

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL MEETING

+ + + + +

MONDAY

OCTOBER 1, 2018

+ + + + +

The Special 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 6:20 p.m., 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
- JOEL LAWSON
- ELISA VITALE

The transcript constitutes the minutes from the Special meeting held on October 1, 2018.

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

2 6:27 p.m.

3 CHAIRMAN HOOD: Okay, we're ready to begin our  
4 special public meeting. Good evening, ladies and  
5 gentlemen. This is a special public meeting of the Zoning  
6 Commission for the District of Columbia.

7 Today's date is Monday, October 1, 2018. We're  
8 located in the Jerrily R. Kress Memorial Hearing Room.

9 Joining me this evening are Vice Chair Miller,  
10 Commissioner Shapiro, Commissioner May and Commissioner  
11 Turnbull. We're also joined by the Office of Zoning staff  
12 Ms. Sharon Schellin as well as the Office of Planning  
13 staff Ms. Steingasser, Mr. Lawson and Ms. Vitale.

14 This proceeding is being recorded by a court  
15 reporter. It's also webcast live. Accordingly we must  
16 ask you to refrain from any disruptive noises or actions  
17 in the hearing room.

18 Notice of today's hearing was published in the  
19 D.C. Register and copies of that announcement are  
20 available on the wall near the door. You know what, am I  
21 reading the wrong.

22 Okay, let's try that again. This meeting will  
23 please come to order. Good evening, ladies and gentlemen.  
24 This is a special public meeting of the Zoning Commission  
25 for the District of Columbia.

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1 My name is Anthony Hood. Joining me are Vice  
2 Chair Miller, Commissioner Shapiro, Commissioner May and  
3 Commissioner Turnbull.

4 We're also joined by the Office of Zoning staff  
5 Ms. Sharon Schellin as well as the Office of Planning  
6 staff Ms. Steingasser, Mr. Lawson, Ms. Vitale.

7 Copies of today's meeting agenda are available  
8 to you and are located in a bin near the door.

9 Please be advised this proceeding is being  
10 recorded by the court reporter. It's also webcast live.

11 Does the staff have any preliminary matters?

12 MS. SCHELLIN: Yes, sir.

13 CHAIRMAN HOOD: Okay. Maybe we'll use that  
14 first excerpt for the hearing which will follow. Okay,  
15 let's go straight to for final action we have Zoning  
16 Commission case number 18-04. Office of Planning text  
17 amendment to subtitle A sections 209.2 and 301.3. This is  
18 re the construction of playing fields and accessory  
19 structures at RFK. Ms. Schellin.

20 MS. SCHELLIN: Yes, sir. If you recall this  
21 case was deferred from the September 17th public meeting  
22 to allow OP to come back with some revised language which  
23 they've done at exhibit 11.

24 So we'd ask the Commission to consider final  
25 action this evening.

1 CHAIRMAN HOOD: Okay. Thank you, Ms. Schellin.  
2 Commissioners, we have asked some things to be reworked  
3 and we have some questions. Let me open up to any  
4 comments. Commissioner Shapiro.

5 COMMISSIONER SHAPIRO: Yes, Mr. Chair. I just  
6 wanted to say that I've reviewed the record and I will be  
7 participating tonight.

8 CHAIRMAN HOOD: Thank you. Anybody else have  
9 any comments or questions? Commissioner May.

10 COMMISSIONER MAY: Yes. Just a quick question.  
11 We went from having a total of three structures to what  
12 NCPC reviewed was four structures and now it's three  
13 structures plus up to three shade structures. Can you  
14 explain why it's continuing to evolve?

15 MS. VITALE: Certainly. Good evening, Mr.  
16 Chair, members of the Commission. Elisa Vitale with the  
17 Office of Planning.

18 When you heard this last there was a  
19 discrepancy between the plans that had been presented to  
20 NCPC versus the proposed language in the text amendment.

21 In conversations with the applicant it was  
22 determined that they desired to add a shade structure that  
23 had not been contemplated in the original proposed text.

24 Through continued discussion with the applicant  
25 we thought it would be wise to allow for one shade

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1 structure per playing field which is why we've gone from a  
2 total of four structures to the potential for a total of  
3 six structures. The three buildings that were originally  
4 contemplated plus the potential for three shade  
5 structures.

6 We just didn't want to end up in a situation  
7 where we had to come back again and further revise the  
8 text. So we thought we would provide the option for a  
9 shade structure at each playing field.

10 COMMISSIONER MAY: Okay. Well, thanks. That  
11 reinforces my reluctance to move ahead last time and I'm  
12 glad it's straight although I hope at some point it gets  
13 settled down and they decide on a plan and go ahead and  
14 build it. I'm fine with this, Mr. Chairman.

15 CHAIRMAN HOOD: Was there anything else? All I  
16 remember is the issue about the structures. Was there  
17 anything else on this?

18 COMMISSIONER MAY: I think we have a note of  
19 caution from the Office of Attorney General about how we  
20 handle this.

21 CHAIRMAN HOOD: Right, I think in the motion  
22 we've been primed.

23 COMMISSIONER MAY: All right, that's good.

24 CHAIRMAN HOOD: Okay. Any other questions or  
25 comments? Commissioner May, would you like to make the

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1 motion since you know what to do?

2           COMMISSIONER MAY: Okay. So I would make a  
3 motion that we approve final action on Zoning Commission  
4 case 18-04 Office of Planning text amendment to subtitle A  
5 sections 209.2 and 301.3 regarding construction of playing  
6 fields and accessory structures at RFK with the revised  
7 language that was provided by the Office of Planning  
8 today.

9           And given that it is a bit of a tweak from what  
10 had previously been proposed I think that on advice of OAG  
11 we need to -- we can take final action on this but that we  
12 also at the same time authorize publication of a new  
13 notice of proposed rulemaking with a 14-day comment period  
14 to be published only if the Office of Documents refuse to  
15 publish the final rulemaking notice.

16           So this is in case they think this is too much  
17 of a change to -- for us to take final action. If they  
18 insist on having a new proposed rulemaking then that's  
19 what would happen. That was a really long motion.

20           VICE CHAIR MILLER: Second.

21           CHAIRMAN HOOD: It's been moved and properly  
22 seconded. Again, if it has to be noticed again it would  
23 only be for 14 days.

24           It's been moved and properly seconded. Any  
25 further discussion? All in favor?

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1 (Chorus of ayes)

2 CHAIRMAN HOOD: Any opposition? Not hearing  
3 any, Ms. Schellin, would you please record the vote.

4 MS. SCHELLIN: Was that Commissioner Miller?

5 CHAIRMAN HOOD: Miller seconded.

6 MS. SCHELLIN: Staff records the vote 5-0-0 to  
7 approve final action on Zoning Commission case number 18-  
8 04. And that's with also authorization for a 14-day  
9 notice of a new proposed rulemaking if ODAI requires it.

10 Commissioner May moving, Commissioner Miller  
11 seconding, Commissioners Hood, Shapiro and Turnbull in  
12 support.

13 CHAIRMAN HOOD: Okay, thank you.

14 COMMISSIONER MAY: Ms. Schellin, can I just  
15 ask, can you let us know how it goes with ODAI.

16 MS. SCHELLIN: Yes.

17 COMMISSIONER MAY: Thank you.

18 CHAIRMAN HOOD: Okay, next, correspondence  
19 Zoning Commission case number 15-27, CP Market Terminal  
20 LLC zoning administrator notice of granting flexibility  
21 pursuant to title A 304.5. Ms. Schellin.

22 MS. SCHELLIN: Yes. On this one pursuant to  
23 subtitle A section 304.5 the zoning administrator has  
24 provided notice that he plans to grant a minor  
25 modification to the plans approved by the Commission.

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1           However, he cannot issue a permit until the  
2 Commission either concurs with his determination or not,  
3 or 45 days has passed, whichever is sooner.

4           So the applicant also filed at exhibit 84 a  
5 copy of the approved penthouse plans which were referenced  
6 in the zoning administrator's letter but was not attached.

7           So we'd ask the Commission consider this  
8 determination letter before you this evening.

9           CHAIRMAN HOOD: Okay. Before we get into the  
10 merits my first issue and maybe I missed it. I didn't see  
11 anything. I didn't see where, and I guess that may be  
12 another process. I didn't see where ANC 5D had been  
13 contacted. And I actually looked for that.

14           I see their names down there, Lewis and I can't  
15 think of the chairman's name. I didn't see where there  
16 has even been a discussion with them.

17           It also seems to be some uncertainty actually  
18 about what's even being asked for here the way I read it.  
19 I think the penthouse is now being asked to go up to 20  
20 feet.

21           So those are my first comments which give me  
22 pause and hesitation. And I'll listen to other comments  
23 as well.

24           I don't even see where any conversation has  
25 been with the community. And that's a big problem for me.

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1 Let me open it up. Any questions or comments.

2 COMMISSIONER MAY: I think it's a good question  
3 but I don't know what the norm is when it comes to  
4 something that's theoretically in the zoning  
5 administrator's discretion whether there's any obligation  
6 for anybody to contact the ANC. Ms. Schellin is shaking  
7 her head.

8 CHAIRMAN HOOD: Well, the problem is it's  
9 coming back to us.

10 COMMISSIONER MAY: No, I understand.

11 CHAIRMAN HOOD: Anytime it comes back to us I  
12 want to make sure the community -- so since it's back to  
13 us I would do like we do in anything else.

14 Now, if they never come back to us that would  
15 have been a different story. But you brought it back to  
16 us.

17 COMMISSIONER MAY: If it were a minor  
18 modification we would typically not have ANC consultation  
19 unless the applicant took it upon themselves to do that  
20 anyway. It's only when we have a modification --

21 (Simultaneous speaking)

22 CHAIRMAN HOOD: But it also depends on the  
23 situation, Commissioner May.

24 COMMISSIONER MAY: I agree.

25 CHAIRMAN HOOD: So I think like we do in other

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1 cases we want to make sure that we have done our due  
2 diligence because we don't want to be after the fact  
3 zoning. So that's where I am.

4 COMMISSIONER MAY: So maybe it's clear to  
5 others. I have a slightly different issue with this. I'm  
6 not saying I don't agree with this. I think I share your  
7 concern generally.

8 Going from 15 to 20 feet on a penthouse without  
9 really knowing exactly -- I mean I can't remember what the  
10 plans were. I can't remember which one was 15 feet. I  
11 don't think we got anything that shows exactly what was  
12 happening in terms of the plans unless I missed it. Do we  
13 have it in the plans?

14 MS. SCHELLIN: The plans were submitted but  
15 they were already approved. My understanding is the  
16 zoning administrator made reference to it but that relief  
17 wasn't even being asked for. He just mentioned in his  
18 letter.

19 So the applicant submitted those approved plans  
20 at the exhibit.

21 COMMISSIONER MAY: Oh, right.

22 MS. SCHELLIN: Yes. So that wasn't even part  
23 of the 2 percent. So I'm not sure why the zoning  
24 administrator made mention to it but that wasn't part of  
25 the 2 percent. You guys already approved the penthouse.

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1 COMMISSIONER MAY: It's a modification over  
2 which he thought he had discretion, right? It's not  
3 necessarily a 2 percent. It's certain minor changes.

4 MS. SCHELLIN: Right.

5 COMMISSIONER MAY: All right. Sorry, for some  
6 reason I missed that second, the set of plans that the  
7 applicant submitted. So I need to look at that for a  
8 second.

9 CHAIRMAN HOOD: But even that discussion  
10 further concerns me. The letter he sent over. So maybe  
11 we need to send it back to him and let him know what he's  
12 looking at.

13 VICE CHAIR MILLER: Mr. Chairman, I think the  
14 two, I don't know what we're calling these, flexibility or  
15 zoning administrator discretion or minor mod within his  
16 discretion to make.

17 I think both changes are very minor and  
18 actually I think they're improvements. Moving the bicycle  
19 rack into the parking area and creating more ground for  
20 retail for the first one which we've had for a while. And  
21 then the penthouse, making that uniform at 20 rather than  
22 having the 20 then go down to 15 and then back up to 20.  
23 I think it's less visually intrusive.

24 I can't imagine that the ANC would have a  
25 problem but if you want to delay it so that they have an

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1 opportunity I have no problem with that. But I can't  
2 believe they would have a problem with this. I think they  
3 were supportive of this project originally.

4 CHAIRMAN HOOD: It's a lot of things I don't  
5 think people have a problem but I'd rather for us to  
6 proceed with caution. That's just where I am. If I don't  
7 have the votes then I won't but you know. Proceed with  
8 caution. This won't hurt us till our next meeting  
9 whenever that is.

10 At least extend the opportunity since the  
11 zoning administrator brought it back to us.

12 And also with the letter I think there needs to  
13 be some clarification on his part. What actually is being  
14 asked for. What do you understand you are using your 2  
15 percent flexibility authority for.

16 Any other questions? Commissioner Shapiro.

17 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
18 would defer to you in terms of the next step for our  
19 process.

20 I want us to think about does this change how  
21 we operate if we typically don't ask for this kind of  
22 input for a minor mod and now we are. And maybe I just  
23 don't have enough history to know -- that's not a  
24 substantial change on this one piece but in terms of our  
25 process.

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1 CHAIRMAN HOOD: I don't think it changes  
2 anything. There have been occasions -- everything has  
3 been fluid for the most part. There have been occasions  
4 where we have held off whether it's a percent calendar  
5 item, minor mod, or whatever the case is that we wanted to  
6 give at least the opportunity of the community at least to  
7 be able to give us back something.

8 We at least extend that opportunity so we've  
9 done our due diligence. I don't think it's nothing that  
10 we have a precedent setting way that we do stuff  
11 especially when we're asking for input from a neighborhood  
12 or community.

13 COMMISSIONER SHAPIRO: Thank you.

14 COMMISSIONER MAY: Mr. Chairman?

15 CHAIRMAN HOOD: Yes.

16 COMMISSIONER MAY: I certainly appreciate the  
17 sensitivity to understanding and making sure we get  
18 appropriate input from the community, but what I keep  
19 going back to is the fact that if this were submitted to  
20 us as a minor modification we would look at it based on  
21 what's presented from the applicant and there wouldn't  
22 necessarily be any kind of consultation with the  
23 community, the ANC or anybody else.

24 If it truly is a minor modification then no  
25 real notice is required. It's only when we get into a

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1 modification of consequence where we insist on having that  
2 input.

3           Now that I've seen the plans for the penthouse  
4 I'm not sure that I agree it's necessarily an improvement  
5 but it's certainly not a major problem. It doesn't  
6 significantly increase any impacts on the neighborhood  
7 because of the extent of the 20 foot penthouse.

8           And I agree with Vice Chair Miller that the  
9 changes with the mezzanine and that slight increase in the  
10 square footage would be beneficial to the project overall.

11           I mean, if there's a consensus that it's okay  
12 to go ahead tonight I would certainly be comfortable doing  
13 that. But if the chairman would prefer to do some  
14 outreach I don't really have a problem with that. I do  
15 think it would be out of the norm to do that. That's my  
16 recollection.

17           CHAIRMAN HOOD: Well, we've done this before in  
18 some other cases regardless of what subtitle it falls  
19 under.

20           If you look at page 2 of the request for  
21 modification of plans approved by the Zoning Commission I  
22 don't know how this works but I see a whole lot of blank  
23 lines. And when I look down at the ANC commissioners I  
24 don't even see the chairman down there of ANC 5D. It does  
25 have the parties which were in support. I don't see

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1 anything there. But then I see Commissioner Petty Gay  
2 Lewis.

3 So for me, and we've done this before. This is  
4 nothing new. This is no surprise. There's been other  
5 areas where we've done this before. We've waited a week  
6 to at least afford the opportunity.

7 And my problem is yes, the zoning administrator  
8 is asking us. There seems to be we're having this long  
9 discussion on something that should have been  
10 straightforward. It seems that there's some clarity at  
11 least the way I have read it from both the ZA as well as  
12 what the applicant really wants.

13 And this is how things get confused and this is  
14 how people get misinterpreted. Then it will be back down  
15 here for an appeal or whatever else the case may be.

16 So I just think we need to proceed with caution  
17 and we need to do it right. A week ain't going to hurt.  
18 It didn't hurt the other times that we've done something  
19 similar.

20 So that's just where I am. If I don't have the  
21 votes I won't, but I will be recording --

22 (Simultaneous speaking)

23 COMMISSIONER MAY: If I read this correctly the  
24 ANC was served on August 10 which is long enough for them.

25 CHAIRMAN HOOD: Just like those other times

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1 that we held something.

2 COMMISSIONER MAY: I understand. We have  
3 extended that privilege. Not in a case like this where  
4 it's just a ZA modification.

5 CHAIRMAN HOOD: The bottom line is still the  
6 same for me. We have done it three times for one  
7 particular ANC in this city. I specifically know that.  
8 And I set that for meeting as a trend because I think if  
9 we do it for one we should do it for all the rest. We  
10 shouldn't just do it for one and not oblige the rest. So  
11 that's where I am.

12 All right. Everybody agree with me on that?  
13 Are we all together on that?

14 COMMISSIONER TURNBULL: I would concur with  
15 you.

16 CHAIRMAN HOOD: Okay. So, Ms. Schellin, can we  
17 look at our next meeting to deal with this. And what  
18 we're asking for is at least make an attempt that the ANC  
19 makes sure -- or maybe the applicant, put the onus on the  
20 applicant to go out and talk to the ANC.

21 VICE CHAIR MILLER: Isn't our next meeting not  
22 till like six weeks from now.

23 MS. SCHELLIN: And the regs say once 45 days  
24 pass the ZA can proceed.

25 CHAIRMAN HOOD: We'll hold another special

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1 public meeting just like we had this one. Six weeks.  
2 When do we meet. Does anybody know when we meet? Can you  
3 all tell me when we meet again? Nobody up here can tell  
4 me when we meet again. When do we meet again?

5 We don't meet again until the 22nd. Okay, we  
6 can do a special public meeting prior to that hearing.

7 COMMISSIONER SHAPIRO: Is Monday the 22nd  
8 within the 45 days?

9 MS. SCHELLIN: It is.

10 CHAIRMAN HOOD: The next time we come, Ms.  
11 Schellin, could you just schedule a 10 minute meeting for  
12 us, please.

13 MS. SCHELLIN: The 22nd.

14 CHAIRMAN HOOD: Is that the next time we're  
15 here?

16 MS. SCHELLIN: Oh, the next time.

17 CHAIRMAN HOOD: The next time I'm here schedule  
18 me a 10-minute special public meeting. We'll be here the  
19 22nd. October 15th the next time we're here. Okay,  
20 October 15th.

21 MS. SCHELLIN: I don't think that's going to be  
22 enough time. If you want the ANC to actually provide a  
23 letter that might not be enough time for them if that's  
24 what you're asking.

25 CHAIRMAN HOOD: I just want to know that we

1 have -- Mr. Glasgow, not today. We got it. I'm trying to  
2 reach out to the ANC because you're not the one in the  
3 community getting hit like I do. So I have to make sure I  
4 cover all bases. You've been trying to call. Let me ask  
5 you this, is it your testimony that you have reached out  
6 to the ANC. And you've worked with them in the past,  
7 haven't you?

8 MR. GLASGOW: Yes, we have.

9 CHAIRMAN HOOD: Go ahead and identify yourself.

10 MR. GLASGOW: For the record my name's Norman  
11 N. Glasgow, Jr., with the law firm of Holland & Knight.  
12 We served the ANC. We have had I think it's two or three  
13 phone calls over to their office and we haven't gotten a  
14 response.

15 CHAIRMAN HOOD: Who is the chairman of this  
16 ANC?

17 MR. GLASGOW: I think it's Petty Gay Lewis.

18 CHAIRMAN HOOD: 5D. And that gentleman comes  
19 down in front of us quite a bit. I think it's 5D. If I'm  
20 wrong, I'm wrong. I'll take it back. But I want to make  
21 sure that we are covered.

22 MS. SCHELLIN: Clarence Lee.

23 CHAIRMAN HOOD: What's his name?

24 MS. SCHELLIN: Clarence Lee.

25 CHAIRMAN HOOD: That's him, Clarence Lee. He's

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1 very active and he's very in tune to what's going on so  
2 I'm surprised. You know, at least if you've been reaching  
3 out to Ms. Petty Gay Lewis, you need to reach out to Mr.  
4 Lee.

5           And I saw Mr. Lee this morning. He was at a  
6 ribbon cutting doing his due diligence so I want to make  
7 sure I do mine. Or at least I hope the Commission would  
8 support me on this. Well, on the form it says 5D.

9           I apologize to those who are waiting for the  
10 hearing. This seems to be taking longer probably than the  
11 hearing.

12           VICE CHAIR MILLER: While we're waiting maybe  
13 it just should be as a matter of course that it gets  
14 referred. I think I brought this up with the ZA once and  
15 he didn't want to do that. To refer it to the ANC I was  
16 going to say if that's going to be our practice maybe  
17 there should be some kind of referral.

18           CHAIRMAN HOOD: You brought that up. I'm sorry  
19 I missed that.

20           VICE CHAIR MILLER: I think I remember having a  
21 dialogue with Mr. LeGrant.

22           CHAIRMAN HOOD: According to the sheet though  
23 it goes to the ANC but now I'm hearing -- is this the  
24 right ANC?

25           MR. GLASGOW: It's 5D. It is 5D.

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1           CHAIRMAN HOOD:  And you've been reaching out to  
2 Ms. Lewis.

3           MR. GLASGOW:  I thought that that's who it was  
4 but I'd have to check with Jesse Bloomfield because Ms.  
5 Bloomfield has been the one that's been calling the ANC.  
6 Petty Gay Lewis is the SMD.  I think we've been reaching  
7 out to both.  I knew we had called Ms. Lewis.

8           CHAIRMAN HOOD:  Okay, so what we're going to  
9 do, we're going to take this back up in two weeks which is  
10 the 15th and I'm just asking if you could reach out to Mr.  
11 Lee.  I think his name is Lee.  And even send him an  
12 email.

13           And if not, and I hate to put you through all  
14 this, but if you could contact Gottlieb Simon.  I just  
15 want to make sure we have our bases covered.

16           MR. GLASGOW:  Sure.

17           VICE CHAIR MILLER:  As long as we're reaching  
18 out make sure they have a copy of the penthouse change as  
19 well because I'm not sure they were copied on that more  
20 recent letter from you.

21           MR. GLASGOW:  All right.  I was going to reach  
22 out then to Clarence Lee.  I guess since Petty Gay Lewis  
23 is the SMD I was going to reach out to her too.  Then we  
24 will do that by email and also contact Gottlieb Simon and  
25 copy the penthouse change.

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1 CHAIRMAN HOOD: After that we've done our due  
2 diligence. I'm not going to -- we'll proceed.

3 And I want to go back to the vice chair's  
4 point. When these things happen we need to do some  
5 rulemakings or referrals or whatever, fine.

6 If it doesn't happen but when you bring it back  
7 to us it opens back up the ball game for me.

8 All right. Anything else?

9 MS. SCHELLIN: Chairman Hood, just to confirm  
10 you want a special public meeting then on the 15th at  
11 6:20.

12 CHAIRMAN HOOD: 6:20, same time we did today.

13 MS. SCHELLIN: Got it.

14 CHAIRMAN HOOD: Thank you for everyone's  
15 indulgence but I'd rather move with caution and proceed  
16 with caution. Anything else on this? All right, so let  
17 me close this special public meeting.

18 (Whereupon, the above-entitled matter went off  
19 the record at 6:52 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 Meeting

Before: DCZC

Date: 10-01-18

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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Court Reporter

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