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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
KONRAD W. SCHLATER, Vice Chairman
GREG M. SELFRIDGE, Commissioner
MICHAEL G. TURNBULL, FAIA, Commissioner (OAC)
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
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CHAIRMAN HOOD: This meeting will please come to order.

Good evening, ladies and gentlemen. This is the June 13, 2011, public meeting of the Zoning Commission of the District of Columbia.

My name is Anthony Hood. Joining me are Vice Chairman Schlater, Commissioners May, Selfridge and Turnbull. We are also joined by the Office of Zoning Staff, Ms. Sharon Schellin, Office of Attorney General, Mr. Bergstein and Mr. Ritting, Office of Planning, Mr. Lawson and Mr. Mordfin.

Copies of today's agenda are available to you and are located in the bin near the door. We do not take any public testimony at these meetings -- at our meetings, unless the Commission requests someone to come forward.
Please be advised that this proceeding is being recorded by a court reporter. It's also webcast live. Accordingly, we must ask you to refrain from any disruptive noise or actions in the hearing room. Please turn off all beepers and cell phones.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Okay, let's move right on.

Consent Calendar item, Zoning Commission Case No. 06-12E, George Washington University, minor modification to 1st Stage PUD at Square 80 and 103.

Ms. Schellin.

MS. SCHELLIN: Yes, sir.

This is a request from the applicant to add three properties that were purchased subsequently to the approval of the
1st Stage PUD.

And, if you'll recall, this was a related -- the same related amendment that was recently approved to the campus plan.

Staff would ask the Commission to consider this as a minor modification, or, actually, the applicant is asking that it be considered as a minor modification.

CHAIRMAN HOOD: Okay. Commissioners, any problems with this being on the Consent Calendar?

Okay, not hearing any.

If you'll recall, I think it was mentioned at one of these hearings that there were three town homes, and I believe these town homes are within the campus plan boundaries already. Am I correct? Okay.

And, we have a submission, Commissioners -- anyway, we have in front of us, the applicant requested the Commission approve the additions of three properties,
which is purchased -- which was purchased subsequent to the approval of the 1st Stage PUD to the previously approved PUD.

Let me open it up for discussion.

If not, I'll obtain a motion.

Any discussion?

Okay. Well, in that case I will move that we approve Zoning Commission Case No. 06-12E, which is the George Washington University minor modification to 1st Stage PUD at Square 80 and 103, and ask for a second.

COMMISSIONER TURNBULL: Second.

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

Are you read for the question?

All those in favor?

(Ayes.)

CHAIRMAN HOOD: Not hearing any opposition, Ms. Schellin would you please record the vote?
MS. SCHELLIN: Yes. Staff records the vote 5-0-0 to approve final action in Zoning Commission Case No. 06-12E, Commissioner Hood moving, Commissioner Turnbull seconding, Commissioners May, Schlater and Selfridge in support.

CHAIRMAN HOOD: Okay, next -- thank you, Ms. Schellin, next, Zoning Commission Case No. 07-27A, the EYA, LLC, Minor Modification to PUD at Square 3648.

Ms. Schellin.

MS. SCHELLIN: Yes, sir.

This is a request from the applicant to change condition ten of the order to allow payment of the $55,000 to the Ward 5 Business Council to be made to the Community Foundation of the National Capitol Region instead.

We also have an OP report at Exhibit 6. Staff would ask the Commission to consider this request as a minor modification
from the applicant.

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

Let me just open up that I live in Ward 5, I'm going to do a disclosure that I do live in Ward 5, and I'll leave it at that, because if you look behind B I've had previous cases where I've got in trouble when I don't disclose certain things, so I want to let everyone know that I live in Ward 5.

Okay. We have a request before us, and again, this is the redirect -- the request is for a modification to previously approved PUD in Zoning Commission Corrective Order, let me see, am I in the right place -- yes, the applicant requested the Commission approve a change in Condition No. 10, as I already stated, to allow for the required payment of $55,000 to the Ward 5 Business Council, to be made to the Community Foundation of the National Capitol Region
instead. And, I think this is saying, being able to vet and help businesses within the area of 5C, I think.

It looks like all parties that were involved in that case were on board with that change, and I think it's definitely conducive for the Consent Calendar.

Any further discussion?

I would move that we approve -- no, somebody else can make that motion, please.

COMMISSIONER MAY: Mr. Chairman, I would move that we approve the minor modification to the PUD, Case No. 07-27A, to change the language as noted in the Office of Planning report, stating that a lump sum contribution shall go to the Community Foundation for the National Capitol Region.

CHAIRMAN HOOD: Okay. Thank you.

It's been moved, do we have a second?
VICE CHAIRMAN SCHLATER: Second.

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

Any further discussion?

All those in favor?

(Ayes.)

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

MS. SCHELLIN: Yes. Staff records the vote 5-0-0 to approve final action in Zoning Commission Case No. 07-27A, Commissioner May moving, Commissioner Schlater seconding, Commissioners Hood, Selfridge and Turnbull in support.

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

Zoning Commission Case No. 0 -- and also, thank you, Commissioner May, and Vice Chairman Schlater -- Zoning Commission Case No. 07-26C. This is the O Street
Roadside, LLC, minor modification to PUD at Square 398.

Ms. Schellin.

MS. SCHELLIN: Yes, this is a request from the applicant to remove 80 vault parking spaces, which would amend Condition 2 and 7D of the order. There's an OP report at Exhibit 5, and there's also a letter of support from the Shaw Main Street at Exhibit 6.

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

Does anyone have a problem with this being on the Consent Calendar? Any questions?

Okay. All right, let's open it up for discussion. Any discussion on this?

COMMISSIONER MAY: I think it's pretty straightforward. I mean, I'm inclined to agree with this modification. I mean, it does change what was previously a maximum
number of parking spaces to a minimum. I don't know that that's a really big issue.

And, in fact, there's a reduction of 80 vault spaces, but it's well over what's required by the minimum for zoning.

So, I don't see any big issue with it.

CHAIRMAN HOOD: Okay. Anybody else?

Even though we are asking, I think, to deal with the vault issue, I think there were some other additional changes that may surface. I would ask maybe Mr. Ritting or Mr. Bergstein if they could clarify that for us.

MR. BERGSTEIN: Well, the first was just mentioned, there is a Condition 7D that allows for flexibility in terms of the number of parking spaces, actually, it's two, in terms of the layout of the garages. There are two that were on the first floor, one
underground.

And so, in addition to eliminating the language in that condition that refers to the 80 vault spaces that does change what was a cap on the total number of spaces to 475, and it makes it a minimum number of spaces, the 475.

And so, it eliminates the language that indicated that they were zoning compliant spaces, so that the language would just say, provide there are a minimum of 475 parking spaces.

So, those are the two changes.

The actual flexibility that was requested in the order was to vary the number, location, arrangement of parking spaces, provided that the total was not reduced below the minimum level required under the Zoning Regulations, so the flexibility requested did relate to a minimum, but what we, frankly, don't understand is where the 475 came from,
because the minimum number of spaces required in the Zoning Regulations is 308.

So, we really don't know why the term "zoning compliant" was thrown in there, and are a little bit nervous about them using a term like "zoning compliant," because it could be interpreted as the spaces not having to be zoning compliant.

So, those were the issues that we had that in addition to removing the reference to the 80 vault spaces they made the requirement of what was a cap into a minimum. That seems to be consistent with the flexibility they requested.

The thing that, I guess, concerns us the most is removing the reference to zoning compliant spaces, which isn't there, and it exists there now. Those were the changes.

COMMISSIONER MAY: Okay. Well, we didn't grant any relief with regard to making
the spaces non-zoning requirement. We didn't grant relief with regard to the size of the spaces, or the number of compact car spaces or things like that, did we?

MR. BERGSTEIN: That's absolutely correct, you do not.

COMMISSIONER MAY: So, I mean, the fact that we, you know, I mean, the parking space is assumed to be zoning compliant unless it's explicitly -- they are explicitly granted relief.

MR. BERGSTEIN: That's true. I'm being a paranoid lawyer, and so, when --

COMMISSIONER MAY: We appreciate that.

MR. BERGSTEIN: -- this was put in, and then later they somehow show parking that's not zoning compliant, my fear is them saying, well, you see it used to say zoning compliant, and now it doesn't say that anymore.
But, I realize that assuming, and I don't have the parking plans, I'm assuming the parking plans all show zoning compliant spaces.

COMMISSIONER MAY: Right.

MR. BERGSTEIN: And, if they did, and if they do not request flexibility, then the argument I just made would, hopefully, be halfway -- would be easily refuted by the Zoning Administrator.

It's just when I see a term like "zoning compliant," and it's removed, I wonder why did they do that, and that's why I brought it to your attention.

COMMISSIONER TURNBULL: Well, why don't we just leave it in?

COMMISSIONER MAY: Well, I'm, actually, more paranoid about having a phrase like that in there, because it implies that we are not, you know, unless we state it that on all PUDs they are able to build non-compliant
spaces, that's not the case. They have to be compliant, unless we, specifically, grant relief.

CHAIRMAN HOOD: I think -- I think what we can do is maybe ask the applicant to explicitly just tell us exactly what they are trying to achieve, and what they are asking to do. What do they mean by zoning compliant?

I think if they clarify that, I think at that point in time it would give our counsel a comfort level, and give, at least it would give us a comfort level, myself.

And, I don't think we are losing anything to wait and deal with this. We have so many meetings, we can always do a special public meeting. So, we can do this probably, what, this week, next week, or whenever.

So, does everybody have -- anybody have a problem with that?

Okay, let's do it that way. Let's get a clarification.
Ms. Schellin, could you schedule this?

MS. SCHELLIN: Do you guys really want to do a special public meeting, or just do this in two weeks?

CHAIRMAN HOOD: We are meeting all the time anyway, we can do it Thursday, Monday.

MS. SCHELLIN: Everybody else is saying do it in two weeks.

CHAIRMAN HOOD: Well, I mean, if it's going to put the -- I don't want to put the applicant at a disadvantage, and if we can do it -- if they can provide it to us Thursday, we can do it Thursday, it will only take ten or 15 minutes.

MS. SCHELLIN: We don't have time to do it Thursday. We have to advertise it. We can't do it that way.

CHAIRMAN HOOD: Okay. Well, seven days from today we can do it. I just don't --
two weeks, I mean, you know, come on, come on, we are here all the time anyway. I don't think -- I mean, two weeks is fine, if we do it in two weeks that's fine, but let's just see when we can do it.

And, if everybody is fine with two weeks, that's fine, but, I mean, I'm trying to be -- we are here anyway, so I'm just trying to hurry up and get it done, because I don't think it's a major deal.

COMMISSIONER MAY: We don't have an indication that this is an urgent matter, do we?

Ms. Schellin, do you have any idea?

MS. SCHELLIN: No.

COMMISSIONER MAY: No.

MS. SCHELLIN: We haven't been told that, no.

COMMISSIONER MAY: Yes. I mean, I would think two weeks is --
MS. SCHELLIN: It was filed in May.

COMMISSIONER MAY: Oh, we have the applicant here.

CHAIRMAN HOOD: Let's just do it in two weeks. Let's just do it in two weeks.

Let me ask this --

MS. SCHELLIN: June --

CHAIRMAN HOOD: -- Ms. Schellin, let me ask --

MS. SCHELLIN: -- June 27th.

CHAIRMAN HOOD: -- okay. We have a meeting June the 27th.

MS. SCHELLIN: Correct.

CHAIRMAN HOOD: How does our agenda look?

MS. SCHELLIN: Oh, I mean, as far as Consent Calendars --

CHAIRMAN HOOD: No, I mean overall.

MS. SCHELLIN: -- oh, I don't know
off the top of my head, really. It's going to be heavier than this one, yes.

COMMISSIONER MAY: There's a four-day requirement to have a special public meeting.

CHAIRMAN HOOD: We are not going to make a big issue. I think the majority of my colleagues are ready to vote on it now, and we'll have to deal with anything that comes up about it at a later date. I just think we will leave it that way.

Are we ready to vote now, do we feel confident, will somebody make a motion? Let's do it, let's move it.

VICE CHAIRMAN SCHLATER: Yes, I'm happy to do it. I don't think anything we are doing today is giving flexibility with respect to providing non-zoning compliant parking spaces. I think the parking spaces are just like it is in every other case. It has to be zoning compliant. And, if it's not, they have
to come back and ask for a waiver of those requirements.

So, I'm comfortable moving this. I move that we approve Z.C. Case No. 07-26C, O Street Roadside, LLC, minor modification to PUD @ Square 398.

CHAIRMAN HOOD: Okay. It's been moved, is there a second?

COMMISSIONER MAY: Second.

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

All those in favor?

(Ayes.)

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

MS. SCHELLIN: Yes. Staff records the vote 5-0-0 to approve final action in Zoning Commission Case 07-26C, Commissioner Schlater moving, Commissioner May seconding, Commissioners Hood, Selfridge and Turnbull in
CHAIRMAN HOOD: Okay. Next, Zoning Commission Case No. 06-11B. This is on the final action 11B/06-12B, George Washington University 2nd Stage PUD at Square 55, and again, this is a 2nd Stage PUD, and we have further processing of the campus plan.

Ms. Schellin.

MS. SCHELLIN: Yes, sir. We do have a supplemental filing from the applicant at Exhibit 75, there's some additional information that the Commission asked for, and then at Exhibit 76 you have an NCPC report that came in, that says that they do not have any -- that they found it not to be inconsistent with the Comp Plan for the National Capitol.

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

As I already stated, we have Exhibit No. 75. I think that was an
outstanding issue, dealing with the John Wilson Park, John A. Wilson memorial plaque, I'm sorry. The old park, which fronted on 22nd Street, had a total of approximately 1,243 square feet. I'm not sure we asked this, I know I asked about the plaque, the new park, which will front on 23rd Street, will have a total area of approximately 1,330 square feet.

It was mentioned, I can't remember whether it was the plaque or the park was going away, and as we see from what we have here, that was not, actually, the case. It may be relocated or reoriented.

Anything else? Okay.

With that, I want to move that we approve Zoning Commission Case 06-11B/06-12B. This is the 2nd Stage PUD at Square 55, 2nd Stage PUD and approve the further processing of the Campus Plan, and ask for a second.

COMMISSIONER TURNBULL: Second.
CHAIRMAN HOOD: It's been moved and properly seconded. Any further discussion?

All those in favor aye?

(Ayes.)

CHAIRMAN HOOD: Hearing no opposition, Ms. Schellin, would you please record the vote?

MS. SCHELLIN: Yes, staff records the vote at 5-0-0 to approve final action in Zoning Commission Case 06-11B/06-12B, and this is the final action for the 2nd Stage PUD and the further processing of the Campus Plan, Commissioner Hood moving, Commissioner Turnbull seconding, Commissioners May, Schlater and Selfridge in support.

CHAIRMAN HOOD: Okay. Next we have Zoning Commission Case No. 08-06, Office of Planning Comprehensive Zoning Regulations Review, which is dealing with the Green Area Ratio, better known as GAR.
Ms. Schellin.

MS. SCHELLIN: Yes. There is an NCPC report on this case also at Exhibit 145. Again, they found them to not be inconsistent with the National -- with the Comp Plan for the National Capitol, and I believe there's been a suggestion for a possible revision to Section 1301, but OAG, if the Commission so chooses to accept that.

CHAIRMAN HOOD: Thank you, Ms. Schellin.

I think the issue was, Commissioners, do we intend for this to be an all -- I know we had that discussion, and, honestly, I don't remember off the top of my head, but let's have a discussion, do we intend for this to be in all zones? I know there was testimony said, let's not. I remember the testimony at the hearing saying, let's not -- just do away with it being a residential zone, at least R1 through R4, but
I wasn't sure whether we said include it, don't include it, or let's just keep it as proposed. And, I think that's the issue, did we intend for this to be in all zones?

Let me do this. Mr. Lawson, am I capturing that or remembering that correctly?

MR. LAWSON: This is Joel Lawson with the Office of Planning.

Your memory is probably better than mine. Actually, I would take that back.

What were we just talking about?

No, just kidding.

I believe that what's before you right now, though, is approval of the wording in the General Chapter only, and the intent was that the discussion of which zones it would apply in would happen as we bring forward the more specific language that would apply to each individual zone.

CHAIRMAN HOOD: Okay. Any questions?
Commissioner Selfridge?

COMMISSIONER SELFRIDGE: I was just going to say that was my recollection as well. I think, particularly, in the residential zones there was concern about the impact on the individual homeowners.

So, I don't recall the exact path forward, but I do recall that that was kind of an open-ended question that we hadn't resolved yet.

CHAIRMAN HOOD: Okay. We also have a proposed change to the text. Any other comments, we all have reviewed that, and I'll just read it. "The GAR Regulations of this chapter apply to any zones and any land use subtitles in which a development table identifies a GAR requirement for that zone."

That's the proposed change.

Any comments?

COMMISSIONER MAY: I agree with the change in the language. It makes it
clearer when it applies and when it would not apply.

CHAIRMAN HOOD: Anyone else?

COMMISSIONER SELFRIDGE: I would just agree with Mr. May on that one. It seems to make sense.

CHAIRMAN HOOD: And, I'll agree with Mr. May, too, since we all are agreeing.

Okay. Would somebody like to make a motion? Maybe one of those who agreed.

COMMISSIONER MAY: I would move approval, final approval, of Zoning Commission Case No. 08-06, Zoning Regulation Rewrite Chapter B13, Green Area Ratio, and ask for a second.

COMMISSIONER SELFRIDGE: Just to clarify, that's with the revised text.

COMMISSIONER MAY: Sorry, with the revised text, as recommended by the Office of the Attorney General, and also as agreed to by the Office of Planning.
COMMISSIONER SELFRIDGE: Second.

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

All those in favor aye?

(Ayes.)

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

MS. SCHELLIN: Staff records the vote 5-0-0 to approve final action in Zoning Commission Case 08-06 as amended, Commissioner May moving, Commissioner Selfridge seconding, Commissioners Hood, Schlater and Turnbull in support.

CHAIRMAN HOOD: Okay. Question for Mr. Bergstein. Oh -- no, I'm just being funny, I know he left. Okay.

Let's go to proposed action in Zoning Commission Case No. 05-28C, Lano Parcel 12, LLC, 2nd Stage PUD and Related Map...
Amendment at Square 5055.

Ms. Schellin.

MS. SCHELLIN: Yes, sir. Staff has nothing further to add to this one, other than to say that if the Commission does take proposed action on this, then staff will have a -- staff will order to issue pass out this evening.

CHAIRMAN HOOD: Okay. Thank you.

Any comments on this? A lot of this has been hashed out, and a lot of this is kind of running together, at least for me.

This is dealing, specifically, with the Community College of the District of Columbia in this area, this is the 2nd stage.

VICE CHAIRMAN SCHLATER: Mr. Chairman, what was the resolution on the truck loading zone? I guess that would be my question, because that seemed like it was never fully resolved and there were a lot of questions about it.
CHAIRMAN HOOD: Was that on the -- was that on this part of it? Okay. Well, because I don't recall if we had a resolution, I know that was an issue back then -- okay -- let's see if that's satisfying, that was in our packet, I think -- that wasn't in tonight's packet, though, was it, it was in the package previously. Okay.

COMMISSIONER SELFRIDGE: The document that we are referring to is the May 18th memorandum from Gorove/Slade traffic consultant on this, and it says that the applicant is proposing to manage large vehicle deliveries by adding more components to the loading dock management plan already proposed.

And, this includes reviewing the truck time, and time of each scheduled delivery, the deliveries will be restricted to off-peak times during the morning and evening rush hours, or on weekends, to limit loading activities on Kenilworth, and no loading
activity or queuing to the loading dock will take place on Kenilworth Avenue, with the exception of larger vehicles described below, and those are large tractor trailers that cannot be accommodated within the loading dock area in the parking garage.

So, I think the question was just, if I recall, trucks were backing up to get to this loading dock, is that right?

MS. SCHELLIN: Commissioner Selfridge, if I may, the record was left open for DDOT to respond to the applicant's proposal on truck deliveries, if you are talking about on the street, and we never got a response back from DDOT.

However, they were notified, and the record was left open, just to ask whether they changed their -- and, whether they changed their response on their position, so that Kenilworth Avenue can be used as both entrance and exit, and we did not get a
response back.

But, they were notified that the record was left open for that.

COMMISSIONER SELFRIDGE: And, DDOT hadn't endorsed that proposal initially, if I recall, I think they had some reservations about it.

MS. SCHELLIN: We don't.

COMMISSIONER SELFRIDGE: Yes.

CHAIRMAN HOOD: Well, here's what we can do. This is proposed action, Ms. Schellin.

MS. SCHELLIN: We could reach out to them again between now --

CHAIRMAN HOOD: Talk to DDOT, and if we can reach out to DDOT and the Office of Planning's assistance, and let them know this issue came up again by Commissioner Selfridge, and by the Commission, and we would like to find out how they feel about what has been proposed to us at this time. Okay?
MS. SCHELLIN: I'm, actually, going to meet with Mr. Parker tomorrow, Martin Parker, tomorrow, and I'll bring this to his attention.

CHAIRMAN HOOD: Okay, good, just to let them know we need a response. That would be great.

Anything else?

COMMISSIONER MAY: Mr. Chairman?

CHAIRMAN HOOD: Commissioner May.

COMMISSIONER MAY: I just have a few thoughts about the project in general.

I think that there was a component of the nearby affected community that had significant opposition to this project and also the other project that we were considering, the medical facility.

And, I appreciate the concerns, but I'm not totally convinced that the concerns are well founded. In other words, you know, the project, I think one could
question whether the project overall is too dense, and whether there is too much there, and that the project overall is going to cause some unacceptable impacts on the neighborhood.

But, I think we've gotten past that already. The Commission already made a decision about that, and I don't think that this change in use is going to wind up having a significant detrimental effect on the project overall. In fact, I think it's a beneficial project in many ways.

So, I am comfortable moving forward. Like I said, I'm sensitive to the concerns of the neighborhood, but I'm just not convinced that it will -- that the bad effects that may come of this project are going to be any worse than what was already going to happen.

And, I don't think, frankly, that they are that bad overall, otherwise the Commission wouldn't have approved this in the
first place.

CHAIRMAN HOOD: Any other comments?

And, I would agree with you, Commissioner May. I've looked at this, considering that the Community College makes it there, I'm very hesitant on that, but then again, I know if the use of something changes, obviously, they have to come back in front of the Commission. So, that gave me a comfort level.

Also, I think that what we did in the 1st stage of this whole plan, I think gives me more of a comfort level. We, basically, only approved half of it for the overall plan. I think that lightens the load, but more or less I think it's a bigger fundamental problem in that area, and I don't know if we can blame, or not necessarily blame, I don't know if we can point at these two projects that we did approve as opposed to
the whole request as being the major factor.
I think there's some infrastructure issues
that need to be dealt with. How we get to
there, that's why we had the professionals,
DDOT, Planning and all the rest.

But, I think that the way we
approved the 1st stage gives me more of a
comfort level to go ahead with these two
projects that we did approve thus far, and
that's my two cents worth.

Anyone else?

Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes,
again, Mr. Chair, I would agree. I think --
and also with Commissioner May -- I think that
the major concerns we were hearing were from
Eastgate Gardens, with Mr. Rapp and the ANC
Commissioner. But, I think they are actually
down the road a piece, about a 1/4 of a mile,
I'm not even sure if it's that far away. But,
I think the immediate reaction from a lot of
the people was that they were in support of the Community College, and I think I agree with Commissioner May when you said that this specific use probably -- this is going to be a benefit to the community. And, I see no reason why we shouldn't go forward with this.

I mean, I appreciate their concerns down at Eastgate Gardens, but I think their concerns are more related -- they had concerns about the college and the amount of students, but I think it's more related to the density of the project as a whole, and getting in and out of their area.

And, I think that they -- to me it could have been anything else, they still would have had concerns about what is being developed along there.

But, I think the Community College is a benefit, and should go forward.

CHAIRMAN HOOD: And, I would say that if we will recall, previously, when this
was proposed, everybody was holding hands, the community was all in favor of it. But again, that was residential, and I think with this Community College, students, I don't know if students, maybe students drive now, I had bus tokens and I had to get there the best way I could, but I think now students are probably more acceptable to using public transportation, I believe, than the residential way where there would be more cars and impact. But, I don't want it to fall short on the impacts.

I think this Commission knows the impacts. I think that Eastland Gardens, Mr. Rapp, and Commissioner Seedman and all of them, I think they have some serious concerns, but whether it's addressed in these two projects, no, I think it's addressed in the bigger issue.

And, back to Commissioner Selfridge's comment about the loading. I
think that -- and I think that's going to be key for us, Ms. Schellin, at the -- before we do final, because if I recall that was one of the concerns that they had about how those trucks would have to -- this is kind of like -- it's almost like they sit out some kind of way, and would cause either -- maybe a potential accident, or a blockage of traffic moving. I think that's what the testimony we heard, but, hopefully, we can get some kind of response from DDOT.

Okay. Anything else?

All right. Can we get a motion? I will move that we approve Zoning Commission Case 05-28C. This is Lano Parcel 12, LLC 2nd Stage PUD and related map amendment at Square 5055, with the addition of asking for the follow-up as Commissioner Selfridge has asked for, from DDOT before we take final, and ask for a second.

COMMISSIONER MAY: Second.
CHAIRMAN HOOD: Moved and properly seconded.

Any further discussion?

All those in favor?

(Ayes.)

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

MS. SCHELLIN: Yes. Staff records the vote 4-0-1 to approve final -- or proposed action rather, in Zoning Commission Case 05-28C, Commissioner Hood moving, Commissioner May seconding, Commissioners Hood and Selfridge in support, Commissioner Schlater not voting, having not participated.

CHAIRMAN HOOD: Okay. Next -- that's why you didn't say anything. Okay. All right. Under correspondence, Zoning Commission Case No. 05-28, this is Parkside Residential LLC. Got a letter from the Zoning Administrator, notification 2nd Stage approval.
not necessary for Block D.

Ms. Schellin.

MS. SCHELLIN: Yes, sir.

Both of the correspondence items are carryovers from our last meeting. The Commission had asked OAG to check into, or to do some checking into these and report back to this meeting, so that's why they are back on the agenda at this meeting.

So, I think it's probably more appropriate for OAG to give you an update on these.

CHAIRMAN HOOD: And, I think, if we could, Mr. Ritting, thank you, Ms. Schellin, let's do them one at a time. Let's do A first.

MR. RITTING: Sure. Mr. LeGrant's letter, in essence, said that 2nd Stage approval wasn't necessary to construct the park improvements.

Essentially, we agree with Mr.
LeGrant for slightly different reasons. We believe that because there's no structure on the park, or at least he believes that, and I have no reason to disagree, there's no need for a building permit, so there's no reason for the Zoning Commission to be involved at all.

Looking down the road a ways, there is some issue about how do you deal with future 2nd stage applications that involve the park parcel and related parcels, but there's no reason to deal with that now, unless you absolutely wanted to, but there's absolutely no reason that -- it doesn't really affect Mr. LeGrant's decision.

CHAIRMAN HOOD: Does anyone want to take that up?

COMMISSIONER MAY: Yes.

CHAIRMAN HOOD: Commissioner May. I shouldn't have asked the question.
COMMISSIONER MAY: Well, first of all, you remember that it states that a building permit is not required. I believe a building permit is required for them to build this park, to make the improvements that are depicted in the drawing that we saw. But, that's a secondary point.

My issue is that the definition of structure is anything constructed, including a building, for which the use of which requires a permanent location on the ground. I don't understand why building this path, and crisscrossing paths, and light structures and so on, I assume there will be lighting in here, why that does not constitute a structure. In my mind it does.

MR. RITTING: Well, I wasn't really taking a position on whether or not the things depicted in those plans were or were not structures. I was just responding to Mr. LeGrant's statement in his letter, that he
concluded there were none.

COMMISSIONER MAY: Okay. Well, I think our instruction to Mr. LeGrant is that a path and light fixtures, and things like that, do constitute structure. And, I also think that as a matter of good practice the Zoning Commission ought to be explicit about a park that is a component of a PUD.

And, if we take a PUD like this, that's all 1st stage, we ought to do a consolidated review of the park component of it, unless all they are doing is taking an open area and planting. I mean, I think that this is much more than planting.

And, I want to see this design, I would want to see this design, and know that it's well done and appropriate for the community and so on, and in more detail than we would see it in -- than I assume we saw at the 1st stage, I wasn't part of the 1st stage so I don't know.
I mean, that's my view.

CHAIRMAN HOOD: What do we do with -- didn't we have something to do with Diamond Teague, I think is the name, I think we had something to do with that park. We didn't? I could have sworn we did. Okay, because I remember that was with the baseball stadium.

You know, it might have been -- Diamond Teague Park might have been proffered as an amenity.

CHAIRMAN HOOD: Maybe that was it, I know there was something. Okay. I'm sorry.

Mr. Turnbull.

COMMISSIONER TURNBULL: Mr. Chair, I would agree, I guess in, specifically, Phase 7, or Phase 8, we see a fountain, what looks -- what appears to be a fountain in the middle of the park. That's definitely a structure that I think I would want to see also on the very last, on the park, Phase 8. It looks like they've also created a couple of
playgrounds.

There are some structures. There is some very public -- there is some definitive work being done, and I think, as Commissioner May said, I think that's something we ought to be looking at.

CHAIRMAN HOOD: So, what are we asking? We are asking -- are we asking the applicant, or are we asking Mr. LeGrant, what are we -- what do we want? I know we want to see it, I do know that, but I guess I have to ask Mr. Ritting, how do we go about doing that?

MR. RITTING: Well, I mean, if you disagree as a body that these plans show a structure, I think you should probably communicate your interpretation of the Zoning Regulations to Mr. LeGrant, and if he knows the way that you are interpreting it I would imagine that he would change his view about whether or not a building permit is necessary,
and whether or not the applicant can proceed without one.

CHAIRMAN HOOD: Does everyone agree with Commissioner May, and I think Mr. Turnbull is on the same page.

Mr. Vice Chairman.

VICE CHAIRMAN SCHLATER: I think, I'm not sure I agree that this is a structure, first of all. I think Commissioner May is correct, it would require some sort of permit to get it. I'm not sure if it's a building permit or not.

But, I think we could have a debate about whether the park itself is a structure. I think as a general principle, when you have a major park as a part of a PUD process, and it's significantly improved, I think we, as a commission, should ask the applicant to come back with further developed plans on the park. I absolutely believe that to be true.
And, I think it's hard to say whether or not, based on these very, you know, almost cartoon-like drawings, whether or not plans are, you know, consistent with the drawings that were submitted to the Commission, because, frankly, they are not very well developed. So, it would be very hard to tell whether or not they are consistent with the drawings.

I think -- so, I'm not sure how the Zoning Administrator made that determination, but, in general, I think if we want parks to come back as part of 2nd stage PUDs we should make it explicit.

So, if there's a park as park of Union Station air rights down the road, we should see it. Or, if there's a park as a part of some other major PUD that comes around, we should just be very explicit about that.

But, I'm uneasy saying today that
this park constitutes a structure, and saying
that for all future parks in the District the
Zoning Commission has some sort of
jurisdiction. I'm not -- I'm not comfortable
-- I'm not there yet.

CHAIRMAN HOOD: Commissioner May,
you were reading the definition of a
structure, could you just read that again? I
can't put my hands on it.

COMMISSIONER MAY: Sure.

MR. RITTING: I have it here.

It's anything constructed, including a
building, the use of which requires permanent
location on the ground, or anything attached
to something having a permanent location on
the ground, and including, among other things,
radio or television towers, reviewing stands,
platforms, flag poles, tanks, bins, gas
holders, chimneys, bridges and retaining
walls.

The term structure shall not
include mechanical equipment, but shall include the supports for mechanical equipment. Any combination of commercial occupancy separated in their entirety, erected, or maintained in a single ownership shall be considered as one structure.

That's the definition.

COMMISSIONER MAY: For me, what's key in this case is it says anything constructed, including a building, for which the use of -- I'm sorry, the use of which requires permanent location on the ground. And, you know, as soon as you start building pathways, and, certainly, when you build fountains, those constitute structures in my book.

And, I think, actually, that's a very important principle that we should be abiding by. If this is the way it's defined, you know, it's more or less anything that's permanently affixed to the ground.
VICE CHAIRMAN SCHLATER: So, do you think that the logical interpretation of that, and I'm not disagreeing with you, that we would then have the authority to regulate all structures, meaning if we wanted, instead of brick pavers, we could mandate LID pavers or something like that for all buildings, would that be within our purview?

Because you are saying anything that's affixed to the ground.

COMMISSIONER MAY: Well, we are, in effect, doing that with the Green Area Ratio. I mean, we are establishing, not necessarily specific requirements for pervious paving, but, you know, we are giving points for pervious paving.

VICE CHAIRMAN SCHLATER: Or, could we require any park over the size of a quarter of an acre to come before us for some sort of design review?

COMMISSIONER MAY: No, because, I
mean, those things are subject to zoning, they are within zones, they have to comply with zoning. There are certain things that you can do as a matter of right.

VICE CHAIRMAN SCHLATER: But, we could, I'm just saying that would be within our authority, if we are taking that view of what a structure means, that we are authorized to regulate it.

COMMISSIONER MAY: Yes.

VICE CHAIRMAN SCHLATER: I'm just, I mean --

COMMISSIONER MAY: Yes, I mean, I guess maybe in theory we could, you know, we could argue that the Zoning Commission should have design review authority over parks, but we don't -- is there design review authority over anything except where relief is required, or where a PUD is established? That's where we are getting into design review.

COMMISSIONER MAY: Well, okay, CG
overlay or some of these other overlays, yes, we get into that, too.

But, it's not a matter of -- I mean, we don't do that as a matter of course for a standard matter of right construction, why would we do that for a standard matter like construction for a park? All I'm saying is that this was part of the PUD, it's part of the entire look and feel, and what we are supposed to be evaluating is the exceptional design of these.

I mean, the whole point of the PUD is getting better spaces and trading off a little bit of, you know, giving a little more than matter of right in exchange for getting better places and better spaces. Why wouldn't we want to have that idea extended to a park that's developed as part of the project? That's the justification of the sort of moral justification, if you will.

I mean, the legal justification,
in my mind, is that I believe that any time you put in a permanent path we are talking structure, and I think, actually, that is an important principle to stick by.

CHAIRMAN HOOD: Okay.

COMMISSIONER MAY: I mean, let me put it this way. There was a BZA case not too long ago in which the City prevailed in that structured soil was considered a structure. So, I mean, you are probably familiar with that case.

VICE CHAIRMAN SCHLATER: No, actually, I'm not. I might be familiar with it.

MR. RITTING: I don't remember the name of it, but I am familiar with it in general.

COMMISSIONER MAY: Yes. I know the name of it.

MR. RITTING: I just wanted to add, okay, so if you don't buy that this does
not include a structure, then the Zoning Administrator made another argument in his letter. He cited some zoning regulations that I don't think, necessarily, support the argument that he was making, but it's still a valid argument, and that is, to the extent that the Commission did approve a 1st Stage PUD that included the park, and he reviewed the 1st Stage order and the plans that were associated with them, and he believed that the park plans that were submitted to them complied with what was approved in the 1st Stage PUD. Do you believe that that is sufficient justification for him to issue a building permit if one is required?

COMMISSIONER MAY: I mean, essentially, it's the park is being viewed as an amity to the project, and they were providing that, is that what the argument was? Is that what I remember?

MR. RITTING: That's a related
argument, yes, that they are providing the park now. It was at least preliminarily approved in the 1st Stage PUD, and that's if we are assuming that a building permit is necessary sufficient for the Zoning Administrator to issue whatever building permit is necessary to construct the park.

It, more or less, begs the question, though, of whether you believe that the 1st Stage PUD approval is sufficient for the Zoning Administrator to issue building permits. And, that's somewhat a divergence from your practice.

I leave it to you to sort of discuss and decide whether you believe that the course of action the Zoning Administrator stated in his letter is appropriate.

COMMISSIONER MAY: Well, I mean, I'm not persuaded that the delivery of the park as part of the 1st stage is the right procedure, and I think that, you know, if we
could wind back the clock and handle this the right way, I think that the smart thing would have been done, or would have been to do, would have been to have sufficient development of the park's, the design of the park, to grant a consolidated approval of the park. If that was the intention, and we knew that that was the intention -- the last thing I want to have happen is to slow down the delivery of the park. That's an important amenity that should be delivered as quickly as possible, but I do think that -- I don't believe that there's been sufficient design review of that to go forward. And, I think it's an important part of the PUD.

If it were that they were going to put in a certain amount of money into improving another park elsewhere, that would be a different matter. We've approved PUDs that included amenities like that in the past, and we don't get involved in the design of
those parks.

CHAIRMAN HOOD: So, with all that said, what are we trying to achieve, and how does the Commission want to proceed?

COMMISSIONER MAY: Well, I would prefer that we notify the Zoning Administrator that there shouldn't be -- that a permit should not be issued, and if it has been issued then it should be revoked, so that we can have a 2nd stage review of the plan.

CHAIRMAN HOOD: I guess my question, Mr. Ritting, is, first of all, can we do that? And, second of all, who would do it, would it be Office of -- if we can do it, and everybody agrees with it, that's the first question, can we do it? The second question is, then what would we have to do, would we have to have a limited scope hearing just for that piece, or what?

MR. RITTING: Well, I think you could do it, because it's pretty clear that no
building permit has been issued for the park. I'm pretty comfortable in saying that.

And, in that case, I think it would probably be sufficient, and maybe you agree with me, maybe you don't, but just notifying the Zoning Administrator of your interpretation of the regulations and the need for a building permit in order to construct the depicted improvements in the plans, and the need for 2nd stage approval before it's appropriate to issue such a permit. I think that would be sufficient to ensure that the Zoning Administrator comply with your stated beliefs tonight.

CHAIRMAN HOOD: And, I'm not sure I come all the way down with what Commissioner May is saying, but when he reads the definition of structure I think he's, on at least that piece he's right on target.

So, that's why I want to know, how do we get to where we need to get. So, I
MR. RITTING: In the past when this has come up, the Office of Zoning has issued the letter, and Ms. Schellin, as Secretary, has signed. Of course, I would help her draft the letter, and if we wanted to circulate it to you before it went out, I'd be willing to do that. I'm sure Ms. Schellin would be willing to do that, or if you trusted us to review the transcript of tonight's meeting, and state it in a letter we are willing to do that as well.

CHAIRMAN HOOD: Okay. Commissioners, you heard what's before us, and how we can proceed, taking up the cause of what Commissioner May, and I think Commissioner Turnbull, are definitely on board with, and I agree with the definition, that's where I am so far.

So, I think we can exercise that, unless someone objects. I don't know whether I
need to call for a vote.

Vice Chairman?

VICE CHAIRMAN SCHLATER: I mean, I'd like to see the park move forward. I don't want to delay it over this issue. I think, you know, the burden is on the Commission to be explicit in its expectations. I don't -- my sense of all past cases is this has not been the common practice and understanding for how this works, so we are changing something here. And, I'm okay with having a hearing on it, I guess, to talk about it more, but I'm not sure I agree with the underlying thrust of Commissioner May's argument.

COMMISSIONER MAY: I'm not sure what you mean, though, by suggesting that this is -- that we are differing from past practice on the part of the Zoning Commission. I don't recall any other case, not that I would necessarily recall, maybe there's a history to this, but I don't recall that portions of any
The project has moved forward on a 1st Stage approval only, and been constructed.

I mean, maybe that's the question worth researching first.

CHAIRMAN HOOD: I don't think, I would have to agree with you, I don't think that's ever been done.

COMMISSIONER MAY: Right. So, I mean, I think that's a --

CHAIRMAN HOOD: That makes your argument.

COMMISSIONER MAY: -- that's bothersome in itself.

VICE CHAIRMAN SCHLATER: I think my point is whether or not a park is considered a structure, which, you know, landscaping, trees, shrubs, whether that falls within the definition of a structure. I don't think that from my common sense view of it, it doesn't seem to fall under that definition.

CHAIRMAN HOOD: Well, I would
agree with you, Vice Chairman. My common sense view of it, but when I read the definition, that's why I say, the definition makes it sound like it does, at least the way I read it.

COMMISSIONER MAY: You know, if all we were talking about was Phase 1, where it's grass and a few trees, I don't think there would be any issue. But, I think that's the existing condition that's not really development of the park.

And, I think as soon as we start paving and putting in lighting, and, certainly, when we put in fountains, that all that constitutes structure.

CHAIRMAN HOOD: Structure, anything constructed --

COMMISSIONER MAY: As provided in the regs.

CHAIRMAN HOOD: -- anything constructed, including a building, the use of
which requires permanent location on the
ground, or anything attached to something
having a permanent location, I'm sorry, that
definition does it.

COMMISSIONER TURNBULL: Mr. Chair,
as Commissioner Schlater had said, these are
still cartoons, but it does, I mean, looking
at this cartoon I would see a fountain, and,
you know, I'm not sure what it's like, but a
fountain is a significant structure that needs
footings, needs plumbing, and it needs a lot
of -- it looks like there could be some walls,
I'm not sure if there is some kind of typical
wall around here by the sidewalk, playground
equipment. I don't know if they have footings
or what they are doing, or if there's walls
here, too.

But, I think there's enough here
that would at least push me down the road to
say I think I want to look at this. It's,
depending on what -- I'm not familiar with
what was shown on the 1st stage, if that was, obviously, just a cartoon, and whether it, actually, showed Phase 7, or it showed Phase 1 in the original. I'm not sure what it showed, but, again, it's enough there to beg the question as to what's happening. That's my concern.

VICE CHAIRMAN SCHLATER: I guess, here's my concern, just to put it out there. There's going to be a lot of times when people are doing, say, land development on a project before they are, actually, building a structure that includes landscaping. My question is, do we have to come back to -- somebody who is developing the project have to come back every time, you know, on a PUD, they are building any landscaped element within their project, for 2nd stage review?

COMMISSIONER MAY: You know, I think it depends on what it is, and if there's a phasing plan associated with the project,
you know, those sorts of issues can be addressed. We don't want to give a 1st stage approval that's really open ended and can allow for a lot of kind of on the fly development of the site with, you know, with landscaping and so on.

We want to be looking at what the finished project is going to be, and in the 1st stage we want to know, generally, what it is.

We don't -- I think in a 1st stage review I would not have even looked carefully at the design of the park. I think we would have looked to see, you know, is it mostly green, is it mostly, you know, plazas, that's about the extent of it, unless it had some important feature that played into the overall design I'm not sure I would have even given it any kind of significant thought.

I mean, at that point we are looking, in the 1st stage we are evaluating
mostly, you know, the massing of things, the
density, you know, where the building
footprints are and so on. We are not looking
at the specific design of the park.

If a developer wants to be able to
move forward on a park component, then it
should be treated as a consolidated.

That's what I feel.

VICE CHAIRMAN SCHLATER: Well, it
sounds like a majority of the Commission wants
to move forward to take a look at the plan, so
I'm not going to belabor the point.

CHAIRMAN HOOD: So, let's go ahead
and proceed, Ms. Schellin, Mr. Ritting, in the
fashion, and let's notify the ZA of what our
wishes are.

Okay. Is that all we need to do?

I think it's a majority here. Okay.

All right, let's move to the next,
the last one on correspondence. It's Zoning
Commission Case No. 07-02, Columbia Heights
Ventures, Parcel 26 LLC, letter from the Zoning Administrator pursuant to 2409.8.

Mr. Ritting, did you want to explain what they have there for us?

MR. RITTING: Sure. On the 23rd the Zoning Commission received a letter dated May 12, 2011, from Zoning Administrator Matthew LeGrant regarding the project known as 1444 Irving Street, N.W., which is subject to Zoning Commission case 07-02B.

In his letter, Mr. LeGrant authorized three changes to the design of the building from the elevation drawings approved by the Zoning Commission in their order.

They were in order, (1) a reduction of the height of the screen wall on the east side of the rooftop condenser units; the addition of Juliet balconies to the facade of floors two through six of the building; and (3), a change in the brick color for the bricks located on the north side of the
building.

He reviewed the plans and determined that he could approve those changes without any further action by the Zoning Commission.

You asked me to look into the question of whether in the narrow sense the Zoning Commission order authorized that flexibility, and I did, and I didn't see any specific authorization for it.

You also asked me to look into whether the Zoning regulations authorized the Zoning Administrator to have that kind of flexibility in approving plans.

That's sort of an interesting question, in the first instance because Mr. LeGrant cited 2409.6A in reducing the height of the -- I don't know how to characterize it, but the screen on the roof. And, it sort of begs the question of whether you believe that that regulation does authorize that kind of
And, the second sort of issue is whether the Zoning Commission believes, as Mr. LeGrant stated in his letter, that he has a general authority to approve changes that don't change the zoning parameters of the building, the height, the use, the parking, and he cites a number of other considerations, and that also preserve the essential elements of the design, so the overall appearance is the same.

So, I guess my long-winded answer is, it depends on what you think about those issues, whether it's appropriate for Mr. LeGrant to approve the kinds of changes that he did in this case.

CHAIRMAN HOOD: Can the Zoning Commission appeal a case in front of the BZA?

MR. RITTING: Probably not.

CHAIRMAN HOOD: Okay, especially since we'll have a member sitting up there.
All right.

Let's open it up, and I'm not sure -- I think, was it all of us, I'm not sure if all -- let's go back -- I should have known that, but I was trying to be diplomatic about it.

Commissioner May?

COMMISSIONER MAY: I'm being singled out.

Yes, I really appreciate getting the analysis from the Office of Attorney General.

You know, as for whether the change in the screen wall, you know, on the roof falls into the flexibility not to exceed 2 percent of the height of any building, you know, you can make a technical argument that really only applies to the height of the building overall, and doesn't apply to like the screen.

I mean, you know, this is a -- the
screen wall, I don't know, I don't even know how tall that was to begin with, but we are talking about penthouse structures and a reduction in the height of the penthouse structure. You know, so long as they are not creating a -- excuse me, as long as they are not varying heights on the penthouse itself, which would be, you know, a violation of the Zoning regulations, you know, I don't see that something like that is a big deal, or that it's worth making a technical argument over that.

But, with regard to the other changes, I mean, I regard these as minor changes, and I don't think that they are really problematic for this building by any stretch. But, I don't believe that the Zoning Administrator has the authority to make changes like these, changing -- I mean, if we specify specific ability to vary the brick color or something like that, and what the
Zoning Administrator does is within the bounds of that flexibility, I'm fine with it. But, adding, you know, modifying the windows to add Juliet balconies I think is beyond the Zoning Administrator's flexibility, because we didn't grant anything like that, and it doesn't fall into the categories of authority that he has.

CHAIRMAN HOOD: Okay, anybody else? Vice Chairman?

VICE CHAIRMAN SCHLATER: I agree with Commissioner May on the final two points.

Just questioning whether any -- so, I see there's a paragraph in the regs about the Zoning Administrator's flexibility, but, usually, also in the order there's some measure of flexibility that we give around, you know, the brick colors, and making small tweaks to the design.

Is there nothing in the order --

COMMISSIONER MAY: There was, and I reviewed the order, and there was some
specific flexibility, but it didn't authorize the changes those two.

VICE CHAIRMAN SCHLATER: Okay.

Well, I think they would be a good candidate for a minor mod then.

CHAIRMAN HOOD: So, I'm trying -- the brick color was not in there. I mean, there was no flexibility. We didn't grant any flexibility for changing the brick color.

MR. RITTING: There was a condition, and I'll read the condition excerpt that's, I think, most relevant. It authorized -- pardon me while I place it -- the applicant to vary the final selection of exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of materials for the apartment building.

CHAIRMAN HOOD: Okay. Page three, vary the final selection of exterior materials
within the color ranges, because I, actually, looked for that in our regulations, but I see it was a condition in the order.

MR. RITTING: Right, and it's a matter of interpretation of whether you think that the modification that Mr. LeGrant discussed in his letter falls within that grant of flexibility in your order.

I think on the Juliet balconies it's clearly no, if you ask me.

On the brick type, I think we'd have to go back and look at the samples that were proposed, to find out whether they were in the color ranges.

CHAIRMAN HOOD: I think sometimes when we look at brick color, and I stand to be corrected if I need to be, but I think a lot of times we look at the character of what's around it, at least I do. I don't know, I'm sure, I believe that's how we do it, at least that's what I do.
So, what do we need to do with this, Mr. Ritting?

MR. RITTING: Well, I think one option that you have is, if you believe that this flexibility is outside of the scope of what was authorized in your order, and as authorized by the regulations, you should advise the Zoning Administrator of that belief, much like the earlier case we discussed a few minutes ago.

CHAIRMAN HOOD: Okay. And, I guess I'm just trying to see this. Once we advise him of that, will it be the same course of action? I mean, what happens after that?

MR. RITTING: Well, I mean, assuming that no building permit has been issued already, and I don't believe that there has, I mean there is no further course of action, assuming that the Zoning Administrator adopts your statement that's his policy.

CHAIRMAN HOOD: So, I guess we
would need to then look at rulemaking. I'm just trying to get this for the record. So then, I guess we would at some point need to look at some type of rulemaking.

COMMISSIONER MAY: Why would we need a rulemaking?

CHAIRMAN HOOD: To try to clear --

MR. RITTING: Well, I mean, if you are interested in expanding the flexibility that the Zoning Administrator had in clearing permits that had plans that varied from what you'd approved in a PUD application, you would -- you would make changes to the regulations.

I didn't hear anything in your statements that suggested that that was the direction you were interested in going.

CHAIRMAN HOOD: 2409.6, I think is -- can somebody read that? I mean, do we have that handy?

MR. RITTING: Oh, I apologize, I didn't understand what you were driving at.
If you are interested in clarifying that the Zoning Administrator does not have this authority that he discussed in his letter, you may want to institute a rulemaking to change the regulations to make that statement.

I didn't understand that that's what you were driving at. What I took your statements earlier to believe is that you were only interested in advising the Zoning Administrator in this particular case that you didn't approve this action.

CHAIRMAN HOOD: No, from further down the line, so that way we won't have --

MR. RITTING: That would be really necessary if you believe that the current regulations are somehow ambiguous, and that a clarification is necessary.

CHAIRMAN HOOD: Let me ask, Commissioners, do we all agree that we need to make sure that -- so we won't have this issue, or, first of all, does everybody kind of agree
with what's been -- I know Vice Chairman Schlater, I was going to call you Shelton, that's my other job, but I know that Vice Chairman Schlater has agreed, but Commissioner May?

Let me hear from my other colleagues, do you agree with the gist of what we heard, Commissioner May?

COMMISSIONER TURNBULL: Yes, I'm fine with that, because there's been other instances where the Zoning Administrator has issued some -- has ruled on certain things that I felt, and in the BZA, wherein, I think we do need to not necessarily expand, but I think we do need to clarify, clarify his role and what he can really do.

I also thought that there was something after 2409.7 that said he would advise the -- advise the Commission of the decision that he was making.

CHAIRMAN HOOD: I think that's
what he did.

COMMISSIONER TURNBULL: No, but I think it ought to be before he makes the decision.

CHAIRMAN HOOD: Oh.

COMMISSIONER TURNBULL: Yes, and I guess what I'm getting at is, is that he ought to say, a letter ought to be addressed to the Commission saying, I am looking at issuing the following, are you in concurrence with the Board members please begin getting up to the table, the last of the Board members? he ought to ask the -- I mean, just verify. I don't want to make -- I don't want to make it more bureaucratic and add a step.

CHAIRMAN HOOD: I think that's a good point. Let's look at it both ways.

COMMISSIONER TURNBULL: Okay.

CHAIRMAN HOOD: But, I think that's a very good point, and that would cut down on some of the things that go on after
the fact, and, especially, before anything is
issued.

MR. RITTING: Right. I mean, I
just was looking at the regulations, and the
one you are thinking of is 2409.8, which
currently reads, following approval of any
modifications under 2409.6, the Zoning
Administrator shall report to the Commission
the modifications approved under this section.
That's how we got the letter that you
considered in May, and it happens after.

COMMISSIONER TURNBULL: Well, my
feeling is it ought to be tweaked -- that
there ought to be that intermediate step, that
he ought to come -- he ought to send us
something saying that, looking at what's been
presented to him he feels that it's not going
against anything in the PUD.

VICE CHAIRMAN SCHLATER: I'm a
little worried about that, not -- I totally
understand what you are getting at, and I
think it would ensure that there weren't these mix-ups in the future, but I'm also pretty confident that there is a lot of these very minor tweaks that are approved, and if we are instituting some sort of process where it has to be heard by the Commission before it's approved, I think you are, basically, going down a road of the Zoning Administrator makes a determination, he then needs to send it to the Zoning Commission, there needs to be a Zoning Commission meeting, and then the Zoning Commission needs to weigh in in some way.

And so, we are creating a process.

COMMISSIONER TURNBULL: Well, I guess I'm trying to avoid him going beyond 2409.6, and going into areas such as balconies and making a decision on things that aren't covered.

COMMISSIONER MAY: Can I jump in here?

COMMISSIONER TURNBULL: Sure.
COMMISSIONER MAY: I agree with Vice Chairman Schlater that, you know, if we create this new process, essentially, we might as well just deal with everything as a minor modification, because that's, effectively, what's going to happen, is that we are going to consider these all as minor modifications.

COMMISSIONER TURNBULL: We really need to clarify 2409.6 and .7 then.

COMMISSIONER MAY: Well, I don't mind doing some clarification of 2409.6. I would tend to want to do that in the Zoning Reg rewrite.

COMMISSIONER TURNBULL: Right.

COMMISSIONER MAY: But, I think that what we are doing right now with this particular case, and the one before, is sufficiently putting the Zoning Administrator on notice that we are not, necessarily, seeing things the way he is, and that he ought to be a little more careful.
COMMISSIONER TURNBULL: Well, I'm not convinced that it's going to do that, but I'll go along with that, but I'm not convinced it's going to --

COMMISSIONER MAY: I think it is, I think, frankly, if he were to say no to a few more things, and be able to point to the Zoning Commission's decisions, it would send the right message to the people who are asking him for flexibility.

CHAIRMAN HOOD: I really think, though, I would have to -- I agree with everybody, actually.

So, here's -- I agree, let's do it in the ZRR. I think that's the way to process it. Mr. Lawson is here, he heard. I agree, but let's deal with this specific issue, but again, while this Zoning Administrator has been here for a while, my hat is off to him, he does a great job I believe, but that position was changing at one time every other
week. So, we need to make sure that at some point we clarify. I think the bottom line is, the recommendation, I think, is to make sure that we clarify what's at 2409.6 at some point in time. Okay?

MS. SCHELLIN: Are you asking that a rulemaking be initiated now, or are you waiting for the ZRR process, because that won't go into effect for probably two years.

CHAIRMAN HOOD: Well we probably should wait, because here's the thing. Mr. Turnbull brought up an option about how to do it. I'd like for the planners and all of us, OAG and everybody, let's look and see if what Mr. Turnbull mentioned is a reality.

You know, you get into a lot of those -- the Zoning Administrator, I'm sure, does a lot of work, but should he notify us prior, I don't know. I can't sit here personally, and I don't think any of us can sit here now and say we've got 1,000 cases,
and I'm sure we don't want to deal with a thousand of those issues, but I think we need to at least look at it, at least look at it.

Now, it might be shot down, it might be something we don't do, but at least open it up for the opportunity to just look at it.

And, I think maybe that will come up on the ZRR. It might take us two years, but then -- this is where I agree with Commissioner May for right now, Mr. LeGrant I don't think is going anywhere any time soon, and he'll know, we'll send a clear message of what we are looking at, looking forward to what we expect, change or not change. Don't add balconies, or add balconies. I think he'll know kind of even with just a flavor -- at least for this five-member Commission for this time, because the Commission is going to change, too, eventually.

COMMISSIONER SELFRIJDE: Mr.
Chair, I just want to make a quick comment. I agree with Mr. May.

I also look at 2409.6 as very explicit already, so I think that at least in my mind I think that we are doing the job here, we are sending a message, and I'm sure that this will help guide future decisions in regards to this.

CHAIRMAN HOOD: So, what we just did, Commissioners, is that all of our options are open, we'll listen to every Commissioner up here, Commissioner Turnbull, Vice Chairman Schlater, Chairman Hood, Commissioner Selfridge and Commissioner May, and with all open stuff we'll be looking at and discovering, then we'll come back. That's the way I look at it.

Any disagreements? Okay.

All right. So, Ms. Schellin, hopefully, you know what we are supposed to do.
MR. RITTING: Well I could sum up, I think, what I think I heard earlier, which is that you'd like the Office of Zoning, in care of Ms. Schellin, to send a letter to Zoning Administrator Matt LeGrant, saying that you do not believe that the second two -- or the second and the third items of flexibility that he stated that he believed were authorized by the PUD are not so authorized by the PUD, or by the Zoning regulations he cited in his letter.

I'll help Ms. Schellin craft an appropriate letter.

CHAIRMAN HOOD: Okay. Thank you very much. I think we all understand --

COMMISSIONER TURNBULL: What's the next step, is that letter sufficient to handle the process?

MR. RITTING: Well, I mean, that depends on what Mr. LeGrant does, I suppose. If he sees your letter and he decides not to
issue a permit, if one is presented to him, that would be the end of the process.

COMMISSIONER TURNBULL: Can he ignore the Zoning Commission?

MR. RITTING: I suppose that he could, and then you'd have to look at what your options are after a permit has been issued. Frankly, I don't know exactly what they would be, but it seems like a very unlikely scenario.

And, if I could add in, it seems like it would just make sense for the applicant to come back for a minor mod at this point, to not have anything kind of in flux anyway. It would just be the easiest way and move it forward with certainty, or more likely, go back to the previous plan and be done with it.

CHAIRMAN HOOD: Mr. Ritting, we, actually, have a request, and I want to know procedurally, I know we probably haven't done
this, the applicant's counsel is here, and has asked to be heard.

What rule would I be breaking, don't move yet, what rule would I be breaking if I do that?

MR. RITTING: There is a rule in Chapter 30 that says that public meetings don't authorize testimony by applicants or their attorneys.

CHAIRMAN HOOD: Unless called up, right?

MR. RITTING: I'm not sure whether it says that or not.

CHAIRMAN HOOD: I think it does say that.

MR. RITTING: I do believe that you have the authority to waive your rules, especially, the procedural ones, if you believe it's appropriate.

CHAIRMAN HOOD: Commissioners, I really can go either way on it. Nobody wants
to hear from you. Okay.

No, actually, hopefully, you can take up any issues with Ms. Schellin, and she will work any issues out that we have.

UNIDENTIFIED SPEAKER: Okay.

CHAIRMAN HOOD: A decision has been made.

Okay. Anything else?

MS. SCHELLIN: That's it.

CHAIRMAN HOOD: All right. With this, this meeting is adjourned.

(Whereupon, the above-entitled matter was concluded at 7:51 p.m.)