

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Regular Public Hearing
1448th Meeting Session (27th of 2016)

7:09 p.m. to 8:32 p.m.
Monday, December 12, 2016

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

1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7 Office of Zoning:

8 SHARON SCHELLIN, Secretary

9

10 Office of Planning:

11 JENNIFER STEINGASSER

12 STEPHEN MORDFIN

13 MATT JESICK

14 JOEL LAWSON

15

16 Office of the Attorney General

17 ALAN BERGSTEIN, ESQ.

18 JACOB RITTING, ESQ.

19

20

21

22

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

2

3 CHAIRMAN HOOD: We're ready to get
4 started. We're running a little behind, so we're
5 going to do the best we can to get everybody out
6 at a reasonable hour.

7 This meeting will please come to order.
8 Good evening, ladies and gentlemen. This is the
9 public hearing of the Zoning Commission for the
10 District of Columbia. My name is Anthony Hood.
11 Joining me are Vice Chair Miller, Commissioner
12 May, and Commissioner Turnbull.

13 We're also joined by the Office of
14 Zoning staff, Ms. Sharon Schellin, as well as the
15 Office of Attorney General, Mr. Bergstein and Mr.
16 Ritting; Office of Planning staff, Ms.
17 Steingasser, Mr. Lawson, Mr. Mordfin and Mr.
18 Jesick.

19 Copies of today's meeting agenda are
20 available to you and are located in the bin near
21 the door. We do not take any public testimony at
22 our meetings unless the Commission requests

1 someone to come forward. Please be advised, this
2 proceeding is being recorded by a court reporter
3 and it's also webcast live.

4 Accordingly, we must ask you refrain
5 from any disruptive noises or actions in the
6 hearing room, including a display of any signs or
7 objects. Please turn off all electronic devices.
8 At this time, we'll take any preliminary matters.
9 Does the staff have any preliminary matters?

10 MS. SCHELLIN: Yes, sir. We have one
11 preliminary matter. And I would ask that the
12 Commission would consider a vote on closed
13 meetings for 2017.

14 CHAIRMAN HOOD: Okay. Thank you. Let
15 me find that. Thank you, Ms. Schellin. Okay. In
16 accordance with 405(c) of the Open Meetings Act,
17 D.C. Official Code 2-575(c), I move that the
18 Zoning Commission hold closed meetings on each
19 Monday that is scheduled to hold a public meeting
20 for calendar year 2017. The closed meetings will
21 begin at 6:00 p.m. and are for the purpose of
22 obtaining legal advice from our counsel and all

1 cases and to deliberate upon but not voting on the
2 contested cases scheduled for a hearing action,
3 proposed action, final action, or calendar
4 consideration.

5 As those cases are identified on the
6 Commission's agendas for those meetings. Is there
7 a second?

8 VICE CHAIRMAN MILLER: Second.

9 CHAIRMAN HOOD: Okay. Will the
10 secretary please take a roll call vote on the
11 motion before us now that has been seconded?

12 MS. SCHELLIN: Yes. Chairman Hood?

13 CHAIRMAN HOOD: Yes.

14 MS. SCHELLIN: Vice chairman Miller?

15 VICE CHAIRMAN MILLER: Yes.

16 MS. SCHELLIN: Commissioner May?

17 COMMISSIONER MAY: Yes.

18 MS. SCHELLIN: Commissioner Turnbull?

19 COMMISSIONER TURNBULL: Yes.

20 MS. SCHELLIN: And Commissioner Shapiro
21 not present. So the motion carries.

22 CHAIRMAN HOOD: I request that the

1 Office of Zoning provide notice of these closed
2 meetings in accordance with the Act.

3 Anything else, Ms. Schellin?

4 MS. SCHELLIN: No, sir.

5 CHAIRMAN HOOD: Okay. Do we have any
6 preliminary matters? Anything else?

7 MS. SCHELLIN: No.

8 CHAIRMAN HOOD: Okay. I guess if I
9 looked at the agenda, I would've saw that we
10 needed to vote on two things. Okay. Let's go to
11 under consent calendar item, modification of
12 consequence; Zoning Commission case number 04-13A,
13 Metropolitan Baptist Church modification of
14 consequence at 277. Ms. Schellin.

15 MS. SCHELLIN: Yes, sir. At Exhibit 8,
16 there is a letter from ANC 2F that they opposed
17 the modification until the ANC could consider the
18 request at their December 7th meeting. That the
19 November 14th meeting, the Commission asked the
20 applicant to make a submission explaining why they
21 could only go to 80 percent for the one affordable
22 unit they were providing, which was due by

1 November 21st. And the ANC's response would be
2 due by November 30th.

3 No submission was received by those
4 dates, however, the applicant made a submission
5 today. Staff asked the applicant to request for a
6 waiver of the late filing and during the
7 Commission's closed meeting, a submission was
8 received for the waiver, for the late filing. So
9 I would ask the Commission if they would accept
10 that late filing.

11 CHAIRMAN HOOD: Do we already have it?

12 MS. SCHELLIN: I do. I did pass it out.

13 CHAIRMAN HOOD: Okay. Yeah, well, we'll
14 accept it. I thank you.

15 MS. SCHELLIN: So you now have the
16 applicant's response. Unfortunately, we don't
17 have a response from the ANC and I imagine that's
18 because they did not meet until the 7th, I'm just
19 assuming. And the filing was just filed today
20 from the applicant. So we'd ask the Commission to
21 decide how they want to proceed with this case.

22 CHAIRMAN HOOD: Okay. Commissioners, I

1 looked at what the ANC had presented and the other
2 applicants filed something. But I think we do owe
3 our elected officials, our frontline elected
4 officials and commissioners and volunteers who
5 don't get paid.

6 I believe we owe them time to be able to
7 look at this case. I would be inclined to put
8 this off until our next meeting. Even I know
9 there is a lot of back and forth and I know we did
10 receive some from the applicant, but apparently,
11 the letter I saw in opposition basically says they
12 oppose it because they haven't had time to look at
13 it. And that's the way I read it.

14 So let me open up for any comments.

15 VICE CHAIRMAN MILLER: Mr. Chairman, I
16 would agree with you. You know, I think our next
17 hearing would be -- our next meeting would be
18 January 9th.

19 CHAIRMAN HOOD: Let me ask this. Is
20 anybody here from 2F?

21 [No response.]

22 CHAIRMAN HOOD: Okay. So maybe we're

1 going to have to notify them. Any other comments,
2 Vice Chair?

3 VICE CHAIRMAN MILLER: Thank you, Mr.
4 Chairman. Yes, I agree with you, we do need
5 something from the ANC in writing just to affirm
6 what the applicant submitted today that the ANC
7 has essentially reversed it. So we'll no longer
8 oppose the application. And I appreciate that the
9 applicant did provide information on the
10 affordable housing issue.

11 I think the arguments the applicant made
12 satisfies me, at least. I think I was one of
13 those who asked if they could strengthen that
14 affordable housing commitment, but I think the
15 arguments that they made in that letter,
16 particularly since this is a case that arises out
17 of a bankruptcy proceeding.

18 The only thing else I would notice is
19 that the original order did contemplate that if --
20 and I think the Office of Planning report did
21 contemplate that the community use by the church
22 of this space no longer becomes viable that this

1 outcome, the three residential units would be an
2 appropriate outcome. So I think as quickly as we
3 can get that ANC letter, since time is of the
4 essence that the applicant seem to want to say
5 something, Mr. Chairman.

6 CHAIRMAN HOOD: Any other questions up
7 here?

8 I actually sat on the original case.
9 I'm not sure who else was here with me. So I do
10 agree with you, Vice Chair, that we knew if things
11 didn't materialize is was going to turn into the
12 facet that we have here in front. But I just
13 think that with all due respect, we need to make
14 sure that the ANC has time to weigh in. Any other
15 questions or comments up here?

16 All right. So we're going to delay this
17 until January 9th. And I know people are getting
18 heart burn. I get heart burn all the time when
19 the Court sends it back to us. So I know you're
20 getting some because I get it too. So I would ask
21 you be patient and let us do what we need to do to
22 do our due diligence because if not, that will be

1 sent back too. So I want to make sure that we do
2 what we need to do in accordance.

3 So I appreciate your understanding. If
4 you want to come to the table and say something.
5 I do look at gestures sometimes. But if you want
6 to come to the table and say something, you can,
7 but I would just suggest to let us handle that.
8 Okay. All right. Thank you very much. Thank you
9 for your patience.

10 Okay. Ms. Schellin.

11 MS. SCHELLIN: And the only submission
12 we're looking for is just the ANC report. Nothing
13 else.

14 CHAIRMAN HOOD: Notify them. And if
15 they can meet between now -- or whatever they need
16 to do. Because apparently, they met before --

17 MS. SCHELLIN: Okay.

18 CHAIRMAN HOOD: -- the December 7th
19 meeting.

20 MS. SCHELLIN: I'm sure the applicant
21 will work with the ANC and we can also send an
22 email to them too. Thanks.

1 CHAIRMAN HOOD: Okay. And again, we
2 will take this up on January the 9th, regardless.
3 But hopefully they'll send something.

4 Okay. Let's go to Final Action. Zoning
5 Commission case number 08-06G, Office of Planning
6 technical corrections to Zoning Order Number 08-
7 06A.

8 Ms. Schellin.

9 MS. SCHELLIN: Yes, sir. At Exhibits 2,
10 5-22 and 24-34, there were comments received to
11 the proposed rulemaking. At Exhibit 23, we have
12 an OP supplemental report. I would ask the
13 Commission to consider final action this evening.

14 Thank you.

15 CHAIRMAN HOOD: All right, colleagues.
16 Okay. We had some requested language definition
17 changes, rules of measurement for building
18 heights. Rules of measurement for rear yards,
19 minimum vehicle parking requirements, bonus and
20 adjustments to incentive inclusionary units.
21 Penthouse general regulations, penthouse height,
22 penthouse setbacks, density, gross floor area.

1 I think we discussed a number of these,
2 lot occupancy in general. Court, pervious
3 surface, special exceptions. And these are just
4 basically looked at as technical corrections. I'm
5 looking at Exhibit 1. And then we also have a
6 supplemental report that was submitted by the
7 Office of Planning, which is our Exhibit 23. And
8 we have a number of letters in opposition. And I
9 think it's due terms of the policy issues and the
10 language, but let me open it up for any comments
11 or questions.

12 COMMISSIONER TURNBULL: Mr. Chair, I
13 think a lot of the comments, quite a few of the
14 comments were concerning the continuing care use.
15 And I think OP's memo of December 8th, which is
16 Exhibit Number 23 clarifies the -- as it said
17 here, "under use by special exception," the
18 comments focus on whether use would still be
19 eligible as a special exception under the 26th
20 definition.

21 The Office of Planning has consulted
22 with the Office of Attorney General and the Zoning

1 Administrator's Office, and they have agreed that
2 the technical correction does not change the use
3 permission as adopted in the 26 regulations. They
4 talk about the '58 regulations. They also talked
5 to OP, and maybe they can comment about the larger
6 issue and offer special exception as a separate
7 and a future case.

8 So I don't know if they'll be one to
9 continue on that, but I think a lot of the
10 comments were about the continuing care. And OP
11 seems to have basically said that this correction
12 does not change anything as to what's already
13 existing.

14 CHAIRMAN HOOD: We can go to our
15 colleague. Ms. Steingasser, could you help us
16 with that?

17 MS. STEINGASSER: Yes, sir. The
18 technical correction is to the definition that was
19 adopted in the ZR '16, the 2016 effective
20 regulations as taken proposed action in May of
21 2015.

22 So it just clarifies that the concern

1 that we're hearing from the letters in the record
2 appear to stem from the change from the
3 interpretation from the '58 regs to the 2016 regs.
4 And we have met with the Office of the Zoning
5 Administrator and he has said he has not been
6 asked to opine at all on the new regs, but we, by
7 no means want to hinder the ability to provide
8 these kind of houses of housing options.

9 So we will be bringing back at the next
10 meeting, some clarification of the special
11 exception language that makes it more clear that
12 as part of that special exception you can get away
13 to not provide all three of the living
14 arrangements.

15 CHAIRMAN HOOD: Okay. So I guess
16 hearing that, I guess we would need to wait on the
17 clarifying language, I believe.

18 MS. STEINGASSER: And we are happy to
19 commit to bringing that back at the next meeting
20 in January, the very first meeting.

21 CHAIRMAN HOOD: And would we need to
22 have a hearing on the clarifying language?

1 MS. STEINGASSER: Yes. It'll be new
2 language.

3 CHAIRMAN HOOD: So it'll come back to us
4 as a set down.

5 MS. STEINGASSER: Yes, sir.

6 CHAIRMAN HOOD: And other comments, Vice
7 Chair?

8 VICE CHAIRMAN MILLER: Mr. Chairman, I'm
9 just a little bit concerned about all the letters
10 that we got on this matter. So the ZR '16
11 proposed a definition which is different than the
12 1958 regulations in the way they were interpreted
13 for decades. So because of that and because we're
14 seeing what the possible adverse impact is, is
15 there a way that we can keep the status quo, I
16 mean the preexisting status quo for the last
17 decades that you don't have to have every one of
18 these facilities as part of continuing care over
19 time at the facility so that we don't disrupt
20 existing operations and have any kind of adverse
21 effect that way?

22 MS. STEINGASSER: Yes, sir. And that's

1 what we would bring back to you to clarify the
2 conditions relative to the special exception that
3 you could request as part of that special
4 exception to have only one of the three. So under
5 the '58 regs, it was considered a community-based
6 residential facility, a CBRF. And the zoning
7 administrator had apparently been allowing them as
8 a community resident facility, which is a licensed
9 facility through the Department of Aging and
10 Department of Health.

11 In order to clarify what these were,
12 they're really not community-based residential
13 facilities, they are continuing care. The new
14 language was introduced through the new regs and
15 the Commission took proposed action and then final
16 action on it. And that would've been the time to
17 address it as an overall issue. We continued to
18 allow it by special exception and then when we did
19 this technical correction to add the word "also"
20 and the word "and," that seemed to get everybody's
21 attention. But we don't want to stop or hinder
22 the ability of these types of facilities to go

1 into neighborhoods. We don't want to have the
2 matter of the right apartment building in a
3 residential zone, just based on the age of its
4 tenants.

5 So that's why there's a special
6 exception and we're happy to clarify that
7 language. But right now, they could still apply
8 for a special exception and still make the case
9 that I think the suitable-sized provide treatment.
10 So if a suitable size is no size, they could still
11 make that case now, but we'll clarify that even
12 further in January.

13 VICE CHAIRMAN MILLER: So are we pulling
14 back the new definition, the new, supposedly
15 technical correction that added the "and" and
16 added the "also?" Is there a way we can do that?

17 MS. STEINGASSER: We don't recommend it,
18 but it would -- we could, yes. You could adopt
19 this case and --

20 VICE CHAIRMAN MILLER: That's what I
21 would be in favor of, Mr. Chairman.

22 MS. STEINGASSER: -- leave that

1 definition out altogether.

2 VICE CHAIRMAN MILLER: That's what I
3 would be in favor of so that we're not -- so that
4 we're just continuing the status quo as opposed to
5 having what might be a major change in policy that
6 we didn't realize may have made.

7 MS. STEINGASSER: Well, in our
8 discussions with the zoning administrator, that
9 office is going to interpret it as if the word
10 "and" were in the sentence, just because of the
11 way it's grammatically written.

12 VICE CHAIRMAN MILLER: Well, I'd like to
13 see if we could get to a place where they'll
14 continue to interpret it as "or" until we take
15 some further proposed action, if that's possible.
16 That's just my own personal opinion.

17 COMMISSIONER MAY: I mean, we're talking
18 about this in light of a single case that's
19 proposed, right? I mean, is your special
20 exception language going to be timely to allow
21 that particular project to proceed?

22 MS. STEINGASSER: In conversation with

1 the Zoning Administrator's Office this morning,
2 there was no case filed before them.

3 COMMISSIONER MAY: So we don't know for
4 sure whether it's going to affect them or not.
5 But there are numerous letters saying that it's in
6 process, but we don't know what state it's in.

7 MS. STEINGASSER: We have not seen
8 anything. And the Zoning Administrator's Office
9 has said there is nothing on file. But if they
10 need to move, I don't know how the zoning
11 administrator would review it, except that he said
12 he would look at it with the word "and." But we
13 would move it as quickly as possible.

14 COMMISSIONER MAY: So it sounds like
15 that no matter what we do here, some further
16 action -- some further change to the text is going
17 to be needed because they wouldn't be able to move
18 forward as they thought they might, based on your
19 conversations with the zoning administrator.

20 MS. STEINGASSER: Well, they could move
21 forward. They could file an application for
22 special exception for the use and make the case

1 within that special exception why the facility,
2 the suitable size for the facility, the nursing
3 facility is no size. They would have to make that
4 argument during that PZA hearing. But to avoid
5 that kind of vagueness, we're going to bring
6 forward additional language to make it clear that
7 the applicant, through a special exception, can
8 request one of the three living styles.

9 COMMISSIONER MAY: Right.

10 MS. STEINGASSER: But they can still
11 file for special exception now and proceed.

12 VICE CHAIRMAN MILLER: I appreciate that
13 you're going to be bringing that forward and trying
14 to clarify it. But I just would feel more
15 comfortable if we could pull of it out there and
16 not have it go forward. That definition with the
17 "and" in there and the --

18 COMMISSIONER MAY: So we could take up
19 the definition change at the same time we take up
20 the special exception. I mean, I think that might
21 make people feel better. I don't think it's going
22 to make the case of this particular project move

1 any faster because of what she said about the
2 zoning administrator interpreting it as if the
3 "and" is there, right?

4 So it's a symbolic gesture.

5 VICE CHAIRMAN MILLER: Well, we don't
6 have the "and" in there and don't have the "also"
7 in there. I think that people think the decades-
8 old interpretation of allowing either or will
9 continue until we do take this up.

10 COMMISSIONER MAY: But this isn't a
11 decades-old definition. This is a new definition
12 of the previous interpretation that had to do with
13 community-based residential facilities.

14 MS. SCHELLIIN: That's correct.

15 COMMISSIONER MAY: Yeah. Like I said,
16 you know, people may think that, but I don't think
17 the zoning administrator is going to think any
18 differently. He's already interpreting it as we
19 are trying to clarify it. But I don't really have
20 any objection to not acting on this, so long as we
21 act on it when you deal with the special
22 exception. I don't think it's a big deal.

1 CHAIRMAN HOOD: I think we should put it
2 together. CBRF, I think was in the late '90s, am
3 I correct?

4 When did we start doing CBRFs?

5 MS. SCHELLIN: I'm not sure. It was in
6 the '90s. It had to do with the Department of
7 Justice.

8 CHAIRMAN HOOD: Yeah. That's when I
9 first got down here, so I remember it. It was in
10 the '90s, so it is a decade or maybe two. So
11 almost two.

12 Okay. So I would agree with the vice
13 chair's way of moving forward. Any objections in
14 that?

15 COMMISSIONER MAY: I don't have any
16 problem with that.

17 CHAIRMAN HOOD: Okay.

18 COMMISSIONER TURNBULL: It sounds like
19 whether they were in or out, the zoning
20 administrator still interprets it according to the
21 old regulations anyways. So I don't care one way
22 or another. But I think we do need to clarify it

1 so that we're all consistent as we go forward.

2 CHAIRMAN HOOD: All right. So there's
3 no action from us on this tonight. All right.
4 Mr. Bergstein?

5 MR. BERGSTEIN: I thought what I heard
6 was that you would consider taking file and action
7 on the case with the proviso that this one
8 technical correction on this amendment would not
9 go final. It has to be removed from the case.

10 COMMISSIONER MAY: Only to this one
11 element.

12 MR. BERGSTEIN: Only the one element and
13 you would still vote to take final action on the
14 case without that one technical correction being
15 adopted.

16 CHAIRMAN HOOD: Oh, okay. All right.

17 VICE CHAIRMAN MILLER: That's what I was
18 suggesting. That would give comfort level to it.

19 CHAIRMAN HOOD: All right. I was
20 thinking we were scrapping the whole thing. But
21 anyway, okay. Vice Chair, you want to make a
22 motion so I won't get it mixed up again?

1 VICE CHAIRMAN MILLER: Okay. So I would
2 move that the Zoning Commission take final action
3 on case number 08-06G Office of Planning Technical
4 Corrections, Zoning Commission Order No. 08-06A
5 with the proviso that the -- with the changes that
6 we've discussed and the definition of continuing
7 the care retirement community until we deal with
8 that at a later time.

9 MR. TURNBULL: Second.

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

12 All those in favor, aye.

13 [Vote taken.]

14 CHAIRMAN HOOD: Ms. Schellin, would you
15 record the vote of those present?

16 MS. SCHELLIN: Yes. Staff records the
17 vote four to zero to one to take proposed action -
18 - I'm sorry, final action in Zoning Commission
19 case number 08-06G with the exception of the one
20 provision. Commissioner Miller moving,
21 Commissioner Turnbull seconding, Commissioners
22 Hood and May in support. Commissioner Shapiro not

1 present/not voting. And also, he did not
2 participate.

3 CHAIRMAN HOOD: Okay. Let's go to
4 Zoning Commission case number 08-06H, Office of
5 Planning Technical Corrections to Zoning
6 Commission Order Number 08-06A. Everybody is
7 leaving for that one.

8 MS. SCHELLIN: Yes. On this case, we
9 just had the one comment which actually was filed
10 before the proposed rulemaking was published from
11 the Committee of 100, and that's at Exhibit 2.
12 And ask the Commission to consider final action.

13 CHAIRMAN HOOD: You know, when I read
14 the -- and I'll open it up for discussion, but
15 when I read the Committee of 100's submission, I
16 thought that's what we were doing is looking at
17 things to make sure that whatever changes were not
18 just technical corrections but could be
19 significantly interpreted.

20 Maybe I'm missing something, but I
21 thought that's what we were doing. But if there
22 is something else out there -- I don't know, do we

1 solicit other people to give us things that they
2 thought were not just a technical correction that
3 was more of a conversational piece or needed
4 further study?

5 Did the Commission solicit that? Did we
6 ask for that?

7 COMMISSIONER MAY: I know that on the
8 Zoning Commission's website there is a request for
9 anybody who spots a technical error in the new
10 zoning regs to, you now, point it out to us so we
11 can consider whether it's something that should be
12 corrected.

13 CHAIRMAN HOOD: And I understand that's
14 the gist of their letter, but I think that that
15 would go to their letter.

16 MS. STEINGASSER: That's for the module
17 we have online. Not to point it out to you guys,
18 to point it out to --

19 COMMISSIONER MAY: No, I know.

20 MS. STEINGASSER: -- to Zoning. Yeah,
21 and we're collecting that information.

22 COMMISSIONER MAY: Right. Right. I

1 mean, we are open to people pointing out what's
2 still out there. And of course, these changes
3 were all published as minor technical changes and
4 we reviewed them as a proposed action at set down
5 for -- what's the right word? When we considered
6 the notice for proposed rulemaking.

7 CHAIRMAN HOOD: Right.

8 COMMISSIONER MAY: I mean, I was
9 satisfied then that these are technical in nature
10 and I haven't seen anything to indicate anything
11 otherwise. There have been a few cases where
12 we've pulled out things that were more substantive
13 as we went through the final reviews and so we've
14 had to take those up as real cases.

15 CHAIRMAN HOOD: Okay. From my
16 standpoint, as long as we have a way for people to
17 be able to get to us and let us know. I looked at
18 even the last paragraph, it says, so we again urge
19 the Commission to invest the necessary effort to
20 identify those proposed changes that cannot be
21 clearly justified as technical corrections and set
22 them down for hearing after an adequate comment

1 period.

2 So I thought that's what we were doing.
3 I guess the Office of Zoning is making that
4 collection and at some point we'll get this. So I
5 just want to show the Committee of 100 and all the
6 residents that that's what we are actually doing.
7 Anytime you do a new code, there are some things
8 that need to be adjusted and that's what this
9 Commission is up to and will take on.

10 Let me open it up. Any other comments?

11 If not, we'll take a motion.

12 Commissioner May?

13 COMMISSIONER MAY: I would move we
14 approve Zoning and Commission case 08-06H, ZR '16
15 technical corrections.

16 CHAIRMAN HOOD: I'll second it. It's
17 been moved and properly seconded. I'll take note
18 of the discussion. Any further discussion?

19 All in favor, aye.

20 [Vote taken.]

21 CHAIRMAN HOOD: Any opposition? Not
22 hearing any, Ms. Schellin, with those present,

1 could you please record the vote?

2 MS. SCHELLIN: Yes. Staff records the
3 vote four to zero to one to approve final action
4 to Zoning Commission case number 08-06H.
5 Commissioner May moving, Commissioner Hood
6 seconding, Commissioners Miller and Turnbull in
7 support. Commissioner Shapiro, not present/not
8 voting.

9 CHAIRMAN HOOD: Okay. Our next case is
10 Zoning Commission case number 11-07F, American
11 University modifications of campus plan Order
12 Condition No. 5.

13 Ms. Schellin.

14 MS. SCHELLIN: At Exhibits 33-36, we
15 have the applicant's post-hearing submissions,
16 Ward 3 Vision requested that the record be
17 reopened to allow them to respond to the
18 applicant's post-hearing submissions which was
19 approved. And their response is at Exhibit 37A.
20 Exhibits 38 and 39 are responses from Spring
21 Valley Wesley Heights Citizen Association and ANC
22 3D, and want to ask the Commission consider final

1 action this evening.

2 CHAIRMAN HOOD: Okay. Commissioners, I
3 think we have two issues here. I don't remember,
4 was Ward 3 Vision, they weren't a party?

5 COMMISSIONER MAY: No.

6 CHAIRMAN HOOD: Okay. And we did reopen
7 the record. Well, I did reopen the record. All
8 right. Well, anyway, let's have a discussion
9 about the condition. Let me open it up to any
10 comments or questions.

11 COMMISSIONER MAY: Mr. Chairman?

12 CHAIRMAN HOOD: Yes?

13 COMMISSIONER MAY: So I think, generally
14 speaking, this is a very positive development that
15 American University and the ANC and affected
16 members have joined together in our having, I
17 think, better conversations and are working to
18 make improvements in their relationship and I
19 think that's a very, very positive development.
20 But I also think that the Ward 3 Vision raises an
21 important point, which is that the changes that
22 are being contemplated here are outside the bounds

1 of what was noticed in our consideration of this
2 case. And so to change those without fully
3 informing the public I think is problematic.

4 So I would, as I said, I'm very, very
5 encouraged by the level of cooperation and I think
6 that that's something that should be recognized
7 and should be memorialized in the changes to the
8 order, but I think that's not something that we
9 can undertake. Those specific changes are not
10 something that we can take right now without
11 having further public input in some form.

12 So I'm prepared to move forward on faith
13 that that will happen either in a subsequent case
14 on its own or perhaps, as part of the next further
15 processing case that they take up those changes.

16 But I happen to agree with Ward 3 Vision
17 that this is something that does require full
18 public notification and some greater public input.
19 I don't think that we're going to get a lot of
20 negative public input on it, but there are changes
21 in here that affect people that I think they have
22 a right to be aware of, and just notifying the

1 parties at this stage, is not sufficient.

2 CHAIRMAN HOOD: Any other comments on
3 that issue or another issue?

4 Mr. Turnbull.

5 COMMISSIONER TURNBULL: Yeah, thank you,
6 Mr. Chair. I would agree with Commissioner May.
7 I think the memo we have from Chair Thomas Smith
8 of the ANC, I think Exhibit No. 39 goes through
9 these issues. And although, as he even says, the
10 agreement is not perfect and does not resolve
11 basically everything, I think he says it's a great
12 step forward and they've come to an agreement on
13 this. But I would also agree with Commissioner
14 May that we can't really change that article in
15 our order, where I believe there were 10 members
16 of the CLC automatically to seven, without input
17 from those members at a hearing of some sort, even
18 a limited hearing to discuss that.

19 I mean, that particular change to an
20 order I think needs to be done in a public forum.
21 But I would agree that this is a great step
22 forward for this one piece.

1 CHAIRMAN HOOD: Okay. Vice Chair
2 Miller?

3 VICE CHAIRMAN MILLER: Thank you, Mr.
4 Chairman. I also appreciate the applicant going
5 back and working with many of the -- I think they
6 tried to work both through the CLC process and
7 then through it with the ANC 3D and the Spring
8 Valley Wesley Heights Citizen Association to come
9 up with something in response to, I think, your
10 request, Mr. Chairman, that they find a way to
11 better communicate and collaborate since we had
12 testimony at the hearing on this case that the
13 community, the CLC in our order didn't seem to be
14 functioning as well as we had envisioned it when
15 the -- well, the Commission had envisioned it when
16 it put it in the original order to the campus
17 plan.

18 So I would want -- I generally would
19 like to reward collaboration that resulted in an
20 agreement between parties that haven't often
21 signed their names to an agreement. American
22 University and Spring Valley Wesley Heights

1 Citizen's Association and ANC 3D. And I would
2 actually be comfortable with moving forward with
3 it as part of this case because I think that there
4 were discussions throughout the summer with the
5 CLC and then with the ANC and Spring Valley.

6 So I think the public that was concerned
7 about AU's campus plan was fully aware of this
8 issue, but maybe the larger public wasn't.
9 Although, if they watched out hearing, it
10 certainly was a big topic at our hearing.

11 So I'm comfortable if the majority of
12 the Commission thinks that it should not be a part
13 of this case and we should take it up later, I
14 guess I could live with that. I'd rather it be
15 the neighborhood collaborative that they come up
16 with, I think is a good fix.

17 I think in terms of the agreement, that
18 that collaboration and those signatories can do
19 all the things that they're going to do, it just
20 won't have the force of a zoning order at this
21 time. So because they have agreed to that
22 additional type of process to engage the immediate

1 neighbors in a more collaborative way and because
2 that can go forward without our zoning order, I'm
3 prepared to go for it as Commissioner May and
4 Commissioner Turnbull had suggested. But I do
5 appreciate all the collaboration about this
6 neighborhood collaborative.

7 CHAIRMAN HOOD: And I too want to echo
8 what the Vice Chair has mentioned. I think
9 collaboration is big. Yes, I was a big proponent
10 of pushing it, but I think we all did. But one of
11 the things that struck me and I know Chairman
12 Smith may be watching this, but when I read this
13 and it said the agreement is not perfect and it
14 does not resolve all disagreements between
15 neighbors in AU, especially over issues tied to
16 the increase in undergraduate students, but it's a
17 start. It's a step.

18 This is the biggest step I've seen with
19 AU. Now I'm not going to pit universities with
20 universities, but we haven't gotten like some of
21 the other universities which I'm very proud of,
22 but we're getting there.

1 So I think we need to continue, as the
2 Vice Chair mentioned. So I'm not sure. Did
3 everybody pretty much say the same thing? We said
4 it in different ways.

5 COMMISSIONER MAY: We're generally in
6 exactly the same place. I think Mr. Miller would
7 be more inclined to go forward with the proposed
8 change to the order, but I'm really not
9 comfortable doing that. But I do think that it's
10 in the best interest of the university to continue
11 to collaborate and to advance this as part of
12 their -- I mean, campus plans are always being
13 updated and there is always further processing.
14 And so there is that -- they have to continue
15 this, I think, to get to the point of getting
16 further processing done; otherwise, we'll have the
17 same issue over and over again every time they come
18 forward. So I expect it'll be done. And it can
19 be done as a separate case. I mean, they can file
20 that case, you know, next week, to make these
21 changes. Or we could take it up at further
22 processing.

1 VICE CHAIR MILLER: I'm comfortable with
2 that coming up in a future case, either as further
3 processing or a separate case because I think the
4 agreement stands on its own without it being part
5 of a zoning order and I'm glad that that process
6 has been established by the university and its
7 immediate neighbor, the ANC and Spring Heights
8 Wesley Heights Citizen Association.

9 CHAIRMAN HOOD: Okay. It sounds like we
10 have a consensus to move forward on this with that
11 caveat. So would someone like to make a motion?

12 COMMISSIONER MAY: So I move that we
13 approve Zoning Commission 1107F, American
14 University Modification to Campus Plan Order
15 Condition No. 5. And that has to do with -- that
16 is not the specific ones having to do with changes
17 to the CLC, but the original case which has to do
18 with other modifications to the campus plan.

19 VICE CHAIRMAN MILLER: Second.

20 CHAIRMAN HOOD: Okay. It's been moved
21 and properly seconded. Any further discussion?

22 All those in favor, aye.

1 [Vote taken.]

2 CHAIRMAN HOOD: Ms. Schellin, would you
3 record the vote of those present?

4 MS. SCHELLIN: Staff records the vote
5 four to zero to one to approve final action in
6 Zoning Commission case number 11-04F.
7 Commissioner May moving, Commissioner Miller
8 seconding, Commissioners Hood and Turnbull in
9 support. Commissioner Shapiro not voting, having
10 not participated, and of course, not present this
11 evening.

12 CHAIRMAN HOOD: Okay. Next, Zoning
13 Commission case number 16-16 Forest City Southeast
14 Federal Center, Southeast Federal Center Overlay
15 Review at Square 771.

16 Ms. Schellin.

17 MS. SCHELLIN: On this one, at Exhibits
18 24-24C and 26-26B, we have the applicant's post-
19 hearing submissions. Exhibit 25 is DC Water
20 supposed hearing submission. Exhibit 27 and 28
21 are DDOT and OP supplemental reports. The
22 applicant then submitted a motion to reopen the

1 record to accept a revised design for Second
2 Street which was approved. And that submission is
3 at Exhibits 30 and 30A.

4 DC Water then submitted a request to
5 reopen the record today to respond to that
6 redesign, which was approved. And the submission
7 can be found at Exhibit 31A. Then after that,
8 this evening the applicant responded to that
9 submission which will be Exhibit 32 in the record.
10 It has not made it in there yet, but I'm assuming
11 the next number will be 32, which has been passed
12 out to the Commission because they are entitled to
13 respond. And we'd ask for the Commission to
14 consider a final action.

15 CHAIRMAN HOOD: Okay. Colleagues, I'm
16 just going to put it out there like this, there
17 has been a lot of back and forth. And I think
18 when we boil down to it, we boil down to three
19 feet, I believe, and then I understand that what
20 they're asking for, the design on Second Street is
21 actually not what they're asking us to do. But I
22 think, to me, it's all germane. I heard loud and

1 clear from DC Water that this prohibits them from
2 doing their job and that concerns me. And I know
3 one thing I'm not going to let anybody do until I
4 get it clarified is tell me what's not within my
5 jurisdiction no more.

6 So I'm going to start examining and
7 looking at everything that's out there. And I
8 just think that some kind of way here we need to -
9 - or they -- well, one of the submissions said
10 that DDOT and Forest City could work it out. I
11 think it was DDOT and DC Water. I forgot who it
12 was. It was one of those two entities. But I'm
13 just trying to figure out how do we get DC Water
14 what they need because it seems like it's a
15 deterrent of how they get the trucks up there,
16 from what I'm hearing. And I think if we leave it
17 up to, I think it was -- thank you. DC Water and
18 DDOT -- then I'm sure that -- I think the design,
19 which is not perfect, may need to be changed. But
20 anyway, let me open it up and see what others'
21 thoughts are on this.

22 Vice Chair Miller?

1 VICE CHAIRMAN MILLER: Nothing.

2 CHAIRMAN HOOD: No. Okay. Commissioner
3 May.

4 COMMISSIONER MAY: So I think I have a
5 slightly different take on this. I mean, this is
6 a Southeast Federal Center design Overlay Review.
7 And we're just looking at the design of the
8 building. There were some minor relief requests
9 that went with it, special exception or variance
10 relief, but there was this outstanding issue that
11 we had gotten testimony from DC Water about their
12 operational needs and the concerns that they have
13 about the plan to reopen Second Street as a full
14 street.

15 And I think that we sent them all back
16 to have further discussions to try to resolve
17 this, DC Water, DDOT, Office of Planning, Forest
18 City of Washington, all to try to come up with a
19 workable solution. And what we got, in the end,
20 was a compromise. Again, having completely to do
21 with the design of the right-of-way. And at this
22 point, it really doesn't affect what happens on

1 the property proper, or within the borderline or
2 within the property line itself. Now we're
3 talking about a 12-foot wide -- I'm sorry. We're
4 talking about essentially plantings to the
5 property line that are in this side yard.

6 The sidewalk is not located there
7 anymore. What's located there is just plantings.
8 And then there is a 12-foot path that is in the
9 right-of-way, then the rest of the right-of-way.
10 So that 12-foot path with plantings on either side
11 take up 22 feet out of the 43-foot right-of-way.
12 The other 21 feet are -- would remain in DC
13 Water's jurisdiction.

14 Now, at this point, DC Water doesn't
15 want 21, they want 24 feet out of that so that
16 they would get a full 75 feet away from their
17 building for their operations. I honestly don't
18 see how much they need for their operations is
19 critical to our review of this case.

20 Our review has to do with the building
21 design itself. And I think that, you know, this
22 city could decide that they would want to close

1 the street entirely and hand it all over to DC
2 Water if they wanted. That doesn't really affect
3 what our decision is. Our decision has to do with
4 this building itself and the building kind of
5 stands on its own. It has a, you know, it meets
6 the requirements for the side yard, generally,
7 except for the area where their entry pavilion is.

8 I had concerns about that relief. I
9 didn't think that was particularly necessary
10 before, but that was on the assumption that there
11 would be a functioning street on Second Street.
12 Now that it's not a functioning street and it ends
13 there, they want to pull the entry out further. I
14 think that kind of makes sense.

15 So I'm willing to grant that side yard
16 relief in order for them to have that entrance
17 point. And I would hope that DC Water and DDOT
18 and Forest City Washington continue to work
19 together to resolve the allocation of street
20 right-of-way. I don't think it really has that
21 much bearing on what our decision is.

22 I mean, I think we had a moment that we

1 could sort of force them to the table and I think
2 that we did and they made a lot of progress to try
3 to resolve this, but it really is external to the
4 case. So I'm prepared to move forward tonight and
5 approve this case and let DC Water, DDOT, and
6 Forest City Washington continue to work to resolve
7 it.

8 CHAIRMAN HOOD: Any other comments,
9 questions? Vice Chair?

10 VICE CHAIRMAN MILLER: Well, I guess, I
11 think both the Chairman and Commissioner May made
12 some points that I agree with, so I'm a little bit
13 conflicted here. I mean, I think DC Water's
14 operations are critical to all of us who use their
15 facilities in the city. But if this is a question
16 to be worked out between DC Water and DDOT, and if
17 there's no -- and I appreciate they've gotten so
18 far that they're down to just three feet at this
19 point and I would hope that they could get to the
20 final three feet resolved, but I guess I agree
21 that it's either going to get resolved by DDOT
22 changing its position, I guess, on the streetscape

1 improvements, or the building would have to be
2 redesigned and in which case it would come back to
3 us.

4 So I guess I'm comfortable with moving
5 forward because either they're going to resolve it
6 or not. And if they don't resolve it, it will
7 have to -- there will have to be a redesign that
8 would come back to us. So I guess I've talked
9 myself into being comfortable with moving forward.

10 CHAIRMAN HOOD: Okay. Mr. Turnbull?

11 COMMISSIONER TURNBULL: Thank you, Mr.
12 Chair. I was not here that night for the hearing,
13 but I have reviewed the case and have gone through
14 the documents. Convoluting hearing. A lot of
15 discussions back and forth regarding these three
16 feet.

17 CHAIRMAN HOOD: And that was supposed to
18 be an easy night, I thought.

19 COMMISSIONER TURNBULL: No. I was glad
20 to be able to sit back and watch the tape of it
21 rather than going through it all. But I agree
22 with all of you. I think the Vice Chair said it -

1 - I don't think what we're looking at is going to
2 significantly change the design of the building.
3 I think the building is the design and that's
4 going to go forward.

5 The street issue will change. I think
6 it's a gated street, anyway. I think they've put
7 a gate up there at one end, the last drawing.

8 COMMISSIONER MAY: For the portion that
9 DC Water would continue to control, yeah.

10 COMMISSIONER TURNBULL: Yeah. So it's
11 not an accessible used right-of-way anymore. It's
12 kind of a very restricted use. And as the Vice
13 Chair says, if for some reason there is a change
14 to the building, they will come back for a
15 modification. I don't like to see them do that.
16 I really can't imagine how this would really
17 affect the design to such a stage as that. But
18 I'm content -- I'm thinking I'm ready to go ahead
19 and vote on this also.

20 CHAIRMAN HOOD: Okay. It's not a show
21 stopper for me, but what it is here recently, the
22 latest development is I've been cognizant to make

1 sure I try to start looking at everything. And I
2 think for the most part, up here, at least from my
3 standpoint, I'm not sure about others, I don't
4 work for DC Water, I just pay my water bill. So
5 they are the subject matter experts. They know
6 what they need to get the job done and I don't
7 want to stand in the way of that.

8 But what will give me a confident level
9 to move forward, as the Vice Chair mentioned,
10 since I don't see I have the votes to hold it up,
11 is to first, DDOT and who else? DDOT and DC Water
12 are going to continue to work together. So we got
13 two -- well, one quasi government. It DC Water
14 quasi government now?

15 Quasi. Okay. So they can work out
16 those issues. Those three feet, according to DC
17 Water, are significant. And I do think that it is
18 up to us to kind of look at that because the
19 design is in front of us. And as we've already
20 mentioned, it will come back. So I'm not going to
21 sit here and belabor it. We'll just see what
22 happens.

1 I hope that they can work out that three
2 feet. We don't need to take 20 hours to talk
3 about three feet. But DC Water is the subject
4 matter expert. I heard loud and clear that they
5 needed that space to be able to get the trucks, I
6 believe, up and in and out of there. So I'm sure
7 that something is going to have to be worked out.

8 Okay. I'm not going to make a motion.
9 Would somebody like to make a motion. I'll vote
10 for it, but I'm not going to make a motion.

11 COMMISSIONER TURNBULL: Mr. Chair, I
12 would move that we take final action on Zoning
13 case number 16-16 Forest City SEFC, the SEFC
14 Overlay Review at Square 771, and look for a
15 second.

16 COMMISSIONER MAY: Second.

17 CHAIRMAN HOOD: It has been moved and
18 properly seconded. Any further discussion?

19 All those in favor, aye.

20 [Vote taken.]

21 CHAIRMAN HOOD: I don't hear any
22 opposition. Ms. Schellin, would those present,

1 would you record the vote?

2 MS. SCHELLIN: Yes. Staff records the
3 vote four to zero to one to approve final action
4 in Zoning Commission case number 16-16.
5 Commissioner Turnbull moving, Commissioner May
6 seconding. Commissioners Hood and Miller in
7 support. Commissioner Shapiro not voting, having
8 not heard the case and also not present.

9 CHAIRMAN HOOD: Okay. Next on the
10 Commission, case number 15-21 Kenilworth
11 Revitalization 1 JV LLC, and DCHA First Stage and
12 Consolidated PUDs and Related Map Amendment at
13 Squares 5113, 5114, and 5116.

14 Ms. Schellin.

15 MS. SCHELLIN: In this case, Exhibits
16 58-65B are the applicant's post-proposed action
17 submissions. Exhibit 66A is an NCPC report
18 finding that the project would not be inconsistent
19 with the comp plan for the National Capitol. So
20 we would ask the Commission to consider final
21 action this evening.

22 There were a couple of requests from

1 the applicant, asking that the record be reopened
2 to submit some revised documents which are
3 included in that 58-65B. Those requests were
4 approved, so I just lumped them all in there
5 together.

6 CHAIRMAN HOOD: Okay, Commissioners,
7 let's open it up. Any further discussion on this?

8 COMMISSIONER MAY: Mr. Chairman, I mean,
9 I think they've resolved the outstanding issues
10 that I had. I mean, they added three-foot wood
11 fences at the back of the yards. That was one
12 issue that we had raised. And the tower has been
13 modified. It looks like the blade sign was
14 eliminated. I think there was still some question
15 about a DC Water issue. I made a note about that,
16 but I can't remember what it was.

17 CHAIRMAN HOOD: Let me see. Did the
18 applicant comment on that post submission?

19 COMMISSIONER MAY: Oh. Yeah, it was in
20 the OP response of the October 17th meeting. So
21 maybe the Office of Planning knows whether that
22 was resolved.

1 MR. MORDFIN: The issue with DC Water --
2 good evening, I'm Stephen Mordfin. The issue with
3 DC Water had to do with whether or not there would
4 be sufficient capacity to service this site. And
5 DC Water did bring that up to us at an interagency
6 meeting.

7 At the last hearing, the applicant
8 proposed that what they would do instead was that
9 they wouldn't add any additional units. That
10 however many units they would demolish, they would
11 only add that many at first for the first phase
12 and then at that point, they would see where
13 things were at with DC Water to see if they could
14 add any additional units.

15 CHAIRMAN HOOD: Okay. Anything else?
16 Thank you, Mr. Mordfin. Anything else?

17 All right. With that caveat from Mr.
18 Mordfin, I would move that we approve Zoning
19 Commission number 15-21 Kenilworth Revitalization,
20 and ask for a second.

21 Second.

22 CHAIRMAN HOOD: It's been moved and

1 properly seconded. Any further discussion?

2 All in favor, aye.

3 [Vote taken.]

4 CHAIRMAN HOOD: Not hearing any
5 opposition, Ms. Schellin, with those present,
6 would you please record the vote?

7 MS. SCHELLIN: Yes. Staff records the
8 vote four to zero to one to approve final action,
9 Zoning Commission case number 15-21. Commissioner
10 Hood moving, Commissioner Miller seconding,
11 Commissioners May and Turnbull in support.
12 Commissioner Shapiro not voting, having not
13 participated and not present.

14 CHAIRMAN HOOD: Okay. Next on the
15 Commission, case number 16-09, 1200 Third Street,
16 LLC, Consolidated PUD and Related Map Amendment at
17 Square 747.

18 Ms. Schellin.

19 MS. SCHELLIN: Exhibits 45-48 are the
20 applicant's post-hearing submissions. Exhibit 49
21 again, NCPC report advising of no issues. We ask
22 the Commission to consider final action this

1 evening.

2 CHAIRMAN HOOD: Okay. Commissioners,
3 anybody have any outstanding issues on this. Vice
4 Chair?

5 VICE CHAIRMAN MILLER: Thank you, Mr.
6 Chairman. No, I just wanted to comment that I was
7 pleased that the applicant did strengthen their
8 commitment to the 50 AMI affordable housing level
9 in response to some of our comments and also
10 modified the distribution of the affordable units
11 and moved units that previously replaced it on the
12 railroad tracks to locations along Third Street so
13 that the distribution and location is in
14 proportion to what the market rate units are.

15 CHAIRMAN HOOD: Okay. And I do see that
16 the First Source agreement -- I'm not sure if it's
17 been signed by everyone, but at least it's in
18 here. And I think with the recent meetings we've
19 had, I expect to see this move and I'm sure it
20 would move without failure.

21 Okay. Anything else?

22 COMMISSIONER MAY: You know, we also had

1 concerns about the signage. I think they provided
2 more information. I'm not too terribly concerned
3 about this. I mean, I think the biggest issue --
4 I mean, they are some very large signs there.
5 They seem to be, in terms of the signage, on the
6 building and the big banner signs and so on. I
7 think they are in keeping, generally, with things
8 that we have approved in the past. I'm a little
9 nervous because of the lighting. But the rest of
10 it, most of the signage is, you know, having to do
11 the retail and all that, I don't have any problems
12 with it. It's just the big signs on the
13 buildings. And I'm curious about what
14 Commissioner Turnbull thinks of the signage.

15 COMMISSIONER TURNBULL: Well, you're
16 right. I think it's better -- I think the signage
17 is better done than we've seen on a lot of
18 buildings, anyways. I think -- and there are
19 options. They're not asking for all of the signs.
20 There is a choice that they're looking for. I'm
21 basically looking on Sheet A-10 where there is
22 either H1 or H2. I'm not opposed to that.

1 I mean, I don't think it's -- they are
2 large signs, but they're not overtly large. So
3 I'm okay with it. You're right; we struggle with
4 it because we don't want to have the signage
5 become the main architecture rather than the
6 architecture itself. So but I think that what I'm
7 seeing on their signage thing is fine.

8 CHAIRMAN HOOD: All right. Anybody
9 else? Somebody would like to make a motion?

10 COMMISSIONER TURNBULL: Mr. Chair, I
11 would move that we take final action on Zoning
12 case number 16-09, 1200 Third Street, LLC,
13 Consolidated PUD and Related Map Amendment at
14 Square 747 and look for a second.

15 VICE CHAIRMAN MILLER: Second.

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

18 All those in favor, aye.

19 [Vote taken.]

20 CHAIRMAN HOOD: Ms. Schellin, record the
21 vote, please.

22 MS. SCHELLIN: Yes. Staff records the

1 vote four to zero to one to approve final action,
2 Zoning Commission case number 16-09. Commissioner
3 Turnbull moving, Commissioner Miller seconding,
4 Commissioners Hood and May in support.
5 Commissioner Shapiro, having not participated and
6 not present/not voting.

7 CHAIRMAN HOOD: Okay. Let's go to
8 Proposed Action. Zoning Commission case number
9 16-10, EAG 400 Florida Avenue, LLC, Consolidated
10 PUD and Related Map Amendment at Square 3588.

11 Ms. Schellin.

12 MS. SCHELLIN: Exhibits 42-42E are the
13 applicant's post-hearing submissions. Exhibit 43
14 is an OP supplemental report. We would ask the
15 Commission to consider a proposed action.

16 CHAIRMAN HOOD: Okay. I think we asked
17 for a few things in this case. Let me just open
18 up and see if everybody satisfied with what has
19 been submitted or what has not been submitted.

20 Vice Chair Miller?

21 VICE CHAIRMAN MILLER: Thank you, Mr.
22 Chairman. Yeah, I think they did provide more

1 information on why it's difficult to do the level
2 -- the below grade level of onsite parking and
3 they did provide commitments for the offsite
4 parking spaces, written commitments that we didn't
5 have previously.

6 So I'm satisfied with the offsite
7 parking information that they provided and they
8 also provided RPP language that we typically put
9 in other restrictions on the tenants getting RPP,
10 which we know is questionable and whether that's
11 enforceable. But that's something we've typically
12 done, so they're trying to address that issue.

13 So I'm comfortable with moving forward,
14 Mr. Chairman. I would've been interested to hear,
15 I guess -- I don't think we got another submission
16 from the ANC since they gave such a negative
17 report to us directly at the hearing. It would've
18 been -- I think I might want to invite them before
19 we get to final if they think there have been
20 improvements to the projects because I'd like to
21 have a comfort level that they feel more
22 comfortable with in moving forward. But I think I

1 can move forward tonight.

2 CHAIRMAN HOOD: Okay. I would echo
3 that. I don't have a problem moving forward
4 tonight. I'm not even going to get on the RPP
5 issue tonight. I don't feel like talking about
6 RPP. So Commissioner May?

7 COMMISSIONER MAY: Yeah, Mr. Chairman, I
8 hate to be the Grinch here, but I'm not prepared
9 to move forward on this. I think there are two
10 unresolved issues. One is they've provided these
11 diagrams that show the bay projections and how
12 they are still technically bay projections, but I
13 think that's nonsense. It does not look like
14 bays.

15 I mean, they don't look anything like
16 bays. The whole point of having the restriction
17 on the amount of square footage, or rather, linear
18 feet that can actually be a projecting bay is so
19 that they actually look like bays and not just a
20 large overhanging façade that overhangs the
21 street. And that's completely what they're trying
22 to do. It does not show up as bays.

1 So I think that's nonsense and I don't
2 think we should approve it. And then the second
3 thing is that I do not think they made the case
4 for the rooftop setback relief having to do with
5 the stair and elevator towers at the northeast
6 corner of the building. The northwest corner of
7 the building.

8 I just don't see a reason why they can't
9 shift those towers to the south. You know, we
10 gave them the opportunity to demonstrate why it's
11 not, you know, how it would not be visible and
12 they show a building sort of ghosted into the
13 north, but the Office of Planning pointed out that
14 there's no guarantee that the building to the
15 north is going to extend that length because
16 that's actually a historic building. So who knows
17 what the height of that building to the north
18 would be and whether it would actually obstruct
19 the appearance of the penthouses.

20 I really do not see a compelling reason
21 why they can't move those elevators and stairs.
22 And I think that they should work harder to do

1 that. So I am not prepared to vote in favor of
2 this tonight.

3 CHAIRMAN HOOD: Okay. Commissioner
4 Turnbull.

5 COMMISSIONER TURNBULL: Thank you, Mr.
6 Chair. I too had noticed the setback aspect of it
7 and was wondering -- I thought we had talked about
8 that in the hearing and I thought we were hoping
9 that that would've been made. So I'm not sure why
10 they haven't done that or why they can't do that.

11 The only other thing that I have is the
12 signage location that they have is fine. I would
13 only like to see on the one site on the hotel, the
14 vertical on the side of the building they are
15 showing an area, but they're not showing what the
16 theoretical height of the letters might be. I
17 mean, you can have a vertical element, I just
18 don't want to see it so outrageous in size.

19 I would actually like to see a proposal
20 for a graphic that shows what the lettering height
21 would be in that area. I'm amenable to either,
22 since it's only a proposed action, Commissioner

1 May makes a good case for holding off until to the
2 setback. I can go either way on it, either hold
3 off or try to get them to get it resolved by
4 final. So I can go either way.

5 CHAIRMAN HOOD: Okay. And also, this
6 was in 5D. 5D voted enthusiastically in support
7 of this application, but 6C had some issues. And
8 maybe some of those issues might get addressed if
9 -- and I'm not sure if that was it because they
10 just said that it was a poor design. But maybe
11 some of those might be addressed if Commissioner
12 May has issues revisited, as he's mentioned. So I
13 think in the best interest of moving forward and
14 giving everyone an opportunity, including the ANC,
15 as we suggested, I would recommend that we hold
16 off and do this at our next meeting, if that's
17 enough time for the applicant to look at some of
18 those things.

19 We actually have the votes to move
20 forward, but I just think that -- we keep saying
21 the latest in development, but I'd like to proceed
22 with caution now. Well, I've always done that, I

1 thought. So I don't know. Let me hear other
2 comments.

3 COMMISSIONER MAY: I'm willing to hold
4 off until January 9th if we did get a chance for
5 the applicant to solve some of these issues.

6 CHAIRMAN HOOD: Is anybody from 6C here?
7 Ms. Schellin, can we contact 6C is
8 that's the way the Commission moves?

9 MS. SCHELLIN: Yes.

10 CHAIRMAN HOOD: Vice Chair, do you want
11 to add anything or you want to proceed?

12 VICE CHAIR MILLER: No.

13 CHAIRMAN HOOD: I mean, we're not
14 turning you down. We're trying to keep from
15 turning you down. We're not turning you down. Do
16 you want to come up so we can turn you down or you
17 just want to -- come on up.

18 Normally, we only bring people up when
19 we turn them down. So you must want -- this group
20 up here, you got to watch them. I wouldn't say
21 nothing. But anyway, go ahead. You have the
22 floor.

1 MS. BLOOMFIELD: Well, we've been
2 listening back there and we think that if you were
3 to take the proposed action tonight, we would be
4 able to address your comments prior to final
5 action. Jessica Bloomfield for the record.

6 [Side bar discussion off the record.]

7 CHAIRMAN HOOD: Okay. It looks like
8 we're going to vote proposed action, but around
9 here, a proposed action doesn't mean anything to
10 us because if things are not corrected, and the
11 ANC needs to weigh in, we will change our votes.
12 We're going to have a problem doing that.

13 VICE CHAIR MILLER: Well, I just want to
14 be sure that it is especially picked up what
15 Commissioner May says on the balconies and the --
16 I mean, the bays and the penthouse.

17 CHAIRMAN HOOD: Okay. Somebody would
18 like to make a motion?

19 I would go ahead and move, taking into
20 consideration what we're looking for final action
21 that we approve for proposed action only, Zoning
22 Commission case number 16-10 EAG 400 Florida

1 Avenue, LLC Consolidated PUD and Related Map
2 Amendment at Square 3588, and ask for a second.

3 VICE CHAIRMAN MILLER: Second.

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

6 All those in favor, aye.

7 [Vote taken.]

8 CHAIRMAN HOOD: Any opposition?

9 COMMISSIONER MAY: Opposed.

10 CHAIRMAN HOOD: Ms. Schellin, would you
11 record the vote?

12 MS. SCHELLIN: Yes. Staff records the
13 vote three to one to one to approve proposed
14 actions, Zoning Commission case number 16-10.
15 Commissioner Hood moving, Commissioner Miller
16 seconding, Commissioner Turnbull in support,
17 Commissioner May opposed. Mr. Shapiro not voting,
18 having not participated and also not present.

19 CHAIRMAN HOOD: Okay. Next, let's go --

20 MS. SCHELLIN: Can we just set a date
21 for when those submissions would be due?

22 CHAIRMAN HOOD: Sure.

1 MS. SCHELLIN: Final action would not
2 occur until the second meeting in January. How
3 much time do you need for those submissions?

4 MS. BLOOMFIELD: When is the second
5 meeting?

6 MS. SCHELLIN: January 30th.

7 MS. BLOOMFIELD: (Not mic'd.)

8 MS. SCHELLIN: It needs to be more than
9 that.

10 MS. BLOOMFIELD: Why?

11 MS. SCHELLIN: Because we need the ANC
12 to respond. So can you get it in by January 13th?

13 MS. BLOOMFIELD: Yes.

14 MS. SCHELLIN: January 13th. And then
15 the ANC would respond by -- would have until
16 January 20th. And then we can put that on the
17 January 30th meeting. And you're going to contact
18 the ANC because you're going to serve them.

19 MS. BLOOMFIELD: Yes.

20 MS. SCHELLIN: Okay.

21 CHAIRMAN HOOD: Okay. Anything else on
22 this case?

1 MS. SCHELLIN: No.

2 CHAIRMAN HOOD: Okay. Let's going to
3 Hearing Action: Zoning Commission case number 05-
4 28P, Parkside Residential, LLC, second stage PUD
5 and Modification of Significance to first stage
6 PUD and Square 5056. I'm going to go to Mr.
7 Mordfin, but let's take a three-minute break and
8 wait for the sit-down king -- I mean, for
9 Commissioner May to come back.

10 He won't look at this. He won't know I
11 called him the sit-down king. But let's wait so
12 he can hear your report.

13 [Brief recess.]

14 CHAIRMAN HOOD: Okay. Now that
15 Commissioner May is back, Mr. Mordfin. I'm not
16 going to say what they said about you, but don't
17 watch the tape.

18 MR. MORDFIN: Good evening, Chairman and
19 members of the Commission. The applicant request
20 set down of the second stage PUD application to
21 construct a market rate seven-story multi-family
22 building with partially below grade parking.

1 The proposed building would require the
2 following modifications to the first stage
3 approval:

- 4 • Increase the number of units from
5 160 to 196
- 6 • Decrease the gross floor area by
7 about 21,000 square feet
- 8 • Increase the floor area ratio from
9 4.58 to 4.7
- 10 • Increase the building height on the
11 north side of the building facing Parkside Place
12 from 54 to 64 feet
- 13 • Decrease the building height on the
14 south side from 90 to 81 feet;
- 15 • And reduce off-street parking from
16 96 to 90 spaces

17 Although the first stage PUD approved a
18 seven-story multi-family building for the site,
19 this second stage application request
20 modifications to the provisions of that approval.
21 OP would like to clarify that because of those
22 modification requests, the proposal is not

1 substantially in accordance with the first stage
2 approval for this block.

3 However, the overall PUD would still be
4 in accordance with the first stage approval for
5 floor area ratio, gross floor area, residential
6 unit cannon, parking provided. The application
7 also requires flexibility to permit parking within
8 a structure abutting a street to be located less
9 than 20 feet from the lot when the ceiling of the
10 garage is above the grade of the adjacent
11 sidewalk.

12 The application was approved for stage
13 one and this application would further those
14 benefits and amenities, including construction of
15 new housing on a long vacant lot for residents
16 that will transition between hired ANC proposed
17 along Kenilworth Avenue and the lower-end city to
18 the northwest; participation in the First Source
19 Employment Program, and as part of the first stage
20 approval, contribute toward the construction of a
21 new pedestrian bridge across Kenilworth Avenue to
22 the Minnesota Avenue Metro Station.

1 The proposed building would be designed
2 to lead and desulphur and would include a green
3 roof and permeable pavers to reduce storm water
4 runoff and include replacement of street trees as
5 necessary. Therefore, the Office of Planning
6 recommends that the Commission set down this
7 application.

8 Thank you.

9 CHAIRMAN HOOD: Okay. Any questions or
10 comments to Mr. Mordfin? Vice Chair Miller.

11 VICE CHAIRMAN MILLER: Thank you, Mr.
12 Chairman and thank you, Office of Planning for
13 your report. I had one question. On page 3 of
14 your report you point out that, in the third
15 paragraph, in accordance with the first stage PUD
16 approval for Parkside which was approved prior to
17 the adoption of inclusionary zoning regulations,
18 all units in this building would be market rate.
19 And then you point out that a significant number
20 of affordable units have been provided in other
21 parts of the PUD, and I know that's the case.

22 I guess if the applicant can bring

1 forward how many units in each of the parcels that
2 we've approved have, you know, are affordable at
3 what levels, just so we have a bigger overall
4 picture of the affordable housing that is being
5 provided in the overall development. So that's
6 either on the applicant or OP working with the
7 applicant to provide that to us. And what level
8 and where they are. Some have been constructed
9 already. Many of them have been constructed
10 already or when or if they are coming in later
11 stages so we know the timing of it.

12 But my question is I thought that in
13 another case when there was a modification to a
14 first stage approval that came after the IZ
15 regulations were adopted that that would trigger
16 the inclusionary zoning from -- I thought it would
17 trigger the inclusionary zoning requirement. So
18 if you could provide either now or at some point,
19 or maybe counsel can provide at some point, how we
20 treated that in the past. Because I had some
21 recollection that when there was a modification
22 and the original project wasn't subject to IZ, but

1 somebody, I thought, made the interpretation that
2 IZ now does apply.

3 So if that information can be provided
4 prior to the hearing, or if you happen to know it
5 off the top of your head now --

6 MR. MORDFIN: I believe your
7 recollection is correct, but I would prefer to
8 have a chance to check before I made a commitment
9 about that.

10 VICE CHAIRMAN MILLER: Thank you.

11 MR. MORDFIN: And to add to that
12 response, it's also possible that they could
13 request IZ relief as a form of PUD relief, too, so
14 that -- just because the answer to your first
15 question is yes, it is required. That doesn't end
16 the story.

17 VICE CHAIRMAN MILLER: Thank you. That
18 would be helpful. I don't think I have any
19 further questions at this time, but I'm still
20 looking at my notes, Mr. Chairman.

21 CHAIRMAN HOOD: Okay. Any other
22 questions or comments? Anybody?

1 COMMISSIONER TURNBULL: I appreciate the
2 Office of Planning's report. I agree with some of
3 the questions that they raised and hopefully it'll
4 all get resolved. We'll see some further
5 development of the design when it comes to the
6 hearing. But generally speaking, I don't see any
7 big issues with this. I'm glad this is not a
8 wholesale redesign and reconception of the
9 project, as we've seen on some of the sites on
10 this PUD. So this is pretty consistent with what
11 we had before. So that's a good thing.

12 COMMISSIONER MAY: Mr. Chairman, I would
13 agree with my colleagues and appreciate the Vice
14 Chair's insightful look at the affordable housing
15 component of that. And I would agree with Mr.
16 Mordfin's report, all of his, on page 1, his six
17 points that he brought out.

18 One of the things that I noticed on the
19 drawings, I'm not a big fan of corrugated metal
20 siding, unless it's handled extremely well. It
21 really doesn't look that well or weather that well
22 either. So I mean, that's my only comment. But I

1 would be in favor of setting this down for a
2 hearing.

3 CHAIRMAN HOOD: Okay. I would agree. I
4 looked at the Office of Planning's report, some of
5 the things they're still working on, I would
6 associate myself with the comments of Commissioner
7 May. Typically, we don't like a long laundry
8 list, but I don't think that's not too long and
9 it's nothing that's not doable to present back to
10 us at the hearing.

11 So any other comments or questions?
12 Vice Chair Miller?

13 VICE CHAIRMAN MILLER: No. I just want
14 to make a motion if it's appropriate.

15 CHAIRMAN HOOD: Sure.

16 VICE CHAIRMAN MILLER: I would move that
17 the Zoning Commission set down case number 05-28P,
18 Parkside Residential, LLC, second stage PUD and
19 Modification of Significance to first stage PUD at
20 Square 5056, and ask for a second.

21 CHAIRMAN HOOD: I'll second it. It's
22 been moved and properly seconded. Any further

1 discussion?

2 All those in favor, aye.

3 [Vote taken.]

4 CHAIRMAN HOOD: Not hearing any
5 opposition to those present, Ms. Schellin, would
6 you record the vote?

7 MS. SCHELLIN: Yes. Staff records the
8 vote four to zero to one to set down Zoning
9 Commission case number 05-28P as a contested case.
10 Commissioner Miller moving, Commissioner Hood
11 seconding, Commissioners Turnbull and May in
12 support. Commissioner Shapiro not present/not
13 voting.

14 CHAIRMAN HOOD: Okay. Ms. Schellin, do
15 we have anything else before us this evening?

16 MS. SCHELLIN: No, sir. Not unless OP -
17 -

18 CHAIRMAN HOOD: OP, do you have
19 anything?

20 MS. STEINGASSER: No.

21 CHAIRMAN HOOD: Okay. I want to thank
22 everyone for their participation tonight and help.

1 And with that, this meeting is adjourned.

2 [The hearing adjourned at 8:32 p.m.]

3 * * * * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22