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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Regular Public Meeting
1451st Meeting Session (2nd of 2017)

6:37 p.m. to 8:44 p.m.
Monday, January 30, 2017

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 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6 PETER SHAPIRO, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13 MAXINE BROWN-ROBERTS

14 ELISA VITALE

15 STEPHEN MORDFIN

16 BRYAN GOLDEN

17 MATT JESICK

18

19 Office of the Attorney General:

20 JACOB RITTING

21 ALAN BERGSTEIN

22 MR. COHEN

23

24

25

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

2 CHAIRPERSON HOOD: This public meeting will
3 please come to order. This is the 1,451st meeting of
4 the Zoning Commission. Today's date is Monday,
5 January 30th of 2017, and approximate time is about
6 6:38. We're located in the Jerrily R. Kress Memorial
7 Hearing room.

8 My name is Anthony Hood and joining me are
9 Vice Chair Miller, Commissioner Turnbull,
10 Commissioner May, and Commissioner Shapiro, as well
11 as the Office of Zoning staff, Ms. Sharon Schellin,
12 as well as the Office of the Attorney General, Mr.
13 Ritting and Mr. Bergstein, as well as Mr. Cohen. Mr.
14 Cohen is, this is his first hearing. We want to
15 welcome Mr. Cohen to the Zoning Commission of the
16 District of Columbia. Looking forward to working
17 with you. As well as Office of Planning staff, Mr.
18 Lawson, Ms. Brown-Roberts, and Ms. Vitale. And I
19 think we have a few other Office of Planning staff in
20 the -- see, Mr. Jesick and others in the audience who
21 will probably come up at the appropriate time.

22 We do not take any public testimony at these
23 meetings unless we ask someone to come forward. We
24 would ask you to be respectful because we are being
25 webcast and recorded. So, with that being said,

1 let's move right into our agenda. Ms. Schellin, do
2 we have any preliminary matters?

3 MS. SCHELLIN: No, sir. Other than the one
4 on the agenda.

5 CHAIRPERSON HOOD: Yeah, other than the one
6 that I have.

7 MS. SCHELLIN: Nothing else.

8 CHAIRPERSON HOOD: Excuse me. Okay. I have
9 a preliminary matter. I know there's a big interest
10 in what I'm getting ready to state so I would ask
11 everyone to pay attention closely. And we will not
12 be taking any questions from the audience at this
13 time.

14 Our commissioners, this is a continuation of
15 our discussion on the next steps in this remand, the
16 Office of the Attorney General has provided us with
17 several options. So, I will open up the floor for
18 further discussion.

19 But let me kind of get us started off. I
20 think that we have some issues that have been
21 remanded back to this Commission. I would like to
22 have a -- I would suggest that we do a limited scope
23 hearing on the remand issues only, and if we move in
24 that direction I will make sure that everyone who
25 comes to speak, depending upon how we move, stays

1 within the reach of the remand only. We're not going
2 to try the whole case. That was not given back to
3 us.

4 So, let me open it up for any comments or
5 discussion.

6 MR. TURNBULL: Mr. Chair, I would concur with
7 your assessment. I think we definitely need to go
8 ahead with a limited scope hearing and it should be
9 restricted just to the remand issues that have been
10 presented to us.

11 CHAIRPERSON HOOD: Okay. Anything else, Mr.
12 Turnbull?

13 MR. TURNBULL: I think that's it.

14 CHAIRPERSON HOOD: Okay. Anyone else?
15 Commissioner May?

16 MR. MAY: No, I would just, I would state my
17 agreement. I think we need to have another hearing
18 based on the remand and that the focus of the hearing
19 should be the issues that were brought up in the
20 remand.

21 CHAIRPERSON HOOD: Okay. Vice Chair Miller?

22 MR. MILLER: Yeah, I just wanted for the
23 record, to concur with your -- with my colleagues, to
24 have a limited scope public hearing and also ask the
25 -- I'm sure this would be done in a matter of course,

1 but ask for the Office of Planning to submit a new
2 report or a supplemental report, as well as reports
3 from the agencies that they refer to so we can get to
4 those adverse impact issues.

5 CHAIRPERSON HOOD: Okay. Alright. May I ask
6 Mr. Bergstein, have we covered everything that we
7 need to talk about on this topic?

8 MR. BERGSTEIN: Just to clarify, the
9 referrals you're asking OP to make are to the
10 agencies that did not respond to the original
11 referrals. You're not asking for rereferrals to any
12 agencies that did respond. Is that correct?

13 MR. MILLER: That's correct, and that's
14 correct and -- okay.

15 CHAIRPERSON HOOD: Yeah, I think everything
16 that fell short to begin with that's on the remand,
17 and also things that were not responded to, we want
18 to go ahead and tighten all that up. Anything else,
19 colleagues?

20 MR. BERGSTEIN: No, sir, for me.

21 CHAIRPERSON HOOD: Okay. Thank you. That's
22 it for that announcement. Okay, Ms. Schellin.

23 MR. BERGSTEIN: Are you going to vote on it,
24 or are you doing it by consensus?

25 CHAIRPERSON HOOD: Oh, do we need to -- I

1 guess we do. I would move that the Commission hold a
2 limited scope hearing on remand issues, and ask for a
3 second.

4 MR. MILLER: Second.

5 CHAIRPERSON HOOD: It's been moved and
6 properly seconded and the remand issues are on the
7 topics of how and proceeding on what we just
8 discussed.

9 [Vote taken.]

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

12 MS. SCHELLIN: Yes. Staff records the vote
13 four, to zero, to one to approve having a further
14 limited hearing on Zoning Commission Case No. 13-14,
15 Commissioner Hood moving, Commissioner Miller
16 seconding, Commissioners May and Turnbull in support,
17 Commissioner Shapiro not voting having not
18 participated in the case.

19 CHAIRPERSON HOOD: Okay. Next, let's go to
20 the consent calendar item, minor modification and
21 technical corrections, Zoning Commission Case No. 08-
22 06J, Office of Planning Technical Corrections to the
23 Zoning Commission Order No. 08-086A, Subtitles B, C,
24 D, G, K, and X.

25 Ms. Schellin, could you -- Ms. Schellin,

1 could you go ahead and call that, Ms. Schellin?

2 MR. OTTEN: [Speaking off microphone.]

3 CHAIRPERSON HOOD: Well, one thing we're not
4 going to do, and I don't want to disappoint everyone
5 who has come down here, let me just say this. We are
6 -- we live in a democracy where we act civilized.
7 And one thing that we're not going to do --

8 MR. OTTEN: [Speaking off microphone.]

9 CHAIRPERSON HOOD: And one thing we're not
10 going to do, I'm not going back to my street days,
11 Mr. Otten, where I would come over there, but I'm not
12 going to do that. So, what I'm going to say --

13 MR. OTTEN: [Speaking off microphone.]

14 CHAIRPERSON HOOD: Yeah, I would.

15 MR. OTTEN: Are you threatening me?

16 CHAIRPERSON HOOD: No, I'm not threatening
17 you. I would come over there and help you out of the
18 room.

19 MR. OTTEN: [Speaking off microphone.]

20 CHAIRPERSON HOOD: Yes, write whatever you
21 want to. You've been doing it all the time.

22 Here's what we need to do. We will council
23 this meeting tonight and effect everyone else, and
24 move forward, because I'm not going to deal with that
25 tonight. Tonight ain't the night. Tonight ain't the

1 night. Tonight ain't the night. Okay?

2 MR. OTTEN: [Speaking off microphone.]

3 CHAIRPERSON HOOD: Colleagues, let me
4 continue the hearing. Let me just ask this, do you
5 all want to -- you all want a council postpone this
6 because of disruption? Or do we want to continue our
7 hearing.

8 MR. OTTEN: No, the question goes to the OAG,
9 why are you all considering [Speaking off
10 microphone.]

11 CHAIRPERSON HOOD: You can do that at another
12 time. This is a formal hearing.

13 MR. OTTEN: [Speaking off microphone.]

14 CHAIRPERSON HOOD: Let's take a five-minute
15 break. Let's take a five-minute break.

16 MR. OTTEN: [Speaking off microphone.]

17 CHAIRPERSON HOOD: And we're going to have
18 Mr. Otten and others to be able to leave. Mr.
19 Norman, you've been knowing me a long time, so if you
20 can talk to your person over there I would greatly
21 appreciate it.

22 [Off the record from 6:45:34 p.m. to 6:45:37
23 p.m.]

24 CHAIRPERSON HOOD: Okay, Ms. Schellin, I
25 think we're ready to go back in session. Can you

1 call the --

2 MS. SCHELLIN: Next case?

3 CHAIRPERSON HOOD: I think -- where was I?

4 MS. SCHELLIN: Yes.

5 CHAIRPERSON HOOD: Consent calendar, yes.

6 MS. SCHELLIN: Yes, sir. Under the minor
7 modifications and technical corrections we have
8 Zoning Commission Case No. 08-06J, Office of Planning
9 Technical Correction to Zoning Commission Order No.
10 08-06A, which makes corrections to Subtitles B, C, D,
11 G, K, and X. As stated, this is submitted by OP and
12 they are -- they have stated that some of the
13 modifications represent editing language so that it
14 is consistent with the existing text, or between
15 subtitles and chapters.

16 Some of the correct -- some correct citations
17 and some represent inadvertent, or inadvertent,
18 omitted, or misstated --

19 CHAIRPERSON HOOD: Ms. Schellin, hold on one
20 second.

21 MS. SCHELLIN: -- text.

22 CHAIRPERSON HOOD: Now, I now you. Don't do
23 that. Don't do that. I don't want to throw you out,
24 so don't do that. Come on.

25 UNIDENTIFIED SPEAKER: [Speaking off

1 microphone.]

2 CHAIRPERSON HOOD: No, don't do -- come on,
3 now.

4 UNIDENTIFIED SPEAKER: [Speaking off
5 microphone.]

6 CHAIRPERSON HOOD: But why are you at the
7 table? Why are you at the table? You and I have
8 always been cordial.

9 UNIDENTIFIED SPEAKER: [Speaking off
10 microphone.]

11 CHAIRPERSON HOOD: But why are you at the
12 table? We're not answering the questions tonight on
13 that. That's how we're moving going forward. We'll
14 see you at the hearing.

15 UNIDENTIFIED SPEAKER: [Speaking off
16 microphone.]

17 CHAIRPERSON HOOD: No, I'm not answering any
18 questions tonight. Just, come on now, you and I have
19 been fine for years, so let's not destroy that.
20 We've got to continue to move on with the meeting.
21 Okay? I've been knowing you a long time and you are
22 not a disruptive person. So, don't follow nobody
23 else's lead. We'll be here for the hearing, because
24 you're sitting at the table and we don't take public
25 testimony at the meeting. So, please don't do that.

1 Don't do that because --

2 UNIDENTIFIED SPEAKER: [Speaking off
3 microphone.]

4 CHAIRPERSON HOOD: No. You need to talk to
5 our staff.

6 MS. SCHELLIN: Not at public meetings. Not
7 at meetings.

8 CHAIRPERSON HOOD: No, this is my friend
9 here. So, I do have some friends. I've been in this
10 city all my life. So, don't do that.

11 UNIDENTIFIED SPEAKER: [Speaking off
12 microphone.]

13 CHAIRPERSON HOOD: I'm just asking you. I'm
14 just asking you not to do that, okay?

15 UNIDENTIFIED SPEAKER: [Speaking off
16 microphone.]

17 CHAIRPERSON HOOD: Thank you very much. I
18 appreciate it.

19 UNIDENTIFIED SPEAKER: [Speaking off
20 microphone.]

21 CHAIRPERSON HOOD: No, don't get your --
22 okay. Well, thank you very much.

23 Okay, Ms. Schellin, I'm sorry.

24 MS. SCHELLIN: So, going back some of the
25 corrections, technical corrections, represent

1 inadvertent, omitted, or misstated language, and so
2 we'd ask the Commission to consider approving
3 authorizing the immediate publication of a proposed
4 rulemaking on this case.

5 CHAIRPERSON HOOD: Okay. Somebody could get
6 us started off while I get my thoughts back together
7 on what I need to be doing? Somebody like to get us
8 started on it?

9 MR. MAY: Mr. Chairman, this is a case of a
10 series of minor modifications or very minor changes
11 to the text of the Zoning Regulations. I think
12 they're all pretty much in the category of
13 corrections. I think there were a few tweaks to
14 definitions and so on, so I think that it's okay at
15 this point to authorize the notice of rulemaking.

16 MR. SHAPIRO: Second.

17 CHAIRPERSON HOOD: So, do we need to -- we
18 need to do a motion?

19 MR. MAY: All right. So, I would move that
20 we authorize notice of proposed rulemaking having to
21 do with these technical corrections.

22 MR. SHAPIRO: Second.

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

25 [Vote taken.]

1 CHAIRPERSON HOOD: Not hearing any opposition
2 of the five of us, Ms. Schellin, would you record the
3 vote?

4 MS. SCHELLIN: Yes. Staff records the vote
5 five, to zero, to zero to approve immediate
6 publication of a proposed rulemaking in Zoning
7 Commission Case No. 08-06J, Commissioner May moving,
8 Commissioner Shapiro seconding, Commissioners Hood,
9 Miller, and Turnbull in support.

10 CHAIRPERSON HOOD: Okay. Next, final action.
11 Zoning Commission Case No. 08-06I, Office of Zoning
12 Text Amendments to 11-Y DCMR, and 11-Z DCMR, minor
13 modifications to Zoning Commission Order No. 08-06A.
14 Ms. Schellin.

15 MS. SCHELLIN: Yes, sir. The proposed
16 rulemaking was published in this case and no comments
17 were received, so we'd ask the Commission to take
18 final action this evening.

19 CHAIRPERSON HOOD: Okay. Commissioners,
20 anything else you want to add to this?

21 Okay. Not hearing any, I would move that we
22 approve for final action Zoning Commission Case No.
23 08-16I, Office of Zoning Text Amendment to 11-Y DCMR,
24 and 11-Z DCMR, minor modification to Zoning
25 Commission Order No. 08-06A, and ask for a second.

1 MR. TURNBULL: Second.

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

4 [Vote taken.]

5 CHAIRPERSON HOOD: So ordered. Ms. Schellin,
6 would you record the vote?

7 MS. SCHELLIN: Yes. Staff records the vote
8 four, to zero, to one to approve final action in
9 Zoning Commission Case No. 08-06I, Commissioner Hood
10 moving, Commissioner Turnbull seconding,
11 Commissioners May and Miller in support, Commissioner
12 Shapiro not voting having not participated.

13 CHAIRPERSON HOOD: Okay. Next, let's go to
14 B, Zoning Commission Case No. 04-33G, Office of
15 Planning Text Amendment, location of inclusionary
16 units and inclusionary development subjects to 11-C
17 DCMR, 100.1, Ms. Schellin.

18 MS. SCHELLIN: Yes, a copy at Exhibit 255,
19 you have a copy of the additional proposed rulemaking
20 that was published in this case. No comments were
21 received. We'd ask the Commission to consider final
22 action this evening.

23 CHAIRPERSON HOOD: Okay, Commissioners, any
24 comments? I think that we need to have a clarifying
25 phrase and I think we always says, and I'm going to -

1 - all the existing units were occupied at the time of
2 the application for the additions building permit.
3 So, I hope we can accept that as a clarifying phrase,
4 and also that the June 5th, 2017 be the effective
5 date.

6 Any other comments on this? Okay. Someone
7 like to make a motion?

8 All right. I move Zoning Commission Case No.
9 04-33G with text amendment with the notations that I
10 made in my earlier comments and ask for a second.

11 MR. MILLER: Second.

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

14 [Vote taken.]

15 CHAIRPERSON HOOD: Ms. Schellin, would you
16 record the vote?

17 MS. SCHELLIN: Staff records the vote four to
18 zero to one to approve final action in Zoning
19 Commission Case No. 04-33G, Commissioner Hood moving,
20 Commissioner Miller seconding, Commissioners May and
21 Turnbull in support, Commissioner Shapiro not voting
22 having not participated.

23 CHAIRPERSON HOOD: Okay. Next is Zoning
24 Commission Case No. 16-10, EAG 400 Florida Avenue,
25 LLC, consolidated PUD and related map amendment at

1 square 3588. Ms. Schellin.

2 MS. SCHELLIN: Yes, sir. At Exhibits 45
3 through 47B we have the applicant's submissions after
4 proposed action was taken. Exhibit 48 is an NCPC
5 report advising of no federal issues. Would ask the
6 Commission to consider final action this evening.

7 CHAIRPERSON HOOD: Okay. Anybody have any
8 comments, any additional comments?

9 A lot of these probably have been hashed out
10 during proposed because I think we -- during our
11 hearings and proposed we get to a lot of the guts of
12 a lot of these final actions. Anything additional?

13 MR. MAY: I'm sorry, I'm still catching up
14 because --

15 CHAIRPERSON HOOD: Okay.

16 MR. MAY: -- I'm writing notes for the last
17 one. So, we're on 16-10?

18 CHAIRPERSON HOOD: On 16-10, yeah.

19 MR. MAY: Yeah. So, a number of issues were
20 addressed between proposed and final. They fixed
21 setback issues on the roof. It's good that they did
22 that but I think that they actually did it so by
23 creating enclosures of many different heights. So,
24 we have a five-foot stair enclosure, a nine-foot
25 stair enclosure, a nine-foot-four stair enclosure, a

1 12-foot penthouse, and a 18-6 elevator enclosure.
2 So, I would think that that actually requires relief.
3 Anybody else notice that?

4 Anyway, I do also think that there is a --
5 MR. TURNBULL: Well, Mr. May, what drawing
6 are you looking at? Do you have a --

7 MR. MAY: Yeah, hold on a sec. It shows up
8 on A-111. We were pushing them to modify the plan of
9 the building so that they would not need setback
10 relief along the back side of the building. And
11 under the new Zoning Regulations I think they're
12 allowed to have enclosures of two different heights
13 within a single penthouse enclosure. I mean, this is
14 a single structure, but there are, you know, I
15 counted five different heights.

16 Maybe I could ask the Office of Planning to
17 see if they agree with my question?

18 MR. JESICK: Yes. I think you've made a
19 correct assessment. There are multiple heights.

20 MR. MAY: Yeah, and as I recall they didn't
21 actually request a -- I mean, relief to address that
22 fix. Mr. Freeman is coming to the table. Do you
23 want to --

24 CHAIRPERSON HOOD: If you want to. Yeah, if
25 you want to.

1 MR. MAY: So, Mr. Freeman, do you want to
2 address that question?

3 MR. FREEMAN: Mr. Chairman, for the record,
4 Kyrus Freeman of Holland and Knight on behalf of the
5 applicant. We originally asked for penthouse relief
6 for setback. However, we withdrew that and within
7 withdrawing that we created this additional area for
8 which we would like to ask for relief.

9 MR. MAY: Okay. But I mean, did I miss that
10 in your submission that you've requested relief?

11 MR. FREEMAN: It may be in our proposed area.
12 I'd have to --

13 MR. MAY: Oh, I see. It might have been the
14 proposed order and not in --

15 MR. FREEMAN: In our proposed order. I'd
16 have to double-check that.

17 MR. MAY: Okay. So, but in any case it's
18 clear that you need it.

19 MR. FREEMAN: Yes, sir. If not, we can --

20 MR. MAY: You know, I kind of wish it had
21 been a little bit cleaner than setting up five
22 different heights and maybe the nine foots could be
23 nine-fours. But maybe they can't. Maybe the nine-
24 fours could be nine -- I don't know. But just, it's
25 a little messy. But I'd rather have that than have,

1 you know not meet the setback requirement.

2 So, it's clear that you're asking for the
3 relief.

4 MR. FREEMAN: I can, just if it's not, I'd
5 like to make it clear that we are asking for that
6 relief, to have walls of unequal height.

7 MR. MAY: I think the fact that you've said
8 it now makes it clear that they have asked for the
9 relief. Or that you've asked for the relief.

10 So, I also do have a question. What is the
11 allowed building height for this project, because
12 it's now --

13 MR. FREEMAN: One thirty.

14 MR. MAY: It is 130? Okay, because it looked
15 like it might have been 120, because one part of the
16 building was holding to 120, including the parapet,
17 and then another part of the building was at 123-6.

18 MR. FREEMAN: One thirty but a portion is
19 lower than the 130.

20 MR. MAY: Got it. Well, all of it is lower
21 than 130. Right. Okay. All right. I'm glad you're
22 here at the table to ask that.

23 All right. So, I think that's it in terms of
24 the questions that you can answer. There was some
25 modification to fix the bay projections so that they

1 looked like two large bays, but with distinct
2 balconies between. You know, it's better than what
3 it was. It's not great, but I can live with that.

4 The signage description, I'm interested in
5 hearing whether other Commissioners had an issue with
6 that. And I think that other than that, you know, I
7 think we have to have some discussion of the ANC's
8 opposition to this, which was based on inferior
9 architecture, insufficient retail, they didn't see
10 the need for the parking relief, the inadequacy of
11 the loading circumstance, and then poor land use and
12 transportation planning aspects.

13 You know, I think that the architecture has
14 improved significantly. I mean, is this the most
15 brilliant building I've ever seen come through the
16 Zoning Commission? Probably not. But I think it is
17 far, far better than it was when we set it down.

18 You know, the retail component of this, yeah,
19 they're losing a lot of the retail components of the
20 hotel use, I think. But I still think it's -- you
21 know, the whole area I think is going to be flush
22 with retail, so I don't know that it's a huge issue
23 in this circumstance.

24 I think we did get good testimony on the
25 parking relief and why that's necessary. I'm usually

1 skeptical when they -- you know, they just don't want
2 to go down any further, but I understand. I think
3 there were circumstances in the site having to do
4 with the grades that would make it really difficult
5 to do. And on the loading question I think that the
6 applicant adequately addressed that. And I did not
7 see the issue with the poor land use and
8 transportation planning at all. I just didn't quite
9 go along with the ANC's concerns.

10 So, anyway, perhaps some of my colleagues
11 have more to say on these topics.

12 CHAIRPERSON HOOD: Any other comments on the
13 ANC issues? The architect will be inferior and
14 unattractive which they're claiming the minimum
15 amount of ground floor retail offered, the no on-site
16 parking issue, the poor land use and transportation
17 planning aspects, and as Commissioner mentioned
18 already, Commissioner May, the insufficient truck
19 loading facilities. Any other comments on any of
20 those issues? Vice Chair Miller?

21 MR. MILLER: Thank you, Mr. Chairman. Yeah,
22 I would just note that the applicant did, at our
23 request, I think, meet with ANC 6C, and I think we
24 got another letter in from former Commissioner
25 Goodman whose, I think whose SMD was adjacent to the

1 site, who said there were improvements, that he was
2 still disappointed on the overall bulk of overall
3 height and bulk density of the building. But he
4 thought -- and he did acknowledge that there were
5 improvements, and I just wanted also to note that the
6 ANC that actually -- the ANC in which this site is
7 located, ANC 5D, unanimously supported the project.
8 So, I just wanted to note that for the record.

9 And on the parking, they did provide, in
10 addition to providing better justification as to why
11 the site is constrained and to create the below-grade
12 parking, they did also provide evidence that there's
13 50 off-site spaces that they have an agreement that I
14 think they provided that agreement in the record.
15 So, I think that helps me mitigate that concern.

16 CHAIRPERSON HOOD: Okay. The other thing,
17 did we talk about the \$25,000 annual donation for the
18 life of the project? I've never heard it. I'm not
19 sure how to handle that one. I don't know if we need
20 to refine that or -- you know, I don't want to --
21 they say for the life of the project. I don't think
22 that's ever -- I don't think that's even going to
23 happen. But I don't know, Mr. Bergstein. Let me
24 just ask you.

25 MR. BERGSTEIN: It's just that in most of

1 conditions we specify that payments are made before
2 the C of O because if they're not made then the C of
3 O doesn't get issued.

4 There's nothing wrong with saying those
5 payments are going to continue for the life of the
6 project. It's just that the enforcement options at
7 that point become either severe or you revoke the C
8 of O or pretty ineffectual usual monetary fine is
9 probably less than the contribution.

10 So, all I think we were suggesting to you is
11 that, this is a public benefit, but in terms of
12 weighing its value because of the -- you know, the
13 questionability of enforceability, you may give it
14 less weight than you would to another benefit that
15 has more certainty in terms of its deliverability.

16 I'm not suggesting you reject the public
17 benefit at all.

18 CHAIRPERSON HOOD: Okay. So, out of all
19 that, I don't think we need to do anything with this.
20 We just need to note it more or less. Okay. All
21 right. Thank you, Mr. Bergstein.

22 Anything else, Commissioners? I think we've
23 covered all the issues. Mr. Turnbull?

24 MR. TURNBULL: Well, getting back to
25 Commissioner May brought up the hotel signage and

1 drawing -- they do provide a Sheet A-221 which shows
2 the signage. My concern is that, and I don't know if
3 Commissioner May was just trying to get it going, but
4 I mean, it's 41 feet high. It's over 41-feet, nine-
5 inches high by four-foot, nine-inches wide. Which I
6 think is a rather -- we asked for the hotel's
7 vertical center. The letters. What the letters are
8 like. I don't know whether they're just putting out
9 an area or they're actually saying that the signage
10 is going to be four-foot nine-inches wide by 41. I
11 mean, it seems rather large. I think it could be a
12 lot more sensitively done and more in scale with the
13 building.

14 But, I just think it's kind of a nebulous,
15 right now just area that they're showing where
16 signage could be. But it could take advantage of the
17 whole -- it could be 41 feet high.

18 CHAIRPERSON HOOD: Okay. So, Mr. Turnbull,
19 is there something you want to see or?

20 MR. TURNBULL: Well, I think they need to
21 actually show us what it's going to be like, and I
22 think it ought to be a little bit more in scale to
23 the scale of the building. I mean, I understand it's
24 a hotel and they want to have a brand name up there
25 for the hotel, but I think it can be -- we've already

1 gone through this before on other hotels and it's
2 become an issue. And so, I think it needs to be a
3 little bit more sensitively done, and at least it
4 should be called out a little bit more clear for us
5 to really, to look at and actually say what we really
6 think because right now it's -- to me, it's very
7 vague.

8 CHAIRPERSON HOOD: So, what I think we can
9 do, if everyone concurs, is do that concerning -- Mr.
10 Turnbull is exactly right. We have had an issue with
11 signage, especially hotels. We want to make sure we
12 get it right. At least as close to right as
13 possible.

14 The only issue we would ask them to revisit,
15 I think, would be that. And maybe they can come
16 back. This shouldn't take but a minute and maybe one
17 of our next meetings, or I wouldn't want them to have
18 to wait until the next public meeting, but maybe at
19 one of our hearings we can do a special public
20 meeting on the signage only. Is that kind of what
21 you were thinking, Mr. Turnbull, or?

22 MR. TURNBULL: Yes, that would be fine.

23 CHAIRPERSON HOOD: Okay. And we would only
24 be asking about that. Want to make sure. So, they
25 have clear guidance.

1 Ms. Schellin, Commissioners, everyone else
2 agree? I agree with Mr. Turnbull. Anyone else
3 disagree?

4 MR. MILLER: I don't have as much concern
5 about the signage that's at the bottom of the
6 building. The issue I think you might be referring
7 to was at the top of the building.

8 But, I think seeing the actual -- seeing some
9 actual examples of what it might look like would be
10 helpful.

11 CHAIRPERSON HOOD: Okay. Anybody else?

12 MR. MAY: So, I think that the -- I mean, I'm
13 kind of with Commissioner Miller on this, you know,
14 given that it's -- I mean, it is tall, but it is down
15 toward the bottom of the building. We don't have a -
16 - I think we have an indication in the drawings at
17 least, whether, you know what kind of a sign it would
18 be, whether it would be backlit, or any of those
19 sorts of things.

20 But I mean, it's not at the top of the
21 building and I think that we're much more sensitive
22 to that than what would happen toward the bottom of
23 the building. It is a vertical sign. I mean, what's
24 also not clear is whether it's some sort of a blade
25 sign or something like that.

1 So, I think a little more information would
2 be helpful.

3 MR. TURNBULL: Well, I think the building
4 sets back.

5 MR. MAY: I agree too. It looks like that's
6 what they're doing.

7 MR. TURNBULL: It looks like it's on that
8 wall, but it's hard to tell.

9 MR. MAY: It is hard to tell.

10 MR. TURNBULL: And, I mean, I'm being picky
11 because we've gone through the signage stuff before
12 and I just want to make sure that we -- what kind of
13 letters, like you said, is it backlit, is it --
14 hopefully it's not neon. But, I mean, hopefully it's
15 something sensitive and tasteful on the side of the
16 building.

17 CHAIRPERSON HOOD: I think, out of respect to
18 one of our colleagues, I think we could do that. I
19 don't think this is nothing major that we've got to
20 vote on. We can wait another week or so and just
21 deal with it at that time. And signage would be the
22 only issue. I want to ensure the applicant and his
23 counsel, that's the only issue that we would bring
24 up.

25 Ms. Schellin, could you make sure that I

1 remember that that's it?

2 MS. SCHELLIN: Yes, and it --

3 CHAIRPERSON HOOD: Do we have a special
4 public meeting day we can do for about 10 minutes?

5 MS. SCHELLIN: Well, the next meeting is in
6 two weeks and we're going to give them a week to
7 submit it, so.

8 CHAIRPERSON HOOD: Oh, okay. So, we'll just
9 do it at our next meeting.

10 MS. SCHELLIN: Yes. So --

11 CHAIRPERSON HOOD: So, we don't have anything
12 until two weeks?

13 MS. SCHELLIN: Right. No, the meeting.
14 Yeah, we have a hearing.

15 CHAIRPERSON HOOD: So, we just do it at the
16 meeting, the next meeting, two weeks.

17 MS. SCHELLIN: Yeah, because we don't have --
18 well, I mean, we have a hearing next Monday, but --

19 CHAIRPERSON HOOD: They need a week.

20 MS. SCHELLIN: Yeah.

21 CHAIRPERSON HOOD: So --

22 MS. SCHELLIN: So, if we could get your
23 submission by noon on the 6th of February, and then
24 we can take it up on the 13th, that next meeting.

25 CHAIRPERSON HOOD: There's my friend Jim

1 Schuman. I just noticed he was sitting there.

2 MS. SCHELLIN: Okay. Thank you.

3 CHAIRPERSON HOOD: Anyway. All right. So,
4 we will deal with the signage issue only on our next
5 meeting date.

6 All right. Let's move right on. Zoning
7 Commission Case No. 0 -- I mean, I'm sorry, Zoning
8 Commission Case No. 80-07A, Jamal's Darth Vader, LLC,
9 PUD modification related map amendment at Square 563.
10 Ms. Schellin.

11 MS. SCHELLIN: Yes, sir. For this case, at
12 exhibits 31 through 31F and 32 we have the
13 applicant's submission since the hearing. Exhibit 33
14 is an OP supplemental report. The applicant asked
15 and it was approved to reopen the record to accept a
16 response to OP supplemental report, which is at
17 Exhibit 34. And then this afternoon, late this
18 afternoon, NCPC submitted a delegated action which
19 stated there were no issues with this case.

20 So, we'd ask the Commission to consider final
21 action this evening.

22 CHAIRPERSON HOOD: Okay. One of the things
23 that we had right off was the Office of Planning
24 required to request the record be reopened to submit
25 a report. I don't believe they are. I think they

1 have the same. They are given great weight at the
2 ANC, so I don't think that's an issue. I don't know
3 if we need to do anything else with that, other than
4 to do like we do ANCs, because the Office of Planning
5 as well the ANCs are also given great weight in front
6 of this Commission. So, I don't think that's
7 anything else that we need to do on that, unless
8 someone disagrees.

9 So, does anyone have any comments?

10 [No audible response.]

11 CHAIRPERSON HOOD: I do have comments about -
12 - I'm going to throw out to my colleagues, about the
13 affordable housing constructed in 2011.

14 Used to satisfy housing requirement triggered
15 by the Commission in 2016 approval of a discretionary
16 zoning density increase, which results in the
17 provisions of an additional commercial office space.
18 And maybe -- and the next question would be, do we as
19 a commission, recognize as a public benefit of the
20 2016 -- of a 2016 PUD, the affordable housing
21 constructed in 2011?

22 So, those are the two questions that I want
23 to propose and remember that, how we need to move
24 forward on these. The second one I would say no, but
25 let me make sure that I'm articulating that correctly

1 and let me ask Mr. Bergstein the --

2 MR. BERGSTEIN: Yes, you articulated it just
3 fine, sir.

4 CHAIRPERSON HOOD: I'm not usually told that,
5 so you're all right with me today, Mr. Bergstein.

6 Okay. Let me open it up for comments on
7 either one of those questions.

8 Mr. Turnbull.

9 MR. TURNBULL: Yeah, Mr. Chair, I would agree
10 with you. I don't really consider it a public
11 benefit considering the age of what's been done. We
12 usually ask for something in concurrence with the
13 current project. So, I am a little bit unsettled by
14 it being thought of as a public benefit in this
15 instance.

16 Regarding your other issue, I am sort of
17 torn. I know OP made some strong arguments and the
18 applicant came back with its argument. So, I am
19 still a little unsettled as to which way to go on
20 this. I think OP made some very strong arguments for
21 not accepting it. But, I'd like to hear from the
22 others.

23 CHAIRPERSON HOOD: Okay. Anybody else want
24 to comment on the first one? I hope -- can we all
25 get a consensus on recognized as a public benefit of

1 2016 PUD? Can we get a consensus on that, something
2 that was done in 2011? Commissioner May?

3 MR. MAY: Yeah, I mean, if we were to accept
4 it, this as a viable solution for housing linkage,
5 yeah, it should not be considered a public benefit of
6 the PUD. But, I mean, because it's -- I mean, from
7 my perspective it's essentially just a requirement
8 anyway, so.

9 CHAIRPERSON HOOD: Okay. So, we --

10 MR. MAY: But I mean, you know, then there's
11 the base question, which I'm actually most curious
12 about what the Vice Chair has to say about that.

13 MR. MILLER: Thank you.

14 CHAIRPERSON HOOD: Actually, so was I.

15 MR. MILLER: Thank you, Commissioner May. I
16 was interested to see, as part of OP's argument, the
17 attachment of a committee to the whole report of the
18 counsel from 23 years ago that I helped draft.

19 We certainly didn't anticipate a credit
20 system at that time. I don't think I knew until this
21 case that there was such a housing credit system that
22 the ZA has been recognizing. And they're not double-
23 dipping, they're using available credits that are
24 filed and available under that type of system.

25 And I wouldn't want to create a -- I wouldn't

1 want anything we do to create a disincentive for
2 developers, creating a lot of affordable housing that
3 is then available to be used in -- whenever they --
4 when they might need it.

5 But on the other hand, I think it is unusual
6 for a past action five years earlier to be considered
7 as satisfying a requirement for a new PUD or in this
8 case a PUD modification where they are getting
9 additional density. So, I'm somewhat torn by this.
10 But, I can't believe that they, when -- and it's hard
11 to -- there's nothing in the record that indicates
12 that when -- that when they constructed that housing
13 as part of the original, I guess it was part of the
14 original PUD, that they knew that there was going to
15 be this modification and they were going to get
16 additional density, that they were going to use that
17 housing to satisfy the linkage requirement.

18 So, I mean, this is a 2016 case. There's
19 additional bonus being provided now. The way that
20 linkage provision reads, the applicant shall
21 construct or contribute, doesn't say shall have
22 constructed or contribute. So, I guess I would tend
23 to agree with Office of Planning and get my
24 colleagues expression opinion that they need to
25 satisfy a current housing requirement with a current

1 project or a current payment.

2 CHAIRPERSON HOOD: Okay. Commissioner
3 Shapiro?

4 MR. SHAPIRO: Thank you, Mr. Chair. I would
5 agree with Vice Chair Miller. The only other option
6 we might take up would be to have some kind of, I
7 guess, limited scope hearing. Is that what it would
8 be to hear from the applicant on the issue? But,
9 barring that, I think the logic is sound. I mean,
10 this doesn't feel tied to the PUD to me.

11 CHAIRPERSON HOOD: Okay. And I've heard
12 something different. I actually don't necessarily
13 agree, but I wouldn't mind doing that. Seems like
14 that's the going thing now, limited scope hearings.

15 But, I wouldn't mind hearing from them. I
16 know they have -- I mean, let me ask you this, would
17 we gain anything different from what's already being
18 presented to us if we had a limited scope hearing?

19 MR. MAY: You mean as opposed to -- based on
20 what we have already received in the record or would
21 you ask the applicant to come up and try to make the
22 case right now?

23 CHAIRPERSON HOOD: Do we want to do it now?
24 What I heard from Commissioner Shapiro is to have a
25 limited scope hearing.

1 MR. SHAPIRO: Well, I mean --

2 CHAIRPERSON HOOD: Maybe that's just a buzz
3 word for the --

4 MR. SHAPIRO: It might be a buzz word. But
5 to your point I think, you know, what we've perceived
6 in writing from both sides, perhaps it's enough to
7 hear for a few minutes from the applicant now, just
8 to give any additional clarification here from --
9 more clarification from OP and maybe that's enough.

10 CHAIRPERSON HOOD: Okay. Well, why don't we
11 do both? Why don't we have the applicant come up and
12 ask the Office of Planning?

13 MR. GLASGOW: Good evening, Mr. Chairman.
14 For the record, my name is Norman M. Glasgow, Jr.,
15 the law firm of Holland and Knight. Here with me
16 this evening is Mr. Paul Millstein of Douglas
17 Development.

18 And we certainly would be available for a
19 limited scope public hearing to do that, have, if the
20 Commission is inclined to go that way, and have
21 witnesses come in. Particularly those that were
22 involved with the St. Martin's project, and the
23 issues that were involved at that point in time to
24 get that affordable housing constructed. And Douglas
25 Development being the only entity and person that

1 would step up and provide that assistance for
2 affordable housing with the understanding, not
3 necessarily that there would be a PUD, but that he
4 would be able to utilize the excess affordable
5 housing that was constructed in the future.

6 And we did not undertake that with the
7 understanding that there were going to be limitations
8 placed on that. At the time that this was done we
9 were still in part of the recession. No one else
10 stepped forward. I had gotten contacted by the
11 Archdiocese. I didn't handle the case for Saint
12 Martin's, but got contacted by the Archdiocese, see
13 if you can find somebody to help with this funding.
14 And Douglas stepped forward.

15 CHAIRPERSON HOOD: And that's how we were
16 able to get to, if I'm not mistaken, 30 percent. Is
17 that how we were able to get to 30 percent AMI?

18 MR. GLASGOW: That was a part of it. Saint
19 Martin's, which is part of Catholic Charities, at the
20 time that whole entity --

21 CHAIRPERSON HOOD: Yes.

22 MR. GLASGOW: -- there with Father John
23 Insler, they went out on a limb and it didn't -- it
24 wasn't working out. They got the approval.

25 CHAIRPERSON HOOD: But I'm saying, we did get

1 the 30 percent. I remember. I specifically remember
2 that --

3 MR. GLASGOW: Yes.

4 CHAIRPERSON HOOD: -- after a week before
5 somebody told me that, not in this case, but in
6 another case, we could never do 30 percent. And here
7 we come in the next week and we got down to 30
8 percent. So, I remember that.

9 MR. GLASGOW: Yes, there was 30 percent that
10 was done. The ability to get the funding that was
11 offered there helped get that done, and helped the
12 project be in a position to proceed. It was in dire
13 straits.

14 MR. MILLSTEIN: If I may? Paul Millstein,
15 Douglas Development Corporation.

16 So, you know, to Commissioner Miller's point,
17 he was struggling and visually so, because I don't
18 know that you've seen this before. And this is an
19 odd situation, but I will tell you that's because
20 it's a very rare situation, maybe unprecedented, that
21 a developer such as Douglas Jamal, and really more a
22 human being, would step up and write a check of that
23 magnitude, which we did when we were on the heels of
24 our rears. We were dying financially. It was a
25 tough time.

1 And Father Martin came to our office --
2 father John, sorry. Father John came to our office
3 and they needed help. And there were a lot of people
4 that needed that housing, and nobody else would write
5 the check.

6 We weren't aware of any sunset clause. We
7 recorded them, we did everything proper, and we paid
8 the money. We believe they're ours. And to punish
9 the good guys, we were the good guy, first of all I
10 believe is wrong. Second of all, I think it's a
11 horrible direction for the housing initiative.

12 And the fact that it hasn't been before you
13 in the past just means that nobody else did this. We
14 didn't know if we'd ever get to use these again or
15 not, but we hoped we would. And sure enough, there
16 was a project that fit for it several years down the
17 road. Don't punish the good guys. We did what we
18 were supposed to do, we helped affordable housing.
19 We wrote the check.

20 CHAIRPERSON HOOD: Okay. Any other questions
21 of them?

22 MR. MAY: Yeah, can I ask?

23 CHAIRPERSON HOOD: Sure.

24 MR. MAY: How many credits did you generate
25 in total on this? I forget.

1 MR. GLASGOW: It was about 175,000.

2 MR. MAY: 175,000. And did you -- have you
3 used them on another project already?

4 MR. GLASGOW: We've used some.

5 MR. MAY: How much/

6 MR. GLASGOW: I think -- there are about
7 65,000 left.

8 MR. MAY: So, you used it on one project or
9 more than one?

10 MR. GLASGOW: More than one project. That's
11 the point.

12 MR. MAY: Right.

13 MR. GLASGOW: Yeah, we've used them on like
14 five projects as they come along --

15 MR. MAY: Right.

16 MR. GLASGOW: -- in dribs and drabs.

17 MR. MAY: Right. And the other ones have not
18 been PUDs, they've just been other projects that had
19 the housing linkage requirement.

20 MR. GLASGOW: That's correct. And so, we did
21 it with the same type of structure with the joint
22 venture that we would do with this and we've said
23 that, yes, technically if we need to modify the joint
24 venture agreement --

25 MR. MAY: Uh-huh.

1 MR. GLASGOW: -- we're happy to do that.

2 MR. MAY: Uh-huh.

3 MR. GLASGOW: And I've already checked with
4 Catholic Charities. They'll do whatever it is. They
5 got the money.

6 MR. MAY: Uh-huh.

7 MR. GLASGOW: They're not trying -- nobody is
8 trying to hang us up on a technicality on that.

9 MR. MAY: Uh-huh.

10 MR. TURNBULL: And how many credits are you
11 going to be using on this, then?

12 MR. GLASGOW: Forty-seven thousand.

13 MR. TURNBULL: Forty-seven thousand.

14 MR. GLASGOW: Correct.

15 CHAIRPERSON HOOD: So, do we want to hear
16 from -- let's go -- we want to hear from Office of
17 Planning? I think that's -- yeah, let's hear from
18 the Office of Planning, Mr. Lawson.

19 MR. LAWSON: Thank you, Mr. Chair. Joel
20 Lawson with the Office of Planning. I think first of
21 all, we want to say this has nothing to do with the
22 merits of this project. It also has nothing to do
23 with the merits of the Catholic Charities with the
24 affordable housing that was constructed back in 2011.

25 Our concern is that these are two separate

1 processes. There's one process that dealt with the
2 DD, and this is a process that deals with housing
3 linkage. So, we remain unclear how credits generated
4 through one system can be used to satisfy a
5 requirement of another section of the Zoning Code.
6 We're unclear of the ramifications that this would
7 have over the long-term. For example, would this
8 allow, just as an example, would this allow housing
9 linkage required from the penthouse provisions that
10 the Commission recently adopted, to be satisfied
11 through a building that was built five years ago? We
12 just don't know. This seems to be setting an
13 entirely new way that these credits are being
14 requested to be used.

15 So, that's our principle concern. We
16 appreciate you dealing with the issue of the benefit
17 issue as well. But in this case, we agree with the
18 applicant and agree with the Commission that there is
19 this underlying issue which is probably more
20 important.

21 And again, we consulted with the Zoning
22 Administrator, we consulted with the Office of the
23 Attorney General. They concur with our position that
24 the two systems -- that the one system should not be
25 permitted to be used to satisfy the requirement, the

1 requirement of the PUD provision in the zoning regs.

2 Thanks.

3 MR. GLASGOW: Mr. Chairman, if I can just --

4 CHAIRPERSON HOOD: Let me see if we have any
5 questions of Office of Planning first.

6 MR. GLASGOW: Sure.

7 CHAIRPERSON HOOD: Any questions of Office of
8 Planning?

9 MR. TURNBULL: Yeah, Mr. Chair.

10 CHAIRPERSON HOOD: Mr. Turnbull.

11 MR. TURNBULL: I've got -- I just wanted to
12 ask Mr. Lawson that, does the ZA agree with your
13 position then, on this?

14 MR. LAWSON: Yes, he does.

15 MR. TURNBULL: So, he would not accept
16 credits coming in under the linkage program, is what
17 you're saying?

18 MR. LAWSON: He, as we stated in our report -
19 - I'm just looking for it now. Well, anyways, I'm
20 just not finding it.

21 As we stated in our report, we did consult
22 with the Zoning Administrator, and again also with
23 the Office of the Attorney General, and they concur
24 that this is not an appropriate way of meeting the
25 housing linkage requirement.

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1 MR. TURNBULL: Okay. Thank you.

2 MR. BERGSTEIN: Just, I think I provided a
3 little bit more nuance to the Commission in terms of
4 the different views I have in terms of the separate
5 issues. I do have a stronger feeling, I think I
6 indicated on the issue of public benefit than the
7 issue of whether or not this linkage can be applied
8 in the two systems. I think I stated my position. I
9 don't want to give it more publicly than that. But I
10 do have somewhat different views.

11 I think the Office of Planning has a very
12 strong argument in terms of the linkage argument, the
13 use of the prior constructed housing to satisfy a
14 present housing linkage requirement. And there's a
15 separate issue, which I've also indicated my feelings
16 about, about whether or not this can be recognized as
17 a public benefit. But I wanted to just clarify that.

18 MR. TURNBULL: Mr. Lawson, I think I found
19 what you were looking for on page 2, the top of page
20 2. "The Zoning Administrator agrees that the use of
21 previously funded affordable housing provided in
22 2011, pursuant to the DD overlay of Chapter 17,
23 paragraph 1706.4 through 1706.6, requirements do not
24 satisfy the housing linkage requirements for a PUD in
25 2017."

1 That's the ZA's position.

2 MR. LAWSON: Yes, thank you.

3 MR. TURNBULL: Okay.

4 MR. MAY: So, I mean, it almost sounds like
5 this boils down, essentially, to a legal question in
6 terms of the concern the Office of Planning is
7 raising. I mean, but we have the authority to -- do
8 we have -- I'm sorry. Do we have the authority to
9 simply waive the housing linkage requirement, and
10 then accept this?

11 MR. BERGSTEIN: No.

12 MR. MAY: We'd have to accept it as a version
13 of the linkage?

14 MR. BERGSTEIN: Well, ultimately when this
15 project goes to the Zoning Administrator for a
16 building permit and the C of O, they have to convince
17 the Zoning Administrator that the requirement for
18 housing linkage as initially stated in the D.C. Code,
19 and it's repeated in the Zoning Regulation, has been
20 met.

21 You've heard that the Zoning Administrator at
22 this juncture, would tend to believe that what has
23 been proffered in this case would not be in
24 compliance, but it is in the Zoning Regulations. The
25 Zoning Regulations are for you to interpret. And if

1 you feel at this juncture that the applicant has the
2 stronger argument, then you would accept that. I
3 think the Zoning Administrator would be bound by
4 that. But then you have created a precedent in terms
5 of the use of prior constructed housing to satisfy a
6 future housing linkage requirement.

7 MR. MAY: So, I mean, is there a way to
8 thread this needle in such a manner that we don't
9 create this precedent?

10 MR. BERGSTEIN: I don't see how. You could
11 ask Mr. Glasgow, but I think there's just two sets of
12 this. There's either, you can or you can't.

13 MR. MAY: Right.

14 MR. BERGSTEIN: I don't see --

15 MR. MAY: Right.

16 MR. BERGSTEIN: I don't see a happy middle
17 ground.

18 MR. MAY: Well, and it -- yeah, and it's not,
19 I mean, it's not just the question of what happens in
20 a PUD. It happens, you know, what happens outside of
21 what's required for a PUD process, right?

22 MR. BERGSTEIN: Well, I don't know if how the
23 counsel would ever weigh in to such a thing because
24 the housing linkage is both implicated when there is
25 a street or alley closing that by virtue of the

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1 closing of the alley adds additional FAR that could
2 be used for office space. And then separate and
3 apart from that, when the council adopted that
4 provision as part of the Comprehensive Plan, they
5 said that should be true for zoning. And that was
6 something prefect lawful. That's not the council
7 zoning. That's the council saying there is a
8 consequence, a financial consequence or an activity
9 consequence, to the granting of that same density
10 increase under a PUD, and then requested you to do
11 regulations to implement that.

12 But ultimately in terms of both actions,
13 street and alley closing PUD, the same rule should
14 hold true.

15 MR. MAY: So, I mean the fact that we have
16 this requirement is because it is in the Zoning
17 Regulations, not because it's in the D.C. Code.

18 MR. BERGSTEIN: No, it's because it's in the
19 D.C. Code.

20 MR. MAY: It's because it's in the D.C. Code.

21 MR. BERGSTEIN: Yeah. The --

22 MR. MAY: I thought they asked us to
23 implement regulations that would do that. I mean,
24 our regulations based on the --

25 MR. BERGSTEIN: No, it affirmatively says

1 that whenever the Zoning Commission grants a
2 discretionary density increase the applicant shall.
3 It's in the D.C. Code. Then they ask you to
4 implement it.

5 But the requirement that exists is the
6 requirement of the Council of the District of
7 Columbia, that you implement it. It is not something
8 they relied upon you to state.

9 MR. MAY: Got it. Which is why it would --
10 it's logical that other housing linkage requirements
11 would be held to the same test and why precedent is a
12 concern.

13 MR. BERGSTEIN: Again, when you use housing
14 linkage -- I think what Mr. Lawson is saying is true.
15 If we talk about the housing linkage for penthouse,
16 it is the same thing. The exact same provisions that
17 were used to describe in the PUD regulations, the
18 housing linkage, were transposed into the penthouse
19 regulations to provide for the exact same type of
20 payment under same type of circumstances. But in
21 that case when there's habitable penthouse space on a
22 non-residential building.

23 So, the same logic would apply that someone
24 could say, hey, I did that five years ago so I don't
25 have to provide you with that contribution. I've

1 done it.

2 MR. MAY: Well, and would that -- but you're
3 not -- I can hear you, Mr. Glasgow. Maybe you want
4 to keep your mic off.

5 Mr. Bergstein, but what about in the case of
6 alley closings? I mean, if we were to take this
7 action, does this have implications for alley
8 closings?

9 MR. BERGSTEIN: I think that the Zoning
10 Administrator is not bound by your interpretation of
11 housing linkage for alley closings. He might defer
12 to it because the logic would be the same. But, this
13 is your zoning regulation, and it's in the context of
14 a PUD, and logic would dictate that the same rule set
15 should apply. But arguably the Zoning Administrator
16 could find that, for whatever reason, a different
17 rule set should apply for alley street closings.

18 But, based on what he's saying, I don't know
19 that he would. But he's the one, ultimately, who has
20 to -- actually, I don't know if it's the Zoning
21 Administrator or the DCRA director in terms of
22 building code who has to make this determination.

23 MR. MAY: Right. So, is it something that it
24 could be clarified in the order that it would only
25 apply with relation to zoning cases? I mean, if

1 we're going to set a precedent --

2 MR. BERGSTEIN: Well, I think that would be
3 true anyway. I mean --

4 MR. MAY: Well, I know it would be true, but
5 I mean, to make it very clear to the Zoning
6 Administrator or to the Director of DCRA, whoever is
7 the enforcer on alley closings.

8 MR. BERGSTEIN: We could write the order that
9 would say that for the purposes of PUDs and PUDs
10 only, you know.

11 MR. MAY: Yeah.

12 MR. BERGSTEIN: The Zoning Commission finds
13 that the requirement that the applicant satisfy --
14 engage in certain activities upon the approval of a
15 density increase through a PUD, that that could be
16 satisfied by preexisting housing through this credit
17 system, but only for Planned Unit Developments.

18 MR. MAY: Is there any way that we could
19 limit it to only this Planned Unit Development?

20 MR. BERGSTEIN: No, I don't think -- I can't
21 think if a measure of reason for -- we have statutory
22 language that basically says, whenever the Zoning
23 Commission approves -- whenever the Zoning Commission
24 approves a discretionary and otherwise appropriate
25 zoning density increase that results in the provision

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1 of additional commercial office space, the applicant
2 who obtains the additional commercial space shall be
3 required to comply with the following housing
4 requirement. Now, that's what it says. It doesn't
5 say, except in Case No. 06-10. I'm sorry, 80-07A.

6 MR. MAY: So, by saying that this qualifies,
7 we're saying that it meets that requirement.

8 MR. BERGSTEIN: You're saying, it meets that
9 requirement.

10 MR. MAY: Yeah. Yeah.

11 MR. BERGSTEIN: The applicant shall
12 construct, the applicant shall contribute, and you're
13 saying, that means the applicant shall have
14 constructed.

15 MR. MAY: Right.

16 MR. BERGSTEIN: Or shall construct. Because
17 that's what you're reading that to be.

18 MR. MAY: Right.

19 CHAIRPERSON HOOD: Commissioner Shapiro?

20 MR. SHAPIRO: And I appreciate the questions,
21 Commissioner May. I'm torn with this issue and
22 precedent and no matter how narrowly we construe this
23 we're not -- I don't feel like I'm quite clear with
24 what the unintended consequences of this might be.

25 The other thing I'm reminding myself of is

1 that we're not wiping out these credits. So, it's in
2 recognition of what good deed was done by the
3 applicant. And though there certainly would be a
4 cost associated with doing this, those credits would
5 still be available to be used in other projects. At
6 least that's the way I would understand that I would
7 see it. So, I'm torn.

8 But I think what I'm more concerned about is
9 the precedent.

10 MR. GLASGOW: Mr. Chairman, can I respond?

11 CHAIRPERSON HOOD: We finished up here? Yes,
12 Mr. Glasgow.

13 MR. GLASGOW: Okay. Thank you. First of
14 all, with respect to just the very last point, wiping
15 out the credits, it's taken us five years to not to
16 use two-thirds of the credits. This has been a long,
17 hard slog to get where we are today, with not the
18 return on the investment that may have been hoped
19 for.

20 Secondly, this was a construction under a JV
21 option that's provided for under the regulations.
22 This isn't a utilization of credits. These were --
23 this affordable housing, this excess affordable
24 housing generated a right to be able to utilize
25 these. And what I'm almost hearing is that if we had

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1 made sure to reference Chapter 24 in that joint
2 venture agreement, which the people that are parties
3 to it have said that they'll amend, instead of just
4 Chapter 17, we would have been in a much stronger
5 position today, and we don't think that should be a
6 result.

7 And we think that if people are providing the
8 affordable housing, which is constructed and done way
9 sooner than they can utilize the credits which we've
10 had, or the affordable housing that was provided way
11 earlier, that that's something that should be
12 encouraged, not the other way around.

13 And I think that when we were dealing with
14 these issues with the council and otherwise, it was
15 always the issue was, well how are we going to make
16 sure the developers actually provide the housing.
17 Well, the housing was provided way earlier. And I
18 think with respect to precedent, we can work on an
19 order that's very finely crafted. We've done that in
20 situations with respect to the provision of housing
21 and downtown, where we had a finely crafted text
22 amendment to the Zoning Regulations, where the
23 affordable housing that was built for Golden Rule
24 Plaza. That wasn't otherwise permitted to go forward
25 because not enough housing was being built on a DD

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1 site, and so we crafted a specific provisions that
2 worked with respect to making sure that project could
3 go forward, because as you remember in DD, we had
4 certain minimums, so they had a huge site area there
5 and then -- and that site area wouldn't generate the
6 minimum. We could never get the project built.

7 And so here, we've gotten a situation where
8 someone paid early and now we want to be able to
9 utilize the affordable housing that was constructed
10 through joint venture, and not like the credits and
11 not like a pay-in because we're doing a lot of the
12 projects now with respect to the penthouses and what
13 we're doing there is we're contributing to the
14 affordable housing production trust fund because
15 that's generated. That requirement is generated by
16 the penthouse that's being put up there right now.

17 And on this situation, what we want to be
18 able to do is utilize the excess affordable housing
19 that was already constructed and it provides in the
20 regulations that you can do it through a joint
21 venture and it doesn't have any time limit on that.

22 CHAIRPERSON HOOD: Here's what I'm going to
23 propose because I understand two separate things that
24 are going on here. For me, we're not trying to
25 punish anyone. But for me I think -- and I know the

1 record is there, but sometimes a little more time,
2 and it gets to the point of -- I think one of my
3 colleagues mentioned, how do we do something. Maybe
4 it was you, Commissioner Shapiro. I forgot who it
5 was now, I've been hearing a lot.

6 But, I think what we need to do is allow OAG,
7 as well as Office of Planning, and you all need to
8 continue to have a discussion for me, because
9 actually what we're getting to is exactly what
10 Commissioner Shapiro just mentioned, a limited scope
11 hearing. That's basically where we're going, because
12 when we have some other things on our meeting agenda
13 for tonight. So, I'm not sure if we need a limited
14 scope hearing, but I would like for all the parties
15 to go -- all the groups that have been working on
16 this issue, OP, OAG, the applicant, to go back and
17 see if it's a way. I've heard that it wasn't. But
18 sometimes a little more time and everybody is, you
19 know, all the heads at the table, you may be able to
20 see a way that is not precedent setting. See a way
21 that we can do this even though it's not
22 interchangeable.

23 So, that would be my recommendation because
24 if we keep going we will have a limited scope hearing
25 tonight and we have other people who are here for

1 other cases for us to make decisions on. And I'm not
2 saying it has to be a whole month away. I think two
3 weeks might do us some good. It's worked in the
4 past. And that will be some more -- hopefully get a
5 clear guidance so we can make a real good decision,
6 because I don't like doing a lot of stuff off the
7 cuff. Okay? So, that's kind of where I am. Let me
8 open it up and see if anybody is with me. Commission
9 May?

10 MR. MAY: Yeah. So, first of all, I
11 appreciate everybody taking a little bit of time now
12 to talk about it because I think it's been helpful
13 trying to flush out what the issues are. And I agree
14 that giving the applicant and the Office of Planning,
15 the Office of the Attorney General some time to try
16 to figure out how we might thread the needle on this,
17 because I think that there are certainly valuable
18 things that the developer has already done that
19 should be recognized, I do have just two more quick
20 questions of the applicant if you can bear with me.

21 One is that at this point do we have a sense
22 of what the credit market is like now? I mean, are
23 there -- you know, you made it sound like it was hard
24 to use up the credits that were generated five years
25 ago. Does that mean that they, you know, there's a

1 glut of credits? Or does it just mean that you've
2 been trying to use them on your projects and just
3 stuff hasn't fit?

4 MR. GLASGOW: It's that we have been
5 gradually using the credits on this project. I mean,
6 on projects that Douglas Development has, and that's
7 why --

8 MR. MAY: The Douglas project.

9 MR. GLASGOW: -- they were purchased. If
10 they were purchased to try to resell --

11 MR. MAY: Yeah.

12 MR. GLASGOW: -- we would have never have
13 done it.

14 MR. MAY: Right. And is there -- I mean, is
15 there actually a, I mean, a thriving market for this,
16 for credits of --

17 MR. GLASGOW: Of this nature?

18 MR. MAY: -- of this sort?

19 MR. GLASGOW: It's very difficult because
20 most developers will only buy what it is that they
21 need, or fund what it is that they need right at that
22 point in time.

23 MR. MAY: When they need it, right.

24 MR. GLASGOW: When they need them. And so,
25 you have a situation, there are credits that get

1 generated and they're probably going 10 to -- the
2 range is \$10 to \$15 a foot and so -- but we would not
3 be buying additional credits. We don't need them.

4 MR. MAY: Right. Okay.

5 MR. GLASGOW: Yeah. And I don't know that
6 these are readily transferrable to others.

7 MR. MAY: Right.

8 MR. GLASGOW: To another entity. So, I'm not
9 sure that there's a market, and I know we wouldn't
10 have bought these if we couldn't use them on our own
11 projects. And it was just, Douglas is going to buy
12 these and then see if he can flip them.

13 MR. MAY: Right.

14 MR. GLASGOW: That doesn't make any sense.

15 MR. MAY: Okay.

16 MR. MILLER: So, in terms of precedent,
17 you've already used this excess Saint Martin's
18 affordable housing on other projects after the fact.
19 I think it would be helpful maybe if we had the
20 circumstances under which they were used. I guess
21 they weren't in the context of a PUD.

22 MR. GLASGOW: They were not in PUD. They
23 were in the downtown development district and housing
24 priority areas.

25 MR. MILLER: Okay. So, maybe that's where we

1 limit, if we were to allow it, to a limit to -- and
2 you're saying that the Zoning Administrator
3 recognized them in that case.

4 MR. GLASGOW: That's correct. So, I think
5 that that's why we believe that there is, while we're
6 talking, we believe that there is a way to properly
7 structure this, and why I brought up the other
8 example, so that it's not readily available.

9 MR. MILLER: Is this project in the -- this
10 project is not in the DD.

11 MR. GLASGOW: It's just outside of it.

12 MR. MILLER: Right.

13 MR. GLASGOW: It's just outside of the DD by
14 a block.

15 MR. MILLER: But how did the office building
16 -- was this office -- was it this office building
17 that lead to the requirement for the Saint Martin's,
18 but it wasn't in the --

19 MR. GLASGOW: No. No.

20 MR. MILLER: It wasn't. It was another
21 project?

22 MR. GLASGOW: Yes. It was, what happened was
23 this building was a prior PUD back in like 1980 or
24 so, Union Labor Life. It was 6 FAR and 90 feet in
25 height, C-3-C. And so now we're coming in and

1 modifying it because I think a lot of people are not
2 thrilled with the look of that building, including
3 ourselves. And here's a way to get it redone.

4 And then we've got the affordable housing,
5 the excess affordable housing that was built out of
6 Saint Martin's, and we say, all right, we can match
7 this up and make this all work.

8 CHAIRPERSON HOOD: Okay. Let's do this --

9 MR. TURNBULL: Okay, Mr. Chair, can I -- I
10 mean, make one comment? I mean, it sounds like we've
11 heard from OP already that the ZA does not sort of
12 accept this right now, from what their discussions
13 have been. So, are you relying upon the language in
14 this new zoning order and to convince the ZA?

15 MR. GLASGOW: Oh, sure. If you all have an
16 order and grant this I believe that the Zoning
17 Administrator will follow the lead of this
18 commission.

19 CHAIRPERSON HOOD: Okay. I'm going to put my
20 idea back out on the table. I've even been to a
21 point maybe we need to have more discussion, and
22 maybe we need to have a limited scope hearing. But
23 let me see what others think. I was just giving
24 everybody a little more time to see if we can come to
25 that conclusion. Two weeks. We do it at our next

1 meeting or, let me hear from others. Because if not,
2 we're getting to have a limited scope hearing.

3 MR. MAY: Mr. Chairman, I agree with you. I
4 mean, it would be best to try to give them an
5 opportunity to figure out a way to make it work and
6 bring it back to us. And if we decide at that point
7 we need to have further discussion during the
8 meeting, we could do that. If we decide we needed to
9 have a limited scope hearing, we'd do that.

10 CHAIRPERSON HOOD: Any others?

11 [No audible response.]

12 CHAIRPERSON HOOD: Okay. So, we will take
13 this back up in two weeks. That's when our next
14 meeting is. So, we're going to ask -- hold on, Mr.
15 Glasgow. Hold tight. We're going to ask, because we
16 want something more definite. We're not ready to
17 make an off-the-cuff decision right now, so we're
18 looking at something in two weeks.

19 MR. GLASGOW: No, we're not. Mr. Chairman,
20 Mr. Millstein is not going to be -- he's going to be
21 away a lot for a project in Buffalo, New York, so --

22 CHAIRPERSON HOOD: But he has a very abled
23 and capable assistant. What's her name?

24 MR. MILLSTEIN: Andrea Gourdine.

25 MR. GLASGOW: Yes.

1 CHAIRPERSON HOOD: Bring her down here
2 because --

3 MS. SCHELLIN: Or the next meeting.

4 CHAIRPERSON HOOD: She seems to be able to
5 get things done. No, I'm just --

6 MR. GLASGOW: No problem.

7 MS. SCHELLIN: The meeting after that is the
8 27th.

9 CHAIRPERSON HOOD: The 27th. Is the meeting
10 after that okay?

11 MR. MILLSTEIN: That would be better if you
12 could.

13 CHAIRPERSON HOOD: Okay. So, we'll do the
14 meeting after that, and give everybody time to come
15 back with a solution.

16 MR. MILLER: Yes.

17 CHAIRPERSON HOOD: So, we don't have to do
18 this fly by night and off-the-cuff. Okay.

19 MS. SCHELLIN: So, you want to have
20 submissions in -- do you want to have written
21 submissions first from all the parties that are
22 involved? Or just from the applicant and OP?

23 CHAIRPERSON HOOD: I think we need -- yeah.
24 And we'll consult with our counsel. Yeah.

25 MS. SCHELLIN: And have written submissions

1 from the applicant and OP.

2 CHAIRPERSON HOOD: We can get something
3 written. And it doesn't have to be a book.

4 MS. SCHELLIN: If we could have that by the
5 13th, then?

6 CHAIRPERSON HOOD: Not a book. You know,
7 just give us some soundbites.

8 MS. SCHELLIN: Yeah.

9 CHAIRPERSON HOOD: And let's see how we could
10 make this work.

11 MS. SCHELLIN: Yeah. 3:00 p.m. on the 13th.

12 CHAIRPERSON HOOD: You may want to involve
13 OAG in the conversation as well.

14 MR. GLASGOW: Oh, we definitely do.

15 CHAIRPERSON HOOD: Okay.

16 MR. GLASGOW: We want to get everybody
17 together.

18 CHAIRPERSON HOOD: Yeah, that's what I mean.

19 MR. GLASGOW: But you're saying that the
20 submissions should be due --

21 CHAIRPERSON HOOD: Written submissions. 3:00
22 p.m. on the 13th.

23 [Discussion off the record.]

24 MS. SCHELLIN: And we'll put it on for the
25 27th.

1 CHAIRPERSON HOOD: 27th, right. And we'll do
2 it for -- again, as it is today, for final action.

3 Okay. So, thank you all. We appreciate it.

4 MR. TURNBULL: Well, Mr. Chair, are you
5 finished with -- you're not finished with the case,
6 though, right?

7 CHAIRPERSON HOOD: Is there something else?

8 MR. TURNBULL: I have a question on the
9 signage.

10 CHAIRPERSON HOOD: Okay. No, I'm not. We're
11 not, then.

12 MR. TURNBULL: I'm glad you provided the
13 drawings, but I still think it shows large areas
14 where signage could be. You have some language that
15 sort of shows where it might be and what it's going
16 to be like. You've shown some pictures. But I would
17 really like to see actual signage up there, whether
18 it says A, B, C, D, the sign, where it would go,
19 rather than just these broad areas of where signage
20 is. I think it's a little bit misleading. I mean,
21 you've got the retail area. It's all pink on the
22 lower. I'm sure it's only going to be small foot and
23 a half sign down there, but I'd like to be a little
24 bit more precise than this big -- the global picture
25 that you seem to present.

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1 If you could be a little bit more refined on
2 what you're really looking at. Size. And, you know,
3 as they say, maybe A, B, C, D, E, F, G, but just show
4 where it might be and just something that's a little
5 bit more graphically representing as to what you
6 want.

7 CHAIRPERSON HOOD: Okay. Anything else on
8 this case?

9 [No audible response.]

10 CHAIRPERSON HOOD: All right. Thank you very
11 much. We'll see you all on the 27th. Or whatever
12 date it is.

13 MS. SCHELLIN: Chairman Hood, before you go
14 to the next case, I was approached by the applicant's
15 attorney in the prior case, Case No. 16-10, where
16 there was an issue with the sign. They've asked if
17 the Commission -- they would withdraw having the
18 sign. If you look at the plans, page number A-221,
19 they would withdraw having the sign in the spot
20 labeled number 1, and only have the sign in sports
21 labeled 2 and 3, and see if that would provide
22 comfort to the Commission.

23 MR. TURNBULL: Could you -- what --

24 MS. SCHELLIN: So, they would not have a sign
25 here. They would only have it here, and here.

1 MR. TURNBULL: So, get rid of -- so get rid
2 of one?

3 MS. SCHELLIN: The one at 1, number 1.

4 MR. TURNBULL: Okay.

5 MS. SCHELLIN: Does that work?

6 MR. TURNBULL: I'm okay with that.

7 CHAIRPERSON HOOD: Okay. Does that work for
8 everybody else? Okay. All right. So --

9 MS. SCHELLIN: So, would you consider taking
10 action this evening?

11 CHAIRPERSON HOOD: Yeah, we're getting ready
12 to do that right now.

13 With the latest development, somebody like to
14 make a motion, Mr. Turnbull?

15 MR. TURNBULL: Okay. Mr. Chair, I would
16 move, then on Zoning Case No., that we take final
17 action on Zoning Case No. 16-10, EAJ 400 Florida
18 Avenue, LLC, consolidated PUD and related map
19 amendment at Square 3588, with the qualification that
20 we've just received from the applicant's attorney
21 about modifying, removing sign number 1 on A-221, and
22 look for a second.

23 MR. MILLER: Second.

24 CHAIRPERSON HOOD: Okay. 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: Staff records the vote four,
5 to zero, to one to approve final action in Zoning
6 Commission Case No. 16-10, Commissioner Turnbull
7 moving, Commissioner Miller seconding, Commissioners
8 Hood and May in support, Commissioner Shapiro not
9 voting having not participated. And would ask the
10 Commission if they want the applicant to provide a
11 new sheet, just the one sheet, A-221, before the
12 order is issued?

13 CHAIRPERSON HOOD: Yes.

14 MS. SCHELLIN: If they could do that rather
15 quickly, so, within the next couple days, maybe?

16 Okay. Just the one sheet. Thank you.

17 CHAIRPERSON HOOD: Okay. Let's go to Zoning
18 Commission Case No. 15-18, Ms. Schellin.

19 MS. SCHELLIN: Yes, sir. On this one at
20 Exhibit 51 the applicant requests that the Commission
21 would accept their late filing of their list of
22 proffers and conditions. It was three days late.
23 Those proffers and conditions are at Exhibit 51A.
24 We'd ask that the Commission would proceed
25 accordingly.

1 So, if you would waive the rules to accept
2 those?

3 CHAIRPERSON HOOD: Let me ask, did we accept
4 the --

5 MS. SCHELLIN: Not yet.

6 CHAIRPERSON HOOD: No, did we accept the
7 Committee of 100 letter? We already did that.

8 MS. SCHELLIN: Yes. Yes.

9 CHAIRPERSON HOOD: Okay. Just couldn't
10 remember. Okay. Let's open it up, colleagues. Any
11 questions or comments? Do we have the lighting plan?
12 I believe someone asked for that. Or did somebody
13 ask for it? Or did we already have it?

14 MS. SCHELLIN: The only new filings start at
15 51.

16 CHAIRPERSON HOOD: Fifty-one?

17 MS. SCHELLIN: Yes.

18 CHAIRPERSON HOOD: Okay.

19 MS. SCHELLIN: All of the other exhibits were
20 previously reviewed.

21 CHAIRPERSON HOOD: Okay.

22 MS. SCHELLIN: At proposed.

23 CHAIRPERSON HOOD: So 51 and 51A are the
24 new --

25 MS. SCHELLIN: Yes, which deal with the

1 proffers and conditions.

2 CHAIRPERSON HOOD: Okay. Anything else
3 anybody wanted to add to this? I know that we spent
4 a lot of time even deciding if we were going to move
5 with this to begin with. So, I think a lot of stuff
6 has been exhausted, and I think this is not precedent
7 setting. At least not from my standpoint.

8 Vice Chair Miller, did you want to add
9 anything or you want to --

10 MR. MILLER: No, I just wanted to make a
11 motion.

12 CHAIRPERSON HOOD: Okay. Go right ahead.

13 MR. MILLER: Make a motion since it's been
14 around a while and I think all the issues have been
15 addressed. So, I would move the Zoning Commission
16 approve -- take final action on Case No. 15-18,
17 Initio, LP consolidated PUD and related map amendment
18 at Square 1194, and ask for a second.

19 CHAIRPERSON HOOD: I'll second it. It's been
20 moved and properly seconded. Any further discussion?

21 [Vote taken.]

22 CHAIRPERSON HOOD: Ms. Schellin, would you
23 record the vote?

24 MS. SCHELLIN: Yes. Staff records the vote
25 three, to one, to one to approve final action in

1 Zoning Commission Case No. 15-18, Commissioner Miller
2 moving, Commissioner Hood seconding, Commissioner May
3 in support, Commissioner Turnbull opposed,
4 Commissioner Shapiro not voting having not
5 participated.

6 CHAIRPERSON HOOD: Okay. Our next case is a
7 time extension. Zoning Commission Case No. 08-33G,
8 MIRV Holdings, LLC, two-year time extension for the
9 first stage PUD at Parcels 121 and /31. Ms.
10 Schellin.

11 MS. SCHELLIN: Yes, this is the applicant's
12 third time extension for this case of the first stage
13 PUD, and they're asking for a waiver of the 2016
14 regulations that limit the number or extensions and
15 for the time period. The applicant is still working
16 with GSA regarding the statement of nondisturbance of
17 the land in order to move forward with the
18 residential component of the project. Exhibit 5 is
19 an OP report advising that they do not oppose the
20 extension which would be to December 31st, 2018.
21 Exhibit 6 is the letter in support from DMPED, and
22 Exhibit 7 is ANC 5A's report in support.

23 CHAIRPERSON HOOD: Okay. Colleagues, this is
24 a case that has actually been around as long as I
25 have, or maybe longer. But this is one that I said

1 that there were a couple of hearing that we had on
2 this. I really hope it gets built. A lot of it has
3 been changed and maybe it will get built after this.

4 I think that the -- in this case of who all
5 you have to work with, I think this warrants an
6 extension. And not putting GSA, sometimes they don't
7 move as fast as we'd like to, or like to see other
8 government agencies move. So, I think that this
9 would warrant a case of an extension and I think this
10 is a very viable and good project. Not just to the
11 neighborhood, but to the city. So, I would be in
12 favor and I'm hoping eventually it gets done. I
13 would be in favor of supporting the extension with
14 the time notice.

15 Any other comments?

16 MR. MILLER: Mr. Chairman, I would concur
17 with your comments and just maybe our federal members
18 can help get some sister federal agencies, GSA in
19 this case --

20 MR. MAY: I wish I had such parlance over
21 GSA.

22 MR. MILLER: (Simultaneous speech) in another
23 case, why they make residential use so difficult.
24 It's obviously something held over from a period that
25 I don't understand, but.

1 MR. MAY: Yeah, I can't respond to the Gorman
2 years thing. And you know, frankly I find this
3 baffling on the part of GSA. I don't really
4 understand what their rationale is. It almost seems
5 like they shifted course on this but, yeah. But then
6 again, there are often cases where our agencies don't
7 necessarily see things exactly the same. So, I guess
8 I'm not that surprised. I would just encourage them
9 to keep working with the deputy mayor to try to get
10 it resolved.

11 CHAIRPERSON HOOD: Okay. So, with that any
12 other comments? With that I would move approval of -
13 - I mean, approval of the extension of Zoning
14 Commission Case No. 08-33G and ask for a second.

15 MR. MILLER: Second. And in that motion was
16 the waiver of the -- I guess encompassed in that
17 motion, and maybe we don't need to set -- it's
18 assumed that we're waiving the rule about only two
19 extensions.

20 CHAIRPERSON HOOD: Oh, yeah, yeah, yeah.
21 Thank you. Yeah, I would move, because of the
22 circumstance -- that was supposed to have been my
23 explanation for it.

24 MR. MILLER: That's what you said.

25 CHAIRPERSON HOOD: Yeah, yeah.

1 MR. MILLER: That's what you said before.

2 CHAIRPERSON HOOD: So, I would move with the
3 friendly amendment added to my motion from Vice Chair
4 Miller.

5 MR. MILLER: Second.

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

8 MR. MAY: Mr. Chairman, I just wanted to
9 note, you know, I want to make sure that everybody
10 understands that we are not under you know, not
11 agreeing to this lightly and that we're not going to
12 be granting these kinds of waivers on extension
13 requests on a regular basis. I mean, you know, we
14 need to -- you know, there are reasons why we did
15 that and we're going to scrutinize every one of them
16 and it really has to be a truly extraordinary
17 circumstance for us to grant the waiver. So, I know
18 that should go without saying, but I feel like I had
19 to say it anyway.

20 CHAIRPERSON HOOD: I think that's good, and
21 I'm going to elaborate a little bit too, because we
22 don't put rules and regulations in place just to do
23 them, to waive them, just like our penthouse
24 regulations which seem to be really working.

25 So, anything else? Got a motion on the table

1 moved and properly seconded. Any further discussion?

2 [Vote taken.]

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

5 MS. SCHELLIN: Yes. Staff records the vote
6 five, to zero, to zero to approve the time extension
7 for Zoning Commission Case 08-33G to December 31st,
8 2018, Commissioner Hood moving, Commissioner Miller
9 seconding, Commissioners May, Shapiro, and Turnbull
10 in support.

11 CHAIRPERSON HOOD: Okay. Next, let's go to
12 proposed action, Zoning Commission Case No. 16-11,
13 Parkview Community Partners consolidated PUD and
14 related map amendment at Square 2890, Bruce Monroe.
15 Ms. Schellin.

16 MS. SCHELLIN: Yes, sir. On this case at
17 Exhibit 236 the Park Neighbors, which was a party in
18 opposition, they provided at that exhibit, a follow-
19 up regarding the meeting with the applicant.
20 Exhibits 237 through 237M, and 239 through 240B, we
21 have the applicant's post-hearing submissions. At
22 Exhibit 238 is ANC 1A's letter opposing the RPP
23 restrictions, and I would just note it is a letter,
24 not a report, that stands the test for great weight.
25 So, we'd ask the Commission to consider proposed

1 action this evening.

2 CHAIRPERSON HOOD: Okay. Let me -- okay,
3 somebody like to get us going? I'm having some
4 computer issues.

5 MR. MILLER: Mr. Chairman, I'll just say that
6 I appreciate the applicant warming up the color
7 scheme of the brick for the residential development
8 at Bruce Monroe. Bruce Monroe? Yeah.

9 So, I think it does have much more
10 residential feel than it did previously and they add
11 balconies, which I always like for a residential
12 building.

13 CHAIRPERSON HOOD: Okay. Anything else?

14 MR. MAY: Mr. Chairman.

15 CHAIRPERSON HOOD: Yes.

16 MR. MAY: So, I think that they made a number
17 of changes to respond to issues that we had. They --
18 gosh, it's a whole series of things. It was the
19 changes to the colors to warm things up. They
20 provided extra drawings of the rooftop amenity and
21 the guardrails and the solar shade. I mean, just a
22 whole series of things. I won't go through the
23 entire list.

24 There were some things that I think are not
25 perfectly addressed, but I would think could be

1 addressed in a subsequent filing. Specifically, I
2 don't believe that the views into or of the
3 courtyards are sufficient. They did provide plans
4 and sections, but I think that actually we need to
5 see perhaps a perspective view and also some sense of
6 what the fences are actually going to look like on
7 those courtyards because I don't think that we -- you
8 know, we see those in plan and section, but it
9 doesn't really give you a sense of the character of
10 the fence. And so, I think I'd like to see that.

11 And since we were at proposed, there would be
12 an opportunity to do that before we take final
13 action. Again, it's a small detail but it's the sort
14 of thing that we would typically want to see.

15 There is an elevation of this building that
16 we have not seen at all, which is the -- one of the
17 walls of the courtyard of the second building. We
18 can sort of see one of them in a prospective view,
19 but -- actually, not even that. I can't really see
20 that. I think we've only seen the elevations from
21 the street and not seen any of the views of what the
22 walls are like on the sides of that courtyard on the
23 second building.

24 You can see it in prospective view on the
25 larger building, what the walls are like and where

1 the balconies are and things like that. And I think
2 that -- so, we have a sense of what the character of
3 that is. But on the other one where you have, you
4 know, it's a slightly different circumstance, and we
5 don't really have any information about that.

6 So, and again, it could be accomplished with
7 a prospective view into that courtyard, or they could
8 produce the additional elevation drawings that show
9 those facades of the building.

10 I think that there is also an issue with the
11 RPP restriction, and I think that, you know, we'd
12 asked about RPP eligibility. And in testimony they
13 had said that it was eligible for RPP, or the
14 buildings would be eligible for RPP, and they were
15 not considering the restriction.

16 But then we heard further in a subsequent
17 submission that they would make the address of the
18 apartment building on Georgia Avenue so that it would
19 not be eligible for the RPP system, and that
20 furthermore, just to make sure they would put an RPP
21 restriction on the market rate units only, which I
22 think is a very unusual thing. We've never seen that
23 before. We certainly have seen RPP restrictions on
24 other apartment buildings. But I think that to do it
25 on the market unit -- the market rate units only,

1 some sort of compromise with the neighbors who are
2 concerned about parking, I don't think is a very
3 viable thing.

4 Plus, we had the ANC letter saying that
5 they're opposed to any kind of RPP restriction for a
6 host of reasons. So, I would not be inclined to go
7 along with an RPP restriction on market rate units
8 only, even though I do believe that there is validity
9 to having RPP restrictions. I think that having the
10 address on Georgia Avenue should theoretically be
11 sufficient to keep the apartment building out of the
12 RPP system.

13 So, those are the issues that I see. I mean,
14 I do think that the attempt to have further
15 conversations with neighbors was valuable, but
16 ultimately not very productive. But I don't think
17 that we should hold up the project for the sake of
18 further nonproductive discussions.

19 CHAIRPERSON HOOD: Okay. Commissioner
20 Shapiro.

21 MR. SHAPIRO: I concur. I'm happy to move
22 forward.

23 CHAIRPERSON HOOD: Okay. Commissioner
24 Turnbull.

25 MR. TURNBULL: Oh, thank you, Mr. Chair. I

1 think notwithstanding the comments of Commissioner
2 May I would agree with Commissioner Miller that
3 probably just got a long way in picking up the
4 changes that we had talked about, and I think the
5 color of the brick enhances what we had seen before
6 with the balcony. So, but as Commissioner May said,
7 I think his comments are valid and I'm ready to go
8 forward also.

9 CHAIRPERSON HOOD: Vice Chair Miller.

10 MR. MILLER: Mr. Chairman, I neglected to
11 mention a few other things that I appreciate the
12 applicant providing in response to our request. I
13 think the number one addition to what we've all just
14 -- the other things we've mentioned, the commitment
15 to the park was obviously very important to
16 everybody, both those who opposed the project and
17 those who supported it. And the applicant has a
18 proposed condition which addresses that commitment
19 and ensures that that park will be built.

20 And, there is also the reference to -- the
21 applicant entered into a construction management
22 agreement, and that's referenced in the draft
23 conditions, and the right to return policy of the
24 D.C. Housing Authority people talked about that being
25 an important component. That's referenced in the

1 draft order. And all the affordable housing was more
2 clearly spelled out in terms of what's being
3 provided.

4 This really is a real -- not enactment. It's
5 an actualization of the New Communities Initiative as
6 envisioned by Mayor Williams many years ago in terms
7 of having one-to-one replacement of public housing
8 that's dilapidated and run down with quality housing,
9 having workforce, other low and moderate income
10 housing, and having market rate housing and
11 revitalizing this neighborhood as we're trying to do
12 in other new communities as well.

13 But I think this one really does assure that
14 these public housing residents who have waited so
15 long for quality housing, will be able to get it at
16 an early as possible time.

17 CHAIRPERSON HOOD: Okay. Any other comments?

18 I don't know, do we need to address the RPP
19 issue? I don't even really want to even talk about
20 it personally.

21 MR. MAY: So, it's been proffered now that
22 they would put an RPP restriction on the market rate
23 units only.

24 CHAIRPERSON HOOD: Right.

25 MR. MAY: And my suggestion is that we not do

1 that because just, again, it's unprecedented. I know
2 you don't particularly think that RPP restrictions
3 are --

4 CHAIRPERSON HOOD: Doesn't work anyway, so --

5 MR. MAY: -- effective, so I think we just
6 assume reject that.

7 CHAIRPERSON HOOD: We might as well just keep
8 the ineffective proffer in place. You mean reject
9 the proffer totally?

10 MR. MAY: Yeah. I mean, they're proffering
11 it only on the market rate units. They're saying
12 that they're going to put the address of the building
13 on Georgia Avenue so the apartment -- the Building 1
14 would not be eligible for RPP because it's on a
15 commercial street. So.

16 CHAIRPERSON HOOD: Yeah, I see. I'm looking
17 at it.

18 MR. MAY: I mean, and again, and this is not
19 a case where they are looking for a reduction in the
20 amount of parking that's required for the building
21 anyway. They were meeting the parking requirement
22 for the building.

23 So, again, I just don't see any reason for
24 the RPP restriction being included in the order the
25 way it has been proffered.

1 CHAIRPERSON HOOD: Okay.

2 MR. MAY: And it sounds like you agreed
3 because you don't think it's effective anyway.

4 CHAIRPERSON HOOD: I don't think it's
5 effective anyway.

6 MR. MAY: So.

7 CHAIRPERSON HOOD: Proffered, or whatever.
8 But I just want to make sure, I think we're in line
9 with the ANC's --

10 MR. MAY: Correct.

11 CHAIRPERSON HOOD: Looks like that. Yeah.
12 So, all right.

13 MR. MAY: Yeah, that would be consistent with
14 the ANC.

15 MR. SHAPIRO: If I can, Mr. Chair? If I'm
16 understanding you correctly, Commissioner May, if we
17 allow them to put the address on Georgia Avenue,
18 essentially what we're saying is that nobody will get
19 residential permit parking.

20 MR. MAY: And for Building 1.

21 MR. SHAPIRO: Right.

22 MR. MAY: Not for building -- I mean,
23 Building 2 could still be addressed on the side
24 street.

25 MR. SHAPIRO: Yeah, but I'm wondering what

1 the impact of that might be on the residents who are
2 moving in from the other development.

3 MR. MAY: You know, again, the building meets
4 its parking requirement and typically we wouldn't
5 entertain RPP restrictions or any of these other
6 methods unless it's, you know, it's not being met.

7 I mean, I think that --

8 MR. SHAPIRO: That's a fair point.

9 MR. MAY: It should be okay because it's, you
10 know, we try to have the Zoning Regulations meet the
11 actual requirements and not just targets. So.

12 CHAIRPERSON HOOD: Okay. Somebody like to
13 make a motion or -- I don't have a problem with
14 moving forward, I just --

15 MR. MAY: Mr. Chairman, I would move that we
16 take proposed action on Zoning Commission Case 16-11,
17 Parkview Community Partners in the District of
18 Columbia consolidated PUD and related map amendment
19 at Square 2890, Bruce Monroe, with the caveat that we
20 would not accept the proffer of the RPP restriction,
21 and also that they provide some additional drawings
22 as I stated earlier, before final.

23 MR. MILLER: Second.

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

1 MR. SHAPIRO: Just to be clear, then, we're
2 accepting a partial proffer of the address change?

3 MR. MAY: Yeah. The only thing that I would
4 reject is their proffer that they put a lease
5 restriction on RPP for the market rate apartments in
6 Building 1. That's the only thing I would reject.

7 CHAIRPERSON HOOD: Okay. Any further
8 discussion?

9 [Vote taken.]

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

12 MS. SCHELLIN: Yes. Staff records the vote
13 five, to zero, to zero to approve proposed action in
14 Zoning Commission Case No. 16-11, Commissioner May
15 moving, Commissioner Miller seconding, Commissioners
16 Hood, Shapiro, and Turnbull in support. And, the
17 applicant knows to make the submissions for the
18 proffers and conditions.

19 CHAIRPERSON HOOD: Okay. Anything else on
20 this?

21 All right, let's go to Zoning Commission Case
22 No. 16-12, Parkview Community Partners, District of
23 Columbia consolidated PUD and related map amendment
24 at Square 3039 and 3040, Park Morton. Ms. Schellin.

25 MS. SCHELLIN: Yes. At Exhibits 174 through

1 174J and 175 through 176, applicant's post-hearing
2 submissions, Exhibit 177 is a response from Park
3 Morton Resident Council. We'd ask the Commission to
4 consider proposed action this evening.

5 CHAIRPERSON HOOD: Okay. Let's open it up.
6 Any comments?

7 Commissioner Shapiro?

8 MR. SHAPIRO: No, I don't have any --

9 CHAIRPERSON HOOD: Oh.

10 MR. SHAPIRO: -- comments, Mr. Chair.

11 CHAIRPERSON HOOD: I'm sorry.

12 MR. MAY: Mr. Chairman, again, you know,
13 there were a handful of minor things that were
14 developed. Details on the roof decks, the facades of
15 the end units, the treatment of the windows. They
16 adjusted the depth of the porches or the siding of
17 the buildings so they could have the deeper porches,
18 whatever it was. And, the trash removal.

19 So, I think all these smaller things were all
20 addressed in the post-hearing submission.

21 CHAIRPERSON HOOD: Okay. Mr. Turnbull, I see
22 you flipping. You have anything?

23 MR. TURNBULL: Well, the only thing that I
24 didn't see, which I think -- I don't know if we had
25 asked for it but I think on Park Avenue the -- Park

1 Road, I meant. Park Road. The overhangs up at the
2 roof, the -- I wanted to make sure we have the one-
3 to-one setback. Did they have that?

4 MR. MAY: Yeah, I think they demonstrated
5 that they had one-to-one setback.

6 MR. TURNBULL: They did?

7 MR. MAY: I'll take another look, but yeah, I
8 thought so. Hold on.

9 MR. TURNBULL: I mean, I see sections through
10 the side of the -- but I didn't see, and maybe I'm
11 missing it, a section through the front.

12 MR. MAY: Oh, so I mean, those buildings are
13 not at the full height.

14 MR. TURNBULL: That's true too.

15 MR. MAY: So, they don't have to be set back.

16 MR. TURNBULL: That's true.

17 MR. MAY: That's what it was. So, the only
18 penthouses --

19 MR. TURNBULL: That's true. That's true.

20 MR. MAY: -- that have to be set back are
21 the --

22 MR. TURNBULL: But it was set back.

23 MR. MAY: -- stair and elevator overruns.

24 MR. TURNBULL: Yeah. Okay. I'm good.

25 MR. MAY: Setback.

1 CHAIRPERSON HOOD: Anything else in 16-12?

2 [No audible response.]

3 CHAIRPERSON HOOD: Okay. If not, how do we
4 want to proceed? Somebody like to make a motion?

5 MR. MILLER: Mr. Chairman, this is the
6 companion Park Morton case to the Bruce Monroe case
7 so I would move -- I would incorporate my previous
8 comments about New Communities into this case as
9 well, and just move that the Zoning Commission take
10 proposed action on Case 16-12, Parkview Community
11 Partners in District of Columbia consolidated PUD and
12 related map amendment at Squares 3039 and 3040, Park
13 Morton, and ask for a second.

14 MR. TURNBULL: Second.

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

17 [Vote taken.]

18 CHAIRPERSON HOOD: Ms. Schellin, would you
19 record the vote?

20 MS. SCHELLIN: Staff records the vote five,
21 to zero, to zero to approve proposed action in Zoning
22 Commission Case No. 16-12, Commissioner Miller
23 moving, Commissioner Turnbull seconding,
24 Commissioners Hood, May, and Shapiro in support.

25 CHAIRPERSON HOOD: Okay. Next case, the

1 Zoning Commission Case No. 16-13, JS -- that's
2 removed from the agenda. Okay. No wonder I can't
3 find it. Okay. All right. I'm working with two
4 agendas up here. Okay. All right.

5 Okay. Hearing action. All right. Zoning
6 Commission Case No. 14-07B, Capitol Gateway Union LP,
7 et al., second stage PUD in Square 3587. What did I
8 say? No, that's a GG. I'm sorry, GG Overlay -- no,
9 I'm sorry, GG Union LP, et al., second stage PUD in
10 Square 3587. Ms. Vitale.

11 MS. VITALE: Good evening, Mr. Chair and
12 members of the Commission. Elisa Vitale with the
13 Office of Planning. OP is recommending set down of
14 the second stage PUD requested by Great Gulf and
15 Eden's to permit development of a mixed-use building
16 at 1300 4th Street Northeast.

17 In 2015 the Commission approved a map
18 amendment from the CM-1 to the C-3-C Zone, a
19 consolidated PUD for the adjacent property at 1250
20 4th Street Northeast, as well as a first stage PUD
21 for the subject property.

22 The second stage PUD that's before you this
23 evening is consistent with the earlier approval and
24 would allow for the construction of approximate 140
25 residential units and 11,000 square feet of retail.

1 Parking would be shared with and connected to the
2 adjacent building and would include approximate 115
3 spaces for the subject property.

4 The proposed FAR of 2.32 is consistent with
5 the earlier approval and the overall 8.0 FAR for the
6 entire site would be consistent with the C-3-C PUD.

7 This site is designated as a multi-
8 neighborhood center on the policy map, and for a mix
9 of production, distribution, and repair, and high
10 density residential and commercial uses on the future
11 land-use map.

12 The applicant should address how PDR uses are
13 being incorporated into this project. The proposal
14 conforms to the Comprehensive Plan's policy
15 objectives for the upper northeast area, which
16 includes the redevelopment of the Capitol City Market
17 area into a regional mixed use and commercial
18 destination.

19 The Commission granted flexibility from the
20 IZ requirements to the first stage PUD so that 20
21 percent of the IZ units could be located in the
22 consolidated PUD building.

23 As required, the relocated units in the
24 consolidated PUD would be reserved for households
25 earning up to 50 percent of the Area Median Income.

1 And consistent with the order, the balance of the
2 required IZ units would be located in the subject PUD
3 and would be reserved for households earning up to 80
4 percent of AMI.

5 The applicant is now proposing habitable
6 penthouse space in the second stage PUD, and that
7 would also trigger an affordable housing requirement.

8 The applicant should provide additional
9 information regarding IZ compliance, including
10 proposed floorplans, unit size, and the distribution
11 of the IZ units within the building.

12 The applicant has also requested flexibility
13 for court width and area, rear yard, and loading.

14 The applicant has continued to refine the
15 proposal since the first stage approval, and the
16 project generally conforms to the conditions outlined
17 in the order. However, the applicant should increase
18 the bike parking to be more in line with the original
19 proposal of 48 to 71 bike parking spaces.

20 OP commends the applicant for its work to
21 reintroduce Neal Place through the project site, and
22 looks forward to refining the design in keeping with
23 the streetscape guidelines for the area.

24 OP also encourages the applicant to continue
25 to work with the ANC to develop the benefits and

1 amenities for this project. In addition to the
2 issues already described OP has identified areas
3 where additional information is required in its
4 report, and we request that the applicant provide
5 revised building elevations that comply with the
6 Union Market Streetscape Guidelines, as well as an
7 enhanced ground floor elevation along the alley to
8 the west of the proposed building, confirmation of
9 the proposed retail square footage, LEED and green
10 area ratio calculations, and a colors and materials
11 board.

12 The second stage PUD is not inconsistent with
13 the Comprehensive Plan. Therefore, OP is
14 recommending that the application be set down for a
15 public hearing. This concludes my report and I'm
16 happy to answer any questions that you might have.
17 Thank you.

18 CHAIRPERSON HOOD: Thank you, Ms. Vitale.
19 Let's see if we have any questions or comments from
20 up here. Or concerns. Open it up. Commissioner
21 May?

22 MR. MAY: I just want to say, you know, I
23 think this is pretty straightforward as far as stage
24 2 PUDs come to us, and I support the Office of
25 Planning's report and the areas where they need to

1 seek further information, clarification, and
2 embellishment, et cetera, from the applicant in their
3 comments. So, that's all.

4 CHAIRPERSON HOOD: Okay. Anybody else? Vice
5 Chair?

6 MR. MILLER: Yeah. Thank you, Mr. Chairman.
7 Yeah, I concur with Commissioner May and I appreciate
8 the Office of Planning's report. I agree with all of
9 its request for additional information, including the
10 Inclusionary Zoning information that it asks for, and
11 I concur with its recommendations on enhancing the
12 bike parking.

13 I also would ask the applicant to look at
14 enhancing the LEED. I think Office of Planning asked
15 for the LEED calculation. I think I saw somewhere
16 that it was meeting a Silver, but not a Gold. I
17 think I saw 53 somewhere, if I'm recalling right.
18 But, if they can somehow enhance that it certainly
19 would be appreciated.

20 But I'm ready to set down.

21 CHAIRPERSON HOOD: Any other comments up
22 here? Commissioner Turnbull?

23 MR. TURNBULL: Thank you, Mr. Chair. I would
24 again commend Ms. Vitale for an excellent report. I
25 think she's picked up all of the items that I had

1 seen, and I would agree with my colleagues. I think
2 your one comment about the architecture elements
3 should be addressed. The building needs a little
4 tweaking, but I think she's picked up everything that
5 I saw, and I would agree with Commissioner Miller on
6 the LEED attribute.

7 So, and I'm ready to set this down.

8 CHAIRPERSON HOOD: Okay. Anybody else? If
9 not, we'll take a motion.

10 MR. SHAPIRO: Thank you, Mr. Chair. I move
11 that we set down Zoning Commission Case No. 14-07B,
12 GG Union LP, et al., second stage PUD at Square 3587.

13 CHAIRPERSON HOOD: I'll second it. It's been
14 moved and properly seconded. Any further discussion?

15 [Vote taken.]

16 CHAIRPERSON HOOD: Ms. Schellin, would you
17 record the vote?

18 MS. SCHELLIN: Yes. Staff records the vote
19 five, to zero, to zero to set down Zoning Commission
20 Case No. 14-07B as a contested case, Commissioner
21 Shapiro moving, Commissioner Hood seconding,
22 Commissioners May, Miller, and Turnbull in support.

23 CHAIRPERSON HOOD: Okay. Next, Zoning
24 Commission Case No. 17-03. This is the Office of
25 Planning text amendment at Subtitle A, 301.5(a),

1 clarification of vesting rule. Mr. Jesick.

2 MR. JESICK: Thank you, Mr. Chairman, and
3 Members of the Commission.

4 We have nothing much to add to our set down
5 report. The Office of Planning recommends set down
6 of this text amendment, together with our colleagues
7 DCRA, in order to clarify some of the vesting rules
8 pertaining to building permits. Particularly when
9 the Zoning Commission is considering a rezoning of a
10 neighborhood or an area of the city.

11 We have developed this language in
12 conjunction with DCRA, but we do ask for flexibility
13 to continue to work with them and OAG prior to the
14 public hearing to make any refinements that are
15 necessary. Thank you.

16 CHAIRPERSON HOOD: Okay. Any questions or
17 comments? Somebody like to make a motion?

18 MR. TURNBULL: Mr. Chair, I would move that
19 we set down Zoning Case No. 17-03, Office of Planning
20 text amendment to Subtitle A, Section 301.5(a),
21 clarification of the vesting rule, and look for a
22 second.

23 MR. SHAPIRO: Second.

24 CHAIRPERSON HOOD: Okay. 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 set down Zoning Commission
6 Case No. 17-03 as a rulemaking case, Commissioner
7 Turnbull moving, Commissioner Shapiro seconding,
8 Commissioners Hood, May, and Miller in support.

9 CHAIRPERSON HOOD: Okay. Next, Zoning
10 Commission Case No. 17-04. This is the Office of
11 Planning text amendment to Subtitles G, U, Z, and to
12 add a new MU-30 zone. Ms. Vitale.

13 MS. VITALE:

14 MR. LAWSON: No, me this time. Sorry.

15 Thank you, Mr. Chair. OP recommends set down
16 of this request for a public hearing to establish an
17 equivalent of the C-4 Zone from the 1958 regulations.

18 The proposal as put before you also
19 reinstates some use provisions from the '58 regs into
20 the '16 regs, and corrects rear yard provision.

21 As you know, there was a C-4 under the old
22 regulations. Most of that C-4, in fact all of it,
23 was in the general downtown area, the area designated
24 for high density commercial development. However, in
25 the 2016 regulations, the C-4 Zone was not created.

1 Rather, all of those areas that are currently zoned
2 C-4 were part of the new DD -- the new D Zone
3 district of Subtitle I.

4 So, this zone wasn't created. However, even
5 under the old regulations the C-4 Zone was
6 occasionally used for PUDs. Applicants requested
7 PUDs with rezoning to go to the C-4 Zone. Those were
8 all cases that were, you know, once again designated
9 very high density commercial development, and
10 typically located directly adjacent to the downtown
11 core.

12 A couple of examples, for example, are the I-
13 395 Air Rights case, which was a PUD approved to go
14 the C-4 Zone, and actually the project you were
15 talking about earlier, the Darth Vader Building, also
16 was a PUD to the C-4 Zone.

17 That option doesn't exist in the current zone
18 -- current regulations because there is no C-4 Zone
19 and we're requesting to correct that.

20 We do want to make clear that we're not
21 proposing that this new zone be mapped anywhere in
22 the District at this point. It would remain a tool
23 that's available. We see it as being available
24 through a PUD process. This is so the Zoning
25 Commission would be able to assess the full impacts

1 through the PUD. However, as drafted, we've based
2 the new C-4 Zone, which we're calling MU-30 in the
3 new regs, entirely on the C-4 Zone.

4 We would request some flexibility to work on
5 the final language with OAG, prior to the
6 notification. For example, there are a couple of
7 places throughout the regulations where there is a
8 reference to the high-density commercial zones, where
9 reference to the MU-30 Zone may also be appropriate.
10 An example would be in subtitle B. There's a
11 provision related to the measurement of courts on
12 corner lots that probably should reference MU-30 as
13 well as the other high-density mixed use zones. And
14 another example would actually be Subtitle Z, where
15 there should be a reference to the hearing fees for
16 zoning cases including PUD related map amendment to
17 this zone.

18 And I think I'll close with that and be
19 available for any questions. Thank you.

20 CHAIRPERSON HOOD: Okay. Let's open it up.
21 Any comments or questions? Commissioner Turnbull,
22 and then we'll go Vice Chair Miller.

23 MR. TURNBULL: Thank you, Mr. Chair. So, Mr.
24 Lawson, the C-4 would now be -- would be MU-30.
25 That's the replacement.

1 MR. LAWSON: That's what we're proposing,
2 yes.

3 MR. TURNBULL: Although you would -- and you
4 would never map that. You would never see an MU-30
5 on a map.

6 MR. LAWSON: We're not proposing that it be
7 mapped. At this point --

8 MR. TURNBULL: Would that be confusing to
9 people at some point in the future if they didn't --
10 if they looked at a map and it said something, but
11 actually it was a higher, it said MU-30 on -- I mean,
12 how would anybody know by looking at a map, what they
13 could do or they -- is that just something under
14 they're coming to the Zoning Commission as part of
15 our process here and then requesting this MU-30
16 increase?

17 MR. LAWSON: That's exactly the case.
18 Through a PUD this may be an option that an
19 applicant, if they're in an appropriate area,
20 directly adjacent to the downtown core, designated
21 high density commercial, where the MU-30 Zone may be
22 an appropriate one for an applicant and the
23 Commission to consider through a PUD process.

24 So, it's a tool, essentially, that we're
25 proposing to be made available to potential

1 applicants, somewhat like some of the new flat zones
2 in the RF Zone. You may remember when we did ZR-16
3 we created a couple of new RF zones that aren't
4 actually mapped anywhere. But they're a tool that's
5 sitting there available to the Commission or to the
6 public to use if the conditions are appropriate.

7 MR. TURNBULL: Okay. Thank you.

8 CHAIRPERSON HOOD: Vice Chair Miller.

9 MR. MILLER: Thank you, Mr. Chairman. That
10 was my question too, that Commissioner Turnbull had.
11 I understand you having it available as a tool, but
12 in this case we have MU-30 mapped, properties you
13 just mentioned too. We have C-4 properties that
14 don't have an overlay over it. Some of them are a
15 matter of right and some of them are PUDs.

16 MR. LAWSON: No, the ones that I mentioned
17 were PUDs. They got the C-4 zoning through a PUD.
18 The C-4 zoning from the old regulations is now part
19 of the D zones, so there is no property currently
20 zoned the equivalent of C-4 in the District. Other
21 than through -- other than, you know, PUD C-4.

22 MR. MILLER: Okay. I guess I just need to
23 maybe look at the map and see what some of these
24 properties, what it does tell you and whether we need
25 to have more information there. I guess I just need

1 to understand a little more why we wouldn't have it
2 mapped if it -- and you're saying they are mapped,
3 though, in another D category.

4 MR. LAWSON: There is an equivalent of what
5 used to be C-4. But it is now in Subtitle I, under
6 the D zones, so it's subject to all of the provisions
7 that apply to the D zones, to the downtown zones.

8 The MU-30 Zone that we're proposing, would be
9 a mixed-use zone, not a downtown zone. So, it would
10 be subject to the provisions of the mixed-use zones
11 instead of the D zones. But we'd be happy, you know,
12 prior to a public hearing, to produce a map that
13 shows the location of the PUDs that have gone to C-4
14 in the past, as well as the boundaries, I guess, of
15 the D-4 equivalent in the -- that are now in the D
16 zone.

17 MR. MILLER: Thank you. I think that might
18 be helpful to understanding the case, so I appreciate
19 that.

20 CHAIRPERSON HOOD: Okay. Anything else?
21 Somebody like to make a motion?

22 MR. SHAPIRO: Mr. Chair, propose for set
23 down, Zoning Commission Case No. 17-04, Office of
24 Planning text amendment, Subtitles G, U, and Z to add
25 a new MU-30 Zone.

1 CHAIRPERSON HOOD: Okay. I'll second that.
2 It's been moved and properly seconded. Any further
3 discussion?

4 [Vote taken.]

5 CHAIRPERSON HOOD: Ms. Schellin, would you
6 record the vote?

7 MS. SCHELLIN: Yes. Staff records the vote
8 five, to zero, to zero to set down Zoning Commission
9 Case No. 17-04 as a rulemaking case, Commissioner
10 Shapiro moving, Commissioner Hood seconding,
11 Commissioners May, Miller, and Turnbull in support.

12 CHAIRPERSON HOOD: Okay. I think the last
13 thing -- let me make sure. The last thing for the
14 agenda this evening is the correspondence, Zoning
15 Commission Case No. 15-16, Ward 5 Alliance for Equity
16 request to accept untimely filing for a request for -
17 - did I already --

18 MS. SCHELLIN: You haven't done that one yet.

19 CHAIRPERSON HOOD: Okay. I mean, did I
20 already open it?

21 MS. SCHELLIN: No. Yes, you did.

22 CHAIRPERSON HOOD: Okay. Okay. I already
23 opened it so we can --

24 MS. SCHELLIN: No, the request is actually on
25 the agenda this evening.

1 CHAIRPERSON HOOD: Oh, okay. Okay.

2 MS. SCHELLIN: For the whole Commission to
3 consider.

4 CHAIRPERSON HOOD: For the whole thing.
5 Okay. Okay. All right.

6 Zoning Commission Case No. 15-16, Ward 5
7 Alliance for Equity request to accept untimely filing
8 for a request for reconsideration. Ms. Schellin.

9 MS. SCHELLIN: Yes, sir. At Exhibit 105 we
10 have a request from the Ward 5 Alliance for Equity, a
11 non-party for a waiver to accept the untimely filing
12 for a request for reconsideration. 11-Z DCMR,
13 Section 700.3 provides that a party to a case may
14 file for reconsideration within 10 days of the
15 effective date of the order. The order in this case
16 became effective on December 9th, 2016, and Ward 5
17 Alliance made their submission on January 13th.
18 Would ask the Commission to consider this request
19 that's before them this evening.

20 CHAIRPERSON HOOD: Okay. I was trying to
21 refresh my memory on this. The Ward 5 Alliance of
22 Equity is asking us -- many residents who attended
23 the first hearing without being able to testify were
24 then notified of the subsequent continuation hearing
25 in contradiction with the D.C., this says

1 Administrative Procedures Act, attached fine
2 development Comprehensive Plan policies are found in
3 documents in the motion for reconsideration.

4 I never really grappled, and I don't know if
5 I'm missing something. Grappled. Why, because I
6 can't get this thing to work.

7 I can't figure out -- yeah, I see that, but I
8 thought it was another page. I don't understand why
9 they weren't able to testify. I didn't get that.
10 Just, maybe somebody can help me understand it.

11 MR. TURNBULL: Well, Mr. Chair, I guess they
12 weren't a party in the case.

13 CHAIRPERSON HOOD: But they still would have
14 been able to testify. We call opposition.

15 MR. TURNBULL: Yeah.

16 CHAIRPERSON HOOD: What do we got in there?
17 Opposition, proponent, undecided, in between. We got
18 all that now, so I'm trying to figure out from what I
19 see here, why they didn't -- why they were not able
20 to testify.

21 Or is it that they didn't apply for party
22 status? That makes a difference. I just would --
23 you know, I know they don't do this all the time and
24 I was just trying to really understand, when they say
25 and here that they were unable to testify. Can

1 anybody else figure that out, because I can't?

2 MR. MAY: Mr. Chairman, you know, I don't
3 recall the particulars of how that hearing played
4 out. I mean, we have so many hearings and it's hard
5 to remember the particular circumstance of, you know,
6 what -- when a particular case goes from one hearing
7 night to a second night, and how we handle that. But
8 I think we're always very careful to make sure that
9 the people in the audience are aware when it's going
10 to be continued and what the continuation day would
11 be, and we try to let people know early in the
12 evening if they're not going to get to testify that
13 evening. We pick dates far in advance.

14 And even if we didn't, I mean, you know, the
15 record of every hearing is posted online, you know,
16 like the same evening or the next day. It's not hard
17 to find out. You can also call the Office of Zoning
18 and find out when the next hearing would be.

19 So, it's hard -- and I also do not recall any
20 particular statements by anyone in the record saying
21 that they did not get an opportunity to testify or
22 they're representing a group of people who did not
23 get the opportunity to testify because of a change of
24 schedule or something like that. So, I don't really
25 see a basis for the argument.

1 And then, you know, when you add to that the
2 fact that the Ward 5 Alliance for Equity was not
3 actually a party to the case, they don't have
4 standing to request this for consideration anyway.
5 So, I don't see how we can grant this.

6 CHAIRPERSON HOOD: Right. I'm just concerned
7 about the statement of -- and we take careful
8 measures to make sure everyone is able to testify.
9 And I think the allegation here is -- I don't
10 necessarily take it personal, but I think we go to
11 extremes as a Commission to make sure, like you
12 say --

13 MR. MAY: Right.

14 CHAIRPERSON HOOD: -- that people are able to
15 speak. And I'm just trying to figure out why they
16 didn't testify.

17 MR. MAY: Right. So, if it's a question of
18 getting information, for us to receive information
19 about why they believe they were not given an
20 opportunity to testify, you know, if this had just
21 simply come in as a piece of correspondence, stating
22 that they'd had these problems with their ability to
23 testify, then it would be something that was, you
24 know, we would just receive under correspondence and
25 we could read the entirety of it.

1 But when you file it with a motion for
2 reconsideration, I mean, again, I don't think they
3 have standing for granting a motion or us to even
4 waive this information into the record on that case.
5 So, but they could write a letter to us and we can,
6 you know, look at that in correspondence. So, we
7 could learn what the problem was without reopening
8 the record.

9 I mean, maybe I'm standing on a principle
10 that we shouldn't reopen the record, but I don't
11 think we should reopen the record when we're talking
12 about a group that doesn't have party status.

13 CHAIRPERSON HOOD: Well, I see him here now
14 filming. Make sure you get my good side. So, I'm
15 going to ask you if you would come up and I'm going
16 to do this, because that bothers me when somebody
17 sends me something saying they were not able to
18 testify. I know this is typical, but I'm the
19 Commissioner now so I want to call them up and ask
20 them, oh ask one of their representative. Ms.
21 DeRoberts. If you can just come forward and identify
22 yourself and tell us why you were not able to
23 testify? Bring your -- yeah, bring the camera closer
24 because I want you to get my good side. I like being
25 on camera. I'm a ham anyway.

1 Have a seat and identify yourself. Let me
2 understand what's going on.

3 Turn your mic on. Identify yourself.

4 MS. DeROBERTS: Good evening, Commissioners.
5 Thank you so much for giving me the opportunity to
6 speak. My name is Abigail DeRoberts, and I'm from
7 Ward 5 Alliance for Equity. And I think that the
8 concern of why myself and other community members
9 were not able to testify was that the developers that
10 night, MRP, were given like over three hours to speak
11 and to talk about their case, and so I was here from
12 6:30 to 9:30 that evening, and had to leave the
13 meeting early because I had to go finish some work.
14 And so, I wasn't able to testify.

15 And I will admit that I didn't go on the
16 website or call the office, but you know, it was my
17 first time, or maybe my second time testifying, or
18 hoping to testify, rather, in front of the Zoning
19 Commission and I wasn't able to. And I know that
20 there were other community members in my neighborhood
21 who weren't really aware of what was going on because
22 of some consistent lack of communication issues with
23 our ANC 5E-10 commissioner. And she was actually at
24 the meeting as well, but besides like limited
25 communication with her and people that she knows in

1 the neighborhood, this information was not really
2 spread in our neighborhood.

3 And maybe it shouldn't be on our ANC, but for
4 myself and other community members that I've spoken
5 with in the neighborhood, people haven't really been
6 engaged in this issue. A lot of people don't even
7 know that the development is happening, and don't
8 really understand or know a lot of the zoning -- a
9 lot of the ways that it got passed through the Zoning
10 Commission.

11 I think that one is the expansion of the
12 buildable envelope that people are concerned about.
13 I think the density is something that people are very
14 concerned about. People are concerned that the
15 traffic analysis was done at a time when it's not
16 peak traffic in the neighborhood and a lot of folks
17 know that. And so, I think people have issues with
18 that. And there are a lot of things that people from
19 the community want to testify about. And I --

20 CHAIRPERSON HOOD: I think, let me just cut
21 you off. I've been just notified and I think had
22 heard this before. MRP Realty, whatever the group
23 is, this case is being appealed in a court.

24 MS. DeROBERTS: Uh-huh.

25 CHAIRPERSON HOOD: So, right now --

1 MS. SCHELLIN: Their group.

2 CHAIRPERSON HOOD: Oh, their group is
3 appealing.

4 MS. SCHELLIN: Yeah, Ward 5.

5 CHAIRPERSON HOOD: Oh, well you all need to -
6 - that's where you all right now. So, we can't help
7 you.

8 MS. DeROBERTS: So, there's no possibility to
9 reopen the record --

10 CHAIRPERSON HOOD: Because you --

11 MS. DeROBERTS: -- and to testify at this
12 point?

13 CHAIRPERSON HOOD: You already have a
14 process. That process has to play out. You probably
15 should have come here first.

16 MS. DeROBERTS: That was our intention and we
17 submitted this paperwork first, but had some trouble
18 about like, getting on the agenda and whether or not
19 we were even going to be able to get on the agenda.

20 CHAIRPERSON HOOD: On this agenda? On this
21 agenda?

22 MS. DeROBERTS: Yeah. We had like a back and
23 forth over e-mail about getting this on the agenda.

24 CHAIRPERSON HOOD: Okay. Well, either way,
25 now --

1 MS. DeROBERTS: And it took actually like
2 over a week or maybe even a week and a half.

3 CHAIRPERSON HOOD: Okay. But now that you've
4 appealed it there's nothing we can do. You have to
5 do that in your court proceedings.

6 MS. DeROBERTS: We couldn't like do this
7 first or try to go through other avenues first?

8 CHAIRPERSON HOOD: I would have done this
9 first before you appealed it.

10 MS. DeROBERTS: Uh-huh.

11 CHAIRPERSON HOOD: And see which way we would
12 have come down on this. Might not have. You
13 probably still would have had to appeal it. And
14 we'll just see what the courts say, okay?

15 MS. DeROBERTS: Okay.

16 CHAIRPERSON HOOD: Thank you.

17 MS. DeROBERTS: Thank you.

18 CHAIRPERSON HOOD: All right. Okay.
19 Anything else? Ms. Schellin, we have anything else
20 tonight?

21 MS. SCHELLIN: No.

22 CHAIRPERSON HOOD: I want to thank everyone
23 for their participation in this meeting. This
24 meeting is adjourned.

25 [Meeting adjourned at 8:44 p.m.]