

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

MARCH 11, 2019

+ + + + +

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 5:50 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice 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
- JOEL LAWSON
- MAXINE BROWN-ROBERTS
- ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from
the Regular meeting held on March 11, 2019.

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

5:50 p.m.

1
2
3 CHAIRMAN HOOD: Okay, this meeting will please
4 come to order. Good evening, ladies and gentlemen. We are
5 convened in the Jerrily R. Kress Memorial Hearing Room for
6 a public meeting of the Zoning Commission for the District
7 of Columbia. My name is Anthony Hood; joining me are Vice
8 Chair Miller, Commissioner Shapiro, Commissioner Turnbull,
9 Commissioner May. We're also joined by the Office of Zoning
10 staff, Ms. Sharon Schellin. I will provide further
11 information about this public meeting when it resumes at 6:30
12 p.m.

13 At this point, Commissioners, I would like to know
14 whether any of you believe we should hold a closed meeting
15 to obtain legal advice from our counsel and to deliberate but
16 not vote on the contested cases scheduled for tonight's
17 hearing.

18 COMMISSIONER SHAPIRO: So moved.

19 CHAIRMAN HOOD: Is there a second?

20 COMMISSIONER MAY: Second.

21 CHAIRMAN HOOD: So moved and properly seconded.

22 Any further discussion?

23 All in favor?

24 (Chorus of aye.)

25 CHAIRMAN HOOD: Will the Secretary please -- even

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1 though I did it, could you still take a roll call vote on the
2 motion before us now that has been seconded?

3 MS. SCHELLIN: Chairman Hood?

4 CHAIRMAN HOOD: Yes.

5 MS. SCHELLIN: Vice Chair Miller?

6 VICE CHAIR MILLER: Yes.

7 MS. SCHELLIN: Commissioner Shapiro?

8 COMMISSIONER SHAPIRO: Yes.

9 MS. SCHELLIN: Commissioner May?

10 COMMISSIONER MAY: Yes.

11 MS. SCHELLIN: Commissioner Turnbull?

12 COMMISSIONER TURNBULL: Yes.

13 MS. SCHELLIN: The vote carries -- the motion
14 carries, rather.

15 CHAIRMAN HOOD: Thank you. This meeting will be
16 recessed until 6:30 p.m.

17 (Whereupon, the above-entitled matter went off the
18 record at 5:54 p.m. and resumed at 6:42 p.m.)

19 CHAIRMAN HOOD: Okay, we're ready to resume.
20 Again, good evening, ladies and gentlemen. This is a
21 resumption of the public meeting of the Zoning Commission for
22 the District of Columbia. I've already introduced my
23 colleagues previously before we went into closed session.
24 Let me also introduce the Office of Attorney General staff,
25 Mr. Tondro and Ms. Lovick, Office of Planning staff, Ms.

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1 Steingasser, Mr. Lawson, Ms. Vitale and Ms. Brown-Roberts.

2 Copies of today's meeting agenda are available to
3 you and are located at the bin near the door. We do not take
4 any public testimony at our meetings unless the Commission
5 requests someone to come forward.

6 Please be advised this proceeding is being
7 recorded by a court reporter and is webcast live.
8 Accordingly, I must ask you to refrain from any disruptive
9 noise or actions in the hearing room, including display of
10 any signs or objects. Please turn off all electronic devices
11 at this time.

12 Does the staff have any preliminary matters?

13 MS. SCHELLIN: No, sir.

14 CHAIRMAN HOOD: If not, we will go with our agenda
15 as noted.

16 Okay, so Consent Calendar Item under B,
17 Modification of Consequence Deliberation, Zoning Commission
18 Case No. 16-13D, JS Congress Holdings, LLC, PUD modification
19 of consequences, Square 748. Ms. Schellin?

20 MS. SCHELLIN: Yes, sir. No new exhibits have
21 been received since the Commission determined this was in
22 fact a Modification of Consequence at its February 11th
23 meeting. I just wanted to remind the Commission that the
24 applicant revised its request to delay the deadline to June
25 30th, 2019 to complete the financial contribution to Habitat

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1 for Humanity. And with that, ask the Commission to consider
2 taking final action on this case.

3 CHAIRMAN HOOD: Okay, colleagues, Ms. Schellin's
4 already, I think, pretty much teed it up with the revised
5 request of the modification of B2 of the Zoning Commission
6 Order, in this case 16-13D.

7 Let me open up for any comments or questions.

8 Okay, so I think it's pretty straightforward the
9 revised date which I believe is Exhibit 5. Would somebody
10 like to make a motion?

11 COMMISSIONER SHAPIRO: Mr. Chair?

12 I move that we take final action on Zoning
13 Commission Case No. 16-13D, JS Congress Holdings PUD
14 modification of consequence, in Square 748. And as Ms.
15 Schelling said, that the motion is with revised condition
16 changing the deadline to June 30th, 2019 as requested by the
17 applicant in Exhibit 5. I'll look for a second?

18 COMMISSIONER MAY: Second.

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

21 All in favor?

22 (Chorus of aye.)

23 CHAIRMAN HOOD: Any opposition?

24 Not hearing any, Ms. Schellin, could you please
25 record the vote?

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1 MS. SCHELLIN: Yes, sir. The staff records the
2 vote 5-0-0 to approve final action Zoning Commission Case No.
3 16-13D with the revised condition change in the deadline to
4 June 30th, 2019 as requested by the applicant in Exhibit 5.
5 Commissioner Shapiro moving, Commissioner Miller seconding,
6 Commissioner's Hood, May and Turnbull in support.

7 CHAIRMAN HOOD: Okay, next we will go to final
8 action. Zoning Commission Case No. 16-23 Valor, development
9 and voluntary design review in Square 1499. Ms. Schellin?

10 MS. SCHELLIN: Yes, sir. Exhibits 427 and 427A
11 have the applicant's post-hearing submissions, Exhibit 428
12 is Spring Valley Opponents' draft order, Exhibit 429 is the
13 Spring Valley Opponents' response to the applicant's post-
14 hearing submissions. Exhibits 430A1-430A2 is CRD's response.
15 Exhibit 431 is CRD's draft order, Exhibit 432 is the
16 applicant's draft order. Exhibit 433 was the applicant's
17 motion to reopen the record to allow them to respond to some
18 issues that CRD brought up in their response which was
19 approved by the chairman. And then Exhibit 433A was the
20 applicant's response thereto. And then Exhibits 434 and 435
21 are CRD and ANC3D's response to the applicant's motion and
22 submission; although, there is no response allowed to the
23 motion to reopen the record, as that is actually just ruled
24 upon by the chairman. I believe they did make some reference
25 to the motion to reopen in their filings, though. So I would

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1 ask the commission to consider action on this case this
2 evening.

3 CHAIRMAN HOOD: Okay. Thank you, Ms. Schellin.
4 I don't think I have to respond to the question about not
5 reopening the record because I've already done that.

6 MS. SCHELLIN: Correct, because that was already
7 done. Yes.

8 CHAIRMAN HOOD: Okay. Commissioners, as you know,
9 this is our first voluntary design review process case and
10 I believe we've learned a lot. But before we move forward
11 just on this case, I would like to know where my colleagues
12 are; do you feel comfortable with moving forward as it is or
13 do we need some things? Let's start off with that question
14 first. Whoever would like to go first?

15 Commissioner May?

16 COMMISSIONER MAY: Thank you, Mr. Chairman. First
17 of all, I want to state for the record in case I didn't state
18 it in the last hearing, that I've reviewed the record on
19 this, even though I missed the hearings in January, so I'm
20 prepared to participate in the decision-making. I would also
21 want to say up front that this has been a very thoroughly
22 examined project and I appreciate the detail that is present
23 in the record and was testified to and presented to the
24 commission by the applicant and by all of the parties in
25 favor and opposed and by the ANCs that were involved. I

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1 mean, I do think it's been very thoroughly examined. I think
2 generally speaking we have the raw facts in the record to be
3 able to make a decision, in my case, and sufficient
4 information to make a positive decision, but I feel like
5 there are a few issues that would need to be discussed
6 further before we actually take a vote. So, as I said, I'm
7 inclined to, in favor of approving the project, but would
8 want to consider the possibility of a little bit more time
9 so that we can have a truly full discussion of all of the
10 aspects of the case to make sure that everything is
11 adequately addressed and make sure we have sufficient council
12 to be able to make a decision.

13 CHAIRMAN HOOD: Okay. Commissioner Shapiro?

14 COMMISSION SHAPIRO: Thank you, Mr. Chair. I'm
15 in a similar place as Commissioner May; I feel like it has
16 been a robust conversation, it feels that the record is quite
17 complete, and again, similar to Commissioner May, I feel like
18 I'm in a position to move ahead and move favorably on this.

19 Thank you, Mr. Chair.

20 CHAIRMAN HOOD: Okay, any other commissioners?

21 Commissioner Turnbull?

22 COMMISSIONER TURNBULL: I would agree with my
23 colleagues; I think this has been an extremely well-vetted
24 case, contradictory from both sides as to what's good, what's
25 bad and the things that may or may not be missing. But I

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1 think overall it's been a well-conducted hearing -- set of
2 hearings that we've had. I guess my sticking point right now
3 is whether or not the aggregation of a FAR is permitted in
4 voluntary -- in this process. I think in one sense I could
5 say it's implicitly implied -- I mean, it's there, but in
6 another sense I'm really troubled that it's not explicitly
7 set out. So I don't know if I can vote on this, and I'm
8 troubled by just the language of what we're dealing with and
9 whether or not the Zoning Commission has absolute, explicit
10 authority to do it. I think the design, there's a lot of
11 positive issues to it. I don't want to get into the design
12 issues and what's wrong and what's positive right now. I
13 have a sticking point with whether or not we can really rule
14 on it; that's just where I am right now.

15 CHAIRMAN HOOD: Okay. Commissioner Miller, Vice
16 Chair, do you want to add something?

17 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
18 think -- I'm not sure I can add anything. I think I share
19 Commissioner Turnbull's concern about needing clarity on the
20 FAR aggregation issue. I think there have been a number of
21 improvements made to this project between the January 2018
22 hearing and the one we had this year. This is our first
23 voluntary design review case which is a very interesting
24 example of voluntary design case with -- one of the original
25 intents was to be an expedited, more efficient, PUD-lite type

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1 of process and I think that's been an absolute failure here.
2 That hasn't been more efficient; without there being a PUD,
3 the public benefits aren't there -- they're being offered but
4 they're not -- they're kind of in this Never Never Land. So
5 how does it get back to all the balancing?

6 I have some discomfort with moving forward, but
7 I could see being inclined to -- well, I don't know if I'd
8 be inclined to move forward. I really think there should
9 have been a PUD and maybe will end up being a PUD. One of
10 my problems with this case has been that I always thought
11 that this development should be on the very site that it's
12 taking the density from, for where it's being located, the
13 Spring Valley Shopping Center site. That's where -- on
14 Massachusetts Avenue that surface parking lot, that's where,
15 with or without the historically landmarked strip shopping
16 mall behind it, because that's where you would want to put
17 your higher and more dense development away, from the two-
18 story single-family homes that are behind the supermarket
19 site, vacant supermarket site, the five-year old supermarket
20 site. What a waste, which is adjacent to the two-story homes
21 on Wyndham and Yuma. So that would require all kinds of
22 hoops to be gone through with I guess the Mayor's agent and
23 HPRB and the HPO staff at OP. So I guess I'm of two or three
24 minds about the whole thing; would like to be done with it
25 one way or the other since it's now been three years, and

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1 five years of a vacant supermarket site, doing nothing for
2 nobody. So, that's my muddled comments, Mr. Chairman, at
3 this point. I'll maybe have some further later as we go on.

4 CHAIRMAN HOOD: I have been back and forth on this
5 whole issue. My first initial question was, were we ready
6 to move in this case? I actually was not; I thought I was
7 going to be by myself, actually, from the first two comments
8 I heard. Let me say this: I know that this was our first
9 voluntary design review and with all the -- not in a rush
10 because it took us nine years to do the zoning rewrite.

11 So, obviously if it takes us that long to try to
12 get something right and we're still working on it, again,
13 this is just one of those things that we didn't see some of
14 the things coming. As you stated, Vice Chair, this was
15 supposed to be a lot faster; this seems to be a lot longer,
16 it seems to be a little more difficult. I know the
17 Commission's intentions I believe were well, we were trying
18 to do this to help the general public as a whole to move a
19 little faster, but it seems like we're more bogged down with
20 this whole concept. And at some point in time I'm going to
21 make sure that I'm fair to this case, so I'm not inclined --
22 as it states I can tell you I'm not inclined to vote
23 favorably because I think there needs to be some fixes, some
24 things and some unanswered questions.

25 I'm not ready to vote or to move forward in this

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1 case, but depending upon what my other colleagues, because
2 it looks like it's 3 to 2 as far as moving forward -- if I
3 counted everything right. I think for me there's still some
4 outstanding questions that are not necessarily germane to
5 this case and I may parse it out and have the case over here
6 while we look at the whole voluntary design review process.
7 I think there needs to be some more going back and some
8 clarification in that process. Now, the question is I want
9 to make sure that I'm fair to the applicant, but I don't want
10 to leave that applicant out there for nine years like it took
11 us to do with ZR16. But I think that there needs to be some
12 clarification in this whole voluntary design review process
13 and there may have been some things that we left out and some
14 things that we need to kind of show up. So that's kind of
15 where I am. I would be inclined to parse it out to -- now,
16 if the applicant -- like you mentioned a PUD or if they want
17 to -- and I'm not saying which way to go, I would leave that
18 up to the applicant -- if you want to vote, I'm inclined to
19 give you a vote, but I also want to make sure I'm giving you
20 an opportunity. And I also want to make sure I'm fair to us.
21 I know we have postponed this case on a number of occasions
22 to give the community and applicant more time to work,
23 changing the plans, so I don't really feel like my back is
24 up against the wall to hurry up and get anything done. Many
25 nights I have postponed this to try to make things better and

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1 we got to this point. In hindsight I think that the
2 opposition, as Commissioner Turnbull mentioned about the FAR
3 aggregation, I think -- FAR aggregation, that is very
4 important. That was mentioned to us on hindsight, probably
5 should have stopped it then. You know, we go down these
6 processes and it's a lesson learned. That's where I am. I
7 will leave that up to the applicant and we can finish having
8 this discussion. But I am not inclined to move forward with
9 what I have in front of me.

10 And here's the thing, I don't want to try to make
11 a wrong a right; I want to clarify things, so then we move
12 forward, but I also want to make sure I'm fair to the
13 applicant who has a case in front of us. I would like to
14 separate the two out, but we need some clarifying language
15 from this whole voluntary design review whether it even stays
16 around or not, because this is the first one -- I may sound
17 like I'm rambling but that's just the way the whole case has
18 been for me, rambling.

19 So that's my two cents.

20 Anybody have anything else further?

21 So I guess the next question is -- let me just say
22 this; since I've heard from everyone, and I can also count --
23 the next question is do we parse it out, do we vote, do we
24 give them a chance to come back as a PUD? It's again, still
25 up in the air for me.

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1 Mr. Shapiro, you want to add to it?

2 COMMISSIONER SHAPIRO: Just briefly, Mr. Chair.
3 I appreciate your thoughts on this. I'm having trouble doing
4 the math that you were doing; I'm a little confused as to
5 where we are. But I'm trying to make sense of where you were
6 specifically, and what I'm hearing from you is one option is
7 to table the decision and take up specifically the FAR
8 aggregation issue?

9 CHAIRMAN HOOD: That's -- okay.

10 COMMISSIONER SHAPIRO: And that's just not an
11 issue for this project; that would be an issue district-wide?

12 CHAIRMAN HOOD: Correct. Yes, so you got that out
13 of it, so I must have been kind of clear.

14 COMMISSIONER SHAPIRO: Okay.

15 CHAIRMAN HOOD: Okay, good.

16 COMMISSIONER SHAPIRO: That is an option.

17 CHAIRMAN HOOD: That is an option and to even go
18 even further, I'm going to even look at here, we can even
19 look at this whole process, this whole --

20 COMMISSIONER SHAPIRO: Voluntary design.

21 CHAIRMAN HOOD: The whole, whole, the whole
22 process. Do we need it, is it working? I don't know if we
23 want to throw it all out because I know a lot of work has
24 been done with the community, the Office of Planning and
25 others. Do we throw it all out after the first case or do we

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1 need to go back from lessons learned? And I don't want to
2 penalize this applicant; that's why I say the PUD or
3 something, or maybe we do something to clarify that
4 aggregation with FAR. That is one option. The other option
5 is look at the whole thing, and I don't know in what context
6 or order we do that, and like I said, I don't want to keep
7 this applicant waiting around for nine years. I'm in no
8 rush. That's what gets us in some of these problems, we
9 rush. I'm not trying to rush to make a right; I want to make
10 sure it's right before we -- I would like to make sure it's
11 right before I make any type of decision, so.

12 COMMISSIONER MAY: Mr. Chairman?

13 CHAIRMAN HOOD: Yes.

14 COMMISSIONER MAY: I certainly appreciate the
15 desire to have clarity when it comes to the FAR aggregation
16 question. In my mind it was pretty straightforward because
17 the thought that without being able to do FAR aggregation,
18 there was not that much reason to even have voluntary design
19 review. So while it may not have been explicit in the
20 regulation, it was certainly implicit in the way I was
21 approaching the voluntary design review. And while I do
22 understand how this -- there are many lessons to be learned
23 by this particular experience -- I am not as inclined to
24 question the whole concept of voluntary design review,
25 because we already do design review that's very similar to

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1 this in a number of areas where it's actually required.
2 There are certain zones where we require design review. And
3 I think that for the most part that has worked very well,
4 that's been a vehicle for us to take on certain cases and to
5 consider the design in some of those neighborhoods with
6 particular guidance set forth in the regulations and how we
7 would consider those cases. It also gives us the opportunity
8 to take up any issues of relief that may be requested. Now,
9 as far as I know, in none of those cases did we actually have
10 to deal with aggregation of FAR; certainly if that had been
11 the case, the many attorneys who are looking at this would
12 have found that and presented that to us as evidence that it
13 was something that we're -- that was an example of what we
14 could be doing.

15 I mean, I appreciate the desire to get greater
16 clarity. I think, though, at this moment the really key
17 question that's before us for a case that was filed in
18 accordance with the regulations the way we had written them,
19 does hang on this singular question of FAR aggregation. So
20 I think if we're going to take up anything about this, I
21 think the immediate thing to do would be to take up the --
22 should we be doing FAR aggregation as part of voluntary
23 design review or not, and leave it at that and take that up
24 fairly quickly so that it's a reasonable way of understanding
25 what can be done with this, with this particular case. So

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1 we'd wind up tabling this case for, I don't know, six months
2 or something while we sort out that question.

3 If we take up the whole issue of wow, should we
4 doing voluntary design review and how do we shape that and
5 revisit the discussions that we had in the Zoning Commission,
6 I think the zoning regulation rewrite that goes back ten
7 years now, I think that's a much longer conversation. It
8 certainly may be a conversation worth having, but I don't
9 know that it does anything to help us get through decision-
10 making on this. And so therefore, I would want to focus, if
11 we're going to defer at all, I would defer so we can focus
12 on the question of FAR aggregation and then see what happens
13 from there.

14 I would also say that -- and the applicant is free
15 to do whatever they want with their case; they could pursue
16 something matter-of-right, they could withdraw this
17 application and pursue a PUD, if that might be faster. I
18 don't know it's going to be a better result for them. They
19 would have to make that decision. I don't think it would be
20 right for us to table this indefinitely with this specific
21 case in the balance when the applicant made their application
22 in good faith. And frankly, remarkable faith to have stuck
23 with it for an extended period of time. I mean, this has
24 been a really extenuated case and I think very difficult for
25 all of the people involved. So I think the applicant

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1 deserves some credit for sticking with it and trying to do
2 something according to rules that we had set forward.

3 CHAIRMAN HOOD: Okay. Any other comments?

4 We've heard my comments and Commissioner May's
5 comments about -- I would be inclined, I guess, to separate
6 this out and look at something city-wide, but again, this has
7 already been stated. The applicant has many choices; they
8 can ask for a vote, put this on hold until we either do some
9 clarifying or have a hearing for the city, not just for over
10 here in this area, but looking at this whole FAR aggregation
11 city-wide; should it be included, should it not be included,
12 how should we handle that. Maybe we'll do a text amendment
13 or something of that nature, or I guess so we won't hold too
14 much up, I do eventually want to look at the whole gamut of
15 the design review, again. But the difference is -- I was
16 around for the Capitol Gateway; that design review I think
17 that was one of the earlier ones, and that seemed -- and as
18 you mentioned, that seemed to I think work very well. I
19 don't remember us even having -- for some reason I always
20 want to credit and I know the whole Office of Planning always
21 wants to credit Mr. Lawson for writing that, but I'm sure
22 that everybody did it. But for some reason I just remember
23 him giving us guidance and testifying to us about that. So
24 if I'm wrong, forgive me, for whoever else worked on it, but
25 I just always remember Mr. Lawson. I always thought he was

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1 the author of that; maybe he just presented the most to us
2 on that.

3 (Off-microphone comments.)

4 CHAIRMAN HOOD: He was the author? Oh, so I got
5 that right. Okay, good.

6 All right, but so did you author this one, Mr. --?
7 (Laughter.)

8 CHAIRMAN HOOD: Don't answer that question. But
9 so that's kind of where I am. I'm not sure. But I think,
10 Commissioner May, you and I may be going down the same lines,
11 if that's safe to say?

12 COMMISSIONER MAY: Yes.

13 CHAIRMAN HOOD: Okay. I don't know what others
14 feel?

15 COMMISSIONER MAY: Well, I'm going down your line
16 because you've been down my line before, so.

17 CHAIRMAN HOOD: Okay. Well, you know, we can call
18 for a vote.

19 COMMISSIONER MAY: No, that's okay. I can count,
20 too.

21 CHAIRMAN HOOD: All right, can I hear from others,
22 path going forward?

23 COMMISSIONER SHAPIRO: Then if we go down this
24 path and there is no vote today but we will have a request
25 for OP related to a specific text amendment -- related to

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1 aggregation of FAR, right?

2 CHAIRMAN HOOD: It would not be germane to just
3 this, to the case. We will parse this case out, we will put
4 it on hold, we will do a city-wide, we will hear testimony
5 from hopefully folks all over the city. And not necessarily
6 just make it germane to this case, even though this case was
7 the impetus to help us to see some of the things, but I don't
8 want to have a direct correlation specific to this issue
9 alone.

10 COMMISSIONER SHAPIRO: Right, of the FAR
11 aggregation. I can get aboard with that.

12 CHAIRMAN HOOD: Okay, others?

13 Okay. All right, so I guess we would ask the --
14 no, we would not take it up this evening, naturally; we would
15 deal with the FAR aggregation issue as, I don't know, I guess
16 a text amendment and look at it and see whether or not it's
17 doable; if it's not doable I guess we would ask, I guess, the
18 Office of Planning to come back with some language. And we
19 would probably set this down -- not set this down, but have
20 a hearing and see whether it's even doable, whether we want
21 to even include it in the design review, in our voluntary
22 design review. So I think those are the questions -- I don't
23 know if I can add anymore to this -- but then again, the
24 applicant as we've already stated a hundred times, has the
25 right to -- you can even send a request and say no I want you

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1 to vote on my case or you can say we're going to withdraw --
2 whatever. I don't want to tell the applicant what to do; I
3 just want to make sure that our process get our clarification
4 correct for me to be able to make an intelligent decision
5 whether it should be there or not be there. I don't know
6 that yet.

7 So Commissioner Shapiro?

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. If
9 we are going down this street, it might be helpful for me to
10 ask OP if they have any questions about a request, if they
11 have clarity about what we're asking them to do, if that's
12 appropriate, Mr. Chair?

13 CHAIRMAN HOOD: Sure.

14 MS. STEINGASSER: I'm pretty sure we understand
15 you want a text amendment that's not project specific but
16 just relevant to the regs, that takes a look at the FAR and
17 the aggregation language.

18 CHAIRMAN HOOD: Yes. All right, and we would make
19 sure that the city, especially our ANCs across the city are
20 involved in this discussion. I don't know; I don't have
21 anything else to add to that.

22 Vice Chair Miller?

23 VICE CHAIR MILLER: So just if we're going to put
24 this case on hold while OP looks at a possible text amendment
25 to clarify the FAR aggregation issue and voluntary design

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1 review cases, generally -- do you have any estimate, Ms.
2 Steingasser, of when you would bring a recommendation to us
3 on just that issue of that voluntary design review process?
4 Even though I personally think we should just get rid of it
5 altogether, but that's neither here or there right now.
6 We're talking about -- if we're just dealing with that issue,
7 do you have any kind of guesstimate?

8 MS. STEINGASSER: Well, we would certainly make
9 it a priority issue but I can't tell you exactly when.

10 VICE CHAIR MILLER: Yes.

11 MS. STEINGASSER: But it would very soon, I would
12 say this spring.

13 VICE CHAIR MILLER: So I think the --

14 COMMISSIONER TURNBULL: Do you think it would be
15 sooner than three months?

16 VICE CHAIR MILLER: That's just for the
17 recommendation to us to set the hearing.

18 MS. STEINGASSER: Yes.

19 VICE CHAIR MILLER: So I mean, it might be -- I
20 don't want to tell the applicant what to do either -- but it
21 might be quicker to just -- while we pursue this text
22 amendment city-wide voluntary design review issue, it might
23 be quicker for the applicant to -- they might want to think
24 about, as the chairman said, going another route whether it's
25 a matter of right, withdrawing this case and going with the

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1 PUD. It might be actually quicker than waiting for this text
2 amendment to resolve. There's a lot of uncertainty knowing
3 where that process is going to go, even if it's made a
4 priority.

5 CHAIRMAN HOOD: And here's another thing I'm going
6 to throw out there, not that I'm asking because I mentioned
7 this earlier, looking at the whole thing; to me it would be
8 advantageous -- I think in the best interest of this
9 commission for the sake of saving everybody's time, we look
10 at the whole thing, not look at a piece of it, but if the
11 Commission -- I don't want to muddy the waters, but if the
12 Commission -- well, I don't mind muddying the waters -- but
13 I just think that to me I'd rather look at it all. And I
14 heard what my colleague said, but to waste time and do a text
15 and then still not be satisfied, and whose time are we going
16 to be wasting again, our time and the public's time. So I
17 just think we look at the whole ball of wax; that's where I
18 am. But we got a path going forward, let's do that, but we
19 may need to reconsider that whole discussion and do the whole
20 thing.

21 Okay, anything else?

22 VICE CHAIR MILLER: No, sir.

23 CHAIRMAN HOOD: Okay, I just wanted to put that
24 on the record.

25 VICE CHAIR MILLER: I do agree that is a ball of

1 wax.

2 CHAIRMAN HOOD: I want to remind us when we get
3 to whatever we get and we're still not satisfied.

4 Okay. Ms. Schellin, do I need to do anything else
5 with this?

6 MS. SCHELLIN: No, sir.

7 CHAIRMAN HOOD: Mr. Tondro, do I need to do
8 anything else?

9 MR. TONDRO: No.

10 CHAIRMAN HOOD: Okay. All right, so does
11 everybody know what we're doing with this?

12 Okay. Well, I hope you all do. All right, so
13 we'll wait -- I think Ms. Steingasser you said in about three
14 months -- or six months?

15 MS. STEINGASSER: No longer than.

16 CHAIRMAN HOOD: Okay.

17 MS. STEINGASSER: And so we'll clarify -- just to
18 put this case up, when final action comes forward on the text
19 amendment, if you move forward with that unless the applicant
20 withdraws this case and moves forward with a matter-of-right
21 or PUD case. Correct?

22 CHAIRMAN HOOD: Yes, okay. Anything else, Ms.
23 Schellin?

24 MS. SCHELLIN: No.

25 CHAIRMAN HOOD: All right, next, let's call the

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1 next case, Zoning Commission Case No. 18-13 TM Jacob,
2 LLC/Capitol Gateway design review, Square 656. Ms. Schellin?

3 MS. SCHELLIN: Yes, Exhibits 38-38C2 is the
4 applicant's post-hearing submissions, Exhibit 42 is the
5 applicant's draft order, and Exhibit 43 is DDOT's
6 supplemental report. We've asked the Commission to consider
7 final action on this case.

8 CHAIRMAN HOOD: Okay. Commissioners, any
9 additional information? Any different requests or are we all
10 satisfied with this one?

11 Mr. Turnbull?

12 COMMISSIONER TURNBULL: I have some issues. What
13 I don't get is that in the applicant's letter which is
14 Exhibit No. 38, following up when they talk about -- I mean,
15 we had talked about -- I think you even brought up the issue
16 about the loading, crossing the neighbor's property and --
17 I guess what I don't understand with what we got back, the
18 applicant provided potential alternate ground floor plans
19 that would allow proper truck access. The loading designs
20 reading from this letter pertain to the loading in the rear
21 of the building but pushes the interior service loading areas
22 towards the west. The results is minor; go on, adjusting the
23 loading would not have any impact on material structure of
24 the building, that's fine. However, while feasible, the
25 adjusted loading design is less than ideal for the applicant

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1 and the final plans which provides larger second-floor units,
2 more space in the residential lobby. Accordingly, the
3 applicant is continuing to pursue negotiations for limited
4 access that would allow DDOT to find that trucks could
5 successfully access to ground floor design shown in the final
6 plans -- which begs the question, what did we get -- they
7 thought they were supposed to provide plans that would show
8 us how it would actually meet the access for these trucks.

9 To that end, to allow the applicant to construct
10 the final plans, if the proper access needs can be
11 accommodated to DDOT's satisfaction, the applicant asked that
12 the following flexibility language be added; should DDOT
13 conclude that the final plans in conjunction with the
14 necessary neighbors' support, provide sufficient
15 maneuverability to accommodate 20-foot service vehicles in
16 the project's loading area, the applicant may modify the
17 adjusted -- they're asking for a lot of flexibility on
18 something we don't even know. And the drawing that they're
19 looking at that was provided to us in Exhibit A, No. 38A1,
20 this little drawing, this little tiny drawing, simply shows
21 arrows going down the alley and it looks like they're going
22 to the garage entrance. Right above the garage entrance is
23 the loading berth. Now typically --

24 COMMISSIONER MAY: Let me see if I can find --
25 yes, that's not the updated one.

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1 COMMISSIONER TURNBULL: That's not the updated
2 one? Is this another one?

3 COMMISSIONER MAY: Yes. It was a confusing set
4 of drawings. There were two drawings in there, and the small
5 drawing that you're looking at is one that doesn't show the
6 changed condition, there's another drawing that shows the
7 change.

8 COMMISSIONER TURNBULL: Well, what exhibit that
9 I might share --?

10 COMMISSIONER MAY: I'll have to find that one.

11 Sorry, give me a sec.

12 COMMISSIONER TURNBULL: Well, after 38IA1, there
13 was 38A2, but that doesn't really show anything. Then
14 there's also the final plans, Part 1 and 2 of 38C1 and C2,
15 but --

16 COMMISSIONER MAY: All right, A19 on 38C1 I think
17 is the expanded loading dock.

18 COMMISSIONER TURNBULL: 38C1.

19 COMMISSIONER MAY: I think that's what it is.
20 Hold on a second, let me just check.

21 COMMISSIONER TURNBULL: A09, I see A09. You say
22 A19.

23 COMMISSIONER MAY: I thought. Again -- I mean,
24 it was clear to me when I was reviewing it. I have to go
25 back and look at it because it wasn't an issue from my

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1 perspective. I mean, they had provided an alternate plan
2 that I thought worked.

3 COMMISSIONER TURNBULL: Well, I see on Drawing A19
4 there is a truck in the loading berth.

5 COMMISSIONER MAY: Yes, they don't have a loading
6 diagram.

7 COMMISSIONER TURNBULL: Yes, they don't have a
8 loading diagram to show the maneuverability of a truck.
9 Normally, that's what -- and Gorove/Slade is their traffic
10 engineers -- usually that's what we got from Gorove/Slade was
11 a modeling of a truck moving in and out to show that just
12 having a truck in the berth is one thing, but showing a truck
13 moving in and out that narrow alley, before they had them
14 cutting across the alley -- cutting across part of the
15 property of one of the other parties. So I'm just curious
16 as to -- now we got 38P.

17 CHAIRMAN HOOD: 38P. What's ironic is DDOT goes
18 along with 38A1 and A2 and say that's sufficient, so they
19 were fine with the first set.

20 COMMISSIONER TURNBULL: Well, I guess even on this
21 -- this is so tight.

22 COMMISSIONER MAY: I mean, did you look at 38B?

23 COMMISSIONER TURNBULL: I'm on A44.

24 COMMISSIONER MAY: Okay. Well, look at 38B which
25 shows the turning diagram.

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1 COMMISSIONER TURNBULL: This is what A44 shows.

2 COMMISSIONER MAY: Okay, but this is the -- it has
3 the truck-turning diagram that shows that they can make the
4 turn to the loading dock without touching the neighbor's
5 property.

6 COMMISSIONER TURNBULL: Okay, I can see that then.
7 I wish they made it clear when they submitted their
8 application as to how to find things. My only concern -- and
9 OAG can help me out on this language that they want, this
10 flexibility which I think is -- it leaves it up in the air,
11 it's open-ended. Usually we're having final --

12 COMMISSIONER MAY: Mr. Turnbull, rather than
13 trying to parse the language -- I mean, we don't have to
14 agree to that. I mean, my inclination is to require them to
15 build it according to the modified loading dock, which works.

16 COMMISSIONER TURNBULL: And not include the
17 language.

18 COMMISSIONER MAY: Yes, and if they come to some
19 accommodation with the neighbor or they manage to twist the
20 guy's arm to see --

21 COMMISSIONER TURNBULL: I guess, that was my
22 bottom line; I didn't want the language at all.

23 COMMISSIONER MAY: Yes, I agree with that.

24 COMMISSIONER TURNBULL: Either it works or it
25 doesn't work.

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1 COMMISSIONER MAY: And I think DDOT's letter was
2 supportive of the modified loading dock.

3 COMMISSIONER TURNBULL: Okay, that's fine.

4 COMMISSIONER MAY: I mean, maybe they can persuade
5 them to do something else, but I'm inclined to vote on
6 something that works rather than speculate on something that
7 wouldn't. And then if they come back for a minor mod, then
8 they can do that.

9 COMMISSIONER TURNBULL: Okay, I would agree then.

10 CHAIRMAN HOOD: Does anybody else have any issues
11 on that or anything else?

12 Okay. And, again, as has already been stated,
13 DDOT has put the endorsement on it, so.

14 All right, anything else?

15 All right, if there's no other comments --

16 VICE CHAIR MILLER: Did we discuss -- I'm sorry --
17 did we discuss the additional flexibility which the applicant
18 requested to add solar panels if they can get all of their
19 requirements -- did we discuss that yet today?

20 CHAIRMAN HOOD: No, we haven't.

21 VICE CHAIR MILLER: I have no problem with their
22 suggestion to use best efforts to accommodate rooftop solar
23 in the specific language they suggested to add solar panels
24 to the roof, provided they can comply with all applicable
25 zoning regulations and building code requirements that do not

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1 diminish the size or interfere with the green roof shown in
2 the plan. I don't know if my colleagues have a concern with
3 that. I'm fine.

4 CHAIRMAN HOOD: I'm going to check with the solar
5 panel expert.

6 (Laughter.)

7 CHAIRMAN HOOD: All right, so I think we're fine
8 with that.

9 COMMISSIONER TURNBULL: I would agree with that.

10 CHAIRMAN HOOD: Okay, anything else? Would
11 somebody like to make a motion?

12 COMMISSIONER SHAPIRO: Mr. Chair, I move that we
13 take final action on Zoning Commission Case No. 18-13 TM
14 Jacob, LLC/Capitol Gateway design review, Square 656, and
15 look for a second.

16 CHAIRMAN HOOD: Okay, I'll second it. It's been
17 moved and properly seconded. Any further discussion?

18 COMMISSIONER MAY: Yes, Mr. Chairman, I just want
19 to clarify that we are -- the motion is inclusive of the
20 modified loading design that's shown in 38A1 and 38A2 and
21 also in 38B.

22 COMMISSIONER TURNBULL: With no added language.

23 CHAIRMAN HOOD: Yes, I'll accept it with no added
24 language as well as the flexibility for solar panels as well.
25 Is there anything else? Right?

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1 COMMISSIONER MAY: Yes.

2 CHAIRMAN HOOD: Okay. All right, let's move to
3 proper second with that clarification. All in favor?

4 (Chorus of aye.)

5 CHAIRMAN HOOD: Any opposition?

6 Not hearing any, Ms. Schellin, would you please
7 record the vote?

8 MS. SCHELLIN: The staff records the vote 5-0-0
9 to approve final action in Zoning Commission Case No. 18-13
10 as clarified. Commissioner Shapiro moving, Commissioner Hood
11 seconding, Commissioners May, Miller and Turnbull in support.

12 CHAIRMAN HOOD: All right, next we have Zoning
13 Commission Case No. 18-11, Riggs Road Center, LLC and Avissar
14 Riggs Road. The map amendment is Square 3710.

15 Ms. Schellin?

16 MS. SCHELLIN: Exhibits 26 and 26A are the
17 applicant's submission of a draft order, Exhibit 27 is a NCPC
18 letter advising that the project is exempt from their review.
19 So I would ask the Commission to consider final action.

20 CHAIRMAN HOOD: Okay, Commissioners, any follow-up
21 on this one, Riggs Road? Comments?

22 I don't think we have anything outstanding on this
23 one. So not hearing any discussion, I would move that we
24 approve Zoning Commission Case No. 18-11 and ask for a
25 second?

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1 VICE CHAIR MILLER: Second.

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

4 All in favor, aye?

5 (Chorus of aye.)

6 CHAIRMAN HOOD: Any opposition?

7 Not hearing any, Ms. Schellin, would you please
8 record the vote?

9 MS. SCHELLIN: The staff records the vote 5-0-0
10 to approve final action in Zoning Commission Case No. 18-11.
11 Commissioner Hood moving, Commissioner Miller seconding,
12 Commissioners May, Shapiro and Turnbull in support.

13 CHAIRMAN HOOD: Okay, next hearing action, Zoning
14 Commission Case No. 1903, Majid Muhammad, Inc., map amendment
15 at Square 5790.

16 Ms. Brown-Roberts?

17 MS. BROWN-ROBERTS: Yes. Good evening, Mr.
18 Chairman, and members of the Zoning Commission. Maxine
19 Brown-Roberts. The applicant petition for map amendment to
20 have nine lots along MLK Avenue in Anacostia and as shown on
21 the location map on the screen, to be rezoned from the MU-4
22 to the MU-5A Zone. The properties have various property
23 owners who are all parties to the application. The
24 generalized land use map recommends meeting density to
25 residential, meeting density to commercial uses, while the

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1 generalized policy map designates the area as a main street
2 mixed use corridor. The existing MU-4 Zone is designated for
3 moderate density mixed use development, while the proposed
4 MU-5A is recommended for medium density mixed use development
5 that would allow for a mixture of residential, retail office
6 and other offices to activate and enhance the corridor.
7 Further, the city-wide elements encourage new housing and
8 retail near transit stations and along transit roads,
9 revitalizing neighborhoods and efficient transportation. The
10 far southeast and southwest area element directs growth along
11 MLK Avenue which is a Great Streets Corridor. The Anacostia
12 transit area strategic investment and development plan, which
13 is a small area plan, recommends the strengthening of MLK
14 Avenue through allowing housing, retail and office space
15 along the corridor. The requested MU-5A Zone is not
16 inconsistent with these recommendations and therefore the
17 Office of Planning recommends the requested map amendment to
18 be set down.

19 Thank you, Mr. Chairman. I just wanted to note
20 one thing; in my report I noted that there was one applicant
21 that was not included, but all the property owners are now
22 part of the application.

23 CHAIRMAN HOOD: Okay. Thank you for that
24 amendment, Ms. Brown-Roberts. Let's open it up, any
25 questions or comments?

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1 Vice Chair Miller?

2 VICE CHAIR MILLER: Ms. Brown-Roberts, you're
3 saying that that one property owner, Lot 47 I believe, has
4 now signed onto the application?

5 MS. BROWN-ROBERTS: Yes, when the applicant
6 submitted the application they did not have a signature from
7 that property owner, but it was submitted later on.

8 VICE CHAIR MILLER: Okay, that's good to hear even
9 though it's not necessarily a requirement. But it's always
10 good to not -- well, that's good to hear and I agree with
11 many of the recommendations in the OP report and I'm prepared
12 to set this down for hearing, Mr. Chairman.

13 CHAIRMAN HOOD: Any other comments or questions
14 for the Office of Planning?

15 Okay, would somebody like to make a motion?

16 COMMISSIONER MAY: Mr. Chairman, to clarify, this
17 is being set down as a rulemaking?

18 CHAIRMAN HOOD: Yes, this is a rulemaking.

19 COMMISSIONER MAY: Okay.

20 CHAIRMAN HOOD: Yes, this is a rulemaking. All
21 right, would somebody like to make a motion?

22 VICE CHAIR MILLER: I would move, Mr. Chairman,
23 that the Zoning Commission set down for a public hearing as
24 a rulemaking, Zoning Commission Case No. 19-03, Majid
25 Muhammad, Inc., map amendment at Square 5790 and ask for a

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1 second?

2 COMMISSIONER TURNBULL: Second.

3 CHAIRMAN HOOD: Okay, it's been moved and properly
4 seconded. Any further discussion?

5 All in favor, aye?

6 (Chorus of aye.)

7 CHAIRMAN HOOD: Any opposition?

8 Not hearing any, Ms. Schellin, would you please
9 record the vote?

10 MS. SCHELLIN: The staff records the vote 5-0-0
11 to set down Zoning Commission Case No. 19-03 as a rulemaking
12 case. Commissioner Miller moving, Commissioner Turnbull
13 seconding, Commissioners Hood, May and Shapiro in support.

14 CHAIRMAN HOOD: Okay, next correspondence, Zoning
15 Commission Case No. 70-28, a WMATA request to extinguish PUD
16 in Square 487. This is, again, I think we had our last
17 meeting -- I think the information has been provided, but Ms.
18 Schellin?

19 MS. SCHELLIN: You're correct; it was deferred
20 from the last meeting. The applicant provided the requested
21 supplemental information explaining how the property conforms
22 with the current regulations which was one of the options
23 that the commission asked them to provide, so you have that
24 before you this evening.

25 CHAIRMAN HOOD: Then again, I think I noted that

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1 the applicant has indicated an acceptable condition that
2 would delay the effective distinguishment until WMATA vacates
3 the property or transfers the title. So I think all that's
4 pretty straightforward.

5 Anything else? Mr. Tondro, is that sufficient for
6 us to act on?

7 MR. TONDRO: Yes, I was just going to say WMATA
8 had offered that they were willing to wait, have the
9 effective date until they actually leave, whether vacant or
10 sell. That's a question of whether the Commission wants to
11 impose that condition.

12 COMMISSIONER MAY: I mean, is there any advantage
13 to that? I mean, it's not going to change the physical
14 circumstances of the property. And if we're satisfied that
15 they meet the requirements for extinguishing the PUD, then
16 I'd be in favor of just extinguishing the PUD and let them --

17 CHAIRMAN HOOD: Oh, the applicant -- okay -- okay,
18 I misread that -- all right. I wouldn't think so, but I mean
19 does anybody see a need for that condition?

20 COMMISSIONER SHAPIRO: So I understand; so
21 effectively if we were to act on this, then the applicant
22 would need to either vacate or transfer title for it to come
23 into effect; is that what we're saying?

24 COMMISSIONER MAY: Yes, I don't see a point in
25 saying it. I mean, it's not going to change anything that's

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1 happening with the property right now. I mean, what if they
2 suddenly decide, they change their mind and want to redevelop
3 it themselves as something that's compliant with the zone?
4 They'd be subject to the same rules that would trigger the
5 residential requirements 3.5, FAR residential. I mean, I
6 just don't see a reason to hold off on it.

7 CHAIRMAN HOOD: So whatever keeps them from coming
8 back to us I guess is where I am now. Because if they want
9 to put the condition in, fine. I mean, what else? They're
10 going to spend more time on it.

11 COMMISSIONER MAY: Mr. Tondro, is there some
12 benefit to the world letting it wait to take effect?

13 MR. TONDRO: Not that I'm necessarily aware of.
14 I think it was provided by the applicant in case it was
15 important to the commission to feel more comfortable that
16 they knew who it was, who was going to take over, what the
17 future prospects were. I'm not sure there's really any legal
18 change, whether it's before or after.

19 COMMISSIONER MAY: Yes. I mean, we already made
20 the decision on how the property should be treated and
21 certainly anyone who purchases the property and redevelops
22 it is going to invest enough into it, that it's going to
23 trigger that residential requirement which is I think the
24 biggest issue. Because I've been inside the building; I know
25 they're going to need to spend a lot of money to fix it up.

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1 CHAIRMAN HOOD: Okay. So Commissioner May, since
2 you have good knowledge, could you make a motion so, and you
3 can leave the condition out and let's move on.

4 COMMISSIONER MAY: Oh, now I have to find it.
5 It's right here.

6 So Mr. Chairman, I would vote to extinguish the
7 PUD, No. 70-28 PUD at Square 487 because the applicant has
8 demonstrated that the sufficient conditions have been met to
9 extinguish the PUD.

10 CHAIRMAN HOOD: Okay, and I'll second that. It's
11 been moved and properly seconded. Any further discussion?

12 All in favor, aye?

13 (Chorus of aye.)

14 CHAIRMAN HOOD: Any opposition?

15 Not hearing any, Ms. Schellin, would you please
16 record the vote?

17 MS. SCHELLIN: The staff records the vote 5-0-0
18 to extinguish the PUD in Zoning Commission Case No. 70-28 as
19 discussed; Commissioner May moving, Commissioner Hood
20 seconding, Commissioners Miller, Shapiro and Turnbull in
21 support.

22 CHAIRMAN HOOD: Okay, next Zoning Commission Case
23 No. 85-16F, 84-20P, Donohoe Company, notice from zoning
24 administrator modification pursuant to 11A DCMR 304.5. Ms.
25 Schellin?

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1 MS. SCHELLIN: Yes, this was as you stated a
2 notice from the zoning administrator advising of a minor
3 modification that he has approved and given notice to the
4 commission per the regulations. However, the applicant
5 submitted a letter today stating that they would submit a
6 modification of consequence next week. Then later this
7 afternoon ANC3E submitted a resolution in opposition to that
8 minor modification that the ZA approved. And so of course
9 it's the Zoning Commission's decision. I did speak to the
10 ZA, Mr. LeGrant, and he's aware of this. And if the
11 commission directs staff to do so, I will let -- per the
12 regulations -- notify the ZA that the applicant should file
13 a modification of consequence and the Zoning Commission would
14 be within that 45-day notice period to -- per the
15 regulations.

16 CHAIRMAN HOOD: So I guess the questions are do we
17 believe that the zoning administrator is within his authority
18 for flexibility to grant it and also do we need to see this
19 if we think this is more than within his flexibility, do we
20 need to see this as a modification of consequence or
21 significance? So I guess those are the two questions.

22 COMMISSIONER MAY: Has the applicant actually
23 filed an application for modification of consequence?

24 MS. SCHELLIN: No, she just filed the letter
25 today; she said that they would do that next week.

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1 COMMISSIONER MAY: Saying they would.

2 MS. SCHELLIN: Yes.

3 COMMISSIONER MAY: This week.

4 MS. SCHELLIN: Or this week. I'm sorry, this week.

5 CHAIRMAN HOOD: So they're already going to file
6 a letter to do a modification of consequence if we accept it
7 as a modification of consequence.

8 COMMISSIONER MAY: I mean, I don't think it matters to us and
9 we haven't gotten the application for modification of
10 consequence. Why are we doing anything at all?

11 MS. SCHELLIN: Well, the regulations require you
12 to respond to the zoning administrator within 45 days.

13 COMMISSIONER MAY: And when is the 45 days right
14 now?

15 MS. SCHELLIN: Like in ten days I think, seven to
16 ten days.

17 CHAIRMAN HOOD: So we won't have any -- do we have
18 anything?

19 MS. SCHELLIN: No.

20 CHAIRMAN HOOD: All right, all I ask is that --
21 well, that determination -- so we haven't got to where I'm
22 trying to go.

23 MS. SCHELLIN: Right.

24 CHAIRMAN HOOD: We haven't got there yet.

25 MS. SCHELLIN: Right, and you do have the ANC

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1 resolution; it goes beyond that, they feel like they're not
2 in compliance with the original order I believe it is, or the
3 modification order. And so they had quite an objection to
4 the ZA's minor modification approval.

5 COMMISSIONER MAY: I'm sorry; so we have this
6 letter? I didn't see it.

7 MS. SCHELLIN: It came in this afternoon.

8 COMMISSIONER MAY: Okay, where do I find it?

9 MS. SCHELLIN: It is at Exhibit --

10 COMMISSIONER TURNBULL: 187. Oh, it's 18 --

11 MS. SCHELLIN: It might be 186.

12 COMMISSIONER TURNBULL: The ANC is 187.

13 MS. SCHELLIN: 187, okay.

14 VICE CHAIR MILLER: Today -- my ZDOCs is not
15 working.

16 MS. SCHELLIN: There's an ANC representative, Mr.
17 Quinn, in the audience if you do want him to speak to it just
18 in case.

19 VICE CHAIR MILLER: Okay. Well, I -- I'm
20 obviously opposed to the applicant's --

21 MS. SCHELLIN: And the applicant's representative
22 is --

23 VICE CHAIR MILLER: -- is not in support of the
24 minor modification anymore. I'm certainly in support of the
25 minor modification. The ANC is opposed to it because the ANC

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1 -- I'm just looking at it for the first time -- they weigh
2 in on the modification of consequence versus modification of
3 significance to -- I mean, I want them to be able to weigh
4 in on -- I've seen a previous correspondence from the
5 applicant that the retail street frontage they wanted to make
6 sure that that was maintained as part of any modification
7 going forward. But you're saying there are others --

8 MS. SCHELLIN: Just in emails back and forth, I
9 can just say that in their email I saw that between them and
10 the applicant's attorney that they were confirming that she
11 would be filing a modification of consequence on behalf of
12 the applicant, so they are aware of that further discussion.

13 CHAIRMAN HOOD: So what do we need to do to make
14 sure that --- ?

15 MS. SCHELLIN: Just to direct staff to tell the
16 ZA not to go forward with it, to direct the applicant to move
17 forward with the modification of consequence.

18 CHAIRMAN HOOD: We need to have consideration for
19 modification of consequence. I don't want to say that
20 there's going to be a modification of consequence, then we
21 get it and then it goes to a modification --

22 MS. SCHELLIN: No, just to direct the applicant
23 to file it.

24 CHAIRMAN HOOD: So I want them to give us a
25 modification of consequence. I'm not saying that's what's

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1 going to end up.

2 MS. SCHELLIN: Right, exactly.

3 CHAIRMAN HOOD: Because I want to make sure this
4 is predictability. I don't want to send them that one day
5 and then not do it.

6 MS. SCHELLIN: Right. I just can tell them to
7 direct the applicant to proceed with the application that
8 they plan to file.

9 CHAIRMAN HOOD: Exactly, so we can let the ZA know.

10 MS. SCHELLIN: And then you guys can decide
11 whether it's modification of consequence or not.

12 CHAIRMAN HOOD: Yes, let the ZA know that we need
13 to look at that.

14 MS. SCHELLIN: Yes.

15 CHAIRMAN HOOD: Okay, so we're straight on that
16 everybody?

17 Okay, let's go to the next one which is Zoning
18 Commission Case No. 16-24, 1336 8th Street SPE, LLC in the
19 District of Columbia, a notice from the zoning administrator,
20 a minor modification pursuant to 11A DCMR 304.5. Ms.
21 Schellin?

22 MS. SCHELLIN: Yes, sir. This one, at Exhibits
23 44 and 44A3 is a notice from the ZA again, advising of a
24 minor modification he has approved and given notice to the
25 Commission per the regulations, so we'd ask the Commission

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1 to consider this one.

2 CHAIRMAN HOOD: Okay. The ANC didn't weigh in on
3 this one, did they?

4 MS. SCHELLIN: No, sir. But for your process,
5 it's not a requirement.

6 CHAIRMAN HOOD: Well, from my process, my process
7 is I always like to hear from the ANC. So that's where I am.
8 But I don't know what others may think, some kind of way.
9 Because again, I've had problems always with some
10 interpretations that have been given, and this may be another
11 one of those cases.

12 Let me hear from Office --

13 COMMISSIONER SHAPIRO: There's an issue related
14 to the ZA's flexibility of how much parking, how much change
15 the ZA authority can do. And my read on this is that this
16 would exceed their, the flexibility that we've allowed them.

17 COMMISSIONER MAY: Specific to the parking, right?

18 COMMISSIONER SHAPIRO: Specific to the parking.

19 COMMISSIONER MAY: Yes, because I don't think they
20 need to test them. It's either flexibility that's within the
21 PUD or flexibility that's within the ZA's authority. The
22 only thing where there's an interesting interpretation of
23 what flexibility the ZA has for changes to parking, but I
24 wouldn't agree with that interpretation that has come to us,
25 so.

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1 CHAIRMAN HOOD: So --

2 COMMISSIONER MAY: I don't think this is within
3 the ZA's authority and that we need to have a minor
4 modification, they need to file a minor modification.

5 CHAIRMAN HOOD: Okay.

6 COMMISSIONER MAY: But I do think it's pretty
7 minor, but they need to file that.

8 CHAIRMAN HOOD: Yes, and I would agree because I'm
9 very nervous when community groups don't weigh in as well.
10 Anyway, Ms. Schellin, if you could notify the zoning
11 administrator of this one as well.

12 MS. SCHELLIN: Yes, sir.

13 CHAIRMAN HOOD: All right, next -- I'm sorry; is
14 everybody in agreeance with that?

15 PARTICIPANT: Yes.

16 CHAIRMAN HOOD: All right, letter from ANC1B
17 asking the commission to clarify the definition of penthouse.

18 MS. SCHELLIN: Yes, sir. On this one, as you
19 stated, the ANC did submit a letter asking the commission to
20 clarify the definition of penthouses; however, since they
21 submitted that letter, I was included on an email that the
22 zoning administrator, where the zoning administrator advised
23 the ANC1D that his office was working with the Office of
24 Planning on some new penthouse texts that would satisfy the
25 ANC, but in my email back and forth with the ANC, I had

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1 originally told them I would put the letter on the agenda as
2 correspondence item. I asked them if they still wanted me
3 to do that and they said yes they did, just so you guys would
4 be aware of it.

5 CHAIRMAN HOOD: Okay, I don't think this calls for
6 any action from us; I just think it's so noted. And again,
7 this was already stated in Ms. Schellin's report that the
8 Office of Planning was also working with the zoning
9 administrator to clarify some language, and I'm sure ANC1B
10 and all the other ANCs will be involved. I don't think
11 there's any action from us.

12 VICE CHAIR MILLER: Can we just get OP to confirm
13 that they're looking at that issue since they're here today?

14 MR. LAWSON: Yes.

15 VICE CHAIR MILLER: So we may see something that
16 addresses the issue in the future?

17 MR. LAWSON: You will.

18 VICE CHAIR MILLER: Okay, thank you.

19 CHAIRMAN HOOD: All right. Does the Office of
20 Planning have a status report or anything?

21 MS. STEINGASSER: Yes, sir. We do. And I'm going
22 to ask that the Office of Attorney General stay in the room
23 while we talk about this. So we were recently asked to look
24 at some text amendments to Subtitle X, and as part of that
25 the commission raised the issue of whether -- raised an issue

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1 of design review converting to a PUD -- is there a process
2 that would accommodate that or would the case need to be
3 withdrawn and filed as new case with new hearings? And
4 especially the public hearings, how we would look at
5 something like that?

6 COMMISSIONER MAY: Are you talking about the
7 earlier case today?

8 MS. STEINGASSER: Yes. So the commission made it
9 very clear that one of the paths forward is through a plan
10 unit development, but would that meaning starting at ground
11 zero, full filing, full advertisement, full set of public
12 hearings?

13 COMMISSIONER TURNBULL: I would hope not.

14 CHAIRMAN HOOD: I would know that we would have
15 to have the hearings. I think -- some of that's a question
16 I think for the director of Office of Zoning to work along
17 with Office of Planning. I don't know if that's a question
18 for us.

19 MS. SCHELLIN: I think that they do because their
20 notice of intent that they filed before was for a design
21 review case and not a PUD case, and I think that they do have
22 to do that notice of intent for a plan unit development.

23 CHAIRMAN HOOD: And the fees are different as
24 well, right?

25 MS. SCHELLIN: Yes, the fees I think that we could

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1 probably talk about, but I think that just the notice of
2 intent has to go out, that's a 45-day notice period, it's a
3 different type of case.

4 COMMISSIONER MAY: So actually I'm really
5 interested in having the Office of Attorney General look into
6 this more deeply and get back to us for our next meeting,
7 because I -- I mean, I can certainly see the logic of it that
8 if there's -- we determine in the end that we can't consider
9 it under that authority, can we have our own action and
10 convert it and therefore save a few steps? We'd have to have
11 another set of hearings, yes.

12 CHAIRMAN HOOD: That's the text amendment of
13 something having to come down the line before we're even able
14 to do that?

15 COMMISSIONER MAY: I'm not sure about that. I
16 mean, if we decided at the next meeting to set it down as a
17 PUD, then it's 45 days' notice and so we could have a hearing
18 on this as a PUD within a couple of months.

19 COMMISSIONER TURNBULL: You're asking OAG whether
20 we would have the authority to do that?

21 COMMISSIONER MAY: Yes.

22 CHAIRMAN HOOD: And if we do, where is it noted?
23 I mean, is it in our regulations -- well, let's leave it
24 open.

25 COMMISSIONER MAY: Yes, let them look at it.

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1 CHAIRMAN HOOD: Because we're going down the same
2 road.

3 VICE CHAIR MILLER: However it gets resolved,
4 whether we have the authority to convert, if an applicant
5 asks us to or whether they withdraw the voluntary design and
6 submit a new PUD, I would hope that somehow we could
7 administratively incorporate into the record the 500-plus
8 exhibits and all the hearing record on the case is pending
9 just because it's all relevant.

10 CHAIRMAN HOOD: I believe we have the authority;
11 it's just how we get there. The courts have told us many
12 times that we have authority; it's just how we get there.
13 So, thank you, Ms. Steingasser; that brings up a good point,
14 something we can deliberate on for another hour.

15 (Laughter.)

16 MS. STEINGASSER: That's all we have, thank you.

17 CHAIRMAN HOOD: Okay. Ms. Schellin, do you have
18 anything else?

19 Ms. Schellin, do we have anything else?

20 MS. SCHELLIN: No, sir.

21 CHAIRMAN HOOD: Okay, so we're done. I want to
22 thank everyone for their participation. This meeting is
23 adjourned.

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

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In the matter of: Regular Meeting

Before: DCZC

Date: 03-11-19

Place: Washington, DC

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