

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission

Regular Public Meeting  
1445th Meeting Session [24th of 2016]

6:49 p.m. to 7:52 p.m.  
Monday, September 26, 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

ROBERT MILLER, Vice Chair

PETER MAY, Commissioner

MICHAEL TURNBULL, Commissioner

Office of Zoning:

SHARON SCHELLIN, Secretary

Office of Planning:

JENNIFER STEINGASSER

JOEL LAWSON

MATT JESICK

MAXINE BROWN-ROBERTS

KAREN THOMAS

Office of Attorney General:

JACOB RITTING, ESQ.

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

CHAIRPERSON HOOD: This meeting will please come to order. Good evening, ladies and gentlemen. This is the public meeting of the Zoning Commission for the District of Columbia. Today's date is September the 26th, 2016.

My name is Anthony Hood. We're located in the Jerrily R. Kress Memorial Hearing Room. Joining me are 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. Ritting, Office of Planning staff, Ms. Steingasser and Mr. Lawson, Mr. Jesick, Ms. Brown-Roberts, 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 our meetings unless the Commission requests someone to come forward. Please be advised this proceeding 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 the display of any signs or objects. Please turn off all electronic devices so not to disrupt these proceedings.

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Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. Let's move right in to it. First, consent calendar item, minor modification and technical correction. Zoning Commission Case No. 11-03H, Wharf District, Master Development, LLC., request for minor modification to PUD Parcel 4, at Square 473. Ms. Schellin.

MS. SCHELLIN: Yes, sir. At exhibits 8 through 8B we have applicant's submissions in response to the Commission's comments made at the September 12th meeting; would ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay. I think Ms. Schellin has already mentioned about -- you mentioned about the DHCD letter, as well as the penthouse setback diagram. So I think those just came in, right? Yeah.

MS. SCHELLIN: On Friday, yes.

CHAIRPERSON HOOD: Friday. Okay. All right. Colleagues, let me open it up for any discussion.

MR. MAY: Mr. Chairman, I have a question, actually.

CHAIRPERSON HOOD: Sure.

MR. MAY: That I might ask of the Office of

Planning and hopefully they can help me on this. But there is an analysis of the redistribution of the affordable units across multiple sites. And I did not have the time to sort of do my own compilation and tracking and all that sort of stuff. But I mean, what is the net difference? Or is there any across the various sites? Do you know that?

Might have been in the exhibits that we already have, but I must have missed it.

MR. JESICK: It looks like the affordable square footage is going up by approximately 500 square feet across both parcels. And the workforce square footage is going up by approximately 1,500 square feet.

MR. MAY: Across the three parcels, isn't it? Isn't there three parcels?

MR. JESICK: Well, 2A, 2B, and 4.

MR. MAY: Right. Okay. And that's the net difference. And what about in terms of the number of units?

MR. JESICK: Looks like the number of units, number of affordable units looks like it's going down by 14. And the number of workforce units, down by four.

MR. MAY: Okay. And the Office of Planning

is comfortable with that redistribution of the affordable square footage, because the loss of units is pretty significant?

MR. JESICK: Yes. We consulted with our housing planner and he was comfortable with the increase in size of the units.

MR. MAY: Okay. Yeah, that's --

MR. JESICK: That made up for any --

MR. MAY: It is a benefit.

MR. JESICK: -- redistribution.

MR. MAY: Right.

MR. TURNBULL: Can I follow up on that question of Commissioner May?

MR. MAY: Please do. I'm done.

MR. TURNBULL: The only thing I'm looking through the applicant's submission is that when we look at affordable housing I look at the 30 percent breakdown, and the 60 percent. It looks like significant drop in those numbers. I mean, and one it says, 10,000 square feet going down to 5,800. I mean, it just looks like the lower percentages are really dropping. Unless there's a better breakdown someplace else.

MR. JESICK: Yes, the applicant did provide us with a detailed spreadsheet, and --

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MR. TURNBULL: Is that in the record?

MR. JESICK: I don't believe so. But the floor area on parcel 2 is going up for the affordable units, and we can get those numbers for you.

MR. TURNBULL: But overall, are the numbers for those 30 percent and 60 percent staying the same?

MR. JESICK: It's going up slightly for the 30 percent, and going up slightly for the 60 percent.

MR. TURNBULL: Okay. I mean, I think we need that because what I'm looking at in some of their documents here shows -- I mean, maybe I haven't looked at all the pages. Maybe it corrected itself, but it does show a decrease in the square footage for the 30 percent and 60 percent.

MR. JESICK: On parcel 4, I think you're correct.

MR. TURNBULL: Yeah.

MR. JESICK: When you combine the two parcels I believe it's going up slightly.

MR. MAY: Yeah, that was the math I hadn't done. I had the same issue. The first one you see is dropping by half, but that was only parcel 4.

MR. TURNBULL: Yeah.

MR. MAY: And so clearly you had to do all that math.

CHAIRPERSON HOOD: Vice Chair Miller.

MR. MILLER: Thank you, Mr. Chairman. Yeah, I'm fairly comfortable with that redistribution and reallocation. I think they're also larger units, larger sized affordable units, which is a positive thing.

I do have a concern, though, when we asked at our last -- when this last was before us we asked for an estimate of what the Housing Production Trust Fund contribution would be due to the modification related to habitable penthouse space. Instead of getting an estimate we get the argument that this is exempt all together from Inclusionary Zoning because it falls under that category of subsidized by the District or Federal Government and administered by DHCD, D.C. Housing Authority or Housing Finance Agency.

It's not exactly subsidized. There is a huge TIF bond associated with the Southwest Waterfront Project, and there was a land write down, but it's not the typical type of affordable housing subsidy that we see for that exemption.

But more importantly, I don't think it was the intent of this Commission when we considered the habitable penthouse space regulation, the relatively recent regulation, that we intended for it to be

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exempt in any circumstance, from triggering an affordable housing contribution. And that was a big part of that case that if you're getting this additional prime space that you didn't have in your pro forma originally, or don't have -- or didn't have under the previous rules. That we wanted to see that tied to a deep affordable housing requirement or a contribution to the Housing Production Trust Fund.

So, the Office of Planning though, agrees that it is exempt from that housing, affordable housing requirement that the penthouse habitable space is just across the board exempt if it gets TIF funding and a land write down from the city in an LDA.

MR. LAWSON: OP raised this question with the applicant and then with the Office of Attorney General. OAG confirmed that the wording would exempt this project from the affordable housing requirement.

MR. MILLER: Okay. Well, I think we need to, since we have that IZ case coming before us for a decision, I believe, we should look at that issue, whether that was our intent and clarify that.

But I'm still not happy that we got to this point, and I would be more comfortable if we got a proffer that tied some affordable housing to that

penthouse habitable space. That's prime space and some people in the city didn't want us to put anything up there, more intensive uses on the roof. And others of us wanted to, but we wanted to clearly have it tied in almost every case to an affordable housing trigger. We realized affordable housing wasn't going to be on the roof, but we figured it was going to be a contribution to the Housing Production Trust Fund, or if they could do it in the building, the affordable housing elsewhere.

So, just a little uncomfortable about that.

CHAIRPERSON HOOD: Okay. Commissioner May, you want to add something?

MR. MAY: Yeah, I would agree with that. I mean, it was a very disappointing development. We just asked the simple question because the original application indicated that there was going to be a contribution to the Housing Production Trust Fund, and the open question was, how much was that going to be.

And lo and behold they do the math and said, oh no, technically they don't have to do it. Technically we don't have to grant any relief for setbacks. I mean, we've taken a very hard line in some other cases about not granting any setback

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relief whatsoever when it comes to penthouses. You know, penthouse modifications where they are seeking to include habitable space. So you know, I'm not ready to deny this application, but I'm sure as heck not ready to move forward with it today.

CHAIRPERSON HOOD: I would agree with both my colleagues. Well, all of my colleagues who commented on this. The setback issue, we've taken -- we put those regulations, as Commissioner May alluded to, in play for a reason. I actually have already sat on a case where we've met a few times on the BZA and oh, we can't meet this setback. Oh, we couldn't meet it. We can't do it.

And then when it was voted and they got their setback relief was denied, they now pull back all those requests for relief and they're able to meet all the setbacks. So they came down here just looking for loopholes, trying to do it their way, and just told us anything.

So, not saying that this developer is doing that, but I've already experienced that. And I will tell you that it's very disheartening to hear people come down and say, oh we can't really do this, and come and tell us that, because the merits and what you say on the record, I'm sure they were here when

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they took the oath. So anyway, but back to this case.

I would agree with Commissioner Miller. And we need to clarify that quick, fast, and already done because that's one of the problems. We do have a lot of loophole finders and a lot of things that we do here in this case, and I know that I'm not necessarily pointing out this application, but we try to put things in place to protect the residents of this city, and the loophole finders always come down and seem to find the loopholes. And the guarantee is to try to make sure that we can coexist and make things go for the residences of the city. I too am not ready to move forward with this particular case.

So, I don't know. They need to go back and revisit, I guess, all of it. All the requests. I don't know. That's where I stand. I don't know, colleagues, what do you all -- what is your pleasure?

MR. TURNBULL: I would agree with you, Mr. Chair. I think we should postpone deciding this case until, I think the Office of Planning was going to submit something anyways regarding the overall housing count and numbers. So, while we're waiting for that --

MR. JESICK: I think we can have the

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applicant submit the chart that they provided to the Office of Planning.

MR. TURNBULL: Yeah. So, while we're waiting for that chart perhaps the applicant can rethink its position on other issues.

CHAIRPERSON HOOD: Okay.

MR. MAY: While we're on it can I ask, do you all look at the analysis of the setbacks that was provided, and are you -- I mean, what's your opinion of those?

MR. JESICK: It seemed generally to be in the same locations as was previously approved, so we didn't have a big issue with it.

MR. MAY: Okay. Thanks.

MR. MILLER: I just had one other question, Mr. Chairman. This is a product that's already out of the ground. Is that correct, as I recall from the previous testimony?

MR. JESICK: Yes.

MR. MILLER: So, yeah, it would be in the applicant's interest to get -- be responsive to this information as soon as possible.

CHAIRPERSON HOOD: All right. Do we need to set a date?

MS. SCHELLIN: Our next meeting is October

17th.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: Which --

CHAIRPERSON HOOD: Applicant's counsel here, or the applicant?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Are they here?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: So that would be, one, two, three weeks away. If we could -- are you looking for OP to respond to what the applicant submits, or -- yes?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: For whatever everybody is supposed to give, it would be good to have input from the Office of Planning.

MS. SCHELLIN: Then if the applicant could make their submission in one week. And then that would be October 3rd by 3:00 p.m. And then OP would have until October 11th, since the 10th is a holiday. 3:00 p.m. And then we can put this on for October 17th.

CHAIRPERSON HOOD: Anything else on this

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case, colleagues? Okay. All right. Let's move on in our agenda. Modification of consequence, Zoning Commission Case No. 13-09A, Stanton Square, LLC., request for modification of consequence at Square 5877, Ms. Schellin.

MS. SCHELLIN: Yes, sir. At Exhibit 6, ANC 8B submitted a letter in support to be granted great weight. They did ask for a waiver for the filing of their letter because it was a day late. However, the rules state that as long as the ANC report is received prior to the Commission taking final action it's acceptable. So they don't really need that waiver. We'd ask the Commission to consider action this evening.

CHAIRPERSON HOOD: Okay, colleagues. I think the merits of this case does describe that it meets our -- modification of consequence. And I get confused. This is only one -- well, we did the modification last time so this is the final vote this time.

MS. SCHELLIN: No vote has been taken.

CHAIRPERSON HOOD: What did we do?

MS. SCHELLIN: You deferred it to allow the ANC to submit a letter that could be given great weight. Their last letter did not contain the vote

or when they met or anything, so it was just left open for that.

CHAIRPERSON HOOD: Okay. I think that it has the necessary support, and I would be willing to move forward in supporting this modification of consequence. Any objections? Any more comments to this?

Okay. So I would move that we approve the modification of consequence, Zoning Commission Case No. 13-09A, 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: Yes. Staff records the vote four to zero to one to approve final action in Zoning Commission Case No. 13-09A, Commissioner Hood moving, Commissioner Miller seconding, Commissioners Turnbull and May in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Next, under final action, Zoning Commission Case No. 15-32, 1126 9th Street Northwest, LLC., consolidated PUD and related

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map amendment at Square 369. Ms. Schellin.

MS. SCHELLIN: At Exhibit 37 we have an NCPC report that finds the project to be inconsistent with the Comp Plan for the National Capital and other federal interests because of a minimal violation of the penthouse setback, requirements of the Height Act, and this afternoon at Exhibit 38 we have an OP submission that attaches a letter from the Zoning Administrator and we'd ask the Commission to consider final action this evening.

CHAIRPERSON HOOD: Okay. Before we get to those two issues, anything else? Or did we cover everything in our proposed? Anything else other than the height issue? NCPC is fine that it's inconsistent with the Comp Plan and there's some height issues, and the Office of Planning has the letter from our Zoning Administrator who interprets the Height Act, who doesn't find that.

So, other than that --

MR. TURNBULL: I think that was the only issue.

CHAIRPERSON HOOD: That's the only -- I mean, any other issues before we get into that one? Okay. All right. Let me open up. NCPC says that the -- due to minimum violation of the penthouse setback

requirement or act to regulate the height building in the District of Columbia, finds it to be inconsistent.

And let me get the ZA. Does anybody have the ZA letter open?

MR. TURNBULL: Yes, do you want me to --

CHAIRPERSON HOOD: Yeah, if you can just read the highlights while mine is opening?

MR. TURNBULL: I think the key issue was the definition of exterior wall. And on page 2 of his letter, Mr. LeGrant says, "The concept of what constitutes an exterior wall requiring a one-to-one setback under the Height Act has been settled for many years. Under the Height Act an exterior wall is one that adjoins a street and a project may be in compliance with the Height Act setback requirements, even when it is not in compliance with those of the Zoning Regulations. The recent change in the penthouse setback requirements under the ZC Order 14-13 does not alter previously held interpretations of the setback requirement under the Height Act. Although the NCPC memo appears to incorporate new zoning interpretations to affect amended interpretations of required setbacks under the height act."

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"Moreover, the Zoning Commission has constantly -- consistently deferred to the Zoning Administrator interpreting the Height Act."

CHAIRPERSON HOOD: Okay.

MR. TURNBULL: I can go on. He goes back and he cites another case review. He goes back to a GW case, 07-18 for 1000 F Street, and he talks about the configuration. But he's basically saying that from his standpoint the project does meet the requirements of the Height Act.

CHAIRPERSON HOOD: Okay. All right. Thank you, Mr. Turnbull. And he asked that we be informed and we are informed, Mr. Turnbull. Thank you for reading the letter.

Again, the Zoning Administrator is the sole authority in determining the Height Act in the District of Columbia. So with that he doesn't see any violations. So with that I know NCPC -- I don't like to snub NCPC, but --

MR. TURNBULL: Well, let me just quote one other little section. He says, application of the Zoning Administrator interpretations, the project and conclusion.

In the instant case the penthouse complies with the Height Act under the longstanding

interpretation that the relevant exterior walls of the project from which the required setbacks are to be measured, are those that adjoin a street.

CHAIRPERSON HOOD: Okay. Commissioner May.

MR. MAY: Yeah, so, I mean, I will say I don't think that NCPC agrees with that interpretation of what an exterior wall is. There's been some discussion of that over the years. But the mere fact is that the Zoning Administrator does have the official role of interpreting the Height Act. And however much I may agree with NCPC and disagree with the Zoning Administrator on this case and the entire history of it, I agree that the Zoning Administrator is the one with the responsibility.

So I think our major concern, or at least my major concern here was that we didn't want to give final approval to something and then see it come back for a change because it in fact did violate the Height Act. But we now have clarity on that point so I'm okay with moving ahead.

MR. TURNBULL: Yeah, I would agree with you, Commissioner May. I think that we may not agree with the fine points of how the Zoning Administrator reaches his conclusion, but under the current law he is the final authority on what complies or does not

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comply with the Height Act.

CHAIRPERSON HOOD: Okay. Anything else? 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. 15-32, 1126 9th Street Northwest, LLC., consolidated PUD and related map amendment at Square 369, 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. 15-32. 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 with Zoning Commission Case No. 15-16, MRP Rhode Island Avenue Investors, LLC., et al., first stage and consolidated PUD at Square 3629. Ms. Schellin.

MS. SCHELLIN: Yes, sir. At Exhibits 96

through 96B, we have the applicant's submissions in response to the Commission's comments made at the September 12th meeting. Would ask that you consider final action this evening.

CHAIRPERSON HOOD: Okay. Okay, commissioners. We did have some post submissions come in. Exhibit 96 describes some of the issues. Talks about the signage, the massing. Signage and massing were, I guess, the two outstanding issues.

All right. Let's open it up. Any questions or comments on that, on the signage or the massing?

MR. MAY: Mr. Chairman.

CHAIRPERSON HOOD: Yes, Commissioner May.

MR. MAY: So, I'm still -- well, I'm still frankly a bit disappointed. The massing diagram is improved from what was there before. I don't quite agree with it the way it's been done. I don't know that 60 feet was the right height to start with. I don't know that one to one is the sufficient setback. But I also don't see a need, at this moment, to belabor the point. I think this is something that's much better evaluated with actual design in hand, and so I'm okay with accepting this for now and simply stating in the order that we will further evaluate the setback, the step back provisions along 4th

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Street when we consider Stage 2. I don't want it to seem like we're blessing this exactly as it is. I think we want to see it when it's -- when the building is actually designed.

So that's my opinion on that one. On the signage thing, they're still not hitting the mark. I don't understand why it's so difficult. This is something that has been considered in other cases before. We get very specific drawings, elevation drawings that show this is where the signage will be, approximately. These are the approximate dimensions of the type and the signs themselves. If it's a blade sign how tall is it going to be? How far is it going to project? Those sorts of limits on what the signage will be. I don't see in between what we received last time and what we received this time, I don't see those sorts of limits.

What we see is, you know, a rendering of, you know, basically four-foot high lettering, which is huge even by current standards. And I'm just guessing at the four feet. It could be five feet for all I can tell because all we have is a 3-D view of it. And a request for you know, more flexibility. It's like, no, we're trying to put some limits on what this signage is going to be. We're not trying

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to, you know, look at some pretty pictures and say, yeah, we're going to give you whatever flexibility you need to build it. No, I mean, this is our last chance to review this project so I want to see what the -- you know, where it's going to be. How big it's going to be. You know, provisions for how it might be lit or whether it might be lit because, you know, there are lots of ways that you can light signage. Some of which cause a lot of light bleed into the neighborhood. And some that are much more subtle but still show the signage for what it is.

So I don't think we have that yet again, between what was submitted last time around and this time around. So I'm really not prepared to vote on the signage provision at this point.

CHAIRPERSON HOOD: Okay. Let's open it up. Any other comments anybody? Commissioner Turnbull?

MR. TURNBULL: I would agree with Commissioner May. I think we need language discussing the massing that carefully addresses going ahead for future stages and phases, and I would like some more clarity on the signage.

CHAIRPERSON HOOD: Okay. Okay. I would agree on the signage. And while they're at it I guess they can relook at the massing as my colleagues



mentioned.

But one of the things that we try to do is the placement, where the signs are located. And we've been through this before where we approve a sign and then all of a sudden another one shows up on the top and it causes some issues. So we want to make sure we nail this down.

So are we in favor of moving this to another hearing? Ms. Schellin, can you look in the audience and see if the council can do it at our next -- it seems like we push everything to the next meeting. October --

MS. SCHELLIN: They're indicating yes.

CHAIRPERSON HOOD: October 17.

MS. SCHELLIN: Yes. Yes.

CHAIRPERSON HOOD: Okay. So we will look at this October 17th, to take a vote on this first stage.

MS. SCHELLIN: Do we need a response from OP or anyone else? Or can they --

CHAIRPERSON HOOD: I think OP -- don't want to put a whole lot of work on OP. I think it would be good if they could respond too.

MS. SCHELLIN: They do so we need the --

CHAIRPERSON HOOD: They don't have to give us

but a one-pager.

MR. MAY: Yeah. I mean, it really is the signage issue.

MS. SCHELLIN: November.

CHAIRPERSON HOOD: I want them to be able to weigh in.

MR. MAY: And, you know, I would suggest that the applicant needs to look at some --

MS. SCHELLIN: So, a week?

CHAIRPERSON HOOD: Hold on for a second. So they can get it.

MR. MAY: Yeah.

CHAIRPERSON HOOD: So we won't have to push into November.

MS. SCHELLIN: So then the applicant's response would be due by 3:00 p.m. October 3rd, and OP would be able to respond by 3:00 p.m. October 11th, and then we could put this on for October 17th.

CHAIRPERSON HOOD: I think Commissioner May has some observation.

MR. MAY: So I just want to make the observation. I mean, this is something that we have seen in other projects in the past. I can't point to which ones they were, but in terms of a, you know, what's an acceptable way to describe and put

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appropriate controls in the signage, it's been done in other PUDs and what we have here doesn't compare to those.

So I would suggest a little bit of research is in order to try to figure out the best way to do it. Perhaps the Office of Planning might actually be helpful in trying to guide them into cases that provide the appropriate level of control on the signage program.

CHAIRPERSON HOOD: Okay. Let's move on to Zoning Commission Case No. 05 -- I'm sorry, 08-15A, Cathedral Commons Partners, LLC., PUD modification at Square 1920 and 1920N. Ms. Schellin.

MS. SCHELLIN: Yes, sir. At Exhibits 30 through 30A, 32 and 39 are the applicant's post hearing submissions. Exhibit 31 is an NCP report advising of no issues. Exhibit 33 is ANC 3C's modified resolution. Then the applicant requested the record be reopened in order to respond to the ANC's modified resolution which was approved in the applicant's responses at Exhibit 37. Wisconsin/Newark Neighborhood Coalition, a nonparty, asked that the record be reopened to accept their response to the applicant's post-hearing submission which was approved, and their response is at Exhibit

38.

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

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

MR. MAY: Mr. Chairman, I would just want to say from the start that I have reviewed the record of this and prepared to participate in today's voting.

CHAIRPERSON HOOD: Okay. Thank you. Any comments, questions? Vice Chair Miller?

MR. MILLER: Thank you, Mr. Chairman. I appreciate that the applicant did revise some of the parking benefits in the garage, the validation period and the number of spaces provided and added an additional hour for the John Eaton teachers as well from the time we saw this last. So, I for one is someone who happens to live two blocks from the PUD site. I'm looking forward to the Silver, as I think most of the neighborhood is, looking forward to the Silver Diner coming and I'm prepared to go forward.

CHAIRPERSON HOOD: Okay. Any other comments or questions? Okay.

MR. TURNBULL: I would concur with Commissioner Miller. Vice Chair Miller, I should say.

CHAIRPERSON HOOD: All right. Well, Vice Chair Miller since you're looking forward to Silver Diner. You want to make the motion? This is not in my neighborhood.

MR. MILLER: I'll be happy to host you at the Silver Diner in a couple years.

CHAIRPERSON HOOD: Okay.

MR. MILLER: Yes, I would move that the Zoning Commission take final action on Zoning Commission Case No. 08-15A, Cathedral Commons Partners, LLC., PUD modification and ask for a -- at squares 1920 and 1920N, 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. 08-15A, Commissioner Miller moving, Commissioner Turnbull seconding, Commissioners Hood and May in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Okay, let's do --

let's go ahead with the agenda. Zoning Commission Case No. 15-18, Ms. Schellin.

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: This is proposed action.

MS. SCHELLIN: Yes. 15-18, Exhibits 44 through 46 are the applicant's post-hearing submissions. The Committee of 100, a non-party, submitted a request to reopen the record which was approved. And their submission is at Exhibit 48 for the Commission's consideration this evening to consider approving or not, proposed action. Thank you.

CHAIRPERSON HOOD: Okay. Commissioners, I think the first action, and I would ask Mr. Ritting to help me with this, or did we already -- no, we haven't. The Commission must decide whether to waive the limitation. I think that's our first action.

But before we get there, let's -- any other comments on this case? Let's open it up for any questions or comments.

Okay. So that must be the main --

MR. MAY: I mean, we didn't have any other further submissions, right? I mean, we were waiting for something more from the last --

CHAIRPERSON HOOD: I don't believe. Were we

waiting for something else?

Oh, okay. Mr. Turnbull, I think you had an issue with the chimney or you -- did they move it? I didn't --

MR. TURNBULL: No, the chimney is still there.

CHAIRPERSON HOOD: Is that a showstopper for you?

MS. SCHELLIN: Commissioner May had asked for the dollar amount of the park improvements and a timeline. Commissioner Turnbull had a problem with the chimney.

MR. MAY: Right.

MS. SCHELLIN: The penthouse has a kitchen, seems very odd. Commissioner Turnbull also asked about the lighting on the 5th floor. Down lighting, no glaring light in the neighborhood. Those were the notes that I had.

CHAIRPERSON HOOD: So I'm guessing, I'm asking, is everybody fine with --

MR. MAY: I don't have any more substantive issues. I think that they've addressed the concerns that I had. I mean I think, you know, the penthouse -- I think the penthouse setback issue was addressed in the last submission. So, that was a concern I

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had. And I'm sorry, Mr. -- Commissioner Turnbull.  
I'm okay with the chimney.

CHAIRPERSON HOOD: Okay. So, Mr. Turnbull,  
did you want to comment on the chimney or --

MR. TURNBULL: No, my --

CHAIRPERSON HOOD: Of what your comments  
were.

MR. TURNBULL: My comments are the same.

CHAIRPERSON HOOD: Okay. Okay. All right.  
So let's deal with this waiver issue. Let me open it  
up. Any comments on that?

MR. MAY: So I think the fact that we're  
considering the question of whether we want to  
establish a rule if you will, for you know, a  
complete waiver of minimum square footage  
requirements for PUDs, the fact that we're  
considering this in the other case, and the case  
hasn't been decided, although the hearing happened  
last week, it does seem a little odd for us to take  
this up now because essentially the only way that we  
can do this is to waive that requirement completely.

Now, the regulations have the 50 percent  
waiver already in place. It doesn't meet the 50  
percent waiver. We can waive any rule providing we  
have a good justification for doing so. Arguably, we

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have a good justification for doing so. But it does sort of feel like we're jumping the gun if we're considering the question of whether this is the right thing to do generally across the city.

So, I think that there's some sense to letting this decision making associated with this case to follow the decision making on the other case, again since the hearing has been held and it's been set for decision making on October 17th. Seems to me we could take up proposed action on that case before we take up proposed on this, but in the same meeting. And then theoretically do the same thing at final. I know that doesn't move the project along as fast as I'm sure the applicant would like, but otherwise I think that we're making a decision before we make a decision. You know, if you understand what I'm saying.

So I would be inclined to defer the decision on this until we take up the decision from the zoning rewrite component of this.

CHAIRPERSON HOOD: Okay. Any other comments? Vice Chair Miller?

MR. MILLER: Thank you, Mr. Chairman. Well, I can support that direction and I -- just because of the timing I think it is odd, but when this issue,

though, first came to us I thought there was sufficient justification for a waiver then. This is a very unusual lot that can't be expanded. And a PUD is probably the most beneficial type of development that it can incorporate all the conditions that the community supports in this case that would be incorporated into the PUD order.

So I don't think the votes are there, but I would have been inclined, when we first heard this, that there is sufficient justification for a waiver. The 50 percent waiver comes out to 7,500 feet, and this lot is at 7,413. Nonetheless, it doesn't meet the 50 percent, so it's 87 square feet short.

So I think this project got delayed while we were considering that whole case already. So I would be -- if there was support, which I don't think there is for going forward with this particular project, and not saying it's necessarily a precedent for how we're going to act on the other case, I would be supportive of going forward. But I can understand the rationale that it might just be cleaner to consider it after we do the larger text amendment.

CHAIRPERSON HOOD: Okay. Any other comments, Mr. Turnbull?

MR. TURNBULL: No, I would just add when we

were talking about these submissions, Exhibit No. 44 of the applicant talked about the chimney, talked about other issues. But when it specifically mentioned the lighting, it says, "Please note that the lighting level at the fifth -- the lighting at the fifth level of the building has not yet been designed. OGB has advised the applicant that the feature will be given significant consideration in its final approval of the project."

So we really don't know what kind of lighting is at the top of this building. So if they're going to be coming back I would suggest that they could come back with a real light plan by that time.

CHAIRPERSON HOOD: Okay. So noted. I would agree in the sequence of procedural of how we move in events. I don't know how that discussion is going to go with the text amendment because out of that, the birth of that came from this case. And I think that putting the cart before the horse is not what I ideally would like to do and I think Commissioner May said it best. So I think it's a -- you know, I don't know what may happen with this case, but I think we need that -- it's a broader discussion than we need to have, whether we're going to keep what we had in '58, whether we're going to allow waiver, or whatever

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we're going to do, I think that's a broader discussion and I think that's something that we need to do and it would be good if, as we stated, we do that on the -- seems like everything is going to happen on the 17th. We might better move to the next one eventually.

But on the 17th of October I think we can deal with both of these. But deal with the text amendment the first, do that first, and then do this case after that. In that order. If we all agree.

And also taking into context what Mr. Turnbull asked them to look at since they have some more time anyway. Okay? We all in agreeance?

Okay, Ms. Schellin, so do we need to give any instructions, any dates, or --

MS. SCHELLIN: If the applicant is going to submit anything then I don't think you need anything from OP on this one if it's a lighting plan. So they could submit it by October 11th, 3:00 p.m.

CHAIRPERSON HOOD: Okay. Anything else, Ms. Schellin, on this case?

MS. SCHELLIN: No, sir. That's it.

CHAIRPERSON HOOD: All right. So we all on the same page?

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: Okay. Let's move to hearing action in Zoning Commission Case No. 14- -- no, I'm sorry. I'm going too fast. Zoning Commission Case No. 04-14D, Florida Rock Properties, Inc., second stage PUD at Square 708. Ms. Thomas.

MS. THOMAS: Good evening, Mr. Chair, Members of the Commission. Karen Thomas with the Office of Planning.

OP is recommending set down of the second phase of MRP's redevelopment of the site known as Florida Rock. The proposed stage 2 PUD would be a 13-story mixed use building which would remain consistent with the bulk requirements and accessibility to the waterfront as originally approved. However, there are proposed changes from the approved plan, including a reduction in the number of units from 282 units to 252 units, an additional 94 spaces proposed for a possible third-level below-grade, and a reduction in the loading dock size.

As the design is refined OP expects the applicant's clarification or reconsideration on the design features, including the proposed materials with reconsideration of the design elements noted on page 4 and 5 of our report.

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We also look forward to the improved diagrams including realistic perspectives in relation to the completed phase 1 building. We anticipate additional information on the use of the rooftop's piece, with required setbacks for all elements identified on the roof. We also look forward to clarity regarding the reduction in the number of units and its effect on the approved IZ unit count or the square footage.

We expect collaboration with DDOT and the implications on the additional parking and the approved transportation plan, and also reconsideration of the LEED designation to LEED Gold as a benefit of the PUD.

And lastly, with respect to the proposed marina design, we will have the applicant cooperate with OP on the guidelines for the Buzzard Point Waterfront that is currently in process.

And at that I'd stop here and I'd be happy to take any questions. Thank you.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Thomas. Colleagues, any questions or comments for the Office of Planning, Ms. Thomas?

Okay. Any questions or comments? Vice Chair Miller.

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

appreciate Office of Planning's report. I think I agree with all of the comments that they made in that report and would be looking particularly for, if we set down this for a hearing, which I'm supportive of doing, seeing some of the changes that they're requesting, including upping the LEED Silver to LEED Gold, increasing the affordable housing proffer, and some of the comments they made about the design on the north side of the project looking like a little bit too much like an office.

And although I -- I think this is the one that has a lot of balconies on the other side, which I really do like. I should say something positive. And I think their comments about the signage is also on point. So I'm supportive of setting it down and seeing all the issues that the Office of Planning raised, addressed.

CHAIRPERSON HOOD: Okay. Any other comments, questions? Mr. Turnbull?

MR. TURNBULL: Yeah. Thank you, Mr. Chair. I would concur with the Vice Chair regarding the reaching for LEED Gold. And a better proffer for the affordable housing I think, in more in line with what we've been seeing on other projects. And the signage is an issue but I would agree with Ms. Thomas and her

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comments on the architecture.

I would also like to see some -- and I think she made reference to better rooftop terrace views. Maybe some better perspective, some sections through it, some aerial views that really show what's going on up on that roof. I think if we can get that then -- and then the rest of the OP comments, I think we're very good.

That's it, Mr. Chair.

CHAIRPERSON HOOD: Okay. Commissioner May?

MR. MAY: I would concur across the Board, with my colleagues and with the Office of Planning. And I would suggest that when it comes to the signage that in particular we would want to have a real signage plan with the kinds of diagrams and dimensions and so on that -- and you know, identification of locations of signage, and heights of signs and so on. All that spelled out in much like the case earlier this evening, where it really just is so much more helpful to have all that stuff spelled out because right now what we see is not great and certainly in terms of the building identifier sign, and I think that the rest of it could use -- I think it just -- I'm getting to the conclusion now where we ought to just like write that

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into the regulations. We ought to have the signage plan and describe what it requires because it seems to come up regularly.

So, but we -- I'm not asking for a text amendment at this moment. Just clarity on this project. I did say at this moment, though.

CHAIRPERSON HOOD: Correct.

MR. MAY: Thank you.

CHAIRPERSON HOOD: So with that I would move that we set down Zoning Commission Case No. 04-14D, Florida Rock Properties, Inc., second stage PUD at Square 708, and ask for a second.

MR. MILLER: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussions? And also incorporate the comments that we've heard from my colleagues.

[Vote taken.]

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

MS. SCHELLIN: Staff records the vote four to zero to one to set down Zoning Commission Case No. 04-14D as a contested case, Commissioner Hood moving, Commissioner Miller seconding, Commissioners Turnbull and May in support, third mayoral appointee position

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vacant, not voting.

CHAIRPERSON HOOD: Okay. Let's go to correspondence. Zoning Commission Case No. 16-18, Georgetown University request for a partial waiver of posting. Ms. Schellin.

MS. SCHELLIN: Yes, sir. This is a request from the applicant for a partial waiver of the posting requirements. In the 1958 regulation a university only had to post each building that faced property not owned by the university. The 2016 regulations did not carry that over. It just states that all buildings must be posted. So that would include those that are inside of the campus itself. This would increase the posting for this case from approximately 21 signs to 100 signs.

And so the applicant is asking for a waiver of that posting, not total posting.

CHAIRPERSON HOOD: Okay. Again, this is one of those rules we put in place for a reason, but I think this one makes a lot of sense.

MS. SCHELLIN: Yes.

CHAIRPERSON HOOD: And so, sometimes I wonder why we do some things. But I guess in other issues it would be relevant, but in this case I think this is a good --

MS. SCHELLIN: Right. And we do have this on our list to bring at the quarterly changes that come up the next time.

CHAIRPERSON HOOD: Okay. Okay. So, they don't want to put up 100 signs, they just want to put up 21.

MS. SCHELLIN: What's been the standard for years?

CHAIRPERSON HOOD: The young folks can put up 100 because that's within the college, right? No, I'm just, I'm going off.

All right. I think that's my request. I would -- any other comments first?

MR. MILLER: I support the partial waiver of the notice.

CHAIRPERSON HOOD: Okay. And this is not precedent setting, but in this case I think the merits of what's being proposed here and the location of it would warrant us giving -- granting this waiver. So I would move that we grant the waiver in Zoning Commission Case No. 16-18, Georgetown University, for their request with a partial waiver on a posting 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 grant the partial waiver of posting, Commissioner Hood making the motion, Commissioner Miller seconding, Commissioners May and Turnbull in support, third mayoral appointee position vacant, not voting.

CHAIRPERSON HOOD: Okay. Thank you. Next let's go to Zoning -- our last case, I believe. Yeah. Our last case for this evening is Zoning Commission Case No. 97-16C, request for reconsideration from ANC 4A. Ms. Schellin.

MS. SCHELLIN: Yes, sir. This is a ANC 4A's request for reconsideration at Exhibit 9. Exhibit 10 is ANC 4A's request for additional time to provide a response on issues on the case. Exhibit 11 is the applicant's response to the ANC's request for reconsideration. Would ask the Commission to consider the request before them this evening.

CHAIRPERSON HOOD: Okay. I think the motion request as stated from the ANC is requesting four things, that reconsider vacate the order granting the

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minor modification of 849D, for Case No. 19-17C, that the Commission deny the minor modification, the Commission order Lowell to revise its PUD and remove, one, any construction or any other action involving indefinite postponement. And two, any construction or any other action that cannot be accomplished within the timeframe established by 849B. And the last thing is schedule the public hearing in connection with Lowell's request.

When we heard this was it represented to this Commission that -- or the applicant met with the ANC? Does anybody remember that?

MR. MAY: No, I think it was noted that they had not met with the ANC, but they had notified the ANC, I think is what it was.

CHAIRPERSON HOOD: Okay. They notified them. Okay. All right, let's open it up for any comments or how we would like to proceed with this.

MR. MILLER: Mr. Chairman.

CHAIRPERSON HOOD: Yes.

MR. MILLER: I am supportive of reconsidering our previous decision and either considering this as either a modification of consequence, which would allow the parties to submit filings to us on the issues related to the use of this space as a field,

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and -- or I could be supportive also of it being considered a modification of significance that would require a public hearing because looking at the ANC's submission and the design that was in the original -- the landscaping option was an option on the original Zoning Commission order, but the two designs are at least consequentially, or significantly different that there are issues being raised about the type of landscaping and buffering between the play area and those three -- I think it's three homes, the backs of those homes on Kalmia Road. And it may require a public hearing to thrash out the vegetation barriers, noise, and safety issues that the ANC is raising.

But I could go either way as a modification of consequence or significance, depending upon where my colleagues are. But I think we should reconsider our previous action.

CHAIRPERSON HOOD: Okay. Any other comments up here, Mr. Turnbull?

MR. TURNBULL: Oh, thank you Mr. Chair. I would agree with Vice Chair Miller. In Exhibit 11 even the applicant is not opposed to the motion to reconsider, so to me that sort of opens the door to talking about this a little bit further. And I would -- you know, going along with the Vice Chair, whether

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it's of consequence or significance, maybe it's better to do it as of significance so that we can flush this out with the ANC present and with the applicant to discuss the issues and really come to a meeting of the minds as to what's really going to happen and what can be done.

CHAIRPERSON HOOD: Okay. Any other comments up here? Commissioner May?

MR. MAY: Yeah, I agree generally with the sentiment of my fellow commissioners, although I think this is a modification of consequence if you look at what -- how we describe that in the new regulations. And you know, I think that we would have the opportunity to hear from the ANC and from the neighbors if we just set this up for briefings to hear those, you know, those arguments in writing, and then we can take it up later, right?

MS. SCHELLIN: Only parties would be --

MR. MAY: Parties.

MS. SCHELLIN: Yeah. Not -- yeah.

MR. MAY: Of course. Yeah. The ANC.

MS. SCHELLIN: Just the ANC, yes.

MR. MAY: And that's the only party?

MS. SCHELLIN: That's the only party.

MR. MAY: Okay.

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CHAIRPERSON HOOD: I kind of was thinking about this, and I know we could do a modification of consequence, and then we get briefings, and then that may take us to a modification of significance. And I really think from the way I read it, even though our regulations of consequence both give both parties, the ANC and applicant, a chance to respond to us. But I think we're going to probably get to a modification of significance.

So as far as, at least the way I read it, and from just wasting time and going through those procedures I think we can cut out consequence. And I would agree with the Vice Chair to go straight to a modification of significance. I think, and I would ask if -- I don't know, I think we can move -- I would be inclined, my vote would be inclined to move straight to a modification of significance.

I don't know if we have three votes. I know we have two.

MR. MILLER: I would agree with you, Mr. Chairman, that we may end up getting to a hearing anyway so we might as well just do it. But it might be a good idea to limit the scope of the hearing to just those issues relevant to the issues mentioned in the ANC request, issues regarding vegetation,

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barriers, noise, safety, and mitigation from the play area.

CHAIRPERSON HOOD: If we get there, if we get to the significance it would definitely be a limited scope hearing on those issues. But I just need to see. I think -- okay. All right. All right. So it seems like we have a consensus. Thank you for going straight to consensus. I mean, significance.

But let me just ask, do we need to vacate that order? We need to do all that now?

MR. RITTING: I think you should vote on the ANC's motion now whether to vacate. And that is a necessary step to having the hearing on the modification of significance when that time occurs.

The other bit of information I wanted to add is that to proceed with the modification of significance, the applicant needs to initiate it by, and follow the rules in the new subtitle Z, Section 704. So you wouldn't be scheduling the hearing now, but you'd be granting the motion to vacate. And I suppose you'd be encouraging the school to follow the rules in Section 704.

CHAIRPERSON HOOD: Okay. I'm going to do all that, what Mr. Ritting said. So, I would move that we vacate the minor modification order of 849D, which

was for Case No. 96-17C, and strongly encourage the applicant to -- what section was that? Seven?

MR. RITTING: I believe it's Subtitle Z, Section 704.

CHAIRPERSON HOOD: Strongly encourage the applicant to apply and do what's up under the Subtitle Z 704, in that order, 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: Yes, sir. Chairman Hood if I may, just to clarify, the applicant that you're asking the applicant to file, it's just regarding those specific issues, right?

CHAIRPERSON HOOD: The issues that they --

MS. SCHELLIN: That the ANC brought up.

CHAIRPERSON HOOD: Right.

MS. SCHELLIN: So they don't need -- it's not like they're starting at square one. You want their application to be based on --

CHAIRPERSON HOOD: All the issues that were --

MS. SCHELLIN: -- responding to those issues.  
Okay.

CHAIRPERSON HOOD: All the issues that came  
before us.

MS. SCHELLIN: Okay. Even though they have  
to follow Section 704.

So staff would record the vote four to zero  
to one that the Commission has voted to vacate Order  
No. -- the order in Case No. 97-16C, and ask the  
applicant to file an application for a modification  
of significance with regard to the issues that were  
raised in the request for reconsideration and the  
ANC's request for reconsideration. And then a  
hearing -- once, then a hearing can be scheduled on  
those limited issues, Commission Hood moving,  
Commissioner Miller seconding, Commissioners May and  
Turnbull in support, third mayoral appointee position  
vacant, not voting.

CHAIRPERSON HOOD: And I'm sure that Lowell  
School is going to continue to be a great neighbor so  
they're going to go ahead and move forward with that  
expeditiously so those issues can get resolved.

Anything else?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. So with that --

MS. SCHELLIN: Unless OP has a status report.

CHAIRPERSON HOOD: Oh, Office of Planning.

MS. SCHELLIN: Sorry.

CHAIRPERSON HOOD: You have a status report?

MS. STEINGASSER: Just very briefly,  
Chairman, Commissioners. I just wanted to point out  
as the regs have now become in full effect, we're  
starting to work closely with the Office of Zoning  
Administrator and how the new regs function, and  
we'll be bringing in other types of corrections and  
modifications to the Zoning Commission. These will  
not be technical corrections but they will probably  
be more than need in a hearing. And we've also  
worked with the Office of Zoning on some.

So you'll start to see, on a quarterly basis,  
a set of corrections coming forward as we work  
through the regs. So just kind of wanted to give you  
a heads up that those may be coming.

CHAIRPERSON HOOD: And can we incorporate  
some of those that we get from the BZA case with  
that, Ms. Schellin? I know you have one or two  
people. Well, one person I know came to see you when  
I was on BZA on Tuesday.

MS. SCHELLIN: Yes, I passed that on to --

CHAIRPERSON HOOD: That's how we --

MS. SCHELLIN: -- Ms. Steingasser already.  
The other person never did contact me.

CHAIRPERSON HOOD: And I forgot what the -- I  
would have to go back and look at the tape. So,  
anyway. Anything else? Ms. Steingasser, you  
finished?

MS. STEINGASSER: Yes, sir.

CHAIRPERSON HOOD: Okay. All right.  
Anything else, colleagues?

All right. I want to thank everyone for  
their participation tonight and this meeting is  
adjourned.

[Hearing adjourned at 7:52 p.m.]