

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

Monday

April 29, 2019

+ + + + +

The Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice Chairperson
- 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
- MAXINE BROWN-ROBERTS

- ELISA VITALE
- BRANDICE ELLIOTT

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.
MAXIMILIAN TONDRO, ESQ.

DEPARTMENT OF ENERGY AND ENVIRONMENT:

EMIL KING

The transcript constitutes the minutes from
the Regular meeting held on April 29, 2019.

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

(6:49 p.m.)

1
2
3 CHAIRMAN HOOD: This meeting will please come to
4 order. Good evening ladies and gentlemen. This is a public
5 meeting of the Zoning Commission for the District of
6 Columbia.

7 My name is Anthony Hood. Joining me are Vice
8 Chair Miller, Commissioner Shapiro, Commissioner May,
9 Commissioner Turnbull. We're also joined by the Office of
10 Zoning staff, Ms. Sharon Schellin, Office of Attorney General
11 Staff, Mr. Tondro and Mr. Ritting. Office of Planning staff,
12 Ms. Steingasser, Ms. Vitale, and Ms. Brown-Roberts.

13 Copies of today's meeting agenda are available to
14 you and are located in the bin near the door. We do not take
15 any public testimony at our meetings unless the Commission
16 requests someone to come forward. Please be advised this
17 proceeding is being recorded by a Court Reporter and is also
18 webcast live.

19 Accordingly, we must ask you to refrain from any
20 disruptive noises or actions in the hearing room, including
21 the display of any signs or objects. Please turnoff all
22 electronic devices.

23 Does the staff have any preliminary matters?

24 MS. SCHELLIN: None other than what's on the
25 agenda.

1 CHAIRMAN HOOD: Okay, I think we, let me read
2 this, okay. All right we have a quick item of business.

3 As Chairman of the Zoning Commission for the
4 District of Columbia in accordance with 405(c) of the Open
5 Meetings Act, I move that the Zoning Commission hold the
6 following closed meeting on Monday, May the 13th, 2019 at
7 6:00 p.m. for the purpose of receiving legal advice from its
8 counsel per 405(b)(4). And to deliberate, but not voting on
9 the contested cases per 405(b)(13) of the Act, D.C. Official
10 Code 2-575(b)(4) and (13).

11 Is there a second?

12 VICE CHAIR MILLER: Second.

13 CHAIRMAN HOOD: Will the Secretary please take
14 roll call vote on the motion before us now that has been
15 seconded?

16 MS. SCHELLIN: Chairman Hood?

17 CHAIRMAN HOOD: Yes.

18 MS. SCHELLIN: Vice Chair Miller?

19 VICE CHAIR MILLER: Yes.

20 MS. SCHELLIN: Commissioner Shapiro?

21 COMMISSIONER SHAPIRO: Yes.

22 MS. SCHELLIN: Commissioner May?

23 COMMISSIONER MAY: Yes.

24 MS. SCHELLIN: Commissioner Turnbull?

25 COMMISSIONER TURNBULL: Yes.

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1 MS. SCHELLIN: Motion carries.

2 CHAIRMAN HOOD: As it appears that the motion has
3 passed, I request that the Office of Zoning provide notice
4 of this closed meeting in accordance with Act. Anything else
5 Ms. Schellin?

6 MS. SCHELLIN: No, sir.

7 CHAIRMAN HOOD: Okay, let's go right into our
8 agenda.

9 Okay, first we have Determination of Scheduling,
10 Modification of Consequence. Zoning Commission Case Number
11 85-16A, CLPF-CC Pavilion, LP - PUD Modification of
12 Consequence at Square 1661. Ms. Schellin.

13 MS. SCHELLIN: Yes, the Applicant is requesting
14 modification of consequence to clarify that the required
15 retail space limited to ground floor street frontage, and
16 that the Applicant intends to use the interior facing space
17 around the atrium for large scale indoor multiple medical
18 uses.

19 At Exhibits 3 through 3B, you have an ANC 3E
20 report in opposition. Exhibit 5 is an OP report which
21 doesn't take a stand on whether this is a modification of
22 consequence or not, but does state that they believe the
23 proposal to locate medical office use in space identified
24 for, and previously occupied by retail uses can be
25 accommodated while maintaining the active atrium space, and

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1 the intent of the mixed-use building.

2 And the proposed clarifying text to decision
3 number two, would reinforce the intent for retail space on
4 the street frontage to be maintained for the life of the PUD
5 and not be converted to office use.

6 Use of the interior vacant spaces as office use
7 would not increase the FAR of the building. The medical
8 office use could increase client traffic through the space
9 and thus the potential for increased retail customers during
10 the day.

11 Ask the Commission to consider whether this is in
12 fact a PUD modification of consequence, and if so, then set
13 a schedule.

14 CHAIRMAN HOOD: Okay, Commissioners I think this
15 case is relatively old. Well maybe I should use better
16 language than old, but it is old. There are a lot of missing
17 elements as far as I'm concerned. And when I read the
18 filings, I too believe in some of what I saw. And I think
19 this, for me, I would take this off as a modification of
20 consequence.

21 And I don't know I think I would propose that we
22 maybe go to a modification of significance, so we can have
23 a full flooded hearing, but before I go any further, Vice
24 Chair Miller did you want to add something?

25 VICE CHAIR MILLER: Yes, thank you, Mr. Chairman.

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1 I would be inclined to agree with your comments, but before
2 we get there I need to, I think I should disclose, and on
3 this fairly recuse myself, unless somebody has an objection.

4 That an adjacent PUD was the Miller company's
5 which was approved around the same time or thereafter in '86
6 or '87. That company was owned by my parents. And my
7 brother was a principle in that company, and they were
8 involved in that zoning case. That's the adjacent PUD to the
9 south, I believe.

10 I never had a financial or operational interest
11 in that. They sold that, they were here for this case to
12 testify in support of this adjacent PUD. They got their
13 approval. They sold that property in 1988, 31 years ago.
14 And that company hasn't existed since 1991, when my mother
15 passed away. My father actually passed away I think during
16 the pendency of that case in '86.

17 So I wanted to disclose that. If, I think I can
18 be objective about this matter if a party of one of my
19 colleagues thinks I should recuse myself, I'd be happy to do
20 that. So I just wanted to put that on the record since it
21 jumped out at me when the original parties were named.

22 One of them was the Miller Company, who wasn't
23 served, because they haven't existed since 1991. And So I
24 put that out there for the record, Mr. Chairman.

25 CHAIRMAN HOOD: Any other comments on that?

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1 Commissioner Shapiro, Commissioner Turnbull.

2 COMMISSIONER TURNBULL: I would just add since you
3 didn't have any fiduciary responsibility and you weren't
4 really involved, I see this as a totally separate issue, so
5 I would not consider your recusal necessary. I think you
6 should stay.

7 CHAIRMAN HOOD: Okay, Commissioner Shapiro.

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair, I
9 concur with Commissioner Turnbull. And as with you, Mr.
10 Chair, I would agree that this is, should instead be
11 considered a modification of significance.

12 And if the Applicant were to re-file as a
13 modification of significance then I would also want them to
14 -- if they, they need to serve all parties or have an
15 explanation as to why they can't serve parties. I mean
16 there's a little bit of relative information there from Vice
17 Chair Miller, but there may be others for other parties as
18 well.

19 So we would need some kind of an explanation as
20 to why they can't serve all parties. If we do take this
21 action and if that's the direction they go.

22 CHAIRMAN HOOD: Okay. Any other comments,
23 Commissioner May.

24 COMMISSIONER MAY: I agree, I agree. I agree, I
25 agree. And I think I agree all the way to the end. Sorry,

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1 all's fine with me.

2 CHAIRMAN HOOD: So do we need to make a motion to
3 make this --

4 COMMISSIONER TURNBULL: Mr. Chair there's only one
5 other --

6 CHAIRMAN HOOD: Yes.

7 COMMISSIONER TURNBULL: There was an issue of --

8 CHAIRMAN HOOD: Drawings.

9 COMMISSIONER TURNBULL: Drawings.

10 CHAIRMAN HOOD: Right, if we did an update, I
11 would hope that would be automatic. But if we have to say
12 something about it. Then yes, we need updated drawings.
13 Update everything. This goes back a while.

14 COMMISSIONER TURNBULL: Right.

15 CHAIRMAN HOOD: You're right maybe I shouldn't
16 take that for granted. Yes, drawings. Is there anything
17 else?

18 MS. SCHELLIN: I think there was a question about
19 the original drawings. I would just state that they Office
20 of Zoning has looked in our flat files, because back many
21 years ago the large plans were brought in.

22 And we could not locate the large, the original
23 drawings. We have drawings and I think for the year, a case
24 prior, and a case later on, but we could not find, and they
25 did not have marked on there the square footage for this

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1 space.

2 So maybe Ms. Giordano can check with her client.
3 They may have the original drawings to be able to show the
4 Commission when they file the modification of significance
5 what that square footage was from the original plan. But the
6 Office of Zoning has already checked to try to --

7 CHAIRMAN HOOD: To try to find, okay. I lost
8 track, I want to go back to it, I think this is important.
9 I want to go back to Vice Chair Miller's disclosure.

10 I believe that he can definitely serve this case.
11 He wouldn't have any biases, because a lot of us have a
12 social -- we live here in the city too. We have
13 associations.

14 If that was the case, the whole lot of times I
15 wouldn't even be sitting up here. And if it's, if we go to
16 that point, I think that you don't have anything, you didn't
17 have anything financially or anything involved with this.
18 So I don't think there's an issue.

19 Is there anyone who believes up here that we --
20 I need to do this for the record. Is there anyone who
21 believes that Vice Chair Miller should recuse himself?

22 PARTICIPANT: No.

23 CHAIRMAN HOOD: Okay, all right.

24 VICE CHAIR MILLER: Not to just, thank you, Mr.
25 Chairman -- and not to prove that I don't have a bias, but

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1 I for the record agree that it is a modification of
2 significance and should have a public hearing. Frankly, it's
3 a change of use.

4 CHAIRMAN HOOD: Right.

5 VICE CHAIR MILLER: A medical office to retail.

6 CHAIRMAN HOOD: Right, and on these kind of cases
7 we need as many people as possible. Vote could be two to
8 two, you never know. So, okay. Yes.

9 VICE CHAIR MILLER: I think I may have said that
10 wrong, from retail to medical office is a change in use.

11 CHAIRMAN HOOD: All right so I've been advised
12 what I need to do to dispose of this is, I move that we deny
13 this as a request of a modification of consequence. And if
14 I'm going to deny it, do I have the Counsel come up?

15 Okay, I move that we deny this request as a
16 modification of consequence which is Zoning Commission Case
17 Number 85-16A and ask for a second.

18 COMMISSIONER TURNBULL: Second.

19 CHAIRMAN HOOD: It's been moved and properly
20 seconded. Any further discussion? And I think the
21 discussion was noted for the record of why we're denying
22 this. Any further discussion?

23 (No audible response.)

24 CHAIRMAN HOOD: All in favor?

25 (Chorus of aye.)

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1 CHAIRMAN HOOD: Any opposition?

2 (No audible response.)

3 CHAIRMAN HOOD: Not hearing any, Ms. Schellin will
4 you record the vote? Please record the vote.

5 MS. SCHELLIN: Yes, staff records the vote 5-0-0
6 to deny Zoning Commission Case Number 85-16A as a
7 modification of consequence. And the Applicant is directed
8 to file a modification of significance. Commission Hood
9 moving, Commissioner Turnbull seconding, Commissioners May,
10 Miller and Shapiro in support of denial.

11 CHAIRMAN HOOD: Okay, are we finished with this
12 case?

13 (No audible response.)

14 CHAIRMAN HOOD: All right, next let me go to
15 Zoning Commission Case Number 80-70B, Jemal's Darth Vader,
16 LLC - PUD Modification of Consequence at Square 563. Ms.
17 Schellin.

18 MS. SCHELLIN: Yes, sir. The Applicant has
19 requested a modification of consequence in this case in order
20 to address issues identified with the existing structure to
21 address perspective tenant demand. And to comply with the
22 DC Construction Code.

23 At Exhibit 5 is an OP report recommending
24 approval. We have two ANCs involved in this case, 6E and 6C,
25 ANC 6E has already provided its support. So we'd ask the

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1 Commission to consider whether this case is considered a
2 modification of consequence or not?

3 CHAIRMAN HOOD: Okay. Ms. Schellin, we didn't
4 receive anything from ANC 6E, correct?

5 MS. SCHELLIN: 6C, not yet.

6 CHAIRMAN HOOD: 6C is who we did not receive
7 anything from?

8 MS. SCHELLIN: Correct.

9 CHAIRMAN HOOD: Who did we receive something from?

10 MS. SCHELLIN: 6E.

11 CHAIRMAN HOOD: Okay. I've got it crossed. Okay,
12 so Commissioners normally if we decide that this is -- first
13 does anybody think this needs to come off of the
14 determination schedule as a modification of consequence?

15 (No audible response.)

16 CHAIRMAN HOOD: Not hearing anyone. As you know
17 in this case, typically we can deliberate if all parties have
18 submitted something. And 6C in this case has not. So I
19 guess the only thing we can do in this case moving forward,
20 Ms. Schellin, is determination of schedule.

21 Any other comments from my colleagues first on
22 this? Anything we need extra?

23 (No audible response.)

24 CHAIRMAN HOOD: Okay, so Ms. Schellin could you
25 do the scheduling please?

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1 MS. SCHELLIN: Yes, our next meeting will be May
2 13th, so if we could have the ANC, to give them the most
3 time, we'll just leave the record open for them until May
4 13th, say 3 o'clock p.m. And we'll put this on for May 13th.

5 CHAIRMAN HOOD: Okay.

6 MS. SCHELLIN: If the Applicant wants to reach out
7 to ANC 6C that would be great.

8 MR. TONDRO: Sorry, when are we going to take it
9 up?

10 MS. SCHELLIN: I've been advised they're going to
11 actually go to go the ANC tomorrow, so that works out
12 perfect. We'll take it up May 13th.

13 CHAIRMAN HOOD: Okay, all right, anything else on
14 this?

15 MS. SCHELLIN: No, sir.

16 CHAIRMAN HOOD: Okay, next let's go to Zoning
17 Commission Case Number 14-12C, EAJ 1309 5th street, LLC - PUD
18 Modification of consequence at Square 3591. Ms. Schellin.

19 MS. SCHELLIN: The Applicant has filed for a
20 modification of consequence and seeks to make improvements
21 necessary to enable the use of the third level of Union
22 Market as a park and for community and entertainment events
23 during the period prior to construction of the south
24 building.

25 At Exhibit 1D is an ANC report in support.

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1 Exhibit 4 is an OP report recommending approval, but also
2 asking that the Applicant provide a dimensioned roof plan
3 showing the setbacks for all proposed structures, which has
4 been provided already by the Applicant at Exhibits 5 and 5A.

5 We would ask the Commission to consider whether
6 first, this case is a modification of consequence? And since
7 the only party, the ANC has already provided a report, if the
8 Commission is so inclined, they could take action this
9 evening.

10 CHAIRMAN HOOD: Okay Commissioners, anyone believe
11 that this should come off as a modification of consequence?

12 (No audible response.)

13 CHAIRMAN HOOD: Okay, not hearing any, as Ms.
14 Schellin stated in this case I think this is unless we have
15 some other issues, I think this is flavored right for us to
16 go ahead and do some deliberation. I don't think we need to
17 delay this.

18 As stated the only party was the ANC 5D I believe
19 in this case. And let's open it up for any questions or
20 comments that some of us may have, may have comments on.

21 (No audible response.)

22 CHAIRMAN HOOD: Nobody has comments? Okay, so the
23 dimension roof plan, as Ms. Schellin, I think that's been
24 provided. That was one of the things that was mentioned.
25 All right, I think that's pretty much it. And the ANC has

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1 provided comments as well. Am I leaving anything out?

2 (No audible response.)

3 CHAIRMAN HOOD: Okay, so would somebody like to
4 make a motion? I'm not going to try to fight to find
5 something to say, but anyway does anybody have a motion? I
6 think this is ready to go forward. Commissioner Shapiro.

7 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
8 move that we approve Zoning Commission Case 14-12C, EAJ 1309
9 5th street, LLC - PUD Modification of consequence at Square
10 3591. And look for a second.

11 VICE CHAIR MILLER: Second.

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

14 (No audible response.)

15 CHAIRMAN HOOD: All in favor?

16 (Chorus of aye.)

17 CHAIRMAN HOOD: Any opposition?

18 (No audible response.)

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

21 MS. SCHELLIN: Staff records the vote 5-0-0 to
22 approve final action, Zoning Commission Case Number 14-12C.
23 Commissioner Shapiro moving, Commissioner Miller seconding,
24 Commissioners Hood, May and Turnbull in support. Ask the
25 Applicant to please provide a draft order.

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1 CHAIRMAN HOOD: Vice Chair Miller.

2 VICE CHAIR MILLER: Yes, and I meant to note that
3 I look forward to seeing a Kastles game on top of the roof
4 there.

5 CHAIRMAN HOOD: Did you say playing in the game,
6 or watching? Oh.

7 VICE CHAIR MILLER: Definitely, watching.

8 CHAIRMAN HOOD: Okay, all right. Well let's go
9 further under deliberations. Zoning Commission Case Number
10 80-11A, 91 TTPA LESSEE, LLC - PUD Modification of Consequence
11 at Square 101. Ms. Schellin.

12 MS. SCHELLIN: At the March 25th public meeting,
13 the Commission determined this was in fact a modification of
14 consequence and asked the Applicant to provide some
15 additional information. The Applicant has done that at
16 Exhibits 7 through 8A3. The ANC was the only party to
17 respond at Exhibit 4. So we'd ask the Commissioner to
18 consider taking final action this evening.

19 CHAIRMAN HOOD: Okay, thank you, Ms. Schellin.
20 Again Commissioners on this one, the request was to -- first
21 let me go back, does anyone see -- we've already decided
22 that, okay. Sometimes it all runs together. Okay, so we've
23 already decided that.

24 Again in this case it was to modify the plans and
25 conditions of a Zoning Commission Order Numbers 339 and 348

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1 to accommodate the changes of the building's facade, interior
2 layout, and loading dock. As well as for an increased
3 flexibility from C-903.1 to allow loading in the existing
4 loading zone on I Street Northwest, adjacent to the building.

5 Let me open up, any comments or questions on what
6 the request, what the ask is? Very clear and straight
7 forward? We all good, somebody can make a motion.

8 COMMISSIONER TURNBULL: Mr. Chair I move that we
9 would approve Zoning Case Number 80-11A, 91 TTPA LESSEE, LLC
10 - PUD Modification of Consequence at Square 101. Look for
11 a second.

12 CHAIRMAN HOOD: I'll second that.

13 It's been moved and properly seconded.

14 Any further discussion?

15 (No audible response.)

16 CHAIRMAN HOOD: All in favor?

17 (Chorus of aye.)

18 CHAIRMAN HOOD: Any opposition?

19 (No audible response.)

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

22 MS. SCHELLIN: Staff records the vote 5-0-0 to
23 approve final action, Zoning Commission Case Number Case No.
24 80-11A. Commissioner Turnbull moving, Commissioner Hood
25 seconding, Commissioners May, Miller and Shapiro in support.

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1 CHAIRMAN HOOD: At all levels, it included the
2 conditions and everything, that motion. I just wanted to
3 make sure for the record it included the DDOT conditions and
4 everything.

5 MR. TONDRO: Yes.

6 CHAIRMAN HOOD: Okay. All right, under final
7 action Zoning Commission Case Number 18-14, 3840 S Capitol
8 LLC and 3848 S Capitol, LLC - Consolidated PUD & Related Map
9 Amendment at Square 6129. Ms. Schellin.

10 MS. SCHELLIN: At Exhibits 29 through 31 and 33
11 through 33A are the Applicants post hearing submissions.
12 Exhibit 32 is an NCPC letter advising the project falls under
13 one of the exceptions of Chapter 8 of NCPC's submission
14 guidelines and therefore exempt from their review.

15 Exhibits 34 through 34A is an OP supplemental
16 report that attaches DCHA's response to the relocation plan.
17 Exhibit 35, the Application -- I'm sorry, the Applicant filed
18 a motion to reopen the record to accept a revised relocation
19 plan, which was approved by the Chairman. And that revised
20 plan is at Exhibits 36 through 36A. They ask the Commissioner
21 to consider taking final action this evening.

22 CHAIRMAN HOOD: Okay, let me open it. Any
23 comments or questions on this? Commissioner Shapiro.

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Just
25 a comment around this issue around the tenant relocation and

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1 how it, a way to mitigate. I think that the tenant
2 relocation plan will partially mitigate the adverse effect
3 of this.

4 But the need to relocate the tenants is an adverse
5 effect of the PUD, and I think that it would be more
6 appropriate that the, that we recognize that this is
7 something that can be partially mitigated, but also that the
8 public benefits of the PUD outweigh the adverse effects.

9 So I just think it's important to put on the
10 record, that that's probably a more appropriate way to look
11 at this.

12 CHAIRMAN HOOD: Okay, I would agree. As far as
13 traffic impacts, we realize there are traffic impacts and
14 there's, Commissioner Shapiro has already mentioned the
15 impacts of the relocation plan.

16 While it won't do away with it, I think it's been
17 fully vetted. We've even had an update in our plan, in the
18 relocation plan, to try to lessen the adverse impacts or
19 lessen the inconvenience. And as long as that plan is
20 followed through, we won't do away with all of the impacts
21 it will pose, but I think it will lessen it.

22 Because eventually at the end of the day it's an
23 all affordable project. And I think that, well it will help
24 from the affordability of the project. And I think it will
25 increase the quality of life with newer residential, a newer

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1 development for residents.

2 So, I think us getting there might impose problems
3 but I think if we can work through it and stick to what's
4 been proposed, and make sure that we follow through,
5 especially with the relocation plan. But if you've been
6 following this Commission, we've always had issues with the
7 relocation plans and making sure people who lived there
8 before are able to return.

9 It's been a big issue, at least for this
10 Commissioner, and I'm sure my colleagues as well. So, any
11 other comments on this? Vice Chair Miller.

12 VICE CHAIR MILLER: Thank you, Mr. Chair. Yes,
13 I would agree with you Mr. Chairman, and Commissioner
14 Shapiro. And just, although we'd asked the Applicant to
15 consider offering additional inclusionary zoning exempt
16 affordable units after the affordability period of the
17 building expires, I just want to note that the Applicant
18 responded they were unable to commit to more.

19 But I do agree with the Applicant that the 60 year
20 long-term commitment to deep levels of affordability at the
21 project is a significant meaningful benefit of the project.

22 Crowding a large number of these family size units
23 at the 30 percent and 50 percent median family income level
24 for at least 60 years, which is 20 years longer than the
25 typical low income housing tax credit commitment, will create

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1 a large amount of affordable housing on a property that
2 currently has no guaranteed affordability for residents.

3 And in addition the Applicant has committed to 11
4 percent of the project at 60 percent MFI for the life of the
5 project. Exceeding the minimum 10 percent required under
6 inclusionary zoning. So for all those reasons I believe that
7 this all affordable housing commitment is a significant
8 benefit of the project.

9 CHAIRMAN HOOD: All right. Anything else, any
10 other comments? Commissioner Turnbull.

11 COMMISSIONER TURNBULL: I would just add one other
12 thing. We had made some comments about the architectural
13 elements of the building and how it ended and turned the
14 corner.

15 And I think we had asked that it might be more
16 appropriate for the neighborhood to include some more brick
17 at the ends of the building. And they have gone ahead and
18 done that. It just makes the building look a lot nicer.

19 CHAIRMAN HOOD: Okay. All right, any other
20 comments? All right with that I would move without comments,
21 the final action of the Zoning Commission Case Number 18-14,
22 and ask for a second.

23 VICE CHAIR MILLER: Second.

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

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1 (No audible response.)

2 CHAIRMAN HOOD: All in favor?

3 (Chorus of aye.)

4 CHAIRMAN HOOD: Any opposition?

5 (No audible response.)

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

8 MS. SCHELLIN: Staff records the vote 5-0-0 to
9 approve final action, Zoning Commission Case Number 18-14.
10 Commissioner Hood moving, Commissioner Miller seconding,
11 Commissioners May, Shapiro and Turnbull in support.

12 CHAIRMAN HOOD: Okay, next let's go to final
13 action again, Zoning Commission Case Number 04-13C, 1210C R
14 Street, LLC - PUD Modification of Significance at Square 277.
15 Ms. Schellin.

16 MS. SCHELLIN: Yes, the Exhibits 87 through 89 are
17 the Applicants post hearing submissions. We'd ask the
18 Commission to consider taking final action this evening.

19 CHAIRMAN HOOD: Commissioners, I can't remember
20 exactly why we held this up. But I remember having a full
21 discussion on the proffer and the 70 percent, which cannot
22 be administered by DHCD. And it looks to me like it just
23 came back the same way we did. But let me, before I go,
24 maybe I might have missed something. Maybe something did
25 change and I just may have missed it. I do miss things.

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1 So let me open up, any discussion or comments?
2 Mr. Shapiro.

3 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I
4 agree with the direction, I believe you were heading on this.
5 You know, we've looked at the amended PUD proffers, the new
6 public benefits that the Applicants agreed to provide, and
7 I do not believe that they are sufficient to justify
8 approval, given the availment of sensors that were already
9 provided for the project.

10 CHAIRMAN HOOD: Yes, and I believe that when we
11 set this out and to move this off site, I thought we had
12 really fully discussed that. So I don't like for that
13 discussion to be incorporated in this, because I'm going to
14 be, my vote will be to deny this request as a modification
15 of significance, as presented.

16 And I think we sent it back for, we made ourselves
17 clear I believe the first time at the other meeting. And it
18 seems like nothing has changed. So I would agree with
19 Commissioner Shapiro.

20 Let me, any others have any comments or questions?

21 VICE CHAIR MILLER: Yes, Mr. Chairman.

22 CHAIRMAN HOOD: Vice Chair.

23 VICE CHAIR MILLER: I would agree with my
24 colleagues. I mean the Applicant is creating additional
25 units and they, at the Logan Circle property and could have

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1 been at the 80 percent AMI level there, and complied with the
2 Zoning requirements. But they asked to go off site, three
3 miles away into the Petworth neighborhood.

4 And an 80 percent AMI unit at Logan Circle would
5 be a useful thing to have, but if they're going to go all the
6 way off site, into a much less expensive neighborhood, then
7 I think the Office of Planning was correct in recommending
8 that it be at the lower 50 percent MFI level.

9 And the Applicant while budging a little bit off
10 of the 80 percent to 70 percent, DHCD found that unworkable.
11 And while budging a little bit off of the affordability
12 period to make it longer, I just think that we don't want,
13 we want the off-site exception to be rare. And if it's going
14 to happen, it should be at a much deeper affordability level
15 or greater amount.

16 Because inclusionary zoning is about mixed-income
17 units all around the, in every neighborhood.

18 CHAIRMAN HOOD: And I think this unit being off,
19 so far off site diminishes the PUD proffer in the first
20 place. And I think that one of the things we tried to do in
21 this city is make sure we put affordable units all across the
22 city. In this case, that will not be allowing us to do that,
23 which again diminishes the rationale behind making this an
24 affordable unit, I mean where it is.

25 And I think that if you're going to give us

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1 something, you're going to move it up on Kennedy Street or
2 where ever, then I think it needs to be a deep affordability
3 as stated by the Vice Chair, and also in the Office of
4 Planning report.

5 So any other comments, questions on this? I would
6 move that we deny Zoning Commission Case Number 04-13C for
7 all the stated reasons that we stated tonight, and
8 previously, and ask for a second.

9 VICE CHAIR MILLER: Second.

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

12 (No audible response.)

13 CHAIRMAN HOOD: All in favor?

14 (Chorus of aye.)

15 CHAIRMAN HOOD: Any opposition?

16 (No audible response.)

17 CHAIRMAN HOOD: Not hearing any, Ms. Schellin
18 would you please record the vote?

19 MS. SCHELLIN: Staff records the vote 5-0-0 to
20 deny final action Zoning Commission Case Number 04-13C.
21 Commissioner Hood moving, Commissioner Miller seconding,
22 Commissioners May, Shapiro and Turnbull in support of denial.

23 CHAIRMAN HOOD: Okay, thank you. Okay, now let's
24 go to Time Extension, Zoning Commission Case Number 13-14C,
25 Jair Lynch Development Partners, on behalf of Vision McMillan

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1 Partners & DMPED - Two-year PUD Time Extension at Square
2 3128. Ms. Schellin.

3 MS. SCHELLIN: Yes, the Applicant has requested
4 a two year time extension, citing a lengthy litigation
5 process. This would be the second stage order. Exhibit 5
6 is an OP report recommending approval. We'd ask the
7 Commissioner to consider taking action on this time extension
8 request.

9 CHAIRMAN HOOD: Okay. Commissioners as you know
10 this whole scenario can be kind of confusing and I think the
11 simplest way for us to move forward, I would -- and also
12 consulting with counsel. You know this whole validity of the
13 period, and the order, and it presents itself a lot of
14 confusion.

15 So I would be inclined that we grant a waiver for
16 Z-705.6. And that we declare that the two year time
17 extension shall start on the day of issuance of the final
18 decision of the Court of Appeals, as regards to this
19 approval.

20 And that means that if it's remanded again,
21 whenever the final, final, final, final order ever gets out,
22 then that when I think the time should start. And hopefully
23 I stated that right, legally sufficiently to move forward.
24 Because I may not even be on the Commission then.

25 But hopefully I am, because I'd like to see this

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1 thing move forward as the Commission has already intended to.
2 So those are my comments on this. I don't know if others
3 have anything they want to add?

4 (Simultaneous speaking.)

5 CHAIRMAN HOOD: Commissioner Shapiro.

6 COMMISSIONER SHAPIRO: I concur.

7 CHAIRMAN HOOD: Okay, anybody else? May I ask for
8 legal sufficiency, Mr. Tondro did it capture everything?

9 MR. TONDRO: Yes, I think just to clarify that
10 this would apply to the Court of Appeals decision in both of
11 the appeal of the first stage as well as the second stage.

12 CHAIRMAN HOOD: First stage as well as the second
13 stage. And any other in the future, in the future?

14 MR. TONDRO: Any other potential future event that
15 may or may not occur, yes.

16 CHAIRMAN HOOD: Right, okay. All right, so I
17 think that's probably the clearest way. So with that noted,
18 and I will leave any working out of the language up to the
19 Office of Attorney General to work that out. I will move
20 that we approve as stated -- hold on a second.

21 I would move that we approve Zoning Commission
22 Number 13-14C as discussed, and ask for a second.

23 VICE CHAIR MILLER: Second.

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

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1 (No audible response.)

2 CHAIRMAN HOOD: All in favor?

3 (Chorus of aye.)

4 CHAIRMAN HOOD: Any opposition?

5 (No audible response.)

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

8 MS. SCHELLIN: Staff records the vote 5-0-0 to
9 grant the two year time extension on Case Number 13-14C
10 until, it'll start on the day that the issuance of the final
11 decision of the DCCA with regard to the approval, until the
12 appeal process is over. Whether it's the first or second
13 stage cases. Commissioner Hood moving, Commissioner Miller
14 seconding, Commissioners May, Shapiro, and Turnbull in
15 support.

16 CHAIRMAN HOOD: Okay, next Proposed Action, Zoning
17 Commission Case Number 17-21, As You Like It - Consolidated
18 PUD & Related Map Amendment at Square 498. Ms. Schellin.

19 MS. SCHELLIN: Yes, Exhibits 58 through 58T is the
20 Applicants post hearing submissions. Exhibit 59 is a letter
21 in support from the PTA. Exhibit 60 is the ANC 6D's response
22 to the Applicant's post hearing submissions. We'd ask the
23 Commissioner to consider taking proposed action this evening.

24 CHAIRMAN HOOD: Okay, Commissioner Shapiro.

25 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Just

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1 wanted to say that I was not here for the public hearing, but
2 I was able to review the record. And I will be participating
3 tonight.

4 CHAIRMAN HOOD: Okay, Commissioners as noted I
5 think there were a few things that were asked for. If you
6 have any comments on them. They address certain aspects of
7 the penthouse design and affordable unit location. I think
8 someone may have mentioned that.

9 Nobody talked about the continued coordinator with
10 the PTA. And also I think two of the families regarding this
11 application. And I think that was pretty much it. I think
12 a lot of this had been flushed out.

13 All right, so any comments or questions on this?

14 VICE CHAIR MILLER: Mr. Chairman, I appreciate
15 that the Applicant did address what we asked for at the
16 conclusion of the hearing. And has, we have a submission
17 from ANC 6D in support of the MOU that was reached between
18 the Applicant and the Amidon Bowen Parent-Teacher Association
19 addressing their concerns.

20 And the ANC's acceptance of the other, the
21 Applicant's explanations to the neighbors about the distance
22 between the project and the townhouses. And the Applicant's
23 efforts to explain the affordable, the location of the
24 affordable units and the other public benefits. So I'm
25 prepared to move forward with the proposed action.

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1 CHAIRMAN HOOD: Any other questions, comments?
2 Commissioner May.

3 COMMISSIONER MAY: No, I agree with that recap.
4 I mean I think this has come a long way from where it
5 started. When we first started hearing about the case, more
6 than a year ago, and I'm prepared to move forward. I think
7 that they've addressed all the concerns that I had.

8 CHAIRMAN HOOD: Okay, anybody else.

9 COMMISSIONER TURNBULL: Mr. Chair, I would concur
10 with my colleagues. And I'm also ready to move forward.

11 CHAIRMAN HOOD: Okay, all right. I can count,
12 that's three so I won't hold it up any longer. Can we get
13 a motion from someone?

14 COMMISSIONER SHAPIRO: Mr. Chair would, before I
15 make the motion, just one comment about some of the
16 conditions that are considered PUD proffers. There are some
17 of the conditions that may be in the order, but we wouldn't
18 consider as part of the PUD balancing test.

19 So I just, I don't know if it's necessary to list
20 out the conditions and which ones would be considered PUD
21 proffers or not? But suffice it to say there are conditions
22 that I have any concerns about, it just may be counted in
23 different ways.

24 CHAIRMAN HOOD: Okay, I think we will leave that
25 to OAG to kind of take the ones you're speaking in terms --

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1 I don't think we need to go through those. And also the ones
2 that are not zoning specific, as well as the ones not
3 enforceable by our orders. Is that kind of the line you were
4 going?

5 COMMISSIONER SHAPIRO: That's the line I'm going.
6 Thank you, Mr. Chair.

7 CHAIRMAN HOOD: All right so we would ask --

8 COMMISSIONER TURNBULL: Yes, I would just say, yes
9 the Applicant's counsel should meet with OAG to review
10 what's, what they've proffered.

11 CHAIRMAN HOOD: Right, yes, so we want to make
12 sure they're germane to our actions. All right, so anything
13 else? Would somebody like to make a motion? Vice Chair
14 Miller.

15 VICE CHAIR MILLER: Mr. Chairman I would move that
16 the Zoning Commission take proposed action on Case Number 17-
17 21, As You Like It - Consolidated PUD & Related Map Amendment
18 at Square 498. And ask for a second.

19 COMMISSIONER TURNBULL: Second.

20 CHAIRMAN HOOD: Okay. It's been moved and
21 properly seconded.

22 Any further discussion?

23 (No audible response.)

24 CHAIRMAN HOOD: All in favor?

25 (Chorus of aye.)

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1 CHAIRMAN HOOD: Any opposition?

2 (No audible response.)

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

5 MS. SCHELLIN: Staff records the vote 5-0-0 to
6 approve Zoning Commission Case Number 17-21 for proposed
7 action. Commissioner Miller moving, Commissioner Turnbull
8 seconding, Commissioners Hood, May, and Shapiro in support.

9 CHAIRMAN HOOD: Okay. And I think our last case
10 for the evening is Zoning Commission Case Number 19-04,
11 Office of Planning - Text Amendment to establish Community
12 Renewable Energy Facility (CREF). Ms. Schellin.

13 MS. SCHELLIN: Yes, we have Exhibit 27, a letter
14 from Coreah Rollins. She's the 11-year-old that attended the
15 hearing that evening, but didn't want to testify. So
16 Chairman Hood you left the record open for her to submit
17 written testimony, which she did.

18 And Exhibit 28 is an OP supplemental report that
19 provides some revised text since the hearing. So we'd ask
20 the Commissioner to consider proposed action this evening.

21 CHAIRMAN HOOD: Okay. I want to thank Ms.
22 Rollins. It's always good when our young people are
23 participating in the process, whether they testify orally,
24 or whether they submit something in writing. She did as I
25 requested, because I wanted to hear what she had to say.

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1 And I do appreciate the time and attention she put
2 into that. I agree with her. My position may be a little
3 different, but I appreciate that. And I think she brings up
4 of value, what she brought up is something I'm going to
5 consider not just in this area, but across the city, which
6 I think is very key.

7 Some of the things that she seen, that open space,
8 and some of the things, we need to be mindful of that. And
9 I think we are, but hearing it from an 11-year-old, or
10 hearing it from a younger person who's also -- I know the
11 college students have mentioned it to me when I went out to
12 speak with them.

13 But I can tell you hearing it from -- the same
14 thing, from an 11-year-old. She has a very bright future and
15 I really appreciate her submitting something in writing and
16 her parents allowing her to do this.

17 By no means does it mean that this has not been
18 taken into consideration, whichever way this Commission goes.
19 But I really appreciate her comments. And I think that if
20 her teacher ever watches this, should give her some extra
21 credit. She'll probably say well who's Anthony Hood to get
22 extra credit to somebody anyway? I really appreciate young
23 folks when they get involved in the process. I think it's
24 very important.

25 So let me open it up. Any questions or comments

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1 on this, or any concerns on this?

2 COMMISSIONER MAY: Mr. Chairman.

3 CHAIRMAN HOOD: Yes, Commissioner May.

4 COMMISSIONER MAY: Yes, so first of all I
5 appreciate the revisions that we received from the Office of
6 Planning that identify or clarify the difference between a
7 solar array that could be on top of a building versus a solar
8 array that would be in the ground. And that at a certain
9 size, ground-based solar arrays should be subject to special
10 exception review and buffering requirements. So I think that
11 those are positive things.

12 I do have a question about the line of
13 demarcation, in terms of the size for the soil, sort of the
14 ground-based solar array. And coming at this at two acres,
15 because two acres is still a very, very large area for
16 something that would be a matter of right. I mean it's
17 almost two football fields.

18 And, you know, in certain circumstances depending
19 on, you know, where houses are placed nearby, what the grades
20 are like, what you know, what buildings are nearby, and what
21 parks are nearby.

22 And that's my biggest concern because many of the
23 areas where there's open space that might be used for this
24 are proximate to national parks. And for those of you who
25 understand the history of Washington's national parks in

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1 particular, I'm concerned about the Fort Circle parks, or the
2 Civil War defenses of Washington which are placed at high
3 points around the city.

4 And they are a key component to the fact that
5 Washington was challenged so little during the Civil War.
6 I mean there was a battle in Washington, but it was not
7 nearly as significant as it might have been and that had to
8 do with the fact that the city was protected by this circle
9 of forts at the high ground.

10 Now granted they were all, you know, many of them
11 have trees and other things that would obscure the views, but
12 there's still some really important views that you can see.
13 And they used to be able to see from one to the other and
14 communicate between those high points.

15 And I'm just very very concerned that we could
16 wind up in a circumstance where the view that we would see
17 from some of these locations would be a view onto a two-acre
18 solar array, which we did not actually have a chance to
19 consider it. Or consider whether there should be some
20 buffering.

21 So I remain very very concerned about that
22 threshold, that two acres. And I mean, and I think one of
23 the things I had asked, and maybe I didn't, I was not clear
24 at what I was looking for, but I thought I'd asked for, to
25 get some sense from either DOEE or OP whether, you know, if

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1 we -- well what the sort of size ranges were for some of
2 these arrays?

3 And you know, if we were to follow OP's advice,
4 you know, how many of these cases are kicked into special
5 exception territory or remain in special exception territory?
6 And how many of these ones that are so vitally important to
7 DOEE's mission could actually be thrown into that, if were
8 to go with a lower threshold?

9 And I'm thinking more like, you know, a quarter
10 of an acre or a half an acre. You know, how many cases does
11 that push into special exception territory?

12 And I didn't get any sort of feedback on what the
13 range of projects are that are in the pipeline now that are
14 potentially jeopardized or slowed down is really what it's
15 about, by having to go through special exceptional process?

16 So I don't know if the Office of Planning is
17 prepared to answer that at all, but I'm really curious about
18 it.

19 MS. VITALE: I can speak to, I guess a part of
20 that question. Elisa Vitale, for the record, with the Office
21 of Planning. The two acre limit would actually -- right now
22 there are two pending cases that are ground-mounted arrays
23 that are in the pipeline for a special exception review at
24 the Board of Zoning Adjustment. Those would stay as special
25 exception with this two acre threshold.

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1 I think more generally, with respect to causing
2 delays or issues for the DOEE Program, I think ensuring that
3 roof-mounted arrays could go forward as a matter of right,
4 may be more critical than ensuring that ground mounted arrays
5 are able to go through without the special exception review.

6 So I think we could certainly look at, you know,
7 modifications to that acre threshold, if the Commission is
8 not comfortable with the two acres we proposed.

9 COMMISSIONER MAY: Thank you, I appreciate that.
10 I mean, as I said, I'm certainly not comfortable with two
11 acres. And I'm not sure exactly what the right number is.
12 But I'm inclined to go significantly lower than that. And
13 it's good to know that at the moment there are only those two
14 that are really that large. And that they would continue to
15 be subject to special exception review. Because I think
16 that's critically important.

17 CHAIRMAN HOOD: So, I think as well, because I was
18 unclear whether or not those still -- because what I heard
19 from the community was that they wanted to make sure they had
20 a right to be heard. Even the 11-year-old in her letter said
21 she wanted make it right. When an 11-year-old tells you they
22 want to have a right, so there's a process for them to be
23 heard.

24 But even more than that, for those who've been
25 around, when we had to do the Tech hotels and we had to have

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1 hearings in August. That was not the easiest thing that this
2 Commission had to do some years ago. Was anybody around for
3 the Tech hotels?

4 Jennifer, you and I, okay and Ms. Schellin. Okay,
5 so anyway for the three of us that were here, you know, we
6 met in August because it went to the same thing that I'm
7 hearing from DOEE, I think it was a time limit. Maybe Ms.
8 Steingasser you could help me try to remember some of this.

9 And things had to be done. And I've heard also
10 from DOEE about funding, time, and not to mention the hearing
11 we have, that's already going to go in from of the BZA or is
12 pending in front of the BZA. But is there some kind of
13 mechanism where we can address that?

14 It kind of goes along with what Commissioner May
15 was mentioning, so that we don't run into that. And we can
16 deal with it like we did with the Tech hotel. Well, I don't
17 never know, I don't think that even existed after a while,
18 but the Tech hotel issues.

19 I don't know maybe that's something, Ms.
20 Steingasser we can look at that? Because I'm thinking, I'm
21 hearing what the community said, and I know we got to the two
22 acres and are going to look at that number, but I'm also
23 hearing from DOEE about funding sources.

24 I know the way the City is going, the initiatives,
25 we need to try to find and strike that balance so we won't

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1 lose funding. And the city won't be lost, because that's the
2 way the city is going. So I don't want us to get bogged down
3 as well.

4 So I don't know, is there something that maybe we
5 can look at? I know that it might sound contradictory, but
6 I'm going to -- maybe is there something that we could
7 probably look at, to see?

8 MS. STEINGASSER: Yes, sir.

9 CHAIRMAN HOOD: And that will satisfy some of the
10 DOEE and some of the funding requirements we possibly may
11 use. I don't have the answer, but let's see if we can do
12 that. Because I would hate to see a lot of folks in this
13 city lose out on funding.

14 Okay, anything else? Vice Chair Miller.

15 VICE CHAIR MILLER: Thank you, Mr. Chairman. I
16 don't share the discomfort level that Mr. May has, but I
17 respect that he has that discomfort level. Only because, you
18 know, as Commissioner Shapiro pointed out the last time, and
19 it really depends upon, you know, the zone that you're in,
20 and the matter of right of development that is allowed in
21 that zone.

22 I mean, you may have more of a view with this
23 array of solar panels than you do with what's allowed as a
24 matter of right in terms of office buildings, or mixed-use
25 development, or whatever.

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1 But I don't have an objection though that in
2 looking further, modification to protect particularly
3 adjacent residential neighborhoods. So as you're looking at
4 modifications maybe to provide that kind of protection or
5 hearing for our residents.

6 Maybe there can be a demarcation between
7 commercial and residential, or proximity to residential uses
8 as you've already done with carving out the PDRs as a matter
9 of right for even, for ground-array of solar panels.

10 So I mean there is an important public benefit
11 that we're trying to foster here. Community solar for low
12 income people who won't be able to afford it otherwise. And
13 the city's goals for making solar a significant part of the
14 energy supply in this city.

15 So there obviously is a lot of balancing as the
16 Chairman pointed out, to be done with this kind of case. So
17 I'll look forward to seeing what comes next.

18 CHAIRMAN HOOD: Any other comments or questions?
19 I am inclined to go ahead and move forward. Again, I do have
20 reservations because as I stated, even at the hearing, the
21 impacts and the visualization of what you may see, the
22 benefits to me outweigh. And I think that's where the city
23 is going. That's where the policy is going, that's the
24 initiatives.

25 And I understand, but again taking out the input,

1 is one of the things I've heard. And that input now is not
2 being taken out from the way I understand it. But the way
3 I understand, it's not being taken out.

4 COMMISSIONER MAY: Well, my concern is that it's
5 being taken out for anything up to two acres. And so it
6 could be, and again two acres is very large.

7 CHAIRMAN HOOD: Right.

8 COMMISSIONER MAY: I don't know how much property
9 you have at your house, but I mean isn't even a tenth of an
10 acre. And so it's large, it's like between a football field
11 and a half and two football fields worth of space, right?
12 So it's big.

13 And it is very circumstantial, right? In certain
14 circumstances you're not going to see it at all because of
15 the vegetation that's around it, or the topography. And so
16 there are probably many cases where it's not a big deal.

17 But you don't, you know. We don't all know that,
18 we don't have comfort in that, that it's going to be handled
19 properly when we simply make it all matter of right up to the
20 two acres. I mean I would be happy enough if we could go
21 down to like a half an acre as a matter of right.

22 And then, you know, and then have -- I mean I
23 would be comfortable moving ahead if it said half an acre at
24 this point. And then anything above that is a special
25 exception. But two acres, I can't support this even for

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1 proposed action because I just think it's too much and we
2 don't know enough to know where there's going to be a
3 problem.

4 I would also say that with regard to the other
5 potential uses that are a matter of right. Absolutely that's
6 true and there are some circumstances where the park service
7 has spoken up against projects that were, you know, that were
8 in the arena of public review.

9 You know, we don't usually get involved in
10 something that is matter of right unless, you know, the
11 developer of that property comes to us and asks us. Because
12 otherwise there's no venue by which we are notified that the
13 case is pending or that we have issues that might be at
14 stake.

15 But, you know, we do speak up occasionally, and
16 we have come to BZA and testified against cases when they
17 were going to be damaging to the views of the historic
18 property that we are responsible for managing on behalf of
19 the American people.

20 So we're, I mean we always want to be sensible
21 about this as well. I mean there are many many large
22 projects that have been close to parkland. There has been
23 parkland that's given up to development over time.

24 And I thinking of the Pollin Development over in
25 Kenilworth Parkside area, where we transferred land the city

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1 then developed into houses. And it is abutting parkland.
2 But it made sense. We agreed to transfer that land for that
3 purpose. And that's happened in a few other circumstances.

4 So we're not completely anti-development in the
5 vicinity of these national parks, but I do think we want to
6 be very careful about doing it, and having that opportunity
7 to comment is critically important to the park service.

8 So like I said, half an acre I could do tonight.
9 Anything more than that, I wouldn't support without
10 understanding better what the potential is. And again, we
11 don't even know that setting it at that level creates a
12 problem at this moment. Because we don't have all the data
13 from Office of Planning.

14 That all being said, we are very supportive of
15 solar-panel power. We've put it in in many locations on
16 parkland. We've also declined to put it in in some cases
17 because of the visual impacts of it. So we decided against
18 putting it in at the Carter Barron parking lot because of the
19 negative impacts associated with putting them in that parking
20 lot.

21 But we've put them up in the maintenance yard at
22 the, down at East Potomac Park. Because it was surrounded
23 by buildings and no one could really see it, so.

24 CHAIRMAN HOOD: Okay. Again for me the, hearing
25 the DOEE and knowing -- Ms. Vitale, let just ask this again.

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1 The two or three that may be in the pipeline are still going,
2 would have to go in front of the Board of Zoning Adjustment,
3 correct?

4 MS. VITALE: That is correct.

5 CHAIRMAN HOOD: Okay, so that's public, that'll
6 give -- now to say for me, Commissioner May, to say for me
7 on the dais, a half an acre, I would not be willing to move
8 in that fashion. And I'll tell you why. Because that's, I
9 mean we don't have an understanding. We do know what we have
10 in front of us.

11 And yes, this Commission can change anytime we get
12 ready. We've done it in the past. Once we come back with
13 something that can move us forward or we feel like it's
14 something better than what we have. For me it's the
15 immediate ones that are in the pipeline, to put something in
16 place.

17 Especially dealing with the money factor, the
18 grant factor, whatever you call it to help residents of this
19 city. Especially the low income to be able to get some of
20 the proffers and some of the benefits that others have been
21 getting for years. I think it's important in this case.

22 So I'm going to be supporting what's before us
23 today, with the caveat of asking the Office of Planning --
24 which I've done in the past, and they've come right back --
25 let's make a change. We do it all the time from our laundry

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1 list of things for us to do as we do some further discovery.

2 And I would ask that we put this on the fast
3 track. Just like I would like to put these cases on the fast
4 track so those who are less fortunate can get some of these
5 benefits some people have been getting for years. And that's
6 where I am. Let me hear others.

7 COMMISSIONER SHAPIRO: Mr. Chair.

8 CHAIRMAN HOOD: Mr. Shapiro.

9 COMMISSIONER SHAPIRO: Thank you, I agree with
10 you. And I appreciate Commissioner May, your thoughtfulness
11 on this. Though Mr. Chair, I agree with you, I'm not sure
12 that lowering it becomes, that there's a magic number and
13 that magic number is a half-acre or an acre smaller. And I'm
14 going to be happy to support this. And I recognize as you
15 do that we can reconsider the issue at a future date if we
16 need to. So I'm happy to go ahead and support this move
17 forward.

18 CHAIRMAN HOOD: Any other comments or questions?
19 Mr. Turnbull.

20 COMMISSIONER TURNBULL: I support the need to, for
21 the solar energy in going forward for the citizens of our
22 community. But I also share Commissioner May's concern about
23 the preservation of the national parks for the good of the
24 people to enjoy the parks.

25 So I'm, it's difficult for me to balance that.

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1 I think that there should be some more thought involved from
2 the Office of Planning as to what the real need would be.
3 Why two acres? Why is that the magic bullet? Why not a
4 half-acre? I think there should be some more thought
5 involved.

6 COMMISSIONER MAY: Mr. Chairman.

7 CHAIRMAN HOOD: Yes.

8 COMMISSIONER MAY: I want to make one more comment
9 --

10 CHAIRMAN HOOD: Sure.

11 COMMISSIONER MAY: -- which is that, you know, it
12 seems to me that one of the things that we could be
13 considering at that point is whether there should be some
14 mandatory screening requirement? Much like we have in
15 certain PDR areas, when they're abutting residential uses.

16 And I'm not sure exactly how that would be
17 crafted. I mean certainly the buffering language that was
18 incorporated into the language so far is helpful. And so
19 having 15 feet, including some evergreens that would be
20 planted with trees that are at least eight feet tall,
21 whatever the particulars were, I think that could help
22 mitigate it even for smaller arrays.

23 Not that it would be required in every
24 circumstance, again there's certainly going to be
25 circumstances where it's not needed at all. It's not highly

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1 visible. They're not that large. And maybe it has to be
2 tied to the acreage.

3 I mean if we have the option of deferring for a
4 couple of weeks so that the Office of Planning can look at
5 that more carefully and maybe weigh in on whether they are
6 totally comfortable with the two acre threshold, I would
7 appreciate that.

8 And, you know, if we waited a couple of weeks
9 maybe I could vote in favor of this. But as it is right now,
10 I wouldn't want to support the two acres. And I would still
11 be interested in hearing what the Office of Planning would
12 have to say about some sort of mandatory screening
13 requirements for projects of lesser acreage, but not
14 necessarily all projects.

15 And maybe it's zone dependent, maybe it's, you
16 know, what it's abutting. If it's abutting a national park,
17 or if it's abutting a residential neighborhood, or whatever.
18 Maybe those screening requirements can happen.

19 CHAIRMAN HOOD: Okay. You know, one of the
20 things, since you mentioned that, Mr. May and then I'll go
21 to others, the screening requirements. I'd like to know how
22 they work in the PDR zones?

23 We have been, we've had them for a while, the
24 screening. And I'd like to know how they are working? And
25 maybe we can get one or two examples of things that we've

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1 already done that show how that screening is actually
2 working?

3 So even in this, we won't put anybody in promised
4 land when we think that the screening does actually work.
5 Just a couple examples if the Office of Planning may identify
6 one or two or maybe three examples for us, of PDRs zones
7 where we've done the buffering.

8 Let's any other questions or comments on this?
9 Vice Chair Miller.

10 VICE CHAIR MILLER: Yes, and not to be redundant,
11 but I think Mr. May has a point that, in terms of, you could
12 build the screening requirement into a matter of right
13 situation. And I don't think there's anything that prevents,
14 but correct me if I'm wrong, Mr. Chairman, from moving
15 forward with proposed action, with what we have before us.
16 And asking the Office of Planning to come back with
17 suggestions for these kinds of modifications, whether it's
18 threshold size -- or alternatives I would say.

19 Come back with alternatives for final action that
20 would be, that might incorporate screening at a certain size
21 threshold, or changing the size of the threshold. But I
22 would like to keep this on track to get done.

23 CHAIRMAN HOOD: I would kind of agree with you
24 Vice Chair. This is proposed action and I think we will have
25 another bite at the apple. I think nobody is not concerned

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1 as well as Commissioner May. I think we all are.

2 But when it comes back, if we need to make a
3 change, we'll do it at that time. I think we've done it
4 before. I don't know how that will look putting it out
5 there, two different, one way this week, and another way the
6 other week, but I'm sure that won't be the first time.

7 So I think that I'm still going to stay on track,
8 as the Vice Chair has mentioned on this. I do share some of
9 the concerns of everything I've heard up here. It may come
10 back with another resolution, Commissioner May. And right
11 now I think I'm ready to move forward.

12 The biggest thing is the public, some of the
13 public at that hearing that we had, talked about a specific
14 case, which we were not talking about, but in general, so
15 far, at least the ones in the pipeline, people can still have
16 an opportunity to be able to be heard. And I think that came
17 over loud and clear.

18 Any others?

19 COMMISSIONER MAY: Mr. Chairman.

20 CHAIRMAN HOOD: Mr. May.

21 COMMISSIONER MAY: Yes, I think the one concern
22 I would have about trying to move forward right at this
23 moment, is that if we decide to change the text in a
24 substantive way, and that doesn't necessarily mean, you know,
25 a lot of words. But if some certain key words change, that

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1 we could wind up in a situation where we would have to
2 advertise a second time.

3 And I think that it would be best if we could, you
4 know, if it's possible to get this, get some further feedback
5 and turn this around in a couple of weeks, and make a clearer
6 decision about what we're moving forward with, you know,
7 immediately as possible. It would be a faster route to a
8 final rulemaking than if we were to try to change this later
9 on.

10 You know, because I think text amendments are
11 different from PUDs between proposed and final. Because
12 things don't usually change substantively. It's not a matter
13 of advertising. It's not a matter of getting, you know, NCPC
14 to weigh in, things like that.

15 So I think that it really needs to be, we should
16 get to the best possible version of this before we advertise.

17 CHAIRMAN HOOD: So --

18 COMMISSIONER MAY: Is it possible for the Office
19 of Planning to get something in two weeks?

20 MS. STEINGASSER: Yes, yes we could get something
21 for the May 13th meeting.

22 CHAIRMAN HOOD: I don't think we have the votes
23 to wait two weeks actually when I count. So I understand and
24 I appreciate asking the Office of Planning, but I think I
25 have the votes, you know, I've been doing this a long time.

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1 I have the votes to move forward.

2 So, yes I have the votes right now to move
3 forward. But I'm just trying to think, should we advertise
4 something as an alternative? Because here's the thing.
5 What's out there now and proposed, they have another
6 opportunity to, I believe if I'm not mistaken. They have the
7 opportunity between proposed and final to make those
8 comments.

9 To make any comments that anybody wants to make.
10 If they want us to lower the acreage, they have the
11 opportunity to do that at that time. Am I correct? Or am
12 I incorrect? If I'm incorrect, I stand corrected.

13 MR. TONDRO: No, you are correct. But it would
14 also, if there is going to be a change to the rules, then
15 that would have to be advertised again as a notice of
16 proposed rulemaking. And I'll just point out, just like with
17 this text that you're considering tonight, this is a revision
18 to the original advertising.

19 So if you were to approve it right now, as is, it
20 would go out as a new notice of proposed rulemaking. So you
21 could either do that and then ask for additional information,
22 and change it in response either to public comments, or
23 because OP provides additional information.

24 Or you can simply wait and see what OP brings, and
25 then issue that one as a proposed rulemaking, either one.

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1 CHAIRMAN HOOD: So with us waiting, would that
2 have any bearing on the funding source for the District of
3 Columbia? Can we find that information out, because that's
4 where I am?

5 COMMISSIONER MAY: So I --

6 CHAIRMAN HOOD: I want everybody to have an
7 opportunity for solar panels.

8 COMMISSIONER MAY: I have a question because I
9 mean I thought that because we took the emergency action that
10 things are moving through the pipeline. Is there anything
11 that is being held up right now because we haven't taken
12 action on the final text?

13 MS. VITALE: We do have the emergency that's in
14 effect through I believe late June, June 19th or 22nd --

15 CHAIRMAN HOOD: So it's already in effect?

16 MS. VITALE: We also have DOEE here and they're
17 going to come up to the dais and hopefully can help respond
18 to that.

19 CHAIRMAN HOOD: So I'm going to make sure I'm
20 clear. I see some residents who, participants in those BZA
21 cases. You're still going have your output in your BZA, that
22 case is going to keep going. So that will not have any
23 bearing on this action here.

24 I'm doing this globally for the city, but let's
25 hear from the expert.

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1 MR. KING: Hello, Emil King, Department of Energy
2 and Environment.

3 CHAIRMAN HOOD: Mr. King, you've heard our
4 discussion, Mr. King. Can you help us?

5 MR. KING: Yes, so I think while I'm not exactly
6 sure how many projects will be in periled by the decision
7 tonight, but there are a few.

8 COMMISSIONER MAY: I don't understand how that
9 could be. I mean if the emergency text amendment is in
10 effect, then nothing should be held up at this moment. Is
11 that, am I incorrect on that?

12 MR. KING: On that --

13 COMMISSIONER MAY: I'm asking the Office of
14 Planning this question.

15 MS. VITALE: I don't, I believe that with the
16 emergency out there, that we shouldn't, no one should be held
17 up.

18 COMMISSIONER MAY: Nothing is held up, so two
19 weeks, I mean I'm just suggesting that we hold off for two
20 weeks and give the Office of Planning the opportunity to
21 tweak the text and come up with some additional language.
22 Mr. Tondro, did you have something?

23 MR. TONDRO: I was just going to say, pardon me,
24 snivel of validity. There is the requirement that a permit
25 be in compliance with the regulations on the date of

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1 issuance. So potentially I guess, there could be a permit
2 that would be issued after the expiration of the emergency
3 rules in June.

4 I don't know if there would be anything that would
5 fall under that category, but that would be the only caveat
6 I would issue.

7 COMMISSIONER MAY: We could in two weeks though,
8 vote to extend the emergency for a long enough period to hear
9 the case --

10 CHAIRMAN HOOD: So really this whole discussion,
11 with the emergency they can go ahead and do what they,
12 whoever is doing whatever they want to do, can do what they
13 want to do anyway. And the emergency goes into June,
14 correct? As long as --

15 COMMISSIONER MAY: Correct.

16 CHAIRMAN HOOD: -- content with the -- okay so
17 this discussion is really two weeks, one week, no weeks.
18 It's really we're just wasting time now. You want four
19 weeks?

20 (Laughter.)

21 COMMISSIONER MAY: You know, if the Office of
22 Planning can do two weeks. Let's do it in two weeks.

23 CHAIRMAN HOOD: Two weeks, can you do two weeks?

24 MS. VITALE: Yes, I think we'd be prepared to
25 bring additional information back for the May 13th meeting.

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1 CHAIRMAN HOOD: And would that include everything
2 that we kind of talked about, when I mentioned about the Tech
3 hotels? You know, we threw a whole lot of stuff in there.

4 MS. VITALE: I've got good notes and hopefully we
5 can address all of your questions.

6 CHAIRMAN HOOD: Okay, all right. For those who
7 were ready to vote this evening, are we fine with two weeks?

8 COMMISSIONER SHAPIRO: Yes, sir.

9 CHAIRMAN HOOD: Okay, all right so we will go
10 along with the request from one of our Commissioners, to go
11 two weeks. Any further discussion on this?

12 All right, so we will do two weeks. We will
13 revisit this. And again the emergency is in effect until
14 what? June?

15 COMMISSIONER MAY: The emergency is already in
16 effect.

17 CHAIRMAN HOOD: Okay, so that, yes. So that nulls
18 and voids a lot of this conversation. Okay, all right
19 anything else?

20 Thank you, Mr. King. We appreciate that. And
21 thank you, Office of Planning as well. All right, Ms.
22 Schellin do we have anything else?

23 MS. SCHELLIN: No, sir.

24 CHAIRMAN HOOD: All right, I want to thank everyone
25 for their participation. Does the Office of Planning have

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1 anything? Do we have an update on the short-term rental?

2 MS. STEINGASSER: No, sir we do not.

3 CHAIRMAN HOOD: Still working on it. Okay, all
4 right so with that I want to thank everyone for patience, and
5 this hearing is adjourned, I mean the meeting is adjourned.

6 (Whereupon, the above-entitled matter went off the
7 record at 7:56 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: Meeting

Before: DCZC

Date: 04-29-19

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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