

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

OCTOBER 30, 2017

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
PETER G. MAY, Commissioner (NPS)
PETER SHAPIRO, Commissioner
MICHAEL TURNBULL, Commission (AoC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director
MATT JESICK

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

HALEY PECKETT
AARON ZIMMERMAN

The transcript constitutes the minutes from the Public Meeting held on October 30, 2017.

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

6:33 p.m.

1
2
3 CHAIRMAN HOOD: This meeting will please come to
4 order. Good evening, ladies and gentlemen. This is a public
5 meeting of the Zoning Commission for the District of
6 Columbia. My name is Anthony Hood, Chairman, chairing with
7 Vice Chairman Miller, Commissioner Turnbull, Commissioner
8 Shapiro, Commissioner May. We are located in the Jerrily R.
9 Kress Memorial Hearing Room.

10 We are also joined by Ms. Schellin, Office of
11 Zoning. Office of Attorney General, Mr. Ritting, Ms. Lubbrick
12 and Mr. Cohen. Office of Planning, Ms. Steingasser, Mr.
13 Lawson, Ms. Brown-Robertson, and Mr. Cochran.

14 Okay. Copies of today's meeting agenda are
15 available to you, and are located in the bin near the door.
16 We do not take any public testimony at our meetings unless
17 the Commission requests someone to come forward. Please be
18 advised these proceedings are being recorded by a court
19 reporter and also webcast live. Please turn off all
20 electronic devices at this time. Does staff have any
21 preliminary matters?

22 MS. SCHELLIN: No, sir.

23 CHAIRMAN HOOD: Okay, if not let's move right along
24 with our agenda. First, we have an advance status party
25 request of Ms. Schellin.

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1 MS. SCHELLIN: Yes, so the Exhibit 14, we have a
2 request in opposition from the Waterfront Tower Condominium
3 Board. Their representative is Harra Boganam and she's the
4 vice president. At Exhibit 14A, she did submit a certificate
5 of service, there was some misunderstanding about doing that,
6 that is something new with the new regulations, but she did
7 submit that.

8 And then at Exhibit 19, we have the applicant's
9 opposition to the request for party status, and we've asked
10 the commission to consider this request this evening.

11 CHAIRMAN HOOD: Okay. Is Ms. Boganam present? Okay,
12 commissioners, we have a request. We also have, as stated by
13 the Secretary, we also have an opposition to that request for
14 party status. I'll just start it off by, when I looked at the
15 submission, if need be we will bring both parties up, if need
16 be. But when I looked at submission, I didn't see where this
17 request was uniquely affected. They basically talk about the
18 whole part of Southwest, and I didn't see where they were
19 affected any different from anybody else who lives in that
20 area.

21 Also, if you look at what the opposition also
22 stated, it's similar but even before I even read what the
23 opposition said, I looked and I read this, I didn't see how
24 they were uniquely affected. But let me open up any
25 discussion, further comments? Vice Chairman Miller.

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1 VICE CHAIR MILLER: Thank you, Mr. Chairman. Yes,
2 I would agree with your comments.

3 CHAIRMAN HOOD: Okay. Thank you. Anyone else? Okay,
4 so what I'm going to do, I'm going to ask the applicant as
5 well as Ms. Boganam, I'm going to ask both of you all to come
6 forward and colleagues, I ask your indulgence in the process
7 for a moment. I think I'd rather do it this way. If you all
8 would just tell us why -- Well, let me first ask Ms. Boganam.
9 Can you just give me a soundbite of why you are uniquely
10 affected and why you should be granted party status? You can
11 identify yourself first.

12 MS. BOGANAM: Yes, we are 57 feet diagonally
13 opposite the construction. We have to share the private
14 street that they're going to use for their parking and all
15 their deliveries, and all of our emergency and security
16 people that come to our building, ambulances, anything like
17 that, has to use that private street as well, so we are
18 uniquely affected in that way.

19 We feel our safety and our security can be
20 compromised because we all have to share that street. There
21 are going to be four, I think four, buildings using that
22 private street. We're afraid that ambulances and our very
23 security vehicles and safety, police will have trouble
24 getting to our building because of this.

25 CHAIRMAN HOOD: You're saying four other buildings

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1 also will have use of that private street.

2 MS. BOGANAM: Yes, the building that used to be the
3 EPA is now an apartment building, and this building, and we
4 had a new building built at 301 M Street that's also using
5 this private street.

6 CHAIRMAN HOOD: Okay. Ms. Striker?

7 MS. SHIKER: Good evening, commissioners. My name's
8 Christine Shiker, with the law firm of Holland & Knight,
9 representing the applicant. As we stated in our proposition,
10 we do not believe that this condo association has any unique
11 interests in the case.

12 However, we think that their opinions and thoughts
13 are important, and like other condo boards that we have been
14 working with in this area, because there are many condo
15 towers in this area, we would like to meet with them to talk
16 to them about their issues and their concerns, try to address
17 them as we move forward towards the hearing, but we don't
18 believe that they are uniquely situated such that they need
19 to present separate witnesses and be able to cross-examine
20 at this point.

21 I think that the community at large and the
22 different condo boards have similar interests, and again, we
23 will continue to work with them prior to a hearing to make
24 sure that we can answer as many of their questions as
25 possible. Thank you.

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1 CHAIRMAN HOOD: Thank you both. Commission, any
2 questions?

3 COMMISSIONER TURNBULL: Yes. Ms. Shiker, my only
4 question is they are diagonally across. They're right
5 adjacent to your property. Why do you think they're not
6 affected, uniquely?

7 MS. SHIKER: The statements that they made for why
8 they would like party status, all generally apply to the
9 community at large, if you walk through each of their
10 statements. With respect to the private street that's
11 referenced, that street is going to be shared by multiple
12 buildings and it's going to be established --

13 CHAIRMAN HOOD: Wait a minute. I guess some people
14 weren't here when I read the opening statement. Did I read
15 the part where it says, the courtroom must ask you to refrain
16 from any disrupting noise or actions in the hearing room,
17 including the display of any signs or objects. So if you have
18 them, if you turn them down, thank you. You may continue.

19 MS. SHIKER: So the use of the private street will
20 be governed by private easement documents. It's on a public
21 street. I also think that certainly the access to this
22 project will be evaluated and making sure that there aren't
23 any issues on the transportation systems. It will be
24 evaluated by DDOT, and including any emergency access as to
25 how this project would impact any emergency access, but that

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1 is a private easement that's being negotiated for the use of
2 that street. It's not a public street.

3 MS. BOGANAM: May I answer? At this point, we have
4 no --

5 CHAIRMAN HOOD: Hold on. I don't want make this a
6 hearing.

7 (Simultaneous talking.)

8 MS. BOGANAM: I understand. That's why I asked.

9 COMMISSIONER TURNBULL: Just by their position
10 alone, I think they would have concerns. That's just me, and
11 just feeling that they're six feet away on the corner.

12 CHAIRMAN HOOD: Let me just say this.

13 COMMISSIONER TURNBULL: Maybe they didn't express
14 exactly where --

15 CHAIRMAN HOOD: After hearing from Ms. Boganam,
16 my position has changed. Those signs didn't do it, but my
17 position has changed because I've read what in the
18 submission, and it was for the whole Southwest, what happened
19 50 years ago to barbershops.

20 But after hearing you talking about we'll have to
21 share, my position has changed. I'm not sure about others.

22 COMMISSIONER TURNBULL: I agree.

23 CHAIRMAN HOOD: Okay.

24 COMMISSIONER MAY: I'm certain we'll follow your
25 lead, Mr. Chairman. I'm still trying to understand how that

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1 is a unique difference, because there are other buildings
2 that are --

3 CHAIRMAN HOOD: Going to share that.

4 COMMISSIONER MAY: That are going to have that
5 exact same issue.

6 MS. SHIKER: And I will point out that there are
7 four buildings on the west side, four buildings on the east
8 side, there's also multiple buildings across the street, as
9 I said. Our team has been going out to each of these condos
10 and co-ops and individual townhouse communities, because the
11 site is large, there are a lot of people.

12 COMMISSIONER SHAPIRO: And I'm just completely on
13 hold there, because it is less of a question, but just more
14 from my sense of it. I think that there are lots of valid
15 concerns that I'm hearing that are going to be addressed
16 through our process. The issue is just why this is unique so
17 that they will be a separate party of record, and I'm not
18 hearing that uniqueness. It's not about the merits of the
19 concerns at all. It's more about why would they be separate.

20 So what we're being directed to is the specificity
21 of what's the test for us? Is this person's interest more
22 significantly, distinctively or uniquely affected in
23 character?

24 That's the piece that I'm not hearing.

25 COMMISSIONER MAY: Mr. Chairman.

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1 CHAIRMAN HOOD: Commissioner May?

2 COMMISSIONER MAY: I would agree with, generally
3 speaking, that what we received in the written submission was
4 not, did not very clearly demonstrate that this party is
5 uniquely affected, but being 57 feet away and having to share
6 a common private street, it's a little hard to judge that
7 without seeing everything, but if they're within 57 feet it
8 kind of makes sense that they would be more directly affected
9 than many of the other buildings that are in close proximity.
10 The fact that we don't have eight applications down here for
11 party status means that you've done a pretty good job so far
12 in your outreach to the other buildings, but I'm inclined to
13 grant party status in this circumstance.

14 CHAIRMAN HOOD: Okay. As I've stated and from what
15 I've heard from the party in opposition, I'm going to be
16 voting in favor of making them a party of opposition after
17 the verbal response to us, because the written submission
18 didn't get it but the verbal, I think, did.

19 But the other issue is, I have to keep pulling
20 your name up, I've got so many names in my head, hold on a
21 second. What's your name again, I'm sorry.

22 MS. BOGANAM: Harra Boganam.

23 CHAIRMAN HOOD: Okay.

24 MS. BOGANAM: Thank you.

25 CHAIRMAN HOOD: We didn't have -- our Rules Section

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1 4.1 of our rules, which state, let me be sure I get the right
2 citation, 4.1 that talks about person requesting party status
3 and their authorized representatives, here's what I would
4 suggest, colleagues, that we give them tentative party status
5 until they meet the requirement before the hearing of having
6 been authorized. We don't have anything in the record that
7 authorized you to speak, that the condo association
8 authorized you to speak, or anything. So we need to meet, and
9 you can work with our office on this, we need to make sure
10 we meet party status application requirements, which is
11 Section 4.4.1.

12 MR. RITTING: I believe the specific citation is
13 subtitle Z, Section 404.1.

14 CHAIRMAN HOOD: Yes. Section 404.1(f). I didn't get
15 many Fs in school, so I left F off. Anyway, if we can satisfy
16 that before the hearing.

17 MS. BOGANAM: Mm-hmm.

18 CHAIRMAN HOOD: Let me ask this, Ms. Boganam. Do
19 we have to do that at the very beginning? That needs to be
20 done before we even get to the hearing, correct?

21 MR. RITTING: You're asking whether, if you granted
22 a conditional party status approval subject to the submission
23 of this additional information, yes, I believe it needs to
24 be done before the hearing starts, at the very beginning.
25 Otherwise the hearing, of course, if they're participating

1 as a party, the way that the hearing will proceed will be
2 different than if they were not.

3 CHAIRMAN HOOD: So we would need that before the
4 hearing. If not, if that's not satisfied, you always have an
5 opportunity to participate as organization opposition.

6 MS. BOGANAM: Yes. I just was not informed that I
7 needed to do that. We did speak to people at zoning a couple
8 of times.

9 CHAIRMAN HOOD: All right. We can work through that
10 and if you can just follow, make sure that's taken care of.
11 Okay?

12 MS. BOGANAM: Okay.

13 CHAIRMAN HOOD: All right, anything else on this?
14 Do we make a motion, tentatively? I will move that we
15 conditionally grant the Waterfront Tower Condominium
16 Association, Representative Ms. Boganam, who's the vice
17 president, conditional party status in Zoning Commission Case
18 02-38I, and ask for a second.

19 VICE CHAIR MILLER: Second.

20 CHAIRMAN HOOD: It's been moved and properly
21 seconded. Any further discussion? All in favor?

22 (Chorus of ayes.)

23 CHAIRMAN HOOD: Any opposition?

24 (No response.)

25 CHAIRMAN HOOD: Not hearing any, anything further?

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1 Thank you all very much. We appreciate it.

2 MS. SCHELLIN: Staff reports the 5 to 0 to 0 to
3 grant party status to the Waterfront Tower Condominium Board
4 in opposition, conditionally. Commissioner Hood moving,
5 Commissioner Miller seconding, Commissioners May, Shapiro and
6 Turnbull in support.

7 CHAIRMAN HOOD: Okay. Thank you. Let's move right
8 along with our agenda. Let's go to final action. Zoning
9 Commission case number 17-13, TM DBT Limited Partnership,
10 design review Capital Gateway Square 656. Ms. Schellin.

11 MS. SCHELLIN: For final action, we have at
12 Exhibits 30 through 31B the applicant's post-hearing
13 submissions. Exhibit 32, we have an ANC 6d's response and
14 then at Exhibit 33 we have a memorandum of agreement between
15 the ANC and the applicant. On Exhibit 34 we have a copy of
16 the construction management plan. Behind you you'll see the
17 materials board, revised materials board, and would ask that
18 the commission consider final action this evening.

19 CHAIRMAN HOOD: Okay, commissioners, let me open
20 it up. Any discussion, any further discussion on this case?

21 COMMISSIONER MAY: Mr. Chairman, I am generally
22 pleased with what's occurred since we had the hearing. I'm
23 glad to know that the ANC and the applicant have come to some
24 agreement. I think there are other things that I could make
25 minor comments on in terms of the design, but I think

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1 generally speaking it's fine.

2 I didn't even know that you could get brick-
3 patterned EIFS. It's sort of an interesting concept, since
4 EIFS is fake stucco to begin with. Now it's fake brick
5 stucco, but whatever. It looks pretty good in the rendering,
6 so I assume it'll be okay. I'm okay with proceeding.

7 CHAIRMAN HOOD: Any other comments? Commissioner
8 Shapiro?

9 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. I'm
10 not sure commission may have noted, but ANC has come out in
11 support of the design changes as well.

12 Did I miss it? Was there no comments or thoughts
13 related to the question of whether there will be solar
14 panels? Any of my fellow commissioners see that?

15 VICE CHAIR MILLER: I didn't see it in what they
16 submitted. I know that you asked about it, and I thought that
17 they had said they'd look into it. But I didn't see a
18 response.

19 COMMISSIONER SHAPIRO: I would like a response if
20 we could, Mr. Chair.

21 CHAIRMAN HOOD: Okay. Well, that's a showstopper.
22 Solar panels are a showstopper right now. Because that's the
23 only thing. I was ready to move forward but you know what,
24 I think that needs to be looked at and not ignored.

25 COMMISSIONER SHAPIRO: I think the difficulty is

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1 that there was no, from what I can see, there's no response
2 to it at all.

3 CHAIRMAN HOOD: Ms. Schellin, when is our next
4 meeting?

5 MS. SCHELLIN: November 13.

6 COMMISSIONER SHAPIRO: If the applicant's here and
7 if it's appropriate, Mr. Chairman, I could hear --

8 CHAIRMAN HOOD: You want to hear something
9 verbally?

10 COMMISSIONER SHAPIRO: I could hear something.

11 CHAIRMAN HOOD: Okay. Come forward. Mr. Kane, are
12 you going to be able to address that off the cuff? I know
13 you're seasoned, but are you going to be able to address that
14 off the cuff?

15 Okay, have a seat. Identify yourself and let us hear you.

16 MR. KANE: My name is Jonathan Kane, I'm with DVT
17 Development Group, one of the co-developers of the property.
18 We have in fact engaged and spoke to solar installation
19 companies about it, so we're doing that review right now.
20 We're not opposed to doing it, it's the issue of we're just
21 trying to go through the mechanics of how it would work with
22 putting solar over the green roof.

23 COMMISSIONER SHAPIRO: That's helpful to hear, and
24 I think it would have been helpful to see some measure of
25 response to that in your supplemental report. I also think,

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1 is there a way, Mr. Chair, that we can allow some space for
2 this or not?

3 CHAIRMAN HOOD: I'm not sure, because we don't
4 really have any, we're just going by what he said. I
5 appreciate the effort but I'm trying to think, we have an
6 order and we have final action, Mr. Shapiro, and if we vote
7 on it all we're getting is that they're looking at how it's
8 going to work with the green roof. That's the way I look at
9 it. No formality for us, no conclusions here.

10 COMMISSIONER MAY: Commissioner Shapiro, are you
11 asking whether we leave it as, if we don't address it
12 explicitly here and they discover that yes, they can figure
13 out a way to do solar over the green roof, would they have
14 the flexibility to do it or would they have to come back for
15 some sort of a modification to do it? Is that what you're
16 asking?

17 COMMISSIONER SHAPIRO: I'd say it's an interesting
18 question, but I was going the other way. I would want to make
19 sure that that were the case. We have a bit of a bully
20 pulpit, and I don't want to miss the opportunity to make sure
21 that you've thoroughly explored it. On the other hand, I like
22 the project and I don't want this to hold it up, but to
23 Commissioner May's point if it does happen, do they need to
24 come back to us?

25 COMMISSIONER MAY: It seems to me that where we

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1 make, you know, in a case that we review and approve if it's,
2 if what is presented to us includes solar panels, then it's
3 got to have solar panels and if they were to remove them or
4 not do them, they would have to come back for modification.
5 Adding solar panels, I think so long as they comply with
6 other building code and zoning regulation, I don't think they
7 would need to come back. That's just my opinion.

8 It's not like we cover every detail of the
9 construction drawings in our decision-making. Again, if it's
10 low-lying and doesn't protrude above four feet on the roof,
11 so long as the green roof is not reduced in the process I
12 think they'd be okay. I notice Mr. Ritting is looking at me
13 with a wrinkled face.

14 CHAIRMAN HOOD: Before we go to Mr. Ritting, let
15 me hear from other commissioners' thoughts first, and I will
16 come to Mr. Ritting.

17 VICE CHAIR MILLER: This is an all-affordable, 100
18 percent affordable housing project in Buzzard's Point, which
19 I don't want to prevent from going forward in any way. If we
20 want to have flexibility to add solar panels that's fine, in
21 our order, but I feel like the economy might go over a cliff
22 any day so I want this to go forward.

23 CHAIRMAN HOOD: Okay. Mr. Turnbull, something you
24 want to add to that?

25 COMMISSIONER TURNBULL: I would agree with the vice

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1 chair. I think there's a lot of significant benefits with
2 this project. I mean, I think there's a lot of community
3 interaction, I think the MOA and the ANC's total support on
4 this. I'm more than willing to give them the option, if it's
5 possible to put solar panels, then they can, but I don't know
6 if I want to hold their feet to the fire that closely.

7 CHAIRMAN HOOD: So we want to give them some
8 flexibility on that, on solar panels?

9 COMMISSIONER TURNBULL: I would be willing to do
10 that.

11 CHAIRMAN HOOD: Let me go to Mr. Ritting. He might
12 have some legal questions.

13 MR. RITTING: As the order is currently drafted,
14 I don't think they do have the flexibility to add solar
15 panels. However, there is a section of the order that
16 discusses the design flexibility that you are granting
17 through this order, and we could if you so choose add that
18 design flexibility to add solar panels to the roof if you
19 thought that was appropriate.

20 COMMISSIONER MAY: I think so long as we put the
21 caveat in there that's, provided they comply with other
22 setback restrictions or anything else having to do with the
23 placement of solar panels and there's no reduction of the
24 green roof. The only problem with that, I would love to argue
25 I think that it's okay to allow them to put solar panels on

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1 without coming back to us in the future, but that's, we don't
2 need to go through that here.

3 CHAIRMAN HOOD: Okay. Commissioner Shapiro?

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. I
5 agree with the vice chair as well. This is an important
6 project. I don't want this to hold it up. I was concerned
7 about the lack of formal response and I think to some degree
8 the issue, I think, if I remember correctly, perhaps OP could
9 help, or DOE, but there's some question about the interplay
10 between the solar panels and the green roof and whether the
11 solar panels get in the way of what you can count as green
12 roof. I thought that that's where OP, I don't remember if you
13 quite come down formally on that or not, but if I could look
14 to OP for an answer on that. But ultimately I agree with the
15 vice chairman. I don't think this should hold up the project.

16 MR. LAWSON: Good evening, Joel Lawson, from the
17 Office of Planning. We would absolutely defer to DOE on that
18 question. Our understanding is that DOE is working really
19 hard to find ways such that people who provide green roof and
20 solar panels are not essentially penalized in terms of GAR
21 numbers, and last I heard they've either gotten there or are
22 very close to that, so that should not be a major issue. But
23 if you're asking us, we would absolutely support adding
24 flexibility in the order to allow the addition of solar
25 panels on the roof.

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1 COMMISSIONER SHAPIRO: Thank you, Mr. Lawson, and
2 thank you, Mr. May, so I would ask that we do add that
3 flexibility and per commissioner May's point, make sure that
4 everything else that needs to be met is met as well. And if
5 I could ask the, Mr. Kane it was? If you can let us know how
6 the conversations go, because I think this will help us, it
7 will probably also help OP as well to hear the ways in which
8 a conflict, if we hold you to your word, you're committed to
9 doing it if you can do it.

10 CHAIRMAN HOOD: You want to turn your mike on.

11 MR. KANE: I'm sorry. Yes, I think we are, if we
12 can do it and again, I think we're just exploring the options
13 on how it could work. But yes, we definitely looking into it.

14 CHAIRMAN HOOD: Well, here's the issue. The
15 record's going to be closed. So can you send us a friendly
16 correspondence?

17 COMMISSIONER SHAPIRO: Yes. I'm not asking to hold
18 up the project, but the friendly correspondence would be
19 good.

20 CHAIRMAN HOOD: Friendly correspondence, I think,
21 would solve it, will give Commissioner Shapiro, kind of let
22 us know where you are with this whole thing.

23 MR. KANE: Thank you.

24 CHAIRMAN HOOD: All right, commission, so we
25 resolved that. Only took about 20 minutes. Anyway, we got it

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1 resolved. So whoever makes the motion, I'm going let one of
2 my colleagues make a motion, but make sure we include
3 flexibility about the solar panels.

4 COMMISSIONER TURNBULL: Mr. Chair, I would move
5 that we take final action approving Zoning Case number 17-13,
6 TM DBT Limited Partnership design review at Square 656 with
7 the caveat the option to include solar panels on the roof as
8 we talked about, included in the parameters.

9 VICE CHAIR MILLER: Second.

10 CHAIRMAN HOOD: Been moved and properly seconded,
11 any further discussion? All in favor?

12 (Chorus of Ayes.)

13 CHAIRMAN HOOD: Any opposition?

14 (No response.)

15 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
16 record the vote.

17 MS. SCHELLIN: Staff records the vote 5 to 0 to 0
18 to approve final action, Zoning Commission case number 17-13,
19 Commissioner Turnbull moving, Commissioner Miller seconding,
20 Commissioners Hood, May and Shapiro in support.

21 CHAIRMAN HOOD: Thank you. Again, we want to thank
22 all the work that the applicant, ANC and everybody has done,
23 and appreciate input from up here as well. Anything else on
24 this?

25 Okay, let's go right along to Zoning Commission

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1 case number 14-11D, Office of Planning Text Amendment Re:
2 Vesting provisions for Case 14-11B. Ms. Schellin.

3 MS. SCHELLIN: Yes, staff has nothing further to
4 add to this other than to say that it was not necessary to
5 refer this to NCPC as this was an administrative, the changes
6 were to the administrative subtitles and therefore NCPC
7 referral was not necessary. So we'd ask the commission
8 consider final action this evening.

9 CHAIRMAN HOOD: Okay. For the life of me I couldn't
10 figure out why we held it off, but I didn't try to look back
11 at the transcript. But anyway, let me open it up. Any
12 comments on this? We do have a recommendation from the Office
13 of Planning as well. I know we started discussing some of
14 this and we took, well, whatever we did we didn't really have
15 to do, but anyway, as stated by the secretary. Let me open
16 it up. Any discussion or comments on this? Pretty
17 straightforward, it is what it is.

18 COMMISSIONER SHAPIRO: Mr. Chairman, I move that
19 we take final action Zoning Commission Case 14-11D, Office
20 of Planning, text memorandum asking provision for Case 14-
21 11B.

22 CHAIRMAN HOOD: I'll second it. It's been moved and
23 properly seconded. Any further discussion? All in favor?

24 (Chorus of Ayes.)

25 CHAIRMAN HOOD: Any opposition?

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1 (No response.)

2 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
3 record the vote.

4 MS. SCHELLIN: Staff records the vote 5 to 0 to 0
5 to approve final action, Zoning Case 14-11D. Commissioner
6 Shapiro moving, Commissioner Hood seconding, Commissioners
7 May, Miller and Turnbull in support.

8 CHAIRMAN HOOD: You know what I'd like to do right
9 quick? I'd like for us to do proposed action last. Let me
10 move the hearing, the two hearing action items up and we'll
11 deal with the proposed last, if that's okay.

12 All right, let's go to hearing action Zoning
13 Commission case number 17-15, 806 Rhode Island Avenue, LLC,
14 Map Amendment at Square 3846. Mr. Cochran.

15 MR. COCHRAN: Thank you, Mr. Chairman. OP
16 recommends the commission sit this down, this request for a
17 map amendment from the medium density PDR-2 zone, to proposed
18 medium to high density in the 6 zone.

19 The site is located a block from the Rhode Island
20 Avenue/Brentwood Metro station, and it's surrounded by MU and
21 PDR zones. The applicants met the pre-hearing requirements of
22 Subtitle Z, Section 304 for a map amendment and the request of
23 change would be consistent with the Comprehensive Plan's maps, its
24 written elements and with the relevant small-area plan. In
25 particular, the generalized future land use map shows the site as

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1 being appropriate for medium density, commercial high density,
2 residential use. There is no PDR strike on the site.

3 The generalized policy map shows this site of being within
4 a multi-neighborhood center inside of a land use change area. The
5 citywide elements encourage clustering new housing, retail and
6 transit nodes to promote strong neighborhood centers, efficient
7 transportation and better air quality, which this request would
8 help to enable.

9 The Upper Northeast element includes the Rhode Island
10 Avenue Metro station as an area where this type of mixed-use
11 development should occur. It cites new housing as an
12 essential part of that mix, and housing couldn't be built if
13 the existing PDR 2 zone were retained, thus making the
14 proposed MU 6 zone more consistent with the comprehensive
15 plan than the current zoning.

16 And finally, the small-area plan recommends
17 development of office space, housing and retail on the
18 specific site for which the map amendment has been requested.
19 That concludes OP's report but of course we're open for
20 questions.

21 CHAIRMAN HOOD: Okay. Commissioners, we have a
22 request to set this down. Let's open it up, well, actually,
23 request to set it down as a rule-maker as well. I'm in favor
24 of the request as noted, but let me open it up to any
25 discussion, comments.

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1 VICE CHAIR MILLER: No comments, Mr. Chair.

2 CHAIRMAN HOOD: No comments? Okay. I think this is
3 very worthwhile setting down. I will say that when I looked
4 at this, I remember Greater Mount Calvary at one time was the
5 only person who would do anything down in that area. So I
6 think this is very well, long time coming, and I think we
7 should be accommodating because they were there when nobody
8 else would go there. So anyway, any other questions?

9 VICE CHAIR MILLER: Yeah, I totally agree, Mr.
10 Chairman, and am in total support of setting it down and
11 moving forward. I would like to get, at the hearing or at
12 some point in our discussion with OP, we've rezoned a lot of
13 PDR to C2-MU6 or whatever. We've rezoned a lot of industrial
14 to mixed-use, which is appropriate here, Metro station but
15 we want to encourage residential.

16 I just want to get some overall picture of how
17 much we've done of that and how much industrial zone is left
18 in the city and whether anybody's looking at that issue as
19 to where we're going to put our industrial uses, so, it's
20 nothing to do with this particular case but I think we just
21 need to, I don't think we've gotten an overall picture. We've
22 done so much of this along the, especially near Ward 5, Mr.
23 Chairman. I think we just need to get an overall picture of
24 that situation.

25 CHAIRMAN HOOD: I would just add a caveat. We need

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1 to get it updated, because about eight years ago we did do
2 one, and I would agree we do need to get an updated one. But
3 I know that this question always comes up when it's in Ward
4 5. But you weren't here the last time, but I just want you
5 to know this question always comes up.

6 VICE CHAIR MILLER: Happy to rezone some Wisconsin
7 Avenue to industrial.

8 CHAIRMAN HOOD: Okay, so, anyway, that's just a
9 little history. So we'll look and get that from the Office
10 of Planning. Might need to dust off the eight-year-old
11 report, update it for us, but I think that's actually a very
12 well --- Ms. Steingasser, you have something to say?

13 MS. STEINGASSER: We'll be happy to get that
14 report. What I request is that we separate it from this case
15 and that maybe we bring it forward in the next month or two
16 under the OP status report.

17 CHAIRMAN HOOD: That sounds good. Let's do that.
18 Let's separate. Okay, so we have a motion on the table,
19 correct? It's been moved and properly seconded. Any further
20 discussion? Oh, well let me move it then. I move that we set
21 down, thought I did that, Zoning Commission case number 17-
22 15, 806 Rhode Island Avenue, LLC, Map Amendment at Square
23 3846, and ask for a second.

24 COMMISSIONER SHAPIRO: Second.

25 CHAIRMAN HOOD: It's been moved and properly

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1 seconded. Any further discussion? Commissioner Shapiro. Yes.
2 Also with the caveat that this is a rule-making case.
3 Anything else? All right, moved and seconded. Thank you for
4 adding that, because I meant to do that in my motion, it's
5 a rule-making case. Any further discussion? All in favor?

6 (Chorus of Ayes.)

7 CHAIRMAN HOOD: Any opposition?

8 (No response.)

9 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
10 record the vote.

11 MS. SCHELLIN: Staff records the vote 5 to 0 to
12 0 to set down Zoning Commission case number 17-15 as a
13 rule-making case. Commissioner Hood moving, Commissioner
14 Miller seconding, Commissioners May, Shapiro and Turnbull
15 in support.

16 CHAIRMAN HOOD: Okay, next, Zoning Commission
17 case number 17-20, Office of Planning Text Amendment Re:
18 Child Development Centers - Subtitles B, D, & U. Ms.
19 Brown-Roberts.

20 MS. BROWN-ROBERTS: Good evening, Mr. Chairman
21 and members of the commission. For the record, I'm Maxine
22 Brown-Roberts from the Office of Planning.

23 Last year the Zoning Commission approved
24 amendments to the regulations regarding child development
25 homes and extended child development homes, which outlined

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1 the pressing needs that exist for child care facilities
2 in the District.

3 This need persists today, and the Mayor and
4 City Council have set aside monies to increase new infant
5 and toddler slots by 1000 by 2018, which works out to
6 approximately 3000 spaces per year.

7 To this end, OSSC and DCRA approached OP to
8 reexamine some of the changes that were made during the
9 transition to ZR16 and also to reflect on current
10 standards for establishing new or expanded child
11 development centers. To meet its mandate, OSSC requests
12 that the regulations governing daytime care be amended to
13 allow child development centers a special exception in the
14 low-density residential zone districts, with no
15 preestablished limitations on the number of persons and
16 as a matter of right in the high-density residential,
17 mixed-use and other zones.

18 In the low-density residential areas, the
19 centers would continue to be by special exception, and be
20 assessed for traffic impact, the location of pick ups and
21 drop offs and off-site play areas.

22 Regarding other residential districts, OP has
23 some concerns that there would be no opportunity for
24 similar review and although we are cognizant of the issues
25 that OSSC has, there are some land use issues that we

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1 would like to address. Therefore, the Office of Planning
2 would like to continue to work with OSSC and DCRA to
3 address some of these issues that have a more predictable
4 system for the assessment of proposed facilities, for
5 their safety as well as for that of the neighborhood in
6 which they operate.

7 OP requests the flexibility to work with OAG
8 on the public hearing and requests that the proposal be
9 set down for public hearing. Thank you, Mr. Chairman.

10 CHAIRMAN HOOD: Thank you, Ms. Brown-Roberts.
11 Commissioners, any questions or comments on this request
12 from Office of Planning? Commissioner May.

13 COMMISSIONER MAY: Yes, so, this strikes me as
14 really a pretty substantive change and we're proposing to
15 make some significant alterations to how and where these
16 facilities can be located city-wide. I don't at this
17 moment pretend to know whether that's a good thing or a
18 bad thing, but it seems to me it is something that's going
19 to garner a fair amount of public attention and I wonder
20 if there's, whether some sort of special outreach might
21 be necessary to make sure people understand this, or maybe
22 that's something that would just happen normally through
23 the process, I don't know.

24 It seems to me like it's a pretty big thing.
25 Very often text amendments are not very substantive of

1 nature, and this is a pretty significant one even though
2 the number of words is relatively small. I don't know if
3 you have thoughts to that, or maybe the rest of the
4 commission does. And if you don't have any thoughts about
5 it, just note that I was thinking of that.

6 MS. STEINGASSER: We'll be happy to work with
7 the Office of the State Superintendent of Education and
8 see what particular outreach they have, the mayor's office
9 has an Office of Community Resources and we'll work with
10 them also to make sure the Listserv gets a little
11 extraordinary notification out there.

12 COMMISSIONER MAY: Okay. Thank you.

13 CHAIRMAN HOOD: Commissioner Shapiro?

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman,
15 just a question. I agree with Commissioner May's sense
16 that this is a pretty significant thing. This would be,
17 maybe this is stating the obvious, but all this means at
18 some level is that it will then get regulated through the
19 permitting process about how many kids can be at a
20 childhood development center.

21 MS. BROWN-ROBERTS: Yes, and actually, the final
22 number is done when they go for licensing at OSSC, and
23 they do the detail measurements and that sort of thing to
24 determine how many kids will be allowed.

25 COMMISSIONER SHAPIRO: So in my head it's a

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1 little bit like we may approve a restaurant as part of a
2 development but we're not going to be saying how many
3 tables are going to be in the restaurant.

4 MS. BROWN-ROBERTS: For those in the low-density
5 areas, because what they're asking for is a matter or
6 right on some of the higher density areas.

7 COMMISSIONER SHAPIRO: Matter of right for the
8 use, not matter of right for intensity of the use. They
9 can't just put in as many kids as they want, so the fact
10 that it's a child development center could happen by right
11 if this went through, but then there's also the processes
12 to make sure that it's appropriately used.

13 MS. BROWN-ROBERTS: Yes, that's right. OSSC
14 would do that, would make that determination when they
15 come for their license.

16 COMMISSIONER SHAPIRO: Thank you.

17 CHAIRMAN HOOD: Any other questions, comments?
18 Vice-chair Miller?

19 VICE CHAIR MILLER: So this would facilitate
20 more child development centers in residential
21 neighborhoods, is that correct?

22 MS. BROWN-ROBERTS: Well, it will facilitate,
23 yes, hopefully, we're hoping that would be it, but it
24 would also speed up the process because this would be, the
25 BZA portion would be taken out of the processing.

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1 VICE CHAIR MILLER: Because it would be a matter
2 of write-ins, certain cases where it's now by special --

3 MS. BROWN-ROBERTS: By special exception, yes.

4 VICE CHAIR MILLER: Well, I'm in favor of that.
5 Thank you.

6 CHAIRMAN HOOD: Okay, any other comments or
7 questions?

8 COMMISSIONER TURNBULL: Mr. Chairman, I have
9 one. It looks like in the RA zone, special exception would
10 be going away. In the RF zone, it would still be, I'm
11 looking at your little chart? Page one?

12 MS. BROWN-ROBERTS: In the RF zone --

13 COMMISSIONER TURNBULL: Special exceptions.

14 MS. BROWN-ROBERTS: Special exceptions,

15 COMMISSIONER TURNBULL: Still applies --

16 MS. BROWN-ROBERTS: Yes.

17 COMMISSIONER TURNBULL: But it would go away in
18 the RA zone.

19 MS. BROWN-ROBERTS: Yes, sir.

20 COMMISSIONER TURNBULL: So there would still be
21 a maximum or 25 persons.

22 MS. BROWN-ROBERTS: No. We would take away that
23 number, the number would go.

24 COMMISSIONER TURNBULL: Oh, so that number would
25 go.

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1 MS. BROWN-ROBERTS: Yes.

2 COMMISSIONER TURNBULL: Is there a max that
3 would be added to that, or is there no max?

4 MS. BROWN-ROBERTS: There's no max. No numbers.
5 That is one of the things that OSSC has requested, that
6 we don't put the number in because they want to make that
7 assessment when an application comes in.

8 COMMISSIONER TURNBULL: So the neighborhood
9 would have no input on that.

10 MS. BROWN-ROBERTS: Right. And that's one of the
11 issues that we are continuing to talk to them about, as
12 to how that would happen. To see if there's something in
13 their regulations that would replace that or do we really
14 need to make a number.

15 COMMISSIONER TURNBULL: Yes, I think as
16 Commissioner May was getting at, this could be an item
17 that people may want to weigh in on and talk about. All
18 right. Thank you.

19 CHAIRMAN HOOD: Okay. Any other questions,
20 comments on this? Somebody like to make a motion?

21 COMMISSIONER TURNBULL: Mr. Chair, I move that
22 we set down the Zoning Commission case number 17-20,
23 Office of Planning - Text Amendment Re: Child Development
24 Centers - Subtitles B, D & U.

25 CHAIRMAN HOOD: So moved. We need a second?

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1 COMMISSIONER SHAPIRO: Second.

2 CHAIRMAN HOOD: It's moved and properly
3 seconded. Any further discussion? All those in favor?

4 (Chorus of Ayes.)

5 CHAIRMAN HOOD: Any opposition?

6 (No response.)

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

9 MS. SCHELLIN: Staff records the vote 5 to 0 to
10 0 to set down Zoning Commission case number 17-20 as a
11 rule-making case. Commissioner Shapiro moving,
12 Commissioner Miller seconding, Commissioners Hood, May,
13 and Turnbull in support.

14 CHAIRMAN HOOD: Okay. Let's go back to proposed
15 action. I think this is the last on our agenda for this
16 evening. Zoning Commission case number 16-26, Wisconsin
17 Owner, LLC - Consolidated PUD & Related Map Amendment at
18 Square 1732. Ms. Schellin.

19 MS. SCHELLIN: Yes, on this one, Exhibits 55
20 through 56A, we have the applicant's post-hearing sand
21 Exhibit 57 through 57A we have TNA's post-hearing
22 submissions. We'd ask the commission to consider proposed
23 action this evening.

24 CHAIRMAN HOOD: Okay, commissioners, we have set
25 this up for, we do have a Tenleytown Neighbors Association

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1 for our proposed findings of fact as well. Let me open it
2 up. Any questions, comments? Commissioner Shapiro.

3 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
4 just want to say that I had the opportunity to, was not
5 physically here but I had the afternoon to review the
6 record and I will be participating today.

7 CHAIRMAN HOOD: Okay, great. Who would like to
8 get us started? I tell you what, then. Let me go ahead and
9 start off. One of the things that I did not see that I was
10 looking for, and I really looked at the TNA's findings of
11 facts for the most part and one of the things that struck
12 me is they looked at the policy. We've been down this road
13 before. I'm trying to pull it up real quick, hold on one
14 second.

15 Okay. RCW Wisconsin Avenue Corridor 2.2, it
16 talks about the scale in height of new development of the
17 corridor should reflect the proximity to single-family
18 homes as well as the avenue's intended function as the
19 neighborhood's main street. This means an emphasis on low
20 to mid-rise buildings rather than highrise towers on auto-
21 oriented strip development.

22 Then it goes on and talks about some of what
23 this applicant is proposing, and I know once before there
24 was some issues about certain floors and the height and
25 what it also said in the comp plan as well as in the RCW

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1 in this case. I was just wondering if maybe the applicant
2 did, maybe they can direct me to where they talk about
3 that in their submission, but I didn't see that really
4 fully discussed. If it's not there, I would like for that
5 to be fully discussed in the applicant's submission,
6 depending upon how this moves.

7 I'll just start it off with that. I don't know
8 if anybody else had that issue, but I'll leave it at that.
9 I'd like to see that expounded upon.

10 COMMISSIONER MAY: Mr. Chairman?

11 CHAIRMAN HOOD: Yes.

12 COMMISSIONER MAY: I took some notes on the
13 hearing about the applicant's response to that concern
14 about the height, and I think it was also addressed to
15 some extent in the OP's report. But the issue is that the
16 way the future land use map describes this area, inclusive
17 of this property I guess, generally is that it would be
18 buildings of four to seven stories, and we're talking
19 about an eight-story building.

20 I think what the applicant had to say is that
21 the actual zones that were named as being consistent with
22 the map included C3A, which is what became MU7. So even
23 though it's, theoretically it's a floor taller, it is
24 consistent with it.

25 And of course the language in the comp plan is

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1 always something like four to seven stories is
2 appropriate, but you know, in certain circumstances under
3 PUD, additional height might be appropriate. That language is
4 in there somewhere. Commissioner Miller could probably tell
5 us exactly where that language occurs, but it does occur.

6 So I was concerned about this too because of
7 the proximity to the smaller houses on the block behind,
8 single-family homes on the block behind, but I think that
9 we also saw, I do think the applicant addressed it fairly
10 solidly and I was convinced by the end of the hearing that
11 eight stories is not inconsistent with the medium-density
12 comp plan designation, which would normally be four to
13 seven stories.

14 I also think that what we saw in the case
15 itself, with the little bit of stepping that they did in
16 the building toward the back and the shade studies, I
17 don't see that there's really a major impact to this
18 building at the height that is proposed compared to what
19 it would have been at seven stories. And the fact that
20 there is not significant opposition from the people
21 immediately behind, I think speaks volumes for the effort
22 that they've made to convince people that this is a good
23 development.

24 I appreciate the sort of automatic unease any
25 time we talk about eight stories in something that's

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1 designated for four to seven, but I've become comfortable
2 with that.

3 CHAIRMAN HOOD: Okay. I do know that, I see
4 where they did talk about it, Commissioner May, I just
5 want them to expound a little more. I've read what they
6 wrote, but I've noticed that was one of the things that
7 the party in opposition, and I just want them to expound
8 a little more.

9 I do know that they went into in the record
10 when they talked about it, but I think there's a little
11 more that can come out of that because I really think that
12 the party in opposition, at least the way I read it in
13 their findings, and their findings of facts includes a
14 lot. I think they really hit the point especially when you
15 talk about the Rock Creek West area element. I really
16 think that the way that the West area element was talked
17 about in the party in opposition, I think that they really
18 make a point.

19 I know that the applicant hit it in their
20 proposed findings of facts. I just don't think they
21 expounded upon it enough. If I had to look at that
22 argument, I would right now be siding with the, and I
23 understand what you're saying, but I would be siding with
24 what's written, because that's what I think people look
25 at, was what's in the narrative.

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1 I think that the argument is made more clear
2 and is defined in the opponent as opposed to applicant,
3 and I just need them to expound upon it. I think I know
4 what they're trying to get to, they just need to get into
5 it a little more. That was to get us started. Mr. Shapiro?

6 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
7 Building off of what you're saying, I think specifically
8 my read on that was in finding 27 of the TNA draft order,
9 just so we have more, if we are to take proposed action,
10 I would want to see some more clarification about how that
11 Rock Creek West policy 2.2.5 specifically addresses
12 greenspace and landscaping because of the 90 percent lot
13 occupancy. I think that's the specific version of what
14 you're talking about as well.

15 Also, I wasn't here but I do want to commend
16 the applicant for a legal project and for this whole thing
17 except for the green roof. I'm kind of curious about how
18 they wrap the solar panels and green roof together,
19 considering what we were talking about earlier. That's all
20 I have for now, Mr. Chair.

21 CHAIRMAN HOOD: Okay. Anything else or anybody
22 else? Vice chair?

23 VICE CHAIR MILLER: Thank you, Mr. Chairman. I'm
24 prepared to go forward, and I would agree with the
25 comments of my colleagues that I think we, before final,

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1 if we go with proposed tonight that we would need a little
2 more explanation of the compatibility along Wisconsin
3 Avenue and with Rock Creek West 2.2.5. But I think this
4 is a good project, and I agree with Commissioner May's
5 comments in large part. I'll leave it at that.

6 CHAIRMAN HOOD: Let me just say I get it, I'm
7 there, but I just don't think the applicant has made the
8 point. I'm actually there, but I just don't think that
9 what I see makes the point. I think if I was looking at
10 both findings of facts, I think that the TNA has made
11 their case. I didn't say that I necessarily agree with all
12 of it, but I just think they've made their case and I just
13 don't think the applicant has expounded enough on that.

14 But I think it's a great project, we just want
15 to make sure that everything is in the correct position
16 for us to make our informed decisions. I'm actually, I
17 just want them to expound on that, that's the only issue
18 I have with this whole case. Commissioner Turnbull?

19 COMMISSIONER TURNBULL: Thank you, Mr. Chairman.
20 I would agree that this is a very worthwhile project and
21 I'm prepared to go forward on proposed action, but I also
22 agree with you that I think the applicant needs to do a
23 little bit more explanation on the points that you were
24 talking about.

25 The only other issue that I have, they had

1 issued Exhibit 55, they had put a letter on talking about
2 revised flexibility conditions, design flexibility
3 conditions, and I just want the applicant to talk with OAG
4 especially on the first bullet point that they have. The
5 language is close to what we are asking applicants to
6 include, but I think they just need to go back and
7 tighten that up and meet with OAG to revise that.

8 CHAIRMAN HOOD: Okay. And I think the ANC
9 supported this project, correct?

10 COMMISSIONER TURNBULL: Yes, they did.

11 CHAIRMAN HOOD: All right. I think that can be
12 done for me. I'm ready to take proposed -- We have two
13 votes in this case. I think it's pretty straightforward
14 unless I hear something else. I'm looking forward to
15 hearing that for final action from the applicant to
16 address those issues that we spoke about. I will accept
17 a motion.

18 VICE CHAIR MILLER: Then I'll make a motion, Mr.
19 Chairman, that the Zoning Commission take proposed action
20 on Zoning Commission case number 16-26, Wisconsin Owner
21 LLC - Consolidated PUD and Related Map Amendment at Square
22 1732, and we're asking for additional information before
23 final action as we expressed here tonight, and ask for a
24 second.

25 COMMISSIONER SHAPIRO: Second.

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1 CHAIRMAN HOOD: Okay, it's been moved and
2 properly seconded. Any further discussion? All those in
3 favor?

4 (Chorus of Ayes.)

5 CHAIRMAN HOOD: Any opposition?

6 (No response.)

7 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
8 can you record the vote.

9 MS. SCHELLIN: Staff records the vote 5 to 0 to
10 0 to take proposed action, Zoning Commission case number
11 16-26. Commissioner Miller moving, Commissioner Turnbull
12 seconding, Commissioners Hood, May, and Shapiro in
13 support. The applicant in this case knows to submit the
14 proffers and conditions. Thank you.

15 CHAIRMAN HOOD: All right. Do we have anything
16 else on the agenda tonight? All right. I see Ms. Chesser
17 has her hand up, but you can see staff. Come to the table
18 and identify yourself.

19 MS. CHESTER: I'm Ms. Chesser, despite the fact
20 that in the transcript for the previous hearing I'm Ms.
21 Bass many times. Having said that, I'm Judy Chesser, for
22 Tenley Neighborhood Association, and my question was do
23 we get to respond to what applicant is going to submit?

24 CHAIRMAN HOOD: Yes. You are party in
25 opposition. Yes, you will respond.

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1 MS. CHESSER: Okay.

2 CHAIRMAN HOOD: What was your name again?

3 MS. CHESSER: Judy Chesser. C-H-E-S-S-E-R.

4 CHAIRMAN HOOD: I know what your name is, but
5 what name -- I didn't call you that. I know you. So I know
6 it wasn't me.

7 (Laughter.)

8 MS. CHESSER: For good or ill.

9 CHAIRMAN HOOD: Okay. We apologize for the
10 mistake in the transcript. But I do know you, Ms. Chesser.

11 MS. CHESSER: Okay. Thank you.

12 CHAIRMAN HOOD: Is there anything else? Anything
13 else tonight? Mr. Avitabile, were you having some
14 concerns? Okay. Ms. Schellin, do we have anything else?
15 Ms. Steingasser, anything? All right, so with that I want
16 to close this meeting. Ms. Schellin, we have a question.
17 When are we taking this up for final?

18 MS. SCHELLIN: This one will not come up until
19 our December meeting, December 11.

20 CHAIRMAN HOOD: 11th. Okay.

21 MR. AVITABILE: Excuse me, commissioners. It
22 would be helpful for us to know when do we submit the
23 revised findings of fact? And I assume it's just those
24 findings that --

25 CHAIRMAN HOOD: Those two issues, yeah. And you

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1 have to make sure they get it.

2 MR. AVITABILE: Of course.

3 MS. SCHELLIN: Right, but they don't get to
4 respond to the findings of facts. That's part of the draft
5 order.

6 MR. AVITABILE: As I understood your request,
7 Mr. Hood, you were asking for more information from the
8 applicant about something.

9 CHAIRMAN HOOD: On two issues.

10 MR. AVITABILE: On two issues, in which case it
11 goes into the record and the other parties have an
12 opportunity to respond, so I think that the appropriate
13 way to handle it is to provide a date for the applicant
14 to provide the additional information and then sometime
15 subsequent to that for the other parties to respond.

16 CHAIRMAN HOOD: Yes, we're going to give them,
17 you will receive notice.

18 MS. SCHELLIN: How much time do you need?

19 MR. AVITABILE: Couple of weeks, probably.

20 CHAIRMAN HOOD: Before December 11?

21 MR. AVITABILE: Well before December 11.

22 MS. SCHELLIN: So how about November 13, is that
23 okay?

24 MR. AVITABILE: Sure.

25 MS. SCHELLIN: And then the parties would have

1 until November 20, 3:00 p.m., for all submissions. And
2 you're providing, you said, a new draft, a finding.

3 MR. AVITABILE: And I think that's where, and I
4 apologize for asking these questions but I want to be
5 clear --

6 MS. SCHELLIN: Because there's no response to
7 that.

8 MR. AVITABILE: Right. Are we just submitting
9 revised findings of fact that we drop into the order, or
10 are we submitting additional information to support the
11 finding, sorry, I want to make sure that I'm clear. I
12 understood the conversation is we were simply submitting
13 additional findings of fact that draw upon what's already
14 in the record. Are we submitting that, or are we
15 submitting additional information to support the findings
16 on Rock Creek West element?

17 CHAIRMAN HOOD: It's really not just findings
18 of fact, it's found upon, I think, 2.2 and 2.2.5, those
19 two are the only things we're asking for. Now it may
20 eventually go into findings of fact, but if you respond
21 to us then they can respond to that.

22 MR. AVITABILE: That makes perfect sense, and
23 that explains my confusion. I thought we were just getting
24 you a revised finding, not additional information. Now I
25 understand, so I know what I'm doing. Thank you.

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1 CHAIRMAN HOOD: Great. We all on the same page?
2 Anything else? I want to thank everyone for their
3 participation tonight and this meeting is adjourned.

4 (Whereupon, the above-entitled matter went off
5 the record at 7:36 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Regular Meeting

Before: DCZC

Date: 10-30-17

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