

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

-----:
IN THE MATTER OF: :
: :
CAPITOL GATEWAY DESIGN REVIEW: Case No. :
MODIFICATION OF SIGNIFICANCE : 17-05B :
: :
-----:

Monday,
December 16, 2019

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 17-05B 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
- PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation
JOEL LAWSON
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.
DANIEL BASSETT, ESQ.
ALEXANDRA CAIN, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on December 16, 2019.

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

(6:32 p.m.)

1
2
3 CHAIRMAN HOOD: Good evening, ladies and
4 gentlemen. This is a public hearing of the Zoning Commission
5 for the District of Columbia. My name is Anthony Hood.
6 Joining me are Vice Chair Miller, Commissioners Shapiro, May,
7 and Turnbull. We're also joined by the Office of Zoning
8 staff, Ms. Sharon Schellin, as well as Mr. Paul Young, who's
9 handling our streaming and all of our electronic equipment.

10 I would ask the Office of Attorney General if they
11 could introduce their staff.

12 MR. TONDRO: Yes. Alexandra Cain, Daniel Bassett,
13 and myself, Maximilian Tondro.

14 CHAIRMAN HOOD: I would ask the Office of Planning
15 if they can introduce their staff.

16 MS. STEINGASSER: Jennifer Steingasser, Joel
17 Lawson, and Elisa Vitale.

18 CHAIRMAN HOOD: Thank you. Notice of this hearing
19 was published in the D.C. Register, and copies of that notice
20 are available in the bin near the door. Because this hearing
21 is being recorded by a court reporter, is always webcast
22 live, we ask that you refrain from any disruptive noises or
23 actions in the hearing room.

24 The hearing will be conducted in accordance with
25 provisions of 11Z DCMR Chapter 4 as follows: preliminary

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 matter, Applicant's case, report of the Office of Planning
2 and Department of Transportation, report of other government
3 agencies, report of the ANC. Then we'll take testimony for
4 those in support, opposition, and undeclared. And then we'll
5 have rebuttal and closing by the Applicant.

6 A couple of other housekeeping items. I won't read
7 them all because I think most have been here before. I will
8 just read this one. Please turn off all electronic devices
9 so this hearing is not interrupted.

10 When you present your testimony, turn on and speak
11 into your microphone, first state your name and home address.
12 When you are finished speaking, turn off your microphone.
13 The staff will be available throughout the hearing to discuss
14 procedural questions.

15 Would all the individuals wishing to testify
16 please rise to take the oath. Ms. Schellin, would you
17 please --

18 (Witnesses sworn.)

19 MS. SCHELLIN: Thank you.

20 CHAIRMAN HOOD: Okay. Ms. Schellin, do we have
21 an preliminary matters?

22 MS. SCHELLIN: Yes, sir. The proffered experts,
23 Ms. -- I'm not sure I'm going to say this right -- Beltikova
24 has already been accepted, and she's being proffered as an
25 expert and available for questions, but not part of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 panel. So, that's the only expert witness.

2 CHAIRMAN HOOD: Okay. We have --

3 MS. SCHELLIN: Previously.

4 CHAIRMAN HOOD: -- previously accepted her. Any
5 objections to continuing that exception? Anything else?

6 MS. SCHELLIN: No, sir.

7 CHAIRMAN HOOD: Okay. So, with that, what I would
8 like to recommend to my colleagues is that we're going to
9 emergency close meeting to seek legal advice from our
10 counsel, and I think I need to call for a vote. Any
11 objections to moving in that fashion?

12 So, I would move that the Zoning Commission --
13 this for Zoning Commission Case 17-05B go into emergency
14 close meeting to seek legal counsel from our counsel, and ask
15 for a second.

16 COMMISSIONER TURNBULL: Second.

17 CHAIRMAN HOOD: So moved and properly seconded.
18 Ms. Schellin, would you do a roll call vote, please?

19 MS. SCHELLIN: Yes, sir. Chairman Hood?

20 CHAIRMAN HOOD: Yes.

21 MS. SCHELLIN: Commissioner Miller?

22 VICE CHAIR MILLER: Yes.

23 MS. SCHELLIN: Commissioner Shapiro?

24 COMMISSIONER SHAPIRO: Yes.

25 MS. SCHELLIN: Commissioner May?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MAY: Yes.

2 MS. SCHELLIN: Commissioner Turnbull?

3 COMMISSIONER TURNBULL: Yes.

4 MS. SCHELLIN: Vote carries.

5 CHAIRMAN HOOD: Okay. And we should be back
6 momentarily. Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record at 6:36 p.m. and resumed at 7:01 p.m.)

9 CHAIRMAN HOOD: All right. We're going to
10 reconvene. Let me just say we -- first of all, the
11 Commission has some questions theirsevles -- ourselves. And
12 moving forward, we're trying to figure out the best way --
13 there's some things that we have been apprised to, and we
14 were trying to figure out a path to go forward.

15 So, I guess -- Ms. Schellin, do I -- do we need
16 to do anything else? Just go back into it?

17 MS. SCHELLIN: Yes. You can go right back into
18 the hearing.

19 CHAIRMAN HOOD: Okay, okay.

20 MS. SCHELLIN: Yes.

21 CHAIRMAN HOOD: So, Ms. Hottel-Cox, I think what
22 we're going to do is we're going to kind of express some of
23 the concerns that we've had and we're going to see where the
24 chips fall.

25 I don't anticipate us moving forward because of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some of the concerns we had and some of the things that we're
2 probably going to be asking for. So, this may be a
3 delayed -- this procedure may be delayed and further
4 investigatory information may be looked at to help us as we
5 move forward. So, who'd like to get us started -- or, start
6 us off? Commissioner May?

7 COMMISSIONER MAY: So, I think the essential issue
8 here is we have -- they're reviewing the case. It raised
9 questions for some of us -- or, all of us, about the question
10 of why this restriction exists in the first place and that
11 it applies only in cases of lodging and not in cases of
12 residential use. And the fact that there's that little
13 distinction also makes it, I think, frankly, very difficult
14 for you to make the variance case.

15 So, I think what we wanted to do is ask -- I
16 mean -- or, what I think we should do -- this is my
17 suggestion. Is that we should ask the Office of Planning to
18 study that question a little bit further, understand the
19 basis for that distinction, and whether, in fact, there
20 really is a good reason for it.

21 And whether we might need to look at that -- look
22 at the regulation in that distinction between lodging and
23 regular residential and see whether it still makes sense.
24 Or whether there might be some circumstances under which it
25 should not apply or whether, you know, there should be some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 path to relief that are specified in the regulations.

2 I'm not sure. I don't know what the right answer
3 would be. But I think that some further study would help us
4 because, otherwise, this is going to be a -- kind of a
5 difficult case to evaluate. So, anyway, those -- that's my
6 thoughts. I'm not sure what else the other commissioners
7 have to say.

8 CHAIRMAN HOOD: Okay. Others?

9 Commissioner Shapiro?

10 COMMISSIONER SHAPIRO: I concur, Mr. Chair. I
11 think we should look at considering this further down the
12 road.

13 CHAIRMAN HOOD: Okay. Anybody else? All right.
14 Vice Chair?

15 VICE CHAIR MILLER: No, no, I support asking the
16 Office of Planning to look at the zoning -- whether there's
17 a zoning-related basis for having that distinction between
18 lodging and residential, which leads to the use variance.
19 In this case, it would need a modification of significance
20 in any event.

21 And I was personally supportive of going forward
22 with the hearing because I think we need the -- people are
23 here, and putting it off until we resolve that issue. But
24 if it's -- it may lead to a different standard, or it may
25 not. But we need to have that clarity before we all go down

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 one path and get confused, like we have in other cases.

2 So, I think it's worth taking a little time, not
3 too much time, to get that issue resolved on the floodplain.
4 I mean, it probably should be a construction code or building
5 code issue, but I'm not sure it should be a zoning code
6 issue.

7 CHAIRMAN HOOD: So, I think with people being
8 in -- and I apologize for people coming down, but, for me,
9 it was a heavy lift. But then as I read more and more, it
10 looked like it was no lift. So, we don't want to start at
11 a no-starter.

12 So, I think, as we're asking OP to further
13 investigate, I would also like to make sure it's general, not
14 just specific to this case because I'm sure there are other
15 things across the city which would be germane to anything
16 they come back with. And I don't want anything written just
17 for this case. I would hope that we would make a general --
18 and I'm pretty sure that's what's -- that's what OP's going
19 to do.

20 So, does the Office of Planning understand?
21 Because you all do a great job, because I might not, but you
22 understand what we're looking for?

23 MS. STEINGASSER: Yes, sir. Yes, sir, we do.

24 CHAIRMAN HOOD: Okay. All right. Commissioners,
25 any other comments?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MAY: No, sir.

2 COMMISSIONER TURNBULL: I would just agree with
3 your comments, Mr. Chair.

4 CHAIRMAN HOOD: Okay. Ms. Hottel-Cox, you have
5 any -- want to tell us goodnight or something, or?

6 MS. HOTTEL-COX: We would be happy to proceed
7 tonight if the Commission is ready to hear the case. But
8 hearing your comments, we're also happy to wait and, you
9 know, see what the Office of Planning puts out, and then
10 respond to that.

11 CHAIRMAN HOOD: All right. Let me go to Mr.
12 Tondro and Ms. Cain. Do I need to -- or Mr. Bassett. Do I
13 need to do anything -- or, we need to do anything else?

14 (Off-microphone comments.)

15 CHAIRMAN HOOD: Oh, we -- oh, okay. Well, I'm
16 going to go to Ms. Schellin now then. Okay. That's all we
17 need? Okay. So --

18 COMMISSIONER MAY: Mr. Chair?

19 CHAIRMAN HOOD: Yes?

20 COMMISSIONER MAY: I just had one question for the
21 Applicant. If this had proceeded and we had gotten to a
22 decision on it, at what point would you actually have -- be
23 planning to have occupants in the lodging use?

24 MR. WILBUR: It would probably be --

25 COMMISSIONER MAY: You need to be -- identify

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 yourself and --

2 MR. WILBUR: Yes. This is Tom Wilbur with
3 Akridge, and we were looking to have -- the occupancy of the
4 building -- the building will be completed around May 1st.
5 And we would look within about 30 days after that to be able
6 to occupy the building with residents. And we would look to
7 have started the WhyHotel at about that same time. So, it --

8 COMMISSIONER MAY: Sometime in May?

9 MR. WILBUR: Sometime in May, which is one of the
10 reasons I think we wish we had started this process a little
11 bit earlier because it's -- now is coming up to about the end
12 for us, because there's some modifications we need to make
13 to the space to have it so it's prepared, ready for them.

14 And I mean, it's kind of a perishing asset, so to
15 speak, the vacant space in the building. We hope it's
16 perishing very fast as we lease it up.

17 COMMISSIONER MAY: Right.

18 MR. WILBUR: But the fact is that the benefit of
19 going through a lot of up-front costs that this group needs
20 to do that they could be doing elsewhere -- across the
21 country that they could be doing it, we really wanted to be
22 able to get thing done so that we could get them started
23 right away. Thank you.

24 COMMISSIONER MAY: Okay. Thank you. It's helpful
25 to know the timing. Unfortunately, I don't -- there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to be certain constraints on how quickly we can move,
2 so.

3 CHAIRMAN HOOD: Okay. Ms. Schellin, you want to
4 work with the schedule?

5 MS. SCHELLIN: Yes, I believe the Office of
6 Planning could come back with a text amendment at the January
7 13th meeting and --

8 MS. STEINGASSER: Yes.

9 MS. SCHELLIN: -- the Office of the Attorney
10 General will work with OP to turn a public hearing notice
11 around very quickly. And if OP could request a shorter
12 notice period of 30 days, then we could get that -- if the
13 Commission sets it down, get that scheduled for a hearing in
14 early March.

15 I'll reserve the 16th of March -- I'll go ahead
16 and reserve that for that case. And then we'll have to keep
17 this case from having to repost and everything. If we can
18 just tentatively schedule -- or, go ahead and reschedule this
19 case for April 6th, so they don't have to repost. And by
20 that time we'll know whether we're going forward or not with
21 this one. Does that work? April 6th --

22 CHAIRMAN HOOD: Okay. Does that schedule work for
23 everyone? ANC included? Everybody?

24 MS. SCHELLIN: Is ANC here?

25 CHAIRMAN HOOD: Okay.

1 MS. SCHELLIN: Okay.

2 CHAIRMAN HOOD: All right. All right. Anything
3 else, Ms. Schellin?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: All right. So, with that, I thank
6 everyone for their participation tonight, and hope you have
7 a great holiday. We'll see you in the new year. Goodbye.

8 (Whereupon, the above-entitled matter went off the
9 record at 7:10 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

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: 12-16-19

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

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701