

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Public Hearing

Case No. 16-16 [Forest City SEFC, LLC. - Southeast
Federal Center Design Review at Square 771, Lot 800.]

6:31 p.m. to 8:04 p.m.

Thursday, October 13, 2016

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

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Board Members:

ANTHONY HOOD, Chairman

ROBERT MILLER, Vice Chair

PETER MAY, Commissioner

MICHAEL TURNBULL, Commissioner

Office of Zoning:

SHARON SCHELLIN, Secretary

Office of Planning:

BRANDICE ELLIOTT

JOEL LAWSON

Department of Transportation:

RYAN WESTROM

P R O C E E D I N G S

CHAIRPERSON HOOD: Okay. We're ready to begin. Good evening, ladies and gentlemen. This is the public hearing of the Zoning Commission for the District of Columbia. Today's date is October 13th, 2016.

My name is Anthony Hood. Joining me are Vice Chair Miller and Commissioner May. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, as well as the Office of Planning staff, Ms. Elliott, and the District Department of Transportation, Mr. Westrom.

This proceeding is being recorded by a court reporter and it's also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room, including the display of any signs or objects. Notice of today's hearing was published in the D.C. Register and copies of that announcement are available to my left on the wall near the door.

The hearing will be conducted in accordance with provisions of Subtitle Z, Chapter 4, preliminary matters, applicant's case, report of the Office of Planning, report of other government agencies, report of the ANC, organizations and persons in support,

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organizations and persons in opposition, rebuttal and closing by the applicant.

The following time constraints will be maintained in this meeting. The applicant has up to 60 minutes. I see we have 20 and we can see if we can reduce that some as well. Organizations, five minutes. Individuals, three minutes.

All persons wishing to testify before the Commission in this evening's case are to -- we ask that you register at the witness kiosk to my left, and fill out two witness cards. These cards are located to my left on the table near the door.

Upon coming forward to speak to the Commission please give both cards to the reporter sitting to my right before taking a seat at the table. When presenting information to the Commission please turn on and speak into the microphone, first stating your name and home address. When you are finished speaking please turn your microphone off so that your microphone is no longer picking up sound or background noise.

The decision of the Commission in this case must be based exclusively on the public record. The staff will be available throughout the hearing to discuss procedural questions. Please turn off all

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electronic devices at this time so not to disrupt these proceedings. Would all individuals wishing to testify please rise to take the oath?

Ms. Schellin, would you please administer the oath?

MS. SCHELLIN: Please raise your right hand.

[Oath administered to the participants.]

CHAIRPERSON HOOD: At this time the Commission will consider any preliminary matters. Does the staff have any preliminary matters?

MS. SCHELLIN: Only the expert witnesses that Mr. Avitabile wants to proffer.

CHAIRPERSON HOOD: Okay, Mr. Avitabile, let's go over your expert witnesses. Good evening.

MR. AVITABILE: Good evening. Good evening, Chairman Hood.

So we have three expert witnesses, all of whom have been recognized as experts by the Commission before. Brian Pilot from Studio's Architecture, Rick Perisi from Empall Friedberg Landscape Architects, and then Erwin Andres from Gorove Slade.

CHAIRPERSON HOOD: Okay. I only recall one, but my notes only say one, but if you affirmed that all of them have been -- we've done that before.

MR. AVITABILE: They have.

CHAIRPERSON HOOD: I don't think we will revisit that.

MR. AVITABILE: Okay.

CHAIRPERSON HOOD: Okay. All right. So we will accept all three of them as experts.

Okay. Any other preliminary matters?

Okay, Mr. Avitabile, you may begin.

MR. AVITABILE: Thank you. We'll do an abbreviated presentation tonight, focusing on what we think are the three issues that require a little bit of further discussion. We've got -- we're here tonight with the support of the Office of Planning, the District Department of Transportation, and Advisory Neighborhood 6D. So we'll just focus on the issues that are outstanding.

I think one issue is, you know, we submitted a couple of letters that have been received from some of the other bodies reviewing this, including the Commission of Fine Arts and the National Capital Planning Commission.

CFA and NCPC review here is different than your typical case where they have a mandatory review and approval process. Here, their review is advisory and each of these entities review the project and

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provide the General Services Administration with comments. GSA then considers those comments, you know, directs Forest City as the applicant to integrate the comments that it thinks are appropriate, and then makes a decision. Sometimes GSA may decide to not take into account all of the comments received by CFA, or NCPC, although they certainly do strive to listen to those entities.

And so in this case, you know, we've got a letter from CFA that generally endorses the design and suggests they'd like to see some things worked on. GSA has determined that they're content with the design as it's been submitted at this kind of conceptual 35 percent level. So we wouldn't necessarily go back to the Commission of Fine Arts.

So the design that's before you tonight reflects what GSA has approved at the 35 percent level and what we'd go forward with. And I know we've talked about it before in the past and it's in the written submission but to take a step back and review kind of the overall process here. This is property that is owned by the federal government. It's been authorized for disposition pursuant to an act of congress. Pursuant to that act of congress, GSA developed a master plan that was reviewed and

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approved by a number of parties. There were memoranda of agreement that were entered into with CFA and NCPC to provide them with a chance to review the design at 35 percent. That's how they're reviewing the design here.

I think NCPC also has a secondary role because it's a federal disposition. But it's that 35 percent review that happens because GSA owns the property and is disposing of it, that triggers their review.

So the end result here is, the design that's before you tonight is the design that we're proceeding forward with and we will be evolving from this design going forward. But there's no need to go back to CFA and make additional changes.

I can stop and answer questions on that point if there are any, or just continue on.

MR. MAY: Yeah, might as well. So, I raise -- I was concerned about this because the letter is fairly negative. I mean, yeah, it's a concept approval but they're questioning some of the basics of this design. So, I mean, has GSA seen that comment and they've just said, the hell with it, we don't care?

MR. AVITABILE: Well, I'll let Jason

characterize GSA's view of that.

MR. BONNET: So, yes, per the program -- oh, sorry. Jason Bonnet for City of Washington. Hello, everyone.

In response to your question, David is correct that they are consulting parties. We do go in front of them. One of the things we did address, and Brian Pilot from Studios was there presenting as well in front of CFA, is GSA and CFA, they do -- when GSA takes the comments they consider them, they review them as it relates to addressing the majority of their comments. I think when GSA and Forest City read the letter, it was more in, I would say, more in an approval type of voice.

They did have some questions as it related to the massing. I think during that presentation we addressed them, and then we readdressed them again with GSA prior to a 35 percent approval. And that's moving forward, GSA did issue the 35 percent approval letter. So as it relates to CFA, when we do go in front of these committees, such as CFA, NCPC, SHPO, and the ACHP, we meet with them not only at the 35 percent but at the 15 percent at the staff level. So we're very thoughtful and considerate as it relates to all comments.

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MR. MAY: Okay. So I don't need the generalities about working with CFA. I work with CFA all the time.

MR. BONNET: Okay.

MR. MAY: And I read those letters all the time. I have two projects before them. Next week I have an average of two of them a month. All right? So I know what they say, and when they say they give a general approval to the concept, that means that they don't like it very much and they have major concerns. Okay?

But they're also very polite about it and they say, you know, yeah, generally it's okay but these are the things you need to work on. And the things that they question are major questions.

Now, I don't know what their role is in the circumstance -- I mean, first of all, they are advisory on almost everything that they do, right? There are a handful of things where they actually have an explicit approval authority and unfortunately most of them are mine. But the real issue here is, you know, if it really just boils down to them providing sort of a courtesy review and GSA takes that into consideration, I mean, I can't remember the last time we did one of these because -- so I can't

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remember exact process here. But if that's essentially what you're telling me, that it's a courtesy review and GSA has signed off on it --

MR. AVITABILE: Yes.

MR. MAY: Okay. So do you have documentation of GSA's sign off? Was that in the package?

MR. AVITABILE: It isn't because we received it after the 20-day --

MR. MAY: Okay. So why don't you give us that, because that's the one that carries weight. And they come from OPDQ? Is that who it comes from? Mina Wright (phonetic)?

MR. BONNET: That's correct.

MR. MAY: Yeah. Okay. Well, and she knows CFA well too, so.

MR. BONNET: Right.

MR. MAY: And she's also very opinionated about design. I'm not really raising this because I have -- I mean, I tend to agree with the comments in the CFA letter, but you know, I also understand what our role is here, which is, you know, how does it conform with the requirements of our review?

And my concern is that if you get a letter like that and you're not able to get past it, then you could wind up having to come back here.

MR. AVITABILE: Right. And --

MR. MAY: Which is what we want to avoid.

MR. AVITABILE: Right. And we won't have that issue here.

MR. MAY: Okay. All right.

MR. AVITABILE: Thank you.

MR. MAY: Okay.

MR. AVITABILE: Okay. So that's the CFA status in that review. I think the second issue was the -- let's talk about the exceptional condition that's related to the entrance pavilion and the side yard. And let me start by saying, and we noted this in the initial application, we presented this as a variance because the new 2016 regulations, it's a little ambiguous as to what kind of relief you need when you come and ask for flexibility from the regulations in a design review case. At least my understanding was, as we were going through the ZRR process, was that what the Commission was intending to do in a design review situation was to make flexibility from the regulations relatively similar to a PUD where you can get flexibility from the strict application of the regulations and particularly when it comes to yards and courts, if it means a better design.

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Now, the language that's in the section that --

MR. MAY: No, no, no, you're playing it two ways here, because you know, if we're going to subject our design review to basically the strict application of what we set up for design review areas like the Southeast Federal Center, that's a, you know, that's a check in the box here.

When we talk about PUD, you know, there is a trad-off there.

MR. AVITABILE: Okay.

MR. MAY: And so it's a different --

MR. AVITABILE: That answer --

MR. MAY: -- kind of thing.

MR. AVITABILE: Well, that's what we --

MR. MAY: I mean, that's my opinion about it, but it's like you know, you're telling us one thing --

MR. AVITABILE: Sure.

MR. MAY: -- on the one case when it comes to the GSA review, and it's like that's where the real meat is. But --

MR. AVITABILE: Okay.

MR. MAY: -- you know, if I don't have as much weight as GSA in this then, you know, we're not

going to give you a pass on --

MR. AVITABILE: No, no, that's --

MR. MAY: -- the exceptional condition requirement.

MR. AVITABILE: Right. So, well, that was a separate point.

But then the other point I just would make, just in terms of the regulations and the way they've actually been drafted, so if this were a matter of right project in a, let's say, a mixed use zone, or even a high density residential zone, you could get relief from yard and court requirements as a special exception. That's one of the changes in the new regulations. But that actual requirement for special exception isn't in the Subtitle K. I don't know whether that was intentional or not. I just wanted to make that point.

Let's assume it's not. We'll address the variance test, which we did in our written submission.

So the variance test --

MR. MAY: So where is that, because I mean, I went over your submissions a couple of times and I didn't quite see answer. Which one was it?

MR. AVITABILE: It's in the initial filing.

MR. MAY: Okay. So --

MR. AVITABILE: And it's --

MR. MAY: So why wasn't that -- I mean, that wasn't satisfactory to OP because they looked at the initial filing, right?

MR. AVITABILE: You'd have to ask OP. I mean, we did our typical -- we walked through the exceptional condition and the --

MR. MAY: Okay.

MR. AVITABILE: -- practical difficulty. It's page --

MR. MAY: I was looking for something, you know, to follow up to --

MR. AVITABILE: Oh, I see. No.

MR. MAY: -- OP because OP's report came after your submission.

MR. AVITABILE: Right. We'll walk through it again now and see if we can -- it's pages 30 through 35.

So, from our perspective the exceptional situation you have here for our property, it's really a combination of its location, adjacent to Tingey Square, which is going to be this major new focal point at the terminus of New Jersey Avenue. The location also at the terminus of N Street, which is

an important east/west access. And then just the location of the property itself, this unique relationship next to 2nd Street, next to D.C. Water, and what will certainly be the unique situations we'll talk about when we get to the third item for discussion tonight.

So I think all of those do come together. This parcel is certainly uniquely situated compared to a typical piece of property that would, even if you had a relatively rectangular parcel, it wouldn't be adjacent to something akin to Tingey Square or in a historic zone where you're serving as a major terminus for an east/west road such as N Street.

So those are the exceptional situations that are present here. And as for a practical difficulty, and I'll look to Brian here to supplement this since he's the architect that's designed this and grappled with some of these difficulties.

So we're directed by the Historic Preservation guidelines that govern the Southeast Federal Center. One of the specific guidelines is to essentially evoke the original building 159 that sat on this property. And that building was actually generally set back from the property about 10 feet. So that's what we've done with this building here.

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So you're maintaining a certain historic distance between us and the pumping station to the west.

Now, meanwhile, we had SHPO, through their review, asking for the residential entrance which is really at Tingey Square, at the terminus of New Jersey, at the terminus of N Place to have a little bit more strength to it. And so that calls for a kind of pulling that residential pavilion out to make it stand out and serve as a focal point in a terminus.

And then the third challenge we have here is, and this is where the flexibility to locate this pavilion, somewhere between zero and five feet comes in, the part of the building to the north, Parcel L1, hasn't been designed yet. It may be set back 10 feet. It may be constructed all the way out to the property line. And that would affect where we'd want to have the residential entry.

Similarly, as we'll talk about, we don't entirely know what the design of second street will ultimately shake out to be, and exactly how much space there will be there for a public to come in off of Tingey Square.

So if there is more space there, then you may want the pavilion to be out at, or close, to the

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property line. If there's less space you might want to pull it back to the five foot to create a little more space in front of the building for pedestrian access and gathering.

I don't know, Brian, if there's anything else you'd like to add to that.

MR. PILOT: This is Brian Pilot with Studios Architecture. If it would be possible to jump to page 28 I think it would make it visually clear in the diagram. And to stress David's point, the idea here was not to have the residential lobby completely lost from Tingey Square, to have a presence.

This image here is a little bit stretched out on the screen, but you see the L1 parcel, which is the parcel that is a page right here, which is showing a setback there. As David mentioned this may go all the way to the property line here. And in its current configuration the residential lobby set five feet back still retains a presence. But if that L1 parcel does go all the way to the property line towards the west or plan north in this page, ideally that residential entry element would also go out to the edge of the property. So, to have an equal presence with the most probable location for the hotel lobby.

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MR. MAY: So why do we really need side yard relief here in the first place?

MR. AVITABILE: So typically a side yard in this zone needs to be a minimum of five feet. And so --

MR. MAY: I got that.

MR. AVITABILE: Right. And we're going to be --

MR. MAY: But why is it a side yard? I mean, isn't that a right of way?

MR. AVITABILE: Well, no. Well, again, it's partly the way the new regulations are written and things that weren't necessarily side yards before are now side yards.

MR. MAY: Yeah. Okay.

MR. AVITABILE: So this is this, because this is the front of the building, and that's the rear of the building, these become side lot lines --

MR. MAY: Got it.

MR. AVITABILE: -- and that's automatically a side yard.

Historically we might have just considered this to be almost a very large court.

MR. MAY: Right.

MR. AVITABILE: And then it could have some

variability to it. But the way side yards are designed, they're supposed to be generally continuous along the depth of the side yard. There's some language in the new regulations that suggest that a side yard doesn't actually necessarily need to be the full depth of the building. But then the problem you would have here is when you get to the residential entrance and it's less than five feet, it now no longer meets the minimum.

If we were to pull this back and agree that no matter what it would be a full five feet back or more, you don't have an issue because you now have a consistent side yard that's at least five feet deep.

MR. MAY: Wait. Say that one again?

MR. AVITABILE: So if -- sorry. This is extraordinarily complex for something relatively --

MR. MAY: Yeah, yeah, I know and it's like I'm -- I dropped off the train there for a second and I --

MR. AVITABILE: Sure.

MR. MAY: -- did get --

MR. AVITABILE: So if the pavilion were set back at least five feet --

MR. MAY: Yeah.

MR. AVITABILE: -- then the whole building is

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set back at least five feet and you now have a consistent five yard that's at least five feet deep.

MR. MAY: All right.

MR. AVITABILE: Similarly, if the pavilion, if we were able to just say, you know what, we're just going to bring the pavilion out to the property line, under the way the new regulations are written, we're actually still okay because they you don't have a side yard that's between zero and five feet. You just have the building here, this is the side yard, the part that is set back complies, the part that isn't set back doesn't, but then you're done.

So, it's the --

MR. MAY: That would be even more confusing.

MR. AVITABILE: I know.

MR. MAY: So, if you push it all the way out to the property line --

MR. AVITABILE: Then we don't need relief either.

MR. MAY: So if it happens to be somewhere between zero and five is where you wind up having to have relief.

MR. AVITABILE: Yes.

MR. MAY: So, and L1 is never going to need any relief because it has -- it's bordered on three

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sides by right of way and one side by property, right?

MR. AVITABILE: Well, I think L1 will not need relief because as we understand it they'd either set back 10 feet, in which case it's compliant.

MR. MAY: Yeah.

MR. AVITABILE: Or they'd come all the way out to the --

MR. MAY: All the way out.

MR. AVITABILE: -- property line.

MR. MAY: It's one or the other.

MR. AVITABILE: Right.

MR. MAY: This is a very strange one.

MR. AVITABILE: And if I've misspoken and Office of Planning wants to --

MR. MAY: Yeah, maybe -- well, we'll get them and give them a chance to try to explain it too. But that's it for my questions on this one.

MR. AVITABILE: Okay.

MR. MAY: I don't know where I -- what I think of it but we'll figure it out.

MR. AVITABILE: Okay. And now we'll speak to 2nd Street.

MR. MAY: And I don't know about the other commissioners, but my particular interest in 2nd

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Street is how does that relate to what we are deciding today, is the real question.

MR. AVITABILE: The answer is, it really doesn't because our building can work. No matter how 2nd Street is configured, whether we went with alternative one we submitted, where it's a full 43 feet wide, or we go with alternative 2 where some variation of that, which we're working on with D.C. Water where it's narrowed, our building works either way. The way we've designed the building, the way the residential entrances work, it actually doesn't really matter. It's something that can be worked out.

Frankly, the reason why we presented the alternatives to you was two-fold. One, there was some discussion about making sure you could understand the context of the building along that side, and so we wanted to provide that context.

And two, I think anticipating what D.C. Water might say, we wanted to at least present a little bit of background as to where we are to help you understand. But the answer is, it actually doesn't really matter. This isn't a PUD where we're necessarily proffering to do improvements on second street as a condition of this application. There are

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already multiple layers that require us to do something along 2nd Street. It's really mostly for informational purpose. And we also wanted to acknowledge the fact that it is important to D.C. Water and that we have been working on that issue, as well as important to DDOT and the Office of Planning.

I don't like to say that you all don't have jurisdiction over something because I think it is always important to look at things in total, but this a situation where this is public space and it's really up to DDOT to figure it out. It's also part of the master plan and so NCPC is in the process of taking a look at the revised amendments, to take a look at this so there is a separate process there as well in amending the master plan. That really doesn't impact your review of this this evening.

MR. MAY: Okay. I mean, I get -- we'll ask the Office of Planning the same question as well. But yeah, I'm having a hard time finding a connection and a, you know, as much as I love to dig into the details of things, there are certain areas where if it doesn't affect our decision making I'm not sure why we need to add that to the, you know, things we have to think about as we make decisions.

MR. AVITABILE: We agree. I think otherwise

I just wanted to note the Office of Planning report did have a couple of items that it requested, and so I thought it made sense to briefly run through that before we close if that's okay with you, to do that.

CHAIRPERSON HOOD: Yeah, also I want you to speak to all the issues, even the ANC, where they talk about --

MR. AVITABILE: Certainly.

CHAIRPERSON HOOD: Speak to all those issues so we can maybe cut some of our questions.

MR. AVITABILE: Perfect. Will do. So we'll start with the Office of Planning report. First, OP wanted to confirm that the L1 parcel would be a separate design review and we agree with that, it would have to come through a similar process when it's ready to do so, after its gone through the same processes that we went through in the federal reviews.

The presentation that we submitted tonight includes some updates to the plans that have been submitted. They include, on the site plan we have specifically shown the location of the preferred uses, and also documented how it meets the requirements for preferred uses to be certain percentage of linear frontage for a certain depth

along Water Street. We did include more information regarding the building materials, and we have samples here this evening. There are photographs that were submitted as well.

The landscape plans have been updated, with legends to identify the plant materials. We had, yesterday, submitted a signage plan to the Commission based on similar signage plans that had been recently approved. We were actually working on that based on the comments from the Commission a couple weeks ago, and then Office of Planning also strongly suggested it was a good idea, so we had a little bit of a head start.

So I think that reflects what you all have been looking for. It's a signage plan that's consistent with the signage standards that Forest City has otherwise put in place for the yards.

And then finally, there was request for the area of the green roof system, and looking through my notes here, it's shown in the plans with an area of approximately 26,184 square feet of green roof. I think the final number may vary as the building design is finalized. But in any event, the building will be able to achieve the GAR of 0.3 that's required. So we'll get there comfortably, I think.

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So those are the Office of Planning questions. And then of course they asked for the additional detail on the exceptional situation and practical difficulty, which we have discussed.

The DDOT report, there were a couple of items that DDOT asked for. They asked for two electric vehicle charging stations in the parking garage. We're happy to do that and we noted that on the parking plans, so we'll provide that.

DDOT also raised a question regarding the width of the sidewalk along 3rd Street. 3rd Street is on the east side of the building. It's currently six feet. DDOT would prefer to see an eight-foot sidewalk, and we've talked with them about this, actually over a few months now in multiple conversations.

We're certainly going to look at this. The quirk here is that that sidewalk is actually already constructed. The LID tree pits are actually already there, and the sidewalk is there, but we'll certainly work with DDOT to see what we can do. It's actually also a -- the whole streetscape for the yards has been reviewed and approved by DDOT, and so this was constructed pursuant to their approval. It was their approval in 2007. We recognize things change, and so

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we'll continue to work with DDOT to evaluate what we can do to further widen that sidewalk area within the other framework that we have to deal with.

And then I think the last thing that DDOT noted in their report was just continuing to work with them on 2nd Street, and their preference for 2nd Street to be the full 43 feet of width that's been dedicated as a public street by the council, and we of course would continue to work with DDOT on that, as well with D.C. Water. Ultimately it may require further discussions with other entities as well to resolve those issues, but that's all not something that the Zoning Commission will have to necessarily deal with. Again, whatever happens with 2nd Street, whether it's we have a 20 feet of public space or 43 feet of public space, our building works either way.

And then finally the ANC report. So, the ANC reviewed the project in September. We actually went to them as the regulations require, prior to filing. And at the initial meeting they raised a number of concerns, particularly with the western façade of the building. They really like the way the building steps down. But they didn't fully understand and appreciate, and I think we probably didn't do as good a job as we could have at explaining the intent

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behind the western façade and evoking the original building 159.

So we took those comments to heart, along with the comments we were receiving from CFA and NCPC, as we advanced the design. And when we went back to them in September, we actually talked through some of those issues. I think as their letter says, they were still not as enthusiastic about the design and they continued to encourage us to look at some other things. Ultimately we have to balance out the things that the ANC asked for, to look at things like balconies or a varied design with all of the other reviews that are coming into play that are pushing us to have a more solid rigorous design that evokes the original industrial aesthetic.

And so, I read the letter as kind of acknowledging, you know, we get that -- it reflects, I think, the dialog that we had with them. I don't know if Jason, or Brian, you want to add anything further to that since you were at those meetings as well. You don't have to.

All right. So those are those three letters that we had in the record, so I think that addresses that. We're happy to answer questions about those reports.

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CHAIRPERSON HOOD: Okay. You finish your --

MR. AVITABILE: That's it.

CHAIRPERSON HOOD: Okay. All right. Let's see if we have any additional questions up here.

MR. MAY: Yeah, so I did take the time now to read the letter from GSA, and GSA encourages Forest City Washington Explorer, the design and detailing of the two buildings, make to a simpler and more consistent treatment of a volumetric articulation and a more varied landscape treatment rather than the formal placement of trees in the building. So that's reminiscent of the CFA's comments.

So the question I have is, I'm less concerned about the actual design selections. It's just, in your opinion at what point do further modifications of the design warrant bringing this back to us? Or can you just like completely redesign the building and not have to come back to us?

MR. AVITABILE: No, I don't think that's the case at all. I think we're going to have a design that is approved by you, and you're going to approve these plans and the Zoning Administrator is going to look for the building to look like the plans that you've approved.

I think within that if there is, you know,

some variation in the landscape treatment, you know --

MR. MAY: I'm less concerned about the landscape treatment. It's the volumetric articulation.

MR. AVITABILE: So, I don't know --

MR. MAY: Whatever she means by that.

MR. PILOT: This is Brian Pilot again from Studios Architecture.

What I understand from the many meetings that we've had with GSA, that the sort of -- the overall concept has been really well embraced in this idea of stepping down. One of the elements that, you know, that me and the team there has brought up as some of the sort of curving elements on the inside of the massing. And then that begins to slightly sort of take away from the overall bigger concept, and we actually, you know, we've reduced those somewhat. There is still a few of those in place, and a lot of that has to do with the viability of the sort of corner units there, and making that sort of viable.

But you know, I think as we continue to finesse the detailing and design through design development, we were going to look through it, look at it through that lens, and ideally make the sort of

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tweaks necessary to strengthen the overall concept, which I think both GSA, and even in the meetings with CFA during the sort of 15 percent review and during the conversation we had with the Commissioners there, that the sort of general big idea was really, really well embraced. And I think as we go through this next level of detailing in our design development we'll be able to make those tweaks necessary to strengthen that initial concept it seemed everyone was very excited about.

MR. MAY: Okay.

CHAIRPERSON HOOD: Okay. Commissioner -- Vice Chair Miller.

MR. MILLER: Thank you, Mr. Chairman, and thank you for your presentation.

So, I appreciate you trying to balance various design criteria and the -- evoking the Building 159 design with that western façade. But it's not a very pretty façade and I'm not sure how much it should be evoked, personally. But I generally agree with the comments of the ANC that that façade should have more articulation, more terraces, balconies. I always want more terraces and balconies on a residential building. It looks like an office building on that side, which I think is a

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shame.

The terraces are great on the other side. And so I realize you're trying to make up now what you lost over there with your gesture to the waterfront and the open space, which is great. But I think the ANC's suggestions of more terraces or balconies or more randomized design, or break or change in the roofline, or changing colors or textures, or adding some boldness by use of color or modern materials, something would help break up that massing which just doesn't look very inviting or residential for my own personal subjective design point of view.

I don't know if you want to comment further on that, or if there's anything you can do without not evoking enough of the Building 159 that used to be there.

MR. PILOT: This is Brian Pilot again.

That's a good image. I think our intent was to never try to imitate Building 159. I think the goal was that there was a vestige of that history, but done in a much more contemporary expressive way. And we really looked directly at those historic Southeast Federal Center guidelines that address the sort of concrete structural bays, the rhythmic bays.

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These are sort of very specific criteria in those design guidelines.

In many ways this façade starts to mimic some of the surrounding buildings like foundry, lofts, which are adjacent to it, which has a similar concrete frame. It has a brick horizontal infill. Here we have sort of a textured vertical infill, large punch windows.

So we're very much trying to use the language that's specifically in those design guidelines. We went back and forth with a lot of different iterations of this façade, you know, and this was through the conversations with GSA and CFA. The strength of this particular perspective of evoking that height of the original Building 159 seemed to be sort of unanimously embraced by those different review agencies, where it begins to taper down to the scale of the D.C. Water building and the change that happens as the building faces the park. This architecture is really grounded on this big idea of being the vestige of 151. But then have -- 159, I'm sorry. But then having a really strong relationship and form towards the park, the geometry of the park. It really begins to transform there.

That is an incredible public space for the

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city. The scale on the other side steps down to the same scale as the building to the east, the foundry lofts, and then the lower lumber shed building in the public space that's there.

But the goal was at this, the corner that you see here, was to really evoke that history, and then it really begins to transform as you move closer to the water. And then was we develop these -- and you can see some of the more details of these two sort of particular elevations, and renderings only capture so much. As you see in some of the wall sections, we're really looking to create a lot of texture and department in both of these two very distinct façade treatments. And we think that the strength of the idea hangs upon these two different elevations being very distinct from one another, and they each have some of their own texture and language, but that strength between the two. And there very much is an intentional simplicity to each to help create that distinction between the two.

UNIDENTIFIED SPEAKER: [Speaking off mic.]

MR. PILOT: Sure. And here is a sort of several bay section where you see the setback of the, what I'll refer to as Skin B, which is the sort of upper one. And Skin A is the lower one. That's how

they're referred to in the packet.

Here, you start to see a bit more of the depth in the façade, as well as the sort of deep setback that we have on this elevation. It's clearly more dramatic, the stepping on the east side, where it steps down. But we also think both of the corners, there is an image of the southwest corner as well, where the glass façade creates the sort of highest point, or the proud of the building. And then another expression of Skin A is on the south façade as well.

So the building really sort of transforms as you move around it. I think some of the reactions are towards a sort of static view from the ANC as this sort of static view of the west. But this is a building that's really, I think, dynamic from a volume standpoint, and what really changes as sort of the public moves around it and sees it from different angles.

CHAIRPERSON HOOD: Let me just interrupt. Can you go back? That was one of my questions. Can you explain again, expand a little more for me on the Skin A and Skin B? You said it just a minute, but I missed it.

MR. PILOT: Okay.

CHAIRPERSON HOOD: I wasn't expecting to hear that answer -- question.

MR. PILOT: So we have two very distinct elevations here. This sort of top part, which is more of a sort of formed metal panel with a sort of expressed slab cover, creating some texture on the façade, as well as some large window openings.

And then the Skin A here is a concrete structural frame. It's a precast concrete which creates the sort of individual expressions here that are very rhythmic. Once again, this is directly out of the Southeast Federal Center Historic Design guidelines.

And then we have a textured panel that's an in-set, as well as large punch window openings. Once again --

CHAIRPERSON HOOD: What do those guidelines say? Help me. What do those guidelines say, because I'm trying to figure out what we're trying to achieve here?

MR. PILOT: Can you go to, it's -- go back.

CHAIRPERSON HOOD: And also don't we, on these design cases, don't we see materials?

MR. AVITABILE: We do have some of them right over there.

CHAIRPERSON HOOD: Oh, okay. We're used to them being back here. Okay. All right. We know you -- you take away what we normally do and it's a whole new game. No, I'm just playing. Thank you.

MR. PILOT: Yeah. So I'm going to just read some of these specific guidelines that are on page 9 here that, planned new buildings should incorporate large areas of glass, as well as brick, concrete, metal, and other appropriate materials in ways that reflect the industrial and maritime heritage of the site, but also allow for contemporary interpretation.

Important design features may include exterior expression of structural bays, articulated roof lines, large bay size, and maximum window area expressed through large window openings. And then the sort of other sort of key guideline here is the massing and scale of the new buildings in the historic zone will be complementary to that of the historic buildings utilizing design concepts such as rectilinear forms, repetitive structural bays, and strong horizontality.

And I think there is one other one I'd like to sort of quickly note here on the sort of Building 159. Planned new buildings should incorporate large areas of glass, as well as brick, concrete, metal,

and other appropriate materials in ways that reflect the industrial and maritime history heritage of the site, but also allow for contemporary interpretation.

CHAIRPERSON HOOD: Okay. So I saw all that. So, I guess the design we have here is Skin A and B, is something you interpreted as trying to meet what the guidelines are. And that's your interpretation and that's what you thought would be best suitable for this particular design. I'm just asking you a question.

MR. PILOT: Yeah, I think it's a combination of that as well as the direct reference to Building 159 and then that, this sort of skin here, the Skin A, is a contemporary expression of that original historical building on the site that played a major role in World War I and World War II at the Navy Yard.

CHAIRPERSON HOOD: Okay. All right. Thank you. Excuse me, Vice Chair.

MR. AVITABILE: And one other thing I just wanted to throw in here, and this is something that I know, when we met with the ANC we showed them and they appreciated it as a nuance that you don't get from the elevations. When you look at the perspective here you can see that the façade is

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recessed within the concrete frame so that does create some of the recessing that they were looking for. And so when you consider that along the elevation and the fact that the skin also changes, that does create some variation there as well.

MR. MILLER: Yeah, I appreciate that too and I appreciate the two skins and the setbacks. I just would like to have seen more of it, I guess, and balconies. But we can move on from that.

There was a statement in your prehearing statement which I just wanted to understand. Did this building -- this is L2, the L2 parcel, but it's for zoning purposes, it's going to be considered a single building with L1 because L2 is taking its height from Tingey Street, which is to the north of L1?

MR. AVITABILE: That's correct.

MR. MILLER: And what is going to be the meaningful connection that I just --

MR. AVITABILE: Sure.

MR. MILLER: I missed it if it was --

MR. AVITABILE: So, if you go to the floorplan here, it doesn't show completely here, but the buildings have a shared loading facility. And so through that shared loading facility there will be

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corridors that connect and allow for movement between the hotel and this building. So that's where the connection will be.

MR. MILLER: And that's above ground?

MR. AVITABILE: It's above ground. It's on the ground floor of the building. So that will allow for a movement, you know, fully above grade, heating and cooled, all the new requirements.

MR. MILLER: Okay. And just two other quick comments. I realize this is design review, but I still want to comment on two aspects.

I saw that you are striving for LEED Gold as a goal, and that your LEED scorecard actually showed LEED Silver, but the statement on the LEED -- on the page with the LEED scorecard said that you will be LEED -- at least LEED certified. So the commitment you're making is the absolutely minimum in terms of LEED, that's LEED certified. And even though the scorecard is showing Silver and even though your goal is showing -- your goal is to get to Gold, which is always, I think, all of our collective goals, so can you comment? Do you have a stronger commitment than what we've been presented so far yet?

MR. BONNET: Yes. This is Jason Bonnet, Forest City.

We are 100 percent committed to LEED Silver as a minimum. We're striving for LEED Gold at the moment. We are hitting LEED Gold, but we hope to 100 percent commit to that as we kind of progress through CDs. But we're pretty much there is what I'm saying.

MR. MILLER: Right. And the other -- well, that's great. Thank you. It would be best if you can get to the Gold if you can.

The other comment is really about affordable housing which I'll ask -- I'll wait on that question for the Office of Planning, to give that question to, about the -- it's exempt from the new penthouse habitable space regulations, which would trigger a 50 percent AMI affordable housing requirement. You are doing a 20 percent, 50 percent AMI affordable housing for the entire --

MR. AVITABILE: And that would include the units in the penthouse.

MR. MILLER: -- project, and that includes that space.

MR. AVITABILE: Right.

MR. MILLER: But I have a question further on that that I'll ask Office of Planning. So, thank you.

CHAIRPERSON HOOD: I don't have any

additional design questions. But I think, I'm not sure what my colleagues feel, but I think -- I don't know if you all are pressed to see some additional work, but I would like possibly for Mr. Turnbull -- I hate to put more work on somebody else, but with his background I'd like for him to also participate in this case. And I'm not sure if anybody was going to be asking for a bench decision tonight, but I would like to see Mr. -- I saw you looking up, so I'm sure you probably were going to ask for it. But I would like for Mr. Turnbull to participate in this case.

Let me -- I don't really have any additional questions, but let me ask, is Commissioner Meredith Fascett. Is it Fascett or Fascett? Fascett? Meredith Fascett representing ANC 6D. We have a letter here that she was going to be the spokesperson. Do we have anybody here from ANC 6D?

Okay. All right. Let's go to the Office of Planning and the District Department of Transportation.

MS. ELLIOTT: Thank you. Good evening, Mr. Chair, Members of the Commission. I'm Brandice Elliott with the D.C. Office of Planning.

First of all, as our report notes, we are generally supportive of this project and we have

recommended approval, and there were a couple of questions that I'll try to -- I'll try to remember and address, but feel free to remind me if I've forgotten anything.

First of all, we do appreciate that the applicant has addressed a lot of our concerns up front before the hearing. It's nice to see the sign plan and some of these other items up front. So, thank you.

The other thing is, we do acknowledge that they've done a lot of work and having to work across several different agencies, and we understand the difficulty in that. And that kind of leads me to the question of the side yard variance.

So, as far as we understand the regulations, if a side yard is provided it's provided for the length, the entire length of the side yard. So our understanding is that it would also apply to Parcel L1, which hasn't been -- which hasn't come forward yet.

But in terms of the residential entrance, I think we're still not quite understanding how the exceptional condition actually relates to the relief that's being requested. Overall, as noted in our report, we feel that the relief is fairly minor. We

don't have an issue from -- an issue with it from that standpoint. We feel that it meets the final two prongs of the test. We're just having trouble making that relationship between the arguments that have been presented and how it actually relates to the relief specifically.

So, I don't know if there's a way for the applicant to elaborate or, you know, maybe there is more to the argument that we're just not understanding. And then I believe there was a question about 2nd Street, and we didn't provide much of an analysis on 2nd Street. We feel that that is actually something that belongs in the -- that's something that's going to be discussed further down the road with the Public Space Committee. It certainly requires additional coordination. OP will be part of that coordination.

In our report we noted that we certainly have a preference for the wider right of way, but we would understand if in working with all of the affected parties, you know, to meet their needs if it is decreased in the future through the Public Space Committee process and any other processes that might be required in doing so.

I think that that's it, but I understand that

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there are more questions.

CHAIRPERSON HOOD: Let's do this. I'm going to do something that we don't normally do. Mr. Avitabile, if you could answer -- let's see if we can hash that out right now.

MR. AVITABILE: Uh-huh.

CHAIRPERSON HOOD: About the issue with Office of Planning. Unsure about the first prong. And let's see if we can take that off the table with everything else that's going on.

MR. AVITABILE: Sure. So I think first of all, one thing we can do to somewhat simplify what we're asking for there, I think -- you guys step on my foot if I'm misspeaking here. We can agree to just -- agree the pavilion will be out at the property line. So there will be no side yard for where the pavilion is. So this way we at least all know what we're dealing with. We're asking for the pavilion to be out at the property line while the balance of the building is set back 10 feet.

I do think, and this is where again, one of the things that's a little odd is that the design review regulations can sometimes be inconsistent, or the Subtitle K special purpose zone regulations can be inconsistent with the general mixed use zones.

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In the general mixed use zones there's a provision that says, if there's a side yard -- let me pull it up so I can read it. Yeah, any portion of a building set back from the side lot line shall be considered a side yard and not a court. Essentially the point is, once you set back a part of your building, you're subject to the side yard regulations, not the court regulations. So what you would have here is a building that's effectively what -- you're building the pavilion out to the property line, then you're setting back the rest of it. So once you set back the rest of it, that's subject to the side yard requirements.

For reasons that I don't fully understand, and there may very well be a good reason, that same language defining what is a side yard doesn't appear in Subtitle K. Subtitle K simply says, if there's a side yard it needs to be five feet. And I guess, then, you would go to the default world, which is the side yard needs to be the full length.

So under that scenario, even being out at the -- even with that's at the property line, we still need the variance because you've got side yard for some but not all the length of the building. So first, maybe hopefully that clarifies at least part

of what we're asking for. Maybe not. Okay.

Moving on to the exceptional condition. At the end of the day --

MR. MAY: Wait, wait, wait, before we move on to that, let's just talk this through a little bit further, which is, do you agree that -- I mean, what they're suggesting is that they would just move the pavilion all the way out to the property line. That does not -- will that negate the need for relief, or do they still need relief?

MR. LAWSON: Our interpretation is yes, they would still need relief.

MR. AVITABILE: Yeah, I think that having read it more carefully, I agree.

MR. MAY: Yeah, okay.

MR. AVITABILE: Okay. So then, so then we need the relief. We all agree to that.

The exceptional condition here, again, this is a property -- it's not inherent in the shape of the property itself. It's inherent in the location of the property in relationship to other properties, and that's what's unique, the fact that this property is adjacent to Tingey Square which serves at a terminus of a major axial street in the L'Enfant Plan, New Jersey Avenue. It also serves, this point

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in the property serves as a terminus of N Street which SHPO has told us they believe is a prominent east/west street, and so where this pavilion is located ends up being a pretty uniquely significant piece of property because it's essentially right at that terminal point.

And because it's there, this was actually something that came through the discussions with SHPO at both 15 percent and 35 percent, correct me if I'm wrong, that they wanted to see the building have a more distinct presence, a visual presence there, and that led to the evolution of the pavilion to the current design that's there.

And part of what makes that part of the building distinct is not just simply its design, but it being located at the property line versus set 10 feet back. I don't know if there's anything else you want to add to that, that that's particularly unique here. I think that's trying to tie it directly.

I understand what you're saying is that okay, yes this is exceptional, but what's exceptional about the pavilion not just being there, but being located 10 feet forward related to that exceptional situation of being at the terminus. I think bringing the pavilion forward makes it stand out more as a

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terminus. Is that correct, Brian?

MR. PILOT: That's correct.

MR. AVITABILE: Okay. So that would be what we would say is the exceptional situation. And I do think it's fair to add to that, you do have a further complicating factor, which is the hotel might very well decide to build itself all the way out to the property line. Now, we've confirmed that if they decide to do that they would need to get variance relief to do that because they're part of our single building. So that's an item that they would have to address when they come forward for their design review application.

MR. MAY: So, if it were to be a -- I mean, for them to proceed without relief it would need to be set back 10 feet? Or it would need to be set back five feet?

MR. AVITABILE: I think it would just be set back five feet.

MR. MAY: Right.

MR. AVITABILE: You can have a situation where part of a building is set back to the minimum rear yard.

MR. MAY: Right.

MR. AVITABILE: And this is --

MR. MAY: So part of your rationale for being able to move it forward was so that it was at least even with L1.

MR. AVITABILE: Right.

MR. MAY: So if they're limited to five feet out and you go five feet out, or you know, five feet setback or whatever, then you're at least even with it.

MR. AVITABILE: That's true. We would be even -- if they end up there, I mean, I think we understand that they're hoping to ask for the relief to be further out and they'd have to make the variance case for that.

MR. MAY: It's very hard to decide that in a vacuum, if that's really what it hinges on, so. I mean, because not knowing where the building actually could wind up, and you know, the relief granted in one case shouldn't really be the reason for the relief granted in another.

CHAIRPERSON HOOD: You're right.

MR. MAY: Yeah.

CHAIRPERSON HOOD: Anyway, I wanted to try that. I'm not sure.

MR. MAY: And I jumped into the process when we were still trying to sort out what the setbacks

would be. There was more that Mr. Avitabile, I think, wanted to say about the --

CHAIRPERSON HOOD: I think you had finished, right?

MR. AVITABILE: No, I --

MR. MAY: No, but he was finished.

MR. AVITABILE: -- think that's, I think that --

MR. MAY: You are finished. Okay.

MR. AVITABILE: I think I understand where you are on that.

CHAIRPERSON HOOD: But I wanted to find out, and that's what I wanted to do, I wanted to go back to Ms. Elliott and ask her did that help tighten the ship a little more or do we need to keep -- and I don't know if I need to put her on the spot. Or do we need to have some additional writings? If we do, make them soundbites. Ms. Elliott.

MS. ELLIOTT: I'm not sure that we're fully convinced.

CHAIRPERSON HOOD: Okay.

MS. ELLIOTT: I don't know if this is something we can continue working on or discussing.

CHAIRPERSON HOOD: Let's continue. You all can continue having that discussion. We don't want

to put it on the spot. I was just trying to cut some things off. But anyway, that didn't work.

Okay. Anything else? Any other questions or comments of Office of Planning? Yeah, I'm going to do DDOT next. I was saying, since we were doing this -- Vice Chair.

MR. MILLER: Thank you, Mr. Chairman. Yeah, I wanted to -- I just wanted to comment on the, you know, this is design review. I wouldn't want to comment on the affordable housing question. This came up in a case last week or the week before, I can't remember. I don't think it was the intent, at least me and I think, I don't know, all of the other commissioners, that there were going to be exemptions to the requirement for affordable housing, 50 percent affordable housing trigger, when there's penthouse habitable space.

In this case it's not as critical because the Southeast Federal Center project has 50 percent AMI requirement for 20 percent of its project of the whole entire project and of this building as well. So, but I was trying to remember what the -- so I wanted to make that comment because I think you're looking at that issue in the context of a possible amendment, looking at exemptions, looking at that

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exemption generally in other cases and in generally.

MR. LAWSON: We are. We weren't anticipating that when we looked at that we would look at that with respect to Southeast Federal Center. Southeast Federal Center was specifically discussed by the Commission when you adopted the penthouse regulations and why Southeast Federal Center was exempted from the affordable housing provision was specifically discussed. And the particular circumstances around Southeast Federal Center, if the Zoning Commission wishes us to take another look at that, we could, but that was not our anticipation.

MR. MILLER: All right. Well, just remind me what the requirement is, the affordable housing requirement is for penthouse habitable space. Is it -- I know it's the 50 percent AMI is what gets triggered, but how much? Is it a one-to-one of what's on the roof, or is it the eight to 10 percent that's normally required? And I think there's a contribution that's allowed.

MR. LAWSON: Are you talking about in Southeast Federal Center specifically?

MR. MILLER: No, I'm talking about in general.

MR. LAWSON: Oh, okay. I'm sorry. In

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general, IZ applies in a residential building. So the requirement would be eight or 10 percent, whatever the IZ requirement is that the penthouse space would kick in that additional requirement. The only difference would be, as you pointed out, that all of the space generated by the -- all of the affordable housing space generated by the penthouse area would be at 50 percent AMI under the current regulations.

There is also the opportunity for both residential and non-residential buildings that in lieu of doing that 50 percent AMI within the building, that it could be done as a contribution to a Housing Production Trust Fund and there we use the existing calculation, the calculation that exists for Housing Production Trust Fund contributions for, for example, additional office space gained through a PUD, or for additional density gain through a street or alley closing in those areas where it applies.

So, it's a calculation based on land area and the amount of square feet, and it's a little bit complicated, but it's the established calculation method.

MR. MILLER: Right. So I'd appreciate you going through that and that does remind me, refresh

my recollection of why we did exempt. Refreshes my recollection of some of the discussion, although of course this is bonus space that wasn't contemplated at the time that the development agreement was entered into with the Southeast Federal Center, and but they are doing the 20 percent and it's applying to that space on top which is double what would normally be required under the penthouse regulations. So I don't have as much of a concern as I did in that other case, and maybe other situations.

But so, I appreciate you going through that. Thank you.

MR. LAWSON: Thank you.

CHAIRPERSON HOOD: Okay. Any other comments or questions of Office of Planning? Okay.

Okay, Mr. Westrom. Let's go to DDOT.

MR. WESTROM: Great. Good evening, Chairman Hood and Commissioners. Thank you. I am Ryan Westrom from the District Department of Transportation and I would observe that the applicant has worked very closely with DDOT to ensure that the appropriate comprehensive transportation review was conducted for this project, documenting the lack of adversity impacts from this particular development.

As the applicant noted this evening, DDOT

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would agree that additional design work for the surrounding public realm is still necessary and we anticipate further dialog with the applicant as well as OP and D.C. Water to address these design elements. DDOT however, has no objection to the requested project and looks forward to continuing to work with the applicant.

CHAIRPERSON HOOD: Any questions up here of DDOT? Vice Chair?

MR. MILLER: Thank you, Mr. Chairman. So usually when you comment on a transportation demand management program, you almost always have it somehow worked out with the applicant that there be a car share or a bike share annual membership for the new residents. I'm not sure I saw that here. I didn't see it. I'm not sure I saw that in your comments, I'm not sure I saw it in the transportation report. But maybe it's there and you can just comment on that.

MR. WESTROM: That is correct. That is often the case. Many of our cases do involve that as one of the TDM elements. In this particular case we did not feel that it rose to the level of requiring that as part of the overall TDM program. We did dialog quite a bit about the TDM program with the

transportation consultant and the applicant directly.

One of the things that is noted within the report that's not within the TDM package is they have agreed to include a bicycle maintenance facility. A small measure that I think we agree adds to the non-auto appeal for the building. And we think that with the components in the TDM program that they've proffered that it's adequate for the building considering what the impacts are for this building.

MR. MILLER: Okay. Thank you.

CHAIRPERSON HOOD: Any other questions? All right. Let's see. Mr. Avitabile, you have any cross-examination of either Office of Planning or DDOT?

MR. AVITABILE: I do not.

CHAIRPERSON HOOD: Okay. Let's go to the ANC report again. Anyone here representing ANC 6D?

They have a letter that they -- which is our Exhibit No. 12. I believe that's the most current. Yeah. And it basically goes on and says, it's regularly scheduled and properly noticed meeting on September the 12th, 2016 with a quorum being present, and the quorum being four commissioners of Advisory Neighborhood Commission voted six to zero to move this letter forward. They were enthusiastic, the way

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I read the letter, about the design on the eastern side.

Again, we talked about the western side. But one thing I didn't hear and I may have missed, one of the things that we're concerned about was the birds flying into the glass. Was that dealt with?

[Pause.]

CHAIRPERSON HOOD: If you don't have it now, let's --

MR. WESTROM: We'll look at that.

MR. AVITABILE: Okay. Yeah, let's look at that and let us know about that. Let's get back to it. Anything else on the ANC report? Okay.

Let's go to any organizations and persons who are here in support?

MS. SCHELLIN: No one signed up.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: On the kiosk.

CHAIRPERSON HOOD: All right. Well, I'm going to call for it anyway. Organizations or persons who would like to testify in support?

Any organizations or persons who would like to testify in opposition? In opposition? Come forward. That's why I always go ahead and call anyway.

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Looks like we've got quite a bit of opposition. I thought --

MS. SCHELLIN: I think this is the D.C. Water group and they made their submission this afternoon, late this afternoon. So it is in the record. Should be the last exhibits.

CHAIRPERSON HOOD: Okay. You can have a seat. Unfortunately, I do work during the day so I probably didn't look at that part. That's okay. That's okay. Thank you.

It's loaded, Ms. Schellin?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Okay.

UNIDENTIFIED SPEAKER: We'll go right to the PowerPoints.

MS. SCHELLIN: Yeah, it came in like at 6:00, so --

CHAIRPERSON HOOD: Six o'clock?

MS. SCHELLIN: Yeah.

CHAIRPERSON HOOD: Oh, that was timely. We started what, 6:30? No, just having fun with you. I just knew we were getting ready to adjourn.

All right. Once you all are ready you may begin. If you could just give it to the young lady down on the side? Thank you. Turn your mic on, Mr.

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Donahue (phonetic).

MR. DONAHUE: My name is Ed Donahue representing D.C. Water. With me at the table, Mr. John Cassidy and Mr. Henderson Brown, also with D.C. Water.

Our intention is to go through briefly a PowerPoint that we submitted to you late this afternoon. And perhaps what Mr. Cassidy is going to focus on is some photographs we wanted to make sure that you had an opportunity to review. There's been some discussion about 2nd Street, the Office of Planning, and DDOT has said that they look forward to continued dialog. D.C. Water's concern is that dialog has come kind of late in the process. Quite late in the process. And D.C. Water's real concern is that the reduction in the size of the campus, and more specifically, the reduction on 2nd Street, was going to have an adverse impact on the continued operation.

And I'm going to ask Mr. Cassidy to address that. I'm going to quickly go through the preliminary slides here if I can. Maybe over here, John.

So, Mr. Cassidy is going to address the D.C. Water operational spatial requirements, and more

particularly the negative impacts and the DDOT recommendations for 2nd Street. We're going to discuss the two alternatives that have been proposed. We had hoped that DDOT was going to address those, but we're going to go over those and talk about the more preferred solution.

Next, John.

MR. MAY: Can I -- before you get too far along can I ask you to try to address why you think this is subject to our review, why it's a matter of discretion for us as opposed to simply, you know, you have this issue or this disagreement with them. How does it relate to the zoning case?

MR. DONAHUE: We understand that this is design review and we understand that what we're talking about is in the Public Space. We've also heard a number of times that this is going to be the subject of further discussion.

Inasmuch as Forest City has proffered some public space improvements and has suggested some design amenities that are attendant to their project, we thought it was appropriate to raise that with you. I can quickly get to the pictures that I think will demonstrate the point I'm trying to make.

MR. MAY: Well, that's fine. I just want you

to keep that in mind as you make the presentation is, how does it relate to our decision making?

MR. DONAHUE: Understood. John, why don't we go to the slide that we were talking about, which is here. Or the one before that, maybe. And discuss the campus and then the reduction of the campus.

MR. CASSIDY: I think if you look at this aerial map, this map basically shows main pumping station. The Forest City property that you're debating or discussing tonight is on the top of the page. Main pumping station is a critical piece of infrastructure of D.C. Water that serves basically with the entire service area, serves the District of Columbia, portions of suburban Maryland and Virginia. It handles approximately a third of the total waste water that comes into Blue Plains, so it's a very critical piece of infrastructure.

In addition to handling that waste water, it handles the storm water. The sewers that run into this area are lower than the river, so the pumping station is needed to basically lift that storm water out. If that does not occur, flooding can occur in homes and businesses in the District.

The areas that's highlighted in blue is basically the current boundary of the D.C. Water

campus. The items that are highlighted in orange and red are basically the large infrastructure that exist on the property. The little cross-section on the lower left-hand side shows a picture of a woman who is about, who measure about six feet tall. That gives you an idea of the magnitude of the sewers that are there.

And I guess the main point we're trying to make is that this infrastructure here is very large. D.C. Water has obligations to basically operate and maintain that facility in a 24 hour a day, seven day a week basis. There's things that need to be done daily, weekly, monthly, and there are large construction projects. Given the physical size of the equipment it's not really practical to reduce the size of the land available for the equipment needed to access and maintain that facility and still keep it in operation and reliable on a regular basis.

Go to this other side here. I think it's slide nine. An example of the type of things that we need to do on a semi-regular basis is, in order to maintain the equipment, we often have to install bypass pumping. Those are very large temporary piece of equipment that are typically put in the front side of the pumping station, pump the sewage around,

basically to maintain the capacity of the facility while you work on the facility.

As you can see in this diagram, we kind of laid it out. In order to actually fit that equipment there we actually need the space on 2nd Street where Forest City is proposing to reduce the size of the property.

I guess the main point is that there's not really a lot -- we don't have a lot of space in this facility. The reduction in size of the campus that's being proposed is the gray. The gray is the land that would be turned back.

Once that is turned back there is very minimal size to operate a very large pumping facility that we're required to maintain in service 24 hours a day, 7 days a week, and giving up property will not allow that to happen.

MR. DONAHUE: John, let me ask you to just briefly go to the next slide, which is the Option 1, Option 2. So slides 11 and 12. Yeah. Go back. Can you discuss the two options that are being proposed?

MR. CASSIDY: I think the Option 1 basically has a fence line being put very close to the building with a small turn-around area in order for D.C. Water to access trucks, to access one of the roll-up doors.

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The deficiency with this option is that it would not allow equipment or staging to occur on the area that D.C. Water currently maintains, and the area on the right-hand side of that red line. The area is basically too close to operate equipment.

And to give an example of that, if you go back to the prior slide, we kind of laid out the size of a typical crane that's normally used at that facility. That's that yellow dot. The physical size of that crane extends pretty much all the way up to the boundary. There's literally no room to put a large piece of equipment there if the Option 1 alternative is adopted, because there just isn't physical space there. And the size of the pumps in that facility are literally bigger than the height of this building and there's really no room to do that absent having that space that's there in the facility.

MR. DONAHUE: And then briefly, Option 2.

MR. CASSIDY: The Option 2 alternative is basically maintains the minimum space requirements that D.C. Water needs, very similar to the existing fence line. I think the attractiveness for us to that is that it maintains the area we need in order to perform a critical operation and maintenance on

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the facility. And if that space is not available, you know, it subjects us to consent to agree fines, fines from EPA, and we just can't maintain good water and sewer service in the District.

MR. DONAHUE: And then go to the last slide.

So, Mr. Chairman, Members of the Commission, we wanted to raise these issues with you because as I said, the dialog, the meaningful dialog at least with D.C. Water has come rather late in the process. And so while this is your public hearing, I know it's not a PUD hearing, it is your design review hearing but we did hear a lot about public space improvements and public space discussions to DDOT and OP and public space committee, et cetera. So we wanted to make you aware of some serious and ongoing concerns that D.C. Water has.

We've expressed those in a letter that we filed, admittedly, late today, and we have the graphics here we submitted for the record. So, we want to make sure you were aware of these things.

CHAIRPERSON HOOD: Okay. I'm of the mindset that this is germane to our process. I think this is -- this is my opinion, I think this is very important. Especially when you talk about providing more of the services to the City.

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So I'm just curious, how did we get here without you all being at the table? Or that's -- what's going on? I don't understand this.

MR. DONAHUE: I might ask Mr. Henderson Brown to respond to that.

MR. BROWN: We have been working, I would say in earnest, with Forest City for the last six months or so. And the issues regarding 2nd Street have actually gotten consideration in the last month. What has happened is, you know, Forest City had an arrangement with the District of Columbia to reduce the size of the campus. The way we're set up is that the District of Columbia and we are governed by two, you know, different governing bodies.

So the arrangement was made to provide for development for Forest City on the gray area on the slide that you see here, which effectively reduced our campus. And we're working to make that development happen. The problem is because we are reduced to less than half of our former campus, we don't have any more space to give up. And the idea of continuing to discuss these things without some sort of guidance from the regulatory authorities is just an opportunity for us to continue talking.

And I've got confidence that Forest City and

DDOT will be able to see their way clear to support a less obstructive view of 2nd Street than the 43-foot-wide public space suggestion that DDOT has suggested to be paramount in their considerations.

I'm hopeful that we can do that, but because this is a public proceeding we felt that it's important that those conversations receive the light of day, you know, and get out of the conference room and become a consideration that's important to the ultimate development of this area of the city.

CHAIRPERSON HOOD: How much time is that going to take?

MR. BROWN: That, I think we heard this afternoon that the Office of Planning and Forest City and we favor the less wide alternative to the configuration of 2nd Street.

The Department of Transportation and we met this week and committed to continue to have those conversations. As I'm looking at the score card, three of the four people or entities that have an interest in this situation can see a way clear to getting to an agreement.

CHAIRPERSON HOOD: Okay. Let me open it up. Any questions or comment? Commissioner May?

MR. MAY: So I'm sorry, three out of four

agree on Option 2?

MR. BROWN: Well, some version of Option 2, yes. Yes.

MR. MAY: And who is the outlier?

MR. BROWN: The Department of Transportation. I don't want to call them out any more than I have.

MR. MAY: No, that's okay.

MR. BROWN: But, I think they're open to continuing dialog with us.

MR. MAY: Uh-huh.

MS. ELLIOTT: Excuse me, Mr. --

MR. BROWN: Mr. Brown. I'm sorry. Henderson Brown.

MS. ELLIOTT: Thank you. OP's, and maybe it was misunderstood, but in our presentation and in our report we actually reiterated that we have a preference for the wider right of way over the smaller right of way. Albeit if DDOT and Forest City and D.C. Water are able to come to an agreement on a, you know, a reduced right of way, we would work with them on that.

CHAIRPERSON HOOD: Okay. All right. Any other questions up here? Okay.

Does the applicant -- yeah. Applicant, you have any cross? Okay. All right.

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Looks like there's going to be some more conversations before this Commissioner moves forward.

Let me just say, again, Mr. Donahue, how much time you think you all might need, because it sounds to me like you're close. Office of Planning is -- how much time because that's a very serious issue, water and the EPA finding and all that. That's a big deal, trust me. I worked on Flint, so I know. Okay?

MR. DONAHUE: Well, we would be willing to commit to a 60-day process and come up with an answer. I would prefer a shorter period of time.

MR. MAY: Nobody ever comes here and tells 60 days. I mean, it's like two weeks, three weeks.

MR. DONAHUE: Two weeks works for us. Yes.

CHAIRPERSON HOOD: Well, I was thinking more of 30 days.

MR. DONAHUE: Okay.

CHAIRPERSON HOOD: Because I do know that the -- I do know how some -- I work in the government so I better not bash the government, but I do have some operations take to go through all the bureaucracy and get the necessary approvals. And I understand that. And I do know that people are going to move forward. But then again, this is talking about the water for the citizens of this city, so I want to make sure

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that we move forward.

And as far as I'm concerned, this is part of our -- what you're telling me is part of what we need to deal with. Okay? That's just my opinion. I don't know where my colleagues are on that, but that's my opinion.

MR. MAY: I'll give you my opinion.

CHAIRPERSON HOOD: That's fine. I gave mine.

MR. MAY: I don't think it's relevant to us. I mean, you know, it is something obviously that needs to be solved and it is something that's vitally important to the city. But you know, our review is defined by the regulations and I don't see how it falls within the regulations.

But, you know, you'd need to have three of us in favor of approving before we can go anywhere, so you only need, you know -- there are only three of us here. So as long as you've got one then --

CHAIRPERSON HOOD: Well, I've already asked --

MR. MAY: -- we're not going anywhere.

CHAIRPERSON HOOD: I've already asked Mr. Turnbull to participate.

MR. MAY: Right.

CHAIRPERSON HOOD: Because of design anyway.

So, he needs to read the record. So that's already adding some time to it anyway. And I do think it's germane. Vice Chair, did you want to say something?

MR. MILLER: No, I'm looking forward to hearing the applicant's rebuttal. But whether it's in our jurisdiction or not I agree with you that it's an incredibly important issue and if we have any leverage to help get that resolved, we should use it.

CHAIRPERSON HOOD: Okay. Well, I appreciate that. So, anyway. All right. Thank you. We're going to hear some --

MR. DONAHUE: Chairman, thank you for your time. I would just mention in closing that the discussions with Forest City included a phone call until about 5:30 this afternoon. So the discussions are ongoing.

CHAIRPERSON HOOD: Okay.

MR. DONAHUE: And we're very optimistic in keeping that dialog open. So we appreciate your comments.

CHAIRPERSON HOOD: Mr. Donahue, I'm going to be looking for you in 30 days to --

MR. DONAHUE: Yes, sir.

CHAIRPERSON HOOD: -- make sure that this works.

MR. DONAHUE: Yes, sir.

CHAIRPERSON HOOD: Okay. All right.

MR. DONAHUE: Thank you, sir.

CHAIRPERSON HOOD: All right. Thank you.

Mr. Avitabile, you can come back. I don't know how much rebuttal you're going to have but --

MR. AVITABILE: Not too much.

CHAIRPERSON HOOD: Okay. We're going to make it work. That's what we're going to do.

MR. AVITABILE: So first, in the interest of trying to reduce the number of issues we're dealing with, we've been talking about the pavilion and I think the point about approving our pavilion being less than five feet before we know where the L1 building might be is a very good one. So we'll just go ahead and keep it at setback as five feet so it complies, not ask for the relief.

And then depending upon what happens with the hotel, if we need to come back and request a modification, we'll do it at that time. So that addresses that issue.

So I do feel, and I don't like to have to do this, but I feel that it's important for the Commission to at least understand the full history of what's going on over here. There have been actually

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extensive discussions involving this part of this area between the Southeast Federal Center and the pumping station that go back I'd say at least 10 years or so, that go back to the original street closing and dedication that governed the creation of the street network within the yards. And there was extensive discussion at that time that involved D.C. Water, they participated actively in the street and alley closing process, or I should say the street closing and dedication process.

There were actually extensive discussions where DMPED was involved in trying to mediate a solution. I think on the one hand we are -- this is a situation that does require balancing D.C. Water's critical infrastructure needs with the other important infrastructure needs of creating this new neighborhood as mandated by congress.

So, there was extensive discussion at that time. There was actually Parson Brinkerhoff (phonetic) was engaged by DMPED to kind of look at the issues and decide where the line could be, that we've submitted a package with some of this information. So Tab A there is a letter that was prepared by DMPED, by your former colleague, Mr. Schlater, explaining how Parsons had been engaged to

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kind of look at this issue and figure out where the appropriate boundaries could be struck.

There was an attempt to negotiate an MOU at that time. It was not finalized, to our knowledge anyway. But the council ultimately did approve a 43-foot right of way, and I mean, to DDOT's point, I think that's DDOT's point, is they've been entrusted with maintaining this public space. And so that's what I think they're struggling with in considering the alternatives that we're willing to live with in narrowing it.

So then I think continues, continuing also in this tab, we've just provided you with copies of the street closing and street dedication plats as Tabs B and C. You know, notwithstanding what you've heard, I think you've seen Forest City and D.C. Water here together often enough to know that we have been working together for a long time in trying to balance out these critical needs.

One of the areas where we've been working with them has been in this kind of long-term control plan that they've been working through, and we've been working with them to provide space for them to work on within the Southeast Federal Center, working around what we do. Jason, I know you can speak

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directly to some of the challenges that we've had, but we've worked through with D.C. Water in reaching agreement. And I think many times we've reached agreement with them, if you want to speak briefly to that.

MR. BONNET: Jason Bonnet, Forest City.

Yeah, I can just speak in regards to the overall yards project, just a quick summary. You know, we've completed over a half dozen projects there. We've obtained approvals from agencies such as U.S. Navy, Army Corps of Engineers, WMATA, as well as D.C. Water. The Parcel N and Parcel M Buildings were all developed over D.C. Water sewer lines. We completed both those projects successfully working with D.C. Water.

And also to note, similar to 2nd Street, or kind of in reference to 2nd Street, Forest City and D.C. Water worked together as it relates to infrastructure in Tingey Street and Forest City received an award of excellence from D.C. Water for a public private initiative on that street back in 2014. So there is a history. Not just the one that David is speaking of going back 10 plus years, but also a recent history of us working well together.

MR. AVITABILE: So building on that, when

Forest City started to develop the plans for Parcel L, and this was mentioned in our earlier written submissions, we didn't just start talking to D.C. Water a couple months ago. We went to them over two years ago when we first started to look at developing the property. And because we knew at that point 2nd Street was going to be a vehicular right of way, and D.C. Water said look, we're concerned about the sewer underneath. Any way that you can convert that to a street that maybe doesn't have a public vehicular traffic running over it? They still need to have the trucks come over it, but not have it as a vehicular street.

We said, you know, we'll talk to DDOT and OP about that. We met with OP and DDOT and we all agreed, you know what, we can make this a pedestrian vehicular street.

And so from that point we proceeded to design the building, anticipating this to be a pedestrian muse. Now, issues weren't raised at that time about it being too wide. Those have come up since then in more recent discussions and that's fine. We've worked with them in earnest. That's why we've proposed the alternative where we narrow it. We've, on the one hand I think, tried to express to D.C.

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Water why, look, is there any way that we can make this work while maintaining the 43-foot right of way that the council has already created, but on the other hand have worked and tried to work with DDOT to see, well what could we do to narrow it in a way that you still find acceptable? We're completely invested in trying to reach that compromise.

But it is very complex. It involves working with multiple agencies and jurisdictions. And particularly if the street is going to be narrowed, that will eventually potentially involve the council taking action again to narrow the street that they dedicated as 43 feet wide.

So this may not be something that necessarily can be completely resolved and tied up in a bow in 30 or even 60 days. We can certainly commit to work with D.C. Water as we have been, as we have a history of doing over the last 10 years in this area, to balance their needs and ours. But I think holding this particular building's approval up over a more critical piece that frankly involves, at some point, potentially someone within the District, whether it's the Mayor, the council, or both, balancing these competing issues between DDOT and D.C. Water and saying, okay, this is how to resolve it, that's

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ultimately right.

Certainly appreciate the role that you all can play in encouraging everyone to work together. I think what's important here is we are already working together and we're committed to continuing to do that. But thank you.

I don't know that there were any other outstanding issues that we needed to address. It sounds like Commissioner Turnbull is going to review the record and participate, so I certainly won't be asking for anything like a bench decision tonight. We can certainly respond in a post-hearing submission to the ANC's request about the glass windows.

On the issue of the affordable housing and the penthouse, Commissioner Miller, the only other thing I wanted to note is the exception for the Southeast Federal Center is limited to residential rental buildings because those are the buildings that are required to provide the 20 percent at 50 percent. When Forest City partners with someone to do a condo building they are subject to that requirement. And in fact that's going on right now in a matter of right development where they will be providing the linkage payment for a condo building that will have penthouse space.

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So I think there's a balance here and this is a unique situation because there's another requirement. With that I think we're happy to continue to answer further questions.

CHAIRPERSON HOOD: Any other questions up here? Okay. Not seeing any.

Okay. Mr. Avitabile, we will look forward to the progress in 30 days and I appreciate you not saying that this was not in our jurisdiction. We have different accounts of how we feel this design review which affects another area, and I think that is within our jurisdiction and we'll deal with that, so anyway, be as it may, I just feel like I'm hearing two different stories. But we'll see what happens now that it's on our radar and we go from there. If it takes the mayor and the council to step in, then that needs to happen because we're talking about water for the residents of this city. Okay?

So anyway, Ms. Schellin, do we have any dates?

MS. SCHELLIN: Yes. So, if we're going to give 30 days then that means that this will come back in December. So, 30 days would put them at November 14th. So we would look for a submission from Mr. Avitabile. And do you want a submission also from

D.C. Water, or just from the applicant?

CHAIRPERSON HOOD: No. Yes, D.C. Water also.

MS. SCHELLIN: Okay. And do you want OP and DDOT to be able to respond to those documents?

CHAIRPERSON HOOD: Yes. Everybody who was called.

MS. SCHELLIN: Okay. And the --

CHAIRPERSON HOOD: Four out of four, or three out of four, whoever it was.

MS. SCHELLIN: ANC, OP, and DDOT. Okay. So then if we could have those submissions by 3:00 p.m. by on December -- I'm sorry, November 14th. And then the ANC, OP, and DDOT can respond by 3:00 p.m. on November 21st. And then we will put this on our December 12th meeting, draft findings of facts, conclusions of law, so due by the 21s of November. And that's it.

CHAIRPERSON HOOD: Okay. Is there anything else?

MR. AVITABILE: Just to clarify, the two items in the post hearing submission would be the glass windows for the ANC and then the status of discussions with D.C. Water, correct?

MS. SCHELLIN: And I --

CHAIRPERSON HOOD: Yeah, I know that the

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windows.

MS. SCHELLIN: Mr. Miller also wanted -- said he'd prefer LEED Gold. Were you guys going to consider that?

MR. AVITABILE: We can clarify that.

MS. SCHELLIN: Okay. That's all I had too.

CHAIRPERSON HOOD: Okay. We all on the same page?

All right. I want to thank everyone for their participation tonight and this hearing is adjourned.

MS. SCHELLIN: Thank you.

[Hearing adjourned at 8:04 p.m.]