

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

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IN THE MATTER OF: :
  
:
  
Dancing Crab Properties, LLC :
  
Consolidated PUD and Related :
  
Map Amendment @ Square 1769 : Case No.
  
: 18-03
  
:
  
-----:

Monday,
  
October 29, 2018

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

The Public Hearing of Case No. 18-03 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  
JOEL LAWSON  
CRYSTAL MYERS

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

AARON ZIMMERMAN

The transcript constitutes the minutes from  
the Public Hearing held on October 29, 2018.

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

6:31 p.m.

1  
2  
3 CHAIRMAN HOOD: Okay, we're ready to get started.  
4 Good evening, ladies and gentlemen. This is the public  
5 hearing of the Zoning Commission for the District of  
6 Columbia. Today's date is October 29th, 2018. My name is  
7 Anthony Hood. We're located in the Jerrily R. Kress Memorial  
8 Hearing Room. Joining me this evening are Vice Chair Miller,  
9 Commissioner Shapiro, Commissioner May, Commissioner  
10 Turnbull. We're also joined by the Office of Zoning Staff  
11 Ms. Sharon Schellin, as well as the Office of Planning staff,  
12 Ms. Steingasser, Mr. Lawson, Ms. Myers; and the Office of  
13 Attorney -- no District Department of Transportation, Mr.  
14 Zimmerman. This proceeding is being recorded by a court  
15 reporter and is also webcast live; accordingly I must ask you  
16 to refrain from any disruptive noises or actions in the  
17 hearing room, including the display of any signs or objects.  
18 Notice of today's hearing was published in the D.C. Register  
19 and copies of that announcement are available to my left on  
20 the wall near the door. The hearing will be conducted in  
21 accordance with provisions of 11-Z DCMR Chapter 4 as follows;  
22 preliminary matters of applicant's case, report of the Office  
23 of Planning and report of other government agencies, report  
24 of the ANC organizations and persons, and support  
25 organizations and persons in opposition, rebuttal and closing

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1 by the applicant. The following time constraints will be  
2 maintained in this meeting; the applicant has up to 60  
3 minutes, organizations 5 minutes, individuals 3 minutes. All  
4 persons wishing to testify before the commission in this  
5 hearing are asked to register at the witness kiosk. The  
6 decision of the commission in this case must be based  
7 exclusively on the public record; to avoid any appearance to  
8 the contrary, the commission requests that persons present  
9 do not engage the members of the commission in any  
10 conversation during any recess or at any time. The staff  
11 will be available throughout the hearing to discuss  
12 procedural questions. Please turn off all your electronic  
13 devices at this time so not to disrupt these proceedings.

14           Would all individuals wishing to testify please  
15 rise to take the oath?

16           Ms. Schellin, would you please administer the  
17 oath?

18           SECRETARY SCHELLIN: Yes, please raise your right  
19 hand. Do you solemnly swear or affirm the testimony you'll  
20 give this evening will be the truth, the whole truth and  
21 nothing but the truth? Thank you.

22           CHAIRMAN HOOD: Okay. Ms. Schellin, do we have  
23 any preliminary matters?

24           SECRETARY SCHELLIN: Yes, sir. The two proffered  
25 experts have been previously accepted, Bill Bonstra from an

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1 architecture from Haresign Architects, Jami Milanovich from  
2 Wells & Associates; and that is the only thing that I see.

3 CHAIRMAN HOOD: Okay, we will continue that  
4 status, unless I hear objections. Anything else, Ms.  
5 Schellin?

6 SECRETARY SCHELLIN: No, sir.

7 CHAIRMAN HOOD: Okay. Ms. Bloomfield, you can go  
8 ahead. We have reviewed the record. Let me just ask; is  
9 there anyone here -- we do have a letter of concern in the  
10 record -- but is there anyone here who's in opposition of  
11 this case?

12 Let the record reflect I don't see anyone present.

13 Okay. Ms. Bloomfield, you can -- any undecided?

14 Okay. Ms. Bloomfield?

15 MS. BLOOMFIELD: Good evening, commissioners. I  
16 want to point out, also, Shane Dettman is here who has  
17 previously been qualified as an expert in land use and zoning  
18 as well.

19 SECRETARY SCHELLIN: Okay, we didn't have him on  
20 the list. Maybe he got added later.

21 MS. BLOOMFIELD: Yes, we did not have him on the  
22 list. I apologize.

23 SECRETARY SCHELLIN: Okay.

24 MS. BLOOMFIELD: We are here this evening to  
25 present our application for a PUD and zoning map amendment

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1 from the MU-4 District to the MU-5B District for property  
2 located on the 4600 block of 41st Street, N.W. about a block  
3 north of the Tenleytown Metro Station. The project is for  
4 the redevelopment of the site with a 41-unit apartment house  
5 with restaurant use on the ground floor and in penthouse  
6 habitable space. We are pleased to have unanimous support  
7 for the project from ANC3E, and their resolution and  
8 unanimous support for the project, and a signed MOU is in the  
9 record at Exhibit 28 and 28A. We've also worked closely with  
10 Office of Planning and DDOT on the project; with respect to  
11 DDOT they have indicated no opposition with some conditions  
12 and we are agreeable with all of those; and with respect to  
13 Office of Planning they did support the project with  
14 conditions and we have some slight adjustments to those that  
15 we would like to propose; the first is that with respect to  
16 hours of operation on the roof deck; OP requested an end time  
17 of midnight, and we would request that the commission defer  
18 that decision to ABRA which would be the final arbiter on the  
19 timing and operation of the roof deck, and would also be  
20 reviewed again by the ANC at that point; second, we added  
21 some clarity to OP's request that there be no live or  
22 amplified music on the roof, by agreeing to restrict  
23 amplified live music from being permitted outside on the roof  
24 after midnight and acknowledging that any instrumental or  
25 recorded music conveyed through speakers would have to

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1 otherwise comply with the requirements of the DC Noise  
2 Control Act; third, we agree with OP's condition that all  
3 lighting on the roof will be shielded and contained to the  
4 roof area and that lighting would be turned off in accordance  
5 with any DC building code requirements; and then fourth and  
6 finally we would agree that the restaurant spaces need not  
7 be considered public benefits as part of the PD package.

8 We propose these modifications --

9 COMMISSIONER MAY: I'm sorry to interrupt. Just  
10 to be clear; the first three were ones where you were  
11 suggesting something a little bit different?

12 MS. BLOOMFIELD: Yes.

13 COMMISSIONER MAY: But the last one you're  
14 agreeing to?

15 MS. BLOOMFIELD: Yes, the last one is that we're  
16 not considering it a benefit.

17 COMMISSIONER MAY: Right.

18 MS. BLOOMFIELD: And we did not previously submit  
19 that list of conditions, which we can or we can talk about  
20 them. Would you like us to submit that now, the proposed  
21 language that we have to the OP report -- condition?

22 COMMISSIONER MAY: It'll have to be submitted at  
23 some point, so.

24 MS. BLOOMFIELD: We propose these modifications  
25 given the fact that the project is approximately 150 feet and

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1 across a public street from the closest residential uses, and  
2 given the site's location on a commercial block, the ANC did  
3 not express any concerns or impose any conditions regarding  
4 the use or time restrictions on the roof. Moreover, if noise  
5 becomes an issue with residents who live within the building,  
6 the owner can address those issues at that point. In  
7 addition, a letter was filed today by Marilyn Simon at  
8 Exhibit 30 and she addressed two concerns; one was with RPP  
9 restrictions, and I would note that we have agreed to an  
10 extensive list of restrictions on RPP as part of our MOU with  
11 the ANC and we would agree that those restrictions should be  
12 included in any order approving this application; and second  
13 was a concern regarding the amount of required and provided  
14 IZ in the project; we evaluated the IZ requirements based on  
15 both the matter-of-right requirements under the existing MU-4  
16 Zone, and also the matter-of-right requirements under the  
17 proposed MU-4B Zone; and in contrast to those calculations,  
18 the proposed project will provide a greater amount, which is  
19 12.7 percent of the residential gross floor area and  
20 penthouse floor area combined. The project is also providing  
21 significantly more square footage devoted to units at 50  
22 percent of the MFI than would be required by the regulations,  
23 and is also providing two-bedroom IZ units where as there are  
24 not even any two-bedroom market rate units provided in the  
25 project.

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1           And finally, we believe we've proposed a  
2 significant public benefits and amenities package which OP  
3 and the ANC have reviewed and supported and believe that the  
4 value of the public benefits that we've proposed outweigh the  
5 development incentives and flexibility requested.

6           And finally, we received a letter from DC For  
7 Reasonable Development this afternoon and I would turn that  
8 over to Shane Dettman to respond to directly.

9           CHAIRMAN HOOD: In your response can you mention  
10 whether or not you met with that group or not, Board 3  
11 Advisory Reasonable Development.

12           MR. DETTMAN: I'm sorry; Mr. Chairman, could you  
13 repeat the question?

14           CHAIRMAN HOOD: I was just wondering, have you had  
15 discussions with that group?

16           MR. DETTMAN: This evening was the first time  
17 we've heard of that group, or the sub-group of DC for  
18 Reasonable Development.

19           CHAIRMAN HOOD: Okay, Ward 3 Advisory Group of  
20 Reasonable --

21           MR. DETTMAN: Yes.

22           CHAIRMAN HOOD: Okay, thank you.

23           MR. DETTMAN: Good evening, Mr. Chairman and  
24 members of the Commission. For the record, my name is Shane  
25 Dettman, Director of Planning Services with Holland & Knight.

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1 We just received the letter from DC For Reasonable  
2 Development. I'll just quickly go through the two sections  
3 that they talk about in their letter pertaining to affordable  
4 housing, and then the impacts on public services, capacities  
5 and upgrades.

6           With respect to affordable housing, I think it's  
7 interesting that in Attachment 1 of their letter, DC For  
8 Reasonable Development, goes through the narrative pertaining  
9 to housing and affordable housing in the comprehensive plan  
10 and I would argue that we're not inconsistent and advance all  
11 of that narrative with this fairly small project being only  
12 41 units. When you look at the fact, as Ms. Bloomfield  
13 mentioned, 12.7 percent of the residential gross floor area  
14 of that building is being devoted to affordable housing. Not  
15 only that, in terms of the amount of affordable housing,  
16 we're exceeding the amount of affordable housing that's  
17 required to be devoted to 50 percent MFI families. And  
18 lastly, I'll mention that all of the two-bedroom units in  
19 this building are affordable housing units; there are no  
20 market rate two-bedroom units within the building. But  
21 looking at the narrative that they point to in Attachment A,  
22 the comprehensive plan addresses the, or encourages the  
23 production of new or affordable housing; that's exactly what  
24 we're doing with this project. Section 218.5 of the  
25 comprehensive plan talks about that all neighborhoods should

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1 share in the overall social responsibilities of the community  
2 in terms of the production of affordable housing. And  
3 commissioned in a couple recent cases that are pending before  
4 you, I'm sure you've heard testimony about the relative  
5 percentage of affordable housing being delivered in Ward 3  
6 compared to other wards throughout the city. And so the  
7 addition of affordable housing at this particular site  
8 certainly will advance Ward 3's participation in the  
9 production of affordable housing. The comprehensive plan  
10 talks about at the most basic level, it is the availability  
11 of safe, decent, affordable housing that will determine  
12 whether the District's vision for inclusive city will be  
13 realized. Again, this is an area of the city that is not  
14 only in Upper Northwest that has great access to very  
15 successful public schools, successful private schools, great  
16 parks and recreation, very close to transit, metro and bus,  
17 as well as community centers and recreation centers. This  
18 is an area of the city that we'd want to put new housing,  
19 including affordable housing.

20           Lastly, in their Attachment A to their letter, DC  
21 For Reasonable Development just lists a litany of policies  
22 that perhaps it believes were not addressed, or that the  
23 project is inconsistent with, and that's listed in the table  
24 of the last page of their testimony. They all have to do  
25 with affordable housing, workforce housing, protection of

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1 existing housing. I would submit that the large majority of  
2 these policies that are cited here, and as the project being  
3 inconsistent with, have to do with the preservation and  
4 protection of existing housing. There is no existing housing  
5 on this site; this is an absolute net add of 41 brand new  
6 residential units, both market rate and affordable in a very  
7 accessible location. With respect to housing for families,  
8 certainly larger market rate and affordable dwelling units  
9 are in demand for the city; I would submit that although  
10 there are no three-bedroom units in this building, a two-  
11 bedroom unit is capable of housing a family. As you know,  
12 there are lots of young families that are looking to  
13 establish themselves and ideally in Ward 3 where they have  
14 access to those great, public schools. So these are starter  
15 families that potentially could get in on the ground floor  
16 of this building and hopefully trade up to a larger existing  
17 single-family dwelling unit that exists in the neighborhood.  
18 And so I would argue that this building does address the  
19 issue of not only affordable housing, but does provide some  
20 housing that could accommodate a young, starting family.

21 MS. BLOOMFIELD: We have our whole team here if  
22 you'd like us to go through the architectural drawings, the  
23 transportation report. We didn't think it was necessary but  
24 we are here available for questions. And that being the  
25 case, that would conclude our direct testimony.

1 CHAIRMAN HOOD: Do me a favor; could you repeat  
2 the response that you said I think in your presentation to  
3 us about Ms. Simon's letter?

4 MS. BLOOMFIELD: Ms. Simon had two concerns; one  
5 was on residential parking permit restrictions and she, I  
6 believe, was looking at an early filing that we did where we  
7 said the site was not signed up for, available to be RPP  
8 eligible. Since then we've worked with the ANC because they  
9 were also concerned about that, and we have a number of  
10 restrictions which was just past out in the MOU that said it  
11 has to be in your lease, penalty of lease termination, if you  
12 get a RPP you can't visit a RPP, that's all addressed in the  
13 MOU. And we would agree with the ANC and with Ms. Simon's  
14 letter that said it should be a condition in the order as  
15 well; we're amenable to all of that.

16 CHAIRMAN HOOD: Okay, and what about the second --  
17 and the reason I'm doing, Ms. Simon just came in, I wanted  
18 her to hear what you just explained to us -- so what about  
19 the second issue?

20 MS. BLOOMFIELD: The second one is about IZ, and  
21 Shane can go into this into more detail, but there was a  
22 question about whether we compared the proposed IZ in the  
23 building which is 12.7 percent to what would be required as  
24 a matter-of-right. And so what we did was we compared the  
25 matter-of-right conditions under the existing zone which is

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1 MU-4 and we compared the matter-of-right requirements under  
2 the proposed zone which is MU-5B, and under both those  
3 scenarios you get a smaller square footage requirement than  
4 the square footage requirement that we're providing which is  
5 the 12.7 number that I've referenced.

6 CHAIRMAN HOOD: All right, are you finished? You  
7 all are finished?

8 Thank you for going back over those two points.

9 Let me open it up to see if there are any  
10 questions or comments from up here.

11 Mr. Shapiro?

12 COMMISSIONER SHAPIRO: I just have a quick  
13 question for the developer, if not you. But did you try to  
14 get the parking lot next door?

15 MS. BLOOMFIELD: They did, yes. They -- do you  
16 want to add to it --

17 PARTICIPANT: No.

18 MS. BLOOMFIELD: They tried to.

19 COMMISSIONER SHAPIRO: Thank you, we'll leave it  
20 at that. Okay, thank you. Thank you, Mr. Chair.

21 CHAIRMAN HOOD: Okay. Commissioner May?

22 COMMISSIONER MAY: Yes. I mean, so I assume we're  
23 passing on an architectural presentation. I don't really  
24 need one.

25 CHAIRMAN HOOD: Unless somebody needs one.

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1 COMMISSIONER MAY: No, I think that question was  
2 left unanswered. I personally don't really need one, but I  
3 don't know if the rest of the Commission does.

4 CHAIRMAN HOOD: Would anybody like one?

5 COMMISSIONER MAY: No? Okay.

6 CHAIRMAN HOOD: All right.

7 COMMISSIONER MAY: So, I just have a couple other  
8 questions. I'm not entirely clear about this; the language  
9 in your pre-hearing statement was with regard to LEED, was  
10 that the project will be built to be certified LEED-Gold;  
11 does that mean that you're actually going to go through the  
12 certification process?

13 MS. BLOOMFIELD: Yes, we will go through the  
14 certification process.

15 COMMISSIONER MAY: Okay, I saw that elsewhere but  
16 I wasn't totally sure. And then there's also reference to  
17 the public, outdoor roof lounge; I mean, that really just  
18 means that it's got a restaurant that's open to the public?

19 MS. BLOOMFIELD: Correct.

20 COMMISSIONER MAY: As opposed to walking down the  
21 street, I'm going to go up and check on the roof, you  
22 probably have to go up and have a drink and check out the  
23 roof?

24 MS. BLOOMFIELD: It would be part of the  
25 restaurant.

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1 COMMISSIONER MAY: Yes. And there were a handful  
2 of issues that were in DDOT's report; did you address those?

3 MS. BLOOMFIELD: I briefly addressed them, the  
4 conditions in DDOT's report were amenable to agreeing to all  
5 of them, so I didn't go through them in detail.

6 COMMISSIONER MAY: Okay, so -- I mean, they're  
7 going to have to review the ball bounce, but they support  
8 that. They are not going to approve the stamped concrete,  
9 so I assume that's -- you're not going to do that, stamped  
10 concrete and the crosswalks?

11 MS. BLOOMFIELD: Yes.

12 COMMISSIONER MAY: I mean, they didn't say they're  
13 not going to approve it in their letter here, but they said  
14 in the public space process they almost never do that.

15 MS. BLOOMFIELD: Right, and we talked with DDOT  
16 actually about the stamped concrete and the problem was an  
17 issue of maintenance. And so DDOT can comment more about  
18 what their position was. I believe that our current plans  
19 do show the stamped concrete.

20 COMMISSIONER MAY: And isn't that something that  
21 the ANC wanted anyway?

22 MS. BLOOMFIELD: Stamped or brick is what is on  
23 the plans.

24 COMMISSIONER MAY: Stamped or brick. Okay, so I  
25 guess I'll have to wait to hear from DDOT about what they're

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1 willing to agree to. But I mean, as I read through things  
2 I thought maybe there was a disconnect between what DDOT was  
3 willing to do and what the ANC wanted.

4 MS. BLOOMFIELD: Yes, ANC did ask for it. I'm  
5 sorry; what --?

6 PARTICIPANT: There is no disconnect.

7 MS. BLOOMFIELD: No, it's all subject to public  
8 space. But the issue that DDOT -- there was not a  
9 misunderstanding; the ANC initially requested it, DDOT said  
10 it's difficult to maintain. And I'd let DDOT respond to that  
11 item. Again, it's all open to public space.

12 COMMISSIONER MAY: We'll wait to hear more from  
13 them. I just didn't want to approve something that the ANC  
14 is going to have a problem with. It'd be better to get it  
15 sorted in advance. All right. I think that's it for my  
16 questions.

17 CHAIRMAN HOOD: Okay. Any other questions or  
18 comments?

19 Vice Chair Miller?

20 VICE CHAIR MILLER: Thank you, Mr. Chairman and  
21 thank you for your presentation. Could you -- I think it's  
22 an attractive design and I appreciate you having worked with  
23 the ANC to address their concerns and get their input. Could  
24 you just -- and I appreciate you responding in the written  
25 response that you provided to Ms. Simon's testimony -- do you

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1 have an extra copy that maybe you can give one to her when  
2 you leave the table here, if she doesn't already have it?  
3 But could you just state for the record -- I see it written  
4 down here -- but could you state for the record what the  
5 square footage is of affordable housing under the existing  
6 matter-of-right zoning and what it would be under the new map  
7 amendment, the MU-5B and what it would be under this  
8 proposal, what the square footages are.

9 MS. BLOOMFIELD: Absolutely. Under the matter-of-  
10 right, MU-4, which is the existing zone, the affordable IZ  
11 requirement would be 2,746 square feet, under MU-5B as a  
12 matter-of-right it would be 2,539 or 40 square feet of IZ  
13 required, and what we're proposing is 3,882 square feet of  
14 IZ.

15 VICE CHAIR MILLER: Okay. And she may be  
16 interpreting the calculations differently, and we'll hear  
17 from her, but I appreciate that information. And maybe she  
18 can take a look at what you have and respond to that. And  
19 I appreciate that you're willing to put in the zoning order  
20 itself the condition of the lease termination if someone gets  
21 RPP and all that, not just be a part of the MOU enforcement  
22 with the ANC. So amongst the other public benefits are the  
23 mural which is on an at-risk wall, and that's determined  
24 later in discussions with the ANC in terms of content and --

25 MS. BLOOMFIELD: Yes, right. We committed to a

1 maximum funding amount and we're going to work with the ANC  
2 on what the subject matter is and who the artist is, and they  
3 were well-aware that it is an at-risk wall and considered it  
4 a benefit anyway.

5 VICE CHAIR MILLER: And that amount is \$25,000?

6 MS. BLOOMFIELD: Correct.

7 VICE CHAIR MILLER: And then you have the \$35,000  
8 contribution to Friendship Place which is on that block, I  
9 believe, or maybe on both sides of that block. And there's  
10 specific improvements that you're devoting \$35,000?

11 MS. BLOOMFIELD: \$35,000.

12 VICE CHAIR MILLER: And that'll be a condition of  
13 the order as well prior to any --?

14 MS. BLOOMFIELD: Yes.

15 VICE CHAIR MILLER: And then you've got this  
16 maintenance of the park -- not park -- the triangular area  
17 adjacent -- is it adjacent to your site or it's just --?

18 MS. BLOOMFIELD: It's across 41st Street.

19 VICE CHAIR MILLER: Right, and another PUD  
20 currently is doing that -- has that for five years, 4600  
21 Wisconsin -- do you have a value or cost on that five-year  
22 maintenance landscaping plan or no?

23 MS. BLOOMFIELD: No, we don't have a value for the  
24 amount of landscaping we did commit to improving the  
25 landscaping to the north of that, and there's a value of that

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1 of up to \$5,000 to install that landscaping, and the  
2 condition would be that we would maintain the landscaping for  
3 the life of the project, for both the piece of the triangle  
4 that wasn't landscaped by the adjacent owner and by the  
5 northern more portion of the triangle that we would install  
6 the landscaping for.

7 VICE CHAIR MILLER: Right. And I know you have  
8 a number of streetscape improvements on the sidewalk and the  
9 public space there which will go through DDOT, that they  
10 commented mostly favorably on, I believe. This ANC often  
11 asks for under-grounding of the utility poles adjacent to the  
12 site; did they ask for that? I didn't see mention of that  
13 in any submission.

14 MS. BLOOMFIELD: We did talk about it in early  
15 discussions, but ultimately they dropped the issue and were  
16 happy with the benefits and amenities package that we  
17 proposed. As you know, we postponed the hearing because  
18 we're still working with them, and the whole idea was that  
19 they really wanted these public space improvements. And we  
20 had a couple of very good meetings with the ANC and DDOT  
21 together where we came up with what we are now proposing.  
22 And so they didn't bring it up after we kind of went over  
23 these other more important items to them.

24 VICE CHAIR MILLER: And it's of total 41  
25 residential units under the PUD and the three of which the

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1 two, two-bedrooms and one, one-bedroom. So, that's a good  
2 thing.

3           The bicycle room, or the bicycle storage area,  
4 that couldn't be moved up to the floor above it somehow so  
5 it isn't such a schlep for the bicycle owner to get out? Or  
6 somebody mentioned they might go through the lobby to avoid  
7 having to go up the two floors.

8           MS. BLOOMFIELD: So you can -- it's one level  
9 below grade -- the site is sloped quite a bit, and so the  
10 bike room is one level below grade; you can enter through the  
11 lobby; you can also enter through the rear entrance where you  
12 go into the parking garage. Yes, you can see it here.

13           There's two ways to enter; we didn't look at  
14 moving it up; the ANC didn't have an issue with it or DDOT.

15           VICE CHAIR MILLER: All right. Well, I have no  
16 other questions, really. I appreciate the presentation.  
17 Thank you very much.

18           CHAIRMAN HOOD: Any other questions up here?

19           VICE CHAIR MILLER: I did want to say you do have  
20 the solar panels -- in addition to the LEED Gold you have the  
21 solar panels on the roof. Commissioner Shapiro?

22           COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I  
23 just had a question on the hours of operation which you're  
24 totally changing from what OP had. You don't have any end  
25 hour. How long is this going to be open then, at night,

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1 2:00/3:00?

2 MS. BLOOMFIELD: Well, we don't have any end hour,  
3 and so what we were hoping to do is negotiate that with ABRA  
4 under the licensing process.

5 COMMISSIONER SHAPIRO: But have you talked to the  
6 ANC; is the ANC --?

7 MS. BLOOMFIELD: The ANC did not raise any issues  
8 with the roof deck use.

9 COMMISSIONER SHAPIRO: But you talked to them  
10 about it?

11 MS. BLOOMFIELD: Correct. Yes, we have.

12 COMMISSIONER SHAPIRO: Okay, I'm still a little  
13 bit concerned about that. I want to hear OP's comments. You  
14 also talked about the lighting, then, would still be on until  
15 whatever hours you're going to be going on.

16 MS. BLOOMFIELD: Right. So what we have committed  
17 to is have downward-facing lighting and that we did not  
18 commit to a time to turn the lighting off, other than  
19 complying with the regulations.

20 COMMISSIONER SHAPIRO: Your comment, "Amplified  
21 live music shall not be permitted after midnight on the  
22 outside of the roof. Instrumental or recorded music conveyed  
23 via speakers or recorded sound systems shall be permitted,  
24 and then shall comply with the noise requirements. Now,  
25 instrumental music can also be live; you could have a

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1 guitarist out there playing. So what do you mean by  
2 instrumental or recorded music; is it just recorded music --  
3 is that the correct --?

4 MS. BLOOMFIELD: Well --

5 COMMISSIONER SHAPIRO: I mean, are you going to  
6 have live performers up there playing guitars or trumpets and  
7 --?

8 MS. BLOOMFIELD: So --

9 COMMISSIONER SHAPIRO: A Mariachi band out there.

10 MS. BLOOMFIELD: -- instrumental or recorded music  
11 conveyed via speakers -- so that second sentence in that  
12 condition is assumed to not be live.

13 COMMISSIONER SHAPIRO: All right, let's clarify  
14 that if you're going to do that, if we agree to this. I  
15 think we need to talk about it, I think OP needs to see it,  
16 and I'd like to get a comment back from the ANC that they're  
17 okay on the hours and the kinds of music. After all, there  
18 are other residential buildings in that neighborhood, so  
19 always concerned about -- I mean, I think everybody wants to  
20 enliven the rooftops and make them more useful, but I think  
21 we have to respect the rights and the use of other nearby  
22 neighbors, too.

23 MS. BLOOMFIELD: Yes, so we did talk about that  
24 with the ANC and they weren't concerned because the furthest  
25 existing residential uses are at least 150 feet away and are

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1 separated either by Wisconsin Avenue or by Brandywine to the  
2 south.

3 COMMISSIONER SHAPIRO: All right. Well, I guess  
4 maybe it's just me.

5 MS. BLOOMFIELD: There wasn't a concern in the  
6 past.

7 COMMISSIONER SHAPIRO: I'd just like to see that  
8 tightened up a bit in the language somehow; that's just my  
9 feeling.

10 MS. BLOOMFIELD: Sure.

11 COMMISSIONER SHAPIRO: But we can talk to OP about  
12 that also. Thank you.

13 CHAIRMAN HOOD: Any other questions up here?

14 Do you have a representative from ANC? Anybody  
15 representing the ANC?

16 Okay, let's go to the Office of Planning. Ms.  
17 Myers?

18 MS. MYERS: Good evening, commissioners. Crystal  
19 Myers with the Office of Planning. For the most part, the  
20 Office of Planning wants on the record we're in support of  
21 the project. I know there's the question of the conditions;  
22 we wanted to add the time restrictions in the conditions  
23 because this is the only opportunity the Board has to provide  
24 the maximum amount of time that we would permit the noise and  
25 the lighting on the property, on the rooftop. Yes, ABRA does

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1 have an opportunity to have a final say on it, but we could  
2 have a restriction now and they could work within that  
3 restriction. We felt, the Office of Planning felt that  
4 midnight was appropriate when it comes to the hours of  
5 operation on the rooftop and felt that 1:00 a.m. was  
6 appropriate for the lighting, and also felt that live music  
7 or amplified music was not appropriate on the roof, but it  
8 is ultimately up to the Board to decide what you want to  
9 decide on that. So otherwise, we rest on the record.

10 CHAIRMAN HOOD: Thank you, Ms. Myers.  
11 Commissioner Shapiro?

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I'm  
13 curious about the rationale for that restriction on the hours  
14 of operation on the rooftop, given its location. In this  
15 case I actually know the area quite well; there aren't  
16 residents in close proximity to this building.

17 MS. MYERS: Well, it is a mixed use area; it does  
18 have residential buildings. I do know it's across the  
19 street, I believe Wisconsin Avenue, but just as a standard  
20 for residential area we want to provide some sort of  
21 restrictions time-wise. Again, ultimately your decision of  
22 whether or not you want to go as far as midnight. But  
23 because this is an area that does have a residential  
24 population, we do want to provide that level of time  
25 restriction. And as it is mixed use, there's always the

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1 possibility that more residential properties could come in  
2 the future. And then as the applicant has said, the building  
3 itself has residential units in it.

4 COMMISSIONER SHAPIRO: That's true. Thank you  
5 very much. Thank you, Mr. Chair.

6 CHAIRMAN HOOD: Okay. Any other questions from  
7 Office of Planning?

8 All right. Thank you, Ms. Myers. Does the  
9 applicant have any questions for Office of Planning?

10 MS. BLOOMFIELD: No, thank you.

11 CHAIRMAN HOOD: Okay. Again, I don't see anyone  
12 here from the ANC. Now let's go to DDOT, Mr. Zimmerman?

13 MR. ZIMMERMAN: Thank you. Good evening, Chairman  
14 Hood and commissioners. For the record, my name is Aaron  
15 Zimmerman with the District Department of Transportation.  
16 As you've heard in the applicant's opening statement, they  
17 have agreed to all of DDOT's recommended conditions, which  
18 include the implementation of a TDM plan and the restriction  
19 of trucks serving the site to 30 feet or smaller. The  
20 applicant has also worked closely with the ANC and DDOT staff  
21 to redesign and upgrade the public space on this block;  
22 specifically the proposal calls for installing curb  
23 extensions and a raised table crosswalk in front of the site.  
24 DDOT is in agreement with their proffer in the preliminary  
25 concept design as documented in the October 11th, 2018

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1 developer ANC MOU, and we look forward to working with them  
2 on the final design during public space permitting. So the  
3 question about the stamped concrete; yes in general we prefer  
4 not to for the reasons we noted in our report about the  
5 maintenance issues; however, since we released our report,  
6 we had the opportunity to meet again with the applicant and  
7 the ANC and we've had a number of conversations with both  
8 parties, and feel that in all likelihood we could be very  
9 amenable to that in this case, but we still need to work on  
10 the final design, which as I just mentioned would occur  
11 during public space permitting, but we have indicated that  
12 we are amenable to some kind of alternate paving across the  
13 raised table crosswalk. So, with all the agreed to  
14 conditions and proffers, including the final zoning order,  
15 DDOT has no objection to approval of this consolidated PUD  
16 and map amendment. Thank you.

17 CHAIRMAN HOOD: Okay. Thank you, Mr. Zimmerman.  
18 Let's see we have any questions. Commissioner Shapiro?

19 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. The  
20 proffer of the raised crosswalk at that one place -- there  
21 was another slide that actually showed more than just this --  
22 there that -- so why just that one location? I mean, there's  
23 a consideration about how much money they're proffering, but  
24 from a pedestrian safety perspective, why that location and  
25 why not closer to Brandywine? Why not the intersection at

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1 41st and Chesapeake? I'm just trying to figure it out,  
2 because it's all rough around there.

3 MR. ZIMMERMAN: Yes, so with this, this was not  
4 something DDOT had requested; this was something the  
5 applicant came to us and proposed through this process. If  
6 they would have considered wanting to make some improvements  
7 up at Chesapeake or down at Brandywine, I mean we would have  
8 been amenable to that, but since this was something they were  
9 proposing and offering, we decided to just work with them on  
10 this isolated location.

11 COMMISSIONER SHAPIRO: I mean --

12 MR. ZIMMERMAN: And the reason we didn't ask for  
13 any more is we just determined in our analysis that there  
14 weren't really any impacts based on this development with the  
15 low parking ratio and the number of units, et cetera. It  
16 didn't seem like going further away and asking for anything  
17 we didn't think we had, there was much of a case for going  
18 further away, but we would certainly have been amenable.

19 COMMISSIONER SHAPIRO: Right, I'm not saying I'm  
20 asking for one, but do you know when the last -- not traffic  
21 study, but study related to pedestrian safety has been done  
22 for this area?

23 MR. ZIMMERMAN: No, I don't.

24 COMMISSIONER SHAPIRO: It's just a complicated  
25 place with people, bicycles and cars, and it always has been.

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1 MR. ZIMMERMAN: Yes, you're correct. And we've  
2 had some conversations with the ANC about the intersection  
3 with Chesapeake, a number of staff members from our office  
4 went out with the ANC and a number of folks in the  
5 neighborhood to look at some of the intersections further to  
6 the north.

7 COMMISSIONER SHAPIRO: Yes, Chesapeake, the  
8 lighting is so bad that it's really dangerous when cars hit  
9 Chesapeake right in that little cut-off to the right.

10 MR. ZIMMERMAN: Well, when we think of the  
11 improvement that the applicant is recommending, does improve  
12 the conditions, at least down around the vicinity of the  
13 site, and this is a significant upgrade, we think will  
14 definitely enhance pedestrian safety right in this immediate  
15 area.

16 COMMISSIONER SHAPIRO: Thank you.

17 MS. BLOOMFIELD: If we could shed some light on  
18 that, we actually did meet with DDOT. I don't think you were  
19 in that meeting, but we did bring the ANC down and this was  
20 negotiated quite a bit. I'll ask Jami Milanovich to speak  
21 to it, if that's okay.

22 COMMISSIONER SHAPIRO: Please.

23 MS. MILANOVICH: Thank you. Actually, if you  
24 could bring up the landscape slide that shows the crosswalk.  
25 There you go.

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1           So when we initially met with the ANC and they  
2 brought this request forward, the primary concern was related  
3 to the speed of traffic on 41st Street. So as you're coming  
4 off Wisconsin Avenue, it's barely a right turn, it's  
5 essentially a straight shot up 41st Street. And so there's,  
6 what we understand from the ANC, a significant speeding  
7 problem. So what we were looking at was a way to slow the  
8 traffic down as they're entering 41st Street, which we think  
9 will have obviously benefits at the immediate crosswalk but  
10 also as cars continue up 41st Street to the Chesapeake  
11 intersection, will have slowed them down by the time they got  
12 there.

13           So, if you can go back to the slide.

14           So what we're doing is creating the curb extension  
15 on our side of 41st Street, and then on the west side of 41st  
16 Street we're actually extending the curb line down into what  
17 is currently a painted gore area. And so that's going to  
18 give the appearance to drivers that it's a more constrained  
19 condition. And then at the crosswalk we're narrowing the  
20 width that the pedestrians have to cross. So again,  
21 shortening the pedestrian crossing distance obviously safer  
22 for pedestrians, but the feeling of that more constrained or  
23 tighter roadway also has been shown to slow traffic down.  
24 So we think both of those are a benefit.

25           COMMISSIONER SHAPIRO: Thank you, that answers the

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1 question perfectly. Thank you, Mr. Chair.

2 CHAIRMAN HOOD: Okay, thank you. Any other  
3 questions or comments up here?

4 All right, let's go to ANC report, report other  
5 government agencies. Let me do the ANC report, ANC3E -- let  
6 me see if I can find it -- okay, it says the resolution  
7 passed by a vote of 5-0-0 at a property notice meeting. They  
8 have two commissioners who were scheduled to say something  
9 but obviously are not here; we'll let the record speak for  
10 itself. It goes into great detail and shows the support; the  
11 property notice meeting held October 11th which a quorum was  
12 present and the names of the commissioners and I believe  
13 there's letters of support of the application before us. Was  
14 there some other issues that you have with the ANC that you  
15 did not mention other than the ones that were already  
16 mentioned? You worked out everything with the ANC?

17 MS. BLOOMFIELD: We have no issues remaining with  
18 the ANC.

19 CHAIRMAN HOOD: Okay, I just want to make sure.  
20 Their letter has great detail and I see a lot of the things  
21 were identified previously.

22 Okay, do we have any organizations -- let me go  
23 to organizations or persons who are here in support of this  
24 application.

25 Any organizations or persons who are here in

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1 opposition of this application?

2 Any undeclared, come on up and sign. Are you  
3 undeclared? Come on up and sign.

4 Now, we went back over those two issues for your  
5 benefit, so I wanted you to be able to hear those. Come on  
6 up and you may begin when we get settled.

7 MS. SIMON: Thank you. My name is Marilyn Simon  
8 and I'll address these two issues. I was certainly pleased  
9 to hear that there's a consensus that the Zoning Commission  
10 should include a RPP condition in the order, but I do want  
11 to point out that we have some past history here and the MOU  
12 with the ANC is not sufficient to address this issue. On  
13 Bates PUD there was a similar MOU, this is directly across  
14 the street and the building got added to the RPP database  
15 while it was under construction, even though the MOU is in  
16 place and the ANC did nothing about it. So I would suggest  
17 that we want something in the zoning order a little bit  
18 stronger; we have an example; for example, at the Washington  
19 clinic PUD, at Military and Western Avenue, or at the  
20 original 5333 Connecticut Avenue PUD, not the building that  
21 you actually see, but the one that was initially done quite  
22 some time ago, that it has actual RPP conditions that are  
23 slightly stronger than the MOU, and those could be included  
24 in the order. The second issue is the inclusionary zone and  
25 there seems to be some issue with the way that I address this

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1 issue. The applicant is using the reduced set-aside  
2 requirement for their calculations for the PUD because they  
3 requested a map amendment to MU-5. If you look at Section  
4 1003.2 you see that the reduced set-aside formula only  
5 applies if more than half the building, half the residential  
6 portion of the building is concrete and steel, and that seems  
7 very unlikely that that is the case. It doesn't have a  
8 trigger of whether or not it's a MU-5 versus a MU-4 Zone.  
9 So my table in the submission does the calculation using the  
10 standard set-aside formula rather than the reduced set-aside  
11 formula, which I believe they don't qualify for. And you see  
12 that there are only a little over 100 square feet over the  
13 requirement. And so I would say that either they should beef  
14 up the affordable housing requirement or there should be some  
15 other enhanced public interest benefits to address this  
16 difference. Thank you.

17 CHAIRMAN HOOD: What regulations did you cite, Ms.  
18 Simon?

19 MS. SIMON: Subtitle C, Section 1003.2 which is  
20 the set-aside formula for the reduced formula.

21 CHAIRMAN HOOD: Set-aside requirements. Okay.

22 MS. SIMON: Now, there is a problem here because  
23 there's sort of clunky language in 1003.1 and it turns out  
24 that a building of this type has no defined set-aside formula  
25 for this were a building that's mostly in an MU-5 Zone.

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1 CHAIRMAN HOOD: Let me do this; Ms. Schellin, how  
2 many votes do we have on this?

3 SECRETARY SCHELLIN: We have --

4 CHAIRMAN HOOD: We have two, right?

5 Okay. All right, what I'm going to do, I'm going  
6 to ask on that point, those two points; first let me ask the  
7 applicant on the RPP because that's a stick with me too as  
8 well about RPP, period. Can we come up with some stronger  
9 language that we can make sure that we put in the order? I'm  
10 actually going to request that, something that actually  
11 works. And that's something I want to make sure -- and I  
12 will ask OAG to make sure that we have some strong language,  
13 so something enforceable so we can have some capability.

14 MS. SIMON: Certainly there's no incentive for a  
15 landlord to terminate Visa's over an issue that he doesn't  
16 care about.

17 CHAIRMAN HOOD: We're going to do everything that  
18 we can on this end, at least put it in order as you  
19 requested. I'd like to see that -- I don't know if I have  
20 any objections?

21 Not seeing or hearing any.

22 The other thing is, I'm going to ask at some point  
23 -- I'm not sure how we're going to proceed with this either  
24 -- but we look at the other issue 1003.2 the set-aside  
25 requirements; I'd like to -- what Ms. Simon has mentioned,

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1 I want to make sure that what she's saying -- I need a  
2 response to that. And I would also like the Office of  
3 Planning, Ms. Myers, if you all can weigh in on that issue  
4 to help us move forward to make sure that we have that  
5 regulation covered.

6 All right, any disagreement, Commissioner May?

7 COMMISSIONER MAY: No, I don't disagree, but I  
8 have a question for Ms. Simon.

9 MS. SIMON: Yes, I was wondering if I'd have an  
10 opportunity to reply to what they said.

11 CHAIRMAN HOOD: Let us ask our questions and we'll  
12 see if we can do that. Okay.

13 COMMISSIONER MAY: So your bottom line was that  
14 there -- I thought you said 100 square feet less or more than  
15 what would be the requirement?

16 MS. SIMON: They meet the minimum requirement, but  
17 instead of being over 1,400 square feet above, they're a  
18 little over 100 square feet above. There's a table in there.

19 COMMISSIONER MAY: Yes. I mean, I'm looking at  
20 the table and I'm trying to sort that out and I'm not seeing  
21 a difference that small. I'm seeing that under the one  
22 formula it'd be 2,538 and the other it's 2,746, and they're  
23 providing 3,882?

24 MS. SIMON: They're providing 3,882 and the  
25 requirement would be 3,774.

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1 COMMISSIONER MAY: I'm not seeing the 3,774.

2 MS. SIMON: Page 4. There are two bold numbers  
3 in the middle column.

4 COMMISSIONER MAY: A-ha, I think maybe I don't  
5 have Page 4 in the -- the printed copy that I received  
6 tonight does not have a Page 4, so I'll have to look at the  
7 -- all right. Yes --

8 SECRETARY SCHELLIN: Commissioner May, she's  
9 referring to Page 4 of her submittal. You're looking at the  
10 applicant's response for her submittal.

11 COMMISSIONER MAY: Oh, got it. Thank you for  
12 clarifying that. I'll look at them both.

13 SECRETARY SCHELLIN: Thank you.

14 COMMISSIONER SHAPIRO: While we're here, just  
15 while you're sitting in front of us, do you have a response  
16 to what Ms. Simon says? I mean --

17 MS. BLOOMFIELD: Well, yes. We do have a  
18 response; we submitted a brief answer to it in what we handed  
19 out today, and I understand you haven't gotten a chance to  
20 look at that. Generally, our math is slightly different,  
21 with all due respect, and we did submit our math this  
22 evening; it's our position that either under 1003.1 or  
23 1003.2, which is either 10 percent or 8 percent of the  
24 residential gross floor area, we are at 12.7 percent, so no  
25 matter how you do the math we are more than what would be

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1 required as a matter-of-right. We also believe that we've  
2 addressed these issues with the ANC and they believe that  
3 with the rest of our public benefits and amenities package  
4 it's a well-balanced project and they unanimously and  
5 enthusiastically supported and signed our MOU after we  
6 postponed the hearing to work with them on all of these  
7 issues. So we do think that we're providing not only what's  
8 required by IZ but significantly more than that, and if you  
9 consider that the amount of square footage of affordable  
10 housing that is being provided at 50 percent of the MFI is  
11 required to be 150 or 200 square feet and we're providing a  
12 whole unit at almost 1,000 square feet, in addition to doing  
13 two-bedroom units which aren't required.

14           So it's our position that we're going above and  
15 beyond what is required by the zoning regulations, and we can  
16 submit a more detailed response after the hearing if you all  
17 would like that.

18           COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

19           CHAIRMAN HOOD: I have not had a chance. I don't  
20 know if I need anything anymore, unless my colleagues need  
21 something. I didn't know that this was already in front of  
22 me. So, I don't think I really need anything else; I just  
23 need to look at this. Any more questions up here?

24           Commissioner May?

25           COMMISSIONER MAY: Yes, I'm sorry; again, because

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1 both of these relate compared to when I was preparing for  
2 this, and I am confused by it. The real bottom line seems  
3 to be that when you look at the PUD with map amendment to MU-  
4 5 reduce, set aside only -- I mean, that column, that center  
5 column of Ms. Simon's submission comes down to a requirement  
6 of 3,774. And your submission I think is saying that if you  
7 do that same calculation, it comes down to 2,539; is that  
8 right?

9 MS. BLOOMFIELD: So there's a couple of pieces  
10 here; her center column assumes that you would fall into the  
11 10 percent, so the non-reduced 1003.1.

12 COMMISSIONER MAY: Right.

13 MS. BLOOMFIELD: And it has been interpreted in  
14 the past that if you don't fall into the 1003.1 category,  
15 which we don't, as you've explained, you go under the 1003.2  
16 bucket. And that's how we did the analysis. In addition to  
17 that, the square footage that she has used in her math, which  
18 makes sense once you look at our zoning calculations chart,  
19 is actually not the correct number; the number on our chart  
20 shows the total gross floor area and the number that we were  
21 using is slightly lower; it's just the total residential  
22 gross floor area. So these two charts, both of which were  
23 submitted today, are not entirely apples to apples.

24 MS. SIMON: The issue is that it's not just a  
25 formula based on gross residential floor area, it's also the

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1 bonus density formula, and that kicks in and --

2 MS. BLOOMFIELD: Right, and we did those  
3 calculations as well.

4 COMMISSIONER MAY: Do you understand the  
5 difference now?

6 COMMISSIONER SHAPIRO: I feel better about this.  
7 I mean, you're working with two different sets of numbers and  
8 I'm curious whether, Ms. Simon, if you've seen the response  
9 they've provided to yours?

10 MS. SIMON: I have not seen that.

11 COMMISSIONER SHAPIRO: Because that actually might  
12 -- regardless of review, that might be helpful data for you.

13

14 CHAIRMAN HOOD: So what I want to do, I want to  
15 be able to look at both of these. Because I was asking for  
16 what I have here in front of me, and I think we need some  
17 time to look at this, especially since this was just given  
18 to us this evening. I would ask the Office of Planning  
19 officer to weigh in to help us with us, but Ms. Simon, I  
20 would also ask that you get a copy of this as well and see  
21 if your math matches -- I also thought math was an exact  
22 science, but I guess not; I guess it depends on what numbers  
23 we're all working with. So whose books are we using?

24 But anyway, let's see if we can all get on the  
25 same page with that issue, okay?

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1 MS. SIMON: Will I have an opportunity to respond  
2 to this?

3 CHAIRMAN HOOD: Yes, that's what I'm asking for --  
4 before we -- well, I don't know where we're going with this  
5 -- before we go too far, we'll have a chance to look at what  
6 we have in front of us.

7 Okay, Ms. Myers and Ms. Steingasser, if you all  
8 can help weigh in on this.

9 MS. STEINGASSER: Yes, sir. And just for the  
10 record, we did run these numbers by our housing specialist,  
11 Art Rodgers, as well as HCD.

12 CHAIRMAN HOOD: The numbers from the applicant?

13 MS. STEINGASSER: Yes, and they agreed with the  
14 numbers from the applicant. And there's also a text  
15 amendment 0433I which is clarifying this very issue, to make  
16 it clear, because the language in ZR16 meant to bring forward  
17 exactly the language from the 1958 regulations which said  
18 "or" not "and" between the building height and the type of  
19 construction; it was either/or, not both. And so that word  
20 "or" got left out, and so that's being clarified through the  
21 existing case. So, I think what's really important here and  
22 what I don't want to get lost is the applicant is consistent  
23 with the zoning regulations; it's whether it's classified as  
24 a proffer in excess, but the application does comply with the  
25 zoning regulations and it does exceed the zoning regulations.

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1 How much it exceeds is what Ms. Simon disagrees with, but it  
2 does exceed it. So that's why Office of Planning is happy  
3 to support the application and we would request that any  
4 clarification be established after proposed action.

5 CHAIRMAN HOOD: Okay. All right, I want to allow  
6 you, Ms. Simon, so we can all get on the same page. Because  
7 I think I have a comfort level now. I know we're doing some  
8 corrections here but I want to make sure going forward -- and  
9 we appreciate your participation in doing this -- a lot of  
10 people don't do this and go through this magnitude, so I want  
11 to make sure to be considerate of your response as well.

12 So we will allow you a time to look at what Ms.  
13 Steingasser just mentioned and also what the applicant  
14 proposes tonight. I think, Ms. Steingasser, what I'm hearing  
15 from you is you're fine with what we have here, so I don't  
16 need any more from the Office of Planning.

17 MS. STEINGASSER: We would happily submit  
18 additional memorandum in confirmation of this interpretation.

19 CHAIRMAN HOOD: Okay. Can we do sound bites?  
20 Let's do sound bites so we won't have too much to look at  
21 because we'll get confused.

22 MS. STEINGASSER: Bullets, we do bullets.

23 CHAIRMAN HOOD: Thank you very much. Okay, and  
24 that's really everybody who can do sound bites for us.

25 All right, so I think we're set on that issue.

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1 Ms. Simon, are we on the same page now?

2 MS. SIMON: Yes, what kind of time frame am I  
3 looking at?

4 CHAIRMAN HOOD: I'm not sure yet. Let me make  
5 sure; anything else pertaining to this case?

6 MS. BLOOMFIELD: Commissioner Hood, I would just  
7 ask, if she's not a party, does she get an opportunity to  
8 respond to what was submitted today?

9 CHAIRMAN HOOD: Since she brought up this issue,  
10 this one particular issue -- and I think we're fine with the  
11 RPP issue because we're going to take care of that, correct?

12 MS. BLOOMFIELD: Yes.

13 CHAIRMAN HOOD: I would like to see her response.  
14 I would just like to see where she is and we will make the  
15 final decision. I would ask her. I don't want to throw out  
16 her testimony and not follow up on her comments, okay?

17 MS. BLOOMFIELD: Okay.

18 CHAIRMAN HOOD: I don't want to do that. Do you  
19 have a problem with that?

20 MS. BLOOMFIELD: No, sir.

21 CHAIRMAN HOOD: It's funny; I thought you were  
22 going to say that. Do we have -- and that's the only issue  
23 that I think we really have outstanding, other -- because  
24 we've agreed to the RPP and everything else, it seems that  
25 the Office of Planning and DDOT, everything seems to be

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1 agreed -- this is the only outstanding issue.

2 COMMISSIONER MAY: Mr. Chairman, I would point out  
3 if we are asking Ms. Simon to make an additional submission,  
4 the applicant should have the opportunity to rebut that,  
5 right?

6 CHAIRMAN HOOD: Right, I think they do. I think  
7 that's a requirement.

8 COMMISSIONER MAY: Right. So whatever gets  
9 submitted, then the applicant will be able to respond to  
10 that.

11 CHAIRMAN HOOD: Again, we're looking for sound  
12 bites, if you don't mind. Because it gets too confusing.  
13 I haven't been to geometry in a long time.

14 Okay, anything else? Comments? Okay, does the  
15 applicant have anything final? Oh, wait a minute; does the  
16 applicant have any cross for Ms. Simon?

17 MS. MILANOVICH: No.

18 CHAIRMAN HOOD: Okay. Again, I'm not seeing the  
19 ANC. So, Ms. Simon, thank you. Ms. Bloomfield, do you have  
20 any closing?

21 MS. BLOOMFIELD: Yes, I would just say a couple  
22 of things; Commissioner Turnbull ask that we tighten up some  
23 of the Office of Planning condition language, and so we'd be  
24 happy to file that as well with our submission if that's  
25 something you'd like as well.

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1 COMMISSIONER TURNBULL: That's fine.

2 MS. BLOOMFIELD: With respect to the hours of  
3 operation on that point, the current restaurant use with a  
4 summer garden at the site has an ABRA license until 2:00 a.m.  
5 seven days a week, so restricting it to 12:00 midnight would  
6 be reducing what the current ABRA license already permits.  
7 We can put that in the record if that's helpful in terms of  
8 our response to the OP conditions.

9 CHAIRMAN HOOD: Was that time agreeable to the ANC  
10 as well?

11 MS. BLOOMFIELD: They had no concerns with the  
12 outdoor use or time or noise.

13 CHAIRMAN HOOD: Okay.

14 MS. BLOOMFIELD: And then finally, we have not yet  
15 submitted to the record our final landscape plan that we  
16 agreed to with DDOT and with the ANC more importantly than  
17 what is referenced in the ANC's resolution and the MOU, and  
18 so we'd like the opportunity to submit a final complete set  
19 of architectural drawings that shows what you're seeing here  
20 tonight on the PowerPoint presentation with the landscape  
21 plan.

22 And that's it. Thank you very much. And given  
23 that the issues are relatively straightforward, we would ask  
24 that you consider taking proposed action this evening. Thank  
25 you.

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1           CHAIRMAN HOOD:        Okay, commissioners, my  
2 calculations, I want to make sure we're doing the same math.  
3 We only have one issue that I see; everything else I think  
4 has been resolved. But let me open it up for discussion.  
5 You heard the requests. I think this is ready for final,  
6 unless we want to hold off on that one issue -- I mean, a  
7 final for proposed -- and I will tell you that even though  
8 we take proposed doesn't mean we will take final -- I just  
9 want to put that out there so nobody won't think that this  
10 is a done deal, because it's never a done deal around here.

11           Okay, so, I don't know; colleagues, let me hear  
12 from you.

13           VICE CHAIR MILLER: Mr. Chairman, I would agree  
14 that we can take proposed action tonight and get whatever  
15 additional submissions from anybody prior to our taking final  
16 action. I'm prepared to go forward with proposed action  
17 tonight.

18           CHAIRMAN HOOD:    Okay, do I have a consensus?

19           COMMISSIONER SHAPIRO: I would, though perhaps a  
20 little bit more hair more precision than the Vice Chair said,  
21 because we're only looking for information from a few people,  
22 one person; the applicant, Ms. Simon, OP, and response, and  
23 that's it.

24           VICE CHAIR MILLER: Right. I was referring to the  
25 IZ submission from the applicant, the OP and Ms. Simon, if

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1 she chooses. But the applicant said that they're going to  
2 submit some landscaping plan as well. Didn't you say that?

3 MS. BLOOMFIELD: Yes, just to clarify; our  
4 preference would be to submit an entire updated set; although  
5 most of the issues will be the same just so it's one complete  
6 consistent set.

7 VICE CHAIR MILLER: Yes. Okay, thanks.

8 CHAIRMAN HOOD: Okay, so now we're down to four  
9 things that we're looking for. You know what; I think the  
10 record is complete. Is there anything else, commissioners?

11 All right, in that case, I think we're ready to  
12 move forward. Would somebody like to make a motion?

13 VICE CHAIR MILLER: Mr. Chairman, I would move  
14 that the Zoning Commission take proposed action on Case No.  
15 18-03, Consolidated PUD Related Amendment for Dancing Crab  
16 Properties, also known as Tenleytown Apartments, Square 1769,  
17 Lot 1 and 2, and ask for a second?

18 COMMISSIONER TURNBULL: Seconded.

19 CHAIRMAN HOOD: Okay, it's been moved and  
20 seconded. Any further discussion?

21 All in favor, aye.

22 Any opposition?

23 Not hearing, Ms. Schellin, would you please record  
24 the vote?

25 SECRETARY SCHELLIN: The staff records the vote

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1 5-0-0 to approve proposed action in Zoning Commission Case  
2 No. 18-03, Commissioner Miller moving, Commissioner Turnbull  
3 seconding, Commissioner May, Shapiro and Hood in support.  
4 And if we could submit, get some dates, how much time do you  
5 need for the full set of plans?

6 MS. BLOOMFIELD: No time at all.

7 SECRETARY SCHELLIN: Okay. So how about --?

8 CHAIRMAN HOOD: So she can turn those in tonight.

9 MS. BLOOMFIELD: Actually, we could.

10 CHAIRMAN HOOD: Oh, excuse me.

11 SECRETARY SCHELLIN: Yes, we wanted you to submit  
12 those online.

13 CHAIRMAN HOOD: Making me be quiet, okay.

14 SECRETARY SCHELLIN: Yes, so that's fine. I guess  
15 the main thing is how much time do you need to respond for  
16 the IZ, a week?

17 MS. BLOOMFIELD: Well, we don't need much time  
18 after her submission. We can file it --

19 SECRETARY SCHELLIN: She's actually responding to  
20 you guys.

21 MS. BLOOMFIELD: Oh, we already filed ours.

22 CHAIRMAN HOOD: So she's going to look at this in  
23 her response.

24 SECRETARY SCHELLIN: Okay, so OP, are we --?

25 CHAIRMAN HOOD: Let me go to Ms. Steingasser, she

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1 has something else.

2 MS. STEINGASSER: We can file our report within  
3 the next two days.

4 SECRETARY SCHELLIN: Okay, so we'll just say that  
5 we'll give OP until Friday 11/2 to make their submittal, and  
6 then Ms. Simon would have until 11/9 to make her submission,  
7 and then the applicant would have until 11/16 to provide a  
8 response to the OP or Ms. Simon's submittal; and also at that  
9 same time you would provide everything else, whether you  
10 submit it before then or at the same time, you have until the  
11 16th.

12 CHAIRMAN HOOD: Ms. Schellin, is that the best  
13 schedule? Can we do it faster?

14 SECRETARY SCHELLIN: No, we have to refer this to  
15 NCPC, so.

16 CHAIRMAN HOOD: All right.

17 SECRETARY SCHELLIN: It isn't going to matter.

18 CHAIRMAN HOOD: Okay.

19 MS. BLOOMFIELD: So you want Findings of Fact and  
20 Conclusions of Law on that same date?

21 SECRETARY SCHELLIN: I was getting there.

22 MS. BLOOMFIELD: Thank you.

23 SECRETARY SCHELLIN: Yes. And the draft findings,  
24 facts, conclusions of law served by the 16th, and then we'll  
25 put this on for December 17th.

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1 CHAIRMAN HOOD: Okay, are we all on the same page?  
2 Ms. Steingasser, did you have something you want to add?

3 MS. STEINGASSER: I would just ask for  
4 clarification; does the Commission accept the applicant's  
5 modified conditions?

6 The applicant has submitted modified conditions  
7 to OP's conditions and accepted DDOT's conditions, and I'm  
8 just wondering where the Commission is on that?

9 COMMISSIONER MAY: Mr. Chairman, I have no  
10 objection to the proposed conditions.

11 CHAIRMAN HOOD: I think, from what I heard, the  
12 only thing I was going to stand fast was on the -- I think  
13 you all recommended 12 o'clock, but I think from what I'm  
14 hearing now, it's already 2 o'clock and it's not an issue.  
15 So I don't know where others are but I just wanted --

16 COMMISSIONER TURNBULL: I think they're still  
17 going to submit something on that.

18 CHAIRMAN HOOD: Well --

19 MS. BLOOMFIELD: We can submit something. The  
20 condition that we had now that I heard Commissioner Turnbull  
21 have an issue with was the instrumental or recorded music;  
22 the way we wrote it was, "instrumental or recorded music  
23 conveyed via speakers," so our view is that it was clear  
24 that, that was not live music. But if you'd like us to  
25 tighten it up, we're more than happy to do so.

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1 COMMISSIONER TURNBULL: Yes, it just sounded  
2 strange to me how it was worded.

3 CHAIRMAN HOOD: Amplified live music --

4 COMMISSIONER SHAPIRO: So put the word "recorded"  
5 before "instrumental."

6 CHAIRMAN HOOD: Okay, so are we going to -- I  
7 think the question is asking for us to propose conditions  
8 from the OP report, the changes -- are these three -- are we  
9 fine with these? I think we heard one commissioner. Others  
10 are fine?

11 MS. SIMON: There were also the RPP conditions;  
12 I don't know if that'll be in the Findings of Fact or  
13 earlier.

14 CHAIRMAN HOOD: Thank you, Ms. Simon; I think we  
15 covered that. Yes, I think that's good.

16 MS. SIMON: I think the applicant was supposed to  
17 submit something.

18 CHAIRMAN HOOD: We've asked them to tighten that  
19 up. All right, but these three that I have here in front of  
20 me was the question that was asked. Any objections?

21 Okay, not hearing. So yes, Ms. Steingasser, to  
22 your question.

23 SECRETARY SCHELLIN: And then you'll also provide  
24 the -- go through the process of the proffers and conditions  
25 that starts in seven days. Okay.

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1 CHAIRMAN HOOD: Okay, so I think we're all on the  
2 same page as Ms. Schellin. Do we have anything else?

3 SECRETARY SCHELLIN: No, sir.

4 CHAIRMAN HOOD: Okay. So with that, I want to  
5 thank everyone for their participation. This hearing is  
6 adjourned.

7 (Whereupon, the above-entitled matter went off the  
8 record at 7:34 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: 10-29-18

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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