

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

+ + + + +

MONDAY

JUNE 25, 2018

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The Special Public 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., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

- SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

- JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation
- JOEL LAWSON
- MAXINE BROWN-ROBERTS
- STEVE COCHRAN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from
the Special Public Meeting held on June 25, 2018.

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

Case Number: 15-20B	5
Minor Modification to Condition B2E1 of Order Number 15-20.	
Case Number: 08-06Q	14
Office of Planning - Minor Modification to Z.C. Order No. 08-06A re: Subtitle B Section 304.3	
Case Number: 03-12V/03-13V	16
Square 769, LLC, Modification of Consequence to PUD, 250 M Street, SE at Square 769	
Case Number: 79-19A/78-07	24
BDC Van Ness, LLC	
Case Number: 18-02	27
MR 1700 Columbia Retail, LLC	
Case Number: 18-09	29
Office of Planning, text amendment to Subtitle B Section 307.6	
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Valor Development	
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P-R-O-C-E-E-D-I-N-G-S

(6:32 p.m.)

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

Good evening ladies and gentlemen. This is the public meeting of the Zoning Commission for the District of Columbia. My name is Anthony Hood. And we're located in the Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are Vice Chair Miller, Commissioner May, Commissioner Turnbull. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, as well as Officer of Attorney General, and our staff, Ms. Lovick. Office of Planning staff, Ms. Steingasser, Mr. Lawson, and Ms. Brown-Roberts, and Mr. Cochran.

Copies of today's meeting agenda are available to you and are located in the bin near the door. Please be advised this proceeding is being recorded by a Court Reporter. It's also webcast live. Please turn off all electronic devices at this time.

Does the staff have any preliminary matters?

MS. SCHELLIN: No sir.

CHAIRMAN HOOD: Okay, if not let's proceed with our agenda as noted. Excuse me, first case, Consent Calendar item minor modification and technical corrections, Zoning Commission Case 15-20B. Ms. Schellin.

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1 MS. SCHELLIN: Yes, sir. The Applicant is
2 requesting a minor modification as you stated, to condition
3 B2E1 of Order Number 15-20 to change the notice requirements
4 in that paragraph. The Applicant didn't provide the notice
5 required within ten days of applying for a raise permit.

6 Instead the Applicant sent the notice out 40 days
7 after applying. And the Applicant stated there were no, in
8 their submission, that there were no adverse impacts because
9 all of the units have been vacated.

10 At Exhibit 3F, there's a letter in support from
11 Sursum Corda Cooperative. And staff would ask the Commission
12 to consider whether this is a minor modification and proceed
13 accordingly?

14 CHAIRMAN HOOD: Okay, Commissioners. Does anyone
15 want to take this off the Consent Calendar item, calendar?
16 Okay.

17 (Off the record comments)

18 CHAIRMAN HOOD: Okay.

19 COMMISSIONER MAY: Not on consent, I mean it might
20 be a Modification of Consequence. Not a minor mod, but we
21 can talk about it.

22 CHAIRMAN HOOD: Okay, so I don't hear anyone. We
23 want to have a discussion? I'll start off with you
24 Commissioner May.

25 COMMISSIONER MAY: All right. Sorry, I'm getting

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1 caught up here. But no, I mean I think the real problem I
2 have with treating this as a minor modification is that,
3 that's not the way we would alter a condition of an order.

4 Now granted this condition, the order was
5 something that was probably written in by the Applicant in
6 the first place. It was something that was essentially
7 proffered but not followed through on. And it could have
8 been written differently.

9 And so I agree that it seems that there's not
10 really an adverse effect from, you know, that results from
11 this. Because there was, you know, notice to the extent
12 there had to be notice. And people are not being affected
13 because the buildings have all been vacated.

14 And the other notification processes for a raise
15 permit were done. So I don't see a whole lot of negative
16 effect. It's really a question of the, I think, how
17 important it is for people to follow our orders the way they
18 are written. I think that's the bigger issue.

19 I can see that, you know, it might be appropriate
20 to hail this as a Modification of Consequence. I don't know
21 what that does for the Applicant's schedule. But I think I
22 would be more comfortable with that kind of an approach since
23 we are changing the language of an order.

24 I also don't know that the proposed solution is
25 the correct solution. I think we have an alternate

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1 suggestion from the Office of Attorney General. But I think
2 that I'm interested in finding out what other folks think
3 about whether this should be treated as a Modification of
4 Consequence, so we'll start with that?

5 CHAIRMAN HOOD: All right, anybody have any other
6 comments?

7 COMMISSIONER TURNBULL: Mr. Chair, I guess I
8 would, I guess my concern would be is that if we treat this
9 as a minor mod, if it is indeed setting a precedent and
10 broadens sort of our interpretation of a minor modification
11 to include a change to a condition in a final order.

12 Again, as Commissioner May said, I don't think in
13 one way that this isn't a big deal, but I think from a
14 precedent setting stand point of language in one of our
15 orders that this may be, is really should not be considered
16 a minor mod.

17 CHAIRMAN HOOD: Vice Chair, you want to add?

18 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
19 generally agree with my colleagues' statements. And I guess
20 I don't know if we need to hear from the Applicant, but what
21 would be the time sequence if it's a Modification of
22 Consequence? Do they send out some official notice?

23 MS. SCHELLIN: No.

24 CHAIRMAN HOOD: We would have to do s
25 determination and scheduling.

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1 MS. SCHELLIN: Right.

2 VICE CHAIR MILLER: Or we could do it all right
3 now, here?

4 MS. SCHELLIN: Yes.

5 VICE CHAIR MILLER: A Modification of Consequence?

6 MS. SCHELLIN: Correct.

7 CHAIRMAN HOOD: Let me comment before we go, if
8 there's anybody else -- why don't you finish?

9 VICE CHAIR MILLER: Okay, so I'll just finish.
10 I also do, so I'm a little concerned about the precedent of
11 treating a minor mod, changing a condition of a final order
12 as a minor mod because it would be a precedent for our
13 future, for the future.

14 And I would support alternative, an alternative.
15 Instead of changing the notice requirement from ten days
16 before the raise permit to 40 days after, which seems kind
17 of weird.

18 The OIG did request adding the following language
19 to the condition in question, and I would slightly alter it,
20 but quote, "violations of this condition shall not result in
21 the denial of a raise permit. However if a violation occurs,
22 DCRA may consider imposing the appropriate civil infraction."
23 That's what I would say.

24 CHAIRMAN HOOD: Okay.

25 COMMISSIONER MAY: I would agree with that tweak

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1 of language too, because I was thinking it was too harsh the
2 way it was written.

3 VICE CHAIR MILLER: Yes.

4 COMMISSIONER MAY: But, you know.

5 CHAIRMAN HOOD: Okay. Let me just say, when I
6 first looked at this, and I know we talk about precedent
7 setting, I thought this was very simple. I actually, I left
8 this case after reviewing it, and saying okay, we'll just
9 give them what they ask for. That's the way I saw it.

10 But after hearing my colleagues, whatever we need
11 to do. I don't think this is necessarily a major deal. But
12 it's just how we do it, and I would agree with the
13 alternative language.

14 But I'm not sure if we can get around the
15 determination of scheduling because, you know, we want to
16 make sure we're considerate of our time especially. But I
17 don't think we can do that as well.

18 So, Ms. Schellin, we have to do determination and
19 scheduling correct?

20 MS. SCHELLIN: Correct. So, we could put this on
21 for July 9th, which is just two weeks away.

22 CHAIRMAN HOOD: Okay, two weeks won't hurt us.

23 MS. SCHELLIN: Right, and did you need anything
24 additional? You don't need anything additional from the
25 Applicant. And the, I don't have, let's see, I don't think

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1 the ANC weighed in yet on this one. Let me double check.
2 No.

3 CHAIRMAN HOOD: And we would ask that they look
4 at the language that has been proposed.

5 MS. SCHELLIN: So, if the ANC would just provide
6 their response, if they could work with the ANC, if they
7 choose to respond by July 2nd, then we can put in on for July
8 9th.

9 CHAIRMAN HOOD: So, we won't have to, so let me
10 just say this so we won't have to deal with this July the
11 26th, or whatever our next hearing is, let's make sure that
12 you all look at the language and make sure you concur with
13 it. Okay?

14 MR. GLASGOW: So we can submit anything by July
15 2nd?

16 CHAIRMAN HOOD: Was --

17 MR. GLASGOW: I just want to sure that anything
18 in that language didn't cause a problem with financing the
19 project or anything like that. I don't know because I
20 haven't seen the language.

21 COMMISSIONER MAY: So it's pretty much as
22 Commissioner Miller just read it.

23 MR. GLASGOW: But you've had some changes --

24 CHAIRMAN HOOD: Let's yes, let's read it. I'll
25 ask the Vice Chair to read it again. Because the way I saw

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1 it was actually very accommodating, but anyway --

2 VICE CHAIR MILLER: Yes, that was the point.

3 CHAIRMAN HOOD: Oh, hold on a second.

4 (Off the record comments)

5 VICE CHAIR MILLER: So it would instead of, as an
6 alternative changing the notice requirement as had been
7 requested by the Applicant from the ten days before the raise
8 permit to 40 days after, the Commission would suggest adding
9 the following language to the condition, which we would
10 welcome the Applicant's comments on.

11 The condition B2EI, quote "violations of this
12 conditional shall not result in the denial of a raise permit.
13 However if a violation occurs, DCRA may consider imposing the
14 appropriate civil infraction."

15 MR. GLASGOW: Could you say that one more time
16 please?

17 VICE CHAIR MILLER: Okay.

18 CHAIRMAN HOOD: So let me say this, let me say
19 this, hold it. So you won't have to decide off the cuff,
20 we'll make sure you get the language. The question that I
21 have is we say may, or should it be should?

22 (Off the record comment)

23 CHAIRMAN HOOD: Because may --

24 (Off the record comment)

25 CHAIRMAN HOOD: -- for me, and let's have that

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1 discussion, now we'll have a discussion on may or should.
2 Okay.

3 (Off the record comment)

4 COMMISSIONER MAY: You know, I'm fine with may,
5 because I, you know if -- for us to say should implies that
6 we are the, we should be the arbiter of such DCRA decisions.
7 And I don't think we should.

8 I think we, you know, we're trying to be as
9 flexible as possible. And if DCRA determines that, you know
10 some sort of civil infraction is warranted here, they may do
11 that. But they also may not. And if they don't, so be it.

12 CHAIRMAN HOOD: Okay.

13 COMMISSIONER MAY: You know, we'll be okay with
14 whatever they, whatever comes out of it.

15 CHAIRMAN HOOD: Okay.

16 COMMISSIONER MAY: I mean again, I don't think
17 there's any real harm that's been done by this, let's call
18 it a clerical error, whatever it was. But I think that we,
19 you know, we have to maintain the integrity of our order.

20 CHAIRMAN HOOD: Okay. So I would after hearing
21 that, I would go with may. So we're not going to make that
22 a big issue. You only want to go with may because that's
23 your last name.

24 (Laughter)

25 CHAIRMAN HOOD: But anyway, I had to get that in.

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1 (Simultaneous speaking)

2 COMMISSIONER TURNBULL: Mr. Glasgow do you want
3 to hear it again?

4 MR. GLASGOW: No that's fine, because I understand
5 that I'll be able to comment by July 2nd. So that will be
6 fine.

7 CHAIRMAN HOOD: Is that the schedule Ms. Schellin?
8 Okay. Vice Chair, did you have anything? We kind of
9 interrupted and kept right on going. Okay, so do we need to
10 do anything else with this, Ms. Schellin?

11 MS. SCHELLIN: No.

12 CHAIRMAN HOOD: Okay, so we'll deal with this on
13 the July, whatever the date was. What was the date? July --

14 MS. SCHELLIN: July 9th.

15 CHAIRMAN HOOD: Okay, thank you. All right, so
16 move right along. For determination of scheduling, does
17 anyone believe -- okay let me call the case first. Zoning
18 Commission Case Number 13-12V/03-13V Square 769, LLC,
19 Modification of Consequence to PUD, 250 M Street, SE at
20 Square 769. Ms. Schellin.

21 MS. SCHELLIN: Yes, for this case, first OP has
22 requested a waiver to accept their report less than ten days
23 prior to the meeting. The Commission -- no?

24 MS. STEINGASSER: I believe the item was skipped
25 over. I think there's been a -- the Chairman was reading the

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1 Modification of Consequence Determination, as opposed to the
2 minor mod, number 2.

3 MS. SCHELLIN: That's what I'm reading is the --

4 CHAIRMAN HOOD: Which one are we --

5 MS. SCHELLIN: He read the wrong case number, I'm
6 sorry. Yes, 08-06Q.

7 CHAIRMAN HOOD: Hold on a second, let me see.

8 (Off the record comment)

9 CHAIRMAN HOOD: Oh, I did skip. Oh, okay. I went
10 straight to the -- okay, all right. Thank you. Maybe I
11 should just have one agenda in front of me. I have two.

12 Okay, Zoning Commission case Number 08-06Q. A
13 good catch, thank you, Ms. Steingasser. Office of Planning,
14 minor modification to Zoning Commission Order No. 08-06A and
15 Subtitle B, 304.3 Rules of Measurement, and Subtitle I 200,
16 Density - Floor and Area Ratio, and request for emergency
17 action and waiver requests. Ms. Schellin.

18 MS. SCHELLIN: Okay, so I'll start again. First
19 the OP has requested a waiver to accept their report less
20 than ten days prior to the meeting. So I ask the Commission
21 if by consensus if they'll waive that?

22 CHAIRMAN HOOD: Any objections?

23 (No audible response)

24 CHAIRMAN HOOD: No objections.

25 MS. SCHELLIN: So then, second OP is requesting

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1 a minor modification be approved on an emergency basis, and
2 that the Commission authorize the immediate publication of
3 the emergency if adopted. And also the publication of the
4 proposed rulemaking.

5 This request is to conform with the 1958
6 regulations that hotel and other lodging would not count as
7 residential uses in the downtown zones. So I ask the
8 Commission to consider the emergency, and the authorization
9 to publish a proposed rulemaking.

10 CHAIRMAN HOOD: Okay. Commissioners, I would
11 agree with all the requests that have been asked for in this
12 case. And I open up for any discussion.

13 COMMISSIONER MAY: I agree as well.

14 CHAIRMAN HOOD: Okay. All right, would somebody
15 like to -- Mr. Turnbull.

16 COMMISSIONER TURNBULL: I would just say, I concur
17 with this.

18 CHAIRMAN HOOD: Would somebody like to make a
19 motion that we accept everything that's been asked for?

20 COMMISSIONER TURNBULL: Mr. Chair, I would move
21 that we accept on the Consent Calendar Zoning Case Number 08-
22 06Q, Office of Planning, minor mod to Zoning Commission Order
23 08-06A. Subtitle B, Rules of Measurement, Sub -- Density
24 Floor Area Ratio, and et cetera, et cetera, et cetera. And
25 I'll look for a second.

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1 COMMISSIONER MAY: Including the emergency action.

2 COMMISSIONER TURNBULL: Including the emergency
3 action.

4 VICE CHAIR MILLER: Second.

5 CHAIRMAN HOOD: Okay, it's been moved and properly
6 seconded. And everything is included that's been asked for.
7 Any further discussion?

8 (No audible response)

9 CHAIRMAN HOOD: All in favor?

10 (Multiple ayes)

11 CHAIRMAN HOOD: Any opposition?

12 Not hearing any, Ms. Schellin will you record the
13 vote?

14 MS. SCHELLIN: Staff records the vote 4-0-1 to
15 take emergency action and authorization to publish the
16 proposed rulemaking on Case Number 08-06Q. Commissioner
17 Turnbull moving, Commission Miller seconding, Commissioners
18 Hood and May in support. Commissioner Shapiro not present,
19 not voting.

20 CHAIRMAN HOOD: Okay, next we have a Modification
21 of Consequence, determination of scheduling. Zoning
22 Commission Case Number 03-12V/03-13V Square 769, LLC,
23 Modification of Consequence to the PUD, 250 M Street, SE at
24 Square 769. Ms. Schellin.

25 MS. SCHELLIN: Yes, on this one the Applicant is

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1 seeking, as you stated a Modification of Consequence. They
2 want to modify the design of the building to fit the needs
3 of DDOT, the only tenant of the building, or planned for the
4 building. Exhibit 4 is ANC's 6D report in support with the
5 condition that deliveries not begin prior to 7 o'clock a.m.

6 Exhibit 5 is an OP report in support, provided the
7 Applicant provide additional information prior to this
8 evening. Exhibit 6 is the Applicant's response to ANC 6D and
9 the -- sorry, ANC 6D and OP.

10 Ask the Commission to determine whether this is
11 in fact a Modification of Consequence, and if so, the
12 Commission could, since the ANC is the only party, proceed
13 with deliberation actually this evening unless the Commission
14 wants some additional information or feels that the Applicant
15 has not responded satisfactory to OP and the ANC. Thank you.

16 CHAIRMAN HOOD: Okay, thank you. First let me
17 ask, does anyone believe this is not a Modification of
18 Consequence?

19 (No audible response)

20 CHAIRMAN HOOD: Okay, and it sounds like, are we
21 ready to proceed this evening?

22 COMMISSIONER MAY: That's fine, but I think I have
23 questions for the Office of Planning before we do that.

24 CHAIRMAN HOOD: Okay, we can do that at this time.

25 COMMISSIONER MAY: So we have a pretty clear

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1 indication the ANC, of the ANC's support. Their one
2 condition was met. The Office of Planning had a few other
3 conditions, quite a few other conditions. So I'm wondering
4 if they are now in agreement with how the Applicant has
5 responded to all those? Or whether there are any other, any
6 ongoing concerns?

7 MR. COCHRAN: There are no ongoing concerns.

8 COMMISSIONER MAY: Fair enough. Okay.

9 CHAIRMAN HOOD: All right, are there any other --

10 COMMISSIONER TURNBULL: Yes, Mr. Chair I just had
11 a -- Mr. Cochran it's hard to tell looking at the small scale
12 plans that we have here. But was there any modification to
13 the penthouse? It looks like, if I look at certain things
14 on the elevation, I see changes, but then and on the
15 sections, but I really can't tell how much change was done
16 to the penthouse?

17 MR. COCHRAN: There were modifications to the
18 penthouse. It was made smaller. Because of scale the size
19 of the building -- the reduced scale, there was no longer a
20 desire to make it sort of a bookend to a building on the west
21 side of the Canal blocks park. That had been the intention
22 of the original penthouse. So they would serve to frame
23 equally, the Canal blocks park.

24 Now that this would be two stories lower than the
25 building on the west side of the park, the penthouse was

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1 reduced accordingly.

2 COMMISSIONER TURNBULL: So the FAR, the footprint
3 on the roof is smaller?

4 MR. COCHRAN: The height.

5 COMMISSIONER TURNBULL: The height is smaller.

6 MR. COCHRAN: Is smaller.

7 COMMISSIONER TURNBULL: Shorter.

8 MR. COCHRAN: I'm sorry, I can't answer your
9 question on the footprint. I could look at the plans and get
10 back to you.

11 COMMISSIONER TURNBULL: Yes, I really, I couldn't
12 tell. I, just curious, I mean I look at, I see windows in
13 certain areas where there weren't windows before. And I'm
14 just like, is there change of use, a change of mix of what
15 they did up there? I mean it's probably not a big deal, but
16 I just, I didn't really see anything here.

17 MR. COCHRAN: I would only note that the penthouse
18 would still come under the height act. And if there were a
19 problem, it ultimately could be considered as a story.

20 COMMISSIONER TURNBULL: Okay, all right. Thank
21 you.

22 CHAIRMAN HOOD: Mr. Turnbull if you need your
23 questions answered, I think we can call Mr. Tummonds up, if
24 you want to go to that extent. If so, we can clarify your
25 questions.

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1 MR. TUMMONDS: Thank you, Paul Tummonds, from
2 Goulston & Storrs, no changes in the panels.

3 COMMISSIONER TURNBULL: No changes?

4 MS. BROWN-ROBERTS: Correct.

5 COMMISSIONER TURNBULL: Okay.

6 CHAIRMAN HOOD: Any other questions for Mr.
7 Tummonds while he's at the table? Okay, Vice Chair Miller,
8 you want to add anything?

9 VICE CHAIR MILLER: Thank you, Chair. I just
10 wanted to concur with the ANC's comments in support of this
11 modification, which is designed to secure a specific office
12 tenant, DDOT. And the reduced size actually is closer to the
13 original PUD and it makes the project more economically
14 feasible.

15 So, and they provided the conditions, the
16 specificity to the conditions that OP requested. And the
17 commitment that the ANC requested to provide community space,
18 and that community meeting space in that conference center,
19 which they're going to try to activate as much as possible --

20 CHAIRMAN HOOD: Okay.

21 VICE CHAIR MILLER: -- made in the report.

22 CHAIRMAN HOOD: All right, Commissioner May.

23 COMMISSIONER MAY: I just wanted to comment, I'm
24 glad to see that this particular project is now happening.
25 Because it's been -- we've extended the PUD for this a few

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1 times on this particular parcel.

2 I do have a question though, I mean DDOT seems to
3 move around a lot. Every ten years or so they move around.
4 So is this going to be a longer term stay for them? Do you
5 know, Mr. Tummonds? Anybody know?

6 MR. TUMMONDS: I believe the letter of intent is
7 still being negotiated.

8 COMMISSIONER MAY: Okay.

9 MR. TUMMONDS: So, I think term --

10 COMMISSIONER MAY: Well, I'm glad they're staying
11 in that neighborhood. That seems to work well for them, in
12 proximity to DOT I think is probably worthwhile for them.
13 And I just hope that they, you know, there's some stability
14 and they don't have to move again in ten years, or whatever
15 it is.

16 CHAIRMAN HOOD: Okay, anything else? So it looks
17 like we have agreement, I mean everything looks pretty
18 straight forward. Somebody like to make a motion, which
19 would include what is really being requested? Vice Chair
20 Miller?

21 VICE CHAIR MILLER: Sure, thank you, Mr. Chair.
22 I would move that the Zoning Commission approve the
23 Modification of Consequence. Is that the right terminology?

24 MS. SCHELLIN: For final action.

25 VICE CHAIR MILLER: For final action on Zoning

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1 Commission Case Number 03-12V/03-13V, Square 769, LLC,
2 Modification of Consequence of PUD at 250 M Street SE, Square
3 769, and ask for a second.

4 COMMISSIONER TURNBULL: Second.

5 CHAIRMAN HOOD: Okay, it's been moved and properly
6 seconded. Any further discussion?

7 MS. LOVICK: Excuse me.

8 CHAIRMAN HOOD: Yes.

9 MS. LOVICK: I just want you to make reference to
10 the conditions in Exhibit 6.

11 VICE CHAIR MILLER: Well I'll incorporate that as
12 part of my motion, with specific reference to the conditions
13 in Exhibit 6. And I assume the seconder will --

14 COMMISSIONER TURNBULL: I will --

15 VICE CHAIR MILLER: -- go along with that.

16 COMMISSIONER TURNBULL: -- go along with that too.

17 CHAIRMAN HOOD: We're talking about the conditions
18 for the ANC? What?

19 MS. LOVICK: Yes, the conditions that were
20 associated, all the conditions that the Applicant proposed
21 with the reference to allowing the ANC to use the center
22 space. And that 7 a.m., that there would be no deliveries
23 prior to 7 a.m.

24 CHAIRMAN HOOD: Okay. All right. Anything else
25 we need to add? Because I think your motion is inclusive of

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1 all the requests.

2 VICE CHAIR MILLER: Yes.

3 CHAIRMAN HOOD: Okay, just making sure.

4 COMMISSIONER MAY: And I mean, the Applicant
5 already, I mean -- there are conditions that were associated
6 with the Office of Planning's report as well that are
7 incorporated.

8 CHAIRMAN HOOD: Right.

9 COMMISSIONER MAY: Right?

10 MR. TUMMONDS: Correct.

11 CHAIRMAN HOOD: So this motion is including
12 everything. Okay, all right, I just wanted to make sure.
13 So where we at now? Yes, an all-inclusive motion. So it's
14 been moved and properly seconded. Did I call for the vote?

15 (No audible response)

16 CHAIRMAN HOOD: All in favor?

17 (Multiple ayes)

18 CHAIRMAN HOOD: Any opposition?

19 (No audible response)

20 CHAIRMAN HOOD: Not hearing any, Ms. Schellin
21 would you record the vote?

22 MS. SCHELLIN: Staff reports the vote 4-0-1 to
23 approve Final Action Zoning Commission Case Number
24 03-12V/03-13V. Commissioner Miller moving. Commissioner
25 Turnbull seconding. Commissioners Hood and May in support.

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1 Commissioner Shapiro not present, not voting. And I just ask
2 the Applicant, to provide an order. I'm taking it a Summary
3 Order could be provided. Is the Commission okay with that,
4 Chairman Hood?

5 CHAIRMAN HOOD: I'm sorry.

6 MS. SCHELLIN: Another Commissioner Summary Order?

7 CHAIRMAN HOOD: Yes, Summary order is fine.

8 MS. SCHELLIN: Okay. Thanks.

9 CHAIRMAN HOOD: All right, sorry I'd moved on to
10 the next case. Make sure I call the right one. Okay? I'll
11 probably still call the wrong one. Let me see.

12 All right next we have Zoning Commission Case
13 Number 79-19A/78-07, BDC Van Ness, LLC, Modification of
14 Consequence to PUD at Square 2047. Ms. Schellin.

15 MS. SCHELLIN: Yes, after meeting with the ANC,
16 the Applicant submitted a revised drawing for the Kiss and
17 Ride Level, and that's at Exhibits 5 and 5A. And at Exhibit
18 6 you have ANC 3F's Resolution with the conditions they
19 proposed. So I would ask the Commission to consider
20 deliberations on -- bless you -- yes, deliberations on this
21 case. Thank you.

22 CHAIRMAN HOOD: Okay. Who would like to start us
23 off?

24 COMMISSIONER MAY: So, Mr. Chairman I think the
25 missing piece that we have at this moment is that we did get

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1 the ANC's report, but their -- and then we got new
2 information from the Applicant. And I think that we need to
3 hear from Forest Hills Citizen's Association and the Office
4 of Planning on what we have received from the Applicant with
5 regard to the Kiss and Ride, and those conditions. And the
6 flexibility to, you know, change Kiss and Ride, or not change
7 Kiss and Ride? So, I think we need to, we probably need to
8 defer consideration in order to get comment on those things.

9 CHAIRMAN HOOD: Okay, do we need -- we don't have
10 anyone here from Forest Hills do we?

11 (No audible response)

12 CHAIRMAN HOOD: Okay. I also too was concerned
13 about the Kiss and Ride which seems to be going away. But
14 anyway I'll let the communities work it out. Anything else
15 that we want to send out, or?

16 (No audible response)

17 CHAIRMAN HOOD: Okay, so I think the only thing,
18 outstanding issue we will wait for is information from the
19 Applicant as well -- is the Applicant here?

20 (No audible response)

21 CHAIRMAN HOOD: Okay.

22 MS. SCHELLIN: So we can get the Applicant to work
23 with the party. And then of course OP is here, if we can get
24 those responses by July 2nd, we can put them on for July 9th.

25 CHAIRMAN HOOD: So does anybody want to hear from

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1 Applicant now, or you want to wait?

2 (No audible response)

3 CHAIRMAN HOOD: Does the Applicant, you want to
4 come up and tell us something that might help us move this
5 along? Not that we will -- we have to verify too, so.

6 MS. BLOOMFIELD: Thank you, Jessica Bloomfield
7 from Holland & Knight. Forest Hills was a party in the
8 original 1980 PUD. And we've provided copies of all of our
9 materials to them. And they had no comment so far. So,
10 we're happy to reach out to them again, if you want to
11 postpone the decision. But we have copied them on
12 everything.

13 CHAIRMAN HOOD: All right, so I think that would
14 be a wise move for us to wait, with everything -- don't leave
15 the table yet. I have a question to ask you. Not to put it
16 publicly, but I heard some news. Are you getting married
17 soon?

18 (No audible response)

19 (Laughter)

20 CHAIRMAN HOOD: Well, congratulations. That's
21 all, excuse me. So we hear things too. Just like you all
22 hear things about us, we hear things too. So,
23 congratulations. All right.

24 (Off the record comment)

25 CHAIRMAN HOOD: You're not upset because I did

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1 that?

2 (No audible response)

3 CHAIRMAN HOOD: Okay, all right. Sometimes I do
4 those things.

5 Okay, so we'll wait and we'll get that back.
6 We'll take this up when, Ms. Schellin?

7 MS. SCHELLIN: July 9th.

8 CHAIRMAN HOOD: July 9th, okay. All right,
9 anything else on this?

10 MS. SCHELLIN: I don't have anything.

11 CHAIRMAN HOOD: Okay, let's move to
12 Hearing Action.

13 MS. SCHELLIN: Final.

14 CHAIRMAN HOOD: Final Action. I got so much stuff
15 written on it. Wait a minute.

16 MS. SCHELLIN: At the bottom of Page 4.

17 CHAIRMAN HOOD: Oh, it's two sided.

18 MS. SCHELLIN: Yes, unfortunately.

19 CHAIRMAN HOOD: I'm used to stuff being one sided.

20 Okay, Final Actions, Zoning Commission Case Number
21 18-02, MR 1700 Columbia Retail, LLC, text amendment to the
22 special exception provisions of Subtitle U, Sections 508,
23 511, and 513. Ms. Schellin.

24 MS. SCHELLIN: Yes, the Notice of Emergency and
25 Proposed Rulemaking was published in the register on May 4th.

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1 No comments were received, however at Exhibit 19 there's a
2 letter from NCPC advising that their staff determined that
3 the case was exempt from review pursuant to NCPC submission
4 guidelines. So we would ask the Commission to consider Final
5 Action this evening.

6 CHAIRMAN HOOD: Okay, Commissioners, any comments
7 on this?

8 COMMISSIONER MAY: Mr. Chairman.

9 CHAIRMAN HOOD: Yes.

10 COMMISSIONER MAY: I just want to state for the
11 record that I have reviewed the record, I was not present for
12 the hearing, but I reviewed the record and materials, and am
13 prepared to participate in any decision making.

14 CHAIRMAN HOOD: Okay. Give me one second please.
15 Any other comments or questions on this case? One second.

16 COMMISSIONER TURNBULL: I think we went through
17 everything during the hearing. I don't think there were any
18 outstanding issues at the time.

19 CHAIRMAN HOOD: I just wanted to make sure. Yes,
20 I think we hashed a lot out about the text amendment, and the
21 animal sales and everything. So I think that this is ready
22 for our approval. I will move that we approve Zoning
23 Commission Case Number 18-02, and I ask for a second.

24 VICE CHAIR MILLER: Second.

25 CHAIRMAN HOOD: It's been moved and properly

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1 seconded. Any further discussion?

2 (No audible response)

3 CHAIRMAN HOOD: All in favor?

4 (Multiple ayes)

5 CHAIRMAN HOOD: Any opposition?

6 (No audible response)

7 CHAIRMAN HOOD: Not hearing any, Ms. Schellin
8 would you record the vote?

9 MS. SCHELLIN: Yes, staff records the vote 4-0-1
10 to approve Final Action on Zoning Commission Case Number 18-
11 02. Commissioner Hood moving. Commissioner Miller
12 seconding. Commissioners May and Turnbull in support.
13 Commissioner Shapiro not present, not voting.

14 CHAIRMAN HOOD: Okay. Next we have
15 Correspondence, Zoning Commission Case Number 16 --

16 (Off the record comment)

17 CHAIRMAN HOOD: Why do I keep skipping everything?
18 I think I know what it is. I'll deal with it.

19 Zoning Commission Case Number 18-09, Office of
20 Planning, text amendment to Subtitle B 307.6, measuring
21 height in non-residential zones for buildings 90 and above,
22 and Subtitle U 502.1, add art gallery and museum to
23 matter-of-right, use Group A. Ms. Steingasser.

24 MS. STEINGASSER: Yes, sir. So these two text
25 amendments bring the measuring point for non-residential

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1 zones, set permit buildings taller than 90 feet into
2 conformance with the previous precedence of the 58 regs. And
3 in conformance with the language that the Commission recently
4 adopted in case 17-14. And it had to do with basement
5 cellars and measuring points.

6 So it brings those uses, those text consistencies
7 and then it also reintroduces or reinstates the art galleries
8 and museum uses in the MU Zones. They, in the previous 58
9 regs, this use was in the R-4 and it carried through to the
10 R-5. And through the R-5 it then carried through into the
11 SP Zones.

12 When the SP Zones became part of the MU, the
13 Commission also took the museum use out of the now R-4 Zones.
14 So that that carry through was broken. And so we wanted to
15 reinstate those uses. And we recommend that they be setdown.

16 CHAIRMAN HOOD: Ms. Steingasser, let me just ask
17 you. Thank you, but let me ask you about the MU. So is
18 there something that we left out in ZR16, or we just off, or?

19 MS. STEINGASSER: Yes, yes it just got left off
20 because we broke that pull through chain by taking it out of
21 the R-4 Zone.

22 CHAIRMAN HOOD: Okay. All right, any questions
23 on any of this?

24 (No audible response)

25 CHAIRMAN HOOD: And I thank we also, we're asking

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1 for emergency action as well. Correct? We're not?

2 MS. STEINGASSER: No, sir. These just need
3 regular setdown.

4 CHAIRMAN HOOD: Okay, regular setdown. I don't
5 know why I thought it was -- okay, all right. Any questions,
6 any further questions?

7 (No audible response)

8 CHAIRMAN HOOD: All right in that case I will move
9 that we setdown Zoning Commission Case Number 18-09, Office
10 of Planning, text amendment, Subtitle B 307.6, and also
11 Subtitle U 502.1, as well as the -- and also the gallery and
12 museum to matter-of-right uses Group A. And ask for a
13 second.

14 VICE CHAIR MILLER: Second.

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

17 (No audible response)

18 CHAIRMAN HOOD: All in favor?

19 (Multiple ayes)

20 CHAIRMAN HOOD: Any opposition?

21 (No audible response)

22 CHAIRMAN HOOD: None. Ms. Schellin, if you would
23 please record the vote?

24 MS. SCHELLIN: Yes, staff records the vote 4-0-1
25 to setdown Zoning Commission Case Number 18-09 as a

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1 rulemaking case. Commissioner Hood moving. Commissioner
2 Miller seconding. Commissioners May and Turnbull in support.
3 Commissioner Shapiro not present, not voting.

4 CHAIRMAN HOOD: I'm almost scared to call the next
5 case. I'm going to call the wrong one.

6 Okay, Zoning Commission Case Number 16-23, is that
7 the right one?

8 MALE PARTICIPANT: That's it.

9 CHAIRMAN HOOD: Okay. Valor Development, LLC,
10 third request to defer deliberations and request for further
11 hearing. Ms. Schellin.

12 MS. SCHELLIN: Yes, at Exhibit 236 the Applicant
13 is requesting a third deferral of action until October 16th,
14 to submit revised plans. The Applicant believes it will take
15 approximately three months to resolve outstanding questions
16 regarding the development agreement with the owner of lot
17 807. In addition since the last submission the Applicant
18 states it has resolved the IZ set aside issue.

19 The Applicant believes the changes made to the
20 plans are significant enough to require another hearing, and
21 would ask the Commission to consider scheduling another
22 hearing instead of deliberations.

23 At Exhibit 237, the Citizens for Responsible
24 Development has filed an opposition to the request for
25 deferral. But if the Commission so grants the deferral, they

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1 ask that the Commission grant an eight weeks for the parties
2 to respond to the revised plans.

3 At Exhibit 238 ANC 3D has submitted approval for
4 the, their approval for the Applicant's request of deferral.
5 So I ask the Commission to consider the request that's before
6 them.

7 CHAIRMAN HOOD: Okay, let me just from the outset
8 state that after reading through all the materials, yes I was
9 very confused about what was actually going on. This is a
10 third request. I know they asked for October the 16th, I
11 believe. And I'm wondering if they need a year? And I'll
12 start there.

13 I wonder if they need to June '19, because this
14 is the third request asking for an extension? And I'm
15 looking at the ANC, is saying that they support the project
16 and that they've been working along with the developer, the
17 Applicant.

18 And then I'm looking at the letter from the party
19 that was in opposition to the first case, I mean to the first
20 proposal that we had. And they're saying they're not even
21 working with them. So I'm trying to figure out, so many
22 different moving parts, and what's going on?

23 And I'm wondering realistically if they come back
24 on October 16th, are they going to be ready? Or do they need
25 to June of 2019 to pull everything together? Because when

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1 I look at the ANC is saying that they support this, what are
2 they supporting?

3 Because I mean, are they supporting what was done
4 first, their continuous support? And I don't think from what
5 I, the way I read from the Applicant they have not finished
6 making adjustments to what they're doing.

7 But anyway, this has got me all over the place.
8 The materials to me reflect that there's still some
9 inconsistencies. So maybe I think, even though they're
10 asking for October 16th, they may need a little more time.
11 And I know that the party in opposition has asked for an
12 additional time.

13 So I don't know, I'm just throwing all that out
14 there for a discussion, to get the discussion going and just
15 see where we land, so any other comments?

16 VICE CHAIR MILLER: Yes.

17 CHAIRMAN HOOD: Vice Chair Miller.

18 VICE CHAIR MILLER: Mr. Chairman, I support the
19 request for additional time. And for the suggestion that we
20 have a new, another public hearing, which the Applicant
21 suggested. Because there have been so many changes from the
22 time that we had the original hearing.

23 And, you know, this is a -- well I won't go there.
24 But yes, I support the ANC's comments that the, reading from
25 their June 22nd report, that the changes mentioned by the

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1 Applicant and their third deferral request are improvements.

2 The revised plan included the conversion of 19
3 apartments and condos. And Building 2 into four town homes.
4 A reduction in the scale of Building 1 by an entire story.
5 And the replacement of the previously planned grocer, with
6 an alternative high quality grocer that will compete less
7 directly with the existing tenant at the adjacent shopping
8 center.

9 ANC goes on to say, we believe these changes
10 substantially improve the project by addressing and reducing
11 some potential objections to the plans, while still returning
12 a full service grocery store to the site.

13 In addition the entire expectation is that the
14 Applicant will continue their proffer of valuable pedestrian
15 improvements that were negotiated previously and adopted in
16 a formal memorandum of understanding between the Applicant
17 and the ANC 3E.

18 I think having another public hearing will give
19 the party in opposition the notice required to get a copy of
20 the plans, the revised plans that have been referenced in all
21 these communications.

22 I think the changes that the ANC references are
23 changes that came up at our, changes and addressed concerns
24 that were raised at our hearing. Some of which by the party
25 in opposition, some by others, some by some of us on the

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1 Commission.

2 So, this is a, you know I wonder myself whether
3 given the length of time that this case has been hanging
4 around, whether it just should have gone through a planned
5 unit development process, and might have happened more
6 efficiently.

7 But there are a lot of unique, they are unique
8 things. I think this is the first, OP can correct me if I'm
9 wrong, the first voluntary design review. It's the first use
10 of the new voluntary design review provision in ZR16. So
11 that's a unique thing.

12 And there are three ownership entities on this
13 particular square, which the Applicant needs to be working
14 with. And I think the density issues and Inclusionary Zoning
15 issues have been addressed. But I think we'll need to see
16 all of that in the prehearing submissions.

17 I also think we'll need to see the development
18 agreements that were, that have been executed with the two
19 of the three owners. And I realize one of the owners, you're
20 still working, the Applicant is still working with and
21 hopefully by the time the hearing, that will -- and that's
22 the biggest outstanding issue -- and hopefully that will be
23 resolved.

24 But I think we need to have that in the record so
25 we, and the public, and the party in opposition knows what

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1 is going on on the square before we proceed with any action
2 on it.

3 But so I think the delay is unfortunate, but I
4 think it's a unique situation. And I think it's a better
5 project now, and hopefully we'll get the more details in the
6 plan, and the party in opposition will as well. And we'll
7 have an opportunity to appropriately address it at another
8 public hearing. So I would be in support of that effort.

9 CHAIRMAN HOOD: Again, maybe your comments, Vice
10 Chair and others can help me understand why the ANC is saying
11 they're working with the new proposal, and the party in
12 opposition -- and I thought we always had communities work
13 together. And the party in opposition said they haven't seen
14 anything.

15 So I just think, I guess when they do get in, I
16 think they ask for eight weeks after that. So, anyway let
17 me hear from others. Because this has going back and forth
18 a lot. Commissioner Turnbull.

19 COMMISSIONER TURNBULL: Yes, thank you, Mr. Chair.
20 Well I, you know, I struggle with it just like you. But I
21 think the Vice Chair brought up, I mean yes, it looks like
22 there's some action that has been going on. Quite a bit of
23 action.

24 And actually, if we take the request of the party
25 in opposition who wants eight weeks. This is not going to

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1 happen October 16th. I mean it's going to be more like,
2 December, or later.

3 CHAIRMAN HOOD: And they also mentioned -- I'm
4 glad you brought that up. They mentioned their letter which
5 concerns me. And I've always said this, no stuff around the
6 holiday time.

7 COMMISSIONER TURNBULL: Right.

8 CHAIRMAN HOOD: So we want to make sure, they
9 mentioned about doing stuff with their families. So we want
10 to make sure that we're cognizant of that as well so. I
11 didn't mean to interrupt.

12 COMMISSIONER TURNBULL: Yes, no and so I mean I
13 think there's going to be, we're not going to see this for
14 a few months as it is. But I think the Applicant, as the
15 Vice Chair has pointed out, this is a complicated little
16 planned unit development that's -- this project with the
17 voluntary design guideline.

18 I think this has been complicated. There's a lot
19 of issues involved in it. And I think the Applicant is
20 struggling to solve these. So, I'm in favor of going forward
21 and doing whatever we can to get this thing to the community
22 so that they can, that we can eventually get to us and we can
23 look at this thing.

24 And I'm all for the hearing, but I just don't know
25 time wise when it's going to occur, I guess.

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1 CHAIRMAN HOOD: Well, let me hear from
2 Commissioner May, and then we'll get back to some.

3 COMMISSIONER MAY: Well, I support the Applicant's
4 request to defer submission of new plans until October 16th.
5 I would suggest that what we need to do is to go through the
6 normal timing based on that. As opposed to, you know, some
7 arbitrary number of eight weeks that will be needed to
8 review.

9 I mean I think we already have standards for how
10 much time the public gets to review things. And we ought to
11 just stick with that. So if that's, I don't know exactly
12 what is that? Thirty days or something like that probably?
13 That should be sufficient. It would be sufficient
14 ordinarily, if it were, you know, a project that was
15 submitted to us.

16 You know, there is a disconnect between the ANC
17 and the party in opposition in terms of what they are
18 reporting about the interactions they've had with the
19 Applicant. And I would suggest that the Applicant needs to
20 redouble their efforts to communicate well with the party in
21 opposition between now and October 16th, so that we don't
22 hear this repeated again.

23 And, you know I mean it's not uncommon for us to
24 have cases where we hear at the same hearing both that the
25 Applicant has done a great job of communicating to the public

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1 and that the Applicant has not said anything to anybody about
2 this project. There's inadequate notice, and we get on both
3 sides of these things.

4 So I'm not too concerned about hearing these
5 conflicting views, but I do think that it is incumbent upon
6 the Applicant regardless of what is reported, to do the
7 outreach to the party in opposition, and the ANC between now
8 and when they submit plans.

9 And you know, we'll schedule it once we get the
10 materials submitted. And I think that that, you know again,
11 following our normal standards. If it happens to come close
12 to the holidays. I mean sure we don't want to work on the
13 holidays any more than the people who would come down and
14 testify.

15 But the work of government does not cease on
16 November 15th and start up again on January 15th. So, if it
17 happens to fall in that time period, hopefully it will fall
18 at a time when people came make it.

19 CHAIRMAN HOOD: Well I agree with some of what
20 you're saying. I disagree with the, if it happens to fall,
21 because I too, and I'm sure others, because a lot of times
22 we say those things and then we may not be here. Some of --
23 we never know what may come up. So we want to make sure that
24 we're cautious because around the holiday time we make plans
25 up here as well.

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1 And I've been around here when there's just three
2 of us sitting up here on the dais, so we want to be very
3 cautious with what days we do it -- and I think for me, I'm
4 going to be requesting that we have the full Zoning
5 Commission. We need all five on this case.

6 So, we may, I don't know what plans we have, so
7 we want to make sure we have five. Now I notice no one
8 entertained my topic of going to June. I was doing that to
9 start from June and work back. And that way we may have
10 some, maybe we can do exactly what you said, Commissioner
11 May.

12 Maybe we can have the Applicant to work with the
13 groups and try to pull everybody, and not that you're going
14 to agree, but at least have a conversation. Because it looks
15 like right now, that's not even happening.

16 And it may ease whatever we do, whatever date we
17 have, it may ease some of the adverse issues that people may
18 have. If you have those conversations before you get down
19 here, and then we have to hash it out and have two or three
20 nights of hearings.

21 Let me just ask this though. I think this is our,
22 is this our second design review case?

23 MALE PARTICIPANT: No.

24 MS. SCHELLIN: It's our first voluntary.

25 CHAIRMAN HOOD: Voluntary, this is the first one.

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1 I wonder why I thought we had another one. Okay. All right,
2 so any other comments up here?

3 COMMISSIONER MAY: Yes, I want to add one other
4 thing. You know, the Vice Chairman suggested that we do need
5 to see the agreements between the Applicant and the other
6 land owners on the block. I'm not totally convinced that we
7 need to have those. I mean again, the question is what in
8 those agreements is relevant to any zoning decision that we
9 would make? And not everything is always relevant.

10 And I understand why people want this to be in the
11 record, but I'm not convinced that it's something that we
12 must have in order to make a zoning decision. And if there
13 are reasons why the Applicant is not able to do that for
14 confidentiality reasons, or whatever. Then I think that they
15 should explain that, but make sure that we have the
16 information that we need in order to make the zoning
17 decisions.

18 CHAIRMAN HOOD: Okay. We do have a Commissioner
19 that had a request, but if you're able to provide and it
20 doesn't cause any confidentially issues, then provide it for
21 that particular Commissioner. The rest of us may chime in.

22 But if you're not able to provide it for some
23 legality reasons, then don't. But we do have a request from
24 one of our Commissioners. And I'm always open to getting us
25 more information as possible, whether I utilize or use it,

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1 it's for our use or not, so.

2 CHAIRMAN HOOD: Vice Chair, you have --

3 VICE CHAIR MILLER: I mean I was thinking about
4 proprietary information when I saying that, but at least some
5 summary of the key use issues that do relate to zoning. And
6 maybe you can share the draft with OIG, and you can figure
7 out what's proprietary or not and give us a redacted copy,
8 or just a key, a summary of the key use provisions that
9 affect the use of the property.

10 CHAIRMAN HOOD: So, Ms. Schellin do we have any
11 dates that we can look at?

12 MS. SCHELLIN: I think that --

13 CHAIRMAN HOOD: A timeframe.

14 MS. SCHELLIN: -- if I'm hearing correctly and
15 with the holidays. So the Applicant would submit --

16 CHAIRMAN HOOD: So hold on a second. Are you part
17 of the party? You with the party? Let me do this, so we can
18 -- let me ask the Applicant and the representative of the
19 party to come forward. And I don't have ANC here, so. I see
20 they are raising their hands so I want to make sure that we
21 don't have any issues after October the 16th.

22 MALE PARTICIPANT: We're not going to have the
23 hearing tonight.

24 CHAIRMAN HOOD: No we're not going to have the
25 hearing tonight, no, no, no. Okay, if you can just identify

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1 yourself at the table. And then I'm going to go to the party
2 in opposition, because they had their hand up first. Let me
3 get all of you. Identify yourselves first.

4 MR. REPP: Shelly Repp, the Citizens for
5 Responsible Development, parties in opposition. This is my
6 wife, Barbara.

7 MR. GLASGOW: Norman M. Glasgow Jr., the law firm
8 of Holland & Knight.

9 MR. LANSING: Will Lansing, with Valor
10 Development, the Applicant.

11 CHAIRMAN HOOD: So, I'm going to go to the party
12 in opposition. I saw your wife's hand up. So did you want
13 to?

14 MR. REPP: Well, let me try first here. I mean
15 we're concerned, I mean there's a lot of issues as I think
16 you say here, a lot of issues in this case. Very
17 complicated, one of which is an issue that we raised is the
18 inclusionary zoning issue, where I'm not really sure it's
19 been resolved, because we don't know how it's been resolved.
20 So I think we'd like to know how it's been resolved. But
21 there's a lot of other issues in the case, both legal issues,
22 and more factual issues about how this fits with the
23 neighborhood.

24 As you remember we had two hearings in January.
25 We had among our group, we had individuals, not only the

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1 party here, but we had 40 people --

2 COMMISSIONER MAY: Can I interrupt you just a
3 second. I don't think we need a recap of the case. We
4 remember the case.

5 MR. REPP: Yes.

6 COMMISSIONER MAY: Okay, if you could just get to
7 any key points that may relate to decisions that we're making
8 now.

9 CHAIRMAN HOOD: Let me just say this, I was
10 letting you go. I was getting ready to do the exact same
11 thing. I might be just a maybe a minute or so more patient
12 than Commissioner May, but I was getting ready to get there.
13 So if you could get to our discussions. I thought, that's
14 why I called you up. I thought whatever you were going to
15 say were germane, to what we were discussing.

16 Because we've already covered what you just
17 mentioned. We covered the concerns that you had. We
18 specifically singled out your submission. Okay, so anything
19 other than that?

20 MR. REPP: Well, as far as timing goes, this is
21 complicated we don't know where they're going to end up.
22 They're still negotiating with the land owner. They don't
23 have a final deal with the land owner.

24 And so the, and we don't know what that's going
25 to mean as far as the ultimate proposal. And so we think we

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1 need more than 30 days, or one month to digest the changes
2 and prepare our response.

3 CHAIRMAN HOOD: So we're looking at, I think
4 everything is supposed to be in on October 16th. And I think
5 you heard us ask the Applicant, or insist upon the Applicant
6 to make sure he also works with the Office of Planning, I
7 mean not the Office of Planning, makes it work with the
8 opposition party. Like it seems like you've been working
9 with the ANC. So those two are conflicting too, so we're
10 asking that you try to do that. And I think we've mentioned
11 that? So anything else?

12 MR. REPP: No.

13 CHAIRMAN HOOD: So we got you covered, right?

14 MR. REPP: Well, I hope. Once again, I think we,
15 the changes probably will be substantial.

16 CHAIRMAN HOOD: You haven't seen any changes?

17 MR. REPP: No we haven't, so we I mean as far as

18 --

19 CHAIRMAN HOOD: But the ANC has seen them.

20 MS. REPP: No.

21 CHAIRMAN HOOD: Well, that's what this letter
22 says, well unless I'm reading this letter. He's been
23 working, he still has --

24 COMMISSIONER MAY: We're going on head nods, maybe
25 we want to hear from you.

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1 CHAIRMAN HOOD: Yes.

2 MS. REPP: Well, about the changes that 3D says
3 they agreed, they like, that's an interesting letter that
4 they wrote. Because it was not set for a vote with their
5 entire 3D Commission. They have not seen it. We have not
6 seen the changes.

7 CHAIRMAN HOOD: Okay, so I do know. Let me just
8 say this and we're going to go away from the head nods, but
9 I know I read that letter correctly. So thank you for
10 helping make sure I read that letter correctly. Because I
11 know I read that they said they had been working with you.
12 And they agreed to the changes --

13 MS. REPP: There is one person who has appointed
14 himself as a negotiator. Who has been working with us.

15 CHAIRMAN HOOD: So let's go to --

16 MR. LANSING: Commissioner, sir to give some
17 clarity, so what's happened in the way of timing, and the
18 reason for the extension is we have been working on the
19 affordable housing interpretation issue. We don't agree with
20 OP's stance on it, but we are working to get it to a place
21 where it is in line with that. That's taken some time.

22 As part of that, we've had to go back to the land
23 owner, the key land owner of the application, which we're
24 working through right now. And in doing so, we have
25 communicated to both CRD in a meeting with them, and also via

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1 email with they and their legal counsel, Ed Donahue
2 (phonetic), you know that we're still working through
3 iterations with the land owner currently.

4 We've communicated the same to both ANCs. In that
5 communication I have let them, everyone know, we have not
6 shared drawings but we have mentioned sort of at a high
7 level, the changes we are making to the proposed project
8 plan. We have been asked to publicly stand down, by the land
9 owner until we've resolved our issues, before we go back and
10 start making public presentations again.

11 So that's why again, if I could point back to the
12 history of the record, if you recall, I think we've had north
13 of 30 or 40 public meetings throughout the history of this
14 case. I'm very much attuned to making sure we're out in
15 front of this with the public, including the opposition.

16 So, we very much will continue to do that when we
17 can. We've just been asked to stand down publicly until we
18 worked out our agreement with the current land owner. And
19 once we do we'll be back to meet with Mr. Repp and his group
20 as well as the ANCs publicly. Probably a couple of times
21 before we get here in October. And so that's the game plan.

22 CHAIRMAN HOOD: So Mr. Lansing, just help me, and
23 I'm not going to keep perusing this, but let me, help me
24 understand this. This is in the letter from Chairman
25 Gardner. He says, these changes are not a surprise to ANC

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1 3D. We have known about them for several months, and in fact
2 we helped foster their development.

3 MR. LANSING: I can't speak to foster their
4 development, but I can speak to knowing about it. I think
5 that letter if I'm not mistaken was submitted maybe a week
6 or so ago. Is that right, give or take?

7 CHAIRMAN HOOD: June 22nd.

8 MR. LANSING: So again, we have been in touch with
9 Shelly and his group, back in late April about the changes
10 that we were going to be making to the project. And so that,
11 I think that timing I think plays out. So we were in touch
12 with the various ANCs again. But never showing anything
13 publicly but just sort of discussion on what we're doing.

14 CHAIRMAN HOOD: Long story short, just work with
15 all the parties involved.

16 MR. LANSING: We will okay, absolutely.

17 CHAIRMAN HOOD: And I'm in agreeance with having
18 another hearing as has been stated. I will tell you I threw
19 out June, so we can work back. So I don't think we need
20 June, I haven't heard nobody support me on that. So, do you
21 all support me for June?

22 MR. LANSING: We'd like to keep to October if we
23 can for the submission.

24 CHAIRMAN HOOD: Okay.

25 MR. LANSING: And then --

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1 CHAIRMAN HOOD: And I think we could work with
2 October, what is it, what is it 40 days, Ms. Schellin? Is
3 it 30 or 40, I can't remember.

4 MS. SCHELLIN: From the October date?

5 CHAIRMAN HOOD: The 16th and that's when all the
6 submissions will be in, right? On the 16th?

7 MR. LANSING: Correct, yes.

8 MS. SCHELLIN: So that would put us into December,
9 which we could possibly have December 17th as a hearing date.
10 That would be the earliest.

11 CHAIRMAN HOOD: What's our first date in January?

12 MS. SCHELLIN: January 7th.

13 CHAIRMAN HOOD: Okay. I would shoot for January
14 the 7th, if that's the scheduling. I would rather do January
15 7th.

16 MR. REPP: That's better for us than December
17 17th.

18 CHAIRMAN HOOD: That's actually better for me too.

19 MS. SCHELLIN: So if I might, Chairman Hood, if
20 the Applicant when they make their submission on October
21 16th, obviously they're going to serve the parties, but if
22 they would also provide us with new labels for owners within
23 200 feet.

24 So we can at that time, even though we're
25 announcing the date tonight, we will send out notices, a new

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1 public hearing notice to owners within 200 feet just so they
2 can get their own personal copy, even though we're announcing
3 it this evening. We'll still send out a public hearing
4 notice.

5 And also if you could send us a draft public
6 hearing notice by email that day, that would be great. Then
7 we can get it out sooner. That's it.

8 CHAIRMAN HOOD: Okay. We all on the same page?

9 MS. SCHELLIN: Does the Commission want the --

10 CHAIRMAN HOOD: You're not on the same page?

11 MR. REPP: The one question is the date that we
12 would have to respond. We now have October 16th and January
13 7th, and between then we will respond as will the ANCs and
14 the other party in opposition, the other parties in support.
15 I mean, what the timing of that?

16 I mean we had asked for eight weeks. It seems to
17 me you could fit in somewhere between October 16th and
18 January 7th, a time longer than 30 days, for us to respond.

19 CHAIRMAN HOOD: What day did you give them? What
20 day?

21 MS. SCHELLIN: For the parties to respond?

22 CHAIRMAN HOOD: Right.

23 MS. SCHELLIN: If we, we could give them -- I mean
24 you want the Applicant to then respond to what they submit,
25 because they --

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1 CHAIRMAN HOOD: Well, here's the thing. We're
2 setting this up for a hearing.

3 MS. SCHELLIN: Yes.

4 CHAIRMAN HOOD: Right, so we're going to have a
5 hearing. There's going to be a lot of responses that we're
6 going to take -- I mean you want to do it before. And this
7 is like, almost like we're doing a Proposed Action. And you
8 want to respond before Final Action.

9 We're having a hearing on this. We're going to
10 have the materials sometime before. We all are going to be
11 looking at them. And then we'll be having the conversation.
12 You'll be able to, you're a party so you'll be able to cross
13 and do all the things that parties can do.

14 And then even after that, I'm not sure about a
15 decision. I don't know what may happen. You may come down
16 to say you all agree with everything they provided. So I
17 don't know what's possible.

18 MS. SCHELLIN: Eight --

19 MR. REPP: That would be nice, but if there's no
20 deadline for us to respond, except at the hearing, that
21 would, we'd have until the hearing to do it?

22 MS. SCHELLIN: I, Chair --

23 CHAIRMAN HOOD: You got, here's the thing the way
24 I see it, now you correct me if I'm wrong. My colleagues can
25 chime in. When they submit their submissions, you will

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1 review it and be able to look at it, and then you'll come to
2 the hearing prepared to ask questions. And hopefully you all
3 as well have done some of that prior, but if not, there's
4 going to be a hearing.

5 So I don't understand why it's a for sure thing,
6 we need to do all this before, because there's going to be
7 a hearing. The prep work is going to happen, then you ask
8 Mr. Lansing all the questions you need to ask at the hearing.
9 And we will hear the questions being asked.

10 MR. REPP: I understand.

11 MS. REPP: That would be almost a year exactly
12 later than our first hearing of January 11th, and January
13 25th of 2018. And then almost a year and the Applicant has
14 had since then. February, March, April, May, June, July,
15 August, September, October. Will have had nine additional
16 months to do what?

17 CHAIRMAN HOOD: They are revising apparently their
18 proposal. You didn't like the, well a number of people
19 didn't like the first one. It looks like they're revising
20 it. It may come back that you like it. So let's give that
21 an opportunity.

22 MS. REPP: Well it's been typed up that they are
23 revising it, has anyone seen anything? Has 3D seen anything
24 in writing?

25 CHAIRMAN HOOD: I'm not sure --

1 MS. REPP: Well.

2 CHAIRMAN HOOD: I have not been available. I was
3 not privy to any of that --

4 MS. REPP: Take a guess, and --

5 CHAIRMAN HOOD: I'm only going by the letters that
6 I have.

7 MS. REPP: I think you were on the right track
8 when you mentioned a year.

9 CHAIRMAN HOOD: I've seen cases for four or five
10 years. So, I'm just trying to --

11 MS. REPP: I don't know if we'll be around.

12 CHAIRMAN HOOD: You don't want to go that far?
13 We'll all be here hopefully, but if not, but I'm just saying,
14 let's give this a chance. Let's give this process a chance.
15 That's all I'm asking.

16 MS. REPP: They've had how many years? It'll be
17 three years.

18 CHAIRMAN HOOD: I know some that have had 20 and
19 still haven't gotten the rights.

20 MS. REPP: They've had three years coming up.

21 CHAIRMAN HOOD: Okay.

22 MS. SCHELLIN: Chairman Hood.

23 CHAIRMAN HOOD: Yes.

24 MS. SCHELLIN: If I may. Just to, since there's
25 all this questioning and they seem to, you know, they asked

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1 for eight weeks. If we actually gave a deadline for them to
2 actually respond to, give them the eight weeks that they've
3 actually asked for. And have the parties to respond to the
4 new submissions of December 11th. That would be exactly
5 eight weeks.

6 They would then give the Applicant, I think not
7 quite a month with the holidays especially, but it would give
8 them an opportunity to maybe look at the submissions that
9 come in and maybe by the actual hearing, an opportunity to
10 see what the concerns are. And maybe come to the hearing
11 prepared to be able to respond to them. Or make changes that
12 have been, that come in from the party in opposition or meet
13 with them.

14 So, do you in this case, want to go ahead and give
15 them the eight weeks? And set a deadline for them to respond
16 to the submissions --

17 CHAIRMAN HOOD: Ms. Schellin I think --

18 MS. SCHELLIN: -- since they asked for it?

19 CHAIRMAN HOOD: -- I think you said that so
20 eloquently, I'm not going to comment on it, because I don't
21 want to mess it up. So whatever you just said, let's do it.

22 MS. SCHELLIN: So we'll set a deadline. So the
23 Applicant will make their submission by let's say 3 o'clock
24 p.m. on October 16th. And the additional information I asked
25 you to provide, the labels and a draft public hearing notice.

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1 And all parties, not just the party in opposition,
2 but all parties will have until 3 o'clock p.m. on December
3 11th to provide a response to those submissions that are made
4 on October 16th to provide a response there too, and then at
5 the hearing if there are any issues that the Applicant can
6 address, great.

7 Or maybe meet in between and try to come to a --
8 or maybe you'll be coming and holding hands and singing
9 Kumbaya, whatever. Hopefully everybody will be happy, you
10 know, to meet in between. Hopefully the revisions will make
11 everyone happy. Thank you.

12 MR. REPP: We hope so too.

13 CHAIRMAN HOOD: Okay, so seriously, I think we're
14 on the right path. Let's just see what happens. So, Ms.
15 Schellin, do we -- so we're all on the same page?

16 MS. SCHELLIN: I think so.

17 CHAIRMAN HOOD: Okay, thank you very much, thank
18 you.

19 Okay, next Zoning Commission Case Number 15-29,
20 Jemals Gateway, LLC, Jefferson's request for leave to file
21 Motion for Reconsideration of Order No. 15-29 and Applicant's
22 Opposition thereto. Ms. Schellin.

23 MS. SCHELLIN: Yes, at Exhibit 76, as you stated,
24 Mr. and Mrs. Jefferson filed a request for leave to file a
25 Motion for Reconsideration of Order No. 15-29(2). As you'll

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1 recall the Jeffersons were not a party to this case. So
2 that's the reason for them requesting the leave to file the
3 Motion for Reconsideration.

4 And then in Exhibit 77 you have the Applicant's
5 opposition to the request for leave to file the motion. So
6 I'd ask the Commission to consider the request for leave to
7 file.

8 CHAIRMAN HOOD: Okay, colleagues again, I think
9 this request for reconsideration of our order comes from a
10 person, or persons in opposition of a case, but they were not
11 a party. As you know our, we have a strict regulation. Our
12 regulation specifically says that motion for reconsideration,
13 rehearing or reargument. And they've asked us to waive that.

14 Is there anyone interested in waiving the rule?
15 And is anyone interested in reconsideration?

16 (No audible response)

17 CHAIRMAN HOOD: Okay, so our regulation stands in
18 this case.

19 Do we need to take a vote?

20 MS. SCHELLIN: Yes, to deny.

21 CHAIRMAN HOOD: Okay, somebody like to -- I would
22 move that we deny the request for reconsideration and for
23 waiver. I guess I need to do both.

24 MS. SCHELLIN: The motion for leave to file is
25 what you're denying.

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1 CHAIRMAN HOOD: Okay. So did I word that
2 correctly? Leave to file. Okay, I didn't -- request for
3 leave to file a motion for reconsideration. That we deny
4 that motion as requested, and ask for a second.

5 VICE CHAIR MILLER: Second.

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

8 (No audible response)

9 CHAIRMAN HOOD: All in favor?

10 (Multiple ayes)

11 CHAIRMAN HOOD: Any opposition?

12 (No audible response)

13 CHAIRMAN HOOD: Not hearing any, Ms. Schellin
14 could you record the vote?

15 MS. SCHELLIN: Yes, staff records the vote 4-0-1
16 to deny the Motion for Leave to file a Motion for
17 Reconsideration by the Jeffersons. Commissioner Hood moving.
18 Commissioner Miller seconding. Commissioners May and
19 Turnbull in support. Commissioner Shapiro not present, not
20 voting.

21 CHAIRMAN HOOD: Okay, Ms. Schellin do we have
22 anything else?

23 MS. SCHELLIN: I have nothing else.

24 CHAIRMAN HOOD: Okay, Ms. Steingasser you have
25 anything?

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1 (No audible response)

2 CHAIRMAN HOOD: Colleagues, you have anything?

3 (No audible response)

4 CHAIRMAN HOOD: Ms. Lovick, you have anything?

5 (No audible response)

6 CHAIRMAN HOOD: Okay, so we're done. Thank
7 everyone for their participation. This meeting is adjourned.

8 (Whereupon, the above-entitled matter went off the
9 record at 7:39 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: Special Public Meeting

Before: DCZC

Date: 06-25-18

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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