

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER, 19, 2018

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The Regular Public Meeting 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 7:09 p.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LESYLLEE M. WHITE, Board Member
- CARLTON HART, Board Member (NCPC)
- LORNA JOHN, Board Member
- MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MAXIMILLIAN TONDRO, ESQ.
- MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
ELISA VITALE
BRANDICE ELLIOTT

The transcript constitutes the minutes from the
Public Meeting held on September 19, 2018.

TABLE OF CONTENTS

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

14096B, Wilson NPB, LLC, ANC 2C01 4
Approved

19796, 3324 Sherman, Ave., LLC, ANC 1A07 6
Record reopened, further hearing scheduled for 10/3/18

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

(7:08 p.m.)

1
2
3 CHAIRMAN HILL: We are going somewhat out of
4 order than we've done in the past. Actually, since the break
5 we've done it this way. We've done deliberations after the
6 hearing. Just for clarification for anybody that's here, we
7 don't take testimony from anybody. We don't talk to anybody.
8 We don't ask anything of anybody. If you're here, I hope you
9 enjoy the show.

10 All right. Mr. Moy.

11 MR. MOY: Thank you, Mr. Chairman. The first of
12 the case applications for decision making, this is Case
13 Application No. 14096B of Wilson NPB LLC.

14 This is the Applicant's request for a two-year
15 time extension of BZA Order No. 14096-A, approving a special
16 exception under the Zoning Regulation of 1958 from the unused
17 bonus density requirements under Section 768 to permit the
18 interior renovation of an existing building in the D-7 Zone
19 District, formerly DD/C-5 Zone District at premises 529 14th
20 Street, N.W., Square 254, Lot 53.

21 The Applicant's request is in the case record
22 under Exhibit 3A. I'll just leave it at that. Thank you.

23 CHAIRMAN HILL: Okay. Is the Board ready to
24 deliberate?

25 MEMBERS: Yes.

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1 CHAIRMAN HILL: Okay. I can start. The Applicant
2 did serve this onto the ANC-2C which was the only other party
3 in the underlying application. The Applicant also served the
4 Office of Planning and the parties have had 30 days to
5 respond.

6 After reviewing the record, as well as the reports
7 from the Office of Planning, I do feel that the Applicant has
8 met the burden under Y705.1 with the justifications that they
9 have given in terms of why they need, or are requesting I
10 should say, the extension concerning part of which they are
11 presenting the 41 percent vacancy despite the Applicant's
12 efforts to attract additional tenants.

13 I don't want to go into further detail because the
14 record, I think, is clearly full as to how they are providing
15 their discussion for the relief requested -- for the
16 extension. I would be in support of this.

17 Anyone else have anything else they would like to
18 add?

19 MEMBER WHITE: Yes, Mr. Chair. I would also be
20 in support that they've met the criteria for showing good
21 cause under Y705.1 for the expiration of the order. As you
22 mentioned, there is criteria that has to be met. They've
23 served the parties. There has been no substantial change in
24 the facts.

25 The Applicant has shown good cause for the

1 extension citing issues like market conditions that have
2 contributed to their 41 percent vacancy rates. I would also
3 be in support in order to give them more time to complete
4 their renovations.

5 CHAIRMAN HILL: Okay. Anyone else? All right.
6 Then I'm going to make a motion to approve Application No.
7 14096B as captioned and read by the Secretary for the time
8 extension. I would ask for a second.

9 MEMBER WHITE: Second.

10 CHAIRMAN HILL: The motion has been made and
11 seconded. All those in favor say aye.

12 MEMBERS: Aye.

13 CHAIRMAN HILL: All those opposed? The motion
14 passes. Mr. Moy.

15 MR. MOY: Staff would record the vote as five to
16 zero to zero. This is on the motion of Chairman Hill to
17 approve or grant the two-year time extension request.
18 Seconding the motion Ms. White. Also in support Mr.
19 Turnbull, Ms. John, and Vice Chair Hart. The motion carries.

20 CHAIRMAN HILL: All right, Mr. Moy.

21 MR. MOY: The next decision making goes to Case
22 Application No. 19796 of 3324 Sherman Ave., LLC. This
23 application, as the Board will recall, is a request for a
24 special exception under Subtitle E, Section 5201 from the
25 side yard requirements of Subtitle E, Section 307.4, and

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1 under the residential conversion requirements of Subtitle U,
2 Section 320.2, to convert an existing flat to a three-unit
3 apartment house in the RF-1 Zone at premises 3324 Sherman
4 Avenue, N.W., Square 2841, Lot 864.

5 At the Board's hearing of September 12th the Board
6 heard testimony, closed the record except for additional
7 information. One, an update from the ANC detailing with
8 additional relief. And requesting clarification of letters
9 that were filed in support from adjacent neighbors.

10 In the case record there is an ANC-1A report dated
11 September 13th. That is under Exhibit 49. There are also
12 two other pieces in the record, or filed for the record. One
13 is a request of the adjacent neighbor to reopen the record
14 to allow her letter into the record. Her name -- that letter
15 is under the name of Melanie Pirchner, P-I-R-C-H-N-E-R. Her
16 address is 3328 Sherman Avenue, N.W.

17 I also have in hand today a hard copy of the
18 letter from the other, I believe, adjacent neighbor at
19 address 3322 Sherman Avenue, N.W. I can't read the
20 signature. It either is a K or an R, C-A something but I'll
21 pass this to the Board.

22 MR. HILL: All right. Is the Board ready to kind
23 of talk about this? Okay. So this started last week. We
24 heard this case last week. What we asked of the Applicant
25 last week was that there wasn't an actual vote that we had

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1 from the ANC concerning --

2 I'm trying to remember all this correctly, and you
3 guys can correct if I'm wrong -- as to what they thought of
4 the rear addition, as well as the side court relief. We had
5 requested the Applicant go back and find and get something
6 from the ANC that clarified their positions on the rear
7 addition and the side court relief. Mr. Turnbull, you
8 weren't with us.

9 MEMBER TURNBULL: No, but I'm quite willing to sit
10 here.

11 CHAIRMAN HILL: Okay. That's all right. I was
12 like thinking -- okay. Commissioner May was with us. He,
13 I believe, wanted some further clarity as to the signatures
14 of the people that were the adjacent neighbors. What we did
15 get from the Applicant was a letter from the ANC further
16 clarifying their position. I mean, it wasn't a vote. They
17 didn't get a vote from the ANC in the one week and they
18 didn't get anything that I think we could give great weight
19 towards.

20 However, I do think that the letter is -- I think
21 it's a substantial letter. I mean, I think the Chair of the
22 ANC had to take time to write this and clearly articulated
23 why they were in support of the relief that was being
24 proposed.

25 In addition to further clarification, they

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1 reiterated in the letter what the Applicant had said which
2 was that extending the property was going to allow for three-
3 bedroom units. Extending the property was going to allow for
4 three bedroom units which is something the ANC was
5 encouraging which is why they were in favor of the extension.

6 What I recall was that I was most interested in
7 -- I'm going to have to look up which numbers and maybe you
8 guys can help me -- the property that was next door but
9 wasn't connected. That is the one that I was most interested
10 in hearing from. Now we seem like we get something from that
11 property saying that they were not contacted so it confuses
12 me as far as that property.

13 VICE CHAIR HART: Yes, they actually said it's not
14 just that they weren't contacted but they were in opposition,
15 at least one of the units, because I think it's a two-unit
16 building. One of the units was in opposition to the actual
17 case, the project that was before them.

18 I'll also say that one of the things that we also
19 heard from the ANC, you are correct that we did get a letter
20 from the ANC, Exhibit 49. In the letter itself one of the
21 things that they said about the rear addition, and I'll read
22 it. "Personally, I concur with the Office of Planning that
23 the overall addition -- that overall the additional eight-
24 foot you are seeking for the rear addition is a small
25 deviation considering the large size of the lot."

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1 Then there is kind of a piece that says, "Provided
2 that you have support from the abutting neighbors to the
3 north and south of your property as that would be the
4 expectation and question that you would be asked by the full
5 Commission." So to me that's kind of like there is support
6 of it if both of the abutting neighbors would be in support.

7 It seems as though the letter that we've received
8 is not in support of it so then it would kind of call into
9 question whether or not the ANC would be in support of it if
10 they found out that one of their -- you know, the abutting
11 neighbors did not like that.

12 That just causes, you know, a little bit more of
13 that concern. This is kind of why we were looking for the
14 feedback from both the ANC and the clarification about the
15 project from the two abutting neighbors.

16 I guess one of the abutting neighbors to the --
17 I'm trying to remember if that's north now. Anyhow, the 3328
18 -- yeah, 3328 were the ones that were -- Unit 1 was actually
19 not in support of it. Again, that leads to the question of
20 does the ANC then -- would they be in support of it if they
21 knew that this was the case.

22 CHAIRMAN HILL: And what confuses me -- I'm sorry,
23 Ms. White -- not confuses me, the further discussion about
24 all this is that the Applicant also at the end of the hearing
25 last week said that if they weren't going to get approval of

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1 the 10-foot waiver, then they were going to submit something
2 that had the plans that they could have done with just the
3 side-yard relief so they didn't do that either. I'm kind of
4 -- it just further muddies what we're talking about. Please
5 go ahead, Ms. White.

6 MEMBER WHITE: No, I concur, you know, with what
7 your concerns were. I had concerns. One, when I saw the
8 letter from the ANC which bolded the word "provided" they get
9 support from the abutting neighbors. As you know, we have
10 a lot of sensitivities in terms of how abutting neighbors
11 feel as well as how it relates to the regulations as well.

12 Then Melanie Pirchner, it's clear that she is not
13 in support. I'm not prepared to support the application
14 until we get a little bit more information unless we decide
15 to vote today.

16 VICE CHAIR HART: Yeah. I guess I would also say
17 that because -- it's not just because the neighbor is in
18 opposition to it. I thought that the development was going
19 to be impactful to the neighbor and it didn't seem as though
20 there was -- I thought there was an option that the applicant
21 could do that was the buy-right option, the 10-foot option,
22 that would be less impactful.

23 I just was not supportive of the additional eight
24 feet, I guess, it would be. I think that because I didn't
25 feel that the Applicant had met the criteria, I didn't think

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1 that I would be able to support that application.

2 CHAIRMAN HILL: Okay. I'm, again, not sure what
3 we're going to do because, again, looking as to whether or
4 not I thought they were meeting the criteria, you know, to
5 approve the 10-foot waiver it's not that, again, we don't
6 necessarily -- even though it does tend to go this way at
7 times, it's not like the two neighbors on either side if they
8 agree, then it's a go. Right?

9 So, you know, it's whether or not there is undue
10 impact from that extension of eight feet going onto that
11 neighbor to, I guess, the east.

12 VICE CHAIR HART: It's to the north. It's to the
13 north.

14 CHAIRMAN HILL: Right. So the neighbor to the
15 north. That's the one that would be impacted the most.
16 Right? Did I think -- we're having deliberations but did I
17 think that additional eight feet was unduly impacting that
18 neighbor to the north.

19 And based upon the discussions that we had, the
20 testimony that we took, and the analysis from the Office of
21 Planning, I didn't think that it was of undue impact. I
22 would have been fine with the 10-foot waiver. What makes
23 this --

24 VICE CHAIR HART: The 10 foot.

25 CHAIRMAN HILL: I'm sorry, the 10 foot. What

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1 makes this, again confusing you've got kind of something that
2 we asked for from the ANC and they didn't really get
3 something that we were going to get from the neighbor.
4 Right? Like we got something completely different.

5 The ANC still seems to be saying what the
6 Applicant had provided in their testimony which was that they
7 were in favor of the larger project because of the units.
8 Right? Now, again, that doesn't have to do with the
9 regulations per se but it was just something that I was just
10 making note of during the discussions we were having with the
11 Applicant.

12 I would actually, I guess, be more along the lines
13 of possibly putting this off again and trying to hear from
14 them again or reopen the hearing to provide further testimony
15 from the Applicant to clarify what is going on, and that we
16 had thought we were going to get was at least the other
17 option which was the buy-right option with the side yard and
18 we didn't get that.

19 Maybe I'm confusing or maybe I'm mixing that up.
20 There was something where they weren't going to go back as
21 far as they were going to go back and that's what I thought
22 was the other design. They were going to provide us with
23 another design and we didn't get that either. I guess then
24 I would -- I wish that I could -- but the reopening of the
25 record to have further clarification of all this unless you

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1 all think you can figure it out.

2 MEMBER WHITE: I would be okay with asking the
3 Applicant for some feedback regarding what they are willing
4 to do here.

5 CHAIRMAN HILL: The only other option is to take
6 a vote. Right?

7 MEMBER WHITE: I can do that, too.

8 CHAIRMAN HILL: I think if we take a vote, it
9 doesn't -- I'm not exactly sure what's going to happen but
10 it looks like this might not pass. We can do that, too, but
11 at least I would rather be at least -- I would prefer to be
12 more clear about what it is we are voting on.

13 MEMBER WHITE: Okay.

14 VICE CHAIR HART: You're saying what we're voting
15 on. We're voting on whether or not we think the 18 feet is
16 too much. If we think that it does not meet the zoning
17 regulations.

18 We can say that it does or doesn't but it sounds
19 like -- I think that it would be too long of an extension
20 because the property that is most impacted, which is to the
21 north, has submitted a letter saying that they would not want
22 this. And I think that it would be the most impacted on this
23 site. I mean, my vote right now would be -- if we voted
24 right now, I would be voting against it.

25 CHAIRMAN HILL: And so I guess then I'm now

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1 providing more analysis from the discussions that I had with
2 the Office of Planning and the discussions that came from the
3 testimony that we took at the time, I guess, from the
4 Applicant concerning the positions of the ANC which, I guess,
5 is getting further muddied by this letter. But I can vote
6 on it, too. I mean, I don't know.

7 Would you all be opposed to reopening the record?
8 Okay. Let's reopen the record. Let's ask them to come back
9 and clarify what has been put forth in front of us. At least
10 I will have more clarity as to how to move forward and maybe
11 that's now eight-and-a-half hours. Mr. Moy, what would we do?

12 MR. MOY: Well, we could --

13 CHAIRMAN HILL: We could reopen the record for a
14 limited hearing based upon the information that has just been
15 provided?

16 MR. MOY: Yes. If the Board -- I'm sure the
17 Applicant is listening to this here -- listening to the
18 discussion. The Board has two choices. One, either to
19 reopen the record for limited scope as to the status of the
20 record. We could do that next week. We have an appeal case
21 but I don't think this would go very long. Or allow two
22 weeks if the Applicant intends to make any changes.

23 CHAIRMAN HILL: When is Mr. May back?

24 MR. MOY: He is back on -- just a second. He is
25 back October 24th.

1 CHAIRMAN HILL: I'm not here.

2 MR. MOY: While you think about that, Mr.
3 Chairman, for the staff's edification do I interpret that the
4 Board allowed this person's letter into the record?

5 CHAIRMAN HILL: I appreciate that. We were kind
6 of game to all this.

7 MR. MOY: Okay.

8 CHAIRMAN HILL: I would go ahead and allow Ms.
9 Pirchner's letter into the record. That's what my thought
10 would be.

11 VICE CHAIR HART: Actually, it is one of the
12 things that we wanted. We wanted a letter from the neighbor
13 and now we kind of got a letter from the neighbor. I think
14 we were thinking it was going to be a letter of support from
15 the neighbor but it is a letter nonetheless. I think it's
16 in line with what we are looking for.

17 CHAIRMAN HILL: Let's do this in a couple weeks.
18 I can't do this again next week because it will be three
19 weeks in a row. Let's do this in two weeks. We'll ask Mr.
20 May if he's interested in coming in and we'll do this at the
21 very beginning. Okay? If the Applicant is listening, you
22 know, I would like to maybe ask them to reach out to you to
23 kind of see if we can understand what seems to be confusing.

24 MR. MOY: Staff can take care of that.

25 CHAIRMAN HILL: Okay. Then we can have a limited

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1 scope hearing two weeks from today.

2 MR. MOY: October 3rd.

3 CHAIRMAN HILL: October 3rd. And see if Mr. May
4 wants to join us to discuss what -- at this point just to
5 discuss what's been put into the record because it seems I'm
6 confused.

7 MR. MOY: Okay. Since you brought up his name,
8 I do have an absentee ballot from Mr. May. It was in three
9 parts but I'll just mention the first part which was that "I
10 am in favor of reopening the record to accept the submission
11 from the abutting neighbor." That's Ms. Pirchner. I wanted
12 to get that on the record.

13 CHAIRMAN HILL: Okay. Okay. Great. All right.
14 So then we'll do that again, limited continued hearing, on
15 the 3rd. You can reach out to the Applicant.

16 MR. MOY: Yes, sir.

17 CHAIRMAN HILL: Okay. Sorry, all the parties.
18 All the parties.

19 MR. MOY: I have one other business before the
20 Board adjourns tonight. I'm in possession of a joint consent
21 motion that was filed and dated September 12th and it's in
22 the case record under Exhibit 22. The case is -- actually,
23 it's an appeal, Appeal No. 19839. That appeal is currently
24 scheduled for public hearing on October 17th.

25 In that exhibit, Exhibit 22, Mr. Chairman, and the

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1 joint motion with DCRA and the property owner that's
2 represented by their attorney, is requesting that the Board
3 schedule -- well, they filed in their motion to dismiss the
4 appeal as untimely, No. 1. And No. 2, requesting that the
5 Board schedule this at an early public meeting to decide the
6 motion on September 26 which, of course, is well before the
7 scheduled hearing of October 17th.

8 CHAIRMAN HILL: Okay. Has the Board had a chance
9 to look at this motion? Mr. Turnbull, are you not on this
10 motion?

11 MEMBER TURNBULL: I'm here for your support.

12 CHAIRMAN HILL: Okay. Well, then feel free to
13 take a look at the motion.

14 So what I understand -- so Mr. Moy, can OAG kind
15 of explain to me a little bit more as to what this is? They
16 are asking what?

17 MS. NAGELHOUT: I don't have it in front of me but
18 from what I understand, there is an appeal pending. There's
19 a hearing scheduled for October 17th, I think. The property
20 owner together with DCRA has submitted a motion to dismiss
21 the appeal as untimely and they would like you to take that
22 up next week.

23 CHAIRMAN HILL: Okay. They would like us -- they
24 would like us to take up the motion to dismiss the motion as
25 untimely next week. The only other party -- so the parties

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1 that are affected are the Appellant. We haven't heard from
2 the Appellant. Does the Appellant have time to respond to
3 this motion?

4 MS. NAGELHOUT: I'm assuming the motion was filed
5 and served on the Appellant when it was made and the regs
6 allow seven days.

7 CHAIRMAN HILL: So have seven days transpired?

8 MS. NAGELHOUT: I believe so. I think it was --

9 MR. MOY: Close of business today, sir.

10 CHAIRMAN HILL: Close of business today. So we
11 don't know if they responded to -- well, they've had seven
12 days and we don't know if they responded or not to this
13 motion other than COB today. If they don't turn it in COB
14 today, then they will not have responded to this motion.
15 Correct?

16 MR. MOY: Yes. I checked --

17 CHAIRMAN HILL: The Applicant is asking for us to
18 weigh on this next week. That's what the motion is.

19 MS. NAGELHOUT: I believe so.

20 CHAIRMAN HILL: Okay. Does the Board have any
21 thoughts?

22 VICE CHAIR HART: Part of this is trying to
23 determine why we need to do this early still. I know it's
24 probably written in here. It seems as though this issue has
25 already been set down -- not set down. It's already been

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1 scheduled, or the appeal has already been scheduled.

2 We would be deciding at that point if there was
3 a need to go on at that point or not, but it just seems a bit
4 premature to do that now. Again, I may have missed something
5 in here. There is quite a bit of information in here. My
6 thoughts are it does seem as though it is a bit early to do
7 that.

8 MEMBER WHITE: I would prefer to have an
9 opportunity to kind of read through it first but why couldn't
10 we just hear the motion right before the scheduled appeal?
11 The other question is whether or not the Appellant is going
12 to respond to this. When would their response be due?

13 MR. HILL: Right. Their response would have been
14 today. This is a lot of information to just try to digest.
15 What I suggest perhaps -- I mean, at this point, as you say,
16 Mr. Hart, you know, there could be something in here as to
17 why they are trying to get this pushed. We haven't done this
18 before and I could look through here and see what there is.
19 Also, there's been one more week.

20 I guess what we could do is we could look at this
21 for another week. Okay? We could take a look at this and
22 have an opportunity to see if there is anything in here and
23 then decide next week whether or not we want to schedule an
24 earlier hearing for the week after that on this motion. Does
25 that make sense?

1 MEMBER TURNBULL: Haven't you normally looked at
2 these things like on the day of the hearing to dismiss?

3 MEMBER WHITE: We have.

4 MEMBER TURNBULL: I'm just curious what the normal
5 procedure is usually. I thought that was. This motion
6 normally came up when you have the hearing. I didn't know
7 you did it ahead of time, or we did it ahead of time. Like
8 you say, maybe there's something in all of that that explains
9 why it's being asked to be done ahead of time.

10 CHAIRMAN HILL: Mr. Hart.

11 VICE CHAIR HART: No. I agree with that. I
12 understand that typically we will look at motions just in
13 general at the time of the appeal or the application itself.
14 I think that the owner is talking about they will be
15 substantially prejudiced by the extension of the appeal
16 filing deadline. I mean, like I said, there are quite a bit
17 -- there is quite a bit of information in here to have to go
18 through.

19 CHAIRMAN HILL: Okay.

20 VICE CHAIR HART: I wouldn't mind having maybe a
21 week.

22 CHAIRMAN HILL: Let's do this then. Mr. Moy, we
23 are going to go ahead and take a look at this this week.
24 Then next week we'll determine whether or not we are going
25 to schedule this earlier or not in terms of to determine this

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1 motion for untimeliness, or we'll just wait until when the
2 day of the appeal is going to happen. Okay?

3 MR. MOY: Yes, sir.

4 CHAIRMAN HILL: All right. Okay. Does that sound
5 good?

6 MEMBER WHITE: Yes.

7 CHAIRMAN HILL: Okay. Does everybody have one of
8 these? All right.

9 Mr. Moy, do we have anything else before the
10 Board?

11 MR. MOY: No, sir.

12 CHAIRMAN HILL: Okay. Thanks. We stand
13 adjourned.

14 (Whereupon, the above-entitled matter went off the
15 record at 7:43 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 09-19-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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