

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC HEARING

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 IN THE MATTER OF: :
 :
 Text Amendment to : Case No.
 Title 11, Subtitles A, : 21-16
 C, G, I, K, X, Y, and Z; :
 Transfer of Counsel :
 and Sufficiency Review :
 :
 -----:

MONDAY

DECEMBER 6, 2021

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The Public Hearing of Case No. 21-16 by the District of Columbia Zoning Commission convened via videoconference at 3:45 p.m. EDT, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- ROBERT MILLER, Vice Chairperson
- JOSEPH IMAMURA, Commissioner
- PETER MAY, Commissioner
- PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, ESQ.

DENNIS LIU, ESQ

The transcript constitutes the minutes from the
Special Public Hearing held on December 6, 2021.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

OPENING STATEMENT:
 Anthony Hood 4

PRESENTATION:
 Case Number: 21-16 - Title 11
 Text Amendment to Subtitles A, C, G, I, K, X, Y,
 and Z; Transfer of Counsel and Sufficiency Review . . . 6

COMMENTS AND QUESTIONS:
 Commissioners 7

ADJOURN:
 Anthony Hood14

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

2 (4:00 p.m.)

3 CHAIRPERSON HOOD: Good afternoon, ladies and
4 gentlemen. We are convening and broadcasting this public hearing
5 by videoconferencing. My name is Anthony Hood. Joining me this
6 evening are Vice Chair Miller, Commissioner Shapiro, Commissioner
7 May, and Commissioner Imamura. We're also joined by the Office
8 of Zoning staff, Ms. Sharon Schellin, and Mr. Paul Young, who
9 will be handling all of our virtual operations. We also have
10 from the Office of Zoning Legal Division, Ms. Lovick and Mr. Liu.

11 Copies of today's virtual public hearing notice are
12 available on the Office of Zoning's website. Please be advised
13 this proceeding is being recorded by a court reporter. It's also
14 webcast live Webex and YouTube Live. The video will be available
15 on the Office of Zoning's website after the hearing. Accordingly,
16 all those listening on Webex or by phone will be muted during
17 the hearing, and those who have not -- who have signed up to
18 testify will be unmuted at the appropriate time. Please state
19 your name and home address before providing testimony or your
20 presentation. When you are finished speaking, please mute your
21 video -- you audio, so that your microphone is no longer picking
22 up sound or background noise. If you experience difficulty
23 accessing Webex or with your telephone call-in, then please call
24 our OZ hotline number at 202-727-5471 to sign up or to receive
25 Webex login or call-in instructions. All persons planning to

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1 testify either in favor or opposition, we encourage you to sign
2 up in advance, and your name will be called at the appropriate
3 time. If you wish to file written testimony or additional
4 supporting documents during the hearing, then please be prepared
5 to describe and discuss it at the time of your testimony.

6 The hearing will be conducted in accordance with
7 provisions of 11Z DCMR Chapter 5, as follows: Preliminary
8 matters, presentation -- in this case, I believe it's the -- it
9 will be the Office of Zoning, then we'll have report of the Office
10 of Planning, the report of other government agencies, the report
11 of the ANC. I don't believe the Office of Planning is going to
12 report on this. Report of the ANC. Testimony with organizations
13 and individuals. Each will have -- the organizations will -- and
14 -- organizations will have five minutes, and individuals have
15 three minutes, respectively. And we'll hear in the order of
16 those -- from those in support, opposition, or undeclared.

17 The Commission reserves the right to change the time
18 limits for this presentation if necessary and intends to adhere
19 to the time limits as strictly as possible and notes that no time
20 shall be ceded. Again, any issues, please call our OZ hotline
21 number at 202-727-5471.

22 The subject of this evening's first case is a text
23 amendment to Subtitles A, C, G, I, K, X, and Y and Z of Title
24 11. This is transfer of legal counsel and sufficiency review.

25 With that, if there are no other comments or

1 preliminary matters, let me turn that over to Ms. Schellin. If
2 not, Ms. Schellin, you can keep it, and go ahead and do your
3 presentation.

4 MS. SCHELLIN: Yes, I'll keep it very short. This is
5 a text amendment from the Office of Zoning to Subtitles A, C, G,
6 I, K, X, Y and Z that simply transfers the legal counsel -- for
7 transfer of legal counsel and sufficiency review, due to the
8 change of the legal staff from the Office of the Attorney General
9 to OZ's Legal Division. We needed to make this change to our
10 zoning regs to affect that.

11 I'll just briefly respond. There was a Committee of
12 100 comment placed in the record, and so just to briefly respond
13 to the issues that are germane to this case. Some of it doesn't
14 have anything to do with the text amendment. But basically,
15 we're just codifying what the city council and the Mayor did for
16 fiscal year 2022's budget. But two of the OAG attorneys did come
17 to OZ, and OZ hired five new attorneys, and no changes to add or
18 take away the ZA's ability to hold discussions. It's the same.
19 That was something they brought up in their comments.

20 And, last, many community groups in the past, including
21 the Committee of 100, have asked for years exactly what has
22 happened for the Office of Zoning to have their own legal staff.
23 And so, now we're just updating the regulations to reflect that
24 change. And so, we'd ask the Commission to take that under
25 consideration.

1 We did refer it to NCPC, however, it was not referred
2 at the time, emergency -- the emergency was taken. It wasn't
3 referred until December 2nd. And even though they have provided
4 in a text that they would not take up any review of the case,
5 legal staff feels it would be best to wait the 30 days, because
6 the emergency will not run out until after that period to proceed
7 with final action, rather than moving forward this evening. So
8 we just ask that the Commission will consider that, and we're
9 ready for any questions.

10 CHAIRPERSON HOOD: Thank you, Ms. Schellin. I just
11 want to comment. A lot of residents, as you have mentioned, have
12 really pushed for this to happen --

13 MS. SCHELLIN: Right.

14 CHAIRPERSON HOOD: -- including the Committee of 100
15 were very vocal over the years for this to happen for years. So
16 we're there. We got it. So I know everybody's happy. And some
17 of the things -- I did read that letter of amendments -- they're
18 germane. And if they have additional questions, I always would
19 say they can always contact the Office of Attorney General as
20 well.

21 So let me open it up for any questions or comments.
22 Okay. Not seeing or hearing any. Okay.

23 Well, in that case, Ms. Schellin, do we have -- we
24 didn't have any other government reports, I don't believe. We
25 didn't have any reports from the -- any ANCs. Do we have anyone

1 on the line who wants to testify, an organization or individual
2 who wants to testify, either in support, opposition, or
3 undeclared, either organization or individual, Ms. Schellin?

4 MS. SCHELLIN: No one registered to testify.

5 CHAIRPERSON HOOD: Okay.

6 I think residents are very satisfied with what we have.
7 All right. So with that, I know that we cannot take action on
8 this tonight. I don't have any additional comments. We've heard
9 the presentation by the Office of Zoning. I think it's pretty
10 straightforward.

11 And, again, we want to welcome all of our Office of
12 Zoning Legal Division. I've got to get used to that. So anyway.
13 No further Comments.

14 And, Ms. Schellin, do we have anything else?

15 MS. SCHELLIN: No, sir. We'll put this on the January
16 13th agenda for final action.

17 CHAIRPERSON HOOD: Okay. Unless I hear something else,
18 we will put this, as Ms. Schellin said, on the January 13th --
19 Commissioner Shapiro?

20 COMMISSIONER SHAPIRO: Thank you. I'm just -- I'm
21 thinking about the language that we use -- I think this is
22 unrelated to this case -- but I was thinking about the language
23 that we use. If I refer to "our counsel" by saying -- by referring
24 to "our counsel," we are referring to the Office of Zoning Legal
25 Division, right?

1 CHAIRPERSON HOOD: Yeah, I -- sometimes, I -- that's
2 what the office is called in the Office of Zoning Legal Division,
3 but I usually call them "our counsel," and then --

4 COMMISSIONER SHAPIRO: Yeah, I think it's the new
5 appropriate shorthand, because this is our counsel.

6 MS. SCHELLIN: Yes. It used to be when --

7 CHAIRPERSON HOOD: I --

8 MS. SCHELLIN: -- you'd say, "our counsel," it was
9 Office of the Attorney General, but --

10 CHAIRPERSON HOOD: Right.

11 MS. SCHELLIN: -- no longer.

12 COMMISSIONER SHAPIRO: Right.

13 CHAIRPERSON HOOD: So that scenario, "our counsel,"
14 fits for both, because they were our counsel for at least the 24
15 years I've been here, 23 and a half, so. Now, still "our counsel"
16 is counsel, this counsel.

17 COMMISSIONER SHAPIRO: Just trying to simplify it for
18 you, Mr. Chair.

19 CHAIRPERSON HOOD: Well, I've -- I want to get practice
20 of saying Office of Zoning Legal Division. When I first -- I
21 was thinking legal -- but anyway, getting into semantics. I
22 won't do that.

23 Commissioner May?

24 COMMISSIONER MAY: So this little bit of discussion did
25 prompt a question for me, which is that, you know, in addition

1 to the regular support that we receive -- received from OAG and
2 have been receiving from the Office of Zoning Legal Division most
3 recently, there's also the question of what happens when a
4 decision is appealed to the DC Court of Appeals. Who will handle
5 representation of the Zoning Commission in such proceedings?

6 MS. LOVICK: It's going to be the Solicitor General,
7 the same as it always has been. And that'll be in either
8 scenario, whether or not it's an appeal of like a PUD or like a
9 design review, or it's an appeal of a rule-making action, and it
10 goes to the superior court --

11 COMMISSIONER MAY: Right.

12 MS. LOVICK: -- it would still be the Solicitor General.

13 COMMISSIONER MAY: How is it going to work with the
14 office of the Attorney General now staking out a position as an
15 advocate on certain positions on matters before the Zoning
16 Commission? Anybody know that?

17 MS. LOVICK: When you say how's it going to work, do
18 you mean is it going to --

19 COMMISSIONER MAY: Yeah, I mean is the Solicitor
20 General part of the Office of the Attorney General?

21 MS. LOVICK: No, I think that they're a separate office,
22 technically speaking.

23 COMMISSIONER MAY: So they might be within the
24 umbrella, but they're independent?

25 MS. LOVICK: I believe so. I don't know the specifics

1 of exactly how they are organized, but I know that they are not
2 technically directly part of. I don't believe that they are --
3 I think that they have some separation. But I mean I can
4 certainly look into it. I don't want to give you the wrong
5 information. I just know that the Solicitor General is supposed
6 to be representing us in those appeals in both instances.

7 COMMISSIONER MAY: Well, I -- that's the key question.
8 I probably have follow up questions, but we don't need to go
9 through all that here.

10 MS. LOVICK: Okay.

11 COMMISSIONER MAY: Thank you.

12 MS. LOVICK: Yeah, and that's always been the case. I
13 mean that was the case always.

14 COMMISSIONER MAY: Right.

15 CHAIRPERSON HOOD: Okay. And Commissioner -- Vice
16 Chair Miller?

17 VICE CHAIR MILLER: Thank you, Mr. Chairman. Yeah,
18 this is -- obviously, it's my understanding that the Solicitor
19 General is part of the Office of Attorney General. And,
20 obviously, this whole new relationship is an evolving one that
21 we'll have more discussion about in the future, and it will
22 evolve. But on -- to Commissioner May's question, I think we
23 -- in terms of that evolution, I think we need to have our own
24 legal division involved in those appeals somehow; coordination,
25 communication, input. I think it's something we need to be

1 thinking about and considering.

2 I think other independent agencies that have their own
3 counsel -- it needs to be looked at. For example, the city
4 council when -- or Public Service Commission to see how their
5 -- who on their legal -- who is doing the legal representation
6 when there's an appeal or a litigation against the particular
7 body. I think you need -- the legal division needs to be
8 involved. I don't know what the extent of that is. I just think
9 it's something that we need to be thinking about and considering,
10 as this new relationship goes forward.

11 There needs to be communication between OZLD, I guess
12 that's our counsel, and OAG on probably a lot of issues, because
13 they are -- because the Solicitor General is going to be handling
14 -- the main person handling the appeals of our decision, so.

15 MS. LOVICK: Yeah, you're right. I'm sorry. I wasn't
16 prepared to answer that question, but you're correct that the
17 Office of the Solicitor General is part of OAG. And all I know
18 at this point is that the intent, based on what has been conveyed
19 to me, is that the Office of the Solicitation General is still
20 going to act as our counsel with regard to appeals. But it's
21 certainly something that's continuing to evolve, and it's
22 something I'm aware of, and we're working to figure out what that
23 interplay will be, so that we can facilitate a transparent
24 process. So thank you for raising it. It's certainly on our
25 radar.

1 VICE CHAIR MILLER: Thank you.

2 CHAIRPERSON HOOD: Well, just to give everybody a
3 comfort level, that was always the first -- and I was involved
4 in very early discussions. That was always the case, that the
5 Solicitor General would do as he -- as they've done in the past.
6 And I think, from what I understand, and the Office of Attorney
7 General has already stated, those offices are separate. When it
8 comes to issues, they don't -- when we were up there, they didn't
9 comingle. I understand they're separate. So I think that's
10 always been the plan. The only difference, the way I see it, is
11 that the lawyers now -- our counsel now has moved to the Office
12 of Zoning, and then -- they're under the Office of Zoning, as
13 opposed to being where they were in the Office of Attorney General

14 So more to come. I'm sure that will -- I'm sure they
15 will work all that out. Kind of similar. But that was -- I just
16 wanted you to know that was on the table early on, who was going
17 to defend us in court, how is that going to work, and I'm sure
18 that Ms. Lovick and others and Mr. Liu and others will work that
19 out with the Solicitor General or whomever up in OAG. Okay?

20 COMMISSIONER MAY: Okay. I thought it actually it was
21 going to be the Chairman having to represent us in the court of
22 appeals.

23 CHAIRPERSON HOOD: Somebody is going to be in trouble
24 if I represent. All right. And did I acknowledge Mr. Liu?

25 Mr. Liu, did I acknowledge you when we first came on?

1 If I didn't, forgive me.

2 MR. LIU: You did, yes.

3 CHAIRPERSON HOOD: I did? Oh, okay. I'm better than
4 I thought I was. No, I'm just playing. All right, sir.

5 Anybody have anything else? All right. So we don't
6 have anything else on this. So I will adjourn this. We have
7 the dates. And this hearing is adjourned, and I'll see you all
8 at the next one.

9 (Whereupon the above-entitled matter went off the
10 record at 4:00 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Special Public Hearing

Before: DCZC

Date: 12-06-21

Place: Videoconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
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