

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

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MONDAY
NOVEMBER 13, 2017

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Robert Miller, Vice Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice Chairperson
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation
JOEL LAWSON
BRYAN GOLDEN
ART RODGERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.
HILLARY LOVIZK, ESQ.

The transcript constitutes the minutes from the Regular meeting held on November 13, 2017.

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Adjourn 22

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

6:38 p.m.

1
2
3 VICE CHAIR MILLER: This meeting will please come
4 to order. Good evening, ladies and gentlemen. This is the
5 public meeting of the Zoning Commission for the District of
6 Columbia. I am not Anthony Hood, the Chairman. I'm Rob
7 Miller, the Vice Chairman sitting in for Anthony Hood today.
8 We're also missing Commissioner Peter Shapiro.

9 But joining me this evening are Vice Chairman --
10 no, not Vice Chairman, Commissioners Peter May and Michael
11 Turnbull. It's a problem when you're reading from a script.
12 We're also joined by Office of Zoning staff Sharon Schellin,
13 Office of Attorney General staff Alan Bergstein and Hillary
14 Lovick, and Office of Planning staff Jennifer Steingasser,
15 Joel Lawson, and I can't remember the first name, Golden.

16 MR. GOLDEN: Bryan.

17 VICE CHAIR MILLER: Bryan Golden, and Office of
18 Planning, Art Rodgers. Copies of today's meeting agenda are
19 available to you and are located in the venue of the door.
20 We do not take any public testimony at our meetings unless
21 the Commission requests someone to come forward.

22 Please be advised that this proceeding is being
23 recorded by a court reporter and is also web cast live.
24 Accordingly, I must ask you to refrain from any disruptive
25 noises or actions in the hearing room, including the display

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1 of any signs or objects, and please turn off any electronic
2 devices.

3 Does the staff have any preliminary matters?

4 MS. SCHELLIN: Staff has no preliminary matters.

5 VICE CHAIR MILLER: Okay, then if not, let us
6 proceed with the agenda, and the first item on the agenda is
7 the advanced party status request in Zoning Commission case
8 number 16-23, Valor Development, a request from Citizens for
9 Responsible Development in opposition. Ms. Schellin?

10 MS. SCHELLIN: Yes, as you stated, this is a
11 request for advanced party status, and Mr. Donohue, who is
12 in the audience, is the representative for the Citizens for
13 Responsible Development, and I'd ask the Commission to
14 consider this request before them this evening. The exhibits
15 pertaining to this request are at Exhibits 66, 66a, and 79.
16 Thank you.

17 VICE CHAIR MILLER: Thank you. I believe that the
18 party has, I mean the requester has demonstrated that they
19 meet the party status, but I would be happy to hear from my
20 colleagues on that matter if they have any comments.

21 COMMISSIONER TURNBULL: Thank you, Mr. Chair. I
22 just have one question I'd like to get clarified. The party
23 status request form under the name says Barbara and Sheldon
24 Repp, and then a slash, Citizens for Responsible Development.
25 So are Barbara and Sheldon Repp Citizens for Responsible

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1 Development?

2 I mean, they mention 150 people, but I'm not clear
3 or sure why Barbara and Sheldon Repp are mentioned in the
4 same line with Citizens for Responsible Development other
5 than 4704 Windom Place is about half a block from the site.
6 I'm just confused. I'd like it clarified somehow.

7 VICE CHAIR MILLER: Do you want the party, the
8 requester to come forward?

9 COMMISSIONER TURNBULL: Yes, I think somebody
10 needs to come forward.

11 MR. DONOHUE: Ed Donohue representing Citizens for
12 Responsible Development. Mr. Repp, both Mr. Repp and Ms.
13 Repp are here today. Mr. Repp was the signer of the form,
14 but we'd prefer to have the name of the party in opposition
15 be Citizens for Responsible Development.

16 COMMISSIONER TURNBULL: Well, are they also a
17 party in opposition?

18 MR. DONOHUE: They are members of the Citizens for
19 Responsible Development.

20 COMMISSIONER TURNBULL: Yeah, we never really got
21 a list of who's a member or anything to clarify. It was such
22 a generic term. It just says we're -

23 MR. DONOHUE: Right, so what we attempted to do
24 was to talk about the number of folks that were represented
25 by the group, and then we gave you the list of those folks

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1 that we anticipate calling as witnesses, at least the
2 preliminary witnesses.

3 COMMISSIONER TURNBULL: Could you submit for the
4 record then a list of people in the organization?

5 MR. DONOHUE: Each of the members? Sure.

6 COMMISSIONER TURNBULL: Yeah.

7 MR. DONOHUE: Sure.

8 COMMISSIONER TURNBULL: Okay, thank you.

9 VICE CHAIR MILLER: And that can be done before
10 the hearing. When is the hearing date scheduled?

11 MS. SCHELLIN: It's not until January.

12 VICE CHAIR MILLER: January, okay.

13 MS. SCHELLIN: I believe it's the 11th, I think,
14 off the top of my head. I'm not positive.

15 VICE CHAIR MILLER: Yes, I think you're right.

16 MS. SCHELLIN: I think it's the 11th.

17 VICE CHAIR MILLER: Okay, any other comments? Do
18 we need to vote on the -

19 MS. SCHELLIN: Yes, yes.

20 VICE CHAIR MILLER: -- advanced party? So I would
21 move that we grant advanced party status to the Citizens for
22 Responsible Development in opposition and ask for a second?

23 COMMISSIONER MAY: Second.

24 VICE CHAIR MILLER: This is case number 16-23.

25 All in favor, say, "aye."

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1 PARTICIPANTS: Aye.

2 VICE CHAIR MILLER: All opposed? The ayes have
3 it. Ms. Schellin, record the vote.

4 MS. SCHELLIN: Yes, I have an absentee ballot from
5 Chairman Hood. Staff records the vote four to zero to one
6 to approve the party status in opposition from the Citizens
7 for Responsible Development, Commissioner Miller moving,
8 Commissioner May seconding, Commissioners Hood and Turnbull
9 in support, Commissioner Shapiro not present, not voting.

10 VICE CHAIR MILLER: Okay, thank you.

11 PARTICIPANT: Thank you, Mr. Chair.

12 VICE CHAIR MILLER: The next item on the agenda
13 is a consent calendar item, a modification of consequence in
14 which we make a determination in scheduling whether it is a
15 modification of consequence in Zoning Commission case number
16 04-14E, Riverfront Holdings II, LLC, PUD modification of
17 consequence at Square 708. Ms. Schellin?

18 MS. SCHELLIN: Yes, on this one, the applicant is
19 requesting a modification of consequence that concerns the
20 redesign and relocation of architectural elements of the
21 building which includes relocation of the mechanical
22 equipment on the rooftop and related rooftop refinements,
23 creation of a small amenity terrace on the second floor,
24 changes to the fenestration of the east elevation, and
25 modification to the signage along Potomac Avenue.

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1 At Exhibit 4, you have an OP report agreeing that
2 this is a modification of consequence, and so I'd ask the
3 Commission to consider this to determine whether it is, in
4 fact, a modification of consequence so that a schedule can
5 be set for the parties to respond.

6 VICE CHAIR MILLER: Thank you, Ms. Schellin. Does
7 the Commission, do my colleagues have comments or questions
8 that they want to weigh in on on this issue?

9 COMMISSIONER MAY: No, it seems pretty
10 straightforward to me, and I would think that, I mean, it is
11 a modification of consequence, but we can take it up at our
12 next hearing. I think we have an indication from OP that the
13 ANC is in support, but I think it would be helpful to
14 actually have their report, and I assume that we would have
15 that opportunity to get that from them? Ms. Schellin is
16 nodding her head, so. Yeah, she said yes.

17 MS. SCHELLIN: Yes, so is the Commission -- the
18 Commission is not looking for anything additional? Okay, so
19 then we could leave the -- set a schedule then since the
20 Commission is not looking for anything additional, for the
21 parties, in this case, I believe it was just the ANC, to
22 provide their submission by November 20.

23 If the applicant wants to work with the ANC to get
24 that in by the 20th, then we can put this on for the November
25 27 meeting, which is the next meeting.

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1 VICE CHAIR MILLER: I think that's fine. I would
2 just note that just looking at the renderings, it looks much
3 more visible and taller, the penthouse, than it was
4 previously, so I guess I want a little more information as
5 to how that happened or why, just how that -- what the
6 rationale is for that.

7 And I think it still might be a modification of
8 consequence as opposed to significance, but I just want more
9 information on that because the renderings clearly show it's
10 taller and bigger.

11 COMMISSIONER MAY: Yeah, I mean, I think I
12 understood and accepted what the rationale was for the
13 changes, and it is just a little bit more space on the
14 penthouse level, and that's something that we've encouraged
15 with the new penthouse regulations.

16 VICE CHAIR MILLER: Right, right.

17 COMMISSIONER MAY: So, but I'm happy to see more
18 information on it too.

19 VICE CHAIR MILLER: Yeah, just a little more
20 information on that.

21 COMMISSIONER TURNBULL: Yeah, I would agree that
22 we ought to set this down for review. My other thing is that
23 the penthouse now looks so glaringly white. It sort of
24 sticks out more than usual. I'm surprised Commissioner May
25 hasn't said something, but it just seems very noticeable now.

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1 COMMISSIONER MAY: You know, I mean, for
2 modifications like this, I don't -- I try to resist the
3 temptation to redesign things.

4 COMMISSIONER TURNBULL: Yeah, it just looks very
5 glaringly -

6 COMMISSIONER MAY: I certainly wouldn't object if
7 they came back with something that was darker.

8 VICE CHAIR MILLER: Okay, so we've sent that
9 signal. Okay, thank you. So we'll make that determination.
10 We don't need to vote, right?

11 MS. SCHELLIN: No.

12 VICE CHAIR MILLER: Okay.

13 MS. SCHELLIN: We'll just set. So, two, if the
14 applicant is going to respond, they also would respond by
15 November 20, and we could still keep this on for November 27.

16 VICE CHAIR MILLER: Thank you. The next item on
17 our agenda this evening, I believe, is the hearing action,
18 Zoning Commission case number 17-16, 251 Massachusetts
19 Avenue, LLC, map amendment, Square 560, and I would call on
20 the Office of Planning. Would that be Mr. Golden? Okay,
21 thank you.

22 MR. GOLDEN: Good evening, Mr. Vice Chair and
23 members of the Commission. The Office of Planning is
24 recommending the Zoning Commission to set down 251
25 Massachusetts Avenue, LLC's proposal to rezone lot 853 of

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1 Square 560 from the MU6 to the D4 zone. The site is within
2 the Mount Vernon Triangle neighborhood generally located
3 between NoMa and downtown.

4 The comprehensive plan, general policy, and future
5 land use maps designate the site as land use change area, and
6 identifies the site for mixed use, including high-density
7 commercial and high-density residential.

8 The proposed D4 zone is intended to promote high-
9 density development of commercial and mixed uses in areas
10 with a concentration of federal and infrastructure uses.

11 The D4 zone recognizes the identification of the
12 site for high-density mixed use by the future land use map,
13 and as a land use change area on the generalized policy map.

14 The existing MU6 zone has a maximum nonresidential
15 density of 2.0 FAR, thus it does not provide an opportunity
16 to accommodate the high-density commercial use indicated by
17 the future land use map.

18 Though the increase in overall density would be
19 relatively small, the proposed zoning change would bring the
20 nonresidential FAR from 2.0 to 6.5.

21 The combination of D4 zone on the subject property
22 and the remaining MU6 zone would be consistent with the high-
23 density mixed use anticipated by the future land use map.

24 The proposal aligns with the comprehensive plan's
25 policy objectives for the central Washington area element and

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1 citywide elements which include recognizing opportunities for
2 new office growth and strengthening the central Washington's
3 office core.

4 The change in zone would not permit an increase
5 in height, however, which would remain the same at 90 feet.

6 The Office of Planning believes that this proposal
7 is not inconsistent with the comprehensive plan. We
8 anticipate working with the applicant regarding the issues
9 raised in the report and any other concerns that the
10 Commission may have prior to the public hearing. Thank you,
11 and I am available for questions.

12 VICE CHAIR MILLER: Thank you, Mr. Golden. Does
13 the -- do my colleagues have any questions of the Office of
14 Planning or any comments about this case for set down?

15 If not, I think that it is appropriate that we set
16 this down for a public hearing, so I would move that the
17 Commission set down case number 17-16, proposed map amendment
18 to remap lot 853 at Square 560 from MU6 to D4, Massachusetts
19 Avenue, LLC, and ask for a second.

20 COMMISSIONER TURNBULL: Second.

21 VICE CHAIR MILLER: Any further comments? All in
22 favor?

23 PARTICIPANTS: Aye.

24 VICE CHAIR MILLER: All opposed? The motion
25 passes. Ms. Schellin?

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1 MS. SCHELLIN: Yes, staff records the vote four
2 to zero to one to set down Zoning Commission case number 17-
3 16 as a contested case, Commissioner Miller moving,
4 Commissioner Turnbull seconding, Commissioners Hood and May
5 in support, Commissioner Shapiro not present and not voting.

6 VICE CHAIR MILLER: Okay, thank you. Our last
7 item, I think it's our last item, is another hearing set
8 down, case number 04-33I, Office of Planning text amendment
9 regarding inclusionary zoning, subtitles C through H and K.
10 Mr. Rodgers, are you presenting for OP?

11 MR. RODGERS: Yes.

12 VICE CHAIR MILLER: Okay, thank you.

13 MR. RODGERS: Good evening, Vice Chair and members
14 of the Commission. My name is Art Rodgers. I'm the Senior
15 Housing Planner for the D.C. Office of Planning.

16 I'm here to present OP's recommendations for
17 amendments to the IZ section and some related subtitles.
18 These are largely corrections to errors and omissions, or
19 clarifications, or reorganization to the chapter for
20 readability and efficiency of use.

21 For an example, some of the corrections and
22 omissions would be the exemption of the CG-1, which is a
23 former R5E zone, which under the 1958 was exempt from IZ.
24 They would also include bringing the Reed Cook zones up to
25 consistency with the changes made by 04-33G, which was the

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1 changes to the targeting of the incomes by the tenure of the
2 buildings.

3 Some of the clarifications include how bonus
4 density is articulated between the potential bonus density
5 and the achieved bonus density of the project. It also
6 provides clarifications of when IZ does not apply to the
7 existing building.

8 Under 04-33G, IZ was applied to the existing
9 portion of the building when the addition of ten units
10 reached the threshold of 50 percent expansion of the existing
11 building. Working with DCRA, they thought it would be
12 helpful to clarify that when the expansion is of ten units,
13 but less than 50 percent of the existing building, that IZ
14 only applies to the new ten units.

15 An example of the reorganization is moving the
16 zone specific rules, including applicability and exemptions
17 and envelope flexibility, to the zone subtitles for each
18 individual zone, and in addition, simply moving the use
19 exemptions for university and embassy housing to a more
20 appropriate subsection of the IZ chapter.

21 We are proposing two amendments that go a little
22 bit beyond clarifications, or errors, or reorganization.
23 That includes the codification of procedures that have been
24 in place since IZ was first implemented back in 2009, and
25 that's the conversion of the gross floor area requirements

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1 to a net measurable square footage of the units as they are
2 presented, and then also are proposing some flexibility
3 primarily for smaller units on the ability to meet the
4 proportionality rule of the IZ development standard sections.

5 In addition to that, we would like to add to our
6 report amendments that we will work out with OAG to develop
7 language on, for instance, ensuring affordable units
8 proffered as PUDs are treated automatically as IZ units, and
9 they will be conformed to the IZ price schedules, and then
10 also a more recent issue that has been raised by DCRA that
11 revising the definition of "bedrooms" to exclude those rooms
12 that are at risk due to their location along a shared
13 property line. In other words, the window to that room would
14 have to be boarded up if an adjoining property built along
15 the party wall there.

16 That concludes my testimony. I'd be happy to
17 answer any questions the Commission may have.

18 VICE CHAIR MILLER: Thank you, Mr. Rodgers. I
19 might have a couple of questions, but let me turn to my
20 colleagues first and see if they have any comments or
21 questions.

22 COMMISSIONER MAY: So at least what was in the
23 report, you called out specifically amendments 12 and 13 as
24 ones where they were a little bit more substantive and not
25 just a matter of clarification or readability improvements,

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1 things like that, and 12 is the one where you essentially
2 switch from a gross square footage calculation to a net, and
3 then there's an example.

4 And I think I follow the example, but what I don't
5 understand is whether there's actually any -- is this just
6 a matter of making it easier to calculate, or does it
7 actually mean that there would be an increase or decrease in
8 the net square footage of IZ units as a result?

9 MR. RODGERS: It doesn't make any change to the
10 requirement of the net square footage. As I said, this is
11 simply codifying the existing procedures that have been in
12 place since 2009.

13 And at the request of DCRA for the sake of clarity
14 as to the process, they asked that we develop language on how
15 that would happen, and working with DCRA, they had identified
16 language by the Building Management Association, the idea
17 being that the first step in this is to compare the greater
18 of calculation of eight percent to 50 percent of the bonus
19 density.

20 Bonus density is measured in gross terms, but to
21 determine if the developer is actually meeting a gross
22 requirement, we have to see what's the net space delivered
23 of the actual units, and so this just brings that procedure
24 into the zoning regulations.

25 COMMISSIONER MAY: Okay, I think I understand

1 that. I mean, the concern would be if we wind up making a
2 change, that actually reduces less net square footage of IZ,
3 but that doesn't seem like that's a likely outcome.

4 So, and then the second one was the
5 proportionality of unit types. I mean, basically we're
6 trying to allow for a reasonable approach when we have a
7 building that's made up of studios and one-bedrooms, and how
8 we can approach having those units.

9 MR. RODGERS: Correct.

10 COMMISSIONER MAY: And it will -- I mean, in
11 effect, it could wind up with less square footage, but only
12 because we were kind of -- the folks who -- the buildings
13 that had just studios and one-bedrooms were kind of getting
14 rough treatment because they'd have to have a bigger unit
15 than they ordinarily would in order to meet that minimum
16 requirement.

17 MR. RODGERS: That's correct. So essentially
18 what's been happening, particular for smaller projects, the
19 proportionality rule essentially required them to set aside
20 a two-bedroom.

21 To the extent that that didn't meet their full IZ
22 requirement, they would then have to set aside an additional
23 studio or one bedroom to meet the full requirement. In some
24 cases, that ended up being significantly more than their
25 minimum requirement.

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1 COMMISSIONER MAY: Right.

2 MR. RODGERS: And then also it had to do with
3 other issues, for instance, in a small project that they're
4 stacking the units, it might present a difficulty if you had
5 to provide a two-bedroom.

6 COMMISSIONER MAY: Thank you.

7 VICE CHAIR MILLER: Mr. Turnbull?

8 COMMISSIONER TURNBULL: I just had a very simple
9 question. I think I know the answer, but on page 13 when you
10 talk about the set aside requirements, you talk about the
11 purpose of the section primary height shall be the height
12 permitted. Is primary height a defined term that we've used?

13 MR. RODGERS: I don't believe it's a defined term
14 right now in the definitions' section within that subtitled,
15 and that's why we've added that language for the purpose of
16 this section, "The primary shall be that height permitted
17 within the zone exclusive of any bonus height," essentially
18 to clarify.

19 The confusion was some zones might have a base
20 height of 50 feet, but that they are provided five feet or
21 10 feet for other reasons other than IZ, and we wanted to
22 clarify that in those situations where their base height was
23 50 feet, that they would have to follow the 10 percent of
24 residential space or 75 percent of the bonus density as
25 opposed to being treated as a zone that was greater than 50

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1 feet where they would only have to provide eight percent or
2 50 percent of the bonus density.

3 COMMISSIONER TURNBULL: Okay, all right, thank
4 you.

5 VICE CHAIR MILLER: Thank you, Commissioner
6 Turnbull. So I guess I had a couple of questions. So we
7 exempt certain low-density residential zones from the
8 inclusionary zone requirements. I think this is just
9 carrying forward the existing exemptions, but I'm not sure
10 I understand the rationale for the exemption, and maybe at
11 the hearing we can elaborate on why low-density zones should
12 be exempt.

13 If somebody's doing a subdivision of single-family
14 homes, I'm not sure why if that has 10 or more units, I'm not
15 sure why it should be exempt from IZ, but maybe you can just
16 give a brief comment on that.

17 MR. RODGERS: So the R zones, R1 and R2, or, I'm
18 sorry, R1-A and R1-B, were originally exempted for largely
19 two reasons, I think. One, there is very limited capacity
20 for additional units, whether market rate or IZ units, at all
21 within those areas.

22 There's very few properties that are zoned large
23 enough to have 10 units to trigger the IZ requirement, and
24 that two, the bonus density, which would trigger in some
25 cases a duplex or a flat, was perhaps inconsistent with the

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1 R1-A and the R1-B, and so those were the two main reasons why
2 back in 2006, those zones were not included and were exempt.

3 VICE CHAIR MILLER: Okay, and then the other
4 question I had, are we -- as long as we're clarifying, is it
5 clear throughout the IZ regs that whatever the IZ set aside
6 requirement is, that it's a minimum set aside, that the
7 applicant can always offer to do more, whether it's a greater
8 amount or deeper affordability level, that that is clearly
9 permitted by these regulations? Is that clear now with these
10 amendments or do we need any additional language to make that
11 perfectly clear?

12 MR. RODGERS: There is the option -- I think there
13 are two ways. There's the option that was created under 04-
14 33G where you can voluntarily, if IZ does not apply to you,
15 you can voluntarily provide IZ units.

16 And then secondly, as I said in my testimony
17 tonight, we want to work with the Office of the Attorney
18 General to work out language on the treatment of PUD units.
19 If your question goes beyond that, we'd be happy to provide
20 further research on how what I think you're trying to get at
21 can be done.

22 VICE CHAIR MILLER: All right, and then I saw --
23 so, yeah, so I might want more information on that, and then
24 I saw that you're clarifying the common ownership of
25 contiguous lots, that you get to the 10 or more units. I

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1 know we had a BZA case that I sat on where it didn't apply
2 where it should have applied. Is it going to take care of
3 that problem?

4 MR. RODGERS: Yes, that's correct.

5 VICE CHAIR MILLER: Okay.

6 MR. RODGERS: Yeah.

7 VICE CHAIR MILLER: All right. Any other
8 questions or comments? So if not, I'll move that the Zoning
9 Commission set down the case for a public hearing, case
10 number 04-33I, Office of Planning text amendment regarding
11 inclusionary zoning subtitles C through H and K, corrections,
12 reorganization, and other changes, and ask for a second.

13 COMMISSIONER MAY: Second.

14 VICE CHAIR MILLER: Any further discussion? All
15 those in favor, please say, "Aye."

16 PARTICIPANTS: Aye.

17 VICE CHAIR MILLER: All those opposed? The ayes
18 have it. Ms. Schellin, please record the vote.

19 MS. SCHELLIN: The staff records the vote four to
20 zero to one to set down Zoning Commission case number 04-33I
21 as a rulemaking case, Commissioner Miller moving,
22 Commissioner May seconding, Commissioners Hood and Turnbull
23 in support, Commissioner Shapiro not present and not voting.

24 VICE CHAIR MILLER: Thank you, Ms. Schellin. Does
25 the Office of Planning have any other reports or information

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1 they want to give to the Zoning Commission this evening?

2 MS. STEINGASSER: No, sir.

3 VICE CHAIR MILLER: Okay, Ms. Schellin, do we have
4 anything else? Then with that, this meeting is adjourned.

5 (Whereupon, the above-entitled matter went off the
6 record at 7:07 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Regular Meeting

Before: DCZC

Date: 11-13-17

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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