

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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 IN THE MATTER OF: :
 :
 OFFICE OF PLANNING - TEXT :
 AMENDMENT TO SUBTITLE G : Case No.
 CREATING A NEW MU-4A ZONE : 18-06
 AND RENAMING MU-4 TO MU-4B :
 :
 ----- :

Monday,
July 23, 2018

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 18-06 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice Chairperson
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
- PETER G. MAY, Commissioner (NPS)
- PETER SHAPIRO, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation

JOEL LAWSON

CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on July 23, 2018.

I-N-D-E-X

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

6:33 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission for the District of Columbia. Today's date is July 23, 2018. My name is Anthony Hood. We're located in Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are Vice Chair Miller, Commissioner Turnbull, Commissioner May, and Commissioner Shapiro, as well as the Office of Zoning staff, Ms. Sharon Schellin, as well as Office of the Attorney General, Mr. Ritting, Office of Planning staff, Ms. Steingasser and Mr. Lawson, as well as Ms. Meyers.

This proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room, including display of any signs or objects. This opening statement is going to apply to both Zoning Commission Case No. 18-06, which is our first case, and our second case is Zoning Commission Case No. 17-11, in that order. Notice of today's hearing was published in the D.C. Register, and copies of that announcement are over to my left, on the wall, near the door. The hearing will be conducted in accordance with provisions of 11(z) DCMR, Chapter 5, as follows: preliminary matters, presentation by

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1 the petitioner, one of the cases, the Office of Planning,
2 reports of the other government agencies, report of the ANC,
3 organizations and persons in support, organizations and
4 persons in opposition, organizations and persons undeclared.

5 The following time constraints will be maintained
6 in this hearing: Petitioner or the Office of Planning will
7 have up to 60 minutes. I don't believe we need 60 minutes
8 in either case, but we'll see how it goes; organizations five
9 minutes, and individuals three minutes. All persons wishing
10 to testify before the Commission in this evening's hearings
11 are asked to register at the witness kiosk.

12 If you need assistance, you can see Ms. Schellin.
13 It's to my left. The staff will be available throughout the
14 hearing to discuss procedural questions. Please turn off all
15 electronic devices at this time, so not to disrupt these
16 proceedings. At this time, the Commission will consider any
17 preliminary matters. Does the staff have any preliminary
18 matters?

19 MS. SCHELLIN: No, sir.

20 CHAIRMAN HOOD: Okay, our first case is going to
21 be 18-06. Before we get started, I want to read a statement
22 in this case. Before we get started, I want to announce that
23 we will follow the regular map amendment process if we decide
24 to adopt a new MU-4A zone. If we do adopt the MU-4A zone,
25 then we will follow our regular map amendment process for

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1 applying it to particular properties.

2 There's absolutely no automation to our process.
3 That will help you as we move forward because there's a lot
4 of misinformation that gets out. I don't know how that
5 happens, but it's out there. If we get into that, I will
6 read my statement again.

7 Every time I hear something that's out of context,
8 I will continue to read my statement. If you don't
9 understand my statement, when you come up, you can let me
10 know, and I'll explain it more. Let me turn it over to the
11 Office of Planning. This is our first case, 18-06. Ms.
12 Steingasser.

13 PRESENTATION BY THE OFFICE OF PLANNING

14 MS. STEINGASSER: Yes, sir. Chairman Hood,
15 Commissioners, on October 2, 2017, the Zoning Commission held
16 a public hearing for Case 17-11. The Petitioner requested
17 a rezoning for the property at 3200 Pennsylvania Avenue
18 Southeast from the MU-3 low density mixed use and the R-1B
19 low density residential to the then-MU-4 moderate density
20 mixed use zone.

21 The MU-4 was supported by the Office of Planning,
22 but at the hearing, concern was expressed about the adjacency
23 of moderate mixed use development and the low density single
24 family residential properties, unique in this situation
25 because of the extreme topography and the immediate adjacency

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1 of these two sites.

2 The Commission asked the Petitioner to work with
3 the community to draft a new zone that would be responsive
4 to these adjacency issues. The MU-4 was suggested as a
5 starting point because that was the zone that was under
6 consideration and had been applied for by the Petitioner.
7 The MU zone allowed for low to moderate density, and there
8 may be other locations throughout the city that have a
9 similar adjacency situation, in which case, whatever the new
10 zone would be possibly appropriate. The Petitioner worked
11 with the adjoining property owners and submitted the text to
12 the Office of Planning.

13 We then recommended that it be set down for public
14 hearing for the creation of the new zone only. That text was
15 advertised. The proposed text sits between the MU-3 and the
16 MU-4A. Several comments have been submitted into the record,
17 and I'd like to address a few of those now because I, like
18 you, have found them to have created more confusion than
19 clarity.

20 To start with, the Office of Planning supports the
21 advertised text. We recommend adoption of the advertised
22 text. We do not support or recommend any amendments or
23 changes to the advertised text.

24 OP does not support or recommend the automatic
25 rezoning of any additional property subject to this text

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1 amendment. This case is solely based on the existing
2 advertised text amendment. There seems to be, also, some
3 confusion created by the use of the MU-4 names by creating
4 a new MU-4A, sliding it in between the MU-3 and MU-4 zones,
5 and then subsequent renaming of the other properties to the
6 MU-4B. Therefore, to help avoid this confusion, while still
7 maintaining the organization of the zone categories, OP is
8 going to recommend that the name that was advertised as MU-4A
9 actually be MU-3B and have it spring from the MU-3 low
10 density, sitting between the MU-3s and the MU-4s.

11 We think that would avoid the confusion over
12 what's happening with the rest of the MU-4s, while still
13 making it clear that this is a low to moderate mixed use
14 zone. Together with the correction noticed in our OP
15 Correction Report of July 17th and the name change, Office
16 of Planning recommends the Commission adopt the advertised
17 text. With that, we're happy to stand on the record, or I
18 could go into the details of the text, itself, if you would
19 like.

20 CHAIRMAN HOOD: Commissioners, do we need to go
21 into the details? Does anybody need to expand upon that?
22 Ms. Steingasser, I think you cut off my first two questions
23 I was going to ask when you said that you all recommend the
24 text as advertised, without any changes. I know there was
25 some changes mentioned. My questions were going to be about

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1 -- one of the groups mentioned about -- NC zones, and it was
2 another issue. But anyway, since you've said, that answered
3 any questions that have not been advertised, so I don't need
4 to go any further any that. Let me open up. Any questions
5 and comments to the Office of Planning? We've heard the
6 presentation to us from Ms. Steingasser, and they're
7 recommending what we have. Anything else? Commissioner
8 Turnbull.

9 COMMISSIONER TURNBULL: Ms. Steingasser, the MU-4
10 remains MU-4?

11 MS. STEINGASSER: It would remain MU-4. This new
12 zone would be created as the MU-3B. MU-3 would then become
13 MU-3A.

14 COMMISSIONER TURNBULL: Okay, thank you. Vice
15 Chair Miller.

16 VICE CHAIR MILLER: Thank you, Mr. Chairman, and
17 thank you, Ms. Steingasser, for that presentation and for all
18 your work and the community's work with the particular
19 project developer on this case. I think I had stated at the
20 hearing, when a different map amendment, I think, was being
21 proposed, that I saw the value of a new zone category that
22 might be able to be applied in the future. I just want to
23 clarify, for myself, since I was cited in some of the public
24 hearing testimony on both sides, actually, that I did not --
25 I certainly did not mean that this would apply immediately

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1 or automatically to other similarly adjacent low density
2 neighborhood commercial areas that are adjacent to low
3 density residential zones.

4 I could see how it could be of value to other
5 neighborhoods to petition to be in that category, instead of
6 the MU-4 or whatever they're currently in. I also had
7 thought that particular case, which I also was quoted in some
8 of the public hearing testimony, that it really seemed
9 designed to be -- this seemed to be a workaround to the fact
10 that we weren't having a PUD, which could have worked, I
11 thought, with the MU-4 underlying zone, but with all of the
12 setbacks and scale downs and landscaping screening that is
13 being designed for this particular intermediate zone between
14 M-3 and M-4.

15 My question to you is, with those clarifications,
16 there was some testimony -- and we'll hear it. I don't want
17 to delay getting to it because I want to hear it -- there was
18 reference to why weren't we creating an NC, a neighborhood
19 commercial zone, for Penn Branch? Then whatever we're up to,
20 NC -- what are we up to, 25 or 23? I don't know what we're
21 up to, but whatever the next -- why wouldn't we do that and
22 let other neighborhoods petition for those neighborhood
23 commercial zones? Did you consider that? Is there a value
24 to what we're doing more than doing it that way, in terms of
25 having a custom zone?

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1 MS. STEINGASSER: I think so. The neighborhood
2 commercial zones are custom zones. By creating a new zone
3 that can be mapped in locations more efficiently, it doesn't
4 require the same level of customization. It's just a new
5 zone and, where similar characteristics exist, the Commission
6 could consider whether it would be appropriate to map it
7 there.

8 VICE CHAIR MILLER: But then in this particular
9 zone, we do have a specific reference to the square and lots.

10 MS. STEINGASSER: To the square, yes, sir.

11 VICE CHAIR MILLER: Which is somewhat unusual in
12 a zoning category, to have an exception --

13 MS. STEINGASSER: We've done similar things --

14 VICE CHAIR MILLER: -- in terms of -- it's the lot
15 occupancy, right? It doesn't go to 70. It's 60 percent or
16 something.

17 MS. STEINGASSER: Let me find it real quick.

18 VICE CHAIR MILLER: I guess I would like you to
19 respond to the concern that this might be spot zoning,
20 whatever that term means.

21 MS. STEINGASSER: I can't say strong enough this
22 is not spot zoning. Spot zoning is a legal term where one
23 property is over-advantaged, to the detriment of the
24 comprehensive plan, in conflict with the comprehensive plan.
25 That's not at all what's going on. The fact that there's

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1 only one location that's being considered at this -- in the
2 next case, not even part of this case. This, by no means,
3 represents spot zoning.

4 VICE CHAIR MILLER: There isn't a concern about
5 referencing the specific --

6 MS. STEINGASSER: Condition of the square --

7 VICE CHAIR MILLER: -- parcel --

8 MS. STEINGASSER: -- for lot occupancy?

9 VICE CHAIR MILLER: Yes.

10 MS. STEINGASSER: No, there's not.

11 VICE CHAIR MILLER: I just wanted to give you a
12 chance to address that.

13 MS. STEINGASSER: We've done similar things -- I'm
14 thinking of -- especially in uses -- I think it was in the
15 Camp Simms case, where we carved out -- at that time, I think
16 it had to do with food business and allowed seats in a
17 certain square in Camp Simms to allow for this recognition
18 that there are some areas that have a unique treatment, but
19 I don't think it's spot zoning by calling it out, especially
20 because it's more restrictive. It's not more lenient.

21 VICE CHAIR MILLER: All right, thank you very much
22 for those answers and for the presentation.

23 CHAIRMAN HOOD: Commissioner Shapiro.

24 COMMISSIONER SHAPIRO: Thank you. Just a quick
25 process question. It might be for you, Ms. Steingasser, or

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1 it could be for our staff or the Office of the Attorney
2 General. Does changing the description of the zone from
3 MU-4A to MU-3B, does that trigger anything, in terms of our
4 process and notification, or is that just so technical it's
5 okay?

6 MS. STEINGASSER: My understanding is it is
7 perfectly okay that we would just adjust the numbering to
8 make it fit, but the sentiment, the intent, the purpose, all
9 the standards, there would be no change to any of those.

10 We've been told before, from the Office of the
11 Attorney General, that we could actually describe a zoning
12 case in laymen's terms, not even using the zoning language,
13 as long as it was clear what we were doing. There would be
14 no change to the zone. It would just be that name, which
15 would actually help, I think, in what we've seen, avoid
16 confusion.

17 COMMISSIONER SHAPIRO: Okay, thank you. Thank
18 you, Mr. Chair.

19 CHAIRMAN HOOD: Okay. Any other questions or
20 comments up here? Not seeing any, let's go to report of
21 other government agencies. We do have not necessarily
22 government agencies, but we do have a lot of letters with
23 different viewpoints in this case. The record is there,
24 18-06. You go online and look at all of them, but I just
25 wanted to note that. Let me call for the report of ANC. Do

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1 we have any ANCs who would like to comment on 18-06? Come
2 forward. For all those who want to comment on -- ANC
3 commissioners or commissions who want to comment on 18-06,
4 if you can come forward at this time.

5 MS. SCHELLIN: We just have the one full ANC.

6 CHAIRMAN HOOD: We have one full ANC.
7 Commissioner, you can introduce yourself, and you may begin.

8 REPORT OF ANC

9 MR. KRAVITZ: Good evening. I'm Troy Kravitz.
10 ANC 3D officially appointed me to testify on the Commission's
11 behalf when it passed our resolution in opposition to this
12 matter on July 11th. Exhibit 41 contains a more detailed
13 version of these comments.

14 Hard cases make bad law. Supreme Court Justice
15 Oliver Wendell Holmes realized this in 1904. If you take
16 nothing else from what I say to you tonight, we hope you heed
17 these words, hard cases make bad law, and we hope you embrace
18 their implication. This is a hard case. It began in Zoning
19 Case No. 17-11, as an issue at 3200 Pennsylvania Avenue
20 Southeast. The initial matter should remain the only matter,
21 as far as ANC 3D is concerned, whether and how to rezone
22 Square 5539, Lots 835, 838, 839 and 840. We're here because
23 the Petitioner and the neighbors immediately surrounding the
24 site successfully found something they could all live with for
25 3200 Pennsylvania Avenue Southeast.

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1 As 3200 Pennsylvania Avenue Southeast is quite far
2 afield from ANC 3D's jurisdiction in upper Northwest, we have
3 no opinion about what constitutes sound policy for the
4 affected parcel. What works for them, works for us. The
5 proposals before you for a text amendment affect ANC 3D
6 directly. We oppose this.

7 Figure 3, on Page 8, in Exhibit 41, shows the
8 sites near us where this new zone could be applied. We
9 believe it is helpful to understand concretely, visually,
10 what we're talking about when one speaks in the abstract
11 about MU-4 zones bordering residential areas in the city.
12 Others in this case have expressed their support that the
13 text amendment be morphed into a map amendment and that you
14 rezone entire sites across the city tonight. Again, let's
15 be concrete. Consider the vacant and deteriorating
16 Superfresh site by Massachusetts Avenue, in Spring Valley and
17 AU Park. We've talked about this voluntary design review
18 case, 1623, at length.

19 Record Lot 9 contains the vacant grocery store,
20 the large surface parking lot, and the former AU Law School.
21 The part excluding the AU Law Building is highlighted in red.
22 If you were to knock down the vacant deteriorating building
23 and bulldoze the surface parking lot, that is everything in
24 the red box, you wouldn't even be able to construct two
25 townhomes on the entire site.

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1 Even with the OP plan, you could barely rebuild
2 the existing space that you see there now. In some ways,
3 this proceeding may appear to be a continuation of the
4 eight-year zoning rewrite, but it's not.

5 This started as a case about a parcel at 3200
6 Pennsylvania Avenue Southeast. There was an up-zoning
7 request for one particular parcel. While practically nobody
8 else engaged with this matter, this hard case ballooned into
9 a text amendment, let alone map amendment, potentially
10 affecting the entire city. We believe allowing the proposed
11 text amendment to become available city-wide like this, by
12 allowing an obscure to most zoning case transform into an
13 obscure to all zoning case, is both poor policy and poor
14 process.

15 The public cares about the zoning regulations
16 governing their city's evolution. Now is not the time to
17 exclude them, even if by accident. The zoning vesting rules
18 indicate caution is needed. Consider a matter of right
19 proposal in a current MU-4 zone.

20 If, while preparing building plans, a map
21 amendment petition is filed, DCRA cannot approve the building
22 plans until the petition is denied. Even a petition entirely
23 devoid of merit shifts the burden onto the Office of Planning
24 and the community.

25 It becomes incumbent upon people on the ground,

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1 like dedicated, but volunteer advisory neighborhood
2 commissioners, to study and address the petition. This text
3 amendment will become a sword used to disembowel development
4 projects writ large. So where do we go from here? This
5 should have been a PUD, but PUDs are toxic right now. We,
6 or really the courts, need to resolve that clog before the
7 whole septic system backs up and sullies our shoes further,
8 and just our shoes, if we're lucky. A custom zone for this
9 site seems like a viable path forward.

10 OP didn't object, saying if we want to continue
11 down the path of a customized zone, OP would absolutely
12 entertain, and we could call it out by square or something
13 that makes it specific. But that's not what we have here.

14 It's the omission of the last sentence, excerpted
15 in full, that's the problem -- and we could call it out by
16 square or something that makes it specific. Those were
17 sensible words. This case, 18-06, started as 17-11, about
18 a parcel at 3200 Pennsylvania Avenue Southeast.

19 The concerns, the objections, they were only about
20 that parcel. The engagement, the meetings the Zoning
21 Commission and the Office of Planning so rightly applaud,
22 they took place only between the Petitioner and the neighbors
23 immediately adjacent to that parcel. The outcomes of this
24 meeting, which we rightly applaud, should only apply to the
25 object of the concerns, the objections and the meetings, 3200

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1 Pennsylvania Avenue Southeast. The evidence in the record
2 for this case and for 17-11 is that this zone was tailored
3 for that particular parcel.

4 With the specter of Durant just over the horizon,
5 the rational basis for applying this zone city-wide is
6 deficient. We don't have to look far for a template to move
7 forward. Here's an example from right in our backyards,
8 literally, that's already in the zoning code.

9 The R-21 zoning designation is the Chain Bridge
10 Road/University Terrace Residential Zone. Section 1300.2
11 stipulates exact geographic boundaries for the zone. We
12 could have, instead, pointed you to the R-8, R-9, and R-10
13 zones just the same, for they also specify geographic
14 limitations for applicability.

15 We appreciate the renaming from MU-4A to MU-3B;
16 however, we recommend that the text amendment under
17 consideration be amended to apply only to the specific site
18 at 3200 Pennsylvania Avenue Southeast. Doing so properly
19 reflects the totality of the analysis, the totality of the
20 concerns and objections, and the totality of the community
21 engagement in this case, on this matter. We've said it
22 before, and I'll say it again. This is a hard case. We
23 don't have to let it make bad law. Thank you.

24 CHAIRMAN HOOD: Thank you, Commissioner Kravitz.
25 I think my statement was not as exhaustive as yours. I think

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1 I kind of dispelled that in my statement earlier about
2 there's no automation. I don't know where that was created,
3 but it wasn't created up here. This city can be very
4 creative, but let's make sure we get the right information
5 out there and get it out there correctly.

6 MR. KRAVITZ: To be clear, that was one of our
7 concerns. The other concern was making this designation
8 available city-wide.

9 CHAIRMAN HOOD: Again, it wasn't created up here.
10 It was suggested. We get a lot of suggestions, but it wasn't
11 created here.

12 MR. KRAVITZ: Is it a matter of the Office of
13 Planning that the text amendment be written to include the
14 specific lots and parcels? Are you saying that's already
15 implicit in their text?

16 CHAIRMAN HOOD: When we get to the second part of
17 our case, then we will deal -- this is something that the
18 Commission asked for. It morphed into its own being. Just
19 hold tight. Your comments are understood. I don't want to
20 say a whole lot because I don't want to mix up anything more
21 than what it's already mixed up.

22 But I will say this, since you asked. Sometimes,
23 we have a problem getting the word out, so I would like for
24 all those who got this word out, they seem to have done a
25 good job at it, even though most of it was incorrect. When

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1 we have hearings down here, we're trying to do something, we
2 want to get the city involved.

3 It would be good that we can also use some of
4 those resources that people used this time to help us get the
5 correct information out. That would be helpful. I just used
6 that platform to mention that to others who got this word
7 out.

8 MR. KRAVITZ: We really appreciate you saying that
9 because this is one of our concerns. It's not included in
10 our testimony, but the email we receive basically has -- it
11 just says proposed -- the email has ANC commissioner, so it
12 goes to the office of each ANC. The subject was something
13 like proposed text amendment and creation of MU-4A MU-4 zone.
14 Then the body says see attached. We're pretty much up on
15 this, or at least I am here, and that was esoteric, even for
16 me.

17 CHAIRMAN HOOD: I would just suggest that we all
18 do our own homework when it comes to these kind of things.
19 Let me see if my colleagues have any questions or comments.
20 Commissioner Shapiro.

21 COMMISSIONER SHAPIRO: Yes, just a question. One
22 of your concerns is that there would be some kind of -- to
23 Chairman Hood's description, some kind of automated down
24 zoning across the board. It sounds like you're fine with
25 that.

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1 MR. KRAVITZ: I am delighted to hear that you guys
2 have disabused me of that mistaken notion already.

3 COMMISSIONER SHAPIRO: Thank you. The other issue
4 you're saying, though, I didn't quite understand. Because
5 yes, we're proposing an additional zone, but where that zone
6 might apply, there will be a process for each site where it
7 either would or wouldn't apply. In other words, I can't
8 imagine there would be, to use your example, some arbitrary
9 down zoning at the Spring Valley site. It wouldn't -- if
10 that was somebody's approach, then it would be a whole public
11 process around that specific site.

12 MR. KRAVITZ: That's right, and we appreciate
13 that, and we understand that. Ultimately, though, that only
14 mollifies some of the concerns. Again, the example I used
15 is a matter of right proposal, so it doesn't even need to
16 come before the Zoning Commission.

17 If there were a proposed map amendment placed on
18 that, OP would then research it, and they would do -- my
19 understanding is that OP would research it, and they would
20 do a set down report. If they decide to do a set down
21 report, at that point, the property owner and the public
22 would be notified by a sign placed publicly, I believe.

23 But by now, we're pretty far down the rabbit hole,
24 so to speak. Like I said, one concern is that it becomes
25 incumbent upon volunteers to really stay up on this stuff,

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1 to be able to respond adequately and in a timely fashion.
2 That was one of our concerns with -- since this site is
3 really tailored for 3200 Pennsylvania Avenue, we would like
4 to see it apply to 3200 Pennsylvania Avenue and not be
5 available city wide, at this point.

6 COMMISSIONER SHAPIRO: To the Chairman's point,
7 I think that we'll be addressing that in the next case.
8 Thank you. No further questions, Commissioner.

9 CHAIRMAN HOOD: Okay, any other questions up here?
10 Commissioner May.

11 COMMISSIONER MAY: I just want to make clear, you
12 understand this is just about the creation of a different
13 zone that may or may not be applied at 3200 Pennsylvania
14 Avenue, and it may or may not be applied elsewhere, at some
15 point in the future, after a similar case as 17-11?

16 MR. KRAVITZ: That's right, but I think the
17 similarity -- and we appreciate the improvement already from
18 MU-4A to MU-3B, but the similarity, calling it an MU-4A, I
19 think, I believe -- we believe will attract less meritorious
20 cases to try and use this as a way to bludgeon attempts at
21 development.

22 COMMISSIONER MAY: I don't necessarily have that
23 same fear, since we have to sit through every one of the
24 hearings that occur with any kind of up zoning or down
25 zoning. It seems that if there's ever a case where a

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1 property is down zoned, I can't recall one where we didn't
2 get a lot of people here to testify in opposition to that.

3 MR. KRAVITZ: But you can already see the effects
4 of this. There are three -- the first three submitted
5 exhibits in this file were three organizations that are
6 proposing to have this text amendment applied across the city
7 this evening. That's a fairly extreme example, which you
8 guys have already gotten rid of, but I think that speaks to
9 the general tendency of what we honestly think --

10 COMMISSIONER MAY: We also have alarmists on the
11 other side, as well, who are lighting fires that don't need
12 to be lit if people truly understood what was being proposed.

13 MR. KRAVITZ: That's right.

14 COMMISSIONER MAY: All right, thank you.

15 CHAIRMAN HOOD: Any other questions, comments?
16 All right, thank you very much, Commissioner Kravitz, we
17 appreciate it. Let me see; do we have any -- in 18-06 -- I
18 know we have another case afterwards -- do we have any
19 organizations or persons who would like to -- oh, we have a
20 list. Proponents, Ms. Ayanna Smith. Let me do it this way.
21 We're having some technical problems. Anyone who's here to
22 testify in the first case, 18-06, could you just raise your
23 hand?

24 PARTICIPANT: There's quite a few.

25 CHAIRMAN HOOD: There's quite a few? The first

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1 name I called -- okay, I got it. The first name I just
2 called was Ms. Ayanna Smith, and she's here for the second
3 case, but I'm reading 18-06. Mr. Donovan Anderson, the
4 second case. That's how we'll do it. Elson Nash.

5 PARTICIPANT: Second case.

6 CHAIRMAN HOOD: Second case. This one I know is
7 for both cases, Ms. Richards. I know I can get at least one
8 right. Ryan Esselman (phonetic), Joan McKenzie, Stan Benton
9 --

10 PARTICIPANT: Second case.

11 PARTICIPANT: If you're for the first case, come
12 forward, right?

13 CHAIRMAN HOOD: I was getting ready to do that,
14 but I understand we have a large list here.

15 (Off record comments)

16 CHAIRMAN HOOD: I saw Ms. Gates' name. I didn't
17 know whether -- her name was No. 1.

18 (Off record comments)

19 CHAIRMAN HOOD: Were you a proponent, Ms. Gates?
20 Let me say this. Anybody -- you know what? I'm going to do
21 it my way now. Anybody who wants to testify on 18-06, if you
22 can come forward, as a proponent.

23 PARTICIPANT: Ms. Gates is undeclared.

24 CHAIRMAN HOOD: Hold on. What I'm saying is I've
25 said all this, and nobody's coming forward. As a proponent

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1 in 18-06 --

2 PARTICIPANT: You're on undeclared.

3 CHAIRMAN HOOD: -- as opposition in 18-06, and as
4 undeclared in 18-06, all that, we have two people at the
5 table. Ms. Richards, you may begin.

6 PARTICIPANT: There's two more undeclared.

7 CHAIRMAN HOOD: Everybody who's -- just come up
8 until the seats in 18-06. This is the whole panel we have
9 for 18-06, whether you're in support, opposition, or
10 undeclared. That was easier done that way. That took five
11 minutes. It took 20 for the other. We're going to start
12 with you, Ms. Cort. We'll start with Ms. Cort, to my right,
13 your left.

14 PUBLIC COMMENTS

15 MS. CORT: Good evening, Chairman Hood and members
16 of the Commission. My name is Cheryl Cort. I'm with the
17 Coalition for Smarter Growth. We're dedicated to making the
18 case for smart growth. Our mission is to promote walkable,
19 inclusive, and transit-oriented communities and the land use
20 and transportation policies and investments needed to make
21 those communities flourish.

22 We suggest that more research, analysis, and
23 public engagement is warranted to create a new city-wide
24 zone, in order to understand how it is applicable in
25 different cases. That said, if the Commission decides to

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1 adopt the proposed text amendment, we recommend that
2 eligibility for the new zone be restricted to rezonings of
3 R and MU-3 zoned lots. We recommend that the conversion of
4 the MU-4A zone be limited to R and MU-3 lots, in order to
5 replicate the circumstances from the case that inspired this
6 proposed zone.

7 Other sites that are similar to the 17-11 case,
8 where the square specifically includes both R-1B and MU-3,
9 might be particularly well suited for conversion to this
10 zone. In these cases, the new zone would increase
11 development potential above existing zoning, in order to
12 support city wide and local goals, such as attracting desired
13 retail and providing a viable number of mixed-income housing
14 units.

15 This might be appropriate, given the needs of a
16 neighborhood and its level of transit access and
17 comprehensive plan goals. Also, I'd suggest, as well,
18 affirmatively furthering fair housing goals under the federal
19 Fair Housing Act. We do want to consider this proposal, as
20 we see it today, based on its origin with the 17-11 case and
21 question why a planned unit development wasn't the right tool
22 for this site. However, it appears that the developer has
23 ruled out a PUD because PUDs take a long time. They're
24 highly vulnerable to further delays due to court appeals.

25 These delays and uncertainties can doom a project

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1 altogether. This uncertainty was cited as a major problem
2 for attracting desirable retailers. We note that a PUD would
3 be a better process for engaging the public, civic groups,
4 and the ANCs.

5 It would be a tool for establishing public
6 benefits and transportation demand management plans and
7 vehicle trip mitigation, such as an expanded Capital
8 Bikeshare facility. Further examination of a large surface
9 parking lot in front of the new strip center would also be
10 enabled through a PUD.

11 But without a PUD, we do not have access to a TDM
12 plan or other public benefits. DDOT recommended a TDM plan
13 and expansion of the Capital Bikeshare station in the case
14 of 17-11, but it's unclear that the developer will implement
15 these recommendations with a rezoning, rather than a PUD
16 order. Let me just skip to the end of my testimony. Without
17 further research analysis, it's hard to say if this zone is
18 ready for city-wide application. This zone seems to be
19 conceived of -- apart from a broader public awareness that
20 conceived of a customized zone.

21 My experience with customized zones is with the
22 overlays which were incorporated into the base zone, or also,
23 for instance, the R-19 and R-20, which are Georgetown
24 specific zones. My experience specifically with R-19 and
25 R-20 is that it makes it harder, or almost impossible, to

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1 build an accessory apartment, unlike how accessory apartments
2 are treated in other similar R zones.

3 In both overlay conversions and Georgetown zones,
4 to exclude certain uses allowed in similar zones elsewhere,
5 these cases are tied together by geographic locations,
6 modifying general zones into ones tailored and specific to
7 a limited area. The proposed new zone seems to be the
8 opposite, extrapolating the experience from Case 17-11, the
9 17-11 site, to the rest of the city. Given this, more
10 analysis of the proposed new zone and its application across
11 the city seem to be warranted. To make a decision to create
12 a new city-wide custom zone, rather than the limited
13 geographic custom zone, we recommend Office of Planning
14 provide analysis for such sites across the city.

15 We need to know how this new zone would enhance
16 the comprehensive plan, small area plan goals, and address
17 our obligations under the Fair Housing Act to affirmatively
18 furthering fair housing. We are interested in how these
19 sites, like Penn Branch Shopping Center, that are located in
20 a major transit route, can be better served by new housing
21 and retail development opportunities that would take
22 advantage of a major transit investment. Thank you.

23 CHAIRMAN HOOD: Thank you. Before everyone
24 starts, just let us know if you're a proponent, undeclared,
25 and -- what's the other one -- opponent.

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1 MS. CORT: I'm undeclared.

2 CHAIRMAN HOOD: Okay, thank you. Next.

3 MS. KIMMEL: Good evening. My name is Susan
4 Kimmel, and I'm speaking on behalf of Ward 3 Vision. We are
5 a grass roots organization of neighbors who believe in smart
6 growth and in transit-oriented development. Basically, my
7 concern here is regarding the process that's been used. I
8 was glad to hear, from our earlier discussion, that there's
9 not an automatic trigger, that if there's a text amendment,
10 it doesn't automatically become a map amendment that would
11 be applied throughout the city.

12 That was good to hear because the concern is
13 really the whole process that's been involved and the amount
14 of transparency and the amount of opportunity for different
15 segments of the community to weigh in on particular sites.
16 Since a good deal of what -- I am actually a resident in ANC
17 3E. That is where the Spring Valley Shopping Center is, so
18 I have direct personal concern, also, that the new zone that
19 has been developed wouldn't apply automatically in that case.

20 I think Troy spoke very vividly about the
21 implications of such an action would be. It's also something
22 that Jennifer had said earlier about creating a new zone, the
23 MU-4A, or now being renamed the MU-3B, the idea of why there
24 needs to be a separate zone, that it would be something that
25 could be transferrable to other places, and why it isn't just

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1 a unique set of circumstances of the site at 3200
2 Pennsylvania Avenue Southeast.

3 I think it was mentioned that there was extreme
4 topography there, in addition to the fact that it was
5 adjacent to residential neighborhoods. It seems -- do the
6 facts on the ground really call for something that can be
7 generalized, and what process is used by OP and the Zoning
8 Commission in establishing a new zone?

9 I think making that more available and more
10 publicized would be of great benefit for all of us who are
11 concerned about the future of the city and how the zoning --
12 how it implements the comprehensive plan.

13 I appreciate having more information about that
14 and the consideration of this Commission in working together
15 with OP in figuring out what processes and methods and
16 improvements of some existing systems, such as the PUD
17 process, that might be applicable here. Thank you for your
18 time.

19 CHAIRMAN HOOD: Thank you. Next.

20 MS. RICHARDS: My name is Laura Richards. Members
21 of the Zoning Commission, I am testifying on behalf of O
22 Street Neighbors and Friends, generally in favor of 18-06,
23 but with requests for some amendments regarding its city-wide
24 application.

25 It creates a new zone, MU-4A, which tends to

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1 ameliorate the impact of a commercial zone adjacent to
2 residential zones, especially low density residential zone.
3 While the zone grew out of efforts to address a particular
4 proposed development, a particular site, the new zone has
5 been advertised city wide because it addresses a city wide
6 problem, adverse impacts from commercial activity near
7 residences.

8 This occurs throughout the city. This is not at
9 all a customized, particular problem. In fact, when -- at
10 the outset of this process, when we were encouraged to work
11 with OP and the owner on seeing what we could do about our
12 site, we requested a custom zone, perhaps one of the NC zones
13 that are site specific. The Office of Planning made it quite
14 clear that they did not wish to pursue that, that they wished
15 to pursue a generally applicable zone that could be applied
16 as kind of a buffer zone to residential or commercial kind
17 of overlaps throughout the city. Whatever the origins of
18 this zone, in our particular instance, it was designed to be
19 a city-wide zone.

20 We need to just be very clear on that. That is
21 the Office of Planning's position. There is one provision
22 of MU-4A respecting lot occupancy that is site specific, and
23 we think it should be applied city wide. That's the maximum
24 lot occupancy. Square 5539 is 60 percent.

25 That includes any IZ bonuses or any PUD bonuses.

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1 For the MU-4A throughout the rest of the city, it would be
2 60 percent base lot occupancy, with 75 percent IZ. A higher
3 lot occupancy, higher than 60, combined with a proposed
4 height, would have rendered MU-4A unacceptable to O Street.

5 We believe that all neighborhoods where it is
6 mapped should have the benefit of the lower lot occupancy.
7 In our case, a lot occupancy of 75 percent would overwhelm
8 the neighborhood. I am sure we are not alone, where there
9 other low density neighborhoods. In the spirit of equity,
10 please apply this provision wherever it is mapped. Of
11 course, it would be -- if you put that in the text, then it
12 would be there. Then whenever it's proposed to be mapped,
13 people could discuss it. Height and setback. The nominal
14 height for MU-4A and 4B is 50 feet, but the penthouse rules
15 make the de facto height 65 percent.

16 The shadow studies performed at the behest of the
17 Zoning Commission on our site demonstrate that at certain
18 times and seasons, the residences will be overshadowed,
19 literally. That has been ameliorated to some extent by the
20 requirements for a setback above 40 feet.

21 That's a setback in addition to the penthouse
22 setback. That is totally unobjectionable. O Street regards
23 the lower lot occupancy as a trade-off for the height. MU-4A
24 should apply when an alley separates residential and
25 commercial.

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1 Sometimes, these lots share a lot line, and
2 sometimes there's an alley in between. The text of MU-4A can
3 be read to apply only to sharing a lot line. It should
4 apply, also, where an alley separates these because the
5 impact of the commercial activity will be otherwise felt all
6 the way up to the lot line, and the alley does not really
7 provide sufficient buffering. The setback rules were based
8 on Subtitle J, providing for setbacks in PDR zones, when they
9 bump up against residential.

10 The PDR rules say that there has to be a rear yard
11 setback, whether or not there's an alley separation or a
12 shared lot line. It's the same amount of setback, 25 feet.
13 We have 20 feet here. There's no sound reason for denying
14 MU-4A relief to residents separated by an alley from a
15 commercial use.

16 Also, we urge that MU-4A should be mapped widely
17 and immediately. It's only proposed to be mapped to one
18 place. Since then, other neighborhoods have expressed
19 interest. We ask the Commission to propose mapping city
20 wide, wherever low density residential neighborhoods are
21 located next to low density commercial zones.

22 I see my time's up. I'll just say we object to
23 naming this 3B because this proposed new zone has much more
24 in common with the MU-4 than 3. The penthouse, alone, you
25 don't have habitable penthouses in MU-3; you do in MU-4. The

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1 densities and everything are much more of an MU-4 zone, so
2 I encourage you not to rename it because you're going to
3 disturb the integrity of MU-3. Thank you.

4 CHAIRMAN HOOD: Thank you. Next.

5 MS. GATES: Before I begin, I would like to make
6 a statement, please. As you know, I am a member of ANC 3D.
7 I did not participate in the discussions. I recused myself
8 because I was going to represent the Committee of 100, so I'd
9 like that in the record at the Zoning Commission.

10 It was meant to be put into the ANC's report.
11 Also, much of what we heard tonight from ANC 3D, I think, is
12 quite an embellishment. Mr. Kravitz was not at our meeting.
13 With that, I will begin my testimony. Good evening, Chairman
14 Hood and members of the Zoning Commission.

15 I am Alma Gates, speaking on behalf of the
16 Committee of 100 on the Federal City. The Committee of 100
17 is pleased to present testimony in support of the creation
18 of a new MU-4A zone. Dividing the MU-4 zone into MU-4A and
19 B makes perfect sense when considering different development
20 patterns in certain areas of the city, as well as the
21 juxtaposition of residential and mixed use zones. The full
22 C100 report is found in the record at Exhibit 7. The C100
23 strongly urges the Zoning Commission to revise the purpose
24 and intent of the MU-4 zones to make the proposed MU-4A zone
25 a city-wide option and to map it accordingly, using the

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1 criteria found in Subtitle A, Chapter 1, Sections 101.2 and
2 101.3, which consider the character of the respective zones
3 and the required development standards.

4 The new MU-4A zone seems especially well suited
5 for mixed use areas which abut low-density residential zones.
6 I am specifically referring to R-1A and R-1B residential zone
7 districts. These two zones, mixed use and residential, may
8 not be located on the same parcel, and there may be some
9 separation, such as an alley or street between the MU and the
10 R zones.

11 However, this is not always the case. When
12 mapping the MU-4A zones, in addition to proximity to R-1
13 zones, the Zoning Commission may wish to use one of the same
14 criteria established for parking, that is the subject MU-4A
15 zone must be located at least one-half mile away from a Metro
16 rail station. Also, these low density mixed use zones are
17 not located within one-quarter mile of a priority corridor
18 network Metro bus route, nor do they have access to day-long
19 rapid transit. Their density is low, rather than moderate.
20 It was a disappointment to discover OP's corrected report,
21 filed after C100 had filed its submission into the record.

22 The rear yard requirement, 20 feet, seems much
23 more appropriate than the 15 feet for the MU-4A zone. When
24 the Zoning Commission considers that rear yard setbacks for
25 the lowest density categories in all the R zones is at least

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1 20 feet, it makes sense that the abutting mixed use zone
2 would have the same setback requirement, but that is not what
3 is proposed.

4 In both ZR-16 and this text amendment, OP proposes
5 a 15-foot rear yard for the MU-4 zones. This hearing
6 provides an opportunity for the Zoning Commission to
7 establish a new mixed use zone with a slightly more generous
8 rear setback.

9 Also, suggesting a public street or alley serves
10 as a buffer between the residential and mixed use zone is
11 somewhat unrealistic. It's not as if there is no activity
12 in the street or alley, or that they actually buffer
13 anything. Yes, they provide a separation of sorts, but
14 that's about as far as it goes. Adding an additional five
15 feet to the MU-4A setback should be a consideration. The
16 C100 also suggests establishing a new FAR allowance for both
17 residential and non-residential uses in the new MU-4A zone
18 of 1.5 max, and 2.0 max with IZ, to bring residential and
19 mixed use zones into compatibility with one another.

20 The R-1A and R-1B zones have no FAR restriction,
21 and even the FAR in the more dense RA-1 zone, the former R-5A
22 zone, is limited to .9. By way of comparison, the R-A1 zone
23 is limited to 40 feet and three stories, while the MU-4A zone
24 is limited to 50 feet and an unspecified number of stories.

25 Height, number of stories, and lot occupancy

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1 requirements would not change in the new MU-4A zone, but the
2 Zoning Commission should consider setting a lower FAR to
3 control overall bulk. The C100 supports the proposed
4 transition setback requirements found at 411, in the July 13
5 OP final report. In closing, the C100 supports the creation
6 of a new MU-4A zone, city wide application and mapping of the
7 new zone, subject to certain criteria, a 20-foot rear
8 setback, a FAR allowance of 1.5 max, and a FAR allowance of
9 2.0 max with IZ for both residential and unresidential uses,
10 transition setback requirements as outlined in the proposed
11 411, and please codify a definition in ZR-16 for the term
12 abut. Thank you.

13 CHAIRMAN HOOD: Thank you. Next.

14 MR. WARWICK: Great, thank you. My name is Daniel
15 Warwick, and I serve as chair of the Dupont Circle Advisory
16 Neighborhood Commission, though I represent only myself in
17 this testimony. I'm an opponent of this case. I'm concerned
18 with the creation of more zones, and I'm here specifically
19 to oppose the request of several organizations in the case
20 file to automatically down zone some existing MU-4 lots to
21 MU-3B.

22 Based on following certain other cases before the
23 Zoning Commission, I've noticed the Commission will sometimes
24 take testimony not specific to a proposed case, like my
25 testimony right now, and request the initiation of a new case

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1 reflecting the concerns. I was concerned the Commission
2 would ask for an initiation of a map amendment process for
3 all analogous zones across the city to the one in 17-11
4 unless hearing from opponents like me. I understand if a new
5 MU-3B zone may be required for Zoning Commission Case 17-11,
6 involving the Penn Branch Shopping Center, and I'm not going
7 to speak to that application.

8 I will note, however, that my experience serving
9 as an advisory neighborhood commissioner is that it's a good
10 thing when developers and neighbors can come together on a
11 compromise when there are complicated projects that involve
12 multiple lots, multiple zonings, and larger scale projects.

13 That's a really good thing. But one of the
14 purposes of the zoning rewrite in 2016 was to reduce the
15 complexity of our zoning code. Adding new zoning
16 designations every time there's a compromise between
17 developers and the community really makes that harder.

18 We already theoretically have a process to deal
19 with cases like this, and that's initiating a planned unit
20 development. With recent and recurring lawsuits attacking
21 PUDs again and again, even on the same case, I understand why
22 an applicant would prefer a map amendment and, honestly, I
23 cannot blame them. But over time, as a policy matter,
24 creating one-off zones for each project, I feel, is going to
25 cause a disarray in our zoning code that was somewhat fixed

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1 under ZR-16.

2 Hopefully, we won't need ZR-2066 to fix it again.
3 I urge the Commission to work to fix the PUD process, rather
4 than continue to create custom zones like this across the
5 city. This one has gone into a place that it's probably fine
6 if this is what the community is asking for, but over time,
7 if this continues to happen, I'm afraid the zoning code is
8 going to get a lot less coherent.

9 CHAIRMAN HOOD: All right, thank you all. Let's
10 see if we have any questions up here. Any questions?
11 Commissioner May.

12 COMMISSIONER MAY: I guess this is a question for
13 both Ms. Gates and Ms. Richards. You both spoke of trying
14 to apply this new zone more broadly across the city. I think
15 somebody even used the word immediate. What do you mean by
16 immediate? You're saying that we should just act on this
17 case right now and map it across the city? Is that what
18 you're suggesting?

19 MS. RICHARDS: No, of course not. I'm as much
20 opposed to arbitrary action on the part of the government as
21 anybody. When I say immediate, immediate, to me, means that
22 the Zoning Commission would suggest that the planning office
23 undertake a study of areas across the city where the zone
24 might appropriately be mapped, and that, then, it put out --
25 do its normal study, and then do a release of --

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1 COMMISSIONER MAY: So would you say that this case
2 should not move forward, that 17-11 should not move forward
3 until that's done more broadly across the city?

4 MS. RICHARDS: No, you can certainly create the
5 text amendment. You just don't have to map it --

6 COMMISSIONER MAY: No, but 17-11 is about mapping
7 it, and it can't happen until the zone is created. So you'd
8 be effectively delaying the Penn Branch redevelopment until
9 that happens, wouldn't you?

10 MS. RICHARDS: I wish to be clear. I believe the
11 text amendment should go forward immediately. I believe that
12 17-11 should proceed immediately. I believe that further
13 mapping of new MU-4A/3B should be delayed pending the normal
14 study and process.

15 COMMISSIONER MAY: But you want to move forward,
16 it just should have to go through the process. I think one
17 of the things that causes confusion is when you call for it
18 immediately, is it immediately makes people think that we're
19 going to make a decision tonight to map it across the city,
20 so people get very concerned about that because it shortcuts
21 the process that we go through.

22 MS. RICHARDS: That would shortcut the notice and
23 comment process --

24 COMMISSIONER MAY: Right, but most people don't
25 -- Many people don't understand that. You do. You

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1 understand how the process works. In the comments that have
2 come to us suggesting that it be remapped across the city,
3 immediately implies this so-called automatic action.

4 MS. RICHARDS: No automaticity. Due process all
5 around.

6 COMMISSIONER MAY: Okay, thank you. Ms. Gates.

7 MS. GATES: I would agree with Laura. If there
8 was confusion in what I said, perhaps I was confused by the
9 OP -- the hearing announcement. I thought we were looking
10 to map broadly across the city for areas which might be
11 appropriate, not necessarily immediately, but to at least
12 identify them.

13 COMMISSIONER MAY: I think the intention is to
14 create a zone that could be used elsewhere if it's
15 appropriate.

16 MS. GATES: Yes, and I would support that. I
17 think that's --

18 COMMISSIONER MAY: But supporting that as an idea
19 and suggesting that it be remapped immediately, some of the
20 testimony that we got suggested that this should happen on
21 the spot, that this should apply across the city right now.
22 What you're suggesting is basically you support of the idea
23 of creating this new zone and, wow, this is a good idea. It
24 should be considered for other locations. Is that right?

25 MS. GATES: Yes, thank you.

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1 COMMISSIONER MAY: Sometimes, it's helpful to say
2 things as simply as that, rather than -- because it tangles
3 things up. It makes people think that maybe Penn Branch
4 might get slowed down, or it makes people concerned that all
5 the sudden, we're going to take this action that will be an
6 automatic rezoning, which I think is problematic.

7 MS. GATES: Yes, sir.

8 COMMISSIONER MAY: Ms. Cort, I have a couple
9 questions for you. I've forgotten, now, since it's been a
10 while since we initially heard the 17-11 case, but was the
11 Coalition for Smarter Growth involved in that? Did you
12 testify --

13 MS. CORT: No, we did not.

14 COMMISSIONER MAY: You did not. So is there a
15 reason why you didn't pay attention to that, at that time?
16 I know you pay attention to a lot of cases.

17 MS. CORT: We're only just a couple people, so I
18 can't be involved with every case.

19 COMMISSIONER MAY: I understand. It just was a
20 matter of it was not big enough or important enough at that
21 time. When it became a map amendment, it became more
22 important.

23 MS. CORT: I'm testifying on the 18-06 case.

24 COMMISSIONER MAY: Right, so it's a text amendment
25 to create a new zone.

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1 MS. CORT: Yes, so that's what got my attention.

2 COMMISSIONER MAY: Right, got it. You understand,
3 of course, and I think you even said it, that effectively the
4 way this would be applied in 17-11 is effectively an up
5 zoning, not a down zoning, right?

6 MS. CORT: That's correct, and that's why I would
7 suggest maybe you make that the premise for eligibility that
8 it's --

9 COMMISSIONER MAY: So that's my next question,
10 which is that -- so you're suggesting --

11 CHAIRMAN HOOD: Excuse me one second. When you
12 have those discussions, whoever's watching you can hear it,
13 so you want to turn your mics off. I'm going to go home and
14 watch the hearing and see if you all said something bad about
15 us. You all may continue.

16 COMMISSIONER MAY: That was my next question,
17 which is that you were suggesting that the creation of this
18 new zone be predicated on it only being used in a
19 circumstance of up zoning.

20 MS. CORT: Correct.

21 COMMISSIONER MAY: Wouldn't that be the only
22 application of that principle anywhere in the zoning
23 regulations, that it's only available for up zoning? Doesn't
24 that seem a little odd to you?

25 MS. CORT: I find this process a little odd, in

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1 terms of being more conservative. It seems like it's more
2 responsive to the context -- or it's responding to this
3 context, which was we're looking at an R-1B property that's
4 part of this shopping center, basically. It's a big parking
5 lot now, I guess. Then the MU-3, so the developers made the
6 case of he really wanted MU-4.

7 The community generally supported it, but had some
8 concerns. What seemed like it should have been a planned
9 unit development went down this path. At this point, I think
10 to be more conservative and more -- recognizing the context
11 in which this application is moving forward under 17-11,
12 saying that we need to do the redevelopment with more
13 capacity, in order to get to the right number of housing
14 units and this sort of thing, then at least predicate that
15 it might be about the adjacency of R and MU-3 properties
16 maybe in the same square, since that's specific to this case.
17 That might be where we would be looking to create a new zone
18 that establishes that transitional setback that was
19 identified as a priority for neighbors.

20 COMMISSIONER MAY: But generally speaking, though,
21 you see the utility of having this sort of a zone that might
22 be a way to both allow matter of right up zoning of certain
23 properties, but at the same time, provide some protection to
24 abutting residential zones.

25 MS. CORT: Possibly. I don't want to slow down

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1 17-11 because now, I have spent the weekend reading the
2 transcripts and the reports, so I don't want to, in any way,
3 be a barrier to progress on that project. I'm sort of
4 offering you some options that I think are reasonable ways
5 to address some concerns that -- sort of like should we up
6 zone? Should we down zone? It's proposed as an up zoning,
7 in order to respond to some small area plan goals and comp
8 plan goals, so that seems reasonable. If you're stuck with
9 this odd parcel of R-1B next to your shopping center that you
10 want to create a mixed use development, then that seems
11 reasonable, but you would want to --

12 COMMISSIONER MAY: Hopefully, we don't have too
13 many of those circumstances, but I don't know.

14 MS. CORT: I don't know.

15 COMMISSIONER MAY: From our perspective, this is
16 just another way to, as you said, meet comp plan goals and
17 address the particulars of this situation. It might have
18 utility across the city, which is why we were, I think,
19 supportive of looking at this as a broader application,
20 rather than just a customized zone.

21 The idea of customized zone came up in the course
22 of the original hearing, as did the PUD, the prospect of a
23 PUD. We all understand the complications with the PUD. I
24 think the developer, in the 17-11 case, knows pretty well the
25 complications of a PUD, probably more so than anybody.

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1 Anyway, I appreciate everybody's testimony. I don't think
2 we have to worry about this being applied -- it was clear
3 from the beginning of the hearing this is not something
4 that's going to be applied broadly, and it is something that
5 is essentially just -- if it becomes part of the zoning
6 regulations, it's essentially another tool in the toolbox and
7 would not be implemented without the proper process for
8 public input.

9 CHAIRMAN HOOD: Any questions or comments, anyone?

10 PARTICIPANT: Mr. Chair.

11 CHAIRMAN HOOD: Hold on one second. I have a
12 question for my friend in Dupont Circle, the commissioner.
13 Do we have your statement? I found your statement to be very
14 interesting because I kind of would associate myself -- we
15 don't want to keep going down this same line, but I think
16 hopefully this is a unique case. I would agree that we don't
17 want to continue that. But do we have your testimony?
18 Because I want to utilize that.

19 MR. WARWICK: I will submit my testimony this
20 evening.

21 CHAIRMAN HOOD: Could you do me a favor? Could
22 you just get to the point where you're talking about us
23 continuing to do this? I want to make sure that I keep that
24 on my radar.

25 MR. WARWICK: Absolutely. It's all written down

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1 on my laptop.

2 CHAIRMAN HOOD: Great. If you could just
3 highlight that part because I think that's going to be
4 articulated some more. I'll give you full ownership of it.
5 You may hear me use it some more, but I'll give you ownership
6 of that. If you could submit that, I'd appreciate it. Any
7 other questions or comments? Commissioner Turnbull.

8 COMMISSIONER TURNBULL: Yes, thank you, Mr. Chair.
9 I just had a couple of questions for Ms. Gates. Thank you
10 for being here tonight for the Committee of 100.

11 MS. GATES: Thank you.

12 COMMISSIONER TURNBULL: You have some definite
13 changes or points that you would recommend to the Office of
14 Planning. I don't know whether you're trying to -- I guess
15 you're trying to get back more into the MU-3 group. You're
16 talking about they had corrected the rear yard to 15 feet.
17 You'd like to see that go back to 20 feet.

18 MS. GATES: No, it's always been 15. They made
19 a mistake in their statement. When the corrected statement
20 came in, it says 15.

21 COMMISSIONER TURNBULL: You're okay with 15?

22 MS. GATES: No.

23 COMMISSIONER TURNBULL: You want 20?

24 MS. GATES: I would prefer 20.

25 COMMISSIONER TURNBULL: You feel that's more in

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1 keeping with the neighborhood concept that we're dealing
2 with?

3 MS. GATES: I think in some ways, it probably
4 depends on --

5 COMMISSIONER TURNBULL: It's all context, I know.

6 MS. GATES: Right. My testimony really deals with
7 low density residential areas, which may be affected by these
8 kinds of developments, where you have MU-4, now MU-3B, next
9 to R-1A and R-1B. But I've given you some other information.
10 The R-A1 zone, which was the R-5A zone, the most dense of the
11 R-5s, the least dense of the previous R-5 zones, where the
12 FAR was only .9. The setback there is 20 feet.

13 COMMISSIONER TURNBULL: Right now, you've got 1.5
14 and 2.0 for IZ.

15 MS. GATES: That would be the FAR that we
16 recommend for the new MU-3B zone, which, by the way, if we
17 look at the zoning regulations, Subtitle G, Section 400.2,
18 the MU-3 zone is intended to permit low density mixed use
19 development. So I very much favor moving from moderate
20 density to low density.

21 COMMISSIONER TURNBULL: I don't think you've made
22 a comment on the height issue.

23 MS. GATES: There's no change there.

24 COMMISSIONER TURNBULL: You're fine. Okay. I
25 didn't ask the Office of Planning what happens when this new

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1 zone becomes a PUD. I guess I'll have to ask them how that
2 change would be involved with -- I wonder if, Ms.
3 Steingasser, you could ask me how does --

4 MS. STEINGASSER: All PUDs, unless otherwise
5 specified in Subtitle X, are eligible for a PUD with a 20
6 percent increase in density. That's the standard rule of
7 thumb under the ZR-16.

8 COMMISSIONER TURNBULL: What about height?

9 MS. STEINGASSER: Height would probably stay the
10 same. We didn't do a lot of work on the PUD.

11 COMMISSIONER TURNBULL: Okay, I was just curious
12 what kind of impacts would develop if someone pursued that.

13 MS. STEINGASSER: The impacts would obviously be
14 under a public review through the Commission.

15 COMMISSIONER TURNBULL: I guess the 60 percent/75
16 percent IZ, but it's unique, 60/60 at --

17 MS. STEINGASSER: In this particular case, the
18 property owner of that square was willing to restrict
19 themselves to a 60 percent lot occupancy. We don't think
20 that's an appropriate baseline for inclusionary zoning city
21 wide because we don't know what all the situations would be
22 city wide, so we kept the standard 75 percent for the IZ.

23 COMMISSIONER TURNBULL: Do you think in some cases
24 we might find ourselves in a similar situation, though?

25 MS. STEINGASSER: I don't see this being a very

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1 common situation. I don't see that the Office of Planning,
2 on its face, since we're talking purely theoreticals, would
3 be bringing forward any kind of map amendment to this zone
4 without the consent and initiation of the property owner,
5 themselves.

6 COMMISSIONER TURNBULL: I didn't mean to put you
7 on the spot.

8 MS. STEINGASSER: That kind of gets to what Ms.
9 Cort was getting at, that it would be an up zoning, so it
10 would be those rare cases where a property owner has some
11 kind of overlapping in zones, that it would be initiated by
12 that property owner. It would not be initiated by the Office
13 of Planning.

14 COMMISSIONER TURNBULL: Okay, thank you.

15 CHAIRMAN HOOD: Anything else up here? Ms.
16 Richards, you wanted to make a comment.

17 MS. RICHARDS: Yes, I had -- on the 15 feet versus
18 20-foot rear setback, when I saw the corrected OP report, I
19 thought no, this is supposed to be 20, as agreed. I
20 contacted the Office of Planning. I was informed that it is
21 going to be a 20-foot setback.

22 MS. STEINGASSER: No, I don't believe that's
23 correct. I believe we said it was going to stay as in our
24 corrected report at 15, and that the transition area,
25 wherever that transition area, that's where the 20 feet comes

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1 in. The transition area, whether it's along the side yard
2 or the rear yards, that's where there would be 20 feet.

3 MS. RICHARDS: That's right, but in many cases,
4 the transition and the rear yard are going to be the same
5 thing, so that the --

6 MS. STEINGASSER: Right, and then the transition
7 --

8 MS. RICHARDS: Would trump, so it --

9 MS. STEINGASSER: -- would trump.

10 MS. RICHARDS: In the vast majority of cases, it
11 will be 20 feet.

12 MS. STEINGASSER: We did not do a theoretical
13 analysis of every one of these cases because, as I said, we
14 would anticipate that the property owner developing under
15 this would initiate this case, as was the case here.

16 MS. RICHARDS: It was my understanding of the
17 zoning regs that any interested person, which would be more
18 than the property owner, could petition for rezoning.

19 MS. STEINGASSER: They could. It would be a very
20 difficult case for the Office of Planning to support a down
21 zoning. These properties that currently are MU-4 have had
22 this zoning since at least 1958, if not all the way back to
23 1921. So to take a property that has been this zone for 60
24 years, without the consent of that property owner, it would
25 be a very difficult analysis for the Office of Planning --

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1 CHAIRMAN HOOD: Okay, I allowed that. Typically,
2 we don't do this. I allowed that because I wanted to make
3 sure we start getting the correct information, so I wanted
4 us to have that dialog, but I'm going to have to cut that
5 off. Ms. Richards, I know you know the Office of Planning.
6 You all can have that discussion because we want to get to
7 our next hearing. So thank you. Commissioner Shapiro.

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair, just
9 a question for Ms. Steingasser triggered by what you were
10 just talking about. Is there any precedent for -- I
11 understand, practically speaking, this would likely only come
12 forward if initiated by the property owner, but is there any
13 precedent for making that a requirement?

14 MS. STEINGASSER: That it could -- I would have
15 to look to the Office of the Attorney General on whether
16 something like that would be legally sound. Where only the
17 property owner could initiate --

18 COMMISSIONER SHAPIRO: I'm not familiar with any
19 precedent for that. I understand practically speaking,
20 that's the only way it would likely happen anyhow.

21 MS. STEINGASSER: I don't know of any precedent
22 where that has happened.

23 COMMISSIONER SHAPIRO: I would be curious to see
24 if there's even any legal precedent for that, if that's
25 allowed.

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1 CHAIRMAN HOOD: Before we respond, do we know the
2 answer? I don't want us to do too much off the cuff --

3 COMMISSIONER SHAPIRO: No, I think this is more
4 for research.

5 CHAIRMAN HOOD: -- information.

6 MR. RITTING: Yes, I don't have an immediate
7 response to that.

8 CHAIRMAN HOOD: Okay, we'll wait on that.

9 MR. RITTING: I do have a response to whether
10 there's been any changes to the existing regulations to
11 restrict who can petition, and there hasn't been, in my
12 memory.

13 PARTICIPANT: Okay, thank you. Thank you, Mr.
14 Chair.

15 CHAIRMAN HOOD: Any other questions or comments
16 up here?

17 COMMISSIONER TURNBULL: Just to go back to Ms.
18 Steingasser again, would it be worthwhile, or do you think
19 it's of interest, to include the term transition 20 feet or
20 clarify, or do you think the language that we've got is
21 sufficient?

22 MS. STEINGASSER: I think the language that we
23 have is sufficient.

24 COMMISSIONER TURNBULL: Do you think you could
25 look into defining the word abuts?

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1 MS. STEINGASSER: I don't think there'd be a lot
2 of common agreement that something across the street would
3 constitute abut. We would have to do a full investigative
4 -- research through the entire code and see where it's used.
5 It's been made clear that the purpose is to make it more
6 restrictive, and not less. I think that would result in --
7 it would be very hard to assess the impact of something like
8 that on non-conforming and existing developments already.

9 COMMISSIONER TURNBULL: Okay, thank you.

10 CHAIRMAN HOOD: Anything else up here? Great.
11 I want to thank you all for your participation. We
12 appreciate that. The only other name I see is Ms. Morgan.
13 Ms. Morgan, I see your name as undeclared in this case. The
14 next case, 17 -- okay. I'm going to -- any other comments,
15 colleagues? Do we need to set -- Ms. Schellin, do we need
16 to set a date on this case? I'm just starting that
17 conversation. I'm actually ready to move forward.

18 COMMISSIONER MAY: Mr. Chairman, it seems to me
19 that there are certainly some comments -- some suggestions
20 that -- what might happen as a result of creating this new
21 zone, but it seems to me that I'm not hearing a whole lot of
22 avid resistance to the mere creation of the zone. It's a
23 question of how it's applied. If the gentlemen were so
24 inclined to take action, since this is -- this would be
25 helpful, depending on what happens with the next case, this

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1 moves the ball a little bit faster if we were to take action
2 to approve this text amendment.

3 CHAIRMAN HOOD: Can we hear from others?

4 (Simultaneous Speaking.)

5 VICE CHAIR MILLER: I would prefer that we have
6 a hearing on the next case and maybe come back to it and
7 decide how we want to handle both -- tonight, decide how we
8 want to handle both, but hear the next --

9 COMMISSIONER MAY: Can we take action on the
10 second case before we've done a -- taken final action on the
11 -- how can we take -- I'm looking at the Office of the
12 Attorney General.

13 CHAIRMAN HOOD: I think what he's saying, let's
14 hold this particular case in abeyance, and then once we
15 finish hearing from the next case, I think we can make a
16 decision how we're going to move -- I think we can move on
17 this one tonight.

18 COMMISSIONER MAY: Right, the testimony, it's
19 clear to me we can move tonight; 17-11, I'm not so sure if
20 we can move --

21 CHAIRMAN HOOD: Right. I need to hear from the
22 public and see where we are. Okay, we will come back to
23 18-06 after we finish 17-11. I would hope to finish 17-11
24 tonight. That's the goal. We're going to all work together,
25 and we're going to finish 17-11 tonight because don't nobody

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1 want to see us again next week.

2 (Whereupon, the above-entitled matter went off the
3 record at 7:49 p.m. and resumed at 8:02 p.m.)

4 CHAIRMAN HOOD: Any discussion on that? I think
5 the merits of that case are -- I think the record speaks for
6 itself. We heard plenty of testimony. I think it's ready
7 for us to move forward with further discovery, as Office of
8 Planning and others have asked us to do in 18-06. I would
9 move that we approve 18-06, as advertised, with the
10 discussion that we had this evening, and ask for a second.

11 COMMISSIONER SHAPIRO: Second.

12 COMMISSIONER TURNBULL: Commissioner, could I ask
13 a question?

14 CHAIRMAN HOOD: It's been moved and seconded. Any
15 further discussion? Mr. Turnbull.

16 COMMISSIONER TURNBULL: I wanted to ask a question
17 of OP before we did anything.

18 CHAIRMAN HOOD: Okay, you can ask a question of
19 OP, but it's moved and seconded. Commissioner Turnbull.

20 COMMISSIONER TURNBULL: Ms. Steingasser, the floor
21 to area ratio that was developed, was that based upon the
22 17-11 case, or was that based upon an analysis of potential
23 -- of a new zone somewhere in between?

24 MS. STEINGASSER: It started with the 17-11 case,
25 the petitioner of that case working with the neighborhood,

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1 at the direction of the Zoning Commission. It was then
2 submitted to OP, who did an analysis of it in the context of
3 the overall zoning parameters, shall we say, the spectrum.
4 We found that it fit very well.

5 COMMISSIONER TURNBULL: Okay. I guess I'm just
6 bringing up the question that Ms. Gates brought up about the
7 lower numbers. Did you look at the numbers that the
8 applicant --

9 MS. STEINGASSER: We did not. Those lower numbers
10 are -- they're not realistic. They're really not. The
11 relationship of the IZ, that makes the lowest zone having the
12 highest IZ burden. That IZ, as a matter of right, would be,
13 I think, .33, 33 percent, as opposed to what we normally see.
14 It would be an extraordinary burden. It just doesn't -- I
15 don't know where the 1.5 came from. I don't know where that
16 came from.

17 COMMISSIONER TURNBULL: Okay, thank you.

18 COMMISSIONER MAY: Mr. Chairman?

19 CHAIRMAN HOOD: Okay, Commissioner May.

20 COMMISSIONER MAY: I do think there is one
21 unresolved question, which is the Office of Planning's
22 suggestion that we switch the nomenclature from MU-4A and B
23 to MU-3A and B, right?

24 CHAIRMAN HOOD: I agree.

25 COMMISSIONER MAY: You made the motion. I think

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1 it's up to you whether you want to change it.

2 CHAIRMAN HOOD: Here's the reason why I thought
3 about it. First of all, for us to go ahead with the -- we
4 have to create something before we can move forward with
5 another hearing, after I thought about it. It seems to me
6 that the MU-3B, as stated -- I think Ms. Richards -- I forgot
7 whether Ms. Richards or Ms. Gates -- I'm not sure if that's
8 going to confuse the issue because it talks about lower
9 densities.

10 I'm just trying to make sure that whatever we do,
11 whether it's MU-3B or MU-4A, that it's clear and concise for
12 people who don't do this every day. That's kind of where I
13 am. Can you add to that, help me understand?

14 MS. STEINGASSER: There is a statement of intent
15 and purpose of the zones. It would just simply say that the
16 MU-3B is a low to moderate density mixed use zone that
17 accommodates residential and commercial. We would just slip
18 that in there. That would be the same -- we would do the
19 same in the MU-4s, but in this case, it recognizes that
20 transition of low to moderate density.

21 We also felt, believe it or not, that it had a
22 more positive bent because you're transitioning up in a
23 standard positive -- as opposed to transitioning down, which
24 I think is what we saw a lot of the concern about down
25 zoning, when in reality, this is an up -- in this particular

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1 case, this is an up zoning.

2 PARTICIPANT: That makes sense.

3 CHAIRMAN HOOD: I would agree.

4 PARTICIPANT: It's fine.

5 CHAIRMAN HOOD: I think I can go with the MU-3B.
6 I would encompass that in my motion. Any other outstanding
7 issues?

8 COMMISSIONER SHAPIRO: I accept that as the
9 seconder.

10 CHAIRMAN HOOD: The seconder accepts it. Any
11 further discussion?

12 VICE CHAIR MILLER: I just wanted to say that I'm
13 in support of this, creation of the zone in this case --
14 creation of this zone. I think it's a creative solution, and
15 I'm pleased that the neighbors and the property owner worked
16 so diligently together to come up with a solution that would
17 allow 17-11 to move forward.

18 I appreciate the clarifications that the Chairman
19 made at the beginning, and that Commissioner May elicited in
20 response to his questions that there is no automatic or
21 immediate mapping that's going to be happening for other
22 areas, that the normal processes for mapping and texting will
23 occur. I also appreciate the Office of Planning's position
24 that they would be unlikely to support any set down of
25 another area without the support of the property owner. I

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1 would add the neighbors, which existed in this 17-11 case and
2 in this case, and the ANC, which existed in this case and
3 17-11. I'm ready to move forward, Mr. Chairman.

4 CHAIRMAN HOOD: Okay, we've got a motion that's
5 been moved and properly seconded. Any further discussion?
6 All in favor, aye?

7 (Chorus of ayes.)

8 CHAIRMAN HOOD: Any opposition?

9 (No audible response.)

10 CHAIRMAN HOOD: Staff, would you record the vote?
11 Now, I feel better about moving forward because now it's
12 created. Okay, thank you, Ms. Schellin.

13 MS. SCHELLIN: Yes, staff records the vote at
14 5-0-0 to approve proposed action in Zoning Commission Case
15 No. 18-06, Commissioner Hood moving, Commissioner Shapiro
16 seconding, Commissioners May, Miller, and Turnbull in
17 support. That is changing the name from -- creating the
18 MU-4A to changing that to MU-3B, correct? Yes. OAG will
19 work with OP on creating the notice of proposed rulemaking.
20 Thank you.

21 CHAIRMAN HOOD: As we still continue to learn
22 ZR-16, is this a one vote?

23 MS. SCHELLIN: No, it's a rulemaking case, so
24 it'll be two. Both cases will be two.

25 CHAIRMAN HOOD: So that was proposed action? I

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1 just want to be sure we understand it.

2 MS. SCHELLIN: Proposed action, yes, so there will
3 be a 30-day comment period once that's published.

4 CHAIRMAN HOOD: Okay. Sorry for that. Stick
5 around; you'll see a lot more than that.

6 (Whereupon, the above-entitled matter went off the
7 record at 8:09 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Case No. 18-06

Before: DCZC

Date: 07-23-18

Place: Washington, DC

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



Court Reporter

NEAL R. GROSS

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