

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

SEPTEMBER 30, 2013

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- MARCIE COHEN, Vice Chair
- PETER G. MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

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STEVEN COCHRANE  
MATT JESICK  
JOEL LAWSON  
STEPHEN MORDFIN  
JENNIFER STEINGASSER, Deputy Director,  
Development Review & Historic  
Preservation

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the minutes  
from the Regular meeting held on September 30,  
2013.

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

ZC Case 12-05 ..... 6

ZC Case 12-16 ..... 11

ZC Case 02-38D ..... 28

ZC Case 12-10A ..... 35

ZC Case 03-12/03-13P ..... 37

Correspondence ..... 47

Proposed Action ..... 73

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

2 6:46 p.m.

3 CHAIRMAN HOOD: I want to apologize  
4 again for being a few moments late. This  
5 meeting will please come to order. Good evening,  
6 ladies and gentlemen.

7 This is September 30th, 2013 public  
8 meeting of the Zoning Commission of the District  
9 of Columbia.

10 My name is Anthony Hood. Joining me  
11 is Vice Chair Cohen, Commissioners Miller, May,  
12 and Turnbull. We're also joined by the Office  
13 of Zoning Staff, Ms. Sharon Schellin; Office  
14 of Attorney General, Mr. Retting; Office of  
15 Planning Staff, Ms. Steingasser, Mr. Lawson,  
16 and Mr. Jesick. And I see Mr. Cochrane who is  
17 also from the Office of Planning will be joining  
18 us at a later time. Copies of today's  
19 meeting agenda are available to you and are  
20 located in the bin near the door. We do not take  
21 any public testimony at our meetings unless the  
22 Commission requests someone to please come

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1 forward.

2 Please be advised that this  
3 proceeding is being recorded by a court  
4 reporter. It is also webcast live.  
5 Accordingly, we must refrain from any disruptive  
6 noises or actions in the hearing room.

7 And as stated earlier, we are  
8 located the hearing at the Jerrily R. Kress  
9 Hearing Room.

10 Please turn off all beepers and cell  
11 phones at this time.

12 Does the staff have any preliminary  
13 matters?

14 MS. SCHELLIN: No, sir.

15 CHAIRMAN HOOD: If not, what I would  
16 like to do is to move our post action to the last  
17 item that we're going to take up this evening.  
18 After the correspondence item, we will take up  
19 the proposed action items.

20 Are there any objections?

21 (No audible response.)

22 Okay. Thank you.

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1           Let's go to final action, Zoning  
2 Commission Case Number 12-05A. This is the  
3 Ballpark Square, LLC, Capital Gateway Overlay  
4 Modification to Square 701.

5           Ms. Schellin.

6           MS. SCHELLIN: Yes, sir. At  
7 Exhibit 17 and 18, we have the applicant's post  
8 hearing submissions. And in Exhibit 19 is an  
9 additional, is some additional information from  
10 the applicant that was asked for it at the  
11 September 9th meeting. They asked the  
12 Commission to consider final action this  
13 evening.

14           CHAIRMAN HOOD: Okay.  
15 Commissioners, I think the most updated  
16 submission, as stated by Ms. Schellin, was dated  
17 September the 16th. And I thought I saw in an  
18 NCPC report. Okay. Thank you. Okay. Maybe  
19 I didn't. Okay. All right. Okay.

20           Let's open it to any comments.  
21 Commissioners, I'm looking at exhibit -- oh, any  
22 of the exhibits actually. But I know there were

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1 a lot of issues that we asked for further  
2 information on the rooftop, and the TV area,  
3 enhanced guidelines on the rooftop. And they  
4 also provided some additional drawings of the  
5 rooftop and how the TV would, and all that would  
6 all fit in. And also, the residential component  
7 outdoor TV area operation rules and regulations  
8 which I think we asked for. So all that's been  
9 submitted. And also we have what was provided  
10 for some additional corrections.

11 Any comments?

12 COMMISSIONER TURNBULL: Yes, Mr.  
13 Chair. Thank you.

14 I think the applicant picked up most  
15 of the comments that we had talked about. I  
16 thought the planter was going to be extended a  
17 little bit further.

18 I'm willing to live with what's  
19 there. They've added some other upright tables  
20 and grills which are supposedly I think trying  
21 to screen this, the big-screen TV. I guess we  
22 have these planters in as the applicant had, in

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1 an earlier exhibit, I think it's number 17, dated  
2 August 5th, 2013 on page 4, that they talk about  
3 roof planters positioned to prevent light and  
4 noise from being conveyed out of the viewing  
5 area.

6 I would, just to be sure that these  
7 planters are working the way the intent of what  
8 the applicant is submitting, I would think that  
9 in the either the rules or the little regs that  
10 they talked about that they would enforce  
11 regarding the outdoor TV area, I would like to  
12 see, these planting areas, something mentioned  
13 that the landscape is going to be maintained.  
14 And something like, "The building management  
15 shall maintain the vegetation in the rooftop  
16 planters adjacent to the rooftop entertainment  
17 area at all times during the year, and that this  
18 vegetation be of sufficient density and  
19 structure to provide adequate screening to  
20 prevent noise and light from being conveyed out  
21 of the viewing area." That last part is  
22 actually taken from their exhibit. I thinks

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1 this just strengthens the intent of what they're  
2 trying to do and says that the planting area are  
3 not going to die, they're not going to let it --  
4 they're going to maintain this, the greening up  
5 there, to exactly what the intent of the planters  
6 are intended to.

7 And I would just like to see that  
8 added.

9 CHAIRMAN HOOD: Okay. Thank you,  
10 Mr. Turnbull.

11 Any objections to the language Mr.  
12 Turnbull has proposed?

13 (No audible response.)

14 Okay. So ordered.

15 COMMISSIONER TURNBULL: And I think  
16 the applicant is nodding in agreement.

17 CHAIRMAN HOOD: Okay. I don't  
18 usually look in the audience.

19 COMMISSIONER TURNBULL: I do.

20 CHAIRMAN HOOD: And sometime they  
21 go like this and sometimes they make faces at  
22 you. So I don't usually look out.

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1                   Okay.       Okay.       So any other  
2                   comments?

3                   (No audible response.)

4                   Would somebody like to make a  
5                   motion?

6                   COMMISSIONER MILLER: With that, I  
7                   would move approval of the final action of Zoning  
8                   Commission Case Number 12-05A Ballpark Square,  
9                   LLC, CG Overlay Modification to Square 701 with  
10                  the change that is recommended by Commissioner  
11                  Turnbull.

12                  VICE CHAIR COHEN: I'll second  
13                  that.

14                  CHAIRMAN HOOD: Okay. It's been  
15                  moved and properly seconded.

16                  Any further discussions?

17                  (No audible response.)

18                  Are you ready for the question, all  
19                  those in favor? Aye.

20                  (Chorus of ayes.)

21                  Any opposition?

22                  (No audible response.)

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1 Ms. Schellin, the staff, would you  
2 record the vote.

3 MS. SCHELLIN: The staff records  
4 the vote 4-0-1 to approve final action Zoning  
5 Commission Case Number 12-05A. Commissioner  
6 Miller moving. Commissioner Cohen second.  
7 Commissioners Hood and Turnbull in support.  
8 Commissioner May not voting, having not  
9 participated.

10 CHAIRMAN HOOD: Okay. Next,  
11 Zoning Commission Case Number 12-16. It's the  
12 Capital Gateway Marketplace, LLC, Consolidated  
13 PUD. And related map amendment is Square 5246  
14 in all.

15 Ms. Schellin.

16 MS. SCHELLIN: Yes. With Exhibit  
17 54, we have the applicant's post hearing  
18 submissions. Exhibit 55 is an NCPC report  
19 stating that it was not, that they found that the  
20 project was not inconsistent with federal  
21 interest, elements of the comp plan for the  
22 national capital. They ask the Commission to

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1 consider final action this evening.

2 CHAIRMAN HOOD: Okay. You heard  
3 the report from our zoning secretary. So I  
4 don't need to repeat it, which is Exhibit 54.  
5 Some of the things that they had asked for.

6 Vice Chair Cohen.

7 VICE CHAIR COHEN: Thank you, Mr.  
8 Chairman.

9 A few things I'd like to comment.  
10 First of all, I do think this is a project that  
11 finally brings forward the Hope 6 Project for  
12 Capital Gateway.

13 I think that housing component is  
14 superior. Unfortunately, it does not begin  
15 until the end of, I think, 2014 at the earliest.  
16 And that's disappointing especially in light of  
17 the financial environment for low income tax  
18 housing credit projects.

19 So I know I have I no impact on  
20 changing dates but I do think that for the record  
21 I want to state that it would be great if the  
22 developer pushed that part of the schedule

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1 forward. I just had to just, had to get that off  
2 my chest. The need is so great for housing for  
3 lower and middle moderate income people.

4 The other thing I want to bring up  
5 is throughout the order there's reference to the  
6 superior design and land use of this project.  
7 And I think that is out of order. This is  
8 supposed to be a transit oriented development  
9 project. They mention that. And yet it's not  
10 a transit oriented dense development.

11 I know that the Comprehensive Plan,  
12 at least I was reminded, that it calls for a lower  
13 density but you can't have it both ways. You  
14 can't be transit oriented and at low density.

15 So I recommend that we strike any  
16 reference to it providing superior land-use and  
17 efficient land-use. Wherever in this zoning  
18 order.

19 I'm open for my colleagues to  
20 comment.

21 COMMISSIONER MAY: Madam Chair, are  
22 there specific spots where you question the

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1 language?

2 VICE CHAIR COHEN: Yes.

3 COMMISSIONER MAY: Can you call out  
4 something?

5 VICE CHAIR COHEN: Okay. On page  
6 16 of the order paragraph 6, "The Commission  
7 finds the project implements a number of urban  
8 design and architectural best practices." I  
9 think that we can talk about architectural best  
10 practices but certainly not urban design.

11 Under page 19, "Public benefits and  
12 amenities," it talks about urban design  
13 architecture and landscaping. And again it  
14 should remove the term "urban design."

15 Page 22, "Environmental benefits,  
16 the project exhibits many characteristics of  
17 exemplary urban design." I think that should be  
18 removed.

19 Page 30, paragraph iB, "The project  
20 exemplifies the principles of transit oriented  
21 development." I think that should be struck.

22 COMMISSIONER MAY: Which page is

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1 that?

2 VICE CHAIR COHEN: 30.

3 COMMISSIONER MAY: 30.

4 VICE CHAIR COHEN: And I believe  
5 that's, I think there's one other place. There  
6 may be one or two other places but I -- that's  
7 basically where I caught it.

8 COMMISSIONER MAY: Okay. You  
9 know, I think I'm generally sympathetic to the  
10 notion that a project really has to be truly  
11 superior for it to be called out for its superior  
12 attributes.

13 But I will say that the examples that  
14 you cited in the language, I mean, those are some  
15 of the ones that I had seen. And I'm not as  
16 troubled by them as you.

17 I mean, going back to the first one  
18 on page 16, "The commission finds that the  
19 project implements a number of urban design and  
20 architectural best practices." You know, I  
21 think that there are some urban design best  
22 practices that have been implemented here. I

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1 wouldn't say that it's superior urban design but  
2 that's not what it's being called out for. And  
3 a number of urban design best practices, yes,  
4 it's probably more than one.

5           So I mean, technically, I feel this  
6 is correct. But it may be it still connotes  
7 something superior that it should not. So I  
8 mean, I guess I can see softening of language  
9 but I don't think that it's really technically  
10 incorrect there.

11           I think that it does amend of number  
12 of urban design best practices. I mean, just  
13 the mere fact that it's not a great big box behind  
14 a big parking lot is indicative of an urban  
15 design best practice. So --

16           VICE CHAIR COHEN: Well, is that  
17 architectural or urban design? Because --

18           COMMISSIONER MAY: It's urban  
19 design.

20           VICE CHAIR COHEN: -- land-use, I  
21 think again is not efficient, it was not  
22 efficiently planned for this project. And --

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1                   COMMISSIONER MAY: Well, and again,  
2                   it's not, I don't think we're stating that it is  
3                   the best that it could possibly be or that it  
4                   shouldn't, you know, it wouldn't make sense for  
5                   it to be, to have greater density or development  
6                   of, you know, above the retail space.

7                   Like I said, I'm generally, I want  
8                   to be stingy about using, you know, words that  
9                   describe something as superior. But I don't  
10                  think that this, especially when it comes to  
11                  urban design, but I don't think this order is  
12                  really over the top in that regard.

13                  I mean, maybe other Commissioners  
14                  have some thoughts.

15                  CHAIRMAN HOOD: Let me open it up.  
16                  Commissioner Miller.

17                  COMMISSIONER MILLER: I would share  
18                  Commissioner May's -- maybe on that first one,  
19                  maybe just we should change best practices to  
20                  benefits. A number of urban design  
21                  architectural benefits. I think it's the best,  
22                  is the best that got the Commissioner, got the

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1 Vice Chair maybe. So that would be my  
2 suggestion on that one.

3 And I didn't have a problem with  
4 striking the transit oriented development.

5 But on the others, I think it really,  
6 it needs to be something in between what you said  
7 and leaving what's in there. So if we can get,  
8 find that middle ground of where it is a benefit  
9 but not exemplifying the best and the brightest.  
10 I think there are a number of attractive features  
11 for this, particularly for this Gateway location  
12 that's currently vacant and badly needs this sit  
13 down restaurant and the other amenities that are  
14 going to be offered.

15 CHAIRMAN HOOD: Okay. Comments.  
16 Commissioner Turnbull.

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

19 No, I can sympathize with the Vice  
20 Chair on a lot of these things. And I agree with  
21 some of the comments of Commissioner Miller and  
22 May.

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1                   And I'm just, I don't want to go back  
2 through each one I guess and look at which one  
3 we're going to -- but on page 30, on the transit  
4 oriented development, are we changing  
5 exemplifies to principles of transit oriented  
6 development? Or is that staying in? Are we  
7 saying that it really doesn't?

8                   VICE CHAIR COHEN: Well, having --  
9 I'm not a member of that, you know, exemplary  
10 group of urbanists. But I think they would,  
11 because I read a lot of their messages, and I  
12 think they would have a problem with that. But  
13 as I said, I'm not a member. I would strike  
14 that.

15                   COMMISSIONER TURNBULL: Well,  
16 would we put in the project incorporates many  
17 transit oriented?

18                   VICE CHAIR COHEN: How about some?

19                   COMMISSIONER TURNBULL: Some.

20                   COMMISSIONER MILLER: Or a number  
21 of.

22                   CHAIRMAN HOOD: Okay. Can I ask

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1 you a question? Are you following us? Are you  
2 following us on -- we're on page 30.

3 MR. RITTING: Yes.

4 CHAIRMAN HOOD: Can we actually  
5 make that change?

6 MR. RITTING: That's okay. I was  
7 on a microphone.

8 CHAIRMAN HOOD: Maybe -- I might  
9 need you off the record. That may be a crazy  
10 question.

11 MR. RITTING: No, no it isn't. I  
12 mean, you're discussing whether you're going to  
13 modify some of the proposed findings in that  
14 draft order. And I think that's definitely  
15 within your purview to do that. I mean, this is  
16 the findings that are justified approval or  
17 denial of a project, which is completely within  
18 your discretion.

19 COMMISSIONER TURNBULL: All right.  
20 But basically, we're looking at saying, "The  
21 project incorporates a number of transit  
22 oriented development principles."

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1 MR. RITTING: Okay.

2 COMMISSIONER TURNBULL: And then  
3 are we getting rid of the third sentence up on  
4 the end? Are we getting rid of "as well as great  
5 design"?

6 VICE CHAIR COHEN: My comments were  
7 strictly on land-use, frankly.

8 COMMISSIONER TURNBULL: Okay.

9 VICE CHAIR COHEN: The design, I  
10 have opinions but I'm not as well-versed in the  
11 best design principles so I kind of leave it to  
12 my colleagues often. You being one of them.

13 COMMISSIONER TURNBULL: Well, I'm  
14 just wondering if, as well as great design is a  
15 little over the top but -- I'm just wondering if  
16 that is a little over the top.

17 COMMISSIONER MILLER: How about  
18 attractive?

19 COMMISSIONER TURNBULL:  
20 Attractive.

21 COMMISSIONER MILLER: Very  
22 attractive.

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1 CHAIRMAN HOOD: Okay.

2 COMMISSIONER MAY: Yes, I mean, as  
3 well as great design just strike that phrase  
4 entirely. And not -- put in attractive. To  
5 say, "The project includes a number of resident,  
6 restaurant, and residential, and office uses all  
7 of which will help increase the vitality."

8 CHAIRMAN HOOD: Okay. So are we  
9 all in agreeance on that?

10 (No audible response.)

11 Let me just comment on the urban  
12 design question because I haven't commented yet.  
13 The way I look at urban design is how you shape  
14 and mold a city or town. And for me, I don't have  
15 any great concern or bother. I kind of  
16 associate myself with Commissioner May and  
17 Commissioner Miller. And I'm not -- I can't  
18 remember what Commissioner Turnbull said. It's  
19 been awhile.

20 But anyway, I just, maybe the first  
21 one I think someone mentioned about taking urban  
22 design, but I think for the most part, I think

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1 that's exactly what we're doing. We're shaping  
2 and molding, which is defining urban design the  
3 definition the way I read it. So I don't have  
4 any great concern on that.

5 The other ones, I don't have a  
6 problem, Vice Chair, with making those changes.

7 Do we need to go through them one by  
8 one? Does everybody accept everything  
9 including the amendment we just made?

10 PARTICIPANT: Yes.

11 CHAIRMAN HOOD: Okay. All right.  
12 Anything else?

13 (No audible response.)

14 Would somebody like to make a  
15 motion?

16 COMMISSIONER MILLER: Mr. Chairman

17 --

18 CHAIRMAN HOOD: Oh, wait a minute.  
19 Before we do that.

20 COMMISSIONER MILLER: Yes.

21 CHAIRMAN HOOD: Excuse me. I do  
22 want to comment on the first source agreement.

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1 I do appreciate what I was given.

2 The one thing concerns me, I'm going  
3 to get this right eventually, is that I didn't  
4 see where the city has signed. I guess, you  
5 know, normally maybe we're going to find this out  
6 -- oh, this is final. Oh, but anyway, it's not  
7 a showstopper for me at this point. But a lot  
8 of times when we see this, unless something is  
9 changed and I'm not aware, I see where CG  
10 Marketplace, LLC, the signature of the company  
11 is signed. But I don't see the signature of  
12 the employment service. And I'm looking at page  
13 6.

14 I think that the file that was given  
15 shows a lot of what's been done was good. But  
16 I'm just having a problem with not seeing both  
17 signatures. And this is final action for me,  
18 for us. So anyway.

19 I'm not going to hold up the point.  
20 I think they have enough information for the  
21 record but they don't have the signature at the  
22 proper time, I'm sure that will find the

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1 signature. Or get it. I'm not sure what the  
2 OES is doing now and how they do the process.  
3 Maybe that's something we can look at. I'm not  
4 going to say this is a showstopper for me but  
5 normally I like to see a signed agreement.

6 Okay. All right. Anything else?  
7 But I would tell you this, I remember this wasn't  
8 signed and I will follow-up in about six years  
9 when I'm still around, 10 years. Okay.

10 Anything else?

11 Okay. Commissioner Miller.

12 COMMISSIONER MILLER: Yes. Mr.  
13 Chairman, following up on your point, the draft  
14 order does refer to a fully executed first source  
15 employment agreement. So that would have to be,  
16 that would have to be there.

17 CHAIRMAN HOOD: Yes, but typically  
18 we usually see signatures on both sides.  
19 Especially at --

20 COMMISSIONER MILLER: Right. So I  
21 would move approval of Zoning Commission Case  
22 12-16 CG Marketplace, LLC, Consolidated PUD and

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1 related map amendment with the minor language  
2 changes that we discussed earlier and ask for a  
3 second.

4 COMMISSIONER TURNBULL: Second.

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

7 Any further discussion? And let  
8 me just say the reason why this needs to be there  
9 is because we need to make sure DOS is alerted  
10 that this is going on. And as in the past, that  
11 has been a problem. It says, fully executed but  
12 when you ask people, oh, we didn't know anything  
13 about it. That's just been my experience. But  
14 I'm sure that the Council that they have here and  
15 this applicant is not going to do that. Okay.

16 It's been moved and proffered.

17 Any further discussion?

18 (No audible response.)

19 All those in favor. Aye.

20 (Chorus of ayes.)

21 Any opposition.

22 (No audible response.)

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1 Ms. Schellin, the staff would you  
2 record the vote.

3 MS. SCHELLIN: The staff records  
4 the vote 5-0-0 to approve final action Zoning  
5 Commission Case Number 12-16. Commissioner  
6 Miller moving. Commissioner Turnbull  
7 seconding. Commissioners Cohen, Hood, and May  
8 in support.

9 CHAIRMAN HOOD: Okay. Let's go  
10 next, Zoning Commission Case Number 02-38D  
11 Waterfront 1001 4th Street, LLC, 2nd Stage PUD  
12 at Square 542.

13 Ms. Schellin.

14 MS. SCHELLIN: Yes, sir. At  
15 Exhibit 49, we have the applicant's supplemental  
16 post hearing submission. Exhibit 50 ANC 6D  
17 submitted a report in support. And Westminster  
18 Presbyterian Church, a party to this case, made  
19 a request to reopen the record to accept their  
20 late submission which was granted. And this  
21 submission is found at Exhibit 52. Exhibit 53  
22 is an NCPC report which found that the project

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1 was not inconsistent with the federal elements  
2 of the Comp Plan.

3 We'd ask the Commission to consider  
4 final action on this case.

5 CHAIRMAN HOOD: Okay. Thank you  
6 Ms. Schellin.

7 Commissioners, as noted, we did  
8 receive a shadow study clarification on the  
9 rooftop community space. And we continue the  
10 work of the community.

11 Any starters off? Any comments on  
12 anything that we've asked for?

13 (No audible response.)

14 I'll start us off with the language  
15 of what was the -- the applicant versus -- oh,  
16 I'm sorry. I'm looking for it. I don't have  
17 the report. The applicant -- oh, here it is.  
18 The applicant versus the church.

19 One of the things that concerned me,  
20 colleagues, is that and, you know, I didn't voted  
21 against -- I voted against this  
22 as proposed -- it looks like that there's been

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1 some movement. I'm not exactly sure of  
2 everything that is an adverse impact is being  
3 covered in the language from the applicant. Why  
4 I'm more geared towards scaling towards the  
5 applicant, I think the rationale behind the  
6 church is to make sure that some of those  
7 mitigation factors that they tried to look out  
8 for, they won't know until the project is either  
9 completed or it gets into the project. So I just  
10 think it might need some fine-tuning. I don't  
11 necessarily agree with the whole part of the  
12 applicant. I think it's just a few things that  
13 are missing. And I would, I don't know if my  
14 colleagues feel the same but I'll take any  
15 suggestions.

16 Commissioner Miller.

17 COMMISSIONER MILLER: Thank you,  
18 Mr. Chairman.

19 Yes, I think you're talking about  
20 the language in the draft, the applicant's draft  
21 order that it concluded that the condition  
22 designed to ameliorate the proposed adverse text

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1 of the project on the church by providing money  
2 to fund landscaping.

3 To get at what you're saying, I had  
4 some, just some minor changes to that language  
5 to try to provide a little bit more flexibility  
6 than what was in the actual original language.  
7 And so with your permission, I would just read  
8 that into the record.

9 CHAIRMAN HOOD: Okay.

10 COMMISSIONER MILLER: And if it --  
11 and see if my colleagues are in agreement with  
12 that.

13 So the applicant's draft condition  
14 reads, "Prior to the issuance of the building  
15 permit, the applicant shall place \$25,000 into  
16 an escrow fund for the benefit of the church to  
17 use in connection with the design and  
18 installation of landscape improvements in the  
19 general area of the sanctuary window to create  
20 a more spiritual and/or tranquil environment for  
21 the benefit of its members." That's the  
22 applicant's language.

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1 I would just suggest adding that we  
2 had in, we add a few words to this. And ad after  
3 the word landscape, "In connection with design  
4 and installation of landscape or other  
5 improvements," or other would be the additional  
6 phrase there. Then going on, "In the general  
7 area of the sanctuary window to create a more  
8 spiritual and/or tranquil environment for the  
9 benefit," it currently reads, "of its members,"  
10 I would say, "of church members or guests."  
11 Because the church testified that they have a  
12 number of activities where they invite certain  
13 members of the community to its -- so I would just  
14 -- but those are just minor changes. I think  
15 that might cover some of the concerns that you  
16 have, Mr. Chairman.

17 CHAIRMAN HOOD: I want to thank you,  
18 Commissioner Miller. I really think that  
19 covers it for me. And I appreciate you going the  
20 extra mile and rewriting that because I didn't  
21 do it.

22 Any other problems with the language

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1 proposed by Commissioner Miller? And myself.  
2 Well, he drafted it, I just joined. I want to  
3 be a cosponsor. Can I be a cosponsor? Is that  
4 would they do on the Council?

5 COMMISSIONER MILLER: It was your  
6 idea.

7 CHAIRMAN HOOD: But I mean, you  
8 wrote it, so I cosponsored that.

9 Is that how you all do it on the  
10 Council? Or they used to do it? All right.

11 No, I like that.

12 Anything else? We all agree on  
13 that?

14 (No audible response.)

15 Okay. Thank you, Commissioner.

16 Anyone else? Any other comments?

17 (No audible response.)

18 Okay. Somebody like to make a  
19 motion?

20 COMMISSIONER TURNBULL: Mr. Chair,  
21 I would move that we approve Zoning Case Number  
22 02-38D Waterfront 1001 4th Street, LLC, 2nd

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1 Stage PUD at Square 542 with the recommended text  
2 changes by Commissioners Miller and Hood. And  
3 look for a second.

4 VICE CHAIR COHEN: I'll second.

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

7 Any further discussion?

8 (No audible response.)

9 All those in favor? Aye.

10 (Chorus of ayes.)

11 Any opposition?

12 (No audible response.)

13 Ms. Schellin, the staff, would you  
14 the vote.

15 MS. SCHELLIN: The staff records  
16 the vote 5-0-0 to approve final action Zoning  
17 Commission Case 02-38D. Commissioner Turnbull  
18 moving. Commissioners Cohen seconding.  
19 Commissioners Hood, May, and Miller in support.

20 CHAIRMAN HOOD: I don't want the ANC  
21 -- I don't want to slight them but they did vote  
22 in favor of supporting the action we just took

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1 4-0-1. Okay.

2 Okay. Next let's go to Zoning  
3 Commission Case Number 12-10A Office of Planning  
4 second correction to Zoning Commission Order  
5 Number 12-10 the GAR. Is that what we said we're  
6 going to call it? GAR?

7 MS. SCHELLIN: G-A-R.

8 CHAIRMAN HOOD: Oh. Where did GAR?  
9 Okay. G-A-R. I'm sorry.

10 Ms. Schellin.

11 MS. SCHELLIN: Staff has nothing  
12 new to add to this. There were no new comments  
13 received during the 30 day comment period. And  
14 we just ask the Commission to consider final  
15 action.

16 CHAIRMAN HOOD: Okay.  
17 Commissioners, as noted, this is a very slight  
18 change and I think it was just a correction that  
19 was made, I don't necessarily mean a change but  
20 a correction. No comments during the 30 day  
21 comment period.

22 And I think it's right for us to move

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1 forward.

2 Any questions or comments?

3 (No audible response.)

4 Somebody like to make a motion?

5 VICE CHAIR COHEN: Mr. Chairman, I  
6 would move that we approve the Zoning Case Number  
7 12-10A text amendment 11 DCMR technical  
8 correction to Zoning Case Order Number 10 --  
9 12-10.

10 CHAIRMAN HOOD: And I'll second it.  
11 It's been moved and properly seconded.

12 Any further discussion?

13 (No audible response.)

14 All those in favor? Aye.

15 (Chorus of ayes.)

16 Not hearing any opposition, Ms.  
17 Schellin, would you record the vote?

18 MS. SCHELLIN: Yes. Staff records  
19 the vote 5-0-0 to approve final action Zoning  
20 Commission Case Number 12-10A. Commissioner  
21 Cohen moving. Commissioner Hood second.  
22 Commissioners May, Miller, and Turnbull in

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1 support.

2 CHAIRMAN HOOD: Okay. I think last  
3 on our final actions Zoning Commission Case  
4 Number 03-12P/0-13P Capper/Carrollsbury  
5 Venture, LLC, and DCHA two year PUD time  
6 extension in Square 769 and 882.

7 Ms. Schellin.

8 MS. SCHELLIN: Yes, sir. As you  
9 stated, the applicant is requesting a two-year  
10 time extension in which to file for building  
11 permit for the construction of a residential  
12 building in Square 769. And a two-year time  
13 extension in which to file a building permit for  
14 the construction of an office building in Square  
15 882. Both of which have been extended once  
16 before.

17 The applicant has cited difficulty  
18 securing financing for the buildings. Exhibit  
19 5 is an OP report in support. And Exhibit C --  
20 6, I'm sorry, is an ANC 60 report in support with  
21 concerns.

22 And we'd ask the commission to

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1 consider final action on this case.

2 Thank you.

3 CHAIRMAN HOOD: Okay. Thank you.

4 Let's open it up the comments.

5 Anybody?

6 VICE CHAIR COHEN: Yes.

7 CHAIRMAN HOOD: Vice Chair.

8 VICE CHAIR COHEN: Thank you, Mr.  
9 chair.

10 I think the applicant made a very  
11 compelling argument about needing the extension  
12 for the office building. I think it misses the  
13 housing in light of all the other housing that  
14 is moving ahead in the neighborhood.

15 And they need to complete, again,  
16 this is a Hope 6 project that had some very  
17 aggressive time lines. Again, I think I should  
18 say, many years ago I was on the Housing  
19 Authority. So I am aware of this project,  
20 probably have a little bit more information than  
21 my colleagues on it.

22 It disturbs me every time we do get

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1 an extension for affordable housing.  
2 Especially, the need and the demand is so great  
3 on the Housing Authority list. I know you guys  
4 heard me say this before but I need to say it  
5 again. To reduce the angst that I feel that  
6 60,000 households are on our waiting list. And  
7 a lot of these units will not be available for  
8 them. And the Housing Authority made a  
9 wonderful commitment to replace all the public  
10 housing that was demolished.

11 In light of the fact that there has  
12 been progress made and in hopes again that the  
13 Housing Authority will attempt to make every  
14 effort on getting financing so that they can  
15 break ground within two years, I will go along  
16 with this. But it just doesn't make me feel that  
17 enough has been done, again, in light of today's  
18 financial markets.

19 CHAIRMAN HOOD: Okay. Thank you,  
20 Vice Chair.

21 Any other comments?

22 Commissioner Miller.

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1                   COMMISSIONER     MILLER:            Just  
2 following up on the Vice Chair's comments.

3                   I see in the OP report, dated  
4 September 20th, 2013, that OP makes the same  
5 point that the difficulty with financing the  
6 case wasn't made quite as strongly for the  
7 residential as it was for the office. And that  
8 OP had asked the applicant to supply additional  
9 information about its efforts to secure  
10 financing for the steel and concrete building.

11                  So I guess I wanted to ask if OP has  
12 gotten any additional or if the Office of Zoning  
13 has received any additional information in  
14 response to a OP's request to the applicant?

15                  VICE CHAIR COHEN: You have the --

16                  MR. COCHRANE: Excuse me, then.

17                  OP did receive a document, dated  
18 September 23rd, that was addressed to the  
19 Commission entitled, the case number,  
20 "Additional materials in support of extension  
21 request." And it's a letter from Holland and  
22 Knight referring to attempts for financing

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1 through Eagle Bank which has a long-standing  
2 relationship with the owners of the project.

3 CHAIRMAN HOOD: I wonder if we could  
4 find out if we have a copy of it. Or is it --

5 VICE CHAIR COHEN: I think one of  
6 the things that happens in the world of financing  
7 is each developer has relationships with banks.  
8 The banks have legal lending limits that they  
9 must follow and they're sometimes internal. So  
10 that they don't want to finance many projects in  
11 a particular development developers working on  
12 because they have outstanding lines of credit.

13 So I just bring that to the attention  
14 of my colleagues so that they are aware that  
15 these things tend to happen and delay other  
16 projects that are in the pipeline.

17 Are the developers overextended?  
18 That might be the case.

19 CHAIRMAN HOOD: Okay. Thank you,  
20 Vice Chair.

21 COMMISSIONER TURNBULL: Mr. Chair.

22 CHAIRMAN HOOD: Commissioner

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1       Turnbull.

2                   COMMISSIONER   TURNBULL:       I just  
3 wanted to point out the ANC letter which voted  
4 in support 4-0 but it had a lot of conditions and  
5 they pointed out a lot of things that promises  
6 which have been unfulfilled to date.

7                   And I think we just need to send a strong  
8 message to the applicant that, two years hence,  
9 if we get another request to extend this I think  
10 we're going to look not very favorably without  
11 any communication with the ANC and the community  
12 to solve some of the issues that the ANC has  
13 brought up. I think these are important  
14 concerns that the applicant should really  
15 address and take to heart.

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

18                   Any objections to Mr. Turnbull's  
19 comments? Any objections?

20                   VICE CHAIR COHEN: No, not at all.  
21 In fact, I support them because one of the  
22 requirements of Hope 6 is also to extend their

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1 outreach to the people who were either living on  
2 the site or were relocated off the site, they  
3 were called task forces. And we never get  
4 appropriate information from those groups.

5 Not that it's a requirement of the Zoning  
6 Commission but I think it behooves the Housing  
7 Authority to continue to do that communication  
8 and the developers.

9 CHAIRMAN HOOD: We're going to --  
10 okay. Okay. We've heard all our comments.  
11 We're going to get a copy of the letter and pass  
12 it out to the colleagues so they can see it so  
13 we can go ahead and move forward. So if  
14 everybody would just take a two-minute break.

15 I need three minutes, Ms. Schellin.  
16 (Whereupon, the above-entitled  
17 matter went off the record at 7:23  
18 p.m. and went back on the record  
19 at 7:26 p.m.)

20 CHAIRMAN HOOD: Okay. So we're  
21 back on the record.

22 Because the Vice Chair said we do

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1 have it now as documentation of -- okay.

2 Any other comments? Did we make a  
3 motion?

4 VICE CHAIR COHEN: No.

5 CHAIRMAN HOOD: Okay. Would  
6 somebody like to? Vice Chair, you raised your  
7 concerns --

8 VICE CHAIR COHEN: Yes.

9 CHAIRMAN HOOD: -- necessarily have  
10 a --

11 VICE CHAIR COHEN: -- have an  
12 objection --

13 CHAIRMAN HOOD: Okay. All right.

14 VICE CHAIR COHEN: Don't make me  
15 move.

16 CHAIRMAN HOOD: Okay. I'll move  
17 it.

18 In the class I took last week it said  
19 the Chair is supposed to yields to his  
20 colleagues. So I was trying to practice that  
21 today. But I'm still practicing it.

22 Would somebody like to make a

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1 motion?

2 Commissioner Miller.

3 COMMISSIONER MILLER: Yes, Mr.  
4 Chairman. Thank you.

5 I will move the final approval of  
6 Zoning Commission Case Number 03-12P/03-13P  
7 Capper/Carrollsborg Venture, LLC, and DCHD  
8 two-year PUD time extension at Square 769 and  
9 882. And ask for a second.

10 VICE CHAIR COHEN: I'll second.

11 CHAIRMAN HOOD: I'll second. Do  
12 you want to second?

13 VICE CHAIR COHEN: Yes.

14 CHAIRMAN HOOD: Okay. It's moved  
15 and properly seconded by Vice Chair Cohen.

16 Any further discussion?

17 (No audible response.)

18 All those in favor? Aye.

19 (Chorus of ayes.)

20 Any opposition?

21 (No audible response.)

22 Ms. Schellin, the staff would you

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1 record the vote?

2 MS. SCHELLIN: The staff records  
3 the vote 5-0-0 to approve final action of Zoning  
4 Commission Case 03-12P/03-13P. Excuse me.  
5 Commissioner Miller moving. Commissioner  
6 Cohen seconding. Commissioners Hood, May, and  
7 Turnbull in support.

8 CHAIRMAN HOOD: Oh, okay. I've  
9 just been informed that we had a, I don't know  
10 if you were here, there was an announcement,  
11 if we hear the fire alarm, we do obey all fire  
12 laws. But we were told that we didn't have to  
13 evacuate. It was an announcement prior, some of  
14 you may not have been here. I don't what you to  
15 think the Zoning Commission think that they have  
16 it like that and they can ignore fire alarms.  
17 But I want you to know, we will be the first ones  
18 out here if we had to go. So I just wanted  
19 everybody to know that. We were told that we  
20 didn't have to evacuate. Okay.

21 Again, I wanted to move  
22 correspondence, I think we can get through

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1 correspondence faster than -- Zoning  
2 Commission, let's go to correspondence. Zoning  
3 Commission Case number 0834C. A letter from the  
4 applicant requesting further consideration of a  
5 modification requirement.

6 Ms. Schellin.

7 MS. SCHELLIN: As you stated, it's  
8 a request from the applicant asking the  
9 Commission to further consider a modification  
10 requirement. And the alternative to consider a  
11 minor modification in this case.

12 Thank you.

13 CHAIRMAN HOOD: Okay.  
14 Commissioners, let's open this up. Any  
15 comments? We have a submission 17. This is  
16 from the applicant's counsel. Any comments on  
17 the request?

18 COMMISSIONER MAY: Mr. Chairman,  
19 I'd be happy to start talking about it. I can't  
20 say that I have a clear picture of how we should  
21 proceed on this.

22 But I understand now what has,

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1 what's requested is a reconsideration of our  
2 previous set down of this case for the hearing  
3 on the modification to the stage one, based on  
4 the fact that they've looked at their drawings  
5 more carefully and determined that it's really  
6 not eight feet taller than before, it's two feet  
7 seven inches, or two feet eight inches,  
8 something like that, whatever it is.

9 And then they've asked that we  
10 either not consider this a modification and I  
11 guess within the realm of what could be  
12 considered just in the hearing for the stage two  
13 in this or in the alternative consider it a minor  
14 or moderate modification and act to approve it  
15 either now or in the immediate future.  
16 Something like that.

17 I'm not sure how I feel on this. I  
18 think that that when it comes to height that we  
19 don't generally regard height as something that  
20 can be changed with a minor modification. But  
21 this is only a little over two and a half feet  
22 on a 50 foot building, so it's close to 5 percent.

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1 I'm not sure if there's a threshold at which  
2 point we'd feel comfortable. And certainly, if  
3 they're coming back with a six inch modification  
4 that would be pretty minor. But is two and a  
5 half feet minor? I'm not sure. It's a question  
6 of what we feel we're comfortable with.

7 I'm also -- I understand the dilemma  
8 because it is, even though it would not actually  
9 add significant work for the hearing, the mere  
10 fact that there has to be a hearing, even if it's  
11 coincident, requires another fee and that fee is  
12 quite substantial. So I'm sympathetic to that  
13 fact.

14 I would like to weigh in on whether  
15 we modify the stage one or allow the stage two  
16 to incorporate that modification. Or rather  
17 for us to conclude that it's within our  
18 flexibility on the stage two.

19 I don't know. I mean, I don't know  
20 enough about the history of what we've done in  
21 the past and how these sorts of modifications  
22 have been dealt with from stage ones to stage

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1 twos.

2 I do know that we've not, you know,  
3 we've been sticklers on some cases where  
4 there've been substantial modifications to  
5 stage one that came in on stage two. And we  
6 said, no, that's not, that's not consistent with  
7 stage one. And you need to file for a  
8 modification there.

9 The one that sticks in my mind is  
10 much more significant than this though. So it's  
11 almost like it's, here, it's a matter of  
12 principle.

13 So I mean, I don't know if this  
14 actually works for us but I would be, I would  
15 think that we could take action before we take  
16 action on the stage two modification let this  
17 issue ride. And then consider a minor  
18 modification. This is a minor modification at  
19 stage one. That's one way to deal with it.

20 And then just reverse our previous  
21 set down of this as a modification.

22 But I'd like -- I've been talking for

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1 a while and I'd like to hear other people's  
2 comments.

3 CHAIRMAN HOOD: Okay. Anybody  
4 else?

5 Commissioner Miller.

6 COMMISSIONER MILLER: Well, I share  
7 many of Commissioner May's concerns.

8 I think I was the first to speak the  
9 last time when I thought that it needed to have  
10 a first stage modification when I saw that the  
11 difference was eight feet out of 50.

12 But I didn't, but now that there's  
13 been a correction and it's only two feet seven  
14 inches on a 50 foot high church building, that's  
15 in the context of a PUD that has 130 foot maximum  
16 height everywhere else.

17 I don't think this would set a  
18 precedent if we allow this to go forward as a --  
19 I have no problem with this going forward and  
20 just considering this, considering this at the  
21 hearing. I think it is minor. I don't think  
22 it's a precedent for other cases because of the

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1 way it was corrected, because of the context of  
2 the 130 foot high building. So I wouldn't have  
3 a problem with us agreeing to the applicant's  
4 request to consider it as a minor change. And  
5 without the requirement of paying a substantial  
6 hearing fee on the whole issue.

7 CHAIRMAN HOOD: Okay. Any other  
8 comments?

9 Commissioner Turnbull.

10 COMMISSIONER TURNBULL: It is a  
11 conundrum of sorts. And I agree with  
12 Commissioner Miller and Commissioner May.

13 You know, I think the fact that we've  
14 mentioned this on the record and we've noted that  
15 what this is and what it involves is kind of a  
16 caveat to what we're looking, what we've always  
17 agreed that height is not considered a minor  
18 modification. And I think the fact that we  
19 recognize, I think that this is not  
20 precedent-setting. And that anybody listening  
21 to this cannot rely upon this, this  
22 is a unique situation that were looking at.

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1           And I would agree with my two  
2 colleagues.

3           CHAIRMAN HOOD:   Okay.   Any other  
4 comments?

5           VICE CHAIR COHEN:   I would just  
6 suggest that we make it unanimous.

7           CHAIRMAN HOOD:   Okay.   So the way  
8 I'm hearing it, what you're trying to say, so I  
9 understand what I'm hearing is that we would  
10 consider this a minor modification.   The  
11 applicant then would do what's proper.   And I  
12 think something to the directive, whatever that  
13 is.

14           And also that we would hear this at  
15 the time of the hearing at the second stage.

16           Is that -- that's where we are?   We  
17 all on the same page?

18           COMMISSIONER MAY:   Yes.   I'm  
19 looking over at Mr. Ritting to see if he has an  
20 opinion on whether we actually handle in that  
21 fashion or whether we, we're better off not --

22           MR. RITTING:   I'm sorry.   I was

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1 just a little surprised. I was expecting from  
2 the discussion that you were deciding that the  
3 modification wasn't necessary.

4 COMMISSIONER MAY: A modification  
5 but --

6 CHAIRMAN HOOD: Minor  
7 modification. That's a distinct difference.

8 MR. RITTING: Here's the pause I  
9 have.

10 COMMISSIONER MAY: All right.

11 MR. RITTING: In order to set down  
12 this case, you had to, for the second stage, you  
13 had to decide that under 2408.3 that the  
14 Commission determines that the applicant  
15 complies with all the requirements of the first  
16 stage approval. And it shall schedule a public  
17 hearing on the second stage application. It is  
18 the intention of the Commission that any second  
19 stage application that is substantially in  
20 accordance with the elements, guidelines, and  
21 conditions of the first stage approval shall be  
22 granted a hearing.

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1           And what I understood your decision  
2           to be at the set down was that you found that it  
3           was not substantially in compliance with the  
4           condition that said that it will be developed in  
5           accordance with the plans that showed a building  
6           of a certain height.

7           So I'm just not, I'm not clear where  
8           that set down decision stands in light of what  
9           you're discussing tonight.

10           COMMISSIONER MAY: So upon further  
11           consideration of how the building height is  
12           actually measured, and it turns out it's really  
13           only two feet and change taller as opposed to  
14           eight feet, that we no longer consider this a  
15           modification.

16           CHAIRMAN HOOD: The information  
17           that we made that decision on has been changed.

18           MR. RITTING: Right. And so I  
19           guess what I'm suggesting is that, if that's your  
20           view that it is substantially in accordance with  
21           what was approved in your first stage, then I  
22           don't see a need for a minor modification

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1 decision at the hearing night.

2 I don't know if that makes things  
3 clearer or less clear.

4 COMMISSIONER MAY: And I was  
5 actually wondering because I didn't necessarily  
6 get the impression that everybody agreed that we  
7 should be treating this as a minor modification  
8 either.

9 CHAIRMAN HOOD: I thought, I  
10 thought --

11 COMMISSIONER MAY: I know you, Mr.  
12 Chairman, agreed. But I thought --

13 CHAIRMAN HOOD: -- that goes  
14 against my class. And you want me to go against  
15 my class. The chairman is not the whole board.  
16 I was trying to -- my class -- that's what I  
17 heard. If that's not what I heard --

18 COMMISSIONER MAY: And I thought I  
19 heard something different but I could, you know,  
20 I could have heard it wrong. So --

21 CHAIRMAN HOOD: I think the only  
22 person who really spelled it out was

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1 Commissioner Miller.

2 COMMISSIONER MAY: Right.

3 CHAIRMAN HOOD: He said it was fine  
4 I think -- I don't want to put words --

5 COMMISSIONER MAY: I mean --

6 CHAIRMAN HOOD: Let's do it again.

7 COMMISSIONER MAY: Yes. You all  
8 think it should be a minor modification or that  
9 we should simply regard it as substantially  
10 consistent with stage one or whatever the right  
11 word is?

12 MR. RITTING: Right. I'm sorry to  
13 interrupt. You'd be revisiting your set down  
14 decision now, essentially, and saying you don't  
15 need to have a PUD modification for the first  
16 stage approval.

17 COMMISSIONER MAY: I mean, for you,  
18 your advice is that it's an either/or. It's  
19 either, it is a modification and we should stay  
20 the course or it's not a modification and we  
21 withdraw the set down. And that minor  
22 modification really doesn't enter the radar.

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1                   CHAIRMAN HOOD:     Which then, it  
2     should be put on the consent calendar.

3                   COMMISSIONER MAY:   Right.

4                   MR. RITTING:    I'm not willing to go  
5     that far.  I just wanted to step through the  
6     decision.

7                   COMMISSIONER MAY:   Right.

8                   MR. RITTING:    To make the first  
9     decision whether you think it's a modification  
10    in light of that language I read about whether  
11    it's substantially in accordance with the -- and  
12    if the answer is no, it's not substantially in  
13    accordance, then whether you believe it's  
14    appropriate to consider the change is a minor  
15    modification.     And I think it would be  
16    appropriate to make that decision at the hearing  
17    if that's the way you wanted to go.  Or it's  
18    certainly possible.

19                   It's just, I wanted to make sure you  
20    step through the steps of the decision.

21                   COMMISSIONER MAY:   Right.  So I  
22    mean, I think there's a consensus, a consistent

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1 sense among the Commissioners who've spoken that  
2 we should reconsider the set down for a  
3 modification; is that correct? If we're going  
4 to step through this in the fashion that Mr.  
5 Ritting suggests.

6 CHAIRMAN HOOD: The only reason we  
7 would reconsider it is because the information  
8 --

9 COMMISSIONER MAY: Right.

10 CHAIRMAN HOOD: -- this information  
11 has changed.

12 COMMISSIONER MAY: Right.

13 CHAIRMAN HOOD: So we would  
14 withdraw that, we would withdraw the set down.  
15 And then, we would look back at it and it should  
16 go on the consent calendar. Am I right?

17 MR. RITTING: No. I'm just asking  
18 you to, I'm suggesting that you'd reconsider the  
19 set down decision about whether there's a need  
20 for the first stage modification at all in light  
21 of the changed information.

22 CHAIRMAN HOOD: And we can do that

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1 at the hearing.

2 MR. RITTING: No. I think you  
3 should do it tonight.

4 CHAIRMAN HOOD: Okay. We're going  
5 to spend three hours on how many? Two feet two  
6 feet seven inches?

7 COMMISSIONER MAY: Mr. Chairman,  
8 as I was trying to get through before, I would  
9 suggest that there's enough information, based  
10 on the new information that we have, for us to  
11 reconsider the previous set down. And move to  
12 withdraw the set down.

13 So I would make that motion right  
14 now.

15 CHAIRMAN HOOD: Okay. And I'll  
16 second it.

17 COMMISSIONER MAY: Okay.

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

20 And please, I mean, any further  
21 discussion?

22 (No audible response.)

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1 All those in favor? Aye.

2 (Chorus of ayes.)

3 Not hearing any objections, Ms.

4 Schellin, would you record the vote.

5 MR. RITTING: So we've withdrawn

6 the set down.

7 MS. SCHELLIN: Of which case?

8 MR. RITTING: Of the --

9 MS. SCHELLIN: There were two  
10 cases. So I don't know --

11 COMMISSIONER MAY: One.

12 MS. SCHELLIN: -- the modification  
13 case --

14 COMMISSIONER MAY: Stage one  
15 modification.

16 CHAIRMAN HOOD: C, right?

17 MS. SCHELLIN: Okay. That was D.

18 Staff records the vote 5-0-0 to  
19 withdraw the set down of Zoning Commission Case  
20 number 0834D. Commissioner May moving.  
21 Commissioner Hood second. Commissioners  
22 Cohen, Miller, and Turnbull in support of

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1 withdrawal of set down.

2 CHAIRMAN HOOD: Mr. Ritting, is  
3 that right so far as we step through this?

4 MR. RITTING: I just want to ask you  
5 if I understand what your intention was with the  
6 previous vote.

7 And that was to decide that it's no  
8 longer necessary to have a modification to the  
9 first stage PUD. Because you believe, because  
10 of the changed information that you've received  
11 about the height of the building, you believe  
12 it's no longer necessary. And that you believe  
13 that the set down for the second stage PUD  
14 application should continue in place and that  
15 you intend to have a hearing on that part of the  
16 application.

17 CHAIRMAN HOOD: Everyone is  
18 agreeance with that so we don't have to make the  
19 first stage -- that's off the table. We don't  
20 need to revisit that for two feet seven inches.

21 COMMISSIONER MAY: Well, I mean, I  
22 think that's the second question is whether we

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1 want to regard it as a minor modification or  
2 whether we want to simply just consider the  
3 question of its -- I mean, we can go to the  
4 hearing and decide, you know what? We don't  
5 like an extra two feet seven inches and you got  
6 it bring it down to 50 feet flat. We could  
7 decide that at that time. They could basically  
8 take their chances about whether or not it's  
9 consistent, right?

10 CHAIRMAN HOOD: So then we need to  
11 consider that as a minor mod to the first stage,  
12 right? If I --

13 COMMISSIONER MAY: No, if you  
14 understand what I'm saying is that we can let it  
15 ride up until that point and the applicant can  
16 basically gamble that we're going to either  
17 decide that it's not necessary to change the  
18 stage one or that we may require them to make it  
19 50 feet tall.

20 CHAIRMAN HOOD: So we're leaving it  
21 open. We're not improving that part. But then  
22 again --

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1                   COMMISSIONER MAY:    But we're not  
2                   saying no to it either.

3                   CHAIRMAN HOOD:    So we -- it's all  
4                   semantics.  We still end up at the same place.

5                   MR. RITTING:    Right.

6                   CHAIRMAN HOOD:    How do you word it?

7                   MR. RITTING:    The decision, I mean,  
8                   the difference, as I understand it and perhaps  
9                   I'm misunderstanding your view, is there would  
10                  no longer need to be a minor modification  
11                  application approved in this case.  You would be  
12                  -- you've decided to set down the second stage  
13                  application, you don't believe a first stage  
14                  modification is necessary.  However, at the  
15                  hearing, in judging the second stage  
16                  application, if you believe that it is too tall,  
17                  you will not approve the application.

18                  CHAIRMAN HOOD:    You know what?  
19                  What I would suggest is that unless somebody has  
20                  anything else, I'm not going to -- maybe I  
21                  shouldn't have switched the agenda.  Maybe I  
22                  should have left it like it was.

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1 Does everyone agree with what  
2 Commissioner May has confused, I mean, has  
3 mentioned?

4 VICE CHAIR COHEN: Yes.

5 COMMISSIONER TURNBULL: I  
6 certainly agree.

7 CHAIRMAN HOOD: I just think that,  
8 I just think in the past if we basically are  
9 saying -- I understand what you're saying but  
10 it's like we're almost putting the first stage  
11 in with the second stage. And we've already  
12 approved -- I just don't agree with the process.

13 COMMISSIONER MAY: Well, Mr.  
14 Chairman, I mean, we can leave it up to the  
15 applicant to decide if they want to go ahead and  
16 submit for a minor modification of stage one.  
17 And then we can take it up either at a meeting  
18 between now and the hearing or we can take it up  
19 on the night of the hearing. Or we can decide  
20 that we don't want to take it up at all.

21 CHAIRMAN HOOD: And I agree. But  
22 we left it up to the applicant last time and we

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1 -- and for some reason.

2 COMMISSIONER MAY: Well, we did  
3 leave it up to the applicant. We told the  
4 applicant --

5 CHAIRMAN HOOD: Well, we told them  
6 but six feet disappeared. So that's why we got  
7 here now.

8 COMMISSIONER MAY: Right.

9 CHAIRMAN HOOD: That's why we're  
10 here.

11 COMMISSIONER MAY: Right. Well,  
12 we set it down last time and they decided they  
13 decided or they took another look at their plans.

14 CHAIRMAN HOOD: Okay. Well, maybe  
15 they can take another look in the tool manual and  
16 we go along with -- does anyone disagree with  
17 what Commissioner May just mentioned?

18 COMMISSIONER TURNBULL: I'm just a  
19 little bit confused on the legality of how or the  
20 process like you had mentioned about how this is  
21 really going down. I'm not sure that I, I'm not  
22 sure what we're trying to achieve.

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1                   COMMISSIONER MAY: I believe that  
2 we can decide at this stage two hearing that what  
3 they have proposed is consistent with stage one;  
4 is that correct?

5                   MR. RITTING: Yes.

6                   COMMISSIONER MAY: It's in our  
7 discretion.

8                   MR. RITTING: Right. That there's  
9 a rule that says that, in this is, this goes to  
10 whether you should approve a second stage  
11 application, it says, it's 24.806, "If the  
12 Commission finds the application is in  
13 accordance with the intent and purpose of the  
14 zoning regulations, the PUD process, the first  
15 stage approval, the Commission shall grant  
16 approval of the second stage application."  
17 That's one of the standards you use in deciding  
18 whether to approve a second stage application.

19                   So in hearing the case, you will  
20 decide whether you believe that this change to  
21 the height is in accordance with the first stage  
22 approval. Period.

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1           CHAIRMAN HOOD:   And if we get to  
2           that point, it's not that we have -- what's the  
3           next step? Well, I don't want to go into all  
4           that. Then they have to file another, they  
5           would have to file a minor modification as we  
6           said previously. If we get to that point. I  
7           understand what Commissioner May is saying now.

8           MR. RITTING:       No.     If you're  
9           deciding that there is no need for a, that  
10          there's no need for a first stage modification  
11          right now, there's no need for minor  
12          modification application to come from the  
13          applicant. You will judge the second stage  
14          application that they file in accordance with  
15          the PUD regulations including the regulation  
16          that I just read that requires, in order to be  
17          approved, that the second stage application is  
18          in accordance with the first stage approval.

19          CHAIRMAN HOOD:   So if we got to the  
20          hearing and we found out that it was not in  
21          compliance with the first stage then the whole  
22          application would be -- if we would --

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1 MR. RITTING: Correct.

2 CHAIRMAN HOOD: I don't want you to  
3 go thinking that's what's going to happen on  
4 this. I just want to know all the scenarios.

5 Does anyone have any objections to  
6 what Commissioner May has proposed Mr. Ritting  
7 has read our regulation? I think that gets it  
8 for me.

9 Commissioner Turnbull, you --

10 COMMISSIONER TURNBULL: No, I just  
11 hope the applicant understands that. They  
12 could be denied for the whole thing.

13 CHAIRMAN HOOD: Commissioner  
14 Miller. Are you fine --

15 COMMISSIONER MILLER: Yes, I'm fine  
16 with that. I think this is the, I think that the  
17 two feet seven is substantially in compliance  
18 with the first stage PUD.

19 CHAIRMAN HOOD: So that's one vote.

20 Commissioner Cohen, are you fine?

21 VICE CHAIR COHEN: I am fine.

22 CHAIRMAN HOOD: Commissioner May

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1 are you fine with your own --

2 COMMISSIONER MAY: I'm fine.

3 CHAIRMAN HOOD: Okay. Two feet  
4 seven inches. All right.

5 So do we need to do anything? We've  
6 taken it off the table, we're already had a  
7 motion, we don't need to do anything else but  
8 wait for the second stage. Okay.

9 MS. SCHELLIN: Just to confirm, the  
10 second stage can proceed. It's no longer  
11 contingent on the modifications so I can  
12 perceive with advertisement.

13 CHAIRMAN HOOD: Okay. Does  
14 everybody understands -- is anybody still  
15 confused with it? Okay.

16 Let's go to proposed action. This  
17 will probably be quicker than correspondence.  
18 Zoning Commission Case Number 05 -- we have  
19 another one? Did I miss one? Oh, okay. I'm  
20 sorry. Zoning Commission Case 05 -- I'm sorry,  
21 thank you -- Zoning Commission Case Number  
22 05-37/05-37B, letter from the Zoning

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1 Administrator pursuant to 249.8.

2 Ms. Schellin.

3 MS. SCHELLIN: Yes, sir. Pursuant  
4 to section 2409.8, "The Zoning Administrator is  
5 required to provide notification to the  
6 Commission of any decision he makes that  
7 deviates from the Zoning Commission's  
8 decision." As you guys may recall, 2409.8  
9 requires the ZA to wait for the Zoning Commission  
10 to acknowledge that the modification that he's  
11 made does not exceed the scope of 2409.6 or for  
12 45 days to pass, whichever occurs first before  
13 he can issue a permit. So this letter is before  
14 you for you to acknowledge or for you to let 45  
15 days pass your pass.

16 CHAIRMAN HOOD: Okay. Any  
17 comments on this? I know he's done it in the  
18 past. Do we have any objections? Any  
19 objections?

20 (No audible response.)

21 So do we need to take a motion to  
22 accept this?

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1 MS. SCHELLIN: We can just  
2 acknowledge it. If you're okay with it. No  
3 objections.

4 CHAIRMAN HOOD: Any objections?

5 Not seeing any. So it's been  
6 acknowledged by Commission. And we have --

7 MS. SCHELLIN: Thank you.

8 CHAIRMAN HOOD: And we have to deal  
9 with the consensus of acknowledgment.

10 Okay. Last on the agenda for this  
11 evening. Well, proposed action, Zoning  
12 Commission Case Number 0536G. This is a K  
13 Street Developer's, LLC, PUD modification  
14 related map amendment to Square 749.

15 Ms. Schellin.

16 MS. SCHELLIN: Exhibits 46 through  
17 46D are the applicant's supplemental  
18 information per the Commission's July 29th  
19 meeting. ANC 6C made a request to reopen the  
20 record, which was granted, to submit another  
21 report which is found at Exhibit 48.

22 We'd ask the Commission to consider

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1 proposed action this evening.

2 CHAIRMAN HOOD: Okay.

3 Commissioners, the ANC -- let's go to ANC 6C.

4 I'll get that paperwork.

5 I don't know. Does anyone feel  
6 strongly with ANC 6C's letter? I think we  
7 wanted to address it. Okay.

8 Vice Chair Cohen.

9 VICE CHAIR COHEN: Yes. Before I  
10 start that, I do want to thank the development  
11 team for present valuing the cost to providing  
12 the two affordable units. I think that's an  
13 important thing to do. I think it's important  
14 because it's, it provides more transparency and  
15 whether people are at the Zoning Commission or  
16 not, a lot of people are interested in the  
17 housing issues in the District of Columbia. So  
18 I hope that's continuing, that other developers  
19 will continue to do that when it comes to  
20 applauding themselves for providing an  
21 additional unit or two. So thank you.

22 As far as the ANC Commission, I

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1 disagree with their comment that the project is  
2 not integrated. I think a vacant parcel of land  
3 is not integrated in a neighborhood. And I'd  
4 like to see this parcel developed.

5           Again, I think, I believe that the  
6 issue of loading, it's common in the District of  
7 Columbia. Not every apartment has a loading  
8 area. Not every house has a loading area. You  
9 have to ask the District for permission to load  
10 and unload. And I think there will be someone  
11 on site to assist residents to do that.

12           I think there are some times  
13 problems, when you have a truck coming up and,  
14 you know, just like a UPS or, you know, any kind  
15 of a delivery truck, they tend to hold up the  
16 traffic. But that's something that living in a  
17 city, you know, we do.

18           The other thing I would just like to  
19 comment on is the parking seems to have a  
20 resolution to it. It's not definitive. But it  
21 appears that there is willingness to allow some  
22 parking if residents do desire to have a car.

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1 But also, the applicant is willing to prohibit  
2 that ownership of a car in the lease. I think  
3 I have the right project.

4 And lastly, I just want to make a  
5 statement about the issue with regard to  
6 complying with outreach to minority  
7 contractors. I think there was a time when work  
8 was very difficult to come by. And the  
9 contractors, in letters, stated that they were  
10 able to use their own workforce. And could not  
11 expand it.

12 It's unfortunate that we have that  
13 situation. I would like -- and I think in this  
14 market where we have, you know, over 50 cranes  
15 in the air, this is changing. I also think  
16 though that all developers should do their  
17 utmost to provide some kind of opportunities for  
18 people to, who are minority business owners or  
19 even residents to come and be trained to do their  
20 jobs. And to find spaces for them in their own  
21 organizations. That is a big help as well.

22 So I just understand what they were

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1       faced with during the period of time that they  
2       were under construction for their first  
3       building. And I see that -- I saw that a lot in  
4       my past experience. But I hope that currently  
5       we're doing much more in subcontracting to  
6       minority enterprises.

7                     Thank you.

8                     CHAIRMAN HOOD: Any other comments?  
9       Commissioner Turnbull.

10                    COMMISSIONER TURNBULL: Mr. Chair,  
11       I think the only thing that I would add, I think  
12       the applicant in Tab D tried to respond to some  
13       of the concerns of the ANC. But I just want to  
14       recognize that even in the ANC's vote it was a  
15       very fractured vote. It was not like it was 6-0  
16       against the project. It was 3-1-2. So I think  
17       there's not uniformity to this vote. I mean,  
18       for the community.

19                    I think the applicant has really  
20       done, you know, considering the difficult  
21       aspects of this site and the project, I think the  
22       applicant has really done an excellent job.

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1                   And although the ANC talks about not  
2                   integrating it, I think, in fact, does integrate  
3                   fairly well with the rest of the project.

4                   And I am in support of this.

5                   CHAIRMAN HOOD:   Okay.   Any other  
6                   comments?

7                   Commissioner Miller.

8                   COMMISSIONER MILLER:   Thank you,  
9                   Mr. Chairman.

10                  Yes, I would echo the comments of  
11                  Commissioner Turnbull.  This does, this project  
12                  does complete the square as originally  
13                  envisioned.  And the applicant used the same  
14                  architect as the first phase, as I recall.  And  
15                  this will definitely provide a completion to  
16                  this square with a lot of housing -- that is, that  
17                  will help revitalize, continue the  
18                  revitalization of this neighborhood.

19                  COMMISSIONER TURNBULL:   Yes, I  
20                  agree with all my colleagues that I think that  
21                  the -- you know, I understand the ANC's concern.  
22                  I'm not sure that they completely got it right

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1 this time around. And as Commissioner Turnbull  
2 notes, it wasn't a unanimous vote in opposition.  
3 For strong reasons, I think it was mostly, you  
4 know, lesser concerns. But enough to tip the  
5 balance I guess against the project.

6 You know, we'd like to see PUD that  
7 comes before us simply be a home run. But you  
8 know, not everything gets done with a slugger  
9 hitting a home run. Sometimes it's, you know,  
10 you just got to plod through it and move the  
11 runner around the bases and get it across home  
12 plate. And I think that's kind of what happened  
13 here. It just moved it along.

14 And I think this is a better project  
15 than we would get as a matter of right. And with  
16 some substantial amenities.

17 I was not convinced of that at the  
18 very beginning. But I am now.

19 CHAIRMAN HOOD: Okay.  
20 Commissioner Miller.

21 COMMISSIONER MILLER: Yes. I just  
22 -- I forgot to add something. I think the

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1 commitment letter that we've gotten since the  
2 last time from the phase two owner that if  
3 there's excess parking, they will allow this  
4 phase to use it, use phase two -- I think we had  
5 something in the record that DDOT felt that if  
6 the parking garage is at both phase two and phase  
7 -- well, we're over -- it was over-park. So  
8 there is a good likelihood that there will be  
9 excess parking available there. And it just  
10 simply isn't required in the zoning. It's just  
11 practical by itself to have parking.

12 So I'm comfortable with that. It  
13 goes along with the RPP, the residential permit  
14 parking restrictions.

15 COMMISSIONER TURNBULL: Mr. Chair,  
16 I would just add one more thing that I am -- we  
17 had a special hearing on Monday night regarding  
18 the cross-examination of one of the applicant's  
19 expert.

20 And I was not convinced by the  
21 opposition's cross-examination that there was  
22 anything that was harmful about the project.

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1 And I think that after hearing it I was very much  
2 convinced that the project was very much in sync  
3 with the Comprehensive Plan. And everything  
4 else.

5 And so, I just wanted to add that.

6 CHAIRMAN HOOD: Okay. And it's  
7 already been noted. Thank you, Commissioner  
8 Turnbull, but it's already been noted. I'm  
9 still reviewing contract compliance forms that  
10 have been done in the past. And I think that was  
11 one of the things. I'm not sure who brought  
12 that up. It might have been me.

13 So many employment opportunities  
14 has been given, this developer has given to  
15 residents of the city and abroad. Well, DMV  
16 actually. So I want to make note of that.

17 I appreciate the letters here of  
18 support. And requesting -- the different  
19 letters, they vary from different trades. And  
20 I appreciate the applicant for providing that.  
21 It's always good to see that people are actually  
22 doing what they say when they come down in front

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1 of us.

2 Okay. Anything else?

3 (No audible response.)

4 All right. Somebody like to make a  
5 motion? Or not make a motion. Somebody delay  
6 it or --

7 COMMISSIONER TURNBULL: Mr. Chair,  
8 I would move that we take proposed action for  
9 approving Zoning Case 05-36G K Street  
10 Developers, LLC, CASCO PUD Modification and  
11 related map amendment at Square 749.

12 VICE CHAIR COHEN: I would second  
13 that.

14 CHAIRMAN HOOD: It's been moved and  
15 properly seconded.

16 Any further discussion?

17 I just want to say the RPP, is this  
18 one of those streets -- I can't remember -- where  
19 we can actually do it. I know that DDOT has a  
20 rule about how it can be done. And I can't  
21 remember. Are we sure that this is one of those  
22 areas? Okay. I mean, I looked in the audience.

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1 There's only three people. So I looked this  
2 time. I'm being told that could be done. So I  
3 won't labor. Okay.

4 It's been moved and properly  
5 seconded.

6 Any further discussion?

7 (No audible response.)

8 All those in favor. Aye.

9 (Chorus of ayes.)

10 Not hearing any opposition, Ms.  
11 Schellin, would you record the vote.

12 MS. SCHELLIN: The staff records  
13 the vote 5-0-0 to approve proposed action Zoning  
14 Commission Case Number 05-36G. Commissioner  
15 Turnbull moving. Commissioner Cohen second.  
16 Commissioners Hood, May, and Miller in support.

17 I would just remind the applicant to  
18 comply with Sections 2403.15 through 20 since  
19 the proposed action has been taken.

20 Thanks.

21 CHAIRMAN HOOD: Okay. Does the  
22 Office of Planning have an update of a report?

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1 (No audible response.)

2 Ms. Schellin, do we have anything  
3 else on our agenda?

4 MS. SCHELLIN: No.

5 CHAIRMAN HOOD: I want to thank  
6 everyone for their participation tonight. And  
7 this meeting is adjourned.

8 (Whereupon, the above-entitled  
9 matter was concluded at 8:04 p.m.)

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