

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Special Public Meeting
1456th Meeting Session [7th of 2017]

6:27 p.m. to 6:38 p.m.
Monday, March 20, 2017

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

OLENDER REPORTING, INC.
1100 Connecticut Avenue NW, #810, Washington, DC 20036
Washington: 202-898-1108 • Baltimore: 410-752-3376
Toll Free: 888-445-3376

1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 MICHAEL TURNBULL, Commissioner

5

6 Office of Zoning:

7 SHARON SCHELLIN, Secretary

8

9 Office of Planning:

10 JENNIFER STEINGASSER

11 JOEL LAWSON

12 MAXINE BROWN-ROBERTS

13

14 Department of Transportation:

15 ALAN BERGSTEIN

16

17

18

19

20

21

22

23

24

25

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

2 CHAIRPERSON HOOD: Okay, are we ready? Okay.
3 This meeting, special public meeting, will please
4 come to order. Good evening, ladies and gentlemen.
5 This is a public meeting of the Zoning Commission for
6 the District of Columbia.

7 My name is Anthony Hood. Joining me are Vice
8 Chair Miller and Commissioner Turnbull. We're also
9 joined by the Office of Zoning staff, Ms. Sharon
10 Schellin, as well as the Office of Attorney General,
11 Mr. Ritting, Office of Planning staff, Ms.
12 Steingasser and Mr. Lawson, and Ms. Brown-Roberts.
13 Oh, I said Mr. Ritting? Okay, Mr. Bergstein. I'm
14 sorry.

15 Did I say Mr. Ritting? I must have Mr.
16 Ritting on my mind.

17 MR. BERGSTEIN: We're often confused for each
18 other.

19 CHAIRMAN HOOD: Kind of like me and Carol
20 Mitten (phonetic). Okay. All right. Excuse me, Mr.
21 Bergstein, I'm sorry.

22 We have copies of -- I'd actually read what I
23 have here. Copies of today's meeting agenda are
24 available. Am I correct, Ms. Schellin, we did have
25 agenda? Okay. To you, and are located in the bin

1 near the door. We do not take any public testimony
2 at our meetings unless the Commission requests
3 someone to come forward.

4 Please be advised, this proceeding is being
5 recorded by a court reporter and is also webcast
6 live. Accordingly, we must ask you to refrain from
7 any disruptive noises or actions in the hearing room,
8 including display of any signs or objects. Please
9 turn off all electronic devices. Does the staff have
10 any preliminary matters?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. We have one issue in
13 front of us this evening in this special public
14 meeting. This is a remand on the McMillan case that
15 we have been dealing with.

16 Commissioners, we have a -- just bear with
17 me. We have a request from Friends of McMillan Park,
18 and I'd like to just refer to them as FOMP, a party
19 that was in opposition hereby has asked -- they have
20 asked us a motion to defer the hearing scheduled for
21 March the 23rd for an additional 30 days to allow
22 FOMP necessary time to review the untimely prehearing
23 submissions by Vision McMillan Partners, and the
24 deputy mayor for planning and economic development.

25 While that's what their assertion is and they

1 believe that the notice -- there was some ruling
2 where they couldn't do an exhibit since submissions,
3 I believe that that was not the intent of this
4 Commission. While I understand the interpretation.

5 So, as looking through this, I've come up
6 with a way that I think would hopefully satisfy all
7 parties involved, and I would just, I would just
8 throw this out for discussion, colleagues, that we
9 move in this proceeding and this manner on Thursday,
10 March the 23rd, 2017, we would deal with any
11 preliminary matters. We would take public testimony.
12 We would -- hopefully we get to all this.

13 We would also have agency or agency testimony
14 on the 23rd, and then on Monday, April the 3rd at
15 2017, then we would continue if needed. If we don't
16 finish everything on the 23rd, we would continue on
17 Monday, April the 3rd, with the public testimony or
18 agency's testimony, depending upon where we are on
19 the 23rd. And hopefully we'll finish. Hopefully we
20 will finish on the 23rd. If not, we will use Monday,
21 April the 3rd, as a day to continue that proceeding.

22 And then on Thursday, April the 6th, 2017, we
23 would have presentation by the parties only. While I
24 do not find FOMP's arguments persuasive, I think we
25 intended, at least all of us had intended all

1 exhibits to come in 10 days before the hearing
2 because FOMP may have relied on the arguments in
3 their request, we're going to allow FOMP to submit
4 their statements. But I would ask my colleagues, if
5 that was the route we would take, I would also ask if
6 FOMP -- FOMP chooses to submit something, that they
7 choose it by -- I mean, that they submit it by 3:00
8 p.m., April the 3rd, which would allow us to be able
9 to review their materials as well.

10 But I think that's the order I would
11 recommend, and I'll just open it up for anyone else
12 who may want to add something, take something away,
13 or put their own suggestion in, or however we want to
14 do it.

15 MR. MILLER: Thank you, Mr. Chairman. I
16 agree with your analysis. I think that we intended
17 that the parties would respond to -- would submit a
18 statement responding to the courts. That was the
19 issues that we identified and any other issues that
20 they thought the Court identified, 10 days prior to
21 the hearing date that we set the limited scope public
22 hearing date that we set.

23 But because of this misunderstanding, for
24 whatever reason -- so, I would be in favor of denying
25 the deferral and proceeding with the hearing as

1 scheduled on this Thursday, March 23rd, but
2 reorganizing the -- those who testify so that the
3 party in opposition would have more time to provide a
4 written statement prior to the Thursday, April 6th,
5 public hearing that you've just proposed for the
6 parties to present. And I agree that if they're
7 going to submit a written statement addressing those
8 -- the issues in the Court's remand that they provide
9 it by Monday, April 3rd, so we have an opportunity to
10 review it. So, I would agree with everything you
11 said.

12 CHAIRMAN HOOD: Okay. Mr. Turnbull.

13 MR. TURNBULL: Thank you, Mr. Chair. I would
14 agree with the both of you and I do think that the
15 FOMP misunderstood the intent of the language that
16 went out. And the only thing I would just clarify is
17 that, I think we said if they choose, I think they
18 should submit something. I really -- they ought to
19 submit their statements in response to the issues,
20 the five issues that are on remand, I think it would
21 be good for us to have that ahead of time.

22 MR. MILLER: But it really should be in
23 response to the Court's issues, not --

24 MR. TURNBULL: The Court's issues, right.

25 MR. MILLER: -- in response to what the

1 applicant has already --

2 MR. TURNBULL: Right. Oh, absolutely not.

3 MR. MILLER: -- submitted 10 days prior to
4 the --

5 MR. TURNBULL: No, in fact, we specifically
6 said there's no -- it's not responding to --

7 MR. MILLER: Back and forth.

8 MR. TURNBULL: Back and forth. It should be
9 their statement, their issues, their statement on the
10 issues on remand.

11 CHAIRMAN HOOD: Okay. And I think that's
12 very important. Just reiterate, as my colleagues
13 have just mentioned, there are no responses to party
14 submissions. Individuals per the notice are to
15 indicate which issues they are testifying about also,
16 as they come up. I think that's what the notice
17 mentioned.

18 So, when people come up to testify, they will
19 tell us what issues that they are responding to as
20 well. Nobody is responding to what somebody else put
21 in or another party put in. They are coming to their
22 issues which were remanded back to this Commission.

23 Okay, so --

24 MR. BERGSTEIN: Mr. Chair, I just want to
25 make sure that it's clear that you're not, by asking

1 them to state their position, suggesting that they
2 have the burden of proof on the issues. The
3 applicant has the burden of proof on the issues. So,
4 when they state their position, it would be the
5 position as they see it, but subject to that
6 clarification that they're not required to provide an
7 explanation as to why the Commission should do
8 anything. But to the extent that they believe that
9 the appropriate response of the Commission would be
10 to deny the application, they can do it in that
11 setting. But they're not obligated to meet the
12 burden of proof in this case, and I just want to
13 clarify that because that was a concern that the
14 Board -- that the Court of Appeals had.

15 CHAIRMAN HOOD: Right. The burden of proof
16 is not on FOMP, right. You're correct.

17 MR. MILLER: Okay. It's on the applicant.

18 CHAIRMAN HOOD: Right. Okay.

19 MR. MILLER: So, we have to deny the -- we
20 have to deny the motion to defer, and then proceed
21 with the schedule that you announced.

22 CHAIRMAN HOOD: Yeah, I would -- let me put
23 the motion like this; first, let me ask, does anybody
24 disagree with the process of what I've planned --
25 what we laid out? Okay. What's been laid out?

1 Okay. What we discussed. All right.

2 So, let me put this motion like this, try to
3 -- I would move that we deny the motion by FOMP to
4 defer and move in the fashion in which we described
5 and discussed previously. Will that suffice, Mr. --
6 that motion suffice, Mr. Bergstein?

7 MR. BERGSTEIN: Yes, with the understanding
8 that Ms. Schellin will articulate the dates and
9 submissions and things like that.

10 CHAIRMAN HOOD: Okay.

11 MR. BERGSTEIN: And if you don't agree with
12 what she's saying that you can, you know, clarify
13 that.

14 CHAIRMAN HOOD: Okay.

15 MR. MILLER: I'll second your motion, Mr.
16 Chairman.

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

19 [Vote taken.]

20 CHAIRMAN HOOD: Ms. Schellin, would you
21 record the vote?

22 MS. SCHELLIN: Yes. Staff records the vote
23 three, to zero, to two, to deny FOMP's motion -- or,
24 I'm sorry, request motion for a postponement, or in
25 the alternative to remove the applicant's March 13th

1 filing from the record, and to proceed with the
2 hearing as follows; on Thursday, March 23rd, the
3 Commission will take up preliminary matters and we'll
4 hear from the public and agencies if testimony is
5 given, and if necessary that will continue on to
6 March 3rd. And then on March -- I'm sorry, April
7 3rd. And then on April 6th, presentations by the
8 parties only. And also on April 3rd, the Commission
9 would like to have a submission from FOMP by 3:00
10 p.m. so they can review it prior to them giving their
11 presentation on the 6th of April. And that would be
12 Commission Hood moving, Commissioner Miller
13 seconding, Commissioner Turnbull in support,
14 Commissioners May and Shapiro not present, not
15 voting.

16 CHAIRMAN HOOD: Okay. I guess we're all on
17 the same page. Ms. Schellin, do we have anything
18 else for this special public meeting?

19 MS. SCHELLIN: That's it.

20 CHAIRMAN HOOD: All right. I want to thank
21 everyone for their attendance and my colleagues for
22 their participation, and this special public meeting
23 is adjourned.

24 [Whereupon, the regular public meeting
25 adjourned at 8:43 p.m.]