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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning

PUBLIC HEARING OF THE OFFICE OF ZONING

6:30 P.M. to 7:21 P.M.  
Monday, April 20, 2015

441 4th Street, N.W.  
Jerrily R. Kress Memorial Room  
Second Floor Hearing Room, Suite 220-South  
Washington, D.C. 20001

1

2 Board Members:

3 ANTHONY HOOD, Chairman

4 MARCIE COHEN

5 PETER MAY

6 ROBERT MILLER

7 MICHAEL TURNBULL

8

9

10 Office of Planning:

11 JOEL LAWSON

12 STEPHEN GYOR

13

14

15 Office of Zoning:

16 SHARON SCHELLIN, Secretary to the Board

17

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P R O C E E D I N G S

4

5 CHAIRPERSON HOOD: Good evening, ladies  
6 and gentlemen. This is a public hearing of the  
7 Zoning Commission for the District of Columbia.  
8 Today's date is April 20, 2015. My name is  
9 Anthony Hood. Joining me are Vice Chair Marcie  
10 Cohen, Commissioners Miller, Commissioner May, and  
11 Commissioner Turnbull.

12 We are also joined by the Office of Zoning  
13 staff, Ms. Sharon Schellin, and the Office of  
14 Planning staff, Mr. Lawson and Mr. Gyor.

15 This proceeding is being recorded by a  
16 court reporter and is also Webcast live.

17 Accordingly, we must ask you to refrain  
18 from any disruptive noise or actions in the  
19 hearing room, or display of any signs or objects.

20 Notice of today's hearing was published in the  
21 D.C. Register, and copies of that announcement are  
22 available to my left on the wall near the door.

23 The hearing will be conducted in  
24 accordance with Provisions of 11 DCMR 3021 as

1 follows: preliminary matters to applicant's case,  
2 report of the Office of Planning, reports of other  
3 government agencies, report of ANC Organizations  
4 and Persons in support, organizations and persons  
5 in opposition, rebuttal, and closing.

6           The applicant has up to 60 minutes,  
7 organizations 5 minutes, and individuals 3  
8 minutes.                   All persons appearing  
9 before the Commission are to fill out two witness  
10 cards. These cards are located to my left on the  
11 table near the door. Upon coming forward to speak  
12 to the Commission, please give both cards to the  
13 reporter sitting to my right before taking a seat  
14 at the table. When presenting information to the  
15 Commission, please turn on the speaker to the  
16 microphone, first stating your name and home  
17 address.

18           The decision of the Commission in this  
19 case must be based exclusively on the public  
20 record. To avoid any appearance to the contrary,  
21 the Commission requests that persons present not  
22 engage with the members of the Commission in  
23 conversation during any recess or at any time.  
24 The staff will be available throughout the hearing

1 to discuss procedural questions.

2 Please turn off all beepers and cell  
3 phones at this time so as not to disrupt these  
4 proceedings.

5 Would all individuals wishing to testify  
6 please rise and taken the oath. Ms. Schellin,  
7 would you please administer the oath.

8 MS. SCHELLIN: Please raise your right  
9 hand. Do you solemnly swear and affirm the  
10 testimony you will give this evening will be the  
11 truth, the whole truth, and nothing but the truth?  
12 Thank you.

13 CHAIRMAN HOOD: At this time, the  
14 Commission will consider any preliminary matters.  
15 Does the staff have any preliminary matters?

16 MS. SCHELLIN: No, sir.

17 CHAIRMAN HOOD: Okay.

18 MS. SCHELLIN: I believe there are some  
19 proffered expert witnesses.

20 CHAIRMAN HOOD: Yeah, I think we have one.  
21 Is there anyone here who is in opposition to this  
22 case present? Okay. Okay, you can come forward,  
23 Ms. Batties. Let me just say that we -- some of  
24 us have really hashed around with this case a lot

1 through the Text Amendment and everything, and you  
2 may want to abbreviate your presentation. I know  
3 you have asked for, I think, 40 or 45 minutes. I  
4 don't think we need 40 or 45 minutes -- more like  
5 10 or 15, if that much, because I think we have  
6 fully, completely read the records, so I don't  
7 know how much more you can add -- something  
8 different than what is in the record, if not, I  
9 would ask you to limit it, okay? You may begin.

10 [Speaking off mic.]

11 CHAIRMAN HOOD: Oh, okay, somebody else  
12 might have done that. Okay.

13 MS. BATTIES: Good evening. We will limit  
14 our presentation to 15 minutes, but I would like  
15 to start, Mr. Chairman and members of the Zoning  
16 Commission, by proffering Mr. Walid Tikriti of  
17 Acoustonica as an expert witness in the area of  
18 acoustics, and his resume was included in our most  
19 recent submission filing to the Zoning Commission.

20 CHAIRMAN HOOD: Okay. Colleagues, we have  
21 his resume, and you want to proffer him in  
22 acoustics.

23 MS. BATTIES: Yes.

24 CHAIRMAN HOOD: And, that is our exhibit

1 30. Any objections? Do we need additional time?

2 Okay. I don't see any objections, so, we will  
3 proffer him as an expert.

4 MS. BATTIES: Okay, great. With that, the  
5 only other thing -- first, I am Leila Batties and  
6 Jessica Bloomfield on behalf of the applicant,  
7 View 14 Investments, LLC. I want to introduce the  
8 other members of our team this evening; Mr.  
9 William Licko, who is senior person with UDR and  
10 View 14, which owns the subject property, the View  
11 14 Building, and then next to him is Mr. Phillip  
12 Kasdorf, who is a principle with the dog day care  
13 center operator. They are not going to testify  
14 this evening as part of our initial presentation,  
15 but, of course, they are available to answer any  
16 questions that you may have.

17 The applicant this evening seeks to modify  
18 the PUD approved by the Zoning Commission on  
19 December 5, 2005 for the View 14 Building located  
20 on the east side of 14th Street between Florida  
21 and Belmont. Specifically, the applicant wants to  
22 modify the PUD -- are you okay, Mr. Chair? I'm  
23 sorry.

24 CHAIRMAN HOOD: You're probably the only

1 person that's concerned about me. Thank you very  
2 much. I just turned around as I was coughing..

3 MS. BATTIES: I didn't see you at all.

4 CHAIRMAN HOOD: I was still listening.

5 Oh, you didn't see me? You thought I fell out?

6 MS. BATTIES: Yes.

7 CHAIRMAN HOOD: Some people probably would  
8 be hoping that I fell out. Okay. Mr. May  
9 wouldn't even notice if I was lying on the ground.

10 [Laughter]

11 MS. BATTIES: Specifically, the applicant  
12 seeks to modify the PUD to include flexibility to  
13 permit a dog day care center in the ground floor  
14 retail space. The proposed dog day care center  
15 will consist of approximately 4500 square feet and  
16 will include pet grooming and overnight animal  
17 boarding. The entrance to the project -- to the  
18 animal day care center will be along -- at the  
19 corner of 14th and Florida with primary frontage  
20 along 14th Street. We are pleased that the zoning  
21 regulations have been amended to contemplate dog  
22 day care centers in mixed-use buildings like the  
23 View 14 Building, and should the Board grant the  
24 approval this evening, we are pleased that our

1 project will be the first mixed-use building to  
2 include a dog day care center, which is a growing  
3 business across the country, particularly in  
4 cities like Washington, D.C.

5           Naturally, the primary concern for the  
6 proposed mix of uses is the impact of the dog  
7 barking on the residential units above. So, with  
8 that, I am going to stop my opening remarks here,  
9 turn the presentation over to Mr. Tikriti, who  
10 will testify about the noise that is expected to  
11 be generated by the dog day care center use, and  
12 how the impact from this will be fully mitigated  
13 through building design. After Mr. Tikriti  
14 testifies, I would like to close our presentation  
15 by very briefly discussing the Standard of Review  
16 and the applicant's engagement with the  
17 neighborhood stakeholders. Thank you.

18           MR. TIKRITI: Good evening. My name is  
19 Walid Tikriti, and I specialize in acoustics and  
20 noise control. The project that we have been  
21 talking about concerns dogs and the impact of dogs  
22 on living space directly above. I need to mention  
23 that I have worked successfully on three similar  
24 projects in three different states and three

1 different cities across the country, Seattle, San  
2 Diego, and Dallas, Texas, and this is the fourth  
3 one; so, the project that we are discussing comes  
4 with backup of experience and, you know,  
5 successful experience with the project that has  
6 been opened and running.

7 I want to mention things about the steps  
8 that will be taken into consideration for the  
9 noise mitigation, and I just need to mention if  
10 the lights can be turned on that side so you can  
11 have a better view on the details that we are  
12 going to talk about.

13 So, this is a section of the floor/ceiling  
14 assembly that will be built in the building. The  
15 existing structure that is there right now is the  
16 7-inch concrete slab, and everything else is  
17 exposed. So, the proposed mitigation aspect here  
18 is to build two separate ceilings in the space.  
19 One if going to be a spring isolated ceiling with  
20 double layers of 5/8-inches with bat insulation on  
21 top of it, and that will be considered as the  
22 noise barrier for anything that would go up into  
23 the structural slab above, and then there will be  
24 another ceiling right below, which is the ceiling

1 that will be the finish ceiling, and there will be  
2 an air gap in between. The overall noise  
3 transmission class or noise reduction is going to  
4 be very high. That will insure that the units  
5 directly above will not have any audible noise  
6 above.

7           This is a little bit of a closeup section  
8 of the detail, and as you see on the top here in  
9 the green where the pointer is, there are spring  
10 hangers that will hang the ceiling. This is not a  
11 typical residential-type construction. This is  
12 more designed for noise reduction at the different  
13 frequency levels that the dogs create, and the  
14 type of partitions and type of isolation between  
15 the structural elements in the building and the  
16 finished space is being considered here.

17           The type of partitions between tenant  
18 spaces is also being considered, so anything  
19 adjacent to the dog space will be considered to  
20 isolate noise, not only vertically but  
21 horizontally, next to, on the right and left side  
22 of the space.

23           Going into the details that will be  
24 already existing in the building similar to



1 found in other projects to be a weak link. You  
2 have a unit directly above, and it will have  
3 plumbing coming down and exposed now in the space  
4 below. So, we are proposing that all these things  
5 will be isolated. Again, the way that it will be  
6 taken into consideration is to have all the pipes  
7 being above the ceiling, and it will be completely  
8 isolated from the exposed sound level that will be  
9 generated from possible dogs barking in the space.

10

11 This is the main kind of strategy to  
12 reduce the noise on the residential units above,  
13 and we feel comfortable with that design, and we  
14 have provided feedback to the owners on any other  
15 things that need to be considered. Thank you.

16 MS. BATTIES: Members of the Commission, I  
17 just want to briefly walk through the Standard of  
18 Review, both for the modification of the PUD and  
19 special exception approval. We submit with regard  
20 to the modification of the PUD -- we submit that  
21 the proposed modification to permit the dog day  
22 care center complies with the Standard of Review  
23 for modifying the PUD in that it will not have an  
24 unacceptable impact on the operation of city

1 services and facilities, and that the proposed use  
2 is extremely reasonable when evaluated against the  
3 substantial benefits and amenities package that  
4 was part of the original PUD.

5           When you take into account that the noise  
6 and odor can be fully mitigated -- the impacts  
7 from the noise and odor generated by the proposed  
8 use can be fully mitigated both through the design  
9 that Mr. Tikriti testified to this evening, as  
10 well as the measures that have been discussed in  
11 our pleadings, and also in light of the Office of  
12 Planning and DDOT report, we believe that the  
13 applicant's case is justified and supports the  
14 Standard of Review for modifying the PUD.

15           Also, as you know, the regulations were  
16 recently amended to allow special exception  
17 approval for these types of uses in the commercial  
18 district where you have residential units above.  
19 Again, through the testimony this evening as well  
20 as in the pleadings, we have demonstrated that we  
21 are fully -- able to fully mitigate the impacts.  
22 The animal boarding use will not create any noise  
23 or odor objectionable to the adjacent properties,  
24 including the residential units immediately above.

1           The last thing I wanted to address is the  
2 applicant's community outreach. As you know, this  
3 has been a protracted process -- long process for  
4 the applicant that started back -- I think we  
5 filed originally in November of 2013. But, we are  
6 pleased to be here with the letter of support from  
7 ANC1B, and it is significant in that when we  
8 started this process and we went to the BZA last  
9 year, the ANC purposely did not take any action on  
10 this application. So, we have come a long way in  
11 terms of getting the ANC's report. The record, as  
12 you know, does not reflect any petitions for  
13 parties in opposition to the case.

14           We have reviewed the letter filed by the  
15 Meridian Hill Neighborhood Association, and the  
16 applicant is agreeable to the first three  
17 conditions presented in that letter, which are:  
18 dog-walking along 14th Street only and not in the  
19 surrounding residential blocks, the second is that  
20 employees of the dog day care center will wear  
21 uniformed shirts somehow identifying that they are  
22 with the dog day care center operator, and then  
23 third, the customers of the dog day care center  
24 will be required to sign an agreement that

1 obligates them to follow the -- obey all of the  
2 traffic and parking rules. So, we are agreeable  
3 to those -- the first three conditions listed in  
4 the letter. As it relates to the fourth  
5 condition, we want to clarify what we have  
6 proffered in order to mitigate any traffic  
7 impacts. That is, if it was necessary to address  
8 traffic impacts, the dog day care center operator  
9 will provide concierge service to receive dogs  
10 from the cars on weekdays only -- weekday mornings  
11 between 7:30 and 8:30 a.m.

12           Now, with that said, based on their  
13 experience, the applicant expects a significant  
14 percentage of the customers for this facility to  
15 walk their dogs to and from the dog day care  
16 center, and also, we looked at it as recently as  
17 this afternoon, there is ample on-street parking  
18 in immediate proximity to the site both on 14th  
19 Street and Florida Avenue, and given these  
20 factors, we don't think stacking or backup traffic  
21 will be an issue for the proposed use.

22           So, based on the foregoing and the  
23 testimony provided here this evening, and the  
24 records, the pleadings, we respectfully request

1 that the Zoning Commission grant approval of the  
2 proposed PUD modification. Thank you.

3

4 CHAIRMAN HOOD: I want to thank you for  
5 that presentation, you both. Let's see if we have  
6 any questions up here. Vice Chair Cohen.

7 VICE CHAIR COHEN: Thank you, Mr.  
8 Chairman. I have a question for Mr. Tikriti.  
9 With all of the insulation and noise prevention  
10 measures that are being taken, what impact does  
11 that have on the flow of air -- fresh -- you know  
12 -- it's not exactly fresh air, but it's air. Does  
13 it have any impact at all, so that there is no  
14 circulation of air?

15 MR. TIKRITI: No, air circulation  
16 regarding, you know, what is being proposed -- is  
17 being considered. All the air circulation  
18 elements like ducts and units will be above the  
19 finished ceiling, which is -- if you look at the  
20 screen, it will be right here. Those are the air  
21 distribution systems and the ducts, and everything  
22 else above it will be isolated, so it's going to  
23 be two separate zones, if you will.

24 VICE CHAIR COHEN: Sure.

1 CHAIRMAN HOOD: Okay, Commissioner Miller.

2 COMMISSIONER MILLER: Thank you, Mr.  
3 Chairman, and thank you for your presentation and  
4 patience in getting this facility in the District  
5 of Columbia, which I think will be an amenity for  
6 the neighborhood and for the District. Ms.  
7 Batties, on that fourth condition from Meridian  
8 Hill Neighborhood Association, so, would you have  
9 any objection to rephrasing it to the way that you  
10 just phrased it here tonight, if necessary, to  
11 mitigate any traffic impacts and limiting it to  
12 the 7:30 to 8:30 Monday through Friday hours?

13 MS. BATTIES: I have no objection to  
14 making those changes.

15 COMMISSIONER MILLER: Thank you.

16 CHAIRMAN HOOD: Are there any other  
17 questions up here? Commissioner May.

18 COMMISSIONER MAY: A couple questions about  
19 the sound isolation, and if you could go into a  
20 little bit more detail about the sound  
21 transmission class and decibel reduction that you  
22 expect, particularly in the ceiling assembly.

23 MR. TIKRITI: Sure, the existing slab is a  
24 7-inch concrete slab. The sound transmission

1 class of the 7-inch concrete slab is about 40-45  
2 points of noise reduction. Once you add the  
3 ceiling, which is the spring isolated ceiling,  
4 there has been -- it has been tested on site  
5 field-tested and in lab, and there is backing  
6 support information about that. The STC value  
7 jumps from 45 to 72. That is with the spring-  
8 isolated ceiling. Now, I have to emphasize that  
9 it has to be spring isolated ceiling and with 2  
10 layers of gyp. That is -- by itself -- is going  
11 to be sufficient; however, we have found that  
12 adding the second finished ceiling with the air  
13 gap will enhance the STC points, which is the  
14 sound transmission class points, by 10 extra  
15 points, so it will go up from the lower 70s to the  
16 lower 80s. So, the STC value will be 82-85  
17 approximately here in this ceiling construction.  
18 This is very generous sound transmission class.  
19 If you look at a typical demising wall in a  
20 residential space, like what HUD would be  
21 recommending, it would be recommending STC 50, but  
22 taking into consideration the dog noise and the  
23 frequency content, we have strongly recommended  
24 that this type of ceiling assembly will need to be

1 implemented before it will be satisfactory from a  
2 noise transmission class standpoint.

3           COMMISSIONER MAY: Okay, it's been a while  
4 since I have dealt with any kind of design working  
5 with the sound transmission class, but what I'm  
6 familiar with is like doors in concert halls and  
7 things like that. If you could -- I mean, can you  
8 compare an 82 to something. I mean, is it  
9 equivalent to -- where does that stand compared  
10 to, say, what you would prescribe for the door  
11 between the auditorium and the lobby in a concert  
12 hall -- a symphony hall.

13           MR. TIKRITI: Very good question. Yes,  
14 and that's typically... A door, number one, a door  
15 type size can be 3x7 or 6x7, so the square footage  
16 of it is not that big; however, the STC rating of  
17 a typical sound-rated door for symphony hall or  
18 for a band hall would be an STC of 55-58. This  
19 one is STC 80, and if you are -- if I'm designing  
20 a terminal building that is next to a runway,  
21 there are takeoffs and landings, the glass in that  
22 terminal at the gate will have to be in the range  
23 of STC 60-65. So, this is beyond. The reason why  
24 it's beyond is there are so many different

1 elements in the building that includes piping and  
2 conduits that we need to ensure that it will be,  
3 you know, taken care of. So, the STC value goes  
4 higher to be on the conservative side, and then  
5 also taking into consideration that the springs --  
6 the spring hangers are adding to the ceiling  
7 assembly, and that is the key factor, in my  
8 opinion, that is adding this value to this sound  
9 transmission class.

10           COMMISSIONER MAY: I would imagine it  
11 makes sense that it would be a lot heavier than  
12 normal given that you are dealing with sort of the  
13 sharp impact noises of barking, usually relatively  
14 high frequency, but can be quite piercing. I  
15 mean, every frequency level of sound behaves a  
16 little bit differently in how it deals with solid  
17 masses and things like that. It sounds like you  
18 are really doing a belt and suspenders to try to  
19 keep the sound from getting out any which way.

20           MR. TIKRITI: Exactly, yeah. In addition  
21 to that, we have done actually on-site sound  
22 testing to the existing structure to assess how  
23 much extra is needed from additional points from  
24 STC, and that has been done too.

1           COMMISSIONER MAY: So, you verified that  
2 it is already at 40 or 45 points just for the  
3 slab?

4           MR. TIKRITI: Correct, yes.

5           COMMISSIONER MAY: Okay, and the last  
6 thing is that, you talked about doing this with  
7 other facilities. I mean, you are talking about  
8 this particular day care facility in other  
9 locations that you have worked on and tested, or  
10 is it similar kinds of things.

11           MR. TIKRITI: No, this specific day care  
12 operation, three of them, and also one additional  
13 one for the City of Dallas as well.

14           COMMISSIONER MAY: And, in those  
15 circumstances, are there residences directly  
16 above?

17           MR. TIKRITI: With the three mentioned  
18 projects, yes. All residents directly above.

19           COMMISSIONER MAY: And, are we aware of  
20 any complaints from those residents? I see  
21 someone in the back shaking her head. Maybe you  
22 need to come up and answer that.

23           MR. LICKO: Hi, I'm Bill Licko with UDR,  
24 representing the ownership. To this point, we

1 have had zero complaints on all three properties,  
2 and one thing to correct, two out of the three had  
3 residents directly above. The first one in  
4 Seattle has a parking garage directly above, but  
5 there were apartments adjacent.

6 COMMISSIONER MAY: That is such a strange  
7 concept, parking garage above. We don't do that.  
8 Anyway, thank you.

9 CHAIRMAN HOOD: Hmm, maybe we should. Any  
10 other questions? Commissioner Turnbull.

11 COMMISSIONER TURNBULL: Thank you, Mr.  
12 Chair. I just want to carry on a little bit with  
13 the questions that Commissioner May started to  
14 raise. In Exhibit 2-E, we have a document  
15 provided, basically going back over what you  
16 already presented. In that, I think it is Page 3,  
17 you gave a lot of levels, and I think the level  
18 you are giving for dogs barking is 95.1 -- I think  
19 you had a worst-case scenario of 50 dogs barking  
20 all at once, and that gets up to 95. I can't even  
21 imagine the sound of 95 dogs barking. You are  
22 looking, based upon -- and, you pointed out that  
23 there is nothing in the regulations that actually  
24 gives a decibel rating for this kind of a use, but

1 you are relating it back to a bedroom -- a quiet  
2 bedroom use of 35. So, you are trying to achieve  
3 between the 95 generated to create a measurement  
4 of 35 in the apartment above. Has that been  
5 verified then in these other locations that you  
6 have been able to achieve that?

7 MR. TIKRITI: To my knowledge, yes. Based  
8 on the design elements and the details that have  
9 been considered and the field-testing before and  
10 after or during the construction, it has been  
11 verified, yes. COMMISSIONER TURNBULL:

12 Okay. Have you had any instances where anybody  
13 has complained, and you have had to go back and  
14 modify anything or...

15 MR. TIKRITI: No, not with this use.

16 COMMISSIONER TURNBULL: Not with this use,  
17 okay. And, I guess you're proffering a HEPA  
18 filtration system for this facility?

19 MR. KASDORF: Yes, that's correct.

20 COMMISSIONER TURNBULL: Okay. If you can  
21 identify yourself.

22 MR. KASDORF: Phillip Kasdorf, one of the  
23 four owners of the proposed dog day care.

24 COMMISSIONER TURNBULL: Where does that

1 vent then? Where does the HEPA -- is that at the  
2 rear of the building -- or, how does that get  
3 vented out? Does it go up on the roof or go  
4 through?

5 [Speaking off mic.]

6 MR. KASDORF: It's up through the roof.

7

8 COMMISSIONER TURNBULL: It's up through  
9 the roof, and the filtration is up on the roof  
10 then? Do you have some located -- the basic unit  
11 is in the use itself, and then it gets carried on  
12 through?

13 MR. KASDORF: That's correct, and then  
14 filters are changed quarterly.

15 COMMISSIONER TURNBULL: Quarterly, okay.  
16 When we talk about dogs being walked on 14th  
17 Street, how many dogs would a handler necessarily  
18 walk at one time?

19 MR. KASDORF: They would walk one to two  
20 at a time.

21 COMMISSIONER TURNBULL: One to two at a  
22 time, and they would have their little Washington  
23 Post bags for pickup of anything.

24 MR. KASDORF: That is correct. They would

1 pick up any excrement on the walk and bring that  
2 back with them to the club to be disposed of at  
3 the club.

4 COMMISSIONER TURNBULL: Okay, okay. Let  
5 me go back and look at one more thing here. I  
6 think that may be all my questions. I had notes  
7 written all over the place here, but I think we  
8 have covered -- I think everyone else picked up on  
9 some of the things that I had too, so. But, all  
10 of this thing -- in the modification for the  
11 order, would be covered.

12 MS. BATTIES: I'm sorry, Commissioner  
13 Turnbull.

14 COMMISSIONER TURNBULL: All of the things  
15 that we are talking about in the modification are  
16 going to be addressed then.

17 MS. BATTIES: Yes, in the order.

18 COMMISSIONER TURNBULL: Right, thank you.

19 CHAIRMAN HOOD: I really don't have any  
20 questions. I actually sat on the original case at  
21 BZA, and I've seen different forms and fashions in  
22 trying to put things together to get to this point  
23 here where we are today. Let me just ask. I  
24 didn't see this slide 16. It says -- was that --

1 were you trying to insinuate something? It says  
2 we need a place to play, don't make me ask twice,  
3 and I see all these dogs. I'm just curious. I  
4 didn't see that at the original presentation. Was  
5 that stuck in there for us? Did you stick that in  
6 intentionally for us?

7 MR. KASDORF: It was in the original.

8 CHAIRMAN HOOD: It was? I just didn't  
9 remember that one.

10 MR. KASDORF: Some cute D.C. dogs that  
11 want to play.

12 CHAIRMAN HOOD: Okay, I gotcha. But, let  
13 me ask you -- I did ask earlier, was there anyone  
14 here in opposition? What -- do you know of any  
15 opposition other than the hand we saw -- you know,  
16 what opposition that may be, and maybe you can  
17 respond to it?

18 MS. BATTIES: We were not aware of any  
19 opposition. When we went to both the ANC  
20 Committee meeting as well as the full ANC meeting,  
21 there was nobody there to speak against the  
22 application. In fact, we've had a lot of support  
23 from the ANC and the single-member District  
24 representative for this project.

1           CHAIRMAN HOOD: I would be interested in  
2 hearing from the gentleman. But, I don't remember  
3 any opposition in all the other cases. It was  
4 just questions and concerns from this Commission,  
5 well, and the Board first, and then because of the  
6 way the regs read, and also when we did the Text  
7 Amendment, a lot of questions got answered, at  
8 least from my standpoint.

9           MS. BATTIES: I hope I'm not inappropriate  
10 when I say this, but the person here in opposition  
11 operates a dog day care center, and they  
12 originally opposed this application because they  
13 thought we were bringing additional competition  
14 for this use to the area, so...

15           CHAIRMAN HOOD: Okay, I remember some of  
16 that. Okay, I was just curious if you could  
17 respond. Maybe you can respond on rebuttal. Any  
18 other questions up here? Anyone representing  
19 ANClB present tonight? They do have a letter, and  
20 I will read that at an appropriate time. Let's go  
21 to the Office of Planning, Mr. Gyor.

22           MR. GYOR: Good evening, members of the  
23 Commission. The Office of Planning recommends  
24 approval of this request for modification. The

1 proposal would not be inconsistent with the  
2 general intent of the approved PUD and would not  
3 detrimentally alter the approval external  
4 appearance of the building or alter the approved  
5 benefits or amenities for the site, but would help  
6 to fulfill occupation of ground-floor commercial  
7 space with a use that is generally desired by many  
8 District residents and is consistent with the  
9 intent of the zoning. Thank you.

10 CHAIRMAN HOOD: Okay, thank you, Mr. Gyor.  
11 Commissioners, any questions of Office of  
12 Planning? Okay, I'm not seeing any. Reports of  
13 other government agencies -- we do have a report  
14 from DDOT, and they are in support. Any other  
15 reports that I may have missed? We do have a  
16 report from the ANC that is Exhibit #32, and it  
17 basically says "ANC1B at its regular scheduled  
18 meeting on April 2, 2015, in which a quorum was  
19 present, were noticed and properly given in  
20 accordance in with the D.C. Code, voted to support  
21 the request of View 14 Investments, LLC, for  
22 modification to an approved planning unit  
23 development." They voted in support of the  
24 application with the City by the ANC1B Zoning



1 think there was some opposition, just to clarify,  
2 from residents in the building the first time  
3 around. I will say in my remarks, but just to  
4 point out, it is my understanding that with this  
5 process, the normal notification that you have to  
6 go through -- I think it's the 200-foot rule --  
7 that people have to be notified didn't happen the  
8 second time. It happened the first time, and I  
9 think everybody probably thought, oh, this has  
10 been resolved, and I don't know if everybody  
11 within 200 square feet -- or 200 feet -- is aware  
12 that this has moved forward. Yes, the ANC is  
13 supportive, but I have been to ANC meetings in the  
14 past, and with all due respect to those folks, not  
15 everybody goes to ANC meetings.

16 But, I do want to say that we're not here  
17 -- I'm not here to oppose the opening of another  
18 dog day care in Washington. We are really blessed  
19 in Washington to have so many dogs and so many  
20 good people, and so many people that are moving in  
21 and out of the city that all of the businesses do  
22 quite well. We don't really feel like we compete  
23 against each other. There really -- you know,  
24 people take their dog to the dog day care that is

1 the closest, and, you know, we have a really good  
2 working relationship with the other dog day cares  
3 and several have opened in Washington over the  
4 past few years.

5           But, I am here because I do think we all  
6 need to play by the same rules, and I think some  
7 folks on the Commission are aware, we did try to  
8 open up a second location on Capitol Hill. We  
9 found a building that we felt was a beautiful  
10 building, less than a block from my house. It was  
11 in a C2A Zone District area, and we went to the  
12 ANC, they approved it, it was 10-0-1, and  
13 unfortunately, when we got to the BZA, the BZA for  
14 their particular reasons voted against it. It was  
15 quite heartbreaking to us. We had put second  
16 liens on our houses, and now we have this  
17 building, and we had to figure out what to do with  
18 it. But, we did, and we are moving forward.

19           I assume that City Dog Club folks were,  
20 you know, upset that their original application in  
21 front of the BZA was denied, but what has happened  
22 next is, you know, in response to that denial, the  
23 applicant has decided to go forum shopping in  
24 hopes that the Zoning Commission will overturn the

1 BZA's legitimate decision. My understanding is  
2 that the Zoning Commission does not typically  
3 handle appeals or reconsideration of BZA  
4 decisions, except in extraordinary cases. I would  
5 not call this an extraordinary case.

6           Furthermore, there hasn't really been any  
7 -- there have been no changes to the applicant's  
8 proposal, just the heightened lobbying effort with  
9 a different agency with the exact same facts under  
10 which this was previously denied by your  
11 colleagues at the BZA.

12           Like I said, while the ANC is now  
13 supporting this under the latest effort, or the  
14 latest process, it is my understanding that the  
15 residents within the 200-foot border have not been  
16 notified that this has been reconsidered or is  
17 being reconsidered, and now is a possibility  
18 within their neighborhood.

19           In addition, it seems to me that there  
20 should be a great respect by this Commission for  
21 decisions made by its colleagues at the BZA.  
22 Otherwise, you may give the impression to the  
23 public that if one doesn't get the approved answer  
24 by the BZA, all you need to do is hop over to the

1 Zoning Commission to get the result you want.  
2 This undermines the integrity of the Zoning  
3 Regulations and the entire land use process.  
4 Perhaps that is not really the case, but you  
5 should expect a bystander and other small business  
6 owners trying to play by the rules to view this  
7 and to think that no doesn't really mean no, when  
8 it comes to variance applications in the District.  
9

10 Finally, while the regulations may have  
11 changed recently regarding dog day care, it hasn't  
12 changed anything in respect to the BZA's denial,  
13 which included concerns about the applicant's lack  
14 of ability to prevent their noise from reaching  
15 the living spaces and residents above it.

16 For these reasons, I urge the Zoning  
17 Commission to respect the decision of the BZA, not  
18 interfere with that denial, and to deny this  
19 application, as everyone should play by the same  
20 rules here in the District of Columbia. Thank  
21 you.

22 CHAIRMAN HOOD: Okay, thank you. I'm going  
23 to respond just a little bit to that, because I  
24 was the Zoning Commissioner that sat on there for

1 that denial. First thing -- my time is usually  
2 not up, but... If you will look in the record at  
3 Exhibit 19, it shows all the notices that went out  
4 -- in the records of the Office of Zoning, you can  
5 always look in the record. It went out within 200  
6 feet. We have 6-1/2 pages of labels.

7 MR. HEIER: The first time or the second  
8 time?

9 CHAIRMAN HOOD: No, this time.

10 MR. HEIER: Okay.

11 CHAIRMAN HOOD: This time, so you look at  
12 Exhibit...

13 MR. HEIER: Yeah, I'm not a zoning expert  
14 -- I just run a dog day care.

15 CHAIRMAN HOOD: That's no problem.

16 MR HEIER: And, I heard from neighbors  
17 that they had not received it, but I believe what  
18 you say. CHAIRMAN HOOD: Yeah, I'm looking at  
19 Exhibit 19, and its 6 pages. Florida Avenue, 19th  
20 Avenue, okay, Northeast. But, anyway, we do have  
21 that in writing for you.

22 MR. HEIER: Okay, that's good news.

23 CHAIRMAN HOOD: The other issue, if you  
24 remember on the BZA, there were some things in the

1 regulations, which prohibited to even move  
2 forward, and if you remember the Chairperson of  
3 the BZA, he kept saying the Zoning Commission  
4 needs to correct this, and that was an issue, and  
5 I think that the Office of Planning at the urging  
6 of the BZA needed to correct it. I don't think it  
7 was any issue where anything was switched or  
8 changed, but let me ask you this. Your case, and  
9 I'm not familiar with your case, but your case,  
10 was it done before this one or after this one?  
11 The first BZA, was yours...

12 MR. HEIER: It was done before.

13 CHAIRMAN HOOD: Have you tried to look at  
14 it again? I'm not sure where you are, because of  
15 the change, have you looked at it again?

16 MR. HEIER: We were denied because of some  
17 neighbors that had moved -- that lived in a  
18 commercially zoned district but had turned it into  
19 their house, and they felt that the noise was  
20 going to be an issue, even though our dogs were  
21 separated from the abutting residences, and quite  
22 honestly, we can't afford to do it. We've already  
23 had to move on and put a new business in there,  
24 and when we were denied the first time, my

1 question to our zoning attorney was, well when can  
2 we -- when is the next time you can do it, and he  
3 said, well you have to -- what, I think it is a  
4 year to do it. And, while this hasn't been a  
5 year, it's just -- you know, well let's go to a  
6 different group and see if we can get them to  
7 approve it because we were denied at this -- point  
8 a, well, let's try another place and see if they  
9 say yes there.

10 CHAIRMAN HOOD: I don't exactly view it  
11 like you do. I specifically remember the BZA and  
12 what we grappled with. Again, I hear that quite a  
13 bit, I don't know about my other colleagues, that  
14 the Zoning Commission needs to tweak or change  
15 this regulation or needs to do something about  
16 this, and that is basically what we did. Office  
17 of Planning worked on it. Mr. Lawson, you can  
18 chime in anytime. I think you were here through  
19 some of this also. It was time for us to make  
20 some corrections moving forward, and that is what  
21 was done. It's not that anybody just ran from the  
22 BZA and came to the Zoning Commission, because one  
23 thing about it, all five of us sit on the BZA.  
24 So, we see it again. It just so happened in this

1 particular case, I'm not sure about your case, but  
2 this particular case, I sat on. We drilled them  
3 through the first BZA case, through the Text  
4 Amendment, everything.

5 MR. HEIER: Alright.

6 CHAIRMAN HOOD: Okay. So, let me see.  
7 Any other questions? Commissioner May.

8 COMMISSIONER MAY: I don't have any  
9 questions, but I just wanted to comment that I  
10 really appreciate the fact that you are testifying  
11 basically on the basis of the sanctity of the  
12 process and wanting to preserve the -- to urge us  
13 to respect decisions of the BZA, and, you know, I  
14 just -- we don't often have people testifying in  
15 favor of the process the way it is. I think  
16 that's really a great thing.

17 There are subtle reasons I think why what  
18 we're doing is completely consistent with it.  
19 First of all, we have the authority to review any  
20 BZA case that we think was improperly decided.  
21 The second thing is that I think a number of us  
22 had experiences with this -- with similar kinds of  
23 facilities that were denied simply because of the  
24 way the language was in the regulations. It

1 didn't really give the BZA an avenue to approve  
2 certain things. I mean, basically, it was the  
3 abutting residential use was the problem in the  
4 case that I had heard, and that was problematic  
5 because it doesn't really get to the root cause of  
6 the problem, which is the potential for noise or  
7 other impacts on the neighbors. So, even though  
8 I'm totally sympathetic to that idea, I really  
9 appreciate the fact that you came down to testify  
10 on that basis.

11 I'm very sorry that your appeal or your  
12 case didn't come after this one, because you would  
13 have had a much clearer path, I would think I  
14 mean, there's still going to be some cases, I  
15 think, that come to BZA that aren't going to be  
16 approvable because of potential impacts, and you  
17 review in your testimony about how far you have to  
18 go to make sure that you don't have noise  
19 transmission to adjacent residences. But, I don't  
20 know that there is really -- I mean, I'm perfectly  
21 comfortable proceeding based on what we've heard  
22 so far, and I don't feel like this is a case of  
23 forum shopping. It does happen sometimes that  
24 people forum shop, but I don't really think this

1 is one of those cases.

2 MR. HEIER: I respect what you say there.

3 I think -- just to add -- the reason why we  
4 weren't too concerned the first time around when  
5 it was -- why we were concerned to a certain  
6 extent was -- I think there is a history of when  
7 dog day care businesses go bad, the reactions are  
8 tighter and more stringent regulations, and we saw  
9 that several years ago when there was one on a  
10 street near our place, and then all of a sudden we  
11 had all of these restrictive regulations that make  
12 it hard to open a dog day care, and I don't know  
13 if this falls under BZA rule or whatever, but just  
14 me personally knowing dogs and knowing the dog day  
15 care business, I see a dog day care going into a  
16 residential building, and I -- my nightmare is, oh  
17 man, two years from now, we're going to get this  
18 backlash, and now it's even more restrictive. You  
19 know, it's going to be like a nightclub, and --  
20 so, I'm just -- you know, I think it's important  
21 to realize the full scale of the history and how  
22 the regulations ebb and flow and we're all just  
23 trying to make a living and provide a service,  
24 and, like I said, it is a -- it's not an easy

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1 process.

2 CHAIRMAN HOOD: Okay. Any other  
3 questions?

4 COMMISSIONER TURNBULL: Mr. Chairman, I  
5 just have a comment, and again I appreciate you  
6 coming down. I think part of the issue that we  
7 have also, and what we found over the years, is  
8 that zoning is not an absolute science. As much  
9 as we do our best to put regulations in play that  
10 are workable, we find sometimes they don't work,  
11 and we have a make a mid-course correction. It  
12 could be that we'll have maybe lots of complaints  
13 coming forth with this, and there will have to be  
14 another correction at some point. But, I mean --  
15 I think -- zoning is always not a static thing.  
16 It will change. Different conditions make a  
17 change. People's attitudes toward certain things  
18 will change. So, we try to be as clear and  
19 concise as we can, but we also have to realize  
20 that there is a little flexibility that we've got  
21 to work with.

22 CHAIRMAN HOOD: And, that's a good point,  
23 because I was thinking when I was growing up, my  
24 parents always told me don't ride your bike in the

1 street. [Laughter] And, that's all we do now, so  
2 you're right. [Laughter] Okay, but we really  
3 appreciate you coming down and providing that  
4 testimony. Okay. Any other questions up here?  
5 Do you have any rebuttal?

6 MS. BATTIES: The only thing I would like  
7 to add, since it was mentioned, is the Exhibit G  
8 of the application statement contains a petition  
9 in support of the application. The petition was  
10 signed by 105 people, 100 of whom live in the View  
11 14 Building. There are five units directly above  
12 the dog day care center space, three of the  
13 residents -- residents from three of those units  
14 signed the petition in support. The other two  
15 units, one was vacant at the time we circulated  
16 the petition, and the other resident -- tenant --  
17 we weren't able to reach the resident for that  
18 unit. So, I do want to clarify that people that  
19 live in the building are supportive of this  
20 application. Thank you.

21 CHAIRMAN HOOD: Okay, any other questions  
22 on rebuttal? Okay. Are you having a closing?

23 MS. BATTIES: I have nothing further.  
24 Thank you.

1           CHAIRMAN HOOD: Okay, and thank you for  
2 that last comment, because that actually was my  
3 concern at the very beginning of this case  
4 upstairs -- the people who live right up above or  
5 near. So, anyway, okay, Commissioners, do we have  
6 any dates, or what is your pleasure? I just  
7 wanted to see when you all -- does anybody need  
8 more time to decide this? Okay. So, would  
9 somebody like to make a motion?

10           VICE CHAIR COHEN: Mr. Chairman, I will  
11 move to approve Zoning Case #05-22A, View 14  
12 Investments, LLC, PUD Modification at Square 2868  
13 and ask for a second.

14           COMMISSIONER MILLER: Second.

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

17           COMMISSIONER TURNBULL: Just noting all  
18 the comments and concerns that we heard would be  
19 put in the order.

20           CHAIRMAN HOOD: Moved and properly  
21 seconded with concerns being put in the order.  
22 Any other discussion? All those in favor?

23           [Chorus of ayes]

24           CHAIRMAN HOOD: Any opposition? Not

1 hearing any, Ms. Schellin, would you record the  
2 vote?

3 MS. SCHELLIN: Staff records the vote 5-0-  
4 0 as modified to approve Zoning Commission Case  
5 #05-22A, Commissioner Cohen moving, Commissioner  
6 Miller seconding, Commissioners Hood, May, and  
7 Turnbull in support.

8 CHAIRMAN HOOD: Okay, Ms. Schellin, do we  
9 have anything else before us tonight?

10 MS. SCHELLIN: No, sir, other than to ask  
11 Ms. Batties to provide us with the Draft of  
12 Findings of Facts, and Conclusions of Law.

13 CHAIRMAN HOOD: Okay, so with that, I want  
14 to thank everyone for their participation. This  
15 hearing is adjourned.

16

17

18