

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

+ + + + +

THURSDAY

JULY 27, 2023

+ + + + +

The Public Hearing of the District of Columbia Zoning Commission convened via videoconference pursuant to notice at 4:00 p.m. EDT, Anthony Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chair
PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

ELLA ACKERMAN, Staff
MIKE SUKININIJAR (phonetic), Data Specialist

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

HILLARY LOVICK, ESQUIRE

The transcript constitutes the minutes from the Public Hearing held on July 27, 2023.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 21-09B
 US Union Square DC, 901 LLC and
 US Union Square DC 999 LLC 12

Case No. 16-18F
 Georgetown University 14

Case No. 21-20A
 Steuart Investment Company 18

Case No. 21-22 - withdrawn
 Office of the Attorney General Company 22

Case Nos. 18-16, 19-27 and 19-27A, 19-27B
 Office of Planning and Zoning Commission 22

Case No. 22-32
 1232 Shift Cubed Partners, LLC 26

Case No. 02-38K
 Waterfront 375 M Street, LLC 29

Case No. 22-25
 Office of Planning text amendment 31

Case No. 22-35
 22-35 UM 500 Penn Street NE, LLC,
 NYA4 Associates, LLC, and HH Books, LLC 82

Case No. 23-17
 Office of Planning 101

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

(4:00 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. We are convening and broadcasting this public meeting by video conferencing.

My name is Anthony Hood. Joining me this evening are Vice Chair Miller and Commissioner May. We're also joined by the Office of Zoning's staff, Ms. Ella Ackerman, and Mr. Mike Sukininijar, hopefully I pronounced that right, who will be handling all of our virtual operations. We will ask all others to introduce themselves at the appropriate time. Copies of today's meeting agenda are available in the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live WebEx and YouTube Live. The video will be available on the Office of Zoning's website after the meeting.

Accordingly, all those listening on WebEx or by phone will be muted during the meeting unless the Commission suggests otherwise. For hearing action items the only documents before us this evening are the application, the ANC setdown report and the Office of Planning report. All other documents in the record will be reviewed at the time of the hearing. Again, we do not take any public testimony at our meetings unless the Commission requests someone to speak. If you experience difficulty

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1 accessing WebEx or with your phone call-in, then please call our
2 OZ hotline number at 202-727-0789 for WebEx login or call-in
3 instructions, and I believe that's the correct number for
4 tonight, yes, and tonight our OZ hotline number is 202-727-5471.
5 Again, 202-727-5471 for WebEx login or call-in instructions.

6 At this time, does the staff have any preliminary
7 matters other than the one I already know about? Okay. So with
8 that, I would ask everyone's indulgence. We have a lot of
9 movement going around in this process, and now I would ask that
10 Mr. Lawson be brought up. We have another young man who is going
11 to be retiring from the Office of Planning with a stellar record,
12 and that's Mr. Stephen Mordfin, so I'm going ask Mr. Lawson to
13 come up first and hopefully Mr. Mordfin is somewhere listening
14 and if not, when he gets ready to go to sleep one night he can
15 play this tape back.

16 So anyway, I will ask Mr. Lawson, if you could take it
17 from there and when you get finished what you're doing, turn it
18 back to me and I'll take it from there. Thank you.

19 MR. LAWSON: Thank you. Thank you very much, Mr. Chair,
20 for this opportunity to acknowledge Steve Mordfin and his
21 contributions, his many contributions to the Office of Planning
22 and to planning and development in D.C. generally.

23 Steve's been actually with the Office of Planning in
24 the Development Review Division for 21 years as a development
25 review specialist and now he's retiring. But during that time

1 he managed of course many, many Zoning Commission cases as well
2 as all kinds of BZA cases and other cases all over the City.
3 We're really going to miss his institutional (phonetic) knowledge
4 of planning and zoning review in D.C.

5 So I want to send a huge congratulations to him. Best
6 wishes for this next chapter in his life. He's moving to be
7 closer to his family. In fact, a new grandson was born just a
8 few weeks ago, so congratulations for that too. He does not
9 happen to have a case on the agenda tonight but, Mr. Chair, as
10 you said, I'm sure that he's watching. So Steve, well done from
11 me, Jennifer, from all of your friends and colleagues in OP and
12 have a happy retirement. Thank you, Mr. Chair.

13 CHAIRPERSON HOOD: Thank you, Mr. Lawson. I hope that
14 he can get, I'd like for him to come on if he's available, if we
15 can get him up. But I'm looking for some of the stats and I had
16 them open and with all this other stuff that I have open now I
17 can't find. There he is. Okay. Great. Mr. Lawson, the stats,
18 you sent some stats to me. Give me one moment. If somebody can
19 send it to me again right quick.

20 MR. LAWSON: Well, I thought of doing some stats, but
21 to be honest, he kind of predates the time that we started to
22 keeping track, keeping track of cases the way that we've done for
23 some other staff. So in this case, that's why I'm using the term
24 many, many Zoning Commission and BZA cases. It would certainly
25 be up in the many, many hundreds of both Zoning Commission and

1 BZA cases. I don't want to (indiscernible) anybody but they have
2 more than 100 reports on Parkside PUD alone, so.

3 CHAIRPERSON HOOD: Okay. I think I found what I was
4 looking for and let me just add to what Mr. Lawson has already
5 said. We know, Mr. Morfin, you're retiring. You have, and as
6 was mentioned by the Vice Chair of the BZA yesterday, you've had
7 a stellar record and whatever crazy things that this Commission
8 or the Board asked for you always presented it to us with a smile.
9 Put it like this, you have a smile, I don't know how you really
10 if you're really smiling all the way through because I always
11 tell people we're the most needy people around and needing
12 assistance.

13 But we want to thank you for your stellar reporting.
14 You were part of that group that came in when the Mayor, and I
15 always say this about a lot of newer people who came to the Office
16 of Planning, when you all first came down during the planning
17 process, you were one of those who came in and you all livened
18 up planning. So I was here before the liven up planning was
19 here, and I'm not talking about the older folks who are now
20 retired, but you made it really interesting. You were always
21 passionate about what you, and what I like about you specifically,
22 you know, you always think something different about someone,
23 what I like about you specifically is -- and I'm not saying nobody
24 else did -- but I always knew you had done your homework. I
25 always knew you had done your research to give us the best

1 information possible.

2 You have over 20 years in the Office of Planning from
3 what I have in countless BZA and Zoning Commission cases, and I'm
4 not going to disclose where you're going. I'll let you do that
5 when we turn it over to you. But we appreciate you. We wish
6 you the best in your next chapter. Have fun. It's well-deserved
7 and I will tell you this. The District of Columbia, because of
8 you, is better today than it has been because of the service and
9 you passing this way.

10 So thank you for all you've done. We greatly appreciate
11 it and always appreciate that you have never, never frowned when
12 you've given a report, and I know some of the stuff that we might
13 have said have been off kilter or left field, but you always have
14 been steadfast. So thank you for all you've done on behalf of
15 the Zoning Commission and the BZA and also the residents of the
16 City. You know, we haven't always agreed but you always, just
17 like you're doing now, you've always kept that smile. Any of my
18 colleagues want to say anything else? Want to add to what I
19 said.

20 Commissioner May.

21 COMMISSIONER MAY: Yes. I'll be very brief, but 21
22 years. So that's like you and I started with Zoning probably
23 right around the same time because, I mean, I've been doing this
24 18 years, but I had three years between my two stints. So it's
25 like we've been together from the very beginning and it's hard

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1 to think about, you know, the fact that you're not going to be
2 here helping out anymore. I mean, I don't think I can outdo the
3 Chairman in his recap and his praise for all the work that you've
4 done but I do want to underscore one point in particular, which
5 is that, you know, even though you've been dealing, you've dealt
6 with many, many hard cases, and it's not just like the big
7 extended ones that are long and painful to get through all the
8 time, but even just like the difficult BZA cases that take a lot
9 of study and consideration, you know, your attitude toward it and
10 your mood, even when some of us are cranky about them, I mean,
11 you know, you continue to smile through it and try to look at
12 everybody's position positively and even if some of us were a
13 little crazy about certain things.

14 So I really do appreciate that attitude. I don't know
15 that I could have maintained that if I were in your chair when
16 it came to doing some of these cases, because it can get pretty
17 cranky. So but no, I really, really do appreciate it and I miss
18 you and I really find it hard to believe that you're old enough
19 to retire. But then again, I do think you are young enough to
20 retire. It's important to retire when you're young enough to be
21 able to make something out of the years you have.

22 So congratulations and best wishes for good times
23 ahead. You deserve a warm send off and a good life and I'm sure
24 all of that always awaits you. Thank you.

25 CHAIRPERSON HOOD: Vice Chair Miller, do you want to

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1 say something?

2 VICE CHAIR MILLER: Yes. Thank you, Mr. Chairman.
3 I'll be brief also. I didn't know that you were retiring, Stephen
4 Mordfin, and we will definitely miss you. I couldn't say anything
5 really better than the three previous speakers, particularly
6 Chairman Hood and Commissioner May and Joel Lawson.

7 You always have been very professional, incredibly
8 professional and getting us the information we need, the options
9 that are available and when we'd ask you to go back you always
10 did, both at BZA and Zoning Commission. So I congratulate you
11 if you're still here and can hear me on your retirement, on your
12 grandson, I can relate to. Was it grandson? I can relate to
13 that. You'll have many, many, many more hours of enjoyment than
14 you've already had. You look more relaxed today, I have to say,
15 than any time I've seen you in the last 20 years or 11 years that
16 I've been on the Zoning Commission but I've seen you for 20 years
17 around. You look more relaxed so I think there is something to
18 this retirement thing that's going around anyway.

19 So I wish you luck and I thank you for all of your
20 contributions to this to our City. Thank you, Steve.

21 CHAIRPERSON HOOD: Thank you. And let me just extend,
22 if anybody else, Ms. Lovick or Ms. Ackerman, anybody else want
23 to say anything. If not, we'll put you up under our comments,
24 if anybody -- I want to give everybody the opportunity if they
25 wish to do so.

1 Okay. I think as well, so Mr. Mordfin, what I'll do,
2 I will turn it over to you. But in your comments, Mr. Mordfin,
3 do me one favor. Don't tell us what you really thought about us
4 when you turned your camera off. Don't tell us that part. But
5 we'll turn it over to you now.

6 MR. MORDFIN: Thank you so much everybody for all of
7 your comments. I really do appreciate it. I really did enjoy
8 this job. I'm not going to forget it. District of Columbia will
9 always be written on my birth certificate, so it will follow me.

10 But that said, yes, we're going to join -- I now have
11 a grandson. There's also a granddaughter. So we're going to
12 join them all and they're all in Israel and we're going to join
13 them there and all be together in the same place again, which we
14 haven't done for a long time. So that's my plan, is what I'll
15 do when I get there we'll find out for something else but I'll
16 always remember working with all you and I did enjoy working with
17 the Boards and the Commissions. It does make it exciting to hear
18 what questions people will come up with and how different people
19 view different things.

20 So thank you very much everybody.

21 CHAIRPERSON HOOD: Thank you. Well said, and again,
22 best in your future endeavors.

23 MR. MORDFIN: Thank you.

24 CHAIRPEROSN HOOD: Okay. So thank you. All right. So
25 let's continue. One moment, please. Mr. Lawson, thank you for

1 making all that happen and giving us the opportunity to express
2 our well wishes as well. So thank you.

3 MR. LAWSON: Thank you, Mr. Chair.

4 CHAIRPERSON HOOD: Okay. Give me one second. I lost
5 all my files. Give me one moment, please. That's why it's not
6 good to talk about other people, I was telling somebody yesterday
7 if they have problems, get a young person. I need Archie
8 (phonetic) or somebody to come over here and help me now. Give
9 me one moment.

10 VICE CHAIR MILLER: He'll be waking up from his nap
11 soon. I'll send him right over.

12 CHAIRPERSON HOOD: All right. I think I'm good now.
13 All right.

14 Let's go, Ms. Ackerman, we did preliminary matters. We
15 did that. Let's go to on our agenda, and again I want to thank
16 everyone in the public for indulging us. I think that was well
17 warranted, well deserved and I appreciate you all for working
18 with us to through that.

19 Let's go to Zoning Commission case, I'm sorry,
20 modification of consequences, determination of scheduling and
21 determination/scheduling. Zoning Commission case No. 21-09B, US
22 Union Square DC, 901 LLC and US Union Square DC 999 LLC
23 modification of consequence of design review and at Square 675.
24 Ms. Ackerman.

25 MS. ACKERMAN: So the Applicant is asking for a

1 modification of consequence to update the elements of the
2 building façade, revise the proposed phasing, replace the
3 approved second story retail space with additional lodging,
4 update the roof layout and mechanical screening and revise the
5 project's landscaping and hardscaping features and the covered
6 passageway.

7 At Exhibit 5, the OP report states it finds the request
8 meets the standards of a modification of consequence and
9 recommends approval and Exhibit 8 ANC 6E submitted a letter of
10 support. That's all.

11 CHAIRPERSON HOOD: Thank you, Ms. Ackerman. Again, as
12 stated, this is a modification request, modification of
13 consequence is being requested. Any objections to the
14 determination of modification or consequence? Okay. Not seeing
15 any objections. Hold on one second, I'm trying to stage everybody
16 so I can see them.

17 Okay. Any objections? All right. Not seeing any
18 objections. Again, as stated, the modification consists of plans,
19 incorporate updates to elements of the building facade, including
20 window design and updates to proposed signage zones. Also revise
21 the proposed phasing of the development in the order for the
22 project to proceed before the proposed ground floor addition to
23 the existing office building at 899 North Capitol Street, N.E.,
24 replace the approved second story retail space with additional
25 lodging space, update the roof layout, revise the project's

1 landscaping, hardscaping features and the covered passageway.

2 Also, as Ms. Ackerman has already mentioned, at our
3 Exhibit 4 ANC 6E report which is the only party, there is no
4 issues or concerns. The ANC report states that at a regularly
5 scheduled meeting notice in July 11, 2023 with a quorum present
6 ANC voted five zero to three, the three were absent, to support
7 the application being proposed as a modification of consequence,
8 given the modest degree of changes proposed.

9 So let me open it up to any questions or comments. Any
10 changes? Okay. We're all good. All right. So what I would do
11 to move it along, I would move that we approve -- first of all,
12 we know this is a modification of consequence. I would move that
13 we approve Zoning Commission case No. 21-09B as stated in the
14 record, and ask for a second.

15 COMMISSIONER MAY: Second.

16 CHAIRPERSON HOOD: It's been moved and properly second.
17 Any further discussion? Not hearing any, Ms. Ackerman, would you
18 do a roll call vote, please?

19 MS. ACKERMAN: Commissioner Hood?

20 CHAIRPERSON HOOD: Yes.

21 MS. ACKERMAN: Commissioner May?

22 COMMISSIONER MAY: Yes.

23 MS. ACKERMAN: Commissioner Miller?

24 VICE CHAIR MILLER: Yes.

25 MS. ACKERMAN: The vote is three to zero to two to

1 approve final action Zoning Commission case No. 21-09B.
2 Commissioner Imamura is not present and the minus one being the
3 third Mayoral appointee seat.

4 CHAIRPERSON HOOD: Okay. If anyone has an update,
5 thank you, Ms. Ackerman, if anyone has an updated agenda, Zoning
6 Commission case No. 63-81A is not on the agenda. It fell off so
7 I want to make sure.

8 All right. Let's go to Zoning Commission case No. 16-
9 18F Georgetown University modification of consequence of campus
10 plan at Square 1321. Ms. Ackerman.

11 MS. ACKERMAN: The Applicant is asking for a
12 modification of consequence to authorize construction of an
13 interim enclosure that is needed to facilitate an upgrade to the
14 campus wide utility systems.

15 At Exhibit 4 there's an OP report stating it finds the
16 request meets the standards of a modification of consequence and
17 recommends approval.

18 CHAIRPERSON HOOD: Thank you, Ms. Ackerman.
19 Commissioners, anyone believe that this is not a modification of
20 consequence? Okay. So we will continue that status. Ms.
21 Ackerman, can we do a scheduling, please?

22 MS. ACKERMAN: Sure.

23 CHAIRPERSON HOOD: And this is for the party response.
24 We had a number of parties in this case.

25 MS. ACKERMAN: So you wanted to put this on the next

1 public meeting; right?

2 CHAIRPERSON HOOD: We don't count August as a date, so.

3 MS. ACKERMAN: Yes. So the next one would be September
4 14th.

5 CHAIRPERSON HOOD: Is that enough time for all of our
6 statutory requirements? Ms. Lovick, if you can help us.

7 MS. LOVICK: Yes. I think you could -- well, wait.
8 You need to allow seven days for the Applicant to be able, well,
9 no, wait. This is -- you just need party responses, so yes, you
10 can just have the party to respond by the 7th of September.

11 MS. ACKERMAN: Yes. That's what I was going to do.

12 MS. LOVICK: Yes. Do that then; okay?

13 CHAIRPERSON HOOD: Do we count -- we don't count August,
14 though, do we? Those dates?

15 MS. LOVICK: You're not counting August. It's just
16 that basically you're giving them the first seven days of
17 September to respond and then it would be on the first agenda on
18 September 14th.

19 MS. ACKERMAN: So, let's do this. Let's do this because
20 I don't, you know, everybody knows how I am with August, so let's
21 do this. Let's do our second meeting in August. It won't kill
22 us.

23 MS. LOVICK: The second meeting?

24 CHAIRPERSON HOOD: Yes.

25 MS. LOVICK: Okay. One moment. So you would then --

1 I don't know. Is it exactly two weeks? I don't have the schedule
2 for September.

3 MS. ACKERMAN: I have it right here. The next meeting
4 would be September 28th.

5 CHAIRPERSON HOOD: Let's do the 28th.

6 MS. ACKERMAN: Okay.

7 MS. LOVICK: Do we usually -- I'm trying to remember.
8 I don't think the Applicant needs to respond. The Applicant
9 doesn't need to respond to the party responses, I don't think.

10 CHAIRPERSON HOOD: I'm more concerned --

11 MS. LOVICK: Let me just --

12 CHAIRPERSON HOOD: -- about the community. They don't
13 meet in August. Some of them don't meet in July and I'm
14 (indiscernible).

15 MS. LOVICK: Right. I'm just checking -- I'm going to
16 just check the rules real quick. I apologize. I just don't --
17 I mean, it's usually the Applicant gets the last word, but I just
18 can't remember if we're supposed to give seven additional days
19 for the Applicant to be able to respond to the party responses
20 before you put it on. I'm checking. Hold on a second.

21 VICE CHAIR MILLER: While Ms. Levick is checking, I
22 would just note that the application has the support of the
23 Georgetown Community Partnership and many of the parties, if not
24 all of them, that we're asking for a specific response are part
25 of the Partnership that has already indicated, their support for

1 this interim utility facility while they're updating/upgrading
2 their overall HVAC system.

3 CHAIRPERSON HOOD: Yes. That's very important right
4 now, especially today.

5 MS. LOVICK: Yes, I don't think so. I don't think that
6 the Applicant has to respond.

7 CHAIRPERSON HOOD: Okay. So let's just do this --

8 MS. LOVICK: Yes. So just, so if it's on for the 28th,
9 then you can just let them, I mean they can respond at any point
10 in September. Just have them respond at any point in September
11 that is prior to, you can, you know, you can give them some time,
12 but let them respond at any point in September that you choose.

13 MS. ACKERMAN: Okay. So I'm just going to say a date,
14 though, just so we have something.

15 MS. LOVICK: Yes.

16 MS. ACKERMAN: Okay.

17 MS. LOVICK: So you need to say a date. I'm sorry. I
18 didn't mean to say (indiscernible).

19 MS. ACKERMAN: (Indiscernible) the 21st.

20 MS. LOVICK: Okay, so.

21 MS. ACKERMAN: All right. Parties, if they wish to
22 respond, have until 3 p.m., on September 21st and then we would
23 consider it for the September 28th meeting.

24 CHAIRPERSON HOOD: Sounds good. Thank you.

25 MS. ACKERMAN: Okay.

1 CHAIRPERSON HOOD: All right. Let's move right on to
2 deliberations. Zoning Commission case No. 21 -- if I go too
3 fast, Ms. Ackerman, just let me know.

4 MS. ACKERMAN: Okay.

5 CHAIRPERSON HOOD: Zoning Commission case No. 21-20A
6 Steuart Investment Company modification of consequence of an
7 approved design review at Square 662. Ms. Ackerman.

8 MS. ACKERMAN: At the Commission's, at the Zoning
9 Commission's June 29th meeting, the Commission determined that
10 the application was a modification of consequence and set a time
11 frame for responses.

12 At Exhibit 5, we have the Applicant's cover letter.
13 The Applicant states that its updated floor and site plans reflect
14 revisions to the retail doors on Half Street in response to the
15 Office of Planning. In addition, the Applicant states it
16 conducted further outreach with ANC 6D and was scheduled to attend
17 the ANC's July 17th meeting. Exhibit 5A, we have the Applicant's
18 updated floor and site plans and at Exhibit 6 ANC 6D submitted a
19 letter of conditional support detailing concerns about the
20 proposed changes.

21 CHAIRPERSON HOOD: Okay. Colleagues, as you will
22 recall we, as Ms. Ackerman has already mentioned, we made this a
23 modification of consequence. In this modification request it
24 talked about the penthouse changes and she said S Street
25 streetscape changes, private alley changes and as mentioned, we

1 already have some updated plans which, well we have also the
2 Applicant's cover letter is Exhibit 5 and the updated plans and
3 site, floor and site plans are Exhibit 5A, as noted.

4 Any questions or comments on this request?

5 COMMISSIONER MAY: Yes. Mr. Chairman?

6 CHAIRPERSON HOOD: Yes.

7 COMMISSIONER MAY: I don't know about you, but I would
8 like to see some sort of a response from the Applicant to the
9 ANC's concerns. I mean, it's strange that we would get this
10 coming out of their meeting, you know, they have these concerns.
11 They're not saying that they don't support it, but they are
12 stating that they have these concerns and they would like us to
13 consider these and make sure that, you know, certain things are
14 addressed. But we're not really in a position to do that without
15 hearing from the Applicant. So my inclination is to not decide
16 this today, but ask that the Applicant provide a response and
17 hopefully whatever response they have will be satisfactory to the
18 ANC.

19 CHAIRPERSON HOOD: Okay. Thank you. Vice Chair Miller.

20 VICE CHAIR MILLER: I would agree with Commissioner May
21 on that point, that we should get a response from the Applicant.

22 CHAIRPERSON HOOD: Okay. And I would agree.
23 Chairperson Kramer and the ANC works real hard and they have some
24 concerns. We want to make sure -- I think the letter came in
25 today, actually -- we want to make sure that their concerns are

1 addressed or at least brought to the attention of the Applicant
2 and hopefully they can work it out.

3 Again, Ms. Ackerman, as far as scheduling, I don't
4 think that -- I know the ANC will not be and with any
5 collaboration, I know the Applicant is listening, so again, if
6 we deal with this again I would like to put it on our second
7 meeting in September.

8 Yes. Commissioner May, are you fine with a second
9 meeting in September?

10 COMMISSIONER MAY: I mean, the most important thing
11 from my perspective is to hear from the Applicant and certainly
12 the Applicant can get us a response to this in time for the first
13 meeting on the 14th and, you know, if they have further work to
14 do with the ANC and maybe they don't have enough time to be able
15 to do that, but if we get to that point and, you know, they want
16 to postpone consideration or the ANC wants us to postpone
17 consideration, you know, we could put it off again for another
18 couple of weeks. But I don't see a reason to delay it basically
19 for two months. We're already putting it off six weeks.

20 CHAIRPERSON HOOD: Okay. My rationale was, again, the
21 month of August for me, you all know how I feel about August,
22 and I agree they should be able to respond but some of those
23 things could probably be worked out and we could get a more formal
24 letter moving forward. But I'm not going to, either way, I mean,
25 whichever way works best, whichever way you want to do, I mean,

1 my colleagues want to do is fine with me.

2 COMMISSIONER MAY: I guess it comes down to the Vice
3 Chair then. What are you thinking?

4 CHAIRPERSON HOOD: I said either way is fine with me.
5 Yes. Vice chair, you've got to break the tie.

6 COMMISSIONER MAY: You get to decide.

7 VICE CHAIR MILLER: I'll go with the either way.

8 CHAIRPERSON HOOD: Okay. Well, we'll go with what
9 Commissioner May says and when I have to -- if I have to do it
10 again, the end of the week I will call his name out the first
11 meeting in September. All right. So we will do that, Ms.
12 Akerman, the first meeting in September.

13 MS. ACKERMAN: Okay. So if the parties wish to respond,
14 they have until 3 p.m. on September 7th. The Applicant needs to
15 respond by the 7th as well and then action would be considered
16 on the September 14th meeting.

17 CHAIRPERSON HOOD: Right. Sounds good. Let's keep
18 moving. All right. Further deliberations on Zoning Commission
19 case No. 21 -- I think that, Ms. Lovick help me. Didn't that
20 fall off?

21 MS. LOVICK: Yes, this case was withdrawn. This is 21-
22 22; correct?

23 CHAIRPERSON HOOD: 21-22, yes.

24 MS. LOVICK: Yes. This case was just withdrawn. So
25 we don't need to do this case.

1 CHAIRPERSON HOOD: Okay. And I appreciate you saying
2 just. I don't want the public thinking I don't read over the
3 weekend because it was on, but it just got taken off, so. All
4 right.

5 Now let's go to final action. Zoning Commission No.
6 18-16, 19-27 and 19-27A, 19-27B Office of Planning and Zoning
7 reorganization text and map amendments to Subtitles A through K,
8 no A through H, K, U and W through Z and zone name changes.

9 Ms. Ackerman.

10 MS. ACKERMAN: The new exhibits are Exhibit 14, which
11 is the Notice of Proposed Rulemaking and at Exhibit 15 the ANC
12 6C submitted a letter. This case is ready for final action.

13 CHAIRPERSON HOOD: Thank you, Ms. Ackerman.
14 Colleagues, as noted, we have two outstanding issues brought to
15 us from ANC 6C which is our Exhibit 15, and one of them is the
16 current proposed texts, as we know, on Square 776, the maximum
17 nonresidential density of 1.5 FAR shall be permitted in the event
18 that a grocery store is constructed on square 776.

19 Let me hear some -- any objections, any concerns?

20 COMMISSIONER MAY: So I mean, this is -- the grocery
21 store has been built; right? So I don't know that it's, this is
22 not an issue so I don't see any problem with tweaking the language
23 to reflect that.

24 CHAIRPERSON HOOD: Okay. Vice Chair Miller, do you
25 agree? Maybe we want the grocery store torn down, but anyway.

1 Okay. All right.

2 So now the other proposed text. Give me one second.
3 ANC 6 on Square 776. Oh, no, no, no (indiscernible). The proposed
4 name relocates E 206, a rooftop of upper floor additions to E
5 204. The proposed E 204 language should be further amended to
6 address its application to cornices, and the use of parapet walls
7 to evade setback requirements, to evade setback requirements.
8 Okay.

9 Let me hear what my colleagues have to say on this one.
10 I don't believe it's supported, especially by Planning. But
11 let's see what others have to say.

12 COMMISSIONER MAY: Yes. It seems to me that this
13 language, while it might be something worth considering, is
14 outside the bounds of what was originally proposed in this case
15 and, or these cases, and it's problematic to try to throw that
16 into the works now that we're getting to final action. So if
17 there is an issue to be considered, it can be taken up at a later
18 point. I don't see that it makes sense to add it now.

19 CHAIRPERSON HOOD: Okay. Vice Chair Miller.

20 VICE CHAIR MILLER: I concur with Commissioner May.
21 I'm going to miss saying that, so I'll say it again. I concur
22 with Commissioner.

23 CHAIRPERSON HOOD: Well, you can always concur with me.
24 So anyway. Let me just say --

25 VICE CHAIR MILLER: That is fine. I don't know why.

1 Maybe because you're more agreeable.

2 CHAIRPERSON HOOD: All right. Let me just say, though.
3 I think I understand, I've been on a few cases and I think this
4 would apply. I would agree. This may as, Commissioner May, I
5 would agree with Commissioner May this time too. I think this
6 may be more out of the scope of what we're working through here,
7 proposed action.

8 But what I would ask the Office of Planning is to relook
9 at this and see how we can deal with this going forward. Let's
10 put this in our in our pipeline and let's come back and revisit
11 exactly what's being requested here, because I think I know where
12 it's coming from and I think I've been on a few cases. We all
13 probably have. All right. So we're going to accept one because
14 it's already done and we're not going to accept anything else on
15 this. All right.

16 Well, I would move approval of Zoning Commission Case
17 No. 18-16, 19-27, 19-27A and 19-27B as noted and incorporate our
18 comments and discussion, and ask for a second.

19 COMMISSIONER MAY: Mr. Chairman, I'll second. But I
20 would also like to note for the record that these are multiple
21 cases that were considered and proposed action was taken at
22 different times over time and at one point one of the proposed
23 actions was heard, was in 1927, and I was not present for the
24 hearing when proposed action was taken. But I just want to state
25 for the record that I have reviewed the record, complete record

1 from that hearing, and so I'm fully prepared to participate in
2 this final vote.

3 CHAIRPERSON HOOD: Okay. Thank you. Any further
4 discussion? Ms. Ackerman, do we have a proxy, absentee vote from
5 Commissioner Imamura on anything?

6 MS. ACKERMAN: No, I did not receive anything from him.

7 CHAIRPERSON HOOD: I just want to make sure. Okay.
8 All right. Again, any further discussion? Okay, Ms. Ackerman,
9 could you do a roll call vote, please?

10 MS. ACKERMAN: Commissioner Hood?

11 CHAIRPERSON HOOD: Yes.

12 MS. ACKERMAN: Commissioner May?

13 COMMISSIONER MAY: Yes.

14 MS. ACKERMAN: Commissioner Miller?

15 VICE CHAIR ILLER: Yes.

16 MS. ACKERMAN: The vote is three to zero to two to
17 approve final action in Zoning Commission cases 18-16, 19-27, 19-
18 27A and 19-27B, Imamura not present and the third Mayoral
19 appointee seat vacant.

20 CHAIRPERSON HOOD: Thank you, Ms. Ackerman. Let's go
21 to Zoning Commission case No. 22-32 1232 Shift Cubed Partners,
22 LLC consolidated PUD and related map amendment at Square 772.
23 Mr. Ackerman.

24 MS. ACKERMAN: Okay. Since the public hearing on June
25 5th, the new exhibits are Exhibit 28. We have the Applicant's

1 proffers and conditions. Exhibit 29, we have the Applicant's
2 post-hearing submission and at Exhibit 29A1 through 29A5, we have
3 the revised architectural plans. Exhibit 30, we have the
4 Applicant's draft order and Exhibit 31 the NCPC filed a letter
5 stating that the proposal is not inconsistent with the
6 comprehensive plan and Exhibit 32 we have the Applicant's revised
7 proffers and conditions. This is ready for final action.

8 CHAIRPERSON HOOD: Okay. Colleagues, you've heard Ms.
9 Ackerman teed us up what's been provided. The only outstanding
10 issue I think we have in this case, and I'm going to let -- this
11 is the last time I'm going to have some fun -- I'm going to let
12 Commissioner May deal with the issue about the bike lanes.

13 COMMISSIONER MAY: Oh gee, thanks. No, I'm not sure
14 really what we can do to make, to force the Applicant to do
15 something significantly different to address the ANC's concerns
16 in this case and I frankly am not sure I share their concern
17 about it. So I'm prepared to move forward with this case as it
18 is before us.

19 CHAIRPERSON HOOD: Okay. So Commissioner May, are you
20 fine with the language that the Applicant has provided because
21 we didn't get anything from the ANC who brought up the issue
22 about the bike lane. So I guess that's what we'll stick with.

23 COMMISSIONER MAY: Yes.

24 CHAIRPERSON HOOD: Vice Chair Miller.

25 VICE CHAIR MILLER: I agree. I'm ready to move forward.

1 CHAIRPERSON HOOD: Okay. All right. I think
2 everything's covered. If somebody could make a motion. Let me
3 make sure, somebody could make a motion on this?

4 VICE CHAIR MILLER: Sure. Mr. Chairman, I would move
5 that the Zoning Commission take final action on case No 22-32
6 1232 Shift Cubed Partners, LLC consolidated PUD and related map
7 amendment, Square 772 and ask for a second.

8 COMMISSIONER MAY: Second.

9 CHAIRPERSON HOOD: It has been moved and properly
10 second. Any further discussion? Not hearing any, Ms. Ackerman,
11 could do a roll call vote, please?

12 MS. ACKERMAN: Commissioner Miller?

13 VICE CHAIR MILLER: Yes.

14 MS. ACKERMAN: Commissioner May?

15 COMMISSIONER MAY: Yes.

16 MS. ACKERMAN: Commissioner Hood?

17 CHAIRPERSON HOOD: Yes.

18 MS. ACKERMAN: The vote is three to zero to two to
19 approve final action in Zoning Commission case No. 22-32. Imamura
20 is not present and the third Mayoral appointee seat is vacant.

21 CHAIRPERSON HOOD: Okay. Thank you. Before I go
22 further, I need to -- I meant to do this earlier. While the
23 Zoning Commission is not, we have one more hearing before our 30
24 day brief break for the month of August, so what I would like
25 for everyone to do is please join us on the 31st at 4 p.m. There's

1 going to be something going on that you don't want to miss. I've
2 been advertising and talking about it for weeks and it's something
3 that you really don't want to miss. I think it'll be -- it's
4 going to be a historical moment, so don't miss it. All right.
5 And I wanted to do that before everybody leaves. I noticed the
6 numbers go down after we finish certain cases. So I wanted to
7 make sure I mention that. So just join us. It should take
8 probably about 45 minutes to an hour. Just join us. All right.
9 Commissioner May.

10 COMMISSIONER MAY: Yes. I need a three minute break.

11 CHAIRPERSON HOOD: Okay. Let's take a three minute
12 break.

13 (Whereupon, there was a brief recess.)

14 COMMISSIONER MAY: I'm back, Mr. Chairman. Whenever
15 you're ready.

16 CHAIRPERSON HOOD: Okay. Is everybody back? Waiting
17 for others to come back. Okay. Everybody's back. All right.
18 We're back in session. I guess I have to get a new mouse. Guess
19 I wore this one out.

20 Okay. Let's go to the next case which is a time
21 extension. Time extension Zoning Commission case No. 02-38K
22 Waterfront 375 M Street, LLC two year PUD time extension at Square
23 542.

24 Ms. Ackerman.

25 MS. ACKERMAN: The Applicant is requesting a waiver to

1 allow an early filing of the time extension and a two year time
2 extension. The Applicant states that an extension is needed
3 because it has been unable to obtain financing. At Exhibit 5,
4 there is an OP report in support of the waiver and the time
5 extension. This is ready for final action.

6 CHAIRPERSON HOOD: Okay. Colleagues, I think we can
7 move forward. A 30 day time for responses has elapsed and it's
8 been served on all parties in the Commission. At this point, we
9 can proceed with final action of this request, as noted.

10 First, let's talk about the waiver, the waiver of time
11 extension, to do our time extension. Any issues with that?

12 COMMISSIONER MAY: I would just say it's unusual for
13 us to consider time extensions this far in advance, but it's not
14 that far outside of the norm. I mean, I think in the past when
15 we've considered such requests, when they're filed like a year
16 in advance we, you know, we put them off. But in this
17 circumstance it's close enough. So I don't have any problem with
18 granting a waiver.

19 CHAIRPERSON HOOD: Okay. We'll just do that. Vice
20 Chair, any objections?

21 VICE CHAIR MILLER: No, no objection, Mr. Chairman. I
22 support the waiver and the time extension request, and would just
23 note that -- and they're supported by an Office of Planning and
24 the ANC 6D -- I would just note that this is a case I believe
25 that was appealed, our decision, original decision back in 2019,

1 early 2019, was appealed to the D.C. Court of Appeals and it took
2 almost three years, almost exactly three years for the Court to
3 affirm our decision, but they did in about a year ago, took three
4 years for an appeal supported by us and the Office of Planning.

5 CHAIRPERSON HOOD: Okay. Thank you. So I think we all
6 are in agreement with the waiver and with the time extension. So
7 with that, I would move approval of the waiver, with granting
8 approval of the waiver and a two year time extension as noted in
9 the request in the Zoning Commission case No. 02-38K, and ask
10 for a second.

11 VICE CHAIR MILLER: Second.

12 CHAIRPERSON HOOD: Moved and properly second. Any
13 further discussion? Not hearing any, Ms. Ackerman, could you do
14 a roll call vote, please.

15 MS. ACKERMAN: Commissioner Hood?

16 CHAIRPERSON HOOD: Yes.

17 MS. ACKERMAN: Commissioner Miller?

18 VICE CHAIR MILLER: Yes.

19 MS. ACKERMAN: Commissioner May?

20 COMMISSIONER MAY: Yes.

21 MS. ACKERMAN: The vote is three to zero to two to
22 approve final action in Zoning Commission case 02-38K. Imamura
23 not present and the third Mayoral appointee seat vacant.

24 CHAIRPERSON HOOD: Okay. This next case I'm going to
25 slow down a little bit, I think.

1 Let's go to the proposed action Zoning Commission case
2 No. 22-25, Office of Planning text amendment to Subtitles C, I,
3 X, Y, Z, downtown zones and BZA and Zoning Commission Rules and
4 Practices and Procedures. We finally got here, Ms. Ackerman.

5 MS. ACKERMAN: One moment. Since the public hearing
6 on June 12th the new exhibits include testimonies from Valerie
7 Jablow at Exhibit 40 and from Chris Otten at Exhibit 41. At
8 Exhibit 45 and 45A we have submissions from OP, a supplemental
9 report, and a chart of responses. At Exhibit 46 OZ submitted
10 Responses to OAG's comments. That is all.

11 CHAIRPERSON HOOD: Thank you, Ms. Ackerman. I will be
12 referring to documents in 45A and 46 as we go through this
13 exercise.

14 So what I'd like to do first is to go through each one
15 of what I'm going to mention some bullet points where it suggested
16 changes that have been listed and I would like for us to state
17 whether we agree to the change or not, and we can do that
18 relatively quickly. Probably take me longer to try to read it
19 and I -- Commissioner May.

20 COMMISSIONER MAY: Mr. Chairman, I was wondering should
21 we go through the, just recap the OP suggested changes or
22 reactions? I mean, there's a short recap of the ones that they
23 think we should make, that I think we should be deciding whether
24 or not we agree on first and then some of that, that saves us
25 some time I think later on going through the rest of the chart.

1 CHAIRPERSON HOOD: So what I was going to do was go
2 through under, yes, I was just -- it's only five bullet points
3 and I wanted to go through those five bullet points first.

4 COMMISSIONER MAY: Yes, that's exactly what I'm saying.
5 Okay. (Indiscernible).

6 CHAIRPERSON HOOD: Yes.

7 COMMISSIONER MAY: (Indiscernible).

8 CHAIRPERSON HOOD; I'm sorry. So maybe we, are we
9 saying the same thing?

10 COMMISSIONER MAY: We're saying the same thing. I just
11 didn't think (indiscernible) you were saying what I was saying
12 so I was, that's what I said what I said. But you were already
13 saying it, so go ahead.

14 CHAIRPERSON HOOD: Okay. All right. But would you
15 like to read one? Why don't we take turns and read one?

16 COMMISSIONER MAY: (Indiscernible) want you to read as
17 much as possible.

18 CHAIRPERSON HOOD: All right. All right. The first,
19 I'm going to do the best I can. I may improvise.

20 In X 303.14 the PUD standards. OP considered public
21 comments and there were some comments that were given from Ms.
22 Laura Richards and Mr. Eckenweiler and they were recommending
23 that the Commission not approve the proposed amendments to this
24 section, which would change the standard for variances sought as
25 part of a PUD.

1 OP and OZ's reasoning is that PUDs already allow for
2 substantial flexibility in height and density. Relaxing the
3 strict application of a variance test could undermine the PUD
4 process and possibly conflict with the Zoning Act. I know that
5 the residents who mentioned that have a lot of exhaustive
6 experience in zoning and I think from my standpoint are well
7 respected and I think this conversation has happened previously.

8 While I don't favor it, I know there's some other
9 unintended consequences when you start relaxing that I know it's
10 been, in some of these cases I thought that the variance rule
11 was kind of over to a point but I think that what we have now
12 works and it's not broke and I don't think it needs any, I would
13 not be in favor of changing it, but let me hear from others.

14 Commissioner May.

15 COMMISSIONER MAY: Yes. I think, I mean, OP is now.
16 Recommending that we not approve that amendment that they had
17 previously proposed and I agree with that. That's fine.

18 CHAIRPERSON HOOD: Vice Chair Miller. Any comments?

19 COMMISSIONER MAY: Uh-oh.

20 CHAIRPERSON HOOD: Did we lose him?

21 COMMISSIONER MAY: Did we lose the Vice Chair?

22 CHAIRPERSON HOOD: You're on mute? Vice Chair? Let's
23 see.

24 (Pause.)

25 CHAIRPERSON HOOD: Is it raining somewhere?

1 COMMISSIONER MAY: I'm just going to check the weather
2 up in northwest.

3 CHAIRPERSON HOOD: It's sure not raining over here.
4 Wish it were.

5 (Pause.)

6 CHAIRPERSON HOOD: Okay. I guess he's rebooting. So
7 let's give him a moment to come back.

8 (Pause.)

9 COMMISSIONER MAY: Looks like the weather is fine in
10 D.C. generally in terms of storms, so must just be a computer
11 thing.

12 CHAIRPERSON HOOD: Okay. Ms. Ackerman, he's back on.
13 Could we make him a panelist? He likes to be a panelist. Could
14 we make him -- put him back? No, he wants to be made a panelist.
15 He likes to be out in the audience.

16 VICE CHAIR MILLER: Sorry about that, Mr. Chairman, and
17 the public and everybody.

18 CHAIRPERSON HOOD: Okay. Vice Chair, did you want to
19 expound on that or are you fine with us not accepting it, the
20 first one?

21 VICE CHAIR MILLER: I'm fine.

22 CHAIRPERSON HOOD: Okay. All right.

23 The second one is in Z, Subtitle Z 703.6. The
24 definition of modification without hearing.

25 OP and OZ recommended the definition of a modification

1 without hearing be corrected to use examples from the current
2 definition of a modification of consequences. How do we feel?

3 COMMISSIONER MAY: Mr. Chairman, that makes sense. I
4 mean, we've been doing the modifications of consequence since we
5 set up that system in ZR 16 and it works reasonably well, but
6 it's a little bit confusing and so giving those sorts of examples,
7 anything we can do to clarify for people what qualifies as a
8 modification without a hearing I think would be useful for the
9 public. So I'm in favor of that change.

10 CHAIRPERSON HOOD: Vice Chair Miller.

11 VICE CHAIR MILLER: Yes, I agree. I think it was, the
12 examples of a modification of consequence without a hearing or
13 what is what our practice has been. I think the unintended
14 mistaken inclusion of examples that were really modifications of
15 significance led to the confusion and opposition in the public
16 to this particular section. So I'm glad we can clear it up as
17 we go forward, continue as we have been doing.

18 CHAIRPERSON HOOD: Okay. Thank you. I think this next
19 one, thank you, and I think this next one is a correction.

20 In Subtitle Y 703.9 filing requirements for
21 modification without hearing, OP and OZ recommended that the
22 words "of consequence" which were mistakenly left in be taken
23 out. Any objections?

24 COMMISSIONER MAY: No, it's fine.

25 CHAIRPERSON HOOD: Let's keep moving.

1 Subtitle X 303.2 PUD status OP and OZ recommended
2 replacing zone or zones with zones as this section deals
3 exclusively with the lots that span multiple zones. Any
4 objections?

5 COMMISSIONER MAY: No.

6 CHAIRPERSON HOOD: In subtitle Y 700.4 BZA
7 reconsideration and rehearing. OP and OZ recommend replacing
8 affirm or reverse with grant or deny, since the BZA doesn't
9 technically affirm or reverse an appeal. That makes a lot of
10 sense.

11 COMMISSIEONR MAY: Yes.

12 CHAIRPERSON HOOD: Okay. All right. One moment. And
13 what I would like to do is go over some of the proposals that
14 were given to us by the public and let's talk about whether we
15 agree or not. I know that OP and OZ have looked at some of these
16 and they've expressed where they are. But I want us to see where
17 we are.

18 The first one comes from ANC 6C, add new non-waivable
19 provisions to Subtitle Y 300 BZA application requirements
20 requiring all materials to be filed and served before scheduling
21 or holding a hearing or decision meeting.

22 I think for me that's, you know, that sets us back and
23 when I look at some of the changes, I think there's -- first let
24 me back up and this is going to open up, I think when we opened
25 this case up, which has been around for years, and we just had

1 to even put a new name, I mean, a new number on it, I think
2 there's a lot of confusion of actually what goes on. There's a
3 lot of things that actually happen, but because now it's
4 wordsmithing and trying to do like deny versus refer, and I think
5 that caused a lot of confusion because some of the things that -
6 - I've been through this rodeo probably about 20 years ago -- a
7 lot of things like in this case to be found and served before
8 scheduling, holding a hearing or decision meeting, I think it
9 just cuts it short. Having everything in before you start, they
10 are last minute things that go on all the time in these processes,
11 BZA and Zoning Commission, which I think give us better outcomes
12 and better refinements.

13 So I'm not, I would not be in favor and I don't think
14 OP and OZ recommends it, but let me open it up to others to see
15 where you are, where we are.

16 Commissioner May.

17 COMMISSIONER MAY: I agree with you, Mr. Chairman. You
18 know, the system isn't necessarily perfect, but you know, making
19 this requirement I think would tie the hands of the BZA in a way
20 that would really snarl cases. So I don't think it's worth doing.
21 I do think it, you know, it's a reminder if people think that
22 this is necessary, that the BZA should be judicious about when
23 new information is introduced and making sure that people have
24 adequate time to react to it.

25 CHAIRPERSON HOOD: Okay. And Vice Chair Miller.

1 VICE CHAIR MILLER: I agree with both of you on that.

2 CHAIRPERSON HOOD: Okay.

3 Let's go to subtitle Y. Requires filing deadline of
4 statement of ANC contacts and the BZA case in 30 days instead of
5 21 days. We noted that OAG is also requesting a separate change
6 to this provision noted in chart two. They have the same kind
7 of issue.

8 I think there's no objection. But I also want to remind
9 the public that some years ago the reason why we went to -- some
10 of these numbers were in place years ago, and we went from 30 to
11 21 because we heard from the public. The public said it's taking
12 you all too long to do things. So guess what? Now the new,
13 that's when you've been around a while, you go back and forth.
14 We've come full circle. Now we're going back to where we were
15 when people said it took us too long to get things done.

16 So I just want to make sure that's clear to everyone,
17 even though there's no objection from anybody. but I want to make
18 it clear that we're going back to exactly what the residents said
19 they didn't want and we went from 30 to 21, 21 now back to 30 or
20 whichever way we're going. But either way, we're going back in
21 the direction where it's going to take longer for things to
22 happen. So let me hear from others.

23 Commissioner May.

24 COMMISSIONER MAY: I don't have any problem with making
25 this change. I do want to clarify that the change that OAG

1 requested is not what we are talking about right now. We are
2 just talking about the simple change for the filing deadline from
3 21 days to 30 days.

4 CHAIRPERSON HOOD: Right. Okay. And their change is
5 separate. I got you.

6 COMMISSIONER MAY: Well, we'll deal with that
7 (indiscernible) change later.

8 CHAIRPERSON HOOD: Right. Vice Chair Miller.

9 VICE CHAIR MILLER: I support this change. Thank you,
10 Mr. Chairman.

11 CHAIRPERSON HOOD: Okay. Subtitle Y 300.15. Require
12 pre-hearing statement filings 30 days before hearings instead of
13 21 days.

14 COMMISSIONER MAY: It's fine.

15 CHAIRPERSON HOOD: No objections? Okay. Subtitle Y
16 300.17. Reject proposals because it would allow BZA to waive new
17 30 day deadlines.

18 COMMISSIONER MAY: It's not, I mean, I think it goes
19 to what you said in your first comments, your earliest comments
20 about the ability of the BZA to take in new information because
21 cases change and circumstances change and the Board needs the
22 ability to have the latest information. So it's not just
23 something that gets waived willy nilly, it should be something
24 that is carefully considered when it is waived and if it's
25 necessary to allow people more time to react to those changes,

1 the BZA should be taking that into consideration as well. But I
2 don't think we need to set a hard and fast deadline and not allow
3 the BZA to waive it.

4 CHAIRPERSON HOOD: Okay. Vice Chair Miller.

5 VICE CHAIR MILLER: Yes. I agree, and in general I
6 think we all agree with rules. That's what we're talking about
7 here are rules and regulations, and they should be adhered to.
8 But we do have these waiver provisions for a good cause. It's
9 always for a good cause and that's the discretion of the
10 Commission or the Board, as the case may be, and it should be a
11 good cause. But I think we ought to not restrict our own
12 authority here or almost anywhere else where it's being proposed
13 in this case.

14 CHAIRPERSON HOOD: Okay. Thank you. Let's keep moving
15 and I'm going to ask Ms. Lovick to make sure I stay on the right
16 stuff in the record.

17 Okay. Subtitle Y 18. Yes. Require this provision to
18 be non-waivable so applicants are barred from filing last minute
19 documents.

20 Been there, done that, tried that. It didn't work. So
21 I mean, excuse me, my phone's ringing. Give me one moment.

22 (Pause.)

23 CHAIRPERSON HOOD: Sorry about that. Nobody calls me
24 all day until I get in a hearing. Okay. So we tried that, even
25 with the Herb Franklin rule about not waiving it, but, you know,

1 again, we make concessions. We don't live, as the Vice Chair
2 just mentioned and I think Commissioner May has, we're having
3 this conversation. I don't think that for us to bar, make it
4 non-waivable because that never worked, because anything I think
5 we can make it waivable.

6 But let me hear from others on that one.

7 COMMISSIONER MAY: I agree, it's the same issue. They
8 need flexibility.

9 CHAIRPERSON HOOD: Okay. All right.

10 VICE CHAIR MILLER: Agreed.

11 CHAIRPERSON HOOD: Okay. Let's go to Y 303.5. Reject
12 proposal because it would require ANCs to provide racial equity
13 analysis if an ANC files a text amendment. Reject proposal
14 because it would require ANCs to provide racial equity analysis.

15 MS. LOVICK: The ANCs don't want to have to do a racial
16 equity analysis if they bring forward a text amendment.

17 COMMISSIONER MAY: Yes, Mr. Chairman. I don't think
18 this makes sense. I mean, this is, we don't, you know, I don't
19 know why an ANC would be any different from any other applicant
20 or petitioner for a map amendment and I mean, we understand that
21 providing the racial equity analysis is a burden and frankly,
22 reviewing the racial equity analysis is a burden for us as well.

23 So I mean, it's a shared load. We all have to do this
24 and that being said, I think that the ANCs are maybe more
25 concerned about this than they should be because the ANCs can

1 certainly get help in preparing the racial equity analysis from,
2 you know, through the Office of Zoning or the Office of Planning.
3 I mean, it's not like they're just out on their own having to
4 invent it out of whole cloth. There are ways that they can get
5 assistance in doing this.

6 So I don't think it's -- I wouldn't say the burden is
7 imaginary, but I think they may be overly concerned and, again,
8 it is something that we have to do.

9 CHAIRPERSON HOOD: Okay. That's why I had to read it
10 twice. I was trying to really get to the gist.

11 Vice Chair Miller.

12 VICE CHAIR MILLER: Yes. I agree with Commissioner
13 May. You know, we understand that ANCs are volunteer
14 organizations and we're not going to get the kind of comprehensive
15 analysis, racial equity analysis from an ANC that we might get
16 from a developer, applicant or from the District's own Office of
17 Planning. So, but the effort should be made to try to address
18 the underlying principles of what the racial equity tool is all
19 about.

20 So I agree that the effort should be made and they
21 shouldn't be relieved of that requirement.

22 CHAIRPERSON HOOD: Okay. I too agree and as always, I
23 would agree with both my colleagues. I think that we will work
24 with the ANCs like we've always done. They are front line
25 officials and we know that a lot of them are not experts on

1 certain zoning matters or racial equity analysis and we get that
2 and as Commissioner May has already mentioned, there's a lot of
3 help out there for ANCs. Office of Zoning will help ANCs. They
4 can learn from the Office of the Attorney General and others.
5 So, yes. All right.

6 So next. Subtitle Z 400.8 and .9. Require/allow 40
7 days for ANCs to file setdown report. Require 45 days from filing
8 of a case can be scheduled for setdown for public hearing.
9 Commissioner May or either one, or Vice Chair Miller.

10 COMMISSIONER MAY: Yes. I think the Office of Planning
11 said they don't have an objection to this and I don't either.
12 It's a minor change.

13 CHAIRPERSON HOOD: Okay.

14 VICE CHAIR MILLER: I'm fine with that.

15 CHAIRPERSON HOOD: Okay. Next Subtitle Z 703.12 and
16 .13. Require longer notice period and filing deadlines for
17 modifications without hearing, i.e., more than 30 days for party
18 responses and more than 35 days for filing and request is put on
19 a meeting agenda.

20 Again, here we go. I don't agree with that. The goal
21 was to get stuff done. We had backlogs for two and three years,
22 and that's exactly where we're going to eventually be going back
23 to every time I see us extending time. I think what we have done
24 over the years has worked. We have made sure that people are
25 heard. Even if, you know, if there are other circumstances which

1 require it we have dealt with it at that time. It's case by case
2 specific. But just to put a cart blanche and continue to add
3 days to things and responses and all I think is totally a misstep
4 and it's actually going backwards.

5 Commissioner May.

6 COMMISSIONER MAY: I agree with you, Mr. Chairman.

7 CHAIRPERSON HOOD: Okay. And Vice Chair Miller?

8 VICE CHAIR MILLER: I agree.

9 CHAIRPERSON HOOD: Okay. All right. Where am I?
10 Subtitle Y 602.4. Limit the BZA to one opportunity to reopen
11 the record prior to making a final decision and make the one time
12 limit non-waivable.

13 No. Let me hear from my -- no.

14 Okay. Let's keep moving. Subtitle Y 700.10. Make
15 the BZA authority to motion to reopen the record within ten days
16 of the final order non-waivable.

17 When I see non-waivable that's, for me, that just does
18 not work. There's no wiggle room and non-waivable, I don't know
19 who made that recommendation, but if they're listening non-
20 waivable will come back to haunt you or haunt us, you, us and
21 everybody else and I'll leave it at.

22 Any, Commissioner May.

23 COMMISSIONER MAY: I agree with you. I don't think it
24 makes sense to make this authority or limit the authority in this
25 way, make things non-waivable. I just don't agree with that.

1 CHAIRPERSON HOOD: Okay. Vice Chair.

2 VICE CHAIR MILLER: I agree with you both.

3 CHAIRPERSON HOOD: Okay. All right.

4 Subtitle X 1001. Require area variance to allow more
5 FAR than allowed by-right to be treated as use variances.

6 I don't agree with that. We've hashed that out. We've
7 been through all that. I don't agree with that. The unintended
8 consequences of -- just look at the language. There are
9 definitely unintended consequences which cause more problems than
10 good. We are where we are, and I will leave it at that. Let me
11 hear from others.

12 COMMISSIONER MAY: I mean, it is really an issue with
13 an area of variance allowing, I mean, if there are examples where
14 a lot more FAR is being allowed then maybe there's something to
15 be done about that. But that's not -- that's beyond the scope
16 of what we're considering here. So maybe it's an issue that
17 needs to be addressed, but it's not one that we would undertake
18 here.

19 CHAIRPERSON HOOD: Okay. Subtitle Y, and Vice-Chair,
20 I'm sorry.

21 VICE CHAIR MILLER: I agree.

22 CHAIRPERSON HOOD: Okay. Just trying to keep moving.
23 Okay. Subtitle Y, Chapter 5 for appeals. Add procedures for
24 motions to similar procedures for motions § Y 407 for
25 applications.

1 I think that too is out of the scope, but let me hear
2 from others.

3 COMMISSIONER MAY: Yes. I agree. It's out of scope
4 and I'm not sure about the need for that.

5 CHAIRPERSON HOOD: And some of these things are,
6 colleagues, I think may have some merit. But this is how I think
7 some of this took a life of its own. It started becoming living,
8 started moving by itself and I think some of these, I think we're
9 putting a lot more into this than what actually needs to be.

10 Vice Chair Miller, do you want to add to that?

11 VICE CHAIR MILLER: I'm with you both.

12 CHAIRPERSON HOOD: Okay. All right.

13 Subtitle Y 604.10. Add language to provides some
14 recourse if work is not carried out and conform to with the
15 approved plans and the ZA refused to enforce the approved plans.
16 I don't understand that. I mean, I understand it, but I'm not
17 in favor of that.

18 COMMISSIONER MAY: I agree. It's another one of those
19 things where it's beyond what we were undertaking with this text
20 amendment.

21 CHAIRPERSON HOOD; Right. Okay. Vice Chair?

22 VICE CHAIR MILLER: I agree. It's beyond the scope,
23 but it may be beyond our authority too.

24 CHAIRPERSON HOOD: That's what I was thinking, more
25 about our authority.

1 Subtitle Y 700.2. Remove the term re-argument from the
2 types of motions that can be filed after a Board decision.

3 Okay. Well, OZ and OP has no objections with the
4 change. How do we feel?

5 COMMISSIONER MAY: Yes. I mean, it's wordsmithing. I
6 don't have a problem with it.

7 CHAIRPERSON HOOD: Okay. All right. Vice Chair? Okay.

8 VICE CHAIR: Okay.

9 COMMISSIONER MAY: Mr. Chairman, I think you skipped
10 over one in our list of issues.

11 Subtitle X, Chapters 9 and 10 require BZA to analyze
12 all applications as if the work had not been done in applications
13 seeking relief for illegal work and make the requirement non-
14 waivable. See that, the chart?

15 CHAIRPERSON HOOD: I'm looking at so many of them I
16 guess I did skip it. Which one was that again I missed?

17 COMMISSIONER MAY: X, Chapters 9 and --

18 CHAIRPERSON HOOD: Subtitle X 9 and 10. Require, thank
19 you, require the BZA to analyze all applications as if the work
20 has not been done and applications seeking relief for illegal
21 work and make the requirement non-waivable. I know what we're
22 trying to get at.

23 COMMISSIONER MAY: Yes.

24 CHAIRPERSON HOOD: But I don't think it's --

25 COMMISSIONER MAY: For me, I mean, when we're dealing

1 in a case where some illegal work has been performed and an
2 applicant is coming in for after the fact relief, it is a stick
3 (indiscernible) no doubt and in some cases there are things why
4 things wound up that way and, you know, it's and I wouldn't say
5 it's, you know, there are many cases where it comes in and it's,
6 the applicant is not at fault in some way.

7 In some cases, you know, applicants do get permits for
8 things and then they're subsequently revoked by the Department
9 of Buildings. That, you know, those circumstances, I think, are
10 relatively small where the applicant does not bear some
11 responsibility.

12 But I think the bigger issue, even when the applicant
13 does bear responsibility for it, is that I think at least, you
14 know, my experience has been that when we look at cases where
15 there is legal work that has been completed or some portion of a
16 project that is illegal has been completed, I always try to look
17 at it in terms of the relief that is being granted and how does
18 that conform with the regulations? Do they meet the various test
19 if it's something that requires a variance or do they meet the
20 special exception test if it's a special exception, and that
21 should be the standard. You know, we completely ignore the fact
22 that something is built, but the fact that something is built is
23 never really a basis for saying that, oh, we should go ahead and
24 approve it.

25 I think, you know, there's also the opposite, you know,

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1 the converse of this argument is that, well, the mere fact that
2 they built it illegally means that it should be removed regardless
3 of whether they qualify for the relief or not, because I think
4 some people come into hearings with that kind of an attitude. I
5 don't think that we should try to mandate this one way or the
6 other. I think we should simply rely on the wisdom of the BZA
7 to review the facts and decide cases based upon the standards for
8 relief and leave it at that.

9 CHAIRPERSON HOOD: So, Vice Chair Miller. I think
10 you're on mute.

11 VICE CHAIR MILLER: Sorry. I agree with Commissioner
12 May. You know, I think the BZA often does look at those types
13 of cases as if the work had not been done and looks at the
14 standards, as Commissioner May, the standards for relief that are
15 being and see if it meets the standards and there are always,
16 there's sometimes questions about whether they detrimentally
17 relied on DCRA, or the old DCRA, the Zoning Administrator who may
18 have changed and with new information, changed his mind or changed
19 his position.

20 So I agree that we should not go with this
21 recommendation.

22 CHAIRPERSON HOOD: So I would agree. But for me, and
23 I would agree because this stuff is not easy trying to figure
24 some of this stuff out, even myself. But I would agree that
25 there is a fundamental problem for me when I sit on the Board

1 and I've been advised by counsel over the years to act as though
2 the project hasn't been built. I can tell you that's a hard hill
3 to climb. Treat this like it has not been built. But here's a
4 problem. Here's a problem with all that I don't have any answers
5 for it so that's the only thing I know to do, is to treat it like
6 it hasn't been built.

7 So I too would not recommend that we do this. I think
8 for now, unless at some later time that we see that we need to
9 go back and revisit this, I think for now and I know exactly
10 probably where this is coming from. I've sat on a few of these
11 cases as well, and I'm sure we all have, but to treat is like
12 it's not been built, I have not gotten over that hurdle while I
13 still try to deal with it according to, as Commissioner May
14 mentioned, according to the requirements, the statutory
15 requirements of the regulations, and as we do before it's built
16 to begin with.

17 So I don't have an answer for it. So I would agree
18 that we should continue in the status that we are. Anything else
19 on that?

20 All right. Did I leave anything else out? All right.

21 COMMISSIONER MAY: Not in the first section. We have
22 to do the next section.

23 CHAIRPERSON HOOD: Yes. I might leave some stuff out
24 again. Okay. So I guess for the most part, I'm going to read
25 some things kind of like we did, and all this is in the record

1 for the public if they need to see it, and we just respond if we
2 agree or disagree, if we agree with the change or not.

3 So okay, the first one is adopt a single notice of
4 filing pre-hearing process requiring an application, I'm sorry,
5 let me back up. These are some of the responses that OAG, some
6 of the requests OAG has -- I think most of these are from OAG, I
7 believe and if I'm not, I'm sure Ms. Lovick will correct me.

8 Adopt a single notice of filing pre-hearing process
9 requiring the application/petition to be filed at the same time
10 as notice for all contested cases and rulemaking before the Zoning
11 Commission 80 days before setdown and all cases before BZA six
12 days before hearing.

13 Obviously the new folks in the OAG weren't around when
14 this City told us we take too long with stuff. So anyway, let
15 me open it up for others.

16 COMMISSIONER MAY: You know, I think I made the point
17 during the hearing that I didn't see how this was a practical
18 suggestion because it's, you know, we want applicants to inform
19 the public early about their projects before they're fully baked
20 and what this basically does is force applicants to completely
21 design something before they even put the public on notice that
22 they're filing the petition.

23 So I think that's a mistake and it actually will lead
24 to much worse outcomes because people will be providing here's
25 our finished product, right, as if there isn't room to navigate

1 it. I think we want to have early discussions before things are
2 fully formulated.

3 CHAIRPERSON HOOD: Well said. Vice-Chair Miller.

4 VICE CHAIR MILLER: I agree. Well said.

5 CHAIRPERSON HOOD: I'm not going to even touch it. I
6 could if I could add to it, but I don't want to mess it up.

7 All right. Let's go to required notice to include
8 substantive case information such as a case number, information
9 on how to access full application package, et cetera.

10 COMMISSIONER MAY: Yes. I think this is something that
11 already happens. I'm not I don't think that there's anything to
12 be added. The wealth of information that's available in the
13 Zoning Commission's on the Office of Zoning's website is I think
14 sufficient.

15 CHAIRPERSON HOOD: And I think Office of Zoning's
16 website is a model. I know sometimes I refer to it. So, Vice
17 Chair Miller.

18 VICE CHAIR MILLER: Yes. No, I think that that notice
19 process is working. We have a lot of public participation at
20 our hearings in the record. It's not perfect, but I think it's
21 working.

22 CHAIRPERSON HOOD: All right. Require notice to be
23 posted on the subject property and email to interested persons
24 when the application is accepted.

25 Email? Okay. I think that's burdensome. It would be

1 another signing to be created because the current signing
2 notifies the public of a hearing notice. A sign would advise of
3 a case that has already been filed. I just see so many. Emails
4 is the problem I'm having, so let me hear from others. I would
5 not accept this.

6 COMMISSIONER MAY: Yes. I mean, it does create
7 complications with, because of the time that can occur between
8 when a case is filed and when it's actually heard and how long
9 the notice needs to be kept up. It's, you know, there are
10 multiple ways in which people are informed of projects that could
11 affect them in their neighborhood and trying to make every single
12 aspect of those various forms of notice so complete and thorough
13 isn't necessarily going to improve it.

14 There are, you know, you provide mailed notice to
15 people who are immediately nearby. The ANCs are notified. The
16 signs are posted in a timely manner because posting something
17 eight months before it's going to happen, it's not necessarily
18 going to be in people's minds when they need to pay attention to
19 it.

20 So, I mean, I think what we have right now is a series
21 of different methods to get notice to people and they serve
22 different purposes and have different timings. So I don't see
23 any benefit for this.

24 CHAIRPERSON: Okay. Thank you. Vice Chair Miller.

25 VICE CHAIR MILLER: I agree that we have currently

1 multiple ways of notifying the public and interested neighbors
2 and the community about our public hearings and applications.
3 There's the direct notices that go to everybody within 200 feet
4 of the site. There's the posting of the sign. There's the
5 publication of our notice of public hearing in the D.C. Register.
6 Those are just our ways of directly requiring. The ANCs are
7 usually on top of it. They get the direct notice as well. So I
8 think there are sufficient ways for that notice to be distributed
9 currently and continuing forward.

10 CHAIRPERSON HOOD: Okay. I would agree. So I'm at,
11 okay, grant automatic party status to tenants living on the
12 subject property and require applicants and petitioners to meet
13 with tenants after notice and before setdown.

14 As we know, in most situations sometime the tenants may
15 be split, some may be in support, some may be in opposition, some
16 may be moving. It's all kind of, I just see this as a potential
17 problem. I don't know why we would even entertain or even bring
18 that up. I don't know what, maybe it has to be something else
19 behind that, why that was recommended but I wouldn't, I don't
20 think that's the way to go. I think we're actually going
21 backwards as opposed to going forwards.

22 Commissioner May.

23 COMMISSIONER MAY: Yes, I agree with you. I don't
24 know. I don't think that this is a, would be an effective
25 improvement to the process. I agree with the Office of Zoning's

1 recommendation against this. I mean, certainly tenants can apply
2 for party status, but they have to engage themselves. You know,
3 we can't just serve everything up on a platter to everybody who
4 might have a slight concern about something. They need to engage
5 as well.

6 So I agree with the Office of Zoning's recommendation
7 not to adapt this.

8 CHAIRPERSON HOOD: Vice Chair Miller.

9 VICE CHAIR MILLER: I agree.

10 CHAIRPERSON HOOD: And plus, we have the engagement
11 tool, too. So I mean, you know, we got things that work. So
12 why would we create problems?

13 All right. Let's go to require all modifications to
14 go through OAG's proposed notice of filing procedure, including
15 a substantive notice requirement and setdown meeting for
16 termination.

17 No, I don't agree with that. But let me hear from
18 others.

19 COMMISSIONER MAY: Yes. I also do not agree with that.

20 CHAIRPERSON HOOD: Okay.

21 VICE CHAIR MILLER: Same.

22 CHAIRPERSON HOOD: All right. Let's keep moving.

23 Allow a modification without a hearing to become one
24 with a hearing without having to restart the process.

25 COMMISSIONER MAY: Mr. Chairman, I would just say on

1 that one, you know, on its face it kind of makes sense because
2 it means, you know, we don't slow things down, right, we want to
3 keep things moving. But you know, as evidenced by what's in the
4 record, you know, this is, you know, there was a time when this
5 is the way things worked and it was, you know, it was a way to
6 circumvent some of the necessary process.

7 So it's actually kind of surprising that the Office of
8 Attorney General would be recommending this where, you know, in
9 other cases they are maximizing notice and trying to recommend
10 ways of making sure that everybody knows everything about a
11 project at every step of the game. But here they're like opening
12 the door for a shortcut. So I don't support this.

13 CHAIRPERSON HOOD: Vice Chair Miller.

14 VICE CHAIR MILLER: I agree.

15 CHAIRPERSON HOOD: Okay. The next one is rehearing and
16 reconsiderations. Open rehearing and reconsideration process to
17 nonpartisan extended time frame to file a motion from ten to 30
18 days.

19 That goes exactly opposite of what even when OAG was
20 our representative of what we asked them to do in the first 19-
21 25, which was in 2018. That flies directly in the instructions
22 that we have given and asked for them to deal with as far as,
23 and also I think in most court cases, and I'm not a judge, most
24 times you have to have standing unless I'm not understanding that
25 correctly. But just to open up to everybody, somebody's way

1 across town, speaking for somebody, you have time to testify, but
2 to open up party status to everybody, and I think that has been
3 looked at previously and it just I think through the legal minds
4 of this City, it just went away because they found so many nuances
5 and unintended consequences with that. To me, that doesn't even
6 make sense. But anyway, I don't want to keep going on that.

7 Commissioner May.

8 COMMISSIONER: I agree with you, Mr. Chairman.

9 CHAIRPERSON HOOD: Okay. And Vice Chair Miller.

10 VICE CHAIR MILLER: I agree.

11 CHAIRPERSON HOOD: Okay. Allow motion for
12 reconsideration of rehearing to be decided by the Commission
13 regardless of if an appeal is filed.

14 Okay. Let me hear from somebody else and I'm starting
15 to think about this stuff and I'm going backwards.

16 COMMISSIONER MAY: And again, I don't see the value of
17 this other than, you know, opening the door for unnecessary
18 complications. So I agree with the Office of Zoning, which does
19 not recommend that we adopt this change.

20 CHAIRPERSON HOOD: Vice Chair Miller.

21 VICE CHAIR MILLER: I agree.

22 CHAIRPERSON HOOD: Next is codify the racial equity
23 analysis requirements in a new Subtitle Z Chapter 15 with the
24 additional requirements, including requiring the OP Community
25 Planning Division to provide the applicants and petitioners prior

1 to filing with the data that reflects changes to the broader
2 neighborhood census block within a quarter of a mile since 2000
3 and a narrative explaining any systematic racial inequities and
4 oddities, and, no.

5 I think what we have now works. I think the tool that
6 was created by our Office works. I've heard people, not just
7 here locally, I've heard people nationwide talk about our tool
8 and appreciate it and we have a lot more than what they do and I
9 think this is causing an abundance of confusion and an abundance
10 of work, and it doesn't leave room for improvement because we
11 have to keep going back to the regulations to keep making changes.

12 I think the way we have it now is where I'd like to
13 see it stay and I think what we have now is working well. Now
14 we may need, as we already know, sometime touch on our tool, but
15 so far our tool is working and is working well.

16 Commissioner May.

17 COMMISSIONER MAY: I agree with you and to the extent
18 to which it's not hitting the mark, having the ability to make
19 changes to it without having to go through a rulemaking process,
20 I think is critically important. You know, some people think
21 that the only way to fix these issues is to just have more rules
22 and I don't believe that we can rule make our way through
23 correcting issues of racial inequity in the District.

24 I think we need tools that are adaptable and we have a
25 good tool and let's keep going with it and let's improve it as

1 it needs improvement in the future.

2 CHAIRPERSON HOOD: And Vice Chair Miller.

3 VICE CHAIR MILLER: Yes. I agree with you, Mr. Chairman
4 and Commissioner May. You know, this is an evolving process and
5 we will make the changes that we need to make in the process to
6 improve it, to improve both the process and the outcomes as we
7 go forward and as the public interacts with it. So I think we
8 have the flexibility to make changes in the process as we go
9 forward.

10 CHAIRPERSON HOOD: Okay. The next one. Apply racial
11 equity analysis requirements to BZA actions.

12 I will tell you that while I know what the comp says.
13 I know, Ms. Lovick remembers we've had many conversations. I'm
14 not a legal mind person, but I do have common sense. I would
15 like to see it there. I've always said that. But there's a
16 reason that, and I think the Council would be the one to have to
17 do it because they don't, BZA does not come up in the charter
18 when the Council did it as noted, and I've been well educated on
19 this, it's in the comp plan and the comp plan does not require
20 the BZA actually require racial equity analysis and there are
21 many legal reasons why, and I don't need to go through them again.
22 I've learned it. But I've often thought that it should be there,
23 but it's not and the Council has some great lawyers. We, the
24 Zoning Commission, have great lawyers in our Office of Zoning.

25 So they've all come to the same conclusion. So who is

1 going to stay in his lane and not push that anymore, because I
2 have mentioned that and I agree with that, but there's a reason
3 it's not there and, Ms. Lovick, we don't need to go through that
4 again, but I appreciate you explaining why it's not there, so
5 I'll leave it alone and if it's not there, it's not there. So,
6 anyway.

7 Commissioner May.

8 COMMISSIONER MAY: I agree with you, Mr. Chairman.

9 CHAIRPERSON HOOD: And Vice Chair Miller.

10 VICE CHAIR MILLER: Yes, Mr. Chairman, I agree with
11 you. The mandate upon the Zoning Commission to devise and
12 establish the racial equity tool as part of our comprehensive
13 plan consistency analysis was a mandate upon the Zoning
14 Commission, which does comprehensive plan consistency analysis.
15 So the BZA does not.

16 But I do agree with you, Mr. Chairman, that these
17 racial equity and comp plan overall policy considerations should
18 be looked at by the BZA, where it's relevant. Now some people
19 may argue that it's never relevant because they have their
20 standards for relief and that's all you should stick to but I
21 think the comp plan policies are relevant to zoning of both Zoning
22 Commission and BZA and so I think the BZA can take note of it,
23 acknowledge it, and if people want to make an argument that one
24 thing is supporting it or not, supporting more racial equity or
25 less, I think that's appropriate to make in a BZA case. So I'm

1 not going to stop that First Amendment activity from happening.

2 So, yes. I don't think we need to mandate something
3 upon the BZA that the Council carefully chose to mandate upon us,
4 the Zoning Commission.

5 CHAIRPERSON HOOD: Okay. And for full disclosure, I
6 did have a conversation with the chairman and we were supposed
7 to get back with a whole lot of other things. I did have a
8 conversation about that, but I'm sure that his lawyers as well
9 as mine, have already stated, have already told us why it's not
10 there. So anyway. All right. So we will keep that as it is.

11 Let's go to Subtitle Z 500.1, and I'm going to do this
12 in two parts. Subtitles Z 500.1. Require OP and OZ amendments
13 to be subject to Subtitle Z 500.3 requiring petition to be placed
14 in the public record, and I think as stated, OZ text amendments
15 to be subject to 503 require the petitions to be placed, and so
16 this already happens when a case is processed, but the regulations
17 are not clear. If the Commission agrees, if we agree with OZOP
18 and OZLB they will draft some -- so do we agree with that?

19 COMMISSISIONER MAY: Yesh, I agree with that. That's
20 fine.

21 CHAIRPERSON HOOD: So we will leave that up, let me
22 just say this. All this, we leave it up to our counsel to, with
23 the flexibility so I want to put that out there. That's kind of
24 where I am, where we are, I believe, okay, and I may have to say
25 that again at the end.

1 All right. Let's go to 500.4. Allowing the Commission
2 to determine if a case is a contested case or rulemaking and
3 500.7 and 500.9 ANC referral requirements.

4 So I think this is already taken care of in other areas
5 in 500.13. So really, that's not an issue. Let me open up and
6 see what others have to say on that.

7 COMMISSIONER MAY: So I agree with you and the Office
8 of Zoning's recommendation. I don't think it's an issue. So I
9 don't see the purpose of making the change.

10 CHAIRPERSON HOOD: And we have setdown formula. What
11 we have now is working. IF it's working don't muddy the waters.
12 You might not agree with the decisions, but the process is --
13 I've been here for a while and I've seen the process get better
14 and these kind of conversations get us better. We want to move
15 in the direction of getting better, not going back, looking back.

16 Vice Chair Miller. I'm sorry. I think you're on mute,
17 Vice Chair.

18 VICE CHAIR MILLER: Sorry. I agree with you, Mr.
19 Chairman.

20 CHAIRPERSON HOOD: All right. Subtitle X 303.1. Make
21 clear that the Zoning Commission shall waive any development
22 flexibility granted under this section against the benefits of a
23 PUD. Do we agree with that?

24 COMMISSIONER MAY: Yes. I think in principle, I mean,
25 the Office of Attorney General provided some revised language for

1 that section, and I agree that could be clarified and would rely
2 on the Office of Zoning Legal Division to work out the right way
3 to say it.

4 CHAIRPERSON HOOD: Okay. Vice Chair Miller.

5 VICE CHAIR MILLER: I agree. Thank you.

6 CHAIRPERSON HOOD: And I appreciate that one. As
7 Commissioner May has already mentioned and Miller as well
8 supported, that's the direction we want to go in, not go
9 backwards.

10 All right. So let's go to reflect all amendments of
11 Zoning Commission process in Subtitle Y (BZA as well).

12 So some, as stated as we know, some things in Subtitle
13 Z does not necessarily work in Subtitle Y based on our subtitles
14 and functioning authority between the ZC and the BZA. They have
15 different authorities and different types of things they look at,
16 so I don't think that's -- OZ does not recommend it and I don't
17 support it. Okay. Anybody else? All right.

18 All right. How much more we got to go? All right.
19 Require all agencies, including OAG, to provide with notice of
20 application filings at the same time as OP and DDOT. Did that
21 come from the OAG?

22 COMMISSIONER MAY: Yes. They want a certain special
23 status. I mean, this is a little strange because, you know, OAG
24 used to be our counsel, and their views were always known and
25 they had notification of everything. But now, you know, there's

1 nothing that, you know, we have a legal division now. We don't
2 need legal advice. So if they want to weigh in on issues that
3 we are considering that they need to monitor what we are doing
4 and not, I mean, I don't see any reason why they should get a
5 special notification like this.

6 CHAIRPERSON HOOD: Okay. Vice Chair Miller. Okay.
7 And, again, you know, I've said this previously. The expertise
8 and the planning and I don't think they have planners and, you
9 know, they're not a land use authority so I don't understand that
10 one. So anyway, I would agree with not recommending this.

11 All right. In Subtitle Y 300.8. Require BZA
12 applications to submit a statement of planned public outreach
13 efforts and as we know, OZ and OP has separately recommended to
14 increase the days in the provisions from 21 to 30. Any issues
15 with that? So we already recommended pretty much this anyway.
16 Subtitle Y 300.8. Require BZA applicants to submit a statement
17 of planned public outreach efforts and I think --

18 COMMISSIONER MAY: Yes, it makes sense.

19 CHAIRPERSON HOOD: Yes. Okay.

20 COMMISSIONER MAY: We certainly want to encourage that.

21 CHAIRPERSON HOOD: And they have some proposed
22 language. All right. Yes. I think we can accept that. All
23 right.

24 There are a few things that I do want to talk about.
25 We had a request, and I said this previously but I just have to

1 say it again because I'm -- we had a request that the 30 day
2 notice period for ANCs be extended to 40 days.

3 I can understand why, but I also want to make sure that
4 whoever the ANC was, that ANC understands that the ANCs some
5 years ago thought that that they could do it within 30 days.
6 That was actually a recommendation and I know specifically
7 because I know Jerrily Kress and I were going back and forth on
8 that, my good friend, the late Jerrily Kress, about the 30 and
9 40 days. We were at 40 and the residents and the ANCs wanted us
10 to go to 30. So now we're going back to 40 and the rationale
11 behind that was -- unless I'm off kilter but I don't think I am
12 -- the rationale why they wanted us to lower that because they
13 thought we were taking too long with cases and people think we
14 have a little backlog now. We really had one then. I mean, we
15 were talking about years of backlog. So if anybody thinks we've
16 got a backlog now, you haven't seen a backlog. We are up to
17 snuff now and I'll leave it at that.

18 Commissioner May. You don't have to comment on that,
19 you know, unless you all want to. All right.

20 Let's go over a few things I think noted. When affected
21 ANCs have changed, both new and previous ANCs should receive
22 notice. Been around for two re-districtings and what we've done
23 here, and I know we did something a little different with BZA
24 this time, and what we've done each time it's worked and a prime
25 example was just yesterday. There was a re-districting with ANC

1 5C was in a position to weigh in all this time and then when re-
2 districting came ANC 5B weighed in and I want to commend all the
3 ANCs that work that way. It's an ANC that has, I can't remember
4 whether they were across the street, adjacent or whatever.

5 But I think we have I think we have the perfect fix for
6 that. I think that this Office, regardless of who's here, has
7 always accommodated ANCs I don't think this is needed. So I
8 would not be a supporter of it. But let me hear from others.

9 COMMISSIONER MAY: I agree you, Mr. Chairman. I don't
10 I mean, for me it's just a practical consideration because
11 providing, you know, tracking the current ANC boundaries and
12 future, I'm sorry, and past ANC boundaries, it just creates a
13 burden and frankly, an unnecessary burden because once the
14 boundaries are redrawn it's the affected ANCs are potentially
15 going to change and now a neighboring ANC can still get party
16 status on a case if that's necessary, but just, you know, making
17 sure that there's notice in these ways.

18 I mean, there are ways to make sure you get the notice
19 if you think it's going to affect something in your immediate
20 neighborhood. But this is an administrative burden and I think,
21 frankly, not necessary.

22 CHAIRPERSON HOOD: And I agree. Let me say something
23 before I go to the Vice Chair. A lot of this has been asked for.
24 They know that personnel actions come with it because, as you
25 said, the administrative burden, then we have to get more people

1 to help us do all these different actions.

2 Vice Chair Miller.

3 VICE CHAIR MILLER: Ye. I would agree with both of
4 your comments and just note that in the last redistricting at the
5 BZA where we scheduled a hearing or gotten public comments when
6 the project is in a particular ANC and then it got re-districted
7 to a new ANC by the time the hearing was going to be held, we
8 did at the BZA just on our own without any rule being in place,
9 put a notice out there that the hearing is being -- we rescheduled
10 the hearing so that the new ANC could be fully apprised of it
11 being there and so we would have the new ANC's comments in the
12 record.

13 So we are able to take care of this affected ANCs,
14 adjacent ANCs do weigh in and we welcome the comments.

15 CHAIRPERSON HOOD: Well said. Thank you. Okay. Next.
16 Amend Subtitle Z 406.4 to allow more lenient rule
17 regarding seven days ANC authorization for oral testimony.

18 I don't think that -- that is not recommended. I don't
19 think we need to put that. I can just tell you this. I think
20 that both the Zoning Commission and the BZA, we do what we have
21 to do to accommodate our ANC Commissioners who are volunteers,
22 and I think we do it. I think we do it well. They might not
23 always agree with us, but I think we do it well.

24 Commissioner May.

25 COMMISSIONER MAY: No. We always hear the testimony

1 even if there's a late designation or authorization and sometimes
2 we seek that authorization after the fact, after we've heard the
3 testimony to validate that, in fact, they were the authorized
4 representative. This is a solution in search of a problem, I
5 think. So I don't see any reason to make a change.

6 CHAIRPERSON HOOD: Okay. Vice Chair Miller.

7 VICE CHAIR MILLER: Yes. I can understand where they're
8 coming from because we almost always waive that rule and allow
9 the ANC, we're not going to not allow the ANC that shows up at
10 our hearing to not testify. We want to hear their testimony.
11 But the rule's there. It's a good goal. It's a goal. It's an
12 aspirational goal and as Commissioner May says, yes, we sometimes
13 have asked for authorization or additional clarification if the
14 ANC report wasn't clear, and Archie (phonetic) agrees with me on
15 that point, so maybe we'll have four votes on it.

16 CHAIRPERSON HOOD: All right. Archie, stick around.
17 How are you, Archie? Could you read the next one for me because
18 -- all right. All right. Let's go.

19 Limiting and reconsideration of zoning decisions only
20 to those with party status a very, very narrow body of people
21 per current rules and limiting the types of decisions which can
22 be reconsidered further erodes public participation in the zoning
23 process.

24 I think there's a misnomer out there. I think the
25 wrong information has gotten out there to some folks in the

1 public. That is not an issue. Even if you don't have party
2 status, I'm sure there's case law out there about how that's
3 done, not necessarily in zoning, but in legal jurisdictions as
4 well from judicial processes. I think that if you're not a party,
5 then you still have a right to testify and participate in a case.
6 So I don't know why we just trying to rule, rule, rule everything
7 which again will come back and I think I've heard that from some
8 lawyers. No, I don't think that's correct. I would not be in
9 support of that, even if I was a judge.

10 So, Commissioner May.

11 COMMISSIONER MAY: No. I agree with you. I don't see
12 any public benefit to making this proposed change.

13 CHAIRPERSON HOOD: And Vice Chair Miller.

14 VICE CHAIR MILLER: I agree with both of you. Thank
15 you.

16 CHAIRPERSON HOOD: The next one is allowing filing of
17 applications and comments only through digital means serves to
18 further exclude residents without digital connectivity from the
19 zoning process.

20 I don't know where that came from because that's not
21 what goes on. So, you know, a lot of misinformation gets out
22 there. At no time has this Office ever just went to digital
23 because guess what? Things are going to change and we're going
24 to be in the digital age and it's going to be something else out
25 there where we're going to need help. So you know, everybody

1 doesn't do computers and digital. So I think the Office is very
2 flexible, very open to whatever situation, it's a case by case
3 basis, whatever situation someone has this Office has always been
4 open to accommodate them, to be able to participate in the
5 process. So I don't think -- it's not recommended and I don't
6 agree with it as well.

7 Let me hear from others. Vice Chair Miller. Let me
8 go to Vice Chair Miller.

9 VICE CHAIR MILLER: Yes. I agree with you, Mr.
10 Chairman. It may be a matter of wordsmithing and we'll leave it
11 to our legal counsel maybe to clarify. That while we prefer that
12 information be filings be made electronically, we certainly have
13 allowed and will continue to allow submissions to be mailed or
14 to be brought in person. If that has to be codified in what the
15 existing practices in our regulations so that there isn't that
16 misinterpretation about the electronic submissions, then maybe
17 we should make that adjustment. I'll leave it to our legal
18 counsel to work that out (indiscernible). Yes.

19 MS. LOVICK: Yes. So I think what was confusing is the
20 amendments that were proposed, they just removed the requirement
21 to have to submit any paper filings. They didn't say anything
22 specific about electronic filings and, you know, we had some
23 conversations about this to just try to get an idea of when the
24 last time someone came into the Office of Zoning with a paper
25 application to be filed and it was over a decade ago at this

1 point.

2 So when we received these comments we were just, I
3 think, the effort on the part of the Office of Zoning and
4 obviously I'm trying to speak for Sharon right now in her absence,
5 was just to clarify that the change removed a paper filing
6 requirement, but it did not expressly speak to anything having
7 to do with making things all digital.

8 But are you saying -- I just wanted to clarify that -
9 - are you saying, you're saying you would like to add additional
10 text for clarification purposes?

11 VICE CHAIR MILLER: If it would make it clearer that
12 we're not limiting it, the filings, since there was the perception
13 out there, and maybe just this discussion itself is enough. I'll
14 leave it in the judgment of the Chairman.

15 MS. LOVICK: Okay. Well, yes. Well just so it's clear,
16 the Office, even though it hasn't happened for over a decade from
17 what I'm told, if someone comes in with a paper filing, the Office
18 of Zoning Staff, of course, will accommodate them.

19 VICE CHAIR MILLER: And if it's mailed, they will
20 receive it and put it into the record if it's appropriate to put
21 it into the record.

22 CHAIRPERSON HOOD: Okay. Thank you. All right.

23 Next. Expand notice requirements for tenants and for
24 condo owners and co-op owners to individuals, all persons within
25 200 feet of the application property. If eligible persons do not

1 receive notice, a hearing may be postponed, while notice is
2 served.

3 Now, that last part of it. Yes, that happens. It does
4 happen sometimes if we don't think proper notice was given, but
5 there are three or four ways of getting notice, the register, the
6 mail and placard. So if you don't get one, you should have seen
7 one of the other two and it may be another one there now, I don't
8 know.

9 But I'm not agreeing with the, there's a reason and
10 this has been discussed, but see and I appreciate the comments
11 and it's always good to revisit, I'm not down on any of the
12 comments, but to expand those requirements for tenants and for
13 condo owners and I think condo owners, but co-op owners,
14 individuals, I think the way it's written has always worked and
15 I know it goes to the, I think, the condo board, to the owners,
16 no disrespect to renters, but renters come and they go, but the
17 owners own the property and whatever goes on, they're going to
18 endure it.

19 So I know there's a whole lot of other legalese that
20 go behind that, if that's the word. I think I heard somebody
21 use that since I have, but maybe I got it from somebody. But I
22 think they have a whole lot of legalities that go behind all this
23 so I think what we have works. So I'll leave it at that.

24 Commissioner May.

25 COMMISSIONER MAY: Yes. I think what we have works

1 reasonably well. There certainly have been instances where the
2 owner of the building doesn't share notice of some action with
3 the tenants, or maybe it goes to the condo association and it
4 doesn't go to all the condo owners. I mean, things like that do
5 happen. But again, this is why we have multiple means of notice
6 to people in the vicinity of a project and, you know, when we
7 get wind of there being a serious defect in notice, we have
8 postponed cases to allow, you know, that notice to be beefed up
9 and if we hear from, you know, individuals that they haven't, you
10 know, they haven't had enough time because they only recently
11 learned of it because they didn't get the notice that should have
12 come through the building owner or the condo association, I mean,
13 we are very understanding of those sort of circumstances as well
14 and, you know, so often these are just not things that happen
15 overnight and even in BZA cases, if there's substantial
16 opposition, they don't happen immediately in most cases.

17 So there are still ways for people's voices to be heard
18 and providing something like this is not necessarily practical,
19 particularly the part about, you know, having to postpone a
20 hearing while notice is served because, you know, sometimes,
21 you're right, the notice doesn't reach every individual. But how
22 do we know that? How do we know that it didn't just get tossed
23 away because, you know, people get a lot of mail and they don't
24 necessarily pay attention to every piece of mail that drops
25 through the door.

1 So I just don't see that this is a practical solution
2 to anything and I think what we have right now works pretty well.

3 CHAIRPERSON HOOD: Okay. Thank you. Vice Chair Miller.

4 VICE CHAIR MILLER: Thank you, Mr. Chairman. I agree
5 the current notice provision is working.

6 CHAIRPERSON HOOD: Okay. The next comment.

7 In weighing development flexibilities, specify small
8 area plans along with benefits and amenities.

9 As we already know, the small area plan is already part
10 of the comprehensive plan analysis. So I don't see any benefit
11 to that. It's already there. Anything else?

12 COMMISSIONER MAY: Small area plans are something that
13 we give consideration to as a supplement to the comprehensive
14 plan guidance. So I don't see a reason to make any changes in
15 light of this comment.

16 CHAIRPERSON HOOD: Okay. Vice Chair Miller.

17 VICE CHAIR MILLER: Right. I think we have evaluated
18 the relevant small area plans and other plans beyond the
19 comprehensive plan as supplemental guidance, as Commissioner May
20 said, when they exist in cases before us. So I don't think this
21 is necessary.

22 CHAIRPERSON HOOD: Okay. Next.

23 Require rather than simplify recommended, excuse me,
24 require rather than simply recommend the applicants meet with the
25 ANCs prior to setdown meeting or hearing.

1 Let me start, or somebody else start off with that.

2 COMMISSIONER MAY: How can we possibly require that?
3 I mean, you know, the applicant can, you know, we've seen multiple
4 cases where the applicant reaches out to the ANC, and the ANC
5 just doesn't have space on the agenda or doesn't have sufficient
6 interest in a project or for whatever reason, there's no guarantee
7 that the applicant will ever get on an ANC's agenda and in fact,
8 if we make it a requirement, you know, I could easily see people
9 trying to prevent ANC meetings as a way of preventing the cases
10 from moving forward.

11 That's, we don't want to create that kind of incentive.
12 This just doesn't make any sense at all.

13 CHAIRPERSON HOOD: And Vice Chair Miller.

14 VICE CHAIR MILLER: I agree. I mean, at every BZA
15 sitting that I'm at I think we've, almost every one, we've
16 postponed consideration of a case and to even where the applicant
17 tried to meet with the ANC to give them one more opportunity to
18 try to meet with the ANC when they haven't.

19 So, you know, if that wasn't at the top of our mind in
20 wanting to get the ANC's issues and concerns so we can give them
21 great weight, we wouldn't be asking for it in almost every case
22 and OP wouldn't be analyzing it in every case and our legal
23 counsel wouldn't be analyzing it in every case. So again, it is
24 a solution in search of a problem.

25 CHAIRPERSON HOOD: So one of the things I say is that,

1 you know, I know people are probably saying, well, you all may
2 not be there all the time, but you know, I've been here for a
3 while and every one of my colleagues over the 24-25 years I've
4 been here all have making sure we get participation, making sure
5 that people are engaged, ANCs, and now, as our counsel's always
6 pushing us with the engagement piece, which we're mandating now
7 with the racial equity lens, that it happens early.

8 So everybody's in tune with it. Whether Commissioner
9 May, Vice Chair Miller or Anthony Hood are here, whoever the
10 Commission is it's going to do the same thing, I mean, because
11 at the end of the day, we all live in this city, we all are part
12 of the City, that means that we're all neighbors. So we get it.
13 We have a role and we have regulations to go by. Because I also
14 look at one of the other comments, which I'm going to mention,
15 concerns that changes could result in less public participation.
16 How? We advocate for public participation, whether it be me as
17 chair, the chair before me did, the chair before that person did
18 and I notice it's always been done that way because it's human
19 nature.

20 So anyway, I look at some of these comments. I
21 appreciate the comments, but I think the word is bigger than --
22 it's overshadowing the concern and the extra input is really, I'm
23 not going to say it's not warranted and I understand the concern
24 and I understand to make sure everything gets done, but you do
25 that when you come down and testify, or you're a party, these

1 things get covered because a lot of consideration is given by
2 everybody, whether it be our legal counsel, our Commission, or
3 whomever.

4 All right. Enough of all my soapbox. Ms. Lovick, is
5 that pretty much covered, or anything else that we need to
6 probably go through because I'm tired.

7 MS. LOVICK: I think that's, I think that's
8 (indiscernible).

9 CHAIRPERSON HOOD: Okay. All right. What else do we
10 have an agenda?

11 COMMISSIONER MAY: Well, we actually --

12 MS. LOVICK: Two more cases, two hearing action cases.

13 COMMISSIONER MAY: So we have to take proposed action
14 here; right?

15 CHAIRPERSON HOOD: Okay. Well (indiscernible).

16 MS. LOVICK: Yes. Sorry. Well, I certainly wasn't
17 circumventing that. I was just saying you were done with the
18 substantive issues.

19 COMMISSIONER MAY: (Indiscernible).

20 MS. LOVICK: Yes, sir.

21 CHAIRPERSON HOOD: Would somebody like to make a
22 motion, please?

23 COMMISSIONER MAY: (Indiscernible) make a motion.

24 CHAIRPERSON HOOD: Okay. Go right ahead, Commissioner
25 May.

1 COMMISSIONER MAY: (Indiscernible) action to approve
2 Zooning Commission case 22-25 Office of Planning text amendments
3 to Titles C, I, X, Y, and Z, downtown zones and BZA and ZC Rules
4 of Practice and Procedure.

5 CHAIRPERSON HOOD: Okay, and I'll second that. It's
6 been moved and probably second. Any further discussion? Not
7 hearing any, Ms. Ackerman, could you do a roll call vote, please?

8 MS. ACKERMAN: Yes. Commissioner May?

9 COMMISSIOENR MAY: Yes.

10 MS. ACKERMAN: Commissioner Hood?

11 CHAIRPERSON HOOD: Yes.

12 MS. ACKERMAN: Commissioner Miller?

13 VICE CHAIR MILLER: Yes.

14 MS. ACKERMAN: The vote is three to ZERO to two to
15 approve proposed action for Zoning Commission case 22-25.
16 Imamura not present and the third Mayoral appointee seat vacant.
17 Thank you.

18 CHAIRPERSON HOOD: Okay. I'm going to take a moment
19 and I want to apologize to OP. I probably should have had you
20 all go before we did that, but I want to take a moment. I think
21 it's warranted. All the work that Ms. Lovick and her team did
22 to prepare us to have that discussion and all the comments and
23 Ms. Lovick and the OZ staff working together and I know OP
24 probably worked together, and the OAG, and everybody, residents,
25 I want to thank everybody because even in our going through that

1 and laying it out because at the end of the day, we do have,
2 well, we do have full time jobs, even though some may be retired
3 and may be taking care of a grandson or whatever the case is, we
4 do have other parts of life, and especially our Office of Zoning
5 Legal Division and our Office of Zoning staff and others have
6 really helped formulate our discussion in helping us extrapolate
7 and consolidate all the comments that have been made.

8 While we didn't touch on every last one of them, we
9 have looked at them, we have reviewed them, and we wanted to make
10 sure we try to hit all of them. So I appreciate the public and
11 I appreciate everybody who made that process like it is, not just
12 in that case, but in all cases and I wanted to say that right
13 after we did that, because it's exhausting because you have to
14 read a lot. But it's -- we got it and, again, I want to caution
15 all of us in the public that one thing about the Commission and
16 I think all of us we're human, as we know, and we don't mind
17 being flexible. You know, if something happens, we will deal
18 with it when it pops up the best way that we can. So I'll leave
19 it at that.

20 All right. So hearing action.

21 VICE CHAIR MILLER: I would second your comments, Mr.
22 Chairman.

23 CHAIRPERSON HOOD: Okay.

24 COMMISSIONER MAY: Likewise.

25 CHAIRPERSON HOOD: All right. Thank you. All right.

1 Let's go to hearing action Zoning Commission case No.
2 22-35 UM 500 Penn Street NE, LLC, NYA4 Associates, LLC, and HH
3 Books, LLC consolidated PUD related map amendment and air rights
4 at Square 3592 and Parcel 129/45, and that is Mr. Jesick. Mr.
5 Jesick, you're not retiring, are you?

6 MR. JESICK: I wish. No, no. Several more years. But
7 thank you, Mr. Chairman.

8 CHAIRPERSON HOOD: You're on mute, Mr. Jesick. You're
9 on mute somehow.

10 MR. JESICK: Can you hear me now?

11 CHAIRPERSON HOOD: Yes. You might need to turn, can
12 you lean closer or turn it up?

13 MR. JESICK: I'll see if I can turn it up.

14 (Pause.)

15 MR. JESICK: How's that? Is that any better?

16 COMMISSIONER MAY: Yes.

17 MR. JESICK: Great. Okay. So again, thank you, Mr.
18 Chairman, and members of the Commission.

19 This is an application for a PUD and related map
20 amendment in order to construct two residential buildings with
21 ground floor commercial space and a lodging use. The site is in
22 the Florida Avenue Market on Penn Street between 4th and 5th
23 Streets and it is currently the site of a motel, smaller
24 commercial buildings and a service parking lot.

25 The two sides of the site are separated by a public

1 alley. The existing zoning is PDR-1 and the proposed zoning
2 would be among MU-9A. The western building would be 130 feet
3 tall and the eastern building 90 feet tall, with a total FAR for
4 the entire project of 9.32.

5 The project would have about 350 total residential
6 units with 15 percent IZ. The IZ would be mostly at 60 percent
7 MFI with some at 50 percent MFI and there would be about 50 to
8 55 total IZ units. The project would have about 30,000 square
9 feet of commercial uses and ten percent of that space would be
10 reserved for PDR uses for a period of five years. The proposed
11 lodging use would have about 25 keys and be located in the eastern
12 building.

13 The project would generally not be inconsistent with
14 the comprehensive plan when viewed as whole and when viewed
15 through a racial equity lens and OP therefore recommends that the
16 application be set down for a public hearing.

17 Next slide, please. Let's look at the comprehensive
18 plan in more detail. The PUD, again, would not be consistent
19 with the plan that includes the future land use map. The future
20 land use map calls for a mix of PDR, high density commercial and
21 medium density residential on the site and that designation
22 combined with written plan policies that would support density
23 in this location, led OP to the conclusion that the MU-9A zone
24 would not be inconsistent with a comp plan when taken as a whole
25 and when viewed through a racial equity lens, the proposed PUD

1 would also not be inconsistent with the plan and would help
2 fulfill a number of written policies related to equity.

3 Now in the upper northeast planning area, the available
4 data indicates disparities by race of key economic indicators.
5 For example, the Black population has a lower median income and
6 homeownership rates and higher unemployment and poverty rates
7 than their White counterparts and this data can be found beginning
8 on page nine of our report. The proposed development could help
9 alleviate some degree of inequity, especially regarding housing
10 costs and the number of families that are housing cost burdened.
11 Data on the number of households burdened by housing costs is not
12 disaggregated by race but given unemployment and income levels,
13 it can be inferred that additional affordable housing provided
14 by the project could help to further equitable outcomes for Black
15 residents.

16 I mentioned the 15 percent IZ. That would, of course,
17 help families that live in those units reduce their housing costs
18 burden, but also more generally, the provision of new housing,
19 both market rate and affordable, could help keep down the upward
20 pressure on housing prices and then, of course, providing housing
21 and affordable housing would help to meet the Mayor's 2025 housing
22 goals. The upper northeast planning area is nearly on track to
23 reach its affordable housing goal, and this project will help us
24 get closer to 100 percent of that target number.

25 Another benefit of the project would be providing

1 housing units in close proximity to several transportation modes,
2 which can help populations of any skill or education level reach
3 employment opportunities. The project could also help to further
4 economic development goals of supporting small and local
5 businesses. This would tend to provide greater opportunity for
6 local entrepreneurs, which in turn often create job opportunities
7 for nearby residents, and touching briefly on equity as a process,
8 the Applicant has emphasized that they have been in contact with
9 the ANC for many years on various projects and specifically on
10 this project they have met with the ANC on numerous occasions and
11 ANC 5D has voted to support the application, and that's at Exhibit
12 10 of the record.

13 The one question mark we had about equity was regarding
14 displacement. Of course, there would be no direct displacement
15 of residents, but existing businesses would be displaced and the
16 Applicant's racial equity analysis, that's at Exhibit 11C,
17 acknowledges that and notes that the owners of the businesses
18 support the application. The exhibit goes on to state,

19 "They have made arrangements with the owners of those
20 businesses to mitigate impacts."

21 So we just ask the Applicant to expand upon what that
22 actually means and whether existing businesses would be
23 accommodated in the new project. So for OP's full equity
24 analysis you can refer to our written report at Exhibit 12 and
25 again, the Applicant has provided an analysis of Exhibit 11C.

1 Next slide, please. And finally, on the design OP
2 supports the architecture of the buildings, including the
3 significant use of balconies. We asked the Applicant to provide
4 more balconies on the east building, and they did do that, so we
5 appreciate them working with us on that point. They've also
6 worked with DDOT and OP public space planners on both the above
7 grade public space as well as the design of the garage, which
8 would go underneath the public alley and we understand that they
9 received conceptual approval from the Public Space Committee this
10 morning on that very point. So we appreciate them working with
11 the agency feedback and refining the design of the garage. We
12 also strongly support the activation of the streetscape, as well
13 as the activation of the alley.

14 We've also asked the Applicant to discuss with DOEE
15 whether LEED 4.1 would be a more appropriate LEED version than
16 4.0 when analyzing this project and finally, of course, we always
17 ask Applicants for more PDR space. In this case, the Applicant
18 has proffered that ten percent of the commercial space would be
19 reserved for PDR uses for five years. OP would be supportive of
20 a larger and longer commitment to PDR uses.

21 So in summary, the proposal would not be inconsistent
22 with the comprehensive plan including when viewed through a
23 racial equity lens and OP therefore recommends that the
24 application be set down for a public hearing. Thank you.

25 CHAIRPERSON HOOD: Thank you, Mr. Jesick. Let's see

1 if we have any questions or comments.

2 Commissioner May.

3 COMMISSIONER MAY: Yes. Mr. Jesick, I appreciate your
4 report, your analysis. I mean, the project has a lot going for
5 it. There's still, it's slightly undercooked in some ways
6 compared to what we often see. But there's one thing that that
7 for me is a potential deal killer, at least at this moment, which
8 is the penthouse setback relief. Are they still requesting that,
9 and that was flagged in your report?

10 MR. JESICK: Yes, well. The exhibit, the original
11 plans at Exhibit 2B I think pointed that out that setback relief
12 may be necessary. The updated plans do not seem to have that
13 same note in the plans themselves. I don't believe the written
14 statement discusses the setback relief, but that was something
15 we were going to clear up with the Applicant.

16 COMMISSIONER MAY: In the original statement it did -
17 -

18 MR. JESICK: Okay.

19 COMMISSIONER MAY: -- and I have to admit I probably
20 looked at the original plans, but didn't necessarily look at the
21 corresponding pages in the other ones. But, you know, I have to
22 say if they're, I mean, did you have any discussions with them?
23 Do you have any idea what's driving that if they in fact are
24 requesting it?

25 MR. JESICK: It seemed to be mostly that sort of eyebrow

1 feature at the north side of the east building.

2 COMMISSIONER MAY: Yes.

3 MR. JESICK: So we have not discussed that feature in
4 detail with them, but we were going to analyze that in more detail
5 moving forward.

6 COMMISSIONER MAY: So, this is really hard for me
7 because you know that I have been steadfast in opposing setback
8 relief and yet I'm seeing it. I do see it in the more recent
9 submissions and especially eyebrow features like this which are,
10 I mean, the net effect of this is to make the building seem taller
11 than it is, right, at least in zoning terms and I don't understand
12 the purpose of it. It doesn't seem like there's really a
13 practical consideration there. It doesn't -- it's not necessary
14 in order to achieve the objectives of the project.

15 So I just don't, it would be inconsistent if I were to
16 say at this moment, yes, you can go ahead and set this down and
17 fix it later, because I think this is something that should be
18 fixed before it is set down, honestly. Now maybe my fellow
19 Commissioners feel differently about this, but for me the fact
20 of the setback relief request, which is embedded, not really
21 discussed and not justified in any significant way, is a problem.
22 It just seems to be it's an architectural vanity, and it's not
23 consistent with the zoning regulations.

24 So again, the point of having the setbacks is to make
25 the height of the building, you know, what is allowed and what

1 is the perception of that height to be consistent with it and
2 adding these things on top, if they're not, you know, like tower
3 features or something like that which are explicitly allowed
4 under the Height Act and other provisions in zoning regulations,
5 this just makes the building seem taller and that's not the point
6 and the architect and the developer and their lawyers should know
7 better than to show me something like this.

8 So I'll get off my soapbox for a second and see if my
9 other fellow Commissioners feel differently or want to try to
10 convince me that this should be set down right at this moment.

11 CHAIRPERSON HOOD: Vice Chair Miller.

12 VICE CHAIR MILLER: Thank you, Mr. Chairman. I don't
13 know if I can convince you, Commissioner May, and we would need
14 your vote tonight to set down.

15 I would say that, I mean, I agree with the, you know,
16 substance of everything you've said. I just think that this
17 application otherwise has a lot going for it, particularly the
18 15 percent affordable housing, greater amount of housing and
19 deeper affordability level and bigger sized units, more three
20 bedroom units, meaningful number of three bedroom units than was
21 originally proposed in this case and which the Applicant changed
22 apparently in response to ANC 5D's comments on those points. So
23 I think the Applicant has shown and has responded to Offers of
24 Planning's other comments about adding balconies and use of the
25 below grade air space.

1 So I just would say that if the issues can't get
2 resolved to your satisfaction, even though you may not be here
3 by the time of the hearing, but even if the issues can't be, if
4 this issue hasn't been resolved, we can postpone and not go
5 forward with the hearing which we've done in the past or we cannot
6 go -- if we had the hearing, if the issue is not resolved, we
7 cannot go forward with scheduling it for proposed action. So I
8 just think that with the time that it takes to put all these
9 development proposals together with the racial equity analysis
10 now that's required, that's been provided by Office of Planning,
11 at least so far, I think going into a summer and not scheduling
12 this for a hearing is maybe too harsh a signal.

13 So I would ask you if you would be willing to allow the
14 Applicant to respond to this issue and see if we find the response
15 satisfactory by the time that the hearing is scheduled sometime
16 in the Fall, and if it isn't then we wouldn't go forward at that
17 point. But I realize it's complicated by this as maybe your last
18 hurrah and you won't be here in the Fall to say no, so you're
19 saying no now. So I appreciate that.

20 But that's my best shot and I've failed many times at
21 my best shot, which is why I enjoyed concurring with you so much
22 earlier in other cases.

23 CHAIRPERSON HOOD: Well, I, well, obviously we need
24 three to set it down. But I do want us, and I'm not trying to
25 convince Commissioner May to change his mind, but I will say

1 this. If you think because he ain't gonna be around and I'm not
2 going, we're not going to follow up and figure this out and make
3 sure that it's carried out, then you're sadly mistaken. It's
4 been brought to our attention. Commissioner May flagged it and
5 we will follow through whether, whoever's here it will be followed
6 through to deal with that and I do know, I always like to say I
7 know I think Mr. Turnbull and Commissioner May really held with
8 those penthouse regulations, so I know they're near and dear to
9 them. So I will say that if you think if you're going to wait
10 us out and think that he'd be gone or we won't worry about
11 (indiscernible) Miller, you're in for a rude awakening.

12 So I don't know, you know, but there's some other issues
13 besides that. But if we're not going to set this down, let's
14 just make sure we (indiscernible). Did anybody convince you,
15 Commissioner, because I didn't try?

16 COMMISSIONER MAY: Well, let me ask you this, and I
17 appreciate your statement, Mr. Chairman, as I do the Vice Chair's
18 statements about this. But let me ask you this. Do you agree
19 with me that the setback relief for this eyebrow feature which
20 is just an architectural thing and not, it's not necessary, it's
21 not driven by mechanical equipment needs or other things that
22 that are, in my view, are the only reasons why setback relief
23 can be justified on the front of a building and would you agree
24 with me that that's what you would pursue because if you both
25 believe that this has to be fixed before there is a hearing on

1 this, then maybe I would be willing to set it down, you know,
2 being assured by both of you that you're solidly in my camp, that
3 penthouse setback relief on the front of a building cannot be
4 justified for architectural reasons. It has to be based on, when
5 I say architectural I mean design reasons; right? It has to be
6 based on a real functional requirement of the building and it is
7 unimaginable in this circumstance, at least to me, that there is
8 some functional reason why this has to be justified or this can
9 be justified.

10 CHAIRPERSON HOOD: I would just say this, Commissioner
11 May. I think that has been the status quo.

12 COMMISSIONER MAY: Yes.

13 CHAIRPERSON HOOD: This is not the first time you've
14 said it. I think we have dealt with this before and it has to
15 have some purpose and it doesn't, as you so eloquently noted and,
16 you know, it needs to be fixed before we have a hearing and I
17 believe the Applicant would do it. But it depends. We've done
18 it both ways. We don't set it down. We set it down and then we
19 don't move forward. I'm open to both ways, so.

20 COMMISSIONER MAY: Yes. I mean, I'm not totally
21 confident that the Applicant is going to do it because they should
22 have known not to do this based on the track record of the
23 Commission and the Office of Planning. They just sort of, you
24 know, kind of let it slide. I don't, I'm really puzzled by this.

25 Anyway, Vice Chair, what's your view on this?

1 VICE CHAIR MILLER: I agree with you that the setback
2 should be for functional, primarily for functional reasons. I,
3 you know, I can't think of, hypothetically of a non-functional
4 aesthetic reason, but there might be one that might make it look
5 better. But I agree with you that yes, in general that the
6 setback rule is an important rule and it should be related to
7 the function and any relief from it should be related to the
8 absolute necessity of the functioning or the efficient
9 functioning of the building.

10 COMMISSIONER MAY: Right. Yes. I mean, the sort of
11 things that I can imagine that would drive this would be things
12 like, you know, if it's a mechanical penthouse that doesn't fit
13 within the footprint allowed by complying with the setback or if
14 for some reason the, you know, an elevator has to be located more
15 toward the front of a building for sort of interior organizational
16 circumstances. I remember that happening in one case and not in
17 the too distant past. But here it's again, it's just it seems
18 to be all about a decorative feature and I'm not against having
19 decorative features, but the, you know, the idea of putting this,
20 you know, adding this feature across the entirety of the facade
21 or a majority of it, as opposed to having moments, a tower kind
22 of feature or something like that flies in the face of the intent
23 of the zoning regulations that we put in place after the Congress
24 gave us greater flexibility with the Hyde Act.

25 I mean, I think generally speaking, the changes that

1 came out of that have been a huge improvement to rooftops across
2 the City but it was always a worry that people would try to take
3 advantage of that and do other things to, you know, make their
4 building, you know, stand out more by being taller, by being more
5 exciting and in these ways that that architects unfortunately,
6 let their egos get the better of their sense when it comes to
7 complying with regulations.

8 So I'm still only maybe halfway there on this, but I
9 am encouraged to know that you all agree in principle that the
10 Zoning Commission cannot be granting relief on setback
11 requirements when there's not a demonstrated need for it and I
12 don't know, I'm sure that Mr. Jesick would take this back to the
13 Applicant and make sure they understand the import of complying
14 with setback regulations and if I'm not here by the time this is
15 heard, I'm sure somebody will be here who will be speaking up
16 for the same concerns that I have. So I'm slowly trying to talk
17 myself into this.

18 VICE CHAIR MILLER: I think you are the best person to
19 convince yourself, and others.

20 COMMISSIONER MAY: And I'm doing it out of my love for
21 the Commission and the desire to have consensus. It's too bad.
22 I wish Commissioner Imamura was here, then I could have voted
23 against it and then it probably still would have gone forward and
24 I could have made my points.

25 CHAIRPERSON HOOD: Well, I think we can give them some

1 time to come back and fix it. That's kind of where I am now and
2 I understand we got August. Give them some time to fix it. I
3 know we have other issues because, you know, the more I look at
4 it, the more I think it is intrusive. So I'll just leave it at
5 that. I don't know where you are, Vice Chair so --

6 COMMISSIONER MAY: In trying to convince myself to go
7 along with it, I convinced you to not. So that's good by me.

8 CHAIRPERSON HOOD: I just don't want to send out a
9 wrong signal. I want them to take care of it and I believe if I
10 call the counsel up, I'm sure they would probably have something
11 to say. But I don't know if that's in order as well. But I
12 don't know. That's what happens when you have three.

13 COMMISSIONER MAY: Yes. That's the problem with three
14 Commissioners.

15 CHAIRPERSON HOOD: So let's talk about the other issue.
16 Anything else other than the penthouse issue for you,
17 Commissioner May?

18 COMMISSIONER MAY: No, that's it.

19 CHAIRPERSON HOOD: Okay. Vice Chair Miller, anything
20 else?

21 VICE CHAIR MILLER: No, Mr. Chairman.

22 CHAIRPERSON HOOD: I do have a few things. The mouse
23 just went to sleep.

24 Let me ask this, Mr. Jesick. Is the Office of Planning
25 aware of any opposition on this application?

1 MR. JESICK: I don't think we've seen any in the record
2 yet and I'm not aware of any. As I noted, the ANC supports it.
3 I believe the Applicant has reached out to other stakeholders in
4 the neighborhood. So as of this evening, I'm not aware of any.

5 CHAIRPERSON HOOD: Okay. And again, I know it was
6 touched on by both the Applicant and the Office of Planning, but
7 I want to make sure that, whenever it's setdown at the hearing,
8 the ethnicity trends identified could be impacted by the
9 application, what kind of impacts and I'm sure if we go that far,
10 which it doesn't seem like we will, that we -- hold on one second.

11 Okay. The staff has been notified, Commissioner May,
12 the Applicant is willing to redesign the trellis-like element on
13 the western building fronting on Penn and 5th Street northeast
14 so that it does not require setback relief. I know that doesn't
15 hold any weight, me saying it. I can't hear you, Commissioner
16 May.

17 COMMISSIONER MAY: I guess that's helpful. I mean, if
18 that's convincing enough for you, Mr. Chairman, then I'd go along
19 with setting it down. I would point out that at least in the
20 earlier drawings, I didn't look carefully at the second
21 submission, but in the earlier drawings the relief was not limited
22 to the trellis feature, it also included the guardrails and the
23 guardrails would also have to be, I mean, I assume that they're
24 going to redesign it so no setback relief is required. I would
25 take that as a blanket requirement so if guardrails need to be

1 set back further than they should, and don't try to fool us by
2 saying, oh, the guardrails will be made of glass so you won't
3 really see them, because we know that's not true. Now, and you
4 guys all know that. I'm saying that for the benefit of the
5 architects who may, you know, may have been able to fool other
6 people with that kind of argument, it just doesn't work. It's
7 not that way. You can still see the glass.

8 CHAIRPERSON HOOD: So, Commissioner May, with that
9 statement and it's been noted by our counsel as well, with that
10 statement, are you willing to maybe change your mind?

11 COMMISSIONER MAY: Yes. Can we agree to set it down,
12 yes, we set it down on the basis that we now have that statement
13 indirectly in the record. I know that doesn't really, it probably
14 doesn't hold legal weight but certainly the fact that they've
15 said this to you, Mr. Chairman, and to the Vice Chair as well, I
16 expect that you will hold them to that promise.

17 CHAIRPERSON HOOD: Yes, we will.

18 COMMISSIONER MAY: Okay. All right. Then I will agree
19 to vote in favor of setting down and would thank the Applicant
20 for giving me the opportunity to vent on one of my favorite topics
21 in my last meeting.

22 CHAIRPERSON HOOD: One things I'll say though, when you
23 start talking about it. I think about my times with Herb
24 Franklin, the late Herb Franklin, and Mr. John Parsons and Jerilee
25 Cress, when they talked about it when I first got here, I started

1 hearing about it. But through over time, Commissioner May, you
2 have helped formalize what they what we talked about then and now
3 we have it in codified in our regulations when it comes to
4 setbacks and trellises and decorative and, you know, that's been
5 going on. So you really took me way back to John Parsons in that
6 because we spent many nights at 11:30 at night talking about
7 decorative trellises and stuff like that.

8 COMMISSIONER RMAY: All right.

9 CHAIRPERSON HOOD: All right. Anything else on this,
10 either Commissioner May or Vice Chair Miller?

11 COMMISSIONER MAY: We need to take a vote to set it
12 down; right?

13 CHAIRPERSON HOOD: Yes. But anything, we talked about
14 that, so I forgot. Do we have anything else? I know there was
15 some questions, but most of the racial equity questions, the
16 Applicant will come prepared if we set it down, But we're going
17 to really be looking at the penthouse issue, which they're now
18 they said they're going to design it, so it needs no relief. So
19 you, on your way out, you won, Commissioner May.

20 All right. Somebody like to make a motion to set? I
21 think it's appropriate, Commissioner May, that you make the
22 motion.

23 COMMISSIONER MAY: (Indiscernible). Vice Chair.

24 CHAIRPERSON HOOD: Vice Chair Miller, would you make
25 the motion?

1 VICE CHAIR MILLER: Okay. I will make a motion, Mr.
2 Chairman. That the Zoning Commission set down for a public
3 hearing case No. 22-35 with the comments noted, the discussion
4 that noted that we expect the Applicant to live up to their
5 indirect statement to staff at this meeting, while we were
6 discussing this issue, that they would address and take care of
7 and not require setback relief by the time we have a public
8 hearing on the issue and with that motion, with that
9 understanding, I would make a motion that we set it down, and
10 asked for a second.

11 CHAIRPERSON HOOD: Okay, and I'll second. So I won't
12 put Commissioner May through that. I've been there so I know.
13 I'll second. Any further discussion? Not hearing any, Ms.
14 Ackerman, could do a roll call vote, please?

15 MS. ACKERMAN: Yes. Commissioner Miller?

16 VICE CHAIR MILLER: Yes.

17 MS. ACKERMAN: Commissioner Hood?

18 CHAIRPERSON HOOD: Yes.

19 MS. ACKERMAN: Commissioner May?

20 COMMISSINER MAY: Yes.

21 MS. ACKERMAN: The vote is three to zero to two to set
22 down Zoning Commission case No. 22-35 as a contested case.
23 Commissioner Imamura not present and the third Mayoral appointee
24 position which is vacant. Thank you.

25 CHAIRPRESON HOOD: Commissioner May, I thought she was

1 getting ready to do something. I had a guy one time made a motion
2 and a guy seconded and then when they called for the vote, he
3 voted against it. I thought you were going to do that.

4 All right. Our next, I hope this is our last case,
5 Zoning Commission case No. 23-17 Office of Planning TA to Subtitle
6 -- TA, I don't know if that's right -- TA to Subtitle C § 701.5
7 to reduce parking requirements for publicly assisted affordable
8 dwelling units. Mr. Kirschenbaum.

9 MR. KIRSCHENBAUM: Thank you, and good evening and if
10 we could pull up the presentation, that would be great. Thank
11 you.

12 So good evening, Chair Hood and members of the Zoning
13 Commission. I am Jonathan Kirschenbaum with the Office of
14 Planning. I'm joined by my colleagues Art Rodgers and Joel
15 Lawson, and we will be available for questions after my
16 presentation.

17 The proposal before you is a text amendment that would
18 reduce minimum parking requirements for affordable housing
19 located near mass transportation. On balance, when viewed
20 through a racial equity lens, the proposal is not inconsistent
21 with the policies of the comprehensive plan, and the Office of
22 Planning recommends that this application be set down for a public
23 hearing.

24 Next slide, please. This tax amendment appropriately
25 balances making the provision of affordable housing less costly

1 while ensuring residents have reliable access to transportation.
2 It will still require some off-street parking to be to be provided
3 for larger affordable buildings, while generally allowing an
4 elimination of parking for small properties where it is generally
5 difficult or impossible to provide parking.

6 As we will discuss in further detail, OP has concluded
7 that the proposed parking reduction should only be available when
8 in proximity to mass transit to ensure equitable access to jobs
9 and opportunities throughout the region. This proposal
10 acknowledges that there are limits to access afforded by public
11 transit, even in the most accessible parts of the District. In
12 particular in Wards 7 and 8 there is an important need for
13 residents to use a car to commute to work, especially given
14 existing inequities in public transportation.

15 Next slide, please. So we want to give a quick review
16 of existing parking requirements and also parking reductions that
17 exist. Generally speaking, the zoning regulations require
18 apartment houses to provide one parking space per three dwelling
19 units with the first floor dwelling units excluded from the
20 calculation. The regulations also allow affordable housing for
21 seniors and persons with disabilities to have a lower parking
22 requirement as well and then the regulations also allow the
23 parking requirement for either type of building to be reduced by
24 as much as half as a matter-of-right if they are located near
25 mass transit and OP does not propose any changes to these

1 requirements.

2 Next slide, please. So the minimum parking
3 requirements established through ZR16 were based on an intensive
4 utilization study that included both market rate and affordable
5 housing projects. The study determined that utilization rates
6 for affordable housing were lower than market rate projects, but
7 still indicated that some minimum parking requirement was needed.

8 So this table in front of you shows how many parking
9 spaces were provided in the survey of apartment buildings based
10 on buildings built to the ZR58 parking regulations, which were
11 significantly higher than what the current regulations allow. So
12 you'll see at the bottom of the overall parking utilization rate
13 was 44 percent. That rate considered how many parking spaces
14 were used based on occupied dwelling units in the building and
15 this data was used to inform the current parking requirement
16 under ZR16 which typically requires parking spaces to be provided
17 based on 33 percent of the total number of dwelling units in a
18 building and there's been a lot of great work that has been done
19 for parking as part of ZR16 to really sort of optimize and
20 streamline parking requirements to how much parking is actually
21 used in many buildings.

22 So as part of this proposal, OP's review of BZA and PUD
23 cases filed since ZR16 went into effect suggested that smaller
24 projects, less than 40 units had greater difficulty in meeting
25 the requirements for parking due to the size of the property and

1 other unique factors. This is especially true when a below grade
2 garage would have been needed to meet the parking minimum.

3 Next slide, please. So OP proposes a new category to
4 reduce parking requirements for any type of publicly assisted
5 apartment house. To qualify, the development must be funded in
6 part or fully by either the District or federal governments, and
7 must provide affordable housing in excess of the IZ program. The
8 proposed requirement would be one parking space per three
9 dwelling units in excess of the first 40 dwelling units if the
10 building is located close to mass transit. The parking
11 requirement could be further reduced by half because the
12 development would have to be proximate to transit.

13 Next slide, please. As noted in our setdown report and
14 as we will discuss further in our racial equity analysis, OP
15 research demonstrates that lower income households in underserved
16 communities need significant improvements to the reliability and
17 frequency of mass transit to better access jobs. The
18 comprehensive plan notes that there is limited transit service
19 to some significant suburban employment areas, which increases
20 financial pressure on low income residents who have less
21 affordable, reliable access to employment.

22 Relatedly, a study by the Brookings Institute found
23 that the region's transit systems do a better job of connecting
24 high skilled workers to high skill jobs than it does for mid-
25 skilled and low skilled workers and that in particular areas east

1 of the Anacostia River have the lowest share of jobs accessible
2 within a 45 minute commute on mass transit and data from DDOT
3 shows that residents in Wards 7 and 8 have the longest commute
4 times to work via public transportation, but significantly lower
5 average commute times to work via a car.

6 Next slide, please. So as part of the racial equity
7 lens and analysis, OP hosted four meetings last summer where we
8 met with staff from the Department of Housing and Community
9 Development, affordable housing providers and housing advocates
10 to discuss a proposal to reduce parking. We also held sort of a
11 general roundtable on housing and affordable housing District-
12 wide and in downtown last Fall.

13 We generally heard that the cost to provide an
14 individual parking space can vary greatly based on where it's
15 located. But generally speaking, a below grade parking space can
16 cost as much as \$50,000 each. Other feedback provided was that
17 providing parking in live (phonetic) tech buildings can be
18 particularly expensive because these buildings cannot receive the
19 level of revenue from parking fees compared to market rate
20 buildings and then lastly, we also heard that the parking can be
21 expensive to provide. There is still a need for low income
22 residents and staff members of these buildings to have on-site
23 parking and that there is concern that eliminating parking
24 entirely would make it more difficult for people to have adequate
25 access to opportunities.

1 So again, based on the feedback we received and the
2 racial equity analysis we conducted, this text amendment balances
3 making the provision of affordable housing less costly while
4 ensuring residents have reliable access to transportation and I
5 think sort of put another way, this text amendment ensures that
6 residents do not have reduced transportation options to be able
7 to access jobs and services and then sort of a summary of the
8 key takeaways from our public engagement can be found on page two
9 of OP's setdown report.

10 Next slide, please. So we did review the parking
11 reduction proposal through a racial equity lens. The proposal
12 provides opportunities to devote more room and funding for
13 affordable housing units instead of parking spaces. The proposal
14 should not negatively impact direct or indirect displacement
15 because it would ease regulations for the provision of new housing
16 and only applies when in proximity to mass transit. The proposal
17 also has the ability to have positive effects on the physical
18 environment because it would in many instances reduce the need
19 for expensive below grade excavation and/or reduce the need for
20 creating accurate impervious surface for parking.

21 Next slide, please. So as we have discussed, fully
22 eliminating parking and mass transit is not convenient, raises
23 issues of equity based on the nature and location of jobs held
24 by low income households and this is a map from DDOT's Move D.C.
25 2021 report showing that there is a higher percentage of

1 historically under-resourced communities in areas with the
2 greatest need of transportation access. In particular Wards 7 and
3 8 and also portions of Wards 4 and 5 have the highest density of
4 residents of color, the highest density of low income residents,
5 and the highest density of residents with disabilities who are
6 in the greatest need of better transportation access.

7 Next slide, please. Residents of Wards 7 and 8 have
8 the lowest access to jobs across the region within a 45 minute
9 commute by mass transit while having the highest rates of
10 unemployment in the District, as shown in figure 8. The
11 comprehensive plan further states that unemployment rates in
12 areas such as far southeast and far southwest are four to five
13 times higher than the regional rates and disproportionately
14 affects Black residents.

15 As shown in figure 7 residents in Wards 7 and 8 also
16 have the highest percentage of residents who use a car to commute
17 to work and this could be in part contributed to the fact that
18 these Wards have longer commute times to work on public transit
19 and then relatedly, figure 9 shows that Wards 7 and 8 have the
20 fewest jobs per acre. The map generally shows that areas in
21 yellow have jobs that are few and far between, and that these
22 jobs are spread out far away from transit. The highest
23 concentration of jobs in the District tend to be clustered around
24 mass transit.

25 So in summary, based on the review through a racial

1 equity lens and comments received from community engagement, this
2 proposal balances the desire to provide opportunities to devote
3 more room for affordable housing instead of parking spaces, while
4 also ensuring residents do not have reduced parking options when
5 they live far away from reliable mass transit options.

6 Next slide, please. And we thank you and we're
7 available for questions.

8 CHAIRPERSON HOOD: Thank you, Mr. Kirschenbaum. I just
9 remembered before you started, I didn't ask you where you're
10 going to be retiring because I've been getting that quite a bit
11 the last week or two. But I assume, I think I know the answer
12 to that question.

13 But let me see, Commissioner May, do you have any
14 questions of Mr. Kirschenbaum?

15 COMMISSIONER MAY: I do not have any questions. I
16 appreciate the fact that you're bringing this forward. I think
17 this is an area where we can make improvements to the regulations,
18 but we have to do it very thoughtfully and I think you've done a
19 good job at analyzing many of the issues. I mean, it's not --
20 eliminating parking requirements is not sort of an automatically
21 good thing in all circumstances when it comes to affordable
22 housing.

23 So I think looking at this in this way, I think is a
24 very good start and I think we have an indication from the Office
25 of the Attorney General that they would like to collaborate on

1 this process when they requested that their previous case be
2 dismissed and so hopefully we'll be able to take advantage of
3 that and come up with the appropriate regulation.

4 So I do not have anything else to add. Appreciate your
5 presentation. Thank you.

6 CHAIRPERSON HOOD: Vice Chair Miller.

7 VICE CHAIR MILLER: Thank you, Mr. Kirschenbaum, for
8 your report and for all the work by you, Mr. Rodgers, and the
9 entire Office of Planning in developing the data and the findings
10 that led to your recommendation for this proposed text amendment
11 to reduce parking requirements for publicly assisted affordable
12 housing units near transit.

13 I guess I'm not convinced that the proposed reduction
14 in parking requirements shouldn't also apply to non-publicly
15 assisted additional IZ units when a private developer not getting
16 public -- other tax incentives or other tax credits or other
17 public assistance, I'm not convinced that when they're complying
18 when they are exceeding our inclusionary zoning requirements
19 which we want them to do in every case, we have a minimum
20 requirement, minimum amount, and we have certain affordability
21 levels but we want them to do more, more affordable housing units,
22 and we want them to do deeper affordable housing units and we
23 want them to do greater size three bedroom units, two and three
24 bedroom units, which we have incentives in the current
25 regulations to encourage that. But I'm not sure not sure why,

1 at least for proposal purposes or for advertisement purposes for
2 a hearing we shouldn't be a little bit more ambitious in not
3 limiting it just to publicly assisted additional affordable
4 housing units.

5 I've read what you've written in the report, but maybe
6 you want to elaborate on why the Office of Planning is not
7 currently recommending reduced parking requirements for other
8 cases where the IZ requirements are being exceeded?

9 MR. KIRSCHENBAUM: Sure. I'll take the first stab and
10 maybe Art can fill in a little bit as well.

11 I think there's sort of two different parts going on
12 here. One of the reasons why the proposal is tied to publicly
13 assisted buildings is that we need to make sure that the units
14 that are having a parking reduction are tied to some sort of
15 affordability program because otherwise someone could come into
16 the Zoning Administrator's office and just say, hey, I'm
17 providing these deeply affordable units, I don't have to provide
18 parking and not -- this ensures that it's tied to a program that
19 is being administered by the District and regarding the IZ units
20 one of the reasons why we do not propose to include this for IZ
21 units is that we heard from DHCD that IZ tenants often are at a
22 disadvantage for parking spaces.

23 When new buildings open, they get leased up usually
24 first by market rate tenants, and then those tenants take away
25 or they lease the parking and there's no parking left for the IZ

1 residents and IZ residents have called and complained that they
2 don't have access to parking at these properties, and also the
3 IZ program requires IZ units to really not be sort of
4 differentiated from market rate units.

5 So that is sort of the primary reason why we didn't
6 include IZ units as part of this proposal and again, the primary
7 part to tie it to publicly assisted housing is really to ensure
8 that there is some sort of program, affordable program that is
9 being administered for those units.

10 I don't know, Art, if you want to add anything or if
11 that sufficiently answered the question.

12 MR. RODGERS: Hi, this is Art Rodgers, the senior
13 housing planner for OP.

14 I think that that generally answers the question. I
15 think the other thing that we discovered in conversations with
16 the Department of Building and the Zoning Administrator and DHCD
17 was the complexity of increasing the number of affordable units,
18 number of IZ units in exchange for reducing parking when the
19 inclusionary zoning rules already have various sections that will
20 increase the requirement or decrease the requirement and so there
21 was this level of complexity added of achieving this, and then I
22 think the other reason is that it really doesn't create an
23 incentive for most developers unless it can justify the
24 elimination of an entire floor of below grade parking.

25 And so we thought it was very unlikely to generate

1 additional IZ units and so those are some of the other reasons
2 that we discovered in our research process.

3 VICE CHAIR MILLER: Well, I appreciate those responses.
4 You know, I think the issue about access, equal access to whatever
5 parking is in the building by both those who are in IZ units and
6 those who are not in units, I think that is a principle that is
7 important and is in conformity with the general principle that
8 IZ units should be pretty much the same in all outward appearances
9 and by their presentation as market rate units. But I think that
10 can be addressed through other means, not by not allowing an
11 incentive for reduction when there's additional IZ units.

12 I guess I just want to hear more about this from the
13 public at the hearing. I guess as long as we are able to, you
14 know, the administrative burden argument on the DHCD or District
15 government has been raised every time we do anything with the IZ
16 program and I understand that it's real. So but I still, at this
17 point, would want this reduced parking incentive to be applicable
18 not just to publicly assisted affordable units but to non-
19 publicly assisted units so that we can see whether it works,
20 whether it's enough to get more IZ units in any case in these
21 projects going forward.

22 It's all incremental. The whole IZ program has been
23 incremental, but over time it has produced a meaningful number
24 of affordable housing units and I just want to create as much
25 incentive as we can while adhering to the principles of the

1 equality that we have regarding the program.

2 So I guess that's where I am. I'm supportive of setdown
3 because I wanted this issue to move forward. But I want this
4 proposal to be expanded, but I'll wait to hear more at the public
5 hearing, Mr. Chairman, if we set it down for a public hearing.

6 CHAIRPERSON HOOD: Thank you. I will tell you that I'm
7 excited about this, what's being proposed. I probably shouldn't,
8 I don't think I'm jinxing myself. I think this is something that
9 shows a collaboration with working together to try to achieve
10 some of the things that will benefit the residents of the City
11 and that's all I'm going say on that because if I start promoting
12 and touting about it right now, then it'll be my luck to turn
13 into being a major disaster. So I don't I don't want that to
14 happen. I think this is the way to go, and I'll leave it at
15 that. Big applause to everybody who's worked on this to bring
16 this forward. I think it would be beneficial.

17 But let me ask this, though, before I say too much.
18 Mr. Kirschenbaum or Mr. Rodgers, when you all were having those
19 interactions with the stakeholders, some of the stakeholders, was
20 there any opposition?

21 MR. KIRSCHENBAUM: Not that we've heard so far, no.
22 No, like I said this really balances the many sort of different
23 comments we received from the community engagement that we've
24 done.

25 CHAIRPERSON HOOD: So without belaboring, thank you all

1 for all your hard work on this and everybody who joined in put
2 in a part and we'll see how this goes. I think it would be a
3 very interesting hearing. I'm looking forward to it.

4 Okay. So thank you, Mr. Kirschenbaum and Mr. Rodgers.
5 And it was one other person you named, I'm sorry. Oh, Mr. Lawson.
6 How could I forget that? Okay. All right.

7 All right. So let me see. Colleagues, I'm ready to
8 set this down. I would move that, oh, I'm sorry. I'm on the
9 wrong case. I would move that we set down, well, hold on for a
10 second. I'm really on the wrong case. I move that we set down
11 Zoning Commission case No. 23-17 as captioned and ask for a
12 second.

13 VICE CHAIR MILLER: Second.

14 CHAIRPERSON HOOD: It's been moved and properly second.
15 Any further discussion? Not hearing any, Ms. Ackerman, could you
16 do a roll call vote, please?

17 MS. ACKERMAN: Commissioner Hood?

18 CHAIRPERSON HOOD: Yes.

19 MS. ACKERMAN: Commissioner Miller?

20 VICE CHAIR MILLER: Yes.

21 MS. ACKERMAN: Commissioner May?

22 COMMISSIONER MAY: Yes.

23 MS. ACKERMAN: The vote is three to zero to two to set
24 down the Zoning Commission case No. 23-17 as a rule making case.
25 Commissioner Imamura not present and the third Mayoral appointee

1 position, which is vacant. Thank you.

2 CHAIRPERSON HOOD: Thank you, Ms. Ackerman.

3 Do we have anything else before us?

4 MS. ACKERMAN: No.

5 CHAIRPERSON HOOD: Okay. Again, I usually do the
6 closing for the August recess at this meeting, but I'm going to
7 wait and do it on the 31st. I want to also ask again that you
8 join us on the 31st, especially for the first hour for our
9 hearing. It's a hearing, but we have something very special.
10 It's going to be a historic moment. So tune in at 4:00 p.m., on
11 the 31st of this coming Monday and other than that, Ms. Ackerman,
12 and I want to thank those who, Ms. Lovick, and all those who've
13 had a part to play in this meeting running as smoothly as it did,
14 and helping us make sure that we're prepared and the gentleman's
15 name, Mike -- Ms. Lovick, how you pronounce his last name?

16 MS. LOVICK: Sukininijar, I think.

17 CHAIRPERSON HOOD: Mr. Sukininijar, if it's incorrect,
18 when you see Ms. Lovick in the office, tell her she gave it to
19 me incorrect. But I want to thank you too for filling in. We
20 did not miss a beat. Thank you all.

21 So with that, unless my colleagues have something to
22 say you all have a great weekend and with that, this meeting is
23 adjourned.

24 Goodnight, everybody, and thank you.

25 (Whereupon, at 7:04 p.m., the above-entitled hearing

1 was adjourned.)

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In the matter of: Public Meeting

Before: DCZC

Date: 07-27-2023

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