

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: :

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Poplar point RBBR, LLC d/b/a : Case No.

Columbian Quarter Holdings - : 18-19

Zoning Map Amendment @ :

Squares 5860 & 5861 :

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Thursday,

June 6, 2019

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 18-19 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:

HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on June 6, 2019.

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

6:30 p.m.

CHAIRMAN HOOD: Okay. We're ready to get started.

Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission for the District of Columbia. Today's date is June the 6th, 2019. My name is Anthony Hood. We're located in the Jerrily R. Kress Memorial Hearing Room. Joining me are Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner Turnbull. We're also joined by the Office of Zoning staff Ms. Sharon Schellin, Office of Attorney General Ms. Hillary Lovick, Office of Planning staff Ms. Steingasser, Mr. Jesick, and Mr. Lawson.

This proceeding is being recorded by a court reporter and is also webcast live. Notice of today's hearing was published in the *D.C. Register* and copies of that announcement are available to my left on the wall near the door.

The hearing will be conducted in accordance with provisions of 11-Z DCMR, Chapter 5 as follows: Preliminary matters, presentation by the Petitioner, Reports of other government agencies, report of the Office of Planning, report of the ANCs, organizations and persons in support, organizations and persons in opposition, organizations and persons who are undeclared.

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1 The Petitioners and the Office of Planning also
2 have up to 60 minutes; organizations 5 minutes; individuals
3 3 minutes. All persons wishing to testify before the
4 Commission this evening's hearing I ask to register at the
5 witness kiosk. The staff will be available throughout the
6 hearing to discuss procedural questions. Please turn off all
7 electronic devices at this time so as not to disrupt these
8 proceedings.

9 At this time the Commission will consider any
10 preliminary matters. Does the staff have any preliminary
11 matters?

12 MS. SCHELLIN: Yes, sir. Even though this is a
13 map amendment, the Petitioner has proffered an expert in
14 architecture even though the Commission doesn't typically
15 hear about a project for a map amendment case. So I don't
16 know if you want to take that up or not. It's Mr. Hellmuth
17 who's been before the Commission before accepted, so if the
18 Commission wants to consider an expert in architecture or
19 not.

20 MS. HOTTEL-COX: If I could just add a point of
21 clarification, we are proffering Mr. Hellmuth as an expert
22 in planning --

23 CHAIRMAN HOOD: Could you identify yourself?

24 MS. HOTTEL-COX: -- for this case.

25 CHAIRMAN HOOD: Some people may not know you.

1 MS. HOTTEL-COX: Sorry. I'm Meghan Hottel-Cox
2 with Goulston & Storrs, counsel for the Petitioner.

3 We are proffering Mr. Hellmuth as an expert in
4 planning in this case. While he has been accepted by the
5 Commission as an expert in architecture before, his
6 background is also as an expert in planning, and so we are
7 offering him as an expert in planning to discuss the
8 consistency of the map amendment with the Comprehensive Plan.
9 I just wanted to provide that clarification.

10 MS. SCHELLIN: Okay. So we only have him -- the
11 Commission accepting him as an expert in architecture, so if
12 you want to reconsider or also consider him in planning.

13 CHAIRMAN HOOD: Okay. I would like to put that
14 in abeyance. And let me just again open it up to my
15 colleagues first as a path going forward. Right now, as we
16 mentioned, this is a rulemaking. Let's see if there's any
17 interest of changing our previous decision of making this a
18 rulemaking. I know this might be a surprise to some, but I
19 know we have grappled with this in the past. So let me see
20 if anyone's interested in changing our setdown before we go
21 too far into this rulemaking case.

22 Commissioners, any questions or comments?

23 COMMISSIONER MAY: So, Mr. Chairman, so I actually
24 I think at this point would be inclined to set this down
25 again as a contested case. I know that can be seen as yet

1 another delay, but I think actually it will work better in
2 the long run that we consider it in this fashion given all
3 of the circumstances of the case. I don't want to have to
4 go through every aspect of it, but I just -- I would agree
5 with the question posed by the Chairman that we should set
6 this down once again as a contested case.

7 CHAIRMAN HOOD: Okay. Any other comments on that?
8 Vice Chair Miller?

9 VICE-CHAIR MILLER: I can see that --

10 CHAIRMAN HOOD: Turn your mic on.

11 VICE-CHAIR MILLER: Oh, sorry. Thank you, Mr.
12 Chairman. I think we have discretion to set it down, and we
13 did set it down as a rulemaking. We also had discretion to
14 set it down as a contested case. We had initially heard some
15 opposition to the fact that it was not set down as a
16 contested case by the opposition that's no longer in
17 opposition to the map amendment.

18 And so I actually -- and because this has been
19 planned for so long and there have been so many delays, while
20 I can see the value of being cautious in setting it down as
21 a contested case, I'm not aware of any opposition at this
22 stage. I think we're at a good stage. I'm worried that if
23 we proceed later that we won't be at this final -- finally
24 good stage that we're at.

25 There are broader public policies that are in play

1 here that are -- for the Howard Road Development Opportunity
2 Area, which is why a customized zone -- we think a customized
3 zone is a good idea and why I think a rulemaking hearing on
4 the map amendment could be appropriate because broader public
5 policies for a very large area -- policies which are set
6 forth in the Comp Plan.

7 So I would prefer that we just have the hearing
8 and get to the proposed map amendment as -- not as quickly
9 as possible, because this thing has been nothing but -- been
10 nowhere no quick. So I would just pause and be -- I'd be
11 comfortable with going forward. I guess I'd be comfortable
12 with setting it down, but I just -- the three-month delay is
13 a matter of concern with me since we're at a good stage where
14 the community, the Office of Planning, the Applicant and the
15 Zoning Commission all seem to be on the same page, and I'm
16 worried about that page turning over a long hot summer.

17 CHAIRMAN HOOD: Commissioner Shapiro?

18 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I'm
19 Actually the position where Vice Chair Miller is. I get
20 where he's coming from. And I think if it were just this one
21 case in isolation that it would make sense to me. And I
22 agree for the concerns as he's shared that there's been a lot
23 of work that's put into this and we're in a good place with
24 it.

25 I think in this case though I think there is an

1 issue around precedent, and I think this will set a tone for
2 how we go forward in similar situations. And for that
3 reason I think even though it may not feel as comfortable
4 focused on this case, I think for the broader issues that we
5 take up as a commission I think it does make sense to move
6 forward to have this be taken up as a -- re-advertised as a
7 contested case.

8 CHAIRMAN HOOD: Okay. Commissioner Turnbull?

9 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I
10 would -- I think the Vice Chair brings up a lot of good
11 points. I mean, ANCs are both in favor of this and it's got
12 a lot of positive aspects, but -- and I don't know if OAG
13 wants to weigh in, but I think the other option is from a
14 legal technical standpoint. We may be on safer grounds or
15 on better grounds for hearing this case as a contested case.
16 I don't know if Ms. Lovick has any comments she'd like to add
17 onto that.

18 CHAIRMAN HOOD: Ms. Lovick, let me comment.

19 (Laughter.)

20 CHAIRMAN HOOD: I think -- so she can tell me I'm
21 wrong.

22 (Laughter.)

23 CHAIRMAN HOOD: But let me just say this: I
24 appreciate all the work that has been done. I think that
25 we're doing everyone -- we're looking out for the best

1 interests of everyone in this city with the process that
2 we're moving forward by making this a contested case, because
3 for me all of our stuff has been challenged elsewhere. And
4 I know we work very hard down here. So while the Applicant
5 and those residents may not see this as a positive step
6 moving forward, we're trying to take out that element.

7 And I'm not going to sugarcoat it. We're trying
8 to take out that element that goes -- and after all the work
9 the communities and residents do and we're trying to take out
10 that element where people go down and challenge and hold up
11 everything and stopping a lot of progress in this city.

12 So I think this is a wise caution move. Yes, we
13 pushed it off and pushed it off because we're trying to get
14 it right, but we also have some other folks how look over our
15 shoulders as well. And they've been looking for a while.
16 And it's not the best feeling. I've even talked to one of
17 the judges. But I'll just tell you this: We
18 want to make sure we do this right. WE don't want to have
19 to come back down here or get held up again. Even though I
20 know people have said, oh, we're withdrawing this right now,
21 but we have other things that we have to do as well. We want
22 to make sure we do stuff correct and we're -- the path going
23 forward. I think we have a good tool. I think it's a
24 win/win. I'm hoping things don't change because I think it's
25 a very -- a good win/win for the residents in that area, and

1 for the city as well. While there may be an inconvenience
2 now, I think in the long run we'll be better served.

3 And I know the two gentlemen on the front row are
4 probably tired of seeing me. And I'm not going to say
5 likewise, but I know they're tired of seeing me. But I know
6 they want to move forward. I know the support they have in
7 the back.

8 The reality is there's another element. And I
9 think if you stop and look at it, I think this commission is
10 moving cautious because we have to make sure we do stuff with
11 due process and do it right, while it's inconvenient and I
12 know we're costing people money, and I hate all that, but I
13 also hate when I turn the news on and hear that the Zoning
14 Commission down here -- and I see a long line of everything
15 that we've worked and we spent many nights on -- somebody
16 else has now become the court of zoning, and that becomes an
17 issue.

18 So I want to make sure we try to make sure that
19 we're moving properly and correct, and I think things are in
20 line. And I agree with the Vice Chair and all of my
21 colleagues. We want to make sure that our process is done
22 correctly. Even though I didn't think anything was wrong,
23 the way we're moving to some extent, but I think that it --
24 I think we all would be better advised and it would be a
25 better way for the city so we won't get other things held up

1 with all the affordable housing that's being held up right
2 now in the city. I think -- moving this way I think is
3 better.

4 So I would ask that we just take a step for this
5 little time we're going to take again to hold off and let's
6 make sure we move it forward as a contested case, even though
7 I know the opposition pulled away for now, but I think it
8 will be better served when we're able to hear this. Might
9 not understand it now, but I think we'll appreciate it later,
10 all of us, the city as a whole appreciate it later. So I
11 don't know if that's any comfort, but I feel better about
12 moving forward in that direction.

13 Ms. Lovick, since they called on you, do you have
14 anything you want to add? Was I incorrect?

15 MS. LOVICK: I don't have any additional comments.

16 CHAIRMAN HOOD: Okay. Commissioner May?

17 COMMISSIONER MAY: I just have a question for Ms.
18 Schellin. If we set it down again, what's the period that
19 it has to be advertised?

20 MS. SCHELLIN: Forty days.

21 COMMISSIONER MAY: Forty days? So that's going
22 to push us deep into July.

23 CHAIRMAN HOOD: So can we --

24 COMMISSIONER MAY: So it would be --

25 MS. SCHELLIN: Yes, September.

1 COMMISSIONER MAY: -- early September no matter
2 what.

3 CHAIRMAN HOOD: So can we -- let me ask this: Can
4 we waive that?

5 MS. SCHELLIN: To maybe --

6 CHAIRMAN HOOD: I'm asking Ms. Lovick now. I was
7 always told we can do --

8 COMMISSIONER MAY: Waive it or reduce it?

9 CHAIRMAN HOOD: Yes, maybe reduce it. Yes, maybe
10 we could do that.

11 COMMISSIONER MAY: And it wouldn't even -- I mean,
12 if we could possibly get it in before the end of July --

13 CHAIRMAN HOOD: That would be -- I think that
14 would take some of the impact off if we can get it off our
15 plate.

16 MS. LOVICK: I mean, you could reduce the time to
17 30 days, but in this situation based on the timing I don't
18 think that that would get it on the schedule prior to
19 September.

20 COMMISSIONER MAY: So is there -- I mean, if we
21 can reduce it, can we reduce it more than 30 days?

22 MS. LOVICK: No.

23 COMMISSIONER MAY: Why not?

24 MS. LOVICK: Yes --

25 CHAIRMAN HOOD: You would advise no, but we can

1 reduce it --

2 MS. LOVICK: Oh --

3 CHAIRMAN HOOD: -- 10 days.

4 MS. LOVICK: -- Ms. Schellin is saying because of
5 the ANC Act. Yes, I'm drawing a blank right now. I -- but
6 I know it's 30 days. I would just need to like check to
7 figure out what that is, but it's -- maybe it is the ANC Act.
8 I'm not sure.

9 MS. SCHELLIN: Or the Administrative --

10 (Simultaneous speaking.)

11 VICE-CHAIR MILLER: Mr. Chairman --

12 (Simultaneous speaking.)

13 MS. LOVICK: Or maybe -- yes, maybe it's the APA.
14 It could be --

15 (Simultaneous speaking.)

16 VICE-CHAIR MILLER: When was this map amendment
17 first -- when was the map amendment hearing first -- I mean,
18 when was this -- yes, when was the map amendment first step
19 advertised?

20 MS. SCHELLIN: I don't know, but it was advertised
21 as a rulemaking, so it may step down.

22 VICE-CHAIR MILLER: I know. I know. I'm know.
23 I'm just saying a lot of people have known for a long time
24 that this hearing was going to happen.

25 MS. SCHELLIN: But it wasn't -- but it was sent

1 to a different -- it --

2 VICE-CHAIR MILLER: I understand, and they all
3 know it.

4 CHAIRMAN HOOD: All right. I know we have one
5 representative from the ANC, and we try to move -- do we have
6 the other two here?

7 (No audible response.)

8 CHAIRMAN HOOD: Okay. All right.

9 COMMISSIONER SHAPIRO: Mr. Chair, if we were to
10 take this up in 30 days, would -- Ms. Schellin, would we have
11 enough time to hear this by the end of July?

12 MS. SCHELLIN: No, there's nothing available in
13 July unless you guys want to come in on --

14 (Simultaneous speaking.)

15 CHAIRMAN HOOD: If we do a special day, I mean,
16 for -- we'll do it Wednesday. What day does Commissioner May
17 play volleyball? That's the day we'll do it. No, I'm just
18 -- I shouldn't have did that.

19 COMMISSIONER MAY: Every night.

20 (Laughter.)

21 COMMISSIONER MAY: Every night in the summer.

22 CHAIRMAN HOOD: So what day -- what other -- we
23 can do a different day.

24 VICE-CHAIR MILLER: Well, we could do -- I mean,
25 we could do Wednesday, July 31st.

1 CHAIRMAN HOOD: Yes, well, that is the last day
2 of the month.

3 VICE-CHAIR MILLER: It is the last day. And we
4 could also do it August 1st because it's still -- we're going
5 to be meeting earlier that week. I mean, nobody likes to
6 have a meeting in August.

7 PARTICIPANT: On principle.

8 VICE-CHAIR MILLER: On principle. Right.

9 CHAIRMAN HOOD: Let's do the 31st, and let's make
10 it work for the 31st. I'm not going to ask Commissioner
11 Austin to speak for the other ANCs because I don't want to
12 get nobody in trouble.

13 VICE-CHAIR MILLER: Yes, I mean, how quickly could
14 it get into the *Register*, Ms. Schellin?

15 MS. SCHELLIN: As soon as they -- they need to
16 send us a public hearing notice, the Applicant.

17 VICE-CHAIR MILLER: So I mean, if we get it --

18 CHAIRMAN HOOD: Can you do it tomorrow?

19 VICE-CHAIR MILLER: -- in a couple of days --

20 CHAIRMAN HOOD: Okay.

21 VICE-CHAIR MILLER: -- we could take it up on July
22 31st?

23 CHAIRMAN HOOD: So you can do it tomorrow by
24 10:00?

25 Okay. She'll have it by 10:00. And I made sure

1 I asked in front of her client. She can do it tomorrow by
2 10:00.

3 VICE-CHAIR MILLER: She was planning on being here
4 for a couple more hours, so she could just go back to the
5 office now and get it -- bang it out.

6 CHAIRMAN HOOD: We're having fun, but actually we
7 are trying to accommodate because we understand where we are.

8 PARTICIPANT: Why don't you ask her?

9 CHAIRMAN HOOD: So, okay. Yes, Ms. Hottel-Cox,
10 if you want to -- true. Is it helpful for us to do this in
11 July, because if not, we can push to September.

12 MS. HOTTEL-COX: Yes, I mean, I think we would
13 state for the record that we do believe that the rulemaking
14 would have been the appropriate course of action given all
15 the reasons we stated in our filing in Exhibit 49 given the
16 extensive size of the site and, as Commissioner Miller noted,
17 the significant policy considerations.

18 I did also just want to note given the change on
19 the IZ component of the text amendment, which also obviously
20 has a very strong implication on the map amendment, our
21 understanding from the Office of Planning's report was that
22 they were not recommending the increase in IZ from 10 percent
23 to 15 percent.

24 And understanding that any increase in affordable
25 housing either through an increase in the level of

1 affordability or square footage serves various policies of
2 the district, this text amendment without the 15 percent
3 increase already has significant IZ enhancements including
4 the 10 percent set aside, the quarter set aside required at
5 50 percent MFI where it otherwise wouldn't be required, a
6 significant number of three-bedrooms, as well as the text
7 amendment that got pulled into 18 --

8 VICE-CHAIR MILLER: I'm sorry, are you trying to
9 reargue the case that we just decided?

10 CHAIRMAN HOOD: So here's what I was going to do:
11 I was going to let her finish.

12 VICE-CHAIR MILLER: Okay.

13 CHAIRMAN HOOD: Yes, I was going to let her finish
14 because I asked her specific question, and that was so we can
15 move forward. But don't -- just cut it off.

16 MS. HOTTEL-COX: I apologize. I wasn't --

17 CHAIRMAN HOOD: We appreciate what you said about
18 the rulemaking. You heard that discussion that we need to
19 do that. All we asked was could you accommodate so we can
20 accommodate your client July 31st. But if you want us to,
21 we can do it in September.

22 MS. HOTTEL-COX: July 31st works.

23 CHAIRMAN HOOD: Okay. So can we go back to my
24 first question? We forgot? I forgot now because I -- what
25 was it? What was I asking her?

1 MS. SCHELLIN: Just did July 31st --

2 (Simultaneous speaking.)

3 CHAIRMAN HOOD: Did July 31st work for you all?

4 MS. HOTTEL-COX: Yes.

5 CHAIRMAN HOOD: Okay. That was it. Thank you.

6 MS. HOTTEL-COX: Thank you.

7 CHAIRMAN HOOD: So all those other points you can
8 argue in a submission for your regular case. And about
9 whether something applies or not, you can work with the
10 Office of Planning on that. You have time. Okay?

11 MS. HOTTEL-COX: Thank you.

12 MS. SCHELLIN: Chairman Hood, OAG did confirm that
13 it's the charter that requires a minimum of 30 days. So it
14 can be no less than 30.

15 CHAIRMAN HOOD: So 30 days will work for us,
16 right?

17 MS. SCHELLIN: Yes.

18 CHAIRMAN HOOD: Okay. And we will come in here
19 on the --

20 MS. SCHELLIN: According to my calculations. I
21 did do pretty good in math in school.

22 CHAIRMAN HOOD: Okay. Good. Did you check and
23 validate with Ms. Lovick that it was correct?

24 MS. SCHELLIN: Yes.

25 CHAIRMAN HOOD: Okay. Now I'm going to have fun

1 with that one for a while. So the 31st is the date?

2 MS. SCHELLIN: It will be.

3 CHAIRMAN HOOD: Okay.

4 MS. SCHELLIN: I'll miss church that night, but
5 I guess I can be here.

6 CHAIRMAN HOOD: Okay.

7 MS. SCHELLIN: Wouldn't be the first time.

8 CHAIRMAN HOOD: Ms. Hottel-Cox, you want to add
9 anything else?

10 MS. HOTTEL-COX: No, thank you.

11 CHAIRMAN HOOD: The 31st is good? Is the 31st
12 good for everybody who wants to come back?

13 (No audible response.)

14 CHAIRMAN HOOD: Okay. And I would ask my fellow
15 Commissioner if he could maybe mention to the other
16 Commissioners as well. Okay.

17 All right. Anything else, Ms. Schellin?

18 MS. SCHELLIN: Yes, you guys need to vote to set
19 it down, if that's what you want to do.

20 CHAIRMAN HOOD: Oh, that's important. We'll come
21 back on the 31st and do that --

22 MS. SCHELLIN: That's right.

23 CHAIRMAN HOOD: Okay. So I would move that we set
24 down Zoning Commission Case No. 18-19 as a contested case and
25 ask for a second.

1 COMMISSIONER TURNBULL: Second.

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

4 (No audible response.)

5 CHAIRMAN HOOD: All in favor?

6 (Chorus of aye.)

7 CHAIRMAN HOOD: Any opposition?

8 (No audible response.)

9 CHAIRMAN HOOD: Not hearing any, Ms. Schellin --

10 VICE-CHAIR MILLER: I'll abstain.

11 CHAIRMAN HOOD: Okay. Abstain?

12 Ms. Schellin, would you please record the vote?

13 MS. SCHELLIN: Chairman Hood, before I do that,
14 are you guys taking out the text amendments that were
15 included in this case and moving them to -- is that part of
16 -- you guys had that discussion.

17 CHAIRMAN HOOD: What are we doing, Commissioner
18 Shapiro? You were right?

19 COMMISSIONER SHAPIRO: I got it wrong. You'll
20 have to ask the Chair.

21 CHAIRMAN HOOD: Yes, right. Okay.

22 MS. SCHELLIN: You're removing those that you
23 incorporated into 18-18, is that correct?

24 COMMISSIONER SHAPIRO: Yes.

25 MS. SCHELLIN: Okay. So staff records the vote

1 4 to 0 to 1 to set down Zoning Commission Case No. 18-19 as
2 a contested case. Commissioner Hood moving; Commissioner
3 Turnbull seconding, Commissioners May and Shapiro in support,
4 and Commissioner Miller abstaining.

5 CHAIRMAN HOOD: Okay. Ms. Schellin, we have
6 anything else?

7 MS. SCHELLIN: That's it.

8 CHAIRMAN HOOD: Okay. Again I want to apologize
9 for the inconvenience, but as stated by my colleagues and
10 myself I think this is the better path forward.

11 So, with that, this hearing is adjourned.

12 (Whereupon, the above-entitled matter went off the
13 record at 6:50 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 06-06-19

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

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