

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC MEETING

+ + + + +

THURSDAY

OCTOBER 14, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Zoning Commission convened via Videoconference, pursuant to notice at 4:00 p.m. EDT, Anthony Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson
ROBERT MILLER, Vice Chairperson
PETER SHAPIRO, Commissioner
PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
MATTHEW JESICK
ELISA VITALE

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OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, Esquire
JACOB RITTING, Esquire

The transcript constitutes the minutes from the
Regular Public Meeting held on October 14, 2021

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(4:00 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. We are convening and broadcasting this public meeting by videoconferencing.

My name is Anthony Hood. Joining me are Vice Chair Miller, Commissioner Shapiro, and Commissioner May. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, as well as Mr. Paul Young, who will be handling all of our virtual operations. Also, our legal counsel, Ms. Lovick, and Mr. Ritting.

Copies of today's meeting agenda are available on the Office of Zoning's website. Please be advised, this proceeding is being recorded by a court reporter, and is also webcast live, Webex or YouTube Live.

The video will be available on the Office of Zoning's website after the meeting. Accordingly, all those listening on Webex or by phone will be muted during the meeting, unless the Commission suggests otherwise. And at that time, if we suggest you come up, you can introduce yourself at that time.

For hearing action items, the only documents before us this evening are the application, the ANC set-down 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 at our meetings, unless the Commission requests someone to speak. If you experience difficulty

1 accessing Webex or with your phone call-in, then please call our
2 OZ hotline number -- that number is 202-727-5471 -- for call-in
3 or Webex instructions.

4 First, let me also -- I do have one quick preliminary
5 matter. I don't call it summer dress now. I call it at-home
6 dress. So we're going to continue that throughout the pandemic.
7 And I should reference, I won't be wearing my pajamas. But at-
8 home dress. So since we're still operating virtually, so -- we
9 can continue that fashion, unless there are any objections.

10 Okay. Ms. Schellin, do you have any preliminary
11 matters?

12 MS. SCHELLIN: No, sir. No preliminary matters, other
13 than, maybe we should announce that the Office of Zoning now has
14 its own legal division. I don't think that's been announced. So
15 we do not use the Office of the Attorney General. We're now
16 using our own legal staff.

17 CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. As
18 Ms. Schellin has said, the Office of -- what is it called? The
19 OL -- what is it? Office of Legal --

20 MS. SCHELLIN: OZLD.

21 CHAIRPERSON HOOD: OZLD.

22 MS. SCHELLIN: OZLD.

23 CHAIRPERSON HOOD: Office of Zoning Legal Division.

24 Okay.

25 MS. SCHELLIN: Office of Zoning Legal Division. Yes.

1 CHAIRPERSON HOOD: OL -- OZLD.

2 MS. SCHELLIN: OZ -- yes.

3 CHAIRPERSON HOOD: So that'll take six months for me
4 to figure that out. Or six weeks. Okay. All right. Thank you.

5 All right. Let's go right into our case. And we'll
6 go straight -- we'll stick with the agenda for tonight. The
7 first case is under a modification of consequence, determination
8 of scheduling, Zoning Commission Case Number 80-07D. Ms.
9 Schellin?

10 MS. SCHELLIN: Yes. The Georgetown University PUD
11 modification of consequence at Square 653. I'm sorry, 563. The
12 applicant is requesting this modification of consequence to the
13 orders to include university as an allowed use.

14 At Exhibit 4, you have an OP report in support, but
15 they have asked the applicant to clarify whether any parking
16 relief may also be needed for a university use. The applicant
17 provided a response to that at Exhibit 7, stating that no parking
18 relief would be needed.

19 At Exhibit 5, you have ANC 6E's report, in support.
20 And at Exhibit 6, you have ANC 6C's report, in support. Ask the
21 Commission to consider possibly taking action this evening, if
22 they feel that all responses are adequate. If not, then to
23 schedule.

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

25 Commissioners, as you know, there's a request for this

1 application via modification of consequence. But as you know,
2 in our regulations, Z 703.6, it calls for -- "examples of
3 modification of significance include but are not limited to a
4 change in use," and it goes on to read, "change to proffered
5 public benefits and amenities."

6 So we have a request from the applicant, asking us to
7 consider this, because of the use of it -- consider this as a
8 modification of consequence. My first question -- that's from
9 my -- different from my regulations. Now normally, we can waive
10 that.

11 So let me ask, does anyone -- before I say that, also,
12 the ANCs, who I think are the only parties in this case, have
13 also consented, both ANC 6E and 6C, to support approval of the
14 modification, including the related waiver, the waiver to permit
15 the change to be a modification of consequence.

16 Let me open it up. Anyone want that to be other than
17 a modification of consequence, or want us to ascertain and keep
18 our rule? Any objections?

19 Commissioner May?

20 COMMISSIONER MAY: Yeah, Mr. Chairman, I don't think
21 it would be inconsistent with our rules to consider this a
22 modification of consequence, given that the, you know, the
23 university use was already something that was allowed in the
24 zone, and was mentioned in the previous PUD.

25 And, I mean, this is only a, I think, a small

1 modification to that -- you know, how that use can be deployed
2 within the site. So I don't really have any issues with this.
3 I think it can be a modification of consequence.

4 I do have a different question, but maybe you want to
5 come back to me, in case anybody else wants to talk about the
6 modification of consequence.

7 CHAIRPERSON HOOD: Okay. Anybody have any objection
8 to the modification of consequence?

9 Vice Chair Miller?

10 VICE CHAIR MILLER: Thank you, Mr. Chairman. I don't
11 have any objection to modification of consequence. I also would
12 not have objected to us considering it a modification of
13 significance, because the university use wasn't explicitly
14 permitted, although it's permitted as a matter of right in the
15 zone, and then waiving the requirement for a public hearing,
16 because I think there is good cause to waive that.

17 The ANCs, as you've noted, 6E and 6C, both support the
18 -- and the university is about to close on this particular
19 property. It's right near their law school. It's in downtown
20 East End, which has been suffering, like all of downtown and all
21 of downtowns across the country, because they can seize -- and
22 this building is vacant.

23 Anyway, I think there'd be good cause shown and no
24 prejudice to parties if we waived the hearing requirement, if we
25 considered a modification of significance. I have no problem,

1 | though. I think it could easily be, as Commissioner May has
2 | ordered, to be considered a modification of consequence.

3 | I just want to get to the result of voting on it
4 | tonight, and approving it. This was going to be before us, I
5 | think, at least a month ago, and it got delayed because of various
6 | logistical issues in our own scheduling, and because they had not
7 | yet, I think, gotten ANC support. So they've done all that. I'm
8 | ready to support it, whichever way gets us there.

9 | CHAIRPERSON HOOD: Okay. Sounds good. So it sounds
10 | like the Vice Chair and I -- I know I am, and others, possibly,
11 | are ready to move forward.

12 | But let's -- Commissioner Shapiro, anything to add?

13 | COMMISSIONER SHAPIRO: No, sir. I'm fine with
14 | modification of consequence, and I am ready to take action.

15 | CHAIRPERSON HOOD: Okay. So let's go back to
16 | Commissioner May.

17 | COMMISSIONER MAY: Yeah. My question is, you know, we
18 | had a hearing, starting back in 2016 -- or maybe that was the
19 | set-down -- anyway, several years ago, about substantial
20 | modifications to the building, that were approved. And as far
21 | as I can tell, none of that's been done yet, and I'm wondering
22 | if -- you know, what the status is of those physical modifications
23 | to the exterior of the building.

24 | And I'm hoping maybe, you know, maybe if we could bring
25 | up somebody from the Office of Planning, they might be able to

1 | tell us the status on that. It's just the one question I have
2 | about this before we vote on changes, because I didn't see
3 | anything in the submissions about it.

4 | CHAIRPERSON HOOD: Let's see if we can get the planner
5 | who worked on it, or maybe Ms. Steingasser, somebody, can come
6 | up and can field that question for us. Mr. Young, if you can
7 | bring somebody up? Whoever has their hand up. Board Member --
8 | Chairman Hill?

9 | It looks like we have Ms. Steingasser, Commissioner
10 | May.

11 | Ms. Steingasser?

12 | MS. STEINGASSER: Hi. My understanding -- yes, sir,
13 | Chairman Hood, Commissioners. My understanding is that they may
14 | not be proceeding with the full design, but once the university
15 | gets full control of the building, they will assess that previous
16 | PUD that was approved, those modifications.

17 | COMMISSIONER MAY: Okay. So they were modifying the
18 | PUD to change the use, and they've still got a little breathing
19 | room before they would go forward or abandon those other changes,
20 | in which case that other modification that we had approved -- 80-
21 | 07A, I think --

22 | MS. STEINGASSER: Uh-huh. Yes.

23 | COMMISSIONER MAY: -- would just expire and no change
24 | is might -- they might not --

25 | MS. STEINGASSER: Correct. That's correct.

1 COMMISSIONER MAY: That's too bad. They were going to
2 do a lot of things to make the building into a very green
3 building, as opposed to a very black building. And it is now.
4 But it's, you know, the most important thing is that it gets some
5 use. So -- okay. Thank you, I appreciate it.

6 MS. STEINGASSER: Great. Uh-huh.

7 CHAIRPERSON HOOD: Okay. Vice Chair Miller, you have
8 a question for Ms. Steingasser? Don't go --

9 VICE CHAIR MILLER: Just a comment and reaction to
10 Commissioner May. Yes, well, so the Darth Vader design still
11 lives another day. I also like the other design, so maybe
12 Georgetown, when they get control, will go back to that, if they
13 can afford to.

14 COMMISSIONER MAY: Right. They were very progressive
15 on the other building that they acquired, with the inclusion of
16 the vertical solar panels and things like that. So, you know,
17 maybe they'll be similarly creative on this building.

18 VICE CHAIR MILLER: Thank you.

19 CHAIRPERSON HOOD: All right. So we have the requests,
20 making this a modification of consequence. I think we've already
21 discussed all that, and also the support of the ANC 6E and 6C.
22 Am I leaving anything out?

23 (No response.)

24 CHAIRPERSON HOOD: Okay. Would somebody like to make
25 a motion? I think we're ready to move forward with this. I

1 think the record speaks for itself.

2 VICE CHAIR MILLER: Mr. Chairman -- and the Counsel
3 will correct me, or somebody will. One of my colleagues will
4 correct me if I state this wrongly. I would make a motion that
5 the Zoning Commission approve Case Number 80-07D, Georgetown
6 University PUD, considering it as a modification of consequence
7 at Square 563, and ask for a second.

8 COMMISSIONER SHAPIRO: Second.

9 CHAIRPERSON HOOD: It's been moved and properly
10 seconded. Any further discussion?

11 (No response.)

12 CHAIRPERSON HOOD: Not hearing any, Ms. Schellin, would
13 you do a roll call vote, please?

14 MS. SCHELLIN: Commissioner Miller?

15 VICE CHAIR MILLER: Yes.

16 MS. SCHELLIN: Commissioner Shapiro?

17 COMMISSIONER SHAPIRO: Yes.

18 MS. SCHELLIN: Commissioner Hood?

19 CHAIRPERSON HOOD: Yes.

20 MS. SCHELLIN: Commissioner May?

21 COMMISSIONER MAY: Yes.

22 MS. SCHELLIN: The vote is four to zero to one, to
23 approve final action in Zoning Commission Case Number 80-07D.
24 Commissioner Miller moving, Commissioner Shapiro seconding,
25 Commissioners Hood and May in support, the AOC representative not

1 present, not voting. And that is granting the waiver that was
2 requested for the change of use. Correct?

3 CHAIRPERSON HOOD: Correct.

4 MS. SCHELLIN: Yes. Okay.

5 CHAIRPERSON HOOD: So Ms. --

6 MS. LOVICK: No, I don't -- it's not granting a waiver.
7 It's just granting the modification of consequence to change the
8 conditions in the final order --

9 MS. SCHELLIN: Okay.

10 MS. LOVICK: -- to allow for the change in use.

11 MS. SCHELLIN: To allow the use. Okay.

12 MS. LOVICK: Yeah. There's no waiver.

13 MS. SCHELLIN: No waiver request.

14 CHAIRPERSON HOOD: Right. There's no waiver in this.
15 But let me just say, we honored the request. The request was -
16 - I want to make sure the record's clear. The request the
17 applicant made, and all the ANCs and all parties involved agreed,
18 that our regulations say it needs to be a -- our regulations say
19 any use change should be a --

20 MS. LOVICK: Modification of significance.

21 CHAIRPERSON HOOD: -- modification of significance.

22 MS. LOVICK: Yes.

23 CHAIRPERSON HOOD: So we changed it to modification of
24 consequence, and that is -- and we agreed to that, to make it a
25 change, because it's a permitted use, anyway. So we -- I don't

1 necessarily know if we waived -- and our Counsel just corrected
2 us -- we didn't waive that regulation. What we did was moved
3 it and considered, as a modification of consequence, at the
4 request of the applicant. Now, I think that I'm muddying the
5 waters enough. I'm going to leave it at that.

6 COMMISSIONER SHAPIRO: And Mr. Chair, we approved the
7 condition change. I mean, the use change.

8 CHAIRPERSON HOOD: I'm sorry. I can't hear you.

9 COMMISSIONER SHAPIRO: And we approved the use change.

10 CHAIRPERSON HOOD: Right. Right, we approved the use.
11 Right. So we approved it as a modification of consequence, with
12 what -- we approved the applicant's request fully. Okay. All
13 right. Some of this stuff, when you read, keep reading back and
14 forth, it starts running together.

15 Ms. Schellin, this next case, I would like for you to
16 call the time extension first.

17 MS. SCHELLIN: Okay.

18 CHAIRPERSON HOOD: And then we will -- okay. And let's
19 call them both together.

20 MS. SCHELLIN: Okay. So calling them together, we have
21 a time extension case, which is Zoning Commission Case Number 08-
22 07H. And the modification of consequence case is 08-07I. And
23 this is for Four Points Development, LLC.

24 And the time extension is for two years, and in that
25 case -- I believe you wanted to take that up first -- the

1 applicant is requesting the two-year extension, citing the
2 reasons as delays in the construction schedule for the overall
3 PUD site, which has impacted the applicant's ability to prepare
4 and file second-stage PUD applications for Buildings 2 and 5.

5 This is the fourth time extension request, and the
6 applicant is asking for a waiver from Subtitle Z, Section 705.5,
7 which limits the number of time extensions and the second
8 extension being only limited to one year.

9 At Exhibit 4, there's an OP report, in support. And
10 Exhibit 5, ANC 8A submitted its report, in support.

11 Going back to the modification of consequence, the
12 applicant is asking for that to clarify the deadlines to file the
13 second-stage PUD applications for the buildings included in
14 Phases 2 and 3 of the first-stage PUD, approved by Zoning
15 Commission Order 08-07.

16 Again, at Exhibit 4, OP agrees the case is
17 appropriately filed as a modification of consequence, and
18 recommends approval, and Exhibit 5 is an ANC 8A report, in
19 support. So you have both of these before you, to do as you find
20 appropriate this evening. Or this afternoon.

21 CHAIRPERSON HOOD: Okay. All right. Thank you, Ms.
22 Schellin. I also want to thank Counsel for helping to lay some
23 of this out, because I can tell you, when I was reading it, like
24 I said, I spent a lot of time trying to figure this stuff out.

25 But let me try to tee it up, as Ms. Schellin's already

1 done, of how I'd like to proceed. As noted, this relates to our
2 other case, which we're going to do shortly, 08-07I. The time
3 extension request simply involves Stage 2 of the first-stage PUD.

4 And I think the first thing -- and I'm sure Counsel
5 will show up if I'm not correct -- the first thing we need to do
6 is to -- there are two waivers that are necessary. One is to
7 permit the time extension filing, after the expiration of the PUD
8 approval. And the other -- and then the other waiver is to permit
9 a third time extension, for two years. We will note that the
10 08-07F time extension really doesn't count toward the total
11 number of -- under our regulation Z 705.4, since this was due to
12 the COVID pandemic.

13 So hopefully I teed that us for us to move forward. So
14 any objections to the extension of filing after the expiration -
15 -

16 MS. LOVICK: That was all right -- that was all right,
17 sir. I just want to interject and say, it's the fourth, not the
18 third. It's the fourth time extension request.

19 CHAIRPERSON HOOD: Oh, okay. The fourth.

20 MS. LOVICK: That's all.

21 CHAIRPERSON HOOD: I thought, the way I read it, that
22 the -- we weren't counting the pandemic. But I will say it's
23 the fourth. Okay. Because I thought we did a swath of all that
24 during the pandemic. Okay. So it's the fourth. All right. So
25 either way, thank you for that correction.

1 First, the two waivers. Two waivers will be necessary.
2 One to permit this time extension filing after the expiration of
3 the PUD approval, and another to permit the fourth time extension
4 for two years, under Z 705.5. Any objections?

5 (No response.)

6 CHAIRPERSON HOOD: Do we need to do a roll call, Ms.
7 Lovick? Or can we just do it by general consensus?

8 MS. LOVICK: I mean, I think you should do a roll call.

9 CHAIRPERSON HOOD: Okay. Ms. Schellin, I will make a
10 motion to be -- let me make the motion. I'll make a motion that
11 we grant both waivers, as requested, to permit the time extension
12 filing after the expiration of the PUD approval, and also to
13 permit a fourth extension for two years, under Z 705.5, for the
14 reasons noted in the submissions.

15 VICE CHAIR MILLER: Second.

16 CHAIRPERSON HOOD: And I'll ask for a second.

17 VICE CHAIR MILLER: Second.

18 CHAIRPERSON HOOD: It's been moved and properly
19 seconded. Any further discussion?

20 Okay. Ms. Schellin, could you do a roll call vote,
21 please?

22 MS. SCHELLIN: Commissioner Hood?

23 CHAIRPERSON HOOD: Yes.

24 MS. SCHELLIN: Commissioner Miller?

25 VICE CHAIR MILLER: Yes.

1 MS. SCHELLIN: Commissioner May?

2 COMMISSIONER MAY: Yes.

3 MS. SCHELLIN: Commissioner Shapiro?

4 COMMISSIONER SHAPIRO: Yes.

5 MS. SCHELLIN: The vote is four to zero to one, to
6 approve the two-year PUD time extension, which also grants the
7 waivers requested. Commissioner Hood moving, Commissioner Miller
8 seconding, Commissioners May and Shapiro in support, the
9 Architect of the Capitol representative not present, not voting.

10 CHAIRPERSON HOOD: Okay. So we've done the time
11 extension. Let's go to the -- give me one second. I don't know
12 which one is faster, the files or paperwork. I think files.

13 Okay. Ms. Schellin's already teed this up. Again,
14 this is an application requesting to modify the Decision Number
15 D2 of the original order, Zoning Commission Order Number 08-07,
16 to change the deadline to file the second-stage PUD application
17 for Phase 2 on Buildings 2 and 5 to -- the date now being asked
18 for is to May 22nd, 2023.

19 Let me open it up for any discussion. And again, let
20 me just read what that says in our original order. "A second-
21 stage application must be filed for the buildings included in
22 Phase 2 of the development, Buildings 2 and 5, within four years
23 after the effective date of the order granting second-stage
24 approval, Phase 1" -- and it goes on and on. And there's another
25 bullet point.

1 So that's what we have in front of us. Let me see if
2 there are any questions or comments. Any objections?

3 COMMISSIONER MAY: No.

4 CHAIRPERSON HOOD: Do we have everyone covered? It
5 looks like the ANC, as well -- let me make sure this is the right
6 thing. The ANC, as well, had a -- at its regularly scheduled,
7 duly-noticed public meeting with a quorum of seven Commissioners
8 present, ANC voted unanimously, seven-zero-zero, to support the
9 request of the modification of consequence. And that was ANC 8A.

10 Okay. Would somebody like to make a motion?

11 (No response.)

12 CHAIRPERSON HOOD: Okay. I would move that we approve
13 the application -- the modification of -- hold on. First of all,
14 let me back -- hold on. Let me back up. Let me back up. Moving
15 too fast. Does anybody object to this being a modification of
16 consequence?

17 (No response.)

18 CHAIRPERSON HOOD: Okay. That was the first thing I
19 was supposed to do. Okay. So we went through everything else.
20 The applicant, again, has requested a modified Decision Number
21 D2 of the original orders, to change the deadline of the filing
22 of the second PUD application for the Phase 2 buildings, Building
23 2 and 5, to May 22nd, 2023. I would move -- so moved, and ask
24 for a second.

25 VICE CHAIR MILLER: Second.

1 CHAIRPERSON HOOD: The movement's been properly
2 seconded. Any further discussion?

3 All in favor? I mean -- I'm sorry. Ms. Schellin,
4 could you do a roll call vote, please?

5 MS. SCHELLIN: Commissioner Hood?

6 CHAIRPERSON HOOD: Yes.

7 MS. SCHELLIN: Commissioner Miller?

8 VICE CHAIR MILLER: Yes.

9 MS. SCHELLIN: Commissioner May?

10 COMMISSIONER MAY: Yes.

11 MS. SCHELLIN: Commissioner Shapiro?

12 COMMISSIONER SHAPIRO: Yes.

13 MS. SCHELLIN: The vote is four to zero to one,
14 Commissioner Hood moving, Commissioner Miller seconding,
15 Commissioners May and Shapiro in support, the AOC representative
16 not present, not voting.

17 CHAIRPERSON HOOD: Okay. Let's go to Zoning Commission
18 Case Number 06-10F. Ms. Schellin?

19 MS. SCHELLIN: This is the Morris and Gwendolyn Cafritz
20 Foundation. They are asking for a modification of consequence
21 of the PUD at Squares 3765 and 3767. The applicant is seeking
22 this modification of consequence to make modifications to
23 exterior architectural elements of the building, to the location
24 of amenities, and an expansion of the residential component
25 identified as conditions in the previous orders.

1 Exhibit 4, you have an ANC 5A report in support.
2 Exhibit 5, the OP report, stating it doesn't object to the request
3 being considered as a modification of consequence, and recommends
4 approval of the request. And in Exhibit 6, there's a letter from
5 the Lamond-Riggs Citizens Association, stating they don't have
6 an objection to the request, but they do have some concerns,
7 which they list out in their letter. So this case is before you
8 to do as you please.

9 CHAIRPERSON HOOD: Okay. First, let me ask, does anyone
10 believe that this is not a modification of consequence?

11 Commissioner May?

12 COMMISSIONER MAY: Yeah, it concerns me, as a
13 modification of consequence. I mean, it may, you know -- the
14 individual changes may be the sort of thing that we can consider.
15 They fit into the modification of consequence box.

16 But there are just an awful lot of changes, and they
17 substantially affect the look of the building. And then when you
18 add onto that the concerns of the Lamond-Riggs Citizens
19 Association, to me, it's enough to warrant a hearing. Hopefully,
20 it could be a short hearing. But I just -- it doesn't sit right
21 with me to just call something with this array of changes a
22 modification of consequence, as opposed to a modification of
23 significance.

24 CHAIRPERSON HOOD: Thank you, Commissioner May. It
25 only takes one of us, so Commissioner May has mentioned that, and

1 I, when I look at all the things here, I agree. I'm not going
2 to say the hearing will be quick, because every time I say that,
3 it's a long hearing.

4 So -- but I do think, especially with the Lamond-Riggs
5 Citizens Association coming forward with some concerns, maybe we
6 can hash some of those things out, as well, about 3rd Street. So
7 I would concur.

8 Any other comments, Commissioners?

9 Commissioner Miller?

10 VICE CHAIR MILLER: Yeah, as long as we can schedule
11 that hearing relatively quickly, given our schedules. But yeah,
12 I mean, that family entertainment zone, iconic Meow Wolf use,
13 which everybody loved, including the applicant.

14 And then I know they're diligently looking for
15 alternative uses, as they've stated in their letter, but it did
16 affect, as Commissioner May said, the design of the entire space.
17 And so it'd probably be useful if we can do it as quickly as we
18 can, within our rules, have a hearing on it.

19 COMMISSIONER MAY: I will only add, I do think that
20 there are certain aspects of the building that are an improvement.
21 I felt like the whole thing was a little bit oversized, and a
22 little bit too grand. And I had real concerns about, you know,
23 the viability of the operation. The last thing we'd want is a
24 really grand empty building, you know, several years after the
25 PUD is approved. So I think this is a step in the right direction,

1 in terms of the building itself, and how it sits in the
2 neighborhood. But I do think we want to look at it more closely.

3 I would also say, some of the things that they're
4 proposing to do with the buildings, the apartment sections of the
5 -- they're using more subdued colors and things like that. I
6 don't view that as an improvement. I think that they're making
7 everything a little bit lighter and a little bit blander.

8 So I hope that between now and whenever we wind up
9 considering this matter at a hearing, that they look more closely
10 at that and try to maintain the vibrancy of the more background
11 sections of the building.

12 CHAIRPERSON HOOD: Okay. Any other comments or
13 questions?

14 Vice Chair Miller?

15 VICE CHAIR MILLER: I'll defer to Commissioner Shapiro,
16 if he wanted to say something. But I meant to say a couple
17 things. And maybe you were going to touch on this, Chairman.

18 I mean, the Lamond-Riggs letter -- and they were a
19 party, I think, in the original case -- expressed concern
20 regarding continued communication regarding the opening of 3rd
21 Street to thru traffic. And they requested the applicant to
22 submit a rendering to the record, showing 3rd Street and any
23 safety features to be added. So we now have time for that to be
24 submitted into the record.

25 And, Office of Planning, I believe this is the case

1 that they were strongly encouraging those 23 additional
2 residential units to be constructed on Block B to have an
3 affordable component in them, even though there was language in
4 the prior order which indicated that the project was not subject
5 to our normal inclusionary zoning, because it was prior to the
6 adoption of inclusionary zoning.

7 However, I think we've taken the position -- and maybe
8 it's arguable out there that, when there's a modification, now
9 it's a modification of significance that we're saying, that IZ
10 gets triggered, even if the overall number of units hasn't
11 changed. That's just a reallocation. Anyway, I would echo OP's
12 comment that those 23 additional residential units in Block B
13 have affordable housing component in them.

14 CHAIRPERSON HOOD: Okay. So I think the normal
15 procedure after this has come off of the modification calendar.
16 So Ms. Schellin, I think you would direct them to submit a
17 submission and direct them to file for a hearing.

18 MS. SCHELLIN: To file a modification of significance
19 case, they need to look at the regs and do whatever's required
20 to do that.

21 CHAIRPERSON HOOD: Okay. So is there anything else
22 that we need to do?

23 MS. SCHELLIN: Nope.

24 CHAIRPERSON HOOD: Okay. I think our discussion is -

25 -

1 MS. SCHELLIN: Is finished.

2 CHAIRPERSON HOOD: -- opposition out -- okay. All
3 right. Thank you. Let me find the next case.

4 Let's move to further -- final action. Not further
5 action. Final action on Zoning Commission Case Number 21-02.
6 Ms. Schellin?

7 MS. SCHELLIN: This is the Office of Planning text
8 amendment modifications and clarifications to Subtitles C, D, F,
9 G, H, and K, for IZ-XL Phase 1. The proposed rulemaking was
10 published in the register on July 30th, and no comments were
11 received, so this is ready to proceed with final action, if the
12 Commission is ready.

13 CHAIRPERSON HOOD: Okay. I will open it up to others.
14 I think one of the major concerns -- and I think we talked about
15 this at the first round proposed, about the Historic Anacostia
16 Association. I think they were -- there had been responses to
17 ANC 6B's concerns. And I know that there were some other concerns
18 out there. Let me see. Anacostia, Dupont Circle, Georgetown
19 Historic District, Naval Observatory, 8th Street, and Capitol
20 Hill. I think some of those have been incorporated in what we
21 have here.

22 But let me open it up for others. I don't know if you
23 have anything else to add.

24 Commissioner May?

25 COMMISSIONER MAY: No, not really.

1 CHAIRPERSON HOOD: Okay.

2 Commissioner Shapiro, anything to add?

3 COMMISSIONER SHAPIRO: Well, there was a few concerns
4 that were addressed by OP in this. And I think it's pretty
5 straightforward, but you mentioned one of them, where they
6 responded to the Historic Anacostia Block Association.

7 But there was also a response to ANC 6B's concerns
8 around the viewshed issues in the Latrobe Gate. They've addressed
9 that. And then there's a vesting language that's been included,
10 as well. So -- but all this is to say, I think this is certainly
11 ready for us to take final action.

12 CHAIRPERSON HOOD: Okay. Vice Chair Miller, you have
13 anything to add? Or you're good?

14 VICE CHAIR MILLER: I'm good. This is just another
15 incremental expansion of our incremental inclusionary zoning, our
16 little part to try to address the affordable housing issue within
17 the zoning sphere, the limited zoning sphere that we have.

18 So I'm ready to make a motion to approve Zoning
19 Commission Case Number -- final action on Case Number 21-02,
20 Office of Planning text amendment modifications and
21 clarifications to Subtitles C, D, F, G, H, and K, for IZ XL Phase
22 1, and ask for a second.

23 COMMISSIONER SHAPIRO: Second.

24 CHAIRPERSON HOOD: Okay. It's been moved and properly
25 seconded. Any further discussion?

1 (No response.)

2 CHAIRPERSON HOOD: Not hearing any, Ms. Schellin, would
3 you do a roll call vote, please?

4 MS. SCHELLIN: Commissioner Miller?

5 VICE CHAIR MILLER: Yes.

6 MS. SCHELLIN: Commissioner Shapiro?

7 COMMISSIONER SHAPIRO: Yes.

8 MS. SCHELLIN: Commissioner Hood?

9 CHAIRPERSON HOOD: Yes.

10 MS. SCHELLIN: Commissioner May?

11 COMMISSIONER MAY: Yes.

12 MS. SCHELLIN: The vote is four to zero to one, to
13 approve final action, Zoning Commission Case Number 21-02. As
14 the roll call vote shows, the AOC representative not present, not
15 voting.

16 CHAIRPERSON HOOD: Ms. Schellin, did I say I'm glad to
17 see you back? I'm glad you're feeling better.

18 MS. SCHELLIN: Yes, you did.

19 CHAIRPERSON HOOD: Okay, I did? I can't remember.

20 MS. SCHELLIN: Thank you. Thank you. Glad to be back.

21 CHAIRPERSON HOOD: After the modification of
22 consequence, I can't remember anything. Okay. Good. Glad to
23 have you back.

24 MS. SCHELLIN: Thank you.

25 CHAIRPERSON HOOD: Okay. This next case is the Peter

1 | Shapiro -- no, no, I'm just playing. Zoning Commission Case
2 | Number 21-09. Ms. Schellin?

3 | MS. SCHELLIN: Yes, sir. This is the Union Square D.C.
4 | 899, LLC; U.S. Union Square D.C. 901, LLC; and U.S. Union Square
5 | D.C. 999, LLC. This is a design review case at 899 and 999 in
6 | North Capitol Street Northeast, at Square 675, Lot 298. The
7 | post-hearing submissions at Exhibit 21 through 21C were the only
8 | submissions we received. And so I'd ask the Commission to
9 | consider final action on this case.

10 | CHAIRPERSON HOOD: And I think, Commissioner May,
11 | you're not participating on this case. Right?

12 | COMMISSIONER MAY: I am not.

13 | CHAIRPERSON HOOD: Well, I will say, for the record,
14 | just in case you have not viewed it, this was one that I really
15 | -- I think I said that I wish Commissioner May was here, and I
16 | don't think I've ever said that. I believe it was on this one.

17 | COMMISSIONER MAY: Well, if you want -- if you want,
18 | you could give me a little more time to review it, and then I'll
19 | participate.

20 | CHAIRPERSON HOOD: No, I'm not going to hold -- I'm not
21 | going to punish that applicant. I think Commissioner Shapiro did
22 | that enough at this point.

23 | COMMISSIONER MAY: Oh.

24 | CHAIRPERSON HOOD: So let me see if you all have
25 | anything, any comments or questions. Commissioner Shapiro, let

1 me start with you on this one.

2 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Yeah,
3 consider me a lesser Commissioner May for the day.

4 I think the applicant responded more than adequately
5 to the requests that we had. And they submitted revised plans
6 to further develop and enhance the design of the retail level
7 addition. And I liked the -- it's subtle but, I think,
8 improvements, in some of the design there. The applicant's also
9 now stating that they're going to achieve LEED Gold.

10 And they're also requesting additional time for Phase
11 2, which I am okay with. I don't have a concern with them having
12 seven years to apply for the building permit and then to begin
13 construction. So I'm fine with this case at this -- I appreciate
14 the response of the applicant, and I'm fine with the case.

15 CHAIRPERSON HOOD: Okay. Thank you, Commissioner
16 Shapiro.

17 Vice Chair Miller, you have anything you want to add,
18 or comments?

19 VICE CHAIR MILLER: No, I agree with everything
20 Commissioner Shapiro has said, and appreciate the applicant's
21 responsiveness to the Commission's concerns and the ANC's
22 concerns, because they have the support of the ANC 6C and ANC 6E
23 in their submissions. At Exhibit 19 and Exhibit 16, respectively,
24 they each voted unanimously to support the application. And ANC
25 6C used the language that Commissioner Shapiro just used, that

1 | they more than adequately addressed the concerns that they have
2 | had. So thank you.

3 | CHAIRPERSON HOOD: Okay. I, too, want to commend the
4 | applicant. I like, kind of, the design that we had previously,
5 | but I know, not to make -- anyway, I really love what I saw
6 | previously, I like what I see now. But I'm not going to make a
7 | big deal over it. I really like the way it was popping out at
8 | me. But we went through that discussion, and I think I'll leave
9 | it at that.

10 | I do know that the -- and I couldn't remember whether
11 | the Office of Planning had some conditions. I think the applicant
12 | has accepted all of their conditions, as well as all of DDOT's
13 | conditions. I just wanted to -- and the Vice Chair's already
14 | mentioned everything else.

15 | Now, there were some issues about the NCPC report,
16 | about the -- excuse me. Includes the language about continuing
17 | to consult with NCPC. I understand from our Counsel, that's
18 | still in there, so we don't have to worry about that. The other
19 | thing is probably about retaining C 1500.3. Does anybody have
20 | any objections to that being retained?

21 | (No response.)

22 | CHAIRPERSON HOOD: Are we ready for that one? Or --

23 | VICE CHAIR MILLER: I'm not sure what you're referring
24 | to, Mr. Chairman. I'm sorry. And I think the NCPC was on a
25 | different case, actually.

1 CHAIRPERSON HOOD: Am I on a different case? Hold on.
2 Hold on a second.

3 VICE CHAIR MILLER: I think so. I was flipping ahead
4 to find it, but -- so I think it's a different case.

5 CHAIRPERSON HOOD: You know what? I have moved --

6 VICE CHAIR MILLER: You've moved on.

7 CHAIRPERSON HOOD: I'm on the text amendment. I'm on
8 the text amendment. Okay. I'm sorry. All right.

9 VICE CHAIR MILLER: Okay.

10 CHAIRPERSON HOOD: So discount everything that I said
11 other than the Office of Planning conditions and the DDOT
12 conditions. Yeah, I was moving right along.

13 All right, other than that, all those conditions have
14 been accepted. The Vice Chair has mentioned what the ANCs have
15 supported, and their conditions have also been accepted.
16 Commissioner Shapiro also mentioned about the architecture and
17 the changes. He is now satisfied in having that.

18 All right. Anything else that I'm leaving out?

19 (No response.)

20 CHAIRPERSON HOOD: Commissioner Shapiro, would you like
21 to make a -- hold on one second, please.

22 COMMISSIONER SHAPIRO: Sure. Is this -- are we taking
23 proposed action or final action?

24 CHAIRPERSON HOOD: This is on the final action.

25 COMMISSIONER SHAPIRO: All right. Mr. Chair, I move

1 that we take final action, Zoning Commission Case Number 21-09,
2 U.S. Union Square D.C. 899, LLC; U.S. Union Square D.C. 901, LLC;
3 and U.S. Union Square D.C. 999, LLC. Design review of the 899
4 and 999 North Capitol Streets Northeast, Square 675, Lot 298.
5 Look for a second.

6 VICE CHAIR MILLER: Second.

7 CHAIRPERSON HOOD: Okay it's been moved and properly
8 seconded. Any further discussion?

9 (No response.)

10 CHAIRPERSON HOOD: Not hearing any, Ms. Schellin, would
11 you do a roll call vote, please?

12 MS. SCHELLIN: Commissioner Shapiro?

13 COMMISSIONER SHAPIRO: I vote yes.

14 MS. SCHELLIN: Commissioner Miller?

15 VICE CHAIR MILLER: Yes.

16 MS. SCHELLIN: Commissioner Hood?

17 CHAIRPERSON HOOD: Yes.

18 MS. SCHELLIN: The vote is three to zero to two to
19 approve final action in Zoning Commission Case Number 21-09.
20 Commissioner Shapiro moving, Commissioner Miller seconding,
21 Commissioner Hood in favor, Commissioner May not voting, having
22 not participated, and the AOC representative not present, not
23 voting.

24 CHAIRPERSON HOOD: Okay. Next, let's go to the case
25 that I was trying to anxiously get to, Zoning Commission Case

1 Number 14-13E. Ms. Schellin?

2 MS. SCHELLIN: Yes. This is the Office of Planning
3 text amendment regarding the penthouse regulations. The notice
4 of proposed rulemaking was published in the register on July
5 16th.

6 At Exhibit 21, there's a joint -- there's joint
7 comments from the Committee of 100 and Kalorama Citizens
8 Association. And at Exhibit 22, there are comments from Single-
9 Member District 6C 04. Exhibit 23 is a supplemental report from
10 OP, and I believe Joel Lawson from OP provided that supplemental
11 report. If you have any questions, he'll be able to assist with
12 that. Other than that, it is ready for the Commission to consider
13 final action.

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

15 Let's bring Mr. Lawson up. I'm sure we may have some
16 questions we may want to -- some questions that we put out. We
17 may have some questions of Mr. Lawson. Let me open it up. Any
18 questions or comments?

19 Vice Chair Miller?

20 VICE CHAIR MILLER: Yeah, I'm glad you have brought up
21 Mr. Lawson. I think it would be useful for Mr. Lawson to walk
22 us and the public through the -- you know, concisely, the major
23 points in the supplemental report, dated October 1st, Exhibit 23,
24 because it outlines all of the issues that we asked for at
25 proposed action, that we -- the information that we asked for at

1 proposed action, as well as response to comments we received
2 then, or prior to proposed and since, from both ANC 6C 04,
3 Commissioner Eckenwiler, I think, on behalf of the ANC, and also
4 from the Committee of 100 and Kalorama Citizens Association.

5 I think it would be useful just to go through issue by
6 issue, and maybe see where we are on them, because I think OP
7 has recommendations of where they are, as a result of the comments
8 that we made and that the public has made. And in some cases,
9 they're recommending, and in some cases, they have no objection.

10 It just -- if it doesn't take too long. I don't want
11 to prolong this, because this case has gone on way too long. I
12 think it would help organize it and focus us and the public on
13 the issues remaining, and we can then make a decision about them,
14 if we're able to.

15 CHAIRPERSON HOOD: Okay. Mr. Lawson, can you help us,
16 as the Vice Chair mentioned, us and the public, of things that
17 you all have adopted? And this encompasses all the community's
18 comments, comments from us, and everything. And this is what
19 this report is all about, things that we've asked for, as well.

20 MR. LAWSON: Thank you, Mr. Chair. I'm Joel Lawson
21 with the Office of Planning. Thanks for bringing me in. Happy
22 to help out. And I'll just very quickly go through our last
23 report. I won't go into a lot of detail. There's a lot of detail
24 in the report on some of these issues.

25 Before I start, I would like to once again thank the

1 members of the public who did provide these comments to me, and
2 were willing to sit down with me and have conversations about
3 their comments. As you pointed out earlier, we didn't agree on
4 all of the comments, but the discussion was always really helpful,
5 and if nothing else, it helped us to understand the regulations
6 better, and some of the issues associated with them.

7 So the first issue in our report, which is Number 2 on
8 Page 1 of our report, was the issue of solar panels. And this
9 one actually came more from the Zoning Commission, although there
10 was some mention of it in the ANC Commissioner's memo, as well.
11 And this had to do with solar panels, particularly on the roof
12 of single-family dwellings and flat, low-density residential
13 buildings, and particularly on flat-roofed buildings of that
14 type.

15 But mainly the Commission, at proposed action, had
16 expressed some concerns that the structural supports for the
17 solar panels, if a setback was not required from the front facade,
18 those structural supports could be visible from the street. And
19 they're not pretty. So was there something that we could do
20 about that?

21 So the Commission asked us to look at that again, to
22 go back and talk to DOEE, Department of the Energy (sic), as well
23 as the DCRA solar coordinator, and to bring back some more
24 proposals on this, as well as some rough illustrations showing
25 what some screening might look like.

1 As you'll see from the illustrations at the end of the
2 report, it really wasn't easy to do good illustrations, because
3 the screening could be so many different things. We also weren't
4 sure the examples that we found -- that the solar panels would
5 be conforming to the new requirements that we were proposing in
6 the regulations for solar panels.

7 In the end, after my discussions, particularly with
8 DOEE and the DCRA staff, they actually -- well, first of all,
9 they wanted to reiterate that we really need to maximize, as much
10 as we can, the surface area available for solar panels. However,
11 they didn't feel that requiring a one-to-one setback for those
12 solar panels from the front facade would significantly impact
13 that area.

14 And the reason is that often there's a bit of a parapet,
15 so you would set the panels back from those parapets anyways, to
16 make sure they're not shaded. And more importantly, solar panels
17 now, on these flat roofs, tend to be mounted very, very close to
18 the roof, if not right on the roof surface.

19 So although we wanted to make sure that there was
20 continued flexibility for different kinds of panels, because the
21 technology is changing very rapidly, there was not a lot of
22 opposition to simply requiring the one-to-one setback from the
23 front facade. The people I talked to did not feel that the
24 screening was an effective solution, and could lead to a worse-
25 looking scenario than just allowing the solar panels to not be

1 | seen.

2 | And the third -- or, sorry, and the third option that
3 | we identified was, of course, the one that we originally proposed,
4 | which was to allow the panels, not require the screening, and not
5 | require the setback.

6 | So of those three options, as we see in our report, OP
7 | is okay with requiring the one-to-one setback. Our preference
8 | would be to not require the one-to-one setbacks, because we're
9 | trying to not restrict solar panels any more than we need to.
10 | But we're not really recommending the option of requiring
11 | screening below the structural support.

12 | So that was the first issue. I can go through our
13 | entire report, if you want, Mr. Chair. Or I can stop if there's
14 | questions on individual elements, if you prefer.

15 | CHAIRPERSON HOOD: Why don't we -- we may have some
16 | questions individually, so let's do them one at a time.

17 | MR. LAWSON: Sure.

18 | CHAIRPERSON HOOD: Any questions on the solar panels?

19 | COMMISSIONER MAY: No questions, but, you know, we'll
20 | do our deliberation after Mr. Lawson is done. Right?

21 | CHAIRPERSON HOOD: Yeah. Yeah, we're going to come
22 | back and go through them. I just wanted to see if we had any
23 | questions.

24 | COMMISSIONER MAY: Okay. I didn't have any questions.

25 | CHAIRPERSON HOOD: So Mr. Lawson, let me ask you. You

1 all have -- you said you went to the one-to-one with no screening.

2 MR. LAWSON: Well, that would be our preference. Like
3 I said, simply because it allows the most. But we don't think
4 that the one-to-one setback -- once I talked, particularly, to
5 the DCRA solar coordinator, we don't think that would have an
6 enormous impact, just because of, like I said, the way the solar
7 panels are now typically mounted on these kinds of roofs. So
8 we're okay with that option, if the Zoning Commission is more
9 comfortable with that one.

10 CHAIRPERSON HOOD: Okay. All right. Any other
11 questions or comments?

12 (No response.)

13 CHAIRPERSON HOOD: Okay, Mr. Lawson. Can we go to the
14 next one?

15 MR. LAWSON: Sure. Number 2 was the NCPC filing. And
16 that, as Ms. Schellin noted, is in the record. They denoted that
17 there wasn't a federal -- they didn't have an issue with this
18 proposal.

19 The text is existing in the current regulations, and
20 we had proposed some tweaking of the regulations, mainly to change
21 this provision from requiring a variance to get relief from it,
22 to requiring a special exception to get relief from it. They
23 seem to be fine with that.

24 They had further conversations with the Secret Service,
25 and the Secret Service requested some additional language

1 | tweaking. We're comfortable with that new language. At the
2 | time, I ran it past OAG. They were comfortable with the language,
3 | back when it was OAG. So we would recommend the language that
4 | is in our report, and which is consistent with what NCPC had
5 | recommended.

6 | CHAIRPERSON HOOD: Any questions or comments?

7 | (No response.)

8 | CHAIRPERSON HOOD: Okay, Mr. Lawson, we can come on to
9 | the next one.

10 | MR. LAWSON: The third one has to do with ANC comments.
11 | These were from Commissioner Eckenwiler, who always provides very
12 | good comments, so it was interesting to get them. He had
13 | requested a relatively small amendment to the definition of
14 | "rooftop structure."

15 | This would change the -- the way that we read his
16 | request is that this would change the definition of what is a
17 | structure -- when a trellis is considered a structure on the
18 | roof. And we don't feel that's necessary, so it would not be our
19 | recommendation to adopt that text amendment -- that particular
20 | text amendment brought forward by Commissioner Eckenwiler.

21 | His second major issue had to do with the front facade
22 | setback requirement. In the regulations, we have provided where
23 | a setback is required, and then where a setback is not required.
24 | And he felt that some of the allowances that we were proposing
25 | would be contrary to other provisions in the regulations,

1 particularly in the RF zones, that require the retention of a
2 rooftop element.

3 I think that we've generally addressed this through
4 other provisions. OP had already recommended that a guard rail
5 on the uppermost roof of a building would require that one-to-
6 one setback, and I think that was a major concern of his. And
7 that would mean that the deck itself would also be set back from
8 the front -- from the front facade. And other types of uses
9 would also require that setback.

10 So we didn't feel that it would apply in very many
11 areas, particularly if the Zoning Commission does elect to adopt
12 requiring a one-to-one setback for solar panels from the front
13 facade. So again, we don't think additional change is necessary,
14 because we (audio interference) covered most of the issues that
15 he raised in his memo. And those were the two issues from
16 Commissioner Eckenwiler.

17 CHAIRPERSON HOOD: Okay. Any comments on Commissioner
18 Eckenwiler?

19 Commissioner May?

20 COMMISSIONER MAY: Yeah, so, the trellis thing. I
21 mean, that's an interesting issue, because they're -- I mean,
22 essentially, what you're saying is that if the trellis has got
23 two-foot-wide spacing, it's therefore not a structure, so it can
24 be right up against any facade, all the way to the front of the
25 house.

1 And, I mean, I do kind of think that's problematic,
2 because I think it's -- you know, I mean, I'm fine with people
3 making use of their rooftops. I think that's a great thing. And
4 having, you know, having -- we'll require them to set back a
5 handrail one-to-one, so why wouldn't we want them to set back a
6 trellis that could be all the way at the front of the house? I'm
7 a little puzzled why that wouldn't also be something we'd want
8 to have set back, regardless of what the beam spacing is.

9 MR. LAWSON: Well, you know, we consider a trellis on
10 a rooftop -- we don't see them a lot on single-family dwellings,
11 although I'm sure they do exist in some places. We tend to see
12 it more on, you know, multifamily buildings on rooftops.

13 COMMISSIONER MAY: Yeah.

14 MR. LAWSON: But we consider that kind of a normal kind
15 of embellishment on the roof. We don't consider -- we wouldn't
16 consider that a problematic kind of an embellishment. And we
17 felt that restricting it at this point would be -- I guess we
18 took the opposite approach. We didn't see a need to restrict it
19 any further than it already was.

20 COMMISSIONER MAY: Right. Well, I don't know. I mean,
21 maybe I just tend to notice all of the aberrant structures on
22 tops of roofs. But I've seen a lot of trellises. And actually
23 more common than trellises are the sort of thing where it's just
24 sort of single posts that are joined, and then they've got some
25 sort of retractable roof shade built into it. And they're often

1 built in very visible ways, and I don't know whether they're all,
2 you know, obeying -- whether they're set back or not.

3 But I've definitely seen a lot of them. Not necessarily
4 in my neighborhood, because I'm in an historic neighborhood, and
5 it would be very hard to do that here. But, you know, four blocks
6 to the east, it's a problem. Or it's a visible thing. Is it a
7 problem? It's in how often it happens and how well it's done.

8 So anyway, that's it. I'll save the rest for the
9 discussion.

10 MR. LAWSON: Okay. Should I move on?

11 CHAIRPERSON HOOD: Do we have any other questions? Any
12 other questions, comments?

13 (No response.)

14 CHAIRPERSON HOOD: Okay. Mr. Lawson?

15 MR. LAWSON: Okay. The last section in our report had
16 to do with the latest submission from -- it's a joint submission
17 from the Committee of 100 and the Kalorama Citizens Association.
18 We had a number of conversations, and received a number of
19 submissions from them. The latest one was quite similar to
20 earlier submissions that we received from them, and many of the
21 issues that they raised were addressed in our earlier reports.

22 There did seem to be a misunderstanding, on their part,
23 of when particular provisions actually do apply and when they
24 don't apply. Some of the things that they were referring to
25 would've resulted in the considerable potential expansion of

1 current limitations, which we felt was well beyond what the
2 Commission had discussed, and well beyond what the intent of
3 these provisions was.

4 Certainly did want to note that one provision that is
5 discussed on Page 5, and that has to do with -- I think the Chair
6 was kind of referring to this earlier -- a provision called
7 Subtitle C 1500.3(b). And that has to do with a limit on the
8 size of any penthouse, whether it's mechanical or habitable, on
9 the roof of a building that's limited -- in residential zones, a
10 building that's limited to 40 feet.

11 So in most instances, we have other provisions that are
12 even more restrictive than that. So we have other provisions
13 that restrict penthouses on single-family dwellings and on flats.
14 And OP has proposed that those much more rigorous restrictions
15 also apply to buildings that use the RF-1 conversion provision
16 in the RF zone. So the main place where this would apply would
17 be in the RA-1 zone. Also the RA-6, but RA-1 is certainly a much
18 more common zone.

19 OP had recommended that this provision be deleted.
20 It's somewhat redundant. It's kind of a holdover from the old
21 regulations. And in talking to the zoning administrator much
22 earlier in this process, it's just one that was difficult to
23 administer and to do very much with. So we had recommended that
24 it be deleted.

25 Having said all that, there certainly were concerns

1 raised in the letter about penthouses on these buildings. And I
2 know from monitoring the BZA, where we have seen a number of RA-
3 1 small apartment buildings, it's been a concern in front of the
4 BZA, as well. So we had recommended it be deleted. We're still
5 very comfortable with that.

6 However, if the Commission wishes to retain that
7 provision, it would certainly limit the size -- or continue to
8 limit the size of a penthouse -- excuse me -- on the RA-1
9 apartment buildings. But it could be retained, for sure, in
10 which case we would probably take a closer look at that provision
11 as part of our underway review of the RA-1 regulations in total.

12 The Commission has asked us to look at the RA-1
13 apartment regulations, the special exception provision for
14 multifamily buildings, and so we could wrap that provision up
15 into our discussion of the RA-1 zone in general. But like I
16 said, we're also comfortable with it being deleted at this point.

17 CHAIRPERSON HOOD: Okay. Thank you, Mr. Lawson. I
18 really appreciate hearing that report, the other report, of the
19 RA-1 underway. I'm glad to know that's still on the radar. When
20 I heard that, it made me feel --

21 MR. LAWSON: Thank you very much.

22 CHAIRPERSON HOOD: -- made me feel real good.

23 Let me see if we have any questions or comments.
24 Additional questions, comments? I'm looking.

25 Commissioner May?

1 COMMISSIONER SHAPIRO: You're on mute, Commissioner
2 May.

3 COMMISSIONER MAY: Sorry about that.

4 My question is not about this section. It was back on
5 solar. Can I go there now? Or should I wait?

6 CHAIRPERSON HOOD: Yeah, let's go there now. Let's do
7 it now.

8 COMMISSIONER MAY: The quick question I had is, you
9 know, right now, there are requirements -- I don't know if they're
10 written or not, but it's a standard practice in the historic
11 districts to put up a screening alongside solar panels. And, you
12 know, I know this because I put them on my own house, and I had
13 to screen the side along the alley so that the panels would not
14 be visible from the street.

15 And a neighbor of mine, their house faces, you know, a
16 north-south street, and the side of their house, which actually
17 faces, you know, my street, they had to put the screening on what
18 is the side of their house, not the main front. They put the
19 screening on the side of the house, so that it would not be
20 visible from the street.

21 I guess my question is, if we went to a one-to-one
22 setback requirement, would that mean, in those circumstances,
23 that they would have to set back solar panels from that side
24 wall, where they did have to put up a flashing to screen it?

25 MR. LAWSON: That would not be our recommendation.

1 COMMISSIONER MAY: I know, I --

2 MR. LAWSON: What we discuss in the report is just
3 requiring a setback from the front facade. Certainly, in historic
4 districts, you know, HPRB can review applications and can require
5 screening where they think is appropriate.

6 COMMISSIONER MAY: Okay.

7 MR. LAWSON: The zoning regulations, of course, apply
8 across the entire city, much of which is not within a historic
9 district.

10 COMMISSIONER MAY: Right.

11 MR. LAWSON: So we would not recommend that from a
12 side facade.

13 COMMISSIONER MAY: You would not recommend --

14 MR. LAWSON: We would not recommend the one-to-one
15 setback from the side facade.

16 COMMISSIONER MAY: From the side facade, even if it's
17 facing the street?

18 MR. LAWSON: We would not recommend that.

19 COMMISSIONER MAY: Well, I know. Okay. But what is
20 the regulation that you're -- if we were to adopt a one-to-one
21 today, as it's written right now, would it apply to that side
22 wall of my neighbor's house?

23 MR. LAWSON: It would not.

24 COMMISSIONER MAY: Okay. That's really the question I
25 had.

1 MR. LAWSON: Okay.

2 COMMISSIONER MAY: Thank you.

3 CHAIRPERSON HOOD: Any other follow-up questions or
4 comments?

5 (No response.)

6 CHAIRPERSON HOOD: Okay. As we go through these, and
7 talking about them, we might -- Mr. Lawson, you may want to stay
8 up, because we may have some additional comments that may come
9 to mind. So unless there's an issue, we'll leave Mr. Lawson up.

10 COMMISSIONER SHAPIRO: We're going to go through these
11 one-by-one, Mr. Chair?

12 CHAIRPERSON HOOD: Yeah, that's what I'm getting ready
13 to start now, since there are no comments. And let's take them
14 in the order that Mr. Lawson did, and that's in his report. Let's
15 go with setback of solar panels and screening of solar panel
16 structures. Any questions or comments?

17 Commissioner May?

18 COMMISSIONER MAY: We're going to talk about that one.

19 I am in favor of requiring the one-to-one setback. The
20 fact that the DCRA's solar coordinator said that a one-to-one
21 setback does not really affect the available area, I found to be
22 very comforting, because I do know these things can be mounted
23 pretty low and, you know, very often there's a parapet wall at
24 the front wall, so it doesn't really affect very much.

25 So, you know, and I have seen some really egregious

1 | examples of solar panels highly visible from the front of the
2 | house. And again, maybe I just, you know, I have an eye for the
3 | really terrible. But I've seen really terrible, and it's not the
4 | ones that, you know, that we saw in the OP report. The ones in
5 | the OP report weren't bad. I mean, if that's all we were facing,
6 | I wouldn't be as worried about it.

7 | But what I have seen is, you know, solar panels propped
8 | up on the top of the roof at an angle, that are, like, two and a
9 | half feet high, you know, right at the front of the house. And
10 | that's the sort of thing that is a concern to me. So if we put
11 | in this one-to-one setback, they're either going to, you know,
12 | camp those a little bit lower, and then set them back, you know,
13 | so that they're down, like, to a foot or something like that.

14 | I think that that's -- I don't think that's
15 | unreasonable at all, as a requirement. And there's still plenty
16 | of area to be able to get good solar panel coverage. It would
17 | be a rare thing, I think, for a one-foot shift away from the
18 | front of a house to cost anybody any solar panels, given the fact
19 | that they're all three feet by five feet, and it's a juggle to
20 | get them all on anyway. I don't think it's going to have an
21 | effect.

22 | And I just strongly believe that it's a protection that
23 | we should have across the city. It is a protection that we have
24 | in historic neighborhoods, and I don't want to just have, you
25 | know, the historic neighborhoods look better and not get junked

1 up by seeing the panels.

2 So that's my opinion on it. So, you know, total solar
3 panel believer, but I believe that we should regulate it in this
4 way, to make sure that it doesn't affect the appearance of
5 neighborhoods across the city.

6 CHAIRPERSON HOOD: Okay. Any other questions,
7 comments, on the one-to-one?

8 COMMISSIONER SHAPIRO: Just -- I would concur with
9 Commissioner May. I think the one-to-one setback is a reasonable
10 measure, and probably would even incentivize, you know -- I mean,
11 given the new technologies, it probably would even incentivize,
12 for lack of a better term, better-looking solar panels. So I'm
13 absolutely fine with a one-to-one setback.

14 CHAIRPERSON HOOD: Okay.

15 Vice Chair?

16 VICE CHAIR MILLER: Thank you. I also concur with the
17 one-to-one setbacks, and just to clarify what Commissioner May
18 was saying, this is the option that has the one-to-one setback,
19 but no specific screening requirement, because that can create
20 other problems.

21 COMMISSIONER MAY: Right. Yeah. I'm okay with
22 foregoing the screening requirement. I was only thinking of that
23 if it was going to wind up being right up against the front of
24 the house.

25 VICE CHAIR MILLER: Yeah. Okay. I just wanted to

1 clarify that. Okay, thank you.

2 COMMISSIONER MAY: Yeah.

3 CHAIRPERSON HOOD: Okay. So we will -- and I would
4 concur. I did think about the screening, but I'm not the expert
5 on it, and I don't want to cause any other issues. But the one-
6 to-one probably will, as Commissioner May and others have
7 mentioned, probably will satisfy -- at least won't "junk up", is
8 the word I think you use in the city. So I don't want to be
9 accused of junking up the city.

10 So we're fine with that. Anything else from that?

11 (No response.)

12 CHAIRPERSON HOOD: Okay. Let me see. Next one. The
13 issue about the NCPC filing, the language in the notice of
14 proposed rulemaking, about the consultation language NCPC -- that
15 is requesting. Any comments or questions on that?

16 COMMISSIONER MAY: No.

17 CHAIRPERSON HOOD: Our Counsel has given us legal
18 advice, that it's basically already there. Okay.

19 COMMISSIONER MAY: No, I think it's fine.

20 CHAIRPERSON HOOD: Okay. All right. What was next?

21 Now, the ANC comments. Commissioner Eckenwiler, who
22 basically has become one of the Commissioners who's helped us
23 write the zoning regs. He's had great input, as Mr. Lawson said.
24 So I think they think they've already satisfied that, about the
25 structure and some of his comments, and the beaming. What do

1 | others think? Anybody want to accept Commissioner Eckenwiler's
2 | comments?

3 | Commissioner May?

4 | COMMISSIONER MAY: The one that really resonated for
5 | me was the trellis thing that I questioned Mr. Lawson on. I
6 | think that, you know, it's just -- it always seemed like such an
7 | arbitrary thing, that you could put up a trellis on top of your
8 | roof, you know, and as long as the spacing between the pieces
9 | are 24 inches, it's not a structure, but if it's 23 inches, it's
10 | a structure.

11 | It just seems so arbitrary, because the difference
12 | between those two things, they both have a potential for
13 | substantial visual impact. And so I just feel like we should be
14 | considering a trellis -- any sort of vertical structure that's
15 | permanent like that, that has, you know, the beams around it, no
16 | matter what the spacing is between the beams -- that it should
17 | be considered a structure.

18 | I've never understood that ruling from DCRA, and I
19 | think that Commissioner Eckenwiler's change is very sensible. I
20 | don't agree with him on the setback for handrails and the concern
21 | about rooftop elements. I think that that's been addressed, and
22 | I don't think we want to have setbacks on lower roofs. I think
23 | it's really just about the upper roof, where we need to have
24 | setbacks for handrails. The highest roof.

25 | CHAIRPERSON HOOD: Okay. Commissioner Shapiro, any

1 | comments on Commissioner Eckenwiler's request?

2 | COMMISSIONER SHAPIRO: Yeah, I appreciate Commissioner
3 | May's view on this. I don't have the same feeling about the
4 | trellises. I think I'm more inclined to follow OP's
5 | recommendation. It feels like it's kind of a -- it mostly "ain't
6 | broke", and there's nothing we need to fix. And so, you know,
7 | it's not something I feel like I need to fall on a sword on. But
8 | I feel like I'm, again, more inclined to follow OP's
9 | recommendation on this.

10 | CHAIRPERSON HOOD: Okay. Vice Chair Miller?

11 | VICE CHAIR MILLER: Thank you, Mr. Chairman. I'm kind
12 | of where Commissioner Shapiro is. I don't -- and where Office
13 | of Planning is, not really feeling that the change is necessary.
14 | But maybe I'm just not as observant as Commissioner May is of
15 | the rooftops around the city. And I've tried to be, ever since
16 | he's pointed out all the problems up there.

17 | But I guess I am willing to go along with this suggested
18 | change, and just, if we go -- if we go along with it, OP should
19 | have the flexibility to work with our Office of Zoning staff and
20 | OAG to -- how to make that change part of the final order, and
21 | so that there's just the appropriate flexibility.

22 | I think it's the next one I'm more concerned about,
23 | that Commissioner Eckenwiler recommended. So I, yeah, I'm not
24 | willing to fall on my sword on this one.

25 | CHAIRPERSON HOOD: So maybe I didn't follow you, Vice

1 Chair. So you are fine with making the recommendation that
2 Commissioner Eckenwiler -- about the structure. You're fine with
3 it?

4 VICE CHAIR MILLER: I'm okay. Yes. I don't know if
5 I'm fine. I'm never fine.

6 CHAIRPERSON HOOD: I would agree with both Commissioner
7 May and Vice Chair Miller. I think Commissioner Eckenwiler brings
8 a lot to the table. And I, too, don't go and look up, and I'm
9 sure they probably observe and pay attention to that, and I
10 actually don't. Maybe I should. I do sometimes, but -- and I
11 think, from knowing Commissioner Eckenwiler, he has brought a lot
12 to the table. And I would want to -- I'm probably going to go
13 along with him on this one. I think that's what I hear, so let's
14 do that.

15 And again, as the Vice Chair mentioned, they can work
16 with OZ and OZLD and -- I guess OZLD and all the rest of them,
17 to try to figure that out, how we put in that order.

18 VICE CHAIR MILLER: Commissioner Shapiro gave his
19 thumbs-up to what you just said.

20 CHAIRPERSON HOOD: Oh, okay. All right. All right,
21 so -- all right.

22 So the next -- so what about the second -- I think
23 you've already mentioned, Vice Chair, about the second --
24 Commissioner May, I believe -- I'm trying to remember. You didn't
25 really have -- you didn't agree with the second one. Okay.

1 COMMISSIONER MAY: Yeah, I didn't agree with it.

2 CHAIRPERSON HOOD: Yeah, I know we talked about (audio
3 interference). Does anybody agree with him on that one?

4 (No response.)

5 CHAIRPERSON HOOD: Okay. So we'll keep what we have
6 in front of us. And thank him again for all of his hard work.
7 Okay.

8 What about the public comments? Oh, okay -- well, let
9 me do the public comments first. As Mr. Lawson mentioned, from
10 the Kalorama Citizens Association and the Committee of 100, they
11 made some comments.

12 Office of Planning felt like what they had was tight
13 for now, and were not willing to maybe adopt the changes that
14 were suggested, but I think they have -- I believe Mr. Lawson
15 has -- they have considered heavily of what was mentioned to
16 them. I don't think they adopted them, but I think that might've
17 -- some of it might've tweaked some of the language that they -
18 - in the process. But I'm not sure on that.

19 Let me open it up. Any questions or comments?

20 Commissioner May?

21 COMMISSIONER MAY: Yeah, I mean, I think that the Office
22 of Planning has pretty thoroughly addressed the concerns that
23 have been raised by the Committee of 100 and the Kalorama Citizens
24 Association. It does seem like a lot of rehashing of previous
25 comments or concerns about things that are either in the language,

1 | already addressed, or in the existing regulations, already
2 | addressed. So I don't share the same level of concern.

3 | I do think that the notion of retaining C 1500.3(b) is
4 | worthwhile, because I think it does address one of the more
5 | significant concerns raised by the Committee of 100. And since
6 | we're already going to be looking at the RA-1 zone -- or the
7 | Office of Planning will be looking again at the RA-1 zone, that
8 | is something that they can look at more thoroughly in the context
9 | of the holistic review of RA-1.

10 | So my inclination is to go with the language as we have
11 | published it, although retain the C 1500.3(b), and then have OP
12 | look at it with the RA-1 study.

13 | CHAIRPERSON HOOD: Okay.

14 | COMMISSIONER SHAPIRO: That's fine with me, Mr. Chair.
15 | I've got no concerns around that. I think that's the right way
16 | to go.

17 | CHAIRPERSON HOOD: Vice Chair?

18 | VICE CHAIR MILLER: Well, I would've preferred the
19 | other way, maybe because I just sat on a BZA case where this was
20 | in play, and they were waiting for us.

21 | So this, in the notice of proposed rulemaking, deleted
22 | that 1500.3(b). And it is being looked at, in terms of the RA-
23 | 1 zone. It's being studied. But this would -- by retaining it,
24 | we are preventing -- restricting penthouse use, which only
25 | would've been allowed by special exception if we got rid of this.

1 So it would've been reviewed.

2 But we're restricting penthouse use in these zones to
3 not being habitable -- well, not being lived-in, basically,
4 space, and just have to continue to be mechanical or ancillary
5 space, on the deck, and I think that's not the direction that
6 the city and we were going in.

7 It's going to be looked at in terms of any impacts, in
8 terms of the overall RA-1 study that OP's doing, but it also
9 would be looked at in every individual BZA case. It wouldn't be
10 allowed, unless it was reviewed. And so -- by special exception.

11 So I think it's -- the existing previous, which
12 proposed rulemaking got rid of, is unduly restrictive and I'm not
13 in favor of putting it back in. But I think there are three
14 votes to do that, and I think we should -- it'll be revisited
15 when we go -- as we further study RA-1 and other issues,
16 conversions, going forward.

17 COMMISSIONER SHAPIRO: Mr. Chair, if I may, in
18 fairness, I'd like to hear where you are on this, because I also
19 -- you know, maybe I wasn't paying enough attention, but Vice
20 Chair Miller makes a convincing argument.

21 CHAIRPERSON HOOD: So where I'm going, I listened to
22 all of my colleagues, and I was thinking, too, to retain. But
23 I'm going to bring Mr. Lawson back up. So I guess I did that
24 for -- kept him up for a reason, because I need him. So I'm
25 going to bring him back up.

1 And I need, Mr. Lawson -- and I know it's in the report,
2 but I'm trying to think. What are -- not what OP's recommendation
3 is. What are the advantages of retaining, and what are the
4 advantages of deleting? If you could help me, and if you can
5 narrow it to layman's terms, so I can -- because I'm already
6 ready for the RA. I got so excited about you telling me the RA
7 is still underway, maybe I lost my train of thought. So tell me
8 again, delete it, what happens? If we retain it, what happens?

9 MR. LAWSON: If the provision is retained, then
10 essentially, a penthouse is not permitted. A habitable penthouse
11 is not permitted. And even -- sorry. My cat's decided to join
12 me. And even a mechanical penthouse would be (audio interference)
13 on the roof of one of these multifamily buildings.

14 And, you know, Commissioner Miller raises some very
15 good points, that I wish I had raised, but are in our report.
16 The RA-1 multifamily buildings are only permitted by special
17 exception. They are reviewed. Every one of them is reviewed by
18 the BZA. So the impact of the building, whether it includes a
19 penthouse or not, is part of that review. It's not like a
20 penthouse would be allowed by right, because the use itself is
21 not permitted by right.

22 So the main impact of -- sorry, to get back to your
23 question -- I'm sorry. So to keep the provision means that that
24 penthouse would not be permitted. To remove that provision would
25 mean that some level of a habitable space would be allowed in a

1 | penthouse. It would still have to conform to all of the height
2 | requirements, the setback requirements.

3 | The main difference is that if they do provide
4 | habitable space up there, then there is an affordable housing
5 | contribution, which is required for any habitable space in a
6 | penthouse. That could lead to as much as an additional affordable
7 | unit within the building, or a larger affordable unit within the
8 | building, that would not otherwise be the case.

9 | So take it out, a penthouse is possible through the
10 | special exception process. Leave it in, that kind of a penthouse
11 | is no longer possible.

12 | CHAIRPERSON HOOD: So I think you bring up a good point
13 | for me, for -- you know, we're trying to do affordability. And
14 | I know I'm stretching it, because that's just what I do. Can we
15 | go further and say that, if that is -- if we delete it, and as
16 | the Vice Chair has mentioned, there's a criteria of special
17 | exception that the BZA will look at, it doesn't -- I always say
18 | this to the -- it doesn't mean that -- because it says you can
19 | go to ten, you don't have to go to ten. You know? We have to
20 | look at adverse impacts. We might go to eight or something.

21 | So that's in the play for me. But I'm just -- could
22 | we -- I guess we couldn't. I'm going to ask the question anyway.
23 | Could we put it to where that unit, or some type of unit -- well,
24 | not necessarily the penthouse, but some type of unit in that
25 | structure, in the RA zone, go down -- be mandatory, 30 percent?

1 MR. LAWSON: That would be a pretty big move, and pretty
2 different from what we have in our current IZ program. But I
3 would suggest that, you know, frankly, whether the provision is
4 retained or removed, this will be looked at as part of the RA-1
5 review. So if you decide to remove the regulation, how people
6 do the penthouse on the roof would be part of that discussion of
7 how to amend the RA-1 regulations, anyway.

8 Likewise, if you decide to take it out -- or, I'm sorry,
9 if you decide to leave it in, then you would, you know, continue
10 to look at the massing and the bulk of these buildings, and that
11 will definitely include the penthouse.

12 So a question like yours, Mr. Chair, I think, would be
13 a -- it would be a very difficult one, because it's very different
14 from what -- because we discussed, as part of IZ in the past,
15 already, penthouse habitable space actually has a lower MFI
16 requirement than other IZ space. IZ space in the building has
17 to be at either 60 or 80 percent of MFI, whereas the penthouse
18 space has to be at 50 percent MFI. So that already exists.

19 If you wanted us to look at that as part of an RA-1
20 overall review, we can do that. I think that you would find it
21 would make that penthouse space sufficiently uneconomical that
22 it just wouldn't be built.

23 CHAIRPERSON HOOD: Okay. Okay. I still want you to
24 look at it, as you move on. But I think I'm going to go with
25 the Vice Chair on this one, and I'll tell you why. And then I'll

1 call on you, Commissioner May.

2 It's because we're trying to get affordable housing.
3 There is, as Mr. Lawson has just mentioned, there is a review on
4 the BZA to look at the penthouse. But I also believe I don't
5 want to take any IZ units. I want to get as much affordability
6 as possible in the rest of the -- or in part of the unit as
7 possible. I don't want to take that out, the way I understand
8 that. So that's kind of where I am.

9 Commissioner May?

10 COMMISSIONER MAY: Yeah, so I'm certainly with you on
11 wanting to encourage more inclusionary units across the board.
12 And anything that we can do, especially in the context of things
13 like a review of the RA-1 regulations, I think, would be a very
14 good idea.

15 The issue, though, is that, while there is a special
16 exception review for RA-1, for multifamily units in the RA-1
17 zone, it is a very light-handed review. There are no specific
18 guidelines. This is why we are even -- you know, why we have
19 requested the review of RA-1 units.

20 And when you think about RA-1 multifamily unit
21 buildings, if you think about this, that's why we even asked for
22 the additional regulations, because it's the sort of thing where
23 you get into the room with the BZA, and you have, you know, a
24 whole slew of folks who are upset about the prospect of having
25 this, you know, multifamily unit in their neighborhood, because

1 of the impacts that are associated with parking and all of these
2 other things. And there's just so little guidance for the BZA
3 to consider those impacts and what's important.

4 And I just feel like, for us to lift this requirement
5 and just sort of throw it into the mix, you know, every single
6 apartment building that goes into an RA-1 zone, that goes through
7 the BZA process, is going to wind up being more contentious and
8 more of a concern, and more opaque to the people who would have
9 concerns about it.

10 I don't -- I mean, I could easily see how we would lift
11 this provision at some point in the future. I just believe that
12 it's best in the context of updated RA-1 regulations. And sort
13 of lifting it right now and then, you know, it's going to be
14 harder for us to impose that again later, or impose some different
15 version of it. Best to leave it alone now, until we have the
16 chance to flesh out RA-1 completely.

17 CHAIRPERSON HOOD: I wonder if anything is ever easy
18 around here.

19 Commissioner Shapiro, you wanted to add something?

20 COMMISSIONER SHAPIRO: Yeah, I think, just after
21 hearing the conversation, I appreciate all sides on this, but I
22 think I'm more inclined to err on the side of more housing, more
23 affordable housing, and more inclined to -- so where I am right
24 now is to support where Vice Chair Miller is.

25 CHAIRPERSON HOOD: And the more we talk about it, where

1 I am right now is to go with Commissioner May. So you just can't
2 win.

3 COMMISSIONER MAY: I'm sure we're not going to see more
4 affordable housing in this short period between now and when we
5 revise the RA-1 regulations, simply because we've made it a little
6 bit easier to put, you know, a habitable penthouse on top of an
7 apartment building.

8 We're technically talking about, you know, very small
9 apartment buildings in neighborhoods where, you know, it's this
10 mixture of rowhouses and single-family houses and apartment
11 buildings.

12 And, I mean, every one that I've ever been in, the
13 neighborhood -- there are substantial portions of the
14 neighborhood who -- folks who come out in opposition to this,
15 and, you know, and not necessarily always for the right zoning
16 reasons. Certainly for very good reasons that are important to
17 their neighborhood.

18 I mean, I'm thinking about the very -- the most recent
19 one, which, to me, from a zoning perspective, was a slam dunk,
20 and I voted to approve it, but it, you know, it clearly was not
21 something that the neighbors or the ANC or the council member
22 wanted.

23 So I just feel like, you know, let's not mess with RA-
24 1 for right now. Leave it as it is, and we'll take up the regs
25 with the RA-1 case.

1 CHAIRPERSON HOOD: I would agree. I don't want --
2 here's what I don't want to do. And whatever, delete or retain,
3 whatever gets me there, that's where I want to be. I don't want
4 to exacerbate RA-1 any more than what it already is.

5 COMMISSIONER MAY: Right.

6 CHAIRPERSON HOOD: That's just where I am. And I think,
7 with that statement, it goes to what Commissioner May is saying.
8 But I do want affordable housing. So -- but for right now, as
9 Mr. Lawson has assured me -- because I know I was really one of
10 the Commissioners that kept pushing for the review on RA-1, and
11 I'm sure others, as well -- but I think Mr. Lawson has assured
12 me, it is underway, and that can be reexamined at that time.

13 But here's the thing. I can count. It depends on what
14 Commissioner Shapiro does. I know where the Vice Chair is, and
15 I think I'm going to err on the side of caution to retain, with
16 Commissioner May. But if it's a split, then we've got another
17 problem.

18 But anyway, let's see where Commissioner Shapiro is.

19 COMMISSIONER SHAPIRO: It's a split right now.

20 CHAIRPERSON HOOD: Okay. Well, Ms. Schellin, can you
21 vote? No, I'm just -- never mind. So right now, it's in there.
22 Right? So we don't have --

23 VICE CHAIR MILLER: Right now, the deletion of that
24 paragraph --

25 CHAIRPERSON HOOD: Is in there.

1 VICE CHAIR MILLER: -- is in the proposed rulemaking.
2 Right now, that prohibition on any habitable space in the RA-1
3 zone is in the zoning regulations, and that will continue. You
4 will get no housing, whether it's affordable or not, for whatever
5 period of time that this is being studied, reviewed, hearings
6 held, public proposed rulemaking, or -- there are the general
7 adverse impacts.

8 We know they're inadequate in the RA-1 regulations.
9 But the adverse impacts are supposed to be looked at in every
10 case, and they are. And maybe there's a disagreement on them
11 and -- but we won't even get to whether there's a disagreement
12 on them, because there won't even be allowed the possibility of
13 any housing on top of those particular buildings.

14 And it's not even -- they're not even -- it may be not
15 -- it may be a smaller universe, because they are small buildings,
16 as Commissioner May has pointed out. And it's not appropriate
17 in a lot of cases. But in a lot of other cases, it is. And it
18 just -- it forecloses that possibility, which was in our proposed
19 rulemaking while we look at the overall issue and every BZA
20 Wednesday, we'll get to see it, and see what the adverse impact
21 is.

22 But we're two to two, so I don't think there's a
23 decision to be made here. So it may be the status quo, which is
24 the existing prohibition, and -- but I guess we -- it's in the
25 proposed rulemaking, so if you move to strike it from the proposed

1 rulemaking, you wouldn't have the votes to strike it. I don't
2 know how, procedurally, this works.

3 CHAIRPERSON HOOD: So here's the other thought, though.
4 My other thought is, you know, it's the arguing of two sides.
5 We're trying to get more housing, but we also, Vice Chair Miller,
6 have residents who come down because there are these big
7 infrastructures that are being built, and they just go off, and
8 we look at it.

9 And this goes back to the point, what I told Mr. Lawson
10 -- what I mentioned to Mr. Lawson earlier. Just because it says
11 you can do this, you don't have to go all the way. And I say
12 this to the BZA all the time. And I'm sure Fred -- well, I'm
13 sure he's not watching. But I say it to him all the time.
14 Because it says you can build to a ten -- lessen the impact.
15 Lessen the impact on that neighbor. That neighbor next door has
16 come down, and I can tell you, the BZA and the Zoning Commission,
17 we have been ridiculed tremendously in this city about RA.
18 Terribly.

19 So I think I would rather proceed with the precaution,
20 to go along with Commissioner May, and I feel good about the
21 comfort level that Mr. Lawson has given me, that we're underway.
22 And I think all that can be reexamined at that time. But I don't
23 know. It's in the notice of proposed rulemaking. I don't know,
24 legally, if we're split, how this works. I don't --

25 COMMISSIONER SHAPIRO: I think we only --

1 CHAIRPERSON HOOD: The notice of proposed rulemaking
2 has not been voted upon. So what's before that, I believe, is
3 where we are. And I'll let Ms. Lovick opine on that, if she can,
4 to help us figure out where we are.

5 MS. LOVICK: Yeah, I mean, honestly, I don't know. The
6 situation is really unique. We have a seat that's vacant. There
7 are several issues. But, I mean, I don't think that -- if we
8 can't get a majority, I don't see how we proceed with final action
9 in this situation, because the final language is the final
10 language that would be adopted.

11 CHAIRPERSON HOOD: Can we adopt everything but that,
12 the issue on that? Because we agree on everything else.

13 MS. LOVICK: Well, I mean, if we adopt everything but
14 that, then essentially, what we're doing -- I mean, what we
15 published deleted this provision.

16 COMMISSIONER SHAPIRO: Right. That's the status quo.

17 MS. LOVICK: Yeah, and it is the status quo. The status
18 quo is that the language is in the regulations. Maybe so. I
19 mean, I can't --

20 COMMISSIONER SHAPIRO: The status quo is the deletion.

21 COMMISSIONER MAY: We have to decide one way or the
22 other. I don't think there's a default or anything like that.

23 You know, I would just ask two things. First of all -
24 - and I'm not going to try to answer this, but my first question
25 is, what would Mike Turnbull do? And see if that's persuasive

1 for anybody.

2 But the second thing is that, you know, Mr. Chairman,
3 if you cited -- you know, if it were -- if I were the holdout,
4 and you decided to go the other way, I would go with you. But I
5 would also suggest that perhaps my colleagues might consider the
6 Chairman's position, and give deference to that.

7 Because I do think that this is not just about this one
8 particular issue, and it's not about affordable housing versus,
9 you know, protecting neighborhood concerns against, you know,
10 too-tall buildings. It's as much about, you know, how we handle
11 RA-1 cases and how we provide guidance to the BZA.

12 And so again, I would just defer to you, Mr. Chairman.
13 Whatever you want, we can do.

14 CHAIRPERSON HOOD: So as everyone knows, I've had many
15 problems with what we've been doing in RA. I've heard the
16 community loud and clear.

17 And Commissioner May, I know you're saying, "up to me,"
18 but I want to put it back to you and my colleagues, because if
19 we don't start exercising that adverse impact and special
20 exception in these cases, then they're going to run us out of
21 town. They're going to run us out of town. I put myself living
22 next to some of the stuff that, to me, is not managed. But the
23 applicant has a right, because our regulations say they can do
24 it. But it's not fair to the homeowners.

25 So it's, to me, you know -- I'd really rather, for me,

1 | if we could, I'd rather have the RA analysis done. I know it's
2 | a lot. Ms. Steingasser has mentioned this a lot, and Mr. Lawson.
3 | It's a lot to do, for us to put some teeth in it, for the BZA to
4 | go with it.

5 | I just -- my question is -- and I think, Commissioner
6 | May, you're yielding the point that you made a very good point
7 | on, and that was, we're opening the floodgates. It's going to
8 | be hard to get back.

9 | I, too, want affordable housing. You see me trying to
10 | get it down to 30 percent. I almost said 20, but I figured I
11 | was pushing it, so I said 30. And obviously, I was pushing it.

12 | So I think we all agree, but we've got two things that
13 | are at risk here. We've got major structures -- and some
14 | neighbors have called them other names, but I'm going to be
15 | respectful -- major structures next to homes of people for years
16 | to have been living there, and then all of a sudden, they get
17 | this massive structure next to their home.

18 | And then the Vice Chair is talking about affordable
19 | housing and making sure a unit in the structure is more
20 | affordable. So we want all of that. We want to -- we want to
21 | be cautious over here, but we want to produce over here for the
22 | residents of the city. So I don't know how I get there with what
23 | I have in front of me.

24 | Commissioner May?

25 | COMMISSIONER MAY: Yeah, I just want to ask a question

1 of Mr. Lawson, if I could.

2 And that would be, you know, if we were to put it off
3 in anticipation of an RA-1 text amendment, do you have a sense
4 of how quickly we might actually see draft language for set-down
5 on RA-1 regulations? And please be as optimistic as possible.

6 MR. LAWSON: I'll be as optimistic as I can, and say I
7 honestly don't know.

8 COMMISSIONER MAY: Okay.

9 MR. LAWSON: The reason being that there are, of course,
10 a number of other priority items that we're trying to bring forth
11 in the Zoning Commission. It is something we need to look at
12 very carefully.

13 We also need to remember that RA-1 -- I know that the
14 cases that you've seen that have been more contentious are the
15 RA-1 cases within otherwise predominantly rowhouse areas. Most
16 of the RA-1 zoning is not that. Most of the RA-1 zoning is small
17 apartment buildings, scattered throughout the city. So --

18 COMMISSIONER MAY: Mr. Lawson, let me interrupt you.
19 That was not the case in the last one that I heard. It was a
20 predominantly apartment neighborhood. It was directly across the
21 street from apartments. There were apartments all around it.
22 And then it was still very unpopular, to say the least.

23 MR. LAWSON: No, no, no, I'm not saying it's not
24 unpopular. I'm just saying that the potential impacts of the
25 penthouse are a little bit different in that case.

1 COMMISSIONER MAY: It would've been -- it would've been
2 -- you know, it would've made the neighbors even madder in that
3 circumstance, because part of what they objected to was just the
4 size of the building.

5 So, I mean, I don't disagree with you. I think most
6 of them are -- most of them, where they are contentious, are the
7 neighborhoods that you describe. But I don't want to give anybody
8 the impression that that's exclusively what it is, because it's
9 not.

10 MR. LAWSON: No, absolutely not. No, and no, that's
11 not what I was saying, and that's not what I said.

12 COMMISSIONER MAY: I know. I know, I know, I know.
13 I'm just --

14 MR. LAWSON: I just wanted to put --

15 COMMISSIONER MAY: I lived through this one.

16 MR. LAWSON: I just wanted to put that context in there,
17 as well, that by keeping this provision, it prevents penthouses
18 on the exact kind of building that I think the intent of the
19 penthouse provisions in the first place were intended to -- the
20 type of building where that kind of a penthouse was intended to
21 be allowed.

22 COMMISSIONER MAY: Right. So Mr. Lawson, you have not
23 answered my question. You just got your argument in further.
24 Okay? So --

25 MR. LAWSON: I'm sorry. But I --

1 COMMISSIONER MAY: -- I thank you for that, but it
2 hasn't been helpful to me.

3 MR. LAWSON: I'm sorry. I will say that we are actively
4 working on it. We've started to do some mapping. We've started
5 to look at the regulations. It's not -- it's not like it's kind
6 of on a back burner somewhere.

7 COMMISSIONER MAY: Right.

8 MR. LAWSON: It's just that at this point, you know,
9 we can't say how long that initial kind of research phase that
10 we're kind of going through right now is going to take. It is a
11 contentious issue, and we want to make sure that what we bring
12 to the Commission is a good proposal.

13 CHAIRPERSON HOOD: So I want to just say, I think the
14 other question that Commissioner May had was, "What would Mr.
15 Turnbull do?" I think Mr. Turnbull would leave it in for now.
16 I really do. Now, that's just me, and I know that probably --
17 somebody's probably saying, well, that has nothing to do with it
18 right now, because he's gone. But I just think he would leave
19 it in. You ask me, he would proceed with caution.

20 All right. Vice Chair? And then Commissioner Shapiro.

21 VICE CHAIR MILLER: And I'm willing to defer to the
22 Chairman and the retired Architect of the Capitol. But let me
23 just -- I don't want to prolong this case or this issue, or the
24 discussion of this issue.

25 But let me ask Mr. Lawson a follow-up question to

1 Commissioner May's question to him about how long it would take
2 for the RA-1 generally. I think that's going to take a long
3 time. Or take a good deal, amount of time.

4 Do you think that there is language that you could
5 craft with this specific issue, in terms of, you know, clarifying
6 that special exception applies in every case, and maybe adding a
7 specific criteria when housing is -- when habitable space is put
8 on a penthouse, in these types of zoning districts? Do you think
9 you could craft something that we can look at?

10 But I don't want to have the same discussion in two to
11 three weeks, or whenever our next meeting is. But do you -- I
12 saw that you said, if we get rid of what was in the proposed
13 rulemaking, the deletion, you wanted the flexibility to work with
14 OZ on how it should read, so I thought maybe that you had
15 something in mind specifically for this RA-1 issue, as opposed
16 to the entire panoply of issues that are associated with RA-1
17 cases.

18 MR. LAWSON: Well, that's an interesting idea. I hadn't
19 -- I had not considered that. I think it might be a little bit
20 of putting the cart before the horse, since we are going to be
21 looking at what those criteria should be, as part of the broader
22 review.

23 So offhand, I think that would be difficult to do. And
24 of course, would also, I suspect, delay you taking action on the
25 rest of the provisions related to penthouses until that was done.

1 VICE CHAIR MILLER: Right. And I don't want to do
2 that, and so I think, Mr. Chairman, as our Counsel has advised,
3 if we don't have a majority, to go forward with what was in the
4 proposed rulemaking, I will defer to you and to change the
5 deletion so that the existing regulation prohibiting habitable
6 space altogether, in every case, remains, despite my concerns
7 about that on the record.

8 CHAIRPERSON HOOD: So I hope that whoever is going to
9 write about this discussion in the newspaper gets it right, of
10 what we're dealing with here. And I hope it doesn't come back
11 that Commissioner May and Commissioner Hood are against
12 affordable housing. I hope it doesn't come back that Vice Chair
13 Miller and Commissioner Shapiro do not have any empathy or any
14 concern of those who live near the projects where there are --
15 because I can tell you, I'm saying this for you all. When you
16 write the story, make sure you write it right about the things
17 that we're having to grapple with.

18 But Mr. Lawson, what I will say is that I'm looking for
19 this -- we're leaving it in there for -- I think we're going to
20 leave it in there for now, leave it as it is for now. But we
21 want to get back to this as soon as possible. All right? And
22 the RA zone is underway, and I think, unless my colleagues
23 disagree, I think that's one thing we all can agree on. We want
24 to get back to this and close this out as soon as possible.

25 And I don't remember what you said about the text

1 amendment, even though I just asked, because I've been trying to
2 think this thing through. Vice Chair Miller's text amendment
3 question. What was your response again, Mr. Lawson?

4 MR. LAWSON: I think Mr. Miller was asking if there
5 could be other conditions. If it was removed, could there be
6 additional conditions established as part of this text amendment
7 that would relate directly to the penthouses? And I think I was
8 saying that would be difficult to do.

9 Honestly, what we would normally do in a case like this
10 is, we would say, well, then let's just make it permitted by
11 special exception. Except it's already only permitted by special
12 exception, because of the RA-1 review process. So I think that
13 I would -- I think that would be a difficult thing to do on the
14 fly like this.

15 And I suspect those conditions will be something that
16 the public would want to discuss through another public hearing
17 process, which I don't -- I would not encourage, I guess, for
18 this, for the penthouse regulations. I would encourage that they
19 (audio interference).

20 CHAIRPERSON HOOD: Okay. So let me ask. Should we
21 just put this out for a hearing, or for additional comment? I'm
22 just throwing that out there. I'm seeing no.

23 COMMISSIONER MAY: I think that we need to -- I mean,
24 I think we have -- I think we need to move forward with this text
25 tonight, and get it done. So, I mean, if -- I appreciate Vice

1 Chair Miller's willingness to defer to the Chairman on this, but
2 I think that's what we should be proceeding with, and just urging
3 the Office of Planning to move the RA language as quickly as
4 possible, because I think, you know, we've got to finish the
5 rooftop stuff. We've got to finish that.

6 CHAIRPERSON HOOD: Okay. But I just want to make sure
7 the public understands that Anthony Hood is never against
8 affordable housing.

9 COMMISSIONER MAY: Sure.

10 CHAIRPERSON HOOD: But I also want to make sure those
11 understand about the precautionary measures.

12 Commissioner Shapiro?

13 COMMISSIONER SHAPIRO: Thank you. Yeah, I mean, I
14 agree with you. I think that your track record, our track record,
15 shows that we're quite thoughtful about balancing the
16 neighborhood impact issues with the need for additional housing
17 and additional affordable housing. I don't think that this is
18 an absolute black or white issue, in that regard, at all. So
19 yeah, that's not the issue for me.

20 I do think that, especially if we frame -- if we frame
21 this as, we need to do this because people get angry at us, that's
22 a bad way to frame this, because, you know, we do this because
23 we think it's good policy. And I think -- or not good policy.
24 And I think that the idea of doing what we can to incentivize
25 appropriate additional housing and potentially affordable

1 housing, I agree a small percentage -- that's what we do.

2 This does not feel, to me, like -- and I, you know,
3 this is why my temperature is rising a bit. This does not feel,
4 to me, like an issue where we are all of a sudden going to, in a
5 catastrophic way, trash neighborhoods. It's not at all. Right?

6 So it just -- it's so that -- let's not get caught up
7 in that. It's a relatively small thing, and I think we should
8 err on the side of more housing. And I think that's where OP
9 is, and I completely get it. But I also can A, count votes, and
10 B, feel like it's more important that this whole text amendment
11 moves forward. I'll leave it at that.

12 CHAIRPERSON HOOD: So I want to respond to you,
13 Commissioner Shapiro. I appreciate what you just said. But, you
14 know, and I'm sure we all do this, but I always put myself in
15 the person who's having -- I live across town from some of that.
16 I don't live anywhere near it. But I always put myself in the
17 person -- things change when it's next door to you. The way you
18 look at it changes when it's right out in front of your house.
19 When the police tape is up in front of your house, things change.

20 So, you know, and I'm not being argumentative, I'm just
21 saying, I'm trying to feel how all sides feel on an issue like
22 this. So I think that the safest thing right now is to not
23 exacerbate the situation, like I think some people have felt.

24 And yeah, people get angry. And here's the other thing.
25 Not only do the people get angry, but when I look at some of what

1 I see, I get angry. But then again, the regulations tell me I
2 have to do this, and I have to follow the regulations, so I do.
3 And I understand the BZA. It's just frustrating, because I know
4 there are a lot of competing interests here to get to where we
5 need to be.

6 So that's it. If I could wave the magic wand tonight
7 and deal with whether it stays or goes away, and able to predict
8 what's going to happen, then I would be -- I would feel good. I
9 would feel comfortable. But right now, it's 50/50 for me. I
10 want to protect the neighborhood, and I also want to get more
11 affordable housing.

12 So I don't know if, you know, if that -- that doesn't
13 solve any issue, because I -- but you all want to -- we want to
14 get through with this tonight. Again, as we've said in the past,
15 we will revisit this as quickly as possible. So that's where I
16 am.

17 Any other questions or comments?

18 (No response.)

19 CHAIRPERSON HOOD: All right. So there are no options
20 we could -- we want to retain it, I believe, is what we're going
21 to do. And I think we have a general consensus on that for the
22 most part, for now. Tentative. You can't put tentative in the
23 regulations, I don't think.

24 So anyway, would somebody like to make a motion?
25 Because I'm not making the motion on this one.

1 COMMISSIONER SHAPIRO: I move that we approve Zoning
2 Commission Case Number 14-13E, Office of Planning text amendment
3 re: penthouse regulations, with the changes that we have
4 described, and without a change that we have noted.

5 CHAIRPERSON HOOD: Okay, it's been moved. Hearing a
6 second?

7 COMMISSIONER MAY: I'll second it. I think it would
8 be worthwhile to recap the changes that we've agreed to.

9 COMMISSIONER SHAPIRO: I believe I'll take that as a
10 friendly amendment to the motion, Commissioner May.

11 COMMISSIONER MAY: Thank you.

12 CHAIRPERSON HOOD: Okay. Commissioner May?

13 COMMISSIONER MAY: Yeah. We have agreed that we will
14 incorporate the one-to-one setback for solar panels on the front
15 of buildings; that we will -- regarding trellises, that we will
16 include the language regardless of the spacing of the beams; and
17 that we will retain the language in C 1500.3(b); and we would
18 give the OZLD and Office of Planning some flexibility to massage
19 the language as needed, to make sure it all makes sense and works
20 together. Did I capture everything?

21 COMMISSIONER SHAPIRO: I think there's the issue of the
22 -- maybe you caught it, but the issue of -- that we have heard
23 but are not changing any language regarding what the Committee
24 of 100 and Kalorama Citizens Association mentioned.

25 COMMISSIONER MAY: Yeah, the only thing we're doing in

1 response to the Committee of 100 and Kalorama is the -- to retain
2 1500.3(b), which addresses their greatest concern, which is
3 habitable penthouses on RA-1 buildings.

4 COMMISSIONER SHAPIRO: So with that addition, Mr.
5 Chair, that's the motion.

6 COMMISSIONER MAY: And the second.

7 CHAIRPERSON HOOD: It's been moved and properly
8 seconded, with the -- outlined in the discussion, and also
9 outlined, recapped, by Commissioner May and Commissioner Shapiro.
10 So moved, properly -- any further discussion?

11 (No response.)

12 CHAIRPERSON HOOD: Ms. Schellin, could you do a roll
13 call vote, please?

14 MS. SCHELLIN: Commissioner Shapiro?

15 COMMISSIONER SHAPIRO: Yes.

16 MS. SCHELLIN: Commissioner May?

17 COMMISSIONER MAY: Yes.

18 MS. SCHELLIN: Commissioner Hood?

19 CHAIRPERSON HOOD: Yes.

20 MS. SCHELLIN: Commissioner Miller?

21 VICE CHAIR MILLER: Yes.

22 MS. SCHELLIN: The vote is four to zero to one. The
23 Architect of the Capitol representative not present, not voting.

24 CHAIRPERSON HOOD: Where is --

25 MS. SCHELLIN: To take final action -- to approve the

1 final action, as discussed this evening.

2 CHAIRPERSON HOOD: And where is AOC when you need him?
3 Okay. Let's take a five-minute break. Everybody online, let's
4 take a five-minute break.

5 MS. SCHELLIN: Sure.

6 (Whereupon, the above-entitled matter went off the
7 record and then resumed at 5:53 p.m.)

8 CHAIRPERSON HOOD: I think we're coming up on five
9 minutes. Everybody back?

10 (No response.)

11 CHAIRPERSON HOOD: That was a very good, healthy
12 discussion. And one thing I hope -- I hope residents who say we
13 rubber-stamp everything realize what we go through. I shouldn't
14 have said that. That gets me in trouble.

15 Okay. Are we ready to go back to hearing action now?
16 Zoning Commission Case Number 16-02C, Office of Planning.

17 Mr. Young, if you can bring the Planner up?

18 Ms. Vitale, good evening.

19 MS. VITALE: Good evening --

20 CHAIRPERSON HOOD: Get yourself situated. You may
21 begin.

22 MS. VITALE: Good evening, Mr. Chair, and members of
23 the Commission. Elisa Vitale with the Office of Planning, for
24 Zoning Commission Case 16-02C.

25 The Office of Planning recommends that the Zoning

1 Commission set down for public hearing H&A DCU JV, LLC's request
2 for a modification of significance to the approved consolidated
3 PUD for Audi Field. The original PUD, which covers one record
4 lot in the CG-4 zone, permitted the Audi Field soccer stadium.

5 The PUD included stadium ground-floor retail, a two-
6 story building at the south side of the stadium, also with ground-
7 floor retail, team offices, the player locker rooms, and a bike
8 valet. There is a team store located at the northeast side of
9 the stadium.

10 And the PUD also included the ticket windows, entry
11 gates, as well as a park and plaza space along Potomac Avenue,
12 as well as the realigned private 1st Street Southwest. The
13 approved PUD did not include any onsite parking.

14 Parcel B, which was the remaining portion of the record
15 lot that did not, you know, take in the stadium or any of the
16 associated improvements, was not included in the PUD, and
17 condition D(2) of the final order required a design review for
18 any development on Parcel B. You can see the approved PUD
19 submission boundary, as well as the approved boundary for Parcel
20 B in the slide that's before you now. And that's on the left
21 side of the screen.

22 The subject modification of significance that's before
23 you this evening is a request to adjust the boundary, but not
24 the total area, of Parcel B, and that is to more accurately
25 reflect the proposed development footprint for Parcel B. And you

1 can see that modified boundary on the right-hand side of this
2 slide.

3 The modification request also includes a redesign of
4 1st Street Southwest, as well as a redesign of the Potomac Avenue
5 Southwest park and plaza area. The modification would also
6 clarify that FAR calculations for Parcel B would be based on the
7 land area of Parcel B and not the full PUD area. And finally,
8 the modification request contemplates permitting the underground
9 parking garage of Parcel B to extend under the PUD site.

10 The proposed modification would not be inconsistent
11 with the Comprehensive Plan, and would further policies contained
12 in the citywide elements, as well as the Lower Anacostia
13 Waterfront and Near Southwest Area element. The future land use
14 map indicates that the site is appropriate for high-density
15 residential and high-density commercial.

16 The generalized policy map now indicates that Audi
17 Field is designated as a regional center, and the revised or
18 updated Comprehensive Plan maintains the neighborhood enhancement
19 area designation for Parcel B. And finally, the Comprehensive
20 Plan indicates that the site is located in a Resilience Focus
21 area. If you can go the next slide, please?

22 The modification would facilitate the development of
23 Parcel B, and would result in improvements to the park and plaza
24 space at Potomac Avenue. It would result in the completion of
25 the site remediation through the voluntary cleanup process for

1 Parcel B. It would result in a redesign of 1st Street Southwest,
2 and would provide for improved public space on Half Street
3 Southwest.

4 In reviewing this modification request through a racial
5 equity lens, OP finds that it would result in an increase in
6 affordable housing opportunities, including senior affordable
7 housing that is proposed for Parcel B. It would provide inclusive
8 economic opportunities, and would encourage a healthy
9 neighborhood.

10 OP recommends that the application be set down for a
11 public hearing, and will continue to work with the applicant on
12 issues raised in our report. This would include refining the
13 changes to the condition language and fully addressing the
14 updated Comprehensive Plan, to include the regional center
15 designation, and the location within a Resilience Focus area.

16 This concludes my report, and I'm happy to answer any
17 questions. Thank you.

18 CHAIRPERSON HOOD: Thank you, Ms. Vitale. Let's see
19 if we have any questions or comments.

20 Commissioner May?

21 (No response.)

22 CHAIRPERSON HOOD: Okay. Commissioner Shapiro?

23 (No response.)

24 CHAIRPERSON HOOD: And Vice Chair Miller?

25 (No response.)

1 CHAIRPERSON HOOD: Okay. Thank you very much for your
2 report. Should be pretty interesting. Anyway, thank you for
3 your report.

4 Commissioners, we have before us a request to set down
5 Zoning Commission Case Number 16-02C, modification of
6 significance to an approved PUD for Audi Field at 100 Potomac
7 Avenue Southwest, Square 665, Lot 27. And I so move. Can I get
8 a second?

9 COMMISSIONER SHAPIRO: Second, Mr. Chair. With the
10 second, there's a question around the applicant requesting that
11 the hearing for this modification of significance be consolidated
12 with the hearing for the related design review application. Is
13 that anything we need to address right now?

14 CHAIRPERSON HOOD: Let me carry the motion. Let me
15 carry the motion. So it's been moved and properly seconded. Any
16 further discussion?

17 Commissioner Shapiro, could you repeat that again,
18 please?

19 COMMISSIONER SHAPIRO: Yes, sir. I believe the
20 applicant's requesting that the hearing for this modification of
21 significance be consolidated with the hearing for the related
22 design review application, 16-02D. Any action we need to take
23 on that now?

24 CHAIRPERSON HOOD: I think we can just consent to do
25 that, unless there's an objection. And I'll leave that to Staff

1 to work that out, unless there is an objection.

2 (No response.)

3 CHAIRPERSON HOOD: Okay. Then Ms. Schellin can work
4 that out, figure that out, the design review case and this case.

5 Okay. Any further discussion? Thank you, Commissioner
6 Shapiro.

7 (No response.)

8 CHAIRPERSON HOOD: Okay, Ms. Schellin, would you do a
9 roll call vote, please?

10 MS. SCHELLIN: Was that Commissioner Shapiro who
11 seconded? Or Commissioner Miller?

12 CHAIRPERSON HOOD: It was Commissioner Shapiro.
13 Commissioner May's microphone wasn't on, so I guess we'd better
14 give it to Commissioner Shapiro.

15 MS. SCHELLIN: Okay. Commissioner Hood?

16 CHAIRPERSON HOOD: Yes.

17 MS. SCHELLIN: Commissioner Shapiro?

18 COMMISSIONER SHAPIRO: Yes.

19 MS. SCHELLIN: Commissioner May?

20 COMMISSIONER MAY: Yes.

21 MS. SCHELLIN: Commissioner Miller?

22 VICE CHAIR MILLER: Yes.

23 MS. SCHELLIN: Again, the vote is four to zero to one.
24 The AOC representative not present, not voting. And this is
25 being set down as a contested case, and has been approved to have

1 the hearing with Case Number 16-02D, which is the design review
2 case.

3 CHAIRPERSON HOOD: Okay. Moving right along, let's go
4 to Zoning Commission Case Number 21-16, Office of Zoning text
5 amendment to subtitles, changing references from OAG to OZLD, or,
6 well, Office of Zoning Legal Division. Ms. Schellin, is that
7 you?

8 MS. SCHELLIN: Yes. So we filed this case, this text
9 amendment, on an emergency basis, asking that the Commission take
10 emergency action, set it down; and also approve a shorter notice
11 period for a 30-day notice of the public hearing; and also to
12 authorize the immediate publication of the notice of proposed
13 rulemaking.

14 This is just a simple text amendment to change any and
15 all references in our regulations from "the Office of the Attorney
16 General" to "the Office of Zoning Legal Division." That gives
17 the authority -- takes the authority from OAG to OZ's Legal
18 Division. So I'd ask the Commission if they would take those
19 actions this evening.

20 CHAIRPERSON HOOD: Okay. Commissioners, we have a
21 request to set this down. We also have a request to take
22 emergency action and authorize immediate publication of notice
23 of proposed rulemaking, and then approve a shorter notice period
24 of 30 days for the public hearing notice.

25 I will ask you, Ms. Schellin -- I believe this is pretty

1 straightforward, but before I open it up, let me ask, Ms.
2 Schellin, if we could probably put this case -- I don't anticipate
3 this -- I shouldn't say this, but I don't anticipate this case
4 being any more than five minutes, if that long.

5 MS. SCHELLIN: Right.

6 CHAIRPERSON HOOD: So can we find a way to put this
7 with something else?

8 MS. SCHELLIN: That's what we plan to do.

9 CHAIRPERSON HOOD: Okay. Great. Thank you. Any
10 further discussion --

11 VICE CHAIR MILLER: No.

12 CHAIRPERSON HOOD: -- Commissioners? Okay. So,
13 somebody like to make a motion? Somebody else? Commissioner
14 May, your microphone?

15 COMMISSIONER MAY: My microphone is on, and I will make
16 the motion to approve Zoning Commission Case -- sorry, set down
17 Zoning Commission Case Number 21-16, Office of Zoning, text
18 amendments to subtitles regarding changing references from OAG
19 to the OZ Legal Division, including taking emergency action and
20 authorize immediate publication, and approve a shorter notice
21 period, 30 days, of public hearing notice.

22 CHAIRPERSON HOOD: Okay. I'll second that motion.
23 It's been moved and properly seconded. Any further discussion?

24 (No response.)

25 CHAIRPERSON HOOD: Okay. Ms. Schellin, could you do a

1 roll call vote, please?

2 MS. SCHELLIN: Commissioner May?

3 COMMISSIONER MAY: Yes.

4 MS. SCHELLIN: Commissioner Hood?

5 CHAIRPERSON HOOD: Yes.

6 MS. SCHELLIN: Commissioner Miller?

7 VICE CHAIR MILLER: Yes.

8 MS. SCHELLIN: Commissioner Shapiro?

9 COMMISSIONER SHAPIRO: Yes.

10 MS. SCHELLIN: The vote is four to zero to one, to
11 approve the emergency, the set-down, the immediate publication
12 of the proposed rulemaking, and the shortened notice of hearing
13 of 30 days. Four to zero to one, the AOC rep not present, not
14 voting. Thank you, guys.

15 CHAIRPERSON HOOD: Thank you, Ms. Schellin. Next, our
16 last case, I believe for the day, is Zoning Commission Case Number
17 19-29, the UM 1348 4th Street Northeast, LLC, consolidated PUD,
18 related map amendment and the air rights development, in Squares
19 3587 and 3594.

20 Oh, Mr. Jesick, there you are. Mr. Jesick, you may
21 begin.

22 MR. JESICK: Thank you, Mr. Chairman, and members of
23 the Commission.

24 This application was last before you at your June 10th
25 public meeting, and at that time, the Office of Planning didn't

1 make a recommendation regarding set-down, and noted that the
2 public benefits of the PUD were not commensurate with the degree
3 of development incentives that were requested. Specifically, the
4 use mix, including PDR uses, and the amount of affordable housing
5 were not consistent with the Comprehensive Plan or with the
6 Mayor's order on housing.

7 And at that meeting, the Commission agreed that the
8 magnitude of the benefits needed to be improved, and you did not
9 set the application down for a public hearing.

10 Since that time, OP and the applicant have continued
11 our discussions about the outstanding issues identified in OP's
12 report, with a particular focus on the level of IZ in the project.
13 And those discussions have resulted in the applicant revising
14 their proffer to provide a total of 13 percent IZ, with 11 percent
15 at 60 percent MFI, and 2 percent at 50 percent MFI.

16 And OP and DHCD, the Department of Housing and
17 Community Development, have concluded that that amount of
18 affordable housing is appropriate for this PUD, given that there
19 is some deeper level of affordability for the IZ units. And
20 based on that updated proffer, OP can now recommend that the
21 application be set down for a public hearing.

22 Now, regarding the PDR uses, the applicant has
23 increased their proffer from 5 percent of the commercial area for
24 five years to 10 percent for five years. But OP remains concerned
25 about how this commitment would be deemed not inconsistent with

1 the Comprehensive Plan. And we continue to recommend a greater
2 quantity of PDR uses and a longer time commitment.

3 Now, prior to the public hearing on this case, OP will
4 continue to work with the applicant to address that issue, as
5 well as other issues raised in the initial OP report, and raised
6 by the Commission at the June meeting. But again, the Office of
7 Planning is now recommending that the Commission set this case
8 down for a public hearing. And I'd be happy to take any
9 questions.

10 CHAIRPERSON HOOD: Thank you very much, Mr. Jesick.
11 Let's see if we have any questions.

12 Commissioner May?

13 COMMISSIONER MAY: I don't really have questions, no.
14 But I have comments. Basically, you know, I'm glad that the
15 Office of Planning has worked successfully with the applicant to
16 refine the application and improve things.

17 I'm not totally persuaded that the applicant has gone
18 far enough, and hope that the applicant will continue to work
19 with the Office of Planning in a cooperative way to meet the
20 concerns the Office of Planning has, and make sure that, you
21 know, the PDR space issue, for example, is settled.

22 I'm not totally sure that we're where we need to be on
23 affordable housing, either, but, you know, I'm certainly fine
24 with setting it down and having that discussion at a hearing. So
25 thank you.

1 CHAIRPERSON HOOD: Thank you.

2 Commissioner Shapiro?

3 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I agree
4 with Commissioner May. I'm happy to set this down, and I share
5 the same concerns, and I would want to make sure that the
6 applicant continues to work with OP and addresses those issues.
7 And I think they'll need to do that before they'll -- I imagine
8 they'll need to do that before they get the support of the
9 Commission, even if we're setting this down.

10 CHAIRPERSON HOOD: Okay. Vice Chair Miller?

11 VICE CHAIR MILLER: Thank you, Mr. Chairman. I also
12 support setting this down for a public hearing. I appreciate all
13 the work that, Mr. Jesick, you and the applicant have done on
14 this case thus far. And I appreciate all the movement in the
15 right direction by the applicant, in terms of the increased
16 proffers on affordable housing and the PDR uses.

17 And I appreciate, also, them working with -- the
18 applicant working with ANC 5D to get their support with all those
19 commitments that have been made for various neighborhood
20 improvements. But clearly, there needs to be continued work, and
21 I support all of the Office of Planning's recommendations and
22 comments in their report.

23 CHAIRPERSON HOOD: Okay. I don't have anything to add,
24 but I would agree with my colleagues about continuing to work
25 with the Office of Planning as we get ready for a hearing. Sounds

1 | like we have the votes to set this down. Would somebody like to
2 | make a motion to set this down?

3 | VICE CHAIR MILLER: Mr. Chairman, I would move that the
4 | Zoning Commission set down for a public hearing Case Number 19-
5 | 29, consolidated Planned Unit Development and related map
6 | amendment at 1348 4th Street Northeast, and ask for a second.

7 | COMMISSIONER SHAPIRO: Second.

8 | CHAIRPERSON HOOD: It's been moved and properly
9 | seconded. Any further discussion?

10 | (No response.)

11 | CHAIRPERSON HOOD: Not hearing any, Ms. Schellin, would
12 | you please do a roll call vote?

13 | MS. SCHELLIN: Commissioner Miller?

14 | VICE CHAIR MILLER: Yes.

15 | MS. SCHELLIN: Commissioner Shapiro?

16 | COMMISSIONER SHAPIRO: Yes.

17 | MS. SCHELLIN: Commissioner Hood?

18 | CHAIRPERSON HOOD: Yes.

19 | MS. SCHELLIN: Commissioner May?

20 | COMMISSIONER MAY: Yes.

21 | MS. SCHELLIN: The vote is four to zero to one, to set
22 | down Zoning Commission Case Number 19-29 as a contested case.
23 | The AOC representative, of course, not present, not voting.

24 | CHAIRPERSON HOOD: Okay. Ms. Schellin, do we have
25 | anything else before us in the meeting tonight?

1 MS. SCHELLIN: We do not, unless OP has a report. And
2 I don't think they do. They usually let me know ahead of time.
3 So I think we're good.

4 CHAIRPERSON HOOD: Okay. Thank you. So the Zoning
5 Commission will be meeting again on -- just a second -- on Monday,
6 October the 18th, at 4:00 p.m., on the same platform. That case
7 would be an Office of Planning, Zoning Commission Case Number 21-
8 10, public hearing, proposed text amendment to Subtitle C,
9 Chapters 7 through 9, Vehicle Parking, Bicycle Parking, and
10 Loading.

11 And then I'm not sure how this happened, but I didn't
12 -- I see on the agenda, we have a hearing on Tuesday. Not sure
13 how that was done. But anyway, we will be hearing, Tuesday -- I
14 will announce Tuesday's hearing on Monday.

15 So anyway, anything else, Ms. Schellin?

16 (No response.)

17 CHAIRPERSON HOOD: All right. I want to thank the
18 Office of Zoning's Legal Department, who has not missed a beat -
19 -

20 MS. SCHELLIN: Division.

21 CHAIRPERSON HOOD: Division. Department. I told you,
22 it's going to take me six months.

23 MS. SCHELLIN: That's okay.

24 CHAIRPERSON HOOD: I want to thank all the work under
25 the leadership of Sara Bardin as we went through this transition.

1 I think it will be very beneficial, because we had a lot of things
2 tonight, I know, that I had to read over, so I want to thank Ms.
3 Lovick and her team.

4 And I also want to thank Ms. Nagelhout and her team,
5 because when the transitions happen, a lot of time, things fall
6 by the wayside, you lose -- but this time, in this particular
7 case, I want to thank them, because we did not miss a beat. So
8 I appreciate all the work they've done, and especially the Office
9 of Zoning staff, as always. I appreciate that.

10 And I really appreciate what everybody does, because
11 that's what makes it work. We may not always agree, but what
12 makes it work is working together. So thank you all.

13 So with that, see you all on Monday. I'm still trying
14 to figure out who made the suggestion for Tuesday. I don't think
15 that was me, but -- oh, Commissioner May.

16 MS. SCHELLIN: Oh, it was Peter. Commissioner May did
17 that?

18 CHAIRPERSON HOOD: Oh, you did that?

19 MS. SCHELLIN: Or was he just raising his hand to speak?

20 CHAIRPERSON HOOD: Okay.

21 COMMISSIONER MAY: (Indiscernible) it was me, and I
22 think it's going to cost me a volleyball game.

23 MS. SCHELLIN: What? Then that means Chairman Hood
24 made it, decided that day.

25 CHAIRPERSON HOOD: Well, all right, so we'll --

1 MS. SCHELLIN: He always like to mess up your game.

2 COMMISSIONER MAY: It was that or, you know, missing
3 the D.C. United game on Wednesday night, so --

4 CHAIRPERSON HOOD: Oh, okay. We had a lot of things
5 going on there. Okay. Well, anyway --

6 COMMISSIONER MAY: I'm a busy man.

7 CHAIRPERSON HOOD: Well, I want to thank everybody
8 again for their participation in the meeting tonight, and with
9 that, this meeting is adjourned. Good night, everyone.

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

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In the matter of: Public Meeting

Before: DCZC

Date: 10-14-21

Place: Teleconference

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