GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

REGULAR MEETING

MONDAY

SEPTEMBER 15, 2014


ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SARA BENJAMIN BARDIN, Director
SHARON S. SCHELLIN, Secretary
ZELALEM HILL, Special Assistant
OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development Review & Historic Preservation
JOEL LAWSON
STEVEN COCHRAN
ELISE VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the minutes from the Regular meeting held on September 15, 2014.
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CHAIRMAN HOOD: Okay. We are ready to start. This meeting will please come to order.

Good evening, ladies and gentlemen. This is the public meeting of the Zoning Commission of the District of Columbia for Monday, September the 15th, 2014. The time now is 6:30. We are located in the Jerrily R. Kress Memorial Hearing Room.

My name is Anthony Hood. Joining me is Vice Chair Cohen, Commissioner Miller and Commissioner Turnbull. And, again, we wish Commissioner May a speedy recovery.

We are also joined by the Office of Zoning Staff, Ms. Sharon Schellin, also our Director of the Office of Zoning, Ms. Bardin, and also Special Assistant Ms. Zee Hill, and Mr. Bergstein, Office of Attorney General, as well as Office of Planning, Ms. Steingasser, Mr. Lawson, Ms. Vitale, and Mr. Cochran.
I have not seen Mr. Ritting lately.

I'm just curious, is he B- is Mr. Ritting B-

MR. BERGSTEIN: He's fine.

CHAIRMAN HOOD: Okay.

MR. BERGSTEIN: He just said I would handle this meeting.

CHAIRMAN HOOD: Okay, not that we didn't want you to come. I just B-

MR. BERGSTEIN: That's fine. That's fine.

CHAIRMAN HOOD: Copies of today's meeting agenda are available to you and are located in the bin near the door. We do not take any public testimony at our meetings unless the Commission requests someone to come forward.

Please be advised this proceeding is being recorded by a court reporter, and also is web cast live. Accordingly, we must you to refrain from any disruptive noises or actions in the hearing room, including a display of any signs or objects. Please turn off all beepers and cell phones.
Does the Staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Okay, if not, let's go right into Final Action. Zoning Commission Case Number 05-36J. This is Toll DC II, LP, One-Year PUD Time Extension at Square 749. Ms. Schellin?

MS. SCHELLIN: Yes, sir. This is a request from the Applicant for a one-year time extension of the second stage PUD so that the building permit for Phase IIA of the development must be filed no later than November 14th, 2015. And we B- they do have a hearing on this case coming up. I believe it's October 30th, so I ask the Commission to either consider action this evening, or hold this in abeyance until Final Action on that case.

CHAIRMAN HOOD: Okay. Commissioners, you've heard the report of our Secretary. Any questions or comments? Vice Chair Cohen. Sorry, Commissioner Turnbull?
COMMISSIONER TURNBULL: No, let's go right ahead. I think the Vice Chair can go ahead.

CHAIRMAN HOOD: Oh, I'm sorry. Okay.

VICE CHAIR COHEN: I would move to approve the one-year extension for PUD Case 05-36J, an extension request for Phase II.

CHAIRMAN HOOD: Okay, it's been moved.

COMMISSIONER TURNBULL: Yes, I will second that, but I think the major issue we had at the time was that when the Applicant came before us there was some B- it looked like in the language of the documents we got there was going to be some architectural modifications to it, and we said just because you had a change in order someone's still got to come before us and do the modification process. So, I'm fine with extending it, or holding it in abeyance, whatever. But if the motion on there is to extend it for a year, I'm fine with that. I'll second that.
CHAIRMAN HOOD: Okay. So, I think it's been moved and properly seconded. But I think, Mr. Turnbull, I think you're exactly right. The changes in the drawings and some of the alterations, changes they're making, I think the Commission expressed that they still wanted to see it.

Anyway, it's been moved and seconded. Any further discussion? Okay, all those in favor, aye.

(Chorus of ayes)

CHAIRMAN HOOD: Not hearing any opposition of those present, I think we have a proxy, Ms. Schellin?

MS. SCHELLIN: Yes, we do. Staff would record the vote 5-0-0 to approve Final Action Zoning Commission Case Number 05-36J. Commissioner Cohen moving, Commissioner Turnbull seconding, Commissioners Hood and Miller in support, Commissioner May in support by absentee ballot.

CHAIRMAN HOOD: Okay. Next, let's go
to Miscellaneous. A request from the Office of Zoning to extend waiver of 3030 Granted on September 12, 2011, Consent Calendar Memos. Ms. Schellin?

MS. SCHELLIN: Yes, sir. On September 12th, 2011, staff had requested and the Commission granted a waiver of Section 3030 which required the Director to provide the Zoning Commission with a Consent Calendar or a memo that basically stated that the Applicant had complied with the regulations whenever they filed for a minor modification. Since those regulations were put in place, the office has created a application form that pretty much eliminates the need for that memo. And the Commission agreed with that, and in 2011 granted a waiver for that memo. And at that time, granted a two-year waiver thinking, I believe, that the new regulations would be in place and would do away with this section of the reg. But that will be October 1st, and the new regs have not been completed, so we are asking
for another waiver, an extension of that waiver.

CHAIRMAN HOOD: And we ask for another two years.

MS. SCHELLIN: If we could because of the fact that by the time the regs are finished, and then not knowing how B- when you guys are going to choose an effective date, whether that's six months, a year. It probably could be two years before that happens, so just to be safe it's probably best to do two years.

CHAIRMAN HOOD: Okay. Commissioners thank you, Ms. Schellin, and you've heard the report from the Secretary. Any comments? Okay. Not hearing any, I would move that we grant the waiver requested by the Office of Zoning for the extension of the waiver that we granted on the Consent Calendar memos two years ago, and allow another two years based on the fact of us completing the regulations and putting those B- the new ZRR Zoning Regulations in place within the next two years. So, that's my motion.
Give me a second.

VICE CHAIR COHEN: I second that.

CHAIRMAN HOOD: It's been moved and seconded. Any further discussion? All those in favor, aye.

(Chorus of ayes)

CHAIRMAN HOOD: Not hearing any opposition, Ms. Schellin, would you record the vote and the proxy we have.

MS. SCHELLIN: Yes, sir. Staff records the vote 5-0-0 to grant a two-year extension of waiver of Section 3030 to the Office of Zoning to not require the Director to comply with providing the memo. Commissioner Hood moving, Commissioner Cohen seconded, Commissioners Miller and Turnbull in support, Commission May in support by absentee ballot.

CHAIRMAN HOOD: Okay, thank you. Next let's go to Correspondence. Zoning Commission Case Number 12-18 USL WDC H Street, LLC, letter from Zoning Administrator pursuant to 3409.8. Ms. Schellin?
MS. SCHELLIN: Yes, this is a copy of a letter that was written to the Applicant from the Zoning Administrator advising of the decision that the Zoning Administrator made regarding the modification to the development that he is going to B- or he's planning to grant with regard to Zoning Commission Order Number 12-18.

As you'll recall, new regs require B- Section 2409.8 requires the Zoning Administrator to notify the Zoning Commission of any modification he plans to grant, and then the Zoning Commission has 45 days to respond to the Zoning Administrator. So, we'd ask the Commission to advise how they want to proceed on this.

CHAIRMAN HOOD: Okay. Again, Commissioners, I think this is something that we asked a long time ago that when the Zoning Administrator did anything using his flexibility that he let us know first, and I think that is one of those cases. So, let's open
it up. Any questions or comments? We do have one from Commissioner May, but let's see if our colleagues here have any questions or comments. Okay.

COMMISSIONER TURNBULL: I guess, Mr. Chair, without actually seeing any kind of drawings, I mean, just reading the language in the letter it's hard to exactly say what the projections are doing. I think the key part that I see in here which is that the setback area does not impact the retail area on the ground floor. That still is to be held as originally intended. So, I guess without knowing B- looking at all the elevation and seeing what it does, I guess I'm okay with this.

CHAIRMAN HOOD: Mr. Turnbull, there's B- if you turn the page, I think you'll B- what page is it? Yes, the back, yes. That didn't do it for you?

COMMISSIONER TURNBULL: Well, as I say, I think it's fine just looking at the ground floor plan and looking at B-
CHAIRMAN HOOD: Okay.

COMMISSIONER TURNBULL: Without actually seeing what it would look like, I'm still okay with just seeing this graphic footprint of what the outline would be like. I'm fine with it.

CHAIRMAN HOOD: Okay. But if you want to see more, we can ask for it. I'm just, you know B- make sure we have a comfort level before we B-

COMMISSIONER TURNBULL: Unless Commissioner May wants it, I'm okay with it.

CHAIRMAN HOOD: Okay. What he B- what Commissioner May asked is that B- he first wanted to ask Office of Planning, I don't know if you all had a chance to look at this. He wanted to get your opinion on it, because he recalls that the setback was something that you strongly supported along H Street to make the sidewalks a bit more generous. In any case, given the wording of the order and the other aspects of the case, he didn't necessarily see
any objections, but he wanted to see what Office of Planning thought.

MS. STEINGASSER: Unfortunately, Chairman, Office of Planning has not seen that interpretation or the drawings.

CHAIRMAN HOOD: Okay. All right. I hate to hold off a Correspondence item, but I think that since you all have not seen it, I think that's what we're going to do. Okay. Any objections to that? And then maybe we can get B- I'm not sure whose case this is. Maybe Mr. Glass because he's the only one here. I didn't have to go to school to figure that one out.

MS. SCHELLIN: We do have a meeting on September 29th, so that's still within the time frame.

CHAIRMAN HOOD: So, why don't we try to do that September the 9th.

MS. SCHELLIN: 29th.

CHAIRMAN HOOD: 29th. You heard the discussion. Let's let the Office of Planning, you all can look at it and see, because I think
from what Commissioner May is recalling, that you all were very strong on the setback piece. So, anyway, regardless, let's go ahead and see it, and then maybe we can address some of the concerns that Mr. Turnbull has in particular, Mr. Turnbull, besides what we have here that you would like to see?

COMMISSIONER TURNBULL: No, I'm fine. I just think if OP hasn't seen this, it would be good to have their comments.

CHAIRMAN HOOD: Okay.

COMMISSIONER TURNBULL: And also, as I say, basically from the language it sounds like there's some elevation changes within the setback area on the upper floors, but I think the B- if I'm interpreting this right, the ground floor plan still remains as originally intended. But I think OP should have a good look at it.

CHAIRMAN HOOD: Okay, so we will do this B- we will take this back up at our September 29th meeting. Do we have a lot on the
agenda? This shouldn't take long.

MS. SCHELLIN: If we do this, you could always move this up. You guys can rearrange the agenda at any time you want.

CHAIRMAN HOOD: Right, okay. All right. Any other comments, colleagues? Okay, thank you.

Let's go to B-

COMMISSIONER MILLER: Mr. Chairman?

CHAIRMAN HOOD: Commissioner Miller.

COMMISSIONER MILLER: Just following up on that last discussion. I think as a matter of course, the Office of Planning should probably see these when we see these. And we should always try to get their comments on it. In fact, it has to be done administratively by our office.

CHAIRMAN HOOD: I think in the past that's always happened. It's always happened. But I think B- I don't know what happened here, but anyway. One time out of the many, I don't
think B- but yes, that's a good point. But I thought in the past it always has happened, so okay.

All right. Let me see, where are we?

Let's go to the ZR B- I think we've at number VIII, ZRR, Office of Zoning, Zoning Commission Case Number 08-06A, Zoning Regulations Review, Discussion of Next Steps and Dates for Deliberation. Office of Zoning?

MS. SCHELLIN: Yes, sir. We provided the Commissioners with a proposal for deliberations in October. We've given four dates that we've set aside, October 6th, 7th, 8th, and 9th, Monday through Thursday starting at 6:00 p.m. each of those nights, and we've broken down just generally; of course, we'll give worksheets as far as the items, the specifics that need to be B- when the time comes for discussion, discussion points that need to be discussed that evening, but this is just the topics to give you an idea for each of those nights. So, I'm presenting you with the
CHAIRMAN HOOD: Okay. I want to first thank the Office of Zoning for helping us in our proposal for our ZRR deliberations, which is a lot. And I appreciate the effort of going into this. But let me open it up, colleagues, you see what's proposed night one, night two, night three, night four, and see what the topics are, but let's open it up and see if we want to run like concurrent, like if we do night one, do we continue on night two, or do we tell people to come down night one. This is what I'm going to talk B- there a number of things we can quickly talk about. We don't have to make it a three-hour deliberation tonight. We can talk B-

COMMISSIONER TURNBULL: Yes.

CHAIRMAN HOOD: Commissioner Turnbull.

COMMISSIONER TURNBULL: Mr. Chair, I'm okay with the schedule as presented. My only, I guess B- I think as you're alluding to,
for instance, let's say night one follows the schedule and we can get through that fairly easily, but then when we get on night two, if we get into a lot of discussion on certain acts, accessory apartments, corner stores, because there was a lot of comments. And if it takes us a long time to get B- if we take the whole night, or we don't finish at a reasonable time, then if we've already set up times for these other nights B- I mean, I guess what you're saying, do we simply roll on, or do we have like another set ahead to finish this night? And that's my only concern.

I don't know how we B- if you've got a rolling night. I mean, we may have people in the audience listening to us, but B- and they might be coming for specific things, so I don't know whether we simply schedule it for like you've got, and simply when we get to a B- at a certain point say we're not going to finish our deliberations tonight. We're going to carry it on for, you know, another week for this one
set of topics. I mean, I'm open to do it either way, rolling or B- I just don't know whether people are going to be coming for a certain night if we advertise these. I don't know if we advertise these. We don't advertise them, so it's mainly our schedule then, I guess. So, in that case I'm open to either way, either have it rolling, or go as far as we can. Maybe it's easier to do it rolling then so we finish consecutive things. I'm open to hear what others have got to say.

CHAIRMAN HOOD: Okay, Vice Chair.

VICE CHAIR COHEN: Thank you, Mr. Chair. Ms. Schellin, does this get advertised, though, this B- in any way?

MS. SCHELLIN: No, these are meetings.

VICE CHAIR COHEN: Okay, so it's not on any B-

MS. SCHELLIN: No.

VICE CHAIR COHEN: Okay.

MS. SCHELLIN: I mean, it's an agenda
that we will just say that it's ZRR, the case number and it's, you know, Proposed Action, so to speak.

VICE CHAIR COHEN: Then I think my preference would be roll B-

MS. SCHELLIN: Five days before?

VICE CHAIR COHEN: Yes. My preference would be then rolling.

MS. SCHELLIN: Yes.

VICE CHAIR COHEN: Because we might as well take advantage of the time that is permitted. I think a lot of it, you know, is not going to fit neatly into a particular schedule, so that would be my preference. I don't know what the others B-

COMMISSIONER TURNBULL: So, if we don't get finished at the end of the week, we simply carry it into the next week?

VICE CHAIR COHEN: Yes.

COMMISSIONER TURNBULL: Okay.

VICE CHAIR COHEN: Or if we finish early by any chance B-
COMMISSIONER TURNBULL: Right.

VICE CHAIR COHEN: B- then we go into the next topic, and then we B- we may want to stop because it's a logical place to stop, and the Chairman's judgment is usually quite accurate when doing that.

CHAIRMAN HOOD: I'm moved, my judgment is accurate tonight.

VICE CHAIR COHEN: Sir, you're always accurate. May not agree with your accuracy, but B- all right. So, that's just C-- I think rolling might be the best and simplest way to manage the entire meeting as we deliberate.

CHAIRMAN HOOD: Okay. Commissioner Miller, you want to comment on this?

COMMISSIONER MILLER: Yes, thank you, Mr. Chairman. Yes, I think these have been organized in a useful way to focus us, to focus our discussion. And I have no problem with the way it's been set out. And then if we get through what's listed for night one, go on to what's
listed for night two, so I guess that's the 
rolling method.

But I also think there might be some 
value in putting on the meeting agenda for the 
public what is on night one.

MS. SCHELLIN: No, we are going to 
just B- we are, we're going to put on our 
website the whole list and just B- we're going 
to advertise the dates so that way it's a 
rolling schedule.

COMMISSIONER MILLER: Right. So, I 
thought it just might be useful to have it that 
B- have it published almost like this somehow 
and to say that. But if they get through B-

MS. SCHELLIN: Right, so we're going 
to B-

COMMISSIONER MILLER: B- what's on 
night one early, we'll go into night two, so 
people know the order of our discussion. I think 
that's useful.

CHAIRMAN HOOD: Okay. I think all 
comments B- I would agree with all the comments
that I've heard. And I think that is exactly how we should do it, and we just make a note that we may continue. And then, Vice Chair, I would also say that, you know, it's a point in time sometime when we get tired, too, so we would all have to know, you know, it's not just on the Chairman. All of us, you know, as we talk, we may start getting tired, and we want to make sure we have our best effort when we're doing this, so it may be a point where somebody may say well, look, I'm getting kind of tired, or we're getting tired. Let's stop here at this point and go to the next, and do it the next night. So, I mean, it's a number of factors. Unfortunately, I'm probably one of the only ones up here who have never done a rewrite of regulations before, so you all yield, I mean, pardon my inexperience at this. I'm being joking, I don't think anybody was here in 1958 at least doing this, I don't think. If you were, how come you didn't tell us earlier what to do?

But I think, everything I've heard
from our colleagues I think is germane to how
I think we should proceed. So, I don't know if
we need to do anything in particular, but B-

MR. BERGSTEIN: I think you can go by
consensus for this.

CHAIRMAN HOOD: By consensus? Okay.
All right. So, any B- what did Commissioner May
B-

MS. SCHELLIN: He just had B- if you
guys wanted to, he just recommended since he
thought night one was the easy night, to move
it to night four, and put the harder nights up,
but it sounds like you guys are just going to
roll in, so it sounds like you're okay.

CHAIRMAN HOOD: Well, since he can't
send them back to me, night four must have been
a volleyball night.

MS. SCHELLIN: I think he's out of
commission for a while.

CHAIRMAN HOOD: Oh, okay. Well,
anyway, we'll go ahead and do as we said. I think
we've got a good plan. And, again, as
Commissioner Miller mentioned, we mention it, and then we just let people know we possibly may roll on. I just don't want us to be tired up here about 10:30, 11:00 still trying to do this. We need to have our best effort forward.

Okay. Do we have anything else?

MS. SCHELLIN: No, sir. We do have a copy of the Ward 4, 5 Industrial Land Transformation Study for you, though.

CHAIRMAN HOOD: Okay, so everybody has a copy and we appreciate that.

VICE CHAIR COHEN: Maybe we should be serving Red Bull that night.

CHAIRMAN HOOD: That night? Okay.

Ms. Steingasser, does Office of Planning have anything?

MS. STEINGASSER: No, sir.

CHAIRMAN HOOD: Okay. Ms. Bardin, does Office of Zoning have anything?

MS. BARDIN: No, sir.

CHAIRMAN HOOD: Okay. So with that, Ms. Schellin, anything else?
MS. SCHELLIN: That's it.

CHAIRMAN HOOD: Okay, so with that, this meeting is adjourned. Thank you.

(Whereupon, the above-entitled matter went off the record at 6:59 p.m.)