

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

JULY 13, 2009

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
WILLIAM WARREN KEATING, Vice Chairperson
KONRAD SCHLATER, Commissioner
MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
ARLOVA JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular meeting held on July 13, 2009.

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TABLE OF CONTENTS

HEARING ACTION

Z.C. Case No. 09-09.....	6
(Forest City SEFC, LLC, Text Amendment to	
Create 1804.7	
VOTE - Approved three to zero to two.....	10

PROPOSED ACTION

Z.C. Case No. 08-17.....	10
Office of Planning - Text Amendment	
Reed-Cooke Overlay District	
VOTE - Approved four to zero to one.....	14

FINAL ACTION

Z.C. Case No. 08-29.....	14
Office of Planning Text Amendment to	
1902.3	
VOTE - Approved four to zero to one.....	16

Z.C. Case No. 08-15.....	16
Friendship-Macomb SC, Inc.	
Consolidated PUD & Related Map Amendment	
@ Squares 1920 & 1920N	
VOTE - Approved four to zero to one.....	21

Z.C. Case No. 06-02A.....	22
Petworth Holdings, LLC - Two-Year	
Extension @ 4136 Georgia Avenue, NW	
VOTE - Approved four to zero to one.....	27

CORRESPONDENCE

Z.C. Case No. 06-10.....	28
The Morris & Gwendolyn Cafritz	
Foundation - Letter from Applicant	
Requesting Postponement of Public Hearing	
to October	
VOTE - Approved four to zero to one.....	32

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

2 6:53 p.m.

3 CHAIRMAN HOOD: First of all I want
4 to apologize for being a few minutes late.
5 We'll try to be like the airplane and make up
6 sometime.

7 This meeting will please come to
8 order.

9 Good evening, ladies and gentlemen.
10 This is the July 13, 2009, Public Meeting of
11 the Zoning Commission of the District of
12 Columbia. My name is Anthony Hood. Joining
13 me are Vice Chairman Keating and Commissioner
14 Schlater. We're also joined by the Office of
15 Zoning staff, Ms. Sharon Schellin, Ms. Donna
16 Hanousek, Ms. Esther Bushman. Office of
17 Attorney General, Mr. Bergstein and Ms.
18 Nagelboult. Office of planning, Ms.
19 Steingasser, Mr. Lawson and Ms. Jackson.

20 Copies of today's meeting are
21 available to you and are located in the bin

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1 near the door. We do not accept -- do not
2 take any public testimony at these meetings
3 unless the Commission requests someone to come
4 forward.

5 Please be advised these proceedings
6 are being recorded by a Court Reporter and is
7 also webcast live. Accordingly, we must ask
8 you to refrain from any disruptive noises or
9 actions in the hearing room. Please turn off
10 all beepers and cell phones.

11 Does the staff have any preliminary
12 matters?

13 SECRETARY SCHELLIN: No, sir.

14 CHAIRMAN HOOD: Okay. Let's move
15 right into our agenda.

16 Let's go on the Hearing Action.

17 Zoning Commission Case 09-09
18 (Forest City SEFC, LLC - Text Amendment to
19 Create 1804.7).

20 Ms. Jackson.

21 MS. JACKSON: Good evening, Chair
22 Hood and Commissioners.

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1 For the record my name is Arlova
2 Jackson and I'm a Development Review
3 Specialist with the D.C. Office of Planning.

4 The case before you is a Text
5 Amendment brought forth by Forest City, SEFC,
6 LLC, on behalf of the General Services
7 Administration.

8 The proposed amendment would allow
9 for the establishment of a trapeze school and
10 performing arts facility within the SEFC site.

11 The proposed location, Parcel O is
12 located within the SEFC R-5-E Zone and
13 therefore does not allow commercial uses.

14 The proposed location is
15 highlighted on the maps attached to the staff
16 report.

17 The requested text amendment would
18 allow by right use for a period of up to five
19 years as well as authorizes the Zoning
20 Commission to extend this timeframe if
21 requested via a special exception request.

22 The proposed trapeze school and

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1 performing arts facility would include a tent,
2 outdoor and indoor trapeze rig. The
3 activities held there would include classes,
4 performances and corporate team-building
5 workshops.

6 The trapeze school is currently
7 operating in the old Convention Center site at
8 9th and H Street, NW. The commercial zoning
9 and DD overlay on that site allow the use
10 there by rights but the facility has to move
11 to allow for site redevelopment.

12 Since the filing of OP's report,
13 the Office of the Attorney General has
14 reviewed the originally proposed text, worked
15 with the Applicant and suggested some
16 different language. After consulting with OAG
17 and the Applicant, the Office of Planning
18 supports these changes.

19 The proposed text amendment as
20 revised also addresses the off-street parking
21 requirements that may be associated with the
22 proposed use.

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1 In light of the existing parking
2 available on the SEFC site, OP recommends
3 waiving the parking requirement for the
4 temporary trapeze school use.

5 The revised text also allows for
6 the issuance of a building permit for the
7 proposed use. As the proposed has not yet
8 been subdivided to create a lot of record,
9 this will pose an issue when the use submits a
10 building permit for approval.

11 Finally, the revisions included an
12 expiration date for the use which the
13 Applicant has requested be changed from
14 September to December 2014. OP will continue
15 to work with the Applicant and OAG to refine
16 the text in advance of the public hearing.

17 The Office of Planning finds the
18 proposed text amendment is not inconsistent
19 with the 2006 Comprehensive Plan by increasing
20 the variety of recreational uses near the
21 waterfront and requests that the requested
22 text amendment be set down for the public

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1 hearing.

2 CHAIRMAN HOOD: Thank you, Ms.
3 Jackson.

4 Colleagues, we have Exhibit A and
5 Exhibit 1 in front of us.

6 Are there any questions of Ms.
7 Jackson?

8 CHAIRMAN HOOD: And, Ms. Jackson, I
9 will just ask that -- I think you mentioned
10 the Applicant, Office of the OG and OP all
11 consulted with what we have in front of us?

12 MS. JACKSON: Yes.

13 CHAIRMAN HOOD: Okay.

14 Any questions?

15 Okay. I would move that we set
16 down Zoning Commission Case No. 09-09 as
17 agreed to with all the parties as stated by
18 Ms. Jackson and ask for a second.

19 VICE CHAIRMAN KEATING: Second.

20 CHAIRMAN HOOD: This has been moved
21 and properly seconded.

22 Any further discussion?

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1 All those in favor?

2 (AYES)

3 CHAIRMAN HOOD: Not hearing any
4 opposition of those of us who are present, Ms.
5 Schellin, if you could record the vote with
6 any proxies.

7 SECRETARY SCHELLIN: Yes. Staff
8 records the vote, three to zero to two to set
9 down Zoning Commission Case No. 09-09 as a
10 rule-making case.

11 Commissioner Hood moving,
12 Commissioner Keating seconding, Commissioner
13 Schlater in support, Commissioners May and
14 Turnbull not present, not voting.

15 CHAIRMAN HOOD: Okay. Let's move
16 right along with our agenda.

17 Under Proposed Actions, Zoning
18 Commission Case No. 08-17, Office of Planning
19 Text Amendment Reed-Cooke Overlay District.

20 Ms. Schellin.

21 SECRETARY SCHELLIN: Staff has
22 nothing further to add to this one other than

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1 to ask that the Commission consider this case
2 for Proposed Action.

3 CHAIRMAN HOOD: Okay. Thank you.

4 Colleagues, we have in front of us
5 a proposal and I think we just had this one,
6 I'm not sure. Yes. Seems like we just had it
7 recently. But anyway, again, this is dealing
8 with the Reed-Cooke Overlay District. And
9 basically, if you remember, we had a request
10 from the Applicant or the representative of
11 Harris Teeter for some additional language
12 that we can add. The issue is they want
13 predictability but then the ANC under
14 Chairperson -- the Chairperson of the Planning
15 and Zoning Transportation Committee, Wilson
16 Reynolds, they were looking at trying to see
17 predictability and process.

18 I think the BZA vetted this out
19 very good in their final order. But what I
20 would do was just that, and I could open it up
21 for the discussion, but I would just say that
22 we would in our Proposed Action that we

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1 basically -- what we could do it -- give me a
2 second. I have it on the top of my head. Let
3 me think.

4 What we can do is adopt the
5 language and I would recommend that we ask the
6 Zoning Administrator to measure before final
7 action and that way we can put a cap on -- a
8 cap on the percentage of the accessory use if
9 that makes sense. Okay.

10 Does anybody have any further
11 discussion or anything you want to add or does
12 everybody agree?

13 That's good. There's only three
14 here but everybody agrees.

15 Okay. So, Mr. Bergstein, if I made
16 a motion with all that, would that be
17 sufficient -- legally sufficient?

18 MR. BERGSTEIN: Yes. And I assume
19 that the public would also be able to comment
20 as to what they feel would be the appropriate
21 amount of space that would be consistent with
22 it being an accessory use.

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1 CHAIRMAN HOOD: Okay. So, any
2 further discussion?

3 So, I would move under Proposed
4 Action, that we approved Zoning Commission No.
5 08-17 with the proposed language by the
6 Applicant or the representative of Harris
7 Teeter but before final action that we allow
8 public comment. We ask the Zoning
9 Administrator to measure and we also ask for
10 advice on a cap. We place a cap before we do
11 final action.

12 And I ask for a second.

13 COMMISSIONER SCHLATER: Second.

14 CHAIRMAN HOOD: Moved and properly
15 seconded.

16 Any further discussion?

17 All those in favor?

18 (AYES)

19 CHAIRMAN HOOD: Not hearing any
20 opposition of those who are in attendance.
21 Ms. Schellin, would you record the vote with
22 any proxies?

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1 SECRETARY SCHELLIN: Yes.

10 CHAIRMAN HOOD: The next under
11 Final Action, Zoning Commission Case No. 08-
12 29, Office of Planning Text Amendment to
13 1902.3.

14 Ms. Schellin.

15 SECRETARY SCHELLIN: This case is
16 before you for a Final Action and I believe
17 you have a copy of the proposed rule-making
18 that was published.

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1 requirement Uptown Arts Overlay.

6 And I'm trying to -- we had a
7 submission from ANC-2F and I don't know if
8 this was basically --

9 SECRETARY SCHELLIN: I don't think
10 it really goes with this case. I think it
11 really applies more to a ZRR, maybe an
12 upcoming ZRR case or a past one.

13 CHAIRMAN HOOD: We'll just pass
14 that on to the Office of Planning.

17 Okay. Any further discussion?

22 VICE CHAIRMAN KEATING: Second.

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1 CHAIRMAN HOOD: It is moved and
2 properly seconded.

3 Any further discussion?

4 All those in favor?

5 (AYES)

6 Not hearing any opposition, Ms.
7 Schellin, would you record the vote with
8 proxies.

9 SECRETARY SCHELLIN: Yes.

10 The staff records the vote four to
11 zero to one to approve Final Action in Zoning
12 Commission Case 08-29.

13 Commissioner Hood moving,
14 Commissioner Keating seconding, Commissioners
15 May and Turnbull in support. Commissioner
16 Schlater not voting having not participated.

17 CHAIRMAN HOOD: Okay. Our next
18 case is Zoning Commission Case No. 08-15,
19 Friendship-Macomb SC, Inc - Consolidated PUD &
20 Related Map Amendment in Squares 1920 and
21 1920N.

22 Ms. Schellin.

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1 SECRETARY SCHELLIN: Yes, sir.

2 There are a couple documents that
3 came in after the record was closed. They are
4 Exhibits 267 through 271 and 273.

5 CHAIRMAN HOOD: I think that those
6 are out of order. We actually did not ask for
7 -- the only thing I think -- at least I know
8 what I asked for was a relook at one of the
9 loading docks and I think it was on Macomb
10 Street.

11 SECRETARY SCHELLIN: And also for
12 OP to address -- Mr. May asked for OP to
13 respond regarding the Macomb and W Overlay.

14 CHAIRMAN HOOD: And he's given us a
15 proxy on it.

16 SECRETARY SCHELLIN: Right. Well,
17 OP provided something.

18 CHAIRMAN HOOD: Oh, OP provided --

19 SECRETARY SCHELLIN: Right.

20 CHAIRMAN HOOD: And Mr. May is
21 giving us a proxy tonight.

22 SECRETARY SCHELLIN: Yes. He has.

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1 CHAIRMAN HOOD: Okay. All right.

2 So, I guess we will have to return
3 those exhibits as noted by Ms. Schellin
4 because they were not properly before us. We
5 did not ask for them. And let's send them
6 back kindly.

7 Okay.

8 SECRETARY SCHELLIN: We did receive
9 an NCPC report at Exhibit -- I believe that's
10 272.

11 CHAIRMAN HOOD: Okay. As stated we
12 did receive the NCPC report.

13 Okay. And they also state and I
14 must have missed this. But they also state
15 and I'll just read since I missed it.

16 Advises that the Zoning Commission
17 350,000 square feet of mixed use development
18 for Square 1920, Lot 813 and 1920N lots 1 and
19 2 and related map amendment to change the
20 zoning from NW to C1 to C-2A to allow for
21 greater density and height and would not be
22 -- and this will not in inconsistent with the

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1 Comprehensive Plan nor will it adversely
2 affect any identified Federal interests. And
3 as stated, that's Exhibit 272.

4 SECRETARY SCHELLIN: Yes. That was
5 272.

6 CHAIRMAN HOOD: Okay. We have that
7 exhibit. We also have in front of a response
8 to the Applicant. As you know, we asked them
9 to look at to see how we could lessen impact
10 on the homes for Idaho Avenue and they have
11 come back with a response and I'll just read
12 the end of page 2.

20 I would just say that we have tried
21 to make every way work. I realize we're going
22 to a community to try to enhance what was

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1 there previously and I know it's been hashed
2 out with the community. We've had a number of
3 meetings trying to get some resolve and I
4 think unless my colleagues disagree that I
5 think this is ready to move forward. And the
6 Applicant did do what I asked to do
7 personally. I think I asked him to go back
8 and look at Idaho Avenue and they have
9 provided their response. And I think this is
10 Exhibit 206. Oh, 266, dated June 2nd, 2009.

11 And I'll just open it up for any
12 comments. If not, I'll take a motion.

13 Any additional comments?

14 VICE CHAIRMAN KEATING: I would
15 just say I do feel like the Applicant has made
16 a strong effort to try to address these issues
17 of noise with the loading dock facilities.
18 And looking at this latest report from the
19 noise consultant, Gerald Henning, and the
20 willingness of the Applicant to try an
21 additional measure of noise reduction with the
22 residents' permission modifying the storm

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1 windows and doors, I think in addition to the
2 sound barriers, the landscaping, the wall
3 that's been put up and moving the entrance in
4 such a way that it is, you know, 140 feet away
5 from the closest residential house, I think
6 they've done quite a bit here to try to
7 mitigate this impact of potential noise from
8 the loading dock.

9 CHAIRMAN HOOD: All right. Thank
10 you.

11 With that I would move that we
12 approve Zoning Commission Case No. 08-15 and
13 ask for a second.

14 VICE CHAIRMAN KEATING: Second.

15 CHAIRMAN HOOD: Moved and properly
16 seconded.

17 Any further discussion?

18 All those in favor?

19 (AYES)

20 CHAIRMAN HOOD: Not hearing any
21 opposition of those who participated, Ms.
22 Schellin, would you record the vote.

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1 SECRETARY SCHELLIN: Yes. Staff
2 records the vote four to zero to one to
3 approve Final Action in Zoning Commission Case
4 No. 08-15.

10 CHAIRMAN HOOD: Okay. Our last
11 piece on Final Action is Zoning Commission
12 Case No. 06-02A. It's the Petworth Holdings,
13 LLC, Two-Year PUD Time Extension @ 4136
14 Georgia Avenue, NW.

15 I'm sorry, Ms. Schellin.

16 SECRETARY SCHELLIN: Staff has
17 nothing further to add on this one other than
18 as you stated the request for a two-year time
19 extension to a previously approved PUD or in
20 the alternative the maximum extension that the
21 Zoning Commission sees fit.

22 CHAIRMAN HOOD: Okay. Colleagues,

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1 do we have a submission from the Applicant's
2 representative counsel. And if you look at --
3 it's dated June 9th. If you look at page 5, I
4 think this is where they really make their
5 case.

6 It says and I'll just read straight
7 from page 5 of the June 9th exhibit.

8 In this case the dismal state of
9 the real estate market throughout the District
10 of Columbia and particularly in the Georgia
11 Avenue corridor and the Applicant's efforts to
12 proceed with the project have been squarely
13 within the standards set out in the zoning
14 regulations.

15 I think the key for me was in this
16 case, the dismal state as we know we've seen a
17 lot of these, inability to secure all required
18 government agency approvals and then for the
19 planned unit development by the expiration
20 date of the planned unit development and they
21 go on to some other complications and issues
22 that they have had. Inability to obtain

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1 sufficient project financing I think is the
2 first one they have under 248.10C.

3 So, with the submission, I think it
4 speaks for itself. Not to belabor it, I would
5 move that we grant the two-year time extension
6 at 4136 Georgia Avenue, NW, and ask for a
7 second.

8 COMMISSIONER SCHLATER: Second.

9 CHAIRMAN HOOD: Any further
10 discussion?

11 Question, Vice Chairman?

12 VICE CHAIRMAN KEATING: I was just
13 wondering, are we able to put any conditions
14 around this approval? And the only reason I
15 say this is when I did read through this I
16 noted that the Applicant is not going to do
17 any site remediation. I'm not familiar with
18 the site. I just kind of wonder what that
19 means and is that -- are we creating a
20 situation where the neighbors have to live
21 with another two years, a site that, again,
22 not knowing anything about it, might be an eye

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1 sore of some sort or --

2 I guess that's a question for OAG.

3 MS. NAGELBOUT: I'm not familiar
4 with this case at all but there are standards
5 in the regs for what your jurisdiction is on a
6 request for an extension. So, that's what I'm
7 looking for now. But if you have Chapter 24
8 you can look it up as well.

9 CHAIRMAN HOOD: Vice Chairman
10 brings up a good point.

11 I know that we have to deal with
12 the time extension but I guess as it's already
13 mentioned, leaving it there for two years and
14 everyone has to -- it may be -- DCRA may come
15 back under the building code and require them
16 to do something under construction. And I
17 think that's the question.

18 Ms. Steingasser, can you help us
19 with that?

20 MS. STEINGASSER: I've never seen
21 the Commission condition any of their
22 extensions. The criteria at which the

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1 application is eligible do not include an
2 option for condition. However, and I'm not
3 sure what the state of the site is, whether
4 they've demolished the site and it's leveled
5 or whether it's clean or not.

6 But if the property is required
7 under city law to be safe and secured and to
8 be maintained from weed and debris. So, at
9 that very minimum standard, DCRA would
10 intercede if it exceeded that.

11 Beyond that, I mean, we can make a
12 point to check in the next couple of weeks
13 just to finish the record, but that's all I
14 know.

15 CHAIRMAN HOOD: Okay. Great
16 question.

17 Okay. It's been moved and properly
18 seconded.

19 Any further discussion?

20 All those in favor?

21 (AYES)

22 CHAIRMAN HOOD: Not hearing any

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1 opposition from those of us present, Ms.
2 Schellin, could you record the vote and also
3 the proxies.

4 SECRETARY SCHELLIN: Yes. Staff
5 records the vote four to zero to one to
6 approve the two-year time extension in Zoning
7 Commission Case No. 06-02A.

8 Commissioner Hood moving,
9 Commissioner Schlater seconding, Commissioner
10 Keating in support. Commissioner Turnbull in
11 support by absentee ballot. Commissioner May
12 not present, not voting.

13 VICE CHAIRMAN KEATING: Could we
14 follow up on that and look into that.

15 MS. STEINGASSER: Absolutely.

16 VICE CHAIRMAN KEATING: My concern
17 is that I think we're seeing more and more
18 extensions and what I hate to see is the
19 project either partially started or something
20 boarded up on the side or something that just
21 for the neighborhood's sake is not what you
22 want to be looking at for the next two years.

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1 And we're granting the Applicant something
2 and maybe there ought to be something in
3 return if the site doesn't meet -- I don't
4 know what the guidelines would be but --

5 MS. STEINGASSER: Okay. We'll be
6 happy to do that. We can -- we'll do a site
7 visit. I think the Commissioner has had about
8 nine extensions this year.

9 VICE CHAIRMAN KEATING: Yes.

10 MS. STEINGASSER: We'll do a site
11 visit of each one, give you a status of those
12 projects. And if it seems like there is a
13 problem, perhaps a text amendment or something
14 to allow you to condition those approvals
15 would be -- okay.

16 VICE CHAIRMAN KEATING: Okay.

17 That's great.

18 CHAIRMAN HOOD: Zoning Commission
19 Case -- I'm sorry.

20 Correspondence. Zoning Commission
21 Case No. 06-10. We have a request for a
22 postponement. Let me go to Ms. Schellin.

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1 Ms. Schellin, if you could just
2 give us a little more detail. I know it came
3 in in more detail than what I have. I really
4 haven't had a chance to read it.

5 SECRETARY SCHELLIN: Okay. This is
6 a request from the Applicant. They are asking
7 for a postponement from the -- as you know, we
8 had this hearing on July 2nd and -- and we
9 postponed it or rather continued it to July
10 20th.

11 The Applicant filed a letter on
12 Thursday requesting a postponement of the July
13 20th hearing to October. And we have an
14 opening on October 8th. And they want some
15 more time. The reason for it is to allow them
16 time to address the questions/concerns that
17 the Commission raised and also to work with
18 the community.

19 As you will recall, there was a
20 party in opposition, the Lamond Riggs Citizens
21 Association. I did send an e-mail to the
22 three parties, ANC-5A, ANC4B who you guys

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1 determined was an affected ANC and granted
2 party status. And also Lamond Riggs sent them
3 an e-mail giving them a copy of the letter and
4 then I also left Voicemails for two of the
5 three. The third one, the number I had was no
6 longer in service.

7 Since then I got an e-mail from the
8 chairman of ANC-5A saying that she was in
9 support of a continuance and then I received
10 an e-mail from Charon Hines. I believe she's
11 the president of Lamond Riggs who would like
12 to go forward on July 20th. That was on
13 Thursday.

14 Today I spoke to her. She asked me
15 about the process. I explained it to her and
16 then since then she sent another e-mail saying
17 that she spoke with Holland and Knight
18 representative and has -- they've changed
19 their position and are agreeable to the
20 postponement to October.

21 And that's the way it stands.

22 CHAIRMAN HOOD: Okay. Any

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1 questions or comments for Ms. Schellin?

2 We'll put you on the witness stand.

3 Okay.

4 Anyway, this is Exhibit 67, I
5 believe.

6 Colleagues, I think this is an
7 order unless you feel otherwise. I would just
8 move that we grant the motion for continuance
9 to October the 8th, 2009, and that we require
10 re-advertisement and we waive all other
11 notices and I would ask for a second.

12 SECRETARY SCHELLIN: And just to
13 clarify, that's just advertisement in the D.C.
14 Register and all other --

15 CHAIRMAN HOOD: All other things
16 are waived.

17 SECRETARY SCHELLIN: Waived. Okay.

18
19 VICE CHAIRMAN KEATING: Second.

20 CHAIRMAN HOOD: Moved and properly
21 seconded.

22 Any further discussion?

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1 All those in favor?

2 (AYES)

3 CHAIRMAN HOOD: Ms. Schellin, could
4 you record the vote.

5 SECRETARY SCHELLIN: Yes. Staff
6 would record the vote four to zero to one to
7 approve the continuance of Zoning Commission
8 Case No. 06-10 to October 8 at 6:30 p.m.

9 Commissioner Hood moving,
10 Commissioner Keating seconding, Commissioner
11 Schlater in support, Commissioner May in
12 support by absentee ballot. Commissioner
13 Turnbull not present, not voting.

14 CHAIRMAN HOOD: Okay. Let me go to
15 the Status Report, Office of Planning.

16 MS. STEINGASSER: We have nothing
17 to report this month.

18 CHAIRMAN HOOD: Okay. Thank you
19 very much.

20 Any questions -- nothing to report
21 or Ms. Steingasser?

22 I would just say for the record, my

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1 colleagues and I are still -- we're still
2 going through the -- looking at hiring of the
3 Office of Zoning Director. We will have more
4 information to provide at our next public
5 meeting which is on the 27th.

6 And I want to thank my colleagues
7 for working tirelessly on moving in that
8 direction to fill the vacant position in the
9 Office of Zoning. And I want to thank
10 everyone who helps us get prepared, the Office
11 of Planning, Office of Zoning and Office of
12 the Attorney General.

13 Anything else, Ms. Schellin?

14 SECRETARY SCHELLIN: Nothing.

15 CHAIRMAN HOOD: Okay. With that,
16 this meeting is adjourned.

17 (Whereupon, the above matter was
18 concluded at 7:20 p.m.)

19

20

21

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