

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

Office of Planning - : Case No.

Text Amendment to Subtitle K : 18-18

to Add a New Chapter 10 :

to Create the :

Northern Howard Road [NHR] Zone :

:

-----:

Thursday,

May 2, 2019

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 18-18 by the

District of Columbia Zoning Commission convened at 6:30

p.m. in the Jerrily R. Kress Memorial Hearing Room at 441

4th Street, N.W., Washington, D.C., 20001, 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

MATT JESICK

JOEL LAWSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on May 2, 2019.

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

6:36 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentleman. This is a public hearing of the Zoning Commission for the District of Columbia. Today's date is May the 2nd, 2019. My name is Anthony Hood. We're located in the Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are Commissioner -- Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner Turnbull. We are also joined by the Office of Zoning staff, Ms. Sharon Schellin; Office of Attorney General Staff, Mr. Tondro and Ms. Cain; Office of Planning staff, Ms. Steingasser, Mr. Lawson, and Mr. Jesick.

This proceeding is being recorded by a court reporter. It's also webcast live. Accordingly, we must ask you to refrain from any disruptive noise or actions in the hearing room. This is a continuation of Zoning Commission Case Number 18-18, and this hearing will be conducted in accordance with the provisions of 11 DCMR Chapter 5 as follows. We will start off with the presentation again by the Office of Planning; any other government reports; report of the ANC; organizations and persons in support; organizations and persons in opposition; and organizations and persons who are undeclared.

The staff will be available throughout the hearing

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1 to discuss procedural questions.

2 Please turn off all electronic devices at this
3 time so as not to disrupt these proceedings.

4 Again, this is a continuation of Zoning Commission
5 Case Number 18-18. Ms. Schellin, do we have any preliminary
6 matters?

7 MS. SCHELLIN: No, sir. As you stated, the case
8 was continued for the Office of Planning to provide some
9 additional information, so they have provided a supplemental
10 report which is in the record at Exhibit 11. And so the
11 Commission can proceed with this hearing as they choose to
12 do so, whether they want to hear from anybody or not, and
13 we'll go from there.

14 CHAIRMAN HOOD: OKAY. Let me make a correction.
15 Sometimes when you read an opening statement so much, you
16 just think you read it verbatim. I read that there were
17 organizations and person and parties. In this case, this is
18 a rulemaking. We just have organizations and persons in
19 support, organizations and persons in opposition, and
20 organizations and persons who are undeclared. And I want to
21 thank counsel for correcting me, so I greatly appreciate it.
22 So I just want to make this correction. Again, this is a
23 rulemaking. Okay. Thank you, Ms. Schellin, for that
24 preliminary report.

25 Commissioners, as we move forward, is there anyone

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1 who has anything preliminary before we --

2 COMMISSIONER MAY: So, Mr. Chairman?

3 CHAIRMAN HOOD: Commissioner May.

4 COMMISSIONER MAY: Yeah, if I could? So you know,
5 I -- I'm sort of at a loss on what to say or how to start,
6 but I don't feel like at this moment, there has been a whole
7 lot of change in the situation from where we were before in
8 terms of the substance of the text amendment. And I think
9 that the -- you know, I have concerns about how we should or
10 should not move forward at this moment given this particular
11 situation where we have an approved PUD that's hung up for
12 other reasons and we don't know when that's going to be
13 resolved, and so this is some alternate path to achieve some
14 semblance of the same result.

15 First of all, I -- you know, I appreciate the
16 difficulty that the Applicant is facing, and I appreciate all
17 of the work on the part of the Applicant and their team to
18 try to find a way to move forward, and there are good reasons
19 to move forward and try to seek redevelopment of these
20 properties. And I appreciate the Office of Planning's work
21 to try to, you know, come up with a solution that brings
22 appropriate development and appropriate benefits to the
23 neighborhood or the nearby residents.

24 But I also appreciate the testimony that we
25 received from those who were opposed to this map amendment

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1 as a workaround for the PUD that is currently stalled. So
2 I don't feel like -- I feel like we ought to have some
3 discussion right up front about what we expect to gain out
4 of continuing the hearing today and, in fact, whether we
5 should continue -- you know, whether we should take some
6 other action tonight or -- and, you know, who knows what will
7 happen with the next case on the agenda. So I just think
8 some conversation at this moment would be appropriate.

9 CHAIRMAN HOOD: Okay. Before we move on, I'm
10 going to come to Commissioner Shapiro right after this. We
11 do have a preliminary matter, and Ms. Schellin just reminded
12 us. Can you tee that preliminary matter up for us, Ms.
13 Schellin?

14 MS. SCHELLIN: Yes, sir. There was a joint
15 request from ANCs 8A and 8C for a postponement, and they were
16 asking for additional time to work with the petitioner. I
17 believe it was on a CBA. They were asking for a two-week
18 postponement. That would allow them to be able to submit
19 their report after working with the petitioner. And sorry,
20 I'm pulling up the other case, too.

21 COMMISSIONER MAY: Can you tell us the Exhibit
22 Number on that, because I --

23 MS. SCHELLIN: Yes.

24 COMMISSIONER MAY: -- couldn't find it.

25 MS. SCHELLIN: It --

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1 VICE CHAIR MILLER: Forty-two.

2 MS. SCHELLIN: Yes, 42.

3 VICE CHAIR MILLER: Oh, I'm sorry.

4 COMMISSIONER MAY: Oh, in the --

5 VICE CHAIR MILLER: Isn't it only --

6 COMMISSIONER MAY: -- the second case.

7 MS. SCHELLIN: The second case, yes.

8 VICE CHAIR MILLER: The second case.

9 MS. SCHELLIN: And so they were asking it be
10 postponed by two weeks to extend the time to receive the
11 final ANC reports.

12 COMMISSIONER MAY: But that applies only to the --

13 MS. SCHELLIN: Well, they actually referenced --
14 yes, they did only reference 18-19.

15 COMMISSIONER MAY: 18-19.

16 MS. SCHELLIN: I'm sorry. I thought they had
17 referenced both cases.

18 COMMISSIONER SHAPIRO: There was a request for --

19 MS. SCHELLIN: So my mistake.

20 COMMISSIONER SHAPIRO: -- postponement on 18-18
21 from before.

22 MS. SCHELLIN: From before. That one was from
23 before, so my mistake.

24 CHAIRMAN HOOD: Okay. So we don't have a
25 postponement for 18-18?

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1 MS. SCHELLIN: Not for this case, yes.

2 CHAIRMAN HOOD: All right. We have 18-19, we'll
3 deal with that.

4 MS. SCHELLIN: So I jumped the gun.

5 CHAIRMAN HOOD: All right. Let's go back. Thank
6 you, Ms. Schellin. Let's go back. Commissioner Shapiro.

7 COMMISSIONER SHAPIRO: Yes. I agree with
8 Commissioner May. I feel like before I want to hear anything
9 else about this, I would like us to have a discussion about
10 this process, why this is before us. I'm concerned. I think
11 it's worthy of discussion because I'm concerned about what
12 kind of precedent this sets to go down a process like this
13 in other -- as Commissioner May says, there's an approved PUD
14 out there, and this is a way around a problem, and what are
15 we encouraging if we go down this route. So before I --
16 there's nothing else that I feel like I need to hear, and
17 there's so much in here that's related to the Community
18 Benefits Agreement, which isn't even relevant to this, so I
19 very much would like to -- for us to have that conversation
20 before you do anything else.

21 CHAIRMAN HOOD: Okay. Any other comments on that
22 issue, Vice Chair, before I make my comments?

23 VICE CHAIR MILLER: Did you want to go first?

24 CHAIRMAN HOOD: No.

25 VICE CHAIR MILLER: Okay.

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1 CHAIRMAN HOOD: I've learned a long time ago you
2 -- the Chairman always goes last, courtesy.

3 VICE CHAIR MILLER: Yes.

4 CHAIRMAN HOOD: Unless he's really hot on the
5 issue, unless he's really hot about the issue, which I --

6 (Simultaneous speaking.)

7 VICE CHAIR MILLER: I just wanted to defer to you
8 if you did. Okay. Thank you, Mr. Chairman. I have no
9 problem talking about the process going forward, but I just
10 wanted to ask, on the preliminary matter, about the
11 postponement request from the two ANCs for Case 18-19, the
12 ANC letter represents that the Applicant has agreed to this
13 -- postponement if the Zoning Commission can reschedule the
14 hearing in relatively short order. The ANC letters ask for
15 the two weeks, so I just want to -- if I could get some --
16 I don't know if we had anything in the record that actually
17 says the Applicant agrees with the postponement.

18 Can I get some affirmative acknowledgment from the
19 Applicant's representative in the audience that they do a --
20 that they do agree with this -- agree with the postponement
21 request if it can be -- if it can be heard in two weeks?

22 CHAIRMAN HOOD: So what we'll do, we'll just ask
23 you to identify yourself --

24 MR. SKINNER: Yeah.

25 CHAIRMAN HOOD: -- who you're with and then if you

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1 can just answer the question. That's all.

2 MR. SKINNER: Tom Skinner, Redbrick LMD. And I
3 think our perspective was that we wanted to have the hearing
4 this evening and then if there was a postponement of the vote
5 for two weeks while we completed the CBA, that would be
6 something that we would be comfortable with. But I mean we
7 -- I think we felt like last time, we had several hours where
8 we didn't have, you know, our testimony and our voices
9 weren't heard, and we're very concerned about just continuing
10 to getting like pushed and pushed and pushed. So -- but I
11 mean a two-week push if we have a hearing tonight would
12 certainly be --

13 VICE CHAIR MILLER: A two-week postponement on the
14 decision, okay.

15 MR. SKINNER: On the decision.

16 VICE CHAIR MILLER: I appreciate that
17 clarification. Thank you.

18 CHAIRMAN HOOD: Okay. Anybody else? Mr. Turnbull
19 -- Commissioner Turnbull.

20 COMMISSIONER TURNBULL: Thank you, Mr. Chair.
21 Yeah, you know, we went through ZR16, and we ended up getting
22 rid of overlays, and now we're going back and creating
23 specialized zones. But I don't think we've had a discussion
24 with the Office of Planning as to what is the intent, what's
25 the process, and why would you go about creating specialized

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1 zones within the city. I guess there ought to be a process
2 and a rationale for developing that, and I don't think we've
3 had that sort of a reach out as to why we would do this and
4 how you would do it and what are the parameters involved for
5 doing it. And I would like -- I think we need to do that.

6 CHAIRMAN HOOD: So on this topic, I will tell you
7 -- and I had concern from the beginning, colleagues, and I
8 know that my thoughts -- I don't -- I can't remember if I
9 expressed them publicly, but when I read through the case --
10 and it had nothing to do with none of the submissions, it was
11 the format in which we were going. We already have a PUD.
12 For me, I don't have a problem fighting it in court. I think
13 that it's defensible; I think that it's a great project which
14 we approved the PUD. Yes, we did some massaging.

15 And then we can go back to those issues that the
16 ANC had. I mean we have something in place, and now we're
17 coming back and we're doing this rulemaking. To some degree,
18 to me, we have things going simultaneously, because I think
19 it's a great project. I think it's a -- it'll be a good star
20 for the neighborhood, and I think we have something already
21 in the pipeline.

22 That's people's right to take stuff to court.
23 They can take as much stuff to court as they want to. That's
24 their right, but I also think this is, again, an improvement
25 for the city. And when we -- I keep hearing gentrification.

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1 For me, that started in the '80s. The discussion is good to
2 have now, but if I know what I know now, we should have
3 started that in the '80s when we were all migrating and
4 people were going to Prince George's, which I thought then --
5 and I appreciate my parents withstanding the test and staying
6 here in the city. That didn't just start when Hood and them
7 got on the Zoning Commission. That started, for me, in the
8 '80s. Some of it may have been sooner, but it's more
9 prevalent now, yes. We're behind the 8-ball on that.

10 I do -- that's why what we try to do within our
11 jurisdiction we talk about gentrification, you know, I try
12 to put things in Barry Farm -- I try to put things in place
13 in orders, even though I'm told often it is not in my
14 jurisdiction, but I try to put it in place because yes, it's
15 people of color who are being moved out of the city, and I
16 think it's sad. We were here during the rough times, and
17 those people should remain, if they choose to, during the
18 tough times. But I don't want to make this a racial issue.

19 What I do want to say is, though, I have an issue
20 with things being done simultaneously and us retreating and
21 not standing up in court and fighting for what I thought we
22 did for the best interest of this city.

23 And it gets confusing because we start mixing
24 CBAs, even though I allowed it, I know that it's technically
25 not within our jurisdiction in this process, but I wanted to

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1 make sure that I also hear from the community, because when
2 they develop this and gone, the community, the ANC
3 Commissioners, Chairman Prestwood and all the rest of them,
4 all of us are going to still be here in this city. They will
5 be -- the developer, they'll be developing in Bethesda,
6 somewhere else, and we'll still be living here. So to me,
7 I have a problem with balancing that. How do I make
8 something fit that's not fit actually within our jurisdiction
9 or it's not on our purview under this process.

10 We have a perfectly fine PUD. I say let's stand
11 up, let's fight for it in court. That's where I am. I don't
12 have a problem going to court, not one bit. So I think we
13 got one. Let's fight for it. I think we massaged it.

14 Now another conversation I'm hearing, and I'm
15 going to use this time to say it -- people say the Zoning
16 Commission never saw a PUD they didn't approve. Everybody
17 who's ever said that obviously don't follow our process,
18 because I now for a fact the four other people sitting up
19 here with me put their own input into it, and if the truth
20 be told, the way it comes in looking one way, when it leaves
21 back, nobody has come in -- I will admit there's one case.

22 That was the Georgetown sports facility. That was
23 the only case I don't think we touched. You all think about
24 it. That was the only case I don't think we touched. To my
25 tenure, my 20 years, that's the only case, but they go

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1 around, the Zoning Commission hasn't seen the PUD -- the
2 people who are spreading that obviously don't know the
3 process, and they come in the room for 10 minutes, then leave
4 out and don't hear what we do.

5 So anyway, I concur with what I've heard. I've
6 been troubled about this going forward anyway to begin with,
7 not because of what I read. I was troubled when I started
8 reading it as far as trying to say okay, well, don't we have
9 something already in the pipeline. Yeah, it's in court.
10 It's being appealed. Fine. Let's fight it. So I don't
11 know. Vice Chair?

12 VICE CHAIR MILLER: Well, I guess we're having the
13 conversation. You know, a lot of -- we asked the Applicant
14 to work with the ANC since our last hearing on this, and
15 there been a lot of people who spent a lot of time, a lot of
16 hours, the ANC representatives, the Applicant's
17 representatives, the Council -- Ward 8 Councilmember's
18 representative, working things out, and they're making
19 progress. Yes, this is obviously an alternative way of
20 moving forward with this important development. We have
21 considered many map amendments on cases which either that
22 they didn't file as a PUD because they were concerned about
23 how the D.C. Court of Appeals is treating our PUDs. Or I
24 think there are cases where they decided to go with a map
25 amendment where the zoning -- where the Comprehensive Plan

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1 supported that kind of just straight map amendment without
2 the public benefits that you get from a PUD.

3 In this case, I think it's a creative solution to
4 get a lot of the public benefits, the design review, and the
5 input from public that would happen in this kind of a
6 process. We've created, Commissioner Turnbull, in the ZR16,
7 specialized zones all over the City. That's why we have like
8 almost, I don't know -- I don't know what the number is, but
9 it seems like it's 10 times the number of zones than
10 previously existed often for very specific neighborhoods and
11 because we incorporated -- instead of doing the overlays, we
12 incorporated the overlays into individualized zones. So, you
13 know -- and so all these different neighborhoods that had
14 overlays before have now a zone, R-18, R-17, whatever they
15 are. So it's not unusual to create a -- and we have the
16 site-specific zones for St. Elizabeth's and for Hill East and
17 other areas.

18 So yes, this is a workaround, but I think it's a
19 creative workaround. Who knows? These PUDs, I'm all for
20 fighting for the PUDs that we approved, but there are costs
21 associated with that. There's been delays, hour -- I mean
22 years of delays producing thousands of housing units which
23 this city desperately needs including hundreds and hundreds
24 of affordable housing units, sometimes at deeper levels than
25 what IZ, inclusionary zoning, oftentimes at deeper levels

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1 than what inclusionary zoning would require and in greater
2 amounts. So there is a cost to waiting for the PUD court
3 process which we, as a -- which the city disagrees with some
4 of the court's decisions. We're trying to do our decisions
5 in PUD cases addressing the issues in a way that's more --
6 that tries to address the court's articulated concerns. But
7 like the Comp Plan, they're all over the place in their
8 articulation, and it's hard to know exactly what to do to
9 meet their concerns because you're right, Mr. Chairman.
10 You've fought for addressing many issues that we've been told
11 aren't in our jurisdiction, and it's come back to -- on some
12 of these court cases that yeah, you -- that is within your
13 jurisdiction, the relocation plan. So you were right to
14 spend hours and hours on that to try to get down to make sure
15 that that -- there was a DHCD-approved relocation plan for
16 some of these projects so -- even though it's not necessarily
17 a zoning enforceable decision.

18 So I've kind of rambled here. I don't share the
19 concern about it being a workaround because I acknowledge
20 that it's a workaround, but if it'll get this development
21 going in an under-utilized vacant area that needs development
22 and has waited too long for it, and a lot of people have
23 worked on trying to get this kind of -- this project and
24 others like it off the ground.

25 And so I'm supportive of going forward but I

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1 anticipate -- I think in certain -- it's worthwhile to have
2 a conversation as -- with Office of Planning as to why we're
3 going this route since we really didn't have that at the
4 outset. But I'm in favor of going forward and moving this
5 forward as quickly as possible.

6 CHAIRMAN HOOD: Okay. Commissioner Shapiro.

7 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
8 Yeah, I mean sounds like, to Vice Chairman, at this point
9 we're having this conversation. You know, my concern is I'm
10 struggling with how to evaluate what's before us when the CBA
11 -- I mean I think, you know, to the Vice Chair's point, we're
12 both -- it's not what is germane to the case and it's driving
13 our thinking, and that makes me concerned about our process.
14 And I'm not sure then -- and, you know, to Vice Chair
15 Miller's point, I like the development that we approved.

16 My concern on end run is not so much around is
17 this a way to achieve that goal of getting this development
18 moving forward, but what is it doing to our process overall.
19 And it does feel different to me than the other site-specific
20 zones that you're talking about because this whole process
21 feels designed in relation to the PUD, and it's after the
22 PUD. That's what concerns me about it. And yeah, I'm -- I
23 have a lot of concern about that, and I'm sort of just
24 throwing it out there and we can keep talking about it, but
25 that makes it hard for me to want to move forward on this.

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1 VICE CHAIR MILLER: A lot of the CBA -- the draft
2 CBA provisions are already in the text amendment for --
3 that's before us, the affordable housing requirements which,
4 again, go much deeper and way beyond what inclusionary zoning
5 would normally require so.

6 COMMISSIONER SHAPIRO: It would be helpful to see
7 that, to see what is actually baked in versus what's in the
8 CBA. And that would be one piece --

9 VICE CHAIR MILLER: And we can hear that from OP
10 in the dialogue we have tonight if we go forward with this
11 hearing.

12 CHAIRMAN HOOD: So for me, again, I know that some
13 of the things that the ANC is asking for is not -- and I'm
14 not going to say not in our purview because right now the
15 court told me everything's in my purview so -- our purview.
16 But even though it's not in our rules and regulations -- but
17 I can just tell you this. It's hard to sit here, even though
18 I know residents -- I live in the city, too. It's hard to
19 sit here and residents like Chairman Prestwood -- and I'm
20 pointing him out because he's here tonight -- and other ANC
21 Commissioners feel like they're not being heard. So I think
22 we go through extreme measures to make sure that they're
23 being heard because they're our frontline workers. They do
24 what a lot of people don't do, and they do it for free. And
25 I don't want them to think that at no time, as long as I'm

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1 here -- and I've tried to do this, and I know some of them
2 disagree because some of them are my friends and they
3 disagree -- that we don't listen because I, too, have served
4 as the president of a civic association who has been down
5 here and done some of the same stuff and stayed all day and
6 didn't feel like I was heard. And I determined that even
7 though -- you're right, it's not part of our process, but I
8 think we should consider -- if they can work it out without
9 us, yes, I think it's great.

10 But then let me just go back to what I said about
11 the PUD. What I've been grappling with, yeah, let's fight
12 the PUD, but also -- I also understand that there's nothing
13 in our regulations that prohibit us from going this way.

14 Nothing. So, you know, I've been grappling with
15 that even at the first hearing. I've heard the testimony.
16 I know what I felt when I read the merits of the case, and
17 my whole thing is how do we get to the resolve. It seems
18 like the problems always end up right here, and I mean I
19 think we're up to the task. We've always been up to the
20 task, but there are some things, some fundamental things that
21 I think that just makes this feel uncomfortable, as I think
22 Commissioner Shapiro mentioned.

23 It just makes this feel uncomfortable; either the
24 PUD goes away and we do this, I'm fine, but I also know --
25 and being fair to the Applicant as well and trying to balance

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1 this out -- is that there's nothing that says that they
2 cannot do it this way. For me, maybe the optics may look a
3 little strange, it's a little strained for me to look through
4 when I look at it, and I'm like is this right.

5 But I have to look at the regulations also, so
6 I've been grappling with okay, well, how do we deal with
7 this. And I was hoping that we can come back and continue,
8 and I even thought look at the postponement. And I said,
9 well, the postponement to continue to have this conversation,
10 is that really germane? No. But hopefully, they can work
11 the postponement. So those, you know -- but this whole
12 thing, you can't do nothing but ramble because you're trying
13 to find the medium that works the best for the city. It's
14 not about any particular group. It's the best for the city.
15 We're talking about changing the area that will it be an
16 improvement if we're talking about making some improvements,
17 and that's what this city's been about, trying to make
18 improvements, because a lot of stuff that we go out to Prince
19 George's County for and other places, we're trying to do
20 right here in the District. And everybody now is trying to
21 do business here in the city because this is a -- thriving
22 businesses going, and I think all of us who've been here
23 should still stay here.

24 So I really don't have the way we can go, but I
25 do hear what Commissioner May and Mr. Shapiro are saying.

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1 I think -- Mr. Turnbull, I'm not sure if you agree but I
2 think that, to me, it just doesn't -- if I can use your
3 words, it doesn't feel right. Commissioner May.

4 COMMISSIONER MAY: Yes. So I'll try to hit a few
5 of the points that have been made so far. I don't want to
6 spend a whole lot of time talking about gentrification, but
7 I do want to agree with you that gentrification was happening
8 in the 1980s. I wrote my college thesis on that topic -- I
9 think I've mentioned that before -- in 1984.

10 CHAIRMAN HOOD: I never got a copy because I did
11 want to read it.

12 COMMISSIONER MAY: It's not that good so.

13 (Laughter.)

14 CHAIRMAN HOOD: Well, that ain't going to help me
15 then, but I would like to read it.

16 COMMISSIONER MAY: But, you know, part of the
17 research showed -- that I did at the time indicated that, you
18 know, this is something that has happened well in the past.
19 I mean it happened in the 1940s in Georgetown and, you know,
20 it's an ongoing phenomenon. It's unfortunate that now we
21 seem to be making headlines for having the worst
22 gentrification and displacement in the country, and that's
23 an unfortunate thing. And I think one of the things that can
24 help address that is to get more housing units into the
25 pipeline.

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1 And I agree with Chairman Miller that the cases
2 that we're facing that are slowing down development of
3 projects and their affordable components, and particularly
4 those with greater than minimum affordability requirements,
5 it's really unfortunate that we're facing that because I do
6 think that all housing helps and inclusionary units
7 especially help. And it's not good that we are being slowed
8 down.

9 Now I will also say that when it comes to having
10 a specialized zone in this location, I'm perfectly fine with
11 that. I think that that's a reasonable tool, and it is
12 something that we have applied in other areas. It's
13 unfortunate that we're not able to do this at the same time
14 as the redevelopment of Poplar Point, but there are reasons
15 why that got slowed down. And I'm glad to see that at least
16 this is moving forward because it is a private property
17 that's -- you know, that is abutting the Poplar Point
18 property that the District will soon hopefully get control
19 of.

20 The -- I will also say that with regard to the
21 Community Benefits Agreement, that's a good thing. I think
22 it's a really good sign that the Applicant is working closely
23 with the community and coming to agreement or coming close
24 to agreement with the ANC. I think that's great. However,
25 it's not relevant to the rulemaking and the map amendment

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1 process, right? That's really important if it's a PUD but
2 in this moment, that's not critical.

3 Now the elements of the CBA that are baked into
4 the zone, I think are relevant, but I think that's the way
5 we should be considering them, as just part of what's in the
6 zone, as it's been described in the text amendment.

7 At this point, I just feel like I'm okay with
8 going this process and I'm okay with continuing with the PUD
9 and hoping that we get a good outcome out of the court or
10 fighting it if the Applicant is willing. But I'm not okay
11 with doing both at the same time. That's really what it
12 boils down to. I think that if the Applicant were to
13 withdraw the PUD case and simply go with this, then we can
14 have this out and make a decision relatively quickly. But
15 if we're going to, you know, continue to try and do two
16 tracks, I just feel uncomfortable about it, and I think
17 that's a big problem.

18 I see the Applicant really wants to address that
19 so --

20 CHAIRMAN HOOD: So I think I know what they want
21 to do, so I think they've heard our comments, so I really
22 would like for us to take five minutes and let the Applicant
23 make sure that's what they want. I think -- am I reading you
24 all right? I can kind of -- you're jumping out your seats
25 so I think we're getting ready to get what we're asking for.

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1 But I would like for you to all take five minutes and make
2 sure. I don't want us to rush. Haste makes waste. I don't
3 want us to rush with no decisions. I'd like if you would do
4 that. And then I'm going to have to talk to legal counsel
5 to find out the correct format. I know my format, but my
6 format may not be legally correct, so I will talk, give our
7 counsel a chance, but if you can let Ms. Schellin know what
8 you're wishing to do, we're going to take five minutes, and
9 we're going to come back.

10 (Whereupon, the above-entitled matter went off the
11 record at 7:05 a.m. and resumed at 7:20 a.m.)

12 CHAIRMAN HOOD: Okay. We are going to go back in
13 session. What I would like to do -- we were taking a break
14 to try to give folks time to figure out the path forward.
15 So what I would like to do at this time is we're getting
16 ready to -- and we can do this under our rules and
17 regulations in a -- Open Meetings Act.

18 As Chairman of the Zoning Commission for the
19 District of Columbia and in accordance with Sections 405 and
20 406 of the District of Columbia Administrative Procedures
21 Act, I am declaring that the Zoning Commission now go into
22 closed session to discuss and -- seek legal advice from our
23 counsel on the path forward and which have just been
24 mentioned to us. So with that, I would ask for a second.

25 COMMISSIONER SHAPIRO: Second.

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1 CHAIRMAN HOOD: It's been moved and properly
2 seconded. Will the Secretary please take roll call on the
3 motion before us now that it has been seconded?

4 MS. SCHELLIN: Chairman Hood?

5 CHAIRMAN HOOD: Yes.

6 MS. SCHELLIN: Vice Chair Miller?

7 VICE CHAIR MILLER: Yes.

8 MS. SCHELLIN: Commissioner Turnbull?

9 COMMISSIONER TURNBULL: Yes.

10 MS. SCHELLIN: Commissioner Shapiro?

11 COMMISSIONER SHAPIRO: Yes.

12 MS. SCHELLIN: Commissioner May?

13 COMMISSIONER MAY: Yes.

14 MS. SCHELLIN: Motion carries.

15 CHAIRMAN HOOD: Okay. As it appears the motion
16 has passed, I hereby give notice that the Zoning Commission
17 will recess this proceeding today for about 10 or 15 minutes,
18 closed emergency meeting -- to the Office of Zoning
19 conference room pursuant to the District of Columbia
20 Administrative Procedures Act. With that, we will be back
21 in about 15 minutes.

22 (Whereupon, the above-entitled matter went off the
23 record at 7:22 a.m. and resumed at 7:36 a.m.)

24 CHAIRMAN HOOD: Okay. So with that, we're going
25 back on the record. I was just informed that they're not

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1 letting people upstairs. They're saying that there's -- the
2 building is closed. I'm not sure what's going on, but we
3 need to investigate that because the building is not closed.

4 MS. SCHELLIN: Okay.

5 CHAIRMAN HOOD: And I've just been informed that
6 that's what's being said downstairs. So we will follow-up
7 for the person who just came up, Mr. Abraham, who just come
8 up and mentioned that to me. I appreciate that. That was
9 not ex parte. He was letting me know that people were not
10 being allowed to come up to these meetings, and that's one
11 thing we will not tolerate, and we will get to the bottom of
12 that. We need to find out what --

13 MS. SCHELLIN: Do you want to take a couple minute
14 break? I'll run down there.

15 CHAIRMAN HOOD: Could you? Let's -- I hate to
16 keep doing this. We'll probably get home at 11:00 if we keep
17 -- so could you go -- could you take a few moments and go
18 down and let them know that the building is open, and if we
19 have a problem, then we will deal with that accordingly.

20 (Whereupon, the above-entitled matter went off the
21 record at 7:37 a.m. and resumed at 7:42 p.m.)

22 CHAIRMAN HOOD: Okay. Let's go back into session.
23 Okay. We've had some developments, and I know that the
24 proposed -- the Applicant has spoken to our staff. And I
25 would ask our staff to convey back to us what was said.

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1 MS. SCHELLIN: Yes. The Petitioner has advised
2 that they would file for an extinguishment in the PUD case,
3 which I believe is 16-29. And they would do that right away,
4 I believe tomorrow, and we'd get that on the agenda. They
5 have expressed that they would like to proceed with the
6 hearing in the map amendment case this evening. Of course,
7 that's depending on what -- how the Commission would like to
8 proceed.

9 CHAIRMAN HOOD: Okay. I -- first of all, I
10 appreciate them hearing our concerns and our comments which
11 may have been in different areas, but I think we all bore
12 down closely to being close to the same concern.

13 Second thing is the request -- let me just deal
14 with the request for 18-19. I think that moving forward, we
15 would close 18-18 and wait for the request and deal with that
16 accordingly. And I would not be in favor, unless I hear from
17 some of my colleagues, of moving forward 18-19. I don't want
18 to put any carts before the horse or any -- I want us to make
19 sure that we're doing stuff in a procedural sequence.

20 So what I would ask is that we not hear 18-19,
21 and, again, I'm only one vote. I don't know how others feel.
22 Let's deal with that issue first.

23 COMMISSIONER SHAPIRO: I concur, Mr. Chair.

24 CHAIRMAN HOOD: Okay. Thank you. Anybody else?

25 Everybody agrees, okay. That's the easiest thing

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1 we've done this evening so far. Okay. So we will not hear
2 18-19. We're going to deal with 18-18. I think we will
3 close the record but for some limited things that we would
4 like to see, and we will also take up the -- whatever's
5 presented to us because I don't want to put anything out and,
6 you know, the Applicant has a right to change their mind.
7 I don't want to put anything out there and expect it. I
8 always expect the unexpected.

9 So whatever's presented to us, we will deal with
10 it, but we would put that in some type of timeframe. Ms.
11 Schellin, do we have some dates of how we can proceed? I
12 know we don't meet next week so.

13 MS. SCHELLIN: Yes. So if the Petitioner in 18-19
14 would file the extinguishment -- for the extinguishment
15 tomorrow and serve all of the parties to the PUD case, the
16 parties in the PUD case 16-29 would then have seven days to
17 respond to that extinguishment request, which would be May
18 10th, assuming that you serve them either by hand or by
19 email. Then they would have until the 10th to respond. We
20 can then put it on the agenda for -- at the May 13th meeting
21 to be considered.

22 COMMISSIONER MAY: Ms. Schellin --

23 MS. SCHELLIN: And --

24 COMMISSIONER MAY: -- Ms. Schellin, just to
25 clarify. I mean you said the parties but of course, the

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1 parties include the ANC --

2 MS. SCHELLIN: Right.

3 COMMISSIONER MAY: -- responding within seven
4 days.

5 MS. SCHELLIN: Well, the ANC is a party.

6 COMMISSIONER MAY: I understand that. I just want
7 to make sure that everybody heard that the ANC will also have
8 seven days to respond once --

9 MS. SCHELLIN: Yes.

10 COMMISSIONER MAY: -- the extinguishment motion
11 is filed tomorrow.

12 MS. SCHELLIN: Right. I just consider the ANC
13 because they're a party. So that includes the ANC and all
14 other parties would have until the 10th to respond, and then
15 we'd put that on for May 13th for consideration by the
16 Commission. And then in the meantime, in Case Number 18-18,
17 the text amendment case, if the -- I believe the Commission
18 would like the Petitioner in 18-19, the ANC, and OP to work
19 together on maybe some additional text with taking a look at
20 the CBA. If there's any information from that CBA that could
21 maybe be incorporated into text and the Office of Planning
22 provide a supplemental report 10 days prior to June 6, which
23 we will schedule a six o'clock special public meeting to
24 consider proposed action on that case. So 10 days prior to
25 that would be May 27th, which is a holiday, so OP's report

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1 would be due on May 28th. And if the ANC would like to --
2 and of course, the Commission will give further details on
3 what they're looking for on that, but the ANC, if they would
4 like to provide any comments on that text. And,
5 Commissioners, do you want to give the Petitioner an
6 opportunity to provide any comments also on that supplemental
7 report from OP --

8 CHAIRMAN HOOD: Okay.

9 MS. SCHELLIN: -- which would --

10 CHAIRMAN HOOD: Let me see what others think.

11 MS. SCHELLIN: Okay.

12 CHAIRMAN HOOD: Anything that we need, anything?

13 MS. SCHELLIN: Or just from the ANC? Okay. So
14 that would be due seven days after that, which would be by
15 3 p.m. on June 4th. And then we --

16 MS. STEINGASSER: Ms. Schellin, over here. Are
17 we -- we're talking about Case 18-18?

18 MS. SCHELLIN: Yes.

19 MS. STEINGASSER: Okay.

20 MS. SCHELLIN: For you to give --

21 MS. STEINGASSER: OP was the Petitioner --

22 MS. SCHELLIN: Right.

23 MS. STEINGASSER: -- in that case.

24 MS. SCHELLIN: Right. I'm talking about the other
25 Petitioner in 18-18.

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1 MS. STEINGASSER: In 18-19.

2 MS. SCHELLIN: 18-19, I'm sorry.

3 MS. STEINGASSER: Okay. That's where --

4 CHAIRMAN HOOD: 18-19.

5 MS. SCHELLIN: If they want to provide responses
6 to that supplemental report and the ANC's, that would be due
7 by 3 p.m. on June 4th. And then as I've stated, there would
8 be a 6:00 p.m. special public meeting on June 6th to take up
9 -- or to consider proposed action in Case Number 18-18. And
10 then at 6:30 p.m., the Commission will have a hearing on Case
11 Number 18-19.

12 CHAIRMAN HOOD: Okay. Commissioners, is there
13 anything else that we need or we're looking for possibly,
14 depending upon what comes back to us and what form it comes
15 back to us?

16 COMMISSIONER MAY: I mean I think --

17 CHAIRMAN HOOD: Commissioner May.

18 COMMISSIONER MAY: -- Ms. Schellin captured it
19 pretty well. I mean I think we understand there's some
20 additional benefits within the CBA that has been under
21 discussion between the ANC and the Petitioner in 18-19. And
22 to the extent to which any of that can be further
23 incorporated into the text amendment that we're considering,
24 I think that would be welcomed. I mean it would be great to
25 have everybody in agreement about what should be in there

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1 when we take it up on June 6th. I don't have anything else
2 specifically that I'd want to incorporate, but maybe others
3 do.

4 CHAIRMAN HOOD: Okay. Anyone else? Anything
5 else?

6 All right. So are we all on the same page?

7 Okay. I'm seeing everybody nodding. Chairman
8 Prestwood, you can come forward.

9 MR. PRESTWOOD: Yes. Good evening, Commissioners.
10 I just wanted to make --

11 CHAIRMAN HOOD: Identify yourself.

12 MR. PRESTWOOD: Oh, I'm sorry. I'm Troy Dante
13 Prestwood, ANC Commissioner 8A04, Chairman of 8A. I just
14 wanted to just -- because I had failed to do this last time,
15 which was to give the Commission here a sense of when the
16 ANCs meet. We only meet once a month, which allows us a
17 chance to make -- you know, do a public vote. We do not vote
18 separate and apart from that the same way that you guys
19 don't. And so I just wanted to just bring to your attention
20 those dates if that would be great for the record.

21 CHAIRMAN HOOD: That's fine.

22 MR. PRESTWOOD: Okay. So ANC 8A will meet --
23 won't meet until June 4th, and ANC 8C meets on June 5th, at
24 least that's what our schedules are right now. And so I just
25 want to, you know, in the event that we have to continue to

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1 over the next few weeks or so work with the Petitioner and
2 the Applicant, that we at least know what our schedule is so
3 that we can then make that work for the Zoning Commission
4 schedule.

5 CHAIRMAN HOOD: Yes. We -- hold on a second. Let
6 me ask you if -- depending upon how you come, would you all
7 be -- would you be able to give us something on -- I know you
8 can't speak for the other ANC -- would you all be able to
9 give us something for the 5th -- for the 6th, even if you
10 give it to us the morning of the 6th?

11 MR. PRESTWOOD: Yeah.

12 CHAIRMAN HOOD: And what --

13 MR. PRESTWOOD: Yeah.

14 CHAIRMAN HOOD: -- here's --

15 MR. PRESTWOOD: We should be able to do that.

16 CHAIRMAN HOOD: -- whichever way it go, we will
17 make sure that we hear from the ANC, okay? I will make sure
18 of that.

19 (Simultaneous speaking.)

20 MR. PRESTWOOD: I would say, though, that -- I
21 apologize for interrupting -- I would say that the 8C,
22 though, I mean they vote -- I mean they actually meet the
23 next day. And I'm sorry I don't know what day of the week
24 June 6th is.

25 CHAIRMAN HOOD: It's a Thursday.

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1 MR. PRESTWOOD: It's a Thursday, okay, understood.
2 So then they -- if they met on that Wednesday, which would
3 be the 5th, then I suspect they would need until the end of
4 that night or early the next morning to get something to you
5 as well. But it does put a tremendous squeeze on us, but we
6 understand where we are in the case here.

7 (Pause.)

8 CHAIRMAN HOOD: All right. Counsel has advised
9 me that one -- Mr. Prestwood, one of the things we can do,
10 we -- you can be working with the Applicant and OP, as you
11 know, to see what should be in the -- from the CBA, what
12 should be in the text. What we can also do -- and that's
13 what we'll be considering on the 6th. We also want to --
14 this is a two-vote case.

15 So, you know, if 8C I believe you said -- I think
16 it's 8C that meets on Wednesday?

17 MR. PRESTWOOD: Yes, sir.

18 CHAIRMAN HOOD: If 8C or even your ANC, if you
19 don't have time to do -- give us input, first of all, we'll
20 take it verbally.

21 MR. PRESTWOOD: Okay.

22 CHAIRMAN HOOD: And second of all, there will be
23 another opportunity -- another bite at the apple when we go
24 to final action. So we will do what we can to make sure,
25 first of all, we're within the legal requirement, and second

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1 of all, that we make sure that the ANC has their input; okay?

2 MR. PRESTWOOD: Okay.

3 CHAIRMAN HOOD: I can assure you of that.

4 MR. PRESTWOOD: Is there a second date already
5 scheduled for their next vote?

6 CHAIRMAN HOOD: No.

7 MR. PRESTWOOD: Okay.

8 CHAIRMAN HOOD: No -- no.

9 MR. PRESTWOOD: Understood.

10 CHAIRMAN HOOD: No. We can't even get to the first.

11 MR. PRESTWOOD: I just want to be organized here.

12 Okay.

13 CHAIRMAN HOOD: I got you.

14 MR. PRESTWOOD: Thank you.

15 CHAIRMAN HOOD: we're all on the same page?

16 All right. So I want to -- do we need to do
17 anything else? All right. So with that, everybody, we all
18 on the same page?

19 COMMISSIONER MAY: I'm sorry, do we --

20 CHAIRMAN HOOD: Yes.

21 COMMISSIONER MAY: -- did we actually close the
22 hearing and close the record on --

23 CHAIRMAN HOOD: I thought I said that, but we'll
24 close the hearing --

25 COMMISSIONER MAY: Well, I mean --

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1 CHAIRMAN HOOD: -- on the record --

2 COMMISSIONER MAY: -- we talked about doing it but

3 --

4 CHAIRMAN HOOD: Do we need to do a formal action?

5 MS. SCHELLIN: Just -- no, once the hearing's

6 over, then the record is closed.

7 CHAIRMAN HOOD: So --

8 MS. SCHELLIN: You did say except for what you --

9 CHAIRMAN HOOD: -- to answer your question, we've
10 closed the record. Did we ask for anything in 18-18?

11 MS. SCHELLIN: Just the supplemental --

12 CHAIRMAN HOOD: Just those --

13 COMMISSIONER MAY: The OP report--

14 CHAIRMAN HOOD: -- things we asked for.

15 COMMISSIONER MAY: -- and the responses, yeah.

16 CHAIRMAN HOOD: Other than those things we asked
17 for, the record is closed. Anything else?

18 All right. Let's close this hearing before I get
19 any more confused. Okay. So with that, I want to thank
20 everyone for their participation, and we'll see how we move
21 forward. We are now adjourned.

22 (Whereupon, the above-entitled matter went off the
23 record at 7:55 p.m.)

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 05-01-19

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.



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