

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

JUNE 13, 2011

+ + + + +

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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STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Regular meeting held on June 13, 2011.

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- A. New Cases Filed:
 - 1. Z.C. Case No. 11-11 (1711 Florida Avenue Property, LLC - Consolidated PUD & Related Map Amendment @ Square 2562)
- B. Orders Published:
 - 1. Z.C. Order NO. 05-36D
 - 2. Z.C. Order No. 05-36E
 - 3. Z.C. Order No. 09-21

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

6:33 p.m.

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.

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1 Please be advised that this
2 proceeding is being recorded by a court
3 reporter. It's also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noise or actions in the hearing
6 room. Please turn off all beepers and cell
7 phones.

8 Does the staff have any
9 preliminary matters?

10 MS. SCHELLIN: No, sir.

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

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

17 Ms. Schellin.

18 MS. SCHELLIN: Yes, sir.

19 This is a request from the
20 applicant to add three properties that were
21 purchased subsequently to the approval of the

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1 1st Stage PUD.

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

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

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

12 Okay, not hearing any.

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

18 And, we have a submission,
19 Commissioners -- anyway, we have in front of
20 us, the applicant requested the Commission
21 approve the additions of three properties,

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1 which is purchased -- which was purchased
2 subsequent to the approval of the 1st Stage
3 PUD to the previously approved PUD.

4 Let me open it up for discussion.

5 If not, I'll obtain a motion.

6 Any discussion?

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

12 COMMISSIONER TURNBULL: Second.

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

16 Are you read for the question?

17 All those in favor?

18 (Ayes.)

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

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1 MS. SCHELLIN: Yes. Staff records
2 the vote 5-0-0 to approve final action in
3 Zoning Commission Case No. 06-12E,
4 Commissioner Hood moving, Commissioner
5 Turnbull seconding, Commissioners May,
6 Schlater and Selfridge in support.

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

11 Ms. Schellin.

12 MS. SCHELLIN: Yes, sir.

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

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

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1 from the applicant.

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

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

11 Okay. We have a request before
12 us, and again, this is the redirect -- the
13 request is for a modification to previously
14 approved PUD in Zoning Commission Corrective
15 Order, let me see, am I in the right place --
16 yes, the applicant requested the Commission
17 approve a change in Condition No. 10, as I
18 already stated, to allow for the required
19 payment of \$55,000 to the Ward 5 Business
20 Council, to be made to the Community
21 Foundation of the National Capitol Region

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1 instead. And, I think this is saying, being
2 able to vet and help businesses within the
3 area of 5C, I think.

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

8 Any further discussion?

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

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

19 CHAIRMAN HOOD: Okay. Thank you.

20 It's been moved, do we have a
21 second?

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1 VICE CHAIRMAN SCHLATER: Second.

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

4 Any further discussion?

5 All those in favor?

6 (Ayes.)

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

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

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

18 Zoning Commission Case No. 0 --
19 and also, thank you, Commissioner May, and
20 Vice Chairman Schlater -- Zoning Commission
21 Case No. 07-26C. This is the O Street

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1 Roadside, LLC, minor modification to PUD at
2 Square 398.

3 Ms. Schellin.

4 MS. SCHELLIN: Yes, this is a
5 request from the applicant to remove 80 vault
6 parking spaces, which would amend Condition 2
7 and 7D of the order. There's an OP report at
8 Exhibit 5, and there's also a letter of
9 support from the Shaw Main Street at Exhibit
10 6.

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

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

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

18 COMMISSIONER MAY: I think it's
19 pretty straightforward. I mean, I'm inclined
20 to agree with this modification. I mean, it
21 does change what was previously a maximum

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1 number of parking spaces to a minimum. I
2 don't know that that's a really big issue.

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

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

8 CHAIRMAN HOOD: Okay. Anybody
9 else?

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

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

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1 underground.

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

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

13 So, those are the two changes.

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

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1 because the minimum number of spaces required
2 in the Zoning Regulations is 308.

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

9 So, those were the issues that we
10 had that in addition to removing the reference
11 to the 80 vault spaces they made the
12 requirement of what was a cap into a minimum.

13 That seems to be consistent with the
14 flexibility they requested.

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

20 COMMISSIONER MAY: Okay. Well, we
21 didn't grant any relief with regard to making

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1 the spaces non-zoning requirement. We didn't
2 grant relief with regard to the size of the
3 spaces, or the number of compact car spaces or
4 things like that, did we?

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

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

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

14 COMMISSIONER MAY: We appreciate
15 that.

16 MR. BERGSTEIN: -- this was put
17 in, and then later they somehow show parking
18 that's not zoning compliant, my fear is them
19 saying, well, you see it used to say zoning
20 compliant, and now it doesn't say that
21 anymore.

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1 But, I realize that assuming, and
2 I don't have the parking plans, I'm assuming
3 the parking plans all show zoning compliant
4 spaces.

5 COMMISSIONER MAY: Right.

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

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

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

17 COMMISSIONER MAY: Well, I'm,
18 actually, more paranoid about having a phrase
19 like that in there, because it implies that we
20 are not, you know, unless we state it that on
21 all PUDs they are able to build non-compliant

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1 spaces, that's not the case. They have to be
2 compliant, unless we, specifically, grant
3 relief.

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

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

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

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

20 Okay, let's do it that way. Let's
21 get a clarification.

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1 Ms. Schellin, could you schedule
2 this?

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

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

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

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

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

20 CHAIRMAN HOOD: Okay. Well, seven
21 days from today we can do it. I just don't --

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1 two weeks, I mean, you know, come on, come on,
2 we are here all the time anyway. I don't
3 think -- I mean, two weeks is fine, if we do
4 it in two weeks that's fine, but let's just
5 see when we can do it.

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

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

14 Ms. Schellin, do you have any
15 idea?

16 MS. SCHELLIN: No.

17 COMMISSIONER MAY: No.

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

20 COMMISSIONER MAY: Yes. I mean, I
21 would think two weeks is --

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1 MS. SCHELLIN: It was filed in
2 May.

3 COMMISSIONER MAY: Oh, we have the
4 applicant here.

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

7 Let me ask this --

8 MS. SCHELLIN: June --

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

11 MS. SCHELLIN: -- June 27th.

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

14 MS. SCHELLIN: Correct.

15 CHAIRMAN HOOD: How does our
16 agenda look?

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

19 CHAIRMAN HOOD: No, I mean
20 overall.

21 MS. SCHELLIN: -- oh, I don't know

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1 off the top of my head, really. It's going to
2 be heavier than this one, yes.

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

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

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

15 VICE CHAIRMAN SCHLATER: Yes, I'm
16 happy to do it. I don't think anything we are
17 doing today is giving flexibility with respect
18 to providing non-zoning compliant parking
19 spaces. I think the parking spaces are just
20 like it is in every other case. It has to be
21 zoning compliant. And, if it's not, they have

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1 to come back and ask for a waiver of those
2 requirements.

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

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

9 COMMISSIONER MAY: Second.

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

12 All those in favor?

13 (Ayes.)

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

17 MS. SCHELLIN: Yes. Staff records
18 the vote 5-0-0 to approve final action in
19 Zoning Commission Case 07-26C, Commissioner
20 Schlater moving, Commissioner May seconding,
21 Commissioners Hood, Selfridge and Turnbull in

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1 support.

2 CHAIRMAN HOOD: Okay. Next,
3 Zoning Commission Case No. 06-11B. This is on
4 the final action 11B/06-12B, George Washington
5 University 2nd Stage PUD at Square 55, and
6 again, this is a 2nd Stage PUD, and we have
7 further processing of the campus plan.

8 Ms. Schellin.

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

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

20 As I already stated, we have
21 Exhibit No. 75. I think that was an

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1 outstanding issue, dealing with the John
2 Wilson Park, John A. Wilson memorial plaque,
3 I'm sorry. The old park, which fronted on
4 22nd Street, had a total of approximately
5 1,243 square feet. I'm not sure we asked
6 this, I know I asked about the plaque, the new
7 park, which will front on 23rd Street, will
8 have a total area of approximately 1,330
9 square feet.

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

15 Anything else? Okay.

16 With that, I want to move that we
17 approve Zoning Commission Case 06-11B/06-12B.

18 This is the 2nd Stage PUD at Square 55, 2nd
19 Stage PUD and approve the further processing
20 of the Campus Plan, and ask for a second.

21 COMMISSIONER TURNBULL: Second.

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

4 All those in favor aye?

5 (Ayes.)

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

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

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

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1 Ms. Schellin.

2 MS. SCHELLIN: Yes. There is an
3 NCPC report on this case also at Exhibit 145.

4 Again, they found them to not be inconsistent
5 with the National -- with the Comp Plan for
6 the National Capitol, and I believe there's
7 been a suggestion for a possible revision to
8 Section 1301, but OAG, if the Commission so
9 chooses to accept that.

10 CHAIRMAN HOOD: Thank you, Ms.
11 Schellin.

12 I think the issue was,
13 Commissioners, do we intend for this to be an
14 all -- I know we had that discussion, and,
15 honestly, I don't remember off the top of my
16 head, but let's have a discussion, do we
17 intend for this to be in all zones? I know
18 there was testimony said, let's not. I
19 remember the testimony at the hearing saying,
20 let's not -- just do away with it being a
21 residential zone, at least R1 through R4, but

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1 I wasn't sure whether we said include it,
2 don't include it, or let's just keep it as
3 proposed. And, I think that's the issue, did
4 we intend for this to be in all zones?

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

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

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

11 What were we just talking about?
12 No, just kidding.

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

20 CHAIRMAN HOOD: Okay. Any
21 questions?

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1 Commissioner Selfridge?

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

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

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

19 Any comments?

20 COMMISSIONER MAY: I agree with
21 the change in the language. It makes it

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1 clearer when it applies and when it would not
2 apply.

3 CHAIRMAN HOOD: Anyone else?

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

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

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

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

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

18 COMMISSIONER MAY: Sorry, with the
19 revised text, as recommended by the Office of
20 the Attorney General, and also as agreed to by
21 the Office of Planning.

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1 COMMISSIONER SELFRIDGE: Second.

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

5 All those in favor aye?

6 (Ayes.)

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

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

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

19 Let's go to proposed action in
20 Zoning Commission Case No. 05-28C, Lano Parcel
21 12, LLC, 2nd Stage PUD and Related Map

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1 Amendment at Square 5055.

2 Ms. Schellin.

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

9 CHAIRMAN HOOD: Okay. Thank you.

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

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

16 VICE CHAIRMAN SCHLATER: Mr.
17 Chairman, what was the resolution on the truck
18 loading zone? I guess that would be my
19 question, because that seemed like it was
20 never fully resolved and there were a lot of
21 questions about it.

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1 CHAIRMAN HOOD: Was that on the --
2 was that on this part of it? Okay. Well,
3 because I don't recall if we had a resolution,
4 I know that was an issue back then -- okay --
5 let's see if that's satisfying, that was in
6 our packet, I think -- that wasn't in
7 tonight's packet, though, was it, it was in
8 the package previously. Okay.

9 COMMISSIONER SELFRIDGE: The
10 document that we are referring to is the May
11 18th memorandum from Gorove/Slade traffic
12 consultant on this, and it says that the
13 applicant is proposing to manage large vehicle
14 deliveries by adding more components to the
15 loading dock management plan already proposed.

16 And, this includes reviewing the
17 truck time, and time of each scheduled
18 delivery, the deliveries will be restricted to
19 off-peak times during the morning and evening
20 rush hours, or on weekends, to limit loading
21 activities on Kenilworth, and no loading

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1 activity or queuing to the loading dock will
2 take place on Kenilworth Avenue, with the
3 exception of larger vehicles described below,
4 and those are large tractor trailers that
5 cannot be accommodated within the loading dock
6 area in the parking garage.

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

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

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

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1 response back.

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

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

8 MS. SCHELLIN: We don't.

9 COMMISSIONER SELFRIDGE: Yes.

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

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

15 CHAIRMAN HOOD: Talk to DDOT, and
16 if we can reach out to DDOT and the Office of
17 Planning's assistance, and let them know this
18 issue came up again by Commissioner Selfridge,
19 and by the Commission, and we would like to
20 find out how they feel about what has been
21 proposed to us at this time. Okay?

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1 MS. SCHELLIN: I'm, actually,
2 going to meet with Mr. Parker tomorrow, Martin
3 Parker, tomorrow, and I'll bring this to his
4 attention.

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

8 Anything else?

9 COMMISSIONER MAY: Mr. Chairman?

10 CHAIRMAN HOOD: Commissioner May.

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

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

18 And, I appreciate the concerns,
19 but I'm not totally convinced that the
20 concerns are well founded. In other words,
21 you know, the project, I think one could

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1 question whether the project overall is too
2 dense, and whether there is too much there,
3 and that the project overall is going to cause
4 some unacceptable impacts on the neighborhood.

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

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

19 And, I don't think, frankly, that
20 they are that bad overall, otherwise the
21 Commission wouldn't have approved this in the

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1 first place.

2 CHAIRMAN HOOD: Any other
3 comments?

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

12 Also, I think that what we did in
13 the 1st stage of this whole plan, I think
14 gives me more of a comfort level. We,
15 basically, only approved half of it for the
16 overall plan. I think that lightens the load,
17 but more or less I think it's a bigger
18 fundamental problem in that area, and I don't
19 know if we can blame, or not necessarily
20 blame, I don't know if we can point at these
21 two projects that we did approve as opposed to

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1 the whole request as being the major factor.
2 I think there's some infrastructure issues
3 that need to be dealt with. How we get to
4 there, that's why we had the professionals,
5 DDOT, Planning and all the rest.

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

11 Anyone else?

12 Commissioner Turnbull?

13 COMMISSIONER TURNBULL: Yes,
14 again, Mr. Chair, I would agree. I think --
15 and also with Commissioner May -- I think that
16 the major concerns we were hearing were from
17 Eastgate Gardens, with Mr. Rapp and the ANC
18 Commissioner. But, I think they are actually
19 down the road a piece, about a 1/4 of a mile,
20 I'm not even sure if it's that far away. But,
21 I think the immediate reaction from a lot of

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1 the people was that they were in support of
2 the Community College, and I think I agree
3 with Commissioner May when you said that this
4 specific use probably -- this is going to be a
5 benefit to the community. And, I see no
6 reason why we shouldn't go forward with this.

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

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

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

20 CHAIRMAN HOOD: And, I would say
21 that if we will recall, previously, when this

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1 was proposed, everybody was holding hands, the
2 community was all in favor of it. But again,
3 that was residential, and I think with this
4 Community College, students, I don't know if
5 students, maybe students drive now, I had bus
6 tokens and I had to get there the best way I
7 could, but I think now students are probably
8 more acceptable to using public
9 transportation, I believe, than the
10 residential way where there would be more cars
11 and impact. But, I don't want it to fall
12 short on the impacts.

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

20 And, back to Commissioner
21 Selfridge's comment about the loading. I

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

12 Okay. Anything else?

13 All right. Can we get a motion?
14 I will move that we approve Zoning Commission
15 Case 05-28C. This is Lano Parcel 12, LLC 2nd
16 Stage PUD and related map amendment at Square
17 5055, with the addition of asking for the
18 follow-up as Commissioner Selfridge has asked
19 for, from DDOT before we take final, and ask
20 for a second.

21 COMMISSIONER MAY: Second.

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1 CHAIRMAN HOOD: Moved and properly
2 seconded.

3 Any further discussion?

4 All those in favor?

5 (Ayes.)

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

9 MS. SCHELLIN: Yes. Staff records
10 the vote 4-0-1 to approve final -- or proposed
11 action rather, in Zoning Commission Case 05-
12 28C, Commissioner Hood moving, Commissioner
13 May seconding, Commissioners Hood and
14 Selfridge in support, Commissioner Schlater
15 not voting, having not participated.

16 CHAIRMAN HOOD: Okay. Next --
17 that's why you didn't say anything. Okay.
18 All right. Under correspondence, Zoning
19 Commission Case No. 05-28, this is Parkside
20 Residential LLC. Got a letter from the Zoning
21 Administrator, notification 2nd Stage approval

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1 not necessary for Block D.

2 Ms. Schellin.

3 MS. SCHELLIN: Yes, sir.

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

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

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

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

21 Essentially, we agree with Mr.

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1 LeGrant for slightly different reasons. We
2 believe that because there's no structure on
3 the park, or at least he believes that, and I
4 have no reason to disagree, there's no need
5 for a building permit, so there's no reason
6 for the Zoning Commission to be involved at
7 all.

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

16 CHAIRMAN HOOD: Does anyone want
17 to take that up?

18 COMMISSIONER MAY: Yes.

19 CHAIRMAN HOOD: Commissioner May.
20 I shouldn't have asked the question.

21 Commissioner May?

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1 COMMISSIONER MAY: Well, first of
2 all, you remember that it states that a
3 building permit is not required. I believe a
4 building permit is required for them to build
5 this park, to make the improvements that are
6 depicted in the drawing that we saw. But,
7 that's a secondary point.

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

17 MR. RITTING: Well, I wasn't
18 really taking a position on whether or not the
19 things depicted in those plans were or were
20 not structures. I was just responding to Mr.
21 LeGrant's statement in his letter, that he

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1 concluded there were none.

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

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

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

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1 I mean, that's my view.

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

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

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

13 Mr. Turnbull.

14 COMMISSIONER TURNBULL: Mr. Chair,
15 I would agree, I guess in, specifically, Phase
16 7, or Phase 8, we see a fountain, what looks
17 -- what appears to be a fountain in the middle
18 of the park. That's definitely a structure
19 that I think I would want to see also on the
20 very last, on the park, Phase 8. It looks
21 like they've also created a couple of

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1 playgrounds.

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

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

14 MR. RITTING: Well, I mean, if you
15 disagree as a body that these plans show a
16 structure, I think you should probably
17 communicate your interpretation of the Zoning
18 Regulations to Mr. LeGrant, and if he knows
19 the way that you are interpreting it I would
20 imagine that he would change his view about
21 whether or not a building permit is necessary,

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1 and whether or not the applicant can proceed
2 without one.

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

6 Mr. Vice Chairman.

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

13 But, I think we could have a
14 debate about whether the park itself is a
15 structure. I think as a general principle,
16 when you have a major park as a part of a PUD
17 process, and it's significantly improved, I
18 think we, as a commission, should ask the
19 applicant to come back with further developed
20 plans on the park. I absolutely believe that
21 to be true.

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1 And, I think it's hard to say
2 whether or not, based on these very, you know,
3 almost cartoon-like drawings, whether or not
4 plans are, you know, consistent with the
5 drawings that were submitted to the
6 Commission, because, frankly, they are not
7 very well developed. So, it would be very
8 hard to tell whether or not they are
9 consistent with the drawings.

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

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

21 But, I'm uneasy saying today that

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

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

10 COMMISSIONER MAY: Sure.

11 MR. RITTING: I have it here.
12 It's anything constructed, including a
13 building, the use of which requires permanent
14 location on the ground, or anything attached
15 to something having a permanent location on
16 the ground, and including, among other things,
17 radio or television towers, reviewing stands,
18 platforms, flag poles, tanks, bins, gas
19 holders, chimneys, bridges and retaining
20 walls.

21 The term structure shall not

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1 include mechanical equipment, but shall
2 include the supports for mechanical equipment.

3 Any combination of commercial occupancy
4 separated in their entirety, erected, or
5 maintained in a single ownership shall be
6 considered as one structure.

7 That's the definition.

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

17 And, I think, actually, that's a
18 very important principle that we should be
19 abiding by. If this is the way it's defined,
20 you know, it's more or less anything that's
21 permanently affixed to the ground.

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1 VICE CHAIRMAN SCHLATER: So, do
2 you think that the logical interpretation of
3 that, and I'm not disagreeing with you, that
4 we would then have the authority to regulate
5 all structures, meaning if we wanted, instead
6 of brick pavers, we could mandate LID pavers
7 or something like that for all buildings,
8 would that be within our purview?

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

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

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

21 COMMISSIONER MAY: No, because, I

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1 mean, those things are subject to zoning, they
2 are within zones, they have to comply with
3 zoning. There are certain things that you can
4 do as a matter of right.

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

10 COMMISSIONER MAY: Yes.

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

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

21 COMMISSIONER MAY: Well, okay, CG

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1 overlay or some of these other overlays, yes,
2 we get into that, too.

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

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

21 I mean, the legal justification,

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1 in my mind, is that I believe that any time
2 you put in a permanent path we are talking
3 structure, and I think, actually, that is an
4 important principle to stick by.

5 CHAIRMAN HOOD: Okay.

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

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

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

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

20 MR. RITTING: I just wanted to
21 add, okay, so if you don't buy that this does

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1 not include a structure, then the Zoning
2 Administrator made another argument in his
3 letter. He cited some zoning regulations that
4 I don't think, necessarily, support the
5 argument that he was making, but it's still a
6 valid argument, and that is, to the extent
7 that the Commission did approve a 1st Stage
8 PUD that included the park, and he reviewed
9 the 1st Stage order and the plans that were
10 associated with them, and he believed that the
11 park plans that were submitted to them
12 complied with what was approved in the 1st
13 Stage PUD. Do you believe that that is
14 sufficient justification for him to issue a
15 building permit if one is required?

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

21 MR. RITTING: That's a related

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1 argument, yes, that they are providing the
2 park now. It was at least preliminarily
3 approved in the 1st Stage PUD, and that's if
4 we are assuming that a building permit is
5 necessary sufficient for the Zoning
6 Administrator to issue whatever building
7 permit is necessary to construct the park.

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

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

18 COMMISSIONER MAY: Well, I mean,
19 I'm not persuaded that the delivery of the
20 park as part of the 1st stage is the right
21 procedure, and I think that, you know, if we

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1 could wind back the clock and handle this the
2 right way, I think that the smart thing would
3 have been done, or would have been to do,
4 would have been to have sufficient development
5 of the park's, the design of the park, to
6 grant a consolidated approval of the park. If
7 that was the intention, and we knew that that
8 was the intention -- the last thing I want to
9 have happen is to slow down the delivery of
10 the park. That's an important amenity that
11 should be delivered as quickly as possible,
12 but I do think that -- I don't believe that
13 there's been sufficient design review of that
14 to go forward. And, I think it's an important
15 part of the PUD.

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

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1 those parks.

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

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

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

20 MR. RITTING: Well, I think you
21 could do it, because it's pretty clear that no

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1 building permit has been issued for the park.

2 I'm pretty comfortable in saying that.

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

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

20 So, that's why I want to know, how
21 do we get to where we need to get. So, I

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1 guess who would be submitting the letter?

2 MR. RITTING: In the past when
3 this has come up, the Office of Zoning has
4 issued the letter, and Ms. Schellin, as
5 Secretary, has signed. Of course, I would
6 help her draft the letter, and if we wanted to
7 circulate it to you before it went out, I'd be
8 willing to do that. I'm sure Ms. Schellin
9 would be willing to do that, or if you trusted
10 us to review the transcript of tonight's
11 meeting, and state it in a letter we are
12 willing to do that as well.

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

20 So, I think we can exercise that,
21 unless someone objects. I don't know whether I

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1 need to call for a vote.

2 Vice Chairman?

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

15 COMMISSIONER MAY: I'm not sure
16 what you mean, though, by suggesting that this
17 is -- that we are differing from past practice
18 on the part of the Zoning Commission. I don't
19 recall any other case, not that I would
20 necessarily recall, maybe there's a history to
21 this, but I don't recall that portions of any

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1 project has moved forward on a 1st Stage
2 approval only, and been constructed.

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

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

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

10 CHAIRMAN HOOD: That makes your
11 argument.

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

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

21 CHAIRMAN HOOD: Well, I would

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1 agree with you, Vice Chairman. My common
2 sense view of it, but when I read the
3 definition, that's why I say, the definition
4 makes it sound like it does, at least the way
5 I read it.

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

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

16 CHAIRMAN HOOD: Structure,
17 anything constructed --

18 COMMISSIONER MAY: As provided in
19 the regs.

20 CHAIRMAN HOOD: -- anything
21 constructed, including a building, the use of

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1 which requires permanent location on the
2 ground, or anything attached to something
3 having a permanent location, I'm sorry, that
4 definition does it.

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

18 But, I think there's enough here
19 that would at least push me down the road to
20 say I think I want to look at this. It's,
21 depending on what -- I'm not familiar with

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1 what was shown on the 1st stage, if that was,
2 obviously, just a cartoon, and whether it,
3 actually, showed Phase 7, or it showed Phase 1
4 in the original. I'm not sure what it showed,
5 but, again, it's enough there to beg the
6 question as to what's happening. That's my
7 concern.

8 VICE CHAIRMAN SCHLATER: I guess,
9 here's my concern, just to put it out there.

10 There's going to be a lot of times when
11 people are doing, say, land development on a
12 project before they are, actually, building a
13 structure that includes landscaping. My
14 question is, do we have to come back to --
15 somebody who is developing the project have to
16 come back every time, you know, on a PUD, they
17 are building any landscaped element within
18 their project, for 2nd stage review?

19 COMMISSIONER MAY: You know, I
20 think it depends on what it is, and if there's
21 a phasing plan associated with the project,

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1 you know, those sorts of issues can be
2 addressed. We don't want to give a 1st stage
3 approval that's really open ended and can
4 allow for a lot of kind of on the fly
5 development of the site with, you know, with
6 landscaping and so on.

7 We want to be looking at what the
8 finished project is going to be, and in the
9 1st stage we want to know, generally, what it
10 is.

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

20 I mean, at that point we are
21 looking, in the 1st stage we are evaluating

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1 mostly, you know, the massing of things, the
2 density, you know, where the building
3 footprints are and so on. We are not looking
4 at the specific design of the park.

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

8 That's what I feel.

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

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

17 Okay. Is that all we need to do?
18 I think it's a majority here. Okay.

19 All right, let's move to the next,
20 the last one on correspondence. It's Zoning
21 Commission Case No. 07-02, Columbia Heights

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1 Ventures, Parcel 26 LLC, letter from the
2 Zoning Administrator pursuant to 2409.8.

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

5 MR. RITTING: Sure. On the 23rd
6 the Zoning Commission received a letter dated
7 May 12, 2011, from Zoning Administrator
8 Matthew LeGrant regarding the project known as
9 1444 Irving Street, N.W., which is subject to
10 Zoning Commission case 07-02B.

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

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

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1 building.

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

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

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

15 That's sort of an interesting
16 question, in the first instance because Mr.
17 LeGrant cited 2409.6A in reducing the height
18 of the -- I don't know how to characterize it,
19 but the screen on the roof. And, it sort of
20 begs the question of whether you believe that
21 that regulation does authorize that kind of

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1 change.

2 And, the second sort of issue is
3 whether the Zoning Commission believes, as Mr.
4 LeGrant stated in his letter, that he has a
5 general authority to approve changes that
6 don't change the zoning parameters of the
7 building, the height, the use, the parking,
8 and he cites a number of other considerations,
9 and that also preserve the essential elements
10 of the design, so the overall appearance is
11 the same.

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

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

19 MR. RITTING: Probably not.

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

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1 All right.

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

7 Commissioner May?

8 COMMISSIONER MAY: I'm being
9 singled out.

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

13 You know, as for whether the
14 change in the screen wall, you know, on the
15 roof falls into the flexibility not to exceed
16 2 percent of the height of any building, you
17 know, you can make a technical argument that
18 really only applies to the height of the
19 building overall, and doesn't apply to like
20 the screen.

21 I mean, you know, this is a -- the

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

13 But, with regard to the other
14 changes, I mean, I regard these as minor
15 changes, and I don't think that they are
16 really problematic for this building by any
17 stretch. But, I don't believe that the Zoning
18 Administrator has the authority to make
19 changes like these, changing -- I mean, if we
20 specify specific ability to vary the brick
21 color or something like that, and what the

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1 Zoning Administrator does is within the bounds
2 of that flexibility, I'm fine with it. But,
3 adding, you know, modifying the windows to add
4 Juliet balconies I think is beyond the Zoning
5 Administrator's flexibility, because we didn't
6 grant anything like that, and it doesn't fall
7 into the categories of authority that he has.

8 CHAIRMAN HOOD: Okay, anybody
9 else? Vice Chairman?

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

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

19 Is there nothing in the order --

20 COMMISSIONER MAY: There was, and
21 I reviewed the order, and there was some

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1 specific flexibility, but it didn't authorize
2 the changes those two.

3 VICE CHAIRMAN SCHLATER: Okay.
4 Well, I think they would be a good candidate
5 for a minor mod then.

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

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

20 CHAIRMAN HOOD: Okay. Page three,
21 vary the final selection of exterior materials

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1 within the color ranges, because I, actually,
2 looked for that in our regulations, but I see
3 it was a condition in the order.

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

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

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

15 CHAIRMAN HOOD: I think sometimes
16 when we look at brick color, and I stand to be
17 corrected if I need to be, but I think a lot
18 of times we look at the character of what's
19 around it, at least I do. I don't know, I'm
20 sure, I believe that's how we do it, at least
21 that's what I do.

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1 So, what do we need to do with
2 this, Mr. Ritting?

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

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

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

21 CHAIRMAN HOOD: So, I guess we

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1 would need to then look at rulemaking. I'm
2 just trying to get this for the record. So
3 then, I guess we would at some point need to
4 look at some type of rulemaking.

5 COMMISSIONER MAY: Why would we
6 need a rulemaking?

7 CHAIRMAN HOOD: To try to clear --

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

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

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

20 MR. RITTING: Oh, I apologize, I
21 didn't understand what you were driving at.

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1 If you are interested in clarifying that the
2 Zoning Administrator does not have this
3 authority that he discussed in his letter, you
4 may want to institute a rulemaking to change
5 the regulations to make that statement.

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

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

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

18 CHAIRMAN HOOD: Let me ask,
19 Commissioners, do we all agree that we need to
20 make sure that -- so we won't have this issue,
21 or, first of all, does everybody kind of agree

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1 with what's been -- I know Vice Chairman
2 Schlater, I was going to call you Shelton,
3 that's my other job, but I know that Vice
4 Chairman Schlater has agreed, but Commissioner
5 May?

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

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

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

21 CHAIRMAN HOOD: I think that's

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1 what he did.

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

5 CHAIRMAN HOOD: Oh.

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

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

18 COMMISSIONER TURNBULL: Okay.

19 CHAIRMAN HOOD: But, I think
20 that's a very good point, and that would cut
21 down on some of the things that go on after

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1 the fact, and, especially, before anything is
2 issued.

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

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

19 VICE CHAIRMAN SCHLATER: I'm a
20 little worried about that, not -- I totally
21 understand what you are getting at, and I

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1 think it would ensure that there weren't these
2 mix-ups in the future, but I'm also pretty
3 confident that there is a lot of these very
4 minor tweaks that are approved, and if we are
5 instituting some sort of process where it has
6 to be heard by the Commission before it's
7 approved, I think you are, basically, going
8 down a road of the Zoning Administrator makes
9 a determination, he then needs to send it to
10 the Zoning Commission, there needs to be a
11 Zoning Commission meeting, and then the Zoning
12 Commission needs to weigh in in some way.

13 And so, we are creating a process.

14 COMMISSIONER TURNBULL: Well, I
15 guess I'm trying to avoid him going beyond
16 2409.6, and going into areas such as balconies
17 and making a decision on things that aren't
18 covered.

19 COMMISSIONER MAY: Can I jump in
20 here?

21 COMMISSIONER TURNBULL: Sure.

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

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

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

14 COMMISSIONER TURNBULL: Right.

15 COMMISSIONER MAY: But, I think
16 that what we are doing right now with this
17 particular case, and the one before, is
18 sufficiently putting the Zoning Administrator
19 on notice that we are not, necessarily, seeing
20 things the way he is, and that he ought to be
21 a little more careful.

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1 COMMISSIONER TURNBULL: Well, I'm
2 not convinced that it's going to do that, but
3 I'll go along with that, but I'm not convinced
4 it's going to --

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

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

14 So, here's -- I agree, let's do it
15 in the ZRR. I think that's the way to process
16 it. Mr. Lawson is here, he heard. I agree,
17 but let's deal with this specific issue, but
18 again, while this Zoning Administrator has
19 been here for a while, my hat is off to him,
20 he does a great job I believe, but that
21 position was changing at one time every other

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1 week. So, we need to make sure that at some
2 point we clarify. I think the bottom line is,
3 the recommendation, I think, is to make sure
4 that we clarify what's at 2409.6 at some point
5 in time. Okay?

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

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

16 You know, you get into a lot of
17 those -- the Zoning Administrator, I'm sure,
18 does a lot of work, but should he notify us
19 prior, I don't know. I can't sit here
20 personally, and I don't think any of us can
21 sit here now and say we've got 1,000 cases,

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1 and I'm sure we don't want to deal with a
2 thousand of those issues, but I think we need
3 to at least look at it, at least look at it.

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

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

21 COMMISSIONER SELFRIDGE: Mr.

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1 Chair, I just want to make a quick comment. I
2 agree with Mr. May.

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

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

18 Any disagreements? Okay.

19 All right. So, Ms. Schellin,
20 hopefully, you know what we are supposed to
21 do.

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1 MR. RITTING: Well I could sum up,
2 I think, what I think I heard earlier, which
3 is that you'd like the Office of Zoning, in
4 care of Ms. Schellin, to send a letter to
5 Zoning Administrator Matt LeGrant, saying that
6 you do not believe that the second two -- or
7 the second and the third items of flexibility
8 that he stated that he believed were
9 authorized by the PUD are not so authorized by
10 the PUD, or by the Zoning regulations he cited
11 in his letter.

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

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

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

19 MR. RITTING: Well, I mean, that
20 depends on what Mr. LeGrant does, I suppose.
21 If he sees your letter and he decides not to

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1 issue a permit, if one is presented to him,
2 that would be the end of the process.

3 COMMISSIONER TURNBULL: Can he
4 ignore the Zoning Commission?

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

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

19 CHAIRMAN HOOD: Mr. Ritting, we,
20 actually, have a request, and I want to know
21 procedurally, I know we probably haven't done

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1 this, the applicant's counsel is here, and has
2 asked to be heard.

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

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

10 CHAIRMAN HOOD: Unless called up,
11 right?

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

14 CHAIRMAN HOOD: I think it does
15 say that.

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

20 CHAIRMAN HOOD: Commissioners, I
21 really can go either way on it. Nobody wants

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1 to hear from you. Okay.

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

5 UNIDENTIFIED SPEAKER: Okay.

6 CHAIRMAN HOOD: A decision has
7 been made.

8 Okay. Anything else?

9 MS. SCHELLIN: That's it.

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

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

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