

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :  
 :  
FOREST CITY SEFC, LLC : Case No.  
SEFC-1 Zone and SEFC-3 Zone : 13-16A  
Design Review at Square 743, :  
Lot 94, Square 744, Lot 806, :  
and Square 827, Lot 1 :  
-----:

Thursday,  
May 3, 2018

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing of Case No. 13-16A by the  
District of Columbia Zoning Commission convened at 6:30  
p.m. in the Jerrily R. Kress Memorial Hearing Room at 441  
4th Street, N.W., Washington, D.C., 20001, Anthony J.  
Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT  
JOEL LAWSON

The transcript constitutes the minutes from  
the Public Hearing held on May 3, 2018.

## C-O-N-T-E-N-T-S

Case No. 13-16A (Forest City SEFC, LLC - SEFC-1 Zone and  
SEFC-3 Zone Design Review at Square 743, Lot 94, Square  
744, Lot 806, and Square 827, Lot 1)

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

6:48 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentleman. This is the public hearing of the Zoning Commission. Today's date is May 3, 2018. My name is Anthony Hood. We're located in the Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner Turnbull. We are also joined by the Office of Zoning staff Ms. Sharon Schellin, as well as the Office of Planning's staff Mr. Lawson and Ms. Elliott.

This proceeding is being recorded by a court reporter and is also webcast live. Accordingly, I must ask you to refrain from any disruptive noises or actions in the hearing room.

Notice of today's hearing was published in the D.C. Register and copies of that announcement are located to my left on the wall near the door.

The hearing will be conducted in accordance with the provisions of 11-Z DCMR Chapter 4 as follows: preliminary matters; Applicant's case; report of the Office of Planning; report of other government agencies; report of the ANC; organizations and persons in support; organization and persons in opposition; organizations and persons who may

1 be undeclared; rebuttal and closing by the Applicant.

2           The following time constraints will be maintained:  
3 The Applicant has up to 60 minutes; organizations five  
4 minutes; individuals three minutes.

5           The decision of the Commission in this case must  
6 be based exclusively on the public record. Please turn off  
7 all electronic devices at this time so as not to disrupt  
8 these proceedings. Would all individuals wishing to testify  
9 please rise and take the oath.

10           Ms. Schellin, would you please administer the  
11 oath.

12           MS. SCHELLIN: Please raise your right hand. Do  
13 you solemnly swear or affirm the testimony you give this  
14 evening will be the truth, the whole truth, and nothing but  
15 the truth?

16           PARTICIPANTS: I do.

17           MS. SCHELLIN: Thank you.

18           CHAIRMAN HOOD: At this time the Commission will  
19 consider any preliminary matters. Ms. Schellin, do you have  
20 any preliminary matters?

21           MS. SCHELLIN: I do not.

22           CHAIRMAN HOOD: Okay. Let me ask. Is there  
23 anyone here who is in opposition of this case tonight? Okay.  
24 All right.

25           Mr. Avitabile, go ahead.

1 MR. AVITABILE: Chairman Hood, members of the  
2 Commission, we are here tonight for I think a relatively  
3 straight forward application. We are happy to rest on the  
4 record. There is only one issue raised which was DDOT's  
5 recommendation regarding a condition about coming in and  
6 building the sidewalk on the north side of N Place.

7 You should have before you -- we worked with DDOT  
8 to come to an agreement on a condition that essentially says  
9 -- the challenges were going to be approving the parcels  
10 along the north side of N Place, Parcel H and Parcel I in the  
11 relatively near future.

12 We filed a Notice of Intent to start the zoning  
13 process for Parcel I. You'll hopefully be seeing that case  
14 later this year. Parcel H will follow as the next project  
15 after that.

16 What we proposed is a condition that says, look,  
17 we will do that sidewalk by the end of 2019 unless we've  
18 started, you know, work on Parcel I in which case we're going  
19 to wait and do the sidewalk in connection with Parcel I or  
20 Parcel H.

21 The reason for that is we're proposing to actually  
22 reconstruct the entire one-block length or two-block length  
23 of N Place, the entire street as part of the work for Parcel  
24 I so it wouldn't make sense for us to put in that sidewalk  
25 only to then reconstruct the entire street and have to rip

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1 it out.

2 DDOT agreed with us so the condition that's before  
3 you reflects that plan so this language was worked out with  
4 us in DDOT over the last couple of days. Office of Planning  
5 was on that email exchange so they can speak to that if DDOT  
6 isn't here tonight. This represents our mutual concurrence  
7 on the way that it makes sense to move forward with it.

8 Otherwise, I think we have OP support, DDOT  
9 support, ANC support. It's relatively straight forward. We  
10 are happy to answer questions.

11 CHAIRMAN HOOD: Okay. Great. Glad to see this  
12 latest development. Let's see if there are any questions up  
13 here. Commissioner May.

14 COMMISSIONER MAY: So the complication with the  
15 sidewalk, I'm in favor of there being a sidewalk there  
16 because I honestly believe it's a necessary mitigation for  
17 the continued temporary use of parking in that location. But  
18 I don't think that there's a lot of evidence in the record  
19 that is specifically a mitigation for that use.

20 I mean, is that the position that you're taking  
21 that this is something that you agreed to do because it is --  
22 because there's a lot of people walking there and there's no  
23 sidewalk.

24 MR. AVITABILE: We've agreed to do it. Well,  
25 we've already agreed with DDOT that we're going to

1 reconstruct the entire segment of N Place and build that  
2 sidewalk at some point.

3 COMMISSIONER MAY: Right.

4 MR. AVITABILE: What we're saying is we agree that  
5 if we don't get going with the --

6 COMMISSIONER MAY: I understand what you've agreed  
7 to. The question is how does that tie to the relief you're  
8 requesting today which is a five-year extension?

9 MR. AVITABILE: I don't think it necessarily does  
10 tie directly.

11 COMMISSIONER MAY: You're not helping me here.

12 MR. AVITABILE: But I could argue that it ties  
13 because there are people that leave the parking lot and are  
14 walking over to the ballpark and this gives them a place to  
15 walk.

16 COMMISSIONER MAY: Right.

17 MR. AVITABILE: Or, alternatively, even if it's  
18 not directly related, we are able to proffer a condition.  
19 If we are voluntarily proffering it and you all want to  
20 accept it, I think you can do that.

21 COMMISSIONER MAY: I don't know. That wasn't in  
22 the offering when we first discussed it or when we got advice  
23 on this. Let me ask you this.

24 Say, you know, the Parcel I redevelopment gets  
25 slowed down for one reason or another and you do wind up

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1 constructing the improvements, are you going to do the full  
2 street reconstruction or are you just going to do the  
3 permanent sidewalk construction? I mean, your condition  
4 states that you'll do the permanent version of this sidewalk  
5 and street scape.

6 MR. CALKINS: My name is Peter Calkins with Forest  
7 City. I think our expectation will be that we will wait and  
8 do the full street when we're doing either Parcel I or Parcel  
9 H, whichever one eventually comes first. Our expectation is  
10 it will be Parcel I.

11 COMMISSIONER MAY: Okay. I mean, if for some  
12 reason Parcel I gets slowed down and you are obliged by this  
13 proffer or condition, whatever we call it, do construct the  
14 permanent street scape improvements and sidewalk, you're  
15 going to go in there and just do the sidewalk and street  
16 scape.

17 I know you guys have elaborate storm water  
18 retention systems and things like that built into those.  
19 You're going to do all of that work on that sidewalk -- that  
20 section of sidewalk? That's what you're proffering?

21 MR. AVITABILE: We talked about it and recognize  
22 that in the unlikely event that does happen, that's what we'd  
23 do.

24 COMMISSIONER MAY: Right. Okay.

25 MR. AVITABILE: I think we would be obligated to

1 do it. Or, at that point, we'd come back and say this  
2 doesn't necessarily make sense and we would have to go  
3 through a process to address it.

4 COMMISSIONER MAY: Right. I mean, I'm just  
5 thinking that there may be construction reasons why it  
6 doesn't make sense to do the permanent sidewalk improvements  
7 when you still have to rebuild the road at a later date.

8 I think the key thing here, again, going to the  
9 notion that this is mitigation, is that a sidewalk could just  
10 be a sidewalk. Right? It doesn't necessarily have to be the  
11 full space improvements, as much as we would like to have  
12 that. I mean, that would be -- it certainly would meet the  
13 condition.

14 MR. AVITABILE: Right. And I think that's what's  
15 helpful is that it is phrased in a way that would give DDOT  
16 some latitude to help us evaluate. As long as there's a  
17 permanent sidewalk and public space improvements and maybe  
18 there's some landscaping and other details, but not  
19 necessarily go to that next level.

20 COMMISSIONER MAY: So it could be whatever they --  
21 yeah, they could agree to something less --

22 MR. AVITABILE: Right.

23 COMMISSIONER MAY: -- than the full planned  
24 streetscape improvements in the event that you find out that  
25 it really is a huge constructional inefficiency.

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1 MR. AVITABILE: We've had these sorts of  
2 situations crop up from time to time before and it usually  
3 can be worked out pretty readily. We spend a lot of time  
4 working with our friends at DDOT.

5 COMMISSIONER MAY: I don't know what we do about  
6 the question whether this is considered a proffer or  
7 condition. I mean, it helps that you're offering it. I  
8 personally believe that this should be explicitly tied to the  
9 relief that's requested.

10 It's easy for me to see that it would be because  
11 of the volume of vehicles that are there and the fact that  
12 if not for that, people will be walking in the street or  
13 walking on grass or walking through the parking lot more than  
14 they should be because even that is not necessarily an ideal  
15 condition so I think it is reasonable as a mitigation.

16 CHAIRMAN HOOD: Any follow-up questions or  
17 comments?

18 Vice Chair Miller.

19 VICE CHAIR MILLER: Thank you, Mr. Chairman. I  
20 would just concur with Commissioner May and appreciate that  
21 OP and DDOT worked -- you worked with OP and DDOT to work  
22 this out.

23 CHAIRMAN HOOD: Okay. Commissioner Shapiro.

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.

25 This is a process question and in part I think

1 it's in reaction, Commissioner May, with -- I agree with you.  
2 I agree about making sure the case is clear.

3 On the other hand, the Applicant's point that if  
4 they're willing to proffer something and this proffer is  
5 sitting on our desk before this hearing has even begun, I'm  
6 not sure how we're construing this as something we are  
7 requiring them to do. They are coming to us with it.

8 COMMISSIONER MAY: Right. Well, I think I'm sort  
9 of side stepping the question of whether we can simply accept  
10 it as a proffer or whether we can -- whether it has to become  
11 -- in effect it becomes a condition but, in my mind, I think  
12 it still needs to be a condition.

13 I still believe the case can be made that this  
14 condition, or this proffer, is a reasonable mitigation for  
15 what they are requesting.

16 COMMISSIONER SHAPIRO: I agree.

17 COMMISSIONER MAY: I think we can say yes on both  
18 points. It is a condition that we require and it happens  
19 also to be a proffer.

20 COMMISSIONER SHAPIRO: Okay. That makes sense to  
21 me, Mr. Chair.

22 CHAIRMAN HOOD: Any other questions or comments?

23 COMMISSIONER TURNBULL: If at some point you find  
24 that doing the permanent solution does not work toward this  
25 deal, if we're off schedule, or there's some impact involved,

1 would you come up with a temporary sidewalk solution then?

2 MR. AVITABILE: Yes. I think that's the intent  
3 here is that if Parcel I is delayed, if Parcel H is delayed,  
4 and we're not otherwise doing the reconstruction of the  
5 street, then we would put in a temporary sidewalk.

6 It might be a sidewalk that could be permanent but  
7 it will be designed in a way that when we then eventually go  
8 and reconstruct the entire street, you know, we're not having  
9 to go all the way back to square one.

10 COMMISSIONER TURNBULL: Right.

11 MR. AVITABILE: I should add that there was a  
12 similar condition, I think, tied to the DC Water Headquarters  
13 PUD, 15-14, where DDOT asked for a sidewalk along the south  
14 side of N Place to be constructed by DC Water in the event  
15 that we hadn't otherwise constructed a sidewalk as part of  
16 our property in the south.

17 COMMISSIONER TURNBULL: Okay.

18 MR. AVITABILE: I think it's not an uncommon  
19 situation.

20 COMMISSIONER TURNBULL: Yeah. All right. Thank  
21 you.

22 CHAIRMAN HOOD: Great. Any other questions up  
23 here? Comments?

24 Okay. Do we have anyone here from ANC-6D? Not  
25 seeing anyone, we will now go to the Office of Planning. Ms.

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1 Elliott.

2 MS. ELLIOTT: Thank you, Mr. Chairman. Good  
3 evening Zoning Commission. I'm Brandice Elliott for the  
4 Office of Planning. I want to stand on the record of our  
5 record recommending approval of the extension of the special  
6 exceptions.

7 Not sure that I need to comment on the condition  
8 other than OP is supportive of the condition. We're in  
9 agreement with the discussion that has happened here tonight.  
10 I'm happy to answer any questions you have.

11 CHAIRMAN HOOD: Thank you, Ms. Elliott. I want  
12 to say this. I think I have some colleagues up here who like  
13 to joke with me about certain things and they tried to tell  
14 me that I just called your name wrong. After five years I  
15 have now gotten it correct and I probably won't call it wrong  
16 anymore.

17 Anyway, let's see if there are any questions or  
18 comments. All right. Again, there is no one here from ANC-  
19 6D. Okay. Thank you, Ms. Elliott.

20 Let's go to -- do we have any other reports of any  
21 government agencies? We do have one and I think that's been  
22 thoroughly talked about from DDOT, the recommendation. Also  
23 we have a new proposed condition and proffer as has been  
24 stated in front of us.

25 We do have NCPC? Okay. Can somebody tell me

1 about the NCPC report?

2 COMMISSIONER MAY: It would not be inconsistent  
3 with the comprehensive plan, nor would it adversely affect  
4 any other identified federal interest.

5 CHAIRMAN HOOD: Okay. Do we have any other  
6 reports? Okay. Thank you, Commissioner May.

7 Now, we do have the report of the ANC. Since I  
8 had it open, I didn't want to close it. This is from  
9 Chairperson Fascett. Is she here?

10 Basically they have voted -- the four  
11 commissioners from 6D voted five-zero-zero for the motion to  
12 support the request by Forest City, Washington for the five-  
13 year extension, and the existing approval of temporary  
14 parking use for the existing parking lots on the properties  
15 known as Parcel F, H, I, and Q. This is dated -- this is  
16 signed by the Chairperson Fascett.

17 Okay. Do we have any persons or organizations  
18 that would like to testify who are here in support? Any  
19 organizations or persons who would like to testify in  
20 opposition? Any organizations or persons who would like to  
21 speak that are undeclared? We'll go to any rebuttal or any  
22 closing. Any rebuttal or closing that you may have.

23 MR. AVITABILE: No, thank you.

24 CHAIRMAN HOOD: You don't have any closing?

25 MR. AVITABILE: We have none. We are very happy

1 to be here.

2 CHAIRMAN HOOD: Do you want to tell us how happy  
3 you are to be in front of us?

4 MR. AVITABILE: I was just saying we are happy to  
5 be here. Thank you.

6 CHAIRMAN HOOD: Okay. That makes us feel a little  
7 better. I don't think we need to stay any longer. The  
8 longer we stay, the more trouble we get into.

9 MR. AVITABILE: Yes.

10 CHAIRMAN HOOD: So let's see what you all would  
11 like to do with this. We do have a proposed condition and  
12 proffer as I think Commissioner May has cited. I think --  
13 let me open it up first and see what the Commission would  
14 like to say.

15 VICE CHAIR MILLER: Mr. Chairman, I would make a  
16 motion, if it's in order, that the Zoning Commission approve  
17 Zoning Commission Case No. 13-16A which request a  
18 continuation of temporary parking lots on Parcels F, H, I,  
19 and Q South East Federal Center for a period of five years  
20 subject to the proposed condition that's in front of us as  
21 we discussed this evening. I would ask for a second.

22 COMMISSIONER MAY: Second.

23 CHAIRMAN HOOD: It has been moved and properly  
24 seconded. Any further discussion? All in favor aye.

25 COMMISSIONERS: Aye.



1 CHAIRMAN HOOD: Any opposition? Not hearing any,  
2 the vote -- well, there's only five of us. Not hearing any  
3 opposition, Ms. Schellin, would you please record the vote.

4 MS. SCHELLIN: Yes. Staff records the vote five-  
5 zero-zero to approve final action in Zoning Commission Case  
6 No. 13-16A. Commissioner Miller moving, Commissioner Shapiro  
7 seconding, Commissioners Hood, Turnbull, and May in support.  
8 If we could get a draft order from you in a week.

9 MR. AVITABILE: Sure. Can it be a summary order?

10 CHAIRMAN HOOD: Yes, summary as long as we attach  
11 the proposed condition and proffer.

12 MR. AVITABILE: Excellent.

13 CHAIRMAN HOOD: The young gentleman there, did you  
14 have anything you wanted to say tonight? I said young  
15 gentleman. I wasn't talking to you. You and I look like  
16 we're the same. I mean the young gentleman at the table.

17 MR. ODUM: No, I'm all set. Thank you.

18 CHAIRMAN HOOD: All right. Is this your first  
19 time down here in front of us?

20 MR. ODUM: Yes, it is.

21 CHAIRMAN HOOD: Oh, you didn't want to say  
22 nothing. You don't want to introduce yourself?

23 MR. ODUM: I'm Michael Odum with Forest City.

24 CHAIRMAN HOOD: Okay. What do you do for Forest  
25 City?

1 MR. ODUM: I'm a development associate there.

2 CHAIRMAN HOOD: Okay.

3 MR. ODUM: Hopefully this won't be the last time  
4 you see me.

5 MR. AVITABILE: Michael was here with us two years  
6 ago when we were here for Parcel L-2.

7 CHAIRMAN HOOD: Was he the guy that was a little  
8 nervous then? Was that him? Because I like to pick on  
9 people. We might as well close the hearing.

10 MR. AVITABILE: Michael was brand new at that  
11 point but he's now stepping up.

12 CHAIRMAN HOOD: Somebody came in and said they  
13 were nervous so I thought it might have been you. I like to  
14 see if they are still nervous but it wasn't you.

15 Okay. Anything else? All right. So we're done.  
16 Thank you for your participation tonight and this hearing is  
17 adjourned.

18 (Whereupon, the above-entitled matter went off the  
19 record at 6:48 p.m.)

20

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24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Forest City SEFC, LLC

Before: DCZC

Date: 05-03-18

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.

  
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