

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

OCTOBER 21, 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
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
- PETER G. MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy
JOEL LAWSON
ARTHUR JACKSON
MAXINE BROWN-ROBERTS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the minutes from the Regular meeting held on October 21, 2013.

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

2 6:35 p.m.

3 CHAIRMAN HOOD: Okay, good evening
4 everyone. We're getting ready to get started.
5 We're located here in the Jerrily R. Kress
6 Memorial Hearing Room. This meeting will
7 please come to order.

8 This is the October 21, 2013 public
9 meeting of the Zoning Commission for the
10 District of Columbia. My name is Anthony Hood.
11 Joining me are Vice Chair Cohen, Commissioner
12 Miller, Commissioner Turnbull, and Commissioner
13 May.

14 We're also joined by Office of
15 Zoning staff, Ms. Sharon Schellin, Office of
16 Attorney General staff, Mr. Alan Bergstein,
17 Office of Planning staff, Ms. Steingasser, Mr.
18 Lawson, Mr. Jackson, and Ms. Brown-Roberts.

19 I'll remind everyone copies of
20 today's meeting agenda are relevant to you and
21 are located in the bin of the door. We do not
22 take any public testimony at our meetings unless

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1 the commission requests someone to come forward.

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

8 Does the staff have any preliminary
9 matters?

10 MS. SCHELLIN: No, sir.

11 CHAIRMAN HOOD: Okay, if not, let us
12 proceed with the agenda. The first final action
13 Zoning Commission Case No. 12-02, B&B 50 Florida
14 Avenue, LLC - Consolidated PUD & Related Map
15 Amendment at Square 3516. Ms. Schellin?

16 MS. SCHELLIN: Yes, sir, at
17 Exhibits 59 and 60, we have the applicant's
18 post-hearing submission, and in Exhibit 61 we
19 received an NCPC report which states that they
20 have no issues with this case, and we'd ask
21 permission to consider a final action.

22 CHAIRMAN HOOD: Okay, thank you,

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1 Ms. Schellin. Commissioners, this is in front
2 of us for final action. Any comments?

3 (No audible response)

4 CHAIRMAN HOOD: Vice Chair Cohen?

5 VICE CHAIR COHEN: Yes, this is,
6 again, a very minor comment. Page 18 of the
7 draft order, paragraph 60, we should keep the
8 term testified that was crossed out in the third
9 line.

10 CHAIRMAN HOOD: Okay, what
11 paragraph? I'm sorry.

12 VICE CHAIR COHEN: 60, under
13 contested issues.

14 CHAIRMAN HOOD: I got it. Okay,
15 any objections from anyone?

16 (No audible response)

17 CHAIRMAN HOOD: Okay, anything
18 else?

19 (No audible response)

20 CHAIRMAN HOOD: Would somebody like
21 to make a motion?

22 VICE CHAIR COHEN: With that minor

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1 correction, I will move to approve Zoning
2 Commission Case No. 12-02, Bush at Florida
3 Avenue Associates, LLLP, and B&B Florida Avenue,
4 LLC - Consolidated PUD & Related Map Amendment
5 at Square 3516.

6 COMMISSIONER TURNBULL: Seconded.

7 CHAIRMAN HOOD: Okay, it's been
8 moved and properly seconded. Any further
9 discussion?

10 (No audible response)

11 CHAIRMAN HOOD: All those in favor?

12 (Chorus of ayes)

13 CHAIRMAN HOOD: Any opposition?

14 (No audible response)

15 CHAIRMAN HOOD: Staff, would you
16 record the vote?

17 MS. SCHELLIN: Staff records the
18 vote 5-0-0 to approve final action in Zoning
19 Commission Case Number 12-02, Commissioner
20 Cohen moving, Commissioner Turnbull seconding,
21 Commissioners Hood, May and Miller in support.

22 CHAIRMAN HOOD: Okay, thank you.

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1 Let's go to Proposed Action Zoning Commission
2 Case Number 13-07. This is David Belt Map
3 Amendment at Square 5081. Ms. Schellin?

4 MS. SCHELLIN: Yes, sir. Exhibit
5 23 is an OP Supplemental Report. Exhibit 24 is
6 the petitioner's response thereto. And then
7 today we had a request to reopen the record from
8 the National Parks Service, and that request was
9 granted, so at Exhibit 26 we have a letter from
10 the National Parks Service in support.

11 CHAIRMAN HOOD: Okay.

12 MS. SCHELLIN: We'd ask the
13 Commission to consider a proposed action.

14 CHAIRMAN HOOD: Okay, thank you,
15 Ms. Schellin. This is before us,
16 commissioners, for a proposed action. I just
17 want to state that I did review the record, and
18 I will be participating in this case. I wish I
19 would have missed another night besides this
20 case, but I did review the record. Okay, let's
21 open it up for comments, if someone would like
22 to get it started?

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1 COMMISSIONER MAY: Mr. Chairman?

2 CHAIRMAN HOOD: Commissioner May.

3 COMMISSIONER MAY: Yeah, this is a
4 very difficult case, and the way it comes to us
5 really does complicate things. But I have to
6 say that I am sympathetic to the applicant and
7 their desire to rezone these properties to be
8 consistent with the comprehensive plan.

9 And Z3A, I mean, we already have an example
10 of what Z3A would yield in this property. And
11 so, I am inclined to, despite the fact that the
12 Office of Planning is now recommending that we
13 dismiss the case, I am inclined to support it.

14 CHAIRMAN HOOD: Okay, any other
15 comments?

16 (No audible response)

17 CHAIRMAN HOOD: Oh, we got a
18 question, Commissioner Miller?

19 COMMISSIONER MILLER: Thank you,
20 Mr. Chairman. Yeah, I read the OP supplemental
21 report and I understand the reasons why they're
22 recommending dismissal. But I have a

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1 question for the Office of Planning, which I'm
2 not sure - I have a question for the Office of
3 Planning. Is Z3A zoning, current, existing
4 zoning for this property, is it inconsistent
5 with the comprehensive plan?

6 MS. STEINGASSER: Well, the
7 reference is a double negative, not
8 inconsistent. Yeah, so, when you look at it in
9 terms of what the residential capacity is, it's
10 not - it's a little bit more dense than would
11 normally be accepted through, say, a PUD, for
12 moderate density on this site.

13 The maximum PUD would be an R5B,
14 which would be a 3FAR. This is a little bit more
15 than that. However, an R5C, which is typically
16 a medium density residential, but could
17 accommodate also up to a 3FAR residential, and
18 would alleviate the commercial potential of the
19 site would be another option. Does that - does
20 that secure this enough?

21 COMMISSIONER MILLER: That's
22 helpful.

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1 MS. STEINGASSER: Okay.

2 COMMISSIONER MILLER: And you said
3 R5C is - you were just referencing R5C?

4 MS. STEINGASSER: Well, we looked
5 at what the - what the applicant had submitted
6 for funding of the housing project had
7 sufficient information for us to be able to
8 assess it against other residential zones, and
9 it looks like with some reworking, the R5C would
10 accommodate the housing project.

11 There may be some variance relief
12 for a rear yard that would be needed, but the
13 height, the lot occupancy, the FAR, are all
14 within the R5C, and they're all within what would
15 be still considered moderate under a PUD.

16 And we're not suggesting that this
17 project come forward as a PUD, but that it's
18 still within that range which the commission has
19 determined to be consistent with the moderate
20 density residential.

21 COMMISSIONER MILLER: So, the
22 project that we heard about, with some

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1 reworking, could meet the R5C as a matter of
2 right?

3 MS. STEINGASSER: That is our
4 understanding, or it may require a rear yard
5 variance. But the rear yard seemed to be the
6 only real point of difficulty within an R5C.

7 COMMISSIONER MILLER: It might need
8 a BZA.

9 MS. STEINGASSER: It might need a
10 BZA.

11 COMMISSIONER MILLER: Okay, thank
12 you.

13 CHAIRMAN HOOD: Any other comments
14 from commissioners? Vice Chair?

15 VICE CHAIR COHEN: Thank you, Mr.
16 Chairman. Again, I have some sympathy for the
17 applicant's goals, but similar to OP, I think
18 that the larger benefit of the 71-unit
19 affordable residential development meets the
20 greater goal for the larger community, and
21 therefore, I would recommend dismissal of the
22 applicant's request.

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1 CHAIRMAN HOOD: Okay.

2 COMMISSIONER MAY: Mr. Chairman,
3 can I follow up with a question to the Office of
4 Planning?

5 CHAIRMAN HOOD: Commissioner May.

6 COMMISSIONER MAY: So, I'm looking
7 at the report that you issued on June 28th, and
8 the conclusion states, "Zone Districts
9 generally deemed consistent with moderate
10 density residential category R, R3, R4 and R5A."

11 And so, you're saying that R5B and
12 R5C are also generally deemed consistent, or -
13 you know. I mean, I know, I understand where,
14 "generally deemed consistent," is kind of
15 wishy-washy words to begin with, and we often can
16 stretch a little bit, but stretching to R5B is
17 more easily understandable than R5C.

18 MS. STEINGASSER: R5B is, I would
19 say, more than generally, it is typically
20 accepted as a moderate density -

21 COMMISSIONER MAY: Okay.

22 MS. STEINGASSER: - residential.

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1 COMMISSIONER MAY: So, okay.

2 MS. STEINGASSER: Under that, under
3 that category, through a PUD, you can also get
4 up to a 3FAR, which with this project, I think
5 it was coming in around a 2.6 to a 2.7 FAR, so
6 it - and that's still considered moderate
7 density residential.

8 So we're comfortable, if we went
9 with an R5C - let me make sure - that it would
10 still be consistent in the general context of
11 what we have seen. We would obviously not
12 support a PUD or anything that would exceed that
13 FAR, that would take it out of that moderate
14 category.

15 COMMISSIONER MAY: All right.

16 MS. STEINGASSER: But the primary
17 issue for us on the consistency argument is the
18 commercial potential. That's what really is
19 more difficult for us is the commercial use.

20 COMMISSIONER MAY: Right. Well, I
21 mean, I guess I can see that, but the density
22 itself is an issue. A 3.0 FAR next to a single

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1 family home is quite a difference.

2 MS. STEINGASSER: But the single
3 family homes, to be clear, are not identified as
4 low density.

5 COMMISSIONER MAY: I understand.

6 MS. STEINGASSER: They too are
7 identified as moderate density.

8 COMMISSIONER MAY: I understand,
9 right.

10 MS. STEINGASSER: So they also have
11 development potential.

12 COMMISSIONER MAY: Absolutely,
13 understood.

14 CHAIRMAN HOOD: Okay, Mr. Turnbull?

15 COMMISSIONER TURNBULL: Thank you,
16 Mr. Chair. I just have a question for the Office
17 of Planning. In your community comments
18 section, there's quite a few organizations and
19 individuals opposed - or supporting the R5A,
20 ANCs. Can you comment upon that? I mean - or
21 Mr. Jackson, if you could? Have you -

22 MR. JACKSON: Well, a number of

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1 these individuals, the ones listed, are -
2 there's property owners, and then other
3 individuals who were actually ones who sent in
4 a letter before.

5 So, I think overall Mr. Belt had
6 contacted - well, we - emailed me, sent letters
7 to all the property owners that, according to
8 their email - their mailing addresses in public
9 records, and we did get responses from the ones
10 who are local or their representatives, and
11 their responses are listed here.

12 And then we also had one of the
13 advisory committee members, the head of the ANC,
14 and we had a letter from another organization
15 that wasn't affiliated with any of the
16 properties, which was the executive director of
17 the Groundworks Anacostia River, DC.

18 So, we did get a number of responses,
19 and most of them were - did encourage going to
20 the R5A.

21 COMMISSIONER TURNBULL: Did you
22 talk to any of these people yourself, any at the

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1 ANC or -

2 MR. JACKSON: No, these were all
3 just correspondence.

4 COMMISSIONER TURNBULL: Just
5 correspondence.

6 MR. JACKSON: Just correspondence.

7 COMMISSIONER TURNBULL: Right.

8 MR. JACKSON: And did you give any
9 kind of great weight or anything to the ANC's
10 position on this?

11 MS. STEINGASSER: Well, to be
12 clear, the issue of great weight goes to the
13 deciding body.

14 MR. JACKSON: Right, right.

15 MS. STEINGASSER: We certainly give
16 deference and respect to all comments from an
17 ANC, but the issue of great weight is one that
18 -

19 MR. JACKSON: I understand that.

20 MS. STEINGASSER: - that rests with
21 the Zoning Commission.

22 MR. JACKSON: I understand that.

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1 Thank you for your clarification on that. But
2 I mean when you - you give your opinion on the
3 first page, and then afterwards you have 7 or 8
4 organizations or individuals that come out in
5 favor of R5A.

6 And I'm just wondering when you are
7 looking at this and you're - is it straightly
8 your interpretation of the comprehensive plan
9 and small area plans, or what - what is the weight
10 that you give when you're looking at this from
11 an inconsistency or a consistency standpoint?

12 MS. STEINGASSER: Well, I think in
13 this particular case, and I'm going to let Mr.
14 Lawson jump in, we were led to believe that all
15 of the property owners who were covered under the
16 petition were in support of the petition, or at
17 least not in opposition.

18 Once we found out through the public
19 notice process that they were indeed not in
20 support, and two were in dramatic opposition,
21 that became a bigger - a different type of issue
22 for us than whether, you know, how the project

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1 proceeded.

2 We also then discovered that it was
3 a housing project, which is consistent with the
4 designation and with other policies within the
5 Comp Plan about providing housing, new
6 construction, and that other city agencies were
7 involved.

8 So, it became a very, as you said,
9 it was a very difficult position for us to
10 discover after the fact, after we had proceeded.
11 So, we're kind of trying to balance all of that
12 in our determination. And ultimately, we
13 looked at the maximum density that could be
14 achieved under a moderate density category and
15 the uses.

16 COMMISSIONER TURNBULL: So as you
17 go forward in the future, you will be examining
18 neighbors more closely I take it.

19 MS. STEINGASSER: Well, we'll
20 certainly be examining the properties that are
21 covered within the application.

22 COMMISSIONER TURNBULL: Okay,

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1 thank you.

2 CHAIRMAN HOOD: I just have a few
3 questions for the Office of Planning. Forgive
4 me for asking these questions because I was not
5 at the hearing, and I don't want to re-hear the
6 hearing, but I just have a couple.

7 Let me ask this, obviously the Office of
8 Planning at some point, aside from the
9 information that they just got, they got, I
10 guess, during the hearing, at some point thought
11 that the re-zoning had some validity. Mr.
12 Jackson, am I correct?

13 MR. JACKSON: Correct.

14 CHAIRMAN HOOD: What was the
15 deciding factor, okay, other than the opposition
16 and the proposed project I think on Lot 52 or
17 whatever the lot number was, other than those
18 elements, why now do we have this other
19 recommendation?

20 Was it because people, the property
21 owners didn't - were not aware of this, at least
22 the two major points, the Menkiti Group and I

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1 think Four Points? Is that what made us change
2 our recommendation?

3 MR. LAWSON: I think that was a
4 major part of it for sure. We take requests to
5 rezone other peoples' property, especially down
6 zoning other peoples' property, pretty
7 seriously. And so, when we felt that all of the
8 property owners were aware of this case, we were,
9 obviously, much more comfortable with it.

10 When two of the land owners, which
11 represent 60 percent of the land in question,
12 came forward and said, "Actually, that's not the
13 case. We're not in favor of this change in
14 zoning at all," we have to take that seriously
15 as well.

16 CHAIRMAN HOOD: Now, the way I read
17 it, and unfortunately I couldn't play the
18 webcast back, but the way I read it, there was
19 some mention of some alternatives. I'm not
20 sure, but it wasn't expounded on. Is that
21 correct?

22 And I think the Office of Planning

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1 was asked to come back with some more
2 submissions, which you did in your supplemental
3 report. But were there some alternatives that
4 were proposed or mentioned?

5 MR. LAWSON: There was some general
6 discussion of some alternatives. Since then
7 we've also had an opportunity, actually since
8 our report was filed, our second report was
9 filed, had an opportunity to get a bit more
10 information from the hopeful developer of the
11 church site, so that we have a little bit more
12 information about what is needed, I guess, to do
13 the development on their property, which helped
14 to clarify things a little bit, and that's what
15 Ms. Steingasser was talking about earlier.

16 We're certainly not opposed to a
17 solution which meets - which tries to meet as
18 many of the objectives as possible. It is - you
19 portrayed earlier as a very difficult situation,
20 and we agree, it is.

21 So, a solution which tries to
22 address some of the competing interests, we're

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1 not opposed to that. But, when we submitted our
2 report, those solutions weren't really crafted
3 through.

4 CHAIRMAN HOOD: Let me ask this, Mr.
5 Lawson, do you think, and again, I wasn't here,
6 but do you think that more time may be able to
7 give us a solution? Because I think Mr. Belt has
8 a very - a good petitioner's case as we've
9 stated.

10 I'm just trying to figure out how do
11 we, and I guess, how do we make everybody - well,
12 not everybody's going to be happy. But, how do
13 we try to close the gap a little more from where
14 we are at this point, or do you think we're at
15 the point where we can just move forward and make
16 a decision?

17 I'm not trying to put you on the
18 spot. If you don't want to answer that question
19 -

20 (Laughter)

21 CHAIRMAN HOOD: That's a hard
22 question, I know. Believe me, I read the

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1 transcript.

2 MR. LAWSON: It is a hard question.
3 I think it's also a very legitimate question. I
4 think that Ms. Steingasser talked about what we
5 think are some of the potential options for
6 addressing the property which, to us, is of most
7 concern because of the nature of the
8 development, because they had proceeded quite
9 far into the process, including wrapping up
10 funding, and including the type of development
11 that it's for.

12 In other words, they had moved
13 forward in good faith, and probably spent a
14 considerable amount of time, effort, and money
15 to get their project to a point where it was able
16 to move forward without knowing that this change
17 was happening.

18 We also understand Mr. Belt's
19 position as well, you know. And it may be
20 possible that there is a solution that can
21 address more of the needs than either approving
22 the request for R5A or not approving the request

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1 for R5A, which is kind of a black or white
2 scenario, you know. It's either yes or no.

3 So, you know, those solutions, I
4 guess, are - it's up to the Zoning Commission,
5 I guess, to advise us if they want us to pursue
6 that a little bit further. We might turn, at
7 some point, to OAG to tell us what might be the
8 process for achieving that, what we'd required,
9 re-notification, a new hearing, that kind of
10 question.

11 But, we think those kinds of
12 solutions are possible now that we have this
13 additional information.

14 CHAIRMAN HOOD: Okay, I like that
15 avenue. I don't know what my colleagues -
16 they'll probably tell me, "You weren't here, so
17 that's your problem."

18 COMMISSIONER TURNBULL: I think
19 that's a great idea, Mr. Chair. I would back you
20 on that.

21 CHAIRMAN HOOD: Okay, I got one
22 person. Do I have another one?

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1 (Laughter)

2 CHAIRMAN HOOD: I really would like
3 for us colleagues to, if it requires more time,
4 and you know, I think everybody - there's strong
5 points on both arguments on whether to or whether
6 not to.

7 And I just would like for us to give,
8 I think, the Office of Planning more time if you
9 need it. If you don't, if you're telling right
10 now you don't need it, we've exhausted all of it,
11 then we'll deal with it. But I think,
12 from what I read, I think it's a difficult
13 situation, and we don't - I don't want to do
14 anything against the project that they got
15 financing for, they've been working on, because
16 the government should be predictable.

17 But also, I think Mr. Belt makes a
18 good case. So, I think a little more time may
19 help us.

20 MR. LAWSON: I would just point out,
21 you know, one other complicated factor, and
22 that's that the R5A zoning is set-down, so it's

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1 vested, so the developer of that one property is
2 basically stymied at this point until something
3 is done with that R5A zoning. So, you may want
4 to take that into consideration as you
5 deliberate what to do.

6 CHAIRMAN HOOD: So what happens,
7 Mr. Bergstein, can we -

8 MR. BERGSTEIN: Well, it raises an
9 interesting question because the set-down rule
10 -

11 CHAIRMAN HOOD: Mr. Bergstein, did
12 you know what I was going to ask?

13 MR. BERGSTEIN: No, I'll wait.

14 CHAIRMAN HOOD: No, because I was
15 going to ask, you probably already knew, I was
16 going to ask what happens if we rescind the
17 set-down?

18 MR. BERGSTEIN: Well, I knew you
19 were going to ask that question.

20 CHAIRMAN HOOD: Okay, I figured you
21 did.

22 (Laughter)

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1 MR. BERGSTEIN: And I was going to
2 tell you that that's what raises the interesting
3 question, because the set-down rule says that
4 the set-down rule does not apply to a decision
5 to hold a hearing on an application that is filed
6 by the owner of - by an owner of property pursuant
7 to 102.2A, which is this situation.

8 Now, it's a little bit interesting
9 because he owns one of the properties, but not
10 all of the properties. But if this had been a
11 case where a property owner says, "I want a map
12 amendment for my own property," the set-down
13 rule does not apply.

14 So, technically, it meets the
15 exception, and it's up to the Zoning Commission
16 to determine whether or not - and it's sort of
17 an unusual circumstance - how to interpret that
18 provision, and whether or not, in fact, the
19 set-down rule does not apply because this
20 applicant's petition was filed by an owner of at
21 least one of the properties in question.

22 And I think that although it doesn't

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1 say that it's a waivable rule, I think that given
2 the fact that there's a real ambiguity about
3 where the Commission wants to go on this, it
4 could indicate either for the reason I've
5 suggested, or for other - or for this other
6 reason, that the set-down rule is not in force
7 with respect to this particular petition.

8 CHAIRMAN HOOD: And if we agree with
9 that, then what do we do, just say it?

10 MR. BERGSTEIN: You would say it
11 because I looked on the Zoning Map for this
12 property, and it's shown being zoned R5A, so the
13 Office of Zoning would need to know to remove
14 that and show it as its existing designation
15 because of the -

16 Because the zoning map, the
17 electronic zoning map, is the official zoning
18 map, and if the zoning administrator were to pull
19 up this property as I did, that's what it would
20 show.

21 CHAIRMAN HOOD: Okay, let me ask
22 this, I've heard from Mr. Turnbull, let me hear

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1 from others about the direction that I was trying
2 to go down, and also the comments that Mr.
3 Bergstein just mentioned to us about the
4 set-down. Commissioner Miller?

5 COMMISSIONER MILLER: Mr.
6 Chairman, I would support the direction that the
7 Vice-Chair was going in and dismissing the
8 application, but adding to that a recommendation
9 that the Office of Planning work on this
10 alternative that would allow the affordable
11 housing development to go forward and protect
12 the adjacent properties as well.

13 So, that's - I would be supportive of the
14 Vice Chair's direction if that's a motion, and
15 add to it a recommendation that the Office of
16 Planning bring back to us, as quickly as
17 possible, an alternative recommendation for
18 re-zoning.

19 CHAIRMAN HOOD: Okay.

20 COMMISSIONER MAY: Mr. Chairman,
21 can I ask a question?

22 CHAIRMAN HOOD: Yes, you may.

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1 COMMISSIONER MAY: So, I mean, were
2 you suggesting that this case be dismissed and
3 that we ask OP to come back with another one, or
4 are you suggesting that we simply put this back
5 to OP for further -

6 CHAIRMAN HOOD: I'm suggesting that
7 with a little more time, OP may be able to do
8 exactly what we're trying to do without us
9 putting -

10 COMMISSIONER MAY: Right.

11 CHAIRMAN HOOD: - stymying the
12 process. We can do as Mr. Bergstein just
13 mentioned.

14 COMMISSIONER MAY: Right.

15 CHAIRMAN HOOD: Make a comment
16 here, I guess, of the -

17 COMMISSIONER MAY: Right.

18 CHAIRMAN HOOD: - about the
19 set-down rule -

20 COMMISSIONER MAY: Right.

21 CHAIRMAN HOOD: - and everything.
22 But I'm kind of yielding to my colleagues for the

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1 most part because, again, I wasn't here.

2 COMMISSIONER MAY: Well, I'm
3 interested in supporting your recommendation.
4 I'd rather not lose the little bit of momentum
5 that we have right now in support of modifying
6 the zoning on this property.

7 I don't think it has a negative
8 effect on this proposal because it, and first of
9 all, according to what Mr. Bergstein says, the
10 proposed zoning does not apply to this property,
11 nor is, you know, if we decide to go in a
12 direction that might require some modification
13 of that project, it, you know, that can be done
14 given where that project is, I think, at this
15 stage, because it's not like they're about to
16 pull permits on it.

17 If they were pulling permits
18 tomorrow, it would be a different thing. But I
19 think they're just in the stage of getting money,
20 and I think it's a concept level of development.

21 VICE CHAIR COHEN: No, no, no.

22 CHAIRMAN HOOD: So - hold on, hold

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1 on. Okay, so, what I'm hearing Commissioner May
2 and Commissioner Turnbull, you both agree with
3 how I would like to proceed. Okay, Vice Chair?

4 VICE CHAIR COHEN: No, I believe
5 strongly that this project, the affordable
6 housing project, does have its funding lined up.
7 And I just want my colleagues to understand how
8 difficult it is to put together any affordable
9 housing project because you're competing
10 against many other developments that need the
11 subsidy.

12 So it's never guaranteed, and once
13 you do have that guarantee, you go ahead. And
14 I think this developer relied on, as somebody had
15 said, relied on the zoning, which is absolutely
16 necessary for anybody to rely on. So
17 I think we must, tonight, dismiss this case, not
18 saying that we're going to dismiss Mr. Belt, but
19 definitely move ahead with the development.
20 We're talking about 71 units that are needed in
21 this city desperately, absolutely desperately.

22 And I could only say to you that I

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1 feel very, very strongly that the developer
2 proceeded in good faith, put down money, has
3 probably - is more ready - I don't know the exact
4 timing - is more ready to proceed, to pull down
5 permits, and that we should not just say, "Let's
6 kick this down," which is what government's tend
7 to do, and I just don't think we should be in that
8 position.

9 CHAIRMAN HOOD: I think we really
10 need to understand what we're saying. What
11 we're saying is we're going to do what we need
12 to do with the set-down rules.

13 So whatever we zone there, and Mr.
14 Bergstein, you can correct me, whatever we zone
15 there for the project, is in effect still able
16 to go under the current zoning, which was
17 predictable when the applicant came down there.

18 But also, we're looking at the
19 residential piece which Mr. Belt has made. In
20 other words, we're not kicking it down, what
21 we're doing is taking that R5A off, and then
22 we're going to the Office of Zone - I mean Office

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1 of Planning, I'm sorry, to give them more time
2 to come up with a better solution than what we
3 have here. So, I don't think we're stymying
4 anyone.

5 VICE CHAIR COHEN: I didn't -

6 CHAIRMAN HOOD: I think what we're
7 doing - hold on, let me finish. I think what
8 we're doing is we're moving the process forward.
9 Because obviously, from what I read, at the
10 hearing we didn't have all the information, and
11 the information was revealed at the hearing.

12 And obviously we're trying to make
13 a wrong right, but I think we're moving hastily
14 if we're moving too fast. And I think what I'm
15 proposing is a way that, for the time being,
16 until the Office of Planning has more time, to
17 try to help us come up with a solution with the
18 OAG. Then that doesn't - it frees up everyone,
19 and it also keeps it on the burner.

20 VICE CHAIR COHEN: I may have
21 misunderstood my colleague, Commissioner May.
22 But in addition, I think that there was some

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1 information that came forward at the hearing
2 where we were under the impression, at least from
3 the package that I read, that everyone was
4 informed.

5 And it turned out that the
6 information that was available to some of the
7 owners, at least two of the owners, that
8 apparently own 60 percent of the property, only
9 became informed when we - there was a notice of
10 a public hearing.

11 So there was some misinformation
12 that I think either the Office of Planning had
13 and provided in the report, but I don't think
14 there was contact with all of the owners about
15 the proposed change.

16 So I just want to state that for the
17 record, Mr. Chairman. I'm not arguing with you
18 as far as should we or shouldn't we, I just want
19 to make sure that we do not, in any way, impede
20 the 71 units of affordable housing.

21 CHAIRMAN HOOD: And I think, Vice
22 Chair, with all respect, I think what we're

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1 proposing, unless I'm missing something - I've
2 been wrong before. I've been maybe wrong once
3 before. But I think that - maybe -

4 VICE CHAIR COHEN: I've never been
5 wrong.

6 (Laughter)

7 CHAIRMAN HOOD: Well - but I think
8 that the proposal that we're asking to look at
9 doesn't impede anyone. I think that's, for
10 tonight, I think that's a win-win all the way
11 around. I just think so. Commissioner Miller?

12 COMMISSIONER MILLER: Mr.
13 Chairman, I support what you're trying to
14 accomplish, but that requires us to make an
15 interpretation of this set-down rule when I
16 think that there is uncertainty.

17 I think Mr. Bergstein made an
18 argument for how the set-down rule would not
19 necessarily apply. But, he said that the
20 electronic zoning map says R5A because it was
21 set-down. Is that why it says R5A?

22 MR. BERGSTEIN: Right, but if you

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1 were - sorry, go ahead.

2 COMMISSIONER MILLER: So, somebody
3 has interpreted the set-down rule as applying,
4 and I think it, I think it's more likely that it
5 does apply because it was only one of the owners.

6 60 percent of the ownership did not.
7 And it was only because of the set-down that the
8 other owners found out about this, so it's good
9 that it applies in this type of situation.

10 So, that's my hesitancy, is making
11 - we make a rule out of a very difficult case,
12 or we come up with an interpretation that works
13 for this case, but it may not work in the future
14 for how set-down rules should apply.

15 CHAIRMAN HOOD: Well, I think
16 having been on one of these cases prior, and how
17 we dealt with this, one of the things that we -
18 and you're right, we need to have stuff that's
19 going to stand the test of time. When all of us
20 are retired and home in our rocking chairs, it
21 will stand the test of time.

22 I think what Mr. Bergstein has

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1 mentioned is the correct interpretation. I
2 think it will stand the test of time even after
3 we all up here are long gone. I just believe the
4 way he interpreted that in this particular
5 situation - because these situations will come
6 back - I think it will stand the test of time.
7 So - but what I - Commissioner May?

8 COMMISSIONER MAY: Yeah, I agree
9 with the Chairman. I think that Mr. Bergstein's
10 interpretation makes perfect sense. And I'm
11 also not terrifically concerned that he happened
12 to pull up the official zoning map and it showed
13 R5A, because that is, you know, that was probably
14 done in response to our set-down because that's
15 the norm.

16 But we don't usually have
17 applications from individuals to re-zone
18 properties. It's usually coming from the
19 Office of Planning, and so, that's the norm for
20 us to do it.

21 I also think the fact, you know, the
22 fact is that the zoning map itself can be wrong.

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1 It has been wrong in the past and I've had it
2 corrected in at least one circumstance. So, the
3 record is what ultimately decides these things
4 if somebody disagrees on interpretation.

5 So, I mean, I'm perfectly
6 comfortable proceeding the way the Chairman has
7 suggested, and I don't think that we're putting
8 this project at particular risk. And I think
9 that it would be very helpful to have the Office
10 of Planning investigate further and find the
11 right solution that we can all support.

12 COMMISSIONER TURNBULL: And, Mr.
13 Chair, I just wanted to chime in. I'm still
14 agreeing with you. I think, if I heard
15 correctly, Ms. Steingasser said earlier that
16 even if this was R5C, it would not impact the
17 project, and so a different zoning than C3A,
18 which I think is what we're struggling with also.

19 CHAIRMAN HOOD: And I think, at
20 least the way I understand, and what I'm
21 intending to do, is give more time to go back and
22 discover some things, but we're not stopping the

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1 project. We're not throwing Mr. Belt away.
2 We're not doing anything right now.

3 And you can call it what you want,
4 putting it off, but I think we need some, from
5 reading what I read, I think we just need some
6 more time. But I don't want to mess up any
7 projects, Vice Chair, that's going on, that are
8 already in the pipeline, that financing has been
9 received, or financing is getting ready to be,
10 whatever the case is.

11 And I think you're right, the units
12 that are proposed there are very beneficial to
13 the city. But I think this does not hamper any
14 of that. So, anything else? Commissioner
15 Miller, are you okay?

16 COMMISSIONER MILLER: I would be
17 okay if there wasn't uncertainty. With what
18 you're saying, if 3 of us say it's this way, that
19 the set-down doesn't apply, it doesn't apply.

20 CHAIRMAN HOOD: No, I didn't say
21 that. What I said was -

22 COMMISSIONER MILLER: You'd rather

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1 take an official action to clarify that, and to
2 give the applicant, give the developer the -
3 uncertainty than it is not in effect.

4 CHAIRMAN HOOD: Well, an official
5 action - and what I try to do up here is to make
6 sure everybody's interest isn't impeded. I
7 never called for a vote, because what I was
8 saying, 3 of us - I'm not saying 3 of us said it.

9 But if I take a vote on it, three of
10 us outnumber two. That's all I'm saying. So,
11 I can count the votes. I've learned how to do
12 that very well.

13 What I'm saying to you, Commissioner
14 Miller, is that I'm trying to make sure you're
15 at ease because being the Chairman's job is to
16 make sure everybody's interests or their ideals
17 are respected and moving forward.

18 So that's what I'm trying to do, to
19 find a happy medium between the 5 of us, and
20 wondering if that solution that I made was for
21 the good. Now, if I call for a vote, whether or
22 not we agree with Mr. Bergstein, the way I heard

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1 it, the vote would be three to two. I may be
2 wrong.

3 VICE CHAIR COHEN: No, I think
4 you're right.

5 CHAIRMAN HOOD: But I try not to do
6 that because I don't want to make any
7 commissioner - we all got one vote, and I try to
8 put everything in the barrel. That's just where
9 I am. So, I did not say we have 3 and that's it.
10 But if I call for a vote, it's going to be three
11 to two. Am I right, Vice Chair?

12 VICE CHAIR COHEN: Yes, you are.

13 CHAIRMAN HOOD: Okay.

14 COMMISSIONER MILLER: I'm only
15 concerned that there may be some uncertainty in
16 that interpretation, and that may lead to the
17 concern of the Vice Chair of somehow impeding
18 this project.

19 CHAIRMAN HOOD: Okay.

20 COMMISSIONER MILLER: Which I share
21 her concern about that.

22 CHAIRMAN HOOD: I still don't see

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1 that. Maybe I'm blind to it, but I don't see the
2 proposal as impeding this project.

3 (Off-mic discussion)

4 CHAIRMAN HOOD: Okay, Vice Chair?

5 VICE CHAIR COHEN: I guess the only
6 other thing that, you know, I just want to
7 suggest to my colleagues is that as a former
8 lender, in my former life, before I became a
9 zoning commissioner, I spent many, many years
10 evaluating and approving financing for
11 projects, and zoning, the appropriate zoning, is
12 critical to the approval and commitment of all
13 funds. I just state that. Again,
14 I'm not quite sure - I know that the funding is
15 lined up for this project. I don't know - I
16 think the developer is out there. But if I'm a
17 lender, I'm going to go with the projects that
18 have their zoning in place. It's critical -

19 CHAIRMAN HOOD: Okay, so -

20 VICE CHAIR COHEN: - to any due
21 diligence.

22 CHAIRMAN HOOD: So why is the zoning

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1 not in place is what we're saying. Why -

2 VICE CHAIR COHEN: Because it could
3 change.

4 CHAIRMAN HOOD: Well, one thing
5 we're sure, for the most part, we're obviously
6 not accepting what we have, well, some of us are
7 not dealing with what we have here, because you
8 want to dismiss. I don't think anyone has said
9 that we're ready to move forward on this being
10 an R5A, so there's -

11 And what we're doing is allowing
12 some more discovery. That's what I think we're
13 doing. Okay, if we rescind the set-down, let's
14 open that up for discussion. Any concerns on
15 that, Commissioners, anybody?

16 COMMISSIONER MAY: Why is that a
17 difference?

18 CHAIRMAN HOOD: And then we'll do a
19 - if we were to vote to rescind the set-down, and
20 then do what - I don't like to do hybrids, because
21 I'm the main one against the hybrids. So, I'm
22 just trying to figure out a process, and like

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1 this conversation with Mr. Bergstein.

2 If we rescind the set-down, then we
3 can ask for another set-down - I don't
4 necessarily know if we want to say pre-set-down.
5 I'm not trying to be creative, I'm just trying
6 to figure out how to get through this - and ask
7 for another report on this which gives the Office
8 of Planning more time to do what we've asked them
9 to, but we'd take all the caveats off that land.

10 And I hear what the Vice Chair is
11 saying because the applicant, they did operate
12 in this issue of zoning, so I understand that.
13 It should be predictable. You shouldn't change
14 the game up at the halftime. I agree with all
15 of that.

16 I'm not disagreeing really with
17 anything. I'm just trying to find a way to move
18 forward from something that I read which was very
19 confusing, that's all.

20 COMMISSIONER MAY: So I think maybe
21 you could explain to me better what would happen
22 with rescinding the set-down?

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1 CHAIRMAN HOOD: Well, if we rescind
2 the set-down, and Mr. Bergstein, you can help me
3 with this, if we rescind the set-down, then we
4 will set down, I guess, get everything back in
5 motion, we will set down kind of what the
6 language was today about leaving things in
7 place, and then give the Office of Planning more
8 time. Is that kind of what we're -

9 MR. BERGSTEIN: You would revert
10 this whole proceeding back to before you had a
11 set-down period. You'd have a petition before
12 you, which actually is an R5A, it's even more
13 stringent than that.

14 COMMISSIONER MAY: It would be an
15 R1B.

16 MR. BERGSTEIN: R1B. And then you
17 would request OP, when it was prepared to do so,
18 to present a new set-down report. But in doing
19 that, they would be informed by all the
20 conversations that you were having, so if they
21 felt that R5C, for example, would be the more
22 appropriate set-down, they could come to you,

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1 ask you to set it down, and explain how that would
2 affect the proposed project.

3 But once you, once you rescind the
4 set-down, that means the set-down rule would not
5 apply. If this project were permit ready, as
6 far as the zoning administrator would be
7 concerned, it would be under the existing
8 commercial zoning, with that density, and they
9 could get a building permit.

10 If you dismiss the case, it would
11 still have the same degree of uncertainty
12 because you're still talking about wanting to
13 see something in the future. So then that
14 uncertainty for the developer would still exist
15 because there could be a new set-down, and a new
16 set-down effect.

17 So, doing a rescission of the
18 set-down would keep this proceeding in place,
19 but would require a new set-down report, a new
20 public hearing notice and all that, but you would
21 have a proceeding in place but without the
22 set-down rule in effect.

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1 So, the option is to dismiss this in
2 its entirety, which doesn't prevent, I don't
3 think, the Office of Planning from coming back
4 with a new petition to rezone - I don't think
5 there's any limitation on that, I'd have to check
6 the rules - or to rescind the set-down, or to find
7 the set-down rule does not apply in this
8 particular case. I think those are the three
9 options.

10 CHAIRMAN HOOD: Okay, I would move
11 that we rescind the set-down in Zoning
12 Commission Case No. 13-07, and ask for a second.

13 VICE CHAIR COHEN: Second.

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

16 COMMISSIONER MAY: Yeah, I just
17 want to have it clear exactly what we're going
18 to request to the Office of Planning at this
19 point.

20 CHAIRMAN HOOD: Well, we're going
21 to - apparently we have to go back to R - what
22 was it, R1A, 1B, R1B?

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1 COMMISSIONER MILLER: R1B.

2 CHAIRMAN HOOD: R1B, and we are
3 giving the office - the way I see it, we're giving
4 the Office of Planning more time to, you know,
5 to basically, not necessarily start all over
6 again, but to start all over again, and get more
7 discovery, to gather all the facts, and move
8 forward.

9 This just leaves
10 non-predictability, and I agree with Mr.
11 Bergstein, whether we dismiss it, or whether we
12 do this action that we're taking a motion, that
13 we end up in the same place. Other variance
14 requests, any - Commissioner Miller?

15 COMMISSIONER MILLER: I support
16 your motion, Mr. Chairman, and the Vice Chair's
17 second, because I think if we had known
18 everything at the set-down hearing that we know
19 tonight, we would have gone down a different
20 path, and the OP obviously would have gone,
21 maybe, with a different alternative
22 recommendation. So, I'm very supportive of

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1 your motion.

2 CHAIRMAN HOOD: Okay.

3 Commissioner May, are you all right?

4 COMMISSIONER MAY: Well, I'm not
5 really enthusiastic. Remember I started this
6 discussion by saying I support R5A. And that's
7 not to say that I don't support affordable
8 housing, because I certainly do, and I'm not in
9 favor of uncertainty in the process.

10 But I am concerned about doing
11 something that's consistent with the
12 comprehensive plan, and clearly C3A is not. And
13 so, we have something before us, you know, I
14 think a dismissal would be acting, in my view,
15 contrary to the comprehensive plan guidance that
16 we have.

17 I mean, I guess I am resigned to
18 supporting this. I can count the votes too.
19 And so, I will go along with this, although I am
20 very interested in seeing the Office of Planning
21 and what they can recommend that we do to further
22 - well, to take the appropriate action

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1 consistent with the comprehensive plan with
2 regard to these properties that had been
3 considered for re-zoning here.

4 CHAIRMAN HOOD: Okay, any further
5 discussion? Mr. Turnbull?

6 COMMISSIONER TURNBULL: I would
7 echo your concerns, and just also echo
8 Commissioner May's concerns. I think that C3A
9 is inappropriate, and looking for the Office of
10 Planning to come back with a better
11 recommendation.

12 CHAIRMAN HOOD: Okay, any further
13 discussion?

14 (No audible response)

15 CHAIRMAN HOOD: All those in favor?

16 (Chorus of ayes)

17 CHAIRMAN HOOD: Any opposition?

18 (No audible response)

19 CHAIRMAN HOOD: Staff, would you
20 record the vote?

21 MS. SCHELLIN: Staff records the
22 vote 5-0-0 to rescind the set-down in Zoning

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1 Commission Case No. 13-07, Commissioner Hood
2 moving, Commissioner Cohen seconding,
3 Commissioners May, Miller, and Turnbull in
4 support.

5 CHAIRMAN HOOD: You know, sometimes
6 it's hard to get five votes, but we got five that
7 time. That was the goal, so we can all agree
8 moving forward. Because I think all of us had
9 concerns and issues, and this was difficult.
10 This was very difficult. And I just wanted to
11 be respectful of everyone. Now, Mr. Bergstein,
12 what do we need to do next?

13 MR. BERGSTEIN: I think this is an
14 internal administrative matter. I'm sure Ms.
15 Schellin can convey to whoever runs the zoning
16 map this decision, and have the zoning map
17 reflect now the existing zoning as it now is.

18 And now it's up to OP, which controls
19 the hearing action calendar, to decide when it's
20 appropriate to come back with a hearing report.

21 CHAIRMAN HOOD: Okay. So, all we
22 need to do now is get some dates, or we need to

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1 come up with a date for a special public meeting?

2 MR. BERGSTEIN: Well, no, what
3 would have to - again, we've reverted to
4 pre-set-down, so when OP feels it's appropriate,
5 it would bring this back in a hearing action, and
6 you would be asked to set the case down again
7 based upon whatever, either the recommendation
8 by the petition, or perhaps for a new
9 recommendation from the Office of Planning.

10 And once you did that, and you set
11 it down, then it would be a normal situation
12 where we'd have to put out a notice of public
13 hearing where - it's considered we're back
14 before set-down.

15 CHAIRMAN HOOD: Okay, back before
16 set-down, okay. So, can we come up with some
17 dates, or do we need to come up with dates?

18 COMMISSIONER MAY: I would very
19 much like to have some dates.

20 MR. BERGSTEIN: That only depends
21 if you want to set a time for Office of Planning
22 to come up with a firm set-down report.

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1 COMMISSIONER MAY: I would like
2 very much for the Office of Planning to give us
3 a sense of when they could come up with a new
4 report, because I don't want this to just
5 languish. I mean, you know, not addressing this
6 for six months or a year is as bad as having
7 dismissed it.

8 CHAIRMAN HOOD: Do you want to ask
9 how -

10 MS. STEINGASSER: We can have a
11 report at the next regular Zoning Commission
12 meeting.

13 CHAIRMAN HOOD: I'm sorry, I don't
14 even know when that is.

15 MS. STEINGASSER: I don't either.

16 (Laughter)

17 CHAIRMAN HOOD: November when?

18 MS. SCHELLIN: November 18th.

19 CHAIRMAN HOOD: Okay, so November
20 18th, we'll take this back up. Okay, any other
21 comments on this? Do we need to do anything
22 else, Mr. Bergstein, on this?

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1 MR. BERGSTEIN: I think you've
2 finished.

3 CHAIRMAN HOOD: Okay, it's about
4 time. Okay, but - all right. Any other
5 comments, colleagues?

6 (No audible response)

7 CHAIRMAN HOOD: Okay, thank you.
8 Let's go, move right on. I think we're all on
9 the same page. Okay, let's go to Zoning
10 Commission Case No. 09-03A, Skyland Holdings,
11 LLC - PUD Modification at Square 5632, et al.
12 Ms. Schellin?

13 MS. SCHELLIN: Yes, sir. On this
14 case, we have some post-hearing submissions at
15 47 through 49 from the applicant, and at Exhibit
16 50, we have a supplemental OP report. We ask the
17 Commission to consider proposed action.

18 CHAIRMAN HOOD: Okay,
19 Commissioners, we have in front of us some
20 submissions. We have some renderings, some
21 retail space, control of the egress and other
22 things that were submitted. I'm not sure who

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1 asked for what, but let's open it up for
2 discussion.

3 VICE CHAIR COHEN: Mr. Chairman, I
4 think we'd asked for some renderings of the
5 Naylor Road frontage, and we did get something.
6 And I want to ask my colleagues what they think
7 about it because I haven't seen anything quite
8 this elaborate, but I have seen these sort of -
9 I don't know what to even call them. I don't
10 have the proper architectural vocabulary.

11 But, you know, they're adding a lot
12 of green, and the greens are on these posts. And
13 I have seen where this has failed over, and over,
14 and over again, where then it goes back to the
15 original rendering without those posts because
16 the greens -

17 Maybe I just don't have enough
18 information to understand how this elaborate
19 screening is going to be a long-term success, and
20 that the poles that are holding up the screening
21 will continue to look good if the screening goes
22 away.

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1 So, I would like to leave the record
2 open so that there could be more elaboration of
3 the intent of this screening, because I really
4 do believe that within five years it's going to
5 go back to looking as the before image.

6 But, I have very, very smart
7 colleagues, and maybe they can help me feel much
8 better about this image.

9 CHAIRMAN HOOD: I thought you were
10 the - oh, that's right, you don't make any
11 mistakes. Okay, I didn't know -

12 VICE CHAIR COHEN: No, that's why
13 I'm worried.

14 (Laughter)

15 COMMISSIONER TURNBULL: Mr. Chair?

16 CHAIRMAN HOOD: Mr. Turnbull.

17 COMMISSIONER TURNBULL: Mr. Chair,
18 I would agree with the Vice Chair. I don't
19 understand. I guess I just don't like these
20 devices. They, for lack of a - for trying to be
21 descriptive, they look like modern versions of
22 medieval torture -

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1 (Laughter)

2 COMMISSIONER TURNBULL: - devices.
3 These curved things with the wires, the huge
4 spikes sticking out look dangerous. They just
5 look - they look uninviting. They're - I just
6 see these things, and as the Vice Chair was
7 saying, when the vegetation dies, these things
8 are going to look very stark, very brutal, very
9 brutal looking, and I really don't think they
10 enhance the project at all. They really detract
11 from it.

12 And if you look at either the
13 close-up view or the view from long, it - they're
14 frightening. They're really a frightening
15 structure. I just don't - I mean, they could
16 hang sides of beef on them or something.

17 They're just - I really think
18 they're not very handsome. They're not well
19 designed. They're just - they're an intrusion
20 onto the whole project. I really don't like
21 them. I just don't think they belong. They're
22 - they don't fit in.

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1 CHAIRMAN HOOD: Okay, Commissioner
2 May?

3 COMMISSIONER MAY: Yeah, I'm not
4 sure I feel quite as strongly as Commissioner
5 Turnbull, but I agree, I don't like what's been
6 presented here. These structures look very
7 heavy, and you know, it's an attempt to do a green
8 wall, I think, in a more interesting and kind of
9 architectural way, but I don't know that that's
10 really what's called for.

11 I can see a green wall, and I believe
12 that, you know, green walls can be done
13 successfully, particularly with the exposure
14 that you have here, but this is clearly not it.
15 I think that that structure with the curved kind
16 of reflector shape to it, the concave curve, I
17 just - it doesn't work for me either.

18 I do think that there was - that
19 there is an improvement with the idea of having
20 these sort of, well, the larger swath of green
21 along the street, so you get some separation from
22 Naylor Road, and it's interrupted by these small

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1 areas where, you know, there are a couple of
2 benches.

3 And I, you know, I think that can be
4 very nice as well. You have to, obviously, take
5 some steps to make sure that they don't become
6 hang outs or places where people sleep or
7 whatever.

8 But, the idea of having a broader
9 swath of green along the street I think is a very
10 good thing. I think that they could also use a
11 little help in figuring out what to plant there
12 because I just see two large bands of two types
13 of plant, and it's not -

14 I think a little bit more interest,
15 a little bit more variation, and a little bit
16 more careful planting plan would be appropriate.
17 And yeah, they need to start over on how to do
18 a green wall there, or come up with some other
19 screening method.

20 I really was hoping that this was
21 going to perhaps become an opportunity for a
22 public art component, and that some of that space

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1 might be used for some linear kind of art
2 display. But, I guess that idea didn't take
3 hold. So, I do think they need to try again, but
4 they are making some progress.

5 COMMISSIONER TURNBULL: Well,
6 Commissioner May, I agree. I think I was
7 probably a little overly sarcastic in my - and
8 you're right, there is a better way of handling
9 the greening. I guess the other thing that I
10 thought was at the very top, where you have the
11 parapet, the screening, I sort of like the old
12 version better where it's broken up.

13 I guess the brick piers that were
14 there originally seem to set up a better rhythm
15 than what I see down below. It just a little bit
16 more open. I don't know. I guess I just like
17 the architectural feel of the smaller spacing of
18 the top of the piers.

19 COMMISSIONER MAY: I would agree
20 with that. It looks more like just a, you know,
21 carrying through on the architectural bays,
22 which are, you know, your standard wider module.

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1 So, a narrower module, I think, is better.

2 COMMISSIONER TURNBULL: Right,
3 yeah.

4 COMMISSIONER MAY: I mean, maybe
5 all they really need to do is keep the old facade,
6 and change out those six screens which seem kind
7 of awkward, and then go with the other
8 landscaping plan, the new, improved landscaping
9 plan.

10 COMMISSIONER TURNBULL: I would
11 agree.

12 VICE CHAIR COHEN: Clarification,
13 Commissioner May, you're not suggest - are you
14 suggesting that it all be - not be bricked over?

15 COMMISSIONER MAY: No, no, no, what
16 I'm suggesting is that, you know, they've got
17 elements that they had before that were good,
18 such as everything from about 15 feet up, that
19 white band that goes across.

20 VICE CHAIR COHEN: Exactly.

21 COMMISSIONER MAY: So, keep all of
22 that, and then do something else for the, you

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1 know, the screening within the bays below that
2 white line.

3 VICE CHAIR COHEN: Okay.

4 COMMISSIONER MAY: And then go with
5 the new landscape in the plan, you know, or maybe
6 improve some of the design of the actual
7 planting, but something that moves the sidewalk
8 away from the street, and creates those little
9 seating areas.

10 VICE CHAIR COHEN: Okay, I agree
11 with you.

12 CHAIRMAN HOOD: Okay, any other
13 comments on this? Commissioner Miller?

14 COMMISSIONER MILLER: Well, I would
15 be supportive of that direction if it's - if
16 we're asking for the additional rendering
17 between the proposed action and final?

18 (Off-mic comment)

19 COMMISSIONER MILLER: Yeah, okay,
20 I'm supportive of that.

21 CHAIRMAN HOOD: Did we have
22 anything else? I had asked, and again, this is

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1 an approved case, and approved PUD, it's a
2 modification. I had asked the applicant to
3 continue to have discussions with the neighbors,
4 and I noticed that I didn't see anything. I
5 could have missed it, but I didn't see anything
6 about any discussions. But I did see
7 the rendering - I saw a rendering of Fort Baker
8 Drive. And I was just curious of, what - was
9 there any additional conversations, or were they
10 still where they were to begin with? I just -
11 I had asked - again, we approved this already.
12 This is just a modification.

13 And I had just - and I'm saying this
14 so hopefully the applicant - if I don't see
15 anything, then I know that those discussions did
16 not happen, like I think now they didn't happen,
17 but I just want to know if that had taken place.

18 If we go to final action, I'd like
19 to just know if we made any headway in those
20 continuing discussions.

21 Okay, anything else? Any other
22 design issues?

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1 COMMISSIONER MILLER: Yeah, Mr.
2 Chairman, just one other thing. I'm supportive
3 of the modification that was made to the below
4 grade parking to make it more compact.

5 And I saw the discussion that it
6 resulted in a reduction of the, a small reduction
7 of the parking spaces, and a small reduction of
8 the residential units. It also seemed on the
9 rendering to result in a small reduction of the,
10 well, I don't know how big a reduction, but it
11 seemed to result in a reduction of the retail
12 space if you look at Exhibit A.

13 And I just - so I want to get some
14 confirmation from the Office of Planning if they
15 - is the retail space between the original
16 proposal and the modified proposal, has it been
17 reduced, and by how much? Because I didn't see
18 any discussion of it, but that's the way I'm
19 looking at the revised proposal.

20 MS. SCHELLIN: The applicant just
21 approached the dais and advised that it's about
22 500 square feet less.

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1 COMMISSIONER MILLER: Thank you.
2 I saw the numbers that were less, I just never
3 - I'm not very good at math, so I didn't care to
4 do the calculation. So, I appreciate the
5 confirmation that there has been a reduction,
6 and I'm glad to hear that it's a small reduction,
7 only a small reduction.

8 CHAIRMAN HOOD: Okay, anything
9 else? We do have - Vice Chair?

10 VICE CHAIR COHEN: Yes, in the OP
11 report, they're recommending that there be a
12 condition to maintain a 10-foot wide clear
13 sidewalk. I think we really should just change
14 the word maintain to provide.

15 CHAIRMAN HOOD: Okay. Does anyone
16 have any objections to adding the Office of
17 Planning's condition where we're going to change
18 it from maintain to provide? Any objections?

19 (No audible response)

20 CHAIRMAN HOOD: Okay. Do we have
21 anything else?

22 (No audible response)

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1 CHAIRMAN HOOD: Okay, I would move
2 that we approve Zoning Commission Case 09-03A,
3 the modification to improve PUD for Skyland Town
4 Center, and ask for a second.

5 COMMISSIONER MILLER: Second.

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

8 MR. BERGSTEIN: Mr. Chair, could
9 you indicate whether or not you feel the final
10 proffer process should apply in this particular
11 case, and so the modification is really not
12 changing any of the public benefits?

13 CHAIRMAN HOOD: Right, I think - I
14 don't have that in front of me.

15 (Off-mic comment)

16 CHAIRMAN HOOD: I would ask, Vice
17 Chair, if you would accept the final proffer
18 process set forth in 11 DCMR 243.15 through 56
19 - I'm sorry, through 240320, would be used in
20 this case?

21 MR. BERGSTEIN: Would not be used in
22 this case.

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1 VICE CHAIR COHEN: Would not be
2 used.

3 CHAIRMAN HOOD: Will not be used in
4 this case. My glasses must not be working.

5 (Laughter)

6 CHAIRMAN HOOD: Okay, I missed a
7 whole word. Anyway, would not be used in this
8 case? I ask for a second.

9 VICE CHAIR COHEN: Second on that.

10 CHAIRMAN HOOD: I mean, I just want
11 to know would you accept that?

12 VICE CHAIR COHEN: Oh, yes, yes.

13 CHAIRMAN HOOD: Okay.

14 VICE CHAIR COHEN: Even though I
15 think it's taking too long to do the -

16 (Laughter)

17 CHAIRMAN HOOD: Okay, any further
18 discussion?

19 COMMISSIONER MAY: Yes, Mr.
20 Chairman?

21 CHAIRMAN HOOD: Yes?

22 COMMISSIONER MAY: The motion

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1 before us is to approve this. Does that include
2 the request for modified drawings on the
3 treatment along the -

4 CHAIRMAN HOOD: Everything that was
5 asked for.

6 COMMISSIONER MAY: Okay.

7 CHAIRMAN HOOD: Everything that was
8 -

9 COMMISSIONER MAY: I wanted to be
10 clear.

11 CHAIRMAN HOOD: Okay, good, so
12 noted. Okay, anything else? Did we get a
13 second?

14 VICE CHAIR COHEN: Yes.

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

17 (No audible response)

18 CHAIRMAN HOOD: All those in favor?

19 (Chorus of ayes)

20 CHAIRMAN HOOD: Not hearing any
21 opposition, Ms. Schellin, would you record the
22 vote?

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1 MS. SCHELLIN: The staff records
2 the vote 5-0-0 to approve proposed action in
3 Zoning Commission Case No. 09-03A, Commissioner
4 Hood moving, Commissioner Miller seconding,
5 Commissioners Cohen, May, and Turnbull in
6 support.

7 CHAIRMAN HOOD: Okay, next, let's
8 go to correspondence on Commission Case No.
9 11-17. This is a letter from the zoning
10 administrator pursuant to 2409.8 on our new
11 regulations. Ms. Schellin?

12 MS. SCHELLIN: Yes, sir, as you
13 stated, it is a letter from the zoning
14 administrator pursuant to the new regs 2409.8.
15 We just need to know whether the Commission,
16 whether they want to - you want to acknowledge
17 the letter, or if you have issues? You have a
18 time period to advise the ZA of any issues you
19 have, and we ask the Commission how they want to
20 proceed?

21 CHAIRMAN HOOD: Commissioners, do
22 we have any issues with what the - the

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1 flexibility ZA has used? And we have both what
2 was approved and what was changed, and I think
3 - and I really appreciate showing that. Does
4 anyone have any issues with that?

5 (No audible response)

6 CHAIRMAN HOOD: Okay, Ms. Schellin,
7 not seeing any, then I guess maybe we can shoot
8 them an email.

9 MS. SCHELLIN: We'll send them a
10 letter.

11 CHAIRMAN HOOD: Send them a letter,
12 okay. All right, thank you. Do we have
13 anything else, Ms. Schellin?

14 (No audible response)

15 CHAIRMAN HOOD: Does the Office of
16 Planning have anything?

17 (No audible response)

18 CHAIRMAN HOOD: Okay, I want to
19 thank everyone. Office of Attorney General, do
20 you have anything else?

21 MR. BERGSTEIN: No, sir.

22 CHAIRMAN HOOD: Okay, I want to

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1 thank everyone for their participation in this
2 meeting tonight, and this meeting is adjourned.

3 (Whereupon, the meeting adjourned at 7:38 p.m.)

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