

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Regular Public Meeting
1446th Meeting Session [25th of 2016]

6:37 p.m. to 6:57 p.m.
Thursday, October 20, 2016

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

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A P P E A R A N C E S

Board Members:

- ANTHONY HOOD, Chairman
- ROBERT MILLER, Vice Chair
- MICHAEL TURNBULL, Commissioner

Office of Zoning:

- SHARON SCHELLIN, Secretary

Office of Planning:

- JENNIFER STEINGASSER
- BRANDICE ELLIOTT
- JONATHAN ROGERS

District Department of Transportation

- JOEL LAWSON

Office of Attorney General:

- JACOB RITTING, ESQ.

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

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3 CHAIRMAN HOOD: Good evening, ladies and
4 gentleman. This is the public hearing of the
5 Zoning Commission in the District of Columbia.
6 We're located at the Jerrily R. Kress Memorial
7 Hearing Room. My name is Anthony Hood. Today's
8 date is October 20, 2016.

9 Joining me this evening are Vice-Chair
10 Miller, and Commissioner Turnbull. I believe
11 Commissioner May will be participating, depending
12 on how we proceed. We're also joined by the
13 Office of Zoning staff, Ms. Sharon Schellin, as
14 well as Office of Planning staff, Ms. Steingasser,
15 Mr. Lawson, Ms. Elliott, and Mr. Rogers. I'm
16 sorry, District Department of Transportation, Mr.
17 Rogers.

18 This proceeding is being recorded by a
19 court reporter and it is also webcast live.
20 Accordingly, we must ask you refrain from any
21 disruptive noise or actions in the hearing room,
22 including display of signs or objects. Notice of

1 today's hearing was published in the D.C.
2 Register, and copies of that announcements are to
3 my left on the wall near the door.

4 The hearing will be conducted in
5 accordance with Rules of subtitle Z, Chapter 4 as
6 follows:

7 Preliminary matters, after this case,
8 the report of the Office of Planning, Report of
9 all the government agencies, report of the ANC,
10 organizations and persons in support over the
11 persons in opposition, rebuttal and closing,
12 thereafter.

13 The following the time constraints will
14 be maintained in this meeting: I see we have 60
15 minutes. Organizations five minutes; individuals,
16 three minutes. All persons who wish to testify
17 before the Commission on this evening's hearing
18 are to register at the witness kiosk to my left
19 and fill out the two witness cards. These cards
20 are located to my left on the table near the door.
21 Upon coming forward to speak to the Commission,
22 please give both cards to the reporter sitting to

1 my right before taking a seat at the table.

2 When presenting information to the
3 Commission, please turn on and speak into the
4 microphone, first stating your name and home
5 address. When you are finished speaking, please
6 turn your microphone off so that your microphone
7 is no longer picking up sound or background noise.

8 The decision of the Commission in this
9 case must be based exclusively on the public
10 record. The staff will be available throughout
11 the hearing to discuss procedural questions.
12 Please turn off all electronic devices at this
13 time so not to disrupt these proceedings.

14 Would all individuals wishing to testify
15 please rise and take the oath?

16 Ms. Schellin, would you please
17 administer the oath?

18 MS. SCHELLIN: Yes. Please raise your
19 right hand. Do you solemnly swear or affirm the
20 testimony you will give this evening will be the
21 truth, the whole truth, and nothing but the truth.

22 (Witnesses affirmed)

1 MS. SCHELLIN: Thank you.

2 CHAIRMAN HOOD: Mr. Adams, were you
3 waving at me or Mr. Frank?

4 MR. ADAMS: I didn't wave.

5 CHAIRMAN HOOD: Oh, I thought you was
6 waiving at me because I never had anybody wave at
7 me before. Because I was going to waive back.
8 Okay. Ms. Schellin, do we have any preliminary
9 matters?

10 MS. SCHELLIN: Yes, sir. We have a
11 party status request in support from the 1250
12 Fourth Street Edens, LLC and Union Market
13 Apartments, LLC, who are represented by Mr.
14 Avitabile. Application was filed on time. And
15 again, this is in support.

16 CHAIRMAN HOOD: Okay. Colleagues, what
17 exhibit is that again, Ms. Schellin?

18 MS. SCHELLIN: That is -- oh, I forgot
19 to write that down.

20 MR. TURNBULL: Exhibit 38.

21 CHAIRMAN HOOD: Okay. Thank you.
22 Exhibit 38. Colleagues, I don't have any problems

1 with granting party status support. I think
2 they're trying to work out some issues with the
3 alley and some other issues. Maybe they may be
4 flushed out with this hearing without any
5 objections.

6 Okay. I would move that we grant the --
7 I don't have it open -- Union Market Apartments,
8 LLC, 1250 Fourth Street, Edens Place, LLC/Union
9 Market Apartments, LLC, Exhibit 38, party status
10 in support with the issues that's stated in the
11 submission and ask for second.

12 MR. MILLER: Second.

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

15 (No response)

16 All that's in favor, aye?

17 (Commissioner members comply)

18 I'm not hearing any opposition of those
19 present. Ms. Schellin, record the vote.

20 MS. SCHELLIN: Yes. Staff voted three
21 to zero to two to grant party status in support to
22 the 1250 Fourth Street Edens, LLC and Union Market

1 Apartments, LLC. Commissioner Hood moving,
2 Commissioner Miller seconding, Commissioner
3 Turnbull in support. Commissioner May not
4 present/not voting and the third mayoral appointee
5 position: vacant/not voting.

6 CHAIRMAN HOOD: Okay. Do we have any
7 other preliminary matters?

8 MS. SCHELLIN: The transportation
9 report, the ZR-16 requires that it be filed 30
10 days before the hearing. The applicant filed it
11 20 days before. And the waiver, the applicant has
12 filed a waiver for that. And so we'd ask the
13 Commission to consider that waiver request.

14 CHAIRMAN HOOD: Any objections? I
15 assume we won't have any objections to that. Any
16 objections? Any objections?

17 (No response)

18 CHAIRMAN HOOD: No objections. So we
19 will take it. Anything else?

20 MS. SCHELLIN: And then the last thing,
21 the applicants' expert witnesses that they've
22 proffered, two have been previously accepted.

1 That would be Mr. Andre's and Jeff Barber, has
2 previously been accepted and then Sasha Rosen, who
3 has been proffered in architecture. His résumé is
4 at 18G.

5 CHAIRMAN HOOD: So the only person that
6 we need to deal with is the expert?

7 MS. SCHELLIN: Mr. Rosen, yes.

8 CHAIRMAN HOOD: Any comments?

9 (No response)

10 CHAIRMAN HOOD: All right. Fine. So we
11 will accept him as an expert witness.

12 MS. SCHELLIN: Okay. That's it.

13 CHAIRMAN HOOD: Okay. Due to the Office
14 of Planning's report that I read, and not any of
15 the submissions that came in later this afternoon,
16 I want to go to the Office of Planning first.
17 This is unprecedented. This doesn't mean that we
18 do this in every case. Let me go to the -- I'm
19 going to ask the Office of Planning, Ms. Brandice
20 or Ms. Steingasser, or whomever, have you all had
21 a chance to review what came in this afternoon?

22 Well, let me back up. I saw your

1 reference and what you asked us to do previously
2 in your report, which I had a problem with to
3 begin with. You know, to have the hearing and
4 we'll work on these things and our
5 recommendations.

6 The laundry list, I think it was -- I
7 counted 12. It may be more. But anyway, have you
8 all had a chance to review the things that were
9 submitted this afternoon?

10 MS. ELLIOTT: Good evening, Mr. Chairman
11 and members of the Commission. We have not
12 reviewed what was submitted between the time that
13 we filed the report and this afternoon.

14 CHAIRMAN HOOD: Okay. I'm going to make
15 a recommendation. I normally don't see these
16 colleagues, but I have talked to my colleagues
17 now, so I know everyone has an opinion on this. I
18 have a problem when stuff is presented to us like
19 that. I'd don't like to see everything kind of
20 thrown together. I know that we have issues, but
21 to correct something the day of, we work. We do
22 other things also and we spend a lot of time

1 reading the materials in front of us.

2 As I stated, I did have an issue with
3 the Office of Planning's report to start with, but
4 I can tell you that I was willing to listen to
5 some of it. But then to submit something at the
6 last minute, or what I call the last minute. It
7 might not be the last minute to others, but I call
8 it the last minute.

9 After spending time rereviewing, I have
10 a problem, but I'm not sure where my other
11 colleagues are, but I think that we need to rehash
12 your presentation and include whatever changes you
13 made. And then I don't need to hear I made one
14 change here, one change there. No, we need to
15 pull all this together so when we review stuff
16 that -- we spend a lot of time of this, and then
17 to come in at 2:00 -- I do work. I'm not
18 fortunate enough yet to retire, but I do have a
19 job and I can't do zoning on my job. So I spend a
20 lot of time in the evening doing this.

21 And I'm not giving you a lecture, but
22 let's be realistic. I'm not going to sit up here

1 and make a decision for this city on something
2 that's presented to me like that. I think I'm
3 doing an injustice to the residents of the city;
4 I'm doing an injustice to the government; and I'm
5 doing an injustice to this Commission. At least I
6 feel that way.

7 But let me open it up to my colleagues
8 and see where everybody else because I'm not the
9 only one to vote. Commissioner Turnbull?

10 COMMISSIONER TURNBULL: Well, I guess I
11 would agree with you. I think when you look at a
12 100-page set of drawings, 11x17 drawings, that's
13 one thing to look at, but when we get another 100-
14 page set tonight to look at, rather than trying to
15 pull it up on your computer to look at it, you
16 know, so basically now, instead a 100-page set,
17 you got 200 pages and you got to go back and
18 correlate what's on one, what's on the other. And
19 to try to do it on a hearing like this tonight, on
20 the fly, I think you're absolutely correct.

21 I think if they're going to do this,
22 they need to resubmit either a consolidated set of

1 drawings that reflects totally where they are and
2 not have us have to go between two sets of
3 drawings and try to figure out what supersedes one
4 or what's correct and what's incorrect. I just
5 think it's totally unfair.

6 I mean, it's just -- I think they
7 haven't done their homework and presented it
8 right. I think it's an important project. I
9 think it needs the care and attention that the
10 Zoning Commission can address to it. I think
11 there are a lot of elements in here that need to
12 be looked at. There's a lot of not only planning,
13 urban planning, housing and architecture to look
14 at. And I think from a transportation
15 standpoint, I think we need a set of drawings that
16 we know is up-to-date and accurate, without us
17 having to do back and forth and leaf through and
18 try to figure out -- I think I would rather see a
19 consolidated set to drawings submitted that would
20 tell us exactly what they want to do.

21 CHAIRMAN HOOD: Okay. Any other
22 comments Vice-Chair Miller?

1 VICE-CHAIR MILLER: Thank you, Mr.
2 Chairman. While I appreciate all the time and
3 effort that everyone has put into this project,
4 both the applicant and the District's agencies, I
5 am actually semi-retired, but I didn't realize
6 that that submission came in at 2:00 p.m. this
7 afternoon.

8 And so I was reviewing today and
9 yesterday this file, this very large, important
10 revitalization project. And it has at least six
11 buildings and a lot of issues that were
12 outstanding. So I sat down and still, in the
13 Office of Planning's report, dated October 11,
14 2016, I have trouble -- a little trouble just
15 following where it was. What the status was.

16 So to the extent that we've gotten a new
17 submission today that maybe answers some of the
18 questions that are already in the Office of
19 Planning report and we can digest those and maybe
20 have another report from the Office of Planning, I
21 think that may be a more efficient way to go. So
22 I would tend to support whatever direction you

1 want to go in how we handle this. It's an
2 important case and there are a lot of issues that
3 were outstanding and we should understand more
4 clearly how they've been addressed.

5 COMMISSIONER TURNBULL: Mr. Chairman, I
6 would just echo the vice-chair's comments. I
7 think this is a very critical case to look at.
8 There are a lot of elements to it. Very
9 important, and I think we definitely need the
10 Office of Planning to be able to sit down and go
11 through it all and gives us their expert opinions
12 and if it meets a lot of the issues that they had
13 questions about previously.

14 CHAIRMAN HOOD: Yes, sir. We'll have
15 this discussion. I'm going to come to you, but I
16 can tell you the decision is basically made. So
17 you can hold some of it because taking time to go
18 through this is a lot to us. We spend a lot of
19 time and we take this very seriously. But I will
20 agree with my colleagues, and I think that I want
21 to recommend that we give the applicant some
22 additional time to come together because when I

1 looked at the VDOT report, the last time we agreed
2 about the VDOT and all that. Okay, agreed about
3 what?

4 So I mean, and that's coming from
5 surface. So I think that it's more important for
6 us to have it right instead of dealing with stuff
7 half-baked or half done. And I think, as I say,
8 we do everyone an injustice when we don't fully
9 take a look at it because we really value what we
10 do and we work hard at what we do. And to do this
11 on the cuff and on the blind, somebody throw
12 something to us at 2:00 in the afternoon and
13 Office of Planning hasn't looked at it, as they
14 stated. I haven't looked at it. And then to say
15 oh, well, we've addressed all these issues. And
16 if there are some outstanding issues, I would
17 suggest that you work on those outstanding issues
18 and bring it down to us fully baked and ready to
19 go.

20 Now, Mr. Freeman?

21 MR. FREEMAN: Thank you. Just to be
22 clear, so what we filed yesterday was responses to

1 the Office of Planning's comments. So those were
2 filed yesterday. What we filed today was just a
3 copy of the presentation that we're going to
4 present. So we always file the presentation at
5 3:00 on the day of the hearing.

6 So it is long. That's why we asked for
7 60 minutes. So what we filed today, which we file
8 every time on the day of the hearing, is the
9 presentation that Mr. Rosen is going to present.
10 What we filed yesterday was just our written
11 response to the comments in the Office of
12 Planning's report. So I understand it's a lot.

13 CHAIRMAN HOOD: Yesterday.

14 MR. FREEMAN: It was filed yesterday,
15 sir. It's a lot. The bulk of it are renderings,
16 additional detail and the landscape plans. So
17 none of that, other than the renderings, it does
18 not -- it's new. It's additional stuff for you to
19 look at. I absolutely agree with you on that
20 point. But I do want to make it clear that it was
21 responsive to the questions that the Office of
22 Planning raised so that we could present that

1 during our presentation today so that you would
2 have a full and complete record of what we've
3 shown to OP in the past. Some that was shown in
4 the past, some is new. But again, I just want it
5 to be clear, yesterday and today were two
6 different things. Not that it changes your view
7 on anything, but I just wanted to clarify that
8 point.

9 CHAIRMAN HOOD: You know we also -- and
10 I shouldn't really go into this with you, but do
11 you know we also review on weekends and sometimes
12 we got two days and three days? Yesterday makes
13 me even more madder. Because if you had it
14 yesterday, you probably could've had it Tuesday,
15 right?

16 MR. FREEMAN: I would have had it in as
17 soon as I could have gotten it in, Mr. Chairman.

18 CHAIRMAN HOOD: All right. All right.
19 And I still like you, Mr. Freeman. Understand
20 that. I still like you, but we're going to do
21 what we have to do. We're going to do it right.
22 Okay. Do we have some additional -- and some of

1 those outstanding issues, let's try to bring some
2 of those things together. Some of those still
3 outstanding issues, maybe, like the alley from the
4 group in support. You're going to get some time
5 to work on all of that.

6 MR. FREEMAN: Of their list of 10
7 issues, I would suggest that only two are
8 outstanding of their list of 10 issues.

9 CHAIRMAN HOOD: Okay. I'm going to
10 remember. Make sure that we put those in the
11 notes so when we do get around to the hearing, we
12 will only have two issues, other than that ones we
13 may bring up. Ms. Schellin, please put the note
14 and put my name by that so I can remember to bring
15 it up to Mr. Freeman.

16 Ms. Schellin, do we have some additional
17 dates? Anything else?

18 COMMISSIONER TURNBULL: No. I mean, I
19 have a lot of questions, from what I have, without
20 looking at what we got today. But there are a lot
21 of issues, such as penthouse setbacks, which I
22 don't think they've still met.

1 CHAIRMAN HOOD: And that's what I meant
2 when I proposed. So we now have -- some of this
3 may answer our questions and some of it may not.
4 I don't know.

5 Ms. Schellin, do we have some dates?

6 MS. SCHELLIN: Our next available
7 hearing date will be in January. So that will be
8 --

9 MR. FREEMAN: Mr. Chairman? I firmly
10 believe, once you go through the presentation --
11 if we're able to present, you will see that the
12 information that we're showing answers the
13 questions that you may have, Mr. Turnbull. It's
14 not substantially changed than what you would have
15 otherwise reviewed. So again, for example, there
16 are additional renderings, which is something I
17 think we would have presented on the day of the
18 hearing anyway.

19 There are additional keys, arrows,
20 reference points to highlight some of the
21 information that is already on the landscape plans
22 that you would have already seen. And there are

1 some corrections to numbers that were inconsistent
2 on the plans. So I would posit that we could
3 present a case that will answer 99 percent of your
4 questions, even if you don't look at what we filed
5 yesterday.

6 CHAIRMAN HOOD: Well, it looks like
7 you're going to have until January to present it.
8 What's the date, again, Ms. Schellin?

9 MS. SCHELLIN: That would be January
10 12th. Thursday, January 12th.

11 CHAIRMAN HOOD: Now, what I would be
12 willing to do, willing for you, Mr. Freeman, and
13 for the rest of everyone else, is I know we have
14 some other stuff that we may can schedule on a
15 Wednesday. I know people may not like that, but
16 for the sake of what's going on, it'll give us
17 some time, the Office of Planning some time. And
18 I know we may be able to do something on a Tuesday
19 or Wednesday.

20 VICE-CHAIR MILLER: I would be
21 supportive of that, Mr. Chairman. I was going to
22 suggest that we find another date, earlier than

1 three months. Although, I supported delaying
2 tonight, three months seems like a long time.

3 CHAIRMAN HOOD: Do you have a Tuesday
4 date?

5 MS. SCHELLIN: A Tuesday?

6 CHAIRMAN HOOD: Because BZ will
7 eventually be Wednesdays.

8 MS. SCHELLIN: Starting in November,
9 yes. We could do -- do you want to do November
10 22nd? That's the week of Thanksgiving.

11 CHAIRMAN HOOD: When is Thanksgiving?

12 MS. SCHELLIN: That week. So we won't
13 have anything that Wednesday or Thursday and we
14 can have Monday and Tuesday.

15 CHAIRMAN HOOD: Mr. Freeman is breathing
16 real hard, so he must have --

17 MR. FREEMAN: I am happy to be here on
18 November 22nd.

19 CHAIRMAN HOOD: Oh, I thought maybe you
20 were going to eat some turkey and stuffing. Okay.
21 Can we do that? Everybody is going to be in town?
22 Is anybody going out of town?

1 MR. FREEMAN: We will be here on
2 November 22nd.

3 CHAIRMAN HOOD: What is Commissioner May
4 accommodate? My hat's off.

5 MS. SCHELLIN: I don't know.

6 CHAIRMAN HOOD: Is everybody here.
7 Well, is everybody here that Monday? We have a
8 hearing on Monday, right?

9 MS. SCHELLIN: Yes.

10 CHAIRMAN HOOD: So he probably will be
11 here that Tuesday.

12 MR. FREEMAN: Ms. Elliott may not be
13 here. So if you want Ms. Elliott to be here, we
14 go to do it tonight.

15 MS. ELLIOTT: That's borderline for me.
16 I have five weeks left.

17 CHAIRMAN HOOD: Okay. Well, there are
18 plenty of stand-ins.

19 MS. ELLIOTT: But I'm sure --

20 CHAIRMAN HOOD: Mr. Lawson or Mr.
21 Carpenter. There are plenty of stand-ins at the
22 Office of Planning. All right. So seriously, we

1 will -- and I want to thank the Commission for
2 pushing to the 22nd. We do try to accommodate.
3 So if you start working with us, and we'll
4 continue to work with you.

5 Anything else, Ms. Schellin?

6 MS. SCHELLIN: No, that's it.

7 CHAIRMAN HOOD: So we're going to
8 postpone this until November the 22nd at 6:30.
9 Mr. Glasgow is raising his hand. You want us to
10 go to January?

11 MR. GLASGOW: No, sir, not at all. But
12 I understand, since we're all here, Mr. Turnbull
13 had a number of questions and issues. I'd like to
14 hear those or if we can get them from staff later.
15 I think that may help pursue everything along if
16 we got a list of those comments that we can make
17 that we address.

18 COMMISSIONER TURNBULL: Well, the only
19 thing is I've got issues with the affordable
20 housing. I mean, that would take half-an-hour of
21 talking about it.

22 MR. GLASGOW: Okay. Well, I'm not

1 talking necessarily here, but if we can get some
2 of those points to Ms. Schellin, then we could
3 follow-up and make sure that we have a better
4 opportunity to address those by the time the
5 hearing comes up.

6 CHAIRMAN HOOD: Let us review this.
7 Some of this may answer our questions. And then
8 we can get to the typical type of hearings that we
9 have over the housing issues, transportation
10 issues that we have, and that kind of stuff can be
11 flushed out. But we got to see what's going on
12 here first, I believe, and then it'll be a typical
13 type of case.

14 Is that okay, Mr. Turnbull, or do you
15 want to give them your laundry list?

16 COMMISSIONER TURNBULL: No, no, no.
17 That's fine.

18 CHAIRMAN HOOD: All right. Anything
19 else? All right. I want to thank everyone for
20 your participation tonight. And this hearing is
21 not adjourned, but it's going to be postponed
22 until the date that is specified.

1 MR. FREEMAN: Do we need to repost or --

2 MS. SCHELLIN: You do not.

3 MR. FREEMAN: Thank you.

4 CHAIRMAN HOOD: All right. With that,
5 thank you and we'll see you on the 22nd.

6 (Whereupon, at 6:57 p.m., the
7 proceedings were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, GERVEL A. WATTS, the officer before whom
3 the foregoing hearing was taken, do hereby certify
4 that the testimony that appears in the foregoing
5 pages was recorded by me and thereafter reduced to
6 typewriting under my direction; that said
7 deposition is a true record of the proceedings;
8 that I am neither counsel for, related to, nor
9 employed by any of the parties to the action in
10 which this deposition was taken; and further, that
11 I am not a relative or employee of any counsel or
12 attorney employed by the parties hereto, nor
13 financially or otherwise interested in the outcome
14 of this action.

15

16 GERVEL A. WATTS

17 Notary Public in and for the

18 District of Columbia

19

20

21

22 My Commission expires: February 14, 2019

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