GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

REGULAR PUBLIC MEETING

MONDAY
FEBRUARY 23, 2009

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD Chairperson
GREGORY N. JEFFRIES Vice-Chairperson
PETER MAY Commissioner
(NPS)
MICHAEL G. TURNBULL, FAIA Commissioner
(OAC)
WILLIAM WARREN KEATING Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

JENNIFER STEINGASSER Director
JOEL LAWSON
TRAVIS PARKER
ARLOVA JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.
JACOB RITTING, ESQ.

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CHAIRPERSON HOOD: Good evening, ladies and gentlemen. This is the February 23, 2009 public meeting of the Zoning Commission of the District of Columbia.

My name is Anthony Hood. Joining me are Vice-Chairperson Jeffries, Commissioner Keating, Commissioner May and Commissioner Turnbull.

We are also joined by Office of Zoning staff Ms. Sharon Schellin, Donna Hanousek and Ms. Bushman; Office of Attorney General; also the Office of Planning.

Okay. Office of Attorney General staff, Mr. Bergstein and Mr. Rittig; Office of Planning, Ms. Steingasser and Mr. Lawson and other staff.

Copies of today's hearing are available to you and are located in the bin near the door. We do not take any testimony during this meeting unless otherwise asked to
come forward.

This is also being webcast live.

We would ask you to refrain from any disruptive noises. Please turn off all beepers and cell phones at this time.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. I think we can go with the agenda as prescribed.

We will go to hearing actions Zoning Commission Case No. 08-33. This is Conference Center Associates, LLC, Consolidated PUD and Related Map Amendment of Parcels 121/31.

Mr. Lawson?

MR. LAWSON: Thank you, Mr. Chair.

For the record, Joel Lawson of the Office of Planning.

The Office of Planning recommends that the Zoning Commission set down for a hearing this proposal for the development of
the property at the corner of Michigan Avenue and Irving Street, Northeast, with a conference center, hotel, retail space and restaurant and future development of additional hotel and/or residential development.

The site is currently has the surface parking lot servicing the Washington Hospital Complex. Although owned by the federal government, jurisdictional authority has been transferred to the District, and the D.C. Department of Housing and Community Development is the agency responsible.

The application includes a PUD-related map amendment to zone the property from government, i.e., unzoned, to the C3A district; 2) a Consolidated PUD for a portion of the site -- this is phase one of the development -- with frontage along Michigan and Irving including a 314-room hotel as well as retail space, a restaurant and a parking garage, as well as a 280-space surface parking
lot; and 3) consideration of a first stage of a two-state PUD for the north end of the site. This would be phase 2 of the development. And this would be either 240 residential units with below-grade parking or 120 residential units with a 200-room hotel with underground parking and an addition to the garage of phase 1.

The proposal is not inconsistent with the 2006 Comprehensive Plan Future Land Use and Generalized Policy Maps which designate the site as federal property in reflection of the ownership of the lot rather than the jurisdiction or the intended use. The Zoning Commission previously approved a map amendment which has since expired, but which deemed the property consistent for mixed commercial uses under the commercial zoning designation.

The proposed development would meet or further many of the policies of the Comprehensive Plan related to land use,
housing, economic development and urban
design, as well as specific goals and
objectives of the upper Northeast element.
These are further outlined in our report.

As I noted, the site is currently
zoned GOV. In other words, it's unzoned. And
the Applicant proposes to establish the C3A
zoning on the site and develop the site
utilizing the PUD standards for building
height.

C3A permits matter-of-right medium-
density mixed-use development including
office, retail and residential uses to a
maximum FAR of 4, with nonresidential uses
limited to 2.5 FAR. Through the PUD process,
a maximum height of 90 feet is permitted. The
proposed development would add an FAR of 2.6
and a maximum height of just over 94 feet.

The Applicant is requesting
flexibility from the Zoning Regulation roof
structure and loading requirements to allow
multiple buildings on a single lot and for the
phasing of development. OP believes that flexibility may also be necessary to allow for the proposed range of stage 1 which is phase 2 development regarding the residential and hotel uses.

The proposed re-development targets an underutilized site in an already mixed-used changing neighborhood. The amenity package evaluation is partially based on an assessment of the additional development gained through the application process.

As this site is currently unzoned, there is no defined by-right potential under the current zoning. Rather, zoning must be established to allow any development on the site, or at least any nonfederal development on the site.

The Applicant has listed a number of areas which they believe contribute towards their amenity package including urban design, architecture and site planning, vehicular and pedestrian access whereby several initiatives
are being proposed to improve access and circulation to and around the site, retail which would improve the neighborhood's urban fabric and increase pedestrian activity there by creating a livelier, more inviting streetscape experience for residents and visitors to the site, local business opportunities and for-source agreements, and finally green building and transportation demand management strategies. And we'll continue of course as usual to work with the Applicant to clarify and refine these items which would be elaborated at the public hearing.

In summary, OP recommends that the Commission set down the requested proposal for a public hearing as it is not inconsistent with the 2006 Comprehensive Plan. OP will continue to work with the Applicant and other District agencies to ensure coordination of this PUD with other area planning initiatives and to ensure that the Applicant addresses the
items noted in our report prior to the public hearing.

Thank you. And we're available for questions.

CHAIRPERSON HOOD: Okay. Thank you, Mr. Lawson.

I'll open it up for any comments or questions for Mr. Lawson? Commissioner May?

COMMISSIONER MAY: Yes. I just had a couple questions.

The development of the site itself seems to be very suburban in character and kind of inwardly focused as if it were just a green field off of Rockville Pike or something like that where you just drive in and you've got everything sort of clustered around the center. And granted this is not an established kind of urban fabric. It seems like there's so much focus on the inside, and would just be curious about what kind of a street life it's really going to generate, or whether it really is going to be truly
automobile-focused, and as I say, kind of inwardly focused within the site. But I'm sure you'll explore that with the Applicant. So that's just kind of a comment about it.

The next question I had is as I understand it when they implement the consolidated PUD portion of this that it will leave a parking lot on that one portion of the property, or half of it will be parking lot, and then half of it will be this new development. Is that right?

MR. LAWSON: Yes. Their intention is to develop over what's going to be the parking lot that I think is intended to be mostly used for the hospital site, and to accommodate that parking. And they would add to the existing parking garage -- sorry, it's not existing -- but the phase 1 parking garage as well as build additional underground parking.

COMMISSIONER MAY: Okay. So there is a reason to maintain that much surface
parking to support the hospital use?

    MR. LAWSON: There's a reason to maintain parking. There is an agreement that they will provide parking -- a certain number of parking spaces for the hospital use. And that's the demand that they're attempting to meet.

    COMMISSIONER MAY: Okay. Because it seemed sort of odd that they'd be building kind of this freestanding part one in development and then cutting down -- are there actually trees in that area that's going to be now the parking lot?

    MR. LAWSON: I'm not sure. A fair portion of the site right now is already paved over -- a surface parking lot.

    COMMISSIONER MAY: So they're just retaining the parking lot. All right.

        And I think that's just about it. I'll look forward to seeing more details in the development of the buildings when we get to the hearing stage. Thanks.

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CHAIRPERSON HOOD: Okay. Thank you.

Anyone else? Any other comments?

Vice-Chairman?

COMMISSIONER JEFFRIES: Just a quick question, Mr. Lawson.

I notice in your recommendation you said that this project would further economic development in enhancing the Michigan Avenue corridor. Can you walk me through what the plans are for the Michigan Avenue corridor? I would never even look at it as a corridor, quite frankly, the way it spins and moves around.

MS. STEINGASSER: There's not a Michigan Avenue corridor plan. But there are a series of small area plans and corridor plans in the area. We're just beginning the North Capitol Cloverleaf Study.

COMMISSIONER JEFFRIES: Right.

MS. STEINGASSER: We're just completing the Brookland Study. And of course
the Armed Forces Retirement Home has had a land use plan accepted by the National Capitol Planning Commission, as well as McMillan is in its design stages. So there's kind of a comprehensive body of activity going on up there. And this will add to that and kind of bring some connection between the east and the west pieces.

COMMISSIONER JEFFRIES: Okay. But it's not like you're trying to do a main street or anything?

MS. STEINGASSER: No.

COMMISSIONER JEFFRIES: Okay.

MS. STEINGASSER: We're trying to make sure that all the pieces relate to each other, that there is animation, that the traffic is viewed comprehensively between them and things like that.

COMMISSIONER JEFFRIES: Okay.

Great. Thank you.

COMMISSIONER KEATING: Is there any intent to create a plan? As I think about
this site and I think about McMillan back this way, and I think about you've got the university over here, there really is I think a need for some sort of overall transit plan or pedestrian plan that fills in like in this area because there's been conversation about with McMillan, where do you put maybe some sort of bus kind of tie-on for the rest of the city going east and west. And is that part of this site? Is that part of one of the Armed Forces sites? Is it McMillan? Where's the best fit? And it seems like there needs to be something that brings that all together.

MS. STEINGASSER: And DDOT is looking at the traffic management of the entire area hitting on every point you just raised including the east-west flow of the buses -- how do they connect from one Metro to the next. They will be stopping at this site, but not within the site. So there is some coordination here with DDOT -- the relocation and enhancement of the bus stop itself. But
DDOT is doing a larger scale study of the entire area.

COMMISSIONER KEATING: Because that's what made me think of that. I see this little bus stop picture here. It looks like for four or five people. I thought to myself, well, there must be more to this.

Will that be ready for us -- what's the time line on that?

MS. STEINGASSER: Well, I'm not sure if they're planning to release it in a book form -- here's the study. I think they are reviewing all the pieces together and they are definitely modeling them -- their computer system as a whole. So you'll definitely have a report from DDOT as part of this PUD.

COMMISSIONER JEFFRIES: The other point -- and I recognize this is a first stage PUD -- but I did want to comment. And this is probably more for my colleagues because I probably will not be here. But when we get to the second stage, I would hope that the
Applicant will spend a great deal more time on the architecture here.

This building is sitting in a field right now. And it would be viewed from several sides. And I'm really hoping that the architecture can improve tremendously. It's nothing that we're looking at now. But I just wanted to put that out there that given where this is located, my hope is that it can look less institutional. I mean, it just leaves a lot to be desired.

And I'm really saying this to my colleagues that when we get to stage 2 that we could spend some time in making certain that the architecture is a little more sensitive and forward-thinking.

CHAIRPERSON HOOD: Well, I will say I really hope you are here because I've seen your work and how you've helped create a lot of things that before us -- make them look a lot better. So hopefully you will be still around. That's the goal.
But anyway. Ms. Steingasser and Mr. Lawson, this is more of a comment. I'm really hoping that at the hearing that DDOT and the Applicant can really explain to me A1.07, which is the circulation plan because if you look at -- just tell us how vehicle traffic is going to mix with pedestrian traffic.

Because I'm looking here and I'm thinking already you can't make a left off of Michigan Avenue if you're going east. But some people may do it anyway. Well, you're not supposed to. I'm not saying people don't do it. But I just see a catastrophe getting ready to happen.

And I just want to make sure that at the hearing, we'd be able to walk through that. We can do a 3-D movement and just show me how all that's going to work with the vehicles and the pedestrians in that circulation -- how that site is actually going to work. And we can do that at the hearing.
Okay. Any other questions, comments?

COMMISSIONER TURNBULL: Yes, Mr. Chair, I do.

Mr. Lawson, this is a consolidated PUD and there's going to be phase 1, phase 2. But if I'm reading your report, in addition to the hotel, they're looking to put residential units?

MR. LAWSON: Yes. There's actually two parts to the application. For part of the site, it is a consolidated PUD. So you'd be reviewing both first and essentially first and second stage. And that's for the hotel and convention center portion.

However, for the second phase -- which would include the residential -- you would just be considering that as a first-stage PUD. They'd have to come back at some point for second-stage approval.

COMMISSIONER TURNBULL: In their amenity package, I haven't seen anything about
affordable housing. There's nothing proffered?

MR. LAWSON: We can certainly clarify that with the Applicant and just address that issue so that we can have a general idea as you're dealing with the first stage PUD.

COMMISSIONER TURNBULL: Okay.

COMMISSIONER JEFFRIES: Okay.

Well, thank you for that clarification for me. So I will then strike my former comments and say to the Applicant that my hope is that we see much informed architecture or something by the time we get to the hearing. This is just really bare bones here. It looks like something in the middle of some suburban office park. It's just not acceptable I don't think.

CHAIRPERSON HOOD: Okay. Thank you.

COMMISSIONER MAY: Chairman?

CHAIRPERSON HOOD: Commissioner
May?

COMMISSIONER MAY: I wanted to follow up on my earlier question.

I'm looking at your report which gives us an aerial photo of the proposed site. And it looks like about 60 percent of it is paved. And then the part that's the future surface parking lot looks like it's all trees. Is that not accurate?

MR. LAWSON: You're correct. There would be some tree clearing. It looks like it's part of phase 1.

But we can certainly make sure that we get clarified exactly what is going where and how much additional if any hard surface there would be on the property.

COMMISSIONER MAY: Yes. It seems pretty clear to me if you compare your aerial on page 2 with A1.07 that pretty much everything that's the consolidated PUD is going over what's currently a parking lot.

And then everything that looks like trees -- I
don't know how good a stand of forest that is, but it looks like it's a pretty densely packed area of trees -- will all be paved for a pretty full surface parking lot with not a lot of even islands within it. It's lots and lots of cars.

So I don't know what the time frame is for getting to phase 2, but it would be unfortunate to see all this development -- all this paved area at the expense of the trees -- when I'm not sure what the deal is with the parking and all that. But the interim phase doesn't look like a very attractive phase with all that surface parking there.

One other point that I would note, in your report you cited the fact that they're looking for 94 feet 4 inches of height, and the C3A zone is limited to 90 feet with a PUD. Is that right?

MS. STEINGASSER: It is their request in the additional five percent that the Commission has as its discretionary
authority within the PUD Chapter.

   COMMISSIONER MAY: I see. Okay.
   All right. Well, given the relatively low percentage of lot occupancy, it seems kind of odd that they'd be needing to push it up that much higher when they're only at what -- 47 percent or something like that.

   But I would agree with Commissioner Jeffries with regard to the suburban office park style. Not my favorite either.

   But I was more concerned with the site plan than the actual architecture of the building, because there's a lot of like access roads and things like that ringing around it and not what we're accustomed to seeing.

   Thanks.

   CHAIRPERSON HOOD: Yes, I would echo. I think we need to make this a little more exciting. So we're looking forward to maybe some tweaks as we get into the hearing.

   Okay. Any other comments?

   (No audible response.)
CHAIRPERSON HOOD: I would move that we set Zoning Commission Case No. 08-33 as a Consolidated PUD and first stage --

COMMISSIONER TURNBULL: Mr. Chair?

I just want to make sure that we cover that.

Mr. Lawson, you're going to meet with them and talk about the amenity package?

MR. LAWSON: Absolutely.

COMMISSIONER TURNBULL: Okay.

Thank you.

CHAIRPERSON HOOD: I would move that we set down Zoning Commission Case No. 08-33, Consolidated PUD, first-stage PUD and Related Map Amendment, and ask for a second.

COMMISSIONER TURNBULL: Second.

CHAIRPERSON HOOD: Moved and properly seconded.

Any further discussion?

MS. SCHELLIN: Chairman Hood, can I just ask Mr. Lawson one question?

We spoke earlier and we were going to clarify whether this was a related or a
permanent map amendment. Did we get clarification on that?

MR. LAWSON: Our understanding is that this is a PUD Related Map Amendment.

MS. SCHELLIN: Related. Okay. Just wanted to clarify that.

CHAIRPERSON HOOD: Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor?

(A CHORUS OF AYES.)

CHAIRPERSON HOOD: Not hearing any opposition, Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes. Staff records the vote five to zero to zero to set down Zoning Commission Case No. 08-33 as a contested case. Commissioner Hood moving; Commissioner Turnbull seconding; Commissioners Jeffries, Keating and May in support.

CHAIRPERSON HOOD: Okay. Let's
move right along.

On the final action, Zoning Commission Case No. 08-30 -- Ms. Schellin, did I say 08-33 or 08-30?

MS. SCHELLIN: I think you said 33.

CHAIRPERSON HOOD: Okay. So we're right for them. Okay. These numbers are running real close. Okay.

For final action 08-30, West Half LLC, et al, Capitol Gateway Overlay Review at 26 and M Street, Southeast.

Ms. Schellin?

MS. SCHELLIN: This case is before you for final action. We have a supplemental report from OP and also some additional comments from the Applicant.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin.

Colleagues, you see that there were some responses that we asked for. And I think as we got into this case, there were some outstanding issues. And one of our colleagues

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-- I think it was Commissioner Keating -- mentioned that we wanted to get a supplemental report, which I think was a fantastic idea because then we were able to see what was resolved, what wasn't resolved. And the only ones that I had marked in my reading yesterday were numbers 1 and 2 that we need to look a little closer to, even though I think OP gives their concurrence.

Then also if we look at Exhibit No. 31, we'll see where they have answered a few questions. I think someone mentioned about the roof plan, and we have that under Tab A.

Tab B -- I think it shows how things relate to pedestrian and vehicle traffic. I'm not sure who asked for it. I do remember someone asked about it. And C, it has the conditions.

And we also have a proposed order.

With that, I will open it up for any comments.

(No audible response.)
CHAIRPERSON HOOD: Okay. Well, what I'll do, I'll start off. And maybe I need to ask Mr. Bergstein.

Typically when we have an application like this, I know in PUDs whenever this is CG overlay, typically don't we have two-year approvals? Or is it three?

MR. BERGSTEIN: Only two, because this is essentially a special exception. There's not an amendment to the zoning map or an amendment to the zoning text that would require proposed action either for a notice of proposed rulemaking or for NCPC. So this is more akin to a special exception. And therefore only one vote is required.

CHAIRPERSON HOOD: Okay. I think on 12 -- and I know that some more needs to be looked at there -- they're asking us to do a three year. I just want to make note that we make sure that that's a two-year approval. Projects shall be valid for a period of three years from the effective date. At least
that's the way I read it.

COMMISSIONER MAY: They asked for additional time and flexibility, did they not?

Wasn't that in that --

MR. BERGSTEIN: In the past, there has never been in a CG review order a requirement that a building permit be filed within any given period of time or construction begin after it. That's a PUD provision.

This Applicant I believe, in order to be assured of how long they have to do those things, proposed in their conditions a requirement that a building permit be filed for within three years, and then one year construction after that. So normally our orders are solvent with respect to CG-type of approvals. But in this case, the Applicant actually imposed that requirement on themselves in order to get the assurance that they have that period of time to file for a building permit. So that's why that condition

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is in there.

CHAIRPERSON HOOD: So typically there's no time and this is self-inflicted by the Applicant?

MR. BERGSTEIN: I think it's a self-inflicted restriction. Yes.

CHAIRPERSON HOOD: All right. Well --

COMMISSIONER MAY: I'm sorry. Can I --

CHAIRPERSON HOOD: Sure. Go ahead.

COMMISSIONER MAY: I'm a little confused because I remember hearing on some other actions that -- or actions taken by the Zoning Commission that were similar or effectively similar to a BZA order -- where there was not an expiration date noted. And at the time I remember someone telling me that that was actually an error, and that we should have noted the expiration of the order or that there would be some time frame for issuance of a building permit and start of construction as
there normally would be for a BZA order.

MR. BERGSTEIN: Well, the BZA orders are governed by a rule that says that a building permit has to be filed within two years.

COMMISSIONER MAY: Right.

MR. BERGSTEIN: When the CG overlay provisions were written, there was either through oversight or by intention that type of provision was not put in. Nor is there a provision as there is in the BZA regulations that say that the construction rights vest upon the issuance of the BZA order as opposed to the normal instance where your construction rights don't vest to the building from this issue.

But the CG regulations are silent on that. That's why in this particular case, the Applicant is actually seeking to make clear that it has at least three years, though the other interpretation to the CG overlay provisions is that there's no time frame and
that the Applicant pretty much has forever to file for a building permit based upon the plans.

So if you feel that some sort of time frame needs to be indicated, you really have to do it on an order-by-order basis, which in this case is what the Applicant is requesting.

CHAIRPERSON HOOD: I started that conversation, and I will tell you since we have not done it in the past, I think this Applicant is setting the benchmark.

So three years is fine with me. I will withdraw my comments.

COMMISSIONER MAY: Okay.

CHAIRPERSON HOOD: Other discussion?

COMMISSIONER MAY: Yes. I just wanted to note that one of the other conditions was a condition that would allow for flexibility to reduce the number of parking spaces. And I would just note that
reducing it that we didn't want it -- well, we ought to discuss this. But I wouldn't think that we would want to reduce it below what is required under the zoning regulations. And that's a pretty high number still. It's 360-something? Is that it -- 367?

CHAIRPERSON HOOD: Mr. May, are you in the order?

COMMISSIONER MAY: I'm in the conditions that were requested.

CHAIRPERSON HOOD: Okay. I see it in two places actually -- in the order and proposed order, and also --

COMMISSIONER MAY: It's in the order itself that way?

CHAIRPERSON HOOD: Yes. In the order. And it's also behind Tab -- what's that -- C?

COMMISSIONER MAY: Right.

COMMISSIONER JEFFRIES: Was that a recommendation of DDOT?

COMMISSIONER MAY: DDOT wanted it
to be reduced by 100 spaces. But DDOT didn't bother to show up and make the case. So I'm not sure if I'm persuaded by that.

I didn't bring the order with me. I have just the conditions that were cited as 607 with flexibility.

MR. BERGSTEIN: Condition 8, I believe, is the condition you're referring to which asks for flexibility to reduce.

COMMISSIONER MAY: Has that already been corrected in the order?

MR. BERGSTEIN: It's our recommendation that you do put that in, that provided that the number of parking spaces is not reduced below the minimum required for the use.

COMMISSIONER MAY: Yes. Okay.

CHAIRPERSON HOOD: Okay. It's actually reflecting the order as it is in the conditions in this proposed order here.

COMMISSIONER MAY: The proposed order is correct?
CHAIRPERSON HOOD: It's actually just like it is in your --

COMMISSIONER MAY: Oh, I see.

CHAIRPERSON HOOD: -- behind Tab C.

So Commissioner May, what would you like to see?

COMMISSIONER MAY: Just that they have the flexibility to reduce it but not below that which would be required by the zone.

CHAIRPERSON HOOD: Okay. Anybody else have comments on that?

(No audible response.)

CHAIRPERSON HOOD: All right. We all agree on that.

Anything else?

(No audible response.)

CHAIRPERSON HOOD: Okay. Oh, one other thing.

We had a laundry list that Commissioner Keating picked up on, and I'm looking at some of the issues resolved. And I
will ask the Office of Planning -- Mr. Lawson, the only -- yes, Mr. Lawson. The only one that I noticed, Mr. Lawson, was number 1. And I looked at the submission where you did your report on the 13th and the submittals came in on the 9th. So apparently, this number 1 was not resolved.

This is the only one where you do not have issue resolved -- number 1 on your report, February 13th. And basically what you're saying is "OP feels however that it would benefit the project if additional information was submitted describing interaction between the private and public spaces."

COMMISSIONER JEFFRIES: Where is this located, by the way -- just the actual -- the large blank wall or the potential for?

CHAIRPERSON HOOD: Is that Tab A or B? Behind Tab A? Okay. It's behind Tab A.

COMMISSIONER JEFFRIES: Well, I mean, this would be an elevation, wouldn't it?
These are plans.

Office of Planning? Where would that condition --

MS. STEINGASSER: The concern that the reviewer had was if the retail space -- especially down towards the residential building -- became one large retail space, that there would be a large expanse of unanimated --

COMMISSIONER JEFFRIES: As opposed to several storefronts. It's broken down. I got you.

MS. STEINGASSER: So he was hoping to get some information on just how in the alternative they would do store windows or something like that.

But we're comfortable enough that the project could go forward. We don't wish to delay it any further.

CHAIRPERSON HOOD: We can put issued resolved?

MS. STEINGASSER: The issue is
resolved.

CHAIRPERSON HOOD: Issue resolved.

Okay. That completes it. We have a full house. Okay.

COMMISSIONER MAY: Mr. Chairman?

CHAIRPERSON HOOD: Yes.

COMMISSIONER MAY: There's another issue I wanted to raise. And I don't remember the extent to which we discussed this in the hearing.

But the way I read the drawings, the roof over the roof terrace of the office building is above the height limit of 110 feet, and it's being called essentially an embellishment.

COMMISSIONER JEFFRIES: I thought we had talked about this.

COMMISSIONER MAY: Did we resolve it and come to agreement on it? Because I'm not totally comfortable with that notion.

CHAIRPERSON HOOD: I will tell you that trying to remember, we meet two and three
times a week and I can't remember. I do remember that coming up, but I'm not sure if this -- was this the case?

COMMISSIONER JEFFRIES: Okay. Is that number 6? Is that in OP's supplemental report -- "information on how the above-mentioned roof structures meet the requirements of 411 and the Height Act?"

CHAIRPERSON HOOD: I think you're exactly right, Commissioner May. I think you brought it up.

COMMISSIONER MAY: The issue with regard to the exit stair towers and the residential building, that was resolved by reducing the height of those penthouses. And they submitted a plan that shows the heights.

But it shows the height of the tower roof at 157 feet. And then --

COMMISSIONER JEFFRIES: You're at A?

CHAIRPERSON HOOD: Right behind Tab A.
COMMISSIONER JEFFRIES: Section B?

Where are we looking?

CHAIRPERSON HOOD: The first page right behind A.

COMMISSIONER MAY: And somewhere I saw a dimension of the roof or a height of the roof terrace itself. But I'm not seeing that now. Hold on.

But if you look even at the original drawings that they had submitted, they had that sort of oximetric drawings of building heights. And it shows the 110 feet being measured to the top of the roof deck. And then there's a roof over the roof deck.

COMMISSIONER JEFFRIES: Commissioner May, in terms of the sections, are you looking at any of the sections of what was submitted -- Section A, B or C or D? I'm just trying to see it in section.

COMMISSIONER MAY: Right. It gives us the -- okay.

What we don't see is an absolute -
- or an elevation from the measuring point. We see an elevation above sea level or something like that. And the roof is at 144 feet. And then the tower roof is 13 feet more or less above that. But I think the 144 feet of the roof itself is equivalent to 110 feet. And so we've got another 13 feet above that.

CHAIRPERSON HOOD: Okay. If your assessment is correct, I came up with us being over five feet over what's permitted. You came up with more?

COMMISSIONER MAY: I thought we were limited to 110 feet.

CHAIRPERSON HOOD: But can't you do 18.6?

COMMISSIONER MAY: Yes. But it's got to be set back one to one. This is not set back at all.

CHAIRPERSON HOOD: You're talking about the set back.

COMMISSIONER MAY: This little tower roof is not set back at all from the
building's edge.

And again, it's being treated as an embellishment in effect -- the tower roof.

CHAIRPERSON HOOD: Okay. Well actually, we have one or two options. I don't think we --

COMMISSIONER JEFFRIES: Wait. Before we even go there though, I just want to be clear.

CHAIRPERSON HOOD: You don't know where I'm going.

COMMISSIONER JEFFRIES: Oh, no. I want clarity in terms of what Commissioner May is saying.

So look at Section C of Akridge. So you're saying the roof line is 144 -- the measurement, right?

COMMISSIONER MAY: Right.

COMMISSIONER TURNBULL: Well, that's the elevation.

COMMISSIONER JEFFRIES: That's the elevation.
COMMISSIONER MAY: That's the elevation above sea level, I think.

But if you look at their prior submission, there's an oximetric drawing that shows 110 feet from the measuring point to the height of the roof deck.

Yes, here we go. Measuring is at 34 1/2 feet. So if you look at Section C, subtract 34 1/2 --

COMMISSIONER JEFFRIES: Right.

COMMISSIONER MAY: -- from everyone of those measurements, and you'll see how high it is -- how tall it is.

So the roof is 144 1/2 feet. Subtract 34 1/2 feet; you get 110.

COMMISSIONER JEFFRIES: Right.

110. Right.

COMMISSIONER MAY: But -- let's not look at Section C. Let's look at Section A.

COMMISSIONER JEFFRIES: Okay.

COMMISSIONER MAY: And you see there the roof line is at 144 1/2.
COMMISSIONER JEFFRIES: Right.

COMMISSIONER MAY: And then above that, you have the tower roof at 157.67.

COMMISSIONER JEFFRIES: And you're saying that that is not a setback.

COMMISSIONER MAY: It's not set back at all from the edge of the building.

Essentially, my question here is that you can exceed 110 feet with an architectural embellishment. The question is whether we consider the roof over the roof deck to be an embellishment or not. And I'm not sure that I agree with that opinion. But I'm interested in hearing what the rest of the Commission has to say.

CHAIRPERSON HOOD: Well, from my standpoint, I think most of the time unless we -- I don't know if we have a whole lot of practice with that. At least I don't. The ZA usually makes that determination. And today to try to be determining it myself, I mean, if we blatantly see this as an issue, then we
need to stop it here. But in the past, we've always -- at least the 12 years I've been here -- we always -- I'm not going to say punted -- the ZA makes that determination.

COMMISSIONER MAY: If there were a circumstance where we had a very clear and pronounced tower somewhere on the facade and you had a roof over the tower -- something like that -- it's clear it fits the definition of an embellishment. But here we have an elongated bar of building running through the building. It's hard to really regard that in itself the same way that you would regard a tower.

The object that they have at the corner with the big screen and the pole on top, I mean, that's an embellishment. That's very clearly an embellishment. But if you're just talking about the roof over the roof deck, it's a roof over a roof deck. Is that really an embellishment?

CHAIRPERSON HOOD: Commissioner
May, what would you like to see us do with this?

COMMISSIONER MAY: Well, I'd like to hear what Commissioner Jeffries and Commissioner Turnbull have to say about that.

CHAIRPERSON HOOD: You're going to the architects.

COMMISSIONER MAY: Well, I'd like to hear what you have to say about it too.

CHAIRPERSON HOOD: No, that's all right. I just said what I had to say.

COMMISSIONER MAY: Okay. Well, then that's why I was moving on --

CHAIRPERSON HOOD: Okay. And then I'm going to make a motion.

COMMISSIONER TURNBULL: Commissioner May, I'm looking at RS 1 -- the roof plan of the office building.

Are we looking on the one -- on the southern building, there's a small green roof. And then across that -- across the via, there's the other longer roof. Is that the
roof you're referring to -- the longer roof --
the longer-angled roof?

COMMISSIONER MAY: I'm referring to
the longer-angled roof that's part of the
building closer toward M Street.

COMMISSIONER TURNBULL: Okay.

Toward M Street? Okay.

And your feeling is that as far as
an embellishment, it's gone too long. It's
stretching the limits. It's a roof that seems
to keep going and it's not really an
embellishment? It's kind of one of those --

COMMISSIONER MAY: I don't know
whether it is or it isn't. Because it's not
like it's an element that is integral to a
piece that is an embellishment.

COMMISSIONER TURNBULL: It's not a
dominant feature.

COMMISSIONER MAY: Right. If you
look at what's happening at the corner, and
look at the view that they provided behind Tab
B -- if you look at that for a second, right
in front of us there's the multi-colored mesh screen thing with the pole sticking out of it.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: That's clearly an embellishment.

The piece that's supporting that which extends above 110-foot level also is part of that piece.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: And I have no issue with that even though I don't know what's happening within that space. I assume it's not occupied space. But it's part of that tower element on the corner.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: The question is whether the roof over the roof deck really is an embellishment per se.

Now that I'm looking at it, maybe even the rest of the green bar there. As you extend forward to M Street, is that also an
embellishment?

I don't really know the answer to this. I'm sort of raising the question because I'm afraid of what this opens the door to.

COMMISSIONER JEFFRIES: So that's your concern if this is going to be pressed and if we're going to look at this and someone will be able to point to it? Because --

COMMISSIONER MAY: Right. I mean, the roof deck idea to me is probably the most problematic consideration because it's got this other functional use. It's creating a space that's going to be occupied if not -- I mean, not full time, but it's going to be used. It's more than just a roof deck now. It's a roof deck with a roof over it.

COMMISSIONER TURNBULL: Right. It's sort of an extension of the trellis concept which we've dealt with before.

COMMISSIONER JEFFRIES: Yes. And before when Commissioner Parsons was here,
that was his deal -- rooftop embellishments. And I never really joined him in that. And I'm probably going to depart this time as well.

I think this is a wonderful project, quite frankly. And they're in front of us really for design review. I think that they've responded to a number of our issues and so forth.

Commissioner May, I understand your concern. But you're really asking a question. You're not really certain.

COMMISSIONER MAY: Right. I'm trying to get a sense of what the rest of the Commission feels about this.

COMMISSIONER JEFFRIES: Yes. Yes. I'm going to give it the pass from where I sit.

My suspicion is that someone else will be able to take that up.

COMMISSIONER MAY: Well, as Chairman Hood had suggested --
CHAIRPERSON HOOD: Let's make sure we get the comments from Mr. Turnbull.

COMMISSIONER TURNBULL: Well, I guess in one way I see where you're going. I guess it depends how big you actually make the -- there's no regulation that says how big something is going to be.

I could see how the covered roof -- this terrace -- this covered roof walk -- if it extended over half the roof would be a major issue. Because basically you're almost getting another floor of not occupiable space.

But it's becoming a usable space. It's going beyond the extent of what an embellishment would really mean. So I think they're treading in on a grey area here -- on how far you can actually stretch this.

I don't mind the trellises to the extent that they're an interesting part of the roof feature itself. Where they would begin to dominate the whole roof and actually become more than a feature, I think that's the issue.
we have to struggle with.

    So I guess I'm kind of nebulous on
how to vote on this too. I guess I'm willing
to let it go.

    But I can definitely see
Commissioner May's stance on this that someone
could come back and say oh, look what Akridge
did, and we're only 20 percent more than this
-- or 30 percent more than what they had. So
you're treading an area where how much of a
roof becomes usable to the point it's beyond
just a roof feature.

    MR. BERGSTEIN: Can I make a
suggestion?

    First of all, when the Zoning
Commission approves a design like this, it
does not mean that it has reviewed the design
for compliance with the zoning regulations or
the Height Act. And it's incumbent upon the
Zoning Administrator to make that
determination independently.

    However, the order could include a
provision pretty much stating that, specifically with respect to this particular element being discussed that in approving this application the Zoning Commission is not finding that this particular element exceeds the Height Act or represents an embellishment and encourages the Zoning Administrator to take a specific look at the issue. And in addition, the Office of Zoning could send a cover letter sending this order to the Zoning Administrator specifically pointing out the issue for his review.

COMMISSIONER MAY: I would be very happy with that.

I'm not really so much concerned about this from a Height Act perspective, although there may be an issue there. I'm concerned about how we define embellishment or we don't.

So if we can get clarity from the Zoning Administrator on what that should be, I think that's fine too.
COMMISSIONER JEFFRIES: Can't we just tell the Zoning Administrator to look at the minutes of this hearing.

MR. BERGSTEIN: The concern is precedent. And so that someone can't say well, they did this, so we can do something like it. So what I was suggesting that the order itself indicate that its approval of the design does not create precedent with respect to the particular issue as to whether or not what you're describing is an embellishment or not. However you want us to do it, we can just make it clear that those aspects of the design that you're finding problematical or questionable do not create a precedent in terms of what is permitted under the zoning regulations. And that remains an obligation of the Zoning Administrator to determine.

COMMISSIONER TURNBULL: I could go along with that.

CHAIRPERSON HOOD: All right. Mr. May, now we're going to put that in the water.
Well, we're going to have that put in the water.

The problem that I see with that is we won't know what happens other than every order that comes down and somebody gets close to that, are we looking for a response or something from the ZA to kind of see where he was in that? And I don't even know if that's even legal if we can do that.

MR. BERGSTEIN: You could ask. But you could ask that the Zoning Administrator inform you of his ultimate decision on the issue. But that's something you would do in a cover letter where did you say that the Commission was concerned about this aspect, and would urge the Zoning Administrator to take a look at it and to advise the Zoning Commission as to his determination as to whether or not this is an embellishment or not. You could certainly request that.

COMMISSIONER MAY: It would be helpful to know from the Zoning Administrator
where this stands so that we don't go through this kind of debate next time when we see something like this. Because I'm sure we'll see it again, and then I'll try to remember what happened in this case, and it'll take ten minutes to reconstruct what we were thinking.

Anyway.

It would be helpful if we can at least request that, and we'll deal with it the next time it comes up.

MR. BERGSTEIN: So we'll work with Office of Zoning staff to craft a letter that does that, and we can share it with the Commission or as you please.

CHAIRPERSON HOOD: Okay. Anything else? Thank you, Mr. Bergstein. Anything else?

(No audible response.)

CHAIRPERSON HOOD: All right. I will move for approval of 08-30, and ask that the record and the motion encompass all the comments of my colleague, Commissioner May,
even though it's going to the Zoning Administrator so he can make an interpretation and maybe if at all possible that the Office of Zoning work with OAG to send a letter so we can kind of get some resolution exactly how this was proceeded. And I'll ask for a second.

COMMISSIONER JEFFRIES: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded.

Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor?

(A CHORUS OF AYES.)

CHAIRPERSON HOOD: Any opposition?

(No audible response.)

CHAIRPERSON HOOD: Not hearing any, Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes. Staff records the vote five to zero to zero to approve Zoning Commission Case No. 08-30 as modified.
Commissioner Hood moving; Commissioner Jeffries seconding; Commissioners Keating, May and Turnbull in support.

CHAIRPERSON HOOD: Thank you. Most people don't want to hear me. Okay.

Zoning Commission Case No. 08-09, ANC 4C, Text and Map Amendments to expand the Sixteenth Street Heights Overlay District.

Ms. Schellin?

MS. SCHELLIN: Yes, sir. This one is before you for a final action. I had my package before me and I believe I've shared that with some others here tonight. And so it kind of got split up, and so I'm not real sure -- I believe the NCPC provided a response, but I believe I shared that with someone else on the dais. So I'm not sure that they responded.

MR. BERGSTEIN: They did.

MS. SCHELLIN: They did. Okay.

CHAIRPERSON HOOD: Did we get that tonight or did they send it --
MS. SCHELLIN: We didn't get anything new tonight. It was in the package.

MR. BERGSTEIN: That came back. That came in very early in December.

MS. SCHELLIN: Yes. So nothing new came in tonight.

CHAIRPERSON HOOD: Okay. Let me just say, it's my understanding that the Office of Planning has taken a review pertaining to this petition. We may need to re-open the record.

But before I move anyway legally, I want to talk to Mr. Bergstein and see how I would be able to proceed if I go to the Office of Planning and hear some limited comments. I understand that they have some more information that they could basically put into the record if we were to open the record.

Mr. Bergstein?

MR. BERGSTEIN: That's true. I've been discussing various issues of this overlay with the Office of Planning. And the one
issue of concern for me was that one of the factors that was looked at by the Commission in 1994 was the extent to which the Sixteenth Street Heights neighborhood was occupied by nonresidential uses.

And it concerned me that the order that was issued by the Commission didn't really explain what extent of the land area was occupied. And I believe the Office of Planning has looked at the existing neighborhood that's proposed to be included in the overall, and then also looked at other R1B neighborhoods to see how the extent to which nonresidential uses that are occupied in the proposed expansion area compares to R1B properties as a whole. And I think they have information to share. If you do allow them to do that, it would require the opening of the record.

And what I would recommend if you do that is to then permit persons who commented on the proposed rulemaking to
respond to OP's information and preferably that OP put that information in writing and that's shared with the persons who offered comments.

CHAIRPERSON HOOD: Okay. I guess I will need to do a motion to re-open the record?

MR. BERGSTEIN: If you care to, you may.

CHAIRPERSON HOOD: Okay.

MR. BERGSTEIN: To re-open the record to hear the information -- additional information -- from the Office of Planning. Yes.

CHAIRPERSON HOOD: I'm not going to try to repeat everything Mr. Bergstein said. But I would ask my colleagues that we incorporate and actually follow the procedure which Mr. Bergstein so eloquently laid out. I'm not going to try to rehash it because I won't remember half of it. But I would ask that we do that and re-open the record and do
as Mr. Bergstein has laid out a procedure I think that we can follow so we can be fair to everyone who's involved in this case. And ask for a second?

COMMISSIONER TURNBULL: Second.

CHAIRPERSON HOOD: Moved and seconded. Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor?

(A CHORUS OF AYES.)

CHAIRPERSON HOOD: Not hearing any opposition, Ms. Schellin, would you record the vote?

MS. SCHELLIN: The staff records the vote five to zero to zero to re-open the record to accept the information that the Office of Planning will provide; Commissioner Hood moving; Commissioner -- you did not vote -- okay.

Staff will re-record the vote four to zero to one to re-open the record to accept
the additional information that the Office of Planning will submit in Zoning Commission Case No. 08-09. Commissioner Hood moving; Commissioner Turnbull seconding; Commissioners Jeffries and May in favor; Commissioner Keating not voting having not participated in the case.

And we're going to go from there.

CHAIRPERSON HOOD: Okay. What I would like to do is go to the Office of Planning, and in your report I guess, Ms. Steingasser, could you also at some point reduce your comments to writing so we can share with I guess everyone who commented in that 30-day period? And then we will set up a time schedule.

MS. STEINGASSER: Yes. We'll be happy to submit it in writing. We're not really prepared to do a full presentation.

But what OP did in the last week was using our GIS system and analyze the percentage of institutional uses in the R1B
land area throughout the District of Columbia so we had a city-wide average. We then look at the existing Sixteenth Street Heights overlay, and we have it by land area. And then we looked at the proposed overlay area. And what we found was that District-wide, it's 7.8 percent institutional uses in the R1B. Again, this is land area.

In the existing Sixteenth Street Heights overlay, it's 6.5 percent. But in the area proposed for the extension of the overlay or the mapping of the overlay, it's 18 percent. So it's more than twice the city average and almost three times the average of the existing overlay. So in terms of land area utilization, it's quite high.

With conversions however, it was quite low. It was less than two percent conversions as opposed to the ten percent established for the existing overlay. We did not have an opportunity to do a District-wide conversion. That was a much longer exercise.
We also did it by lots. Came down with a series of figures as well. And we'll be happy to put that together in a chart so it covers both land area and number of lots -- both District-wide, existing overlay and then the proposed expansion. And we'll be happy to get that into the record this week for comment.

CHAIRPERSON HOOD: Thank you, Ms. Steingasser. She says she's not necessarily prepared for a full-blown report tonight. I appreciate her comments. I think we have laid out a process. And if all my colleagues agree to that process -- which we voted on -- hopefully we can continue to sustain it.

Now let me ask Ms. Schellin -- Ms. Steingasser, about how long would it take maybe for you to put that in writing?

MS. STEINGASSER: We can have it into the record this week.

CHAIRPERSON HOOD: Okay. This week?
Can I just ask you to work with Ms. Schellin on a time schedule so we can make sure we get everybody who commented in that notice period to be able to have adequate time to be able to look at it and get it back to us -- their comments?

MS. STEINGASSER: Yes.

CHAIRPERSON HOOD: Okay.

MS. STEINGASSER: Absolutely. We can do so.

MR. BERGSTEIN: Mr. Chair, I would suggest that the Commission itself determine how much time the persons who offered comments would have to respond to the Office of Planning report which will be provided to them from the Office of Zoning. So from the mailing date that the Office of Zoning sends the Office of Planning report to the persons who made comments, how much time do you want to provide those persons and institutions to provide a response if they care to?

CHAIRPERSON HOOD: I would think
two weeks. But as I think about it, I think the petitioner's case was an ANC, and I'm not sure if they have to go back and have a special meeting and all those kinds of things.

By law, don't we have to do something like 40 days?

MR. BERGSTEIN: Well, first of all it's their petition. So they know they filed it.

And at this juncture, I think that it's appropriate. We're talking about a technical issue here of the methodology used by the Office of Planning. And I think the ANC should already have a representative who should be in a position to respond. But you've already fulfilled the ANC notice requirement actually by telling them they filed their own petition. And I think at this point any other response period can be as you think prudent.

CHAIRPERSON HOOD: Okay. Well, I think what we can do, colleagues, is two weeks
since apparently from what I'm hearing from Mr. Bergstein, I don't have to go back for a full vote of the ANC for any comments. As he stated, someone was already designated, and I think they can still carry that out for this case. So I would suggest that we do it within two weeks?

MR. BERGSTEIN: Two weeks from the mail date.

CHAIRPERSON HOOD: From the mail date?

MR. BERGSTEIN: Yes.

CHAIRPERSON HOOD: Okay? All right. Anything else? Is everything in order, Ms. Schellin? Mr. Bergstein, do we need to do anything else?

MR. BERGSTEIN: You're completed, I believe.

CHAIRPERSON HOOD: For the night? Can we go? Or that was just for the --

MR. BERGSTEIN: Just for this docket.
CHAIRPERSON HOOD: I've got to have some fun.

MR. BERGSTEIN: This matter will be rescheduled for final action after the completion of this period of comment.

CHAIRPERSON HOOD: Okay. Good. All right. Thank you, everyone, for their participation on that one.

Let's move right to Zoning Commission Case No. 08-13. That's the Marriott International, Inc., Consolidated PUD and Related Map Amendment at Square 370.

Ms. Schellin?

MS. SCHELLIN: Yes, sir. We have a couple preliminary matters.

We did receive a letter from East Central Civic Association. And as you know, the record is closed. So it's up to the Commission to decide whether they accept that letter. And if so, the Applicant has submitted a letter in response thereto.

But probably a bigger issue is that
staff realizes that it failed to send notice
to ANC 2C, who is an ANC across the street.

CHAIRPERSON HOOD: Okay. We failed
to send this to ANC 2C.

And Ms. Schellin, we do have
exhibit -- and it's actually run off my page,
so I'm not sure which exhibit it is -- from
the East Central Civic Association. Also we
have Exhibit 63 in response to Holland and
Knight.

So Ms. Schellin, to make sure I
understand, we didn't send notice to ANC 6C?

MS. SCHELLIN: 2C.

CHAIRPERSON HOOD: I'm sorry. 2C.

MS. SCHELLIN: Correct. And I
believe Mr. Bergstein can respond to that
issue as far as what we need to do about that.

CHAIRPERSON HOOD: Help me out, Mr.
Bergstein.

MR. BERGSTEIN: I'll try. There's
two issues here.

One is that the Commission's rules
require that an ANC within 200 feet of the project receive notice from the Zoning Commission. That wasn't done.

You can waive that rule under Section 3000.8 if in the judgment of the Commission the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. Now the prohibited by law part goes into the ANC Act which requires that affected ANCs receive 30-day notice of any proposed zoning change and that they receive it by First Class Mail.

Although that was not done in this case, the other aspects of notice were given in terms of publication in the District of Columbia Register, and the property was posted as well. And in fact, a representative of that ANC did testify. So the Commission could look at the ANC Act and interpret it as saying that although technically the mail notice wasn't provided, there's enough evidence to suggest that ANC 2C was put on notice as to
the proposed zoning action and that the fact that they did not submit a written report was intentional and therefore the order could state that because no report was submitted that the ANC is not given the great weight to which they would otherwise be afforded.

The other alternative would be to continue final action for 30 working days, give notice to the ANC, and then schedule final action for either the completion of that period or upon the receipt of a written report, whichever of those two events happens first.

So basically, I need to know what to say in this order whether either you say that on the great weight that no ANC report was received from ANC 2C, therefore no great weight is given. And the Commission acknowledges that no mail notice was received but that other indicia would indicate that notice was received by the ANC.

And the other option as I said is
to continue the matter.

CHAIRPERSON HOOD: Okay. And I want to open it up for discussion, but I tell you, colleagues, we want to make sure that it's clean. It's right. If we didn't send a notice that we want to make sure what we do is right here. At least I'm sure that all five of us agree on that.

But then I know how it is sometimes when you come and you continue to see the same cases. It's like peddling without a chain. We're not going anywhere because we come back every 30 days and we're still dealing with the same case.

But I think there's a mistake on our part that we need to basically deal with. While I don't want to come back and see Marriott International in 30 days, but that's just preliminary where I stand. But I want to open it up and hear some comments before we get into the submittals.

Do you just acknowledge? Or do we
want to give this ANC 2C an opportunity to weigh in. And here's the thing. Once they weigh in, either they have a chance to weigh in, or we'll deal with it in 30 days, whichever comes first.

COMMISSIONER JEFFRIES: Is there evidence anywhere in the record that members of 2C had no idea about this development?

CHAIRPERSON HOOD: I don't know if anyone was present that night. I'm not sure.

MR. BERGSTEIN: I thought one of the ANC Commissioners testified at the hearing. Am I incorrect?

COMMISSIONER JEFFRIES: Mr. Padro. That's right. That's right. Mr. Padro.

So this is really an issue of notice. Clearly, we should have given notice. But I have difficulty up here believing that the 2C did not know about this project. Clearly we dropped the ball here, but particularly given that one of the Commissioners sat here and testified.
COMMISSIONER TURNBULL: And he testified that the ANC 2C had taken no position on the case. And they did not request party status.

CHAIRPERSON HOOD: But the difference on that was I don't think it was -- normally you're supposed to be authorized. I don't even think he was even authorized. He didn't even have a letter that says he was even authorized to come and tell us that.

COMMISSIONER TURNBULL: That's true. But the ANC did not request party status either.

CHAIRPERSON HOOD: But he was here in the capacity I think as President of Shaw Main Street. I thought that's why he was here.

COMMISSIONER JEFFRIES: Yes. But I think it is just heavy handed toward the Applicant quite frankly -- just my view. I mean, we have really been with this project for several months.
And clearly -- again for the record -- we dropped the ball in terms of not giving notice. But I have a difficult time believing that the ANC has been somehow harmed because we did not give notice of a huge city project that's happening across the street from them. I have some difficulty seeing how they could have been harmed through the fact that we didn't give notice here, particularly given the fact that one of the Commissioners spoke here, granted, not in the capacity and so forth. But I just have to be convinced.

CHAIRPERSON HOOD: I can't convince you. Anyone else?

COMMISSIONER MAY: Do we have any indication from the ANC that now that this is all done that they have an interest in submitting a report and having great weight? We have something from a third party that notes this problem.

CHAIRPERSON HOOD: Central Civic Association.
COMMISSIONER MAY: Right.

CHAIRPERSON HOOD: And I can go either way on this actually.

But I think to keep it clean because the technicality for me is we didn't send notice. And I think to keep it clean if we do the latter part of what Mr. Bergstein mentioned about leave it open for 30 more days. If they respond, it'll be quicker. If they don't respond in 30 days, we take final action.

We've already taken a proposed action. So I would be fairly hard pressed to do a 180 -- at least from my standpoint. It would have to be something very compelling that comes into the record for me.

COMMISSIONER JEFFRIES: But Mr. Bergstein, you did say that we could waive this if we felt there was enough in the record that stated -- and I don't have your exact words -- that 2C has not been harmed by the fact that we did not give notice.
in our estimation.

MR. BERGSTEIN: Well, the first issue is the waiver of your rules, which you've done in other cases where other notice has been given under your regulations.

The question is whether or not you have an ANC Act that says that notice must be given by First Class Mail. It did not happen in this case. But you do know that at least one ANC representative had notice of the project because they showed up and testified. Based upon that, I'm suggesting -- but not recommending, because you have to make this decision -- that it would be legally sufficient for you to find that based upon the presence of the ANC representative that the other means of notice that were given -- the posting of the property, the publication in the D.C. Register, the notice of public hearing -- did put the ANC on notice of the proposal and that the fact that they did not submit a written report can be deemed to have
been a conscious action on their part. And therefore, they would not get great weight. Because you only give great weight to the written report of the ANC, not of anything that's stated at the hearing.

So that's one way. And that's how I would write the order if that was your view.

The other thing to do is to continue it and see which comes first -- the 30 days or an ANC report.

CHAIRPERSON HOOD: Also, I think that if I remember correctly -- and I see him -- Mr. Bill was responsible for outreach. And I'm sure that members of that ANC property knew about this project as my colleague already mentioned. Now that I think back, I don't know if that -- I don't have that record in front of me -- I don't know if that was sufficient -- the outreach that was done. I noted at the hearing, I specifically asked about the outreach. But I can't remember what all the answers were. But I would have to go
along with my colleague.

But again, I go back to making sure we keep it clean. But let me open it up and hear from --

COMMISSIONER JEFFRIES: I think that Mr. Bergstein has stated it succinctly to me. I have difficulty accepting that ANC 2C has somehow been harmed given what's in the record -- the evidence. This is the Civic Center of the District of Columbia that's right across the street from them. Are they saying they just had no idea about what was going on, and therefore they've been harmed when their own ANC Commissioner -- one of them -- came here and spoke? If they're not keeping in contact with each other, it's not our job to police these people.

CHAIRPERSON HOOD: Okay. Let me hear from others. Commissioner May?

COMMISSIONER MAY: Honestly, I could proceed either way. I think the only reason to make a decision tonight and move
forward and just acknowledge that this happened would be the urgency of just making a decision and moving on. But if the Chairman would like to move with an abundance of caution and allow the ANC the opportunity to file a report, I would be happy to go along with that.

CHAIRPERSON HOOD: Mr. Turnbull?

COMMISSIONER TURNBULL: Well, Mr. Chair, I'm in favor of going ahead with this and granting approval. But I've always been in favor of it. And I think there may be an internal ANC 2C issue here which is not germane to what we're discussing. But if you feel that we are doing some disservice to 2C, I'm willing to postpone it.

I think we're also doing a disservice to the Applicant by not proceeding. But I'm in favor of going. I think there has been sufficient notice. I think there may be some friction within ANC 2C that we're not privy to.
But again, I'm willing to go along with however you want to go with this.

CHAIRPERSON HOOD: I don't want to do anymore harm to the Applicant. I think this case is very well flushed out. And as we get into the materials, we still can do that. But I just think we need to proceed with an abundance of caution since it seems to be coming back.

I know how my Vice-Chair stands, but I can go either way. But I don't think 30 days is going to hurt us even though we've already had proposed action. Either we get a report, and then if we don't, then we move on in 30 days after not receiving a report.

But I think it's incumbent upon this office -- they've made one mistake in 12 years. They didn't send 2C a letter. Okay. But I can tell you, when you make one mistake around here -- as my colleagues will remember, I made one mistake. We had a whole other night down here. So I just think we need to
proceed very cautiously and I would rather move in an abundance of caution.

MR. BERGSTEIN: Mr. Chair? I just want to put in it's 30 working days. It amounts to 45 days.

CHAIRPERSON HOOD: So that doesn't include --

MR. BERGSTEIN: It excludes Saturdays, Sundays and legal holidays.

CHAIRPERSON HOOD: So Mr. Bergstein, what we would do now -- and Ms. Schellin if you could help me -- if we went and gave them notice, we will send a letter from the Office of Zoning to them?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Keeping in correspondence with the ANC Act.

MR. BERGSTEIN: You would send them written notice advising them of this proposal.

CHAIRPERSON HOOD: Okay. Would somebody like to make a motion besides me?

COMMISSIONER JEFFRIES: Excuse me?
CHAIRPERSON HOOD: Would somebody like to make a motion? I would like to move, but whatever motion I get, I'll entertain.

COMMISSIONER JEFFRIES: Yes. I'd like to make a motion that we approve in the final action of Zoning Commission Case No. 08-13, Marriott International, Incorporated, Consolidated PUD and Related Map Amendment at Square 370.

And I'd like to also point out that the Zoning Commission has acknowledged the error in terms of notice to ANC 2C. But I'm also asking we waive our rights and forego notice to the ANC given the fact that we believe that there is sufficient information in the record to state that they have not been harmed, or will not be harmed by going forward tonight.

I'm sorry. Strike that. Waive our rules. Sorry.

CHAIRPERSON HOOD: We want to keep our rights.
Okay.

COMMISSIONER JEFFRIES: And I need a second.

CHAIRPERSON HOOD: Okay. It's been moved. Can I get a second?

COMMISSIONER TURNBULL: Second.

CHAIRPERSON HOOD: All right. Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor?

(A CHORUS OF AYES.)

CHAIRPERSON HOOD: Any opposition?

(No audible response.)

CHAIRPERSON HOOD: Any abstentions?

(No audible response.)

CHAIRPERSON HOOD: Okay, Ms. Schellin, could you record the vote?

MS. SCHELLIN: Yes. Staff records the vote as zero to one to approve final action on Zoning Commission Case No. 08-13 as stated; Commissioner Jeffries moving;
Commissioner Turnbull seconding; Commissioners Hood and May in support; the third mayoral appointee seat was vacant at the time this case was heard; not voting.

COMMISSIONER MAY: Mr. Chairman?

MS. SCHELLIN: And I believe that since there was no vote taken that the record was not re-opened to accept them. Is that correct?

MR. BERGSTEIN: I agree with you.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: So we will return those.

CHAIRPERSON HOOD: All right.

Good.

COMMISSIONER MAY: Mr. Chairman? I probably should have noted this before the vote, but I did want to recognize the fact that we did get some additional drawings in the package that were part of what we had requested and addressed what was requested at
the proposed action. And I appreciated being
able to see that and review it.

CHAIRPERSON HOOD: And you're
right, Commissioner May.

Also NCPC said no adverse impact to
the federal interests. We did receive a
letter from them. I guess we were so busy
trying to figure out which way to go here, we
omitted that. But I appreciate you're
bringing that too.

Any other comments on the
submittals?

(No audible response.)

CHAIRPERSON HOOD: Okay. Thank
you.

Let's move right along with our
agenda.

Okay. Zoning Commission Case No.
08-23, Office of Planning Text Amendment
1706.2 and 1706.8(b).

Ms. Schellin?

MS. SCHELLIN: This one I do have
the ANC report in front of me. Did not have
to share that one.

And they did provide a report
saying that it would not be inconsistent with
the Comp Plan for the National Capitol, nor
would it adversely affect any identified
federal interests.

And for this one we also have a
supplement report from the Office of Planning,
and ask that the Commission consider final
action.

CHAIRPERSON HOOD: Thank you, Ms.
Schellin. Did you say the NCPC? Okay. Here.

MS. SCHELLIN: Yes, sir.

CHAIRPERSON HOOD: Okay,
colleagues, I think we've dealt with this
already. The text and map amendments to
remove Square 374, Lot 44, B Parcel West from
Housing Priority Area B. We have a two-pager
dated October 30th from Ms. Steingassser which
explains and shows exactly what's transpiring.

We also have as Ms. Schellin has already
mentioned Housing Area B is not inconsistent with the Comprehensive Plan for the National Capitol Area nor would it adversely affect any other identified federal interests.

With that, I would move approval of Zoning Commission Case No. 08-23, and ask for a second.

COMMISSIONER MAY: Second.

CHAIRPERSON HOOD: Moved and properly seconded.

Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: No further discussion. All those in favor?

(A CHORUS OF AYES.)

CHAIRPERSON HOOD: Not hearing any opposition, Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes. Staff records the vote four to zero to one to approve final action on Zoning Commission Case No. 08-23, Commissioner Hood moving; Commissioner May
seconding; Commissioners Jeffries and Turnbull in favor; Commissioner Keating not voting having not participated.

CHAIRPERSON HOOD: Okay. Next is the zoning re-write guidance. Okay, Ms. Schellin?

MS. SCHELLIN: Yes. The last case is the ZRR Guidance. And I believe you have a work sheet before you to go through. And they work with that for the public. So they also have them before them.

CHAIRPERSON HOOD: Okay. Commissioners, simply what we do is read through. I think for the sake of time, I'm just going to read the Office of Planning's recommendation. And it looks like the other recommendations are one liners with the exception of -- anyway, I will read the Office of Planning's recommendation to us. And I would ask that we read silently the other options as I'm reading. I don't know how we want to do this, but let's proceed in that
fashion. I'm just trying to get out of reading all the options.

Okay. Again, this is institutional uses in residential zones work sheet. It's Zoning Commission Case No. 08-06-07. And I want to make sure that everyone in the audience has this work sheet in which we're going to be going by. Okay. And we have Mr. Parker if we have any questions. We can do like we normally do -- go back and forth for dialogue. And again, this is just giving guidance to the Office of Planning as they move forward as far as text is concerned.

"Consistent regulations of institutional uses Option 1, Office of Planning's recommendation. All institutional uses in residential zones should be subject to the same regulatory structure outlined below, with requirements divided by the size and impact of the use rather than the type of use."

And then it goes on to say, "See Page 4 of the OP report for discussion on what
is included in the institutional definition. As of now, public schools and chanceries are not included in this recommendation."

And then you have Option 2 and Option 3.

I am actually looking for my Office of Planning report. Let's take our time. We want to make sure we do it right. Campus Plans have been an issue for awhile, so we want to get this right.

Okay. Mr. Parker, did you want to add something or do you want to give us a snapshot?

MR. PARKER: Would you like a snapshot of this first recommendation? That'd be great.

This first recommendation --

CHAIRPERSON HOOD: We're getting a little old up here. Sometimes we can't remember everything.

This first recommendation is kind of the primary concept on which the rest of the recommendations rest. And the basic concept is similar to the discussion of uses that we had earlier in past hearings in that we want to head in a direction where we have consistent regulation across a group of uses -- in this case, institutional uses so that we're treating large institutional uses the same. And right now, our recommendation is that that category includes things like universities, private schools, hospitals, churches, and certain types of CBRFs, and other things that are commonly considered institutional.

Now you've heard a lot of discussion both in the submissions and at the hearing that some of these uses act differently. And I know we've gotten discussion of churches and how we should be careful how we tread in regulating them, how private schools often act differently than
universities. And the only uses that OP has recommended not be included at this point are public uses that would fall into their own use category, and chanceries which have some legal ramifications of lumping them in with anything.

So we've recommended that this category include even schools and churches -- private schools and churches. But that certainly Option 2 and Option 3 give you the leeway to pull some uses out and continue to treat them differently or maybe throw them in the special exception, but put separate criteria on them.

CHAIRPERSON HOOD: Okay. Any comments to the adoption --

COMMISSIONER JEFFRIES: Not really. I mean, clearly if Option 1 is the bedrock here of the first one -- that's your point, right?

MR. PARKER: Well, the point being -- yes. Yes. Absolutely.
I mean, basically the argument here is that OP's argument is that we need to treat all these uses the same. And then recommendations 2 through 6 are how we would treat those. There still is the option to pull uses out if you feel that they are inconsistent with the others in the institutional category.

But, yes, that is OP's recommendation.

COMMISSIONER MAY: That's an option as we move forward. In other words, we can say yes to Option 1, but then when we get to the refinement, we're going to -- if we realize -- yes, actually churches do need to be treated differently or something like that. We still have that flexibility.

MR. PARKER: Sure. This will just tell us how to write it and how to bring it back to you.

COMMISSIONER JEFFRIES: But based on what you're saying, if we sign up on Option
1 here as we go forward, isn't that going to
be a recurring theme? I mean, unless you're
thinking that --

MR. PARKER: No. What struck me
through the rest of the discussion and in many
of the comments is that there seems to be a
pretty wide range of opinions about how we
should be handling this. What's the threshold
level for certain types of review in terms of
square footage? And do we need a second level
of further processing kind of process after
you've done a campus master plan or not and
what the threshold levels are for that? There
just seems to be such a variety of opinion.
And on the institutional side, there doesn't
seem to be the consistency of opinion.

But even on the private side,
there's a lot of angst about this. And I
think that's been apparent in the cases that
have come before the Zoning Commission when it
comes to campus plans that there's a lot of
very strong opinion about it. And these very
large institutions have significant impacts that the community doesn't want to lose their voice on these things.

So I just feel that as we go forward, while this in principle makes sense that we should be looking at things in terms of the size, in terms of the impacts, terms of the uses as neutrally as possible, I would still think that there's possibility that we're going to find that we need to address something differently because either it puts an undue burden upon the institution or because it kind of accidentally bypasses appropriate and necessary community input. So I would not do that but say that in principle this is the right way to move forward.

CHAIRPERSON HOOD: Okay. I would agree.

I think though the way I've seen it thus far, that's going to be throughout the whole ZRR -- the way I interpret it, some more than others. And this may be one of those
cases.

Anyone else?

(No audible response.)

CHAIRPERSON HOOD: So Option 1, colleagues?

COMMISSIONER JEFFRIES: Yes.

CHAIRPERSON HOOD: Okay. And I think that's the quicker way to do it, Mr. Parker, because you have the snapshot. And that way we don't read all this.

MR. PARKER: Sure.

CHAIRPERSON HOOD: Option 2?

MR. PARKER: All right. So based on what the guidance you just gave us in Option 1, Option 2 is the recommended -- instead of looking at it as three types of review, I'd like you to look at it as a continuum or a spectrum.

At the bottom you have institutional uses that are small enough to go forward as a matter-of-right. And that threshold would vary by the residential
district.

So R1 might be more stringent -- will be more stringent than R2, than R3, than R4 and on up. But each residential zone would have a threshold at which below which institutional uses as a matter-of-right and above which it requires special exception review.

And special exception review falls into two categories -- either special exception individual for every project, or special exception done proactively as a campus plan.

For those uses between the matter-of-right and 300,000 square feet, there would be a choice. Each institution would have a choice whether to do a special exception individually or proactively for all changes over ten years. Above 300,000 square feet, that choice is removed, and institutions must do a proactive special exception looking forward ten years.
Again, we'll get into what the things are in the future in recommendation 3 and 4 that need to be included in special exception. But the detail that we get into these would vary by the size of an institution. So even within a category -- even within above 300,000 square feet, an institution at 500,000 square feet may have to do a lot less detail than one at six million. Or an institution at 50,000 square feet might have to do a lot less detail than one at 150,000 square feet.

So there are three categories of institutions. But it's more a continuum of how much detail goes into a special exception and how far forward it looks.

CHAIRPERSON HOOD: So, Mr. Parker, under Option 1, Office of Planning's recommendation would be (a), (b) and (c)?

MR. PARKER: Those would be the three categories in review. So an institution would either be matter-of-right, would have a
choice between an individual or a proactive campus plan special exception, or above 300,000 square would require a proactive campus plan as a special exception.

CHAIRPERSON HOOD: So let me just make sure. A matter-of-right to me has always been a question. A matter-of-right -- when I'm looking at (a), that means even though the threshold is less than 300,000 square feet of GFA, matter-of-right would take out any public comment.

MR. PARKER: And for example, that would be discussed for R1. For R1, we would sit down and determine what's the appropriate size threshold, what's the appropriate number of users, what's the appropriate number of staff, what's the appropriate hour of operation. And those conditions if they're all met then a use can go forward as a matter-of-right. If not, then it's a special exception.

CHAIRPERSON HOOD: So once we
establish -- it's just not -- okay. Okay.

COMMISSIONER MAY: Can I --

CHAIRPERSON HOOD: -- with the

whole matter. Right? Okay.

COMMISSIONER MAY: And let's just

take an example. Pick a residential zone.
Okay? So say R4. We might determine that an
institutional use at less than 50,000 square
feet, a staff of five, and occupancy of 50
people or something -- people, students,
whatever -- might be allowed as a matter of
right in an R4 zone.

MR. PARKER: Exactly.

COMMISSIONER MAY: And I'm not
suggesting that those would be realistic
limits or numbers by any stretch. I'm just
saying so that I understand it in my simple
mind.

I guess the question that I have is
does that mean that in a typical R4
neighborhood, so long as you met kind of area
minimums that are appropriate for that use
that you have -- I don't know -- 10,000 square feet of land and that no more than 40 percent lot occupancy or things like that -- that you could actually locate that institutional use within a residential area. Will that also be a way of making sure that you don't wind up with massive conversions of residential properties to institutional properties?

MR. PARKER: Absolutely. Absolutely. You have a size limit per institutional use. But you also get at it other ways. You can say no more than X number of users at any one time, or hours of operation are limited. We need to --

COMMISSIONER MAY: Or what the parking requirements are going to be -- things like that.

MR. PARKER: Bingo.

COMMISSIONER MAY: And if you don't meet the parking requirements, you can't locate in that area.

MR. PARKER: And again, so we have
a chance to get at this by what are the
impacts that we want to limit rather than
what's it called.

COMMISSIONER MAY: Okay. Well, the
thing that I fear -- and I don't want to speak
for the Chairman -- but the idea of having
matter-of-right institutional uses within a
residential zone is a little scary because we
don't know what all of those other things are
that might limit it. So I think if we were to
move forward on this assumption, I think it's
with the assumption that there are going to be
significant limits and that if we can't find
those limits, then they're pretty much isn't
going to be a matter-of-right.

MR. PARKER: Well, keep in mind, we
have matter-of-right institutional uses
allowed in residential districts now.
Churches have no limits on them. Most schools
have no limits on them. Museums in R4 have no
limits on them. So there are a lot of these
institutional uses that we aren't putting any
constrictions on at all -- and they're probably should be -- versus others that require special exception even if there are ten people.

COMMISSIONER MAY: Right. But there are still some pretty classic cases that have gotten a lot of attention where a single relatively minor use creates a real firestorm within the neighborhood because of -- I don't know -- a school, for example, can have significant impacts if there's not sufficient land or it's not on a block that can handle it or what have you. So I think that there's that fear that the matter-of-right is going to be difficult.

And this sort of returns back to differences in some of those uses. You cited the institutional uses that are allowed as a matter-of-right. Churches, yes. Public schools, yes. Private schools, no. How do you go at that? So.

CHAIRPERSON HOOD: Mr. Turnbull?
COMMISSIONER TURNBULL: Well, if I was a wise campus administrator, I would make sure that our $1,200,000 building would be built in phases of 300,000 square feet each.

MR. PARKER: That's a cumulative measure. So that's all of the buildings on your campus put together.

COMMISSIONER TURNBULL: Oh, so 300,000 is for the whole --

MR. PARKER: Yes. It's all the buildings put together on your campus.

COMMISSIONER MAY: You'd have to build it in 3500 square foot increments.

MR. PARKER: I could do that. Give me a piece of paper.

COMMISSIONER TURNBULL: All right. So you're saying 300,000 is the low end of the totem pole here?

MR. PARKER: No. That's --

COMMISSIONER TURNBULL: It's the high end for a small institution.

MR. PARKER: It's the high end for
COMMISSIONER JEFFRIES: Is a hospital part of that?

MR. PARKER: A hospital is included in there. There are three hospitals that are well over that that are in the report. I think Sibley, Washington Hospital Center, and Providence -- hospitals that are not already in campus plans.

COMMISSIONER JEFFRIES: And we had the Sibley case where they had the office building?

MR. PARKER: Right. So right now, a hospital is and isn't a matter of right. The hospital function is a matter of right. But all of the accessory functions often cause it to come in as a PUD like Sibley did.

COMMISSIONER JEFFRIES: Right.

MR. PARKER: So this would sort of put it all into just plan the entire campus and come in and do a ten-year campus plan rather than a PUD.
CHAIRPERSON HOOD: I don't know, colleagues, which way you all want to move. I will tell you the stickler for me has always been matter-of-right of anything.

MR. PARKER: Well, keep in mind, that's undefined. So there's another discussion on what that level should be. And as Mr. May said, it can be next to nothing.

COMMISSIONER MAY: Yes. I still have this feeling of uneasiness about that threshold for matter-of-right. And I also frankly have uneasiness about the 300,000 square foot threshold based on the comments that we receive that some think it should be 100,000 and some think it should be 500,000.

COMMISSIONER JEFFRIES: Office of Planning, I guess this is a question for you. Are there like an unlimited number of situations where this could occur currently in terms of --

MR. PARKER: Yes, I think there's 11. Situations that are over 300,000?
COMMISSIONER JEFFRIES: Right.

MR. PARKER: Yes. They're listed in our report. There's eight colleges and universities and three hospitals.

The rest -- the bulk of institutional uses that we identified are well below 300,000. I think the largest private school is 250,000.

COMMISSIONER JEFFRIES: See, that's my point. Those are sort of covered.

I guess, Commissioner May, I'm trying to understand. You feel that it should drop well below 300,000? I guess I'm trying to understand what's driving --

COMMISSIONER MAY: No. I read enough sort of good arguments in both directions that I'm not sure where I stand. And that's all.

But I think that the idea or this structure makes sense, that there be some level matter-of-right, and that there be lots of conditions that would have to be met in
order for anything to be matter-of-right.
Up to some threshold -- 300,000, 250, 350 --
I'm not sure what the right number is. And
then above that, it has to be a master plan.

COMMISSIONER JEFFRIES: We can go
back and deal with the number, right?

COMMISSIONER MAY: And that's what
I'm getting at too is that if we --

COMMISSIONER JEFFRIES: The concept
-- I mean, you're fine with the concept.

COMMISSIONER MAY: I'm fine with
the concept.

COMMISSIONER JEFFRIES: Yes. Yes.
Because I think we're trying to get the
simplicity here.

COMMISSIONER MAY: And I just think
if we decide further down the line that we
want to lower it or raise it, we would still
certainly have the flexibility to do that.

CHAIRPERSON HOOD: I just want to
read a part of a submission from a wise man.
I don't want to say who it is.
But it agrees with what we're saying up to 300,000 -- "to submit and gain approval for a campus plan that was valid for ten years." Then it says, "and allow institutions with lesser area to apply for approval under the process as well in lieu of a special exception process for the program facility or the expansion of program with the facility."

I guess we'll get to those kinds of points when we talk about square footage and what the number is. We'll get there. We'll get there.

Okay. But again, I might not be here, but I've always had an issue with matter-of-right.

Okay. So --

COMMISSIONER JEFFRIES: Mr. Chairman, I'm going to have to step away. But I did leave a proxy.

CHAIRPERSON HOOD: Thank you very much.
COMMISSIONER JEFFRIES: Thank you.

CHAIRPERSON HOOD: We'll be right behind you. Don't stop.

Okay. So Commissioners, Option 1 with some questions?

MR. PARKER: Why don't I write down what I've heard is the concept of Option 1 is acceptable, but the 300,000 square feet is not in stone yet.

CHAIRPERSON HOOD: Right. Okay.

Do we need to do the proxy for each one? Did we get a proxy?

MS. SCHELLIN: Yes. And he said Option 1.

CHAIRPERSON HOOD: Okay. Mr. Parker, we're on number 3, right?

MR. PARKER: Absolutely.

COMMISSIONER MAY: I'm sorry. I forgot that within number 2, we have the issue under Option 2 of including this cellar area. And I did want to talk about the cellar area issue and just understand whether -- the
The definition of cellar has always bothered me because it's a way to get extra space without having to hit your FAR cap. And yet the impacts, particularly when it comes to institutional use -- the impacts of that cellar space would be just the same as if it were above ground, would it not?

MR. PARKER: It depends. It's often space like lockers and storage and parking and things that don't carry necessarily the same weight or have the same use as above-ground space.

More important to the reason that we didn't recommend that be changed is that we base our calculation in determining 300,000 on above-ground space.

COMMISSIONER MAY: If you were to include it, you'd want to increase that number.

MR. PARKER: I think we'd want to re-look at the number.

COMMISSIONER MAY: Well, I guess
I'd like to leave the door open for considering that as well because things like lockers can be above ground too, and in many cases they are. It's not like you automatically because of cellar space wind up with those sorts of things down below grade. And in fact, we're encouraging below-grade development.

I don't know. I don't feel like I have the answer there yet either, but I don't want to close the door on that question.

CHAIRPERSON HOOD: Okay. You finished? Okay. Can we go to 3?

MR. PARKER: Sure. So the bulk of institutions again would have a choice between doing an individual special exception for each project that comes forward or each change in student counter or whatever, versus the ten-year campus plan.

The first of the two -- the individual special exception -- we've laid out a set of core requirements that an application
would have to address -- a facilities plan, neighborhood context, accessibility plan, conservation issues and landscaping and open space.

I guess that's it. Each of these would have to be reviewed by the Commission upon the acceptance of the application, and the Commission would have to determine that these were not adversely impactful on the surrounding neighborhood or the city as a whole.

The only difference is the level of detail that's requested for each of these. Every institution would have to address all five of these areas. But a 20-person private school in a residential neighborhood is going to have to do a lot less work on some of these than a 250,000 square-foot, 1200-student private school down the street.

So these are the areas that need to be addressed. We haven't gone into for obvious reasons how much detail needs to go
into each one because that's really a function of the institution itself, and it would be incumbent on the Zoning Commission to take a look and determine whether the institution had done enough work in each of these areas.

CHAIRPERSON HOOD: Okay. We'll accept that?

COMMISSIONER MAY: I think it's a reasonable outline of things that need to be addressed. The idea of how much work goes into it for a small institution versus a large institution, it makes me a little nervous because how do you determine -- I mean, the Zoning Commission is going do this by practice, by looking at these things individually. And are we going to find ourselves sort of five years down the road in the position where the only way a small institution is going to be able to do this successfully is to hire architects and lawyers and do thick presentations?

MR. PARKER: Well, I think the
point is to avoid that. I think the point is a small institution needs to put a lot less work into it. But you're right.

COMMISSIONER MAY: That's the point. But let's not lose sight of that objective for those smaller institutions.

CHAIRPERSON HOOD: Okay. We'll accept the Office of Planning's recommendation for number 3.

Ms. Schellin, do we have a proxy?

MS. SCHELLIN: Yes. He accepts Option 1.

MR. PARKER: Number 4 then is the other option for institutions. It's the proactive. It's designed to look at mainly the same areas. Again, look ten years into the future and encompass all of the changes that that institution expects over the next few years in terms of user count, in terms of facilities, additions, GFA additions, et cetera.

The list is almost identical with
the addition of more information on the institution itself -- background history, mission, guiding principles. And then assuming that these are generally larger areas, it looks at streetscape treatment as well for rights-of-way going through the campus. So exact same situation as the others, just a slightly longer list.

CHAIRPERSON HOOD: And we may get to a point -- I'm reading from some different correspondence that we got from people who are very interested in how we're moving.

One of them was -- and I'm sure you may have heard this -- "provide some flexibility for minor structural changes to meet unanticipated requirements without having to formally amend and approve campus plan and require the Zoning Administrator to review submissions for buildings for occupancy within the area of the campus plan for consistency with the approved plan."

MR. PARKER: That's coming up in
number 5.

CHAIRPERSON HOOD: Oh, okay.

COMMISSIONER TURNBULL: I take it that some of these categories will be flushed out as we go along. Or are they just going to be left as general --

MR. PARKER: Well, again, that's sort of the point.

The point is this is an identification of the sections that need to be in your application. Your application as an institution needs to address these eight things.

But if you don't have any streetscapes, or if you just have one streetscape on your campus, then your application can be a paragraph in that section. So a lot of it's going to be contextual in terms of how much detail goes into these sections.

But again, the point is to have a general list of these are the things that will
be addressed, but not get into how indepth
they're addressed.

MS. STEINGASSER: Where we came up
with these, we went back through the last
eight years worth of campus plan and school
institutional use orders and combed out the
conditions that the BZA and the Zoning
Commission had been routinely asking for. And
as you know at many of these hearings, there's
a lot of frustration in both the community
side, the applicant side and the Commission
side that there was no continuity of what was
required in the application. So we went
through the orders and pulled these out to try
to create that. So if we get to the end and
we find we need more or less or they need more
flushing, you'll still have that prerogative
to go.

CHAIRPERSON HOOD: Okay. All
right.

Number 4, colleagues, we'll take
Option 1. Not hearing any objections. Do we
have a proxy?

MS. SCHELLIN: Mr. Jeffries concurs.

CHAIRPERSON HOOD: Let me ask this. Ms. Steingasser, do you remember David McGettigan? And I just thought about that when you were talking about going back over all the old campus plans. He had started on a lot of work on campus plans. Is some of his work being shown here in this?

MR. PARKER: We definitely looked back at his work.

CHAIRPERSON HOOD: Mr. Parker, he was in the Office of Planning. But did some of what he had done -- because I know he had started really working on this earlier in the early years?

MR. PARKER: Yes. And he had a lot of background work that was useful to us. But yes, he had put a lot of time into this. And we certainly combed through those files.

CHAIRPERSON HOOD: Okay. All
right.

Can we do number 5, which I think I already started on?

MR. PARKER: Sure. Number 5 has to do with second-stage review.

Right now, campus plans get one review up front that looks at FAR and general campus issues. And then each individual project comes in to look at design and its impact and its final FAR lot occupancy, et cetera.

The idea for the procedure that you're looking at now is that there would be a lot more work put into the upfront ten-year campus plan. Each building would be given an FAR and a lot occupancy, and basically everything short of architectural design. It'd look at a maximum for each site on the building in terms of these measures. And the impacts would be judged up front as to how are the people using this building going to impact the neighbors. So similar to the campus plans...
that you're doing now and looking at GW campus plan and actually making an analysis of every site, the thought being that this work can be done better up front and avoid having to come back and re-do it for each building at each second stage. And then any unanticipated change -- any building that wasn't on the plan or an addition that wasn't on the plan or extra student enrollment or hospital users that weren't accounted for in the plan would require them to come in and amend their plan with the exception -- and again we've set another threshold here of small additions of 3500 square feet or less -- could be done to accommodate minor things that weren't necessarily anticipated -- ADA improvements and the like. So that's our recommendation.

Your Option 2 is to retain a second-stage review for the largest projects to have them come back in later on.

Option 3 is to set a different standard for that 3500 square feet for
unanticipated changes.

And Option 4 is to keep the existing standards of every single project that comes back for a second-stage review.

CHAIRPERSON HOOD: Okay. Any comments? Are we going to accept the --

COMMISSIONER MAY: Yes. I'd like to have a couple questions.

CHAIRPERSON HOOD: Okay.

COMMISSIONER MAY: Compared to campus plans the way they are prepared right now, what would be layered on top of that is more specific building-by-building information -- FAR and height and how many cars, how many people -- that sort of information. So we don't typically get that in our campus master plan at this point.

MR. PARKER: Right.

COMMISSIONER MAY: Now, understanding your second sentence here, which is "Additions or use changes not anticipated in the plan would require an update to the
plan." Would we leave the door open for in effect an institution to submit a campus plan just like they've been doing, and then just kind of automatically come back because it wasn't well defined? Can they leave things sort of undefined if they don't know with the assumption that --

MR. PARKER: That they would have to come in for a second stage? I don't see why that couldn't be an option, I guess.

The intent is for them to go through a planning process and define it all up front. But yes, that seems like a reasonable --

COMMISSIONER MAY: But I guess I'd like to understand better from the larger institutions whether in fact they really can anticipate their needs in that level of detail ten years out, or whether they just have a notion well, we're going to need to put a dorm there --

MR. PARKER: Right.
COMMISSIONER MAY: -- and probably
X number of students.

MR. PARKER: Based on the last
couple of plans that we worked with,
institutions certainly have a question about
when things will happen because of funding and
-- but institutions of that size certainly
know what their needs are. They know next
we're going to need a science center. And
after that, we're going to need more classroom
space and we're also going to need a dorm for
300 students. And it's a matter of saying
well, over the next ten years, we may not
build all this, but here are the four
buildings that we're going to need, and here
is where we're going to put them. And if we
do it according to this plan -- if we reach
our fondest fundraising goals and can build
all four of these buildings, here's how we'll
do it. And if we do it according to this
plan, then we can proceed forward.

I think the biggest open question
for institutions is when the funding will arrive to build those buildings.

COMMISSIONER MAY: Okay. I don't know. I guess I'm not totally convinced that everything will be that planable that far in advance. I think I'm okay enough with this idea to be able to push forward. But I think we may wind up backing up a little bit and maybe introducing a size threshold above which we'd want to review or having an option for -- I don't know -- campus plan light where you have to come back for further processing. I'm not sure with those caveats. I've always got caveats on Option 1.

COMMISSIONER TURNBULL: So, are you concerned about the threshold number?

COMMISSIONER MAY: Well, no. Planning ten years in advance seems reasonable. But I also know that in planning the facilities for the government that our plans aren't necessarily that well fleshed out or that well thought out. And I'm not sure
that they really can be. It's not my Park
Service experience talking here. There are
always new circumstances and particularly when
we're dealing with things that are in
neighborhoods where there are going to be
potentially substantial numbers of people who
are impacted by it.

CHAIRPERSON HOOD: Do you want to
take the lead on that one since you have the
most experience?

COMMISSIONER MAY: Well, no. I'm
okay with Option 1. But I would mention just
with a caution that we may want to introduce
certain thresholds for a second level of
review or that we may want to allow
universities some flexibility with the level
of planning within their campus plans.

CHAIRPERSON HOOD: Yes. I
anticipate when they come back with some of
this guidance and we start seeing it bring
down with threshold numbers, I anticipate
those to be long evenings.

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Okay. All right. Option 1 for number 5.

MS. SCHELLIN: Mr. Jeffries agrees.

CHAIRPERSON HOOD: Okay.

Okay, Mr. Parker, can we do number 6?

MR. PARKER: Number 6 -- again, we had this discussion about ancillary uses. And I continue to use the term because often these are uses on stand-alone lots versus accessory which are part of a primary use. But the point being, campuses have fast-food restaurants and book stores and retail and service-type uses that wouldn't be allowed otherwise in the underlying zoning.

The recommendation is that those types of uses be allowed as part of a campus plan. The other option is to also allow those uses as part of an individual special exception. Those are really the only two options we could identify.
concern about such uses be limited to less than half the total GFA of the campus. I think that in some circumstances that might make sense when you have certain institutions that have significant ancillary uses -- maybe hospitals because they've got office buildings and cafeterias and parking and things like that. But is that going to be the case? Does this open the door for the private school to have a department store on half the lot or something like -- that's ridiculous -- but 50 percent's a big --

MR. PARKER: Well, I don't know that we even have to define a number. I think maybe it's more important to define what is accessory to or what is ancillary to rather than a number.

COMMISSIONER MAY: Right. Well, at some point we're going to want to define that limit.

MR. PARKER: Absolutely.

COMMISSIONER MAY: Okay. So saying
that it's less than half does not mean that it's 49 percent. We could wind up with 20 percent.

MR. PARKER: Absolutely. Or --

COMMISSIONER MAY: Or it may vary by zone or whatever.

MR. PARKER: Personally, I don't even think we should have a threshold. And I think we should take out the less than half language and instead just have a definition of what it means to be accessory to.

COMMISSIONER MAY: So no explicit limit. Just define what's ancillary so that the ancillary uses we would find objectionable or really unrelated are just not going to make the cut?

MR. PARKER: I would think so.

COMMISSIONER MAY: What does the rest of the Commission think of that idea?

CHAIRPERSON HOOD: Well, I agree we need to have some definitions. And then we're taking out the percentage. I thought 50
percent was too large also.

Then we're going to do it individually on each individual case. I think that's the better way to go.

We may want to put back in five or ten percent. Who knows? But I saw that in one of the submissions. But for now, I don't have any problems proceeding in the fashion in the discussion.

Mr. Turnbull, anything?

COMMISSIONER TURNBULL: No. I think -- and again, I think it depends upon the type of campus. And the way things are going, who knows? An art school can have galleries and might have places to exhibit student work that's for sale or something too. So I guess it's kind of a mixed bag on how you could do that.

But you definitely need to define it. But how far you go with the number, I don't know.

I would be surprised if any campus
came anywhere near 30 percent or 20 percent. But that even seems like a lot.

CHAIRPERSON HOOD: All right.

Option 1?

MS. SCHELLIN: Option 1.

CHAIRPERSON HOOD: Okay. I thank everyone for their participation tonight. And I thank everyone in the audience --

COMMISSIONER MAY: Mr. Chairman?

I'm sorry. I just keep prolonging this.

But I want to ask a question of the Office of Planning which is how are you going to deal with government facilities in the same sort of vein? Is that going to be addressed somewhere else in the zoning regulation? And is there going to be a requirement for planning government facilities when they're in a campus-like setting? I mean, not my government, your government. District government versus --

MS. STEINGASSER: I don't know that we have any that would qualify as a campus-
like setting. They would be office buildings like any other mostly, or a service building. MPD's already called out libraries --

    COMMISSIONER MAY: Well, I'm thinking of the DPW's facility where the motorpool is and all that sort of stuff. That's kind of a campus.

    MS. STEINGASSER: It's kind of a campus, but --

    COMMISSIONER MAY: And then the other one was D.C. Village and what might eventually happen there.

    MS. STEINGASSER: Those are all already zoned industrial -- high-density industrial.

    COMMISSIONER MAY: Right.

    MS. STEINGASSER: So there's really very little interaction with --

    COMMISSIONER MAY: Yes. So they're not going to be dealing with residential.

    MS. STEINGASSER: -- with residential. Yes.
COMMISSIONER MAY: Okay.

CHAIRPERSON HOOD: All right. Did you get your answer to the question? All right.

Again, I want to thank everyone for their participation and following this in the audience. And I'm sure you all will be staying tuned.

I thank the Office of Planning. I also thank our staff.

All right. And thank my colleagues.

Ms. Schellin, do we have anything else?

MS. SCHELLIN: No.

CHAIRPERSON HOOD: This meeting is adjourned.

(Whereupon, at 8:54 p.m., the hearing was adjourned.)