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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Regular Public Meeting
1459th Meeting Session [10th of 2017]

6:33 p.m. to 7:41 p.m.
Monday, May 8, 2017

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

1 Board Members:

2 ANTHONY HOOD, Chairman

3 PETER MAY, Commissioner

4 MICHAEL TURNBULL, Commissioner

5 PETER SHAPIRO, Commissioner

6

7 Office of Zoning:

8 SHARON SCHELLIN, Secretary

9

10 Office of Planning:

11 JENNIFER STEINGASSER

12 JOEL LAWSON

13 STEVE COCHRAN

14

15 Office of the Attorney General:

16 ALAN BERGSTEIN, ESQ.

17 JACOB RITTING, ESQ.

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

2 CHAIRPERSON HOOD: This meeting will please
3 come to order. Good morning, ladies and gentlemen.
4 This is the public meeting of the Zoning Commission
5 for the District of Columbia.

6 My name is Anthony Hood. Joining me this
7 evening are Commissioner Shapiro, Commissioner May,
8 and Commissioner Turnbull. We're also joined by the
9 Office of Zoning staff, Ms. Sharon Schellin, the
10 Office of the Attorney General staff, Mr. Bergstein
11 and Mr. Ritting, Office of Planning staff, Ms.
12 Steingasser, Mr. Lawson, Ms. Vitale, and Mr. Cochran.
13 And we are located in the Jerrily R. Kress Memorial
14 Hearing Room.

15 Copies of today's meeting agenda are
16 available to you and are located in a bin near the
17 door. We do not take any public testimony at our
18 meetings unless the Commission requests someone to
19 come forward. Please be advised this proceeding is
20 being recorded by a court reporter and is also
21 webcast live. Accordingly, we must ask you to
22 refrain from any disruptive noises or actions in the
23 hearing room, including the display of any signs or
24 objects. Please turn off all electronic devices at
25 this time.

1 Does the staff have any preliminary matters?

2 MS. SCHELLIN: No, sir.

3 CHAIRPERSON HOOD: If not, let's proceed with
4 the agenda.

5 I have a preliminary matter. Commissioners,
6 typically I have instituted a thing some years back
7 that we do relaxed dress code. I know the weather
8 right now might not signify it, but in the next few
9 days or so, the days that signifies wearing some
10 cooler clothes, I would encourage everyone to do
11 that. From this point, we'll take it right into
12 September.

13 So, I guess -- I would say listen to the
14 weather person, but sometimes that doesn't work
15 either. But if it's hot, I would, you know, and this
16 goes out to the public as well, the ties and the
17 stuff that's all tight, we'd like for you to come
18 down and relax for the next few months. Okay?

19 Is that an order anybody objects? Do we need
20 to do it -- Mr. Bergstein, do I need to take a vote
21 on that?

22 MR. BERGSTEIN: I think you can do it by
23 consensus.

24 CHAIRPERSON HOOD: Okay. Let's do it by
25 general consensus. Everything down here has to be a

1 vote. All right. Any objections?

2 Okay, no objections. And that goes to the
3 public as well, and I'll probably make that
4 announcement again. Ms. Schellin, anything else?

5 MS. SCHELLIN: No.

6 CHAIRPERSON HOOD: Okay. Let's go to the
7 consent calendar, minor modification and technical
8 correction in Zoning Commission Case No. 08-06L,
9 Office of Planning technical corrections to Zoning
10 Commission Order No. 08-06A, Subtitles B, C, D, E, I,
11 Y, and Z. Ms. Schellin.

12 MS. SCHELLIN: Yes, sir. We have an OP
13 report asking for several technical corrections to
14 Subtitle C through E, I, Y, and Z. Would ask the
15 Commission to in fact consider these as technical
16 corrections and authorize the immediate publication
17 of a proposed rulemaking this evening. Thank you.

18 CHAIRPERSON HOOD: Commissioners, we've heard
19 the request. Any comments? Commissioner May?

20 MR. MAY: So, I just had one comment, which
21 is that -- got to make sure I have the right one. L.
22 So, this is the one where we've inserted language
23 relating to modifications of significance in
24 contested cases. And so, there's one circumstance
25 where I think there isn't really a reason to have a

1 modification of significance. So, I'm going to pull
2 up the exact section.

3 But, it's so, Z304.5. When we're doing a map
4 amendment. And the inserted language -- well, 304.5
5 says, "At least 45 days prior to filing a map
6 amendment application under this chapter the
7 applicant shall serve a written notice of intent to
8 file the application to the affected ANC and the
9 owners of the property within 200 feet of the
10 perimeter of the property in question."

11 We had included in that, including a
12 modification of significance. So, not just a map
13 amendment but a modification of significance to a map
14 amendment, and that doesn't really make sense because
15 a map amendment is a map amendment, and if you're
16 going to do a modification of significance to a map
17 amendment, you're just doing another map amendment.
18 So, I don't see that it's necessary to add that
19 language. So, I would suggest that we strike just
20 that phrase from that one, otherwise, I'm fine with
21 the whole thing.

22 MR. BERGSTEIN: Mr. May, would you mind
23 looking at 304.1, because I think your logic also
24 applies to that as well. Or at least I'd like to
25 think about that.

1 MR. MAY: Sure. 304 -- sorry, 304.1.

2 MR. BERGSTEIN: And 304.5. But I think both
3 of those have the same thing. They both talk
4 about --

5 MR. MAY: Oh, yeah, yeah. Yeah, they're both
6 map amendments, yes. 304.1 as well. Yeah. I agree
7 with that.

8 CHAIRPERSON HOOD: Okay. Any other comments?
9 I would just ask, while I don't have any problems
10 with going forward tonight, I know that the Advisory
11 Neighborhood Commission report issues for great
12 weight. Having just went down to the convention
13 center for Councilmember Bonds' ANC, I know there's
14 some reworking of that whole great weight clause.
15 It's probably -- I don't know if this is the most
16 consistent, but hopefully before final, I understand
17 that's going to be passed. I'm not sure what all the
18 legal hurdles that have to go through. I know that
19 they're in the process of -- counsel is in the
20 process of doing some things with that.

21 So, I would hope that before final that we
22 can look into that, Ms. Steingasser, and make sure
23 that we have the latest and the greatest. But at the
24 time that we get to final, if they have not proceeded
25 with that one, then we would just have to adopt this.

1 Okay?

2 All right. Anything else? All right. So,
3 with that I would move that we do proposed action.

4 What is this? No, hold up. Hold on. This
5 is not --

6 MS. SCHELLIN: [Speaking off microphone.]

7 CHAIRPERSON HOOD: Okay. I would move that
8 we authorize the proposed publication of Zoning
9 Commission Case No. 08-06L, Office of Planning text
10 corrections to Zoning Commission Order No. 08-06A,
11 Subtitles B, C, D, E, I, Y, and Z, and do we need to
12 waive the posting?

13 MS. SCHELLIN: There was no posting.

14 CHAIRPERSON HOOD: Oh, there's no posting.
15 Okay. All right. And ask for a second.

16 MR. SHAPIRO: Second.

17 CHAIRPERSON HOOD: It's been moved and
18 properly seconded. Any further comments?

19 [Vote taken.]

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

22 MS. SCHELLIN: Yes. Staff records the vote
23 four, to zero, to one to approve the technical
24 corrections for a publication of a property
25 rulemaking with the corrections noted, Commissioner

1 Hood moving, Commissioner Shapiro seconding,
2 Commissioners May and Turnbull in support,
3 Commissioner Miller not present, not voting.

4 CHAIRPERSON HOOD: Okay. Next, Zoning
5 Commission Case No. 08-06J.

6 MS. SCHELLIN: Yes, sir. On this case, the
7 Commission if you'll recall, approved the publishing
8 of a proposed rulemaking for technical corrections.
9 Originally OP had recommended a change to the
10 definition of flat residential, but prior to the
11 Commission taking action, OP filed a supplemental
12 report removing that definition and at the time the
13 Commission was considering action there was quite a
14 bit going on in the hearing room, the Commission had
15 just announced the next steps for the McMillan
16 remand, and then the Commission was interrupted
17 during the discussion of this case. And so, the
18 supplemental report, I don't know if it was
19 overlooked, or I think it was just not discussed,
20 because I know the Commission had read everything in
21 the record.

22 And so, it was unclear whether the Commission
23 meant to keep that definition in as originally
24 proposed by OP, or to remove it as OP subsequently
25 suggested. So, we'd like to get clarification on

1 that and if the Commission meant to remove it as OP
2 suggested in their supplemental report, we'd like to
3 have the Commission authorize publishing a revised
4 proposed rulemaking for a shorter period of time so
5 that final action can still be taken at the June 12th
6 meeting. Thank you.

7 CHAIRPERSON HOOD: I'm not sure, I must not
8 have been here that night to had all that disruption
9 out here, because look how quiet and nice everybody
10 is. So, I know I was not here. So, we need some
11 clarifications. Apparently, a night I wasn't here.
12 I'm not sure who was running the hearing, but you all
13 had some problems. You have to tell me about it
14 later.

15 But let's open it up. I'm not sure what the
16 -- I probably was involved with whatever was going
17 on. I'm just being sarcastic.

18 Okay. Commissioners, you've heard the -- Ms.
19 Schellin tee it up. What is your pleasure or
20 comments? Mr. Turnbull?

21 MR. TURNBULL: I would go with the later
22 proposal and authorize -- I mean, the reset up and
23 going for the 14 days or hearing notice.

24 CHAIRPERSON HOOD: Okay.

25 MR. TURNBULL: And basically, I don't want to

1 repeat exactly everything she said, but her last
2 remarks.

3 CHAIRPERSON HOOD: Okay. Commissioner
4 Shapiro?

5 MR. SHAPIRO: I think that's a motion. I was
6 going to second it.

7 CHAIRPERSON HOOD: Okay.

8 MR. TURNBULL: That is a motion.

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

11 [Vote taken.]

12 CHAIRPERSON HOOD: Did you oppose,
13 Commissioner May? Did you oppose?

14 MR. MAY: No, [Speaking off microphone.]

15 CHAIRPERSON HOOD: Okay. All right.

16 MS. SCHELLIN: Okay. Staff would record the
17 vote four, to zero, to one to authorize the
18 publication of a revised notice of proposed
19 rulemaking removing the flat residential from the
20 revised proposed rulemaking, and for the shortened
21 notice or comment period so that final action can
22 still occur at the June 12th meeting. Commissioner
23 Turnbull moving, Commissioner Shapiro seconding,
24 Commissioners May and Hood in support, Commissioner
25 Miller not present, not voting.

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1 CHAIRPERSON HOOD: Okay. Next, let's go to a
2 modification of -- no, sorry. Modification of
3 consequence. This is deliberation in Zoning
4 Commission Case No. 06-46D, modification of
5 consequence to the design review at Square 701. Ms.
6 Schellin.

7 MS. SCHELLIN: Yes. If you'll recall, this
8 case was deferred from the last meeting to allow the
9 ANC to weigh in on the digital signage. Just before
10 the meeting this evening I checked, and the ANC had
11 not provided any response back.

12 I did speak to the applicant's attorney this
13 afternoon around 4:00, and they did advise that they
14 were in contact with the ANC and the ANC, I believe
15 it was the SMD, advised that they would submit a
16 letter in support, and they had expected to receive
17 one today, however, nothing was submitted.

18 CHAIRPERSON HOOD: Okay. Thank you, Ms.
19 Schelling.

20 Again, colleagues, we had held this out to
21 get a response from the ANC on the digital signs. We
22 thought that it may have been missed. Let me open it
23 up for any discussion. I think we're still in the
24 same place. Any comments?

25 MR. MAY: I would still very much like to

1 hear from the ANC. I mean, was there a rush? What's
2 the rush?

3 CHAIRPERSON HOOD: Somebody waved their hand,
4 it must be a rush. Well, why don't we do this?
5 We'll take our show on the road. Let's go to the ANC
6 meeting. No, I'm just trying to be funny.

7 But no, I don't know how fair we're being to
8 the applicant. I don't have a problem with trying it
9 one more time, but I think we did the necessary
10 reaching out. Ms. Schellin, correct?

11 MS. SCHELLIN: Yes, I think they've --

12 CHAIRPERSON HOOD: Who's the Chair of this
13 ANC?

14 MS. SCHELLIN: I'm not sure who the chair, I
15 forgot, but I can look it up real quick. But --

16 MR. MAY: Is the applicant's representative
17 here? Maybe we can just ask them --

18 MS. SCHELLIN: Yes.

19 MR. MAY: -- some questions.

20 CHAIRPERSON HOOD: She can come forward.
21 Yeah, she was here --

22 MR. MAY: Come forward. Come forward.

23 CHAIRPERSON HOOD: Come forward and identify
24 yourself.

25 MS. SCHELLIN: And my understanding is, they

1 have a whole list of the times they've contacted the
2 ANC.

3 CHAIRPERSON HOOD: Could you take a -- have a
4 seat, turn your mic on, and identify yourself, and
5 then we may have a few questions for you. Why don't
6 you let us ask the questions first? I know you have
7 a testimony, but let us ask the questions first.

8 Just go ahead, introduce yourself first.

9 MS. LEE: Kaleena Lee.

10 CHAIRPERSON HOOD: And you're with who?

11 MS. LEE: With the applicant, Half Street
12 Residential J.B.

13 CHAIRPERSON HOOD: Okay. All right. Let's
14 see if we have any questions up here. Commissioner
15 May?

16 MR. MAY: Yeah, so tell us about the
17 interactions with the ANC and the question of the
18 digital signage.

19 MS. LEE: So, we presented the entire
20 consequence memo to them, including signage.

21 MR. MAY: So, did it have the same deceptive
22 language in the report that we read? Or did you
23 actually explicitly say, digital signage?

24 MS. LEE: So, I don't think it's deceptive,
25 but we did show both the original and the

1 modification update for the second hearing that we
2 presented to you guys. So, they got both.

3 Again, the application is really about the
4 retail use.

5 MR. MAY: And that's not what the concern is.
6 The concern is the digital signage and the fact that
7 it was not clear in the report that we had, I mean,
8 until we looked at it, you know, a second or third
9 time that you're actually talking about putting up,
10 you know, one of those digital moving displays like
11 we have down at the Verizon Center that keeps people
12 up at night. So, I, you know, I just want to know
13 that the ANC fully understood that. That that's what
14 it is.

15 MS. LEE: They fully understand, and they
16 also understand that the sign was approved under the
17 city council's --

18 MR. MAY: Yeah, I don't care about that
19 either.

20 MS. LEE: Okay. So, that was the both
21 things. So, yes.

22 MR. MAY: So, I mean, it's just not -- their
23 decision-making isn't really that relevant to what we
24 have to do here.

25 MS. LEE: Sure. So, the ANC has put in

1 writing to us that they would send a letter of
2 support of our full application, including signage.

3 MR. MAY: Okay. And who is the chair of the
4 ANC?

5 MS. LEE: So, our SMD is Kara Shockley
6 Meredith has also weighed in. I'm sorry, it's
7 escaping me who the chair is right now.

8 CHAIRPERSON HOOD: The Chair is Andy Litsky.

9 MR. MAY: That's what I thought, and it's a-
10 typical for him to not submit something when he says
11 he would. So, did you hear that from the SMD
12 Commissioner, or from the -- I mean --

13 MS. LEE: From our SMD directly.

14 MR. MAY: Yeah.

15 MS. LEE: And so, it was her responsibility
16 to get them to put it in writing to this date. But
17 again, this is our third time here. They've been
18 notified every time we've come. Again, I said to
19 Sharon, we sent a bunch of documentation to show you
20 that we've reached out to them all three times. I
21 have it right here also if you want to see it. No.

22 MR. MAY: No, I mean, again, one of the
23 things that concerns me about this is that it was not
24 really clear from what you submitted to us
25 originally, that this was digital signage. And

1 not --

2 MS. LEE: Everything that you've asked, we've
3 also presented to them also.

4 MR. MAY: Yeah, go ahead.

5 MR. SHAPIRO: Excuse me. I'm inclined to
6 support this ahead, but I wanted some clarification
7 on something that Commissioner May asked you.

8 When you presented this to them again did you
9 present specifically this concern around -- did you
10 pull out the issue around the digital signage and
11 present that to them, or did you just give them the
12 entire document?

13 MS. LEE: We provided the new rendering
14 showing the better view of the digital signage.
15 Again, the content of signage hasn't been defined.
16 Just, we know it's LED.

17 MR. SHAPIRO: So, yes or no? Did you
18 specifically say to the, the Commission had wanted to
19 hear from you about the digital signage?

20 MS. LEE: Correct, and then we showed them
21 the old rendering and the new rendering. Yes.

22 MR. SHAPIRO: But you did that in the context
23 of not just the broad case.

24 MS. LEE: No.

25 MR. SHAPIRO: But digital signage.

1 MS. LEE: Because your comment was only about
2 signage, so yes.

3 MR. SHAPIRO: Okay. Okay. Thank you.

4 CHAIRPERSON HOOD: Any other questions? Mr.
5 Turnbull.

6 MR. TURNBULL: Without beating this to death,
7 you did mention the type, the exact type of signage
8 that was going to be?

9 MS. LEE: LED, yes.

10 MR. TURNBULL: No, not just LED, digital
11 signage. Moving. It's going to be creating all
12 kinds of designs on it and everything else. You did
13 mention that?

14 MS. LEE: We are seeing it as an
15 entertainment zone, so it's interactive signage.

16 MR. TURNBULL: That's not what I asked. I
17 asked, did you mention it was digital and that it was
18 going to be moving and creating all kinds of images?

19 MS. LEE: From our call and e-mail, it does
20 say digital LED signage.

21 MR. TURNBULL: From your call, but what about
22 your meeting?

23 MS. LEE: No, this is all through e-mails and
24 calls.

25 MR. TURNBULL: Oh, so you didn't have a

1 meeting.

2 MS. LEE: We have tried to get on their
3 calendar for a meeting. They haven't requested us to
4 come to a meeting.

5 CHAIRPERSON HOOD: They haven't requested you
6 to come to the meeting.

7 MS. LEE: We've requested to come their
8 meetings, they have not put us on the calendar.

9 CHAIRPERSON HOOD: You know, in my
10 neighborhood they -- people just show up. So, I
11 mean, I mean, I don't know, maybe it's different from
12 neighborhood to neighborhoods, but I can tell you,
13 when some folks in my neighborhood want to come in my
14 neighborhood, and we have a lot of stuff going on,
15 they just show up and they do get on the agenda at
16 the end. Because this is, you know, and I'm not
17 saying that you all haven't done your due diligence,
18 you probably have. And for me, this is very --
19 because certain ANCs don't respond, you know, we
20 probably need to be consistent across the board. But
21 this is typically unusual for this ANC not to
22 respond.

23 So, I'm thinking that maybe they just don't
24 have a simple -- a problem with it, or maybe they
25 don't understand it. So, I do hear what Commissioner

1 May -- and we're not trying to give you the third
2 degree, because I know it feels like it because I
3 felt like if for you. But we're just trying to make
4 sure we get it right because we get accused of a lot
5 of stuff. A lot of stuff.

6 I don't know what else to do. We've reached
7 out. I don't know what else to do besides
8 (simultaneous speech).

9 MR. TURNBULL: Well, I would suggest not
10 going to the SMD, but making sure that Mr. Litsky,
11 the Chair, realizes it. Maybe that's not being
12 communicated.

13 CHAIRPERSON HOOD: Well, one of the names she
14 mentioned I know is very, very -- one of the names
15 you mentioned, Faucet, Facet.

16 MS. LEE: Yeah. Both Meredith and Kara have
17 been fully abreast on this issue. Kara is our SMD
18 specifically.

19 CHAIRPERSON HOOD: Right. I know she is very
20 responsive. I think she's new, isn't she? Or was
21 new?

22 MS. LEE: She is, and she's the one who
23 helped us find Kara, who kind of went silent for a
24 while. So --

25 MS. SCHELLIN: I think Meredith has been out

1 on maternity leave, wasn't she?

2 MS. LEE: But she was the one who helped us
3 get Kara to respond, so.

4 MS. SCHELLIN: Yeah.

5 CHAIRPERSON HOOD: When is their next
6 meeting? Can you just show up, like they do in my
7 neighborhood? I mean, instead of calling or e-
8 mailing, you just show up. I mean, that's what I
9 would suggest. And I'm not trying to give you the
10 third degree. I just want to make sure, we want to
11 make sure we proceed with caution and do what's
12 right.

13 MS. LEE: So, we would also like to request a
14 third option that would just separate the signage
15 from the application and -- on a retail use only, and
16 then we'll come back for signage, because that seems
17 most important to the Commission. But the retail use
18 is being adversely affected by this approval.

19 CHAIRPERSON HOOD: Okay.

20 MS. LEE: So, that's something we can do.

21 CHAIRPERSON HOOD: So, she -- can we do that,
22 because she amended that on the cuff. We usually do
23 that and I don't see why we can't do it tonight.

24 MS. LEE: I tried to do that last time.

25 CHAIRPERSON HOOD: Around here. Changes.

1 Mr. Ritting, I think she amended it.

2 MR. RITTING: Yeah, I think I can clarify the
3 order to remove the request for any signage relief
4 and to make clear in the conditions that no signage
5 is being approved through this.

6 MS. SCHELLIN: So, they file a separate
7 modification of consequence.

8 MR. MAY: Well, yeah. I mean, I don't think
9 they want to file a separate application for it, they
10 just want to get two decisions this evening.

11 MS. LEE: Yeah, we'll come back for another
12 modification for consequence for signage.

13 CHAIRPERSON HOOD: Well, here's the thing,
14 will they have to pay for it?

15 MS. SCHELLIN: Yeah, it's a separate case.

16 CHAIRPERSON HOOD: We don't want to do that.

17 MS. LEE: Oh.

18 CHAIRPERSON HOOD: We don't want to do that
19 because that's not fair. I don't think that's fair.

20 MR. MAY: But could we bifurcate the
21 decision-making on this and approve one part of it
22 and then --

23 CHAIRPERSON HOOD: And put the other part in
24 abeyance.

25 MS. LEE: For the other half?

1 MR. MAY: -- take the signage later?

2 CHAIRPERSON HOOD: Yeah. Let's do that.

3 MR. MAY: Mr. Ritting?

4 CHAIRPERSON HOOD: Yeah, I think we can do
5 it.

6 MR. RITTING: I wouldn't be issuing the final
7 order until after you make the second decision if
8 there -- if you're intending it to be the same case.

9 MS. LEE: Well, could you go on the record
10 that retail is approved pending us coming back with
11 additional ANC input?

12 CHAIRPERSON HOOD: Well, here's what we can
13 do. I think we can. I think we can put it in two
14 votes.

15 MS. LEE: Okay.

16 CHAIRPERSON HOOD: We'll take the first vote.
17 And even though the order won't be issued, I don't
18 know what good that's going to be but that will give
19 you some assurances. I don't think we have any
20 problems with the retail. And then the second,
21 because I want to be fair to you too.

22 MS. LEE: Thank you.

23 CHAIRPERSON HOOD: You should not have to pay
24 twice. We don't require nobody else to do that and
25 we're not going to require you to do that. Okay?

1 Commissioner Shapiro?

2 MR. SHAPIRO: Thank you, Mr. Chair. I'm
3 inclined to support this application. I mean, at
4 some level what we're saying is either she's not
5 telling the truth, or this information has been
6 communicated to the ANC on a number of occasions.
7 And specifically, I heard you say, specifically
8 mentioning, the digital LED signage.

9 MS. LEE: Correct.

10 MR. SHAPIRO: So, they have heard this and
11 they are not responding. I agree, Commissioner May,
12 that I would like to hear from them, but it's not for
13 me to require them to come.

14 MR. MAY: Looking back at the Exhibit No. 8,
15 which is -- and, you know, the statement at the top
16 of the letter which is regarding the case number and
17 additional information regarding digital signage, and
18 this went to, it looks like all the members of the
19 ANC, individually, including the chairman. So, I
20 mean, I guess we can assume that they had fair notice
21 of this. I'm just really surprised that we didn't
22 get a response in this circumstance.

23 So, I don't necessarily want to prolong it,
24 but I mean, I do have to say that the representations
25 of this were deceptive. Now, maybe they weren't

1 Commissioner May, could you repeat that? What did
2 you say? For real.

3 MR. MAY: It was a long-winded lecture, at
4 the end of which I basically said you know, that it
5 seems that notice was provided to all of the ANC
6 commissioners, and so if they've not taken action to
7 address this in any way, shape, or form, then there
8 isn't that much that we really have to do at this
9 point. I don't think that it was really well
10 communicated from the beginning and I think that
11 initially it was -- it was kind of hidden and it may
12 not have been intentional, but that's the way it came
13 across, and so that's why I was concerned about it.

14 But if the Commission is comfortable moving
15 ahead tonight, rather than overcomplicating our lives
16 in the decision making, and overcomplicating things
17 for the applicant, I guess I'd go ahead with it. I'm
18 sure as heck not going to make a motion.

19 CHAIRPERSON HOOD: Did he have me just go
20 through all that coordination?

21 MR. MAY: I know, if you'd listen to me --

22 CHAIRPERSON HOOD: Yeah, so we can
23 accommodate, take care of issue, so she doesn't need
24 to pay or get another date, with very quick, find out
25 how we can communicate with the ANC, and he comes

1 back with that? No.

2 MS. LEE: When you get the answer you want,
3 you say thank you.

4 CHAIRPERSON HOOD: I went and asked someone
5 because I was trying to take care of his issue. But
6 I still think is issue is pertinent. What I did was
7 -- I don't know. What do the rest of you --

8 MR. MAY: Well, I mean, what is it that you
9 worked out? Maybe that's better than my --

10 CHAIRPERSON HOOD: Well, we want to give --

11 MR. MAY: -- giving in.

12 CHAIRPERSON HOOD: -- everyone some ease with
13 the digital signage issue, because you actually are
14 correct. We do get blamed for a lot of things. So,
15 we were going to reach out to Mr. Litsky ourselves,
16 the Chair of the ANC, and on the 18th -- did we say
17 the 18th? At 5:45 I was going to deal with this
18 again and deal with both issues because I've been
19 advised that if I mix them up, I'm going to confuse
20 the issue. So, I didn't want to split it up and
21 confuse the issue. And that's the quickest I think
22 we can do it so we can put this -- because you don't
23 want to -- here's what you don't want us to do. You
24 don't want us to approve anything and then later on
25 you start having problems. You want to be a good

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1 neighbor. So, we want to make sure that we go into
2 this, everybody is on the same page, everybody
3 understands what's going on about the digital
4 signage, floating back and forth, making all the
5 lights or whatever it does. We want to make sure
6 that we go that way and that everybody is on board.

7 MS. LEE: Sure. I guess, could we just have
8 on the record for the minutes that the commission has
9 no objections? I know you can't vote on that, but
10 can we just, for the comments?

11 CHAIRPERSON HOOD: I think, unless -- does
12 anybody have any objections? I think the Commission
13 can send you strong sign that we don't have any
14 issues with the retail. I'm pretty sure that would
15 be approved.

16 MS. LEE: So, then the action is on the 18th,
17 by the 18th you'll have heard from the Chair.

18 CHAIRPERSON HOOD: If I have not heard from
19 the Chair, then we will be moving forward.

20 MS. LEE: So, then I'll come back to the next
21 hearing which is --

22 CHAIRPERSON HOOD: Do they have an ANC
23 meeting in the time between there?

24 MS. LEE: I'm sorry. What's the 18th? Is
25 that the date of their meeting?

1 CHAIRPERSON HOOD: That's the date of our
2 meeting.

3 MS. SCHELLIN: We're going to schedule a
4 special public meeting.

5 CHAIRPERSON HOOD: So we can deal with --

6 MS. SCHELLIN: It's not a regular meeting for
7 us.

8 CHAIRPERSON HOOD: Right. For us. But I'm
9 talking about, does the ANC -- when do they meet? Do
10 you know?

11 MS. LEE: I don't know off the top of my
12 head, I'm sorry.

13 CHAIRPERSON HOOD: If they meet between now
14 and then, just walk in there.

15 MS. LEE: Okay.

16 CHAIRPERSON HOOD: Okay? And see if you can
17 get Mr. Litsky's attention. And we will send
18 something out, and we will be moving forward with
19 this, especially on the retail part, on the 18th.
20 Okay?

21 MS. LEE: Okay. And that's back here on the
22 18th. Okay.

23 CHAIRPERSON HOOD: Okay.

24 MS. LEE: Thank you.

25 CHAIRPERSON HOOD: They meet tonight. I'm

1 understanding, tonight. So, if you can --

2 MS. SCHELLIN: Go there now.

3 MS. LEE: I'll let her know.

4 CHAIRPERSON HOOD: Jus tell them you left
5 from here, and you can tell them we sent you over
6 there. Okay. That's getting things done, so.

7 MR. TURNBULL: Hail a cab.

8 MS. LEE: Thank you.

9 CHAIRPERSON HOOD: If you can. Okay. Uber,
10 or they have bicycles out front. I don't know which
11 one you do.

12 MS. LEE: I can get there. That's fine.

13 CHAIRPERSON HOOD: Okay. Okay. It will be
14 good if you could do that. Okay. Thank you. And
15 explain it to them, the whole digital signage issue.

16 This is the last time, trust me. Last time I
17 want to --

18 Okay. Okay. Thank you. Ms. Schellin, next
19 -- hold on. I got confused now. Which one are we
20 on? B? Zoning Commission Case No. 16-03, DB
21 Residential, LLC, modification of consequence to
22 design review at Square 1112E. Ms. Schellin.

23 MS. SCHELLIN: Yes. At the last meeting the
24 Commission set a schedule for the ANC to provide its
25 response to the request and if they provided one then

1 the applicant could reply. However, no response from
2 the ANC was received, therefore I'd ask the
3 Commission to consider final action on this case this
4 evening.

5 MR. SHAPIRO: Or we could ask the young lady
6 to go to that ANC as well.

7 CHAIRPERSON HOOD: Is it the same ANC? No.
8 Okay. Commissioners, we have this deliberation in
9 front of us. Who would like to start us off?

10 We have the modification of -- Office of
11 Planning is recommending approval.

12 [Pause.]

13 CHAIRPERSON HOOD: Okay. Again, the proposal
14 modification, colleagues, is, to tee it up, is the
15 approval of civil and architectural plans that
16 reflect more detailed studies in adjacent right of
17 ways, and the roof plan layout, and the courtyard
18 elevations.

19 Anything else anybody want to add on this
20 one?

21 MR. MAY: I mean, I think this is all
22 straight forward. I didn't really have any issues in
23 this from the beginning. It would have been nice to
24 hear from the ANC.

25 CHAIRPERSON HOOD: I was actually going to

1 ask, did we want to hear from the ANC, but I was
2 actually scared to ask that. But since you've
3 mentioned it.

4 MR. MAY: No. And it's my ANC too.

5 CHAIRPERSON HOOD: You all get it together
6 over there.

7 MR. MAY: They usually have it together, but
8 I mean, they must not have thought it was worth
9 commenting on.

10 CHAIRPERSON HOOD: So, but we did what we
11 were supposed to do.

12 MS. SCHELLIN: Yes. Per the regulations,
13 yes.

14 CHAIRPERSON HOOD: I think this is pretty
15 straightforward as well.

16 MR. MAY: I think it's very straightforward,
17 and most of it is technical corrections having to do
18 with where the roads are and then the, you know, some
19 tweaking of the rooftop stuff, and it's not visible.
20 It's -- I don't think it's a big deal at all.

21 Mr. Turnbull, did you have --

22 MR. TURNBULL: Well, yeah. No, my only
23 concerns was there were these little tiny plans, and
24 I'm basing my -- I'm in support. But I'm basing it
25 upon OP's report that all the setbacks are correct

1 and that the heights are all correct, that there's
2 been no major significant changes, that everything is
3 still what it was, that we saw before.

4 MR. LAWSON: That's certainly understanding,
5 and they certainly asked for no additional relief for
6 height or setbacks or anything like that. So,
7 they're not asking for you to approve anything like
8 that, which means that it either does conform or it
9 will conform if they want to get a permit.

10 MR. TURNBULL: Okay. Thank you.

11 MR. MAY: Yeah, I had similar complaints
12 about the drawings that we received. It's not the
13 best document. Sometimes we get very well documented
14 requests for modifications and this just isn't one of
15 them. I mean, at the very least they could do, you
16 know, copy the old and the new, you know, on the same
17 page instead of front and back of different -- I
18 mean, of the same page, which makes it hard to read.

19 MR. TURNBULL: Yeah, I guess the one thing
20 that was confusing for me, they had two -- and there
21 was two -- they had three different sections for
22 documents, and there was two elevations, one in one
23 section, one in another. But the elevations were of
24 the same thing. It was on the F building and so
25 there was -- but there was no elevations on the G

1 building so it's like, I mean, I'm totally relying on
2 OP's report, so I mean, by looking at what we got
3 it's hard to tell that everything is okay. But as
4 Mr. Lawson, and I trust Mr. Lawson completely, so I'm
5 ready to go forward.

6 CHAIRPERSON HOOD: Okay. Any other comments?
7 Commissioner May, since this is your ANC, you want to
8 make the motion?

9 MR. MAY: Sure. So, I would move approval of
10 Zoning Commission Case 16-03A, DB Residential, LLC,
11 modification of consequence to design review at
12 Square 1112E.

13 MR. TURNBULL: Second.

14 CHAIRPERSON HOOD: Okay. It's been moved and
15 properly seconded, seconded by Mr. Turnbull. Any
16 further discussion?

17 [Vote taken.]

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

20 MS. SCHELLIN: Yes. Staff records the vote
21 four, to zero, to one, to approve final action in
22 Zoning Commission Case No. 16-03A, Commissioner May
23 moving, Commissioner Turnbull seconding,
24 Commissioners Hood and Shapiro in support,
25 Commissioner Miller not present, not voting.

1 CHAIRPERSON HOOD: Okay. Let's go to the
2 next case under final action, Zoning Commission Case
3 No. 16-14D, Mid-Atlantic Realty Partners, LLC, PUD
4 modification of significance at Square 3854. Ms.
5 Schellin.

6 MS. SCHELLIN: Yes. This case was deferred
7 from the April 24th meeting to allow the applicant to
8 respond to the Commission's request regarding a
9 phasing plan, and for them -- for the applicant to
10 respond to the ANC's request regarding the affordable
11 housing, and they did that at Exhibit 53, so we'd ask
12 the Commission to consider final action this evening.

13 CHAIRPERSON HOOD: Ms. Schellin, is this
14 Square 3854, or what is it?

15 MR. SHAPIRO: 3584.

16 CHAIRPERSON HOOD: Oh, 3584.

17 MS. SCHELLIN: 3584.

18 CHAIRPERSON HOOD: Okay. So, it's right on
19 there, so thank you. I said 3854. It's 3584. Okay.

20 MS. SCHELLIN: [Speaking off microphone.]

21 CHAIRPERSON HOOD: Well, I just want to make
22 sure we do the right one. Somebody else will have
23 approval.

24 MS. SCHELLIN: [Speaking off microphone.]

25 CHAIRPERSON HOOD: Okay. Well, we'll make

1 sure we have the right square.

2 Is the person -- whose case is this? Is it
3 35 -- 3854, or 3584?

4 That's all right.

5 MR. COCHRAN: Mr. Chair, it's 3584.

6 CHAIRPERSON HOOD: Okay, 3584. Okay. I'm
7 sorry. It's -- all right, I just want to make sure
8 we're doing the right thing. All right. Because
9 that will come back to haunt us.

10 All right. So, it's 3584. Thank you, Mr.
11 Cochran.

12 All right. Again, Commissioners, as you know
13 this is a phasing plan. Let me see here. We have a
14 submission. What's that, Exhibit 53? Which lay --
15 especially the first page which lays out the phasing.
16 I'm sure we've all looked at it. Let me open it up
17 for any comments or questions.

18 MR. MAY: So, Mr. Chairman, I think that in
19 addition to what was received from the applicant,
20 what we did was we got a little bit of background on
21 how it came to pass that this project got vested with
22 the issuance of that first permit, and the fact that
23 the applicant in the initial case insisted that the
24 entire project was going to be built in a single
25 phase, even though the Commission was skeptical about

1 that.

2 And, now we know better and that it should
3 have -- you know, there should have been a phasing
4 plan, or the project should have been modified to
5 include one when it was clear that it wouldn't be
6 built in a single phase. And it's also a lesson to
7 us that we should not -- when we have projects like
8 this and it seems like there may be a need for a
9 phasing plan, there should be some language in the
10 order that says that, you know, if part of it is
11 built and part of it is not built, that it at the
12 time that, you know, a permit is filed or something
13 like that, that the applicant would have to submit a
14 request to modify the case to include a phasing plan
15 at that point. I think that's sort of the lesson for
16 us for future cases.

17 So, in this case, I think that we have to
18 require a phasing plan for the completion of these
19 last two portions of it. I mean, this has been going
20 on quite a long time from when it was originally
21 approved, and I'm not persuaded by what was submitted
22 by the applicant. I'm more inclined to go with our
23 standard timing, and simply say the whole thing has
24 to be started, they have to apply for a permit within
25 two years, and start construction within three. And

1 if they need more time, they need to come back.

2 So, that's my inclination. I may not be
3 speaking for the consensus of the Board, but I just
4 feel like, you know, this has been going on and now
5 they're asking for another six years to get started
6 on the second phase of it, which means that it
7 wouldn't be done for eight, and I just think that,
8 you know, they insisted years ago that the whole
9 thing would be built within about four years. And
10 that's, I don't know, that four years would have been
11 about four years ago, at least.

12 CHAIRPERSON HOOD: Around 2014, I think.
13 Yeah. Okay. Commissioner Shapiro.

14 MR. SHAPIRO: Thank you, Mr. Chair. I agree
15 with Commissioner May.

16 And further to that, I just wanted some
17 clarification, perhaps from Office of Attorney
18 General, in the letter from the applicant it says,
19 related to this condition that in addition to
20 requesting the extension on a certain date, they're
21 saying if no application for a permit is filed
22 construction is not started within the period
23 specified under extension granted, the approval of
24 the PUD modification shall expire and the zoning
25 entitlements shall revert to the preexisting

1 approvals for the property under --

2 Well, what exactly would that mean? Does
3 that mean that -- my concern would be that if we take
4 action to set a specific schedule and they don't meet
5 it, then they go back to not having one.

6 MR. RITTING: Yes, that's the case. I mean,
7 that was the applicant's position coming into this.

8 Perhaps you could address it by setting
9 something affirmatively in this order that could
10 address that.

11 MR. SHAPIRO: So, we could essentially take
12 the language for that and say what would happen if
13 none of these things occur, then we will -- then it
14 does expire. Or no, if it expires then what? What
15 do we do to hold them accountable to moving ahead in
16 a specific schedule? What would normally happen
17 according to our laws?

18 MR. RITTING: Well, there isn't really
19 anything you can do to require them to build the
20 project. And that's the case with all the --

21 MR. SHAPIRO: But if they don't meet a
22 certain timeline, typically what happens?

23 MR. RITTING: The PUD would expire.

24 CHAIRPERSON HOOD: But they also can request
25 an extension. I think --

1 MR. SHAPIRO: They can request an extension.
2 Right.

3 MR. RITTING: That's also correct, yeah.

4 CHAIRPERSON HOOD: Let me help you out.
5 Other than short of us giving the money to help them
6 do the project, I think what we should do is exactly
7 what Commissioner --

8 MR. SHAPIRO: What about our rules, not --

9 CHAIRPERSON HOOD: Yeah, but I'm just saying,
10 I think what we need to do is stay within what we
11 normally do within a request, and not add anything to
12 try to put to make them do it. So, we would stick
13 with exactly what Commissioner May mentioned. We
14 would do the two years, and then they have an
15 opportunity to come back and ask for extension.
16 That's just typically what we've done.

17 MR. SHAPIRO: It may be helpful to
18 affirmatively state according to our rules they would
19 be required to, da-da-da. I mean, because we're
20 sitting with an interpretation of it that is not the
21 direction that we want to go.

22 MR. MAY: But they're asking for that
23 language to be put into the order, right, that it
24 would revert back to the previous --

25 MR. SHAPIRO: Right.

1 MR. MAY: Previously entitled PUD, when in
2 fact what happens is that you know, once -- I mean,
3 maybe we have to be explicit in this, but you know,
4 if they don't seek the exception then all previous
5 entitlements expire and the project reverts to the
6 underlying zone.

7 MR. SHAPIRO: So, if we just don't include
8 the language in number 2 here --

9 MR. MAY: That they've requested.

10 MR. SHAPIRO: -- then we're okay.

11 MR. MAY: I'm not the lawyer, but that's the
12 way I would read it.

13 MR. RITTING: I sort of lost the thread of
14 your thought there. I'm sorry.

15 MR. SHAPIRO: My concern is, if we -- the
16 question is, if we don't -- in small number 2 there,
17 if no application permit is filed, do you see it?
18 So, if we do not include that in, then what would
19 happen if no application for a permit is filed and
20 construction has not started within the time that we
21 specify, and no extension is granted, what would
22 happen?

23 MR. RITTING: That's an interesting question
24 that we've never actually confronted directly and I'm
25 not really prepared to answer at this time.

1 Now, the language that was prepared and in
2 the letter would go in this current order, which is a
3 modification order. Now, it wouldn't actually change
4 the language in the original PUD order that was
5 approved on '06.

6 MR. SHAPIRO: And their interpretation of
7 that original language seems to be that it's vested
8 and there's no timeline.

9 MR. RITTING: That's right, and there is an
10 ambiguity about that and I don't have a good answer
11 for how to correct it at that times.

12 MR. TURNBULL: They were going to build the
13 whole thing in 20 months, in 2006.

14 CHAIRPERSON HOOD: And actually, Mr. Parsons,
15 at the time, asked a question and it was affirmed.

16 MR. TURNBULL: Mr. Rothmeier said, yes, sir.

17 CHAIRPERSON HOOD: Yeah, even got a sir
18 behind it. I don't get that, but yeah. So, you
19 know, maybe we need some more time on that.

20 MR. TURNBULL: Well, we could say it's
21 expired right now, I don't think that would -- what
22 they want to hear, but I think we'd be in our grounds
23 to be able to do that. But I think we ought to do
24 what Commissioner May -- I think what we're leaning
25 at is trying to make this language a little bit more

1 stringent so that we don't go through this like we
2 did before.

3 CHAIRPERSON HOOD: But I also think that
4 Commissioner Shapiro has a good point. What do we do
5 with this -- they wanted to revert back to the
6 preexisting approvals, which --

7 MR. MAY: But, Mr. Ritting, couldn't we -- I
8 mean, couldn't there be language in this order that
9 simply states that phase 2 and 3 of this project you
10 know, would be based on the original entitlements?
11 However, they have to be executed within, you know,
12 the two and three years. And if not, then that
13 portion of the PUD shall expire.

14 MR. RITTING: My hesitancy to answer is just
15 based on the fact that the only thing that's before
16 you is a modification application.

17 MR. MAY: Right.

18 MR. RITTING: And you'd be issuing an order
19 granting the modification application, and adding the
20 expiration point to that.

21 MR. MAY: Right.

22 MR. RITTING: While I think that there is a
23 good basis for you to add that additional condition
24 that relates back to the original order, I can't
25 definitively say that that would be enforceable

1 against the applicant because the issue, the order
2 was issued a long time ago and they've only asked for
3 a limited form of relief here in the form of a
4 modification to that application.

5 MR. MAY: But by that logic we are not within
6 our rights to state there will be a time limit or a
7 phasing on the remaining portions of the project
8 either, right? Because they didn't come in asking
9 for that. They came in asking only for the
10 modification and we're saying that there has to be a
11 time limit.

12 MR. TURNBULL: Maybe we should defer this
13 until we get an answer.

14 CHAIRPERSON HOOD: Here's what I'm going to
15 do. I don't want to put anybody on the spot, on the
16 cuff. We need to have some more investigation and
17 some more discovery on this because I think the
18 applicant's counsel and Mr. Ritting both heard what
19 our concern is. I'm sure -- I don't want to add this
20 to the 18th. We've got enough stuff on the 18th.

21 When is our next meeting?

22 MS. SCHELLIN: The 22nd.

23 CHAIRPERSON HOOD: Oh, the 22nd will be fine.
24 Let's do that for the 22nd. I'm not going to rush
25 though this and I'm not going to do it right. I want

1 to make sure we do it right so, I'm in no rush no
2 more, so let's just let everybody work on it and
3 present us back with something dealing with all the
4 concerns. So, we'll put this on the agenda for the
5 22nd of May.

6 MS. SCHELLIN: And if the applicant wants to
7 make a submission, they may.

8 CHAIRPERSON HOOD: Sure.

9 MS. SCHELLIN: Okay. Thanks.

10 CHAIRPERSON HOOD: Do we need anything else
11 from anybody else?

12 MS. SCHELLIN: No.

13 CHAIRPERSON HOOD: We're going to let Mr.
14 Ritting work on it?

15 MR. MAY: Yeah.

16 CHAIRPERSON HOOD: Okay. All right. Ms.
17 Schellin, we'll deal with this on the 22nd.

18 MS. SCHELLIN: Okay.

19 CHAIRPERSON HOOD: Do we have a meeting
20 before the -- what do we have on the 22nd? Do we
21 have a lot of stuff?

22 MS. SCHELLIN: Not yet. I won't be here with
23 you, but it's light so far.

24 CHAIRPERSON HOOD: Okay. All right. Let's
25 go to our next --

1 MS. SCHELLIN: 15-24.

2 CHAIRPERSON HOOD: Okay. Let's go to Zoning
3 Commission Case No. 15-24 and 15-24A, Gallaudet
4 University and the JBG Companies, first-stage PUD and
5 related map amendment at Squares 3591, Parcels
6 129/70, 129/103, 129/106, and 129/112. Ms. Schellin.

7 MS. SCHELLIN: Yes, sir. At Exhibits 48 and
8 49 we have the applicant's post-proposed action
9 filings. Exhibit 50 is the supplemental report from
10 OP advising that it is in support of the -- with the
11 revised benefits and amenities that the applicant has
12 proposed. So, we'd ask the Commission to consider
13 final action this evening.

14 [Pause.]

15 CHAIRPERSON HOOD: Okay. Any comments or
16 questions on this? Okay.

17 MS. SCHELLIN: I'm sorry, I should have added
18 that we do have an NCPC report also that came in, at
19 Exhibit 52. It was delegated action that they had no
20 issues with the case.

21 CHAIRPERSON HOOD: Okay. We do have a
22 revised order.

23 [Pause.]

24 MR. MAY: Yeah, I think there were just some
25 tweaks to the conditions that were in the order, and

1 I don't think I really have any other ongoing
2 concerns. We got the additional report from OP
3 confirming their support, so I think I don't have
4 anything else that I need.

5 CHAIRPERSON HOOD: Okay. I want to thank
6 Office of Planning for giving us that supplemental
7 report confirming what they verbally had stated.
8 Anything else?

9 Okay. All right. So, with that I would move
10 approval of Zoning Commission Case No. 15-24 and 15-
11 24A, Gallaudet University and the JBG Companies, and
12 ask for a second.

13 MR. MAY: Second.

14 CHAIRPERSON HOOD: Been moved and properly
15 seconded. Any further discussion?

16 [Vote taken.]

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

19 MS. SCHELLIN: Yes. Staff would record the
20 vote three, to zero, to two to approve final action
21 in Zoning Commission Case Nos. 15-24, and 15-24A.
22 Commissioner Hood moving, Commissioner Turnbull
23 seconding, Commissioner May in support, Commissioner
24 Shapiro not voting having not participated, and
25 Commissioner Miller not present, not voting.

1 CHAIRPERSON HOOD: Okay. Next, let's go to
2 Zoning Commission Case No. 16-25. This is the D.C.
3 Boathouse, LLC map amendment at Square No. 16. Ms.
4 Schellin.

5 MS. SCHELLIN: Yes. On this case Exhibits 26
6 and 27 are the applicant's post-hearing submissions.
7 Exhibit 28 again, is an NCPC delegated action
8 advising of no issues with the remapping and would
9 ask the Commission to consider final action.

10 CHAIRPERSON HOOD: Okay. Any comments or
11 questions on this, D.C. Boathouse? No? Mike, do you
12 have any?

13 All right. Would somebody like to make a
14 motion on it? I think it's pretty straightforward
15 unless there are some concerns.

16 MR. MAY: I think we should discuss it
17 extensively just because Ms. Kahlo is here to watch.
18 Don't you think?

19 No, I have nothing to say. Sorry.

20 [Discussion off the record.]

21 MR. SHAPIRO: Mr. Chair, I would move final
22 action of Z.C. Case No. 16-25, D.C. Boathouse, LLC,
23 map amendment at Square 16.

24 CHAIRPERSON HOOD: Okay. Second. It's been
25 moved and properly seconded. Did we talk about -- we

1 did talk about the NCPC report.

2 MS. SCHELLIN: Yes.

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

5 [Vote taken.]

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

8 MS. SCHELLIN: Yes. Staff records the vote
9 four, to zero, to one to approve final action in
10 Zoning Commission Case No. 16-25, Commissioner
11 Shapiro moving, Commissioner Hood seconding,
12 Commissioners May and Turnbull in support,
13 Commissioner Miller not present -- I'm sorry. Yeah,
14 not present, not voting.

15 CHAIRPERSON HOOD: Okay. Next, let's go to
16 Zoning Commission Case No. 07-13F, Lowe Enterprises
17 two-year PUD time extension at Square 643S. Ms.
18 Schellin.

19 MS. SCHELLIN: Yes, sir. On this one we have
20 the applicant is asking for a two-year time extension
21 to May 9th, 2019 to file for a building permit, and
22 to May 9, 2020 to start construction, and if the
23 Commission deems it necessary, a waiver from 11-Z
24 DCMR, Section 705.5, which limits the number of time
25 extensions the PUD can be granted.

1 Exhibit 4, we have ANC 6D report in support,
2 Exhibit 5A, OP report in support, and we'd ask the
3 Commission to grant or to consider final action this
4 evening.

5 CHAIRPERSON HOOD: Okay, Commissioners, I am
6 actually in favor of this. I know that, you know,
7 typically I don't like to do a whole lot, but this is
8 kind of mid-stream as we changed our rules, and I
9 don't want to invoke the Herb Franklin Rule. But I
10 think that this is mid-stream and that some years
11 from now it may be a different story. But right now
12 I think this warrants, and it has the support of
13 extending the two-year time extension. But I think
14 the record is complete and I would be in favor of
15 that. Let me open it up for any comments or
16 questions.

17 MR. TURNBULL: Mr. Chair, I just had one
18 question. That's with the OP recommendation?

19 CHAIRPERSON HOOD: Yes.

20 MR. TURNBULL: Okay.

21 CHAIRPERSON HOOD: Any objections?

22 MR. SHAPIRO: No objections.

23 CHAIRPERSON HOOD: Commissioner May.

24 MR. MAY: No objections. I'd just comment.

25 I mean, this is another project that has been around

1 for a long time. There hasn't been any action. It's
2 morphed a couple of times, or at least once in a
3 major way. It looks like they may be changing it
4 again.

5 I mean, I think the one question I have is
6 that if this is something where we know they're going
7 to be submitting a modification shortly, is it
8 something where we would simply toll this request
9 until we take up the modification? I mean, it's not
10 like we're going to be hearing it in a month, but the
11 application is supposedly going to be submitted this
12 summer. Because I mean, we're saying theoretically
13 that we give them a two-year time extension on the
14 basis that it hasn't changed, but we know that in
15 fact it's going to change.

16 CHAIRPERSON HOOD: Mr. Avitabile, why don't
17 you -- you heard that request. Just save us some
18 time and tell all of us. Identify yourself.

19 MR. AVITABILE: That works fine. David
20 Avitabile with Goulston and Storrs, land-use counsel
21 for Lowe, the applicant.

22 We're working on the modifications. I think
23 we expect to file them by September, quite possibly
24 sooner. I think with the 45-day notice and the
25 additional process we want to make sure we allow for

1 enough time to bring it out to the community before
2 we file. It does put us, you know, bringing it out
3 in the summer months which I know that you don't
4 like, but that's the way it lays out with our
5 schedule, and we have already started the discussions
6 with the ANC about this. So, they're fully aware of
7 what we're doing.

8 But, so that's where we are with the
9 schedule. We would be coming forward and filing
10 something sometime this summer, by September. So, if
11 it were to be held, I don't think we have any issue
12 with that. I just know that you would be holding it
13 out for us to come in by September. We haven't fully
14 vetted exactly what the modifications are, so we're
15 not sure whether it will be a full modification with
16 set down at a hearing, whether it might be a more
17 limited series of modifications that could be
18 considered as modifications of significance. So, the
19 timing is somewhat determinative based on what it is
20 we asked for.

21 MR. MAY: But in either case, whether it's a
22 modification of significance or a modification of
23 consequence, we could take up the time extension at
24 that point. The advantage to you being that you'd
25 get two years from when that order issues, as opposed

1 to two years from when this order is issued.

2 MR. AVITABILE: That's right.

3 MR. MAY: Right? Mr. Ritting is shaking his
4 head in agreement, right?

5 MR. RITTING: That's correct.

6 MR. SHAPIRO: I guess my question would be,
7 is this somehow tied to the negotiation with the new
8 financing, and is this something that is helping move
9 that process along at this point? I mean, at some
10 level I wonder which is going to be more in your
11 interest to do.

12 MR. AVITABILE: It does help. It certainly
13 helps to be able to show the positive progress that
14 the PUD has been extended and it is alive. The
15 Commission could always, I mean, we would propose it.
16 You know, then when you approve the modification,
17 approve a newer time schedule associated with that.
18 I know you just said we just had that conversation,
19 but that's actually what happened in this case the
20 last time around before we were involved.

21 There was an extension approved that kind of
22 blanket approved it for the standard two years. And
23 then the modification was approved and the ultimate
24 timing was tied to the modification. So, that's
25 another way that it could be handled. This

1 modification, this extension simply approved to keep
2 it alive, and then we come in and do the modification
3 and then the final timing is set in that case.

4 CHAIRPERSON HOOD: Okay. Let's just -- I'm
5 sorry, go ahead.

6 MR. SHAPIRO: I would say, given that, I
7 don't see any reason why we shouldn't take action
8 tonight. They understand what the potential
9 consequences are, but I can't imagine why it would
10 matter to us to give them the opportunity to do that.

11 CHAIRPERSON HOOD: Let's just stick with the
12 request and move forward with what's been recommended
13 by the Office of Planning.

14 MR. MAY: That's fine. I just, you know, in
15 some past cases when this has come up we've --

16 CHAIRPERSON HOOD: Right. Right. Right.

17 MR. MAY: -- we have deferred it until we saw
18 the change. But it's a little bit further out than -
19 - I mean, usually in those sorts of cases when we
20 have tolled it, the application had been filed or was
21 imminent, or something like that. But I just thought
22 we would consider that question.

23 CHAIRPERSON HOOD: And it seems like this
24 request is, from what I just saw from the applicant,
25 is in -- it goes to your favor. Okay? So, you all

1 can move things along.

2 MS. SCHELLIN: But, Chairman Hood, I just
3 wanted to clarify because you may want to hold off on
4 it because if you're going to file another time
5 extension, the regs now don't allow you to file for
6 another time extension unless you're within six
7 months. So, if you're thinking about asking for a
8 different timing, you know --

9 MR. AVITABILE: Well, I mean, to be candid,
10 part of what's driving this is we may very well, in
11 the discussions with the community, they've indicated
12 an interest to see this happen sooner. So, one of
13 the things that they may ask us to commit to is,
14 getting to the permitting sooner than the full two
15 years might otherwise allow, and that would be a
16 condition of that PUD. I mean, I understand that the
17 timing is separate, but it seems to me that the
18 Commission could, if they are otherwise inclined, you
19 know, establish, you know, a more restrictive timing.
20 We're not asking for more time when we come forward.
21 We'd be asking for, if anything, probably less time.

22 I think we're comfortable with this being the
23 outside date of what we need to do. And then when we
24 come in all we would be asking for is less time, not
25 more time.

1 MS. SCHELLIN: Okay. I just wanted to make
2 it clear that you could --

3 CHAIRPERSON HOOD: We're going to go ahead
4 and let's go ahead.

5 MS. SCHELLIN: -- do that. Okay.

6 CHAIRPERSON HOOD: Let's go ahead because
7 we're going to be here, and that time will have
8 expired by sitting here talking about it. Okay,
9 let's take the Office of Planning's recommendation.
10 Someone like to make a motion?

11 [Discussion off the record.]

12 MR. SHAPIRO: Thank you, Mr. Chair. I would
13 move we take final action in Z.C. Case No. 07-13F,
14 Lowe Enterprises, two-year PUD time extension at
15 Square 643S.

16 CHAIRPERSON HOOD: And I'll second it. It's
17 been moved and properly seconded. Any further
18 discussion?

19 [Vote taken.]

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

22 MS. SCHELLIN: Yes. Staff records the vote
23 four, to zero, to one to approve final action in
24 Zoning Commission Case No. 07-13F, Commissioner
25 Shapiro moving, Commissioner Hood seconding,

1 Commissioners May and Turnbull in support.

2 Commissioner Miller not present, not voting.

3 CHAIRPERSON HOOD: Okay. Next, we have
4 Zoning Commission Case No. 15-20A, Sursum Corda
5 Cooperative Associates, Inc. Two-year PUD time
6 extension at Square 620. Ms. Schellin.

7 MS. SCHELLIN: Yes, this is another two-year
8 time extension request. The applicant is asking for
9 to file the second-stage PUD application for the
10 south parcel no later than June 30th, 2019. This is
11 the first extension request for this PUD. At Exhibit
12 5 we have an OP report in support. Would ask the
13 Commission to consider final action.

14 CHAIRPERSON HOOD: Okay. Commissioners, I
15 think this warrants a time extension, and this was
16 one, and I'm going to stay within the rules. This is
17 one where we're changing the whole community and the
18 whole neighborhood. If I wanted to give an
19 extension, this would be the one. I mean, if I
20 wanted to add it to more than just a two-year PUD,
21 but we're going to see how far we go so that they
22 don't fall into -- because we're doing a whole lot of
23 revamping here in this neighborhood.

24 So, this is one of the ones, this a prime
25 case where the discussion we just had, I would be

1 inclined to add another year. But I'm going to take
2 the request that they have so we can move this along.
3 But let me open it up for any further discussion.

4 So, you all are saying we can do a three-year
5 -- okay. All right. Somebody like to make a motion?

6 Okay. I would move that we grant Zoning
7 Commission Case No. 15-20A, Sursum Corda two-year PUD
8 time extension at Square 620, and ask for a second.

9 MR. TURNBULL: Second.

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

12 [Vote taken.]

13 CHAIRPERSON HOOD: Ms. Schellin, would you
14 record the vote?

15 MS. SCHELLIN: Yes. Staff records the vote
16 four, to zero, to one to grant final action in Zoning
17 Commission Case No. 15-20A, Commissioner Hood moving,
18 Commissioner Turnbull seconding, Commissioners May
19 and Shapiro in support, Commissioner Miller not
20 present, not voting.

21 CHAIRPERSON HOOD: Okay. Do we have anything
22 else before us?

23 MS. SCHELLIN: The staff has nothing else.
24 I'm not sure --

25 CHAIRPERSON HOOD: Staff. Office of Planning

1 have anything?

2 [No audible response.]

3 CHAIRPERSON HOOD: Okay. I want to thank
4 everyone for their participation tonight and this
5 meeting is adjourned.

6 [Whereupon, the regular public meeting
7 adjourned at 7:41 p.m.]

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