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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission

Regular Public Meeting  
1431st Meeting Session [10th of 2016]

6:40 p.m. to 7:58 p.m.  
Monday, May 9, 2016

Jerrily R. Kress Memorial Hearing Room  
441 4th Street, N.W., Suite 220 South  
Washington, D.C. 20001

1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIE COHEN, VICE CHAIR

4 PETER MAY, Commissioner

5 ROBERT MILLER, Commissioner

6 MICHAEL TURNBULL, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13 JENNIFER STEINGASSER

14 STEVE COCHRAN

15 BRANDICE ELLIOTT

16

17 DDOT:

18 JONATHAN ROGERS

19

20 Office of the Attorney General:

21 JACOB RITTING, ESQ.

22 ARIEL EBI, ESQ.

23 Other:

24 KYRUS FREEMAN, ESQ.

25

## 1 P R O C E E D I N G S

2 CHAIRPERSON HOOD: Okay, we're ready to  
3 begin. This meeting will please come to order. Good  
4 evening, ladies and gentlemen. This is the public  
5 meeting of the Zoning Commission for the District of  
6 Columbia.

7 My name is Anthony Hood, joining me are Vice  
8 Chair Cohen, Commissioner Miller, May, and Turnbull.  
9 We're also joined by the Office of Zoning staff, Ms.  
10 Sharon Schellin, as well as the Office of the  
11 Attorney General, Mr. Ritting and Mr. Ebi, as well as  
12 the Office of Planning, Ms. Steingasser, Mr. Lawson,  
13 Mr. Cochran, and Ms. Elliott.

14 Think I get everybody's name correct this  
15 time. Okay. Let's make sure we note that.

16 Copies of today's meeting and agenda are  
17 available to you and are located in the bin near the  
18 door. We do not take any public testimony in our  
19 meetings unless the Commission requests someone to  
20 come forward.

21 Please be advised this proceeding is being  
22 recorded by a court reporter and is also web cast  
23 live. Accordingly we must ask you to refrain from  
24 any disruptive noises or actions in the hearing room.  
25 Please turn off all electronic devices at this time.

1 Does the staff have any preliminary matters?

2 MS. SCHELLIN: No, sir.

3 CHAIRPERSON HOOD: Okay. If not, let us  
4 proceed. First we have -- first let me ask the  
5 question, our consent calendar item. Excuse me.  
6 Does any Commissioner would like to see any one of  
7 these items come off the consent calendar?

8 Okay. Not hearing anyone, we will proceed.  
9 Zoning Commission Case No. 14-13C, Office of Planning  
10 request for technical corrections in Zoning  
11 Commission Order No. 14-13. Ms. Schellin.

12 MS. SCHELLIN: Yes, sir. The Office of  
13 Planning has first requested a waiver for submitting  
14 their report less than 10 days prior to the meeting.  
15 Does the Commission approve this waiver?

16 CHAIRPERSON HOOD: Any objections?

17 MS. COHEN: No.

18 CHAIRPERSON HOOD: Okay. So noted, we'll  
19 approve the waiver.

20 MS. SCHELLIN: Okay. OP is requesting a  
21 technical correction to Zoning Commissioner Order No.  
22 14-13 with regards to a loophole that has been  
23 discovered by DCRA during the permitting process  
24 regarding the affordable housing requirement, would  
25 ask the Commission to consider this this evening;

1 this case.

2 CHAIRPERSON HOOD: Okay. Any comments on  
3 this? Vice Chair Cohen.

4 MS. COHEN: Thank you, Mr. Chairman. I think  
5 this is a very important technical correction. Kind  
6 of disappointed with the development community for  
7 even needing this, for finding that there is a way of  
8 getting around providing the affordable housing unit,  
9 especially in light of the fact that they get the  
10 benefit of the penthouse area. So, I would like to  
11 see this correction made and it's really unfortunate  
12 that, you know, people think that they can get around  
13 providing an affordable housing unit.

14 CHAIRPERSON HOOD: Okay. Any other comments?  
15 Commissioner Miller?

16 MR. MILLER: Thank you, Mr. Chairman. Yeah,  
17 I agree that -- with the OP report that the Zoning  
18 Commission clearly intended the affordable housing  
19 requirement to be triggered whenever there was  
20 penthouse habitable space.

21 I just had one question if it's appropriate  
22 for Office of Planning, or OAG. They actually  
23 haven't -- they have attempted to use the loophole,  
24 but it actually hasn't been used yet, has it?

25 MR. LAWSON: Not that I know of. And to be

1 honest, I'm not sure anybody has tried to use it.  
2 DCRA identified it as a potential problem.

3 MR. MILLER: I see.

4 MR. LAWSON: So, certainly I could get that  
5 information. Whether or not this kind of loophole  
6 has been utilized by anybody, but --

7 MR. MILLER: Right. No, I was just trying to  
8 understand if the urgency, whether we needed to even  
9 do this on an emergency basis. But if it's DCRA that  
10 identified it and we're plugging that hole and it's  
11 not being used, then I think the way that OP has  
12 recommended makes sense.

13 MR. LAWSON: Yeah, they did indicate to me as  
14 being the object of discussion with people as they  
15 bring permits forward. But not that it's being used  
16 by anybody and so --

17 MR. MILLER: Okay. Thank you.

18 CHAIRPERSON HOOD: Any other discussion on  
19 this topic?

20 Okay. Would somebody like to make a motion?

21 MR. MILLER: Yeah, Mr. Chairman, I would move  
22 that the Zoning Commission approve Case No. 14-13C,  
23 Office of Planning request for technical correction  
24 to Zoning Commission Order No. 14-13, and ask for a  
25 second.

1 MR. MAY: Well, hold on a second. We're  
2 voting to authorize publication of a notice of  
3 proposed rulemaking.

4 MS. SCHELLIN: For 14 days.

5 MR. MAY: For 14 days. Is that what you're  
6 proposing?

7 MR. MILLER: That's correct, Mr. May. Thank  
8 you for -- I was feeling the urgency of it, but yes.

9 CHAIRPERSON HOOD: Okay. And the second --

10 MS. COHEN: Second that.

11 CHAIRPERSON HOOD: You seconded. Okay.  
12 Seconded. All right. Any further discussion?

13 [Vote taken.]

14 CHAIRPERSON HOOD: Ms. Schellin, would you  
15 record the vote?

16 MS. SCHELLIN: Yes, sir. Staff records the  
17 vote five to zero to zero to approve Case No. 14-13C  
18 to allow the proposed rulemaking to be published for  
19 a 14-day comment period, Commissioner Miller moving,  
20 Commissioner Cohen seconding, Commissioners Hood,  
21 May, and Miller -- I'm sorry. Hood, May, and  
22 Turnbull in support.

23 CHAIRPERSON HOOD: Okay. Thank you. Next  
24 let's go to Zoning Commission Case No. 05-23B, 151 Q  
25 Street Residential, LLC., request for minor

1 modification to PUD at square 3576. Ms. Schellin.

2 MS. SCHELLIN: Yes, sir. The applicant is  
3 requesting minor modifications regarding shared  
4 loading, garage entry, and pedestrian walkway in  
5 connection with an adjacent PUD, Case No. 15-15,  
6 which is a hearing scheduled for this Thursday. The  
7 applicant would like the Commission to decide this  
8 evening that the modification is indeed minor, and  
9 then hold its discussions on the case when it takes  
10 up final action on Case No. 15-15.

11 At Exhibit 4, OP is in support of confirming  
12 the case as a minor modification and delay the  
13 discussions until final action. Ask the Commission  
14 to consider this, this evening.

15 CHAIRPERSON HOOD: Okay. Colleagues, I'll  
16 start off on this one too because I don't think it's  
17 -- for me it's like putting the cart before the  
18 horse. And I realize that we've already approved  
19 this and the other PUD and I realize that we have one  
20 coming up on Thursday. And I'll be frank, I don't  
21 have the luxury of having read that far in advance.

22 And I understand that there's a lot of  
23 coordination that went on, but to say that this is a  
24 minor, which some of it looks to be, but I don't know  
25 all the necessary impacts between the two and I want



1 to applaud both of them for working together, but to  
2 come out today for me to say it's minor, I have some  
3 trouble. But then again, I understand they want some  
4 predictability. So you know, I want to hear some  
5 discussion but right now I'm not there. I'm not at  
6 putting the cart before the horse. So, anyway, let  
7 me open it up for discussion.

8 MR. MAY: Mr. Chairman, I appreciate this is  
9 a difficult thing to try to decide in advance. But  
10 as I -- and I think the amount of information we have  
11 is somewhat limited. But if we look at this simply  
12 as the principle of trying to share loading  
13 facilities between two adjacent projects, which  
14 would, you know, increase it in inefficiency and  
15 reduce the number of curb cuts and all those good  
16 things that we like to see, I think that in principle  
17 it's highly supportable from my perspective as a  
18 minor modification. It's not going to affect the  
19 looks of the building substantially. It's not going  
20 to -- it should not affect the operation of the  
21 building. If it were I don't think that they would  
22 be proposing it. And certainly it's not going to  
23 affect the -- if it has an effect on externally it  
24 would be I think beneficial again, because of the  
25 reduction of curb cuts and so on.

1           So I think that the -- I'm in favor of  
2 endorsing the concept of a minor modification but of  
3 course we don't decide anything until we decide it,  
4 and we'll have the hearing on Thursday and if for any  
5 reason we're getting any heartburn about whether in  
6 fact this is a minor modification, we can certainly  
7 raise that issue at that time.

8           But I don't have any problem with, at this  
9 moment, suggesting that, you know, this certainly  
10 could be considered as a minor modification. Again,  
11 we'll decide it later and we'll get more information  
12 on Thursday.

13           CHAIRPERSON HOOD: Actually, Commissioner, I  
14 think you and I are saying the exact same thing.  
15 It's just a different way of getting there. I just  
16 don't want the applicant to go away tonight saying  
17 that this is a minor mod and then we turn around and  
18 say, after we get some additional facts, we find out  
19 that it's not a minor mod. That was basically the  
20 same thing I was pretty much saying. I think that's  
21 in line with what I'm saying. Any other comments?

22           MR. TURNBULL: So I guess, are we going to  
23 defer any kind of action on this until Thursday?  
24 Until we have the hearing?

25           CHAIRPERSON HOOD: I like the way

1 Commissioner May said it, concept.

2 MR. TURNBULL: Okay.

3 CHAIRPERSON HOOD: I just didn't like the way  
4 I thought it was being addressed, just to say, let us  
5 know tonight whether it's a minor mod or not. That's  
6 kind of where I was.

7 MR. TURNBULL: Okay.

8 CHAIRPERSON HOOD: So we will now do like the  
9 HPRB concept.

10 MR. TURNBULL: But it won't be on the agenda  
11 for Thursday, though?

12 CHAIRPERSON HOOD: No, not this. The other  
13 case is, but again it's plausible for the way they're  
14 trying to work together has already been mentioned.  
15 But there's some maybe some things that materialized  
16 the way we may feel that this particular case is not  
17 -- what they're asking for may not be minor.

18 MR. TURNBULL: Okay.

19 CHAIRPERSON HOOD: I just don't want to put  
20 our -- I didn't want to put myself out there. And  
21 you know, as guaranteeing that this is going to be a  
22 minor mod and we come up and then not be predictable  
23 and pull it back.

24 MR. TURNBULL: So no action, though, tonight  
25 on this?

1           CHAIRPERSON HOOD: Only thing we sending the  
2 signal is the concept.

3           MR. TURNBULL: Concept.

4           MR. MAY: Yeah, I think what we're saying is  
5 we're willing to consider this as a minor  
6 modification once we have more information and  
7 assuming it stays minor then we can approve it when  
8 we take final action on that -- on 15-15.

9           CHAIRPERSON HOOD: Commissioner Miller. I'm  
10 sorry.

11           MR. MILLER: Yeah. Thank you, Mr. Chairman.  
12 I would concur with your comments and Commissioner  
13 May's comments. And I think that will get flushed  
14 out Thursday.

15           I mean, and this coordinated loading facility  
16 I think was done not only something that this  
17 Commission has encouraged generally in the past, but  
18 it's also being done, I think in specific response to  
19 the community's request for -- and it mitigates  
20 impacts and -- but that will all get flushed out  
21 Thursday, I think, even though this issue is -- we're  
22 just seeing it now. And if we -- and we will make  
23 the final decision when we make the final decision.  
24 But I support this in concept.

25           CHAIRPERSON HOOD: Okay. Vice Chair Cohen.

1 MS. COHEN: Okay. Thank you, Mr. Chairman.  
2 I guess I'm the only one who is convinced it is a  
3 minor modification, but I'm willing to obviously, you  
4 know, push it a little further along. But one of the  
5 things I do want to say is that it seems that the  
6 benefits of the two developments working together  
7 have resulted in very positive savings in the  
8 neighborhood, having fewer curb cuts as was  
9 mentioned, I think by Commissioner May. So I would  
10 be willing to go along with it tonight to actually  
11 vote on it. But if not, to at least indicate --

12 MR. MILLER: I wanted to vote on it. I  
13 wanted to vote on it tonight, and I think others did  
14 too.

15 MS. COHEN: I didn't get that impression.

16 MR. MAY: No, I'm not ready to vote on this  
17 as a minor modification tonight.

18 MS. COHEN: Yeah.

19 MR. MILLER: Oh, I thought you were reserving  
20 the right to change our mind if we --

21 MR. MAY: No, no, no. No, I'm just saying  
22 that in concept it certain is -- it's a reasonable  
23 suggestion that this could be a minor modification,  
24 but --

25 MR. MILLER: Then I agree with you,

1 Commissioner Cohen.

2 MR. MAY: -- we need more information.

3 MS. COHEN: Yeah. So, anyway, I don't know  
4 if we have the votes to vote on it tonight. But in  
5 any event I think that we should encourage this type  
6 of cooperation, and the results appear to be  
7 something that will benefit the neighborhood. Thank  
8 you.

9 [Discussion off the record.]

10 CHAIRPERSON HOOD: Okay. So, do we have to  
11 do any voting or anything?

12 MS. SCHELLIN: No.

13 CHAIRPERSON HOOD: I'm having some technical  
14 problems with my computer up here, as everyone can  
15 see. So, yeah. I don't know. I've been having some  
16 serious problems lately.

17 Okay. So we don't need to do anything, Mr.  
18 Ritting, with this?

19 MR. RITTING: As I understand it, no.  
20 You're, by consensus, deciding to defer taking action  
21 on this, this case that's been presented to you.

22 CHAIRPERSON HOOD: Okay. All right. So with  
23 that, so noted. We will deal with it at the  
24 appropriate time.

25 So let's go to the next consent calendar

1 item, which is Zoning Commission Case No. 14-07A,  
2 1450 4th Street Edens, LLC. and Union Market  
3 Apartments, LLC., request for minor modifications to  
4 PUD at square 3587. Ms. Schellin.

5 MS. SCHELLIN: Yes. On this case the  
6 applicant is requesting modifications to the façade,  
7 roof structure, loading and parking, and construction  
8 of the Neal Place Extension. At Exhibit 5 we have an  
9 OP report recommending approval. Exhibit 6 is a  
10 letter in support from the SMD 5D-01 Commissioner.  
11 Ask the Commission to consider final action this  
12 evening.

13 CHAIRPERSON HOOD: Okay. Let me open up any  
14 comments on this.

15 MR. MAY: I looked at it fairly carefully.  
16 It looks like they meet all the setback requirements,  
17 which has been a concern of ours for all these  
18 habitable space penthouse modifications. The  
19 drawings were a little deceptive. The rendering in  
20 particular makes it look like they're not meeting the  
21 setback, just because of the -- you know, I'm not  
22 sure why it turned out -- why it looks that way.

23 But the sections seem to show very clearly  
24 that it meets all setbacks, so I'm okay with it. And  
25 the rest of it, you know, it's small modifications to

1 court sizes, sort of shifting things around, a  
2 reduction in parking. I mean, I don't see anything  
3 else that's concerning about this one.

4 CHAIRPERSON HOOD: Okay. Any other comments?  
5 I would agree, it looks like they've made some  
6 improved operations as already stated, the loading  
7 and the parking arrangements, as well as meeting the  
8 setbacks as already been described. So I don't have  
9 any heartburn on this. Anybody else have any  
10 comments?

11 MR. TURNBULL: Well, no, I don't have any  
12 comments. I just, I think it's unfortunate that  
13 they've shortened the balconies, made them smaller.  
14 It's nice that people can have -- I think the four-  
15 foot balconies were a nice benefit and now going to  
16 one and a half feet as Commissioner Miller is always  
17 looking for space because it's people wanting to  
18 enjoy their units.

19 So, but I mean, I don't have that much angst  
20 for it. It's just one of those unfortunate changes,  
21 I think. But it's not enough for me not to oppose  
22 this.

23 CHAIRPERSON HOOD: Okay. All right.  
24 Commissioner Miller.

25 MR. MILLER: I appreciate Commissioner



1 Turnbull bringing up the balcony issue, but yeah,  
2 it's not enough for me to -- but I also support the  
3 change that -- I think this is the one that they're  
4 adding penthouse habitable space, so it's triggering  
5 deeper affordable housing and greater affordable  
6 housing requirement, which is a good thing.

7 CHAIRPERSON HOOD: Okay. So with that I  
8 would move that we approve on the consent calendar,  
9 Zoning Commission Case No. 14-07A with all the  
10 information that was given to us in this proceeding  
11 and request for the minor modification to a PUD at  
12 square 3587 and ask for a second.

13 MR. TURNBULL: Second.

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

16 [Vote taken.]

17 CHAIRPERSON HOOD: Ms. Schellin, would you  
18 please record the vote?

19 MS. SCHELLIN: Yes. Staff records the vote  
20 five to zero to zero to approve final action in  
21 Zoning Commission Case No. 14-07A, Commissioner Hood  
22 moving, Commissioner Turnbull seconding,  
23 Commissioners Cohen, May, and Miller in support.

24 CHAIRPERSON HOOD: Okay. So next we'll move  
25 to final action, Zoning Commission Case No. 14-13A,

1 Office of Planning request for technical corrections  
2 to Zoning Commission Order 14-13. Ms. Schellin.

3 MS. SCHELLIN: Yes, sir. The proposed  
4 rulemaking was published on April 1st and no comments  
5 were received. Would ask the Commission to consider  
6 final action this evening.

7 CHAIRPERSON HOOD: Okay. Commissioners, any  
8 comments on this? I think it's pretty straight  
9 forward. Consideration of technical correction to  
10 26-07.9 of DCMR-11, Zoning Regulations with the  
11 corresponding change to 1,610 of the revised Zoning  
12 Regulations as recently approved through the ZRR.  
13 And this is just basically talking about the  
14 calculations and how we set the, I guess the  
15 affordable funding. Okay.

16 All right. Any opposition or any -- somebody  
17 like to make a motion? I think it's pretty straight  
18 forward.

19 MS. COHEN: Mr. Chairman, I'll move to  
20 approve Zoning Case No. 14-13A, Office of Planning  
21 request for technical correction to Zoning Case Order  
22 No. 14-13, and ask for a second.

23 MR. MILLER: Second.

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

1 [Vote taken.]

2 CHAIRPERSON HOOD: Ms. Schellin, would you  
3 record the vote?

4 MS. SCHELLIN: Yes, sir. Staff records the  
5 vote five to zero to zero to approve final action for  
6 Zoning Commission Case No. 14-13A, Commissioner Cohen  
7 moving, Commissioner Miller seconding, Commissioners  
8 Hood, May, and Turnbull in support.

9 CHAIRPERSON HOOD: Okay. Next, Zoning  
10 Commission Case No. 08-30C, 25 M Street Holdings,  
11 LLC., modifications to a Capitol Gateway Overlay  
12 review at Square 700. Ms. Schellin.

13 MS. SCHELLIN: Yes, sir. At Exhibits 23  
14 through 23C2 and Exhibit 24, we have the applicant's  
15 post-hearing submissions and ask the Commission to  
16 consider final action this evening.

17 CHAIRPERSON HOOD: Okay. Any comments on  
18 this, colleagues?

19 MR. MAY: Mr. Chairman.

20 CHAIRPERSON HOOD: Yes.

21 MR. MAY: I mean, I still think there are  
22 some things that are problematic here. I appreciate  
23 the fact that they made some changes to the top  
24 piece, that angled bar of the building. But given  
25 that it's prominent visibility it still, in my mind,

1 is not making it as a tower piece or an  
2 embellishment. And I think that -- I mean, we did  
3 talk about the possibility of creating sort of tower  
4 elements at the two ends where it pops out from the  
5 façade, and then having something like a trellis in  
6 between. And what we have is still a pretty heavy  
7 bar piece that runs across it.

8 Frankly given what they have done to this, I  
9 don't think that actually it is possible to connect  
10 it with the trellis. I think that they just, they  
11 need to do something to make this read as two tower  
12 pieces because, you know, it's now highly visible.  
13 Before, when that other corner of the building was  
14 taller it was not visible. And so the two ends of  
15 the bar read as tower elements and I thought that was  
16 perfectly fine. And now what we have instead is  
17 something that reads as an extended façade, and we  
18 have repeatedly said that that's not acceptable.

19 And I think there are two problems with it.  
20 One is that it has that large bar that extends across  
21 the top with the trellis piece between it and it  
22 makes it feel like a continuous piece. Plus, they're  
23 extending the façade up three and a half feet and  
24 calling it an architectural embellishment as a way of  
25 getting away from having to set back the handrail.

1           And, you know, I think that you can have a  
2 piece like that, a component like that at a tower,  
3 you know, so at either end you could do something  
4 like that because it is part of that overall piece  
5 that is the architectural embellishment. But to have  
6 that run continuously along with façade, I mean,  
7 we've taken that up before on other cases and have  
8 repeatedly rejected that idea. So I don't think you  
9 can call an extension of the façade an architectural  
10 embellishment. And so I'm not ready to support that  
11 as it has been designed.

12           The other issue that I have is the signage  
13 issue, but maybe perhaps Commissioner Turnbull would  
14 rather address that one.

15           MR. TURNBULL: Thank you, Commissioner May.  
16 I would agree with your comments on the spandrel  
17 element, the continuous spandrel element on the  
18 elevation. I think it's totally contradictory to the  
19 Capitol Gateway Overlay. I think it sets up a new  
20 paradigm on M Street for height. And so I really  
21 don't -- I can't go along with that. There's too  
22 many elements with these horizontal things being  
23 continuous along the façade that are in dire  
24 opposition to the Capitol Gateway Overlay.

25           But on the -- I guess if we went to the

1 applicant's Exhibit No. 23 and go to page 23, on the  
2 signage, they talk about that the -- all of the  
3 property, and I quote on this, the first paragraph on  
4 page 2 where it says, "All of the property owners in  
5 Square 700 and 701 are seeking to create legislation  
6 from the city council to create a ballpark signage  
7 district that is similar to the Verizon signage --  
8 Center signage."

9           So there's really nothing, if you go through  
10 the whole language here, there's nothing really in  
11 this about electronic signage. It's different from  
12 store signage which is fixed. This is electronic,  
13 it's going to be moving, and like the Verizon Center  
14 it has a certain characteristic which is totally  
15 different from regular signage.

16           And since there is no legislation in effect  
17 currently regarding this area with this kind of  
18 signage, my feeling is, it's a little premature for  
19 us to approve these locations until we actually see  
20 something that's from the city council that they've  
21 approved this and what the whole -- and although they  
22 say they're talking about that the language would be  
23 similar, would be consistent with the Verizon Center  
24 signage language, we don't have that yet. We really  
25 don't know what we're looking at.

1           So my feeling is, is that we would -- they  
2 ought to defer this and come back to us as a  
3 modification at a later time once this kind of  
4 signage is approved. I guess I would hate to go  
5 ahead and jump the gun and allow for something that  
6 we really don't know what the effect is and what's  
7 it's going to be like.

8           So my feeling is that it's premature and we  
9 ought to defer this until at some point in time when  
10 we have some kind of direction to look at.

11           CHAIRPERSON HOOD: Okay. Vice Chair, you  
12 have any comments?

13           MS. COHEN: Yes. Thank you, Mr. Chairman. I  
14 agree with Commissioner Turnbull on the signage, that  
15 it's not in place. The public may actually come out  
16 against it and you know, we just don't know what's  
17 going to happen, so again, I would defer that as  
18 well.

19           The other thing I wanted to say is that I  
20 actually like the March 31st perspective. I think it  
21 makes the building -- yeah, it makes the building  
22 lighter, whereas the current one makes the building  
23 feel anchored and heavier. And I think that it just  
24 needs to be looked at again. I really don't like the  
25 bulkiness that appears today. I think the rooftop

1 looks just much more floating. But I know that my  
2 colleague, Commissioner May, has some issues with the  
3 March 31st one as well.

4 MR. MAY: Well, no. I mean, it's not about a  
5 lighter or heavier, or even what looks better than  
6 another. It's that this is reading as a continuous  
7 façade that's above the allowed height for that  
8 location. And it's okay to go above that height with  
9 a tower, but it's not okay to go above that height  
10 with a bar of the building, with an extended façade.

11 And unfortunately I think both of these  
12 iterations do essentially that. And I'm not even  
13 arguing that, you know, the current version looks  
14 better. I don't you know -- in some ways it does, in  
15 some ways it doesn't. But it's still not doing it  
16 for me. It doesn't solve the issue that was created  
17 when the brick portion of the façade was lowered in  
18 height, which sort of masked it and made it look like  
19 it was two tower elements. Now it looks just like a  
20 continuous façade and it's always going to look that  
21 way and it looks like it's taller than every other  
22 building on the block, or every other building on the  
23 street.

24 And I mean, that's really what the issue is,  
25 and I don't think that they've addressed it



1 successfully.

2 MS. COHEN: Well, again that is your opinion,  
3 and of course I, you know, defer to you to a lot of  
4 these issues but again, I still think the March 31st  
5 one does it for me because it makes it look a bit  
6 lighter and less anchored. So those were my two  
7 cents.

8 CHAIRPERSON HOOD: Okay. Commissioner  
9 Miller.

10 MR. MILLER: Thank you, Mr. Chairman. Yeah,  
11 I again agree with Commissioner Cohen. I think  
12 the -- I didn't think that the March 31st version, at  
13 the time, looked like an extension of the façade  
14 because it was open at both ends, it was open to the  
15 sky, and I think this version by closing up one of  
16 the ends, does look like more of an extension of the  
17 façade if that's the concern, than the previous  
18 version.

19 So, we sent them back to the drawing board  
20 once and that looks like we might be sending them  
21 back again. But I think the previous version was  
22 acceptable. Maybe the guardrail part of it that -- I  
23 would agree with Commissioner May that they probably  
24 could have done something about that. I didn't  
25 realize that that was above -- that that was serving

1 as a guardrail and that was above the Height Act act,  
2 so that probably could be set back.

3 But I think that what's on top of the  
4 building as it looked in March, didn't look to me  
5 like an extension of the façade, but that's why we  
6 read -- that's why we're five of us up here, reading  
7 things different ways.

8 CHAIRPERSON HOOD: It looks like we will be  
9 sending it back. I thought at the hearing, actually  
10 we had -- especially with the March 31st, I thought  
11 with the overhang on both sides, I thought that was  
12 cleared up. But obviously -- yeah, I thought that  
13 was cleared up. But I see what they came back with  
14 and I would echo what Commissioner May is saying. It  
15 looks like it's an extension.

16 So maybe somewhere in between there. And I  
17 don't necessarily get into this because I'm more  
18 concerned about the neighborhood and how it's working  
19 with the neighborhood, how the traffic flow is going  
20 to get -- I mean, the design is fine to some degree,  
21 but not this one.

22 But also, the issue with what Mr. Turnbull,  
23 talking about the signage, we've been through that  
24 before. I think that they probably would need to  
25 come back and we probably could -- it depends whether

1 it would be minor or whatever the case is, but the  
2 placement of it, I think that should be dealt with at  
3 a later time, once the necessary approvals and  
4 everything go through. That's just where I am on  
5 that.

6           So, I'm not ready to move forward with this.  
7 Sounds like we have a division of the house as far as  
8 design looks. So maybe we can get one more bite at  
9 the apple. And I don't know how we deal with that  
10 signage issue, and how that's going to resolve with  
11 what the council's actions are, but that may be at a  
12 later time. So, what we'll do is maybe kick it back.

13           MR. MAY: Yeah. I mean, they can continue to  
14 propose it but I don't think that there's enough  
15 support in the Commission to approve it, so we can  
16 approve everything except that.

17           CHAIRPERSON HOOD: Except, yeah. But we're  
18 not -- I don't think we're ready to approve.

19           MR. MAY: No, we're not ready to approve  
20 anything. No.

21           CHAIRPERSON HOOD: Yeah, tonight. So I  
22 actually thought, though, at the hearing maybe -- and  
23 I didn't have a chance to go back and look at it, but  
24 I thought we had dealt with the March 31st  
25 perspective, which the Vice Chair was talking about

1 with the overhang. And I thought there was  
2 concurrence with the applicant, but obviously that  
3 was done as far as bringing it in. But I thought  
4 there were some more things that we had discussed and  
5 I didn't see that as relative of what was presented  
6 back to us. So, I think if they took another shot.

7 MS. COHEN: Mr. Chairman, I just want to  
8 state for the record that I was not here for the  
9 March 31st hearing, but I have read the record.

10 CHAIRPERSON HOOD: Oh, okay. Thank you.

11 MS. COHEN: So that's probably why I'm  
12 putting my two cents in now.

13 CHAIRPERSON HOOD: Okay. Thank you.

14 MR. MILLER: And I did support bringing in  
15 the overhang. I just didn't think that once they did  
16 that, that it -- from my own personal perspective,  
17 that it created a problem but I can see that others  
18 have a problem with it.

19 CHAIRPERSON HOOD: Okay.

20 MR. TURNBULL: Well, Mr. Chairman, I just  
21 want to add one final -- I mean, with the new  
22 penthouse regulations there is so much flexibility  
23 for what you can do on the roof. And it's incredible  
24 what we've seen on other projects and other PUDs,  
25 what has happened. Even the one directly to the

1 south of this, with what they've done on the roof.  
2 It's an exciting thing that you can do on the roof.  
3 I can't see why somebody would want to try to create,  
4 as I called it, a new paradigm for the elevation, the  
5 façade of a building, in contradiction to the M  
6 Street regs, and the Capitol Gateway.

7 I think -- we talked about two options  
8 before. We talked about a tower that they could do.  
9 We talked about if they wanted to have some kind of a  
10 signature element that that kind of an embellishment  
11 would be -- we could look at that. I mean, that's  
12 not an -- I just think that they really need to go  
13 back to the drawing board and really take a hard look  
14 at what they want to do on that roof. I think we've  
15 talked about it. I mean, there's five of us up here.  
16 We all get five different opinions.

17 And so -- but I think there is opportunity  
18 for them to come up with the top of this building  
19 that meets all of the regs and still is an attractive  
20 -- as a signature building. They can still do  
21 signature elements on this building to make it  
22 distinct for this corner.

23 CHAIRPERSON HOOD: Okay. Any other comments?  
24 I think the applicant has heard from us. Ms.  
25 Schellin, do we have a date? I think this is Mr.

1 Tummond's case.

2 MS. SCHELLIN: Yes.

3 CHAIRPERSON HOOD: I saw him come up.

4 MS. SCHELLIN: Yes. The applicant has  
5 requested three weeks to make a submission. So that  
6 would be by 3:00 p.m. on the 26th of May. And then  
7 we will place this on the June 13th public meeting.  
8 I don't think we need any weigh-in from anybody else  
9 since it's just something for the applicant during  
10 deliberations. I mean, for the Commission rather.

11 CHAIRPERSON HOOD: I think unless somebody  
12 else wants something from somebody else, I think --

13 MR. MAY: Yeah, I'm just curious to ask  
14 whether the Office of Planning thinks that the  
15 questions regarding the operable windows on the  
16 second floor was addressed to their -- or perhaps  
17 they could speak to that next time we meet.

18 MR. LAWSON: That would be a good idea.  
19 Thank you.

20 MR. MAY: Okay. Thank you.

21 MS. SCHELLIN: Okay.

22 CHAIRPERSON HOOD: All right. So are we  
23 asking -- so we're not asking anything from the  
24 Office of Planning then. Other than the question.

25 MR. MAY: Yeah, I mean, they can answer that

1 question at the hearing. Or if they have grave  
2 concerns I think they can let the applicant know  
3 and --

4 CHAIRPERSON HOOD: Okay.

5 MR. MAY: -- we'll see more.

6 CHAIRPERSON HOOD: All right. So, we have  
7 the dates. Ms. Schellin has given the dates and we  
8 will deal with this at our June 13th meeting.

9 All right. Are we ready to move on? Let's  
10 go to Zoning Commission Case No. 15-20, Sursum Corda  
11 Cooperative Association, first stage -- Associates,  
12 first stage PUD and related map amendment at Square  
13 620. Ms. Schellin.

14 MS. SCHELLIN: Yes. For this one, Case No.  
15 15-20, at Exhibits 54 through 58 we have the  
16 applicant's submissions since proposed action. We'd  
17 ask the Commission to consider final action this  
18 evening.

19 CHAIRPERSON HOOD: Okay. Let's open it up.  
20 I think a lot of this we flushed out during proposed.  
21 There may be a few things that people want to comment  
22 on, so let me open it up for discussion. Anybody?  
23 Vice Chair Cohen?

24 MS. COHEN: Yeah, Mr. Chairman, again, I was  
25 not here to vote on preliminary but I did review the

1 record and I just want to say that I am  
2 extraordinarily pleased that we have come this far  
3 and this project can move ahead. It has been too  
4 long where people have lived in conditions that I  
5 don't think they -- you know, they just needed to  
6 redesign the project and return to their neighborhood  
7 where they have raised their families. And I think I  
8 have been aware of this project for well, 14 years,  
9 and that's just a real small slice of the history of  
10 the property. So I am so pleased to be able to vote  
11 on this tonight.

12 CHAIRPERSON HOOD: Okay. Any other comments?  
13 I will tell you, when the Vice Chair was getting  
14 ready to speak I was nervous of what we did when we  
15 did propose because she says, "I am so very," and I  
16 was glad to hear that she approved with our actions  
17 because I do respect her when it comes to housing.

18 And actually, I've learned over the years,  
19 she's not just known here in D.C. She's known  
20 nationally and probably abroad with her experience  
21 and expertise in housing. So that made me feel good  
22 that you approved of what we did. So, somebody like  
23 to make a motion?

24 MR. TURNBULL: Mr. Chair, I would be  
25 delighted to approve Zoning Case No. 15-20, Sursum



1 Corda Cooperative Association, first stage PUD and  
2 related map amendment at Square 620, and look for a  
3 second.

4 MS. COHEN: Second.

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

7 [Vote taken.]

8 CHAIRPERSON HOOD: Ms. Schellin, would you  
9 record the vote?

10 MS. SCHELLIN: Yes. Staff records the vote  
11 five to zero to zero to approve final action in  
12 Zoning Commission Case No. 15-20, Commissioner  
13 Turnbull moving, Commissioner Cohen seconding,  
14 Commissioners Hood, May, and Miller in support.

15 CHAIRPERSON HOOD: Is this the famous Peter  
16 May Georgetown case? I can't -- okay. Maybe  
17 Commissioner May didn't hear that.

18 MR. MAY: Thank goodness it's been approved.  
19 We won't have to hear about that until Stage 2.

20 CHAIRPERSON HOOD: Okay. Let's go to Zoning  
21 Commission Case No. 15-22, 301 -- what is that,  
22 Florida? What is FL?

23 MS. SCHELLIN: FL Management.

24 CHAIRPERSON HOOD: Oh, okay. FL Management,  
25 LLC., consolidated PUD and related map amendment at

1 square 772N. Ms. Schellin.

2 MS. SCHELLIN: Yes. On this one we have  
3 Exhibits 40 through 41A, as the applicant's  
4 submission since proposed action. We'd ask the  
5 Commission to consider final action this evening.

6 CHAIRPERSON HOOD: Okay. Commissioners, any  
7 comments on this?

8 [No audible response.]

9 CHAIRPERSON HOOD: Okay, if there's no  
10 comments.

11 MR. MAY: Yeah. I think we still had  
12 concerns about the bays and the potential widening of  
13 the sidewalk at Florida Avenue. I'm not sure that's  
14 been completely addressed in the applicant's  
15 submission.

16 And I think the other question I have was,  
17 what is the -- whether with the applicant's  
18 contribution of now I guess, 150,000, whether that's  
19 going to be enough in combination with the PUD to the  
20 south to build the new street or park between the two  
21 projects on N Street.

22 And I don't think I got that. And I'm going  
23 to -- I'll look back at what was submitted, but I  
24 don't feel like everything was completely answered.  
25 But maybe somebody else wants to enlighten me.

1 MS. COHEN: I don't know. My recollection  
2 was they ended up getting a statement from the Zoning  
3 Administrator that the bays would not protrude so  
4 much, or --

5 MR. MAY: Well, I mean, they had submitted  
6 documentation saying --

7 MS. COHEN: Yeah.

8 MR. MAY: -- indicating that it was okay from  
9 the Zoning Administrator's point of view. It had to  
10 do with the --

11 MS. COHEN: Public, yeah.

12 MR. MAY: -- prospective view that we were  
13 shown that I thought was still fairly cramped. But  
14 there were others who had concern about that.

15 MS. COHEN: Well, I guess I would just state  
16 that I don't have a concern about that.

17 MR. MAY: Well, I think the Chairman and  
18 Commissioner Turnbull had concerns about it and I  
19 want to see whether that's been addressed.

20 MR. TURNBULL: Well, you're right. I don't  
21 think it's been addressed although in their, I think  
22 it's Exhibit 40, they simply say they will not  
23 adversely impact the experience for pedestrians  
24 walking on the sidewalk, and will not result in an  
25 overly narrowed or confined pedestrian experience.

1 The projections occupy a minimal portion of the  
2 building's façade and do not create a cavernous  
3 effect for people walking adjacent to the building.  
4 I mean, that's just a comment they're making. I  
5 don't know how you actually verify or approve that it  
6 won't do that, other than it's just a -- kind of an  
7 aesthetic judgment you make simply looking at the  
8 street.

9           And I don't know what they actually could do,  
10 I mean, other than narrow the bays, which eventually  
11 -- I mean, I know what they're trying to do with the  
12 bays, trying to add some rhythm along the street.

13           So I don't know, it's a difficult one to deal  
14 with, I think. It's one of those issues that you  
15 want to get the enjoyment, the excitement of the  
16 building façade, you want to articulate it, and at  
17 the same time you want to make sure that the  
18 pedestrians aren't walking beneath, you know, what  
19 seems to be a cavern. I think the Chair had the same  
20 comment. So, I don't know, it's a hard one to  
21 balance.

22           CHAIRPERSON HOOD: Right. I actually did,  
23 and I think maybe Ms. Schellin, did Mr. Freeman, I  
24 saw him dash up in here. Did he have something he  
25 wanted to point our direction to?

1 MS. SCHELLIN: He just wanted to make sure  
2 you guys had those plans back.

3 CHAIRPERSON HOOD: Oh, yeah. We have the  
4 plans. Commissioner Miller.

5 MR. MILLER: I'll just repeat what I said at  
6 the time of proposed. I didn't think it created a  
7 cavernous effect. The ground floor retail is set  
8 back from the property line by three feet in order to  
9 provide that more generous sidewalk and tree  
10 planters, and I think those bays do provide a, as  
11 Commissioner Turnbull pointed out, a rhythm and a  
12 breakup of the façade that is important for that kind  
13 of gateway location. So I was comfortable with it  
14 previously and I'm comfortable with it now with the  
15 new perspective that we were shown.

16 CHAIRPERSON HOOD: Okay. Any other comments?

17 MR. MAY: You know, I feel like we're just  
18 kind of taking a bit of a risk here on the assumption  
19 that Florida Avenue is going to be widened. I mean,  
20 if this were -- if we knew that Florida Avenue  
21 sidewalk would not be widened I don't think that I  
22 would be willing to approve this because I think  
23 it -- you know, they're already -- you know, they've  
24 moved the face of the building back to give a little  
25 bit more sidewalk width. And then they're extending

1 out that distance above the first floor. And then  
2 they're adding bays above and beyond that.

3 And I mean, this is not against bays. I  
4 mean, I like bays. I think it's a great way to make  
5 the street façade much more interesting, particularly  
6 on a building like this. But there are other ways to  
7 do that too. You can actually, you know, carve into  
8 the building and do cornices and things like that  
9 that would give you the same effect. And I don't,  
10 you know, I don't agree with the argument that well,  
11 it's not needed, it's not functional, it's just in  
12 order to make the building look better on the façade.  
13 I mean, that whole list of arguments really don't  
14 mean much to me at all. It's the question of whether  
15 in fact we feel like we're creating -- we're allowing  
16 this building to be established. It's going to  
17 essentially be looming over the sidewalk.

18 I mean, I guess we have reasonable assurance  
19 that Florida Avenue sidewalk is going to be widened,  
20 otherwise we wouldn't be considering it. I mean, is  
21 that the consensus for those of you who are strongly  
22 supportive of it?

23 MS. COHEN: Well, I guess what I was looking  
24 -- or thinking about is, what's going on in the  
25 downtown area along K Street where they do have, you

1 know, larger sidewalks and very uninteresting  
2 facades. And I thought, we need to get away from  
3 that because I think what owners and developers are  
4 doing is bringing the building closer to the people  
5 who are on the sidewalk, and it makes a much more  
6 interesting pathway.

7           So I didn't have a problem with this. And  
8 yes, I guess I am assuming that Florida Avenue will  
9 be widened. But I think that when you're walking  
10 closer to your store fronts it really makes a more  
11 interesting outing.

12           MR. MAY: But I don't think that's what this  
13 is about at all.

14           MS. COHEN: Well, I think so.

15           MR. MAY: I mean, because it's a -- we want  
16 to have the right width of sidewalk.

17           MS. COHEN: Of course.

18           MR. MAY: Undoubtedly and having it -- we  
19 want to have the buildings close enough to the  
20 street. I mean, I understand. I agree with that.  
21 It's the question of whether what we are doing in  
22 this building --

23           MS. COHEN: Yeah.

24           MR. MAY: This building.

25           MS. COHEN: Is still -- yeah.

1           MR. MAY: Is essentially overcrowding the  
2 sidewalk space. And again, it just, it -- you know,  
3 some of the previous perspectives really kind of gave  
4 me that feel, that we're overcrowding it. And it,  
5 you know, it may be fine once the sidewalk is widened  
6 another five feet or so. Whatever it's going to be.  
7 Or it probably will be fine then. But if it winds up  
8 this way forever I'm going to be regretting this. I  
9 don't know.

10           MR. TURNBULL: And we have no guarantees that  
11 the sidewalk will definitely be expanded. I mean,  
12 there is an indication out there that it is going to  
13 be, but what you're saying, Commissioner May, is that  
14 we're rolling the dice on this in the way that on a  
15 proposed idea that this sidewalk is going to be  
16 expanded.

17           MR. MAY: Yes. If the sidewalk doesn't seem  
18 likely to be expanded, and I think that's, I mean,  
19 the recommendation that came out of their earlier  
20 report was that it could be expanded, and probably  
21 should be expanded. So it seems like it's more  
22 likely than not to happen.

23           But if that were not in the offering here, I  
24 would be reluctant to approve anything that involved  
25 bay projections like this.



1           MR. TURNBULL: Okay. So what you're saying  
2 is let's go with the base assumption that this  
3 sidewalk does not get extended. If it gets extended  
4 it's a bonus. If it doesn't get extended we're  
5 dealing with what we have before us then. And that  
6 something -- I mean, with the design with the bays as  
7 they are currently is what we're going to end up  
8 with, rather than something that might offer, whether  
9 they were a little higher or less or --

10           MR. MAY: I mean, at this point I'm not  
11 arguing that we do anything different or that they,  
12 you know, that we --

13           MR. TURNBULL: Okay.

14           MR. MAY: -- deny it because they have these  
15 bay projections.

16           MR. TURNBULL: Right.

17           MR. MAY: I just, I'm putting out a  
18 caution --

19           MR. TURNBULL: Yeah.

20           MR. MAY: -- that this is not something that  
21 we should be doing in a, you know, in a circumstance  
22 like this when the sidewalk is as cramped as it is.  
23 The Florida Avenue sidewalk throughout almost all of  
24 its extent, is crowded. And it's crowded out by car  
25 lanes that probably don't need to be there. At least

1 in some sections like here.

2 MR. TURNBULL: Yeah.

3 MR. MAY: So we're kind of hoping that that's  
4 what's going to happen, that the sidewalk is going to  
5 get widened and there are going to be fewer cars. Or  
6 rather, fewer lanes of cars.

7 And if that's going to be the case then I  
8 think that this is okay. If it was not the case then  
9 I think that you know, if they want to vary the  
10 façade and have a little bit of in and out they can  
11 go in rather than out. So, that's all I'm saying.

12 CHAIRPERSON HOOD: I would agree. And it's  
13 hopeful because as I'm sitting here looking at this  
14 discussion and I ride past a place on South Dakota  
15 Avenue that we approved and we did not have that same  
16 thought when we approved that. I can tell you that,  
17 you talking about a sidewalk crowded, this right here  
18 probably looks like it has plenty of room compared to  
19 what we approved previously.

20 So I, after hearing that, I would go ahead  
21 and again, I would agree with what Commissioner May  
22 is saying, but we need to make sure we start looking  
23 at all projects like this. And I think this is  
24 crowded, but we've actually -- we have something  
25 that's out there now that's being done that's even

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1 more crowded. And it's on South Dakota Avenue, and I  
2 won't call the name of the site, but I'm going to  
3 tell you right now, when I ride by it I'm very  
4 disturbed knowing I had something -- I'm hoping once  
5 it all comes out, it works out. But this kind of  
6 reminds me of that here and that's why I had the same  
7 concern. So I don't think it's a showstopper for me.  
8 I'll be ready to move forward with the hope as we've  
9 already stated, that the sidewalk would be expanded.

10 So, any other comments on this?

11 MR. MAY: Yeah. So I mean, I guess what I'm  
12 -- back to the street. What I was looking for was  
13 some understanding of what the total budget for the  
14 project was, not how the 125,000 or the 150,000, I've  
15 seen it both ways, is actually going to be spent. I  
16 want to know that when this project is done and when  
17 the PUD to the south is done, that this will be a  
18 completed roadway and we're not going to wait on half  
19 a million dollars or a million dollars' worth of  
20 funding to come out of DDOT to make road  
21 improvements. That's the answer I was looking for  
22 and I don't see that. Maybe I'm missing it.

23 I mean, perhaps is it -- Mr. Chairman, would  
24 you mind if we were to ask the applicant's --

25 CHAIRPERSON HOOD: Sure.

1 MR. MAY: -- attorney to come up and --

2 CHAIRPERSON HOOD: He can come forward.

3 MR. MAY: -- answer this question if  
4 possible?

5 MR. FREEMAN: For the record, Kyrus Freeman,  
6 Holland and Knight on behalf of the applicant.

7 Commissioner May, what we did is two things.  
8 One, we identified the cost for the cost on  
9 quote/unquote, our side of the street, which is  
10 Exhibit A. And as we've indicated in the narrative  
11 and as indicated in the letter attached as Exhibit B,  
12 Foulger-Pratt has said they're going to cover the  
13 cost of the improvements on their side of the street.

14 So we thought with us saying we were going to  
15 do our half, and the condition outlined on page 2  
16 which requires us to do certain work combined with  
17 Foulger-Pratt, who will be before you with their PUD  
18 saying, committing in Exhibit B that they're going to  
19 do the work on their side of the street, that that  
20 would cover it. We weren't expecting DR  
21 contribution. We were expecting our piece and  
22 Foulger-Pratt's piece to be covered by the respective  
23 applicants.

24 MR. MAY: So is it reasonable -- well, I  
25 mean, the applicant is committing to 125 or 150?

1 MR. FREEMAN: It's 150. That includes work  
2 and permitting and other costs. So that's why  
3 they --

4 MR. MAY: Okay. So it's 100 -- all right.  
5 Well, so 150 total cost. And presumably the Foulger-  
6 Pratt contribution is similar. Might be a little bit  
7 longer because they have a little bit longer stretch  
8 of the sidewalk.

9 MR. FREEMAN: I don't want to speak for their  
10 costs because I'm not their counsel. But they have  
11 said they are covering the work. They're going to  
12 submit a plan similar to our plan that they will  
13 cover --

14 MR. MAY: That covers the work.

15 MR. FREEMAN: -- the costs. Right.

16 MR. MAY: Okay. So what happens if it winds  
17 up being, your portion of it, winds up being 250,000?

18 MR. FREEMAN: Well, we've priced it out and  
19 we feel comfortable that our portion is -- that we  
20 can do what we said we were going to do under Exhibit  
21 A. We spent a lot of time pricing it out.

22 MR. MAY: Okay.

23 MR. FREEMAN: And identifying that work.

24 MR. MAY: So my question remains, what  
25 happens if it still winds up being more? Are you

1 committing to do that portion of the work, or are you  
2 committing to spend \$125,000 on it?

3 MR. FREEMAN: I need a -- I don't --

4 MR. MAY: You need to talk to your --

5 MR. FREEMAN: I need the client --

6 MR. MAY: -- client.

7 MR. FREEMAN: -- at the table. But again,  
8 we're confident that what we're proposing we can get  
9 the work done.

10 MR. MAY: I understand that. I appreciate  
11 that. That's a little bit more clear than what we  
12 had before. But I am looking for that complete  
13 commitment to get the work done, not so much the,  
14 we're going to spend 125,000.

15 MR. FREEMAN: I think we are committing to do  
16 the work that's shown on our exhibit, on our side of  
17 the street, consistent with --

18 MR. MAY: Whether it's 125 or 150 or 175?

19 MR. FREEMAN: Generally, yes. Again, I don't  
20 want to spend someone else's money, but generally  
21 yes.

22 MR. MAY: Do you need to consult with your  
23 client, go back and talk to them?

24 [Pause.]

25 MR. FREEMAN: Mr. Ditto is not here right now

1 to answer that question. We weren't expecting that.  
2 But we've committed to spend the money to show the  
3 work on our side of the plan, and we have a condition  
4 which binds us to doing that.

5 MR. MAY: So, in other words if for some  
6 reason there's a bust on your budget, you're going to  
7 wind up having to come back to us to modify the plan  
8 to build something that's within budget, or you're  
9 going to have to spend the money to build it.

10 MR. FREEMAN: Yes.

11 MR. MAY: Okay. That's good enough for me.

12 MS. COHEN: Well, we can tighten it up in the  
13 zoning order, make sure that's --

14 MR. RITTING: Could I --

15 MR. MAY: Well --

16 MR. RITTING: -- interject --

17 MR. MAY: Yeah.

18 MR. RITTING: -- for a moment? The way the  
19 condition is currently written, it requires the  
20 applicant to spend \$150,000.

21 MR. MAY: Right.

22 MR. RITTING: For the stated improvements.

23 MR. MAY: Right.

24 MR. RITTING: And says, "The applicant shall  
25 allocate its contribution of up to \$150,000 to the

1 work identified in Sections 1A," and it runs through  
2 the list, "with remaining proceeds allocated to the  
3 work identified in Sections 1B through 1F,  
4 respectively." So that means if the work exceeds  
5 \$150,000 they are not responsible for doing it. That  
6 is the way the condition is currently --

7 MR. MAY: B through F? What's B through F?

8 MR. FREEMAN: On page 2 of our exhibit.

9 MR. RITTING: Perhaps I could just walk over  
10 and show you that document.

11 MR. MAY: Well, I mean, is it in the -- show  
12 me in the order?

13 MR. RITTING: Yes, in the order, I'll show it  
14 to you.

15 MR. MAY: Well, just tell me what the page,  
16 in your copy of it, right?

17 MR. RITTING: It begins on the bottom of page  
18 23 and extends through most of the page 24.

19 MS. COHEN: However, I don't know if the  
20 counsel is able to act on behalf of the applicant  
21 without the applicant's go-ahead, but we could  
22 strengthen that particular part of the zoning order  
23 and assure that it is complete.

24 MR. MAY: We can only do what they proffer,  
25 right?



1           MR. RITTING: Commissioner May is correct,  
2 that they've proffered to do -- spend 150,000. They  
3 have not committed to completing all of the work  
4 regardless of cost.

5           MS. COHEN: Then I think that that's a big  
6 problem.

7           MR. FREEMAN: Just one point. If you look at  
8 the exhibit, so for example, Item A is sidewalk,  
9 that's about roughly 20 to \$25,000. So we're not  
10 expecting to spend \$125,000 all on Item A. We're  
11 thinking that the 150 will cover all of A through --  
12 A through F. The purpose of that language is if the  
13 ANC says, oh, well we want \$5,000 benches instead of  
14 \$1,000 benches, there's a cost associated with that.  
15 So that's the reason why we -- and that's consistent  
16 with what we've seen in other orders. That's the  
17 reason why we kind of prioritize them, because all of  
18 this is, again, in coordination with the ANC and DDOT  
19 as well. It wasn't to try to front load it and not  
20 do the work.

21           MR. MAY: This is just the thing that makes  
22 me nervous about the work here, because I felt like  
23 it was going to cost a good bit more than was being  
24 proffered, and knowing even that it was only  
25 proffering half and now you're saying, well, the only

1 thing that we're really committed to is A. I mean, I  
2 understand that there are lots of things that have to  
3 go into that but you know, predicting with great  
4 certainty right now that everything that we've seen  
5 in the plan can be done for \$125,000 and you're very  
6 confident in it, that confidence isn't showing up in  
7 what's in the order, which seems to indicate that  
8 really all you're committing to is, you know,  
9 widening the sidewalk.

10 So I don't know how much of an issue this is  
11 for my fellow commissioners, but I would rather  
12 see -- I just, I don't want to wind up with a project  
13 that just has a big wide sidewalk and none of the  
14 great stuff that we're seeing in the design.

15 Mr. Freeman, you had something else?

16 MR. FREEMAN: I just wanted for -- I'm not  
17 sure that this answers the question but the way this  
18 whole sidewalk improvement initially came up is  
19 because this is something the ANC wanted to happen.  
20 We initially agreed to put money in an escrow account  
21 and let the ANC kind of pick and choose how that  
22 money would have been spent. But at our hearing the  
23 Zoning Commission asked us to not do the escrow  
24 account and instead do the specific condition, which  
25 is why we thought that this condition provided the

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1 assurance of the work that would be done with the  
2 money, as well as a budget indicating that we spent  
3 time on these numbers and this budget matches the  
4 plan that is included with our other exhibit prior to  
5 this exhibit.

6           So we think this budget, the plan, and the  
7 condition -- or we thought it would provide assurance  
8 that the work would occur. But.

9           MR. TURNBULL: Mr. Freeman, in that 48 you've  
10 got specialty paving. I'm looking at Tab A.

11           MR. FREEMAN: Yes, sir.

12           MR. TURNBULL: The specialty paving is --  
13 what will that be? I mean, is that -- is Foulger-  
14 Pratt going to do the same specialty paving?

15           MR. FREEMAN: So, we don't have included with  
16 this exhibit, but the prior exhibit -- and I can get  
17 the plan out.

18           MR. TURNBULL: Oh, okay.

19           MR. FREEMAN: We did submit the plan that  
20 showed the actual improvements along 8th Street. So,  
21 and of course it is Exhibit -- it's your Exhibit 35A.  
22 Would have the actual N Street plan, and that plan  
23 which shows the work that corresponds to that budget.

24           MR. TURNBULL: Okay. I'm pulling it up here.  
25 I just want to take a look.

1           How will the coordination happen between the  
2 two projects? Is there any -- I mean, I'm just  
3 worried about something being left. You mean your  
4 project is going to get done first, I'm assuming.  
5 And then they're going to come back and do their  
6 portion. So I'm just curious as to how this all gets  
7 coordinated so we have a uniform street along there.

8           MR. FREEMAN: So a lot of that is going to --  
9 they've been in coordination and contact already,  
10 which is how we got the letter.

11          MR. TURNBULL: Okay.

12          MR. FREEMAN: And a lot of that is just going  
13 to require coordination with DDOT because this is all  
14 public space improvement, so we would have to work  
15 with DDOT, coordinate the time and the stage and the  
16 expansions, et cetera.

17          MR. TURNBULL: Okay. So you're actually  
18 doing halfway into N Street, then. Is that my  
19 understanding, then? Is that --

20          MR. FREEMAN: On the north side, yes.

21          MR. TURNBULL: On the north side. Okay.

22          CHAIRPERSON HOOD: Mr. Freeman, let me just  
23 ask you, do you have any -- okay, you're getting  
24 ready to get an answer, I guess.

25          Do you have any -- I'm looking at B in your

1 revised proffers and conditions chart. And this goes  
2 away for a minute while I'm thinking about what  
3 Commissioner May is saying about the \$150,000. Do  
4 you have any way of proving that this actually can be  
5 done?

6 MR. FREEMAN: Proven?

7 CHAIRPERSON HOOD: Including residential  
8 leases and provisions. I know that can be done, but  
9 the enforcement part of it.

10 MR. FREEMAN: We, as a private developer, as  
11 with all conditions, any condition that we include in  
12 our order we operate in that manner. I know, and  
13 I've heard DDOT say that the city doesn't have any  
14 way to enforce that condition. But that --

15 CHAIRPERSON HOOD: But we continue to put it  
16 in -- we will continue to --

17 MR. FREEMAN: But again, we subject --

18 CHAIRPERSON HOOD: Don't worry, it probably  
19 doesn't work anyway.

20 MR. FREEMAN: But we subject ourselves to the  
21 conditions that are in our order, so.

22 CHAIRPERSON HOOD: But I'm just saying, we  
23 continued it. And I'm kind of going down a road with  
24 you that I probably go down with everybody. But we  
25 continue to put it in here and we know pretty much it

1 probably doesn't work.

2 MR. FREEMAN: I don't know that it doesn't  
3 work. I've heard that's --

4 CHAIRPERSON HOOD: We don't know whether it  
5 works or it doesn't. We don't know whether if it  
6 works or if it doesn't work, but we continue to put  
7 it in there. Okay. That's all. You've answered my  
8 question. Okay. So just, when it comes back for  
9 your next applicant, next case, I'm going to ask the  
10 same question from here on out from now on, until I  
11 eventually get it resolved for the next year or so  
12 that I'm here, for two years.

13 Okay. Did you get an answer back?

14 MR. FREEMAN: I did not get an answer.

15 CHAIRPERSON HOOD: Okay.

16 MR. FREEMAN: I would just add one last  
17 thought. The language of this condition is very  
18 similar to the language of a condition in 300 M  
19 Street that had significant public space improvements  
20 on the north and south side of M Street, which was  
21 adopted and included in a recently approved Zoning  
22 Commission case order. So that's kind of how I got  
23 the formatting, the structure of that condition,  
24 because it's very similar to an amenity that was  
25 approved before.

1 CHAIRPERSON HOOD: And there probably was  
2 some different structure.

3 MR. MAY: So you're saying we missed it on  
4 that last case, huh?

5 CHAIRPERSON HOOD: We seem to be -- we missed  
6 some stuff. It doesn't mean we can't correct it.  
7 Just so happens, you may be the one that we correct  
8 it on, but we missed some things.

9 MR. MAY: Has that one been -- that one  
10 hasn't been built yet.

11 MR. FREEMAN: It's in permitting.

12 MR. MAY: It's in permitting?

13 MR. FREEMAN: Yes.

14 MR. MAY: Are they going to be able to build  
15 it all out?

16 MR. FREEMAN: Yes.

17 MR. MAY: Not in A through B, or A through G,  
18 or whatever?

19 MR. FREEMAN: No.

20 MR. MAY: No?

21 MR. FREEMAN: All out. Not stopping in the  
22 middle.

23 MR. MAY: Right. They're going to complete  
24 everything that was shown in the plans.

25 MR. FREEMAN: Yes. Again, the sole purpose

1 of that priority is so that folks don't come in and  
2 add to the scope and say, we want to spend all of our  
3 money on benches, and then you don't get to do the  
4 other work because it's in coordination with other  
5 groups.

6 MR. MAY: Right. And I mean, I can  
7 appreciate the need to do that. I'm not sure that  
8 we're really threading the needle right here, again  
9 because I mean, part of this just boils down to my  
10 own concern that \$150,000 is just not enough to do  
11 all this work, and that all we're going to wind up  
12 with is a widened sidewalk and a lot more pavement.

13 MR. FREEMAN: We think the 150 is enough to  
14 cover the work, so -- in the budget that we included.

15 CHAIRPERSON HOOD: Because the work for the  
16 RPP residential leases probably doesn't work, so it  
17 doesn't cost anything to do that. So we can exclude  
18 that.

19 Let me ask you this, Commissioner May, do you  
20 have anything you'd like to see? Would you like us  
21 to go back and look at this proffer or, if not we  
22 can --

23 MR. MAY: I don't know. I mean, if the rest  
24 of the Commission is willing to go along with this I  
25 could go along with it. If we, you know, if you want



1 to ask them to take a little time and see what they  
2 can do to strengthen the guarantee that the work will  
3 -- you know, that the entire park will get realized,  
4 I'd be open to that too. But I don't want to -- you  
5 know, just because I'm skeptical of the budget, I  
6 don't want the whole thing to --

7 CHAIRPERSON HOOD: I think that's part of --

8 MR. MAY: I don't want to be hanging  
9 everything up just because of me. If everybody  
10 agrees that there is a legitimate concern here.

11 CHAIRPERSON HOOD: I think it is, because  
12 that's part of what we're supposed to be doing  
13 anyway, reconciling the benefits and the proffers and  
14 everything with what's being -- flexibility that's  
15 being asked for and all that whole gamut. So, and if  
16 we're only realizing one or two things, which one I  
17 think has a zero-dollar value because I don't believe  
18 it works, matter of fact it has a zero-dollar value  
19 either way. But I'll open it up. Let's hear from  
20 others on your conversation on this piece. Vice  
21 Chair Cohen.

22 MS. COHEN: Mr. Chairman, I would want to  
23 strengthen that commitment and feel more comfortable  
24 that there is sufficient funding to complete what is  
25 being proposed.

1 I hear the applicant's attorney stating that,  
2 you know, they're very confident, but there doesn't  
3 seem to be very much in the record to support that  
4 confidence.

5 MR. FREEMAN: I'm just reconfirming to see if  
6 we can add a condition to the order that says the  
7 applicant shall complete the work identified in Items  
8 A through H, and strike the proviso at the end, which  
9 I think the proviso is what's causing a -- not to  
10 speak for folks, but I think that proviso is what's  
11 causing a concern. So if we --

12 MR. MAY: Yes.

13 MS. COHEN: Yes, I agree with that.

14 MR. FREEMAN: -- solely commit to spend the  
15 money to do Items A through F, hopefully I can get  
16 some confirmation.

17 CHAIRPERSON HOOD: Why don't we give them a  
18 minute and let's go to hearing action.

19 MR. MAY: Yeah.

20 CHAIRPERSON HOOD: And then we can come back.

21 MS. COHEN: Okay.

22 CHAIRPERSON HOOD: Okay. Okay. Let's put  
23 that and come back to that shortly.

24 Let's go to hearing action -- is that the  
25 last one? Yeah, hearing action -- yeah, that's the

1 last one. Excuse me. Zoning Commission Case No. 14-  
2 11B, Office of Planning text amendment to 2016  
3 regulations, re. rear additions and conversions to  
4 apartment houses. Ms. Steingasser.

5 MS. STEINGASSER: Yes. The Zoning Commission  
6 asked the Office of Planning to bring back language  
7 regarding the disproportionate rear additions on row  
8 buildings, as the Office of Planning is proposing  
9 language that reflects the 10-foot standard recently  
10 approved by the Zoning Commission on the special  
11 exception of conversion case. This would establish a  
12 10-foot limit as a matter of right for rear  
13 additions, and allow more than 10 feet by special  
14 exception.

15 In addition to that language the Department  
16 of Regulatory and Consumer Affairs, the Zoning  
17 Administrator's office reached out to us and asked  
18 for some clarifying language to the original case of  
19 11 -- 14-11, and we have also included that and  
20 recommend that it all be set down for a public  
21 hearing.

22 CHAIRPERSON HOOD: Thank you, Ms.  
23 Steingasser, and I thank you all for moving on this  
24 expeditiously and can we -- Ms. Schellin, can we make  
25 sure that -- well, I'm sure that those who were at

1 the Council Oversight Hearing, budget hearings, will  
2 know that this is being moved or worked on. Not  
3 necessarily approved, but set down for a hearing.

4 Okay. Let's open it up for questions or  
5 comments to the Office of Planning on this.  
6 Commissioner May.

7 MR. MAY: Reading through the language that  
8 was proposed, this is the 10-foot matter of right has  
9 to do with conversions.

10 MS. STEINGASSER: No, sir. This would be  
11 relevant --

12 MR. MAY: That's for everything.

13 MS. STEINGASSER: For everything.

14 MR. MAY: Everything.

15 MS. STEINGASSER: Yes.

16 MR. MAY: But there was some other language  
17 in there having to do with -- that it would not  
18 affect flats or single-family homes.

19 MS. STEINGASSER: Yeah, but it would not  
20 affect detached single-family homes because they're  
21 subject to side yards.

22 MR. MAY: Right. Got it.

23 MS. STEINGASSER: But any kind of attached or  
24 semi-detached dwelling in the R-3 or R-4 equivalent  
25 zones would all be subject to a 10-foot limitation by

1 right.

2 MR. MAY: Okay.

3 MS. STEINGASSER: And anything else.

4 MR. MAY: And then anything else by special  
5 exception. All right. Thank you.

6 CHAIRPERSON HOOD: Okay. Commissioner  
7 Miller?

8 MR. MILLER: Thank you, Mr. Chairman. I'm  
9 supportive of setting this down. I just had a  
10 question. If an adjacent property is already 10 feet  
11 or more beyond the adjacent property, they're going  
12 to become nonconforming? And how is that --

13 MS. STEINGASSER: No, they would be a  
14 conforming structure.

15 MR. MILLER: Is there a specific language  
16 that --

17 MS. STEINGASSER: There is general language  
18 at the, I believe it's in Chapter 1, and it will be  
19 in subtitle A that talks about the conforming  
20 properties as they move forward with changes.

21 MR. MILLER: So they won't have trouble  
22 getting the repairs or the types of renovations that  
23 they need to make?

24 MS. STEINGASSER: This would not get into the  
25 issue -- this standard would work in concert with lot

1 occupancy and rear yards and heights and all that.  
2 It would just be another development standard. It  
3 wouldn't create.

4 MR. MILLER: Okay. Thank you.

5 CHAIRPERSON HOOD: Any other questions or  
6 comments?

7 MR. TURNBULL: Mr. Chair, no. I would go  
8 along with setting this down.

9 CHAIRPERSON HOOD: Okay. In that case I  
10 would move that we set down Zoning Commission Case  
11 No. 14-11B and ask for a second.

12 MS. COHEN: Second.

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

15 [Vote taken.]

16 CHAIRPERSON HOOD: Ms. Schellin, would you  
17 record the vote?

18 MS. SCHELLIN: Yes, sir. Staff records the  
19 vote five to zero to zero to set down Zoning  
20 Commission Case No. 14-11B as a rulemaking case,  
21 Commissioner Hood moving, Commissioner Cohen  
22 seconding, Commissioners May, Miller, and Turnbull in  
23 support.

24 CHAIRPERSON HOOD: Okay. We'll give the --  
25 we'll take a couple of minutes off the record and

1 just wait until they come back.

2 [Off the record from 7:50 p.m. to 7:55 p.m.]

3 CHAIRPERSON HOOD: Okay. What we're going to  
4 do is, we're going to go back on the record, Mr.  
5 Freeman, and we're going to give you the opportunity,  
6 we're going to deal with this on Thursday. Unless  
7 you're ready now. If you're not ready we're going to  
8 give you some time to deal with it on Thursday.  
9 Thursday at 5:30.

10 MS. SCHELLIN: Six.

11 CHAIRPERSON HOOD: Six. Oh, 6:00. Five  
12 minutes to 6:00 for this one.

13 MR. FREEMAN: So just so I'm clear, the  
14 outstanding issue is the contribution for the street  
15 improvements at this point?

16 MR. MAY: Yeah, I think, you know, it's the  
17 contribution or it's the language that goes with the  
18 contribution that gives us some greater certainty  
19 that what we see in those plans is what's going to  
20 get built.

21 MR. FREEMAN: Okay. What we're trying to  
22 figure out is if we increase the amount of the  
23 proffer to guarantee -- well, it's important for us  
24 to have a cap in there because we don't want folks to  
25 add.

1 MR. MAY: We understand that.

2 MR. FREEMAN: So we're looking at, if we  
3 increase the amount of the proffer, would that  
4 resolve the concern about making sure the  
5 improvements got constructed?

6 CHAIRPERSON HOOD: And so you don't do it off  
7 the cuff, we'll just do it Thursday.

8 MR. MAY: Yeah, I mean --

9 MR. TURNBULL: Well, I'm assuming that you've  
10 already done a construction estimate, obviously on  
11 this.

12 MR. FREEMAN: We have.

13 MR. TURNBULL: Of hard costs that actually  
14 shows us, and a contingency also in there.

15 MR. FREEMAN: We have. But we can -- we're  
16 trying to figure out what we had to do to comfort  
17 you. But we'll --

18 MR. TURNBULL: Okay.

19 MR. FREEMAN: -- we'll be -- we'll file  
20 something quickly and be back on Thursday. Thank  
21 you.

22 MR. MAY: Okay. Thanks.

23 CHAIRPERSON HOOD: Thursday at 6:00. Okay.  
24 All right. Thank you very much, Mr. Freeman and  
25 others. Do we have anything else, Ms. Schellin?



1 MS. SCHELLIN: No.

2 CHAIRPERSON HOOD: Okay. I want to thank  
3 everyone for their participation and this hearing is  
4 adjourned.

5 [Hearing adjourned at 7:58 p.m.]

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