

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

+ + + + +

MONDAY

MARCH 13, 2023

+ + + + +

The Public Hearing of the District of Columbia Zoning Commission convened via teleconference, pursuant to notice at 4:00 p.m. EDT, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, ESQUIRE

The transcript constitutes the minutes from the Public Hearing held March 13, 2023

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

Case No. 22-33

NHP Foundation - Map Amendment 4

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

(4:00 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. Today's date is March 13th, 2023. We are convening and broadcasting this public hearing by video conferencing. My name is Anthony Hood, and I'm joined by Vice Chair Miller, Commissioner May and Commissioner Imamura. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, and Mr. Paul Young, who will be handling all of our virtual operations. Also, the Office of Zoning Legal Division, our head policy person, well, not policy person, but our head Office of Zoning Legal Division counsel, Mrs. Hillary Lovick. I will ask all others to introduce themselves at the appropriate time.

The virtual public hearing notice is available on the Office of Zoning's website. This proceeding is being recorded by a court reporter, and the platforms used are Webex and YouTube live. The video will be available on the Office of Zoning's website after the hearing.

All persons planning to testify should have signed up in advance and will be called by name at the appropriate time. At the time of sign-up, all participants will complete the oath or affirmation required by Subtitle Z, 408.7. Accordingly, all those listening on Webex or by phone will be muted during the hearing and only those who have signed up to participate or testify will be unmuted at the appropriate time. When called,

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1 please state your name before providing your testimony. When you
2 have finished speaking, please mute your audio. If you experience
3 difficulty accessing Webex or with your telephone call-in, or if
4 you have not signed up, then please call our OZ hotline number
5 at 202-727-0789.

6 The subject of this evening's case is Zoning Commission
7 Case No. 22-33, the NHP Foundation map amendment at Square 3351,
8 Lot 12, 7050 Eastern Avenue, Northwest. Again, today's date is
9 March 13, 2023.

10 The hearing will be conducted in accordance with
11 provisions of 11Z, DCMR Chapter 4 as follows: Preliminary
12 matters; the Applicant's case, the Applicant has up to 60 minutes;
13 the report of other government agencies, the report of the
14 Department of Transportation and the Office of Planning. And
15 then we have the report of the ANC. Testimony of organizations
16 -- then we testimony of organizations; organizations will have
17 five minutes and individuals will have three minutes. And we
18 will hear in the following order from those who are in support,
19 opposition or undeclared. Then we will have rebuttal and closing
20 by the Applicant.

21 Again, the OZ hotline number is 202-727-0789 for any
22 concerns during these proceedings. And in this particular case,
23 the ANC is -- (indiscernible) tell me right quick, that will help
24 me and I won't have to look for it. What's the ANC? It's two
25 ANCs, I believe.

1 VICE CHAIR MILLER: 4B.

2 CHAIRPERSON HOOD: 4B and -- okay, is it -- okay, ANC
3 4B. I got mixed up with BZA. Okay. So at this time -- then
4 we'll have rebuttal and closing by the Applicant.

5 At this time, the Commission will consider any
6 preliminary matters. Does the staff have any preliminary
7 matters. Thank you, Vice Chair.

8 Ms. Schellin, any preliminary matters?

9 MS. SCHELLIN: Yes, there's two quick ones. OP is
10 requesting a waiver to accept its hearing report into the record
11 because it was filed less than ten days before the hearing. So
12 that's the first one.

13 CHAIRPERSON HOOD: Any objections to the OP report?
14 Okay. I am sure there were some last developments. So thank
15 you. We will accept that.

16 MS. SCHELLIN: So that's by consensus?

17 CHAIRPERSON HOOD: Yes.

18 MS. SCHELLIN: Okay. And the second is the Applicant's
19 motion. They are requesting a waiver from Subtitle Z, Section
20 402.3, and that's with regard to posting the property 40 days
21 prior to the public hearing. They filed -- in filing their
22 affidavit 30 days prior to the hearing. This is at exhibit 24.
23 They posted the property on February 21st, which is 21 days prior
24 to the hearing. Of course, they state in their letter the
25 different ways of notice. We sent out public hearing notice 40

1 days prior. It was posted on our website. It was posted in the
2 D.C. Register. So this is just one other way of posting and it
3 was just short of the 40 days. So if the Commission would
4 consider that waiver.

5 CHAIRPERSON HOOD: Let me hear from my colleagues. And
6 while you're doing that, give me -- let me take a five-minute
7 break. Just give me five minutes. Let me do something. I got
8 something that came up. Give me five minutes.

9 I am very sorry, I said five minutes. Has everybody
10 left their computer? I am extremely sorry. I thought that was
11 (audio interference). Everybody always waits until 4 o'clock to
12 call me. They know I have hearings. And I thought that was an
13 emergency, so forgive me. I'm sorry. Okay.

14 Ms. Schellin, could you repeat that? I'm sorry.

15 MS. SCHELLIN: Yes, It's the requested exhibit, I
16 believe it was 24 by the Applicant regarding the shortage of
17 posting the property.

18 CHAIRPERSON HOOD: Okay. And I think the Applicant
19 mentioned the other ways of notice. And I can tell by the record
20 that the word has definitely gotten out. So let's see if -- let
21 me see how my colleagues feel on this, by the way. Do we have
22 any objections? Not seeing any. Okay. We will accept that as
23 well, Ms. Schellin.

24 MS. SCHELLIN: I'm sorry. And so the Applicant is
25 represented by Mary Carolyn Brown of the Brown Law Firm. ANC 4B

1 is represented by Evan Yeats. And there are some proffered expert
2 witnesses. John Welsh, although he's with the Applicant, we
3 don't usually -- you guys don't usually give the Applicant expert
4 witness.

5 COMMISSIONER MAY: Ms. Schellin, I did not see actual
6 credentials for expert witnesses in the record. Did I miss that?

7 MS. SCHELLIN: I think this was actually just supposed
8 to be the witnesses. So I don't think -- I think that was a
9 mistake. They're listed under experts, but I think that was just
10 who they're with, who their witnesses are, the Applicant's
11 representatives.

12 So other than that, Ms. Brown would like to make a
13 statement to the commissioners before starting. If you guys
14 would indulge her for a moment. If Mr. Young could bring her
15 up.

16 CHAIRPERSON HOOD: So Ms. Schellin, let me make sure I
17 understand, we don't have any expert witness.

18 MS. SCHELLIN: No, no. That was -- I think staff meant
19 that as other -- as the Applicant's representatives instead of
20 experts.

21 CHAIRPERSON HOOD: Okay. Thank you. All right.

22 Well, good afternoon, Ms. Brown. We'll turn it over
23 to you.

24 MS. BROWN: Good afternoon, Mr. Chairman, and members
25 of the Commission. For the record, Carolyn Brown with the Brown

1 Law Firm here on behalf of the NHP Foundation and Elm Gardens
2 owner, the Applicant in this case.

3 Just one quick correction. Initially, the application
4 was filed as Lot 12. We subsequently corrected that to be Lot
5 813, and that's in the record. I don't have the exhibit number
6 off the top of my head, but just to make sure that that's clear.

7 And then secondly, just to confirm, no expert
8 witnesses.

9 I'd like to begin by asking for a continuance of
10 tonight's hearing until the next available hearing date, which I
11 understand from staff is April 6th. The additional time will
12 allow us the opportunity --

13 CHAIRPERSON HOOD: Ms. Brown, we lost you.

14 MS. BROWN: -- a chance to hear from them directly
15 about their concerns. While we believe there is adequate and
16 ample notice of the hearing, the NHP Foundation wants to be a
17 "good neighbor" and abide by the spirit of the Commission's new
18 Racial Equity Tool issued just last month -- issued just last
19 month, that does request the Applicant to have ample community
20 outreach. While notice was mailed to the cooperative, it's
21 mailing address is on 14th Street, which is different from the
22 physical location of the residences. I believe that's where the
23 confusion may be and on what kind of notice they received. So
24 we now have the email addresses and telephone numbers of those
25 residents of the cooperative who signed up to testify, and someone

1 from the NHP Foundation will be reaching out to them shortly. So
2 we therefore ask you to continue this hearing to the next
3 available date. Thank you. And I'll be happy to answer any
4 questions you have.

5 CHAIRPERSON HOOD: Thank you, Ms. Brown. I was
6 wondering how I was going to -- we were going to kind of
7 facilitate and go through this tonight with the -- some of the
8 letters that we received, Exhibits 32, 33, and 34. But I want
9 to commend you for coming up front and making that statement and
10 also coming into compliance with our new Racial Equity Tool and
11 also which is key for engagement. So I really appreciate this
12 Applicant willing to do that. I'm looking forward to -- even if
13 we don't agree on everything -- but some better outcomes from
14 what I've read here so far, especially with the opposition. So
15 I want to commend you for recommending that to us. I know I'm
16 acceptable to it, but let me open it up to my colleagues. You've
17 heard the request from Ms. Brown, which I think is very thoughtful
18 and most in line with the way this Commission moves.

19 So Commissioner May, any questions or comments?

20 COMMISSIONER MAY: No, I support continuing the case.

21 CHAIRPERSON HOOD: Commissioner Imamura?

22 COMMISSIONER IMAMURA: I am in support of continuing
23 the case.

24 CHAIRPERSON HOOD: And Vice Chair Miller?

25 VICE CHAIR MILLER: Thank you, Mr. Chairman. Yes,

1 thank you, Ms. Brown, for that statement. And we'll look forward
2 to hearing about your community engagement with the neighbor in
3 opposition and any mitigating conditions or ways that might be
4 able to address their concerns. So thank you very much.

5 CHAIRPERSON HOOD: So at this time, Ms. Schellin, I'll
6 turn it back over to you to come up with some dates or date.

7 MS. SCHELLIN: So because it's publicly announced, no
8 further notice is needed. We'll put this on for April 6th at
9 4 o'clock p.m., and we will update our website and, of course,
10 IZIS so that our calendar notes that as April 6th at 4 o'clock
11 p.m.

12 If Applicant could update with regard to community
13 outreach and any update you have with regard to the Racial Equity
14 Tool since that is now in effect. That would be great if you
15 could do that at least a week before, maybe ten days before, that
16 would be really good.

17 I would ask Ms. Lovick if she has anything to add with
18 regard to that. Is that -- does that cover everything, Ms.
19 Lovick, as far as the Racial Equity Tool, updating the community
20 and anything else that that may need to be done?

21 MS. LOVICK: I mean, the only thing I would add is if
22 you would just respond to part two of the tool, as applicable.
23 Thank you.

24 MS. SCHELLIN: That's it.

25 VICE CHAIR MILLER: Mr. Chairman.

1 CHAIRPERSON HOOD: Vice Chair Miller had something.

2 VICE CHAIR MILLER: Yeah, I'm sorry. I just realized.
3 I won't be able to make the April 6th hearing date, so -- which
4 is fine. I can -- if the decision is later, I can participate
5 or the three of you there. It's the second night of Passover.
6 We usually do our Passover dinner on the first night, but we just
7 happened to change it to the second night, which is when that
8 is. So I'll be getting ready for 25 people to come over to my
9 house, and I don't think I can handle this and that at the same
10 time. But you can feel free to proceed and I'll be happy to read
11 the record.

12 MS. SCHELLIN: And it is a two vote case, Commissioner
13 Miller, so you could always participate -- if they take a bench
14 decision, you can always participate at final.

15 CHAIRPERSON HOOD: Well, let me check everybody else's
16 schedule on April 6th.

17 Commissioner May, do you think you have any conflicts?

18 COMMISSIONER MAY: Well it's the day of the monthly
19 NCPC meeting and it's too early to know what the agenda will be.
20 And usually I can escape if I need to, to get here by 4 o'clock,
21 but I cannot absolutely say that's the case. I mean, I -- in
22 the worst case, I might be a little bit late. But it's -- again,
23 I can't say for sure.

24 CHAIRPERSON HOOD: Commissioner Imamura, any -- this
25 is probably going to be longer.

1 Commissioner Imamura, any -- you think you have any
2 problems on that day?

3 COMMISSIONER IMAMURA: (Indiscernible), Mr. Chairman.

4 CHAIRPERSON HOOD: I am right now. So let me ask this,
5 Ms. Schellin, due to the uncertainty, could we -- well, we can't
6 do it Wednesday. Who has BZA? Well, never mind. I don't even
7 want to go there.

8 COMMISSIONER MAY: From what I see, next Monday or
9 Thursday would be April 24th, but maybe something's already
10 booked there, Ms. Schellin.

11 MS. SCHELLIN: So you said April 24th?

12 COMMISSIONER MAY: Yeah.

13 MS. SCHELLIN: We do have some ANC training in the
14 evening, so that's not a good day. We have April 20th open.

15 CHAIRPERSON HOOD: Does anybody have anything else?

16 COMMISSIONER MAY: Okay.

17 CHAIRPERSON HOOD: And the only reason is, I would go
18 ahead with it on the 6th, so we can accommodate the Applicant,
19 especially since they're trying to do it, but NCPC.

20 MS. LOVICK: We have 20-08B on the 20th.

21 MS. SCHELLIN: They've rescheduled for May.

22 MS. LOVICK: Oh.

23 MS. SCHELLIN: So that date became available.

24 MS. LOVICK: Okay.

25 CHAIRPERSON HOOD: I lost my train of thought. What

1 was I saying? So do we want to chance the 6th, Commissioner May?
2 I mean, we can wait an hour, 30 minutes. Any objections?

3 COMMISSIONER MAY: I don't mind doing that, if you
4 don't mind, I just can't.

5 CHAIRPERSON HOOD: No, no, I don't mind.

6 MS. SCHELLIN: It's up to the Applicant. If they want
7 to wait, it's up to them, you know.

8 CHAIRPERSON HOOD: If they want to wait until the 20th.
9 But if we want to wait an hour, so that's up to us.

10 MS. SCHELLIN: Yes.

11 CHAIRPERSON HOOD: That's not up to the Applicant.

12 MS. SCHELLIN: Right.

13 CHAIRPERSON HOOD: All right. So do we want to chance
14 it or do we want to just move it to the 20th?

15 MS. BROWN: You're not asking for my opinion, but if
16 --

17 CHAIRPERSON HOOD: Give me your opinion, because we
18 can't predict the future. So give me your opinion.

19 MS. BROWN: We would really prefer to move forward on
20 the 6th. And if it starts at 5 o'clock, I think everybody would
21 be fine with that and we could accommodate Commissioner May's
22 schedule that way.

23 CHAIRPERSON HOOD: So Ms. Brown, if it starts at
24 9 o'clock, then what happens?

25 COMMISSIONER MAY: The NCPC meeting will not go until

1 9 o'clock.

2 CHAIRPERSON HOOD: Okay. So we're going to go with
3 that. Remember, Commissioner May and Ms. Brown both said that
4 we won't have that 9 o'clock problem.

5 COMMISSIONER MAY: Usually we are done four-ish, and
6 sometimes when we get to the end, it's an information presentation
7 that I can watch later.

8 CHAIRPERSON HOOD: Okay. Okay. So we will stick with
9 that. And Vice Chair, you'll be able to participate because it's
10 a two vote case. And actually if you -- it depends upon what
11 happens, you may have to read the record, if you don't mind.

12 MS. SCHELLIN: Four o'clock?

13 CHAIRPERSON HOOD: Let's keep it. Let me ask this.
14 Vice Chair, if we move it earlier, will that help you with your
15 25 guests or it doesn't matter?

16 MS. SCHELLIN: But that won't help.

17 COMMISSIONER MAY: It makes it worse for me.

18 CHAIRPERSON HOOD: No, that's all right.

19 VICE CHAIR MILLER: I'll be there for the second vote.

20 CHAIRPERSON HOOD: All right. Forget it, forget it.

21 Let me be quiet.

22 Go ahead, Ms. Schellin.

23 COMMISSIONER MAY: Maybe we should do it at 9 o'clock.

24 Maybe Vice Chair Miller will be done with his --

25 VICE CHAIR MILLER: That is more realistic, yeah.

1 MS. SCHELLIN: Do we want to keep it at 4 o'clock or
2 start at 5 o'clock? I've heard both sides.

3 CHAIRPERSON HOOD: Go ahead, Commissioner May.

4 COMMISSIONER MAY: What if we did it at 4:30? I don't
5 want to push it automatically to 5:00, but do it at 4:30?

6 CHAIRPERSON HOOD: 4:30 is good.

7 MS. SCHELLIN: Everybody's good with 4:30?

8 Okay, 4:30. I will schedule it for 4:30 instead of
9 5:00. That works.

10 CHAIRPERSON HOOD: Yeah, that works.

11 All right, so with this -- we will continue on April
12 6th at 4:30, and we will continue this case. And thanks again.
13 We will continue Case No. 22-33 on April 6th at 4:30.

14 With that, see you all on April 6th. Good night.

15 MS. SCHELLIN: Thanks.

16 (Whereupon, the above-entitled matter was adjourned.)
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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: Public Hearing

Before: DCZC

Date: 03-13-2023

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
accurate record of the proceedings.

A handwritten signature in black ink, reading "Gary Euell". The signature is written in a cursive, flowing style with large, connected letters.

GARY EUELL

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