

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

MARCH 26, 2018

+ + + + +

The Regular 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
JOEL LAWSON
MATT JESICK

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

HILLARY LOVICK, ESQ.

The transcript constitutes the minutes from
the Regular meeting held on March 26, 2018.

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

(6:31 p.m.)

1
2
3 CHAIRMAN HOOD: This meeting will please come to
4 order. Good evening, ladies and gentlemen. This is the
5 public meeting of the Zoning Commission of the District of
6 Columbia. Today's date is Monday, March 26, 2018.

7 My name is -- excuse me. My name is Anthony Hood.
8 Joining me are Vice Chair Miller, Commissioner Turnbull,
9 Commissioner Shapiro, and Commissioner May, Office of Zoning
10 Staff Ms. Sharon Schellin, Office of Attorney General Staff
11 Ms. Lovick, Office of Planning Ms. Steingasser, Mr. Lawson,
12 and Mr. Jesick.

13 Copies of today's -- copies of today's meeting are
14 available to you, and are located in the bin near the door.
15 We do not take any public testimony in our meetings unless
16 the Commission requests someone to please come forward.

17 Please be advised this proceeding is being
18 recorded by a court reporter. It's also webcast live.
19 Accordingly, we must ask you to refrain from any disruptive
20 noises or actions in the hearing room.

21 Does the staff have any preliminary matters?

22 MS. SCHELLIN: Yes, sir, I have one, Case No. 17-
23 18. It's not on tonight's agenda, but it's scheduled to be
24 on the April 30th agenda, but due to a scheduling issue among
25 the Commissioners, it's on the agenda for further

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1 deliberations, and I think that it's important that all five
2 Commissioners be there, I believe.

3 I'd ask that the Commission move that case to the
4 next meeting, May 14th, and still allow OP and DCRA to submit
5 their further submission ten days prior to that meeting.

6 CHAIRMAN HOOD: Okay. Any objection?

7 Commissioner Shapiro.

8 COMMISSIONER SHAPIRO: I'm fine with this
9 proceeding. I will not be at that meeting, so we will not
10 have five if we're not going to be --

11 CHAIRMAN HOOD: Okay. So, we need to have five,
12 so that may have to change. I'd like for these, for these
13 issues, I think, we need a full complement. So, if
14 everybody's -- if Ms. Schellin will give us a date.

15 Are you out the whole week?

16 COMMISSIONER SHAPIRO: The following -- Ms.
17 Schellin, the following Monday is fine.

18 CHAIRMAN HOOD: Do we have anything --

19 MS. SCHELLIN: Well, we only have one meeting, and
20 then --

21 CHAIRMAN HOOD: What's the following Monday?

22 COMMISSIONER SHAPIRO: Twenty-first.

23 CHAIRMAN HOOD: Do we have --

24 MS. SCHELLIN: May is out that night though.

25 CHAIRMAN HOOD: Oh, the 21st?

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1 MS. SCHELLIN: Yes.

2 CHAIRMAN HOOD: Do we have another night besides
3 the regular nights that we can try to --

4 MS. SCHELLIN: How about -- how about the 10th?

5 CHAIRMAN HOOD: The 10th of --

6 MS. SCHELLIN: Of May. We don't have anything
7 scheduled.

8 CHAIRMAN HOOD: Is this sufficient -- that's
9 enough time for everybody? Can everybody look at their
10 schedules? Okay, and I know things do come up, but we're
11 going to shoot for the 10th of May.

12 MS. SCHELLIN: So, we'll have a Special Public
13 Meeting on the 10th?

14 CHAIRMAN HOOD: Yes.

15 MS. SCHELLIN: Six thirty?

16 CHAIRMAN HOOD: Six thirty, yes.

17 COMMISSIONER SHAPIRO: Six thirty it is.

18 CHAIRMAN HOOD: We don't have anything else
19 scheduled, right, May 10th?

20 MS. SCHELLIN: Nothing.

21 CHAIRMAN HOOD: All right.

22 MS. SCHELLIN: So, we're just going to have the
23 one case on there?

24 CHAIRMAN HOOD: I think it's two, isn't it?

25 MS. SCHELLIN: No, the other one is already

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1 scheduled.

2 CHAIRMAN HOOD: It's taken care of?

3 MS. SCHELLIN: That one is already taken care of.

4 CHAIRMAN HOOD: Is everybody -- okay, okay. I
5 don't want to mix it up. Okay, that's fine.

6 MS. SCHELLIN: Okay.

7 CHAIRMAN HOOD: All right, so we will -- Ms.
8 Schellin, if you can just recap, so if somebody is listening
9 --

10 MS. SCHELLIN: Yes. And I'll let -- I know OP is
11 listening, of course, but I'll let DCRA know also that Case
12 No. 17-18 will be put on for a Special Public Meeting on May
13 10th at 6:30 p.m. OP and DCRA will have ten days prior to
14 that meeting --

15 CHAIRMAN HOOD: Ms. Schellin, let me, let me --
16 I hate to interrupt.

17 MS. SCHELLIN: That's not a good day?

18 CHAIRMAN HOOD: The 14th is now not going to be
19 a good day. We need five -- for these two to --

20 MS. SCHELLIN: The 10th.

21 CHAIRMAN HOOD: No, the 14th for the Valor case
22 is now not a good day. Whatever -- I just want to make sure
23 we have some, we have five for one and five for the other
24 one. Can we do both of them on the 10th?

25 COMMISSIONER SHAPIRO: We already announced --

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1 MS. SCHELLIN: We announced that one at the last
2 meeting. We voted -- you guys voted on that.

3 COMMISSIONER SHAPIRO: But, I mean, maybe we can
4 do them both on the 17th.

5 MS. SCHELLIN: Shapiro is out that day too.

6 COMMISSIONER SHAPIRO: Oh, okay. Never mind.

7 CHAIRMAN HOOD: When is everybody going to be
8 here? Maybe we can start then and work our way back.

9 MS. SCHELLIN: How about the 24th?

10 CHAIRMAN HOOD: Is everybody here on the 24th?

11 COMMISSIONER SHAPIRO: Yes.

12 CHAIRMAN HOOD: Okay, everybody is here on the
13 24th, right? Okay.

14 COMMISSIONER SHAPIRO: I'm going to be out on the
15 21st?

16 MS. SCHELLIN: That's what you told me.

17 COMMISSIONER SHAPIRO: Trying to remember why.

18 CHAIRMAN HOOD: The 24th, so --

19 COMMISSIONER SHAPIRO: All right.

20 CHAIRMAN HOOD: Yeah, so everybody is here on the
21 24th, right?

22 Okay, Ms. Schellin, can you work out a --

23 MS. SCHELLIN: I think you sent me an email saying
24 you were going to be out that day.

25 CHAIRMAN HOOD: Who me?

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1 COMMISSIONER SHAPIRO: I don't doubt that I did
2 that. I just can't remember why.

3 MS. SCHELLIN: Yes. So, now we're going with the
4 24th, or we could go with the 31st. It's up to you guys.

5 COMMISSIONER SHAPIRO: I think, either are fine
6 for me, but I think Commissioner May is uncertain about the
7 21st.

8 MS. SCHELLIN: Not the 21st, the 24th.

9 CHAIRMAN HOOD: The 24th is the date for now to
10 do both, right?

11 Is everybody here on the 24th?

12 COMMISSIONER SHAPIRO: Yes.

13 CHAIRMAN HOOD: So, can we do -- let's do the 24th
14 at 6:00 -- no, 6:30, leave it at 6:30.

15 MS. SCHELLIN: Okay, 6:30 for both of them on the
16 24th. That'd be Case No. 16-23 and Case No. 17-28 for
17 further deliberations, and we'll contact all of the parties
18 involved in both of those cases.

19 COMMISSIONER SHAPIRO: 17-18?

20 MS. SCHELLIN: And 16-23.

21 CHAIRMAN HOOD: Okay. So, we're good, everybody?
22 Anything else on that?

23 MS. SCHELLIN: Six thirty, right?

24 CHAIRMAN HOOD: Right, 6:30. Anything else?

25 MS. SCHELLIN: No, that's it.

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1 CHAIRMAN HOOD: Okay. So, what I'd like to do is
2 before we get into the rest of it, I'd like to take a moment
3 of silence. I mentioned this earlier today at a hearing.
4 I'm going to take a moment of silence of a following
5 colleague who I've served with, I think, a number of us
6 served and we knew. He had a stellar record in doing things,
7 and not just him, the Zoning Commission and the Board of
8 Zoning Adjustment, but in the city as a whole, Curtis
9 Etherly, who served the Zoning Commission with distinction,
10 so I'd like to take a moment of silence in remembrance of
11 Curtis.

12 (Moment of silence.)

13 CHAIRMAN HOOD: Thank you, and I would ask that
14 you keep his family in prayers through this time.

15 Okay, let's move right into our agenda. Under
16 consent calendar item, this is for deliberations, Zoning
17 Commission Case No. 08-24C/04-25, Monroe Street Block E
18 Residential, LLC - PUD Modification of Consequence at Square
19 3654.

20 Ms. Schellin.

21 MS. SCHELLIN: Yes. Since the last time the
22 Commission met and found this case to indeed be a
23 modification of consequence, there's been one submission,
24 that's at Exhibit 10, a letter in support from the Catholic
25 University of America, and so we'd ask the Commission to

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1 consider final action this evening.

2 CHAIRMAN HOOD: Okay. Commissioners, let me open
3 it up. What is your pleasure?

4 COMMISSIONER TURNBULL: Mr. Chair.

5 CHAIRMAN HOOD: Yes.

6 COMMISSIONER TURNBULL: I have no issues with the
7 changes proposed.

8 COMMISSIONER SHAPIRO: Mr. Chairman.

9 CHAIRMAN HOOD: Yes.

10 COMMISSIONER SHAPIRO: I agree. I don't have any
11 issues. I mean, I think, we were hoping to hear something
12 from the ANC, but we haven't gotten anything in the record,
13 and I understand we're not expecting anything in the record,
14 so I'm taking that as indication that there's -- there are
15 no major issues with what's being proposed here, so I'm
16 prepared to go forward.

17 COMMISSIONER MILLER: I concur, Mr. Chairman.

18 PARTICIPANT: As do I, Mr. Chair.

19 CHAIRMAN HOOD: All right, so we have a
20 concurrence as well it looks like. We also have the letter
21 from Catholic University as well in support. That was one
22 thing we did get.

23 Let's -- let's -- somebody like to make a motion?

24 COMMISSIONER MILLER: Mr. Chair, I would move that
25 we approve the Modification of Consequence for Zoning Case

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1 No. 08-24C/04-25, Monroe Street Block E Residential, LLC at
2 Square 3654. Look for second.

3 COMMISSIONER TURNBULL: Second.

4 CHAIRMAN HOOD: Okay, it's been moved and properly
5 seconded.

6 Any further discussion?

7 (No audible response.)

8 CHAIRMAN HOOD: All those in favor, aye.

9 (A chorus of ayes.)

10 CHAIRMAN HOOD: Any opposition?

11 (No audible response.)

12 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
13 record the vote.

14 MS. SCHELLIN: Yes. Staff records the vote five
15 to zero to zero to approve final action Zoning Commission
16 Case No. 08-24C/04-25. Commissioner Turnbull moving;
17 Commissioner Miller seconding; and Commissioners Hood, May,
18 and Shapiro in support.

19 CHAIRMAN HOOD: Okay, next we have under final
20 action Zoning Commission Case No. 14-13D. This is the Office
21 of Planning-Technical Correction to Order Nos. 14-13 and 08-
22 06 Penthouse Regulations, Permitted Area of Penthouses,
23 Subtitle C.

24 Ms. Schellin.

25 MS. SCHELLIN: Okay. Yes, 14-13D. The new

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1 exhibits here are Exhibits 2 and 3, which was the proposed
2 rulemaking being published in the D.C. Register on February
3 23rd. No comments were received on this proposed rulemaking,
4 so we'd ask the Commission to move forward with final action
5 this evening.

6 CHAIRMAN HOOD: Okay. Thank you, Ms. Schellin.

7 Again, this text amendment was to clarify the
8 penthouse area is limited to a third of the total roof area
9 only in zones with a three story or less limitation.

10 Anything -- any other comments on this?
11 Questions?

12 COMMISSIONER SHAPIRO: No questions.

13 CHAIRMAN HOOD: Someone like to make a motion?

14 COMMISSIONER SHAPIRO: Mr. Chair.

15 CHAIRMAN HOOD: Yes.

16 COMMISSIONER SHAPIRO: I move that we take final
17 action on Zoning Commission Case No. 14-13D, Office of
18 Planning-Technical Correction to Order Nos. 14-13 and 08 --
19 and -- sorry -- 08-06 Penthouse Regulations, Permitted Area
20 of Penthouses, Subtitle C.

21 Look for a second.

22 CHAIRMAN HOOD: Second. I'll second that. It's
23 been moved and properly seconded.

24 Any further discussion?

25 (No audible response.)

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1 CHAIRMAN HOOD: All in favor?

2 (A chorus of ayes.)

3 CHAIRMAN HOOD: Any opposition?

4 (No audible response.)

5 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
6 record the vote.

7 MS. SCHELLIN: Staff records the vote five to zero
8 to zero to approve final action Zoning Commission Case No.
9 14-13D. Commissioner Shapiro moving; Commissioner Hood
10 seconding; Commissioners May, Miller, and Turnbull in
11 support.

12 CHAIRMAN HOOD: Okay. Next under final action,
13 we have Zoning Commission Case No. 17-15 (806 Rhode Island
14 Avenue, LLC-Map Amendment at Square 3845).

15 Ms. Schellin.

16 MS. SCHELLIN: Yes. For this one, Exhibits 25 and
17 26, we have, again, the proposed rulemaking, which was
18 published in the D.C. Register on February 23rd. Exhibit 27
19 is the letter in opposition from the D.C. for reasonable
20 growth, and Exhibit 28 are comments on opposition from
21 Abigail DeRoberts.

22 So we'd ask the Commissioner to consider taking
23 final action this evening on this case.

24 CHAIRMAN HOOD: Commissioners, we have the request
25 for final action. We also have the additional submissions

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1 as Ms. Schellin has already mentioned.

2 Let's open it up for any discussion.

3 Commissioner Shapiro.

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Just
5 one point on one of the issues that was raised in concern --
6 this is a -- what was the exhibit number?

7 Pardon me, Mr. Chair.

8 This was on Exhibit No. 28, the comments from Ward
9 5, Alliance for Equity. And one of the issues was they
10 couldn't -- and the two people that they didn't receive
11 proper notice, and there actually were signs posted on this
12 property since December 20th. There were at least three
13 locations with the signs where these were posted 40 days
14 before the hearing, so there was certainly adequate
15 notification.

16 I have no other concerns with this. One other
17 thing I'd like to say, Mr. Chair, is that I wasn't present
18 for the public hearing, but I reviewed the record, and I will
19 be participating.

20 CHAIRMAN HOOD: All right, thank you, Mr. Shapiro,
21 for bringing that to our attention, and also letting us know
22 about the notice. I do know it was properly noticed. That's
23 one of our ways of getting proper notice out, and it was
24 done, I think, in three different places, and I think it
25 still stands today, at least it did yesterday.

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1 So, anyway, I don't know -- I think this was
2 pretty straightforward. Again, this is a proposed
3 rulemaking, and our rules are clear on how we proceed as far
4 as in our rulemaking cases, and I think that the posting and
5 everything is warranted, and I think the record reflects that
6 we have done proper notice, or proper notice has been done.

7 Anything else on this?

8 COMMISSIONER MAY: Mr. Chairman.

9 CHAIRMAN HOOD: Commissioner May.

10 COMMISSIONER MAY: Yes. I just want to say, I
11 mean, I appreciate the fact that we actually received
12 comments on it. Very often, you know, things like this get
13 notice and we hear nothing at all, so I'm glad that folks are
14 paying attention to it.

15 Unfortunately, I think that the comments that we
16 heard are not sufficient to, I think, change the course that
17 we're on. I mean, I think that the, the Office of Planning
18 in the original set down made the case very clearly that this
19 is a property for which, or that an area of the city for
20 which there should be a map amendment. The Comprehensive
21 Planning calls for it in essence, and I think that case is
22 made very clearly, so I am in support of finalizing this
23 action.

24 CHAIRMAN HOOD: Okay. Is there any other
25 comments?

1 COMMISSIONER MILLER: Yes. Mr. Chairman, I would
2 agree that it's a comp plan map consistency case with zoning.

3 CHAIRMAN HOOD: Okay. Will somebody like to make
4 a motion?

5 COMMISSIONER TURNBULL: Mr. Chair, I would move
6 that we take final action on Zoning Case 17-15 (806 Rhode
7 Island Avenue, LLC-Map Amendment at Square 3845).

8 COMMISSIONER MILLER: Second.

9 CHAIRMAN HOOD: Okay. It's been moved and
10 properly seconded.

11 Any further discussion?

12 (No audible response.)

13 CHAIRMAN HOOD: All in favor?

14 (A chorus of ayes.)

15 CHAIRMAN HOOD: Any opposition?

16 (No audible response.)

17 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
18 record the vote.

19 MS. SCHELLIN: Yes. Staff records the vote five
20 to zero to zero to approve final action Zoning Commission
21 Case No. 17-15. Commissioner Turnbull moving; Commissioner
22 Miller seconding; Commissioners Hood, May, and Shapiro in
23 support.

24 CHAIRMAN HOOD: Okay. Next, let's go to hearing
25 action, Zoning Commission Case No. 18-01 (Community Three

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1 Development-Map Amendment at Square 361).

2 Mr. Jesick.

3 MR. JESICK: Thank you, Mr. Chairman, and members
4 of the Commission. The applicant in this case is seeking a
5 rezoning of the Grimke School property on Vermont Avenue just
6 south of U Street.

7 The applicant was selected as the developer of the
8 site in a disposition from the city, and they seek to restore
9 the school building, and include a mix of office and arts
10 uses, as well as a new home for the African-American Civil
11 War Museum.

12 The gym at the rear of the property will be razed,
13 and new residential uses constructed in its place, and that
14 new construction would be subject to historic preservation
15 review as the site is in the U Street Historic District.

16 The current zone on this site is RF-1, which is
17 the same as the surrounding row house residential
18 neighborhood, and the proposed zone is ARTS-2, which is the
19 same as the U Street corridor directly north of the site.

20 The generalized policy map describes this area as
21 a neighborhood enhancement area, and the Future Land Use Map
22 calls for mixed use moderate density residential and moderate
23 density commercial uses on the site.

24 The ARTS-2 zone would not be inconsistent with
25 those designations, and it would allow for the mixed use as

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1 called for in the Future Land Use Map.

2 The Duke Plan, which is the small area plan for
3 this neighborhood, has specific policies addressing the
4 Grimke School, and may suggest its adaptive reuse, again, for
5 the American -- African-American Civil War Museum, as well
6 as other arts uses, and the rezoning would help satisfy those
7 policies.

8 The proposed rezoning, therefore, is not
9 inconsistent with the small area, small area plan, the
10 comprehensive plan, and it is not inconsistent with the
11 zoning in the adjacent U Street corridor. OP, therefore,
12 recommends set down of the application.

13 Thank you.

14 CHAIRMAN HOOD: Okay, thank you, Mr. Jesick.

15 Any questions or comments to the Office of
16 Planning on the set down report? Any questions or comments?

17 Commissioner May.

18 COMMISSIONER MAY: Yes. First thing I want to say
19 is I'm glad to see that finally something is going to happen
20 with the property. It's been a really long time coming. I
21 remember being in the Grimke School when the fire department
22 was in there, and that was not a great spot for them.

23 And I remember walking around the gym before it
24 was the museum, and it was in terrible shape, and, you know,
25 that was a significant improvement, so, I mean, I'm really

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1 glad to see something finally happening with it.

2 The -- I guess, I have one question. This is
3 probably covered in the applicant's submission, but maybe I
4 missed it. Was the museum, is that going to be relocated
5 into the building?

6 MR. JESICK: Yes, it will be in the main school
7 building out --

8 COMMISSIONER MAY: In the main school building
9 instead of in the gym, okay. All right.

10 I don't think I have any other questions about it.

11 CHAIRMAN HOOD: Okay. Any other questions or
12 comments?

13 Vice Chair Miller.

14 COMMISSIONER MILLER: Thank you, Mr. Chairman.
15 Yes, I support setting this down for a public hearing. I
16 know that on map amendments we don't usually get into what
17 the project is, but this is, the map amendment is
18 facilitating a specific project, which has housing,
19 affordable housing, the museum, so I just would like to have,
20 just for our information, if not for our decision-making, at
21 least what the, what the amount of housing is, what the
22 amount of affordable housing is proposed, and, you know, the
23 museum space, and the other office space that's going to be
24 there just to have an idea of what we're facilitating since
25 it's tied to -- that's why we're doing -- that's why the map

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1 amendment is being done.

2 CHAIRMAN HOOD: Okay. Anything else?

3 (No audible response.)

4 CHAIRMAN HOOD: All right. I think this is
5 conforming to this hearing, I will go ahead and move that we
6 set down Zoning Commission Case No. 18-01 with the comments
7 that my colleagues have made on the Community Three
8 Development Map Amendment at Square 361, and ask for a
9 second.

10 COMMISSIONER MILLER: Second.

11 CHAIRMAN HOOD: It's been moved and properly
12 seconded.

13 Any further discussion?

14 COMMISSIONER MAY: Yes. My question, is this
15 going to be a rulemaking?

16 CHAIRMAN HOOD: No, this is --

17 COMMISSIONER MAY: Why is this contested? I get
18 confused.

19 MS. LOVICK: It's a contested case because the
20 applicant did not request that it be a rulemaking.

21 CHAIRMAN HOOD: Okay. So -- okay. All right.
22 Well --

23 COMMISSIONER MILLER: Do we have, do we have the
24 discretion to make it a rulemaking?

25 MS. LOVICK: When they make a request for it to

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1 be a rulemaking, then that's when you go through the process
2 of determining whether it should --

3 COMMISSIONER MILLER: Only if they request it.

4 MS. LOVICK: -- be done as a rulemaking, but
5 otherwise, the default is that it's a contested case.

6 COMMISSIONER MAY: So, can we -- I mean, can we
7 set it down right now, and then -- and be open to such a
8 subsequent request or should we defer, in case they want to
9 do that?

10 MS. LOVICK: No, I mean, at this point, it's done
11 -- it is done at set down, but because it's not being --
12 there's no request to you for it to be a rulemaking, you
13 would, you would set it down as a contested case.

14 COMMISSIONER MAY: Okay. And do -- well, hold
15 off.

16 COMMISSIONER MAY: Can we delay setting this down
17 for --

18 CHAIRMAN HOOD: Here's what -- I'm going to ask
19 Ms. Schellin to -- I mean, that's an opportunity to we're
20 basically saying for the applicant. I would -- because that
21 was my question. If we set this down now as a contested
22 case, could they come back later and request it? And let me
23 just ask the applicant -- they might not even be interested
24 in that. They might want it to be contested.

25 Ms. Prince, you've heard the discussion. Could

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1 you identify yourself and let us know?

2 MS. PRINCE: Allison Prince from Goulston here on
3 behalf of the applicant. This is simply our site that is
4 part of the rezoning application. It is not a broader site,
5 so since it only contains land that is under the control of
6 the current ownership, it would be handled as a contested
7 case and not as a rulemaking.

8 Rulemakings are broader in context. They tend to
9 need to have more property involved than simply the
10 applicant's property --

11 CHAIRMAN HOOD: Okay.

12 MS. PRINCE: -- otherwise we would have filed it
13 as a rulemaking.

14 CHAIRMAN HOOD: Okay. All right, so we are clear
15 on that. We were just trying --

16 COMMISSIONER MAY: Can I ask a question?

17 CHAIRMAN HOOD: Yes, sure.

18 COMMISSIONER MAY: I mean, I thought we'd gotten
19 more recent guidance indicating that the fact that it's a
20 single property is not the, is not the only criterion, and
21 that -- in fact, if this has to do with consistency with
22 comprehensive plan that we had flexibility to consider it as
23 a rulemaking.

24 Is that not -- did I miss that -- did I get that
25 advice incorrect?

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1 CHAIRMAN HOOD: That was our last meeting, I
2 think.

3 MS. LOVICK: The determination is made if there
4 is a request for it to be a rulemaking and arguments being
5 made that it has a broader impact, but in this particular
6 situation, that's not what's happening.

7 I can -- I can look to the reg. Let me -- I can
8 pull up the reg just to --

9 CHAIRMAN HOOD: Well, I'll tell you what.

10 MS. LOVICK: -- for the guidance on it, but
11 there's no -- there's no decision to be made about how it's
12 set down unless there's a request that it be a rulemaking
13 case.

14 COMMISSIONER MAY: But the applicant could amend
15 their request if they felt that there was a reasonable basis
16 for doing so, right? From right now, they could -- the
17 applicant could do that.

18 MS. LOVICK: Yes, they could, but once you -- once
19 it's set down, the Commission does have to decide whether
20 it's going to be heard as a rulemaking or a contested case.

21 COMMISSIONER MAY: Right. Right. I think we
22 might need a little advice on whether, in fact, this would
23 qualify in that for a rulemaking versus a map amendment.

24 MS. LOVICK: Okay.

25 CHAIRMAN HOOD: And, Ms. Prince, are you even

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1 interested in this discussion? I think that's first and
2 foremost.

3 MS. PRINCE: We're perfectly happy to go forward
4 with it as a contested case.

5 CHAIRMAN HOOD: Okay.

6 MS. PRINCE: If there's been some recent guidance,
7 I've missed it. My most recent --

8 COMMISSIONER MAY: I think, it's guidance to us,
9 not to you.

10 MS. PRINCE: Oh, okay, because my most recent
11 experience was if it's site-specific, it's very hard to make
12 an argument that it's rulemaking, so we're perfectly happy
13 to proceed with it as a contested case proceeding.

14 CHAIRMAN HOOD: Okay. We're going to -- we're
15 going to see if we can get -- let's see if we can get some
16 clarity, because we just had a case, was it last week, so we
17 want to make sure we --

18 (Simultaneous speaking.)

19 CHAIRMAN HOOD: All right, Ms. Prince, we're sorry
20 to take up your time, but we're trying to make sure that we
21 operate in a consistent manner, so we will set this down as
22 a consistent case.

23 MS. PRINCE: All right. I did have a further
24 discussion with Ms. Steingasser, who alerted me to the recent
25 determination from the Office of the Attorney General that

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1 for comp plan consistency cases, they can proceed as a
2 rulemaking even if it's site-specific. That's new guidance,
3 but if it's -- if that's the position the Office of the
4 Attorney General is taking, we're perfectly happy to process
5 it as a rulemaking.

6 COMMISSIONER MAY: So, I think, the difference
7 here is that the current zone is not inconsistent. This is
8 the only thing that we just couldn't understand, because RF-1
9 is not inconsistent with the current zone plan, the current
10 comp plan, Future Land Use Map, so, therefore, if the -- it's
11 really about enabling the specific projects, so -- which
12 should be contested --

13 MS. PRINCE: Okay, then that would be contested
14 case.

15 COMMISSIONER MAY: Yes, but we -- I mean, sorry
16 for the confusion about it. I just got confused, because,
17 again, we had gotten this other advice, and we're trying, we
18 are trying to be consistent.

19 MS. PRINCE: I think we should go ahead with it
20 as a contested case.

21 CHAIRMAN HOOD: Okay. All right. So, let's go
22 back to where we were.

23 Thank you, Ms. Prince.

24 We had a motion to second.

25 Any further discussion?

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1 (No audible response.)

2 CHAIRMAN HOOD: Who made the motion?

3 PARTICIPANT: You made the motion. Rob seconded
4 it.

5 CHAIRMAN HOOD: Oh, I made the motion? Rob
6 seconded it, okay.

7 I'm sorry, Commissioner Miller seconded it, Vice
8 Chair Miller. It's moved and properly seconded.

9 Any further discussion?

10 COMMISSIONER MAY: Yes, one more time. I'm sorry.
11 I think it might be worthwhile hearing from Ms. Steingasser
12 on the issue of the consistency of the current zone with the
13 comprehensive plan designation.

14 CHAIRMAN HOOD: Okay.

15 COMMISSIONER MAY: Is that right?

16 CHAIRMAN HOOD: Let's do this. Why don't we --
17 we have a motion on the table, and we want to speak to the
18 motion. Why don't we -- I will withdraw the motion and the
19 second and we'll withdraw, so we'll withdraw -- we'll take
20 the motion off the table, and then we can go to Ms.
21 Steingasser.

22 MS. STEINGASSER: Okay. So, the way the Office
23 of Planning reviewed this was as an issue of consistency with
24 the comp plan. The comp plan identifies the site for a mixed
25 use of moderate density residential and moderate density

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1 commercial. The RF zones do not allow for the commercial
2 use, so, therefore, it's inconsistent with the comp plan.

3 COMMISSIONER MAY: Got it.

4 MS. STEINGASSER: And the question before the
5 Commission is not one of the project. It's one of the
6 appropriate zoning to match that comp plan designation of
7 mixed use, and, therefore, we think it qualifies as a
8 rulemaking if the applicant would proceed with that request.

9 CHAIRMAN HOOD: So that's kind of -- that's
10 consistent with what we did last week.

11 COMMISSIONER MAY: Correct, yes. I think we're
12 still figuring it out.

13 CHAIRMAN HOOD: Here's what I would suggest at
14 least for me. I might need the -- exactly what you said, but
15 more or less, I can keep it here and I can read it, keep
16 looking at it. I know it's probably somewhere where I can
17 look at it, but I think that would be very helpful to us as
18 we understand this as we're moving forward.

19 So, with that new guidance, Commissioners, are we
20 looking forward to entertaining that?

21 COMMISSIONER MAY: Yes, but I think we need to see
22 if Ms. Lovick has anything to add based on what we just heard
23 from the Office of Planning.

24 CHAIRMAN HOOD: Let me ask. Ms. Prince, so are
25 you interested in that?

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1 MS. PRINCE: Well, with -- thank you, Jennifer,
2 acting as OAG tonight a little bit, I think. Jennifer's
3 point is a good one with the RF-1 zoning that is not -- that
4 zoning is not consistent with the commercial stripe, so we'd
5 like to be set down.

6 Rulemaking is preferable always if it's available
7 to us, and with the Office of Planning supporting that
8 inconsistency argument, I believe, it is based on the recent
9 guidance from OAG. It is a large site, and I think that
10 helps make a rulemaking argument versus contested case.

11 CHAIRMAN HOOD: Okay, sounds good.

12 Let's see, Ms. Lovick, do -- does that -- are we
13 moving in the right direction?

14 MS. LOVICK: Yes. I mean, I think, I think,
15 you're moving in the right direction. I mean, I can -- this
16 is in Subtitle Z in Section 201.7, and it indicates that a
17 map amendment can be a rulemaking case when the petitioner
18 owns all of the property proposed to be rezoned, and the
19 ownership pattern -- but the ownership pattern is
20 geographically scattered or otherwise of a character that
21 raises land use policy questions to a greater degree than
22 highly localized issues of fact and effects on neighboring
23 properties, so, you know, I think, what -- setting it down
24 and hearing the case as a rulemaking is consistent with this
25 section.

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1 CHAIRMAN HOOD: All right. After the discussion
2 -- thank you, Commissioner May for bringing that up, and so
3 that's the way we'll proceed if it's okay? Okay.

4 MS. PRINCE: Thank you.

5 CHAIRMAN HOOD: All right.

6 Would somebody like to make a motion?

7 COMMISSIONER MILLER: Mr. Chairman, I would move
8 that the Zoning Commission set down Zoning Commission Case
9 No. 18-01 (Community Three Development-Map Amendment at
10 Square 361) as a rulemaking case and ask for a second.

11 CHAIRMAN HOOD: Second.

12 It's been moved and properly seconded.

13 Any further discussion?

14 (No audible response.)

15 CHAIRMAN HOOD: Thank you, everyone, for that
16 dialogue.

17 All in favor, aye.

18 (A chorus of ayes.)

19 CHAIRMAN HOOD: Any opposition?

20 (No audible response.)

21 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
22 record the vote.

23 MS. SCHELLIN: Staff records the vote five to zero
24 to zero to set down Zoning Commission Case No. 18-01 as a
25 rulemaking case. Commissioner Miller moving; Commissioner

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1 Hood seconding; Commissioners May, Shapiro, and Turnbull in
2 support.

3 CHAIRMAN HOOD: Okay. Ms. Schellin, do we have
4 anything else?

5 MS. SCHELLIN: No.

6 CHAIRMAN HOOD: Ms. Steingasser, do you have
7 anything from the Office of Planning?

8 MS. STEINGASSER: No, sir.

9 CHAIRMAN HOOD: Okay. So with that, I want to
10 thank everyone for your participation. This meeting is
11 adjourned.

12 (Whereupon, the above-entitled matter went off the
13 record at 7:02 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: Regular Meeting

Before: DCZC

Date: 03-26-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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