The Public Hearing 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
WILLIAM W. KEATING, VICE-CHAIRPERSON
MICHAEL TURNBULL, FAIA, COMMISSIONER
(OAC)
PETER MAY, COMMISSIONER (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
TRAVIS PARKER
OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

MARY NAGELHOUT
ESTHER BUSHMAN
JACOB RITTING

The transcript constitutes the minutes from the Public Hearing held on June 8, 2009.
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CHAIRPERSON HOOD: Okay. We're ready to get started with our public meeting. This meeting will please come to order.

Good evening, ladies and gentlemen. This is June 8, 2009. My name is Anthony Hood, joined by Commissioners Keating, May and Turnbull. We're also joined by the Office of Zoning staff and the Office of Planning staff, and the Attorney General.

Copies of today's meeting agenda are available to you and are located in the bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live.

Please turn off all beepers and cell phones.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir..
CHAIRPERSON HOOD: Okay. I have a few preliminary matters, but I want to move the agenda around. First, we're going to take up final action. Second, we're going to take up correspondence. Third, we're going to take up proposed action. And fourth, we're going to take up the ZRR guidance.

Now under proposed action, we're going to move A to preliminary matters. Now there are four preliminary matters in which I would like to discuss this evening. The first one is relaxing clothing rules for the months of June and July. B, the Office of Zoning director. C, elect Bill Keating as the vice-chair. And D, Zoning Commission case 08-21, Athena Group time schedule.

What I would like to propose to my colleagues; we've talked about this some eight years ago, sometimes when it's 90 degrees, it's kind of hot. And I hate to put us all out on public display, but sometimes we put our ties on in the back. So what I would
propose is that we come up here in the months
of June and July comfortable. So I think we
can just do that on general consensus. It's
optional. If you would like to come in
relaxed, feel free. And I hope the public
would excuse us if we come in without a tie
and we would say the same thing to everyone in
the audience, as you come down in front of the
Zoning Commission for the months June and
July. We're still professional. We just
won't wear our ties.

Okay. Any disagreement?

PARTICIPANT: No.

CHAIRPERSON HOOD: Okay. Next,
the Office of Zoning director. I received the
news that our new colleague, Mr. Konrad
Schlater will be sworn in at 6:30. He's
probably a commissioner at this time, if that
clock is correct. So our former vice-chair
will not be joining us tonight, Mr. Greg
Jeffries, who has served this city well. I
personally have enjoyed working with Greg. He
brings a wealth of knowledge and he's made some very tough decisions. And he's really brought a great balance to the Zoning Commission and he will be missed. And I'm sure he will continue to make contributions in his future endeavor. All of my colleagues that I worked with in the past, I will tell, you know, we've all become friends, even though we may disagree up here. But it's like a friendship that goes on and I appreciate the experience that I've had with Greg Jeffries.

So, Greg Jeffries will be replaced by Konrad Schlater starting one week from Thursday. So we want to welcome Mr. Schlater and we will do that properly at our next meeting, even though we'll probably welcome him at the hearing, but we will properly welcome him at the hearing on Thursday.

But I would just ask and so the record reflect, if we could just give Greg Jeffries a round of applause and thank him for his hard work.
(Applause.)

CHAIRPERSON HOOD: Ms. Schellin, could you make sure Mr. Jeffries watches the web cast live re-run?

Okay. Next I want to talk about the Office of Zoning director. We were on a time schedule, Commission Keating and I, and also Vice-Chair Jeffries, but in all respect and fairness to our new colleague, we're probably going to have to push that schedule back. We're going to be trying to kind of consult with Commissioner Keating and also with Commissioner Schlater to see how we're going to move this process forward. I'm not sure what the deadline's going to be, but I want to publicly announce that we're going to bring Commissioner Schlater up to speed as fast as possible and then we're going to try to coordinate our efforts and see what we come back with and try to hurry up and resolve the Office of Zoning so we can move forward with a director. I will tell that you with the
great staff and with the acting director, the Office of Zoning has not missed a beat. Sometimes when things are working you like to leave them alone, but we do need to put a director in place, and we will do that in the very near future. The schedule that we publicize, that we sent to the council and that we notarized in the Northwest Current and other places, it's going to be amended due to the fact of our new colleague coming on board. And I don't know if Commissioner Keating wanted to add to that.

VICE-CHAIR KEATING: No.

CHAIRPERSON HOOD: Okay. Next, what I'd like to do, and I think this shouldn't take but a second, I would like to move that we elect Bill Keating as the vice-chair of the D.C. Zoning Commission and as for a second.

COMMISSIONER MAY: Second.

CHAIRPERSON HOOD: Moved and properly seconded. Any further discussion?
All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

CHAIRPERSON HOOD: Not hearing any opposition, and I'm sure I wouldn't hear any opposition, Ms. Schellin, could you record the vote?

MS. SCHELLIN: I'm assuming that Mr. Keating voted for that?

VICE-CHAIR KEATING: Yes.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: If he didn't, we would discount his vote this time.

MS. SCHELLIN: Staff would record 4-0-1 to vote Commissioner Keating as vice-chair. Commissioner Hood moving, Commissioner May seconding. Commissioners Turnbull and Keating in support. Commissioner Schlater not present, not voting.

CHAIRPERSON HOOD: Okay. Next, under preliminary matters; we're going to move
to preliminary matters, Zoning Commission Case No. 08-21, The Athena Group, consolidated PUD and map amendment, 4460 MacArthur Boulevard, N.W. And what we would like to do is set a schedule.

Ms. Schellin?

MS. SCHELLIN: Yes, sir. If you'll recall, this was a schedule that had been set at the last meeting, the May 11th meeting, which was June 1st, for the applicant to provide an additional filing and the parties to provide their response thereto on June 8th.

May 28th the applicant filed a letter asking for a 30-day extension. And I contacted Chairman Hood asking for a revised time schedule and granting that 30-day extension. And Chairman Hood, you approved that. And I advised the parties that the applicant had until July 1st to provide their filing and the parties would have until July 8th. And then we would take this up, or the
Commission would take this up at their July 13th meeting.

Since then, I've received email communications from the parties that the ANC meets on July 1st and that scheduling would not work for them with the applicant providing their filing on July 1st by 3:00 p.m. They would have approximately four hours to review it and make a decision. So therefore, they're asking for a revised schedule.

CHAIRPERSON HOOD: Okay. Now who's asking? Let me sure I'm correct. The applicant's asking or the ANC?

MS. SCHELLIN: The ANC.

CHAIRPERSON HOOD: Okay. All right.

MS. SCHELLIN: And the applicant did advise that they would be willing to provide their filing on June 26. And the ANC said they would like to have a full week.

CHAIRPERSON HOOD: So the original date, Ms. Schellin; I want to make sure I
understand, and my colleagues will chime in when ready, the original date was July the 1st?

MS. SCHELLIN: The last date that we gave, yes, July 1st.

CHAIRPERSON HOOD: And now the applicant has agreed to move it up to June 26?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Okay. So the ANC --

MS. SCHELLIN: And they would hand deliver that to the ANC, and I'm assuming all the other parties, yes.

CHAIRPERSON HOOD: So that gives the ANCs and the other parties an additional time to be able to peruse information?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Okay. So why don't we do this and then I'll open up to my colleagues, if they want to make any changes. Why don't we do June the 26th for the applicant? And the ANCs and the other parties
can stick with July the 8th.

MS. SCHELLIN: Okay. And is that still going to be by 3:00 p.m.?

CHAIRPERSON HOOD: Yes, what's our normal time?

MS. SCHELLIN: 3:00 p.m.

CHAIRPERSON HOOD: 3:00?

MS. SCHELLIN: So the applicant should serve it on the parties by 3:00 p.m. on June 26th.

CHAIRPERSON HOOD: They've agreed to do that and make sure they do that by June the 26th.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: Is that -- ANC? Ms. Haas? Just come forward and tell us if it puts you --

MS. HAAS: Chairman Hood and Commissioners, we wonder whether it would be possible to have a week's time for the ANC to review this, which would put it on Wednesday the 24th?
CHAIRPERSON HOOD: 24th of July?

MS. HAAS: June.

CHAIRPERSON HOOD: Okay. If the applicant is going to give it to us by --

MS. SCHELLIN: June 26.

CHAIRPERSON HOOD: Right. And you want it by June the 24th?

MS. HAAS: It would give us two more days, if that would be okay.

CHAIRPERSON HOOD: Oh, you're asking if the applicant can turn it in by the 24th?

MS. HAAS: Right.

CHAIRPERSON HOOD: Is the applicant here? Is that a problem?

MS. RODDY: Hi. We'd actually scheduled a meeting --

CHAIRPERSON HOOD: Could you identify yourself?

MS. RODDY: Christine Roddy with Pillsbury representing the applicant. And we've scheduled a meeting for June 19th to get
all the parties together and just because, you know, with vacation schedules it's difficult. So obviously we would like as much time as possible to work with that. But if that's the deadline or the time line that we need to be on the July agenda, then I think that we'd be okay with it.

MS. SCHELLIN: And actually, just to clarify, we would not be putting this on our meeting until July 27th.

CHAIRPERSON HOOD: Right. So does that add more time, so the applicant can stay with the 26th?

MS. HAAS: Well, our ANC meets on July 1st and I'm quite confident that our ANC would like to have a decision made, you know, as soon as possible thereafter.

CHAIRPERSON HOOD: Well unfortunately, Ms. Haas, because of us pushing back and another Commissioner coming on, and we have a Commissioner out, before our deliberations on the 13th, we're going to have
to move it to our second meeting in July.

MS. HAAS: Oh, well that's fine.

Oh, that's fine.

CHAIRPERSON HOOD: Trying to accommodate everyone else's schedule.

MS. HAAS: Oh, that's just fine.

CHAIRPERSON HOOD: Okay.

MS. HAAS: Yes.

CHAIRPERSON HOOD: Is that a problem, Ms. Roddy?

MS. RODDY: (Off microphone.)

CHAIRPERSON HOOD: Okay.

MS. HAAS: I think what we were trying to not have to do is have another special meeting of the ANC, that we could hope to resolve it at our July 1st meeting.

CHAIRPERSON HOOD: I hope you all get it resolved at your July 1st meeting. I really do.

Okay. So what is the time schedule?

MS. SCHELLIN: June 26.
CHAIRPERSON HOOD: June 26.

MS. SCHELLIN: And July 8th still for the ANC. We're not changing the ANC's response date. We're only changing the applicant.

CHAIRPERSON HOOD: And is that --

MS. HAAS: Okay. So that's five days to wrap things up.

CHAIRPERSON HOOD: So you need two more days, the 24th?

MS. HAAS: We would love to have those two more days.

CHAIRPERSON HOOD: Well, they agreed to the 24th.

MS. HAAS: Okay. Okay.

CHAIRPERSON HOOD: All right.

Let's do this. I think the applicant agreed.

Ms. Roddy, you agreed to the 24th, right?

MS. RODDY: I guess we would prefer the 26th, only because that only gives us shorter time. That gives us five days then...
to change the plans.

    CHAIRPERSON HOOD: Let's make it the 25th.

    MS. HAAS: Sold. Perfect.

    CHAIRPERSON HOOD: Okay. 25th.

I'm glad there's a day in between the 24th and the 26th. So we're going to do the 25th.

Okay. Thank you.

    All right. Ms. Schellin, could you make it clear, please, for the record?

    MS. SCHELLIN: Yes, the applicant will provide their filings by 3:00 p.m. on June 25th. The ANC and the other parties have until July 8th, 3:00 p.m. And this case will be considered at our July 27th meeting at 6:30 p.m.

    CHAIRPERSON HOOD: Okay. Thank you very much. Appreciate everyone helping to work that out so quickly.

    Let's move right into our agenda.

We have no hearing action, nothing on the consent calendar. We're going to begin with
final action in Zoning Commission Case No. 06-14A, MRP Realty, LLC, two-year time extension for PUD at square 3584.

Ms. Schellin?

MS. SCHELLIN: Staff has nothing further to add to this, other than to just say that it's a request for a two-year time extension.

CHAIRPERSON HOOD: Colleagues, we have from the applicant a submission, which was very well done, and it really described exactly what the issues are, what the circumstances are and things that we should look at. Look at page 3, and it says, "In this case the subject property is being cleared and is ready for development; however, due to the dire economic climate, the applicant has been unable to obtain sufficient financing for the construction of the approved project. The financial crisis has frozen the credit markets." And it goes on to say that, and that's on page 3. And I think that's
sufficient for the record.

And what I would do is move that we do a two-year time extension for Zoning Commission Case No. 06-14A and ask for a second.

COMMISSIONER TURNBULL: Second.

CHAIRPERSON HOOD: Any further discussion? All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

MS. SCHELLIN: Yes, staff records the vote 4-0-1 to approve the two-year time extension in Zoning Commission Case No. 06-14A. Commissioner Hood moving, Commissioner seconding. Commissioners Keating and May in support. Commissioner Schlater not present, not voting.

CHAIRPERSON HOOD: Okay. Next
Zoning Commission Case No. 06-24B, DCO Realty, Inc, two-year time extension for PUD at 2400 14th Street, N.W.

Ms. Schellin?

MS. SCHELLIN: Again, this is another request for a two-year time extension and staff has nothing further add on this one.

CHAIRPERSON HOOD: Okay. Thank you.

Again, this is very well done. The structure and the layout of submittal I think was very easy to read and flowed well. So what I would do, and again on page 3, the applicant has been unable to obtain sufficient financing for the construction of the approved PUD due to the dire economic climate. It goes on and talks about the freeze of the credit markets.

And I would move that we allow a two-year extension on Zoning Commission Case No. 06-24B and ask for a second.

VICE-CHAIR KEATING: Second.
CHAIRPERSON HOOD: Thank you.

Moved and properly seconded. Any further discussion? All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

COMMISSIONER TURNBULL: Not hearing any opposition, Ms. Schellin, could you record the vote?

MS. SCHELLIN: Yes, staff records the vote 4-0-1 to approve the two-year time extension in Zoning Commission Case No. 06-24B. Commissioner Hood moving, Commissioner Keating seconding. Commissioners May and Turnbull in support. Commissioner Schlater not present, not voting.

CHAIRPERSON HOOD: Okay. Next, what I would like to do is to move both of these next two in block, if that's okay.

MS. SCHELLIN: On this one, I do have a couple items that the Commission needs to reopen the record on.
CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: They are Exhibits 103, 104, 105. They are letters from the Department of Navy, the U.S. Marines. And then there was a copy of the letter from the applicant to NCPC. And also to advise that we did receive a report from NCPC.

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

Ms. Nagelhout, if we move this in block and highlight the issues with the specific case, is that okay to move in that fashion, or should I take then individually?

MS. NAGELHOUT: I think you could do it either way.

CHAIRPERSON HOOD: Okay. Let's try to move it in block. First, let's open the record for the submissions of the exhibit numbers so cited by Ms. Schellin.

I move that we reopen the record for the exhibits so cited and ask for a second.
COMMISSIONER TURNBULL: Second.

CHAIRPERSON HOOD: Moved and properly seconded. Any further discussion?

All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

MS. SCHELLIN: Yes, staff records the vote 4-0-1 to reopen the record to accept Exhibits 103, 104, 105 in Zoning Commission Case Nos. 03-12G and 03-13G. Commissioner Hood moving, Commissioner Turnbull seconding. Commissioners May and Keating in favor.

Commissioner Schlater not voting, having not participated.

CHAIRPERSON HOOD: Okay. Let's take up Zoning Commission Case No. 03-12G/03-13G, Capper/Carrollsburg Venture, LLC & DCHA, second stage PUD and PUD modifications at
Squares 769 and 882. And also Zoning Commission Case. 03-12H/03-13H, Capper/Carrollsburg Venture, LLC and the DCHA, PUD modifications at Square 739, 767, 668 and 825.

Again, this was a case that was kind of to a point where we got kind of confused and I want to thank the applicant for bringing this to some kind of structure where we can understand what we're doing. Again, another job well done. You know, when you put submissions together and make it easier for us to read, I think that goes a long way with us so we don't have to fight to figure out what's going on.

The only issue on Zoning Commission Case No. 03-12G/03-13G, colleagues, if you'd turn to the NCPC report in the filing, it spoke about the issue and it actually says, "The applicant has discussed these proposed conditions with the Navy and Marines, and we've submitted a letter from the
Navy and Marines and we understand that the conditions adequately address their concerns. Moreover, including these items as conditions in the PUD would make the provisions binding upon the applicant." And it says, "The applicant hereby agrees to the modifications proposed by the Navy, thus the applicant will request that the Zoning Commission revise condition A identified in the applicant's June 1st letter to read as follows." And that is in a submission that was given June the 4th.

And then the final conclusion from the National Capital Planning Commission says, "The Commission advises the Zoning Commission that the modifications to the proposed second stage consolidated PUD development for Squares 882 and 769 would not be inconsistent with the Comprehensive Plan from the National Capital, nor would they adversely affect any other identified federal interest subject to the Zoning Commission included in its final action, the conditions set forth in the June
1st, 2009 letters from the Department of the
Navy and the U.S. Marines, and the June 4th,
2009 letter from Holland & Knight." And those
letters were attached.

And I would only ask in this final
vote that we give the Office of Attorney
General permission to revise the order stating
the agreement between all the parties that
were involved. Okay?

So with that, I would move that we
approve both of those cases, and the agenda
cites what those cases are, but let me do it
for the record. Zoning Commission Case No.
03-12G/03-13G and also Zoning Commission Case
No. 03-12H/03-13H with the modification to
03/12G and 03-13G as noted, and ask for a
second.

COMMISSIONER MAY: Second.
CHAIRPERSON HOOD: Moved and
properly seconded. Any further discussion?
All those in favor? Aye.

VICE-CHAIR KEATING: Aye.
COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

MS. SCHELLIN: Yes, staff records the vote 3-0-2 to approve Zoning Commission Case Nos. 03-12G/03-13G and 03-12H/03-13H.


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

Next, let's go to correspondence.

Zoning Commission Case No. 09-06. This is Abdo New York, LLC, request to convert application into a modification.

Ms. Schellin?

MS. SCHELLIN: Okay. This was before you. There's a request from Abdo
asking that you convert the application to a modification.

CHAIRPERSON HOOD: Okay. Let me open that up for discussion. I think we set this down. Was it at our last public meeting?

MS. SCHELLIN: I believe so. Yes, sir.

CHAIRPERSON HOOD: We set this down as a proposal at our last public meeting. And now the applicant is asking us to consider this as a modification.

Just a little history, some years, I don't know how many years it's been, but we first approved the project. The applicant came back and made some changes and presented it as a different project, even though some things changed, maybe density and some of the architectural drawings and what not. So now they're asking us to reconsider what we set down and consider it as a modification. And it's Exhibit 17. And let me just open it up for comment here from my colleagues.
Commissioner May?

COMMISSIONER MAY: Yes, Mr. Chairman. I think it's very hard to argue that since the change in the case is so significant that this is something that could actually be considered as a modification. I just don't think it fits the criteria. I mean, I'm totally sympathetic to the problem and, you know, I'm not sure that I see another way out of it. But if there is another way to consider it, you know, I'd be willing to do that. I just can't see that this case could actually be considered as a modification.

CHAIRPERSON HOOD: Anyone else want to comment?

Okay. Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes, Mr. Chair. I would just concur with Commissioner May.

CHAIRPERSON HOOD: Okay. So I guess in essence -- and Mr. Rittig or Ms. Nagelhout, I'm not sure who has this, but the
request is for us to make this a modification. If we vote against the request, then it stands as to what we set down at the last meeting. Am I correct?

MR. RITTIG: Yes, if you do nothing else, that's correct.

CHAIRPERSON HOOD: But we need to vote on what's before us today on the modification, or we can just recognize it and say we received it?

MR. RITTIG: Yes, I don't think it's necessary to vote on a correspondence item. You could, if you wanted to vote against it. That would be appropriate as well, but it's not a requirement.

CHAIRPERSON HOOD: Okay. With that, I will wait to hear from my colleagues unless, you know, if someone wants to put a motion on the table, we can. If not, we'll just say that we received it.

COMMISSIONER MAY: Mr. Chairman?

CHAIRPERSON HOOD: Yes?
COMMISSIONER MAY: I'm not sure that it's worth actually taking a vote over. But I would just want to suggest that the staff work with the applicant to see if there isn't some other way to solve this particular problem, because, like I said before, I'm sympathetic to the problem. And otherwise, I'm just not inclined to make it a modification and it doesn't really matter to me whether we vote or not.

CHAIRPERSON HOOD: Okay. I think hopefully the applicant picked up that we are not in favor of this being modification, but we will entertain any suggestions. And thank you, Commissioner May, for bringing that up in that fashion.

Okay. Any other comments?

Okay. Ms. Schellin, if you could work with the applicant?

We are not willing or we don't want to look at this as a modification, so try to work with staff and come back with
something that we can work with. Now, we haven't denied anything. So normally we'd bring you if we deny it, but we haven't denied anything. But we're good folks.

Ms. Prince, come up to the table. But we haven't denied you now.

MS. PRINCE: Thank you so much, Chairman Hood. Allison Prince of Pillsbury.

We really have thoroughly looked into all the options here. This was quite an unusual and counterintuitive result to reduce the density of a project so substantially and reduce the height and go into a more intensive zone category that we would almost triple our hearing fee.

We looked at the options. The options included considering the case as a modification, which we hadn't done at the outset because frankly we thought it was simpler to handle it as a new case, or change the zoning -- or maintain the originally requested zoning of CR, which is far more than
we need in terms of height and density, but
ironically would result in a much more
reasonable hearing fee, still one far greater
than we feel this project should be required
to pay given the amount of affordable housing.

So, aside from the Commission's
general flexibility to waive its rules and
take into special consideration the
circumstances of the project as a very, very
substantial affordable housing project, we
ended up with the modification approach as the
best option.

So, I would say the other options
would be to allow us to keep the zoning at the
CR that was originally requested, which would
at least substantially reduce the hearing fee
from that that results from C-3-A zoning, or
to just consider your ability as a commission
to waive your rules and fee schedule given
these unusual particular circumstances.

CHAIRPERSON HOOD: I'm not sure.

Typically in my tenure here we don't usually
mess around with the fees. But you hit
something, and I also saw it in your
submission about the CR, which you said is
much more than what you really need. Are you
making that request?

MS. PRINCE: Well, if that's the
only other option available, then that's the
request I would make, that we would just stay
with the zoning that we originally secured in
the PUD, which was CR, which would result in
repaying again basically the same hearing fee
that we paid two-and-a-half years ago when we
sought approval for a much more dense PUD.
It's just a very counterintuitive result. The
regulations, as you know, do contemplate fee
relief for projects that have a substantial
amount of affordable housing, but we don't
quite fit under that either.

We have a retail component. We
have some market rate housing, although we
have this extremely significant amount of
affordable housing. So it was just one of
those situations where we felt that going back to the modification option -- I'm talking too much, but as a modification we did work through so many issues last time. Traffic is, you know, a non-issue under this revised plan. Height is a non-issue under the revised plan. Density is a non-issue. And these were all worked through in connection with the original PUD. So we were hoping that the Board could be open-minded about the modification option, even though I know it doesn't quite feel right. And frankly, we didn't file it as such because we had the same reaction as Commissioner May.

CHAIRPERSON HOOD: Okay.

MS. PRINCE: I'm begging.

CHAIRPERSON HOOD: Well, we don't want you to beg. We're going to try to do it. Let's do this: I don't know, and I'm sure that they would like for us to deal with as soon as possible. It looks like we're making a little headway, Ms. Prince. We're
going to go to the Office of Planning and see what they think of that CR option.

Ms. Steingasser?

MS. STEINGASSER: I think we struggle just like the applicant and the Commission with this question. We're very sympathetic to the smaller project with an increased price tag that doesn't seem intuitive.

We wouldn't object to the CR as an alternative in the setdown, as long as it's clear that this is not setting a precedent for all cases to come and request zoning to the lowest possible fee structure. That's our concern, as we typically don't like to over zone even in PUDs, create a lot of excess in zoning. It unnerves neighborhoods. It makes community groups uncomfortable to have this excessive zoning when the project doesn't match. It's not consistent with the zone plan. However, we do agree in this case that there is a significant amount of affordable
housing that's going in and the project's come back to address a lot of financial constraints. So as long as it's clear this is not a precedent and that, you know, perhaps the Office of Zoning and Office of Planning can work together to try to balance out the fee structure going forward so that we can kind of close this disparity.

CHAIRPERSON HOOD: I guess my only question then is we have a request from Ms. Prince. The Office of Planning wants to work with the Office of Zoning to work the fee structure.

Mr. Rittig, we don't have anything in writing as a formal request, only a verbal request, and what the submission is on June 1st. Do we need to wait to get a formal request in writing?

MR. RITTIG: I don't see any reason that you could not reconsider your setdown decision and just set it down as a different map amendment request.
CHAIRPERSON HOOD: Okay.

MS. STEINGASSER: Mr. Chairman, if could also add, we would need to modify the application, the zoning tabulations sheets. The whole application would have to be readjusted now to reflect that so we get the file correct.

CHAIRPERSON HOOD: So we really can't deal with this other than to -- we don't really want to deny the modification. We just don't want to look at it as a modification. We would like to look at it is going into the context of a CR, I think what I'm hearing from my colleagues and the discussion we've had. So what we want to do, how soon do you think we could do this? Because we have a meeting coming up one week from Thursday. And what we could do is do a 15-minute special public meeting prior.

Oh, do I have enough time? Do I have seven days?

MS. PRINCE: We have a timing
issue because of the hearing notice. So it
would be very helpful and important to get the
Commission's action tonight. We certainly in
our submission that we'll make to the
Commission will change all of our tabulations
to comport with the CR zoning. We agree in
principle, but is it important for you to see
those computations before? I mean, it's the
same project. It's a two-and-a-half FAR.
It's 32 percent affordable housing, some of it
at a very, very low AMI level. I mean, it's
just a mechanism for getting to a more
sensible fee result. And we're happy to make
sure to present the case in a way that makes
it clear what the FAR is and how it's really
a fraction of what's permitted under the
zoning.

CHAIRPERSON HOOD: Okay. Again,
as Ms. Steingasser said, we don't want to make
this precedent setting, but what I would like
to do is turn to my colleagues.

We've heard the discussion. Does
anyone have any problems with moving in that fashion?

COMMISSIONER MAY: No, I would be comfortable moving in that fashion tonight. You know, I think generally there's a certain amount of unease about doing this sort of a maneuver to avoid the fee. That's why I think it's very important to have a look at the fee structure to understand why this anomalous situation occurs. And I think that it is important to recognize that we don't want to see any future cases like this where we have zoning categories selected for the sake of the fee that would be charged. So, I'm okay moving forward with those various caveats. And then I'd be happy to see the analysis from the Office of Planning that reflects the right tabulations and so on.

CHAIRPERSON HOOD: Okay. Anyone else want to comment?

PARTICIPANT: No.

Okay. So in the spirit of that, I
would move that we consider our setdown of C-3-A to the CR zone for a PUD for Zoning Commission Case No. 09-06 contingent on the submissions and everything given to us that everything equals up and is sufficient to the Commission's needs and what we need to work with.

Is that all right? Is that agreeable?

MS. PRINCE: That's agreeable.

Thank you.

CHAIRPERSON HOOD: Let me see if I can get a second.

VICE-CHAIR KEATING: Second.

CHAIRPERSON HOOD: It's moved and properly seconded. Any further discussion?

All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

MS. SCHELLIN: Yes, staff records the vote 4-0-1 to reconsider setdown from C-3-A to the CR zone in Zoning Commission Case No. 09-06. Commissioner Hood moving, Commissioner Keating seconding. Commissioners May and Turnbull in support. Commissioner Schlater not present, not voting.

CHAIRPERSON HOOD: Okay. Thank you very much.

MS. PRINCE: Thank you.

CHAIRPERSON HOOD: Okay. Next on our correspondence we have a letter from ANC 1-D, request to include additional language in notices advising residents to contact their local ANC to participate in formulation of local advice.

Ms. Schellin?

MS. SCHELLIN: Yes, this was a letter that was submitted to our office and is before you for consideration.

CHAIRPERSON HOOD: You know, when
I first reviewed this, and I don't think it has an exhibit number. At least mine doesn't.

MS. SCHELLIN: No, sir. It's just general correspondence. It's not to a particular case.

CHAIRPERSON HOOD: The ANC 1-D, which I thought was a very good gesture, but what it does is there's already an ANC law and there's already in our hearing structure a way for ANCs and persons who may not participate in the ANC, a way to come down and give their input. While it's always good to work on one accord and the ANC gets great weight, we don't want to make the appearance or give the impression that individuals cannot come down and still participate. I think that it's a bigger structure than us than just saying let's do this, let's add this sentence. And we don't want anyone to be understood to the fact that they cannot come down and testify in front of the Zoning Commission.

So I would just suggest that we
acknowledge and ANC 1-D may need to do a little more work on this and see exactly what all the legal ramifications are, and how this can properly be done through the ANC. That's just my opinion on it, and if any of my colleagues want to add anything.

Okay. So if we can just say that we acknowledge it. Anybody want to add to that?

PARTICIPANT: No.

CHAIRPERSON HOOD: Okay. So we will just acknowledge it. And I commend the effort, but I think a little more work needs to go into actually how you get it done and not excluding any persons or parties, or anyone who may not necessarily participate in their local ANC.

Okay? Is that sufficient? If it didn't make sense to Ms. Schellin -- you understand what I'm saying?

MS. SCHELLIN: (No audible response.)
CHAIRPERSON HOOD: Okay. All right. Let's go to proposed action. Zoning Commission Case No. 08-15, Friendship-Macomb SC, Inc., consolidated PUD and related map amendment at Squares 1920 and 1920N.

Ms. Schellin?

Just give us a few minutes. Let me move some of this paperwork.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: Let's get out stuff out because I think we'll have some deliberations.

Okay. Ms. Schellin, we're ready.

MS. SCHELLIN: Yes. There's a couple exhibits that we need to reopen the record for late filing. The first one, Exhibit 261, was just a matter of being an hour late. Mr. O'Sullivan and the other parties, they joined in as one group to file their draft findings of fact, conclusions of law, and he was having some computer issues. And he tried to get it in on time and just fax
machine, computer, he was not having a good
technology day. So that was the issue with
the first one.

And then in faxing it, it came in
pieces and we did not get all of it. So I
asked him to send another faxed copy so we
would have a complete copy. So that was the
reason for Exhibit 262.

And then Exhibit 264 he filed
because he realized in his haste of trying to
get it all filed, you know, pieces some got
left out. So I would just ask that the record
be reopened to accept those Exhibits, 261, 262
and 264.

CHAIRPERSON HOOD: Okay. Any
objection? I move that we open the record for
those submissions. We all have bad technology
days; I know I sure do. And ask for a second?

COMMISSIONER TURNBULL: Second.

COMMISSIONER MAY: Moved and
properly seconded. Any further discussion?

All those in favor? Aye.
VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

MS. SCHELLIN: Yes, staff records the vote 4-0-1 to reopen the record to accept the late filing of Exhibits 261, 262 and 264. Commissioner Hood moving, Commissioner Turnbull seconding. Commissioners May and Keating in favor. Commissioner Schlater, having not participated and not voting.

CHAIRPERSON HOOD: Okay. Colleagues, we've had a number of hearings on this case, Zoning Commission Case No. 08-15. Again, this was a consolidated review and one-step approval of a planned unit development and zoning map amendment for the Friendship Shopping Center, which has both a north and south parcel. We had a number of parties and I don't have them right off with me, but we
had a number of parties, a lot of them named after different streets. We had one young lady who was a party. The ANC who was a party with some conditions.

So, we have that before us. And just to kind of frame some of the preliminary questions, one of them was should the development plan be heard by BZA as a special exception under Section 1308.3 of the MW Overlay, Macomb-Wisconsin Overlay, which was one of the questions that was asked.

Also, the other preliminary one was whether it is within the authority of the Zoning Commission to adjust the amount and location of parking within the PUD. And that goes to 2405.6.

So let's take the first one. And if there's something I'm missing, help me out. This is not exactly the smallest record we've had to deal with. I'm not sure how many hearings we had, but we had quite a few. And timeliness and everything, because we have
this case along with another and they started
coming together for me, even though there were
particularly specific different issues in
both.

Let's just discuss the development
plan, whether or not it should have been heard
in front of the BZA. I'm not sure exactly
which party mentioned that, one of the parties
in opposition mentioned. And I think we said
we would hold this into abeyance until our
deliberations. So let me open it up.

Okay. With that, as far as --

Commissioner May?

COMMISSIONER MAY: No, I never
really understood that argument. I mean,
there isn't anything that the BZA would be
considering that we would not be able to
consider. So, I don't see the argument.

CHAIRPERSON HOOD: Anyone else?

Okay. I would also agree. I
think that they cited 1308.3. Within the MW
Overlay District, a lot that has 10,000 square
feet or more in land area, construction of a
new building on a lot with a gross floor area
of an existing building, about 50 percent
shall be permitted subject to review and
approval as a special exception by the Board
of Zoning Adjustment.

The Commission has authority to do
special exceptions and variances, and PUDs.
And I agree. I didn't see the validity in
that argument. And I understood how they may
have went there, but, you know, again, we
write the regulations, so we definitely can
make changes or deal with issues of things
that we write. And while we write it for the
BZA to look at, I think the Zoning Commission
has that authority.

So, anyone else wants to add to
that?

Okay. Is any moved by the parking
issue? And I think this was the only
preliminary issue that I saw. Whether there's
authority of the Zoning Commission to adjust
the amount and location of parking within a
PUD, 2405.6. Off street parking spaces and
loading berth facilities shall be provided as
otherwise prescribed in this title. However,
the Commission may reduce or increase the
amount of such facilities depending on the use
and the location of the project.

I will tell you as we get into
deliberation, it is the loading berth that was
a specific issue for me, but I want to keep
this in some type of fashion.

Okay. So that doesn't move
anyone.

Some of the issues. We looked at
traffic and, I believe -- well, let me just
say this. The opposing parties, we heard
traffic. Traffic was a major concern. With
the mitigation efforts, calming measures.
We've heard conversation about pedestrian use.
Then we went into parking. Amount of
residential parking, amount of commercial
parking. The shortfall I think on the north
parcel. Location of all commercial parking on
the south parcel. Provisions of the
neighborhood parking for surrounding uses.

Again, we talked about loading
impacts. Truck traffic estimates. A truck
management plan. We talked about the grocery
loading. I think it was on Idaho Avenue.
Location design and visual and noise buffering
of loading area. I do know, I think one of
the issues was -- I do know the gentleman's
name, Mr. Montalto, was the issue I think with
the loading and buffering. I think he even
mentioned the backup decibels and how close it
was to the proximity of the four or five
homes. And I'm going off the top of my head.
Hopefully it was four or five. Maybe more.

Also, the Cleveland Park Citizens
Association mentioned to us about the
agreement, the private agreement. Unless I'm
told something otherwise, and I think we
mentioned this at the meeting, that agreements
before parties and the applicant in any
situation are not enforceable by the Zoning Commission. This is a private agreement. And I would hope that if that was something that Cleveland Park wanted to see sustained, they would work it through the realms of which they agreed to it for. Because within our auspices we just deal with the zoning.

So those are some of the issues. Again, we have to evaluate our PUD guidelines and evaluation. But with that, that's enough to try to recap.

I will open it up. We have some finders in facts. I believe it was consolidated by and I think Mr. O'Sullivan took the lead on that. So, anyway, let's open it up and let's try to hit some of the highlights and let's see where we fall.

COMMISSIONER TURNBULL: Mr. Chair, I guess I just want to get back onto your last comment with the traffic and the parking.

I think DDoT's testimony and its evaluations were very good, very, very
critical. As you know, I think we've been
getting -- I think I've been impressed. The
more that DDoT looks at these things, we're
getting better answers, better responses and
better analysis. And I think they're looking
at this with the applicant's TMP, a new
traffic signal and traffic signal optimization
measures, the intersection reconstruction and
the truck management plan. And they're
looking at the amount of parking at the
applicant was providing. They basically said
it was sufficient to accommodate the
anticipated parking demand generated by the
PUD. I think the provision of a traffic
calming escrow account is something that they
wanted. And I think basically that the
proposed future mitigation measures provided
by the applicant are something that DDoT
looked at very carefully. And I don't think
we had any -- I mean, this was one project
that they really looked at very closely and I
think they felt very comfortable with it, and
I do, too.

CHAIRPERSON HOOD: Thank you, Mr. Turnbull.

Anybody else want to hit any of the issues that stood out or any of the ANC conditions, opposition, proponent?

VICE-CHAIR KEATING: Yes.

CHAIRPERSON HOOD: Get used to that.

VICE-CHAIR KEATING: I'm not used to that.

CHAIRPERSON HOOD: At least I didn't call you Madame Chair.

VICE-CHAIR KEATING: This is true. Yes, I'd have to confer with Commission Turnbull's statements there about the traffic and what was done. And recalling DDoT's testimony, I also felt comfortable with what they were saying about what they anticipated to be happening in the area with this development in place, and also
comfortable with their views on the parking.

You know, an issue that stuck with me, I think you mentioned was the loading, the loading dock, loading area and scheduling of the loading. I do feel with the testimony that I heard that there's a plan in place. I think we can set conditions and make sure that the plan is in place for that loading to ensure that that is controlled. And so I got comfortable with that as well.

We heard testimony about the noise being created at the main loading dock and that was truly an issue of contention and testimony in both directions on that. But and kind of going back again and looking at the plans and drawings, and at the last hearing the discussion about the height of the barrier, the berm, the trees, I did start to get more comfortable with the idea that that may not cause a significant problem and started to get comfortable again with that loading area activity and the noise that might
be generated with that.

So those are my initial thoughts on those issues.

CHAIRPERSON HOOD: Commissioner May?

COMMISSIONER MAY: Yes, I'm going to hit a few points and I may have more. But there were a number of really substantive issues, I think, that were raised in the case. You know, one is a key question of the interpretation of the Comprehensive Plan and whether that allows for a C-1 Zone or a C-2-A Zone. It seems very, very clear to me that the Comprehensive Plan allows for a C-2-A Zone in this area. You know, it certainly was an argument worth making, but, as I said, it's very clear to me that C-2-A is appropriate here.

With respect to the massing of the project and the overall density, I think it's also quite fitting. Overall the density is quite low. The density of the buildings are
placed appropriately. In other words, it's the same sort of relatively low-rise retail development in the site of the existing Giant and then a taller building toward the north end of the site. I think that makes perfect sense from a massing point of view and it's the sort of thing that you really should be doing in a PUD. You want to design the entirety of the site, not just design each block individually. And it's not reasonable in a PUD to think that you're going to try to hold each individual block to the underlying zoning requirement of that zone. So in other words, each site does not have to adhere specifically to the C-2-A requirements. You get to push things around a little bit in terms of, you know, where the parking goes or where the massing goes and so on. So I think it's very well considered there.

With regard to loading, I think that the project has made some serious progress from where it had started originally.
It was helpful seeing some of that background. And there were some subtle changes that were made during the course of the hearings that I think improved things even further.

We have seen some commercial projects in here with very problematic loading situations in the past, and in all honesty, this is not one of them. I mean, it's not the sort of perfect situation that we've seen in a couple of cases where you have an entire underground loading dock and turnaround area which we've seen in a couple of projects. But that's really an extraordinary circumstance and frankly can only happen in circumstances where you have much taller buildings on top of it. So I think that a lot of progress has been made here and I think that overall the applicant has done a good job of placing the loading strategically, being able to service the retail space from within the building, which is a problem we've seen in other projects where the loading spaces are there.
but they don't connect well to the retail.
And so we're opening the door to a lot more
street loading. I don't think that's going to
happen as much here. And I think that they've
taken steps to try to buffer the zoning from
the neighbors.

And the last thing I would mention
is that overall I believe that the design of
the project has improved significantly. I
remember looking at very early drawings of the
project and seeing frankly unattractive
elevations of the buildings that were much too
complicated, much too -- almost kind of
whimsical in color and nature. And I think
that what we have now is a well thought out,
appropriate design. I mean, I would never say
that this project is absolutely perfect.
There are certainly things that I would prefer
to see differently, but in balance I think
that overall they've managed to hit the high
points pretty well.

And I would agree with the earlier
comments about DDoT and the traffic issues and
the information that we got from DDoT. I
would say I'm actually very pleased that we're
seeing improved information from DDoT and
involvement from DDoT. And it's encouraging
just to see someone here from DDoT as
regularly as we do now. Because in the short
time that I've been back on the Zoning
Commission, the participation from DDoT has
increased significantly. I hope it stays up
at this very high level.

CHAIRPERSON HOOD: Just speaking
to DDoT, and I'm not sure if this came out at
the -- might have been this case or another
one, but there was talk about enforcement, and
I think DDoT was starting to ask that. We're
starting to see more of that request. In the
letter dated April the 2nd to Acting Director
Nero from Associate Director of DDoT, Karina
Ricks, it states that, "We believe the Zoning
Commission needs to stipulate in the order
that necessary enforcement will occur if the

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applicant is non-compliant with the loading
and delivery goals as mentioned in the
applicant's transportation report."

And I know we've dealt with that.

I wasn't sure if it was this case, but I know
we dealt with that. I don't know if we could
do that, put it in the order or not put it in
the order.

MS. SCHELLIN: (Off microphone.)

CHAIRPERSON HOOD: Okay. So
previously we dealt with that. Maybe it was
another case and we could not do that. Okay.

Thank you, Ms. Schellin, for
helping me remember.

And I do specifically asking Ms.
Haas, I think, or the ANC. Maybe it was Ms.
Barristow. One of the ANC commissioners about
the necessary stipulations and conditions to
be placed. And I think the Acting also
mentions in what we received as of lately that
there were two out of the 10 or 11 or so
conditions -- there were only two that were

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not met. and I may be misquoting that, but I
can tell you it was more that was met than it
was not met, even though this is not a
popularity contest or how many conditions you
meet. But I think that just goes back to what
Commissioner May said about how this project
has evolved and changed with the input of the
neighborhood. I know all neighbors are
probably not going to be happy with it, at
least the way I'm anticipating I'm going to
move tonight. But I can tell you also when I
look at what Cleveland Park -- this is
Cleveland Park? Okay. Well, all the parties
in opposition. Some of the concerns, the
delivery, loading, parking and traffic
mitigations, the proposed requests for zoning
relief are excessive and would negatively
impact residents and businesses in the
surrounding neighborhoods in many respects
such as delivery, loading, parking and
traffic.

I think the record is clear of
trying to put mitigation measures in place.
And I think the Comprehensive Plan designation
I think was a big issue, and Commissioner
Turnbull and Commission May have alluded to
that. I think that's sufficient.

And I just think that the record
is complete. I don't see from this standpoint
I will be voting in favor of this project. I
don't see, you know, in weighing it -- and I
think while it's not a win-for-all for those
parties in opposition, the only other thing I
would ask is that -- I think it was the Idaho
Neighbors represented by Mr. Montalto. I
think the concern of the -- and I mentioned
this earlier, the beeper noise and the loading
dock and that whole -- I just want to know if
any of my colleagues were moved with the
concessions in the buffering which the
applicant has already provided. That was the
only issue after reviewing that really stood
there for me and gave me whether, you know, we
need to revisit that.
But you know what I would like to do, is before final action, is that the applicant revisit that. You know, not necessarily do a major design change, but see if we can put some -- I don't even want to start trying to design it, but see if we can put some more types of buffers there. Because I think those few houses are going to be very well impacted. And I don't know if anyone else agrees with it, but I would like for them to at least consider. If it's not given to us, then silence is golden. I know that you chose not to take that other option, but that's the request from this Commission. If I see it, then I would appreciate it. If I don't see it, then I understand you want to move forward, which you have now. And I know that may sound counterintuitive or contradictory, but that's just how I'm going to leave that.

Okay. Anything else?

COMMISSIONER MAY: Mr. Chairman?
CHAIRPERSON HOOD: You have comments, Commissioner May?

COMMISSIONER MAY: Yes, I think we should talk for a second about the overlay and the impacts to the PUD on the overlay.

I think one aspect of this absolutely clear, which is that the PUD, if approved, would essentially override the existing base zone and the overlay for this particular project. Not do away with it, just override it for this particular project. And if this project weren't built or if at some point in the future the project were to go away, what would be left would be the existing underlying zone and overlay. That's one aspect of the overlay discussion.

The other aspect is that it seems, or one of the things I learned in the course of the hearing was that the existing commercial use in that area that's subject to the overlay that's limited by the 20 percent limit, I guess, it lies -- and the reason why
there is as much of the retail as there is of
the restaurants and such is because there is
so much vacant storefront in the existing
Giant. In other words, you could build up the
amount of restaurants and such in the other
areas where there is retail as a result of
this. I'm not sure what happens when we take
this vacant retail out of the mix. I mean,
say there's a 1,000 feet and we take 600 of it
out of the mix, does that mean that the
denominator for the calculation of how much --
what the percentage would be is now 400? And
I don't have a clear answer to that. And I
would actually appreciate it if we could have
the Office of Planning either explain it to me
now, or explain it to me in the future,
because I don't think it's something that I
would want to leave the interpretation of the
Zoning Administrator. I think we ought to try
to be very clear about what happens with the
remains of the overlay.

MS. STEINGASSER: It would be up
to the interpretation of the Zoning Administrator. We haven't asked him that direct question, but we will be happy to get that for you in the 30-day comment period.

COMMISSIONER MAY: I guess I'm suggesting that we shouldn't simply leave it up to the Zoning Administrator. Or let me put it this way: If we find that what the answer is from the Zoning Administrator and if it's going to wind up with an undesirable effect as a result, then I think the Office of Planning should come back with a recommendation for how we would alter the overlay, you know, to compensate for this.

MS. STEINGASSER: We'll be happy to do that.

COMMISSIONER MAY: Okay.

MS. STEINGASSER: If it mean accompanying a text amendment or something, we'll bring that --

COMMISSIONER MAY: Right. That would be great.
COMMISSIONER TURNBULL: Mr. Chair,
I would like to continue on. And Commissioner
May has brought up a good point. The
applicant has -- this one point of the
overlay. This is one aspect that they've said
they're basically hanging onto, they're
keeping. I mean, this whole commercial,
that's one part of the overlay that I thought
was consistently through this. You know, the
limitations on financing and eating
establishments, its neighborhood-supporting,
you know, retail, are you concerned that other
things won't come in or --

COMMISSIONER MAY: Well, the
amount of linear --

COMMISSIONER TURNBULL: The
footage.

COMMISSIONER MAY: The linear
footage is going to increase as a result of
building the building.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: Does that mean
that the total amount of linear footage is
going to increase within the entire overlay,
because we know there's going to be 20 percent
or 25 percent limit. Twenty or twenty-five?

COMMISSIONER TURNBULL: I think
it's 20.

COMMISSIONER MAY: It's 20 now.
Right.

COMMISSIONER TURNBULL: I think
it's 20.

COMMISSIONER MAY: It's 20 percent. So there's going to be a 20 percent
limit on the new linear footage. But that's
separate from the overlay.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: Then you have
the other stuff outside the overlay, or rather
outside of the PUD that's still subject to the
overlay. And the overall total linear footage
will have been reduced by the fact that what
was in the area of the PUD is now no longer
part of the calculation.
COMMISSIONER TURNBULL: Part of the overlay calculation.

COMMISSIONER MAY: Exactly.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: So what happens outside of the PUD? We know that within the PUD it's going to be limited to 25 percent. But outside, but still within the overlay -- outside the PUD, still in the overlay, it's going to be a 20 percent limit as well, but guess what? They're already way over that.

COMMISSIONER TURNBULL: Yes.

COMMISSIONER MAY: Because of the amount of square footage that's being taken out of circulation.

COMMISSIONER TURNBULL: You've got a good point.

COMMISSIONER MAY: So that's what needs to be clarified and I want to know what the impact is going to be on those other areas.

COMMISSIONER TURNBULL: Okay.
Yes. I would agree.

CHAIRPERSON HOOD: You know, I want to reconsider what I asked for about Idaho. I want the applicant to re-look at that before final. I don't want to just say silence is golden. I actually want you to look at that. Because as I sit here and look at this, I'm sure the answer -- I wouldn't get anything back. So I want that to really be reconsidered. And that's Idaho Street, what I think -- I just Mr. Montalto and his street. I want us to re-look at that loading berth and how that's going to operate, and necessary buffers.

Also in looking at the findings again, as Commissioner May was just talking, and I don't remember this, but, my colleagues, you all can help me. And Mr. O'Sullivan's addendum to his findings, he states that the applicant stated the following construction of the PUD. All signalized study in the sections would operate as an acceptable level of
service D or better if existing signal times are optimized. The applicant stated in his traffic report that it proposes that signal re-timing be deferred until the PUD is fully operational and be funded from the same $100,000 escrow proposed for traffic calming.

And I didn't remember that until I read this night. But I don't remember, there's going to be $100,000 in escrow for DDoT to be able to do traffic -- is that --

PARTICIPANT: (Off microphone.)


PARTICIPANT: (Off microphone.)

CHAIRPERSON HOOD: Okay. All right. That's really all I actually had.

Anything else?

COMMISSIONER TURNBULL: Mr. Chair, I guess the other thing that, and you know, we had a lot a discussion by the applicant, the opposition, OP and we had the former director of OP, Ellen McCarthy, testify and we talked
about the future land use map of the comp
plan. And everyone talked about
interpretation guidelines. The guidelines are
actually on the map itself. And, Ms.
Steingasser, you can jump in any time if I go
off on a tangent here. But I think that the
future land use map is not a zoning map.

MS. STEINGASSER: That is correct.

COMMISSIONER TURNBULL: It's not a
zoning map. And it does not specify allowable
uses or dimensional standards.

MS. STEINGASSER: That is also
correct.

COMMISSIONER TURNBULL: Right.
And it talks about a general character of the
area and the land use designations are not
parcel-specific.

MS. STEINGASSER: That's correct.

COMMISSIONER TURNBULL: And they
need to be interpreted. You can't isolate
that and not look back at the -- again, this
whole thing, everything's tied together.
MS. STEINGASSER: That's correct.

The title of the map is "Generalized Future Land Use Map."

COMMISSIONER TURNBULL: And the plan does not require that each block strictly corresponds to the general description. There is some give and take and understanding interpretation of how this is supposed to work with the comp plan.

MS. STEINGASSER: That's correct.

COMMISSIONER TURNBULL: And I guess I'm just touching base on a couple of -- you know, looking at some of this language here. And one thing that came up, and this was actually in the applicant's comment, that the absence of a mixed-use designation on the future land use map -- I guess the opponent had said that this precludes mixed-use development. And I guess what we're saying here is that the text is clear that housing is permitted in all commercial areas and that the mixed-use striping is only used where it is...
strongly encouraged.

    MS. STEINGASSER: That is correct.

That's correct. Housing is permitted in all but the industrial zoning district.

    COMMISSIONER TURNBULL: So I mean, I guess when we look at this and we then look at this specific PUD, this PUD is then consistent with the intents of the Comprehensive Plan.

    MS. STEINGASSER: We believe it is absolutely consistent.

    COMMISSIONER TURNBULL: Okay. I don't know if my colleagues had any other -- I mean, going back and forth between what the opposition had said and the applicant, you know, we had a lot of testimony going back and forth about, no, that's not right. You got to look at it another way. And I think there is some give and take on here, but you've got to look at it as an entirety, as development, the commercial neighborhood center, which this is. And I think that the applicant has done a good
job in recognizing that.

CHAIRPERSON HOOD: Very well said, Commissioner Turnbull, and I thank you for bringing that to light. I would concur with your comments and actually Ms. Steingasser.

I will say while I didn't necessarily agree with most of it, I do want to recognize the work that all the parties did in opposition. But I want to call my colleagues' attention to Exhibit 262. This is not the addendum from Mr. O'Sullivan, but page 57 and 58. And I just want us to revisit that very quickly and look at in the decision of the opposition and see if 1 through 7 moves anyone. And the reason I want to do this is because there are some issues in there and it goes back to what Commissioner Turnbull said about, you know, some of what we heard during the whole hearing process.

And I'll just use the first one.

Applicant shall redesign the north block building by removing not less than two floors
of the height of the proposed building.

Does that move anyone? In Exhibit 262 with the addendum, it's 1 through 7, then it continues onto 12 and on, and, you know, the amendments. But I just wanted us to look at that and for the record see if it moved anyone. And if not, I guess -- does anyone have any additional comments, or take some more time.

I think the record is complete and I think it was stated by a number of my colleagues that I think the applicant has made a lot of changes; this has been going on for a long time, and give and take, and working with the neighborhood. And as Commissioner May said, this is not the perfect resolve. It is a resolve for coexistence for that community and for the city.

So with that, I would move to approve Zoning Commission Case No. 08-15, Friendship-Macomb SC, Inc., consolidated PUD and related map amendment to Square 1920 and
1920N, with the exception of what I asked for by final and anything else. Anybody else ask for anything?

I would ask for a second.

VICE-CHAIR KEATING: Second.

CHAIRPERSON HOOD: Moved and properly seconded. Any additional discussion?

All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

MS. SCHELLIN: Staff records the vote 4-0-1 to approve proposed action in Zoning Commission Case No. 08-15.

Commissioner Hood moving, Commissioner Keating seconding. Commissioners May and Turnbull in support. Commissioner Schlater not present, not voting.

CHAIRPERSON HOOD: Okay.
MS. SCHELLIN: Excuse me. Let me record Commissioner Schlater as not voting, having not participated.

CHAIRPERSON HOOD: Okay. Let's take a five-minute break before we move to the ZRR.

(Whereupon, at 7:53 p.m. off the record until 8:05 p.m.)

CHAIRPERSON HOOD: Let's go back on the record.

Okay. Next on our agenda is our ZRR guidance. And I'm going to ask colleagues if we can put Exhibit 20 in front of us. And it's been about a month or so since we did it.

Mr. Parker, can you run us through them? Let's do that.

MR. PARKER: You want me to run you through each one?

CHAIRPERSON HOOD: You don't have to read them, but let's just talk about one and two, and give us the short version. I think you'd do quicker than I will. We want...
to make sure that my colleagues who have to leave early get to their events.

MR. PARKER: All right. So we'll do each one.

The first recommendation is main structural recommendation. And this again is this idea of allowing local customization of zoning. Right now we just have the four to six, you know, base zones and the only way that we can make changes to those is to create a new chapter or create a new overlay. This is this idea that local areas should be able to have more customization or more control over their zoning and the recommendation that we create the system to allow that. So all existing zoning categories would keep their similar standards but would be put into a standard template format that would be changeable and customizable in the future.

COMMISSIONER MAY: I have a question. The idea is just there would be a single template, is that right?
MR. PARKER: Well, there's a multitude of ways to handle it. The idea on the table would be to create a template for different densities. So a single-family template, for example, and a row house template with slightly different base rules for each of them. And again, each of these templates would have rules that apply to all single-family zones that aren't changeable and then rules like, you know, the form and height and that sort of thing that are changeable.

COMMISSIONER MAY: So we might have three single-family row house apartments?

MR. PARKER: Theoretically.

COMMISSIONER MAY: Okay. And one of the issues that came up in the correspondence that we received had to do with the effective date of the templates versus the customized zones. And seeing the way it's written up here, I mean, it seems like there wouldn't potentially be the gap that -- you know, templates go public on January 1 and all
the neighborhoods come running on January 1
for their applications and, you know, they all
line up to get their customized zones and it's
all done on January 2nd? No, it's going to
take like a year.

MR. PARKER: Absolutely.

COMMISSIONER MAY: Or something
like that. So there's going to be this time
lag --

MR. PARKER: Right.

COMMISSIONER MAY: -- in which a
zone, an area which is crying out for a
customized template --

MR. PARKER: Right.

COMMISSIONER MAY: -- is not going
to have it because of that initial lag.

MR. PARKER: Right.

COMMISSIONER MAY: How do you deal
with that?

MR. PARKER: Well, it's no
different than if they came to us today and
asked for an overlay. The overlay doesn't
take place immediately. So the idea is --

COMMISSIONER MAY: But they have

the overlay now. Assume they have the overlay

now.

MR. PARKER: Well, that becomes

part of their default. Any overlays that

happen now get written into this system. So

if you've got the tree and slope overlay that

has a 30 percent lot occupancy, then that area

starts out with a 30 percent lot occupancy.

COMMISSIONER MAY: Got it. Okay.

So that's the real question, I think.

MR. PARKER: Yes.

COMMISSIONER MAY: Because it

sounded like they were going to go in with all

this -- you know, everybody was going to

generic and it's not going to get customized.

MR. PARKER: Everybody gets the

default based on what they have now.

MS. STEINGASSER: Yes, the

existing zoning will stay in place until such

time as it's petitioned. So there will never
be a point at which property goes unzoned, or
that those areas covered by an overlay lose
that protection. They'll never get less.

COMMISSIONER MAY: Less zoned.

Okay. That's good. That is the point that --
maybe I misunderstood the letter, but it might
be worthwhile making that clear at public
meetings because that doesn't come across.

MR. PARKER: Sure.

CHAIRPERSON HOOD: Okay. So
option 1?

COMMISSIONER MAY: I'm in favor of
option 1.

CHAIRPERSON HOOD: Okay. All
right. Let's move right on to 2. Height.

MR. PARKER: Okay. So 2 through 9
deal with individual changeable things within
these templates. And we have most of these
now, but a lot of these we've -- through our
research have found, or our discussions with
the working group have found different or
potentially better ways in which to measure
them. And height's one of those. Right now
we measure height to the ceiling of the top
story. And that brings into account, you
know, unlimited height above the ceiling and
what is the top story, and what's an attic and
what's a basement. So it brings into account
a lot of things. The recommendation from us,
and we've got a lot of support from this, is
that height is a physical characteristic
that's, you know, viewed from the outside it
should be measured to the top of the roof.
And measuring it that way limits a need to
count stories, which takes care of a lot of
interpretation issues in terms of measuring
height and what a mezzanine is and a basement
and a cellar and a attic, and lot of these
other issues that come up with the code now.

So we get the impact of measuring
height in terms of the aesthetic impact
without having a lot of the baggage we have in
our current code.

CHAIRPERSON HOOD: Okay. And I
like the way Mr. Parker said 2 through 9. I
want thank you for 2 through 9.

Let's look at 2 through 9 and see
if anyone has an issue, 2 through 9. Let's
just take our time reviewing it and if someone
has an issue, we'll just --

COMMISSIONER MAY: Should I start?

CHAIRPERSON HOOD: Two through

nine. Let's do 2 through 9.

COMMISSIONER MAY: Yes,

absolutely. I'm not skipping to 10.

CHAIRPERSON HOOD: Go right ahead.

COMMISSIONER MAY: I got go 2

through 9. All right. The first question I
have on height has to do where you think the
height levels are going to be set. For
example, right now we have in most residential
zones it's a 40-foot limit and measured to the
ceiling on the top floor. And in many
neighborhoods you wind up with a, you know,
10-foot story, a 10-foot story and then like
a 20-foot story. And we don't want to have
things like that. So I'm assuming that what might happen in a row house zone, for example, is that we wouldn't have that 40-foot limit. Or maybe because the 40-foot limit, or maybe it's 35 and it goes to the top of the roof, that you won't have those sorts of anomalous additions or weird houses popping up.

MR. PARKER: Well, one of the advantages of recommendation 1 that you approved is that neighborhoods will have some say in what the height limit should be. Like right now it's 40-foot across the city for 1 through 4.

COMMISSIONER MAY: Right.

MR. PARKER: And that results in a lot of the pop-ups, where you have an existing series of two-story homes, then you get one that sticks out with a 15-foot third story like a sore thumb. So this is only changing how that's measured, that we're measuring it to the top story. It's not going to change that 40-foot off the bat. It's going to take
customizing these zones to lower that 40 feet to something lower. Is that what you asked?

    COMMISSIONER MAY: Well, so, you know, out of the box, the standard is going to be 40 feet?

    MR. PARKER: Bingo. Yes. Still. Which is actually lower than it is now, because now it's 40 feet to the ceiling.

    COMMISSIONER MAY: Okay. So it would be 40 feet to the top of the roof?

    MR. PARKER: Right. Which is actually a lower standard than --

    COMMISSIONER MAY: It's a little bit better.

    MR. PARKER: Right.

    COMMISSIONER MAY: And it's not quite enough to give you four stories when you're really only entitled to three under the current zone.

    MR. PARKER: But neighborhoods that want to deal with the pop-ups, that will still be part of the customization process to
set that standard lower.

COMMISSIONER MAY: Well, I guess I would want to be proactive in establishing the templates in such a way that -- you know, even if a neighborhood doesn't object to pop-ups --

MR. PARKER: Right.

COMMISSIONER MAY: -- like that, that you would object to it and so therefore you set the template in such a way that it discourages that kind of thing out of the box.

MR. PARKER: True. I hear that, but we've been working under the guidance that we would keep standards where they are now, be they lot occupancy or height, or, you know, not change the standards out of the gate. Just change the system to allow those standards to change. We can look at if there are neighborhoods that want to start at a lower standard just starting, or that should maybe start at a lower standard, doing that, but that would involve a lot of planning that's more than we had anticipated as part of
the zoning review.

COMMISSIONER MAY: Okay. Well, I'll register my discontent and note that I'll come back to that again.

Do we want to stay on option 2 or do we want to go --

COMMISSIONER TURNBULL: Yes, I just had one question on -- not to be problematic here. Would a mansard roof screw up the works? Could somebody fiddle around with --

MR. PARKER: No. I don't know if you have the report in front of you, but there's a diagram of how these would be measured.

COMMISSIONER TURNBULL: I don't have the original.

MR. PARKER: That's all right. One of the pictures in the diagram is of a mansard roof.

COMMISSIONER TURNBULL: Oh, it is?

MR. PARKER: But it would be to
the main roof.

COMMISSIONER TURNBULL: Before it breaks?

MR. PARKER: After. After.

COMMISSIONER TURNBULL: At the break?

MR. PARKER: After the break.

Right, right, right, right.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: So basically the only things that are allowed above that 40 feet are structure elements like a cupola or something like that.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: Or sloped roofs are measured to the midpoint of the roof.

COMMISSIONER TURNBULL: Right.

MR. PARKER: So that you don't have a disincentive for sloped roofs.

COMMISSIONER TURNBULL: Okay.

CHAIRPERSON HOOD: Okay.

Commissioner May, you can keep going.
COMMISSIONER MAY: Well, we're not going to talk them about individually and pick our options?

CHAIRPERSON HOOD: We can just go. I was going to just go up the numbers, but if you are --

COMMISSIONER MAY: All right.

CHAIRPERSON HOOD: I guess what I'm saying, since he said 2 through 9, I wanted to hit the highlights and then we could come back right quickly and --

COMMISSIONER MAY: All right.

That's fine.

On front yards, I understand the principle of option 1, but I'm not convinced that establishing what it can be within a given block is going to be circumstantial that it's based on what's happening in that given block. I mean, for example, you know, a row of houses that are built right to the property line and you've got one that's set, you know, 20 feet back.
MR. PARKER: Yes.

COMMISSIONER MAY: And so if there's a tooth missing somewhere in that row, they could go 20 feet back when you really want them to be right on the line.

MR. PARKER: So perhaps adding a proviso whereby if 90 percent of the homes or 80 percent of the homes are a solid line, that you must build on that line?

COMMISSIONER MAY: Something like that. I mean, this is like, you know, what happens in certain -- I'm trying to remember what the circumstance was. I think it might have been in construction bidding or something like that. You throw out the high bid and you throw out the low bid and then you work with the ones in the middle. I mean, maybe it's something like that. I mean, you don't want to throw out the top one, but anything that's, you know, outside the majority, just because there are going to be circumstances like that.

MR. PARKER: But I guess that
assumes that this particular neighborhood

desires conformity. There are neighborhoods

that don't necessarily desire that conformity.

Especially non-row house neighborhoods.

COMMISSIONER MAY: That's true.

Well and so maybe it's -- I mean, can you --

MR. PARKER: Just a row house

neighborhood.

COMMISSIONER MAY: Maybe it's just

a row house thing. I mean, I think it's much

more important in row houses than it is in

family detached.

MR. PARKER: Fair enough. So you

would say option 1 in general would be the

standard, but we'd have again this proviso for

if above a certain percentage of the homes

along a frontage follow the exact same

setback, new homes must follow that?

COMMISSIONER MAY: Yes.

MR. PARKER: Okay.

CHAIRPERSON HOOD: Let's do this.

Let me go back. Okay. So, option 1, we all
agree to option 1?

No. 2. We all agree with option 1, right?

COMMISSIONER MAY: Yes, with that row house provision, or something like that.

CHAIRPERSON HOOD: Under option 2?

MR. PARKER: On height.

COMMISSIONER MAY: I'm sorry. You went to 1.

CHAIRPERSON HOOD: I'm sorry. No. 2.

COMMISSIONER MAY: No. 2?

CHAIRPERSON HOOD: You're right.

COMMISSIONER MAY: Sorry. I was thinking 1 as 2, and 2 as 3.

CHAIRPERSON HOOD: Okay. All right. No. 1, we're going to option 1.

MR. PARKER: Yes.

CHAIRPERSON HOOD: No. 2, option 1?

MR. PARKER: Yes.

CHAIRPERSON HOOD: Okay. No. 3?
I think this is what you --

COMMISSIONER MAY: That's where I just --

CHAIRPERSON HOOD: That's what you were just talking about.

COMMISSIONER MAY: I added a condition.

CHAIRPERSON HOOD: Okay. And we're fine with that?

PARTICIPANT: (Off microphone.)

COMMISSIONER MAY: I added to option 1 that condition, yes.

CHAIRPERSON HOOD: Okay. So option 1, anyone else?

No. 4?

COMMISSIONER MAY: So the Commission --

CHAIRPERSON HOOD: Option 1. Does anybody have any problem with Peter's addition?

PARTICIPANT: No.

COMMISSIONER MAY: Okay.
CHAIRPERSON HOOD: Okay. Let's do No. 4. Side yards, determination of minimum size. We see option 1 from the Office of Planning's recommendation. Option 2, which says maintain existing eight-foot requirement for all side yards but allow customization of this standard for local zones.

COMMISSIONER MAY: So in other words that template that we were talking about before could be customized.

MR. PARKER: Right. I mean, all of these things 2 through 9 are customizable. Height, you know, starts out at 40, but can be changed. But for the side yards we've recommended a new standard for side yard. We recommended a building-to-lot-width ratio. So your option 1 is to adopt the limitation of side yards by a ratio that takes into account the varying width of lots. So if you only have a 25-foot or a 30-foot lot, your allowed, you know, a percentage of that for your home, the same as if you have a 75-foot lot. So
it's not a straight eight-foot. It's a percentage. We found that that was more consistent with the existing pattern of growth and development in the city.

Option 2 is skip that, keep the existing eight feet, but obviously under the template system that you approved in recommendation 1, that would be a variable standard.

COMMISSIONER MAY: Now you mention in option 1 that there would be a minimum yard maintained on each side.

MR. PARKER: Yes, that is true. If you have a detached home, obviously you have to have some yard and that yard needs to be passable and maintainable. So we'd be open for your guidance.

In talking with HP and others, you know, three to four foot seems to be something that's passable and maintainable.

COMMISSIONER MAY: Okay. All right. I think so long as there's a minimum,
I think that that could work.

CHAIRPERSON HOOD: Anyone else?

Side yard option?

PARTICIPANT: No.

CHAIRPERSON HOOD: Option 1.

Let's go to 4, side yard extensions in non-conforming.

COMMISSIONER MAY: So if you have a one-foot side yard, you would continue that?

MR. PARKER: Well, yes. I mean, it's either that or require it to go back to eight feet, or five feet, or some other measure.

COMMISSIONER MAY: Why not that same three or four-foot standard that's minimal passable?

MR. PARKER: Well, we could do that. The thought is you already have a one-foot side yard. I mean, it's already not passable and not maintainable. So it's reasonable to do that and make it work.

COMMISSIONER MAY: Let's make it
worse.

MR. PARKER: That's fair. I mean, that's what they tried to do with the existing regs where they said you can extend it back if you're within five feet. But the problem is, the way it's written, if you're less than five feet, you don't get to go to five feet. You have to go all the way to eight. We definitely think that's something we need to take care of. We're certainly open to being able to extend back at a different -- it's certainly changes the type of addition you can do if you can't extend the existing wall back and can have impacts, but we're open.

COMMISSIONER MAY: Well, I mean, it seems to me that we don't really want to encourage a situation where what's already not maintainable and not passable would get worse.

COMMISSIONER TURNBULL: Are you looking at more air and light?

COMMISSIONER MAY: No, it's the functionality of just being able to go back
there and clean it and paint the wall if you
need to, or what have you.

COMMISSIONER TURNBULL: Oh, yes.

CHAIRPERSON HOOD: Okay. So,

Peter, what is it 4B?

COMMISSIONER MAY: Well, I mean, I
guess I would just add a qualifier to option
1, which is that we look at maintaining some
sort of minimum. I wouldn't say absolutely
there has to be a minimum, but that you study
that question more carefully.

CHAIRPERSON HOOD: That's under
4B?

MR. PARKER: Right.

COMMISSIONER MAY: Okay. Yes.

CHAIRPERSON HOOD: Okay. So 4A,
Mr. Parker, option 1.

MR. PARKER: Okay.

CHAIRPERSON HOOD: And 4B with the
caveat that Mr. May has asked for.

No. 5, option 1 is remove current
court width and area requirements. Option 2
is to retain current court width and area
requirements but allow customization of this
standard for local zones.

MR. PARKER: And again, the
discussion in the working group and that we
found is that the majority of our existing
courts in the city don't meet our requirements
and all our requirements serve to do is
require people to get variances to keep them,
and to do anything to their house that
enlarges or extends them. This standard
should actually result in the preservation of
more courts that we currently have.

COMMISSIONER MAY: Does it make
sense to in essence grandfather existing ones,
but not encourage the construction of new
ones?

MR. PARKER: Well, either way
we're not encouraging the construction of new
ones. We're looking at this same
recommendation in commercial zones right now
and what we're finding is that the building
code gets to light and air issues in a way it
didn't in 1958. This was a light and air
issue in 1958 because we didn't have building
codes. And today we have court width
requirements in the building code based on
whether you have windows or not and different
other separation things that meet or exceed
this. So it really is a duplicative standard.

COMMISSIONER MAY: Okay.

CHAIRPERSON HOOD: So we agree
with option 2? I notice you all are not
making a recommendation.

MR. PARKER: Oh, sorry. Option 1
is your recommendation.

CHAIRPERSON HOOD: Oh, okay.

MR. PARKER: That should be --

CHAIRPERSON HOOD: I like option
2, but I'm not going to make a -- okay.

COMMISSIONER MAY: Well, I liked
option 2, but --

CHAIRPERSON HOOD: Well, okay.

COMMISSIONER MAY: I'll go with
option 1.

CHAIRPERSON HOOD: Okay. That's fine.

Okay. Building area. Option 1 is OP's recommendation and option 2, continue to regulate building size only.

But I want to take a note from one of the -- and I actually want to respond to a few of the submittals. I was just kind of trying to move ahead. And this is where I talk about the footprint, the building maximum footprint. And help me understand one of the commissioners in ANC-5-A-11, to allow for a minimum matter of right building footprint regardless of lot size seems harmless. However, the potential danger exists or what could be exploited is for those vacant lots that are sub-standard size. And I think the commissioner is talking about in-fill lots. This too should not be the inverted solution for more housing or increased homes. When we allow vacant lots
and in-fills to be built upon an existing mature neighborhood, it changes the characteristics of the neighborhood and imposes further neighborhood impacts.

MR. PARKER: I think that one of the underlying principles of what we've recommended here is try to allow in-fill that is conforming with what's there now. The 1958 regs were not written with the current housing stock in mind. They were written with an ideal housing stock in mind.

And what we found is that a lot of the existing homes in your city are non-conforming and putting in in-fill that is in conformance or in character with the surrounding homes requires variances in a lot of cases.

This is a recommendation, along with a lot of these others, that would help that a little bit in allowing in-fill that is more in character with its surroundings to be a matter of right rather than requiring a
variance. So if you do have a lot that's slightly smaller or a neighborhood of lots that's smaller than what would be required in the zone normally, this would allow a matter of right footprint in conformance with what's around so.

So, for example, in R-4, you have a normal lot size of 1,800. But say you have a series of 1,200 or 1,400 square foot lots that were originally built with 1,000 square-foot footprint homes. That lot wouldn't allow 1,000 square feet under the R-4, but this would say 1,000 is the standard for the neighborhood. You can build 1,000 even if your lot is too small. And if your lot's bigger, you can still build your 60 percent lot occupancy.

So this trying to get -- especially you may recall in your report the graphic that showed a series of lots in the city. And this is especially important where you have like triangle squares in your city,
where the lots change size as you go and go
from, you know, 10 percent lot occupancy on
one side to 90 percent lot occupancy on the
other side. This gets at the idea of a
conforming house size, rather than a
conforming lot occupancy.

CHAIRPERSON HOOD: Any other
comments on 6?

COMMISSIONER MAY: The thing about
6, about all the sixes, you know, I'm afraid
of unintended consequences, particularly when
it comes to new development.

MR. PARKER: Yes.

COMMISSIONER MAY: We don't want
to be encouraging, I think, construction of
homes that are too narrow and deep because
they're allowed to be that minimum size. Nor
do we want to create a circumstance where, you
know, you go through a row of houses and
they're all the same size as a percentage of
lot occupancy and then you get to the last one
in the row and it's a narrower lot. And so
therefore it gets that standard footprint and it winds up, you know, squeezing 50 percent further into the back yard than everything else. And so these are the sorts of -- you know, I'm not sure exactly how to put this all together.

MR. PARKER: Right.

COMMISSIONER MAY: And how to weave it all together. I think the concept of having, you know, a minimum footprint as a matter of right is okay in most circumstances and I think that the principle of trying to deal with, you know, changing lot sizes and consistent house sizes makes sense. But house dimensions are important to that, too, and not just, you know, how tall is it. It's, you know, how deep it is.

MR. PARKER: Yes.

COMMISSIONER MAY: So, I mean, I don't have an alternative and I don't know how to change some of these things to make it make more sense. I do think that we ought to have
more specific aspirations for new development. In other words, we ought to say we don't really want to have 14-foot wide town houses.

MR. PARKER: Yes.

COMMISSIONER MAY: Maybe it doesn't need to be 18 feet, but maybe it's 16 feet. You know, the idea of having a room and a corridor in the internal planning of a house is sort of a -- you know, it's a basic internal planning concept that, you know, makes for better houses, frankly.

MR. PARKER: Right. Well, and that gets to lot size. I mean, we're going to talk later about how big a lot is, but if you don't allow 14-foot lots, you can't have 14-foot row houses. So this isn't a matter of suddenly allowing --

COMMISSIONER MAY: We'll address that when we deal with issues of, I guess, subdivision.

MR. PARKER: Right. Right, right, right.
COMMISSIONER MAY: Okay.

MS. STEINGASSER: And I'd also point out, Commissioner May, No. 7 that's coming up gets to the building depth for row houses to maintain that kind of consistency of rear yard character equal with the consistency of front yard character.

COMMISSIONER MAY: Yes.

MS. STEINGASSER: So when we get there, that might give you some comfort.

COMMISSIONER MAY: Yes. Okay. We'll see.

CHAIRPERSON HOOD: Can we just -- unless someone else had any comments, option 1 of all the number sixes, which would be the Office of Planning's recommendation with the caveat and the concerns of Commissioner May? Because I also have an issue with 6A, but I think as time goes on it will resolve itself.

COMMISSIONER MAY: You know, I think a bunch of these will work themselves out, but I'm not comfortable with option 1 for
6C. And this goes to, you know, the specific consideration of what happens in a row house district when you come to the end of a row. And technically, it's a semi-detached house.

MR. PARKER: Right.

COMMISSIONER MAY: And right now, because it's a semi-detached house in an R-4 neighborhood, your lot occupancy drops and that's because you're supposed to have an eight-foot side yard. And I think you should still have an eight-foot yard and you shouldn't be entitled to getting that 60 percent lot occupancy, because that's going to push your house much deeper.

MR. PARKER: Even though you can do it as a matter of right now just by making it an attached home.

COMMISSIONER MAY: Not if you're at the end of a row and there's not -- and if you're butting up against a rear yard, you technically cannot.

MS. STEINGASSER: That side yard
interpretation has been once again reversed.

COMMISSIONER MAY: Well, I want to un-reverse it. Okay?

MS. STEINGASSER: Well, we'll be happy to --

COMMISSIONER MAY: I know. I think this is a very important concept.

MR. PARKER: Right.

COMMISSIONER MAY: And I think if there have been cases since the one six years ago where it was made very clear -- this is an important principle. There should be space at the end of a row. You shouldn't be butting against your neighbor's rear yard.

MR. PARKER: Is it possible to get at that without losing the integrity of the recommendation by specific language for buildings at the end of a row, a requirement for a yard at the end of a row?

COMMISSIONER MAY: Sure.

MR. PARKER: Because I think the lot occupancy solution has other implications.
COMMISSIONER MAY: That's fine.

MR. PARKER: I think we could add something like that.

COMMISSIONER MAY: I mean, I just think that that's an important concept. It's much less applicable in existing neighborhoods, but as we develop new neighborhoods I think it's been important and it shows up and it's beneficial in other PUDs that we've seen.

MR. PARKER: So what I'm hearing, and please tell me if this is the Commission's viewpoint, that for 6C we take option 1 with the addition that we will create a standard for retaining side yards on end units on rows?

MS. STEINGASSER: Could we request that we certainly take a look at that, but I think you'll be surprised by the data that we can show you and the neighborhood character that is actually quite common to have no side yard. And the zoning regs currently don't have that side yard for row houses. So I just
want to kind of keep the argument fairly open.

    COMMISSIONER MAY: Yes, they do.

Yes, they do. All of the new PUDs that come in with row houses in them have side yards.

    MS. STEINGASSER: All the new ones. But if we're looking at neighborhoods like Capitol Hill --

    COMMISSIONER MAY: Yes.

    MS. STEINGASSER: -- Brookland, Georgetown, some of the most desirable historic row houses, they don't have that side yard. They hold that corner and you go right around that street wall. And, you know, it makes fabulous streetscape.

    COMMISSIONER MAY: Okay.

    MS. STEINGASSER: So I'd like to at least --

    COMMISSIONER MAY: That's fine.

    MS. STEINGASSER: -- keep that door open to make the case.

    COMMISSIONER MAY: Okay. That's fine.
CHAIRPERSON HOOD: Okay. So we're going to take option 1 with 6C with the door going to stay open to make the case.

COMMISSIONER TURNBULL: Is a lot of our data based upon BZA, what's happened in the BZA?

MR. PARKER: We certainly look at that, but actually a lot of our data for this is based on an exhaustive study. We studied about, I forget, 6,000 lots around the city and got just general data on lot occupancy and yards, and everything.

COMMISSIONER TURNBULL: I know we've had several cases where you've got a very narrow lot next to a lot that's a little bit bigger and we've ended up getting what looks to be a row house even though there are --

MR. PARKER: Right.

COMMISSIONER TURNBULL: -- and there are row houses like that on single-family lots. It's a strange mix that gets in
there.

MR. PARKER: Right.

MS. STEINGASSER: It's a result of the way the current regulations are written that allow a row house to be by definition, not by adjoining structures.

COMMISSIONER TURNBULL: Yes.

MS. STEINGASSER: So if you have no side yard, you by definition are a row house and are not entitled to row house standards in these R-3 and above zones. So that gets to what Mr. Parker was talking about. There's incentive to fill in courts so they can kind of punch that out and then they end up with this really odd character. And we've seen it to the detriment in a lot of the historic districts where they artificially fill in courts to try to get that side yard definition. So that's why we've done a lot of field work, GIS work, and we've monitored the BZA cases. And side yards is one of the most mind-numbing, because the regs just fold in on
themselves the more you read them and apply them.

CHAIRPERSON HOOD: Okay. The next one is No. 7. This is unusual because I think you're recommending both.

MR. PARKER: That's where the other one from the earlier recommendation came from. But I think we're recommending option 1 on all of these. Absolutely. And, yes, this is the corollary to the earlier one that dealt with the minimum, or the matter of right footprint. This is talking about just for row buildings, not for others, a matter of right building depth and that gets to the same issue that Mr. May talked about.

But rear yard would still be applied except where lots became so short that the standard building depth couldn't be achieved otherwise.

CHAIRPERSON HOOD: I will just note that ANC 6-B had some issues with 7, and it's so noted on page 2 of the submission.
We've already read that. That kind of goes in line with the argument or the discussion that we talked about previously.

Okay. Any comments? Anyone wants to go against option 1?

COMMISSIONER MAY: No, we'll kind of wait and see, I think.

CHAIRPERSON HOOD: Okay. All right. So we'll go with --

MR. PARKER: That's option 1?

CHAIRPERSON HOOD: Yes, option 1.

MR. PARKER: All right.

CHAIRPERSON HOOD: So you're not recommending both?

MR. PARKER: No, sir.

CHAIRPERSON HOOD: You know, things have changed around here.

Okay. No. 8, residential densities. Number of dwelling units per structure. Office of Planning's recommendation is the first one, as you see.

I'm just going to read option 2. When
customizing zones the number of units allowed per lot may not be changed. And we can talk about option 1, if need be. If not --

MR. PARKER: Would you like this one explained?

Okay. Basically, if you've got a R-4 zone right now, you're allowed two units and that can't ever change, even if you want it to. This is saying that when we create these templates and we allow changes to height or to lot occupancy, or to anything else, we can also consider, if neighborhoods request it, changes for the number of units allowed. So if an R-4 Zone has a building stock that would allow three units, they could ask for their units per lot to be three instead of two. Or similarly, if they have very small shallow row houses, they could ask it for to be one instead of two. This just allows that number to be considered as a customizable standard, just like all of the other things.

CHAIRPERSON HOOD: Okay. Option
1. Anything else?

   Okay. Let's move right along.

Mr. Parker, if we can do No. 9?

MR. PARKER: So, now we're talking about the subdivision of lots. 9A has to do with obviously the creation of new lots. Right now we have different rules for how big your lot can be based on different things. So in the same zone you can lots of one size for one use and a different size for another use. We're saying continue to allow that change in lot size for the type of building that you're constructing. So a different size for a detached from an attached. But we can get at the uses in other ways. So if you put a church in a row house that doesn't suddenly require a variance for lot size when you're not changing the structure. Lot size has to do with the type of building that you put on, but not the use that's in that building.

CHAIRPERSON HOOD: And the option is to continue what we have, specific uses
like public schools for all other uses.

If I don't hear anything, we're going to keep moving. We will take Office of Planning's recommendation.

9B?

MR. PARKER: 9B. This is basically saying for pre '58 lots, right now, again we have these standards for how big lots can be. And that applies to when you create new lots. And a side effect of that in the current regs is it also creates variances for preexisting lots where they have to get a variance to do anything on those lots. If they existed prior to 1958, they are legal and they're buildable, and our code should differentiate between standards for the creation of new lots and taking away any building right on preexisting legal lots that don't meet those standards.

CHAIRPERSON HOOD: Any comments or anything?

Okay. Option 1.
MR. PARKER: Okay.

CHAIRPERSON HOOD: Ten, I think we can pass by that. We dealt with that earlier. Unless we want to make a change.

MR. PARKER: Yes. Okay.

CHAIRPERSON HOOD: Yes, we dealt with that earlier.

Okay. No. 11, accessory buildings.

MR. PARKER: This is related to the matter of right footprint for lot occupancy. When you do that standard, you have lots that allow matter of right footprint that put them over lot occupancy. This takes away the right then on those lots for an accessory structure, because accessory structures are currently counted with the lot occupancy. That may be fine if we decide that those lots are too small. If not, this recommendation would give that right back and say that you always have the right for a particular size accessory structure. Our
recommendation is that that would be based around the size of about a one-car garage.
You'd be allowed a matter of right accessory structure at that size even if you were over lot occupancy based on the matter of right footprint for your house.

COMMISSIONER TURNBULL: Now, this is something that comes up in BZA a lot. This is where you've got someone who wants to get a garage, they have the lot area and they can put up a garage, but they're going to have to put in a very small car.

MR. PARKER: Right.

COMMISSIONER TURNBULL: Because if you go over two more feet, or whatever, they're out. They've taken away from the minimum lot area that they need. And is this going to address this? Is this going to help them?

MR. PARKER: It could. Yes, if we define the size of a single-car garage and say that that size accessory dwelling is a matter
of right, then that would eliminate the need

to get a variance for that size garage.

COMMISSIONER TURNBULL: Yes,
because I think the standard size that --
eight-by-nineteen, I think, is the minimum --

MR. PARKER: That's for a parking
space.

COMMISSIONER TURNBULL: For a
parking space?

MR. PARKER: Obviously, you can
have a little bit more for the garage.

COMMISSIONER TURNBULL: So if you
need like two to three feet on either side, or
like another two feet in back, that's where
we've had issues. We've had any number of
cases like that on the BZA that just eat up
time.

MR. PARKER: What about a Smart
Car garage?

COMMISSIONER TURNBULL: Smart Car.

There you go. I like that.

COMMISSIONER MAY: Yes, I think
this is okay for now. We just have to kind of see where it goes.

COMMISSIONER TURNBULL: Yes.

COMMISSIONER MAY: Because I'm afraid of --

COMMISSIONER TURNBULL: Oh, it can be taken advantage of.

COMMISSIONER MAY: -- we already have, you know, significantly non-conforming for lot occupancy. I mean, what is this going to do for you? You know, you've only got a --

MR. PARKER: And this is true. I mean, this one really is a judgment call. You've given us the guidance on, you know, minimum matter of right footprint. It's really a judgment call of whether people have a right to an accessory structure and a garage, if they go over that. This would give that to them. If you pick option 2, it would just say, you know, that you still have the right to an accessory structure if you have the adequate lot occupancy, and you don't if
you don't.

COMMISSIONER MAY: Okay.

CHAIRPERSON HOOD: Okay. We're going to go with option 1, OP's recommendation.

MR. PARKER: Okay.

CHAIRPERSON HOOD: Let's go to No. 12, non-residential use of historic institutional buildings.

MR. PARKER: You all have been dealing with a case on this, so our basic recommendation would be to adopt your decision on that. I believe that's true.

CHAIRPERSON HOOD: Which case?

MS. STEINGASSER: Schools? Is that what you're referring to?

MR. PARKER: Yes.

MS. STEINGASSER: Schools?

MR. PARKER: Yes, and this could be, yes, expanded to other --

MS. STEINGASSER: We also have Section 227 which allows for non-profit use in
historic homes. It's trying to get at
adaptive reuse of some of these really larger
historic landmark buildings that we don't want
to see cut up into apartments. They're too
big. You know, a 7,000-square-foot is not for
all of us. So how to get those back and into
reuse.

CHAIRPERSON HOOD: Okay.

COMMISSIONER MAY: I do have a
concern. I wouldn't say that it needs to be
a variance, but there's something to be said
for having public input when you're going to
inject a non-residential use into an historic
institutional building that may not be
prepared to -- the building itself may not be
well-suited to that use, you know, for
whatever reason, for insufficient parking or
for the amount of street traffic it generates
at night, or I mean, any number of things.

MS. STEINGASSER: So maybe we
could take the approach that we did take with
schools, that there's a small threshold of
uses that would be pre-deemed compatible and
the rest would be by special exception, as
opposed to a strict variance.

COMMISSIONER MAY: Yes.

MS. STEINGASSER: So we could kind
of split that narrowly. Okay.

COMMISSIONER MAY: Yes. I'd be
comfortable with that.

CHAIRPERSON HOOD: Yes, I actually
like that. And I know we used that
previously.

Okay. So we'll take option 1 with
that caveat that Ms. Steingasser mentioned.

Okay. Lot control, multiple
residential --

MR. PARKER: Option 1, right?

CHAIRPERSON HOOD: Colleagues?

Okay. Lot control, multiple
residential buildings on a single lot of
record.

MR. PARKER: So this basically
says if you're in an R-4 Zone, you're allowed
two lots on your property. Under the current code those two lots have to be in the same building. Even if you have a carriage house or -- I'm sorry, those two units have to be in the same building. Sorry about that. This recommendation would allow you to put the second unit that you are currently allowed in an existing carriage house or garage, or second unit. Basically, it does not change the unit density on the lot at all, just allows more flexibility with how those could be placed.

COMMISSIONER MAY: Is this something that could be handled as a customization of the zones, of the templates rather than being automatic?

MR. PARKER: So make this an option for neighborhoods to implement?

COMMISSIONER MAY: Yes, because I mean, and we've heard very clearly from the Capitol Hill neighborhood that they don't want this, or from the ANC 6-B, that they don't
want to have this at all. They told us they
want to strike 13 entirely.

MR. PARKER: Okay.

COMMISSIONER MAY: I don't have as
big an issue with it as they might, but the
idea of neighborhoods having some control over
it, I think may be a good idea.

MS. STEINGASSER: Well, right now
all neighborhoods are allowed to have a
dwelling unit in an accessory building for
domestics. And that's what's interesting
about the code. Right now in the R-1 Zone you
can have an accessory apartment in your home
by special exception. You can have a
domestic's apartment in your garage as a
matter of right. And you can take on
boarders. So it's possible to have up to four
households in the R-1 Zones. With the
exception of the domestics, you can still have
that same boarder or accessory apartment
dwelling. It's interesting because some of
the pressure for this was coming from Capitol
Hill communities trying to reuse those old carriage houses that are no longer accessible for an automobile. They're not big enough, they're not wide enough, can't get down the alley. And there's been a couple of variance cases where they had to establish a use variance to get into that.

So, I mean, we'd be happy to take a look at it. But that's what we're trying to get at. We're not trying to create a multi-family zone where one doesn't exist. But in the R-4, like most of Capitol Hill, you're allowed flats anyway. So you're allowed to units. And we're suggesting well maybe one of those units could be in the accessory.

Okay. Not buying? Just had to pitch. Had to pitch.

COMMISSIONER MAY: No, I mean, I understand the principle and I'm not saying it's inappropriate. I'm just saying that it's, you know, maybe something that we do want to allow to be customizable.
MS. STEINGASSER: Okay. And can
we look at a special exception option instead
of the variance option?

COMMISSIONER MAY: Yes.

CHAIRPERSON HOOD: Okay. So we're
going to go ahead, we're still going to do
option 1 with that caveat.

MR. PARKER: Actually, that's sort
of a new option. Shall we call that option
one-and-a-half?

CHAIRPERSON HOOD: One-and-a-half.

MR. PARKER: And we'll write that
us as we heard it. Okay?

CHAIRPERSON HOOD: Okay. The last
one, 14, waiver of loading for historic
structures.

MR. PARKER: This is just a follow
up to a case of a year or two ago where we
updated the parking standards for historic
structures. This would do the same thing for
loading. And obviously you'll see language
similar to what you saw for parking.
CHAIRPERSON HOOD: Okay. Any other comments on this?

Okay. We'll accept option 1.

Let me just ask this last question that I have. I was looking at submissions from 6-B, 5-A-11. And the one from Ms. Zartman, I think we discussed this previously. It seems though that there's again -- well, from Ms. Zartman, I think you all did an exercise and I think we talked about this before. I'm just trying to get clear. An exercise to see if something would really work, because she mentions, "We recently met with Travis Parker and some of his staff to review maps that they had prepared with a great investment of staff time to demonstrate how the facts on the ground in Georgetown mesh with the OZ zoning proposals." And again, she says, "In fact, we believe the proposed changes could affect the historic integrity of Georgetown, the only national historic landmark neighborhood in the District."
I think this was the pilot that
you all were working on?

MR. PARKER: Well, yes.

Georgetown is one of those neighborhoods
that's very concerned about the transition
period that Mr. May had talked about. They're
concerned that there will be unintended
consequences from changing this system. And
if you change this system, they want to be
early through the gate with customizable
changes.

So we've agreed to meet with them,
you know, over the next months and years to
ensure that, you know, once this in place
we'll be ready to work with them to institute
or help them submit their proposed changes.
We're, you know, certainly as time permits
going to be working with other neighborhoods
that make that request as well. But we've
already started meeting with Georgetown to
find out what their issues are and what
customizable changes they might want to make.
CHAIRPERSON HOOD: Okay. And also, I think it was 6-B who mentioned that the work sheet I guess was not timely to them, so they didn't have ample time to respond. And we want to try to address that because we don't want Vice-Chair Keating to be drilled by the council the next time on trying to address that. So we don't want to put him in the hot seat along with me, because I'm going to sure bring him in on it. But we want to do all we can do to accommodate so we won't have that issue.

MR. PARKER: Yes, we get both sides actually. We get neighborhoods that ask us to delay our report so that they can get us comments first, and neighborhoods that want our report in early so they can get comments in on that. We're going to try and do more of both, just get information out earlier in the process for people to read and review and then get our report in earlier before the public hearing so there's more time to respond.
Our process is getting slowly but surely longer, but we'll keep at it.

CHAIRPERSON HOOD: Okay. Well again, as we always say, this is a work in progress, so we will continue to keep working at it.

Okay. Anything else?

Okay. Do we have anything else on the agenda?

MS. SCHELLIN: Nothing. We're done.

CHAIRPERSON HOOD: We don't have an OP status report? We don't need one either.

Okay. With that, I want to thank everyone for their participation tonight, and this meeting is adjourned.

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