

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: :
   
:
   
Office of Planning (text :
   
amendment to Subtitle A : Case No.
   
301.5(a) & 301.7 (re: Vesting: 17-03
   
of Building Permits)) :
   
:
   
-----:

Thursday,
   
September 13, 2018

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

The Public Hearing of Case No. 17-03 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:

JENNIFER STEINGASSER, Deputy Director, Development  
Review & Historic Preservation

MATT JESICK

The transcript constitutes the minutes from  
the Public Hearing held on September 13, 2018.

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

(6:34 p.m.)

CHAIRMAN HOOD: Good evening ladies and gentlemen this is the public hearing of the Zoning Commission for the District of Columbia. Today's date is Thursday, September 13th, 2018. My name is Anthony Hood. We're located at Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner Turnbull. We're also joined by Office of Zoning Staff, Ms. Sharon Schellin, as well as Office of Planning Staff, Mr. Jesick.

This proceeding is being recorded by a court reporter. It's also web cast live. Notice of today's hearing was published in the D.C. Register and copies of that announcement are available to my left on the wall near the door. The hearing will be conducted in accordance with provisions of 11 Z DCMR Chapter 5 as follows: Preliminary matters, presentation by the petitioner, or Office of Planning in this case tonight, reports of other government agencies, report of any ANCs, organizations and persons in support, organizations and persons in opposition, organizations and persons undeclared.

Petitioner has up to 60 minutes, we definitely don't need that, organizations five minutes, individuals

1 three minutes. Staff will be available throughout the  
2 hearing to discuss procedural questions. At this time the  
3 Commissioner will consider any preliminary matters. Does the  
4 staff have any preliminary matters?

5 MS. SCHELLIN: No, sir.

6 CHAIRMAN HOOD: Okay. If not, we'll go straight  
7 to Mr. Jesick.

8 MR. JESICK: Thank you, Mr. Chairman, and members  
9 of the commission. The Office of Planning has continued to  
10 work with the Office of the Attorney General, and DCRA on  
11 refining the language of the proposed text amendment. And  
12 tonight I'd just like to highlight one change that we've made  
13 since the public hearing notice was issued, and that was to  
14 add a phrase to 301.7, which would clarify that both the  
15 zoning regulations and the zoning map are vested once the  
16 Board and/or Commission take action on an application. So  
17 that's the only change since the public hearing notice went  
18 out. I'd be happy to take any questions. Thank you.

19 CHAIRMAN HOOD: Thank you. We've also been joined by  
20 Ms. Steingasser as well, Office of Planning. Okay,  
21 Commissioner, any questions or comments on what's being  
22 proposed to us?

23 (No audible response.)

24 Mr. Jesick, I will ask if you can help me  
25 understand as I read the --- as DCR deems complete -- I

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1 forgot exactly how the language was presented, but I didn't  
2 want to stamp it --- we don't want to have this conversation  
3 and trying to do fact finding of normal if something's  
4 complete. Is it going to be a stamp, so everybody's clear?  
5 How is that going to work?

6 MR. JESICK: I don't know the exact procedures, but  
7 I think in their ProjectDox system it's noted as --- there's  
8 a difference between application being filed and then an  
9 application being accepted as complete. So the status of the  
10 permit will change in their system.

11 CHAIRMAN HOOD: So when the BZA is deliberating if  
12 it's an appeal, or whatever the case is, when did it actually  
13 happen, there's going to be clear predictability that this  
14 is complete. Not that it was in the pipeline, and we  
15 consider it almost --- all that's going away. It will be  
16 complete.

17 MR. JESICK: There will be a date when DCRA says  
18 this application is complete and can move forward to  
19 processing, yes.

20 CHAIRMAN HOOD: Okay. And the way I understood the  
21 way the language is if there are modifications, how is that  
22 going to work? Is it complete if there's a modification, or  
23 change?

24 MR. JESICK: You can't submit a permit for a three  
25 unit building and come back and modify it to do a 100 unit

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1 building. You can make minor tweaks to comply with building  
2 code, for example, or to come more into conformance with the  
3 zoning regulations that apply to your property. So you can  
4 do very minor little tweaks to your permit, but nothing  
5 major.

6 CHAIRMAN HOOD: So is that --- and I may have  
7 missed it as I was reading it trying to understand it, is ---  
8 that really needs to be spelled out? It needs --- I think it  
9 needs to be straight to the point so we won't --- I don't  
10 know how --- if we have to craft the language, or if it's  
11 already in there, but I didn't see it.

12 MR. JESICK: Well, I think I can point you to the  
13 proposed language on page two of our report, Section  
14 301.5(a)(2). It says the permit application shall be  
15 sufficiently complete to permit processing without changing  
16 the proposed use, or increasing the intensity of the use, and  
17 without deviations from the submitted plans except for the  
18 these --- then it goes on to list some minor deviations that  
19 can be made.

20 CHAIRMAN HOOD: Okay. All right. Okay, we'll see  
21 how that works for the time being. Any other questions or  
22 comments up here?

23 (No audible response.)

24 Okay. All right. Thank you, Mr. Jesick. Let's  
25 go to --- do we have any ANC? I didn't see it. Let me see

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1 what I'm supposed to do next. Any other government reports?

2 (No audible response.)

3 We did have a letter from ANC 1C's representative.  
4 Is anyone here representing ANC 1C? Mr. Gambora (Phonetic)  
5 reporting new items outside of the scope of October 2016  
6 resolutions necessary to report back to the ANC of any  
7 developments.

8 They wanted to be --- I don't know if maybe he's  
9 on his way, but let's just see what happens. Okay. Do we  
10 have any organizations or persons who are here in support?

11 MS. SCHELLIN: We have one signed up, Eric DeBear.

12 CHAIRMAN HOOD: Okay.

13 MR. DeBEAR: Good evening. I'm just here on behalf  
14 of Cozen and O'Connor just to provide a few comments.  
15 Generally we are supportive of this proposed amendment. Just  
16 a few items that I think, Chair, you already touched on one  
17 of them. In terms of what establishes the date of vesting,  
18 we would suggest adding "under review" to the language of  
19 301.5(a). Again, I think this would align with what is  
20 phrased in ProjectDox. Right now it says, officially  
21 accepted as being complete. We would just recommend adding  
22 "and under review by the Department of Consumer and  
23 Regulatory Affairs" to kind of align with the language we see  
24 in ProjectDox.

25 In terms of the notion, the last sentence of

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1 301.5(a), if no building permit has been issued prior to the  
2 date that the zoning map becomes --- amendment becomes  
3 effective, the building permit shall be processed in  
4 accordance with the adopted zoning map amendment. Just based  
5 on our client's experience we could certainly envision a  
6 scenario where an application is filed, a map amendment has  
7 been set down, and that might only be a couple months until  
8 the map amendment is finalized. Whereas a permit could take  
9 several months, particularly with big projects. So I think  
10 that's pretty limiting, and we would recommend removing that  
11 language -- or suggest I should say.

12 In terms of 301.5(a)(2), I think Chair Hood eluded  
13 to this. It could be simplified. We agree with that. In  
14 terms of --- we certainly encourage having this clarification  
15 that you can make some sort of deviations to a vested permit.  
16 I think one recommendation might be to remove increasing the  
17 intensity of the use. I think that might be thought of as  
18 possibly going against (a) and (b), which then say except for  
19 planned deviations that -- because technically you could make  
20 changes under the requirements of the construction code that  
21 would potentially be arguably increasing the intensity of the  
22 use. So I think that kind of flies against the language you  
23 see under two, whereas 2(a) would be the exception.

24 I would also just note that I think this is  
25 actually potentially more harsh of a language than the

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1 current regulation, it says, "without deviation." Right now,  
2 if I'm not mistaken, it says, "without substantial  
3 deviation." That would be under two. So one recommendation  
4 might be to add "without substantial zoning deviation." And  
5 then other than that under sub (b) perhaps just simplifying  
6 that to maybe just state something along the lines of "to  
7 comply with the matter of right structure." Instead of  
8 listing out all these again I think simplicity would be a key  
9 here.

10 Other than that, I appreciate the Commission's  
11 attention to my comments. Thank you.

12 CHAIRMAN HOOD: Thank you. Any questions, follow-  
13 up questions, comments up here?

14 (No audible response.)

15 Ok. So noted, thank you. Oh, hold on, hold on,  
16 we have a question.

17 COMMISSIONER SHAPIRO: That you, Mr. Chair, I just  
18 --- I'm not sure I understood the first point you were making  
19 about adding "and under review."

20 MR. DeBEAR: I think what we understand the Zoning  
21 Administrator has clarified as the date on which the permit  
22 could become vested. It is when the ProjectDox system for  
23 building permit applications says "ProjectDox under review."  
24 Whereas this language just says officially accepted as being  
25 complete. I would just recommend adding "complete and under

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1 review by DCRA, because that would then align with how DCRA  
2 sees these permit applications being processed.

3 COMMISSIONER SHAPIRO: Okay, thank you. That's  
4 clear. Thank you, Mr. Chair.

5 CHAIRMAN HOOD: Then under the review part doesn't  
6 that take us right back to where we were, as far as how long  
7 it's in the pipeline?

8 MR. DeBEAR: I just feel as though the language,  
9 as it is, is a little vague. And to have a specific ---  
10 because it's ProjectDox under review, so whether it would  
11 need to say being complete and ProjectDox under review.  
12 Perhaps that's better. I don't know if they might change the  
13 name of the system at some later date. But just to clarify,  
14 what I would suggest is just making it more clear. But I  
15 understand your point too.

16 CHAIRMAN HOOD: But I agree with that. Okay. All  
17 right. Anything else?

18 (No audible response.)

19 All right, thank you very much.

20 COMMISSIONER TURNBULL: Well, I guess I would ask  
21 for OP's to opine on that, I mean, I think they're trying to  
22 say to give some finality to some of this by asking for  
23 something to be complete. If you then throw in "under  
24 review", I think there adds another -- the whole idea of ---  
25 I think what Mr. Shapiro might have been getting at was

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1 vagueness. So either we're going to define it better, or ---  
2 but I think once you say it's complete, and then go back and  
3 say under review then maybe OP can opine on that, but I think  
4 that, like, the chair is getting it, it may send it back into  
5 an area where there's --- it's indefinite. And I think the  
6 whole idea is to try to tie this together so that when we  
7 have a BZA case, we don't have the questions for the Board  
8 that --- it should be fairly crystal clear looking at the  
9 language as to what the intent is. The only other question  
10 I would ask for OP on, one of your comments on 315 is you  
11 talk about the intensity of use at a building code. I mean,  
12 I think OP should maybe define what intensity of use is.

13 MR. DeBEAR: Right.

14 COMMISSIONER TURNBULL: I guess I'm unclear as to  
15 how a building code item could --- by doing something, could  
16 increase the intensity of use. And that would be --- I'd be  
17 worried about getting rid of the intensity if indeed --- I  
18 think OP is trying to say that there could be some  
19 opportunity where it's trying to increase the size without  
20 having a hearing and going through it. So I guess maybe a  
21 little bit more finality on that might be good.

22 MR. JESICK: Sure, thank you. On your first  
23 question, this language was generated by the Zoning  
24 Administrator's Counsel, and his staff. So we were heavily  
25 reliant on what their judgment was as to what the date should

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1 be for the cut off and the vesting. I'm happy to kind of  
2 discuss with them any other options if the Commissioner would  
3 like, but this was what they recommended using the phrase  
4 officially accepted as being complete. So that's what we  
5 went with there.

6 In terms of the word intensity, what we envisioned  
7 that word meaning was, you know, the example I used of  
8 increasing the number of units that --- in a residential  
9 building, that would not be something that would be  
10 permitted. I'm trying to think of other examples, maybe  
11 increase in the number of students in a childcare facility.  
12 Anything that expands the use, or its impact I think would  
13 not be permitted. Once that initial permit application is  
14 officially accepted.

15 COMMISSIONER TURNBULL: Thank you for clarifying  
16 that.

17 CHAIRMAN HOOD: I actually would like for you, Mr.  
18 Jesick, for --- we can go back and ask him, because I'm still  
19 just --- what does officially accept as being complete mean?  
20 Maybe I just don't understand that business process.  
21 Officially accept as being complete. I mean, again, are they  
22 going to stamp something, how are we going to know. We're  
23 going to be sitting --- because, like I say, I can imagine  
24 us sitting up here in the BZA having the same discussions we  
25 have now trying to figure out, okay, was this complete? What

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1 date was this? What date was that? What's going to signify  
2 to us, to give us a signal, unless I'm missing something,  
3 that it is complete? That's kind of where I am. I don't  
4 read that in what I see here.

5 COMMISSIONER MAY: So, I mean, you can look up  
6 permits online and you can see what the state of it is, and  
7 I assume that it says in it that it's --- the application is  
8 complete. But I don't know whether that gets time-stamped  
9 onto the record, or something like that at that point and  
10 stays with that record in perpetuity. Do you know that?

11 MR. DeBEAR: I do not know the answer to that ---

12 COMMISSIONER MAY: Yes.

13 MR. DeBEAR: --- I don't --

14 COMMISSIONER MAY: Mr. Glasgow knows the answer to  
15 that. Well maybe when Mr. Glasgow ---

16 (Simultaneous speaking.)

17 CHAIRMAN HOOD: Well, when we get there we'll asked  
18 you. You can help us when he come.

19 MR. DeBEAR: Thank you.

20 CHAIRMAN HOOD: So --- but still let's move on.

21 COMMISSIONER MAY: Actually four people in the  
22 audience might know the answer.

23 (Laughter.)

24 CHAIRMAN HOOD: They probably do, but they're not  
25 going to be able to make a decision. We can't call them up

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1 here to help us, okay.

2 MS. STEINGASSER: Chairman Hood, if I could throw  
3 in my two cents' worth. My concern about adding the phrase  
4 "and under review" puts a secondary level, layer on there  
5 that the applicant might not have control over. So they get  
6 the application in, they pay their filing fees, and now  
7 they're sitting there and maybe the permitters are on  
8 vacation. And so it's filed, but it's not under review yet.  
9 And I would rather -- I guess, we have a chance to follow up  
10 with DCRA to make sure that those two are synonymous and  
11 don't have the potential to work against each other.

12 CHAIRMAN HOOD: Well, I'm actually not in favor of  
13 adding "under review", I was just being polite.

14 MS. STEINGASSER: Okay.

15 (Laughter.)

16 CHAIRMAN HOOD: But I'm not in favor of that,  
17 because to me that puts us right back where we were.

18 MR. DeBEAR: I think they view as when it's  
19 completed they call it ProjectDox under review. That's all  
20 I was saying.

21 CHAIRMAN HOOD: Okay.

22 MR. DeBEAR: That was just a line with their  
23 language, but if they don't say that then that's fine, that's  
24 what I understand.

25 MS. STEINGASSER: Okay.

1           COMMISSIONER MAY: So --- I mean the point was  
2 raised though that, you know, this is the --- ProjectDox is  
3 the system now, but who knows what the system will be ten  
4 years from now. And so I think sticking with language that  
5 is a bit less literal, but clear is probably more sensible  
6 than trying to hew it very closely to a system that exists  
7 now but may get changed. They may have separate stages in  
8 the future, or they may have new terminology or something  
9 like that. And so it becomes unclear at some point in the  
10 future, so.

11           CHAIRMAN HOOD: All right. Like I said, I was not  
12 necessarily agreeing with "under review", but the rest of the  
13 part I agree with.

14           MR. DeBEAR: Thank you.

15           CHAIRMAN HOOD: Okay, so we'll just --- I have to  
16 go back -- my whole thing is make sure it's complete. What  
17 does complete mean, again? I know we're getting there.  
18 We're getting closer than where we were. Any other questions  
19 or comments up here?

20           (No audible response.)

21           Okay. Do we have any organizations and persons  
22 who are here in opposition?

23           (No audible response.)

24           Any organizations and persons who are here  
25 undeclared?

1 (No audible response.)

2 Oh, you're in support? Oh, okay. Is there  
3 anybody else here in support? I'm sorry. Oh, well you should  
4 have come up earlier then. I'm sorry. I thought you just  
5 wanted to come to a hearing, come and see us this evening,  
6 I didn't know. All right. Mr. Glasgow.

7 MR. GLASGOW: Thank you, Mr. Chairman. Just  
8 quickly with respect to -- because I've got a receipt here  
9 that was issued from somebody in DCRA for ProjectDox, and  
10 they send you a receipt. And what it says is, "Thank you for  
11 using the City of Washington, ---" whatever. Not going to  
12 get into our number --- "has passed the pre-screen review  
13 process and will now begin the formal review process." So  
14 I think your language is fine the way that it is. We've got  
15 a receipt.

16 CHAIRMAN HOOD: Is that complete?

17 MR. GLASGOW: What it does is it says, "This is to  
18 inform you that permit application" --- then it gives our B  
19 number -- "has passed the pre-screen review process."  
20 Because if they think that you have a lousy set of plans they  
21 don't take it. Just because I filed the set of plans a week  
22 and a half before doesn't mean I'm in that day. I'm in the  
23 day that they've taken it through their pre-screen.

24 CHAIRMAN HOOD: Pre-screen, that scares me too.  
25 It goes back to review, under review. So we're right in the

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1 same place.

2 MR. GLASGOW: Right, but that is the process that  
3 we have. We've got to file somewhere, and we have to be  
4 acknowledged and have a receipt that we've paid our building  
5 permit applications, they've taken a quick look at the set  
6 of plans. They say, okay, you're in the door.

7 CHAIRMAN HOOD: So you would consider your receipt  
8 there, whatever plans you just turned in, those are complete.

9 MR. GLASGOW: Correct.

10 CHAIRMAN HOOD: And let's make sure that's how they  
11 do that.

12 MR. GLASGOW: Right.

13 CHAIRMAN HOOD: Maybe I'm just the only one  
14 confused, but ---

15 MS. GLASGOW: Right. Well, what's particularly  
16 significant to me, and the reason why I've got this thing  
17 right now, is this set of drawings probably had 100 pages to  
18 it. And we wanted to know when we're in, when we're  
19 accepted.

20 CHAIRMAN HOOD: Well two things that scare me about  
21 that, and I appreciate you having that, pre-screen. So how  
22 do they interpret that? But Office of Planning will look at  
23 that.

24 MR. GLASGOW: They can get into that, but they make  
25 sure that you got a set of plans for all your disciplines,

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1 and all of that type of thing.

2 CHAIRMAN HOOD: Okay.

3 MR. GLASGOW: And you don't have five sheets of  
4 plans when you should have 100 --

5 CHAIRMAN HOOD: Okay.

6 MR. GLASGOW: --- for the type building that you  
7 got.

8 CHAIRMAN HOOD: Okay. You all want to provide some  
9 testimony?

10 MR. GLASGOW: Yes.

11 CHAIRMAN HOOD: Okay.

12 MR. GLASGOW: I'd like to provide some testimony.  
13 I think I've already been identified for the record. The  
14 focus of the testimony is going to be on Section 301.5(a)  
15 investing of permit application and the interplay of this  
16 provision was subtitle Section (a) 301.4, because when you  
17 read the two provisions together essentially what occurs is  
18 that you have a race to obtain a building permit. This  
19 project was specific that I'm talking about right now,  
20 specifically designed be matter of right.

21 We started the plans on the project, I don't know,  
22 eight, ten months ago. We're going to be another probably,  
23 it's a large project, It'll be six or eight months before we  
24 have a permit, before we're through the permit process. That  
25 is a long period of time to potentially be at risk for

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1 something to come up at the Zoning Commission.

2           These plans are hundreds of thousands of dollars  
3 to prepare. To have a situation where something comes up.  
4 The Commission says, well we're going to hold a hearing,  
5 maybe we'll change something. And then it impacts us when  
6 we specifically were designing a matter of right project for  
7 a year and a half ago. So there was nothing on the horizon.  
8 There was no set down, there was nothing going on. And we  
9 think that we should have essentially the same protections  
10 that someone would have when they were going through BZA, or  
11 going through Zoning Commission, which are getting into the  
12 regs that if you're going through that and there's a change  
13 you're protected. Well, now we've got matter of right  
14 projects and a lot of it's because of the --- I'm spending  
15 a lot of time now making sure projects are a matter of right  
16 just because of the litigation environment right now in the  
17 city.

18           And so now we have a new risk in that before we  
19 would have had a set of preliminary schematic designs set  
20 that we would have taken to the Commission, would have taken  
21 to the Board, we get our approval, we don't get our approval,  
22 whatever happens. But if you get through that process you're  
23 protected. Now when we're doing matter of right projects we  
24 are --- we don't have the same level of protection, and we're  
25 suggesting that that should occur.

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1           And also we do agree that the sentence there in  
2 301.5(a), however if no building permit has been issued prior  
3 to the effective date that the zoning map amendment becomes  
4 effective the building gets reviewed under the regulations  
5 at the time that the permit's to be issued. Well, if we've  
6 been --- if we started a year or a year and a half ago to get  
7 there and have the regs changed at the end of the line when  
8 we believed that we have prepared a matter of right set of  
9 drawings we didn't need to go to the Board, we didn't need  
10 to go anyplace else.

11           And maybe something to throw in here on that is  
12 that we have gone through zoning review. Because the last  
13 reviews that you're getting right now, or the last approvals  
14 you're getting would be DOEE and DC Water and then where  
15 there are big fights going on as to who's paying for what.  
16 You're finished with the rest of your review.

17           I was almost going to be down here the other week  
18 and testify on a case, but because of the provisions in the  
19 race as to the date that we were accepted that was prior to  
20 the August date, we had filed months before that we thought  
21 we were going to have our permit. We don't have the permit  
22 because we're fighting with DOEE. They want us to do a bunch  
23 of things with a bunch of infrastructure. I'm not going to  
24 say who's right or wrong, but it's preventing us from getting  
25 the building permit, and we've been two months dealing with

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1 that.

2 COMMISSIONER MAY: So how do you prove that you've  
3 gone through zoning review? Is that another receipt?

4 MR. GLASGOW: Yes.

5 COMMISSIONER MAY: Or is it --- it's just  
6 documented in the overall record or the chain --

7 MR. GLASGOW: Yes, in ProjectDox it'll say ---

8 COMMISSIONER MAY: Yes.

9 MR. GLASGOW: --- it'll say zoning review. Because  
10 you go though ---

11 COMMISSIONER MAY: Yes.

12 MR. GLASGOW: --- comments.

13 COMMISSIONER MAY: Right.

14 MR. GLASGOW: You normally go through comments, it  
15 isn't one day thing. You're going back and forth.

16 COMMISSIONER MAY: Right. I remember I only, you  
17 know, last time I did it it was all on paper, so you had ---

18 MR. GLASGOW: Okay.

19 COMMISSIONER MAY: --- one checklist, and it was  
20 ---

21 MR. GLASGOW: Right.

22 COMMISSIONER MAY: --- and it was always small  
23 enough that I never ---

24 MR. GLASGOW: Okay, right. Well, you could see  
25 that, you know, you got checked off and they signed, the way

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1 it used to be on paper.

2 COMMISSIONER MAY: Right

3 MR. GLASGOW: You know, somebody put their initials  
4 there, and they put a date there, and that was it.

5 COMMISSIONER MAY: So it's --- and so maybe  
6 language saying something "and has been approved for zoning  
7 by the Zoning Administrator," or something like that?

8 MR. GLASGOW: Yes. I think we could get --- we  
9 could do something like that, and that would be, I think,  
10 very helpful and would be, I think in fairness, help people  
11 that are trying to have a project that's matter of right.

12 COMMISSIONER MAY: Sure.

13 MR. GLASGOW: So those were the principal comments  
14 that I had concerning this issue. I don't think --- if I  
15 missed anything ---

16 COMMISSIONER MAY: That's essentially the same  
17 point. There's one point really. It's that one sentence  
18 that you have an issue with.

19 MR. GLASGOW: Yes, it's that sentence. And I think  
20 that we need to get something else in there, ---

21 COMMISSIONER MAY: Yes.

22 MR. GLASGOW: --- because we're still in a race to  
23 a permit.

24 COMMISSIONER MAY: Yes, yes.

25 MR. GLASGOW: And we can get a couple of other, I

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1 think, minor revisions in there and I think it would cover  
2 that issue.

3 CHAIRMAN HOOD: Okay.

4 COMMISSIONER TURNBULL: Yes, I would think that  
5 once you've got your building receipt, and you're in the  
6 works that sort of satisfies that regardless of a change that  
7 the Zoning Commission would make you're still vested under  
8 the regulations that you had.

9 MR. GLASGOW: No.

10 COMMISSIONER TURNBULL: So you should be --- I  
11 mean, that's just my gut feeling.

12 MR. GLASGOW: Yes, I see what you're saying. Yes,  
13 that's why we're up here.

14 COMMISSIONER TURNBULL: Yes, okay.

15 CHAIRMAN HOOD: So what's your ---

16 VICE-CHAIRMAN MILLER: So --- yes, I would agree  
17 with basically what I've heard so far. Does the Office of  
18 Planning have sufficient guidance and language to be added,  
19 or are you going to offer the specific language about the  
20 zoning review sign off, Mr. Glasgow, or do you have  
21 sufficient understanding to adjust that sentence?

22 MS. STEINGASSER: I think we do, and if not we have  
23 Mr. Glasgow's phone number.

24 (Laughter.)

25 VICE-CHAIRMAN MILLER: I bet you do.

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1 MS. STEINGASSER: But, yes, I think so. I think  
2 that what we're looking at is a sentence, however if no  
3 building permit has been approved for zoning purposes by the  
4 Zoning Administrator, or something in that area, and we would  
5 float that by Department of Consumer and Regulatory Affairs,  
6 and OAG also.

7 VICE-CHAIRMAN MILLER: Right.

8 MS. STEINGASSER: And get it back to you.

9 VICE-CHAIRMAN MILLER: I remember sitting on a BZA  
10 case where this substantially complete issue came up, and  
11 they had certain reviews and it was clear they had --- in my  
12 case I think that they did have the zoning review, but they  
13 didn't have other sign-offs. Although I think they went back  
14 and revisited the zoning review as well. There's always that  
15 issue.

16 MR. GLASGOW: That didn't occur.

17 CHAIRMAN HOOD: Yes, and that's what we don't want  
18 to go back to. We want to --- we're moving forward. So,  
19 okay, so any other questions up here or comments? Mr.  
20 Dettman, you wanted to ask ---

21 MR. DETTMAN: Sure, Chairman Hood, thank you very  
22 much. For the record, Shane Dettman with the law firm  
23 Holland and Knight. Just two, one was a follow-up to the  
24 idea about working in language regarding completion of zoning  
25 review. This is sort of an awkward comment, because I'm

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1 sitting next to my supervisor, but similar to Mr. Mays'  
2 comment about how the reviewer might be on vacation, and  
3 who's going to log it in, and who's going to date-stamp it,  
4 accept it as complete. I could see a situation, and I think  
5 the idea of putting in language about checking off for the  
6 zoning review is --- it certainly warrants some thought.  
7 Although if you're --- as the language is proposed if you're  
8 accepted as complete that sort of puts a date-stamp on it.  
9 And wouldn't want to see a situation where perhaps the zoning  
10 review tech is on vacation, meanwhile a zoning change is  
11 winding it's way through the process. I think the language  
12 in terms of accepted as complete with the DCRA vesting  
13 guidance that's out there currently that defines what  
14 accepted as complete is, perhaps that could stand on its own.  
15 The one comment I wanted to add though is kind of a follow  
16 up to what Mr. Glasgow said about how there's a need to read  
17 301.5 and 301.4 in tandem. We focused on the proposed  
18 language in 301.5, that last sentence, the however, and just  
19 say for the sake of argument if that sentence was taken out.  
20 And so a developer invests the time and effort into putting  
21 together a complete package, they file and it's accepted as  
22 complete. And so under the language, without that sentence  
23 in there, it should be able to be carried to completion in  
24 accordance with the regs in effect on the date it was  
25 accepted as complete. However even if you take that sentence

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1 out, if you go back to the language of 301.4 which says,  
2 "Except as provided in 301.9 through 15, any construction  
3 authorized by a permit may be carried to completion pursuant  
4 to the provisions of the title in effect on the date the  
5 permit was issued."

6 And so if we take the "however" sentence out, and  
7 we vest under the regulations that are in effect when this  
8 matter of right project is accepted as complete, there could  
9 be a disconnect between that provision and 301.4 that says  
10 you could carry the completion ---

11 COMMISSIONER MAY: So there needs to be something  
12 in 301.4 that says except as provided in 301.5(a), I mean,  
13 would that handle it?

14 MR. GLASGOW: That could. We need to make sure ---  
15 because they cross-reference each other even when you look  
16 at what's proposed this evening. In 301.5(a) it references  
17 back to 301.4 right before the sentence.

18 COMMISSIONER MAY: Right.

19 MR. GLASGOW: So we have --- the two get read in  
20 tandem.

21 COMMISSIONER MAY: Right.

22 MR. GLASGOW: So we need to make sure that they're  
23 consistent.

24 COMMISSIONER MAY: Okay.

25 CHAIRMAN HOOD: All right.

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1 MS. STEINGASSER: Well, I would caution about  
2 leaving it open ended, because part of this amendment ---  
3 there was a case before this amendment that there was a  
4 permit. It was in the process, and it was in the process for  
5 almost five years, and it just hung there. And every six  
6 months they'd come and amend something, and they'd pay  
7 something, and it just kept grinding. And the neighborhood  
8 was trying to bring the use into conformance with the  
9 comprehensive plan, which had changed in the meantime, and  
10 the zoning had changed in the meantime. But this permit was  
11 just endlessly floating in their sight. I feel like in some  
12 ways we're going back to the beginning if we don't --- of how  
13 we started looking at the issue of vesting if we don't have  
14 some kind of trigger where things come to an end.

15 COMMISSIONER MAY: But does this, I mean, does your  
16 concern relate to the --- this conflict, or this potential  
17 inconsistency between 301.5 and 301.4, or does it relate to  
18 the zoning review being complete question?

19 MS. STEINGASSER: I think it relates to where Mr.  
20 Dettman started wherein he said possibly looking at taking  
21 out the sentence "however" -- in 301.5(a), "however, if no  
22 billing permit", taking that sentence out altogether.

23 COMMISSIONER MAY: Yes, well, I mean, I think we  
24 --- I mean, based on Mr. Glasgow's testimony, I mean, I'm  
25 thinking that it requires a tweak to allow for zoning review

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1 completion, but not complete removal.

2 MS. STEINGASSER: Okay, because that's --- when it  
3 became completely --- and there was no end note ---

4 COMMISSIONER MAY: No, I agree.

5 MS. STEINGASSER: -- to it. That's where I was  
6 getting nervous.

7 COMMISSIONER MAY: Right, and, I mean, you know,  
8 you can't always prevent the worst and stupid sort of things  
9 that can happen sometimes. And we want a process that works  
10 for the people who are actually, you know, building stuff,  
11 as well as the people who are having stuff built in their  
12 neighborhood. So, you know, if you can cover 99 percent of  
13 it, and you've got that occasional outlier then maybe there  
14 needs to be a different remedy for that.

15 MS. STEINGASSER: Right. I absolutely agree.

16 COMMISSIONER MAY: Yes.

17 MS. STEINGASSER: Yes.

18 COMMISSIONER MAY: But I, I mean, I do think that  
19 there is an --- we don't want to get somebody caught in a  
20 trap between two sections of the regulation, so if there is  
21 an inconsistency with 301.4, and the reading of 301.5(a) then  
22 that ought to be addressed.

23 MS. STEINGASSER: We can take a look at that,  
24 because we also have Mr. Dettman's phone number. We'll work  
25 on that language, and then also run it, like I said, by OAG

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1 and ---

2 COMMISSIONER MAY: Yes.

3 MS. STEINGASSER: -- get it back to you.

4 CHAIRMAN HOOD: Okay. Any other comments, or  
5 questions, concerns?

6 (No audible response.)

7 All right. So Office of Planning is going to go  
8 back and re-look at some of the comments we've heard today.  
9 We're a lot further along than where we were, so I thank you  
10 all for all the work that you all have put into this. And  
11 I agree with Ms. Steingasser, we don't want to leave anything  
12 open ended. That's what gets us back to where we were, under  
13 review. But anyway, that was a cheap shot.

14 Okay, so anything else?

15 (No audible response.)

16 CHAIRMAN HOOD: Ms. Schellin, anything else?

17 (No audible response.)

18 CHAIRMAN HOOD: All right. So with that I want to  
19 thank everyone for their participation tonight, and this  
20 hearing is --- Yes?

21 MS. SCHELLIN: So when do we --- we need to set a  
22 date.

23 CHAIRMAN HOOD: Oh, do we need some dates?

24 MS. STEINGASSER: Yes. Do you want to come back  
25 to the next meeting in October?

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1 MS. SCHELLIN: I think so.

2 MS. STEINGASSER: For proposed action?

3 (No audible response.)

4 MS. STEINGASSER: Yes?

5 MS. SCHELLIN: Yes, that gives us plenty of time.

6 CHAIRMAN HOOD: Okay. The next meeting is October.

7 Okay.

8 MS. SCHELLIN: Yes, October 22nd. So if we could  
9 get your revised report just ten days before that would be  
10 great. So that would be the 12th. And then we'll put it on  
11 for the 22nd of October. Other than that, the record is  
12 closed.

13 CHAIRMAN HOOD: Okay. So we're all set?

14 (No audible response.)

15 CHAIRMAN HOOD: All right. I want to thank  
16 everyone for their participation tonight. This hearing is  
17 adjourned.

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

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 09-13-18

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