The Regular Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
GREGORY N. JEFFRIES, Vice Chairman
MICHAEL G. TURNBULL, FAIA, Commissioner (OAC)

PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel
JERRILY KRESS, Director
OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Director
JOEL LAWSON
TRAVIS PARKER
PAUL GOLDSTEIN
MAXINE BROWN-ROBERTS
KAREN THOMAS
MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
JACOB RITTING, ESQ.

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CHAIRMAN HOOD: This meeting will please come to order. Good evening, Ladies and Gentlemen, this is the October 20, 2008 Meeting of the Zoning Commission of the District of Columbia.

Joining me are Vice Chairman Jeffries, Commissioner Turnbull and Commissioner May. Office of Zoning Staff under the leadership of Mrs. Kress and Ms. Schellin the Secretary to the Zoning Commission. Also the Office of Attorney General and also the Office of Planning under the leadership of Ms. Steingasser.

And the Office of Attorney General, Mrs. Monroe and Mr. Rittig.

Copies of today's meeting Agenda are available to you and are located in the bin near the door. We do not take public testimony unless a Commissioner requests someone to come forward.

Please be advised that this
proceeding is being recorded by a court reporter and is also web cast live. Accordingly, I must ask you to refrain from any disruptive noise or actions in the hearing room. Please turn off all beepers and cell phones. Does the staff have any preliminary matters?

SECRETARY SCHELLIN: No sir.

CHAIRMAN HOOD: I have a few changes to the Agenda so again we want to apologize if we inconvenience anyone but we have certain things that we have to deal with and I'm going to ask Ms. Schellin as I do this and if I don't have it exactly right, could you help me to make sure keep it straight.

First of all the agenda that was at the door, do they have the revised agenda? Okay. First, under proposed action we have Zoning Commission Case No. 08-06-3. We will be doing that I believe November 10 at our regular monthly meeting on November 10.

What I would like to do in sequence
of trying to do things expeditiously is to move the agenda around. What I've planned to do is Roman numeral I, II and III in that order and then what we're going to do is Roman numeral V will become IV, Roman numeral VI will become V and Roman Numeral will become VI. I know that was very confusing because it was confusing when I said it.

In other words, Proposed Action will be the last thing the Commission deals with us as far as us taking actions before we go into our status report. Okay?

Ms. Schellin do we have any preliminary matters?

SECRETARY SCHELLIN: Just one more thing. I thought we were going to rearrange the order of the proposed actions. D was going to be A, C would be B and B would be C and A has been deferred.

CHAIRMAN HOOD: Exactly right. D is going to be No. 1, C is 2 and B is 3. Okay. Anything else?
SECRETARY SCHELLIN: No.

CHAIRMAN HOOD: Okay. First under Hearing Action the Office of Planning, Zoning Commission Case No. 03-12G/03-13G and maybe I shouldn't have used the case numbers. In other words, we have a request to set down a 2\textsuperscript{nd} stage PUD for property located in Squares 769 and 882 and a Request for Modifications of Conditions Unrelated to Subject Property Conditions 5, 7, and 11 in Order 03-12/03-13 and Condition 6 of Order 03-12D and 03-13-13D Office of Planning. Ms. Steingasser?

MS. STEINGASSER: Right. As the Commission may remember, this application was before the Commission at the September 8 meeting at which point the Commission deferred taking action and requested the applicant clarify the full extent of the application, especially those issues which needed a hearing and those issues which did not.

The applicant has provided that information. The Office of Planning continues
to recommend a set down of the two items identified on the Agenda for Hearings which are the 2nd stage PUD for Squares 769 and 882 and the modifications to conditions on unrelated properties conditions 5, 7 and 11 of the Order, and we have no objection to the time extensions requested.

CHAIRMAN HOOD: Thank you Ms. Steingasser. Also we were given a letter from ANC 6D and apparently they are meeting tonight and they asked us on the request for the extension of time to start the community center, they asked that we postpone it for about a week. And in our conversation let's take that into consideration and I think they're meeting tonight from Roger Moffett. Okay. Let's open it up. Any questions from the Office of Planning?

And let me just say that Office of Planning still continues as Ms. Steingasser mentioned still recommends the Commission schedule a public hearing for the application.
Mr. May?

COMMISSIONER MAY: Yes. I would be in favor of setting a public hearing for the issues that will require a hearing. As for the time extensions, I would be interested to know what ANC 6D has to say in Ward 16 right. So that's basically my stand.

CHAIRMAN HOOD: Anyone else want to comment? Why don't we move like this colleagues. And I will tell you and I would hope Ms. Schellin if you can work with the applicant to make it as simplistic -- I'm not going to say my colleagues -- for me as possible. I will tell you that reading this they have different numbers, different alphabets behind the numbers and I know there's different actions taken by this commission separately.

If we put D in one pack of what we're being asked do; C in one area of what we're being asked to do and I know it sounds very trivial but it's very helpful because
this commission has taken different actions on
these cases.

So what I would recommend is that
all in one night if we can come up with a date
that we set this and I'll make a motion that
we set down the 2\textsuperscript{nd} stage PUD for property
located in Square 769 and 882 and also take up
the request for modification of conditions
unrelated to subject property, conditions 5, 7
and 11 of Order 03-12, 03-13 and condition 6
of Order No. 3-12D and 3-13D.

And that we also, the same night,
have a special public meeting on the time
extensions of the three requests that we have
as far as dealing with time extensions.

And also if we could bundle those
things in the order so they'll be together on
the actions that this commission has taken in
the past. And I'll ask for a second?

COMMISSIONER MAY: Second.

CHAIRMAN HOOD: Moved and
seconded. Any further discussion? All those
in favor? Aye. I don't hear any opposition.

Staff would you record the vote?

SECRETARY SCHELLIN: The staff records the vote 4-0-1 to set down Zoning Commission Case No. 03-12G and 03-13G as related to the 2nd stage PUD and the request for modifications and to have a special public meeting the same night of the hearing to take action on the time extensions.

[Vote]

Commissioner Hood moving,
Commissioner May seconding, Commissioners Jeffries and Turnbull in favor, Commissioner Etherly not present, not voting and these cases are being set down as contested cases.

CHAIRMAN HOOD: Thank you. And do we have a date? No, we don't need a date on that.

SECRETARY SCHELLIN: We'll wait for the applicant to file their pre-hearing statement and then we'll schedule it.

CHAIRMAN HOOD: Also the vice
chair reminded me that we're not going to deal
with Zoning Commission Case No. 07-35 and I
don't want to hold the folks up who are here
for the Sheridan redevelopment construction
PUD and related map amendment in the new Ward
8. And the reason being in the order
typically the commission looks at phasing and
then talks about a phasing time limit and I
would ask Mr. Rittig if he may be able to help
me with that.

But it's no phasing plan and that's
what this commission needs before we move
forward so Mr. Rittig, if you want to just--

MR. RITTIG: Yes. Let me just
look at my document here. When I was
reviewing the draft order that the applicant
provided I saw the condition 8, and let me
turn to it now, that suggested a condition
that the HUD project may be developed in
phases and it didn't indicate what those
phases would be and I think the Commission
would like to hear from the applicant what
their proposal is for the phasing of the project.

CHAIRMAN HOOD: I think we'll just simply defer that to November 10th meeting. That's phasing with company time lines?

MR. RITTIG: That's correct yes.

CHAIRMAN HOOD: Thank you Vice Chairman Jeffries and Mr. Rittig. Okay. Let's go to final action.

COMMISSIONER TURNBULL: Excuse me, Mr. Chair. I just want to go on what we are looking for the applicant provide us. You talked about providing clear like A, B, C, D. There is a D here already. That number will probably change then in the sequence. I just want to be sure as to what they're looking for and how they're going to submit it to us.

CHAIRMAN HOOD: Well I would like for us maybe to leave that up to staff if that's okay.

COMMISSIONER TURNBULL: Okay. So Ms. Schellin will--
CHAIRMAN HOOD: Ms. Schellin will work all that out and she'll make sure that when we get whatever was D it will be in one package stapled or paper clipped or rubber band.

COMMISSIONER TURNBULL: Good.

Thank you.

VICE CHAIRMAN JEFFRIES: You're referring back to the Hearing Action right?

COMMISSIONER TURNBULL: Yes.

VICE CHAIRMAN JEFFRIES: Okay. I just wanted to say that for the record.

CHAIRMAN HOOD: Thank you. Thank you vice chairman. Okay. Let's move to final action, I'm trying to work off of two agendas here, one I've marked up and one I have not. So let's move to final action, Zoning Commission No. 05-25A H Street Community Development Corporation is asking for a 2-year PUD time extension at 4th Street and Rhode Island Avenue, N.E. Ms. Schellin?

SECRETARY SCHELLIN: You have
everything before you to consider this case
for a 2-year time extension.

CHAIRMAN HOOD: We also have a
letter from Anita Bonds from ANC 5C which is
recommending they support the time extension,
and I think there were three tests basically
that we need to talk about and as I really
reviewed some of the applicant's submittals
even before I got to substantial changes and
no hearing action, I think there's enough in
the case in point to determine whether the PUD
should be extended as whether there exists
good cause, and the applicant shows a number
of reasons for good cause: inability to obtain
sufficient project financing is one; inability
to secure all required governmental agencies
approval for a Planned Unit Development; the
existence of pending litigation, and then it
goes on to tell us exactly why.

Constructions costs. I think from
what the applicant was saying there was a
grant at one time about construction costs and
it looks like construction costs went from $35 million dollars to $56 million. And I think the applicant makes his case in the submittal and I could go on and on to talk about different things that they mention.

Another one is the applicant's initial lender, which is a well known banking institution has withdrawn. The applicant also worked extensively with another reputable lender to structure financing the project. However, after several months of working with the other lender, the lender underwent a major internal reorganization and in time they withdrew their proposal.

And then it goes on to talk about another local Housing Development Corporation to develop scenarios for funding for the project. However, the Housing Development Corporation has withdrawn from the project. It just seems like there's a lot of things because of the markets situation and it's caused this application to have to come and
ask for an extension of time.

And unless someone else has anything else they want to add, I would move that we honor the request.

Now I'm trying to figure out was there a time limit?

VICE CHAIRMAN JEFFRIES: Two years.

CHAIRMAN HOOD: Two years but I mean two years from when? It's two years from expiration? Okay. Two years from the expiration that we extend the timing for the, hold on one second, Zoning Commission Case No. 05-25A and I'll ask for a second.

COMMISSIONER TURNBULL: Second.

CHAIRMAN HOOD: Moved and properly second. Any further discussion? All those in favor? Aye? Any opposition? Hearing none so order staff to record the vote.

[Vote]

SECRETARY SCHELLIN: Just to confirm, the extension is till October 23,
2010 for the applicant's request. Staff
records the vote 4-0-1 to approve the two year
time extension in Zoning Commission Case No.
05-25A Commission Hood moving, Commissioner
Turnbull seconding, Commissioners Jeffries and
May in support, Commissioner Etherly not
present and not voting.

CHAIRMAN HOOD: Okay. Next on the
final action Zoning Commission Case No. 08-05.
This is Office of Planning text amendment to
the DD Overlay. Ms. Schellin?

SECRETARY SCHELLIN: The notice of
proposed rule making was published and any
comments that were received are before you.

CHAIRMAN HOOD: Okay. Thank you.
We also have from the National Capital
Planning Commission which states that they
find proposed text amendments remove the
residential requirement, increase the floor
area ratio of maximum height, maximum for
planning and redevelopment in the DD overlay
square would not be inconsistent with the
comprehensive plan of the National Capital, nor would it adversely affect other identified federal interests, and we have that before us. I would move approval of Zoning Commission Case No. 08-05 and ask for a second.

VICE CHAIRMAN JEFFRIES: Second.

CHAIRMAN HOOD: Okay. Any further discussion? All those in favor? Aye. Okay. No opposition. Staff would you record the vote?

[Vote]

SECRETARY SCHELLIN: Staff records the vote 4-0-1 to approve final action on Zoning Commission Case No. 08-05, Commissioner Hood moving, Commissioner Jeffries seconding, Commissioners May and Turnbull in favor, Commissioner Etherly not present not voting.

CHAIRMAN HOOD: Okay. Next is Zoning Commission Case No. 08-12. This is again an Office of Planning map amendment in Ward 8. Ms. Schellin?
SECRETARY SCHELLIN: Again, the notice of proposed rule making is before you. We have one response and that was from NCPC.

CHAIRMAN HOOD: Okay. Again, Ms. Schelling did they say this is not inconsistent with the comprehensive plan for the National Capital Area nor would it adversely affect any other identified federal interest.

I will move approval. We passed this out and proposed, I would move approval of Zoning Commission Case No. 08-12 and ask for a second.

COMMISSIONER TURNBULL: Second.

CHAIRMAN HOOD: Moved and properly seconded. Any further discussion? All those in favor? Aye. Not hearing any opposition, Ms. Schellin would you record the vote?

[Vote]

SECRETARY SCHELLIN: Yes. Staff records the vote 4-0-1 to approval final action on Zoning Commission Case No. 08-12.
Commissioner Hood moving, Commissioner Turnbull seconding, Commissioner Jeffries and May in support, Commissioner Etherly not present and not voting.

CHAIRMAN HOOD: Okay. Next on the agenda we're going to E, Zoning Commission Case No. 08-02 the Hay Adams Holding LLC Map Amendment at 800 16th Street, N.W. Ms. Schellin?

SECRETARY SCHELLIN: There's just one document before you and that is a report from NCPC.

CHAIRMAN HOOD: And again it looks like Ms. Schellin again it mentions that it's not inconsistent with the comprehensive plan for the National Area nor would it adversely affect any or other identified federal interests. Okay.

The only issue that came up was about a covenant being recorded with the land limiting the height as legally permissible is what we were told. But I think does anyone
move to require this to have a covenant? I am inclined not to and unless I hear someone we will move this without a covenant. Okay. All right.

I don't think I need to put that in the motion, I think the record will reflect that we have not required a covenant. But I would move Zoning Commission Case No. 08-02, the Hay Adams Hotel Holdings and ask for a second.

COMMISSIONER MAY: Second.

CHAIRMAN HOOD: Being moved and properly seconded. Any further discussion? All those in favor? Aye. Not hearing any opposition, Ms. Schellin would you record the vote?

[Vote]

SECRETARY SCHELLIN: Staff records the vote 4-0-1 to approval Final Action, Zoning Commission Case No. 08-02, Commissioner Hood moving, Commissioner May seconding, Commissioners Jeffries and Turnbull in
support, Commissioner Etherly not present and not voting.

CHAIRMAN HOOD: Okay. The next case is Zoning Commission Case 07-31, Joseph Young et al, Map Amendment of Square 416. Ms. Schellin?

SECRETARY SCHELLIN: This is a Map Amendment from Joseph C. Young and others and there is also an NCPC report on this case.

CHAIRMAN HOOD: Thank you Ms. Schellin. And it also mentions that it has no adverse impacts and does not affect any other identified federal interests. The report stands for itself. Any other comments, any other further discussion? I will approval of Zoning Commission Case No. 07-31 and ask for a second.

VICE CHAIRMAN JEFFRIES: Second.

CHAIRMAN HOOD: Moved and properly seconded. Any further discussion? All those in favor? Aye. Ms. Schellin, hearing no opposition staff would you record the vote?
[Vote]

SECRETARY SCHELLIN: Staff records the vote 4-0-1 to approve Final Action Zoning Commission No. 07-31, Commissioner Hood moving, Commissioner Jeffries seconding, Commissioners May and Turnbull in support, Commissioner Etherly not present and not voting.

CHAIRMAN HOOD: Okay.

Correspondence. We're going to go to Correspondence. That's one thing about it, when you take stuff out of order and you put it in order and then you get it all mixed up.

Okay. I don't know if we need to necessarily take any action. We have a letter from a Zoning Commission case 06-14 and also Zoning Commission Case No. 06-28, that's Douglas Development. A letter from Holland & Knight advising the applicant has withdrawn the case.

Ms. Schellin, do we take any action here?
SECRETARY SCHELLIN: No sir. Just to acknowledge.

CHAIRMAN HOOD: Okay. So we have acknowledged we are in receipt.

Okay. Let's move into Proposed Action and we'll start off with Zoning Commission Case No. 05-38A. This is Marina View Trustees LLC - PUD at 1000 and 1100 6th Street, S.W. Ms. Schellin?

SECRETARY SCHELLIN: We have a few documents that have come in on this case for you to consider for proposed action this evening.

VICE CHAIRMAN JEFFRIES: Mr. Chair, I will not be participating in this deliberation.

CHAIRMAN HOOD: Okay, Colleagues, we have in front of us, I think there were some questions, if I can recall the hearing, there were some questions that we asked the applicant to come back and one of them dealt with the conversion from condominiums to
rental and there was a question I think that 
was raised by the Office of Planning about the 
amenities as far as square footage which was 
supposed to be a discount provided to the 
residents of the Marina View who were going to 
remain. And I think the applicant has 
expounded on that to us.

Also, the applicant has reserved an 
additional $71,500 in contingency funds to 
guarantee the renovation of the park, and I 
take this as the completion of the park. I'm 
not sure, I don't know if that was my 
colleague Commissioner May or the Office of 
Planning who raised the concern but I remember 
that that was an issue and this cover letter 
dated October 14, 2008 it talks about those 
issues.

One of the other things that I saw 
in this submission, and I'll just take it 
straight from the submission, the bottom of 
page 2 in the last paragraph it says, 
"nevertheless, the applicant is still offering
the 19 tenants who expressed interest in the
condominium purchase program an opportunity to
return to Marina View in the event the
applicant establishes condominiums in the
future. Those individuals will be able to
return within three years of the date of the
first sale of the condominium unit and
purchase a condominium unit for 20 percent
discount from the market rate."

I don't know, I just think about
follow through you know, whenever this happens
it may be 20 years from now, my mind really
ran rapid when I read that. I guess how do we
ensure that this happens? Some things I guess
are not out of our control and hopefully those
tenants will stay abreast of what exactly
transpires and takes place.

Anyway, with that, let me just open
it up for any conversation or comments and if
not I'll entertain a motion. Commissioner
May?

COMMISSIONER MAY: I just wanted
to comment that the way I'm reading what was submitted, at least with regard to the park, I see a commitment to spend another $71,500 dollars potentially or at least setting aside contingency funds to guarantee that the renovation of the park will be completed and I think that that's a reasonable contingency to be able to do it and I'm now more confident that the renovation of the park will be completed.

And with that I would move approval of Zoning Case No, 05-38A PUD modification request for Marina View, 1110 6th Street, S.W. and ask for a second.

COMMISSIONER TURNBULL: Second.

CHAIRMAN HOOD: Okay. It's been moved and properly seconded. Any further discussion. All those in favor? Aye. Staff will you record the vote?

[Vote]

SECRETARY SCHELLIN: Staff records the vote 3-0-2 to approve proposed action in
Zoning Commission Case 05-38A, Commission May moving, Commissioner Turnbull seconding, Commissioner Hood in support. Commissioner Jeffries not voting having not participated and Commissioner Etherly not present and not voting.

CHAIRMAN HOOD: Okay. The next case is Zoning Commission Case 08-09. This is ANC 4C - Text and Map Amendments to expand the 16th Street Heights Overlay District. Ms. Schellin?

SECRETARY SCHELLIN: I think that there were a couple of exhibits that came in after the record closed. Yes, Exhibits 55 through 59 and I just need to know how the Commission wants to proceed with those documents.

CHAIRMAN HOOD: Do we need to open the record to accept them?

SECRETARY SCHELLIN: If you want to accept them yes.

CHAIRMAN HOOD: Okay. Would you
call those exhibits out again?

SECRETARY SCHELLIN: 55 through 59.

CHAIRMAN HOOD: Okay. What I would do is move that we open up the record to accept 55, 56, 57, 57, and 58 and 59, I don't have that in front of me. But anyway I will move that we open the record to accept all those as mentioned and ask for a second.

COMMISSIONER TURNBALL: Second.

CHAIRMAN HOOD: Moved and properly seconded for discussion. All those in favor? Aye. And hearing no opposition, Ms. Schellin would you record the vote?

[Vote]

SECRETARY SCHELLIN: Yes. Staff records the vote 4-0-1 to reopen the record to accept Exhibits 55 through 59, Commissioner Hood moving, Commissioner Turnbull seconding, Commissioners Jeffries and May in support. Commissioner Etherly not present and not voting.
CHAIRMAN HOOD: I'm sorry, Mr. Schellin. I do have 59 it was behind 58. I guess I should have looked there first. Okay.

Also let me just for the record I think I had to leave early that night but let me just say I have reviewed the remainder of the time, Ms. Schellin, and thank you for carrying on with the hearing and getting out at about ten or so, ten minutes to ten.

But anyway I have reviewed the remainder of the record in which I had to leave so what I'd like to do at this point is let one of my colleagues start off the conversation.

I will say this though, again this was a request by the ANC to expand overlay district and we have some material facts or some findings that were done previously for the previous overlay and whether or not it should be expanded. And those same findings, at least in the Office of Planning's report, said that some of those development pressure
that happened in this particular area, I know there were some comments about it including other areas and taking a comprehensive look at that.

And I think colleagues said if we want that to happen this is the time for us to at least mention it to the Office of Planning. It may not be the time that we can deal with it in this case, we have to deal with the merits that are in front of us. But I mean on down the road we may ask the Office of Planning to look at some more of that comprehensively but with that let me open it up for discussion.

COMMISSIONER MAY: Mr. Chairman, as I understand it what we are supposed to do when looking at expanding the overlay is to look at the findings that supported the initial establishment of the overlay and there were several conditions there that we were supposed to look at.

And I think the one that's the
source of significant debate and discussion is
the issue of exactly how much of this
conversion to non-residential use has been
occurring within that area. And we had a wide
range of testimony on this subject and you can
look at it one way and say while there has not
been this surge of conversions in the recent
past. Even if you look at what has been
presented in testimony by the opposition, it
indicates that something in the neighborhood
of 10 percent of the properties have been
converted to non-residential use.

Granted, not all recently. Only a
couple of them are within that time period
from when the overlay was first enacted, but
it does indicate based on the initial reading
of the overlay that when you get into that 10
percent range that's kind of the tipping
point, and it's the area which there is good
reason to be concerned about what's happening
to the neighborhood because that was the
original basis of it. It was that over a
period over years, one in ten houses in the neighborhood had been converted to non-residential use and I think we're in that same kind of frequency at this point for the area that's been identified for the expansion.

So I'm comfortable with the idea that the overlay zone would be appropriately expanded as its been proposed here.

I am concerned about the notion that this expansion is being done specifically to stop one project in particular, and while we don't know the particulars of that property and that case, it seems to me that the processes for getting a special exception to allow certain uses I think still can be used to address those cases that are appropriate. And I think that that's probably the best way to go.

I do understand that there may be complications even with that and there may be some changes in the regulations that should be considered, with particular regard to the
parking constraints, because the way the parking regulations are written it does make it almost impossible for certain properties I think to provide the necessary parking. Even if they have the land to do it, you can't lay out your site in such a way as to meet those parking requirements and I think that's a conflict that ought to be addressed in the overlay wording.

And I think it would be appropriate to suggest that the office of Planning take a look at both what's the right language to correct that issue potentially to make it easier or possible in some circumstances to get a special exception, and then also to look at the boundaries of the overlay one more time to see if the area that's between the overlay and Rock Creek Park, that wedge of land should also be considered for inclusion in the overlay. That's my suggestion.

CHAIRMAN HOOD: Very well. Very well put. Commissioner Turnbull?
COMMISSIONER TURNBULL: Thank you Mr. Chair. I agree with Commissioner May in most respects. I think I agree in spirit with the concept that an overlay is needed for this area.

My own feeling on this is that in this particular case it doesn't meet the true test of what the original language for the existing overlay says.

I think, and there's conflicting evidence in what was presented to us, but only two properties in the last ten years may have been converted to non-residential use. So although that may bring you to the tipping point it doesn't speak to the true nature of what the existing language said, and there was this dramatic change and that the overlay was created to halt this dramatic change.

I think this sounds like this area has been fairly stable if you look at some of the documents that we've received. So I'm not saying you don't need an overlay, I'm just
saying that the spirit in which we're trying
to do it may be a little bit more of a force
fit.

And I also feel that the overlay is
not comprehensive. We also talked about
extending the overlay over to Rock Creek Park.
It seemed that it's not quite as inclusive as
what it should be, so my own feeling is if
you're going to do an overlay I think you need
to redo the language and I think you need to
redo the zone that it would include
properties.

So I guess I'm just a little bit
tentative on going ahead and saying, yes, this
meets the test and it should go ahead and do
it. I have a feeling at some point, yes, it
needs an overlay but from how the other
overlay was first initiated it was because of
this rapid change that was happening. That's
not happening in this area even though if you
say well two added to what's already there may
put you at a 10 percent, there hasn't been the
rapid transition as was experienced previously for the initial introduction of this overlay. So I'm a little bit reluctant to jump into it myself,

COMMISSIONER MAY: Mr. Chairman, can I speak to a couple of points there?
CHAIRMAN HOOD: Sure. I will just say this and this is obviously going to be a discussion Mr. Turnbull. This is probably the first time that I totally disagree with you which you know there's always a first time for everything. But we'll come back. And we actually, Mr. Turnbull, need to discuss that. I understand your points but we need to talk it through. But let me go back to Mr. May.
VICE CHAIRMAN JEFFRIES: The first point I'd make is that the way the findings read from the initial overlay refers to the fact that over a period of years, approximately one in 10 houses in the neighborhood has been converted.

It doesn't say what that period of
years is. It simply states that one in 10 at this point have been converted. And that period of years could have been five years, it could have been 25 years, the point is at this point it's 10 percent. And in fact there's nothing that really indicates that it had been a rush of conversions that prompted the overlay. It's just that at that point they were out about 10 percent, at least again that's how I'm reading the regulations.

In fact, what I see there is that based on the first overlay, on the first overlay there was not this rush and, in fact, there's a statement that the conversion of houses had been a serious planning enforcement problem for more than 10 years so it implies that this has been going on for some significant period of time.

So I'm not convinced that the situation now is that dissimilar from the way it was before. I think they just reached a point where they realized oh my gosh, 10
percent of these properties have been converted to non-residential use. It's starting to change the character of the neighborhood and we're in a similar condition right now.

Okay. So what's the difficulty of actually giving absolute numbers for absolute time frames so we can make a determination in terms of--

COMMISSIONER MAY: Well, I don't have any difficult with it because again even if we accept the opposition's numbers for this. They say 13 out of 143 properties are non-residential. I mean that's almost 10 percent right now.

VICE CHAIRMAN JEFFRIES: But we don't know over what period.

COMMISSIONER MAY: Well, what they did say is that two of those 13 were converted in the last 14 years. That's a slow period of time but the point is that they're still at about that 10 percent threshold which was
enough to prompt the overlay before.

CHAIRMAN HOOD: Let me do this.

Let me go back to Mr. Turnbull and I want to come back to you because I said I disagreed with you and maybe it's because I didn't understand you, because I looked at these three findings and when I looked at these three findings, as my colleagues said, the way I looked this to extend it is let's look at what the Zoning Commission did when they first adopted 1551.4 and those three findings.

And maybe I just didn't understand because I think 2 and 3 are clear from my standpoint. I think the issue that you said, Mr. Turnbull, is basically over the first one. Am I correct?

COMMISSIONER TURNBULL: Well, it's Part A but it's also I think the neighborhood boundaries are not that well established. I mean we even looked at map ourselves that night and said, gee, why aren't you going further over to Rock Creek Park. It didn't


make sense to leave out a section.

I don't think it's as well thought out and as comprehensive. I think it's a very quickly run overlay that needs to be more thought out and in my own personal feeling in looking at this and looking at what the language says it seems like, and Commissioner May may say oh it could be over 50 years, I don't think you're going to implement an overlay of change if you've only had two changes to business use in 10, 15 years that it merits an overlay.

CHAIRMAN HOOD: But let me--

COMMISSIONER TURNBULL: But if you do then I think the language needs to be addressed differently than what the language is here. I don't think you can shoehorn it under this. If you want to do it, go ahead and do it. I will be voting against it.

CHAIRMAN HOOD: Okay. But let me ask this question. Let me deal with Mr. Turnbull for a second.
Now Mr. Turnbull, I understand your issue about not being well thought out but that was the plan that was brought to us as we all know. And if we did it to include another area, some more area, another comprehensive look if you will, then we would have to re-advertise which I think that may be something we can do.

I'm just trying to give you a comfort level but I think I heard where you're coming from. But I'm just trying to say that if we would deal with this tonight as opposed to delaying or waiting, then there will be a point in time that we can go back to the Office of Planning and ask them to look at the rest of the area which we would like to see a commission comprehensively.

COMMISSIONER TURNBULL: Right. I would like to see that area included too.

CHAIRMAN HOOD: But would that stop you from--

COMMISSIONER TURNBULL: No, I will
still be voting against this.

    CHAIRMAN HOOD: Okay.

    VICE CHAIRMAN JEFFRIES: Because it didn't-- based on what you've said Commissioner Turnbull I mean expanding the area doesn't really address your issue and that is you don't see perhaps that there's been any significant changes in non-
residential use.

    COMMISSIONER TURNBULL: Right.

    VICE CHAIRMAN JEFFRIES: You know from one period to the next. I guess what I'm trying to get to the bottom of, because basically if I understand you correctly, if we look at the initial overlay and why it was created, the determination was based on the fact that you reached this tipping point and you saw one in every 10 houses in a particular neighborhood being converted to a non-
residential use. And so this overlay was created. Okay.

    And then the neighbors came forward
and said okay, we're seeing even further
conversion in some of these adjacent areas to
the existing overlay.

And so your point, Commissioner
Turnbull, is that when you look at what has
occurred it doesn't seem like there's been
much movement.

COMMISSIONER TURNBULL: That's
correct.

VICE CHAIRMAN JEFFRIES: And I
guess what I'm saying is, is there any way
that we can figure out, I mean we can speak
about this in absolutes, I mean time frames
and what has occurred because unless it's in
the file and I have not deduced it, but again
I'm trying to get absolute numbers tied to
absolute time frames because I would agree
with Commissioner Turnbull that you know that
if it doesn't look as if there is any movement
towards, or significant movement towards homes
that are in adjacent neighborhoods that are
converting, if it doesn't seem that there's a
lot of movement, then that does beg the
question then why are we doing it?

But again I'm trying to get some
questions answered. I'm not coming to any
conclusions. I just want to make certain I'm
clear of that. Unless someone has those
answers.

CHAIRMAN HOOD: Well, I can say
this. I can't give you any absolutes but when
I looked at the Office of Planning report and
it starts speaking as though pressures,
development pressures would start migrating
into that particular area then over a period
that initially would happen.

But again I'm not giving you
absolutes. I'm not testifying. I'm just
going by the testimony.

And I don't want us to get mixed up
with, and I'm sure we're not but I want to
cautions, we don't have a specific project
in front of us and I've said that I don't know
a thousand times and I've read the transcript
and I'm sure you mentioned it a lot when I left. So that to me is out of the discussion.

But I'm just trying to figure out because the way I read this coming down, and I know you haven't necessarily put your position there, it appears to me that we may split if we call for a vote. And we want to be fair to all parties when we don't have the fifth person.

But let me ask you this Vice Chairman. When you say absolutes, are you going to go back out to maybe the ANC who petitioned us or the Office of Planning?

VICE CHAIRMAN JEFFRIES: Maybe if the Office of Planning could help me out. I mean if I get answers to my questions here I might be fine but I just want to be clear because what Commissioner Turnbull has stated, I mean I understand it conceptually, I understand what he's saying, but I'm left with not really understanding sort of the point of departure from the first overlay where we saw
one in 10, we saw the conversions and what I was trying to deduce is if you look at the areas where the petitioner is looking to expand, what has been the rate of conversion in those neighborhoods?

And if it's just sort of a pressure then how is that demonstrated or evidenced?

CHAIRMAN HOOD: Ms. Steingasser could you help us? Thank you.

MS. STEINGASSER: I can try. The two properties that have converted since 1994 have pushed the area, the geographically bound area that's proposed from the ANC, from 8.5 percent to 9.93 percent in non-residential uses.

So there has been a movement in the last 14 years to hit that 10 percent threshold. So I think the neighborhood's position is we've now hit that tipping point, let's move proactively rather than reactively so that the overlay is in place at this tipping point and not wait till it becomes 10,
15, 20 percent where it's more of a reactive.

VICE CHAIRMAN JEFFRIES: Okay. So you're effectively merging the overall area I mean the existing overlay and then what is being expanded into one overlay that represents really what was set forth in 1551.4.

I guess I was sort of bifurcating things and saying that you know in the current overlay we saw a tipping point moving towards the 10 percent and I guess I was trying to deduce whether if in this area that's going to be expanded, if you just separate that out and look at sort of what has been the change in terms of conversion to non-residential uses, what that looks like. You're merging both of these areas together.

MS. STEINGASSER: Well, the two properties that converted are in Square 2714 and that is in the proposed overlay area.

VICE CHAIRMAN JEFFRIES: Okay.

MS. STEINGASSER: Movement is in
the newly proposed area.

VICE CHAIRMAN JEFFRIES: So in the area that we're looking to expand it, what has been the movement there?

MS. STEINGASSER: That I believe is the, let me double check my squares, but that is the movement from the 8.5 percent to the 10 percent. And that's documented by the application from Holland & Knight where they list out every square and they went through and provided all the properties within that square, it's in Tab C.

And they do it by square. The pre-1994 use, the post-1994 use. They were not looking at land area, we're just looking at record property, property boundaries not land area.

VICE CHAIRMAN JEFFRIES: It's at Tab C?

MS. STEINGASSER: Tab C, yes. It was what was provided at the hearing September 15th. Tab C goes through each square and what
they're calling the de minimus increase is the threshold that brings it from an 8.5 percent to a 10 percent.

VICE CHAIRMAN JEFFRIES: Okay.

These square in Tab C, these are square in the new--

MS. STEINGASSER: In the new proposed area.

VICE CHAIRMAN JEFFRIES: Okay.

And in that new proposed area this represents about 8 percent of conversion? Roughly?

MS. STEINGASSER: Within this area with the two new conversions it represents 9.93 percent non-residential uses. And those two conversions, while they are only two out of a 141, bring it up to 9.9 percent.

VICE CHAIRMAN JEFFRIES: Okay. I see.

MS. STEINGASSER: So the increase, the threshold gap is happening within the proposed area not the total.

VICE CHAIRMAN JEFFRIES: I see.
Okay. So Commissioner Turnbull, were you following us here?

COMMISSIONER TURNBULL: I don't have that particular document with me but I'm still saying two properties in 14 years.

COMMISSIONER MAY: But why is the rate such a critical thing because there's nothing in the original language that talks about--

COMMISSIONER TURNBULL: Why are you so willing to jam down this down the throat of people.

COMMISSIONER MAY: Why are you going to jam it down anybody's throat? No, I'm looking at the conditions that were specified in the original overlay--

COMMISSIONER TURNBULL: And I don't think they meet that.

COMMISSIONER MAY: And let me explain why I think they do.

COMMISSIONER TURNBULL: Okay.

COMMISSIONER MAY: Which is that
what they were reacting to was the fact that
the conversion to non-residential use over a
period of some years had reached a threshold
of 10 percent. And that was the cause for
concern.

Doesn't say how long it took to get
there, doesn't talk about how many properties
have been converted in the last 10 or 14
years, it just talks about the fact that it's
at about 10 percent. And what's happened in
this--

COMMISSIONER TURNBULL: 9.3 or
something, 9.3 I think she said.

COMMISSIONER MAY: I'm talking
about the original order. The original order
talks about one in 10 properties over a period
of years have been converted so there were
roughly 10 percent of the properties in the
original overlay was enough to cause the
establishment of the overlay.

And what we have here is a case
where we're approaching--
COMMISSIONER TURNBULL: Here?

When you say here you're--

COMMISSIONER MAY: Here in the proposed case the expansion of the area, that expanded area is approaching 10 percent. In fact if you look at that residential institutional uses that's another five properties in there and that pushes it above and beyond. And there's a difference between residential institutional uses and just R-1B residential uses.

But that aside, it's that 9.93, it's very close to the 10 percent that was the threshold amount to establish the initial overlay.

COMMISSIONER TURNBULL: I can read that. I understand that. I just don't feel that the impetus is there yet that would significantly want to add this area that is not even as comprehensive as it could be.

And I think that if you're going to do that, I think the language needs to be
changed to address the conditions today. And I don't think that it really meets the spirit of the old language. I don't think we have had executive branch and council members identifying and coming to us and saying we have a problem here and we need to do something about it.

COMMISSIONER MAY: Well I think the Executive Branch did. The Office of Planning says that they support this proposal.

CHAIRMAN HOOD: Also Council Member in Ward 4, if you remember Ms. Muriel Bowser, I definitely know her name now, I just didn't know whether to say Honorable first or Council first, but she testified at the hearing as you may recall.

COMMISSIONER TURNBULL: Well I still don't think the neighborhood boundaries are well established and encompass the areas that we're talking about.

CHAIRMAN HOOD: Let me--

COMMISSIONER TURNBULL: But if the
three of you feel that's fine then I would so
go ahead and vote.

CHAIRMAN HOOD: But I don't know
what that is yet Mr. Turnbull so what I'm
trying to do is figure out what can we do
maybe go back and ask the Office of Planning
to do something. But let me hear from Vice
Chairman Jeffries.

VICE CHAIRMAN JEFFRIES: Okay. So
my understanding if I look at Tab C of the
Holland & Knight letter dated September 15,
2008, square 2708, 2707, 2710, 2711, 2712,
2713, 2714, 2715, and 2716 all represent the
squares that are in the proposed expansion
area.

And within this area initially you
had about 8 percent of the residential uses
that had been converted to non-residential
uses. And then at some point there's been two
additional homes that have been converted
within these squares in the last 14 years or
whatever and that has pushed the percentage of
sort of non-residential use from 8 to about 9 percent. Is that correct?

MS. STEINGASSER: Yes. From 8.5 to 9.9 percent.

VICE CHAIRMAN JEFFRIES: And that is close to the tipping point as it relates to the three findings from 1551.4 approximately one in every 10 houses in the neighborhood has been converted to a non-residential use, a much higher ratio than has been identified.

So effectively you know you can get another two or three houses in these square that I've stated that could push this to 10 percent and at that point you'd be there.

You're just obviously trying to preempt that and be proactive before we move to that point correct?

MS. STEINGASSER: Well OP is not the applicant.

VICE CHAIRMAN JEFFRIES: Yes, but I just want to make certain I understand just the gist of it.
MS. STEINGASSER: Yes. It's my understanding that the neighborhood and the ANC felt that once they hit 9.93 percent that they had the 10 percent and that over the period of 14 years that they were at that threshold and rather wait to feel more pressure, that they went ahead and filed the overlay.

VICE CHAIRMAN JEFFRIES: Okay.

Okay, that's fine. Thank you. Oh I'm prepared to move forward.

COMMISSIONER MAY: Yes. I would like to make a motion to approve Zoning Case 08-09 map and text amendments to expand the 16th Street Heights Overlay District and I'm going to ask for a second.

VICE CHAIRMAN JEFFRIES: Second.

CHAIRMAN HOOD: All right. It's been moved and properly seconded. Any further discussion? All those in favor? Aye. Any opposition? So staff would you record the vote?
[Vote]

SECRETARY SCHELLIN: Staff records the vote 3-1-1 to approve proposed action in Zoning Case Commission No. 08-09, Commissioner May moving, Commissioner Jeffries seconding, Commissioner Hood in support. Commissioner Turnbull opposed, Commissioner Etherly not present, not voting.

CHAIRMAN HOOD: Ms. Steingasser, taking in context what Mr. Turnbull mentioned about going to the park, do you think maybe at some point the Office of Planning, I know you're not the petitioner but maybe we can look at that so we can get that comprehensive review in which he spoke about.

MS. STEINGASSER: At the end of the comprehensive zoning review we'll be looking at the land use itself and how the new zoning regs apply to these land areas, and the overlay areas are one of the primary focuses so we will be looking at those areas.

CHAIRMAN HOOD: Okay. Mr.
Turnbull, is that--

COMMISSIONER TURNBULL: Sure.

CHAIRMAN HOOD: Okay. Thank you very much. Okay. Again we're going to do the loading; Ms. Schellin when did we say we were going to do the loading?

SECRETARY SCHELLIN: November 10th.

CHAIRMAN HOOD: November 10th okay.

Next we have Zoning Commission Case No. 08-06-4 and that is Arts and Culture. Ms. Schellin?

SECRETARY SCHELLIN: I think you have before you a worksheet to go through the different options to give OP some guidance in writing language.

CHAIRMAN HOOD: Okay. And we're going to do this a little differently. We're going to try it differently this time. I'm not going to read all of them. Does everyone have the worksheet? Even those in the audience? Okay. So everybody has the worksheet. Okay. We're getting better.
COMMISSIONER MAY: Mr. Chairman,
may I just add I was not present for the
hearing but I have reviewed the record and am
prepared to participate.

CHAIRMAN HOOD: Okay. Good.

SECRETARY SCHELLIN: You weren't
here?

COMMISSIONER MAY: Not for Arts
and Culture no.

CHAIRMAN HOOD: Do we need to--

SECRETARY SCHELLIN: No, we're
straight. Mr. May wasn't here for Arts and
Culture and Mr. Turnbull and Mr. Jeffries were
not here for loading. So Mr. May was just
advising that he read the record.

CHAIRMAN HOOD: Okay. And
everybody's going to read the record for
loading so we can all--

SECRETARY SCHELLIN: Yes.

CHAIRMAN HOOD: Okay. All right.
Let me make sure I'm clear. All of the
options ones, and this is probably to the
Office of Planning, all of the options ones are Office of Planning's recommendations. Am I correct Mr. Parker?

MR. PARKER: I believe so. Give us a chance to go through. I think there may be one exception to that rule.

CHAIRMAN HOOD: Okay. Because I was going to handle it in that fashion and hopefully that's exactly how it is. And I will say that we've had some submittals to Conservancy, Committee of 100, the Studio Theater.

MR. PARKER: The answer to your question was yes, option one.

CHAIRMAN HOOD: Okay. Option one is all-- Okay. Ms. Massie ANC 3C-09. Ms. Faith Wheeler, ANC 4B-02 and I think that's all I have in this case. But basically what we're doing there is very general and not specific. I don't want anyone to think that we have not reviewed the submittals that have been taken, there was one or two that might
have been loading.

Anyway, any comments that we need to interject as we try to go through this exercise right quickly to be able to do that.

VICE CHAIRMAN JEFFRIES: Yes, I just have a question for the Office of Planning. So from our hearing were there any changes that you made to your original proposal?

MR. JESICK: We haven't made any changes today. We were going to wait for the Zoning Commission guidance from this meeting and then as we move forward and write specific language we would incorporate public comments and Zoning Commission input.

VICE CHAIRMAN JEFFRIES: Oh okay. Because for parking we had so many comments during the hearing that there were some changes that came from that that made it here, but you didn't do it that for this one?

MR. PARKER: At the end of the hearing there were no issues to address.
VICE CHAIRMAN JEFFRIES: Right.

Okay.

MR. PARKER: We're not asked to report it.

VICE CHAIRMAN JEFFRIES: Okay.

CHAIRMAN HOOD: Okay. And again referring to some of the submittals if my colleagues choose to do so interject and let's move with that so we can give the proper guidance. And again we'll have another bite of the apple so we can institute a lot of these issues once we get the text. Okay. For No. 1, Arts Districts, we have option one and option two.

VICE CHAIRMAN JEFFRIES: Option One.

CHAIRMAN HOOD: Anyone else out there? Everybody in agreement with Option One?

COMMISSIONER MAY: I agree with Option One and I would say that when we are ready to choose an Option we should read
exactly what that Option says. I know we talked about what gets read and what doesn't get read but I think that--

CHAIRMAN HOOD: Let me go back and do it like I did last week. Oh boy.

Okay. No. 1 Arts Districts.

Option One. Create template set of provisions that would apply to existing and future Arts Districts. Based on the remainder of the work in the Zoning Review, these provisions could be applied as a stand-alone district, as part of individual commercial districts, or as an overlay.

Option two says retain existing systems of individual ad hoc Arts overlays.

COMMISSIONER MAY: I agree with Option One but I think it's going to be a beck of a task but we get to review it. We don't have to write it.

CHAIRMAN HOOD: That's right.

And I think because some of the submittals were against the template style. But anyway
so we're going to go with Option One.

COMMISSIONER MAY: Yes. I thought that the opposition had a lot to do with the establishment of Arts Districts rather than Arts overlays. Did I misunderstand that? As opposed to the template concept?

CHAIRMAN HOOD: I'm looking at the letter dated September 18, 2008 from Takoma Theatre Conservancy. And everyone did a good job with this putting it in order. And again the committee is very consistent. I don't want to get too much into that because we can get into specifics when we get there but they're very consistent about the governmental agencies working in collaboration.

Again, I see that again here for this. I'm sure that we'll probably see that on each and every one of them.

MR. PARKER: But Commissioner May your question was you thought there was an issue with a stand-alone district as opposed to commercial districts?
COMMISSIONER MAY: And overlay with an existing zone. And I mean that shows up in the Takoma Theatre Conservancy, the Committee of 100 had that issue. And I don't know if was a misunderstanding that but what's before us in terms of the recommendation would allow for Arts Districts and Arts Overlays right?

MR. PARKER: It sounds like they're looking for flexibility.

COMMISSIONER MAY: It would allow either or, a decision not to be made tonight.

MR. PARKER: Right.

COMMISSIONER MAY: And was that clear the night of the hearing?

MR. PARKER: No, the night of the hearing we were recommending stand-alone Arts Districts period and we're willing to leave that option open until--

COMMISSIONER MAY: Okay. So now I'm less confused.

CHAIRMAN HOOD: Yes, well we're
hearing that. I think we're going to move a
little faster.

VICE CHAIRMAN JEFFRIES: You're
less confused.

COMMISSIONER MAY: I'm less
confused.

CHAIRMAN HOOD: So Option One?
Mr. Turnbull? Are we all in agreement?

COMMISSIONER TURNBULL: Yes.

CHAIRMAN HOOD: Okay. No. 2, Arts
Uses. Option One. Unify and simplify a list
of Arts uses, including grouping Arts uses by
type. That is Office of Planning. And the
next one is do not change basically existing
separate lists of Arts uses.

COMMISSIONER MAY: I agree with
Option One.

CHAIRMAN HOOD: Option One. No.
3, Arts Requirement. NOTE: additional density
resulting from requirement is addressed is in
issue NO. 6. So we'll go to that when we get
there but Option One which is require 0.5 FAR
of Arts use in new construction in Arts
Districts.

Option Two. Require whatever the
FAR of Arts uses in new construction in Arts
Districts. I think they're asking us to fill
that in.

And Option three. Do not require
Arts use in Arts Districts.

COMMISSIONER MAY: So we want to
be hard and fast. I guess we really have to
be if we're calling something an Arts District
then we clearly need to promote Arts Uses in
Arts Districts.

Is there any way or provision that
you know let's say someone might want to put a
swanky nice restaurant in an Arts District, do
we allow it?

CHAIRMAN HOOD: Yes, they can do
that.

COMMISSIONER MAY: In that
building they'd have to have 0.5 FAR devoted
to Arts use in some manner.
VICE CHAIRMAN JEFFRIES: Which could look like what?

MR. JESICK: We had some draft lists in our report of various Arts uses and included in that list of what could count towards the requirements were things like restaurants, lounges, etc. We did hear public testimony and I think some sentiment from the Commission not to count those uses as Arts uses although they are presently.

But if someone wanted to do a restaurant, even if we eliminated those from the Arts lists you know, that could easily fall into the above and beyond the 0.5 FAR or they could do some sort of combined lot development to remove their Arts requirement to another building that wants to accept more than the 0.5 FAR.

VICE CHAIRMAN JEFFRIES: So if I were looking to build a restaurant in an Arts District you can do a combined lot transaction or you can do, what's the first thing you
said?

MR. JESICK: Well you could provide an Arts use say on the 2nd floor and have your restaurant on the ground floor so you'd still be meeting your 0.5 FAR requirement but then you can do whatever you would like with the rest of your building.

VICE CHAIRMAN JEFFRIES: Are you familiar with the Busboys and Poets at 5th and K?

MR. JESICK: Hmm-hmm.

VICE CHAIRMAN JEFFRIES: I mean obviously it's a restaurant but it sort of looks somewhat like a hybrid of sorts. You might not look at that as an Arts use but you know there's lots of art around, lots of funky things and so forth.

I guess I just sort of pause a little bit here because I certainly would not want to present or deter restaurant uses in these Arts Districts and so forth, and if someone is simply just not in a position to
create arts space but they're looking at sort
of complementary uses such as a restaurant,
you know, we want to definitely sort of
promote that.

MR. JESICK: Well, I think the way
we have the proposals drafted in our report, a
restaurant would count towards the Arts
requirements.

VICE CHAIRMAN JEFFRIES: Oh so it
would count?

MR. JESICK: But like I said we'd
have to have public testimonies that might
suggest that we wouldn't want to count
restaurants. So we would have to weigh, you
know, which direction we want to take the Arts
Districts.

MR. PARKER: Both the working
group and the testimony we heard at the public
hearing were that when you allow restaurants
to count as Arts you get restaurants.

VICE CHAIRMAN JEFFRIES: Right.

MR. PARKER: And you don't get
Arts.

VICE CHAIRMAN JEFFRIES: Right.

Right.

MR. PARKER: And so the suggestion was to not allow them to count but they can either put Arts in the building or participate in a CLD and meet at offsite somewhere else.

COMMISSIONER TURNBULL: Well is your recommendation Option One or by Option Two where you leave it blank? Are you looking at a range of are you looking at some flexible number? What's the point of No. 2?

MR. PARKER: Option Two is the way it's done now where every time we come in and create an overlay we negotiate a list of uses and the community makes up a list of uses and brings them in and say these are the ones we want.

COMMISSIONER TURNBULL: So you're recommending Option One?

MR. PARKER: One of the overall themes of what we're recommending, I'm sorry,
I'm on No. 3.

COMMISSIONER TURNBULL: We are on No. 3.

MR. PARKER: Forgive me.

MR. JESICK: Our recommendation was 0.5.

MR. PARKER: Right.

MR. JESICK: At the public hearing I think maybe Commissioner Jeffries had expressed, I don't know if concern is the right word but was questioning whether that was the right number or if another number was correct. So we just wanted to present either option tonight.

COMMISSIONER MAY: I don't have a lot of anguish about the recommendation. I mean once we get a better look at what this means in terms of what a District is, because this is for Arts Districts, and then we look at what the Arts uses would be, you know, we'll have another shot at this and we'll be able to determine well you know is this
something they really have to require or is there some other way to address it, what flexibility we would grant, is 0.5 the right number? Or should it be higher or lower?

Those sorts of things.

VICE CHAIRMAN JEFFRIES: But we looked at on an overlay basis. I mean we looked at a particular area. Well I guess you know I see the tension here, I mean there's certainly areas in Arts overlays that just have galleries and so forth and not enough restaurants and I just think there's a certain appropriate balance and I would just hate for-

And I understand what the Office of Planning is trying to do so I mean I can go forward as long as there's some flexibility down the road.

CHAIRMAN HOOD: So Mr. Turnbull, are we all in agreement on 5 the Office of Planning's recommendation? Okay.

Let me ask this though, I remember
the conversation as you said, Mr. Jesick, about bars, nightclubs, cocktail lounges and you even mentioned about bookstores. What was the PAUL list again? I can't remember. I remember asking that question once before.

MR. JESICK: That was just an acronym that we came up with. It stands for Preferred Arts Use Lists. We'll probably tinker with that name to come up with something.

CHAIRMAN HOOD: Oh okay. So it's not a standard out there like the transportation handbook?

MR. JESICK: What we did was we combined existing use lists that are the zoning regs.

VICE CHAIRMAN JEFFRIES: I just hope that that list, and I think we talked about it, is somewhat broad and allows for some level of flexibility in terms of what constitutes Arts uses.

I mean I don't have it in front of
me right here but--

MR. JESICK: It was our thought
that it didn't feel pretty broad.

VICE CHAIRMAN JEFFRIES: Okay.

MR. JESICK: And we sort of left a
catch all at the end, "a use determined by the
Zoning Administrator to be an Arts use," could
also count.

VICE CHAIRMAN JEFFRIES: Okay.

CHAIRMAN HOOD: Okay. Let's go to
No. 4. Non-Arts Uses. Option One is the
Office of Planning's recommendation. We only
have two options here and Option Two, allow
other non-Arts uses to count toward Arts
requirements.

COMMISSIONER MAY: I think Option
One makes sense. We've got to get that
definition worked up or that list of Arts uses
but that's the key.

CHAIRMAN HOOD: Okay. Let's go
to No. 5. Combined Lot Development/Transfer
of Development Rights. Option One and Option
VICE CHAIRMAN JEFFRIES: That's what we were just sort of talking about Option One because it combined lot development, and I would be in agreement.

CHAIRMAN HOOD: Okay. I'll kind of look for your-- if you have a problem whether we need to stop. Okay. Bonus Density for Preferred Arts Uses. We have Option One, we have Option Two and we have Option Three.

COMMISSIONER MAY: A one to one density bonus. There was significant discussion of this at the hearing right? And was it the Studio Theater where they have the 3 to 1 ratio right? 2 to 1 ratio right?

VICE CHAIRMAN JEFFRIES: Well also I think it was No. 5, because they were able to use those CLDs you know.

COMMISSIONER MAY: They had a 3 to 1 ratio right?

VICE CHAIRMAN JEFFRIES: Yes it
was 3 to 1.

CHAIRMAN HOOD: Okay. So what number are we on? Oh No. 6. Option one. Mr. Turnbull?

COMMISSIONER TURNBULL: Yes.

CHAIRMAN HOOD: Okay.

COMMISSIONER MAY: Well hold on. I mean there was some contrary testimony. What was the existing system from the Uptown Arts Overlay?

MR. PARKER: Do you want us to read out the uses? Basically it separated out uses by their general size and you got 3 to 1 for theater space that's very high and 2 to 1 for other things and Option One I believe is intended to, and I'll let Matt correct me, I believe Option One is intended to replicate that system by just saying you use an FAR equivalent. So for every 10 feet of height you get a 1 to 1.

MR. JESICK: It tended to be simpler.
COMMISSIONER MAY: And the idea was the same, have the same effect as what made the Studio Theater possible. Got it.

MR. JESICK: Yes. For theater volume. The other thing I would add to what Mr. Parker said is that some of the Uptown bonuses may not apply to all areas. For example, you would get a 2 to 1 bonus for things like a drugstore or a dry cleaner or laundry. So those are uses we might not want to necessarily--

COMMISSIONER MAY: Yes. Okay. I wasn't necessarily advertising for the uptown arts overlay as the model. I just didn't know what it was.

VICE CHAIRMAN JEFFRIES: But that Studio Theater discussion I thought was generally around No. 5.

COMMISSIONER MAY: Well also talked significantly about the 3 to 1 ratio. So that's fine. I'm content with Option One now.
CHAIRMAN HOOD: Okay. Thank you.

Let's go to No. 7. I didn't mean it like that, I was glad of his consent.

Design and Use Requirements. Option One. I'm not going to read it because I'm going to read it to myself. We have Option One and Two.

VICE CHAIRMAN JEFFRIES: So Design and Use Requirements. Option One. Create design requirement and use frontage requirements that would apply to designated "primary streets" within Arts Districts, with the ability to tailor the design requirements based on the specific circumstances of each Arts District.

CHAIRMAN HOOD: I would go with Option One.

COMMISSIONER MAY: I can't wait to sink my teeth into those design requirements.

CHAIRMAN HOOD: Okay. Ceiling height. Option One. Require 14' ground floor
ceiling height for all commercial structures in Arts Districts.

Option Two. Require 14' ground floor ceiling height for commercial structures on primary streets in Arts Districts.

Option Three. Do not require 14' ground floor ceiling heights.

VICE CHAIRMAN JEFFRIES: The 14' foot ground floor ceiling heights are somewhat standard so it's not a problem with them being in the Arts District. I mean we certainly want that. You want high floor to ceiling for art work and things of that sort. Light and all that.

CHAIRMAN HOOD: Okay. Option One. No. 9 Arts Exhibitions Areas. Option One is to limit the amount that building lobby exhibition areas count towards Arts requirements to 5 percent.

Is somebody trying to give me a hint now that my time is up?

VICE CHAIRMAN JEFFRIES: Can I ask
a question? I mean why 5 percent? I mean we've seen some pretty fancy you know office lobbies. I mean is that 5 percent of floor area?

MR. JESICK: It would be 5 percent of the total art requirement.

VICE CHAIRMAN JEFFRIES: Oh.

Okay.

COMMISSIONER TURNBULL: That doesn't mean that you can't have a more artistic lobby. It just means that only 5 percent counts.

VICE CHAIRMAN JEFFRIES: Right.

Rights.

COMMISSIONER MAY: I have no problem with that.

CHAIRMAN HOOD: Everybody's okay with it? Okay.

Arts Uses in Residential Zones. Option One. Let me read these. Permit stand-alone arts uses in existing building (such as former schools) in residential districts as a
special exception.

Option Two. Permit stand-alone arts uses in existing buildings (such as former schools) in residential districts as a matter of right.

Option Three. Only permit stand-alone arts uses in existing building through a variance.

VICE CHAIRMAN JEFFRIES: I'm for Option One. I mean in residential zones I don't think the standard needs to be based on a variance but I do think there needs to be some level of review in a residential zone for an arts use because you don't know what it's going to look like. Whether it's going to be compatible with the residential zone.

COMMISSIONER MAY: Yes. And I think we have to be very careful about what the requirements are for the special exception, what criteria you have to meet in order to do it and there is some experience already in the city with this happening in old
school buildings or other buildings. So we ought to be able to get good information on what works well and what doesn't work well.


Option One. OP's recommendation that artists studios (and related art uses that can meet home occupation standards) as home occupations.

And then Option Two. Do not now allow artists studio as home occupations.

COMMISSIONER MAY: I think the concern that I have here is that not all arts uses make good neighbors in terms of the materials that are used and the work that goes on. And I would just want to make sure that there's some sort of control over that.

VICE CHAIRMAN JEFFRIES: But isn't that under home occupation standards? Would that be--

COMMISSIONER MAY: I don't know. That's what I mean, I don't know.
VICE CHAIRMAN JEFFRIES: It would be like if someone was, I mean I like extruded metal. I mean if someone's doing art work in metal I mean that can be a very noisy thing so I agree with you.

COMMISSIONER TURNBULL: And you also have to worry about fumes.

VICE CHAIRMAN JEFFRIES: Sure.

That's what I'm saying you wouldn't be able to-- do you know the home occupation standards?

MR. JESICK: Yes. The home occupation regulations do have guidelines for things like noise and what all the characteristics are.

COMMISSIONER MAY: And what part of the Municipal Regs are they in?

MR. JESICK: They're in--

COMMISSIONER MAY: They're in the Zoning Regs?

MR. JESICK: Yes, they're in the Zoning Regs.
COMMISSIONER MAY: They're in the Zoning Regs. Okay. I mean there's nothing else in any of the other in DCMR and elsewhere?

MR. JESICK: There are more specific noise regulations in 20 DCMR Chapter 27.

COMMISSIONER MAY: I think for this discussion it would be helpful to know what those other regulations are because we don't want to obviously create something that's a conflict but we also want to know where there's already protection. So yes. Anywhere else where we have things that would affect home occupation.

CHAIRMAN HOOD: So we're doing Option One?

VICE CHAIRMAN JEFFRIES: Yes. Option One. I mean I love metalwork but there's no way I want--

CHAIRMAN HOOD: Okay. But it's good to know that we have another bite and
some of the things already exist and they were
under different uses. Okay. Artists Live-
Work Space. Option One. Allow artist/live
work space (i.e. multiple artists apartments
sharing communal workspace) in residential
zones at the same density as other residential
units (i.e. a zone allowing two units would
allow two artist apartments).

COMMISSIONER MAY: So this is
like--

CHAIRMAN HOOD: And Option Two.

COMMISSIONER MAY: So this is
like artist live/work co-housing sort of?

MR. JESICK: Yes. The idea was to
just expand the number of housing options for
artists. It would be a regular live-work now
but in some cases, for a variety of reasons,
artists may want to have communal work space
with individual residences in the same
building.

VICE CHAIRMAN JEFFRIES: Has the
artist live/work space been somewhat
successful? I mean I know the Madder Building has it. Does the Madder Building have it? How successful has that been? I know we were looking at it for the old Wax Museum site which is now City Vista, but how successful has that been?

MR. JESICK: I think there are a few scattered units here and there. The project you mentioned and there's also some studios up in Brookland by Dance Place on 8th Street I think it is. I think there are a few projects here and there that have incorporated artists' studios but I would say it's not very widespread.

VICE CHAIRMAN JEFFRIES: Do you think in terms of what we're putting in place will promote, do you think this will promote more of them?

MR. JESICK: We're hoping so.

VICE CHAIRMAN JEFFRIES: Because the problem I always thought was an economic one.
MR. JESICK: It is largely economic and I think like we spoke about at the public hearing, the zoning would be one component of any arts program, there would also have to be other financial incentives probably from various public sources, but that would be something that we wouldn't cover here.

VICE CHAIRMAN JEFFRIES: Okay.

Mr. Chair, I'm supportive.

COMMISSIONER MAY: I agree. I had one follow up question. I know that live/work space is very successful in some other cities and I'm wondering how that's different from what we permit? Is it because it goes far beyond just the promoting artists live/work space? Is it just live/work space in general?

MR. JESICK: I think some other cities have taken some bigger strides in terms of their artist programs.

VICE CHAIRMAN JEFFRIES: It's subsidized. In Chicago I know that they
subsidize some of it but specifically for artists.

But they have that like in San Francisco, live/work space is big but it's certainly not, the extent to which it happens is not all subsidized. Or maybe I just have an exaggerated impression about how common it is.

MS. STEINGASSER: I think some of it, Mr. May, has to do with the availability of arts compatible spaces that people can live in as opposed to residential spaces that are converted for art. So San Francisco you've got a large industrial area that was able to evolve and have these uses come in.

VICE CHAIRMAN JEFFRIES: Yes, that's how it is in Chicago as well. I mean it's just the warehouse district and so forth I mean is able to absorb it. And have the space that's conducive. They can have the mezzanine and they can have the commercial part of the unit.
CHAIRMAN HOOD: Okay. So we're all in agreement in Option One? Mr. Turnbull?

COMMISSIONER TURNBULL: Yes.

CHAIRMAN HOOD: Okay. All right. So I think that concludes that exercise. Anything else?

Okay. What we'll do is go to the Office of Planning I think for the status report. Ms. Steingasser?

MS. STEINGASSER: I don't have anything special to draw your attention to this evening.

CHAIRMAN HOOD: Okay. Ms. Steingasser, let me just ask. I was very interested when I was riding down South Dakota Avenue and I saw all the Office of Planning staff like in the middle of a dangerous area. Mr. Lawson, I happened to notice all these people and I said okay that's where they are when I can't reach them at the office. But anyway what type of exercise was that on a Friday afternoon maybe about 1:30 or quarter
COMMISSIONER MAY: And was there drinking involved in it?

CHAIRMAN HOOD: I'm just curious.

What kind of exercise was that?

MR. LAWSON: I have no idea how to respond to that. Actually, from time to time the Office of Planning or the Development Review Division does do site visits so that we get a better sense of the lay of the land of the areas that are expected to undergo significant development pressure over the next number of years.

We've done a couple. We did one at the ballpark area. I guess that was at least a year ago now. And we found it very helpful for people to understand. One day we did a shorter visit out to St. Elizabeths. Many of our staff had not been out there and it was very helpful to walk through St. Elizabeths and get a sense of what was going on there.

And this one was really to get a
sense of this particular area for which there are a number of proposals that could be coming forward or will be coming forward over the next little while, as well as some fairly major infrastructure changes that D-DOT is planning so we wanted to make sure that we had a good understanding of what was going on in this area. We found it very, very helpful. And we went out with our Ward planner Debby Crane who was unbelievably informative of what was going on.

CHAIRMAN HOOD: Well, I saw you all definitely standing right there. It was very noticeable. So that's good, it's good to know you're doing that.

Let me just ask this Ms. Steingasser about the re-use of schools and I don't know if this is on here, I haven't really looked at this report thoroughly. Are we still on target for a case in point Bernie Backus being a proposal, I think we mentioned DMV. Are we still on target with that?
MS. STEINGASSER: Yes. Yes we are, yes sir.

CHAIRMAN HOOD: Okay. All right. And I have one other question and this is just trying to help me get informed about transportation issues. I don't frequent Georgetown much but I went over last week and I'll tell you the traffic was just horrific.

And I often wonder do we know what the story is why Georgetown did not have the Metro? And I thought about that as I was walking from Foggy Bottom into Georgetown.

MS. STEINGASSER: I don't know the history and I wasn't living in Washington at that time but we can get that.

CHAIRMAN HOOD: I sure would like to know the history because as I got to where I was going my feet was hurting.

VICE CHAIRMAN JEFFRIES: I have a couple of books on Metro. I can bring them in.

CHAIRMAN HOOD: I really would
like to know honestly.

VICE CHAIRMAN JEFFRIES: I think there's a chapter on the Georgetown--

CHAIRMAN HOOD: You can certainly make a leap in terms of why you don't see a Metro in Georgetown.

COMMISSIONER TURNBULL: I thought Georgetown didn't want the Metro.

COMMISSIONER MAY: There are a lot of legends about it. And Ms. Hartman might be able to tell us what it was.

CHAIRMAN HOOD: I really think that what I saw Friday was -- well anyway.

COMMISSIONER MAY: I think it all had to do with the astounding success of the new Georgetown Waterfront Park which opened on October 4th.

CHAIRMAN HOOD: October 4th of this year?

COMMISSIONER MAY: This year yes. Just a couple of weeks ago. It's a new national park, Georgetown Waterfront Park.
CHAIRMAN HOOD: Well we don't have anything in front of us but I really would like to be enlightened on that. That pre-dated me even having an interest.

That's all I have. I know it didn't have too much to do with the status.

SECRETARY SCHELLIN: Chairman Hood, if I could just make one announcement because I think there are a couple of Task Force members, just to announce that the November 6th Special Public Meeting to deal with height is going to be continued. Call me tomorrow afternoon and I will probably have a date after I've talked with Mr. Parker but I did want to let people know that are here that have shown up for all the others, November 6th is off.

VICE CHAIRMAN JEFFRIES: Are you telling me that we have to talk about height again? We never finished that?

SECRETARY SCHELLIN: We never talked about it.
VICE CHAIRMAN JEFFRIES: Oh my God.

CHAIRMAN HOOD: Okay. With that, Ms. Schellin, do we have anything else?

SECRETARY SCHELLIN: No.

CHAIRMAN HOOD: Okay. With that I want to thank everyone for their participation and also my colleagues for their hard work. This is meeting is adjourned.

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