

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Zoning Commission

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9 Special Public Meeting
10 1453rd Meeting Session [4th of 2017]

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14 6:02 p.m. to 7:04 p.m.
15 Thursday, February 16, 2017

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19 Jerrily R. Kress Memorial Hearing Room
20 441 4th Street, N.W., Suite 220 South
21 Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6 PETER SHAPIRO, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of the Attorney General:

12 ALAN BERGSTEIN

13 MR. COHEN

14

15 Office of Planning:

16 JOEL LAWSON

17 ELISA VITALE

18

19 Department of Transportation:

20 JONATHAN ROGERS

21

22

23

24

25

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

2 CHAIRPERSON HOOD: This special public
3 meeting will please come to order. Good evening,
4 ladies and gentlemen. This is the public meeting of
5 the Zoning Commission for the District -- special
6 public meeting of the Zoning Commission for the
7 District of Columbia. My name is Anthony Hood.
8 Joining me are Vice Chair Miller, Commissioner
9 Shapiro, Commissioner May, and Commissioner Turnbull.
10 We're also joined by the Office of Zoning Staff, Ms.
11 Sharon Schellin, as well as the Office of Attorney
12 General, Mr. Bergstein and Mr. Cohen, as well as the
13 Office of Planning, Mr. Lawson and Ms. Vitale, as
14 well as the District Department of Transportation,
15 Mr. Rogers.

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

21 Please be advised that this proceeding is
22 being recorded by a court reporter. It's also
23 webcast live. Accordingly, we must ask you to
24 refrain from any disruptive noises or actions in the
25 hearing room, including the display of any signs or

1 any objects. Please turn off all electronic devices.
2 Does the staff have any preliminary matters?

3 MS. SCHELLIN: No, sir.

4 CHAIRPERSON HOOD: If not, let us proceed
5 with the agenda. We have one case for our public
6 meeting, Zoning Commission Case No. 16-02. We have
7 been provided -- we're going to take this approach
8 and if my colleagues differ we can do that, and other
9 issues, please raise them. We're going to take our
10 time, going to take this approach, and we're going to
11 address -- let me back up. We have been provided a
12 worksheet from counsel to help us frame some of the
13 ANC issues, and I'm going to use that. It's been
14 outlined even though the ANC report says two issues,
15 but under those two issues there were a lot of
16 subsets within those issues.

17 So, I would like to use that document and I'm
18 calling out and we will talk about what resolve we
19 see or how we think we can resolve it. So, I want to
20 really address ANC 6D's issues, and I really want to
21 appreciate ANC for meeting twice, as we asked them to
22 do at the hearing, to go back and see if we can come
23 closer to some of the things that have gone on with
24 what's being projected in that area.

25 So, I want to commend the ANC and all those

1 who helped us formulate this so we could make the
2 best decision possible for the residents in the
3 District of Columbia.

4 Okay, colleagues, any disagreement in moving
5 in that fashion?

6 [No audible response.]

7 CHAIRPERSON HOOD: Okay. And I'm going to
8 allow time because going back and forth and trying to
9 remember is quite a bit. So, I would ask the
10 audience to indulge us as we try to work through
11 this.

12 Okay. Let's start off, excuse me, with
13 environment health issues. One of the issues, and I
14 have the ANC report in front of me. One of the
15 issues is the ANC basically, on the environmental
16 issue, still is discouraged that neither the District
17 nor PEPCO, I guess slash, Exelon, has matched the
18 applicant's \$50,000 contribution. And, does anyone
19 have any concerns or comments on that? And that's in
20 the first part of their letter.

21 MR. MAY: You know, I don't know that this
22 necessarily requires any action or response on our
23 part. I mean, I guess we could share some
24 discouragement but it's not -- I don't think it
25 really bears on our decision making, whether or not

1 that other contribution is made. It's really about
2 what the applicant proffers.

3 MR. SHAPIRO: Agreed.

4 MR. MILLER: Mr. Chairman, on that point.
5 This is the \$50,000 contribution to Breathe D.C.?

6 CHAIRPERSON HOOD: Breathe D.C.

7 MR. MILLER: The only comment I had was that
8 instead of being prior to the issuance of a C of O,
9 that if that's the way it still reads in the draft
10 order, that it should probably read prior to the
11 issuance of the building permit, because this is
12 related to construction.

13 CHAIRPERSON HOOD: Okay. I think we can note
14 that correction.

15 MR. MILLER: Okay.

16 CHAIRPERSON HOOD: Any disagreement up here?
17 Mr. Bergstein, is that --

18 MR. BERGSTEIN: [Speaking off microphone.]

19 CHAIRPERSON HOOD: Okay. Mr. Cohen, Mr.
20 Bergstein, is that sufficient?

21 MR. MILLER: Unless they've already gotten
22 that building permit somehow. No. Okay.

23 MR. MAY: There are other conditions that are
24 prior to the issuance of the building permit. It
25 just needs to be moved up into that section.

1 CHAIRPERSON HOOD: Okay, are we ready to
2 move? Excuse me. Okay.

3 So, again, ANC 6D continues to believe that
4 the applicant's analysis in their air quality reports
5 should take into account the preexisting conditions,
6 not just the site-specific activities. And that's on
7 page 2.

8 CHAIRPERSON HOOD: I think, and this may be
9 where -- and you all can help me with my memory, I
10 think this is -- I think that the applicant has --
11 and I think the record is sufficient, to show us that
12 they have a fix for some of the dust in the
13 particulate matters that may come up from this
14 development. And I'm just talking about this
15 development. I know there are other things that we
16 heard in the testimony which involve more than this
17 development. But I think from this development they
18 have a, I guess, a monitoring system and a cut-off to
19 where, I guess they maybe hose it down or something.
20 And I know that the ANC has asked for some tarps and
21 other things to happen, and I'm not sure if that's --
22 I think that the applicant has spelled out their plan
23 to be able to deal with that dust and those
24 particulates that may rise up as they do
25 construction. I don't know if it's any more we can

1 do with that, but accept their remedy for the
2 situation. But let me open it up. Any other
3 comments or questions on that?

4 MR. MAY: Yeah, Mr. Chairman. You know, I
5 think that we really are addressing the issues that
6 are related, that are specific to this project. So,
7 I understand there may be an issue with preexisting
8 conditions and that's certainly an issue of concern
9 for the ANC and for other district agencies. But I
10 do not believe that our concern at this moment is
11 what is already preexisting. Just what can be, you
12 know, what we resolve from this project, and I think
13 that has been addressed.

14 CHAIRPERSON HOOD: Any other comments? I
15 think the record is sufficient on how they're going
16 to deal with that issue. Let's move on.

17 ANC 6D continues to question the
18 justification of the Department of the Environment
19 not doing its own independent air monitoring overall
20 on Buzzard Point. And that's on page 2 of their --
21 yeah, page 2 of their -- I'm not going to read the
22 whole paragraph, but it's on page 2 of their report.

23 MR. MAY: We did receive in the record, a
24 response from the Department of the Environment that
25 addresses a number of these concerns that were raised

1 by the ANC. And I think that the responses -- I
2 mean, you know, is there one that addresses
3 specifically this one? I think the collective
4 response from DOEE on all these -- on the issues
5 related to this concern to air quality, I mean, I
6 think it's, you know in the collective, it has been
7 addressed. You know, I'm not sure that whether what
8 the ANC is asking for is necessarily the appropriate
9 response. Certainly, you know, DOEE believes that
10 they are responding as they need to in this case, and
11 they've directed certain things from the applicant,
12 you know, having to do with their voluntary cleanup
13 action and so on.

14 So, I do feel that the issue has been
15 adequately addressed in the responses that we've
16 received.

17 CHAIRPERSON HOOD: I would actually agree.
18 And I think in particular, we've heard testimony
19 about how the applicant was going to make sure that
20 to the best of their ability that the remediation and
21 excavation and other things that may pop up would
22 definitely take in consideration the health and
23 wellbeing of the residents who are close by, who may
24 be subject to some of that.

25 And I think that the plan that was rolled

1 out, I think is sufficient. And any time you do
2 construction, if you live near that, you're going to
3 get some of that but I think that they have some
4 remedies which I think the record is complete and
5 sufficient on dealing with those issues on this site.
6 Anything else? Okay.

7 This is a long one here. I'm not going to
8 read all of it, but I'm going to try to hit the high
9 points. ANC 6D requests weekly reporting of PM 2.5
10 data so that the levels of small particulates being
11 released into the community through fugitive dust
12 from the site can be more clearly delineated. And
13 then it goes on to say, ANC 6D requests air quality
14 reports that specifically include the PM 2.5
15 readings, which it believes will provide a more
16 accurate measurement of the air quality.

17 And I believe -- does anybody remember
18 whether the applicant agreed to do this?

19 [No audible response.]

20 CHAIRPERSON HOOD: Okay. Do we need to put
21 that in the parking lot and come back, because I
22 can't recall? I don't recall. That sounds familiar.
23 Let's do this, if I'm moving too fast, let me know.

24 MR. MAY: I mean, I thought this is what --
25 that was something that, you know, we got the full

1 report. I thought this had been addressed.

2 CHAIRPERSON HOOD: Okay. Let's search for
3 it.

4 [Pause.]

5 CHAIRPERSON HOOD: Let me do this. Mr.
6 Feola, Ms. Calcheck (phonetic), who did this case?
7 Both of you all together? Who wants to come up and
8 help me find that question? Or you can point
9 direction. I that would -- or, maybe the ANC.
10 Everybody. I want to make sure everybody has --

11 MR. MILLER: Mr. Chairman, do we have a
12 representative from DOEE here with us?

13 UNIDENTIFIED SPEAKER: Yes.

14 CHAIRPERSON HOOD: Oh, okay.

15 MR. MILLER: Maybe the representative from
16 DOEE should respond.

17 CHAIRPERSON HOOD: Okay. Great. If you can
18 introduce yourself, and you can -- I don't know if
19 you heard the question.

20 MR. CONNER: Could you please repeat?

21 CHAIRPERSON HOOD: Okay. Introduce yourself
22 first.

23 MR. CONNER: Hi. Daniel Conner from the
24 Director's Office at DOEE.

25 CHAIRPERSON HOOD: Okay. I know you. Okay.

1 Welcome to the Zoning Commission of the District of
2 Columbia.

3 MR. CONNER: Yes. Thank you.

4 CHAIRPERSON HOOD: You picked a good night.

5 MR. CONNER: All right. Just in time.
6 Timely.

7 CHAIRPERSON HOOD: All right. The question,
8 Mr. Conner is, we're actually responding to the ANC,
9 and again, the ANC, I hope you take this back, did a
10 thorough, a very thorough job and we appreciate what
11 they've done in those two meetings as we've stated
12 earlier.

13 ANC 6D requests weekly reports to the PM 2.5
14 data so that the levels of small particulates being
15 released into the community through fugitive dust
16 from the site can be more clearly designated.
17 Accordingly, ANC 6D requests air quality reports that
18 specifically includes the PM 2.5 readings which it
19 believes will provide a more accurate measurement of
20 the air quality.

21 And, I guess the ANC is asking for air
22 quality reports. And one of the questions, Mr.
23 Conner, was they wanted to know why DOEE, DOE was not
24 doing their independent reports, and we need to find
25 out what measures that the applicant has put in place

1 to do reports to the ANC.

2 MR. CONNER: Yes. We, and I can you know,
3 since we heard from the community that this was
4 something that they were interested in seeing, we
5 have actually identified funding with the Department
6 of General Services to purchase an air quality
7 monitor to put in the community to provide additional
8 air quality monitoring, besides what D.C. United is
9 doing onsite.

10 So, that is in place. An MOU was sent over
11 to us yesterday, and we are working through the
12 process of actually purchasing and doing some
13 additional monitoring in the community that would not
14 only measure just from -- it's not just measuring on
15 the site, but in the community in general.

16 CHAIRPERSON HOOD: Okay. Any follow-up
17 questions on that, Mr. Turnbull?

18 MR. TURNBULL: Will you be working with the
19 ANC?

20 MR. CONNER: Yes.

21 MR. TURNBULL: [Simultaneous speech.]

22 MR. CONNER: Yes.

23 MR. TURNBULL: Okay.

24 MR. CONNER: Absolutely. And we're happy to
25 provide those results, you know, in a timely manner

1 as often as we possibly can.

2 CHAIRPERSON HOOD: Okay. Great. I don't
3 know how --

4 MR. TURNBULL: Or as often as requested by
5 the ANC.

6 MR. CONNER: I actually asked the director of
7 our Air Quality Administration on the way over here
8 how often we can actually, you know, how much data do
9 you need to produce -- to release results. But yes,
10 it's as accurately and as often as we can, we're
11 happy to release those results to the community.

12 MR. TURNBULL: Okay. Thank you.

13 CHAIRPERSON HOOD: And I think that part can
14 be worked out. I'm sure. I think everybody can work
15 that out. We can't sit here and push that. I think
16 between the ANC and the Department of the
17 Environment, I think that can be worked out.

18 Mr. Bergstein or Mr. Cohen, is some kind of
19 way we can site that if it's not already sited in our
20 specific --

21 MR. BERGSTEIN: Well, what we'll do is
22 indicate that a response to this issue, that it's DOE
23 who's testifying. Oh, I'm sorry. This one. That a
24 DOE representative stated on behalf of the agency
25 that they will provide those additional reporting of

1 the PM 2.5 data as often and as they can do so
2 accurately. That's what I just heard, so that would
3 be the response to the ANC issue.

4 CHAIRPERSON HOOD: Okay. Thank you. I think
5 that's sufficient.

6 All right. Let's move right along,
7 colleagues. Number 5. ANC 6D finds no clear
8 justification for the placement of only four monitors
9 given the health risks noted by the Zoning Commission
10 or the Department of Health.

11 MR. SHAPIRO: I think I heard the DOE
12 Response that that was the DOE request, and this is
13 what --

14 CHAIRPERSON HOOD: Yeah, I thought so too.
15 But, I just wanted to make sure.

16 MR. SHAPIRO: Sorry, Mr. Chair.

17 CHAIRPERSON HOOD: I'm sorry.

18 MR. SHAPIRO: I'd be curious to see what DOE
19 said, but I feel like they just responded to that
20 with the previous question.

21 CHAIRPERSON HOOD: I actually agree, but I
22 want to make sure that I touch on every issue that
23 the ANC had. I think that's sufficient, that last
24 response would handle that issue.

25 MR. BERGSTEIN: I do want to confirm that --

1 so, what the representative is saying is that there
2 will be more than four monitors. Is that correct?

3 MR. CONNER: The Department of Energy and
4 Environment is purchasing one additional air quality
5 monitor to put in the community to address the
6 concerns of the community, to provide air quality
7 monitoring in the community, not just on the site.

8 CHAIRPERSON HOOD: And I believe the
9 applicant has four. So, it will be, I guess a total
10 of five.

11 MR. CONNER: Yes.

12 CHAIRPERSON HOOD: Unless you all can find
13 money for two more.

14 MR. CONNER: Yes, that's correct.

15 MR. TURNBULL: And the location of that
16 monitor will be worked out between you and the ANC?
17 Or who will determine where that monitor goes?

18 MR. CONNER: We will consult with our
19 engineers on the placement of the air quality
20 monitor. We have identified a site right now, but we
21 will, you know, we're happy to talk about the
22 location of it.

23 MR. TURNBULL: And does the ANC know where
24 that site is?

25 MR. CONNER: We have not discussed -- this is

1 the first time we have --

2 MR. TURNBULL: Okay.

3 MR. CONNER: -- actually talked about any of
4 this because we just --

5 MR. TURNBULL: And I would just recommend
6 that you --

7 MR. CONNER: -- got the dollars.

8 MR. TURNBULL: -- working with the ANC and
9 making sure that they understand where the monitor is
10 and how it's going to react to whatever prevailing
11 winds or what in the neighborhood.

12 MR. CONNER: Yes, happy to do that.

13 CHAIRPERSON HOOD: And that may change. I
14 know one spot today may change tomorrow. So, I think
15 the government will work very closely with our front-
16 line leaders to get that taken care of.

17 Okay. ANC 6D wants dust and soil covered
18 when construction is done for the day. I'm not
19 really sure how we're going to accomplish that. I
20 know that they have the little silk screens for
21 runoff, and I'm not sure if this is done -- and the
22 rationale behind this, I mean, is it the whole site?
23 Is it where the dirt is dug up? I think that --

24 MR. MAY: Mr. Chairman.

25 CHAIRPERSON HOOD: Yeah.

1 MR. MAY: Yeah. So, I mean, this is an issue
2 -- I mean, I can understand given the concerns about
3 the site itself that there would be an interest in
4 taking extraordinary measures, and I think this would
5 be an extraordinary measure compared to a normal
6 construction site. However, I think we had -- we've
7 heard from the applicant about what their strategy is
8 to make sure that there is not excessive dust leaving
9 the site, and that they have a plan for reacting to
10 it if they do in fact, you know, it is -- you know,
11 there's a lack of rain and it's very dusty and
12 there's wind blowing and how they're going to try to
13 treat that to make sure that there's not a lot of
14 dust blowing around or blowing off the site.

15 Honestly, I don't think it's really practical
16 to try to cover the entire site, given the range of
17 construction activities that will be happening every
18 day. And so, I think that the applicant has
19 adequately responded to that question.

20 CHAIRPERSON HOOD: All right. Any other
21 comments?

22 MR. SHAPIRO: No.

23 CHAIRPERSON HOOD: Okay. Next one is vermin
24 and, slash, rats. ANC 6D believes more attention is
25 required to address vermin and the rat population

1 concerns.

2 MR. MAY: So, we have a submission from the
3 applicant regarding rats and vermin, and I think that
4 I found that satisfactory. I'm not saying it's not a
5 concern, but what was submitted indicated that
6 it's -- there isn't that much activity on the site at
7 this stage in terms of rats and vermin.

8 CHAIRPERSON HOOD: And I think, though, if it
9 is, I would hope that the applicant would work along
10 to help to address that problem as they move forward.
11 I'm not sure exactly where it is, but I believe that
12 some things that we can't sit here and talk about
13 them. Actually, that problem is a problem all over
14 the city with development everywhere. Some places
15 were not even developed, we've got just as many. So,
16 and I understand when you disturb soil that this
17 stuff happens. So, I'm sure that the applicant wants
18 to be a good neighbor and work along with the
19 community and make sure that that issue is addressed.

20 Any other comments? Some stuff I just
21 believe that, you know, I just -- I may be wrong but
22 I just believe, we all have to co-exist and I just
23 think that I call it the good neighbor policy.
24 Commissioner Shapiro?

25 MR. SHAPIRO: Mr. Chair, not to be flippant,

1 I thought you said we have to co-exist with the rats
2 and I thought, that's not so good.

3 As I'm reading the report, to Commissioner
4 May's point, I mean, what they're saying is they're
5 going to work in accordance with D.C. regulations and
6 go beyond, so they have a number of measures that
7 they're proposing in addition to that. So, I feel
8 comfortable with the approach the applicant is
9 taking.

10 CHAIRPERSON HOOD: Okay. And I'm going to
11 strike your last statement when I say co-existing
12 with the rats. I didn't mean it like that.

13 MR. SHAPIRO: Thank you, Mr. Chair.

14 CHAIRPERSON HOOD: So, I'm going to strike
15 that from the record.

16 MR. SHAPIRO: Thank you.

17 CHAIRPERSON HOOD: That will be in the
18 Washington Post tomorrow.

19 Okay. Next, anything else on environment
20 issues?

21 MR. TURNBULL: Mr. Chair, I have something
22 that was applicant's, in the findings of fact, page
23 27, Number 11, the applicant has said that the
24 Commission finds that the project will not result in
25 adverse health impacts to neighbor, nearby residents

1 or workers due to site remediation, site excavation,
2 or construction. The Commission acknowledges the
3 concerns of the ANC and other residents at the health
4 of nearby residents may be compromised by the
5 project, but is not persuaded. I'm not going to sign
6 a document that says that.

7 CHAIRPERSON HOOD: I would agree. I think we
8 need to delete all of 68.

9 MR. TURNBULL: I'm not a health expert. It's
10 their remediation, it's their construction, they've
11 got to put their name on the line that it's not going
12 to impact the health of the neighbors. Not the
13 Zoning Commission. That's got to be totally struck
14 and redone. They ought to say that the Commission
15 will address any health impacts to the nearby
16 residents. But we've got to strike some of this
17 language. That's just putting the shovel in the
18 Zoning Commission's hands. It's got to go back to
19 the applicant's hands and they've got to be
20 responsible for that, not the Zoning Commission.

21 CHAIRPERSON HOOD: Well, Mr. Turnbull, thank
22 you for bringing that up. As far as I'm concerned,
23 we can strike all of 68. That can be deleted,
24 because that is not how I feel as a commissioner and
25 I'm sure others don't either. So, we need to do away

1 with that. Reword it, refine it, but it's got to go.
2 It's got to go. Okay?

3 Anything else?

4 [No audible response.]

5 CHAIRPERSON HOOD: All right. So, let's move
6 to the -- and are we all right? Okay. Let's move to
7 the transportation.

8 Ticketing enforcement in unpermitted street
9 parking. ANC 6D wants the applicant to assume the
10 cost of parking enforcement throughout the area on
11 game and event days. I don't understand how that
12 would work.

13 MR. MILLER: Mr. Chairman, before we get to
14 the specifics on the ANC transportation concerns, I
15 just wanted to acknowledge and express appreciation
16 that the applicant, I think did work with DDOT and
17 the ANC on producing this preliminary traffic
18 operations and parking plan that TOPP, which was a
19 subject of a lot of discussion that we needed when we
20 had our last hearing on this matter. So, I just
21 wanted to make that general statement.

22 CHAIRPERSON HOOD: Okay.

23 MR. MILLER: I think that's -- it's a good
24 starting point to get to the final TOPP, which would
25 be crucial for handling all the traffic and parking

1 issues.

2 CHAIRPERSON HOOD: Okay. Colleagues, number
3 8. And thank you, Vice Chair. ANC 6D wants
4 applicant to assume the cost of parking enforcement
5 throughout the area on games/event days.

6 I think the city handles parking enforcement,
7 and I think from what people who tell me who go down
8 there to the baseball games, they do a great job at
9 doing that. So, I'm not sure --

10 MR. MAY: Yeah. I think the city already has
11 an incentive to do that and to do it well. And, I
12 mean, the cost associated with actually going around
13 and writing the tickets, I don't know how substantial
14 it is, but it's also the sort of thing that, you
15 know, we can't write that into an order. It would
16 have to be something that was proffered by the
17 applicant and it hasn't been proffered. So.

18 MR. MILLER: But what I understand from the
19 ANC letter is that they -- the ANC is representing
20 that the applicant has proffered, and I'm going to
21 get this confirmed from our DDOT representative, Mr.
22 Rogers, that the applicant has proffered to assume
23 the cost of the traffic control officers, if that's
24 what TCOs represents, throughout the area on
25 game/event days, as well as MPD officers and vehicles

1 from blocking 1st Street. Is that --

2 CHAIRPERSON HOOD: That's actually the next
3 one.

4 MR. MILLER: Oh, okay.

5 CHAIRPERSON HOOD: That's fine. No, let's go
6 ahead.

7 MR. MILLER: I'm sorry.

8 CHAIRPERSON HOOD: I just want to make note
9 that that is the next thing that we're going to talk
10 about.

11 MR. MILLER: Okay.

12 MR. MAY: Well, but now --

13 MR. MILLER: Is that part of the TMP, Mr.
14 Rogers, and part of the --

15 CHAIRPERSON HOOD: Yeah, it's [Speaking off
16 microphone.]

17 MR. MILLER: That the applicant is assuming
18 the cost of TCOs throughout the area on game day.

19 MR. ROGERS: Yeah.

20 MR. MILLER: And as well as MPD officers,
21 vehicles for that function?

22 MR. ROGERS: So, for the record, Jonathan
23 Rogers, District Department of Transportation.

24 Yes, that is the proffer that the applicant
25 has put forward for TCOs, Traffic Control Officers,

1 and MPD.

2 MR. MILLER: And that's in the TMP that's
3 referenced in our draft orders, so I just want to
4 make sure that if it's not specifically -- that maybe
5 we should call it out in the draft order if it --

6 MR. ROGERS: I believe it's in the
7 preliminary TOPP, but we'll need to double-check
8 that.

9 MR. MILLER: So, that's referenced in our
10 draft order too so --

11 CHAIRPERSON HOOD: So, do we need to call out
12 any decision?

13 MR. MILLER: I would just ask OAG to look at
14 that issue.

15 CHAIRPERSON HOOD: I'm just asking. I'm
16 asking him now, actually.

17 MR. MILLER: Okay.

18 MR. BERGSTEIN: Well, I don't see it in the -
19 - I'm maybe missing it. I don't see it in the
20 conditions that begin on -- in Number C4. There's
21 general TDM strategies, bicycle TDM strategies, and
22 if the applicant wants to tell me where it is, I'd be
23 happy to notice it. But I didn't see anything in the
24 actual TDM strategies.

25 MR. MAY: That's not something that would

1 typically just be a proffer. I mean, it's something
2 that the city requires for these sorts of events
3 anyway, right? Isn't that normally part of it?

4 MR. BERGSTEIN: I don't know. I'm saying is
5 --

6 MR. MAY: No, I'm asking -- sorry, Department
7 of Transportation.

8 MR. ROGERS: There are certainly traffic
9 control officers for other --

10 MR. MAY: Yeah.

11 MR. ROGERS: -- to support other TOPPs. I am
12 not aware of who -- of the payment mechanisms for
13 that and who's responsible.

14 CHAIRPERSON HOOD: So, I guess if the
15 applicant has agreed to do that it should be spelled
16 out somewhere in our order. Okay?

17 But let me make sure, did we cover the
18 enforcement parking? I think we did. Okay. Mr.
19 Feola, can you come up for the record and, so that we
20 all make sure we're all on the same page?

21 MR. FEOLA: Yeah. Thank you, Mr. Chairman.
22 For the record, Phil Feola on behalf of the
23 applicant.

24 It is part of the preliminary TOPP that's in
25 the record and it's referenced as that. It's not in

1 the TMP. In Condition No. 10, I believe, the
2 applicant shall abide by the terms of the final TOPP,
3 and goes on. So, it is a proffer that the applicant
4 made.

5 CHAIRPERSON HOOD: Okay. We want to make
6 sure that the ANC knows that that is there. Mr.
7 Litsky, do you feel comfortable at what you just
8 heard? Yes, you can come forward.

9 MR. LITSKY: Thank you. I just want to make
10 sure that I'm made comfortable with precisely what it
11 is you want me to be comfortable with.

12 So, if you could repeat what you're asking
13 me?

14 CHAIRPERSON HOOD: One of the things --

15 MR. LITSKY: Was it about the enforcement,
16 and --

17 CHAIRPERSON HOOD: No, not the enforcement.
18 I think we dealt with enforcement. We switched over,
19 but we went over to the traffic control officers.
20 But the enforcement, we think the city does a great
21 job in enforcement. For those of us who come in your
22 neighborhood and we come back out and our cars are
23 missing. So, we think --

24 MR. LITSKY: Did that really happen to you,
25 Commissioner?

1 CHAIRPERSON HOOD: No, it didn't happen to
2 me, but somebody I was riding with. So, we think
3 they do a great job.

4 MR. LITSKY: Okay.

5 CHAIRPERSON HOOD: But you live it. So,
6 again, we didn't know where we were. So, I think my
7 colleague, the Vice Chair, moved on to the traffic
8 control officers.

9 MR. LITSKY: Okay. Well, actually when we
10 had cross I had specifically asked, when I did cross
11 of the applicant, during the first hearing, who was
12 paying -- because I was curious, who was paying for
13 the -- for blocking off 1st Street by putting -- you
14 know, who was paying for the cars? Who was paying of
15 the MPD folks to block off?

16 And they said, they are. I said, okay, who's
17 paying for the TCOs? And they said, we are.

18 So, that was stated in testimony and that was
19 a proffer they made that has nothing to do with the
20 TOPP. That has to do with something that they, you
21 know, apparently had agreed to beyond that and before
22 that.

23 MR. MAY: But it's been incorporated in their
24 TOPP.

25 CHAIRPERSON HOOD: So we all --

1 MR. LITSKY: It may have been incorporated as
2 well.

3 CHAIRPERSON HOOD: Right. So, we all good
4 with that. That's why I wanted to make sure you
5 heard what we heard.

6 MR. LITSKY: Yeah.

7 CHAIRPERSON HOOD: Okay.

8 MR. LITSKY: You know, we're not as good with
9 not having enforcement, but, yes.

10 CHAIRPERSON HOOD: Okay. Okay. So, 9 and 10
11 I think have been covered. Okay.

12 Let's go to the status agreements with the
13 Nationals. ANC 6D expects a proper strategy in place
14 as well as clarifying written agreement as a
15 requirement of applicant's certificate of occupancy
16 regarding collaboration with Nats and their
17 facilities. And this is this whole thing about
18 overlapping events.

19 At some point in time all our teams are going
20 to make the playoffs. So, we don't have to -- right
21 now, not really a major issue, but at some point in
22 time they will make the playoffs. So, you know,
23 those are some issues, and I think the ANC -- and I
24 think testimony said that they would work that out.
25 So I don't know if we have to belabor that point. I

1 think the record is sufficient on that. Unless
2 somebody wants to see something additional.

3 But we do want them to make the playoffs now,
4 and they just work it out. Somebody plays at 12:00
5 and somebody plays at 6:00 or whatever. But I don't
6 want to -- we want them to make the playoffs, though,
7 Mr. Litsky.

8 Okay. So, number 11 is done. Where it says
9 list of signed letters of intent, parking spaces.
10 ANC 6D has understood that there would be a complete
11 list of signed level of intent provided to account
12 for the actual number of parking spaces that the
13 applicant requires but does not have a list of sign -
14 - otherwise provided to account for the actual number
15 of parking spaces the applicant would need.

16 I think we also asked for that. Somebody
17 else --

18 MR. TURNBULL: Mr. Chair, I believe we did.

19 CHAIRPERSON HOOD: Okay. I'm not sure who
20 asked for those.

21 MR. MAY: So, maybe the applicant should just
22 respond to that again.

23 CHAIRPERSON HOOD: Mr. Feola. We're not
24 going to make this a hearing, but some things we need
25 to clear for the record.

1 MR. FEOLA: Thank you. Again, Phil Feola for
2 the applicant.

3 We submitted a number of letters of intent
4 into the record at some point. I don't remember
5 whether it was the hearing, or as a post-hearing
6 submission.

7 CHAIRPERSON HOOD: Okay. So, you're saying
8 we already have them?

9 MR. FEOLA: From our standpoint, yes.

10 MR. MAY: For all of the spaces that you
11 intended to provide? We're checking, yes.

12 MR. TURNBULL: Yeah, I think we're looking
13 for approximate 3750 parking spaces or something.
14 Three thousand, seven hundred and fifty.

15 MR. FEOLA: Exhibit 97B.

16 CHAIRPERSON HOOD: Okay.

17 MR. FEOLA: In the record.

18 CHAIRPERSON HOOD: Okay. So, we will check
19 on that and work with that from there. Okay. Thank
20 you.

21 All right, let's go to transit. ANC 6D
22 continues to have concern about --

23 MR. TURNBULL: Mr. Chair, let me just go back
24 on traffic. Could I?

25 Again, I'm going back to their order.

1 There's some language that the applicant has put in -
2 -

3 CHAIRPERSON HOOD: Can you let us know what
4 page you're on?

5 MR. TURNBULL: Page 27, number H. It says,
6 "The Commission finds that the traffic that traffic
7 condition in the neighborhood will not, on the whole,
8 become worse because of the stadium."

9 That's conjecture. That's putting words in
10 the Commission's mouth that says, yeah, we believe --
11 that ought to be struck. I mean --

12 CHAIRPERSON HOOD: Okay. I would agree.

13 MR. TURNBULL: -- the Commission cannot
14 guarantee to the neighbors that this is going to be
15 no extra traffic in the neighborhood.

16 CHAIRPERSON HOOD: Well, any game is going to
17 be traffic. Come on. Let's -- we're realists up
18 here.

19 MR. TURNBULL: Right.

20 CHAIRPERSON HOOD: Come on. Don't do that to
21 us. We get done enough.

22 MR. TURNBULL: The applicant has to really
23 clean up this document where it puts words in the
24 Commission's mouth that says we are agreeing that the
25 impacts are minimal. It's basically putting things -

1 - it's, the onus is on the applicant, not on the
2 Zoning Commission to be doing this.

3 CHAIRPERSON HOOD: Yeah, I would agree with a
4 lot of this rewording and saying what the Zoning
5 Commission believes. Better be careful what some of
6 us may believe. So, I would just suggest that we
7 finetune that throughout this order. And we'll look
8 at it again.

9 So, Mr. Turnbull, we're going to strike that.

10 MR. TURNBULL: Thank you, Mr. Chair.

11 CHAIRPERSON HOOD: I hope somebody is taking
12 some notes. Or, it's on the record, that we want
13 that out of there.

14 Okay. Are we ready to move? Okay. Let's go
15 to -- we're almost done, I think.

16 ANC 6D continues to have concern about
17 applicant's insistence that the yet to be constructed
18 traffic oval on South Capitol Street will resolve
19 heavy vehicular traffic. And that's page 4 of their
20 submission.

21 MR. SHAPIRO: Mr. Chair, I'd be curious where
22 DDOT is with this.

23 CHAIRPERSON HOOD: Mr. Rogers, you want to
24 refresh our memory? I'm sure you probably already
25 responded.

1 MR. ROGERS: Sure. Sure, happy to. So,
2 regarding traffic on South Capitol Street, clearly a
3 very important vehicular and nonvehicular corridor in
4 the District. Conditions out there now, there are
5 some failing conditions in the peak periods.

6 With our South Capitol Street project, which
7 is imminent, the conditions, generally as a rule,
8 improve in the area, is that to say that there will
9 be free-flow traffic at all periods. I don't think
10 we can go so far as to say that. Will conditions
11 generally improve? Yes, we -- that's what our
12 analysis has shown.

13 CHAIRPERSON HOOD: Okay. Anything else? Are
14 we satisfied with that?

15 Okay. Let's go to ANC 6D's greatest concern
16 is routing of traffic through the existing
17 residential neighborhood.

18 All right. Which one am I on? Fifteen?

19 I think this goes to -- Mr. Feola, I hate to
20 keep calling you, and I will call Mr. Litsky too. I
21 thought we talked about that. That was the issue
22 about traffic.

23 Mr. Rogers, what is the remedy that the
24 applicant is talking about as far as -- and DDOT is
25 working on as far as making sure that cars do not go

1 through residential areas? To the best that we can.

2 MR. FEOLA: Sure. So, I think that to the
3 best that you can, as you stated is certainly the
4 goal, reading through the TOPP, the preliminary TOPP,
5 there is a heavy focus on wayfinding, both on the
6 street in terms of signage as well as information
7 dissemination, via the website, via other tools for
8 routing decisions, for people, both in cars and on
9 foot and on bike.

10 I think sort of naturally the way the
11 neighborhood -- the greater Capitol Riverfront
12 neighborhood and Buzzard Point build out, the desire
13 line will be from the Navy Yard Metro station, either
14 down South Capitol Street or 1st Street, to Potomac
15 Avenue, to get to the stop. That's where there will
16 be the best pedestrian facilities. That's where the
17 land uses that sort of support that game day
18 environment, the bars and restaurants will sprout up
19 as opposed to the neighborhood immediately to the
20 north of Buzzard Point.

21 CHAIRPERSON HOOD: Okay. Any other comments
22 or questions? Is that satisfactory?

23 [No audible response.]

24 CHAIRPERSON HOOD: Mr. Litsky? You heard the
25 comments. And we're going to make sure that this is

1 recorded in our order somewhere.

2 MR. LITSKY: Thank you. Andy Litsky for the
3 ANC.

4 And again, we put that in the -- our response
5 because it is indeed the greatest fear and concern of
6 the neighborhood, is traffic going through along 4th
7 Street, down Half Street, down 1st Street, which
8 according to the Buzzard Point plan that is part of
9 what it is that the applicant and the city put forth
10 in evidence, you know, they said that Half street is
11 the transportation spine.

12 I drove up here this evening, because I had
13 to get here quickly. And 4th Street was one line of
14 traffic. There is no baseball game. There is no
15 soccer game. One line of traffic from M Street all
16 the way to P. All the way. And then it was backed
17 up past 6th Street. That's the way it is just about
18 every night. This is with no games.

19 And so, we have asked repeatedly, DDOT to
20 deal with this, and they had just pushed it off the
21 table. So, that is our concern. It is a strong
22 concern of the community. And DDOT has yet to sit
23 with the ANC and SWAMA (phonetic), and the BID, to
24 give us very clear indications of specifically what
25 they plan to do to ensure that not pedestrians won't

1 be walking through, but that automobile traffic will
2 not be going through the neighborhood and impacting
3 our kids who are playing near the playgrounds, and
4 impacting people who really want to get back and
5 forth to their homes.

6 CHAIRPERSON HOOD: I got you.

7 MR. LITSKY: So, it's not been addressed.

8 CHAIRPERSON HOOD: Okay. Mr. Rogers, at some
9 point is DDOT going to meet with SWAMA and the ANC
10 and everybody? I know you all, you know, have a lot
11 going on, but there are some major issues. Is that
12 in the plans?

13 MR. ROGERS: Yes, absolutely. And in fact, I
14 got an e-mail today for scheduling two meetings.
15 One, to talk about the development review process and
16 how we, through the process where we come and work
17 with the Zoning Commission and others, review
18 development projects for their transportation impacts
19 and identify mitigations. So, that's one meeting.

20 The other meeting, also very important for
21 us, is to talk with again the ANC, SWAMA, the BID,
22 about traffic control plans and coordinating
23 construction related activities. Certainly, going to
24 be an important topic as Buzzard Point builds out.
25 Lots and lots of activity that will be essential to

1 be coordinated, and so we want to have these meetings
2 for two purposes. One is to get this feedback and
3 have the opportunity to respond. And also, a bit of
4 education too, to help inform what our processes are
5 like, how we review things comprehensively instead of
6 a one offer piece meal manner, to address issues.

7 You know, certainly there are -- we can't
8 promise that everything is going to be 100 percent
9 okay all the time when you have the amount of
10 construction and development that's coming. There
11 are going to be some changes. But it's, you know,
12 the process that we're going through to meet with the
13 ANC and others is to sort of walk through the
14 processes that we have in place to help manage those
15 changes as much as possible.

16 CHAIRPERSON HOOD: Okay. After that I think
17 you answered my last question. ANC 6D expects to be
18 able to table -- to be at the table, not to table,
19 but to be at the table as the representative that
20 surround the community throughout TOPP
21 implementation. So, I think that kind of goes in
22 hand and hand with what the ANC has requested.

23 MR. LITSKY: It would, but I would point out
24 DDOT's one-page response to, as we put in several
25 more pages on the 30th. And they said that, we will

1 meet with the Buzzard Point community. They never
2 put the ANC in there. And I want to make sure that
3 the ANC is not boxed out of the process, and that
4 they don't choose their own folks to sit with about
5 the TOPP. Because I don't want --

6 MR. MILLER: I think our draft order now
7 specifically calls out the ANC.

8 MR. LITSKY: Right. Just want to make sure
9 that's the case, because DDOT --

10 CHAIRPERSON HOOD: I think anybody knows, in
11 this city --

12 MR. LITSKY: Right.

13 CHAIRPERSON HOOD: -- if you want to be with
14 the frontline workers, you meet with the ANC first.

15 MR. LITSKY: Me. Thank you.

16 CHAIRPERSON HOOD: All right. Especially a
17 hardworking ANC like your ANC, Mr. Litsky.

18 Okay, anything else?

19 MR. TURNBULL: Mr. Chair, I --

20 CHAIRPERSON HOOD: Do we have some other
21 points?

22 MR. TURNBULL: Mr. Chair, I just want to go
23 back on the last item we were talking about, the
24 LOIs. Exhibit 97B, which was referenced by the
25 applicant. There are two LOIs in there. One is for

1 80 parking spaces, and one is for 197, for a total of
2 277. That's a whopping 13 and a half percent of the
3 total number of cars to be provided. So --

4 MR. MAY: Commissioner Turnbull. I'm sorry.
5 I ran a count too. There are five letters of intent
6 in each of those.

7 MR. TURNBULL: Five?

8 MR. MAY: In each of those, B1 and B2. And I
9 did a quick total on it and I came up with 1,800
10 spaces, which is still not 3,750.

11 MR. TURNBULL: Right. Okay. My mistake. I
12 guess I saw only the first one.

13 MR. MAY: Right.

14 MR. TURNBULL: Oh, so there's actually
15 multiple ones behind there?

16 MR. MAY: Right.

17 MR. TURNBULL: And you came up with how much,
18 Mr. May?

19 MR. MAY: 1,810.

20 MR. TURNBULL: 1,810. So, we're still
21 deficient by --

22 CHAIRPERSON HOOD: About 1,800, right?

23 MR. MAY: Mr. Feola is shaking his head like
24 he knows for sure that there is sufficient letters of
25 intent to cover everything. If you're --

1 CHAIRPERSON HOOD: So, you thought there
2 were. So, can we get that, Mr. Feola? We need to
3 get it. If we don't have it, we need to get that.

4 MR. TURNBULL: Yeah, if we can get that
5 confirmed.

6 CHAIRPERSON HOOD: It's a lot of thought
7 going into this process.

8 MR. TURNBULL: The other thing is getting
9 back to, the again, the draft order with the language
10 in there, it talks about -- they keep putting in that
11 the applicant, that the Zoning Commission finds that
12 we don't agree that there's going to be a concern
13 about traffic in the neighborhood and everything
14 else. That language has to be struck. I mean, they
15 have to prove to themselves and work out a plan with
16 the ANC, that it's going to work.

17 And don't put words in our mouth that we're
18 saying that there's going to be no congestion in the
19 neighborhood. I mean, that's not our role here.

20 CHAIRPERSON HOOD: Right. I would agree.
21 And I think anywhere in this order that spells that
22 out, it needs to be taken out and reworded before I
23 sign it. It needs to be -- all that needs to be
24 reworded and I would ask the applicant to work along
25 with Office of Attorney General and whoever else, our

1 staff and everybody, to get that language cleaned up.

2 Don't put it on -- as Mr. Turnbull so
3 eloquently said, don't put it on us. We mediate. We
4 don't say what we -- traffic. Mr. Litsky said he
5 came tonight, and I know nobody's playing tonight.
6 And there was traffic all up and down. So, we know
7 it's going to be traffic. But it's how -- the
8 mitigation measures that we put in place to try to
9 make it co-exist along with the rats.

10 Okay. Vice Chair Miller.

11 MR. MILLER: No, I just wanted to reiterate
12 what you were saying that, you know, a lot of what we
13 are about, Mr. Turnbull, is saying that even though
14 there may be adverse traffic and parking impacts, the
15 mitigation measures that are being put in place in
16 the TDM and in the TOPP, and will continue to be
17 worked on, will be sufficient to mitigate.

18 So, it is a matter of how we word it and we
19 don't make a blanket statement that there -- the kind
20 of blanket statement that you said --

21 MR. TURNBULL: Well, yeah. And --

22 MR. MILLER: -- that in the draft order might
23 have been --

24 MR. TURNBULL: -- my concern is that it may
25 be sufficient. I don't want to come out and say

1 definitely that what they're proposing, that the
2 Zoning Commission definitely says, you're right on
3 target and we agree with you 100 percent. I can't
4 agree with them 100 percent.

5 MR. MILLER: I'm agreeing with you. I'm just
6 saying --

7 MR. TURNBULL: Yeah, right.

8 MR. MILLER: -- it is a matter of wording,
9 how we phrase that. Which is why some of the other
10 conditions like --

11 MR. TURNBULL: Right.

12 MR. MILLER: -- the no overlapping is
13 critical because they're relying on the same parking
14 lots. In fact, they're relying on the Nationals --

15 MR. TURNBULL: That's right.

16 MR. MILLER: -- own parking lots, which we
17 don't have any evidence other than -- do we have any
18 evidence that the Nationals have agreed to that? No.
19 So, that's 1,000 spaces right there.

20 So, it's --

21 MR. TURNBULL: Right.

22 MR. MILLER: There's a lot of conditions. I
23 don't know how enforceable they are.

24 MR. TURNBULL: They are.

25 MR. MILLER: But there are a lot of

1 conditions that are important --

2 MR. TURNBULL: I just don't want to be in the
3 situation --

4 MR. MILLER: -- to mitigate against these
5 adverse impacts.

6 MR. TURNBULL: Yeah, I just don't want us to
7 be like rolling the dice here and somehow saying,
8 yeah, it's 7, it's going to work, but it's really
9 not. And I'm just concerned that the language in
10 this order sort of says that the Zoning Commission is
11 giving carte blanche, when we know we have concerns.
12 And when we have concerns the language ought to
13 express that the Zoning Commission does have
14 concerns, and that the applicant will implement, to
15 the best of its ability, plans to help mitigate this.

16 CHAIRPERSON HOOD: And I think that,
17 depending upon which way we move tonight, I think
18 before anything is signed or anything is final, we
19 will all review it. That's just the bottom line.
20 Okay?

21 All right. The other thing, and I'm going to
22 ask, anything else on any of this? I'm going to ask
23 Mr. Bergstein to help me.

24 We do have to prove the use. So, do we need
25 to make a -- how do we need to deal with that?

1 MR. BERGSTEIN: Well, the PUD application
2 includes a request to approve this use. I just
3 wanted for the Commission to understand that that is
4 a separate criteria, apart from the PUD criteria as
5 stated in Section 618, and it goes to issues of
6 character in the neighborhood, and no dangerous
7 traffic conditions, and that may well have been taken
8 care of in your deliberations. But I just wanted to
9 make sure that the Commission understood that as part
10 of this PUD, it's actually approving a use called a
11 stadium us, and as part of the conditions, it sets
12 forth the limit of that use.

13 CHAIRPERSON HOOD: Okay. Is any --
14 Commissioner Shapiro.

15 MR. SHAPIRO: Just want to make sure. So,
16 you're suggesting that we take some kind of
17 affirmative action or some kind of declaration of
18 that? Or is it enough that we just acknowledge what
19 you're saying and --

20 MR. BERGSTEIN: I just want you to confirm
21 that you believe that the specific criteria of
22 Section 618 have been met. And I identified those in
23 my memorandum to you.

24 MR. SHAPIRO: I was clear. It was clear to
25 me.

1 CHAIRPERSON HOOD: I would say, with some of
2 the mitigation factors that we put in place, and some
3 of the work that we put into this, while we may not
4 always agree and some different viewpoints, but I
5 think that we have tweaked and twisted and pulled and
6 stretched, and tried to do what we can do. So, I
7 think the requirement of 618 has been met, in my
8 opinion.

9 All right. It's one other thing that we need
10 to deal with, I think. Am I forgetting something? I
11 thought it was three things that I need to --

12 Mr. Bergstein, is everything sufficient?

13 MR. BERGSTEIN: Yes. I think you've covered
14 everything that you needed to cover.

15 CHAIRPERSON HOOD: Okay.

16 MR. BERGSTEIN: That's all I have to say.
17 Thank you.

18 CHAIRPERSON HOOD: All right. Okay. Yeah.
19 Okay. Okay. All right. So, with that, with all the
20 stretching, tweaking, and twisting, and I'm saying
21 this for a reason, the things that we've done to try
22 to mitigate some of the issues the ANC has had. Mr.
23 Turnbull?

24 MR. TURNBULL: The other -- I mean, I've
25 marked up their draft order. I have a lot of

1 comments on language that's in that draft order that
2 I can't accept. I don't know how we're going to deal
3 with that.

4 But the other thing is the retail space,
5 which I think the applicant had talked about as a
6 separate item. How are we going to deal with that?

7 CHAIRPERSON HOOD: Is that the --

8 MR. TURNBULL: The other, the other building,
9 retail building or whatever they --

10 CHAIRPERSON HOOD: We're going to do that as,
11 I think they proffered -- offered to do that as a
12 modification of, is it consequence?

13 MR. TURNBULL: Significance.

14 CHAIRPERSON HOOD: Significance. I get them
15 -- I'm still learning the new regs too. The
16 modification of significance.

17 MR. BERGSTEIN: Well, actually they said
18 modification of consequence.

19 MR. TURNBULL: Consequence.

20 MR. BERGSTEIN: With D1, which would mean
21 that they're not --

22 CHAIRPERSON HOOD: Obviously, I'm not the
23 only one up here trying to figure it out.

24 MR. BERGSTEIN: That's all right. Which
25 would mean that there would not even need to be a

1 hearing.

2 MR. MILLER: But that the ANC would be given
3 notice and there would be an opportunity to weigh in?

4 MR. BERGSTEIN: They would be given -- in
5 essence you are -- you still would have to find that
6 it's a modification of consequence. What this is
7 saying is the applicant will be required to apply for
8 a modification of consequence. I would not read this
9 as binding. The Zoning Commission at that time, to
10 agree that it's a modification of consequence, and it
11 could, at the time of the public meeting, find it's a
12 modification of significance and require a
13 reapplication for a public hearing.

14 CHAIRPERSON HOOD: Right. And we can do that
15 at that time.

16 MR. BERGSTEIN: Yes.

17 CHAIRPERSON HOOD: All right.

18 MR. TURNBULL: Yeah, I think we'd like to
19 hear comments from the public. I mean, I think the
20 ANC has got to weigh in on this.

21 MR. BERGSTEIN: Well, if you agreed it was a
22 modification of consequence there wouldn't be a
23 hearing, but you would then, at that point, set a
24 time for the parties -- for the ANC, which is the
25 party, to respond.

1 CHAIRPERSON HOOD: So, do we need to decide
2 that now? Do we decide that when they come back?

3 MR. BERGSTEIN: In terms of whether or not
4 it's a modification of consequence, I would think
5 that you would always have the option at the time the
6 application came before you to decide it was a
7 modification of significance. This is at least
8 saying that they can apply for a modification of
9 consequence, but I don't think you're tying yourself
10 at that time, to consider it as one.

11 CHAIRPERSON HOOD: Right. Because it may be
12 a modification of significance. Mr. Turnbull,
13 anything else?

14 MR. TURNBULL: I was just saying, can we do
15 it now or do we wait?

16 MR. BERGSTEIN: Well, you haven't had the
17 application filed before you yet.

18 MR. TURNBULL: There hasn't been any filing.

19 MR. BERGSTEIN: So, I think you might want to
20 wait until that application --

21 MR. TURNBULL: Got to wait. Okay. Okay.
22 Thank you.

23 CHAIRPERSON HOOD: We don't want to tie a
24 future commission because we don't know when that may
25 happen.

1 MR. TURNBULL: Okay.

2 CHAIRPERSON HOOD: Some of may be here, some
3 of us may not, and do we want to leave it up to that
4 future commission to -- I'm sure Mr. Litsky will be
5 the Chair and the others will still be here. So,
6 anyway, we'll work with it from that point.

7 Okay. Anything else? All right. Well --

8 MR. MAY: Yeah, Mr. Chairman.

9 CHAIRPERSON HOOD: Yes.

10 MR. MAY: So, I mean, if we're wrapping up at
11 this point, I mean I just want to say, I still do
12 feel like this application left something to be
13 desired. I think that the responses on environmental
14 issues and traffic issues and transit and so on, have
15 been adequate to make it passable. But I am still
16 extremely disappointed in the design. You know, not
17 so much that I'm going to vote against it, but it
18 just kind of barely makes it and I just, I couldn't
19 just let it go with saying something about this.

20 It's been a disappointment all the way through. So,
21 I hope that it turns out better than I fear it will.

22 I also want to mention that, you know, we did
23 ask for -- I mean, there were a few things that we
24 had asked for responses on and the applicant, I
25 think, did provide those, including the statement

1 about the water taxi. I think that was of interest
2 to a lot of people.

3 And, you know, we do have a response in
4 there. There's a statement in there that the long-
5 term plan is contingent on the Potomac River Boat
6 Company, which is a -- operates a water taxi, getting
7 a lease at the Buzzard Point Marina, which of course
8 does not exist anymore, from the National Park
9 Service. And, I just want to say that if it's
10 contingent on that, it's not going to happen because
11 it's not in the offing right now for us to do any
12 kind of leasing for that kind of operation at the
13 Buzzard Point Park.

14 That doesn't mean that there won't be another
15 potential other dock locations for a water taxi in
16 that vicinity. I think we were in discussions with
17 the Office of Planning about other locations where
18 that might occur.

19 So, there is still the opportunity to have
20 that, I just want to make it clear that I noticed
21 that and we are not, at this point, looking for that
22 kind of a use at that site. But I do think it still
23 can be -- it still can happen. And there's an
24 interim proposal as well. So, I wanted to address
25 that. Thank you.

1 CHAIRPERSON HOOD: Okay. Thank you,
2 Commissioner May.

3 Vice Chair Miller?

4 MR. MILLER: Thank you, Mr. Chairman. I just
5 wanted to express my appreciation to all of those who
6 have worked on this project, including the applicant,
7 D.C. United, and the ANC, all the district agencies
8 that have weighed in and responded to the ANC
9 concerns in our latest submissions, OAG and others.

10 This is a project that has been long in the
11 making and I am glad that we're finally at a point
12 where I hope that we can proceed with final action
13 tonight, and I'm prepared to make a motion to that
14 affect, unless you want to, Mr. Chairman.

15 CHAIRPERSON HOOD: Any other comments?

16 MR. TURNBULL: Well, I just got a -- if we're
17 taking final action and we have comments that we want
18 to have changes to the order, they have comments in
19 there about flexibility on signage which they need to
20 modify. They have language in there which is
21 concerning a changing in the architecture, the
22 materials, which they have to modify because they
23 can't. And there's other things in there which they
24 slip in, that I can't agree with.

25 So, I can go on with this but how do I --

1 this language --

2 CHAIRPERSON HOOD: Because it's not going to
3 be signed, Mr. Turnbull, as I stated, until we've all
4 reviewed it again. We can take a --

5 MR. TURNBULL: So, this is a conditional
6 final action until we've --

7 CHAIRPERSON HOOD: We can call it what they
8 want, but they won't --

9 MR. TURNBULL: Until we've reviewed the
10 order. Well, if that's the case because there are
11 things in this order that need to be corrected.

12 MR. BERGSTEIN: The way I understand it is
13 that you are voting verbally to approve this
14 application. I will be providing you with an order
15 that addresses all the concerns, I hope, that you've
16 expressed.

17 MR. TURNBULL: Okay.

18 MR. BERGSTEIN: And therefore, you know the
19 merits of this application. You have a problem with
20 how the order has phrased those merits.

21 MR. TURNBULL: Yeah, and some of the items
22 that they're requesting.

23 MR. BERGSTEIN: Well, in terms of the degree
24 of flexibility, I believe that you have the authority
25 to strike them as part of this process of going

1 through the order. I don't think you're bound, at
2 this point, to say that you can't change that.

3 So, you can communicate with me as to any
4 areas of flexibility that you think go beyond what
5 you're comfortable with. If you care to go through
6 that now, you can. But otherwise I think that --

7 MR. TURNBULL: Well, I'm more than willing --
8 I can e-mail you a copy of all my comments on this
9 and let you know what they are. I mean, it's basic
10 things that I think were not done well by the
11 applicant, because I mean, starting off in the
12 beginning where they talked about that this area is
13 an industrial use. It is. But a block away is a
14 major residential R-4 neighborhood, and there's no
15 mention of that, and that needs to be put in here.
16 They need to talk about what's exactly where they
17 are, and the ramifications of that.

18 So, I will submit my comments and I will go
19 along with approving this, but there are significant
20 issues in the order that need to be addressed, from
21 my point.

22 CHAIRPERSON HOOD: Before my signature goes
23 on it we will all have looked at the order.

24 MR. TURNBULL: I'll trust you, Mr. Chair. I
25 always do.

1 CHAIRPERSON HOOD: I'm glad you trust me.

2 How many years have you and I been --

3 MR. TURNBULL: A long time.

4 CHAIRPERSON HOOD: Well, I'm glad that now,
5 today, you trust me. No, I appreciate it.

6 MR. TURNBULL: Well, I've always trusted you,
7 Mr. Chair.

8 CHAIRPERSON HOOD: I'm just messing with you.

9 MR. TURNBULL: And I mean, I think you're
10 going to be chairman for life, aren't you?

11 CHAIRPERSON HOOD: No, no, no, no. I'm going
12 to let Ms. Bennett come up and take it back. No, I'm
13 just playing.

14 Vice Chair Miller?

15 MR. MILLER: I was just going to say that you
16 were kind enough to write on a copy of many -- of
17 your marked-up version of the order, and from what
18 I've read so far just sitting here tonight while also
19 deliberating, I agree with I think almost everything
20 that you've written there. So, I think there are
21 some good points you've made and I appreciate you
22 taking the time to look at it.

23 MR. TURNBULL: Thank you, Vice Chair.

24 CHAIRPERSON HOOD: Okay. I'll echo that.

25 Let's see, and again, I want to thank everybody. I'm

1 not going to do down the list. I'm not going to do
2 the Academy Award piece, but I want to thank
3 everybody who's provided comments to this Commission,
4 regardless of your role or wherever you sit, we
5 appreciate everything.

6 So, I think the Vice Chair, you offered to
7 make a motion?

8 MR. MILLER: Sure, Mr. Chairman. I would
9 move that the Zoning Commission take final action on
10 Case No. 16-02, D.C. Stadium, LLC consolidated PUD at
11 Squares 603S, 605, 607, 661, and 665, and ask for a
12 second.

13 MR. SHAPIRO: Second.

14 CHAIRPERSON HOOD: It's been moved and
15 properly second. Any further discussion?

16 [Vote taken.]

17 CHAIRPERSON HOOD: Ms. Schellin, would you
18 record the vote?

19 MS. SCHELLIN: Yes. Staff records the vote
20 five, to zero, to zero to approve final action
21 subject to further revisions by OAG of the order, and
22 subject to review by the Commission before issuance.
23 Commissioner Miller moving, Commissioner Hood
24 seconding, Commissioners May, Shapiro, and Turnbull
25 in support.

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

3 MS. SCHELLIN: Not for this, no.

4 CHAIRPERSON HOOD: Okay. I want to thank
5 everyone for their participation tonight, and also, I
6 want to thank the real HU for being patient with us
7 as we do this. The real HU know what I really mean.
8 Is it Hampton or is it Howard? But anyway, I want to
9 thank everyone and give us two minutes and we will
10 bring Howard right up. So, thank everyone. This
11 special meeting is adjourned.

12 [Special Public Meeting adjourned at 7:04
13 p.m.]

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