

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING

+ + + + +

MONDAY
DECEMBER 3RD, 2018

+ + + + +

The Special 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 6:15 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
- 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
- MAXINE BROWN-ROBERTS
- ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- HILLARY LOVICK

The transcript constitutes the minutes from the Special Meeting held on December 3rd 2018.

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

(6:16 p.m.)

1
2
3 CHAIRMAN HOOD: Good evening. We're ready to get
4 started. This special public meeting will please come to
5 order.

6 Good evening, ladies and gentlemen. This is a
7 special public meeting of the Zoning Commission for the
8 District of Columbia. Today's date is December 3, 2018. My
9 name is Anthony Hood. Joining me are vice -- I mean, joining
10 me are Commissioner Shapiro, Commissioner May, and
11 Commissioner Turnbull. We're also joined by the Office of
12 Zoning staff Ms. Sharon Schellin, Office of Attorney General
13 staff, Ms. Lovick, as well as the Office of Planning staff,
14 Ms. Steingasser, Ms. Vitale, and Ms. Brown-Roberts.

15 Copies of today's meeting agenda are available to
16 you and are located in a bin near the door. Please turn off
17 all electronic devices. Does the staff have any preliminary
18 matters?

19 MS. SCHELLIN: No, sir.

20 CHAIRMAN HOOD: Okay. We'll go to the first case
21 on our agenda for this evening's special public meeting.
22 Zoning Commission Case Number 17-23. Final action Office of
23 Planning text amendment to subtitles A, B, C, D, E, F, K, and
24 U, side yards. Ms. Schellin.

25 MS. SCHELLIN: Yes, sir. The proposed rulemaking

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1 was published in the D.C. Register on November 2nd and at
2 Exhibit 25, we have an NCPC letter advising that the
3 rulemaking, they found that it falls under one of the
4 exceptions for review, so they did not review it.

5 And then at Exhibit 26, we have a letter in
6 opposition from the SMD8A05 in opposition, and then at
7 Exhibit 27, we have ANC 8A report for the Commission to
8 consider their comments, and that's all of the comments
9 received.

10 CHAIRMAN HOOD: Okay. Thank you, Ms. Schellin.
11 I am not coming up with the last exhibit. I don't know if
12 others have it. Okay. We'll print it off. I see 27. I'm
13 not seeing -- what was the last one, from 8A?

14 MS. SCHELLIN: 27.

15 CHAIRMAN HOOD: Okay. That's the one I'm not
16 seeing; the last exhibit.

17 MS. SCHELLIN: Okay. So you do not see 27.

18 CHAIRMAN HOOD: I do see 26.

19 MS. SCHELLIN: Okay.

20 CHAIRMAN HOOD: The letter in opposition.

21 MS. SCHELLIN: Okay. Let me pull that up real
22 quick and release that for you.

23 CHAIRMAN HOOD: Okay. Seems none of us have 27.
24 Was that just uploaded?

25 MS. SCHELLIN: It may have been.

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1 CHAIRMAN HOOD: Well, while you're doing that,
2 Commissioners, I think we had talked about the side yard part
3 of it, but we do have some comments. Let's open up any
4 discussions, and if we need to, we can continue to ask the
5 Office of Planning other issues that have risen in the two
6 latest submissions.

7 Let me open up, any questions or comments?

8 COMMISSIONER MAY: Well, I mean, between last
9 hearing and today, we didn't -- we just had two comment
10 letters in the record, right?

11 MS. SCHELLIN: It's been released.

12 CHAIRMAN HOOD: Correct. Okay. So we should have
13 it now.

14 COMMISSIONER MAY: And now we have a third.

15 CHAIRMAN HOOD: Okay. I have it now. Give us a
16 moment. Let us look at it.

17 COMMISSIONER MAY: Oh, yes.

18 CHAIRMAN HOOD: Okay. I think these letters are,
19 from the one I read earlier, pretty much asking us to reject
20 any elimination of the side yard. And I thought we had
21 discussions in detail. My memory kind of escapes me some,
22 but I thought we raised some concerns and I thought we asked
23 Office of Planning to go back and look at some of the
24 language that was being proposed.

25 And I looked at the exhibit, Exhibit 24, again,

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1 the notice of -- is this the current thing? Let me ask Ms.
2 Steingasser. Is this the current recommendation after our
3 comments that we made on it at the hearing, on Exhibit 27,
4 notice of proposed rulemaking?

5 MS. VITALE: Good evening --

6 CHAIRMAN HOOD: Oh, I'm sorry, Ms. Vitale.
7 Welcome.

8 MS. VITALE: Good evening, Mr. Chairman, Members
9 of the Commission. Elisa Vitale with the Office of Planning.
10 I believe the letter that was submitted at Exhibit 27 is
11 referring to the text in the notice of proposed rulemaking
12 that hasn't changed at all since the Commission deliberated,
13 with respect to some of the points raised in the letters.

14 These were items that you guys discussed at length
15 during deliberations and made a determination to not regulate
16 side yards based on what was happening on an adjoining
17 property.

18 Also, to not regulate side yards in historic
19 districts differently than citywide, because that's something
20 that would be addressed during historic preservation review.

21 You've also increased the minimum side yard from
22 2 feet to 3 feet, so that gets to some of the issues raised
23 in these letters. And then I think the final point had to
24 do with requiring a side yard for end of row, of 5 feet.

25 And, you know, again, that was something that OP

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1 was asked to go back and do some additional research on, and
2 we did look at that, and we found that, frequently, end
3 properties were built lot line to lot line.

4 And in this instance, if it was a semi-detached
5 building, that 5 yard -- 5-foot side yard would likely be
6 located at the street side property line and wouldn't be
7 located at the interior property line, so wouldn't create
8 that additional space that's being referred to in these
9 letters.

10 So I think in reading the comments that came in,
11 OP believes that these items have been discussed and were
12 addressed during deliberations and in the proposed text.

13 CHAIRMAN HOOD: So let me just ask, and I can't
14 remember, forgive me for not remembering everything that we
15 discussed. I know we had discussed it at length, and I think
16 when I left, I was confident, but after reading things again,
17 maybe I need to take better notes, but I didn't.

18 The semi-detached still has the existing -- if I
19 live in a semi-detached dwelling, I still have a side yard
20 on both sides, correct? We're not eliminating anything.

21 MS. VITALE: If you live in a semi-detached
22 building, you would have a side yard on one side.

23 CHAIRMAN HOOD: On one side, but the other side
24 next to me, the other house on the other side would still
25 have a side yard as well?

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1 MS. VITALE: That's correct.

2 CHAIRMAN HOOD: Okay. So the question about us
3 eliminating something, we're not eliminating anything?

4 MS. VITALE: That's correct.

5 COMMISSIONER MAY: No, I think we are eliminating
6 something. I mean, ordinarily, if there's an unattached
7 wall, you have to have a side yard. What we're saying now
8 is that, if you have an unattached wall, you can put it right
9 on the lot line. That is a change from what we had before,
10 right?

11 CHAIRMAN HOOD: So if I have two structures, or
12 semi-detached, I'm thinking of about a house here and a house
13 here, and they're detached, on the other side, I have a side
14 yard, and on the other side, I have a side yard, so we're
15 eliminating something, which I don't see --

16 MS. STEINGASSER: It depends on the zone district
17 you're in.

18 CHAIRMAN HOOD: Right.

19 MS. STEINGASSER: If you're in a semi-detached
20 zone, an R-2 or -- you would have to maintain that side yard,
21 so we're not getting rid of it on the one side. In a semi-
22 detached zone, you would have a side yard on one side.

23 CHAIRMAN HOOD: So what is a semi-detached zone?

24 MS. STEINGASSER: R-2. The R-2.

25 CHAIRMAN HOOD: Only. So what are we doing on R-3

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1 through -- and the way it's written in 206.4, and we're
2 supposed to be clarifying, and I don't think we're
3 clarifying, I think we're mixing it, because I'm mixed up,
4 when I read it again.

5 MS. STEINGASSER: Well, in the 58 regs, it was
6 based on the property and the issue of yards was based,
7 first, on what zone district you're in, and then on whether
8 the structure provided the side yards. In the ZR-16
9 regulations, we changed that and tried this new approach,
10 which we found to be less successful, ended up with a whole
11 lot more variances, and it was difficult for DCRA and the
12 homeowners, so we went back to the 58 regs.

13 So we went back to that approach and in a rowhouse
14 zone, in the old R-3, R-4, the now R-3 and the R-F zones, if
15 you are a row dwelling, you can be a -- it's defined not by
16 whether you're physically attached to something, but whether
17 you have side yards. So it's the existence or absence of
18 side yards that defines whether you're a row dwelling or a
19 semi-detached dwelling.

20 CHAIRMAN HOOD: So again, if I'm in a semi-
21 detached, and these letters really sparked me, because here's
22 what I'm finding out is happening with a lot of stuff we're
23 doing. A lot of stuff we're out doing, then when it gets
24 out, I say, well, I don't remember doing that, and there's
25 specifically an issue going on in Ward 5 right now that I

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1 don't remember us even doing that.

2 I know I would have raised the question like I'm
3 raising -- I'm going to start raising now. But let me ask
4 this, help me understand, 206.4, one side yard, and I know
5 we went through this before, a minimum of 5 feet in width
6 shall be provided for all semi-detached buildings in the R-3,
7 R-13, and R-17 zones.

8 Are we saying R-3 and then to the R-13 or are we
9 going consistent? R-3, 4, whatever.

10 MS. VITALE: This is the situation, R-3, R-13, and
11 R-17 are all R-3 zones. R-13 and R-17, I believe, are --
12 actually, I --

13 MS. STEINGASSER: Are they? I can tell you what
14 they are. It's the old R-3 naval observatory and the R-3
15 foggy bottom, so those are those three zones. And in those
16 zones, if you're a semi-detached building and you're built
17 as a semi-detached building, you will have a side yard.

18 CHAIRMAN HOOD: Okay. Well, I don't know where
19 my other colleagues are, because I am really confused and not
20 sure, I'm going to be voting against this until I have other
21 information. I probably am in the minority on this, but if
22 I'm confused, I can imagine what's going to happen later on
23 down the road when everybody else is trying to understand.

24 Maybe I just need to take some more time and
25 understand this, because I thought I had -- I felt a good

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1 resolve until I got these two letters, which basically are
2 saying, why are we eliminating something? And I keep going
3 back to the same scenario where I have a semi-detached home,
4 and I have two side yards, and I'm specifically talking
5 about, I can't remember what the zone is, but I'm
6 specifically talking about the neighborhood I grew up in, and
7 we're eliminating the side yards on one side. To me, unless
8 I'm not understanding it, it just doesn't make sense.

9 MS. STEINGASSER: I think they're mixing apples
10 and oranges and they're mixing the 58 and the 16 regs, but
11 if you're a semi-detached building and you're built to be a
12 semi-detached building, that section will require you to have
13 a side yard.

14 The Commission also to ensure that side yards
15 didn't get filled in artificially, made a condition that says
16 the side yard, if you have one, you have to keep it. You
17 can't artificially fill it in, 206.7.

18 And that was to make sure that when there were
19 nonconforming side yards, that people didn't fill them in,
20 that they were maintained, and that was after discussion with
21 the Commission of that variation.

22 CHAIRMAN HOOD: Okay. And sometimes the
23 Commission has to -- and being a part of the Commission,
24 sometime we go down the wrong road and we have to go back and
25 re-track. Let me just ask this, though, what are we doing

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1 away with again? And Commission May alluded to it.

2 Maybe I'm not understanding because I'm looking
3 at the letters, they're saying, please don't do away with
4 something. Is it just in historical districts or what are
5 we doing away with as far as the side yard? Maybe I'm just
6 not --

7 COMMISSIONER MAY: Let me explain the way I see
8 it, because this is something that came up in a BZA case last
9 week that was decided, and we had to grant relief because it
10 was, like, a 25-foot wide yard, sorry, lot, and it was
11 otherwise zoned as, I think RF-1, maybe it was R-3, I can't
12 remember, but in order to build on that property, under the
13 current regulations, they would have to have 5-foot side
14 yards, so you'd wind up with a 15-foot house with two 5-foot
15 side yards.

16 And we granted relief to them, I don't know
17 whether they -- I can't remember if they built lot line to
18 lot line, or whether they built with 3-foot side yards, or
19 something like that, but we had to give them relief so that
20 they could have a house of reasonable width.

21 So it does, I think, affect rowhouse zones, so R-3
22 and the R-F zones, because it allows you to build lot line
23 to lot line, or on the lot line and not on the other lot
24 line, even if there's no other house next to you. That was
25 different from what was there before.

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1 COMMISSIONER TURNBULL: Like, on an alley. If you
2 have a property on --

3 COMMISSIONER MAY: No, I mean, you could always
4 build, I think, straight up to the alley. On an alley, you
5 could build up right up to the alley.

6 COMMISSIONER TURNBULL: That's what I thought.

7 CHAIRMAN HOOD: See, this is my point.

8 COMMISSIONER MAY: So I mean, the point being that
9 we had the side yards tied to the definition of a
10 freestanding wall, we got rid of that, but this clarifies
11 that you don't have to have a side yard when you're in a
12 rowhouse zone, period, it is not dependent on whether or not
13 you are touching the neighboring house.

14 And so, basically, the case that I had last week
15 that required relief, once this is passed, would not require
16 relief.

17 CHAIRMAN HOOD: Okay. Let me open it up and hear
18 from others. Mr. Shapiro.

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.
20 I'm just looking for the same clarification. So,
21 Commissioner May, your sense of this is that the ANC, similar
22 to where Ms. Steingasser is, your sense is that the ANC is,
23 regardless of their intentions, perhaps reading this the
24 wrong way.

25 COMMISSIONER MAY: No, I think they're reading it

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1 the right way. I mean, I think what they want to be able to
2 do is, in the circumstances where a side yard is required,
3 they want to be able to work with the developer and, you
4 know, I guess, negotiate about how they build out on their
5 property, and then, you know, make a decision whether or not
6 to support the relief that may be necessary in order to build
7 a reasonably dimensioned house.

8 And again, that has happened. I mean, I think
9 I've been on four or five cases like this in recent memory,
10 mostly in Ward 7 and 8, where there are existing zones that
11 -- existing zones tied, you know, or with lots that are not
12 wide enough to support the side yard requirement, so they
13 wind up having to get relief.

14 And if they're RF-1 or R-3 zones, then now they
15 don't need to have that relief in order to build on to the
16 lot line.

17 MS. STEINGASSER: That's correct, and that's how
18 the 58 regs were written, that if you --

19 COMMISSIONER MAY: Well, it wasn't the way they
20 were written, it was the way they were interpreted. We're
21 going to go back to Pritchard? You want to go back to --

22 MS. STEINGASSER: Actually, I would love to.

23 COMMISSIONER MAY: It's an old-standing issue with
24 us.

25 MS. STEINGASSER: But a rowhouse was allowed, as

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1 a matter of right, in a rowhouse zone, and a rowhouse was
2 defined as a structure with no side yards. And so if you
3 were in a rowhouse zone, you could build a structure with no
4 side yards.

5 In the 16 regs, we changed that and said, no, you
6 have to be attached to a physical structure, and that created
7 a whole other set of unanticipated variances because
8 especially in some of these much older neighborhood, there
9 are a lot of lots that were not developed as rowhouses, but
10 are zoned for rowhouses, so they have, now, this burden of
11 a setback, because they only own the single lot, they're not
12 building a full -- and now what Mr. May is describing is,
13 they have to come forward and get a variance to the side
14 yards because a rowhouse is no longer defined by its side
15 yards.

16 COMMISSIONER MAY: But the only exception to that
17 description, I would say, is that there was a clause in
18 405.3, or something like that, that said that if you have a
19 freestanding wall, you have to have a side yard, which I
20 always interpreted as meaning that when you come to the end
21 of a row, you need to have a side yard, right?

22 MS. STEINGASSER: Right.

23 COMMISSIONER MAY: And that you could not build
24 to the lot line and convert a semi-detached house into a
25 rowhouse, which had also been common practice, which I also

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1 thought was wrong, but I was the only one who thought it was
2 wrong, and even though we changed it in ZR-16, I have been
3 converted to accept that, now, we should define rowhouses the
4 way we have in this regulation.

5 So I support this the way it is, even though for
6 a long time, I had been an opponent.

7 CHAIRMAN HOOD: Okay. Well, I --

8 COMMISSIONER MAY: Did you get anything out of
9 that, Anthony? I know Jennifer and I did.

10 CHAIRMAN HOOD: I think, you know, I'm thinking
11 that I would rather, for me, still, it takes -- after these
12 letters came in, and what I'm doing away, and I'm doing --
13 I would propose that we take some more time to fully
14 understand it, and I may have to come back to the Office of
15 Planning to help me simplify this, because here's the thing,
16 while we think it's simplified, as you mentioned, Ms.
17 Steingasser, the unintended consequences seems to be what
18 goes on around here, because we think it's simple, and then
19 when it gets outthere, it's starting to have to be practiced
20 or executed, then we have a whole lot of other issues.

21 And then I'm finding out stuff that we do down
22 here, when it gets out there, I say, I don't remember doing
23 that. So I want to make sure, at least from my standpoint,
24 I'd like to proceed with caution.

25 When I'm hearing that we're doing away with

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1 something, maybe I don't understand what we're doing away
2 with, but I read through this, and read through this, and
3 looked at the one letter that I did get today about, don't
4 do away with something, and then I come in today and see
5 another letter from an 8A, saying something similar to the
6 same thing.

7 And that gives me cause. Now, Commissioner May,
8 I know you've been on those cases, obviously, I haven't, and
9 you understand what's going on, but I wonder, do all of us
10 really understand what's -- I'm not going to just approve
11 something for the sake of just approving it. I will vote
12 against it, if I don't have the votes, and move forward, or
13 we can just take time to make sure we all fully understand
14 it and have our fifth Commissioner here as well.

15 So that's my proposal, but I open up any further
16 discussions.

17 COMMISSIONER MAY: Mr. Chairman, if I could just
18 say, and I'll repeat essentially what Office of Planning said
19 before, which is that, this is, essentially, returning the
20 regulations to the way they were under ZR-58, or at least the
21 way they were interpreted, however much I might have
22 disagreed with that interpretation, it is the way they were
23 interpreted, except for a very small period after one case,
24 but the BZA changed their mind about that one too.

25 So I mean, effectively, this is a return to where

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1 it was. Yes, it's a change from where things are in ZR-16,
2 it's not really a change from the way things were on ZR-58,
3 except that it's a little bit clearer. Is that accurate?
4 Yes.

5 CHAIRMAN HOOD: So the 58 regulations, we did away
6 with side yards.

7 COMMISSIONER MAY: In the 58 regulations, you were
8 not required to have a side yard --

9 CHAIRMAN HOOD: Where?

10 COMMISSIONER MAY: -- on a rowhouse --

11 CHAIRMAN HOOD: Oh, okay, I get that.

12 COMMISSIONER MAY: -- zone, R-3 and RF-1.

13 CHAIRMAN HOOD: Okay.

14 COMMISSIONER MAY: This does not change semi-
15 detached zones.

16 CHAIRMAN HOOD: So in this letter, where is it at?
17 I believe the text amendment will unintentionally harm
18 existing homeowners in different instances of adoption as
19 currently drafted. I am asking the Zoning Commission reject
20 any language that would eliminate a side yard requirement as
21 a matter of right for semi-detached row structures.

22 COMMISSIONER MAY: So a semi-detached row
23 structured would only be a row structure at the end of a row.

24 CHAIRMAN HOOD: So the way it's written and the
25 way whoever this is is interpreting it, it's like we're doing

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1 away with side yards in semi-detached rowhouses. That's why
2 I asked the question, because they're interpreting it that
3 way, and so do I.

4 COMMISSIONER MAY: So I think that they're
5 commingling circumstances and it's getting a little bit
6 confused. I think the essential issue that there is that
7 they don't want to eliminate side yards for rowhouses when
8 they are not attached to something else, right?

9 So in other words, they don't want to have lot
10 line houses as a matter of right in rowhouse zones.

11 CHAIRMAN HOOD: But it says to reject any language
12 that would eliminate a side yard requirement as a matter of
13 right for semi-detached rowhouse structures in residential
14 flat zones when the state of being detached is solely based
15 on a definition of building on the lot line as is currently
16 proposed.

17 You need to be on your mic. Turn your mic on so
18 --

19 COMMISSIONER SHAPIRO: You're saying that this
20 would not do this except for end units?

21 COMMISSIONER MAY: No, that's not what I'm saying.
22 I'm saying when they refer to semi-detached row structures,
23 I'm assuming they mean row structures at the end of a -- or,
24 yes, a row structure at the end of a row because that's the
25 only way you could have a semi-detached row structure.

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1 I think, though, that they're garbling the
2 language. What's coming out of this, to me, is that, they
3 don't want us to have a circumstance where people are
4 permitted to build lot line to lot line in rowhouse zones,
5 period. They want to retain the requirement for a side yard
6 when it is not actually physically attached to the house next
7 door.

8 CHAIRMAN HOOD: Okay. Here's what I can do, I can
9 call for the vote and vote against it or let me hear from
10 others. Because maybe I just need some more time on this and
11 from the questions I'm having, I would advise some of the
12 rest of us to go along with me.

13 COMMISSIONER SHAPIRO: Mr. Chair, I will -- I feel
14 like I'm understanding where the Office of Planning is coming
15 from, but I don't see any harm in waiting until we have
16 clarification, wait for a fifth Commissioner, so I am happy
17 to put this on hold.

18 CHAIRMAN HOOD: Okay. All that doesn't really
19 matter to me. I'm not trying to be disrespectful, but I want
20 to make sure that this vote, because we got this, we got
21 that, and Office of Planning, I just want to make sure we're
22 proceeding right, because in the last few weeks, stuff has
23 been coming back, I don't know if you all have been getting
24 it, but I have, which has not been turning out right.

25 So I want to make sure that I understand fully

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1 what I'm up here voting for. I'm not going to vote for it
2 just because it's all -- everybody's all onboard and they
3 understand, because I can tell by the questions that other
4 Commissioners have just asked, that some people are in the
5 same boat I'm at, and I'm not trying to put you out on blast,
6 but that's the reality of it.

7 We got to make sure we understand exactly what we
8 doing. These letters here do not give me a comfort level,
9 and I'm sorry, I will just vote against it. If my colleagues
10 want to go forward, it's no big deal. I just want to make
11 sure I do things -- I want to start doing -- making sure we
12 really scrutinize the stuff that we give to the Office of
13 Planning, and the Office of the Attorney General, and then
14 we put out there for regulations for the city to go by.

15 COMMISSIONER SHAPIRO: I think it's fair unless
16 there's some strong objection, I'd rather that, if we can,
17 we operate by consensus and I'm happy to put this on hold
18 until we have more clarify.

19 CHAIRMAN HOOD: All right. Mr. Turnbull.

20 COMMISSIONER TURNBULL: I mean, I think I
21 understand the Office of Planning's reference point, along
22 with Commissioner May's, and I think I'm fine with it, but
23 at the same time, I'm wondering if Office of Planning can
24 maybe supplement something in response to the last two
25 letters to give the Chair some further -- or to maybe

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1 elucidate a little bit more as to clarify some of these
2 things, to explain it a bit more for us?

3 MS. STEINGASSER: Maybe it would be helpful if we
4 did some drawings?

5 COMMISSIONER TURNBULL: I was going to say, maybe
6 some graphics and sketches would be fine.

7 MS. STEINGASSER: Yes.

8 COMMISSIONER TURNBULL: Because I think we want
9 the Chairman for life to be able to vote on this.

10 CHAIRMAN HOOD: No, I'm not the Chairman for life,
11 but I just want to make sure that it's right also to simplify
12 for those people who don't do zoning, and I consider myself
13 in that category sometimes, who don't do zoning all the time.
14 It would be helpful for all of us, except for Commissioner
15 May, he doesn't need the drawings. But I think it would be
16 helpful to move forward in that.

17 COMMISSIONER MAY: So I was about to start drawing
18 for you, you know?

19 CHAIRMAN HOOD: No, that's all right. Okay. So
20 if we can do that. Do we need a date? Ms. Steingasser,
21 thank you all for doing that, but when do you think you can
22 have it back?

23 MS. STEINGASSER: Probably the first meeting in
24 January.

25 CHAIRMAN HOOD: January?

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1 MS. STEINGASSER: Is that the 14th?

2 CHAIRMAN HOOD: Oh, okay. Yes. So we will --

3 MS. STEINGASSER: 17th?

4 CHAIRMAN HOOD: And if we can just touch on those
5 two points that -- oh, these letters, if we could, that would
6 be very helpful and I would appreciate it.

7 MS. STEINGASSER: Well, I think, based on what I'm
8 hearing, if we did a series of drawings for the 58 regs, the
9 Z-16 regs, and then what this --

10 CHAIRMAN HOOD: What this does.

11 MS. STEINGASSER: So you'll have three layers of
12 comparison.

13 CHAIRMAN HOOD: Okay. And then I think we all,
14 even though I might be the only one -- no, I'm just playing,
15 but I think we all will have a comfort level moving forward.

16 MS. STEINGASSER: Okay.

17 CHAIRMAN HOOD: Commissioner Shapiro?

18 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
19 just want to, again, for the Office of Planning, make sure,
20 because if I'm understanding correctly, there's a bit of a
21 bubble. If we were to kind of go back, then we will have
22 created a bit of a bubble where the standards were different
23 for a period of time.

24 MS. STEINGASSER: That's probably the case, yes.

25 COMMISSIONER SHAPIRO: And I'm just trying to

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1 figure out how many properties that affects. Is there some
2 kind of unintended consequence from this, is there a reason
3 why folks are going to rush to action around this in some
4 way?

5 MS. STEINGASSER: Well, there are many small
6 rowhouse properties that have been on the market. The city
7 had a Vacant to Vibrant program where they auctioned off a
8 couple hundred of these lots, so they're out there. And in
9 those cases where it's really been important, they've come
10 for variances.

11 We know of several that are waiting to the outcome
12 of this case to see whether they should go for variance or
13 matter of right, but if it's important, there's a special --

14 COMMISSIONER SHAPIRO: So it's actually kind of
15 the opposite, which is, if anything, folks will just pause
16 for a bit to see what action we take rather than rush into
17 something.

18 MS. STEINGASSER: They're --

19 COMMISSIONER SHAPIRO: If we had to guess.

20 MS. VITALE: I think people, now -- I think there
21 isn't a rush now because people will either hold and see what
22 the Commission does or there are a number of cases in the
23 pipeline already before the BZA.

24 So I think some folks were saying if they act
25 tonight, we'll withdraw our BZA case, we'll go pull permits,

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1 it'll be matter of right. If the Commission doesn't act this
2 evening, they'll proceed with their BZA case.

3 COMMISSIONER SHAPIRO: Thank you. And I know that
4 you're only imaging what people will do, but it's very
5 helpful to hear. I appreciate it. Thank you, Mr. Chair.

6 CHAIRMAN HOOD: Okay. Well, we're coming up on
7 the holiday season so hopefully it's not too much that will
8 be in the pipeline and I appreciate everyone's indulgence on
9 this, but I want to make sure that we -- that I understand
10 what I'm voting on and that we do it right.

11 Okay. Anything else on this? Do we need some
12 dates?

13 MS. SCHELLIN: Well, we'll just wait for OP's
14 report. They'll file it ten days prior to the meeting and
15 the record on this is closed at this point anyway, so it's
16 just OP's report that'll come in.

17 CHAIRMAN HOOD: Okay. Thank you, everyone, for
18 that indulgence on that. Let's go to Zoning Commission Case
19 Number 17-03. This is the Office of Planning text amendment
20 to Subtitle A, clarification of vesting rule. Ms. Schellin.

21 MS. SCHELLIN: Yes. On this one, the proposed
22 rulemaking was also published on November 2nd. Exhibit 11
23 was the same type of letter from NCPC advising that this case
24 also fell under the exception for their review, so they did
25 not review it.

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1 Exhibit 12 is a letter from -- or a report from
2 ANC 6C, providing comments, and then in Exhibit 13, there
3 were comments from Holland & Knight, so asking the Commission
4 to consider final action on this case.

5 CHAIRMAN HOOD: Okay. Commissioners, this is
6 another case I -- when I started reading it again, I said,
7 wait a minute, what did we do? But then when I started
8 looking at what was proposed and the sufficient -- be
9 sufficiently complete to permit processing without changes,
10 when you look at the regulation, I think we have covered and
11 addressed even the fact of ANC's -- ANC 6C's report, which
12 I thought was very detailed in some of the things, but I
13 think some of what they put in their submission also is
14 something that we spoke about in the -- in our hearing and
15 having a discussion on this.

16 I am fine with the way it's presented to us as is
17 and I think some of their concerns actually covers what those
18 different additions in the language and the regulations, what
19 certain things you have to make sure that it's complete, and
20 how you look at the whole thing about complete, and the
21 pipeline, that whole scenario, and as you know, that was a
22 concern that we had previously, but I think that what we had
23 proposed here gives at least DCRA and gives us a path forward
24 without a whole lot of complication.

25 That's just my -- I think we achieved what we set

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1 out to do. Let me hear from others. Commissioner May.

2 COMMISSIONER MAY: The ANC report did raise a
3 question for me, which is the concern about adding language,
4 and under review, in Section 301.5A, and how that is not the
5 standard that is used for some other restrictions, like the
6 popbacks, where the applications are referred to as being
7 only as filed as accepted and complete.

8 And I'm wondering if that truly is a concern. I
9 mean, frankly, I can't remember all the reasons why we
10 decided to add the, and under review, but I think we all
11 thought that was a good idea, but I'm curious.

12 Perhaps the Office of Planning has some thoughts
13 on whether that's actually a concern or not.

14 MS. STEINGASSER: It is not a concern. During the
15 hearings, the issue came up as to how there would be
16 determined, a date at which something would be considered
17 filed. The Commission asked OP to go back and work with DCRA
18 to look at that issue. We did and in consultation with the
19 Office of the Attorney General and DCRA, came up with that
20 phrase, under -- I've got to find it again -- and under
21 review, as additive to help establish a date at which there
22 is an affirmation that the permit's being reviewed.

23 At that point, an email is sent out to the permit
24 applicant and that establishes that date. And so that's why
25 that was agreed to and why it was recommended.

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1 We did follow back up with DCRA this morning when
2 we saw this letter and they confirmed, again, that that was
3 the preferred language and if the Commission wants to make
4 the other languages consistent with this, that that be
5 considered as a separate case.

6 And that gets to the issue that Holland & Knight
7 has also submitted in their submittal this afternoon, but
8 that that be considered a separate case and that we bring
9 this case to conclusion.

10 COMMISSIONER MAY: Okay. I mean, doesn't that
11 seem to make sense? I mean, wouldn't we want to have the
12 single standard across the different requirements?

13 MS. STEINGASSER: Right. I think so.

14 COMMISSIONER MAY: And it also seems like a pretty
15 minor change to add, and under review, to those other
16 circumstances, but I also understand that it's not something
17 that we would, you know, undertake on the fly right now, so
18 we should get this one done and then come back to that one
19 later.

20 Okay. That makes sense to me.

21 CHAIRMAN HOOD: Okay. Anything else on this?
22 Commissioner Shapiro? Okay. I -- Mr. Turnbull?

23 COMMISSIONER TURNBULL: Yes. And I'm okay with
24 this, the only thing is, this has happened on BZA -- on an
25 appeal case that I know of, where you've got a -- an

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1 applicant's got something in and it's -- there are changes
2 being made, and there are continued reviews on this, and it's
3 often difficult to establish a date when the first permit or
4 when -- there's a whole sequence of events as to when you go
5 through what review.

6 And is it being complete, yes, but plumbing's not
7 done, or this is not done, and under review, I'm just worried
8 that it gives some wiggle room that might cause some problems
9 down the road for some people.

10 MS. STEINGASSER: Well, the -- once it's deemed
11 under review, that actually establishes a set date and that's
12 when an email is sent out. So once it's filed, once the
13 permit application is filed, it's just that, it's filed.

14 But once it becomes under review, that's an actual
15 action, and so there's a date.

16 COMMISSIONER TURNBULL: And the email is sent to
17 --

18 MS. STEINGASSER: To the applicant.

19 COMMISSIONER TURNBULL: Just to the applicant?

20 MS. STEINGASSER: Well, I don't know if it's sent
21 to others, but it is sent to the applicant.

22 COMMISSIONER TURNBULL: I mean, the ANC is not
23 copied?

24 MS. STEINGASSER: I don't believe so. No. I
25 think just the applicant.

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1 COMMISSIONER TURNBULL: Okay. All right. Thank
2 you.

3 CHAIRMAN HOOD: I thought we had a lot of
4 discussion on, was it, under review? One of them, we had a
5 lot of discussion on. Was it, under review?

6 MS. STEINGASSER: Yes, sir, it was.

7 CHAIRMAN HOOD: But we put those caveats to now
8 find out what it meant, under review.

9 MS. STEINGASSER: That's correct.

10 CHAIRMAN HOOD: Okay. I thought that was it.

11 MS. STEINGASSER: And Zoning Administrator's
12 Office was here with us at the dais.

13 CHAIRMAN HOOD: Right. Okay. Again, I think,
14 though, that the exchange between Ms. Steingasser and
15 Commissioner May, I think we do need to look at that as a
16 separate case, especially with what just was handed to us or
17 just came in this letter from Holland & Knight.

18 So I guess, I don't know, do we do a formal
19 request?

20 MS. STEINGASSER: No, sir, we hear you.

21 CHAIRMAN HOOD: You all know.

22 MS. STEINGASSER: Yes.

23 CHAIRMAN HOOD: Okay. Okay. All right. So I'm
24 ready to move forward. Others ready to move forward? Any
25 other concerns, or questions, or comments? Okay. Somebody

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1 like to make a motion? Okay. All right. I make a motion
2 that we approve Zoning Commission Case Number 17-03. This
3 is the Office of Planning's text amendment to Subtitle A,
4 clarification of vesting rule, and ask for a second.

5 COMMISSIONER SHAPIRO: Second.

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

10 MS. SCHELLIN: Yes, staff records the vote 5-0-0,
11 to approve final action on Zoning Commission Case Number 17-
12 03. Commissioner Miller -- I'm sorry, Commissioner Hood,
13 Commissioner Shapiro seconding, Commissioners May and
14 Turnbull in support, Commissioner Miller in support by
15 absentee ballot.

16 CHAIRMAN HOOD: Okay. Ms. Schellin, do we have
17 anything else?

18 MS. SCHELLIN: Nothing else for the meeting.

19 CHAIRMAN HOOD: Okay. So we need to take two
20 minutes to get ready for our hearings. I want to thank
21 everyone for their participation and work on this, and
22 continued work, and with that, the special public meeting is
23 adjourned. We need two minutes.

24 (Whereupon, the above-entitled matter was
25 concluded at 6:54 p.m.)

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In the matter of: Special Meeting

Before: DCZC

Date: 12-03-18

Place: Washington, DC

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