

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

FEBRUARY 26, 2018

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 5:50 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice Chairperson
- PETER G. MAY, Commissioner (NPS)
- PETER SHAPIRO, Commissioner
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

- SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

- JENNIFER STEINGASSER, Deputy Director, Development Review & Historic Preservation
- JOEL LAWSON
- STEPHEN J. MORDFIN
- STEPHEN COCHRAN
- ELISE VITALE
- BRANDICE ELLIOTT
- ANNE FOTHERGILL

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
JACOB RITTING, ESQ.

The transcript constitutes the minutes from
the Regular meeting held on February 26, 2018.

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

Call to Order	5
Call for Closed Meeting	5
Consent Calendar	
Case #04-13B	9
1210C R Street LLC - Minor Modification	
Case #08-060	13
Office of Planning - Minor Modification to ZC Order 08-06A	
Case #10-21B	16
V Street SW, LLC - Design Review Modification of Consequence @ Square 667S	
ZC Case #13-05C	18
Forest City Washington	
Case #11-07H	41
American University - Technical Correction to Condition No. 14 of Z.C. Order No. 11-07	
Hearing Action	
Case #17-21	22
As You Like It, LLC - Consolidated PUD & Related Map Amendment @ Square 498	
Case #17-14	27
UM 500 Penn Street NE, LLC & UDR, Inc. - Consolidated PUD & Related Map Amendment @ Square 3594	
Case #08-34H	35
Jewish Historical Society of Greater Washington - 2nd-Stage PUD @ Square 568	
Correspondence	
Case #15-18A	38
Initio - Request for Reconsideration from Committee of 100 and Applicants Response	
Agenda Item: 06-10	40
Copy of Letter from Zoning Administrator to Applicant re: Matter-of-Right Charter School Use	

NEAL R. GROSS

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

T-A-B-L-E O-F C-O-N-T-E-N-T-S (CONT'D.)

Final Action	
Case #11-07G	53
American University - Campus Plan and Further Processing	
Adjournment	100

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

(5:52 p.m.)

1
2
3 CHAIRMAN HOOD: This meeting will please come to
4 order. Good evening, ladies and gentlemen. This is a public
5 meeting of the Zoning Commission for the District of
6 Columbia.

7 My name is Anthony Hood. Joining me are
8 Commissioner Turnbull, Commissioner May and Commissioner
9 Shapiro. I will be providing additional information, if
10 needed, at our 6:30 proceedings.

11 But we're convening today at this point,
12 Commissioners, we just convened to see whether or not any
13 believe that we should have a closed meeting to obtain legal
14 advice and deliberate -- and not to deliberate but to vote
15 on the contested cases scheduled for tonight's hearing.

16 Let me read this what I have here. I digress from
17 the script. It says, I would like to know whether any of you
18 believe we should hold a closed hearing to obtain legal
19 advice from our counsel, but not to vote on the contested
20 cases scheduled for tonight's hearing.

21 COMMISSIONER SHAPIRO: So moved, Mr. Chair.

22 CHAIRMAN HOOD: Okay, it's been moved that we have
23 a --

24 COMMISSIONER MAY: Second.

25 CHAIRMAN HOOD: It's been moved and properly

NEAL R. GROSS

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

1 seconded. Let me ask for clarification that you all think
2 we need a closed meeting.

3 COMMISSIONER TURNBULL: We do, yes.

4 CHAIRMAN HOOD: Okay. It's been moved and
5 seconded. Any further discussion?

6 All in favor?

7 (Chorus of ayes.)

8 CHAIRMAN HOOD: Any opposition?

9 Okay, also Vice Chair Miller as well votes in
10 affirmative.

11 Ms. Schellin, will you please record the vote?

12 MS. SCHELLIN: Yes. Staff records the vote 5 to
13 0 to 0 to approve to having a closed meeting. Commissioner
14 Shapiro moving, Commissioner May seconding. Commissioners
15 Hood, Miller and Turnbull voting in favor.

16 CHAIRMAN HOOD: Okay. The Commission has voted
17 to hold a closed session.

18 MS. SCHELLIN: I'm sorry. Let me do a roll call
19 vote instead.

20 Chairman Hood?

21 CHAIRMAN HOOD: Yes.

22 MS. SCHELLIN: Vice Chair Miller?

23 COMMISSIONER SHAPIRO: He voted yes walking in.

24 MS. SCHELLIN: Well, he said that he said yes when
25 he --

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Yes. He said yes, but he's back
2 in the back now.

3 MS. SCHELLIN: Okay.

4 CHAIRMAN HOOD: Yes.

5 MS. SCHELLIN: Commissioner Turnbull?

6 COMMISSIONER TURNBULL: Yes.

7 MS. SCHELLIN: Commissioner May?

8 COMMISSIONER MAY: Yes.

9 MS. SCHELLIN: Commissioner Shapiro?

10 COMMISSIONER SHAPIRO: Yes.

11 MS. SCHELLIN: Can we just get Commissioner Miller
12 out here to have him on the record?

13 VICE CHAIR MILLER: Sorry.

14 MS. SCHELLIN: If we can just get you on the
15 record. Vice Chair Miller?

16 VICE CHAIR MILLER: Yes.

17 MS. SCHELLIN: Thank you.

18 CHAIRMAN HOOD: Okay, Ms. Schellin --

19 MS. SCHELLIN: The motion passes.

20 CHAIRMAN HOOD: Okay. So we will convene at 6:30.
21 Anything else?

22 All right, thank you.

23 (Whereupon, the above-entitled matter went off the
24 record at 5:54 p.m. and resumed at 6:51 p.m.)

25 CHAIRMAN HOOD: Okay, are we ready to get started?

NEAL R. GROSS

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

1 This meeting will please come to order. Good evening, ladies
2 and gentlemen. This is a public meeting of the Zoning
3 Commission for the District of Columbia.

4 My name is Anthony Hood. Joining me are Vice
5 Chair Miller, Commissioner Turnbull, Commissioner Shapiro and
6 Commissioner May. We're also joined by the Office of Zoning
7 staff, Ms. Sharon Schellin, as well as the Office of Attorney
8 General Mr. Ritting and Ms. Lovick, Office of Planning, Ms.
9 Steingasser and Mr. Lawson, Mr. Cochran, Ms. Vitale and Mr.
10 Mordfin. Okay.

11 And we have others who I think are in the
12 audience. I think I saw some in the audience who will come
13 up at a later time and they'll acknowledge themselves when
14 they come up.

15 Copies of today's meeting agenda are available to
16 you and are located in a bin near the door. We do not take
17 any public testimony at our meetings unless the Commission
18 requests someone to come forward.

19 Please be advised this proceeding is being
20 recorded by a court reporter and is also webcast live.
21 Accordingly, I must ask you to refrain from any disruptive
22 noises or actions in the hearing room including the display
23 of any signs or objects.

24 Please turn off all your electronic devices at
25 this time.

1 Does the staff have any preliminary matters?

2 MS. SCHELLIN: No, sir.

3 CHAIRMAN HOOD: I do have one. Depending upon how
4 the Commission moves, I'm going to, if we get to that point
5 I'm going to ask that we move -- under Final Action we have
6 Zoning Commission case number 11-07G. I'm going to ask that
7 we move that to our last case for the evening, unless there's
8 some objection.

9 COMMISSIONER SHAPIRO: No objection.

10 CHAIRMAN HOOD: Not hearing objections, okay, Ms.
11 Schellin, could you call the first case?

12 MS. SCHELLIN: Yes, sir. The first case on the
13 agenda is under, is case number 04-13B, 1210C R, Street LLC.
14 It's a request for a minor modification at Square 0277, and
15 the applicant is seeking a minor modification with regard to
16 the benefits and amenities approved in this previously
17 approved PUD case.

18 At Exhibit 5 we have an OP report which stated
19 that they are not opposed to the relocation of the universal
20 design unit, but they do believe this is a, I'm sorry, is not
21 a minor modification but rather a modification of
22 significance or a modification of consequence.
23 Ask the Commission to consider this case this evening.

24 CHAIRMAN HOOD: Okay. Commissioners, my first
25 question, does anyone believe that this case should come off

NEAL R. GROSS

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

1 the consent calendar?

2 COMMISSIONER SHAPIRO: Mr. Chair?

3 CHAIRMAN HOOD: Yes.

4 COMMISSIONER SHAPIRO: Regardless of whether
5 there's opposition or concerns about it or who supports it
6 or who doesn't, just based upon the nature of the
7 modification it feels like a modification of significance to
8 me.

9 CHAIRMAN HOOD: Okay. All it takes is one. I
10 would agree, Mr. Shapiro. Any others? But all it takes is
11 one, so.

12 COMMISSIONER SHAPIRO: Significance.

13 CHAIRMAN HOOD: It's of significance.

14 Okay, I seem to be getting, going brain dead already and we
15 just started and that's a bad sign. So I guess we need to
16 schedule it and that'll be, all it takes is one person to
17 take it off.

18 And you mentioned it's a modification of
19 significance --

20 MS. SCHELLIN: That's a hearing.

21 CHAIRMAN HOOD: -- which would entitle us to go
22 to a hearing, so we need to do some scheduling, correct?

23 MS. SCHELLIN: No. They actually, they would
24 actually, you would direct the applicant to go back and file
25 an application for a modification of significance.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay. So the applicant of Zoning
2 Commission case number 04-13B, this has been taken off the
3 Consent Calendar tonight as you've heard. We would direct
4 you, ask you to go back and file a modification of
5 significance for the case to be heard and at that time we
6 will do scheduling.

7 MR. RITTING: I just wanted to add a little bit
8 of information for the attorney if he's here tonight. The
9 applicable section for you to look at for the application is
10 Subtitle Z Section 704.

11 CHAIRMAN HOOD: You know, I need to read something
12 that I should have read earlier. Let me just go back, so
13 we're going to move in that fashion, okay.

14 VICE CHAIR MILLER: But are you going off of that
15 case?

16 CHAIRMAN HOOD: Yes. I'm going to go back to
17 something I've missed.

18 VICE CHAIR MILLER: Okay. But I just want to add
19 something on that. I would agree on the direction we're
20 going in because I think the rules are pretty clear that a
21 per change to a proper public benefit, especially if this
22 one's going offsite three miles away, I would just encourage
23 the applicant also as we move forward in this to look at the
24 OP's condition that they suggested on page 2 of their report,
25 because I think I agree with those as well.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay. Let me, this goes back to
2 opening statement. I would ask that this statement be
3 incorporated.

4 For cases under the hearing action portion of the
5 agenda, the only documents in the record before us this
6 evening are the application, the ANC set down report and the
7 Office of Planning report. All other documents in the record
8 will be reviewed at the time of the hearing.

9 I think that's important and that's a very
10 important statement. So if you don't hear us deliberating
11 on certain documents then you'll understand why, because it's
12 not the appropriate time for us to consider them.

13 Okay. Let's move on to Zoning Commission case
14 number 11-07H, American University - Technical Correction to
15 Condition No. 14 of Zoning Commission Order Number 11-07.

16 Ms. Schellin?

17 MS. SCHELLIN: Yes. The applicant has filed or
18 requested a Technical Correction of Condition 14 of Zoning
19 Commission Order Number 11-07 which indicates the number of
20 parking spaces it is required to maintain.

21 At Exhibit 4, Spring Valley Wesley Heights
22 Citizens Associations and Neighbors for a Livable Community
23 has filed a joint response to the application in which they
24 believe the applicant should have filed for a modification
25 of significance.

NEAL R. GROSS

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

1 We'd ask the Commission to consider the request
2 before them this evening, and that's all that we have.

3 CHAIRMAN HOOD: All right. There's been an
4 amendment, a request. We're going to do 11-07H before we do
5 the last case. We're going to do them kind of together here,
6 okay.

7 All right, so this day is for some reason starting
8 off a little mixed up for me, but anyway let's keep right on
9 moving.

10 Zoning Commission case number 08-060, Office of
11 Planning - Minor Modification to Zoning Commission Order
12 Number 08-06A Subtitle U, and request for immediate
13 publication of proposed rulemaking.

14 Ms. Schellin?

15 MS. SCHELLIN: Yes. OP is requesting a minor
16 modification to Subtitle U, Section 802 to include large
17 format retail as a special exception use in the PDR zones.

18 In the Commission's October 2014 deliberations
19 they actually voted, you actually voted in favor of OP's
20 recommendation to do this. However, the language was not
21 included in the final text. Therefore, OP is asking the
22 Commission to approve the immediate publication of a proposed
23 rulemaking with regard to this request that's before it this
24 evening.

25 CHAIRMAN HOOD: Okay. Commissioners, I think that

NEAL R. GROSS

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

1 we have been asked and I think we've read the additional
2 language that's being asked for the retail large format which
3 is subject to conditions that we have had in the report.

4 Any questions or comments?

5 Vice Chair Miller?

6 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
7 just had one question. I mean I support this, but I just had
8 one question of the Office of Planning.

9 Are the conditions that you've laid out in the
10 report, the Special Exception Conditions for Large Format
11 Retail in a PDR Zone, are they the same special exception
12 conditions that are set forth in the zoning reg. in ZR16 for
13 other zoning districts?

14 MS. VITALE: This is Elisa Vitale with the Office
15 of Planning. Yes. The criteria that are laid out for the
16 large format retail special exception match those in other,
17 it should read similar to the criteria for large format
18 retail in a mixed use zone or other zones.

19 VICE CHAIR MILLER: Okay. I just, I recall that
20 being one version of that which had something about economic
21 impact. I'm not advocating that but I guess that didn't get
22 into the final special economic, special exception conditions
23 about things being, information being provided by the
24 applicant.

25 But that was my only question, but you think it's

NEAL R. GROSS

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

1 the same?

2 MS. VITALE: Yes, we did. We pulled the language
3 from another section, so.

4 VICE CHAIR MILLER: Okay, thank you. That's all.

5 CHAIRMAN HOOD: So on the same note, Ms. Vitale,
6 when we did PDRs we mentioned external effects. Is that the
7 same practice? See, I think we put it all throughout the
8 code now, but would that also be applicable to this? That
9 we also --

10 MS. VITALE: Yes. Yes.

11 CHAIRMAN HOOD: All right, thank you.

12 Any other questions or comments? Do I hear a
13 motion?

14 VICE CHAIR MILLER: Mr. Chairman, I would move
15 that we, the Zoning Commission, take action on this
16 modification to the zoning regulation as adopted in case 08-
17 06A for the large format retail in PDR zones, and ask for a
18 second.

19 COMMISSIONER TURNBULL: Second.

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

22 COMMISSIONER SHAPIRO: Mr. Chair, do we, under the
23 schedule do we need to clarify that we're requesting
24 immediate publication of the proposed rulemaking or is that
25 --

NEAL R. GROSS

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

1 CHAIRMAN HOOD: I think that's as proposed.

2 MS. SCHELLIN: That's what the vote is, yes.

3 CHAIRMAN HOOD: Right. As proposed, right?

4 COMMISSIONER SHAPIRO: Yes.

5 CHAIRMAN HOOD: Yes. That's our, yes. But thanks
6 for spelling that out, but as recommended. Okay, so moved
7 and properly seconded, any further discussion?

8 All in favor?

9 (Chorus of ayes.)

10 CHAIRMAN HOOD: Any opposition?

11 Not hearing any, Ms. Schellin, would you please
12 record the vote?

13 MS. SCHELLIN: Yes. The vote is, staff recorded
14 the vote at 5 to 0 to 0 to approve immediate publication of
15 a proposed rulemaking for Zoning Commission Case Number 08-
16 060.

17 Commissioner Miller moving, Commissioner Turnbull
18 seconding, Commissioners Hood, May and Shapiro in support.

19 CHAIRMAN HOOD: Okay. Next, we have a
20 modification of consequence so we're going to do
21 deliberations, Zoning Commission Case Number 10-21B, V Street
22 SW, LLC - Design Review Modification of Consequence at Square
23 667S.

24 Ms. Schellin?

25 MS. SCHELLIN: Yes. So the Exhibits 6 through

NEAL R. GROSS

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

1 6A2, the applicant has provided some supplemental information
2 addressing the issues that the Commission asked for at the
3 time it determined the scheduling.

4 And at Exhibit 7, there's an OP supplemental
5 report which advises that based on the supplemental
6 submission from the applicant it no longer has any objection
7 to the applicant's request. So we'd ask the Commission to
8 consider final action this evening.

9 CHAIRMAN HOOD: Okay. Commissioners, thank you.

10 Ms. Schellin, as mentioned, has been presented to
11 us in Exhibit 6A, 6A seems to have answered especially the
12 Office of Planning's questions and issues. Let's see if we
13 have any outstanding other issues. And they're now
14 recommending approval of the modification of consequence.

15 Any questions or comments?

16 VICE CHAIR MILLER: Mr. Chairman, I would say that
17 the changes that have been made are definitely improvements
18 and I'm supportive of that moving forward.

19 CHAIRMAN HOOD: Okay. Any other comments? Okay.
20 All right, no comments.

21 So with that I would move approval as amended,
22 Zoning Commission, or modification of consequence for Zoning
23 Commission Case Number 10-21B, V, Street SW, LLC - Design
24 Review Modifications as changed, and ask for a second.

25 VICE CHAIR MILLER: Second.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: It's moved and properly seconded.
2 Any further discussion?

3 All in favor?

4 (Chorus of ayes.)

5 CHAIRMAN HOOD: Any opposition?

6 Not hearing any, Ms. Schellin, record the vote.

7 MS. SCHELLIN: Yes. Staff records the vote 5 to
8 0 to 0 to approve final action Zoning Commission Case Number
9 10-21B. Commissioner Hood moving, Commissioner Miller
10 seconding, Commissioners May, Shapiro and Turnbull in
11 support.

12 CHAIRMAN HOOD: Okay, next. Zoning Commission
13 Case Number 13-05C Forest City Washington, one-year PUD time
14 extension at Square 744S.

15 Ms. Schellin?

16 MS. SCHELLIN: The applicant is seeking a one-year
17 time extension stating the need is due to extensive efforts
18 required to identify and secure funding for an appropriate
19 location facilities that are acceptable to DC Water. This
20 is the second time extension request for the applicant.

21 Exhibit 6, we have an OP report stating that it
22 is satisfied that the situation was beyond the control of the
23 applicant and would support the request for extension and ask
24 the Commission to consider final action on this case.

25 CHAIRMAN HOOD: Okay, Commissioners, we have a

NEAL R. GROSS

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

1 request before us. I can tell you for me though when I look
2 at this, when I saw the ANC letter says they enthusiastically
3 support the extension.

4 I've actually read it twice because I know that
5 this ANC has a lot of development going on in the ANC and I
6 know they have a lot of work that they're doing, so this says
7 a lot about how they've moved forward in this.

8 When I see the word enthusiastically that means
9 quite a bit. I don't even think I read the rest of it after
10 I saw that. But anyway let me open up any further
11 discussion.

12 Vice Chair Miller?

13 VICE CHAIR MILLER: I'm sorry. This really has
14 nothing to do with the PUD extension request which I support,
15 but this is for the ICON Movie Theater and the above-grade
16 parking associated with it, I think.

17 So that above-grade parking just stood out to me.
18 I realize we approved that, but maybe OP can just quickly
19 explain why did we approve above-grade parking? We didn't
20 approve it at George -- you didn't approve it at Georgetown
21 Waterfront.

22 You didn't approve it at the Southwest Waterfront.
23 I realize the ballpark, it did get approved at the ballpark
24 over this Commission's objections as I recall.

25 Why did we approve or you recommend approval of

NEAL R. GROSS

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

1 above-grade parking at the Yard site for the movie theater?

2 MR. LAWSON: Sure. Joel Lawson with the Office
3 of Planning. I don't have the OP reports in front of me and
4 I certainly wouldn't speak for the Zoning Commission.

5 VICE CHAIR MILLER: It has nothing to do with this
6 PUD extension request, but.

7 MR. LAWSON: Well, I certainly wouldn't speak for
8 why the Commission elected to approve it. If you would like
9 to know more information we can certainly work with the
10 Office of the Attorney General --

11 VICE CHAIR MILLER: I'll go with that.

12 MR. LAWSON: -- and get a copy of that report to
13 you.

14 VICE CHAIR MILLER: Okay. Thank you very much.

15 CHAIRMAN HOOD: Any further questions or comments?

16 COMMISSIONER TURNBULL: Yes. Mr. Chair, I just
17 want to point out that we do have, in Exhibit Number 4, we
18 have a letter from the deputy mayor basically talking about
19 the water issue and that Forest City can't move ahead until
20 the water has been relocated.

21 So I would have no problem in voting for the
22 extension.

23 CHAIRMAN HOOD: All right, so with that any
24 further discussions? Yes?

25 VICE CHAIR MILLER: Where did the, if Office of

NEAL R. GROSS

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

1 Planning knows and you can get it to me later, where did the
2 DC Water facility get relocated? It mentions two sites, but
3 it didn't say where. Are they in the District of Columbia?

4 MR. LAWSON: To be honest with you, we're asking
5 the same question and we have not yet found that answer.

6 VICE CHAIR MILLER: Okay.

7 MR. LAWSON: So I'm not sure where that -- this
8 is, I believe, the fleet maintenance.

9 VICE CHAIR MILLER: Right.

10 MR. LAWSON: And I don't --

11 (Simultaneous speaking.)

12 MR. LAWSON: I can't say. I don't know.

13 VICE CHAIR MILLER: Okay, all right.

14 Again I support the extension.

15 CHAIRMAN HOOD: Okay, so with that I will move the
16 time extension for Zoning Commission Case Number 13-05C
17 Forest City Washington as proposed, one-year PUD time
18 extension as requested, and ask for a second.

19 VICE CHAIR MILLER: Second.

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

22 All in favor?

23 (Chorus of ayes.)

24 CHAIRMAN HOOD: Any opposition?

25 Not hearing any, Ms. Schellin, record the vote.

NEAL R. GROSS

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

1 MS. SCHELLIN: Staff records the vote 5 to 0 to 0
2 to approve final action in Zoning Commission Case Number 13-
3 05C. Commissioner Hood moving, Commissioner Miller
4 seconding, Commissioners May, Shapiro and Turnbull in
5 support.

6 CHAIRMAN HOOD: Okay. Next, I think we go to a
7 hearing action. Zoning Commission Case Number 17-21, As You
8 Like It, LLC - Consolidated PUD & Related Map Amendment at
9 Square 498.

10 Mr. Cochran, is this your case?

11 MR. COCHRAN: Yes, sir.

12 CHAIRMAN HOOD: Mr. Cochran, do you have anything
13 you want to add to it or, because I know this is our second
14 time.

15 MR. COCHRAN: Just a little bit.

16 CHAIRMAN HOOD: Okay.

17 MR. COCHRAN: A couple of filings came in today.
18 Exhibits 17 and 18 were filed today and they indicate that
19 the applicant and the ANC have met twice since the project
20 was reviewed by the, or considered by the Commission in
21 January.

22 In Exhibit 17, the applicant states that in
23 response to those meetings it is now working on site plan
24 changes, particularly the location and size of the annex
25 building, increasing upper story setbacks, mitigating loading

NEAL R. GROSS

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

1 impacts, perhaps design alterations to make the building more
2 compatible with the nearby townhouses and enhancing
3 Shakespeare-oriented public benefits for nearby schools and
4 the neighborhood.

5 In Exhibit 18, the ANC 6D, Single Member District
6 Commissioner notes that while the ANC welcomes the
7 opportunity to continue dialogue about the case, its previous
8 concerns and its recommendations against set down at this
9 time have not changed.

10 OP's analysis indicates that the project would
11 not be inconsistent with the comprehensive plan and OP
12 recommends the Commission set down the application for a
13 public hearing.

14 If the project is set down, OP will work with the
15 applicant on addressing the issues that OP summarized on page
16 18 of its preliminary report, the concerns that have been
17 expressed by the ANC and matters that have others have
18 already or might raise during the continued dialogue that is
19 set down at a hearing would enable.

20 And I can certainly answer any questions if you
21 have them.

22 CHAIRMAN HOOD: Commissioners, we have a request
23 for us to set down. I think the big issue is do we believe
24 this is consistent with the comp plan. I think, Mr. Cochran,
25 Office of Planning believes that this is consistent with the

NEAL R. GROSS

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

1 comprehensive plan?

2 MR. COCHRAN: Or technically not inconsistent,
3 yes.

4 CHAIRMAN HOOD: Technically not inconsistent with
5 the comprehensive plan.

6 Okay, let me hear from others. Let's open up the
7 comprehensive plan, do we want to discuss that or any issues,
8 actually? Any comments or questions?

9 COMMISSIONER MAY: Mr. Chairman?

10 CHAIRMAN HOOD: Yes, Commissioner May.

11 COMMISSIONER MAY: So yes, I appreciate the fact
12 that there have been a couple of meetings. That was pretty
13 fast to have two meetings between the applicant and the ANC.
14 And I appreciate the fact that the applicant has already
15 started to make some changes.

16 It does seem pretty apparent that there, you know,
17 it's not going to be a matter of tweaking to satisfy the ANC
18 that this is consistent with the comprehensive plan.

19 And I, you know, I don't think that the applicant
20 is prepared to make the kind of drastic changes that I would
21 expect the ANC might want to see in order to make it
22 consistent with the immediate neighborhood, which is largely
23 townhouses in the immediate vicinity, but, you know, catty-
24 corner is a tall apartment building as well and Southwest has
25 a lot of up and down, you know, small development and tall

NEAL R. GROSS

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

1 buildings and so on.

2 So it's, you know, I think you could look at it
3 a lot of different ways. I would just say that at this point
4 I don't see a reason to delay set down any further and that
5 we will have to have a hearing.

6 And one of the things that we have to hash out is
7 whether in fact this is, whether we agree that this is not
8 inconsistent with the comprehensive plan.

9 So I'm in favor of setting it down at this moment.

10 CHAIRMAN HOOD: Okay. Any other comments?

11 VICE CHAIR MILLER: Yes.

12 CHAIRMAN HOOD: Vice Chair Miller?

13 VICE CHAIR MILLER: I would just concur with
14 Commissioner May's comments.

15 COMMISSIONER TURNBULL: Yes, Mr. Chair. I would
16 agree with both of my colleagues. I think although there are
17 aspects of what the ANC is opposed to, I think we should set
18 it down.

19 I think we need to talk about this in an open
20 forum. I think the applicant's on notice of what he has to
21 look at. I think the OP report by Mr. Cochran clearly calls
22 out a lot of the issues that I agree with, and I think that
23 the issues of the comprehensive plan can be talked about in
24 an open forum. So I'm ready to go ahead and set it down.

25 COMMISSIONER SHAPIRO: I concur, Mr. Chair.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay. In that case, would
2 somebody like to, there's three out of the five of us. Well,
3 there's four out of the five. Well, five out of the five of
4 us, you know, to say that.

5 COMMISSIONER TURNBULL: Mr. Chair, I would move
6 that we set down Zoning Case Number 17-21, As You Like It,
7 LLC - Consolidated PUD & Related Map Amendment at Square 498,
8 and look for a second.

9 COMMISSIONER MAY: Second.

10 CHAIRMAN HOOD: It's been moved and properly
11 seconded. Any further discussion?

12 COMMISSIONER MAY: I would just want to encourage
13 the Office of Planning and the applicant and the ANC and the
14 interested neighbors to have constructive discussion between
15 now and when we actually have the hearing, because it would
16 be great if there was a better sense of agreement on the
17 direction of this because I think that it will be, in the
18 long run, beneficial to see this site be developed.

19 CHAIRMAN HOOD: Okay, so noted. I'm sure the
20 applicant heard as well as other parties involved. Properly
21 seconded -- moved and properly seconded. Any further
22 discussion?

23 All those in favor?

24 (Chorus of ayes.)

25 CHAIRMAN HOOD: Any opposition?

NEAL R. GROSS

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

1 Not hearing any, Ms. Schellin, record the vote.

2 MS. SCHELLIN: Yes. Staff records the vote 5 to
3 0 to 0 to set down Zoning Commission Case Number 17-21 as a
4 contested case. Commissioner Turnbull moving, Commissioner
5 May seconding, Commissioners Hood, Miller and Shapiro in
6 support.

7 CHAIRMAN HOOD: Okay. Next set down, we have
8 Zoning Commission Case Number 17-14, UM 500 Penn Street NE,
9 LLC & UDR, Inc. - Consolidated PUD & Related Map Amendment
10 at Square 3594.

11 Ms. Vitale? Ms. Vitale.

12 MS. ELLIOTT: I think we took a step back tonight,
13 Mr. Chair. You were doing so well. You were on a winning
14 streak and --

15 CHAIRMAN HOOD: You know what. You know what.
16 Oh, and you know what? I remember you saying that Chairman
17 Fred Hill called you Vitale. I'm sorry, Ms. Elliott. That
18 was in my mind. I remember you saying that, so charge that
19 one to Chairman Hill.

20 MS. ELLIOTT: Absolutely, I will let him know.

21 CHAIRMAN HOOD: Okay, because you said one time,
22 didn't you say that at BZA that he called, I think you said
23 he called you Ms. Vitale.

24 MS. ELLIOTT: I believe that you planted the idea
25 in his head and so he started calling me that.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Wasn't she sitting on the end
2 earlier?

3 MS. ELLIOTT: She was.

4 CHAIRMAN HOOD: Okay, that's what, okay. All
5 right, yes, musical chairs. Okay. I'm sorry, Ms. Elliott.

6 MS. ELLIOTT: I'm used to it, but we'll move on.

7 Good evening, Mr. Chairman, members of the
8 Commission. For the record, I am Brandice Elliott
9 representing Office of Planning. We recommend that the
10 application for a Consolidated PUD and PUD Related Map
11 Amendment for the Maurice Electric site in Florida Avenue
12 Market, located at 500 Penn Street, be set down for a public
13 hearing.

14 The development would consist of a 12-story, 130-
15 foot high, mixed-use building with ground floor retail and
16 11 stories of residential use consisting of approximately 300
17 dwelling units.

18 The property is currently zoned PDR and the
19 applicant proposes to rezone it to MU9 which would result in
20 a gain of 80 feet of height and approximately 189,000 square
21 feet of floor area.

22 The original submission was actually filed last
23 June, so over the last eight months, the applicant has made
24 some improvements. The affordable housing has been increased
25 from 9 percent to 12 percent with 70 percent of the floor

NEAL R. GROSS

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

1 area reserved for those at 60 percent MFI, and 30 percent of
2 the floor area reserved for those at 50 percent MFI.

3 The development also includes three-bedroom units.
4 Other offers have also been added or increased including an
5 art display in the residential lobby, a proposed job training
6 and readiness program and participation in First Source
7 agreement.

8 OP has provided an analysis of the proposed offers
9 and identified the need for additional information regarding
10 some of those as noted on pages 17 through 22 of its report.

11 The applicant has committed to provide 1,178
12 square feet of PDR and makerspace onsite and 20,000 square
13 feet on an adjacent site both for a period of five years.

14 While this is a significant improvement from the
15 original proposal which did not include any PDR or
16 makerspace, the temporary nature of the space is a concern
17 because the intent of the comprehensive plan is to provide
18 permanent land uses consistent with the future land use map
19 and because the flexibility gained through the PUD is
20 permanent.

21 In addition, the Ward 5 Works Industrial Land
22 Transformation Study highlights the need to preserve
23 industrial land to provide affordable spaces for small
24 businesses.

25 The site is designated high-density residential,

NEAL R. GROSS

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

1 high-density commercial and PDR on the future land use map,
2 and the proposed PUD would not be inconsistent with this
3 designation provided that the Zoning Commission determines
4 that the applicant has adequately addressed the PDR stride.

5 The proposal also would not be inconsistent with
6 the policies of the comprehensive plan as detailed in
7 Attachment 2 of OP's report. The PUD would also further the
8 objectives and policies of the Florida Avenue Market small
9 area plan.

10 Should the Commission set down the application,
11 OP would continue to work with the applicant to provide
12 information as noted in OP's report which includes details
13 regarding certain benefits and amenities, permanent PDR and
14 makerspace, refined architectural drawings and of course
15 anything additional requested by the Commission.

16 I'm happy to answer any questions you may have.

17 CHAIRMAN HOOD: Thank you, Ms. Elliott. Let me
18 just ask right off, the employment service amenity or option
19 of employment service I was told, I thought that the city had
20 stopped doing that. Is this something different or are we
21 talking about the same program?

22 MS. ELLIOTT: So the applicant is working with the
23 ANC to develop a different program. I think we've requested
24 additional information to see what it would actually entail.

25 CHAIRMAN HOOD: Okay, all right. Thank you, Ms.

NEAL R. GROSS

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

1 Elliott. And again I apologize for Commissioner Shapiro not
2 -- no, I'm just playing. I apologize getting confused. I
3 was doing so well. I feel bad now.

4 Okay, any other questions or comments?

5 COMMISSIONER TURNBULL: Mr. Chair?

6 CHAIRMAN HOOD: Okay, Mr. Turnbull.

7 COMMISSIONER TURNBULL: Yes, thank you. I just
8 wanted to thank OP for their report. But the one thing I
9 agree that I think there's a couple things about the
10 drawings, you had some issues with the clarification, better
11 drawings, and I would agree with that.

12 You also talk about signage that there's no,
13 anything. There's some, a little reference to signage, so
14 I think that ought to be addressed.

15 I would also like to see better drawings regarding
16 the rooftop, the penthouse and the setbacks. I'd like to see
17 that clearly defined and showing that they meet all the
18 setbacks on the project.

19 But other than that I think it was a very
20 excellent report. Thank you, Mr. Chair.

21 CHAIRMAN HOOD: Any other questions?

22 Commissioner May?

23 COMMISSIONER MAY: Thank you, Chairman Miller, I
24 mean Hood.

25 So I agree with the comments from the Office of

NEAL R. GROSS

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

1 Planning and the particular concerns. I mean I think the PDR
2 use is a pretty big issue, also agree on getting better
3 drawing.

4 And I think one of the very important things for
5 me is the plans for the rest of the lot because the
6 development looks rather odd where it's just sort of half of
7 the Maurice Electric building or the former Maurice Electric
8 building.

9 There is also an issue that I see with the lack
10 of setback on the rooftop or the penthouse on the east side
11 of the rear wing which presumably is that way because it's
12 a closed corridor.

13 It's not a yard. It's not facing a public way.
14 But nonetheless it's highly visible because the rest of that
15 lot is not developed, So I would like to understand that
16 better.

17 I mean if I can know with some certainty that it's
18 not going to be visible for, you know, in the near future or
19 in the immediate lifetime of the building then that's fine.
20 But if it's going to be sitting that way for a long time and
21 we're going to be looking over that two-story Maurice
22 Electric building at a penthouse that's not been set back,
23 then I think it's a problem.

24 So I'm interested in knowing more about that and
25 I agree with Mr. Turnbull's request as well, thank you.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Mr. Shapiro?

2 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
3 agree with the comments of my colleagues and especially what
4 the plans are for the rest of the lot. I had those same
5 concerns.

6 And also related to the environmental benefits I
7 would want to hear from the applicant. If they're not able
8 to include solar panels, why not. That this seems like the
9 perfect project where solar panels would benefit. And OP's
10 support and DOE's support of this Commission has repeatedly
11 made it clear that this is an important benefit.

12 And in addition, as OP mentioned they and we
13 should be looking for clarification if the proposed
14 development will be Gold certified through U.S. Green
15 Building Council. And that's all I have, Mr. Chair.

16 CHAIRMAN HOOD: Okay, thank you.

17 And one of the things that I would -- first,
18 anybody else?

19 Vice Chair Miller?

20 VICE CHAIR MILLER: I would just concur with my
21 colleagues and thank OP for their comprehensive report and
22 agree with virtually all of their recommendations.

23 CHAIRMAN HOOD: Commissioner Turnbull?

24 COMMISSIONER TURNBULL: Mr. Chair. Yes, I just
25 thought of one other thing and I forgot to add it. The alley

NEAL R. GROSS

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

1 back there, there's two hotels, one we approved about a year
2 ago and then there was one built, I mean one that's up and
3 running.

4 There's been several, I would like to have a
5 better analysis of the loading and the traffic going in that
6 alley. It looks like the entrance to the garages are at the
7 very end back by those hotels, so I'd like to -- and there's
8 vaults at the other end, so I'm just curious.

9 And I wouldn't mind seeing like a rendering down
10 that alley to know what the heck it's really going to look
11 like. Very concerned about the impact on how that's really
12 going to work, so that was the only thing I wanted to add.

13 CHAIRMAN HOOD: And also, you know, when I think
14 about certain areas in the city and how it can enhance, I've
15 ran into information about an organization called Rooftop.

16 Not that I'm promoting any particular
17 organization, but I know Ward 5 that we can, in those
18 conversations that you might be having with the ANC you might
19 want to mention one of the groups of Rooftop Roots because
20 it's a very valuable asset, I think, that we'll be hearing
21 more about in this city.

22 So when we talk about solar panels and we talk
23 about green roofs, I'm going to be also talking about
24 scenarios like Rooftop Roots. So that's one of the issues
25 I would like to see us talk about with the Ward 5 community

NEAL R. GROSS

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

1 and I'm going to be mentioning that quite a bit across the
2 city.

3 So okay, anything else? Would somebody like to
4 make a motion?

5 COMMISSIONER SHAPIRO: Mr. Chair, I move that we
6 set down Zoning Commission Case Number 17-14, UM 500 Penn
7 Street NE, LLC & UDR, Inc. - Consolidated PUD & Related Map
8 Amendment at Square 3594. Look for a second.

9 VICE CHAIR MILLER: Second.

10 CHAIRMAN HOOD: It's been moved and properly
11 seconded. Any further discussion?

12 All in favor?

13 (Chorus of ayes.)

14 CHAIRMAN HOOD: Any opposition?

15 Not hearing any, Ms. Schellin, will you record the
16 vote?

17 MS. SCHELLIN: Yes. Staff records the vote 5 to
18 0 to 0 to set down Zoning Commission Case Number 17-14 as a
19 contested case. Commissioner Shapiro moving, Commissioner
20 Miller seconding, Commissioners Hood, May and Turnbull in
21 support.

22 CHAIRMAN HOOD: Okay. Let's go to Zoning
23 Commission Case Number 08-34H, Jewish Historical Society of
24 Greater Washington - 2nd-Stage PUD at Square 568.

25 Ms. Fothergill?

NEAL R. GROSS

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

1 MS. FOTHERGILL: Good evening, Chairman Hood and
2 members of the Commission. For the record, I'm Anne
3 Fothergill with the Office of Planning.

4 OP recommends that the Zoning Commission set down
5 the Jewish Historical Society's request for a 2nd-Stage PUD
6 within the south block of the larger Capitol Crossing
7 project.

8 In 2011, the Zoning Commission approved a 1st-
9 Stage PUD for the subject property. This proposal is not
10 inconsistent with that approval or the comprehensive plan.

11 The 2nd-Stage PUD consists of the relocation of
12 the historic synagogue building to the southeast corner of
13 the reconnected 3rd and F Streets Northwest.

14 The applicant will construct an adjacent building
15 for museum and office space. The new building would maintain
16 the driveway and garage off 3rd Street and the internal
17 connection to the future building to the east shown in the
18 Stage 1 PUD.

19 For the 1st-Stage PUD, the Commission approved up
20 to seven stories and an FAR of 4.09 for this site. The
21 applicant is now proposing four stories and an FAR of 2.605
22 and the new museum building's height would be 68 feet.

23 The proposal would comply with the D4 zoning
24 regulations, but the applicant has requested flexibility from
25 the penthouse setback requirements.

NEAL R. GROSS

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

1 In terms of the comprehensive plan future land use
2 map, this property is appropriate for high-density commercial
3 uses. The proposal is consistent with major policies from
4 various elements of the comprehensive plan.

5 The Office of Planning recommends that the Jewish
6 Historical Society 2nd-Stage PUD application be set down for
7 a public hearing, and I'm happy to take any questions.

8 CHAIRMAN HOOD: Thank you, Ms. Fothergill.

9 Commissioners, is there any questions or comments?

10 Okay. Would somebody like to make a motion, if
11 not?

12 COMMISSIONER SHAPIRO: Mr. Chair, I move that we
13 set down Zoning Commission Case Number 08-34H, Jewish
14 Historical Society of Greater Washington - 2nd-Stage PUD at
15 Square 568, and look for a second.

16 VICE CHAIR MILLER: Second.

17 CHAIRMAN HOOD: It's been moved and properly
18 seconded. Any further discussion?

19 Okay, I guess all the issues that we have we can
20 probably deal with those at the hearing. Any further
21 discussion?

22 All in favor?

23 (Chorus of ayes.)

24 CHAIRMAN HOOD: Any opposition?

25 Not hearing any, Ms. Schellin, if you'll record

NEAL R. GROSS

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

1 the vote.

2 MS. SCHELLIN: Yes. Staff records the vote 5 to
3 0 to 0 to set down Zoning Commission Case Number --

4 CHAIRMAN HOOD: Have a nice evening, Ms. Elliott.

5 MS. SCHELLIN: -- 08-34H as a contested case.
6 Commissioner Shapiro moving, Commissioner Turnbull seconding,
7 Commissioners Hood, May and Miller in support.

8 CHAIRMAN HOOD: Okay. We're in correspondence
9 now, I believe. Okay, let's go to Zoning Commission Case
10 Number 15-18A, Initio.

11 Ms. Schellin?

12 MS. SCHELLIN: Yes. At Exhibit 9, the Committee
13 of 100 has requested to waive the rules to accept a late
14 filed motion for reconsideration from a non-party and their
15 request for reconsideration.

16 The order in this case was published in the DC
17 Register on February 2nd, and request from parties for
18 reconsideration were due by February 12th.

19 At Exhibit 10, the applicant's objection to the
20 request stating that the -- is the, I'm sorry, the
21 applicant's objection to the request stating that the
22 Committee of 100's motion must fail because the regulations
23 clearly states that only parties can request reconsideration.
24 And, in addition, the Committee of 100 doesn't seek to
25 address the merits of the order but to remove language it

NEAL R. GROSS

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

1 feels is unnecessary.

2 So it asks the Commission to consider this
3 request.

4 CHAIRMAN HOOD: Okay, thank you, Ms. Schellin.

5 Colleagues, I think due to our rules, and I'm not
6 sure if we've ever done this and I can stand to be corrected.
7 But I think due to our rules of reconsideration and not being
8 a party, but what I do want to make sure is that our language
9 in that case is correct in the order, but I believe it is.

10 But I think this was stated, if the Committee
11 wants to just take something out dealing with, I guess, about
12 50 percent of the waiver of the requirements, but I think we
13 exhaustively discussed that and I don't want to go back into
14 the merits of the case.

15 But I think it goes first on the Committee of 100,
16 first of all, the rules to accept the late filing to a non-
17 party for a request for reconsideration, and I don't think
18 we've ever done that and I think our rules are explicit and
19 I think we just need to be consistent.

20 Let me open up, any comments?

21 VICE CHAIR MILLER: I concur, Mr. Chair.

22 CHAIRMAN HOOD: Okay. Do I need to vote on this?
23 Okay, anybody else?

24 All right, I move that we deny the request from
25 the Committee of 100 due to our regulations which require you

NEAL R. GROSS

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

1 to be a party to request for reconsideration, and ask for a
2 second.

3 COMMISSIONER TURNBULL: Second.

4 CHAIRMAN HOOD: It's been moved and properly
5 seconded. Any further discussion?

6 All in favor?

7 (Chorus of ayes.)

8 CHAIRMAN HOOD: Any opposition?

9 Not hearing any, Ms. Schellin, will you record the
10 vote?

11 MS. SCHELLIN: Staff records the vote 5 to 0 to
12 0 to deny the Committee of 100's request to waive the rule
13 to accept the late filed motion for reconsideration from a
14 non-party. Commissioner Hood moving, Commissioner Turnbull
15 seconding, Commissioners May, Miller and Shapiro also
16 supporting the denial.

17 CHAIRMAN HOOD: Okay. Next, we have Zoning
18 Commission Case Number 06-10, Copy of letter from Zoning
19 Administrator to Applicant re: Matter-of-Right Charter School
20 Use.

21 I don't think this, this doesn't require any
22 action. This is just letting us know, I believe.

23 MS. SCHELLIN: It's, I mean it's up to the
24 Commission whether they want to do anything.

25 CHAIRMAN HOOD: Any comments on charter school

NEAL R. GROSS

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

1 use?

2 Okay, so we will record this as so noted and we
3 are aware of it. Anything, do we need to do anything else?
4 Okay.

5 All right. Do we have anything else before us
6 other than the American University cases? Okay. So let me
7 see. Does Office of Planning have anything they want to add
8 tonight?

9 MS. STEINGASSER: No, sir.

10 CHAIRMAN HOOD: Okay. Let's go to, go back. And
11 I want to thank those who are here for the American
12 University case. This may take us a little longer. Let me
13 go, let me call the first case and I want to thank Mr.
14 Turnbull for recommending that we put it all together.

15 Okay, Zoning Commission Case Number 11-07H,
16 American University - Technical Correction to Condition
17 Number 14 of Zoning Commission Order Number 11-07.

18 Ms. Schellin?

19 MS. SCHELLIN: Again the applicant has requested
20 a technical correction to Condition 14 of Zoning Commission
21 Order 11-07 which indicates the number of parking spaces it
22 is required to maintain.

23 Exhibit 4 is the Spring Valley Wesley Heights
24 Citizens Association and Neighbors for Livable Communities
25 joint response to the application in which they believe the

NEAL R. GROSS

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

1 applicant should have filed for a modification of
2 significance, and ask the Commission to consider this request
3 before them.

4 CHAIRMAN HOOD: The first thing, I guess we need
5 to decide whether or not, first of all, did I ask this
6 question for this one? Does anybody believe this needs to
7 come off the consent calendar?

8 Okay, so there's no objections to it being on the
9 consent calendar, so let's move forward with the issue at
10 hand about this being a, does anybody believe this is not a
11 technical correction?

12 COMMISSIONER MAY: Mr. Chairman?

13 CHAIRMAN HOOD: Yes, Mr. May.

14 So as being one of the commissioners who was
15 present in the original discussions in this case, the
16 original hearings in the case, the many, many hearings in
17 this case, I have to say, honestly, I do not recall exactly
18 what the number should have been based on just my
19 recollection from the hearing.

20 In reviewing the information that we have on the
21 record on this case, it's not perfectly clear to me that it
22 should be one way or the other. And but I think that, you
23 know, we have evidence in the record to consider whether it
24 should be one way or the other.

25 Certainly, the party in opposition believes that

NEAL R. GROSS

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

1 it should not be changed from the 2,500 as it appears in the
2 condition, and the applicant believes that it really should
3 be 2,200.

4 Frankly, I think that this is something that it
5 is, I mean I don't think that this is something that warrants
6 another full hearing. I think that there's enough
7 uncertainty about it.

8 There certainly was a desire on the part of the
9 University to reduce the number of parking spaces and there
10 was support for that from the Office of Planning and others.

11 Certainly this Commission supported reducing the
12 required number of parking spaces, and the fact that right
13 now they are not running at capacity or even really near
14 capacity I've heard numbers between 70 and 80 percent usage
15 on the existing quantity of parking spaces at 2,400 spaces.

16 So I think that it's, you know, the number of
17 2,200 is perfectly reasonable and supportable based on what
18 we have here and I would suggest that we could treat this as
19 a modification of consequence and evaluate it based on the
20 information that we have already received in the record
21 rather than having to hold a hearing, at which point we will
22 hear a lot of the same arguments repeated over and over
23 again.

24 So I would be ready to move forward with this as
25 a modification of consequence.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay. Thank you, Commissioner
2 May. Let me just add to that.

3 I believe, and when I looked at this,
4 having dealt with American University and the campus
5 plan since 2000 when the Commission first took back
6 over campus plans, one of the issues though I think,
7 and I know as Commissioner May and Commissioner
8 Turnbull and myself and I think, Commissioner Slater,
9 I can't remember who the other commissioner was at
10 the time, but it was hard-pressed for me to figure
11 that we would not address whether it was 2,500,
12 2,200, 2,800, whatever the case is, because one thing
13 about this Commission and specifically I'm going to
14 speak about my two colleagues who were here then and
15 myself, we always get into the numbers and the
16 inches. We've always done that.

17 So I don't know, you know, the condition
18 says, I believe, 2,500. So, you know, and I
19 understand that the assumption of it being a
20 typographical error, but I just don't, I'm sorry.

21 I'm not saying anyone's trying to misguide
22 us, but I'm hard to believe that this Commission,
23 that the guys that, well, ladies and gentlemen, I
24 knew who were up here at the time, would not get down
25 into whether we have that discussion.

NEAL R. GROSS

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

1 It's just unfortunate we can't find the
2 trail, well, one says 2,200 and one's 2,500, and I
3 just, it's hard to believe it was a typographical
4 error because we review those conclusions of law and
5 we look at that. And I'm sure, I don't think we
6 would have missed that but then again I guess we
7 might have.

8 But I just think moving forward I was more
9 inclined to see a modification of significance so we
10 can have results in discussions, but if you all
11 believe that we're going to hear the same information
12 I just thought we could concentrate and kind of
13 figure it out whether it's 2,500 or whether it
14 warrants to go down to 2,200.

15 That's why I was thinking in terms of
16 moving forward to a limited scope hearing. It
17 doesn't have to be an all-night hearing and we don't
18 have to relitigate and reargue the whole campus plan
19 which we've already done.

20 But I've heard from Commissioner May we do
21 have a lot in the record and he brings up a good
22 point, will I hear anymore, but I think we could
23 focus on maybe establishing whether there are adverse
24 impacts with downgrading to the 2,200 as being
25 requested.

NEAL R. GROSS

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

1 But anyway those are my comments.

2 Mr. Turnbull?

3 COMMISSIONER TURNBULL: Thank you, Mr.
4 Chair. I would, I'd like to say I can go either way,
5 but I think Commissioner May is right. We're at a
6 point where, I forget how many hearings we had, five
7 hearings or four nights of hearings, five nights? We
8 had a lot of nights of hearings.

9 And the, I guess, if we go back and look
10 at the language in it, I guess it's a little unclear
11 as to what we actually had agreed. But I think I
12 would at this point in time look at it as a matter of
13 consequence and not want to go the, raises to have a
14 separate hearing. I think we can debate this on the
15 dais and go forward.

16 CHAIRMAN HOOD: Any other comments?

17 Vice Chair Miller?

18 VICE CHAIR MILLER: Thank you, Mr.
19 Chairman. As one who is thankfully not on the
20 original hearing, it was before my term, but as
21 someone who has reviewed the record from that hearing
22 and from this hearing, from this case, I would agree
23 with Commissioner May and Commissioner Turnbull that
24 we have enough information in the record,
25 submissions, both written submissions and public

NEAL R. GROSS

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

1 hearing testimony on the issue of parking that we can
2 proceed to consider this as a modification of
3 consequence.

4 CHAIRMAN HOOD: Commissioner Shapiro?

5 COMMISSIONER SHAPIRO: Thank you, Mr.
6 Chair. I would associate myself with the remarks of
7 Vice Chair Miller.

8 CHAIRMAN HOOD: Okay. All right, let's,
9 so we'll consider this a modification of consequence.

10 Do we need to vote on that Ms. Lovick?

11 MS. LOVICK: Well, you can at this point,
12 you can discuss what you find to be the adverse
13 impacts and you could go ahead and deliberate now
14 because all the parties have submitted documentation
15 to the record on the issue or you could set
16 deliberations for a future date.

17 CHAIRMAN HOOD: Okay, Commissioners, I
18 think I heard do we want to deliberate now, we're
19 ready to move forward. Okay, would somebody like to
20 start us off with the deliberations on this 2,500-
21 2,200?

22 Commissioner May?

23 COMMISSIONER MAY: If you can rewind the
24 tape and I can say what I said before? But I would
25 say, I think that this is a circumstance where it is

NEAL R. GROSS

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

1 in the best, broader interest of the city to have
2 reduced parking numbers.

3 Certainly it doesn't make sense to have a
4 lot of vacant parking spaces which seem to be
5 occurring right now. And I understand there is the
6 potential for, you know, if we were talking about
7 limiting the parking so much that it would drive
8 people to park in the neighborhood, then I think we
9 would need to talk about significant mitigations for
10 that.

11 But I think we are all familiar with the
12 very aggressive policies the University has for
13 policing the University-related people who park in
14 the neighborhood in making sure that that does not
15 occur. In fact, if anything, one can argue that it's
16 overly aggressive, but I won't go that far.

17 But I think that this is a, you know, I
18 get the evidence shows that there is ample parking
19 and it can be reduced without a negative impact, so
20 I don't see that there's anything that required
21 further mitigation.

22 CHAIRMAN HOOD: Okay, anybody else?

23 I would just add that -- I'm sorry.

24 COMMISSIONER TURNBULL: I concur with
25 Commissioner May.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay, anybody else?

2 VICE CHAIR MILLER: I too concur.

3 CHAIRMAN HOOD: I might as well just.

4 VICE CHAIR MILLER: I haven't heard what
5 you're going to say, I may concur with you.

6 CHAIRMAN HOOD: I might as well not say
7 anything now, but let's move on to the next thing.
8 Anybody else?

9 VICE CHAIR MILLER: I'll let you --

10 CHAIRMAN HOOD: What I was going to say
11 is, and I know we heard, I try to balance things. A
12 lot of times we hear from those who are affected and
13 a lot of times we don't, and I guess we have to go
14 what's in the merits of what's in the record.

15 I think there was someone who mentioned
16 about how overly aggressive, I think as Commissioner
17 May alluded to, but then there are probably somebody
18 who are getting the other side of the coin.

19 So, you know, I just try to balance things
20 out. And I know I have to go on the merits of the
21 record, but it's the silent majority that I'm
22 concerned about us not hearing from in trying to
23 balance it.

24 I'm not putting it all on the University
25 or anything of that nature, but it's the people where

NEAL R. GROSS

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

1 they are having some adverse impacts of parking. And
2 yeah, okay, it might work on this street, but what
3 happens on this street?

4 So anyway I also went to school in the
5 city too, so I know how it is when you come out and
6 have a ticket on your car so I'm aware of how that
7 works. I was probably on that side of being over-
8 aggressive that time.

9 And I tell you, look, I'm a student. Why
10 are they doing this to me? But, so I know it's two
11 sides to the coin, but I think this is not a
12 showstopper for me.

13 So any other comments?

14 COMMISSIONER MAY: Mr. Chair, one other
15 thing, which I think is worthy of note, which is that
16 the ANC regarded this a technical correction or they
17 would have accepted this as a technical correction.

18 So I think that, you know, the ANC would
19 support this reduction in the number of required
20 spaces, otherwise I think they would have raised
21 concerns in their communication to us.

22 CHAIRMAN HOOD: Right, okay. And I
23 probably had an answer for that too, but I'm going to
24 withhold that. But I think you're right. The front-
25 line elected officials were in support of it being a

NEAL R. GROSS

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

1 technical correction.

2 So all right, anything else? Somebody
3 like to make a motion? I'm going to vote for it, but
4 I'm not going to make a motion and I'm not going to
5 second.

6 COMMISSIONER MAY: I would make a motion
7 to approve Zoning Commission Case 11-07H, American
8 University modification of consequence to reduce the
9 number of required parking spaces, the condition in
10 the original order from 2,500 spaces to 2,200 spaces.

11 COMMISSIONER SHAPIRO: Second.

12 CHAIRMAN HOOD: Okay. It's been moved and
13 properly seconded. Any further discussion?

14 COMMISSIONER TURNBULL: I would just
15 clarify that it's condition number 14 in the order.

16 CHAIRMAN HOOD: Okay. Yes, condition 14.
17 All right, any further discussion?

18 All in favor?

19 (Chorus of ayes.)

20 CHAIRMAN HOOD: Any opposition?

21 Not hearing any, Ms. Schellin, record the
22 vote.

23 MS. SCHELLIN: Yes. Staff records the
24 vote 5 to 0 to 0 to approve Zoning Commission Case
25 Number 11-07H as a modification of consequence in

NEAL R. GROSS

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

1 approving the change of condition number 14 from
2 2,500 parking spaces to 2,200.

3 Commissioner May moving, Commissioner
4 Shapiro seconding, Commissioners Hood, Miller and
5 Turnbull in support.

6 CHAIRMAN HOOD: Okay, so.

7 MS. LOVICK: Excuse me. Excuse me. Can
8 you just also note the original case number?
9 It's 11-07?

10 COMMISSIONER MAY: 11-07.

11 CHAIRMAN HOOD: 11-07H.

12 COMMISSIONER MAY: No. H is the current
13 case.

14 CHAIRMAN HOOD: Oh, the original case.

15 MS. LOVICK: Yes, 11-07.

16 COMMISSIONER MAY: The original campus
17 plan order is 11-07.

18 CHAIRMAN HOOD: 07.

19 MS. LOVICK: Condition 14.

20 COMMISSIONER MAY: And condition number
21 14.

22 CHAIRMAN HOOD: Okay.

23 All right, let's see here. Now let's go
24 to final action, Zoning Commission Case Number 11-07
25 was the original case and we're dealing with Zoning

NEAL R. GROSS

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

1 Commission Case Number 11-07G, American University
2 Campus Plan Amendment and Further Processing at
3 Square 1600.

4 Ms. Schellin?

5 MS. SCHELLIN: Yes. On this case, at
6 Exhibit 66, you have Spring Valley Wesley Heights and
7 Neighbors for a Livable Community's joint response
8 regarding how they came up with the applicant being
9 required to plant over 400 trees and shrubs.

10 In Exhibit 67 through 67B, you have the
11 applicant's submission regarding the number of the
12 trees and shrubs to be planted and how many they've
13 actually planted.

14 But they agree with the number that the
15 party in opposition came up with and that their
16 original submission was incorrect. That they agree
17 with that number and that they have actually planted
18 over the required amount.

19 So ask the Commission to consider this
20 case.

21 CHAIRMAN HOOD: So did we already reopen
22 the record for the request? There were a couple of
23 things that I saw in here that said reopen the
24 record. Did we already do that?

25 MS. SCHELLIN: Yes.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay, just wanted to make
2 sure.

3 All right, Commissioners, we're looking to
4 see a substantial compliance for some of the things
5 that I think the University has admitted in a couple
6 of cases where they were not in compliance, but they
7 got in compliance just before they came in here to
8 see us, for the last few years.

9 So anyway let me open it up for any
10 discussion or comments. We could really go by some
11 of the outstanding conditions if you want to go in
12 that order. I think it would be better for us to do
13 it that way.

14 Okay, one of the issues was transportation
15 demand monitoring reports. The applicant had
16 admitted that in 2013 and '14 and '15 provided, the
17 applicant admitted that it failed to provide the
18 reports in 2013, '14 and '15. But the applicant
19 provided the Commission with the copies of the
20 reports filed in 2016 and '17. So.

21 COMMISSIONER MAY: Okay. So I mean, to me
22 that means that now they are in compliance with this
23 particular condition as they are with many of the
24 others.

25 It also shows that they didn't do a good

NEAL R. GROSS

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

1 job in the beginning complying with those and they
2 should not have to be reminded about these things and
3 it should have been better, but it is what it is now
4 and they are in compliance with this condition. So
5 I'm okay with that.

6 I think the same is true with the parking
7 utilization reports, although it's kind of that's a
8 little shakier. You know, it's unfortunate that when
9 we are debating really substantive matters when it
10 comes to campus plan modifications, there's further
11 processings as in this case that's a further
12 processing, that we have to deal with real questions
13 about substantial compliance.

14 And I mean it's really unfortunate because
15 this should be a matter of checking boxes, right.
16 They should have completed all these reports and
17 submitted the reports in a timely fashion and clearly
18 some of that stuff has not been done over the years.

19 Again, you know, right now and the TDM
20 reports and parking utilization reports and I think
21 they are in compliance, but it's not been perfect
22 from the beginning.

23 CHAIRMAN HOOD: Any other comments on
24 that?

25 I would just say this to start and, you

NEAL R. GROSS

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

1 know, I don't know if it's a showstopper, but to see
2 something, when you've been around since 2000 and you
3 see the same issues that'll show up 18 years later,
4 then you start having problems.

5 Because that means that all the nights
6 that we stayed here trying to get on the Metro before
7 it closed at 12 o'clock and all the many hours that
8 we spent down here in trying to help mitigate and put
9 conditions in place which should be followed, and
10 then I look up and see a university or an applicant
11 come down in compliance the next two years.

12 So basically the message that we're
13 sending is we're going to do conditions, but when you
14 come back and the first three years you can do what
15 you want, but tighten it up before you come back and
16 see the Zoning Commission for the two, that's the
17 signal I think we're sending, and then I have a
18 problem with it.

19 I don't care for it, because we spent a
20 lot of our time down here and a lot of Office of
21 Planning, Office of Zoning, Office of the Attorney
22 General, the residents of the city, and even the
23 University's time and they know that these are things
24 that we put in place for a reason.

25 We don't put them in place to come in

NEAL R. GROSS

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

1 compliance two years before you come down and ask for
2 something else. But, you know, maybe, well, no, I
3 know I'm right. So I don't know if it's a
4 showstopper for me, but I have problems with that.
5 Some of these same issues have been around here as
6 long as I've been on the Commission.

7 So anyway, any other comments or
8 questions?

9 Commissioner Turnbull?

10 COMMISSIONER TURNBULL: I just have a, are
11 we going to talk about condition 17 Jacobs Field?

12 CHAIRMAN HOOD: You really want to talk
13 about that? Yes, go for it.

14 COMMISSIONER TURNBULL: It seems to me we
15 have in the past, back remembering them, the blushing
16 homeowner, Mr. Herzstein, talking about Jacobs Field
17 and the noise in fact that went on back there, I
18 don't believe that the applicant's right that a non-
19 University athletic event is a special event.

20 My own feeling is that an athletic event
21 that is sanctioned by the University for a third-
22 party raises the same issues about noise and I think
23 that was a concern. And maybe it's not implicitly
24 stated, or explicitly stated, but implicitly stated
25 is that that is a concern.

NEAL R. GROSS

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

1 And I think an athletic event on that
2 field by a third party raises the same concerns as if
3 it was a University-sponsored event, so I'm
4 concerned. I really don't know if it's a special
5 event. That's my feeling. And I don't know what the
6 rest of you think.

7 CHAIRMAN HOOD: Well, I would agree, Mr.
8 Turnbull. But I think though, I think that we, I
9 know we spent a lot of time on Jacobs Field. I feel
10 like I know Jacobs Field very well. But to come back
11 now and say well, there should be some
12 misunderstanding, I don't think, I thought it was
13 clear.

14 COMMISSIONER TURNBULL: Well, I guess I
15 thought it was too. But I think we need to make it
16 clear.

17 CHAIRMAN HOOD: Right, okay.

18 Mr. Shapiro?

19 COMMISSIONER SHAPIRO: Thank you, Mr.
20 Chair. I did not participate in the past, but it
21 does seem to me that a non-University athletic event
22 is an athletic event and not a special event. And so
23 I would agree with Commissioner Turnbull on the
24 interpretation of this.

25 I'm not quite clear what we do about that

NEAL R. GROSS

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

1 because as I look at their overall, I believe that
2 they're considering all the conditions that they're
3 in substantial compliance.

4 But I would want the University to hear
5 loud and clear that we feel that there are some areas
6 where they're not in compliance and are interpret, if
7 we concur that we want to be clear with what our
8 interpretation of this is, then they can make a
9 decision about whether or not they choose to be in
10 compliance with what we're mandating.

11 MS. LOVICK: Excuse me. I would just
12 advise that you would make it clear that a non-
13 University athletic event is not considered a special
14 event and that the Commission is just reiterating and
15 clarifying that you don't find non-University
16 athletic events to be allowable or permissible on
17 Jacobs Field.

18 CHAIRMAN HOOD: Mr. Turnbull, let me ask
19 you, do you recall, no, it's only been a couple years
20 from now, but do you recall what we said about Jacobs
21 Field? I know we had specificity about that.

22 And I see what the conditions say, but I
23 know we were specific about it.

24 COMMISSIONER TURNBULL: To tell you the
25 truth, I don't. I just remember Mr. Herzstein

NEAL R. GROSS

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

1 impassionately talking about that field and the noise
2 and the impact and he being supported by others.

3 And I had a feeling that it was our intent
4 to do whatever we could to mitigate that impact, that
5 the University would do whatever it could to, I mean
6 we have, I thought we were supposed to do like
7 studies of noise, speakers, level of sound. I
8 thought there was a whole menu of conditions that had
9 to be met that they were going to talk about.

10 So unfortunately I can't remember exactly
11 what we said.

12 CHAIRMAN HOOD: So let me ask this. We
13 need to make sure, and I would ask Ms. Lovick. We
14 need to make sure we write a condition that is
15 predictable and understandable so 18 years from now
16 the Commission won't be sitting here faced with the
17 same thing that some of us are faced with.

18 So I'm not sure how we get there, how we
19 make this so they understand exactly what we were
20 trying to achieve. Do we give it back to the
21 community to work on or do we do it, or?

22 MS. LOVICK: No, I mean, I think at this
23 stage you're just clarifying what your intent was
24 because there just was a difference of interpretation
25 between the opposition and the applicant. So.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: I really don't understand.
2 I'd have to, because I thought we really nailed that
3 down. We talked about it enough. But anyway, okay,
4 I'll heed the advice.

5 COMMISSIONER MAY: Mr. Chairman, if I
6 could?

7 CHAIRMAN HOOD: Yes.

8 COMMISSIONER MAY: So I can understand how
9 the University would, you know, reading the
10 conditions that we did set out, 17 and then 25, which
11 is the section that deals more specifically with
12 special events, I can see how the University might
13 interpret certain athletic events to be considered
14 special events.

15 For example, one of the things that I cite
16 is a charitable event such as the Juvenile Diabetes
17 Research Foundation's annual Real Estate Games. So
18 I assume that they're not out there playing, you
19 know, board games, they're doing athletic games of
20 some sort.

21 So there's a sporting event that is
22 included within that general description, so I think
23 it's reasonable for the University to have come to
24 that conclusion.

25 Now whether we, you know, that was what we

NEAL R. GROSS

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

1 had in mind beyond that specific example and how
2 broadly it has been interpreted since then by the
3 University is, you know, I don't feel like we have a
4 whole lot of information to judge it on.

5 I also think that, you know, we're at this
6 point halfway through the life of this plan and it
7 would be rather abrupt for us to simply say that, you
8 know, non-University athletic events are not special
9 events in our view, because I don't know how
10 disruptive that is to the University's practices.

11 I mean maybe it's no big deal and they're
12 willing to forego such events for the sake of keeping
13 peace with the neighbors, maybe they're not. I think
14 that if we're going to come to some different
15 conclusion about whether a non-University sporting
16 event should or should not be considered a special
17 event, I think that we actually need to hear further
18 from the University before we come to some conclusion
19 about that.

20 I mean for my purposes I would be, you
21 know, I would not be averse to continuing to find
22 substantial compliance with the conditions of the
23 order with this still as an open issue, because again
24 substantial does not mean a hundred percent.

25 It mean, you know, they're hitting it on

NEAL R. GROSS

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

1 most of the, you know, the vast majority of the
2 conditions. It's, I mean there are 41 conditions, so
3 there's a lot of things that they have to comply
4 with.

5 I mean again as I said before, they're not
6 doing a very good job, or they have not done
7 historically a very good job on complying with some
8 of them, but I think it's still possible for us to
9 find that they're in substantial compliance without
10 seeing that they have crossed every T and dotted
11 every I.

12 That being said, I understand that the
13 Chairman and Commissioner Turnbull have some
14 resistance to moving, or may have resistance to
15 moving ahead on the assumption that or without making
16 a specific determination that non-University sporting
17 events are not considered special events in order to
18 find substantial compliance.

19 I mean, even then I think I would rather
20 hear from the University to know how big an issue
21 that is before we head specifically down that road.
22 Otherwise, I would suggest that we need to get a
23 little more information from the University and from
24 the parties before we determine whether in fact this
25 is, they are substantially compliant here or not.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay. Let me just say
2 this about substantial while I'm thinking about it.
3 I know that it says substantial compliance with
4 conditions and to me, even though they have, what,
5 40, is it 41 conditions, to me, you know, when you
6 look at parking, you look at the vast majority of
7 some of the main outstanding issues, I don't know if
8 for me if it's a numbers game.

9 I'm not saying anyone's insinuating that.
10 Okay, I'm in compliance with 30 of them. But, you
11 know, some of them, and I'm sitting here looking at
12 some of them. Some of them may not be to the
13 magnitude and does not have the same weight from my
14 standpoint that others do. Some of them are very
15 adversely impact on the community as well as some of
16 the others.

17 Just because they're in compliance with
18 30, even though it's 30 today, they've been at least
19 that we know of that they're in compliance, at least
20 the record show, say that they're in compliance, but
21 those other 11 may have I don't want to say greater
22 weight, but they may be a lot more adversely
23 impacting the community.

24 So I kind of, I don't think it's a numbers
25 game for me as far as substantially in compliance.

NEAL R. GROSS

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

1 I think for me it's what impacts do the ones that
2 they're out of compliance with have on the
3 surrounding community, because that's why we had the
4 conditions to start with to begin with.

5 If everything was rosy and we just did a
6 plan we wouldn't have any conditions. The conditions
7 are to make sure that we balance the use of the
8 University with being within the community and vice
9 versa.

10 So that's what those conditions, the way
11 I believe they're written and what they're for, so
12 that's my opinion on the substantial compliance. But
13 I do agree with you, Commissioner May, to a point.

14 Let me hear from others.

15 Vice Chair Miller and then I'll go to you,
16 Mr. Turnbull.

17 VICE CHAIR MILLER: I'll defer to
18 Commissioner Miller, I mean Commissioner Turnbull.

19 CHAIRMAN HOOD: Now I haven't done that.

20 COMMISSIONER TURNBULL: No, getting back
21 to Commissioner May's point about the special events
22 language listed certain specific things, Homecoming,
23 and they did mention the, what is it, special
24 diabetic blah blah blah as a specific thing, it did
25 not mention, it does not condone soccer games,

NEAL R. GROSS

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

1 football games, lacrosse or any kind of athletic
2 event on the field by a third party.

3 And that's been my concern is that you're
4 going to have major athletic events played on those
5 field. I mean it sounds like if we put diabetic in
6 there that was agreed to by them, I think the
7 neighbors and everybody thought that those games, I
8 don't know what's included in those games, if there's
9 three-legged races or sack races or wheelbarrow races
10 or whatever, but I think that's a specific thing that
11 I think was agreed upon.

12 But I think carrying it further to
13 athletic contests maybe goes beyond the intent of
14 what we, by what at least what this Commissioner
15 thought it was. That's my only fear is that we
16 really need to narrow the scope of this.

17 COMMISSIONER MAY: Well, and I don't
18 disagree with that. I mean I think it's a category
19 of activity that we didn't really explicitly --

20 COMMISSIONER TURNBULL: Right.

21 COMMISSIONER MAY: -- try to give
22 direction on in the order ultimately.

23 COMMISSIONER TURNBULL: But I think --

24 COMMISSIONER MAY: Again, I don't have a
25 good sense of what the frequencies of these sorts of

NEAL R. GROSS

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

1 things are, but I don't think it's unreasonable for
2 the University to have interpreted that as a special
3 event.

4 Again --

5 COMMISSIONER TURNBULL: Well, I think
6 that's why OAG is saying we need to clarify that.

7 COMMISSIONER MAY: Well, right. And I'm
8 saying if we were to try to clarify it, I wouldn't
9 want to clarify it without having a better
10 understanding from the University about what this
11 clarification means, or in fact, you know, how
12 impactful some of these events truly are. I don't
13 really understand that. I don't really know.

14 COMMISSIONER TURNBULL: Are you saying we
15 need a limited hearing just on that issue?

16 COMMISSIONER MAY: No. I'm suggesting
17 that we might want to, before we try to come to a
18 conclusion about narrowing what these conditions mean
19 we probably need further input from the University.

20 And I mean if it's already in the record
21 on this case, then maybe it's just a matter of them
22 pointing at the right things.

23 And, you know, I can go back and look at
24 it all again and see if I see it there, but, you
25 know, it would help to have them point us to it or to

NEAL R. GROSS

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

1 reiterate some of the arguments that they would want
2 to make.

3 Plus, you know, we would want to hear from
4 the parties in opposition. I mean if we're talking
5 about, you know, 50 events a year and they're
6 outrageously loud, obviously that's a problem. But
7 if we're talking about like three, you know, and
8 they're kids' soccer games, I don't know that that's,
9 how big of a problem that is.

10 COMMISSIONER TURNBULL: Well, I guess that
11 would need not only the University but the parties in
12 opposition also.

13 COMMISSIONER MAY: Yes, yes, of course.

14 CHAIRMAN HOOD: Because I actually thought
15 we had a limit on non-University use. I can't even
16 remember now.

17 But let's both get, we're going to go over
18 the other issues, but I think what I'm hearing is we
19 need to get responses from, get it from University.
20 Let's tighten up the language. We need to tighten
21 that language up as Ms. Lovick has already mentioned
22 so it's understandable.

23 But we, as we said, let's hear from the
24 University and I'm sure they'll share that with the
25 parties as well, including, I guess including the ANC

NEAL R. GROSS

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

1 because they're an automatic party. All right.

2 Yes?

3 VICE CHAIR MILLER: Mr. Chairman, I
4 haven't weighed in on this substantial compliance
5 issue at all and we've now gone through three.

6 In general, from what I, I certainly can't
7 say what three Commissioners or the Commission that
8 was in place at the time what they intended if
9 Commissioners here can't even say what they intended,
10 so I can't opine on that.

11 But I do agree with Commissioner May that
12 there could be some misinterpretation of the existing
13 definition of University events. You know, some of
14 the neighborhood might have missed part of the
15 University event definition that said sporting camps
16 sponsored by the University, and what's a sporting
17 camp? That might have a broad definition and the
18 charitable athletic events certainly.

19 But I would say in general, the limiting,
20 in general the limiting, the use of the incredible
21 amenities that the District's universities and
22 colleges and high schools, private schools have to
23 only the students who go to those and precluding the
24 use by the neighborhood of that amenity is something
25 that in general I have an aversion to.

NEAL R. GROSS

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

1 I know in my own neighborhood we have a
2 limitation on the use of, have an incredible athletic
3 facility that's just three blocks from my home. It's
4 underground. It's just, I think, it's a neighborhood
5 -- we have these incredible amenities and it should
6 be opened up in general.

7 I mean there should be limits. It
8 shouldn't become a destination nuisance for the
9 neighborhood where people are fending tour buses or
10 whatever, but there's a balance to be found in the
11 school's use of it and the non-school users because
12 we're lucky to be rich with these facilities and they
13 should be opened up to more than just the immediate
14 occupants of the facility.

15 But I mean, so I think there's a balance
16 to be found and I think your approach here you set
17 out to get more information from the applicant is a
18 good one.

19 But so, but in general I think the
20 University is in substantial compliance,
21 collectively, with the conditions now. As
22 Commissioner May pointed out, they haven't always
23 been. So that's where I am.

24 CHAIRMAN HOOD: Okay. Let's talk about
25 the University's, the --

NEAL R. GROSS

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

1 MS. LOVICK: The number of trees and
2 shrubs along the east buffer?

3 CHAIRMAN HOOD: Okay, condition -- thank
4 you. The number of trees, I think that's been
5 resolved, right? That we have, so I know --

6 COMMISSIONER MAY: I think, Mr. Chair,
7 that they provided exhibits that demonstrate that
8 they met that condition.

9 CHAIRMAN HOOD: Yes. Yes. I mean and
10 that might be open to interpretation. I see some
11 heads shaking. But for me that was, I think there's
12 some other more pressing concerns.

13 I mean the trees are fine and I think the
14 applicant, I thought everybody had agreed that the
15 trees were, had been planted and all that. Am I
16 misunderstanding something?

17 COMMISSIONER MAY: I mean there was a
18 dispute when we were here before --

19 CHAIRMAN HOOD: Right.

20 COMMISSIONER MAY: -- about the number,
21 and the University has since clarified the number and
22 confirmed that in fact they are more than what was
23 shown on the plans that were originally approved.

24 Now some of those, 90-some of them, were
25 planted subsequently in response to concerns from the

NEAL R. GROSS

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

1 neighbors in Westover Homes or Westover Place,
2 whatever it is.

3 And I mean, you know, you could look at
4 that as an unfortunate circumstance, oh they did not
5 plant every single tree that they intended to plant
6 and they didn't do it until the neighbors complained,
7 or you could look at it this way in that, you know,
8 they planted it and the neighbors were unhappy and so
9 they came out and added almost a hundred trees.

10 You know, I don't think we should make too
11 huge a deal over it. I mean we do have a letter in
12 support on this case from Westover Homes, so clearly
13 the organization, maybe not all of the individual
14 homeowners, but the organization is in support of
15 this case moving forward because they feel satisfied
16 with that particular condition in the order.

17 So I think the tree issue has been
18 resolved. I also do think that, you know, this is
19 another instance where the University is kind of
20 shooting themselves in the foot because if they had
21 just reported the number accurately from the
22 beginning we wouldn't be dealing with this issue now.

23 And they, you know, they underreported it
24 and then got called out on the number of trees and
25 then went out and did their own inventory again and

NEAL R. GROSS

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

1 came back with the right number of trees. I mean we
2 shouldn't have to go through that kind of stuff.

3 CHAIRMAN HOOD: And in all cases, in all
4 neighborhoods, you have groups that say they have all
5 these people, and I know because I've lived in one
6 for 20 years and we have 14,000 homes and I only have
7 30 people coming to the meeting.

8 So, you know, I'm familiar with how some
9 of this operates. And I'm sure it doesn't
10 necessarily change from community to community. I
11 know how it works in my community and I'm sure other
12 communities as well.

13 But I thought the tree issue was taken
14 care of. I know that the homeowners, what's the name
15 of the street, Westover, Westover homeowners, and
16 then I also read a submission that said that all of
17 them weren't included.

18 So, you know, again it's a balancing. And
19 then the submission we got from the University as
20 well, so again it goes back to the balancing. You
21 know, we have to try to deal with the facts.

22 And for me, when I looked at these
23 conditions which, one, were really, really majorly
24 critical in adverse impacts as to the community and
25 having that letter also helped out even though it

NEAL R. GROSS

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

1 might not include everybody, but I think that that
2 board at least spoke for the majority, probably.

3 Let's go to the CLC. One of the things,
4 this is the University's Community Liaison Committee.
5 One of the things is we noticed from the party in
6 opposition that they said that the neighborhood
7 collaborative was more of a part of the community
8 engagement. I can't really speak to that. That was
9 not properly before this Commission.

10 We talked about the community liaison
11 commission, I mean the Community Liaison Committee,
12 and I believe that that is what is in our order.
13 That is what the Commission worked hard on to try to
14 get them to work with now.

15 If the University, I expect for the
16 University, and I don't know what credence or what
17 they're doing with the collaborative, but I expect
18 for them to follow the order.

19 And I'm not saying they didn't, but to
20 follow order and what we, the terms that we have for
21 the Community Liaison Committee. Whatever they're
22 doing with all these other groups is how they
23 operate, but I think that they need to follow our
24 condition number 16 as outlined. Engage with the AU
25 neighbors as outlined in our condition.

NEAL R. GROSS

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

1 So let me open up any questions or
2 comments other than that.

3 COMMISSIONER TURNBULL: Well, I would
4 agree with you, Mr. Chair. I think from my
5 standpoint what we look at is what's in the order.
6 And the CLC is the governing organization that we're
7 looking to that they've gone to resolve problems,
8 work out issues and come to some kind of an agreement
9 with the community as to what's going on.

10 So I don't, if this neighborhood
11 collaborative is a subset to this that's one thing.
12 And if they wanted to change they should have come
13 back to the Commission for a modification and worked
14 with the community on how to redo this.

15 So I'm not sure if, to me the neighborhood
16 collaborative cannot preclude or remove the CLC from
17 the process. So I don't know if that's like a subset
18 before you get to the CLC, and if the CLC is now
19 still working towards what we thought it was going to
20 be working to.

21 So I'm confused as to what extent the
22 University is now subletting the responsibility of
23 the neighborhood to this neighborhood collaborative.
24 I'm confused.

25 CHAIRMAN HOOD: So what if, and I don't

NEAL R. GROSS

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

1 know, do we have this in the record, the members of
2 the committee, the CLC, because this goes back to
3 2001. I'm sure if you work in the community
4 neighborhood long enough you probably quit and retire
5 and give it to somebody else and I'm sure that's
6 probably happened.

7 And we'd like to get some updates on this
8 CLC and I don't think we saw a whole lot, at least I
9 don't remember seeing a whole lot of evidence in the
10 record about the CLC.

11 I heard more probably about the
12 neighborhood collaborative. I want to see, I want to
13 hear some more about our CLC which this Commission
14 put in place in 2000-, and help with the applicant as
15 well as the community put in place in 2001 in the
16 campus plan.

17 And there was something else. Is the
18 University still giving those, what was it, flyers or
19 something when they have events? They were supposed
20 to, was it American? I might be getting the
21 universities mixed up now. I thought somebody was
22 supposed to be passing out flyers to let the
23 community know they were having events.

24 Is that what American University still --
25 you can just shake your head to help me, okay, so

NEAL R. GROSS

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

1 they're still going.

2 VICE CHAIR MILLER: I do recall that they
3 put, when the Northwest Current was regularly
4 operating that there were regular notices in there
5 about events and they invited the community to
6 participate --

7 CHAIRMAN HOOD: Okay.

8 VICE CHAIR MILLER: -- in discussions,
9 seminars, whatever.

10 CHAIRMAN HOOD: So if we can get an update
11 on the CLC and who the members are, because I'm sure
12 it's changed since 2001, and how often they meet and
13 if it's in the record just point me to it. I might
14 have missed it.

15 Mr. Turnbull, anything else about the CLC?

16 COMMISSIONER TURNBULL: Well, no. I think
17 they ought to get into the process, I mean with the
18 CLC, the responsibility and how this neighborhood
19 collaborative is feeding into all of this. Is it
20 totally separate? Do they operate independently? Is
21 it feeding up to the CLC?

22 I mean because as you said, the CLC is
23 what's in the order as supposed to be the governing
24 body that looks to solving issues, so I'm, is it
25 unwieldy? Is it too big? Is that why they have the

NEAL R. GROSS

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

1 neighborhood collaborative?

2 And to what extent then are they using or
3 not using the CLC?

4 CHAIRMAN HOOD: Okay. Anything else on
5 the CLC?

6 All right, let's go to lighting and
7 landscape buffer. The applicant's proffered that
8 they will install shades for the lamps at the
9 northwest corner of the buildings programmed to go
10 down every night at dusk and raise every morning at
11 dawn.

12 And these Spring Valley Wesley Heights
13 Citizens Association and Neighbors for Livable
14 Communities, in addition to the applicant's
15 commitment they should also install automatic shades
16 on all windows of the building facing the
17 neighborhood including the 31-foot glass enclosed
18 section of hallways and stairway space.

19 That's still an outstanding issue. Any
20 comments up here on that?

21 COMMISSIONER MAY: Mr. Chairman?

22 CHAIRMAN HOOD: Yes.

23 COMMISSIONER MAY: I don't know, maybe I'm
24 the only person that thinks this, but the, I don't
25 really see a huge issue with the lighting. Ninety

NEAL R. GROSS

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

1 percent of the visible light would be addressed with
2 the shades.

3 There are certainly other lights on campus
4 that one can see from a distance, but it's not like
5 they are so bright that they are lighting up the
6 neighborhood beyond and projecting a lot of light.

7 I mean it's the amount of, I mean the
8 foot-candles of light that actually reach other
9 properties across that field, I think, has to be
10 minuscule. So I don't, I think the University has
11 adequately addressed the issue and I don't see a need
12 for any further mitigations.

13 CHAIRMAN HOOD: Any other comments and any
14 issues on the landscape?

15 COMMISSIONER TURNBULL: I'm satisfied with
16 the applicant's proffers.

17 CHAIRMAN HOOD: Okay. So on the issues,
18 on the outstanding issues that we still have to work
19 through, I believe, and this Jacob, the use of Jacobs
20 Field by third parties and there's another one. Oh,
21 the CLC.

22 Now there was some other issues that were
23 brought up that were not necessarily germane to this.
24 The increased traffic in the increased undergraduate
25 enrollment, they weren't necessarily germane for this

NEAL R. GROSS

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

1 application.

2 But I think they will probably be
3 something we can deal with in the future, in the
4 future plan, but right now I don't think those are
5 germane to this application. Any objections to that?
6 Am I correct?

7 All right, so we only have two outstanding
8 issues we need to really work on and I'm looking at,
9 did we also need to serve the ANC? I guess we need
10 to serve the ANC as well. But they seem to be
11 pretty, they were fine with everything I believe,
12 correct? Okay.

13 So those are the two issues, Jacobs Field
14 and the CLC. And that's kind of narrowing them right
15 down to where I am, Jacobs Field and the CLC.

16 Commissioners, any other guidance we want
17 to give? Do we need to give anymore?

18 COMMISSIONER TURNBULL: No, I just want to
19 go, I don't want to beat this thing to death, but I
20 think it was our intent, my intent that the CLC would
21 have been the principal means to engage the
22 neighbors, the AU neighbors, in as outlined in
23 condition 16.

24 I think that was our intent that was, so
25 if there's another body now that's involved it should

NEAL R. GROSS

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

1 have been brought before us. It should have been
2 clarified as part of the CLC. So I think that needs
3 to be clarified, doesn't it?

4 I mean as far as I'm concerned if there is
5 a working body, this neighborhood collaborative, the
6 AU can do whatever they want as a separate body. But
7 in dealing with the whole neighborhood as an entity
8 and going back, the CLC was still the principal
9 entity that was to be used.

10 And maybe the neighborhood collaborative
11 was intent to help that, I don't know. I think AU
12 needs to explain that.

13 VICE CHAIR MILLER: I think we did get
14 some information on the record that any good
15 collaborative was intended, and intended to help,
16 because the community engagement part of AU's whole
17 process has had its challenges over the years with
18 that and then the CLC was in the, you know, order.

19 But so I think they created that to try to
20 help that process. That's what I recall from the
21 hearing testimony. But we'll get more information
22 from all the parties.

23 CHAIRMAN HOOD: Okay, Commissioner
24 Shapiro?

25 COMMISSIONER SHAPIRO: I agree with Vice

NEAL R. GROSS

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

1 Chairman Miller. That's where I was.

2 CHAIRMAN HOOD: Okay.

3 COMMISSIONER SHAPIRO: That's my memory
4 from the hearing.

5 CHAIRMAN HOOD: Let me say this before I
6 go to you, Commissioner May.

7 I'm rethinking what you said, Vice Chair
8 Miller, about limiting the use of our college fields,
9 because now that you mention it you all have an
10 underground place over here. I didn't know that.

11 So maybe I'll get all my friends and we'll
12 come over in your area and use the underground. Is
13 it open for public use?

14 VICE CHAIR MILLER: No, it's limited.

15 CHAIRMAN HOOD: Oh, okay. Okay.

16 VICE CHAIR MILLER: Per the BZA or
17 whatever.

18 CHAIRMAN HOOD: Okay, so the BZA did that.
19 But I think --

20 VICE CHAIR MILLER: I don't know if you
21 sat on it.

22 CHAIRMAN HOOD: No, I probably, but I
23 think you bring up a good point and it's something we
24 need to think about.

25 VICE CHAIR MILLER: Yes. I think it's

NEAL R. GROSS

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

1 just a matter of finding a balance.

2 CHAIRMAN HOOD: That's actually a good
3 point because I know there was some issues with the
4 tennis courts at UDC some years ago and some other
5 things like that.

6 And I noticed though when I ride around in
7 the city, my problem is we can find ourselves using
8 these facilities, but anytime I'd look up and I see
9 the cars on the street they're from Maryland and
10 Virginia using our facilities.

11 So, you know, and then I know that --

12 VICE CHAIR MILLER: Well, yes. The UDC
13 tennis courts, the door is locked --

14 CHAIRMAN HOOD: Oh, okay.

15 VICE CHAIR MILLER: -- when I'm -- that
16 was several years ago. I don't know if they've
17 changed that policy.

18 CHAIRMAN HOOD: Okay, Commissioner May?

19 COMMISSIONER MAY: I was going to say I
20 think I generally agree with what Vice Chair Miller
21 said with regard to the CLC. I mean I think the key
22 question for us is not whether something like the
23 neighborhood collaborative exists, it's whether the
24 CLC which is defined in the order and required by the
25 order is functioning at a high level.

NEAL R. GROSS

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

1 If it's not functioning at a high level
2 then the University needs to take steps to fix it.
3 Maybe that's what they were trying to do with the
4 neighborhood collaborative, but clearly if that was
5 the intent that's not really working out as broadly
6 as we would like.

7 And I think that, you know, maybe it is a
8 matter of them having to focus more energy on the CLC
9 and being able to report that to us or maybe it
10 means, I don't know, broader participation in the
11 neighborhood collaborative just so long as that
12 funnels up to the CLC, whatever it takes. The CLC is
13 the thing that we have to use and have to measure.

14 VICE CHAIR MILLER: Or as you said at the
15 hearing as I recall, Mr. Chairman, or giving us the
16 language and as you suggested to modify it to if the
17 ANC and the community is in general support of it,
18 which they may not be, but they may be, and putting
19 that as modifying the community engagement process to
20 reflect what's actually happening.

21 If it's working, it hasn't been working,
22 you know, previously, but I think the neighborhood
23 collaborative was established to try to improve the
24 community engagement process and to help out.

25 CHAIRMAN HOOD: Okay. Well, you know,

NEAL R. GROSS

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

1 another thing that I do want and it might have been
2 in here and I just, there's so much to read and we
3 have so many cases, but I want to make sure that we
4 narrow down, I want to know why the University chose
5 to get out of compliance.

6 I'm having problems with this. You chose
7 to be out of -- and, Mr. Tummonds, I think you're a
8 great guy. You represent your clients well. But I
9 need you to find out from this client why they chose
10 to be out of compliance for two years and then two
11 years, I want that specific question answered, and if
12 it's here I didn't read it.

13 I want to know why we chose to be out of
14 compliance for two years and two years before you
15 come back in front of the Commission you chose to try
16 to get back in compliance. I'd like to know that.
17 Just because we just wanted to or because we could?
18 That's where I am.

19 A lot of people don't have the same
20 problem I have with, because, you know, we work hard.
21 And my former colleagues and my colleagues now, we
22 work hard trying to mitigate some of these things,
23 and just chose to be out of compliance doesn't rest
24 well with me.

25 So I'd like to know why we were out of

NEAL R. GROSS

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

1 compliance two or three years. Was it a staffing
2 issue? Was it layoffs at the University? Nobody had
3 time to do it or did we just regard it?

4 You all have been truthful to say you were
5 out of compliance, just tell me we just wanted to
6 disregard your order and I promise you I won't get
7 mad. I want you to just tell me the truth.

8 Okay, anything else on this?

9 Now what do we need to do now, Ms. Lovick
10 or Ms. Schellin?

11 MS. SCHELLIN: Dates. How much time?

12 MS. LOVICK: Yes. Well, since you're not
13 in a position at this point to make a finding of
14 substantial compliance with all the conditions,
15 you're requesting information on three issues, I
16 believe, I would just reconfirm what those are and
17 then set a time for the applicant to file a
18 submission and then a time frame for the opposition
19 to file a response.

20 CHAIRMAN HOOD: Okay. Before we do that
21 I see Mr. Tummonds has come to, maybe he's going to
22 answer why they decided not to be in compliance. Mr.
23 Tummonds?

24 MR. TUMMONDS: Yes, good evening, Paul
25 Tummonds with Goulston & Storrs.

NEAL R. GROSS

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

1 So I think first answer to Chairman's
2 question, I was, some of you were talking about the
3 failure to provide the parking reports and the
4 parking utilization and TDM reports for those three.

5 CHAIRMAN HOOD: Yes, everything that you
6 all admitted that you, you know, I don't need a 20-
7 page.

8 MR. TUMMONDS: Yes, just one sentence and
9 we'll be fine.

10 CHAIRMAN HOOD: Just a bullet point.
11 Yes, one sentence, then give me, at least give me
12 three sentences. Okay.

13 MR. TUMMONDS: I know that Ms. Lovick
14 talked about, you know, all of these things we're
15 discussing deal with the notion of substantial
16 noncompliance or, you know, what was there. And I
17 think Peter May, Commissioner May talks about, you
18 know, are we there or not?

19 And so I think we will provide the
20 information on use of Jacobs Field for third parties
21 and the CLC and I think that will be very, it will
22 not be difficult for us to address in either way.
23 And I think the Vice Chairman and Commissioner
24 Shapiro are, that's what we will be getting you,
25 information that you thought you remembered from the

NEAL R. GROSS

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

1 hearing itself.

2 I would note that because of, you know,
3 where we are, the University is with regards to
4 having a building in operation, occupancy by the fall
5 semester of 2020 requires them to move very
6 expeditiously.

7 And I think what we've talked about today,
8 the issues with regards to the building itself, the
9 special exception standards, the further processing
10 standards, or would this Hall of Science Building
11 create adverse impacts, I think we've addressed and
12 I think the Commission has found that they have been
13 adequately addressed.

14 So one of the issues we have is the
15 ability for AU to move forward with the design of
16 that building so it can be ready for Fall 2020.

17 So with that I think that is somewhat of
18 our plea to say we would like to do this as quickly
19 as possible because we think that we can prepare this
20 information and get it back to you as quickly as
21 possible and come back and have your final
22 deliberations on these three issues so that the Hall
23 of Science Building can occur.

24 MS. SCHELLIN: Can you do it tomorrow?

25 CHAIRMAN HOOD: It was nice to meet you.

NEAL R. GROSS

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

1 MS. SCHELLIN: Can you respond by
2 tomorrow? That would be the quickest way to get it
3 on our next meeting agenda.

4 MR. TUMMONDS: Yes. We can do it
5 tomorrow.

6 MS. SCHELLIN: Okay. So if you can
7 provide your response by --

8 CHAIRMAN HOOD: Well, wait a minute. Does
9 that give the parties --

10 MS. SCHELLIN: Yes.

11 MR. TUMMONDS: Yes, she's going to -- yes.

12 CHAIRMAN HOOD: That's two weeks away.

13 MS. SCHELLIN: So if you can respond by
14 5:00 tomorrow, which is the 27th, then the parties
15 have until 5:00, March 6, and then we can put it on
16 for March 12th. That's the fastest we can do.

17 CHAIRMAN HOOD: Well, let me say this.
18 You know, I got in my ear, this ear I can hear real
19 well. I've heard that's ridiculous, oh Jesus, and a
20 couple of things like that.

21 So what I'm going to do is, what I would
22 suggest because it's put the onus on volunteers and
23 I don't want to put the onus on volunteers, what I
24 would suggest that we do is find a date that we don't
25 have -- I shouldn't say this because it's always a

NEAL R. GROSS

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

1 problem, that we don't have a lot on our agenda
2 between the second meeting and the last meeting in
3 March, and give the community a little more time, at
4 least another week or so to be able to respond
5 because they don't do this full time.

6 Do we have a meeting coming up sometime in
7 March, like the week after our second meeting?

8 MS. SCHELLIN: We have a, you mean a
9 hearing?

10 CHAIRMAN HOOD: Yes. I guess I mean a
11 hearing, but we can do it before.

12 MS. SCHELLIN: We have one on the 15th
13 which would be four days later or we have one on the
14 19th.

15 CHAIRMAN HOOD: So I'm offering the 15th
16 or the 19th, some additional time. Whoever's going
17 to represent the day, Mr. Smith, come to the table,
18 but I'm going to give you some additional time
19 because I heard this is ridiculous and --

20 MR. SMITH: I'm sorry, the 15th or the
21 19th for a hearing or for --

22 MS. SCHELLIN: For a meeting.

23 MR. SMITH: For a meeting, I'm sorry, for
24 a meeting. So when would we have our filing due?

25 MS. SCHELLIN: For which one, the 15th or

NEAL R. GROSS

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

1 the 19th?

2 CHAIRMAN HOOD: Which date do you want,
3 the 15th or 19th?

4 MR. SMITH: We'll take the 19th, it's the
5 latest so it means more time.

6 MS. SCHELLIN: So the applicant would
7 submit by the 5th.

8 MR. SMITH: We'd have until the 12th.

9 MS. SCHELLIN: And you'd have until the
10 12th.

11 MR. SMITH: Okay.

12 MS. SCHELLIN: Is that what you want?

13 MR. SMITH: If that's the best we can get
14 that's what we'll take.

15 CHAIRMAN HOOD: So is that better?

16 MR. SMITH: It's better, yes.

17 CHAIRMAN HOOD: Okay, so we balanced it,
18 right?

19 MR. SMITH: Okay.

20 CHAIRMAN HOOD: Okay. At least that,
21 that's better than what I heard previously.

22 MS. SCHELLIN: So then, yes. If we could
23 get, and the submissions would be due by, to make it
24 even more helpful how about if we make all
25 submissions due by 3:00 p.m. then?

NEAL R. GROSS

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

1 That way you get it a little earlier, 3:00
2 p.m. on the 5th, serve the parties and then the
3 parties' responses would also be due by 3:00 p.m. on
4 the 12th.

5 MR. SMITH: It would be very helpful if we
6 could ask the party to email --

7 MS. SCHELLIN: Yes.

8 MR. SMITH: -- the material to us.

9 MR. TUMMONDS: Sure.

10 MR. SMITH: Because we've been getting it
11 in the mail and it comes four --

12 MR. TUMMONDS: Incorrect. The last one
13 you did because there was no response was allowed.

14 MR. SMITH: Excuse me. We've been getting
15 most of the documents from AU in these cases by mail
16 and they've been coming four days later, so.

17 CHAIRMAN HOOD: Okay, so this time we're
18 going to get it by email.

19 MR. TUMMONDS: Absolutely.

20 CHAIRMAN HOOD: And then that way we've
21 got it both ways.

22 MR. TUMMONDS: Absolutely.

23 CHAIRMAN HOOD: Easy, easy fix.

24 MS. SCHELLIN: Even the ANC's, Mr.
25 Tummonds, can be emailed now.

NEAL R. GROSS

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

1 COMMISSIONER TURNBULL: Mr. Tummonds, do
2 you have all the emails?

3 MR. TUMMONDS: Oh yes.

4 COMMISSIONER TURNBULL: Okay.

5 MS. SCHELLIN: Thank you.

6 CHAIRMAN HOOD: Okay, so anything else,
7 Ms. Lovick or --

8 MR. TUMMONDS: So I'm sorry. So then this
9 would be, is it 6:00 p.m. on the 19th?

10 MS. SCHELLIN: Do you guys need that much
11 time, an hour? It would be half an hour. Is that
12 enough time?

13 CHAIRMAN HOOD: Can we do 5:45?

14 MS. SCHELLIN: You can do whatever time
15 you want.

16 CHAIRMAN HOOD: Well, I know that. I was
17 just asking, I'd really be asking them can we do
18 5:00- --

19 MS. SCHELLIN: So 5:45?

20 CHAIRMAN HOOD: I really, even though Ms.
21 Schellin and I were saying can we do 5:45 --

22 MS. SCHELLIN: Okay.

23 CHAIRMAN HOOD: -- but I was asking them.

24 MS. SCHELLIN: You're asking them.

25 MR. SMITH: Mr. Chairman, may I ask just

NEAL R. GROSS

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

1 for clarification --

2 CHAIRMAN HOOD: Yes.

3 MR. SMITH: -- with respect to Jacobs
4 Field, and actually Dr. Herzstein asked me to ask
5 this, are we talking just about special events or are
6 we talking about issues of noise as well that are
7 related to the events that are held there?

8 We just would like to have a little bit of
9 clarification on that. Are we talking about impacts
10 as well as the --

11 CHAIRMAN HOOD: I thought we dealt with
12 the noise.

13 MR. SMITH: Well, the noise is a factor of
14 the events that are held there.

15 CHAIRMAN HOOD: I think for this
16 proceeding we were specifically talking about events.

17 MR. SMITH: Okay. That's what --

18 MS. SCHELLIN: So you guys are just going
19 to respond to whatever he --

20 MR. SMITH: Right.

21 MS. SCHELLIN: -- they bring up, so.

22 MR. SMITH: You got it.

23 MS. SCHELLIN: Yes.

24 CHAIRMAN HOOD: And let's nail it down to
25 where we all understand it.

NEAL R. GROSS

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

1 MR. TUMMONDS: It is my understanding that
2 we are going to address the question of use of Jacobs
3 Field for third-party athletic events.

4 VICE CHAIR MILLER: I believe that was the
5 thrust of our questions.

6 CHAIRMAN HOOD: Right.

7 COMMISSIONER MAY: Well, and I think it
8 goes beyond just, you know, the question of how many
9 are there and so on. It's also a question of how,
10 you know, are they treated any differently and what's
11 the, you know, what mitigations there might, you
12 know, what mitigations are in place right now for any
13 potential adverse impacts associated with those
14 events.

15 You know, again part of it is
16 understanding what kinds of events they actually are,
17 but then depending on what events they are how is it,
18 you know, how much noise do they generate, how do you
19 mitigate that?

20 MS. HERZSTEIN: Commissioners, it has to
21 deal also with all of the events, because as much as
22 the special events add at least several games,
23 several days of extra noise per month on some months,
24 it's the overall.

25 Many days it's from 7:00 a.m. to 7:00 p.m.

NEAL R. GROSS

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

1 with games all day including on the weekends and the
2 noise is incredible. And I think at the November
3 meeting we were talking about not having dealt with
4 the mediation of the noise issues over these 18
5 years.

6 We started in discussion with AU after
7 that in December and they were talking about a noise
8 barrier which we had written about subsequently in
9 January and said this looks good, we're talking. And
10 then they broke down and they haven't communicated
11 with us at all.

12 So there's no, the noise continues to
13 increase with more amplification, more games, more
14 people at the games screaming at the top of their
15 lungs, more shot clocks, et cetera. So I still think
16 that the noise issue itself is to be discussed, here,
17 as part of compliance.

18 CHAIRMAN HOOD: Okay. Commissioners,
19 anybody wants to bring the noise?

20 COMMISSIONER MAY: You know, I don't think
21 that this is an opportunity for us to relitigate the
22 entirety of the noise issue. I think that this is a
23 very specific question because the order already
24 specified what was required from the University.

25 There's an issue that is unclear which is

NEAL R. GROSS

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

1 the treatment of non-University athletic events as
2 special events, which, you know, the University has
3 interpreted to be allowed.

4 So I think it's a matter of understanding
5 better what's involved with those particular kinds of
6 events and then what the impacts would be and what
7 the mitigations might be for those impacts.

8 So I mean I think it's really focused on,
9 that's not to say I'm not sympathetic to the issue,
10 but it is something that was discussed and decided
11 previously and we're, you know, we don't, we try not
12 to reopen every case every single time.

13 CHAIRMAN HOOD: But I don't know if we can
14 parse the noise out because that is a part of
15 compliance, I think, and I can't remember exactly
16 what it is. So let's see what you come back with.
17 And I think we do, because that is part of the
18 compliance.

19 Am I correct, Ms. Lovick? I mean the
20 noise is part of it.

21 MS. LOVICK: Well, I mean this, well, the
22 issue was specific to the use of the field for non-
23 University athletic events, so.

24 CHAIRMAN HOOD: So that's germane?

25 MS. LOVICK: Yes. That's germane.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: So the noise is germane,
2 okay, so let's make sure we comment on the noise.

3 But I really would like to know why we
4 were out of compliance two years and then we decided
5 to come into compliance before you came, three years,
6 and then you decided, I mean --

7 MS. LOVICK: Well, the noise specific to
8 non-University athletic events.

9 CHAIRMAN HOOD: No. That's, no, I went
10 back to my first issue.

11 MS. LOVICK: Okay.

12 CHAIRMAN HOOD: Mr. Tummonds, he knows
13 exactly what I'm looking for, okay.

14 All right, anything else?

15 MS. SCHELLIN: I think that she was saying
16 that the noise overall was not open, only for the
17 non-University use is what --

18 CHAIRMAN HOOD: For the third party.

19 MS. SCHELLIN: Yes, only for the third
20 party, not overall.

21 CHAIRMAN HOOD: Right, from the third
22 party. Not for the regular overall, because I think,
23 yes, for the, because that was additional. But then
24 also I don't want this to be a, because I'm really
25 pondering what the Vice Chair mentioned about

NEAL R. GROSS

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

1 excluded.

2 (Off-microphone comment.)

3 CHAIRMAN HOOD: Yes, yes. No, I'm just
4 making a record where I'm coming from. Everybody
5 else is, you know, I'm sure they will make an account
6 to where they're coming from, but that's where I'm
7 coming from as well.

8 Okay, anything else on this?

9 MS. LOVICK: Well, I would just ask that
10 you would clarify specifically what you'd like with
11 regard to the CLC and clarify, I mean you've already
12 kind of explained what you wanted in terms of an
13 explanation for the noncompliance with conditions 13
14 and 14.

15 CHAIRMAN HOOD: Okay. So you want us to
16 -- well, I think Mr. Turnbull had mentioned how he
17 wanted us to find. How's the CLC work?

18 MS. LOVICK: Right. I mean as in clear on
19 what you --

20 MR. TUMMONDS: I think we will be able to
21 -- I'm, yes.

22 MS. LOVICK: Okay.

23 CHAIRMAN HOOD: Are you clear on
24 everything that we need?

25 MR. TUMMONDS: Yes.

NEAL R. GROSS

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

1 CHAIRMAN HOOD: Okay, all right. If not
2 we'll just kick it on down the road and keep on until
3 we get it straight, but I think we will.

4 Okay, so we have the days straight.

5 All right, anything else, Commissioners?

6 Ms. Schellin, do we have anything else?

7 MS. SCHELLIN: Nothing.

8 CHAIRMAN HOOD: Okay. So work that one,
9 I think, Commissioner Shapiro.

10 I want to thank everyone for their
11 participation, this meeting's adjourned.

12 (Whereupon, the above-entitled matter went
13 off the record at 8:39 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Regular Meeting

Before: DC ZC

Date: 02-26-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701