

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

MONDAY

APRIL 30, 2012

+ + + + +

The Regular Public 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 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
KONRAD W. SCHLATER, Vice Chairman
MARCIE COHEN, Commissioner
MICHAEL G. TURNBULL, FAIA,
Commissioner (OAC)
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

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OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the
minutes from the Regular meeting held on April
30, 2012.

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

6:33 p.m.

CHAIRMAN HOOD: This meeting will
please come to order.

Good evening, ladies and gentlemen.

This is the April 30th, 2012, Public Meeting
of the Zoning Commission of the District of
Columbia.

My name is Anthony Hood. Joining
me Vice Chairman Schlater, Commissioner
Turnbull, Commissioner Cohen and
Commissioner May. We are also joined by the
Office of Zoning Staff, Ms. Sharon Schellin.
Also the Office of the Attorney General Mr.
Ritting and Ms. Nagelhout. Also, the Office
of Planning Mr. Lawson, Ms. Brown-Roberts, Mr.
Jesick and Mr. Cochran.

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

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1 Commissioner requests someone to come forward.

2 Please be advised that this
3 proceeding is being recorded by a Court Reporter
4 and is also Webcast live. Accordingly, we must
5 ask you to refrain from any disruptive noises
6 or actions in the hearing room. Please turn
7 off all beepers and cell phones.

8 Does the staff have any preliminary
9 matters?

10 MS. SCHELLIN: No, sir.

11 CHAIRMAN HOOD: Okay. Let's go
12 right into our agenda.

13 First up is final actions on
14 Commission Case No. 10-28, 901 Monroe Street,
15 LLC, Consolidated PUD & Related Map Amendment
16 @ Square 3829.

17 Ms. Schellin.

18 MS. SCHELLIN: Yes, sir. At
19 Exhibit 334 through 337 there were some
20 additional filings and/or responses from the
21 parties.

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1 In Exhibit 338 there's an NCPC
2 Report and they had no issues with this project.

3 CHAIRMAN HOOD: Okay.

4 Commissioners, we did have a submission as Ms.
5 Schellin had mentioned. Some requests from one
6 of the parties which was a 200 footers. That's
7 Exhibit 337. They had some requests for the
8 findings of facts, some edit changes. Looks
9 like a few of them I thought may have been typos
10 and that's Exhibit 337.

11 Okay. Again, this is Final Action.

12 A lot of this has hashed out. The concerns
13 and concerns I think we made during Proposed.

14 And I would just run through, unless somebody
15 has any opening comments on this case for Final
16 Action?

17 Let me just run through the way I
18 see Exhibit 337 which was 200 footers. Finding
19 of fact, the first one she has, the first bullet
20 point that Ms. Kahlo and Ms. Steptoe have if
21 that was to happen, I have a note down here to

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1 come back and use the minor mod. For the case,
2 I think that will address itself because there's
3 a process already in place. Who else having
4 a problem? Excuse me.

5 Okay. It looks a little better
6 here.

7 Also, if you look at Findings of Fact
8 Number 37, I think the interest is, well the
9 request the way I anticipate it and I'm open
10 to any comments. The way I read it is that
11 they're asking that the money be designated
12 within five years. I think if worthy projects
13 come after that, I just don't see narrowing the
14 scope on that to five years, because if you just
15 try to throw money at a project from my
16 standpoint it looks like a waste. I think
17 that's why it's left open. I don't think that's
18 why there is a time limit on it. But I think
19 typically everything is done before a permit
20 is permitted.

21 So, I don't necessarily see this as

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1 being funds to be expended within five years.

2 I just don't have a good feeling about this
3 narrowing that down to say five years.

4 Any other comments on that?

5 Also, Findings of Fact 37. There's
6 also a process in place for this. There's party
7 status. I'm sorry, a party. They are already
8 a party. They will get served and there's a
9 process already in place. Now, I do
10 agree with Finding of Fact 37 with what the
11 party, 200 footers are asking for. I agree with
12 it wholeheartedly. I just think it should be
13 crafted to the point where -- actually, the
14 developer is not the expert. I know when I
15 worked with a nonprofit we went out and came
16 back and gave the person the bill to pay for
17 it. But we were able to get a much better deal
18 than the person who we were going to commission
19 to go get them. So, we went and got the invoice
20 and we came back and gave it to the person who
21 was paying for it. And I think in this case,

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1 that would be the best way to go. And I'm not
2 sure how we facilitate that, OAG, but I think
3 that would be the way to move in that fashion.

4 Colleagues, any concerns about
5 that?

6 Okay. The Transportation Demand,
7 Findings of Fact 37, DDOT -- Commissioner Cohen,
8 you want to --

9 COMMISSIONER COHEN: 37D.

10 CHAIRMAN HOOD: D, oh, okay. But
11 DDOT has already agreed to that. I don't know
12 if that's rehashing something that we had
13 already dealt with. And I say the same thing
14 for the Construction Management Agreement.
15 Again, that was negotiated I think prior,
16 disruption of utilities.

17 Ms. Schellin, could you and I have
18 to do this and try to move it along. Does the
19 Applicant in this case, Condition 14D and I'm
20 actually on page 2 of the -- I'm looking at the
21 200 footers on --

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1 MS. SCHELLIN: Yes. The Applicant
2 has responded "yes" they'll agree to that. The
3 disruption in utilities at a provision to insure
4 no cost to the Tenth Street rowhouse owners.

5 CHAIRMAN HOOD: Okay. Great.

6 What about E, G, H, I. No. E, G,
7 H, I, 1 and 2? 1 and 12. Small 2 but anyway.
8 The last 1, 2, 3, 4, 5, 6. The last six on
9 page 2 of the Applicant's -- I'm sorry, 200
10 footers request, the filing? Okay.

11 MS. SCHELLIN: They're okay with
12 all six of those.

13 CHAIRMAN HOOD: Okay. And I think
14 that's it. We have one more on -- all six?

15 MS. SCHELLIN: On that page.

16 CHAIRMAN HOOD: So, we finished
17 that page.

18 MS. SCHELLIN: Yes.

19 CHAIRMAN HOOD: Fine with that. We
20 have one more on page 3 that I see.

21 MS. SCHELLIN: The answer is no from

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1 the Applicant. That's their answer, of course.

2 You're the one who is going to make the
3 decision.

4 CHAIRMAN HOOD: Okay.

5 Commissioners, let's look at page 3. I'm not
6 sure that I understand this. I definitely don't
7 agree being a resident of Ward 5. I don't think
8 this Commission and I wouldn't sit up here and
9 let this Commission take any less protections
10 in Ward 5 and me being a resident of Ward 5.
11 So, I guess this would be the last part of it
12 but kind of understand what we're asking for
13 here.

14 COMMISSIONER COHEN: Mr. Chairman,
15 the way I'm reading this is that this appeared
16 specifically in a different order, a different
17 ward and that they wanted it to be specific to
18 this order in Ward 5. I thought that there are
19 conditions that must be met during construction
20 for every project. So, I don't know what the
21 necessity is to be honest with you but --

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1 CHAIRMAN HOOD: Okay. Anybody
2 else?

3 Mr. Turnbull.

4 COMMISSIONER TURNBULL: I would
5 agree. I think the regulations cover what level
6 of noise can happen on a construction site.

7 CHAIRMAN HOOD: Okay. I would
8 agree. I'm not going to spend a lot of time,
9 but the last sentence, you know, being a Ward
10 5 resident, the last sentence just doesn't set
11 well for me. But, anyway, I'm not going to get
12 into that. We can move on.

13 Anything else?

14 For the most part though looking at
15 the 200 footers, a lot of which has been
16 accepted, necessary corrections, processes are
17 in place. The only thing I think is really the
18 last one which is 14N.

19 Okay. Anything else? Any other
20 comments?

21 Okay. Again, I would move approval

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1 of Zoning Commission Case 10-28,901 Monroe
2 Street, LLC, Consolidated PUD & Related Map
3 Amendment @ Square 3829, with the necessary
4 amendments and corrections that were made today
5 with the submissions by the 200 footers as well
6 as the support. No adverse impact by NCPC and
7 ask for a second.

8 COMMISSIONER TURNBULL: Second.

9 CHAIRMAN HOOD: It's been moved and
10 properly seconded. Any further discussion?

11 Are you ready for the question? All
12 those in favor? Aye.

13 (AYES)

14 CHAIRMAN HOOD: Not hearing any
15 opposition, so ordered.

16 Staff, would you record the vote.

17 MS. SCHELLIN: Staff records the
18 vote five to zero to zero to approve Final Action
19 on Zoning Commission Case No. 10-28.

20 Commissioner Hood moving,
21 Commissioner Turnbull seconding, Commissioners

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1 Cohen, May and Schlater in support.

2 CHAIRMAN HOOD: Okay. Thank you.

3 Next, Zoning Commission Case No.
4 05-37B, Station Townhouses, LLC, PUD
5 Modification @ Square 752.

6 Ms. Schellin.

7 MS. SCHELLIN: Yes, sir. At
8 Exhibit 31 there is an NCPC Report. Once gain,
9 NCPC has no issues with this project.

10 CHAIRMAN HOOD: Okay.
11 Commissioners, remember, this was a minor mod.
12 We took it off for some changes. We had a
13 limited scope hearing and I think unless there's
14 some outstanding issues? Okay.

15 I would move approval of Zoning
16 Commission Case No. 05-38B and ask for a second.

17 COMMISSIONER MAY: Second.

18 CHAIRMAN HOOD: It's been moved and
19 properly seconded.

20 Any further discussion?

21 Ms. Schellin, you did mention the

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1 NCPC Report, didn't you? Okay. I'm sorry.

2 MS. SCHELLIN: Yes, sir.

3 CHAIRMAN HOOD: I forgot that
4 quick. Okay.

5 It's been moved and properly
6 seconded.

7 Any further discussion?

8 All those in favor? Aye

9 (AYES)

10 CHAIRMAN HOOD: Not hearing any
11 opposition, Ms. Schellin, would you please
12 record the vote.

13 MS. SCHELLIN: Yes. Staff records
14 the vote four to zero to one to approve final
15 action on Zoning Commission Case No. 05-37B.

16 Commissioner Hood moving,
17 Commissioner May seconding. Commissioners
18 Schlater and Turnbull in support. Commissioner
19 Cohen not voting, having not participated.

20 CHAIRMAN HOOD: Okay. Next is
21 Zoning Commission Case No. 12-01. This is the

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1 Catholic University Campus Plan. I think they
2 requested 15 years.

3 Ms. Schellin.

4 MS. SCHELLIN: Yes, sir. Exhibits
5 23 through 28 were additional filings and/or
6 responses from parties that the Commission asked
7 for. Exhibits 27 and 28 consist of a request
8 from the Applicant to reopen the record to
9 clarify discrepancy with the campus plan
10 document and the order.

11 Staff did ask the Chair if the record
12 could be reopened to accept the filing and it
13 was.

14 CHAIRMAN HOOD: Okay. What was the
15 Exhibit number on that we opened it up?

16 MS. SCHELLIN: The reopening of the
17 record, 27 and 28. The other documents were
18 23 through -- well, it included 27, 28. Twenty
19 three through 28 were all post-hearing filings
20 and/or responses.

21 CHAIRMAN HOOD: Okay. All right.

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1 Thank you, Ms. Schellin.

2 Again, Commissioners, we heard the
3 Catholic University Campus Plan. We did have
4 one single-member district commissioner come
5 down on behalf of ANC-5C12. And also we did
6 get a letter from 5A for some things. But I
7 think for the most part, Catholic U and the two
8 ANCs agreed as much as possible. It looks like
9 they worked very well together. But with that,
10 let me open it up for any discussion.

11 Any outstanding issues?

12 VICE CHAIRMAN SCHLATER: Mr.
13 Chairman, I did ask at the end of the hearing
14 for some information about the timing on the
15 public space improvements in the plan.
16 Definitely one of the more exciting aspects of
17 the plan was getting rid of the concrete and
18 making it a more walkable campus.

19 The Applicant basically responded
20 that they can't commit to a specific time line
21 for those improvements, but will agree to

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1 provide an update as to the timing of those
2 improvements at each further processing. And
3 while that's not great, it's probably all that
4 we can expect at the moment.

5 CHAIRMAN HOOD: Okay. Any other
6 comments? Anything anybody else --

7 COMMISSIONER TURNBULL: Yes, Mr.
8 Chair. I had asked for some kind of a diagram
9 or schematic showing what would happen with the
10 removal of the temporary parking lot and page
11 67 does show a basic idea of what they would
12 do with it.

13 And I also asked about some of the
14 landscaping on Hawaii Avenue. And they have
15 page 101 which does show what the planting would
16 look like. So, those are just a couple of items
17 that we had talked about in the hearing and I'm
18 satisfied with it.

19 CHAIRMAN HOOD: Okay. Thank you,
20 Mr. Turnbull.

21 Anything else?

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1 I do want to talk about, I do
2 remember the major concern was to install new
3 signage at the DuFour Center facing Hawaii
4 Avenue. I think with what the Applicant has
5 proposed in this case and I looked at it.
6 Hopefully, that would give, especially the ANC
7 in 5C which and I wrote it a different way because
8 the boundaries are going to change. And I can't
9 remember it's going to change in that area or
10 not. But I think at the end of the day it's
11 whatever commission it's in, whether it's 5B
12 which is what I think it's going to change to,
13 that that Commission be the one that Catholic
14 U and I'm sure they will be the one that the
15 work with, especially with the parking issue
16 up there by the DuFour Center and parking on
17 those streets which were already listed in the
18 order. And work with the ANC Commissioner in
19 that area.

20 So, I have a comfort level on that
21 even though that concern was brought up at the

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1 hearing. I think that what's in place to kind
2 of resolve some of the issues that are
3 transpiring, taking place when they have major
4 events.

5 The university should further agree
6 to work in coordination with ANC-5C12 to
7 establish a special event parking zone for the
8 following blocks.

9 I would like to necessarily because
10 I'm not sure if that ANC is probably-- I know
11 that ANC is going to change. I had the
12 university further agree to work in coordination
13 with the single member district
14 Commissioner/ANC to establish a special events
15 parking zone.

16 I don't know whether we want to get
17 into names, but ANC 5C will probably no longer
18 exist. That's why I said the single member
19 district Commissioner as well as the ANC. So,
20 I'd like to see that change made.

21 Anything else, Commissioners?

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1 Okay. Thank you. The record is
2 complete.

3 Somebody like to make a motion?

4 COMMISSIONER TURNBULL: Yes, Mr.
5 Chair. I would like to vote that we approve
6 Zoning Case No. 12-01, Catholic University
7 Campus Plan and look for a second.

8 COMMISSIONER COHEN: Second.

9 CHAIRMAN HOOD: Okay. It's been
10 moved and properly seconded.

11 Any further discussion?

12 Are you ready for the question?

13 All those in favor. Aye

14 (AYES)

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

18 MS. SCHELLIN: Staff records the
19 vote, five to zero to zero to approve Final Action
20 on Zoning Commission Case No. 12-01.

21 Commissioner Turnbull moving,

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1 Commissioner Cohen seconding. Commissioners
2 Hood, May and Schlater in support.

3 CHAIRMAN HOOD: I omitted the date.

4 Pull it back up. No, actually, it should be
5 2027. It's a 15-year so the date should be --

6 MS. SCHELLIN: From the effective
7 date of the order.

8 CHAIRMAN HOOD: From the effective
9 date of the order.

10 Do we need to do anything else other
11 than that? I think the Applicant had 2017 which
12 I think is incorrect.

13 MS. SCHELLIN: I think they had
14 December 31. That was the issue and it's
15 actually from when the order gets published or
16 the effective date of the order.

17 CHAIRMAN HOOD: 2027 from the
18 effective date from when the order is published.

19

20 Ms. Nagelhout, do we need to do
21 anything else?

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1 MS. NAGELHOUT: No, I don't think
2 so.

3 CHAIRMAN HOOD: Okay. Thank you.
4 All right. Okay.

5 Let's go to Zoning Commission Case
6 No. 11-19, 30th Street Crescent, LLC, Map
7 Amendment with Special Exception and Variances
8 @ Square 4376.

9 Ms. Schellin.

10 MS. SCHELLIN: Yes, sir. At
11 Exhibit 83, once again we have an NCPC Report
12 that reports no issues with this project.

13 CHAIRMAN HOOD: Okay. Would
14 somebody like to get it started?

15 I think today, colleagues, we're
16 dealing with the special exception and the
17 variance and I do remember Commissioner Cohen
18 asking me a question. I forgot what it was,
19 but it was something dealing with the special
20 exception, adverse impacts of the traffic. And
21 I told you I would answer you. I don't forget.

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1 I forget some things but I didn't forget it.

2 I told you I would answer your question when
3 we got to the special exception and the
4 variances. So, I'm here for your questions.

5 COMMISSIONER COHEN: If I could
6 remember the question it would be helpful.

7 CHAIRMAN HOOD: I was hoping you
8 didn't remember it.

9 COMMISSIONER COHEN: No, no, no,
10 I'm okay now.

11 CHAIRMAN HOOD: All right.
12 Anybody have any further discussion?

13 COMMISSIONER MAY: I think there's
14 an open question as to the duration of the
15 relief. And I don't know whether, I mean,
16 ordinarily when the BZA grants a special
17 exception or a variance, the standard period
18 is two years. And as I recall, we recently
19 allowed for extensions of that sort of
20 officially. Does that ring a bell or did I just
21 invent that? No, okay. So, there is some

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1 ability to extend the authority on a BZA order.

2

3 From what I understand, the
4 Applicant is not totally confident about getting
5 the entire project built or permitted within
6 the two years. It's two years to permit and
7 three years to start construction, I think, is
8 the typical.

9 MR. RITTING: If I could correct you
10 there?

11 COMMISSIONER MAY: Yes.

12 MR. RITTING: you're thinking of
13 the PUD rule which, of course, wouldn't apply
14 here --

15 COMMISSIONER MAY: Oh, I'm sorry,
16 you're right.

17 MR. RITTING: -- in the PUD.

18 COMMISSIONER MAY: Right.

19 MR. RITTING: In the Special
20 Exception and other BZA board action, it's the
21 BZA rule applies and it's just two years to pull

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1 your building permit. So, there's no time limit
2 to --

3 COMMISSIONER MAY: To start
4 construction.

5 MR. RITTING: Yes.

6 COMMISSIONER MAY: Okay. But
7 there is the two year to pull the building
8 permit?

9 MR. RITTING: Correct. And --

10 COMMISSIONER MAY: That's when it
11 vests.

12 MR. RITTING: The other one little
13 bit of information I wanted to add is that
14 typically with the Board orders that it's just
15 for a single structure and the orders just refer
16 to a single structure. And in this case, there's
17 multiple structures.

18 COMMISSIONER MAY: Right.

19 MR. RITTING: Sort of a round peg,
20 square hole.

21 COMMISSIONER MAY: Yes, another

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1 reason why this should have been or could have
2 been a better PUD. But it is what it is.

3 In any case, while I can understand
4 perhaps not being able to start construction
5 or rather pull permits for all structures on
6 the property within two years, I'm not inclined
7 to let all of the variances vest once one permit,
8 you know, set of permits for a single building
9 have been pulled. That just seems, you know,
10 an opening for part of this project to be built.

11 And the rest of it to sort of be left in limbo.

12 Is it in our authority to simply say
13 three years rather than two or four years instead
14 of two?

15 MR. RITTING: I think that, you
16 know, if you thought a time different other than
17 two years was reasonable, certainly you could
18 impose a different time limit.

19 COMMISSIONER MAY: Right. Because
20 we could say no time limit if we wanted, but
21 I don't think we really want to do that either.

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1 MR. RITTING: Correct. Yes, the
2 only reason that, you know, two years is the
3 baseline is that's the rule if the BZA was
4 granting a special exception.

5 COMMISSIONER MAY: That's right.

6 MR. RITTING: Or a variance and no
7 rule applies directly when you were to grant
8 that relief.

9 COMMISSIONER MAY: Right.

10 MR. RITTING: So, yes, I mean you
11 would have to -- you should, in fact, think of
12 what a reasonable period of time is and impose
13 that in this instance.

14 COMMISSIONER COHEN: Counsel, if
15 they don't meet the two-year time frame, would
16 they come back for a minor modification?

17 MR. RITTING: Well, I think sort of
18 the contemplation is they would ask for a time
19 extension rather than a modification,
20 analogizing it to the Board again that the Board
21 rules say that you can request an extension and

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1 we would sort of mirror that same process with
2 the Zoning Commission, I would anticipate.

3 COMMISSIONER MAY: Well, I would be
4 more inclined to go with two years and grant
5 an extension if it's needed at which point they
6 presumably would make some argument as to why
7 it needs to be extended, rather than do it, you
8 know, have it all vest at the issuance of the
9 first permit.

10 If we had specific information
11 about, you know, phasing the project or when
12 all of it is expected to be done, I might be
13 inclined to do to three years or four years or
14 something like that, but we don't have that
15 information and I'd just as soon keep the
16 pressure on as well. Go with two years and then
17 grant an extension if needed. But I'm
18 interested in hearing what the rest of the
19 Commission has to say.

20 COMMISSIONER COHEN: Commissioner
21 May, I would agree with you.

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1 COMMISSIONER TURNBULL: Well,
2 would we be asking for them to file a building
3 permit application for all structures?

4 COMMISSIONER MAY: Yes, that all be
5 done. All would be applied for within two
6 years.

7 COMMISSIONER TURNBULL: Okay. I
8 would agree with that.

9 CHAIRMAN HOOD: Anybody else?

10 Do we want to hear a timing -- do
11 we want to hold this up and ask for the Applicant
12 to give us -- somebody in my ear saying no.
13 I just want to know. Is that sufficient? Do we
14 want the Applicant to weigh in on the timing
15 issue or are you fine with what Commissioner
16 May has presented?

17 COMMISSIONER COHEN: Chairman, I am
18 fine with what Commissioner May has said and
19 I'm the person who whispered no in your ear.

20 CHAIRMAN HOOD: Oh, okay. I didn't
21 know that. I thought it was Commissioner May.

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1 Okay.

2 Any other comments?

3 Commissioners, as you know, I'm
4 going to be voting against this. I'm very
5 troubled when stuff makes the Comprehensive Plan
6 and it's got a whole neighborhood who obviously
7 had nothing to do with the plan and people who
8 don't live in this city put stuff n the plan
9 for those of us to have to deal with. I'm not
10 finished with this why this case will be moving
11 forward. You will be hearing more from me on
12 this issue because I have problems with that.

13 I have problems with how those of us or those
14 people who live in this city who live in the
15 community, other people weigh in for us of things
16 that happen to our neighborhood. Adverse
17 impacts of this community. I think it's going
18 to be detrimental. I think if you're familiar
19 with this area, how the traffic is going to go
20 back up. Many things I think is out of character
21 for that particular area and I will be still

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1 voting against this but I'm very troubled in
2 how this got into the Comprehensive Plan. But,
3 unfortunately, my hands are tied. It won't
4 always be tied. And I'll just leave it at that.

5

6 Okay. Anybody want a motion?

7 COMMISSIONER MAY: Sorry, this a
8 Final Action for the Map Amendment and Final
9 Action also for the --

10 CHAIRMAN HOOD: Right.

11 COMMISSIONER MAY: -- variances.
12 I need the right prop in front of me to make
13 a motion. But I'll make it.

14 Okay. I would move approval of
15 Zoning Commission Case 11-19, 30th Street
16 Crescent, LLC, Map Amendment with Special
17 Exceptions and Variances at Square 4376 with
18 a time period of two years for application of
19 permits for all buildings on the site.

20 CHAIRMAN HOOD: It has been moved
21 and properly seconded. Everybody knows it's

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1 been moved. Can I get a second?

2 COMMISSIONER COHEN: I will second
3 it.

4 CHAIRMAN HOOD: Okay. It's been
5 moved and properly seconded.

6 Further discussion?

7 All those in favor?

8 (AYES)

9 CHAIRMAN HOOD: Opposition? Aye.
10 Staff, would you record the vote.

11 MS. SCHELLIN: Yes, Staff records
12 the vote four to one to zero to approve Final
13 Action for Zoning Commission Case No. 11-19.

14 Commissioner May moving,
15 Commissioner Cohen seconding. Commissioners
16 Schlater and Turnbull in support. Commissioner
17 Hood opposed. Okay. Thank you, Ms. Schellin.

18

19 Okay. Let's go right to Proposed
20 Action on Zoning Commission Case No. 11-13,
21 TC/CSG St. Matthew's Consolidated PUD and

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1 Related Map Amendment at Square 546.

2 Ms. Schellin.

3 MS. SCHELLIN: Yes, sir. There
4 were some additional documents received from
5 the Applicant and/or responses from the parties
6 at Exhibits 89 and 94 through 99.

7 COMMISSIONER COHEN: Mr.
8 Chairman, for the record, I'd like to state that
9 although I missed one of the hearing dates I
10 had read the record completely.

11 CHAIRMAN HOOD: Okay. Thank you,
12 Commissioner Cohen.

13 VICE CHAIRMAN SCHLATER: Mr.
14 Chairman, I just stepped out of the second
15 hearing as well but I did get the transcript
16 and all the exhibits passed out that night and
17 was able to review them all so thank you. I'll
18 be participating tonight.

19 CHAIRMAN HOOD: Okay. Thank you
20 both.

21 There were some things that we asked

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1 for as Ms. Schellin has mentioned. I know
2 specifically I asked that the pastor and in the
3 church meet with Ms. Herridge and work some
4 issues of signage and some other things that
5 I asked for. And I asked for Zoning Commission
6 Order 807. And I know there are a number of
7 other items that were asked for by other
8 Commissioners. So, those who asked for it if
9 you want to respond or talk about the sufficient
10 or lack of sufficient information that was
11 presented to us in this final submission. So,
12 I'll open the floor up for any comments.

13 Well, I'll start us off.

14 The Carrollsburg Square Association
15 recommended some conditions or recommended some
16 of them proffers actually and I think the way
17 that we treat proffers it has to come from the
18 Applicant, page 3 of their submission which is
19 Exhibit 95. They talk about tree protection,
20 replacement of any lost trees with similar
21 species and minimum six inch caliper in the

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1 plant, landscape contributions of CS/CA for
2 landscaping improvements.

3 A number of these that I see here
4 were proffers that were given by the
5 Carrollsburg Square Condominium Association.
6 And typically we don't -- the proffers come from
7 the Applicant. And what we may want to do
8 depending upon how the discussion goes, what
9 we may want to do is give the Applicant time
10 to respond so whether they want to look at or
11 even entertain some of these things. And I mean
12 respond in writing, I guess before final action.

13 Okay. So, before final action at that time
14 they will have an opportunity to respond if they
15 want to accept what's been proffered or asked
16 to be proffered here on 3 from one of the parties.

17

18 Okay. Anyone else?

19 One thing I know about this
20 Commission when we're silent all is not well.
21 We're trying to collect our thoughts. So, just

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1 bear with us because I know there's some
2 comments. So, we'll just take our time.

3 COMMISSIONER MAY: Mr. Chairman, if
4 you're ready, I can start the discussion, at
5 least some of the issues?

6 CHAIRMAN HOOD: Okay. Thank you.

7 COMMISSIONER MAY: All right.

8 Well, I think one of the big issues
9 that we are concerned about or have been
10 concerned about is the potential impact for this
11 development on the neighbors of the immediate
12 vicinity. And I think we heard quite a bit of
13 testimony about that. I think that the design
14 of the building to a large part I think the mass
15 and the configuration of it is a direct response
16 to what the developer saw as the primary issues
17 for the neighbors in the immediate vicinity.

18 The net result is a building that
19 maybe a little bit tall compared to what one
20 might have expected on the reading of the
21 Comprehensive Plan but it's certainly not out

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1 of character for the neighborhood. I mean,
2 there's been much talk about what the character
3 of the neighborhood is and while there are
4 townhouses immediately adjacent, there are
5 towers amidst the townhouses as well. And that
6 is the character of these areas, much of
7 Southwest where we have townhouses and towers
8 in close proximity. And the fact that we have
9 these towers actually gives many of the
10 townhouses and such a little more separation
11 than you might see in other areas, for example,
12 near Southeast which is redeveloping a lot of
13 apartment buildings. Those are being built
14 very close to the street and you don't have that
15 same openness and green areas between the
16 individual towers. Even the townhouses that
17 they're building in Southeast are packed in
18 incredibly tightly in some of those areas.

19 So, I think it's in keeping with the
20 character. I think, you know, we did ask for
21 some additional study of how some might be

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1 affected by the structure and while it does show
2 again some impacts, I think that for the most
3 part the way it's been designed with the highest
4 mass for the northern end of the property, it
5 really is going to have -- it will minimize the
6 effects on the immediately adjacent neighbors.

7 With specific regard to some of the
8 concerns about the, I guess, for lack of a better
9 term, air quality that might result from a
10 development in this area and the concerns about
11 mold that had affected the original church
12 structure, we heard a lot of talk of that. We
13 heard some testimony as to what initially caused
14 that mold. And, you know, as an architect and
15 someone who had to deal with the very important
16 issues of keeping water out of structures, it's
17 one of the most important things that we have
18 to deal with. I don't find that we heard a
19 compelling case that there is something inherent
20 about the site that would make a future
21 development prone to the same problem that the

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1 church was prone to. I think that really was
2 an issue of a building that wasn't water tight.

3 And once you have a building that's not water
4 tight, water can do damage in a lot of ways and
5 causing mold growth is one of those.

6 So, I don't feel that our
7 decision-making should be guided by this
8 potential for mold. I fully expect this to be
9 a building that's safely built and it's not going
10 to contribute to poor air quality in the
11 immediate vicinity.

12 There was also some testimony with
13 regard to impacts on views. I think it's fairly
14 well established that no one owns the right to
15 views across someone else's property in the
16 immediate vicinity and it's unfortunate that
17 there would be an impact in that way. But,
18 again, I don't think that there's an outright
19 entitlement for views across someone else's
20 property.

21 So, all things considered, I think

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1 that the project is a reasonable response to
2 the constraints of the site and to the direction
3 provided in the Comprehensive Plan. And I
4 believe that the Applicant has done a good job
5 in responding to many of the concerns of the
6 immediate community, if not all, and they've
7 responded to the concerns that we raised in our
8 hearing as well addressing some of the issues
9 with the massing of the building and the roof
10 structure and so on.

11 So, I think that hits the topics that
12 I wanted to make mention of.

13 I do appreciate the fact that the
14 Applicant had direct meetings with some of the
15 most immediately affected neighbors. It's
16 unfortunate that that meeting did not result
17 in any greater agreement with the immediate
18 neighbor. But, you know, we asked that the
19 effort be made and they made the effort.

20 And I think that that, you know, for
21 a meeting like this, there should be some

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1 expectation that the starting point for the
2 discussion should not be that you simply should
3 build townhouses rather than a tall building.

4 I don't think that was a reasonable starting
5 point for the discussion. So, it's not
6 surprising to me that they were not productive.

7 So, anyway, that's what I had to say
8 about it.

9 CHAIRMAN HOOD: Thank,
10 Commissioner May.

11 Commissioner Cohen?

12 COMMISSIONER COHEN: Thank you,
13 Chairman and Commissioner May, I think you
14 summarized some of the points very well.

15 Over 43 years ago when I began my
16 career it was at HUD and it was an urban renewal
17 so I was very familiar with this particular
18 project 43 years ago when it became an urban
19 renewal project. And there is a lot of history
20 with this property/project. It really created
21 a lot of what's happened in Anacostia. But

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1 one of the things that surprised me is that I
2 thought the neighborhood was a very cold
3 neighborhood and there were tall buildings and
4 short buildings and it didn't seem to be a
5 Comprehensive Plan. But I have to tell you,
6 this neighborhood has aged extremely well. I
7 mean, I saw trees that were little saplings and
8 they're really beautiful trees now.

9 I think that overall because this
10 neighborhood has aged well, I don't believe this
11 particular building will be a detriment when
12 it's finally build. I mean, this is a
13 neighborhood that does have a diversity of
14 heights. And I think that the design of the
15 building as proposed by the developer addresses
16 the compatibility with other tall buildings in
17 the neighborhood.

18 There is, again, the shadow studies
19 as Commissioner May said happen to have a very
20 early morning impact on some of the surrounding
21 townhouses in a very small amount of time

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1 relatively speaking. There's a lot of open
2 space in this neighborhood. Everything is
3 within walking distance to really the
4 Waterfront. And I feel that, again, some of
5 the parking issues, the Applicant has made an
6 effort to address the parking by having on-site
7 parking, but near a Metro, by not allowing the
8 new tenants to have access to parking stickers.

9 So, I think there have been attempts. I know
10 everybody is not going to be happy with this,
11 but there has been a lot of, I think, outreach
12 by the Applicant and some modifications to the
13 original design and application.

14 CHAIRMAN HOOD: Okay. Anyone
15 else?

16 Mr. Turnbull.

17 COMMISSIONER TURNBULL: Thank you,
18 Mr. Chair.

19 I just wanted to sort of elaborate
20 on what Commissioner May had said in that the
21 church itself in the '50s, it's basically what

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1 was called a folded plate structure. And very
2 common for the time. A lot of architects were
3 going with these types of folded plate
4 structures. Very striking, very unique. But
5 for the walls, you've got walls are actually
6 ceilings now. And although it's very simple
7 and striking to look at, because of those folded
8 plates and the joints, it's very difficult.
9 It takes a lot of degree of understanding and
10 some detailing of those joints can be very
11 complicated, how to keep the water flowing and
12 without going into a lot of those crevices.
13 And I think what happened here is that the
14 design, the construction whatever wasn't able
15 to sustain itself over the years. Water got
16 in. Got in under the concrete. Mold and the
17 plywood and everything else and you had a serious
18 mold issue.

19 But, again, this is just the
20 structure and as Commissioner May said, I mean,
21 there was nothing really definite. We haven't

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1 heard anything really about the ground itself,
2 at least in the testimony we've heard that would
3 convince me that there's a problem with the
4 ground. But the structure was one thing. But
5 the structure was removed. It's left the site.

6 So, the immediate problem of the mold that was
7 associated with the church was dealt with and
8 it's gone.

9 The issue that's before us now and
10 what was brought up is that there is something
11 with the soil. But, again, eventually the
12 Applicant also had a garden and I think they
13 did some testing of the soil to plant this garden
14 and they found no adverse effects on doing that.

15 Plus, in the process it's my understanding,
16 in the process of building they will be going
17 through DCRA and venting all those issues with
18 the soil and everything else at that point.

19 So, I feel fairly satisfied at this
20 point that the original issue of the mold was
21 remediated to what extent that we know about

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1 it right now and that as the process goes
2 forward, those issues will be talked about with
3 DCRA.

4 CHAIRMAN HOOD: Any other comments?

5 I'll just mention that we did get
6 a report from Mr. Zimbabwe -- am I pronouncing
7 that right, Mr. Lawson? Zimbabwe? Okay. And
8 I think that's what we asked for and I'm sure
9 that the Commissioners in that area, if the
10 parking wasn't right with the ballpark. I'm
11 not saying it's right. I know they had a problem
12 but there's something in place thanks to the
13 efforts of the Commissioners in that area some
14 time back of trying to put something in place
15 when the Nationals play. I'm sure it's getting
16 crowded. They were winning. I probably
17 shouldn't have said that. I'm not sure if
18 they're still winning. But I'll tell you that
19 I'm looking at the report from DDOT and I know
20 it was mentioned from the neighbors about the
21 double parking and what not and I'm looking here.

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1 It says, during the ball games, the CCO force
2 has increased to cover a larger area and to allow
3 more frequent patrolling. So, there is
4 something in place and it looks from this letter
5 that we got from DDOT is that they sufficiently
6 accepted.

7 I know the evidence that came down
8 showed some double parking and especially right
9 near the substation of the police area, which
10 would disturb me, but that's why we asked them
11 to go back and kind of come back with their
12 analysis.

13 Another thing that, I don't know is
14 a study going on and it says the study is in
15 draft stages. Therefore, DDOT will follow up
16 and update the Zoning Commission with the
17 findings of the study that are associated with
18 the alignment of Delaware Street and
19 intersections to M Street. That study is going
20 on but they might not do anything for this case
21 but I think for previous development in that

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1 area.

2 I never had an issue with the
3 development. My major issue is we were given
4 our charge to protect the residents of the
5 District of Columbia. Residents and businesses
6 actually in the District of Columbia.

7 Ms. Herridge has mentioned about her
8 son and his challenge that he's having to deal
9 with and that's why I wanted to find out the
10 precautionary measures that could take place.

11 I wasn't necessarily asking. I didn't ask for
12 Ms. Herridge and the Applicant to meet together
13 and talk about zoning. I wanted to know what
14 precautionary measures were going to be in
15 place. And if I didn't convey that correctly
16 then I apologize. I wanted to know what
17 precautionary measures are going to be in place.

18 And I know the pastor was here at that time
19 and he spoke. He was looking forward to having
20 these conversations.

21 The first letter I can tell you was

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1 very disappointing that I got from Ms. Herridge.

2 The second letter was even more disappointing
3 because it looks as though the intention of that
4 meeting and I think was already stated by
5 Commissioner May were not exactly what I was
6 looking for. It was more or less talking about
7 density, height. It was talking about
8 everything but trying to make sure something
9 was in place to protect the young fellow, the
10 resident who lived there. And, obviously, I
11 don't know how that got misguided or how we got
12 off queue and I do see the letters here. Both
13 meetings, the first one and the second one.
14 It was not about zoning for me. It was about
15 protecting the young man's health and not to
16 further endanger him.

17 I think the mold issue has already
18 been addressed by my colleagues. I would agree.

19 It looks like it's been remediated and will
20 be remediated. There's other processes but,
21 unfortunately, I think there was a missed

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1 opportunity here. There was a very big missed
2 opportunity. And it wa only so much that the
3 Zoning Commission can ask within a realm of our
4 jurisdiction. And I thought there was going
5 to be a good faith effort. I don't even know
6 whether to even try again before final action.

7 It depends upon how this moves. So, other than
8 -- let me think.

9 Other than the proffers that the
10 Condominium Association is asking for, I guess,
11 what I would like to see from the Applicant is
12 whether or not they would accept all but I think
13 four.

14 If the Applicant can indicate in
15 writing if they are willing to accept the six
16 proposed conditions that were given to us by
17 the Association. And I think we can actually
18 get that at a later process and final process.

19 I'd like to see that in the final process unless
20 my colleagues disagree. Okay.

21 Anything else?

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1 Let me just ask. Do you think it's
2 worth asking the Applicant to meet with the
3 pastor again just to try to see what kind of
4 precautionary measures could be put in place
5 for the young fellow? Is it worth even asking?

6 COMMISSIONER COHEN: Chairman
7 Hood, the only concern that I would have for
8 this child is during construction. And, again,
9 I think we have outstanding rules on how to
10 maintain a construction site.

11 Now, if that was not explained, then
12 I think that that is an omission by the Applicant
13 as to what requirements must be met so that the
14 site itself has to be maintained and kept clean.

15 And, again, is there anything more they can do
16 in that area? But other than that, I don't know
17 if it is worthwhile to have two parties who seem
18 to be so far apart sit down and negotiate the
19 same things over again. That's just my opinion.

20 CHAIRMAN HOOD: Okay. And I
21 actually take that comment. I appreciate it.

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1 Anyone else?

2 Commissioner May?

3 COMMISSIONER MAY: No, I would
4 certainly encourage the Applicant to meet with
5 Ms. Herridge or with anybody else in the
6 neighborhood who has specific concerns so they
7 can be addressed during the course of
8 construction. You always want to have the
9 developer of a property have a good relationship
10 with the immediate surrounding neighbors. So,
11 it's in everyone's best interest if that occurs.

12 But I'm not particularly -- I don't see a
13 particular need for us to get reports back on
14 future meetings should they occur.

15 CHAIRMAN HOOD: Why don't I read
16 this sentence. This says, "They told us there
17 were no requirements to take our concerns into
18 consideration or offer anything in mitigation
19 to anticipate the consequences of this project.

20 My husband and I were very disappointed in the
21 developer's position at this second meeting

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1 which ended very quickly after it started."
2 Very disappointed I think is a missed
3 opportunity. There is only so much we can ask
4 for here and I probably went out further than
5 I should in asking for that to be done at that
6 point.

7 Anything else?

8 Would someone like to make a motion?

9 COMMISSIONER MAY: Mr. Chairman, I
10 would move approval of Zoning Commission Case
11 11-13, TC/CSG St. Matthew's Consolidated PUD
12 and Map Amendment at Square 546.

13 CHAIRMAN HOOD: It's been moved.

14 VICE CHAIRMAN SCHLATER: Second.

15 CHAIRMAN HOOD: Moved and properly
16 seconded.

17 Any further discussion?

18 I just can't let this go. I would
19 like to see and I heard you say it, Commissioner
20 May, with this narrow scope. You know, I know
21 that there are things in place. Maybe we try

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1 that again because, you know, the pastor gave
2 me his word and what I'm hearing from Ms.
3 Herridge just doesn't sit well with me.

4 I want to know what precautionary
5 measures and I may be going out on a limb. If
6 I do, I'm sure somebody will tell me. The legal
7 of counsel, I'll hear about it at a later date.

8 But the point is, I just don't have a good
9 feeling moving forward not knowing that the
10 precautionary measures -- I'm going to vote for
11 this, but I still would like to have some
12 satisfaction because I have to sleep at night
13 too, that we've done all we can do because we
14 take a -- well, I guess all of us do at some
15 point. But we take an oath to protect the
16 residents of the District of Columbia and I
17 have to be able to sleep at night.

18 So, you know, I would like for them
19 just to narrow their scope just to that issue
20 about what precautionary measures. And I heard
21 you loud and clear, Commissioner Cohen. But

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1 maybe the Applicant can explain through another
2 process what precautionary measures are in place
3 to look out for the welfare of this young
4 person. That's all I'm asking for.

5 COMMISSIONER MAY: Mr. Chairman?

6 CHAIRMAN HOOD: Yes.

7 COMMISSIONER MAY: May I suggest,
8 since you had suggested and I did not include
9 it in the motion but I'm certainly open to
10 amending the motion to include a response from
11 the Applicant on the conditions that were
12 suggested by the Carrollsburg Square
13 Condominium Association with regard to
14 additional conditions or proffers.

15 So, we're already I think open to
16 receiving that and I would certainly be open
17 to receiving response from the Applicant about
18 the precautions they would take to make sure
19 that the health of the immediately affected
20 neighbors or immediately adjacent neighbors
21 would be appropriately protected. That can be

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1 on the basis of having further meetings with
2 Ms. Herridge or others or whatever means are
3 appropriate. But I'd be very happy to hear more
4 from the Applicant on what they would do to take
5 those precautions.

6 CHAIRMAN HOOD: Okay. Thank you.
7 I appreciate you accepting that.

8 Who seconded? Did somebody second?

9 VICE CHAIRMAN SCHLATER: I did.

10 CHAIRMAN HOOD: Okay. Do you
11 accept that?

12 VICE CHAIRMAN SCHLATER: yes.

13 CHAIRMAN HOOD: Okay.

14 COMMISSIONER TURNBULL: I just want
15 to clarify. The meeting is about precautionary
16 measures and not about zoning?

17 CHAIRMAN HOOD: Not about zoning.

18 I actually think this is a great project. I
19 never had a problem with it. You know, I know
20 there's some fine-tuning, some issues that are
21 still uncertain about the parking and other

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1 issues. But I think this is a great project.

2 I think it's going to benefits to that
3 community.

4 Okay. Anything else? And we will
5 get all this before final. Okay. Yes, we can
6 do the proposed now.

7 So, it's been moved and properly
8 seconded.

9 Any further discussion?

10 All those in favor?

11 (AYES)

12 CHAIRMAN HOOD: Any opposition?
13 Not hearing any, Ms. Schellin, would you please
14 record the vote?

15 MS. SCHELLIN: Yes, and also before
16 any of the parties leave the room, if they would
17 come up the dias after the vote is recorded.
18 I do have a BAFO order to be issued this evening
19 so they could get their copy this evening.

20 But, Staff would record the vote,
21 five to zero to zero to approve Proposed Action

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1 on Zoning Commission Case No. 11-13.

2 Commissioner May moving,
3 Commissioner Schlater seconding.
4 Commissioners Cohen, Hood and Turnbull in
5 support.

6 And also if I could set dates for
7 the additional filings. Two weeks would be May
8 14th, with responses from the parties only by
9 May 21st all due by 3:00 p.m.

10 CHAIRMAN HOOD: Okay. Thank you.

11 Do we have anything else?

12 MS. SCHELLIN: No, sir.

13 CHAIRMAN HOOD: Okay. I want to
14 thank everyone for their participation. And,
15 Ms. Nagelhout, I'd like to talk to you for a
16 moment right after this just in case I don't
17 get to you before you leave.

18 So, anyway, this meeting is
19 adjourned.

20 (Whereupon, the above matter was
21 concluded at 7:29 p.m.)

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