

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Special Public Meeting

7:33 p.m. to 8:25 p.m.
Thursday, September 14, 2017

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

1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JENNIFER STEINGASSER

13 JOEL LAWSON

14

15

16 Office of the Attorney General:

17 ALAN BERGSTEIN

18 HILLARY LOVICK

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRPERSON HOOD: I think we're ready to get started. This meeting will please come to order.

Good evening, ladies and gentlemen, this is a public meeting of the Zoning Commission for the District of Columbia.

My name is Anthony Hood. We're located in the Jerrily R. Kress Memorial Hearing Room. Joining me are Vice Chair Miller and Commissioner May and Turnbull. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, Office of Attorney General, Mr. Bergstein and Ms. Lovick, as well as Office of Planning, Ms. Steingasser and Mr. Lawson.

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 that 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 at this time.

1 Does the staff have any preliminary matters?

2 MS. SCHELLIN: No, sir.

3 CHAIRPERSON HOOD: Okay. This is our
4 continued discussions on Zoning Commission Case No.
5 13-14. We had some questions that we needed to
6 continue to answer. We had, I think if I tee it up a
7 little bit, we had asked the applicant in this case,
8 which is Vision McMillan Partners, LLC in the
9 District of Columbia, to go back and relook at some
10 things. And I am going to run through some of our
11 comments. I mean, some of the comments and things
12 that we received as we continue to expound and give
13 our rationale on the questions that have been posed
14 to us by the court.

15 Any opening statements, comment, colleagues
16 or anyone?

17 [No audible response.]

18 CHAIRPERSON HOOD: Okay. Okay. One of the
19 questions -- one of the things that came back to us,
20 and colleagues, you can -- this record is voluminous.
21 One of the things that came back to us is a proposal.
22 Excuse me. And in question was Parcel 1, a
23 suggestion from C-3-C, which is being proposed now to
24 CR, which was suggested by the applicant.

25 Let me just ask this, anyone see us doing

1 that? I'm sure there are some other things that
2 would come after that if we were to go from C-3-C to
3 CR, which is a suggestion by the applicant. Are
4 there any comments on that proposal?

5 MR. MAY: So, Mr. Chairman, originally, I was
6 not -- I didn't necessarily understand the potential
7 benefit to that. I mean, certainly a sort of
8 redesignation doesn't do anything to change the
9 project. But as I consider this more it seems to
10 make more sense that it would not be unreasonable to
11 consider CR as a zone for this property, just on its
12 face. I mean, it's a question that we probably
13 should have asked when we originally were considering
14 the case and were thinking about this as, you know,
15 as C-3-C, because that was proposed. But then we
16 pushed back on the height of the building on Parcel
17 1. NCPC also pushed back on the configuration of
18 that building.

19 And so, the applicant came back with a
20 building that was not quite as tall. So, at 115
21 feet, it would fall into the CR with a PUD plus the
22 five percent flexibility that we're allowed to give.
23 So it kind of makes sense that we would consider it
24 that way. And although CR is not specifically
25 suggested as, you know, in the comp plan as zones

1 that are compatible with medium density, when you
2 look at the description of what the zone is, it fits
3 this project very well.

4 So, there are a lot of reasons why it could
5 make sense. So, I'd be open to considering making
6 that change. I think we have to have some
7 discussion.

8 CHAIRPERSON HOOD: Okay. Anyone else
9 comment? Vice Chair Miller?

10 MR. MILLER: Yeah. Thank you, Mr. Chairman.
11 Yeah, I would concur with Commissioner May and I
12 would just I guess, request the Office of Planning to
13 comment on that proposal to change it to CR. As I
14 recall -- and comment also on this comment that I'm
15 about to make. As I recall, and I may be recalling
16 incorrectly, I thought the rest of this site, other
17 than Parcel 1 was designated CR by us, that we only
18 went to the C-3-C, or it was only proposed originally
19 as the C-3-C as Commissioner May alluded to because
20 there was originally 130-foot height there, which we
21 pushed back on and got to 115, and now they're coming
22 in at 113.

23 So, if the Office of Planning could comment
24 on the appropriateness of the CR designation, it
25 seems to make sense to me for the reasons that

1 Commissioner May has suggested. And because, I
2 think, the rest of this site, and correct me if I'm
3 wrong as I said, if the rest of the site we did as CR
4 and so I would just ask for Office of Planning expert
5 commentary on that.

6 MS. STEINGASSER: You would like it verbally
7 now, or in writing?

8 CHAIRPERSON HOOD: Yes, if you could. Yes.

9 MS. STEINGASSER: Oh.

10 MR. MILLER: Sorry.

11 MS. STEINGASSER: I think that is a fine
12 solution. The CR is a zone that is very flexible.
13 It's not designated to one, it's not tied to one
14 land-use category or another, and the C-3-C was
15 originally proposed to allow for the height only so
16 that there is another vehicle that accommodates the
17 need of that building. That's what that extra five
18 percent is for. So the solution does fit the site
19 and we would have no objection to it and believe it
20 would be -- would fall within the category of not
21 inconsistent with the comp plan.

22 MR. MILLER: And is the rest -- did our
23 order, that was vacated, did it redesignate the rest
24 of the site as CR?

25 MS. STEINGASSER: I believe the rest of the

1 site is CR.

2 MR. MILLER: That's what I recall.

3 MS. STEINGASSER: Yeah.

4 MR. MILLER: But --

5 MS. STEINGASSER: I believe south of --

6 MR. MILLER: South of the Parcel 1 site.

7 MS. STEINGASSER: There was two pieces.

8 Right. Yes, sir.

9 MR. MILLER: But, okay. Thanks.

10 CHAIRPERSON HOOD: Any other comments on that
11 proposal?

12 MR. TURNBULL: Mr. Chair.

13 CHAIRPERSON HOOD: Yes.

14 MR. TURNBULL: I would agree with my
15 colleagues and agree with OP that going to CR would
16 not be inconsistent with the comp plan and I think
17 it's more appropriate for the site as a whole. So I
18 would be in favor of going down that road.

19 CHAIRPERSON HOOD: Okay. I'm just curious,
20 if we go down this road, that change from C-3 -- I
21 mean, I'm sorry. Yeah, C-3-C to CR, what all is
22 involved? Can we do it on our own or what do we have
23 to do? And I'll just ask Ms. Lovick or Mr. Bergstein
24 if you can just help me do that.

25 MR. BERGSTEIN: The Commission has, in the

1 past, unilaterally redesignated zoning. In this
2 case, it would be a purely technical change. This is
3 a PUD related map amendment so the only thing that
4 can be developed is the plans themselves. So the
5 zoning does not change anything. It actually is more
6 stringent in that the height for a C-3-C PUD is 130,
7 the height for a CR PUD is 110. The maximum FAR for
8 C-3-C is eight, under a PUD. The maximum FAR for a
9 CR PUD is 110 plus the five percent.

10 So you're actually adding stringency to the
11 map amendment. There is case law that would suggest
12 that that might be a case for readvertising. But in
13 this case it was the applicant, the property owner
14 themselves, who is suggesting the CR zoning and
15 stated no objection to it. So, and you have heard
16 from the Office of Planning.

17 So in those circumstances, I think you could
18 unilaterally proceed with CR zoning, but you could
19 also indicate that if for some reason that
20 designation was struck that you would have C-3-C in
21 its place.

22 CHAIRPERSON HOOD: So do we need to vote on
23 this individually, or do we need to --

24 MR. BERGSTEIN: I think in the past you did
25 it by consensus.

1 CHAIRPERSON HOOD: Okay.

2 MR. BERGSTEIN: If you feel you need more
3 formality than that --

4 CHAIRPERSON HOOD: Okay.

5 MR. BERGSTEIN: -- but I think someone should
6 say that the zoning -- I think you might as well make
7 a motion that the zoning be proposed to be
8 redesignated to Parcel 1 from C-3-C to CR, and
9 inclusive within that motion would be the notion that
10 if the CR zoning was deemed to be -- that you didn't
11 have the authority to do that, that it would then be
12 deemed to be C-3-C for the purposes of going forward
13 in analysis.

14 CHAIRPERSON HOOD: Okay.

15 MR. MAY: So, can I just say, so moved?
16 Since you stated it?

17 MR. BERGSTEIN: To adopt my statement as your
18 motion, you may.

19 MR. MAY: I would propose to adopt that
20 statement and make that motion.

21 MR. MILLER: Second.

22 CHAIRPERSON HOOD: Okay. It's been moved and
23 properly second that we change from C-3-C to CR, but
24 I don't want to try to repeat that and then if CR is
25 moot, then we go back to C-3-C. But what Mr.

1 Bergstein just said, so moved. Okay. Yeah. All
2 right. I think that's a good fit.

3 So it's moved and properly seconded. Any
4 further discussion?

5 [Vote taken.]

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

8 MS. SCHELLIN: Staff records the vote four,
9 to zero, to one to redesignate the zoning for Parcel
10 1 from C-3-C to CR, and if that's not doable then it
11 would go back to C-3-C. Commissioner May moving,
12 Commissioner Miller seconding, Commissioners Hood and
13 Turnbull in support, Commissioner Shapiro not
14 present, not voting.

15 MR. BERGSTEIN: So just to help the
16 Commission out, the Court of Appeals based its
17 conclusion that the Parcel 1 building was
18 inconsistent with the Mid-City Element 2.6.5 based
19 upon its conclusion that -- which its commission
20 never actually found, that the Parcel 1 building was
21 a high-density use and specifically because the C-3-C
22 zoning at 115 feet, exceeded what the specific zones
23 called out in the medium-density definition were
24 listed.

25 In other words, the C-3-C Zone was not listed

1 as a zone that would specifically apply to medium-
2 density commercial, but is listed as a zone that
3 would apply to high-density commercial.

4 And as Ms. Steingasser pointed out, the CR
5 Zone is not specifically identified in any of the
6 land-use designations but is separately discussed as
7 appropriate for a mixed-use zone. So, since you have
8 now redesignated the site as CR, you need to go
9 through analysis and determine based upon that
10 designation, whether or not the Parcel 1 building is
11 a medium-commercial density use or a high-density
12 commercial use.

13 And if I haven't been clear on that I can try
14 saying it some other way.

15 CHAIRPERSON HOOD: I'll just say, I think I
16 got it. I think we have it, I hope. So now, we need
17 to decide whether Parcel 1 building is inconsistent
18 with the Mid-City Element 2.6.5, I believe.

19 One of the things that it talks about in
20 meeting commercial density use is the eight-story
21 Parcel 1 building a medium-commercial density use.
22 And I don't even know how we got to high-density, and
23 I'm not sure whether this Commission, whether we were
24 the ones who talked about it. I'm not sure how that
25 even came into play. I don't know whether it was the

1 courts or materially it was given to us. But I don't
2 think we even ever even decided that as a commission,
3 looking at it now after 25 hours of hearings.

4 So I guess that's on the table for us to
5 decide. Is the Parcel 1 building inconsistent with
6 the Mid-City Element 2.6.5, and we need to make, I
7 guess, a determination on the medium-commercial
8 density use.

9 MR. BERGSTEIN: With a CR zoning. So, the --

10 CHAIRPERSON HOOD: With the CR zoning. Okay.

11 MR. BERGSTEIN: Yeah.

12 MR. MAY: CR, but our motion includes the
13 possibility that we might fall back to C-3-C. So,
14 maybe we need to --

15 MR. BERGSTEIN: And then you could also
16 discuss --

17 MR. MAY: -- describe it in both cases.

18 MR. BERGSTEIN: In both cases. In both
19 scenarios.

20 MR. MAY: Yeah.

21 MR. BERGSTEIN: Yes, sir.

22 MR. MAY: Yeah. Mr. Chairman, would you like
23 me to --

24 CHAIRPERSON HOOD: Sure.

25 MR. MAY: -- start on that? So, I think I'm

1 probably repeating myself from the meeting that we
2 had in June, but I am firmly convinced that the
3 building on Parcel 1 is a medium-density commercial
4 use. It is eight stories, and the FAR is consistent
5 with medium-density. The height is the only area in
6 which it is inconsistent with the listed medium-
7 density zones that show up in the comp plan maps.
8 Right? But it's only the height.

9 So but when it comes to the use, it's you
10 know, the intensity of use is measured by FAR and the
11 FAR is consistent with medium-density at 4 point
12 something for Parcel 1.

13 So I firmly believe that it fits into the
14 medium category, and so that would apply to CR use,
15 and I think that this building as it is described,
16 whether it's zoned as CR or C-3-C, would remain
17 consistent with that medium-density designation.

18 So, yeah. I mean, I think it's simply
19 because this is a medical office building and they
20 need the higher floor-to-floor numbers in order to
21 accommodate the equipment that's necessary for that
22 use. I mean, I think that's what it really boils
23 down to. Because if this was just a regular office
24 building it would be substantially less tall.

25 MR. TURNBULL: Commissioner May, but medium

1 goes up to eight stories, though, right?

2 MR. MAY: Correct. And this is eight
3 stories.

4 MR. TURNBULL: Right.

5 MR. MAY: Yeah. It's just that the stories
6 are taller than one would normally expect for a
7 regular office building.

8 MR. TURNBULL: Because of the medical use.

9 MR. MAY: Exactly.

10 CHAIRPERSON HOOD: Okay. Anything else on
11 that? Vice Chair Miller?

12 MR. MILLER: Thank you, Mr. Chairman. Yeah,
13 I would concur with the analysis of Commissioner May
14 and in addition to the fact that it doesn't exceed
15 eight stories in height, which under the FLUM, Future
16 Land-Use Map definitions would put it into high if it
17 was higher than eight stories, which it isn't.

18 It's also not in the central employment
19 district of the city or even on the downtown
20 perimeter. So, and certainly the density itself of
21 the parcel is in the moderate -- is in the medium-
22 density category. So, I would concur.

23 CHAIRPERSON HOOD: Okay. Anything else on
24 that one? We don't need to vote on it.

25 MR. BERGSTEIN: No, no, it's part of your

1 deliberation.

2 CHAIRPERSON HOOD: All right. Let's expound
3 again upon the use. I want to -- Parcel 1 building,
4 if it was a high-density commercial use, would it be
5 inconsistent with MU-2.6.5, with the other uses? And
6 that's the Mid-City Element.

7 MR. MAY: Well, you know, I think there are a
8 lot of things that can be parsed in the language of
9 2.6.5. Where a development takes place, it should be
10 consistent with moderate to medium density housing,
11 retail, and other compatible uses.

12 You know, how you define where development
13 takes place, arguably development is taking place
14 over the entire site. And even the development of
15 parkland is development. I won't dwell on that
16 issue, but other compatible uses, you know, I think
17 it's easy to see how this -- I mean, since this is
18 supposed to be a mixed-use development, having office
19 space is a compatible use. It falls into that
20 category.

21 And furthermore, the restriction of moderate
22 to medium density housing is a restriction on the
23 housing component of it. Not necessarily all of the
24 other uses that are applied. So, you know, again, I
25 would argue it's not a high-density commercial use,

1 but -- and that it is not inconsistent with 2.6.5.

2 CHAIRPERSON HOOD: Okay. And I would agree
3 that if you look at the Mid-City Element, it does not
4 actually, and I think you alluded to this, does not
5 actually -- and I want to make sure I understand it
6 as I went through this. Does not actually state the
7 commercial uses must be moderate or medium density.
8 It basically talks about there's one policy, 2.6.5,
9 that competes against other policies on this site,
10 and there are some other policies that come into
11 play. And it doesn't necessarily call that it says
12 that it be anywhere from moderate to medium uses,
13 other than the housing, the way I interpret it.

14 Any other discussion on that? Vice Chair
15 Miller?

16 MR. MILLER: Thank you, Mr. Chairman. You
17 know, I don't know -- I guess we can't revisit the
18 court's interpretation that the Mid-City Element
19 should be looked at just on a parcel-specific basis.
20 But I just want to say for the record that I disagree
21 with the court's decision on that point. They did
22 uphold us on the land-use element, that we could
23 aggregate all of the parcels and look at the overall
24 density and make a judgment in terms of competing
25 policies of the comprehensive plan and say that it's

1 not inconsistent with the comprehensive plan
2 designations.

3 But on the parcels -- even on the parcel
4 specific analysis that the Court is requiring us to
5 look at in terms of density, I would agree with
6 Commissioner May's analysis and note that the parcel
7 includes the healing garden, which is an important
8 open space. And the Olmstead Walk along the northern
9 part of it, and the edges on each of the edges of it,
10 which is very important preservation and public open
11 space element of the entire project. But it's also
12 on Parcel 1.

13 So I think we can say that it's consistent
14 with the Mid-City density designation for those
15 purposes as well.

16 CHAIRPERSON HOOD: Okay, any other comments?
17 All right.

18 MR. TURNBULL: Mr. Chair.

19 CHAIRPERSON HOOD: Yes.

20 MR. TURNBULL: I would just agree with my
21 colleagues' comments on this, and I think it is
22 consistent with the Mid-City Element.

23 CHAIRPERSON HOOD: Okay. Give me a minute.
24 Let me consult with counsel.

25 [Pause.]

1 MR. MILLER: Mr. Chairman, before you move on
2 to the next issue, I meant to include in my statement
3 that -- when I said that the court upheld us on the
4 land-use element, comprehensive plan analysis, that
5 it's also a fact that the comprehensive plan says
6 that the land-use element predominates over all other
7 elements, especially if there's a conflict. And
8 that's just another reason why I think that the
9 aggregated approach of looking at the entire site,
10 which is one project on an entire site, which has a
11 lot of public benefits and including affordable
12 housing preservation, open space, community center,
13 and required grocery store, required because of this
14 Commission's action, because it was aspirational in
15 the beginning, and the community's action requesting
16 it of us, that's why we responded. Anyway, I think
17 the land-use element does take precedence over other
18 elements of the comprehensive plan. And for that
19 reason, I think that that also is part of my own
20 analysis about the Mid-City designation.

21 MR. TURNBULL: Mr. Chair, I just -- with
22 Commissioner Miller, you're basically saying that the
23 PUD needs to be looked at as a whole, and not broken
24 down into the bits and pieces of it to totally give
25 it analysis. That is the aggregate that is as from

1 the land-use element, is giving it the character.
2 And that is what should be looked at in totality.

3 MR. MILLER: Thank you. You said it much
4 more articulate; in a much more articulate way than I
5 did. Thank you. Yes, I agree.

6 CHAIRPERSON HOOD: Even though I think the
7 Commission, we have come up with medium-density, and
8 I think this is our first time of every making that
9 decision, I don't know how we got to where we got,
10 how we got where we got, but we got there due to the
11 court's findings. We still have to, I think, go
12 through the questions in which the court has given
13 us.

14 Mr. Bergstein, can you help me get there? I
15 mean, I can ask the questions but you know --

16 MR. BERGSTEIN: Well, no. I was just going
17 to say that even though arguably because of the
18 redesignation to CR and the discussion you just had,
19 you essentially mooted out the rest of the remand
20 because the remand was predicated upon there being a
21 high-density use. But I think because the Court
22 could always respectfully disagree with that
23 analysis, you should go forward on the assumption,
24 just for this analysis, that it is a high-density use
25 and go back to question 1A, which concerns whether or

1 not the policies that were enumerated in the
2 Commission's order concerning affordable housing and
3 open space and historic preservation, could be
4 advanced with a medium-density project. And where
5 you left it, it was request to the applicant to
6 revisit the height. And you can take it from there.

7 CHAIRPERSON HOOD: I think we had some other
8 alternatives. Do we still think that this can be
9 advanced, reasonably, alternative building
10 configuration to allow the applicant to preserve the
11 critical density on Parcel 1? Anybody have any
12 comments on that?

13 MR. MAY: Yeah, if I could. Sure.

14 CHAIRPERSON HOOD: Yes.

15 MR. MAY: So, I think when we took this up in
16 June, that was a big question for me, the question of
17 whether the other policy cited in the order could be
18 advanced even if the development size were limited to
19 medium or moderate-density use. I mean, putting
20 aside the fact for the moment that we believe it is a
21 medium-density use.

22 We did ask for the applicant to study more
23 carefully what would happen if they basically shrunk
24 the size of the medical office building or
25 reconfigured the building within the site so that it

1 was not as tall, and therefore, more consistent with
2 the medium-density zones.

3 And I think that this time around the
4 applicant, I mean as they have in the past, they've
5 been very responsive. They provided I think a
6 thoughtful examination of how the building could be
7 reconfigured, and explained what the impact of those
8 changes would be. And they would be significant.
9 And I think that there, you know, there would be
10 impacts on the historic preservation components of
11 the project, the open space components of it, the
12 viability of the building, the leasability of the
13 building, the healing garden. All of these things
14 could be impacted by reconfiguring the building.

15 Now you could also argue that they could
16 shrink the overall size of the building. I think
17 that they've given us good information in the past
18 and I think enforced that in more recent submissions
19 that the size of the medical building is really
20 necessary in order to make the entire project viable.

21 I think the opponents in this case tried to
22 argue that there isn't sufficient marketing
23 information or demonstration that, you know, the
24 building would not be viable if it were, you know, 95
25 or actually 190,000 square feet smaller, and you

1 know, I don't think that that is the case. I think
2 that we saw enough information to demonstrate that
3 having that density is critical. I think we saw it
4 in the development of the master plan over time. And
5 the way the plan got to the point where there was
6 significant open space, and more extensive
7 preservation of the existing site, is predicated on
8 having that medical office building of a pretty
9 substantial size.

10 So it's as that plan developed, going through
11 the planning process and community interaction that
12 we got to the project that we have before us. So I
13 think that, you know, reducing the building square
14 footage was not an option. Reconfiguring the
15 building has costs.

16 So what that means is that if we were to push
17 for a less tall building to conform more closely to
18 some people's definition of medium-density, it would
19 not advance a number of policies. And some of the
20 other policies that would affected would be Mid-City
21 area elements, having to do with open space on
22 McMillan Reservoir site, historic preservation at
23 McMillan Reservoir, land-use policies having to do
24 with reuse of large publicly owned sites, the public
25 benefit uses on large sites, protecting existing

1 assets on large sites.

2 Housing affordability would also be affected.
3 I mean, I think one of the most telling aspects of
4 the way this whole project works together as a
5 cohesive whole is the fact that you have the large
6 commercial component of it that is critical to having
7 a viable grocery store. I mean, you could argue that
8 well, grocery stores are what people need to shop in
9 their homes, but actually grocery stores are
10 dependent on having daytime use as well.

11 If you've ever been to the Whole Foods
12 downtown at GW at lunch time, you understand that.
13 Right? And probably a lot of other Whole Foods.
14 That's the only one I've been to at lunch, because I
15 work on an island. We don't get off the island very
16 often.

17 But it is a really big part of their business
18 model, I think, to have that daytime business. So I
19 think that's critical. If they didn't have the
20 grocery then the senior housing component becomes
21 less viable because proximity to a grocery is
22 critical for senior housing. Otherwise, you wind up
23 with all that extra transportation associated with,
24 you know, helping people get food to their homes.

25 And it's not like you can just take away the

1 office component and replace it with equal square
2 footage of housing because first of all, the costs
3 and return are different, and when you factor in the
4 requirement that 20 percent be affordable, that
5 drives up the square footage that would be necessary.
6 I mean, you'd wind up with a lot more building on the
7 site, potentially, if you tried to make up that
8 difference as just a medium-density development.

9 So I mean, all these things sort of basically
10 lead me to the conclusion that this number of
11 competing policies, and I've mentioned several.
12 There's also the parks and recreation open space
13 components, and urban design components. And I think
14 the applicant has argued there are 100 policies that
15 are affected by this. I don't know if all 100 are
16 negatively impacted by a change like this. But I
17 think that if we were to insist on a building that
18 was, you know, only 70 feet tall or something like
19 that, it would have substantially, a substantial
20 negative impact on this broad array of policies, and
21 we'd wind up with a substantially worse project.

22 So that was my long-winded discussion of it.

23 CHAIRPERSON HOOD: Okay. Any other comments
24 on the policies issue?

25 MR. TURNBULL: I would agree with

1 Commissioner May 100 percent. I think he did a very
2 good explanation of it.

3 CHAIRPERSON HOOD: Okay. Vice Chair, you
4 want to add anything?

5 MR. MILLER: Yeah, I would concur also, and
6 just reiterate the comments that we each made at the
7 June 29th deliberations, but not decision meeting.

8 Where we've found that the medical office
9 building is what's allowing all of these other
10 policies to be effectuated, including the affordable
11 housing which is called out as a civic priority in
12 the comprehensive plan, and the historic preservation
13 of course, and the parks, recreation, and open space
14 that's being provided here, you know, the southern
15 third. So that's why that commercial is clustered on
16 the northern part and set back from the neighborhood,
17 which contributed to its height, even though they did
18 reduce the massing and the height as a result of a
19 lot of input from the community and from ourselves
20 and other bodies.

21 And so, yes, I would agree with the
22 statements of my colleagues on this point as well.

23 CHAIRPERSON HOOD: I would -- Commissioner
24 May?

25 MR. MAY: I just want to add one quick thing

1 that I forgot to mention before. You know, we did
2 push back on the configuration of the building on
3 Parcel 1, and asked for a lot of reexamination. And
4 after substantial work on that topic, the applicant
5 has now come back with 113-foot building instead of a
6 115-foot building, which to me say that they did work
7 hard at it. And this is really all that could be
8 squeezed out of it. I just don't see any way that it
9 would be possible to shave off a floor and have this
10 work.

11 MR. TURNBULL: I would agree --

12 MR. MAY: And I appreciate the extra two
13 feet.

14 MR. TURNBULL: Yeah, I would agree,
15 Commissioner May. I think when you hear two feet, I
16 think your first impulse is to say, well, that's not
17 very much. But in a medical building that's
18 significant because the infrastructure that's needed
19 to support a medical building is incredible. I mean,
20 there is a tremendous amount of equipment that is
21 necessary to take care of a medical building like
22 this.

23 So even trying to skinny this down two feet,
24 I think is a very commendable effort. And the
25 applicant is to be applauded for it.

1 CHAIRPERSON HOOD: And I would agree as far
2 as giving a policy a greater weight than others, as
3 we've read what we're being asked to look at and give
4 one policy more weight than another. I think that
5 the applicant has done a good job in this whole
6 project as far as the one that we may have been a
7 little -- gave a little more leverage to, or a little
8 more lenient on. But the other ones, that one can be
9 mitigated with the other project and the other
10 policies throughout the whole project. So I think
11 they've covered that, and I think with what we asked
12 for the last time, that we worked on -- deliberated.
13 I think that they've come back with different
14 scenarios as you've already mentioned, and I think
15 they have come back with the best scenario for this
16 particular site.

17 MR. MAY: Mr. Chairman.

18 CHAIRPERSON HOOD: Vice Chair?

19 MR. MILLER: Yeah, I just wanted to add that
20 I think the Exhibit A in the applicant's August 21
21 submission that showed what would happen if you tried
22 to make up a 90,000 square foot reduction, because
23 they had already shown us what twice that amount of
24 reduction would -- they already showed us that at the
25 previous hearings in April, and I think it was April,

1 and what that would do. But the 90,000 reduction,
2 how it would adversely impact all of the public
3 benefits. They call them building constraints;
4 building footprint constraints. But they're
5 constraints because of the public benefits that are
6 being provided by the overall project, if you tried
7 to spread that 90,000 square foot reduction in the
8 medical office building elsewhere on the site, what
9 you would lose. You would lose all the -- you would
10 lose many of the public benefits that we've all just
11 articulated.

12 MR. MAY: Mr. Chairman, one more thing.

13 CHAIRPERSON HOOD: Okay. Commissioner May.

14 MR. MAY: So, I mean, you mentioned the
15 height of the building is a factor that could be
16 mitigated, and I think that the applicant has done a
17 good job of doing that, pushing back the building,
18 setting things back, and you know, setting back from
19 the Stronghold (phonetic) neighborhood is a big
20 benefit with a building that tall.

21 I also think it's appropriate to think about
22 these things in terms of, you know, what the effect
23 of these policies are, and the Mid-City Element 2.6.5
24 is a limitation on sort of it's a limiting factor,
25 right, constraining development as opposed to all of

1 these -- all of the other conflicting elements or I
2 guess theoretically competing elements, where those
3 are opportunities to bring benefit and to enhance the
4 project, enhance the neighborhood, enhance the city,
5 and those are the things that are -- I mean, it's all
6 a matter of degree, and I think that what we're
7 dealing with is a project that attempts to maximize
8 the degree of those enhancements that come out of all
9 of these competing policies, rather than getting hung
10 up on that limitation. You know, it mitigates that
11 limitation and it creates those enhancements.

12 CHAIRPERSON HOOD: I'm going to now go down -
13 - I guess some of this we've already dealt with, but
14 I'm going to try to move through this. And if you
15 don't feel like we have, or if we didn't answer it
16 adequately last time we talked about it, just stop
17 and we'll do it again.

18 I'm going on to Issue 2. I think we're good
19 with A and B. Did we leave anything out?

20 MR. BERGSTEIN: No, you started off with A,
21 but you went into B. So, I think you've done it.

22 CHAIRPERSON HOOD: Oh, went into B. Okay.
23 So, all right. Well, let's go on to 2 then.

24 One of the questions, the Issue 2 for us was
25 do these or other comprehensive plan policies cited

1 in the FOMP in the record of this case weigh against
2 approval of the project. Unless someone feels
3 differently, the Commission already decided these
4 policies and our record speaks for itself in our
5 previous deliberations. Okay?

6 MR. TURNBULL: I would agree with you, Mr.
7 Chair.

8 CHAIRPERSON HOOD: Okay. All right. I guess
9 Issue 3 is still applicable so I'll just -- I think
10 Issue 3 has already been resolved.

11 MR. BERGSTEIN: Well, arguably you can decide
12 this, but Issue 3 talks about the relationship
13 between what was termed the high-density development
14 and we're not feasible, mean to retain the
15 significant substantial part of the site as open
16 space. And I think you touch that in your discussion
17 of 1A. But if you feel you need to amplify that
18 specifically to discuss the relationship between the
19 Parcel 1 building and how it enables the public
20 space, you could discuss that, or inside, you've
21 already discussed that.

22 CHAIRPERSON HOOD: Does anybody feel
23 like -- I actually thought we talked about that the
24 last time, but maybe we didn't enough.

25 Mr. Turnbull, you want to add something to

1 that, or --

2 MR. TURNBULL: I was just going to say that I
3 thought in our discussion tonight, going through
4 Issue No. 1, I thought we pretty much talked about
5 this. I think we've -- but unless somebody wanted to
6 add something. Commissioner May?

7 MR. MAY: Yeah, I always like to add
8 something.

9 No, again, I think I would go back to the
10 analysis of the history of the development of the
11 master plan here, and it tells a pretty clear story
12 that as time went on and people pushed for more open
13 space, that it could be achieved. But the way that
14 it could be achieved was to increase the density on
15 Parcel 1.

16 And so, I mean, is it -- is this the only
17 feasible way to retain a substantial part of the PUD
18 site as open space and make it usable for recreation
19 purposes?

20 Given the District's objectives for the
21 disposition of the site and the willingness of the
22 District to invest money in it, and what they want to
23 accomplish with it, I would say yeah, it's the only
24 feasible site.

25 I mean, you know, theoretically they could go

1 even taller on Parcel 1 and maybe save, you know,
2 more open space. But I think that, you know, we have
3 looked at this project as, you know, how do we get a
4 building that provides sufficient -- or a project
5 that provides sufficient density within the overall
6 project to have sufficient open space? You know,
7 sort of maximize that open space within the other
8 constraints that we have on the development. And I
9 think that's what we have.

10 MR. TURNBULL: I would just add that in this
11 whole thing, it's a matter of balance. I think
12 there's so many competing elements involved here that
13 you have to strike a balance. And I think the way
14 the PUD evolved, as Commissioners say, through the
15 master planning and over the years that the applicant
16 worked on this, they struck a balance between all the
17 elements and I think -- I don't know how much more
18 they could do on that and not get the elements that
19 we wanted and what the city wants in this project.

20 CHAIRPERSON HOOD: Okay. Anything else on
21 Issue 3?

22 MR. MILLER: I don't know if this is the
23 appropriate time to reiterate what I stated on June
24 29th, but I'll just reiterate it just for the record
25 here. I mean, this is a project that the city has

1 wanted -- this is a site that the city has wanted to
2 develop for 30 years. And a lot of input, a lot of
3 community input, including from the opposition
4 parties, has gone into what we currently have
5 proposed, this mixed-use, mixed-income, open space,
6 historic preservation, project, and the mayor, and
7 the council, and the Advisory Neighborhood Commission
8 affecting this area. The elected representatives of
9 the people have supported this particular proposal
10 multiple times.

11 So it is accomplishing a lot of public
12 benefits and despite what some in the opposition
13 think, I think it will be a great project that will
14 benefit the city as a whole, and the neighborhood
15 that it's in, and I hope it can finally get going.

16 CHAIRPERSON HOOD: Okay. Anything else on 3?
17 I'll just go to the other part of 3. Its development
18 proposed Parcel 1 the only feasible way to retain a
19 substantial part of the PUD site, it's open space,
20 and make the site usable for recreational purposes?

21 I think we alluded to that early on, and we
22 dealt with that as we were discussing issues 1 and
23 1B. Any other comments on that? Yes.

24 MR. BERGSTEIN: I guess another way of
25 restating it for you is really for your edification.

1 CHAIRPERSON HOOD: Okay.

2 MR. BERGSTEIN: You actually answered the
3 question.

4 CHAIRPERSON HOOD: Okay. All right. Let's
5 go to 4A.

6 Would the project result in environmental
7 problems, destabilization of land values, or
8 displacement of neighborhood residents, or have the
9 potential to cause any other adverse impacts
10 identified by Friends of McMillan, FOMP, in the
11 record of this case?

12 We've already answered that in the negative.
13 Anybody want to elaborate any more on that?

14 [No audible response.]

15 CHAIRPERSON HOOD: Okay, that's already been
16 answered. Okay.

17 Next, I'm going to read it anyway. If so,
18 how should the Commission judge, balance, and
19 reconcile the relative value of project amenities and
20 public benefits offered, the degree of the
21 development incentive to require and the potential
22 adverse effects?

23 We have found that there were no impacts that
24 will result so I don't know if we need to elaborate
25 any more on that. That's already one of our

1 findings.

2 Okay, let me see. 5A. Okay. This was one
3 of the things that we know came that we had to deal
4 with. And I thought we had discussed this, and I
5 know that done a good job in getting responses.

6 Will the project have a favorable impact on
7 the operations of city services? Okay, will the
8 project have impact on operation of city services and
9 facilities?

10 We have reports from, let's see, just a
11 second. And if I leave any out -- we have a report
12 from DDOT. We have reports from DOEE. We have
13 reports from DHCD, MPD, FEMS, F-E-M-S, and DPR. And
14 a lot of them, they are favorable, and some of them
15 have some mitigation measures which can be mitigated.
16 And I won't go into detail. I don't think I need to
17 go into detail. I think the record speaks for
18 itself, where they do see some potential issues, they
19 all can be mitigated.

20 But we have government responses from the
21 agencies in which the courts at first stated we
22 didn't have some or enough of, and we've done that,
23 and it's in the record. And the ones that may have
24 some things that need to be tweaked or adjusted, they
25 all can be mitigated.

1 I don't know if anybody wants to add anything
2 to that. Okay. What else?

3 MR. MILLER: I would concur, Mr. Chairman.
4 We probably should have had those reports from other
5 agencies other than DDOT at the earlier, when we
6 earlier -- before we voted on this case originally.
7 But we do have those reports now and they all do
8 indicate either favorable or adverse, or if there are
9 adverse impacts, they can be mitigated.

10 And I would just note, as I've noted
11 previously, that a lot of the concerns expressed by
12 the community during our now 25 hours of hearings, it
13 was 20 hours in the original case, on this case, was
14 about transportation and traffic and parking matters.
15 And that was one area that the court didn't seem to
16 have a problem with. And in fact they said, when
17 they were criticizing us for not considering other
18 adverse impacts they said, except for transportation,
19 that we did consider that.

20 And I think DDOT and the community worked
21 hard to get appropriate mitigations on that score and
22 the agencies have proposed other mitigations in other
23 areas.

24 CHAIRPERSON HOOD: Okay. As far as issues,
25 Mr. Bergstein, did we have anything else that we

1 needed to --

2 MR. BERGSTEIN: No, you've answered the
3 remand issues and now you have a prior record that
4 you discussed the public benefits of the PUD and the
5 development incentives, and so you can put it all
6 together and decide what motion you'd like to make.

7 CHAIRPERSON HOOD: Okay. Colleagues, I'm
8 going to go ahead and move this along. I think 25
9 hours seems like that seems to be adding. But in our
10 deliberations for the many times that we have dealt
11 with this case, and this is a big case for the city
12 and for everyone, I'm going to just go ahead and move
13 that the Commission again grant this application No.
14 13-14, and ask for a second.

15 MR. MILLER: Second.

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

18 [Vote taken.]

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

21 MS. SCHELLIN: Yes. Staff records the vote
22 four, to zero, to one to approve Zoning Commission
23 Case No. 13-14 as discussed this evening,
24 Commissioner Hood moving, Commissioner Miller
25 seconding, Commissioners May and Turnbull in support,

1 Commissioner Shapiro not present, not voting.

2 CHAIRPERSON HOOD: And I am going to ask that
3 the applicant work with our Office of Attorney
4 General in developing a proposed order.

5 MR. BERGSTEIN: Just to clarify, they should
6 provide a proposed order but --

7 CHAIRPERSON HOOD: Oh --

8 MR. BERGSTEIN: Well, not should, that you're
9 requesting it to provide a proposed order, but you're
10 giving them and me the authority to discuss things.

11 CHAIRPERSON HOOD: Exactly.

12 MR. BERGSTEIN: And that -- okay.

13 CHAIRPERSON HOOD: I'm giving OAG and the
14 applicant the authority to be able to discuss and
15 work with our counsel.

16 Okay. Anything else? Is that it? Anything
17 else, colleagues?

18 MS. SCHELLIN: That's it.

19 CHAIRPERSON HOOD: All right. I want to
20 thank everyone for their participation tonight, and
21 this special public meeting is adjourned.

22 [Whereupon, the special public meeting
23 adjourned at 8:25 p.m.]

24

25

CERTIFICATE OF TRANSCRIPTIONIST

I, Kimberly Lawrie, do hereby certify that the foregoing proceeding was transcribed from a digital audio recording provided to me by Olender Reporting and thereafter was reduced to typewriting by me or under my direction.

I am not related to any of the parties in this matter, and this transcript is a true and accurate record of said audio recording to the best of my ability. The above information has been transcribed by me with a pledge of confidence, and I do hereby certify that I will not discuss or release the content or any information contained herein.



Kimberly Lawrie,
Legal Transcriptionist