

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC HEARING

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THURSDAY

JULY 13, 2023

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chairperson
PETER MAY, Commissioner
JOSEPH IMAMURA, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN, Secretary
ELLA ACKERMAN, Staff
PAUL YOUNG, Data Specialist

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, ESQUIRE
DENNIS LIU, ESQUIRE
JACOB RITTING, ESQUIRE

The transcript constitutes the minutes from the Public Hearing held on July 13, 2023.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Associates, LLC 4

Case No. 85-16B
CLPF-Cc Pavilion, LP 8

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

(4:30 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 this evening are Vice Chair Miller, Commissioner May and Commissioner Imamura. We are also joined by the Office of Zoning's Staff Ms. Sharon Schellin, Ms. Ella Ackerman, and Mr. Paul Young who will be handling all of our virtual operations. Also our Office of Zoning Legal Division we have Mr. Liu, Mr. Ritting and Ms. Lovick. I will ask all others to introduce themselves at the appropriate time, if needed.

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 and 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. For hearing action items, the only documents before us this evening are the application, the ANC setdown and the Office of Planning report. All other documents in the record will be reviewed at the time of the hearing.

Again, we do not take any public testimony in our meetings unless the Commission requests someone to speak. If you

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experience difficulty accessing WebEx if we call on you to speak or with your phone call-in, then please call our OZ hotline number 202-727-0789.

Now, I do have a brief announcement. Okay. I do have a brief announcement. We will not take up -- we will take up at our very next meeting Zoning Commission Case No. 22-25 Office of Planning Text Amendment to Subtitles C, I, X, Y and Z, downtown zones and BZA and ZC Rules and Practices and Procedures. We needed a little more time on that because we want to make sure we do it right. Not fast, but we want to do it right, so we will take care of it at our next meeting which we'll announce the date. I don't know when the next meeting is, I don't have that in front of me right now.

All right. Ms. Schellin, do we have any preliminary matters?

MS. SCHELLIN: We don't.

CHAIRPERSON HOOD: Okay. Let's move right with the agenda and I want to ask everyone to bear with us. We have a lot of information to try to remember, and notice I said try. Okay.

Consent calendar item, minor modification of technical corrections. Zoning Commission Case No. 06-13B Connecticut & K Associates, LLC and 1000 Connecticut Associates, LLC. Minor modification to a PUD to add habitable penthouse space at Square 163. Ms. Schellin.

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MS. SCHELLIN: Yes, sir. As you stated the Applicant is requesting a minor modification to add penthouse habitable space to a PUD approved prior to 2016.

At Exhibit 7 ANC 2C submitted a report which stated they voted unanimously to support the request. At Exhibit 8 there's an OP report that recommends approval. So this is before the Commission if they choose to take action. It is ready to proceed with final action. Thank you.

CHAIRPERSON HOOD: Okay. Commissioners, we've already had this teed up by Ms. Schellin so I won't be redundant. We have it in front of us. We know what the request is, as Ms. Schellin has stated. Let me hear from others.

Commissioner May? Any additional comments?

COMMISSIONER MAY: I'm just saying this is a very straightforward case that fits exactly the process that we had suggested could be used for the addition of penthouse habitable space on existing buildings. I'm always glad to see this happening because of course it yields a either, you know, well it yields both useful space on the rooftops but also a contribution to the affordable housing trust fund. So, and that's like another 800,000 or something like that.

So it's a good thing and I'm ready to move forward.

CHAIRPERSON HOOD: Okay. Commissioner Imamura, any comments?

COMMISSIOENR IMAMURA: Just some comments. Agree it's

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almost 807,000. Took a look at what's in the record and as Commissioner May said this is pretty straightforward. It fits right in there with (indiscernible).

VICE CHAIR MILLER: Can you hear me, Mr. Chairman? Yes, I agree with my colleagues. This is exactly as we intended with the habitable space and the substantial affordable housing production trust fund contribution. So ready to move forward.

CHAIRPERSON HOOD: Okay. I would agree. I'm not going to be redundant. That's the goal tonight for me not to be redundant. So what we'll do is see if somebody would like to make a motion on this?

COMMISSIONER MAY: Mr. Chairman, I would make the motion that the Commission approve case 06-13B Connecticut & K Associates, LLC and 1000 Connecticut Associates, LLC minor modification to a PUD to add habitable penthouse space at Square 163.

COMMISSIONER IMAMURA: Second.

CHAIRPERSON HOOD: Okay. Thank you, Commissioner Imamura and Commissioner May. It's been moved and properly second. Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Imamura?

COMMISSIONER IMAMURA: Yes.

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MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: The vote is four to zero to one to approve final action Zoning Commission case No. -- sorry, I've different screens open here -- 06-13B, the minus one being the third Mayoral appointee seat (indiscernible).

CHAIRPERSON HOOD: Okay. All right.

MS. SCHELLIN: If we could have the Applicant submit a draft order in the next two to three weeks, that would be great.

CHAIRPERSON HOOD: Okay. I'm just trying to remember which case fell off, which case that's on my agenda that fell off, so I'm (indiscernible).

MS. SCHELLIN: The next case would case No. 85-16B.

CHAIRPERSON HOOD: Thank you, Ms. Schellin, because I was getting ready to call the one that fell off. All right.

Let's move to, you said the next case was 85-28AF?

MS. SCHELLIN: 85-16B. Determination scheduling.

CHAIRPERSON HOOD: Oh, okay. I got it. I'm sorry. I jumped ahead. But one of these fell off. Let me call that one, somebody. Let's go to Zoning Commission case No. 85-16B CLPF-CC Pavilion, LP PUD modification of consequence at Square 1661.

Ms. Schellin.

MS. SCHELLIN: Yes, sir. The Commission would recall

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this case was previously removed from the Consent Calendar by Commissioner Miller but based on information received after the fact from the Applicant, Commissioner Miller withdrew his request to remove it from the consent calendar and a schedule was set for submissions.

The Applicant has made a submission with two recommended changes which is at Exhibit 10. One was regarding the FAR and the other regarding the grocer tenant's entrance. We previously had a response submitted from the ANC and I believe these changes were based off of recommendations from the ANC. The Commission decides this case is now indeed a modification of consequence with this additional information. It can move forward with action if it chooses to do so. Thank you.

CHAIRPERSON HOOD: Okay. Again, let's do a determination. Vice Chair Miller, any additional updates?

VICE CHAIR MILLER: Ready to move forward, Mr. Chairman. I'm glad the Applicant has worked out with ANC 3E white issues that they had.

CHAIRPERSON HOOD: Okay. Again, as stated this is Zoning Commission case No. 85-16B. We are determining this is a modification of consequence and we appreciate all the work that everyone has done to get us to this point. If not we would have had to have moved it. All right. Let me open it up for any questions or comments, and even though I say that, if you don't have any comments we'll just keep right on moving.

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Commissioner May? Okay. Commissioner Imamura? Okay. And Vice Chair Miller? All right. So as proposed we've heard the tee up from Ms. Schellin. The ANC and others are on board so I would move that we approve as noted Zoning Commission case No. 85-16B CLPF-CC Pavilion, LP PUD modification of consequence at Square 1661 and ask for a second.

VICE CHAIR MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly second. Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: Commissioner Imamura?

COMMISSIONER IMAMURA: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: The vote is four to zero to one to approve final action Zoning Commission case No. 85-16B, the minus one being the third Mayoral appointee seat being vacant and if we could have the (indiscernible) --

CHAIRPERSON HOOD: Ms. Schellin, I think you're kind of fading out a little bit. I think, I'm not sure of the dates.

MS. SCHELLIN: If the Applicant's attorney could

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provide an order, draft order in two to three weeks? Can you hear me now?

CHAIRPERSON HOOD: Yes, I can hear you now. Hear you good.

MS. SCHELLIN: Okay. Thank you. That's it.

CHAIRPERSON HOOD: Okay. Thank you. All right. Let's keep moving.

Let's go to Zoning Commission case No. --

MS. SCHELLIN: 05-28AF.

CHAIRPERSON HOOD: Yes. My mouse is unhappy. My mouse is moving real slow. So anyway, let's go to Zoning Commission case No. 05-28AF Lano Parcel 12, LLC modification of consequence of a second stage PUD approved by Zoning Commission Order No. 05-28F at Square 5056.

Ms. Schellin.

MS. SCHELLIN: Yes. This case was on the Commission's June 29th agenda for action. However, the Applicant asked for a postponement to allow the ANC additional time to review the case. The ANC 7D submitted its report on July 12th which is at Exhibit 8 and it is in support. This case is ready for the Commission to move forward with final action. Thank you.

CHAIRPERSON HOOD: Okay. As we know, this has been especially with the five heritage trees. Let me see if there are any questions or comments?

Commissioner Imamura.

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COMMISSIONER IMAMURA: Thank you, Mr. Chairman. No questions. I think this is pretty straightforward in my opinion. Really it's a change of relocating these five heritage trees from landscape side park on block D to relocate those heritage trees from parcel 9 to Parkside Park. So, you know, I've taken a look at the record and I'm satisfied with the approach and the strategy for these five heritage trees and I agree that this is a modification of consequence and straightforward, so I'm ready to move forward with it.

CHAIRPERSON HOOD: Okay. Thank you. And Vice Chair Miller?

VICE CHAIR MILLER: Thank you. I agree with Commissioner Imamura's comments and I hope that the trees survive.

CHAIRPERSON HOOD: That sounded real gloomy. I hope so too, it was the way it sounded.

Commissioner May.

COMMISSIONER MAY: I would only add that it's helpful to have the letter in the record from ANC 7D. They specified certain conditions for their unanimous support and those conditions were addressed in the previous case that we heard on Monday and so I don't see any need to (indiscernible) incorporate anything specific about those conditions into this decision since we know these conditions will be met per the other case, so that's it.

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CHAIRPERSON HOOD: Thank you, and I would agree. I'm hoping that the tree transplant will work. I'm sure it will. Take our time, let's do it right. I think a lot is depending on those five heritage trees. So as already stated, I would agree with all my colleagues and ask anyone who'd like to to make a motion on this case.

COMMISSIONER IMAMURA: Mr. Chairman, I'll make a motion.

I move that the Zoning Commission approve Zoning Commission case No. 05-28AF Lano Parcel 12, LLC modification of consequence of a second stage PUD approved by our Zoning Commission Order No. 05-28F at Square 5056. Oh, no, yes. That's my motion and ask for a second.

CHAIRPERSON HOOD: I'll second that. It's been moved and properly second. Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner Imamura?

COMMISSIONER IMAMURA: Yes.

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: The vote is four to zero to one to

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approve final action Zoning Commission case No. 05-28AF, the third Mayoral appointee seat being vacant being the minus one and ask the Applicant to provide a draft order in the next two to three weeks.

CHAIRPERSON HOOD: Thank you, Ms. Schellin. Let's go to the next case. Zoning Commission case No. 22-34 Borean Baptist Church. Zoning map amendment at 2991 Lot 77. Ms. Schellin?

MS. SCHELLIN: Yes. At the conclusion of the hearing the Commission took proposed action approving the map amendment with IZ Plus being applied. Staff referred the case to NCPC on June 1st, however no response has been received. As of today, the 30 day response period has passed and the Commission can proceed with final action. Thank you.

CHAIRPERSON HOOD: Thank you, Ms. Schellin.

I think this hearing, we've mentioned a lot, we've exhausted a lot of issues in the hearing that were there. As Ms. Schellin has already mentioned, IZ Plus will apply to this map amendment. I think the due diligence was done by the church and the Applicant and the community working together to make this possible, and I think it warrants our approval. Any questions or comments?

Commissioner May?

COMMISSIONER MAY: No. I think it's very straightforward. Ready to approve for action.

CHAIRPERSON HOOD: Commissioner Imamura?

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COMMISSIONER IMAMURA: Nothing further to add, Mr. Chairman. I agree the community outreach was substantial (phonetic).

CHAIRPERSON HOOD: And Vice Chair Miller?

VICE CHAIR MILLER: Yes. I share your comments, Mr. Chairman, and the comments that we made at our proposed action. Thank you.

CHAIRPERSON HOOD: So with that I would move that we approve Zoning Commission case No. 22-34 and I ask for a second, as captioned and ask for a second.

VICE CHAIR MILLER: Second.

CHAIRPERSON HOOD: Moved and properly second. Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HODO: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: Commissioner Imamura?

COMMISSIONER IMAMURA: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: The vote was four to zero to one to approve final action in Zoning Commission case No. 22-34, the minus one being the third Mayoral appointee seat which is vacant,

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and I think we may already have a draft order in this case, if not if the Applicant could provide one. Thank you.

CHAIRPERSON HOOD: Okay. Let's move to proposed action. The Zoning Commission case No. 22-36 TM Associates, LLC and Washington Metropolitan Area Transit Authority, consolidated PUD and related map amendment at Square 3351 through 3353.

Ms. Schellin.

MS. SCHELLIN: Since the hearing, the new exhibits include Exhibits 233 through 233D and 235 which are the Applicant's post-hearing submissions. Exhibit 234 is a letter in support from Jacob Barker. Exhibit 236 through 236C is the parties in opposition's post-hearing submissions. Exhibit 237 is an additional response from Faith Wheeler.

This case is ready for the Commission to consider proposed action. Thank you.

CHAIRPERSON HOOD: Thank you, Ms. Schellin. What I'd like to do, colleagues, is to outline some of the issues and I think everybody who worked on this for us helping us as we, our counsel, helping us kind of frame some of the issues.

Again, the first issue is notice. Second issue I'd like to deal with is com plan consistency. The third issue is PUD balancing, getting the public benefits relief required and potential adverse impacts. I'd like to discuss each one and let me start off with the notice issue.

You know, there were comments made by Mr. -- I think

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it's Feiden -- Feiden and others about the 200 foot notice requirement but I think Commissioner May alluded to something that was very significant in that case. He noticed that people got their information even though we probably might first want to waive that because I think that there are other ways of doing notice and I think that this has been going on for so long that I think people knew that at some point there was going to be a hearing and I think the people who were interested actually showed up.

So I believe we didn't prejudice anyone because I think it was properly noticed and I think we have other ways of notification as well. I think we sent out a notification of 200 foot is I think is published in the D.C. Register and I think there's a placard and other ways of notice.

So let me open it up for questions or comments.
Commissioner May?

COMMISSIONER MAY: Yes. I would underscore what you have said. There are multiple means by which people receiving notice of zoning cases. We have waived this requirement on occasion in the past where there have been some sort of technical problems that led to, you know, that notice not necessarily reaching everybody and, you know, this is one case where it is very clear from the participation we had in the hearing and in all the meetings that happened before this, before it even came to us, that this is a topic of much discussion in the

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neighborhood.

So, I don't think we have prejudiced anybody by not having sent out that notice to the people within 200 -- to the people within 200 feet and so, you know, I would be in favor of waiving that specific requirement against we had this robust participation.

We also have the submission from the Applicant indicating the extent to which they did reach out to all of the interested parties both in the District and in Maryland, so I think it's pretty reasonable for us to move forward and waive that notice requirement.

CHAIRPERSON HOOD: Okay. Let me hear from others.

Commissioner Imamura.

COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I will only emphasize that, you know, again this is in a prominent location and has probably been discussed in the community for a very long time. So I'm supportive of moving forward with it, in favor.

CHAIRPERSON HOOD: And Vice Chair Miller.

VICE CHAIR MILLER: Thank you, Mr. Chairman. Yes. I agree with all the comments that you all have made and would further note that this development project has been around for almost 25 years in one form or another and we had in our public hearing record a letter from the County Executive Elrich that was submitted in May and from the village of Takoma Park, Maryland

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that was submitted prior to our public hearing. The Maryland side of (indiscernible) is well aware of this development and has expressed their views in our record and we appreciate hearing from all of them.

CHAIRPERSON HOOD: Okay. So, you know, I want to see first, and I'm going to ask counsel to help me walk through this, do we need to make a motion to waive our rules or waive this or can we just do it all in one gamut at the end?

MR. RITTING: I do think you need to waive your rules, however, you could do that by consensus and all four of the Commissioner have stated that they agree to the waiver so I don't think you need to take a further vote.

CHAIRPERSON HOOD: Okay. Thank you. So we'll do that by general consensus. Thank you all for your comments.

The next outline we have is comp plan consistency issues. We know that Historic Takoma opposition group raised issues that are project is inconsistent with the comp plan policies and as we've noted, they have gone on to speak to that and then we did get a response back from the Applicant but then we let someone else start off with that one.

Commissioner, let me go to Commissioner, Vice Chair, okay, Commissioner May. He raised his hand. I was calling you Vice Chair because I know you're the comp plan consistency guy.

COMMISSIONER MAY: I'm happy to let the Vice Chair go first if you would prefer.

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CHAIRPERSON HOOD: No, you go ahead. You raised your hand. Anytime somebody raises their hand I'm going to --

COMMISSIONER MAY: All right.

VICE CHAIR MILLER: You're not going to be able to raise your hand much longer, so do it.

COMMISSIONER MAY: All right. So there are a handful of issues, specific issues that were raised with regard to comp plan consistency.

The, you know, regarding the specific elements of the plan, Citywide and Rock Creek East meet the elements of the comp plan but that has to do with the new development responding to the defining qualities of the surrounding neighborhood. This, you know, it is true that this building is taller than most buildings in the vicinity but there, you know, there's more to responding and complimenting the existing context that's simply making sure that everything is no greater than a particular height.

But I think in this circumstance, because the comprehensive plan, you know, does include the future land use map which spells out what the, you know, the range of density could be on this site and what's being proposed fits well within that. I, you know, I think that there's ample evidence in the record that this policy or, sorry, this development actually is I think it does respond to the existing characteristics of the neighborhood and I think that that is, you know, that is further

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driven home by the fact that it's going through the Historic Preservation Review Board review to make sure that the architecture is responsive to the neighborhood.

So I think that that's pretty well covered. That's, you know, because also the historic preservation element of the comprehensive plan which again HPRB is reviewing this and so I think that that gives us some reassurance that the finished product will be responsive to the existing context from a historic preservation perspective.

With regard to the future land use map, you know, there are statements about how, you know, there are the covenants of the plan or the future land use map doesn't spell out specific zones in every circumstance. It doesn't talk to height specifically, that somehow the Applicant should be compelled to looking at buildings that are lower in height. But the real, I think the defining limit when it comes to the height of the building is established by the medium density residential stripe on the FLUM which, you know, allows for buildings of pretty substantial height and bulk and specifically RA-3 which would allow similar height to what's proposed here in this PUD.

I think, you know, I don't think there's anything, any information in the FLUM that we could construe as limiting or constraining this site below what's being proposed here and the fact that they're, you know, they are basically looking at this element as a building height that is lower than some of those

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acceptable zones I think is pretty significant.

With regard to the density, the density of the project overall and 1.69 FAR is clearly consistent or not inconsistent with the FLUM designation. It could be like a bit more if you're going to argue that it should be -- that it's not inconsistent, it would be arguably a stronger case that it is, it has less density that is indicated by the FLUM, rather than too much.

But that's not what's proposed. We evaluate what is in front of us, not what things might be or what the Council might have had in mind when it comes to the designations in the map. So I think it's on pretty solid ground when it comes to the future land use map.

I think, you know, there's always that we grapple with the issue of inconsistency with the comprehensive plan more broadly and I think that there are multiple policies, again, citing the FLUM and policies with regard to where we should be building density, how we should be constructing density near metro stations and the need for more housing and affordable housing, all these policies argue against any of the or can be balancing against any constraints that one might see in the FLUM or the other elements.

I think that the, I don't know whether there's necessarily been any generalized policy map consistency issues. There is the issue though of the small area plan and, again, small area plans are secondary guidance. They're not the primary

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guidance, and so what we get out of the comprehensive plan is I think indicates that the project is pretty consistent across the board with the specific language that's in the other elements of the plan. There are some, there are small areas where it's arguable that it's inconsistent with the small area plan but, again, you know, it's the more specific and the more definitive information is in the comprehensive plan. The small area plan compliments that, it doesn't contradict it so I think it's generally in strong standing.

I mean, I completely understand why people are concerned about a building of this height and mass but I think that there's the -- when you look at the comprehensive plan components objectively, I believe that this project is consistent with the requirements of the comprehensive plan overall and certainly the future land use map. That's, you know, that's not to say that the project couldn't conceivably be better in some ways but we, again, evaluate what's in front of us and I think the suggestions that, oh, you can just take a floor off and it would be a perfect project I don't think is realistic because it's very clear to me that the Council wanted to push as much density as could be accommodated within this site while still preserving essential functions of the metro station and the bus stop and so on. So I think overall it's highly consistent with the comprehensive plan and to the extent that it's not, it's consistent with some specific elements, the elements where it is

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consistent far outweigh those smaller inconsistencies.

Yes, I think that that pretty much sums up my perspective on that comprehensive plan component.

CHAIRPERSON HOOD: Thank you, Commissioner May. I think you talked about the plan, you talked about the FLUM and you talked about the generalized policy map. I think you covered it. Let's see if anyone else has something to add to that.

Commissioner Imamura.

COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I was going to yield my time to Vice Chair Miller for his comments on plan consistencies if he so chooses, otherwise (indiscernible).

CHAIRPERSON HOOD: Okay.

VICE CHAIR MILLER: Can you hear me?

CHAIRPERSON HOOD: Yes.

VICE CHAIR MILLER: Okay. My video's off because I'm having some technical difficulties. If you can't hear me just wave your hand and I'll let Commissioner Imamura take over which he's perfectly capable of doing.

I agree with everything Commissioner May and others have said so far. Yes. I think this project is consistent with the comprehensive plan. To the extent there are any potential inconsistencies I think they're outweighed by the high priority affordable housing and housing requirements which have been emphasized in the most recent amendments to the comprehensive plan by the Council and the Mayor including just a couple of

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years ago increasing the density of this site to medium density residential which references zones that I think such as RA-3 which allow for the height and greater height actually than what's being proposed here, 90 versus the 76 that's being proposed here.

I was there at the Council 20 years ago, dating myself, when the Takoma small area plan was first, I think it was the first small area plan approved by the Council, the first Mayoral plan submitted by Mayor Williams at the time. I think the designation then was moderate density residential on the site and the townhouse development was the predominant use that was being, which was consistent with what was being proposed, but the Council has subsequently amended the plan in a number of ways including the future land use map designation which Commissioner May referenced, to make it medium density residential and also emphasize in the framework element the high priority that's given to affordable housing and housing that's above -- that's being provided way beyond whatever minimum requirements that are in our zoning regulations.

So I am comfortable with this moving forward on that issue. Thank you, MR. Chairman.

CHAIRPERSON HOOD: Thank you. Commissioner Imamura.

COMMISSIONER IMAMURA: Thank you, Mr. Chairman. Thank you, Vice Chair Miller for your comments and I agree with everything mentioned as well as what Commissioner May has already shared and I don't think I have much more to add than that, other

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than to say something that, Mr. Chairman, you've commented on often is that some in the public think that those projects are rubberstamped but we wrestle with this really complicated issues and so this is one that has, you know, I think it's a complicated case.

There are some issues that I think, as Commissioner May has pointed out and Vice Chair Miller, that are really addressed in the record in this case and I think another comment that Commissioner May mentioned with the Historic Preservation Review Board, this is a great example where government works at its best for the citizens here to have multiple agencies, review boards review a project such as this to ensure the best outcome for the residents, the neighborhood and the ANC.

So, again, I agree with everything that has already been stated by my fellow Commissioners and (indiscernible).

CHAIRPERSON HOOD: Thank you. And I would agree with what I've heard thus far. I think that one of the things that I know when we look at these plans and we look at some of the offsetting of the policies and looking at our FLUM and looking at the consistency of the area and the historic plan of the frame, I'm sorry, the Rock Creek East framework, the FLUM and the generalized policy map. Some of those things are tangible or moveable and they're offset by other things.

When I look at this whole project, and I understand some people may differ, I think the Vice Chair said it's been 23

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years it's been around, one of the things that I think the Council and the City is trying to achieve is the support of the housing especially near metro stations and I think we actually get that in here.

Yes, it's changed and yes, I want to be straight up. I know there's some adverse impacts. We can talk about that adverse, we know it. But I know there's some other things that counteract some of those adverse impacts. I know it's a change with the way we live and what we always see but there are plenty of benefits to this application, especially when you talk about the affordable housing and I also noticed, and I may be jumping, I also noticed about the environmental issues that some of the opposition was saying that the Applicant shouldn't get credit for and I think they should because we're reducing the carbon footprint because when you're getting ready to go to work or wherever you're going, you can take the metro. So I think it has so many attributes that are not even quantifiable. So, anyway.

So, do we want to talk additionally about who will be, give me a second, reconciling the PUD and benefits and the relief requested? I think for me it's all wrapped up together but if we want to expound more and somebody could do that, if not maybe it could stand on its own.

Commissioner May?

COMMISSIONER MAY: I do think I'd like to mention a few

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points. The, let's see. There's a lot to say about this, I want to be coherent.

So the, I mean a lot has been made of the relief that's required for this in their statement for the record and in the post-hearing filings having to do with height measurement and so on. You know, all of that I think doesn't really carry any weight. I mean, you know, we set the rules for how height is measured but in terms of building height high measuring point and, you know, where you measure to -- you don't measure the top of a penthouse, you measure to the top of the roof of the main building -- and yes, that means that the building might look different in terms of its height from certain perspectives based on how topography affects it and so on but, you know, again we have -- we went through a lot of wrangling to get to these rules the way they are and in my time, you know, we've updated them a few times to make it clear exactly how buildings are measured and I understand this is, you know, an issue of great contention for a number of people who are nearby but I don't, you know, the arguments that have been made in the record don't really hold any water when you think about this just in terms of the way we do zoning and how we measure things.

Let's see. With regard to potential adverse impacts, so this goes to the height issue as well, is concerned about the height density and that setbacks were somehow not sufficient, and that's not, in my view, correct. I believe that the building is

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sufficiently set back so as to -- sorry, I'm having some noise here. Can you hold one for one second? I'll be right back.

(Pause.)

Sorry about that. So the building has been set back and there is substantial public park space between the building and the neighbors across the street that I think do significantly mitigate that, the impact of the height of the building. There could be much more height closer to these buildings if the project were designed differently.

But once again, we're looking at what's in front of us and does it, you know, whether it to the extent to which any of these impacts need to be mitigated or are acceptable, and again, I think the setbacks do significantly mitigate the impact of the development height and with regard to the other impacts of the height and density in the neighborhood and the compatibility of the historic district, again, I think that they've gone through a lot of work to minimize those impacts with setbacks and with the way the site has been laid out and of course the HPRB review as well.

Traffic has an impact. You know, we go through this on just about every project and yes, there's always that potential that there's going to be increased vehicular traffic but the project has been designed to keep that to a minimum and they have developed appropriate traffic management plans that are incorporated into the PUD that will again mitigate those impacts.

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A lot was made of stormwater and the potential for stormwater run-off from this project to adversely impact the neighbors. I think frankly based on all the information that we have been presented and what's in the record in terms of the plans for the development of the site, I would expect that the current stormwater problem that exists in the area will be significantly improved by the project. So I don't see that as a negative, I see that as a positive.

There is an issue of the loss of the commuter lot. I think we've had sufficient testimony to indicate that the people who most need to be able to drive there and park will be able to drive there and park. There is some parking, particularly for handicapped and then, you know, to the extent that people need to park in the building, they can park in the building. So I don't think that that's really a problem.

There was also a statement about reduction of open space and allotment. I think maybe there is some marginal decrease in how much is actually green when you look at the entirety of the site but in terms of the public component of it, what's actually out facing the street, there's no, you know, loss of public space there. There is, you know, there might be more plaza or more paving in certain components of it, but, you know, all of the things that were there before were accidental and they were not really permanent benefits. This is a permanent benefit that there will be parkland there and public plaza space.

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So I see the impacts, I mean, yes, there are marginally some impacts. Just about everything has been mitigated and to the extent to which anything has not been mitigated, I think the benefits of the project far outweigh any of those negative consequences, so.

CHAIRPERSON HOOD: Thank you, Commissioner May, for outlining all about the traffic and pollution and I'm just going to ask it like this. Is there anybody or any one of my colleagues believe that the impacts -- we acknowledge these impacts, correct, unless I hear something else -- we acknowledge there's some adverse impacts but we can also come to the conclusion that, as Commissioner May has already mentioned, that they are outweighed by the public benefits of the project and then also those that the mitigations are adequate to prevent unacceptable impacts. But one of the things I will add to all that is, yes, there's going to be a change but I think we pretty much assure in our evaluation that they're going to be mitigated.

Does anybody disagree with those statements? Okay. Not hearing anything, that's the first time (indiscernible) I disagree with, so be grateful. All right.

So let me go to Commissioner Imamura. Any further questions or comments?

COMMISSIONER IMAMURA: Nothing further. Thank you, Mr. Chairman.

CHAIRPERSON HOOD: And Vice Chair Miller?

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VICE CHAIR MILLER: No. I totally agree with your comments, Chairman Hood Commissioner May, and Commissioner Imamura's comments previously.

I neglected to mention that another change that was made by the Council in the most recent comp plan changes was that in the policy map, in addition to the future land use map designation change up FLUM-ing, to use that expression, to medium density residential they also changed it from -- I think it was in 2021 -- from a neighborhood conservation area to neighborhood enhancement area. That's a big difference and I agree with all of the comments, not all impacts, but obviously any change are impacts. It's how we manage the change, how we adapt to the change.

We're a dynamic City and in this application there have been changes from the initial application, even with the comp plan changes that came forward as a result of the community input and the historic preservation process input that moderated the height and density, made the site plan more compact, reduced the mass, used bay projections, façade articulation, open space setbacks and buffers. So I think all of that, and context essentially materials, all of those qualitative design features help mitigate whatever potential and adverse impacts there are as we try to implement draw (phonetic) zoning the comprehensive plan policy for the Mayor and the Council.

CHAIRPERSON HOOD: Yes, thank you. Does anybody have

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anything else to add, and I'm sure if I left anything out moving forward, I think our counsel will chime in later. All right. I'll turn the camera.

I'm ready to go ahead and move forward. Let me hear, are we ready to move forward? I think we discussed this exhaustively this time and during the hearing so let's see if we can, let me just do it like this. Unless somebody else has something they want to speak about, I think we've covered everything. They were the hot topic issues.

Let me just say that I would move, get the right case, I would move that we approve as noted with the comments that we have discussed and mentioned, that we approve as noted Zoning Commission case number -- hold on a second, my mouse is making me work real hard right now -- Zoning Commission case, as for proposed action, Zoning Commission case No. 22-36 and ask for a second.

VICE CHAIR MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly second. Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: Commissioner Imamura?

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COMMISSIONER IMAMURA: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: The vote is four to zero to one to approve proposed action in Zoning Commission case no. 22-36, the minus one being the third Mayoral appointee and in this case we need the Applicant to go through the benefits and conditions process which first starts in seven days from today. Proposed action being taken, so that process will start today. That's it.

You're on mute, Chairman Hood.

CHAIRPERSON HOOD: Most people say good, keep him on mute. So, Ms. Schelling, I want to make sure that I make sure I did, I didn't get the date out for the next meeting do we can do Zoning Commission case No. 22-25. I know a lot of people are tuned in for that, let me see. The date of our next hearing, is that July the 27th?

MS. SCHELLIN: Yes, sir.

CHAIRPERSON HOOD: Okay. We will take that case up as I stated earlier, July the 27th. Thank you. I tell you, we've got folks on the ball. They make sure of the dates, if the case is not there. Sometimes when you have all these files open it runs together.

All right. Thank you everybody. Let's go to our hearing action. Zoning Commission case No. 15-27G. This is 350 Morse CPK Owner C2, LLC second stage PUD, a modification of

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significance to the first stage PUD at Square 3587. I saw Mr. Jesick. Mr. Jesick, there you go.

MR. JESICK: Thank you, Mr. Chairman and Members of the Commission.

This is an application for a modification of significance to an approved PUD to change the use back to residential as it was originally approved. The market terminal PUD as it is known, was approved in case 15-27 and consists of several buildings and building C2, which you can see on your screen, is the last one to be built.

At the time of the original case it was approved as a residential building as part of the first stage portion of that PUD and then in 2021 the Commission approved a modification, the second stage PUD to change the use to office. Now the Applicant seeks to go back to the original residential use and OP recommends that the application be set down for a public hearing.

Next slide, Mr. Young, please. Regarding the comprehensive plan, the Commission found that the original PUD would not be consistent with the plan including the future land use map and as with the original PUD the proposed residential use would also not be consistent with the FLUM which states that the site is appropriate for a mix of PDR, high density commercial and high density residential uses.

The proposed building would continue to have a height of 130 feet and would have an FAR of 10.75 consistent with the

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high density designation and when viewed through a racial equity lens the proposed change would also not be inconsistent with the comprehensive plan and would be helpful for a number of policies related to equity.

In the upper northeast planning area, the data regarding demographics indicates some disparities by race of key economic indicators. For example, the Black population has a lower medium income and home ownership rate and a higher unemployment and poverty rate than their White counterparts and this data can be found beginning on page 7 of the OP report.

The proposed housing development would help to alleviate some degree of inequity, especially regarding housing costs and the number of families that are housing cost burdened. The data on the number of households burdened by housing costs is not disaggregated by race, but given unemployment and income levels, it can be inferred that additional affordable housing provided by the project would help to further equitable outcomes for Black residents.

Another benefit of the project would be the provision of residential units in close proximity to several transportation modes which can help populations of any skill or education level reach employment opportunities.

Also in regard to housing, the benefits of the project would remain unchanged from the original approval except that the IZ units would be provided at a deeper level of affordability

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with rental units at 50 and 60 percent MFI as opposed to 50 and 80 percent MFI and I mentioned how inclusionary units could help to reduce the housing cost burden for families but also more generally the provision of all new housing, market rate and affordable, could help to keep down the upward pressure on housing prices in the neighborhood and of course the provision of new housing and affordable housing would help to meet the Mayor's 2025 housing goals. The upper northeast planning area is nearly on track to reach its affordable housing goal so this project would help us to reach to get closer to 100 percent of that target number.

In regard to economic development goals, the proposed project could support small and local businesses and this would tend to provide greater opportunity for local entrepreneurs which in turn often provide job opportunities for nearby residents.

Regarding equity as a process, the Applicant has emphasized that they have been in contact with the ANC since the beginning of the PUD eight years ago and specifically with regard to this application they have met with the ANC on numerous occasions and ANC 5D has voted to support the application, and at Exhibit 12 the ANC submitted their letter of support and they noted in their letter all of the meetings the Applicant has had with the ANC or the ANC committees and they "are pleased with the Applicant's continued and proactive engagement with the community." So the Office of Planning is very appreciative of

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the Applicant working with and listening to the input of the neighborhood.

OP's full equity analysis can be seen in our written report at Exhibit 13 and the Applicant also provided a equity analysis at Exhibit 3D.

Next slide, Mr. Young. And finally, on the design. OP supports the architecture of the building including the significant use of balconies. We've asked the Applicant to incorporate additional balconies on the alley side but overall we are very pleased with the architecture of the building.

Other items you've asked the Applicant to take a look at include discussing the DOEE, which LEED system would be most appropriate to evaluate this building. They proffered a 4.0 and we have asked them to look at LEED 4.1 and of course we always ask Applicants to examine if additional PDR space could be incorporated into the building.

But in summary, OP is supportive of the proposed modification. As I noted, it would not be inconsistent with the comprehensive plan including when viewed through a racial equity lens and OP therefore recommends that the application be set down for a public hearing.

Thank you.

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

Commissioner May?

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COMMISSIONER MAY: No, I don't have any questions.
Thank you very much.

CHAIRPERSON HOOD: Commissioner Imamura?

COMMISSIONER IMAMURA: Thank you, Mr. Jesick. Great report.

CHAIRPERSON HOOD: And Vice Chair Miller?

VICE CHAIR MILLER: Thank you, Mr. Chairman, and thank you, MR. Jesick, for the Office of Planning's recommendation for setdown in this case. Good to see you again two days in a row. Saw you at BZA yesterday. But that makes that a habit I guess.

Yes. I mean, it's not unusual to see these modifications in the current climate that we are in from originally approved office to residential projects and this looks like to be a very attractively designed residential project. I like all the balconies that I just saw in that brief presentation and the deeper affordable housing level that's being provided, and so I'm prepared to support setdown of this application, Mr. Chairman.

CHAIRPERSON HOOD: Thank you. Let me say this, Mr. Jesick. I appreciate all the engagement that has already been done and hoping to hoping the Applicant is listening, to continue to keep that engagement going. So hopefully we can continue to have this type of support because I think it has a lot of benefits to this project. So we'll see how it comes back to us when we're ready to set it down.

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All right. Any other questions or comments?

VICE CHAIR MILLER: Yes. I meant to mention I think in this case we have an ANC 5D report supporting the setdown or supporting this application, so I just wanted to state that if that is accurate. Thank you.

CHAIRPERSON HOOD: Yes. We do have a letter from the ANC. I'm not sure here because this is significance, I'm not sure. I thought we would only get, but anyway I won't get into that. But yes, we do have a letter in support and it's --

MS. SCHELLIN: Setdown report, sir. It's not considered at setdown. That's their actual report.

CHAIRPERSON HOOD: Yes. That's actually what I was going to say. They gave it, they're on the ball. They gave it to us early.

VICE CHAIR MILLER: Yes. I was aware of it, so --

MS. SCHELLIN: It's not a setdown form so it's not considered.

VICE CHAIR MILLER: Okay. Whatever.

CHAIRPERSON HOOD: Thank you. Thank you, Ms. Schellin. I was going to go there but we can consider that when we have the hearing. I just wanted to continue the community engagement.

All right. Anything else on that? Or anything else?
All right. So somebody like to make a motion.

Okay. I move that we set down Zoning Commission case No. 15-27G and ask for a second.

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COMMISSIONER IMAMURA: Second.

CHAIRPERSON HOOD: Moved and properly second. Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please.

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: Commissioner Imamura?

COMMISSIONER IMAMURA: Yes.

MS. SCHELLIN: Staff records the vote four to zero to one to setdown Zoning Commission case No. 15-27G as a contested case, the minus one being the third Mayoral appointee position which is vacant. Thank you.

(Pause.)

COMMISSIONER IMAMURA: Mr. Chairman, you're on mute.

CHAIRPERSON HOOD: It's one of those days, man. Ms. Schellin, thank you. I can't believe I just, and I actually framed what I was saying very well and now I've got to say it again.

So before everybody leaves -- I thought it sounded good to me -- before everybody leaves I wanted to say that we will have something special on July the 31st. Is that the 31st, Ms.

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Schellin? I was talking to myself (indiscernible). Yes, July the 31st at 4 p.m., we would ask that you tune in for something very special that day. It's not necessarily case specific, but we would ask you to join us. We have something very exciting that we're doing, or bittersweet, or whatever the case may be but you don't want to miss it. But I want this said because I notice everybody drops off after we finished all the cases and we still have some people, quite a few people here so I wanted to mention it. July 31st, 4 p.m. Join us for a special event prior to our meeting, I mean our hearing.

All right. Let's go to the last case on the correspondence. Zoning Commission case No. 22-06, 801 Maine Avenue, SW PJV, LLC consolidated PUD and related map amendment at Square 390. Ms. Schellin.

MS. SCHELLIN: Yes, sir. The Capitol Square Homeowners Association and the ANC 6D filed motions for reconsideration on order No. 22-06 at Exhibits 135 and 135A and 136A and 136B respectively. The Applicant filed responses to each at Exhibit 137 and 138. These are now before the Commission to decide in favor of grant or deny the motions for reconsideration. So I'll turn that over to the Commission to make their decision on these. Thank you.

CHAIRPERSON HOOD: Okay. Colleagues, there were a cadre of issues they're asking us to reconsider. I know we've all had, and I'm speaking in terms of both motions, I know we've

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had the time to be able to consider and look at it. None of these motions for me persuade me to change. I think we have navigated and mitigated, tried to get the best outcome to the best of our ability and I am not inclined to (indiscernible) reconsideration of either of the motions that were presented both by -- both parties, by the ANC 6D and CSHOA and others. Let me hear -- Capitol Square Homeowners Association -- so let me hear from others. Any comments or questions?

Commissioner May?

COMMISSIONER MAY: Mr. Chairman, I agree with you. I didn't see anything in the motions that compelled me to want to reconsider the decision. So I'm inclined to deny both motions.

CHAIRPERSON HOOD: Okay. Does anybody want to go through all of them because I think we've hashed a lot of that out. Okay. Let's see. Okay.

Commissioner Imamura?

COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I'm in agreement with you. We have reviewed this case extensively, had robust conversations about this. I'm not persuaded by what's detailed in both motions.

CHAIRPERSON HOOD: Okay. And, thank you, and Vice Chair Miller?

VICE CHAIR MILLER: I agree with all of your comments. Thank you.

CHAIRPERSON HOOD: So I guess I can do this, I'm going

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to try it all in one swath. I move that we deny both requests for reconsideration by the -- let me go back to this. Mr. Liu, I see you turned your camera on so I guess on that motion, go right ahead.

MR. LIU: You're good. You're good, Mr. Chair.

CHAIRPERSON HOOD: Oh, so you know I'm getting ready to mess up so that's why you turned your camera on.

I move that we deny, okay, I move that we deny both motions for reconsideration from Capitol Square Homeowners Association and ANC 6D for the reasons cited and I would just add that we had fleshed through these issues and came up with the best outcomes. It might be the liking, even to some of us, but we came up with the best outcomes that we could do possible. Is there -- within the law, within our zoning regulations -- is there a second?

COMMISSIONER IMAMURA: Second.

VICE CHAIR MILLER: I was just going to say I third the motion, I think Commissioner May got the second there or maybe Commissioner Imamura. I was just going to second your comments, Mr. Chairman, that we did appreciate and heard the extensive comments of Capitol Square Homeowners and ANC 6D at our hearing and we did try to address concerns that were raised by them to the extent we thought they were appropriate, so I'll just leave it at that.

CHAIRPERSON HOOD: Okay. Moved and properly second.

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Any further discussion? Not hearing any, Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner Hood?

COMMISSIONER HOOD: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: Commissioner Imamura?

COMMISSIONER IMAMURA: Yes.

MS. SCHELLIN: Staff records the vote four to zero to one to deny the request for reconsideration from Capitol Square Homeowners Association and ANC 6D, the minus one being -- I meant to say to deny those requests, the minus one being the third Mayoral appointee seat which is vacant. (Indiscernible) Applicant to (indiscernible) since they prevailed on this issue.

CHAIRPERSON HOOD: Okay. You cut out a little, Ms. Schellin.

MS. SCHELLIN: Oh, sorry. Do you want the Applicant to provide a draft order or should I ask Ms. Lovick, do you want the Applicant to provide a draft order? Ms. Lovick? No?

MS. LOVICK: No.

MS. SCHELLIN: No draft order needed. Okay. Thank you.

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

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we have anything else before us?

MS. SCHELLIN: Nothing else.

CHAIRPERSON HOOD: Again, I would ask everyone to remember July 31st and the other case that we moved to July the 27th. But I also will say the Zoning Commission will meet again July the 17th, Zoning Commission case No. 23-10, on these same platforms at 4 p.m., which is the Georgetown University.

Also, I want to thank -- I always want to thank our staff from time to time, the Office of Zoning and our Office of Zoning Legal Division. They work very hard to make sure we at least try to be prepared. They make sure we, yes, we do. Some of us have day jobs and some of us are on BZA all day yesterday, so we have a lot of other things going on. But I appreciate all the work that everybody has including the residents of the City as well.

So with that, unless I hear from anyone else, this meeting is adjourned and we'll see you all on the 17th. Good night.

(Whereupon the above-entitled hearing was adjourned.)

C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 07-13-2023

Place: Teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

JULIE SOUZA

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