District of Columbia
Court of Appeals

02/24/2022

No. 19-AA-94

COY MCKINNEY, *et al*.,

Petitioners,

v. **ZC02-38I**

DISTRICT OF COLUMBIA
ZONING COMMISSION,

Respondent.

Anthony J. Hood, Chairman
District of Columbia Zoning Commission
441 - 4th Street, N.W.
Suite 200S
Washington, DC 20001

Dear Chairman Hood,

Pursuant to Rule 41(a) of this Court, the decision in the above-entitled case is attached.

Please acknowledge receipt of the decision by signing the copy of this letter and returning it to this office as soon as possible.

JULIO A. CASTILLO
Clerk of the Court

I hereby acknowledge receipt of the original of this letter with attachments.

_____

Signed

_____

Date

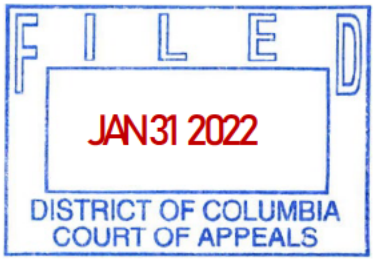
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 19-AA-94

COY MCKINNEY, *et al.*, PETITIONERS,

v.

DISTRICT OF COLUMBIA ZONING COMMISSION, RESPONDENT.



Petition for Review of an Order
of the District of Columbia Zoning Commission
(ZC02-38I)

(Submitted May 6, 2020 Decided January 31, 2022)

Before MCLEESE and DEAHL, *Associate Judges*, and WASHINGTON, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioners Coy McKinney, Pamela McKinney, Adom Cooper, Renee Ater, Linda Brown, and Alexis Wnuk challenge an order by the District of Columbia Zoning Commission ("the Commission") approving a second-stage planned unit development ("PUD") and a modification to an approved first-stage PUD for two buildings located at 375 M Street, SW ("East M") and 425 M Street, SW ("West M") (together, the "M Street Sites"). Petitioners argue that 1) the Commission's findings of fact and conclusions of law should be given little deference because its order was a "near duplication" of intervenors' proposed order, 2) the Commission did not make findings regarding the PUD's adverse effects and inconsistencies with district plans and policies, and 3) the Commission did not support its findings with substantial evidence on the record. Intervenors Waterfront 375 M Street, LLC and 425 M Street, LLC oppose petitioners' challenge to the Commission's order. For the following reasons, we affirm.

I.

Petitioners are residents of the neighborhood in which the PUD site that is the subject of the challenged order is located. Intervenors are, together, the applicant for the second-stage PUD and modification to the previously approved first-stage PUD for the M Street Sites. The Commission approved the original first-stage PUD application on July 31, 2003, for a mixture of office, retail, and residential use. The 13-acre site previously contained a shopping mall. In November 2007, the Commission approved a second-stage PUD for four of the buildings – other than those on the M Street Sites – and a modification to the first-stage PUD. Because the M Street Sites remained vacant pending the start of construction, the Advisory Neighborhood Commission ("the ANC") requested in February 2015 that intervenors temporarily "activate" the M Street Sites for public use. Since then, the sites have been used as a public event and social gathering space.

On April 15, 2017, intervenors submitted an application for a second-stage PUD and a modification of significance to the first-stage PUD, which is the subject of the challenged order. Specifically, intervenors sought to change the primary use of the PUD buildings from commercial to residential and to include neighborhood-serving office space. Intervenors proposed to construct approximately 598 residential units on the M Street Sites, at least 8% of which would be dedicated to households earning up to 60% of the Median Family Income, pursuant to 11-C D.C.M.R. § 1003.2 (2022). Six of those units would be three-bedroom units. Additionally, intervenors proposed to include retail space, office space, and a 6,000 square-foot community center, the third of which intervenors added to the PUD plan following discussions with the ANC. Intervenors agreed to fully cover the cost of rent, property taxes, building maintenance, operating expenses, and utilities for the community center for the first 30 years of operation.

The Office of Planning submitted a hearing report recommending approval of intervenors' application, and the District Department of Transportation submitted a report stating no objection to the application, though both reports contained conditions and issues to be resolved. Intervenors submitted responses to both reports. The Commission held two days of public hearings, on April 5, 2018, and May 10, 2018, at which petitioners and others voiced their opposition to the application's approval. Intervenors subsequently met with and responded to the concerns of those who voiced opposition or sought additional information, including Petitioner Mr. McKinney. On September 17, 2018, the Commission approved the application in a 71-page order.

Petitioners filed a petition for review of the Commission's order, arguing that the order failed to make factual findings and legal conclusions as to certain material contested issues, that it failed to support certain findings with substantial evidence, and that it should be given little deference because of its similarity to intervenors' proposed order.

II.

When a developer seeks approval of a PUD through a two-stage process, the Commission uses the first stage as a "general review of the site's suitability as a PUD" in which it determines the PUD's compatibility with the District of Columbia Comprehensive Plan[1] ("the Plan") as well as with "city-wide, ward, and area plans of the District of Columbia," among other things. 11-X D.C.M.R. § 302.2(a) (2022). The Commission must ensure the PUD "[p]rotects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." 11-X D.C.M.R. § 300.1(c) (2022). At the second stage, the Commission conducts a "detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and [the Zoning Regulations]." 11-X D.C.M.R. § 302.2(b) (2022). The Commission "shall" grant approval to a second-stage application that it finds is "in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval . . . ." 11-X D.C.M.R. § 309.2 (2022). When a developer applies for a "modification of significance" to an already-approved PUD, the Commission must conduct a hearing to determine the "impact of the modification on the subject of the original application," but it may not "revisit its original decision" in doing so. 11-Z D.C.M.R. § 704.4 (2022).

---

[1] "The Comprehensive Plan, first adopted in 1986 and amended in 2006, establishes a broad framework intended to guide the future land use planning decisions for the District." *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1162 n.1 (D.C. 2013) (internal quotation marks and citations omitted). "The Plan, among other things, [d]efine[s] the requirements and aspirations of District residents and [g]uide[s] executive and legislative decisions on matters affecting the District and its citizens." *Id.* (alterations in original) (internal quotation marks omitted) (citing D.C. Code § 1-306.01(b)(1), (2) (2012 Supp.)).

"In the District of Columbia, the Zoning Commission has the exclusive authority to enact zoning regulations, and it has the principal responsibility for assuring that those regulations are not inconsistent with the Comprehensive Plan." *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1166 (D.C. 2013) (*Durant I*) (citation omitted); *see also* D.C. Code §§ 6-621.01(e), -641.01 (2018 Repl.). "Because of the Commission's statutory role and subject-matter expertise, we generally defer to the Commission's interpretation of the zoning regulations and their relationship to the Plan." *Durant I*, 65 A.3d at 1166-67 (citation omitted).

As a result, this court's review of the Commission's decisions like the order at issue in this case is deferential. *Id.* at 1167. We should affirm such decisions by the Commission unless we determine that they are "[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "[w]ithout observance of procedure required by law," or "[u]nsupported by substantial evidence in the record of the proceedings before the Court." D.C. Code § 2-510 (a)(3)(A), (D), (E) (2021 Repl.); *see Union Mkt. Neighbors v. District of Columbia Zoning Comm'n*, 204 A.3d 1267, 1269 (D.C. 2019). Therefore, this court is not in the position to "reassess the merits of the decision" in this case. *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 998 (D.C. 2005). With respect to the evidentiary record, "we must affirm the Commission's decision so long as (1) it has made findings of fact on each material contested issue; (2) there is substantial evidence in the record to support each finding; and (3) its conclusions of law follow rationally from those findings." *Durant I*, 65 A.3d at 1167.

III.

On appeal to this court, petitioners contend that the Commission erred in its approval of the second-stage PUD and modification to the first-stage PUD and that the order should be vacated for several reasons. First, petitioners argue that the Commission's order is entitled to little deference because it was "similarly worded" with intervenors' proposed order.

Second, petitioners argue that the Commission failed to make findings and conclusions of law as to the PUD's inconsistencies with district planning policies and as to its adverse effects. Specifically, they argue that the Commission did not make a finding on the PUD's inconsistency with the Southwest Plan's goal of "equity and inclusion." They also argue that the Commission failed to make a finding on the loss of health-promoting, art, and cultural assets resulting from the

PUD. In addition, petitioners argue that the Commission did not make a finding on whether the project aligns with the Implementation Element of the Comprehensive Plan.

Third, petitioners contend that the Commission lacked substantial evidence when it found that the PUD was not inconsistent with the Comprehensive Plan. Specifically, they argue that the PUD is inconsistent with the Managing Growth and Change portion of the Comprehensive Plan as well as the Lower Anacostia Waterfront/Near Southwest Area Element of the Plan. Additionally, petitioners argue that the Commission lacked substantial evidence in finding that the PUD included an appropriate mix of affordable and market-rate units and that the project would not result in gentrification and displacement in the neighborhood. Finally, petitioners argue that the Commission lacked substantial evidence in finding that the application could be approved before a safety study was conducted.

We disagree with petitioners on all three of their contentions for the following reasons.

A.

First, petitioners urge us to apply a stricter standard of review because the Commission's order contained much of the same language as the intervenors' draft order. Intervenors disagree, arguing that the Commission exercised its independent judgment in issuing the order, given that it "thoroughly vetted every aspect of the M Street PUD throughout the proceeding."

This court does not "prohibit the practice of verbatim adoption of orders proposed by one of the parties," but verbatim copying – "grammatical errors and all" – of a party's proposed order "will trigger more careful appellate scrutiny and result in less deference to the ruling of the . . . administrative agency." *Durant v. District of Columbia Zoning Comm'n*, 99 A.3d 253, 257-58 (D.C. 2014) (*Durant II*) (citation omitted). However, we have not found it necessary to apply this stricter standard when, "[a]lthough the majority of [an order's] paragraphs were adopted verbatim from the applicant's proposals, the Commission added sentences and phrases, changed sentence structure, referenced the applicable regulations, changed the grammar, and, in some places, added entirely new paragraphs." *See Watergate East Comm. Against Hotel Conversion to Co-Op Apts. v. District of Columbia Zoning Comm'n*, 953 A.2d 1036, 1045 (D.C. 2008) (*Watergate*).

We conclude that the Commission's order in this case falls within the category of orders described in *Watergate*. While the Commission's order did copy the vast majority of intervenors' proposed order verbatim, it also added entirely new sections, rewrote certain language, and omitted multiple paragraphs. Critically, unlike the Commission's order in *Durant II*, the order in this case both "mention[ed]" and "address[ed]" the opposing parties' objections to the application and in fact spent approximately eleven pages doing so, portions of which were not in intervenors' proposed order. *See Durant II*, 99 A.3d at 257; *see also St. Mary's Episcopal Church v. District of Columbia Zoning Comm'n*, 174 A.3d 260, 268 (D.C. 2017). Because we are satisfied that the Commission's order in this case "represent[s] its own considered conclusions," *Watergate*, 953 A.2d at 1045, our review of the order remains deferential.

B.

Second, petitioners argue that the Commission failed to make findings of fact on four materially contested issues: 1) the PUD's consistency with the Southwest Plan's goal of "equity and inclusion," 2) the loss of health-promoting assets caused by the PUD, 3) the loss of arts and culture caused by the PUD, and 4) the PUD's consistency with the Implementation Element of the Comprehensive Plan. We will address each of the four issues raised by petitioners in turn.

i.

Petitioners contend that the Commission failed to make a finding on the consistency of the second-stage PUD and modification to the first-stage PUD with the "vision" of the Southwest Plan for the Southwest neighborhood to "remain an exemplary model of equity and inclusion." DISTRICT OF COLUMBIA OFFICE OF PLANNING, SOUTHWEST NEIGHBORHOOD PLAN 5 (2015). Petitioners are particularly concerned with the number of market-rate units included in the plans for the M Street Sites, which they argue "cater to affluent Whites," and they note that the words "equity" and "inclusion" were not mentioned in the Commission's order. Intervenors contend that the Commission necessarily considered equity and inclusion in finding the PUD consistent with the Southwest Plan, though the Commission focused more on the Southwest Plan's "vision" of 4th Street Southwest becoming a "thriving town center." DISTRICT OF COLUMBIA OFFICE OF PLANNING, SOUTHWEST NEIGHBORHOOD PLAN 7 (2015).

Based on our review of the Commission's order, we cannot agree with petitioners that the Commission failed to make a finding on the consistency of the application with the Southwest Plan's goal of "equity and inclusion," even if it did not explicitly mention those words. A similar issue arose in *Cole v. District of Columbia Zoning Comm'n*, 210 A.3d 753 (D.C. 2019). In that case, the petitioner complained that the Commission's decision did not contain an explicit discussion of "rising gentrification pressures." *Id.* at 762. Notwithstanding that fact, this court found that the Commission had adequately considered that issue because gentrification pressures were "'thoroughly analyzed during the development of the [applicable small-area] Plan,' . . . and where the Commission has been explicitly guided by an application's compatibility with the applicable small-area Plan, we 'cannot agree with [an] argument that the Commission failed adequately to consider the impact of th[e] project.'" *Id.* (second and third alterations in original) (quoting *Union Mkt. Neighbors v. District of Columbia Zoning Comm'n*, 204 A.3d 1267, 1272 (D.C. 2019)). Based on the Commission's references to the PUD's compatibility with the applicable small-area Plan, this court inferred the Commission's "recognition that the pressures of gentrification are inevitable, but can be mitigated through inclusionary zoning and through the types of programs discussed in the [applicable small-area Plan] . . . ." *Id.* at 762-63.

Likewise, in the present case, the Commission discussed extensively the application's compatibility with the Southwest Plan. The Commission cited the Southwest Plan's vision for the area to become a "thriving town center and commercial heart of the community, with a range of neighborhood-serving retail options, an active street atmosphere, a high quality public realm, quality new development, and easily accessible transit." It found that the project's plan for the M Street Sites, which included neighborhood-serving retail and office space, "pedestrian-friendly outdoor public spaces," and a community center, among other things, was "fully consistent" with the Southwest Plan's goals.

The Commission also discussed the Southwest Plan's recognition that "residential development with ground floor retail" may be more viable than office space in the near term and its recommendation that developers "have the flexibility to request a modification to [an] approved Planned Unit Development to incorporate residential uses within the buildings." Additionally, though not included in its discussion of the Southwest Plan, the Commission explicitly addressed the issues of housing affordability and gentrification elsewhere in its order. Because the goal of "equity and inclusion" was "thoroughly analyzed during the development of" the Southwest Plan, and the Commission was "explicitly guided by [the] application's compatibility with" the Southwest Plan in

its decision to approve the application, *id.* at 762, we conclude that the Commission did not fail to adequately consider the PUD's consistency with the Southwest Plan's goal of equity and inclusion.

ii.

Petitioners contend that the Commission failed to make a finding on the materially contested issue of the loss of "health-promoting assets." Petitioners are specifically concerned with the loss of the activated public space on the M Street Sites, where the community currently holds regular farmer's markets. Intervenors and the Commission have both responded to this argument by noting that the decision to build on those sites was made during the first-stage proceedings in 2003 and that the current activation was always meant to be only temporary; therefore, it would be inappropriate for the Commission to reevaluate its decision to build on this space.

We agree with intervenors and the Commission. At the second stage, the Commission is required to "determine . . . compliance with the intent and purposes of the first stage approval, and [the Zoning Regulations]," not to consider de novo the merits of the overall project. 11-X D.C.M.R. § 302.2 (2022); *see also Fournier v. District of Columbia Zoning Comm'n*, 244 A.3d 686, 689 (D.C. 2021). Indeed, when considering approval of a modification of significance to a first-stage PUD, the Commission is prohibited from "revisit[ing] its original decision." 11-Z D.C.M.R. § 704.4 (2022). Because the decision that resulted in the loss of the public space in which the neighborhood currently holds its farmer's market was made in the original first-stage PUD approval order in 2003, it would have been inappropriate for the Commission to deny the 2017 application on that basis.

iii.

Petitioners also argue that the Commission failed to make a finding on the issue of the loss of arts and cultural space, again referring to the loss of the temporarily activated public event space where the community hosts the farmer's market, a night arts market, the D.C. State Fair, and more. Our analysis of this issue is the same as that of the previous issue. Constrained by the D.C. municipal regulations, the Commission was not in a position to reevaluate the merits of the decision to approve development on this space during its evaluation of the second-stage PUD and modification application, and neither is this court.

iv.

Petitioners argue that the Commission failed to make a finding on how the PUD is not inconsistent with the Implementation Element of the Comprehensive Plan – specifically Policy IM-1.4.2, which states that the District should "[m]onitor social, economic, community, and real estate trends that might require land use actions or policy modifications" and "[e]nsure that current, reliable data is incorporated in the city's land use planning efforts and that such data is consistently used across District agencies." 10-A D.C.M.R. § 2505.4 (2022). Petitioners argue that the Commission failed to comply with this policy by allowing intervenors to rely on a study from 2013 in their 2017 application. Applying a deferential standard of review, we cannot say that it was "[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," D.C. Code § 2-510 (a)(3)(A), for the Commission to allow intervenor to use a four-year-old study in its application, especially given that the Commission relied on numerous other reports, recommendations, testimonies, and studies in making its decision.

C.

Third, petitioners argue that the Commission lacked substantial evidence in making five of its findings: 1) whether the project is not inconsistent with the Managing Growth and Change element of the Comprehensive Plan, 2) whether the project is not inconsistent with the Lower Anacostia Waterfront/Near Southwest Area element of the Comprehensive Plan, 3) whether the number of affordable units in the PUD is appropriate, 4) whether the project will lead to gentrification and displacement in the neighborhood, and 5) whether the project could be approved before a safety study was conducted. Findings 1-4 are substantially related to one another – they all deal with issues of the impact the PUD will have on housing affordability and gentrification in the surrounding neighborhood. Therefore, we will address findings 1-4 together in subsection (i) and address finding 5 in subsection (ii) of this section.

i.

Petitioners contend that the Commission lacked substantial evidence to support its findings that the PUD was not inconsistent with the Comprehensive Plan, including the Managing Growth and Change section and the Lower Anacostia Waterfront/Near Southwest Area Element, and that it "will not cause or exacerbate gentrification or displacement of existing residents in the surrounding

area."[2] Intervenors disagree, arguing that the Commission's findings on this issue were supported by reports, testimony, and recent decisions by this court addressing the same issue.

Petitioners are correct that the Comprehensive Plan, including the portions referenced, places a strong emphasis on increasing the amount of affordable, family-sized housing available in the District. *See, e.g.*, 10-A D.C.M.R. § 217.3 (2022) ("Housing should be developed for households of different sizes, including growing families as well as singles and couples."); 10-A D.C.M.R. § 502.4 (2022) ("A multi-pronged strategy is needed to . . . ensure that a substantial number of the new units added are affordable to District residents."); 10-A D.C.M.R. § 1907.2(b) (2022) ("Within new neighborhoods, diverse housing choices should be provided so that a mix of household types and incomes are accommodated. Affordable housing for working families and for the city's poorest residents must be part of this equation."). Indeed, in its report, the Office of Planning recommended that intervenors "provide an increased commitment to [Inclusionary Zoning] units, including a larger overall percentage, more family-sized units, and a deeper level of affordability for some units" "in order to more fully meet the affordable housing goals of the Plan . . . ."

However, both the Office of Planning and the Commission ultimately found that the PUD modification "would not be inconsistent with, and would further [the Plan's] housing objectives, including the provision of affordable housing." This finding is supported by several considerations. First, the PUD brings affordable housing units to a location where there would otherwise be no housing at all, both because the previous occupant of the property was a shopping mall and because the previously approved PUD did not include residential use in the M Street sites.

---

[2] Petitioners also argue that the Commission made a procedural error in declining to reopen the record to admit petitioners' post-hearing statement. Under the zoning regulations, supplemental material is not to be admitted to the record after it has been closed unless the person seeking to have the material admitted submits a request to reopen the record. 11-Z D.C.M.R. § 602.6 (2022). The Commission's presiding officer "may" grant such a request, provided that it "demonstrate[s] good cause and the lack of prejudice to any party." *Id.* According to petitioners, the Commission denied petitioners' request to reopen the record, explaining that it "did not think the request met that standard." Because nothing in the regulations *requires* the presiding officer to grant a request to reopen the record, we will not disturb the Commission's discretionary decision to deny the request.

Therefore, unlike other cases that involved the replacement of existing affordable housing with new market-rate housing, *see, e.g.*, *Barry Farm Tenants & Allies Ass'n v. District of Columbia Zoning Comm'n*, 182 A.3d 1214 (D.C. 2018), this PUD only increases the amount of affordable housing available to the neighborhood.

Second, the PUD meets Inclusionary Zoning ("IZ") requirements: the Commission found that, pursuant to its own IZ regulations, 8% of the PUD's total residential floor area was required to be set aside for IZ units, and the PUD included 8.5% square feet of IZ in the East M Building and 8% in the West M Building.[3] 11-C D.C.M.R. § 1003.2 (2022). Furthermore, the percent of IZ units across the entire PUD site is approximately 15%, well over the 8% requirement. As this court has previously noted, "[w]hile we appreciate that petitioner (and others) may believe that the set-aside is not sufficient, we have no authority to second-guess the Commission's judgment on such policy matters." *Cole*, 210 A.3d at 762 n.12.

Third, we credit the Commission's explanation of the reasons for its finding that the PUD "will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area." One of the bases for its findings is the *Bridges to Opportunity, A New Housing Strategy for D.C.* report, published by the District's 2012 Comprehensive Housing Strategy Task Force ("Task Force"), which was composed of 36 members appointed by the Mayor. DISTRICT OF COLUMBIA COMPREHENSIVE HOUSING STRATEGY TASK FORCE, BRIDGES TO OPPORTUNITY, A NEW HOUSING STRATEGY FOR D.C. 1, 18 (2013). Petitioners take issue with this report because it was four years old at the time of the application, as discussed *supra* Section III.B.iv, and because the Task Force was co-chaired by an executive of Forest City Washington, Inc., this PUD's original developer before the current developer took its place, which petitioners claim is a conflict of interest.

---

[3] Petitioners argue that the Commission applied an improper IZ requirement; they contend that the Disposition of District Land for Affordable Housing Amendment Act of 2014 should apply. *See* D.C. Act 20-485, 61 D.C. Reg. 12407 (Nov. 27, 2014). However, this law went into effect, with no language about retroactivity, on March 10, 2015, whereas the land in this case was disposed of by the District in 2006, when the original disposition of the PUD site occurred. *See* D.C. Code § 10-801 (2021 Supp.). Because this PUD modification does not involve a disposition of District land as defined in that Act, we do not disturb the Commission's application of the IZ requirements to this PUD modification. *See id.* at 10-801(a)(1).

Id. at 18. We do not find that the conflict here, if any, is significant enough to justify condemning the Commission's reliance on this report, given that there were 35 other "housing professionals, service providers, and government leaders" on the Task Force, all appointed by the Mayor, that contributed to its finding that recent increases in market rate housing had not "led to significant gentrification, [meaning] displacement of lower income residents." *Id.* at 41.

We are persuaded that the Commission did have substantial evidence to support its conclusion that the PUD contains an appropriate level of affordable housing and that it will not lead to gentrification or displacement. Ultimately, "[i]f there is substantial evidence to support the [Commission's] finding, then the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the [Commission]." *Watergate*, 953 A.2d at 1043 (second and third alterations in original) (citations omitted). Given our deferential standard of review, we decline to disturb Commission's finding on this issue.

ii.

Finally, we turn to the issue of whether the Commission appropriately determined that the application could be approved before a safety study was conducted.[4] According to the Commission's order, intervenors submitted a Comprehensive Transportation Review (CTR) report, which concluded that "the M Street Sites will not have a detrimental impact to the surrounding transportation network" and described a Transportation Demand Management (TDM) Plan. The District Department of Transportation (DDOT) submitted a hearing report in which they endorsed the TDM Plan outlined in intervenors' CTR report, with certain revisions, and recommended that intervenors conduct a safety study. When asked during one of the public hearings whether he felt that the safety study needed to be conducted before approval of the project, a representative from DDOT said he did not, explaining that "[a]ny changes that need to happen . . . [are things] that DDOT can handle outside of this process."

[4] Petitioners' brief appears to confuse the "traffic study," "safety study," and "transportation study." However, the context of the references to those studies in the brief and in the Commission's order leads us to believe that petitioners meant to refer to the Commission's decision to approve the application before the *safety* study was conducted, even though petitioners said "traffic study" in the heading of that section of their brief.

Citing this testimony, intervenors' experts' testimony, and the CTR report, the Commission found that it was not necessary to delay approval until the completion of the safety study. We credit the Commission's reliance on the DDOT representative's testimony, given that the DDOT was the entity that requested a safety study in the first place. Finding this to be substantial enough evidence to support the Commission's decision, we cannot agree with petitioners that the Commission abused its discretion in approving the application before the completion of the safety study.

IV.

For the foregoing reasons, the Commission's decision is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies sent to:

Presiding Administrative Law Judge

Coy McKinney

Pamela McKinney
430 M Street, SW
Apartment N406
Washington DC 20024

Adom Cooper
1366 4th Street SW
Washington DC 20024

Renee Ater
338 M Street SW
Washington DC 20024

Linda Brown
1200 Delaware Avenue, SW
Washington DC 20024

Alexis Wnuk
1150 4th Street, SW
Apartment 322
Washington DC 20024

Philip T. Evans, Esquire

Loren L. AliKhan, Esquire
Solicitor General for the District of Columbia