

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

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MONDAY
NOVEMBER 27, 2017

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 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
ROBERT MILLER, Vice Chairperson
PETER G. MAY, Commissioner (NPS)
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic Preservation
STEVEN COCHRAN
MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.
HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from the Regular meeting held on November 27, 2015.

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

6:33 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is a public meeting of the Zoning Commission for the District of Columbia.

My name is Anthony Hood. We're located in the Terrily R. Kress Memorial Hearing Room. Joining me this evening are Vice Chair Miller, Commissioner May, and Commissioner Shapiro.

We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, as well as the Office of Attorney General, Ms. Lovick and Mr. Ritting, Office of Planning Staff -- Mr. Jesick, soon to be joined by Ms. Steingasser.

Copies of today's meeting agenda are available to you and are located in the bin near the door. We do not take any public testimony in our meetings, unless the Commissioner requests someone to come forward.

Please be advised this proceeding is being recorded by a court reporter. It's also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room, including display of any signs or objects.

Please turn off all electronic devices at this time. Does the Commission have any preliminary matters? Does the Staff -- I'm sorry -- we might have some, but does

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1 the Staff have any preliminary matters?

2 MS. SCHELLIN: No sir.

3 CHAIRMAN HOOD: Okay. If not, let us proceed
4 right along with our agenda. Let's go in order. Our consent
5 calendar item -- Minor Modification and Technical
6 Corrections -- Ms. Schellin.

7 MS. SCHELLIN: Yes sir. The first case is case
8 number 16-13A, JS Congress Holdings, LLC. They are
9 requesting -- the Applicant is seeking to clarify that their
10 offsite IZ location may exceed the 30 percent square foot
11 limitation under 11 DCMR, Section 2607.2g, 2013.

12 Exhibit 6 is an OP report in support of this
13 request, and I ask the Commission to consider final action
14 this evening.

15 CHAIRMAN HOOD: Okay. Commissioners, as stated
16 by Ms. Schellin, we do have a Officer Planning Report, as
17 well as some other filings. Any -- this is to clarify the
18 approving condition of B1 of our order going to 30 percent.
19 Any questions or comments on this? Okay, and if not, we can
20 accept the motion. I think it's pretty straightforward to
21 ask.

22 VICE CHAIR MILLER: Mr. Chairman, I agree it's
23 very straightforward. Just a clarification, Zoning
24 Commission Case Number 16 -- I move that the Zoning
25 Commission approve Zoning Commission Case Number 16-13A, JS

1 Congress Holdings, LLC request for modification to PD at
2 Square 748. Can I ask for a second?

3 COMMISSIONER SHAPIRO: Second.

4 CHAIRMAN HOOD: It's been moved and properly
5 seconded. Any further discussion? All in favor, aye.

6 (Chorus of aye.)

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

9 MS. SCHELLIN: The Staff records the vote 4 to 0
10 to 1 to approve final action of Zoning Commission Case Number
11 16-13A. Commissioner Miller moving, Commissioner Shapiro
12 seconding, Commissioners Hood and May in support,
13 Commissioner Turnbull not present, not voting.

14 CHAIRMAN HOOD: Okay. Next, modification of
15 consequence, determination and scheduling, of Zoning
16 Commission Case Number 16-13B, JS Congress Holdings, LLC,
17 Modification of Consequence, condition number B2 of Zoning
18 Commission Order Number 16-13.

19 MS. SCHELLIN: Yes sir. The Applicant is seeking
20 to modify condition number B2 of the Order to Extend the
21 October 31, 2017 deadline, changing that to six months after
22 favorable resolution of the petition for review filed with
23 the DC Court of Appeals.

24 While the Order deadline is tolled during an
25 appeal with the DC Court of Appeals, it's unclear whether the

1 deadline for payment to Habitat for Humanity is also tolled.

2 So out of the abundance of caution, the Applicant
3 has filed this modification, asking that this change be made.
4 At Exhibit 6 there's no P report in support of this request.
5 So we'd ask the Commission to, one, determine whether this
6 is, in fact, a modification of consequence, and if so, then,
7 two, set a schedule for additional filings and a deliberation
8 date.

9 CHAIRMAN HOOD: Okay Commissioners, any questions
10 or comments on this? Well I don't know if it rises to that
11 occasion. I still want to make sure -- well, I probably
12 would like to see input from others on this topic. But I
13 don't know if it goes to -- to the level of modification of
14 consequence.

15 To me, I think that's something that could be --
16 we can just do. But I guess to make sure we do proper
17 notice -- I'm not sure. Let me hear from others. I'm told
18 I'm --

19 COMMISSIONER MAY: So this is a weird one. I mean
20 technically it's a modification of consequence because
21 there's a change in the condition of the Order, and the
22 Applicant seemed to understand that. And so that's what they
23 asked for.

24 I mean I don't see any reason to expedite at the
25 expense of -- you know, having notification of parties. So

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1 let's notify the parties and we'll take it up --

2 CHAIRMAN HOOD: Okay.

3 COMMISSIONER MAY: -- you know, at our next
4 meeting --

5 CHAIRMAN HOOD: All right.

6 COMMISSIONER MAY: -- or whatever the timing would
7 be.

8 CHAIRMAN HOOD: Okay. Commissioner -- Vice Chair
9 Miller.

10 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
11 just wanted to make a comment to suggest that we might want
12 to suggest that the Office of Planning look at
13 Subtitle Z702.2 and 7.3, to do the clarification in the
14 regulations that when there's an appeal filed, not only is
15 the timeline for the building permit and construction tolled,
16 but that the public benefits, and conditions and
17 contributions are also tolled, so that we don't have to deal
18 with this situation in the future.

19 I mean it's -- this is -- they're asking for this
20 modification as a abundance of caution, because it's not
21 clear in the regs. It's clear for the building permit and
22 construction requirements, but it's not clear for the public
23 benefits, conditions and contributions. So I think we just
24 needed to clarify our zoning regs for future cases.

25 CHAIRMAN MAY: I agree it makes sense that we

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1 should have that clarified so it's -- so we don't have to --

2 VICE CHAIR MILLER: Deal with this.

3 COMMISSIONER MAY: -- deal with this again.

4 CHAIRMAN HOOD: Thank you, Vice Chair. I support
5 that, and let's make sure we can put that on the fast track,
6 so we can go ahead and get that mentioned in our regulations.
7 Anything else?

8 (Off-mike discussion.)

9 CHAIRMAN HOOD: I'm sorry.

10 (Off-mike discussion.)

11 MR. COHEN: Excuse me --

12 CHAIRMAN HOOD: No, -- just made a comment.
13 We'll -- do you have a question about the topic?

14 MR. COHEN: I'll listen to the tape.

15 CHAIRMAN HOOD: Okay. Do you want to repeat what
16 you said? I'm going to ask the Vice Chair just to repeat
17 what he said.

18 VICE CHAIR MILLER: I just suggested that if
19 the -- that the Office of Planning would look at our
20 Subtitle Z, Zoning Regulation 702.2 and 702.3, to clarify
21 that when an appeal has been filed in a case, not only is the
22 building permit and construction timeline tolled, but the
23 public benefits and contributions conditions are tolled as
24 well, which is why we need the modification, just as an
25 abundance of caution to clarify that we're doing it here, but

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1 for future, that we don't have to -- maybe have to deal with
2 issue.

3 MR. COHEN: Thank you. We'll take care of that.

4 CHAIRMAN HOOD: Okay. Ms. Schellin, so we're
5 going to do the scheduling?

6 MS. SCHELLIN: Yes sir. If we could get the
7 parties to -- and I think it was only the ANC -- yes, to --
8 since they've been -- they were served awhile back.

9 It they could file their letter, if they choose
10 to do so, by December 4th, and then if the AN- -- I'm
11 sorry -- the Applicant chooses to make a response to that
12 filing by noon on December 11th, we can put this on for
13 December 11th.

14 CHAIRMAN HOOD: Okay. Any other questions on
15 this? Okay, let's move right along. Let's go to
16 Modification of Consequences, Deliberations, Zoning
17 Commission Case Number 08-30D, 25 M Street Holdings, LLC,
18 Modification of Consequences to design and review a
19 square 700. Mr. Schellin.

20 MS. SCHELLIN: Yes. On this one, Exhibit 7 and
21 7A, we have the Applicant's submission that addresses the
22 removal of the digital sign at the M and Half Street,
23 Southeast, the reduction in the sizes of the remaining two
24 signs, and the appropriateness of the remaining digital
25 signs.

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1 Exhibit 9, we have an ANC 6D Report in Opposition.
2 The Commission will recall this case was -- came up in, I
3 believe it was the September 25th meeting. And the
4 Commission delayed this to allow the Applicant to go back and
5 take a look at the signs, and maybe come up with an
6 alternative plan, or to really look at the need for those
7 digital signs.

8 And this was the response. And the ANC still is
9 opposing what they've come back with. So we'd ask the
10 Commission to consider action on this case this evening.

11 CHAIRMAN HOOD: Commissioners, are there any
12 comments on -- we did receive in our exhibit -- hold on a
13 sec.

14 MS. SCHELLIN: Seven and Seven --

15 CHAIRMAN HOOD: Seven -- which one is the ANC --
16 Exhibit 9.

17 MS. SCHELLIN: Nine.

18 CHAIRMAN HOOD: We did receive a response. And
19 I think -- was this the only thing that we held it out for?
20 Yeah. Okay, so we got the response. So let me open up any
21 comments on the signs. Commissioner May?

22 COMMISSIONER MAY: Yeah. I appreciate the fact
23 that the Applicant went out to the ANC and had further
24 discussions with them, and then the fact that they eliminated
25 one of the digital signs -- the one that I think we all

1 thought was the most problematic.

2 But I'm still troubled by the fact that the ANC
3 is not -- doesn't support having these signs at all. And
4 honestly, I tend to agree. I mean that's just my natural
5 tendency. I mean I understand that the Council's made some
6 decisions in -- with regard to digital signage, which I also
7 happen to disagree with.

8 But I think in this circumstance, I mean this is
9 an approved PUD, and I think we have discretion over it. And
10 so I don't see a particular need to advance the changes with
11 the signage.

12 The rest of the changes that are proposed, I don't
13 have any problem with. It's just the -- you know, I tend to
14 agree with the ANC.

15 CHAIRMAN HOOD: Okay. Mr. Shapiro?

16 COMMISSIONER SHAPIRO: Thank you, Mr. Hood. I had
17 the same reaction, and to give ANC 60 its great weight. I'm
18 not sure how I could -- I'm not finding myself disagreeing
19 with anything that they said.

20 It did feel, from a design perspective it did feel
21 a bit slapped on. And I'm not sure -- it's certainly within
22 our purview to do something about this, and I'm not sure that
23 I see the need to have the digital signs there.

24 I don't think it adds to the look of the building
25 at all. I think it detracts from it.

1 CHAIRMAN HOOD: Okay. Anybody else? Question?
2 Well anybody, either you or me?

3 VICE CHAIR MILLER: Thanks, Mr. Chairman. Yeah,
4 I -- you know, I think the Applicant was responsive. Not
5 totally, but responsive to the ANC's and the Commission's
6 comments.

7 I don't think that the size and -- the reduced
8 size and the reduced location of these signs, I don't think
9 they detract from the feel and physical appearance of the
10 building.

11 And, you know, this is an entertainment district.
12 If we're talking about Half Street, walking from the Metro
13 to -- I just don't see what the big deal is. It's not facing
14 any residences, it's some -- I don't see the problem.

15 But I realize the 6D never wanted the signs --
16 digital signs in this area to begin with. They opposed the
17 Council legislation. The Council did take to action, though,
18 to allow much bigger, and more signs than this project is
19 proposing.

20 So I don't personally have a problem with what's
21 being proposed. Having walked that couple of blocks many
22 times, I don't see what the problem is.

23 CHAIRMAN HOOD: I would associate myself with the
24 comments of the Vice Chair. But when I try and figure out,
25 you know, what's giving the ANC great weight -- I know they

1 put exhaustive work into this. So I would lean on the side
2 of not approving the signs as stated, but -- I don't
3 necessarily have a problem with it, but I know that Chairman
4 Litsky and others have put a lot more work into that.

5 And I know how it is when you put work into your
6 neighborhood. And I don't want to undo some of the things --
7 I think those signs are very informative. I think they look
8 good. But I guess they're trying to keep control of not
9 making it -- some of the other areas that we have in the
10 city, which I don't necessarily have a problem with, as well.

11 We're starting to even get some of those well-lit
12 signs over in some areas in my neighborhood, which I actually
13 like because I read them and they give me information.

14 So I -- you know, I just don't want to undo the
15 work that they've done. But I just associate myself with the
16 Vice Chair's comments. So I really -- I really would like
17 to wait for Mr. Turnbull to hear, because I know he's really
18 on this signs issue.

19 VICE CHAIR MILLER: I think we'd lose when he gets
20 here.

21 (Laughter.)

22 CHAIRMAN HOOD: Well, we might.

23 VICE CHAIR MILLER: I think we know -- we could
24 probably do a proxy for him right now.

25 CHAIRMAN HOOD: We may split now. So that's the

1 issue, so -- but I just don't want to undo what Chairman
2 Litsky, so if we want to go ahead and move forward and not
3 wait on our colleague, I would be voting in favor of not
4 including the signs with the approval.

5 I think we tossed that around last time. So, you
6 know, I would not approve the signs for that very reason of
7 giving the ANC great weight. So --

8 Somebody wants to make a motion? Or would
9 somebody like to wait for Mr. Turnbull? Either way.

10 COMMISSIONER MAY: So if I understand what you're
11 saying, if we took a vote right now, you would vote against
12 the digital signage --

13 CHAIRMAN HOOD: I would -- I would --

14 COMMISSIONER MAY: -- out of respect for the ANC.

15 CHAIRMAN HOOD: Out of respect for the ANC, I
16 would wait. And not that I -- because probably one day it's
17 going to happen. Right? But right now it's not -- it's not
18 been cushioned enough to get the support of the front-line
19 elected officials for me. And that's where I draw the line.

20 VICE CHAIR MILLER: So what would be the effect
21 of voting down the Modification of Consequence? It just that
22 we wouldn't have the signage? Is that the only issue before
23 us?

24 COMMISSIONER MAY: I think we could vote to
25 approve --

1 CHAIRMAN HOOD: Everything --

2 COMMISSIONER MAY: -- everything except the
3 visible signage.

4 CHAIRMAN HOOD: -- except the signage.

5 COMMISSIONER MAY: Okay.

6 CHAIRMAN HOOD: And then maybe they -- and here's
7 the thing. Can they -- they can re-look at that. Let
8 me -- let me look --

9 COMMISSIONER MAY: I mean they're welcome to bring
10 it back again.

11 CHAIRMAN HOOD: Yeah, they can bring the signage
12 back. They can re-look at it and see if they can garner some
13 support.

14 COMMISSIONER SHAPIRO: You sure we're not holding
15 up the case

16 CHAIRMAN HOOD: Yeah. So the signage would still
17 be out there, and they -- can they bring that back?

18 MS. SCHELLIN: A new case.

19 CHAIRMAN HOOD: A new case?

20 COMMISSIONER MAY: It would be a new case.

21 CHAIRMAN HOOD: Do we want to give them a chance
22 to bring it back?

23 MS. SCHELLIN: I think that was what happened last
24 time when Mr. Thomans decided they didn't want do that. They
25 wanted to go back and bring -- you know, go back and

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1 negotiate, and that's why they took away the one sign. They
2 didn't want to come back and piecemeal it, and that was
3 why --

4 CHAIRMAN HOOD: Okay.

5 MS. SCHELLIN: -- if I'm not mistaken, they didn't
6 want to do that -- have part of the case approved, or have
7 the case approved without signage, if I'm not mistaken --

8 CHAIRMAN HOOD: Does Mr. Thomans --

9 MS. SCHELLIN: -- yeah, let them --

10 COMMISSIONER MAY: Well maybe we could just parse
11 it and approve only the parts that we all agree on right now,
12 and then -- and do not say anything about the signage.

13 CHAIRMAN HOOD: But they still have to come back,
14 because it's right now --

15 COMMISSIONER MAY: They still have to come back,
16 but they could also come back --

17 MS. SCHELLIN: He's saying now they'll take the
18 approval of everything they can get.

19 CHAIRMAN HOOD: That's a wise decision down here.
20 Okay. All right, so --

21 COMMISSIONER SHAPIRO: So sort of like documents
22 from Turnbull's proxy vote. We knew which way that was
23 going.

24 CHAIRMAN HOOD: Yeah, we knew which way it was
25 going. So -- but I was also going to put it out there.

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1 Maybe they wanted to look at it some more. And I think this
2 will give them time to do that.

3 COMMISSIONER MAY: Well, I mean they're welcome
4 to bring it back, again, as another case. But I think that,
5 as I understand it, they want finality today. And I'm seeing
6 a nod of head, so finality is what they will get. And I
7 would make a motion that we approve Zoning Commission 08-30D
8 25 M Street Modification of Consequence, with the exception
9 of the requested placement of digital -- three digital signs
10 in that the -- or rather two, as it now been modified. So
11 approve except for the digital signage.

12 COMMISSIONER SHAPIRO: Second.

13 CHAIRMAN HOOD: It's been moved and properly
14 seconded. Any further discussion? Let me just say the
15 finality -- they would get finality today if I was to vote
16 against it. I just want to make sure that's clear. It's
17 not -- ain't nothing straight-cut there. Any further
18 discussion? Ms. Shapiro.

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair, I
20 just want to make sure I am understanding this, because this
21 is listed before us a Modification of Consequence. So we
22 are -- we are approving everything but the signs.

23 CHAIRMAN HOOD: But the signs, right.

24 COMMISSIONER SHAPIRO: Okay.

25 CHAIRMAN HOOD: The only thing that's not being

1 approved is any signage.

2 COMMISSIONER SHAPIRO: Because the other way of
3 looking at this, the only thing that's before us is the
4 signs.

5 CHAIRMAN HOOD: That was the only thing that we
6 had disagreement with previously, was signage. And that's
7 why we -- and the reason it's on here like that is because
8 we don't want to bring up all the other issues -- not that
9 we would.

10 I think we had went through the other issues, and
11 everybody was -- we were all onboard with others. The signs
12 was the issue we wanted to give the ANC time to remark, or
13 come back to us with additional language or whatever --
14 actions that the Applicant did on the signage.

15 COMMISSIONER SHAPIRO: Okay. No further
16 discussion from me, Mr. Chair.

17 CHAIRMAN HOOD: Okay, so you want me to be quiet.
18 No further discussion? Okay. Any further discussion? All
19 in favor of the motion, aye.

20 (Chorus of aye.)

21 Any opposition? Not hearing any, so ordered. Ms.
22 Schellin, would you record the vote.

23 MS. SCHELLIN: Yes. Staff records the vote four
24 to zero to one to approve final action in Zoning Commission
25 case number 08-30D without the digital signage, Commissioner

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

4 CHAIRMAN HOOD: We're going to skip the time
5 extension and come back to that conference. Let's go to
6 final action. Zoning Commission case number 17-08 --
7 Providence Place 1 LP, Consolidated PUD and related math --
8 Consolidated PUD and related map of Limited Square 5194.
9 Ms. Schellin.

10 MS. SCHELLIN: Yes sir. This case at Exhibits 38
11 through 40A, and 42 through 43A, we have the Applicant's
12 post-hearing submissions. Exhibits 41 is DMPED's post-
13 hearing response. Exhibit 40 is the ANC 70C letter in
14 support. We ask the Commission to consider final action this
15 evening.

16 CHAIRMAN HOOD: Okay Commissioners. We have a
17 case in front of us. I think the hearing was pretty
18 straightforward. Did we take proposal on this, or is this
19 one action? We took proposed.

20 MS. SCHELLIN: It's proposed --

21 CHAIRMAN HOOD: Because it has map amendment.
22 Okay. Any discussions? Okay. All right, so with that, I'm
23 actually very happy. And I think the DMPED had a response
24 which I think was very detailed and laid out. So I'm ready
25 to move forward this with the convention, and I would move

1 approve Zoning Commission case number 17-08, Providence
2 Place, I LP, Consolidated PUD and related map amendment of
3 Square 5194, and ask for a --

4 COMMISSIONER MILLER: Second.

5 CHAIRMAN HOOD: -- second. It's been moved and
6 properly seconded. Any further discussion? All in favor,
7 aye. Any opposition? Not hearing any, Ms. Schellin, would
8 you record the vote.

9 MS. SCHELLIN: Staff records the vote four to zero
10 to one to approve final action of Zoning Commission case
11 number 17-08, Commissioner Hood moving, Commissioner Miller
12 seconding, Commissioners May and Shapiro in support,
13 Commissioner Turnbull not present, not voting.

14 CHAIRMAN HOOD: Okay, let's go to proposed action,
15 Zoning Commission case number 06-120, George Washington
16 University, Boston Properties first stage modification of
17 significance map amendment and second-stage PUD at Square 75.
18 Ms. Schellin.

19 MS. SCHELLIN: Yes, the Applicant requested the
20 record to be reopened so they could provide a copy of the
21 correspondence between WMATA and WICCA regarding the use of
22 funds and statistics on the Foggy Bottom elevator
23 performance.

24 That request was approved, and the Applicant
25 submitted its document at Exhibit 30. So you have that, plus

1 you have at Exhibits 27 through 27B, and 31 and 32, the
2 Applicant's post-hearing submissions.

3 Exhibit 39 you have WICCA's response to the
4 Applicant's post-hearing submissions, and we'd ask the
5 Commission to consider proposed action this evening.

6 COMMISSIONER MAY: So Mr. Chairman, if I could ask
7 the Chair's indulgence, I have a few questions for the
8 Applicant.

9 CHAIRMAN HOOD: Go ahead and ask the Applicant to
10 come forward.

11 COMMISSIONER MAY: Yeah, I was -- I did review the
12 case and listened to the hearing, and I just had a few
13 questions.

14 CHAIRMAN HOOD: Thank you for reviewing the case,
15 as well. I'm sure Mr. Turnbull did as well.

16 COMMISSIONER MAY: It was my pleasure. I mean I
17 couldn't think of a better thing to do on a Sunday.

18 CHAIRMAN HOOD: Okay, great. See if we can do
19 more of that for you.

20 COMMISSIONER MAY: Thank you. All right, so I'm
21 catching up here. So, the -- my first question is, the
22 extent of your discussions with the National Park Service
23 regarding improvements to the reservation that is across the
24 street from the property.

25 MR. AVITABILE: Sure. It's David Avitabile with

1 Goulston & Storrs, land use Counsel for the Applicant, and
2 with me is Jake Stroman from Boston Properties. I'll start,
3 and Jake, you fill in with the details, because I think
4 Jake's been at the forefront of those discussions.

5 We've been talking with the Park Service for the
6 better part of a year about the potential improvements to the
7 reservation, and included at least one in-person meeting that
8 I attended. I think there's probably been a half dozen
9 conversations. Jake, if you want to fill in the details of
10 who you met with.

11 MR. STROMAN: Sure.

12 COMMISSIONER MAY: Is Robert Nixon and --

13 MR. STROMAN: Robin Nixon, and then Mike Camiso,
14 I believe is his name.

15 COMMISSIONER MAY: Mm hmm.

16 MR. STROMAN: So we had an in-person meeting with
17 them in late-August to review some conceptual design elements
18 for reservation 28, just to get some initial feedback from
19 them. And the conversation's been continuing.

20 It was -- you know, happened prior to that, that
21 meeting date. And then has happened subsequent to that.
22 Just keeping them abreast of the conversations and, you know,
23 the entitlement efforts.

24 MR. AVITABILE: And I think part of this -- the
25 basis for this -- is that Boston Properties has previously

1 partnered with the Park Service on the improvements of
2 maintenance of other reservations in the city, so it's
3 building on that track record.

4 COMMISSIONER MAY: So -- and -- I mean, you know,
5 we're accustomed to doing that. I have not -- I was not
6 aware that any of these discussions were going on, which is
7 at it should be.

8 But I'm wondering -- I mean you actually showed
9 them this design when you discussed it with them, and this
10 is -- I don't know what the exhibit number was, but it's
11 drawing L03 -- I don't know, and --

12 MR. STROMAN: Yes.

13 MR. AVITABILE: Right, it was from our pre-hearing
14 submission.

15 MR. STROMAN: Right.

16 MR. AVITABILE: That's right, we did share that
17 drawing with him, and had an initial discussion at the
18 meeting. After the meeting, they came back to us and said
19 that they had discussed it with some people internally at the
20 Park Service, because what they were trying to analyze is,
21 basically, what are the things that we can change, what are
22 the things that can't change?

23 And there was some feedback. In particular, I
24 think, about the pathways that we were changing, and those
25 might have to remain. So that design is purely conceptual.

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1 It's going to change -- probably significantly -- between now
2 and when we deliver this.

3 COMMISSIONER MAY: Yeah. I'm smiling because,
4 yeah, it's going to change a lot, and I'm just surprised, you
5 know -- there's just so much on here that we could never do
6 on that reservation, given the historic -- the history of
7 those reservations.

8 Although, I mean, we're very much in favor of help
9 maintaining them, and I think it's a great idea. But I just
10 want to make sure that we didn't have unrealistic
11 expectations that we're going to get all these sweeping
12 paths, and things like that, because that won't happen.

13 MR. STROMAN: No. Robin did make it clear about
14 three weeks after that meeting, give or take, that the
15 pathways were considered, you know, sacred, and that there
16 were still conversations internally about what else might
17 additionally be sacred within that part, to kind of give us
18 some parameters to design around.

19 COMMISSIONER MAY: Okay. So for future purposes,
20 when it comes to the actual improvements that might be
21 considered, if it's going to be anything that is beyond sort
22 of restoring the existing, it's going to have to go through
23 my office -- not necessarily me, but staff in my office, or
24 one of my colleagues.

25 So I would not meet with Robin and Mike without

1 having regional staff there present next time around.

2 MR. STROMAN: Duly noted.

3 COMMISSIONER MAY: Okay. So, let's see -- oh, and
4 with regard to placing a bike share station on the MPS
5 reservation, did you discuss that with Robin Nixon and Mike
6 Camiso?

7 MR. STROMAN: We did.

8 COMMISSIONER MAY: And did they have any issues
9 with that?

10 MR. STROMAN: They indicated that it's not
11 something that they typically do. But there are capital bike
12 share stations on the National Mall and other places. There
13 was no decision rendered whatsoever at that point. They said
14 that this was internal conversation that they were planning
15 to have.

16 COMMISSIONER MAY: All right, well I can be a
17 little more clear than they can, which is that I don't think
18 that we would approve this in the long run.

19 I mean having them on the mall versus having them
20 on a very small triangle is a very different thing. So I
21 would look very strongly at other locations. But you have
22 that flexibility. So --

23 MR. STROMAN: And we have other locations onsite
24 that will satisfy --

25 COMMISSIONER MAY: Okay. That's good. I would

1 focus on those. It's just because we don't want to be taking
2 up valuable green space for the sake of more bike share
3 docks. We like -- we love bike share docks, but -- and there
4 are certainly locations where it makes a whole lot of sense
5 to have them. But not there.

6 And -- let's see -- oh, in the hearing there was
7 a -- there was some discussion, and I appreciate my
8 colleagues trying to address things that they know are areas
9 of interest to me. In particular, the lack of setback on the
10 west side of the penthouse on the Pennsylvania Avenue side.

11 And it looked like you were showing a drawing that
12 might show what that looked like from the street. What --
13 did you actually have a drawing of that? Because I looked
14 through everything that I saw, and I didn't see it in the
15 presentation, and I didn't see it in the other drawings.

16 MR. AVITABILE: It should have been in the
17 presentation that we submitted.

18 COMMISSIONER MAY: Okay.

19 MR. STROMAN: It was in the presentation.

20 COMMISSIONER MAY: And it showed a street view --

21 MR. STROMAN: Yes.

22 COMMISSIONER MAY: -- looking at Pennsylvania
23 Avenue from the side where you're most likely to see that?

24 MR. AVITABILE: Yes. So it was from the --

25 COMMISSIONER MAY: North side of Pennsylvania

1 Avenue.

2 MR. AVITABILE: North side of Pennsylvania Avenue,
3 looking south, and there were a couple of shots, I think,
4 that showed as you would -- essentially as you were walking
5 down the street --

6 COMMISSIONER MAY: Okay.

7 MR. AVITABILE: -- what you would see, or really
8 what you wouldn't see.

9 COMMISSIONER MAY: All right. All right, well I
10 looked for that several times and I didn't see it. So if
11 you -- if it's easy for you to find a page for it, that would
12 be fantastic. But if not, I will --

13 MR. STROMAN: I have my computer.

14 COMMISSIONER MAY: -- figure it out.

15 MR. STROMAN: Let me grab it. Give me one second.

16 MR. AVITABILE: We'll look as you continue to --

17 COMMISSIONER MAY: Yeah, I mean I think that's the
18 real question I have about it. I mean, you know, I'm --
19 that's not the sort of thing that I'm generally going to
20 support.

21 And I think Vice Chair Miller voiced my concern
22 pretty directly, that I would -- my reaction on things like
23 this is that, you know, make the occupiable space smaller so
24 that you can push the penthouse back and meet the
25 requirement -- required setbacks.

1 I'm looking through the presentation now, too.
2 I appreciate my colleagues indulgence on this for a couple
3 of minutes. The one thing I would note also, Mr. Schellin,
4 I think that the new sort of split screen thing that happens
5 on the hearings, is really fantastic.

6 But it would be great if one of those splits were
7 actually what was on the screen, so we could hear them
8 talking, and understand what they're showing. Right now it
9 shows a camera with the Commissioner, and a camera on the
10 Applicant.

11 And it would be better if it showed a camera on
12 the Applicant, and then the other split screen being what
13 image is being projected. So, it's just an observation. I'm
14 sure that members of the public would appreciate it, too.

15 MR. STROMAN: Hold on. Let me see.

16 COMMISSIONER MAY: It's otherwise a lovely
17 building. So --

18 MR. STROMAN: Thank you. Just give me one minute.
19 It's --

20 COMMISSIONER MAY: Sure. You know, maybe we want
21 to turn to the other discussion of issues while you guys try
22 to find that. And -- I don't want to take up too much of the
23 time of the rest of the Commission.

24 MR. AVITABILE: I think I may understand why --
25 I think we had a couple of slides that we had prepared in

1 case questions came up, and I think it was in that set of
2 slides. So that may not have been in the written record.

3 COMMISSIONER MAY: So you have it now?

4 MR. AVITABILE: We do have it now.

5 COMMISSIONER MAY: Okay. Is there a way for us
6 to get that somehow?

7 MR. STROMAN: I need a -- hold on.

8 COMMISSIONER MAY: So other issues that came up,
9 I think I'll go ahead and start talking about my other
10 questions or issues that do not involve the Applicant
11 answering questions.

12 So, the -- let's see -- I think there's one other
13 area of relief, or explanation I guess -- no, it's relief --
14 having to do with the extended skylight between the penthouse
15 wings.

16 And I don't -- ordinarily, I'm a stickler for
17 making sure that we don't have too much sort of extended
18 facade. But since it's in a facade that faces an alley, and
19 it is between two wings of the penthouse, I don't think
20 that's an issue.

21 The other open issues, I am -- I know there was
22 a lot of discussion of, I guess, trying to earmark -- okay,
23 I'll look at that in a sec -- earmark the \$350,000 toward --
24 specifically toward building an elevator, or another
25 entrance.

1 And I tend to want to allow Metro's planning
2 process take its course, rather than -- you know, I would
3 certainly encourage that they consider that, because we heard
4 testimony to that effect.

5 But I certainly wouldn't want to do anything too
6 heavy handed in that regard. I think it's -- I'm a big
7 advocate for planning first, and decision-making after you've
8 done the planning. So -- and then with regard --

9 CHAIRMAN HOOD: Let the rest of us just comment
10 on that issue, since --

11 COMMISSIONER MAY: Oh sure.

12 CHAIRMAN HOOD: Yeah. Any other comments?
13 Mr. Shapiro?

14 COMMISSIONER SHAPIRO: I concur with
15 Commissioner May. I thought that the correspondence that we
16 saw made it clear that WMATA was not looking to have the
17 money earmarked, while they were happy to be a part of the
18 planning process, to see if there was additional need. So
19 I would concur with Commissioner May.

20 CHAIRMAN HOOD: Any other comments on that?

21 VICE CHAIR MILLER: I, too, concur with the
22 comments on the elevator. I think the \$350,000 will be
23 get -- will get spent a lot sooner if we don't put ourself
24 in the role of being the WMATA board or executive director.

25 CHAIRMAN HOOD: I understand West End's stance.

1 I appreciate the fight, and eventually they will prevail.
2 But when I saw the email from WMATA stated, and how they
3 would like to move forward in their planning process, then
4 I would have to take that really under consideration.

5 In the email it mentions about how there's some
6 other things that are down cert- -- I think elevators that
7 are down, and some other things they mentioned.

8 And I think, as all my colleagues mentioned, they
9 have a planning process and a way to -- but I can tell you,
10 knowing the West End Citizens Association, eventually I'm
11 sure that will come to light.

12 While it may not come to light with case in this
13 particular time, but I know they're going to keep fighting
14 for it. And, I mean eventually I'm sure that that will
15 happen. Okay, anything else on that?

16 VICE CHAIR MILLER: We're not -- I just want to
17 emphasize what you're saying. We're not precluding that from
18 being the purpose that's -- that those monies are used for.

19 CHAIRMAN HOOD: Right. Okay. Anything else?
20 Okay, your other issues?

21 MR. STROMAN: The date --

22 CHAIRMAN HOOD: Wait -- I'm sorry.

23 COMMISSIONER MAY: Thank you. So having seen
24 these images now, I mean I'm still not enthusiastic about it.
25 I mean -- and I didn't necessarily buy the argument that it's

1 driven by floor plates and placement of the elevator and so
2 on. I mean is it -- is it -- I mean can you explain that a
3 little bit more thoroughly?

4 MR. STROMAN: Sure. So the configuration of the
5 building being both sort of north tower and south tower, is
6 separated by a fairly large atrium. The floor plates are
7 fairly narrow, which means -- so on this north elevation,
8 there's only 80 feet of building width, which requires a lot
9 of that equipment.

10 In some of those, the widths, the floor plates,
11 you know, in typical buildings are 100 feet. So that 20 feet
12 that is of narrowness requires some of that mechanical
13 equipment on the roof to sort of spread out further, which
14 is that coupled with the fact that there's a condition at the
15 ninth floor that requires already a building setback from the
16 adjacent structures, of 20 feet.

17 Sort of eats into where we can actually locate
18 mechanical equipment on that penthouse.

19 COMMISSIONER MAY: Okay. So -- and I have one
20 last question on this. What is the setback from Pennsylvania
21 Avenue for that penthouse?

22 MR. STROMAN: The penthouse is --

23 COMMISSIONER MAY: I know it's at least 20 feet.

24 MR. STROMAN: It's at least 20 feet. I'm not sure
25 exac- -- it could be -- let me pull up my plans, and --

1 COMMISSIONER MAY: I mean it just -- this is a
2 thought that just occurred to me. Otherwise I would have
3 checked it earlier myself.

4 MR. STROMAN: Give me one second.

5 MR. JESICK: Commissioner May.

6 COMMISSIONER MAY: Yeah.

7 MR. JESICK: It's 29 feet, 7 inches.

8 COMMISSIONER MAY: 29' 7"? Okay. So given all
9 these circumstances -- the fact that you had to have that
10 setback from the -- you have to have a setback from the
11 abutting building.

12 MR. STROMAN: Yes.

13 COMMISSIONER MAY: And so that limits the overall
14 floor plate and the fact that you're pushing back an extra
15 nine-something feet on Pennsylvania Avenue. I can accept
16 that this is a reasonable compromise.

17 MR. STROMAN: Thank you.

18 COMMISSIONER MAY: So -- okay. But let's not look
19 at this as a precedent anyway. All right, so that was -- I
20 think actually, the only other issue I had was the discussion
21 of DDOT's desire for another \$80,000 to go to the WMATA study
22 to offset the loss of other TDM measures.

23 So -- which I didn't find particularly compelling
24 on the part of DDOT, but I'm interesting in hearing what the
25 rest of the Commission has to say.

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1 CHAIRMAN HOOD: Okay, Commissioner Shapiro.

2 COMMISSIONER SHAPIRO: Mr. Chair, the only comment
3 I have is I appreciate the Applicant addressing the issue
4 where the loading dock was, and I'm much happier with
5 revisions around the glass and the metal panel, and the
6 elevator configuration.

7 There were -- I'm not sure there were any
8 architects on our -- for that day, so the architect to my
9 right may have a opinion about this. That's all I have,
10 Mr. Chair.

11 CHAIRMAN HOOD: Okay. Mr. Shapiro, I think that
12 was the case that you took his place -- architect's place.
13 Yeah, you filled in --

14 COMMISSIONER SHAPIRO: I agree. He did a good
15 job.

16 CHAIRMAN HOOD: I want you to know he filled --
17 oh yeah, he filled in for you. I want you to know that.
18 Okay, Vice Chair.

19 VICE CHAIR MILLER: Thank you Mr. Chairman. I,
20 too, appreciate the Applicant's response to all of the issues
21 and questions that were raised at the hearing, in the
22 Applicant's November 2nd, and I think it's November 10th,
23 submissions.

24 A question, I guess, for Office of Planning,
25 unless I missed any new filing, do you -- are -- is Office

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1 of Planning still recommending that the Applicant commit to
2 not locating a daycare center in the cellar.

3 I think we've received information from the
4 Applicant as to how that should -- may be a licensing issue,
5 and -- but maybe you could comment on that, Mr. Jesick.

6 MR. JESICK: Yes, thank you. For the record, my
7 name is Matt Jesick. We would, on that issue, yield to our
8 colleagues at OSSE and their licensing requirements, as to
9 where daycare centers may or may not be located.

10 And I know they have standards that all centers
11 are judged by. So we would allow them to make that call.

12 VICE CHAIR MILLER: Thank you for that comment.
13 And I think the Applicant did indicate that they've
14 successfully developed daycare centers, both at the ground
15 level and at the low grade, and in other projects that
16 they've been involved with.

17 And I guess I would concur with Commissioner May
18 that we don't really have the ability to compel the Applicant
19 to add an additional \$80,000 to that WMATA elevator
20 improvement commitment.

21 We could deny the whole project and say that
22 without it we don't think the TDM measures are sufficient,
23 but -- or indicate that we think that that needs to be looked
24 at again. But I'm ready to go forward with this tonight,
25 Mr. Chair.

1 CHAIRMAN HOOD: Any other questions or comments?
2 I'm probably going to get in trouble for this. Won't be the
3 first time. I -- Ms. Maddux has been -- I've been coming
4 down here a long time, and I see her, she's just chomping at
5 the bit. She looks like she's about to cry. She's getting
6 to my heart, so --

7 I know it's not normal for the process, and I'm
8 going to take the Chair's privilege and ask if you just --
9 if we don't go back into a hearing -- you want to say
10 something. One thing.

11 Okay, I'm going to do that, Ms. Maddux. Come
12 forward. You've been in the trenches a long time. So I'm
13 going to have you just come -- now let's not make this -- not
14 for you, but I'm telling others who are watching me to this.
15 This is not going to be a every meeting occurrence, but go
16 ahead, Ms. Maddux.

17 MS. MADDUX: The concern about the allocation for
18 the project with WMATA, is that we make sure it is totally
19 encircled to be applied accordingly. Because we have
20 previous experiences with PUDs, where the amenities got
21 frittered off, and they weren't completed.

22 So we want better, more stable assurance that that
23 \$350,000 will be with WMATA, working with the neighborhood
24 as the planning process goes along, to make sure it really
25 does. Because otherwise, we have to go after the zoning

1 administrator to get the amenities that you all have
2 graciously included on previous things.

3 And we have lost a lot of things in the
4 neighborhood with these other amenities that have frittered
5 out. So our concern is that it be very strictly
6 circumscribed in the process, to be sure to be the Foggy
7 Bottom Metro to solve the problems that we look at, which is
8 people being able to get into and out of.

9 And that's why we went -- and have been going for
10 ages, for the second elevator, either next to the current
11 one, or across the street. And I apologize if I've extended
12 over your good graces.

13 CHAIRMAN HOOD: That's okay. I thank you. Okay,
14 thank you.

15 MS. MADDUX: That's --

16 CHAIRMAN HOOD: Ms. Maddux.

17 MS. MADDUX: That's it.

18 CHAIRMAN HOOD: Okay.

19 MS. MADDUX: Thank you kindly.

20 CHAIRMAN HOOD: Mr. Avitabile, can you -- are
21 you -- can you comment on that?

22 MR. AVITABILE: I think what we've been endeavoring
23 to do from the beginning of the process, is to deliver to the
24 West End Citizens Association what they want, which is this
25 contribution to this metro station, and to ensure that it

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1 goes to improvements to this metro station.

2 We've also said what we -- we believe strongly
3 that WMATA should include the neighborhood in the planning
4 process. They've told us they will at the appropriate time.
5 And I think we're happy to continue to work with the Office
6 of the Attorney General to make sure that the condition does
7 exactly what Ms. Maddux is looking for.

8 I think we're -- we have been very much 95 percent
9 aligned on this issue with the West End Citizens Association,
10 other than what the money will be used for. And even there,
11 we wouldn't preclude it going toward the elevator. We just
12 want the planning process to identify it.

13 CHAIRMAN HOOD: Okay. All right. Again, for
14 those that saw me just do that, that's not the normal way,
15 but Ms. Maddux, she just got to my heart. So I had to do
16 what I had to do.

17 Okay. All right, anything else? Okay, I want to
18 thank you all for coming to the table. We appreciate it.

19 Okay, colleagues, anything else? Or would
20 somebody like to make a motion? I don't have anything.

21 COMMISSIONER SHAPIRO: Mr. Chair?

22 CHAIRMAN HOOD: Mr. Shapiro.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
24 move that we take proposed action on Zoning case -- Zoning
25 Commission case number 06-120, George Washington University

1 and Boston Properties First Stage Modification of
2 Significance map amendment, and second-stage PUD at
3 Square 75. Looking for a second.

4 VICE CHAIR MILLER: Second.

5 CHAIRMAN HOOD: Okay, it's been moved and properly
6 seconded. Any further discussion? All in favor, aye.

7 (Chorus of aye.)

8 CHAIRMAN HOOD: Any opposition? Not hearing any,
9 Ms. Schellin, would you record the vote?

10 MS. SCHELLIN: Yes. Staff records the vote four
11 to zero to one to take proposed action -- or to approve
12 proposed action of Zoning Commission case number 06-120,
13 Commissioner Shapiro moving, Commissioner Miller seconding,
14 Commissioners Hood and May in support, Commission Turnbull
15 not present, not voting. And I just remind the Applicant
16 to -- that the proffer and condition process starts, first
17 filing due in seven days.

18 CHAIRMAN HOOD: Okay. Do we have any GW students
19 here? Okay. All right. Let's -- I hate to put them on the
20 spot, but Commissioner Shapiro was asking, so I figured I
21 would ask. So let's go back to the time extension, Zoning
22 Commission case number 05-28U, Lano Parcel 12, LLC, two-year
23 PUD time extension at Square 5055. Ms. Schellin.

24 MS. SCHELLIN: Yes. The Applicant states that the
25 PUD now faces the challenge of effectuating the remaining

1 phases without over-saturating the market. The Applicant
2 anticipates introducing approximately 300 residential units
3 before or in 2021 -- excuse me -- and an additional 250 units
4 before or in 2024, because the initial market rate and
5 workforce multifamily residential units will not be delivered
6 until 2021.

7 Lenders are reticent to commit to additional
8 residential development at this time. So that was a
9 statement from the Applicant in their filings. And then in
10 Exhibit 5 we have an ANC 7D letter in support. Exhibit 6 is
11 the OP report.

12 Exhibit 7, we have the Applicant's response to OP,
13 which OP has not had an opportunity to address, since it was
14 filed today. However, I believe OP would like to address the
15 Applicant's response. If they could do so this evening on
16 the dais.

17 CHAIRMAN HOOD: Okay, thank you, Ms. Schellin.
18 Since the Office of Planning has not had a chance to respond,
19 let's go straight to Ms. Steingasser. Ms. Steingasser?

20 MS. STEINGASSER: Yes sir, thank you very much.
21 This was filed close to 2 o'clock this afternoon, so we
22 haven't had a lot of time to go through it in detail. But
23 we have recommended that the Commission approves the waiver
24 that's needed to request the extension.

25 This is the fourth waiver, and as you know, the

1 regulations restrict waivers to two, and the second waiver
2 only for one year. So this is a 12-year project with a
3 fourth waiver.

4 But our -- we -- subject to the Commission
5 approving that waiver, we also recommend approval of the
6 extension, but subject to the material facts that have
7 changed, and that are now in play, which is
8 the -- specifically, the competence plan's been adopted and
9 modified several times, and then of course the Department of
10 Environment and Energy has also new development regulations.

11 And we would recommend that the Commission -- that
12 the applications going forward be subject to those new
13 conditions, and that the Applicant, who has requested that
14 they maintain flexibility, that they request that flexibility
15 with each stage two.

16 And that gives the opportunity for the starting
17 point to be the current regulations, the current material
18 facts, with the flexibility then provided, as you may recall,
19 in case 0528-R -- we did propose that there be some current
20 standards applied to the second stage.

21 And the Applicant then said no, the first stage
22 vested the second stage, and so we couldn't get any leverage.
23 And so with issues such as solar and inclusionary zoning, we
24 would ask that those -- you know, that the application be
25 held to the current codes, and then the flexibility be

1 requested at the Applicant's burden at the time of stage two,
2 if that makes any sense at all. Thank you.

3 CHAIRMAN HOOD: Okay, so Ms. Steingasser, going
4 forward with these type of requests, do you want us to pretty
5 much -- now unless we hear otherwise, or other material
6 facts, or other evidence comes in, or a reason to give us
7 good cause not to approve anything more than two times, you
8 want us to really look hard and fast at the letter of the
9 regulations that we implemented.

10 MS. STEINGASSER: Yes sir.

11 CHAIRMAN HOOD: Okay.

12 MS. STEINGASSER: Please.

13 CHAIRMAN HOOD: I got it loud and clear. Okay,
14 and I'm glad you said that. That's why I wanted to repeat
15 it. I got it, but I wanted to repeat for those who are going
16 to say, well you did it for this case.

17 But there's a specific reason, as Ms. Steingasser
18 just mentioned, and we just went into ZR-16, and that applies
19 as well. So I think -- there are certain circumstances which
20 sometime we have to be allowable, because everyone knows I'm
21 not in favor of putting a rule in place, then undoing it
22 right after we put it in place.

23 But I think, as described by Ms. Steingasser, I
24 think this is very good reason. This is one of those cases
25 where we're still in between 58 and the ZR-16, and I think

1 this is a good cause to do that. Let me open it up for any
2 further discussion. Peter. Commissioner May.

3 COMMISSIONER MAY: All right. I tell you, I have
4 a -- I should have a script by now about, you know, being
5 cranky about granting extensions even when we had just done
6 those zoning reg rewrite, and decided we don't want to do
7 more than two extensions.

8 Maybe I'll go back and listen to the many times
9 that we've had this discussion, and then I could just, you
10 know, recite my script every time.

11 And I -- you know I feel like in this -- this case
12 has very strong reasons why it makes sense. It also, I
13 think, is an example of where, when it was originally
14 approved, we probably should have thought more carefully
15 about how this was going to play out over time, because I
16 don't think that we really want to be in the habit of having
17 a PUD like this play out over decades.

18 And so I'm not enthusiastic about granting the
19 extension. I think that the really positive thing that I saw
20 in the record on this particular request, was the ANC's
21 support, and why they supported it.

22 And I feel like, you know, after having a few
23 contentious hearings on the most recent cases, they've turned
24 the corner a bit, and I think that the Applicant and the ANC
25 are working better together now than they have at some times

1 in the not-too-distant past.

2 So I think for those reasons I would support it.
3 I mean I also am supportive of the Office of Planning's
4 position though, that we should try to hold these -- I mean
5 a lot of time has passed, and a lot has changed in terms of
6 the regulatory framework for this, and I think we should be
7 holding them to the higher standards. And if they need
8 relief on the development of this parcel, then, you know,
9 then they can request it at that time. But I think that
10 they -- we should be setting the standard a little bit higher
11 since so much time has passed. And I think that's a small
12 price to pay for a fourth extension.

13 CHAIRMAN HOOD: All right, thank you, Commissioner
14 Shapiro.

15 COMMISSIONER SHAPIRO: Ditto. The -- and just --
16 I'm reminding myself, remind us, that what Ms. Steingasser
17 is recommending and what we might approve, doesn't preclude
18 flexibility. It just gives them a different place where
19 they're starting from. So I would associate myself with
20 Commissioner May's comments, and I would encourage us to move
21 forward on the extension.

22 CHAIRMAN HOOD: Okay. Vice Chair, do you have
23 anything?

24 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
25 concur with Commissioner Shapiro and Commissioner May, and

1 I'm ready to move forward.

2 CHAIRMAN HOOD: For some reason, when we have
3 these type of cases -- and in the past when I first started
4 the Zoning Commission, I like to call this the Herb Franklin
5 rule. I'm going to always do that as long as I'm here. This
6 is the Herb Franklin rule.

7 COMMISSIONER MAY: That's part of your script.

8 CHAIRMAN HOOD: Yeah, that's part of my script,
9 too -- the Herb Franklin rule. Because when I first got
10 here, we was ten and twenty year extensions. But anyway,
11 someone like to make --

12 (Off-mic comment.)

13 CHAIRMAN HOOD: No, this was the Herb Franklin
14 rule.

15 (Off-mic comment.)

16 CHAIRMAN HOOD: Well I don't know where he got it.
17 I heard it from Herb. But anyway, let's -- maybe I need to
18 go back and look at the transcripts.

19 (Off-mic comment.)

20 CHAIRMAN HOOD: Let's see. We're getting some
21 last-minute information.

22 MS. SCHELLIN: Chairman Hood, the Applicant is
23 saying that they almost would rather not have the time
24 extension approved, if they're going to be held to the new
25 regs -- the new rules. Is that correct?

1 (Off mic comments.)

2 MS. SCHELLIN: Actually, they'd like to ask the
3 Commission to defer action so they can talk to OP to find out
4 how this would affect them with the new -- what's already
5 been done, and the new IZ regs and stuff, how it would really
6 affect them.

7 If the Commission could defer action until their
8 Jan- -- until the January 8th meeting.

9 CHAIRMAN HOOD: Okay. If everybody's onboard,
10 colleagues. January 8th? Any objection? No, any objections
11 up here? So we have no objections. We will defer this to
12 January 8th.

13 MS. STEINGASSER: Okay.

14 CHAIRMAN HOOD: Is that it for the -- that's it
15 for --

16 MS. SCHELLIN: Yeah.

17 MS. STEINGASSER: If they're not, then that works.

18 MS. SCHELLIN: That works.

19 CHAIRMAN HOOD: Okay. All right, let's go -- I
20 think -- what do we have next? Correspondence. Okay.
21 Zoning Commission case number 15-27, KF Morse, LLC request
22 for reconsideration and amendment of the final order, Union
23 Market Neighbors, Ms. Schellin.

24 MS. SCHELLIN: Yes. Exhibits 80 and 80A, we have
25 a request for reconsideration and amendment of the final

1 order from Union Market Neighbors, a non-party to the case.
2 But also note that their filing states that they're actually
3 requesting to reopen the record.

4 However, as the Commission knows, the order has
5 been issued in this case, and so the case cannot be reopened
6 at this point. So we'd ask the Commission to consider the
7 request that's before you.

8 The Applicant did also submit a response and a
9 further response since they filed their initial request, then
10 they filed a second request, and I believe those exhibits are
11 80 and -- 81 and 81A. So if the Commission would consider
12 this request, I'd appreciate it.

13 CHAIRMAN HOOD: Okay, so --

14 MS. SCHELLIN: And the Applicant's motion, if --
15 the Applicant has also asked if the Commission denies Union
16 Market's motion, they're asking that then the Union Market's
17 attachments be stricken from the record.

18 CHAIRMAN HOOD: Okay. Maybe I'll ask Ms. Lovick
19 or Mr. Ritting this question. And I think I got that. I
20 think I have the answer in front of me. But the zoning
21 regulation provide that only parties may request
22 reconsideration. So I can ask you. First of all,
23 Commissioners, the -- our zoning regulations do not allow for
24 such a motion, first of all, because they're not a par- --
25 let me ask this.

1 The motion to reopen the record, I think, is late,
2 and they were not a party. The order's already been issued,
3 correct, Ms. Schellin?

4 MS. SCHELLIN: That's correct.

5 CHAIRMAN HOOD: So the order's already out there.
6 So the record has been closed, and the zoning regs do not
7 allow for such a motion after a final order has been issued.
8 So I think -- do we need to vote on that?

9 MS. SCHELLIN: Yes.

10 CHAIRMAN HOOD: We need to v- -- okay.

11 MS. SCHELLIN: To deny, or to approve.

12 CHAIRMAN HOOD: So I would move that we deny the
13 motion by the amendment of the -- well the Union Market
14 Neighbors, to open the record due to our regulations, which
15 says -- the zoning regulations do not allow for such a motion
16 after the final order's been issued, and ask for a second.

17 COMMISSIONER SHAPIRO: Second.

18 CHAIRMAN HOOD: Moving's been properly seconded.
19 Any further discussion?

20 COMMISSIONER SHAPIRO: Under discussion, I believe
21 if the advice from our attorneys is correct, that that -- we
22 don't allow for such a motion, and that the motion that we
23 should be considering is a request for reconsideration of
24 rehearing. And it's that motion that would be before us.

25 And then you're -- what you're saying is that you

1 would deny that motion.

2 CHAIRMAN HOOD: I think it's three motions that
3 I'm going to put out --

4 COMMISSIONER SHAPIRO: I believe that's the first
5 one, though.

6 CHAIRMAN HOOD: No. What's the first motion? To
7 reopen --

8 MR. RITTING: The first motion is, is the Union
9 Market Neighbor's motion to reopen the record.

10 CHAIRMAN HOOD: Reopen the record.

11 MR. RITTING: Which doesn't exist in your rules.

12 CHAIRMAN HOOD: Right.

13 MR. RITTING: So the question is, well what do you
14 call --

15 COMMISSIONER MAY: What are we interpreting as --

16 MR. RITTING: Yeah, what are you interpret that
17 as. And what we think is the most logical fit is the -- a
18 motion for reconsideration, rehearing, or re-argument, which
19 does exist under your rules -- it's Subtitle Z,
20 Section 700.3.

21 And if you look at that rule, it says that only
22 parties request reconsideration -- rehearing, and that they
23 must do so within ten days after issuance of the order. In
24 this case, Union Market Neighbors are not a party, and this
25 is well after ten days. It's -- their request was filed 68

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1 days after the order was issued. So those are potential
2 reasons for you to deny the motion.

3 COMMISSIONER SHAPIRO: But Mr. Chair, if I'm still
4 under discussion, I just want to make sure we're getting this
5 right. So my understanding is, the first thing that -- as
6 a friendly amendment to the Chair's motion, it would be, the
7 motion is not a request to reopen -- we're not taking up a
8 motion to request the reopening of the record.

9 We're interpreting that to mean it's a request for
10 reconsideration and rehearing, and it's that motion that
11 we're taking up.

12 MR. RITTING: Okay.

13 COMMISSIONER SHAPIRO: So that's --

14 CHAIRMAN HOOD: Well let me ask this. What was
15 spelled out in the application before us? It says, motion
16 to consider order and reopen record, to include mitigation
17 conditions. Our regulations collaborate on amending the
18 order, per DCMR 11. Let me -- okay, Vice Chair.

19 VICE CHAIR MILLER: So I was going to suggest, but
20 I'll defer to your wisdom on this matter, but that we just
21 have a combined motion to deny any motion to reopen the
22 record, denying any motion to reconsider, denying any
23 motion -- which they didn't even make -- to waive the rules
24 to allow all that, because there's no good cause shown, it's
25 untimely, it's -- they're not a party -- way after -- so I

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1 just would suggest that we --

2 CHAIRMAN HOOD: I actually like that, because that
3 would --

4 VICE CHAIR MILLER: -- deny everything that they
5 asked for, and that they didn't ask for, which would lead --
6 because there's no rule that allows what they ask for. But
7 if they had moved to -- they didn't even ask for us to waive
8 the rules, which they could have. But they didn't feel
9 good -- they didn't ask for that, and they didn't -- and they
10 didn't show any good cause -- give every -- good cause reason
11 to waive the rules. So I would suggest that we move a
12 combined motion to deny reopening the record, deny
13 reconsidering, and deny --

14 CHAIRMAN HOOD: Rehearing.

15 VICE CHAIR MILLER: -- any waiver of the rules,
16 which they didn't even ask for.

17 COMMISSIONER MAY: Second.

18 COMMISSIONER SHAPIRO: Mr. Chair, per Robert's
19 rules, there's already a motion that we'd need to withdraw
20 before we take up that motion.

21 CHAIRMAN HOOD: Well I think --

22 COMMISSIONER SHAPIRO: So I would withdraw my
23 second for the first motion.

24 CHAIRMAN HOOD: He's going to withdraw -- no,
25 we're going to come back to your motion. He's going to

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1 withdraw his second. I'm going to withdraw mine. But I'm
2 also going to note that motion was in order -- the first
3 order that I was making. It was definitely in order because
4 of what the Applicant had provided. So what we're going to
5 do now --

6 VICE CHAIR MILLER: Yeah, I wasn't suggest it
7 wasn't.

8 CHAIRMAN HOOD: Yeah, but no, no. So now Vice
9 Chair Miller's going to give us a motion to take care of all
10 that. Then I got one more motion after that.

11 VICE CHAIR MILLER: Right.

12 CHAIRMAN HOOD: Yeah.

13 VICE CHAIR MILLER: So I -- you want me to repeat
14 what I just said?

15 CHAIRMAN HOOD: Yes, please.

16 VICE CHAIR MILLER: Okay. So I would move that
17 we -- the Zoning Commission deny the request to reopen the
18 record, deny the request for reconsideration, and deny what
19 they didn't even ask for, which is a waiver of the rules to
20 allow for those motions, because those motions aren't even
21 permitted under our rules, because it's untimely -- they're
22 untimely, they're not a party, and there's no good cause show
23 for either the motions, or for waiving our rules.

24 COMMISSIONER MAY: Second.

25 CHAIRMAN HOOD: It's been moved and properly

1 seconded. Any further discussion? All those in favor, aye?
2 Any opposition? Not hearing any, Ms. Schellin, would you
3 record the vote.

4 MS. SCHELLIN: Staff records the vote four to zero
5 to one to deny Union Market Neighbors' request to reopen the
6 record, the request for reconsideration, and any waiver that
7 may have been requested but not requested, Commissioner
8 Miller moving, Commissioner May seconding, Commissioners Hood
9 and Shapiro in support. Commissioner Turnbull not present,
10 not voting.

11 CHAIRMAN HOOD: Also, I would move that we strike,
12 as requested, the -- we would -- hold on, let me think. I
13 would move that we grant the Applicant's motion to strike,
14 which is think is Exhibit 82, as requested by the Applicant,
15 and ask for a second.

16 COMMISSIONER MAY: Second.

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

19 COMMISSIONER SHAPIRO: Mr. Chair, I --

20 CHAIRMAN HOOD: Yes.

21 COMMISSIONER SHAPIRO: -- want to make sure. Is
22 it just -- so what we're asking to strike is, let's make sure
23 we got the right exhibit.

24 MS. SCHELLIN: It's the attachments to the Union
25 Market Neighbors' motion.

1 CHAIRMAN HOOD: Is that Exhibit 82?

2 COMMISSIONER SHAPIRO: 80A.

3 CHAIRMAN HOOD: Let's make sure we got the right.

4 I'm not --

5 MS. SCHELLIN: 80A.

6 COMMISSIONER SHAPIRO: 80A and its attachments.

7 MS. SCHELLIN: Correct.

8 CHAIRMAN HOOD: 80A? Okay. And it's attachments.

9 MS. SCHELLIN: Yes.

10 CHAIRMAN HOOD: All right. Well, actually
11 anything that came in with that, whatever the exhibit is.
12 But right now it's 80A and its attachments, or anything else.
13 Okay.

14 COMMISSIONER SHAPIRO: I believe it's 80 -- well,
15 80 is just the request, so that's fine.

16 MS. SCHELLIN: No. 80A also has the request too.
17 And then what happened is, they refiled the request, and when
18 they refiled it at 80A, they stuck a bunch of attachments
19 to it.

20 CHAIRMAN HOOD: So wherever it is that came in --

21 MS. SCHELLIN: We'll take care of it.

22 CHAIRMAN HOOD: Yes. I want -- whatever
23 exhibit -- 80A, 82 --

24 COMMISSIONER SHAPIRO: What we're striking is the
25 attachments thereof.

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1 MS. SCHELLIN: Correct.

2 CHAIRMAN HOOD: Attachments.

3 MS. SCHELLIN: We got it.

4 CHAIRMAN HOOD: We've already dealt with the
5 request. Okay. Move is properly seconded. Any further
6 discussion? All those in favor, aye.

7 (Chorus of aye.)

8 All right, any opposition? Not hearing any,
9 Ms. Schellin, would you record the vote?

10 MS. SCHELLIN: Staff records the vote four to zero
11 to one to grant the Applicant's motion to strike the
12 attachments in Union Market Neighbors' filing, Commissioner
13 Hood moving, Commissioner May seconding, Commissioner Shapiro
14 and Miller in support, Commissioner Turnbull not present, not
15 voting.

16 CHAIRMAN HOOD: Okay. Next, under Correspondence,
17 we have Zoning Commission case number 11-03J, the Wharf REIT
18 Leaseholder, LLC application's request to provide multiple
19 decisions and responses from parties. Ms. Schellin?

20 MS. SCHELLIN: Yes. At Exhibit 76, 76A, the
21 Applicant filed a motion requesting three separate decisions,
22 and three separate orders. Exhibit 77, ANC 6D's opposition
23 to this requested, stated that they felt this should have
24 been done prior to the hearing, and stated, quoting, most
25 particularly, ANC 6D does not wish to discover at any point

1 in time that because one -- because a portion of this case
2 has been decided, that concerns over other items in another
3 portion of this case might preclude -- might be precluded
4 from consideration.

5 Exhibit 84, we have the Applicant's motion to also
6 extend the deadline for filing their draft findings of facts,
7 conclusions of law, which are due by 3 p.m. today.

8 However, since the Commission was not going to
9 make their decision on their motion to file multiple orders
10 and to have multiple decisions made until this evening, the
11 Applicant has asked for an extension to file their drafts
12 until noon on Wednesday, November 29th.

13 CHAIRMAN HOOD: Okay. Commissioners, we haven't
14 asked about three orders, and then we haven't asked of
15 extension. We have the ANC's response. Let's open it up for
16 comments from us.

17 COMMISSIONER SHAPIRO: Mr. Chair, I would be --
18 it would be helpful to me if I could hear some of the
19 rationale for the request beyond the most basic issues around
20 expediency and economy. But a little bit more detail would
21 help me in my decision-making.

22 CHAIRMAN HOOD: Okay. Whose case is this? I
23 guess -- can you come forward, Mr. Glasgow? I didn't want
24 to take anything for granted. So --

25 MR. GLASGOW: Good evening, Mr. Chair, members of

1 the Commission. For the record, my name is
2 Norman M. Glasgow, Jr., of the law firm of Holland & Knight.

3 CHAIRMAN HOOD: I think Commissioner Shapiro has
4 a few questions he would like to ask.

5 COMMISSIONER SHAPIRO: I'm just looking for the
6 rationale. I'm mindful of Chair Litsky's concerns. I
7 certainly don't want to cast any -- send any negative
8 assumptions your way, your Applicant's way.

9 But it would be helpful for me to hear what the
10 rationale behind this is. And then that -- for me, that's
11 a way of, in my decision-making, giving great weight to Chair
12 Litsky's concerns.

13 MR. GLASGOW: Right. Well with respect to --
14 first of all, we did follow the exact same process that we
15 did the other time. And I know that that's not necessarily
16 a reason to grant the request, but there was a motion filed
17 in the first round where we had the four orders issued, and
18 that was after the hearings, after everything had been done
19 to request the Commission to break the case open to four
20 pieces, which was done. So we followed the same process.

21 COMMISSIONER SHAPIRO: Can I hold you there for
22 a second.

23 MR. GLASGOW: Sure.

24 COMMISSIONER SHAPIRO: Just making sure I
25 understand. So you're saying that in the last round, it was

1 done at approximately the same time post-hearing.

2 MR. GLASGOW: That is correct.

3 COMMISSIONER SHAPIRO: Okay, thank you.

4 MR. GLASGOW: All right. And we had done that
5 previously, because we thought the case was a complicated
6 case with a very large record. And we thought that that
7 would be helpful to the Commission, certainly to us, with
8 respect to proceeding in that fashion.

9 So we followed that here, and so we have a lot of
10 different things going on. For example, if you take
11 parcel 10, which was a small building that had rotated, and
12 we worked out those issues as the hearing went along.

13 It was technically a party-in-opposition, but I
14 think after we had the redesign, I think they indicated on
15 the record that they didn't have any further issues with
16 where we were on that particular building.

17 Well that building doesn't show up or have
18 anything to do with the last two hearings. That's an example
19 of that. And then we have -- we have buildings 6, 7, 8, 9
20 and 10, which are just all landside structures.

21 But we do have water buildings 2 and 3, and those
22 buildings were in different hearing dates.

23 COMMISSIONER SHAPIRO: Thank you for that. Just
24 to probe a little bit more, what's the risk of moving forward
25 with one case? With one decision, rather than three?

1 MR. GLASGOW: With one decision rather than
2 three?

3 COMMISSIONER SHAPIRO: What are you risking?

4 MR. GLASGOW: I think part of the risk that you
5 have there are, do people have a concern about one particular
6 building or another? They may want to seek further remedies
7 with respect to that. And then it could end up tying up more
8 of the project.

9 COMMISSIONER SHAPIRO: Thank you. Thank you.
10 Thank you, Mr. Chair. That's all the questions I had.

11 CHAIRMAN HOOD: Okay. Any other questions or
12 comments? All right. Commissioners, you know what the
13 request is in front of us. How would you like to proceed?
14 Commissioner Shapiro.

15 COMMISSIONER SHAPIRO: Mr. Chair, I'm comfortable
16 with following the -- with granting the Applicant's request.
17 I would look to hear if any of my colleagues have any other
18 concerns. But if not, then I would make that motion. Are
19 we ready for a motion?

20 CHAIRMAN HOOD: Hold on a second.

21 VICE CHAIR MILLER: I would concur with going
22 forward with the three separate -- since that's the way we
23 proceeded in phase 1. And regarding Chairman Litsky's
24 concern that if we decide one of the three, that it might
25 preclude -- it might predetermine the outcome of a future

1 case.

2 He'll have the opportunity, I think, to let us
3 know that. And then we can change and we can reconsider if
4 we -- if it's already -- if he let us know after the fact,
5 we can reconsider it if there's a problem.

6 But he can let us know even before the fact, so
7 we're not precluding outcomes that the ANC might want to see
8 in those other cases, and those other parts of this one case.

9 CHAIRMAN HOOD: Okay. Would you make a motion.

10 COMMISSIONER MAY: Just to be clear, we're still
11 deciding all of the cases at the same time. Right? We're
12 not posing -- proposing to stagger the decision-making in the
13 cases.

14 MR. GLASGOW: No.

15 COMMISSIONER MAY: Right. So yeah, I mean I --
16 I did not really understand the logic of it until Mr. Glasgow
17 indicated the concern that if somebody wanted to stop a
18 portion of the project, that in doing so, they would be
19 stopping the entirety of this phase 2, or slowing it down.

20 And given the number of cases that we've had
21 recently slowed by litigation, I find that to be compelling.

22 CHAIRMAN HOOD: Yeah. And I'm -- it's very
23 unfortunate, because a lot of those costs I know for a fact
24 are being passed on. Once those projects are done, those
25 costs are being passed on to the residents of this city. So

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1 anyway, it's been -- did you make a motion?

2 COMMISSIONER SHAPIRO: I have not yet. I was --

3 CHAIRMAN HOOD: Okay. I keep asking the same
4 question.

5 COMMISSIONER SHAPIRO: All right. Mr. Chair, I
6 move that we grant the Applicant's motion to -- or the
7 request to provide multiple decisions as described in
8 their -- in their - in Form 150. Are these separate
9 motions? That and the extension? Okay. And in addition,
10 that we extend the submitting of the draft order. Is that
11 right? To November 29th?

12 CHAIRMAN HOOD: Okay, it's been moved, and I will
13 second that. Any further discussion? All in favor, aye.

14 (Chorus of aye.)

15 CHAIRMAN HOOD: Any opposition? Not hearing,
16 Ms. Schellin, would you record the vote.

17 MS. SCHELLIN: Staff records the vote 4 to 0 to
18 1 to grant the filing of -- having multiple decisions and
19 multiple orders in Zoning Commission case number 1103J, as
20 well as extending the draft findings of facts and conclusions
21 of law deadline to November 29th, noon, Commissioner Shapiro
22 moving, Commissioner Hood seconding, Commissioners May and
23 Miller in support, Commissioner Turnbull not present, not
24 voting.

25 CHAIRMAN HOOD: Okay. Does the Office of Planning

1 have anything extra? Okay. Ms. Schellin, do we have
2 anything else?

3 MR. GLASGOW: Mr. Chairman?

4 CHAIRMAN HOOD: Yes?

5 MR. GLASGOW: I want to just state one other
6 thing. Just for the Commission, because there was a question
7 about everything being decided on the same night with respect
8 to the case, even though in three different pieces.

9 That's what was done in the prior case. All four
10 decisions were the same night. All four orders were issued
11 the same day, and that's cases 11-03A1 through A4, I believe
12 it is.

13 CHAIRMAN HOOD: I think that's what the Vice Chair
14 was alluding to when he mentioned that --

15 MR. GLASGOW: Yes sir.

16 CHAIRMAN HOOD: -- in his comments.

17 MR. GLASGOW: Yep.

18 CHAIRMAN HOOD: But thank you, Mr. Glasgow, for
19 putting that on the record. Anything else?

20 MS. SCHELLIN: No sir.

21 CHAIRMAN HOOD: Okay, so I want to thank everyone
22 for their participation. Now this meeting's adjourned.

23 (Whereupon the above-entitled matter went off the
24 record at 7:49 p.m.)

25

C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Regular Meetin

Before: DCZC

Date: 11-27-17

Place: Washington, DC

was duly recorded and accurately transcribed under
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