

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

MARCH 10, 2008

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4<sup>th</sup> 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
- GREGORY N. JEFFRIES, Vice Chairman
- CURTIS L. ETHERLY, JR., Commissioner
- PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

- SHARON S. SCHELLIN, Secretary
- DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
JOEL LAWSON  
TRAVIS PARKER  
MATT JESICK  
ARTHUR JACKSON  
STEPHEN RICE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the minutes from the Regular meeting held on March 10, 2008.

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

2 6:30 p.m.

3 CHAIRMAN HOOD: This meeting will  
4 please come to order. Good evening, ladies  
5 and gentlemen. This is the March 10, 2008  
6 public meeting of the Zoning Commission of the  
7 District of Columbia.

8 My name is Anthony J. Hood.  
9 Joining me are Vice Chairman Jeffries. Also,  
10 Commissioners Etherly and May. We will not be  
11 joined this evening by Commissioner Turnbull,  
12 and he has provided proxies for us to deal  
13 with in our discussions.

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

17 We do not take any public  
18 testimony at our meetings unless the  
19 Commission requests someone to come forward.

20 Please be advised that these  
21 proceedings are being recorded by a court  
22 reporter and are also webcast live.

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

5                       Also, I've omitted to acknowledge  
6           our staff: Ms. Sharon Schellin and also Ms.  
7           Donna Hanousek, to my left. And Mr. Ritting,  
8           Office of Attorney General, to my left. To my  
9           right, the Office of Planning; I'll just say  
10          under the leadership of Ms. Steingasser. But  
11          we all know Mr. Lawson, Mr. Parker, Mr.  
12          Jesick.

13                      Okay. Does the staff have any  
14          preliminary matters?

15                      MS. SCHELLIN: No, sir.

16                      CHAIRMAN HOOD: Okay. Let's  
17          proceed with our agenda.

18                      MS. SCHELLIN: Actually, I'm  
19          sorry. Just the one item that you were going  
20          to move to final action.

21                      CHAIRMAN HOOD: Oh. Thank you.  
22          Okay. Let's rearrange our agenda a little

1 bit.

2 Under proposed action, we had  
3 Zoning Commission case number 07-32, NJA  
4 Associates, LLC, Capital Gateway Overlay  
5 Review. That, actually is going to now become  
6 B up under "Final Action" because we only take  
7 one vote under the regulations under the  
8 design review of the Capital Gateway. Okay?

9 That's all I have. Is that it?  
10 Okay. Good.

11 Okay. Let's move right along with  
12 our agenda. Our status report, we'll go  
13 straight to the Office of Planning. Ms.  
14 Steingasser?

15 MS. STEINGASSER: I'm going to  
16 turn it over to Mr. Parker, who's going to  
17 update you on the zoning rewrite and review.

18 MR. PARKER: Good evening. The  
19 zoning review is moving full steam ahead since  
20 we last met. The first two working groups  
21 have finished their work. Height and flood  
22 plan are about to send their recommendations

1 out to the task force.

2 Two more, parking and loading, are  
3 in midstream and should be wrapping up in the  
4 next couple of weeks. And later this month,  
5 we will be starting the next four working  
6 groups.

7 Historic structures, arts and  
8 culture, retail strategy, and low density  
9 residential will all get their start in the  
10 next couple of weeks.

11 We expect to have the set down for  
12 the first Zoning Commission hearings to take  
13 place in April. And the first time that we  
14 expect to have hearings before you would be in  
15 late May or early June for those first groups,  
16 the height and the flood plan.

17 If you have any questions, our  
18 next task force meeting is March 26th and we  
19 expect to have some information from those  
20 first two working groups available to the  
21 public shortly after that.

22 I'm happy to answer any questions

1 about where we're at in the process if you  
2 have them.

3 CHAIRMAN HOOD: Okay. Anything  
4 else, Ms. Steingasser? Okay.

5 Let me first acknowledge that I'm  
6 on the task force. And I'm going to say that  
7 repeatedly. I'm going to always acknowledge  
8 that I am on the task force. So I am on the  
9 task force.

10 And let me also commend the Office  
11 of Planning in the expeditious moving of this.  
12 It looks like things are coming along real  
13 fine.

14 The one meeting I was able to  
15 attend, I saw the task force. They had a lot  
16 of good folks and the reputation of people who  
17 had been out here in this process for a long  
18 time. So my hat's off to you. Keep up the  
19 good work.

20 Colleagues, let me ask, anybody  
21 has any questions for the Office of Planning?  
22 Okay. Thank you. We let them off easy this

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1 time.

2 All right. Next hearing action,  
3 Zoning Commission case number 06-40. This is  
4 the Gateway Market Center, Inc.; consolidated  
5 PUD and related map amendment at square 3587  
6 and parcels 129/9 and 129/32. Office of  
7 Planning, Mr. Jesick?

8 MR. JESICK: Thank you, Mr.  
9 Chairman and members of the Commission. My  
10 name is Matt Jesick.

11 The applicant for Case 06-40 has  
12 submitted a consolidated PUD and a PUD related  
13 map amendment in order to develop a ten story  
14 mixed use building at the corner of Florida  
15 Avenue and 4th Streets, Northeast.

16 This site is part of the overall  
17 Florida Avenue market site and it is located  
18 a short distance from the New York Avenue  
19 Metro.

20 Now, the Commission previously  
21 considered this case in January of 2007. At  
22 that time, the Commission deferred setting the

1 case down for a public hearing, pending the  
2 completion of a small area plan for the entire  
3 Florida Avenue market.

4 That plan is still ongoing, but  
5 the applicant has asked OP to bring this case  
6 forward to the Commission again. The setdown  
7 meeting is that the new Comprehensive Plan has  
8 become final.

9 The future land use map in the  
10 Comprehensive Plan was amended to show a mix  
11 of uses on this site, specifically high  
12 density residential, medium density  
13 commercial, and production distribution and  
14 repair.

15 Furthermore, the generalized land  
16 use map shows the entire Florida Avenue market  
17 as a multi-neighborhood center.

18 So because this application is not  
19 inconsistent with either of those  
20 Comprehensive Plan maps, the Office of  
21 Planning is recommending that the case be set  
22 down for a public hearing.

1                   Now, the proposal is again, for a  
2 mixed use building just under seven and a half  
3 FAR, 120 feet in height, and ten stories. The  
4 first two stories would be retail, the next  
5 two would be office, and the remainder would  
6 be residential.

7                   That works out to 116 residential  
8 units, about 39,000 square feet of retail, and  
9 about 54,000 square feet of office.

10                  Now, in addition to the Comp. Plan  
11 land use maps, this proposal also meets  
12 several of the Comp. Plan's guiding principles  
13 including utilizing an underdeveloped or  
14 infill site, creating a TOD environment and a  
15 walkable environment, and providing affordable  
16 housing.

17                  Several other elements of the  
18 Comp. Plan also support the proposal,  
19 including the land use element, the  
20 transportation, housing, and urban design  
21 elements.

22                  In conjunction with the PUD, the

1 applicant is seeking some areas of zoning  
2 relief. First of all, the PUD Related Map  
3 Amendment. The site is currently zoned C-M-1  
4 and the applicant is seeking zoning Z-3-C in  
5 order to achieve the height and density  
6 proposed.

7 The applicant also seeks relief  
8 from the one-to-one setback for rooftop  
9 structures from exterior walls and relief from  
10 the loading requirements.

11 OP will provide a complete  
12 analysis of the requested zoning relief at the  
13 time of the public hearing and we will work  
14 with the applicant to ensure that their design  
15 meets all the requirements of the Height Act.

16 In terms of amenities, the  
17 applicant has listed several areas they feel  
18 contribute to their amenity package. One  
19 would be affordable housing.

20 They are providing 20 percent of  
21 the total residential floor area for  
22 affordable housing. That works out to about

1 24 units. And those would be made available  
2 to households earning less than 80 percent of  
3 the AMI.

4 In terms of environmental design,  
5 the applicant is proposing an extensive green  
6 roof on the project. And OP will work with  
7 the applicant to nail down other green  
8 features of the building including a potential  
9 LEED score.

10 The design also incorporates  
11 community meeting space for the ANC if they  
12 would like to use it, as well as an ANC  
13 office. The design also incorporates space  
14 for a Metropolitan Police Department  
15 substation, should the Police Department  
16 determine that that facility is needed in this  
17 location.

18 And the applicant will also enter  
19 into agreements for first source employment  
20 and LSDBE.

21 OP feels that the amenity package  
22 is sufficient for a setdown and we will

1 continue to work with the applicant on those  
2 items that I mentioned.

3 So again, because the application  
4 is not inconsistent with the Comprehensive  
5 Plan, OP recommends that it be setdown for a  
6 public hearing. And I'd be happy to take any  
7 questions.

8 CHAIRMAN HOOD: All right. Thank  
9 you, Mr. Jesick. Let me just ask, Mr. Jesick,  
10 the last time the Commission considered this  
11 and we postponed taking the action, that was  
12 January 2007?

13 MR. JESICK: That's correct.

14 CHAIRMAN HOOD: All right. Before  
15 I make my comments, I'm going to open it up.  
16 I'm going to open it up to my colleagues.  
17 Vice Chair?

18 VICE CHAIRMAN JEFFRIES: Yes. So  
19 when we were last here on this project, the  
20 issue was around the small area of plan. And  
21 my understanding is that it's currently in the  
22 phase 2.

1 MR. JESICK: That's correct. It's  
2 in phase 2 of 2. The first phase was looking  
3 at the desired land uses, net process  
4 involved, the land owners, and the larger  
5 community. Phase 2 is an economic analysis,  
6 and we expect that to be completed in the next  
7 couple of weeks.

8 VICE CHAIRMAN JEFFRIES: So is  
9 there a draft of the phase 1? Or is there  
10 anything that we could look at?

11 MR. JESICK: I believe we can get  
12 you some sort of draft.

13 VICE CHAIRMAN JEFFRIES: Is there  
14 something?

15 MS. STEINGASSER: There's not a  
16 document that's been released yet. But as  
17 soon as one is, we'll get you that draft form.

18 VICE CHAIRMAN JEFFRIES: Okay.  
19 And in terms of timing, by the time we get to  
20 proposed action, when will we be able to see  
21 something of phase 2 before final action? Or  
22 it's hard to say?

1 MS. STEINGASSER: Yes. We would  
2 think the Commission would want to have that  
3 comfort, have that small area plan at least in  
4 its final draft form.

5 There's nothing in the various  
6 drafts that have been circulated that this  
7 project would be inconsistent with.

8 VICE CHAIRMAN JEFFRIES: Okay.

9 MS. STEINGASSER: Which is part of  
10 why we're comfortable bringing you that.

11 VICE CHAIRMAN JEFFRIES: Okay.  
12 And I think during the setdown, I had some  
13 concerns about the office, which I would  
14 imagine the marking aspects of your phase 2  
15 would address, but I'm also trying to get  
16 comfortable with two levels of retail. Second  
17 level of retail, what exactly is going to be  
18 on that second level?

19 MR. JESICK: I believe the  
20 applicant has a different plans for level 1  
21 and level 2. I can go back and check the  
22 application materials and see if they

1 differentiate between the two levels.

2 They would both have street access  
3 because of the grade of the site. The first  
4 level opens onto Florida Avenue and the second  
5 level opens directly onto Morris Street on the  
6 north side.

7 VICE CHAIRMAN JEFFRIES: I have  
8 something that they say here from a year ago.  
9 But I just don't fully understand. That's the  
10 second floor facing the market across Morris  
11 is envisioned as more of a dry goods  
12 merchandise emporium, also tenanted by  
13 existing market and new vendors.

14 So historically, second floor  
15 retail doesn't always quite work. So I just  
16 wanted to make certain I was clear about  
17 viability.

18 MR. JESICK: We can ask them to  
19 nail that down.

20 VICE CHAIRMAN JEFFRIES: Okay.  
21 Thank you.

22 CHAIRMAN HOOD: All right.

1 Commissioner May?

2 COMMISSIONER MAY: Yes. I guess  
3 I'm curious about the state of the design  
4 since we were looking at drawings that are a  
5 year old. And I know what happened led to  
6 them being at this point.

7 And I note that in both the  
8 original setdown report and the current one,  
9 there were comments about working with the  
10 architects. And I'm just wondering if there's  
11 still big issues that you're working on at  
12 this point with them, in terms of the  
13 architecture?

14 MR. JESICK: We do want to look at  
15 the rooftop structures. We want to be sure  
16 that that complies with the Height Act. Right  
17 now the stairwells are kind of on the edge of  
18 the building. So those stairwell towers may  
19 need to have a second look.

20 I've received preliminary comments  
21 from our public space folks. And we may look  
22 at some refinements to the public space

1 design. But that's obviously not the building  
2 itself.

3 COMMISSIONER MAY: Yes. Okay.

4 The building is sort of odd because it's  
5 trying to be so many things at the same time.  
6 And even the way it sits in the site, it  
7 doesn't feel entirely comfortable in terms of  
8 everything that's happening around it.

9 And the things that make me a  
10 little bit uncomfortable are for example, the  
11 driveway or the garage entrance on Florida  
12 Avenue. I mean, I know structurally why that  
13 makes sense, but in terms of the roadway  
14 circulation, you're picking the busiest road  
15 around on which to have that entrance.

16 MR. JESICK: Right. I think that  
17 has been changed. The latest designs that I  
18 have show it off Morris Street. The entrance  
19 on Florida was a "no", as far as DDOT was  
20 concerned.

21 COMMISSIONER MAY: So that was  
22 changed in the version?

1 MR. JESICK: Yes. DDOT, I think  
2 commented on that. That it should be off  
3 Morris.

4 COMMISSIONER MAY: Okay.

5 MR. JESICK: Yes.

6 COMMISSIONER MAY: Do we have the  
7 different drawing?

8 MR. JESICK: No.

9 VICE CHAIRMAN JEFFRIES: All we've  
10 got is DDOT.

11 COMMISSIONER MAY: Okay.

12 VICE CHAIRMAN JEFFRIES: Well,  
13 that's good. In terms of the rest of it, even  
14 the way the building is expressed, we have  
15 this sort of face of brick architecture;  
16 almost like it's a two story commercial  
17 building. And then on top of it you've got  
18 this big glass tower. And it's really not a  
19 good conversation between the two.

20 MR. JESICK: Yes. I was under the  
21 impression that the Commission received that  
22 latest drawings. But it sounds like maybe you

1 haven't. I'm pretty sure they tweaked the  
2 architecture since the design you're referring  
3 to.

4 COMMISSIONER MAY: Okay. Good.  
5 Because the drawings I have are dated August  
6 of '06. Yes. August of '06.

7 MR. JESICK: Yes. The latest ones  
8 I have are November 15, 2006.

9 COMMISSIONER MAY: Okay. So it's  
10 a few months newer. But still, 15 months old.  
11 Okay. But, they may not have changed very  
12 much.

13 VICE CHAIRMAN JEFFRIES: So  
14 besides that, there have been no changes to  
15 this building design? I mean, that's a big  
16 something, I recognize, Commissioner May, but  
17 besides that.

18 MR. JESICK: I know between the  
19 original set and this set, they had  
20 conversations with our HP folks on the design  
21 and I'll have to go back and see exactly what  
22 elements have been changed. But I think they

1 did try and work with them on making the  
2 design work with the historic sense of the  
3 neighborhood.

4 VICE CHAIRMAN JEFFRIES: Wait a  
5 minute. So should we set this down? I mean,  
6 unless we have drawings? I mean, more up to  
7 date, accurate drawings?

8 MS. STEINGASSER: I believe these  
9 were filed with the Commission back in either  
10 November --

11 VICE CHAIRMAN JEFFRIES: I'm  
12 hearing from the secretary. No.

13 MS. SCHELLIN: I have staff  
14 checking on that but we didn't have any new  
15 plans.

16 CHAIRMAN HOOD: Why don't we do  
17 this? We'll hold Commissioner May's questions  
18 in abeyance because I don't want to inflict my  
19 position. Which, everybody, if you read the  
20 transcript, you'd know.

21 So why don't we do this? Why  
22 don't we find out what do we have? And I want

1 to make sure that we are courteous to those,  
2 especially our two new colleagues, who were  
3 not here for that. And let's just continue  
4 to ask questions. That is, the one or two  
5 issues that you raised, we continue to ask  
6 the questions. And we'll find out what have  
7 and what we don't have.

8 COMMISSIONER MAY: Okay. Does  
9 that mean that we're going to move onto the  
10 next item.

11 MS. SCHELLIN: Well, I can answer  
12 the question now. We do not have anything  
13 other than what you have before you.

14 VICE CHAIRMAN JEFFRIES: It's 2006  
15 drawings.

16 MS. SCHELLIN: August 25th, yes.

17 COMMISSIONER MAY: If the  
18 Commission is inclined to move ahead tonight,  
19 I'm not adverse to that. I just see a lot of  
20 work that needs to be done, in terms of --

21 CHAIRMAN HOOD: And here's my  
22 issue. What I'm saying is go ahead and

1 continue to flush out. They'll hear you.

2 COMMISSIONER MAY: Okay.

3 CHAIRMAN HOOD: Office of  
4 Planning's hearing you. And I'm trying not to  
5 put my position there.

6 COMMISSIONER MAY: Okay.

7 COMMISSIONER ETHERLY: Right.

8 Just to jump in at this, I would share I  
9 believe the direction of Mr. May's comments in  
10 that as we do continue to flush that out, I  
11 don't hear or believe there's anything that's  
12 emerging that would slow us down from setdown.

13 Perhaps the Vice Chair might have  
14 a different leaning, as we kind of ferret some  
15 of this out. But I'm still comfortable with  
16 moving forward on that step as we identify  
17 some of these issues.

18 CHAIRMAN HOOD: Let's get there  
19 first. Let's let Commissioner May finish his  
20 thing. Weight broke the wagon. We don't want  
21 to keep getting so heavy. That's what  
22 happened now when we were supposed to deal

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1 with January 2007.

2 So we're going to let Commissioner  
3 May finish asking his questions. We're not  
4 going to make this hard. We're going to make  
5 it very easy. Okay. Commissioner May?

6 COMMISSIONER MAY: Okay. I got a  
7 little confused in looking at the plans about  
8 what's going on with the units, the housing  
9 units at the top that have the private decks.  
10 But I think I got that figured out.

11 There are other aspects to the  
12 architecture that I think are a concern.  
13 Because I think that we have this mixture of  
14 round columns supporting the glass structure  
15 that are piercing through this sort of brick  
16 base.

17 And we see that combination around  
18 town. Or at least we did, like back in the  
19 '80s or something. That was something that  
20 was pretty popular back then.

21 And it just doesn't feel right in  
22 this combination here. The base building with

1 the large arches and brick facades and some of  
2 these inset panels, it looks like.

3 It doesn't seem to be sufficiently  
4 detailed, even on its own. And that what  
5 we're seeing is a very kind of stripped down  
6 architecture in that base. And then we see a  
7 fairly -- "fussy's" not the right word, but  
8 more complicated kind of glass and steel  
9 expression above. Lots of mullions and bands  
10 and metal bars on top and things like that  
11 compared to a very simple base.

12 It's talking too many languages at  
13 once. And I would hope that what we build in  
14 what I think is a very prominent location here  
15 would be really exemplary architecture and not  
16 this sort of confused assemblage, which I seem  
17 to see.

18 Maybe my colleagues disagree and I  
19 would open up the floor to see whether you  
20 have some of the same concerns,  
21 architecturally.

22 VICE CHAIRMAN JEFFRIES: Well, I'm

1 just sort of out of place at this point with  
2 this particular application. I just want to  
3 be clear. I just want to be certain about the  
4 delta between what we looked at in January of  
5 last year and today.

6 And as long as I can get some  
7 comfort that this building from a year ago is  
8 95 percent the same, I'm fine with going  
9 forward. But if there are several larger  
10 changes, then I think we should postpone the  
11 setdown. I mean, I don't know how I find that  
12 out.

13 CHAIRMAN HOOD: Let me ask this  
14 question again, Mr. Jesick. You said you had  
15 a revised version which came in November of  
16 '06?

17 MR. JESICK: That's correct.  
18 November of '06.

19 CHAIRMAN HOOD: So we would had to  
20 have had something in front of us more recent  
21 than August of '06. I mean, we dealt with  
22 this in January of '07. So I went back to

1 look, but it was so long ago I don't have it.

2 MS. STEINGASSER: Could I suggest  
3 that for the Commission to be comfortable with  
4 this project, we have a special meeting in two  
5 weeks. We could get additional copies of the  
6 current plan from the applicant and have them  
7 to you. And then you'll have the exact copy  
8 that you are setting down. And we can  
9 consider it on the 24th? And that gives  
10 Commission more comfort.

11 CHAIRMAN HOOD: Yes. I think  
12 that's fine. Because we don't want to set  
13 this down in the blind, unfortunately. Do we  
14 have anything?

15 MS. SCHELLIN: Actually, if we  
16 could get the applicant to provide the updated  
17 plans by the 17th, we can add this to a  
18 special public meeting we already have  
19 scheduled on the 24th at 6:00.

20 CHAIRMAN HOOD: 24th of March?

21 MS. SCHELLIN: Yes. Two weeks.

22 CHAIRMAN HOOD: Okay. Let me just

1 ask this question. Ms. Steingasser, are you  
2 finished? Okay. Good.

3 VICE CHAIRMAN JEFFRIES: Okay.  
4 The DHCD, is the issue about an exclusive  
5 rights agreement or is it funding for the  
6 affordable housing? What's the issue with  
7 DHCD?

8 MS. STEINGASSER: It has to do  
9 with the disposition agreement. And it's now  
10 a year behind its estimated time. And I'm not  
11 sure if the agreement will expire or if  
12 there's going to be a funding penalty but it's  
13 a year late on its timeline. And they're  
14 concerned about not having any action to move  
15 the project.

16 VICE CHAIRMAN JEFFRIES: This is  
17 an exclusive rights agreement or an LDA?

18 MS. STEINGASSER: LDA.

19 VICE CHAIRMAN JEFFRIES: Okay. So  
20 we are a year after the drop dead date. So  
21 this project is effectively what?

22 MS. STEINGASSER: Well, the

1 agreement is still valid with DHCD, but they  
2 have put pressure on the applicant to try to  
3 get some action. To get some movement in the  
4 case.

5 VICE CHAIRMAN JEFFRIES: Okay.  
6 Thank you.

7 CHAIRMAN HOOD: Thank you, Vice  
8 Chair. That goes in line with my question.  
9 Is there a time frame? Will two weeks hurt  
10 this, as far as the request about funding?

11 MS. STEINGASSER: I don't believe  
12 so.

13 CHAIRMAN HOOD: Okay. And even  
14 after that, once we get the current plans in  
15 front of us, is it such a rush that they ask  
16 us to maybe expedite it?

17 MS. STEINGASSER: We have not  
18 gotten any requests for an expedited hearing.

19 CHAIRMAN HOOD: Okay. Because  
20 when I read this subject project and how it  
21 has a timing issue. This is on page 1. With  
22 its funding agreement with the District

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1 Department of Housing and Community  
2 Development. And I know how sometimes things  
3 disappear.

4 So what we'll do, Ms. Schellin,  
5 can you announce again when we're going to  
6 deal with this?

7 MS. SCHELLIN: Again, if the  
8 applicant can provide the updated plans by  
9 Monday, March 17 -- that's one week from today  
10 -- then we can add this to our 6:00 special  
11 public meeting on March 24th. And that would  
12 be two weeks from today.

13 VICE CHAIRMAN JEFFRIES: And if  
14 Office of Planning could also give us  
15 something around the phase 1, that'd be great.  
16 If there's something that you can give us.  
17 Okay. Thank you.

18 CHAIRMAN HOOD: Okay. Thank you.  
19 Let me pause at this time. We have a former  
20 Councilman from the ward in which I live in,  
21 the Honorable Vincent Orange. We want to  
22 welcome him in attendance this evening. It's

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1 good to see you.

2 Okay. Let's move right along with  
3 our agenda. Zoning Commission case number 07-  
4 31, Joseph Young, Ralph Higgs, Jr., and 717-  
5 721 T Street, northwest. This is a map  
6 amendment at square 416.

7 Mr. Jackson? Whoever sits down,  
8 that's usually the person. You know?

9 MR. JACKSON: Yes, Mr. Chair.

10 Good evening, Mr. Chair, members of the  
11 Commission. I am Arthur Jackson, a  
12 Development Review Specialist or the District  
13 of Columbia Office of Planning. And I will  
14 present a brief summary of the Office of  
15 Planning's preliminary report on this  
16 application.

17 Joseph E. Young and other  
18 applicants have filed a petition with the  
19 Office of Zoning, requesting that the Zoning  
20 Commission rezone several lots on square 416  
21 from residential R-4 to commercial light  
22 industrial C-M-1 district or community

1 business center C-2-B with an uptown arts  
2 overlay district.

3 The applicant's statement  
4 indicated that the subject properties were  
5 purchased based on the fact that they were  
6 taxed at a commercial rate.

7 Former certificates of occupancy  
8 for the property also indicated that the  
9 properties had been used for commercial  
10 purposes. However, no new commercial uses can  
11 be established in these buildings because they  
12 are located in an R-4 zone district.

13 Since the composite plan  
14 anticipates low density residential and  
15 moderate density commercial uses on most of  
16 the square, the applicant submitted a petition  
17 in order to change the existing zone district  
18 to one more consistent with the generalized  
19 land use map of the 2006 Comprehensive Plan.

20 The applicant requested a change  
21 to either arts C-2-B or C-M-1. However, the  
22 C-M-1 zone does not allow the residential uses

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1 prescribed in the plan and the arts C-2-B zone  
2 would allow high density development not  
3 proposed on this square.

4 The Office of Planning recommends  
5 C-2-A, also preadvertised, in the alternative  
6 as a more appropriate zone in term of use  
7 intensity, massing, and the transition to the  
8 remaining C-4 neighborhoods to the west.

9 A C-2-A is similarly used along U  
10 Street and Georgia Avenue corridors in small  
11 pockets between higher density C-2-B and R-4  
12 zones. Although the regulations refer to  
13 medium proportions in C-2-A, allowable FAR  
14 ratios of 1.5 to 2.5 are consistent with low  
15 to moderate density land uses.

16 Two issues were raised by this  
17 petition. The plat that associated the  
18 application shows a ten foot wide alley  
19 between the subject properties and the CVS  
20 pharmacy. However, DC land records indicates  
21 this former alley is now tax lot 801.

22 In either case, Office of Planning

1 recommends adding this tax lot to the petition  
2 in order to create a continuous mixed use  
3 residential and commercial zone along the T  
4 Street frontage of the square.

5 This request also does not include  
6 all the lots in this quadrant of the square.  
7 At OP's request, the applicant's delivered  
8 information about this proposal to the  
9 remaining lots in the R-4 district on the east  
10 side of 8th Street, Northwest.

11 Verbal responses from three  
12 property owners did not object to this  
13 rezoning. However, no property owners joined  
14 this petition.

15 The zone change would also support  
16 a number of the policies that have been  
17 planned by encouraging the reuse of the  
18 existing, underutilized, low intensity  
19 commercial buildings. And by allowing for  
20 future mixtures development while lending the  
21 potential density so that it would step down  
22 from the high density commercial anticipated

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1 along Georgia Avenue toward the surrounding  
2 moderate density residential neighborhoods.

3 Based on this information, the  
4 Office of Planning recommends scheduling this  
5 application for public hearing for a map  
6 amendment for the subject properties and tax  
7 map 801 to arts C-2-B and C-2-A in the  
8 alternative.

9 Office of Planning recommends  
10 against setting down C-M-1 for a public  
11 hearing.

12 This concludes my summary of the  
13 Office of Planning's preliminary report of  
14 this application and we're available to answer  
15 questions.

16 CHAIRMAN HOOD: Okay. Thank you,  
17 Mr. Jackson.

18 Colleagues, do we have any  
19 questions? Commissioner May?

20 COMMISSIONER MAY: Yes. In your  
21 report, you write that the Comprehensive Plan  
22 designation anticipates low density commercial

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1 use, but when we look at the future land use  
2 map that you include in the report, the plan  
3 designation is a mixture of moderate density  
4 residential and moderate density commercial.  
5 Right?

6 MR. JACKSON: Yes. I'm afraid  
7 that arrow was pointing at the wrong area. On  
8 that larger map you see that on the square,  
9 there's a higher density corner. It's  
10 probably difficult to see, but in the  
11 northwest corner of the square, there's  
12 another land use pattern that comes across.

13 COMMISSIONER MAY: Yes. I see.  
14 It's slightly darker.

15 MR. JACKSON: Yes. That's  
16 moderate and moderate. The other pattern  
17 that's on the majority of the square is a low  
18 density residential and moderate density  
19 commercial.

20 COMMISSIONER MAY: Low density  
21 residential?

22 MR. JACKSON: Yes.

1                   COMMISSIONER MAY: Okay. And  
2 what's low density residential, in terms of  
3 zones?

4                   MR. JACKSON: Well, it can include  
5 all four.

6                   COMMISSIONER MAY: At the high  
7 end?

8                   MR. JACKSON: Yes.

9                   COMMISSIONER MAY: I guess that's  
10 it for my questions. I'll have things to  
11 discuss with my fellow Commissioners.

12                  CHAIRMAN HOOD: Do we have any  
13 other questions? Okay.

14                  VICE CHAIRMAN JEFFRIES: I have a  
15 question. So what about the lot 801? What's  
16 the game plan for 801?

17                  MR. JACKSON: Well, this is a  
18 unique circumstance. We have a lot, an area  
19 that's shown as an alley on the survey that  
20 was submitted with the application. But the  
21 tax records show it as being a parcel.

22                  We also have back records that

1 show that portions of this alley have been cut  
2 off and added to the properties to the north.

3 So we would think because this lot  
4 sits here, it separates the proposed area for  
5 rezoning from the other commercial space. So  
6 the issue is, if this was to be rezoned --  
7 these series of lots -- it would still have a  
8 very narrow, ten foot wide residential slot  
9 between two commercial designations, which  
10 makes no sense. You really couldn't develop  
11 them for residential use. So it behooves us  
12 to recommend that this lot be included in this  
13 petition.

14 VICE CHAIRMAN JEFFRIES: So this  
15 is in square 416, right?

16 MR. JACKSON: Yes.

17 VICE CHAIRMAN JEFFRIES: So lots  
18 24, 25, 26, 27, A21, A22, as well at lot 801?

19 MR. JACKSON: Yes. At a minimum.

20 VICE CHAIRMAN JEFFRIES: Okay.

21 MS. STEINGASSER: And if I could  
22 add a little bit, one thing we want to assure

1 the Commission is this was indeed plotted as  
2 a private alley. It is no longer used as an  
3 alley. The northern half is part of the WMATA  
4 site and it was taken during the land assembly  
5 for WMATA and they own the north part of the  
6 site. And then the four residential row  
7 houses to the north have fenced off that part.  
8 So it's just the 801 parcel that remains  
9 against the commercial properties.

10 And before we conclude our  
11 presentation, I do want to make clear, these  
12 buildings were built for commercial purposes.  
13 They are not converted row houses. And it's  
14 very clear when you see them that they don't  
15 have the residential in and out. The windows,  
16 the doors, everything. They are old  
17 commercial structures.

18 COMMISSIONER MAY: When was the  
19 last time they were actually used? I mean,  
20 are some of them actually being used now for  
21 commercial purposes? Because all CFOs that  
22 were in the file here look pretty old. Those

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1 that have dates are pretty old.

2 MR. JACKSON: During my site  
3 visit, there appeared to be signs in the  
4 windows, but I couldn't tell if there was any  
5 activity.

6 COMMISSIONER MAY: So we don't  
7 know whether there's actually any commercial  
8 activity going on?

9 MR. JACKSON: I can't say for  
10 sure.

11 COMMISSIONER MAY: But if there  
12 had been commercial activity going on in the  
13 last three years --

14 MR. JACKSON: It could be  
15 continuation of a nonconforming use.

16 COMMISSIONER MAY: Right. But we  
17 don't know for a fact that we have that issue  
18 either way?

19 MR. JACKSON: Well, the original  
20 proposal from the applicant was that they were  
21 going to apply for a series of use variances  
22 so they could make the investment to really

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1 establish these buildings to be sufficient.

2 If you look at the aerial  
3 photographs that were provided in the  
4 application, the buildings are serviceable but  
5 they're not by any means state of the art.

6 And I think the applicant having  
7 acquired the property is really interested in  
8 raising the property to a level where it is  
9 competitive and actually contributes to the  
10 revitalization that's going on along Florida  
11 Avenue and Georgia.

12 Having made the initial  
13 investment, they wanted to proceed as far as  
14 they could with making the properties  
15 appropriate. But of course, any major  
16 investment in a property that is not  
17 conforming could be foolhardy.

18 So they originally applied, or  
19 tried to move forward with seeking variances.  
20 But given the state of the Comprehensive Plan  
21 and the designations, I think it was prudent  
22 for them to move forward with this option of

1 trying to bring the property in conformance  
2 with the plan and thereby make the zoning  
3 sufficient for them to move forward with  
4 actual renovations and improvements.

5 COMMISSIONER MAY: Okay. That's  
6 it for my questions.

7 CHAIRMAN HOOD: Okay. Any other  
8 questions? Okay.

9 VICE CHAIRMAN JEFFRIES: Mr.  
10 Chair, I just make a motion that we setdown  
11 Zoning Commission case number 07-31. A  
12 proposed zoning map amendment from R-4 to arts  
13 C-2-B, with C-2-A in the alternative. And  
14 that is for lots 24, 25, 26, 27, A21, A22, as  
15 well as lot 801 in square 416.

16 CHAIRMAN HOOD: Okay. All right.  
17 I think we've added the lot, colleagues. 801.  
18 And also, I think Vice Chair Jeffries' motion  
19 is also including setting both down C-2-A, as  
20 well as C-2-B.

21 Okay. Is there a second? I  
22 second it. Any further discussion?

1 COMMISSIONER MAY: Yes.

2 CHAIRMAN HOOD: Commissioner May?

3 COMMISSIONER MAY: Yes. I have  
4 decided that just looking at this on the face,  
5 in terms of the map, in terms of even the  
6 comprehensive land use map or future land use  
7 map, I don't see a very strong case that these  
8 properties really need to have a commercial  
9 future.

10 When you look at the way the map  
11 is laid out and the way they always told me in  
12 school doing zoning, is that you don't draw  
13 the line for zoning at the face of the  
14 building. You draw it down the middle of the  
15 alley so that the buildings that you're facing  
16 are residential.

17 And so this is the corner of a  
18 residential zone and we're essentially going  
19 to take that corner and we're going to convert  
20 it to commercial. Now, I know it's been  
21 commercial. I understand that and I  
22 understand that's what the history has been.

1 But that's why I asked the question about the  
2 continuity of use

3 Just because it had been used for  
4 that purpose doesn't really mean that really  
5 should be in perpetuity. And when things fall  
6 out of that kind of use, that's why the  
7 nonconforming use will lapse.

8 So I have to say that I'm really  
9 not in favor of setting this down. And it  
10 would take a good argument to convince me that  
11 this is the right thing to do. I'm not going  
12 to predict clearly what my decision making  
13 will be, but I think that there's a big test  
14 to be made here. And I'm not in favor.

15 VICE CHAIRMAN JEFFRIES: Yes. For  
16 me what's compelling is that I believe this  
17 area -- and OP, correct me if I'm wrong -- I  
18 mean this is part of the uptown destination  
19 district.

20 And I think that the push was  
21 clearly for a mixed use development that was  
22 supposed to really be a major draw for

1 entertainment and so forth.

2 And so from my review of this  
3 application, in order to really forward that  
4 overlay district, that we really needed to get  
5 as much upzoning as possible. So that's why  
6 I'm supportive of this. And that I think we  
7 should go forward and set it down.

8 COMMISSIONER MAY: Would the  
9 Commission entertain the possibility that we  
10 only set down C-2-A and not C-2-B? Because C-  
11 2-A is sort of the commercial equivalent of R-  
12 4 in my mind. I mean, I think C-2-A and R-4  
13 go well together, particularly in small sites  
14 where there isn't going to be a PUD that's  
15 going to make the building a lot larger.

16 VICE CHAIRMAN JEFFRIES: We're  
17 just having a hearing.

18 COMMISSIONER MAY: I understand.

19 VICE CHAIRMAN JEFFRIES: We'll  
20 hear them out and, I think we should allow the  
21 applicant the flexibility to present the case.

22 COMMISSIONER MAY: Okay. I tried

1 to find a way to vote for it.

2 VICE CHAIRMAN JEFFRIES: That's  
3 all right.

4 CHAIRMAN HOOD: I think as we  
5 start getting to the question of intensities,  
6 and plus we have a proxy anyway. So I think  
7 this time you may be out there by yourself.

8 I've been there. Trust me. I'm  
9 actually there quite a bit.

10 VICE CHAIRMAN JEFFRIES: We've all  
11 had that experience.

12 CHAIRMAN HOOD: Any further  
13 discussion? All those in favor? Any  
14 opposition.

15 COMMISSIONER MAY: Opposed.

16 CHAIRMAN HOOD: So ordered.  
17 staff, would you record the vote, and include  
18 the proxy.

19 MS. SCHELLIN: Staff records the  
20 vote four to one to zero to set down Zoning  
21 Commission case number 07-31. Commissioner  
22 Jeffries moving, Commissioner Hood seconding,

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1 Commissioners Turnbull and Etherly in favor.  
2 Commissioner Turnbull in favor by absentee  
3 ballot and Commissioner May opposed. And this  
4 is being setdown as a contested case.

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

7 Let me give you a minute and we'll  
8 go to our proposed action. And we're going to  
9 take B first because we've already moved A to  
10 final action as B.

11 Okay. Anyway, Zoning Commission  
12 case number 07-25, Scott Whittier, et al, map  
13 amendment at square 2794. Ms. Schellin?

14 MS. SCHELLIN: Our staff has  
15 nothing further to add.

16 CHAIRMAN HOOD: Okay. Again,  
17 colleagues, this was a case in front of us  
18 where we looked at it and we thought R-5-A was  
19 too restrictive and the applicant asked us to  
20 rezone to R-5-C. We asked them look at R-5-B.

21 So in their submissions, if you  
22 look at page 2. It talks about examples. The

1 petition explains why rezoning the property to  
2 R-5-C district was necessary, rather than the  
3 R-5-B.

4 And they list some bullet points.  
5 Exactly. Case in point, "The square includes  
6 buildings exceed 50 feet height limitations."  
7 I'm not going to sit here and read it to you.  
8 We've already read it.

9 So I guess what I'll do at this  
10 point is just open it up for discussion. I'm  
11 not picking on Commissioner May tonight, but  
12 I noticed in our wrap-up, he talked about the  
13 size of other buildings inside the square.

14 I asked about the support from the  
15 other property owners. And I think this is  
16 Mr. Rice's case because he sat down.

17 And then I know we had different  
18 questions and a lot of stuff was answered and  
19 flushed out through the hearing process.

20 I will tell you, the one thing  
21 that I noticed that really sticks out is the  
22 direction to the applicant to provide a

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1 written submission explaining why R-5-B would  
2 not work and asked OP to prepare a broader  
3 study showing the inconsistencies in a larger  
4 area.

5 Okay. So we did get a letter of  
6 support. Actually, someone changed their  
7 position.

8 VICE CHAIRMAN JEFFRIES: Yes. Ms.  
9 Braxton.

10 CHAIRMAN HOOD: Ms. Braxton?

11 VICE CHAIRMAN JEFFRIES: Yes.

12 CHAIRMAN HOOD: And she was here,  
13 if I remember correctly, in opposition. Very  
14 much so. And I thought she had a very  
15 compelling case. I guess after she was able  
16 to meet with them after, she changed her  
17 position. And she notes that in her letter,  
18 dated February 14th.

19 VICE CHAIRMAN JEFFRIES: Mr.  
20 Chair, these consistency cases just drive me  
21 crazy. And I think by now Office of Planning  
22 and my fellow Commissioners know that. God,

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1 it always seems that the Office of Planning  
2 should bring these cases before us because  
3 it's really addressing a consistency need.

4 That is it's not driven by a  
5 particular project or the needs of a project,  
6 but more out of supporting the 2006  
7 Comprehensive Plan, and so forth, and so on.  
8 And I know that case has been made that the  
9 applicant has made that case here.

10 And I don't know if fellow  
11 Commissioners if you have the pre-hearing  
12 statement from back in January in Tab C and  
13 you just look at the geographical boundaries.  
14 It's tough.

15 I clearly understand why the  
16 developer brought this case before us. I  
17 mean, they're trying to secure additional  
18 height to satisfy setback and lot occupancy  
19 and also address inclusionary zoning, which  
20 came from us. So I clearly am sympathetic  
21 towards that.

22 I guess I'm sort of at a place

1 where, for me this is probably just a larger  
2 issue than this particular application. But  
3 I'm prepared to move forward.

4 CHAIRMAN HOOD: Okay. I want to  
5 make sure I understand, Vice Chair. Are you  
6 saying it should be more area that we look at?  
7 I'm trying to make sure I understand.

8 VICE CHAIRMAN JEFFRIES: If you  
9 look at the zoning map, it just looks as if  
10 we're carving out that little area within a  
11 huge R-5-A zone for R-5-C. And even if they  
12 said R-5-B, And that's partially why I'm  
13 indifferent at this point, is whether it's R-  
14 5-B or C, it still looks like it's being  
15 forced.

16 I clearly understand that a good  
17 portion of this area is bounded by Missouri  
18 Avenue, which is a higher density. But, it  
19 just seems like it's being carved out and  
20 somewhat intentionally.

21 And again, like we're always  
22 looking for in these consistency cases, you

1 just want to see something that looks somewhat  
2 reasonable. And this doesn't seem reasonable.  
3 But again, because of this applicant and what  
4 they're trying to do, I am willing to go  
5 forward with this.

6 Based on the issues that they're  
7 having, I think they're doing an R-5-B is  
8 going to be a bit of a hardship for anyone in  
9 this particular area to do any improvements  
10 and so forth to their property.

11 I guess my point is, you can make  
12 this argument nearly any place in the  
13 district. I mean, we could get into a  
14 situation where we're always reviewing.  
15 There's always something going on in your  
16 particular area.

17 Where I live, there are a number  
18 of nonconforming buildings. And, what's  
19 stopping anyone from coming forward and  
20 saying, "Well, listen. We should do a map  
21 amendment. We need a consistency case. You  
22 know, we have this stretch."

1                   And so my issue is a little larger  
2 than just this case. Again, I'm willing to go  
3 forward.

4                   CHAIRMAN HOOD: But I think it's  
5 still worth the discussion. Ms. Steingasser  
6 or Mr. Rice, you've heard my colleagues'  
7 comments. Could you comment on that?

8                   MS. STEINGASSER: I could. And  
9 maybe at the next meeting we can have a non-  
10 project based discussion of what is a  
11 Comprehensive Plan consistency case?

12                   Because it's not zoning that's  
13 consistent with the built environment. It's  
14 bringing zoning that is not consistent with  
15 the Comp. Plan into consistency with the Comp.  
16 Plan. And it's looking for more of the future  
17 development. That's why we refer to the  
18 generalized land use map and the policy map.

19                   So, in some cases the Comp. Plan  
20 calls for stabilization of a neighborhood,  
21 such as some other cases that are before the  
22 Commission. And in this particular case, it

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1 calls for allowing future development of a  
2 higher density.

3 As we're currently rewriting the  
4 zoning regulations, are not in a position to  
5 go through the Comp. Plan and do a major  
6 consistency initiative of all the areas.

7 What we have agreed with is when  
8 people feel they have a project that has  
9 financial or other kind of contractual  
10 constraints, that with the support of the ANC,  
11 we can move them in smaller doses.

12 But after we plan after we  
13 complete the rewrite of zoning regs, that we  
14 will be coming back and going through major  
15 rezoning initiatives, like you're seeing in  
16 Wards 7 and 8, where we've taken a much more  
17 holistic approach.

18 We just don't have the manpower or  
19 the time to do it in combination with the  
20 zoning rewrites. So it's consequential to it.  
21 But in these cases, we've encouraged people  
22 who do have these properties that they need

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1 for some reason or other to get rezoned if it  
2 is consistent with the Comp. Plan and there is  
3 community support, that we will be bringing  
4 them to you.

5 VICE CHAIRMAN JEFFRIES: I  
6 understand that, Ms. Steingasser. And I  
7 appreciate that. I think that's my issue.  
8 I'm being a purist around this whole notion of  
9 consistency and so forth.

10 But it's a pure exercise of we  
11 really need to make the adjustments. And I  
12 understand the whole notion of future  
13 development. So, yes.

14 Mr. Chair, in terms of Ms.  
15 Steingasser made the suggestion about -- I  
16 don't know how you want to go forward on that  
17 or not, but --

18 CHAIRMAN HOOD: Well, I think,  
19 speaking of being consistent, I think Ms.  
20 Steingasser had mentioned that some months  
21 back that that was the issue. So I want to  
22 thank you for being consistent.

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1                   But I am ready to move forward  
2 with this. Actually, she used basically the  
3 same language that she told us the last time.  
4 I think that the former Chair talked about  
5 this. So let me do this. Commissioner May?

6                   COMMISSIONER MAY: Yes. I just  
7 want to say that I concur with Commissioner  
8 Jeffries' sort of uneasiness about moving  
9 ahead in this case.

10                  I think I'm prepared to move  
11 ahead, but it doesn't feel right when we're  
12 sort of carving out these set of parcels from  
13 within a zone and rezoning it because it's  
14 inconsistent with the map. And I don't know  
15 how long it's been inconsistent with the map.  
16 I don't think it's been inconsistent that  
17 long. But it just doesn't feel right kind of  
18 approaching it in this piecemeal kind of  
19 fashion because it doesn't feel like it's  
20 being driven by planning so much as it's being  
21 driven by a specific project or specific needs  
22 of a property owner.

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1                   And so I don't feel great about  
2                   doing it. But I guess since we don't have a  
3                   significant contingent of neighbors who are  
4                   opposed or citizens groups who are concerned  
5                   about the same issues, since it's not  
6                   inconsistent with the Comprehensive Plan, then  
7                   I think I'm comfortable enough with going  
8                   ahead.

9                   VICE CHAIRMAN JEFFRIES: Yes. Ms.  
10                  Braxton took the wind out of my sail after I  
11                  read her letter. So I'm like, "Okay. Okay."

12                  You know, I was going to sort of  
13                  ride her coattail here. But clearly again, I  
14                  don't feel that the applicant should be harmed  
15                  over somewhat of a structural issue or  
16                  resource issues for Office of Planning.

17                  Obviously, this is something that  
18                  Office of Planning would put forward if they  
19                  had the time and the manpower to do a pure map  
20                  amendment of this area as well as several  
21                  other areas. But it shouldn't hold up this  
22                  applicant.

1                   CHAIRMAN HOOD: I would agree with  
2 everything I've heard. And I would also agree  
3 with the concern that I've heard from my two  
4 colleagues. But I think we were told, those  
5 of us who were here, Commissioner May and Mr.  
6 Jeffries, we were told far in advance.

7                   And, again, I want to commend Ms.  
8 Steingasser with being consistent. Because  
9 when she started talking, I remember us having  
10 this conversation about how things would be  
11 brought to us because of the zoning rewriting  
12 and other things that were going on.

13                   So with that, I would approve  
14 Zoning Commission case number 07-25, square  
15 2794, lots 18, 19, 877, 879, 895, 8995, 2002  
16 through 2047 site from the R-5-A district,  
17 moderate density residential to the R-5-C  
18 district, medium density residential. And I  
19 ask for a second.

20                   COMMISSIONER ETHERLY: Second, Mr.  
21 Chair.

22                   CHAIRMAN HOOD: Moved and properly

1 seconded. Any further discussion?

2 All those in favor? Any  
3 opposition? I'm hearing none. So ordered.

4 Staff, would you record the vote  
5 and the proxy?

6 MS. SCHELLIN: Staff records the  
7 vote five to zero to zero to approve the  
8 Zoning Commission case number 07-25 for  
9 proposed action. Commissioner Hood moving,  
10 Commissioner Etherly seconding, Commissioner  
11 Jeffries and May in favor, and Commissioner  
12 Turnbull in favor by absentee ballot.

13 CHAIRMAN HOOD: Give Ms. Schellin  
14 and myself a chance to catch up.

15 The next proposed action item is  
16 Zoning Commission case number 05-15A. This is  
17 the Broadway I Associated PUD modification at  
18 318 I Street, northeast. Ms. Schellin?

19 MS. SCHELLIN: The Commission has  
20 before it some additional filing that was  
21 requested and this case is up for proposed  
22 action.

1 CHAIRMAN HOOD: We have a proposed  
2 findings of fact, but Mr. Etherly, would you  
3 like to comment on the ANC?

4 COMMISSIONER ETHERLY: No further  
5 comment from me, Mr. Chair. I'd like to go  
6 forward.

7 CHAIRMAN HOOD: Thought maybe you  
8 wanted to comment on the ANC letter.

9 Okay. Colleagues, if you remember  
10 this case, this is a PUD modification. Mr.  
11 Esocoff was an expert witness in architecture.

12 Was this one of the late night  
13 cases? I'm not sure.

14 All right. Hopefully everybody  
15 remembers their issues. I encourage Mr. Mully  
16 to work through the ANC and I believe that  
17 took place -- I'm not sure if he has any  
18 additional comments.

19 But anyway, we have the order in  
20 front of us. I saw one area in this proposed  
21 order.

22 Okay. Let me open it up for

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1 comments. If not, I will obtain a motion. If  
2 nobody doesn't have any concerns.

3 VICE CHAIRMAN JEFFRIES:

4 Commissioner May, I thought you had a couple  
5 of roof embellishment or design issues?

6 COMMISSIONER MAY: I had an issue  
7 with the north side. With the roof needing to  
8 step down to the neighbor next door. I think  
9 that was one issue.

10 I wasn't entirely comfortable with  
11 the alley situation. But all things  
12 considered, I'm not entirely uncomfortable  
13 with this.

14 CHAIRMAN HOOD: I have in my  
15 notes, did we look at the bicycle plan? Why  
16 do I have that written down? I can't even  
17 read my own writing.

18 COMMISSIONER MAY: We talked a  
19 little bit about bicycles, but I think that  
20 got answered.

21 CHAIRMAN HOOD: Okay.

22 COMMISSIONER MAY: What I had a

1 problem with on the roof structure was the  
2 sort of arcade, if you will, on the roof deck.  
3 As far as I can tell, I didn't see a revision  
4 to that at all.

5 VICE CHAIRMAN JEFFRIES: It  
6 doesn't seem as if we requested that they --  
7 there were a couple of requests for  
8 submissions and responses. But beyond that,  
9 it didn't seem like anything rose to the level  
10 of requiring new drawings or anything of that  
11 sort.

12 So, Mr. Chair, I'm ready to just  
13 make a motion that we approve this. So I'd  
14 like to make a motion that we approve on the  
15 proposed actions on the Zoning Commission case  
16 number 05-15A, Broadway I Associates. That's  
17 a PUD modification at 318 I Street, Northeast.

18 COMMISSIONER ETHERLY: Second, Mr.  
19 Chair.

20 CHAIRMAN HOOD: Any further  
21 discussion? Wasn't this the case where we  
22 talked about the shadow? I'm trying to

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1 remember. We talked about height and how you  
2 look at the line, I think it was.

3 COMMISSIONER MAY: Well, this is  
4 again, because it's a modification, we sort of  
5 cleared the basic hurdles about the building.  
6 And at this point, it was just dealing with  
7 the modifications that were submitted.

8 CHAIRMAN HOOD: Right. I just  
9 wanted to make sure that we covered all the  
10 issues. I really didn't have any, but you  
11 know what? I'm going to stop grasping and  
12 trying to figure out what they were.

13 VICE CHAIRMAN JEFFRIES: This is a  
14 modification.

15 CHAIRMAN HOOD: Because if we  
16 don't bring them up now --

17 VICE CHAIRMAN JEFFRIES: It's a  
18 modification.

19 CHAIRMAN HOOD: All right. But we  
20 just try to make sure we cover everything.

21 COMMISSIONER MAY: I think there  
22 were just a lot of things that I was talking

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1 with the architect about. I didn't get enough  
2 support for some of my suggestions, I think,  
3 to get to the point where anything got  
4 modified. But it also wasn't that strongly  
5 felt.

6 CHAIRMAN HOOD: So you didn't get  
7 the support at the hearing? All right.

8 COMMISSIONER MAY: Because  
9 sometimes I'm out there on my own.

10 CHAIRMAN HOOD: I only do this  
11 because I think it's good for us to flush out  
12 and make sure we got everything before we take  
13 a final vote. But anyway, any further  
14 discussion? All those in favor? Any  
15 opposition? None.

16 So ordered. Staff, would you  
17 record the vote and the proxy?

18 MS. SCHELLIN: Yes. Staff records  
19 the vote five to zero to zero to approve  
20 Zoning Commission case number 05-15A for  
21 proposed action. Commissioner Jeffries  
22 moving, Commissioner Etherly seconding,

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1 Commissioners Hood and May in favor, and  
2 Commissioner Turnbull in favor by absentee  
3 ballot.

4 CHAIRMAN HOOD: Okay. Next we're  
5 going to go into final action. Zoning  
6 Commission case number 07-28. This is  
7 Office of Planning text amendment to 701.4(bb)  
8 and 721.3(u). Ms. Schellin?

9 MS. SCHELLIN: The staff has  
10 nothing further.

11 CHAIRMAN HOOD: Okay. The only  
12 thing I would add is that the National Capital  
13 Planning Commission wrote that they reviewed  
14 the proposed text amendments to the zoning  
15 regulations regarding prepared food shops and  
16 fast food establishments in square 5912 and  
17 found that the amendments would not be  
18 inconsistent with the Comprehensive Plan for  
19 the National Capital, nor would they have any  
20 adverse impact on any federal interest.

21 And again, I want to thank the  
22 Office of Planning for when we first did this,

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1 they said that if there were any issues, they  
2 would come right back. And here's an instance  
3 where they came right back for us to make a  
4 few corrections to the regulations.

5 So any other comments? With that,  
6 I would approve Zoning Commission case number  
7 07-28 as amended and ask for a second.

8 VICE CHAIRMAN JEFFRIES: Second.

9 CHAIRMAN HOOD: Moved and properly  
10 seconded. Any further discussion?

11 All those in favor? Any  
12 opposition? So ordered.

13 Staff, would you record the vote  
14 with the proxy?

15 MS. SCHELLIN: Yes. Staff records  
16 that five to zero to zero to approve final  
17 action in Zoning Commission Case 07-28.  
18 Commissioner Hood moving, Commissioner  
19 Jeffries seconding, Commissioners Etherly and  
20 May in favor, Commissioner Turnbull in favor  
21 by absentee ballot.

22 CHAIRMAN HOOD: All right. Our

1 next case under final action is Zoning  
2 Commission case number 07-32, NJA Associates,  
3 LLC, CJ Overlay Review, 1111 New Jersey  
4 Avenue, Southeast. Ms. Schellin?

5 MS. SCHELLIN: Just to advise that  
6 we did receive a DDOT report at approximately  
7 5:30 this afternoon that you have in addition  
8 to all the other documents.

9 CHAIRMAN HOOD: Thank you, Ms.  
10 Schellin. I think that if my colleagues will  
11 recall, there were some issues about use of  
12 the alley, New Jersey, M Street, and others,  
13 that whole conversation. And DDOT sent their  
14 response with the issue today, as Ms. Schellin  
15 has already stated, at 5:30.

16 It said, "DDOT feels that the  
17 alley remains a workable solution for serving  
18 the property access needs through careful  
19 design."

20 And then it says, "However, for  
21 the design to be sufficient, the alley must be  
22 widened to a minimum of 20 feet."

1                   Then it goes on to say, "DDOT is  
2 willing to permit a curb cut on New Jersey  
3 Avenue."

4                   But I think what's most important  
5 out of this whole discussion -- because I  
6 think that was a stickler for me -- was that  
7 DDOT maintains its reservation about  
8 introducing another conflict point for  
9 pedestrian and negatively impacting the  
10 streetscape.

11                   But it says, "In order to mitigate  
12 these issues, DDOT will require the applicants  
13 to work with our Transportation Planning and  
14 Policy Administration.

15                   But as you recall, the legal  
16 counsel for the applicant asked us to give  
17 them the flexibility. And at this late time  
18 at 5:30, for me to get this at 5:30, even  
19 though it's still kind of loomed to that, I  
20 think that's the fashion in which this  
21 Commission should move and to give the  
22 applicant flexibility and leave it to DDOT and

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1 let them sign off on it.

2 VICE CHAIRMAN JEFFRIES: Because  
3 quite frankly, Mr. Chair, I think we had this  
4 discussion before. That even if this  
5 Commission said that it was fine to have the  
6 curb cut at New Jersey Avenue and then the  
7 applicant then is not able to get a permit,  
8 the applicant is going to be back here.

9 So I think that we should allow  
10 for flexibility so that the applicant can move  
11 forward with their project.

12 CHAIRMAN HOOD: Thank you. And  
13 also, I think someone requested some rèsumès.  
14 I thought we had Lindsley Williams' rèsumé.  
15 But anyway, Chris Kabatt, we got his rèsumé.  
16 And also, I asked for the LEED checklist. So  
17 we have those things and I will now open it up  
18 for discussion. Commissioner May?

19 COMMISSIONER MAY: Yes. I'm  
20 inclined to go along with the idea of  
21 flexibility.

22 I would frankly rather have the

1 access to the garage resolved here and now  
2 than to leave it up in the air and to be  
3 resolved, but we're kind of on the spot where  
4 this is the best that we can do.

5 We still leave the door open for  
6 DDOT not to agree by giving it the flexibility  
7 and not saying, "Yes. It should be this way  
8 or it should be that." You know what I mean?

9 CHAIRMAN HOOD: DDOT's going to  
10 have to sign off on it.

11 COMMISSIONER MAY: I know.

12 CHAIRMAN HOOD: Even if we agree  
13 to something and we say put it through, use  
14 through the alley or whatever we may say if  
15 the applicant goes and works with DDOT and  
16 DDOT says, "I'm not signing off on it." They  
17 might have to turn around and come back and  
18 we'll have another hearing.

19 I know you like to have hearings.  
20 So we'll have another one.

21 COMMISSIONER MAY: No, you know,  
22 I'd like to have certainty on this. And I

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1 don't think that DDOT, for the sake of their  
2 principle on this matter would make the  
3 applicant come back again at some later date  
4 if we had decided one direction to the other.

5 The problem is at this moment what  
6 we're presented with is an either or. And I'm  
7 comfortable enough going ahead with that. I  
8 know what the better solution is and I would  
9 be happy if we were faced with just that and  
10 that DDOT had signed off on it.

11 What we have instead is that DDOT  
12 thinks it's okay. I guess that's as good as  
13 we're going to get.

14 CHAIRMAN HOOD: I'd like to hear  
15 your solution.

16 COMMISSIONER MAY: I think the  
17 alley solution is terrible for this building.  
18 I think that DDOT is wasting peoples' time by  
19 proposing it.

20 VICE CHAIRMAN JEFFRIES: Even with  
21 the 20 foot width requirement that they're  
22 putting on it?

1                   COMMISSIONER MAY: Well, the  
2 problem with the 20 foot requirement is that  
3 that eats out space from the applicant's  
4 building.

5                   VICE CHAIRMAN JEFFRIES: Yes.

6                   COMMISSIONER MAY: The time to  
7 have that discussion would have been a long  
8 time ago. Not now. So, they've done that on  
9 other buildings and that works fine in other  
10 buildings, but it's part of their planning  
11 from the beginning.

12                   You know, even with the 20 foot  
13 alley, I think we still had a grade issue that  
14 makes it a very long run to the garage. And  
15 you have this sort of blind corner situation  
16 and people having to drive down the left side  
17 of the ramp. And you're not going to fix that  
18 with a 20 foot alley. You're just going to  
19 have a little more room in which to have  
20 accidents.

21                   VICE CHAIRMAN JEFFRIES: Well, I  
22 think this is the second case. Maybe this is

1 the first case. I know we had another case  
2 afterwards that talked about really making the  
3 alley or the network of alleys fairly use  
4 intensive.

5 And I think, Commissioner May, I  
6 triggered you, in terms of we need to have an  
7 understanding about exactly how DDOT is going  
8 to -- the practicality of this, how this is  
9 going to work going forward.

10 I think there's a lot of  
11 institutional issues. I mean with DDOT and  
12 then the Zoning Commission. And I just don't  
13 think it's fair that we would have the  
14 applicant get in between that. You know, that  
15 we're fighting back and forth. And maybe I  
16 shouldn't say fighting, but having outward  
17 disagreements.

18 I just think that it is better  
19 that we allow this applicant flexibility to go  
20 forward. And I would agree with you, I don't  
21 think the alley works. At least I haven't  
22 seen anything to get me comfortable that it

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1 works.

2 But I'm also in a position that if  
3 that is in fact what is decided, I'm going to  
4 hope for the best.

5 But I think you're no different  
6 than any of us. We'd all like for something  
7 to be finalized. But at this point, it seems  
8 as if we're going to slow down this applicant.  
9 And I don't think that's fair.

10 COMMISSIONER MAY: Right. I'm not  
11 suggesting that we would not move forward  
12 today or that we not grant them the  
13 flexibility. I think that's what we're faced  
14 with. I just think that it would be better if  
15 what we we're voting for was the New Jersey  
16 Avenue access. You know, as difficult as that  
17 is, I think in this case it's unavoidable.

18 And I'm a big fan of alley access  
19 to garages to begin with. But this is what  
20 we've got and we'll go ahead with it. And I  
21 just hope that next time around, DDOT thinks  
22 this through a little more before it gets to

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1 us.

2 VICE CHAIRMAN JEFFRIES: And  
3 Office of Planning knows I'm a strong  
4 proponent of pedestrian friendly walkways and  
5 corridors and so forth. So I would love for  
6 the alley to work as well. I just have not  
7 seen anything that makes it a compelling  
8 argument. So I think we'll see.

9 CHAIRMAN HOOD: And again, we  
10 depend upon, at least I do, the subject matter  
11 experts when it comes to these things. And I  
12 would agree with your comments, Commissioner  
13 May. Again, as I stated at the hearing, I  
14 don't like to have my hands tied. I really  
15 don't. I don't like to be put in a situation.

16 The time for them to even give us  
17 the letter they gave us then was then. It  
18 didn't happen. I'm not going to punish this  
19 applicant. But maybe before final -- I  
20 probably shouldn't even say this because I  
21 don't know what may happen. It would be nice  
22 to know.

1                   Oh. This is final? That's right.  
2                   You know what? We got one vote and we've  
3                   already moved and had discussion. So we are  
4                   where we are.

5                   COMMISSIONER MAY: This is final  
6                   because it's an overlay and we only get one  
7                   vote.

8                   CHAIRMAN HOOD: Right. Yes. I  
9                   figured that out when we moved it. Somebody  
10                  made a motion. Nobody made a motion? Okay.  
11                  Well, let me keep talking then.

12                  But again, I don't think it's  
13                  right for us to punish this applicant. I  
14                  would like to see it down to the point. But  
15                  I think to my initial thought, Commissioner  
16                  May, you asked for something at this hearing,  
17                  I think this was hearing, about use of the  
18                  alley. I don't know whether that comes from  
19                  DDOT. And I'm not sure exactly.

20                  Do you remember what; it's the way  
21                  phrased that? You asked OP to work with DDOT  
22                  to give us, I guess, a general analysis on

1 how these alleys are going to be used.

2 COMMISSIONER MAY: Yes. That was  
3 a different case. We asked for a level of  
4 service analysis for the alley.

5 CHAIRMAN HOOD: Yes, we still need  
6 it. This is another example, as far as I'm  
7 concerned.

8 COMMISSIONER MAY: Right. I was  
9 thinking about this one I think when I made  
10 that comment.

11 VICE CHAIRMAN JEFFRIES: I'd like  
12 to make motion under final action --

13 CHAIRMAN HOOD: Okay. I'm trying  
14 to make a point here. I mean, we're starting  
15 to see a lot of these. And I would just ask  
16 the Office of Planning to maybe help us get  
17 that when we're dealing with these alleys  
18 because this situation is even worse than the  
19 other one, Commissioner May. I don't know if  
20 you would agree with me, but I think it is.

21 COMMISSIONER MAY: I agree.

22 CHAIRMAN HOOD: All right.

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1 Commissioner Jeffries? As you wanted me to be  
2 quiet, go right ahead.

3 VICE CHAIRMAN JEFFRIES: Okay. I  
4 take a five second delay.

5 I'd like to make a motion under  
6 final action for Zoning Commission case number  
7 07-32, NJA Associates, LLC. That's Capital  
8 Gateway Overlay Review at 1111 New Jersey  
9 Avenue, Southeast. And that includes approval  
10 of garage access with the curb cut at New  
11 Jersey Avenue or in the alternative garage  
12 access off the alley.

13 COMMISSIONER MAY: Second.

14 CHAIRMAN HOOD: Okay. It is moved  
15 and properly seconded. Any further  
16 discussion?

17 All those in favor? No  
18 opposition?

19 Ms. Schellin, would you record the  
20 vote and the proxy?

21 MS. SCHELLIN: Staff records the  
22 vote four to zero to one to approve final

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1 action in Zoning Commission case number 07-32  
2 with the flexibility mentioned. Commissioner  
3 Jeffries moving, Commissioner May seconding,  
4 Commissioner Hood in favor, Commissioner  
5 Turnbull in favor by absentee ballot,  
6 Commissioner Etherly not voting, having not  
7 participated.

8 CHAIRMAN HOOD: Okay. Thank you.  
9 Ms. Schellin, do we have anything else for our  
10 meeting?

11 MS. SCHELLIN: We do have a couple  
12 items under correspondence. The first one is  
13 a request for dismissal in Zoning Commission  
14 case number 07-33 from the Office of Planning.  
15 And we just need to take a vote on approval of  
16 the dismissal.

17 CHAIRMAN HOOD: Okay. We have a  
18 request for dismissal in Zoning Commission  
19 case number 07-33. I would move that we honor  
20 that request for dismissal. Zoning Commission  
21 case number 07-33, text amendment to the  
22 zoning regulations, chapter 14, Reed-Cooke

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1 overlay, section 1401, use provisions. And I  
2 ask for a second.

3 COMMISSIONER MAY: Second.

4 CHAIRMAN HOOD: Moved and properly  
5 seconded. Any further discussion? All those  
6 in favor? Any opposition? I'm hearing none.

7 Staff, would you record the vote?  
8 And do we have a proxy?

9 MS. SCHELLIN: No. We don't.

10 Staff records the vote four to zero to one to  
11 approve the dismissal request from the Office  
12 of Planning in Zoning Commission case number  
13 07-33. Commissioner Hood moving, Commissioner  
14 May seconding, Commissioners Jeffries and  
15 Etherly in favor of dismissal, and  
16 Commissioner Turnbull not present, not voting.

17 CHAIRMAN HOOD: Okay. Ms.  
18 Schellin, you mentioned we had one more item.

19 MS. SCHELLIN: Yes, sir. There's  
20 one item pertaining to a request from Holland  
21 & Knight in case number 07-21. They've just  
22 asked for a change in the schedule of the due

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1 dates for the documents that you guys  
2 requested at the end of the hearing.

3 They have a meeting scheduled to  
4 meet with DDOT on March 14th and they think  
5 that they may need additional time to respond  
6 to any issues that come out of that meeting.  
7 So they're just asking for basically a one  
8 week delay.

9 CHAIRMAN HOOD: Why don't we do  
10 this? Why don't we grant them that one week  
11 by general consensus. And also, if anything  
12 else comes up, let's leave that to Staff to  
13 work with them.

14 MS. SCHELLIN: Okay. Thank you.

15 CHAIRMAN HOOD: Anything else?

16 MS. SCHELLIN: That's it.

17 CHAIRMAN HOOD: Okay. I want to  
18 thank everybody for their participation. Do  
19 my colleagues have anything else? Okay. This  
20 meeting is adjourned.

21 (Whereupon, the meeting was  
22 concluded at 8:00 p.m.)

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