

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

OCTOBER 15, 2012

+ + + + +

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
- MARCIE COHEN, Vice Chair
- MICHAEL G. TURNBULL, FAIA, Commissioner (OAC)
- PETER G. MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

JOEL LAWSON

MAXINE BROWN-ROBERTS

PAUL GOLDSTEIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the
minutes from the Regular meeting held on
Monday, October 15, 2012

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

2 6:46 p.m.

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

5 Good evening, ladies and gentlemen.

6 This is the October 15th, 2012 public meeting
7 of the Zoning Commission of the District of
8 Columbia.

9 My name is Anthony Hood. Joining
10 me are Vice Chair Cohen, Commissioner Miller,
11 Commissioner May and Commissioner Turnbull.

12 We're also joined by the Office of
13 Zoning Staff Ms. Sharon Schellin, Office of
14 Attorney General Mr. Bergstein and the Office
15 of Planning Ms. Steingasser, Mr. Lawson, Ms.
16 Brown-Roberts and Mr. Goldstein.

17 Copies of today's announcement are
18 available to you and are located in the bin near
19 the door. We do not take any public testimony
20 at our meetings unless the Commission requests
21 someone to come forward.

22 Please be advised that this

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1 proceeding is being recorded by a court reporter
2 and is also webcast live.

3 Accordingly, we must reframe from
4 any disruptive noises or actions in the hearing
5 room.

6 Please turn off all beepers and cell
7 phones.

8 Does the staff have any preliminary
9 matters?

10 MS. SCHELLIN: No, sir.

11 CHAIRMAN HOOD: If not, let us
12 proceed with the agenda.

13 But, before we do that, this is our
14 new colleague's first meeting and I wanted to
15 say as I said in a hearing a couple of nights
16 ago that we're glad to have him on board. He
17 needs no introduction. He's made great
18 contributions in this City.

19 And I always want to just remind him
20 of the many times that I've testified in front
21 of the Chairpersons of the City Council. I know
22 he had a lot to do with some of those questions

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1 especially here recently when Former Chairman
2 Ray was the Chairman of the Council when I got
3 drilled for 45 minutes.

4 So, I know he's made a major
5 contribution to the City and we're glad to have
6 him on board. I just had to rub that in a little
7 bit. My second chance.

8 So, we're glad to have Rob Miller
9 on board. He brings a wealth of knowledge about
10 this whole zoning aspect and I'm sure the City
11 will be better served once his service is entered
12 here on this Commission and we're looking
13 forward and excited about having him. Okay.

14 COMMISSIONER MILLER: Thank you.

15 CHAIRMAN HOOD: Okay. Let's go to
16 final action.

17 Zoning Commission Case 11-24, the
18 Stanton- EastBanc, LLC - Consolidated PUD &
19 Related Map Amendment @ Square 901.

20 Ms. Schellin.

21 MS. SCHELLIN: Yes, sir, an NCPC
22 report was received and they did not show that

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1 there would be any impacts to Federal interests.

2 Then there are several exhibits from
3 Exhibit Numbers 469 through 476 that came in
4 as either post-hearing submissions and/or
5 through the BAFO procedural order process.

6 CHAIRMAN HOOD: Okay. Thank you.

7 Commissioners, let's get all those exhibits
8 out in front of us. A number of them we asked
9 for.

10 In particular, the DDOT responses
11 to the Zoning Commission's request for
12 supplemental information provided by the -- one
13 of the party's transportation expert. I think
14 we asked for a request from them.

15 One of the things that I do have a
16 concern about, and I don't believe we have an
17 updated ANC report, is we all know this ANC has
18 worked real hard in this case. I would like
19 to allow them additional time.

20 Let's see how the discussion goes
21 and hopefully my colleagues would agree.

22 I'd like to allow them additional

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1 time to be able to give them the -- afford them
2 the great weight that's necessary. Doesn't
3 mean we can't have the discussion, but I think
4 that we can have a discussion this evening and
5 allow some time for them to be able to give the
6 correct information so they can give the great
7 weight which I think ANC's are due and especially
8 by being a volunteer and all the work they've
9 put into this case, I would hate to see this
10 go down in this record as the ANC not given great
11 weight.

12 Any other comments?

13 COMMISSIONER TURNBULL: Mr. Chair,
14 I would agree.

15 I mean although I respect the
16 Executive Committee of the ANC very much and
17 their report is very concise, I think we really
18 do need a formal report with a vote from the
19 ANC as a whole.

20 CHAIRMAN HOOD: Right and I think
21 if we hash out whatever outstanding issues we
22 have today, I think that we could probably do

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1 that in maybe a five minute -- well, I better
2 not say that. We can do that at a special public
3 meeting and take it from there.

4 Okay. Would somebody like to get
5 it started? We want to talk about -- any other
6 opening comments?

7 Okay. I guess we can talk about the
8 loading berth, the 55 truck loading berth on
9 the 7th Street side or I think -- I'm not sure
10 who asked that they re-engineer or re-look at
11 some of that, but let's open it up for any
12 comments.

13 COMMISSIONER MAY: I think I was at
14 least one of the folks who were interested in
15 pursuing a head-in/head-out 55-foot truck
16 access which is what I was really interested
17 in and what's come back is a proposal to or an
18 explanation of what's necessary to be able to
19 back 55-foot trucks in.

20 Which well, I'm not thrilled with
21 that option. We don't know whether or not it'll
22 pass muster with DDOT. I don't think it's a

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1 particularly safe maneuver myself and like I
2 said, I was really interested in finding out
3 more about a head-in/head-out.

4 I don't know how much more space it
5 takes. You know, if we lose a little bit of
6 space in the building, I would have thought that
7 would be a worthwhile sacrifice. I mean there's
8 a lot of space already devoted to that loading
9 dock. So, I would think that it wouldn't take
10 that much more to be able to pull a truck in
11 and get it turned around given that you have
12 the T-shaped dock.

13 So, let me just say I'm
14 disappointed. We have -- you know, we did get
15 comments from various folks from the parties
16 involved and from the ANC. I think the ANC was
17 happy to have the flexibility to go that way
18 or would prefer that way over loading on a curb
19 I guess.

20 And one of the groups suggested that
21 55-foot trucks should simply be prohibited.
22 I don't think that's quite practical.

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1 So, I mean I guess if we had to accept
2 an either or where they back in a 55-foot truck
3 or they do curbside loading for a 55-foot, if
4 that's all we've got, that's all we've got.
5 But, I'm still like I said disappointed that
6 we didn't find a better solution for this.

7 I'm interested in hearing what
8 others have to say.

9 CHAIRMAN HOOD: Anyone else?

10 COMMISSIONER TURNBULL: Well, yes,
11 thank you, Mr. Chair.

12 I would agree with you, Commissioner
13 May. I think what was a little bit disturbing
14 we have this wonderful 55-foot truck diagram,
15 854, which was part of the Applicant's submittal
16 and it shows a truck backing in and it shows,
17 I believe, four truck berths or five truck berths
18 plus a little place for a smaller vehicle.

19 But, if there wasn't a truck there
20 in one of the berths, I'm trying to figure out
21 why a truck couldn't pull straight in down the
22 ramp, pull into one of the truck berths and back

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1 up then into another one directly opposite.

2 I mean I -- just looking at it, I
3 mean you're assuming that both berths would be
4 open, but if that being the case and a truck
5 pulled straight in and made its turn, this is -- I
6 guess I'm with you that there could be more work
7 done to see if this could actually be feasible.

8 Another drawing, a little bit more of a -- a
9 better diagram. But, to me, it looks like
10 there's some room. There's some flexibility
11 in this plan somehow that a front end truck could
12 come in and then back up into a loading berth.

13 I mean I'm not a truck driving
14 expert, but just looking at this plan, it looks
15 like that there is some flexibility there. I
16 mean I've never driven a 55-foot rig myself.

17 COMMISSIONER MAY: No, but I tried
18 to back a 26-foot straight into a loading dock
19 right off Broadway once. That was a nightmare.

20 COMMISSIONER TURNBULL: Yes.
21 Well, it's not easy.

22 COMMISSIONER MAY: So, the

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1 head-in/head-out makes a whole lot of sense.

2 COMMISSIONER TURNBULL: Yes. So,
3 I'm not sure. But, I would agree with you.
4 I would like to see some more work done and
5 another plan generated that would actually show
6 something that might work.

7 CHAIRMAN HOOD: Okay. You know, I
8 was -- okay. Go ahead.

9 COMMISSIONER MAY: I'm sorry.
10 And, you know, I guess if it really is not
11 possible, I think I'd like to see the diagrams
12 that prove it is not possible or what the impact
13 would be to the building.

14 COMMISSIONER TURNBULL: Yes,
15 absolutely.

16 COMMISSIONER MAY: I think that's
17 what I would need to --

18 COMMISSIONER TURNBULL:
19 Absolutely.

20 COMMISSIONER MAY: -- accept that
21 it's not possible.

22 CHAIRMAN HOOD: Okay. Any other

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1 comments on that?

2 I was just going to say and I think
3 Commissioner May eluded to it. I think one of
4 the parties mentioned that what we should -- make
5 it real easy is just not allow for the 55-foot
6 trucks. I'm not sure if that's exactly the
7 avenue to go on. While it's a thought because
8 I know in other areas that has been the
9 prescription of getting smaller vehicles.

10 But, I think due to the magnitude
11 of what all some of the uses are, that might
12 be infeasible. It might be something that we
13 not need to look at. So, I would agree with
14 the comment of not trying to ban 55-foot trucks
15 on this site. But, in some areas, it does work.

16
17 But, I think because of some of the
18 uses -- and then some of the parties even went
19 even further. They started talking about
20 retail as we were trying to -- just some of the
21 things that we asked for and I don't know if
22 that's a -- I think we hashed a lot of that out.

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1 Maybe some outstanding issues. But, as far
2 as the 55-foot truck issue, I do not agree with
3 at least one of the parties that I read.

4 I know the ANC has had a lot of input and
5 I think they agree with what's being proposed,
6 but I think my colleagues have asked
7 for -- that's one of the things that we need
8 to make sure, Ms. Schellin, we put in the parking
9 lot and I'm sure the Applicant has listened about
10 what my other colleagues have asked to see.

11 Vice Chair, do you have anything you
12 want to add on that?

13 VICE CHAIR COHEN: Mr. Chairman, I
14 just -- I've been spending a lot of time at the
15 Safeway on 17th Street and noticed that trucks
16 pulling in and out of the loading dock, you know,
17 just create a major headache for traffic flow.

18 You know, I support my colleagues
19 in wanting additional information, but I think
20 that I am comfortable with DDOT's recommendation
21 to have curb-front loading on 7th Street and
22 I believe it's -- well, I just think that it's

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1 going to be more simple and less thwarting of
2 traffic flow.

3 CHAIRMAN HOOD: And as already
4 stated, EMMCA -- is that how to pronounce that?

5 EMMCA? EMMCA is favoring against the curbcut
6 front loading favored by DDOT and as already
7 stated, the other group the Hine Street
8 Neighbors say prohibit 55-foot trucks.

9 Anything else on this issue? So,
10 we know what we've asked for.

11 Let's move to the next issue. Let's
12 talk about traffic if you will. Exhibit 471.

13 Go ahead.

14 VICE CHAIR COHEN: Thank you, Mr.
15 Chairman.

16 Again, I've spent my career, 40
17 years, looking at financing projects and wanting
18 to halt leasing at 50 percent is totally
19 impractical from the point of view of a lender.

20
21 So, I really think that Hine School
22 North, I think it's their recommendation that

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1 the leasing be halted at 50 percent. I just
2 think that that's totally impractical.

3 So, I would suggest that we hold to
4 the 70 percent leased.

5 CHAIRMAN HOOD: Okay. Seventy
6 percent which is proposed by the Applicant is
7 on the table.

8 Anyone disagree? Let me see. I
9 can't remember what -- okay. DDOT also -- thus,
10 DDOT finds no need to modify the monitoring
11 agreement reached with the Applicant that begins
12 monitoring at 70 percent commercial occupancy
13 and 90 percent residential occupancy.

14 Are we all fine with that?

15 The four points on the front page
16 of the DDOT supplemental, does anybody want to
17 discuss anything else on here?

18 I actually just said discuss if
19 anybody -- I didn't necessarily have anything
20 in particular, but I wanted to put that out
21 there.

22 COMMISSIONER MAY: I think the memo

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1 addressed the points that were raised by the
2 party in opposition and I am -- generally, I
3 find that what they have stated here makes sense
4 to me.

5 So, I have no -- I don't think
6 there's anything else that I feel a need to
7 pursue to respond to the opposing parties'
8 specific concerns regarding the traffic
9 evaluation.

10 CHAIRMAN HOOD: Okay. Are we ready
11 to move? Let's go to the CMA Construction
12 Management Agreement Mitigation Fund. We got
13 different views on that.

14 The Applicant I believe has -- the
15 Applicant agrees to include the 200 block of
16 A Street within the Mitigation Fund.

17 Some parties still does not include
18 all properties within the 200 feet. Certain
19 properties want to be included in that equation
20 and then one group says it should be extended
21 600 to 800 -- to the 600 and 800 blocks of C
22 Street.

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1 Does anyone have any views or
2 comments on that?

3 I'm just trying to remember what
4 everybody said.

5 Anyone?

6 COMMISSIONER MAY: Well, I think we
7 spoke up previously indicating that it made
8 sense to expand it as was suggested last time
9 around. So, this is a request for further
10 expansion.

11 I mean as far as I'm concerned, if
12 the Applicant wants to agree to that, that would
13 be okay. I don't feel -- I mean there's nothing
14 magic about 200 feet. It's just a matter of
15 where we think the likely impacts are going to
16 be, you know, around the corner.

17 You know, I just don't see that there
18 are going to be the kinds of issues affecting
19 those properties that would need to be
20 mitigated. But, if the Applicant is willing,
21 I'd be okay with it.

22 CHAIRMAN HOOD: Okay. I

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1 think -- Vice Chair, did you want to add
2 something or did you --

3 VICE CHAIR COHEN: No, I just concur
4 with Commissioner May's assessment.

5 CHAIRMAN HOOD: Who made the
6 request the first time? I'm just -- was
7 it -- was it you, Vice Chair?

8 Okay. I'm not sure how we got there

9 MS. SCHELLIN: Chairman Hood, it
10 came from -- it was when you guys did a proposed
11 action. I don't recall whose response it was,
12 but they had brought that up and so, one of the
13 things you asked the Applicant to look at was
14 including all of the 200-block of 8th Street
15 and so, they've provided their response.

16 VICE CHAIR COHEN: I'll take credit
17 for it.

18 CHAIRMAN HOOD: Okay. So, it must
19 be a good thing. Because if it was bad, I'd
20 probably get credit for it.

21 Okay. So, are we satisfied with
22 what's being proposed in front of us or we'd

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1 like to see it extended as requested.

2 COMMISSIONER TURNBULL: Well, Mr.
3 Chair, I'm satisfied. I think the 200 block
4 is the -- it's the specific block that's really
5 across the street and it's integral to the
6 development of the project.

7 So, I don't know how far you can
8 carry that. I think it's really -- what we're
9 trying to address is the -- or what we tried
10 to address at the time I think was the immediate
11 neighbors that are really impacted and I'm
12 satisfied with what's being proposed.

13 CHAIRMAN HOOD: Okay. Anyone
14 else? Okay.

15 Let's move to the relocation of the
16 North Building. Trash activity. I think
17 everyone is in agreement with that except for
18 one group wanted it to be moved further west
19 than the commercial operations.

20 The ANC's -- Vice Chair.

21 VICE CHAIR COHEN: Yes, Mr.
22 Chairman, I think the Applicant did not -- they

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1 provided like a mitigation plan as opposed to
2 explaining why it could not be moved further
3 west. I think they moved it further away from
4 where it was, but the mitigation that they have
5 proposed, I mean that to me should be standard
6 operating procedure in a management for any
7 apartment building.

8 So, I actually was a little -- was
9 disappointed that they did not provide a greater
10 explanation why the movement couldn't be made
11 further west of the alley and I believe that
12 was a concern of the ANC.

13 MR. BERGSTEIN: That's correct.
14 It was in the Executive Committee's report and
15 also HSNN also I think stated that.

16 CHAIRMAN HOOD: So, Vice Chair, you
17 want to know why we couldn't go further west?

18 VICE CHAIR COHEN: Exactly.

19 CHAIRMAN HOOD: Okay. And I think
20 that's -- as Mr. Bergstein mentioned, the ANC
21 also eluded to that and I'm not sure who else.

22 COMMISSIONER TURNBULL: Well,

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1 excuse me, Vice Chair. They did submit a plan.

2 You saw the plan where --

3 VICE CHAIR COHEN: Yes.

4 COMMISSIONER TURNBULL: -- they
5 move it further west.

6 VICE CHAIR COHEN: They've moved it
7 further west, but it was not west enough.

8 COMMISSIONER TURNBULL: I see.

9 VICE CHAIR COHEN: In my opinion.
10 But, if everybody else is satisfied.

11 CHAIRMAN HOOD: No, I think it's
12 good. We obviously -- I don't believe we can
13 do a final action tonight. I think we'd like
14 to put this off to a special public meeting and
15 get those things that we're asking for.

16 Anything else?

17 COMMISSIONER TURNBULL: Well, I
18 guess, you know, there's only so much room.
19 They're showing three locations for a -- a
20 30 -- they got a 55-foot truck, a 30-foot truck
21 and a 30-foot truck or a 34 trash truck unless
22 we're assuming that the trash truck would be

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1 where the 30-foot truck is at certain times.

2 I mean they've done a little
3 convoluted -- they've got an exit -- they've
4 got the exit from the one stair now going through
5 what is the holding area and by a trash compacter
6 also which -- I mean they've tried to make
7 adjustments to the plan, but now, they have the
8 exit from the second stair or the first stair,
9 whatever you want to call it now, going through
10 the trash and holding area.

11 But, well, maybe it does need a
12 little bit more work then. I don't -- what are
13 you thinking, Mr. May?

14 COMMISSIONER MAY: I'm struck
15 trying to figure is actually going to get to
16 the trash room, but I guess they'll figure that
17 out.

18 COMMISSIONER TURNBULL: Yes.

19 COMMISSIONER MAY: It is odd
20 because in the existing or the original plan,
21 they show the 34-foot trash truck assuming that
22 it pulled into the alley from 7th Street and

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1 was pulling out onto 8th Street and presumably,
2 it was rear loading and now, they have a scheme
3 that shows us where it would be rear -- where
4 it would be if it's rear loading and where it
5 would be if it's front loading. I'm not sure
6 why that distinction comes into play now when
7 it didn't exist before.

8 You know, ideally, the 34-foot trash
9 truck front loading location as labeled in the
10 plan is closer to the commercial area and further
11 west and so, therefore, would be the preferred
12 space.

13 Does that mean that it always has
14 to be a front-loading truck that takes up the
15 trash, I would think not. I don't know that
16 anybody enforces side of the street or side of
17 the alley regulations on, you know, what side
18 your truck can travel. Certainly, the way that
19 alley operates right now, it's -- you know, you
20 often see vehicles on either side.

21 I also think that anything that's
22 going to put the activity in the proximity of

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1 the north/south alley is probably sufficient.

2 I mean there are already -- there's already
3 significant truck activity coming and going from
4 that area. I don't think that this is going
5 to add a significant additional burden in that
6 vicinity because there are other retail
7 establishments that load off of that alley and
8 a number of them simply park in the alley and
9 the stuff gets hand trucked up the alley. I
10 don't know how the trash comes and goes, but
11 I think that anything that's going to push it
12 as far east as it is in the proposed plan is
13 probably just fine. As far west. As far west
14 as --

15 CHAIRMAN HOOD: Yes. Vice Chair,
16 would you still like to say something? Still
17 want to keep it in the parking lot? The parking
18 lot is getting full.

19 VICE CHAIR COHEN: I think, you
20 know, Commissioner May gave a good explanation.
21 Can we just park it and let me just reflect
22 a little bit about his explanation versus my

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1 other colleague Mr. Turnbull?

2 CHAIRMAN HOOD: Okay.

3 Commissioner May, since you're giving out good
4 explanations, would you like to respond and let
5 me know why on the First Source and CB
6 agreements, we still have Mr. Hunter's name.
7 I thought Mr. Hunter had left. Maybe I can just
8 ask Antonio Hunter. Is he --

9 COMMISSIONER MAY: I think you're
10 the expert on CB. So, I'd be happy to hear your
11 explanation.

12 CHAIRMAN HOOD: I'm just trying to
13 figure out why I have something in front of me
14 with his name on it.

15 Ms. Steingasser, do you know if Mr.
16 Hunter's still in that office?

17 MS. STEINGASSER: I don't know.

18 CHAIRMAN HOOD: Well, he must have
19 come back from Baltimore because that was the
20 last conversation I had with -- is he still in
21 the office? Okay. This has September 2012 and
22 he's been gone for awhile now. Maybe that's

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1 why he didn't sign it.

2 I understand. Ms. Schellin, did we
3 ever -- and I know I've been asking this question
4 and I don't even think -- this might not have
5 even been the case. Did we ever find out what
6 DOES and everyone's saying about the First
7 Source agreement?

8 Remember at one time they told us
9 page 11 had to be filled out and --

10 MS. SCHELLIN: No, they definitely
11 said that the page, I believe it is page 11,
12 that has the chart which is, I believe, the
13 employment plan should be filled out. Although
14 they do understand that sometimes with projects
15 like especially with what comes before us the
16 PUDs, they haven't -- the developer hasn't
17 selected the person who's going to be doing all
18 the hiring. They haven't selected a company
19 to do the work and so, therefore, what they'll
20 do is they'll do an attachment A or something
21 that says when they do make a selection that
22 that company will be bound by the terms of the

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1 agreement.

2 CHAIRMAN HOOD: Since we revisited,
3 and I'm looking here as requested by the
4 Commission, attached is an employment plan which
5 is Exhibit B and I see all the exhibits. But,
6 this is not page 11. Unless I -- I may be missing
7 something and I have missed stuff before.

8 I would like for them to follow with
9 Mr. Pettigrew who's the new person not Mr.
10 Hunter. Mr. Hunter doesn't even work here no
11 more. He's in Baltimore. Was going to
12 Baltimore.

13 So, we need to get this stuff nailed
14 down because it's starting to just kind of be
15 like a joke. We need to get this nailed down
16 because it's important to the City. The First
17 Source and the CB agreements, I think is
18 important to the City.

19 So, maybe touch base with Mr.
20 Pettigrew and I know that this Applicant, this
21 developer was not trying to pull one over on
22 me because they wouldn't do that.

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1 MS. SCHELLIN: I would recommend
2 based a case that we just had recently that they
3 contact DeCarlo Washington of DOES. He's the
4 one who handles these plans now and what he did
5 in the other case was they came back with an
6 Exhibit A to their agreement because they
7 agreement was a couple of years old.

8 CHAIRMAN HOOD: Okay. And we were
9 able to get some resolution on that if I
10 remember. I know it was another case. I just
11 couldn't remember which one.

12 Okay. So, if we can do that.

13 Anything else, Commissioners, on
14 this? Any other comments?

15 Ms. Schellin, do we have a date?
16 Are we going to do a special -- hold on.
17 Commissioner May.

18 COMMISSIONER MAY: No, I just -- I
19 feel like we ought to make a quick run through
20 some of the other submissions.

21 CHAIRMAN HOOD: I kind of was doing
22 a little bit of that, but yes, let's do it.

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1 COMMISSIONER MAY: Yes.

2 CHAIRMAN HOOD: Let's do it. Let
3 me get those back in front of me.

4 COMMISSIONER MAY: Do we need to
5 talk about the Construction Management
6 Agreement and how that's described in the
7 conditions? Okay.

8 So, you know, I think what we
9 struggle with a little bit is that the
10 Construction Management Agreements are
11 sometimes proffered as the condition or as a
12 condition of the decision and sometimes they
13 are not. Simply they're -- sometimes they're
14 simply mentioned and this circumstance, we have
15 them proffered as conditions, but subject to
16 change and a condition subject to change doesn't
17 really work.

18 So, it's -- I think that -- I mean
19 the specific proffers that were mentioned were
20 the Applicant shall abide -- actually, it
21 applies to the Construction Management
22 Agreement. During the construction of the

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1 project, the Applicant shall adhere to the
2 Construction Management Agreement as may be
3 amended by the parties to the agreement pursuant
4 to its terms which is attached as an exhibit
5 to the MOA dated August 13th and marked Exhibit
6 455 in the record.

7 And it's the as may be amended by
8 the parties that puts it into odd territory for
9 us and then there's -- it's similarly the -- as
10 a reference to the Memorandum of Agreement
11 between the ANC and the Applicant that note they
12 may be amended by the parties and I think that's
13 problematic as well.

14 So, I mean I think we like both the
15 Memorandum of Agreement and the Construction
16 Management Agreement, but it's hard to make them
17 part of the agreement the way this is described
18 in the proffers.

19 COMMISSIONER TURNBULL: Mr. Chair,
20 I would agree with Commissioner May.

21 I think we could reference the fact
22 that they exist, but they're really between two

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1 other -- they're between two separate bodies
2 that we don't control. We can't enforce that
3 in our order.

4 I mean if it had been a proffer right
5 from the beginning, there was a Construction
6 Management Agreement, I think that would be
7 different, but as Commissioner May says, it's
8 now between two parties separate and although
9 it's well intentioned and I -- you know, between
10 themselves, between the ANC and the Applicant,
11 we can't enforce it.

12 CHAIRMAN HOOD: I think we can -- I
13 think --

14 MR. BERGSTEIN: Can I jump in?
15 Okay. There would be nothing wrong in there
16 being a condition that says the Applicant shall
17 adhere to the Construction Management Agreement
18 attached to the MOA period.

19 The problem with this one it says
20 that the Applicant shall adhere to the terms
21 of the Construction Management Agreement as it
22 may be changed. Which -- and then the problem

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1 is a specific enforceable agreement and in
2 addition, that the people who get to decide
3 whether or not it should be changed is not the
4 Commission and the other parties, but the ANC
5 and the Applicant.

6 So, normally, a condition to be
7 enforceable is one that's absolute and if
8 there's any issues, the Applicant comes back
9 and seeks a modification.

10 In this case, what they're saying
11 is well, you can grant this application based
12 upon this condition. We can't guarantee you
13 that this Construction Management Plan won't
14 change. We can't guarantee you that the 200
15 block will later be eliminated from the
16 Mitigation Fund. Everything's up for grabs and
17 that's the distinction I think I would make here.

18 COMMISSIONER MAY: So, Mr.
19 Bergstein, we could simply request that the
20 Applicant agree to delete the as amended by in
21 both of those proffers and they would be
22 perfectly fine.

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1 MR. BERGSTEIN: That is correct.
2 I still want to distinguish -- I want to make
3 a distinction between -- because there are
4 certain conditions in the MOA that are restated
5 in the order and I just want to specify that
6 if there's any conflict, the conditions as
7 stated would apply.

8 COMMISSIONER MAY: The order
9 would -- right.

10 MR. BERGSTEIN: Yes, but thus far,
11 it's been my understanding that the Applicant
12 is unwilling to do that because they believe
13 that, for example, for the Loading Management
14 Plan, they need the flexibility to later be able
15 to quickly negotiate a change if things don't
16 work out. So, that --

17 COMMISSIONER MAY: Well, maybe if
18 there were specific clauses to the MOA that may
19 be amendable, that we would exclude them.

20 I mean I'd rather -- you know, our
21 alternative is simply not include these proffers
22 at all and simply say there is an MOA and there

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1 is a CMA.

2 MR. BERGSTEIN: Right. I mean and
3 you can ask the Applicant to revisit the issue
4 of either calling out those conditions in the
5 MOA that are -- you know, that would be accepted
6 as conditions unequivocally and cannot be
7 changed subject to modifications and those which
8 aren't and it's only the former that would be
9 incorporated by reference into the order.

10 COMMISSIONER MAY: So, I mean since
11 we're going to ask for the Applicant to do a
12 little more work before we take final action
13 anyway, I would suggest that that's exactly what
14 we do.

15 CHAIRMAN HOOD: Is everybody in
16 agreement with that? Okay. I would agree.

17 Anything else?

18 COMMISSIONER MAY: Yes, there are
19 a couple of other points.

20 CHAIRMAN HOOD: Lead us through it.

21 COMMISSIONER MAY: There was the
22 reference to the Applicants determining at some

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1 later point that the number of bicycle spaces
2 may not be needed and are excessive. The
3 Applicant may reduce the number of spaces by
4 up to 25 percent and I think that if, in fact,
5 they do find that at some point that they just
6 a glut of bicycle spaces in the garage and they
7 want to make better use of the space, that it's
8 a pretty straightforward modification. They
9 could come back to us and request that
10 modification rather than grant the flexibility
11 up front for them to make a decision without
12 us being involved or I mean it's either that
13 or they just, you know, proffer 25 percent less
14 because, you know, we don't have any control
15 over whether they do it or not.

16 CHAIRMAN HOOD: So, you're saying
17 if they get to that point, they come back for
18 a modification on bicycle spaces?

19 COMMISSIONER MAY: Yes.

20 CHAIRMAN HOOD: Does everybody
21 agree with that? You all do? Because I'm
22 outnumbered. The vote would have been three

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1 to one. So, okay. That's fine. I would --

2 COMMISSIONER MAY: You're ready to
3 let them cut the bicycle spaces?

4 CHAIRMAN HOOD: If they see fit,
5 yes.

6 COMMISSIONER MAY: By 25 percent.

7 CHAIRMAN HOOD: I think that's one
8 that we can, you know, another hearing night,
9 another something that I think --

10 COMMISSIONER MAY: Well, since
11 we're already asking them to make some changes.

12 CHAIRMAN HOOD: Okay. I'm not
13 going to fight over bicycle spaces. You know
14 me.

15 COMMISSIONER MAY: I thought you
16 were a champion of bicycle spaces.

17 CHAIRMAN HOOD: Not that many
18 spaces, but anyway, I just thought that was
19 something we could leave out, but that's fine.

20 Let's do that.

21 Do you want to lead us through this
22 or do you want to go on to the --

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1 COMMISSIONER MAY: I think the next
2 condition that is of concern is the donations,
3 the financial contributions having to do with
4 public space, landscaping and the playground.

5 Those are just way too fuzzy.

6 I mean I think we are moving toward
7 an era where donations like this are not going
8 to be acceptable in PUDs potentially.

9 You know, what we're considering in
10 the future is the possibility that we'll only
11 accept specific work being done. In other
12 words, you can't proffer to give \$50,000 to a
13 particular cause. You'd have to do \$50,000
14 worth of work or buy \$50,000 worth of stuff or
15 something like that.

16 CHAIRMAN HOOD: I thought we had
17 already shifted --

18 COMMISSIONER MAY: Well, we have
19 been shifting in that direction. It's just --

20 CHAIRMAN HOOD: Oh, we already had
21 shifted.

22 COMMISSIONER MAY: Well, we

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1 hadn't -- it's not codified in the regulations
2 yet, but we are shifting in that direction.

3 So, to have it stated that, you know,
4 there's 50,000 for this purpose by an entity
5 yet to be named and if that doesn't work out,
6 there's another entity that might be named and
7 if that doesn't work out and the C of O is issued,
8 then there's no reason to make a donation after
9 all. I mean that's just way to soft.

10 And then similarly for the
11 playground. There's, you know, a designated
12 group to be named and then a back-up group.
13 I think that needs to be nailed down. I mean
14 if we're going to even consider a donation of
15 any sort, it has to be to a specific existing
16 group who's agreed to take it and use it for
17 that purpose.

18 CHAIRMAN HOOD: So, is this
19 something -- I'm sorry, Vice Chair.

20 VICE CHAIR COHEN: No, I was going
21 to say that I concur with Commissioner May.

22 I think that this requires constant

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1 open communication because what if these groups
2 do not realize that a C of O has been applied
3 for and granted. They'll lose the money.

4 So, I think that the Office of
5 General Counsel and the Applicant's counsel
6 should tighten up this language.

7 COMMISSIONER TURNBULL: I would
8 concur with that, Mr. Chair.

9 I just know from out past history
10 that we had another case that at one point there
11 was some confusion as to what to do and I think
12 the ZA by default, maybe Mr. Bergstein can
13 enlighten us, but I think an escrow account was
14 set up to deal with it. Which is, again, like
15 a deep whole that we don't know what's happening
16 with the money.

17 MR. BERGSTEIN: Friends of Francis
18 Field.

19 COMMISSIONER TURNBULL: That's
20 correct.

21 So, I think we want to avoid that
22 kind of a nebulous area of where money is going.

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1 I think we need a definitive plan. A finality
2 that everybody knows what's going to happen and
3 it's going to be able to get done. There has
4 to be an action plan for this.

5 CHAIRMAN HOOD: Okay. So, that's
6 something we will request with everything else.

7 Okay. Commissioner May, you're doing a good
8 job leading us down this road.

9 COMMISSIONER MAY: That's it for
10 the issues that I wanted to bring up from that
11 particular list. So, I think there were a
12 couple of other points that I wanted to touch
13 on.

14 VICE CHAIR COHEN: Mr. Chairman.

15 CHAIRMAN HOOD: Yes.

16 VICE CHAIR COHEN: There's a
17 question about the affordability period. The
18 Applicant has proposed that it begin on the date
19 of the first residential unit in place.

20 I would like it to be considered
21 that -- first of all, when you have any
22 affordable housing, there's usually like at

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1 least five times the number of people who apply
2 for it than available units. So, I would like
3 to see that the 30 years begin the date of 50
4 percent lease-up.

5 I think that it'll assure greater
6 affordability for a longer period of time as
7 opposed to staggering it and having some maybe
8 affordable for 29 years. Let's say the final
9 unit doesn't get leased-up until, you know, a
10 year later.

11 So, I would like 50 percent
12 substituted for the first unit.

13 MR. BERGSTEIN: Can I request that
14 we be allowed to discuss that with the Applicant
15 and the Office of Planning? See if that works
16 out and if not, we come up with some other
17 alternative that might work for you.

18 CHAIRMAN HOOD: Let me let the Vice
19 Chair comment.

20 VICE CHAIR COHEN: That would be
21 acceptable. I think though in my experience
22 that's been a very common way of assuring

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1 affordability on a long term, on a 30-year term.

2 But, yes, I would find that acceptable.

3 COMMISSIONER TURNBULL: Vice
4 Chair, in your experience over the years, you
5 have found that 50 percent has been a target
6 that's been used quite a lot.

7 VICE CHAIR COHEN: Yes.

8 CHAIRMAN HOOD: Okay. Yes, I'm
9 fine. Especially with the Vice Chair's known
10 track record of affordable housing in the City
11 and her raising the bar in this City of dealing
12 with affordable housing. I would have to -- one
13 time I would yield to you.

14 Okay. Commissioner May, you want
15 to keep leading us?

16 COMMISSIONER MAY: Speaking of
17 lead, going to the ANC memo, we covered many
18 of the ANC's issues in the being of our
19 discussion, but there are a few things that we
20 missed.

21 One was the reference in the -- and
22 this is cited I think by others. The language

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1 that refers to using commercially reasonable
2 efforts to design the project so that it
3 satisfies LEED Gold, et cetera and at first,
4 I was similarly concerned about that statement.

5 But, apparently, what we've been advised is
6 that that's actually a common term for how one
7 describes such efforts and so, I'm comfortable
8 with that language the way it is. I just wanted
9 to make sure we had addressed it since the ANC
10 had brought it up.

11 CHAIRMAN HOOD: Can I ask a
12 question? How comfortable are we? And I
13 realize that there may be six or seven members
14 on -- six members on this task force or the ANC
15 Board of whatever you call it. How comfortable
16 that once we give great weight that the same
17 items will come back with this type of letter
18 in full support with these issues?

19 And that's why I really didn't get
20 into a whole lot because I'm not sure if some
21 of these issues will show up as it is here once
22 we give great weight to the ANC.

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1 COMMISSIONER MAY: You know, I
2 think the -- I don't know that we necessarily
3 have to decide them definitively right now.
4 If we find out that the ANC when the full body
5 voted is -- there's some differences, then we
6 can take it up at the next meeting.

7 CHAIRMAN HOOD: Okay. I just
8 didn't know whether something was going -- it
9 may come back exactly like this.

10 COMMISSIONER MAY: Do we have any
11 indication from the ANC that it was reported
12 exactly?

13 MS. SCHELLIN: I did just receive
14 a note from the ANC that they ratify its report
15 on the Applicant's supplemental filing 9-0-0.
16 They had a properly notified public meeting
17 on 9 October which is what they had said I think
18 in their committee report that they were going
19 to do, but we do not have an ANC report in the
20 record, a full report.

21 CHAIRMAN HOOD: Okay. So --

22 COMMISSIONER MAY: It's mostly a

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1 paperwork issue then.

2 CHAIRMAN HOOD: Yes.

3 COMMISSIONER MAY: Okay.

4 CHAIRMAN HOOD: And it's going to
5 come back just like this. So, we can finish
6 the discussion.

7 MS. SCHELLIN: Right. That was the
8 first thing you guys asked for.

9 COMMISSIONER MAY: Okay. So, how
10 do you feel about LEED, Mr. Chairman? Are you
11 okay with commercially reasonable efforts?

12 CHAIRMAN HOOD: I think what's
13 typically standard I don't have an issue with.

14

15 What about anyone else?

16 VICE CHAIR COHEN: I just wanted to
17 state that I could accept that as well if that's,
18 you know, within industry standards.

19 However, just to give the ANC some
20 comfort is that it really behooves the Applicant
21 to be able to advertise their building as
22 certified LEED and, you know, even though

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1 they're not intending to go for certification,
2 I think it really means something to the general
3 public now. If you read the same, you know,
4 newspapers, whatever, it's becoming the thing
5 to do and it's making different building much
6 more competitive.

7 So, I would think that the Applicant
8 will definitely move in that direction of making
9 sure that everybody knows that their buildings
10 meet LEED standards.

11 CHAIRMAN HOOD: Okay. Anything
12 else?

13 COMMISSIONER MAY: No, I'm ready
14 for the next issue unless --

15 CHAIRMAN HOOD: Let's keep going.
16 Hopefully, we'll get down to the advisory
17 group, but let's keep going.

18 COMMISSIONER MAY: Okay. The
19 tabletop planning for market activity was
20 omitted from the procedural order. I think that
21 that'll get flushed out in the discussion with
22 the Applicant -- between OAG and the Applicant

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1 about how to treat the MOA since this is one
2 of those things that was in the MOA that didn't
3 get listed as a condition. So, hopefully,
4 that'll get flushed out there.

5 The child care facility being
6 omitted from the procedural order, there's a
7 reference to substantial building completion
8 and the concern from the ANC was that that's
9 a vague term.

10 I assume that the Applicant in
11 suggesting this particular language was
12 actually using what is an architectural standard
13 called substantial completion. You know, there
14 are forms and things that one signs off on saying
15 that a building is substantially complete. So,
16 there is an actual milestone associated with
17 substantial completion.

18 I assume that's what is meant, but
19 maybe in discussion with the Applicant, OAG can
20 confirm that, in fact, that's exactly what's
21 intended as opposed to some vague notion of what
22 substantial completion is.

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1 Mr. Turnbull, you agree that that's
2 a specific term that we can rely on and a real
3 milestone.

4 COMMISSIONER TURNBULL: Right.
5 Substantial completion is a well-accepted term
6 that's been used in the industry.

7 COMMISSIONER MAY: In terms of the
8 other issues, the bike racks omitted from
9 procedural order, again, that's something that
10 hopefully will get clarified in the discussions
11 of how the MOA is treated as a proffer.

12 The references to the revised FAR
13 calculation, I think that was for our
14 information and it would have been nice to have
15 that right up front from the very beginning,
16 but now that we have it, I'm not concerned that
17 it suddenly throws the project out of whack from
18 an FAR point of view. I think it's still
19 reasonable density overall. It's just good to
20 know what the real calculation is.

21 So, for me, it was a point of
22 information. It was not a point that provides

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1 a basis for reconsideration of the decision.

2 Not that the ANC was suggesting
3 that, but I think other parties had suggested
4 that.

5 Does anybody else see anything in
6 the ANC's that was worth discussing?

7 CHAIRMAN HOOD: I think we've
8 pretty much hit all of the ANC issues.

9 COMMISSIONER MAY: Yes. Hine
10 School North.

11 CHAIRMAN HOOD: Hine School North.
12 Okay. One and two, I think we've already
13 hashed. Not sure. Did we already mention
14 where their positions were? Three. Below
15 retail uses of the North and South Buildings.

16 COMMISSIONER MAY: You know, I mean
17 I think there was a language inconsistency there
18 that perhaps OAG wants to take a look at, but
19 I'm not seeing the substantive issue if there
20 is one.

21 MR. BERGSTEIN: Well, the question
22 is do you want -- shall means they have to create

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1 the retail. May means they can create the
2 retail. That's a fairly large difference.
3 It's what you expectation is.

4 CHAIRMAN HOOD: Shall means they
5 have to. May means they can.

6 MR. BERGSTEIN: Yes.

7 COMMISSIONER MAY: Well, we didn't
8 have may.

9 MR. BERGSTEIN: Sorry. May be
10 used. Got it.

11 COMMISSIONER MAY: Very commonly
12 used.

13 CHAIRMAN HOOD: So, are we in
14 agreement with using shall? No offense,
15 Commissioner May.

16 COMMISSIONER MAY: I have no
17 problem with shall.

18 Well, again, the way they're
19 describing the problem here, it sounds like it's
20 a language issue. It doesn't sound like it's
21 a substantive issue.

22 CHAIRMAN HOOD: What is the

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1 community expecting? Are they expecting retail
2 or yes, so shall. If the community's expecting
3 this - -

4 COMMISSIONER MAY: No, they shall
5 have the option of -- I mean even the Hine
6 Neighbors are saying they shall have the option.

7 They shall have the option to develop below
8 grade retail.

9 Oh, so, they want it to be optional
10 on both buildings. Is what they're proposing.
11 North and South Building.

12 CHAIRMAN HOOD: Did the ANC comment
13 on that?

14 COMMISSIONER MAY: They shall
15 develop below grade retail in the North Building
16 and shall have the option to develop below grade
17 retail in the South Building.

18 I mean it's a language consistency
19 issue. We say they shall develop it, but if
20 they can't market it, then they get to use it
21 for something else.

22 I mean again I think it's a language

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1 consistency issue that they're raising.
2 Anyway.

3 CHAIRMAN HOOD: Anything else?
4 Vice Chair.

5 VICE CHAIR COHEN: No, I think that
6 again the Office of Attorney General should take
7 a look at this to tighten it.

8 COMMISSIONER MAY: Yes. I think
9 the rest of the Hine School North Neighbors is
10 addressed.

11 CHAIRMAN HOOD: Okay. What about
12 EMMCA?

13 COMMISSIONER MAY: I think
14 everything that was -- we've talked about all
15 the issues that EMMCA mentioned except for the
16 plaza advisory group.

17 CHAIRMAN HOOD: And that actually
18 is going to be in the -- that's an agreement
19 between the ANC and the Applicant I believe.

20 COMMISSIONER MAY: Yes.

21 CHAIRMAN HOOD: Yes, so, I don't
22 know what we can do with that. Hopefully, get

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1 it right. Obviously, the community seems to
2 think that it's very important. So, I'm sure
3 the Applicant will make that work. That's
4 beneficial to the Applicant.

5 Anything else? So, anybody else?

6 Mr. Turnbull?

7 Thank you, Commissioner May, for
8 taking the lead on that.

9 Vice Chair.

10 VICE CHAIR COHEN: No, I just did
11 a off conversation with Commissioner May and
12 I will if Commissioner Turnbull concurs state
13 that the location of the trash room in the North
14 Building is acceptable.

15 I mean, Commissioner Turnbull, do
16 you --

17 COMMISSIONER TURNBULL: Oh, I have
18 no -- I mean it's over the electrical vault.
19 So, I mean the grates have got to be substantial
20 enough to hold a truck. So, that's a
21 construction issue for them. But, I'm okay with
22 it.

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1 VICE CHAIR COHEN: Okay. Thank
2 you. So, I will take that out of the parking
3 lot and just withdraw my concern.

4 CHAIRMAN HOOD: Okay. Since she
5 didn't ask me, I won't -- I feel slighted.

6 COMMISSIONER TURNBULL: Then, Mr.
7 Chair, how do you feel about that?

8 VICE CHAIR COHEN: May I --

9 CHAIRMAN HOOD: That was just a
10 joke. I don't feel slighted. Okay.

11 VICE CHAIR COHEN: Chairman, may I?

12

13 CHAIRMAN HOOD: I think my special
14 public meeting is out the window because of the
15 time response.

16 Ms. Schellin will go over it.

17 MS. SCHELLIN: Yes.

18 COMMISSIONER TURNBULL: Mr. Chair,
19 I just had one other item and it isn't a big
20 item and I guess I'm not a -- I mean they're
21 asking for flexibility for a 5 percent increase
22 in height.

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1 This is primarily on the South
2 Building and it has to do -- let me -- they're
3 talking about the penthouse and the catering
4 kitchen on the roof level. They're asking for
5 a 5 percent flexibility. The building is 94.6,
6 94 feet 6 inches. So, 5 percent would give you
7 roughly 2 feet which I don't -- whatever.

8 But, I think just the Applicant
9 needs to understand that that'll probably throw
10 that back to HPRB. Since they've already had
11 approval at a certain height, that may bring
12 up an issue for HPRB to have to give approval
13 for any additional height in the future if you're
14 going to make a change. So.

15 COMMISSIONER MAY: Commissioner
16 Turnbull, the 4 feet 6 inches is the 5 percent.

17 COMMISSIONER TURNBULL: Well, wait
18 a minute.

19 COMMISSIONER MAY: It is the 5
20 percent. It's 90 feet plus 42.

21 COMMISSIONER TURNBULL: Well,
22 they're saying that the height of the office

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1 component at 7th and Pennsylvania is 94 foot
2 6 inches.

3 COMMISSIONER MAY: Correct. As a
4 result of getting the 5 percent.

5 COMMISSIONER TURNBULL: So, this is
6 not in addition to that then?

7 COMMISSIONER MAY: No.

8 COMMISSIONER TURNBULL: Well, then
9 let's not worry. I mean I think it's confusing
10 the way it's worded.

11 COMMISSIONER MAY: Oh, okay.

12 COMMISSIONER TURNBULL: I mean I
13 guess when I first read it it sounds like in
14 addition to 94 foot 6 they want an extra 5
15 percent.

16 COMMISSIONER MAY: No.

17 COMMISSIONER TURNBULL: So, maybe
18 I'm misreading it then.

19 COMMISSIONER MAY: No, my
20 understanding is that it's 90 feet plus the 5
21 percent and 94-6 --

22 COMMISSIONER TURNBULL: Maybe Mr.

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1 Bergstein can confirm that then.

2 MR. BERGSTEIN: I'm sorry. I was
3 busy taking notes.

4 MS. SCHELLIN: Actually, the
5 Applicant is shaking their head yes in the
6 audience that that is correct.

7 COMMISSIONER TURNBULL: It is?

8 MS. SCHELLIN: The 90 plus the -- as
9 Commissioner May just --

10 COMMISSIONER TURNBULL: Well,
11 maybe we could just reword that so it's a little
12 bit more clear then.

13 CHAIRMAN HOOD: Okay. Anything
14 else on this?

15 Okay. Ms. Schellin, can you give
16 us some dates?

17 MS. SCHELLIN: Yes, sir, two weeks
18 for the Applicant to provide the information
19 requested and also the ANC to provide their
20 report. So, that would be by 3:00 p.m. October
21 29th. Responses from the parties to those
22 filings 3:00 p.m. November 5th and then we can

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1 put this on our November 19th agenda for
2 consideration.

3 CHAIRMAN HOOD: Okay. We ready to
4 move to the next case? Okay. Next,
5 colleagues, let's go to proposed action.
6 Zoning Commission Case Number 10-14. This is
7 the Big Bear Café - Map Amendment @ Square 3103.

8 Ms. Schellin.

9 MS. SCHELLIN: Yes, sir, on this
10 one, there were a few post-hearing submission
11 at Exhibits 50 through 53.

12 CHAIRMAN HOOD: Okay.
13 Commissioners, this is a straight map amendment.

14 Ms. Schellin, did you finish?
15 Okay.

16 We have some exhibits as stated by
17 Ms. Schellin.

18 As you remember, colleagues, there
19 was one party in opposition. They call
20 themselves the Lewis Party and they have some
21 responses which is Exhibit 53.

22 We have the Applicant's submission

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1 which is Exhibit 50.

2 Also, we have a petition, I believe,
3 which was submitted by the Applicant, Exhibit
4 51 and I'm missing an exhibit somewhere.

5 One of the things that I stated at
6 the hearing was that I was going to try to see
7 what we could do in regard to potential impacts
8 from a C2A Zoning could have going forward.
9 One of the things I think that the Lewis Party
10 really wanted some assurances of is that the
11 change in zoning would not -- the Applicant's
12 already stated he would not go any higher as
13 far as height is concerned or do anything within
14 the C2A Zoning. But, I think the Lewis Party,
15 in particular, were concerned that C2A is C2A
16 regardless.

17 There's been testimony that you
18 couldn't go higher than what already exists
19 there which I believe now is 40 feet and also,
20 one of the misstatements which was pointed out
21 is that it stated that the -- that this has been
22 residentially zoned since 1891 and it was

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1 pointed out that the Zoning Regulations are
2 only -- we're about 30 years before the Zoning
3 Regulations were even created or so. Whatever
4 that issue is.

5 But, we know it didn't happen in
6 1891. It wasn't residentially zoned because
7 zoning didn't exist in this City until the '20s,
8 the '30s. Mr. Bergstein?

9 MR. BERGSTEIN: Nineteen
10 twenty-ish.

11 CHAIRMAN HOOD: Twenty-ish.

12 MR. BERGSTEIN: Yes.

13 CHAIRMAN HOOD: I don't know how I
14 forgot that. So, that's definitely a
15 misstatement.

16 COMMISSIONER TURNBULL: We're
17 coming up on 100 years of zoning in D.C.

18 CHAIRMAN HOOD: I'm not going to be
19 there. You and I -- you know, what I was getting
20 ready --

21 COMMISSIONER TURNBULL: You're
22 right. I may not be here for that, but we will

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1 be approaching it.

2 CHAIRMAN HOOD: Okay. Let me open
3 it up.

4 I do have some concerns. I do, but
5 I'm not sure what we can do to ease the Lewis
6 Party's response. I don't want to put -- bind
7 us and do anything that is unprecedented or
8 something that we -- that has never been done.

9 I'm not really comfortable in going down that
10 path. While I would like to give them
11 assurances, but I'm not sure if we can put
12 conditions and everything else in place like
13 we typically do in other cases.

14 But, let me open it up for any
15 comments, Commissioners.

16 COMMISSIONER MAY: Mr. Chairman.

17 CHAIRMAN HOOD: Commissioner May.

18 COMMISSIONER MAY: Yes, I'm
19 not -- I'm certainly comfortable with what we
20 think the likely outcome of this is. That this
21 particular retail establishment will continue
22 to operate and the building will not likely

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1 substantially change as a result and it simply
2 legitimizes this and modifies the map only
3 slightly since this is a building that fronts
4 a street that has a lot of other commercial
5 activity on it to the east and west. So, I'm
6 certainly comfortable with that.

7 We have to make a decision though
8 that we're comfortable with just whatever could
9 happen in the future under C2A and honestly,
10 I don't have a great deal of discomfort with
11 that either because C2A and R4 live next to each
12 other quite comfortably throughout the City.

13 And while there may be some, you
14 know, you may wind up with a building that's
15 a little bit taller, you're certainly not going
16 to wind up with a whole lot of density because
17 it's such a small lot and I think that's one
18 of the reasons why it's not likely to change
19 for the foreseeable future.

20 So, I mean as much as we worry about
21 that or one might worry about that, I don't think
22 it's likely to -- the density is likely to change

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1 on that site, the development is likely to
2 change.

3 I think this is a pretty safe and
4 sensible map amendment.

5 CHAIRMAN HOOD: Anyone else like to
6 comment?

7 COMMISSIONER TURNBULL: I know we
8 struggled with this at the time, but I think,
9 if I remember, under R4 as a matter of right
10 you could go 40 feet, like 40 feet and under
11 C2A, you only get an extra 10 feet. So, you
12 can go 50 feet as a matter of right and it is
13 a small footprint building.

14 I agree with Commissioner May on
15 this. I can't see this site being used for much
16 more than what it is already. Either being
17 rehabbed or renovated and redone.

18 But, to go up more involves a stair
19 or an elevator and again, the footprint to go
20 40 feet is very small.

21 Again, I guess I would concur with
22 Commissioner May that I think the impact on this

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1 area is very minimal.

2 CHAIRMAN HOOD: I know we don't go
3 down these roads, but when I was reading the
4 material, I was just wondering why Mr. Davenport
5 who expressed at the hearing and from what I
6 also read in the materials is very open to
7 working with the Lewis Party and that was
8 actually my suggestion and I was just wondering
9 why nothing ever became of that at least the
10 way I read it. The commitment was there, but
11 it wasn't shown.

12 So, I really am -- I hear what my
13 colleagues are saying, but, you know, I know
14 some of the issues here and, you know, saying
15 the good neighbor policy. But, I was just
16 wondering what happened. Why didn't it
17 continue?

18 It looks like a discussion was had
19 and the submission from Ms. Lewis says "On
20 September 20, 2012, Mr. Banks and I met with
21 Mr. Davenport to discuss the concerns of the
22 Lewis Party. I brought a draft copy of the

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1 proposal of restricted covenants which was used
2 to guide our discussions. While the Applicant
3 agreed to execute a declaration of covenants
4 restricting the height of the property, it was
5 conditional and subject to the lenders consent.

6 In addition, the party would like to request
7 that the Applicant not only execute the
8 declaration, but also have the declaration
9 recorded with his deed."

10 Now, I know we can't get into a whole
11 lot of that. I was just curious if from what
12 I heard from Mr. Davenport and what I'm seeing
13 in this letter, how come the report that came
14 back was not some kind of agreement?

15 I don't know if my colleagues feel
16 any hesitation about -- you know, I'm not
17 inclined to go against what my colleagues had
18 mentioned. I'm just wondering what happened.

19 How come we didn't complete the thought? How
20 come we didn't complete the progress in which
21 they were having those meetings with the
22 conversation that Mr. Davenport said here at

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1 this meeting and also what broke off the talks?

2 Why wasn't anything presented a little more
3 concrete back to us that you all were willing
4 to work it out?

5 Other than -- because at the end of
6 the day once we zone it, and I've heard about
7 the 50 feet and I understand what my colleagues
8 are saying about the small lot, once we zone
9 it, it is what it is.

10 And I was just wondering what
11 happened to those talks?

12 And I don't see anything in the
13 submissions that helps me with that.

14 I don't know if anybody else feels
15 that way.

16 COMMISSIONER MAY: Mr. Chairman, my
17 sense of the agreement or the two submissions
18 that we had gotten was that they had met and
19 they had a discussion about covenants and other
20 issues and there was quite a range of things
21 that were discussed, but there was not, you know,
22 a sufficient level of agreement about what a

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1 covenant would be. You know, the time frame
2 what it would be, for example, and how it might
3 be conditioned.

4 You know, it sounds like it was a
5 reasonable discussion, but it just didn't lead
6 to an agreement in that time period. You know,
7 if we sent them back to the drawing board, they
8 would continue to meet and come to an agreement.

9 But, maybe they wouldn't.

10 I just -- I thought it was an
11 indication of some progress. Just not as much
12 as we would have liked.

13 CHAIRMAN HOOD: And I agree. I
14 wonder if they need some additional time.
15 Because what it says it and I can kind of -- it
16 says "In addition," this is from the Applicant,
17 the Applicant had expressed his willingness
18 provided the Lewis Group withdraws its
19 opposition."

20 The question I have is why didn't
21 you? If the Applicant is agreeing to it, maybe
22 I'm going to far into this. Maybe I need to

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1 stop and just deal with what's before me, but
2 I just want to know why. Why didn't you do what
3 we asked from this Commission to make happen
4 so everybody can drink coffee, hold hands or
5 do whatever they need to do for years to come?

6 What happened?

7 Because there are some other issues
8 if you look and I don't know all because of what's
9 presented to us and this being a map amendment,
10 some of the other issues, but the Applicant seems
11 to be willing. But, I'm not sure what broke
12 off or what happened.

13 COMMISSIONER TURNBULL: Well, I'm
14 not sure either, Mr. Chair.

15 I'm guess I'm just concerned that
16 the Lewis Group I mean -- the letter I mean she
17 gets into tax concerns, property values and
18 basically, you know, maybe he's got too many
19 people working for him. Perhaps it
20 overstaffed. She's getting into the weeds of
21 his business and I'm just concerned that she
22 just doesn't want the business there.

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1 CHAIRMAN HOOD: I didn't get that
2 at the --

3 COMMISSIONER TURNBULL: Page 2.

4 CHAIRMAN HOOD: Yes.

5 COMMISSIONER TURNBULL: I didn't
6 get it at the hearing.

7 CHAIRMAN HOOD: I didn't get it at
8 the hearing and you're right. Some of this is
9 in the weeds, but, you know, we always get stuff
10 in the weeds.

11 COMMISSIONER TURNBULL: Oh, I know.

12 CHAIRMAN HOOD: We have to see our
13 way through or cut the weeds down.

14 COMMISSIONER TURNBULL: Yes.

15 CHAIRMAN HOOD: So, that's kind of
16 where I am. Some of this stuff here I think
17 is legitimate even though it's not proffered
18 before us.

19 COMMISSIONER TURNBULL: Right. To
20 a certain extent.

21 CHAIRMAN HOOD: But, I'm just going
22 by what I heard at the hearing, the consensus

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1 and also what I'm hearing here. I want to go -- I
2 would lean towards more what Commissioner May
3 is saying. Maybe it wasn't enough time.

4 COMMISSIONER TURNBULL: I don't
5 know.

6 COMMISSIONER MAY: Well, Mr.
7 Chairman, I was not really suggesting that there
8 be more time. I was more -- because I'm prepared
9 to move forward with this tonight without any
10 further agreement. You know, if the Chairman
11 wants to allow them more time, I don't have an
12 objection to that, but I wasn't really
13 advocating for that.

14 CHAIRMAN HOOD: I actually would
15 like to give them a little more time.
16 Unless -- you know, but I'm not inclined enough
17 to probably go against it. But, I would just
18 like to give them the opportunity because as
19 stated and by the petitions, there are a lot
20 of folks in the surrounding area and abroad and
21 some further away who this business has been
22 very beneficial.

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1 I just think that from what I see
2 here we're almost there and I may be wrong.
3 Maybe when we come back, we're in the same spot.

4 But, I would just like to allow maybe a few
5 more days, a week or two. Unless my colleagues
6 feel otherwise.

7 COMMISSIONER TURNBULL: I have no
8 objections I mean, Mr. Chair, if that is the
9 way you want to go. I just -- I'm not sure if
10 we're going to get any further, but I am more
11 than willing to go along with it.

12 CHAIRMAN HOOD: Mr. Turnbull, I'm
13 sorry.

14 COMMISSIONER TURNBULL: I was
15 saying I -- if your wish is to give them another
16 two weeks, I think that's fine. I'm not sure
17 we're going to get much further, but who knows.

18 CHAIRMAN HOOD: Okay. Mr.
19 Bergstein, can I ask a question?

20 Is it proper to have like -- I see
21 Mr. Davenport here. Is it proper to ask him?

22 Can we bring him up or -- but, then again, we

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1 don't have the other party here to ask them.

2 MR. BERGSTEIN: The other party's
3 not here?

4 CHAIRMAN HOOD: No, I don't see her.

5 MR. BERGSTEIN: I'm really leery
6 about that. It's on the record, but you would
7 at least have to give the other party an
8 opportunity to respond in writing to anything
9 Mr. Davenport says.

10 So, I'd be very concerned about
11 having basically unilateral testimony about the
12 ability of the Applicant to respond.
13 Particularly if you're going to be persuaded
14 to do additional time based upon the assertion
15 of one party. The other party if they were here
16 would perhaps convince you that no more time
17 was needed.

18 And this is also proposed action.

19 I mean there is going to be more time.

20 CHAIRMAN HOOD: Oh, you know what?

21 This is proposed. I must have too much on my
22 mind. Okay. This is proposed.

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1 Thank you, Mr. Bergstein.

2 Okay. Even though this is
3 proposed, I still would recommend two weeks.
4 Two weeks is -- can you look, Ms. Schellin?
5 I don't look in the audience when I make
6 decisions. I just look at you. Could you see
7 if two weeks is enough?

8 MS. SCHELLIN: Two weeks. Yes, I
9 mean even they did it in one week it's not going
10 to make them come before you again any sooner.

11 So.

12 CHAIRMAN HOOD: Maybe we can do a
13 special. You know, we try to accommodate.
14 We'll do a special public meeting. About 15
15 minutes.

16 MS. SCHELLIN: Okay. So, we could
17 leave the record open until 3:00 p.m. October
18 29th and see if -- I mean whether they talk again
19 and come up with some other kind of agreement,
20 but it allows the opportunity for the Applicant
21 to provide a response whether it's the same or
22 it's something different and then the Lewis

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1 Group would have until 3:00 p.m. November 5th
2 and we'll put this on the November 19th agenda.

3 CHAIRMAN HOOD: Will we notify the
4 Lewis Group?

5 MS. SCHELLIN: We don't usually,
6 but I can send them --

7 CHAIRMAN HOOD: I'm sure they're at
8 home watching this on --

9 MS. SCHELLIN: Yes.

10 CHAIRMAN HOOD: -- webcast live.

11 MS. SCHELLIN: I mean once you're
12 a party, you're suppose to follow the case
13 yourself. But, we could. We don't typically.

14 CHAIRMAN HOOD: If we could in this
15 case just follow up and again, I'm sorry to
16 inconvenience, but I just want to make sure we
17 exhaust it. It gives me a comfort level. I
18 don't have major heartburn, but I just want to
19 find out what happened. It's like this is
20 open-ended.

21 I know that Mr. Davenport said he
22 was willing and I understood what was going on

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1 here. It looked like we were getting somewhere
2 and then all of a sudden it just dropped off.

3

4 COMMISSIONER MAY: Mr. Chairman.

5 CHAIRMAN HOOD: Yes.

6 COMMISSIONER MAY: Given that the
7 last due date that Ms. Schellin had suggested
8 was November 5th and we wouldn't actually take
9 it up until the 19th, it seems to me that the
10 whole schedule could slide a week to give them
11 a little bit more time to try to get together.

12 Does that make sense?

13 MS. SCHELLIN: It's just if we don't
14 get it, then we don't have time to get it in
15 the packages ahead of time. If you guys want
16 to read it the night you get here --

17 COMMISSIONER MAY: No. But, you
18 could slide the deadline of the 5th to the 12th
19 and we would still get it --

20 MS. SCHELLIN: That's a holiday.
21 So, then - -

22 COMMISSIONER MAY: All right.

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1 MS. SCHELLIN: So, we have a short
2 week already preparing the packages.

3 COMMISSIONER MAY: So, the Friday
4 before or whatever the day is before.

5 MS. SCHELLIN: The 9th for the party
6 to respond, the Lewis Group?

7 COMMISSIONER MAY: Yes. I mean
8 we -- you know, the parties go out on Wednesday.
9 You're saying that if we got it on Tuesday the
10 13th we wouldn't get it in time?

11 MS. SCHELLIN: Well, if OAG wants
12 to be able to provide any comments, it doesn't
13 give it to them ahead of time.

14 I mean if you want to move it to the
15 9th, we can move it to the 9th. That's the
16 Friday before.

17 MR. BERGSTEIN: I don't see a need
18 for us to make any comments on the actual --

19 MS. SCHELLIN: Okay. Then we can
20 make it --

21 MR. BERGSTEIN: This is just
22 basically settlement discussion. So --

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1 MS. SCHELLIN: Then we can make it
2 noon on the 13th.

3 COMMISSIONER MAY: And then back up
4 from there. Right. So, then a week --

5 CHAIRMAN HOOD: You know what? Mr.
6 Bergstein, can we do this? I haven't done it
7 now. Didn't ask for it. But, can we do what
8 we're doing? Going down this line asking.

9 MR. BERGSTEIN: I'm sorry. I'm not
10 sure what -- I'm not sure what you're asking
11 me.

12 CHAIRMAN HOOD: I was asking is
13 this -- well, never mind. You know what. Let's
14 keep it. I don't need to ask.

15 MS. SCHELLIN: I'll just give the
16 new dates.

17 CHAIRMAN HOOD: I don't need to ask
18 that question.

19 MS. SCHELLIN: Based on what
20 Commissioner May is suggesting, if I understand
21 correctly, the Applicant will now have until
22 November 6 noon to provide their response and

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1 then the Lewis Party would have until November
2 13th noon to provide their response and we'd
3 still take it up November 19th. Okay.

4 CHAIRMAN HOOD: Okay. I'm sorry
5 for any inconvenience and we'll move right on.

6 Okay. Commissioners, anything? Okay.
7 Let's move to the next case which is a hearing
8 action and I want to thank Commissioner Miller
9 for being patient with us.

10 Hearing Action Zoning Commission
11 Case Number 12-14 3rd & M, LLC & Park Inn
12 Associates, LP - Consolidated PUD & Related
13 Map Amendment @ Square 542 and we're going to
14 call these together. Zoning Commission Case
15 Number 12- 14A 3rd & M LLC - Consolidated PUD
16 & Related Map Amendment @ Square 542.

17 Mr. Goldstein.

18 MR. GOLDSTEIN: Good evening, Mr.
19 Chairman, Members of the Commission.

20 The Applicant in this case has filed
21 two consolidated planned unit developments and
22 related map amendments from R5D to CR on Lot

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1 79 and Square 542 at the northwest corner of
2 M and 3rd Streets, S.W.

3 The reason for the separate
4 applications is due to the non-contiguous
5 arrangement of the project site. Nevertheless,
6 OP proposes to review the applications in tandem
7 due to the close relationship between the
8 project components.

9 Overall, the Applicant proposes to
10 construct three new apartment buildings
11 containing 401 residential units and about
12 370,000 new square feet.

13 The buildings would be assembled
14 around two existing nine-story apartment
15 buildings designed by I.M. Pei on the site.
16 One of which is included as part of the
17 application. Specifically, two new 110-foot
18 tall residential buildings would replace
19 existing surface parking lots to the north and
20 south ends of the site. Essentially, book
21 ending the Pei buildings. A new 45-foot tall
22 building would also be located perpendicular

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1 to the Pei buildings and fronting on 3rd Street.

2 In general, the project would better
3 utilize available space in close proximity to
4 transit.

5 Other details of the proposal
6 include a minor amount of nonresidential use
7 on the buildings' ground floors along M and K
8 Streets. Two hundred and eighty-nine spaces
9 would be located underground in underground
10 garages beneath the new high rises accessed from
11 only one curbcut along K Street and one existing
12 shared curbcut from M Street.

13 The new buildings would occupy about
14 half the site. Meaning there would be a
15 substantial amount of open space.

16 The northern Pei tower tower would
17 be renovated as part of the proposal and the
18 application also provides that affordable
19 housing would be provided consistent with the
20 Land Disposition Agreement and OP has requested
21 more information regarding how the project
22 satisfies or possibly exceeds the terms of that

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1 disposition.

2 The application requests
3 flexibility from the size of the rear yards,
4 loading features and roof structure heights and
5 setbacks.

6 Concerning specific benefits and
7 amenities, the Applicant lists items such as
8 a historically sensitive improvement to the
9 existing northern Pei tower, the
10 re-configuration of street parking along 3rd
11 Street and a contribution to the Southwest
12 Public Library which is across the
13 street -- across K Street to the north of the
14 site.

15 OP encourages the Applicant to
16 continue to clarify the details of the proffers
17 and the work with the ANC to insure that the
18 benefits and amenities package is sufficiently
19 robust.

20 Finally, the OP report included some
21 questions regarding building design. In
22 particular, asking the Applicant to reexamine

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1 the proportion of the center building, to
2 elaborate on transportation demand management
3 measures among other items as things that the
4 Applicant should further address prior to a
5 public hearing.

6 The Comp Plan Future Land Use Map
7 designates the site as high-density
8 residential. The proposed CR Zoning would
9 primarily accommodate the project's height.
10 While the proposed FAR would be about half what
11 is otherwise permitted in a CR PUD.

12 As detailed in the OP report, the
13 Applicant's proposal is not inconsistent with
14 this Comp Plan Future Land Use designation or
15 the policy guidance.

16 OP recommends that the Commission
17 set down the application.

18 I'm now available for any questions
19 the Commission may have.

20 CHAIRMAN HOOD: Okay. Thank you,
21 Mr. Goldstein.

22 Commissioners, I want to open it up

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1 if we have any questions of the Office of
2 Planning or something we may want to see.

3 The Applicant's here. They're
4 taking good notes because I think all
5 five -- well, at least four of them have pencil
6 and pad. The other one probably has a recorder
7 or something. I don't know, but anyway let's
8 open it up.

9 Vice Chair Cohen.

10 VICE CHAIR COHEN: Are the Pei
11 buildings both on what registers? Historic
12 registers.

13 MR. GOLDSTEIN: The Pei buildings
14 have not been landmarked. My understand is they
15 could be eligible for historic landmarking, but
16 they're not.

17 VICE CHAIR COHEN: So, I would like
18 to know if the Applicant is proposing to landmark
19 the one that they will have control over.

20 Just an observation is that smaller
21 building, just to me again from the views, it
22 looks so strange there. It looks so

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1 overpowered. So, I guess what I would like to
2 know is a little bit more about its -- why it's
3 there. I mean, you know, other than it's going
4 to add, but it just doesn't look consistent.
5 That's all.

6 And then I have a question. Is that
7 building to the -- I guess it's to the northwest
8 and is that built? Actually built? That one?
9 Is it under construction?

10 MR. GOLDSTEIN: Is that the
11 building? There's an 11-story building. The
12 former EPA building. It is existing and
13 currently being renovated I believe for
14 residential uses.

15 VICE CHAIR COHEN: Okay. But, it's
16 somewhat higher by the look of the rooftop.
17 It's somewhat higher?

18 MR. LAWSON: Joel Lawson from the
19 Office of Planning.

20 Yes, it's actually at 130 feet.
21 It's part of the same planned unit development
22 that covered the rest of the Waterside Metro

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1 Station site. The development that's happening
2 there. It's part of that PUD.

3 VICE CHAIR COHEN: Oh, in some of
4 the drawings, I see sort of a connection, a glass
5 connection between the buildings, but I don't
6 see it on all the drawings. So, if that could
7 be described more fully. You know, I see it
8 on some and I don't see it on others. So, I
9 presume it's going to be created.

10 I guess those are my questions. Oh,
11 and, of course, I think there was information
12 on LEED. I'd like additional information as
13 to the sustainability features that they are
14 committing to especially in light of this being
15 part of the eco-district. The NCPC's
16 eco-district. No?

17 COMMISSIONER MAY: That's north of
18 the freeway.

19 VICE CHAIR COHEN: Okay. Sorry.
20 Although, those issues are still relevant.

21 CHAIRMAN HOOD: Okay.
22 Commissioner Turnbull.

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1 COMMISSIONER TURNBULL: Thank you,
2 Mr. Chair.

3 Let me just follow up on the Vice
4 Chair's comment on the hyphen between the new
5 building and the Pei building. There is a
6 drawing on 1.7 N/1.8 N that shows this little
7 structure, but we're really going to need some
8 better drawings of it I think. They're sort
9 of gray washed-out pictures and I really think
10 we need a color view of this rendering how it
11 actually meets the Pei building. I'd like to
12 really see.

13 Do you all have it?

14 Anyways, so, it is shown. I mean
15 it's shown on these drawings and it's on a few
16 others, but I think we really need some better
17 characterization to see visually what this
18 building -- what it's really going to look like.

19 The other thing is then I think Mr.
20 Goldstein's touched on some of the -- in a very
21 general way on the architectural issues. I
22 think there are some things and I'm not going

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1 to get into. Maybe Commissioner May will touch
2 on it a little bit more, but there are some issues
3 architecturally that I think we'll have to get
4 into at the hearing.

5 One of the things that is missing
6 on the drawings is dimensions, vertical
7 dimensions of the building. The roof plan has
8 no dimensions as far as what the setbacks are
9 and what the heights are of the penthouse. I
10 saw some dimensions on a site plan for some very
11 basic elements from a planning standpoint, but
12 nothing vertically. So, I think if we had some
13 better drawings that showed the dimensioning
14 and what you're looking for in relief on the
15 roof. I think we're going to need that.

16 And I would like to see some better
17 perspectives of looking at street level at the
18 buildings and how they really relate to one
19 another. There were a couple, but I think
20 you're going to need a few more and some of the
21 ones like I mentioned on 1.7N and 1.8 I think
22 that's going to be a very important aspect on

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1 how you're meeting the other buildings.

2 So, and I guess Mr. Goldstein's
3 comments architecturally, I'm concerned about
4 the penthouses and how they look like and how
5 big they are and what you're really doing up
6 there. So, we're going to need some better
7 definition of what's happening on the
8 penthouses.

9 And we'll need a material board, of
10 course, when we go to the hearing and I guess
11 that's about it for me.

12 CHAIRMAN HOOD: Okay. Thank you.
13 Any other questions for Mr. Goldstein?
14 Commissioner May.

15 COMMISSIONER MAY: I don't really
16 have any questions, but I have a couple of
17 comments and it's really not much.

18 The Vice Chairman brought up the
19 issue of the sort of that smaller building in
20 between and actually, I mean I think that's
21 probably a fairly common occurrence in
22 Southwest. Certainly in laying out buildings

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1 and sites in this era. It was common to have
2 sort of a low building/high building kind of
3 dialogue going on and it happens here only in
4 Southwest. So, I'm not uncomfortable with that
5 at all.

6 There are some aspects of the
7 architecture that -- I mean on the one hand,
8 it's a -- I think it's a pretty simple complement
9 to what is existing there and it's kind of -- it's
10 not your typical kind of modern, you know,
11 current -- modern in the sense of current
12 architecture that we see. There's some
13 references in the architecture to the style of
14 the buildings that surround it and I find that
15 actually quite interesting.

16 I can't say that it's my favorite
17 combination of colors, but I'm willing to go
18 along with that. I'm not suggesting anything
19 really change.

20 The one feature about it that is
21 probably the most incongruous for me is the
22 series of these sort of visors or breeze-like

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1 type things that are at the tops of the buildings
2 along the major facades of all the buildings
3 and I'm not -- I mean I guess I'm not totally
4 opposed to having that kind of a feature. I
5 just don't -- I'm not loving what I see in terms
6 of the combination of things that are there and
7 maybe it's just because there are two layers
8 of it on the taller buildings and they're
9 not -- and the dialogue between those two
10 features isn't quite right. I don't know. I
11 just have questions about it. Put it that way.

12 I do like the fact that, you know,
13 the -- we're dealing with a relatively simple
14 building, simple plans, simple penthouses. Not
15 a lot of extra stuff that we often wind up seeing
16 that is a challenge to consider in a PUD.

17 So, I mean I guess I have the
18 question. What we're seeing in the penthouse
19 in terms of occupiable space, you want to tell
20 me what's going on there? I mean I see the
21 restrooms and sort of thing that we normally
22 see, but I see a bar.

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1 MR. GOLDSTEIN: Certainly, it's
2 something we can talk with the Applicant about
3 and --

4 COMMISSIONER MAY: Okay.

5 MR. GOLDSTEIN: -- find out more
6 information.

7 COMMISSIONER MAY: Okay. Because
8 I assume that those are -- I mean those are real
9 penthouses. We're not below the permitted
10 height in the zone or are we?

11 MR. GOLDSTEIN: I think that that
12 is the permitted height. It's 110 feet in a
13 PUD CR Zone.

14 COMMISSIONER MAY: Right.

15 MR. GOLDSTEIN: So, it can't go any
16 higher. Yes.

17 COMMISSIONER MAY: Right. So,
18 they can't have any occupiable space in the
19 penthouse under the --

20 MS. STEINGASSER: I believe you can
21 for recreational -- communal recreational
22 purposes.

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1 COMMISSIONER MAY: Recreational
2 purposes. But, I thought it was in service to
3 other --

4 MS. STEINGASSER: As long as it
5 didn't exceed the Height Act. We made an
6 amendment about --

7 COMMISSIONER MAY: Oh, is that what
8 it was?

9 MS. STEINGASSER: -- seven or eight
10 years ago.

11 COMMISSIONER MAY: Okay.

12 MS. STEINGASSER: It's been awhile
13 back.

14 COMMISSIONER MAY: All right. I
15 mean --

16 MS. STEINGASSER: But, we'll
17 clarify that one way or another for you.

18 COMMISSIONER MAY: I'm actually
19 quite open to those amenities on that level.
20 I just want to make sure that it's consistent
21 with the regulations the way they are and we
22 don't have a Height Act issue I assume with this

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1 building.

2 MR. GOLDSTEIN: I don't believe so.

3 No.

4 COMMISSIONER MAY: No. Okay. All
5 right. That's it.

6 CHAIRMAN HOOD: Commissioner
7 Miller?

8 COMMISSIONER MILLER: Yes, I just
9 wanted to emphasize some of the points made by
10 the Office of Planning in its set-down report
11 that I think the Commission will need by the
12 time of the public hearing including, you know,
13 strengthening of the proffers and public
14 amenities and benefits after consultation with
15 the effected ANC, the Transportation Management
16 Plan, how much -- oh, back to the proffers.
17 The quantification of and more specificity on
18 what the contribution will be to the public
19 library or to the re- configuration of 3rd Street
20 parking, how much green roof will be there and
21 how the application does respond to the
22 requirements of the LDA and how it exceeds

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1 the -- whether it exceeds the requirements of
2 the LDA or how it meets them. It might be
3 helpful to see the LDA. Maybe that was in our
4 packet, but I didn't see it. So, that about
5 covers it.

6 On Vice Chair Cohen's comment about
7 the center building's height, I can understand
8 the variation of heights in Southwest. I would
9 like to know a little bit more about why the
10 45-foot height is the appropriate height. Why
11 it shouldn't be higher to get more than 19 units
12 or how that's just arrived at and why it makes
13 sense architecturally or from an urban design
14 standpoint.

15 So, that's about it. I don't have
16 any questions. Just those observations, Mr.
17 Chairman.

18 CHAIRMAN HOOD: All right. Thank
19 you very much, Commissioner.

20 Any other? Mr. Turnbull?

21 COMMISSIONER TURNBULL: I just
22 wanted to apologize to Mr. Goldstein. I

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1 actually called him Mr. Goldberg. So, mea
2 culpa.

3 MR. GOLDSTEIN: I can respond to
4 either. That's fine.

5 COMMISSIONER TURNBULL: I'm not the
6 only one that's -- okay.

7 CHAIRMAN HOOD: Okay. Well, we
8 apologize to Mr. Goldberg for -- I mean Mr.
9 Goldstein.

10 All right. Anything else? Any
11 other questions?

12 Okay. Is that it, Ms. Schellin?
13 Do we have anything else?

14 Oh. Oh, we need to make a motion
15 to -- what are we going to do with this? I was
16 about ready to close out.

17 VICE CHAIR COHEN: I will move to
18 set down Zoning Case Number 12-4 and 12-4A, 3rd
19 & M, LLC & Park Inn Associates, LP - Consolidated
20 PUD & Related Map Amendment @ Square 542.

21 COMMISSIONER MILLER: I would
22 second that, Mr. Chair.

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1 VICE CHAIR COHEN: Well, dash 14A
2 and dash 14.

3 CHAIRMAN HOOD: Oh, I'm sorry. I
4 thought I heard 12-4.

5 COMMISSIONER TURNBULL: Well, Mr.
6 Chair, do we want to combine those now into one?

7 CHAIRMAN HOOD: Yes, I think she
8 said -- she mentioned both.

9 COMMISSIONER TURNBULL: Did she?

10 VICE CHAIR COHEN: I did.

11 CHAIRMAN HOOD: Yes, she mentioned
12 both. Oh, combine them as a case to be heard.
13 Combine them.

14 VICE CHAIR COHEN: As a combined
15 case to be heard.

16 CHAIRMAN HOOD: Okay.

17 COMMISSIONER MILLER: I would
18 second that, Mr. Chairman.

19 CHAIRMAN HOOD: Okay. It's been
20 moved and properly seconded. Any further
21 discussion?

22 All those in favor?

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1 (Ayes.)

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

5 MS. SCHELLIN: Yes, sir. Before
6 staff records the vote, can we clarify? I know
7 that it's going to be heard together and you're
8 saying combine. Does that mean that we can just
9 combine all of the filings so that all filings
10 go to one file and not the second case?
11 Everything can be filed in Zoning Commission
12 Case Number 12-14. We can put a note in 12-14A
13 to see that case.

14 CHAIRMAN HOOD: But, the
15 materials -- exhibit numbers will have 12-14
16 versus 12-14A. Right?

17 MS. SCHELLIN: No, not if we're
18 going to have one file.

19 CHAIRMAN HOOD: Won't divide it.

20 MS. SCHELLIN: It would be -- it
21 would have both case numbers on it. It would
22 say 12-14 and 12-14A, but then rather than having

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1 the same document in two files, we could just
2 have one file.

3 CHAIRMAN HOOD: Yes, I don't see a
4 problem. I was just trying -- okay. I don't
5 think we have an issue.

6 MS. SCHELLIN: Okay. All right.
7 Staff records the vote 5-0-0 to set down Zoning
8 Commission Case Numbers 12-14 and 12-14A as
9 contested cases to be combined into one record
10 or one file rather. Commissioner Cohen moving.
11 Commissioner Miller seconding. Commissioners
12 Hood, May and Turnbull in support.

13 CHAIRMAN HOOD: Okay. Do you have
14 an Office of Planning Status Report, Ms.
15 Steingasser?

16 MS. STEINGASSER: Just real
17 quickly, I'll give you an update on where we
18 are in ZRR. We do have a communications and
19 meeting facilitation service under contract.
20 We'll be bringing a schedule back to the Zoning
21 Commission at the next meeting.

22 CHAIRMAN HOOD: Okay. Any

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1 questions of that?

2 Okay. Thank you, all, very much.

3 Anything else, Ms. Schellin?

4 Okay. With that, I want to thank
5 everyone for participation tonight and this
6 meeting is adjourned.

7 (Whereupon, at 8:20 p.m., the
8 meeting was adjourned.)

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