

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA**

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

FEBRUARY 25, 2013

+ + + + +

**The Regular Meeting of the
District of Columbia Zoning Commission
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 6:36 p.m., Anthony J. Hood,
Chairman, presiding.**

ZONING COMMISSION MEMBERS PRESENT:

**ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA,
Commissioner (AOC)**

**PETER G. MAY, Commissioner (NPS)
ROBERT MILLER, Commissioner**

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

**JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation**

JOEL LAWSON

STEPHEN MORDFIN

STEVEN COCHRAN

MATT JESICK

PAUL GOLDSTEIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

**The transcript constitutes the
minutes from the Regular meeting held on
February 25, 2013.**

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

6:36 p.m.

CHAIRMAN HOOD: Good evening. We are going to go ahead and get started. This meeting will please come to order.

Good evening ladies and gentlemen. This is the February 25, 2013 public meeting of the Zoning Commission of the District of Columbia.

My name is Anthony Hood. Joining me this evening are Vice Chair Cohen, Commissioner Miller, Commissioner May, and Commissioner Turnbull. We are also joined by Office of Zoning Staff Ms. Sharon Schellin.

Also the Office of Planning staff Ms. Steingasser Mr. Lawson and Mr. Jesick. I think I see Mr. Goldstein and Mr. Mordfin and Mr. Cochran in the audience.

Copies of today's meeting agenda are available and located in the bin near the door. We do not take any public testimony at our meetings unless the Commission request

1 someone to please come forward.

2 Please be advised that this
3 proceeding is being recorded by a court
4 reporter's and is also webcast live.

5 Accordingly, we must ask you to refrain from
6 any disruptive noises or actions in the
7 hearing room. Please turn off all beepers and
8 cell phones.

9 Does the staff have any
10 preliminary matters? I don't think we have
11 any preliminary matters. If not, let's move
12 right on with our agenda.

13 Final action. I'll call Zoning
14 Commission Case No. 12-17 (Holland & Knight,
15 Text Amendment to the Reed-Cooke Overlay
16 District).

17 Commissioners, we have received
18 Exhibit 19 which is the NCPC Report.

19 COMMISSIONER MILLER: Mr.
20 Chairman, did you want to call A and B
21 together?

22 CHAIRMAN HOOD: Yes, I sure did.

1 Thank you. Thank you, Commissioner Miller.

2 Let me call again under Final
3 Action Zoning Commission Case No. 12-17
4 (Holland & Knight, Text Amendment to the Reed-
5 Cooke Overlay District). Also Zoning
6 Commission Case No. 11-17 (Adams Morgan Hotel
7 Consolidated PUD & Related Map Amendment @
8 Square 2560.

9 We have received a few submissions
10 in 12-17. Exhibit No. 18, Exhibit No. 19, as
11 well as Exhibit 20, 22, 23, 21, and 24. I
12 know I didn't call that as eloquently as Ms.
13 Schellin does but I think I got all the
14 exhibits.

15 Next in Zoning Commission Case 11-
16 17 -- let's see what exhibits we have. No new
17 exhibits in that one. Great.

18 All right. Let's start our
19 discussion. Even though I called the cases
20 together, we can start a discussion with 12-
21 17. I think we have to do that one first
22 because without 17 there is no 11 -- without

1 12-17 there is no 11-17.

2 I'll open it up for comments. Any
3 comments? Would somebody like to make a
4 motion to approve?

5 VICE CHAIR COHEN: Mr. Chairman, I
6 move to approve Zoning Order No. 12-17, Z.C.
7 Case No. 12-17, Text Amendment amending the
8 Reed-Cooke Overlay District.

9 VICE CHAIR COHEN: The case has
10 been properly moved. Can I get a second?

11 COMMISSIONER TURNBULL: Second.

12 CHAIRMAN HOOD: Moved and properly
13 seconded. Any further discussion? On
14 discussion I'll just note the NCPC report
15 basically says no impacts. It would not be
16 inconsistent with the federal elements of the
17 Comprehensive Plan.

18 We also have received some
19 comments about some changes. I don't think
20 anyone -- at least I'm not moved to insert
21 some of the changes that were asked for. I
22 think they are not as relevant as the person

1 who submitted them would submit.

2 Is anybody moved by any of these
3 submissions?

4 Okay. It's been moved and
5 properly seconded. All those in favor, aye.

6 COMMISSIONERS: Aye.

7 CHAIRMAN HOOD: Not hearing any
8 opposition, Ms. Schellin, please record the
9 vote.

10 MS. SCHELLIN: Staff records the
11 vote five to zero to zero to approve final
12 action in Zoning Commission Case No. 12-17.
13 Commissioner Cohen moving, Commissioner
14 Turnbull seconding, Commissioners May, Hood,
15 and Miller in support.

16 CHAIRMAN HOOD: Let's go to Zoning
17 Commission Case No. 11-17, the Adams Morgan
18 Hotel which we already called.

19 Commissioners, any comments?

20 Again, we have an NCPC report
21 which shows no impacts, I believe. Or do we
22 have a report on this one?

1 Anything else? Any other
2 comments? I would move approval of Zoning
3 Commission Case No. 11-17, Adams Morgan Hotel,
4 Consolidated PUD & Related Map Amendment at
5 Square 2560 and ask for a second.

6 VICE CHAIR COHEN: Second.

7 CHAIRMAN HOOD: It has been moved
8 and properly seconded. Any further
9 discussion? Any further discussion? All
10 those in favor, aye.

11 COMMISSIONERS: Aye.

12 CHAIRMAN HOOD: Not hearing any
13 opposition, so ordered.

14 Staff, would you record the vote.

15 MS. SCHELLIN: Yes. Staff records
16 the vote five to zero to zero to approve final
17 action in Zoning Commission Case No. 11-17,
18 Commissioner Hood moving, Commissioner Cohen
19 seconding, Commissioners May, Miller and
20 Turnbull in support.

21 CHAIRMAN HOOD: Okay. Next is
22 Zoning Commission Case 12-11. This is the

1 Office of Planning, Text Amendments, Various
2 Administrative Amendments to Currents
3 Regulations.

4 Ms. Schellin.

5 MS. SCHELLIN: Yes, sir. Exhibit
6 17 is an NCPC report. Then there are some
7 comments that were received to the proposed
8 rulemaking that was published at Exhibits 18
9 and 19.

10 CHAIRMAN HOOD: Okay,
11 Commissioners. Again, the NCPC report not
12 inconsistent with the federal elements of the
13 Comprehensive Plan for the National Capital.
14 That's Exhibit No. 17.

15 We did receive another exhibit
16 from ANC-3D, Exhibit 19, as well as Holland &
17 Knight which is Exhibit 18. Let's discuss the
18 ANC-3D letter first. Actually, we can come
19 back to the building height issue.

20 I think the ANC objected to the
21 language that would relieve an applicant of a
22 PUD for being required to identify if approved

1 how the PUD would offer a public benefit.
2 ANC-3D believes that having the applicant
3 define what the public benefit would be is a
4 crucial part of the PUD process.

5 Let me just ask Mr. Bergstein, are
6 we changing -- with what is proposed now are
7 we making any major change to where it would
8 put more of a burden than what the ANC is
9 requesting in 2403.15?

10 MR. BERGSTEIN: Actually, I can
11 understand the ANC's confusion because there
12 is language that is in the draft that says
13 that the Zoning Commission may relieve the
14 applicant of its obligation or its
15 responsibility.

16 I think they interpreted that as
17 being the responsibility to prove that the PUD
18 had certain public benefits. One thing the
19 Commission might consider is instead of using
20 that language is simply say the Commission may
21 decide not to utilize the process which is the
22 final proffer process when it's unnecessary.

1 Therefore, the language directs itself to the
2 process and not to the applicant's obligation
3 to prove that the PUD would provide meaningful
4 public benefits.

5 CHAIRMAN HOOD: Okay.

6 Commissioners, does anyone want to
7 -- I would like to adopt Mr. Bergstein's
8 language. Any objections? Okay, no
9 objections.

10 Let's go to the next point. Would
11 this also, Mr. Bergstein, pertain to
12 reconsideration of Chapter 31 when it talks
13 about objections to proposed language that
14 would require a showing of new evidence for
15 the Zoning Commission and the BZA to consider
16 a motion for reconsideration?

17 MR. BERGSTEIN: No. The language
18 that's been added is the same language that
19 comes from actually the Board of Zoning
20 Adjustment which says new evidence is required
21 when there is a request for a rehearing and
22 rehearing only.

1 The standard language deals with
2 the standard for reconsideration remains the
3 same. We are just adding in the language that
4 is already in the BZA rules that says that
5 when there is a request for a rehearing, the
6 applicant has to -- the person moving for the
7 new hearing has to show there is new evidence.

8 CHAIRMAN HOOD: Thank you.

9 I see a hand. Is it that you
10 can't hear me? Am I not talking loud? You
11 can't hear me? I'm not talking loud enough?
12 Okay. Am I talking loud enough now? Okay.
13 I'm sorry. Thank you for raising your hand.

14 I'm sorry, ma'am. We don't take
15 any public testimony. I thought you were
16 raising your hand because I was not talking
17 loud enough so if you could just have a seat
18 or you can ask staff any questions you may
19 have. This is a meeting, not a hearing so if
20 you could just speak with staff. Staff is to
21 my left, Ms. Sharon Schellin.

22 I'm not sure but if you could just

1 speak with staff. I think you obviously need
2 an interpreter. Was there a request made?
3 Okay, ma'am. Do me a favor. This is a short
4 meeting tonight actually. If you could just
5 go down to staff and you can work out any
6 issues you have with Ms. Schellin.

7 I can tell you if you do not ask
8 for an interpreter -- if I'm not mistaken, the
9 young lady who is sitting beside you I'm sure
10 can explain to you that the case that you are
11 here for we've already dealt with.

12 I know you can interpret that to
13 her. Right?

14 I mean, the young lady that is
15 sitting beside her.

16 You can interpreter that to her.
17 You can explain to her that we have already
18 dealt with that case. Okay. Hold on. Let's
19 not be disruptive, please. I'm just saying --
20 I'm asking you all to see staff and not to
21 speak from the audience. That's what I've
22 asked.

1 I took that much from the young
2 lady who said she didn't understand. I
3 thought she couldn't hear me so that's why I
4 entertained that. Any other questions or any
5 other issues, please work with staff. Thank
6 you.

7 We already dealt with the third
8 one, reconsideration. Okay. The last one is
9 ANC-3D objects to the new language that would
10 prevent a party from commenting after a
11 decision is reached on proposed revisions of
12 the final order that are put forth by the
13 applicant.

14 Current regulations provide
15 parties with the opportunity to comment on any
16 changes or revisions until the order is
17 finally published. ANC-3D believes that
18 changes would impact the public's ability to
19 comment on major changes in an order.

20 I think the way the process --
21 I'll ask Mr. Bergstein also to comment, but I
22 think the way the process stands now is to

1 make sure that everybody is on the same page,
2 not necessarily to revisit the issues.

3 I think that is why we respond to
4 the order is to make sure that everybody is in
5 agreeance. If I understand the ANC correctly
6 what they are asking, it's not to reinvent or
7 go back and reopen a case.

8 MR. BERGSTEIN: Let me just
9 explain how this happened. This only pertains
10 to the BZA. There is a case where the BZA
11 rendered a decision and the Chair of the BZA
12 asked the prevailing party, who was the
13 applicant, to submit a final order to speed
14 things up.

15 Frankly, I don't have enough
16 attorneys to really be able to get a lot of
17 these orders out as quickly as I might like.
18 If I'm given a draft order that is fully
19 written, it incredibly speeds up the time that
20 I can get orders out.

21 The opposing party objected to
22 that process and the BZA ruled that because

1 the decision had been made the only issue at
2 hand was to provide OAG with a draft order it
3 could use as a starting point. The final
4 order may not look anything like it. That
5 would also go to the BZA review and the BZA
6 might review my order.

7 The point of this new process, and
8 it would be a new process, would be to permit
9 the BZA chair or any prevailing party to be
10 able to submit to me through the Office of
11 Zoning a draft order that I can start working
12 with rather than having my staff start from
13 scratch.

14 This is not an opportunity to
15 revisit a decision that was already made.
16 When the order comes out if anyone is unhappy
17 with what is in the order, they can file for
18 reconsideration.

19 The only purpose of this process
20 was to allow persons who really need to get
21 their building permits pulled to build their
22 decks or who really want to start the appeal

1 process to be able to give me an order that I
2 can start working with.

3 So for me to get an order and for
4 me to send it to the BZA and say, "Would you
5 like -- here is the order but here's some
6 comments on this order." Then they would have
7 to meet again before reconsideration would
8 make basically the process worthless.

9 This is just a process for after
10 the BZA has made its decision for a prevailing
11 party to provide a draft that would be able to
12 be issued and if anybody has problems with
13 that draft, they could file for
14 reconsideration.

15 That is why there is no
16 opportunity for comment on a draft order that
17 is submitted to me because it is just the
18 beginning of the process. It's not the end of
19 the process.

20 CHAIRMAN HOOD: Thank you, Mr.
21 Bergstein, for that clarification.

22 Any objection, Commissioners?

1 Okay. Any other issues?

2 We also did receive a letter which
3 is Exhibit No. 18 from Holland & Knight. Any
4 comments? Not hearing anything, would someone
5 like to make a motion?

6 COMMISSIONER MAY: Mr. Chairman.

7 CHAIRMAN HOOD: Commissioner May.

8 COMMISSIONER MAY: I think --
9 first of all, there are a number of comments
10 in there that are, you know, typographical
11 changes and directions and a number of
12 clarifications that I think are being
13 addressed.

14 I do have a question about the
15 issue of the proposed building height and its
16 applicability in non-residential zones. What
17 was submitted indicates or assumes that the
18 Commission really only intended to change the
19 way height is measured in the 40-foot zone
20 when it comes to residential zones and not
21 when it comes to non-residential zones. I
22 want to have clarity that was, in fact, our

1 intention.

2 I don't recall actually thinking
3 separately about residential zones versus some
4 of the other zones that the letter points out.
5 In some ways I was hoping that some of these
6 changes would actually be a clarification and
7 simplification of the regulations but it seems
8 like we are going to wind up with a number of
9 different ways to measure height rather than
10 having consistency among the major use groups.

11 I just wanted to see what the
12 other Commissioners thought about how we
13 measure this, whether in fact we should have
14 one method for measuring height for
15 residential zones that allow 40 feet versus
16 nonresidential zones that allow 40 feet.
17 Anybody have an opinion?

18 CHAIRMAN HOOD: Commissioner
19 Miller.

20 COMMISSIONER MILLER: Well, I
21 think this originated with, correct me if I'm
22 wrong, with the Office of Planning. They can

1 clarify what the intent was there.

2 CHAIRMAN HOOD: Can somebody help
3 us? Ms. Steingasser or Mr. Lawson?

4 Ms. Steingasser.

5 MS. STEINGASSER: We did work
6 through these issues with OAG last week. The
7 intent was to try to come up with a
8 clarification that would simplify the
9 measurements but the issues became more and
10 more complex as individuals started weighing
11 in with their comments on how a house feels
12 and the roof pitch of a house versus the
13 normal pitch of a commercial building and the
14 grade of the yard and the way the building may
15 sit on the yard so we ended up kind of
16 backtracking in our recommendation and leaving
17 it a little bit more in the definition and
18 taking it out of some of the original
19 proposals.

20 COMMISSIONER MAY: We wind up with
21 something of a hybrid as a result. We are
22 making a significant clarification about

1 measurement of height and residential zones
2 that are limited to 40 feet and that is
3 essentially nearly all that's changing.

4 MS. STEINGASSER: Yes, sir.

5 COMMISSIONER MAY: That is a
6 change worth making in and of itself. I was
7 hoping for greater consistency across the
8 board but I'll go with this for now.
9 Otherwise, it sounds like it will -- trying to
10 do anything differently would delay our
11 process here.

12 MS. STEINGASSER: I believe
13 anything more would require a republication of
14 proposed action.

15 COMMISSIONER MILLER: Mr.
16 Chairman, I would share Commissioner May's
17 general sentiment that it probably was the
18 Office of Planning's intent originally to try
19 to simplify across the whole Zoning
20 Regulations so maybe this is just something
21 that we can look at as we did the ZRR process.

22 CHAIRMAN HOOD: I don't know how

1 much simpler it's going to be through the ZRR
2 because having went to my one and only surette
3 I was more confused when I went in than I was
4 when we came out.

5 Commissioner Turnbull.

6 COMMISSIONER TURNBULL: I just
7 wanted to -- this is for Commissioner May.

8 Commissioner May, are you
9 concerned about residential properties or the
10 residential zones that this would apply to?

11 COMMISSIONER MAY: No. I mean, I
12 think residential zones are being taken care
13 of. The question is what we do in other zones
14 that allow 40 people. The letter from Holland
15 & Knight pointed out what a few of those are.
16 I just thought that it's a very strange thing
17 that we had the regulation to allow
18 measurement of height of 40-foot buildings to
19 the ceiling of the top floor.

20 It's just sort of a strange way to
21 measure height. We're not getting rid of
22 that. It's still going to be there but it's

1 going to be there and it's going to apply to
2 C1, W0, etc. Maybe it doesn't come into play
3 very often in those zones.

4 The major issue was with the major
5 sort of abuse of that method of measuring was
6 occurring in residential zones. We are taking
7 care of most of the actual known issue here
8 but we are not necessarily getting the clarity
9 that we would have liked and I'll accept that.

10 CHAIRMAN HOOD: Maybe I have to go
11 back to Commissioner Miller's point. Maybe
12 we'll get more clarity in the ZRR. But I can
13 tell you that it seems like we're just punting
14 this and punting this.

15 The only concern I do have is
16 Exhibit 19. The ANC also commented on the
17 building height and I'm wondering even though
18 this is -- I don't think it's a significant
19 change, we're just trying to come up with some
20 clarification.

21 Would it be advisable for us to
22 approve the other amendments and hold off on

1 this one and give at least the one ANC that
2 did respond have a chance to respond to what
3 we are approving tonight? Anyone want to go
4 down that road?

5 COMMISSIONER MAY: I'm not
6 suggesting that. I mean, I think the issue
7 that the ANC raised is one that we heard
8 before loud and clear in various cases
9 relating to height. They prefer the height of
10 the building to be the top of the building.

11 I understand that approach but I
12 think that actually the more reasonable way of
13 measuring height since you're talking about
14 many different ways of making a roof is to do
15 that averaging between the top of the peak of
16 a roof and the bottom of the eave.

17 I think that is a more reasonable
18 way to approach the measurement of height.
19 Otherwise, you could conceivably be
20 encouraging a lot of really shallow-pitched
21 roofs. It's just not going to lend itself to
22 the best architectural expression. I'm not

1 inclined to revisit it on that point.

2 CHAIRMAN HOOD: So the mid-point
3 the building facade, the closest to the street
4 lot line. We are fine with all the other
5 recommendations. Correct?

6 Okay. All right. So with that I
7 would move that we approve Zoning Commission
8 Case 12-11, various amendments, especially
9 with discussion of the building height be
10 amended to our discussion and ask for a
11 second.

12 COMMISSIONER TURNBULL: Second.

13 CHAIRMAN HOOD: Moved and properly
14 seconded. Any further discussion? All those
15 in favor, aye.

16 COMMISSIONERS: Aye.

17 CHAIRMAN HOOD: Not hearing any
18 opposition, Ms. Schellin, would you please
19 record the vote.

20 MR. BERGSTEIN: Before she does, I
21 would just like clarification that the
22 approval includes the proposed modifications

1 to the text that I provided to you in my
2 memorandum.

3 CHAIRMAN HOOD: Yes.

4 MS. SCHELLIN: Staff records the
5 vote five to zero to zero as amended. This is
6 to approve final action in Zoning Commission
7 Case 12-11. Commissioner Hood moving,
8 Commissioner Turnbull seconding, Commissioners
9 May and Miller and Cohen in support.

10 CHAIRMAN HOOD: Okay. Next is
11 Zoning Commission Case No. 10-23, Jemal's
12 Babes - Consolidated PUD and Related Map
13 Amendment @ Square 1732.

14 Ms. Schellin.

15 MS. SCHELLIN: Yes, sir. Exhibits
16 114 through 121 with the exception of Exhibit
17 120 which is the NCPC report. All other
18 submissions are related to the procedural
19 order.

20 CHAIRMAN HOOD: Okay. Thank you,
21 Ms. Schellin.

22 Let me just start off -- well, I'm

1 not going to make it a major issue. I was
2 disappointed in the four cases that we got for
3 the RPP. I've been on this Commission for a
4 while and I know that we have dealt with that
5 issue on some cases before 2012.

6 It just looks like all the cases
7 that we got when we asked for a status of how
8 those were working were all 2012 cases which
9 I did not expect to be fully blown into
10 operation and into action. I was thinking
11 more like those 2009 and 2010 cases which I do
12 remember.

13 That's not going to be a show
14 stopper. I do appreciate the four cases.
15 Case in point, one of them the project hasn't
16 even been built yet so that's not anything for
17 us to look at. I had asked for cases that we
18 had dealt with the RPP and in other areas
19 which developments have already been built and
20 already in operation to find out how those are
21 working and 2012 it just doesn't -- enough
22 said on that.

1 Let me open it up. Any other
2 comments?

3 Also, I think in the procedural
4 order there were some changes that were made
5 by the Applicant and I want to make sure that
6 the Applicant -- I'm not sure how we will do
7 this. The Applicant as well as the ANC are in
8 concurrence. I'm not really sure.

9 Mr. Bergstein, do you have a way
10 that you can help me figure out how to do
11 that?

12 MR. BERGSTEIN: The issue is
13 really just a technical one. The ANC provided
14 you with joint conditions which are a markup
15 of past proffers and what is the final
16 conditions that were agreed to. The problem
17 is this is not in any form that I can
18 incorporate into the final order.

19 We need just to get a clean
20 version from somebody of this in text form
21 that we can include in the order however the
22 Commission cares to do it. It's just that we

1 can't go forward with the order unless we get
2 this in some sort of form that we can use.

3 You can request both the ANC or
4 the Applicant to do it or just have the
5 Applicant do it and make sure they confirm
6 with the ANC that it's correct. The aim is
7 not to reopen negotiations but just to get a
8 document that is clean and represents what
9 this annotated version really means. We know
10 what it really means but we need a clean
11 version.

12 CHAIRMAN HOOD: Will that stop us
13 from any action on that tonight?

14 MR. BERGSTEIN: No. This is just
15 technical in order to get the final order
16 published.

17 CHAIRMAN HOOD: Commissioners, as
18 Mr. Bergstein mentioned, if we could ask the
19 Applicant to give us a clean version and just
20 make sure the ANC sees it and then submit
21 that. I think that will be the best way to do
22 this is putting the onus on the ANC.

1 Vice Chair.

2 VICE CHAIR COHEN: Mr. Chair, I
3 was just going to say that having gone through
4 the various iterations it appears that the
5 Applicant and the ANC do agree so a clean-up
6 version would be helpful to expedite the
7 process. With that I think there is total
8 agreement on language.

9 CHAIRMAN HOOD: Okay. So we will
10 move in that fashion.

11 Any other comments or discussions?
12 Would someone like to make a motion?

13 VICE CHAIR COHEN: Yes, Mr.
14 Chairman. I move that the Zoning Commission
15 approve Zoning Case No. 10-23, Jemal's Babes,
16 LLC Consolidated PUD and Related Map Amendment
17 at Square 1732.

18 COMMISSIONER MILLER: I would
19 second that.

20 CHAIRMAN HOOD: It has been moved
21 and properly seconded. Any further
22 discussion? All those in favor, aye.

1 COMMISSIONERS: Aye.

2 CHAIRMAN HOOD: Not hearing any
3 opposition, Ms. Schellin, would you please
4 record the vote.

5 MS. SCHELLIN: Staff records the
6 vote five to zero to zero to approve final
7 action of Case No. 10-23. Commissioner Cohen
8 moving, Commissioner Miller seconding,
9 Commissioners Hood, Turnbull, and May in
10 support. The record is open only for the
11 Applicant to submit a clean copy of the
12 condition.

13 CHAIRMAN HOOD: And they are going
14 to run it by the ANC.

15 MS. SCHELLIN: Right.

16 CHAIRMAN HOOD: Okay. Good.

17 Okay. Let's go to Hearing Action.

18 Oh, I'm sorry. Zoning Commission Case No. 06-
19 11G/06-12G (George Washington University - 2nd
20 Stage PUD & PUD Modification to 1st Stage @
21 Square 75).

22 Ms. Schellin.

1 MS. SCHELLIN: Yes, sir. Exhibits
2 60 through 64 are submissions related to the
3 procedural order. Exhibit 65 is an NCPC
4 report.

5 CHAIRMAN HOOD: Okay.
6 Commissioners, Exhibit 65, NCPC. We have an
7 NCPC report. It talks about this project will
8 not be inconsistent with the federal elements
9 of the Comprehensive Plan.

10 We also have a post-hearing
11 submission West End as well as some
12 submissions, as already stated by Ms.
13 Schellin, from the Applicant. Let me not
14 forget Advisory Neighborhood Commission 2A.

15 Let me open it up for discussion.
16 Commissioner Cohen.

17 VICE CHAIR COHEN: Yes. Thank
18 you, Mr. Chairman. I think that we have
19 gotten revised language for Condition 11 which
20 indicates that prior to the Certificate of
21 Occupancy for the project the university shall
22 in accordance with the affordability

1 requirements outlined in Exhibit 50, Tab A,
2 convert the seven units.

3 They have been made affordable to
4 households earning up to 80 percent median
5 income. Again, the maximum rent and household
6 income and the term are all based on the
7 affordability requirements.

8 Prior to or concurrent with the
9 conversion of the properties, the university
10 shall enter into a covenant that combines the
11 university to comply with the affordable
12 requirements.

13 Mr. Bergstein, is that correct?

14 MR. BERGSTEIN: It would be
15 actually the ADU covenant. Substantially the
16 form of the ADU covenant but that is correct.

17 CHAIRMAN HOOD: Okay. Any other
18 comments?

19 Commissioner Miller.

20 COMMISSIONER MILLER: Yes, Mr.
21 Chairman. Thank you. Regarding the
22 affordable housing, I recognize that the ANC

1 and the West End Citizens' Association letters
2 reference again that they did not ask for that
3 particular amenity and that they don't
4 themselves consider it to be a public amenity.

5 However, I share Commissioner
6 Cohen's view that this amount of affordable
7 housing proffer is a very substantial public
8 amenity in this neighborhood.

9 Particularly with the mix of
10 units, the two and three-bedroom units, two-
11 bedroom units, and then the three one-bedroom
12 units, I think that is a substantial
13 affordable housing public amenity for this PUD
14 in addition to some of the other specific
15 proffers that will benefit the community
16 including the Foggy Bottom Village
17 contribution and the Francis-Stevens School
18 contributions.

19 Both letters did also reference my
20 comments at the -- I can't remember if it was
21 during the hearing or when we first approved
22 this in proposed action regarding my

1 preference -- my agreement with their
2 preference that the retail that's being
3 provided be night-active type of retail.

4 That certainly is my preference
5 and would encourage, as I did previously, the
6 Applicant to provide that and would note again
7 that the illustrations they provided -- and
8 they are just illustrations.

9 They weren't a proffer but
10 illustrations of the type of retail that they
11 are offering would typically be available
12 during the evening hours; a yoga studio and a
13 coffee bar. Lots of students need coffee late
14 at night so I'm sure Starbucks could use some
15 competition. Or another Starbucks.

16 Anyway, I'm prepared to support
17 this going forward this evening and would move
18 approval of Zoning Commission Case No. 06-
19 11G/06-12G (George Washington University - 2nd
20 State PUD and PUD Modification to 1st Stage @
21 Square 75) and ask for a second.

22 VICE CHAIR COHEN: I'll second.

1 CHAIRMAN HOOD: It's been moved
2 and properly seconded. Any further
3 discussion?

4 I do want to take one quick note.
5 It's actually in both. This kind of mirrors
6 the ANC as well as West End. I'm trying to
7 understand page 7, finding of fact No. 39
8 where it says West End Citizens' Association.

9 And the ANC says in their note,
10 "We do not understand why the Applicant's
11 revised conditions for this proffered benefit
12 is dependent on its agreement with the present
13 condominium. As a consequence, we recommend
14 that the final paragraph in this proposed
15 condition be removed."

16 I'm trying to remember. There's
17 something that the Applicant --

18 MR. BERGSTEIN: They've agreed to
19 that.

20 CHAIRMAN HOOD: They have?

21 MR. BERGSTEIN: They have, yes.
22 It should be reflected in our order.

1 CHAIRMAN HOOD: That's what I was
2 looking for. The word is good. Okay. All
3 right. Thank you.

4 Any further discussion? All those
5 in favor, aye.

6 COMMISSIONERS: Aye.

7 CHAIRMAN HOOD: Not hearing any
8 opposition, Ms. Schellin, please record the
9 vote.

10 MS. SCHELLIN: Staff records the
11 vote five to zero to zero to approve final
12 action in Zoning Commission Case No. 06-
13 11G/06-12G. Commissioner Miller moving,
14 Commissioner Cohen seconding, Commissioners
15 Hood, Turnbull, and May in support.

16 CHAIRMAN HOOD: Okay. I guess
17 Hearing Action now, right? Hearing Action.
18 Zoning Commission Case 13-02, Jemal's Hecht's,
19 LLC - Map Amendment @ Square 4037.

20 Mr. Cochran.

21 MR. COCHRAN: Thank you, Mr.
22 Chair.

1 OP recommends that the Commission
2 set down Jemal's Hecht's, LLC's request for
3 Map Amendment from CM2 to CM3 for portions of
4 lot 7 and 804 in Square 4037. The specific
5 area is shown under Tab G in the Applicant's
6 filing of January 16th. That area comprises
7 just over half of a square.

8 The requested rezoning would not
9 be inconsistent with the Comprehensive Plan.
10 The future land use map designates the square
11 for production distribution and repair uses,
12 PDR.

13 That is a category that includes a
14 broad range of non-residential uses. It is
15 one for which the future land use map does not
16 differentiate between low, moderate, medium,
17 or high density as it does for some other
18 types of uses. CM3 would, therefore, be
19 equally consistent with the future land use
20 map as would CM2.

21 The generalized policy map shows
22 the location as the neighborhood conservation

1 area where the District intends to maintain or
2 enhance the PDR uses. CM3 zoning wouldn't
3 produce any de-stabilizing influences into the
4 zone or the area. It could actually be used
5 to help retain PDR uses in their historical
6 records.

7 This is to some extent because the
8 portion of the square for which the rezoning
9 is being requested -- excuse me, for which the
10 rezoning is not being requested, that portion
11 contains the company warehouse building which
12 is historic and it's also owned by tonight's
13 Applicant.

14 The warehouse, as you probably
15 know, has been vacant for the last decade or
16 so despite attempts by other developers to
17 reposition it. The Applicant is intending to
18 use the greater flexibility that the CM3
19 zoning would afford on the nonhistoric portion
20 of the site to actually help renovate the
21 historic warehouse which would retain it's CM2
22 zoning, not go to CM3.

1 Overall the requested zoning would
2 be consistent with the Comprehensive Plan maps
3 and with written elements such as the city-
4 wide elements land use policies stressing
5 restoration of vacant buildings and
6 redevelopment of obsolete industrial uses; the
7 upper northeast area element's policies on
8 enhancing and in-filling the New York Avenue
9 gateway and retaining its PDR uses; and,
10 finally, with the historic preservation
11 element.

12 As such, we would recommend that
13 the Commission set down the request for a
14 public hearing. I would be happy to answer
15 any questions.

16 CHAIRMAN HOOD: Thank you, Mr.
17 Cochran.

18 Vice Chair, any questions?

19 VICE CHAIR COHEN: Thank you, Mr.
20 Chairman.

21 Mr. Cochran, in the plans they
22 talk about, or they mention typical floor plan

1 for residential option. That appears to be
2 for this particular site. Is that correct?

3 MR. COCHRAN: Well, obviously
4 tonight's proposal is not looking at any
5 specific development proposal and residential
6 would not be permitted under CM3. Since we
7 are not talking about a specific development
8 proposal, I think I would rather not address
9 the residential option.

10 COMMISSIONER MAY: May I chime in?

11 VICE CHAIR COHEN: Yeah, sure.

12 COMMISSIONER MAY: Okay. I
13 understand -- I mean, if this was not even
14 included it wouldn't even be a question but it
15 was included. Clearly they've looked at
16 residential. This is where it's going to end,
17 though. Right?

18 MR. COCHRAN: No.

19 COMMISSIONER MAY: If we set it
20 down for CM3, it's not going to be
21 residential.

22 MR. COCHRAN: As I understand it,

1 that residential wrap around the garage was an
2 exercise to demonstrate that in the future if
3 New York Avenue develops such and such and
4 thus and such, you're not precluding the
5 wrapping of a parking garage with residential.

6 It's demonstrating that the
7 structure itself can be repositioned in the
8 future should that ever be desired.

9 Obviously, it couldn't be repositioned if the
10 zoning isn't changed yet again from CM3. OP
11 is not anticipating anything other than a
12 demonstration that 40 years from now, 30
13 years, whatever it might be, you wouldn't be
14 stuck with a parking garage on New York
15 Avenue.

16 You could actually make it into
17 something that might be considered more
18 attractive or desirable. This is trying to
19 allow for future good. It's not guaranteeing
20 one in the future development because at this
21 point we are looking at retaining the PDR
22 uses.

1 VICE CHAIR COHEN: So when
2 Chairman Hood is still on this particular
3 Board and 30 years from now we'll have to come
4 back and just change the designation once
5 again.

6 MR. COCHRAN: You wouldn't have to
7 but you have the option because the building
8 wouldn't have to be torn down.

9 VICE CHAIR COHEN: All right.

10 COMMISSIONER MAY: Can I continue?

11 VICE CHAIR COHEN: Yes, please.

12 COMMISSIONER MAY: Understanding
13 that this is not specifically being proposed,
14 nor is it part of what we are considering or
15 should be considering, but understanding
16 something about what the future might hold for
17 the property. Do you know if there is another
18 plan or is a plan on the part of the developer
19 to actually develop this as a PDR use?

20 MR. COCHRAN: Yes.

21 COMMISSIONER MAY: There is? Can
22 you tell us anything about that?

1 MR. COCHRAN: I haven't been in
2 those meetings. From what I understand it
3 would be a building that would complement,
4 perhaps be attached to the remaining portions
5 of the Hecht Warehouse, the historic portions.

6 But it would be for nonresidential
7 uses which might range from parking to retail
8 to office to perhaps light industrial uses.
9 More likely than not the principal use would
10 be parking and retail.

11 COMMISSIONER MAY: Parking and
12 retail. Okay.

13 COMMISSIONER TURNBULL: Mr.
14 Cochran, to understand 3, though, you can go
15 up to 90 feet. I'm trying to imagine 90 feet
16 above PDR use. Can you help me on that?

17 MS. STEINGASSER: Maybe I can add
18 a little bit to the discussion. When the
19 developer came forward, they are looking at a
20 redevelopment of the site. They are looking
21 at a long-term phased redevelopment.

22 New York Avenue is such that as we

1 started looking at the heights and densities
2 that could be achieved, it just seems like the
3 site, especially that which is east of the
4 historic structure, could carry a lot more
5 density.

6 How that will be used is not quite
7 firmed up but it could be an office building.
8 That would be permitted as matter of right.
9 Pretty much anything is permitted in matter of
10 right in CM except for residential.

11 COMMISSIONER TURNBULL: Right.

12 MS. STEINGASSER: The parking
13 structure was shown and we wanted a
14 demonstration that there wouldn't just be a
15 parking structure, that it could be adaptively
16 reused at such time as the market was there
17 and that's what those drawings were there to
18 represent, that it could be used whether it's
19 for residential or commercial, but that there
20 was an opportunity when it was built.

21 The phasing is such that the
22 historic structure would be renovated. The

1 garage would need to be built for parking.
2 The rest of the uses would be built and share
3 that parking structure.

4 COMMISSIONER TURNBULL: I'm
5 totally in favor of the redevelopment. I
6 think we all -- I mean, I think most of the
7 other Commissioners would chime in and say I
8 think it's a tremendous opportunity. I am
9 just struggling with the 90 feet and what in
10 the PDR zone would be looking to go in there.
11 I mean, is that a reality?

12 MS. STEINGASSER: At least the
13 early drawings discussed with us did not go to
14 a full 90 feet but they did go taller than
15 what the CM2 allowed.

16 COMMISSIONER TURNBULL: Okay.

17 MS. STEINGASSER: Because it's a
18 future-phased type of development, we wanted
19 to have the flexibility in place. We felt New
20 York Avenue could certainly carry 90 feet.

21 COMMISSIONER TURNBULL: Oh, sure.
22 Yeah.

1 VICE CHAIR COHEN: Can I, Mr.
2 Chair?

3 CHAIRMAN HOOD: Yes.

4 VICE CHAIR COHEN: I agree with
5 this being a gateway avenue. I don't have a
6 problem with the 90 feet. I have a problem if
7 it's just a garage. That would be my problem.

8 MS. STEINGASSER: It's going to be
9 a garage as an interim use. It's going to be
10 the garage that services all the projects on
11 the site so it will be a shared use garage.
12 Over time it's being constructed so it can be
13 reused with flat plates. The bearing
14 structures are being built so that something
15 could be used on it besides cars.

16 VICE CHAIR COHEN: I would need a
17 very compelling argument to let it go just as
18 a garage.

19 MS. STEINGASSER: I think, with
20 all due respect, that is what Mr. Cochran was
21 trying to get at. When you do a math
22 amendment you don't review the project. This

1 was more of a curtesy review to let people
2 understand why we were --

3 VICE CHAIR COHEN: That's right.

4 CHAIRMAN HOOD: I can kind of
5 understand your thought pattern. I would beg
6 to differ, Mr. Cochran, just a little bit. He
7 said it was 10 years. I think it's been
8 vacant for 20. I may be wrong. At least it
9 looks like it's been vacant for 20. This is
10 moving forward and I'm glad to see this
11 happening as someone who lives close by.

12 Okay. Mr. Cochran, I'm curious.
13 Has it been 20 years? You said 10 years. I
14 think it's been more like 20. We don't have
15 to get into that debate if you don't know
16 exactly.

17 MR. COCHRAN: I don't know
18 exactly.

19 CHAIRMAN HOOD: Okay. I think 20.
20 I think I'm right on that one.

21 Commissioner Miller.

22 COMMISSIONER MILLER: I just would

1 echo your views, Mr. Chairman. I would note
2 that the OP report does say that the land and
3 structures there have been without a
4 productive use for over a decade. It might be
5 20.

6 If appropriate, I would like to
7 move to set down for hearing Zoning Commission
8 Case No. 13-02, Jemal's Hecht's, LLC Map
9 Amendment @ Square 4037 and look forward to
10 the revitalization of this property.

11 CHAIRMAN HOOD: I'll second that.
12 It's been moved and properly seconded. Any
13 further discussion? All those in favor, aye.

14 COMMISSIONERS: Aye.

15 CHAIRMAN HOOD: Not hearing any
16 opposition, Ms. Schellin, would you record the
17 vote.

18 MS. SCHELLIN: Yes. Staff records
19 the vote five to zero to zero to set down
20 Zoning Commission Case No. 13-02 as a
21 contested case. Commissioner Miller moving,
22 Commissioner Hood seconding, Commissioners

1 Cohen, May, and Turnbull in support.

2 CHAIRMAN HOOD: Okay. Ms.

3 Schellin, just for the record, the young lady
4 who wanted to speak earlier, was it due to a
5 language issue?

6 MS. SCHELLIN: She wanted you to
7 know that there were consequences to the
8 people who were affected in that area.

9 CHAIRMAN HOOD: Okay. I think we
10 vetted all that a number of times actually.

11 Okay. Anything else?

12 MS. SCHELLIN: No, sir.

13 CHAIRMAN HOOD: Okay. With that I
14 want to thank everyone for their attention to
15 the meeting tonight and this meeting is
16 adjourned.

17 (Whereupon, at 7:27 p.m. the
18 meeting was adjourned.)

19

20

21

22

A			B	C
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This is to certify that the foregoing transcript

In the matter of: Regular Meeting

Before: DCZC

Date: 02-25-13

Place: Washington, DC

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