

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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-----: :
IN THE MATTER OF: :
: :
Forest City Washington - : Case No.
Text amendment to permit : 11-05
general office use on the :
second floor of Building 173 :
on an interim basis in the :
Southeast Federal Center - :
11 DCMR ' 1805 :
: :
-----: :

Thursday,
July 7, 2011

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
11-05 by the District of Columbia Zoning
Commission convened at 6:30 p.m. in the
Office of Zoning Hearing Room at 441 4th
Street, N.W., Washington, D.C., 20001,
Anthony J. Hood, Chairman, presiding.

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
ARLOVA JACKSON

The transcript constitutes the minutes from the Public Hearing held on July 7, 2011.

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

Preliminary matters..... 4
ALEX NYHAN, VP of Development, Forest City 10
Office of Planning, Ms. Jackson..... 26
VOTE: 5-0-0 to approve..... 31

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

6:30 p.m.

CHAIRMAN HOOD: Okay. Good evening, ladies and gentlemen.

This is a public hearing of the Zoning Commission for the District of Columbia for Thursday July 7, 2011. My name is Anthony Hood. Joining me this evening are Vice Chairman Schlater, Commissioner Selfridge, Commissioner May and Commissioner Turnbull. We are also joined by the Office of Zoning staff Ms. Sharon Schellin, the Office of Planning staff we expect to be joined by Mr. Lawson and we're joined by Ms. Jackson. We're also joined by Mr. Lawson.

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

The subject of this evening's hearing is Zoning Commission Case 11-05. This is a request by Forest City Washington for text amendments to the zoning regulations to permit general office use on the second floor

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1 of Building 173 located on parcel P of the
2 Southwest Federal Center site on an interim
3 basis.

4 Notice of today's hearing was
5 published in *DC Register* on May 20, 2011.

6 The hearing will be conducted in
7 accordance with provisions of 11 DSCR 3021 as
8 follows:

9 Preliminary matters;

10 Presentation by the petitioner in
11 the case, Forest City Washington;

12 Report of other government
13 agencies;

14 Report of ANC 6D;

15 Organizations and persons in
16 support;

17 Organization and persons in
18 opposition.

19 I believe we also will be hearing
20 from the Office of Planning, at some point.

21 The following time constraints
22 will be maintained in this meeting:

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1 Petitioner has 15 minutes;
2 Organizations five minutes;
3 Individuals three minutes.

4 The decision of the Commission in
5 this case must be based exclusively on the
6 public record.

7 Please turn off all beepers and
8 cell phones at this time so as not to disrupt
9 these proceedings.

10 Again, just a reminder, when
11 presenting information to the Commission,
12 please turn on and speak into the microphone.

13 First say your name, your home address. When
14 you are finished speaking please turn your
15 microphone off so that your microphone is no
16 longer picking up sound or background noise.

17 At this time the Commission will
18 consider any preliminary matters.

19 Does the staff have any
20 preliminary matters?

21 MS. SCHELLIN: Staff would just
22 advise that we do have an affidavit of

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1 maintenance. The property was maintained --
2 the signs were maintained only for the
3 posting.

4 CHAIRMAN HOOD: Okay. With that
5 either Mr. Feola or Mr. Avitabile or whoever's
6 -- oh, hold on one second.

7 MS. SCHELLIN: They're proffering
8 experts, or not? Swearing in, it's a
9 rulemaking case.

10 CHAIRMAN HOOD: Well we'll swear
11 them in anyway so we can make sure they tell
12 the truth. They're going to be sworn in.

13 All right. Okay. Mr. Feola
14 you may begin.

15 MR. FEOLA: In fact, Mr. Chairman,
16 lawyers never swear in, so.

17 CHAIRMAN HOOD: But you want your
18 other folks to be sworn in. Okay.

19 MR. FEOLA: Just telling the
20 truth.

21 CHAIRMAN HOOD: All right.

22 MR. FEOLA: Thank you, Mr.

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1 Chairman.

2 For the record, Phil Feola with
3 Dave Avitabile from Goulstone and Storrs on
4 behalf of the applicant.

5 With me this evening, and I'm
6 going to introduce a couple of people in the
7 audience who are intending to speak. Pat
8 Daniels from the General Services
9 Administration, who owns most of this property
10 still but not this particular piece right now.

11 Tom Henneberry who is Chief Operating Officer
12 for Forest City. Jordon Goldstein who's a
13 lead architect from Gensler for the building
14 that we're going to talk about tonight. And
15 to my right is Alex Nyhan who is Vice
16 President of Development for Forest City.

17
18 And as the Chair pointed out, the
19 request is fairly simple. We're requesting an
20 amendment to the text on the regulations to
21 allow for a temporary office use for the
22 second floor of one specific building in the

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1 Southeast Federal Center. The project now
2 known as The Yards.

3 When the Zoning Commission created
4 this special zoning categories for the
5 Southeast Federal Center created two aspects
6 of the W-0 zone. It created an open space
7 zone which was intended to be a place for park
8 and recreational facilities and a development
9 area within the W-0 zone for buildings that
10 could service and provide services for people
11 coming to the park.

12 Forest City came to this
13 Commission a few years ago and got permission
14 to build out the open space with a park and as
15 if you've been down there, it's been built and
16 operating. And that was in 08-04. And we
17 came back for the development area in 08-04A
18 to be able to build two new retail pavilions
19 and to convert an existing building, The
20 Lumber Shed, Building 173, into a two story
21 retail facility.

22 We believe the goal of the

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1 Commission's regulations for this part of the
2 Southeast Federal Center were to create a
3 people friendly, pedestrian oriented park and
4 consequently the Commission choose not to
5 allow office use as a matter of right in this
6 area. The Commission's goals and Forest
7 City's goals are the same in the long run, to
8 create the people, pedestrian friendly place
9 for the park. And Forest City wants to start
10 with the Lumber Shed Building but as you'll
11 hear in a few minutes, they've had trouble
12 getting the financing and tenant mix together
13 to actually put that project together.

14 So consequently we're asking for
15 an amendment to 1805.9 for 20 years to allow
16 office use on the second floor. And with that
17 I'll let Mr. Nyhan explain the rationale.

18 MR. NYHAN: Good evening.

19 CHAIRMAN HOOD: Is your microphone
20 on?

21 MR. NYHAN: Good evening Chairman
22 Hood and other members of the Commission. For

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1 the Record my name is Alex Nyhan, Forest City
2 Washington.

3 As Mr. Feola mentioned we've been
4 able to achieve some success at The Yards so
5 far, and I wanted to give a brief thumbnail
6 sketch of where we are today. And then get
7 into a little bit of what we believe is a
8 reasonable rationale for our request.

9 If you look over here, you can see
10 a board that depicts the various parcels of
11 The Yards. And within those parcels we've
12 highlighted the four buildings that
13 collectively comprise really our first phase
14 of trying to create a sense of place.

15 The first of those buildings is
16 labeled as "M" there, which is our so-called
17 Foundry Lots Building. The leasing of that
18 begins next month, which is 170 apartments of
19 which 20 percent are affordable. It's an
20 adaptive for use project. The apartments will
21 start delivering in October.

22 The second building of our phase

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1 one is depicted as "K" on that building site
2 plan, which is the so called Boiler Maker
3 Building, which will start construction this
4 month and will feature various restaurants and
5 other retailers of which five were announced a
6 few weeks ago. That building will then open
7 next fall in 2012.

8 And then the third building,
9 assuming we can find a way to move forward,
10 will be The Lumber Shed which is the subject
11 of our hearing tonight, Building 173, on the P
12 parcel where we'd like to start that
13 construction this fall and then open that
14 building late 2012 or possibly early 2013, if
15 it comes to that.

16 And then the fourth building of
17 phase one is also slated to commence
18 construction this fall as well, which is the
19 building that has the Harris Teeter and the
20 apartments on top of the Harris Teeter.

21 So I guess all in all we're
22 grateful that after many years of planning and

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1 collaboration with various groups we're now
2 able to see some construction starts for that
3 first phase and continue to build on the
4 positive momentum that we've seen in The Yards
5 Park.

6 In the next few years we will have
7 about one-third of the whole retail program
8 for the whole Yards project online. So, the
9 Yards is about 400,00 square feet of retail,
10 we'll have about 150,000 online by late 2013
11 if those four building start as I have
12 mentioned.

13 I guess in the spirit of our
14 approach to retail we have a little bit of
15 experience working in other urban retail
16 environments with 27 million square feet of
17 retail that we've developed nationally. And
18 part of that experience has been brought to
19 bear in our attempts to market the retail for
20 this building, Building 173, in the park. We
21 have been at it for several years now and
22 there is good news and bad news.

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1 The good news is that there have
2 been tremendous restaurant interest in the
3 first floor and the less good news, is that
4 it's been very difficult to market the second
5 floor to retailers in The Yards Park. Because
6 the park is really designed to be an active
7 people place, we feel that it's important to
8 get this building started and build on the
9 energy that's there. And give people a place
10 to get in from the elements and have a bite to
11 eat or have an ice cream cone or whatever the
12 case may be. So for that reason we are
13 anxious to jumpstart this building.

14 As you can tell from the
15 renderings around here that you are very
16 familiar with from the last review, the design
17 intent calls for the renovation and adaptive
18 use of this historic building. And to that
19 end we have been working carefully with the
20 various design constituents of CFA, CHIPPA, OP
21 to get our final designs approved. And we are
22 now in for building permit on this building.

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1 So I guess I wanted to jump to,
2 why do we feel that we need to make this
3 request for an interim office use on the
4 second floor? And basically the reason for
5 that is because there's not retail leasing
6 interest on the second floor, but we need to
7 achieve a certain pre-leasing threshold for
8 the building to be able to get it financed and
9 therefore start construction. Even if we're
10 able to lease the entire first floor, we won't
11 be at that threshold. And therefore we need
12 to find a viable use for the second floor on
13 an interim basis to get the building financed
14 and get it going.

15 Answering that construction start
16 question is fundamental to finalizing our
17 deals with the restaurants because it's sort
18 of a coordination question where they all want
19 to sign up but they need to know when the
20 building is actually going to start.

21 With respect to the office program
22 on the second level on an interim basis, we

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1 would be the tenant. Forest City Washington
2 would move from the central business district
3 down to the Yards. And that second floor
4 space would be occupied by our whole regional
5 office as well as some maintenance and
6 management staff who will be working on The
7 Yards.

8 I think I'll stop there, Mr Feola.
9 And that's basically the summary of our
10 rationale and be pleased to address any
11 questions you may have.

12 Thank you.

13 MR. FEOLA: Stand ready for
14 questions, Mr. Chair.

15 CHAIRMAN HOOD: Okay. Great.
16 Thank you, Mr. Feola and Mr. Nyhan for the
17 presentation.

18 Commissioners, we have any
19 question? Mr. Turnbull?

20 COMMISSIONER TURNBULL: I guess
21 the one obvious question is: Why 20 years?
22 Seems like an awfully long time to have an

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1 interim use for office from the CFO. Why not
2 10? I mean, why such a longer reach out there?

3 MR. NYHAN: Well the simple answer
4 to that is we ask for forever so we could have
5 the maximum flexibility. And the Office of
6 Planning said they'd only go to 20 years, and
7 that's how we got the 20 years.

8 I guess to your underlining
9 question, you know what does financing really
10 require? Why does it have to be 20 years, if
11 that's kind of the question you have. We need
12 to have a dependable revenue stream to get
13 both the debt and the equity required to be
14 able to build this building and, you know,
15 therefore the longer the term the better and
16 the more certain that revenue stream is.

17 COMMISSIONER TURNBULL: Do you see
18 Forest City as being the tenant for 20 years,
19 or do you see maybe moving in five, ten, or
20 whatever, and looking for another tenant?

21 MR. NYHAN: I would see Forest
22 City as the only office tenant there because

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1 really the point of putting Forest City on
2 that second floor is to jumpstart the
3 building.

4 COMMISSIONER TURNBULL: Okay.

5 MR. NYHAN: Forest City doesn't
6 have another office building that we can
7 occupy in The Yards yet. So as soon as we can
8 develop another office building there and
9 assuming some growth in the local economy, et
10 cetera, it would be very natural for Forest
11 City to springboard from The Lumber Shed at
12 some point into sort of more traditional
13 office space. And at the same time then back
14 fill that second floor with retail and
15 restaurants once we've sort of proving out the
16 concept more.

17 COMMISSIONER TURNBULL: What do
18 you think -- is it just the idea of the second
19 floor that's hard to sell to retail? They
20 like that off-street direct access?

21 MR. NYHAN: That's true. It's
22 second floor retail is always very difficult

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1 but in this particular case I think it's made
2 just a little bit more challenging by two
3 factors:

4 1. That it's kind of by itself
5 right now because we haven't been able to fill
6 in those other parcels --

7 COMMISSIONER TURNBULL: Right.

8 MR. NYHAN: -- around the park yet
9 with buildings. I think once we do that, it
10 will be much easier to tell that story of the
11 viability of second floor retail.

12 And the second factor never will
13 go away, and that's just sort of the
14 seasonality of there's lots of people in the
15 park from, you know, April through October
16 but, you know, restaurants and retailers will
17 have to pay rent 12 months a year. So they
18 need to sort of think of the ups and downs of
19 that. But my suspicion is filling in the
20 first level with restaurants and retail,
21 building in a few of our other parcels around
22 there, there will be demand for that second

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1 floor retail space. And candidly, we have
2 another two buildings in this development zone
3 in the park that are zoned for two levels of
4 retail. So really the onus is on Forest City
5 to develop that sense of place that we'll be
6 able to have the market demand for the second
7 floor retail in all three buildings.

8 COMMISSIONER TURNBULL: Okay.
9 Thank you.

10 CHAIRMAN HOOD: Commissioners, any
11 other questions? Commissioner May?

12 COMMISSIONER MAY: In the long
13 term when more of the development is built,
14 are you anticipating that this space will
15 command higher rents as second floor retail or
16 as office space? In other words, is there
17 going to be a financial incentive for you to
18 move your office down to the basement of some
19 other building, which is wherever else you'd
20 go?

21 MR. NYHAN: Over time if the
22 second floor retail can trend the way our

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1 first floor retail tenants have trended in
2 both the Boiler Maker and The Lumber Shed
3 Building, it'll make more financial sense for
4 it to be retail.

5 COMMISSIONER MAY: Okay.

6 MR. NYHAN: But I think even kind
7 of even beyond that, you know, our job is to
8 fill in the second floor retail of all three
9 of those buildings. So we've just got to keep
10 at it and then ultimately move our office to a
11 more traditional office building.

12 COMMISSIONER MAY: Okay. What
13 would you think if this interim use were sort
14 of a one time thing? In other words, and I
15 don't know how this would be phrased, but that
16 there could be an interim use but that once
17 you've committed to go retail that there's no
18 going back.

19 MR. NYHAN: I mean, I understand
20 why the Commission would want to do that. And
21 my job is to get the building going.

22 COMMISSIONER MAY: Right.

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1 MR. NYHAN: You know what I mean?

2 So if that's the direction that the
3 Commission wants to go and I can get my
4 building going, then great.

5 COMMISSIONER MAY: Okay. I don't
6 know if we want to go in that direction. It
7 just occurred to me. Thanks.

8 CHAIRMAN HOOD: Any other
9 questions? Vice Chairman?

10 VICE CHAIRMAN SCHLATER: Mr.
11 Nyhan, the ANC supports this text amendment
12 with a few conditions, including development
13 guidelines for the office use: Protecting how
14 the window views are, jewel box lighting for
15 the building on both floors even during
16 evening hours, and then a sign approved by the
17 Historic Preservation Office on the historic
18 significance of the building. Those things
19 have been accepted by the developer, I assume?

20 MR. NYHAN: We negotiated that
21 package with the ANC. Just to be specific
22 when we negotiated that at the ANC meeting I

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1 don't recall there being a specific reference
2 to the Historic Preservation Office needing to
3 sign off on the actual historic plaque is the
4 only comment I would have on that. But those
5 three conditions we certainly signed up for
6 and agreed to. Yes.

7 VICE CHAIRMAN SCHLATER: What is
8 the historic significance of the Lumber Shed
9 Building?

10 MR. NYHAN: Mr. Feola might want
11 to add to my answer, being much more educated
12 in these matters than I am. But this was a
13 very early example of a special type of
14 concrete construction and it was also were the
15 lumber that was used in the Navy manufacturing
16 process was dried in the Navy Yard Annex.

17 VICE CHAIRMAN SCHLATER: Okay.

18 MR. FEOLA: It was basically an
19 open aired building that they brought lumber
20 in and let it dry and cure before they used it
21 to build ships, basically.

22 VICE CHAIRMAN SCHLATER: Very

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1 good.

2 Well, assuming this text amendment
3 does pass, you know, we'll welcome you. My
4 employer, development firm located down in the
5 Navy Yard so It's always good to have company
6 in competition down there.

7 CHAIRMAN HOOD: Any other
8 comments?

9 Mr. Nyhan, let's talk about the 20
10 year, because I looked at that. What happens
11 in 20 years? The question I'm going to ask
12 you, if you could answer this, you'd probably
13 give me the number and I'll be straight for
14 the evening. But in 20 years, if you get to a
15 point in this, and this probably will go to
16 Office Planning, but if you get to the point
17 and the project's successful what are going to
18 do, just move out? What are you going to do?

19 MR. NYHAN: I mean, our goal would
20 be to relocate our office before the 20 years
21 elapses. And we'll have we've got -- If you
22 look over that site plan for a moment,

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1 especially there's several blocks to the west
2 of New Jersey, A1, A2, A3, F, G, H, I where
3 the balance of The Yards office program is 200
4 million square feet basically of office is
5 located. So it'd be fantastic for us.

6 The best win for us is to get this
7 building going, get one of those office
8 building going. Move from this building to
9 that office building and then back fill our
10 space will more retailers. And in fact I
11 should have mentioned this before: Our retail
12 and architecture design is designed for retail
13 on the second floor. So we sort of started
14 with our final state, then backed into well
15 how would we need to tweak that now to allow
16 an office tenant for an interim basis.

17 CHAIRMAN HOOD: So in other words,
18 kind of like we did with Tech Hotels. We
19 built them for the electronic piece but
20 actually to be able to back fill they were
21 built so an office could finish off the
22 envelope of the building.

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1 Okay. I think I'm -- so 20 years
2 is -- I kind was in tune but I kind of
3 understand why we had the 20 years because
4 we're having what we're trying to accomplish
5 there and that's the retail piece. Okay.

6 Any other questions? Comments?

7 Okay. Let's go to other
8 Government agencies. Let me ask first, Ms.
9 Daniels, did you want to say anything? Okay.

10 For the record she said GSA is very pleased.

11 Okay. Great. And thank you for coming down
12 to share that with us. Okay.

13 Let's go to the Office of
14 Planning, Ms. Jackson?

15 MS. JACKSON: Good Evening. For
16 the record my name is Arlova Jackson with the
17 Office of Planning.

18 Just to be brief, the Office of
19 Planning is supportive of the proposed text
20 amendment. We've worked with OAG since the
21 setdown to determine the appropriate wording
22 and location. We are not opposed to changes

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1 in changing the time frame as were brought up
2 at the setdown so long as the total length
3 doesn't exceed 20 years. And that its planned
4 utilization for retail is fulfilled.

5 We find that the text amendment is
6 not inconsistent with the Comprehensive Plan
7 and that it'll help facilitate the restoration
8 of a historic structure, create a daytime
9 presence in the area and bring more people to
10 the water front park site. So we would
11 recommend approval and are happy to take
12 questions at this time.

13 CHAIRMAN HOOD: Okay.
14 Commissioners any questions?

15 I am not going to ask my 20 year
16 questions to the Office of Planning. I'm just
17 going to leave it at that.

18 Any other questions,
19 Commissioners? Okay.

20 Other government reports. We've
21 already heard from Ms. Daniels from GSA. I
22 think that was it.

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1 Let's go to report ANC 6D, the
2 Vice Chairman has already alluded to pretty
3 much most of the report and the conditions. I
4 think we are all acceptable with that. And
5 this comes from Chairperson Ron McBee. On
6 Monday April 11, 2011 in which a quorum of ANC
7 Commissioners in attendance ANC 6D voted
8 unanimously 6 to 0 to support Zoning
9 Commission Case 11-05 Forest City Washington
10 text amendment. And that's exhibit 17 for our
11 records.

12 Do we any organizations or persons
13 who are here to testify in support?

14 Any organizations or persons who
15 are here in opposition?

16 Okay. With that, it's not called
17 for, Mr. Feola, did you want to say anything,
18 close this out?

19 MR. FEOLA: No, Just I appreciate
20 the Commission's time on this hot July evening
21 and I'm glad we were able to keep it short.
22 And if the Commission is so inclined, we would

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1 not mind if the Commission deliberated on this
2 this evening.

3 CHAIRMAN HOOD: Okay.
4 Commissioners, you all want to set this this
5 evening or do you want to deal with it in
6 August? That was a joke. You can joke when
7 things go like this, you know. Okay.

8 COMMISSIONER MAY: I'm just
9 wondering when we get our next showing of Mr.
10 Feola doing his Vanna White imitation over
11 there by the sign. Because I would come back
12 in August for that.

13 MR. FEOLA: I would have to fill
14 the room with a lot of angry people for that.

15 COMMISSIONER MAY: You know, I was
16 not totally comfortable with 20 years. I
17 think that based on the questions that were
18 asked and answered today, seems pretty clear
19 to me that 20 years is the outside limit. And
20 I understand the importance of having a longer
21 term for financing. So I'm comfortable with
22 it and actually believe, once you get the

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1 critical mass going, that this will become
2 retail space -- excuse me -- retail space in
3 less than 20 years. So I would be comfortable
4 in moving ahead with this. And I'd make a
5 motion if you're ready to just jump straight
6 to that. Okay.

7 I would move approval of Zoning
8 Commission Case 11-05 proposed zoning text
9 amendment to allow general office usage on the
10 second floor of Building 173. This is
11 modifying section 1805, 1805.9 in particular.

12 Ask for a second.

13 VICE CHAIRMAN SCHLATER: Second.

14 CHAIRMAN HOOD: Okay. It has been
15 moved and properly second. Any further
16 discussion?

17 COMMISSIONER TURNBULL: Just, are
18 we amending it to include ANC arguments or are
19 we beyond that?

20 VICE CHAIRMAN SCHLATER: I
21 wouldn't include it in the text.

22 COMMISSIONER TURNBULL: That's

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1 right, we shouldn't.

2 VICE CHAIRMAN SCHLATER: No,
3 you're right. Honor their agreements.

4 CHAIRMAN HOOD: And I feel
5 confident that they will work it out and I
6 don't think we need to try to strap anything
7 to this.

8 Okay. Anything else, Mr.
9 Turnbull?

10 Okay. It's been moved and
11 properly seconded. Any further discussion?
12 Are you ready for the question? All those in
13 favor aye?

14 ALL: Aye.

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

18 MS. SCHELLIN: Yes. Staff records
19 the vote five to zero to zero to approve
20 proposed actions on Zoning Commission Case 11-
21 05. Commissioner May moving, Commissioner
22 Schlater second. Commissioners Hood,

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1 Selfridge and Turnbull in support.

2 CHAIRMAN HOOD: Okay. I want to
3 thank everyone for doing all the legwork. You
4 made our night easier. But Commissioners
5 don't get used to it. Appreciate everyone's
6 participation and this hearing is adjourned.

7 MR. FEOLA: Thank you.

8 (Whereupon, the Regular Meeting of
9 the Zoning Commission was adjourned at 6:55
10 p.m.)

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