

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY,

OCTOBER 17, 2011

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN Secretary
ESTHER BUSHMAN, General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

STEVE COCHRAN
MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

This transcript constitutes the minutes from the Regular Meeting held on October 17, 2011.

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

2 6:32 p.m.

3 CHAIRMAN HOOD: Okay. This
4 meeting will, please, come to order.

5 Good evening, ladies and
6 gentlemen. This is the October 17, 2011
7 Public Meeting of the Zoning Commission of the
8 District of Columbia.

9 My name is Anthony Hood. Joining
10 me are Vice Chairman Schlater, Commissioner
11 Turnbull and Commissioner May.

12 We are also joined by the Office
13 of Zoning staff Ms. Sharon Schellin and Ms.
14 Bushman.

15 Also, the Office of Attorney
16 General Mr. Ritting.

17 Office of Planning Mr. Lawson and
18 Mr. Jesick and Mr. Cochran.

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

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1 Commission asks someone to come forward.

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

5 Accordingly, we must ask you to
6 refrain from any disruptive noises or actions
7 in the hearing room.

8 Please, turn off all beepers and
9 cell phones.

10 Does the staff have any
11 preliminary matters?

12 MS. SCHELLIN: No, sir.

13 CHAIRMAN HOOD: Okay. If not, let
14 us proceed with our agenda.

15 First, we have Consent Calendar
16 item Zoning Commission Case No. 06-10A, The
17 Morris & Gwendolyn Cafritz Foundation - Minor
18 Modification to PUD at Square 3765 and 3769.

19 Ms. Schellin?

20 MS. SCHELLIN: Yes, sir. The
21 applicant is requesting flexibility to
22 relocate the grocery store use from Building A

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1 to Building B and then to substitute in its
2 place in Building A an equivalent amount of
3 retail and service uses which had been
4 proposed for Building A.

5 So staff would ask the Commission
6 to consider this case this evening.

7 CHAIRMAN HOOD: Okay.
8 Commissioners, as was already stated, we
9 approved Building A, the spot for Building A
10 is a grocery store. We also have Office of
11 Planning's report, which also goes into more
12 detail.

13 And then the Office of Planning's
14 recommendation. OP recommends that the Zoning
15 Commission determines the request to be a
16 minor modification and the Commission approve
17 the application.

18 Increasing the possibility for
19 securing finance for the construction of
20 Building A, several hundred housing units and
21 other retail would be a significant benefit to
22 the Fort Totten neighborhood and may increase

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1 the chances of attracting a major grocery
2 store in the Stage 2 application when
3 presented.

4 So let's open it up for any
5 comments.

6 COMMISSIONER TURNBULL: I wonder,
7 Mr. Chair, if we could just have OP comment on
8 their potential concerns on page 2?

9 CHAIRMAN HOOD: Okay. Mr.
10 Cochran?

11 MR. COCHRAN: Thank you, Mr.
12 Chair. Which concerns in particular?

13 COMMISSIONER TURNBULL: On page 2
14 under potential concerns it --

15 MR. COCHRAN: Oh, yes.

16 COMMISSIONER TURNBULL: -- the
17 loading, yes, that's what I --

18 MR. COCHRAN: Okay. Yes. That's
19 why we asked the applicant to supply drawings
20 to us to make sure that Building B, which is
21 where they intend to put the grocery, and for
22 which they would be filing a 2nd Stage

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1 application in January, could actually
2 accommodate the grocery.

3 And we also had them show us how
4 they might in effect backfill the grocery
5 space that was in A with what kind of retail.

6 And both worked out fine.

7 Our only concern on the
8 preliminary plans for Building B are that, at
9 this point at least, the loading would not be
10 covered. In Building A, the loading for the
11 grocery is covered. But again, those are
12 preliminary plans that we have seen for
13 Building B. Perhaps they will be able to work
14 the scheme up, so that it could be covered.

15 COMMISSIONER TURNBULL: So you're
16 looking for that in the 2nd Stage.

17 MR. COCHRAN: Yes.

18 COMMISSIONER TURNBULL: We'll see
19 more definitive plans.

20 MR. COCHRAN: We've talked to the
21 applicant and they intend to file for Building
22 B before January 15, 2012, that would be the

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1 first of the 2nd Stage applications. And they
2 will be -- with filing for Building B, they
3 will be giving an indication of what the
4 phasing would be for the rest of the 2nd Stage
5 project.

6 COMMISSIONER TURNBULL: Okay.
7 Thanks.

8 CHAIRMAN HOOD: Any other
9 questions or comments? Vice Chairman
10 Schlater?

11 VICE CHAIRMAN SCHLATER: What was
12 supposed to be located in the Building B? Was
13 that just designated as retail?

14 MR. COCHRAN: It was. Exactly.
15 It was designated as retail.

16 VICE CHAIRMAN SCHLATER: No
17 cultural or --

18 MR. COCHRAN: Oh, yes.

19 VICE CHAIRMAN SCHLATER: -- other
20 sorts of --

21 MR. COCHRAN: Sure. But they are
22 not proposing moving that out. They are still

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1 showing cultural facilities, the children's
2 museum and other things like that.

3 The upper uses, etcetera, were in
4 the building that was just to the north and
5 east of that, so if you are going up South
6 Dakota, those uses would have been in the
7 third building up, as opposed to the first one
8 that -- where they are asking the grocery to
9 be transferred out of.

10 VICE CHAIRMAN SCHLATER: So
11 Building B had programmed 59,000 square feet
12 of retail? And that leaves 59,000 square feet
13 of retail?

14 MR. COCHRAN: Yes.

15 VICE CHAIRMAN SCHLATER: Before
16 this change?

17 MR. COCHRAN: That's right. And
18 the kind of uses as they are suggesting, they
19 are looking for in Building A as a substitute
20 for the grocery. It could actually employ
21 space that wouldn't have very much -- very
22 many windows. That's one of the things we

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1 were concerned about.

2 And they have given us an idea of
3 what sort of the tenants are that they are
4 looking for. And so that space that -- it's
5 more interior than not, could be used by these
6 kinds of tenants.

7 VICE CHAIRMAN SCHLATER: And does
8 OP have any -- maybe it's not our place to
9 make this judgment, but in the absence of a
10 grocery store, what's the likelihood that all
11 of the retail space is actually going to be
12 used in Building A?

13 MR. COCHRAN: I don't really feel
14 competent to assay an opinion on that.

15 VICE CHAIRMAN SCHLATER: Because,
16 you know, my impression of looking at this
17 change and I don't have a problem moving the
18 grocery from one space to the next. That's
19 not a principle that I think is a major
20 modification.

21 But it does occur to me that
22 Building A was designed with a grocery store

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1 in mind. And, you know, it's very large and
2 it takes up the entire block. And my sense is
3 it probably would have been designed
4 differently at the beginning had there not
5 been a grocery involved in it.

6 MR. COCHRAN: I don't know, but I
7 don't think it is -- there are major pharmacy/
8 drug stores needed in many neighborhoods. And
9 this is one of the uses that they are looking
10 at. And then there are recreational uses that
11 they are looking at and possibly employing
12 some of the roof for recreation, either in
13 Building A or in Building B that would be
14 associated with a gymnasium.

15 But again, I don't think that they
16 have letters of commitment, but those are the
17 kinds of things that they are looking at.

18 VICE CHAIRMAN SCHLATER: Okay.
19 Thank you.

20 CHAIRMAN HOOD: Commissioner May?

21 COMMISSIONER MAY: Yes, actually I
22 do have a concern about the phasing that

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1 results and we're talking about taking a
2 supermarket that had been consolidated and
3 moving it to the next submission. Is that
4 what you said?

5 MR. COCHRAN: Yes, that would be
6 in January of 2012.

7 COMMISSIONER MAY: So I guess,
8 theoretically, the time line for that would
9 push it -- push the delivery of the grocery
10 store out by something like a couple of years.

11 MR. COCHRAN: I would think so.

12 COMMISSIONER MAY: Do we have any
13 concern that it might be longer than that?

14 MR. COCHRAN: Yes, that's just --
15 we always have a concern when you are in a
16 competitive marketplace.

17 COMMISSIONER MAY: Yes.

18 MR. COCHRAN: Any development at
19 Fort Totten, if -- you just can't predict.
20 There is no reason that the grocery wouldn't
21 be able to go in B. It may be that financing,
22 market conditions, potential competitors would

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1 have shaken out and settled down by then that
2 would make Building B more likely to attract a
3 grocery than Building A seems to be able to do
4 right now.

5 COMMISSIONER MAY: Yes. Okay. So
6 I guess my follow-up question would be whether
7 there is -- whether you are aware of there
8 having been any discussions with the community
9 about the delaying the delivery of the -- of a
10 supermarket?

11 MR. COCHRAN: I'm not aware of
12 that.

13 COMMISSIONER MAY: Okay. That's
14 sort of a key question from my perspective.
15 For some reason, I don't know why, I don't
16 have the original submission in what I
17 received and I don't know if anybody else did
18 receive that letter in their package?

19 MS. SCHELLIN: It was -- if you
20 will recall, this was on a prior meeting --

21 COMMISSIONER MAY: Oh.

22 MS. SCHELLIN: -- and it was

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1 deferred because OP needed to do a report. It
2 was asked to take off of the meeting agenda.

3 COMMISSIONER MAY: Okay. Yes,
4 sometimes I think I need a reminder of that,
5 because I didn't know that I had -- I already
6 had that material. I know exactly where it is
7 sitting in my office then.

8 Well, I don't feel like I have
9 enough information to say definitively that
10 this is not more than a minor modification.
11 It just seems -- it feels a little open-ended
12 without having something specific about the
13 grocery store. And maybe that is in the
14 original submission.

15 VICE CHAIRMAN SCHLATER: As I
16 recall from reading the materials, I think
17 they did have a grocer in mind at the time.

18 COMMISSIONER MAY: Yes.

19 VICE CHAIRMAN SCHLATER: And those
20 talks have fallen through.

21 COMMISSIONER MAY: So I mean, so,
22 yes, it's -- that's a tough one, because we

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1 have seen that happen before. And it doesn't
2 always wind up being a grocery store in the
3 end.

4 CHAIRMAN HOOD: Okay. Yes, you're
5 right, as opposed to -- at least in this case
6 right now, I can think of another development
7 where the grocery store was not even mentioned
8 to follow in another placement or anything.
9 At least in this case, they are trying to
10 retain the area for the grocery store, unlike
11 another position case that we took -- I was
12 really hopeful a grocery store would be in.

13 And if ride by there now, it's
14 still not -- and it has been long enough that
15 something should have been done. I don't even
16 think they can even -- have not even been able
17 to even acquire a conversation, not
18 necessarily a tenant, but to even have a
19 conversation.

20 So anyway, the only other issue
21 that I have is, again, I think I was trying to
22 remember, did the ANC -- that might be another

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1 case. Did the ANC support this minor mod? Do
2 we know? I didn't see anything.

3 MS. SCHELLIN: They did not.

4 CHAIRMAN HOOD: They didn't?

5 MS. SCHELLIN: Not in --

6 CHAIRMAN HOOD: Okay.

7 MS. SCHELLIN: Not on the minor
8 mod.

9 CHAIRMAN HOOD: So they did not
10 support it?

11 MS. SCHELLIN: They did not
12 respond. I'm sorry. We don't have a response
13 from them.

14 CHAIRMAN HOOD: And another thing
15 is, Mr. Cochran, I'm not really sure, how long
16 would it -- if they get through with A and get
17 the financing as was mentioned in your report,
18 how long would it be before -- how much time
19 would it be before they come back in the 2nd
20 Stage and build or try to do a grocery store?
21 Because that would then be a 2nd Stage, so it
22 could be -- what order is it in?

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1 What order of the phasing is it in
2 or do we know?

3 MR. COCHRAN: The applicant has
4 told OP that it still wished to build the
5 grocery store in A. It tried very hard, but
6 there were some relatively recent changes in
7 the competitive market that unsettled some of
8 the more traditional grocers in the Washington
9 area.

10 They think that that would settle
11 out by the time they are ready to build
12 Building B. If they file their plans in
13 January and then you figure on another, what,
14 year to 18 months until construction starts,
15 then you would be looking at a different
16 building cycle, different retail cycle. So
17 probably some time in 2014, you might be
18 looking at a grocery.

19 What they had told OP though is
20 that they would have to delay the construction
21 of Building A if they were still required to
22 delivery a grocery in it. The inability to

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1 get a grocer gets in the way of their securing
2 financing.

3 Whereas, they seem to think that
4 they have the ability to bring two other
5 retailers in to fill the space that would have
6 gone for the grocery and they are more secure
7 in that and they feel that they would then be
8 better able to get funding for it.

9 I'm just conveying what they have
10 told OP, that's not necessarily OP's opinion,
11 but that's it.

12 CHAIRMAN HOOD: So if I'm
13 understanding your discussion with the
14 applicant, it looks as though if this minor
15 mod would go through, the next thing we would
16 see in the 2nd Stage would be the grocery
17 store?

18 MR. COCHRAN: It --

19 CHAIRMAN HOOD: The very next --

20 MR. COCHRAN: -- would definitely
21 be Building B. I confirmed that this
22 afternoon. They wouldn't be skipping over to

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1 do say Building C as a hi-rise or residential
2 and Building B coming back later. No, it
3 would go Building A and then Building B.

4 CHAIRMAN HOOD: Okay. I'm going
5 to make my recommendation, but, you know, I'm
6 only one vote.

7 I think I'm in favor of proceeding
8 as is. I just think that us to sit here, I
9 mean, this is my opinion, and talk about how
10 come we don't have a grocery store or have
11 another -- even a hearing. The hearing will
12 last 10 minutes. It would be a waste of time.

13 And I think that we really just need to go
14 ahead and move forward.

15 What gives me a comfort level is
16 that the applicant has said that the 2nd, the
17 very next 2nd Stage will be the Building B,
18 which hopefully will be the grocery store.

19 VICE CHAIRMAN SCHLATER: How do we
20 know that's true? I mean, I hear that's the
21 verbal commitment, but is there something that
22 binds them to that, Mr. Chairman?

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1 CHAIRMAN HOOD: If I knew that, I
2 wouldn't be here tonight, because I would be
3 somewhere winning some money. Honestly,
4 that's the reality of it. If I knew that, I
5 would have given -- I would have told my wife
6 what the number was and told her to put about
7 \$7,000 down on it. That's just like reaching
8 for something in the dark. You know, we can
9 sit here and delay and go through all that and
10 oh, I don't like it this way, but the reality
11 of it is, the market is the market.

12 VICE CHAIRMAN SCHLATER: I don't
13 think that was my point, Mr. Chairman. I
14 guess what I'm saying --

15 CHAIRMAN HOOD: You asked me a
16 question, so that was my answer.

17 VICE CHAIRMAN SCHLATER: I guess
18 the question is how do we memorialize that
19 understanding in the modification, such that
20 we know that the next building to come forward
21 is Building B and that it will include a
22 grocery store?

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1 CHAIRMAN HOOD: Well, I think Mr.
2 Cochran -- I took Mr. Cochran's word. But if
3 you want to have -- if you want something
4 else, then you have to mention that to them.

5 MS. SCHELLIN: Okay. Chairman
6 Hood, if I may, the applicant just approached
7 staff and advised that that is required by the
8 existing order.

9 VICE CHAIRMAN SCHLATER: It's
10 required that a 2nd Stage application be
11 submitted, but not that it be B or is it that
12 it has to be B?

13 MS. SCHELLIN: That it has to be
14 B.

15 VICE CHAIRMAN SCHLATER: It has to
16 be B, okay. All right.

17 CHAIRMAN HOOD: I think isn't that
18 what Mr. Cochran said? Maybe I missed --

19 MS. SCHELLIN: I don't think he
20 said it quite that way.

21 CHAIRMAN HOOD: Exactly like that.
22 Okay.

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1 COMMISSIONER MAY: He didn't say
2 it was required by the order.

3 MR. RITTING: If you are
4 interested, I could read the condition of the
5 existing PUD that states when the 2nd Stage
6 applications must be filed or if you're not
7 interested, I'll leave it at that.

8 VICE CHAIRMAN SCHLATER: All you
9 have to say is do you agree with that logic?

10 MR. RITTING: No, I don't.

11 VICE CHAIRMAN SCHLATER: Building
12 B has to come next?

13 MR. RITTING: I don't agree with
14 that statement. I believe that Condition 25,
15 and I'll read it to you, permits either a
16 single 2nd Stage filing or multiple 2nd Stage
17 filings. And it is a possibility and it's not
18 required by the original order that they file
19 just one single 2nd Stage application.

20 COMMISSIONER TURNBULL: And B is
21 not specifically called out?

22 MR. RITTING: No.

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1 CHAIRMAN HOOD: Well, again,
2 that's kind of where I was. Like I say which
3 was specific, I was just going by what Mr.
4 Cochran said about what would be in front of
5 us. You are right, I agree with that. Okay.

6 So you want to know how do we memorialize
7 that.

8 But from a legal standpoint, I
9 mean, does it make good economic sense for us
10 to just say okay, it's got to be a grocery
11 store there. If not, it's just going to sit
12 there? What kind of feedback are we going to
13 get, well, are you going to get, because I'm
14 not going to sit here and take it.

15 I would move that we approve the
16 minor modification request in Zoning
17 Commission Case No. 06-10A, The Morris and
18 Gwendolyn Cafritz Foundation, minor
19 modification of PUD at Square 3765 and 3769
20 with the caveat that we, the Zoning
21 Commission, strongly encourage the applicant
22 to come back in their next phase, even though

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1 I don't know if legally I have any standing,
2 but the caveat that the Zoning Commission
3 strongly encourages the applicant to come back
4 with the appropriate use for Building B, which
5 is being requested to switch to a grocery
6 store. And I ask for a second.

7 COMMISSIONER MAY: Second.

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

11 All those in favor aye?

12 ALL: Aye.

13 CHAIRMAN HOOD: All those in
14 opposition? So ordered. Staff, would you
15 record the vote?

16 MS. SCHELLIN: Yes, staff records
17 the vote 4-0-1 to approve Zoning Commission
18 Case No. 06-10A for Final Action.
19 Commissioner Hood moving, Commissioner May
20 seconding, Commissioners Schlater and Turnbull
21 in support. Commissioner Cohen not voting,
22 not present.

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1 CHAIRMAN HOOD: Okay. Thank you
2 Next, Final Action, Zoning Commission Case No.
3 11-03, Hoffman-Struever Waterfront, LLC - 1st
4 Stage PUD and Related Map Amendment at Square
5 390, 391, 471W, 472, 473 and 503. Ms.
6 Schellin?

7 MS. SCHELLIN: Yes, sir. At
8 Exhibits 114 and 115, those are responses from
9 the application per the BAFO Order and at
10 Exhibit 116 you have a report from NCPC, which
11 they have stated that they encourage the
12 developer to work with the National Park
13 Service.

14 CHAIRMAN HOOD: Okay. Thank you,
15 Ms. Schellin. And I think there is a lot in
16 the NCPC report, at least what I picked up.
17 There was a lot of continuing work that,
18 obviously, looks like is being done,
19 especially with this being a 1st Stage.

20 I think you had a lot of
21 suggestions, I think better connections
22 working with the Park Service and some other

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1 things that they went into a lot of depth in
2 their report.

3 I never saw they support it. I
4 always saw some additional work. And I think
5 due to the magnitude of this particular case,
6 Commissioners, I think that's kind of probably
7 all we're going to get, at this point in time.

8 So I'll open it up for any
9 discussion or comments.

10 VICE CHAIRMAN SCHLATER: I have
11 comments on the draft order for OAG, just to
12 better understand.

13 Well, the first question is do you
14 think -- it's usually our practice that we
15 have one final set of plans that encapsulates
16 all the plans for the project. Why are we
17 doing two in this case?

18 MS. SCHELLIN: Do we have two on
19 this one?

20 VICE CHAIRMAN SCHLATER: That's
21 what it says.

22 MS. SCHELLIN: I didn't notice.

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1 VICE CHAIRMAN SCHLATER: We have
2 got a June 28th set of plans and then
3 supplemented by a July 8th plan.

4 MS. SCHELLIN: That's four sheets.
5 I'm being told by the applicant's attorney
6 that the second set is just four sheets or
7 roughly four sheets, that's why.

8 VICE CHAIRMAN SCHLATER: I think
9 it's always good to have them in one place,
10 but that's just --

11 MS. SCHELLIN: Well, usually they
12 ask to have a full set, only it's their choice
13 just for permitting purposes, so it's not that
14 -- I mean, it's not required. It's usually
15 because they want to --

16 VICE CHAIRMAN SCHLATER: Okay.

17 MS. SCHELLIN: They have to pay to
18 get it certified, so it's usually because it's
19 convenient for them fee-wise.

20 VICE CHAIRMAN SCHLATER: Okay.
21 The second question is why -- so we basically
22 append this exhibit. You go into great detail

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1 on affordable housing, work force housing, the
2 bid and the first source agreement, the CBE
3 agreement, you know, and making those fully
4 enforceable conditions.

5 But then, you incorporate by
6 reference those other benefits and amenities
7 that are offered in Exhibit 60, I want to say.

8 MR. RITTING: That's correct.

9 VICE CHAIRMAN SCHLATER: And so --

10 MR. RITTING: Yes, Exhibit 60.

11 VICE CHAIRMAN SCHLATER: But it
12 seems to me that in reading Exhibit 60, and I
13 don't -- I can't seem to find it in front of
14 me right now, but those are less than
15 forcible. It just doesn't -- it's not clear
16 and in some cases it actually contradicts
17 what's in the order itself why you chose to
18 draw it up like that.

19 MR. RITTING: Well, we
20 contemplated that they would be filing with
21 their 2nd Stage application. And if you look,
22 it's actually incorporated in the conditions

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1 of this order at C-3. They are going to come
2 back with a more, and I'll just read it for
3 you now, so you don't have to find it:

4 "For each Stage 2 PUD application
5 filed for the project, the applicant shall
6 provide a detailed implementation plan for the
7 public benefits and project amenities
8 enumerated in Exhibit 60 and Conditions B-3
9 through B-6. The implementation plan shall
10 identify the benefits and amenities proposed
11 for that particular Stage 2 application. The
12 benefits and amenities that have already been
13 implemented, the benefits and amenities yet to
14 be implemented and an overall status update
15 and time table for the implementation.

16 In addition, the first Stage 2
17 application shall provide additional
18 information that are required in certain
19 previous conditions that are above."

20 The general idea is that this is a
21 very complicated project and there is a lot of
22 benefits and amenities that are partially

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1 fleshed out, but will be more fleshed out by
2 the time they are ready to come back with the
3 Stage 2 applications. And we thought it was
4 best to sort of show the rough outlines, at
5 this point, and then allow them to fill in the
6 details when they are able to do so in a
7 better fashion.

8 And they will also report it to
9 you when they file their Stage 2 applications
10 and they are required to by this order.

11 VICE CHAIRMAN SCHLATER: Okay. I
12 guess that just opens us up to interpretation
13 of what we thought we meant when we approved
14 it versus what the applicant thought they
15 meant when we approved it the next time
16 around, which is probably a level of ambiguity
17 that given the complexity of it is fine.

18 MR. RITTING: We felt that that
19 was, you know, certainly possible, but given
20 the level of complexity and the necessary --
21 the need to sort of flesh the things out more
22 fully as they get closer to actually

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1 developing the parcels, that it was
2 appropriate to do it this way.

3 VICE CHAIRMAN SCHLATER: Okay. On
4 the affordable housing condition, usually we
5 say it should be distributed evenly throughout
6 all the buildings and sort of a consistent
7 application. In this case, there are going to
8 be zero affordable units in two of the
9 buildings, Parcel 4 and then the first
10 residential building in Phase 3. Is that
11 correct? Am I reading that right?

12 MR. RITTING: I don't -- I can't
13 provide you that level of detail while I'm
14 sitting here now. They have been referred to
15 in a couple different ways in a couple
16 different places. Is there a specific place
17 that you are looking at --

18 VICE CHAIRMAN SCHLATER: Yes.

19 MR. RITTING: -- the draft order,
20 so I could refresh my recollection?

21 VICE CHAIRMAN SCHLATER: Sure.
22 I'm looking at the proposed conditions Stage 1

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1 public benefits and amenities.

2 MR. RITTING: B-2.

3 VICE CHAIRMAN SCHLATER: No. 2.

4 MR. RITTING: Yes, I believe you
5 stated that correctly. I -- yes.

6 VICE CHAIRMAN SCHLATER: And then
7 it goes on to say that it's -- they will --
8 except for those two buildings that are going
9 to have zero affordable housing, that the
10 units will not be concentrated except for
11 senior housing units and artist housing units.

12 But I don't actually ever remember
13 any discussion of inclusion of senior housing
14 units in the project.

15 I do remember artist housing being
16 referred to for the Arena Stage Project. So I
17 was curious as to how many senior housing
18 units were being proposed and that maybe you
19 are not the right person to answer that, but
20 I'm -- these are just questions that are --

21 MR. RITTING: Yes, I don't --

22 VICE CHAIRMAN SCHLATER: -- I'm

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1 thinking of.

2 MR. RITTING: -- know the answer
3 to that question.

4 VICE CHAIRMAN SCHLATER: And then
5 on No. 3, work force housing, it says "The
6 applicant shall dictate as work force housing
7 for households earning up to 120, I assume
8 that means percent of AMI, 20 percent of gross
9 floor area built over and above a threshold of
10 500 units for District-owned properties."

11 I'm not sure I understand the
12 distinction of "for District-owned
13 properties."

14 MR. RITTING: To my understanding,
15 that language mirrors a statute, but I can't
16 provide much further explanation other than
17 that, at this point.

18 VICE CHAIRMAN SCHLATER: Okay. In
19 the record, I think it reflects elsewhere that
20 they would pay a million for the work force
21 intermediary program. And it says \$750,000 in
22 this order. I would like that clarified.

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1 On the first source -- actually,
2 on No. 7, which goes into the LEED-
3 certification, there is a commitment to
4 achieve gold in the certification, which I
5 don't think was caught in this order. And
6 that's it. That's all I covered.

7 But, you know, Mr. Chairman, I
8 want to see this project move forward. I'm
9 very supporting of it. I think it could use a
10 little bit more work in terms of tightening up
11 the language in the order, that's where I'm
12 at.

13 CHAIRMAN HOOD: Okay. Any other
14 comments? I think we may have to put this off
15 from what I'm hearing from Vice Chairman. Am
16 I correct, Vice Chairman, would like to put
17 this off? I'll work with him on this one, but
18 that first one, I wasn't going on that one,
19 but this one I will be more accommodating.

20 Ms. Schellin, could you ask the
21 applicant is that going to -- I mean, I would
22 like to get this done as soon as possible.

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1 How long do we need? I'm sorry, Commissioner
2 May, did you have anything? Okay.

3 MS. SCHELLIN: I think that there
4 needs to be some clarification exactly what --
5 because OAG is not quite sure what you are
6 looking for.

7 VICE CHAIRMAN SCHLATER: Yes, they
8 just need to --

9 VICE CHAIRMAN SCHLATER: Yes, I'm
10 just trying to understand what you are asking
11 me to do.

12 MS. SCHELLIN: Before we take
13 action, what you're looking for.

14 VICE CHAIRMAN SCHLATER:
15 Clarification on the questions that I have
16 asked tonight. I guess that's -- I mean, I'm
17 not saying you have to change. I'm not
18 editing the document. There is just a
19 question, a couple questions that I have
20 raised tonight that I would like the answers
21 to.

22 And if you want me to go through

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1 the list again, I can.

2 MR. RITTING: No, I took notes and
3 I got it. I just wasn't sure what --

4 VICE CHAIRMAN SCHLATER: Okay.

5 MR. RITTING: -- you expected from
6 me next.

7 MS. SCHELLIN: Okay.

8 COMMISSIONER TURNBULL: I think if
9 I'm reading from the Deputy Chair, I think he
10 is just uncertain and I think that some of us
11 have the same concerns that what we thought
12 was in the language, are we right, is this
13 right? I think we need to just tweak this and
14 make sure that we are all on board with this
15 language.

16 I mean, I think the Deputy Chair
17 has brought up some, the Vice Chair, I should
18 say, thoughts that are very important.

19 MS. SCHELLIN: Okay. Our next
20 meeting is on November 14th.

21 CHAIRMAN HOOD: Can we maybe
22 schedule that earlier? And I'll tell you the

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1 reason why. It's a possibility we may have a
2 special meeting.

3 MS. SCHELLIN: October 27th?

4 CHAIRMAN HOOD: And that way we
5 won't -- if they can have the information in.

6 MS. SCHELLIN: It would need to I
7 think work with OAG and get that in.

8 MR. RITTING: I could respond to
9 these questions very quickly. I just don't
10 have access to the information immediately to
11 do it.

12 MS. SCHELLIN: Okay.

13 CHAIRMAN HOOD: I don't think
14 that's going to be a major --

15 MS. SCHELLIN: Okay. If they
16 could do that very quickly, like in the next
17 day or two, then it's not an issue. We could
18 do a Special Public Meeting at say 6:00 on the
19 27th, because --

20 CHAIRMAN HOOD: Okay.

21 MS. SCHELLIN: Yes.

22 CHAIRMAN HOOD: 6:00, okay.

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1 MS. SCHELLIN: Yes.

2 CHAIRMAN HOOD: That would be
3 great. Okay. Thank you, Vice Chairman. Any
4 other comments on this? Okay. So we will
5 look forward to taking this up on the 27th of
6 October.

7 Okay. Next, Zoning Commission
8 Case No. 11-09, Duball Petworth, LLC -
9 Consolidated PUD and Related Map Amendment at
10 Square 2905. Ms. Schellin?

11 MS. SCHELLIN: Yes, sir. At
12 Exhibits 47, 48 and 50 is the additional
13 information that the Commission requested.
14 Excuse me, 46 is the -- 46 would be the BAFO
15 response from the applicant.

16 51 is an NCPC report. And in that
17 report, it was clear that they have -- that
18 they stated the project would not be
19 inconsistent.

20 CHAIRMAN HOOD: Thank you, Ms.
21 Schellin. And that's usually what I'm used to
22 seeing, but that other one took me for a loop.

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1 I kept looking at it and looking for them to
2 say it was not having any federal interest,
3 but they never said that.

4 Okay. As stated, I think Exhibit
5 48 is the submissions that we asked for,
6 Commissioners. And also, I'm not sure who
7 asked for this, but we have some more drawings
8 and site plans. I'm not sure if we asked for
9 it or at least an updated version. Maybe we
10 did ask for this.

11 But anyway, we have it in front of
12 us. Let's open it up for discussion. And I'm
13 actually sorry that our new colleague is not
14 here tonight. She is an expert in affordable
15 housing, but I guess I have to go to the next
16 expert. But anyway, I think that is an issue
17 about whether or not the affordable housing
18 can be proffered as an amenity.

19 And I think this Commission has
20 went -- I'm not sure. I just want us to be
21 consistent. I can't remember which way we
22 have went.

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1 Mr. Ritting, could you expound on
2 some of that for me?

3 MR. RITTING: I believe you are
4 wondering whether the fact that the applicant
5 has met their IZ requirement should count as a
6 benefit amenity of this PUD.

7 The Commission has considered this
8 in at least two prior cases, one of them is
9 the Parcel 7 PUD, which is located on --
10 generally speaking, in the H Street area, NE,
11 and there was another project on Georgia
12 Avenue, I think it was 3321 Georgia Avenue in
13 which the Commission concluded that a project
14 that merely meets its IZ requirements that
15 that affordable housing component does not
16 count as a PUD benefit and amenity and
17 instructed us to strike the finding of fact in
18 the draft order that found that it was.

19 CHAIRMAN HOOD: So both times we
20 have ruled the same way?

21 MR. RITTING: That's my
22 understanding, yes.

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1 CHAIRMAN HOOD: Okay. Let me open
2 it up for discussion, Commissioners. I just
3 think that we need to continue to be
4 consistent. And I would -- my vote would be
5 for them to strike it in this case, also.

6 Commissioner May?

7 COMMISSIONER MAY: Yes. I think
8 the only finer point that I would want to put
9 on the issue of whether meeting the IZ
10 requirement constitutes an amenity, is that
11 the -- you know, at some -- for some projects,
12 when it is a PUD plus Map Amendment, there is
13 a delta in the IZ that comes from the higher
14 density that is allowed by the Map Amendment.

15 And so there is some additional
16 affordable housing component over matter-of-
17 right. Our basis for comparison is always
18 what's the matter-of-right for the existing
19 zone. And I think we should be consistent and
20 look at that. And if there is, in fact, a
21 delta between that and what is proposed to the
22 PUD, then there should be some credit given

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1 for that.

2 I don't know that that is the case
3 here. I got the impression that it wasn't on
4 further examination, so I don't think it's a
5 big issue in this case, but I think that for
6 future purposes, that's what we should be
7 looking at is what is required under matter-
8 of-right development of the site under the
9 existing zoning versus what is achieved in the
10 PUD.

11 CHAIRMAN HOOD: I actually think
12 that has been what we have used in the past.
13 Exactly what you just said. I may be
14 incorrect, but that's what I think we have
15 looked at. At least, that's what I recall.

16 MR. RITTING: I can't say for sure
17 what you have definitively said about that
18 issue one way or the other. I know there has
19 been some nuance to this discussion and there
20 hasn't really been a definitive statement that
21 is categorical about it and there is some,
22 I'll just repeat it again, nuance to the

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1 issue.

2 And perhaps you might have a
3 different view about this project. I don't
4 know. I don't mean to --

5 COMMISSIONER MAY: Well, I mean, I
6 think the only thing that we don't -- the only
7 piece we don't have here is an actual
8 calculation of what could be done matter-of-
9 right and what the -- you know, how much
10 affordable housing would result versus what is
11 done under the PUD.

12 I mean, it may be a difficult
13 comparison because, in some cases, you may
14 actually wind up with more under matter-of-
15 right because, for whatever reason, you know,
16 you can't achieve the maximum density under
17 the PUD or what have you.

18 But I don't recall ever having a
19 case where we really did that calculation in
20 any fine detail. Now, it may have happened.
21 I just don't remember it. But I think that's
22 actually what we probably should be doing in

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1 the future is if we are going to look at
2 affordable housing as an amenity, we ought to
3 calculate the delta versus matter-of-right and
4 look at it in those terms.

5 VICE CHAIRMAN SCHLATER: I'll just
6 add my two cents to that discussion. Since I
7 was leading the charge, I think in Parcel 7
8 associates and -- we have had this
9 conversation a couple of times. And I think I
10 have come around to the view.

11 I agree with Commissioner May's
12 interpretation on this, which is to say
13 affordable housing created in excess of the IZ
14 requirement for a fully built-out matter-of-
15 right project should be considered an amenity
16 on the project, because you are creating more
17 affordable housing than there otherwise would
18 have been on that site.

19 And that, you know, benefit or
20 amenity is -- we are granting extra density on
21 the project and that's one of the things that
22 we are getting in return for the extra

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1 density.

2 COMMISSIONER TURNBULL: I would
3 agree with all of you on that. And I would
4 just think that in future we should ask the
5 applicant to put that in their zoning
6 analysis. I mean, OP will probably cover it
7 in their report, too, but I think it ought to
8 be in the applicant's material that they
9 submit in their zoning analysis.

10 CHAIRMAN HOOD: Any other comments
11 on this? I know there are folks looking for
12 the new Safeway. Any other comments? Any
13 other comments? Would somebody like to make a
14 motion?

15 COMMISSIONER TURNBULL: Well, so
16 on this project not knowing, we are saying
17 that it is not?

18 CHAIRMAN HOOD: Yes.

19 COMMISSIONER TURNBULL: That's my
20 understanding. Since we don't have that
21 information, we are assuming that it is not?

22 CHAIRMAN HOOD: Right.

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1 COMMISSIONER TURNBULL: Okay.

2 CHAIRMAN HOOD: And we ask them to
3 strike, if you could strike that from the
4 order. I'm not sure where it is, but if we
5 can get it -- if we can strike it from the
6 order.

7 COMMISSIONER MAY: It's just a
8 matter of deleting a couple of paragraphs that
9 make reference to it. I don't know that we
10 are writing anything into the order that makes
11 a definitive statement about the policy toward
12 IZ and PUDs for all future cases, so I would
13 not be inclined to put that language, any kind
14 of really conclusive language along those
15 lines into this order, unless we actually did
16 an analysis and made that decision.

17 But I'm not in favor of delaying
18 action for the sake of including that. I
19 think we can simply take up the discussion the
20 next time around, which won't be too far in
21 the future, I'm sure.

22 CHAIRMAN HOOD: And then all I'm

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1 saying really is doing away with striking
2 findings and fact, F-5-B from the order. I
3 think that's in line. Okay. All right.
4 Anything else? Any other comments?

5 Okay. With that, with the
6 discussion had, I would move approval of
7 Zoning Commission Case No. 11-09 Duball
8 Petworth, LLC, Consolidated PUD and Related
9 Map Amendment at Square 2905 and ask for a
10 second.

11 COMMISSIONER TURNBULL: Second.

12 CHAIRMAN HOOD: It has been moved
13 and properly seconded. Any further
14 discussion? Are you ready for the question?

15 All those in favor aye?

16 ALL: Aye.

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

20 MS. SCHELLIN: Yes. Staff records
21 the vote 4-0-1 to approve Final Action in
22 Zoning Commission Case No. 11-09.

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1 Commissioner Hood Moving, Commissioner
2 Turnbull seconding, Commissioners May and
3 Schlater in support. Commissioner Cohen not
4 voting having not participated.

5 CHAIRMAN HOOD: Okay. Let's go
6 right into Proposed Action, Zoning Commission
7 Case No. 05-28F, Lano Parcel 12, LLC - 2nd
8 Stage PUD at Square 5041 and 5046. Ms.
9 Schellin?

10 MS. SCHELLIN: Yes, sir. At
11 Exhibit 28, we have a letter in support from
12 ANC-7D and at Exhibit 29, you have the
13 additional information that the Commission
14 requested from the applicant.

15 CHAIRMAN HOOD: Okay.
16 Commissioners, we have in front of us a
17 request and the things that we have asked for.
18 I'll open it up for any discussion. If not,
19 I'll accept a motion or however you want to
20 proceed.

21 As already stated, we do have a
22 letter from the ANC and that's in support.

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1 Commissioner May?

2 COMMISSIONER MAY: I was just
3 going to make a motion. I would move that we
4 approve Zoning Commission Case 05-28F, Lano
5 Parcel 12, LLC, 2nd Stage PUD and Related Map
6 Amendment at Squares 5041 and 5046.

7 CHAIRMAN HOOD: 5046.

8 COMMISSIONER MAY: 46, right.

9 CHAIRMAN HOOD: Is it? Okay. Is
10 it 46 or 56?

11 COMMISSIONER MAY: 5056. In any
12 case, I move that we approve the proposed
13 action for the redevelopment of the park.

14 CHAIRMAN HOOD: And make sure that
15 we do the right numbers, whatever it is, 46 or
16 56? But anyway --

17 COMMISSIONER MAY: As is --

18 CHAIRMAN HOOD: We don't want to
19 approve both of them, because 56 may be
20 something totally different. But anyway,
21 okay, it has been moved and can I get a
22 second?

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1 COMMISSIONER TURNBULL: Second.

2 CHAIRMAN HOOD: It has been moved
3 and properly seconded. Any further
4 discussion?

5 All those in favor aye?

6 ALL: Aye.

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

10 MS. SCHELLIN: Yes, staff would
11 record the vote 3-0-2 to approve Final Action
12 in Zoning Commission Case 05-28F.
13 Commissioner May moving, Commissioner Turnbull
14 seconding, Commissioner Hood in support.
15 Commissioners Cohen and Schlater not voting
16 having not participated.

17 CHAIRMAN HOOD: Okay. Next,
18 Proposed Action, Zoning Commission Case No.
19 11-16, Office of Planning Text Amendment to
20 721.3, Firearms.

21 Apparently, we have to do Proposed
22 Action and then Emergency Action Extension of

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1 it, if needed. Okay.

2 MS. SCHELLIN: Right.

3 CHAIRMAN HOOD: So we may have to
4 do both.

5 MS. SCHELLIN: And that's not
6 needed now. We have consulted with OAG and
7 found out that it is not needed, unless the
8 Commission feels otherwise, but according to
9 OAG, it's no longer needed. They have talked
10 with the Zoning Administrator and found out
11 that it is not needed.

12 CHAIRMAN HOOD: Okay. All right.
13 Ms. Schellin, do you have anything else?

14 MS. SCHELLIN: At Exhibit 11,
15 there is a follow-up memo from the Office of
16 Planning.

17 CHAIRMAN HOOD: Okay. And in that
18 memo from the Office of Planning, we have a
19 response also attached to it from Deputy Mayor
20 Paul Quander, who says in his last part "We
21 note that the Commission has been requested
22 recently to expand this proceeding in which

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1 Councilman Mendelson asked us to expand the
2 vehicle for consideration of the removal of
3 the 300 foot requirement."

4 And this is what he says "We
5 believe that it would be premature to reach a
6 judgment on the broader issue and that this is
7 not a matter that needs to be addressed in
8 this proceeding. At this time, it is only
9 imperative that the limited modification that
10 was established on an emergency basis last
11 summer be made permanent.

12 After the Mayor's office has had
13 an opportunity to analyze the broader issue
14 fully and if it concludes that there should be
15 changes to the 300 foot requirement, we will
16 present proposed text to you.

17 In the meantime, we respectfully
18 request that you complete the process started
19 in July and adopt the text as stated above.
20 Thank you for your consideration in this
21 matter."

22 Let me open it up for discussions.

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1 Any discussion? Okay. Not hearing any --

2 COMMISSIONER MAY: Well, no.

3 CHAIRMAN HOOD: Commissioner May?

4 COMMISSIONER MAY: I would like to
5 know from the Office of Planning how quickly
6 they would expect to take up the 300 foot
7 issue and whether we can expect something
8 substantive on that to happen in the
9 foreseeable future?

10 MR. LAWSON: Joel Lawson with the
11 Office of Planning. We also, of course, read
12 the memo from the Deputy Mayor where they
13 stated that they don't feel it is appropriate
14 to take up this issue at this time.

15 Now, the Office of Planning is
16 certainly happy to take it up if the Zoning
17 Commission requests us to and then we would be
18 at the schedule of the Zoning Commission.

19 At this point, it doesn't seem,
20 according to the Deputy Mayor, that there is a
21 reason for taking this up. And we would
22 certainly want to examine the potential

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1 implications of taking up that 300 foot
2 barrier and that would take some time.

3 COMMISSIONER MAY: Okay. So, you
4 know, I think we have learned that actually
5 there -- since we issued the temporary or the
6 emergency action, and it was followed-up, it
7 was acted upon, in other words, the
8 establishment was made and the business is
9 operating out of a police headquarters, this
10 is -- I mean, all this would do would,
11 essentially, allow a new similar business to
12 be established at that location.

13 The one that is there right now
14 would be considered a grandfathered
15 nonconforming use. So I'm not sure why we
16 really even have to take the permanent action.

17 I mean, the one that is there is there. And
18 unless we are expecting to open up, you know,
19 a new sort of shopping district at the police
20 headquarters --

21 MR. LAWSON: Well, the Text
22 Amendment is for a single establishment.

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1 COMMISSIONER MAY: right.

2 MR. LAWSON: It isn't necessarily
3 for --

4 COMMISSIONER MAY: Oh, right.

5 MR. LAWSON: -- some -- for the
6 purveyor. We have been advised that the
7 intent is that space will be made available to
8 a -- I'm going to use the wrong word here, but
9 the gun dealer.

10 COMMISSIONER MAY: Right.

11 MR. LAWSON: The person who
12 handles this kind of a transfer of a firearm
13 into the District. It wouldn't necessarily be
14 the existing one, the person who is there now.

15 It would be let out or sorry it would be --
16 anyway, I believe that's why the Text
17 Amendment would be helpful to have.

18 COMMISSIONER MAY: Well, I
19 understand that the retail firearms
20 establishment use was lawfully established on
21 July 20, 2011. So, I mean, unless we are
22 anticipating that that particular gun dealer

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1 is going to go out of business and you want
2 the flexibility for another one to be
3 established there --

4 MR. LAWSON: Again, my
5 understanding is that because this is a
6 District building, at some point, the ability
7 to operate that facility in that building will
8 have to be taken out to see if there are other
9 people who are interested in operating that
10 facility -- that use within that space.

11 COMMISSIONER MAY: So do we have
12 to do an RFP or something?

13 MR. LAWSON: Something along those
14 lines. It could and probably would end up
15 being the same dealer, because for some time
16 that person has been the only dealer in the
17 District, you know, the person who has
18 expressed interest in being a dealer in the
19 District.

20 But it wouldn't necessarily be the
21 case in the future.

22 COMMISSIONER MAY: Well, I guess

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1 I'm curious about what the rest of the Zoning
2 Commission thinks about the need to address
3 the 300 foot distance requirement and whether
4 the Commission is inclined to ask the Office
5 of Planning to study this matter further, as
6 recommended by the Councilmember?

7 CHAIRMAN HOOD: From my standpoint
8 -- oh, I'm sorry, go ahead, Commissioner
9 Turnbull.

10 COMMISSIONER TURNBULL: No, no.

11 CHAIRMAN HOOD: From my
12 standpoint, that's what I was going to do at
13 the meeting. The way I look at it, I'm in the
14 same place I as at the meeting. And that was
15 to -- because I believe there is going to be a
16 lot more discussion.

17 I think the Deputy Mayor just
18 validates the discussion that needs to be had.

19 Now, I don't know how we can put -- we can
20 make the administration do anything, but I
21 just think that's kind of where I was when we
22 had the meeting. Let's deal with what is in

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1 front of us now and then let's relook at this
2 300 foot buffer, who I think the Councilmember
3 brings up a good point.

4 But, you know, I'm not in the
5 inner-workings and I'm not the subject matter
6 expert on all of this, so that's why I was
7 leaving it to the planning folks and also to
8 the safety folks, that's where I was.

9 Commissioner Turnbull?

10 COMMISSIONER TURNBULL: Well, I
11 guess I know we have this -- we had
12 Councilmember Mendelson here talking about
13 that his concern was it, I think, really
14 didn't need to be the 300 feet. Didn't need
15 to be.

16 The ANC is for the 300 feet. In a
17 way this is written, is it other than the one
18 use that they are talking about on -- at
19 Indiana? The 300 feet is the minimum
20 requirement.

21 COMMISSIONER MAY: Yes, that's the
22 existing regulation.

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1 COMMISSIONER TURNBULL: That's
2 existing. So basically, it's just the status
3 quo other than for this one facility.

4 COMMISSIONER MAY: Right. And I
5 think the Councilmember's concern was that the
6 status quo was not sufficient to allow the --

7 COMMISSIONER TURNBULL: The
8 businesses --

9 COMMISSIONER MAY: -- business
10 that the --

11 COMMISSIONER TURNBULL: Yes.

12 COMMISSIONER MAY: -- District
13 needs to have --

14 COMMISSIONER TURNBULL: Yes.

15 COMMISSIONER MAY: -- maintained
16 or else face further pressures to change it.

17 COMMISSIONER TURNBULL: And your
18 thought was that we really don't have to do
19 anything. It's simply a nonconforming use.

20 COMMISSIONER MAY: Right. If we
21 don't do anything --

22 COMMISSIONER TURNBULL: Right.

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1 COMMISSIONER MAY: -- then the
2 emergency, essentially, is over and the
3 emergency -- yes, the emergency zoning
4 regulations --

5 COMMISSIONER TURNBULL: Cover
6 these, yes.

7 COMMISSIONER MAY: -- cover the--

8 COMMISSIONER TURNBULL: Yes.

9 COMMISSIONER MAY: -- status quo.

10 COMMISSIONER TURNBULL: Well, do
11 you want to go for a hearing, at some point?

12 COMMISSIONER MAY: Well, I just
13 wanted to understand whether the Commission as
14 a whole feels that we ought to, as recommended
15 by Councilmember Mendelson, take up the
16 question of the 300 feet.

17 COMMISSIONER TURNBULL: Yes.

18 COMMISSIONER MAY: And urge the
19 Office of Planning to study it further.

20 COMMISSIONER TURNBULL: You know,
21 I would agree with that. I would agree with
22 that.

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1 COMMISSIONER MAY: I mean, if
2 that's the consensus of the Commission, then I
3 would be inclined to go ahead and let this be
4 permanent. I mean, I don't really see the
5 need for it, but I'm happy to go along if we
6 all think that we can -- we should take
7 another look at the 300 foot.

8 Well, and it doesn't necessarily
9 mean that we are going to end up having
10 hearings and changing it, but that the --

11 COMMISSIONER TURNBULL: Right.

12 COMMISSIONER MAY: -- Office of
13 Planning would do some sort of a report,
14 either recommending a language to set down or
15 explaining why they believe the language is
16 not necessary.

17 COMMISSIONER TURNBULL: Mr.
18 Lawson, is that something you could look into?

19 MR. LAWSON: If the Commission
20 wishes us to look at that, we certainly could.

21 We, at this point, again, you know, looking
22 at the memo from the Deputy Mayor, don't feel

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1 that it is necessary to look at it and, as he
2 stated, that it is premature to be looking at
3 this issue.

4 But if the Commission wishes us
5 to, we certainly would.

6 CHAIRMAN HOOD: Okay. Again, the
7 only thing I can say is I feel like I'm in the
8 same place I was at -- the last time. I don't
9 see any --

10 COMMISSIONER MAY: Chairman, you
11 are ready? I mean, you agree though that the
12 Office of Planning should take a look at it?

13 CHAIRMAN HOOD: That's what I said
14 the last time. That's what --

15 COMMISSIONER MAY: Okay.

16 CHAIRMAN HOOD: I mean, when did
17 we take this up the last time when we went
18 through something like this? We just took
19 this up what about --

20 COMMISSIONER MAY: At the hearing.

21 CHAIRMAN HOOD: At the hearing
22 when I tried to do a vote and I wanted to get

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1 the Office of Planning to come back. At that
2 time, I was asking them to come back with a
3 set date, but I can't remember -- do you
4 remember this?

5 I asked them to come back with a
6 set date. But now, I'm hearing from the
7 Deputy Mayor. You know, I don't know. Yes,
8 so I think there's some additional information
9 after this. So I really don't know what to do
10 now. Honestly.

11 COMMISSIONER MAY: Well, as I said
12 before, I'm willing to proceed and take a vote
13 on this, at this point, assuming that we are
14 going to get some further information from the
15 Office of Planning.

16 CHAIRMAN HOOD: All right. So
17 what we will do, would you like to put a time
18 limit on it, 60 days?

19 COMMISSIONER MAY: I don't know
20 that we necessarily have to put a time limit
21 on it. I trust that the Office of Planning
22 will take up dutifully and will either make a

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1 recommendation about setting down a hearing
2 for further changes or explain why it is not
3 necessary.

4 CHAIRMAN HOOD: Okay. And I would
5 agree with Commissioner May wholeheartedly. I
6 just hope that it comes back at some point in
7 time. I know the Deputy Mayor doesn't think
8 that it is necessary. I just think that if it
9 is imposed, then we need to have a hearing
10 because I just think it needs to be fully
11 vetted.

12 So, Mr. Lawson, if you can let
13 Deputy Mayor Quander know that our wishes are
14 to revisit it and if we need to send a letter
15 to the Deputy Mayor, then we need to do it.
16 The Office of Planning just let them know that
17 we would like to see this at some point in
18 time or have you all at least look into it.

19 Okay? Is that okay, Commissioner
20 May?

21 COMMISSIONER MAY: Yes.

22 CHAIRMAN HOOD: Okay. All right.

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1 Anything else? Any other comments? Okay.
2 So with that, I would approve -- Mr. Turnbull,
3 did you want to add anything?

4 COMMISSIONER TURNBULL: No, I'm
5 good with that.

6 CHAIRMAN HOOD: Okay. What about
7 you, Vice Chairman, do you want to add
8 anything?

9 VICE CHAIRMAN SCHLATER: Mr.
10 Chairman, I didn't sit on the case.

11 CHAIRMAN HOOD: Oh, I'm sorry.
12 Well, since I'm asking, Marcy, do you want to
13 add anything?

14 Anyway, I would move approval of
15 Zoning Commission Case No. 11-16, The Office
16 of Planning Text Amendment to 721.3. And also
17 in this approval, I would like for our
18 comments to be noted and we expect to further
19 discover the 300 Foot Rule at a later date and
20 ask for a second.

21 COMMISSIONER TURNBULL: Second.

22 CHAIRMAN HOOD: It has been moved

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1 and properly seconded. Any further
2 discussion?

3 All those in favor aye?

4 ALL: Aye.

5 CHAIRMAN HOOD: Not hearing any
6 opposition, Ms. Schellin, would you, please,
7 record the vote?

8 MS. SCHELLIN: Yes. Staff records
9 the vote 3-0-2 to approve Proposed Action in
10 Zoning Commission Case No. 11-16.
11 Commissioner Hood moving, Commissioner
12 Turnbull seconding, Commissioner May in
13 support. Commissioners Cohen and Schlater not
14 voting having not participated.

15 CHAIRMAN HOOD: Okay. Next, we
16 have under Correspondence, Zoning Commission
17 Case No. 11-08, Il Palazzo, LLC - Request for
18 Special Public Meeting on October 27, 2011.
19 And that is, Ms. Schellin?

20 MS. SCHELLIN: Yes, sir. This
21 case would come up for -- it originally was
22 scheduled to come up for the November 14th

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1 meeting, but, as you have before you, a letter
2 explaining that they have some year-end,
3 stringent year-end deadlines that the
4 applicant has to meet for financing for this
5 project.

6 It has already gone to NCPC, so
7 there is no need to continue to wait for that
8 30-day deadline. It will finish the BAFO
9 process on, I believe it is, the 23rd. We
10 have already talked with OAG and they can go
11 with the October 27th Special Public Meeting
12 date, if the Commission is willing to
13 entertain that.

14 CHAIRMAN HOOD: Okay.
15 Commissioner May?

16 COMMISSIONER MAY: You said it
17 already went to NCPC?

18 MS. SCHELLIN: It did.

19 COMMISSIONER MAY: Did we get the
20 report back? I should know this.

21 MS. SCHELLIN: We have.

22 COMMISSIONER MAY: We have. Okay.

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1 MS. SCHELLIN: We received it on
2 the 12th.

3 COMMISSIONER MAY: Okay.

4 CHAIRMAN HOOD: Okay.

5 Commissioners, we have a request in front of
6 us for a Special Public Meeting. If anyone
7 has anything they would like to add or say on
8 it? Are we all in agreeance to honor this
9 request? Okay.

10 Do I need to make a motion?

11 MS. SCHELLIN: No, sir. If you --

12 CHAIRMAN HOOD: The meeting will
13 start at 6:15.

14 MS. SCHELLIN: We are already
15 having one at 6:00, so we are just going to
16 add this to the agenda.

17 CHAIRMAN HOOD: Okay. Okay.
18 That's good. October 27th.

19 MS. SCHELLIN: October 27th at 6:00
20 p.m.

21 CHAIRMAN HOOD: 6:00. Okay.

22 Do we have anything else before

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1 us, Ms. Schellin?

2 MS. SCHELLIN: No.

3 CHAIRMAN HOOD: Okay. I want to
4 thank everyone for their participation
5 tonight. And this meeting is adjourned.

6 (Whereupon, the Regular Meeting
7 was concluded at 7:33 p.m.)

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