

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Zoning Commission

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9 Special Public Meeting
10 1449th Meeting Session (28th of 2016)

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14 6:03 p.m. to 7:56 p.m.
15 Thursday, December 19, 2016

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19 Jerrily R. Kress Memorial Hearing Room
20 441 4th Street, N.W., Suite 220 South
21 Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JENNIFER STEINGASSER

13 ANNE FOTHERGILL

14

15 Office of Attorney General:

16 JACOB RITTING

17 ARIEL EBI

18

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

2 CHAIRPERSON HOOD: Okay. Are we ready to get
3 started? Okay. This meeting will please come to
4 order. Good evening, ladies and gentlemen. This is
5 a special public meeting of the Zoning Commission for
6 the District of Columbia.

7 My name is Anthony Hood. Joining me are Vice
8 Chair Miller, Commissioner May, and Commissioner
9 Turnbull. We're also joined by the Office of Zoning
10 staff, Ms. Sharon Schellin, Office of Attorney
11 General staff, Mr. Ritting and Mr. Ebi, Office of
12 Planning staff, Ms. Steingasser and Ms. Fothergill.

13 Copies of today's meeting agenda are
14 available to you and are located in the bin near the
15 door. We do not take any public testimony unless we
16 ask someone to come forward. Please be advised that
17 this proceeding is being recorded by a court reporter
18 and is also webcast live. Please turn off all
19 electronic devices.

20 Does the staff have any preliminary matters?

21 MS. SCHELLIN: Yes, we'd ask the Commission
22 to consider voting on a closed meeting for January
23 23rd.

24 CHAIRMAN HOOD: Okay. Do, I have the --

25 MS. SCHELLIN: Yes.

1 CHAIRMAN HOOD: I do?

2 MS. SCHELLIN: I thought I gave it to you.
3 May not. No, you don't.

4 CHAIRMAN HOOD: Okay. January 23rd. Okay.
5 Thank you.

6 Okay. In accordance with 405C of the Open
7 Meetings Act, D.C. Official Code, 2-575C, I move that
8 the Zoning Commission hold a closed meeting on each
9 Monday, January -- on Monday, January 23rd, 2017 for
10 the purpose of obtaining legal advice from our
11 counsel on Zoning Commission Case No. 13-14, Vision
12 McMillan Partners, LLC., and Office of the Deputy
13 Mayor for Planning and Economic Development remand
14 from the Court of Appeals. Is there a second?

15 MR. MILLER: Second.

16 CHAIRMAN HOOD: It's been moved and properly
17 seconded. Would the secretary please take the roll
18 call vote on the motion before us now that has been
19 seconded?

20 [Roll Call vote taken.]

21 MS. SCHELLIN: Chairman Hood.

22 CHAIRMAN HOOD: Yes.

23 MS. SCHELLIN: Vice Chair Miller.

24 MR. MILLER: Yes.

25 MS. SCHELLIN: Commissioner May.

1 MR. MAY: Yes.

2 MS. SCHELLIN: Commissioner Turnbull.

3 MR. TURNBULL: Yes.

4 MS. SCHELLIN: Commissioner Shapiro, not
5 present. Motion carries.

6 CHAIRMAN HOOD: Okay. I request that the
7 Office of Zoning provide notice of these closed
8 meetings in accordance with the act. Anything else,
9 Ms. Schellin?

10 MS. SCHELLIN: No, sir.

11 CHAIRMAN HOOD: Okay. Let's go right into
12 our agenda. Do we have any other preliminary
13 matters?

14 MS. SCHELLIN: No, sir.

15 CHAIRMAN HOOD: Okay. Ms. Schellin, would
16 you please call the first case?

17 MS. SCHELLIN: Yes, sir. The first case for
18 this evening is Zoning Commission Case No. 08-06F, as
19 in Frank. And this was some technical corrections to
20 Zoning Commission Order No. 08-06A. Would ask --
21 there were several comments received to the proposed
22 rulemaking, and we'd ask the Commission to consider
23 those comments and consider final action this
24 evening.

25 CHAIRMAN HOOD: Okay. Thank you.

1 Commissioners. As we move through this, I know it's
2 a lot of moving parts here. And I appreciate the
3 support we have in trying to frame this. Let's see,
4 the proposed rulemaking does three substantive
5 things, as we all know, clarifies the 2016
6 regulations, apply the modifications of previously
7 approved orders, other than minor marks, broadens the
8 circumstances where the ZA may permit modifications
9 from ZC and BZA approved plans, and reduces the PUD
10 minimum land area for certain zones.

11 I believe that if we go in that order, I
12 think that two of them we really would have elaborate
13 discussion on, but let's deal with this first one.
14 Clarity of 2016 regulations to apply the
15 modifications for previously approved orders, other
16 than minor marks.

17 [Pause.]

18 CHAIRMAN HOOD: Give me a second.

19 [Pause.]

20 CHAIRMAN HOOD: Again, the first one that I'm
21 looking at is, clarifies that the 2016 regulations
22 apply to modifications of previously approved orders,
23 other than minor marks. Does anybody have any
24 comments on that? Do I need to do a singular vote on
25 each one?

1 Okay. So, there are no comments on that, so
2 we'll accept that. Okay. All right.

3 Next, changes the circumstances where the ZA
4 may permit modifications from ZC -- well, the Zoning
5 Commission and Board of Zoning Adjustment approved
6 plans. Any discussion on this?

7 MR. MAY: As I recall we had adopted these
8 proposed changes, or were moving in direction of
9 these proposed changes. And I want to make sure that
10 the Zoning Administrator, or that -- to make sure
11 that parties were aware of changes, modifications to
12 projects and I thought that was a, you know, well-
13 intentioned changed. I'm not sure that we fully
14 understand what the administrative burden would be,
15 and the Zoning Administrator, but I still think that
16 it's something that is worthwhile doing and I don't
17 find that either of the suggestions that come from
18 the Zoning Administrator particularly hit the mark.

19 CHAIRMAN HOOD: All right. Any other
20 comments? Commissioner Miller.

21 MR. MILLER: Well, if the Zoning
22 Administrator said it would be an administrative
23 burden, he proposed two options as alternatives. It
24 seemed to me that Option B might work if we -- he
25 basically put the burden on the applicant to notify

1 the parties if the Zoning Administrator approves a
2 modification. If we added to that a requirement that
3 the applicant also has to let the Zoning
4 Administrator know, or give an affidavit, or some
5 kind of certification that it did notify the parties,
6 the ANC in particular. Then it would be the
7 enforceable mechanism for that type of provision that
8 we were trying to add, the notification to the
9 parties of an approved modification, if that makes
10 any sense.

11 So, I think Option B could work with some
12 refinement, with some additional language and for the
13 flexibility for the OAG to work that out. I think it
14 could work for me, at least.

15 MR. MAY: Yeah, I mean, I do think there has
16 to be something else because as it's proposed, I
17 don't think it's particularly enforceable because the
18 change will have been made, and if there is never any
19 notice to the parties, would the Zoning Administrator
20 even know?

21 MR. MILLER: Well, the change -- what I was
22 suggesting was the change couldn't be made unless the
23 -- well.

24 MR. MAY: So, it wouldn't become final?

25 MR. MILLER: Yeah, I guess, that --

1 MR. MAY: This is the notification of final
2 changes, so.

3 MR. MILLER: Yeah.

4 MR. MAY: Yeah. I mean, I mean,
5 theoretically if the Zoning Administrator ever does
6 not receive the required affidavit regarding notice,
7 they could revoke the change or revoke the permit for
8 the change or something like that. But that seems an
9 even greater administrative burden, and not something
10 that would ever actually happen.

11 So, I mean, there's room to try to do
12 something that -- I mean, I don't mind, you know,
13 deferring action while the language gets tweaked to
14 try to address this concern, but --

15 CHAIRMAN HOOD: Well, let me do this. Let me
16 hear from Commissioner Turnbull and let me chime in
17 too, first, before we go too far.

18 Mr. Turnbull.

19 MR. TURNBULL: Thank you, Mr. Chair. I agree
20 with Commissioner May and I also understand where
21 Commissioner -- where the Vice Chair is coming from
22 on -- to me, the way it is right now, Option B has no
23 teeth in it and there is no really enforceable way
24 for us to do anything. So, yeah, if we do go with
25 Option B, you really do need some other language to

1 cover that, to make sure that the applicant has
2 indeed done what the ZA says they should be doing.

3 I think the only other question I had, there
4 was something about some changes in three, on their
5 Section 304.

6 CHAIRMAN HOOD: 304.12?

7 MR. TURNBULL: The materials, changes to
8 materials?

9 CHAIRMAN HOOD: Yeah, 304.10, where the
10 materials can change. All that is just, you know, it
11 seems like we're going backwards.

12 MR. TURNBULL: Yeah, I -- yeah.

13 CHAIRMAN HOOD: Yeah. Go ahead, I don't want
14 to cut you off.

15 MR. TURNBULL: Yeah. No, I'm a little bit
16 concerned about that.

17 CHAIRMAN HOOD: I'm also concerned about
18 304.12. Let me just chime in for a second, Mr.
19 Turnbull.

20 MR. TURNBULL: Yeah, and I'll go to --

21 CHAIRMAN HOOD: 304.12, where basically the
22 ZA just sends a letter to the BZA and says that this
23 has been done, and 304.10 doesn't include materials.
24 So, if I'm the applicant and I come down and I
25 propose to do brick front, and I want to change it to

1 wood or something, or EIFS or whatever, I can do
2 that. And the way I read it, that's it. I've made
3 the decision. So, this goes back to a lot of the
4 concern, I believe, that we saw in some of the
5 comments. And this is how we get burnt in this city.

6 MR. TURNBULL: Right.

7 CHAIRMAN HOOD: And how things are done
8 incorrectly because what people say to us is that,
9 how was that change made? So, I don't understand why
10 we -- it seems like we going the opposite direction
11 as opposed to trying to improve things. So, you
12 know, and I also want to comment on what Commissioner
13 May said.

14 I think he's more -- I'm not in favor of
15 either A or B. At least the way it's written,
16 because we're always putting stuff on the applicant,
17 got to do this, the applicant got to do this, the
18 applicant should be doing this. There needs to be a
19 trust factor. It's not that people in this city
20 don't trust the applicant. That's fine. But we've
21 got to find a better way. You know, we've got to
22 start doing some things to make sure that notice is
23 out there. And I understand that the ZA has said
24 there's a burden. Maybe what the Vice Chair said.
25 Maybe they can tweak some of this but --

1 MR. MILLER: Yeah, let's stick with what we
2 original proposed. I mean, it doesn't seem that much
3 of an administrative burden to send out a letter to
4 the -- notice to the ANC. So, I would --

5 CHAIRMAN HOOD: Let's say that --

6 MR. MILLER: If they come back with more
7 information or a different way of tweaking it that
8 makes it enforceable, release another burden, we can
9 consider it then. So.

10 CHAIRMAN HOOD: So, what we'll do then, do
11 you want to give them an opportunity to try to refine
12 the language as you mentioned, or just keep what we
13 have?

14 MR. MILLER: I'd keep it as we have it.

15 CHAIRMAN HOOD: Okay. Okay. So, we don't
16 even need to discuss that.

17 Commissioner May, are you in line with
18 leaving it like we had it, unless he can prove his
19 case. I don't think he proved his case in what we
20 got tonight.

21 MR. MAY: Yeah, I don't think he proved his
22 case either. Yeah, I'm fine with proceeding with the
23 original language, and if the Zoning Administrator
24 feels like it needs to be tweaked further, they can
25 submit it, a proposed text amendment.

1 CHAIRMAN HOOD: Mr. Turnbull, on that one,
2 you?

3 MR. TURNBULL: I'm fine with that.

4 CHAIRMAN HOOD: Okay. did you want to add
5 something else?

6 MR. TURNBULL: No, I was just wondering, had
7 you finished on 304.10 or --

8 CHAIRMAN HOOD: You want to add something to
9 the materials?

10 MR. TURNBULL: No, I mean, materials isn't
11 covered, so it sounds like materials can change.

12 CHAIRMAN HOOD: Right. So, I think we need
13 to put that in there.

14 MR. TURNBULL: Oh, okay. Yeah.

15 CHAIRMAN HOOD: Because the final drawings
16 should be the final --

17 MR. TURNBULL: Right.

18 CHAIRMAN HOOD: What the BZA looks at.

19 MR. TURNBULL: Right.

20 CHAIRMAN HOOD: Like, you know, being
21 consistent with what we do.

22 MR. TURNBULL: Okay.

23 CHAIRMAN HOOD: I don't know, do we need to
24 advertise that?

25 [Pause.]

1 MR. MILLER: Well, Mr. Chair, I would just
2 want to clarify under 304.10 that the Zoning
3 Administrator, that we're not looking to change --
4 they cannot change material; the applicant cannot --
5 material cannot change on a BZA action, that the ZA
6 does not have that authority to change materials
7 going from brick to vinyl or wood.

8 CHAIRMAN HOOD: So, that's pretty consistent
9 with the Zoning Commission, what we do.

10 MR. MILLER: Right.

11 MR. MAY: Okay. So, but it's relevant to the
12 Zoning Commission's actions because we conduct design
13 review as part of the planned unit developments. The
14 BZA typically isn't going to be involved, in
15 particular, with design review and materials and
16 things like that, except to the extent that they
17 mitigate any adverse effects that might be associated
18 with the relief that's granted.

19 MR. MILLER: Right. I'm just saying --

20 MR. MAY: In which case I think that's a
21 substantive thing that shouldn't be granted by the
22 ZA. I'm not sure how we cover that, but --

23 MR. TURNBULL: Right.

24 MR. MAY: I think that they should have
25 flexibility to change materials. Why not? I mean --

1 MR. TURNBULL: Well, it's --

2 MR. MAY: -- if we can do it now on a
3 regular, if it's a by-right project.

4 MR. TURNBULL: If it's an all brick area of
5 rowhouses, and the applicant suddenly comes back and
6 wants to do vinyl, doesn't that change the character
7 of the neighborhood?

8 MR. MAY: Well, but it's something that
9 they're allowed to do as a matter of right now, then
10 you know, what say would we have over it? I mean,
11 the BZA is not design review except in the cases
12 where it's [simultaneous speech].

13 MR. TURNBULL: No, but if the BZA -- in the
14 BZA you've gone through a hearing, ANC is there, the
15 neighborhood is there.

16 MR. MAY: I remember how they go.

17 MR. TURNBULL: All right. And if the
18 drawings clearly show what, it's going to be brick or
19 something else, and the ZA then later on they show up
20 and it's vinyl, I think the neighborhood will be a
21 little upset that there's no teeth in the BZA order
22 that doesn't say that they've got to put in what was
23 approved in the hearing.

24 CHAIRMAN HOOD: That actually gets us in
25 trouble sometimes, I think. And we need to be

1 consistent. Even though, whatever we're doing now, I
2 don't even -- even if we've been doing it for 30
3 years, that don't make it right. You know? Just
4 because we've been doing something on one way on the
5 BZA, and one of -- I just have always had a problem
6 with that. So, I don't know if we have the votes to
7 move forward. We might have to wait for -- let
8 Commissioner Shapiro participate. I'm not sure where
9 we are.

10 Vice Chair, you want to comment on it?

11 MR. MILLER: Well, no, the only comment I
12 wanted to make was that it became apparent in an
13 appeal case that I sat on, I can't now remember --
14 anyway, I can't remember what the case was. So, but
15 I didn't want to state it anyway. But it became
16 clear that if it was important to the BZA, a material
17 for example, that should be a condition of the order.
18 And then they can't modify it without coming back.

19 So, that was what the outcome of that BZA
20 appeal case was, that if -- unless it was a condition
21 in an order he did have the authority to modify. And
22 so, because the plans are a little more, I don't know
23 what the word is, but they're not as --

24 MR. MAY: Well defined.

25 MR. MILLER: They're not solidified as they

1 are in Zoning Commission cases, for whatever reason.
2 I agree, there should be more consistency, though,
3 between the two bodies. However, there is a way of
4 taking care of that material issue, and it does come
5 up sometimes as an adverse impact and if that's
6 important the party -- the neighbors have to insist
7 upon it and the members have to insist upon that it
8 be a condition of the order. So, I think there's a
9 way we could take care of it.

10 CHAIRMAN HOOD: So, let me ask you. So, the
11 (garbled speech) in that case was you made it a
12 condition of the order.

13 MR. MILLER: Well, we didn't make something a
14 condition of an order and it got modified and it
15 upset the neighbors. The outcome of that appeal case
16 is when we didn't make the height of the penthouse --
17 and now I'm remembering the case. When we didn't
18 make the height of the penthouse a condition of the
19 order, and they raised the height of the penthouse to
20 a matter-of-right height, but it was a lower height
21 and it was talked about in the hearing, it was in the
22 findings of fact, even, as something that was
23 testified to. But because that nine-foot talked
24 about height didn't get put into the -- as a
25 condition of the order, it came in for a modification

1 later and they got matter-of-right higher height and
2 the neighbors were upset in Adams Morgan again.

3 CHAIRMAN HOOD: You know, let me ask this.
4 Can we ask a planning officer? We need to think
5 about this some more. Instead of rushing a wrong,
6 from my standpoint, I know we got different views of
7 it, maybe we need to look at that whole scope. I
8 mean, is this something that we just have to do
9 tonight? Or can we put this off? Do we just have to
10 do this tonight? Is anything --

11 MR. MAY: You know, this is an issue that --
12 I mean, I think we're talking about a different issue
13 because you're talking about, you know, the
14 penthouses thing wouldn't be covered by the material
15 change inclusion.

16 MR. MILLER: But it's an example.

17 MR. MAY: But it's an example, right. And
18 it's a question of what, you know, the extent to
19 which in an approved BZA case the applicant is
20 required to abide by what's in the drawings that were
21 submitted and what flexibility there should be. I
22 mean, I think it is a bigger issue, and I think that
23 we should go ahead with what we have before us
24 tonight. And then ask the Office of Planning to look
25 at whether any further refinements are necessary in

1 terms of controls on the Zoning Administrator's
2 discretion, rather than, you know, not have this in
3 the regs now, or not get this clarified in the regs
4 now.

5 CHAIRMAN HOOD: The problem around here with
6 doing stuff and then we want to do it. Sometime we
7 don't never get back to it. Or we don't get back to
8 it in a timely fashion. That's one of the problems.
9 If we leave it out there, then we get back to it
10 faster. That's just my issue. I don't know. What
11 do other feels. What are you feeling, Mr. Turnbull?

12 MR. TURNBULL: Well, I think it needs to be
13 addressed and I don't know how fast Office of
14 Planning could come back to us with something on
15 this.

16 I mean, in one way I want to go forward, but
17 in another way, like you said, we don't want to rush
18 through this. We want to get it done right. We want
19 to be able to -- if we're looking at a bigger issue,
20 should we stop and look at the bigger issue, or can
21 the bigger issue be done within the beginning of the
22 year?

23 MR. MAY: Well, the other question is, if the
24 bigger issue gets much bigger it's going to wind up
25 requiring its own hearing and notification and all

1 that sort of stuff, because I'm sure that there will
2 be members of the development community who want to
3 speak up on this question. So.

4 CHAIRMAN HOOD: And I'm sure there will be
5 members of the community and everybody is going to
6 (simultaneous speech).

7 MR. MAY: Oh, absolutely, yeah.

8 CHAIRMAN HOOD: But what the other issue is,
9 I think though, unless I heard something incorrectly,
10 I think the Vice Chair mentioned something that in
11 that appeal case, and I know he's talking about
12 penthouse, but early on when he was talking about it
13 he mentioned that the materials were made a condition
14 of the order. Do we normally do that, Mr. Ritting?
15 Is that normally done in a BZA case?

16 MR. RITTING: [Speaking off mic.]

17 CHAIRMAN HOOD: That may be the safe way out,
18 if we do it -- I'm going to Ms. Steingasser in a
19 minute.

20 [Pause.]

21 MR. RITTING: I apologize for the delay. I
22 didn't hear the first part of the question. I was
23 asking Mr. Hood to clarify it.

24 As I understood his question, it's whether
25 the -- may the BZA impose conditions in its orders

1 related to things like materials. And I believe the
2 answer is yes, but it's unusual for that to happen,
3 and particularly in cases where the relief requested
4 is unrelated to the material choice.

5 CHAIRMAN HOOD: Okay. I will -- Mr.
6 Turnbull, I'm not sure where you are, but I think as
7 Commissioner May -- let's go ahead and close the loop
8 on this, but I'm going to go to the Office of
9 Planning to see if we can move forward and let's
10 examine some more, going down those lines and see
11 what actually, what problems we may cause -- well,
12 I'm not going to say we caused a problem. What
13 things we can look at to discover to try to grab more
14 of a hold to. I would be in favor of probably going
15 ahead and accepting this.

16 If the relief is part of what's being asked
17 for, then we'll do the condition. I think that will
18 serve, I think correctly for the BZA at the time,
19 while I go to the Office of Planning, if they could
20 maybe do a little discovery for us and try to help us
21 to move this thing along a little more than -- you've
22 heard the discussion and the concern.

23 MS. STEINGASSER: Yes, sir.

24 CHAIRMAN HOOD: Ms. Steingasser. Okay. So,
25 we can do that. So, all right. Are you fine with

1 that?

2 MR. TURNBULL: Yeah, I'm fine.

3 CHAIRMAN HOOD: Okay. What gives me the
4 comfort level is the -- if the relief is retraining
5 anything of that nature, the materials, you can put a
6 condition in there.

7 MR. MILLER: I would agree with that, Mr.
8 Chairman, and I also would agree with what
9 Commissioner May said earlier, if it's important to
10 the mitigation of an adverse effects that's been part
11 of the whole case.

12 CHAIRMAN HOOD: Okay. Okay. All right. So,
13 do we have --

14 MR. TURNBULL: Yeah. No, I was just saying,
15 I think regardless of the relief requested, if the
16 neighborhood or the community has reliance upon what
17 was presented in a hearing as to what the appearance
18 of a project is going to be, then I think that needs
19 to be identified and made a condition.

20 CHAIRMAN HOOD: Okay. So, that's part of
21 what the Office of Planning will discover for us and
22 look at, and bring back to us. Okay? Is that okay?

23 Okay. So, so far it looks like we're batting
24 1,000. So, one and two, we're okay with, with
25 working through it.

1 All right, let's go to reduces the PUD
2 minimum land area for certain zones. We've heard a
3 lot of comments about why we should not, and then we
4 have some of the newer zones, which would stand, but
5 we should give the waiver. So, that whole
6 discussion. Somebody like to get us started?

7 [Pause.]

8 CHAIRMAN HOOD: All right.

9 MR. MAY: Mr. Chairman.

10 CHAIRMAN HOOD: Yes.

11 MR. MAY: Since nobody else wants to talk.

12 CHAIRMAN HOOD: No, they want to talk,
13 they're probably just getting their thoughts together
14 like I am.

15 MR. MAY: All right, well I'm happy to wait
16 for others to get their thoughts.

17 So, you know, I honestly found some of the
18 comments that we received in the record to be a bit
19 troubling, and it raises some concerns about you
20 know, how much we can and should sort of codify this
21 waiver of the minimum land area.

22 Of course, you know, we still have the
23 ability to waive any rule that we make, so we could
24 just like in the case we'll hear later, or rather the
25 case we'll decide later, there's always that ability

1 to waive the rule, and certainly the circumstance
2 that we have in that case, it's understandable. But
3 we're only talking about waiving, I don't know, 80
4 feet out of the 7,500 minimum.

5 Now, understanding of course that the 7,500
6 is half the -- is already getting the 50 percent
7 waiver. So, does that mean that we should have the
8 50 percent plus two percent? Or something like that?
9 I mean, it gets a little silly at a certain point.
10 But I think that there's a basic principle about what
11 people can rely upon in terms of the minimum land
12 area for PUDs, and I think what we want to see more -
13 - we want to give some flexibility because PUDs
14 provide an avenue to create -- to selectively create
15 better projects and some greater density with the
16 tradeoff that, you know, overall the project is a net
17 benefit to the community.

18 Is that something that just should be done
19 broadly? I mean, I always thought it was rather
20 strange when I, you know, having studied what planned
21 unit developments were, to find out that they could
22 basically just be a single office building. Because
23 for me, in my academic career, a planned unit
24 development was usually a much more substantial land
25 area and involved a mixture of uses and things like

1 that. And the fact that we do PUDs for office
2 buildings just struck me as strange.

3 Now, it makes perfect sense now that I've
4 been doing it for 12 years. But, in this
5 circumstance I think that -- I mean, if anything, we
6 might want to be a little bit more careful and look
7 more carefully again. You know, we got some specific
8 requests on how we might further limit it as well as
9 other limitations and height on certain zones, which
10 we obviously cannot take up in this case because it
11 goes beyond what we notified the public about.

12 I mean, we could take the easy way out and
13 accept some of those further exclusions, or we could,
14 you know, part of me just wants to say, the heck with
15 the whole thing, and just leave it to our future
16 discretion when these, you know, unusual cases like
17 15-18 come up and there's a reason to, you know, give
18 them 51 percent reduction as opposed to 50 percent.

19 So, I don't know. At the very least I think
20 we have to take serious the concerns that are raised
21 by ANC 1C.

22 CHAIRMAN HOOD: 1C.

23 MR. MAY: 1C.

24 CHAIRMAN HOOD: Kalorama.

25 MR. MAY: And the Kalorama Citizen's

1 Association. At least with regard to the PUD
2 minimums, and what falls in what category. But
3 again, the height thing is not something that we
4 would take up in this case.

5 CHAIRMAN HOOD: Okay. Anybody else?

6 MR. MILLER: Thank you, Mr. Chairman.

7 CHAIRMAN HOOD: Vice Chair.

8 MR. MILLER: I would -- I think there were
9 some legitimate points raised by the identical
10 comments made by ANC 1C and Kalorama Citizens. So,
11 they essentially were proposing, I'm going to use the
12 old zones just because it's easier to understand in
13 our head. They wanted to basically keep the minimum
14 area requirements for the status quo for waivers for
15 the R-5-A, C-2-A and C-2-B zones, because they
16 thought the new waiver rules that applied to those
17 zones would create, somehow -- would create more
18 incompatibility with what's in those types of
19 existing neighborhoods and might create an incentive
20 for buying up an adjacent property and doing a PUD on
21 what's really a neighborhood block, neighborhood
22 commercial block, or a neighborhood rowhouse type of
23 block.

24 So, I'm okay with going with their
25 recommendations to keep the status quo for those

1 three zones, and I agree with Commissioner May that
2 the height issue is way beyond what was advertised
3 and is beyond this case. So, that would have to be
4 looked at later. But, so, I'm ready to go forward
5 with keeping the status quo for the three zones as
6 suggested.

7 MR. MAY: Can I ask a question, though? One
8 of the things that is raised is that one of those
9 zones is the zone that applies in the case in 15-18,
10 right? It would be M-U-4 under the new map, which
11 was C-2-A. So, in effect we would be saying that --
12 we'd be charting a course, and the permanent
13 recommendations that inconsistent with an action that
14 we might take later. Isn't it?

15 MR. MILLER: It's a waterfront zone that's
16 being proposed.

17 MR. MAY: Waterfront? I thought it was M-U.

18 MR. MILLER: It currently might be, but it's
19 being changed.

20 MS. FOTHERGILL: It's a waterfront zone.

21 MR. MAY: Oh, it is a waterfront zone, so it
22 would --

23 MS. FOTHERGILL: I mean, it's a proposed map
24 amendment.

25 MR. MAY: Proposed waterfront zone?

1 MS. FOTHERGILL: Uh-huh. Yes.

2 MR. MAY: Oh, in terms of the map amendment,
3 but the current zone is C-2-A.

4 MS. FOTHERGILL: That's right. It's
5 partially unzoned, partially C-2-A.

6 MR. MAY: Got it. So, that's another way.

7 CHAIRMAN HOOD: Let me see, Mr. Turnbull, you
8 have anything, comment on this?

9 MR. TURNBULL: No, I would agree with the
10 Vice Chair, and keep the status quo for those areas.
11 I think Adams Morgan has gone through. I mean, we're
12 getting a lot of feedback from them all the time.
13 So, I would be in favor of that, and I also agree
14 with the height, it's not an issue that can be
15 addressed here.

16 CHAIRMAN HOOD: I kind of agree with -- and
17 hopefully I understood Commissioner May's last point.
18 Keep our waiver as it is, and it's up to our
19 discretion anyway. I'm trying to remember how you
20 phrased that. I kind of like -- I like that,
21 actually. Even with moving to the status quo. Even
22 with this next case that's coming up. We can make
23 that change without all this, I believe.

24 So, I kind of like that. It keeps what's in
25 place. I think that solves some of the comments

1 we've heard from the different neighborhoods,
2 Committee of 100, 1C, Kalorama, and others. I wasn't
3 clear on 4B's -- I'm still not clear on 4B's letter,
4 but I kind of like that and I'd just like to see if
5 that's the fashion, because we can deal with that, we
6 can waive our rules, I think, at any time. I'm
7 always told that. And we can do it within a case-by-
8 case basis.

9 MR. MAY: So, you're not suggesting that we
10 go with the just adding the three zones to the -- or
11 exempting these three zones from this greater waiver
12 provision, but that we throw away the whole thing.

13 CHAIRMAN HOOD: Yeah, that was --

14 MR. MAY: Well, I mean --

15 CHAIRMAN HOOD: Throw away the whole thing.
16 Whatever you said, say again.

17 MR. MAY: I said part of that.

18 CHAIRMAN HOOD: Okay.

19 MR. MAY: Part of it (simultaneous speech).

20 CHAIRMAN HOOD: (Simultaneous speech.)

21 MR. MAY: -- was thinking, oh, you know,
22 let's just give up and, you know, we can waive
23 whatever we want whenever we want. But, the fact
24 that we have growing support for simply including the
25 three zones, makes me inclined to go that direction

1 rather than the throw away all of the reduced
2 minimums.

3 CHAIRMAN HOOD: Okay. I really like your
4 last way of doing it. And that would lead us right
5 into -- we probably could have done this at the very
6 beginning, but we needed to go down and discover. I
7 just think that even though we have these additional
8 zones, these three zones now, that the neighborhood
9 has asked, as has been stated, we don't know what
10 else is going to come forward. And I just think, you
11 know, that way we will, at least from my standpoint -
12 - I don't have a problem with going with this if I
13 don't have the votes. I'm not going to vote against
14 it. But I'd just like us -- I just like what you
15 say, throw it all out and we can make our rules and
16 you know, we can waive our rules at any time. We've
17 always been granted that authority, and we deal with
18 it on a case-by-case basis like this in this next
19 case that's coming up before us shortly after this.
20 That's where I am.

21 MR. MAY: Well, I mean, I think the good
22 thing, though is that if we were to go ahead and take
23 action and just add these three zones that, you know,
24 every one of these things is going to come before us
25 anyway, right? They're all PUDs and we'll be able to

1 see the trend, and we'll be able to understand what
2 it means, and if we wind up seeing wide spread abuse
3 of it, we are certainly able to take action to
4 further refine the standards. Or to turn down the
5 PUDs when they -- you know, when somebody comes to,
6 you know, present an application that is truly beyond
7 the intent of this greater codified flexibility, then
8 we can take action at that point. We'll always still
9 be seeing these.

10 CHAIRMAN HOOD: This kind of reminds me,
11 though, of something that we've been pushing back,
12 including myself on those. And I know it's not
13 necessarily ready, but it is germane. The penthouse
14 setbacks. I've seen, we start off with five and
15 because we're saying, you need to redesign or do some
16 other things, we end up with zero. So, I think if we
17 allow the opportunity, we give the opportunity, I
18 think we're going to see it.

19 So, that's why I agree with your last point.
20 I really think -- I hope I can get some -- garner
21 some support. Doesn't look like I'm getting too
22 much. But I just think we're opening it up, because
23 any time you come in and you ask for setback relief
24 on a Tuesday, and two weeks later you don't need any
25 setback relief all of a sudden, we've opened those

1 gates. But we've pushed back and said, no you fix
2 that. So, to me this kind of falls in line with
3 that, and I think if we deal with our -- on a case-
4 by-case basis, like we said, the cases coming before
5 us, that's a different situation. I think we can
6 deal with that without doing any of this.

7 Do I have any support for that?

8 MR. MILLER: Mr. Chairman, six months ago I
9 was ready to do a waiver of our existing rules to
10 allow that case to go forward, and we decided to go
11 through this exercise. I'm ready to go forward with
12 the case that we came up with, or tried to come up
13 with city wide standards for reduce PUD areas that --
14 we heard some concerns about three of the zones being
15 included. We can be responsive to that, allow the
16 other to go forward, it will all come back before us
17 anyway, we can refine and tweak it as we go along if
18 we see that there are issues. But, you know, I was
19 ready six months ago, to waive, under our existing
20 rules for this upcoming case, and I'd be ready
21 tonight to do that.

22 CHAIRMAN HOOD: Sometime, Vice Chair,
23 sometime it takes six months. I've been working with
24 some things for almost 16 years. So, I will tell
25 you, it sometimes takes a little while to go through

1 an exercise to see -- to do the discovery. And
2 sometime, you know, you want to try to make the best
3 decision possible. While you might have had the
4 foresight six months ago, I probably didn't. So, I
5 had to go through this exercise to get where I am
6 now. So, that's just me, you know?

7 I'm not going to say I'm a slow learner,
8 because I'm a fast learner. Mr. Turnbull, you want
9 to add something?

10 MR. TURNBULL: I was going to say, I've been
11 remodeling my house for 18 years, and I guess
12 architects are never satisfied. We keep changing it.

13 No, I think the old regulations, I think
14 going back to the old is fine except the areas that
15 we're talking about putting a limit on sort of then
16 opens it up that we could go into those areas. So,
17 Kalorama and 1C are going to look and say, oh, well
18 now you went back to the old regs but you still put
19 our areas in play again. So, I think there's a
20 little uncertainty for them that we're not trying to
21 protect those areas ever, from going back, and for
22 allowing the Zoning Commission to make changes.

23 And maybe I'm reading in to that, but.

24 CHAIRMAN HOOD: But what about the areas that
25 we're not protecting? The areas who probably did not

1 have the skill set or was not into zoning like
2 Kalorama 1C, some of those other areas, where those
3 opportunities, who were not afforded the opportunity,
4 who may not know yet, and may have some of the same
5 issues. But you know what? I'm not going to belabor
6 the point. If somebody is ready to make a motion
7 obviously, we don't want to throw it away, like I
8 want to and just deal with it case by case.

9 So, I know how to concede. I'm not going to
10 keep going on and on. Somebody make a motion, that's
11 fine.

12 MR. MAY: Well, Mr. Chairman, you know, since
13 I did sort of play at the seed of backing away from
14 it all, but I'm sure the seed was already there. So,
15 and I also needed six months to help figure this out
16 because it was not so clear to me what action would
17 be the right action when we first considered it six
18 months ago, and of course we were, in the Zoning
19 Regulations rewrite, considering waiving minimums
20 entirely for PUDs at some level. So, it was not
21 entirely clear and we had to go through this.

22 I kind of wish we had gone through it faster
23 because I would have held it in my head a little bit
24 more easily. Each time we took it up I had to reread
25 the whole case.

1 In any case, I would move that we take final
2 action on Zoning Commission Case No. 08-06F, and I
3 won't bother reading through it all, but I think that
4 the -- in the three substantive sections of it, one
5 and two essentially remain unchanged, and with regard
6 to the PUD minimum land areas, we incorporate the
7 three additional zones as recommended by ANC 1C.
8 That would be the old R-5-A, C-2-A, and C-2-B, which
9 would be M-U-4, M-U-5-A and R-A-2. I think. Yeah.
10 Vice Chair Miller is nodding in agreement, so that's
11 the motion.

12 MR. MILLER: And I'll second it since I
13 nodded in agreement.

14 CHAIRMAN HOOD: You said M-U-5-A, right?

15 MR. MAY: Yeah.

16 CHAIRMAN HOOD: Okay. And M-U-4 and R-A-2.
17 Okay.

18 MR. MAY: Right.

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

21 [Vote taken.]

22 CHAIRMAN HOOD: Ms. Schellin, would you
23 record the vote?

24 MS. SCHELLIN: Yes, staff records the vote
25 four to zero to one to approve for final action in

1 Zoning Commission Case No. 08-06F, Commissioner May
2 moving, Commissioner Miller seconding, Commissioners
3 Hood and Turnbull in support, Commissioner Shapiro
4 not present, not voting.

5 CHAIRMAN HOOD: Okay. Next, PUD case --
6 Zoning Commission Case 15-18, Initio, LP. Ms.
7 Schellin.

8 MS. SCHELLIN: Yes, sir. There's nothing new
9 in this case. It's just up for a proposed action.
10 It was deferred until final action was taken on
11 Zoning Commission No. 08-06F, so we'd ask the
12 Commission to consider proposed action in this case.

13 CHAIRMAN HOOD: Okay, colleagues. This is
14 the first example, one of the examples of many,
15 probably. Anyway, I don't have anything to add to
16 this.

17 MR. MAY: Mr. Chair, I believe we have plenty
18 of opportunity to vet the project for all of its
19 internal substance. I think the only outstanding
20 issue was the ability to, or the interest in waiving
21 the minimum square footage requirements so that we're
22 down to 7,413 square feet or whatever it was, rather
23 than 7,500.

24 And I fully support that waiver at this
25 stage.

1 CHAIRMAN HOOD: I tool. So, somebody like to
2 -- is that a motion?

3 MR. MAY: I would move proposed action on
4 Zoning Commission Case 15-18, and ask for a second.

5 CHAIRMAN HOOD: I'll second it. It's been
6 moved and properly seconded. Any further discussion?

7 MR. MILLER: Yes, I just wanted to note
8 the --

9 CHAIRMAN HOOD: Vice Chair.

10 MR. MILLER: Thank you, Mr. Chairman. To
11 reiterate what we stated at proposed action, that the
12 public benefit of the housing linkage in this
13 particular case I think is very important and I'm
14 appreciative of the applicant for including that.

15 CHAIRMAN HOOD: Okay. Any further comments?
16 [Vote taken.]

17 CHAIRMAN HOOD: Okay. Ms. Schellin, would
18 you record the vote?

19 MS. SCHELLIN: Yes. Staff records the vote
20 three, to one, to one to approve proposed action in
21 Zoning Commission Case No. 15-18, Commissioner May --
22 I'm sorry, is that right?

23 CHAIRMAN HOOD: Commissioner May moved and I
24 seconded.

25 MS. SCHELLIN: Commissioner May moving,

1 Commissioner Hood seconding, Commissioner Miller in
2 support, Commissioner Turnbull opposed, and
3 Commissioner Shapiro not present, not voting.

4 CHAIRMAN HOOD: Okay. We want to thank this
5 applicant for being patient as we go through that
6 exercise. So, sometimes it's better to go through
7 exercise and figure out how we're doing things. This
8 probably will be my limit, but anyway.

9 All right. Anything else to this special
10 meeting?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. So, with that we're
13 going to take five minutes and we'll get started with
14 our hearing for the night.

15 [Special Meeting adjourned at 6:47 p.m.]

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