

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

IN THE MATTER OF:

Text Amendment to Explicitly
Allow for a BZA Consent
Calendar

Case No.
09-13

Monday,
October 26, 2009

The Public Hearing of Case No. 09-13 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

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BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC G. LOUD, Chairman

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM, Director of the Office of
Zoning

SHARON S. SCHELLIN, Secretary

DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

JOEL LAWSON

OFFICE OF ATTORNEY GENERAL STAFF PRESENT:

ALAN H. BERGSTEIN, ESQ.

The transcript constitutes the
minutes from the Public Hearing held on
October 26, 2009.

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

2 6:36 p.m.

3 CHAIR HOOD: This is a public
4 hearing of the Zoning Commission of the
5 District of Columbia for Monday, October 26,
6 2009.

7 My name is Anthony Hood. Joining
8 me are Commissioner May, Commissioner
9 Schlater, and Commissioner Turnbull. We are
10 also joined by the Office of Zoning staff,
11 Director Weinbaum, under the leadership of
12 Director Weinbaum. Also, the Office of
13 Planning staff under the leadership of Ms.
14 Steingasser. Also, the Office of Attorney
15 General.

16 This proceeding is being recorded
17 by a court reporter. It's also webcast live.

18 Accordingly, we must ask you to refrain from
19 any disruptive noises or actions in the
20 hearing room.

21 The subject of this evening's

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1 hearing is Zoning Commission Case 09-13. This
2 is a request by the Office of Planning for
3 text amendments to the Zoning regulations to
4 allow for BZA expedited review process.

5 Notice of today's hearing was
6 published in the D.C. Register on August 7,
7 2009, and copies of that announcement are
8 available to my left on the wall near the
9 door.

10 This hearing will be conducted in
11 accordance with provisions of 11 DCMR 3021 as
12 follows: preliminary matters, presentations
13 by the Office of Planning, Reports of Other
14 Government Agencies, Reports of all the ANCs,
15 that's citywide, Organizations and Persons in
16 Support, Organizations and Persons in
17 Opposition.

18 The following time constraints will
19 be maintained in this hearing: organizations
20 five minutes, individuals three minutes.

21 The Commission intends to adhere to

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1 the time limits as strictly as possible, in
2 order to hear the case in a reasonable period
3 of time. The Commission reserves the right to
4 change the time limits for presentations if
5 necessary. No time shall be ceded.

6 All persons appearing before the
7 Commission are to fill out two witness cards.

8 These cards are located to my left on the
9 table near the door. Upon coming forward to
10 speak to the Commission, please give both
11 cards to the reporter sitting to my right
12 before taking a seat at the table.

13 When presenting information to the
14 Commission, please turn on and speak into the
15 microphone, first stating your name and home
16 address. When you are finished, we ask that
17 you please turn your microphone off, so we
18 will not pick up any sound or background
19 noise.

20 To avoid any appearance of the
21 contrary, the Commission requests that persons

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1 present not engage members of the Commission
2 in conversation during any recess or at any
3 time.

4 Please turn off all beepers and
5 cell phones at this time, as to not disrupt
6 these proceedings.

7 At this time, the Commission will
8 consider at preliminary matters.

9 Does the staff have any preliminary
10 matters?

11 MS. SCHELLIN: No, sir, just one
12 thing, though. I do want to advise, OP has
13 passed out a supplemental report that they
14 submitted this evening. It has a couple
15 additional changes.

16 CHAIR HOOD: Is this the one that
17 we received which says October 21st?

18 MS. SCHELLIN: October 26th.

19 CHAIR HOOD: Oh, the 26th.

20 MS. SCHELLIN: It was just placed
21 on the dias.

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1 CHAIR HOOD: All right, thank you.

2 Okay, now we will go to our
3 presentation by teh Office of Planning.

4 Ms. Steingasser.

5 Let me do this first. We have the
6 Chairperson of the Board of Zoning Adjustment,
7 Chairman Loud. If you wanted to go first, or
8 did you want to go -- we want to serve at your
9 pleasure. Did you want to go first, or did
10 you want to wait to hear the presentation by
11 the Office of Planning, and then we'll bring
12 you right up?

13 Okay, right, okay. All right.
14 Okay, well, I'm sure they appreciate it, but
15 I'm going to, actually, what we are going to
16 do is, I'm going to hear from Ms. Steingasser,
17 I'm going to bring you up. I'm sure they
18 won't mind waiting for you, as long as you are
19 not too long winded.

20 Okay, Ms. Steingasser.

21 MS. STEINGASSER: Chairman Hood,

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1 Commissioners, the Office of Planning has
2 proposed a text amendment to Section 3118, the
3 purpose of which is to explicitly allow an
4 expedited review calendar for use by the Board
5 of Zoning Adjustment.

6 I apologize for the late report and
7 the supplemental report. We have been working
8 with the Office of Zoning, the Office of
9 Attorney General, and the Board of Zoning
10 Adjustment, all the way up until 6:00 this
11 evening, trying to get as many issues resolved
12 as we could. There's overall concurrence in
13 this text amendment. However, there are some
14 additional items that the BZA would like us to
15 consider, and we are, ultimately, recommending
16 that the Commission take no action this
17 evening, but rather, keep the record open for
18 us to continue working with the BZA and the
19 Office of Attorney General, to finalize the
20 text before you.

21 The text, as was advertised, OP has

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1 made a few recommendations after consulting
2 with the Board of Zoning Adjustment Chair --

3 CHAIR HOOD: Ms. Steingasser, let
4 me -- I hate to interrupt, but there's
5 something I need to do before you give your
6 report, as opposed to after you give the
7 report.

8 Colleagues, any problems with
9 accepting the report?

10 Okay, thank you, general consensus.

11 Sorry about that, Ms. Steingasser.

12 MS. STEINGASSER: No problem.

13 The text was modified after set
14 down and advertised. We then worked with OAG,
15 OZ and the BZA chairs to fine tune it a little
16 bit more.

17 What you have before you right now
18 has three major changes. It's changed the
19 phrase "consent calendar" to "expedited review
20 calendar." It has expanded the eligible
21 opposition to include those property or

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1 business owners who have view of the proposed
2 construction, and it includes the Office of
3 Zoning, as was originally intended in our set
4 down report, into also that list of
5 opposition.

6 We've also heard, through reading
7 some of the ANC resolutions, that there's some
8 concern about the text amendment, and I want
9 to be very clear that the text amendment does
10 not change any of the ANC time lines that are
11 set out by the APA. OP is not proposing any
12 changes to that. So, the time allotted the
13 ANC remains in tact.

14 All those that would get notice
15 would stay teh same, the 200 foot, the ANC,
16 those would all stay notified, and the case is
17 limited to only two particular types of cases,
18 Section 223 and Parks, Playgrounds, Pools and
19 Fields, as provided for in 209.1. We are not
20 recommending community center buildings be
21 included on this list, only those two types of

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1 cases.

2 We are aware that the ANCs have
3 some concerns that this might reduce their
4 authority, but it does not. The status of
5 great weight remains with the ANC, and if any
6 member of the ANC, or the Councilmen's Office,
7 the Office of Planning, or anybody requesting
8 party status, notifies the Office of Zoning by
9 written notice, they don't even have to go
10 into a large amount of detail as to why
11 there's no official resolution required, just
12 simple notification to the Office of Zoning
13 that they would like it removed from the
14 consent -- the expedited review calendar.

15 So, we think -- we think those --
16 those maintain the integrity of the ANC
17 process and its purpose.

18 We also believe that the process
19 would allow for the smaller applicants and the
20 local community organizations to have a faster
21 and more affordable process. It reduces the

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1 cost to small applicant organizations, by
2 giving them advanced notice that they do not
3 need to bring in their attorneys, or their
4 architects, or any other representative or
5 professional with them to the hearing, and it
6 allows the BZA to move several cases with one
7 vote, thus, moving your agenda forward much
8 faster.

9 In a review of the last five years,
10 OP found that 24 percent of all the BZA cases
11 were Section 223, and we put this -- we did an
12 estimated time line of what would happen if we
13 removed these cases from the consent agenda,
14 and we believe that it brings all the cases
15 forward by two months, just by simply removing
16 this volume from the full hearing process.

17 And again, we do not recommend that
18 the Commission take action this evening, but
19 that you allow us time to work with the Board
20 of Zoning Adjustment and the Office of
21 Attorney General on that final language, based

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1 on what we hear from the public at large and
2 the Commission.

3 Thank you very much.

4 CHAIR HOOD: Okay, thank you very
5 much.

6 I don't know, I would rather
7 probably hear from the Chair of the BZA before
8 we ask our questions, and then maybe we can
9 ask both at the same time.

10 And, I would ask those who have
11 signed up to indulge us.

12 Come on, Mr. Chairman, as those of
13 us -- because I know that the Chairman is
14 going to be getting ready for tomorrow,
15 tomorrow is a long day, so we want to get him
16 in, and I'm sure he may stick around. I'm not
17 sure, but anyway, let's go ahead and hear from
18 Chairman Loud.

19 BZA CHAIR LOUD: Thank you, Mr.
20 Chair. I'm going to be very brief in my
21 remarks.

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1 First of all, I just want to thank
2 the Zoning Commission for the opportunity to
3 appear before you tonight, and give you the
4 perspective from the other side of the dias.

5 My name is Mark Loud. I'm a member
6 of the Board of Zoning Adjustment, a mayoral
7 appointee, and I also have the honor to
8 currently serve as the Chair, and have been
9 serving as Chair since May, 2009.

10 I'm here tonight to offer support,
11 as noted by my remarks, for Zoning Case No.
12 09-13, and I want to commend the Office of
13 Planning for its leadership in implementing
14 this aspect of the Zucker Study's
15 recommendations for a limited consent
16 calendar.

17 Let me say at the outset that Board
18 of Zoning Adjustment members met and
19 collectively we had dialogue, and the opinions
20 that I'm offering tonight represent the
21 opinions of my colleagues as well, those that

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1 would include Mr. Shane Dettman and Miss
2 Meredith Moldenhauer.

3 I think the most important thing
4 that I want to note on the record, Mr. Chair,
5 is that we are in support of the expedited
6 calendar for uncontested cases, and I think it
7 comes across in the report by the Office of
8 Planning that that's what they are talking
9 about, but it's certainly what we are talking
10 about.

11 We see this from a different
12 perspective, I think, than citizens do
13 sometimes, and for some of the same reasons
14 that I've read in the record, that they may
15 have some opposition to it, we are for it.

16 Just in the context of this process
17 of allowing us to expedite review for
18 uncontested cases, we believe will save our
19 citizens a tremendous amount of wasted time
20 that is spent down here on Tuesdays waiting
21 for a case to be called, waiting for a hearing

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1 to get to their part of their hearing.

2 I don't know if all the public
3 understands, but we are currently, under the
4 current regulatory scheme, we are required to
5 call every single case that we have before us
6 on Tuesday, every hearing that we have before
7 us, and to call it separately, and to offer
8 the opportunity for the applicants to have a
9 hearing on the record.

10 And, that's true even where the
11 case is absolutely uncontested, where the
12 applicant has worked with the ANC, the
13 applicant has worked with his adjoining
14 neighbors, for example, in a 223, other
15 witnesses.

16 Nonetheless, we have to call that
17 case at a hearing. That may be the third or
18 fourth case scheduled for that day, and the
19 applicant comes down and brings a number of
20 witnesses, and we are often in the
21 uncomfortable position of looking at the

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1 applicant, looking at the witness sometimes
2 for hours before we can get to their case, as
3 opposed to having the tool of simply being
4 able to place it on an expedited review or
5 consent calendar for uncontested cases.

6 And, it makes all the sense in the
7 world from our standpoint to have the
8 flexibility of that kind of tool, to save our
9 applicants and our citizens a little time.

10 We are not for this in any case
11 where it's going to be contested, where it
12 would deprive an ANC of any opportunity to
13 weigh in on a case, but there's clearly a
14 category of cases that don't fit that bill and
15 are absolutely uncontested. They are
16 uncontested from the beginning. The applicant
17 has done a great job of working with the ANC,
18 neighbors and with the community, to position
19 that case to come before BZA, and those are
20 the types of cases that we think are
21 represented by the Office of Planning's

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1 proposal, particularly, with respect to 223s.

2 I think I've indicated some of the
3 public policy reasons why we support the
4 Office of Planning's proposed change. Let me
5 go briefly into one of the areas of the
6 proposed change that may require some
7 additional tweaking.

8 We have had dialogue with the
9 Office of Planning, and will continue to have
10 some dialogue with the Office of Planning. I
11 think one of the things that their report
12 notes is that the BZA can retain the ability -
13 - this is on page three of the report --
14 retain the ability to remove an application
15 from the consent calendar should a last minute
16 concern arise, or unanticipated interested
17 party wish to be heard. I think that's the
18 spirit to move in, and certainly, a tool that
19 -- some flexibility that we'd like to see.

20 However, the way the current
21 legislation is written I'm not certain that

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1 that would happen, because the BZA's authority
2 to remove a case from the calendar would
3 expire ten days before the day of the hearing.
4 And so, in order to afford us some flexibility
5 to go within that ten-day window, to still
6 remove a case off the calendar, that's one of
7 the follow-up pieces of dialogue we'll be
8 having, I think, with the Office of Planning,
9 which has been very cooperative in all of our
10 conversations with them up to this point.

11 I think that was the major area of
12 concern that Board members had with the
13 legislation as proposed.

14 Board members thought that there
15 were a number of additional areas that could
16 benefit from this tool as well, in addition to
17 223 and 209, and one of those would be
18 Section 3130s, which are modifications and
19 two-year extensions on proposals that have
20 come before the Board, that have been approved
21 by the Board, and for reasons of financing or

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1 inability to get regulatory permits or
2 approvals through, are required to come back
3 before us.

4 An additional section, which is
5 one, I think, that the Zoning Commission
6 already has, or similar to it, would be our
7 Section 3129, which is very minor
8 modifications of plans, seeing no reason why
9 those should not also be part of a consent or
10 expedited review calendar.

11 Some of the other concerns that
12 Board members had, and I'm going to place
13 those on the record, since I'm representing
14 their reviews as well, is that the BZA have
15 some discretion about motions for continuance
16 and placing those on an expedited review
17 calendar as well.

18 We, often times, will sit and
19 dither with a motion for continuance for ten,
20 15, 20 minutes on the record, and it has no
21 bearing on the actual merits of the case, and

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1 we are delaying getting to the merits of
2 hearings, of witnesses gathered in the room,
3 it would be fantastic if those types of
4 motions could also be placed on an expedited
5 review calendar that would not require full
6 engagement by the Board.

7 And, I think I'll stop with that,
8 and see if there are any questions that Zoning
9 Commission members may have, and again, I want
10 to thank you for the opportunity and thank the
11 Office of Planning for moving this dialogue
12 forward.

13 CHAIR HOOD: Okay. Colleagues, if
14 we would, I would like for us to ask Office of
15 Planning, as well as the Chair of the BZA if
16 he doesn't mind, the questions that we have,
17 or any further clarification that we need from
18 him, or things that we need to ask Ms.
19 Steingasser or Mr. Lawson.

20 So, I'll open it up.

21 Commissioner Schlater?

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1 COMMISSIONER SCHLATER: Just a few
2 questions on the technicalities here.

3 Overall, I'm very supportive of
4 this idea of streamlining the process and
5 having the expedited calendar. I think Office
6 of Planning should be commended for pushing it
7 forward. Thank you, Chairman Loud, for coming
8 out tonight. I know this will help move those
9 hearings along. Sometimes they go late into
10 the night -- all day, and late into the night.

11 So, I'm definitely supportive of seeing this
12 move forward.

13 I think some of my questions
14 dovetail with some of the concerns raised by
15 members of the BZA, and I'll just -- I'll ask
16 you both to comment on them.

17 Just in terms of the process, maybe
18 the OP can just walk me through it, from
19 notice of a BZA hearing, when it's put on the
20 expedited review calendar, what period would
21 the ANC have -- how many days would the ANC

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1 have, basically, to object to it being placed
2 on the consent calendar?

3 MS. STEINGASSER: I'm going to look
4 to the Office of Zoning for head nodding and
5 bobbing as well, but it would be a full 40
6 days. There would be no reduction in that.

7 MR. BERGSTEIN: That's right, it's
8 the regular notice period. So, everybody gets
9 40 days notice before a hearing.

10 And, what the rules prescribe is
11 that, if an ANC wants -- or the other criteria
12 persons want the case off the consent
13 calendar, then ten days from that hearing they
14 simply need to put in a simple notation
15 saying, the ANC hereby requests the removal of
16 the case from the consent calendar.

17 COMMISSIONER SCHLATER: Would the
18 ANC need to take a vote between the 40 days
19 and the ten days, in order to have their voice
20 heard on this? Is that --

21 MR. BERGSTEIN: Well, they would,

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1 in other words, the request has to be made by
2 the ANC in accordance with its rules and
3 procedures. That's different from how a
4 written report that gets great weight is done.

5 There are specific requirements in the
6 ANC Act as to what an ANC report that wishes
7 to receive great weight has to contain.

8 This rule doesn't indicate those
9 same specific things, quorum, public notice,
10 and it doesn't necessarily have to meet those
11 requirements, but it simply has to be an
12 action of the ANC taken.

13 COMMISSIONER SCHLATER: Does it
14 have to be the entire ANC, or can it be any
15 member?

16 MR. BERGSTEIN: It has to be the
17 ANC, so however the ANC rules provide for a
18 vote would govern.

19 COMMISSIONER SCHLATER: Okay.

20 MR. BERGSTEIN: So, if the ANC
21 requires, you know -- they have different

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1 quorums, I believe, so however the ANC takes a
2 legal action is how the -- is what would allow
3 it to have its request for removal authorized.

4 But, the time frames are the same,
5 the 30 business day that the ANC has to
6 provide written comment starts with the same
7 hearing notice that they'll be reacting to.
8 And so, the actual time frame, the end of that
9 40-day period, it's almost going to be the
10 same for both things, for the ANC report, for
11 a request to take it off, and the ANC can do
12 both if they care to.

13 COMMISSIONER SCHLATER: And why --
14 I'll ask OP, OIG, and BZA, just why -- why --
15 why this requirement that they notify to take
16 it off the expedited review calendar with ten
17 days prior to the hearing date? Why not up to
18 the hearing date itself?

19 MR. BERGSTEIN: I'm going to let OP
20 respond, but the notion was to create a
21 certain period that an applicant will know

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1 that they don't need to prepare a hearing,
2 that it has to do with the cost of having an
3 attorney, that has to do with the potential
4 hardship of bringing witnesses in who have to
5 take time off from work, et cetera. So, the
6 idea of the hearing of this calendar was to
7 create a date of certainty.

8 Now, the date of certainty is
9 really seven days before the hearing, that's
10 when the Office of Zoning would post a consent
11 calendar, final consent calendar, on its
12 website. That's the date that the consent
13 calendar would be posted in the Office of
14 Zoning, in accordance with the regulations.
15 So, the ten days is like the three -- the
16 minimum period between the absolute date when
17 the Office of Zoning would know that everyone
18 has been heard from, and then three days to
19 get the mechanics of having the final agenda
20 posted and put on the website.

21 So, that was sort of working back

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1 from the seven days.

2 COMMISSIONER SCHLATER: So, would
3 it be within anybody's power, if at the last
4 minute a serious concern is raised, to remove
5 it from the calendar?

6 MR. BERGSTEIN: That's the question
7 that -- do you want to talk about that,
8 Jamie?

9 DIRECTOR WEINBAUM: Yes. From the
10 Office of Zoning's perspective, we spoke about
11 -- and this is part of the reason that I think
12 that there was an interest in keeping the
13 record open, about if even in the few days
14 prior to the hearing if the BZA members were
15 discussing a case that they wanted pulled from
16 the expedited review calendar, that they would
17 then have the opportunity to pull it, and then
18 the Office of Zoning would schedule a full
19 hearing at a later date.

20 So, they wouldn't have to come in
21 necessarily and bring their witnesses right

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1 the next day, it would just be a question of
2 later scheduling a full hearing. That was
3 something we were going to discuss.

4 COMMISSIONER SCHLATER: Okay. When
5 the Zoning Commission sometimes is able to
6 waive its rule on late commission filing, is
7 that something that the BZA would be able to
8 do in terms of late commission by an ANC of
9 the notice to take it off the expedited review
10 calendar?

11 DIRECTOR WEINBAUM: Yes, because
12 this is one of the rules that is waivable.

13 COMMISSIONER SCHLATER: It is
14 waivable.

15 DIRECTOR WEINBAUM: Yes, it is.

16 COMMISSIONER SCHLATER: Question
17 for OP.

18 Chairman Loud noted that he wanted
19 to add a few sections to the list of sections
20 that would be able to be put on the consent
21 calendar.

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1 Why did OP choose to limit it to
2 such a small fraction of all BZA cases? It
3 would seem to me, if you come up with a good
4 process here, why not put all the cases, why
5 not make all cases eligible to be put on the
6 expedited review calendar?

7 MS. STEINGASSER: Well, number one,
8 we thought that -- it's our position that the
9 expedited calendar is a little revolutionary
10 right now, so starting out with some cases
11 that people understand, that have the least --
12 the least amount of opposition, and the
13 highest chance of probability, we just thought
14 we would start, it's almost like a trial
15 balloon. We'll see how that works, and then
16 start to define what other types of cases
17 might work on that calendar.

18 That was all we -- we just felt
19 that bringing forward any unidentified lists
20 would raise a lot more opposition from the
21 community, because they wouldn't quite know

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1 what might show up on there, and it creates a
2 window for the more creative representatives
3 to try to get their client at head of line
4 when they know they've got a fully
5 controversial case, but they want to try to
6 move it forward.

7 So, we were just trying to find a
8 way to kind of contain who -- what kind of
9 cases might be on there, til we get
10 comfortable with the consent.

11 MR. BERGSTEIN: Would you say that
12 two sections that Chairman Loud were
13 discussing weren't actually types of cases,
14 they are types of relief that already don't
15 require hearings, motions to extend the
16 validity of an order, and motions to have
17 minor modifications to plans.

18 So, there are types of cases which
19 hearings aren't required as a matter of
20 regulation. The expedited proceeding are
21 cases where hearings are generally required,

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1 but can be waived by the applicant.

2 So, there's no reason why, if the
3 BZA -- if the Office of Zoning wanted to, on
4 the date that it knew it had consent calendar
5 items, to add other items to it as long as
6 everything is set seven days before the
7 meeting, because the BZA rules require that a
8 meeting agenda be posted seven days before the
9 meeting. So, if they know they have a consent
10 calendar, they will have a consent calendar
11 seven days going forward, and there's a 3130
12 or 3129 kicking around, they can certainly add
13 it to that calendar, but we can expressly
14 state that.

15 COMMISSIONER SCHLATER: Okay. I
16 would definitely be in support of that.

17 And, as for expanding it beyond
18 that, I'd look to the other Commission members
19 here.

20 I'd be supportive of expanding it,
21 but I understand OP's problem.

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1 MS. STEINGASSER: And, we're happy
2 -- I can tell you, we're happy to do whatever
3 the BZA wants, whatever makes their day
4 easier, we are willing to go there for them.

5 COMMISSIONER SCHLATER: So, maybe I
6 should be directing my question to Chairman
7 Loud then.

8 MS. STEINGASSER: It's a matter of
9 just trying to figure out what those might be,
10 and having a public hearing on those cases.

11 One of -- the ANC had a concern
12 that OP had control over what kind of cases
13 would be placed on this, and we wanted to be
14 clear that any of the cases that got put on
15 here would have a rulemaking hearing to get
16 on the list, so there would be public comment
17 put in there.

18 That's one of the reasons we'd like
19 the record to be kept open, we just haven't
20 been able to do the consultative work that the
21 four agencies would like to do together.

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1 BZA CHAIR LOUD: And, let me just
2 add to that as well, I think that's a reason
3 why we are very encouraged by the idea of
4 keeping the record open and continuing the
5 dialogue.

6 Just taking a look at the proposal
7 as it's written, there are so many things that
8 could, potentially, go wrong, that a trial
9 period to evaluate -- let me explain what I
10 mean by that -- a trial period to evaluate
11 before, necessarily, expanding it might be
12 helpful for everyone.

13 For example, we would certainly not
14 want for there to be cases that are placed on
15 an expedited review calendar that,
16 potentially, don't meet the test of a 223, but
17 because an applicant has placed it on a
18 consent calendar, and ANC has consented to it,
19 no neighbors are found anywhere to oppose it,
20 it's automatically approved.

21 COMMISSIONER SCHLATER: That

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1 wouldn't be good.

2 BZA CHAIR LOUD: No, that wouldn't
3 be good at all.

4 And so, just thinking through how
5 this might play itself out with respect to,
6 for example, variances, is something that
7 would require a little more consultation and
8 just thinking through the ramifications of it.

9 COMMISSIONER SCHLATER: I think
10 that concern is -- I hear you, and so I'm
11 fully supportive of taking the baby steps on
12 this.

13 One thing I'd like to see, and just
14 make sure that everybody has the power to do,
15 is on the day of the hearing if something
16 comes up, and somebody raises a concern,
17 you've got to be able to pull back off the
18 consent calendar, and we've just got to make
19 sure that we have the flexibility to do that
20 under the written rule.

21 And so, I know we are keeping the -

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1 - we are keeping the record open, so I hope we
2 can work on that and confirm that that is
3 possible.

4 I have no further questions.

5 BZA CHAIR LOUD: I think what I'm
6 hearing from the dias up there is that Section
7 3100.5 would allow us to waive the ten-day
8 requirement that's identified in the proposed
9 language. I'm not certain if that's what I
10 heard or not.

11 But, if it does not specifically
12 allow us to waive that ten-day requirement,
13 then it is something that we'd like to
14 continue the dialogue with the Office of
15 Planning about.

16 I'm certain there's a way to fix
17 that challenge. We can talk about how it can
18 best be done.

19 CHAIR HOOD: Okay. Great
20 questions.

21 Commissioner Turnbull?

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1 COMMISSIONER TURNBULL: Thank you,
2 Mr. Chair. I just have one question.

3 It looks like under 3118.2 that it
4 doesn't take much to knock a case off the
5 expedited review calendar. It could be a
6 neighbor. I mean, what -- I guess I'm looking
7 at how effective is this going to be if -- are
8 you going to get 50 percent of the applicants
9 through this?

10 MS. STEINGASSER: I think once it's
11 up and -- was that a question for OP?

12 COMMISSIONER TURNBULL: Yes,
13 either.

14 MS. STEINGASSER: I think what we
15 are seeing is many of these -- most of these
16 cases, and by most I mean the overwhelming
17 majority of the Section 223s, have nobody in
18 the audience in support or in opposition.

19 COMMISSIONER TURNBULL: I've been
20 there. Yes, I know.

21 MS. STEINGASSER: Right, but the

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1 board is obligated to open the hearing, go
2 through the motions.

3 So, I think once people get
4 comfortable with how this process works, it
5 really won't be an issue. At the same time,
6 we wanted to address some of the concerns that
7 we heard from BZA members that there be
8 opportunity for people who aren't within 200
9 feet, who may still be affected but might not
10 know they should apply for party status, to
11 have that opportunity.

12 So, we want the opposition -- the
13 eligibility to oppose to be fairly broad, so
14 that people do feel they had a hearing to
15 weigh in. I'm sorry, they've had an
16 opportunity to weigh in about having a
17 hearing.

18 COMMISSIONER TURNBULL: Yes, I have
19 a feeling that in the beginning there is going
20 to be a lot of uncertainty from people as to
21 how this really works, and I think you may

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1 have a lot of people questioning it and
2 putting in opposition until they really
3 understand what it means.

4 MS. STEINGASSER: And, it's also --
5 it also encourages the applicant to work with
6 the neighbors and the ANC early, so that they
7 have a good sense whether someone is going to
8 oppose them or not.

9 COMMISSIONER TURNBULL: Thank you.
10 Commissioner May?

11 COMMISSIONER MAY: Yes, I have a
12 few questions.

13 You just said that the overwhelming
14 majority of the 223 cases are uncontested. Do
15 you have -- I mean, do we have a statistic
16 that 24 percent of the cases are 223? I think
17 that was in your report.

18 MS. STEINGASSER: Yes.

19 COMMISSIONER MAY: Does that mean
20 20 percent, therefore, are -- would wind up
21 being on the expedited agenda, or, I don't

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1 know, what's an overwhelming majority? Do you
2 have any statistic on that?

3 MS. STEINGASSER: Well, the
4 overwhelming majority I was referring to was
5 with regard to how many Section 223 cases have
6 opposition in the audience.

7 COMMISSIONER MAY: Yes.

8 MS. STEINGASSER: At their hearing.

9 And, we can certainly go back and
10 track that, but I would -- I would say that
11 probably 90 percent of the cases would be
12 easily eligible right off the bat, and I think
13 once people -- I think there's going to be a
14 learning curve, and we've tried very carefully
15 not to get into the Office of Zoning's
16 business of how they set up their system.

17 But, once I think it's all in play,
18 and it becomes well established, we'll see
19 more and more cases go on it.

20 COMMISSIONER MAY: Okay. I,
21 actually, have a question for Mr. Bergstein.

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1 You said before, you made reference
2 to 40 business days, or 30 business days, did
3 you mean to say business days?

4 MR. BERGSTEIN: Yes, for the ANC
5 Act, the ANC Act uses 30 business days for the
6 period that the -- from the time that a
7 District agency advises an ANC of a type of
8 action for which ANC review is required, the
9 ANC Act says 30 business days.

10 Our notice requirement is 40
11 calendar days. It pretty much equates to the
12 same period of time, but that is the
13 difference, it's 30 business days in the ANC
14 Act, 40 calendar days for notice in the -- in
15 our regulations. But again, it's notice of a
16 hearing, not a final action. The ANC Act says
17 that no agency can take final action without
18 giving the amount of notice, there's nothing
19 that prevents an agency from having a hearing
20 without ANC notice, but it has to give notice
21 before it can take final action.

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1 COMMISSIONER MAY: But, in effect,
2 we are shortening that.

3 MR. BERGSTEIN: No, not at all,
4 because --

5 COMMISSIONER MAY: Well, let me
6 explain my logic.

7 MR. BERGSTEIN: Sure.

8 COMMISSIONER MAY: The --
9 essentially, what we are saying is, that ten
10 days in advance, the way this is currently
11 drafted, ten days in advance we are going to
12 announce to the world that a positive decision
13 is going to be made on this case, and that --
14 that ten days is subtracted from the 30
15 business days that the ANC is requiring for
16 notice, right?

17 MR. BERGSTEIN: Where I disagree is
18 that the consent calendar is not an agreement
19 calendar. I mean, it's not going to be a
20 farce. It simply means that -- right now an
21 applicant can go before the Zoning Commission

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1 and say I rest, okay? Now, that doesn't mean
2 that the BZA says, oh, you rest, you get it.
3 It means, you rest, okay, you better hope that
4 this record is good, because that's what we
5 are going to look at.

6 The consent calendar means that the
7 BZA has an obligation, as it always has, to
8 look at the application materials, the
9 supplemental filings that are filed at least
10 14 days before the hearing, and make a
11 decision on that record. They could deny a
12 case on the consent calendar, easily.

13 And, in a way, you may find some
14 applicants who are uncomfortable with that
15 gamble, and would still want to take their
16 chance on, you know, having their day in
17 court, per se, rather than to say I rest on
18 the record.

19 But, that's what's going on here,
20 it is -- so, an ANC report is -- can be filed
21 seven days before a hearing. It is within the

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1 40 days/30 business days provided. It will
2 get great weight, and so that even if an ANC
3 did not put in an opposition to the consent
4 calendar, if an ANC's view that a 223
5 application will cause undue shadows on a
6 neighborhood property, will result in a lack
7 of privacy to an adjacent neighbor, they will
8 get that great weight when the consent
9 calendar decision is made.

10 A consent calendar decision is like
11 any other decision, it is not a lighter burden
12 on the applicant, it just means that the
13 written materials will not be augmented by
14 oral testimony.

15 COMMISSIONER MAY: Okay. I think
16 it's sort of -- it highlights the need, I
17 think, for having some ability to take
18 something off of the expedited agenda, pretty
19 much right up until the day of the hearing.

20 But, you know, that's just my
21 commentary on it.

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1 I guess my next question goes to
2 the sort of process. BZA members, the way
3 it's currently written, would have to object
4 ten days prior to the hearing, and say they
5 really want to have a hearing on a particular
6 case. How will that BZA member, or those BZA
7 members, know anything about it when we
8 typically get information, as BZA members,
9 just a few days in advance?

10 MS. STEINGASSER: Well, that's an
11 internal administrative operation of the
12 Office of Zoning, and if the Commission moves
13 forward with this that will -- that will be up
14 to the Office of Zoning to figure out how to
15 get the Board members fair time.

16 We tried not to codify that kind of
17 operational aspect of the process.

18 COMMISSIONER MAY: But, the record
19 would have to be reasonably complete at that
20 point, ten days in advance.

21 MR. BERGSTEIN: It would be, Mr.

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1 May, because the 14 days, in point three it
2 says, at least 14 days prior to the hearing
3 date the Office of Zoning shall provide each
4 Board member, it say with a consent calendar
5 for the date and the intent, it's not just the
6 calendar, of course, but the case itself.
7 Fourteen days is the date that any
8 supplemental filings by the applicant must be
9 put in.

10 So, that is the date where, to the
11 extent that the applicant has decided to make
12 its case in writing, that case will be made,
13 and that's what will be provided to the BZA.

14 And then, there is, basically, a
15 three-day period for them to look at it and
16 say, there's not enough stuff here, or I'm not
17 comfortable with taking this off the calendar,
18 I want to ask some questions, and they just
19 say at that point, you are not on the consent
20 calendar, and we are all hearing what's being
21 said by both the Chair and the Commissioners

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1 that one of the options here is simply to take
2 off that part and to allow the BZA, at any
3 point including the day of hearing, to
4 indicate that it's off the consent calendar.

5 But, as the way it's written now,
6 there's a three-day period between when they
7 get what amounts to the complete written
8 record of the case, and when any member of the
9 BZA can say I -- you know, Mr. Moy, please
10 take this off the consent calendar.

11 COMMISSIONER MAY: When do we,
12 typically, get Office of Planning reports? Is
13 that ten days in advance, or seven days in
14 advance?

15 MS. STEINGASSER: Seven.

16 COMMISSIONER MAY: Seven. So, 14
17 days in advance we will not have had the
18 benefit of OP's report. I'm speaking as if I
19 were a BZA member at that moment.

20 MS. STEINGASSER: OP would be
21 subject to Section 3118.2, which means we

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1 would have the option of providing also
2 written opposition if we felt that an item
3 should be removed from the agenda. That's
4 the latest -- the last supplemental.

5 COMMISSIONER MAY: Right.

6 But, I'm less concerned about
7 whether you think it should have a hearing or
8 not, than what you think of the substance of
9 the case, so that I can make an informed
10 decision about whether I think something
11 should be on the expedited agenda or not.

12 MS. STEINGASSER: Right.

13 COMMISSIONER MAY: So, I mean, I
14 guess this is just yet another reason why
15 there needs to be a way to take things off of
16 the expedited agenda much closer to the date
17 of the proposed hearing.

18 If a -- the way it stands right
19 now, for the ANCs, their involvement in this
20 process is that they would get that notice 40
21 days -- 40 days or 30 business days in advance

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1 of whenever the hearing would be, and then it
2 would be up to the ANC to take an affirmative
3 action, to do sufficient review on a given
4 case, and theoretically take a vote or do
5 whatever they have to do by their bylaws or by
6 the ANC law, whatever it is.

7 So, it does require an extra step,
8 if you will, on their part in some way. They
9 have to act affirmatively in response to all
10 of the notices.

11 I guess my question is, if a
12 particular ANC does not like the expedited
13 agenda idea at all, they could simply send an
14 objection as soon as they get the list to
15 every case. Is that right?

16 MS. STEINGASSER: Yes, they could.
17 Yes.

18 COMMISSIONER MAY: Okay. Okay, I
19 think that's the end of my questions.

20 CHAIR HOOD: I have a few
21 questions, and this may have been asked, but

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1 I'm going to ask it my way, so I can make sure
2 I understand it.

3 First of all, when this concept
4 first came up I agreed with it, and I still
5 do, but we have to tell it so that we can
6 maybe answer all those questions. I'm glad to
7 hear that there's going to be some continued
8 dialogue between Office of Planning, I believe
9 BZA, Office of Zoning, OAG, all I would ask
10 that the Zoning Commission also be kind of
11 included in that dialogue. I don't think we
12 are running afoul if we are also included in
13 some of that dialogue, so we won't have to
14 wait until it's time for us to make a
15 decision, so we can tailor it.

16 And, that's taken also in
17 composition with what we are going to hear
18 tonight, I'm not sure what we are going to
19 hear tonight, but what we also hear from the
20 community, from what we already have here from
21 ANC. We want to try to tailor this, because

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1 some years ago I, too, came in front of the
2 BZA, Mr. Chairman, on this issue, as the
3 Chairman I'm going to tell you, some years ago
4 I, too, came in front of the BZA, and I was
5 down here the whole day as cases had to go
6 out. And, I think we left about 9:30 that
7 night. We had been down here since, I think
8 at that time, it was 9:30 when the hearing was
9 supposed to start. We were here the whole
10 day. No, I'm sorry, 1:30, we came for the
11 afternoon.

12 And, I will tell you, as a citizen
13 sitting out there waiting, and waiting, and
14 waiting, I think this is a great concept. I
15 would hope that we could tailor it, though, so
16 that it meets some of those needs, like the
17 ANCs, and when someone can take something off
18 of the expedited review calendar, which, I
19 think, is what it's being called now.

20 Let me look at this, and I'm
21 looking at the Chairperson, but I'm not

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1 exactly directing my comments to the
2 Chairperson.

3 Let me ask the Office of Planning,
4 or maybe the Office of Zoning, how do we see
5 this working? Maybe I just don't understand
6 3118.2(a), written opposition to the expedited
7 review calendar placement that was submitted
8 by an affected ANC, the Council member
9 representative. You know, sometimes, and I'm
10 sure this may be one or two areas in the City
11 where it takes a while to get the ANC to
12 cooperate with folks in the community. I
13 mean, we don't have much of that in this City.

14 So, I mean, if I had to depend on
15 the ANC or someone who does not have party
16 status, if I'm just a regular citizen and I
17 want this to -- I want to be able to have some
18 input, and I know it's on the consent
19 calendar, then if I show up at that hearing
20 that particular day, then -- and I think this
21 might have been asked, but it wasn't asked the

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1 way I can understand -- then how -- what
2 recourse do I have, if I'm here that day and I
3 think that I need to have some input or some
4 say so, and I didn't meet all the
5 prerequisites of the 14 days and the seven
6 days, and I just show up at the hearing. And,
7 I want to -- I've got a -- I just found, I've
8 been out of town, I can tell you what we are
9 going here, I've been out of town the whole
10 time, I live in London some of the time, but
11 my residence is here in D.C., and these are
12 live examples, things that we've dealt with
13 over -- at least I've seen over the past 12
14 years, I've been out of town, I show up at the
15 hearing, it's on the expedited review
16 calendar, how can I then, as a citizen who
17 walks in the door the day of, be able to take
18 that off of the expedited review calendar?

19 MS. STEINGASSER: Well, if you meet
20 one of the categories, being that you are
21 either the ANC, a Councilman, you are with the

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1 Office of Planning, you are within 200 feet of
2 notified, or you are a property or business
3 owner who can see the property, you would
4 petition to the BZA.

5 And based -- I think what I'm
6 hearing for the fourth time is, I think this
7 provision of allowing the BZA to act that day
8 to remove something would solve all of those
9 concerns.

10 CHAIR HOOD: You may hear this for
11 the 4th time, but each Commissioner has to ask
12 it the way they can understand it, so forgive
13 me if you hear it the 5th time.

14 MS. STEINGASSER: Well, I certainly
15 meant no disrespect, I'm just saying, I'm
16 hearing it for a lot of different angles, that
17 that's what the Commission would like to see
18 the Board have that opportunity, and I think
19 that would solve all of these issues.

20 It was not meant with any level of
21 disrespect.

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1 CHAIR HOOD: Oh, you know, Ms.
2 Steingasser, you and I have been around here
3 too long, I didn't -- I didn't -- I thought
4 maybe you were getting a little perturbed with
5 me for asking the same question.

6 And, you know what, I prefaced my
7 remarks, because I knew I was going to be
8 asking the same way, and I prefaced my remarks
9 by saying, I was going to ask, it had probably
10 been asked, but I ask it so I can understand.

11 So, that's how I prefaced it.

12 And, I still don't understand, even
13 though you've heard it the 4th time. So, you
14 are going to give it to me the 5th time.

15 MR. BERGSTEIN: Mr. Hood, but are
16 you anticipating a possibility where before
17 the consent calendar is called, in essence,
18 the chair would say is there anyone in this
19 room who has reason why this case should not
20 continue on the consent calendar, and give
21 them an opportunity, and then the question is,

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1 is it anybody who happens to walk into the
2 room and say, oh, hell, I want, you know, a
3 hearing today.

4 CHAIR HOOD: That's kind of where I
5 am, Mr. Bergstein.

6 MR. BERGSTEIN: Okay, well, that's
7 fine, but then, the discussion would be --
8 there's a tension here between the desire to
9 have some degree of certainty and not. And
10 so, if you did that, and that certainly could
11 be built in, that prior to the call of the
12 consent calendar the BZA Chairman shall
13 request any member of the audience whether or
14 not they object to the consent calendar
15 treatment, and you call them forward and you
16 hear from them, that's fine, and that's
17 something we could add in if you wanted to.
18 But, that's what I hear you suggesting, not
19 just the Board having the opportunity as a
20 preliminary matter to take something off the
21 consent calendar before it's called, but any

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1 citizen in the room.

2 CHAIR HOOD: I think that -- here's
3 where I am. I'm just trying to discover all
4 the things, I don't really have any answers,
5 but I think something needs to be done. I
6 will agree it needs to be streamlined. I'm
7 not going to pull no punches.

8 But, I'm just trying to come up
9 with some of those scenarios that we have
10 seen. That's all I'm trying to do, is cover
11 all our bases, since these discussions are
12 still going to be going on, I'm just bringing
13 some things that may not have come up, or may
14 have come up.

15 You are right, somebody walks in,
16 because -- and I'm looking at examples. I
17 have to go to my ANC, my Council member can't
18 stand me, you know, all those things, I can't
19 get them to write no letter for me. I'm just
20 saying, you know, those are some of the things
21 that, actually, are real live situations we

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1 have to deal with.

2 The other thing is, going back to
3 the 14 days, and it kind of was similar to the
4 lines along Commissioner May, when
5 Commissioner may said we are biting into the
6 40 day time frame. So, I think you are saying
7 we are taking it from 40 days now to 20 --
8 what is it, 26?

9 COMMISSIONER MAY: well, I won't
10 attempt to do the math and convert between
11 business days and regular days, but my thought
12 was that if we were establishing the expedited
13 agenda ten days in advance, that we were
14 effectively reducing the time that the ANC
15 would have to respond.

16 MR. BERGSTEIN: Well again, there's
17 a difference between great weight and
18 participation in a hearing. The ANC Act says
19 that every ANC has to be given 30, basically,
20 working days to review a government proposal
21 and submit a written report. There's no

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1 guarantee that an ANC will participate in a
2 hearing, that BZA and the Zoning Commission
3 make them automatic parties, but that's the
4 exception and not the rule in the D.C.
5 Government.

6 So that, how an ANC participates in
7 a hearing, and whether an ANC should be given
8 an opportunity to object to consent calendar
9 treatment, is wholly different from the
10 obligations that this Commission owes the ANC
11 under the ANC Act.

12 The ANC was put in there because of
13 a recognition of their importance, but not
14 because as a legal necessity they were
15 required to be given that. That's entirely
16 different from great weight.

17 What great weight requires is that
18 they be given 30 working days notice of a
19 final action, an opportunity to put in a
20 written report that expresses their issues and
21 concerns, and that in your oral deliberation

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1 and your written determination that the ANC
2 must be recognized as the source of the
3 advice, and you have to indicate why you find
4 their written advice either persuasive or not
5 persuasive. That's the sum total of what's
6 owed an ANC under the ANC statute.

7 Any other additional procedural
8 safeguards you wish to give an ANC is fine,
9 but it's not compelled. So, whether or not to
10 provide an ANC with an opportunity to object,
11 that's your decision. Whether are not to do
12 it ten days before a hearing or 30 days before
13 a hearing, that's your decision. But, it's
14 not relevant to the notion of great weight,
15 that great weight responsibility always
16 exists. You cannot take a final action until
17 you have -- until -- not til you receive the
18 report, but there's a certain period of time
19 that they have to give you a report, but if
20 they give you a report you have to read it and
21 give great weight in the way that I've just

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1 articulated.

2 CHAIR HOOD: Let me ask another
3 question, and I think Commissioner Schlater
4 has another comment also.

5 3118.4, at least seven days prior
6 to a hearing date a list of all expedited
7 review calendar items shall be posted on the
8 Office of Zoning website. Now, you know what
9 we are going to hear there, right? Everybody
10 doesn't use the website, or everybody doesn't
11 use the computer, especially, your older
12 citizens.

13 I just want to know -- I just want
14 us to think of these things, because being a
15 President of a civic association most of the
16 people that come are older, and they are
17 always -- I say, well, we are going to do e-
18 mail, some of them are not doing e-mail. You
19 know, e-mail came long after they went through
20 the process.

21 So, I think we need to be

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1 considerate about older members of the City
2 also. Everybody is not -- some older citizens
3 might not -- as nice as it is, may not have
4 even seen the Office of Zoning's website.

5 So, those are some of the things as
6 we continue to have those discussions we need
7 to -- we need to make sure that we look at.

8 And, by no means am I trying to --
9 I'm just trying to help us cover all bases of
10 things that we've seen and things that may
11 come, because I will tell you that, while I do
12 think that we need to have a streamline, but
13 we just need to continue to tailor it. And,
14 I'm glad to hear that it looks as though we
15 are going to crawl before we walk.

16 While I do agree with Chairman
17 Loud, we could probably ask him stuff, but I
18 also agree with Ms. -- not helping anybody, I
19 agree with Ms. Steingasser. We had to start,
20 let's put this out in the field, let's see how
21 this works, and one thing that the Office of

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1 Planning and Zoning Commission has done
2 previously, which I greatly appreciate, we
3 don't mind making a tweak if we see that
4 something is not working, and I think we can
5 get the Office of Planning's support on making
6 a change if we need to, right, Ms.
7 Steingasser?

8 MS. STEINGASSER: Yes, sir.

9 CHAIR HOOD: Okay. I just wanted
10 to get that for the record. Okay.

11 Any other questions?

12 Commissioner Schlater?

13 COMMISSIONER SCHLATER: One thing
14 I'm not clear on, and I think Commissioner May
15 and the other Commissioners were alluding to,
16 in this whole process I'm not sure what the
17 value of notifying people that things are
18 going beyond this expedited review calendar,
19 what's the value there? Why not the day of
20 the members of the BZA consider everything
21 that's come into the record, and they decide

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1 if there's nothing in opposition that they
2 should just place it on the consent calendar
3 at the beginning of the hearing. And then,
4 they just dispose of it.

5 What I heard before was that this
6 was in consideration of maybe some of the
7 applicants, so that they didn't have to, you
8 know, pay for their lawyers to prepare, you
9 know, an oral case in front of the Board. But,
10 I think it's more important that people have
11 more time to get their concerns on the record
12 than it is the lower --

13 MR. BERGSTEIN: Well then, you
14 don't need a consent calendar if you want to
15 make a decision on the day. In other words,
16 I've been involved in lots of cases where the
17 judge might say to me, I'm satisfied, you
18 don't have to put anything on. Or, you know,
19 do you really want to put anything on, I think
20 you've given us enough information.

21 Anybody on the day of hearing, you

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1 know, the BZA can say, you know, Mr.
2 applicant, do you want to rest, or the
3 applicant may say I want to rest, and you are
4 done. Okay?

5 COMMISSIONER SCHLATER: Well, can
6 they say at the beginning of the hearing, we
7 want to put these five cases on the consent
8 calendar?

9 MR. BERGSTEIN: Well, they can't
10 because an applicant has an absolute right to
11 a hearing, so the BZA can't say we don't want
12 to have a hearing on it.

13 The way this is legal --

14 COMMISSIONER SCHLATER: What if
15 consent -- I don't think an applicant could
16 argue with an affirmative vote on their case.

17 MR. BERGSTEIN: Well, but the
18 problem is the vote takes place before they
19 have an opportunity. In other words, you have
20 a right to a hearing. What this says to an
21 applicant --

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1 COMMISSIONER SCHLATER: I'm not
2 saying you could vote it down up front, I'm
3 saying you could only vote it up up front.

4 MR. BERGSTEIN: -- well --

5 COMMISSIONER SCHLATER: How would
6 that be violating the law?

7 MR. BERGSTEIN: -- if -- in other
8 words, the BZA would take a preliminary vote
9 at the beginning of every hearing, and it
10 would say -- yes, I mean, you could do that,
11 that's the way teh Council works, where the
12 way the Council works is that the Committee of
13 the Whole all -- every piece of legislation is
14 on the consent calendar at the beginning, and
15 then it's up to an individual Council member
16 to take -- and we are talking about a
17 contested case here, but it's the same day --
18 so, a Council member says I want this, this,
19 this, this off the consent calendar, it goes
20 on to the regular first reading calendar, and
21 then the first order of business at a Council

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1 sessions is voting on the consent calendar.

2 Now, certainly, if the BZA wanted
3 to do it that way, it would not further the
4 purposes of the proposal as originally
5 articulated of allowing for a certain point
6 where -- a 223 application is pretty small
7 potatoes, somebody wants a deck, somebody
8 wants something like that, and the idea is
9 saying to that person, you will know seven
10 days out that you don't have to bring in your
11 architect, you don't have to bring in the
12 witness, everything is going to be -- not
13 everything is going to be fine, but you don't
14 have to if you don't want to, because you
15 waived your right.

16 If you don't want the applicant to
17 waive their right at the getgo, but, in
18 essence, place the burden on the BZA to say,
19 okay, let's look at these three 223s that are
20 up for today, I say we put them on the consent
21 calendar, and then you take a vote on the

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1 consent calendar, but it would be as if a
2 first vote, second vote, like the Zoning
3 Commission does, but what you are saying is
4 only up, that unless there's a motion to
5 approve it goes off the consent calendar and
6 you have the hearing.

7 And, the question is, does the BZA
8 have that much time in a day to do that?

9 But, yes, you could do it that way.

10 COMMISSIONER SCHLATER: Chairman
11 Loud?

12 BZA CHAIR LOUD: I just wanted to
13 respond.

14 I think a lot of what I'm hearing,
15 in terms of the back and forth and discussion,
16 would be remedied by removing the ten-day
17 provision that's currently in the language.

18 And then secondly, I think that
19 what's beautiful in this piece of legislation
20 is in the eye of the beholder. In other
21 words, the beauty in it to us is not that it

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1 might save an attorney, or law firm, or
2 architect, the opportunity of coming down,
3 although I think where that can be
4 accomplished no one should fight that, but
5 what's wonderful to us is that when applicants
6 are down here, and they are down here at 9:00,
7 9:30 in the morning, they will not have to
8 stay down here until 5:00 in the afternoon,
9 because we are running behind with cases that
10 are incredibly complicated, and they are
11 simply waiting for their case to be heard.

12 This is an opportunity to bundle
13 together all of the really simple cases that
14 absolutely are not contested, and just dispose
15 of them immediately.

16 And so, I think, you know, we've
17 had a number of real life examples, where we
18 have a lot of cases that are not contested,
19 they are just uncontested, there's no
20 opposition in the record on the morning of the
21 hearing. And, I think all of you that have

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1 participated in those can recount that every
2 Tuesday we have some that fall in that
3 category, and we are trying our level best to
4 move those quickly now, but this is a tool
5 that would allow us to do that a lot better,
6 and that's the value to use your word,
7 Commissioner, of it to us.

8 MS. STEINGASSER: Could I also
9 suggest that rather than trying to remove
10 these rules that the Office of Zoning just not
11 schedule a hearing more than 54 days after
12 filing, so that the ANC gets their full 40
13 days, and the applicant still gets the
14 assurance of ten in the 14 days.

15 I can tell you, in the nine years
16 I've been here, I've never seen a case make it
17 from filing to the BZA in less than 50 days. I
18 mean, we are lucky if we see it in less than
19 three months. So, I can't imagine practically
20 we are going to ever run afoul of this timing,
21 but to be sure we could just add a text

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1 amendment that would guarantee that no hearing
2 will be scheduled less than 55 days after
3 filing. So, that gives the full ANC 40 days
4 and the --

5 CHAIR HOOD: I think, at least for
6 my question on additional time, I don't know
7 if I want to add time, because, you know, one
8 thing that I remember, and I'm going to --
9 we're going to move along -- is that the
10 government should be predictable. Some
11 citizens come in, as the Chairman -- as
12 Chairman Loud has already said, sit down here
13 all day. You know, I think this is a good
14 concept. I think our questions, at least my
15 colleagues' questions, were some -- since we
16 weren't in on the discussions earlier, this is
17 our time to get our input in.

18 I think that some more tweaking,
19 I'm glad to hear that that's going to happen,
20 and then we'll come back with something that
21 works, and if we need to make changes, and I

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1 can assure you, at least as long as I'm here,
2 we'll have to do what we have to do to make
3 the changes and make it work. I mean, because
4 if you are sitting out there it's a different
5 story, being down here all day. I know, I've
6 sat out there.

7 COMMISSIONER MAY: Mr. Chairman,
8 can I ask another question?

9 CHAIR HOOD: Sure.

10 COMMISSIONER MAY: Just in terms of
11 the mechanics of voting, I've heard a couple
12 of different things suggested here, that we go
13 into a particular hearing and we have three
14 223 cases on the expedited agenda. And then,
15 they all get voted on at once? Because if
16 they are, then that means that we are voting
17 in favor of all of them at the same time, I
18 assume. Is that right? Or is it, do we vote
19 them -- we just vote them up and down based on
20 the written record, and do it one at a time?

21 MR. BERGSTEIN: You could do it any

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1 way you want. In other words, if someone says
2 let's put all three of these together, and
3 vote on them together, and one of the Board
4 members says I'd really like to have a little
5 bit more deliberation on case number three,
6 then you wouldn't do that. In other words, I
7 would assume that at the beginning the
8 presumption would be they would all vote in
9 favor, but any member of the Board can say I'm
10 not comfortable with that, I want to
11 deliberate on this one separately.

12 And so, I imagine that's how it
13 would go. And again, the presumption is not
14 that you are going to vote in favor, the
15 presumption is that no further testimony is
16 needed, the record is sufficient, and you are
17 prepared to vote up or down depending upon the
18 sufficiency of the evidence before you.

19 COMMISSIONER MAY: All right,
20 thanks.

21 BZA CHAIR LOUD: I just want to

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1 comment on that briefly, just to state my view
2 of that particular matter on the record, and I
3 think again it comes under the umbrella of
4 just removing the ten-day requirement.

5 I can't imagine a scenario where
6 there would be a contested case that I would
7 be in favor of depriving the applicant of a
8 hearing. That's my personal perspective. I've
9 talked to other board members and they have
10 different opinions on that, even where they've
11 waived the hearing. I just can't imagine
12 where there are factual issues in dispute,
13 where they through a hearing might have an
14 opportunity to further persuade, I can't
15 imagine denying relief without any kind of
16 hearing.

17 So, I just wanted to offer that on
18 the record.

19 COMMISSIONER TURNBULL: Mr. Chair,
20 could I add a comment?

21 CHAIR HOOD: Sure.

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1 COMMISSIONER TURNBULL: This is
2 going back to something that Commissioner May
3 had said about the Office of Planning reports.

4 Typically, when we get our cases,
5 we get our portfolio for the next hearing we
6 are going to have, we'll get it five days
7 ahead of time, maybe, something like that.

8 And, I think what you were getting
9 at, we won't, actually, have a chance to read
10 that report until that that day. And so,
11 although the Office of Planning may approve
12 it, and say it's fine, there may be something
13 in that report, as Commissioner May was
14 alluding to, that just strikes a chord that
15 says, gee, I don't know why this is really on
16 teh consent calendar, why isn't this really --
17 maybe it should have a hearing.

18 So, that would be almost on the day
19 of the hearing then, you are going to be going
20 and saying, I don't think this case is right
21 for a consent calendar.

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1 And right now, the way it's
2 written, you are out of luck. It says ten days
3 for a Board member, and I think the way we do
4 it with our paperwork right now, that's never
5 going to happen if we get that report at that
6 time.

7 There's got to be some leeway for a
8 Board member, I guess, to go through that body
9 of paperwork and come in with a pretty good
10 feeling about it.

11 I mean, we all know that the 223s -
12 - but, you know, somebody could come in and
13 say, gee, the deck is too high, there could be
14 some little things that might come up on it,
15 which I think is what you were getting at.

16 COMMISSIONER MAY: That's right,
17 and, in fact, my experience very recently was,
18 in one case that there was a question that was
19 raised by the OP report. Everything that we
20 had on the record fully supported the
21 application. It was not a 223 case. But,

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1 everything that we had on the record supported
2 it, and it was in the process of asking
3 questions about the OP report that we found a
4 factual discrepancy, and we needed more time,
5 more information from the Office of Planning,
6 and we wound up with getting a very different
7 recommendation.

8 They didn't reverse the position,
9 but it became a different type of relief, as a
10 result of that questioning. And, I can
11 imagine things like that, potentially,
12 happening in the future, that you would see
13 something when you get that Office of Planning
14 report, in particular, as a piece of evidence.

15 COMMISSIONER TURNBULL: And, I
16 don't want to get into the weeds of how we do
17 this, but I think there ought to be, as I
18 think we've said, a waiver, some way that you
19 can waive that time, to be able to make a
20 decision based upon the record.

21 COMMISSIONER MAY: In another

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1 organization that I work with, the consent
2 calendar stays -- I mean, things go on the
3 consent calendar as a matter of default, but
4 as soon as anybody wants to testify about it,
5 it goes off. And so, anyone can raise the
6 objection.

7 COMMISSIONER TURNBULL: Anyone, not
8 really limited to what's in 3118.2(a)?

9 COMMISSIONER MAY: Right.

10 COMMISSIONER TURNBULL: Or (b)?

11 COMMISSIONER MAY: Anybody signs up
12 to talk about it, it goes off the consent
13 calendar and becomes a public item.

14 CHAIR HOOD: I think we, basically,
15 get anybody, when we say any property or
16 business -- well, most people, we include all
17 those, especially, who will be affected. When
18 we say any property or business owner who can
19 see the proposed construction, so we open it
20 up.

21 COMMISSIONER MAY: Yes, I would

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1 say, I think that language is pretty odd,
2 because then we'll get into questions of,
3 well, can you really see it from your property
4 or not, and some people will want to argue
5 about that.

6 I mean, I think the -- I think
7 anybody who experiences the property, just
8 because they walk past it, or, I don't know, I
9 mean, whether or not they can see it from
10 their home or from their business, I mean, I
11 think it's legitimate enough reason to be able
12 to want to have a hearing.

13 So, I'd be inclined to make that
14 open to a lot of people, rather than limit it.

15 CHAIR HOOD: You know, I actually
16 thought we were going to only be here for an
17 hour, but one of the things that I think we
18 could do at this point, I definitely want to
19 hear from -- we have a few witnesses, I want
20 to hear from the witnesses we have, and also
21 the Office -- you know, the different

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1 organizations, OZ, and Office of Planning, and
2 BZA, and continue a work in progress, and I
3 think we want to do that.

4 And also, I think it's another time
5 frame where the public can comment, am I
6 correct, between now and -- between proposed
7 and final?

8 MR. BERGSTEIN: Yes, but you are
9 talking first of leaving the record open, not
10 taking action tonight.

11 CHAIR HOOD: No, no, we are not.

12 MR. BERGSTEIN: But yes, after you
13 take proposed action, there would be an
14 opportunity for the 30-day period of public
15 comment, yes.

16 CHAIR HOOD: Okay. Okay. And,
17 that way we can make sure that once we come up
18 with something definite that we are going to
19 advertise, then the public will have a chance
20 to comment.

21 But, actually, we haven't given the

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1 public a chance to comment yet, so we want to
2 hear what they have to say, but let me --
3 Chairman Loud, do you have anything else that
4 you would like to say in closing?

5 BZA CHAIR LOUD: I just want to
6 thank you for the opportunity again. I thank
7 the Office of Planning for initiating our
8 dialogue around this. I'm encouraged that
9 Commission members are also concerned about
10 the ten days. I'm further encouraged that Mr.
11 Bergstein feels that Section 3100.5 eliminates
12 our quandary about the ten-day provision, but
13 also would love to see something very specific
14 in the proposed text that addresses this whole
15 ten-day issue for us.

16 CHAIR HOOD: Okay.

17 BZA CHAIR LOUD: And, I just want
18 to thank you again.

19 CHAIR HOOD: Does the Office of
20 Zoning have anything they want to close with,
21 since we are all in collaboration here?

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1 DIRECTOR WEINBAUM: No, not at this
2 time, thank you.

3 CHAIR HOOD: Okay. Office of
4 Attorney General have anything?

5 MR. BERGSTEIN: No, sir.

6 CHAIR HOOD: Office of Planning?

7 MS. STEINGASSER: No, sir.

8 CHAIR HOOD: Okay. Colleagues, do
9 you have anything? Okay.

10 COMMISSIONER MAY: Mr. Chairman,
11 yes.

12 CHAIR HOOD: Maybe I asked too
13 much.

14 COMMISSIONER MAY: Yes, no -- yes,
15 you asked too much.

16 The waiver of the rules to allow
17 someone to push it into a hearing within the
18 ten days, that waiver of rules requires some
19 sort of a consent by the entire BZA, right?
20 It's either a vote or there has to be --

21 MR. BERGSTEIN: I think what the

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1 Chairman was referring to was that he wanted
2 to know that intrinsic in the BZA's authority,
3 notwithstanding what's in the proposed rule,
4 is that the BZA could always say, we waived
5 the rule requirements to put our objection in
6 ten days. You can do that, but he's also
7 saying that something like that is better
8 stated expressly, that nothing in these rules
9 prevents the Board of Zoning Adjustment, and I
10 think, actually, that would be the better
11 approach.

12 COMMISSIONER MAY: Yes, I think it
13 -- and I think like the initial language that
14 suggests a single member can object, I don't
15 think you want to rely on it being any kind of
16 a vote or a majority or anything like that. I
17 certainly want to do that, because every once
18 in a while I'm the only person on a side of a
19 particular issue.

20 CHAIR HOOD: I think we all have
21 been on that side before.

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1 Okay, let's go to the public.

2 I thank everyone again for that
3 discussion.

4 Let's start with Mr. Gary Peterson.

5 Ms. Alma Gates?

6 They both will have five minutes,
7 and then Mr. Lindsley Williams will have three
8 minutes, in that order.

9 And, if you have something, why
10 don't we do this at this time, if you have
11 something to pass in, your testimony or
12 anything, if you could pass it in now, so we
13 can have it while you are reading your
14 testimony.

15 Okay, we'll start with Gary
16 Peterson.

17 MR. PETERSON: Good evening, Mr.
18 Chairman. My name is Gary Peterson, I'm Chair
19 of the Capitol Hill Restoration Society's
20 Zoning Committee, and I'm here to testify in
21 support of some sort of, I guess we are

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1 calling it an expedited review calendar now,
2 but I think it has been called for for a
3 long time, and makes a lot of sense.

4 We also agree with the Office of
5 Planning's theory to start out small, and see
6 how it works, and then progress from there if
7 we can agree on what other types of cases
8 belong on an expedited review calendar.

9 I have a little different
10 perspective on some of these things, because,
11 of course, the Society is not an individual,
12 or an applicant, or any of those categories,
13 but is an organization, and there area couple
14 of instances where I could see where someone
15 might apply for party status, but at the
16 hearing it would be denied. And, I think it's
17 silent here as to what would happen if the
18 person's request for party status were denied.

19 Another thing that happens is,
20 sometimes the Restoration Society, with these
21 new regulations, we would have to apply for

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1 party status, and then we may be able to work
2 something out with the applicant. And, can we
3 withdraw, it's silent as to withdrawing the
4 objection to being on the expedited calendar.

5 And, I think there may be need to address
6 that issue, where someone objects initially,
7 but then is able to work something out with
8 the applicant, and agrees that it should be on
9 the expedited review calendar.

10 And then I want to make sure that
11 we have another chance, and I think you just
12 spelled that out, to come back and review
13 whatever is the final draft before you.

14 The thing, though, I would like to
15 see, and I hope you keep this in mind, because
16 I see you deviating a little bit from this,
17 and I think, indeed, we want to make sure
18 that we save some time for the BZA, and we
19 save some time for the public, from having to
20 sit for a long time for a case that's really
21 not contested. And, we also want to make sure

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1 that landowners don't have to incur undue
2 expenses.

3 And so, I would like it to be that
4 they have ample time to know whether or not
5 they have to prepare their case, and that if
6 they don't then they don't have to have the
7 expense of their lawyer, their architect, or
8 whoever, showing up and, one, preparing for
9 it, and then, two, showing up and testifying.

10 I think we have to take all of
11 those parties into consideration to make it a
12 win/win/win/win for everybody here.

13 CHAIR HOOD: All right. Hold your
14 seat, Mr. Peterson. We may have some
15 questions for you.

16 MR. PETERSON: Okay.

17 CHAIR HOOD: Okay, let see who was
18 next.

19 Ms. Gates?

20 MS. GATES: Thank you, Mr.
21 Chairman, and Members of the Commission.

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1 My name is Alma Gates, and I'm
2 representing Neighbors United Trust.

3 Consideration of the BZA consent
4 calendar makes complete sense. NCPC uses one,
5 and so does the Historic Preservation Review
6 Board.

7 However, these boards consider
8 matters that do not affect the values of
9 abutting properties in the same way that
10 special exceptions and variances considered by
11 the BZA affect an abutting residential
12 neighbor.

13 In the matter of zoning, according
14 to the Washington D.C. Zoning Regulations
15 Administrative Processes Study, by White and
16 Smith, the Zoning Commission's consent
17 calendar procedure is limited to minor
18 modifications and technical correction, so
19 they are of little or no importance or
20 consequence.

21 So, consent calendars are being

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1 used widely by D.C. regulatory authorities in
2 cases that do not convey an impact.

3 In the proposed zoning text
4 amendment document, the Office of Planning
5 notes the Zucker Report attempted to evaluate
6 all aspects of the development process in D.C.

7 with regard to the BZA, the report
8 recommended a target for scheduling
9 applications for hearings within 60 days of
10 when they were filed, and recommends the use
11 of a consent calendar as a means of
12 accomplishing that goal.

13 But, increased efficiency should
14 not diminish the efficacy or purpose of the
15 zoning process.

16 To ensure no compromise, the report
17 goes on to note the BZA can retain the ability
18 to remove an application from the consent
19 calendar. Likewise, the noticing requirements
20 remain in effect so there is no loss of
21 opportunity for the public to be involved.

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1 There is no argument that the BZA
2 calendar is loaded with cases, but they are
3 there because they need zoning relief. The
4 pertinent question might be, is it appropriate
5 or responsible to waive off some of these
6 hearings because the BZA's calendar is too
7 full, or a property owner wants an expedited
8 hearing process?

9 The notice of public hearing for
10 tonight's hearing, and the October 21
11 memorandum of the Office of Planning, do not
12 make clear the level of detail that would be
13 provided to the ANC for expedited cases, nor
14 has the OP screening process been made
15 evident, that would recommend some cases for
16 listing on a consent calendar, while others
17 would require a full hearing.

18 There is every reason to believe
19 most residents filing under Section 223 would
20 ask that their applications be placed on the
21 calendar for expedited review, to avoid the

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1 costs associated with bringing architects and
2 attorneys to the BZA hearing.

3 The White and Smith study, which is
4 also referenced as justification for the
5 recommendation to allow for a BZA consent
6 calendar notes, the BZA could also include a
7 consent calendar procedure, because most of
8 their cases are contested cases. A consent
9 calendar procedure runs the risk of violating
10 the due process rights of parties who are
11 denied the opportunity to comment where the
12 case is resolved without a full hearing.

13 So long as parties have adequate
14 notice, and the opportunity to request that
15 the BZA pull the case and hear it, there is
16 little risk of due process violation.

17 However, this process is rarely
18 used with variances, appeals, and special
19 exceptions, that typically require some fact
20 finding and potential off-site impacts.

21 The proposed new language under

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1 Section 3118.2(c).1 references Section 223 for
2 additions to one family dwellings or flats,
3 and for new or enlarged accessory structures.

4 If the Office of Planning is making the
5 recommendation that an application should be
6 placed on the consent calendar, what objective
7 criteria would be used to ensure the risk of
8 violating the due process rights of parties
9 who are denied the opportunity to comment is
10 not realized.

11 Section 223 provides a list of
12 specific criteria that must be met under
13 special exception review.

14 While I conditionally support a
15 consent or expedited review calendar to lessen
16 the case load of BZA, I also support a process
17 that is open, fair, transparent, and
18 inclusive. In addition to those areas
19 previously noted, the screening criteria that
20 would be used to ensure an open fair,
21 transparent and inclusive process continues

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1 under the zoning text amendment needs to be
2 disclosed by the Office of Zoning prior to
3 approval by the Zoning Commission.

4 After the questions raised by the
5 Board tonight, work on the process needs
6 further consideration.

7 Thank you.

8 CHAIR HOOD: Thank you very much,
9 Ms. Gates.

10 Mr. Williams?

11 MR. WILLIAMS: Good evening, Mr.
12 Hood, and Members of the Commission. My name
13 is Lindsley Williams. I reside at 3307
14 Highland Place, N.W., and I'm here to testify
15 in favor of what you are trying to achieve
16 tonight, not that it's ready for adoption, but
17 to say you are heading in the right direction,
18 and I appreciate the effort, much as you've
19 expressed your great thanks to Chairman Loud,
20 Mr. Hood.

21 My comments are really relatively

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1 few. I look at this, and I want to offer some
2 suggestions. As I look at the first section,
3 3118.1, I want to suggest some discussion and
4 some caution. This is in the baby steps
5 department, about adopting the portion of the
6 recommendation that relates to 209.1. This is
7 the park, playground, swimming pool and
8 athletic field, there have not been a lot of
9 cases. I'm not sure that you are going to get
10 a lot of additional savings from that, and I
11 just think that part of the further discussion
12 should say, why do we need to add that to the
13 list, we don't even know quite what that
14 brings with it.

15 Second, I wanted to go to a remark
16 Mr. Bergstein made, because I was going to
17 say it in a different way, but he said it so
18 well. He said an applicant is entitled to a
19 hearing. And so, in 3118.2, it would seem to
20 me that an applicant ought to have the ability
21 to say, I want to have my hearing, and that's

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1 not provided for.

2 And then, as I listened to Mr. May
3 talking about what, in effect, is the NCPC
4 process and broadening the list, and as I
5 listened to the dilemma about the ANC issue,
6 it seemed to me that if you move it in the
7 direction of allowing a wider audience,
8 particularly, if you allow the ANC single
9 member district commissioners to state the
10 objection, then you can kind of resolve some
11 of those issues of objection on the one hand
12 and action by the ANC as a whole.

13 And, the final comment I wanted to
14 make is to ask you to look at 3118.7, that's
15 the last bottom line of the whole process, and
16 it concludes, but shall reflect the nature of
17 the relief granted and any conditions imposed.

18 I think that's reasonable, but I would
19 suggest very strongly that you add to that the
20 nature of the relief requested that granted
21 and the conditions imposed, so as to put into

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1 some framework whether there's a difference
2 between what the person was seeking, rear
3 yard, so on, and so forth, from what was
4 granted, maybe a difference of a foot or two.

5
6 And, I'm sorry, I did say it was
7 one more, this was the last -- one more thing
8 I meant to add, and that is that you establish
9 that if there are other things pending on the
10 property, by pending I mean you need a
11 variance, some of the stuff you can do under
12 223, but there's something else that's
13 bringing it up, like maybe it's a non-
14 conforming property under Chapter 21, and,
15 therefore, you have an expansion. Well then,
16 if you have that, maybe you want to allow that
17 under 223, maybe you don't. But, it seems to
18 me if you have a whole bunch of other things
19 going on, you want to hear the whole case, and
20 not even try to waiver out, somehow shorthand
21 the 223s. You want to hear the whole case,

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1 because it's inherently complex.

2 My time is up. Thank you so much.

3 CHAIR HOOD: Thank you all for your
4 comments and your testimony on this issue.

5 Let me go right back to you, Mr.
6 Williams.

7 You mentioned about the ANC to a
8 single member district. How would that work?

9 Maybe I didn't understand, but how would that
10 work if, say, the ANC supported it, and we see
11 this sometimes, where a single member district
12 may be in opposition, and they show up and
13 they raise their hand. How would that work?
14 Which one are we supposed -- well, the law
15 says we are supposed to --

16 MR. WILLIAMS: I can answer that
17 pretty easily.

18 CHAIR HOOD: -- okay, but the law
19 says we are supposed to use great weight by
20 the ANC Commissioner. If we allow the ANC
21 single member district person, who may be in

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1 the area and they are in opposition of it, how
2 does that work?

3 MR. WILLIAMS: All the ANC -- all
4 I'm trying to do in that remark I made about
5 the SMD was to say that a single member of the
6 Commission, much like the person Peter was
7 describing walking by the property, that was
8 in the neighborhood, it affected them in some
9 way, they would have standing, so, too, should
10 the ANC single member district commissioner.

11 And, what you are trying to do is
12 to say, should it move from a hearing into
13 some more abbreviated process, that's all the
14 SMD person would have, if you will, the right,
15 as in this discussion, conceptually have, and
16 it simplifies it, because I'm not sure every
17 ANC, without revising the math, can act as a
18 body to make a statement saying take it off
19 the -- they object to its being put on to a
20 consent calendar, which was the question that
21 was being asked.

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1 CHAIR HOOD: Okay. And, Ms. Gates,
2 I look here at your testimony, you say, and I
3 want to thank you for being open, and fair,
4 and transparent and inclusive in finishing up
5 your testimony, going into your closing
6 thought without me having to ask for it, but I
7 appreciate that.

8 But, let me ask you, I'm trying to
9 get a feel kind of for where you -- do you
10 think the text, as it stands now, is moving in
11 the direction, as Mr. Williams said, of being
12 open, fair, transparent, and inclusive?

13 MS. GATES: I think tonight's
14 conversation has been very helpful.

15 CHAIR HOOD: Okay. Okay.

16 MS. GATES: Could I ask Mr.
17 Bergstein to clarify something he said?

18 CHAIR HOOD: I don't think we
19 typically do that, but I'll tell you what, ask
20 me. This is how we do it. Since we are all
21 trying to hash things out, ask me, and then I

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1 will direct your ask.

2 MS. GATES: All right, thank you.

3 Mr. Chairman, the question regards
4 ANCs being automatic parties, and I think I
5 heard Mr. Bergstein say that you are required
6 by law to give their report great weight, but
7 you are not required -- or, they are not
8 automatic parties, necessarily, in the
9 hearings.

10 And, that sort of gave me a bit of
11 a jolt.

12 CHAIR HOOD: Well, I think Mr.
13 Bergstein is exactly correct, but let me ask
14 Mr. Bergstein, can you clarify that for me?

15 MR. BERGSTEIN: I didn't suggest
16 that at all.

17 Under the current regulations, the
18 Zoning Commission and the BZA make ANCs, the
19 affected ANC, or affected ANCs, automatic
20 parties to a hearing.

21 Now, what I was saying is, the

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1 regulations wouldn't compel to do that, by
2 virtue of the ANC Act. It was something that
3 the Zoning Commission decided to do.

4 There are other agencies,
5 administrative -- adjudicatory entities, that
6 do not make the ANC automatic parties. It was
7 a policy choice that the Zoning Commission and
8 BZA made. It was not compelled by the ANC
9 Act, but it does exist. The ANC -- the
10 affected ANC is an automatic party, which is
11 wholly different from their entitlement to
12 give a written report, and the obligation of
13 the Zoning Commission or BZA to give that
14 written report great weight.

15 MS. GATES: Thank you, Mr.
16 Chairman.

17 CHAIR HOOD: Right, and my
18 rationale for saying that Mr. Bergstein was
19 exactly correct is, because sometimes we have
20 areas outside of where the location or the
21 subject property that is before us is out

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1 side, and the ANC across the street, it's not
2 in their jurisdiction, we don't normally -- we
3 have to consider whether we are going to make
4 them a party, we have to grant them party
5 status, which is opposite of if they are in
6 there we make them automatic party status.

7 That's where I was going. I'm not
8 sure if that's what Mr. Bergstein was, but
9 that's why I was.

10 Okay, thank you Ms. Gates.

11 Let me see, any questions?

12 Commissioner May?

13 COMMISSIONER MAY: Yes, I just
14 wanted to clarify something that Mr. Williams
15 alluded to, which is the notion that the
16 applicant would have some say in whether
17 something is on the expedited agenda or not.

18 I mean, the way I understand the
19 proposed language, it would only appear on the
20 expedited agenda if the applicant waived the
21 right to the hearing in the first place. So,

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1 it would take their affirmative action to be
2 able to go on to the agenda, is that right? I
3 mean, to go on to the expedited agenda?

4 MR. BERGSTEIN: I'm sorry, your
5 voice is sort of fading at this end.

6 COMMISSIONER MAY: Worry about
7 that.

8 MR. BERGSTEIN: You are asking me
9 if -- why don't you say it again, but a little
10 bit closer to the microphone, if you would.

11 COMMISSIONER MAY: Just, Mr.
12 Williams alluded to the idea that the
13 applicant needs to have some say over whether
14 something is on the expedited agenda or not.
15 And, I was just saying that, the way I read it
16 the applicant would have to waive the right to
17 a hearing in order to appear on the expedited
18 agenda. If they didn't waive that right, then
19 they get their hearing, no matter what.

20 MR. BERGSTEIN: If they don't waive
21 their right, if they waive their right they

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1 don't get a hearing.

2 COMMISSIONER MAY: If they don't
3 waive their right.

4 MR. BERGSTEIN: They absolutely get
5 it. I mean --

6 COMMISSIONER MAY: They absolutely
7 get a hearing, right.

8 MR. BERGSTEIN: -- the default --

9 COMMISSIONER MAY: Is a hearing.

10 MR. BERGSTEIN: -- is you are going
11 to have the hearing.

12 COMMISSIONER MAY: Right.

13 MR. BERGSTEIN: You would need to
14 check a box that says, request for consent
15 calendar, or expedited treatment, I hereby
16 waive my right to a hearing and request the
17 matter be placed on a consent calendar.

18 So, I don't think we need to have
19 an election, I want a hearing, I don't want a
20 hearing. I think the default is always, you
21 have a right to a hearing, you have to

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1 specifically and expressly waive that right.

2 COMMISSIONER MAY: Okay.

3 MR. WILLIAMS: That's where I was
4 coming from, if I could, Mr. Hood, is that if
5 something comes in from one of the groups that
6 is eligible to make comments, and the
7 applicant then says, well, maybe I really do
8 want to -- even though it's in favor or
9 something, I just want to sort of uncheck that
10 box. That's where I was coming from.

11 MR. BERGSTEIN: It's an interesting
12 idea, it's not made express, but the question
13 is, once they uncheck that box can they decide
14 at any point to say, I hereby request a
15 hearing?

16 Now, of course, they will be
17 scheduled for a hearing on the same date as
18 the consent calendar. So, they could easily
19 do that, and say forget the consent calendar,
20 I go with the hearing. I mean, that's the way
21 I understand it's going to work. You are

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1 really going to have the case appear twice on
2 an agenda, once under a hearing, once under a
3 consent calendar, and only until you get to
4 that ten-day point where there is certainty at
5 that point gets removed from the hearing part
6 and left on the consent calendar, or if
7 there's an opposition take it off the consent
8 calendar, kept on the hearing calendar.

9 So, I think it's implicit, but we
10 could state expressly that at any time prior
11 to the hearing date the applicant can remove
12 request for consent calendar treatment, and it
13 would just happen.

14 MR. WILLIAMS: That would be my
15 recommendation.

16 CHAIR HOOD: All right. Any other
17 questions of this panel?

18 All right, we want to thank you,
19 and we appreciate your input greatly.

20 Stay tuned, we'll see something
21 different, or see some tweaks, so we hope to

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1 get your comments on that also.

2 Anyone else who is here in support?

3 Anyone else in support?

4 Okay, next let me go to those
5 opponents. Let me start with Gale Black, Ms.
6 Black, and also Ms. Barbara Zartman.

7 Anyone else who is here in
8 opposition?

9 Now, is this opposition with
10 conditions, or is this straight opposition,
11 Ms. Black? You know, sometimes I get
12 opposition with conditions, so I'm just
13 curious.

14 Okay. If you could turn your
15 microphone on.

16 MS. BLACK: Good evening. My name
17 is Gale Barren Black, and I live at 1761
18 Crestwood Drive, N.W., of course, in
19 Washington, D.C.

20 And, I'm one of the officers of
21 ANC, Advisory Neighborhood Commission, 4A, and

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1 I'm here to offer testimony in opposition to
2 the petition, and this is on behalf of the ANC
3 itself.

4 ANC 4A considered this matter at
5 our October 6, 2009 public meeting, and we did
6 have a quorum present at that meeting. And,
7 the ANC voted to oppose the petition at that
8 meeting, and authorized me to present the
9 views of the ANC.

10 We oppose this matter because we
11 don't believe that we are going to have
12 sufficient notice or due process to, actually,
13 be able to protect our interests and D.C.'s
14 overall interests, and we do have a
15 significant interest in this particular issue.

16 The ANC covers a number of
17 neighborhoods, including Crestwood, Shepherd
18 Park, Colonial Village, North Portal Estates,
19 Brightwood, and a portion of 16th Street
20 Heights. These neighborhoods are
21 predominantly single family residential

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1 neighborhoods. They are mainly R-1 units, and
2 some R-2.

3 The ANC covers approximately 16,000
4 residents, and most of these homes are,
5 actually, owner occupied. The area is
6 characterized by certain zoning protections
7 that we want to protect. They permit
8 sufficient green space, by having set asides,
9 setbacks, and they also give us some
10 assurances as to what to expect in terms of
11 land use.

12 As we understand the proposal, and
13 I'll be the first to say I'm a little confused
14 as to what all is, actually, being proposed,
15 but it sounds like it would allow additions to
16 one family dwellings, accessory apartments,
17 maybe English basements being converted, and
18 would permit new or enlarged structures, such
19 as community centers, athletic fields to go
20 in, and that this would be something that is
21 deemed appropriate to go on an expedited

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1 calendar.

2 The proposal would also allow BZA
3 staff to bundle these requests, these
4 modifications, in such a way that I'm not sure
5 that anyone would know even what's coming
6 before you, and what action to take. Non
7 profits, community groups, wanting to run a
8 park or a playground, and that was recently, I
9 guess, in the papers to bypassing the process,
10 adding swimming pools or athletic fields in a
11 residential zone where there's not one now.

12 These are not just typical
13 additions here, these are something that we
14 would question whether that is appropriate for
15 an expedited calendar. And, it seems to be a
16 rather over broad approach that extends well
17 beyond what we would consider routine. It
18 could be, really, tantamount to a whole change
19 in zoning.

20 We also think that because of this
21 there is not enough public notice or

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1 opportunity for true public feedback. We've
2 been talking about the 40 day requirement.
3 Our ANC meets the first Tuesday of the month.
4 We meet monthly, nine times a year. Our
5 calendar is usually filled with things,
6 whether it's requests for permit variances for
7 liquor stores, you name it, it's full. And,
8 it's hard to keep up, to tell you the truth,
9 with all that is coming through.

10 I have yet to see, coming in in any
11 sort of written form, except through the D.C.
12 Register, any notices as to what's going on
13 the consent calendar. And so, for our ANC to
14 say that we have 40 days, when we probably
15 would read about it, perhaps, two weeks into
16 the process, we would miss the time for
17 submitting any statements, and as I've heard
18 tonight, we really have only the opportunity
19 to get notice of a final action. So, where is
20 the opportunity for us to participate?

21 And, I'm not sure whether or not

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1 this proposal would actually expedite
2 anything, because as it's stated before, the
3 matter would come up at the same date as the
4 scheduled hearing would have come.

5 Now, we do understand that the ANCs
6 can still object, but again, what notice are
7 we actually getting and to do what? Is it
8 after the fact when it's a final action, or is
9 there really a chance for us to give some
10 feedback?

11 what we usually have been finding
12 is that, we get notice via the D.C. Register,
13 and it's not enough.

14 If I could just sum up, as an
15 example this month we've learned about a two-
16 level addition to a unit that's being added.
17 It came in that notice after our meeting, so
18 we had absolutely no chance to act on that.

19 Just in summarizing, I ask that
20 this testimony which I provided to you in
21 written form be made a part of the record, and

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1 that you give great weight to this, because it
2 was something that was considered at an ANC
3 meeting.

4 Whatever is done has to be
5 consistent with the zoning, we think, and the
6 City's comprehensive plans. I'm just not
7 clear on what safeguards you've got here, and
8 so we ask for your consideration on this
9 matter.

10 Thank you.

11 CHAIR HOOD: Okay, thank you. Hold
12 your seat, we may have some questions or
13 comments for you.

14 Ms. Zartman?

15 MS. ZARTMAN: Thank you, Mr.
16 Chairman, and thank you all for being here for
17 this interesting discussion.

18 I'm speaking tonight on behalf of
19 the Committee of 100, which believes this
20 proposal should not be pulled out of the
21 overall zoning reform process, because the BZA

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1 procedures are as central to zoning reform as
2 any topic.

3 We deeply appreciate the dedication
4 of those who serve on the Board of Zoning
5 Adjustment, including the rotating
6 representative of this Commission. We know the
7 hours can be long and contentious, but
8 amending one element of BZA operations, while
9 others are the subject of proposed ZRR
10 changes, will only add to confusion, rather
11 than serve to simplify the zoning process.

12 You have had before you proposals
13 to change any number of land uses, to matter
14 of right entitlements. In fact, you have
15 encouraged some of them, including auxiliary
16 dwelling units as of right additions in
17 residential zones.

18 While we at the Committee strongly
19 disagree with such proposals, and hope the
20 Commission thinks better of them, they would
21 certainly affect the number of cases brought

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1 to the BZA, both as applications and as
2 appeals.

3 Similarly, OP proposes that
4 institutional use be allowed of right in
5 residential neighborhoods up to, perhaps,
6 50,000 square feet. Again, this would have a
7 major impact on the BZA case load, unless the
8 Commission, again, thinks better of the
9 proposal and turns it down.

10 There's a more subtle factor
11 involved as well, and it's been referred to
12 tonight. We believe a number of proposals
13 from the Office of Planning will have the
14 effect of limiting due process rights for
15 citizens, associations, not mentioned in the
16 draft, and ANCs.

17 We ask that the Commission delay
18 any individual change to BZA procedures until
19 we can see the collective impact on citizens'
20 rights of the several proposals, as the White
21 and Smith report cautions.

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1 As to the mechanics and the
2 schedule, the proposals don't seem to make
3 sense when viewed in terms of the ANC
4 operations, and the legal requirements for
5 notice of ANC action. It is also a tight time
6 line that demands public reaction, not ANC
7 reaction, within a four-day window, if we are
8 reading the OP proposal correctly. I know
9 will shock all of you to see my observe that
10 not all ANCs work perfectly, and often people
11 are at the mercy of their own devices to find
12 out what is on a BZA calendar.

13 They will only see what is proposed
14 for the consent calendar 14 days before the
15 hearing, and they have to act within four days
16 of that notice. That seems to me an
17 unreasonable expectation of individual
18 citizens.

19 Moreover, any case in which someone
20 has filed an application for party status
21 would seem, by definition, to be ineligible

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1 for inclusion on a consent calendar. There's
2 someone who wants party status to have a say.

3 The automatic party status for ANCs presents
4 its own complication.

5 It's not clear whether OP would
6 contemplate allowing appeals of decisions
7 rendered by a consent calendar by those who
8 missed that four-day window or some other
9 procedure, or whether motions to reconsider
10 would be entertained.

11 Of course, without a hearing
12 record, findings of fact and conclusions of
13 law, the question might be mute.

14 We ask that you at least postpone
15 action on this topic until it can be
16 considered within the omnibus rulemaking.

17 I'd be happy to answer any
18 questions you might have.

19 CHAIR HOOD: Okay. Colleagues, any
20 questions of this panel?

21 Let me ask Ms. Black, and maybe we

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1 can talk some of this out for a moment with
2 Mr. Bergstein, if he doesn't mind. I don't
3 want to put him on the spot.

4 You said that your ANC only gets --
5 and I'm talking about how it operates now --
6 you only get notice through the District
7 Register, I was about to say Federal Register,
8 through the Register.

9 MS. BLACK: Register, yes.

10 CHAIR HOOD: Right. But,
11 typically, this office also sends out
12 correspondence of anything, any zoning
13 activity to the chairperson -- are you the
14 chairperson, Ms. Black?

15 MS. BLACK: No, I'm not.

16 CHAIR HOOD: Okay, it goes to the
17 chairperson of the ANC, as well as the single
18 member district. So, you should be getting
19 something from our -- and that started, I know
20 for sure, back in 1998, because that's
21 something we started when I first came here,

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1 because that was an issue.

2 MS. BLACK: We are not getting the
3 notices. Now, and I do go to the office to
4 check what's coming in. If it's something
5 that -- maybe it's just that 4A hasn't had
6 anything, but I am picking up things that I
7 find elsewhere.

8 CHAIR HOOD: That may be. Okay.
9 But, that may be the case.

10 MS. BLACK: That I think we should
11 be.

12 CHAIR HOOD: That may be the case.
13 Maybe you don't have anything that's going on
14 in front of either the Commission or the
15 Board, but, typically, we send notices out,
16 and I think Ms. Gates, I hope your ANC is
17 getting notices from the Office of Zoning, as
18 well as Ms. Zartman, your ANC is getting
19 notices. Okay.

20 So, I want to -- we want to make
21 sure -- maybe we don't have the right address.

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1 I don't know. Hopefully, we do.

2 MS. BLACK: Fortunately, the
3 residents will alert us if there's something
4 that's big that's coming through, and then
5 they'll come and we've had a good relationship
6 so far working through the residents who bring
7 it to our attention.

8 But, I can only -- I'm thinking
9 there's one, I guess the Emory Beacon of Light
10 came through, that was one, but that's it.

11 CHAIR HOOD: Is that a case in
12 front of us? I'm not sure, I don't know. I
13 don't really want to talk about any cases, but
14 is that in front of us? Does anybody know?

15 MS. SCHELLIN: I don't think, not
16 the Zoning Commission.

17 CHAIR HOOD: Okay, maybe the BZA.
18 But, even at that, they should get notices,
19 right?

20 MS. SCHELLIN: We do send out
21 notices to all ANC chairs and the SMDs.

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1 CHAIR HOOD: Right.

2 MR. BERGSTEIN: Under the BZA
3 rules, it's required that mailing the notice
4 to the ANC within the area for which the
5 subject is located, and that it has to be done
6 not less than 40 days before the dates of the
7 hearing. So, that's at least what the rule
8 requires, and that's a moment of proof that
9 has to be made, and every single order
10 indicates that that's been done.

11 CHAIR HOOD: What I would suggest,
12 because sometimes I think ANCs do move around,
13 different offices, you may be in the same
14 office, just make sure that we have the right
15 address. I think we would have known by now
16 if we didn't.

17 MS. BLACK: Yes.

18 CHAIR HOOD: So, if we could just
19 do that. Okay.

20 Ms. Zartman, so you are asking --
21 I'm trying to understand, you are asking us,

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1 as we ask that you at least postpone action on
2 the topic until it can be considered along
3 with the omnibus rulemaking. You are asking
4 us to wait to do anything with this action,
5 which we're going to be waiting some time, but
6 I don't know if it's going to go that far.
7 You are asking us to wait until we get to the
8 completion of the ZRR, is that what you are
9 asking?

10 MS. ZARTMAN: Certainly, at least
11 the portion that would be the task force
12 report on the operations, the administrative
13 operations of the Office of Zoning.

14 I think all of the proposed changes
15 should be considered as a whole, and not
16 changing this one procedure, and, perhaps,
17 being important to change another procedure,
18 without understanding -- I mean, if you are
19 going to make it matter of right to do rear
20 additions and expansions for auxiliary
21 dwelling units, you don't need the relief you

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1 are considering tonight to get those cases off
2 the calendar. They are going to come off.

3 If you are going to have of right
4 ability to locate institutional uses in
5 residential zones, those are coming off the
6 BZA calendar.

7 CHAIR HOOD: Okay. I forgot who
8 mentioned -- who mentioned the community
9 centers, because I heard -- that's -- okay,
10 Ms. Black, and I hate to keep jumping back and
11 forth, I'm just trying to remember everything
12 everyone said -- one of the things I think in
13 Ms. Steingasser's opening statement, I don't
14 know if you all were here for it, she
15 mentioned that this would not -- this didn't
16 involve community centers, and I forgot all
17 which you entitled, but could you just
18 reiterate your opening statement?

19 MS. SCHELLIN: The proposed text
20 addresses only Sections 223 and parks,
21 playgrounds, swimming pools and athletic

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1 fields. It does not include any other relief.

2 It does not include community center
3 buildings, rec centers, anything else, just
4 those two types of cases, Section 223 and
5 209.1, parks, fields and pools and athletic
6 fields.

7 CHAIR HOOD: Let me ask you both a
8 question.

9 You heard our discussion. Now, you
10 heard the concern. We definitely want to take
11 the citizen input, because at the end of the
12 day all of us are residents of the City, or
13 have some part to the City. So, you know, we
14 might -- we are not going to always be here,
15 we are going to be down there trying to do the
16 same thing.

17 But, after you heard the
18 discussion, do both of you now have a comfort
19 level of the direction this is going, or is
20 your opposition -- I know where you are, Ms.
21 Zartman, with the ZRR and the omnibus

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1 rulemaking, but, Ms. Black, I'm going to ask
2 this, because I'm trying to get a sense, do
3 you feel that we are going in the right
4 direction, as we asked the other three?

5 While it might not be the timing
6 aspect of it, but do you feel like what we are
7 proposing here tonight possibly would be going
8 in the right direction, and would you kind of
9 curtail some of the reservations now that
10 you've heard discussions that have happened
11 here tonight?

12 Let me start with you, Ms. Black.

13 MS. BLACK: Well, as a
14 Washingtonian, and a long-time homeowner,
15 anything that will expedite the process I'm in
16 favor of.

17 However, it's how you do it, and to
18 the extent that this is cushioned on the
19 notion that there are certain things that are
20 non-controversial, and they need to be on the
21 calendar, it might be non-controversial

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1 because we didn't get notice, and we didn't
2 have the opportunity to give our input.

3 I can tell you, whenever we've had
4 an addition to a one-story dwelling, something
5 that will change the light and the spacing, it
6 brings people out, and if only that they can
7 hear what's proposed.

8 So, what I've heard tonight makes
9 me more nervous, because I'm thinking, what
10 have we been missing that we probably should
11 have been weighing in on, and just didn't know
12 it was even there.

13 So, the concept that we don't get
14 notice until it's a final action, so what I've
15 heard tonight makes me wonder, well, what --
16 does the ANC even have the same rights that an
17 individual has, because we are not entitled to
18 a hearing. We are not entitled to get a true
19 30 days full notice, because of the practical
20 way the situation works.

21 CHAIR HOOD: Now, Ms. Black, I'm

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1 not really understanding when you say final
2 notice. What I was doing, we have a final
3 action period, and I wanted to make sure.

4 MS. BLACK: Final action.

5 CHAIR HOOD: We have a final
6 action, and what we are doing tonight there's
7 going to be some more collaboration between
8 the groups, and I guess you all, you know, if
9 you have some more input, and then you'll have
10 another chance once we define more of what the
11 issues what we heard tonight.

12 Once that's put together and some
13 of our concerns and issues are put again,
14 there will be some more text that will go out.
15 It will be tweaked, and the collaboration with
16 those groups that say they are going to be
17 working together, and then there will be a
18 comment period before we take final action.

19 I was talking about us having final
20 action, and what concerns me, I don't want you
21 to be -- I don't want to be misunderstood,

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1 that the ANC is not -- because the ANC, I
2 think, is out in front on a lot of -- at least
3 I'm hoping so.

4 I would like for you to make sure,
5 first of all, to maybe check with Ms.
6 Schellin, call her here tomorrow and make sure
7 that we have your right address to your ANC,
8 but then again, it may not be a whole lot
9 happening in ANC 4A at this time.

10 MS. BLACK: Okay, I'll be happy to
11 make sure you have our --

12 CHAIR HOOD: Just make sure we have
13 the right address.

14 MS. BLACK: -- it's, yes, 7600
15 Georgia Avenue.

16 MS. SCHELLIN: It's actually, you
17 should check with Gottlieb Simon, we get all
18 of our e-mails through Board of Elections, so
19 you need to make sure that it's done through
20 there, because we do send to all chairs and
21 the single member districts. So, if there's

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1 anything going on in your ANC, I can assure
2 you, you are getting notices sent to the
3 chairperson.

4 CHAIR HOOD: Make sure Gottlieb has
5 the right address.

6 MS. SCHELLIN: It may be that your
7 chairperson isn't getting it out there, but it
8 is being sent, I can assure you of that.

9 COMMISSIONER MAY: Let me -- can we
10 provide her the address that we are mailing
11 to?

12 MS. SCHELLIN: If she contacts our
13 office, we can certainly do that.

14 COMMISSIONER MAY: Okay.

15 CHAIR HOOD: Let me ask you also,
16 Ms. Zartman, the question I asked, do you feel
17 like that even though I know, you know, the
18 timing of it and everything was an issue, do
19 you feel like, though, the expedited review
20 calendar is more or less the way to go, at
21 some point, even if it was at the end of the

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1 omnibus bill.

2 MS. ZARTMAN: Unquestionably, at
3 some point there should be a number of
4 procedural changes that will make life easier.

5 I should provide to the Commission
6 the Committee's comments on the Zucker Report,
7 and its 97 recommendations, all of which we
8 commented on, because I think there were some
9 very poor recommendations that came through
10 that report.

11 And, as you consider any of them as
12 part of this process, I'd love to have our
13 comments part of your thinking. That was also
14 something that dealt substantively with this
15 proposal. How much does the community or the
16 neighbor get to say in his or her
17 communication about pulling a case off the
18 consent calendar? If all you get is a
19 recommendation from the Office of Planning,
20 and the applicant, you will not be hearing,
21 basing your decision on a rounded argument,

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1 just as you currently get materials for your
2 own cases from an applicant and the Office of
3 Planning, but for the last several years you
4 have not been reading submissions from other
5 affected entities. And, it strikes me that
6 you are dealing with only half of the story,
7 as you weigh whether to set down a case.

8 And, I don't know if you are
9 anticipating some way of communities, ANCs,
10 those who would seek party status, submitting
11 part of their argument so you will have it in
12 front of you when you decide whether to put
13 something on the consent calendar.

14 CHAIR HOOD: Okay. All right,
15 thank you.

16 Let me open it up. Any questions,
17 colleagues, of this panel, these ladies?

18 Okay, not hearing any, I want to
19 thank you all. We appreciate your testimony,
20 and as I told the first group, stay tuned,
21 you'll see something tweaked, and, hopefully,

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1 we'll get your comments.

2 And, Ms. Zartman, I know where you
3 are with the timing of it. I know where we
4 are.

5 MS. ZARTMAN: Oh, yes, it's
6 literally just get the whole picture rather
7 than changing one color in the painting.

8 CHAIR HOOD: Okay. All right. No
9 one else wishing to testify?

10 what we will do is figure out where
11 we go from here. I would suggest, as has
12 already been asked of us, that the record,
13 colleagues, be kept open. I don't know if we
14 have a time frame, and I don't even know if we
15 are pushing for a time frame.

16 MS. SCHELLIN: I think we need to
17 ask the Office of Planning.

18 CHAIR HOOD: Let's go to the Office
19 of Planning for a time frame.

20 MS. STEINGASSER: Well, I would
21 suspect we'd probably need at least another

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1 six weeks, Mr. Bergstein, to be able to
2 coordinate a meeting with the BZA chair, go
3 through the recommendations, see how they play
4 through, and go through the comments we've
5 received tonight.

6 MR. BERGSTEIN: I think that's
7 right. I think as has been stated there's
8 been a lot of interesting discussion tonight.

9 I've been taking notes, and I think a six-
10 week period would allow us to flesh those out.

11 MS. SCHELLIN: So, that would put
12 us til December 7th, and --

13 CHAIR HOOD: Is there any way --

14 MS. SCHELLIN: -- we probably won't
15 bring -- because our December meeting is
16 December 14th, we probably then won't bring
17 this back until our January meeting. Is that
18 correct, Jennifer?

19 MS. STEINGASSER: That would be
20 fine.

21 MS. SCHELLIN: I mean, if we leave

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1 the record open until December 7th, are we
2 expecting comments from -- you guys want an
3 opportunity to respond to what comes in, or
4 are we just expecting something from OP? I'm
5 not real sure what we are waiting for.

6 MR. BERGSTEIN: I think the notion
7 is that OAG, OP, the Board, perhaps, the
8 Office of Zoning, may either provide you with
9 a combined document or separate documents.

10 MS. SCHELLIN: But then, we could
11 bring it back then on the December 14th, if
12 you guys provide something by December 7th?

13 MS. STEINGASSER: Yes. Yes.

14 MS. SCHELLIN: Okay, all right,
15 then we could leave the record open until
16 December 7th, and then we can put this on our
17 December 14th meeting agenda.

18 CHAIR HOOD: And, there will be --
19 allow us time for the community to
20 participate?

21 MS. SCHELLIN: They'll have an

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1 opportunity to participate after you take
2 proposed action. So, yes, they'll have an
3 opportunity after -- if you choose to take
4 action on the 14th, once a proposed rulemaking
5 is published, they'll have an opportunity at
6 that time.

7 CHAIR HOOD: Okay.

8 MS. SCHELLIN: Thirty-day comment
9 period.

10 CHAIR HOOD: Okay. Colleagues, any
11 other -- anything else?

12 All right. Well, I want to thank
13 everyone. Is everything okay, Ms. Schellin,
14 are we all on the same page?

15 MS. SCHELLIN: Yes, sir.

16 CHAIR HOOD: Okay. All right. I
17 want to thank everyone for their participation
18 tonight, and this hearing is adjourned.

19 (Whereupon, the above-entitled
20 matter was concluded at 8:30 p.m.)

21

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