

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC MEETING

+ + + + +

THURSDAY

JANUARY 28, 2021

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IN THE MATTER OF: :

:

Office of Planning - : Case Nos.

Reorganization of Subtitles : 15-21B, 20-14, 20-02, 20328,

D, E, and F; Reorganization : 15-21C, 20-27, 21-02, and

of Subtitles C, G, H, K, and : 21-03

U :

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The Public Meeting of the District of Columbia Zoning Commission convened via videoconference pursuant to notice at 4:00 p.m. EDT, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice-Chair
- PETER SHAPIRO, Board Member
- MICHAEL TURNBULL, Board Member
- PETER G. MAY, Board Member

OFFICE OF ZONING STAFF PRESENT:

- SHARON SCHELLIN, Secretary
- PAUL YOUNG, Zoning Data Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, Esquire

The transcript constitutes the minutes from the
Public Meeting held on January 28, 2021.

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(4:07 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. Today's date is January 28th, and this is the monthly meeting of the Zoning Commission of the District of Columbia.

We are convening and broadcasting this public meeting by videoconferencing. My name is Anthony Hood. 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 and Mr. Paul Young who will be handling all of our virtual operations.

I will ask all others to introduce themselves at the appropriate time. Copies of today's meeting agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter, and is also webcast live, Webex and YouTube Live.

The video will be available on the Office of Zoning's website after the meeting. All those listening on Webex or by phone will be muted during the meeting unless the Commission suggests otherwise.

For hearing action items, the only documents before us this evening are the application, the ANC setdown report, and the Office of Planning report. All other documents in the record will be reviewed at the time of the hearing. Again, we do not take any public testimony in our meetings unless the Commission requests

1 someone to speak.

2 If you are experiencing difficulty accessing Webex or
3 with your telephone call-in, then please call our OZ hotline
4 number at 202-727-5471 for Webex login or call-in instructions.

5 At this time, the Commission will consider any
6 preliminary matters. Ms. Schellin, do we have any preliminary
7 matters?

8 MS. SCHELLIN: No preliminary matters.

9 CHAIRPERSON HOOD: Okay. Let's go right into our agenda
10 as noted. First, modification of consequence, deliberations.
11 Zoning Commission Case No. 15-21B, Kenilworth Revitalization I JV,
12 LLC and DCHA, PUD Modification of Consequences at Squares 5113,
13 5114, and 5116. Ms. Schellin?

14 MS. SCHELLIN: Yes, sir. At the Commission's last
15 meeting, the Commission determined that this case -- determined
16 this case was an impacted modification of consequence and set a
17 schedule for submissions of January 25th for the applicant and
18 January 28th for the ANC. The applicant's supplemental filing is
19 at Exhibit C and I believe we received a submission from the ANC
20 today, so staff would ask the Commission to consider this case
21 this evening or this afternoon.

22 CHAIRPERSON HOOD: Okay. Again, Commissioners, this was
23 the -- we had two prior approvals, Zoning Commission Case No. 15-
24 21 and 15-21A. Again, the project they're asking for is to reduce
25 the number of units, reduce the amount of non-residential square

1 footage and increase the amount of additional rental units from 44
2 to 59 and we're talking about the rear yard, the GFA, the FAR, lot
3 occupancy, parking and other issues, modification of lot
4 designation. So let me open it up for any questions or comments
5 on the request. Let me -- hold on. Let me make my screen -- I
6 don't know if sometimes it's harder when we're in-person or on the
7 computer.

8 Commissioner May?

9 COMMISSIONER MAY: Yeah, I don't see any issues with
10 this case at this point. You know, we've gotten clarifying
11 information. I think that was helpful. Maybe if we had had it at
12 the very beginning, we would have agreed immediately that it was a
13 minor modification, but, you know, I'd certainly agree that it
14 fits the standards for a modification consequence, and I have no
15 concerns about moving forward with it tonight.

16 CHAIRPERSON HOOD: Okay. Thank you. Any other
17 questions or comments? Okay. So with that, Commissioner May,
18 would you like to make a motion?

19 COMMISSIONER MAY: Sure, sure. So I would move the
20 Zoning Commission approve Zoning Commission Case No. 15-1B,
21 Kenilworth Revitalization I, Joint Venture, LLC and DCHA PUD
22 Modification of Consequence at Squares 5113, 5114, and 5116.

23 COMMISSIONER TURNBULL: Second.

24 CHAIRPERSON HOOD: Okay. It's been moved and properly
25 seconded. Any further discussion? I do have a point. Is this

1 the case, and I'm trying to remember, where the ANC asked for
2 additional time?

3 COMMISSIONER MAY: I don't think so. I think what we
4 got was a report from the SMD representative saying that it had
5 been presented to the entire Commission and they didn't take a
6 vote on it, but the SMD rep saw no issues with it. So, you know,
7 I'm comfortable with that and wouldn't want to hold off --

8 CHAIRPERSON HOOD: Right.

9 COMMISSIONER MAY: -- for another month --

10 CHAIRPERSON HOOD: Okay.

11 COMMISSIONER MAY: -- for the ANC.

12 CHAIRPERSON HOOD: I would agree. I just wanted to
13 acknowledge that, and I was just trying to remember if this was
14 the case. I would agree. So is the moved and properly seconded?
15 Any further discussion? Not hearing any, Ms. Schellin, would you
16 please do a roll call vote?

17 MS. SCHELLIN: Yes, sir. Commissioner May?

18 COMMISSIONER MAY: Yes, sorry.

19 MS. SCHELLIN: Sure. Commissioner Turnbull?

20 COMMISSIONER TURNBULL: Yes.

21 MS. SCHELLIN: Commissioner Hood?

22 CHAIRPERSON HOOD: Yes.

23 MS. SCHELLIN: Commissioner Shapiro?

24 COMMISSIONER SHAPIRO: Yes.

25 MS. SCHELLIN: Commissioner Miller?

1 COMMISSIONER MILLER: Yes.

2 MS. SCHELLIN: The vote is 5 to 0 to 0 to approve final
3 action in Zoning Commission No. 15-21C.

4 CHAIRPERSON HOOD: You know, it's something when you're
5 trying to unmute, Commissioner May and others, when you're trying
6 to unmute and it takes a minute to catch up and you're trying to
7 unmute, so those are just some of the technical things that --
8 that's why I tell everybody when we're doing this, we just have to
9 be patient because sometimes my computer does all kinds of things,
10 but anyway.

11 COMMISSIONER MAY: Mr. Chair, you have to --

12 CHAIRPERSON HOOD: Yes?

13 COMMISSIONER MAY: -- patient with me because I had gone
14 off and like started typing other stuff, so that's why I'm being
15 slow.

16 CHAIRPERSON HOOD: Oh. Okay. Okay.

17 COMMISSIONER MAY: I was trying to type my notes in this
18 case, you know, and I forgot we had to take the motion.

19 CHAIRPERSON HOOD: Okay. Commissioner Shapiro?

20 COMMISSIONER SHAPIRO: Yes, sir. I learned that cheat
21 on unmuting that maybe you all know, but I just learned it today
22 which is if you just press your space bar down, it temporarily
23 unmutes immediately.

24 CHAIRPERSON HOOD: I agree. I learned that awhile back,
25 but when -- sometimes if you hold your hand on it too long, it

1 mutes and unmutes all at the same time.

2 COMMISSIONER MAY: Well, and it doesn't help if you've
3 gone off to another program to write notes at the same time, so.
4 Like, I was in another program. I had to flip back, so.

5 CHAIRPERSON HOOD: I know the public is probably saying,
6 "I'll be glad when they learn how to operate their equipment so we
7 can hear the cases." But anyway, this is part of what we do.

8 COMMISSIONER MAY: No, it's --

9 CHAIRPERSON HOOD: (Audio interference).

10 COMMISSIONER MAY: This is a meeting. It's not like
11 they're waiting to testify, so.

12 CHAIRPERSON HOOD: Well, that's true.

13 All right. Let's go to final action Zoning Commission
14 Case No. 20-14 VNO South Capitol, LLC and Three Lots in Square
15 649, LLC - Design Review at Square 649, Ms. Schellin.

16 MS. SCHELLIN: Yes. This case was deferred from the
17 January 14th meeting to allow the applicant and OAG to discuss
18 possible -- possibly putting a condition in the order to provide
19 affordable residential units in the project even though not
20 required for a design review case. I believe OAG has provided the
21 Commission with its opinion on this and the applicant has made a
22 submission to the record and this is ready for the Commission's
23 consideration for final action.

24 CHAIRPERSON HOOD: Okay. So let me just note, so if I'm
25 a little slow getting back, I want to make sure every time I

1 finish talking that I mute so we won't get that noise. So as long
2 as we stay muted and I stay muted as well, there won't be any
3 feedback. So let me open this up. Commissioners, any questions
4 or comments?

5 Vice Chair Miller?

6 VICE CHAIR MILLER: Thank you, Mr. Chairman, and I want
7 to thank the Commission for putting this off for a couple weeks so
8 that we could see if something could be done short of a condition
9 to memorialize the commitment being made by the applicant in this
10 case to provide affordable housing even though not required under
11 our IZ, Inclusionary Zoning Regulations, in this particular
12 downtown zone in this design review case.

13 So the applicant did work with our -- applicant's
14 counsel did work with our counsel and came up with some language
15 that does record a covenant separate from any covenant that would
16 incorporate conditions of our order which would memorialize the
17 commitment to do 19 affordable housing units including the three-
18 bedroom unit that was also committed to and commitments that were
19 referenced in the councilmember's, the Ward 6 councilmember's,
20 letter that withdrew his opposition to this case.

21 And so I think that they were important -- it is an
22 important commitment and even though the community would like to
23 see more, we would like to see more, affordable housing, we
24 recognize that the Regulations currently do not require any
25 affordable housing. There's a lot of market rate housing that's

1 going on, a vacant lot, and now that'll include -- it'll include
2 some affordable housing as well.

3 So I'm prepared to move forward with final action at
4 this time, Mr. Chairman. I appreciate the efforts by everyone who
5 participated; the community, the applicant, and all parties, and
6 my colleagues, and the -- and our counsel. Thank you.

7 CHAIRPERSON HOOD: Thank you, Vice Chair. I would agree
8 with your comments as well. Let me open it up and see if we have
9 any additional questions or comments.

10 Commissioner Turnbull?

11 COMMISSIONER TURNBULL: Yeah. I think the Vice Chair
12 has expressed it very well and I think it's a win-win situation.
13 The only thing I would ask is that OAG can work to get the
14 language straightened out and make sure it is what we intended to
15 have. So that's my only comment; is that OAG work with this
16 (audio interference) put into it.

17 VICE CHAIR MILLER: Yeah, I meant to say -- thank you,
18 Mr. Turnbull for reminding me, that the ANC came back, 6D, and
19 looked at this language --

20 COMMISSIONER TURNBULL: Right. Right.

21 VICE CHAIR MILLER: -- and they suggested some changes
22 which I think in the case of the -- which I think are in -- are
23 generally appropriate, so I would encourage the -- our -- give the
24 flexibility to our counsel to work with -- work on the order to
25 incorporate the ANC's comments in terms of its reference to

1 Inclusionary Zoning.

2 I think they also had a reference to life of the
3 project. I don't think that that particular comment applies
4 because that's our normal phrase that we use when we're putting
5 housing or any conditions, but in terms of actually referencing in
6 the order IZ compliance or non-compliance, the ANC had some
7 suggestions for clarification purposes which I think are
8 appropriate and I'll leave it to our counsel to work that out.

9 CHAIRPERSON HOOD: Any additional questions or comments?

10 Okay. Vice Chair, would you make a motion and I think
11 that one includes the flexibility for our counsel as well.

12 VICE CHAIR MILLER: Okay. Thank you, Mr. Chairman.
13 Yes, I would move that the Zoning Commission take final action on
14 Case No. 20-14, that's VNO South Capitol, LLC and Three Lots in
15 Square 649, LLC - Design Review at Square 649 with the flexibility
16 referenced and ask for a second.

17 COMMISSIONER SHAPIRO: Second.

18 CHAIRPERSON HOOD: Okay. It's been moved and properly
19 seconded. Any further discussion? Ms. Schellin, will you do a
20 roll call vote, please?

21 MS. SCHELLIN: Commissioner Miller?

22 VICE CHAIR MILLER: Yes.

23 MS. SCHELLIN: Commissioner Shapiro?

24 COMMISSIONER SHAPIRO: Yes.

25 MS. SCHELLIN: Commissioner Hood?

1 CHAIRPERSON HOOD: Yes.

2 MS. SCHELLIN: Commissioner May?

3 COMMISSIONER MAY: Yes.

4 MS. SCHELLIN: Commissioner Turnbull?

5 COMMISSIONER TURNBULL: Yes.

6 MS. SCHELLIN: The vote is 5 to 0 to 0 to approve final
7 action in Zoning Commission Case No. 20-14.

8 CHAIRPERSON HOOD: Okay. Next? Thank you. Next, let's
9 go to final action Zoning Commission Case No. 20-02, Office of
10 Planning Text Amendment Inclusionary Zoning Plus, Ms. Schellin.

11 MS. SCHELLIN: The proposed rulemaking was published in
12 the D.C. Register on November 27th. At Exhibit 31A, you have an
13 NCPC report advising of no adverse effects. Exhibit 32 is a copy
14 of the 2019 IZ annual report. Exhibit 33 are comments from DCBIA.
15 Exhibit 34 through 34A are supplemental OP reports and they are
16 asking for a request for a waiver of the 10-day filing. I believe
17 they were one day late filing their report. If the Commission
18 would so grant that waiver by consensus that will be fine.

19 CHAIRPERSON HOOD: Any objections? So would we do that
20 by consensus.

21 Ms. Schellin, I believe you're finished. I see you've
22 muted, so let me open it up for questions and comments. I will
23 start off on this. I know there are some -- may be some other
24 issues with the things that were presented to us, but as long as,
25 I believe, we've cured the vested issue with Howard University and

1 the Greater Mount Calvary Holy Church, that was my issue and I
2 think that, from the way I read the record or read what's been
3 submitted, I think we have -- that's been satisfied and I want to
4 make sure if anybody -- if it hasn't been. I believe it has been.
5 So unless I'm corrected otherwise, that's how I am moving forward.
6 So let me open it up for any questions or comments of others.

7 Commissioner May, or Shapiro, or Turnbull? Nobody has -
8 - okay. All right. Well, I guess this is good to go unless
9 there's someone muted. I would move that we approve Zoning
10 Commission -- for final action, Zoning Commission Case No. 20 --
11 Commissioner May?

12 COMMISSIONER MAY: Sorry to interrupt.

13 CHAIRPERSON HOOD: Okay.

14 COMMISSIONER MAY: But I think that because of the
15 changes indicated by -- or, you know, the changes to the utilized
16 density versus maximum density, that the Office of Planning has
17 decided to accept, that was a comment that had come in from the
18 public, that that's enough to trigger a re-advertisement. So I
19 think we were advised that we could only do a revised proposed
20 action, but we can do a shortened notice or -- yeah. So we can
21 move it through that process more quickly, but we do have to do
22 the re-advertisement.

23 CHAIRPERSON HOOD: Okay. So we -- it would be a seven-
24 day advertisement and then I wasn't -- maybe I wasn't clear on
25 that. So it will not be final action. Thought it would be, but

1 | it will not be final action. It would be still proposed action,
2 | am I correct, Mr. Tondro?

3 | MR. TONDRO: From the language, if you will, Mr. Chair,
4 | here's what I think would make sense. I'm happy to be helpful, if
5 | you want.

6 | CHAIRPERSON HOOD: Let me make sure I got the process
7 | down first and then we'll go to Commissioner Shapiro.

8 | Mr. Tondro?

9 | MR. TONDRO: Yes, Chairman Hood. It is -- it would be
10 | taking revised proposed action to adopt the text that's shown in
11 | the public -- in the second supplementary report of OP with a
12 | shorter seven-day notice period.

13 | CHAIRPERSON HOOD: Okay. Okay.

14 | MR. TONDRO: Or a common period I should say.

15 | CHAIRPERSON HOOD: Okay. Thank you, Mr. Tondro.

16 | Okay. Commissioner Shapiro, and do we all accept what's
17 | been revised in the supplemental? Let me go to Commissioner
18 | Shapiro first?

19 | COMMISSIONER SHAPIRO: I'm comfortable with it. I'm
20 | happy to make a motion, but you may want to see where the -- where
21 | our Commissioners are.

22 | COMMISSIONER MAY: I'm fine with it.

23 | CHAIRPERSON HOOD: Okay. So Commissioner Shapiro, you
24 | can go ahead. I'll withdraw whatever I was going to ready to make
25 | and Commissioner Shapiro, you can go ahead and make the motion

1 with any -- if you have any --

2 COMMISSIONER SHAPIRO: I move that we take --

3 CHAIRPERSON HOOD: -- additions.

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I move
5 that we take a revised proposed action with a shortened seven-day
6 notice period with the changes recommended by the Office of
7 Planning and also to allow the flexibility of the Office of
8 Planning -- Office of Attorney General to work on the specific
9 language on this.

10 CHAIRPERSON HOOD: Okay. It's been moved.

11 COMMISSIONER TURNBULL: Second.

12 CHAIRPERSON HOOD: Can we get a second? It's been moved
13 and properly seconded. Forward, any discussion?

14 COMMISSIONER SHAPIRO: If I may have a discussion, Mr.
15 Chair, it goes without saying that we're referring to Zoning
16 Commission Case No. 20-02, Office of Planning - Text Amendment
17 regarding Inclusionary Zone Plus.

18 CHAIRPERSON HOOD: Okay. And you mentioned the seven-
19 day as well, I believe you mentioned that in your motion.

20 COMMISSIONER SHAPIRO: Yes, sir.

21 CHAIRPERSON HOOD: Okay. All right. Any further
22 discussion?

23 All right. Ms. Schellin, would you do a roll call vote,
24 please?

25 MS. SCHELLIN: Commissioner Shapiro?

1 COMMISSIONER SHAPIRO: Vote yes.

2 MS. SCHELLIN: Commissioner Miller?

3 VICE CHAIR MILLER: Yes.

4 MS. SCHELLIN: Commissioner Hood?

5 CHAIRPERSON HOOD: Yes.

6 MS. SCHELLIN: Commissioner May?

7 COMMISSIONER MAY: Yes.

8 MS. SCHELLIN: Commissioner Turnbull?

9 COMMISSIONER TURNBULL: Yes.

10 MS. SCHELLIN: The vote is 5 to 0 to 0 to approve a
11 second proposed action as stated in Zoning Commission Case No. 20-
12 02.

13 CHAIRPERSON HOOD: Okay. Next, under final action let's
14 go to the Board of Zoning Adjustment Order No. 20328, Madison
15 Heights, LLC, special exception at Square 2934, Lot 35,
16 consideration of sua sponte, Ms. Schellin.

17 MS. SCHELLIN: Yes, sir. At the request of you,
18 Chairman Hood, I placed this on the Commission's Zoning -- or
19 agenda for this evening and it is for you to present to the
20 commissioners to see if they are interested in taking sua sponte
21 action on this case or taking sua sponte review of this case based
22 on your presentation.

23 CHAIRPERSON HOOD: Okay. First, let me help our counsel
24 -- thank our counsel for helping me formulate my thoughts and I
25 really wanted to preface it -- I really appreciate the help,

1 helping me formulate. This is all Anthony Hood's thoughts as we
2 move forward.

3 Let me first ask Mr. Young. Could you put up the
4 presentation. It's not my PowerPoint. This is the applicant's --
5 the opposition's PowerPoint, part of the opposition's PowerPoint
6 in this presentation.

7 Okay. Commissioners, I would ask you to bear with me
8 for a moment. Can we go to the next slide? I believe it's the
9 next slide. Okay. First, Commissioners, there are a number of
10 cases that I would like to talk about. I know one I've served on
11 as well as Mr. John Stokes case, this one and others and I know
12 there was not necessarily all similarities, but I think the
13 Regulations that we write and the way sometimes that they come
14 out, I think are really not our intentions and so I would like for
15 us to try to revisit some of this and this was the best way I can
16 get it back in front of the Commission.

17 I'd like to talk about the recent BZA case, which is
18 Case No. 20328, which involves special exceptions for a new
19 residential development, an IZ density bonus, to convert a single-
20 family home to an apartment building in the R-1-A -- I mean, I'm
21 sorry, RA-1 zone. A picture is worth a thousand words, so I'm
22 going to show you some images from the opposition's presentation
23 in this case. Here's a picture of the neighborhood. Next slide,
24 please?

25 And here are -- this is actually not the one I want.

1 Let me do it in this order. Let's go to -- flip through. There's
2 another picture I want to show first and forgive me, I don't
3 present all the time, so. Keep going. Keep going. I think it's
4 the last one. Keep going. It's another -- yeah, that one. And
5 we may -- forgive me for having to go back and forth, but I'm
6 trying to line up my presentation with what I have in front of me.

7 Okay. Here are some pictures of the apartment building
8 that was ultimately granted as a special exception to go up next
9 to a single-family home. Okay. Mr. Young, let's go back to the
10 side yard. Right there. Go to the one in front, next one. Okay.
11 Here is the side yard. Okay. So let's go to the picture window
12 next, Mr. Young. Y'all, forgive me for being all over the place.
13 Okay. And this is a picture of the apartment building from the
14 kitchen window of the house next door.

15 So Commissioners, what I'm asking is to bring -- what
16 I'm asking us is to bring this case up for sua sponte review
17 because I think it's an unusual instance that's worth another
18 look. In this case, a huge building that seemed -- excuse the
19 phone -- in this case, a huge building that seemed like it was
20 uncharacteristic of the neighborhood was allowed to go up next to
21 a single-family home and increase its density for IZ.

22 I'm not against IZ, but I am concerned about negative
23 impacts on the neighborhood characteristics and of the privacy of
24 the neighbors from having a structure like this next door. These
25 impacts compounded when you add this in. As a result, I'd like

1 the Commission to take a look at what happened here. I understand
2 we ultimately may not change the BZA's decision or take an action
3 at all, but I think it's worth a look.

4 Two more things. In this case and another one, and
5 others, there was a lot of discussion about whether the BZA could
6 consider things such as light and air impacts under the general
7 special exception criteria. I don't think we wrote those -- these
8 things out of the Regulations, but the applicant's attorney seemed
9 to think otherwise. The BZA granted relief in both of those
10 instances.

11 Next, there was also a lot of discussion about whether
12 it's allowed by-right. Some of these Regulations like density are
13 ceilings not floors. I don't think we intended to allow
14 applicants to develop every special exception to its maximum
15 building envelope, and let me repeat that. I don't think we
16 intended to allow applicants to develop every special exception to
17 its maximum building envelope without accounting for other impacts
18 like neighborhood characteristics, light and air. But it seems
19 like there was some uncertainty here.

20 As a result, I am asking the Commission, take a look at
21 the effect of the regs after we write them and what happened in
22 this instance and I ask that the Commission review this record
23 here sua sponte.

24 And let me add, I also want to call the Commission's
25 attention to the fact that this case will be the first of many

1 | because of the Board of Zoning Adjustment Appeal No. 20226
2 | expanding types of RA-1 apartment houses that require Board
3 | approval. That is -- I'm -- you know, we may not choose to
4 | overturn it, but I think we write Regulations and sometimes we
5 | don't monitor our outcomes and I think there's a groundswell of
6 | some residents being dissatisfied of some of the things that are
7 | allowed to exist.

8 | I'm are not against IZ. I'm not against the people
9 | having development rights, but somewhere along the line I believe
10 | we need to find that happy -- some type of happy medium, much more
11 | than what we have now.

12 | So Mr. Young, can you close down the PowerPoint?

13 | So I thank you. I don't know -- it's been a while since
14 | I've done a sua sponte. Even if it's no more for me, I would
15 | suggest that we need to at least -- this is the way I could get it
16 | back in front of the Commission, this and some other cases,
17 | because I truly, and this is me speaking, I truly don't think the
18 | Regulations that we wrote are intended to do some of the things
19 | that are happening.

20 | And I do know that the BZA has some authority,
21 | especially when you're looking at adverse impacts and I think
22 | there needs to be some more direction given and especially when it
23 | comes to adverse impacts.

24 | So I would open it up for any questions, or comments, or
25 | discussion and I would ask -- I think this is a perfect time to

1 ask that we relook at this case. Not that we're going to overturn
2 it, but we need to look at this one and others as well. So let me
3 open it up for questions or comments.

4 Commissioner Miller?

5 VICE CHAIR MILLER: Thank you, Mr. Chairman. I didn't
6 realize until right before this meeting that you were going to be
7 -- that this was added to the agenda, so I really haven't had a
8 lot of time to think about it although I did -- I have
9 participated in BZA cases and watched other BZA cases that you've
10 participated and other of my colleagues where issues have come up
11 about -- there are different issues that have come up both in
12 conversion cases which -- conversion cases from flats in
13 residential RF-1 rowhouse neighborhoods where units are being
14 added and in this case, which is an RA-1 zone, where -- which
15 allows for apartments.

16 But the RA-1 zone is kind of a transitional zone between
17 the rowhouse neighborhood of RF and the other apartment zones and
18 so it requires special exception approval with some very general
19 adverse impact language. You know, the sua sponte is a very --
20 has been rarely used and our Regulations have the provisions for
21 when it should be used and I don't think they necessarily apply in
22 this case, those -- it says the Zoning Commission may exercise sua
23 sponte under our own Regulation 800.8 where the BZA has exceeded
24 its authority and thus, in effect, changed the zoning, or where it
25 appears that a basic policy of the Commission as expressed in the

1 Zoning Regulations has been violated as a result of an action by
2 the BZA, or in an unusual instance as determined by the
3 Commission.

4 So I think those three cases, three examples of when the
5 Commission should actually invoke its sua sponte authority on
6 their terms show why it needs to be a pretty unusual and egregious
7 violation or -- of our Regulations or an excessive -- exceeding
8 authority that the BZA doesn't have and I just don't -- I don't
9 think that exists in this case.

10 I listened to this particular case and the other cases
11 where there is -- I agree that there is, perhaps, a need to
12 provide more standards for conversions in residential and in
13 rowhouse zone neighborhoods in terms of the adverse impacts
14 because I think some representations have been made that said that
15 we eliminated some of those specific references to adverse impacts
16 which I -- and I don't think that we have eliminated any
17 examination of the criteria by the BZA, but that's the rowhouse
18 zone conversion. That's a different issue.

19 This is the RA-1 zone which is an apartment zone and I
20 think the case, this case and the other cases, where people are
21 coming in and asking for adding additional units to what appears
22 to be a rowhouse zone or single-family neighborhood zone, they're
23 actually asking for what's allowed, permitted, in the zone which
24 is apartments; in this case eight units. There is -- it is a
25 special exception. All RA-1 cases are, and it has very general

1 adverse impacts. And maybe those general adverse impacts need to
2 be looked at.

3 There isn't, I don't think, a specific reference in
4 this, in the RA-1 zone cases, special exception cases, too out of
5 character with the block, for example, or the street frontage,
6 which is a specific criterion in the RF-1 conversion cases, so
7 there isn't anything like that. I think this case though -- so I
8 think you've pointed out something that needs to be looked at by
9 the Office of Planning and by us, but not in the sense of
10 considering overturning a BZA action because they exceeded
11 authority, or they violated our Zoning Regulations.

12 I think this case in particular, and ones like it in the
13 RA-1 zone, show that maybe there needs to be more criteria for the
14 RA-1 zone in terms of adverse impacts or there need to be a
15 rezoning. Maybe if it's a neighborhood that's been single-family
16 or rowhouse forever and even though the comprehensive plan might
17 allow for a medium density residential, which I think may be the
18 case or moderate density residential and not just low density
19 residential, which I think is the case here, I think it was
20 moderate or medium, that maybe it needs to be looked at a rezoning
21 of some of these neighborhoods that have traditionally been
22 rowhouse or single-family where nobody really looked at the
23 Regulations and saw that it was an apartment zone.

24 So I think all of that needs to be looked at, but I
25 don't think it rises to the level in the specific case here to

1 | overturn the BZA because they violated the Regulations. I don't
2 | think that they have, or that they exceeded their authority. I
3 | think it's -- I think you pointed out something that needs to be
4 | looked at because I've sat in on these cases, listened to others,
5 | where we need to maybe look at the criteria or look at the zones,
6 | but I don't -- I would not be supportive of exercising our sua
7 | sponte review of the BZA in this case.

8 | And in principle, I think that that's a very rare thing
9 | that we should exercise and in egregious cases, and I just don't
10 | think that that exists here, but I'm not saying that that's not --
11 | that the issues surrounding that case and others, both in RA-1
12 | zone and RF-1 zone, should not be looked at by us and the Office
13 | of Planning and maybe in a -- as we go forward, but not in terms
14 | of overturning, considering overturning, the BZA in this
15 | particular case.

16 | So those are my rambling off the top of my head, really,
17 | thoughts since I only realized shortly before the meeting that
18 | this was on the agenda which is my -- I think we might have been
19 | notified by Ms. Schellin a couple days ago and I just missed that.
20 | So I -- that's where I am, Mr. Chairman. I appreciate you
21 | bringing the issue before us. It has -- it is a -- this type of
22 | issue is something I think that should be examined, but not in a
23 | sua sponte review authority type of case by us.

24 | CHAIRPERSON HOOD: Well, Vice Chair, let me -- before I
25 | go to others, let me just say that I searched for a way to bring

1 | it to the Commission and I can tell you being, even the Chair, or
2 | being a commissioner, it's not easy to bring stuff to the Zoning
3 | Commission and I've been asking for the legal requirements and
4 | legal -- believe me. This was not just me thinking fly by night
5 | or how I voted on it, these issues, I believe, need to be
6 | addressed, but I want to take you back to my statement and I want
7 | to read to you what I said.

8 | As a result, I'd like the Commission to take a look at
9 | what happened here and I understand, emphatically, I understand we
10 | ultimately may not change the BZA's decision or take any action at
11 | all, but I think it's worth a look and this is the only mechanism
12 | that we can use a textbook case that I know of, after consulting
13 | with everybody and trying to figure out how to get it back in
14 | front of the Commission. I made the statement, "I'm on the
15 | Commission and it's hard for me to get something in front of the
16 | Commission." So maybe that even needs to be looked at, but either
17 | way, this was the only tool.

18 | And again, I said I understand we ultimately may not
19 | change the BZA's decision or take any action at all. I understand
20 | that, but this is the tool that I could use to get it back in
21 | front of the Commission. Let me hear from others. Anybody else?

22 | Commissioner Shapiro?

23 | COMMISSIONER SHAPIRO: Thank you, Mr. Chair, and I
24 | appreciate your thoughtfulness about this and it's clear that, you
25 | know, your strong feelings are based on lots of experience and

1 even a bit of frustration, so I hear you loud and clear. I would
2 associate myself with the Vice Chair's remarks though.

3 I think that, you know, it -- the issue is the issue and
4 if we want to revisit some policy pieces here, let's do it and I
5 think what you've done is, I think in a thoughtful way, brought an
6 issue to the Commission that we can -- we should now take up. And
7 if we use this case or other cases as specific examples to educate
8 ourselves around it, that makes sense. That's just data for us to
9 work with, but that's very different than the sua sponte action
10 that you're talking about.

11 And I would say instead -- like the Vice Chair said, I
12 would say instead let's just take this issue up and use this and
13 other cases as examples as we move forward.

14 CHAIRPERSON HOOD: And I want to respond to each
15 Commissioner. Not that I'm being argumentative or not that I'm
16 coming back, and I appreciate your comments, but for me,
17 everything that the Vice Chair, and so far, Commissioner Shapiro
18 has said, what do we say to the residents who have -- when we --
19 when it's like that next door to my, and I'm not bring up the
20 case, like I can't see myself living next door to that.

21 Sometimes it's a different feeling when it happens to
22 you and I put myself in resident's situations because I have
23 things that go on in my neighborhood, we all do, so I try to put
24 myself where they are. Again, unless you all know another tool,
25 because I've searched and I've even got counsel, in trying to

1 figure out how to get it in front of us. So this was the only way
2 I could get this in front of us and I wanted to use this as a
3 textbook case along with others.

4 Now, we can always set-up at the meeting and send
5 something to the Zoning Commission, I mean, to the Office of
6 Planning and tell them to review something, but I wanted this to
7 be a textbook case and we be able to expound upon this because
8 this is a prime case of what -- there's a groundswell of
9 dissatisfaction in this city with the Zoning Commission because of
10 this, because of this type. And I'm not saying it's just all the
11 Zoning Commission. I hear that at the BZA to a certain point. I
12 think, and I stated tis, Commissioner Shapiro, that sometimes even
13 though the envelope allows you to do that, we've got to put the
14 impacts, the adverse impacts, into the equation and find out where
15 we can lessen the impact.

16 And I don't think -- I think eventually applicants are
17 going to come down, "Let me build the biggest thing I can."
18 They're supposed to do that. But it's incumbent upon the BZA to
19 say these are impacts on this area or this is impacting the side
20 yard, do you use fluorescent, or whatever you call it, the frosted
21 glass so people -- invasion of privacy. Those are the kind of
22 impacts I think we need to look at. So anyway, let me go -- I
23 just want to respond to everybody, so who would like to be next?

24 And I think Mr. -- if I'm not wrong, Commissioner
25 Shapiro, I think you sat on this appeal. I think it was an

1 appeal. See, I came in second and I wish I had known all that,
2 but anyway. Commissioner Turnbull?

3 COMMISSIONER TURNBULL: Mr. Chair, I can sense your
4 passion on this. I think the Vice Chair made a very rational
5 argument as to his understanding of it and I think he makes a lot
6 of sense on a lot of those points. It's very clear that sua
7 sponte cannot be taken lightly. I guess what I haven't heard
8 from, and maybe you could express it, where -- in the BZA review
9 of this, where do you think the understanding by the rest of the
10 Board members was so egregious in understanding of the Regulations
11 that it sort of put them -- that you think this was totally
12 misunderstood by them?

13 I mean, I think sua sponte is an excellent exercise in
14 going through something and maybe even if this doesn't get to sua
15 sponte, I think we need to take a case like this and thoroughly
16 analyze why -- what are the positive and negative aspects of how
17 we look at cases. I think maybe as the Vice Chair said, maybe the
18 zone is wrong. Maybe the safeguards in the Regulations aren't
19 there. Maybe there's parts that we've just missed and maybe we
20 need to reinforce them, but maybe you could explain for me what
21 you saw that was most egregious by how the rest of the Board voted
22 on this. Vice Chair, we can't hear you.

23 CHAIRPERSON HOOD: I'm sorry. I had -- I was on mute.
24 I said this to the Board, and my thing is I believe that when it
25 comes to adverse impacts, I think there needs to be some more

1 guidance on adverse impacts. I don't think that we do enough of
2 adverse impacts. We don't do -- from my standpoint; I don't think
3 we do anything for adverse impacts.

4 And I think, because it says you -- like I said, at that
5 particular BZA case, if it says you can build to a 10, sometimes
6 you might not be able to build. You might have to go to a 9.5 for
7 this simple reason. Even though it's allowable in the zone,
8 sometimes that half a foot or half of whatever, half, will help
9 with some of the impacts that will take to the 10. You might get
10 a little more light. It's all kind of things I don't think that's
11 being expressed and that we need to spell out.

12 Again though, Mr. Turnbull, Commissioner Turnbull, my
13 issue is to use it, as you said, use this as a textbook. Did it
14 allow for -- does it allow to do this, yes, but I don't think
15 adverse impacts -- it's just a word. It's just a buzz word. I
16 don't think it's being looked at. I don't think there's any
17 guidance to help maybe the BZA and they may disagree with me, but
18 you all have sat on them cases. You've sat on them cases. You
19 watched.

20 We just -- it's just like, you know, they were calling
21 us the rubber stampers. "Oh, don't worry about it, it's going to
22 be approved." But I don't -- I think this Commission works too
23 hard for this and the reason I'm passionate about it is because
24 the residents of the District of Columbia who live in those zones
25 are having some problems. Now, am I trying to take rights away

1 from anybody? No, I'm just trying to mitigate a potential problem
2 because I can tell you, this problem is going to be exacerbated
3 and it's going to be worse if we don't stop and do something about
4 it now.

5 Now, this -- let's not get caught up in sua sponte. My
6 thing was I was just trying to -- I'm trying to get a textbook
7 case and there is another one, the John Stokes case. I missed
8 that because it was -- and so much legal stuff that was going on,
9 I missed that case and I've been told I can't even do this with
10 that case. Again, it's hard to get a case in front of the
11 Commission that we can analyze.

12 Anything else, Commissioner Turnbull? Okay.

13 COMMISSIONER TURNBULL: No, I -- in one way, I sense
14 your angst and I could see going through sua sponte in a case like
15 this which we may not reverse it or overturn it just to hear the
16 arguments as to the pluses and minuses to what went wrong and how
17 egregious this really is, but I'm a little reluctant just to take
18 the case on and do it.

19 I mean, I think the Vice Chair talked about maybe the
20 best thing is that we really need to get OP involved and really
21 look at what we've got covering the RA-1, the 1A zones, and maybe
22 we need to beef up our review, what -- like you said, what's --
23 what are the effects on properties adjacent. I'm torn. I sense
24 your angst and in one way I could see going through this as an
25 exercise to see what went wrong and what -- and how something like

1 | this is egregious or isn't egregious, but I'm a little bit torn on
2 | that right now.

3 | CHAIRPERSON HOOD: So Commissioner Turnbull, I
4 | appreciate having this discussion with you and I'll tell you why.
5 | It's because you're bringing some more stuff to light. Typically,
6 | what we, this Commission, does, we go to the Office of Planning,
7 | we ask them to look at a certain topic, come back with some
8 | language and we try to figure it out. We don't have a live
9 | situation.

10 | For me, the difference is this time we have a -- we have
11 | something that we put in place. We have a live situation now we
12 | can analyze, and I appreciate the Vice Chair's way, but that way
13 | is just like doing it in the blind. We don't have anything that
14 | we can tangibly put our hands to look at. We just say, "Okay.
15 | This is what we want you to do." "Okay. We'll reduce this, add
16 | this language," but we don't really know what the outcomes are.
17 | This case here is an outcome but let me go to Commissioner May.

18 | COMMISSIONER MAY: I think Commissioner Shapiro wanted
19 | to make a point that was relevant to what you were saying, so
20 | maybe he needs a second.

21 | CHAIRPERSON HOOD: Okay. I just wanted to give you an
22 | opportunity.

23 | Commissioner Shapiro?

24 | COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Thank you,
25 | Mr. May. Yeah, I was just reacting to what you were saying and I

1 -- it appeals to me. I like the idea of using a specific case for
2 us to help make sense of this, of the policy issues. I really
3 like what you're saying, I just think doing it through the sua
4 sponte approach I don't like. But I think if we direct the Office
5 of Planning to bring this issue to us and to do exactly what
6 you're saying, to bring this issue to us and even to craft the
7 discussion around specific examples, this case, one or two other
8 cases, we have that within our authority and it would really -- I
9 agree with you, that would help educate us. It grounds us in the
10 reality of specific cases. So I just want to do that. I really
11 want to do that. I just don't want to do it using this legal
12 mechanism.

13 CHAIRPERSON HOOD: Okay.

14 COMMISSIONER SHAPIRO: That's all.

15 CHAIRPERSON HOOD: I want to hear from Commissioner May
16 and then I'm going to go Mr. Tondro because I can tell -- I want
17 all my colleagues to know I've searched for a mechanism. I've
18 searched and this is what I came -- what I was -- this is the best
19 way I could get it in front of you. Now after you've heard those
20 discussions, you know, Mr. Tondro, I just want you to know I'm
21 going to come to you, maybe there's another way after you hear,
22 but we got to have something that we can tangibly look at. We
23 can't do the what if. That's what got us here now, the what if.

24 Commissioner May?

25 COMMISSIONER MAY: Sure. Thank you, very much. So, you

1 know, I have to say that in this particular case the, you know,
2 certainly the images that you showed us of the building that is
3 already partially constructed, I can totally understand why the
4 abutting neighbor and probably many other neighbors are just, you
5 know, very upset about it.

6 I certainly -- you know, if I lived in that house that
7 was next door, I would not want to see that going up right next to
8 me, so close, so large and, you know, it does point out a problem
9 in the RA-1 special exception to build a new apartment building
10 issue, right. I mean, that's -- and it really puts a spotlight on
11 the shortcomings, I think, of that particular regulation.

12 I think that most of us who have been on BZA for a while
13 have encountered some cases where, you know, it gives you some
14 anxiety, what goes with it. We even considered one, I think, that
15 was -- you know, might have been before the Zoning Commission not
16 too long ago where we actually had to consider the RA-1 special
17 exception criteria in order to approve, you know, some other kind
18 of case, a design review or something. I forget what it was.

19 Anyway, you know, in this particular circumstance, first
20 of all, it's -- I think it's like the -- you know, one of the best
21 examples of how we would look at this problem and one of the worst
22 at the same time, right. It's one of the best because it really
23 highlights what the shortcomings are in the Regulations, but it's
24 also one of the worst because the building is already partially
25 constructed. And, you know, just looking at this from a cold,

1 factual, Regulation mindset, I don't see how this results in a
2 less imposing building being constructed there.

3 Even if we did do a sua sponte and by some miracle
4 decided -- you know, persuaded my fellow commissioners who are not
5 sold on the idea that this is an egregious overstepping on the
6 part of the BZA, I just don't see how that decision would
7 ultimately stand up, right. I have to believe that the developer
8 would appeal that decision and it would be a problem, I think,
9 trying to defend it.

10 So I don't -- I -- you know, and it's also weird because
11 it's under construction in the first place. It shouldn't have
12 gotten underway before the relief was granted, for some reason I
13 think that happened. I don't know what the particulars were but,
14 you know, we are where we are.

15 We have a partially built building, and we have a BZA
16 decision that supports what's there being completed and it --
17 again, it's upsetting to neighbors and it's upsetting to some of
18 us that this could even happen. I mean, I -- you know, I can't
19 imagine having to deal with that right next to me and so I
20 understand what the problem is.

21 You know, I think the Vice Chair made important points
22 about what we need to look at. Part of it is making the criteria
23 for saying okay to new apartment buildings in the RA-1 zone more
24 specific, and I think that if they were maybe something like this,
25 you know, a development like this, would have been scaled back a

1 bit to be more appropriate to the context. Because again, you
2 know, it is a transitional zone, but it is an apartment zone and
3 maybe -- you know, maybe the development controls are also what
4 need to be looked at, right, so that you can't do something that's
5 quite as big as this next to a single-family home.

6 I also think that the Vice Chair made the -- a good
7 point, that we should be looking at whether some of these RA-1
8 zones are appropriately RA-1 or whether they should be, you know
9 R-1-A or R-1-B, or, you know, an R2 or 3, whatever. And I know
10 that we have done in that past. I mean, we did -- didn't we do
11 some pretty significant rezonings in Ward 7, maybe in Ward 8 as
12 well where we looked at our, you know, broad swaths of what was
13 then --

14 COMMISSIONER TURNBULL: I think we had some nasty --

15 COMMISSIONER MAY: -- (audio interference)?

16 COMMISSIONER TURNBULL: We had some nasty hearings on
17 that too when some of the neighbors were complaining about
18 downsizing and it could be a contentious hearing, but I would
19 agree. (Audio interference).

20 COMMISSIONER MAY: Yeah. I mean, I remember the Ward 7
21 R5-A to R whatever, R2, was as contentious. I think we had bigger
22 issues with -- Mr. Turnbull, I can't hear you. You're muted.

23 COMMISSIONER TURNBULL: No, you're right. The last one
24 we did I don't think was that contentious. There was a few
25 neighbors who were opposed. I'm looking for -- it was a few years

1 ago though that we --

2 COMMISSIONER MAY: Yeah. No, we definitely had
3 contentious hearings where --

4 COMMISSIONER TURNBULL: Yeah.

5 COMMISSIONER MAY: -- everyone thought that the R4, or
6 what was then R4, additional controls were considered to be a
7 downzoning.

8 COMMISSIONER TURNBULL: Right.

9 COMMISSIONER MAY: But if you can -- right. So yeah, I
10 mean --

11 COMMISSIONER TURNBULL: You're right.

12 COMMISSIONER MAY: -- we'll hear that too. I don't know
13 that we'll necessarily hear it from neighbors, you know, current
14 residents. We may hear it more from the development community
15 because this is fertile ground for people to buy, you know, older
16 homes and redevelop them into apartments in what would otherwise
17 be a -- what appears to be a neighborhood of single-family
18 detached homes.

19 So I mean, it's -- you know, yeah, we've got this
20 formula of difficult issues surround the RA-1 zones. To some
21 extent there's also the issue of conversions. I think that's sort
22 of a separate issue and would rather not necessarily take it up at
23 the same time, but I don't have any problem with taking up
24 concerns there because I think that -- right now we have a
25 situation with conversions where the controls are pretty

1 reasonable and we're not seeing the crazy things happening that we
2 were for a while back before we made those changes.

3 But in RA-1, I mean, think we're seeing -- there's much
4 more potential for bad outcomes for the neighbors. So I think
5 that's the most urgent one. I do actually have sort of a legal
6 question on this because if we ultimately decide not to reexamine
7 this case as a sua sponte, are there other things that we could do
8 to exert some better oversight over how these cases are
9 considered?

10 And so what I'm specifically asking is whether we could
11 -- rather than try to take up this case as something that we have
12 to decide, take up any of the current pending RA-1 apartment cases
13 as Zoning Commission cases rather than BZA cases. Is there a way
14 for us to simply assert our authority and say, "We're going to
15 take up these ones ourselves," so that we can see first-hand
16 exactly what the problems are and discuss them as a group as they
17 happen? And it is a -- you know, and that is a temporary measure
18 until we get, you know, some sort of report and proposed language
19 from the Office of Planning, so.

20 CHAIRPERSON HOOD: I would -- and I'm going to ask Mr.
21 Tondro to come up, but what I do want to do is I don't want him to
22 give us anything off the cuff. I want us to -- if he feels
23 comfortable, we can do it today. If not, Mr. Tondro, if you want
24 to do some more investigation and look at all the legal
25 ramifications of what Commissioner May just mentioned, then I

1 | would ask you put that in the parking lot and we hold this off and
2 | come back at our next meeting and discuss this. I know where the
3 | Vice Chair is. I know where others are. I have no problems with
4 | that, but I -- for me, I need to realize it. I need to be able to
5 | see it. We do this all the time.

6 | But anyway, regardless of how I feel, I don't know if I
7 | want to get an answer to that unless the -- unless Mr. Tondro
8 | feels comfortable today giving us an answer because I think there
9 | are some legal ramifications behind it. It sounded like that to
10 | me, but I think what Commissioner May is saying is a great idea.

11 | Mr. Tondro, also, you've heard what the Commission said,
12 | and I've discussed ways of trying to get this to this point and
13 | this is what I've come up with. So if you have another way, and
14 | you don't have to do it today because I know when you're dealing
15 | with the legal ramifications you have to take time and look at all
16 | the necessary cites and the regulatory stuff but let me let you
17 | tell me what you feel comfortable with and we'll go from there.

18 | MR. TONDRO: Thank you, Chairman and members of the
19 | Commission. Yes, I would like to take a little bit of time to
20 | make sure that I do my due diligence in response to Commissioner
21 | May's thoughts. I think that's an interesting one, so let me get
22 | back to the Commission on that in writing in a couple of days.

23 | I will say in response to your earlier question, I
24 | think, Chairman Hood, as to what else can be done at this point.
25 | I mean, I think as various members of the Commission have said,

1 have suggested, I mean, one thing that you still can do is to ask
2 OP to either look at the specific circumstances of this case as an
3 example in the RA-1 in general and both that aspect, like the Vice
4 Chair had raised, of whether there's a potential for specific
5 parts of the RA-1 zone that might need to be rezoned as well as
6 also questions about the current standards for new residential
7 developments in the RA-1 zone.

8 So that, I think, still -- you know, that's up to the
9 Commission. The Commission may decide that they don't want to do
10 the sua sponte, but that they want to direct OP to respond.
11 Presumably, the OP would need some time to prepare both if they
12 were going to do any kind of text amendment, but also if they were
13 going to do any research about potential rezonings and so it would
14 be a directive that you could give to that and then separately I
15 will respond, I'll do the research and respond to Commissioner
16 May's thoughts as well.

17 CHAIRPERSON HOOD: Okay. So let me ask this, Mr.
18 Tondro. Should we -- because obviously I don't have support for a
19 sua sponte, but I think my whole issue was to get it back in front
20 of us and not just keep sitting on the BZA seeing this stuff keep
21 happening but should we just do away with the sua sponte today
22 because I don't -- obviously, I don't have support for it. It's
23 obviously 4 to 1. So should we wait until you come back with --
24 or do we have to do anything because I -- I'm just putting it up
25 there. I mean, do we have to do anything with the sua sponte?

1 COMMISSIONER TURNBULL: Well, Mr. Chair, if I could just
2 (audio interference) one side here or whatever, maybe we could ask
3 OP to put this on the front burner. I mean, if this is really an
4 issue and we're going to see more of these cases like this, maybe
5 OP can look at this case and as the Commissioner was saying, we
6 use this as an example and get into this and then try to flesh out
7 what's wrong with this and what it needs to do to get better.

8 What can OP -- what can we -- I mean, not to take an
9 emergency action or anything, but what can we do to put this on
10 the front burner and not put it on a back burner? Let's get this
11 thing going so that we can come up with something fairly quickly,
12 within a month or something. I don't know. Just trying to get
13 this thing going, get it on the -- get it up front and so we can
14 analyze it. I think you'd feel better about it. I think if we
15 had this once it's going to happen again, so we need to at least,
16 I think, get this thing going fairly quickly.

17 CHAIRPERSON HOOD: And I will tell you all, and I know
18 you all have probably heard it, and I may have heard it more, but
19 the BZA is asking us to relook at some of this. They're the ones
20 that are there every week dealing with this. We come by once
21 every five weeks. So the BZA is asking us. I've heard it enough.
22 You all have probably heard their hands are tied, they're going
23 with our Regulations and at some point, it's time for us to take
24 some type of action.

25 This is, as Commissioner May, I think, pointed out, this

1 is basically built, so but I just wanted to use this one and maybe
2 others that you all have sat on as something for us to visually --
3 something we can see. I have to see it. I have to realize.
4 Numbers and lot occupancy and all that, that's great, but when I
5 visually look at it and I say, wait a minute, was that really what
6 we intended? And I think, I think, as I've asked Office of
7 Planning to prepare a list of all of the things we have, our
8 laundry list is getting quite a bit -- they have their hands full
9 at OAG, but at some point, we need to see where we are and what
10 progress we're making.

11 Commissioner Shapiro?

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Just a
13 couple things. One is I appreciate what you said about the BZA.
14 You know, I don't experience them as the opposition or the enemy
15 here. I think they're struggling with this issue like we are, so
16 I'm very appreciative that you said that, but I had a question for
17 Mr. Tondro too. Is there anything that stops us from using, to
18 the Chair's desire and request on this, is there anything that
19 stops us from taking a case like this and not actually
20 deliberating the case for real, but, you know, using -- taking all
21 the data that comes from this case and using -- beyond just using
22 it as an example.

23 I mean, like we can just literally run through it. What
24 would we do? What problems do we run into as we visit a specific
25 case, or two, or three? Because I think that's very different.

1 To your point, Mr. Chair, that's very different than OP coming to
2 us with recommendations. You know, there's something about the
3 experience of it that might educate us. Can we do that, Mr.
4 Tondro?

5 MR. TONDRO: I think so. I mean, I think that -- if I'm
6 understanding correctly, I mean, I think the sua sponte is a very
7 limited procedure and so I think it's limited to what is the
8 record before the Board and for you to reconsider that. I think
9 what you're talking about is a broader one and I think indicating
10 that the Commission might benefit from an opportunity to do a deep
11 dive into several different cases that all use the same special
12 exception --

13 COMMISSIONER SHAPIRO: Yeah.

14 MR. TONDRO: -- to see how that actually works. And I
15 think --

16 COMMISSIONER SHAPIRO: Consider it an experiential
17 exercise.

18 MR. TONDRO: Right. So that could be done various
19 different ways. I mean, my guess is, you know, there could be an
20 opportunity to do it as a -- let's say a training for the
21 commission that, you know, we could try to pull together that
22 record for you, OAG could, and OZ, together could work to do that,
23 and OP, if they were able to help out as well. That, in addition
24 to or separate from, parallel to, asking OP to consider doing
25 this, if that -- if you -- you know, if you want them to do that.

1 I mean, the one thing I'll say is that OP is in the best
2 situation, first of all, to address those issues raised by the
3 Vice Chair as to the question of whether there are any particular
4 rezonings. In other words, are all of the properties zoned RA-1
5 appropriately done so. They have that -- access to information
6 that we all don't have. They also are, you know, would be, I
7 think, appropriate for giving their point on the individual cases
8 and perhaps even identifying the cases that you would want them to
9 look at.

10 I think OP has, you know, I think they have been very
11 effective in responding to requests that you make. I know that,
12 you know, for example with the Inclusionary Zoning XL, they came
13 around and, I think, were able to get something to you fairly
14 quickly. That one is already in the pipeline. This is a slightly
15 different one, but, you know, again, I don't know if that answers
16 your question, Commissioner Shapiro.

17 COMMISSIONER SHAPIRO: It does, and I appreciate that.
18 Thank you, Mr. Chair.

19 COMMISSIONER TURNBULL: Mr. Tondro, I sort of liked the
20 idea, what you -- or the proposal as a training exercise where OP
21 could actually come up with a prototypical -- take -- not
22 necessarily this case, but sort of modify it and show exactly all
23 the things wrong in a neighborhood like this and it could be
24 become an exit where we can talk about it and go through the whole
25 analysis of a prototypical site that has these issues.

1 I think, you know, you could do that with a lot of
2 different things. You know, the RF-1 zone, or RA-1, RA-2. I
3 mean, I think that does provide us with the ability to talk about
4 it in an open forum and bring up issues and go over things with OP
5 and ourselves as to what we think is really something that we've
6 missed all these years. So I don't know, I think that might be an
7 opportunity.

8 CHAIRPERSON HOOD: So in order for full disclosure, Mr.
9 Turnbull, that was one of the things we did talk about, whether we
10 bring this up as a training, but because -- again, Zoning
11 Commission, they didn't want to have but so much training, so we
12 tried to be accommodating to what our wishes were, but now I'm
13 hearing we want to do training.

14 So I've tried a number of ways and I can tell you, this
15 came to this -- and this came to sua sponte with the Zoning
16 Commission in mind. Training, we didn't want any additional
17 training. That was discussed. I got pushback on that. But now
18 I'm hearing that we want the training because I also wanted to
19 include the BZA, but the -- I wanted to do -- I wanted us to do it
20 first.

21 And Mr. Tondro will tell you that's how we started, but
22 this is where our (audio interference). But I -- I want us to do
23 it first and then if we're going to do it that way, we also will
24 do the Vice Chair's way because that was one of the ways we just
25 thought about doing it, but my issue was not having anything

1 | tangible. That's kind of where I am.

2 | So I appreciate all of your good points. Obviously, I
3 | don't have any support for a sua sponte, but let me just tell you
4 | all this; I accomplished my goal because I got this in front of
5 | us. Now we can do something with it.

6 | Okay. All right. Any other questions or comments on
7 | this?

8 | And we -- we'll get back to Commissioner May. It's
9 | funny looking at the screen. We'll all get back to Commissioner
10 | May's question. We'll give Mr. Tondro and legal counsel time to
11 | be able to fulfill and answer your question as they requested.
12 | All right. So I don't think any action, unless I hear otherwise,
13 | is needed with this.

14 | COMMISSIONER MAY: Mr. Chairman?

15 | CHAIRPERSON HOOD: Yes?

16 | COMMISSIONER MAY: Sorry, I just want to clarify.

17 | CHAIRPERSON HOOD: Mr. May?

18 | COMMISSIONER MAY: I mean, I think the consensus is that
19 | we absolutely do want to have the Office of Planning look at this
20 | as an area, you know, both the aspect of the RA-1 Regulations and
21 | the issue of where RA-1 is mapped and whether there are changes
22 | needed to that and to do it in, you know, as swiftly as we can.
23 | So I think we could ask the Office of Planning to come back to us
24 | at the next meeting and report on, you know, how they would
25 | approach it and how quickly they think they might be able to come

1 back with it. That's one suggestion.

2 The other thing is that I was -- I just want to clarify
3 that what I was suggesting is that until we actually take this up
4 as a text amendment, or map amendments, or some combination of
5 those things, that we would be hearing those cases ourselves so
6 that we, you know, we take that burden off the Board of Zoning
7 Adjustment and we're dealing with it, we're experiencing it, but
8 it would just be a short-term measure so that we take up those
9 things. That's really all what I'm -- I was asking for. Maybe
10 Mr. Tondro and everybody else already knew that, but I just wanted
11 to make sure it was very clear that it was a temporary thing until
12 we got to take up the Regulation change that I think we should be
13 considering.

14 CHAIRPERSON HOOD: Okay. Commissioner Shapiro?

15 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I think
16 Ms. Steingasser is an attendee right now in this meeting as are
17 other folks from the OP, I imagine. Is there some value -- the
18 timing of this, you know, there is some urgency to it. Is there
19 some value in having her weigh-in? We have the --

20 CHAIRPERSON HOOD: I actually was going to bring her up
21 when we got to the Office of Planning and we could discuss it
22 again unless you all want to just do it now while we're talking
23 about it. I was going to move on with the rest of the agenda.

24 COMMISSIONER SHAPIRO: I would appreciate just doing it
25 now because it's in the moment.

1 CHAIRPERSON HOOD: Okay. Okay. All right. Seize the
2 moment, Commissioner Shapiro.

3 Can we bring Ms. Steingasser and whoever else from
4 Office of Planning that needs to come up so we can discuss this?

5 Ms. Steingasser?

6 VICE CHAIR MILLER: Mr. Chairman?

7 CHAIRPERSON HOOD: Yes?

8 VICE CHAIR MILLER: While --

9 CHAIRPERSON HOOD: Hold on one second, Ms. Steingasser.

10 VICE CHAIR MILLER: While she's coming up -- oh, she's
11 there so I can reserve my comments until afterwards, but I -- just
12 in response to Commissioner May's suggestion, I don't -- I am not
13 in favor of us taking a -- setting the precedent of us taking up
14 BZA cases where there needs -- where there may need to be clarity
15 in the Zoning Regulations. I think the way to deal with it is the
16 way you've all, all of us, have discussed it; is to have the
17 Office of Planning look at the Zoning Regulations, see what needs
18 to be clarified or changed and have training sessions in
19 conjunction with that if necessary. I'm fine with training
20 sessions and never have been against any training sessions just
21 for the record.

22 So I think -- I don't -- but I'm not in favor of us
23 taking -- but I think the appropriate way for us to deal with it
24 is for OP to look at it and come up with some suggestions and we
25 could -- and go -- we can go back and forth informally in a

1 training session or we -- and with experiential cases as examples
2 or in a formal proposal from them, but I am not in favor of us
3 taking out a whole raft of cases that are properly before the
4 Board of Zoning Adjustment.

5 CHAIRPERSON HOOD: Okay. All right. So noted.

6 Ms. Steingasser, Commissioner May, you (audio
7 interference)?

8 COMMISSIONER MAY: Yeah. Just to be clear, I'm not
9 necessarily advocating for it either. I just wanted to know if it
10 was a possibility. I think if before we actually took it up, we
11 would want to know, you know, what is the workload and what the
12 implications would be and so on. So there's a lot to discuss, so,
13 you know --

14 CHAIRPERSON HOOD: And I think the good --

15 COMMISSIONER MAY: -- it's just a threshold question of
16 whether it would be something that we could do.

17 CHAIRPERSON HOOD: Right. I think that's a good
18 question though and I think by one of us sitting there, we're
19 there anyway, but let me go to Ms. Steingasser.

20 Ms. Steingasser, I guess you've heard this discussion
21 and the way -- and I will tell you that this is no slight on OP or
22 anybody. I just wanted to get this in front of us to revisit and
23 this is the way I could get it there. But first, let me ask you
24 this. How do you think my presentation went?

25 MS. STEINGASSER: Your --

1 CHAIRPERSON HOOD: No.

2 MS. STEINGASSER: You did very good.

3 CHAIRPERSON HOOD: Thank you. Thank you. But anyway,
4 Ms. Steingasser, you've heard the conversation --

5 MS. STEINGASSER: Yes, sir.

6 CHAIRPERSON HOOD: -- and sua sponte may not be the best
7 way for me to be able to -- for us to be able to do deal with
8 this, for me to bring it, but that was the way I came to it
9 because of the training issues and I discussed all that. Now I'm
10 hearing that they don't -- we don't mind training, so maybe that
11 will go back to it and figure out how we can do it that way, but
12 either way I wanted to get this on the table. And you've heard
13 the conversation?

14 MS. STEINGASSER: Yes, sir.

15 CHAIRPERSON HOOD: Do you have a response to it, to what
16 --

17 MS. STEINGASSER: I don't right now. I have heard -- I
18 understand the urgency. We, the entire division, watches the BZA.
19 We understood your frustration in the last few weeks as you've
20 heard these cases and had to vote on them so we're not surprised
21 and we have a big stove, but this will go to the -- this will be
22 one of our front burner cases.

23 CHAIRPERSON HOOD: Yeah. Ms. --

24 MS. STEINGASSER: We (audio interference) --

25 CHAIRPERSON HOOD: -- Steingasser, let me ask another

1 question and this is also to my colleagues. What I've heard back
2 from the Board is that I don't know if we have enough or we need
3 to give more direction when it comes to adverse impacts and the
4 special -- I'm not really clear of what more we need to do because
5 to me, each case will stand on its own. You know you -- you know
6 what the aspects are of adverse impacts on a neighboring property
7 with enjoyment, I think those things are there. Do we -- and I
8 would like for the Office of Planning also to look at, do we need
9 to clarify that move because it seems that there are still some
10 questions with that.

11 MS. STEINGASSER: I think that there is some room to
12 provide some design guidance as to how buildings relate to each
13 other and what we mean by, you know, a site plan for these
14 buildings and when -- especially when they're an infill project. I
15 think we also have an opportunity to work with OAG in looking at
16 what is the court history on adverse impacts in a special
17 exception because there's a lot of court guidance that talks to
18 that issue.

19 And, you know, so it would be working with our design
20 division on getting possibly some guidance and then also with the
21 OAG. So I think there's some opportunity here for us to work with
22 those divisions and get back to you, you know, at least in the
23 next -- by the next meeting we can get a status report back to you
24 on what we think the timing will be just like we did with IZ where
25 we kind of laid out how we'll be bringing things back to you.

1 (Audio interference) --

2 CHAIRPERSON HOOD: Okay. So, Ms. Steingasser, I think
3 at the next --

4 MS. STEINGASSER: (Audio interference).

5 CHAIRPERSON HOOD: The last meeting I asked if we could
6 kind of -- and I'm not trying to put a whole lot of work, but it's
7 -- it helps us to do our work with all of the milestones and
8 everything that we have in front of us. What I had asked for was
9 a listing of things that we had kind of in the -- that we were
10 looking at.

11 MS. STEINGASSER: Right.

12 CHAIRPERSON HOOD: And I wanted to give you time to do
13 that. I'm not -- maybe -- I don't know what your time frame is
14 because I know you all have much -- a lot more work than just
15 that, but that -- I think that would be helpful for all of us in
16 the roadmap going forward because right now we've got so much
17 stuff out there, I don't even remember some of the stuff and then
18 when I get it I say, "Oh, I thought we dealt with that." So I
19 think that would be helpful to the Commission as well.

20 MS. STEINGASSER: Okay. Yes, we do. We have a list of
21 all pending cases that we want to initiate with the Zoning
22 Commission and then we have, you know, the IZ and its multiple
23 phases and this as well.

24 CHAIRPERSON HOOD: And all those laundry lists of things
25 that we had said we were going to work on, I'm just making sure

1 that we -- I would like for us to have the list so we can kind of
2 keep up to date and signal whatever -- you know, send a signal, a
3 word I heard the other day, send a signal to be able to help us
4 keep up with the things that we keep asking OP to do or asking OP
5 to do, this way when we get them, it won't be such a surprise.

6 Let me --

7 MS. STEINGASSER: We have that.

8 CHAIRPERSON HOOD: -- open it up to others.

9 Okay. Thank you, Ms. Steingasser.

10 Let me open it.

11 Commissioner Shapiro, I saw your hand.

12 COMMISSIONER SHAPIRO: I was going to say a version of
13 what you just said. I think that every meeting to have that list
14 with sort of the status updates without -- I don't want to create
15 a whole lot of workload, if you have it and for us to have status
16 updates would be great. It could even be submitted --

17 MS. STEINGASSER: Okay.

18 COMMISSIONER SHAPIRO: It could even be submitted in
19 writing so we can keep track of things.

20 MS. STEINGASSER: Okay.

21 CHAIRPERSON HOOD: Thank you.

22 All right. Any other questions or comments for Ms.
23 Steingasser?

24 Ms. Steingasser, do you need anything else from us? I
25 think you've heard the Vice Chair; you've heard all of us, you

1 | heard me which I don't know how you all can put all that together,
2 | but anyway, do you need anything else from us?

3 | MS. STEINGASSER: No, sir. I think we understand
4 | exactly what the Commission is looking for.

5 | CHAIRPERSON HOOD: Okay. So I guess I will -- I'm not
6 | going to withdraw the sua sponte, but I know for a fact that I
7 | don't have support for the sua sponte, so let me put that on the
8 | record. I'm not going to withdraw it. I'm going to stay it at
9 | our front burner, but I'm not going to withdraw it unless you all
10 | just vote me out, but we can put that -- I think we can take it
11 | off the agenda from now on. I will not pursue it. I think that's
12 | just simple. I don't think I need a vote on that, Mr. Tondro.
13 | Here he is.

14 | Do I need to vote on the sua sponte?

15 | MR. TONDRO: I think there's an issue of finality. You
16 | have 10 days --

17 | MS. STEINGASSER: Yeah.

18 | MR. TONDRO: -- to take action, so I think the
19 | Commission has to decide yay or nay. You could withdraw it in
20 | light of the fact that the Commission has agreed to support you in
21 | asking OP or you could also proceed with a vote if you want to.

22 | CHAIRPERSON HOOD: So I will withdraw the sua sponte,
23 | but I appreciate all the comments and I don't take this either
24 | way. I just -- I think that the residents expect us to try to --
25 | I think we can do better, so I'll just leave it at that. But I'll

1 withdraw the sua sponte. I don't want to be outvoted. I get
2 enough of that.

3 Ms. Schellin, are you talking? Oh, I thought you was
4 talking. Okay. So --

5 COMMISSIONER TURNBULL: Well --

6 CHAIRPERSON HOOD: So --

7 COMMISSIONER TURNBULL: -- Mr. Chair, I just want to say
8 we still love you so the --

9 COMMISSIONER HOOD: I really appreciate that, but it
10 sure doesn't feel it by that vote, the sua sponte. No, I'm just
11 playing. All right. So I will withdraw the sua sponte. So let's
12 move on. I think -- any closing comments on that? So I'm looking
13 forward to us engaging and see what we can do to try to assist the
14 BZA because I think that they have asked for assistance from us,
15 so let's get it done.

16 Okay. Let's go to time extensions. Zoning Commission
17 Case No. 15-21C, Kenilworth Revitalization I JV, LLC and DCHA -
18 PUD Modification of Consequence to Modify Conditions D(3) at
19 Squares 5113, 5114, and 5116. Ms. Schellin?

20 MS. SCHELLIN: Yes, sir. The Commission decided at
21 their January 14th Public Meeting that this case was properly a
22 time extension request. If you'll recall, they originally had
23 filed it as a modification on the consent calendar and the
24 Commission deferred action to allow the applicant to submit its
25 affidavit that's required in a time extension case. The ANC was

1 to submit its report and was granted time to submit its report.
2 The applicant has submitted its affidavit at Exhibit 6 along with
3 a follow-up email to the ANC showing that they have reached out to
4 the ANC again, and the ANC submitted the letter that you
5 referenced. I believe it's the same letter that you referenced
6 from the earlier case this evening. Thank you.

7 CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin.

8 Commissioners, any questions or comments on the time
9 extension?

10 Commissioner Turnbull?

11 COMMISSIONER TURNBULL: Mr. Chair, we had -- as Ms.
12 Schellin said, we had a lot of -- we had some exhibits that came
13 in from the ANC and from the applicant and basically, it's a
14 funding issue, I think, that they've had some problems raising the
15 last amounts of money to build this, so I would be -- I think
16 they've got enough evidence here for us to approve a time
17 extension, so I'm okay with it.

18 CHAIRPERSON HOOD: Okay. I agree even though it's --
19 okay, so we all agree. Even though it's been seven years, this is
20 a rough time right through here to do a whole lot of anything, so
21 I think we -- that's really understood. So I would move that we
22 grant the time extension.

23 You know what, Mr. Turnbull, could you make a motion?

24 MS. SCHELLIN: With the waiver request, if you'll
25 recall, they did ask for a waiver because this is, I think, more

1 | than their second waiver.

2 | CHAIRPERSON HOOD: Second time. Yeah, it's been seven
3 | years.

4 | MS. SCHELLIN: It's the second one. Yeah, so they are
5 | asking for a granting of the waiver.

6 | CHAIRPERSON HOOD: So Commissioner Turnbull, could you
7 | make the motion?

8 | COMMISSIONER TURNBULL: Yeah, I will. Mr. Chair, I
9 | would move that we approve Zoning Case No. 15-21C request for time
10 | extension to an approved first H PUD with -- including the waiver
11 | for -- that they're asking for and look for a second.

12 | COMMISSIONER MAY: Second.

13 | COMMISSIONER SHAPIRO: Second.

14 | CHAIRPERSON HOOD: Okay. It's been moved and properly
15 | seconded. Any further discussion?

16 | Okay. Ms. Schellin, you can do a roll call real quick.

17 | MS. SCHELLIN: Was that Commissioner May that seconded
18 | or Commissioner Shapiro? Commissioner May? Okay.

19 | COMMISSIONER MAY: I think you got a double Peter on
20 | that. I was like --

21 | MS. SCHELLIN: That's what I thought, you know. Peter
22 | times two, which I don't hear Commissioner May very often. I lost
23 | my pen here. All right. Roll call. Commissioner Turnbull?

24 | COMMISSIONER TURNBULL: Yes.

25 | MS. SCHELLIN: Commissioner May?

1 COMMISSIONER MAY: Yes.

2 MS. SCHELLIN: Commissioner Hood?

3 CHAIRPERSON HOOD: Yes.

4 MS. SCHELLIN: Commissioner Miller?

5 VICE CHAIR MILLER: Yes.

6 MS. SCHELLIN: Commissioner Shapiro?

7 COMMISSIONER SHAPIRO: Yes.

8 MS. SCHELLIN: Staff records the vote 5 to 0 to 0 to
9 approve final action in Zoning Commission Case No. 15-21C and the
10 granting of the waiver requested.

11 CHAIRPERSON HOOD: All right. Let's move along, but,
12 you know, I can't let this go past me and I know we've been doing
13 this for a while. It's all right to have a little fun, but Ms.
14 Schellin I think you made one mistake. I heard you say that you
15 don't hear Commissioner May often and I was like, "You must mean
16 in the roll call (audio interference)."

17 MS. SCHELLIN: In the vote. In the voting. I'm sorry,
18 in the voting. We hear from him for sure, but not --

19 CHAIRPERSON HOOD: Okay.

20 MS. SCHELLIN: -- in the voting.

21 COMMISSIONER MAY: Yeah. I'm --

22 CHAIRPERSON HOOD: Okay.

23 COMMISSIONER MAY: I'm too busy typing to like turn off
24 my mute button, so.

25 CHAIRPERSON HOOD: All right.

1 COMMISSIONER MAY: So --

2 CHAIRPERSON HOOD: All right. Well, okay. Let's go to
3 -- thank you. Let's go to hearing action Zoning Commission Case
4 No. 20-27. This is the High Street District Development,
5 Incorporated, Consolidated PUD and Related Map Amendment at Square
6 445. And yes, Ms. Fothergill?

7 MS. FOTHERGILL: Good evening Chairman Hood and members
8 of the Commission. I'm Anne Fothergill with the Office of
9 Planning for Zoning Commission Case 20-27 and Mr. Young is (audio
10 interference) map and the comprehensive plan (audio interference).
11 This is an application for consolidated PUD and related map
12 amendment to the MU-6 zone. The Office of Planning finds that the
13 (audio interference) is not inconsistent with the comprehensive
14 plan and recommends that the Commission set it down for a public
15 hearing.

16 The proposed mixed case PUD will be located on the
17 northeast corner of 7th and P Streets, Northwest. The development
18 site consists of seven lots and has a total land area of 22,824
19 square feet. The property currently has a surface parking lot
20 along P Street, a small commercial building and a barbershop on
21 7th Street and the remainder is vacant property. Across P Street
22 to the south is the Kennedy Recreation Center and across 7th
23 Street to the west is an approved PUD that was rezoned to the C-2-
24 C zone at the time, now MU-6 zone.

25 The proposed building would have 230 residential units

1 and 7,400 square feet of ground floor retailers. The height of
2 the building would be 90 feet with nine stories and habitable and
3 mechanical penthouses and the building would be set back above the
4 fifth floor along Marion Street. There would be 56 underground
5 parking spaces accessed off the alley to the north off Marion
6 Street. The total proposed gross floor area is 164,000 square
7 feet with an FAR of 7.17. The project intends to achieve LEED
8 Silver certification.

9 The future land use map and comprehensive plan shows the
10 property striped medium density commercial and medium density
11 residential and also moderate density residential at the corner of
12 P and Marion Streets. The MU-6 zone is not inconsistent with
13 these designations.

14 The text in the OP setdown report inadvertently included
15 the text from the previous framework element for moderate density
16 residential and I wanted to be sure to correct that on the record
17 and note that the project remains consistent with the future land
18 use map designations and the new framework model.

19 THE MU-6 zone is intended to permit medium to high-
20 density mixed-use development and will focus on residential and
21 provide facilities for shopping and business needs, housing and
22 mixed uses for large segments of the District of Columbia outside
23 the central (audio interference). That is what the Zoning
24 Regulations state.

25 This proposal is for a mixed-use development with a

1 focus on residential use. In this case, greater density will be
2 possible since it will be viewed as a community and will be
3 providing additional affordable housing. The proposed building
4 would abut a large area of permanent open space across P Street to
5 the south and will provide a building height and design transition
6 to the residential row dwellings in the adjoining RF-1 zone along
7 Marion Street.

8 The comprehensive plan's generalized policy map
9 indicates that the area is designated as a main street mixed use
10 corridor and the east side of the property is a neighborhood
11 enhancement area. The proposal is not inconsistent with these
12 policy map designations. Main Street mixed use corridor
13 ambitions, pedestrian- oriented street with ground floor retail
14 and upper-store residential like the proposed mixed-use
15 development. This block of 7th Street is underutilized and has
16 capacity for redevelopment that would benefit through proximity to
17 transit and would improve the overall streetscape and pedestrian
18 experience.

19 For the eastern part of the site, the neighborhood
20 enhancement area, the proposal is also in keeping with the
21 guidance. This is currently a surface parking lot, and this is an
22 opportunity for (audio interference) development including
23 residential use. Providing new housing in this area would be in
24 keeping with the goal that new development should support city-
25 wide housing needs.

1 As detailed in the report, the OP report, the proposal
2 would further the guidance found within the comprehensive plan's
3 framework, land use, transportation and housing, (audio
4 interference) production, economic development, and urban design
5 elements as well as the (audio interference) northwest area
6 element.

7 The proposal is also not inconsistent with the guidance
8 found in the 2006 small area plan mentioned in our area strategic
9 development plan. The guidance for 7th Street includes a
10 recommendation for additional residential, retail businesses,
11 affordable housing and rezoning to allow mixed use developments.

12 The applicant includes a request for relief from lot
13 occupancy, penthouse, structures of different height and court
14 width as well as flexibility from a number of elements of the
15 proposal. The project would provide more affordable units than
16 required through Inclusionary Zoning and a deeper level of support
17 (audio interference) requirements from covenants on two lots and
18 additional IZ (audio interference).

19 In addition to the approximately 10 affordable units
20 provided by covenants, the applicant proposes to provide
21 approximately 18 units or 12 percent of the building's residential
22 square footage that is not subject to the covenant restrictions as
23 affordable housing. Twenty-five percent of those units would be
24 two-bedroom units.

25 The applicant has offered a number of additional

1 benefits and amendments as outlined in their application and the
2 OP report. OP recommends that the applicant provide additional
3 information on the building's proposed energy performance, LEED
4 goals, solar installation, and storm water retention, and more
5 details on the benefits and amendments prior to the public
6 hearing.

7 Overall, OP finds that the application is not
8 inconsistent with the comprehensive plan and recommends that it be
9 set down for a public hearing and I'm happy to take any questions.

10 CHAIRPERSON HOOD: Thank you, Ms. Fothergill. We
11 appreciate your presentation. Let's see if we have any questions
12 of the Office of Planning or comments.

13 Commissioner May?

14 COMMISSIONER MAY: Yeah. So the concerning thing about
15 this or one of the concerning things about this project is the
16 future land use map designation for the east side of this site
17 where it's indicated as moderate density and I heard you say
18 something about the contemplated changes to the future land use
19 map and it's -- I mean, is that eastern side of it projected to
20 change in the FLUM or is it going to stay as it is?

21 MS. FOTHERGILL: No, I did not mean to say that. I'm
22 not sure.

23 COMMISSIONER MAY: No. No, I didn't say you were. I
24 just -- like, I didn't hear what you said.

25 MS. FOTHERGILL: No, the -- you're right. The small

1 eastern part of the (audio interference) is different on the
2 future land use map. It's moderate density residential and then -
3 - so with the PUD and with the additional IZ, there's some
4 flexibility and (audio interference) use consistent with that
5 designation.

6 COMMISSIONER MAY: So my question is about the
7 contemplated changes to the future land use map and whether in the
8 future version of the land use map which may be -- go down to
9 council in the coming months, whether this -- it's contemplated to
10 change on that east side.

11 MS. FOTHERGILL: I was not aware that it was, no.

12 COMMISSIONER MAY: Yeah, okay. All right. Well, you
13 know, Mr. Chairman and fellow Commissioners, I'm not comfortable
14 in setting this down at this moment because of that issue. If one
15 looks at some of the drawings that are in this -- I don't know
16 who's -- there's a lot of noise coming from somewhere.

17 CHAIRPERSON HOOD: Yeah, can everybody else mute? I'm
18 even on mute, so if everybody can mute that'll help us. Thanks.

19 COMMISSIONER MAY: Yeah. Thank you. So yeah, I mean, I
20 -- you know, Marion Street is a very small-scale street. It's a
21 very narrow street and the houses are not -- I mean, they're --
22 you know, even for rowhouses they're not very tall even though
23 they're, you know, they're older than many neighborhoods. I just
24 feel like the building, as it is proposed, the massing of it is
25 wrong.

1 It's just way too much building on the Marion side of
2 the block and I understand that they -- you know, they may not be
3 able to achieve full density if they -- or achieve everything that
4 they're proposing here if they were to move some of the density
5 back off of Marion Street, but I think, you know, going up 15 or
6 so feet and then stepping back 15 feet and then going up to 90
7 across the street from a 25-foot townhouse, I don't think is
8 sensible and I don't think it's sensitive to the context or
9 respectful of the neighborhood.

10 It's already going to be a very large project and it's
11 going to have, as I recall, the garage entrance is going to be off
12 the alley which means a lot more traffic on Marion Street as well.
13 I mean, it's -- I'm just not supportive of this at this moment. I
14 feel like it needs to be modified to be more respectful of the
15 context and I think in doing so it will become more consistent
16 with the future land use map, so I feel like that's where I stand
17 on this. I'm just -- I'm not ready to set this down.

18 CHAIRPERSON HOOD: Okay. Thank you, Commissioner May.
19 So noted. Let's hear what others may have to weigh in on this.

20 Commissioner May? I mean, Commissioner Shapiro --

21 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

22 CHAIRPERSON HOOD: -- you had a comment?

23 COMMISSIONER SHAPIRO: I agree with Commissioner May. I
24 would rather have this come back to us than set it down. I
25 actually had a number of issues around the design in addition to

1 | the massing that Commissioner May talked about. I was confused
2 | about -- you know, I was looking at the view from Marion Street
3 | and, you know, trying to make sense of the stairwells, doorways
4 | that were there and how that fit in with the look of the street,
5 | the -- that sort of big glass tower at the corner, sort of just
6 | read too much like a commercial office building and it didn't seem
7 | to fit into the character.

8 | The penthouse is just kind of -- if this came to
9 | hearing, actually we'd bring something like this up, but the
10 | penthouse kind of was too light for Commissioner May, I'm sure and
11 | others. So there were all sorts of issues. I mean, I was even
12 | channeling Commissioner Turnbull where the IZ units seemed pretty
13 | stacked, at least the two-bedroom units. I'm trying to figure out
14 | why, what that was about.

15 | And then in terms of solar, my -- one of my pet issues,
16 | it seemed like there was lip service to it, but I imagine a lot
17 | more could be done with integrating solar and the -- even though
18 | they're integrating solar in the green roof, there could be --
19 | there was much more green roof that could handle much more
20 | integration of solar. So there were any number of issues and I --
21 | for those and mostly from what Commissioner May said, I would not
22 | want this set down. I'd like to see it revised and take another
23 | look at it before we set it down. That's all I have, Mr. Chair.

24 | CHAIRPERSON HOOD: Okay. Thank you. Okay. Thank you,
25 | Commissioner Shapiro.

1 Commissioner Turnbull?

2 COMMISSIONER TURNBULL: Thank you, Mr. Chair. First of
3 all, I would agree with my colleagues and all their -- and their
4 comments. I don't think project is quite ripe yet to be set down.
5 Getting back -- what we could -- you know, Commissioner Shapiro
6 talked about the IZ units and there are cellar units in this
7 project and one corner there and there is, I think seven, maybe
8 seven units, maybe more, in the cellar.

9 Three of those are IZ units, but they have these little,
10 tiny -- they have these little area wells which I'm assuming are
11 the windows and if you look at some of these sections, these --
12 there's only about 3 feet of the project is above grade. So
13 you've got these area wells that are somehow going to allow light
14 and air into these units which I think they've really got to take
15 -- I really have to see some more information on what the heck
16 life is like from those area wells. I think it's really kind of a
17 minimal place that they've got down there.

18 They have a huge place, they have a huge brick pier on
19 one side that is scheduled for a retail sign almost the full
20 height of the building and if it's a residential building, I
21 wonder how many people want to live next to a -- kind of look out
22 and see a big sign staring at them. We do -- I've seen -- there's
23 a lot of those in Arlington and I don't know how anyone stands to
24 live next to some of those signs on their building, so I think
25 they really need -- I really need to know a lot more information

1 or why they need a huge sign that goes the whole height of the
2 building that does that. To me, that's just ridiculous.

3 The other thing is that up on the roof, we really need
4 to know a lot more what's going on up at that roof. There is a TV
5 screen which looks like it could be a mini theatre screen. So I
6 don't know what kind of an impact that's going to have on the rest
7 of the neighborhood, but I'd really like to know what -- some more
8 information on what's going on the roof, what kind of facilities
9 you're going to have up there. Is there really a widescreen TV up
10 there that's going to be playing; what are the hours for life up
11 there?

12 So but they also want relief on the facade design for
13 the retail and it's just like the carte blanche thing, you know,
14 to accommodate the needs of the retailer. I think that's fine to
15 an extent, but I think we really need to be careful about how much
16 flexibility we give them. We need to see some idea of what
17 they're going to do.

18 Most of the other things that they're wanting I think is
19 okay, but I would agree with my colleagues. I think they need a
20 little bit more work to do on this. I think some of the views,
21 the renderings of looking at Marion Street, are a little bit
22 deceptive. It looks like they're pretty close in height to the
23 townhouses across the street except when you see a section of the
24 street, then you notice that there's two whole floors taller than
25 that, so it's really going to dwarf the street. So I think the

1 applicant really needs to go back and look at the scale and look
2 at a lot of different things before it's -- we can set this down.
3 And with that, Mr. Chair, I will relinquish.

4 CHAIRPERSON HOOD: Okay. Thank you, Commissioner
5 Turnbull.

6 Vice Chair Miller, do you have any comments or
7 questions?

8 VICE CHAIR MILLER: Yes. Thank you, Mr. Chairman. I
9 have no disagreement with any of the comments of my colleagues and
10 -- but I, you know, I can count to three. I would have personally
11 voted to set it -- to set this down for a hearing and ask the
12 applicant to make all of those design changes, and other changes,
13 and requests for information that my colleagues have asked for
14 between now and the actual date of a public hearing which if they
15 -- if it's insufficiently -- if sufficient progress wasn't made on
16 those points, the design points and the delineation of the
17 comprehensive plan policies that might outweigh the potential land
18 use mapping consistency at that one corner that's moderate density
19 residential, a better delineation of why the other policy would
20 outweigh that land use map designation as well as other changes
21 and we can always -- and we have -- I mean, we've done it both
22 ways in the past and if we get to the hearing and progress hasn't
23 been made, we have not held the hearing. We said you've got to --
24 we'll -- we're going to put it off.

25 So I would have allowed the momentum of this project

1 | which has the -- I think has the support of the ANC and in a time
2 | when I'm thankful that projects are even going forward and
3 | surprised that they are, pleasantly surprised that they are going
4 | forward in the economic and public health crisis climate that
5 | we're in. So I think all of those issues need to be addressed. I
6 | think they could have been addressed between a set down tonight
7 | and the actual hearing or if they weren't, we could put off the
8 | hearing as we've done in the past, but I can count to three or
9 | four and my single vote wouldn't make a difference there, so I see
10 | where this is going. Thank you, Mr. Chairman.

11 | CHAIRPERSON HOOD: Okay. Thank you much. I actually
12 | agree with my colleagues. I agree with the Vice Chair as well,
13 | and I also agree with -- I agree with all of my other colleagues
14 | as well. So I think, you know, we -- as was mentioned, we've
15 | already done this both ways, but I think this is time to do
16 | something here, the (audio interference) and I also would agree
17 | that hopefully I can, you know, make the case depending upon the
18 | changes that come back forward, as we set it down, of why the FLUM
19 | says one thing and why they believe the other policies outweigh
20 | that for us -- for our approval, so -- as the Vice Chair has
21 | already mentioned.

22 | So the those are the kind of things that we're looking
23 | at Ms. Fothergill, and hopefully the applicants are listening.
24 | Take some more time and I guess you can bring it back next month,
25 | I believe, or I'm not sure how all that works, but I'll leave that

1 up to staff, and up to OP, and the applicant.

2 Vice Chair, you had something else you wanted to add?

3 VICE CHAIR MILLER: Yeah, just one other thing. As long
4 as there is this time period, it might be worth exploring, a time
5 period when comprehensive plan land use map changes are pending
6 before the council. I think Ms. Fothergill said she wasn't aware
7 whether there is a proposed change by the Mayor or the affected
8 Ward councilmember for this site, but it might be worth exploring
9 whether there should be a change. Not that the existing
10 designations can't be dealt with in a case going forward if
11 there's appropriate design changes and delineation of the other
12 comp plan policies, but it might be worth exploring whether there
13 should be an adjustment to the land use map designation for that
14 corner from the moderate density residential that's currently
15 there to something that might be a little bit more accommodating.

16 CHAIRPERSON HOOD: Okay. Thank you, Vice Chair.

17 Also, I would agree with Commissioner Shapiro about the
18 roof. I actually like the roof, but the light colors of it for
19 the mechanical pieces up in there, I would ask that they relook at
20 that as well. I think that's what Commissioner Shapiro had
21 mentioned. So anyway, all of those comments. We'll look forward
22 to seeing what comes back and we'll go from there.

23 Mr. Shapiro, did you want to say something? Oh. Okay.
24 I thought you.

25 All right. So Ms. Schellin, what do we give them, 30

1 days or they take as much time? I'm not sure.

2 MS. SCHELLIN: I will just wait for the applicant to
3 supplement the record and I imagine OP will do a supplemental
4 report 10 days prior to one of our meetings and when that report
5 comes in, I will put it on an agenda.

6 CHAIRPERSON HOOD: Okay. Thank you, very much.
7 Thank you, Ms. Fothergill.

8 MS. FOTHERGILL: Thank you.

9 CHAIRPERSON HOOD: All right. So let's move right on to
10 Zoning Commission Case No. 21-02, the Office of Planning Text
11 Amendment to Subtitle C, D, F, G, H, and K (IZ XL Phase I).
12 Hopefully I pronounced that XL correctly. So who was -- Mr.
13 Kirschenbaum? You're on mute, Mr. Kirschenbaum.

14 MR. KIRSCHENBAUM: Good evening everyone. Paul, when
15 you get a chance can you bring up the presentation? Thank you.
16 So good evening Chair Hood and members of the Zoning Commission,
17 Johnathan Kirschenbaum with the Office of Planning for Case 21-02.

18 We are pleased to bring forward the first phase of IZ
19 XL. These proposed text amendments propose to apply the Regular
20 IZ program to certain exempt zones and to modify the existing set-
21 aside requirements to reflect changes to both the Building Code
22 and construction technology which permit taller stick-built
23 buildings. These text amendments would only apply to the existing
24 IZ program which we have been referring to as Regular IZ.

25 As a reminder, the separate IZ Plus text amendments

1 | under Case No. 20-02 already incorporate many of these proposed
2 | changes that we will discuss with you tonight. The Office of
3 | Planning recommends set down of these proposed text amendments
4 | which would not be inconsistent with the comprehensive plan. And
5 | can we go to the next slide?

6 | The Historic District -- so first we'll discuss Historic
7 | Districts. The following Historic Districts are exempt from the
8 | Regular IZ program and they are now proposed to have the program
9 | apply and those would be the R3 in the Anacostia Historic
10 | District, MU-13 in the Georgetown Historic District, and NC-6 in
11 | the Capitol Hill Historic District.

12 | At the time of the adoption of the Regular IZ program,
13 | these areas were exempted from an IZ requirement and bonus density
14 | because there was a concern that the use of IZ bonus density may
15 | have an impact on historic neighborhood scale and character. A
16 | more recent and detailed preliminary review of these areas
17 | indicates that buildings using IZ bonus density could be designed
18 | to be compatible with their historic district and development in
19 | these areas, you know, will continue to be a subject to the
20 | requirements of the Historic Preservation Act and also a review by
21 | the Historic Preservation Review Board when necessary. Next
22 | slide, please?

23 | The tables on the next several slides will show the
24 | existing matter-of-right development standards and the proposed IZ
25 | density bonuses proposed for these zones. So for R-3 in the

1 Anacostia Historic District, it is proposed to have IZ bonus
2 densities that are consistent with bonuses that already exist for
3 the R-3 zone outside of the historic district. IZ density bonuses
4 proposed would permit a minimum lot area of 1,600 square feet and
5 the minimum lot width could be 16.8 through a special exception.
6 Next slide, please?

7 The MU-13 zone in the Georgetown Historic District is
8 proposed to have IZ bonuses consistent with what this zone was
9 under ZR58 outside of Georgetown. IZ density bonuses would permit
10 a maximum height of 80 feet and a maximum FAR of 4.8. Next slide,
11 please?

12 And the last historic district is the NC-6, 8th Street
13 zone in Capitol Hill. It's proposed to apply to all properties in
14 the zone other than Square 907 and that is -- that contains the
15 Navy Yard Cardbarn -- I'm sorry Car Barn Historic District. This
16 landmark already covers 100 percent of the lot and cannot
17 accommodate additional density. IZ density bonuses would permit a
18 maximum height of 55 feet and a maximum of -- a maximum FAR of
19 3.6. Next slide, please?

20 The following zones that are not part of a historic
21 district are also exempt from the Regular IZ program and are now
22 proposed to have the program apply and these include the RA-5 and
23 the RA-10 DuPont Circle Zones, Capitol Gateway 1 and MU-27 Naval
24 Observatory Zone.

25 At the time of the adoption of the Regular IZ program,

1 | these areas were exempted from IZ requirements because there was a
2 | concern that these zones would have difficulties accommodating
3 | additional density. The RA-5, RA-10 and Capitol Gateway 1 zones
4 | already permitted the maximum height permitted under the Height
5 | Act at 90 feet and the MU-27 zone is limited to 40 feet because it
6 | is located adjacent to the Naval Observatory. The height of these
7 | zones cannot be further increased and thus the height bonus could
8 | not be provided to help buildings access a 20 percent IZ FAR
9 | density bonus.

10 | We have -- OP has reevaluated the feasibility for
11 | applying the Regular IZ program with a 20 percent FAR density
12 | bonus to these zones and, you know, through our preliminary
13 | analysis we have found that it's possible through -- to provide
14 | density bonuses through a lot occupancy density bonus. Increasing
15 | lot occupancy would allow for buildings to access their maximum
16 | potential FAR with a 20 percent IZ density bonus while complying
17 | with other matter-of-right development standards like rear yards.
18 | Next slide, please?

19 | So both the RA-5 and RA-10 zones are proposed to have IZ
20 | density bonuses that would permit a maximum FAR of 7.2 and a
21 | maximum lot occupancy of 80 percent. Next slide please?

22 | And this is for the RA-10 zone which has the same
23 | development standards. It's just this map shows you where the RA-
24 | 10 zone, I'm sorry, the RA -- yeah, the RA-10 zone is currently
25 | mapped. And then next slide, please?

1 The Capitol Gateway 1 zone is proposed to have IZ
2 density bonuses that would permit a maximum FAR of 7.2 and a
3 maximum lot occupancy of 90 percent. Next slide?

4 And lastly, the MU-27 zone is proposed to have IZ
5 density bonuses consistent with the equivalent of this zone which
6 is MU-4. IZ density bonuses would permit a maximum FAR of 3 and a
7 maximum lot occupancy of 75 percent. Next slide, please?

8 The regular -- so now we'll shift over to the set-aside
9 requirement changes, proposed changes. The Regular IZ program has
10 two different set-aside requirements that take into account the
11 type and the cost of construction. The current set-aside
12 requirements is on the table in front of you. Since the adoption
13 of the Regular IZ program, changes to the Building Code and
14 technology have allowed stick-built construction as tall as 85
15 feet which is generally lower in cost than concrete and steel
16 construction. Increasing this height threshold as it relates to
17 construction type and the set-aside requirement would result in
18 potentially more IZ units because it would not adversely affect
19 the economic balance that could result in fewer overall units.

20 IZ Plus already proposes to adjust the height threshold
21 from 50 feet to 85 feet and this proposed text amendment would
22 align the requirement for inclusionary developments that are
23 subject to Regular IZ to align with what we have proposed in IZ
24 Plus. Next slide, please?

25 And this slide again is the proposed set-aside

1 requirements showing that the threshold is based on 85 feet and
2 this concludes my presentation. Please let me know if you have
3 any questions. Thank you.

4 CHAIRPERSON HOOD: Thank you, Mr. Kirschenbaum. Let's
5 see if we have any questions or comments.

6 Commissioner May? Okay.

7 Commissioner Shapiro?

8 Commissioner Turnbull?

9 COMMISSIONER TURNBULL: No comments. I was just
10 wondering, is your PowerPoint going to be in the record?

11 MR. KIRSCHENBAUM: Yes. We have emailed it to the
12 Secretary, and we can also upload it ourselves to the record, but
13 it will be in the record, yeah, in one way or another.

14 COMMISSIONER TURNBULL: Great.

15 MS. SCHELLIN: Can we just ask OP to go ahead and do
16 that then?

17 MR. KIRSCHENBAUM: No problem.

18 CHAIRPERSON HOOD: And Vice Chair, do you have any
19 questions or comments?

20 VICE CHAIR MILLER: Yes, Mr. Chairman. Thank you.
21 Thank you, Mr. Kirschenbaum for your presentation and thanks to
22 Office of Planning for all the work in bringing forward both the
23 expanded IZ case that we dealt with earlier this evening and this
24 XL case, and future cases to potentially expand and capture
25 affordable housing and projects throughout the city. Is this the

1 report -- (audio interference)? I lost track.

2 Is this the report that says that you are looking, that
3 the office is looking at the downtown zones for later -- a
4 potentially later proposal to apply IZ to it, but it currently
5 isn't being proposed to -- that's not one of the zones, the D zone
6 is not being proposed to eliminate from the current exemptions; is
7 that correct?

8 MR. KIRSCHENBAUM: So --

9 MS. STEINGASSER: That's correct. Yes, this is
10 Jennifer. I just wanted to make a -- the D zones are not part of
11 this case.

12 VICE CHAIR MILLER: You are looking at that for -- in
13 terms of all of the economic analysis because it's --

14 MS. STEINGASSER: It's a much more complex study and
15 we'll be bringing that forward later -- in the late spring, early
16 summer.

17 VICE CHAIR MILLER: Okay. Well, that's what I wanted
18 just to clarify my own understanding of what you're doing and the
19 public's understanding and I think that's important to continue to
20 look at as the zone that even though it has a lot of public
21 benefits that are trying to be achieved and it already has the
22 maximum build-out that's permitted in order to achieve all of
23 those goals, it's important still to look at that zone to see if
24 we can squeeze some inclusionary zoning units there, so I
25 appreciate that you're looking at that and look forward to a

1 | proposal hopefully on that.

2 | The other area I just lost track of, whether this IZ is
3 | applying here, or whether we did it in a previous case, or it's a
4 | future case, the conversion of office buildings to residential.
5 | Is that part of this case, that -- that IZ would apply? I know we
6 | had cases before us in zones that don't require inclusionary
7 | zoning, but there have been commercial offices to residential
8 | where IZ just didn't get applied, but we were going to look at
9 | whether they should be applied regardless of the zoning (audio
10 | interference).

11 | MS. STEINGASSER: Right. That'll be coming back to you
12 | as Phase II. So we took all of this and we had laid this out in
13 | three separate phases, so this is our part. This is part I of IZ
14 | XL. Part II will be looking at the issue of conversions of non-
15 | residential to residential and then Part III will be looking at
16 | the D zones.

17 | VICE CHAIR MILLER: Right. Okay. Well, I'm glad to be
18 | reminded that the conversions will be dealt with more quickly
19 | because I think that that is more -- a less complicated analysis
20 | and its lost opportunity right now that I think increasingly,
21 | we'll be seeing in zones that -- where IZ doesn't apply and I
22 | think that that -- there's an urgency to try to capture that
23 | potential. So I'm glad to hear that that's Phase II and I'll look
24 | forward to seeing that as well and I support setting down this
25 | hearing, Mr. Chairman. Thanks for all your work, Ms. Steingasser.

1 CHAIRPERSON HOOD: Okay. Thank you. Thank you for that
2 discussion, Vice Chair. Any other questions or comments? Vice
3 Chair, would you like to make a motion to set it down? I think
4 we're all in favor. Well, we'll see.

5 VICE CHAIR MILLER: Yes. I would move that the Zoning
6 Commission set down Case No. 21 -- I'm not sure I have the number.

7 CHAIRPERSON HOOD: Okay.

8 COMMISSIONER SHAPIRO: 02.

9 CHAIRPERSON HOOD: It's 21-02.

10 VICE CHAIR MILLER: 21-02, the IZ, Inclusionary Zoning,
11 XL Phase I case and ask for a second.

12 COMMISSIONER SHAPIRO: Second.

13 CHAIRPERSON HOOD: Okay. It's been moved and seconded.
14 Any further discussions or comments? Mr. Schellin, could you do
15 a roll call vote, please?

16 MS. SCHELLIN: Yes. Commissioner Miller?

17 VICE CHAIR MILLER: Yes.

18 MS. SCHELLIN: Commissioner Turnbull?

19 COMMISSIONER TURNBULL: Yes.

20 MS. SCHELLIN: Commissioner Hood?

21 CHAIRPERSON HOOD: Yes.

22 MS. SCHELLIN: Commissioner May?

23 COMMISSIONER MAY: Yes.

24 MS. SCHELLIN: Commissioner Shapiro?

25 COMMISSIONER SHAPIRO: Yes.

1 MS. SCHELLIN: The vote is 5 to 0 to 0 to set down
2 Zoning Commission Case No. 20-02 as a rulemaking case.

3 CHAIRPERSON HOOD: Thank you again, Mr. Kirschenbaum.
4 Let's move right on to our -- I think this is our last hearing
5 action, Zoning Commission Case No. 21-03. This is the Office of
6 Zoning Text Amendment to Subtitles Y and Z, Text Amendments to
7 Subtitles Y and Z which says Compliance with Clean Hands Mandate
8 and Corporate Registration Requirement. Who is doing that one,
9 Ms. Schellin?

10 MS. SCHELLIN: Yes, sir. In working with the Office of
11 the Attorney General and based on some calls that the Office has
12 received and not only from individuals, but also from DCRA, the
13 Office of Zoning would like to move forward with this text
14 amendment to make changes to Y and Z to ensure that anyone that
15 does -- files applications with the BZA and the Zoning Commission
16 are in compliance with the Clean Hands Act and Corporate
17 Registration requirements.

18 We also, in addition to asking for set down and the
19 Commission taking emergency action and authorizing immediate
20 publication of the notice of proposed rulemaking and authorizing a
21 30-day notice, public hearing notice, we would also note that we
22 need to -- need leave to work with the Office of the Attorney
23 General in refining the actual language for the text amendment if
24 you would allow us to do that prior to publication and so I'll
25 leave it at that for any questions you may have.

1 CHAIRPERSON HOOD: Thank you, Ms. Schellin. I will tell
2 you that I think when I saw this, I thought it was great. This
3 was long overdue. I know we talked about this some years ago.

4 MS. SCHELLIN: (Audio interference).

5 CHAIRPERSON HOOD: Back in the 90's or early 2000's, but
6 this is long overdue, and I think it's -- I definitely will be
7 voting in favor of this but let me go around.

8 Commissioner May, any questions or comments?

9 Commissioner Shapiro, any questions or comments?

10 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. And I
11 agree with you. I think the concept of this is great. I do have
12 questions about who it applies to in terms of who comes before us
13 with cases. You know, the owner, the applicant, the
14 representatives of the owner or applicant? You know, there are
15 all sorts of folks who come before us and it doesn't feel clear to
16 me who this would apply to. That's one question, but there may or
17 may not be an answer to that. It may just be something to flag.
18 I don't know, Ms. Schellin or Mr. Tondro, if you have any
19 reactions to that now or is that just something --

20 MS. SCHELLIN: As far as who it applies to?

21 COMMISSIONER SHAPIRO: Yeah.

22 MS. SCHELLIN: I think the intent -- there was something
23 that just before the meeting started this evening we had a little
24 discussion about, because I had received a call asking in the case
25 of where let's say a potential buyer of property and the seller

1 gave the buyer authorization to bring a case before the Board or
2 the Commission, would the owner of the property have to provide
3 that information or would it just be the applicant and I thought -
4 - I don't have the language right here in front of me. Sorry, I
5 lost my connection a few minutes ago.

6 But I thought the language that we had initially
7 proposed said the owner or applicant and if so, in talking with
8 Mr. Tondro, which he can join in on this, I -- he said the intent
9 was that both the owner and the applicant would have to provide
10 the information or he would look at the Act, you know, the other
11 language to make sure that we're in the same realm of language
12 used there. Is that right, Mr. Tondro? You're going to take a
13 further look at that?

14 MR. TONDRO: Yes. I think the -- I think the intent,
15 as I understand from the Office of Zoning, is for it to apply to
16 both the applicant and any agent, that they would be required to
17 submit proof that they comply with the Clean Hands and also, if
18 they are a business entity, with the Corporate Registration
19 requirements. I agree that the language should probably be
20 tightened, so if the Commission was in agreement with that and
21 then give me flexibility to address that in the language, I would
22 so before it goes out as a public hearing notice.

23 MS. SCHELLIN: Right. And it wasn't our intent that the
24 -- you know, if an owner gave authorization as many times they do,
25 we ask for the letter of authorization to, say, a law firm or an

1 architect, that they would be the ones providing their Clean Hands
2 and Corporate Registration because it's -- they're not essentially
3 the ones who are working on the project themselves. So it was
4 never our intent that it would be them. So Max will -- OAG will
5 help us with the language on that if permitted by the Commission.

6 COMMISSIONER SHAPIRO: Yeah.

7 CHAIRPERSON HOOD: Okay.

8 COMMISSIONER SHAPIRO: Thank you. That actually helps
9 me -- that clarifies that a lot, both the intent and I'll trust
10 Office of the Attorney General (audio interference) can figure out
11 how to memorialize that. The other thing is this applies to
12 companies and it applies to individuals, right?

13 MS. SCHELLIN: Yes.

14 COMMISSIONER SHAPIRO: So --

15 MS. SCHELLIN: Yes, because they have to show that they
16 are, as we've been told, that they are current in their taxes
17 because we all owe taxes. I guess every day we owe taxes, so that
18 they are current in their taxes.

19 COMMISSIONER SHAPIRO: So my understanding, and this may
20 be my ignorance, but I've actually dealt with Clean Hands
21 certifications in a number of ways. It doesn't just apply to
22 taxes. It applies to fines and fees that are owed, a broad range
23 of things. It even applies to unpaid parking citations. Now, so
24 that language isn't so clear now, right? Because it's unpaid
25 parking citations from a jurisdiction with whom we have

1 reciprocity. All right?

2 MS. SCHELLIN: Is that correct, Max? I think it -- I'm
3 not positive. I'm not read up on all of it. I was just thinking
4 in the lines of the District, but I have not -- I'll be honest, I
5 have not read the Act all the way through so Max would know
6 better.

7 MR. TONDRO: I think I can follow-up on that,
8 Commissioner Shapiro. As far as I understand, it has to be a debt
9 that's owed to the District of more than \$100, but you are correct
10 that it is not just taxes. It's also fees, fines, and penalties
11 including also failure to file a tax return.

12 COMMISSIONER SHAPIRO: So I think the -- you know, we're
13 bit of the beast in that way and I want to make -- I want to -- I
14 just want to make -- talk about unintended consequences. So I
15 really like the idea of this, this is the (audio interference),
16 but what are we really asking for given the breadth of what (audio
17 interference) Clean Hands actually applies to?

18 So, you know, would we really not want somebody to come
19 before us who owed more than \$100 in unpaid parking citations in
20 the state of Maryland? And as my read of the Act, yes, that would
21 not be allowed to come before us. So I don't know how to get the
22 answer to it, but I think we, as a body, should be clear about
23 what this actually does and doesn't do.

24 MS. SCHELLIN: I think that we'll have to spell that out
25 in the language as we work through it.

1 MR. TONDRO: One possibility, Commissioner Shapiro,
2 would be for the purposes of the Clean Hands that they could
3 provide it, the certificate, that they have met it or, if they
4 can't, then they provide an explanation as to why not. And so in
5 that case, if there was an issue with the fact that it's an unpaid
6 parking ticket from Maryland, they could explain that. This is --
7 these are application requirements. That's the way that they're
8 framed, so that they have to provide it before it can be accepted
9 if that makes --

10 MS. SCHELLIN: Again, that would --

11 COMMISSIONER SHAPIRO: Yeah.

12 MS. SCHELLIN: -- be the staff. We have to remember the
13 staff accepts the application, so we have to be really careful in
14 that because if it's something the Commission doesn't want the
15 staff doing, then we would have -- the text has to be very clear
16 on this because if I say, "Okay. Well, that's owed to Maryland.
17 That's not D.C.," and the Commission says, "Oh, no, no, no. We
18 really meant it for Maryland, Virginia, and D.C.," we've got to
19 make it very clear what you guys really intend. Do you want it to
20 just be D.C. or do you want it --

21 COMMISSIONER SHAPIRO: But I don't think --

22 MS. SCHELLIN: -- according to the Act?

23 COMMISSIONER SHAPIRO: I don't think we want to a
24 qualified certificate in advance. You either get it or you don't.
25 So all of this is to say that I'm just afraid that there's more to

1 | this than we're making of it and I think it's worth getting some
2 | answers to these questions and maybe a conversation with DCRA as
3 | well, you know, or I guess it's OTR. I --

4 | MS. SCHELLIN: DCRA actually contacted us and is what
5 | really initiated us filing this case.

6 | COMMISSIONER SHAPIRO: But it's OTR that grants the
7 | certificates of Clean Hands and there may be a conversation there
8 | to figure out what all the consequences of this are because it's
9 | just -- we have such a wide range of people who come before us and
10 | I want to make sure this is action, something that works out
11 | (audio interference). I guess the idea behind it which is, you
12 | know, (audio interference) thought that.

13 | CHAIRPERSON HOOD: Okay. Thanks. Well, let me go back
14 | to Commissioner May.

15 | COMMISSIONER MAY: Yeah, I just want to mention one
16 | thing. You know, if you're going to look at unintended
17 | consequences, I think one of the things to look at, and parking
18 | tickets is what triggered this for me, is FMBZA, diplomatic
19 | missions and ticket infractions. Is that going to be enough for
20 | us to stop an FMBZA application? So it's something to consider
21 | because I think there are broader implications in something like
22 | that than just if somebody has a ticket in another state.

23 | COMMISSIONER SHAPIRO: And there -- I mean, for me, it's
24 | like thank the good lord. There are probably, you know, a dozen
25 | example of where there are unintended consequences (audio

1 | interference). So I think it's just worth a more thorough
2 | perusing.

3 | CHAIRPERSON HOOD: Okay. Mr. Turnbull, you have any
4 | comments on this?

5 | Vice Chair, you have any comments or questions on this?

6 | All right. Mr. Tondro, I saw you had a comment?

7 | MR. TONDRO: Yeah. (Audio interference) are valid and
8 | I did check, Commissioner Shapiro, right now, the issue that you
9 | had raised in response, in -- regarding to the Clean Hands Act.
10 | You are right, the mandate is -- does include parking fines and
11 | penalties from other jurisdictions. One option that you could do
12 | is you could go tonight and take emergency action just on
13 | requiring the Corporate Registration and then leave the Clean
14 | Hands mandate issue for OZ and OAG to review and come back to you
15 | with -- as to what we could do for that one.

16 | CHAIRPERSON HOOD: So after hearing -- I thought this
17 | was going to be relatively simple when I first looked at it and
18 | now, I'm thinking that maybe that's why it fell by the wayside
19 | years ago when we brought it up. I don't know. So I do want us
20 | to -- I think it's a good concept we're moving. I think we could
21 | take our counsel's recommendation to us unless I hear some
22 | opposition and then they can come back with some finer language
23 | unless, Ms. Schellin --

24 | MS. SCHELLIN: Yeah.

25 | CHAIRPERSON HOOD: Let's just -- here's the other thing

1 | though. If DCRA is already doing something and I don't know what
2 | they're doing, then maybe should ours mirror whatever they're
3 | doing?

4 | MS. SCHELLIN: Well, Chairman Hood, if I may? They
5 | contacted our director asking why the Commission and Board were
6 | entertaining applications when they were getting the applications
7 | after the Board and Commission were approving cases and when it
8 | got to them, they weren't going anywhere because of this and they
9 | felt that we shouldn't even be entertaining these cases, these
10 | projects, because of this. It should stop before it ever got to
11 | them, that we should be stopping it.

12 | And so that's what initiated this. And if I may, to
13 | respond to what, with all due respect, to what OAG has suggested,
14 | rather than not moving forward with any part of the Clean Hands
15 | Act, if the Commission would just indulge us with just moving
16 | forward with just saying, you know, doing the Corporate
17 | Registration and maybe we could just do the Clean Hands Act and
18 | just say any taxes due to the District just for now and we could
19 | supplement that later. OAG, would that be okay?

20 | And I only bring that up because it was brought to our
21 | attention regarding some BZA applicants. We received calls from
22 | two ANC's that said, "Why are you guys entertaining these
23 | applications when they owe a lot of back taxes," and that was on
24 | two cases. Sorry, but.

25 | CHAIRPERSON HOOD: So let me just opine.

1 MS. SCHELLIN: And we told them we were already in the
2 process of working on something.

3 CHAIRPERSON HOOD: Okay. Let me just opine. I realize
4 we can throw a lot of caveats into this. Again, this came up
5 previously. I want to say 20 years ago, but anyway, this has come
6 up before. I am willing to take the set down, the emergency
7 action, and whatever is proposed for us today and we can unravel
8 and leave up the rest to OZ and -- what did I say, OZ and OAG and
9 I'll tell you why.

10 Because this is not the first time I've heard that.
11 I've been hearing it over the years, and I think the residents of
12 this city are expecting more. Yeah, the buck has got to be pushed
13 over to us, but at some point in time we got to get stuff done and
14 then -- and it's not -- it's just not fair for people to come in
15 and get permits and get stuff and they owe this city mountains of
16 money. You know, the mayoral appointees, the first question that
17 the Chairman asks you is, "Are you current with your taxes?" So
18 you -- we can't -- you can't even do this if you ain't current.
19 So anyway. So why do we let people come in front of us? We got
20 to be current. They should be current, and I think the residents
21 deserve better.

22 Commissioner Shapiro, then I'll go to Commissioner May.

23 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. So I'm
24 going to play with what you said. When we go before the council,
25 they ask us if we're current with our taxes. They do not ask us

1 | if we owe any parking tickets. But I think the problem with a
2 | certificate of Clean Hands is it really is a shotgun approach to,
3 | I don't know, whatever the word is, to -- I'm too old to remember
4 | the word. But anyhow, I agree with the point around why would we
5 | allow somebody to come before us who hasn't paid taxes. I get it.
6 | But this is so much more than that and is there a way, to Mr.
7 | Tondro's point, is there a way to do a narrow version of it that
8 | addresses that big issue which is there's no excuse for it and
9 | then let us figure out the more complex part which is what the
10 | certificate of Clean Hands does.

11 | CHAIRPERSON HOOD: Well, Commissioner Shapiro, let me --
12 | since you want to play with it, I don't mind. Let's go back and
13 | forth. They ask you in public, "Are you current with your taxes,"
14 | but they also do a background check. Now, if you owe a ticket --
15 | well, most of the time in my neighborhood if I owe a ticket and it
16 | goes over so many days, my car might not be there. It'll be a
17 | boot or something on it. You know, they don't tell us or ask us
18 | do we owe any parking tickets, but they also do a background
19 | check. You fill out a background check, you know. You don't know
20 | what all that background check -- I hear what you're saying, but I
21 | think there's some people who, and I don't necessarily agree with
22 | cutting it up, we do the corporate first and then we turn this,
23 | but maybe we need to -- and if DCRA could call us and ask us, for
24 | citizens to ask us, then that means we need to do something.
25 | That's where I'm at.

1 Commissioner May?

2 COMMISSIONER MAY: Okay. So I was okay with this sort
3 of starting off, but the more we talk about it, the more concerned
4 I am about taking immediate action on this because, first of all,
5 what we've heard is that, you know, we're doing this in response
6 to a request from DCRA who is already stopping any projects from
7 moving forward because of their Clean Hands rules and we've heard
8 about it from, you know, certain ANCs and so, yes, that means that
9 we should deal with it, but it doesn't necessarily mean that we
10 should launch something that's not fully baked.

11 And then the last thing, you know, that I note is that,
12 you know, Mr. Chairman, you said that we talked about this maybe
13 20 years ago. Maybe not you and I, maybe you and somebody else,
14 but, you know, it's that long in the making. Why does it have to
15 be done right now? It seems to me that the whole thing would make
16 a lot more sense if we give OZ and OAG another couple of weeks to
17 figure it out and to make a cleaner recommendation about what we
18 approve. I just think it's better than wait rather than try to
19 set it down with, you know, too much leeway on how it gets worded
20 or too many qualifications because it just seems crazy to me, you
21 know, trying to figure it out on the spot right now.

22 CHAIRPERSON HOOD: Okay. Can --

23 MS. SCHELLIN: Okay. Can we put it on the --

24 CHAIRPERSON HOOD: Let me ask this. Ms. Schellin, let
25 me ask you this. Can you come -- can you have it back to us by

1 February the 8th --

2 MS. SCHELLIN: February 11th or --

3 CHAIRPERSON HOOD: -- Mr. Tondro and Ms. Schellin?

4 MS. SCHELLIN: For the February 11th meeting? February
5 11th?

6 CHAIRPERSON HOOD: February 8th meeting. We have --
7 it's February 8th.

8 MS. SCHELLIN: Is it February 8th?

9 COMMISSIONER MAY: No, it's February -- that's a --

10 MS. SCHELLIN: 11th?

11 COMMISSIONER MAY: -- Monday.

12 MS. SCHELLIN: 11th?

13 COMMISSIONER MAY: It would be the 11th.

14 MS. SCHELLIN: We're on Thursdays now. Get with the
15 program, Mr. Hood.

16 CHAIRPERSON HOOD: I'm looking at the -- I'm looking at
17 the ZDOCS. Whatever. I'm looking at ZDOCS so I can announce --

18 MS. SCHELLIN: Well --

19 CHAIRPERSON HOOD: -- the next meeting.

20 MS. SCHELLIN: -- ZDOCS is wrong. ZDOCS is wrong. It
21 should have been put in for February 11th. If it's in there for
22 the 8th, I stand corrected.

23 CHAIRPERSON HOOD: How are we going to get (audio
24 interference) to give us Clean Hands in our hands? We've got the
25 wrong date in our materials.

1 MS. SCHELLIN: Yeah.

2 CHAIRPERSON HOOD: Go ahead.

3 MS. SCHELLIN: February 8th is a hearing. It should be
4 in -- February 8th should be in there as a hearing, but not a
5 meeting. So, yes --

6 CHAIRPERSON HOOD: Okay.

7 MS. SCHELLIN: -- I think that, Max, we can do that.
8 Yes. So we'll bring it back to you. Thank you. We'll bring you
9 some language, so it'll be much clearer.

10 CHAIRPERSON HOOD: Okay. So thank you, Commissioner
11 Shapiro and others, and Commissioner May, and Turnbull, Vice
12 Chair, for bringing up that up. Any other questions or comments?

13 Mr. Turnbull, were you going to -- did you want to
14 comment? Okay. We got everybody? Everybody commented? So --

15 COMMISSIONER SHAPIRO: I think --

16 CHAIRPERSON HOOD: Commissioner --

17 COMMISSIONER SHAPIRO: Mr. Chair, I think Mr. Turnbull
18 --

19 CHAIRPERSON HOOD: Yes?

20 COMMISSIONER SHAPIRO: -- was saying he promises to pay
21 his parking tickets. I think that's what he was saying.

22 COMMISSIONER TURNBULL: (Audio interference).

23 CHAIRPERSON HOOD: Okay. So I was going to announce the
24 next meeting, but it's obviously -- it says Zoning Commission --
25 we have a meeting --

1 MS. SCHELLIN: It's the 8th.

2 CHAIRPERSON HOOD: -- on February 8th, but we have a
3 hearing --

4 MS. SCHELLIN: It's the 8th.

5 CHAIRPERSON HOOD: February 8th is the hearing?

6 MS. SCHELLIN: Yes, there's a hearing --

7 CHAIRPERSON HOOD: Just --

8 MS. SCHELLIN: -- on February 8th and that is Case No.
9 20-28.

10 CHAIRPERSON HOOD: Okay. So the Zoning Commission -- do
11 we -- first of all, do we have anything else before us, Ms.
12 Schellin?

13 MS. SCHELLIN: Yes. It's not --

14 CHAIRPERSON HOOD: Oh, we do?

15 MS. SCHELLIN: -- a real case, but I would like to wish
16 Commissioner Shapiro a happy birthday on Saturday the 30th is his
17 birthday.

18 CHAIRPERSON HOOD: Oh. Okay.

19 MS. SCHELLIN: And since we are not in the office, I
20 will send you a virtual birthday cake. Actually, I won't be in a
21 position to send you anything, I'll be out of commission. But
22 anyway, happy birthday. Happy early birthday.

23 CHAIRPERSON HOOD: If I had known we could have done a
24 virtual singing of happy birthday to you, but I didn't know that.

25 MS. SCHELLIN: I don't think he wants that. Just

1 pretend.

2 CHAIRPERSON HOOD: Well, happy birthday.

3 MS. SCHELLIN: Other than that, nothing else.

4 CHAIRPERSON HOOD: Okay. Well, happy birthday,
5 Commissioner Shapiro. I hope you enjoy your day.

6 So again, we have a meeting, 20 dash whatever -- 28?

7 MS. SCHELLIN: A hearing, 20-28 on the 8th.

8 CHAIRPERSON HOOD: Okay. At 4:00 p.m. --

9 MS. SCHELLIN: -- of February.

10 CHAIRPERSON HOOD: -- on this same web link. So if
11 there's nothing else before us, I want to thank everyone for their
12 participation and the public for their indulgence and with this,
13 this meeting is adjourned. Good night. Stay safe.

14 MS. SCHELLIN: Thank you.

15 (Whereupon, the above-entitled matter went off the
16 record at 6:24 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 01/28/21

Place: Teleconference

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