

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC HEARING

+ + + + +

THURSDAY

APRIL 3, 2023

+ + + + +

The Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference, pursuant to notice at (time not specified) EDT, Anthony Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROB MILLER, Vice Chairperson
PETER G. MAY, Commissioner
JOSEPH S. IMAMURA, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, Esquire
DENNIS LIU, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on April 3, 2023.

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

Case No. 22-25

Office of Planning 5

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

(4:00 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. We are convening and broadcasting this public hearing by videoconferencing. My name is Anthony Hood. Joining me this evening are Vice Chair Miller, Commissioner May, and Commissioner Imamura. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin -- yeah, Ms. Sharon Schellin. We're also joined by the Office of Zoning legal division, Ms. Lovick and Mr. Liu. I will ask all others to introduce themselves at the appropriate time.

Copies of today's virtual public hearing notice are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter. It's also webcast live, Webex and YouTube Live. The video will be available on the Office of Zoning's website after the hearing. Accordingly, all those listening on Webex or by phone will be muted during the hearing, and those who have signed up to participate or testify will be unmuted at the appropriate time. Please state your name and home address before providing all testimony on your presentation. When you are finished speaking, please mute your audio so that the microphone is no longer picking up sound or background noise.

If you experience difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number

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1 202-727-0789 to sign up or to receive Webex log-in or calli-n
2 instructions.

3 All persons planning to testify either in favor or in
4 opposition, we encourage you to sign up in advance and your name
5 will be called accordingly. If you wish to file written
6 testimony, additional testimony, or additional supporting
7 documents during the hearing, then please be prepared to describe
8 and discuss it at the time of your testimony. Also, I want to
9 mention if you have not signed up, also please call 2202-727-
10 0789 so we can hear your testimony.

11 The hearing will be conducted in accordance with the
12 rules of 11 Z D.C.M.R. Chapter 5 as follows: preliminary matters;
13 presentation by the petitioner or the Office of Planning, which
14 has up to 60 minutes; report of other government agencies; report
15 of the ANCs; testimony of organizations and individuals,
16 organizations will have five minutes, individuals have three
17 minutes, respectively; and we will hear in the order from those
18 who are in support, opposition, or undeclared.

19 While the Commission reserves the right to change the
20 time limits of presentations if necessary, it intends to adhere
21 to the time limits as strictly as possible and notes that no time
22 shall be ceded. Again, any issues, please call our OZ hotline
23 number at 202-727-0789.

24 And the subject of this evening's hearing is the Office
25 of Planning text amendment to Subtitles I, X, Y, and Z, and it's

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1 Zoning Commission Case No. 22-225.

2 So with that, Ms. Schellin, do we have any preliminary
3 matters?

4 MS. SCHELLIN: We did receive a report from OAG on
5 Friday around 6 p.m. I did ask them for a waiver and they pointed
6 out that their report is not a report that OP requested or the
7 Commission requested, and so therefore they do not need to file
8 their reports ten days prior to a hearing. So -- and they propose
9 quite a few changes. And so in light of that and with some of
10 the comments that have been submitted to the record after talking
11 with OP -- I mean, I guess I should go back and say that, as you
12 know, this case actually did not start in 2022. It actually
13 started in 2019. This case came out of 19-05, and it was a
14 collaboration between OAG, OP, and OZ, and that was when Alan
15 Bergstein was still here. And then Max Tondro took over, and
16 then the delay started and that case never came forward after
17 being set down in March of 2019. And because it had been so
18 long, we then filed this case, 22-25. And because of all of
19 these changes that OAG has -- or proposed recommended changes,
20 we would like to ask the Commission to set down some changes this
21 evening that we would like to propose and then postpone this case
22 to June 12. That would give us time to advertise these changes.
23 And those changes, I can tell you what they are because they
24 would be -- and this is based off of some comments also in the
25 record. So we do want to address some of those submissions.

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1 Section 500.1, it was an oversight not to include OP, OZ, and
2 any text amendments from the Zoning Commission to comply with the
3 comp plan and racial equity analysis. It was just an oversight.
4 We never not intended that we would address those. We would
5 delete Section 304.1 that has to do with map amendments filed by
6 the ANC and OP. So OP has recommended deleting that section for
7 contested cases. We've heard from the ANCs that there's not
8 enough time for them to submit their set-down report. I think
9 that there might be some confusion on the part of the ANCs between
10 the set-down report and their actual report, because the set-
11 down report is not given great weight and the majority of the
12 ANCs do not even submit them. However, in response to the
13 submissions, we're willing to respond by saying changing that
14 from the ANC submitting the set-down report from 30 days to 40
15 days, and that would mean that contested cases would not -- and
16 this is for contested cases -- would not be able to be set-down
17 less than 45 days from the date it's filed instead of 35 days.
18 And the last change would be to add that any other government
19 agency reports shall be filed at least ten days prior to the
20 hearing. At the time the regulations were written, as you know,
21 OAG was our counsel. It was never envisioned that OAG would be
22 a separate agency at the time the regs were written, so therefore
23 it was never envisioned that OP would ask OAG for a report. And
24 so it would not only include OAG, but it would include DHCD, DDOT
25 -- well, DDOT I think is already addressed, but any other

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1 government agency. So not just OAG, but here recently it's been
2 OAG who has been responding and they do make a lot of good
3 recommendations, and it would be nice to have those ahead of time
4 so that we can properly -- and OZLD can properly address those
5 and brief the Commission. So I would ask that the Commission
6 would set-down those changes and anything that we find that relate
7 to the text that we've already submitted, if there are comments
8 in the record that we think we can address by making changes,
9 that we could go ahead and make those changes in the public
10 hearing notice and we have the time to advertise it. That's what
11 I would like to do is ask the Commission set that down so that
12 we can proceed with a hearing June 12th.

13 CHAIRPERSON HOOD: Okay. So we have a number of items
14 --

15 MS. SCHELLIN: Sorry for the long explanation.

16 CHAIRPERSON HOOD: Okay. We have a number of items -
17 - long explanation. Well, 19-05 took so many years that I'm in
18 no rush to do anything. So you know, I remember -- now, I just
19 remember 19-05, I remember we inquiring from our former counsel
20 when we were going to see it, and now I have to go back in the
21 nest to want a new life, 22-25. So we have a number of -- ask
22 colleagues certainly there are some things on here once we get
23 to the point that I think that -- some of these things have been
24 looked at 20 years ago. I know with the days, 30 days, we've
25 been to 45 days, 48, and now we're talking about 40 days again

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1 back from 30. That's some stuff we need to hash out. It's always
2 good, I think, as everyone knows, this is just me talking now,
3 it's always good, as everyone knows, always to look at your
4 constitution and bylaws in any organization every ten years. So
5 I guess that's kind of what we're doing here. Some things I'm
6 in favor of what I've seen, but I'll be -- I want to be careful
7 to make sure that we get the correct information because it seems
8 like we're going in all different directions. Some things I
9 think may not be always understood. So I'm going to ask if any
10 of my colleagues have any problems. Do we have any reports we
11 have late, Ms. Schellin, was there one report or two?

12 MS. SCHELLIN: From government agencies, just OAG at
13 this time. OP, I'm sorry, OP did file a supplemental report and
14 they did ask for a waiver. So I'm sorry, there is that report
15 too if you would grant that waiver for supplemental report, which
16 basically states two of the changes that I just went over.

17 CHAIRPERSON HOOD: Okay.

18 Any objections, Commissioners? Okay. No objections.
19 We will accept all the reports. Then also you all are asking
20 for a postponement or extension to gather with those new reports
21 that came in on Friday, I understand? Any objections to June
22 the 12rth at 4 p.m., any objections? Okay. Commissioner May,
23 were you raising your hand? I'm sorry.

24 All right. All right. So Ms. Schellin, everything
25 that you've asked for we're ready to deal with.

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1 MS. SCHELLIN: I'm sorry. I'm sorry. One correction.
2 OP has not filed a supplemental report. I apologize. They were
3 not going to because they felt the record was complete. Sometimes
4 they don't file a report after the set-down report is pretty
5 complete. So they did not file a supplemental. That was my
6 mistake. So sorry.

7 CHAIRPERSON HOOD: Okay. No problem. So we'll take
8 in everything that came in, OAG and whoever else. That's -- it
9 was only OAG, right?

10 MS. SCHELLIN: It was only OAG.

11 CHAIRPERSON HOOD: Any objections to OAG's report? No
12 objection, so we'll take that in. The next ask, I believe, is a
13 postponement or a continuance.

14 MS. SCHELLIN: To set-down some changes and postpone
15 to June 12th, yes.

16 CHAIRPERSON HOOD: Okay. Ms. Schellin, let me see if
17 any of my colleagues need any -- need to be -- need to tell us
18 what those three changes or four changes were, anybody needs to
19 hear it again? Any objections to setting those things down that's
20 being recommended by OZ? Okay. No objections, we'll set that
21 down. What's the next item, Ms. Schellin?

22 MS. SCHELLIN: Just to add if we -- we feel that there's
23 some minor tweaks to the language we've already -- you've already
24 set down that may be responsive to comments in the record, if
25 we're free to go ahead and add those to the public hearing too,

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1 notice also.

2 CHAIRPERSON HOOD: Okay. So I really --

3 MS. SCHELLIN: Nothing major.

4 CHAIRPERSON HOOD: Okay. I appreciate the correction
5 about the racial equity, because that was --

6 MS. SCHELLIN: Yes, it was just an oversight.

7 CHAIRPERSON HOOD: Okay. All right. So we'll accept
8 that as an oversight. Let's put everything in place, let's get
9 everything flavored right so we can come back on June the 12th
10 at 4 p.m. on these same platforms. Unless I hear any other
11 comments from my colleagues, we will come back June the 12th at
12 4 p.m.

13 MS. SCHELLIN: If you could set that -- officially set
14 it down please so we can -- because there is a new -- there is
15 some new text, if you would please set it down, I'd appreciate
16 it.

17 CHAIRPERSON HOOD: Okay. Let me -- there's -- I would
18 move that we set down additional comments in the report given to
19 us by our Office of Zoning secretary, Zoning Commission, Ms.
20 Sharon Schellin in Zoning Commission Case No. 22-25, the
21 additional set-down requirements or regulations that have been
22 proposed from your office and ask for a second. I think I got
23 that right. If not, Ms. Lovick will turn her light on.

24 VICE CHAIR MILLER: Second.

25 CHAIRPERSON HOOD: It's been moved and properly second.

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1 Light's not on, so must have got that right. Any further
2 discussion?

3 Okay. Ms. Schellin, could you do a roll call vote
4 please?

5 MS. SCHELLIN: Commissioner Hood?

6 CHAIRPERSON HOOD: Yes.

7 MS. SCHELLIN: Commissioner Miller?

8 VICE CHAIR MILLER: Yes.

9 MS. SCHELLIN: Commissioner Imamura?

10 COMMISSIONER IMAMURA: Yes.

11 MS. SCHELLIN: Commissioner May?

12 COMMISSIONER MAY: Yes.

13 MS. SCHELLIN: The vote is four to zero to one to set-
14 down the additional language and to postpone the hearing to June
15 12 at 4 p.m. The minus one being the third mayoral appointee
16 seat, which is vacant. And we thank you for that. That will
17 allow us some additional time to prepare and update the language.
18 Thank you. And I would like to ask that any government agency
19 reports, any additional reports, regardless of whether the
20 Commission has asked or if you would ask for them now, that if
21 any additional reports, including OAG, DHCD, you know, fire and
22 medical, that they be filed ten days prior to that hearing with
23 the Commission, please ask OAG -- if you would ask OAG if they
24 would file a report to please -- additional report -- that they
25 file that ten days prior to the hearing.

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1 CHAIRPERSON HOOD: Okay. And that's in our
2 regulations, right, so --

3 MS. SCHELLIN: Well, it isn't because -- it isn't
4 because the Commission -- OAG was our counsel, so we never
5 envisioned having -- needing a report from them because they were
6 our attorney. So I'm just asking since that was their response,
7 we're going to add it. But I would just ask that for this hearing
8 that you would ask OAG and any other government agency who wishes
9 to submit a report on this case, that they do so ten days prior
10 to the hearing. I'm just asking that you do that.

11 CHAIRPERSON HOOD: Okay. I would ask the OAG to do
12 exactly that, but I would also ask the OAG now, since -- and this
13 is becoming a major, major OAG, OAG, OAG, but it's (audio glitch)
14 for me. So I'm going to ask OAG if they're listening at this
15 point, I'm going to ask staff and I'll talk to my colleagues,
16 but if we have to codify it in the regulations, we will. They
17 are now an agency to us, so they need to follow the normal
18 standard. I don't want to just single them out every time. We
19 have a lot more government agencies we have to answer to and work
20 with. So I would ask them to fall in line as they have helped
21 us to put in the regulations themselves before they became a
22 separate agency, to fall in line as they've done with the other
23 agencies as well. So that's an ask, but if we need to codify
24 that or put it in the regulations, then let's do it. Okay.
25 Anything else?

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1 MS. SCHELLIN: And I'm sorry, one more thing, if I may
2 ask. The APA allows for the shortest time period for advertising
3 is 30 days for a public hearing. Even though I think we have
4 the time, just in case we look at the additional comments that
5 OAG has submitted, and I believe Laura Richards made a submission
6 today, we've not had an opportunity to look at that, in case we
7 see some further changes that we may want to make would the
8 Commission also grant a shortened time period if needed. We
9 don't think we need it, but just in case, after reviewing those
10 comments that we find that we need to address those and maybe
11 make some additional changes, I would just ask the Commission to
12 allow us a shortened time period if needed, and that's 30 days.

13 CHAIRPERSON HOOD: Any objections? Okay. Not hearing
14 any, we will accept that as well, Ms. Schellin. Anything else?

15 MS. SCHELLIN: I promise that's it.

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

17 Vice Chair Miller?

18 MS. SCHELLIN: Commissioner Miller?

19 VICE CHAIR MILLER: Thank you, Mr. Chairman. I just
20 wanted to thank the Office of Zoning's staff and Office of
21 Planning's staff for collaborating on the changes that are being
22 proposed. And I gather from -- and I thank all those who've
23 commented so far on this procedural -- this case about procedures,
24 a lot of which is to clarify and try to make the system work for
25 everybody involved. So I thank those who've submitted comments,

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1 OAG, ANCs, citizens. And yes, I do encourage this OP and OZ to
2 -- what -- I saw a lot -- I read a lot of the comments that have
3 come in so far, maybe not the ones today, but yes, to the extent
4 you want to clarify further based on those changes, please do so.
5 And in the hearing notice, I think it'll be helpful to everyone
6 at this point maybe to delineate what's been further clarified
7 or changed. I think you did say that, Ms. Schellin, in your
8 statements, so. Just so that it's --

9 MS. SCHELLIN: I think -- I'm sorry, go ahead.

10 VICE CHAIR MILLER: No, that's it.

11 MS. SCHELLIN: I was going to say I think that we can
12 do that by maybe double underlining anything that is new since
13 we first advertised. And I do want to say there were a couple
14 of people who made submissions like 3:00 or after today, and we
15 returned those because, you know, submissions are due 24 hours
16 prior to the hearing. And I just -- I know -- I see that several
17 of those people are watching now. And I just want to say I'll
18 have my staff go ahead and put those comments in the record. I
19 know that Ms. Richards was one and Deirdre Brown was one. And
20 so I just want to let them know that they do not need to resubmit
21 them. We will go ahead, I'll have staff go ahead and put those
22 in the record. So Ms. Ackerman will go ahead and release those
23 now so they don't have to resubmit them.

24 CHAIRPERSON HOOD: Okay. We're going to make sure we
25 hear from everyone. We do have to have some -- we've been through

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1 this before. I'm going to put this out there. I want to make
2 sure we hear from everyone. This is not the first time. We
3 don't cut anybody off. We're going to hear from you. So don't
4 worry about it. As long as I'm here, we're going to hear from
5 you. Okay. Anything else.

6 MS. SCHELLIN: And that's it. That's it. I'm sorry.

7 CHAIRPERSON HOOD: All right. Anything else,
8 colleagues? Well, let me say, as long as we're here because this
9 is not a one-man show here. All right. Let me just say that
10 the Zoning Commission will meet again, NHP Foundation, Zoning
11 Commission Case No. 22-33 on April the 6th on these same
12 platforms. And again, this case will continue on, give me the
13 date, Ms. Schellin, because I don't want to mess that up.

14 MS. SCHELLIN: June 12th at 4 p.m.

15 CHAIRPERSON HOOD: June 4th -- June 12th at 4 p.m. on
16 these same platforms. Anything else, anybody? Thank you. And
17 let me apologize to those who came today because we want to make
18 sure as we move forward we all are operating on the same page -
19 - on the same sheet of music and the same page. With that, I
20 want to thank everyone for attending tonight, and I apologize for
21 any inconvenience, and we'll see you on June the 12th. Good
22 night.

23 MS. SCHELLIN: Thank you.

24 (Whereupon, the above-entitled meeting was adjourned.)

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: 04-03-23

PLACE: Teleconference

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

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