

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

Monday

April 8, 2019

+ + + + +

The 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
- ELISA VITALE
- BRANDICE ELLIOTT

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.
JACOB RITTING, ESQ.
MAXIMILIAN TONDRO, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

The transcript constitutes the minutes from
the Regular meeting held on April 8, 2019.

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CONTENTS

Case No. 19-05 Correspondence: Memo from OP Withdrawing Sections	9
Case No. 14-12 EAJ 1309 5th Street LLC	10
Case No. 16-23 Valor Development LLC	13
Case No. 16-02B	17
Case No. 02-38J, WFS2 LLC	19
Case No. 18-10 High Street LLC	23
Case No. 15-27A 300 Morse CPK Owner LLC et al	35
Adjourn	

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

5:54 p.m.

1
2
3 CHAIRMAN HOOD: We'll now begin. This meeting
4 will please come to order. Good evening, ladies and
5 gentlemen. This is a public meeting of the Zoning Commission
6 for the District of Columbia.

7 My name is Anthony Hood. We're located in the
8 Jerrily R. Kress Memorial Hearing Room. Today's date is
9 April 8, 2019. Joining me this evening are Vice Chair
10 Miller, Commissioner Shapiro and Commissioner May.

11 I will be providing further information about this
12 public meeting when it resumes at 6:30 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 -- tonight's meeting, I'm sorry.

18 COMMISSIONER SHAPIRO: I believe we should.

19 CHAIRMAN HOOD: Can I obtain a motion?

20 COMMISSIONER SHAPIRO: So moved.

21 CHAIRMAN HOOD: Can I get a second?

22 COMMISSIONER MAY: Second.

23 CHAIRMAN HOOD: It's been moved and seconded. All
24 in favor?

25 (Chorus of ayes.)

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1 CHAIRMAN HOOD: But I would also ask -- we need
2 to redo it. We need to do it this way. We need to do a roll
3 call vote. And also we're joined by Commissioner Turnbull.

4 Ms. Schellin, would you do the roll call vote,
5 please?

6 MS. SCHELLIN: Yes. Chairman Hood?

7 CHAIRMAN HOOD: Yes.

8 MS. SCHELLIN: Vice Chair Miller?

9 VICE CHAIR MILLER: Yes.

10 MS. SCHELLIN: Commissioner Shapiro?

11 COMMISSIONER SHAPIRO: Yes.

12 MS. SCHELLIN: Commissioner May?

13 COMMISSIONER MAY: Yes.

14 MS. SCHELLIN: Commissioner Turnbull?

15 COMMISSIONER TURNBULL: Yes.

16 MS. SCHELLIN: Motion carries.

17 CHAIRMAN HOOD: Okay. So let it be properly
18 noticed that we have voted to go into closed meeting.

19 Anything else, Ms. Schellin?

20 MS. SCHELLIN: No.

21 CHAIRMAN HOOD: Okay, with that we'll be back at
22 6:30.

23 (Whereupon, the above-entitled matter went off the
24 record at 5:56 p.m. and resumed at 6:47 p.m.)

25 CHAIRMAN HOOD: Good evening, ladies and

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1 gentlemen. We are resuming our public meeting of the Zoning
2 Commission for the District of Columbia. I'll introduce the
3 dais again. Today's date is April 8, 2019. We're located
4 in the Jerrily R. Kress Memorial Hearing Room.

5 My name is Anthony Hood. Joining me are Vice
6 Chair Miller, Commissioner Shapiro, Commissioner May and
7 Commissioner Turnbull.

8 We're also joined by Office of Zoning staff Ms.
9 Sharon Schellin, Office of Attorney General staff Mr. Tondro,
10 Mr. Ritting and Ms. Lovick, Office of Planning staff Ms.
11 Steingasser, Mr. Lawson, Ms. Vitale and Ms. Elliott.

12 Ms. Elliott, did I get your name right? Okay.
13 I've got to have a little fun sometimes. How long did it
14 take me to get your name right?

15 MS. ELLIOTT: Six years.

16 CHAIRMAN HOOD: Six years. So how many years do
17 I have it right now though?

18 MS. ELLIOTT: You're going on about six months.

19 CHAIRMAN HOOD: I thought she was going to be a
20 little nicer than that, but anyway. All right.

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

25 Please be advised this proceeding is being

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1 recorded by a court reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from any disruptive
3 noises or actions in the hearing room including the display
4 of any signs or objects. Please turn off all electronic
5 devices at this time.

6 Does the staff have any preliminary matters?

7 MS. SCHELLIN: Just one. When the Commission
8 brings up voting for the closed meeting for training we would
9 also ask the Commission to vote for a closed meeting on April
10 29 -- yes, for April 29, the next public meeting.

11 CHAIRMAN HOOD: Okay. So do I have that in front
12 of me? Yes, okay. All right.

13 So there are two things. So we're going to do the
14 April 29th and the April -- what's the other date?

15 MS. SCHELLIN: Thirtieth.

16 CHAIRMAN HOOD: Twenty-ninth and the thirtieth?

17 MS. SCHELLIN: Yes. One is our public meeting and
18 one is for training.

19 CHAIRMAN HOOD: Okay. All right. So as chairman
20 of the Zoning Commission for the District of Columbia and in
21 accordance with 405(c) of the Open Meetings Act I move that
22 the Zoning Commission hold the following closed meetings: on
23 Monday, April 29, 2019 at 6 p.m. Also on Tuesday, April 30
24 at 9 a.m. And to deliberate and for training, but not voting
25 on the contested cases and to be I guess educated on training

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1 matters per 405(b)(13) of the act, DC Official Code 2-
2 575(b)(4) and (13).

3 And on Tuesday, April 30, 2019 at 9 a.m. for the
4 purpose of receiving training as permitted by DC Official
5 Code 2-575(b)(12). The subjects of the training are an
6 update on variances and special exceptions, rear additions
7 to rowhouses, architectural issues, renderings for non-design
8 related relief, building height measurements and language
9 access training. Is there a second?

10 COMMISSIONER SHAPIRO: Second.

11 CHAIRMAN HOOD: Okay. Will the secretary please
12 do a roll call vote on the motion before us now?

13 MS. SCHELLIN: Chairman Hood?

14 CHAIRMAN HOOD: Yes.

15 MS. SCHELLIN: Vice Chair Miller?

16 VICE CHAIR MILLER: Yes.

17 MS. SCHELLIN: Commissioner Shapiro?

18 COMMISSIONER SHAPIRO: Yes.

19 MS. SCHELLIN: Commissioner May?

20 COMMISSIONER MAY: Yes.

21 MS. SCHELLIN: Commissioner Turnbull?

22 COMMISSIONER TURNBULL: Yes.

23 MS. SCHELLIN: Motion carries.

24 CHAIRMAN HOOD: Okay. As it appears the motion
25 has passed I request that the Office of Zoning provide notice

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1 of the closed meeting in accordance with the act.

2 Anything else on this, Ms. Schellin?

3 MS. SCHELLIN: No, sir.

4 CHAIRMAN HOOD: All right. Are we ready to go
5 into the agenda?

6 MS. SCHELLIN: Yes.

7 CHAIRMAN HOOD: Do we have anything preliminary
8 other than what we just did?

9 I do want to move -- colleagues, I do want to move
10 correspondence. I'm going to move both correspondence items.

11 MS. SCHELLIN: There's three.

12 CHAIRMAN HOOD: Three. Okay. I move all three
13 correspondence items up to the front and then we'll go back
14 with our regular agenda. Is that okay?

15 COMMISSIONER MAY: Yes.

16 CHAIRMAN HOOD: Okay. Correspondence. Zoning
17 Commission Case 19-05, Office of Planning -- memo from Office
18 of Planning withdrawing sections relative to rulemakings and
19 contested cases from proposed text amendments to Subtitles
20 X and Z. Ms. Schellin.

21 MS. SCHELLIN: Yes. At exhibit 3 the Office of
22 Planning submitted a memo to withdraw the issue of
23 rulemakings and contested cases from the case so that it
24 doesn't hold up the other amendments that were filed.

25 Those amendments have some associated legal issues

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1 that need to be worked out and we just need the Commission
2 to acknowledge and okay proceeding with case 19-05 without
3 those amendments. Unless OP wants to add anything further
4 that's it.

5 CHAIRMAN HOOD: Commissioners, we have the request
6 before us. What is your questions or comments? What is your
7 pleasure?

8 COMMISSIONER MAY: No objection, Mr. Chair.

9 CHAIRMAN HOOD: Any objections? Do we need to
10 make a motion on this?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. So there are no objections.
13 All right. So ordered.

14 Let's go to Zoning Commission Case No. 14-12 EAJ
15 1309 5th Street LLC - notice from Zoning Administrator, minor
16 modification pursuant to 11-A DCMR 304.5. Ms. Schellin.

17 MS. SCHELLIN: Yes, sir. At exhibits 59 through
18 59(e)(2) you have a notice from the Zoning Administrator of
19 what he has deemed to be a minor modification that he has
20 approved and forwarded to the Commission per the regulations
21 for your review and comment.

22 So I'd ask the Commission to consider what is
23 before you and determine whether you agree with the ZA that
24 this is something within his purview, and if not to advise
25 staff to notify the ZA.

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1 CHAIRMAN HOOD: Let me just tee up a little bit.
2 As we notice that the applicant is requesting that the Zoning
3 Administrator approve a change to the PUD that would allow
4 recreational uses on the roof of a building.

5 The relief does not appear to be among the types
6 authorized by the relevant zoning regulations. The rule
7 provides that the ZA may only grant the specific types of
8 relief.

9 And I guess the question is does the Commission
10 believe that the request exceeds his scope. Do we think he
11 is within his scope. And then as we have noted his reference
12 of what he's allowed to do. I'll open it up for discussion.
13 Commissioner Shapiro.

14 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. In
15 my opinion this exceeds the scope of an allowable minor
16 modification and I would suggest that we direct the secretary
17 to notify the ZA of that.

18 CHAIRMAN HOOD: Okay. Do we all agree?

19 COMMISSIONER MAY: I would concur with
20 Commissioner Shapiro.

21 CHAIRMAN HOOD: Okay.

22 VICE CHAIR MILLER: I would agree as well. The
23 applicant's attorneys talks about implicit authority. Maybe
24 one of the things that should be explicit in the authority
25 of the Zoning Administrator -- I don't think it currently is.

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1 But I would just note that it doesn't seem to be
2 a very controversial thing and I think we could deal with it
3 expeditiously as a modification here.

4 CHAIRMAN HOOD: Okay. I'm going to add something
5 to this. As you noticed where I stood in the ZR 16 rewrite
6 about the flexibility of the ZA. I think Matt is a great
7 guy. There's nothing against it. I'm just looking at some
8 of our determinations.

9 I'm going to ask that we set for the next training
10 since everybody wants to know when we're going to be trained
11 that we also have a training session with the Zoning
12 Administrator so we can have a discussion about how he's
13 exercising some of his flexibility. I'll leave that up to
14 Ms. Martin to come up with the conversational piece.

15 But I think that would be a good training. I
16 think it will be good training for all of us, for him as well
17 as the ZA. And then we can all kind of get on the same
18 accord about this flexibility issue which has been very
19 disturbing to me for some time.

20 So can we get a motion on this? Do we need a
21 motion? Okay. So I think we can ask Ms. Schellin as
22 directed by Commissioner Shapiro and unanimously agreed by
23 all of us that we notice that we do think that he's -- let
24 me use -- what's the polite word he used. He might have
25 exceeded his scope.

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1 Anything else on this?

2 MS. SCHELLIN: And the applicant should file a
3 modification.

4 CHAIRMAN HOOD: Well, if that's what they -- yes.
5 For us to consider. Right. They may want to just withdraw
6 everything, I don't know. So I have to leave that up to
7 them.

8 Anything else? Okay, next, Zoning Commission Case
9 No. 16-23 Valor Development LLC. Ms. Schellin.

10 MS. SCHELLIN: Yes. Exhibit 436, the applicant
11 filed a motion to reopen the record which was approved by the
12 chairman in order to file a motion to hold this case in
13 abeyance until further notice which is at exhibit 436A.

14 At exhibit 437 you have Ward 3 Vision's response
15 in support of the motion and exhibit 438 you have CRD's
16 response in opposition of the motion.

17 So I would ask the Commission to consider both the
18 applicant's motion and the parties' responses thereto.

19 CHAIRMAN HOOD: Okay. Let me open it up for
20 comments. We have the request for us to hold this in
21 abeyance. Let me hear what others have to say on this issue.

22 COMMISSIONER MAY: Mr. Chairman?

23 CHAIRMAN HOOD: Yes.

24 COMMISSIONER MAY: I think effectively we've
25 already decided to hold this case in abeyance while we clear

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1 up how we should be handling or whether the voluntary design
2 review includes FAR aggregation.

3 And I appreciate the fact that the applicant may
4 be seeking some greater clarity about what their situation
5 is, but the way I see this playing out I don't see a
6 particular need to make any more definitive of a statement
7 or tying holding it in abeyance to an application for a PUD
8 or even -- or the setdown related to that.

9 I think the applicant is free to file an
10 application for a PUD and then we will take it up when we do.
11 And then move on from there.

12 Of course the applicant is also free to withdraw
13 the case if they want to just pursue the PUD, but I think
14 it's just, you know, I appreciate their wanting to have some
15 comfort about this, but I think we just continue to hold it
16 in abeyance and go from here. See if the applicant files the
17 PUD and we'll react accordingly once that comes before us.

18 CHAIRMAN HOOD: Thank you. Commissioner Shapiro.

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
20 would concur with Commissioner May.

21 The only thing I would add is that I think that
22 based on the communications that we have it's not just the
23 applicant. I think that the parties in support -- party in
24 support, party in opposition, a bunch of folks who are
25 looking for some degree of perhaps comfort or clarity around

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1 it.

2 But I agree with Commissioner May. Effectively
3 this is in abeyance and if something else comes up before us
4 we'll deal with it when it comes before us.

5 CHAIRMAN HOOD: Any other comments? Vice Chair
6 Miller.

7 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
8 just wanted to -- I generally concur with my colleagues.

9 The public hearing on the -- we've set down for
10 public hearing the text amendment on voluntary design review
11 FAR aggregation issue and that's been -- I just want to for
12 the record clarify with Ms. Schellin. Has that been
13 scheduled for a public hearing date?

14 MS. SCHELLIN: May 30.

15 VICE CHAIR MILLER: May 30. Okay. Thank you.

16 CHAIRMAN HOOD: Okay.

17 COMMISSIONER TURNBULL: Mr. Chair, I would just
18 add that things are moving at a certain pace right now and
19 I think we're -- as I said, we've already held this in
20 abeyance and I don't think we really have to take another
21 action to formalize that again.

22 So I would just say that I would concur with my
23 colleagues that we're already there. We're already holding
24 it in abeyance. I don't think we need to act any further.

25 CHAIRMAN HOOD: Okay. I don't think this calls

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1 for an official action, but that whole process which I do
2 have questions about, the way all this is coming together.

3 If the applicant wants they can submit a letter
4 and ask us to make a decision on the case in front of us and
5 then that way we can go ahead and deal with that at the
6 appropriate time instead of being formally asked to do
7 something.

8 I think even with the text amendment I just -- I
9 don't know. I've got to think all this stuff through and see
10 how it plays out.

11 But I hear what my colleagues, what we're all
12 saying. I just -- it is what it is for now. But I don't
13 think we need -- I don't even understand the request for the
14 most part.

15 But if they think things are moving too slow then
16 what we could do is like I said, just send a request and ask
17 us to take the vote and we'll go ahead and hash it out,
18 deliberate and vote on what's before us in that previous case
19 that's still out there lingering.

20 So, do we need to -- well, I guess we need to --
21 do we need to deny -- we don't need to do anything? Okay.
22 So, Ms. Schellin, can you look at the applicants and see if
23 they understand? Maybe they understand but I don't. But if
24 they understand what we've said.

25 MS. SCHELLIN: They do.

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1 CHAIRMAN HOOD: Okay. All right. So anything
2 else on this?

3 VICE CHAIR MILLER: I would just add it will play
4 out.

5 CHAIRMAN HOOD: Exactly.

6 VICE CHAIR MILLER: It's been playing out for a
7 long time, but hopefully it will play out and end at some
8 point.

9 CHAIRMAN HOOD: Okay. Well, that's the goal. All
10 right. Anything else on that, Ms. Schellin?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. So now I think we can go
13 back to the agenda. Okay. Let's go back to on the consent
14 --

15 MS. SCHELLIN: Preliminary matter. You've already
16 done that, I'm sorry. You're right, consent calendar.

17 CHAIRMAN HOOD: Okay. Consent calendar,
18 modification of consequences, determination of scheduling.
19 Does anyone believe that Zoning Commission Case No. 16-02B
20 needs to come off the consent calendar?

21 COMMISSIONER SHAPIRO: No.

22 CHAIRMAN HOOD: Okay, not hearing anyone. Ms.
23 Schellin, could you schedule this for scheduling?

24 MS. SCHELLIN: Yes. So you guys believe it is a
25 modification of consequence? No comments on it? You're not

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1 looking for anything in particular?

2 CHAIRMAN HOOD: Does anybody --

3 (Simultaneous speaking)

4 MS. SCHELLIN: Do you agree with the -- do you
5 want the applicant to provide the proposed parking layout
6 that OP feels they should provide that includes curb cuts?

7 CHAIRMAN HOOD: Yes. Well, let's see what
8 Commissioner May has to add.

9 COMMISSIONER MAY: So, yes. OP's questions, I
10 think access because I know that that was a condition in the
11 DDOT report.

12 Also I'd like them to answer the issue of why the
13 bike share station hasn't been paid for.

14 I also had a question, though maybe -- I don't
15 know if anybody can actually answer this now. I'm curious
16 about how the -- what the performance has been so far in
17 terms of parking and access.

18 Because I know, I have been to a few games now
19 down there and it is a little tough to get around if you're
20 not on your bicycle which I usually am.

21 So I'm just wondering what the performance has
22 been, whether it's up to what DDOT was expecting at this
23 point. I do not recall if there was a specific requirement
24 for monitoring and then additional TDM measures.

25 But just an update on how they see it working now.

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1 That would be a helpful thing. I don't think that's really
2 super critical for this given the relatively small number of
3 cars. It may actually be a benefit. Just having some sort
4 of update on that I think would be helpful.

5 CHAIRMAN HOOD: Okay. Anything else on this? We
6 know the ANC is going to be probably weighing in on this as
7 well.

8 MS. SCHELLIN: Yes. And they have requested in
9 the past a little more time than we've given them in the past
10 to respond. So if we could get the applicant's updates on
11 this by April 29 and if they'd serve the ANC and have the ANC
12 respond by May 6 we can put this on for May 13.

13 CHAIRMAN HOOD: Okay. Anything else on that, Ms.
14 Schellin?

15 MS. SCHELLIN: No, sir.

16 CHAIRMAN HOOD: Okay. Let's go to final action,
17 Zoning Commission Case No. 02-38J, WFS2 LLC, 2nd stage PUD,
18 planning and development at square 542. Ms. Schellin.

19 MS. SCHELLIN: In exhibit 55 there's a joint
20 filing from the applicant, the PTA and the SMD commissioner
21 providing a revised proffer and conditions that address the
22 Commission's comments from the March 25 public meeting
23 regarding the previous proffer to the PTA.

24 Exhibit 56 is a letter from the Deputy Mayor for
25 Education that basically states charter schools are allowed

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1 to pick their own locations and he will not comment on the
2 instant case.

3 I ask the Commission to consider final action this
4 evening.

5 CHAIRMAN HOOD: Okay. Commissioners, as I look
6 I think those two issues in which we really held this up for,
7 it looks like they were kind of fine-tuned.

8 I still -- because when I look at the laptops, you
9 know, technology changes every six months it seems. I kind
10 of understand the point of the PTA, the parent teachers
11 group, and that's why I thought that Commissioner Shapiro's
12 way of doing this would have been more advantageous. But I
13 see that they had a way that they've worked this out so I
14 don't guess I would interfere with it, but I still would --
15 it would have been nice, Commissioner Shapiro, that we would
16 have adopted your way which would have helped them get I
17 think newer equipment as opposed to get it all at once and
18 it be outdated in three or four years. But anyway, it is
19 what it is. We can't compel them to do that.

20 But let me open it up for discussions or comments.
21 Commissioner Shapiro.

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. And
23 I would add to your comments that they have provided the
24 clarity. Even if I agree with you that may be a bit limiting
25 for them they have provided the clarity that we would be

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1 seeking by doing this. So even if we don't think it's the
2 best way it is a way. And it's a way that I think doesn't
3 compromise our process. So I'm okay with it.

4 CHAIRMAN HOOD: Any other questions or comments?

5 COMMISSIONER TURNBULL: I just have one. We were
6 concerned at the time also of an escrow account. I think the
7 way it's structured now solves that issue and I think the
8 fact that there's going to be at least some communication to
9 the ZA that this proffer will be delivered.

10 I think that for the most part comes close to
11 meeting our needs on the Zoning Commission.

12 CHAIRMAN HOOD: Okay. Anybody else? And again,
13 my comments was merely trying to associate myself with the
14 needs of the PTA and outdated stuff. Have it for two years,
15 it will be outdated. But anyway. Commissioner May.

16 COMMISSIONER MAY: So, I'm also glad that this has
17 been resolved and we have something that we can support.
18 It's perhaps not as clear as we'd like or perhaps not the
19 ideal situation for the PTA, but I think it's important that
20 we stick with the -- a process that delivers a specific
21 benefit and that that's proven before there's a C of O.

22 And I was not very comfortable with the idea of
23 having a fiduciary oversee it so I'm glad that that's not
24 what they came back with. So. But I'm supportive of what
25 they did come back with, so.

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1 CHAIRMAN HOOD: But Commissioner Shapiro, I do
2 want to look into that a little more. I think that's just
3 never been anything that's been discussed.

4 I think full discussion and trying to help people
5 stay with updated materials, trying to grasp it all. I
6 understand the point and I've heard what my colleagues said.
7 I know that's why we've done this in the past, but what
8 Commissioner Shapiro mentioned was the first time that I've
9 ever heard or even thought that to be mentioned down here.
10 So anyway, that's enough I think for me.

11 COMMISSIONER SHAPIRO: Mr. Chair.

12 CHAIRMAN HOOD: Yes.

13 COMMISSIONER SHAPIRO: Unrelated to this case I'll
14 work Commissioner May on the side in future.

15 CHAIRMAN HOOD: Maybe you can do the training at
16 one of our training sessions.

17 COMMISSIONER MAY: If we do want to go there I
18 wouldn't object to doing that in the abstract. But doing it
19 on the fly kind of case I think is the thing that makes me
20 uncomfortable.

21 That's a solution. Because I absolutely see the
22 utility of having it escrowed, but we want to make sure that
23 the benefits are delivered. That's why we have -- why we
24 went this route.

25 CHAIRMAN HOOD: I agree. I just think we need to

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1 have further discussion because you know, things change.
2 Architecture has changed since I've been here so we're going
3 to make sure that we stay up to times with how things are
4 working in society. So anyway, enough said on that.

5 Anything else on this? Would somebody like to
6 make a motion?

7 VICE CHAIR MILLER: I'd like to make a motion
8 since I'm comfortable with moving forward that the Zoning
9 Commission take final action on Zoning Commission Case No.
10 02-38J WFS2 LLC, 2nd stage PUD at square 542 and ask for a
11 second.

12 COMMISSIONER TURNBULL: Second.

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

15 (Chorus of ayes.)

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

18 MS. SCHELLIN: Staff records the vote 5-0-0 to
19 approve final action on Zoning Commission Case No. 02-38J.
20 Commissioner Miller moving, Commissioner Turnbull seconding,
21 Commissioners Hood, May and Shapiro in support.

22 CHAIRMAN HOOD: Okay. Next let's go to proposed
23 action, Zoning Commission Case No. 18-10 High Street LLC map
24 amendment at square 5799, lot 976. Ms. Schellin.

25 MS. SCHELLIN: This one is actually a proposed

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1 action. The High Street --

2 CHAIRMAN HOOD: What did I say, final?

3 MS. SCHELLIN: It's proposed.

4 CHAIRMAN HOOD: Is it proposed or final?

5 MS. SCHELLIN: Hillary's got me all confused now.

6 (Simultaneous speaking.)

7 MS. SCHELLIN: It is proposed which is what you
8 said. So exhibit 47 is a supplemental OP report that gives
9 the development standards for the RA-1 and RA-2 zones.
10 Exhibit 48 is the applicant's response to the Commission's
11 comments that were made from March 21. So we'd ask the
12 Commission to consider proposed action this evening.

13 CHAIRMAN HOOD: Okay. Let me go first to
14 Commissioner Shapiro.

15 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
16 just want to say I wasn't here for the March 21st public
17 hearing, but I reviewed the record and I will be
18 participating in the case.

19 CHAIRMAN HOOD: Okay, thank you. All right.
20 Colleagues, as you know there were a number of issues that
21 we wanted to have addressed. And I think we're capturing as
22 one of the issues that was raised was contested case versus
23 rulemaking.

24 And then we wanted to deal with a specific project
25 that is not relevant to the Commission's decision. It is not

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1 because as I expressed -- well, we can get to that.

2 This was about a rulemaking. This was not about
3 a case. And I know since I've been here every time we do a
4 rulemaking it's always about -- people always want to talk
5 about a case and that is not germane to our proceeding of a
6 rulemaking. It's more of a general policy issue that's
7 across the board for specific -- more than just one area.
8 It impacts a wide, broader scope as opposed to just one
9 specific project and a parcel of land.

10 And then also I'm not sure, one of us may have
11 asked why -- I don't know if it was presented in testimony
12 or one of us may have asked from RA-2 versus RA-1. And we
13 need to resolve those issues and depending upon where we land
14 we'll see how we move forward.

15 So who would like to start us off on the issue
16 that was raised by some members of the community about the
17 contested case versus rulemaking?

18 You know, we had determined this to be a
19 rulemaking but it was mentioned that some people thought this
20 should have been like a PUD or contested case versus a
21 rulemaking. So let me open that up. Any discussion on that
22 broader issue? Commissioner Shapiro.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
24 believe this is a rulemaking case and we were fairly clear
25 with that from the beginning. And I think specifically under

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1 201.7(b)(2) this is around -- this is a case that raises land
2 use policy questions to a greater degree than highly
3 localized issues of fact and effects on neighboring
4 properties. It feels quite clear and I think that's where
5 the Commission is and so for me this is a rulemaking case.

6 I don't think we have anything that should send
7 us in another direction.

8 CHAIRMAN HOOD: Okay. All right. Anybody else?
9 Commissioner May.

10 COMMISSIONER MAY: I think that -- I can
11 understand why some people might look at it and think that
12 it should be a contested case because of the single property
13 owner issue, but that's not the only condition that we have
14 to be looking at.

15 It is an issue of broader policy and I think that
16 becomes clear when you look at the comprehensive plan more
17 fully and think about the objectives for building new housing
18 and building affordable housing. So I think it's in the
19 context of those objectives within the comp plan that we can
20 look at this as a legislative matter, a rulemaking matter
21 rather than the particulars of that specific case.

22 CHAIRMAN HOOD: Right. As I already stated it's
23 more of a higher issue than just the local issue which
24 they're talking about as has already been mentioned pretty
25 much through Commissioner May.

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1 We're looking at more of a broader issue. So I
2 think that should be sufficient enough to keep it where we
3 have it. Any others? Vice Chair Miller.

4 VICE CHAIR MILLER: I would agree with my
5 colleagues. I think it is a comp plan map and policy
6 consistency case.

7 CHAIRMAN HOOD: Okay. I'm not hearing anything
8 else.

9 Let's go to the issue about RA-2 versus RA-1. I'm
10 not sure -- Vice Chair Miller.

11 VICE CHAIR MILLER: So, since I actually was the
12 one that brought that up, I brought it up in the context of
13 comp plan map consistency, that I knew that there was more
14 than one zoning category that might fit into the comp plan
15 moderate density designation and changing it from R-3 to R-2
16 -- that did seem not inconsistent.

17 And I think that I asked the question would RA-1
18 also be not inconsistent and I think what came back was some
19 very good arguments both from the applicant I think and from
20 -- did we get something -- I think we got something from DHCD
21 as well.

22 I didn't realize when I asked that question about
23 RA-1 that RA-1 would not be matter of right. And I think
24 that's a definite consideration. I wouldn't have asked the
25 question, or if someone had said right there that RA-1

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1 wouldn't be matter of right, that it would have to go through
2 the special exception BZA process I would have said well,
3 then we shouldn't even be considering that because the whole
4 purpose is to get this developed with moderate density
5 housing which is a map which is not inconsistent with what
6 the map says and what many policies call for in the housing
7 and land use policies of the comp plan for both market rate
8 housing and affordable housing as a specific priority. So
9 I'm ready with RA-2.

10 CHAIRMAN HOOD: Okay.

11 COMMISSIONER TURNBULL: I think the other reason
12 that came up for the RA-1 was that there was an RA-1 zone
13 fairly close to this area plus an RF zone. So I think that
14 kind of led to the question why aren't we doing another RA-1
15 rather than RA-2 just because of the proximity of the other
16 zone.

17 CHAIRMAN HOOD: Okay. Anything else? Again,
18 we've already noted that no project -- even though like I
19 said earlier people do bring up projects, but no project is
20 necessarily specific to our -- what's before us in this
21 particular case.

22 People like to bring projects up all the time.
23 This is not our first time hearing a project, but we're not
24 talking about a project through this process.

25 All right, anything else? Would someone like to

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1 make a motion? Sounds like we're ready. Is there anything
2 else on this case other than those issues?

3 Not hearing anything I would move proposed action
4 on Zoning Commission Case No. 18-10 and note this discussion
5 that we've had here from the dais and ask for a second.

6 VICE CHAIR MILLER: Second.

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

9 (Chorus of ayes.)

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

12 MS. SCHELLIN: Staff records the vote 5-0-0 to
13 approve proposed action, Zoning Commission Case No. 18-10.
14 Commissioner Hood moving, Commissioner Miller seconding,
15 Commissioners May, Shapiro and Turnbull in support.

16 CHAIRMAN HOOD: Okay. I'm going to go to hearing
17 action. Before I go there I have another letter that was
18 given to me. Before I go to hearing action just give me one
19 moment.

20 I have a letter that was sent to me and it
21 basically says -- I'm going to read the whole letter since
22 I think my colleagues have copies. I'm going to read the
23 letter into the record.

24 "Dear Chairman Hood, last October 17 all 13
25 members of the Council sent a letter regarding the urgent

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1 need to update the zoning regulations to reflect the
2 widespread presence of thousands of short-term rental units
3 in residential zones throughout the District.

4 "The letter again signed by all councilmembers
5 stated in part, it is imperative both to the city's finances
6 and need for a viable regulatory scheme that the zoning
7 regulations be revised.

8 "Accordingly, we must request that the Zoning
9 Commission initiate a text case as well as emergency
10 rulemaking to permit home-sharing.

11 "Now, almost six months later a case has yet to
12 be initiated. I am truly grateful that within days of the
13 councilmember's letter that the Zoning Commission held a
14 special meeting to discuss the matter.

15 "At that meeting the Zoning Commission requested
16 that Office of Planning undertake an analysis and provide a
17 report.

18 "While I believe the Zoning Commission has been
19 responsive this issue has to move forward. I am writing now
20 to request that at tonight's regular public meeting the
21 Zoning Commission insists that the Office of Planning submit
22 its analysis by a date certain.

23 "At OP's budget hearing before the Council's
24 Committee of the Whole last month Director Trueblood
25 indicated a report might be submitted this month."

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1 And then it goes on with, "Please insist that this
2 is a commitment. Sincerely, Phil Mendelson." Chairman
3 Mendelson.

4 First thing I want to make clear is that we are
5 not ignoring anything that the City Council or the Mayor or
6 the city has asked us to do. We are operating within our
7 independent authority.

8 But we also are trying to make sure, and I think
9 I said this at our oversight hearing. And I understand the
10 urgency of getting this to us so we can -- the city can come
11 into compliance.

12 And when you look at this issue, this is not just
13 in the District of Columbia. I think this issue is going on
14 elsewhere as well. And I don't know who really has the grasp
15 on it, who really has the lead on it. From what I've seen
16 nobody.

17 But I do know that I have asked this question of
18 Office of Planning on a number of occasions and they are --
19 I think I just asked it two weeks ago or so, or our last
20 meeting and I was informed by Ms. Steingasser that they're
21 doing an overhaul comprehensive review and I guess looking
22 at other cities.

23 When I thought about that after Ms. Steingasser
24 had mentioned we're looking at other cities I don't know who
25 really has the book on how to do this. I may be talking, I

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1 mean saying some stuff that Office of Planning now has closed
2 a little bit of a gap, but I believe that -- I'm sure that
3 we will probably see it soon.

4 We've asked and we've asked for an update. But
5 we don't want to rush -- hasten the rush and then turn around
6 and have to go back and have a lot of questions, go back.
7 We want a thorough analysis.

8 And I have mentioned that at the oversight hearing
9 as well as the budget hearing again about two weeks ago.

10 So, Ms. Steingasser, do we have a date certain?
11 Can you give me a progress of where we are? Can we nail down
12 a date at this point or where are we?

13 MS. STEINGASSER: So, you're correct, Chairman
14 Hood. We are working, looking at a national level of how
15 other jurisdictions and states are handling this type of use.

16 We're coordinating with other city agencies. And
17 we're continuing to do that research because we would rather
18 do it right and do it once.

19 It is a fairly complex issue and we're continuing
20 to work on it and we'll get it to you as soon as we can.

21 CHAIRMAN HOOD: Ms. Steingasser, does anybody have
22 the book to follow on this subject?

23 MS. STEINGASSER: No. Every jurisdiction we've
24 looked at has done it in very different ways. Some of them
25 are similar, but some of them are just completely different.

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1 And so that's why we're looking at it and what works best
2 with -- what's most compatible with our structure and our
3 permitting and licensing divisions.

4 CHAIRMAN HOOD: So to ask for a date right now
5 would be premature.

6 MS. STEINGASSER: Yes, sir. We don't have a date
7 certain.

8 CHAIRMAN HOOD: Okay. All right. So I will send
9 a letter back to the Chairman myself. He may be watching
10 this, but I will send a letter.

11 Again, we're kind of like still doing the research
12 model, still trying -- unfortunately nobody has the book of
13 how to handle this. And as you said there's a wide analysis
14 out there of all kinds of ways to do it.

15 And I know you all are trying to tell us something
16 for the best interests of this city which is unique. So I'm
17 sure that that is a difficult assignment.

18 Here's what I'll do to give the chairman some
19 assurances. I will ask this at every meeting if I can
20 remember. So I will ask this question at every meeting, or
21 maybe once every other -- it depends. It depends on how far
22 along we go.

23 All right. Anybody else have any questions on
24 this? All right. Vice Chair Miller.

25 VICE CHAIR MILLER: Since the Council Chairman

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1 probably is watching or will be watching it I'll ask a
2 question. Since I run into him from time to time.

3 Do you think it's a matter of weeks or a matter
4 of months? I guess there is an October 1 I guess
5 applicability date for the action, the regulatory scheme that
6 the Council set up.

7 And I think having watched his dialogue with
8 Director Trueblood I think he would want this to be in place
9 before then and not have to delay that applicability date
10 which seemed generous I guess at the time that they took
11 their action.

12 So, do you just have a guesstimate on whether it's
13 next month?

14 MS. STEINGASSER: I really don't and I don't want
15 to --

16 VICE CHAIR MILLER: And I agree with you that it
17 should be done right and once, not over and over because we
18 made a mistake.

19 MS. STEINGASSER: I really don't have a date.
20 Like I said we're trying to work -- trying to survey the
21 other cities and find a system that works with our regulatory
22 permitting and licensing structure the best.

23 VICE CHAIR MILLER: We'll look forward to your
24 next progress report very soon.

25 CHAIRMAN HOOD: All right. Thank you. Any other

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1 questions? Ms. Schellin, could we give Chairman Mendelson
2 a response from me? I will work with you and Ms. Martin on
3 this response because I do want to respond to this letter.

4 All right, anything else on this? All right,
5 let's go now to hearing action. And Rob, if you see him you
6 might -- since you run into him you can give him a response
7 on my behalf.

8 Okay. Zoning Commission Case No. 15-27A 300 Morse
9 CPK Owner LLC et al, a 2nd stage PUD and modification of
10 significance of 1st stage PUD at square 3587. Ms. Elliott.

11 MS. ELLIOTT: Two for two.

12 CHAIRMAN HOOD: I know I've been calling you Ms.
13 Elliott for at least a year. Even though it's been eight,
14 at least a year.

15 MS. ELLIOTT: All right. Good evening, Mr.
16 Chairman, members of the Commission.

17 OP recommends that the application for a
18 modification to the stage 1 PUD and the stage 2 PUD for
19 building A-2 be set down for a public hearing.

20 If you want to direct your attention to the screen
21 we have a vicinity map showing the general location of the
22 site. And I know it looks small, but wanted to give you some
23 context with the overall Florida Avenue market area showing
24 New York Avenue to the north and Florida Avenue to the south.

25 It's generally on the east side -- I'm sorry, the

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1 west side of the site.

2 The building address would be -- well, generally
3 in the vicinity of 300 Morse Street NE.

4 When this application was originally submitted it
5 actually consisted of three separate buildings so I just want
6 to clarify that it has been revised and the application is
7 now for building A-2 only.

8 The development would consist -- the other two
9 buildings will come in separately. For clarification.

10 The development would consist of a 13-story 130
11 foot high mixed use building with ground floor retail and 12
12 stories of residential use having approximately 260 dwelling
13 units.

14 The development would devote approximately 21,000
15 square feet to IZ units at 80 percent MFI which is consistent
16 with the stage 1 PUD approval.

17 The development incorporates green space at the
18 third floor, roof and penthouse and most notably with the
19 proposal of Neal Place Park at the east side of the building.

20 The frontage along the park would be activated by
21 building entrances although OP has requested additional
22 information demonstrating the relationship between the park
23 and ground floor facade.

24 Parking would be accessed via a shared driveway
25 located in building A-1. And for reference that shows where

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1 building A-1 is. And loading would be provided in and shared
2 with building A-1 as well.

3 The building would be certified LEED gold and
4 include solar on the roof.

5 The applicant has proposed the following
6 modifications to the 1st stage PUD - an increase in the FAR
7 from 7.13 to 7.88 which includes gains in both residential
8 and non-residential uses, an increase in the unit count from
9 198 to 260 units, to modify a condition in the order
10 regarding the completion of Neal Place Park so that
11 completion of the park and issuance of the certificate of
12 occupancy would be tied to building A-2 only, to modify
13 parking for the site increasing the number of spaces from 63
14 to 165 spaces, and to include habitable penthouse space.

15 OP has requested additional information from the
16 applicant which is noted at the beginning of our report to
17 include additional renderings and architectural details, Neal
18 Place Park features and an explanation regarding the proposal
19 to increase parking along with additional traffic mitigations
20 that might be necessary to accommodate the parking.

21 The proposal continues to meet the requirements
22 of the C-3-C PUD zone. Public benefits would include IZ
23 units beyond the minimum required, completion of the street
24 grid including sidewalks and bicycle infrastructure and Neal
25 Place Park.

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1 While makerspace was required by the 1st stage PUD
2 to be included in several buildings in this PUD building A-2
3 was not included and is currently not proposing makerspace
4 in the building.

5 The proposal includes -- I'm sorry, the proposal
6 continues to be not inconsistent with the future land use
7 map, the generalized policy map, small area plans and studies
8 as demonstrated at the 1st stage PUD and in OP's report.

9 The Office of Planning recommends that the Zoning
10 Commission set down the requested modification to the 1st
11 stage PUD and 2nd stage PUD for building A-2.

12 And we will continue to work with the applicant
13 to address issues identified in the report and any identified
14 by the Zoning Commission prior to the public hearing. I'm
15 happy to answer any questions.

16 CHAIRMAN HOOD: Okay, thank you, Ms. Elliott.
17 Let's see if we have any questions or comments.

18 COMMISSIONER MAY: I don't have anything to add.
19 I just think the list of additional information as often is
20 the case with Office of Planning reports is very good and
21 thorough and look forward to seeing that additional
22 information. So I don't have anything to add.

23 CHAIRMAN HOOD: Okay. Did we want to set this
24 down with all that or what do we want to do? Okay. All
25 right.

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1 COMMISSIONER TURNBULL: Mr. Chair, I just have two
2 items.

3 CHAIRMAN HOOD: Mr. Turnbull.

4 COMMISSIONER TURNBULL: I would agree with
5 everything that Ms. Elliott said. I think it was a very good
6 report.

7 I would just add that if they could tighten up the
8 signage element, actually putting heights and making --
9 pinpointing the locations better.

10 The only other thing is they provided an IZ
11 layout, but I'm always worried about stacking of units and
12 I wonder if they could take another look at what they
13 provided.

14 CHAIRMAN HOOD: Okay. Anything else on this?
15 Yes.

16 COMMISSIONER SHAPIRO: Thank you. I appreciate
17 the inclusion of rooftop solar. I would encourage the
18 exploration of seeing rooftop solar and a green roof as not
19 incompatible uses and perhaps there's an opportunity to
20 extend the amount of rooftop solar by putting it above the
21 green roof as well.

22 So I would look to hear from some kind of response
23 about that, why it either is or isn't practical.

24 CHAIRMAN HOOD: All right. Anything else? Vice
25 Chair Miller.

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1 VICE CHAIR MILLER: I would just concur with my
2 colleagues and thanks Ms. Elliott for the report and all of
3 the requests that you made for further clarification and
4 information.

5 Did you say that the IZ being provided -- I know
6 you asked for some clarification of the IZ calculations, but
7 did you say in your presentation here tonight that the IZ
8 being provided is more than the minimum that's required, or
9 were you talking about the overall development which I
10 realize the overall development with all the stages and
11 phases and buildings is providing for more than the minimum.

12 But I thought this particular building was at the
13 minimum. Even though there are two and three bedrooms which
14 are part of the calculation because they're part of the
15 overall unit mix which I appreciate. Could you just clarify
16 what you said about the minimum on this report?

17 MS. ELLIOTT: Sure. The order that was approved
18 with Case 15-27 provides an option for for sale units for
19 building A-2. So if they are for sale units they would
20 provide essentially 8 percent of the floor area at 80 percent
21 MFI.

22 And then there are additional requirements for IZ
23 units in different buildings. So, overall it's more but in
24 this specific building it is the minimum.

25 VICE CHAIR MILLER: I appreciate you clarifying

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1 that because that's how I read the -- but we always would
2 encourage, or at least I would encourage -- I'm sure Office
3 of Planning would encourage that even though the 1st stage
4 in -- required going beyond the minimum in this building A-2
5 it always would be welcome if they went beyond the minimum.

6 CHAIRMAN HOOD: Okay. Anything else? Would
7 somebody like to make a motion to set this down?

8 COMMISSIONER SHAPIRO: Mr. Chair, I move that we
9 set down Zoning Commission Case No. 15-27A 300 Morse CPK
10 Owner LLC et al 2nd stage PUD and modification of
11 significance of 1st stage PUD at square 3587. Look for a
12 second.

13 VICE CHAIR MILLER: Second.

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

16 (Chorus of ayes.)

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

19 MS. SCHELLIN: Staff records the vote 5-0-0 to set
20 down Zoning Commission Case No. 15-27A as a contested case.
21 Commissioner Shapiro moving, Commissioner Miller seconding,
22 Commissioners Hood, May and Turnbull in support.

23 CHAIRMAN HOOD: Okay. Ms. Schellin, do we have
24 anything else?

25 MS. SCHELLIN: No, sir.

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1 CHAIRMAN HOOD: Ms. Steingasser. Okay, what I
2 will announce and I probably should have done this earlier.
3 I think it's about time for us to relax our dress code even
4 though we relax anyway sometimes. So let's just relax for
5 the summer because it's starting to get hot.

6 All right. Anything else, Ms. Schellin?

7 MS. SCHELLIN: No, sir.

8 CHAIRMAN HOOD: All right. So with that I want
9 to thank everyone for their participation and this meeting
10 is adjourned.

11 (Whereupon, the above-entitled matter went off the
12 record at 7:35 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Regular Meeting

Before: DCZC

Date: 04-08-19

Place: Washington, DC

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



Court Reporter

NEAL R. GROSS

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