

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC MEETING

+ + + + +

MONDAY

JANUARY 25, 2010

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- WILLIAM WARREN KEATING, Vice Chair
- KONRAD SCHLATER, Commissioner
- MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
- PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

- JAMISON WEINBAUM, Director of the Office
of Zoning
- SHARON S. SCHELLIN, Secretary
- DONNA HANOUSEK, Zoning Specialist
- ESTHER BUSHMAN, General Counsel

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on
January 25, 2010.

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

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

6:37 p.m.

CHAIRPERSON HOOD: This meeting
will please come to order.

Good evening, ladies and
gentlemen. This is our January 25th, 2010
public meeting of the Zoning Commission.

My name is Anthony Hood. I'm
joined by Vice-Chairman Keating, Commissioner
May, Commission Schlater and Commission
Turnbull. Also, the Office of Zoning staff
under the leadership of Director Weinbaum.
Office of Attorney General on the other side
of the Office of Zoning staff to our left. To
my right, Office of Planning staff under the
leadership tonight of Mr. Lawson.

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

We do not take any public
testimony unless someone requests someone to
come forward. Please be advised that this

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1 proceeding is being recorded by a court
2 reporter and is also Web cast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room. Please turn off all beepers and
6 cell phones.

7 Also, we are represented by the
8 Office of Attorney General under the
9 leadership of Mr. Bergstein.

10 Okay. Let's go right into our
11 agenda. The only thing we're going to do,
12 we're going to move around the agenda. We're
13 going to take -- final action will be item 4,
14 and proposed action will be item 5. That's
15 the only change we're going to make this
16 evening.

17 Okay. Let's go right to the
18 consent calendar. Zoning Commission Case No.
19 03-30, Square 643 Associates, LLC. Technical
20 Corrections to Order No. 03-30.

21 Ms. Schellin?

22 MS. SCHELLIN: Yes, sir. This was

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1 an item that was brought up at a prior meeting
2 in December, and it was an issue that the
3 Commission asked us to place on one of the
4 future meetings. And so, we would ask the
5 Commission to please take action on the
6 technical correction. Order. No. 03-30(c), I
7 believe is the order number.

8 CHAIRPERSON HOOD: Thank you very
9 much, Ms. Schellin.

10 As Ms. Schellin has already
11 stated, this was inadvertently not restated as
12 a condition in the decision portion of our
13 said order. Accordingly, to make the public
14 benefit amenity enforceable, the corrected
15 order is adding it as a condition of approval.
16 And I think that's what we agreed to and
17 wanted to see.

18 Any discussion?

19 (No audible response.)

20 CHAIRPERSON HOOD: If I don't hear
21 any, I would move that we approve on the
22 consent calendar Zoning Commission Case No.

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1 03-30 with the technical correction to the
2 Order No. 03-30, and ask for a second.

3 COMMISSIONER TURNBULL: Second.

4 CHAIRPERSON HOOD: Moved and
5 properly seconded. Any further discussion?
6 Further discussion?

7 (No audible response.)

8 CHAIRPERSON HOOD: All those in
9 favor? Aye.

10 VICE-CHAIR KEATING: Aye.

11 COMMISSIONER SCHLATER: Aye.

12 COMMISSIONER MAY: Aye.

13 COMMISSIONER TURNBULL: Aye.

14 CHAIRPERSON HOOD: Not hearing any
15 opposition, Ms. Schellin, would you record the
16 vote?

17 MS. SCHELLIN: Yes, staff records
18 the vote 5-0-0 to approve the technical
19 correction to Zoning Commission Order No. 03-
20 30. Commissioner Hood moving, Commissioner
21 Turnbull seconding. Commissioners Keating,
22 May and Schlater in support.

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1 CHAIRPERSON HOOD: Okay. Thank
2 you, Ms. Schellin.

3 Let's move right into our hearing
4 action. Zoning Commission Case No. 09-20,
5 Baywood Hotels map amendment at Square 3594.

6 Mr. Jackson, I believe? Mr.
7 Jackson.

8 MR. JACKSON: Good evening, Mr.
9 Chairman and members of the Zoning Commission.
10 I will present a brief summary of the Office
11 of Planning's preliminary report on this
12 application.

13 VASUDAV, Incorporated, the
14 applicant, filed a petition with the Office of
15 Zoning requesting that its property located at
16 501 New York Avenue, N.E. be rezoned from C-M-
17 1 to C-3-C. This property is currently
18 developed with a two-story motel.

19 The Florida Avenue Market Small
20 Area Plan Supplement to the 2006 Comprehensive
21 Plan was adopted by the District Council on
22 October 6th, 2009. The subject property and

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1 the surrounding properties included in this
2 planning area were designated high-density.
3 The proposed C-3-C District is consistent with
4 the description of high-density and this
5 supplemental planning document.

6 The proposed rezoning is therefore
7 not inconsistent with the Florida Avenue
8 Market Supplement to the Comprehensive Plan.
9 Accordingly, the Office of Planning recommends
10 that this petition be set down for public
11 hearing.

12 That concludes my summary of the
13 Office of Planning report on this application,
14 and we are available to answer questions.

15 CHAIRPERSON HOOD: Okay, Mr.
16 Jackson. Thank you.

17 Let's open it up for any questions
18 of Mr. Jackson, or comments on this map
19 amendment for Baywood Hotels. Commissioner
20 May?

21 COMMISSIONER MAY: The first
22 question I have actually is -- well, I'll ask

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1 it of the Office of Planning, but Mr.
2 Bergstein might also want to provide an answer
3 to that.

4 You referred to the Florida Avenue
5 Market Small Area Plan as being a supplement
6 to the Comprehensive Plan.

7 MR. JACKSON: Yes.

8 COMMISSIONER MAY: I mean, was it
9 officially introduced as a supplement to the
10 Comprehensive Plan? I mean, as I understood
11 it there is some distinction. I don't know
12 what it is.

13 MR. JACKSON: Well, in the order,
14 the resolution that was adopted for the plan
15 is introduced as a -- well, it was approved by
16 District Council, and I'm not sure -- the
17 wording of the resolution actually refers to
18 it as becoming a part of the Comprehensive
19 Plan.

20 COMMISSIONER MAY: Okay.

21 COMMISSIONER TURNBULL: I'm sorry.
22 Could you repeat that? I didn't quite hear

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1 it.

2 MR. JACKSON: All right. I should
3 go on. In the resolution that was presented
4 for the regulation, this plan, it says, "Once
5 approved the Florida Market Small Area Plan
6 will become supplemental guidance to the
7 Zoning Commission and other District agencies
8 in carrying out the policies of the
9 Comprehensive Plan for the National Capital."

10 So in essence, they refer to it as
11 a supplemental document that will help carry
12 out the policies of the Comp Plan. So, i.e.,
13 it is part of the Comp Plan.

14 COMMISSIONER MAY: Okay. I think
15 we probably need a little bit greater clarity
16 on exactly what that means. Because
17 supplemental guidance is a concept I
18 understood with regard to small area plans in
19 the past. But the idea of actually
20 supplementing the plan I'm not so sure about,
21 particularly given that the Comprehensive Plan
22 itself, the Land Use Map shows it as

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1 production, distribution, repair. So, I'm not
2 sure how that fits in, so I think it would be
3 helpful to know more about that.

4 Does the Office of Planning have
5 specific information or guidance with regard
6 to what actually happened within the Florida
7 Avenue Market Plan Area? I mean, are there
8 design guidelines or something that are going
9 to control how this development is done?

10 Because it seems to me that this is a very
11 prominent location in particular, and given
12 that it's a great street and all that kind of
13 thing, what kind of guidance is there?

14 MR. LAWSON: the Small Area Plan
15 for the Florida Avenue Market area is actually
16 quite detailed in terms of its guidance for
17 most of the small area plan area. It provides
18 less guidance for this property. Most of the
19 guidance relates to the Historic Market area,
20 which is a little bit further south of this
21 property. The main guidance in the Small Area
22 Plan for this property is that it be

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1 redesignated as high-density, and there is
2 some language in there that it be generally
3 put to a mixed-use type of development as
4 opposed to the industrial use, which is the
5 former land use designation the Comprehensive
6 Plan had.

7 So, I think the guidance that we
8 would get from this is that any development
9 that would be put on this property would have
10 to conform to the Zoning Regulations, and I
11 believe that's what the applicant is certainly
12 proposing. And there would be other venues
13 for review. For example, the Public Space
14 Committee would review its relationship to New
15 York, and therefore its relationship to the
16 New York Avenue planning that DDoT has been
17 doing.

18 COMMISSIONER MAY: Is there a
19 specific development that's in mind for this
20 site at this point?

21 MR. LAWSON: The applicant has
22 shown us very preliminary and conceptual

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1 drawings only. They are proposing to
2 redevelop it as a new hotel, but within the C-
3 3-C parameters as opposed to the C-M-1
4 parameters. So, that would allow extra height
5 and allow extra density, a height of up to 90
6 feet by right.

7 COMMISSIONER MAY: Okay. That's
8 it for my questions for right now.

9 CHAIRPERSON HOOD: Anyone else,
10 any questions or comments?

11 COMMISSIONER TURNBULL: But we're
12 only looking at one piece of this whole
13 Florida -- I mean, it just seems like we're
14 picking and choosing sites in this plan.
15 We're upscaling this one little piece in this
16 whole area. Somehow I'm a little bit troubled
17 that we're just kind of going in and picking
18 a spot that a developer seems ripe and the
19 whole area other still stays C-1-M. I'm a
20 little bit confused on why we're going at it
21 like this.

22 MR. LAWSON: I think the concern

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1 is it would normally be a legitimate concern.
2 Normally we like to see when there's a Small
3 Area Plan that the zoning action come forward
4 in a more comprehensive package.

5 In this case, you know, as we were
6 talking about earlier, the plan is very
7 specific in terms of what it wants for most of
8 the Florida Avenue Market Area, and it calls
9 for preservation of historic buildings and
10 some innovative ways to help make sure that
11 happens, but as well as providing for some
12 fairly significant areas of new density.
13 That's really not the case for this property.
14 It's certainly within the Florida Avenue
15 Market Area and it's called out, as I said,
16 for being rezoned to higher density
17 development.

18 But the plan itself doesn't
19 provide additional guidance the way that it
20 does for the rest of the properties. That's
21 why the Office of Planning is comfortable with
22 this project moving forward kind of separately

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1 from the rest of the Small Area Plan area.
2 And that's why, you know, when the applicant
3 came and talked to us we weren't opposed to
4 the idea of this property moving forward of
5 any potential zoning action that may come
6 forward for the rest of the plan area, which
7 would address issues in the Small Area Plan
8 that are different from the issues for this
9 particular property.

10 COMMISSIONER TURNBULL: Well, do
11 you see this area as having several different
12 zones?

13 MR. LAWSON: It's possible. The
14 Small Area Plan again is quite specific in
15 terms of the kinds of densities its looking
16 for in different parts of the area, and that
17 certainly could lead to different zones kind
18 south of Peal Street. If you have the map of
19 the Small Area Plan open, north of Peal Street
20 it's all designated for high-density
21 development, and it's because of the nature of
22 the development. And north of Peal Street the

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1 relationship between the properties and New
2 York Avenue, which is kind of unique in the
3 Florida Avenue Small Area Plan area, it's a
4 little bit different in terms of the intended
5 kind of development patterns and how this area
6 might relate to those areas south of Peal
7 Street.

8 COMMISSIONER TURNBULL: Do you see
9 the university expanding?

10 MR. LAWSON: Certainly some of the
11 property within kind of the heart of the
12 Florida Avenue area is owned by Gallaudet, and
13 they were very much a part of the Small Area
14 Plan discussion. They attended the meetings
15 and they were very much involved in all of the
16 discussions.

17 We haven't seen an actual proposal
18 from Gallaudet University yet for what they
19 plan to do with their properties. I believe
20 that their properties; and I'd have to check
21 this to be sure, but I believe their
22 properties on the Florida Avenue Market side

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1 of 6th Street are within the Gallaudet campus
2 plan though. So, any development that would
3 happen on their properties would not only be
4 subject to any guidelines and objectives of
5 the Small Area Plan, they'd also be subject to
6 the campus plan for Gallaudet.

7 COMMISSIONER TURNBULL: Okay.
8 Thank you.

9 CHAIRPERSON HOOD: Any other
10 comments or questions? Commissioner Schlater?

11 COMMISSIONER SCHLATER: Mr.
12 Lawson, I am just wondering, sort of
13 dovetailing off the previous questions, we're
14 being asked to look at a rezoning of this
15 property to C-3-C, is that correct?

16 MR. LAWSON: That's correct.

17 COMMISSIONER SCHLATER: How did
18 you come up with that designation of the high-
19 density designations? Or, you know, do you
20 think that's the right one? Why is it C-3-C
21 and not another one? It's a big jump, I just
22 make note, from what C-M-1 is. If I'm not

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1 mistaken it is 3 FAR and up to 40 feet,
2 correct?

3 MR. LAWSON: That's correct. But
4 we actually don't see it as being a big jump
5 because of the small area plan designation
6 with this being high-density. C-3-C is
7 actually a very typical high-density-type
8 zone, particularly in an area along a major
9 corridor such as New York Avenue. So, rather
10 than kind of seeing it as a major jump from
11 what's there right now, we see it as being a
12 zone that's appropriate to what Council has
13 approved through the Small Area Plan.

14 COMMISSIONER SCHLATER: I think in
15 terms of just the fundamental change of the
16 zoning from C-M-1 to C-3-C it is a big jump,
17 and that's how I characterize it. I'm not
18 saying it's a good or bad thing. I actually
19 think that, you know, on New York Avenue
20 there's a lot of traffic there, but it's
21 certainly a place that can handle density.
22 And, you know, would a high-density

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1 residential building, office building or hotel
2 be better than the hotel that's there now?

3 You know, I can see making that argument.

4 But, going from 3.0 FAR, 40 feet of height to
5 C-3-C is a big jump. You're adding a lot of
6 value to the property.

7 So, I think, I mean, in that
8 context I understand what you're saying about
9 the Small Area Plan, but recently approved,
10 big jump, frankly, from the Comp Plan that was
11 approved by Council just a couple years ago.

12 So, one other question I have.
13 Commissioner Turnbull raised this. If at C-3-
14 C; the way I read the small snippet of the
15 plan that I looked at, was there was a high-
16 density zone within the Florida Avenue Market.
17 Is this action going to set the precedent for
18 C-3-C on the balance of the high-density
19 portions of the site?

20 MR. LAWSON: We would have to see.
21 There's already a bit of a precedent of C-3-C
22 in this area. There have been other planned

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1 unit developments in the area that have sought
2 and received densities and zonings in kind of
3 that range. It's also fairly close to NOMA,
4 which is also, you know, high-density. So,
5 you know, we'd have to look at the plan as a
6 whole. Like I said, there are certainly much
7 more kind of detailed objectives and guidances
8 in the Small Area Plan for the areas south of
9 Peal Street.

10 So whether C-3-C is appropriate
11 for all those properties, or appropriate for
12 some of the properties, to be honest, we don't
13 know that yet. But certainly the areas that
14 are designated for high-density, C-3-C is one
15 of the zones that we would be looking at, yes.

16 COMMISSIONER SCHLATER: And just
17 out of curiosity, was there any discussion
18 about having this come forward as a PUD, which
19 would give us some idea of what might be
20 coming for the future of the site? I mean, if
21 we were to rezone the site to the C-3-C,
22 that's a pretty wide swath of what possibly

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1 could be developed on that site.

2 MR. LAWSON: That's true. The
3 applicant rightly felt that -- we feel -- felt
4 that they had a good case for a map amendment
5 to go forward to the Zoning Commission based
6 on the Small Area Plan. There wasn't a lot of
7 discussion about a planned unit development.
8 All the indications we've heard again from the
9 applicant are that the development that they
10 proposing will be fully conforming with the
11 basic high-density zone, which is C-3-C.
12 Certainly, if they were proposing something
13 beyond that, if they were proposing, for
14 example, 110 feet, we would have very strongly
15 pushed them into a planned unit development.
16 Because, frankly, if they receive the rezoning
17 and then decide to do 110 feet, they'd be
18 coming back in for a PUD anyway.

19 So, the applicant has made it
20 clear that they plan on building within those
21 limits, and we're comfortable with that.

22 COMMISSIONER SCHLATER: I guess my

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1 overarching feeling is I'm a little
2 uncomfortable at this point with where we're
3 at and how this fits into the overall context
4 of the Florida Avenue Plan and the development
5 that's going to be moving forward there.

6 CHAIRPERSON HOOD: Vice-Chair?

7 VICE-CHAIR KEATING: Yes, just to
8 follow on that, I feel the same way. It feels
9 as though this is a little piecemeal. You
10 mention that in the area there was another
11 PUD, or at least one other PUD that's happened
12 in this area that's gotten additional density.
13 We're looking at this parcel here, and you
14 mention specific issues about this parcel,
15 which I'm not completely clear about. But,
16 you know, just to echo Mr. Schlater's
17 comments, I do feel like we're opening the
18 door for kind of a very piecemeal approach to
19 how we look at this high-density area in this
20 Florida Avenue Plan. And it gives me a little
21 discomfort, I guess. That's my concern. I
22 don't know if you can allay that concern or

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1 not.

2 MR. LAWSON: Well, as I said, the
3 Council action, we feel, was very specific in
4 that called for this property to be rezoned to
5 high-density. The Small Area Plan that
6 Council approved specifically called out the
7 opportunity for zoning map amendments to
8 achieve that density. So, we feel that this
9 proposal is fully in conformance with the
10 Small Area Plan and what was anticipated.

11 Again, we've noted that we
12 recognize that there's a bit of a difference
13 between the develop or developments that will
14 be happening north of Peal Street which relate
15 more to New York Avenue for which the Small
16 Area Plan doesn't provide a lot of guidance
17 other than that development should be high-
18 density, unlike the development south of Peal
19 Street, where I think we would agree with you
20 that we would have more concerns if an
21 individual property owner came forward with a
22 proposal.

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1 I will note that there actually
2 has been one proposal south of Peal Street on
3 Florida Avenue. It was a PUD called
4 Washington Beef, I believe, that came before
5 the Zoning Commission, and as far as I know
6 that was approved some time ago. And I
7 believe that was also to C-3-C, a PUD-related
8 map amendment to C-3-C. Now, that one kind of
9 preceded the Small Area Plan by a little bit,
10 so, you know, it made sense that it go
11 forward.

12 In this case, we just see that in
13 this case the applicant's proposal to modify
14 the Zoning Map to change the zoning to C-3-C
15 is actually fully consistent with the Small
16 Area Plan. But we would certainly be happy to
17 continue to work with the Zoning Commission to
18 keep you kind of abreast of what the plans
19 are, particularly on the south side of Peal
20 Street and to make sure that that goes forward
21 as more of a comprehensive package. That's
22 certainly our anticipation.

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1 VICE-CHAIR KEATING: Point of
2 clarification. You're saying Peal Street. Do
3 you mean Neal Street or Penn Street?

4 MR. LAWSON: Oh, I'm sorry. Penn
5 Street. I'm sorry.

6 VICE-CHAIR KEATING: Okay. All
7 right. I'm with you now.

8 MR. LAWSON: Penn. Okay. It's a
9 combination of the two.

10 VICE-CHAIR KEATING: Okay.

11 CHAIRPERSON HOOD: Mr. Lawson, I'm
12 hearing some concerns or some issues that my
13 colleagues are bringing up that I actually
14 agree with, but I want to bring up another
15 one.

16 You're mentioning about a PUD. I
17 think I know which one it is. The PUD that
18 you're mentioning in this area that was
19 approved, other than the Washington Beef site,
20 which was on Florida Avenue; I don't remember
21 that, you're mentioning another PUD which is
22 closer to the New York Avenue site, am I

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1 correct?

2 MR. LAWSON: I was kind of talking
3 generally, that there were other developments
4 in this broader area that have done to that
5 kind of a height and density and in fact
6 through the PUD process went to much higher
7 heights and densities than what the applicant
8 would be allowed to do on this property

9 CHAIRPERSON HOOD: Okay. So,
10 Office of Planning feels that the case that
11 this applicant has made, there's no need for,
12 I guess, any additional design review?
13 Because, I will tell you where I am because of
14 some other issues that have happened with map
15 amendments. And I don't know whether it's a
16 PUD, how we get to where I'm trying to get to
17 as far as design, or whether the Office of
18 Planning comes back with some type of text
19 amendment so we can get some kind of design
20 review depending upon how we proceed with this
21 particular case. I will tell you that I'm
22 very concerned about moving in this fashion

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1 with no design review. And a PUD I know is a
2 tool, but I'm not necessarily selling the
3 applicant to come back with a PUD.

4 But from my standpoint, I think we
5 need some type of design review, even though
6 it falls lower parameters than the existing
7 PUDs in that area. I just think it just needs
8 that. Because there are some other sites that
9 this Commission has approved in the past that
10 basically prevailed and made a good case, but
11 after it was built. It should have had some
12 design review.

13 MR. LAWSON: I understand your
14 concern, Commissioner Hood. In this case we
15 were comfortable just going forward because it
16 is a process that the applicant is entitled to
17 go through. You know, the owner of the
18 property is the applicant, and we felt they
19 were entitled to this.

20 The other thing, again, I guess I
21 would note once again is that we would have no
22 criteria for what that design review would be.

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1 Normally, where there is a design review
2 requirement; for example, in Capital Gateway,
3 areas like that, where it's not a PUD, but
4 it's design review, there are very specific
5 criteria for what the Zoning Commission is
6 looking for. It's not a straight out review
7 of everything necessarily. It's a review of
8 very specific elements that may relate to --
9 for example, in Capital Gateway that relate to
10 the streetscape and the pedestrian experience
11 and, you know, those kinds of issues.

12 In this case, the Small Area Plan
13 provides no real guidance for what those
14 guidelines would be. The Office of Planning
15 felt that the major factors that would be
16 reviewed would be issues related to
17 circulation, transportation and relationship
18 of the building to New York Avenue, all of
19 which would be reviewed through the public
20 space permitting process with DDoT and the
21 Public Space Committee.

22 So, I'm not sure what the design

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1 review would be of and how we would establish
2 what those design guidelines, what the
3 Commission would actually be looking at and
4 reviewing it for.

5 CHAIRPERSON HOOD: I guess, Mr.
6 Lawson, I will tell you that Office of
7 Planning in my tenure here has been very
8 creative when we did Capital Gateway and other
9 design reviews, and I'm not going to sit here
10 and say you guys figure it out. I want to
11 make sure I help you. It depends on how we
12 move, whether it's a PUD -- and you're right,
13 the applicant has the opportunity to come in,
14 as they did. But as far as my standpoint is,
15 because of what I've known in the past, I just
16 think that we need to have some type of -- we
17 need to have more than just a map amendment.
18 Because, I don't think it's fair and I don't
19 want to call the project. I just don't think
20 it's fair to the residents who live in that
21 area. It's not fair to the ward, and it's not
22 fair to the city what was done there.

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1 Also, not to belabor the point, I
2 think a couple of my commissioners mentioned
3 just the general overview. I know there were
4 cases that we basically said, well, hold up.
5 Let's look at a overall perspective of what's
6 trying to be achieved here. Because as I
7 mentioned previously, we have the
8 Comprehensive Plan, we have the Small Area
9 Plan. You have Main Street, you have Great
10 Streets. We have all these different plans
11 out here. And I think maybe it was
12 Commissioner May, we have a number of plans
13 and at some point you don't know which plan to
14 look at. Because, when you start looking at
15 the Comprehensive Plan and all these other
16 plans, they contradict each other on the
17 guidance in which we should be moving forward.

18 So, I guess to me there are a
19 number of moving parts here. Unless my
20 colleagues feel otherwise, I think I've heard
21 enough concern that I don't know if anyone is
22 interested tonight to make a motion or to set

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1 anything down. I don't feel comfortable,
2 unless someone has a persuasive argument for
3 us to move forward. But, I think that I would
4 hope there is enough for the applicant and
5 Office of Planning to see where the concern
6 is, at least that I have and some of what my
7 colleagues have had, to come back with
8 something a little more tangible for us to
9 have a comfort level to move forward. If not,
10 we will continue to talk about it.

11 Let me open it back up.

12 Commissioner May?

13 COMMISSIONER MAY: I just have one
14 short question. With Capital Gateway what was
15 the basis for the design guidelines that were
16 implemented there?

17 MR. LAWSON: A very long and
18 extensive planning study that started in
19 actually the mid-1990s that culminated in a
20 map amendment in 2004, I believe, in
21 conjunction with the AWI, of course, the
22 Anacostia Waterfront Initiative. So, in that

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1 case, there was a very long and protracted
2 planning study that led to what it was from a
3 design standpoint, as well as from a land use
4 standpoint, what it was that the District
5 wanted to achieve. I think that's what, you
6 know, in this case the Small Area Plan adopted
7 by Council, I would say, quite specifically
8 doesn't have that. It calls out this area for
9 being high-density. It notes that mixed-use
10 is preferable. And it notes its importance,
11 you know, to encourage redevelopment on -- and
12 thereby, you know, notes its importance for
13 redevelopment on New York Avenue. But the
14 Small Area Plan does not include that level of
15 guidance that we saw in, for example, Capital
16 Gateway, where there were years and years of
17 planning study that led to what that guidance
18 should be.

19 COMMISSIONER MAY: I'm curious as
20 to why this was considered not -- I mean, was
21 it something that there wasn't time to do,
22 there wasn't interest in doing? I mean, it

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1 seems to me that it would be -- you know,
2 given its visibility and the fact that this is
3 this major approach into the city, and it
4 happens sort of at a pivotal moment at the top
5 of the hill -- I mean, the site adjacent to
6 this is Park Service land, and we see the
7 importance of sites in that vicinity; in fact
8 a little bit further up the road is one of the
9 major sites within the Museums and Memorials
10 Master Plan for the city because of its
11 prominence. So, I'm just curious why that
12 wasn't something that was important in the
13 planning process.

14 MR. LAWSON: I certainly don't
15 want to downplay and kind of make the
16 implication that we don't think this site is
17 important, because I agree with you. It is an
18 important site. The District is kind of full
19 of important sites that are developed by
20 right.

21 In this case, you know, again, I
22 think the Small Area Plan, which was a very

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1 lengthy and involved plan that involved many,
2 many discussions with the community and many
3 discussions with the stakeholders, with the
4 various owners, you know, certainly
5 concentrated on the area south of Penn Street,
6 because that's kind of where the focus of the
7 historic Florida Avenue Market is. I think by
8 including these properties though in the Small
9 Area Plan, certainly the people who developed
10 the plan acknowledged that they're important
11 properties and that the existing land use
12 designation for those properties was no longer
13 appropriate given their location. And
14 certainly given its location on New York
15 Avenue, a low-density PDR zone wasn't
16 considered either the appropriate zone or the
17 appropriate use, given the nature of what else
18 is happening on New York Avenue and the
19 importance that New York Avenue has.

20 But as I said, it does not provide
21 additional guidance beyond that, which, you
22 know, would make any kind of a design review

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1 process, I think, somewhat difficult. I'm
2 certainly not saying it's impossible. The
3 Chairman is absolutely right: We in the
4 Office of Planning love to get creative. And
5 so, we could see what we could come up with.
6 But, it would be a different kind of a process
7 for the Zoning Commission to adopt, because it
8 would be a design review not based on an
9 action by Council, whereas I would say past
10 ones have been directly resulting from a
11 Council action.

12 COMMISSIONER MAY: I would just
13 have to say I'm with the Chairman on this in
14 what I suspect is a growing consensus that
15 there are concerns about what's going to
16 actually happen on this site. It is
17 unfortunate that it is not before us as a PUD.
18 I think that would address a lot of the
19 concerns. And I think that one of the reasons
20 why there would be comfort in a PUD is again
21 because of prior experiences of the Zoning
22 Commission.

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1 The one that I think of is the St.
2 Elizabeth's campus where the two sites that
3 were developed in advance actually by the city
4 were done as PUDs, not because additional
5 density was required for those zones, because
6 it was the first step in something that was
7 ultimately going to be rezoned. Now, I
8 understand that there hadn't been enough
9 thinking at that point to have planned it out
10 and to fully understand what was going to
11 happen on that entire campus, so it's not a
12 totally analogous situation here. I think
13 there's been much more planning than there had
14 been about St. Elizabeth's at that point.

15 But, I think that there's some
16 greater comfort in being able to control the
17 process. It doesn't necessarily mean that
18 there needs to be additional relief associated
19 with it or, frankly, great amenities
20 associated with any additional relief that
21 might be granted. It's more about knowing
22 something about what's happening here as this

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1 single step. But again, it's not before us as
2 a PUD. It's before us as it what it is.

3 I think an reasonable alternative
4 would be design guidelines. It's unfortunate
5 there isn't more guidance that's been
6 developed by the Office of Planning and
7 approved by Council to be able to make it a
8 smoother process, but I think, you know, that
9 would be a better alternative. And I think no
10 matter what we do I think we need to more
11 about what the whole Florida Avenue Market
12 Plan is and what's envisioned that will happen
13 on the entirety of the site before we can
14 understand that this is the right thing to do
15 at this moment. Because again, as I
16 understand it, the Florida Avenue Market Plan
17 has been approved to provide supplemental
18 guidance. I'm not sure that it has exactly
19 the same weight at the Comprehensive Plan.

20 MR. LAWSON: I would just like to
21 clarify that from Office of Planning's
22 standpoint and say that we feel that it

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1 absolutely has the same weight as the
2 Comprehensive Plan. In fact, it provides that
3 additional local guidance that a Comprehensive
4 Plan, which tends to be more generalized, can
5 provide. That's the purpose of a Small Area
6 Plan, to provide that more specific guidance.

7 COMMISSIONER MAY: I don't know
8 why, I mean, but my recollection is that in
9 the past when we've seen the Small Area Plan
10 come in as supplemental guidance, it wasn't a
11 complete change of direction that this seems
12 to imply. Now, maybe I'm over reading what
13 this change from C-M-1 to C-3-C is, but when
14 we've had the Comprehensive Plan Overlay with
15 the Small Area Plan, it hasn't been this sort
16 of shift in use. But, you know, again, that's
17 just my recollection of past cases, and there
18 are so many, it's hard to remember. You know,
19 maybe I'm not remembering correctly.

20 MR. LAWSON: Well, compared to
21 some other Small Area Plans, this is a bigger
22 shift than what we have seen in some other

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1 Small Area Plans, which are much more kind of
2 small scale in terms of their anticipated
3 change. This plan happened to be finalized
4 after the last Comprehensive Plan was
5 approved. So the Comprehensive Plan that we
6 have before us obviously doesn't incorporate
7 the changes here.

8 We're going through a process
9 right now to update the Comprehensive Plan,
10 and I would expect that there will be changes
11 to the Comprehensive Plan that will reflect
12 the Florida Avenue Market Plan and any other
13 plan that was adopted after the Comprehensive
14 Plan was approved. But again, that's the
15 purpose of a Small Area Plan. Council very
16 clearly set out that there is a major change
17 in focus intended for this area. That's kind
18 of the point of this Small Area Plan, that the
19 change is fairly large. And doing that while
20 maintaining some aspect of the character of
21 the market, of the historic buildings, is
22 really a focus of the Small Area Plan that

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1 Council adopted, you know, particularly south
2 of Penn Street.

3 CHAIRPERSON HOOD: Commissioner
4 Schlater?

5 COMMISSIONER SCHLATER: Just one
6 last question on it. The C-3-C zoning
7 designation, if that were applied to the high-
8 density portion of the site, is it possible
9 then you could have an office corridor down
10 there where it would be 100 percent office, if
11 that was the most valuable land use?

12 MR. LAWSON: I would have to go
13 through kind of the details of the Small Area
14 Plan to see if that's envisioned in the plan.
15 If the plan, as I suspect, envisions something
16 a little bit more mixed-use, then it may be
17 something, you know, south of Penn Street a
18 bit more nuanced than C-3-C would be
19 necessary. Or, it may be that there is some
20 kind of an approval process required south of
21 Penn Street. I'm not quite sure. We haven't
22 got to the point of translating the details of

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1 the plan into new zoning at this point. So,
2 I can't say for sure.

3 I can say that I don't believe
4 that's the intent of the Florida Avenue Small
5 Area Plan, that it be an office corridor.
6 There certainly is a desire that the warehouse
7 and retail function be maintained somehow.

8 COMMISSIONER SCHLATER: So, if
9 this C-3-C was approved for this site, would
10 there be anything stopping it from becoming
11 just an office building?

12 MR. LAWSON: There would not.

13 COMMISSIONER SCHLATER: Okay.

14 Thank you.

15 CHAIRPERSON HOOD: Mr. Turnbull?

16 COMMISSIONER TURNBULL: Yes, thank
17 you, Mr. Chair.

18 Mr. Lawson, you had stated that
19 the Florida Small Area Plan does reflect this
20 and it does affect the Comprehensive Plan, and
21 you said it's very precise as to what it says.
22 But, I guess there's this imprecise element

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1 which we just heard now, that this doesn't
2 have to be a hotel, this could be an office
3 building. I guess I'm just concerned that we
4 don't have a road map that kind of tells us
5 where we're going on this, and we're asking
6 this Commission to decide upon something which
7 seems a little bit like Jell-O.

8 And I'm a little bit concerned
9 that we start off in the corner of the Florida
10 Area Plan and say it's C-3-C. And New York
11 Avenue, yes, we can make an argument that it
12 makes sense in that area there. But, I guess,
13 I don't know, and maybe I don't know how the
14 other commissioners feel. I'm just a little
15 puzzled as to how we're going forward on this,
16 picking this one little piece and saying, yes,
17 this is what it is. And, well, what's next
18 door? Well, I don't know. That could be C-2-
19 C. And then we have an R-4 area over by
20 Gallaudet. And I'm just like -- I'm a little
21 bit confused how this whole network of
22 property is slowing being developed, and yet

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1 tonight we're being asked to make a map
2 amendment for C-3-C. And I'm just a little
3 apprehensive that we're going at this and not
4 really understanding the full impact of what
5 the Florida Small Area Plan really intends to
6 do. I'm very antsy about it.

7 MR. LAWSON: I understand that for
8 sure. The Florida Avenue Small Area Plan
9 doesn't call out a specific use for this
10 property, other than that the low-density
11 industrial use that it's currently zoned is
12 not appropriate. What the Small Area Plan
13 says is that a high-density form of
14 development is what's appropriate on this
15 property. And you're correct, it doesn't say
16 whether that should be office, or a hotel, or
17 residential. It just says that given its
18 location on New York Avenue the high-density
19 is appropriate.

20 I guess I would, you know, just
21 kind of say this is an application brought
22 forward by the owner, and that's why it's

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1 coming before you in this form. But the
2 Zoning Regulations do provide for this form.
3 It provides for an applicant to request a
4 zoning map amendment to come to the Zoning
5 Commission to deal with the zoning issue,
6 which is that the zone is no longer
7 appropriate given the Council direction for
8 this property. The applicant, from our
9 standpoint, has the right to make that
10 request. And the Zoning Regulations are very
11 clear in establishing what that process is and
12 allowing a land owner that opportunity to come
13 forward to this body and request that their
14 zoning reflect Council-adopted land use
15 policy, essentially. That's what I believe
16 this applicant is doing.

17 If the Commission is truly
18 uncomfortable with proceeding forward with
19 this, we'd certainly be happy to continue
20 working with the applicant, and probably also
21 the Office of Attorney General, to figure out
22 how we could devise that kind of a process to

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1 come back before you. Honestly, I'm not quite
2 sure what that is at this point, and as I
3 said, particularly when, from our standpoint,
4 the regulations are very clear in establishing
5 this process, but we'd be happy to take what
6 direction the Zoning Commission wants to give
7 us.

8 CHAIRPERSON HOOD: Well, thank
9 you, Mr. Lawson. I appreciate your last
10 comment. Unless I hear something from
11 colleagues other than that, I think that's
12 exactly what we would like to see. We have
13 every bit of faith in you. We've worked with
14 you a long time. We know that you and the
15 Office of Attorney General, the applicant,
16 will come back with something that addresses
17 the many concerns and the issues that you've
18 heard here.

19 Let me just ask this, though: You
20 know, we keep referring to the Small Area
21 Plan. And I'm trying to remember, is this the
22 same plan that started back when Andy Altman

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1 was here, or is this a new Small Area Plan?

2 MR. LAWSON: Certainly, some
3 planning work did start back when Mr. Altman
4 was the director of the Office of Planning.
5 It did take a while to go through. But, you
6 know, again, this is the plan, and it went
7 through a lot of kind of discussions and
8 iterations. This is the document that
9 eventually Council did approve.

10 CHAIRPERSON HOOD: Okay.

11 MR. LAWSON: So, this is it.

12 CHAIRPERSON HOOD: So, I guess
13 what I'm saying is, those intentions and those
14 discussions that we had when Mr. Altman first
15 got here, I know they were talking about
16 tailoring it to certain neighborhoods. So,
17 now we're starting to see this coming to
18 light, because that's what these Small Area
19 Plans are, I guess. But the issue then was we
20 had the Comp Plan, and then we had elements of
21 the Comp Plan. So, now we have the Small Area
22 Plan. Okay.

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1 MR. LAWSON: Well, but that's
2 standard for a Small Area Plan to provide
3 additional guidance on what is appropriate on
4 individual properties. And, yes, you know,
5 any Small Area Plan will address various
6 elements within the Comprehensive Plan,
7 particularly the land use map and the policy
8 map, but also goals and directions for
9 individual neighborhoods. And the Small Area
10 Plan, you know, again is intended to provide
11 that more detailed guidance. And they always
12 follow a long; well, usually long, but
13 certainly extensive discussion with the
14 community and with the property owners. And
15 that was certainly the case here, as you
16 rightly point out. You know, there were
17 elements of this planning process that started
18 many years ago. It certainly came to a head
19 more like a couple of years ago, three years
20 ago, and then was eventually, as Mr. Arthur
21 pointed out, approved by Council just late
22 last year.

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1 CHAIRPERSON HOOD: We are
2 definitely not trying to undo all that long
3 longevity work that has been done. I think
4 what we need is just a little more
5 clarification in how we're going to proceed
6 and kind of get a full understanding of all
7 the different moving parts here, and how
8 things are going to kind of eventually come
9 into fruition, how they're going to eventually
10 play out.

11 I saw Mr. Freeman acknowledge or
12 wave at me. I don't think he was just
13 speaking to say good evening. Typically, we
14 have not really turned you down, Mr. Freeman.
15 You know, I'm a fair guy. We have not really
16 turned you down. I think with the Office of
17 Planning and what you've heard, and you've
18 heard our concerns. I think hopefully you all
19 can take some time, not 14 years, but I think
20 you all can take some time and try to hear our
21 concerns and see how we can kind of move in
22 the direction of what you heard my colleagues

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1 say. Even though we haven't turned you down;
2 and I may get in trouble for this, but I'm
3 going to bring you up. Hope no one shows up
4 next month and say, "You let Mr. Freeman come
5 to the table and you didn't turn him down."

6 MR. FREEMAN: That might be me
7 next month. Good evening, member of the
8 Commission. My name is Kyrus Freeman. I'm an
9 attorney with the law firm of Holland & Knight
10 here on behalf of the applicant.

11 I appreciate all of the
12 Commission's concerns that have been raised
13 tonight, and I know the Commission is going a
14 different way. Probably we can address most
15 of these concerns during the course of a
16 hearing to indicate what the plan calls for,
17 how our application meets the legal standards
18 for the application that we filed, and of
19 further conversation and discussion of what
20 the plan calls for, how our project and
21 proposed map amendment is consistent with the
22 plan and not inconsistent with the

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1 Comprehensive Plan.

2 I don't know if your counsel wants
3 to add anything, but as Mr. Lawson said, the
4 Zoning Regulations do specifically provide for
5 a map amendment application and process. I'm
6 not sure, quite frankly, what this new design
7 review process would look like, because the
8 regulations as they currently exist don't call
9 for that. And I know you said you don't want
10 it to be a 14-year process, but it could take
11 some time to develop a legally-binding design
12 review process for this site, which quite
13 frankly doesn't exist now.

14 So, we would respectfully ask that
15 you set us down and let us make our case.
16 Thank you.

17 CHAIRPERSON HOOD: Okay. Thank
18 you, Mr. Freeman. I actually like the way Mr.
19 Lawson proceeded, at least trying to get us
20 where we are. And I understand, Mr. Freeman,
21 what we have in front of us, but we have to
22 move with caution. Again, I'll be frank and

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1 honest. I'm almost ashamed to admit, I sat on
2 a case and now I walk past the place and I
3 want to ask who did that? And I don't want us
4 to go down those same lines. And I know, you
5 know, there are some things that we have do
6 basically to protect the interests of the
7 residents of this city, and, you know, I know
8 the law calls for it. But we're also trying
9 to be accommodating. We don't want to get to
10 the end of this road and it's not a win/win
11 for all. And I think that's what I hear among
12 my colleagues.

13 So, I will open it up and see if
14 my colleagues would like to go the route of
15 what Mr. Freeman has asked. So, we'd like to
16 just pause, take a little cautious moment and
17 ask that they regroup and come back with some
18 more clarification from us. And I'll just
19 open that up for any further discussion from
20 my colleagues on that issue. We have whether
21 we do or what we have articulated up here, or
22 if Mr. Freeman, he said they'll make their

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1 case and come in front of us and make the
2 case. Allow them the opportunity to make
3 their case. Forgive me. I don't want to
4 misquote you.

5 Commissioner May?

6 COMMISSIONER MAY: Mr. Chairman,
7 I'm inclined to let it wait just a little bit
8 to try to get more information. And I think
9 that the Office of Planning could be very
10 helpful in providing something more for us one
11 way or another in a suggested course of
12 action. But I think that this can all happen
13 relatively quickly, because we don't want to
14 slow things down a lot, but we do want to be
15 cautious. So, I think a little more time
16 would be helpful.

17 CHAIRPERSON HOOD: Okay. Great.
18 Do I see a consensus on that?

19 COMMISSIONER TURNBULL: Yes, I
20 concur.

21 CHAIRPERSON HOOD: Okay. All
22 right.

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1 MR. BERGSTEIN: Before you close
2 up --

3 CHAIRPERSON HOOD: Mr. Bergstein?

4 MR. BERGSTEIN: -- I don't think
5 it's appropriate for you to actually reach the
6 issue, but I wonder if I can state my
7 understanding that the applicant does not
8 object to the designation of this case as a
9 rule making, if that's what you choose to do.
10 Not that you're going to make that decision
11 now, but I heard Mr. Freeman refer to his
12 client as the applicant. From conversations
13 earlier today, it's my understanding that they
14 would actually prefer to be a petitioner. You
15 could reach that issue some other time. I
16 think it's appropriate you do that.

17 But, in going forward, I just want
18 to apprise the Commission; and Mr. Freeman can
19 correct me if I'm wrong, that they have no
20 objection to this being designated as a rule
21 making proceeding as opposed to a protested
22 case. Without you deciding the merits, I'd

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1 like to get that on the record.

2 CHAIRPERSON HOOD: All right. Did
3 you want to add something, Mr. Freeman?

4 MR. FREEMAN: Just that we have no
5 objection to it being a rule making case.

6 CHAIRPERSON HOOD: Okay. We will
7 consider that at the appropriate time, I think
8 when we revisit this for a setdown. Okay?
9 Thank you.

10 Okay. Anything else? Is
11 everybody on the same page? Mr. Lawson?

12 MR. LAWSON: If I could, Mr. Hood?
13 I'm not sure that I'm entirely clear on what
14 additional information the Zoning Commission
15 is requesting of the Office of Planning at
16 this point.

17 CHAIRPERSON HOOD: I guess, from
18 my standpoint, I've heard a number of
19 different things, and I'm going to try to
20 capture all this, and my colleagues can chime
21 in if I misquote you or get it all messed up.

22 But, one of the things, we asked

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1 for some type of design review. And I know
2 the regulations may not call for it now in the
3 map amendment; we're going back to the Small
4 Area Plan, but something like what we did with
5 the -- especially if we're going to do a rule
6 making, some type of text amendment to come
7 back and say these are the things we need to
8 look at or look for. And I'm not sure exactly
9 how we'd get there, and I unfortunately didn't
10 give you any guidance on how we got to the
11 Capital Gateway. I think you specifically
12 were one in the office who really brought back
13 some evidence to help us get to some of our
14 concerns without a PUD. Or, I've heard the
15 mention of looking into a PUD. I've heard the
16 mention of looking at the overall market area.
17 Once before we took a comprehensive look at
18 how that all is going to evolve and how it's
19 gong to develop. I heard a concern of just
20 doing a parcel. Maybe we need to retract and
21 do like we've done in the past, have a review
22 of the whole area and then come back with the

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1 specific site. There are a number of running
2 things that I think -- Commissioner May, I'm
3 not sure if I covered yours. Pretty much?
4 Okay. Did I cover -- whose did I miss? Did
5 I get everybody? Well, I must have recapped
6 that. Did you get it?

7 MR. LAWSON: Could I just clarify
8 one thing?

9 CHAIRPERSON HOOD: Sure.

10 MR. LAWSON: The design review
11 you're proposing I believe would not be part
12 of the map amendment, but what the text
13 amendment would say is that -- you know,
14 assuming that you approve the map amendment,
15 that no building permit shall be issued for a
16 property site until the Zoning Commission has
17 done X, Y and Z. And that would occur when
18 they get to the point of about to apply for a
19 building permit, as it would for a PUD. So,
20 it would be a two-step process where you would
21 approve the map amendment, but basically that
22 approval would be contingent upon the text

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1 amendment being adopted as well, that itself
2 would call for a design review down the road.
3 And I just wanted to clarify that it wouldn't
4 be part of the map amendment. The design
5 review would not be part of the map amendment
6 itself. It would be something that would stem
7 from that as a text amendment.

8 CHAIRPERSON HOOD: Okay. It would
9 be separate and apart from that?

10 MR. LAWSON: That's correct.

11 CHAIRPERSON HOOD: Okay. And
12 again, I'm just asking, because, you know,
13 while I know that it's perfectly within the
14 rights of the applicant to come and ask what
15 they asked. Again, we're trying to make a
16 win/win here, and I think we can get a lot
17 closer than where we are.

18 You need to come back to the
19 table? You have one question? Come on to the
20 table. You might as well have a seat until we
21 finish.

22 MR. FREEMAN: If I could offer a

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1 thought. I haven't fully formulated this
2 thought, but I just wanted to kind of give
3 some initial feedback from the Zoning
4 Commission.

5 If the goal here is to have some
6 form of design review; and I haven't spoken
7 to my client about this or the petitioner
8 about this yet, but would it be possible to
9 have a map amendment and PUD and waive some of
10 the zoning sections applicable to PUDs? For
11 example, the fees for a PUD are extremely
12 high. Some of the other sections which would
13 be applicable to a standard PUD, I think
14 Commissioner May mentioned, you know, we
15 wouldn't have to do all of the PUD standards.
16 But if the overall goal is design review,
17 perhaps there would be a way to go through
18 that process and waive some of the PUD
19 requirements.

20 CHAIRPERSON HOOD: I really don't
21 think we can do that. And I don't want to be
22 hardcore, but I don't even know if that's in

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1 our jurisdiction. We can't do that.

2 MR. BERGSTEIN: The fees I don't
3 believe are waive-able. And just my thought;
4 and I appreciate Mr. Freeman just coming off
5 this and I'm sort of responding to it in the
6 same way, but a PUD seeks flexibility from
7 substantive area requirements. There would
8 actually have to be a text amendment to amend
9 the PUD regulations to provide that certain of
10 those standards would not apply to this
11 particular project. And by the time you're
12 through, you might as well just have a stand-
13 alone process for dealing with this. That's
14 my thought. But, I'm sure Mr. Freeman is as
15 creative as the Office of Planning and perhaps
16 he can come up with a way of doing that.

17 But, I don't believe that the
18 Zoning Commission -- there are certain fees
19 that Congress has permitted to be waived.
20 They're actually the BZA fees. And I believe
21 our office has said that an agency cannot
22 waive its own fees unless it's given the

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1 express authority to do that. But, we can
2 have that discussion.

3 MR. FREEMAN: We were just trying
4 to find a way to facilitate the process, but
5 what we'll do is work with the Office of
6 Planning and the Office of the Attorney
7 General to get the case in a form that meets
8 all legal requirements and addresses the
9 comments the Commission raised tonight.

10 CHAIRPERSON HOOD: Okay. Well, on
11 that note, thank you very much, Mr. Freeman.
12 Greatly appreciate your diligent work and
13 cooperativeness in understanding our concerns.

14 Okay. Anything else on this?

15 Thank you, too, Mr. Lawson, and
16 Mr. Bergstein.

17 Okay. We're going to defer this.
18 I don't know if we need to make a time
19 certain, but we'll defer it until all parties
20 have come back at least closer than we are in
21 addressing our concerns.

22 Okay. Let's move right along with

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1 our agenda. Next, we're going to do final
2 action. Thank you, Commissioner Schlater,
3 because I would probably move right to
4 proposed. Final Action, Zoning Commission
5 Case No. 09-12, George and Dimitri Mallios,
6 map amendment at Square 180.

7 Ms. Schellin?

8 MS. SCHELLIN: Yes, so this is
9 before the Commission for final action. We
10 did receive an NCPC report at Exhibit 26.

11 CHAIRPERSON HOOD: Okay.

12 Colleagues, the applicant has requested the
13 Commission to rezone the property from DC R-5-
14 B to DC C-2-B zone district.

15 And the NCPC report, which is
16 Exhibit 26, states that they found the
17 proposed map amendment to rezone Lot 30 in
18 Square 180 from DC R-5-B to DC C-2-B would not
19 be inconsistent with the Comp Plan, nor would
20 it adversely affect any other identified
21 federal interests.

22 I think we hashed this out. I

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1 actually think this was a bench decision, so
2 it's pretty straightforward. I won't belabor
3 the point. Any discussion?

4 (No audible response.)

5 CHAIRPERSON HOOD: Not hearing
6 any, I would move that we approve Zoning
7 Commission Case No. 09-12 and ask for a
8 second.

9 COMMISSIONER MAY: Second.

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

13 (No audible response.)

14 CHAIRPERSON HOOD: All those in
15 favor? Aye.

16 COMMISSIONER SCHLATER: Aye.

17 COMMISSIONER MAY: Aye.

18 COMMISSIONER TURNBULL: Aye.

19 CHAIRPERSON HOOD: Any opposed?

20 (No audible response.)

21 CHAIRPERSON HOOD: Any
22 abstentions?

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1 (No audible response.)

2 CHAIRPERSON HOOD: Ms. Schellin,
3 could you just record the vote?

4 MS. SCHELLIN: Yes. Staff would
5 record the vote 4-0-1 to approve final action
6 in Zoning Commission Case No. 09-12.
7 Commissioner Hood moving, Commissioner May
8 seconding. Commissioners Schlater and
9 Turnbull in support. Commissioner Keating not
10 voting, having not participated.

11 CHAIRPERSON HOOD: Okay. I think
12 what we have last on our agenda for this
13 evening is a proposed action, Zoning
14 Commission Case No. 09-13, Office of Planning,
15 text amendment: BZA expedited review calendar.

16 I think this was fleshed out and
17 we had the groups to go back and work very
18 diligently to come back with something that
19 expressed some of our concerns, and especially
20 the concerns of the chair of the BZA and his
21 colleagues.

22 So, let me just go to Ms.

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1 Schellin. Any other comments on this, Ms.
2 Schellin?

3 MS. SCHELLIN: No, sir, other than
4 to say that we did receive a supplemental
5 report from the Office of Planning that you
6 have before you to consider.

7 CHAIRPERSON HOOD: We don't need
8 to waive this or anything, do we?

9 MS. SCHELLIN: No, sir.

10 CHAIRPERSON HOOD: Okay. What I
11 would like to do, colleagues, is just let's go
12 right down this. And anyone, OAG, the Office
13 of Zoning staff, Director Weinbaum, Office of
14 Planning, as we discuss this, anyone who wants
15 to chime in and maybe give us further
16 clarification if we need it, feel free to do
17 so.

18 I'm just going to take the sheet
19 from Exhibit 18, proposed text with
20 highlighted changes. And for the record, we
21 have looked at a lot of comments that have
22 come in from residents and other parties

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1 involved, and we kind of got to this point
2 here to where we are today. And I'll start
3 with, I guess this is page 2, proposed text
4 with highlighted changes. It's not necessary
5 to read all of it.

6 3118.1. "The rules of the
7 procedures in this section apply to all
8 applications filed with the Board," and it
9 goes on and says, "In effect prior to October
10 1st, 1999 in 3103, provided, however, the
11 provisions of this section only apply to
12 chancery applications to the extent specified
13 in and the applications processed under the
14 expedited review procedures to the extent
15 specified in 3118." That's the addition.

16 Any comments or questions on that
17 portion? Any clarification needed?

18 (No audible response.)

19 CHAIRPERSON HOOD: Okay. 3118,
20 Expedited Review. 3118.1. "The purpose of
21 this section" -- let me ask this: Is it more
22 effective and efficient to read through all of

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1 this?

2 MR. BERGSTEIN: Maybe I could just
3 go through the highlights.

4 CHAIRPERSON HOOD: Yes, that's
5 really kind of where I am, because I have one
6 or two points. You don't want to hear me
7 read? Okay.

8 All right. Hit the highlights.

9 MR. BERGSTEIN: Hit the
10 highlights. Okay. 3118.3-B was intended to
11 address Mr. May's concern that we not have a
12 situation where the ANC comment period
13 continued, but the time for indicating their
14 objection passed. So, what this does is to
15 make sure that the hearing won't be scheduled,
16 which is a final decision, until both the
17 normal 30 working day ANC period concludes,
18 plus an additional 14 days. And I believe
19 what that will mean is that at the end of the
20 30-day period, which is when an ANC must make
21 its comments by, that will be the 14th day
22 before the hearing. That's when they can say

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1 we object to the expedited treatment.

2 So, there won't be an instance
3 where they might lose their right comment
4 because the right to comment will always
5 coincide with the date that an objection must
6 be made. So, that was the intent of doing
7 that.

8 COMMISSIONER MAY: Can I just
9 follow up on that? I just want to understand
10 what the normal process will be.

11 So, what will happen is when an
12 application is made and someone will request
13 an expedited review, and then within a few
14 days or whatever the ANC is notified of the
15 case. Is that right?

16 MR. BERGSTEIN: That's right, and
17 that happens in all instances.

18 COMMISSIONER MAY: Right. And
19 then the ANC has 30 business days in which to
20 file a report?

21 MR. BERGSTEIN: That's the normal
22 rule. And what this does is backs it up by 14

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1 days.

2 COMMISSIONER MAY: You're getting
3 ahead of me.

4 MR. BERGSTEIN: Okay. Fine.

5 COMMISSIONER MAY: The normal
6 process is they have 30 business days in which
7 to file a report?

8 MR. BERGSTEIN: Yes.

9 COMMISSIONER MAY: Okay. Once
10 that 30th business day passes, then there is a
11 minimum of 14 days before the item can
12 actually appear on an agenda and be approved
13 on a consent calendar?

14 MR. BERGSTEIN: Yes.

15 COMMISSIONER MAY: Okay.

16 MR. BERGSTEIN: And they way we
17 had the process before it didn't specify, so
18 you are correct that the way the rules read
19 now, it actually says that the ANCs get notice
20 40 days before hand, even though that's not
21 what happens.

22 COMMISSIONER MAY: Yes.

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1 MR. BERGSTEIN: But when you play
2 that out, there's a real possibility that if
3 notice was given 40 days before the hearing;
4 I actually did a chart, you could have a
5 situation where the 40th day is not the end of
6 the 30 working day. So, luckily, as a matter
7 of practice, what happens with the Office of
8 Zoning is the day or two after the application
9 comes in, they give them that notice so they
10 have well more than 30 working days before the
11 hearing date.

12 COMMISSIONER MAY: Right.

13 MR. BERGSTEIN: But, this rule
14 specifically says now you've got to be
15 cognizant of the ANC time for putting in their
16 report, which is 30 days. But because there
17 is an action of the ANC that actually needs to
18 be taken 14 days before then, this is built in
19 so that no hearing can be scheduled in a
20 manner that would not allow for that objection
21 to be made on the 14th day, and that the 30-
22 day period would conclude on the 14th day

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1 before the hearing, you know, if not earlier.

2 COMMISSIONER MAY: Okay.

3 MR. BERGSTEIN: The next point is
4 3118.6, and I actually did highlight the most
5 important thing. And I'll just summarize what
6 the issue is.

7 The chair felt very strongly, and
8 OZ staff felt very strongly that if something
9 is taken off the expedited calendar, the
10 hearing should not happen on the scheduled
11 date that it would have been on the expedited
12 calendar. They think that that could possibly
13 blow their entire schedule up. So, this is
14 changed to say now that an applicant
15 tentatively placed on the expedited review
16 calendar shall be removed and rescheduled for
17 hearing if these things happen. Which means
18 that the only thing that's going to happen on
19 the date that a case is scheduled for
20 expedited review is: (1) it will happen; or
21 (2) a continuation date is announced. So,
22 that was a significant change that was made.

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1 The other change which is made in
2 A is to clarify that the board can wait up
3 until the moment it votes; that means, while
4 it's deliberating to take a case off the
5 expedited calendar. And that's because the
6 chair wanted the ability if things were going
7 badly for an application that was being heard
8 on the expedited calendar to say, "I'm taking
9 this off and we're going to have a hearing."
10 And so, this gives the greatest flexibility
11 possible to the BZA as to when it can take off
12 an expedited case.

13 B was a revision that simply said
14 that it's not just any party request that
15 would cause something to be taken off the
16 expedited calendar. It's got to be a request
17 in opposition. Obviously, if you have a
18 member of the public who wants to be a party
19 and express their support for an application,
20 they would have no objection to there not
21 being a hearing. And so, we wanted to make
22 that clear.

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1 COMMISSIONER TURNBULL: Mr.
2 Bergstein, I wonder if I could interrupt you
3 for a minute? On B, when you have the party
4 in opposition, I mean, that isn't often
5 decided until you're in the hearing.

6 MR. BERGSTEIN: They state in
7 there; and correct me if I'm wrong, but I
8 believe the one thing you've got to state is
9 if you're in opposition or support of the
10 application when you put in your request.

11 COMMISSIONER TURNBULL: Regardless
12 of whether the board then allows you to be a
13 party in opposition.

14 MR. BERGSTEIN: Right, you've got
15 to state whether you're in opposition or in
16 support at the time you file your request.
17 So, that's why it will be known.

18 COMMISSIONER TURNBULL: Right.
19 So, it doesn't matter whether the board then
20 says you don't get party status?

21 MR. BERGSTEIN: No, it does not.
22 The idea was to --

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1 COMMISSIONER TURNBULL: It's just
2 that you've got to submit it at the time?

3 MR. BERGSTEIN: Right. And the
4 idea was to recognize certain persons who had
5 the preemptive right to say, "I want a
6 hearing."

7 COMMISSIONER TURNBULL: Okay.

8 MR. BERGSTEIN: Okay?

9 CHAIRPERSON HOOD: Mr. Bergstein,
10 can I go back to this party? I'm trying to
11 understand how this is going to work in line
12 with Mr. Turnbull's line of questioning.

13 If someone submits something and
14 they want to be a party in support, the board
15 will still have to act on it, right? They're
16 still going to act on it, even though it's
17 expedited. They're not going to hear from
18 them.

19 MR. BERGSTEIN: NO, because once
20 it's placed on the expedited calendar, there's
21 no hearing and their party status is
22 irrelevant. The only reason party status is

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1 relevant is if somebody wants to cross examine
2 and present witnesses and that. If a case
3 goes on the expedited calendar, you just go
4 right to decision. And so, the fact that you
5 were saying, you know, "I want to be a party
6 and I want to express my support, and I want
7 to cross examine anybody who opposes this
8 thing," if there's no parties in opposition,
9 and therefore it could be done on an expedited
10 basis, the fact that there's a person who
11 wants to express support for the application,
12 their request for a hearing becomes
13 superfluous because the application is in a
14 posture where it could be decided.

15 CHAIRPERSON HOOD: So, why don't
16 we treat this like we do our rule makings
17 where we don't have any parties? If you're
18 going to be in support, you just submit a
19 letter saying you're in support, not leading
20 me down a road thinking I'm going to be a
21 party at some point in time?

22 MR. BERGSTEIN: I supposed that

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1 the rules could be amended to say that they
2 only parties are parties in opposition. The
3 Administrative Procedures Act says that what
4 we do at the BZA and what we do at the Zoning
5 Commission is a contested case, and it says
6 that every party shall have the right to do
7 certain things. It doesn't tell you who the
8 party is, but generally speaking the Court of
9 Appeals, as you'll learn, or some people are
10 going to learn in training tomorrow, is any
11 person who has a specific interest in the
12 nature of the application. So, I don't know
13 if we could do a rule that says the only
14 people who are parties are those people who
15 have a specific interest in the application
16 who are against it. I'd have to think that
17 over.

18 But, I could see an amendment to
19 the rules that would just say the only parties
20 are parties in opposition, because that would
21 make sense. I mean, the applicant could take
22 care of themselves. They don't need other

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1 people to be parties and say, "Me, too. Let
2 me help you cross examine." So, there's some
3 validity to your observation.

4 But for what it's worth, we do
5 have that right now, where we do have parties
6 in support, parties in opposition. And all
7 this was saying, as someone had suggested, why
8 would we require a hearing when the only
9 person who wants the hearing is someone who
10 wants to support the application? And so
11 that's why this was just limited to parties in
12 opposition who have the automatic right to
13 basically pull it from a hearing.

14 CHAIRPERSON HOOD: Okay. All
15 right.

16 MR. BERGSTEIN: Okay?

17 CHAIRPERSON HOOD: Thank you.

18 MR. BERGSTEIN: The other note
19 that I have next to C is that originally the
20 people who are under C.3, I think actually
21 everybody except the Office of Planning would
22 actually have to serve their objection to the

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1 expedited treatment on the parties. And I
2 thought about it, and I thought, well, the
3 party has to come in anyway at 14 days to see
4 who's requesting party status. That's what
5 they do. So, that's the time when they could
6 see whether or not there's objections as well.
7 So, to require all these persons to serve the
8 applicant seemed redundant, and so I just took
9 that out. And everybody who participated in
10 that; that is, the representative of the
11 Office of Zoning and the representative from
12 the Office of Planning, agreed. So just no
13 requirement for service.

14 The next provision, 3118.7, was
15 put in because there is not going to be a
16 hearing on the date that an application is
17 scheduled or would have been scheduled for
18 expedited treatment.

19 The way it was originally written
20 was that if the persons who opposed the
21 treatment didn't appear on the date of the
22 hearing, then the application would go back on

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1 expedited calendar, because basically it was
2 an obstructionist action. It was something I
3 think Mr. May said. How do we know people
4 just don't object to object to be
5 obstructionists? So, the original idea was
6 saying, okay, if you don't show up on the date
7 that is going to come up for expedited
8 consideration, then you really don't care and
9 we're not going to have a hearing, and we're
10 going to consider it for expedited treatment.

11 Now, that an application is
12 automatically going to be continued for a
13 hearing, it seemed unfair to require an
14 objector to come on the date that the item was
15 going to be called for expedited treatment
16 just to prove they would show up.

17 So, I tried to come up with any
18 way to make sure that the objection was in
19 good faith. And what .7 says is when you put
20 in your objection, tell us what you would have
21 testified about if there was going to be a
22 hearing. And then the next section allows the

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1 chair to say, "I've read the proffer and your
2 proffer is that what you want to testify to is
3 that you believe the applicant is a martian.
4 And that's not a good enough reason for us to
5 have a hearing. So, your proffer of testimony
6 is irrelevant. And even though you're among
7 the persons who could automatically request
8 and object to expedited treatment, your
9 proffer is so irrelevant that we're going to
10 go ahead and have expedited treatment anyway."
11 So, that's the point of it. And that's all
12 the changes.

13 CHAIRPERSON HOOD: I just had one
14 other question; and I notice it wasn't
15 changed, and then I'm going to be finished.

16 3118.6-C.4, "The owner or occupant
17 of any property located within the same
18 proximity." How --

19 MR. BERGSTEIN: Yes, what we --
20 I'm sorry.

21 CHAIRPERSON HOOD: No, go ahead.
22 Because I'm just trying to figure out how do

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1 we define "proximity?"

2 MR. BERGSTEIN: Same proximity is
3 within 200 feet. It relates back to 3. This
4 is one of the suggestions of the board, that
5 just as we recognize that you can have an
6 affected ANC who may not actually be within
7 the boundaries, you can have a council member
8 who is interested in or whose area would be
9 affected by the project, even though
10 technically speaking the project's not within
11 their jurisdiction. So in No. 3, what was
12 added was not just a council member
13 representing the area, but also a council
14 member representing the area located within
15 200 feet of the subject property. And that's
16 the same standard for who gets notice.

17 So then in 4, when say "or the
18 owner or the occupant of any property located
19 within the same proximity," it meant 200 feet,
20 the same 200 feet. But I'll be glad to just
21 say 200 feet there instead. The idea is that,
22 you were reading 3, which said "located within

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1 200 feet." And so 4, by saying "within the
2 same proximity" means within 200 feet. But I
3 could just change it to "within 200 feet."

4 CHAIRPERSON HOOD: Okay. Because
5 I just see "same proximity."

6 MR. BERGSTEIN: Yes.

7 CHAIRPERSON HOOD: People are
8 going to read it like me and probably say,
9 "Wait a minute. Proximity. I'm in
10 proximity."

11 MR. BERGSTEIN: That's why we
12 check these things. So, that's fine.

13 CHAIRPERSON HOOD: Okay. Anything
14 else?

15 Director, did you have something
16 you wanted to add?

17 MR. WEINBAUM: No, I was just
18 going to say with respect to sub-point 3, we
19 looked into the idea of just having it the
20 council member, but it seemed that it's
21 possible that two council members could be
22 within 200 feet, if it's right on the border

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1 between two different wards, for example.
2 Which is the explanation for that language,
3 but I have no other thoughts on it.

4 CHAIRPERSON HOOD: Okay. Any
5 other questions, Commissioners?

6 (No audible response.)

7 CHAIRPERSON HOOD: I will tell
8 you, I want to thank the working group, and
9 the chair of the BZA and the board, and
10 everyone. The director, the Office of Zoning,
11 the Office of Attorney General, the Office of
12 Planning, everyone who had a part to do with
13 this. I think this is a great start. You
14 know, we had to start somewhere. I think this
15 is a good jump start. It looks good. Now,
16 let's put it into motion. I think the
17 residents of the city -- I know about maybe 14
18 years ago I sure would have appreciated this
19 when I came down and stayed all day. So, I
20 really think that this is a really good start.
21 And I think the residents should be very
22 thankful to that working group.

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1 Okay. With that, unless there's
2 any further discussion, I would move approval
3 of Zoning Commission Case No. 09-13, and ask
4 for a second.

5 COMMISSIONER MAY: Second.

6 CHAIRPERSON HOOD: Any further
7 discussion?

8 COMMISSIONER MAY: Yes, Mr.
9 Chairman.

10 CHAIRPERSON HOOD: Commissioner
11 May?

12 COMMISSIONER MAY: Yes, I just
13 want to say I really do appreciate all the
14 extra work that went into the latest rewrite,
15 because looking at where we were on the
16 previous version of the language and where we
17 are now, I think it pretty much addresses just
18 about all of the concerns that I had. And it
19 seems very clear now, whereas before the
20 process seemed a little bit muddy. This is,
21 I think, very, very clear. So, I really
22 appreciate it.

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1 CHAIRPERSON HOOD: Okay. It's
2 been moved and properly seconded. Any further
3 discussion?

4 (No audible response.)

5 CHAIRPERSON HOOD: All those in
6 favor? Aye.

7 VICE-CHAIR KEATING: Aye.

8 COMMISSIONER SCHLATER: Aye.

9 COMMISSIONER TURNBULL: Aye.

10 COMMISSIONER MAY: Aye.

11 CHAIRPERSON HOOD: Not hearing any
12 opposition, Ms. Schellin, would you please
13 record the vote?

14 MS. SCHELLIN: Yes, sir. Staff
15 records the vote 5-0-0 to approved proposed
16 action on Zoning Commission Case No. 09-13.
17 Commissioner Hood moving, Commissioner May
18 seconding. Commissioners Keating, Schlater
19 and Turnbull in support.

20 CHAIRPERSON HOOD: Okay. Mr.
21 Lawson, you didn't have a status report for us
22 tonight, did you?

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1 MR. LAWSON: Not tonight, sir.

2 Thank you.

3 CHAIRPERSON HOOD: Okay. Good.

4 All right. Anything else?

5 (No audible response.)

6 CHAIRPERSON HOOD: Okay. With
7 that, this meeting is adjourned.

8 (Whereupon, the meeting was
9 adjourned at 7:55 p.m.)

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