

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC HEARING

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THURSDAY

JUNE 8, 2023

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN, Secretary
PAUL YOUNG, Data Specialist

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, Esquire
JACOB RITTING, Esquire
DENNIS LIU, ESQUIRE

The transcript constitutes the minutes from the Public Hearing held on June 8, 2023.

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

Case No. 22-36	
TM Associates, LLC & Washington Metropolitan	
Area Transit Authority	4
Case No. 6-10H	
The Morris and Gwendolyn Cafritz Foundation	7
Case No. 85-16B	
CLPE-CC Pavilion, LP	10
Case No. 12-01F	
The Catholic University of America	14
Case No. 23-07	
701 Michigan, LLC	16
Case No. 22-33	
NHP Foundation	21

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 meeting by videoconferencing. My name is Anthony Hood. Joining me this evening are Vice Chair Miller, Commissioner May and Commissioner Imamura. We are also joined by the Office of Zoning's Staff Ms. Sharon Schellin as well as Mr. Paul Young who will be handling all of our virtual operations. Also the Office of Zoning Legal Division Ms. Lovick, Mr. Ritting, and Mr. Liu. I would ask all others to just introduce themselves at the appropriate time if the Commission requests you to speak or come forward.

Copies of today's meeting agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live on Webex and YouTube Live. The video will be available on the Office of Zoning's website after the meeting. Accordingly, all those listening on Webex or by phone will be muted during the meeting unless the Commission suggests otherwise.

For hearing action items, the only documents before us this evening are the application, the ANC set-down report and the Office of Planning report. All other documents in the record will be reviewed at the time of the hearing. Again, we do not take any public testimony at our meetings unless the Commission

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1 requests something otherwise. If you experience difficulty
2 accessing Webex or with your phone-call in, then please call our
3 OZ hotline number at 202-727-0789 for Webex log-in or call-in
4 instructions.

5 At this time does the Staff have any preliminary
6 matters?

7 MS. SCHELLIN: No, sir.

8 CHAIRPERSON HOOD: Okay. Let's proceed right along
9 with our agenda. Again, first we have advanced party status
10 Zoning Commission case 22-36. This TM Associates, LLC and
11 Washington Metropolitan Area Transit Authority consolidated PUD
12 and related map amendment at Square 3351, 3352 and 3353. This
13 is a request by Mr. Peter Feiden -- hopefully I pronounced that
14 right, not sure if I did correctly -- and opposition represented
15 by counsel, David Brown, and that's in our Exhibit 37.

16 Ms. Schellin, I don't know if left out anything on
17 that.

18 MS. SCHELLIN: Yes, sir, and Mr. Brown is present if
19 you'd like for him to go ahead and be brought forward and this,
20 as you said, is a request for advanced party status in opposition.
21 He too is being represented by Mr. Brown, like the other three
22 individuals that you considered at the last meeting and it was
23 filed timely, and so the Staff has nothing further to add other
24 than to say that the Applicant did not file on any opposition
25 nor did the ANC. So that means for the regs that they have no

1 opposition to it.

2 CHAIRPERSON BROWN: Okay. Thank you, Ms. Schellin.
3 You may want to bring Mr. Brown up, and then Mr. Feiden and
4 forgive me if I mispronounced your name. He lives right across
5 the street and one of the things that we notice in the submittal
6 it says every time we ingress and egress, things are going to be
7 affected and he's right, they added.

8 So first let me hear from others, and I know we may
9 want to request, I want to ask Mr. Brown. Let me hear from others
10 first.

11 Commissioner May.

12 COMMISSIONER MAY: I think this party status
13 application is just fine. It's similar to what we've heard from
14 the others that we've already granted so, and I would just
15 encourage all of these parties to be working together as a single
16 party rather than -- particularly since they're all represented
17 by Mr. Brown. It would be best if they all work together as a
18 single party.

19 CHAIRPERSON HOOD: So let me follow up with my other
20 two colleagues. Mr. Brown, that was one of the questions I was
21 going to ask but you heard Commissioner May mention could you all
22 join together and be all one party or is that an issue?

23 MR. BROWN: It's not an issue. This is a continuation
24 essentially of the request we made before and Mr. Feiden was
25 unable to get his documentation in time for the last meeting

1 which is why it's a little late. But it was not intended to be
2 any different in the way we're going to handle it as a
3 consolidated group.

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

5 Commissioner Imamura, any comments on Mr. Fieden?

6 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I'm
7 inclined to support party status with Mr. Feiden, as a
8 consolidated group.

9 CHAIRPERSON HOOD: Okay. Great.

10 Vice Chair Miller.

11 VICE CHAIR MILLER: I concur and that all sounds right
12 on track.

13 CHAIRPERSON HOOD: Okay. Thank you. Mr. Brown, we
14 will grant status to -- I move that that we grant status to Mr.
15 Feiden, hopefully I've pronounced his name right, to be the group
16 who all are being represented by Mr. David Brown and ask for a
17 second.

18 COMMISSIONER MAY: Second.

19 CHAIRPERSON HOOD: It's been moved and properly second.
20 Any further discussion? Not hearing any, Ms. Schellin, would you
21 record the vote, please?

22 MS. SCHELLIN: Chairman Hood?

23 CHAIRPERSON HOOD: Yes.

24 MS. SCHELLIN: Chairman May, I'm sorry, Commissioner
25 May? I'm bumping you up, I'm sorry.

1 COMMISSIONER MAY: That happened a bunch of times at
2 BZA yesterday too. Yes.

3 MS. SCHELLIN: (Indiscernible).

4 VICE CHAIR MILLER: They're trying to get you to stay,
5 one way or the other.

6 MS. SCHELLIN: Yes. Commissioner Miller?

7 VICE CHAIR MILLER: Yes.

8 MS. SCHELLIN: Commissioner Imamura?

9 COMMISSIONER IMAMURA: To support, yes.

10 MS. SCHELLIN: The vote is four to zero to one, the
11 minus one being the third Mayoral appointee seat which is vacant,
12 to grant party status in opposition to Mr. Feiden who will join
13 in with the other three individuals who are represented by Mr.
14 Brown and they will be one party, one joint party, and they will
15 have one presentation, one joint presentation. Thank you.

16 CHAIRPERSON HOOD: Okay Thank you. Let's move right
17 along. Let's go to determination of scheduling. Zoning
18 Commission Case No. 6-10H. I'll let you do the rest, Ms.
19 Schellin. I'll turn it over to you.

20 MS. SCHELLIN: Sure. This is the Morris and Gwendolyn
21 Cafritz Foundation. They are asking for modification of
22 consequence of a PUD at Square 3765. They are asking to modify
23 Zoning Commission Order 06-10D, E and G which approved the
24 development of block B of a PUD and they'd like to add a condition
25 to provide for construction and occupancy sequencing so the

1 Applicant can deliver the Aldi grocery store and the Children's
2 Museum space for tenant occupancy by February, 2024 as required
3 by their leases, and then continue with construction of the other
4 elements of block B without decommissioning construction activity
5 on the site.

6 At Exhibit 4 there's an OP report which finds that this
7 application can be considered a modification of consequence and
8 therefore they recommend approval of the application.

9 Exhibit 5A is a, I'm sorry, Exhibit 5 is a report from
10 ANC 5A that voted unanimously to support the application.

11 Exhibit 6 is ANC 4B's comments stating that they do not
12 intend to participate in this application and Exhibit 7, the only
13 other party to this case is a comment from Lamond Riggs Citizens
14 Association stating that they too do not intend to participate
15 in this application.

16 Therefore, if the Commission finds that this is truly
17 a modification of consequence, if they choose to do so they could
18 proceed with final action on this case. Thank you.

19 CHAIPERSON HOOD: Thank you, Ms. Schellin. I don't
20 need to repeat anything. Ms. Schellin, she really teed it up
21 for us very well. But let me first see if there are any questions
22 or comments. Let me go first. Does anyone believe this is not
23 a modification of consequence which means that we won't have a
24 hearing? No objections? Okay.

25 So we will consider this a modification of consequence,

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1 and let me go to Chairman May first. You have any questions or
2 comments? Oh, I know. Ms. Schellin should have never let me
3 hear that.

4 COMMISSIONER MAY: I have no comments or questions. It
5 seems pretty straightforward.

6 CHAIRPERSON HOOD: Maybe anybody should be chairman so
7 that the chairman by himself doesn't get blamed for everything.

8 Commissioner Imamura.

9 COMMISSIONER RIMAMURA: Thank you, Mr. Chairman, and
10 thank you, Chairman Miller. This seems like a simple change to
11 the condition that you ordered to accommodate the leases and it
12 makes a lot of sense to me, Mr. Chairman, so I'm just going to
13 support it.

14 CHAIRPERSON HOOD: And Vice Chair Miller?

15 VICE CHAIR MILLER: Thank you, Mr. Chairman. I agree
16 with your comments and the comments of my colleagues. Thank you.

17 CHAIRPERSON HOOD: Okay. Would somebody like to make
18 a motion on this one? Somebody else besides me.

19 VICE CHAIR MILLER: Mr. Chairman, I would move that we
20 approve a modification of consequence of Zoning Commission Case
21 No. 6-10H The Morrison and Gwendolyn Cafritz Foundation
22 modification of consequence of planned unit development Square
23 3765 and ask for a second.

24 COMMISSINER IMAMURA: Second.

25 CHAIRPERSON HILL: Okay. It's been moved and properly

1 second. Any further discussion? Not hearing any, Ms. Schellin,
2 would you do a roll call vote, please?

3 MS. SCHELLIN: Commissioner Miller?

4 VICE CHAIR MILLER: Yes.

5 MS. SCHELLIN: Commissioner Imamura?

6 COMMISSIONER IMAMURA: Yes.

7 MS. SCHELLIN: Chairman Hood?

8 CHAIRPERSON HOOD: Yes.

9 MS. SCHELLIN: Commissioner May?

10 COMMISSIONER MAY: Yes.

11 MS. SCHELLIN: The vote is four to zero to one to
12 approve final action Zoning Commission Case No. 6-10H and I would
13 like to ask the Applicant to provide a draft order within two
14 weeks.

15 CHAIRPERSON HOOD: Okay. Hopefully, I'm sure they
16 heard you. Let's move on to Zoning Commission Case No. 85-16B.
17 This is CLPE-CC Pavilion, LP PUD modification of consequence of
18 Square 1661. Ms. Schellin.

19 MS. SCHELLIN: Yes, sir. The Applicant is proposing
20 to modify condition No. 3 of Zoning Commission Order No. 517 so
21 that they can, okay, so the condition No. 3 in the order and also
22 they want to modify the Wisconsin Avenue façade.

23 So with that being said, we have a response from the
24 Applicant to a submission that was made by ANC 3E at Exhibit 7.
25 We have an OP report at Exhibit 4 that recommends approval of

1 the requested changes. Although their report seemed to approve
2 some of the changes but not quite all of them, so you may want
3 to check with OP on that, I believe it was Karen Thomas, and the
4 ANC report that the Applicant responded to, the ANC 3E, is at
5 Exhibit 6. They submitted a supporting resolution at Exhibit 6A
6 and an FAR analysis by one of their constituents at Exhibit 6B.

7 So this is ready for the Commission to decide if it is
8 truly a modification of consequence and if so, to set a schedule
9 to move forward. Thank you.

10 CHAIRPERSON HOOD: Thank you, Ms. Schellin. First,
11 colleagues, anybody believe that this is not a modification, as
12 requested, a modification of consequence?

13 VICE CHAIR MILLER: Mr. Chairman?

14 CHAIRPERSON HOOD: Vice Chair Miller.

15 VICE CHAIR MILLER: I'm supportive of the, generally
16 supportive, based on what's in the record of the modifications
17 that are being requested. However, I think that given the
18 discrepancy between, or at least the initial discrepancy between
19 the FAR count by one of the constituents at ANC 3E which they
20 noted in their resolution and the Applicant which apparently has
21 since gotten resolved, as well as the condition of the ANC
22 supporting a modification of consequence but it's being
23 conditioned on the grocery store, an anchor grocery store going
24 into the space, the public atrium space in order to expand into
25 that.

1 That's part of the modification although the Applicant
2 opposes that because if they don't get a grocery store, they want
3 to be able then to have that FAR flexibility for another anchor
4 tenant, but given that discrepancy between what's in the record
5 from ANC and the Applicant on that grocery store issue and given
6 the FAR initial discrepancy and the fact that we haven't heard
7 from neighbors in the townhomes that are across the street that
8 are not part of the PUD, they may not even -- I don't know if
9 they're even aware of the application.

10 I think this should be a public -- I think we should
11 have a public hearing on this as soon as possible and so I would
12 support a modification of significance which would automatically
13 I guess require the Applicant to file a new application of
14 modification of significance and have a public hearing as soon
15 as we can in the Fall so that we can hear all the issues and
16 decide whether that grocery store condition should be part of it
17 or not. We certainly don't want the space to be vacant. There's
18 a lot of problems with vacancies everywhere, retail vacancies
19 downtown and in Friendship Heights, but I think we need to hear
20 from people. We can't just -- I think it would be more prudent
21 to have a public hearing to hear directly from people rather than
22 giving more time for the consequence to be worked out and then
23 it may not even be worked out then and then there's a further
24 delay, and a public hearing which we could get this public
25 hearing scheduled sooner than later, so.

1 I would support a modification of significance, Mr.
2 Chairman, if that makes any sense.

3 CHAIRPERSON HOOD: Okay, Vice Chair. Thank you. All
4 it takes is one but let me hear from others, give everybody an
5 opportunity.

6 Commissioner May, Chairman May, if you don't mind me
7 calling you that for the rest of the day.

8 COMMISSIONER MAY: I don't object to the Vice Chair's
9 concerns and the hearing. I'm okay with that. It's unfortunate
10 that it will add some time to the process but it's -- that's just
11 the way things go.

12 CHAIRPERSON HOOD: And Commissioner Imamura.

13 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I'm
14 in support of Vice Chair Miller that we need more information
15 (indiscernible).

16 CHAIRPERSON HOOD: Okay. Yes. Since we're going in
17 that direction, kind of the way things were submitted we would
18 ask that you bring, as the Vice Chair has already mentioned, kind
19 of bring a cohesive case to us, and some of the stuff may be able
20 to be worked out before so we can have a clear case. If not,
21 we'll make a decision but let's just, I'll just say this, let's
22 just tighten it up. I'll leave it at that.

23 All right. So, Ms. Schellin, I believe that's all we
24 have to do on it?

25 CHAIRPERSON HOOD: Okay.

1 MS. SCHELLIN: That's correct. That's correct.

2 CHAIRPERSON HOOD: (Indiscernible) they have to refile
3 it and all that. Okay.

4 MS. SCHELLIN: They have to file new modification of
5 significance case if they choose to move forward, yes.

6 CHAIRPERSON HILL: Okay. Mr. Ritting, were you going
7 to say something extra or?

8 MR. RITTING: No need to. Ms. Schellin took care of
9 it.

10 CHAIRPERSON HOOD: All right. Well, good. Okay. Thank
11 you.

12 All right. Let's move right on. Okay. We have a time
13 extension. Zoning Commission case No. 12-01F. This is The
14 Catholic University of America two year for the process of time
15 extension at Square 3821. Ms. Schellin.

16 MS. SCHELLIN: Yes, sir. The Applicant is requesting
17 this two year PUD time extension to extend the time to file a
18 building permit to construct the N1/N2 hall chapel, the residence
19 hall, from May 14th 2023 to May 14th, 2025 specifically amending
20 condition 19 of order 12-01C and the University states that an
21 extension is needed because it has been unable to obtain dedicated
22 financing for the hall despite efforts due to several
23 uncontrollable factors including grant allocation and timing,
24 fluctuation in student needs and overall market conditions
25 affecting both development and higher education.

1 So with that, there's an OP report at Exhibit 4
2 recommending approval and we have not heard, even though the time
3 has run, they had 30 days to respond from ANC 5A, 5B or 5E. So
4 the Commission can proceed with final action on this case.

5 CHAIRPERSON HOOD: Okay. Thank you. Let's see what
6 others have to say.

7 Commissioner May.

8 COMMISSIONER MAY: I don't have any concerns about
9 this. I'm fine with granting the time extension.

10 CHAIRPERSON HOOD: Okay. Commissioner Imamura.

11 COMMISSIONER IMAMURA: I'm in agreement.

12 CHAIRPERSON HOOD: And Vice Chair Miller.

13 VICE CHAIR MILLER: I concur, Mr. Chairman.

14 CHAIRPERSON HOOD: Okay. So with that, I would move
15 that we grant the time extension on Zoning Commission case No.
16 12-01F taking into the fact, as well as the things for the record
17 that Ms. Schellin has already mentioned, and ask for a second.

18 COMMISSIONER MAY: Second.

19 CHAIRPERSON HOOD: So moved and properly second. Any
20 further discussion? Not hearing any, Ms. Schellin, would you do
21 a roll call vote, please.

22 MS. SCHELLIN: Yes. Commissioner Hood?

23 CHAIRPERSON HOOD: Yes.

24 MS. SCHELLIN: Commissioner May?

25 COMMISSIONER MAY: Yes.

1 MS. SCHELLIN: Commissioner Imamura?

2 COMMISSIONER IMAMURA: Yes.

3 MS. SCHELLIN: Commissioner Miller?

4 VICE CHAIR MILLER: Yes.

5 MS. SCHELLIN: The vote is four to zero to one to
6 approve final action in Zoning Commission case No. 12-01F and the
7 minus one being the third Mayoral appointee seat which is vacant,
8 and again I would ask the Applicant to provide a draft order
9 within the next two weeks. Thank you.

10 CHAIRPERSON HOOD: Okay. Let's go to hearing action
11 Zoning Commission case No. 23-07. This is 701 Michigan, LLC map
12 amendment at Square 3657. Mr. Jesick and Ms. Steingasser.

13 MR. JESICK: Thank you, Mr. Chairman and Members of the
14 Commission and thank you, Mr. Young.

15 This is an application for a zoning map amendment at
16 701 Michigan Avenue, NE to change the zoning on the site from
17 MU-3A to MU-2. The MU-2 zone would not be inconsistent with the
18 comprehensive plan including when viewed through a racial equity
19 lens and the Office of Planning therefore recommends set-down of
20 the application. OP also recommends that the site be subject to
21 IZ Plus.

22 The subject site is located across the street from
23 Catholic University, next door to the Brookland Arts Walk and
24 very close to the Brookland metro. It's currently developed with
25 a one story commercial building and a surface parking lot.

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1 Next slide, please, Mr. Young. The future land use map
2 identifies the site as appropriate for medium density commercial
3 and medium density residential mixed use. The MU-2 zone which
4 permits up to 90 feet in height and 7.2 FAR with IZ would not be
5 inconsistent with those designations. The generalized policy map
6 shows the site is within a neighborhood conservation area. Infill
7 development consistent within the MU-2 zone would be compatible
8 with nearby development and would not be inconsistent with the
9 policy map.

10 Next slide, please. In terms of equity the proposed
11 map amendment, together with the IZ Plus designation, could
12 potentially further a number of planned policy related to equity
13 including achieving higher market rate and affordable housing
14 production targets, providing housing close to transportation
15 options thereby improving equitable transportation access,
16 improving air quality through transportation efficiency and as
17 called for in the urban design and upper northeast area element
18 of the plan improving the urban design around the Brookland metro
19 station and along Michigan Avenue. A full analysis against the
20 criteria of the Zoning Commission's racial equity tool can be
21 found in OP's report.

22 So in summary, the subject site is in an area considered
23 appropriate for the MU-2 zone and it's based on the comprehensive
24 plan maps as well as a number of written plan policies and the
25 proposal therefore is not inconsistent with the plan including

1 when viewed through a racial equity lens.

2 OP therefore recommends that the map amendment be set-
3 down for a public hearing and that it be subject to IZ Plus.
4 Thank you.

5 CHAIRPERSON HOOD: Thank you very much, Mr. Jesick.
6 Let's see if we have any questions of the OP.

7 Commissioner May.

8 COMMISSIONER MAY: No, I do not.

9 CHAIRPERSON HOOD: Okay. Commissioner Imamura.

10 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. Thank
11 you, Mr. Jesick, for your report, your thorough and responsive
12 racial equity analysis as well. So nicely done, and I just want
13 to ask if we decide to set this down that, you know, if you could
14 speak at the hearing in a little more detail about the race and
15 ethnicity trends that your report identified and how that could
16 be impacted, you know, with the proposed amendment.

17 The only question I do have for you, Mr. Jesick, is
18 whether or not you're aware of any ANC opposition?

19 MR. JESICK: I'm not aware of any at this time. I
20 don't believe there is an ANC report in the record yet, but we
21 can touch base with the Applicant to see what their understanding
22 or conversations with the ANC has been to date.

23 COMMISSIONER IMAMURA: Very good. Thank you, Mr.
24 Jesick, and thank you, Mr. Chairman.

25 CHAIRPERSON HOOD: Thank you. Vice Chair Miller.

1 VICE CHAIR MILLER: Thank you, Mr. Chairman. I concur
2 with the comments of Commissioner Imamura and support of setting
3 this down for a public hearing and I compliment, as Commissioner
4 Imamura did, the comp plan consistency and racial equity analysis
5 done by the Office of Planning and in addition, the racial equity
6 analysis that's been done by the Applicant thus far.

7 So I'm in support of setting this down for a public
8 hearing.

9 CHAIRPERSON HOOD: Okay. Thank you. I don't have any
10 questions and it seems like we have support. Would somebody like
11 to make a motion to set this down?

12 COMMISSIONER IMAMURA: I can make the motion.

13 CHAIRPERSON HOOD: Thank you.

14 COMMISSIONER IMAMURA: (Indiscernible) the Zoning
15 Commission set down case No. 23-07 701 Michigan, LLC map amendment
16 Square 3657 and ask for a second.

17 VICE CHAIR MILLER: I second that and just note that
18 as OP said it's with IZ Plus, the map amendment with IZ Plus
19 designation as well.

20 COMMISSIONER IMAMURA: (Indiscernible).

21 CHAIRPERSON HOOD: Okay. The -- has been moved and
22 properly second. Any further discussion? Not hearing any, Ms.
23 Schellin, could you do a roll call vote, please.

24 MS. SCHELLIN: I'm sorry. I was taking care of a member
25 of the public and I didn't catch who made the motion or moved

1 it.

2 CHAIRPERSON HOOD: Vice Chair Miller moved it and
3 Commissioner, no, Commissioner Imamura moved it and Vice Chair
4 Miller seconded it.

5 MS. SCHELLIN: Seconded. Okay. That's what I thought.
6 Commissioner Imamura?

7 COMMISSIONER IMAMURA: Yes.

8 MS. SCHELLIN: Vice Chair Miller?

9 VICE CHAIR MILLE: Yes.

10 MS. SCHELLIN: Commissioner May?

11 COMMISSIONER MAY: Yes.

12 MS. SCHELLIN: Chair Hood?

13 CHAIRPERSON HOOD: Yes.

14 MS. SCHELLIN: The vote is four to zero to one. Set-
15 down Zoning Commission case No. 23-07 as a contested case, the
16 minus one being the third Mayoral appointee position which is
17 vacant.

18 CHAIRPERSON HOOD: Thank you.

19 COMMISSIONER MAY: Mr. Chairman, I have to break away
20 for a few minutes. Given that what we have left is a
21 correspondence item, if you want to continue without me that's
22 fine. I'll be back --

23 CHAIRPERSON HOOD: Actually, I don't. Do you want to
24 stick five or ten minutes?

25 COMMISSIONER MAY: Give me five minutes.

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1 CHAIRPERSON HOOD: Okay.

2 COMMISSIONER MAY: I'll let you know when I'm done.
3 Thank you.

4 CHAIRPERSON HOOD: All right. Thank you. Let's take
5 five minutes, let's check back in five minutes.

6 (Whereupon, there was a brief recess.)

7 CHAIRPERSON HOOD: We're back in session. Let's go to
8 the correspondence Zoning Commission case No. 22-33 NHP
9 Foundation map amendment at Square 3351. We have a letter from
10 the Applicant intent to amend application. Ms. Schellin.

11 MS. SCHELLIN: Yes, sir. So the Applicant has submitted
12 a letter asking or advising that their intent is to file a
13 consolidated PUD and related map amendment and they are asking
14 for a couple of waivers, and the one as far as a shortened public
15 hearing notice period, we've advised that that was something that
16 the Commission would consider at the time of set-down and we've
17 also advised, Staff has advised the Applicant that the Commission
18 leaves the hearing action portion of the agenda to the Office of
19 Planning when they send in their set-down report, then the case
20 is put on the agenda so the Commission usually does not schedule
21 cases for set-down when they are asking for a first meeting in
22 September for set-down, but that will be left up to OP to do
23 that. The Commission will not instruct OP to do that.

24 And so the other left is that they would like for the
25 month of August to be counted in the time period from the time a

1 case is filed to set-down, that 35 days that a case cannot be
2 considered for set-down less than 35 days from the time of filing
3 and they would like for the month of August to be counted within
4 those 35 days.

5 That is what you have before you. They reported back
6 This is their intention of what they want to file and they'd like
7 for the month of August to be counted in those 35 days from filing
8 to set-down. So that's the only thing that they would like to
9 hear or for you to decide.

10 CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. Let
11 me just say I'm not in favor of any waivers, especially with how
12 we deviate from how we've done in August. I've been around long
13 enough to know July and August has gotten this Commission in a
14 lot of trouble. The perception is we try to sneak things in and
15 I'm a stickler, if you watched what I said 15 years ago I'm saying
16 the same thing today. So I understand what they're trying to
17 do. I understand, and we've heard previous cases but I want to
18 make sure we do with this practice what this Office has been
19 doing.

20 Now, Ms. Schellin, I want to make sure we don't -- my
21 opinion, Ms. Schellin, is that we do not anything that we do
22 other than our normal practice. So let me hear from others.

23 Commissioner May. You're on mute.

24 COMMISSIONER MAY: Yes, I agree with you, Mr. Chairman.
25 As much as I want this to move along very quickly, I do think

1 it's important to make sure that we have that notice and yes, I
2 agree with you. I mean, National Parks Service also avoids doing
3 things in August because the attention level just isn't there and
4 we want to make sure that there's good public notification and
5 participation. So I completely agree with that.

6 CHAIRPERSON HOOD: Thank you. Commissioner Imamura.

7 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I
8 agree with your comments and Chairman May's comments. I think
9 that it should move along quickly but I'm more reticent to disrupt
10 the general practice, so I'm not in favor of supporting the
11 waiver.

12 CHAIRPERSON HOOD: Okay. And Vice Chair Miller.

13 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
14 generally agree with your comments, Mr. Chairman, and those of
15 Commissioners May and Imamura.

16 I would like to thank the Applicant for the
17 correspondence amending this application for what previously was
18 a map amendment to RA-3 on which we have a public hearing back
19 in May, a month ago, no, in April I think, April or March, we
20 had proposed action in May at which we were concerned about the
21 potential inconsistency of the map amendment with the
22 comprehensive plan amendment's map designation and the inability
23 to incorporate certain public benefits and amenities that were
24 being testified to by the Applicant, including the right to return
25 to these long term, longstanding tenants of this property at Elm

1 Gardens, and again to a, as I understand it based on our public
2 hearing record, a tenant opportunity of purchase agreement with
3 a non-profit developer and NHP. Those agreements are always very
4 fragile, particularly in these challenging economic times and so
5 I'm appreciative that they've amended the application to the map
6 amendment in RA-2 in conjunction with a planned unit development
7 that can incorporate public benefits that they were testifying
8 to, then we can incorporate in any order if we ever get to that
9 point.

10 There was opposition from the -- to the original
11 application from the adjacent cooperative owners at Eastmont
12 Cooperative long term minority tenants mostly at that property
13 as well and so there has been a lot of public hearing of the
14 concerns that have been expressed. We've heard from the ANC.
15 We've heard from Office of Planning. I actually supported the
16 original map amendment so it shouldn't be that difficult for them
17 to prepare a set-down report on a new application that is less
18 intense in terms of the map amendment.

19 So I would be inclined to, and we encouraged, at least
20 I did, and maybe others at the hearing in a proposed action
21 because of the concerns that have been expressed by the party in
22 opposition, we encouraged them to come back with a different
23 application and they did, and so I'm appreciative of that and we
24 then guaranteed that we would favorably consider it, that we
25 would expedite anything but I think that some type of expedition

1 in this case might be appropriate if not setting it down for a
2 public hearing in our first meeting in September, at least as
3 soon after that as possible and maybe shortening then the public
4 hearing notice thereafter so that we can move forward to have the
5 public hearing as quickly as possible and not jeopardize the
6 partnership that currently exists between these tenants and NHP
7 non-profit, the Applicant in this case.

8 So, I guess those are my comments. I hope that we can
9 expedite something in terms of getting a hearing scheduled in
10 terms of some of our time periods due to the exceptional
11 circumstances of this case. But we've had a long public hearing
12 and now I can't remember whether it was March or April, but it
13 was a long public hearing and we've heard the concerns, the
14 Applicant has heard the concerns too and adjusted their
15 application.

16 So I hope we can get to this in the Fall as quickly as
17 feasible. Thank you, Mr. Chairman.

18 CHAIRPERSON HOOD: Okay. Thank you very much, Vice
19 Chair. I just want to say this for the record, that at no time
20 did I encourage them of what to bring back. But I left that up
21 to them. I didn't tell them how to bring it back. So I don't
22 want any misnomers out there thinking that because you came back
23 this way, you all directed us. No, it wasn't work that way. We
24 want to look at the relief requested --

25 VICE CHAIR MILLER: You said that at the time, Mr.

1 Chairman, and I agree with that. We are not making -- we
2 encouraged them to consider but you may not have even done that.

3 CHAIRPERSON HOOD: I just wanted to make sure because
4 you know how things are, Vice Chair. You've been in this City,
5 working in this City longer than I have. Better say what we said
6 and nobody will remember that that happened, so I wanted to make
7 sure that I put that out there on the record so we won't get
8 confused. We're going to deal with whatever, this different
9 relief and how it comes to us the way it comes to us. So anyway,
10 I'll just leave it at that. I could go on more but I'm going to
11 leave it at that.

12 All right. Anything else? All right. Ms. Schellin,
13 do we need to do anything?

14 MS. SCHELLIN: I don't think so. I think that the
15 Applicant has heard loud and clear that you're not going to
16 approve the waiver to count the August date and that you'll
17 consider the shortened notice period for time of set-down.

18 CHAIRPERSON HOOD: Right. And I will definitely
19 consider that. I heard what the Vice Chair requiring some kind
20 of way and that may be one way that we may be amenable to once
21 we get to that point, so. I heard it loud and clear. I didn't
22 discount anything you said but I want to make sure we follow our
23 normal process and I'm glad that we've come to that conclusion.

24 All right. Anything else? Anybody have anything else?
25 Commissioner May.

1 COMMISSIONER MAY: Yes. I just want to clarify. I
2 mean, at this point the Applicant has to withdraw the original
3 map amendment case; is that right in order to --

4 MS. SCHELLIN: Yes.

5 COMMISSIONER MAY: -- take the next step and then
6 (indiscernible).

7 MS. SCHELLIN: Yes. They need to withdraw that before
8 they file the new case, yes.

9 COMMISSIONER MAY: All right. Okay. I just want to
10 make sure they don't forget that.

11 MS. SCHELLIN: Right.

12 CHAIRPERSON HOOD: I think we may have had that problem
13 before where we had two cases -- okay. Well, we don't want to
14 give any ideas, not so that's something else we'd have to deal
15 with. All right.

16 Anything else, Ms. Schellin?

17 MS. SCHELLIN: The only other thing is I don't know if
18 you guys want to reconsider this or not, but I was contacted by
19 the attorney on the modification of consequence case, Cynthia
20 Giordano. She has advised that the case that you guys decided
21 was not a modification of consequence, that they will lose the
22 tenant. They're willing to agree to whatever the ANC, the
23 condition the ANC has put forward, but if they have to go the
24 modification of consequence route they will lose the tenant and
25 so that's it.

1 CHAIRPERSON HOOD: So, let me ask this and I'm not
2 asking for a response. But every time the Zoning Commission gets
3 ready to do something, either somebody's getting ready to lose
4 something we've got to hurry up and do this, we've got to hurry
5 and do that, the sky's going to fall in. But we have to do our
6 due process too. They can't always get to us and we've got to
7 hurry up and do something because the residents of the City expect
8 for us to make good sound judgments and decisions that they can
9 live with and be comfortable with being in the City.

10 So it's always on us. Hurry up and do this, hurry up
11 and do that and I know it ain't always like that. I'm not talking
12 about this case, I'm talking about that I hear that all the time.
13 But --

14 MS. SCHELLIN: Well, can I ask this? Would you be
15 willing to allow the Applicant to file a different modification
16 of consequence less than a, I forget what the regs say, I believe
17 it's 90 days that --

18 CHAIRPERSON HOOD: So before you finish, let me hear
19 from my other colleagues on that first.

20 MS. SCHELLIN: Yes, sorry.

21 CHAIRPERSON HOOD: That was just my position because
22 it's always hurry up, the sky's falling in and I agree with some
23 of that. Some of that -- it didn't always just fall on to us to
24 have and do our process. The amount of process should hurry
25 along as well and not just think that this is going to be a vote

1 and a pass. I hear that too much, so I would ask everybody to
2 stop bringing that to us. Bring the specific issues to us.

3 But I'm going to go to Vice Chair Miller. You were one
4 of the ones who took the lead on taking it off the consent
5 calendar, we all agree. But you heard what Ms. Schellin said
6 that nothing we have, do you agree with, unless you need her to
7 repeat it. I'll just leave it at that.

8 VICE CHAIR MILLER: No. I heard what she said and I
9 guess if that had been in writing earlier I might have had a
10 different position. But that's not what I have in the record
11 here, so I'm not comfortable changing my position that it should
12 -- well, let me defer to my colleagues, you know, and I want to
13 be reasonable. If that had been the position that they would
14 accept the ANC condition that was there without -- there are
15 also, there are also the FAR discrepancy issue which I understand
16 has been resolved but I'm not sure I understand all the, how it
17 was resolved or the ramifications of that and, well, let me defer
18 to my other colleagues.

19 CHAIRPERSON HOOD: I'll come back to you.

20 Commissioner May.

21 COMMISSIONER MAY: Yes. I didn't really think that the
22 condition that the ANC wanted to see was really the source of
23 concern when it came to deciding this was a modification of
24 significance rather than a modification of consequence and I'm
25 not ready to, you know, immediately sort of reconsider our earlier

1 vote and change it based on new conditions that, you know, Ms.
2 Schellin has related to us.

3 But I would not be averse to staying that conclusion
4 until the next meeting and allow the Applicant to file some new
5 information documenting what they are doing and trying to make
6 the case again when this could be considered as a modification
7 of consequence and then we can decide at that moment whether or
8 not we agree it's a modification of consequence. I mean, what
9 that means is the Applicant's going to lose, what three weeks
10 until the next meeting, is that what it is? They lose three
11 weeks but, you know, if they can get a decision on a modification
12 of consequence in three weeks maybe that, you know, maybe that
13 saves them and saves their potential deal with a tenant, I don't
14 know.

15 But I don't like the idea that we're just suddenly
16 going to undo what we discussed half an hour ago on the spot.
17 Right. I now see a lawyer.

18 CHAIRPERSON HOOD: Before we get to the lawyer, hold
19 on a second.

20 COMMISSIONER MAY: I see more than one actually.

21 CHAIRPERSON HOOD: Commissioner Imamura.

22 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I'll
23 keep my comments brief. I certainly agree and appreciate
24 Commissioner May's out-of-the-box thinking and perhaps, you know,
25 staying a decision might be the best approach.

1 But to Vice Chair Miller's point though, that's not
2 what's in the record and so, you know, I'm reluctant to just
3 change decisions and our position based off of new information
4 that's come in, you know, via phone. So I certainly don't want
5 to set a precedent for others to say, oh, we'll just call it in,
6 so.

7 CHAIRPERSON HOOD: So the last time we did a telephone
8 change it caused a major catastrophe and I happened to be the
9 one to make the call. So I called for a vote on the BZA from
10 somewhere that I was a part of and it was a mess. I should have
11 left my phone where it was and that messed it up. But let me go
12 to, and I agree with Commissioner May, but we would have to undo
13 what we just did.

14 But let's see what Mr. Ritting has to say.

15 MR. RITTING: I had a suggestion for how to go about
16 taking Mr. May's suggestion. So I was looking at the rule that
17 has to do with taking things off the consequence, and what it
18 says is, "At the request of a Commissioner remove an item from
19 the consent calendar and direct the Applicant."

20 So perhaps Mr. Miller could just withdraw his request
21 and you could, by consensus, defer a decision on the modification
22 of consequence application and as a third thing request that the
23 Applicant tighten this up and clarify what its request for the
24 modification is now that all of these things have happened,
25 including the change in position with respect to the grocery and

1 the changes to the FAR calculation and that they make a revised
2 suggestion for what the modification would be and that Mr. Miller
3 would just state that he's withdrawing his request or remove it
4 from the consent calendar.

5 CHAIRPERSON HOOD: So, let me ask this. We voted and
6 we, so if he withdraws it we would have to do a motion and the
7 second then, we would have to go through that whole process
8 because we have --

9 MR. RITTING: The point I'm trying to make is you didn't
10 vote. You withdrew it immediately because the rule says that one
11 Commissioner --

12 CHAIRPERSON HOOD: Oh, okay.

13 MR. RITTING: -- can withdraw and because of that that's
14 why you didn't take a vote and that's what I'm saying you need
15 to (indiscernible).

16 CHAIRPERSON HOOD: Right. We didn't vote. Right. We
17 didn't vote. Okay. Thank you. Okay. Let me go to Ms. Lovick
18 and then, Vice Chair Miller, let's hear what you have to say
19 because we might need some more information.

20 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
21 appreciate Commissioner May and my colleagues, and Mr. Ritting's
22 comments and advice going forward on this, and Ms. Schellin for
23 relaying the phone call although I really discourage that kind
24 of action in the future in the midst of a meeting.

25 Yes. So I, yes. So I would withdraw then my request

1 and say it was just one Commissioner that caused it to come off
2 of the consent calendar. I would caution, and for the Applicant
3 to proceed as Commissioner May and Mr. Ritting have suggested,
4 and also in addition to putting on the record the agreement with
5 whatever the grocery store condition, we certainly don't want to
6 lose the grocery store if that's really going to happen, although
7 there are like 25,000 grocery stores on Wisconsin Avenue, 25 not
8 25,000, on the Wisconsin Avenue corridor when the east of the
9 river is crying out. So I guess I can't let that go. I have
10 too many choices and others do not. That's neither here nor
11 there though for this issue.

12 So, yes. I will withdraw. I would just note though,
13 and so yes, the Applicant should tighten up the application, make
14 clear that they're agreeing with the ANC condition, clear up that
15 they're agreeing that the FAR, what the ramification of that is.
16 Maybe do a little community outreach to other neighbors in the
17 neighborhood just so we know that there has been some outreach
18 and are comfortable with that, although the ANC has represented
19 that they are supportive just with the grocery store condition
20 although they wanted the FAR to be clarified, which apparently
21 has been although I think that was a late submission today. I
22 mean, I don't see -- even seen that, so that's why I'm saying I
23 don't know if it's been clarified.

24 So I would just say that, you know, maybe if they had
25 just applied for a modification of significance at the outset we

1 would have already had the hearing and you could have gone forward
2 with your proposed action. You are losing time each time we are
3 putting off the modification of consequence. So I'm fine willing
4 (phonetic) to put it off again for the Applicant to make another
5 stab, another effort with the ANC and the community to try to
6 come to a more consensus than what's currently in our record.

7 So, yes, I withdraw my request that it came off the
8 consent calendar and hopefully when it comes up at our next
9 meeting I guess, or the meeting before our August recess, that
10 that will all have been clarified and bring back the grocery
11 store tenant and people can be happy.

12 CHAIRPERSON HOOD: So our next meeting is I believe
13 June the 29th. Ms. Schellin, do we need to give any dates? We
14 actually have stayed that and we're going to reconsider at the
15 29th meeting or did they tell you when?

16 MS. SCHELLIN: Yes, the 29th. If we could have the
17 Applicant's submission by the 16th and if the ANC and any other
18 party, I don't know if there are any other parties, want to
19 respond to the submission they would have until the 23rd, 3
20 o'clock p.m., for all submissions and then we'll put it on for
21 the 29th.

22 CHAIRPERSON HOOD: Okay. Chairman May.

23 COMMISSIONER MAY: I would just add that, you know, if
24 the three weeks isn't going to be helpful enough to the Applicant,
25 you know, they can make that decision themselves. They can decide

1 to withdraw the modification of consequence, file for the
2 modification of significance if that's the course they need to
3 go or they can put the whole thing off if they need to, whatever.
4 The ball's in their court. They've got to figure out what they
5 can do or cannot do in the next three weeks and then we will
6 grapple with it then.

7 CHAIRPERSON HOOD: Okay. And I just want you to know
8 that these words I'm listening to when I hear we, and when I hear
9 we I believe it to be we. So I'll leave it at that.

10 Ms. Schellin, do we have anything else?

11 MS. SCHELLIN: No.

12 CHAIRPERSON HOOD: Okay. Let me go, the Zoning
13 Commission, I'm sorry? Okay. The Zoning Commission will meet
14 again on June the 12th on these same platforms and the subject
15 of that is Zoning Commission case No. 22-25 The Office of
16 Planning, some amendments to come forward to us to deal and
17 grapple with.

18 So with that, I would like to thank everyone for their
19 participation in this meeting tonight. Have a great weekend and
20 I'll see everybody on Monday.

21 (Whereupon the above-entitled hearing was adjourned.)
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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 06-08-2023

Place: Teleconference

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

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