

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC HEARING

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MONDAY

OCTOBER 16, 2023

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson  
ROBERT MILLER, Vice Chairperson  
JOSEPH S. IMAMURA, Commissioner  
TAMMY STIDHAM, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN, Secretary  
PAUL YOUNG, Data Specialist

OFFICE OF ZONING LEGAL COUNSEL:

DENNIS LIU, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on October 16, 2023.

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

Case No. 22-31

SIM Development, LLC . . . . . 4

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

(4 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. Today's date is October the 16th, 2023. We are convening and broadcasting this public meeting by video conferencing. My name is Anthony Hood. I'm joined by Vice Chair Miller, Commissioner Stidham and Commissioner Imamura. We are also joined by the Office of Zoning Staff Ms. Sharon Schellin, our Secretary, and Mr. Paul Young who will handling all of our virtual operations and our Office of Zoning attorney is Mr. Dennis Liu. 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 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 not 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 4847. Accordingly, all those listening on WebEx or by phone will be muted during the hearing and all of those who have signed up to participate and testify will be unmuted at the appropriate time. When called please state your name before providing your testimony. When you

1 are finished speaking, please mute your audio. If you experience  
2 difficulty accessing WebEx or with your telephone call-in, or  
3 have not signed up then please call our OZ hotline number at 202-  
4 727-0789.

5 If you wish to file written testimony and additional  
6 supporting documents during the hearing, please be prepared to  
7 describe and discuss it at the time of your testimony. The  
8 hearing will be conducted in accordance with provisions of 11  
9 D.C.M.R. Chapter 4 as follows; preliminary matters, the  
10 applicant's case. The applicant has up to 60 minutes but I  
11 believe we can condense it to 30 or 20 or less, and then we have  
12 reports of other government agencies including the Department of  
13 Transportation and the Office of Planning, the report of the ANC,  
14 in this case it's ANC 8C, testimony of organizations and  
15 individuals, organizations five minutes and individuals three  
16 minutes and we will hear in the following order from those who  
17 are in support, opposition or undeclared, then we'll have  
18 rebuttal and closing by the applicant. Again, the OZ hotline  
19 number is 202-727-0789 for any concerns throughout these  
20 proceedings.

21 Again, the subject of this evening's hearing is SIM  
22 Development, LLC, map amendment at Square 5868, Lots 1034 and  
23 1014, 2662 through 2666 Martin Luther King Jr. Avenue, S.E., and  
24 I will ask the Applicant in your presentation make sure you hit  
25 the highlights, the OP issues, issues thereby requesting and

1 anything that's outstanding in your testimony you think would be  
2 advantageous for our time.

3 And Ms. Schellin, let me just ask. Is this also YouTube  
4 Live, I mean YouTube as well?

5 MS. SCHELLIN: Yes.

6 CHAIRPERSON HOOD: Okay. I didn't put that in, that  
7 part of my statement. I notice that's missing from my statement,  
8 so that's something I need to do. Okay. I will correct that.

9 All right. So, Ms. Schellin, do we have any preliminary  
10 matters?

11 MS. SCHELLIN: No preliminary matters that I am aware  
12 of. There are no proffered experts, no party status requests,  
13 so the Applicant is ready to proceed.

14 CHAIRPERSON HOOD: Okay. Thank you. Let's bring  
15 everyone up. Okay. Mr. Brown, Mr. Blanchard or is this Mr.  
16 Brown?

17 MS. SCHELLIN: It's Mr. Brown.

18 CHAIRPERSON HOOD: I thought I was going to get to see  
19 Lyle Blanchard. I haven't seen him in a while. Rob, you know  
20 Lyle Blanchard, don't you?

21 VICE CHAIR MILLER: I certainly do. We worked together  
22 at the City Council many eons ago.

23 CHAIRPERSON HOOD: Right.

24 MS. SCHELLIN: Are you ready to proceed? You're muted.

25 MR. BROWN: Okay. Very good. Yes, Chairman Hood and

1 members of the Commission. We're ready to move forward. If I  
2 could just introduce my team very quickly starting to my right.

3 CHAIRPERSON HOOD: Mr. Brown, are you having camera  
4 problems? You want to turn your video on.

5 MR. BROWN: The video's -- all right.

6 CHAIRPERSON HOOD: Should say start video.

7 MR. BROWN: Yes.

8 CHAIRPERSON HOOD: All right.

9 MR. BROWN: There we are.

10 CHAIRPERSON HOOD: All right.

11 MR. BROWN: We were here before. Can you see us now?

12 CHAIRPERSON HOOD: WE can see you now, yes.

13 MR. BROWN: Okay. Very well. If I could allow my team  
14 to introduce themselves. I'm Patrick Brown from Greenstein,  
15 DeLorme & Luchs. To my right.

16 MR. BELLO: Toye Bello.

17 MR. MAHARI: Yosief Mahari.

18 MR. BROWN: Chairman Hood, we have a PowerPoint. I'm  
19 not so sure we need to spend a lot of time with it. Based on  
20 your initial guidance I think I'd like to focus, the record is  
21 full here from the Office of Planning, DDOT and there are no  
22 parties or ANC who have entered an appearance. I think that the  
23 material we filed collectively supports the map amendment  
24 application and there's only a slight difference of opinion  
25 between our application and the Office of Planning and that goes

1 to the extent of the rezoning from RA-1 to MU-8A.

2 If I could, Mr. Young, the future land use map is  
3 included in our presentation at slide --

4 CHAIRPERSON HOOD: Mr. Brown, why don't you run through  
5 -- briefly run through your PowerPoint and I mean briefly.

6 MR. BROWN: Very well. If I can, next slide, Mr. Young.  
7 We've introduced ourselves.

8 Next slide. And you'll see the two properties with the  
9 26,000, almost 27,000 square feet that's vacant, wooded, steeply  
10 graded land. The Martin Luther King frontage is about 140 feet  
11 narrowed down to 63 feet at Dunbar. The grade drop from Martin  
12 Luther King to Dunbar is approximately 40 feet very steep decline.

13 Next slide, Mr. Young. And you'll see the site there  
14 outlined, also the zoning map is indicated IZ exempt. Maybe  
15 that's a little premature but we think that's appropriate based  
16 on the OP report and circumstances which we can discuss later.  
17 The site's currently zoned -- the entire site is currently zoned  
18 RA-1, the entire square is.

19 Next slide, Mr. Young. There it is in one aerial view.

20 Next slide, Mr. Young. Here's a little better context.  
21 Google maps showing the site. To the right, I mean, to the left  
22 is Martin Luther King Road and to the right you'll see Dunbar  
23 Road. To the west of Dunbar Road is Federal land wooded and  
24 you'll see the yellow there, that's the Suitland Parkway. All  
25 the Federal land is undeveloped. The square is on the north side

1 is Stanton Road and on the south side Pomeroy Road. The distance  
2 on Dunbar from Stanton Road to Pomeroy is about 1,200 feet, linear  
3 feet.

4 Next slide. And I've covered that. The roadway Dunbar  
5 from Stanton Road is uphill rather significantly to Pomeroy.  
6 We'll see some photos here next.

7 Next slide. Here's the intersection of Dunbar and  
8 Stanton Road at the north.

9 Next slide, Mr. Young. This is from Stanton Road  
10 looking up towards Pomeroy, just about the intersection.

11 Next slide. You'll progress up Dunbar and you can see  
12 that it's barely wide enough for my truck to go through and next  
13 slide you'll see further up Dunbar, down Dunbar. It's uphill.  
14 This is looking again up toward Pomeroy Road. To the left is  
15 the Federal land. To the right is the private land.

16 Next slide. Here we are getting closer to the end of  
17 the road at Pomeroy. Again, the left is the Federal land. The  
18 right is the privately owned land. There's quite a bit of illegal  
19 dumping going on on both sides of the property. My client has  
20 had a lot of trouble, even though his property is fenced, with  
21 illegal dumping.

22 Next slide. Here we're almost up to Pomeroy Road. The  
23 fence to the subject property is to your right. Federal land to  
24 the left.

25 Next slide. And this is from Pomeroy looking towards



1 Stanton Road. To the right is the Federal land. To the left is  
2 the private property, my client's property.

3 Next slide, Mr. Young. My client, he acquired the  
4 larger lot in 2010. He's been unable to develop it under the  
5 RA-1 zoning. He bought the smaller lot 1034 at tax sale. That  
6 process took over four years to complete but he now has title to  
7 that property. He's got very limited street frontage. The lot,  
8 as you've seen before, is steep and narrow, 63 feet at the Dunbar  
9 Road. Dunbar Road currently is practically inaccessible.  
10 Illegal dumping has been an ongoing problem on both the private  
11 and Federal land and as hard as Mr. Mahari has tried, the RA-1  
12 development under the current zoning has not been economically  
13 feasible for this site in the 13 years he's owned both of them.

14 Next slide. This is the future land use map and this  
15 highlights really the only what I consider a minor difference  
16 between the Office of Planning and our application. You'll see  
17 that the mixed use medium density residential and commercial runs  
18 thus far on either side of Martin Luther King Avenue. It does  
19 not extend the full depth of the property to Dunbar Road. So  
20 you'll see on the right a sliver of moderate density residential  
21 on the future land use map. Our view is that rezoning the entire  
22 property, the entire depth from Martin Luther King to Dunbar in  
23 this case is 1) appropriate, 2) within the Commission's capacity  
24 and not limited by specifically by the future land use map which  
25 is instructive but not definitive. In this case the property

1 abutting Dunbar Road is Federal land, wooded and unlikely ever  
2 to be developed for anything more than what it is, the Suitland  
3 Parkway. As much as we hate the Suitland Parkway, it's not going  
4 anywhere and rezoning the whole property, 1) would be beneficial  
5 to the redevelopment of this site and 2) would not have any impact  
6 on any adjoining properties, and it would reflect the fact that  
7 this site's access is limited to Dunbar Road which, under the  
8 DDOT report, is going to be my client's responsibility to  
9 establish from Pomeroy Road about 150 feet of DDOT roadway to  
10 access his own site. So, again, in the context we think rezoning  
11 the entire depth of the property is appropriate.

12           Next slide, Mr. Young. Just drawing a distinction on  
13 the future land use map.

14           If we go to the next slide, and this is a generalized  
15 policy map and again shows the Main Street mixed use corridor on  
16 either side of Martin Luther King Avenue. Again, the requested  
17 rezoning of the entire property really supports the Main Street  
18 mixed use corridor as well. The way this site is configured that  
19 really the entire site should be MU-8A to facilitate development  
20 along the Martin Luther King frontage.

21           Next slide, please. And I'm not going to go through  
22 these. The OP and our reports are very similar in parallel laying  
23 out compliance with the citywide elements and land use, housing  
24 and the other factors.

25           Next slide. I mean, I think the important thing to

1 remember here is infill development conserving, enhancing,  
2 revitalizing this neighborhood in a long vacant site is a vacuum  
3 or a blank area on Martin Luther King Avenue that needs to be  
4 filled and filled with positive development, both commercial and  
5 neighborhood serving commercial and residential.

6 Next slide. Goes through the housing elements. It's  
7 important to encourage the private sector here to create  
8 development here that provides housing and limited neighborhood  
9 serving commercial uses, a mix of income which is appropriate to  
10 the neighborhood.

11 Next slide. Transportation. We're very close to the  
12 metro and will provide reasonable transit oriented development  
13 and equitable access for transportation.

14 Next slide. On the area elements, we're located in the  
15 south east-southwest planning area development of new housing,  
16 infill housing are critical elements. Also we're roughly under  
17 the Congress Heights small area plan and as we outlined in more  
18 detail in our submissions, increasing residential density and  
19 particularly infill of vacant sites focused in on Martin Luther  
20 King Avenue and to support medium density mixed use development  
21 on Martin Luther King and if you've been out in this area  
22 improving the pedestrian and connectivity development will bring,  
23 as the DDOT report focuses on improved pedestrian access along  
24 the site and Martin Luther King which is an important access site  
25 for the area and redevelopment would bring that up to where it

1 should be.

2           Next slide. I've gone through and all the discussions  
3 we've had previously focused in on improving the health, safety,  
4 and general welfare of this neighborhood. Development of a long  
5 vacant site safety, which can't be underestimated, the OP report  
6 as well as my report focused in on the continuing concern about  
7 crime and unfortunately a vacant site is a harbor of activity  
8 that should be avoided. Some neighborhood serving commercial  
9 uses and create some new local jobs.

10           NEXT SLIDE. There really aren't any adverse  
11 consequences to this. It's creating something positive where  
12 nothing exists now and it actually replaces a dangerous  
13 situation. There's good public transportation, unlikely to be  
14 any major traffic impacts and certainly no displacement of  
15 existing residents where a substantial amount of new housing  
16 affordable and otherwise will be provided.

17           Next slide. And I think I've gone through in my report  
18 and the Office of Planning did a extremely thorough job going  
19 through the racial equity analysis, but certainly consistent with  
20 the comprehensive plan city wide, this planning area and Congress  
21 Heights.

22           Next slide. And, Mr. Bello can talk to it in more  
23 detail but from prior to the Notice of Intent which was in July  
24 of 2022, my clients have attempted to engage specifically ANC 8C  
25 over a repeated number of times with mixed results as far as the

1 willingness or the ability of ANC 8C to engage. The last visit  
2 was in July of this year and the ANC has not filed anything in  
3 this case. But in the future post-map amendment, certainly the  
4 basis is in place for continuing the community engagement to the  
5 ANC.

6 I would note that the first call I received from the  
7 Notice of Intent was from Ms. Georgette Joy Johnson, who lives  
8 on Pomeroy. At the time she was just a private citizen. She's  
9 now after January of this year the SMD for this property, so  
10 she's well informed about what's going on.

11 Next slide. Here I've provided some in not as great  
12 detail as the Office of Planning, but the demographic backgrounds  
13 of this area.

14 Next slide. And the table showing basically that the  
15 impact of this will not be detrimental, no displacement and it  
16 will create something where nothing exists now.

17 Next slide. And then the last question, and the Office  
18 of Planning made a very strong recommendation, that this be IZ  
19 Plus exempt based on the disproportionate level of affordable  
20 housing already in the planning area. I think their most latest  
21 report indicated that 30 percent of the affordable housing  
22 citywide comes out of this planning area, so I think the facts  
23 bear that out and IZ Plus is unnecessary and probably too much  
24 of an imposition for this very limited property.

25 Next slide. And I think that's it actually. Yes.

1 Chairman Hood, I'd be happy to entertain any questions from you  
2 or your fellow Commissioners.

3 CHAIRPERSON HOOD: Okay. Thank you very much. We  
4 appreciate it. I'm going to ask Vice Chair Miller if he could  
5 start us off, if you have any questions or comments.

6 VICE CHAIR MILLER: Thank you, Mr. Chairman. Can you  
7 hear me?

8 MR. BROWN: Yes, we can.

9 CHAIRPERSON HOOD: Yes.

10 VICE CHAIR MILLER: Okay. Thank you, Mr. Brown, for  
11 the SIM Development presentation and for bringing this  
12 application forward and for all of the -- for the community  
13 outreach that you've done even though I don't think we've gotten  
14 a formal comment from ANC 8C. Is that correct?

15 MR. BROWN: There's nothing been filed in the record.

16 VICE CHAIR MILLER: Right. But you said you have been  
17 in communication with the current SMD, Commissioner Georgett Joy  
18 Johnson, and I don't think she's here today. Has she articulated  
19 any concerns or general support or can you relay the conversations  
20 you've had with the Single Member District Commissioner or the  
21 ANC?

22 MR. BROWN: I'll let Mr. Bello respond.

23 MR. BELLO: Mr. Vice Chair, good evening.

24 So we essentially reached out to the ANC at a minimum  
25 of eight times from the Notice of Intent to request a map

1 amendment. We were successful in presenting to the ANC 50 percent  
2 of those times, that's four times. So at the end of the  
3 presentation the ANC voted not to support the map amendment, not  
4 because of a concern for the zoning designation as requested, but  
5 because they believe that they would be voting for something in  
6 the blind in terms of what development was planned for that site.  
7 So we're not able to successfully convince the ANC that this was  
8 not a development related map amendment request. So there was a  
9 vote not to oppose.

10 VICE CHAIR MILLER: Right. Right. So, and I did see  
11 that summary of the dialogue in the record where they  
12 consistently wanted to see what the development was and of course  
13 this is a map amendment case, a project is not before us. This  
14 will, this increased density consistent with the comprehensive  
15 plan medium mixed use designation for most of the site will  
16 facilitate a medium density residential project with perhaps  
17 neighborhood serving commercial uses but we don't, as part of  
18 this map amendment process have a project before us so I can  
19 understand their frustration in wanting to actually see what it  
20 is that might be facilitated.

21 I don't know if you provided them examples of what you  
22 might have in mind for that vision for the site. Did you share  
23 some conceptual renderings of what could be possible under this,  
24 if this map amendment were to go through?

25 MR. BELLO: No. We did in general indicate to the ANC

1 that there would be a mixed use development but that it was  
2 difficult for the Applicant to graphically demonstrate what may  
3 be there because of the presumptions of the Applicant to conclude  
4 that the Zoning Commission was going to approve this and I think  
5 the situation underscores the Applicant's concern in terms of the  
6 difference between the request and what the Office of Planning  
7 has recommended. But the Applicant did make a commitment that  
8 they'd be willing to come back to present to the ANC when we do  
9 get to that phase of the project whether or not the project would  
10 be a mater-of-right project or one that would need any kind of  
11 relief which obviously would come.

12 So we did commit to coming back before the ANC to  
13 present some kind of development plan when we get to that bridge  
14 and we need to cross it, even if it's a matter-of-right project.

15 VICE CHAIR MILLER: So you did commit to coming back  
16 to the ANC even if the zoning, even if it were a matter-of-right  
17 project?

18 MR. BELLO: That's correct, Mr. Chair.

19 VICE CHAIR MILLER: Yes. Okay. Thank you.

20 On that, related to that point. So the Office of  
21 Planning has recommended that for the sliver of land adjacent to  
22 Dunbar Road which is still designated on the future land use map,  
23 comp plan map, as moderate density residential, that didn't  
24 change with the area adjacent as mixed use medium density which  
25 you're proposing to go to from RA-1 to MU-8A which is more



1 consistent with what the density designation is on the comp plan.

2           In your dialogue with OP, and I'll ask them about this  
3 when we hear from them today, was there discussion about a  
4 different zone other than MU-8A for that sliver of moderate  
5 density residential on the future land use map? For example, was  
6 there discussion of RA-2 which would still be a moderate, I think  
7 a moderate to medium, but a moderate density designation  
8 residential in our zoning which would be I think consistent with  
9 the moderate density designation that remains on the future land  
10 use map but it would -- was there discussion about other zones  
11 other than what the Office of Planning is recommending which is  
12 keeping it at RA-1 or going to MU-8A which is what you've proposed  
13 for the entire site including the Dunbar sliver I'll call it, was  
14 there discussion of other possible zones? The RA-2 when it comes  
15 to my mind is something that at least would be consistent with  
16 the comp, or more consistent with the comp plan and as long as  
17 we're doing a rezoning, would be, you know, would allow you maybe  
18 to do the whole development as a matter-of-right even though  
19 you've pledged to go back to the ANC to consult with them on  
20 whatever particular development is going to be there, but if  
21 we're doing a rezoning it just seems a little odd for rezoning  
22 to facilitate development if we're keeping an RA-1 zone for that  
23 sliver which is part of the development site which will require,  
24 we know will require, BZA review under our zoning regulations.  
25 RA-1 is not matter-of-right zoning. Any residential development

1 along in that sliver whether it's one townhouse or a row of  
2 townhouses or a garden apartments will require, under RA-1, would  
3 require BZA approval.

4           So was there discussion of an alternative zone other  
5 than the MU-8A which is more of a medium density which you're  
6 proposing for the rest of the site which is designated on the  
7 comp plan as medium density? Was there something discussed,  
8 another zone discussed other than the existing zone RA-1 or the  
9 proposed zone for the rest of the site MU=8A?

10           MR. BROWN: Vice Chairman Miler, our discussion with  
11 OP to date has focused in on retaining the RA-1 for that sliver.  
12 I think your point on RA-2 is very well taken. We still maintain  
13 that the rezoning the entire site MU-8A is appropriate and  
14 certainly authorized. But the RA-2 is a viable option and more  
15 appropriate than just maintaining the RA-1.

16           VICE CHAIR MILLER: Okay. All right. I think I'll  
17 leave it at that on that subject. Thank you, Mr. Chairman.

18           Well, one question. You are agreeing to, as a map  
19 amendment, but you have agreed to all of the conditions of DDOT  
20 in their report including improving the unimproved Dunbar Road?

21           MR. BROWN: Yes, to the extent that DDOT has requested  
22 which is limited to providing access from Pomeroy and not the  
23 entire length, 1,200 foot length of Dunbar. Unfortunately, DDOT  
24 has told me, they indicated in writing that they have no money  
25 or plans to do anything about Dunbar on their own so that will

1 fall to my client which is quite frankly another reason why the  
2 MU-8A seems more appropriate because some rather extraordinary  
3 costs and burdens are being placed on him for any redevelopment  
4 of this site. DDOT has limited access from Martin Luther King.  
5 There are no curb cuts and they don't want any new curb cuts so  
6 access will be limited to Dunbar Road at great expense to my  
7 client which he's prepared to do but, again, that further supports  
8 the MU-8A for the entire site.

9 VICE CHAIR MILLER: And you would be improving the  
10 entire 60 foot frontage along that your site abuts Dunbar Road  
11 --

12 MR. BROWN: Actually it's more extensive than that  
13 because DDOT indicates that we have to improve access to the site  
14 which in this case coming from Pomeroy where there is a properly  
15 improved public street to our property that's closer to 150 feet,  
16 not 63 feet. So he'd be improving parts of Dunbar that don't  
17 abut his property but are required to gain access and 150 feet  
18 of roadway to DDOT's standards is a substantial investment.

19 VICE CHAIR MILLER: Okay. Well, thank you for that  
20 response. I appreciate it and I appreciate all of the analysis  
21 that you've provided and I think that's right now, Mr. Chairman.  
22 I may have further questions later. Thank you. Thank you all.

23 CHAIRPERSON HOOD: Thank you. Thank you. Let me go  
24 to Commissioner Stidham.

25 COMMISSIONER STIDHAM: Thank you, and thank you for

1 your presentation. I have I guess a couple of follow-up questions  
2 related to the questions from Commissioner Miller.

3 In your presentation you talked about the RA-1 not  
4 being economically feasible. Can you elaborate on that just a  
5 little bit? I believe that you had indicated that the owner of  
6 the property was unable to develop it up until this point under  
7 RA-1, so if you could just elaborate a little bit more that would  
8 be helpful?

9 MR. MAHARI: Yes . The site topography and the drop of  
10 the site is substantial. So to do any kind of development with  
11 that kind of topography with RA-1 is not economically viable.

12 COMMISSIONER STIDHAM: So basically the cost to develop  
13 the site would be greater than you would get in terms of using  
14 -- being under the RA-1 in developing it for (indiscernible). Is  
15 that correct?

16 MR. MAHARI: Yes, ma'am. Yes, ma'am, that's correct.

17 COMMISSIONER STIDHAM: But you, I think you indicated  
18 to Commissioner Miller that RA-2 would work for you or maybe I  
19 misheard.

20 MR. BROWN: Only having to do with the sliver on Dunbar  
21 and one of the difficulties we face in looking at the future land  
22 use map is it doesn't define and was never intended to define  
23 where the boundary between the moderate and medium density would  
24 be so we have no way of knowing. But as a possible option if  
25 you chose not to rezone the entire property, the RA-2 would be

1 less impactful. It would still be impactful on the overall  
2 viability of the project.

3 MR. BELLO: Do you want me to weigh in?

4 MR. BROWN: And Mr. Bello might add to that.

5 COMMISSIONER STIDHAM: Okay.

6 MR. BELLO: Okay. So Subtitle A of the zoning  
7 regulations, § 207.1 which deals with the zone boundary line  
8 crossing a lot. The condition for the applicability of those  
9 provisions if read very carefully did not intend for split zoning  
10 designations to actually continue because those provisions were  
11 specifically written in 1958 to protect those property owners  
12 that were in single ownership and zone boundary lines affected  
13 adversely.

14 So recreating the neutral zone at this point actually  
15 doesn't adhere any benefits of those provisions to a current  
16 owner because this property was not in single ownership at the  
17 time of the 1958 zoning provisions. So that date has not been  
18 changed in the zoning regulations so he is the single owner of  
19 that property at this property when he didn't own it in 1958. So  
20 some of the benefit of those provisions would actually not apply  
21 to the current owner if read very carefully.

22 My personal opinion from my experience is that that  
23 provision or the creation of new split zoning is not something  
24 that the zoning regulations intended to continue.

25 COMMISSIONER STIDHAM: Okay. Thank you for that. And

1 as a matter of OP's recommendation, do you feel like the  
2 development that you were able that it's feasible to develop the  
3 site with that split zoning requirement?

4 MR. BELLO: As the Vice Chair already pointed out, the  
5 Applicant doesn't believe that the RA-1 zoning district is  
6 practical because it would at once at the same time rezone this  
7 property and subject it to a special exception. If any portion  
8 of that development were to cross that new zone boundary line,  
9 RA-2 may resolve that problem for that little sliver because the  
10 RA-2 zone permits the development of a multiple dwelling unit  
11 building, but then the Applicant still faces the challenge of the  
12 density restrictions that the topography imposes on the  
13 Applicant. I believe the property is about 200 feet deep,  
14 approximately?

15 MR. BROWN: It's actually, I think it's more than that.

16 MR. BELLO: More than that?

17 MR. BROWN: It's 340 feet.

18 MR. MAHARI: 320 feet deep.

19 MR. BELLO: 320 feet deep, that is for the larger lot,  
20 lot 1014?

21 MR. MAHARI: Yes.

22 MR. BELLO: Yes. If you look at the topography of that  
23 site from Martin Luther King, 30 feet into that property  
24 everything becomes FAR because of the drop of the site.

25 COMMISSIONER STIDHAM: Okay. Mr. Chair, nothing more

1 from me right now.

2 CHAIRPERSON HOOD: All right. Thank you. Commissioner  
3 Imamura, any questions or comments?

4 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. Just  
5 maybe one question. I just want to thank Vice Chair Miller for  
6 his set of questions. I shared some of the same interests there  
7 and Commissioner Stidham's follow-up I think was important about  
8 I think about the viability of developing this part of this  
9 property in the MU-8A zone while leaving that sliver as the RA-  
10 1 zone.

11 I was curious, and it doesn't sound like there have  
12 been any conversations about approaching (phonetic) OP about  
13 another zone. I just want to confirm that. I guess what I'm  
14 curious to know is I guess why, or have you already gamed out  
15 -- I guess that's the other part of the question -- have you  
16 already gamed out what your matter-of-right development might be  
17 in sort of this split zone versus a full zone, what that delta  
18 is and then what I'd like to know first, what is the delta between  
19 a full MU-8A for the entire property versus what OP is suggesting  
20 and what that matter-of-right would be comparatively speaking and  
21 then what that does might lead to, you know, perhaps another zone  
22 to consider for the entire site, I don't know.

23 But that to me that's kind of where I would have started  
24 so can you tell me what you gained out here in terms of your  
25 formula, your financial formula, what works, you know, how much

1 matter-of-right development are you getting from I guess split  
2 zone versus the full MU=8A?

3 MR. BROWN: Commissioner, just as a preliminary matter.  
4 One of the difficulties is we've asked and nobody's able to answer  
5 where that line would be drawn so it's very hard to make that  
6 distinction.

7 COMMISSIONER IMAMURA: I think for at least, back of a  
8 napkin I disagree. The map, right, it's not drawn, sort of with,  
9 you know, geographic GIS level of specificity but I think that  
10 we can garner a pretty good estimate though from a map. So I'm  
11 not sure I would agree that.

12 MR. BROWN: In this context I'm not so sure I agree  
13 with that. I mean, I think it gives an idea, it's meant to convey  
14 that there should be a dividing line. I'm not so sure in this  
15 context that we can, but --

16 COMMISSIONER IMAMURA: (Indiscernible).

17 MR. BROWN: -- I'll let others answer that specific  
18 question.

19 COMMISSIONER IMAMURA: Mr. Brown, I think it's what  
20 you're telling me is you have not done the arithmetic on this to  
21 figure out the difference between a split zone. I mean, before  
22 you go into an endeavor like this, right, which would facilitate  
23 a potential project, you would definitely run the math. So I  
24 would rather hear we haven't run the math than tell me that, you  
25 know, well, the line there is a little bit, you know,



1 indetermined.

2 MR. BROWN: Well, we have not run the math specifically  
3 and, 2) the question of distinguishing the two zones has only  
4 come up in our recent discussions with the Office of Planning  
5 and, again, I'm not pointing fingers but the original setdown  
6 report made no distinction whereas their October 6 report, which  
7 we've discussed with them when it was issued, for the first time  
8 drew this distinction. So little bit short notice but I'll leave  
9 it at that.

10 COMMISSIONER IMAMURA: All right. Mr. Brown, I  
11 recognize that you feel that is short notice but you are coming  
12 before the Zoning Commission so it's something to pencil out,  
13 right, to just have that prepared. I think that, you know, I  
14 certainly understand the concern about the split zone but I would  
15 have felt better had you come back and said, yes, we've run the  
16 numbers, this is kind of what it looks like, you know, back of a  
17 napkin this is what we kind of estimate. So that way we have a  
18 little more information to make, you know, a little more data to  
19 make an informed decision.

20 So, Mr. Chairman, I don't have any more questions  
21 (indiscernible).

22 MR. BROWN: Mr. Chairman, Mr. Bello would like to chime  
23 in.

24 CHAIRPERSON HOOD: Hold on a second. Commissioner  
25 Imamura, did you ask Mr. Bello a question?

1                   COMMISSIONER IMAMURA: I did not, Mr. Chairman. I have  
2 a couple of questions for the Office of Planning, but that  
3 concludes the questions that I have.

4                   CHAIRPERSON HOOD: Okay. Well --

5                   MR. BROWN: Mr. Bello -- no, no, that's fine.

6                   CHAIRPERSON HOOD: Mr. Brown, Mr. Brown, I asked the  
7 Commissioner did he have a question for Mr. Bello, he said no so  
8 we're going to keep moving. Okay?

9                   I want to opine on what my I heard my colleagues say,  
10 and particularly Commissioner Imamura. I was sitting here  
11 thinking how's the best way forward (indiscernible) but I had a  
12 problem even before Commissioner Imamura even mentioned that, and  
13 I'm trying to think -- and I want my colleagues to think about  
14 this -- I'm thinking we may postpone this proceeding, go back and  
15 do some of the things I'm hearing because there's no sense in me  
16 bringing up a lot of stuff, and come back with a package where  
17 you've done the math, where you also went back and spoke with  
18 the ANC.

19                   Now, I understand there is no project, I get that, but  
20 there is the development capacity table and maybe they didn't,  
21 maybe that was not explained to them that, like the Vice Chair  
22 has mentioned about density, you know, about the things that can  
23 be developed in a RA-1 versus the MU-8. Not talking about a  
24 specific project, but you can say you can go .8 here and you go  
25 1.5 or 6.3 there and even the novice including myself, I'm in

1 that group, can understand that I can do more over here than I  
2 can do there. That's just simple.

3 The ANC 8C I'm sure would have weighed in -- most of  
4 the time people look for projects, that's natural -- but I think  
5 a little more push and if that was done, I need to see that it  
6 was done because when I look at the table, I've got so many files  
7 opened up here, but when I look at the table and I went back to  
8 look at the OP report, Mr. Brown, since you said it was short  
9 notice and I haven't found it and I hope -- it's not in the  
10 2/27/2023 report that we had. I do know that, as you mentioned,  
11 it is in the 10/6, but you're saying it was short notice. But  
12 again, that report was filed October the 6th. Today is the 16th  
13 and you do this for a career, for a living. That's ten days,  
14 even if you have to cut the football game off on Sunday and you  
15 have to do this to come in front of the Commission.

16 So, I don't know where others are. I want you all to  
17 go back and work with the ANC or at least make an attempt. I'll  
18 feel better if an attempt was made. Just to come and tell me  
19 there was no project, they didn't want to talk about it, no.  
20 That's not right. They don't do this all the time. Go back to  
21 the ANC, tell them this is what this is about and, you know,  
22 maybe we can (indiscernible). Maybe I need to ask the Office of  
23 Planning has that been done. This is what this is about. It's  
24 about -- hold on one second -- this is about use groups E versus  
25 use groups F, 40 feet to three story maximum RA-1, if we go to

1 MU-8 it's about 70 feet max, that's the conversation.

2 Let me ask you about this before I make the accusation.  
3 I'm going by what I heard. Was that conversation had?

4 MR. BELLO: Mr. Chair, yes. The conversation was had  
5 in terms of the differences in the density between the two zones,  
6 but did we provide any kind of graphic illustration? No, we  
7 didn't but as far as the density differences, yes, those  
8 conversations were had.

9 CHAIRPERSON HOOD: Well, I want something from the ANC  
10 saying that's what was done. I'm sorry. I just don't have a  
11 comfort level of moving forward and if you did your due diligence,  
12 forgive me, but I have to rest easy because you all will be gone  
13 and the ANC's will be on this Commission about us not doing our  
14 due diligence.

15 So that's -- I'm not going to ask any more questions.  
16 I want this, as Commissioner Imamura and others were talking  
17 about the other zones that may have been considered, the Office  
18 of Planning's recommendation to us and then when Mr. Brown said  
19 possibly we can do an RA-2. So it's, to me, you know, looking  
20 on the surface of this, this is not ready for us, even our  
21 consideration. I need this packaged better than what is presented  
22 to us today. I'm not trying to be hard on you, I just need to  
23 make sure that when it's all said and done then I'll probably  
24 come to you all and then I'll come look at the Commission,  
25 particularly myself. So I want to make sure that this is packaged

1 right.

2 Now, let me ask my colleagues this question. Do we  
3 need to postpone for now? I think we've put enough out there,  
4 especially with what I've heard from my colleagues today, do we  
5 need to postpone right here and now and come back (indiscernible)  
6 through this whole process, and I'm just having --

7 VICE CHAIR MILLER: I would prefer that we continue on  
8 with the hearing, Mr. Chairman. I'd like to (indiscernible) --

9 CHAIRPERSON HOOD: I'm sorry?

10 VICE CHAIR MILLER: That's my own personal preference.  
11 I would --

12 CHAIRPERSON HOOD: I didn't catch you, Vice Chair  
13 Miller.

14 VICE CHAIR MILLER: I'm sorry. I would prefer to  
15 continue on with the hearing, at least for now so I can ask the  
16 Office of Planning some questions about alternative zones, and  
17 we don't need to make any decisions this evening and we might  
18 very well want to have additional information requested before  
19 we schedule this for any continued hearing or decision meeting.  
20 But I would like to hear from the Office of Planning and have  
21 the opportunity to ask questions this evening since we're all  
22 here.

23 CHAIRPERSON HOOD: Okay. That's fine. Let me hear  
24 from others. Commissioner Stidham?

25 COMMISSIONER STIDHAM: I feel like that we could

1 dismiss at this point and have the Applicant go back and bring  
2 more information and let the Office of Planning leave it at that  
3 and start over, frankly.

4 CHAIRPERSON HOOD: Okay. Commissioner Imamura?

5 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I'm  
6 in agreement with you and Commissioner Stidham frankly. So, you  
7 know, my sense is that the Office of Planning essentially  
8 evaluated what the proposal was, you know, it's MU-8A, that was  
9 it, and the recommendation was, you know, not to be used  
10 (indiscernible) and that it remain RA-1.

11 But what I would prefer to hear from the Applicant that  
12 they come back and have further discussions with, as you pointed  
13 out, ANC; right? The last time they had a conversation was July,  
14 here it is, you know, mid October. Certainly that's an ongoing  
15 conversation and should be, right, and to the fact that they said  
16 they were committed should this facilitate a project to go back  
17 to the ANC, I would hope that that's the good neighbor policy.

18 So I would prefer the Applicant to come back and tell  
19 us we tried this with OP, this didn't work, this did work. This  
20 is where we landed, this is, you know, what essentially this is  
21 the delta between, you know, what was what and what OP is seeing  
22 or what have you, and I would suggest that the Applicant, while  
23 he did talk about perhaps the various FARs allowable under the  
24 different zones, but he did admit that he didn't use any graphics.

25 People, zoning's complicated. They don't understand

1 that a lot of people just have a difficult time understanding  
2 zoning, but when you bring in graphics and volumetric space they  
3 understand that.

4 So that's really critical and important to your  
5 conversation with the ANC and we should probably see that in the  
6 record. There's nothing wrong with that at least showing that  
7 some volumetric space, that doesn't suggest that there's a  
8 project coming, it does suggest this is what the matter-of-right  
9 might be. That's where I'm at, Mr. Chairman.

10 CHAIRPERSON HOOD: Okay. Thank you. I think this is  
11 what I'm going to do. I'm always trying to accommodate everyone.  
12 I'm going to let the Office of Planning come one, take us out of  
13 order and let the Office of Planning talk. Vice Chair Miller,  
14 let him ask his questions and then we'll stop there, and then  
15 we'll go back and rejuvenate and because they've heard from the  
16 three of us, but I want to be open to what the Vice Chair has  
17 asked to do, to have questions.

18 So some of those same questions that he may have would  
19 not be at the date. I'm going to ask Ms. Schellin to begin to  
20 get the date ready and could the Office of Planning person come  
21 up at this time, please, and I'm going to ask Ms. Schellin to give  
22 us the quickest date possible. Does anybody want to  
23 (indiscernible), well let me see what she comes back with. Can  
24 the Office of Planning come up, please, and I'm taking this out  
25 of order. This is not what I normally do, it's not our normal

1 procedure, so I shouldn't say this, don't take me to court. I'm  
2 trying to make sure we get things right.

3 Okay. Ms. Steingasser, Ms. Thomas. This is simply not  
4 asking you all to give your report, I'm asking the Vice Chair if  
5 he has some questions for you all that he's already expounded  
6 upon. I think you know the direction the Commission is going,  
7 so I'll turn it over to the Vice Chair.

8 VICE CHAIR MILLER: All right. Thank you, Mr.  
9 Chairman. I appreciate you giving me the opportunity to ask the  
10 Office of Planning a question or two and I thank the Office of  
11 Planning for their work on this case and their report.

12 So, Ms. Steingasser or Ms. Thomas, did you consider an  
13 alternative zone other than the existing RA-1 zone for the sliver  
14 along Dunbar that is still designated on the future land use map  
15 of the comprehensive plan as moderate density residential, as you  
16 are recommending the MU-8A zone for the adjacent parcel that then  
17 goes up to MLK Avenue because it's medium density mixed use which  
18 is what the comp plan land use map is and the MU-8 zoning would  
19 facilitate? But did you consider anything other than RA-1 for  
20 that existing RA, existing moderate density strip along Dunbar?

21 MS. STEINGASSER: No, we did not. No, sir.  
22 (Indiscernible).

23 VICE CHAIR MILLER: Would you --

24 MS. STEINGASSER: Well, so the burden falls to the  
25 Applicant and it wasn't until we started overlaying the property



1 on to the comprehensive plan that we noticed that disconnect  
2 between the split, the land use map designation and no, we did  
3 not try to do elaborate calculations with other zones.

4 VICE CHAIR MILLER: Well, would you be -- I assume you  
5 would be willing to talk with the Applicant further about  
6 alternative zones that --

7 MS. STEINGASSER: Yes.

8 VICE CHAIR MILLER: -- the existing zone or the proposed  
9 zone that might be more appropriate as part of this development  
10 site, you know, that would be. I assume you'd be open to having  
11 that conversation with the Applicant and with the ANC and others?

12 MS. STEINGASSER: Yes, of course. Yes, we would. You  
13 know, part of == also what was missing is the topography drop.  
14 As you know, height is required to be measured from the front of  
15 the building which would be MLK, so then there's that height  
16 which is the MU-8 is 70 feet, as that height is pulled toward  
17 the back of the lot and the lot topography goes down, the back  
18 part of that building is going to be upwards of 95 to 100 feet  
19 in height and that kind of juxtaposition with what's already back  
20 there was also somewhat concerning to us.

21 So, yes, we would be happy to work with, especially if  
22 they're going to be doing some volumetric studies of how that  
23 topography and the zones work together.

24 VICE CHAIR MILLER: I think we all would benefit from  
25 that kind of study and analysis and, yes, I wasn't asking why

1 | you didn't -- you no longer, you were proposing MU-8A for the  
2 | entire site and I think the explanation you've given makes a lot  
3 | of sense. I just think that there might be alternative zones  
4 | with a lesser height, even if measured from MLK that might provide  
5 | that scale down to the moderate density designation on the comp  
6 | plan.

7 |           Now what is, if you know off the top of your head, I  
8 | should know -- I don't know off the top of my head, what the RA-  
9 | 2 height matter-of-right?

10 |           MS. STEINGASSER: RA-2 height is 50 feet.

11 |           VICE CHAIR MILLER: Fifty feet.

12 |           MS. STEINGASSER: RA-1 height is 40 feet.

13 |           VCIE CHAIR MILLER: And then 8A is?

14 |           MS. STEINGASSER: Seventy.

15 |           VICE CHAIR MILLER: So it would be at least 20 foot,  
16 | but we've heard that there's a 40 foot topographical slope from  
17 | MLK down to Dunbar, so that 20 feet could get easily eaten up by  
18 | that topographical measurement.

19 |           Okay. I think there needs to be further discussion  
20 | about those alternatives to make this site work for both, for the  
21 | neighborhood, mostly for the neighborhood, for the community, for  
22 | the planning area, but for the Applicant and for the city. So I  
23 | look forward to hearing the results of that analysis and further  
24 | study and conversations, Mr. Chairman.

25 |           CHAIRPERSON HOOD: Okay. Thank you, Vice Chair. Any

1 other quick questions from my colleagues for OP or do you want  
2 to hold off and we'll come back with? All right.

3 So thank you, Ms. Steingasser.

4 Ms. Schellin, here's how I want to proceed forward, and  
5 I'll explain this to the Applicant. I don't want to have a whole  
6 hearing and it's not ready, and then we have to have another  
7 whole hearing. So let's save all of us some time. You've heard  
8 the questions because if we were to take a vote right now I'm  
9 sure, the way I see it, it would probably be, either way it'd be  
10 recommended or denied. So let's see, help us to get you where  
11 you need to be.

12 So what I would like to do, Ms. Schellin, is to come  
13 up with a date, the quickest one you can get me. The Applicant,  
14 Mr. Brown, I think you've heard everything, the concerns and the  
15 comments, and here's with the ANC, for me, just do your due  
16 diligence, do a little more, even if you have to do graphics and  
17 this is not the first time this Commission has asked an Applicant  
18 to do that. Okay? So this is not the first time, because I  
19 wanted to go down a little road with Mr. Bello because his  
20 207.1(a) says something a little different and I, so anyway I  
21 interpret that a little differently.

22 So, I don't need to get into that because we're going  
23 to start the hearing, Ms. Schellin, at the very beginning again.  
24 We're going to postpone it but we're going to start it. We're  
25 going to let the Applicant present the case, whatever. They need

1 to come back, update, update or make any changes, put that in  
2 the record and all the time necessary to get that done.

3 But I'm going to turn it over to you, Ms. Schellin.

4 MS. SCHELLIN: Yes, sir. So obviously they need to  
5 have time to meet with the ANC and we are mid-October and the  
6 first hearing date we have available is December 7th. I think  
7 that will allow them to work with OP and to make it to the ANC's  
8 November meeting.

9 MR. BROWN: Mr. Chairman, can I interject, to be  
10 helpful?

11 CHAIRPERSON HOOD: Yes, you can.

12 MR. BROWN: Always helpful.

13 CHAIRPERSON HOOD: Yes, you can.

14 MR. BROWN: Always helpful. ANC 8C meets the second  
15 Wednesday of every month so that would be, we've missed October  
16 but they meet the 8th of November and then the 13th of December.  
17 So if we're going to wait till December 7th, perhaps wait a little  
18 bit longer so that we perhaps have two bites of the ANC apple?

19 CHAIRPERSON HOOD: Okay. So now, Mr. Brown, I was  
20 trying to get you back in here and out of here as quickly as  
21 possible. What you're asking for probably will carry us over  
22 into January.

23 MS. SCHELLIN: Well, I do have December 18th and the  
24 21st. The 21st is the last hearing of the year.

25 MR. BROWN: December 18th would work.

1 CHAIRPERSON HOOD: Yes. We get wacky (phonetic) around  
2 the 21st. We need a break.

3 MR. BROWN: Yes.

4 MS. SCHELLIN: So December 18th instead?

5 MR. BROWN: Yes.

6 MS. SCHELLIN: Okay.

7 MR. BROWN: We appreciate that.

8 CHAIRPERSON HOOD: Okay. I really think, while I  
9 understand the Applicant was trying to move forward, I really  
10 think that it's better to make sure we have all the information.  
11 As my colleague mentioned, you need to do the math. I like that.  
12 I used to have to do the math, but I think that's very important.  
13 So what you've heard, I hope the Applicant will take that under  
14 consideration.

15 Ms. Schellin, do we have anything else?

16 MS. SCHELLIN: No, sir.

17 CHAIRPERSON HOOD: Do my colleagues have any other  
18 comments? Okay. Before I close out, the Zoning Commission will  
19 meet again -- what's today, today is the 16th? The Zoning  
20 Commission will meet again the 19th which is this Thursday. Adam  
21 Gambrell, Hugh Roell AIA, Gillermo Rueda, AIA. That's the case,  
22 case No. 22-23.

23 With that, I want to thank everyone for their  
24 participation and this hearing is postponed until December the  
25 7th at 4 p.m. --

1 MR. BROWN: December the 18th.

2 MS. SCHELLIN: The 18th.

3 CHAIRPERSON HOOD: Okay. I'm sorry. December the  
4 18th, 2023 on these same platforms. Thank you everyone for your  
5 participation tonight, and again this is postponed.

6 Good night everyone.

7 MR. BROWN: Thank you.

8 MR. BELLO: Good night.

9 (Whereupon, the above-entitled hearing, at 5:10  
10 p.m., 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: ZC

Date: 10-16-2023

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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JULIE SOUZA