

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Zoning Commission
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9 Regular Public Meeting
10 1433rd Meeting Session [12th of 2016]
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14 6:43 p.m. to 7:35 p.m.
15 Monday, May 23, 2016
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19 Jerrily R. Kress Memorial Hearing Room
20 441 4th Street, N.W., Suite 220 South
21 Washington, D.C. 20001
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1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIE COHEN, Vice Chair

4 PETER MAY, Commissioner

5 ROBERT MILLER, Commissioner

6

7 Office of Zoning:

8 SHARON SCHELLIN, Secretary

9

10 Office of Planning:

11 JOEL LAWSON

12 JENNIFER STEINGASSER

13 ANNE FOTHERGILL

14 MEGAN RAPPOLT

15

16 Other:

17 DAVID AVITABILE, ESQ.

18

19

20

21

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

2 CHAIRPERSON HOOD: Are we ready to get
3 started? Okay.

4 [Pause.]

5 CHAIRPERSON HOOD: Okay. The meeting will
6 please come to order. Good evening, ladies and
7 gentlemen. This is the public meeting of the Zoning
8 Commission for the District of Columbia.

9 My name is Anthony Hood. Joining me are Vice
10 Chair Cohen, Commissioner Miller, May and Mr.
11 Turnbull is not with us tonight. We're also joined
12 by the Office of Zoning staff, Ms. Sharon Schellin,
13 Office of the Attorney General, Mr. Bergstein and Mr.
14 Ritting, Office of Planning, Ms. Steingasser, Mr.
15 Lawson, Ms. Fothergill, and Ms. Rappolt.

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

21 Please be advised this proceeding is being
22 recorded by a court report and is also web cast live.
23 Accordingly we must ask you to refrain from any
24 disruptive noises or actions in the hearing room,
25 including the display of any signs or objects.

1 Please turn off all electronic devices so not to
2 disrupt these proceedings. Does the staff have any
3 preliminary matters?

4 MS. SCHELLIN: No, sir.

5 CHAIRPERSON HOOD: Okay. I have one
6 preliminary matter and that's for a closed meeting.
7 Let me read this.

8 As Chairman of the Zoning Commission for the
9 District of Columbia and in accordance with 405C of
10 the Open Meetings Act, I move that the Zoning
11 Commission hold the following closed meeting, on
12 Thursday, June 16th, 2016, at 5:30 p.m. for the
13 purpose of receiving training as permitted by D.C.
14 Official Code 2-575B12. The subject of the training
15 is Department of Energy and Environment presentation
16 on the risks that climate change poses to the
17 District's infrastructure, public facilities and
18 residents, and recommendations that may influence
19 zoning decisions.

20 Is there a second?

21 MS. COHEN: Second.

22 CHAIRPERSON HOOD: Will the secretary please
23 take a roll call vote on the motion before us now
24 that has been seconded?

25 [Roll call vote taken.]

1 MS. SCHELLIN: So the vote carries.

2 CHAIRPERSON HOOD: Okay. As it appears, the
3 motion is passed. I request that the Office of
4 Zoning provide notice of this closed meeting in
5 accordance with the act. Anything else with that,
6 Ms. Schellin?

7 MS. SCHELLIN: No, sir.

8 CHAIRPERSON HOOD: Okay. I do have one
9 preliminary matter. Typically what we do is we relax
10 our dress code in the summer, and it seems like from
11 what I'm hearing in the weather report it's going to
12 get even hotter. So starting today, if you don't see
13 us with a tie or a coat or whatever, whatever we had,
14 I don't want to be one-sided, whatever you wear, you
15 want to come in cool and relaxed, we would encourage
16 my colleagues, we would encourage everyone who comes
17 down to do the same. So come relax. If you don't
18 have a tie we won't look at you if you -- I don't
19 know really what to say, Vice Chair, for ladies so
20 I'll just leave that alone.

21 So if you don't have a --

22 MS. COHEN: Wise man.

23 CHAIRPERSON HOOD: So again, come down cool
24 and comfortable for the summer months. Okay. Any
25 other preliminary matters?

1 MS. SCHELLIN: No, sir.

2 CHAIRPERSON HOOD: Okay. Let's go first to
3 consent calendar items. I think I'll do them one by
4 one since we have so many. Let me call the first
5 one, Zoning Commission Case No. 15-01A, level 2
6 development, request for minor modifications to PUD
7 at Square 3587. I think this has been on there a few
8 times so I think they've made some corrections with
9 some of the comments we've made, but does anyone see
10 that this needs to come off the consent calendar?
11 Okay. All right. Ms. Schellin.

12 MS. SCHELLIN: Yes, sir. As you stated, this
13 has been on the consent calendar a couple times.
14 Most recently May 12th, special public meeting. The
15 applicant has submitted some revised documents at
16 Exhibits 12 and 12A. At Exhibit 13 you have an OP
17 supplemental report and ask the Commission to
18 consider final action this evening.

19 CHAIRPERSON HOOD: Okay. Let me open it up.
20 Any comments on this one, Commissioner May?

21 MR. MAY: Yeah, I think that they've done
22 what they can to reduce the setbacks. Certainly for
23 the habitable space. And I think the only areas
24 where they continue to need setback relief on the
25 rear of the building has to do with elevator shafts

1 and the like. And so I think that it's acceptable
2 now.

3 CHAIRPERSON HOOD: Okay. Any other comments?
4 Not hearing any I would move that we approve as
5 amended tonight, Zoning Commission Case No. 15-01A,
6 level 2 definition request for minor modification at
7 PUD at Square 3587 and ask for a second.

8 MR. MILLER: Second.

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

11 [Vote taken.]

12 CHAIRPERSON HOOD: Ms. Schellin, would you
13 record the vote and also the proxy?

14 MS. SCHELLIN: Yes, sir. Staff records the
15 vote five to zero to zero to approve final action in
16 Zoning Commission Case No. 15-01A, Commissioner Hood
17 moving, Commissioner Miller seconding, Commissioners
18 Cohen and May in support, Commissioner Turnbull in
19 support by absentee ballot.

20 CHAIRPERSON HOOD: Okay. Next let's go to
21 Zoning Commission Case No. 08-34F, Capitol Crossing
22 Five, LLC., request for minor modification to PUD at
23 Square 568. Does anyone, any commissioner see that
24 this needs to come off of the consent calendar?

25 MR. MAY: Mr. Chairman, I have questions

1 about it and depending on the answers, I mean, it may
2 need to come off but hopefully not. I think it may
3 actually need to be deferred but it depends on the
4 answers.

5 CHAIRPERSON HOOD: Okay. The answer to the
6 Office of Planning or to the applicant.

7 MR. MAY: Well, I'm going to ask the Office
8 of Planning but I'd like the Commission to look at it
9 too.

10 CHAIRPERSON HOOD: Okay. I would ask the
11 applicant to just come to the table just in case.

12 MR. MAY: Okay. So, all right. So two
13 things. First of all, on page 2-10, and we see a
14 change in the view there. Everybody got 210 up
15 there?

16 So yeah, 210. So you see the gentleman in
17 the foreground there on the left side? Is that Kyrus
18 Freeman? You see that there? Doesn't that look --

19 CHAIRPERSON HOOD: Yeah, I think that is him.

20 MR. MAY: Maybe he's modeling for CAD
21 companies as, you know, these images --

22 CHAIRPERSON HOOD: Oh, he's not here tonight
23 so we can talk about him.

24 MR. MAY: I know, but I bet he's watching,
25 you know?

1 CHAIRPERSON HOOD: Whoever is not here,
2 that's who we talk about.

3 MR. MAY: He's diligent. No, all right. So
4 the real issue is on page 3.2 where on the right side
5 we see the one-to-one setback and it looks like -- I
6 mean, I see that in most cases they've not tried to
7 measure the setback from the edge of the solar shade,
8 which I think is not acceptable. But it looks like
9 they're measuring from an extension of the façade of
10 the building on that side as opposed to measuring
11 from the building that's immediately adjacent. So
12 maybe I'm misunderstanding that. But --

13 MS. SHIKER: Good evening. My name is
14 Christine Shiker with the law firm of Holland and
15 Knight representing the applicant in this case. I
16 did look at that issue and confirmed with the
17 architect that it is just a perception of how the
18 section is cut. We could get a better plan and get
19 the section cut in a different way to show you. But
20 if you look in the submission in Exhibit -- it's
21 Exhibit E. You can see that the penthouse is in fact
22 set back one to one from the exterior wall from the
23 top level. You know, at the top level on the two
24 corners the building sets back in, and those setbacks
25 are in fact measured from the setback at the top

1 level. So it isn't from an extension of the
2 building. It's just -- again, when I reviewed the
3 plans I had the same question and I did confirm that
4 it's just where the section was cut.

5 But I think that if you see that penthouse
6 diagram in Exhibit E, which is why I included it,
7 it's much clearer that even though the section is cut
8 there and it looks like you're measuring, it in fact
9 is just the building beyond in the section.

10 So you're seeing, because it's a flat
11 elevation, you're seeing a portion of the
12 penthouse --

13 MR. MAY: Right.

14 MS. SHIKER: -- that is further north on 2nd
15 Street, but is set back one to one. The penthouse
16 then comes in at the area where the building is set
17 back in.

18 MR. MAY: Okay. So, if we can go to 3.2 and
19 look at the -- what we see in elevation on the roof,
20 the first low -- it says elevator bulkhead painted
21 metal panel system. Right?

22 MS. SHIKER: Yes.

23 MR. MAY: Okay. And so that's what's set
24 back 13 feet, nine inches, according to the plan that
25 you showed me.

1 MS. SHIKER: Okay. So we're looking at --

2 MR. MAY: I'm looking at the penthouse
3 diagrams, which is a separate drawing and in
4 combination with 3-2.

5 MS. SHIKER: Yes.

6 MR. MAY: Or 3.2.

7 MS. SHIKER: So you can see, I think, going
8 left to right, you see the penthouse that's set back
9 31, then you see a very far recessed in the back, if
10 you're kind of comparing Exhibit E to 3.2. Then in
11 the center section you have the section that's set
12 back 51.3. Then you have the narrow section in the
13 back. Then you have the section that's 30 -- no, do
14 you see this?

15 MR. MAY: No, I'm lost.

16 MS. SHIKER: All right. So this --

17 MR. MAY: So I mean, let me ask my question
18 again. So looking just at the penthouse diagrams we
19 see a penthouse in the lower left-hand corner that's
20 set back 13 feet, nine from the east façade of the
21 building. Right?

22 MS. SHIKER: That is correct.

23 MR. MAY: East or west.

24 MS. SHIKER: That's the west.

25 MR. MAY: West. Sorry, west side.

1 MS. SHIKER: That's the west. North is up
2 towards the --

3 MR. MAY: Got it. Got it.

4 MS. SHIKER: -- spiral binding.

5 MR. MAY: So it's a 13 foot, nine setback.
6 Now if we look at 3.2, that is the gray box with
7 vertical lines on it that's labeled elevator bulkhead
8 painted metal panel system.

9 MS. SHIKER: Yes, I believe it is.

10 MR. MAY: You believe it is, or you know it
11 is?

12 MS. SHIKER: Based on looking at this
13 drawing. I'm not the architect so it's -- I didn't
14 draw the drawings. So based on looking at it, it
15 does appear to be that case.

16 MR. MAY: Okay. Now I think I understand and
17 agree. Okay. Yeah, I mean, what threw me off was
18 the red dashed lines which I guess is intended to
19 show the 18, six setback that's in the major portion
20 of the penthouse.

21 MS. SHIKER: That is correct. And I asked
22 them to put that because I wanted to make sure that
23 the Commission understood we weren't measuring from
24 the outside extent of the solar panel.

25 MR. MAY: Right.

1 MS. SHIKER: Or from the solar shade.

2 MR. MAY: Right.

3 MS. SHIKER: I wanted to make sure you
4 understood, we are measuring from the exterior wall.
5 But again, the Exhibit E was put in there to show
6 that the penthouse --

7 MR. MAY: Got it.

8 MS. SHIKER: -- moves, just like the
9 building. So it is set back one to one --

10 MR. MAY: right.

11 MS. SHIKER: -- from all the exterior walls
12 at the top level.

13 MR. MAY: Right. And now, and I'm finally
14 understanding what the elevation number is there.
15 Okay. I'm satisfied.

16 MR. MILLER: Mr. Chairman, I just had one
17 question. I'm supportive of this going forward. But
18 the habitable space that's being added triggers a
19 contribution to the -- required contributions to the
20 Housing Production Trust Fund. Do you have any
21 guesstimate of what that would be according to the
22 formula that's provided in the regulations?

23 MS. SHIKER: This case is a difficult one to
24 calculate because it's typically you take the
25 assessed value within 30 days of the building permit,

1 and then you create the per square foot value and you
2 times it in half. And so it's a very easy
3 calculation to do.

4 In this case the project is subject to a
5 pilot, which is payment in lieu of taxation. And
6 there are specific designated amounts that go with
7 each of the properties. And we've been working for
8 the last six months with the Office of Tax and
9 Revenue to finalize what those are because they have
10 changed quite a bit and there's legislation that
11 dictates them. And so I have not been able to
12 ascertain exactly the amount of funds that would be
13 contributed as a result. But we will contribute in
14 accordance, based on the OTR assessment under the
15 pilot within that 30 days and again, I think the
16 reason why the tax values are lowed is because this
17 was a disposition property and you have to create the
18 land at hundreds of millions of dollars before you
19 start being able to construct up. So it was all part
20 of the legislation and I'm just trying to get through
21 that with the tax counsel and with the Office of Tax
22 and Revenue.

23 MR. MILLER: So you don't have any idea
24 whether --

25 MS. SHIKER: I don't. I don't at this

1 point --

2 MR. MILLER: -- it's going to be in the --

3 MS. SHIKER: -- because the numbers could
4 change so much.

5 MR. MILLER: Yeah, because it hasn't set.

6 MS. SHIKER: Which is why I said we would
7 comply with the formula of that 30 days. And I
8 understand the Zoning Administrator will be
9 certifying, you know --

10 MR. MILLER: Okay.

11 MS. SHIKER: -- what those amounts are.

12 MR. MILLER: Okay. Thank you.

13 CHAIRPERSON HOOD: Okay. Any other
14 questions? Ms. Shiker, thank you very much. We
15 appreciate it.

16 Colleagues, I think with the two ANCs'
17 support, even though one has not signed, I don't know
18 what that means, but I don't think anybody would put
19 a letter in here if they weren't agreeing to it,
20 unless somebody else wrote the letter for them, but I
21 don't think that is the case. And also I think the
22 Office of Planning said that they did not oppose to
23 this request and I think pretty much, are we okay,
24 Commissioner May?

25 MR. MAY: Yes.

1 CHAIRPERSON HOOD: Okay. Would somebody like
2 to make a motion? Unless somebody else has another
3 comment. I think it's pretty straight forward.

4 MR. MAY: So I make the motion to approve
5 Zoning Commission Case No. 08-34F, Capitol Crossing
6 request for minor modification to PUD at Square 568.

7 MS. COHEN: Second.

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

10 MR. MILLER: Yeah, I would just say that I
11 did like the fins better on the earlier design, but
12 it's certainly not enough to make me oppose it in any
13 way.

14 CHAIRPERSON HOOD: Would you like to hold it
15 up and have them --

16 MR. MILLER: No.

17 CHAIRPERSON HOOD: -- put the fins back?

18 MR. MILLER: Absolutely --

19 CHAIRPERSON HOOD: Okay.

20 MR. MILLER: Absolutely not.

21 CHAIRPERSON HOOD: All right.

22 MR. MAY: I would say, I would tend to agree
23 but, you know, whatever.

24 MR. MILLER: I'll think about fins when I
25 look at the building.

1 CHAIRPERSON HOOD: Okay any further
2 discussion?

3 [Vote taken.]

4 CHAIRPERSON HOOD: Ms. Schellin, not hearing
5 any opposition of those present could you tally a
6 vote and also give us the absentee?

7 MS. SCHELLIN: Yes. Staff records the vote
8 five to zero to zero to approve final action in
9 Zoning Commission Case No. 08-34F, Commissioner May
10 moving, Commissioner Cohen seconding, Commissioners
11 Hood and Miller in support, Commissioner Turnbull in
12 support by absentee ballot.

13 CHAIRPERSON HOOD: Okay. Next, Zoning
14 Commission Case No. 14-04A, Professional Associates
15 and International Finance Corporation request for
16 minor modification to a PUD at square 74. Let me see
17 if there's anyone who would like to see this come off
18 of the consent calendar.

19 Not seeing anybody, Ms. Schellin.

20 MS. SCHELLIN: Yes, sir. The applicant has
21 requested a minor modification to add penthouse
22 habitable space. Exhibit 6 is an OP report
23 recommending approval as a minor modification subject
24 to the applicant documenting the guardrail as setback
25 per their report. And I believe the applicant has

1 submitted a follow-up submission in response to the
2 OP report. So, would ask the Commission to consider
3 final action this evening.

4 CHAIRPERSON HOOD: Okay. Let me try to find
5 my file. Okay.

6 All right. Any comments, colleagues, on this
7 case? Commissioner Miller?

8 MR. MILLER: Yeah, I'm supportive of this.
9 But again, I had the same question if the applicant
10 or if OP happens to know what the Housing Production
11 Trust Fund contribution requirement, what the ball
12 park -- and I realize it's determined at a later
13 point when you're closer to the building permit.
14 But --

15 MR. AVITABILE: Certainly. David Avitabile
16 with Goulston and Storrs for the applicant. We ran
17 the calculation based on the current assessed value.
18 It's almost exactly \$100,000. So that would be the
19 contribution for the 1,500, 1,600 square foot room.
20 And really, actually if you think about it, it's only
21 really for the additional 600 square feet. So it's a
22 pretty good value for the District.

23 MR. MILLER: Right. Thank you.

24 MR. AVITABILE: Thank you.

25 CHAIRPERSON HOOD: Okay. And I think the

1 late submission was about the guardrails. I think
2 they have conformed to that. Anything else?
3 Somebody like to make a motion on this case? Vice
4 Chair.

5 MS. COHEN: Mr. Chairman, I move to approve
6 Zoning Case No. -- or the minor modification for
7 Zoning Case No. 14-04A, Professional Associates and
8 International Finance Corporation. Again, request
9 for minor modification to PUD at Square 74 and ask
10 for a second.

11 MR. MILLER: Second.

12 CHAIRPERSON HOOD: I'll second. Okay,
13 Commissioner Miller seconded. It's moved and
14 properly seconded. Any further discussion?

15 [Vote taken.]

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

18 MS. SCHELLIN: Yes. Staff records the vote
19 five to zero to zero to approve final action in
20 Zoning Commission Case No. 14-04A, Commissioner Cohen
21 moving, Commissioner Miller seconding, Commissioners
22 Hood and May in support, Commissioner Turnbull in
23 support by absentee ballot.

24 CHAIRPERSON HOOD: Okay, next. Zoning
25 Commission Case No. 04-24C, RI Station, LLC., request

1 for minor modification to PUD at Square 3858. Ms.
2 Schellin.

3 Oh first, let me see. Does anyone like to
4 see this come off the consent calendar? Okay. Not
5 seeing anybody, Ms. Schellin.

6 MS. SCHELLIN: The applicant is requesting a
7 minor modification to Condition No. 3 of the order to
8 accommodate businesses that are currently interested
9 in leasing the ground floor commercial space.
10 Exhibit 5 is an OP report not opposed to the request.
11 Would ask the Commission to consider final action.

12 CHAIRPERSON HOOD: Okay. Let's open it. Any
13 discussion?

14 MS. COHEN: Nothing.

15 CHAIRPERSON HOOD: Okay. Not hearing
16 anything, anybody? Okay. I think this is pretty
17 straight forward. Seeing if I had anything on this.
18 No, it's a checkmark. Okay. In that case I would
19 move that we approve the request for minor
20 modification in Zoning Commission Case NO. 04-24C and
21 ask for a second.

22 MS. COHEN: Second.

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

25 [Vote taken.]

1 CHAIRPERSON HOOD: Ms. Schellin, would you
2 record the vote and the proxy?

3 MS. SCHELLIN: Yes. Staff records the vote
4 five to zero to zero to approve final action in
5 Zoning Commission Case No. 04-24C, Commissioner Hood
6 moving, Commissioner Cohen seconding, Commissioners
7 May and Miller in support, Commissioner Turnbull in
8 support by absentee ballot.

9 Okay. Next, Zoning Commission Case No. 08-
10 06D. This is Office of Planning technical
11 corrections to Zoning Commission Case No. 08-06A. I
12 think we need to waive request for the Office of
13 Planning's filing. It was less than 10 days. We
14 know they were working. They have a lot on their
15 plate and they were working on this, so any
16 objection?

17 Not hearing any, Ms. Schellin.

18 MS. SCHELLIN: Yes. As you stated, OP is
19 requesting a technical correct and minor
20 modifications to Zoning Commissioner Order No. 08-
21 06A. This is the first group of modifications to the
22 ZR-16. We'd ask the Commission to consider approving
23 a publication of a proposed rulemaking in this case.

24 CHAIRPERSON HOOD: Okay, Commissioners. We
25 see the modifications that are requested. First,

1 does anyone think this needs to come off the consent
2 calendar? Okay. Any comments? And I think the
3 Office of Planning did a great job in spelling out
4 what the issues were here.

5 All right. Anybody like to make a motion or
6 need more time?

7 MS. COHEN: Okay. Mr. Chairman, I move to
8 approve Zoning Case No. 08-06D, Office of Planning
9 technical corrections to Zoning Case Order No. 08-06A
10 and ask for a second.

11 MR. MILLER: Second.

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

14 [Vote taken.]

15 CHAIRPERSON HOOD: Not hearing any
16 opposition, Ms. Schellin, would you record the vote
17 plus the proxy?

18 MS. SCHELLIN: Staff records the vote five to
19 zero to zero to approve the publication of a proposed
20 rulemaking in Zoning Commission Case No. 08-06D,
21 Commissioner Cohen moving, Commissioner Miller
22 seconding, Commissioners Hood and May in support,
23 Commissioner Turnbull in support by absentee ballot.

24 CHAIRPERSON HOOD: Okay. Let's go to the
25 final action in Zoning Commission Case No. 14-13B,

1 Office of Planning request for technical corrects to
2 Zoning Commission Order No. 14-13, Ms. Schellin.

3 MS. SCHELLIN: Yes. So the proposed
4 rulemaking was published in the Register on April
5 26th -- 22nd, I'm sorry. And no comments were
6 received, so we'd ask the Commission to consider
7 final action this evening.

8 CHAIRPERSON HOOD: Okay. Colleagues, again,
9 this is the vesting language. I think we did
10 propose, and this is a final action and it's 3202.11.
11 I don't need to read it. I think we have it in front
12 of us, which has the provision of the roof structure
13 regulations in place as of November 19th, 2015. And
14 it has some things that you go through to make sure
15 it's within good standing to be able to move and to
16 be vested. So, any other comments on this?

17 Okay. In that case I would move that we adopt
18 Zoning Commission Case No. 14-13B, Office of Planning
19 request for technical corrections as cited in their
20 report, and ask for a second.

21 MS. COHEN: Second.

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

24 [Vote taken.]

25 CHAIRPERSON HOOD: Not hearing any

1 opposition, Ms. Schellin, of those present, and if
2 you can give us the proxy also?

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

9 CHAIRPERSON HOOD: Okay. Next, Zoning
10 Commission Case No. 12-21A, Covenant Baptist Church
11 United Church of Christ, two-year PUD time extension
12 at Square 3845. Ms. Schellin.

13 MS. SCHELLIN: Yes. This is a request for a
14 two-year time extension to file for a building permit
15 for construction of the affordable housing
16 development for seniors. The applicant states it
17 anticipate a funding from DHCD, and there's been a
18 delay in getting that funding and so they're making
19 this request and ask the Commission to consider final
20 action this evening.

21 CHAIRPERSON HOOD: Okay. Commissioners, I
22 think this case, at least the merits of this case are
23 very noteworthy. I would be in favor of granting a
24 two-year time extension. Again, this is senior
25 housing. I see where at least maybe one of the

1 applications may not have gotten in in time and you
2 know, you go through those things. And I think this
3 is a very worthwhile project which we've heard and
4 they've worked a lot of things out with the
5 neighbors, so I would be in support of granting this
6 two-year time extension. Let me open it up for
7 support. Vice Chair Cohen.

8 MS. COHEN: Mr. Chairman, I concur with you,
9 however I just want to state for the record that one
10 of the issues with moving affordable housing projects
11 in a timely manner is the way DHCD does funding --
12 does their funding for affordable housing projects.
13 They do it by having a NOFA, Notice of Funding
14 Availability, and it doesn't really comport with the
15 real world. I mean, if they do their underwriting
16 like a bank they should be ready to go ahead with a
17 project as opposed to wait a whole year to submit
18 applications and then fund them.

19 So I really wanted to bring to everybody's
20 attention that the fact that DHCD should parallel
21 their review of projects in line with when readiness
22 of funding. I mean, this project might have had
23 everything in place but DHCD, and it's unfortunate
24 they have to wait for a funding round. But I will
25 second your motion.

1 CHAIRPERSON HOOD: It's been so long ago.
2 Did I make a motion?

3 MS. COHEN: You did.

4 CHAIRPERSON HOOD: Oh, okay. It's been moved
5 and seconded. Did I make a motion?

6 MS. SCHELLIN: No.

7 MS. COHEN: No?

8 CHAIRPERSON HOOD: Okay. Okay. Well, I'll
9 make one.

10 MS. COHEN: All right, then I'll move.

11 CHAIRPERSON HOOD: Okay. Well, you make it.

12 MS. COHEN: Thank you. I move to approve
13 Zoning Case No. 12-21A, Covenant Baptist Church
14 United Church of Christ two-year PUD time extension
15 at Square 3845, and now I ask for a second.

16 CHAIRPERSON HOOD: Second. It's been moved
17 and properly seconded. Any further discussion?

18 [Vote taken.]

19 CHAIRPERSON HOOD: Ms. Schellin, could you
20 also record the proxy?

21 MS. SCHELLIN: Yes. Staff records the vote
22 five to zero to zero to approve final action in
23 Zoning Commission Case No. 12-21A, Commissioner Cohen
24 moving, Commissioner Hood seconding, Commissioners
25 May and Miller in support, Commissioner Turnbull in

1 support by absentee ballot.

2 CHAIRPERSON HOOD: Okay. Next, let's go to
3 hearing action in Zoning Commission Case No. 13-05B,
4 Forest City Washington, PUD modification at Square
5 744S and 744SS. Ms. Fothergill.

6 MS. FOTHERGILL: Good evening, Chairman Hood
7 and Members of the Commission. For the record, I'm
8 Anne Fothergill with the Office of Planning for Karen
9 Thomas tonight.

10 This PUD was approved as a consolidated --

11 MS. COHEN: Can you speak in your mic? I
12 can't hear you.

13 MS. FOTHERGILL: Sure. Sorry. So sorry. Do
14 you want me to start over?

15 MS. COHEN: No, no.

16 MS. FOTHERGILL: My name. This PUD was
17 approved as a consolidated and first stage PUD for
18 the redevelopment of the D.C. Water Site which abuts
19 the D.C. Water O Street Pumping Station building,
20 which was also approved for redevelopment under
21 Zoning Commission Order No.15-14.

22 The subject of this application is for the
23 consolidated portion of the PUD and requests
24 modifications to the 16-screen movie theater building
25 on the F1 Parcel of the Ford Parcel development site,

1 including changes to the facades, including changes
2 to the locations, and amounts of materials, although
3 generally within the approved materials pallet. A
4 minor reduction in the approved parking, inclusion of
5 a stairway penthouse, a change to the roadway
6 material at the intersection of N Place and One and a
7 Half Street, and a modification of an improved
8 condition which was agreed to by DDOT.

9 The original material pallet of the facades
10 was discussed at length by the Commission and the
11 community representative at the initial public
12 hearing. Changes to the approved use or the
13 building's massing are not proposed and no new relief
14 from Zoning Regulations would be required. OP
15 recommends that the applicant be set down for public
16 hearing. And I'm happy to take any questions.

17 CHAIRPERSON HOOD: Okay. Thank you, Ms.
18 Fothergill. Any questions on this setdown request?
19 Anybody?

20 MS. COHEN: Yes.

21 CHAIRPERSON HOOD: Vice Chair Cohen.

22 MS. COHEN: I just would like more
23 information about the change in the -- not the
24 change, the white paneling and its long-term
25 durability. And let's see. And I guess yeah, the

1 high contrast neutral white tone of the metal panel.
2 And just a little bit more elaboration on the --
3 there's a streetscape. You know, is it -- I think
4 it's changing because of the plans related to the
5 water site. That's it.

6 MS. FOTHERGILL: We can get you that
7 information.

8 CHAIRPERSON HOOD: Okay. Any other
9 questions? Okay. Somebody like to make a motion?

10 MR. MILLER: Mr. Chairman, I would move that
11 the Zoning Commission set down for hearing, Zoning
12 Commission Case No. 13-05B, Varsity Washington PUD
13 modification at Square 744S and 744SS and ask for a
14 second.

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

17 [Vote taken.]

18 CHAIRPERSON HOOD: Ms. Schellin, would you
19 record the vote and do we have a proxy?

20 MS. SCHELLIN: Yes. Staff would record the
21 vote five to zero to zero to set down Zoning
22 Commission Case No. 13-05B as a contested case,
23 Commissioner Miller moving, Commissioner Hood
24 seconding, Commissioners May and Cohen in support,
25 Commissioner Turnbull in support by absentee ballot.

1 CHAIRPERSON HOOD: Okay. Let's go to
2 correspondence. Next we have a letter from David
3 Avitabile, Esquire regarding ZR-16 notices of intent
4 during the transition period. Ms. Schellin.

5 MS. SCHELLIN: Yes, sir. As you stated, this
6 is a letter from Mr. Avitabile. He is asking the
7 Commission to clarify the notices of intent during
8 the transition period between the 1958 regulations
9 and the 2016 regulations, and we'd ask the Commission
10 to do whatever they want to do this evening.

11 CHAIRPERSON HOOD: Okay. I'm looking. Ms.
12 Schellin, this letter of intent that was supplied
13 from Mr. Avitabile, is this under the old regulations
14 or the new regulations?

15 MS. SCHELLIN: The notices of intent that
16 were sent out referred to the 1958 regulations.

17 CHAIRPERSON HOOD: Okay. But he is filing
18 under the --

19 MS. SCHELLIN: My understanding is he intends
20 to file under the 2016 regulations.

21 CHAIRPERSON HOOD: Okay. Colleagues, I would
22 advise and I would think that we need to -- I don't
23 see where any clarification is needed because it
24 needs to be 45 days from -- under the new
25 regulations, the way I see it. I'm not really sure

1 what's being asked for here. I don't really see
2 where there's a whole lot of clarification.

3 MS. SCHELLIN: I think he sent out a notice
4 stating that, you know, under the 1958 regulations --
5 and it's been 45 days, or it will be 45 days, and I
6 sent an e-mail out reminding applications that under
7 the new regulations you have to send out a 45-day
8 notice that you intend to file under the 2016
9 regulations, and that's what prompted his letter
10 because he sent it out and he says it's been 45 days
11 and my response was, but you didn't send notice that
12 you were filing under the 2016 regulations. And so
13 therefore he's asking you guys to clarify what
14 happens in between.

15 I don't know if Mr. Bergstein wants to weigh
16 in. Maybe he should weigh in on this.

17 MR. BERGSTEIN: Well, I don't have a view,
18 but the point is that what Mr. Avitabile is
19 suggesting is that he filed a notice of intent saying
20 that he was going to file these applications under
21 the 1958 regulations. And the 45-day period that's
22 required under new regulations has passed. And the
23 point that OZ made was, well, the notice you gave was
24 not under -- that you intended to file under the 2016
25 regulations, but under the 1958 regulations, and

1 therefore you need to file a new notice of intent to
2 file under the 2016 regulation and the clock starts
3 again.

4 Mr. Avitabile is asking for a clarification
5 that that's not the case, that as long as he filed a
6 notice of intent and 45 days has passed, it doesn't
7 matter if the notice of intent referred to the 1958
8 regulations or the 2016 regulations.

9 So that's the question. Is it insufficient
10 for the notice to have mentioned the 1958 regulations
11 and a new notice is required that mentions the 2016
12 regulations? Or does the existing notice suffice?
13 He's asking for a clarification that a notice that
14 references a 1958 regulation suffices.

15 CHAIRPERSON HOOD: Okay. And I would open it
16 up for discussion, but I don't think so. I think he
17 needs to send out another notice of intent. That's
18 what we get hit around here with all the time now, is
19 -- and I'm not saying that Mr. Avitable, his
20 application is that case, but at least the Zoning
21 Commission, we get hit. We're filing a notice of
22 intent of 1958 regulations, but we're really doing
23 this under whatever it's called, 16, 2016 or '16
24 regs. And I think we need to keep it clean. I think
25 there needs to be another notice of intent filed that

1 will start another 45 days. That's my opinion, and
2 let me open it up.

3 MR. MAY: I mean, do we actually know how
4 many days different we're talking about? I mean, did
5 the first 45 days already pass?

6 CHAIRPERSON HOOD: Almost.

7 MS. SCHELLIN: And, Chairman Hood, I would
8 say the absentee ballot from Commissioner Turnbull
9 agrees with what you just stated.

10 MR. MAY: I'm sorry, did you get the answer
11 to my question? I didn't see.

12 CHAIRPERSON HOOD: Great minds think alike.

13 MS. SCHELLIN: He sent the notices out, I
14 think his letter states that he sent it out March --
15 if you look at his letter he sent the notices out
16 March 25th and --

17 MR. MAY: Okay. So it's already been about
18 60 days.

19 MS. SCHELLIN: Yeah. March 18th and March
20 25th.

21 MR. MAY: Yeah. Okay.

22 MS. SCHELLIN: But my understanding is the
23 plans are -- I mean, they're still working on the
24 plans even. So, yeah.

25 MR. MAY: Okay.

1 MS. SCHELLIN: So.

2 MR. MAY: I don't disagree with the Chairman
3 or Mr. Turnbull.

4 CHAIRPERSON HOOD: Okay. Anybody else,
5 comment?

6 Do we need to take a vote or I don't know
7 what it is you clarify --

8 MS. SCHELLIN: Not if you're clarifying it,
9 it's fine.

10 CHAIRPERSON HOOD: Mr. Bergstein.

11 MR. BERGSTEIN: Well, you're consensus is no
12 clarification is needed.

13 MS. SCHELLIN: Right.

14 MR. BERGSTEIN: I don't think you need a vote
15 if that's your consensus.

16 CHAIRPERSON HOOD: Right, that's the
17 consensus.

18 MS. COHEN: All right. Just for the record,
19 then. Mr. Chairman, I concur with you and
20 Commissioners May and Turnbull and make it unanimous.
21 Commissioner Miller?

22 CHAIRPERSON HOOD: See, now you started
23 something. He may not agree, but we got the vote.

24 MR. MILLER: I didn't really feel strongly
25 about it either way.

1 CHAIRPERSON HOOD: Mr. Bergstein, let me ask
2 a question. Mr. Avitabile has his hand up. I don't
3 necessarily consider that us turning it down, we just
4 gave him clarification. Typically, we only bring
5 people up when we turn them down. We didn't turn him
6 down, we just gave him a clarification.

7 MR. BERGSTEIN: Well, just to make sure
8 everybody is on the same page. What you've decided
9 is that there's no clarification needed, that in this
10 instance the notices -- basically the Office of
11 Zoning has ruled or whatever one might want to say,
12 that the notices of intent to file that referenced
13 the 1958 regulations are insufficient under the 2016
14 regulations, and that they will not accept an
15 application unless a new notice of intent to file is
16 submitted and notice is given that specifically
17 references the 2016 regulations and they have to wait
18 another 45 days. You are in essence confirming the
19 position of the Office of Zoning as I understand it.

20 CHAIRPERSON HOOD: Okay. Now, Mr. Avitable,
21 I see you have your hands up, and I think we've
22 already did a consensus. You have anything that can
23 change that? I would really strongly encourage -- I
24 don't want to deny you the opportunity but I would
25 strongly encourage you to hear what we said. But you

1 can come forward if you really feel that strong. I
2 don't want to discourage you. Did I discourage you?
3 Maybe I was a little harsh.

4 MR. AVITABILE: I'll be brief. David
5 Avitabile for Goulston and Storrs.

6 I think the issue that may not have been
7 entirely clear in the letter is, when we were going,
8 you know, bringing a project through the development
9 process isn't a point in time, it's a continuum. And
10 when we were embarking on the process back in March,
11 this was immediately after the new regulations had
12 been adopted, but before there was real clarification
13 as to exactly when you could file under the new
14 regulations, when you would no longer be able to file
15 under the old regulations. We have the general
16 vesting language that talked about having to be set
17 down prior to -- or having a hearing prior to the new
18 regulations taking effect. But we didn't know more
19 than that.

20 And so for both of these applications, out of
21 an abundance of caution, we actually filed the
22 notices well enough in advance that we would meet the
23 45 days. We didn't know which regulations we'd be
24 under, whether we'd be under the old or the new. But
25 at that point the old regulations were the

1 regulations we knew, and so that's what the notices
2 referred to.

3 As often happens with the development
4 process, as you're going along and developing your
5 plans for a PUD you engage in discussions with the
6 Office of Planning and with other agencies, and you
7 make changes. And so both applications were delayed
8 as a result of those processes and we didn't get
9 something filed.

10 So that's why we were held off. But we
11 really did meet the substance of the new regulations.
12 We filed a notice 45 days in advance. It described
13 the project. In fact, it even referenced the new
14 zone categories as well as the old zone categories.
15 The only thing that it didn't say is necessarily
16 which regulations you'd be under. We referenced the
17 old ones simply because that's what was applicable at
18 the time.

19 In one case we've met with the ANC. In the
20 other case we approached them and we will be meeting
21 with them next week to present the project. So we've
22 met that bar of the requirement. So the only thing
23 here is a notice that doesn't reference, we're filing
24 under the new regs as opposed to the old regulations.
25 But with the regulations changing I think that just

1 comes as a matter of course. At least that's the way
2 we looked at this. This will have broader
3 implications for other projects that maybe were filed
4 as actually as a PUD months ago and have been waiting
5 for set down and now would have to go back and file a
6 new notice.

7 So it's just, it's a function of the fact
8 that we're at a moment in time when we're still in
9 this transition period. So we thought it was worth
10 asking the question. We've heard your discussion and
11 we understand we can wait the additional 45 days. In
12 the case of one of these projects, it was actually an
13 all affordable housing project and part of it is
14 their timing is being driven by trying to meet the
15 grant period, so this will make that a little bit
16 tighter, but we'll make it work. But we thought it
17 was worth at least asking since we had otherwise met
18 what I viewed as the intent of the new regulations.
19 Maybe it would be appropriate, at least in this
20 initial period, to let it go. But thank you for
21 indulging me.

22 MR. MAY: Mr. Chairman, can I ask a question?

23 CHAIRPERSON HOOD: Sure.

24 MR. MAY: How many days has this actually set
25 you back on either of those cases?

1 MR. AVITABILE: Well, we'll have to file new
2 notices.

3 MR. MAY: I understand that, but --

4 MR. AVITABILE: And so it will be 45 days.

5 MR. MAY: So you're ready to file those --

6 MR. AVITABILE: We were --

7 MR. MAY: -- applications today?

8 MR. AVITABILE: I guess it would be not quite
9 45 days. We could conceivably be ready to file both
10 of them, certainly one of them we were intending to
11 file on June 1st so that we could get the earliest
12 possible hearing date we could, or at least whenever
13 the new application forms are ready. But as close as
14 possible.

15 The other one, we're still working on the
16 design. That might be a couple of weeks off. So
17 that won't necessarily set us back the full 45 days.
18 It might be more like --

19 MR. MAY: Twenty or 25.

20 MR. AVITABILE: -- 20 or 25 days.

21 MR. MAY: And the other one could be --

22 MR. AVITABILE: More like closer to 40.

23 MR. MAY: Closer to 40. Mr. Chairman, I
24 could go either way on this. You know, honestly, if
25 they were having the discussions and the folks who

1 need to know about it, know about it, I don't really
2 have a big problem. I mean, I understand that it may
3 not have required the clarification, and you know, I
4 mean, the rules were pretty clear but I can
5 understand how, you know, even making the best
6 efforts to try to meet those requirements could, you
7 know, could wind up with something being delayed
8 unintentionally and I don't think that was really
9 what the intention is, so long as the notice is out
10 there. So, anyway.

11 MS. COHEN: And, Mr. Chairman, also it seems
12 that it's going to affect a number of other projects
13 as well. So, I don't know. Again, I could go either
14 way.

15 CHAIRPERSON HOOD: Well, since you all both
16 can go either way I would encourage us to stick with
17 our first agreements since you all can go either way.
18 And I know that -- I don't think it would have that
19 much detrimental impact on the affordability. Vice
20 Chair, I notice that Mr. Avitabile knows how to get
21 to your heart. But I also know --

22 MS. COHEN: And my mind, please.

23 CHAIRPERSON HOOD: So, I'm sure that it will
24 work out, Mr. Avitabile, and as we go through this
25 transition. But for me, I like to, if I'm in the

1 community and I see a notice of intent I want to know
2 which regulations because if I don't do zoning, I
3 need to know which ones I need to start studying. I
4 know people who don't do zoning as a career all the
5 time so that's just where I am on that. And since
6 they could go either way I'm going to help them so we
7 can move this along.

8 MR. AVITABILE: Right. Thank you.

9 CHAIRPERSON HOOD: We have one more case.

10 MS. SCHELLIN: The last correspondence item.

11 CHAIRPERSON HOOD: Oh, that's right. He kind
12 of got to me too with the affordability issue, Vice
13 Chair. Where am I at? Okay. Correspondence. Okay.
14 Letter from NCPC, interpretation of exterior
15 walls under the Height Act.

16 [Discussion off the record.]

17 CHAIRPERSON HOOD: Okay. All right. Let me
18 call it again. Where am I at? Okay. Letter from
19 NCPC, interpretation of exterior walls under the
20 Height Act. Ms. Schellin.

21 MS. SCHELLIN: Yes, sir. As you stated, it
22 is the letter from NCPC. They were asking the
23 Commission to reconsider its interpretation of
24 exterior walls under the Height Act, and so I'd ask
25 the Commission to, again do what they would like with

1 this one.

2 CHAIRPERSON HOOD: Okay. Let's open it up
3 for discussion. Commissioner May.

4 MR. MAY: Right. So first of all, I have to
5 say I agree with NCPD's sentiment that generally that
6 set back really shouldn't be granted on courts that
7 are open to streets when they're at the Height Act
8 height.

9 However, Zoning Commission does not use the
10 term exterior wall. We don't have a say in how the
11 Zoning Administrator interprets exterior wall under
12 the Height Act. So I think what they're asking us to
13 do is not something that we could, should, or are
14 able to do, or able to do with any effect.

15 And I think that -- I do think, though, that
16 there is a -- as with any change in the regulations
17 that's as significant as the penthouse regulations,
18 there are some instances where we don't fully
19 understand what might come as a result of those
20 changes. And there are some things that might be
21 worth taking another look at. And I think that the
22 circumstance where you have a court that is open to a
23 street, that the ability to get relief from setback
24 provisions probably should not be considered as a
25 special exception. And so I would suggest that we

1 want to -- we would actually ask the Office of
2 Planning to look at that and make a recommendation to
3 a tweak of the setback provisions.

4 Because I think, you know, when we're dealing
5 with open courts, courts that are open to streets, I
6 do think that we need to abide by the setback
7 provisions very strictly. And the only circumstances
8 where such relief should be granted are probably
9 under a variance standard. I know this doesn't quite
10 go completely to NCPC's concern, but I think they're
11 asking us to do something with regard to the advice
12 to the Zoning Administrator that we can't do.

13 I also have another issue that relates to a
14 tweak of the penthouse, new penthouse regulations.
15 And that has to do with the treatment of setbacks on
16 closed courts, where I think this has come up on a
17 couple of recent zoning cases where the setback from
18 a closed court that abuts a property line, whether
19 it's on the rear property line or a side property
20 line, we're not requiring a setback there at all.

21 And I think there are circumstances where
22 there should be a setback, when it's open to a
23 property that doesn't have a building built up to the
24 same height. You know, I think there should be a
25 setback requirement. And I think that I would

1 suggest that we also ask the Office of Planning to
2 address that issue as well. I think they know the
3 cases where that has come up recently, and so
4 hopefully they would take that up and be able to make
5 a recommendation.

6 So those are my thoughts.

7 CHAIRPERSON HOOD: Okay. I don't think I can
8 add anything to that. I would agree that we would
9 kind of kick it to the Office of Planning and try to
10 see what they come back with so we can try to close
11 some of those gaps which we think that we may not
12 have fulfilled when we did our penthouse regulations.
13 But let me open it up. Anyone else? Vice Chair
14 Cohen?

15 MS. COHEN: Yeah, Mr. Chairman, I think
16 Commissioner May articulated the issues facing us
17 very concisely and clearly and I look forward to the
18 OP report.

19 CHAIRPERSON HOOD: Commissioner Miller.

20 MR. MILLER: Thank you, Mr. Chairman. I
21 agree with Commissioner May's statement that we can't
22 -- that it's the Zoning Administrator that interprets
23 the term, exterior wall, for the Height Act purposes.
24 And I don't have a problem with OP looking at the two
25 issues that Mr. May -- that Commissioner May brought

1 up, particularly the second one. But I personally,
2 at this point, without seeing more study of the
3 matter, would not be inclined to support going from a
4 special exception standard to a variance standard for
5 that setback, to get relief from that setback
6 requirement.

7 I think the adverse visual impact, or
8 whatever adverse impact there is, can be evaluated on
9 a case by case basis, and I'm not sure why we need to
10 be more restrictive at this point than we've been for
11 30 years. Especially when we're trying to encourage
12 -- some of us are trying to encourage habitable space
13 on the roof, which is where the penthouse -- or
14 penthouse regulations cases was primarily about.

15 So I don't have a problem with OP looking at
16 it, but I think there should be flexibility for the
17 BZA or the Zoning Commission to look at each case and
18 evaluate whether there are the visual impacts without
19 necessarily having a much stricter variance standard
20 which hasn't existed for that kind of -- I don't
21 think that's existed for decades. So I am not
22 inclined to go for a more restrictive standard at
23 this point.

24 But I don't have a problem with OP looking at
25 it and giving us recommendations on the matter.

1 CHAIRPERSON HOOD: Okay. I would agree that
2 I would -- well, no. Let me take that back. I don't
3 agree necessarily with what I've heard, but I think
4 it's good though to kick the Office of Planning and
5 we can have those discussions about whether we're
6 going to kick it to a variance or how far it goes.
7 But let's see what the study brings back. And I
8 don't necessarily like studies because we study too
9 much around here. But let's see what happens. We'll
10 kick it to the Office of Planning and they will come
11 back with some recommendations for us, and for us to
12 have a dialog and a discussion on.

13 Also, I wanted to read -- we have a proxy
14 from Mr. Turnbull. I want to make sure I read this
15 into the record. And this is what he says on this
16 whole issue.

17 "The exterior wall interpretation by the
18 Zoning Administrator is inconsistent with the intent
19 of the Zoning Commission. OP should review the issue
20 and provide language that would clarify, tighten, or
21 otherwise strengthen the intent of the Zoning
22 Commission."

23 The first part of it, I think, I'm not really
24 sure. When he comes back we have time for him to
25 kind of expound on that. But I think the second part

1 is exactly what all of us are saying OP should --
2 he's saying should review the issue. And I think he
3 basically concurs with us. So, do we need to do a
4 motion or anything on this? Mr. Bergstein?

5 MR. BERGSTEIN: No, I think you've responded
6 to the correspondence.

7 CHAIRPERSON HOOD: Okay. All right. Do we
8 have anything else? Office of Planning have
9 anything? You have anything else?

10 All right. I want to thank everyone for
11 their participation in this meeting and this meeting
12 is adjourned.

13 [Meeting adjourned at 7:35 p.m.]

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