

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Public Hearing

Case No. 08-15A [Cathedral Commons Partners, LLC -
Modification and Consolidated PUD for Square 1920,
Lots 833-835, 841, 844-852, and 7006-7012, and Square
1920-N, Lots 800-804, and 7000-7004.]

6:45 p.m. to 8:03 p.m.

Thursday, June 28, 2016

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

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Commissioner

4 MICHAEL TURNBULL, Commissioner

5

6 Office of Zoning:

7 SHARON SCHELLIN, Secretary

8

9 Office of Planning:

10 JOEL LAWSON

11 MAXINE BROWN-ROBERTS

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

2 CHAIRPERSON HOOD: Okay, good evening, ladies
3 and gentlemen. This meeting will please come to
4 order. Today's date is July the 28th, 2016.

5 My name is Anthony Hood. Joining me are
6 Commissioner Miller and Commissioner Turnbull. We're
7 also joined by the Office of Zoning staff, Ms. Sharon
8 Schellin, as well as the Office of Planning staff,
9 Mr. Lawson and Ms. Brown Roberts.

10 This proceeding is being recorded by a court
11 reporter and is also webcast live. Accordingly, we
12 must ask you to refrain from any disruptive noises or
13 actions in the hearing room, including the display of
14 any signs or objects. Notice of today's hearing was
15 published in the D.C. Register and copies of that
16 announcement are on the table near the door.

17 This hearing will be conducted in accordance
18 with provisions of 11 DCMR 3022 as follows:
19 preliminary matters, applicant's case, report of the
20 Office of Planning, report of other government
21 agencies, report of the ANC, in this case it's 3C,
22 organizations and persons in support, organizations
23 and persons in opposition, rebuttal and closing by
24 the applicant.

25 The applicant has up to 60 minutes but I

1 think 10 minutes should be sufficient. Organizations
2 five minutes, individuals three minutes.

3 All persons appearing before the Commission
4 are to fill out two witness cards, and also all
5 persons wishing to testify before the Commission in
6 this evening's hearing are asked to register at the
7 witness kiosk to my left. Any assistance you need,
8 Ms. Schellin will be able to assist you.

9 The staff will be available throughout the
10 hearing to discuss procedural questions. Please turn
11 off all electronic devices at this time so not to
12 disrupt these proceedings. Would all individuals
13 wishing to testify please rise to take the oath? Ms.
14 Schellin, would you please administer the oath?

15 MS. SCHELLIN: Yes. Would all people wishing
16 to testify please rise to take the oath? Raise your
17 right hand, please?

18 [Oath administered to the participants.]

19 CHAIRMAN HOOD: Okay. At this time the
20 Commission will consider any preliminary matters.
21 Ms. Schellin, do we have any preliminary matters?

22 MS. SCHELLIN: Yes, sir. We do have a
23 request for party status in this case. It is --
24 actually, it's not on my list but I know we have one.
25 It is the Wisconsin Newark Neighborhood Coalition,

1 and they are represented by Richard Nash in
2 opposition. I'd ask the Commission to consider this
3 request.

4 CHAIRMAN HOOD: Okay. If somebody could
5 start us off while mine is coming up again?

6 MR. MILLER: Mr. Chairman.

7 CHAIRMAN HOOD: Okay. Commissioner Miller.

8 MR. MILLER: I wasn't here for the original
9 case but they were a party in the original and I have
10 no objection to them being a party in this case.

11 MS. SCHELLIN: Actually, I take that back.
12 They have not applied for party status, they have
13 just submitted a letter in opposition, it looks like.

14 MR. MILLER: Okay.

15 MS. SCHELLIN: So I take that back, it's not
16 a preliminary matter.

17 CHAIRMAN HOOD: Yeah, they --

18 MS. SCHELLIN: Yes.

19 CHAIRMAN HOOD: Okay. So we don't have any
20 party request.

21 MS. SCHELLIN: Right. I'm sorry.

22 CHAIRMAN HOOD: Yeah, they are a -- I'm
23 looking at the letter now. Okay. This is our
24 Exhibit -- what is this? Twenty-four?

25 MS. SCHELLIN: Correct.

1 CHAIRMAN HOOD: Okay. All right. So, we
2 know we have -- how many other people do we have --
3 how many people do we have here in opposition? Okay.
4 How many people we have here in support? How many
5 people here just to see what we're doing? No, I knew
6 I'd get somebody. Okay.

7 All right. Well, we know where we are.
8 Okay. So we will hear everyone's comments. But Mr.
9 Avitabile, you may begin.

10 MR. AVITABILE: Great. Thank you very much.
11 Good evening, Commissioners. Thank you for hearing
12 us tonight on what I hope will be a relatively
13 succinct hearing.

14 We're here tonight for a, although not a
15 minor modification, big minor, relatively minimal
16 modification to a significant PUD up at Wisconsin
17 Avenue and Newark Street in Upper Northwest D.C. It
18 was known at the time as the Wisconsin Avenue Giant
19 PUD when you first considered it, 2008. It's now
20 known as Cathedral Commons. The project has been
21 built and it is occupied. The grocery store is open,
22 the residences are occupied, and the owner is in the
23 process of leasing out the ground floor retail.

24 As you may remember, this property was in one
25 of the neighborhood commercial overlays. Through the

1 PUD we rezoned out of the neighborhood commercial
2 overlay, but then put back in many of the protections
3 as conditions of the PUD. One of those projections
4 was that 20 percent of the linear commercial frontage
5 of the PUD would be limited to eating and drinking
6 establishments.

7 We currently have about 40 feet of linear
8 frontage left for restaurant uses within the PUD. We
9 -- the ownership, and I should say that with me
10 tonight, although they won't be speaking,
11 representing the ownership, Bozzuto, is Tess Quinn
12 behind me, and we also have Mark Russell from Silver,
13 the prospective tenant is also here tonight.

14 So Bozzuto identified an opportunity to bring
15 in the Silver as a tenant, and the Silver is, it's an
16 all-day neighborhood processory (phonetic)
17 restaurant, serves breakfast, you know, and in their
18 efforts with the community building out this project,
19 this was one of the items really requested by the
20 neighborhood, to have an establishment like this.
21 And this is all in our testimony. I'm just
22 summarizing it. Our written testimony.

23 Unfortunately, the Silver, it's a rather
24 significant establishment and they need 90 feet of
25 frontage, which is about 50 feet more than the 40

1 feet that's currently available. So we identified a
2 need to modify one of the conditions of the PUD to
3 allow for that additional frontage. It takes us from
4 about 20 percent to about 23 and a half percent.
5 It's a relatively small increase, and you still have,
6 you know, over 75 percent of the PUD's linear
7 frontage are non-restaurant establishments.

8 This is a great use to have. It would be
9 located on the north parcel along Wisconsin Avenue,
10 where right now there are a couple of establishments,
11 but it has not been leased to the same extent as some
12 of the other frontages, putting this establishment in
13 with the anticipated sidewalk café will create a lot
14 of activity on Wisconsin Avenue and really fulfil one
15 of the goals of the PUD which was to create a dynamic
16 active pedestrian realm along all of the commercial
17 streets here.

18 The other item we're requesting is a
19 modification to the original PUD. The original PUD
20 had a series of signage and store front guidelines.
21 One of those guidelines that we proffered was that
22 signage height, the letters be limited to a height of
23 18 inches. Because of the nature of the Silver's
24 frontage, and the fact that they're just going to
25 have one sign that says silver, in order to have that

1 sign have the appropriate scale to their
2 establishment, they original requested, we original
3 requested a sign height of 36 inches which would be
4 double what was -- we had original proposed.

5 Through to the discussions with the ANC,
6 there was a little bit of concern -- there was, I
7 shouldn't say little bit. There was concern about
8 the height of the lettering. We agreed to lower it
9 from 36 to 30 inches so the application that's before
10 you tonight has the lettering at 30 inches.

11 So a little bit about the community
12 engagement efforts related to this, and I think it's
13 worthwhile to talk about what's happened since you
14 last saw this project. When you last saw this
15 project it was a contested hearing witness a lot of
16 back and forth. It went up to the Court of Appeals.
17 The Court of Appeals affirmed the case. But then
18 Giant partnered with Bozzuto to come in and help
19 construct the project, and the team at Bozzuto, and
20 the ANC worked together to develop a construction
21 liaison committee that met regularly throughout
22 construction to address issues of concern. I think
23 the Bozzuto -- I think representative of the ANC is
24 here and can speak to, you know, that process. It
25 actually developed a very good relationship between

1 Bozzuto and the community and a lot of -- it set a
2 good groundwork for us to have the discussion we
3 needed to have about this project.

4 So, before filing this project we engaged the
5 ANC and started discussing it. The ANC indicated
6 that they could officially consider it after we had
7 filed an application. So we filed the applicant in
8 late March. We appeared at the ANC's Planning and
9 Zoning Committee in early April, had a long and
10 vigorous discussion about the project, went for the
11 full ANC, later that month. The ANC at that point
12 made it clear they didn't think this should be a
13 minor modification. We modified it. We agreed that
14 we would come before you all for a hearing.

15 We continued those discussions informally,
16 working out what else we could do within the project
17 to make it acceptable and address community concerns,
18 and as I think one of the commissioners said, we were
19 getting a little bit more and so we should give back
20 a little bit more. And we have agreed to do that.
21 We went back to the ANC in June. We went again to
22 their Planning and Zoning Committee at the beginning
23 of the month and the full ANC on June 20th. And we
24 arrived at a compromise and some additional changes
25 to the application, and really to the PUD as a whole,

1 to address some of the concerns about really parking
2 and traffic impacts.

3 First, we agree to increase the validation
4 period for free parking within the PUD, as well as
5 free parking for neighborhood restaurants from 90
6 minutes to two hours.

7 Second, and to take you back, one of the
8 public benefits proffered as a part of this PUD was
9 providing free parking for neighborhood restaurants
10 that are outside of the PUD, but in the area. There
11 used to be a surface parking lot here. There used to
12 be 30 free parking spaces available to residents of
13 the neighborhood to park at those restaurants, and so
14 one of the things we had agreed to do is provide that
15 sort of free parking.

16 Through our discussions about this project it
17 became very clear that the community wanted some
18 additional changes to the parking program we had
19 implemented to make sure it truly met the spirit of
20 what had been original proffered. And so what we
21 agreed to do was one, start the free parking at 6:00
22 p.m. rather than 7:00 p.m., so that more people could
23 come in and park for free when they're coming in for
24 dinner.

25 The second thing we agreed to do -- so the

1 way we are administering these free parking spaces,
2 it's a validated system. It's not like a parking lot
3 where you can just drive in and we can stripe 30
4 spaces. So we basically offered to the neighborhood
5 restaurants, you can give your restaurants free
6 parking and there's a certain amount of hours
7 available in the system that they can use.

8 To ensure that there would continue to be
9 free parking available later in the evening what
10 we've agreed to do is we'll maintain the initial
11 traunch of free parking hours that start at 6:00
12 p.m., and then add in additional free parking hours
13 at 8:00 p.m. so that people who come to dinner a
14 little bit later can continue to park for free.
15 There will still be that potential.

16 And, again, we worked this back and forth
17 with the ANC and everyone agreed that this was
18 acceptable.

19 The next item that we agreed to do, and this
20 came in kind of the later discussions, the John Eaton
21 Elementary School is nearby and they have some
22 parking constraints and asked, you know, you have
23 some room in that commercial parking garage, could
24 you provide some free parking to the teachers. We
25 agreed to do that for two years. Our understanding

1 is, there's a plan in place to provide additional
2 parking there down the road, so this was intended as
3 kind of as a temporary measure to provide some
4 relief. And so we've agreed to do that.

5 The second to last thing is, we've agreed to
6 ensure that, provided the Commission approves this
7 increase for this space, we didn't want to limit it
8 to a particular tenant because things change, the PUD
9 will live a long time. We certainly hope the Silver
10 will be there for the next 60, 70, 80 years. But in
11 the event that someone else comes in, it would
12 continue to be, you know, an all-day type of an
13 establishment serving breakfast since that was a key
14 thing important to the neighborhood.

15 And finally, we agree to reduce the signage
16 height to 30 inches. We have the support of the
17 Office of Planning. We have the support of the ANC.
18 DDOT doesn't have any issues. We will of course work
19 with DDOT on the appropriate public space approvals.

20 I think the last thing I wanted to address
21 briefly is the Wisconsin Newark Neighborhood
22 Coalition.

23 They submitted a letter early on when we
24 filed the application, indicating they had concerns.
25 We reached out to them to offer to meet. We didn't

1 hear back. We reached out a second time, didn't hear
2 back. They didn't participate through the ANC
3 process. Our understanding when we were at the ANC
4 meetings, they were relatively sparsely attended by
5 the neighborhood, but actively participated with the
6 ANC, including commissioners representing the people
7 along Newark Street, east of Wisconsin, and that's
8 essentially who WNNC is. It's east of Wisconsin
9 along Newark, and that immediate neighborhood.

10 So our understanding was we were working with
11 the neighborhood's elected representatives to come up
12 with a compromise. So we were a little surprised to
13 get their letter a couple of weeks ago, indicating
14 some issues. We did immediately reach out to them
15 and we had a conversation. Jeff Case from Bozzuto
16 spoke with Rick. There were a couple of items
17 identified that the neighborhood, this group was
18 asking for. We didn't really think they were
19 necessarily relevant to the specific concerns of the
20 PUD, so we're not prepared to address those at this
21 time. But we did have a conversation.

22 I think the one item that they did bring up
23 was basically put a notice on the restaurant parking.
24 The restaurant website said there is free parking
25 available. We can't guarantee that because we can't

1 control what the tenants do on their websites. We
2 certainly are happy to encourage them to do that, but
3 I think that's the one item that we did indicate to
4 them that we would look at.

5 So that's all that I have. I think we do
6 otherwise have a solid record here with, again,
7 support from OP and the ANC, and we're happy to
8 answer your questions. Thank you.

9 CHAIRMAN HOOD: Thank you, Mr. Avitabile.
10 That was a very good wrap up of what these issues
11 were and moving forward and we're looking forward to
12 hearing from the -- not the party in opposition, but
13 the Wisconsin Newark Neighborhood Coalition.

14 Let's open it up. Any questions up here?

15 I do have one. It may sound kind of crazy,
16 but I remember those long hearings. And it's been a
17 while. And I always say this, and I don't mean --
18 and I say this even in my own neighborhood when the
19 Costco came. Some of the people who are in
20 opposition of the Giant, are they going in there
21 using the facility? And that's not a sarcastic
22 question. I'm just curious.

23 MR. AVITABILE: I probably shouldn't speak to
24 that just because I don't live in that neighborhood.

25 CHAIRMAN HOOD: Oh, because you -- okay.

1 Okay.

2 MR. AVITABILE: My understanding is that
3 generally speaking many people are happy with the end
4 result. And I think even, even when the PUD was
5 being processed, I think even the opponents generally
6 were supportive of having --

7 CHAIRMAN HOOD: Size.

8 MR. AVITABILE: -- a grocery store, and
9 develop something happening here. It was concerns
10 about parking in packs, and the scale and the height.
11 I'll certainly leave it to Rick and Carl to talk
12 about their neighbors and their sentiment and how
13 people feel about the project. The impression I got
14 from attending the ANC meetings is that people are
15 generally happy about the project and just, you know,
16 continue to be concerned about potential impacts and
17 unanticipated impacts.

18 CHAIRMAN HOOD: And I'll tell you why I asked
19 that, and I'm not going to be long because a lot of
20 times, you know, we live in the City. So when I go
21 to stores and stuff that we vote on, I have people
22 who give me all kind of comments about -- and I
23 remember in the hearings they were here and they were
24 in opposition. And I know there were some issues
25 that we have to work out. But I said, well, we both

1 standing in the same store that you had a problem
2 with. So, you know.

3 But anyway, that's something that I grapple
4 with quite a bit. And I understand that there are
5 significant issues, and I'm not being sarcastic. But
6 I guess I just wanted to know, I guess, is there a
7 benefit to the neighborhood. But I'm sure I can ask
8 some of the ANC commissioners who live in that area.
9 So, anyway. All right. Any other questions? Mr.
10 Turnbull.

11 MR. TURNBULL: Mr. Chair, just following up
12 on your comment, I remember when we -- we had a lot
13 of different issues. We had a lot of different
14 neighbors concerned about a lot of different aspects,
15 restaurants, that whole shopping areas was one. But
16 I also remember spending a lot of time on the Giant
17 loading dock, the noise level, the idling of the
18 truck, the landscaping. Especially there was a
19 neighbor who lived right adjacent to it and we spent
20 I don't know how many hours going through
21 requirements and what we had to do to reduce the
22 impacts to all of that.

23 And we had several nights of hearings and
24 then we finally, I think, resolved most of those
25 issues. I don't know if to everyone's satisfaction,

1 but I think we came up with --

2 CHAIRMAN HOOD: The best of --

3 MR. TURNBULL: The best of all solutions that
4 could be achieved. So, but it was an intense process
5 with about four or five parties, I think, that was
6 involved in this.

7 CHAIRMAN HOOD: Five parties.

8 MR. TURNBULL: Yeah.

9 MR. AVITABILE: Five.

10 CHAIRMAN HOOD: And I remember this group. I
11 think they had party status. And if I remember
12 correctly, was this the group Mr. Sullivan --

13 MR. AVITABILE: Mr. O'Sullivan.

14 CHAIRMAN HOOD: Mr. Sullivan. I understand.
15 Did he --

16 MR. AVITABILE: He's away.

17 CHAIRMAN HOOD: Yeah. He struck out on me.
18 He was very respectful.

19 MR. AVITABILE: Yeah.

20 CHAIRMAN HOOD: I don't know, was he a
21 lawyer?

22 MR. AVITABILE: Yes.

23 CHAIRMAN HOOD: Yeah, I thought he argued
24 very well.

25 MR. AVITABILE: Yes, he did.

1 CHAIRMAN HOOD: He did a good job. Okay.

2 MR. TURNBULL: I mean, I just remember there
3 was concerns --

4 CHAIRMAN HOOD: We're going down Memory Lane
5 now.

6 MR. TURNBULL: Yeah, we had concerns about
7 parking, parking in the neighborhood, and yeah, it
8 was a very intense set of hearings.

9 MR. AVITABILE: We also had a party in
10 support.

11 MR. TURNBULL: Yes.

12 MR. AVITABILE: Which was relatively for a
13 large part --

14 CHAIRMAN HOOD: Was that Vision?

15 MR. AVITABILE: The Aware.

16 MR. TURNBULL: Oh, Aware. Yeah.

17 MR. AVITABILE: Advocates for Wisconsin
18 Avenue Renewal or something along those lines.

19 MR. TURNBULL: Yeah. Yeah.

20 CHAIRMAN HOOD: Well, that showed what we did
21 because I think, like you said, we had five parties
22 so we opened it up. Commissioner Miller.

23 MR. MILLER: Thank you, Mr. Chairman. I
24 wasn't here for the Zoning Commission action. Wasn't
25 here on the dais from the Zoning Commission action in

1 '08. I was in the neighborhood, and I still am in
2 the neighborhood. And close neighbors with people,
3 parties who are both in support and opposition,
4 although I wasn't part of any of those parties.

5 But I can personally attest for whatever it's
6 worth, that I think the development has been a public
7 benefit to the neighborhood. There are a lot of -- I
8 think the revamped Giant is fantastic to have close
9 by. Don't always want to have to go to Whole Foods,
10 either up north or south. I am two blocks east of
11 the development on 35th, between Newark and Macomb.

12 So I think the restaurants have been
13 beneficial. There is a lot of parking spaces in that
14 garage. I don't know what the official usage is. I
15 can tell you from my own personal experience, there
16 are always lots of spaces there. Half the time that
17 I go to the -- usually when I'm going to the
18 restaurant I'm walking, it's two blocks, but when I'm
19 going to the Giant, like you, when most people go to
20 the supermarket and they have bags they don't want to
21 usually walk if they're going to be heavy, or bike.

22 CHAIRMAN HOOD: Ride the bike. Sorry --

23 MR. MILLER: Just thought I'd say that for
24 your benefit.

25 CHAIRMAN HOOD: We have to let Commissioner

1 May look at this tape.

2 MR. MILLER: He's hearing that. But I could
3 actually, it's so close you are often going for just
4 the quick pick up that you often are walking or you
5 could do it by bike.

6 Anyway, there often is on-street parking
7 even, which I'm surprised at. It's now metered and
8 you can pay by Park Mobile, which I do when I go
9 there, and find the on-street. But really, half the
10 time I got here you can find the on-street, which I'm
11 surprised. So it just shows me, just from my own
12 personal experience, there is a lot of parking.

13 So I look forward to seeing -- I think one of
14 the conditions that the ANC, that you've agreed to,
15 that the ANC asked for was a report about the
16 parking.

17 MR. AVITABILE: That's right.

18 MR. MILLER: And who's using it and how much
19 excess parking there is. What is there, 535 spaces
20 in that garage?

21 MR. AVITABILE: It's a total of 535 spaces.
22 I think there's 300 and change in the commercial
23 parking garage. Two levels.

24 MR. MILLER: Is it two levels? I've never
25 gone down beyond the first level or within 10 feet of

1 the Giant entrance because there's always parking.

2 But, so anyway, I just -- did you have a --

3 MR. AVITABILE: Don't tell DDOT that.

4 MR. MILLER: What?

5 MR. AVITABILE: Don't tell DDOT that.

6 MR. MILLER: I'm sure they thought it was an
7 excessive amount of parking based on just their usual
8 testimony. I don't know if they thought it was
9 excessive back in '08, but based on what they usually
10 provide us now.

11 Did you have an opportunity yet to see the
12 Wisconsin Newark testimony from tonight which
13 outlines additional conditions that they would like
14 you to consider? And so I guess you could come back
15 on rebuttal after they do their testimony.

16 MR. AVITABILE: Yeah. I haven't seen it. I
17 suspect if it's the same items --

18 MR. NASH: Yes. Commissioner Miller, if your
19 [Speaking off mic].

20 MR. MILLER: I have it. We have it.

21 MR. NASH: They are in essence what we
22 discussed with Mr. Case.

23 MR. AVITABILE: Yeah. I mean, I can address
24 them now because I'm pretty sure I know what our
25 position is on those items, or I could wait until

1 after they've testified. However, you all would
2 prefer.

3 MR. MILLER: Why don't we let --

4 MR. AVITABILE: Sure.

5 MR. MILLER: -- the Wisconsin Newark --

6 MR. AVITABILE: That makes sense.

7 MR. MILLER: -- Mr. Nash testify, and then
8 come back. I did want them addressed.

9 MR. AVITABILE: Uh-huh.

10 MR. MILLER: In addition to the five that he
11 outlines, the additional hour or so that he suggests
12 for the Eaton Staff since their hours, he indicates,
13 go longer. But so, if we can just address those
14 after he comes back, I'd appreciate it.

15 MR. AVITABILE: Sure.

16 MR. MILLER: So I look forward to the
17 testimony from, I guess the ANC, maybe.

18 CHAIRMAN HOOD: ANC.

19 MR. MILLER: Testifying as well. I look
20 forward to that testimony as well as Mr. Nash's.

21 CHAIRMAN HOOD: Okay. Any other questions?
22 Okay. Do we have anyone here from ANC 3C? Okay.
23 Are you going to -- you're representing the ANC
24 right?

25 MR. ROLLER: [Speaking off mic.]

1 CHAIRMAN HOOD: You have any cross-
2 examination of what you just heard from Mr.
3 Avitabile?

4 MR. ROLLER: I do not.

5 CHAIRMAN HOOD: Okay. All right. Let's go
6 to the Office of Planning. I guess, well, we have a
7 DDOT report, so we'll go to the Office of Planning.
8 Ms. Brown-Roberts.

9 MS. BROWN-ROBERTS: Good evening. Yeah, good
10 evening, Mr. Chairman and members of the Commission.
11 The Office of Planning recommends approval of the
12 requested modifications as outlined in our report.
13 We reviewed the recommendations or the conditions
14 recommended by the ANC and the applicant. And I just
15 wanted to note that in our report there -- or you
16 will see that they're a little different. The art is
17 a little different from what was in the -- both in
18 the applicant's and the ANC Commission. But the
19 language is the same. We just sort of rearranged
20 them to make them flow a little better. But the
21 words are the same thing.

22 And so we recommend approval of the proposed
23 modifications, and I'm available for questions.

24 CHAIRMAN HOOD: Okay. Any questions of
25 Office of Planning? Mr. Turnbull?

1 MR. TURNBULL: I just had a question on your
2 report. You included language from the original
3 order, starting with five.

4 MS. BROWN-ROBERTS: Yes, five was the
5 first --

6 MR. TURNBULL: Does it -- I'm just curious
7 under Item 4, does it really say that -- I mean,
8 you've got some changes in here but you've got the
9 signage at 30 feet in height, and 18 feet in height.
10 I think that's a typo.

11 MS. BROWN-ROBERTS: Yes, that's a typo. I'm
12 sorry.

13 MR. TURNBULL: Oh, okay. I was concerned
14 that that was -- I don't think we've ever allowed
15 anybody to do signage that big. But okay. A little
16 humor for the night.

17 MS. BROWN-ROBERTS: Yes.

18 CHAIRMAN HOOD: All right. Anything else up
19 here?

20 Okay. Does the applicant have any cross of
21 the Office of Planning?

22 MR. AVITABILE: No, we're happy to reorder
23 the conditions in whatever order seems the most
24 logical.

25 CHAIRMAN HOOD: Okay. Does Office of -- I

1 mean, the ANC have any cross of Office of Planning?

2 MR. ROLLER: No, sir.

3 CHAIRMAN HOOD: Okay. All right. Let's go
4 to any other reports of any other government
5 agencies. We do have the DDOT report which I think
6 says no objection. I won't even bother to look for
7 it unless it -- did they have anything else in there?
8 No objections? Did we have any other government
9 reports? Okay.

10 Let's go to Advisory Neighborhood Commission
11 3C. You the chair person?

12 MR. ROLLER: Yes, sir.

13 CHAIRMAN HOOD: Yeah, come forward. Okay.
14 That's Chairman -- oh, I just had it open.
15 Chairman --

16 MR. ROLLER: Roller.

17 CHAIRMAN HOOD: Rollin? Okay. Roller.
18 Chairman Roller. I just had it open, now. Hold on.
19 Hold on. I got to get it. You know how you have
20 something and you've got to get it. We'll be here
21 all night, so go ahead, Chair.

22 MR. ROLLER: Thank you, sir, and thank you,
23 Commissioners. I will be very brief. We really, I
24 think, counsel for the applicant nicely summarized
25 the background and the situation. The only

1 additional pieces I would add is, as was noted in our
2 original resolution, ANC 3C did have some substantial
3 concerns regarding the terms of the original
4 application. We feel that the current amended
5 proposal is represented in their Exhibit A from
6 earlier this month, adequately addressed those
7 concerns resulting in ANC 3C's unanimous resolution
8 in May. I'm sorry, in June. The caveat being just
9 in full candor, two abstentions. Those two
10 abstentions came from Commissioners MacWood and
11 Commissioner Siegel who represent portions of
12 Cleveland Park that include the Newark Street
13 portion.

14 And I think they would say, as they said at
15 the meeting, that while they may not have been
16 enthusiastically in support of the proposal, that
17 they did feel that after substantial negotiations we
18 had gotten back from the application, terms and
19 conditions and that would be of substantial benefit
20 to the community and address some of the outstanding
21 issues and growing pains that we had had from the
22 original construction of Cathedral Commons.

23 To answer some of the questions or briefly
24 address some of the questions you had asked of
25 counsel, I would say all of the feedback I have heard

1 from my constituents regarding Silver in particular,
2 I asked when it was originally proposed, I asked on
3 my neighborhood listserv, 95 percent of the feedback
4 I heard was strongly in support. The other five
5 percent was, yeah, I'd like a dance studio or
6 something else, but I know that's not going to
7 happen.

8 And the feedback I have heard regarding
9 Cathedral Commons generally has been very, very
10 positive. There were definitely some growing pains
11 as I mentioned, but we work well with Bozzuto to
12 address those, and I'm confident that as we continue
13 to have issues the ANC and the community will be able
14 to address them.

15 If you have any questions I'm happy to answer
16 them, but otherwise I'm not going to take up your
17 time.

18 CHAIRMAN HOOD: Okay. Well, thank you,
19 Chairman Roller, for coming out and giving us your
20 testimony. Let's see if we have any questions up
21 here. Any questions?

22 MR. MILLER: Thank you, Mr. Chairman. I
23 don't know if I have any questions, but I just wanted
24 to thank you for engaging with the Bozzuto and thank
25 the ANC for engaging with Bozzuto in coming up with a

1 set of conditions to address concerns.

2 I, as a neighbor, I agree that this will be a
3 significant benefit to the neighborhood. I didn't
4 vote in that survey but -- I didn't see the survey.
5 But I would have been among the 95 percent who would
6 strongly love a breakfast all day option there.

7 And I appreciate that your resolution pointed
8 out what some of the alternative tenants that were
9 expressing interest in that space, cellular service,
10 carrier, and a medical supply company. Certainly not
11 neighborhood serving or activating or something that
12 we definitely need there, which reminds me of a
13 similar case in your ANC and Nandos.

14 MR. ROLLER: Yes, sir.

15 MR. MILLER: Where the alternative would have
16 been a, I think a 7-Eleven, or something worse. So I
17 appreciate all the work that you both have done, that
18 Bozzuto and the ANC have done on this issue.

19 CHAIRMAN HOOD: Okay. Any other comments?
20 Okay. Does the applicant have any cross?

21 MR. AVITABILE: No.

22 CHAIRMAN HOOD: Okay. Chairman Roller, we
23 appreciate all your work.

24 Since there's so much parking over there,
25 Commissioner Miller, maybe I'll drive over there and

1 start using that Giant instead of mine because we
2 don't have that much parking. Okay. There I go
3 getting distracted again.

4 Okay. Do we have any organizations or
5 persons who are here in support? You want to testify
6 in support? You can come forward. Come forward and
7 identify yourself.

8 This kiosk -- or, you know, what? No, we
9 don't have -- I don't have it. We've only had it for
10 two months and we haven't used it yet, I don't think,
11 have we? We do need to practice before September.

12 Did you key your name in and everything?

13 MS. SCHELLIN: She did.

14 [Discussion off the record.]

15 CHAIRMAN HOOD: Okay. Yeah, if you can push
16 that. Identify yourself and you may begin.

17 MS. ROTTMAN: Okay. Hi. My name is -- oh,
18 sorry. Hi. My name I Larin Rottman and I'm a fourth
19 grade teacher at John Eaton Elementary School, and
20 I've been serving on our local School Advisory Team
21 for two years, and we've been working together as a
22 group of teachers, parents, and residents and members
23 of the ANC to help solve our parking issues in the
24 neighborhood.

25 I'm here to speak in favor of the application

1 to amend the zoning order conditions, but I'm also
2 here to explain how the added condition for teachers
3 at John Eaton Elementary School could be improved.

4 In the past three years it has become
5 increasingly difficult for the teachers to find
6 parking within walking distance of this school, and
7 at the same time residents are all finding it
8 difficult to park near their homes. As unzoned
9 areas, parking areas around the street have become
10 more and more limited around the school, teachers
11 began to struggle to find parking spaces, and as a
12 result many teachers have been using Zone 3 visitor
13 parking passes to park on other nearby streets in the
14 neighborhood around the school.

15 And this has resulted in more residents
16 finding it difficult to find parking near their
17 homes. Although the situation has continued to
18 escalate, it is important to remember that we all
19 have the same end goal in mind, which is to work
20 together to make the community a great place to live
21 and learn, and it should be accessible to all members
22 of the community as well.

23 As public servants who are serving the
24 community, the teachers at John Eaton support the ANC
25 resolution to provide parking for teachers in the

1 development parking garage. However, in order for
2 this to be a viable option for the teachers, the
3 added conditions must be proved. John Eaton is not
4 your average DCPS school. We have an exemplary staff
5 that work well before and beyond our contractual
6 hours of duty to provide a school-wide enrichment
7 model and academic support for our students. Our
8 students play woodwind strings and marimba, and they
9 participate in yoga, basketball, geoplunge, robotics,
10 and much more. Our students perform in the top five
11 of all DCPS elementary schools in English language
12 arts and mathematics, as proved by our most recent
13 Park Score results. All of these facts make Eaton
14 one of the most sought after schools in DCPS.

15 However, none of this is possible without the
16 administration and the teachers and the staff that
17 work an average of 10 to 11 hours each day to ensure
18 that our students receive a world class education.
19 We work countless hours each week before and after
20 our required contract time of duty with DCPS, often
21 without extra pay, because we care about our students
22 and the school community.

23 John Eaton Elementary School brings value to
24 the neighborhood and in order to maintain that value
25 the school must be able to attract and maintain

1 exceptional teachers. And we can value the service
2 of our teachers, which will in turn, continue to be
3 an asset to the community by extending the hours of
4 the proposed parking for teachers in the development.

5 I recently conducted a Google [audio cut out]
6 with the teachers and staff at John Eaton regarding
7 the parking spaces in the development. Forty percent
8 of the teachers who responded to this survey stated
9 that they would use the parking spaces provided. Of
10 those teachers who would use the parking spaces, 70
11 percent stated that they would need the garage space
12 available until 6:00 p.m. Only three staff members
13 who responded to the survey stated that they would be
14 able to use the garage until 4:00 p.m.

15 Since the majority of our teachers
16 participate in after school activities, meetings,
17 4:00 p.m. just is not a viable option for the end of
18 a window of time for the parking space for our
19 teachers. Currently the application provides 20
20 spaces during the school year, from 7:00 a.m. until
21 4:00 p.m. for two years.

22 Two years is also of concern to Eaton
23 Elementary School as we are not slated for a
24 renovation until 2022. I would like to propose that
25 the time be extended for six years, or until DCPS

1 arranges for a more permanent solution such as on-
2 street parking near the school, or construction of a
3 parking facility. These two improvements to the
4 added condition for parking for teachers will value
5 the educator service to the school community, and it
6 will also alleviate the tensions of the current
7 parking situation for John Eaton Elementary and the
8 surrounding community residents.

9 CHAIRMAN HOOD: Okay. Thank you very much.
10 Let's see if we have any questions. Any questions?
11 Mr. Turnbull.

12 MR. TURNBULL: So, when Mr. Avitabile was
13 presenting he mentioned basically that this is a
14 temporary plan --

15 MS. ROTTMAN: Yes.

16 MR. TURNBULL: -- that there's a proposal.
17 But you're saying that the actual construction is not
18 for 2022.

19 MS. ROTTMAN: Uh-huh. Yes.

20 MR. TURNBULL: To be completed in 2022?

21 MS. ROTTMAN: To begin.

22 MR. TURNBULL: To begin in 2022.

23 MS. ROTTMAN: The date has continued to be
24 pushed back each year.

25 MR. TURNBULL: And then do you know what the

1 phasing or the time line is?

2 MS. ROTTMAN: No.

3 MR. TURNBULL: Okay. But you're asking
4 basically from -- you would like to see the hours
5 change from 7:00 to 6:00 p.m.?

6 MS. ROTTMAN: Yes.

7 MR. TURNBULL: And to 2022. Okay. Thank
8 you.

9 MS. ROTTMAN: Thank you.

10 CHAIRMAN HOOD: Okay. Any other --
11 Commissioner Miller?

12 MR. MILLER: Yeah, thank you, Ms. Rottman for
13 your testimony. I just wanted to say that my
14 daughter graduated from John Eaton. I don't know how
15 many years ago. Maybe 18 years ago. She did get a
16 world class education. I know kids there who get a
17 world class education. It's a great school with
18 great teachers, great principal, great staff. And so
19 I'll look forward to hearing what Bozzuto says about
20 providing additional parking.

21 You think that most of the teachers -- are
22 any of the teachers arriving by public
23 transportation, or are all the teachers, or most of
24 the teachers arriving by car? And you're saying most
25 of them have visitor Ward 3 -- Zone 3 parking passes?

1 MS. ROTTMAN: So, currently we took a survey
2 at -- our local school advisory team took a survey
3 and most of the teachers are driving their cars to
4 commute to school as we have many teachers who live
5 in Virginia and Maryland. We do have some teachers
6 who are taking public transportation. We have a few
7 staff members who actually live in the neighborhood,
8 so they walk. But most of the teachers who currently
9 drive have a -- we've asked parents and different,
10 you know, community members if we could borrow Zone 3
11 visitor's passes. And that's a nice solution for us,
12 but unfortunately that still creates the problem for
13 the residents because then we are parking, you know,
14 near their homes where they're trying to park as
15 well.

16 MR. MILLER: Okay. Well, thank you. I
17 appreciate your testimony and we'll hear what the
18 applicant has to say in response.

19 CHAIRMAN HOOD: You may have already
20 mentioned this in your testimony, have you had that
21 discussion with the applicant already?

22 MS. ROTTMAN: I'm sorry, with who?

23 CHAIRMAN HOOD: Have you had that discussion
24 already with the applicant about what you're asking
25 for the teachers?

1 MS. ROTTMAN: I believe this -- from what I
2 understand is that whenever the ANC 3C, they were
3 authoring the resolution, is that the school has been
4 working with Commissioner Nancy MacWood, and that she
5 was unable to attend the meeting because of a family
6 matter which the resolution was authored, so the
7 other commissioners who heled to author it, they
8 didn't fully understand the needs of the school at
9 the time.

10 CHAIRMAN HOOD: Okay. So you were working
11 with Chairman Roller and that group, in the ANC?

12 MS. ROTTMAN: Yes. Uh-huh.

13 CHAIRMAN HOOD: Okay. Okay. All right.
14 Again, as Commissioner Miller mentioned, we'll see
15 what happens.

16 Do any of your teachers ride their bicycle to
17 work? I'm just curious.

18 MS. ROTTMAN: You know, we have a few but
19 again, they live fairly close in the neighborhood to
20 where if they wanted to, they could also take the bus
21 as well.

22 CHAIRMAN HOOD: I see. Okay.

23 MS. ROTTMAN: Uh-huh.

24 CHAIRMAN HOOD: All right. Let's see. Does
25 the applicant have any cross? Does the ANC have any

1 cross?

2 MR. ROLLER: Not a cross, sir. No.

3 CHAIRMAN HOOD: Okay. Thank you very much,
4 we appreciate it.

5 MS. ROTTMAN: Okay. Thank you.

6 CHAIRMAN HOOD: Okay. So I've called for
7 everyone who was in support, organizations or
8 persons. Now we have an organization, and I see
9 there it's listed as a party. They were a party in
10 the previous case. In this case they are just
11 organization in opposition. So they will come up,
12 Mr. Nash.

13 Also, anyone else who is here who would like
14 to testify in opposition? Okay. So we will just
15 have the Wisconsin Neighbor's Coalition.

16 MR. NASH: Okay --

17 CHAIRMAN HOOD: I'm sorry, Wisconsin Newark
18 Neighbor --

19 MR. NASH: Wisconsin Newark Neighborhood
20 Coalition.

21 Mr. Chairman and Commissioners, my name is
22 Rick Nash, and thank you for the opportunity to
23 testify this evening. As you noted, we were a party
24 in the proceeding below, remain on the service list,
25 actually as a party in this proceeding. And it filed

1 comments earlier in opposition to the motion for
2 minor modification, and we appreciate the commission
3 considering those comments and setting this down for
4 a full hearing.

5 I intend to be brief and promise not to --
6 I'll try not to use my full time because I assume
7 that my remarks are probably not the ones you're most
8 interested in hearing tonight and I know you all want
9 to get out of here.

10 Mr. Chairman, you will recall, and
11 Commissioner Turnbull as well, and Mr. May, who were
12 serving during the 2009 hearings, that the 20 percent
13 linear limitation on restaurant and bar frontage was
14 one of the most contested issues in the case, and one
15 of the most significant and material conditions in
16 the zoning order.

17 In fact, the zoning order effectively
18 increased the amount of restaurant and bar frontage
19 previously allowed under the Macomb Woodley
20 Commercial Overlay, which is something that
21 applicant's counsel had alluded to.

22 And even with the increase above the overlay
23 limit there was testimony from parties and members of
24 the community and from ANC 3 itself, that the 20
25 percent limitation was important for several reasons.

1 First, it reduced the chance that Cathedral
2 Commons would become a restaurant and bar destination
3 of the type disfavored by the Comprehensive Plan in
4 areas without Metro rail access.

5 And secondly, it would serve also to limit
6 the parking and traffic impacts of food and drink
7 establishments, particularly during the peak hours in
8 the evening as nearby residents are returning home.

9 And third, it would hopefully encourage a
10 greater diversity of neighborhood serving retail.

11 But less than two years after Cathedral
12 Commons first opened, and three full service
13 restaurants and two limited service food
14 establishments already operating, and with unleased
15 space still available in the project, the applicant
16 now requests modification of this central provision.
17 The applicant makes no showing of hardship unless the
18 modification is granted. In fact, the applicant has
19 stated, as we've discussed this evening, that it's
20 received expressions of interest from various non-
21 restaurant tenants for the space that Silver intends
22 to operate.

23 And while one might disagree on what is
24 appropriate neighborhood serving or other uses,
25 again, there's no showing that the applicant is

1 enduring any hardship that would result in having to
2 modify this central provision.

3 Now, while applicant understandably wishes to
4 characterize the amendment as a modest increase in
5 restaurant and bar frontage from 20 percent to
6 approximately 24 percent, as counsel pointed out, it
7 is looking another way, almost a 20 percent increase
8 above the existing order in the total amount of
9 frontage space devoted to bars and restaurants.

10 Now, I do want to make clear that WNNC has no
11 dispute with Silver itself. You know, applicant is
12 free to rent to Silver or anyone else subject to
13 provisions of the zoning order. But the modification
14 that applicant seeks is not just for Silver to come
15 in, rather it affects a permanent change. As I
16 pointed out, increasing space available for eating
17 and drinking establishments by nearly a fifth for a
18 successor restaurant, or for multiple bars and
19 restaurants under a new cap, on and on into the
20 future.

21 It creates a large new frontage area for such
22 use, prominent linear frontage twice as long as any
23 other project restaurant on Wisconsin, and with
24 signage that is 67 percent larger than that allowed
25 under the existing order.

1 So, the modification that applicant is
2 seeking not only affects a material change in the
3 zoning order, but it undercuts and essential purpose
4 of the frontage restriction that Cathedral Commons
5 shall not be -- that Cathedral Commons shall be
6 neighborhood serving in its orientation and not
7 become an entertainment and retail destination.

8 Now, this isn't the first time applicant has
9 pushed that envelope. The applicant has been careful
10 to state in its filings, and you may recall that it's
11 consultant, Street Works, argued before the
12 Commission during several hearings in 2009, that
13 Cathedral Commons is not a destination development.
14 But as soon as that zoning order was issued,
15 applicant began to market Cathedral Commons and its
16 collateral is just such a destination. And it's
17 clear now that Silver and the applicant want to
18 modify the order in part to leverage the expanded
19 frontage, and the expanded signage to create a
20 restaurant billboard concept if you will, to attract
21 destination traffic.

22 Now, I noted before that the Comprehensive
23 Plan, especially the Rock Creek Park Element, West
24 Element, states that destination retail uses are not
25 appropriate in smaller scale commercial areas,

1 especially those without appropriate Metro rail
2 access, which of course Cathedral Commons lacks.

3 Regardless of scale, retail development must
4 be planned and designed to mitigate traffic parking
5 and other impacts on adjacent residential areas. So,
6 it's clear that if the Commission were to grant the
7 modification application, particularly to modify such
8 a contested material condition of the zoning order,
9 this should also be commensurate in modification to
10 mitigate traffic, parking, and other impacts.

11 And I've outlined what these provisions are
12 that we're seeking.

13 If I could have about 10 more seconds? I do
14 want to just state that --

15 CHAIRMAN HOOD: Go ahead and finish your
16 testimony.

17 MR. NASH: I'm sorry?

18 CHAIRMAN HOOD: Finish your testimony.

19 MR. NASH: Okay. Well, I appreciate that,
20 Mr. Chairman.

21 I do want to say that we appreciate
22 applicant's efforts to try to address some of the
23 parking impacts of the modification through more
24 realistic garage validation hours to fix what frankly
25 has been a disincentive for restaurant patrons to use

1 the project garage. There was, for a time, cliff
2 parking charges. So when one went over the validated
3 parking period, one paid not just for the overage,
4 but for the entire period. And as a result, and this
5 is anecdotally, more restaurant patrons were parking
6 in the neighborhood.

7 So we appreciate what Bozzuto is trying to do
8 here, and we appreciate the dialog and offering the
9 20 day-time spots for Eaton. But as the Eaton
10 representative pointed out, the hours and time make
11 it more of an aspirational amenity rather than, I
12 think, addressing the teacher needs. So I hope the
13 Commission looks at that.

14 And I do want to say Bozzuto has maintained a
15 good dialog with the community during construction of
16 Cathedral Commons. And indeed, I've told Mr. Case of
17 Bozzuto more than once that we wish that they had
18 been involved with the project when the Commission
19 reviewed it in 2009, because we believe that the
20 result would have been much better than, you know,
21 frankly the flat design and substantial hardscape,
22 and even what applicant in his preliminary statement
23 characterized as quote, the lack of sense of place
24 that exists today. So we appreciate what Bozzuto has
25 done.

1 But as I said, we submit that there are still
2 other reasonable conditions and might help to
3 mitigate the impacts from a modified order and
4 address the shortcomings in the 2009 order.

5 And we have proposed to applicant first that
6 applicant fund a modest increase in what is frankly a
7 paltry traffic calming escrow setup in the 2009
8 order. That escrow is only \$100,000 despite it being
9 an expressed condition of the ANC's conditional
10 support at the time that applicant fund it at
11 \$500,000. And the purpose of the escrow increase
12 would be to make pedestrian safety enhancements,
13 reduce vehicle turning speed, and mitigate impacts on
14 the east side of the Wisconsin Newark intersection
15 which is the residential street closest to the Silver
16 location. Newark Street at this location, by the
17 way, is classified as a local street and the
18 functional classification. And this mitigation, for
19 example, could include a raised crosswalk and curb
20 extensions of the type that applicant itself already
21 constructed on Newark West of the project at the
22 approach of the McLean Gardens residential
23 neighborhood. This wall has appropriate signage for
24 traffic.

25 And the escrow increase would also correct an

1 oversight in the 2009 order pursuant to which
2 applicant funded curb extensions and a reconfigured
3 intersection at Idaho and Ordway Street east of the
4 project, however similar mitigation that Newark was
5 left on the cutting room floor and out of the order
6 despite a letter request to the Commission signed by
7 25 Newark residents at the time.

8 An increase in the escrow by a bare bones
9 \$20,000 would be commensurate with the percentage
10 increase in the linear restaurant frontage which the
11 applicant seeks, but more realistic cost spaced
12 increase of \$50,000 would be only about two and a
13 half percent of the applicant's tenant improvement
14 allowance being provided to Silver.

15 Now, counsel stated that they would
16 entertain, as we've requested, disclosure on Silver's
17 collateral such as its website and its menu, that
18 patrons are requested to park in the garage. And we
19 realize they can't impose that condition on other
20 restaurants, but we would ask that they do that as
21 well as they extend the parking to two hours.

22 Now, we don't know the hours that Silver
23 proposes to operate, and we would ask that the time
24 of the validation again, be congruent with the hours
25 that Silver operates, so that in other words if the

1 validation is only planned to extend until midnight,
2 and Silver is planning to operate until 2:00 or 3:00
3 in the morning, we would want to see validation until
4 that point.

5 And then finally, what we have asked is that
6 applicant cause the new residential leases at
7 Cathedral Commons, and existing leases as they come
8 up to be amended to preclude residential tenants from
9 seeking and obtaining D.C. residential permit
10 parking.

11 WNNC had asked for this in the 2009 zoning
12 order but it was left out. And since then it's
13 become more common condition in PUD orders as the
14 Commission knows, which successfully, especially in
15 those PUDs which successfully seek modification of
16 off-street parking requirements, which applicants
17 sought and obtained for its multi-family units.

18 Now at the time applicant represented to the
19 Commission and community that project off-street
20 parking would be adequate to meet the parking needs
21 of 138 apartment housing units. So we are very
22 concerned to discover just this week that Cathedral
23 Commons North and South bought mixed use buildings
24 which are in commercial zones, have actually been
25 entered in the DDOT registry as eligible for RPP

1 street parking.

2 So in closing we're troubled that the
3 applicant seeks to retrade such a material
4 significant condition of the 2009 order soon after
5 Cathedral Commons opening while there's still tenant
6 vacancies, and without any hardships showing.

7 We're also concerned not only that the
8 loosening the existing condition by nearly 20 percent
9 will undercut the objectives that the restriction was
10 intended to achieve, but that the proposed
11 modification will hasten an entertainment and retail
12 destination which the Comp Plan disfavors at this
13 location.

14 But in any event, as the Comp Plan provides,
15 if the order is modified we would request
16 commensurate mitigation measures. And the conditions
17 we propose are a compromise, frankly. Some of us
18 believe that much more is required. But what we
19 propose is, in our view, minimal and we hope quite
20 reasonable for all of the parties.

21 And once again, I thank you for the
22 additional time, for your attention and
23 consideration.

24 CHAIRMAN HOOD: I'm just going to say this,
25 Mr. Nash, about the RPP. Since 2009 we have been

1 harping and screaming and hollering about this RPP,
2 and lately, I think it was an article that came out
3 this week, or maybe it was last week, about RPP and a
4 lot of the zoning orders, and the agencies that are
5 supposed to enforce them are not even aware of them.
6 So that makes me even more oblivious to this whole
7 RPP issue.

8 So I want you to know that this Commission
9 has been pushing on an RPP because we don't want to
10 make sure we sent communities on promise land. And
11 not just this applicant. I'm not picking on this
12 application. But in general applicants have been
13 promising us this.

14 So I know this is one of your conditions, but
15 I think really we might scratch that off because even
16 though that's what we want, but realistically, what I
17 found out, my own research and up here trying to go
18 back, it doesn't work. I'm sorry. It just does not
19 work and this is not the first case I've said that
20 in. Anybody who has been down here enough knows that
21 I say this constantly when developers come in and
22 they want to exempt somebody from RPP. I don't think
23 it's a system. I've been on with DDOT. We've had
24 training sessions. We've been talking about -- and
25 then this last article that just came out last week

1 tells me that all this stuff we talking about RPP and
2 the agencies, what the article says, it's not even
3 aware of it. So I think we're wasting our time on
4 that.

5 We going to keep push -- I'm going to keep
6 pushing because I think we need to figure something
7 out, because I don't like putting communities or
8 neighborhoods on promise land, and then something
9 doesn't happen. Now, this is not necessarily germane
10 just to this case, but it's a lot of cases that we
11 had where it's proffered and offered to us. And it's
12 not realistic.

13 MR. NASH: Yeah. Well, I appreciate the
14 Chairman's perspective and would certainly agree that
15 it's an important one that if you have such
16 conditions that all DC agencies be aware of them and
17 enforce them. And secondly I understand that
18 Arlington County has been more successful in doing
19 this and perhaps D.C. should take a look at how that
20 works.

21 CHAIRMAN HOOD: You know, I'm glad you told
22 me who it was because I'm going to be on DDOT. Maybe
23 they need to look at Arlington County. I didn't know
24 where to look to and see, but maybe we need to look
25 at Arlington County because I've heard so many mixed

1 issues on RPP to the point when as soon as I hear RPP
2 I start, you know, going -- not going to say what I
3 start doing, but anyway, I just don't like to put
4 communities on promise land.

5 So I appreciate your information that you
6 gave me. So this was a helpful dialog for me. So,
7 thank you.

8 Let me open it up. Any comments? Mr.
9 Turnbull.

10 MR. TURNBULL: Thank you, Mr. Chair.

11 Mr. Nash, I'm just trying to figure out.
12 I've been looking at the math here, trying to go
13 through. You actually are saying that this is a 20
14 percent increase above the existing order in the
15 amount of frontage. OP in their report is basically
16 saying it's 3.42 percent. So I'm wondering where --

17 MR. NASH: It's 3 point -- actually, it's a
18 little more than I think 3.2, four percent. But as
19 counsel for the applicant stated it's approximately
20 three and a half percent. Maybe a little less.

21 MR. TURNBULL: Right.

22 MR. NASH: In terms of overall frontage. My
23 point -- and that's one way to look at it. My point
24 was the 20 percent was, you know, arrived at after a
25 heavily contested process. And, you know, put

1 another way it's about an 18 percent. So
2 approximately a 20 percent increase in the amount of
3 space currently allotted for restaurants.

4 MR. TURNBULL: Well, no. I still don't -- I
5 don't see where your math is going, how you get that.
6 I mean, the linear footage as I understand, is still
7 at 1507 feet. And I think they're asking for a
8 change only for one tenant. So the overall use as
9 the Office of Planning says, they're still -- I
10 forget what they said, how much -- there's 41.16 feet
11 of linear space left in that requirement.

12 So, the overall percentage for one tenant has
13 increased but the overall space is still the same.
14 It's still 15 -- if I'm -- 1,500 and maybe Ms. Brown-
15 Roberts can clarify, but I think it's still 1,507
16 feet. It's still the overall length that can be used
17 for restaurants and --

18 MR. NASH: Yeah, I think the applicants when
19 filing, they're adding about 60 percent. Sixty feet,
20 rather. Sixty linear feet to the number of feet.

21 MR. TURNBULL: Well, we can ask the applicant
22 on that.

23 MR. NASH: Yeah.

24 MR. TURNBULL: Thank you.

25 CHAIRMAN HOOD: Any other questions or

1 comments up here? Okay. Commissioner Miller.

2 MR. MILLER: Just to -- thank you, Mr.
3 Chairman. And thank you, Mr. Nash. So I assume that
4 -- well, correct me if I'm wrong in my assumption but
5 I assume that you are in support of the conditions
6 that the ANC included in their resolution and that
7 the applicant has agreed to and think that those are
8 improvements to the original application, but you
9 don't think that they sufficiently address the
10 parking and other concerns.

11 MR. NASH: Yeah, that's right. We're in
12 favor of certainly the modifications that applicant
13 has agreed to make to the validation and the
14 operation of the parking garage. The, you know, my
15 youngest daughter graduated from Eaton so I
16 appreciate what is being done for the teachers.

17 That said, I'm not that close to the issue
18 but would observe that I think, you know, the Eaton
19 arrangement should be for a longer term and certainly
20 should be more realistic in terms of the hours that
21 the teachers are expected to work and be in the
22 building.

23 So I think that applicant has gone some, you
24 know, some way to fixing some of the problems with
25 the garage and making it more attractive to

1 restaurant patrons. That said, there are still
2 additional impacts of both parking on the street, as
3 well as some additional traffic and pedestrian
4 safety. And again what we're, you know, asking for
5 in terms of a slight top up to the escrow fund, is
6 really to do much of what an applicant has done
7 already on the west end of Newark near McLean Gardens
8 to reduce pedestrian crossing distances, you know,
9 reduce turning speeds in what is, you know, the
10 corner that will be closest, at least, you know,
11 diagonally, to the restaurant.

12 And the traffic calming escrow was set up
13 witness the expectation, as I said, what resulted was
14 much less than what the ANC had asked for, a fifth of
15 it. But it was set up with the expectation that it
16 not be tapped until the complex was fully up and
17 running. And we've respected that. Our concern is
18 that as the restaurant frontage has increased and,
19 you know, particularly more use and attraction in the
20 evening and so forth, that we not get to the end of
21 the day and find that a smaller fund has essentially
22 become smaller still to address a slightly bigger
23 problem.

24 MR. MILLER: Okay. Thank you. We'll hear
25 what the applicant says shortly.

1 CHAIRMAN HOOD: Okay. Anything else up here?
2 Does the applicant have any cross? Does the ANC have
3 any cross?

4 MR. ROLLER: No, sir.

5 CHAIRMAN HOOD: Okay. Mr. Nash, we
6 appreciate it.

7 MR. NASH: Thank you, gentlemen.

8 CHAIRMAN HOOD: Thank you very much. Again,
9 I don't think we have anyone else who wants to
10 testify this evening, so if we have any rebuttal, a
11 little rebuttal and then we'll do closing and we'll
12 see what we're going to do.

13 MR. NASH: Well, thank you. Sorry. Thank
14 you. So I'll go through, I guess, the items that
15 we've just heard and frankly almost all these items
16 or many of these items are items we're hearing for
17 the first time. I think to address the comments
18 about John Eaton, you know, I mean, we negotiated
19 that commitment with the ANC based on what the ANC
20 told us and we didn't -- that resolution was passed
21 on June 20th. We haven't heard anything until
22 tonight. I think if someone had come to us earlier I
23 could have at least been able to come to you tonight
24 and say, this is what our position is. We're not in
25 a position to say anything further tonight about

1 that.

2 I think, you know, I do know that when we
3 selected the hours we were balancing the need to
4 ensure that there is parking available for the
5 grocery store and the restaurants and all the other
6 uses. And there are quite a few other uses in this
7 complex other than just restaurants and the grocery
8 store towards the end of the evening when other
9 people need to come in. And so -- and we also
10 balance, you know, not just want's on the ground now
11 but in the future. So we certainly can consider
12 that. But this is the first time we're hearing about
13 it, so we can't say anything more today.

14 I do know that -- I mean, I will say this. I
15 think the original offer -- or the original
16 suggestion we heard from the ANC included possibly
17 three years instead of two years, and possibly also
18 included slightly different hours instead of the
19 hours we came back with. But we came back with what
20 we came back with, and the ANC accepted that. And
21 then no one said anything further to say, could you
22 do more. So we are where we are on that.

23 Regarding the Wisconsin Newark Neighborhood
24 Coalition comments, you know, I certainly appreciate
25 the time that Rick spent preparing for this tonight.

1 I do think I did feel like I was going back on the
2 way back machine here, a number of issues coming back
3 that, you know, we heard a number of times. Well, we
4 asked for this, we didn't get it in 2009, we'd like
5 it now.

6 Regarding the increase in the traffic calming
7 escrow, you know, the 100,000 -- so you may remember,
8 one of the commitments of the PUD was to put \$100,000
9 into an escrow fund for DDOT to use for traffic
10 calming measures, should they be needed to mitigate
11 the impacts of the project.

12 Now, we provided that funding. To my
13 knowledge, none of it has been used yet, so I think
14 it's a little premature to say, we need to increase
15 it by 50 percent as much, when none of it has been
16 used to date yet. So I think that's a premature
17 request and I don't follow the logic about our
18 increase restaurant frontage requiring a commensurate
19 increase in the escrow fund, which was not just for
20 the restaurant impacts, but for the impacts of the
21 entire PUD.

22 So, we're not prepared to give any additional
23 money at this time, on that front. As I indicated, I
24 think we're certainly happy to encourage the Silver
25 to provide information about street parking. I think

1 it's to their benefit to let prospective restaurant
2 visitors, patrons know that there's free parking
3 available. I think everyone's interests are aligned
4 on that. I am reluctant to necessarily agree to a
5 commitment to require a tenant to do something. I
6 think that becomes, and we've been talking about PUD
7 conditions and enforceability, that that approaches a
8 line where I get uncomfortable.

9 The, I guess, point number 3 about validated
10 parking for the period consistent with the operating
11 hours of Silver, I should note that we don't have an
12 end time on when validation is available in the
13 evening. It's available as long as the restaurants
14 are open. As a matter of the way the validation and
15 the free parking works, it tends to get used up
16 earlier in the evening, so there's probably not much
17 free parking available later at night. But on a slow
18 night if there was still free parking available in
19 the fund it certainly -- there wouldn't be a time
20 limit the way this is set up. So I guess we have
21 agreed to that.

22 There's a comment, at least, on his list
23 about marking intersections with signage stating
24 local traffic only or no through traffic. We don't
25 have control over signage. That's DDOT's call. So,

1 I don't think we're in a position to commit to
2 anything there.

3 And then as far as RPP, I'll you know, I
4 think Chairman Hood, I understand your point and I
5 don't disagree. I also think that that's an issue
6 regarding the residents of the project, parking in
7 the neighborhood, which really doesn't have anything
8 to do with why we're here tonight, which is about a
9 restaurant and potential restaurant patrons. Even if
10 we agree to that it would have nothing to do with
11 what we're asking for here.

12 So I don't know that that makes sense. I
13 think the last thing I might say, you know, part of
14 the challenge here is in the extensive discussions
15 that we had with the ANC there was a lot of back and
16 forth and we gave on things based on what the package
17 was. Had some of these items been as part of that
18 package we might have, you know, squeezed the balloon
19 differently in another place. And it's a little hard
20 now to come back and have more things layered on, you
21 know, that we're not in a position.

22 The last point that I will make, I know Mr.
23 Nash mentioned a couple of times, that we haven't
24 proved a hardship. But that's not a requirement for
25 modifying a PUD, or for modifying a condition of a

1 PUD. It's simply looking at the modification and the
2 context of the PUD as a whole. We don't need to
3 demonstrate a hardship.

4 Though, I think it's important we include it
5 in the record, a list that shows all of the retail
6 tenants in the project. And you get a sense that
7 this isn't just restaurants and bars. There is home
8 accessories, there's cosmetics and clothing stores.
9 There's a grocery store. There's a pet supply store
10 that I understand is very popular. A salon.

11 There is also, you may remember the project
12 has a second story of commercial space on the south
13 parcel near the grocery store. There are a number of
14 non-restaurant uses there as well, so there's a lot
15 of commercial activity going on here that's making
16 this -- and, you know, Commissioner Miller, you were
17 there so you'd probably see it and can certainly
18 attest to it.

19 So I think what we're asking for tonight, and
20 to bring it back to what led to us making this
21 modification, we were presented with an opportunity.
22 Instead of putting in a pizza joint or a quick burger
23 place in that 40 feet of frontage that's left, that
24 we're allowed to do, we had an opportunity to bring a
25 really fantastic tenant here that responded to the

1 demands of many of the people in the neighborhood and
2 give them space.

3 But you know, they have an operation and they
4 know they need a certain amount of frontage. And we
5 also think from a planning perspective, it makes
6 sense to have that frontage and that presence on
7 Wisconsin Avenue to really create the same sort of
8 vibrancy that we have on the south parcel, which is
9 largely leased up, up on the north parcel. And this
10 is an opportunity to do that with a signature tenant.
11 Timing is what it is. We can't -- as we've gone out
12 in the market, when a tenant comes to you, a tenant
13 comes to you. We have this opportunity. They're
14 looking now. That's why we're here.

15 We originally pushed this as a minor
16 modification and this was in our initial -- one of
17 our initial filings, because we were trying to make a
18 timing to get this thing open, you know, around this
19 time next year or even earlier. You know, it's going
20 to take a few months to prepare permit drawings and
21 then actually build out the space. And the longer we
22 wait to get our approval, the longer we can start
23 doing that now. We can start doing some of the
24 preliminary work, but you need to know where we are
25 before we go.

1 So we had an opportunity. We've jumped on
2 it, because it seemed like the right thing to do for
3 the project as a whole.

4 I think, again, I haven't heard anything that
5 really varies the positions that the ANC and the
6 Office of Planning have taken supporting this
7 project. We do think that the case has been met.
8 We're happy to answer any questions. Thank you.

9 CHAIRMAN HOOD: Okay. Thank you. Let's see.
10 We have any questions, Mr. Turnbull?

11 MR. TURNBULL: Yeah. Thank you, Mr. Chair.
12 Can you go back over the frontage, the numbers?

13 MR. AVITABILE: Sure. So, the total
14 commercial linear frontage is 1,500 square feet and
15 change. That's the total frontage. Of that, we're
16 allowed about 300 square feet. So that's 20 percent
17 of 1,500. To date we only have 260 feet of frontage
18 devoted to restaurants.

19 I think what Mr. Nash was trying to indicate
20 is that -- so we're allowed a 20 percent increase --
21 a 20 percent restaurant frontage. We want to
22 increase that to about 24 percent so that extra four
23 percentage points over the original 20 percent,
24 that's a 20 percent increase from 300 to 350 feet of
25 frontage. That's where he's getting, I think, the 20

1 percent number.

2 MR. TURNBULL: All right. It's kind of a --

3 MR. AVITABILE: The math doesn't quite work
4 out. But if you think about four percentage points
5 over 20 percent, so that's a 20 percent increase.

6 MR. TURNBULL: Okay.

7 MR. AVITABILE: I think that's what he was
8 trying to express.

9 MR. TURNBULL: Okay. This is going to be a
10 two-part. There is going to be proposed action,
11 final action, whatever. Do you see yourself going --
12 can you, I mean, looking at going back and consider
13 some of the aspects of the school?

14 MR. AVITABILE: Certainly. I mean, we're not
15 in any position to say no to them either.

16 MR. TURNBULL: Right.

17 MR. AVITABILE: We can certainly look at
18 them. I know that some of those issues were
19 considered before, but we'd certainly take another
20 look at it.

21 MR. TURNBULL: Okay. Thank you, Mr. Chair.

22 CHAIRMAN HOOD: Any other questions or
23 comments, Commissioner Miller?

24 MR. MILLER: Thank you, Mr. Chairman. Yeah,
25 I appreciate the timing issue because that was

1 brought to us at the time that they wanted to do this
2 as a minor modification and this is a very -- this is
3 an opportunity to get a tenant that many in the
4 neighborhood would like to see there. So, I guess
5 just following up on what Commissioner Turnbull said,
6 I'm prepared to move forward, waiting to see where
7 you are. There are only three of us up here right
8 now. And -- but I'm prepared to move forward.

9 But I would ask that the applicant go back
10 and talk to the ANC about some of the other
11 conditions that were raised here tonight by John
12 Eaton's representative and Mr. Nash, and see if some
13 additional -- I think you already stated you were
14 willing to consider the John Eaton one, or talk
15 further with others in the ANC about it. And I think
16 you even said that one of them you were doing anyway
17 or you were going to do. So, if we can just get
18 clarity on what any other additional conditions
19 between proposed and final action, the momentum of
20 the lease being able to get done with the Silver can
21 keep going.

22 And so that's where I would be to go forward,
23 if we have your vote, Mr. Chairman, because we need
24 three, to go forward with the proposed and ask the
25 applicant to work with the ANC and the neighbors to

1 see if there is any additional condition.
2 Particularly the John Eaton one. Even though the
3 relationship with the modification that's being
4 requested is not really there. But you said you were
5 willing to consider it and you've already offered
6 something on it. So the additional hour or
7 additional hours or additional years I think would be
8 appreciated.

9 CHAIRMAN HOOD: I too don't have a problem
10 moving forward. This is our first proposed action.
11 But I will say that the work that Mr. Nash and his
12 coalition has put together, I would like for you to
13 look at these conditions. I heard what you said
14 about some of them, but some of them they can -- we
15 probably -- even if you have to have them figure out
16 a way, like number 4, the intersections and local
17 traffic and all that, whatever -- and I know that's
18 not necessarily your issue, but maybe DDOT can help
19 out with that. And I understand since none of the
20 money has been used, some kind of way we can use that
21 traffic mitigation. I'm just -- see what you can do
22 to work it out. And I don't want to undo anything
23 that you've already done with the ANC. I'm not
24 trying to compete any interests. But some of these
25 you may be able to come a little closer and bridge

1 the gap to satisfy the coalition who actually is
2 going to be affected by a lot of things that go on.

3 So if you can work with some of these
4 conditions, and I know you just gave us a full
5 explanation of, I think you went through all of them,
6 but some of the like number 4, I think we could --
7 even if you point us in the right direction, you know
8 about some of that stuff more than some of us
9 community folks, some of the neighbors, or work with
10 us and help us get that done more collaboratively,
11 some of these we probably can get achieved.

12 So I think from where Commissioner Miller is,
13 I don't have a problem moving forward tonight with
14 proposed action. But for final you can kind of see
15 if we can close the gap a little bit. To the best
16 that you can. Especially if it's germane to this
17 case and to Zoning. And even sometime if you go a
18 little beyond to help the community. That goes a
19 long way. Okay.

20 I'm not saying you have to, but I will tell
21 you, the RPP, that just -- that bothers me so you all
22 can just scratch that one because I haven't figured
23 out whether it works yet or not. I don't think it
24 does.

25 So anyway, and my colleagues will tell you,

1 they've heard me say that. Every time there's RPP,
2 that's one thing that I do comment on. Am I correct?
3 I always comment on RPP.

4 MR. MILLER: All across the city.

5 MR. AVITABILE: You know, the only thing I'll
6 note is commercially zoned blocks are not supposed to
7 be eligible for RPP. So these blocks on our side of
8 the street shouldn't be. Maybe an issue because the
9 east side of the street is residentially zoned and
10 DDOT hasn't picked it up, but that's all I'll say.

11 CHAIRMAN HOOD: Yeah, that came to light
12 about two or three years ago. Yeah. So, yeah. So
13 every three years we learn something new about RPP.
14 And today when I heard -- when I read that article
15 last week -- that's a whole other issue. But we're
16 going to have them look at Arlington County and maybe
17 they can figure it out. Didn't you say Arlington,
18 Mr. Nash?

19 MR. NASH: Yes, sir.

20 CHAIRMAN HOOD: Okay. Then maybe we can
21 figure that out. Okay.

22 So, I don't think we need anything for final.
23 Does anybody -- other than -- oh, yeah, update of
24 what's going on. Yeah, that. That's about it.
25 Okay. All right. Somebody like to make a motion and

1 continue to work with the community?

2 MR. TURNBULL: Mr. Chair, I would move that
3 we take proposed action on Zoning Case 08-15A,
4 Cathedral Commons Partners, LLC., modification of
5 consolidated PUD for square 1920, lots 883 to 835,
6 841, 844 to 852, and 7006 to 7012, and Square 1920-N,
7 Lots 800 to 804, and 7000 to 70004.

8 MR. MILLER: Second.

9 MR. TURNBULL: There's a lot in there.

10 MR. MILLER: Second.

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

13 [Vote taken.]

14 CHAIRMAN HOOD: Not hearing any opposition of
15 the three of us present, Ms. Schellin, would you
16 record the vote?

17 MS. SCHELLIN: Yes, sir. Staff records the
18 vote three to zero to two to approve proposed action
19 in Zoning Commission Case No. 08-15A, Commissioner
20 Turnbull moving, Commissioner Miller seconding,
21 Commissioner Hood in support. Commissioners Cohen
22 and May not present, not voting. And I would ask the
23 Commission if they would be willing to waive the
24 proffers and conditions section of 2403.15, I believe
25 it is.

1 CHAIRMAN HOOD: Yes. Yes.

2 MS. SCHELLIN: Three twenty.

3 CHAIRMAN HOOD: Yes.

4 MS. SCHELLIN: Since this is a modification.

5 CHAIRMAN HOOD: Right.

6 MS. SCHELLIN: It's not changing any of the
7 amenities or anything. Thank you.

8 CHAIRMAN HOOD: Typically we usually waive
9 that. So, yes.

10 All right. Anything else?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Oh, do we need some dates?

13 MS. SCHELLIN: Yes.

14 CHAIRMAN HOOD: For the update.

15 MS. SCHELLIN: Yes. So this would be on the
16 September 12th agenda for final action. So --

17 CHAIRMAN HOOD: Can we -- let's do that.
18 Don't we have two meetings in September?

19 MS. SCHELLIN: We do. The 26th --

20 CHAIRMAN HOOD: Let's do it the second
21 meeting because again, as I always said for years, if
22 you ever want to get something over on a neighborhood
23 you do it in August. So let's give them some time in
24 September, and let's do the last meeting in
25 September.

1 MR. AVITABILE: That will also give us time
2 to talk to the ANC if we need to do that.

3 CHAIRMAN HOOD: Right. And most of the time
4 ANCs and community groups, we take a break in August.

5 MR. AVITABILE: Uh-huh.

6 MS. SCHELLIN: Okay.

7 CHAIRMAN HOOD: One day we'll get a break in
8 August. Okay. All right.

9 MS. SCHELLIN: So then if we could just have
10 a submission from the ANC and the applicant I imagine
11 they can submit it at the same time since they'll be
12 working together. If we could get that by 3:00 p.m.
13 on the 19th of September, Mr. Roller is that going to
14 work with your meeting?

15 MR. ROLLER: Yes, ma'am.

16 MS. SCHELLIN: Okay. So if we could have
17 that by -- or not?

18 MR. ROLLER: I don't know if it will work in
19 time for our meeting.

20 MS. SCHELLIN: When is your meeting?

21 MR. ROLLER: It's, I believe, the Wednesday
22 of that week. I believe --

23 MS. SCHELLIN: The 21st? Okay. All right.
24 Then if -- but you guys would meet --

25 MR. ROLLER: [Speaking off mic] formal

1 resolution voted on by the full commission.

2 MS. SCHELLIN: Okay. but you guys would meet
3 before then, though. Okay. So then if Mr. Avitabile
4 could make his submission by the 19th, 3:00 p.m., and
5 the ANC make theirs the next day after your meeting,
6 the 22nd, by 3:00 p.m., then that would work.

7 CHAIRMAN HOOD: Okay. We all on the same
8 page? All right. Do we have anything else, Ms.
9 Schellin?

10 MS. SCHELLIN: No, sir.

11 CHAIRMAN HOOD: I want to thank everyone for
12 their participation tonight and this hearing is
13 adjourned.

14 MR. AVITABILE: Thank you.

15 [Hearing adjourned at 8:03 p.m.]

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