

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

THURSDAY

NOVEMBER 20, 2008

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:00 p.m., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	CHAIRMAN
GREGORY JEFFRIES	VICE CHAIRMAN
MICHAEL TURNBULL, FAIA	COMMISSIONER (OAC)
PETER MAY	COMMISSIONER (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist
ESTHER BUSHMAN	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, DEPUTY DIRECTOR
JOEL LAWSON
TRAVIS PARKER
PAUL GOLDSTEIN

The transcript constitutes the minutes from the Special Public Meeting held on November 20, 2008.

TABLE OF CONTENTS

Opening - Chairman Hood	4
Preliminary Matters - Mrs. Schellin	5
Consent Calendar - Mrs. Schellin	
Z.C. Case No. 03-10A (Holland & Knight - Technical Correction to Z.C. Order No. 03-10)	5
Vote to Approve	6
Proposed Action - Mrs. Schellin	
Z.C. Case No. 08-20 (Office of Planning - Text Amendment re: Firearms)	8
Approval to Accept Late OP Report Filing	9
Approval of Emergency Action	19
Approval of Publication	26
Closing - Chairman Hood	26

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
 1323 RHODE ISLAND AVE., N.W.
 WASHINGTON, D.C. 20005-3701

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

2 6:05 p.m.

3 CHAIRMAN HOOD: This meeting will
4 please come to order. Good evening, ladies
5 and gentlemen. This is the November 20th,
6 2008 public meeting of the Zoning Commission
7 of the District of Columbia.

8 Joining me are Commissioner
9 Jeffries -- Vice Chairman Jeffries,
10 Commissioner May and Turnbull. We're also
11 joined by the Office of Zoning Staff Ms.
12 Schellin, Ms. Hanousek and Ms. Bushman and
13 Office of Planning Staff under the leadership
14 of Mrs. Steingasser. We're also jointed by
15 Ms. Mary Nagelhout from the Office of Attorney
16 General.

17 Copies of today's meeting agenda
18 are available to you and are located in the
19 bin near the door.

20 We do not take any public
21 testimony.

22 Please be advised these

1 proceedings are webcast live. Accordingly, we
2 must ask you to refrain from any disruptive
3 noises or actions in the hearing room. Please
4 turn off beepers and cell phone.

5 Does the Staff have any
6 preliminary matters? I don't think we have
7 any preliminary matters.

8 So, let's move right into it.

9 Ms. Schellin, do we have any
10 preliminary matters?

11 MRS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: Okay. Consent
13 calendar, Zoning Commission Case Number 03-
14 10A, Holland & Knight - Technical Correction
15 to Zoning Commission Order Number 03-10.

16 Ms. Schellin.

17 MRS. SCHELLIN: This is a
18 technical request that -- a technical
19 correction that's been requested by Holland &
20 Knight with reference to Section 2104.1.

21 CHAIRMAN HOOD: I'm sure everybody
22 has reviewed the transcripts. This takes us

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 back. It's dealing with the -- takes some of
2 us back. Okay.

3 And if we look at page 4 of the
4 submission by the Applicant, it's actually --
5 the gist of what's actually taken place.
6 Section 2104.1 -- actually, I'm looking at the
7 Applicant's submission dated November the
8 10th, 2008 and I was just to -- on page 4, you
9 look at 2104.1. It tells us what the
10 technical correction is as follows. I will
11 not read it because -- any questions?

12 I would move that we approve the
13 requested technical correction in 2104.1 as
14 noted on page 4 of the Applicant's submission
15 and ask for a second.

16 COMMISSIONER TURNBULL: Second.

17 CHAIRMAN HOOD: Properly seconded.
18 Any further questions? Comments? Discussion?

19 All those in favor?

20 (Ayes.)

21 CHAIRMAN HOOD: No -- Mr.

22 Turnbull, are you in -- oh, you seconded it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Yes.

2 MRS. SCHELLIN: He seconded. Yes.

3 CHAIRMAN HOOD: That was crazy for
4 me to ask that. I'm sorry. Okay.

5 COMMISSIONER TURNBULL: I better
6 be in favor of it.

7 CHAIRMAN HOOD: All those in
8 favor? Aye. Any opposition? So ordered.

9 Staff, would you record the vote?

10 MRS. SCHELLIN: Staff records the
11 vote 4 to 0 to 1 to approve the technical
12 correction in Holland & Knight's request
13 regarding Zoning Commission Case 03-10A.
14 Commissioner Hood moving. Commissioner
15 Turnbull seconding. Commissioners Jeffries
16 and May in support. The third mayoral
17 appointee seat vacant, not voting.

18 CHAIRMAN HOOD: I will tell you a
19 little bit on a side note. I have had a
20 second before and the person didn't vote with
21 it. So. So, that has happened to me.

22 Okay. Next Zoning Commission Case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we're going to -- thank you, Ms. Schellin.
2 We're going to do proposed action Zoning
3 Commission Case Number 08-20. This is an
4 Office of Planning Text Amendment dealing with
5 firearms. Ms. Schellin.

6 MRS. SCHELLIN: This is -- there's
7 a revised report from OP that's before you.
8 That has made some recommended changes from
9 their original recommendation.

10 CHAIRMAN HOOD: And I believe
11 that's dated November the 14th. It's what we
12 have in front of us. Okay.

13 First, we need to waive our rules.
14 The -- I mean the Office of Planning's asking
15 us to -- this was submitted less than ten
16 days. They're asking us to respectfully --
17 respectfully requesting that we waive our
18 rules and I think we can do that by -- I make
19 a motion that we waive our rules to accept the
20 Office of Planning's report on Case Number 08-
21 20 and ask for a second.

22 COMMISSIONER MAY: Second.

1 CHAIRMAN HOOD: Moved and properly
2 seconded. Any discussion? All those in
3 favor?

4 (Ayes.)

5 CHAIRMAN HOOD: No opposition.
6 Ms. Schellin, would you record the vote?

7 MRS. SCHELLIN: Staff records the
8 vote 4 to 0 to 1 to accept the late or to
9 grant the waiver for the late filing of the OP
10 report. Commissioner Hood moving.

11 Commissioner May seconding. Commissioners
12 Jeffries and Turnbull in support. The third
13 mayoral appointee seat vacant not voting.

14 CHAIRMAN HOOD: Okay. What I
15 would like to do at this time because there
16 have been some corrections or some changes
17 made to the first advertisement I would ask
18 that Office of Planning be ready. We may have
19 one or two questions, not many, that we may
20 want to just ask and if I can start off.

21 I know now that we're going from a
22 special exception to a matter of right and I

1 know because of the ATF review and the
2 Metropolitan Police Department's review and
3 one of the things that I've known in this city
4 is that citizens want public comment and I
5 think the rationale is we don't necessarily do
6 special exceptions or have public comment for
7 just ordinary retail.

8 So, the Metropolitan Police
9 Department's review and the ATF review does
10 that allow for public input?

11 MS. STEINGASSER: No, it's not
12 public hearing. It is a security type of
13 background check.

14 CHAIRMAN HOOD: Okay. So, will
15 there ever be a time that the public would be
16 able to maybe weigh in and I would -- I don't
17 know if this would even -- even the Zoning
18 Commission would even be the forum, the proper
19 forum. I guess is there ever a time for
20 public -- if we're going to take special
21 exception away and make it a matter of right
22 -- I go to a lot of meetings and one of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things I hear is matter of right is almost
2 like a bad word. I'm just saying.

3 MS. STEINGASSER: Well, the time
4 to weigh in on the regulation is not on the
5 individual dealers, but would have been at the
6 public hearing for this very text. That would
7 have been the time for any community input
8 regarding where or when and how the retail
9 sales are reviewed.

10 But, when we worked with MPD, we
11 met several times with MPD, the Office of
12 Attorney General, the Acting Attorney General
13 and we went through the various rationales.
14 Is there a planning rationale? Is there a
15 security rationale? Is there a legal basis to
16 require a special exception?

17 The criteria all seemed to be
18 addressed either through licensing or through
19 spacing and there appeared to be no reason to
20 have a special exception hearing on the legal
21 sales of firearms.

22 CHAIRMAN HOOD: And I understand

1 the point wholeheartedly. I just wanted to
2 vet it out and make sure that I was making an
3 informed decision, but I understand the
4 rationale. I just wanted to ask the question.

5 Okay. Mr. Turnbull.

6 COMMISSIONER TURNBULL: Mr. Chair,
7 just going along with what your line of
8 questioning, is the time for questioning by
9 the ANCs and the community at the hearing. I
10 think it was advertised as it was going to be
11 a special exception. So, wouldn't they have
12 thought that if it's going to be a special
13 exception they would have felt that that's
14 what they wanted. So, now --

15 MS. STEINGASSER: Yes, and the
16 Office of Attorney General has advised that
17 that would be why during -- the re-
18 advertisement would go out for proposed action
19 and we would get comment back there and that
20 the emergency would also need then a second
21 notice.

22 COMMISSIONER TURNBULL: So,

1 basically, written comments coming in then.

2 MS. STEINGASSER: Written comments
3 would come in now.

4 COMMISSIONER TURNBULL: Okay.

5 CHAIRMAN HOOD: Any other
6 questions? Comments?

7 COMMISSIONER MAY: Yes.

8 CHAIRMAN HOOD: Commissioner May.

9 COMMISSIONER MAY: I'm curious.
10 You know, we had gotten detailed testimony
11 from Council Member Mendelson and one of his
12 comments was that in C-1 and C-2A firearm
13 sales would be prohibited and they'd be
14 allowed as a special exception in C-2B through
15 C-3A and allowed as a matter of right in C-3B
16 and above and I'm wondering -- I mean I --
17 we've obviously taken a slightly different
18 direction, but certainly more slanted toward
19 matter of right in all circumstances.

20 I'm wondering why -- you know, why
21 you didn't follow that kind of a structure?

22 MS. STEINGASSER: Well, Councilman

1 Mendelson worked with us on this report and
2 was at several of our working meetings. We
3 did consult with him directly on our text. He
4 is in agreement and authorized us to say so in
5 our report that he agreed with what we were
6 proposing.

7 We went to the intent of the
8 Zoning Regs and we looked at each zoning
9 category and what was the intent of the
10 category. The C-1 zone talks about being --
11 the intent being aimed at the day-to-day needs
12 of a small area.

13 The C-2 districts as a body and
14 distinguished by their A, B and C was aimed at
15 serving the broader commercial needs with a
16 larger draw I think is the word -- the phrase
17 they used and the A, B and C don't get to the
18 use difference. They get to the height and
19 bulk and so, it really didn't -- make a
20 difference. It didn't make sense to
21 distinguish A from B because that had to do
22 more with height and density not use itself.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MAY: Now, I guess
2 going back to the idea of the special
3 exception. I mean did you actually explore if
4 it were a special exception what would be the
5 terms by which it would be granted or you just
6 simply say is this exception worthy or not?

7 MS. STEINGASSER: No, we did look
8 at the kind of criteria that we would
9 establish and whether there was, you know,
10 administrative efficiency in having a hearing.
11 What would be the qualitative items versus the
12 quantitative items and all the issues
13 regarding the licensing, the security, the
14 signage, the location, all of that was
15 quantitative and was something that would be
16 established through either the license or
17 through the Zoning Regs and there was nothing
18 that we could come up with from a planning
19 standpoint that needed public airing that
20 couldn't be quantified.

21 COMMISSIONER MAY: Other than I
22 don't want a firearms retailer in my

1 neighborhood.

2 MS. STEINGASSER: Right. It would
3 be more of an emotional --

4 COMMISSIONER MAY: Yes. Okay. I
5 guess -- how comfortable are you with the
6 notion that we would proceed tonight without
7 actually allowing for a hearing. I know that
8 there's the opportunity to provide written
9 comment, but it's essentially very different
10 nature.

11 MS. STEINGASSER: It is indeed.

12 COMMISSIONER MAY: And I'm
13 wondering whether we'd get some really
14 negative backlash if we did not --

15 MS. STEINGASSER: It's certainly
16 the Commission's prerogative.

17 COMMISSIONER MAY: Yes.

18 MS. STEINGASSER: We're
19 recommending that the emergency be extended.

20 COMMISSIONER MAY: Right. I
21 understand the need for that.

22 MS. STEINGASSER: The original

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hearing was closed. So, it would have to be
2 re-advertised.

3 COMMISSIONER MAY: Right.

4 MS. STEINGASSER: So, I'm not
5 sure. We didn't plot out a time line to see
6 how that would tie together.

7 COMMISSIONER MAY: Right.

8 MS. STEINGASSER: I think the
9 emergency expires at the end of November. I'd
10 have to look to Ms. Schellin as to whether it
11 would fit in, but if the Commission would like
12 to hold another hearing, that's certainly your
13 prerogative.

14 COMMISSIONER MAY: Yes. Okay.
15 But, you don't have any advice for us on that
16 point? Other than -- or a desire. I mean
17 obviously, there's a -- it's simpler if we
18 don't, but you don't have a --

19 MS. STEINGASSER: It's simpler,
20 but, you know, public input and proper -- is
21 always -- it is a radically different proposal
22 from what was originally put out there. Many

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighborhoods that would have been happy with
2 the C-3C may not be quite so comfortable with
3 a C-2A. So, it --

4 COMMISSIONER MAY: Right. Okay.
5 All right.

6 CHAIRMAN HOOD: Okay. Any other
7 questions? Comments?

8 We have it in front of us and I
9 think the Office of Planning report is very
10 well done. It talks about the recommendation.
11 I'm not going to read through -- if you look
12 at page 3, it talks about the changes. Has it
13 underlined in bold some changes. We've
14 already read all of that. So, I'm not going
15 to -- we're not going to have a reading. I'm
16 not going to read through all that and it
17 talks about the recommendations in the front
18 page. So, we've already perused that.

19 I am inclined to go ahead and move
20 forward. First, let me do it in two motions.

21 I would move approval of emergency
22 action to adopt as proposed which is in the

1 Office of Planning report dated November 14th,
2 2008 and ask for a second.

3 VICE CHAIRMAN JEFFRIES: Second.

4 CHAIRMAN HOOD: Properly seconded.

5 Any further discussion? Any further
6 discussion? All those in favor?

7 (Ayes.)

8 COMMISSIONER MAY: Mr. Chairman.

9 CHAIRMAN HOOD: Hearing --

10 COMMISSIONER MAY: I'm sorry.

11 CHAIRMAN HOOD: Let me finish here
12 and I'll come -- that's why I'm doing it --

13 MRS. SCHELLIN: That was for the
14 emergency action?

15 CHAIRMAN HOOD: Yes, emergency
16 action only.

17 MRS. SCHELLIN: Okay. Emergency
18 Action. Zoning Commission records the vote 4
19 to 0 to 1 to take emergency or to adopt
20 emergency action in Zoning Commission 08-20
21 pursuant to the revised OP report.
22 Commissioner Hood moving. Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Jeffries seconding. Commissioners May and
2 Turnbull in support. Third mayoral appointee
3 seat vacant not voting.

4 CHAIRMAN HOOD: Okay. Thank you.
5 Now, Commissioner May, I hope that it was no
6 concern with the emergency act.

7 COMMISSIONER MAY: No, not at all.

8 CHAIRMAN HOOD: Okay.
9 Commissioner May.

10 COMMISSIONER MAY: No, I just
11 wanted to have some sort of discussion about
12 whether we think a hearing is necessary and
13 appropriate before we take proposed action on
14 this.

15 This is a pretty significant
16 change. We've gone from special exception
17 process to no special exception and we've gone
18 from C-3 only to C-2A with some distance
19 restrictions and it's a significant enough
20 change that I think that there would be a lot
21 of folks who -- potentially who would want to
22 say something about it now since they didn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feel -- you know, wouldn't have necessarily
2 felt so concerned before. They weren't close
3 enough to a C-3 zone or they weren't -- they
4 knew that there was always the safety net of
5 the special exception process and so, I mean
6 although we do have the opportunity to get
7 written comment from folks, there's nothing
8 like a hearing to get people to speak up and
9 share their views with us.

10 So, you know, I personally am
11 inclined to proposed that we have a hearing on
12 this rather than simply taking action tonight,
13 but I'm interested in hearing everyone else's
14 view.

15 CHAIRMAN HOOD: Okay. So, at
16 least what I hear from Commissioner May is
17 whether or not -- instead of approving
18 proposed action I guess we would be setting
19 this down for a hearing.

20 I want to hear from -- and one of
21 the things that -- I will say this though and
22 then I believe Commissioner May -- I mean

1 Commissioner Turnbull, one of the things that
2 I am inclined -- it seems like all the people
3 who -- and I understand your point,
4 Commissioner May, but it seems as though all
5 the people who had an interest the first time,
6 and I know we're going from C-3 to C-2 now,
7 but who were interested in this topic were at
8 the table with the Office of Planning in
9 between when we dealt with it from the hearing
10 until this point who helped craft this -- what
11 we have in front of us.

12 Let me just ask this though. Ms.
13 Steingasser, was Ms. Brazil also at the table?

14 MS. STEINGASSER: No, sir, she was
15 not.

16 CHAIRMAN HOOD: Okay. Okay.
17 Commissioner Turnbull.

18 COMMISSIONER TURNBULL: Thank you,
19 Mr. Chair. I can -- I guess I can go either
20 way on this. I know where Commissioner May's
21 coming from. Worried about that -- such a
22 major change as this. I guess if we -- and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 guess the concern is maybe are you going to
2 get enough of the feedback in the written
3 comments which you should. I have a feeling
4 if people are that much -- have something to
5 say, they're going to say it in the written
6 comments.

7 But, I know where Commissioner
8 May's coming from. That a public venue for
9 people, ANCs or other community organizations
10 to come out and speak may be more appropriate,
11 but I'm torn on this I guess. I guess I could
12 go either way. I have a feeling that you can
13 -- you're still probably going to get some
14 responses back written that will answer --
15 that will give -- that should give a good
16 reading on the concerns out there, but I can
17 go either way on this one.

18 VICE CHAIRMAN JEFFRIES: Mr.
19 Chair, I guess I'd like to ask the Office of
20 Planning. Because I agree with Commissioner
21 May. You know, I'm more, you know, struck
22 with the change from special exception to

1 matter of right and there is a difference
2 between sort of written commentary and a
3 public hearing and a lot of people are swayed
4 in public hearings and then different things
5 happen and so.

6 But, before I go forward, I just
7 want to make certain I understand from the
8 Office of Planning. I mean is there any --
9 there's no harm here in terms of having the
10 public hearing.

11 MS. STEINGASSER: No, sir.

12 VICE CHAIRMAN JEFFRIES: Yes,
13 okay. Well, I would concur with Commissioner
14 May that we should have a hearing. I just
15 think the whole notion of moving from special
16 exception to matter of right is -- there's
17 some distance there. So, I would agree.

18 CHAIRMAN HOOD: Okay. It looks
19 like the vote will be to set this down for a
20 public hearing, but I just want to warn my
21 colleagues that it's a possible chance by the
22 time we get ready for the hearing we may have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to do another emergency. Okay.

2 So, what we'll do is we will set
3 down Zoning Commission Case 08-20 because of
4 the changes for a public hearing and also
5 authorize immediate publication of both the
6 emergency and the regulations that we're
7 setting down for the proposed action which now
8 will be hearing action --

9 MRS. SCHELLIN: Actually, it's the
10 emergency and proposed rule making. The
11 immediate publication of the proposed rule
12 making not proposed action.

13 CHAIRMAN HOOD: Okay. Okay.
14 Thank you. Proposed rule making and the
15 emergency and again, I just want to make sure
16 that we know we may have to take up the
17 emergency once again. Okay. All right. That
18 was the motion. I know it was --

19 COMMISSIONER TURNBULL: Second.

20 CHAIRMAN HOOD: -- scatterbrained.
21 Okay. It's been moved and properly seconded.
22 Any further discussion? All those in favor?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (Ayes.)

2 CHAIRMAN HOOD: No opposition.

3 Staff would record the vote.

4 MRS. SCHELLIN: Yes, Staff records
5 the vote 4 to 0 to 1 to set down Zoning
6 Commission case 08-20 and authorizes the
7 immediate publication of the proposed rule
8 making when the emergency rule making is
9 published. Commissioner Hood moving.

10 Commissioner Turnbull seconding.

11 Commissioners May and Jeffries in support.

12 Third mayoral appointee set vacant not voting.

13 CHAIRMAN HOOD: Okay. Ms.

14 Schellin, do we have anything else before us
15 in this special public meeting?

16 MRS. SCHELLIN: No.

17 CHAIRMAN HOOD: Okay. We should
18 be starting in about six minutes our hearing
19 for this evening. Thank everyone for their
20 participation.

21 (Whereupon, the meeting was
22 concluded at 6:25 p.m.)