GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC MEETING

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MONDAY

JANUARY 25, 2010

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.

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

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6:37 p.m.

CHAIRPERSON HOOD: This meeting will please come to order.

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

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

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

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

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

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

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

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

Ms. Schellin?

MS. SCHELLIN: Yes, sir. This was

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

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

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

Any discussion?

(No audible response.)

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

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

COMMISSIONER TURNBULL: Second.

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

(No audible response.)

CHAIRPERSON HOOD: All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER SCHLATER: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

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

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

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

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

Mr. Jackson, I believe? Mr. Jackson.

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

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

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

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

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

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

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

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

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

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

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

MR. JACKSON: Yes.

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

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

COMMISSIONER MAY: Okay.

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

it.

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

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

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

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

Does the Office of Planning have specific information or guidance with regard to what actually happened within the Florida Avenue Market Plan Area? I mean, are there design guidelines or something that are going to control how this development is done? Because it seems to me that this is a very prominent location in particular, and given that it's a great street and all that kind of thing, what kind of guidance is there?

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

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

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

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

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

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

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

CHAIRPERSON HOOD: Anyone else, any questions or comments?

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

MR. LAWSON: I think the concern

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

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

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

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

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

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

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

COMMISSIONER TURNBULL: Do you see the university expanding?

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

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

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

COMMISSIONER TURNBULL: Okay. Thank you.

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

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

MR. LAWSON: That's correct.

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

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

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

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

residential building, office building or hotel be better than the hotel that's there now? You know, I can see making that argument. But, going from 3.0 FAR, 40 feet of height to C-3-C is a big jump. You're adding a lot of value to the property.

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

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

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

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

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

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

could be developed on that site.

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

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

COMMISSIONER SCHLATER: I guess my

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

CHAIRPERSON HOOD: Vice-Chair?

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

not.

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

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

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

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

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

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

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

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

VICE-CHAIR KEATING: Okay.

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

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

correct?

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

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

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

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

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

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

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

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

So, I'm not sure what the design

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

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

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

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

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

Let me open it back up. Commissioner May?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON HOOD: Commissioner Schlater?

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

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

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

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

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

MR. LAWSON: There would not.

COMMISSIONER SCHLATER: Okay. Thank you.

CHAIRPERSON HOOD: Mr. Turnbull?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON HOOD: Okay.

MR. LAWSON: So, this is it.

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

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

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

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

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

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

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

Comprehensive Plan.

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

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

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

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

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

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

Commissioner May?

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

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

COMMISSIONER TURNBULL: Yes, I concur.

CHAIRPERSON HOOD: Okay. All right.

MR. BERGSTEIN: Before you close up --

CHAIRPERSON HOOD: Mr. Bergstein?

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

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

like to get that on the record.

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

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

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

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

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

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

But, one of the things, we asked

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

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

MR. LAWSON: Could I just clarify one thing?

CHAIRPERSON HOOD: Sure.

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

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

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

MR. LAWSON: That's correct.

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

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

MR. FREEMAN: If I could offer a

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

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

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

our jurisdiction. We can't do that.

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

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

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

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

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

Okay. Anything else on this?

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

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

Okay. Let's move right along with

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

Ms. Schellin?

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

CHAIRPERSON HOOD: Okay. Colleagues, the applicant has requested the Commission to rezone the property from DC R-5-B to DC C-2-B zone district.

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

I think we hashed this out. I

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

(No audible response.)

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

COMMISSIONER MAY: Second.

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

(No audible response.)

CHAIRPERSON HOOD: All those in favor? Aye.

COMMISSIONER SCHLATER: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

CHAIRPERSON HOOD: Any opposed?

(No audible response.)

CHAIRPERSON HOOD: Any abstentions?

(No audible response.)

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

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

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

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

So, let me just go to Ms.

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

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

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

MS. SCHELLIN: No, sir.

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

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

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

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

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

(No audible response.)

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

this?

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

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

All right. Hit the highlights.

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

we object to the expedited treatment.

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

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

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

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

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

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

days.

COMMISSIONER MAY: You're getting ahead of me.

MR. BERGSTEIN: Okay. Fine.

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

MR. BERGSTEIN: Yes.

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

MR. BERGSTEIN: Yes.

COMMISSIONER MAY: Okay.

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

COMMISSIONER MAY: Yes.

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

COMMISSIONER MAY: Right.

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

before the hearing, you know, if not earlier.

COMMISSIONER MAY: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER TURNBULL: Okay.

MR. BERGSTEIN: Okay?

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

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

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

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

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

MR. BERGSTEIN: I supposed that

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

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

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

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

CHAIRPERSON HOOD: Okay. All right.

MR. BERGSTEIN: Okay?

CHAIRPERSON HOOD: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

we define "proximity?"

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

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

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

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

MR. BERGSTEIN: Yes.

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

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

CHAIRPERSON HOOD: Okay. Anything else?

Director, did you have something you wanted to add?

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

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

CHAIRPERSON HOOD: Okay. Any other questions, Commissioners?

(No audible response.)

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

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

COMMISSIONER MAY: Second.

CHAIRPERSON HOOD: Any further discussion?

COMMISSIONER MAY: Yes, Mr. Chairman.

CHAIRPERSON HOOD: Commissioner May?

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

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

(No audible response.)

CHAIRPERSON HOOD: All those in favor? Aye.

VICE-CHAIR KEATING: Aye.

COMMISSIONER SCHLATER: Aye.

COMMISSIONER TURNBULL: Aye.

COMMISSIONER MAY: Aye.

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

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

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

MR. LAWSON: Not tonight, sir. Thank you.

CHAIRPERSON HOOD: Okay. Good. All right. Anything else?

(No audible response.)

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

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