

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Regular Public Meeting
1412th Meeting Session (12th of 2015)

6:40 p.m. to 7:48 p.m.
Monday, July 13, 2015

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

1 Board Members:

2 ANTHONY HOOD, Chairperson

3 MARCIE COHEN, Vice-Chairperson

4 ROBERT MILLER, Commissioner

5 PETER MAY, Commissioner

6 MR. TURNBULL, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13 JENNIFER STEINGASSER

14 MEGAN RAPPOLT

15 MATT JESICK

16 ART ROGER

17

18 OTHER:

19 ALAN BERGSTEIN, ESQ.

20 JESSICA BLOOMFIELD, ESQ.

21 JOSH POSNICK

22

23

24

25

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

2 CHAIRPERSON HOOD: Okay. We're ready to
3 get started. This meeting will please come to
4 order.

5 Good evening, ladies and gentlemen, this
6 is the public meeting of the Zoning Commission for
7 the District of Columbia.

8 My name is Anthony Hood. Joining me are
9 Vice Chair Cohen, Commissioner Miller,
10 Commissioner May, and Commissioner Turnbull.
11 We're also joined by the Office of Zoning staff,
12 Ms. Sharon Schellin, Office of Attorney General,
13 expected to be joined by Mr. Bergstein, the Office
14 of Planning, Ms. Steingasser and Mr. Lawson, Mr.
15 Rappolt, and Mr. Jesick, and the District
16 Department of Transportation -- no.

17 MS. SCHELLIN: No, Rogers.

18 CHAIRPERSON HOOD: Okay.

19 MS. SCHELLIN: Art Rogers.

20 CHAIRPERSON HOOD: Mr. Rogers for the
21 Office of Planning. I don't know I want to put
22 you with DDOT. Okay.

23 Copies of today's meeting agenda are
24 available to you and are located in the bin near
25 the door. We do not take any public testimony at

1 our meetings unless the Commission requests
2 someone to come forward. Please be advised that
3 these proceedings are being recorded by a court
4 reporter and is also webcast live.

5 Accordingly we must ask you to refrain
6 from any disruptive noises or actions in the
7 hearing room, including the display of any signs
8 or objects. Please turn off all beepers and cell
9 phones.

10 Does the staff have any preliminary
11 matters?

12 MS. SCHELLIN: No, sir.

13 CHAIRPERSON HOOD: Okay. Let's move
14 right into our agenda. First on the agenda we
15 have the consent calendar item, Zoning Commission
16 Case No. 14-11, Office of Planning request for
17 technical corrections to 330, 336, and 3202. Ms.
18 Schellin.

19 MS. SCHELLIN: Yes, sir. At Exhibit 350
20 we have a request from the Office of Planning
21 asking for technical corrections to Sections 330,
22 336, and 3202. Would ask the Commission to
23 consider this request and take final action this
24 evening.

25 CHAIRPERSON HOOD: Okay. Commissioners,

1 we have the request in front of us for some
2 corrections and clarifications. Moving forward,
3 any comments on this? Any questions? Somebody
4 like to make a motion?

5 MS. COHEN: Mr. Chairman, I move that we
6 approve the technical correction to paragraphs
7 330, 336, and 3202, and ask for a second.

8 MR. MILLER: I'll second it, and -- are
9 we supposed to not to comment on consent calendar
10 items?

11 CHAIRPERSON HOOD: You can comment, but
12 let me carry the motion to -- it's been moved and
13 properly seconded. Any further discussion, now.

14 MR. MILLER: Okay. Yeah, I think that
15 the Office of Planning report justifies that this
16 was the intent and to cover the nonresidential
17 building conversion issue. I of course, given
18 where I was on the whole besting issue, would have
19 preferred to capture even more permits that were
20 in the pipeline, but I realize that that's beyond
21 the scope of this particular proposal.

22 CHAIRPERSON HOOD: Any other comments,
23 discussion?

24 MR. TURNBULL: Is there any -- I guess
25 the only question is, are there building permits

1 in the process now that we're worried about? Is
2 there --

3 CHAIRPERSON HOOD: Can I add to your
4 question?

5 MR. TURNBULL: Sure.

6 CHAIRPERSON HOOD: About how many are we
7 looking at that may be a concern?

8 MS. STEINGASSER: We know for certain for
9 there are two that are being held that would be
10 kicked out, that have been in the process since at
11 least I think April and one in June, and they
12 would be kicked out and have to get in line for
13 the BZA.

14 MR. TURNBULL: So there's a little bit of
15 urgency here for at least two of them. Or --

16 MS. STEINGASSER: Yes, sir. And if the
17 Commission would entertain we would request that
18 this be adopted on an emergency basis so that they
19 could proceed.

20 MR. TURNBULL: Those two. Allowing --

21 MR. BERGSTEIN: Well, it would be any.

22 MR. TURNBULL: It would be anything,
23 really. Any item.

24 MR. BERGSTEIN: But if there's only two,
25 I guess that's in there, that's potentially

1 universe because we're only talking about
2 applications that -- well, no there could be some
3 -- and you could tell me, Ms. Steingasser, would
4 there be any possibility of any additional permits
5 that would be subject to the new provisions that
6 have not yet been filed?

7 MS. STEINGASSER: I don't know. I only
8 talked to those developers that were immediately
9 affected by --

10 MR. BERGSTEIN: The bottom line is that
11 once this goes into effect it goes into effect for
12 anyone who could possibly --

13 MS. STEINGASSER: Right.

14 MR. TURNBULL: Okay.

15 MR. BERGSTEIN: -- be affected by it.
16 That's not just those two.

17 CHAIRPERSON HOOD: Who had been at a
18 certain point. I mean, I can't just go down there
19 tomorrow myself and fall into this category. I
20 would have already been in the process.

21 MS. STEINGASSER: You would already have
22 been in the process.

23 CHAIRPERSON HOOD: Right. And I think
24 again as we know, we want the government to be
25 predictable to us, so I think we need to be

1 predictable. And two, I don't think -- well, even
2 if it was five. Well, I shouldn't say that
3 because it will be three to go down tomorrow.

4 Okay, Mr. Turnbull, I'm sorry.

5 MR. TURNBULL: Yeah, well, I would not be
6 opposed to an emergency action to alleviate this.

7 MS. COHEN: Mr. Chairman, should I modify
8 my --

9 CHAIRPERSON HOOD: Let me go to
10 Commissioner Miller and then --

11 MS. COHEN: Oh, sure.

12 CHAIRPERSON HOOD: -- I'll ask you to
13 modify.

14 MR. TURNBULL: Yeah, I just wanted to
15 clarify in my own mind and maybe for the benefit
16 of the public, but the only ones we're taking care
17 of are those conversions of nonresidential
18 buildings that were in the process. You're not
19 taking care of conversions of residential
20 buildings that had a -- that didn't have a
21 building permit filed before July of last year.

22 MS. STEINGASSER: We're not expanding the
23 vesting as the Commission adopted, except to
24 clarify for nonresidential this time.

25 CHAIRPERSON HOOD: Right.

1 MR. TURNBULL: I just wish we were.

2 CHAIRPERSON HOOD: Okay. I think we've
3 already been down that road. I think this is
4 pretty straight forward. Could we get an
5 amendment to do this on an emergency basis?

6 MS. COHEN: Yes, sir. I amend my
7 proposal to adopt -- to approve the consideration
8 of technical corrections to paragraphs 330, 336,
9 and 3202 and adopt them as emergency process.

10 MR. MILLER: Second.

11 CHAIRPERSON HOOD: As well as your
12 emergency and as well as the regular motion. Just
13 include both of them?

14 MS. COHEN: Yeah. And to adopt them as
15 an emergency.

16 CHAIRPERSON HOOD: As well.

17 MS. COHEN: As well.

18 CHAIRPERSON HOOD: Okay. Okay. It's
19 been accepted so it's been moved and properly
20 seconded. Any further discussion?

21 All in favor?

22 [Vote taken]

23 CHAIRPERSON HOOD: Any opposition? Not
24 hearing any, Ms. Schellin, would you record the
25 vote?

1 MS. SCHELLIN: Yes. Staff records the
2 vote five to zero to zero to take proposed and
3 emergency action on the technical corrections
4 proposed by the Office of Planning in Case No. 14-
5 11, Commissioner Cohen moving, Commissioner Miller
6 seconding, Commissioners Hood, May, and Turnbull
7 in support.

8 CHAIRPERSON HOOD: Okay. Next let's go
9 to final action Zoning Commission Case 15-01.
10 This is the Level 2 Development, Consolidated PUD
11 and Related Map Amendment at Square 3587, Ms.
12 Schellin.

13 MS. SCHELLIN: Yes, sir. At Exhibits 49
14 through 53 we have the applicant's post hearing
15 submissions. At Exhibit 55 we have an OP
16 supplemental report. And then the applicant
17 requested to reopen the record which was granted
18 to them to accept the letter regarding their
19 progress in securing off-site affordable housing.
20 That letter is in the record at Exhibit 57 and at
21 Exhibit 58 we have an NCPC report which finds that
22 the project would not be inconsistent with the
23 Comp Plan for the National Capital, nor affect
24 other federal interests, and we'd ask the
25 Commission to consider final action on this case.

1 CHAIRPERSON HOOD: Okay. Commissioners,
2 let's open it up. Any comments? There's been
3 some work going on and rework, and especially
4 dealing with the off-site/on-site. So any
5 comments, questions?

6 MR. TURNBULL: Well, I can just maybe
7 start off with the -- we had a couple of
8 architectural items that we asked them to look at.
9 And on A18H they gave a couple of different
10 scenarios, five different options for the corner
11 of the north building where they had a feature at
12 the top and it was very gray. I think I had asked
13 them to look at that. It's in 0538B, Exhibit --
14 it's Exhibit No. 400, A18H.

15 CHAIRPERSON HOOD: Okay.

16 MR. TURNBULL: Oh, I'm in the wrong one.

17 CHAIRPERSON HOOD: Well, 15 -- well, you
18 want to. You want to go ahead and take the --
19 which one is that?

20 MR. TURNBULL: Sorry, guys.

21 CHAIRPERSON HOOD: That's all right.

22 MR. TURNBULL: I grabbed the wrong stack.

23 CHAIRPERSON HOOD: Believe it or not, it
24 happens to me every now and then.

25 MR. TURNBULL: Well, let's go back to 15-

1 01.

2 CHAIRPERSON HOOD: Okay, while Mr.
3 Turnbull is getting his stack together let's go to
4 -- any other -- Vice Chair Cohen?

5 MS. COHEN: Yes. Mr. Chairman, I know
6 that there was some difficulty in setting forth
7 the various scenarios that will take place to
8 assure that we meet the IZ requirements. But what
9 I am especially pleased about this particular
10 project is that it does provide for deeper
11 affordability and larger units. And I believe
12 that the attorneys in the Office of Planning did
13 work out a schedule that will clarify the delivery
14 of the off-site units.

15 Should there be a reduction in the off-
16 site then on-site will pick up that to make sure
17 that we meet the minimum, but I think we're
18 exceeding the minimum IZ units. But again for me,
19 this is an important opportunity to be creative,
20 to partner between a not for profit and a for
21 profit entity, and as I said earlier, to get that
22 deeper affordability and larger units to address
23 our critical housing issues in the city.

24 CHAIRPERSON HOOD: Okay. Any other
25 comments or questions?

1 Commissioner May, and then we go to
2 Commissioner Miller.

3 MR. MILLER: Thank you, Mr. Chairman.
4 Yeah, I would associate myself with the Vice
5 Chair's comments that under any -- that this is a
6 creative approach to getting affordable housing
7 that's badly needed. And under any scenario that
8 has been set forth in a chart that has been worked
9 on between Office of Attorney General and the
10 applicant, and it is to understand that that chart
11 may be, as it's refined, will be entered into the
12 record as an exhibit because it's going to be
13 referred to in this condition, should there need
14 to be a reversion of the off-site units to on-
15 site.

16 But under any scenario, as the Vice Chair
17 said, we are getting a greater amount of
18 inclusionary zoning, square footage, and a deeper
19 affordability level than would be otherwise
20 required as a minimum. So I'm pleased to support
21 us going forward this evening.

22 CHAIRPERSON HOOD: Okay. Commissioner
23 May. Commissioner May.

24 MR. MAY: Okay. So I generally agree
25 with what's been said about the affordable housing

1 provision.

2 I am a little confused about some of the
3 other things that we have requested, or at least
4 what was submitted. I thought we made it pretty
5 clear that we're looking for a demonstration, the
6 penthouse plan in the setbacks would be -- should
7 be adjusted to be consistent with the Zoning
8 Regulations, and that they needed to demonstrate
9 that the amenity space is accessory to the roof
10 top recreation space.

11 And I didn't see a calculation that
12 demonstrated that the amenity space is 20 percent,
13 or equivalent to 20 percent. I know we had some
14 testimony to that affect, but then we see a
15 drawing that looks like it's closer to 40 or 50
16 percent, compared to the recreation space.

17 So does anybody -- I mean, did I just
18 miss that in the submission somewhere? I just
19 don't recall seeing it. And I looked for it.

20 CHAIRPERSON HOOD: Okay. Maybe they can
21 help tell us where it is. If you can give us the
22 exhibit number. 51A, page A35.

23 MR. MAY: Prefect. Thank you very much.
24 I don't know why I missed that the first time
25 around.

1 I am concerned about the setbacks because
2 again I thought we had described that the setbacks
3 were -- that we were looking for, no relief from
4 setbacks, but clearly there need to be relief from
5 setbacks for the parts of the penthouse that
6 extend over the rear wings, or in toward the rear
7 wings. They're not set back from the corners
8 there. And I would think that that actually needs
9 -- I mean, I don't have a real problem with the
10 way it has been designed, I just think that it --
11 you know, I had my notes that we were asking for
12 something that was completely compliant on
13 setbacks. And if that's not going to be the case
14 then -- I mean, you know, they demonstrated that
15 all the rails are set back, and the platforms, and
16 so on are set back, and that's fine. It's that
17 back section of the penthouses that are not --

18 MR. TURNBULL: It's the two corners on
19 the inside of the --

20 MR. MAY: Yeah.

21 MR. TURNBULL: Yeah.

22 MR. MAY: Well, it's four corners in
23 total.

24 MR. TURNBULL: You're right. Four
25 corners, right.

1 MR. MAY: I'm not suggesting that we
2 actually have to modify everything to set them
3 back. What I'm suggesting is that if they need to
4 have relief there, if that's not been explicitly
5 requested. Maybe it was, I'm just -- I thought we
6 were going to see a plan that showed it all being
7 completely compliant.

8 MR. TURNBULL: Yeah, I think the plans
9 show it's only about five foot 10.

10 MR. MAY: Yeah, something like that. And
11 it's an 18-6 tall penthouse.

12 So I mean, I think the solution here is
13 that if -- I don't sense that anybody is really
14 concerned about granting relief if it's necessary
15 in those circumstances. I mean, I would have a
16 problem if we were talking about anything that was
17 more exposed than those. But they're on the rear
18 side of the building. I mean, I generally don't
19 like them anyway, but I'm not going to hold up the
20 final approval of the project on that.

21 CHAIRPERSON HOOD: Okay. Are you asking
22 a question or are you --

23 MR. MAY: Well, you know, I'm not seeing
24 anybody else get concerned about them so I think
25 that it would have to be addressed in terms of

1 relief within the order if there's -- if we
2 approve the design as it's been presented to us,
3 then I think there has to be an explicit grant of
4 relief for that.

5 CHAIRPERSON HOOD: While they're having
6 discussion, Mr. Turnbull, did you want to add
7 something?

8 MR. TURNBULL: Just going to ask if -- I
9 thought Commissioner May had concern about the
10 height or the unequal heights, or the options for
11 the heights for the penthouse.

12 CHAIRPERSON HOOD: I think they were --
13 they asked us for two options. Was it two
14 options?

15 MR. TURNBULL: I'm not sure. That's why
16 I was referring back to Commissioner May.

17 MR. MAY: I'm sorry. I was --

18 MR. TURNBULL: Didn't you have a concern
19 about the penthouse heights, or the options?
20 There was two options or --

21 MR. MAY: I don't think we have two
22 options anymore. I thought this is --

23 MR. TURNBULL: No, we don't. We just
24 have the one, it's the unequal heights.

25 MR. MAY: Yeah. No, and they've asked

1 for the relief on unequal heights and I --

2 MR. TURNBULL: All right, so --

3 MR. MAY: -- don't have any problem with
4 that.

5 MR. TURNBULL: Okay.

6 MR. MAY: I mean, it's you know, it's not
7 ideal but it's acceptable. But I think there has
8 to be relief from the setback at the rear of the
9 building.

10 Mr. Bergstein just showed me where they
11 had asked for flexibility from roof structure
12 requirements.

13 CHAIRPERSON HOOD: Okay.

14 MR. MAY: But only for walls of unequal
15 heights.

16 MR. BERGSTEIN: So you just want the
17 order expanded to request -- I mean, they haven't
18 requested the relief formally. I don't know if
19 the applicant has a position that they want to
20 take in terms of whether or not they think they
21 need to request a relief. But are you asking that
22 I just -- the Commission also note that relief is
23 needed from that and that the Commission does not
24 have any problem with granting such relief. I
25 mean, I could just --

1 MR. MAY: If we can proceed that way then
2 I would suggest that's what we do. I mean, maybe
3 I'm just too much of a stickler on rooftop setback
4 relief, but I think that relief is needed there.

5 MR. TURNBULL: Well, they could cut back
6 the storage rooms and make the wash room smaller.
7 But.

8 MR. MAY: Well, yeah. I mean, they could
9 fix it. Absolutely. And I would have preferred
10 that they had. I thought that based on my notes
11 from the hearing that I thought we were going to
12 see something that was fully compliant. But maybe
13 we just weren't really focused on that; that area
14 of relief.

15 CHAIRPERSON HOOD: So let me just ask
16 everyone else. We've heard Commissioner May.
17 Does anyone feel as strongly as maybe sending them
18 back and asking them to fix it, or if we can just
19 grant them the relief they requested for the
20 setbacks.

21 MS. COHEN: Grant the relief.

22 CHAIRPERSON HOOD: Does anyone feel as
23 strong as -- I know where you are, Commissioner
24 May, I believe you could move forward either way,
25 but --

1 MR. MAY: Right.

2 CHAIRPERSON HOOD: So I'm just -- does
3 anyone else share that pause or concern?

4 MR. TURNBULL: Well, I see Commissioner
5 May's point. There could be another building
6 developed next to it at that property which would
7 be next door, which could be an issue. But --

8 CHAIRPERSON HOOD: Here's what we can do.
9 We can always ask that they look at that. And the
10 issue not be ordered. I mean, the order got it --
11 the order not be issued.

12 I mean, here's the thing. If we're going
13 to bring it up, let's do something about it. If
14 not, if it's just something miniscule that we just
15 want to mention for the record, then let's move
16 forward. I don't think we need to get bogged down
17 with it. That's just why --

18 MR. MAY: I think what Mr. Bergstein
19 suggested before would be fine.

20 CHAIRPERSON HOOD: Okay.

21 MR. MAY: We just note that this relief
22 is needed in the order.

23 MR. BERGSTEIN: I'll reach out the
24 applicant and work on some language, assuming the
25 applicant doesn't object at this time.

1 MR. MAY: Yeah.

2 CHAIRPERSON HOOD: But let me go back to
3 my point. If Mr. Turnbull feels like you do then
4 we could not issue the order until we see
5 something as we've done in the past. That's kind
6 of where I am.

7 MR. MAY: I don't think that's necessary.
8 I trust that it will get worked out.

9 CHAIRPERSON HOOD: Mr. Turnbull, are you
10 --

11 MR. TURNBULL: I'm okay with it.

12 CHAIRPERSON HOOD: Okay. Anything else?

13 MR. TURNBULL: I just have one thing on
14 the applicant's draft order, in their last section
15 under miscellaneous C, it's Item No. 3. It's the
16 last sentence. "The applicant shall have the
17 right to proceed with matter of right development
18 at its election. I believe that's contrary to PUD
19 regulations. So that ought to be struck from the
20 order.

21 CHAIRPERSON HOOD: I would agree. We can
22 strike that. Okay. Do we have any other issues?
23 Let me see one thing.

24 I am glad to see the Exhibit 57 from the
25 Habitat from Humanity. That's very encouraging.

1 Okay. Someone like to make a motion?

2 MR. MILLER: Mr. Chairman.

3 CHAIRPERSON HOOD: Yes.

4 MR. MILLER: I would move that the Zoning
5 Commission take final action on Zoning Commission
6 Case No. 15-01, Level 2 Development, Consolidated
7 PUD and Related Map Amendment at Square 3587, Lot
8 4, with leave for Mr. Bergstein to make that
9 refinement to the roof provision and any other
10 refinements that are necessary.

11 MR. TURNBULL: Second.

12 CHAIRPERSON HOOD: Mr. Turnbull. Give
13 that to Mr. Turnbull. It's been moved and
14 properly seconded. Any further discussion?

15 [Vote taken]

16 CHAIRPERSON HOOD: Any opposition? Not
17 hearing any, Ms. Schellin, would you record the
18 vote?

19 MS. SCHELLIN: Yes. Staff records the
20 vote five to zero to zero to approve final action
21 in Zoning Commission Case No. 15-01, Commissioner
22 Miller moving, Commissioner Turnbull seconding,
23 Commissioners Cohen, Hood, and May in support.

24 CHAIRPERSON HOOD: Okay. Next Zoning
25 Commission Case No. 05-38B. This is the final

1 action of Mill Creek Residential Trust, LLC., PUD
2 Modification at Square 499. Ms. Schellin.

3 MS. SCHELLIN: Yes, sir. At Exhibits 38
4 through 41 we have the applicant's post-hearing
5 submissions. Exhibit 42 we have the OP
6 supplemental report. And Exhibit 44 we have an
7 NCPC report which finds that the project would not
8 be inconsistent with the Comp Plan for the
9 National Capital, nor affect other federal
10 interests. Would ask the Commission to consider
11 final action this evening.

12 CHAIRPERSON HOOD: Okay. Colleagues, you
13 heard the request in front of us. Any concerns or
14 discussion points that need to be made?

15 MR. TURNBULL: Well, Mr. Chair, maybe I
16 can -- since I started this a little earlier maybe
17 I can go back and finish my comments on this.

18 Anyways, in Exhibit 400 there are several
19 architectural elements that were presented as
20 supplemental post-hearing requests by us. And on
21 page A18H they address the corner of the north
22 building. I guess -- yeah, I think it is. That I
23 had -- I think I had raised. And there's five
24 options and I think the option 3 is I think the
25 one that they originally had.

1 My feeling, as -- I sort of prefer four
2 and five. I think the whiter sort of blends in
3 with the building. I think it makes the building
4 more striking. I think it actually accents that
5 corridor more. And I'm not really concerned
6 whether they go to the bone or just a white, but I
7 just think those look a lot more -- it's Exhibit
8 400.

9 CHAIRPERSON HOOD: Four and five? I
10 thought because we made such an issue of it they
11 gave us five to pick from.

12 MR. TURNBULL: They gave us five, right.

13 CHAIRPERSON HOOD: The five of them is up
14 here so we can all have one.

15 MR. TURNBULL: Yeah, anyways, I would you
16 know, give them the flexibility to either, I don't
17 know, four or five. I really have no preference
18 one way or another. I guess I'm leaning more
19 toward five, but I don't know what the rest of you
20 think about it.

21 CHAIRPERSON HOOD: I actually would agree
22 with your comments, but let's open it up. Anyone
23 want to pick one of the other four?

24 MR. MAY: I think one and two are bad. I
25 like three. And I like four. I could live with

1 five.

2 CHAIRPERSON HOOD: Again, why don't we
3 all --

4 MR. MAY: How's that?

5 CHAIRPERSON HOOD: -- just take one?

6 MR. MAY: How's that? No, no, no, I
7 think we can all agree to eliminate one and two.

8 CHAIRPERSON HOOD: Okay.

9 MR. MAY: No, I'm of the view that it
10 should be either the same color as the rest of the
11 structure, which is that bone white, I believe.
12 Or it should be a contrasting color, the dark
13 gray. And it should be a clearly contrasting
14 color as opposed to the medium gray or the light
15 gray, which I don't think contrasts enough. And I
16 think showing it as white, I mean I just, it seems
17 like it's just slightly off. It's going to make
18 the bone white look dirty or something. So.

19 MR. TURNBULL: So you think it's too
20 bright? Or just too --

21 MR. MAY: Well, white against bone white
22 is --

23 MR. TURNBULL: Yeah.

24 MR. MAY: -- just weird. So it should be
25 the same as the rest of the skeleton, which is the

1 bone white, or it should be the dark gray.

2 MR. TURNBULL: Well, I'm not opposed to
3 either. I mean, four would be fine with me.

4 MR. MAY: Okay.

5 CHAIRPERSON HOOD: So we're obviously --
6 let me hear -- we're obviously giving our options
7 so we're looking at what now, three and five now?

8 MS. SCHELLIN: Three and four.

9 CHAIRPERSON HOOD: Oh, three and four.
10 So five --

11 MR. MAY: Well, I was for three and four.
12 But Mr. Turnbull I think is not for three.

13 CHAIRPERSON HOOD: Well, let me just say,
14 the next time --

15 MR. MAY: Heck no on three.

16 CHAIRPERSON HOOD: Next time look, just
17 come up with number six and maybe we'll all agree
18 on it. So how long is this going to take us?

19 MS. COHEN: My preference would be three,
20 because I think it's just much more elegant. But
21 to push this forward or to encourage it to go
22 forward, I don't have a tremendous problem with
23 four either.

24 MR. MILLER: And I would support three or
25 four as well.

1 CHAIRPERSON HOOD: So we're looking at
2 three or four, Mr. Turnbull. Seems like we had
3 three people three or four.

4 MR. TURNBULL: Well, I would prefer four.
5 I really don't care for three myself. I think
6 four just adds more balance to the building. I
7 think it is more exciting. I think it just
8 enhances that corner. I think it's a little bit
9 more elegant solution. To me, three just gets
10 lost in the corner. I think four adds a sort of
11 sense of heightened -- it's a little more lively
12 up there. But that's -- again, I'm just one vote.

13 CHAIRPERSON HOOD: Okay. So we're going
14 to give them -- are we giving them two options?
15 Is that what we're doing? Well, let's say it like
16 this, one and two are out.

17 MR. TURNBULL: Actually, I think OP
18 recommend either bone or white. I think they were
19 either for four or five.

20 CHAIRPERSON HOOD: Yeah, actually, no.
21 But we appreciate their recommendation. We give
22 them great weight but I actually like three and
23 five, so that's a whole other issue. But I'm not
24 going to get into that. So. I can't believe
25 this.

1 MS. COHEN: I think the majority support
2 four.

3 CHAIRPERSON HOOD: The majority supported
4 four?

5 MS. COHEN: I think so.

6 CHAIRPERSON HOOD: Okay. So four. You
7 didn't support four.

8 MR. MAY: I think I preferred three, but
9 I could live with four.

10 CHAIRPERSON HOOD: Okay. Well, let's go
11 with what all of us can live -- can all of us live
12 with four?

13 MS. COHEN: Yes.

14 CHAIRPERSON HOOD: And what is the other
15 alternative? Five, right?

16 MS. COHEN: No, three.

17 CHAIRPERSON HOOD: Three? Three and
18 four. Okay. Three and four, next.

19 MR. MAY: Well, okay. So this is a
20 circumstance where they've asked flexibility among
21 five. They didn't really ask us to choose among
22 the five, right?

23 CHAIRPERSON HOOD: But we know --

24 MR. MAY: But we're choosing among the
25 five.

1 CHAIRPERSON HOOD: One and two is out.

2 MR. MAY: Well, I know. I just want to
3 make sure that the applicant is going to live with
4 our choice.

5 MS. COHEN: Yeah. They're going to say
6 yes.

7 MR. MAY: Okay.

8 CHAIRPERSON HOOD: So the choice is
9 three, four, or five.

10 MR. MAY: Everybody can appreciate four.
11 If not, if it's not their favorite.

12 CHAIRPERSON HOOD: Okay. Four. Okay.
13 Just so we can get out of here tonight, yeah.

14 MR. MAY: Even the Office of Planning is
15 okay with four.

16 CHAIRPERSON HOOD: Okay. And when you
17 ride by and you look at it and you don't like it
18 years later, don't say anything.

19 All right. So any other comments?

20 MS. COHEN: Yes. I have a problem. I
21 don't think the IZ requirement meets our
22 standards. First of all I don't think it goes for
23 40 years, the way I interpreted it. And I think
24 that that's a very -- well, perpetuity. I'm not
25 saying, you know, the life of the building. So I

1 had a problem with that, that I believe the
2 applicant must agree to extending the
3 affordability period in the off-site buildings as
4 well as the on-site.

5 CHAIRPERSON HOOD: Okay. Do you have a
6 recommendation you would like to see? We'll see
7 if they can accept it.

8 MS. COHEN: Yeah, my recommendation is to
9 have all the IZ units meet the IZ requirements.

10 CHAIRPERSON HOOD: Okay.

11 MS. SCHELLIN: The applicant has advised
12 that it's currently 20 years and they offered an
13 additional 15 years.

14 MR. MAY: Twenty years starting when,
15 though?

16 MR. BERGSTEIN: From July, 2010. So it
17 would give you until July 8th, 2045 is what
18 they've agreed to.

19 MS. COHEN: I don't think that there was
20 provided a compelling reason why they can't meet
21 the IZ perpetuity requirement. I may have missed
22 it but --

23 CHAIRPERSON HOOD: But you know what?
24 This is a meeting and typically we have the
25 authority to call them up. If you want to call up

1 and the can address that we can do that. This is
2 our meeting. So I'm going to ask Ms. Bloomfield,
3 you all, you bring your applicant you can come up
4 and address Vice Chair's concern. Maybe we might
5 be able to get some resolve tonight.

6 MR. TURNBULL: Mr. Chair, as they're
7 coming up I just wanted to say that I share the
8 Vice Chair's concerns that the IZ compliance is
9 questionable and that there needs to be a greater
10 proffer there.

11 CHAIRPERSON HOOD: Okay. If you can
12 introduce yourself?

13 MS. BLOOMFIELD: Good evening. Jessica
14 Bloomfield from Holland and Knight. Our position
15 was that since this is a PUD modification and the
16 PUD was approved prior to IZ, that IZ wouldn't
17 apply. And so we agreed to meet the IZ
18 requirements, assuming that the existing
19 affordable units would count towards that
20 requirement.

21 MS. COHEN: So what you're trying to do
22 is really get the best of all worlds, and I don't
23 think that that's appropriate because your IZ
24 requirement for the new building would be higher
25 in square footage.

1 MR. POSNICK: This is Josh Posnick with
2 Millcreek Residential.

3 So the goal was to extend the deadline an
4 additional 15 years. So in fact more than -- it
5 wouldn't be more than doubling, but almost
6 doubling the remaining period left on the life of
7 it and still going by the old applicability.

8 MS. COHEN: Again, put in more units in
9 the new building, which it does apply to. Or are
10 you saying that because this is a modification
11 you're just being so generous? I don't understand
12 your rationale, so you need to explain it a little
13 bit further for me.

14 MR. POSNICK: No, I think that's correct,
15 because it's a modification we were extending it.

16 MS. COHEN: I'd like to hear from my
17 other colleagues about that because it doesn't
18 make me -- still I'm not feeling comfortable
19 accepting that.

20 MR. TURNBULL: Does there need to be a
21 filing for an extension? Or are we addressing
22 this in the order? I'm confused. I mean, is this
23 -- do we need an extension then on this for that
24 part?

25 CHAIRPERSON HOOD: I think it's more --

1 MR. BERGSTEIN: I think that's a
2 different issue, Mr. Turnbull.

3 MR. TURNBULL: It is.

4 MR. BERGSTEIN: Basically they were
5 supposed to file a building permit for the
6 remainder of the PUD seven years from the end of
7 the CFO for the first building, and I'd raised the
8 issue that as part of this PUD modification they
9 put in the separate condition saying that the PUD
10 would be good for two years, in which time they
11 had to put in a building permit, but that's a
12 separate issue.

13 The issue I think the Vice Chair is
14 discussing is simply the issue of whether or not
15 they should get credit against --

16 MR. TURNBULL: Okay.

17 MR. BERGSTEIN: -- their IZ requirement,
18 which they claim doesn't exist for the units that
19 they have already constructed, with the proviso
20 that they add 15 years to the 15 years that are
21 left. So you have 30 years from approval of
22 affordability period for the buildings that they
23 haven't constructed yet, and they're asking that
24 that count against the like requirement that would
25 otherwise require perpetual affordability for IZ

1 units. So that's, I think, the issue.

2 MS. COHEN: That's right. And it also
3 may be setting a precedent. And so I want to make
4 sure that we're not doing anything that
5 jeopardizes IZ units or IZ regulations.

6 CHAIRPERSON HOOD: Okay. Anybody else
7 have any comments or like to echo the Vice Chair's
8 --

9 MR. MILLER: I previous did.

10 CHAIRPERSON HOOD: Yeah, I know where you
11 are.

12 MR. MILLER: Did echo it, but I guess if
13 it's appropriate, I mean, the -- I guess I was
14 interested in OP's opinion as to whether they
15 think it's in compliance with the IZ -- with
16 inclusionary zoning, whether this --

17 CHAIRPERSON HOOD: Let me, before we go
18 to OP, let me hear -- my colleagues want to wait
19 and hear and from OP or somebody else had
20 something, either Commissioner May or Commissioner
21 Turnbull.

22 Okay. Let's go to OP.

23 MR. JESICK: Thank you, Mr. Chairman and
24 members of the Commission. The current proposal
25 would not be in compliance with IZ. It would

1 require the Zoning Commission to grant relief to
2 the IZ requirements that those units not be in
3 perpetuity and technically be located off site
4 from the new construction as well.

5 CHAIRPERSON HOOD: Okay. Commissioner
6 May?

7 MR. MAY: I'm inclined to agree with the
8 Vice Chair. I mean, the project, it's a fine
9 project, there are many good things about it. But
10 I think that the -- what we're being asked to
11 accept as an alternative to the normal IZ
12 requirement, I just don't see great value in it.
13 You know, this is not -- I mean, there are other
14 areas where the project is not really as strong as
15 we would like. I mean, you know, another issue is
16 the LEED rating. They couldn't seem to get it
17 past Silver, and I mean, that's not that unusual.
18 We approve Silver projects from time to time.

19 But you know, I'm not -- I think I'm
20 inclined to press for better IZ on this project.
21 You know, I think that we're just -- I'm not
22 buying that an extra 15 years of affordability on
23 already existing and already occupied units is
24 really that great a benefit. I think we need to
25 have more permanent affordable housing.

1 CHAIRPERSON HOOD: Okay. Anyone else
2 like to ask anything?

3 MR. TURNBULL: So --

4 CHAIRPERSON HOOD: So -- I'm sorry.

5 MR. TURNBULL: You mean on the same issue
6 as far --

7 CHAIRPERSON HOOD: Yeah, on the same
8 issue.

9 MR. TURNBULL: No, I would agree. I
10 would concur.

11 CHAIRPERSON HOOD: Okay. All right.

12 MS. BLOOMFIELD: Mr. Chairman, the
13 applicant has agreed to provide all of the
14 inclusionary -- all of the affordable housing
15 units, including the existing units in perpetuity
16 if that would --

17 MR. POSNICK: Well, what we've proposed.

18 MS. BLOOMFIELD: Right. All the existing
19 units, 10,587 square feet of gross floor area,
20 which are already existing, to provide those in
21 perpetuity.

22 MR. POSNICK: So just to clarify, what
23 I'm hearing is, is that we're looking for it in
24 perpetuity.

25 MR. BERGSTEIN: For as long as the

1 project is in existence. That's the term that we
2 would use.

3 MR. POSNICK: Understood.

4 MR. MAY: So do I understand though, that
5 the entirety of the eight percent affordable
6 housing units for the two new buildings will be
7 located in the two existing buildings? No?

8 MS. BLOOMFIELD: No. There is an
9 additional 6,450 square feet of gross floor area
10 that would be in the two new buildings.

11 MR. MAY: I see.

12 CHAIRPERSON HOOD: Okay.

13 MS. COHEN: That satisfies my concern
14 about perpetuity. Or the life of the building.

15 MR. POSNICK: We hear you loud and clear.

16 MS. COHEN: Thank you.

17 CHAIRPERSON HOOD: Okay. Thank you all
18 for coming to the table. We appreciate it.

19 Any other comments, colleagues?

20 Everybody else satisfied?

21 MR. MILLER: Just on that issue, I'm
22 satisfied. Minimally satisfied that the full life
23 of the project takes care of that noncompliance
24 concern.

25 I had asked at the hearing to go back and

1 look and see if they could do one, two, some
2 minimal amount at a lower level than 80 percent
3 AMI and I was disappointed that they didn't. But
4 it's not going to be a show stopper for me, Mr.
5 Chairman.

6 CHAIRPERSON HOOD: Right.

7 MR. MILLER: But I'm disappointed.

8 CHAIRPERSON HOOD: Yeah. And I would
9 echo your comments because I think I joined in
10 with you on that. But after what just happened I
11 think it won't be a showstopper for me either.
12 Mr. Turnbull, you had anything else or wanted to -
13 -

14 MR. TURNBULL: Not on that issue, on the
15 affordable.

16 CHAIRPERSON HOOD: Okay. Something
17 different?

18 MR. TURNBULL: I just had a couple of
19 others.

20 I think their draft order also has the
21 same comment about having the right to proceed
22 with a matter of right development at it's
23 election.

24 CHAIRPERSON HOOD: We'll strike that and
25 --

1 MR. TURNBULL: We'll strike that. Needs
2 to be struck.

3 CHAIRPERSON HOOD: Yeah, we'll strike
4 that language. And save yourselves some
5 keystrokes. Nobody else has to put that in the --

6 MR. TURNBULL: The only other thing I
7 want to say thank you for the other architectural
8 items. I mean, they submitted -- I think I had
9 asked about what was going on at the front of the
10 -- on M Street, at like the townhouse, the walk-up
11 units from the street. And on what is it, L20 of
12 Exhibit 40C, they did a blowup version of the
13 sidewalk and then the paving units at the
14 residential units. So, I think they've tried to -
15 - I mean, they've explained or showed what they
16 meant.

17 I think the only other thing is, and I
18 think the Vice Chair may have had some comments on
19 the courtyard, and I think maybe I did too. And I
20 guess I'm satisfied for the most part, although
21 their -- I'm looking for the sheet here. Oh, I
22 guess it's L14 on that same exhibit.

23 They show a perspective, they show a
24 plan, a perspective, and an elevation. And the
25 only thing is the perspective, is they left out

1 all the glass on the building. It's just a blank
2 wall which -- but you can see on the elevation
3 below that that there's windows there. And the
4 perspective view of A is really taken back
5 further. It's back by the center part of the
6 building and I mean, I think the concern was, I
7 think the Vice Chair had a concern about the
8 plantings along the side of the building. And I
9 think they sort of tried to show what they were
10 trying to do there. And I think I'm okay with it.

11 MS. COHEN: Mr. Turnbull, thank you for
12 pointing that out. I was just so totally focused,
13 but I'm okay with it.

14 MR. TURNBULL: Oh, okay.

15 CHAIRPERSON HOOD: And, colleagues, I
16 don't believe we have a time extension request
17 before us so I think it's still holding the same
18 time. Are we all in agreeance on that?

19 Okay. Okay. Because I think it would be
20 premature. We don't have any extensions being
21 asked for in this case at this time. Anything
22 else?

23 I do want to ask the Office of Planning,
24 not now, but in situations like this I know we did
25 IZ, it was always -- everyone referred to

1 Montgomery County as I guess the guru or the
2 subject matter experts. And in situations like
3 this I've wondered what did they do in Montgomery
4 County. I'm not asking you to ask, but this may
5 be a question I may ask later. I was just
6 curious, how would Montgomery County handle this
7 because one of the things we heard from the
8 campaign is that everybody kept referring
9 throughout that whole process how great Montgomery
10 County was doing. And I would like to see how
11 they would have handled a situation like this.
12 And that's not necessary for now, but I'm just
13 curious and I may ask that at a later time. I
14 will be asking at a later time.

15 Any other questions on this case, or
16 comments?

17 Okay. Vice Chair.

18 MS. COHEN: Thank you. If there are no
19 other comments or questions then I move to approve
20 Zoning Case No. 05-38B, Millcreek Residential
21 Trust, LLC., PUD Modification at Square 499, and
22 ask for a second.

23 MR. TURNBULL: Second. Second.

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

1 MR. TURNBULL: I just wanted to note that
2 with the proviso with the affordable housing
3 change, the other changes we talked about --

4 MS. COHEN: Yeah, that's on record and so
5 yes, that's assumed.

6 MR. TURNBULL: -- and selected number
7 four for the --

8 MS. COHEN: Option four.

9 MR. TURNBULL: Option four for the
10 corner.

11 MS. COHEN: Thank you, Mr. Turnbull.

12 CHAIRPERSON HOOD: Okay. Any further
13 discussion or comments?

14 [Vote taken]

15 CHAIRPERSON HOOD: Any opposition? Ms.
16 Schellin, would you record the vote?

17 MS. SCHELLIN: Yes. Staff records the
18 vote five to zero to zero to approve final action
19 in Zoning Commission Case No. 05-38B with Option
20 4, and the other condition changes as discussed,
21 Commissioner Cohen moving, Commissioner Turnbull
22 seconding, Commissioners Hood, May, and Miller in
23 support.

24 CHAIRPERSON HOOD: Okay. Next let's go
25 to hearing action, Zoning Commission Case No. 04-

1 33G, Coalition for Smarter Growth, et al., Text
2 Amendment to Chapter 26, Inclusionary Zoning.

3 Mr. Rogers.

4 MR. ROGERS: Thank you, Mr. Chair and
5 good evening members of the Zoning Commission. My
6 name is Art Rogers and I'm the Senior Housing
7 Planner for the D.C. Office of Planning.

8 I am here tonight to present OP's
9 recommendation to the Zoning Commission that the
10 proposed amendments to the District Inclusionary
11 Zoning Program be set down for a public hearing.

12 The District's IZ program requires that a
13 residential project of 10 units or more set aside
14 anywhere from a minimum of eight percent to a
15 maximum of 12 and a half percent of the
16 residential square footage to be affordable, to
17 households earning less than 50 and 80 percent of
18 the median family income, or MFI. These
19 requirements vary based on the project zoning,
20 method of construction, and bonus density achieved
21 on the site.

22 The IZ's program now has almost 100
23 projects that have filed their initial paperwork,
24 their initial applications, with a total of over
25 760 IZ affordable units of which over 150 are now

1 completed. Included in these numbers are
2 applications for Fiscal Year 2015, which could
3 total more than 30 projects and 260 IZ affordable
4 units filed in a single year.

5 OP has reviewed the program's production
6 and as a result of discussions with DCRA, DHCD,
7 and members of the development community, we have
8 identified several issues including the District's
9 method for setting rents results in units that are
10 too expensive for -- setting rents too expensive
11 for most targeted households and do not create a
12 large enough group of households who can afford
13 them. This makes marketing the units difficult
14 and may require a lengthy process to find suitable
15 households who wish to rent the units.

16 Second, production is not addressing
17 where affordability gaps in the District's supply
18 become the most significant. Namely the majority
19 of units produced are small rental units at 80
20 percent of AMI, of the MFI. So OP is recommending
21 that the Commission consider either splitting the
22 requirements by the tenure of the project, or
23 increasing the number of zones that are required
24 to provide IZ units at both 50 percent and 80
25 percent of the MFI.

1 Third, greater flexibility is needed to
2 improve and leverage the program. For example,
3 one allowing off-site provision in the same
4 neighborhood that increase the square footage
5 required to be affordable. Two, permitting
6 developers to provide fewer units but at lower
7 income households where IZ prices are too close to
8 the market to make marketing the IZ units
9 practical. And three, providing a release where
10 circumstances such as rising condominium fees
11 affect and threaten the unit's affordability.

12 Fourth, greater clarity is also needed as
13 to when IZ is triggered, how the square footage of
14 requirements are calculated, and the type of
15 square footage that may be used to fulfill those
16 requirements, such as units on the seller level or
17 square footage that projects into public space.

18 Finally OP's recommendations address a
19 few minor errors and omissions. For these reasons
20 OP recommends setting down for the public hearing
21 process, the applicant's filings, and in the
22 alternative OP's language amending Chapter 26 of
23 the D.C. Zoning Regulations.

24 OP has several concerns regarding the
25 applicant's filings. Most significant of these

1 are the changes to the permitted height, that
2 depending on where certain zones are mapped, may
3 be in conflict with the Comprehensive Plan. It
4 therefore may not be possible to balance their
5 increased affordability requirements with the
6 bonus density increases that they have proposed.

7 As part of our final report OP will
8 include a detailed analysis of both the bonus
9 density currently being achieved by IZ projects,
10 and the potential proposed by the applicant. OP
11 will present the work we've been doing with the
12 Development Committee on how the proposed changes
13 may impact residential development in D.C.

14 OP is particularly concerned about --
15 concerned and interested in working with the
16 developers on how splitting the impacts by tenure
17 may affect development.

18 We'll also be doing this impact analysis
19 will include the revisions to the purchase price
20 schedule that will make the units more affordable
21 to target households and broaden the range of
22 households who could afford them. And finally,
23 we'll be happy to add any additional information
24 the Zoning Commission requests.

25 And with that I think the Commission --

1 I'd be happy to answer and take any questions or
2 comments you may have. Thanks.

3 CHAIRPERSON HOOD: Okay. Commissioners,
4 any questions or comments? Vice Chair Cohen.

5 MS. COHEN: Thank you, Mr. Chairman.
6 First I'd like to really acknowledge that this
7 report was very thorough, and I know that you're
8 going to be adding additional information to it
9 because there are areas that we have questions.

10 I also like to state for the record that
11 I also understand that inclusionary zoning will
12 never serve the lowest income residents who need
13 housing. That requires gap subsidy and the
14 purpose of this program is to really try to get
15 the private sector to meet some of the other needs
16 of the city.

17 Stating that I just want to say that
18 there is a mismatch between what the need is and
19 what this particular program can meet that need
20 without subsidy.

21 My questions are, I wasn't really sure
22 which zones are excluded. And I know the W zones
23 are, but what particular areas of the city, and
24 which zones because I think that again we need to
25 expand where IZ is operational. I mean, you don't

1 have to answer all these today, obviously. This
2 is for the public hearing.

3 I thought it would be helpful to have a
4 side-by-side of what the coalition is requesting.
5 This is for ease, and what OP is recommending and
6 why; the difference. I think OP needs to look at
7 these -- if we go down to 60 percent of median
8 income, what the impact on the low income housing
9 tax credit program will be, because there has been
10 some discussion that finding eligible families at
11 that level -- again, I think the need in the city
12 is 50 percent and below. Especially 30 percent
13 and below, and our homeless. So there are some
14 potential conflicts that may or may not exist.

15 On your recommendation 2, I think you
16 need to provide further explanation of -- wait.
17 That because, really what I think is the important
18 homeownership requirements are not within your
19 control, they're in the control of the private
20 lender. Unless it's first time homeowners and the
21 housing finance agency can address that a little
22 bit more. Either that or I didn't understand, you
23 know, fewer for sale units at deeper
24 affordability. That's a possibility but again can
25 the -- without down payment assistance, will HPAP

1 be able to make more families eligible? I think
2 that needs further discussion.

3 Technical issue is, you talk about --
4 let's see, the mayor being able to purchase units.
5 I'm sure you mean the mayor's designee. I don't
6 think you're going to ask the mayor every time.

7 On the definitions, yes. Definitely
8 bedrooms need windows. And closets. Because if
9 they don't have closets, if they don't have some
10 of these amenities, we used to call that public
11 housing. And obviously that ended up in very
12 distressed situations without anticipating
13 family's needs.

14 If you could define, I think you're
15 talking about price controls on page 5, under
16 recommendation 4. I think you need to elaborate
17 on what you mean by that.

18 It would be helpful -- you have a map of
19 the distribution of the units, but it would be
20 helpful to know not only the distribution because
21 it's hard to look at that map and see, you know,
22 small dots and then larger circles. And also know
23 more about the size of units. Again, we all know
24 what dictates a lot of the economics of a project
25 is the land value and that's why affordability

1 units are usually pushed to neighborhoods that are
2 already impacted. That's just, you know, as we
3 all have been reading in the newspapers about fair
4 housing, that's going to be challenging for every
5 city to start meeting that distribution of
6 affordable units in higher income areas. So I
7 think that that will be helpful for everybody in
8 the city to have that information.

9 The condo fees. I know you've done some
10 research on this, and probably used the latest
11 online projects, but I still think they appear
12 very low from what I know in the market. And
13 maybe it's because the buildings are older. So
14 maybe you could, you know, give us a little bit
15 more clarity or information as to where you're
16 getting your information.

17 I noted that you did footnote Delta
18 Associates, and you even mentioned that something
19 about a lot of the projects that they evaluate or,
20 you know, have these clubhouse and stuff. A lot
21 of their information that they aggregate is based
22 on Northern Virginia and Maryland, so they're not
23 very urban. And I think that they can -- well, I
24 know they could separate that out and that may be
25 more helpful.

1 You know, our condos that are being built
2 today have many more amenities and so of course I
3 would think the rents that are being asked would
4 pay for some of that too. But the fees may also
5 go into that.

6 I'm getting towards the end because I'm
7 on page -- my comments on page 14. I did not
8 understand when you say rents for developments
9 using low income housing, tax credits do not
10 exceed 30 percent of the income limits, but
11 frequently developers of these projects also
12 adjust the rents to market to ensure occupancy,
13 and/or receive additional subsidies to fill the
14 gaps if rents are estimated to be significantly
15 lower.

16 So again, I just think that needs further
17 clarification, again related to the difficulty
18 that some areas that are located west of the river
19 have in meeting lower affordability. I mean,
20 there's a -- it's the land, you know. A lot of it
21 is related to the land and the need for density,
22 and that argument needs to, I think, be enhanced
23 so that you know, the citizens of the city
24 understand what is going on. And I think again,
25 every neighborhood needs to play a role in this.

1 So I know you're going to be talking to certainly
2 the development community. But I also think that
3 ANCs need this as an education because they're the
4 ones who may be opposing some of these projects
5 without fully understanding them.

6 You do refer back to the Housing Task
7 Force Report, and I wasn't sure if it was the most
8 recent one, because I think that that Task Force -
9 - well, I won't say what I think.

10 Again, is there some way on page 15 you
11 can match down payment assistance with potential
12 homebuyers, and you might want to again encourage
13 homebuyers at the lower level of affordability to
14 go through credit counseling and housing
15 counseling so that they can qualify for mortgages
16 and therefore be of -- and I think this is
17 actually being done now. I think we have learned
18 some of the bumps in implementing this program and
19 I certainly believe this is a successful program.
20 And just for the record, most programs run into
21 these issues.

22 On your pro forma, I think your
23 contingency of five percent is too low. I think
24 your hurdle rates, you need to be a little bit
25 more explicit. Thirty-one percent, what does that

1 mean? People will look at that hurdle rate and
2 say, where can I get that investment? Especially
3 in today's market when we're only getting what,
4 two percent on any financing that we're -- or
5 mutual funds and stuff like that.

6 So I think that needs to be more
7 elaborated, that table.

8 Again, my questions aren't exhaustive. I
9 just thought this was an excellent first step, and
10 I thank you for it. Thank you, Mr. Chairman.

11 CHAIRPERSON HOOD: Okay. Any comments or
12 questions? Anyone else? Commissioner Miller.

13 MR. MILLER: Thank you, Mr. Chairman. I
14 too, I want to thank the petitioners for bringing
15 forward these inclusionary zoning amendments back
16 in the early part of this year, February I think.
17 And I want to thank the Office of Planning for all
18 of the work that you've done on inclusionary
19 zoning before that time and since. And finally
20 bringing a set down recommendation to us I support
21 strongly the OP recommendation that we set down
22 the petitioner's text amendments and the -- as
23 well as the Office of Planning's alternative text.
24 And I appreciate the analysis that's been done so
25 far and I look forward to the further analysis

1 that the report promises will be made so that we
2 can get more definitive recommendations from the
3 Office of Planning on the issues of increased set-
4 aside as proposed by the petitioners, increase
5 permitted bonus density as proposed by the
6 petitioners. Although I understand the reference
7 you made to comprehensive plan land use map
8 density issues that need to be looked at in that
9 regard.

10 But I would hope we could try to get to a
11 point where we are increasing the set-aside and
12 the permitted density where it's appropriate,
13 permitted bonus density.

14 I also want more information on -- I hope
15 that that further analysis allows the Office of
16 Planning to propose, in addition to the
17 alternative, it propose maybe to get something
18 closer to the -- or provide reasons why it can't'
19 get something closer to what the petitioners
20 suggested for 50 percent for the rental, which I
21 think one of your alternatives was 60 percent, and
22 they proposed 70 percent for the for sale, and I
23 guess I just would want more information on
24 anything, on what the challenges are in getting to
25 these deeper affordability levels which we know,

1 based on what the median family incomes are, based
2 on the incomes in the region, that we need to have
3 a program which your own report says the 80
4 percent median family income is virtually market
5 rate in the city.

6 So I don't know why we would propose
7 keeping anything at 80 percent AMI. But maybe you
8 can -- maybe the further analysis will provide
9 information why we have to, but I hope we can get
10 to a deeper affordability level. So, that's all I
11 have, Mr. Chairman. Thank you. I thank the
12 Office of Planning again for bringing this
13 forward.

14 CHAIRPERSON HOOD: Okay. Any other
15 comments? Mr. Turnbull.

16 MR. TURNBULL: Thank you, Mr. Chair. I
17 would echo Commissioner Miller's comments. And I
18 guess want to even give some more pluses to the
19 Office of Planning for their alternative
20 amendments. I think it was nice to get the
21 applicant's initial round for drafting for these
22 IZ -- for this, for inclusionary zoning. But I
23 think I'm glad the Office of Planning sort of went
24 back and really looked it. And I think we've
25 spent, especially the -- with concern with the

1 Comp Plan and the neighborhoods, I mean, we spent
2 seven years now going through and looking at doing
3 the rezoning, and coming up with new zones and new
4 characteristics. So I really appreciate your look
5 at this and look forward, and would obviously want
6 to set this down. So thank you again.

7 CHAIRPERSON HOOD: Okay. Any other
8 questions or comments?

9 Okay. I too look forward to the
10 proceeding to a hearing. Somebody like to make a
11 motion?

12 Commissioner Miller.

13 MR. MILLER: Mr. Chairman, before I do
14 that I will do that very very shortly. But I just
15 wanted to note one concern about the
16 recommendation 4 on page 5, regarding occupancy
17 and administrative flexibility. I'm just a little
18 bit concerned about anything that will provide --
19 will somehow incentivize keeping IZ units vacant
20 so they can get to a higher -- an even higher
21 median family income level, go to 100 percent if
22 it's 80. Or to 80 if it's 60. I'm just
23 concerned.

24 I think we do have some -- or existing IZ
25 does have some buffer, as you point out on that

1 page, of affordability that helps to reduce the
2 risk from rising condo fees. So I'm not sure that
3 that flexibility -- I'm just worried about the
4 incentive that that flexibility might provide to
5 just bump up that median family income level and
6 we'll be seeing cases, you know, right and left to
7 do that and I just don't want to see that.

8 But with that, I would move that the
9 Zoning Commission set down Case No. 04-33G,
10 Inclusionary Zoning Amendments and ask for a
11 second.

12 MS. COHEN: Second.

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

16 [Vote taken]

17 CHAIRPERSON HOOD: Any opposition? Not
18 hearing any, Ms. Schellin, would you record the
19 vote?

20 MS. SCHELLIN: Yes. Staff records the
21 vote five to zero to zero to set down Zoning
22 Commission Case No. 04-33G as a rulemaking case,
23 Commissioner Miller moving, Commissioner Cohen
24 seconding, Commissioners Hood, May, and Turnbull
25 in support.

1 CHAIRPERSON HOOD: Okay. Thank you. Ms.
2 Schellin, do we have anything else before us?

3 MS. SCHELLIN: No, sir.

4 CHAIRPERSON HOOD: I want to thank
5 everyone for their participation in this meeting
6 this evening and this meeting is adjourned.

7 [Hearing adjourned at 7:48 p.m.]

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