

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Regular Public Meeting
1444th Meeting Session [23rd of 2016]

6:36 p.m. to 8:00 p.m.
Monday, September 12, 2016

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

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Board Members:

ANTHONY HOOD, Chairman

PETER MAY, Commissioner

ROBERT MILLER, Commissioner

MICHAEL TURNBULL, Commissioner

Office of Zoning:

SHARON SCHELLIN, Secretary

Office of Planning:

JENNIFER STEINGASSER

JOEL LAWSON

MATT JESICK

ELISA VITALE

KAREN THOMAS

Office of Attorney General:

ALAN BERGSTEIN, ESQ.

ARIEL EBI, ESQ.

JACOB RITTING, ESQ.

P R O C E E D I N G S

CHAIRPERSON HOOD: Good evening, ladies and gentlemen. This is the public meeting of the Zoning Commission for the District of Columbia. My name is Anthony Hood. Joining me are Vice -- well, soon to be Vice Chair Miller, Commissioner May, and Commissioner Turnbull. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, Office of Attorney General, Mr. Bergstein and Mr. Ritting, and Mr. Ebi, Office of Planning staff, Mr. Jesick, Ms. Vitale, and Ms. Thomas.

Copies of today's meeting agenda are available to you and are located in the bin near the door. We do not take any public testimony at the meeting unless the Commission requests someone to please come forward. Please be advised that this meeting is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room, including display of signs or objects. Please turn off all beepers and cell phones.

Ms. Schellin, did I call your name? Office of Zoning Staff, Ms. Sharon Schellin?

MS. SCHELLIN: I wasn't listening.

CHAIRPERSON HOOD: Also the Office of

Planning, Ms. Steingasser and Mr. Lawson have joined us.

Okay, does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. We have made a few adjustments to our agenda, and I think that's already been notified so I don't think I need to go through that. Let me first -- I got two quick announcements I'm going to do on preliminary matters. And I'm going to do this very quickly.

I move that Rob Miller become the Vice Chair of the Zoning Commission and I ask for a second.

MR. TURNBULL: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion?

[Vote taken.]

CHAIRPERSON HOOD: Congratulations, Rob.

MR. MILLER: Thank you, Mr. Chairman.

CHAIRPERSON HOOD: Ms. Schellin, could you record the vote?

MS. SCHELLIN: Yes. Staff records the vote four to zero to one to have Commissioner Miller to be the new Vice Chairman, Commissioner Hood moving, Commissioner Turnbull seconding, Commissioners May

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and Miller in support. The third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Also, I would also just announce that the Zoning Commission again is going to continue the -- because of the weather, the dress code, relaxed dress code until I guess October the 1st. We should be back into our proper attire. So, so noted. Any objections? Not hearing any.

Okay. Let's go to consent calendar item. This is a minor modification and technical correction, Ms. Schellin.

MS. SCHELLIN: Yes, sir. On this first case the applicant is requesting a minor modification to add penthouse habitable space to a portion of the parcel 3A building that was previously approved by the Commission and also to make related modifications to the penthouse facades.

At Exhibit 5 there's a letter in support from ANC 6D, and at Exhibit 6 we have an OP report in support and we'd ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. Ms. Schellin has teed that up.

Any comments? Let me open it up. Any comments on this request?

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MR. MAY: I have a question.

CHAIRPERSON HOOD: Yes.

MR. MAY: So, with the changes, the one to one setback is met in all areas where relief was previously granted. Am I looking at the right one? I mean, there were two -- sorry. I'm trying -- we're looking at G, right?

CHAIRPERSON HOOD: G.

MR. MAY: So is this the one with the -- where the relief is needed at the court niche off the middle, off the courtyard in the center of it? That's the only area where relief was previously granted?

MR. JESICK: Yes, I think you're correct.

MR. MAY: Okay. Sorry. I read them out of order so I'm really confused about which one was which.

All right. Does it meet all other requirements for setbacks such as the new requirements that are explicit with regard to rails and things like that?

MR. JESICK: Yes. It looks like the handrails are set back at one to one.

MR. MAY: Okay. All right. That's fine. I think when something comes in for modification under

the new penthouse regulations it needs to meet all the new penthouse regulations. So, that's my question.

CHAIRPERSON HOOD: Any other questions? Are we ready to move forward with this?

MR. MILLER: Yeah, I mean, in reviewing the drawings it looks like they have met everything that was requested. I mean, it looks like it's basically the same footprint, same building other than exchanging the use up on the penthouse.

CHAIRPERSON HOOD: Okay. If we all agree, I would move that we approve for minor modification, Zoning Commission Case No. 11-03G and ask for a second.

MR. MILLER: Second.

CHAIRPERSON HOOD: It's moved and properly seconded. Any further discussion?

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes, sir. Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 11-03G, Commissioner Hood moving, Commissioner Miller seconding, Commissioners May and Turnbull in support, third mayoral appointee

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position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next, Zoning Commission Case No. 11-03H, Ms. Schellin.

MS. SCHELLIN: Yes, sir. This case, the applicant requests approval to increase the amount of penthouse habitable space within the Parcel 4 penthouse and make related modifications to the penthouse facades. At exhibit 5 there's a letter from ANC 6D in support. Exhibit 6 is an OP report that states they cannot recommend approval without the application, including further required modifications. At Exhibit 7 the applicant filed a request asking for additional relief per OP's report, specifically to provide a range of residential units on Parcel 4, plus or minus 14 percent instead of 10 percent from the number depicted on the plans. And it also requests a change to Condition 5B of the order, regarding the types of leased units.

And they're asking the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay. Commissioners, let's take this under. Whose case is this, Office of Planning? Mr. Jesick? Can you explain? You said she needed some additional modification. Can you give us a quick explanation of that? I know it's in

your report.

MR. JESICK: Sure. Thank you. Again, Matt Jesick with the Office of Planning.

In reviewing the request for the penthouse modification it came to light that the number of units in the building had changed significantly and the number of affordable units had also changed. The original order granted flexibility for a 10 percent change in the number of units.

The building, as designed, had a 13 percent reduction in the number of units, and also a change in the number of affordable units. What happened was some of the affordable units were shifted to Parcel 2 in the Southwest waterfront, and overall, the floor area of affordable units has actually gone up slightly. But in order to accurately reflect the situation on Parcel 4, we recommended that the applicant amend the order showing the change in total units, as well as the changes in affordable units.

CHAIRPERSON HOOD: Okay. Commissioners, we've heard explanation, a soundbite explanation of what the Office of Planning is asking before we move forward. Any other comments, Commissioner Miller?

MR. MILLER: Thank you, Mr. Chairman.

CHAIRPERSON HOOD: Vice Chair Miller, excuse

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me.

MR. MILLER: So, Mr. Jesick, so did you see the submission by the applicant with the changes to respond to your concerns? With those changes would you be okay with going forward with a minor modification or you still think that something that it needs to -- it needs something more than that?

MR. JESICK: We appreciate the submission by the applicant. This helps clarify things. I think in order to tie up all the loose ends it would be helpful if the order for Parcel 2 also reflected the changes to indicate the increase in affordability on that parcel.

MR. TURNBULL: So we -- I mean, one option is to defer this to another public meeting until we've had all of the documents filed.

MR. JESICK: Yes, that would be our recommendation.

MR. TURNBULL: Okay.

MR. MILLER: That's fine with me.

CHAIRPERSON HOOD: Commissioner Miller.

MR. MILLER: That's the only other question I had was, I mean, I think it was a good direction to have the larger sized units, both the market rate and the affordable. So I have no objection with that;

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with the order reflecting that.

But, the way they proposed dealing with it is to increase the flexibility from the original number, from 10 percent to 14 percent. I'm just wondering why don't we just -- if we're changing something why don't we just change it to the number to reflect the number and keep within the 10 percent, our normal 10 percent flexibility. Or does that create a different problem?

It just seems to be a more up front way of dealing with that number issue, rather than referring back to an original number that no longer is relevant.

MR. MAY: Right.

MR. MILLER: So that would be my recommendation that would resolve that, maybe between now and the next two weeks when we'd take this up again.

MR. MAY: I'd agree with that strategy. It makes more sense to, you know, set the number and then allow some minimal flexibility.

I have other questions.

CHAIRPERSON HOOD: Sure. But let's see. So we -- after we hear the questions from Commissioner May we're going to defer this and we can tie up some

loose ends, but he may still have some additional ones, so --

MR. MAY: Sure.

CHAIRPERSON HOOD: -- Commissioner May.

MR. MAY: So, you noted in this application and actually on the previously one, that the applicant did not estimate the value of the historic -- sorry, the House Production Trust Fund contribution. And we have, in the past, gotten those but I don't know that we necessary require it, so I appreciate your pointing that out. Is that something that we can get from the applicant?

MR. JESICK: We would also like to receive that, so which is why we pointed it out. It's not a requirement that he provide it. The actual contribution will be based much further on in the process, but getting an estimate at this point would actually be helpful.

MR. MAY: Okay. So I think we should ask for that. The other question is, again, there was previously some flexibility granted on the penthouse setbacks and so I have the question from the last one which is, does it meet all the new requirements for setbacks such as rails, et cetera, and I assume the answer is correct, that they do.

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But there is an area where I'm puzzled as to why -- I mean, I don't frankly understand exactly where I previously granted flexibility and so maybe I need an answer to that first.

MR. JESICK: No, it wasn't real clear in the original application, but if I can refer you to Sheet 0.8?

MR. MAY: Yeah.

MR. JESICK: Basically it's everywhere there's a little niche in the façade is where there was some flexibility granted. I can point out each of them, if you'd like.

MR. MAY: Okay. so, yeah, I can see one where there's a little niche in the façade. I see, in all of those around the façade, they're all -- we're dealing with the decorative treatment of the building. I don't really like this. I mean, again, I've been fairly a stickler about meeting setback requirements. Is this one of the buildings that's already coming out of the ground?

MR. JESICK: Yes, it's been permitted. It's permitted. It's well under ground.

MR. MAY: Is it well under construction. I mean, a bunch of them are well under construction.

MR. JESICK: It's well under construction.

MR. MAY: Yeah. So, you know, I'm in favor in principle on this one, but I really don't like all these exceptions when we're adding the space; adding the habitable space.

You know, at the very least if we're going to defer this I'd like to get a drawing that highlights where those -- where the areas of relief are. Including not just the niches, but where it starts to step on the -- what's that, on the south side? It starts to do that stepping. That first couple of steps it looks like it's well within the 14 feet, and that's probably the one that concerns me the most. The other ones don't bother me as much.

So, we defer that one.

CHAIRPERSON HOOD: Okay. Any other comments on this?

All right. And we deferred. Let's keep it moving. Anything -- you have anything else?

MR. MAY: No, that's it.

CHAIRPERSON HOOD: All right. Zoning Commission Case No. 12-18B, A Street Northeast Owner, LLC., request for minor modification at PUD at Square 858. Ms. Schellin.

MS. SCHELLIN: Yes, sir. The applicant is requesting flexibility to provide a clear floor to

ceiling height of less than 14 feet for 0.3 percent of the PUD's total ground floor retail space along H Street, which is necessary to accommodate a D.C. Water storm drain and its associated piping.

Exhibit 1H is a letter in support from ANC 6C. Exhibit 5 is an OP report in support of the request.

Ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay, colleagues, I think this is pretty straight forward. It tells us why this is needed. And if there's no objection or any further discussion, I would move Zoning Commission Case No. 12-18B for the request of the -- for the minor modification request for the subject that's listed in our submission and ask for a second.

MR. MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion?

[Vote taken.]

MS. SCHELLIN: Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 12-18B, Commissioner Hood moving, Commissioner Miller seconding, Commissioners May and Turnbull in support, third mayoral appointee position

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vacant, not voting.

CHAIRPERSON HOOD: Okay. Next. Zoning Commission Case No. 08-06G, Office of Planning technical correction to Zoning Commission Order No. 08-06A. Ms. Schellin.

MS. SCHELLIN: Yes, sir. This is the request from the Office of Planning for the third set of minor modifications and to technical corrections to the ZR-2016 and would ask the Commission to consider action, or authorizing the publication of the proposed rulemaking for this case.

CHAIRPERSON HOOD: Okay. Commissioners, any additional comments on this? Anything we want to add to the list? Probably have some later, but okay. Somebody like to make a motion?

MR. TURNBULL: Yeah, Mr. Chair, I would move that we approve Zoning Case No. 08-06G, Office of Planning technical corrections to ZC Order No. 06 -- I mean, 08-06A.

CHAIRPERSON HOOD: You got it?

MR. TURNBULL: G.

CHAIRPERSON HOOD: Okay. I'll second it. It's been moved and properly seconded. Any further discussion?

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes, sir. Staff records the vote four to zero to one to allow publication of the proposed rulemaking in Zoning Commission Case No. 08-06G, Commissioner Turnbull moving, Commissioner Hood seconding, Commissioners May and Miller in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next, Zoning Commission Case No. 08-06H. This is again, Office of Planning technical correction in Zoning Commission Order No. 08-06A.

Ms. Schellin, do we need to waive the rules --

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: -- for 10 days. Have already done that.

Any objections? We got the report a little less than the 10-day requirement. Any objections?

Okay. So we'll waive that. Ms. Schellin.

MS. SCHELLIN: Again, this is a request from the Office of Planning, this being the fourth group of minor modifications and technical corrections to the ZR-2016. Ask the Commission to consider allowing immediate publication of the proposed rulemaking for

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this case.

CHAIRPERSON HOOD: Okay. Any objections? Commissioner May? Or not objection, but any comments to -- Commissioner May?

MR. MAY: Mr. Bergstein, was this the one that you had a question about?

MR. BERGSTEIN: Yeah, we just asked for authority to allow the discretion not to advertise the amendment to Subtitle U, Section 252. I'd like to continue discussions with the Office of Planning.

CHAIRPERSON HOOD: Any objections? Not seeing any, so we will grant that authority. Anything else?

Thank you, Mr. Bergstein. Did somebody make a motion?

MR. MILLER: Mr. Chairman, I would move that with the exception noted that the Zoning Commission approve minor modification of technical correction -- or technical corrections in Zoning Commission Case No. 08-06H, from the Office of Planning technical corrections to Zoning Commission Order No. 08-06A, and ask for a second.

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

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Staff records the vote four to zero to one to allow immediate publication of the proposed rulemaking in Zoning Commission Case No. 08-06H, Commissioner Miller moving, Commissioner Hood seconding, Commissioners May and Turnbull in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next, modification of consequence. This is a new one so we're going to learn this one ourselves.

Zoning Commission Case No. 13-09A, Ms. Schellin.

MS. SCHELLIN: Yes, sir. The applicant is requesting a modification related to the redesign and relocation of architectural elements of the building based on the needs of Martha's Table and Community of Hope. Exhibit 4 is an OP report in support. Exhibit 5 is the letter from ANC 8B in support, however it doesn't give the required information in order to be given great weight. Would ask the Commission to consider this case this evening.

CHAIRPERSON HOOD: I believe the first thing we need to do, colleagues, and I'm sure Mr. Bergstein or someone will correct me is to make sure that we

see this in modification of consequence.

MR. BERGSTEIN: Yeah, it's similar to the usual procedure. If any member of the Zoning Commission believes it's not a modification consequence or a modification of significance, it would be removed from the consent calendar and you would have to set it down.

So it's up to any member of the Commission to just indicate that. If in the absence of that, then you can go forward.

CHAIRPERSON HOOD: Okay. Anyone need further study on this, or we find this as not being a modification -- or a modification of consequence.

MR. MAY: That's fine.

CHAIRPERSON HOOD: Okay. Anybody else? All right. So, not finding that I guess we can move forward with treating this as we do a consent calendar item. Any comments on this?

Again, asking for the redesign for some of the -- I guess some of the applications with some of the programs they're trying to run the modification.

MR. MAY: So, I mean, I would comment about it. I don't have any problem with proceeding with this under this process, but to me it's a demonstration. I mean, the things that they

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described and the reasons why the design had to change didn't seem to be new information. I mean, I think they knew who some of these providers were going to be, and I think that they knew some things about the configuration of the building, and they just hadn't designed it enough. And I'm not happy about that.

I mean, I think this is one of those ones where the design of the building was kind of half-baked, and so now they have to come back and pursue a modification in this circumstance because too much changed. It was outside the bounds of the normal flexibility that we would grant.

So I mean, maybe I'm wrong about that but that's what I'm getting as the message here, and you know, it's one of those things where we'd like to see things developed enough that we don't have to go through these kind of changes later on.

CHAIRPERSON HOOD: Okay. But you are not against the modification?

MR. MAY: No.

CHAIRPERSON HOOD: Okay. Any other comments on this?

All right. Somebody like to make a motion?

MR. BERGSTEIN: There actually is no motion

at this point.

MR. MAY: No motion.

MR. BERGSTEIN: The next thing you're supposed to do is to establish a timeframe for the parties in the original proceeding to file responses in opposition or support of the request, and for the applicant to respond thereto.

CHAIRPERSON HOOD: Okay. All right. So we don't need to make a motion on this. So the people who would have to respond to the ANC, the applicant, and whom else?

MS. SCHELLIN: That's it.

CHAIRPERSON HOOD: That's it? Just the party and the applicant?

MS. SCHELLIN: And OP. And OP.

CHAIRPERSON HOOD: And the Office of Planning. Okay.

MS. SCHELLIN: And DDOT. So I can --

CHAIRPERSON HOOD: All right. And DDOT? Okay. Well, I just want to make sure --

MS. SCHELLIN: If they choose to, then, yeah.

CHAIRPERSON HOOD: -- of who all is supposed to respond.

MS. SCHELLIN: Yeah. So do you want me to give you some dates?

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CHAIRPERSON HOOD: Yeah, you have some dates now?

MS. SCHELLIN: Okay. If the Commission is okay with it we could have the -- oh, boy, this will actually be pushing them to October, actually. If we could have the ANC provide their letter by the 19th, the applicant will respond by the 26th, and then this would not come up until the meeting on the 17th of October.

Does the Commission want to put it off that long?

MR. MILLER: Can I ask a question about that --

CHAIRPERSON HOOD: Sure.

MR. MILLER: -- schedule? I mean, you said the ANC did submit a letter. The only thing that's missing is they didn't have the proper language saying that there was a quorum. And so that's all that's needed. They're the only party.

MS. SCHELLIN: And the vote. They don't have a vote either.

MR. MILLER: They don't have the vote.

MS. SCHELLIN: Yeah.

MR. MILLER: So maybe, it seems to me that that can be accomplished within two weeks before our

next meeting and I don't think the applicant is going to respond negatively to a --

MS. SCHELLIN: Yeah, the applicant is indicating they don't plan to respond so --

MR. MILLER: And OP was --

MS. SCHELLIN: OP has provided --

MR. MILLER: -- supportive of the minor modifications. I mean, the modification consequence. So it just seems to me that this could all be resolved with the ANC being informed that they need to send a proper letter.

MS. SCHELLIN: Mr. Tummonds, can you work with the ANC to get them to provide a proper letter? Okay. So we could get that letter by the 19th and we could put this on for the 26th.

CHAIRPERSON HOOD: Okay. Now, I don't want the agenda on the 26th to build up and so we have another issue, so let's make sure we monitor how much stuff we're putting on to the -- kicking down the road. Okay? So, thank you. Anything else on that?

MS. SCHELLIN: No.

CHAIRPERSON HOOD: Okay. All right. Thank you. Let's continue with final action, Zoning Commission Case No. 04-33G, campaign for Inclusionary Zoning text amendment in Inclusionary Zoning.

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MS. SCHELLIN: Yes, sir. On this case the Commission just asked -- there's no vote this evening, but the Commission did ask for an update from DHCD to provide a letter regarding timing for them to implement the IZ program once the Commission did take final action on this case, which is scheduled to happen at the, I believe it's the October 17th meeting.

And so you have before you at Exhibit 249, that letter from DHCD, and so it's just --

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: -- for your information.

CHAIRPERSON HOOD: Informational purposes.

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Commissioners, any question? We do have the director here. Do we have any question? I think the letter was pretty straight forward for me. But are there any follow up questions?

Okay. So we don't have any. We'll deal with this on the 7th -- 17th of October, and thank you, Director, for coming down.

Okay. Where am I?

MS. SCHELLIN: H.

CHAIRPERSON HOOD: Oh, okay. I'm sorry.

Let's move on to the next one. Zoning Commission Case No. 04-33H. Again, Director, hold off.

Office of Planning text amendment, Inclusionary Zoning, addition of affordable housing required by District law to exemptions for Inclusionary Zoning. Ms. Schellin.

MS. SCHELLIN: Yes, sir. At Exhibit 8, we have an OP supplemental report asking for emergency action regarding the Inclusionary Zoning text. Would ask the Commission to consider taking emergency action this evening.

CHAIRPERSON HOOD: Okay. We have a request, Commissioners, for emergency action and spelled out in the report. What is your pleasure?

MR. TURNBULL: I'm ready to go ahead.

CHAIRPERSON HOOD: Okay.

MR. TURNBULL: So want me to make a motion?

CHAIRPERSON HOOD: So yeah, somebody could make a motion.

MR. TURNBULL: Mr. Chair, I would move that we take emergency adoption of the rules proposed in Zoning Commission Case 04-33H to exempt the affordable housing mandated by the law for Inclusionary Zoning and inclusion in this case of technical proposed cased 04-33G pertaining to the

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minimum income targets for such exempted projects.

MR. MILLER: I would second that, and as part of your motion to move the 04-33G amendments to 04-33H as recommended by --

MR. TURNBULL: Absolutely. Yeah, I stand corrected. You're absolutely right.

MR. MILLER: Thank you.

CHAIRPERSON HOOD: Okay. It's been moved and properly seconded. Any further discussions?

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes, sir. Staff records the vote four to zero to one to approve the emergency action requested and to move the text from 04-33G to 04-33H, Commissioner Turnbull moving, Commissioner Miller seconding, Commissioners Hood and May in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next, Zoning Commission Case No. 08-33F, MIRV Holdings, LLC., 10-month time extension, Irving Street and Michigan Avenue Northeast, Parcel 121/31. Ms. Schellin.

MS. SCHELLIN: The applicant is requesting a 10-month PUD time extension to May 31st, 2017, citing

that the property is encumbered by 66-inch storm sewer pipe running diagonally across a portion of the site. This is their third time extension with the 2016 regulations, which limits the number of time extensions. They're asking for a waiver of that rule. Exhibit 5 is an OP report in support of the extension request.

CHAIRPERSON HOOD: Okay. Commissioners, I guess first we need to waive our rules and I know we don't like putting rules in place and then waive them immediately, but I think this is a different circumstance. I think this is part of the conversion and I would not -- this is not precedent setting. I'm not going to be too happy about waiving all of our rules, but I think this is the changeover from our old regs to our new regs and I believe that this is a minor request, especially as we get into our new regulations.

But I would be in favor of waiving it, but let me open it up for comments. Commissioner May?

MR. MAY: I agree with you. And I think in this circumstance we see substantial evidence that the project is moving forward after a long time, and they're at the point where they're trying to work through some very difficult technical issues to get

the permits issued. And I can understand that. It's different from a lot of the other ones where we were seeing repeated requests for extensions because the financing wasn't there or something like that. You know, they're trying to keep the entitlement alive even though the project is probably dead. And that happens, you know, to us periodically. It's not one of those cases. So I think I'm comfortable in this circumstance granting this short extension.

CHAIRPERSON HOOD: That must have been them calling to thank us, but we haven't done it yet. So, any other comments?

Okay. Somebody like to make a motion?

MR. MILLER: Mr. Chairman, I would move that the Zoning Commission take final action on Zoning Commission Case 08-33F, MRV Holdings, LLC., a 10-month time extension at Irving Street and Michigan Avenue Northeast, Parcel 121-31, and ask for a second.

MR. TURNBULL: Second.

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

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 08-33F, Commissioner Miller moving, Commissioner Turnbull seconding, Commissioners Hood and May in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next let's go to Zoning Commission Case No. 15-33, Insight E Street, LLC., consolidated PUD and related map amendment at Square 1043. Ms. Schellin.

MS. SCHELLIN: Yes. At exhibits 38 and 39, 41 and 42, we have the applicant's submissions after proposed action was taken. Exhibit 40 we have an OP supplemental report, would ask the Commission to consider final action.

CHAIRPERSON HOOD: Okay. Somebody like to get us started on --

MR. MAY: Yeah. So some of the questions that came up in this case were issues that I had had, and I appreciate having the new drawings of the front façade and how we see it from across the street, and I am okay with the front façade handrail as it's -- sorry, the façade and parapet handrail, et cetera, as it has been shown in that design, and it was originally designed and so I'm okay with moving

forward with that as the applicant would like. And I appreciate the explanation of the setback on the handrail on top of the penthouse. I don't understand why that would be necessary, simply for the sake of serviceability of solar panels. I'm scared if that's in fact going to be a requirement because we're going to see a lot more solar panels on top of penthouse structures, and I wouldn't want to see -- have to have handrails on top of every one of those. There's certainly other ways of doing fall protection and so on, so hopefully that's not going to be a precedent, but it's set back one to one and it's still no higher than the elevator overrun, so I'm okay with it.

CHAIRPERSON HOOD: Okay. Also, I think DDOT is fine. The applicant has continued discussions with DDOT and determined that the MOU, the ANC 6B, they are satisfied with moving forward with that.

I think somebody asked for review of distribution of IZ units. I think everybody is satisfied, but let me open it. Any other discussion?

MR. MILLER: Did we also mention that they enhanced the LEED to LEED Gold as well? That's very -- we're appreciative of that.

CHAIRPERSON HOOD: All right. Anything else on this? I think this is pretty straight forward.

We're ready to move forward on this with the comments as noted. I would ask -- I would move that we approve Zoning Commission Case No. 15-33 and ask for a second.

MR. MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion?

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 15-33, Hood -- Commissioner Hood moving, Commissioner Miller seconding, Commissioners May and Turnbull in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Let's move right along. Zoning Commission Case No. 15-32, 1126 9th Street Northwest, LLC. consolidated PUD and related map amendment at Square 369. Ms. Schellin.

MS. SCHELLIN: Yes, sir.

CHAIRPERSON HOOD: Your microphone. Is your mic on? Or is mine on?

MS. SCHELLIN: I'm sorry. On this one we have Exhibits 35 through 36A, or the applicant's

submissions after proposed action was taken. Would ask the Commission to consider final action.

CHAIRPERSON HOOD: Okay. I can't do nothing but open up discussion. My computer now has died. So, let me open it up for discussion.

MR. MAY: So, Mr. Chairman, I happen to know from the fact that I serve on NCPC, that NCPC has a concern. They believe that this project violates the Height Act because of the penthouse structure, the way it extends up and the way it faces on M Street.

And there unfortunately is not anything in the record from NCPC at this point. Or at least there wasn't when I downloaded my records. I'm wondering if the Office of Planning had heard anything further from NCPC on that because I think this is one of those areas where we need to have the Zoning Administrator's opinion on it.

MR. LAWSON: I have not.

MR. MAY: Okay. So, Mr. Chairman, you know, what I would hate to have happen is for us to take final action to approve this and then find out that in fact there is a concern with the Height Act from the Zoning Administrator's perspective. So I would really like to have the Zoning Administrator look at the action that NCPC took and give us his assessment

of whether in fact it is consistent with the Height Act or not. And then I think we can act with certainty at that point. And hopefully all that can happen before the meeting on the 26th. Hopefully we can take this up again.

CHAIRPERSON HOOD: Okay. Commissioners, I would like for all of us hopefully to accept Commissioner May's recommendation so we only have to deal with this once as opposed to having to redo things, and I think he makes a valid point. Anything else on this? Anything else?

Okay. So we're deferring this until -- did we say a date? To the next -- 26th? That 26th is building up, isn't it?

MR. MAY: You know, I checked with Ms. Schellin before the meeting came out, the 26th agenda, and it was pretty light before we started so I think --

CHAIRPERSON HOOD: Okay. Okay.

MR. MAY: -- we're okay.

CHAIRPERSON HOOD: So the 26th, we can just put everything on the 26th. Okay.

MR. MAY: Yeah, but who's playing that night?

CHAIRPERSON HOOD: Let me just say this. Let me just say this, my team won yesterday so all the

rest of that doesn't matter. Okay. Let's move --

MR. MAY: My team tied. Does that mean anything?

CHAIRPERSON HOOD: Nobody watches that.

MR. MAY: Oh, yeah.

CHAIRPERSON HOOD: Okay. We got to have a little fun.

Okay. So, anything else we need to say on 15-32? Okay. So we're going to defer that to the 26th.

Okay. Let's go to Zoning Commission Case No. 16-08, Office of Planning text amendment, nonconforming use in Lanier Heights. Ms. Schellin.

MS. SCHELLIN: Yes, the proposed rulemaking was published and we received no comments and we'd ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay, colleagues. I don't know how much more we need to add to this. I think we've really had a real flushed out hearing especially, and then we dealt with this in our proposed. Any other comments added to this? Mr. --

MR. TURNBULL: I would agree, Mr. Chair. I think when we did our proposed action we really went through those and talked about all these issues in

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the language. So I feel pretty good about going forward.

MR. MAY: I'm sorry. I'm catching up. This is 16-08, right?

CHAIRPERSON HOOD: Yeah, 16-08. Right.

MR. MAY: So I wasn't here for the proposed action or that hearing, but I have reviewed the record in its entirety and so I am prepared to participate in this case.

CHAIRPERSON HOOD: Okay. Thank you, Commissioner May. Somebody like to make a motion?

MR. MILLER: Mr. Chairman, I would move that the Zoning Commission take final action on Zoning Commission Case No. 16-08, Office of Planning text amendment regarding nonconforming uses in Lanier Heights, and ask for a second.

MR. TURNBULL: Second.

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

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 16-08, Commissioner Miller

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moving, Commissioner Turnbull seconding, Commissioners Hood and May in support, third mayoral appointee position not vacant, not voting.

CHAIRPERSON HOOD: Okay. Next let's go to the proposed rulemaking. I'm sorry, Zoning Commission Case No. 15-13, Watkins Alley, LLC., consolidated PUD and related map amendment at Square 1043. Ms. Schellin.

MS. SCHELLIN: Yes. At exhibits 50 and 51 we have the applicant's post-hearing, or their submissions after proposed action was taken, and we'd ask the Commissioner to consider final action.

CHAIRPERSON HOOD: Any other comments on this? I think we got a lot -- I think we put this off like two or three times to get a final resolve on it and I think that happened. Any further discussion on this?

MR. MAY: Yeah, sorry.

CHAIRPERSON HOOD: Okay.

MR. MAY: My computer was a little slow coming up. I think that -- I mean, I don't have anything to add in terms of the discussion of the meat of the project. I would note that there are a few editorial changes that I would suggest for the order where there are several references to the

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superior architecture of the project. I agreed that much of the design of this is contextually appropriate and certain aspects of the design are very good, but I would not say that it meets the standard of being superior architecture, so I would simply suggest that those -- that language in the order, the final order, be modified. And that's findings of fact 42A, 50, and 60.

CHAIRPERSON HOOD: Okay. Anything else?

Okay, so with the addition from Commissioner May I would move that we approve Zoning Commission Case No. 15-13 and ask for a second.

MR. MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion?

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Staff records the vote four to zero to one, Commissioner -- to approve final action in Zoning Commission Case No. 15-13, Commissioner Hood moving, Commissioner Miller seconding, Commissioners May and Turnbull in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next, Zoning

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Commission Case No. 15-29, Jamal's Gateway D.C., consolidated PUD and related map amendment at Square 2960. Ms. Schellin.

MS. SCHELLIN: Yes, sir. At Exhibits 50 through 52 and 55, we have the applicant's submissions after proposed action was taken. At Exhibit 53 we have an update from Mr. and Mrs. Jefferson. At Exhibit 54 we have ANC 4B's resolution not in support of the project without certain conditions included in the order. At Exhibits 57 and 58 the applicant responded to ANC 4B's resolution, seemingly to accept all of their conditions.

So we'd ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay. Commissioners, any further comments on this case?

MR. MILLER: Mr. Chairman, I just wanted to commend the applicant and the ANC for working together to come to an agreement.

CHAIRPERSON HOOD: Okay. Anything else? You know, I asked for a few things, especially from the Jefferson family. And as I went through what I started looking at, and as Commissioner Miller has already mentioned the ANC 4B, which I think most of it's in 4A, if I remember correctly, and I'm going

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off the top of my head, but the letter support from 4A. And then 4B worked out some resolutions with the applicant and now I think they both are in agreeance with some of the things that 4B has, some of the issues.

So we went back and forth with 4B a few times, but it looks as though they've come to some resolution. Some may be within our jurisdiction. Some may not be. But I was a little disappointed in the legal counsel for the Jeffersons because what I was trying to do kind of went beyond the scope of our authority. I was trying to find some of the things that would try to help mitigate some of the other issues that they had. And all I got back was talking about the basic business license, which I don't believe, and Mr. Bergstein, Mr. Ritting, you all can let me know, but that's not within our authority.

The overall plan for the renewal of the proposed traffic study for the Ward 4 area, which is addressed, I think, to Councilmember Todd, Brandon Todd. And then there are some new substantial neighborhood involvement, both in the ANC 4A and 4B regarding adverse impacts on the community. And I think this Commission went through that and we tried to evaluate that.

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I didn't exactly get, two times, what I was trying to get from the Jefferson family. But then I started thinking about -- and I know they're sitting in the front row, but I also started thinking about the husband who is in support, and his wife, who was in opposition. So I had to try to reconcile my thoughts with all that, and also with the submissions that we got from ANC 4B. As you've already noted, it looks like there has been a lot of work that has transpired between the applicant and the ANC, even though -- 4B and 4A. I know they're right across the street or they share some boundary lines.

But I'm in favor of moving forward with this case and I'll let the record speak for itself. Anything else?

All right. Commissioner May?

MR. MAY: Yeah, I would agree with the Chairman. I think that most of the concerns that remain for the Jeffersons are outside the realm of what are actually specifically zoning related. And so there isn't much that we can do but some of the things that the applicant has offered to do I think will mitigate the concerns of the Jeffersons.

Now, whether it's enough you know, we can never say. It seems like there are some

extraordinary concerns on the part of the Jeffersons, which go well beyond what we can do and perhaps go well beyond what even building code regulations would help them with. But I do, I appreciate the applicant's interest in, you know, in trying to reach an accommodation. And what I saw in the submissions was, I think, pretty extraordinary. Not the sort of thing we normally see in terms of trying to satisfy the specific concerns of an adjacent neighbor.

I do have two concerns about the agreement with the ANC. One is the proposal to construct a welcome sign, which you know, may or may not be needed. I don't really have a problem with that, but I'm a little concerned that we would be -- that that would become a condition of this order. And according to the latest from Mr. Ritting, that actually is included as a condition of the order. And it's not something that we've seen or designed, and I'm not sure who reviews it and all that sort of thing. I'm perfectly happy with the idea that it would be -- you know, that we would reference that as part of the agreement with the ANC, and that the applicant would be obliged to live up to that requirement.

But I don't want, you know, since we're not

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actually reviewing and approving that sign, I don't want the order to reflect that perhaps we are.

MR. RITTING: And to clarify the remark I made to you earlier, the condition that is in the record refers to the triangular park.

MR. MAY: Yeah.

MR. RITTING: It does not --

MR. MAY: Does not specifically mention the sign?

MR. RITTING: -- specifically mention the sign, no.

MR. MAY: Okay. So, it's just the agreement to make improvements to the park?

MR. RITTING: I can read it. It says, "Prior to the issuance of a certificate of occupancy for the building and for the life of the project, the applicant shall maintain the grass and landscaped area located within the curb line of the triangular median within the intersection of Georgia, Kalmia, and Alaska.

MR. MAY: All right. So I'm comfortable with that. I'm sorry if I went off too far on the welcome sign, but I just you know, if we're going to be giving our approval to something that includes a feature like that I think we'd need to see what that

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feature looks like. But that's not the case.

The next thing that I had concern about is that the applicant has requested flexibility on colors within a color range, and that's something that they agreed with on the ANC, and it was supposedly attached to the submission. But I didn't actually see it. And I wonder if that -- if there was just a glitch. Did anybody actually see that color range that was supposedly attached to the submission? And does the applicant's attorney happen to have that, because I think that would be helpful to see.

MR. TURNBULL: I don't think there was an attachment.

MR. MAY: Certainly wasn't in the --

CHAIRPERSON HOOD: Well, one thing I --

MR. MAY: The document that I reviewed.

CHAIRPERSON HOOD: And I know we don't go on assurances. One thing about knowing some of the folks up in that area, this applicant going to do what he said he's going to do, whether it's in our order or with the agreement with the ANC.

MR. MAY: Uh-huh.

CHAIRPERSON HOOD: He's going to wish he never moved up there. So I'm pretty sure that I feel

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confident about the sign, working with the ANC and the group up there that as he's moving forward I'm pretty sure that he's going to carry some of this out. But I know from a legal standpoint we have to make sure that we have it.

And I also looked at that color pallet that they were talking about, and typically I wouldn't really want to hold this up for that. But I think that is important to our --

MR. MAY: I --

CHAIRPERSON HOOD: Let me just finish.

MR. MAY: Yeah, sure.

CHAIRPERSON HOOD: I think it's very important to our proceedings. But I don't know if we normally just yell that out. We usually look at something like that and for our records. So, I would not really want to hold it up for that but maybe Mr. Freeman may have it. Does Mr. Freeman have it? I'm asking so we can move this thing forward.

Mr. Freeman?

MR. FREEMAN: Good evening. For the record, Kyrus Freeman, Holland and Knight. I just forwarded it to Ms. Schellin for the record.

CHAIRPERSON HOOD: Okay. Thank you.

MR. TURNBULL: Electronics is wonderful,

isn't it?

CHAIRPERSON HOOD: It is when it's working.

MS. SCHELLIN: I haven't gotten it yet.

MR. MAY: Do you want to move on to another case and then come back to this when we get that in?

MS. SCHELLIN: Yeah, I'll put it in the record after you -- if you guys want to move on.

CHAIRPERSON HOOD: Okay. So you can put it. Okay. Good. All right. We'll put that in the parking lot with everything else. Okay. So we'll come back. Is that the only outstanding issue that we have on this, is the color pallet?

MR. MAY: Yeah.

CHAIRPERSON HOOD: Okay. All right. Let's go on to Zoning Commission Case No. 15-28. This is Foulger-Pratt Development, LLC., consolidated PUD and related map amendment at square 772. Ms. Schellin.

MS. SCHELLIN: Yes, sir. At exhibits 38 and 39 we have the applicant's submissions after the Commission took proposed action. Would ask the Commission to consider final action.

CHAIRPERSON HOOD: Okay. This is a case that -- has the order been issued?

MS. SCHELLIN: No, this is up for final action. Not this one.

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CHAIRPERSON HOOD: Okay. Oh, not this one. Okay. All right. Getting confused and all.

All right. Let's open this up. Any questions or comments on this? I'm jumping ahead of myself. If there's no comments or any additions, I'll take a motion.

MR. MAY: I'm having computer problems so I can't pull it up.

CHAIRPERSON HOOD: Mr. Turnbull said that technology was wonderful.

MR. MAY: Uh-huh.

MR. TURNBULL: My technology is wonderful.

CHAIRPERSON HOOD: Oh, so it must be working tonight.

MR. MILLER: In the meantime I would just comment that this is one of those that the project has been upgraded to have LEED Gold since we took proposed action, which is a good thing and it also is one that includes 50 percent AMI units as part of the Inclusionary Zoning, which is a good thing.

CHAIRPERSON HOOD: Okay. Anything else? You're trying to get it up, still? We'll wait on you.

MR. TURNBULL: Do you want mine?

CHAIRPERSON HOOD: I'm sorry. Oh, sharing

tonight, huh?

MR. TURNBULL: I'm a very sharing --

CHAIRPERSON HOOD: Those kind of chances go around.

MR. TURNBULL: I'm a very giving person.

MR. MILLER: Mr. Chairman, I would move that the Zoning Commission take final action on the Zoning Commission Case 15-28, Foulger-Pratt Development, LLC., consolidated PUD and related map amendment at Square 772 and ask for a second.

MR. TURNBULL: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion.

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes. Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 15-28, Commissioner Miller moving, Commissioner Turnbull seconding, Commissioners Hood and May in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Ms. Schellin, have you had any success?

MS. SCHELLIN: Not yet. I'm almost there.

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CHAIRPERSON HOOD: You're almost there?

Okay.

MS. SCHELLIN: If you want to go to the next case.

CHAIRPERSON HOOD: Yeah, let's go to the next one. Zoning Commission Case No. 03-12T/03-13T, Capper Carrollsburg Venture, LLC. and DCHA, six-month PUD time extension at Square 769N, Ms. Schellin.

MS. SCHELLIN: Yes, the applicant is requesting a six-month PUD time extension to February 14th, 2017. This is their third time extension and again with the 2016 regulations limiting the number of extensions, they're asking for a waiver of that rule. The applicant states that despite good faith efforts to move forward with the project they're unable to obtain complete project financing and have been unable to secure all the required agency approvals.

Exhibit 4 is an OP report in support.

Exhibit 5 is a letter in support from SMD 6D-07.

CHAIRPERSON HOOD: Okay. Commissioners, this is another time extension. But what is your pleasure on that; on this? Commissioner Miller? Vice Chair Miller?

MR. MILLER: Thank you, Mr. Chairman. I'm

supportive of the waiver of the rules to allow the six-month time extension. I think it appears that the construction is imminent but there's some storm water sharing and other agreements that they're just trying to finalize and so I think we should go forward with that waiver and six-month extension.

CHAIRPERSON HOOD: Okay. Any other comments? I would agree. Any other comments? Somebody like to make a motion? Six months?

MR. TURNBULL: Mr. Chair, I would move that we take final action on Zoning Case No. 03-12T, 03-13T, Capper Carrollsburg Venture, LLC. and DCHA six-month PUD time extension at Square 769. I look for a second.

MR. MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion.

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes, sir. Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 03-12T and 03-13T, Commissioner Turnbull moving, Commissioner Miller seconding, Commissioners Hood, May in support, third

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mayoral appointee position vacant, not voting.

And you can now see that exhibit. It's the last exhibit.

MR. TURNBULL: On which? 15-29?

MS. SCHELLIN: 15-29.

CHAIRPERSON HOOD: We must have to reboot.
Do I need to reboot?

MS. SCHELLIN: You may have to.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: You may have to go out and --

CHAIRPERSON HOOD: I'm scared to cut it off
because it may not cut back on.

[Pause.]

MR. TURNBULL: There would appear to be a range. There's three colors, red, kind of a red, orange, and a more beigey color.

CHAIRPERSON HOOD: Is that Exhibit 59?

MS. SCHELLIN: Yes.

MR. TURNBULL: Uh-huh.

CHAIRPERSON HOOD: We can look at -- hasn't got to mine yet.

[Pause.]

MR. MAY: What was the range originally? Or what was the one originally? Does anybody know?

[Pause.]

MR. MILLER: Mr. Chairman, I'm personally supportive of the range of colors and don't have any problem with that.

CHAIRPERSON HOOD: Anybody who's not supportive?

[Pause.]

CHAIRPERSON HOOD: All right. So we're supportive. So any -- who's getting ready to make the motion, because I think that was the only outstanding issue?

Thank you, Ms. Schellin and Mr. Freeman, for getting that to us.

MR. MILLER: Mr. Chairman, I would move that the Zoning Commission take final action on Zoning Commission Case No. 15-29, Jamal's Gateway D.C., consolidated PUD and related map amendment at Square 2960, and ask for a second.

CHAIRPERSON HOOD: I'll second it. It's been moved and properly seconded. Any further discussion.

[Vote taken.]

CHAIRPERSON HOOD: Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes. Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 15-29, Commissioner Miller

moving, Commissioner Hood seconding, Commissioners May and Turnbull in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next let's go to Zoning Commission Case No. 15-16. This the MRP Rhode Island Avenue Investors, LLC., and all first stage and consolidated PUD at Square 3629. Ms. Schellin.

MS. SCHELLIN: Yes, sir. Yes, sir. For this one we have Exhibits 91 through 93C, 95, and 95A. We have the applicant's submissions after proposed action was taken and we'd ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay. Commissioners, any questions or follow-up questions or issues with this case? Commissioner May?

MR. MAY: Yeah, you know, this is a very complicated case and I think that there are some outstanding questions and issues with the final order that need to be sorted out and you know, on that basis alone I think it's -- we need to consider deferring action.

I have a few other comments, though. The first is that the ANC is offering support if they proffer 14 percent affordable housing all at 60 percent of AMI, and that's just so, so different from

not only what we have in this case but what we normally see. I mean, to see that -- to request that level of affordability, I mean, at the last minute to say well their support is conditional is, you know, we're very clearly not going to get there. Or we've previously voted that eight percent with a 50/50 split between 50 percent and 80 percent of AMI for phase one, and then a slightly different split on phase two, that that's acceptable.

So I don't see that we're going to get anywhere close to what the ANC is asking for.

I have two other comments. One is on the setback on 4th Street which they've showed us some drawings that I think demonstrate a little bit better what they have in mind, but I don't think what they've done is particularly good. I mean, matching the cornice line from the buildings across the street, and then setting back only a short distance and popping up very tall I think is just, it's not going to cut it.

And now -- and I would prefer something better. Particularly if we're going to send it back out to the -- or defer action while the applicant does some more work with the OAG to get the order straightened out.

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But in my view they should be going up -- you know, they don't have to match the cornice line of the townhouses across the street because this is very clearly going to be multi-family buildings. It's a fairly wide street. You know, it can be 40, 50 feet on that first tier. But then it has to set back a more substantial amount before it goes all the way up to 70 or 90 feet or whatever it is. I think it's two steps and it just -- the setbacks are so minimal that across from the street it doesn't mean -- from across the street it means absolutely nothing.

So I think they need to, you know, make the building a little bit taller at the first level. You know, go up another story or two at the you know, at the street façade, and then step back everything else from there, and maybe they can do it in only one step. I think that would be a much better approach.

And, you know, maybe it doesn't have to be one to one, but it certainly -- you know, stepping back whatever it is, eight feet, you know, after you go up 21 feet or whatever, 31 feet, I just think is -- it just doesn't work.

So the second thing is that the signage guidelines that they submitted are kind of worthless. They don't really offer any protection that are

responsive to our concerns. I mean, I think we are looking for a signage diagram that would indicate where the signage would be and what would be acceptable. Basically they're saying that, you know, pretty much anything goes but the owner has to approve it. That's not what we're looking for. We're looking for something that actually keeps it under control. Particularly the building signage that goes up the building as opposed to the retail signage that might be at the ground floor.

So, I mean, this is the sort of thing that has been done before and it's been done to our satisfaction and the applicant or its attorney can certainly figure out some things that have worked in the past. But what we've got here is just worthless. So that's my opinion on that.

So another reason why I think we should defer while they improve on the setback issue and improve on the signage issue.

CHAIRPERSON HOOD: Okay. We have up for deferral, anyone else? Any other thing you want to add to --

MR. TURNBULL: Yeah, I would just agree with Commissioner May. I think that the building looks like a canyon. I mean, it looks like a cliff, and it

just looks very stark. The relief, the setbacks that they've done are very minimal and it really does not offer the kind of texture and relief that you want to see as you're going down the street. So I think they really have to revisit that.

And I would agree on the signage, the residential building signage guidelines. When they talk about on Building 1A, that you can have a 60 foot by four-foot-wide corner signage, I think that's a little bit excessive.

So what I want to see is they ought to do it building by building and show exactly where the proposed signage is, just as we've seen by other applicants before. They have a diagram, they show the building, and they tell us exactly not in just very -- in this kind of just language, what they're proposing to do. And as Commissioner May said, basically, whatever the owner accepts, that's what it will be.

We need some better ideas of what they're really proposing. But definitely, we're not going to approve a 60-foot by four-foot signage on that residential building. I mean, at least I won't approve that.

CHAIRPERSON HOOD: Okay.

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MR. TURNBULL: I think that's ridiculous.

CHAIRPERSON HOOD: All right. Let's -- anything else? Let's go ahead and defer this. I don't think there's any objections up here. Ms. Schellin, do we have a date? The 26th?

MS. SCHELLIN: The 26th. I believe one of the items, one of the two items I had is being taken off, so --

CHAIRPERSON HOOD: All right. So we can add that one to the 26th.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: Okay. So we will defer that and I hope the applicant will take the note of the comments that my colleagues have just mentioned. Anything else on this?

All right. Let's go to -- what I'd like to do before I go to proposed action is just -- let me deal with the other business consideration sua sponte of the BZA Case No. 18991, appeal of John Stokes. I want to do that right quick.

Colleagues, Ms. Schellin, do you need to tee this up or -- Ms. Schellin.

MS. SCHELLIN: I really don't have anything to say other than say that Chairman Hood had asked that this be brought to the Commission's attention.

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And so all the Commission members have been provided with a copy of BZA Order No. 18991 for consideration this evening.

CHAIRPERSON HOOD: Okay. I think the only things that we have to do here, I am going to bring - - I am bringing this case to the Commission.

MS. SCHELLIN: I'm sorry. There was one more thing. Ask the Commission to waive the 10-day rule because the fact that you were on August recess and we did not have any meeting to be able to consider this.

CHAIRPERSON HOOD: Okay. Again, as I was stating, I am bringing this to the Commission. There are two things that I want to do is -- first of all, I want to waive -- get permission or ask my colleagues to join me in waiving the rule because we do not meet in the month of August. That was a roadblock that I was faced with as bringing this.

So can I get a general consensus on waiving that rule for the specific fact that we don't meet in August?

MR. TURNBULL: I would go along with that.

CHAIRPERSON HOOD: Thank you.

MR. MILLER: I'm supportive of that.

CHAIRPERSON HOOD: Okay. And what I wanted

the Commission to do was to examine this case because the BZA -- I sat on this case, and one of the things -- this reminds me of the Euclid Street, 1327 Euclid Street, which we actually sua sponte some years back. And this reminds of something similar, even though this is more germane to the integrity of the R-4 zone.

One of the problems I had going through this, I thought this was totally out of scale, totally inappropriate. But the BZA, and which if you look at the transcript you'll see that none of them said, well, I really don't want to vote for this but they felt like their hands were tied and I just didn't -- I didn't agree with that, and I know that we've been advised that the BZA does not look at the Comprehensive Plan, but I think right is right. And I know there are some other factors going on with this case which even makes it even more significant for the Zoning Commission to look at this. The integrity of the Comp Plan, the Zone Plan, and all this is being just basically thrown out the window on this case. If we're going to allow this process to move forward, and I would like for the Zoning Commission, for us to examine or start the process with the sua sponte, because if we're going to allow

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this then there's really no need from my standpoint, for a Zoning Commission to be sitting and monitoring and making regulations and rules, if we allow this type of activity.

So I think they have usurped the -- went well above the authority of the Zoning Commission, which I could have -- I tried to find reasons for them to look at this and develop, I mean, and to be able to agree with me in the vote. But the issue was, they felt like their hands were tied.

I don't really want to vote for this but I have to, and some of those kind -- you can read it for yourself. And I'm not talking about my colleagues. But you know, we debated this whole issue. I think this is totally inappropriate for the R-4 Zone and what's being proposed.

So anyway, I wanted us to examine it, and bring it to the Commission and make sure that was the intent of the regulations in which we write. And so that's where I am. You all have agreed to waive the rule and I just want the Zoning Commission to examine this sua sponte.

Any other comments on this? Commissioner Miller.

MR. MILLER: Mr. Chairman, I did review the

board, the BZA's order, and the records and the transcript and the exhibits on that case. I think I watched it each time it was presented.

I mean, I -- the R-4 rules were changed after this project was permitted and this may be an example of why R-4 needed to be changed. But I found the Board's -- the arguments in the Board's order somewhat -- I mean, pretty persuasive as to why it met the then regulations of the R-4 zoning. So, I'm not really supportive of us.

I don't think there was an egregious error by the -- I can understand why you want to -- why there was discomfort at the Board level. I watched that when you all were deliberating. But just, I'm not sure I want the Zoning Commission to intervene in this case. I'm not sure that there was an error.

CHAIRPERSON HOOD: Okay. I really didn't want to get into the merits. I wanted to make sure that those who may not have had a chance to review everything and have a discussion, but let me hear from others. Commissioner Turnbull or Commissioner May?

MR. MAY: So all I've read is the order on this, and so I understand what the Board's logic was in making this decision. And you know, I don't feel

like I can do justice to the concerns that you have, Mr. Chairman, without actually reading the entirety of the record. But I will, you know, just say that on its face what's in the order is logical if contrary to subsequent action that was taken by the Zoning Commission, we'd you know, I think Vice Chair Miller was correct in saying that this is, you know, probably one of the reasons why we took action in the R-4 case, to try to keep a better -- have a better perspective on projects like this, and to do something that's more appropriate for the R-4 neighborhoods.

Now, all that being said, you know, as I said, I don't have any problem with going through the process and reconsidering the case. But I don't -- it's hard just based on what I read in the order to believe that there was a substantial mistake made at this point. Doesn't mean a mistake wasn't made, but I think I'd have to read the whole record to do that.

I do have a question, though, which is that the -- I understand that the permit may have been rescinded, but the rescinding of the permit is under appeal and so that maybe it's not actually ripe for a sua sponte consideration if in fact there's not an active permit. I don't know. Mr. Ritting.

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CHAIRPERSON HOOD: Let me say this, though, about the permit.

MR. MAY: Yeah.

CHAIRPERSON HOOD: Let me go before you go to OAG.

MR. MAY: Sure.

CHAIRPERSON HOOD: My issue is that I want us to -- and I understand, and I agree, you need to look at the whole record, not just the order. You need to look at how we got there. And that's what's wrong with some of the things we do up here now. We don't look at the whole record of how we got there. We just look at what OAG or what we approve as an order. And the order is written to try to be sustainable and upheld. But we need to know how we got to that point. And that's why I want to get to the merits of the case at some point.

But back to your question about OAG, I mean, about the permits and what's going on with that. Either way, if it's not ripe for us, I still want to make note. If I have a consensus of at least three, I still want to make note that I want us to review this as a -- from a sua sponte standpoint, and review this regardless of that because that order -- that may be a year from now, but I'm making note that I

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want to sua sponte this, and I want the Commission to evaluate some of the findings.

And I realized you probably read the order and that's all you read. But I also want to know how we got to the order. And that's kind of where I am. And if you, you know, look in the transcripts, review on the record, everybody haven't had that opportunity.

So if you want to, Mr. Ritting, you can respond on the permits issues, or what's going on with DCRA.

MR. RITTING: Yeah. As I understand it, the permit has -- the question of whether the permit is still valid is under appeal and technically speaking it's not a ripeness issue, but a mootness issue. It could be moot if eventually that appeal runs its course, but you won't know that until that process plays out, so.

CHAIRPERSON HOOD: So the permits apparently were revoked.

MR. RITTING: They were revoked but there's some chance that might change.

CHAIRPERSON HOOD: It could live on.

MR. RITTING: Yes.

CHAIRPERSON HOOD: We don't know. But right

now they are revoked.

MR. RITTING: That's --

CHAIRPERSON HOOD: Okay. Which means if we don't have -- really, it's really no action for us. I mean, this is really nothing for us to really consider. I mean, we could consider it, but it would be a moot point.

MR. RITTING: That is possible, but we won't know until that whole process plays out.

CHAIRPERSON HOOD: So, again, for the certainty of the Commission, if we -- I just want to make note that I'm going to put a pin in it, and depending upon the outcome of that proceeding I would like for us to evaluate it here if need be. If I can get support on that. I know where Commissioner Miller is, but I think -- I'm not sure where you are, Commissioner May, and Commissioner Turnbull.

MR. TURNBULL: Well, I think -- maybe I'm interpreting Commissioner May, I think I -- and I guess I'd be in the same position. I'm willing to follow the sua sponte process further to initiate it to review the case and evaluate the findings of the case. And we'll deal with the merit as we get into it and review it. I have not had a chance to go back and look at it as thoroughly as what would probably

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be needed. But I'm more than willing to at least initiate the process to be able to get to that position, to determine whether or not the merits are worth it. And as you said, you know, that there was an egregious error made. I'm willing to go through that process to get there.

CHAIRPERSON HOOD: Okay. And not only was it -- well, I'm not going to get into the merits. We'll deal with it at appropriate time. But we will wait on the outcome of what's going on in the court system, and then we will deal with it. I just want to make sure that I do have -- so I do have three people to support us bringing it back and reevaluating this whole case.

There are some others that need to be reevaluated that some of us have sat on, but I've looked at them too, which I think need to come back. But since I was on this one, I want this one to come back and I appreciate the support of my colleagues.

Okay. Anything else, Ms. Schellin, need to do on this?

MS. SCHELLIN: No, sir. So we'll have -- we'll get the record to the Commission to review. Do you want to set -- or are we going to defer it --

CHAIRPERSON HOOD: But I think, I think, I

think, I think we have to wait.

MS. SCHELLIN: -- until you find out from the court?

CHAIRPERSON HOOD: From what I'm hearing I think we probably -- I just want to make sure that this proceeding goes along with -- depending on the outcome of that proceeding --

MS. SCHELLIN: Of the court?

CHAIRPERSON HOOD: Right. If it's not a moot point then it falls back to them overturning the permits and the permits are back in place, then I want us to do it.

MS. SCHELLIN: Then you want to take -- okay. All right.

CHAIRPERSON HOOD: Right. Okay?

MS. SCHELLIN: So we'll wait and we'll follow that, then.

CHAIRPERSON HOOD: I mean, that's what I've been advised.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: Sure.

CHAIRPERSON HOOD: All right. Anything else on this?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: All right. Let's go to proposed actions. We have one case tonight that has at least some discussion. Proposed action in Zoning Commission Case No. 15-24.

Let me say this about pop-ups. I've been hearing this around town about pop-ups. I want to make sure that we all -- this Commission, and you all can correct me if I'm incorrect, this Commission has put more in place dealing with pop-ups. We have not made pop-ups a matter of right. So we need to make sure that the right information is out there because over the month of August, while a lot of us were taking a break, I was in grocery stores and everywhere, and I'm hearing some things that they said we did and I don't think I would have sat up here and went along with that. So I want to put that on the record. I don't think we made pop-ups a matter of right. If we did --

Ms. Steingasser, can you help me? If we did, we need to repeal that because I don't think we did that. Ms. Steingasser, did we make it a matter of right? I know we had a lot. We didn't make it a matter of right.

MS. STEINGASSER: We did not. There's still one amendment pending.

CHAIRPERSON HOOD: That's sounds good.

MS. STEINGASSER: And that has to do with limiting the matter of right rear additions. And that will be coming back to you.

CHAIRPERSON HOOD: So we made it more restrictive more or less.

MS. STEINGASSER: Yes, sir.

CHAIRPERSON HOOD: Right. Right.

MS. STEINGASSER: More restrictive.

CHAIRPERSON HOOD: Okay. All right. I just wanted to make sure. I know I'm not sitting up here daydreaming.

Okay. Okay. Let's go to proposed action in Zoning Commission Case No. 15-24 and 15-24A, Gallaudet University and JBG Companies, first stage PUD and related map amendment at Square 3591 at Parcels 129/70 129/103, 129/106, and 129/112. Ms. Schellin.

MS. SCHELLIN: Yes. At Exhibits 36 through 36E-7 and 37, the applicant's post-hearing submissions were made. Exhibit 38 we have a DDOT supplemental report. And Exhibit 39 we have an OP supplemental report. Would ask the Commission to consider proposed action.

CHAIRPERSON HOOD: Okay. Commissioners, any

comments on this? Commissioner May?

MR. MAY: Sorry, catching up. So the issue with this case remains the meager benefits and amenities of the project and I think the OP supplemental report spells it out pretty bluntly. You know, they did address the DDOT concerns, apparently, to DDOT's satisfaction according to their supplemental report. But I do think the benefits and amenity are deficient.

And so I think that we need to defer action on this to allow the Office of Planning and the applicant to work together to try to come up with the appropriate -- the appropriate benefits and amenities package for this project because I just don't see that it's there yet.

CHAIRPERSON HOOD: Okay. Any other comments on this case? Proposed action.

Obviously we're not going to move this to the 26th because what I look at, it's a lot more to it --

MR. MAY: Yes.

CHAIRPERSON HOOD: -- than the 26th.

MR. MAY: Right.

CHAIRPERSON HOOD: This is one I know we're not going to move to the 26th. At least be some additional work as Commissioner May mentioned.

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Anybody else?

MR. TURNBULL: I was just going to concur. I think the DOP report is pretty thorough.

CHAIRPERSON HOOD: Okay.

MR. TURNBULL: In it. And the applicant needs to go back and reread it and look at all the issues.

CHAIRPERSON HOOD: Right. And this would have been taken off the agenda for tonight but we thought it was important not to wait to the 26th to let you know where we are with this because -- so I guess, Ms. Schellin, you will work out some dates with the applicant at a later time and see when they can bring this back to us?

MS. SCHELLIN: Yes. Do we want to just put it off for October 17th? Yes. Yes. The applicant is asking for October 17th.

CHAIRPERSON HOOD: Okay. So --

MS. SCHELLIN: So we'll need their submissions at least by --

CHAIRPERSON HOOD: Let's see what else -- let's make sure we got everything first. They might not be able to meet October, so the Vice Chair --

MR. MILLER: No, I was just going to agree with my colleagues that the OP needs -- that the

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applicant needs to get better on the same page with OP. And I just wanted to note, there have been some positive direction in response to the concerns raised on, I think, on LEED and on the affordable housing.

But I think there does need to be a closer -- a better response; a more comprehensive response to the OP's latest report.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: So --

CHAIRPERSON HOOD: Let's come up with some dates.

MS. SCHELLIN: Can the applicant have their submissions in by September 30th? Is that doable?

And then OP and DDOT, if they choose to respond, would be able to do that by October 7th. And then we can put it on for the 17th.

Later?

CHAIRPERSON HOOD: We all straight? Anything else?

MR. MAY: Yes.

CHAIRPERSON HOOD: Yes.

MS. STEINGASSER: Should the ANC have an opportunity --

MS. SCHELLIN: And the ANC if they choose to, yes.

MR. MAY: So I had one other comment on this which is that there was a reference in the benefits package to working with the -- to get to some agreement with the National Park Service regarding improvements to the field that you know, abuts the project. And I'm not sure what is intended by that. You know, the baseball field that's there along 6th Street is -- it is federal property and it was transferred from the National Park Service, but it is entirely in the jurisdiction of the District of Columbia. And so the National Park Service doesn't need to be party to an agreement having to do with that land.

So I'm not sure exactly what was intended by that. I see a lot of heads shaking in the audience. I don't know how to interpret that. And I'm not asking for a response from the audience, but if the applicant wants -- you know, if there is some issue where they believe that the National Park Service needs to be involved, they can contact my office and somebody can help them with it. But I can just say definitively, National Park Service has no role in improvements having to do with that ball field.

CHAIRPERSON HOOD: Okay. Anything else on that?

MR. MAY: No.

CHAIRPERSON HOOD: All right. So we're all straight. Let's go to the next, and I think last thing on the -- we have a correspondence item. Zoning Commission Case No. 15-34, Sherman Avenue, LLC. has requested to reopen the record to accept revised architectural plans after final action has been taken. We have already taken action on this particular case. We're asked now to reopen the record so they can put the drawings into the record.

I think that we need to have some type of review process so we can see what's going on. You know, what we approve versus what's being put in there. But let me go to the Office of Planning, Mr. Lawson. Did you want to comment on it?

MR. LAWSON: I think our only comment would be that we agree with that assessment, that it should be filed as a modification if they wish to modify the plans.

CHAIRPERSON HOOD: Okay. And to my knowledge the order has not been received so we need to let that process go through and then if there's some alterations that need to take place, we need to examine it. We need to be able to look at them.

You can file it for a minor modification if

it's not that significant, and we will have a review process. And if we take it off the consent calendar item, who knows what may happen. We need to see it. We don't just open the record, but we've approved the case, open the record and let somebody just put something back in there. Not that we don't trust you but I can tell you there's a lot people down here to try to be slick. And I'm not saying you're that person, but we have to be cautious of it and make sure we protect the integrity of the process.

So any objections to that? Does the applicant know what we're asking for? You don't know what we're asking for? We're asking for the process to run its course. So once -- do you have a final order?

APPLICANT: [Speaking off mic.]

CHAIRPERSON HOOD: Okay. Once you get the final order then you can come back and you can ask for a modification.

MR. MILLER: And it may in fact be minor.

CHAIRPERSON HOOD: It may be a minor modification, yeah.

MR. MILLER: [Speaking off mic.]

CHAIRPERSON HOOD: We're going to put -- it may stay on the consent calendar. So in other words,

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we need to run our process. Okay? All right. Not saying that you all would do that. I know you of all people would not do anything like that.

So, anything else?

MS. SCHELLIN: No, that's it.

CHAIRPERSON HOOD: Okay. Is that all we have on our agenda for the night?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: All right. So I think we got everybody out of here in time for whatever they needed to do, and with that this meeting is adjourned.

Oh, hold up. Nope, it's not adjourned. Let me --

MS. SCHELLIN: Office of Planning.

MS. STEINGASSER: Under our status report we wanted to ask the Zoning Commission if it was your desire that OP prepare a response to the comments received in Case 04-33G and H, in the normal table format that we've done on several of the last cases.

CHAIRPERSON HOOD: Yes, that would be very helpful. Yes.

MS. STEINGASSER: Okay.

CHAIRPERSON HOOD: Anything else?

MS. STEINGASSER: No, sir. It's just that

the record is closed so it would have -- the Commission had to acknowledge it to reopen the case for us.

CHAIRPERSON HOOD: Okay. Yeah, we'll do that for -- that's helpful to us. Okay. All right. Can I close the -- okay.

So with that, this meeting is adjourned.

[Public meeting adjourned at 8:00 p.m.]