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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission

REGULAR PUBLIC MEETING  
1432nd Meeting Session [11th of 2016]

6:17 p.m. to 6:56 p.m.  
Thursday, May 12, 2016

Jerrily R. Kress Memorial Hearing Room  
441 4th Street, N.W., Suite 220 South  
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIE COHEN, VICE CHAIR

4 PETER MAY, Commissioner

5 ROBERT MILLER, Commissioner

6 MICHAEL TURNBULL, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of the Attorney General:

12 ALAN BERGSTEIN

13 ARIEL EBI

14

15 Office of Planning:

16 JENNIFER STEINGASSER

17 MAXINE BROWN-ROBERTS

18 MEGAN RAPPOLT

19

20 Department of Energy and Environment:

21 JAY WILSON

22

23

24

25

## 1 P R O C E E D I N G S

2 CHAIRPERSON HOOD: Okay. We're ready to  
3 begin. This meeting will please come to order.

4 Good evening, ladies and gentlemen. This is  
5 a public meeting of the Zoning Commission of the  
6 District of Columbia.

7 My name is Anthony Hood. Joining me this  
8 evening are Vice Chair Cohen, Commissioner Miller,  
9 May, and Turnbull. We're also joined by the Office  
10 of Zoning staff, Ms. Sharon Schellin, Office of the  
11 Attorney General, Mr. Bergstein and Mr. Ebi, Office  
12 of Planning, Ms. Steingasser, Ms. Brown-Roberts, Ms.  
13 Rappolt, and the District Department of Energy and  
14 Environment, Mr. Wilson.

15 We do not take any public testimony unless we  
16 ask someone to come forward. We ask that you please  
17 turn off all your beepers and cell phones, or your  
18 electronic devices so not to disrupt these  
19 proceedings.

20 Okay. Ms. Schellin, do we have any  
21 preliminary matters?

22 MS. SCHELLIN: No, sir.

23 CHAIRPERSON HOOD: Okay. Ms. Schellin, could  
24 you do me a favor and call the first case?

25 MS. SCHELLIN: Yes, sir. The first case is

1 Zoning Commission Case No. 15-01A, Level 2  
2 Development, request for minor modifications to a PUD  
3 at Square 3587.

4 This case was deferred from a prior meeting  
5 and what you have here are exhibits 8 through 9A, the  
6 applicant's revised roof plan. Exhibit 10 is an OP  
7 supplemental report. And Exhibits 11 and 11A, the  
8 applicant's supplemental revised roof plan. Ask the  
9 Commission to consider final action this evening.

10 CHAIRPERSON HOOD: Thank you, Ms. Schellin,  
11 for teeing that up. Colleagues, again this is still  
12 on the consent calendar item. And I'll ask the  
13 question, I don't think anyone -- we didn't take it  
14 off, we just had a few things we want to revise.  
15 Anyone objects to it still being where it is?

16 Okay. Not hearing anything, let me open it  
17 up. Any comments? Questions?

18 MR. MAY: Yeah, so I think that since I had  
19 most of the questions last time around I should  
20 start.

21 I see that the number of the issues have been  
22 addressed. The mezzanines were illuminated. The  
23 balconies above the two heights of penthouse space,  
24 those were -- or the patios outside the mezzanines  
25 were eliminated. The setbacks have been addressed,

1 including the handrail setbacks as far as I  
2 understand.

3           The thing that I still had a question about  
4 and I'm hoping that the Office of Planning can help  
5 me figure this out is that the back portion of the  
6 building, which faces those two courts or rear yards  
7 or whatever. The setbacks of those projecting  
8 portions of the penthouses are not at one-to-one.  
9 And I'm wondering if that's simply because they're  
10 considered courts and not rear yards, or did they --  
11 could they not, you know, address it for some reason  
12 because it seems like some of it could be addressed.

13           MS. STEINGASSER: I'm sorry, I don't know.

14           MR. MAY: Okay.

15           MS. RAPPOLT: Are you talking about the pinch  
16 point? I'm calling it a pinch point but it's sort of  
17 where the corner of where the building goes.

18           Okay. It's my understanding that those  
19 weren't set back during the original. I think they  
20 asked for relief from those and I don't know that  
21 they've been moved back since.

22           MR. MAY: Right. And so I think the point we  
23 were trying to make in the previous hearing is that  
24 if you're going to take advantage of the new benefits  
25 that are associated with the new penthouse

1 regulations, that you ought to meet all of the  
2 requirements. And that was a requirement that I  
3 thought was there.

4 Now maybe there's some reason why it's not  
5 required because it's a closed court and it's not  
6 required for a closed court. But it seems to me that  
7 on its face it's a rear yard, not a closed court, and  
8 so it ought to meet all that requirement.

9 Now, if there was some technical reason why  
10 it is extremely difficult to do so, such as the  
11 placement of an elevator shaft, that I can  
12 understand. But pretty much anything else is  
13 moveable and I thought that was going to be addressed  
14 by the applicant.

15 Mr. Chairman, do you want to hear from the  
16 applicant? There seems to be motion in the audience.

17 CHAIRPERSON HOOD: Yeah, it also, because I'm  
18 looking at the Office of Planning's report about the  
19 -- you talking about the guardrails?

20 MR. MAY: No, no, no. No, I'm not talking  
21 about the guardrails. I'm talking about the  
22 projecting portions of the penthouse, toward the rear  
23 of the building.

24 CHAIRPERSON HOOD: Okay. Yeah, they can come  
25 forward so we can see if we can get this resolved and

1 then -- and if they can show us where it's  
2 memorialized the concerns. So, if you can identify  
3 yourself.

4 MR. FREEMAN: Kyrus Freeman, Holland & Knight  
5 on behalf of the applicant, Level 2. Those  
6 structures are in the same location as they were when  
7 initially approved. And we went through the  
8 analysis. It's because of the stair, it's because of  
9 the elevator, it's because of other internal  
10 operations of the building. The setback relief on  
11 those portions of the building are not in order to  
12 create any additional habitable space. They were  
13 there when approved and it's not -- that relief  
14 wasn't granted in order to accommodate additional  
15 space. It's --

16 MR. MAY: I understand that because there was  
17 no option for additional space when the case was  
18 originally granted. But again --

19 MR. FREEMAN: We had a terrace. We had a  
20 communal room on the roof.

21 MR. MAY: I understand that. You had a  
22 terrace. Okay. But, you know, I think the point  
23 that we made when this came up on the consent  
24 calendar before is that if you're going to take  
25 advantage of the benefits of the new penthouse

1 regulations you have to comply with all of the  
2 setback requirements. Unless you can demonstrate  
3 again why it is absolutely essential.

4           You cannot tell me that the residential unit  
5 on the east side of the building is absolutely  
6 essential, and it does not meet the setback. I mean,  
7 I can see -- you could try to make that argument for  
8 the extension of the penthouse that's at the  
9 northeast -- or sorry, northwest corner, because  
10 there is -- it looks like maybe it's an elevator  
11 shaft there. It's a little bit hard to tell because  
12 there -- well, it's not labeled. But there's also a  
13 restroom there. The restroom could move.

14           I mean, I thought we were pretty clear about  
15 meeting all the setback requirements. The only cases  
16 where it wouldn't be -- where you wouldn't have to  
17 meet the setback requirement is where it truly is  
18 impossible because of something like an elevator  
19 shaft.

20           MR. FREEMAN: Well, we understood -- maybe we  
21 misunderstood, obviously, that that is the same  
22 relief that was granted before and it's not new  
23 relief that we're asking for an order to accommodate  
24 habitable space. That is --

25           MR. MAY: Yeah, and I guess maybe I should



1 have been more clear that I didn't care about what  
2 relief was previously granted. You're talking about,  
3 essentially, you know, the argument has to do with  
4 the taking advantage of all this additional habitable  
5 space. I mean, somehow magically you've managed to  
6 cram in a lot more habitable space on this penthouse.  
7 And I think you may have extended the height of the  
8 penthouse. If you're going to do that you've got to  
9 comply with all of the regulations in my view. Not  
10 just the -- you know, not sort of go back to what  
11 relief was previously granted and then sort of see  
12 what you can fit in.

13 I mean, maybe what you're telling me is that  
14 maybe we should have looked harder at what was done  
15 in the original case and not granted that relief.

16 MR. FREEMAN: No, we actually spent time  
17 going through that relief and proved the case for  
18 that relief. So I think that relief was properly  
19 granted because we --

20 MR. MAY: Yeah, but I mean again, in this  
21 case what we're talking about -- I mean, at the very  
22 least, the residential unit that's at the east --  
23 toward the eastern side of the building is not  
24 properly set back. And you can't tell me that that's  
25 essential. That relief is necessary in order to have

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1 that space.

2 MR. FREEMAN: We're happy to, if you want to  
3 schedule a limited scope hearing for us to present  
4 the case on why that relief is necessary, we're happy  
5 to do that.

6 MR. MAY: Well, I'm not inclined to vote in  
7 favor of this as a minor modification at this stage.  
8 So I mean, again, you're back in the same situation.  
9 You can present it again, you know, fix it and  
10 present it again as a minor mod and I'd vote in favor  
11 of it and I'd leave it on the agenda. But otherwise,  
12 yeah. We'd need another hearing.

13 MR. FREEMAN: And there is mechanical space  
14 above that area as well.

15 MR. MAY: So maybe that's the justification  
16 for it, but if that really is the justification then  
17 that case should have been made here.

18 MR. FREEMAN: Well, on A-36 you could see the  
19 mechanical space.

20 MR. MAY: I know I can see it. I mean, I  
21 know that it's drawn there. But again, you've  
22 managed to pack in all of the mechanical requirements  
23 of the building as it was originally designed, into  
24 this newly configured penthouse, and you've managed  
25 to get 4,000 square feet of habitable units, in

1 addition to the interior amenity area. So you have a  
2 lot more space. You know, you have to demonstrate to  
3 me why every square foot of that second floor space  
4 is required, and then maybe you have a case.

5 Anyone else on the Commission have an opinion  
6 or disagree?

7 MR. TURNBULL: I would concur with you,  
8 Commissioner May.

9 CHAIRPERSON HOOD: Okay. Anybody else on  
10 that topic?

11 MR. MAY: I do want to say, you know, I'm  
12 sorry if you misunderstood from before. I mean, I  
13 thought I was really crystal clear that I wanted to  
14 see it, you know, absolutely comply with every one of  
15 the setback requirements. And you know, I hate to  
16 have to have this drag on but I have some -- you  
17 know, I don't want to --

18 CHAIRPERSON HOOD: I think, Commissioner May,  
19 you're exactly right. We put these regulations in  
20 place for a reason and I would agree with your  
21 comments. I'm starting to see a lot of this and I  
22 would wholeheartedly support your comments on this.

23 I guess my question is, Mr. Freeman, you want  
24 to leave it on the consent calendar to go back and  
25 make an adjustment? Or do you want to see if we can

1 have a limited scope hearing?

2 MR. FREEMAN: If we were to have a limited  
3 scope hearing how quickly could that be scheduled?

4 CHAIRPERSON HOOD: Probably in September or  
5 October. So you want to go back and make the  
6 adjustment on the consent calendar?

7 MR. FREEMAN: Well, if you could leave that  
8 open and we will either -- we'll confer with the  
9 Office of Zoning to see what we need to file to get  
10 back on the consent calendar and if not we will --  
11 we'll try to schedule that limited scope hearing.  
12 So.

13 CHAIRPERSON HOOD: Try the consent calendar.

14 MR. MAY: Mr. Chairman, could I make a  
15 suggestion?

16 CHAIRPERSON HOOD: Sure.

17 MR. MAY: I think that one of the things  
18 that's missing here is that if there is absolute  
19 requirement driven by mechanical needs for the relief  
20 that was previously granted to stay intact, then you  
21 can make that argument. I think you have a very hard  
22 time making that argument when it comes to the  
23 habitable space that's on the east wing; on the  
24 eastern portion of the building. And the western  
25 portion of the building, you know, you may be able to

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1 make that argument.

2 But, you know, you're welcome to try it again  
3 as a minor modification if you include a rationale  
4 for continuing to be granted that relief.

5 MR. FREEMAN: Thank you.

6 MS. SCHELLIN: And I would just like to  
7 remind Mr. Freeman --

8 CHAIRPERSON HOOD: Hold on. Let me see.  
9 Have you made -- you need to consult with somebody or  
10 you want to leave it on the consent calendar, or you  
11 want to have a limited scope hearing?

12 MR. FREEMAN: I think we'd like to -- the  
13 person with whom I need to consult is not here. So  
14 we would like to --

15 CHAIRPERSON HOOD: I got you.

16 MR. FREEMAN: -- again, try to remain  
17 flexible to see if we can make the revisions then  
18 come back on consent, and if not we will --

19 CHAIRPERSON HOOD: Okay.

20 MR. FREEMAN: We'll contact the Office of  
21 Zoning to determine the next available hearing date.

22 CHAIRPERSON HOOD: Because I think if we do  
23 consent calendar item we can get them in a lot  
24 faster.

25 MS. SCHELLIN: Right. And actually you

1 wouldn't be able to consult me for a hearing date  
2 because you would need to have the commission set it  
3 down. So just so you know, it would have to be on  
4 the agenda for the commission to take it off and set  
5 it down. So you need to make that decision.

6 MR. FREEMAN: Can we set it down today for a  
7 hearing and if we cancel that hearing then we'll  
8 cancel that hearing?

9 MS. SCHELLIN: No. If they set it down  
10 you've got to go that route. That means they no  
11 longer think it's minor. So --

12 MR. FREEMAN: We could file a new minor  
13 application.

14 CHAIRPERSON HOOD: Let's do this. Let's give  
15 you -- when is our next meeting?

16 MS. SCHELLIN: The 23rd.

17 CHAIRPERSON HOOD: When is that. I don't  
18 even know what day it is.

19 MS. SCHELLIN: It's Monday, the 23rd, so --

20 MR. MAY: Eleven days.

21 CHAIRPERSON HOOD: Will you be ready by the  
22 23rd to let us know whether you want to set it down  
23 or leave it on the consent calendar?

24 MR. FREEMAN: Yes.

25 CHAIRPERSON HOOD: We can do it at that

1 action, that way we can make it easy on you.

2 MR. FREEMAN: Yes.

3 CHAIRPERSON HOOD: We don't try to put up a  
4 lot of road blocks. We try to make things a lot  
5 easier down here. So the consent calendar gets you a  
6 lot faster. Okay?

7 MS. SCHELLIN: All right. So if you want to  
8 make a submission in time for that meeting. Okay.

9 MR. FREEMAN: Thank you.

10 CHAIRPERSON HOOD: All right. Anything else,  
11 colleagues, on this? Okay. Let's go to the next.  
12 Thank you, Mr. Freeman.

13 All right. Hold on a second. Okay. Our  
14 next -- now let's go to final action, Zoning  
15 Commission Case No. 16-03, DB Residential Hill East.  
16 No. I'm looking at a different agenda. Let's go to  
17 Zoning Commission Case 15-22.

18 [Discussion off the record.]

19 CHAIRPERSON HOOD: Okay. Let's go to Zoning  
20 Commission Case No. 16-03, DB Residential Hill East,  
21 LLC., Hill East District, design review at Square  
22 1112E. Ms. Schellin.

23 MS. SCHELLIN: Yes, sir. At Exhibits 35  
24 through 35A-2 and 36 we have the applicant's post-  
25 hearing submissions. And I would just point out that

1 the applicant has asked that the Commission allow  
2 them to file a full set of plans which basically is  
3 just consolidating submissions that are already in  
4 the record. If you would approve that, they have the  
5 hard copies this evening, and they would then upload  
6 into ISIS, the electronic copy, tomorrow morning.  
7 And to consider final action this evening.

8 CHAIRPERSON HOOD: Okay, Commissioners, we  
9 have a number of running issues here. The applicant  
10 seeks a variance from the Inclusionary Zoning  
11 Regulations. This property is located within the  
12 Anacostia Water Development Zone. But let's open it  
13 up. Any comments on this? Questions?

14 MR. MAY: I'd like to talk a little bit about  
15 the design issues.

16 CHAIRPERSON HOOD: Okay.

17 MR. MAY: So, you know, we've made the  
18 request that they look more carefully at a couple of  
19 the elevations on the building in the G-1 parcel or  
20 whatever. You know, I appreciate the steps that they  
21 have taken. I think the Massachusetts Avenue  
22 elevation got a little bit better. But the C Street  
23 elevation actually kind of got worse. And I'm -- I  
24 mean, I can understand what you know, what some of  
25 the moves were that they made. But I actually think



1 that we're better off with original C Street design.  
2 I think really on C Street the only thing it really  
3 needed was a little bit more consistency in the brick  
4 color because it was so -- you know, you had the very  
5 light tan brick and then you had the red brick and it  
6 was, you know, going back and forth.

7           And the form of the building was very similar  
8 from one to the next, and it read like five  
9 townhouses or whatever it was, or six townhouses.  
10 But having that sort of jarring difference in the  
11 brick color was not the sort of thing that you would  
12 normally see in the City's older neighborhoods and  
13 certainly not what you'd see in the other areas of  
14 Hill East or further to the west in the rest of  
15 Capitol Hill.

16           And I think what, you know, by inserting a  
17 completely different façade in the middle of C Street  
18 there, it just, it made it, I think, more  
19 problematic.

20           So I think, like I said, I think the C Street  
21 was better off the way it was. Mass Ave. I think is  
22 probably acceptable because they did simplify that  
23 and made it look a little bit more consistent, like a  
24 regular row of town houses.

25           And I think that -- I mean, some of the other

1 design issues, or design questions, setback  
2 questions, I think were really raised by others.  
3 Maybe Commissioner Turnbull wants to address some of  
4 those.

5 MR. TURNBULL: Well, I just had one that I  
6 noticed on the roof and it's on Drawing 23A, which is  
7 the building F roof. And there is a seating area  
8 with a trellis. And it's right adjacent to a stair,  
9 stair number 2. And the trellis extends beyond the  
10 eastern part of the stair. And I believe from  
11 another drawing, I think I saw that that stair is  
12 about 13-4 from the railing, so I'm just concerned  
13 that I would have thought that the -- and again, I  
14 don't know what the height is. I didn't see anything  
15 that really showed me the height of what this trellis  
16 was. Unless I missed it.

17 I guess part of the thing was, they really  
18 didn't do a good job of showing the appurtenances and  
19 other things on the roof and relating them on a  
20 height, a one-to-one height drawing which we normally  
21 get on a lot of things, and back to the plan, which  
22 would show us exactly what it is.

23 So, I don't know. I have feeling that it  
24 might be not at a one-to-one setback, the height of  
25 the trellis. But I can't be sure because I don't

1 really have anything that clearly shows me what that  
2 relates to. And I'm not sure -- I think that -- on  
3 the top of the stairs it's hard to tell because some  
4 of them vary. I mean, one stair is at 10 feet. If  
5 the top of the stair was 10 feet, I mean, I wish they  
6 had shown exactly what the dimensions were on the  
7 drawing and indicated a one-to-one diagram setback.  
8 So I am a little bit confused as to whether it beats  
9 it or not.

10 CHAIRPERSON HOOD: Okay. Anything else, Mr.  
11 Turnbull, before you finish?

12 MR. TURNBULL: No, I just wish we had -- I  
13 wish they had done a little bit better job of showing  
14 all the roof appurtenances and showing that they meet  
15 the one-to-one setbacks in all areas.

16 CHAIRPERSON HOOD: Well, I would agree. I  
17 think we don't usually -- I don't like to necessarily  
18 vote in the blind. So, and I think it needs to be  
19 clear for -- if it's not clear to one of us, it needs  
20 to be clear for the record. So this is another one  
21 that I'm going to recommend that we do a -- I hate to  
22 keep doing special public meetings but we need some  
23 clarification.

24 Well, let's finish talking about it first.  
25 Vice Chair Cohen, you wanted to answer?

1 MS. COHEN: Yeah, I just have two comments.  
2 And I think both comments will not deny me the, you  
3 know, opportunity to vote for this. But one is the  
4 disappointment that it's just Silver certification.  
5 I think this type of a project really should be Gold  
6 standard certification. It's sort of like Robert  
7 Burton's comment of being pennywise and pound  
8 foolish. Especially because you recoup the costs  
9 that are going into the project within three to five  
10 years. So there is no excuse that this particular  
11 project should not go for Gold.

12 The other point that I want to make is that  
13 again, we are getting affordability that is deeper.  
14 And IZ does not apply. But I don't think the  
15 applicant in this made the case that the practical  
16 difficulty of making this IZ economically feasible  
17 was made. And therefore I just want to make sure  
18 that it's known for the record and for any other  
19 developer who comes forward with a project in Hellise  
20 (phonetic) that they have to come up with the  
21 economically viable. It's not economically viable  
22 argument to not include additional IZ units.

23 Again, I don't believe this project got any  
24 type of write down by the City, and therefore I think  
25 that they could make the case. They just didn't make

1 the case of economic viability or lack thereof. So,  
2 I just wanted to you know, put that out in the public  
3 to make sure in the future we do get that type of  
4 analysis from the applicants.

5 CHAIRPERSON HOOD: Mr. Miller, did you want  
6 to add something?

7 MR. MILLER: Yes, Mr. Chairman. Thank you.  
8 This was a very long awaited first project on the  
9 Hill East site, which that neighborhood and a lot of  
10 people in the city have been waiting to happen for a  
11 long time. The affordable housing component is as  
12 you stated, Mr. Chairman, subject to the Anacostia  
13 Waterfront legislation, which has a much stronger  
14 affordability requirement than a deeper amount of  
15 affordable housing and a greater amount. In this  
16 case it's 30 percent of the total housing units,  
17 which half of which must be developed at 30 percent  
18 AMI, which is very deep, and 15 percent, and half of  
19 which must be developed at 60 percent AMI. And I  
20 think that Anacostia legislation required a 50-year  
21 covenant. That's the one area where it's a little  
22 less than IZ because IZ is in perpetuity.

23 But we're talking about 106 -- I think it's  
24 106 affordable housing units, half of which will be  
25 at the 30 percent AMI level, and half at 60 percent

1 as I just said. So it's a considerable amount.

2           So I think to the extent that the public is  
3 hearing us saying that they need a variance from the  
4 IZ regulations, it's only because they're doing so  
5 much more. And I think what we need, regardless of  
6 when we act on this, what we need from Office of  
7 Planning is a text amendment to the Hill East zone  
8 that's similar to the Walter Reed zone, that has its  
9 own you know, strong affordability requirement. But  
10 then, and so it waives the IZ requirement for the  
11 covenant period for the stronger affordability. And  
12 then IZ would kick in at the end of the 50 years.

13           So that doesn't preclude us from acting now,  
14 I don't think. I think we can grant the waiver or  
15 variance, or whatever we're calling it, here so this  
16 doesn't have to be held up because I think it's our  
17 own regulations that have created the maybe  
18 exceptional circumstances here that where they need  
19 an IZ variance.

20           So, the other thing I -- so the housing  
21 component is very important and the development  
22 itself is very important to be preceding as quickly  
23 as possible since it's the first one in this area.  
24 On the facades, on the C Street façade, I didn't have  
25 a problem that -- or as much of a problem as others

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1 had the last time with the facades. I think they did  
2 simplify it. I kind of like the way it was before,  
3 but I also, I just think it reads more residential  
4 now, and that was one of my concerns that the -- not  
5 as much with the town houses, but with the large  
6 white building, which I don't think any changes were  
7 made to, that it reads like a beautiful old senate  
8 office building as opposed to a residential -- at  
9 least on the C Street façade side because the  
10 balconies there I think are just, are not very -- I  
11 think are just Juliette balconies, although on the  
12 back side, the court side, I think they do have more  
13 functioning balconies. So I didn't have a problem --

14 MR. MAY: I think you need to think more like  
15 Paris, rather than, you know, senate office  
16 buildings. It's a bit Parisian.

17 MR. MILLER: Okay.

18 MR. MAY: Big stone buildings, Juliette  
19 balconies --

20 MR. MILLER: Yeah.

21 MR. MAY: Big windows.

22 MR. MILLER: Okay.

23 MR. MAY: Different kind of residential.

24 MR. MILLER: I will defer to your  
25 characterization. I like the big senate office

1 building, but they're office buildings. That's the  
2 problem and it just didn't read as residential.

3           Anyway, I don't have a problem with the  
4 development. I think it's a very attractive  
5 development and I hope we can proceed as quickly as  
6 possible.

7           MR. MAY: So, Commissioner Miller, can I ask,  
8 do you prefer the previous C Street elevation versus  
9 what's presented now?

10           MR. MILLER: I'm looking at both. Those  
11 square versions at the top, on the end, and in the  
12 middle, are -- I think what they did is actually more  
13 creative and looks -- and at the same time it's  
14 simpler because it's a flatter façade. Although it  
15 did break up the long -- I think there are pluses and  
16 minuses of both. I could live with either one of  
17 them. I just want to live with them. Soon.

18           MR. MAY: Right. Okay.

19           CHAIRPERSON HOOD: Okay, I think --

20           MR. MAY: So, I'm --

21           CHAIRPERSON HOOD: If you -- oh, are you  
22 still on that topic? We're still on there.

23           MR. MAY: No, we can move on.

24           CHAIRPERSON HOOD: Oh, okay.

25           MR. MAY: I may come back to it.



1 CHAIRPERSON HOOD: No, I'm going to come back  
2 to you I just --

3 MR. MAY: Okay.

4 CHAIRPERSON HOOD: Vice Chair wanted to say  
5 something.

6 MS. COHEN: No, I just wanted to clarify  
7 that --

8 CHAIRPERSON HOOD: To clarify.

9 MS. COHEN: -- again, we're making certain  
10 assumptions on the IZ and I'm just asking for future  
11 developments to meet the variance test. That's all.  
12 I just want to make sure you understood that,  
13 Commissioner Miller.

14 MR. MILLER: Yeah, but the text amendment  
15 that I'm talking about would make that moot. They  
16 wouldn't have to --

17 MS. COHEN: That's true.

18 MR. MILLER: That's all I was saying.

19 MR. MAY: And the text amendment you're  
20 talking about, anything that would be subject to the  
21 AWI bill? Is that what it -- I mean, the AWI law,  
22 where this additional affordability is a requirement  
23 as opposed to just Hill East? Or is Hill East the  
24 only place where this applies?

25 MR. MILLER: No, I think you're correct.

1 MR. MAY: Yeah. So it's anything.

2 MR. MILLER: It would apply to other --

3 MR. MAY: Right. Yeah.

4 MR. MILLER: -- areas. So we need a broader  
5 text amendment. Or two text amendments.

6 MR. MAY: Right. And it's --

7 MR. MILLER: Or two text amendments.

8 MR. MAY: Right. And it's an exemption for  
9 the period of -- for that 50-year period or whatever  
10 it is.

11 MR. MILLER: For the affordable --

12 MR. MAY: The affordability period.

13 MR. MILLER: Period. Yeah.

14 MR. MAY: Yeah. I do -- you know, I think we  
15 probably ought to clarify that, I don't know, maybe  
16 this is not an issue but the question is, at 50 years  
17 when IZ kicks in the applicant has said that IZ will  
18 apply after 50 years. Is it the IZ that's in place  
19 in 50 years or is it the IZ that's in place now?

20 Mr. Bergstein, do you actually have an  
21 opinion on that?

22 MR. BERGSTEIN: It's my interpretation, and I  
23 spoke with the attorney about this, that first of all  
24 it would not be actually IZ but it would be the IZ  
25 standard of affordability, and I believe as it is

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1 now.

2 MR. MAY: Okay. Then, that's fine.

3 MR. BERGSTEIN: But they won't have to start  
4 going through the IZ selection process. They would  
5 just have to --

6 MR. MAY: Maintain --

7 MR. BERGSTEIN: The affordability levels  
8 would be as applicable as IZ. And I guess we do have  
9 to say that because there's a bit of a hole in the  
10 regulations that the actual set-aside amount isn't  
11 currently specified in 2603, that perhaps it should  
12 be as that IZ standard is subject to amendments made  
13 in 0433G, which I believe are going to plug in actual  
14 IZ standards for Hill East, and very specifically so.  
15 And so I think that the intent should be that it  
16 would be the IZ standard as it either currently is,  
17 such as it is, or as adopted through 0433G. And if  
18 the Office of Planning has any views upon that, that  
19 would probably be helpful for me to hear at least.

20 MS. BATTIES: We're happy to work with you on  
21 bringing that text amendment forward for the June  
22 meeting. I don't know how to --

23 MS. STEINGASSER: No, that's to say, I'm  
24 sorry, the question is, do we want to say that the IZ  
25 -- that it is -- or I guess we don't have to say

1 anything. The question is, do you want us to put  
2 anything in the order, or are you happy with the  
3 interpretation that it is whatever IZ set aside is  
4 applicable to these developments at this time.  
5 That's what you want to say.

6 MR. MAY: Okay. Sorry.

7 CHAIRPERSON HOOD: Anything else? I know we  
8 were talking about 50 years from now, but I believe  
9 that the city then will have a new code and I'm sure  
10 everything we talk about now will be changed. So if  
11 we want to continue about what's going to happen 50  
12 years from now we can.

13 MR. MAY: But you'll still be chairman.

14 MS. COHEN: You'll still be -- yeah.

15 CHAIRPERSON HOOD: I will not be chairman. I  
16 hope to still be living.

17 MR. TURNBULL: And you can go through ZR-66.

18 CHAIRPERSON HOOD: So, anything else,  
19 Commissioners?

20 MR. TURNBULL: Well, I just had -- I'm just  
21 wondering. I would concur with Commissioner Miller's  
22 comments on the IZ and the text amendment when we go  
23 through it. My only question is, we were talking  
24 about, do we need to add some language into the order  
25 now that reflects what we've just been talking about

1 as far as how we got to where we are with this IZ? I  
2 mean, with what's going on and what's allowed in Hill  
3 East right now, on this project, on this?

4 MR. BERGSTEIN: No, I mean, the applicant has  
5 simply stated that the exceptional condition and the  
6 practical difficulty is they have to comply with AWI  
7 and I can't enhance that. But my understanding is  
8 you're finding for the purposes of this application  
9 at this point in time. That suffices and you intend  
10 to grant the variance and leave it at that. I can't  
11 enhance it any more than it presently is. But it's  
12 my understanding that based upon the circumstances  
13 that are presented to you, you're finding the  
14 assertion that's been made in the order to suffice,  
15 and we'll leave it as it is.

16 CHAIRPERSON HOOD: Anything else on this  
17 case?

18 The only thing I think we still have  
19 outstanding is the issue that you raised, Mr.  
20 Turnbull, about what's going on on the roof.

21 MR. TURNBULL: Yeah, I don't want to delay  
22 this project any longer than it is, but I'm just  
23 uncertain that all of the roof structures are set  
24 back one to one.

25 CHAIRPERSON HOOD: Is this final action?

1 MR. MAY: Yes. Single.

2 MR. TURNBULL: You only get one bite at this.

3 MR. MAY: Mr. Chairman, can I make a  
4 suggestion?

5 CHAIRPERSON HOOD: Yes.

6 MR. MAY: It's true it's not completely clear  
7 that it meets the setback requirement. But if it  
8 doesn't meet the setback requirement they'd have to  
9 get relief or they'd have to modify. So I think it's  
10 safe to say that -- I mean, since we're not granting  
11 relief related to that trellis, that they will have  
12 to modify it if need be in order to meet the setback  
13 requirement. So in other words, I think we can go  
14 ahead and trust that it will be --

15 MR. TURNBULL: I'm just concerned that the ZA  
16 doesn't see anything.

17 MR. MAY: Unless we explicitly grant relief  
18 for that, I mean, we're not approving the entirety of  
19 the plans. We're approving it on the assumption that  
20 the setback has been met. I mean, the ZA has got to  
21 review the plans when they're submitted and is going  
22 to compare any relief granted, versus what's  
23 submitted. And they're going to pick up on relief if  
24 it's needed for the trellis set back.

25 CHAIRPERSON HOOD: We're going to ask Ms.

1 Batties if you can come up and certify.

2 MS. BATTIES: Good evening, Lila Batties with  
3 the law firm of Holland and Knight, on behalf of the  
4 applicant, D.B. Residential. The architect has  
5 confirmed with me that the trellis does meet the one-  
6 to-one setback and we're going to certify that for  
7 the record this evening.

8 MR. TURNBULL: And do all the other trellises  
9 and appurtenances meet the one-to-one setback then?

10 MS. BATTIES: Yes, they do.

11 MR. TURNBULL: Okay.

12 MS. BATTIES: Uh-huh.

13 CHAIRPERSON HOOD: Okay.

14 MR. MAY: So I have just one remaining  
15 question which is that when it comes to the facades  
16 that they submitted that were altered, does anybody  
17 feel strongly enough about C Street to say, go back  
18 to the old C Street elevation or to make further  
19 changes? I mean, at this point I could probably go  
20 either way. I don't feel that strongly about it. I  
21 don't want to continue this case in order to see  
22 another set of elevations. So --

23 MR. TURNBULL: I can go either way. I can go  
24 either way.

25 MR. MILLER: Why don't we just give them the

1 flexibility to go either way?

2 CHAIRPERSON HOOD: So, yeah, make sure that  
3 we're giving them the flexibility to go to either way  
4 because we'll be here the next 50 years talking about  
5 which one we want to go with.

6 MR. MAY: All right. That's fine.

7 CHAIRPERSON HOOD: Okay. So you have the  
8 flexibility. We gave the flexibility on C Street.  
9 But my opinion, I kind of agree with Commissioner  
10 Miller. I kind of like the first one, but --

11 [Discussion off the record.]

12 CHAIRPERSON HOOD: That was my two cent's  
13 worth. Oh, Commissioner May and I's two cent's  
14 worth. Okay. Let's go ahead and dispose of -- I  
15 mean, Ms. Batties, you were trying to come to the  
16 table. Did you want to add something? Okay.  
17 Somebody like to make a motion?

18 MR. MILLER: Mr. Chairman, I would move that  
19 the Zoning Commission take final action this evening  
20 on Zoning Commission Case No. 16-03 DB Residential  
21 Hill East, LLC., Hill East District Design review at  
22 Square 112E and ask for a second.

23 MR. TURNBULL: Second.

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



1 [Vote taken.]

2 CHAIRPERSON HOOD: Ms. Schellin, would you  
3 record the vote?

4 MS. SCHELLIN: Yes. Staff records the vote  
5 five to zero to zero to approve final action in  
6 Zoning Commission Case No. 16-03, Commissioner Miller  
7 moving, Commissioner Turnbull seconding,  
8 Commissioners Hood, Cohen, and May in support.

9 CHAIRPERSON HOOD: Okay. And our last case  
10 for the special public meeting is Zoning Commission  
11 Case No. 15-22, Ms. Schellin.

12 MS. SCHELLIN: Yes, this was a case that was  
13 deferred from our May 9th public meeting. The  
14 applicant has made a submission at Exhibits 42 and  
15 42A, so we'd ask the Commission to consider making  
16 final action this evening.

17 CHAIRPERSON HOOD: Okay. Commissioner May, I  
18 think you were the one who brought up a number of the  
19 concern. I think we all agreed so we want to see if  
20 this meets your satisfaction.

21 MR. MAY: Yeah, I think the issue has been  
22 appropriately addressed. As much as I would like to  
23 make Mr. Freeman come back yet again, as we tend to  
24 do. No, I think it's perfectly fine. I appreciate  
25 the efforts of the applicant and Mr. Freeman to get

1 this addressed to our satisfaction.

2 CHAIRPERSON HOOD: Okay. I think that was  
3 the only outstanding issue. No surprises to Mr.  
4 Freeman tonight, so I would move that we approve  
5 Zoning Commission Case No. 15-22 and ask for a  
6 second.

7 MS. COHEN: Second.

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

10 [Vote taken.]

11 CHAIRPERSON HOOD: Ms. Schellin, would you  
12 record the vote?

13 MS. SCHELLIN: Yes. Staff records the vote  
14 five to zero to zero to set down Zoning Commission  
15 Case No. -- I'm sorry. To approve final action in  
16 Zoning Commission Case No. 15-22, Commissioner Hood  
17 moving. I heard Commissioner Miller first making the  
18 second. Commissioners Turnbull, Cohen, and May in  
19 support.

20 CHAIRPERSON HOOD: Okay. Ms. Schellin, do we  
21 have anything else?

22 MS. SCHELLIN: Not for the meeting.

23 CHAIRPERSON HOOD: Not for the meeting. I  
24 want to thank everyone, and I want to thank those for  
25 the hearing -- who are at the hearing, for being

1 patient for us starting late with your hearing, and I  
2 promise you tonight we'll have you out of here at  
3 least by 11:30. So I want to thank you all for being  
4 patient. I'm just joking. Thank you all for being  
5 patient. Give us five minutes and we'll get started  
6 so you all can come on and get set up.

7 [Hearing adjourned at 6:56 p.m.]

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