

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

: Case No.

VNO South Capitol, LLC : 20-14

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Thursday,

October 1, 2020

Video Teleconference

The Public Hearing of Case No. 17-05B by the

District of Columbia Zoning Commission convened at 4:00

p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice Chairperson
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
- PETER G. MAY, Commissioner (NPS)
- PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- SHARON S. SCHELLIN, Secretary
- PAUL YOUNG, Zoning Data Specialist

The transcript constitutes the minutes from

the Public Hearing held on October 1, 2020.

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

4:00 p.m.

1
2
3 CHAIRMAN HOOD: All right. I want to welcome
4 everyone to the Zoning Commission for the District of
5 Columbia. Good afternoon, ladies and gentlemen. We are
6 convened and broadcasting this public hearing by video
7 conferencing.

8 My name is Anthony Hood. Joining me is Vice Chair
9 Miller, Commissioner Shapiro, Commissioner Turnbull,
10 Commissioner May, and Office of Zoning staff Ms. Sharon
11 Schellin and the Office of Zoning staff, as well, Mr. Paul
12 Young, who is handling all of our virtual operations. I
13 believe I did call Commissioner May's name as well.

14 Today is October the 1st, 2020. This is Case No.
15 20-14. The subject of tonight's hearing is the VNO South
16 Capitol, LLC and three lots in Square 649 LLC, design review
17 at 5 M Street, Southwest, Square 649, Lots 43 and 45 and 48
18 in Ward 6.

19 The virtual Public Hearing Notice is available on
20 the Office of Zoning's website. This proceeding is being
21 recorded by a Court Reporter and is also webcast live to
22 YouTube Live.

23 The video will be available on the Office of
24 Zoning's website after the hearing. Accordingly, all those
25 listening on Webex or by phone will be muted on the hearing

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1 and only those who have signed up to participate or testify
2 will be unmuted at the appropriate time when called. Please
3 state your name and home address before providing your
4 testimony. When you are finished speaking please mute your
5 audio.

6 Again, to save us from having technical issues,
7 when you get ready to speak if we can't hear you we will let
8 you know. So, you don't really need to ask us. We want you
9 to feel comfortable. You don't need to ask us am I unmuted
10 or can you hear me. If we can't, we'll let you know. We
11 appreciate your indulgence.

12 Also, if you have not signed up please call 202-
13 727-5471. And if you have any problems please call 727-5471.

14 All persons planning to testify must sign up in
15 advance and will be called by name at the appropriate time.
16 At the time of sign up all participants will complete the
17 oath of affirmation required by Subtitle Z, 48.7.

18 If you are listening and haven't signed up, this
19 goes back to what I just said, and want to testify you need
20 to call the hotline number and that number is 202-727-5471.

21 If you wish to file written testimony or
22 additional supporting documents during the hearing then
23 please be ready to describe and discuss it at the time of
24 your testimony as we have not had time to review your
25 documents.

1 The hearing will be conducted in accordance with
2 the provisions of 11-Z, DCMR Chapter 4 as follows. We have
3 preliminary Matters, the Applicant's case which the Applicant
4 has up to 60 minutes. Then we'll have report in support and
5 we also have collectively with the parties in support which
6 in this case we have the Advisory Neighborhood Commission who
7 is an automatic party. Report of the Office of Planning and
8 of the District Department of Transportation, Report of Other
9 Government Agencies, the Report of the ANC. In this case
10 it's ANC 6B. Then we will have our testimony of
11 organizations and individuals. Each have five to three
12 minutes, respectively. And we are hearing the order from
13 those in support, opposition and undeclared. And then we'll
14 have rebuttal and closing by the Applicant.

15 At this time, the Commission will consider any
16 Preliminary Matters. Does the Staff have any Preliminary
17 Matters.

18 MS. SCHELLIN: Yes, sir, we do.

19 There are a couple of proffered expert witnesses.
20 First, in transportation Dan VanPelt which the Commission has
21 previously accepted. Landscape architecture, Jeff Lee, again
22 previously accepted by the Commission. There are two that
23 the Commission has not accepted before. We have Shelly --
24 I'm going to mess this one up. I'm going to say Mrstik in
25 architecture and Benjamin Holsinger he's a sustainability

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1 specialist. And he will not be presenting -- Mr. Holsinger
2 will not be presenting but he will be available for questions
3 along with Jason Klem but Mr. Klem is not being proffered as
4 an expert only if he is needed. So, the architect and the
5 sustainability specialist in architecture, those two need to
6 be considered for expert status. And the other two, of
7 course, just in this case.

8 CHAIRMAN HOOD: Okay. Thank you, Ms. Schellin.

9 Let me open it up again. Ms. Mrstik and I'm sure
10 I messed her name up as well. Her exhibit is 3E.

11 COMMISSIONER TURNBULL: What is the exhibit number
12 for her resume?

13 CHAIRMAN HOOD: Ms. Mrstik is Exhibit 3E.

14 COMMISSIONER TURNBULL: Thank you.

15 CHAIRMAN HOOD: So, I'll give you time to look at
16 it. She's been proffered as an architect.

17 COMMISSIONER MAY: I have no comments. I think
18 that, you know, her credentials are fine for being considered
19 an expert in architecture.

20 CHAIRMAN HOOD: Okay.

21 COMMISSIONER SHAPIRO: I'm okay also.

22 CHAIRMAN HOOD: Okay. So, we will accept Ms.
23 Mrstik as --

24 MS. SCHELLIN: Both of them? Okay.

25 CHAIRMAN HOOD: No, I'm going to do the next one.

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1 MS. SCHELLIN: Oh, okay, I'm sorry.

2 CHAIRMAN HOOD: Okay I am sorry. Let's do Mr.
3 Holsinger. His resume is in 14E. He's been proffered in
4 LEED, I believe, yes.

5 COMMISSIONER MAY: Does Mr. Holsinger have
6 experience prior to Gensler?

7 CHAIRMAN HOOD: So, we may need to bring Ms.
8 Shiker up so she can answer Commissioner May's question.

9 Ms. Shiker, if you can introduced yourself and if
10 you heard the question, Commissioner May will repeat it if
11 need be.

12 MS. SHIKER: Hi, good evening. Christine Shiker
13 with the law firm of Holland & Knight. New format for me
14 with the Commission so it's my first time on the virtual.

15 Mr. Holsinger is only going to be answering
16 questions. I can -- we can bring him in to answer questions
17 about his experience or we can wait to decide if we need to
18 admit him as an expert to see if there are any questions.

19 COMMISSIONER MAY: I'd prefer to wait. I mean if,
20 you know, if he has six years of experience, I believe that's
21 a little light compared to what we would typically see for
22 somebody to be considered an expert. I'm sure he is, you
23 know, very good at what he does. But, you know, just based
24 on our past practices, it's usually, you know, 10 or more
25 that we testify to my recollection.

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1 MS. SHIKER: Okay.

2 COMMISSIONER MAY: So, I mean, if we don't need
3 to rely on him as an expert that's probably more appropriate.

4 MS. SHIKER: All right. Mr. May, that's fine.
5 He's just here to answer questions that may come up so I
6 don't think it's too critical that he have that expert
7 status.

8 COMMISSIONER MAY: Okay. Thank you.

9 CHAIRMAN HOOD: Okay. And, Ms. Shiker, you can
10 just stay up and let me ask Mr. Young. If you can bring --
11 I do have a Preliminary Matter. If you can bring Ms. Fast
12 up from the chair of the ANC as well.

13 MS. SCHELLIN: There's only one other thing I just
14 wanted to advise the Commission that I just checked the
15 records. A maintenance affidavit has been filed.

16 CHAIRMAN HOOD: Okay. Great. Let me just say,
17 Commissioner May, I appreciate you catching that because when
18 I looked and saw six years I thought he had just joined the
19 company six years and I'm glad you did catch that. So, I'm
20 sure others are -- anyone disagree with the format dealing
21 with Mr. Holsinger? I'm looking. Okay, great.

22 So, Ms. Fast and Ms. Shiker. Let me talk to my
23 colleagues. I just want to bring you all up.

24 Colleagues, I know that this is a design review
25 case. After reviewing this case we have a lot of opposition.

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1 One of the statements in the ANC letter I'll be frankly
2 honest. I started reading it a couple of days ago, maybe two
3 days ago and it took me until early today to go back and
4 review it because I did not like the statement. But even
5 more than that when I look at it from the design review all
6 things went through my heard and I'm not trying to down play
7 it but this is a major gateway. And it's major opposition.

8 We, the City, are going to have to endure what
9 goes on that corner coming in headed towards the Capitol.
10 And I can just tell you when you're down in that area (audio
11 interference) it's very important. And when I look at some
12 of the comments and I know some of that isn't necessarily
13 within our purview, but one of the things that came to my
14 mind was if this is what we are being presented with under
15 the Capitol Gateway I think we need to go back and relook at
16 our regulations. I know that this Applicant thinks for the
17 most part, so I have a problem with the design. I have a
18 major problem and I don't usually get into design. But when
19 I looked at this, it was Gateway and then I have even more
20 of a problem with some of the, and I'm not saying that --
21 I've been knowing Ms. Shiker for a while. Some of the stuff
22 that's been said and some of the stuff that's been reported
23 about how the community has been -- I would necessarily say
24 talk to because that's how we perceive something. That's not
25 the way -- we need to be neighborly and try to get things

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1 done and be cohesive.

2 I don't see unless I missed it, I didn't see any
3 support and I'm not about shoving anything down the
4 community's throat. I've never done it and I'm not going to
5 do it. And I even thought about recusing myself from this.
6 Because I don't even want to participate in something like
7 this. That's where I was but I also have been appointed to
8 do a job so that's what I want.

9 If my colleagues want to go ahead and proceed then
10 that's fine. I will proceed. I'm going to do my job. But
11 I can tell you it's a heavy lift, you know, I know some
12 things are not purview but this is a design review. And this
13 is a major thoroughfare for the District of Columbia. And
14 personally and I'm not trying to down play it but I don't
15 want to have my name on nothing like this with a lot of
16 opposition and what I'm looking at unless they have a
17 different design that's in this record. I know we look at
18 materials and other things of that nature. And I know
19 there's some things like IZ that may not fall within our
20 purview at this time but I just have a problem with the
21 design. I think it does and I can go and quote some of the
22 stuff in our language where I think it does not be.

23 So, let me open it up and let me hear from others,
24 your thoughts. You don't necessarily have to agree with me.
25 I'm sure, you know, but I'd like to know. I'm out here by

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1 myself and if you all want to proceed. Because I'm ready to
2 do what the request say give the ANC more time and let them
3 come back with something that folks in that neighborhood can
4 live with.

5 So, let me go to Commissioner May first.

6 COMMISSIONER MAY: Well, Mr. Chairman, I
7 appreciate the concern you have. Certainly, we don't want
8 to hear -- it's never good to start a hearing off with this
9 extent of neighborhood opposition. I'm not quite in the same
10 place when it comes to the design. I'm really not bothered
11 by it. I think we already have some projects along this
12 corridor. I mean, this is not going you see right when you
13 come across the bridge. It's a little bit further up the
14 block so it's going to be blended into a street wall of
15 numerous buildings that are, you know, relatively large in
16 scale.

17 There's a bit of a dip in the density to the south
18 so maybe it might be a little bit more prominent than others.
19 But, I mean, I think we already have some buildings on there,
20 along that stretch that are, you know, are okay but not
21 spectacular. And I think this is actually a pretty good
22 building in terms of the design is something that, you know,
23 I find interesting and different for Washington.

24 But, you know, that's just based on my first
25 impression as having, you know, reviewed the design here,

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1 certainly, I will learn more from the presentation, you know,
2 what the Office of Planning who does support this and others
3 have to say about it. So, I mean, I'm okay with, you know,
4 proceeding tonight and certainly don't think we're going to
5 get to the point of making of a decision tonight but, you
6 know, I'm here to learn more about it.

7 And, of course, you know, there are sideboards in
8 the extent of our review when it comes to Capitol Gateway
9 design reviews. And, you know, you alluded to this in the
10 beginning, maybe there's something we need to look at there
11 so that we can take some of these other issues into
12 consideration. But for right now it's really about, you
13 know, what is defined in the design review and so it doesn't
14 go to some of the issues that have been raised about the
15 project.

16 Those are my few thoughts. I will certainly go
17 along with the consensus here.

18 CHAIRMAN HOOD: Okay. Thank you, Commissioner
19 May.

20 Commissioner Shapiro.

21 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

22 I'm more in line with where you are on this one,
23 Mr. Chair. I think given the level of opposition I agree
24 with Commissioner May. It's hard to imagine with me making
25 a decision tonight in any case. But I think we would benefit

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1 from this being cooked a little bit more before it gets to
2 us. So, you know, even if that means we, you know, this
3 hearing is open even if that means we just continue this
4 until there's more conversation that's had. And I'm not even
5 talking about the IZ. I'm talking about things that are
6 relevant to the design we get.

7 So, I would be supportive of continuing this
8 hearing. Stopping at this point and continuing the hearing.

9 CHAIRMAN HOOD: Thank you, Commissioner Shapiro.
10 Commissioner Turnbull.

11 COMMISSIONER TURNBULL: Thank you, Mr. Chair.

12 I have really mixed feelings about this. ANC 6B
13 has been -- we have been on a lot of projects that come
14 before us. And this area has been very well heavily
15 developed and they've always paid attention to every very
16 carefully. And so I see them with the opposition that is
17 before us, I get a little bit skeptical about it.

18 The only other issue I have not regarding what the
19 buildings are going to look at is that the request for
20 alternatives. We've approved some projects in the past with
21 alternatives but they've been kind of minor. You can sort of
22 see what-- I guess I'm a little -- I'm always skeptical about
23 approving applications that want alternatives and because it
24 seems like it is a very slippery slope at times as to what
25 you're going to really get. So, unless there's something,

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1 unless they can refine that further on, I'm a little doubtful
2 that -- we're not going to get to a solution tonight or an
3 answer. We're not going to walk away.

4 But I think Commissioner Shapiro raised a good
5 point in maybe they ought to go back and meet with people and
6 try to resolve some of these issues before they come back and
7 actually want to have a full-blown hearing.

8 CHAIRMAN HOOD: Thank you, Commissioner Turnbull.
9 Vice Chair Miller.

10 VICE CHAIR MILLER: Thank you, Mr. Chairman.

11 I listened carefully to my colleagues and I've
12 read the entire record and I see that the Applicant has
13 provided a response to some of the community concerns about
14 the design and affordable housing issues. And I'm usually
15 one to say let's go ahead and have the hearing if everybody
16 has taken all the time to come down to Judiciary Square. In
17 this case they've taken the time to Zoom in or Webex in or
18 call in. So, it's not as much of an inconvenience if we were
19 to postpone.

20 As you've said in the past, Mr. Chairman, about
21 other cases what struck me about this case is it just doesn't
22 seem to be flavored right. And Mr. Shapiro used the term "it
23 could use some more cooking."

24 I mean, I realize it's a big project and a lot of
25 changes have been made. There's some design setbacks and

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1 material changes that have been made and height step downs.
2 But I'm concerned about the level of opposition and what it's
3 about, both in the context of the neighborhood, in terms of
4 the small area plan's aspirations for this neighborhood, for
5 the ends of the neighborhood. And, yes, even though it's not
6 required the affordable housing -- the lack of affordable
7 housing, I realize it may have started out with zero and none
8 is required, but we have about 300 units in one alternative
9 and 600 units in another in a neighborhood that has a history
10 of sometimes not a good history of pushing people out,
11 although no one is being displaced residentially from the
12 site that's being developed, I don't think. I think it's
13 mostly vacant and maybe some retail, one store. But there
14 needs to be more diversity. This project needs to respect
15 the diversity of Southwest both architecturally in a better
16 way and then the affordable housing mix. One percent -- I
17 realize it's not -- inclusionary zoning doesn't apply but a
18 lot of us who had a problem with inclusionary zoning not
19 applying to the downtown area. It's a D5 zoning apparently
20 or where it's exempt in some of these design review cases.
21 And I think the Office of Planning is looking at that issue.
22 So, I mean, there are a lot of aspirational principles in the
23 Southwest small area plan. And I think I was there on the
24 council staff when that was approved and heard those
25 aspirations articulated by the community and by the Office

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1 of Planning that presented it to us at the time about
2 affordable housing and a mix of housing and a mix of
3 architecture that fits into the neighborhood.

4 So, I think providing more time for more
5 opportunities for the Applicant to try to address some of
6 these concerns to show how it's evaluating the principles in
7 the small area plan better and meeting them even though
8 there's no strict compliance with those aspirations. There's
9 no strict requirements in the design review criteria that is
10 before us. But this is a discretionary -- I believe it's a
11 discretionary review that we have. That's why we're here
12 otherwise why would they come before us.

13 So, we've got to use whatever little leverage we
14 have to bring this together a little bit better than -- I can
15 hear -- we could hear the case if everybody here blocked out
16 the time but I'm certainly not ready to make any decision,
17 favorable decision. It would be against it if the project
18 didn't change to address some of the concerns of the ANC, the
19 community members, the Council Member Charles Allen of Ward
20 6 who doesn't often weigh in on a case.

21 So, you know, we have -- we do have an overarching
22 requirement that Zoning shall may be not inconsistent with
23 the Comprehensive Plan. And the highest civic priority in
24 the existing Comprehensive Plan and certainly the frame work
25 elements that were just adopted by the Council and the new

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1 proposals that are pending that the Mayor sent to the Council
2 emphasize affordable housing. And we can do better. The
3 Applicant can do better here. And the community deserve
4 better. The city deserves better so that's where I am, Mr.
5 Chairman.

6 CHAIRMAN HOOD: So, let me go back to -- okay,
7 Commissioner Shapiro.

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

9 First of all, I appreciation the elocution of Vice
10 Chair Miller. I absolutely associate myself with his
11 remarks.

12 But also wanted to amplify something that
13 Commissioner Turnbull said. You know, I am still the new kid
14 on the block with this even after three years. But I just
15 can't remember a case where we've been asked -- where we've
16 had two schemes that aren't just around the edges but are two
17 fundamentally different schemes. Maybe there are, I don't
18 remember it. And I have lots of concerns about that. And
19 so that's another piece of this. Maybe we should discuss
20 this and perhaps we need to give some direction to the
21 Applicant around that. But I'm not comfortable with that at
22 all.

23 CHAIRMAN HOOD: I actually would agree. I hadn't
24 gotten there. But let me go back to what we were saying and
25 we'll come back to the question of different schemes.

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1 One of the issues I had and I'm not going to get
2 too much into it is when I read something that says and I'm
3 not going to read the whole decision, but the Applicant
4 initially informed ANC 6B that they would not offer any
5 affordable units in either scheme because as they stated to
6 us, "It is not required and we don't have to."

7 If you go back and talk to the neighborhood,
8 please don't a community what you have and don't have to do
9 because they're the ones who live there. And I will tell you
10 and I've heard what the Vice Chair said about what's in our
11 purview. I don't state that a lot anymore. So, there are
12 things that I've been saying over the years that the courts
13 have sent back and said, oh, yes, it is in your purview. So,
14 what I say now is as far as I'm concerned even though some
15 of these findings and some of these things that we look at
16 are within our purview. And I don't know who said that or
17 if they said it or how it was interpreted if they not said
18 it. All I'm doing is encouraging the Applicant because it
19 looks like it is going back. And I'm surprised we even went
20 this far. But I'm just encouraging the Applicant to work
21 cohesively with the good neighbor policy of the people who
22 live there. That's what I'm asking.

23 And I don't think the ANC had a major ask. They
24 had three different letters but one of them I saw I really
25 appreciated how they framed it. Basically their ask was not

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1 a whole lot. There ask was to postpone and they asked for
2 more time to work with the Applicant. Ask is abnormal, I
3 don't think that's out of reach. I think it's a lot. I don't
4 know if they're going to come back with everything that they
5 want. The Applicant is going come back here. But I think
6 we'll come back closer to where we are now. And I just have,
7 with the way this is and the Vice Chair mentioned it, I don't
8 think it's flavored right. I'm very hesitant on moving
9 forward.

10 We could hear tonight but we have all other cases
11 and meetings and trying to keep all this stuff sometime
12 wrapped up, I've rather hear it flushed out once, then we can
13 have it all concrete. It's all put together. It's all
14 packaged to concentrate and get because if tonight. If we
15 go forward with this hearing tonight it's going to be this
16 way, that way. It's going to be all over the place and then
17 if we just get submissions for me it's going to be all over
18 the place and then I got to try to put it together.

19 So, that is our job. We're up to the task but I
20 think we should give both the Applicant and the ANC and the
21 community from what I understand as well an opportunity.

22 So, let me open it back up both second comments,
23 second round. You hear what Commissioner Shapiro --

24 MS. SHIKER: Excuse me. Will you let the
25 Applicant have a chance to speak at some point?

1 CHAIRMAN HOOD: Ms. Shiker, probably not. The
2 reason I brought you and Ms. Fast up is because I was trying
3 to see how quick you all can have a meeting, how quick. And
4 that's why you all came out. I don't necessarily need to
5 hear from anybody about arguing the case or anything. We
6 don't even want to get there. We're not even there. So, I
7 would encourage you and I will have to give Ms. Fast -- I'll
8 give you one minute but let's not talk about the merits,
9 please.

10 MS. SHIKER: And, no, and I want to talk about the
11 postponement that you were asking for.

12 I do want to say that our team has worked very
13 closely with the ANC. We've made significant design changes
14 but we are at a fundamental impact of what is supposed to be
15 at the corner and it is in terms of height and density.

16 The ANC very much wants to see something very low
17 at the corner of M and south Capitol Street. The zoning, the
18 future land use map and the Southwest Area Plan all call for
19 high density creating an axial corridor. So, that is why we
20 kind of have gotten to a point where we couldn't continue
21 discussion because we are at a place. We have a fundamental
22 different view of what that means and we were very hopeful
23 tonight that the Commission could give us some guidance on
24 what they believe that means because this is the first corner
25 at the Southwest site. We would be happy being able to

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1 present to you and get comments back from the Commission on
2 the design to go back and talk to the community.

3 We've met with them seven times. We have
4 presented, we have started meeting in April. It's not for
5 a lack of time and I understand that the ANC was trying too
6 but we do need some feedback. The Office of Planning
7 believes that what we have done is what is called for in the
8 plan and in the zoning. And that --

9 CHAIRMAN HOOD: Okay. Okay. Thank you, Ms.
10 Shiker. I think that's' good.

11 Ms. Fast, did you have something. I don't want
12 to go that far and I don't know, you know, we'll see what
13 direction. I thought I had articulated mine but I can do it
14 again. There's some things.

15 Ms. Fast, let me give you a moment to speak and
16 I don't want to get too much into the case, Ms. Fast.

17 MS. FAST: Yes. Thank you very much.

18 Commissioner Hood, what Ms. Shiker said is
19 somewhat correct but somewhat incorrect in the sense that we
20 are not saying that we want to see the corner of Couth
21 Capitol and M to be a different design scheme. What we
22 really want to see is it to follow the tenants as we have
23 said in the small area plan. And with the proposition that
24 we received from the Applicant to look at both a mixed view,
25 a mixed use view which is very different from the

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1 residential. It made it very difficult for us to make a
2 decision and to talk about design elements.

3 So, we have had discussions. Yes, she is correct.
4 We have had discussions with them. I will say that the first
5 few did not go very well because we did not have -- we had
6 a very big back and forth about the inclusionary zoning, the
7 affordable housing piece. But the design has only gone back
8 for review with us twice and we would like more time and
9 effort to come to, as you said, some sort of agreement.
10 Obviously, we have done this before and we recognize we don't
11 get everything we want but we would like to at least come to
12 a decision where we get some and the Applicant gets some. And
13 we meet in the middle and it's a great corner and we're all
14 happy with it and proud to call it Southwest.

15 CHAIRMAN HOOD: Okay. Thank you, Ms. Fast. And
16 thank you also, Ms. Shiker.

17 And what I heard from both of you all tells me
18 that the ask of the ANC needs to happen because it seems
19 like we were in the same meetings but we came out with
20 different interpretations or different understandings.

21 And some time, I know it's been seven times. I
22 never thought I'd say eight, nine or ten times maybe the
23 charm.

24 But let me open it up to my colleagues. I know
25 they had additional comments. I think was it Commissioner

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1 Shapiro, did you have a pass forward or, oh, Commissioner
2 May.

3 COMMISSIONER MAY: If I could please, yes.

4 So, first of all, I don't have any objection if
5 the Commission wants to defer the hearing to a later date to
6 allow further discussions between Applicant and the ANC. I
7 have no problem with that and hopefully good things will come
8 from that.

9 The second point I would make is that, you know,
10 the Zoning Commission is a strong champion for affordable
11 housing and proper execution of the inclusionary zoning
12 regulations. Strengthening the inclusionary zoning
13 regulations we do this all the time in the, you know, both
14 in writing the regulations that are required across the city
15 but also in unit developments in balancing the benefits and
16 potential impacts of projects. So, you know, we're always
17 fighting for affordable housing. However, I do believe that
18 it is extremely important at moments like this that the
19 Zoning Commission stick with its own rules. And its own
20 rules in this case are that we established a zone that did
21 not require an IZ percentage. And we are only doing a design
22 review. So, I think any discussion of affordable housing in
23 this context has the potential for getting us outside of the
24 bounds of our normal roles. And I don't think we would want
25 to do that in any direction in favor of an Applicant or in

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1 favor of a community that's resisting the particular
2 proposal.

3 So, I would not associate myself with any of the
4 comments having to do with affordable housing because of the
5 impacts that could come from us, you know, straying from a
6 typical Capitol Gateway review.

7 The next thing is that when it comes to reviewing
8 two proposals, I understand that is more difficult and I'm
9 certainly sympathetic to how difficult that would be for the
10 ANC to review. However, I completely understand why the
11 Applicant wouldn't want to do it. It's a very difficult
12 thing to, you know, finance and build buildings like this,
13 particularly ones where we have particular aspirations for
14 what goes onto this corner that we create the kind of
15 environment that our plans and zoning are intended to create.

16 So, given the often uncertain environment of
17 financing something like this and layering in current
18 economic conditions and the projected potential use or future
19 lack of use for office space, in particular, I think that
20 it's perfectly reasonable for the Applicant to propose
21 something that is primarily residential and then an
22 alternative that includes some component of office space.
23 I think that's a reasonable thing and I think that we can
24 look at both of them as if they were two separate buildings
25 and decide whether or not they meet the requirements of a

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1 Capitol Gateway Design Review.

2 So, I mean, I appreciate the reluctance on the
3 part of some of my fellow commissioners to undertake
4 something like this because it's not something that we've
5 done before but I don't see anything in the rules that state
6 that we can't do it. And I don't see -- and I do see
7 extenuating circumstances why we probably should in this
8 circumstances. So, I may be the only voice speaking to these
9 things but I would -- I just felt I had to make those
10 comments.

11 CHAIRMAN HOOD: Thank you, Commissioner May. And
12 whoever that is that wrote the comment in the Chat while I
13 appreciate your comments. There's a lot to what you wrote.
14 I've been on this Commission for 20 years and I an African
15 American male in the District of Columbia so I know you
16 directed it to Commissioner May but I know what it takes on
17 this Commission. You can write me something in the Chat, you
18 call the office and get in touch with me if there's some
19 issues about that.

20 COMMISSIONER MAY: So, I would suggest that
21 whoever wrote that if they want to submit it to the record
22 they should submit it to the record. But I'm not going to
23 read any chats.

24 CHAIRMAN HOOD: No, no. But I just happen, you
25 know, I would like for us to block that but I would like to

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1 have -- if he wants to have a conversation, there are
2 regulations and rules that we have to go by. And, again,
3 like I stated earlier, the courts have given us, has
4 basically said to me, to the Commission, that, yes, we can
5 look at gentrification. And they just said that recently.
6 So, you know, that was not within our purview at one time but
7 as far as I am concerned it is now. So, you know, we do have
8 regulations and rules that we have to follow. We may
9 disagree how we get to them like we have a disagreement now.
10 Not necessarily a disagreement, a fundamental process and I
11 think that will work itself out.

12 Commissioner May, what you said and what Mr.
13 Turnbull and Mr. Shapiro said, I think that will work itself
14 out. We can figure that out as we go further about the
15 flexibility. They can bring it in and we can figure it out
16 as we move forward and get more into the merits of the case.

17 Let me go to any others. Anybody -- Mr. Shapiro.

18 COMMISSIONER SHAPIRO: You know, respectfully,
19 because I hear where Commissioner May is coming from. It
20 doesn't feel like to me it's just about that we haven't done
21 it before, it's that talk about opening a can of worms, you
22 know. If we are not just allowing for minor flexibility but
23 we're allowing folks to provide, you know, fundamentally
24 alternate designs for projects, first of all, why only two.
25 Could it be three or four?

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1 And also, you know, does this open the door to,
2 you know, dozens of projects that come our way doing this and
3 maybe that's not the end of the world either. But at least
4 we need to be mindful of what we're opening ourselves up to
5 if we allow for this kind of, you know, flexibility on
6 steroids.

7 CHAIRMAN HOOD: Okay. Thank you. Commissioner
8 Turnbull.

9 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I
10 would, as much as I respect my colleague, Mr. May, I think
11 Commissioner Shapiro has brought up a very good point.

12 Going down any kind of a precedent-setting route
13 is always awkward, I think. I would really want to talk with
14 the Office of the Attorney General to understand the
15 implications of what we're going into and what kind of road
16 that would lead us to. I mean, having multiple projects with
17 multiple options in them sounds like it's going to be a --
18 I don't know if we're set up if we have the backpacks to
19 necessarily be able to do that or the beds to stay up late
20 at night going through all these things.

21 I think it puts a big burden not only on the
22 Zoning Commission to look at multiple options but on
23 community also. The community members get confused as it is
24 looking at one particular project and trying to understand
25 the implications of what it's going to do on the

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1 neighborhood. But if you give them two options, three
2 options and say, here, we could this, we might change to
3 this. I think it makes it very difficult for people to
4 really understand what they're going to get and what the
5 neighborhood is going to look like. So, I think we have
6 tread very lightly on precedent setting options on projects.

7 I just think it's -- it's probably doable, yes,
8 yes, if we could -- we're super heroes, the Zoning
9 Commission. We can do anything, you know, that's how good
10 we are. But I think we have to be very, very careful for
11 what we're allowing the community to get into and we have to
12 think of their abilities to look at these things and
13 carefully analyze it.

14 So, I mean, it's one thing for the Zoning
15 Commission to say we can do this but I worry about putting
16 a big burden on the neighborhoods and asking them to say, oh,
17 by the way you got a project coming here that's got two,
18 three or more options that they could do and what do you
19 think. Is it a possibility that they can do any one of the
20 three. I think that's asking a lot for the community to get
21 into.

22 CHAIRMAN HOOD: Okay. Thank you. I think though
23 that we have a process to do exactly what both I hear that
24 Commissioner Shapiro, Commissioner Turnbull and Commissioner
25 May. We already have a process and I think we just need to

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1 tap it and utilize what we already have in place. And that
2 may be a Consent Calendar I don't know. Whatever the case
3 is, but I'm sure we have a process to cover that that they
4 need to come back in for a minor mod or whatever. I'm sure
5 we have a process to deal with that. And I do want to state
6 that the reason I looked at the Chat. I don't sit here and
7 look at Chats. I'm too busy running hearings. But I will
8 tell you this. It's because one of the things when we did
9 this virtual and I'll put this on the record. I wanted to
10 make sure that every resident and everyone who wanted to
11 participate in this process was able to participate. So,
12 when I saw the Chat come up, I've never seen it since we been
13 doing virtual, I read it. And I read it because it could
14 have been somebody trying to get in. We've had that happen
15 one time on the BZA and we want to make sure that everybody
16 is able to participate and that's why I read it. But I did
17 respond to it because I wanted to make sure that whoever
18 wrote while I appreciate what they wrote, a lot more goes to
19 that. And if you want to have a conversation, it's not about
20 a case, we can talk about it and I can tell you what my
21 experience has been being on this side of it and dealing with
22 it.

23 So, let's get back to this. Now, that I've head
24 everything and I've heard from Mr. Shiker and I heard from
25 Ms. Fast, Chairperson Fast, I think -- I think what I've

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1 heard is, we know that they're in separate places but I think
2 if they had time to go back and work together I think we
3 could come back with more resolve.

4 What we're looking at what we're not looking at
5 is not it for me. We can deal with that when we come back.
6 And the reason I brought them up is because I want us to have
7 as quickly as possible how we can come back. We're operating
8 virtually as the Vice Chair said now. So, it doesn't mean
9 that we got to go downtown to the Marion Barry Building which
10 was I think named -- it's been named but it is now. I've
11 been very proud of that. But I don't think we have to go
12 down to the building. We don't have to do that now. We can
13 do it right here so it's easier for all of us.

14 Let me open it up. Moving forward, Commissioners,
15 what I was going to do. Let me just tell you what I think
16 the plan is.

17 Moving forward I think we all agree that they need
18 more time. At least we have a majority. And I heard
19 Commissioner May and I understand sometime with the Vice
20 Chair. But I think I hear loud and clear that the ANC and
21 the Applicant need more time. My question is, how much more
22 time? How quick can you get this back to us? We're doing
23 this virtually. I assume it is but we can probably meet on
24 a Tuesday or a Wednesday. But we can get this done because
25 we're doing it virtually.

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1 So, let me ask Ms. Schellin if you can work with
2 Ms. Fast. And, Ms. Fast, a lot of it is going to depend on
3 you, how quickly you can get your colleagues and you all can
4 set it up. I guess you all are doing it virtually and how
5 quick you all can get together to determine how quick we can
6 schedule something.

7 So, I'll put it up and I'll ask Ms. Schellin if
8 you could take the lead on that I would appreciate it.

9 MS. SCHELLIN: Okay. So, Ms. Shiker, Ms. Fast,
10 how quickly do you think you guys can meet and then have a
11 new, you know, response to what you've heard this evening in
12 order to get new drawings and then so we can go ahead and
13 schedule a date this evening so it doesn't have to be re-
14 advertised and reposted. We can give the date tonight.

15 MS. FAST: So, from the ANC's perspective the
16 earliest that we could take a look to revote because,
17 obviously, we have a -- we voted in opposition. So, would
18 be at our October 13th meeting would be the earliest. That
19 meeting and then the next meeting after that and,
20 unfortunately, even if we came up to a design and we agreed
21 on everything we would still have to vote at a public meeting
22 as you probably know and understand.

23 And then the November meeting would be on November
24 16th.

25 MS. SCHELLIN: So, these are schedule a special

1 meetings, right?

2 MS. FAST: We can schedule a special meeting.
3 We'd have to give time for that. The October 13th would
4 probably be just enough time given today we'd have to do 14
5 days.

6 MS. SCHELLIN: But I mean if it was between the
7 two months.

8 MS. FAST: Sure, sure. Yes.

9 MS. SCHELLIN: Ms. Shiker.

10 MS. SHIKER: I'm trying to coordinate with my team
11 on how quickly. I mean we certainly would like to do
12 something before November. So, I think that we can plan to
13 meet with the ANC at some point and go to the October 13
14 meeting. And so we could schedule something, you know, in
15 the second or third week of October for the Zoning Commission
16 to come back. As I said, we were very hopeful to get some
17 input on our design to help inform some of these discussions
18 with the ANC, but it sounds like the Commission is not able
19 to do that is you're unique in that you don't get a set down
20 so you don't get the hearing input in advance. So, we are
21 kind of working blind with what the Zoning Commission thinks.
22 But, you know, I don't know what the Commission would think
23 about that.

24 CHAIRMAN HOOD: Let me interrupt. I think for me
25 and I don't know where the others are. It's not necessarily

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1 the Zoning Commission. I'd like for you to have the flavor.
2 I'd like for you to get the input from the community and work
3 with them. And if you come back disagreed, fine. But, you
4 know, it needs to be a more of a -- it's not on the Zoning
5 Commission. I'm not pushing the ANC out the way and take the
6 Zoning Commission because to be, Ms. Shiker, I know you don't
7 mean it but that's how it sounds of being a person--

8 MS. SHIKER: Oh, no. What we're talking about
9 back to the ANC.

10 CHAIRMAN HOOD: That's exactly how it sounds.

11 MS. SHIKER: Back to the ANC and talk to them.
12 We just were hoping to get more input from the Zoning
13 Commission. But as you said, we'll go back to the ANC and
14 we'll come back and we'll get the input from the Zoning
15 Commission there even if, you know, hopefully, we should come
16 closer at that point.

17 CHAIRMAN HOOD: So, Ms. Shiker, I know you and I
18 know Ms. Fast. I know you all will come back, if you're not
19 holding hands at least you're close by where you can reach
20 out and grab each other's hand. That's where I am.

21 All right. Ms. Schellin, you can continue,
22 please.

23 MS. SCHELLIN: Okay. So, Ms. Shiker, you wanted
24 to -- do you actually think that you guys are going to meet
25 and you're going to be back in time with new plans by the

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1 second or third week of October?

2 MS. SHIKER: I think we would be back before the
3 ANC by October 13 and then -- I'm sorry, since we're not all
4 together it's hard to talk. I'm trying just to see how
5 quickly my architect can work. So, if you could give me one
6 moment I --

7 MS. SCHELLIN: Sure.

8 MS. SHIKER: Yes, thank you so much.

9 CHAIRMAN HOOD: Take a couple of minutes. We'll
10 wait a couple of minutes and let them get that together.

11 MS. SCHELLIN: Sure.

12 COMMISSIONER TURNBULL: I have a question for
13 Commissioner Fast.

14 CHAIRMAN HOOD: Go right ahead.

15 COMMISSIONER TURNBULL: I'm very jealous.
16 Hopefully, you can tell me what I'm looking at is a picture
17 on your wall behind you?

18 MS. FAST: It's a feature on Webex that you can
19 do to change your background.

20 COMMISSIONER TURNBULL: Really. I'm looking at
21 this and I'm just drooling. I'm like, boy are you lucky to
22 be able to be there.

23 MS. FAST: I needed the zen because obviously we
24 were not coming to this hearing in a positive light. So, I
25 was hoping for that.

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1 CHAIRMAN HOOD: So, Commissioner, let me ask.

2 Could you work, I'm sure you will. I know you
3 have a notice requirement but my only ask of you is the ANC
4 and the community if you all. Whatever happens if you all
5 could work as fast as possible so we can get back in here and
6 do this. I'm just asking, I'm not saying, believe me, I know
7 sometime it's not doable. All I'm doing is asking.

8 MS. FAST: We will try. I mean, obviously, from
9 our perspective we would want to see new design plans and I
10 think what I heard from you here tonight is you'd want to
11 hear from community engagement. We have a little struggle
12 with community engagement, of course, because we go virtual
13 and it's not always as easy as it would be in person.

14 Most of our concerns from our community have to
15 do with the Affordable Housing piece and as you know, we put
16 that in as a supplemental because we understand what our
17 purview is in terms of how we come before Zoning. So, again,
18 we don't want to dismiss it but we understand that. I think
19 from our perspective if we can get some new architectural
20 plans, talk with the Applicants we can have them come before
21 us on the 13th because our notice would give us to the 13th
22 anyway so if they can make it to that we can certainly do
23 that.

24 CHAIRMAN HOOD: Okay. Sounds good. Thank you.

25 Let me go to Commissioner Shapiro and then we will

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1 go back to Ms. Shiker.

2 Mr. Shapiro.

3 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

4 Just a question about our process. I want to make
5 sure I understand.

6 I'm working under the assumptions of what we're
7 doing is talking about a continuance, not a postponement, is
8 that right?

9 CHAIRMAN HOOD: I've planned not to even reopen
10 the statement. We're just going to reconvene.

11 COMMISSIONER SHAPIRO: Essentially, we're
12 continuing this public hearing. Okay. Thank you.

13 CHAIRMAN HOOD: Right, right.

14 MS. SHIKER: So, Chairman Hood, Ms. Schellin, I
15 have confirmed that we would be able to work with the ANC and
16 get some new progress going so they have opportunities to
17 review some of the revisions and some of the areas that they
18 have expressed concern on and we would be able to go to the
19 meeting on October 13th and meet with Chairman Fast and
20 Commissioner Forgie and others before then.

21 We would be able to have some more refined
22 drawings of those redone by the week of October 25th and so
23 if we could do something that week in front of the Zoning
24 Commission for continuing this hearing we would appreciate
25 that.

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1 MS. SCHELLIN: Okay. Well, we actually already
2 have both of those nights taken and I was going to suggest
3 that we have the hearing November 5th which would be the
4 following week. So, if you're going to have your refined
5 drawings that week then that would give you one more week to
6 make sure they really are refined and we could schedule you
7 for Thursday, November 5th, which is the first week of
8 November and have the ANC maybe if they need to schedule a
9 special public meeting to take a vote maybe they could
10 schedule a special public meeting the last week of October
11 once they see the refined drawings and take a vote in time
12 for that hearing.

13 MS. FAST: That would work for us. We could do
14 that.

15 MS. SCHELLIN: Okay.

16 MS. SHIKER: And I think that that would for us
17 as well.

18 MS. SCHELLIN: Okay. So, November 5th, Chairman
19 Hood, at 4:00 p.m. That would mean no more -- they do not
20 have to post since we are announcing publicly and no further
21 notice -- we'll obviously put it up on our website and we'll
22 go from there, November 5th at 4:00 p.m. and the ANC will
23 have committed to scheduling a, I believe, they would call
24 there's a special public meeting also or something along
25 those lines, the last week of October to look at the refined

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1 drawings and they'll have their meeting in October.

2 CHAIRMAN HOOD: Okay. All right. Well, thank
3 you, Ms. Schellin, for putting all that together.

4 I want to thank everyone for their participation
5 and I am not postponing or adjourning this hearing. We will
6 reconvene this exact hearing and it will be a limited opening
7 statement on November the 5th at 4:00 p.m. November 5th at
8 4:00 p.m.. We will reconvene in Zoning Commission Case No.
9 20-14.

10 So, with that I will see everyone November 14th
11 for Zoning Commission Case No. 20-14.

12 Let me just state the Zoning Commission will meet
13 again October the 5th. We do have Zoning Commission Case No.
14 20-03 and I think we have another one. We also have a
15 special public meeting update on the comp plan on November --
16 I'm sorry, October the 5th at 4:00 p.m.

17 So, unless I hear anything else, thank everyone,
18 and we will reconvene this hearing November 5th at 4:00 p.m.

19 Good night.

20 MS. SCHELLIN: Thank you.

21 (Whereupon, the above-entitled matter was
22 concluded at 4:53 p.m.)

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 10-01-20

Place: teleconference

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