

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

Office of Planning - Text : Case No.

Amendment to Subtitles, B, D, : 17-18

E, F, J and K re: Changes to :

Definitions and Rules of :

Measurement) :

:

-----:

Thursday,

February 22, 2018

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 17-18 by the District of Columbia Zoning Commission convened at 6:36 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director Development
Review & Historic Preservation
ANNE FOTHERGILL

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS PRESENT:

MATTHEW LE GRANT, Zoning Administrator
PAUL GOLDSTEIN
MAXIMILIAN TONDRO

The transcript constitutes the minutes from the
Public Hearing held on February 22, 2018.

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

6:36 p.m.

1
2
3 CHAIRMAN HOOD: Good evening, ladies and
4 gentlemen. This is a public hearing of the Zoning Commission
5 of the District of Columbia. My name is Anthony Hood.
6 Today's date is February 22, 2018.

7 Joining me are Vice Chair Miller, Commissioner
8 Shapiro, Commissioner May, and Commissioner Turnbull. We are
9 joined also by the Office of Zoning staff, Ms. Sharon
10 Schellin as well as the Office of Planning staff, Ms.
11 Steingasser and Ms. Fothergill as well as our DCIA Zoning
12 Administrator's Office, we're joined by Mr. Le Grant, Mr.
13 Goldstein and Mr. Tondro. I think I got everybody.

14 Okay. This proceeding is being recorded by a
15 court reporter. It's also web cast live. Accordingly, I
16 must ask you to refrain from any disruptive noise or actions
17 in the hearing room, includes display of any signs or
18 objects.

19 A notice of today's hearing were published in the
20 *DC Register* and copies of that announcement are over to my
21 left on the wall near the door. The hearing will be
22 conducted in accordance with provisions of 11-Z DCMR Chapter
23 5 as follows; preliminary matters, presentation by the Office
24 of Planning and then we'll also hear from DCRA as well,
25 report of other government agencies, report of the ANC,

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1 organizations and persons in support, organizations and
2 persons in opposition, organizations and persons undeclared.

3 The following time restraints may be maintained
4 in this meeting. The petitioner, Office of Planning, has --
5 we don't usually give Office of Planning time. Okay, well,
6 anyway, let's move on; organizations, five minutes;
7 individuals, three minutes. The Commission intends to adhere
8 to the time limits as strictly as possible in order to hear
9 the case in a reasonable period of time. The Commission
10 reserves the right to change the time limits of
11 presentations, if necessary, and notes that no time shall be
12 ceded.

13 All persons wishing to testify before the
14 Commission at this evening's hearing are asked to register
15 at the witness kiosk to my left and fill out two witness
16 cards. If you need assistance, you can see Ms. Schellin.

17 When you are finished speaking, we ask you to
18 please turn your microphone off so your microphone is no
19 longer picking up sound or background noise. The staff will
20 be available throughout the hearing to discuss procedural
21 questions. Please turn off all electronic devices at this
22 time so as not to disrupt these proceedings.

23 At this time, the Commission will consider any
24 preliminary matters. Does the staff have any preliminary
25 matters?

1 MS. SCHELLIN: No, sir.

2 CHAIRMAN HOOD: Okay. Let's turn it over to the
3 Office of Planning and I believe after that, DCRA as well,
4 correct? Okay, in that order. Okay, MS. Fothergill.

5 MS. FOTHERGILL: Good evening, Chairman Hood, and
6 members of the Commission. For the record, I am Anne
7 Fothergill with the Office of Planning.

8 On October 16, 2017, the Zoning Commission set
9 down a text amendment that the Office of Planning had
10 proposed for changes to some definitions and rules of
11 measurement in Subtitle B, Chapters 1 and 3, as well as five
12 specific zoning regulations in Subtitles D, E, F, J, and K.
13 The objective of the text amendment is to refine and clarify
14 the definitions and rules related to building height,
15 adjacent grade, basement, cellars, and gross floor area. The
16 proposed changes would establish measuring basements and
17 cellars to the top of the finished floor of the ground floor
18 instead of the ceiling of the basement or cellar. The
19 amendment would also adjust the measurement height to five
20 feet so it is consistent for both detached and attached
21 buildings and the measuring point would be the lower of
22 either adjacent natural or finished grade. The proposed text
23 amendment would move some language that is currently found
24 in definitions to rules of measurement without any language
25 changes.

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1 Since set down, OP and the Zoning Administrator's
2 Office have worked together and made a few additional changes
3 that are highlighted in the OP report dated January 8, 2008,
4 which is Exhibit 6 in the record. For tonight's discussion,
5 that will be the version of the proposed changes to the
6 regulations that we will be referring to. The Zoning
7 Administrator and his staff are here tonight to present the
8 proposed text changes outlined in the OP hearing report as
9 well as to raise for discussion some additional changes to
10 the regulations.

11 In response to the proposed text amendments and
12 versions, many residents and ANCs have filed thoughtful
13 comments into the record. At this point, OP is not making
14 a final recommendation since we expect there to be additional
15 discussion tonight that will help form our recommendations.
16 And now Matt Le Grant, the Zoning Administrator, will provide
17 the presentation.

18 MR. LeGRANT: Thank you, Anne, and thank you,
19 Jennifer. Chairman Hood, Members of the Commission,
20 appreciate the invitation to present to you this evening.
21 I'm accompanied from DCRA today with my Program Analyst, Paul
22 Goldstein, and my Counsel from the Office of General Counsel,
23 DCRA, Max Tondro.

24 I'm going to be walking through a presentation.
25 I'm going to try to keep it moving as quickly as possible.

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1 I believe it'll be about 20 minutes' time and will be
2 available for questions following the presentation. Members
3 of the public can follow on the screens the presentation, the
4 PowerPoint that I'm going to cover. So I'll start by
5 outlining, we -- just an overview of the presentation this
6 evening. We're going to talk about the goals of my office
7 and bringing these proposed text amendments before the
8 Commission, talk about why, at this point in time, we believe
9 that the amendments are necessary, and then we'll drill down
10 into the highlights of those changes having to do with
11 basement, cellar, building height, area ways and window
12 wells, gross water area, floors partially below grade in
13 habitable rooms. We'll then also touch on some possible
14 additional proposed revisions and come concluding thoughts.

15 Our goals for the text amendments; first of all,
16 we worked in close collaboration with the Office of Planning
17 identifying -- develop improvements to the particulars on any
18 regulations. We want to improve the clarity and the
19 transparency of the definitions, the rules and measurement
20 for basements and cellars. We'd like to align the
21 definitions and regulations regarding stories, building
22 height, gross floor area measurement methods wherever
23 possible. We want to reduce the instances that --
24 manipulating grade or ceiling that we believe are contrary
25 to the intent of the regulations. And we'd like to clarify

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1 the issue of habitable rooms that exist in cellars and
2 basements.

3 The question is why at this point in time? These
4 topics have been a source of controversy and confusion for
5 developers and concerned neighbors, among others, who -- and
6 this has manifest itself in several appeals before the BZA
7 including -- I'm not going to read the entire list here --
8 but these are cases that live with the Commission as they
9 rotate to the Board and are familiar with some of these.
10 While the Zoning rewrite 016 addressed several of these
11 topics, I believe that the Commission could further clarify
12 these issues by adopting the proposed changes.

13 Let's talk about -- the first section is basement-
14 cellar. We have -- the Zoning regulations have definitions
15 of basement-cellar and the way they're defined, they're to
16 be mutually exclusive. The basement is defined as that
17 portion of a story partly below grade, the ceiling of which
18 is four feet or more above the adjacent finished grade.
19 Definition of cellar; the converse is that portion of a
20 story, the ceiling of which is less than four feet above the
21 adjacent finished grade. As members of the Commission and
22 the audience may know, cellars are not counted toward the
23 maximum number of stories nor are they chargeable as gross
24 floor area in zones that limit FAR.

25 The concerns here are the manipulation of both the

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1 finished grade and the ceiling height to convert existing
2 lower-level into cellars. And going back again, sort of the
3 key words of the definitions of basement-cellars is the
4 relationship to finished grade. So currently, the
5 definitions key are key to adjacent finished grade. However,
6 building height and the number of stories -- and we'll see
7 elsewhere in the present -- are calculated from what's known
8 as the building height measurement point, the BHMP, based on
9 existing grade in residential zones. As a result, we believe
10 there is some ambiguity and possible conflict.

11 So the purpose of the proposed text changes would
12 be to measure to the top of the finished floor of the ground
13 floor, that is the floor above the -- this lowest level,
14 cellar or basement, which would eliminate the manipulation
15 of ceilings to create cells. The standard would go from four
16 to five feet and this is intended to accommodate the standard
17 floor thickness and make the change neutral, so it's neither
18 making the regulation, I believe, more restrictive nor more
19 permissive. The finished floor standard also tracks the
20 current approach in the zoning regulations for perimeter wall
21 and grade-play methodology, which we'll see a little later.
22 Based on the idea of lowering the finished floor level, it
23 would be more difficult than lowering the ceiling if someone
24 would try to change that.

25 In taking the lower of the elevation of the

1 natural existing grade or finished grade is it encouraged --
2 is the other proposal is intended to discourage the strategic
3 razing of finished grade to create a cellar. I'm going to
4 note the current existing definition of an actual grade
5 that's in the zoning regulations. Natural grade is the
6 undisturbed elevation of the ground of a lot, part of the
7 human intervention, or where there's existing improvements
8 on a lot, the established elevation of the ground exclusive
9 of the improvements or adjustments to the grade made in two
10 years prior to applying for a building permit. Natural grade
11 may not include manually-constructed berms or other forms or
12 artificial landscaping, and the citation in the code is
13 B100.2.

14 The two-year rule exists to help address changes
15 of creating like a non-conformity based on the change.

16 The proposal that was advertised in the set --
17 that was in the set-down and notice of the public hearing and
18 the Office of Planning report -- this is the strikeout and
19 underlined version -- is now to read -- proposed to read,
20 that portion -- for a basement, "That portion of a story
21 partly below grade where the finished floor of the ground
22 floor is five feet or more above the adjacent natural or
23 finished grade, whichever is lower in elevation." If there
24 is one key aspect of the recommendation this evening, it is
25 this idea now it's the most restrictive of the lower of the

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1 natural grade or finished grade. So as you'll see later, I
2 believe this proposal will help increase certainty in
3 development review and let applicant's know they can't play
4 a game with grade to affect a basement, a cellar, or building
5 height.

6 Converse, the cellar, "That portion of the story
7 partly below grade where the finished floor of the ground
8 floor is less than five feet above the adjacent natural or
9 finished grade, whichever is lower in elevation." This is
10 the same text taking out the ~~strikeout~~ and underlined
11 versions which I've just read.

12 We have an illustration of this and so this is a
13 diagram. It's a section or cutaway view of a side of a
14 building. In this proposal, the dwelling is located in a
15 residential zone, and in this particular case, the natural
16 finished grade are equivalent. The measurement of stories
17 is from the same point as the building height measuring
18 point, BHMP, or at the midpoint of the facade of the
19 principal building closest to the street line. This is the
20 measuring point that was in the -- it's in the current zoning
21 regulations. It was the measuring point that was used in
22 ZR58.

23 Here, the lowest level would be considered a
24 basement. And let's see if I can highlight this now. Here
25 we go. Okay. I got my little arrow here. Okay. So if you

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1 can follow along, here's the BHMP with the "red circle," and
2 you see the "yellow" -- in this case, I noted the finished
3 grade, the natural grade is the same. So if -- from the top
4 of the finished floor, this level here, projected out to the
5 grade level is five -- is less than five feet, it's -- this
6 is deemed a cellar. And the import of this, again, is this
7 lower-level now is not counted as a story and is not charged
8 as gross floor area, those zones that are charged gross floor
9 area. Okay. So that's the illustration.

10 I guess I skipped over basement. Basement is the
11 converse and here, if it's over -- five feet or more, that
12 lowest level is a basement. Okay. So the difference between
13 the BHMP and the top of the finished floor is five feet or
14 more, boom, that is a basement. It's counted as a story and
15 charged for gross floor area. So that's the basement-cellar
16 and the illustrations of that.

17 The next topic is residential building height.
18 We have a measurement rule in residential zones that's set
19 forth in Chapter subtitle B. The building height measuring
20 point shall be established existing grade at the midpoint of
21 the building facade of the principal building that's closest
22 to the street line. Our concern here is -- here, now we're
23 using a different term, existing grade. It's not a defined
24 term in the zoning regulations. It's unlike finished grade
25 and natural grade. It's inconsistent with the measuring

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1 points for -- that are in basement-cellar and it's contrasted
2 to building height.

3 So our proposal here is to use the word "natural
4 grade" instead of "existing grade," replace that in order
5 to create greater consistency with the basement-cellar
6 definitions in, we'll see later, some other sections of the
7 code. So the proposed changes that were in the set down in
8 the public hearing would strike the word "existing" and say
9 instead "the BHMP shall be established at the adjacent
10 natural or finished grade, whichever is lower in elevation
11 at the midpoint of the building facade or the principal
12 building that's closest to a street lot line." Again, we're
13 seeing this consistency with the suggested language for
14 basement-cellar for "whichever is lower" of those two
15 situations.

16 One thing I'll just touch briefly -- in the "blue"
17 text here, added some additional language; DCRA, at this
18 point, proposed to withdraw this highlighted text in "blue."
19 We'll talk a little later about the BHMP and its relationship
20 to the facade which, right now, is the midpoint versus
21 situations where the grade may vary across the face of the
22 facade. So the proposed text would be the BHMP has
23 established the adjacent natural or finished grade, whichever
24 is lower in elevation at the midpoint of the building facade
25 or the principal building that's closest to the street lot

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1 line.

2 We have some illustrations of this. Again, we're
3 coming back to a section in which we -- it's a residential
4 zone. The natural grade here now in "blue," -- my little
5 arrow here -- okay, the "blue" line is the natural grade.
6 The "yellow" line is the finished grade, which is higher.
7 The measurement of the BHMP at the midpoint of the facade,
8 again, the "red" circle, since the natural grade is lower
9 than that would drive the measuring point, and the consequent
10 building height measurement in this scenario would be from
11 that, BHMP is projected over.

12 The next area has to do with area ways and window
13 wells. Our current text has a definition of finished grade,
14 the elevation of the ground directly abutting the perimeter
15 of a building or a structure 016 today has a definition of
16 area; "a subsurface space adjacent to a building open to the
17 top or protected at the top by grading or guard that includes
18 window wells and passageways accessing basement-cellar
19 doors."

20 Our concern is the zoning regulations are silent
21 when an area way or a window well alters the finished grade.
22 The purpose of the text -- proposed text change is to codify
23 my office's longstanding interpretations of how to deal with
24 -- I generally term these as exceptions to grade area ways
25 and window wells. We -- builds upon the -- now that we have

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1 a definition of area way in 016 but we also introduce
2 dimensions and limitations on those area ways and window
3 wells for the determination of grade. Determination of grade
4 can impact, as we saw earlier, how the height of a building
5 is measured, and then it can impact ultimately the counting
6 of the number of stories and the amount of gross floor area.

7 The initial proposed text at set-down in the
8 notice of public hearing for finished grade include the
9 language in "red." The "black" is the existing language.
10 The "red" is to add the words "or at the top of the window
11 well, exceptions to finished grade are a window well that
12 projects no more than four feet from the building face and
13 to an area way that provides direct access to an entrance
14 that projects no more than five feet from the building face,
15 is not more than five-feet wide along the face of the
16 building." So the "red" would be the new proposed text.

17 The revised and proposed text that was in the
18 Office of Planning hearing report also had additional
19 language in "red" that introduced a horizontal with
20 limitation for an area way. At this point, DCRA supports
21 removal of the text, this "red" text as too restrictive, but
22 we have -- later we'll talk about some possibilities, some
23 alternatives if the Commission wants to look into limitations
24 on the horizontal extent of an area way.

25 Final proposed text is -- I won't re-read it but

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1 it's the -- this idea that idea that on the face of the
2 building, a window well can come out four feet perpendicular
3 to the face of the building, and an area way is -- that has
4 pedestrian access, that people can walk into through a door
5 or stairs is five feet. That's -- from illustrations of this
6 concept, here the scenario is in a residential zone, and this
7 would be an area way. My little arrow again.

8 Okay. So the "blue," again, is the natural grade,
9 the "yellow" is finished grade. The -- this area way, the
10 width of this face -- from perpendicular face of the building
11 I'm tracing out is less than five feet. So in this scenario,
12 the BHMP in the "red" circle is at the lower of the finished
13 or natural grade, so the "red" circle is there, but the area
14 does not take -- the lower surface of the area way down here
15 -- how come I keep losing this, the arrow here -- there it
16 is, thank you -- so it's not this bottom of the area way.
17 It's -- the BHMP is measured here from the lower of the
18 natural grade. So this area way is an exception to grade.
19 It's not counted as the grade. Natural grade governs in the
20 situation because it's the lower of the natural or finished
21 grade.

22 In contrast, if the area now becomes wider than
23 five feet from the fact of the building, than this dimension
24 here coming across, I usually then say this is a sunken
25 patio; it's bigger than an area, and this now, as you see,

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1 the BHMP is here because that becomes the new grade referent
2 for measuring building height. Because the area way
3 dimension is greater or equal to five feet, this sunken patio
4 becomes the new grade. Okay. That's the language and
5 illustration of an area way, and the window well is similar
6 except the window is four feet perpendicular from the face of
7 the building.

8 Moving on. Gross floor area, we have ZR-16
9 codified long-standing practices of how to allocate gross
10 floor area or lower levels of the building in which the
11 topography is varied. And the idea is that either using
12 what's known as the grade plane method or the perimeter wall
13 method establishes how much chargeable area in that lower
14 level is basement, i.e., charge toward gross floor area and
15 ultimately FAR for a cellar that is exempt. So the current
16 tax from the rules of measurement -- I'm not going to read
17 the entire text here -- but set forth a standard that how you
18 establish -- there's a graphic to illustrate this in a few
19 minutes -- that -- to create a plane that helps -- that
20 establishes what is chargeable and what is not chargeable in
21 terms of gross floor area.

22 Our concern that it's -- this is inconsistent with
23 the other standards set forth in zoning regulations -- and
24 we'd like to line these up consistent with the definitions
25 that we talked about earlier in the building height

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1 measurement. So purpose is to create a consistent measuring
2 approach across the related standards. We're going to label
3 it. Right now they're not explicitly labeled as grade plan
4 and perimeter wall. Just to distinguish, the perimeter wall
5 method is used for detached buildings. Grade plan is used
6 for attached buildings and this is right of the existing
7 code. I'm going to walk -- I'll walk through the grade plan
8 example. I'm not going to go into the perimeter wall method
9 language although it mirrors it exactly. We have that
10 language in some of the appendix of our slides.

11 So the proposed changes that were initially proposed
12 at set-down and public hearing in "red." The "black" is the
13 existing text. The "red" is the proposed text. And we
14 introduced the -- for a building attached at any point, in
15 every building's GFA, gross floor area, of a portion of the
16 story located partially below natural or finished grade shall
17 be calculated by the grade plane method -- it's labeling, a)
18 establish a line between the midpoint of the building facade
19 along the nearest street or the adjacent natural or finished
20 grade, whichever is lower -- so this is making it consistent
21 with the recommendation for the basement-cellar to use
22 whatever the lower of those grades are -- midpoint of the
23 opposite facade of the building, or the adjacent finished
24 grade, whichever is lower, okay; and then the five feet. And
25 we saw that number earlier in the definitions as five feet

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1 or more below the finished floor of the story directly above.
2 "C" talks about the actual methodology. It's not changed,
3 project a perpendicular line to the point along the line
4 described in paragraph B, the exterior walls of the building
5 and D, measure the floor area that is between the projected
6 perpendicular line and the other portions of the story that
7 are five feet or more above the finished grade -- finished
8 floor of the story above.

9 So a lot of people are going to say, "Well, what
10 does this mean, you know?" Okay. So here is the only --
11 well, I'll show it in a moment in a graphic to help
12 illustrate this, but the revised proposed text, we're adding
13 the word "adjacent" to the natural finished grade just to
14 clarify and are more consistent with our other standards.
15 The final proposed text shows in "red," the new changes to
16 the existing. "Red" is the new. "Black" is the existing
17 text.

18 Okay, now an illustration. So I'll spend a few
19 moments on this. The -- so we're here -- jumping ahead.
20 Here is the lower level. We've labeled -- there's a grade
21 change, right? In this scenario, this is a residential
22 building that's in a non-residential zone so as members of
23 the other Commission may know and members of the audience
24 know, you know, the BHMP established at the top of the curb
25 opposite the middle of the front of the building. Unlike

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1 residential zones where it's in the middle of the front of
2 the building on the site, here it's established at the -- at
3 this curb level.

4 MR. LeGRANT: So here's the BHMP projected across
5 here and here -- like here's the grade at the front of the
6 building, here's the grade at the back of the building. So
7 because the grade varies, it is -- we employed the grade
8 plane method. The magic number of five feet from the top of
9 the floor to the -- this -- where this plane is, where the
10 five feet breaks, the wide area is not charged as gross floor
11 area but the "colored" area is charged. So that's -- in a
12 grade plane method calculation, this portion of the
13 building's lower level that is chargeable is deemed gross
14 floor area for FAR calculation purposes.

15 So that, hopefully, helps illustrate and the perimeter wall
16 method, if the Commission wants to see that, we do have some
17 appendix slides to illustrate that as well. But to help --
18 and this is an everyday task in my office when people come
19 in and say, "well, I'm doing a building; it's -- I want to
20 use a grade plane or perimeter wall to charge the lower level
21 gross floor area.

22 The next topic -- moving on -- is habitable room.
23 The zoning regulations currently have a definition of
24 habitable room; "an undivided enclosed space used for living,
25 sleeping, or kitchen facilities. The term habitable room

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1 shall not include attics, cellars, corridors, hallways,
2 laundries, serving and/or storage pantries, bathrooms or
3 similar space. Neither shall it include mechanically
4 ventilated interior kitchens less than 100 square feet nor
5 kitchens in commercial establishments." It's important for
6 the Commission to understand that this is -- how habitable
7 rooms are regulated is only limited in very specific
8 circumstances in mixed-use zones and downtown zones in the
9 context of the board granting rear yard relief to take into
10 account a habitable room standard. There are other
11 provisions in some other zones that were in the ZR-58
12 regulations.

13 The concern here is that we believe there's
14 confusion related to the meaning and the application of the
15 term "habitable room." It's not presently included in the
16 definition of a cellar or basement. It's not included or
17 referred to in the calculation of building height, number of
18 stories, or FAR. Our current practice recognizes that
19 habitable use of cellars, dwelling use of cellars is a common
20 proposal development occurrence. The zoning regulations
21 themselves recognize and -- that dwelling units in cellars,
22 in an IZ -- in IZ or inclusionary zoning, a context that it
23 has -- explicitly references allowing dwelling units in
24 cellars. There have been many -- there's been an appeal case
25 and many BZA applications that have approved plans with

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1 dwelling units in cellars.

2 The proposal is to remove the reference in the
3 definition of habitable room the words "cellar and attics."
4 By removing the term, I think it would help improve the
5 clarity of the regulation, reduce confusion and actually,
6 DCRA would not have the -- we don't object to the removal of
7 the entire second sentence of that definition in its
8 entirety. So the strikeout version, the "red" shows the
9 changes along with the text that's struck out is the
10 proposal. Again, a second sentence from our perspective
11 could be struck simply because most of habitable room
12 regulation occurs under the DC Construction of Building Code.
13 It's not something that goes on in regulations, really
14 regulate the habitability of rooms, it's really a Building
15 Code matter. The final text shows the definition with the
16 references of those terms removed.

17 Based on -- okay, that is the primary
18 recommendations. Based on the feedback that's been in the
19 record and the discussions with the Office of Planning,
20 further review of proposals, there are some additional
21 revisions that I'd like to walk through if the Board -- if
22 the Commission has a few more moments to indulge me with
23 presentation. Some of these additional proposed revisions
24 would deal with the amended current definition of area way
25 and add a definition for window well. That just clarifies

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1 more as to what those features are, and I won't read all the
2 text here but again, the difference between an area way and
3 a window well is an area way has pedestrian access,
4 somebody's actually working through -- a sidewalk through a
5 door. A window well is just for light and air and in some
6 cases, emergency access. There are fire ladders to meet some
7 Building Code requirements for emergency exit.

8 Additional revisions would be to change some of
9 the language, the finished grade elevation, the ground
10 directly abutting the perimeter, the building structure
11 that's exiting text. And we removed the reference to the "at
12 the top edge of the window well."

13 Other revisions; the issue is manipulation of
14 grade by excavating around the midpoint or BHMP. You may say
15 I'm going to -- middle from my building, BHMP is this grade
16 and I'm not changing it but around it, the excavating things
17 that maybe change the nature of that grade near the front of
18 the background -- right now if you had -- it's -- what's
19 existing and in the proposal, it's continued to use the
20 midpoint as the measuring point for BHMPs. The -- one of the
21 ways to maybe address that is to start looking at explicitly
22 acknowledging window wells and air ways are excluded from the
23 midpoint, the grade at the midpoint -- at definition and
24 taking into account, however, if there's a driveway that you
25 measured to, the bottom surface of that driveway and we've got

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1 some, I think, some illustrations later if we have some --if
2 you'd like to see those.

3 So the area way-window well issue, this would add
4 the same language to area ways that, again, are under the
5 five-foot and the four-foot metric that we talked about
6 before.

7 There's the issue of excessively wide area ways
8 and window wells. This is now from -- not from the
9 perpendicular face of the building but from the width along
10 the facade of the building, there have been concerns that
11 that should be limited and one of the initial thoughts was
12 to set a number. My office doesn't have a -- I believe
13 that's a policy issue but one approach might be to limit that
14 width an aggregate to like 50 percent of the length of the
15 building or some other standard that the Commission may feel
16 is needed. And that could be a broad-based regulation or it
17 could be differentiated for different zones or different
18 uses.

19 I think we're just about at the end here. We
20 already mentioned is the existing code and the recommendation
21 is to that natural grade includes that no changes two years
22 prior to applying for a building permit. There's been some
23 concern that that is not stringent enough. It could be a
24 different timeframe. It could be changed to five years or
25 a different number to speak to somebody that might try to go

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1 in, change the grade, wait a period of time and then come
2 back to change that.

3 If the Commission elects to approve the proposed
4 changes, we expect applicants to, in their applications, show
5 natural finished grade in the applications, identify the
6 BHMP, or building height measurement plans, provide
7 calculations on the plans and sections. So I believe, in sum
8 -- the sum of all these inter-related provisions, the
9 definitions, the rules of measurement, to bring them synced
10 up and in concert with one another would, I think, be more
11 transparent, more understandable for the public, the
12 development community, and staff, and would -- and the
13 information that would gather, the document in our
14 development on the building permit applications and plan
15 sets, I believe, would provide clarity to all parties. I am
16 now available for questions. We do have some additional
17 drawings and photos as questions may require us to illustrate
18 that either Mr. Goldstein, Mr. Tondro or I can speak to.
19 Thank you. I appreciate your patience in listening to me.

20 CHAIRMAN HOOD: Okay. I want to thank you, Mr.
21 Le Grant as well as Ms. Fothergill for those reports.
22 Commissioners, let's see if we have any questions or
23 comments? One thing about it, I know we'll have plenty of
24 questions and plenty of comments, but I don't usually go
25 first. Commissioner May?

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1 COMMISSIONER MAY: I just have a couple of
2 questions. So the measurement or being able to measure
3 cellar versus basement, we have a -- there's method for a
4 fully detached building and there's a method for an attached
5 building but what about a semidetached building. How is that
6 typically treated?

7 MR. LeGRANT: Okay. So the proposal does not
8 change the existing zoning regulations standard on that, and
9 the measure -- way to measure attached buildings is the grade
10 plane method and the wording in the regulations is a building
11 that's attached at any point, so it includes fully attached
12 or a row building as well as a semidetached. It's -- and
13 then you differentiate that from a fully detached building;
14 that is when the perimeter wall method is used.

15 COMMISSIONER MAY: Okay. I mean does it make
16 sense to be explicit in the regulation? I mean it says
17 "attached at any point," but does it -- would it help to --
18 I'm just thinking for, you know, simple people like me that
19 --

20 MR. LeGRANT: Well --

21 COMMISSIONER MAY: -- saying "detached" or --

22 MR. LeGRANT: Yes.

23 COMMISSIONER MAY: -- attached or semidetached.

24 MR. LeGRANT: Yes. So my sense has always been
25 is attached building, whether it was semidetached or fully

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1 detached, the grade plane makes more sense because there's
2 no grade along the sides of the building to utilize. So --

3 COMMISSIONER MAY: Well, for a semi-detached,
4 there is a grade on the one side.

5 MR. LeGRANT: On one side.

6 COMMISSIONER MAY: Right.

7 MR. LeGRANT: So --

8 COMMISSIONER MAY: I mean I agree with you that's
9 the logical way to do it.

10 MR. LeGRANT: Right.

11 COMMISSIONER MAY: I'm just wondering whether in
12 the wording, that since we're tweaking the wording whether
13 we should be explicit that semi-detached --

14 MR. LeGRANT: I don't see it's a problem at this
15 point in time to keep it as it is.

16 COMMISSIONER MAY: Okay. All right. Well --

17 MR. LeGRANT: Others may feel differently.

18 COMMISSIONER MAY: I was confused.

19 MR. LeGRANT: Okay. Maybe -- there may be some
20 area --

21 COMMISSIONER MAY: But it's --

22 MR. LeGRANT: -- we'll work on that.

23 COMMISSIONER MAY: -- you know, because it's like
24 fully attached; you know, we have the -- we have fully
25 detached and we have fully attached defined -- or attached

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1 in any way --

2 MR. LeGRANT: Yes.

3 COMMISSIONER MAY: -- but, you know, the one in
4 between is semi-detached, right. I'm sure you're going to
5 be interpreting it correctly. I'm just thinking about the way
6 people are going to --

7 MR. LeGRANT: Sure.

8 COMMISSIONER MAY: --- read it so --

9 MR. GOLDSTEIN: I'm sorry. Commissioner May, I
10 think there's also another Zoning Commission case that may
11 impact definitions that you might be aware of. It's 17-23
12 which deals with side yards and definitions as well of
13 attached building, semi-detached and detached. So it may be
14 a little bit evolving, some of the definitions, as we go
15 along with the Zoning Commission proposal. So at this time,
16 it may make the most sense just to leave it as it is but --

17 COMMISSIONER MAY: Okay. Well --

18 MR. GOLDSTEIN: -- maybe to revisit at a future
19 point.

20 COMMISSIONER MAY: -- I'm just suggesting that it
21 might be a possibility and just --

22 MR. GOLDSTEIN: Sure.

23 COMMISSIONER MAY: -- bear in mind it's not just
24 about how you interpret it but how people read it when they
25 -- because a lot of people who read this and are trying to

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1 figure it out are not necessarily that experienced with it.

2 So I got confused. This is not really truly that
3 related to the specifics of what we are proposing in terms
4 of changes, but I got confused in the how we measure building
5 height. And so in certain zones, we are still measuring to
6 the ceiling of the top floor of the building, and do I read
7 it correct that that's for buildings less than 40 feet --
8 that are --

9 MR. LeGRANT: Right.

10 COMMISSIONER MAY: -- within non-residential
11 zones?

12 MR. LeGRANT: Well, that's -- okay, so that has
13 not been addressed here.

14 COMMISSIONER MAY: I understand.

15 MR. LeGRANT: Yes.

16 COMMISSIONER MAY: Just to --

17 MR. LeGRANT: Right. There is --

18 COMMISSIONER MAY: -- it was included somewhere
19 in there so I --

20 MR. LeGRANT: It is. There is, I believe -- and
21 either Mr. Goldstein or Mr. Tondro can correct my
22 recollection -- I believe in residential zones in which the
23 building height is 40 feet or less, you have the option of
24 measuring to the ceiling of the top floor instead of the
25 roof.

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1 COMMISSIONER MAY: Okay. We did also include new
2 guidance for houses, basically, with a sloped roof where we
3 measured to the midpoint of the sloped roof, right?

4 MR. LeGRANT: That's correct. Going back
5 approximately three years, the Commission changed for -- to
6 accommodate different roof configurations, if there's a
7 gabled or sloped roof, you get to use the midpoint of the
8 ridge and the -- or the eave --

9 COMMISSIONER MAY: And the eave, yes, right.
10 Okay. I just wanted to confirm that was still in there
11 because I sort of got confused by seeing the old definition,
12 which used to be the way you measured in the residential
13 zones and led to other forms of mischief. So a number of the
14 comments that we're getting revolve around the question of
15 the treatment of cellars and attics as habitable or excluding
16 them from the definitions. So if you wouldn't mind trying
17 to explain how what's proposed here is actually going to make
18 it clearer and easier to make some of these calls because,
19 you know, we have seen enough of these sort of examples. And
20 I'm not questioning -- I mean there's a separate sort of
21 policy question about whether a cellar that has full ceiling
22 height and window wells and is otherwise fully occupiable,
23 whether that should be part of GFA. That's a policy
24 question. I understand we have to, you know, in this moment,
25 either ignore or address. I mean it's -- but that's a policy

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1 question.

2 MR. LeGRANT: Sure.

3 COMMISSIONER MAY: The question is you want to
4 tweak the definition because this is going to make it more
5 clear in the regulations and easier to enforce some aspect
6 of it. So if you could explain the rationale for making the
7 change, I think that would help.

8 MR. LeGRANT: Okay. So I'll summarize and ask Mr.
9 Tondro to weigh in as well. The -- as I noted, the current
10 definition of habitable room says, "shall not include an
11 attic or a cellar." And I have not construed that to mean
12 that you can't have a dwelling unit with habitable rooms in
13 a cellar or attic. That has been an area of contention.
14 Some people have challenged that. I believe it's been posed
15 before the Board -- the BZA on appeal, so rather than -- it
16 just -- I -- our proposal would, by removing the words
17 "attic" and "cellar" from the definition of habitable room,
18 it simply clarifies that that is not a basis in which one
19 cannot have a dwelling unit in a cellar or attic. I don't
20 know, Mr. Tondro could expand.

21 MR. TONDRO: Yes. Good evening, Commissioner.
22 This has come up in a couple of appeals and the concern was
23 to clarify so everybody understood both, as it were, the
24 folks here at the table dealing with this on a daily basis
25 but also for the general public, to make it clear that the

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1 habitable room, that -- as you refer to the policy question
2 -- that that has been decided or has not been decided. And
3 that's really, as you say, it's up to the Zoning Commission,
4 but this is something that, I believe in the context of that
5 appeal, caused a lot of concern. DCRA took one position on
6 that.

7 I believe there was -- in that particular period,
8 which is 18-615, I believe there's a number of filings on the
9 record from various different groups, the Coalition for
10 Smarter Growth and others, supporting our interpretation that
11 habitable room did not apply and was not part of the
12 basement-cellar calculation. But I think there was also
13 fervent opposition to that position on the other side.

14 And the concern that we had was to remove the
15 ambiguity. This is -- as long as we're dealing with this
16 issue right now of how we calculate basement and cellar,
17 address that issue once and for all so that everybody knows
18 what the ground rules are. Again, I think to the extent
19 that, you know, we lay out understanding of why it is that
20 DCRA believes that habitable room, that definition really has
21 nothing to do with the calculation of basement or cellar or
22 FAR. But in light of the fact that there is a lot of -- that
23 there are others who believe to the contrary, I think this
24 may be the opportunity to directly address that one way or
25 the other. That's the reason why we're proposing to remove

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1 those two terms.

2 COMMISSIONER MAY: Okay. So just to be clear,
3 take attics first, okay. So an attic, basically, if there's
4 a, quote, "attic space," which would be a space above the top
5 normally occupied floor, if that, quote, "attic," in a, you
6 know, the sort of vernacular, has a ceiling height of eight
7 feet, it really is a story even though somebody calls it
8 their attic?

9 MR. LeGRANT: Absolutely.

10 COMMISSIONER MAY: And if it's 6-1/2 or less or
11 less than 6-1/2, it is no longer a story, it is just an
12 attic, a technical attic and, therefore, should not be used
13 for habitable space?

14 MR. LeGRANT: The way -- the zoning regulations
15 definition of gross floor area, as you noted, a specific
16 standard of ceiling height of 6.6; if it's more than 6.6,
17 it's treated as gross floor area. So if somebody above a top
18 story has a space that they would call an attic that is less
19 than 6.6, whether it's -- and the way I look at it is whether
20 it's finished or unfinished --

21 COMMISSIONER MAY: Right.

22 MR. LeGRANT: -- if they had drywall or just, you
23 know, open rafters, less than 6.6, it's -- that is then I
24 don't count it as a story, I don't count it as chargeable as
25 gross floor area.

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1 COMMISSIONER MAY: And this change to the
2 regulations does not affect that?

3 MR. LeGRANT: Correct.

4 COMMISSIONER MAY: Right. Okay. And when it
5 comes to cellar space, at a certain point, the cellar height
6 also is a factor;, it's not as explicit in the regulations,
7 right, but you'd have to have -- I mean I recall that, you
8 know, in a basement apartment, you have to have 7-1/2 feet
9 now. It used to be seven, now it's 7-1/2 feet clear in order
10 to be a -- in order to get a COO for an apartment, right?
11 Is that -- I mean is -- are we operating -- is this one of
12 those areas where we're overlapping building code regulations
13 with zoning and so -- I mean you could conceivably have a
14 six-foot tall basement, right?

15 MR. LeGRANT: Correct.

16 COMMISSIONER MAY: And that would still count as
17 a story?

18 MR. LeGRANT: I would -- off the top, I would say
19 "yes" but it wouldn't be -- they'll never get a building
20 permit issued.

21 COMMISSIONER MAY: Right. They wouldn't be able
22 to build it out as --

23 MR. LeGRANT: Right.

24 COMMISSIONER MAY: -- as habitable space.

25 MR. LeGRANT: Correct.

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1 COMMISSIONER MAY: They could finish it however
2 you want, right? I can take my five-foot tall cellar and put
3 drywall on it. It be crazy but I could do it.

4 MR. LeGRANT: I would look to my building code as
5 to whether they allow that --

6 COMMISSIONER MAY: Right, exactly.

7 MR. LeGRANT: -- but I think they could, yes.

8 COMMISSIONER MAY: Yes. Okay. So I mean in
9 essence, what we're trying to do is remove an -- by changing
10 this, you're trying to remove an ambiguity and it's really
11 not changing the way any of these spaces have been measured
12 or treated.

13 MR. LeGRANT: It's our view in terms of the
14 habitable room labeling as per the definition, yes. I think
15 -- and as Mr. Tondro noted, it removes the ambiguity. The
16 other aspects of this, of how it's measured, because then
17 it's a different -- it's a different issue as to the
18 classification of that lower level as basement, cellar,
19 depending upon the relationship of the grade, and now as
20 we've covered, because finished grade, natural grade and the
21 ceilings -- taken from the ceiling to the top of the surface
22 of the floor bottom.

23 COMMISSIONER MAY: Right. Yes, right. That
24 aspect of it is changing but otherwise --

25 MR. LeGRANT: Yes.

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1 COMMISSIONER MAY: -- it's -- there's nothing else
2 that really changes? Okay.

3 MR. LeGRANT: I believe so.

4 COMMISSIONER MAY: All right. That's it for my
5 questions. Thank you very much.

6 CHAIRMAN HOOD: Okay, thank you. Commissioner
7 Shapiro?

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Just
9 a few quick questions. These are issues that were sparked
10 from some of the comments that I imagine we're going to here,
11 but I've got you so one is -- these are around definition.
12 So one of the comments that I read was concerns around the
13 definition of area way and referencing sort of walk-in spaces
14 in the front of the house, under a porch and whether the
15 definition of area way in some way would make that harder or
16 affect -- I think specifically the issue is does that --
17 would the staircase somehow say that this is no longer an
18 open area?

19 MR. LeGRANT: Well, the definition of area way now
20 allows somebody to, I believe, have a grate over -- it can
21 be open to the sky or it can have a grate over it. I believe
22 there are some cases in which area ways may -- there may be
23 a stairway above leading to like the first floor above or
24 something that can manifest itself in many different ways.
25 Our goal here is to codify the way that my office to date has

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1 been measuring the five-foot perpendicular to the face of the
2 building to establish a hard and fast standard of how big --
3 how wide or deep this area way can be. And then if it starts
4 becoming enclosed over, if they start roofing it, then I
5 think it turns to a different creature. But for the most
6 part, it's typically open or maybe just covered by a grate
7 or there may be a stair ascending above it.

8 COMMISSIONER SHAPIRO: And I think it's the stair
9 ascending above it; is there any -- do you feel like it is
10 necessary to clarify that in any way?

11 MR. LeGRANT: I don't believe it's a problem at
12 this point based on the various projects that I have seen.

13 COMMISSIONER SHAPIRO: Okay. Another definition
14 -- there were some concerns expressed about this -- is
15 artificial landscaping. There's no -- maybe it's stating the
16 obvious, but there's no definition for that anywhere, is
17 there?

18 MR. LeGRANT: You're correct. There is no
19 definition. That wording is referenced in the definition of
20 natural grade. It says you cannot use berms or other means
21 of artificial landscaping. We're not proposing any changes
22 to that. I think the generally understood meaning of that
23 is it shouldn't be something that is manipulated and bermed
24 up, piling up soil or something to modify an underlying
25 grade.

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1 COMMISSIONER SHAPIRO: Okay. Then the last
2 question I had is -- this is just related to this issue of
3 whether -- I mean essentially, what I hear you saying is that
4 it's a whole lot more expensive to -- or it's cheaper to
5 lower a ceiling than it is to raise a floor, a finished
6 floor. And so either way, there's just a -- a developer
7 would have to, or a homeowner would have to weigh out the
8 economic advantage of doing any of those things if they
9 wanted to rent this out in some way, shape, or form. You're
10 just saying one's more expensive than the other, so you're
11 making it a little bit harder?

12 MR. LeGRANT: Well, the manipulation of the
13 ceiling in the current standard, people are dropping
14 ceilings; you know, that has been the subject of appeals that
15 my office has been criticized of like, hey, you're letting
16 somebody just by dropping a ceiling to flip a basement into
17 a cellar. I believe the combination of making the grade
18 referent to the lower of the natural or finished grade width
19 using the floor above, because it would be more expensive to
20 start moving that floor rather than dropping or just lowering
21 the ceiling, those things together would make that
22 manipulation more expensive and more difficult to do.

23 COMMISSIONER SHAPIRO: But if I just chose to --
24 and just help me understand this -- if I just chose to add
25 six inches onto my finished floor, just make my floor six

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1 inches deeper, you're measuring from the top of the finished
2 floor?

3 MR. LeGRANT: Correct.

4 COMMISSIONER SHAPIRO: So if I had a whole lot of
5 ceiling height on my first floor and I really wanted to
6 manipulate this, I could just add a whole lot to my first
7 floor?

8 MR. LeGRANT: You could probably do so, yes.

9 COMMISSIONER SHAPIRO: Okay.

10 MR. TONDRO: Commissioner Shapiro, just to address
11 that, I think using what we see is actually the opposite.
12 It's not raising the finished floor because what they would
13 be wanting to do would be to address the lower level below.
14 So what would be happening instead would be lowering the
15 finished floor which is a --

16 COMMISSIONER SHAPIRO: So then you'd have to --

17 MR. TONDRO: -- but that, that's how much --

18 COMMISSIONER SHAPIRO: -- you're talking about
19 major -- more significant construction?

20 MR. TONDRO: Right, exactly.

21 MR. LeGRANT: Right.

22 MR. TONDRO: And --

23 MR. LeGRANT: And if you raise the floor, then you
24 immediately --

25 COMMISSIONER SHAPIRO: No, you're right. I'm just

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1 thinking of it the wrong way.

2 MR. LeGRANT: -- would introduce some problems
3 with, you know, accessing through a doorway and so forth.

4 COMMISSIONER SHAPIRO: Okay. That's all the
5 questions I have for now, Mr. Chair.

6 CHAIRMAN HOOD: Thank you.

7 COMMISSIONER MAY: Mr. Chairman, can I follow up
8 on the --

9 CHAIRMAN HOOD: Sure.

10 COMMISSIONER MAY: -- on the related question.
11 What about the circumstance where -- well, where there are
12 actually multiple levels within a floor? I mean do you --
13 you know, if more than 50 percent is at one level, do you use
14 that level or -- I mean do you average it?

15 It doesn't happen very often but occasionally, or
16 you might have a sunken entry, right?

17 MR. LeGRANT: Sure.

18 COMMISSIONER MAY: The entry is a step below?

19 MR. LeGRANT: So you're right, on occasion there
20 will be a sunken entry and then some more steps to lead to
21 the floor and maybe a split floor.

22 COMMISSIONER MAY: Right.

23 MR. LeGRANT: And so that doesn't happen very
24 often. On a case-by-case, I've looked at situations where,
25 you know, how much of that floor is at one level versus

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1 another level. If there are reasons for a sunken entry, I've
2 not usually, quote, unquote, "penalized" people for that.
3 But it's a difference between trying to retrofit an existing
4 building versus all new construction, I think all new
5 construction typically, for accessibility requirements, tend
6 to have the one continuous same level.

7 COMMISSIONER MAY: But if you did have a
8 circumstance where, you know, living room is at this level
9 and the rest of the house is at that level, what -- which do
10 you use, the level of the room at the front of the building?

11 MR. LeGRANT: I've looked at that -- you know,
12 I've looked at that generally as the level at the front of
13 the building, you know, closest to the BHMP. I, in some
14 cases, take into the account the topography, are there
15 reasons for the topography, maybe there's an underground
16 parking garage that they're trying to accommodate. So
17 they're rare enough that I've had to do just some case-by-
18 case --

19 COMMISSIONER MAY: Sure.

20 MR. LeGRANT: -- directions.

21 COMMISSIONER MAY: So I mean if they truly are
22 rare, it's probably not worth having to address it. It was
23 a question that came up again in one of the submissions that
24 we got, and maybe it's worth considering having some language
25 to address that as well.

1 MR. LeGRANT: Okay.

2 CHAIRMAN HOOD: Commissioner Turnbull.

3 COMMISSIONER TURNBULL: Thank you, Mr. Chair. Mr.
4 Le Grant, thank you for your presentation on an extremely
5 interesting subject that we've had a lot of talk about over
6 the last few years. I actually sat on one of those BZA cases
7 so I know how impassioned people get at those hearings. We
8 still have a definition of a habitable room in the zoning
9 regs. We simply removed the caveat of attic and cellar on
10 it. Everything else remains the same as per what the
11 definition was originally, if you want to call it a
12 definition. We really don't talk about habitability, which
13 I think you're getting at is really a building code issue.
14 Am I correct?

15 MR. LeGRANT: That's correct.

16 COMMISSIONER TURNBULL: So that the requirements
17 for a habitable room beyond what the zoning regulations are
18 is under your purview as far as getting a permit, whether
19 you've got the light, the air, the height, all the other
20 requirements that would, quote, make it livable or habitable.
21 That would be your Department's issue for getting the permit.
22 So the health aspects of that habitable space are really not
23 in the purview of the Zoning Commission?

24 MR. LeGRANT: Well, I'll say this. As we noted,
25 the actual regulations that refer to habitable rooms are only

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1 in the context of a BZA special exception for rear yard
2 relief in a --

3 COMMISSIONER TURNBULL: Yes.

4 MR. LeGRANT: -- couple of zones. Otherwise, my
5 office doesn't use the habitable room. There's no other
6 zoning regulation which is key to the overall. And I think
7 your point or my point is that as to what is a habitable room
8 that meets the DC building or construction code is the
9 purview of DCRA's permit operations division.

10 COMMISSIONER TURNBULL: Right. So they would be
11 the ones looking at the height, the air, the light, whatever
12 the requirements are that a -- that people can occupy and
13 live, either sleep, live or whatever?

14 MR. LeGRANT: That's correct.

15 COMMISSIONER TURNBULL: Okay. And so as
16 Commissioner May brought up, the attic, so the height, all
17 that would be governed by DCRA looking at that and judging
18 whether it would be an acceptable space for someone to be
19 able to use as living quarters?

20 MR. LeGRANT: That's correct. If somebody -- if
21 an applicant came in with a plan and said, oh, I want to put
22 a bedroom, for example, in the attic, and the building code
23 has specifications including --

24 COMMISSIONER TURNBULL: Right.

25 MR. LeGRANT: -- the height and fire rating, so

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1 forth, accessibility, it would have to meet the building code
2 requirements for that if it was designated as a bedroom.

3 COMMISSIONER TURNBULL: Okay. The finished grade-
4 natural grade and I think you put down a requirement that --
5 or you're looking to put down two years, I think, the
6 applicant must show for two years what the --

7 MR. LeGRANT: That's the existing standard.

8 COMMISSIONER TURNBULL: And it's the existing
9 standard but you were saying you might change that two to
10 five years if that was felt to be worthwhile?

11 MR. LeGRANT: Well, we're simply raising --
12 because the concern has been raised that the Commission may
13 want to look at that two years as whether it is the right
14 standard.

15 COMMISSIONER TURNBULL: Is that easy for an
16 applicant to be able to bring to you what the existing grade
17 has been for two years?

18 MR. LeGRANT: Well, as an all --

19 COMMISSIONER TURNBULL: I mean there's a certain
20 amount of you're trusting the applicant to be a certain
21 degree of honesty here bringing forward a plan that says here
22 was the existing grade and here's what I propose to do.

23 MR. LeGRANT: So our current practice is
24 applicants are to specify what the grade is, if they're
25 changing the grade, they need to show us the existing, should

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1 be the natural grade, and a finished grade. It's like any
2 other representation in a building permit plan submission.
3 And my counsel can always weigh in on this. This is a
4 representation. Now we look at that and because of globe
5 spotter and information, or sometimes a citizen or neighbor
6 may bring to our attention that questions the accuracy of
7 that, and then we can drill down into that but otherwise, if
8 there's not an issue that arises through our analysis and
9 evaluation or no issues -- other issues are raised to us,
10 that representation has to be a true and accurate
11 representation that the applicant makes in his submission.

12 MR. TONDRO: Yes. Good evening, Commissioner
13 Turnbull. Yes. The reason, I think, we had muted the
14 possibility of expanding it from two to five years was rather
15 -- was really sort of take it off the table any kind of
16 manipulation so that no one was tempted to do so. But I
17 think as the Zoning Administrator has deftly put it, you
18 know, it's up to the applicant to make a representation. We
19 have -- we've DCRA with the Zoning Administrator and the
20 surveyor come up with a revised plot certifications which
21 requires additional certification by an applicant as to the
22 existing grade, if there's changes. And so this is something
23 that's really on the applicant as a sort of a rebuttable
24 proposition. If, for some reason, we are -- we realize that
25 there's an issue or if a neighbor brings it to us, then it's

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1 evaluated on that basis.

2 COMMISSIONER TURNBULL: I was going to say, you
3 know, I mean in Washington, we've got a -- you can have a
4 great variety of grade change within a block, within several
5 homes, thinking of row homes. So you can have -- I mean one
6 of the questions I think somebody talked -- brought up was
7 retaining walls get put up to try to -- when you look at
8 that, do you look at the adjacent properties to see when an
9 applicant submits --

10 MR. LeGRANT: Well, so because the code has
11 retaining wall regulations in some zones, the applicants do
12 make representations when there's a retaining wall, a new
13 retaining wall or an alteration of an existing retaining
14 wall, which sometimes involves the grade of an adjacent
15 property. So then in those context, we would look at the
16 adjacent property and we would ask applicants to make a
17 depiction and again, as I noted, we can look at other
18 information that DCRA has access to. And the thing I'll
19 stress -- and then Commission, you know, this already -- any
20 misrepresentation by an applicant is grounds for a building
21 permit revocation.

22 COMMISSIONER TURNBULL: Revocation, right.

23 MR. LeGRANT: So if they misstate the grade or the
24 height or some other existing condition, say my building
25 sticks out this far and we find it's different, they're

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1 wrong, it's not accurate, it's not truthful representation,
2 that is a basis that we can revoke the building permit.

3 COMMISSIONER TURNBULL: Okay. Again, thank you
4 for your presentation today.

5 COMMISSIONER MAY: Mr. Chairman, can I ask a
6 follow-up on this one, too?

7 CHAIRMAN HOOD: Okay.

8 COMMISSIONER MAY: Thank you. So do you know
9 offhand what amount of grading would prompt the need for a
10 permit; is there a square footage minimum at which point
11 you'd have to have a permit? I'm sure there is one but I
12 just don't know what it is.

13 MR. LeGRANT: Well, offhand I do not know. There
14 are -- for example, the District Department of the
15 Environment for -- as a soil disturbance standard, I believe
16 it's like 50 --

17 COMMISSIONER MAY: Fifty square feet?

18 MR. LeGRANT: -- feet or something.

19 COMMISSIONER MAY: Yes.

20 MR. LeGRANT: That -- if you make that change,
21 then it's subject to their review and regulation under their
22 standards and requirements.

23 COMMISSIONER MAY: Right. I mean not that those
24 things get caught readily but there is -- I mean somebody's
25 -- if somebody's building a berm, they're going to be out

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1 there with -- most likely with earth-moving equipment and
2 most like going to have to have a permit to do that in which
3 case you'd know from that permit what the original grade was
4 and what the new grade will be.

5 MR. LeGRANT: Yes.

6 COMMISSIONER MAY: Yes. Okay, thanks.

7 CHAIRMAN HOOD: All right. I just have a few
8 questions. Maybe Mr. Tondro can help me. I see in the
9 presentation, you have a lot of appeals. I'm just curious --
10 and I know that's over a few years, '13, '15 -- '15, '16,
11 '17. Do we have the -- I don't necessarily need to know all
12 of them but did the BZA kind of come down -- what was the
13 ruling; was it similar in each case or, you know, not
14 necessarily get into the specifics but I'm just curious how
15 it landed.

16 MR. TONDRO: Sure. I think going backwards in
17 time, as I recall, the most recent one, 1514 Q -- I'm looking
18 at slide 4, in that one, that was decided on a timeliness
19 basis. I think from the dais, the chair indicated that if
20 it had gone to the merits what they would have done but
21 that's, again, dicta. It was decided on untimeliness.

22 On 1828 Ontario Place, I believe in that one --
23 and obviously, I'm looking towards the audience members who
24 were involved -- I know that that one was withdrawn, the
25 permit, and I believe the appeal was. I'm struggling to

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1 remember that one.

2 67 V Street, 19106, the Board denied the appeal.
3 In Argon Place, also, that one, however, with -- it mostly
4 denied the appeal in 1636 Argon; again, most of that was on
5 the basis of timeliness. However, 5333 Connecticut Avenue,
6 18615, that was prior to my involvement but as I understand,
7 the Board again backed up -- denied the appeal, backing up
8 DCRA.

9 CHAIRMAN HOOD: Okay.

10 MR. TONDRO: So I think the reason we had wanted
11 to raise this is to -- is less about -- it wasn't driven from
12 the standpoint that the Zoning Administrator felt that there
13 was a need to be on -- a concern that he had been -- that
14 appeals had been upheld but rather is an issue of making sure
15 that this was an issue of controversy, that there was some,
16 at least felt to be some, ambiguity. And this was an issue
17 that was important to many individuals in the City and,
18 therefore, as a result, this was an opportune time to try to
19 clarify that so everyone understands what the rules are as
20 opposed to fighting -- continuing to fight and filing
21 appeals.

22 CHAIRMAN HOOD: Okay. Thank you. I think this
23 case is very timely since one of the questions that came up
24 at our oversight hearing some years ago was about cellars and
25 basements and that's coming up on Wednesday, so. I'm going

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1 to ask -- I do want to ask Mr. Le Grant about the basement-
2 cellar. I looked at the -- what we have now and I looked at
3 what's being proposed and sometime -- how do they say it --
4 sometimes less is better than more. And when I look at the
5 definitions, I'm trying to figure out why didn't, in your
6 experience, in your time, your tenure as the Zoning
7 Administrator, why didn't the current definitions -- when I
8 read them, it seems like when I read the other ones, I know
9 we're -- it's a little more and it's more for me to grasp.
10 If I don't do zoning every day or into this every day as --
11 like Commissioner May mentioned, why do we think that what's
12 being proposed about the definition of cellar and basement
13 is easier as proposed that what we had previously?

14 Now I know the track record of the
15 misunderstanding what's out there but I'm just saying when
16 I read it, it looks like it's more for me to understand.

17 MR. LeGRANT: Well, two major points; one is
18 because we have the -- in the context of other regulations,
19 specifically the grade plane and the permanent wall, which
20 use a different standard now, they use different numbers than
21 the four feet, just to align those so they're all consistent
22 with -- at the five-foot standard, again, and then changing,
23 as we've already talked a little bit about, the ceiling of
24 the lowest level to the top of the floor above, which I
25 believe is -- speaks to making it less -- it makes it more

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1 difficult to manipulate that and then finally, introducing
2 the idea the lower of the existing -- lower of the natural
3 or finished grade. So it is slightly expanding but I believe
4 it's to make them more consistent with the regulations in the
5 DC Title 11 that deal with the related issues of building
6 height and gross floor area or FRA measurement so they're
7 aligned more consistently.

8 CHAIRMAN HOOD: Okay. And I notice -- I know at
9 one time, we talked about using diagrams and I know we're
10 still kind of working our way through a lot of things in ZR-
11 16, but is the plan to put some of the diagrams like here --
12 you know, especially, again, for those who don't do this
13 every day, I think these diagrams are very helpful. Do you
14 have diagrams now for people to look at or is that the plan
15 if -- once this is adopted or once -- if we adopt it?

16 MR. LeGRANT: Well, certainly, we, in working with
17 applicants and people inquiring about standards, we have some
18 of these graphics that we can help people understand what the
19 regulations are speaking to. I know originally in the zoning
20 re-write, there was interest in introducing graphics into the
21 code. I'd have to leave it to the Office of Zoning or the
22 Office of Planning to speak to that. Whether that could be
23 introduced, you know, I -- frankly, my opinion would be it
24 be a great thing to have some diagrams in the code, which
25 would help applicants, citizens and everyone to have greater

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1 understanding of some of these concepts.

2 CHAIRMAN HOOD: Yes. I think there was a second
3 book that was proposed but right now we're still going
4 through a lot of changes, so I think that might be premature.
5 But at some point in time, hopefully, the Zoning Commission
6 or the Office of Zoning and Office and Planning together will
7 do that to make it easier for those who don't do this every
8 day.

9 I do have one other question. No, that's it. You
10 know what, I want to get to the public. Do you have a
11 question, follow-up, Commissioner May?

12 COMMISSIONER MAY: Of course. I just want to
13 comment on the graphics that were provided and that we, you
14 know, instead of getting computer graphics, we got somebody's
15 best imitation of Francis D.K. Ching architectural standards
16 or graphic standards so --

17 MR. LeGRANT: I'll give credit --

18 COMMISSIONER MAY: -- I appreciate those.

19 MR. LeGRANT: -- credit -- direct credits due is
20 my fine zoning technician, David Vollin, is the person on my
21 staff who created these graphics.

22 COMMISSIONER MAY: Clearly, he had some training.

23 MR. LeGRANT: He did. He's a graduate of the
24 College of -- Catholic University.

25 COMMISSIONER MAY: Well, it did make it very clear

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1 although I think that when we try to put those into the regs,
2 they'll have to be a little bit, you know, more computerized
3 and sterile and, you know, because that's the way we do
4 things. Thank you.

5 MR. LeGRANT: Thank you.

6 CHAIRMAN HOOD: I did think of my other questions,
7 Mr. Le Grant. This goes to a number of things. You
8 mentioned if an applicant misrepresents the grade, natural
9 grade or whatever the case is, to -- how is the -- how is
10 that checked? I mean typically, I believe -- and I know we
11 don't have the staff to go around and check every development
12 but typically, I believe that the -- and I'm just going by
13 what I've seen in the past, the checks and balances are
14 usually the community. Is that still the case?

15 MR. LeGRANT: Well, in part, the -- again there
16 are different ways where you can become aware of something
17 that is not accurate. In the course of a review, my
18 reviewers, again, have access to information including street
19 photographic diagrams and GlobeSpotter or Google Street view
20 that can say well, wait a second, that is a variance from
21 what we're understanding. We also have other records, you
22 know, past plans. We have -- there's base maps. There are
23 a variety of information available that we can check. On
24 occasion, this -- prior to the permit issuance, we can check
25 that or we can ask the applicant, it's unclear, provide

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1 photographs, provide documentation.

2 Secondly, neighbors that may be aware of a
3 building permit prior to issuance had raised that issue with
4 us. They've come to me, they've come to my staff and said,
5 hey, Mr. Developer's saying this but it's this. And then we
6 can drill down into that prior to the permit's review.

7 Post permit issuance, if something is -- starts
8 construction and becomes -- we can be made aware through a
9 neighbor concern, through an ANC Commissioner communication.
10 And our inspectors go out, DCRA's inspectors go out and if
11 there's something that we're wait a second, this was depicted
12 in the plans but your building isn't that way, that's a basis
13 for either stopping a job, issuing a stop work order, and
14 ultimately can lead to a building permit revocation.

15 CHAIRMAN HOOD: All right. I want to thank you,
16 Mr. Le Grant, and his team as well as Office of Planning.
17 We appreciate all the work that you all have put into this.
18 We'll now hear from the public.

19 COMMISSIONER TURNBULL: Mr. Chair, I just have one
20 --

21 CHAIRMAN HOOD: Yes.

22 COMMISSIONER TURNBULL: -- I just have one more
23 question. On the habitable room definition, as you
24 explained, it really refers to a special exception for a rear
25 yard. And I think we had -- on the appeal, I think a lot of

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1 people were confused on the appeal that I was on, that it was
2 thought of as a general term. And so I think a lot of people
3 were applying that in ways that I think they misread or
4 misunderstood the limited definition and to what it applied
5 to. Is there -- I mean that's my take on what I thought.
6 I'm just -- maybe it's an Office of Planning question as to
7 why a habitable room is not a general definition in the regs?

8 MR. TONDRO: Actually, Commissioner Turnbull, I'm
9 sorry, the -- yes, the habitable room, that is what is
10 defined. It's -- so habitable room is used in the
11 regulations. Both it's defined, which is the definition we
12 have here that we're proposing to change; it is then also
13 included in a variety of other definitions of residential
14 uses, hotels, etcetera, apartments, and then -- but in terms
15 of the zoning regulations itself, the actual provisions, it's
16 only applied in those cases where there are standards for
17 rear yard relief for the Board to consider the granting of
18 rear yard relief in those limited zones, the MU and the D
19 zones.

20 COMMISSIONER TURNBULL: Is -- are those the only
21 instances that habitable room has come up, the concerns about
22 that is on, like rear yard?

23 MR. TONDRO: I don't think it's actually -- well,
24 obviously, since the only two active provisions where it's
25 applied or applied to the BZA and the grant of relief, it

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1 doesn't come to the Zoning Administrator's purview. So the
2 only time it's come, I believe, under this -- to the Zoning
3 Administrator's attention is the context of these appeals
4 where they -- the appeals have cited to this definition with
5 the assertion that because there is this definition,
6 therefore, basements or cellars cannot include dwelling
7 units.

8 COMMISSIONER TURNBULL: Right. Okay. I think
9 there still may be some ambiguity with people in the audience
10 as to that definition of habitable room. I'm not sure but
11 thank you.

12 CHAIRMAN HOOD: Commissioner Shapiro?

13 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.
14 So I have one more quick one. You may have covered this.
15 It was just triggered in the definition of habitable room
16 that's being proposed. What's the reason for the flexibility
17 around "unless otherwise specified?" What triggered that?

18 MR. LeGRANT: Okay. The -- our proposed -- yes,
19 on slide 35 here, if we -- the recommendation is to strike
20 the words "attics and cellars" and strike out "unless
21 otherwise specified." So I believe that if the Commission
22 ultimately enacted a regulation in the body of the zoning
23 regulations that utilized habitable room as -- referenced
24 habitable room for regulation, then it makes it clear that
25 this is when the definition would be invoked.

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1 COMMISSIONER SHAPIRO: So "unless otherwise
2 specified" is "unless otherwise specified by us?"

3 MR. LeGRANT: Right, in the code itself.

4 COMMISSIONER SHAPIRO: Okay. Thank you. Thank
5 you, Mr. Chair.

6 CHAIRMAN HOOD: All right. Any other Government
7 reports that I missed other than the ones we've heard thus
8 far?

9 (No response.)

10 CHAIRMAN HOOD: We do a letter here from DCBIA.
11 I think from me looking at it briefly when it was passed out,
12 it basically talks about us phasing a lot of this in. So I
13 haven't had a chance to fully look at it but it also notes
14 some other cases in the back, for specific cases, I guess,
15 that had some issues with some of the appeals as already been
16 mentioned.

17 All right. Let's go to the report of the ANC.
18 We have a number for ANCs, I believe, present so if you're
19 representing the ANC tonight, if you would come forward? Oh,
20 that's right.

21 MS. SCHELLIN: We're going to have --

22 CHAIRMAN HOOD: Can we take --

23 MS. SCHELLIN: -- Mr. Young come out and grab the
24 laptop.

25 CHAIRMAN HOOD: -- so let's take -- is everybody

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1 at the table going to need the -- let's take two minutes so
2 we can get set up there, and then we won't interfere with
3 whoever's testifying.

4 MS. SCHELLIN: It should only take a few seconds.

5 CHAIRMAN HOOD: Oh.

6 MS. SCHELLIN: So he'll come out and grab that.

7 CHAIRMAN HOOD: My colleagues always help me. I
8 don't think we do this but I hate to put it out there, but
9 I was asked if people get sworn in.

10 MS. SCHELLIN: No, not for rulemaking.

11 CHAIRMAN HOOD: Okay. I didn't think so.

12 (Whereupon, off record comments.)

13 MS. SCHELLIN: It's actually for the full NAC, not
14 the SMDs, only the full ANC representatives. Mr. Eckenwiler,
15 are you actually representing the full ANC, because I have
16 you down as SMD?

17 MR. ECKENWILER: You have our letter --

18 MS. SCHELLIN: And you're representing --

19 MR. ECKENWILER: -- of January 17th which
20 specifically authorizes me as a witness.

21 MS. SCHELLIN: Okay, great.

22 MR. ECKENWILER: I think what happened was Ms.
23 Hanousek asked for an answer before we had actually voted on
24 this and so it was --

25 MS. SCHELLIN: That's why she --

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1 MR. ECKENWILER: -- loathe to you --

2 MS. SCHELLIN: -- put the SMD?

3 MR. ECKENWILER: Yes.

4 MS. SCHELLIN: Yes, got you. That's fine. I just
5 wanted to make sure.

6 So you each have five minutes.

7 (Pause.)

8 MR. ECKENWILER: Now Ms. Schellin, the next time
9 you're thinking about upgrading your technology here, you put
10 a timer right under the Chairman's name plate. That's a lot
11 easier than -- like I can't even read that one because of the
12 light reflection, so just a thought in the future. I mean
13 that -- you know, that's for your benefit, right? It means
14 we're more like to shut up sooner.

15 MS. SCHELLIN: You think they give me that much
16 credit here?

17 MR. ECKENWILER: Well, you've got these nice new
18 displays, which I have to say are a significant improvement.

19 MS. SCHELLIN: Great.

20 COMMISSIONER MAY: I think it's an excellent idea.

21 MS. SCHELLIN: I do, too.

22 COMMISSIONER MAY: Could make it really big.

23 (Laughter.)

24 MR. ECKENWILER: Maybe a skull and crossbones, you
25 know, when the time expires.

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1 COMMISSIONER MAY: Warning lights.

2 MS. SCHELLIN: Can we make it as big as the
3 monitor down there? I will make that suggestion. All right,
4 Chairman, they are all ready and they each have five minutes.

5 CHAIRMAN HOOD: Okay. Let's give Mr. Turnbull --

6 MS. SCHELLIN: Oh.

7 (Pause.)

8 CHAIRMAN HOOD: Okay. We're ready to get started.
9 I guess our ANC, I see, ANC1C, you're going to again -- okay,
10 you may introduce yourself, you may begin.

11 MR. GUTHRIE: I'm Ted Guthrie for ANC 1C, and up
12 until January I was the Chair, but I decided that there were
13 too many of these hearings that I have to go to.

14 I'm here tonight because it's been a real concern
15 in ANC 1C, which is Adams Morgan, principally in Lanier
16 Heights which does not have historical protection that much
17 of the rest of Adams Morgan does.

18 We would like to appreciate the Office of Planning
19 for taking up these much-needed revisions, and we embrace
20 some of those provisions. But the bottom line is we believe
21 more is necessary. And I think the panel was getting to the
22 "more". The "more" to me is that what zoning is supposed to
23 be about is regulating usage and density and the impact of
24 those on the community.

25 If you have an artificial standard that segregates

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1 between basements and cellars solely for the purposes of how
2 much you can add space to a building, which is what this is
3 being used for and why this is being gamed, you wind up with
4 a situation that is not indicative of the real impact on the
5 community. And I believe that by keeping habitability
6 separate from the issue, whether or not a cellar or basement
7 is being occupied and used as real living space, under the
8 current provisions is something that doesn't really address
9 the real issues that zoning should be about, which is density
10 and the impact of density.

11 Anytime you are going to do it artificially by a
12 measurement, the crucial things are what points are you
13 measuring from. And we've heard a little about this, and we
14 really appreciate the elimination of the berming. We
15 appreciate the idea of the change between not being able to
16 lower the ceiling to do an artificial quick-fix that can,
17 then, be eliminated, which I think actually has been done in
18 certain cases.

19 One of the examples that -- first of all, I would
20 like to point out that what happens is, when you get it
21 classified as a cellar, you don't have to count that floor
22 for FAR purposes, for story purposes. And that's why we're
23 having all these fights.

24 If you look at Adams Morgan and Lanier Heights,
25 you will see this is just anecdotally what we pulled up with

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1 a number of places that had issues of cellar/basement due to
2 development of rowhouses. That's where this is really
3 occurring in the District, is rowhouse neighborhoods.

4 And what they're doing is they're playing with
5 getting things so it's less than 4 feet, or under the new
6 standards 5 feet, as something that somehow should impact
7 their ability to build more because they've got more FAR than
8 they otherwise would. I would suggest that that inch
9 difference doesn't make a damned bit of difference in terms
10 of density and the impact of density on the neighborhood.

11 One of the examples that sort of flies in the face
12 of why they only went to the lowered-ceiling room is Ontario
13 Road where they got their initial building permits as the
14 building had originally been constructed. Then, they went
15 in and gutted and lowered -- lowered? -- raised the floor
16 that would be the first main floor, so that they basically
17 got what was functioning as a basement rather than a cellar,
18 but they had gotten the extra space -- and you'll see a popup
19 there -- on the basis of it being a cellar.

20 When this was brought to the attention by the
21 neighbors to DCRA, DCRA put in a stop work order, and they
22 came up with the helpful solution of putting in a
23 nonconforming retaining wall, adding a couple of inches of
24 fill dirt, and there you have a new finished grade that we
25 can measure from, so that it's now a cellar again. How that

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1 makes any impact on the density issues in the neighborhood
2 is beyond me.

3 Again, we have, if you look at the slide that
4 we've got, if the point is density -- and that really should
5 be what you guys are concerned about -- if the point is
6 density, it makes no difference to how that is experienced
7 by the community when you've got an areaway versus when
8 you've got the surface measure. Now what happens is, when
9 you get the areaway, you get another floor on top of that,
10 increasing the density of the neighborhood.

11 We've got problems with sewers, we've got problems
12 with electricity, and we've got problems with parking that
13 are directly related to this problem. And you need to stop
14 making it a game that is subject to manipulation by
15 developers and simply put it as, if this is habitable space,
16 it gets included in the FAR; it gets included in the stories,
17 and stop this game playing.

18 Thank you.

19 CHAIRMAN HOOD: Okay. Thank you.

20 Next.

21 MR. ECKENWILER: Mr. Chairman, Members of the
22 Commission, Mark Eckenwiler for ANC 6C, which is the area
23 that covers, basically, North Capitol Hill all the way up to
24 Florida Ave. We have both Historic District and non-Historic
25 District in our ANC. The bulk of our land area is rowhouse

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1 neighborhood and the bulk of my SMD is rowhouse neighborhood.

2 So, I'm here to present the views of ANC 6C
3 pursuant to our vote back in January. I want to talk about
4 two of the major issues in the proposed rulemaking.

5 We support the proposed change to use the level
6 of the ground floor as the measuring point for that dividing
7 line between cellar and basement as well as the proposal to
8 use 5 feet as the break between the two. As Mr. Le Grant
9 indicated in this presentation, that's going to preclude
10 certain tricks like installing dropped ceilings, which, of
11 course, are very readily removable, from being used to
12 transform basements into cellars.

13 We, likewise, agree with the proposal to make
14 clear that the measurement should be relative to the lower
15 of the adjacent not just finished grade, but also adding in
16 natural grade as well, because, as Mr. Le Grant pointed out,
17 the current definition of natural grade excludes manually
18 constructed berms. That would close a commonly exploited
19 loophole, and we've included in our letter an example from
20 a September 2017 determination letter from the ZA where it's
21 just clear as day that this prospective applicant intends to
22 build this berm so that they're 3 foot 11 under the ceiling.
23 It could not be more brazen.

24 Now I want to note for the Commission's
25 consideration -- and Commissioner May raised this during his

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1 questions -- there's an issue about houses that may have
2 multiple levels, kind of a split level. Honestly, this
3 happens more often than you might think. My own house, which
4 was redone not very well in the 1970s, has a higher floor
5 level by about 3 or 4 inches in the kitchen. So, these
6 things do happen.

7 I think Mr. Le Grant actually -- he's not right
8 when he says, well, we'll just look at what the proportion
9 is, whether it's most of the floor or not, because the
10 rulemaking retains the existing language. The introduction
11 to the definition of both cellar and basement would continue
12 to begin that portion of a story. So, if that language
13 remains, you could have a circumstance where, if there are
14 different levels on the ground floor, what's underneath that,
15 part of it is a basement and part of it is a cellar. And I
16 don't know what all the implications of that are, but I think
17 that needs to be thought through. It is not simply a matter
18 of, well, we'll just look at what 51 percent of the ground
19 floor is, because that's not what the text actually says.

20 If the objective here is to make it clear not just
21 to all the zoning specialists, but to applicants and their
22 architects and people who have come along and are trying to
23 comply in good faith with the law, then that aspect of the
24 law really does need to be thought through and perhaps
25 amended.

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1 So, the second issue I want to raise is on the
2 definition of finished grade. We agree in principle with the
3 changes proposed for that definition, although we have
4 concerns. And both of those go to the second proposed
5 exception. That is, for areaways no larger than 5-feet deep.

6 First -- and I think Commissioner Shapiro flagged
7 this -- the definition of areaway, you know, it talks about
8 a guard or a grate. And we've included a photograph in our
9 letter of a -- it is a perfectly typical cast iron stoop on
10 a Capitol Hill rowhouse. You can see what's beyond that.
11 There's an areaway -- well, there's an area which is open to
12 the sky in part. It is covered by this structure, and I
13 think it needs to be clarified whether or not that is not
14 really an areaway because it's a set of used stairs, you
15 know, getting access, whatever. But be clear that this sort
16 of scenario, which is repeated on thousands of rowhouses all
17 over the District, that's not what's subject to this sort of
18 areaway potential for lowering the measurement point. So,
19 we urge you to make clear that these circumstances are not --
20 that that's not an areaway.

21 Second, it's unclear whether the 5-foot limit on
22 the depth of excluded areaways includes or excludes the run
23 of stairs. Actually, this goes to a little bit of timing.
24 When we voted on January 10th, we did not have the benefit
25 of the January 8th prehearing report from Office of Planning,

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1 which struck the language restricting the width of an areaway
2 to 5 feet.

3 And one thing I would urge the Commission to think
4 about, when you're thinking about areaway, there are really
5 two components to what we think of. There's the run of
6 stairs that goes down, and then, there's what you might think
7 of as the landing, basically, that landing that's at the
8 level of the door.

9 Mr. Chairman, will you indulge me just to go on
10 for a little bit?

11 CHAIRMAN HOOD: Okay.

12 MR. ECKENWILER: Thank you.

13 So, when we talk about the areaway and what the
14 dimension restrictions are on it, I would urge the Commission
15 to think about, are you just talking about that landing or
16 are you also including that run of stairs? Frankly, I think
17 it makes a lot of sense not to include a run of stairs,
18 provided it's not some big, long, rather shallow -- you know,
19 it's an appropriate grade, right? It goes down the
20 appropriate proportions. Because that actually would allow
21 you to retain that 5-foot width restriction. Right now,
22 eliminating the 5-foot width restriction, that makes sense
23 if you're including stairs, because the deeper that lower
24 level is, the more stairs that are going to be required to go
25 down to it, and then, you have the landing in addition. If

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1 you simply exclude a properly configured set of stairs, then
2 that 5-foot width actually makes sense.

3 And similarly, excluding stairs for a run going
4 straight on -- we actually, unfortunately, have these in
5 places on the Hill, like where these cast iron stoops have
6 been removed, where the areaway doesn't run along the side
7 of the facade. It runs straight at it. And that's always
8 going to be deeper than 5 feet, given the number of the
9 stairs and, then, the size of the landing itself. So, again
10 there, if you exclude the stairs, I think you get sort of a
11 more rational sort of rule about what constitutes an areaway.

12 So, you've indulged me. I don't want to go on.
13 But, Mr. Chairman, I just do want to say I hope in the
14 questions you'll ask me about what Mr. Le Grant said about
15 the revocation of permits because I have some thoughts on
16 that subject.

17 Thank you. I would be happy to answer your
18 questions.

19 CHAIRMAN HOOD: Okay. Thank you.

20 Okay, Mr. Eckenwiler, could you talk about the
21 revocation of what Mr. Le Grant mentioned?

22 (Laughter.)

23 MR. ECKENWILER: Thank you, Mr. Chairman. I
24 thought you'd never ask.

25 So, what Mr. Le Grant said is true in theory, but

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1 the theory simply is disconnected from reality. And I say
2 that as someone who's been dealing with these kinds of issues
3 for a while now. I'm in my sixth year as a Commissioner.
4 I've been chairing our Zoning Committee for six years.

5 And the truth is we, for a time -- and I'm
6 thinking back to about 2014 where we went to DCRA and
7 complained bitterly about some really, really egregious
8 projects where all kinds of things were being done that were
9 clearly in violation of zoning regs, either with respect to
10 height, either with respect to the creation of illegal
11 courts, back when court dimensions were regulated under the
12 regs, under the '58 regs.

13 And our experience was that we basically got
14 nowhere until November 2015, when a neighbor and I pointed
15 out to DCRA that flagrantly fraudulent plans had been
16 submitted to DCRA in support of a permit which was issued.
17 They initially showed a structure that wasn't there as an
18 existing condition. It wildly falsified the dimensions of
19 the building, both as to its width and as to its depth on the
20 lot, all of which was sort of a transparent attempt to get
21 it under 60 percent, at least on paper.

22 And when we went to DCRA on that, I got nowhere,
23 and basically, the 60-day clock was running. So, we wound
24 up filing a BZA appeal. We're now up to our third BZA appeal
25 in the past two and a half years.

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1 And I just sort of want to walk you through what
2 the factors are. Trust me, I'm not just doing this rant for
3 my own benefit. It's because you raised a legitimate
4 question. I think one of the other Commissioners may have
5 raised this as well. But how much can you trust an applicant
6 and how much does that get vetted? What are the checks on
7 that, both within DCRA and outside?

8 So, let me just offer a set of propositions for
9 you. One, applicants will lie. There are unscrupulous
10 developers. We've seen them time and again in my ANC and
11 elsewhere.

12 It is hard for the average citizen, even for a lot
13 of the ANC Commissioners, to get information where they would
14 be in a position to rebut. Because the truth is, even though
15 District statute requires building permit application
16 materials, all the drawings, all the paperwork, to be
17 available online, it's not. And it's super-hard to get that
18 stuff. It really, really is. The Office of Open Government
19 has issued an opinion letter on this.

20 Even when, as in 2015, the Zoning Administrator
21 is told about these problems, a lot of the time there's
22 inertia. There's simply no reaction.

23 And then, you have, on top of that, the burden,
24 if someone actually decides, well, I need to go to BZA,
25 you've got a 60-day clock that's running. You've got to have

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1 the time and effort and a certain amount of expertise,
2 because the filing requirements require you to get it all
3 right at the time of filing, right? You are stopped from
4 adding documents later on post-filing. So, there are a lot
5 of costs to doing things that are going to correct some sort
6 of mistake based on a misrepresentation by an applicant.

7 And so, the practical result, in my experience --
8 and this is not just about me; I hear this from other folks
9 in the District with whom I'm in regular contact -- there is
10 effectively no deterrence. There is a strong incentive to
11 lie because what's the worse that happens if an applicant
12 gets caught. Well, as in this case where we filed the appeal
13 in 2015, they were forced to surrender that permit, but the
14 disincentive is so small. That just meant that they were
15 going to have to go get the relief that they would have to
16 get in the first place if they had really been honest.

17 So, I would urge you to think really carefully
18 about how this works in practice because the reality is not
19 what Mr. Le Grant has described to you.

20 Also, one point really briefly. On this habitable
21 space thing, if you really want to resolve the issue about
22 usage, about whether dwelling units can be in those lower
23 levels, call it something else. Call it countable space.
24 Call it chargeable space.

25 Part of the issue here is the meaning that is

1 carried by the word "habitable," and it's not about whether
2 or not it is a lawful use fit for it to be dwelling space.
3 Then, just decide whether or not -- maybe you want to call
4 it something else that takes that issue off the table.

5 I'll stop there. Thank you.

6 CHAIRMAN HOOD: All right. Thank you.

7 Let's see if we have any questions or comments.

8 Mr. Turnbull?

9 COMMISSIONER TURNBULL: Getting back to that, I
10 think, and as ANC 1C had mentioned, you're basically saying
11 that whatever that space is, basement/cellar, and it's usable
12 space, chargeable space, whatever, your term, it should be
13 counted as part of the gross floor area?

14 MR. ECKENWILER: I'm sorry, you're addressing that
15 to me, Commissioner Turnbull?

16 COMMISSIONER TURNBULL: Both of you.

17 MR. ECKENWILER: Oh. I'm not saying that at all.
18 We, ANC 6C, did not take a position on the habitable space.
19 I think you can read into that; we didn't have any objection
20 to the proposed change on that.

21 COMMISSIONER TURNBULL: Okay.

22 CHAIRMAN HOOD: Commissioner Guthrie?

23 MR. GUTHRIE: We very definitely do. I mean, that
24 is our bottom line. I think that is what's driving all of
25 the problems. If we didn't have that artificial distinction

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1 between cellars and basements, and basements counting against
2 FAR, cellars not, we wouldn't have all these games, and we
3 would have an accurate and clear reading of the impact of
4 development of rowhouses on the neighborhood.

5 If you want to have a denser, more intense D.C.,
6 fine, but be honest about it. And this is not honest. This
7 is a fake. This is from back in the days when there was a
8 root cellar. Nobody lived down in the root cellar. But now
9 you've got it so that you've gotten DCRA to approve as
10 habitable spaces that previously were not habitable.

11 And what they're doing is they're going in, and
12 instead of one family, you've got six to eight units. It's
13 no surprise that I'm getting at least three alerts a day on
14 water main breaks. Why do you think that we're having such
15 challenges with the water? It's because we've got way more
16 usage than we used to on old infrastructure. And we're not
17 having the developers pay for any of that at all. It's our
18 burden.

19 And what I really feel sorry for is the people who
20 move into these places, only to discover that they have to
21 take the garbage around some circuitous route because the
22 developer didn't bother to work in garbage or they find out
23 that somehow developer did some -- we had one case where they
24 had put up balconies that were not authorized. And at that
25 point the people had already bought the places, moved in.

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1 It was consistent with a building that was adjacent to it.
2 So, as the ANC, we said, "We don't want these people to
3 suffer as a result of that."

4 But the developers are coming in and taking
5 advantage, and they're taking advantage of the District in
6 ways that are really unfortunate. And you guys have the
7 opportunity to at least cut back on that by saying we're no
8 longer going to have games about whether this is a cellar or
9 a basement. If it's habitable space, it counts toward your
10 FAR; it counts toward your stories.

11 COMMISSIONER TURNBULL: Thank you.

12 CHAIRMAN HOOD: Any other questions? Mr.
13 Turnbull? Oh, I'm sorry. Commissioner May?

14 COMMISSIONER MAY: I pretend to be Turnbull. It's
15 all right.

16 COMMISSIONER TURNBULL: You need a beard.

17 (Laughter.)

18 COMMISSIONER MAY: I would need more than a beard,
19 I think.

20 (Laughter.)

21 CHAIRMAN HOOD: I must have been thinking about
22 the Architect of the Capitol and went back. I'm not sure.

23 COMMISSIONER MAY: Yes, yes, we were
24 interchangeable once.

25 Anyway, so I have a question for Commissioner

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1 Guthrie. You showed a photograph where there had been that
2 manipulation. We don't need to see the photograph again.
3 I remember what it looked like. But there had been that
4 manipulation of the finished grade.

5 And the regulations, the way this change is
6 proposed, would address that, wouldn't it? I mean, you would
7 not be able to do that same berming up. You wouldn't be able
8 to elevate the grade in that circumstance. So, that basement
9 would have counted as a story. And so, they would not have
10 been able to add another story?

11 MR. GUTHRIE: This actually was a result of
12 problems in enforcement of what the rules are. Because what
13 was originally proposed and what was shown to DCRA as to what
14 they were going to build was different from what they
15 actually built.

16 COMMISSIONER MAY: And that's not what I'm asking.

17 MR. GUTHRIE: Right.

18 COMMISSIONER MAY: What I'm asking is that what
19 you showed us was a third floor added to an existing house
20 that had two stories plus a basement.

21 MR. GUTHRIE: Right.

22 COMMISSIONER MAY: And they raised the grade to
23 make the basement a cellar, which meant they could add a
24 third story, right?

25 MR. GUTHRIE: They raised the floor above, so that

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1 they could actually have it a basement, even though they
2 originally showed --

3 COMMISSIONER MAY: Well, you know, in other words,
4 they manipulated it, right?

5 MR. GUTHRIE: Yes.

6 COMMISSIONER MAY: Originally, it was a two-story
7 house with a basement, right?

8 MR. GUTHRIE: With a cellar. And what they
9 did is --

10 COMMISSIONER MAY: It originally had a cellar?

11 MR. GUTHRIE: Yes, because what they did was they
12 moved the first floor up.

13 COMMISSIONER MAY: Which would have made it a
14 basement?

15 MR. GUTHRIE: Which would have made it a basement.
16 But, originally, it was a cellar.

17 COMMISSIONER MAY: And so, in order to avoid that,
18 they raised the grade, too? But neither of those things
19 could have been done in this circumstance, right? I mean,
20 if these changes are enacted, raising the first floor would
21 have made it, you know, the basement, it would not have
22 changed the status of the basement as a basement? And you
23 would not be able to manipulate the finished grade out in
24 front of the building to convert that basement into a cellar?
25 And so, therefore, you couldn't have a third floor?

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1 MR. GUTHRIE: Originally, it was a cellar, a
2 cellar-defined space.

3 COMMISSIONER MAY: Yes.

4 MR. GUTHRIE: What they did was, contrary to the
5 plans that they had submitted -- and this goes to the
6 enforcement issue and where they're going to go --

7 COMMISSIONER MAY: No, you're missing my point
8 entirely

9 MR. GUTHRIE: Okay.

10 COMMISSIONER MAY: My point entirely is, there is
11 a change that is proposed here --

12 MR. GUTHRIE: Right.

13 COMMISSIONER MAY: -- that is intended to address
14 exactly that problem. Do you understand that it will or do
15 you disagree that it will and think that it will not?

16 MR. GUTHRIE: What my understanding is, that the
17 proposed solution will address issues of lowered ceiling,
18 false ceilings in basements, but will not really address the
19 issue of --

20 COMMISSIONER MAY: No, it changes the definition
21 of the grade outside.

22 MR. GUTHRIE: Right.

23 COMMISSIONER MAY: So, it's no longer the finished
24 grade.

25 MR. GUTHRIE: Right.

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1 COMMISSIONER MAY: It will be the lower of the
2 finished grade or the, quote, "natural grade" as defined two
3 years in the past.

4 MR. GUTHRIE: The "fix" would not have been
5 applicable -- I agree with that -- because of the berming
6 issue.

7 COMMISSIONER MAY: Right. So, what they did to
8 make that project happen could not happen under the new
9 regulation?

10 MR. GUTHRIE: One would hope.

11 COMMISSIONER MAY: Right.

12 MR. GUTHRIE: And again, my understanding --

13 COMMISSIONER MAY: There is a certain reliance
14 on --

15 MR. GUTHRIE: My understanding is that, by the
16 time this all got resolved, people had bought and moved into
17 the units, at which point the neighborhood was not as
18 interested in having the whole thing torn down.

19 COMMISSIONER MAY: I can --

20 MR. GUTHRIE: That's just a practical --

21 COMMISSIONER MAY: I understand that. I mean,
22 there are issues of enforcement.

23 MR. GUTHRIE: Right.

24 COMMISSIONER MAY: And unfortunately, we don't
25 have so much say over that.

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1 MR. GUTHRIE: Well, if you limit it to gaming --

2 COMMISSIONER MAY: But we are trying to clarify
3 things in the regulations, which is the starting point,
4 right?

5 MR. GUTHRIE: Yes.

6 COMMISSIONER MAY: All right. Okay.

7 So, Mr. Eckenwiler, Commissioner Eckenwiler, so
8 you had raised the split-level floor issue, which is when I
9 asked the question originally. And my question for you is,
10 what would you do to fix it? If it's not what Mr. Le Grant
11 described as his process in that circumstance, what would you
12 think would be an appropriate way of addressing it?

13 MR. ECKENWILER: I'll tell you the conversation
14 we had not on the Commission itself, which didn't attempt to
15 resolve this, within our Planning and Zoning Committee, which
16 has at least two architects on it. The consensus was that
17 a rule that basically over 50 percent would be a not bad
18 rule, again, because it's a lot harder to --

19 COMMISSIONER MAY: So, it's over 50 percent
20 which --

21 MR. ECKENWILER: Whatever is the majority --

22 COMMISSIONER MAY: Whatever the majority is?

23 MR. ECKENWILER: Exactly right. In fact, it's
24 more or less what Mr. Le Grant was saying. You know, if
25 there's just some small area, a sunken entry or whatever, if

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1 you look at where that level is in the main, that's not an
2 unreasonable position to take. It's just that, if you leave
3 this rulemaking as it's proposed right now, that's not what
4 it's going to say. It's going to say you need to look at
5 each individual portion underneath those different levels,
6 and some of it may be basement and some of it may be cellar,
7 which --

8 COMMISSIONER MAY: Yes. So, I mean, I think one
9 of the things that we ought to give consideration to, to try
10 to address this, is really to figure out the best way that
11 it does not invite games. Because we're getting rid of the
12 option of dropping the ceiling. And I appreciate the fact
13 that it is more expensive to drop the floor, but I don't know
14 what's happening in your neighborhood, but in my neighborhood
15 what often happens is the house is gutted to the bricks and
16 reframed in the inside from the ground up. So, they could
17 put the floors wherever they want. And so, the floors will
18 go in at 4 feet 11 above the natural grade, and they'll
19 manipulate the entrance. I mean, you can't do that in an
20 Historic District --

21 MR. ECKENWILER: Right.

22 COMMISSIONER MAY: -- very easily. It may be
23 possible. It kind of depends on how well it's done. But
24 most of the city doesn't have historic preservation
25 protections anyway.

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1 MR. ECKENWILER: I would just say, in response,
2 though, if you're talking about a complete gut job where
3 you're removing the joists and everything --

4 COMMISSIONER MAY: Yes.

5 MR. ECKENWILER: -- then I think that's really a
6 separate question. I mean, that just goes to you've got to
7 pick a dividing line somewhere between cellar and basement --

8 COMMISSIONER MAY: Right.

9 MR. ECKENWILER: -- assuming you want to have that
10 distinction.

11 COMMISSIONER MAY: Right.

12 MR. ECKENWILER: I'm not sure that that really
13 goes to this question of what happens when you've got --

14 COMMISSIONER MAY: Well, that's true. That's
15 true. It doesn't really go to that. But it could. I mean,
16 it kind of depends on how complex they want to get with the
17 framing.

18 MR. ECKENWILER: Sure, and somebody could say,
19 "Well, I want to do it 51 and 49," but, then, it really has
20 to be 51 and 49.

21 COMMISSIONER MAY: Right.

22 MR. ECKENWILER: They can't -- you know, the tail
23 cannot wag the dog, as it were.

24 COMMISSIONER MAY: Right, right. Okay. I
25 appreciate your raising that issue.

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1 The last thing is that, on your submission, I was
2 very confused by one of the statements and I could not follow
3 it.

4 MR. ECKENWILER: Only one?

5 (Laughter.)

6 COMMISSIONER MAY: Only one. I think I have a BZA
7 hangover.

8 (Laughter.)

9 We were here late last night.

10 Sorry. Give me a second to pull it up.

11 So, on page 2, the first full paragraph, "We note
12 for the Commission's consideration a question about the
13 applicable" -- oh, okay. So, that was the same thing?

14 MR. ECKENWILER: I think that's what you and I
15 just discussed.

16 COMMISSIONER MAY: Yes, that's what we just
17 discussed. Okay. Yes, I scribbled notes, and I don't have
18 a page 2.

19 MR. ECKENWILER: You understood it better than
20 you're giving yourself credit for.

21 COMMISSIONER MAY: Okay. Maybe I figured it out
22 as the evening wore on. All right.

23 So, that's it. Thank you.

24 CHAIRMAN HOOD: Any other questions or comments
25 up here?

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1 (No response.)

2 Okay, not seeing any, thank you both. We
3 appreciate it, Commissioners. You, too, I think you're
4 coming back.

5 Okay. You're an ANC Commissioner? Have I heard
6 from all the ANC Commissioners? Okay.

7 Let me call the list. Are these proponents? And
8 we have an opponent list? We have opponents, too? Oh, so
9 you've got both? Okay.

10 All right. Hopefully, I don't mess his name up.
11 Guillermo -- call that name off.

12 COMMISSIONER MAY: Guillermo Rueda.

13 CHAIRMAN HOOD: Okay.

14 COMMISSIONER MAY: I rolled my "R's" too much,
15 but --

16 CHAIRMAN HOOD: You must have practiced that.

17 Okay. And Susan Flinn. Okay. And Neil
18 Flannigan. Is Neil Flannigan here? Okay. Okay. So, Mr.
19 Gambrell, you must be running the equipment. Okay. Okay.

20 All right. So, do we have anyone else here who's
21 going to testify in support of this proposal?

22 Okay. All right. Mr. Glasgow?

23 MS. SCHELLIN: Mr. Young, can you come back out?

24 CHAIRMAN HOOD: Let's give them a chance to get
25 set up.

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1 Is there anyone else here who would like to
2 testify in support? Okay.

3 MS. SCHELLIN: Mr. Glasgow, you're changing from
4 undeclared to support?

5 MR. GLASGOW: Yes, and it's on a very limited
6 issue.

7 MS. SCHELLIN: Okay.

8 CHAIRMAN HOOD: So, are we ready now?

9 Oh, okay. You're a Mac? Okay. Well, they say
10 Macs are better. That's what my wife tells me.

11 MS. SCHELLIN: I think the other people can start,
12 though, that aren't using the PowerPoint. Not everybody is.

13 CHAIRMAN HOOD: Okay. I was going to say, are you
14 using the PowerPoint?

15 MS. CHANG: Yes, I have one slide.

16 CHAIRMAN HOOD: Okay. You have one slide.

17 MS. CHANG: You're going to be very familiar with
18 it by the end of the evening.

19 (Laughter.)

20 CHAIRMAN HOOD: Oh-oh. Okay.

21 MS. SCHELLIN: Maybe Mr. Glasgow?

22 CHAIRMAN HOOD: Mr. Glasgow, do you have a slide?

23 MR. GLASGOW: No, sir.

24 CHAIRMAN HOOD: Please bring a slide next time.

25 (Laughter.)

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1 You can go ahead. We'll start with you.

2 MR. GLASGOW: All right. Thank you, Mr. Chairman.

3 The one item that I was going to discuss very
4 briefly was I am in support of the proposal dealing with the
5 habitable space and how that's dealt with.

6 And I think that with respect to -- there was a
7 lot of discussion about increase in density, as to how either
8 cellars or basements are used. At least the experience I
9 have with the regulations are, particularly like in RF-1
10 zones and those, you don't get any increased units. You have
11 a larger unit than you would have otherwise, or you may have,
12 you could have, because you can only have two units in that
13 structure with some certain things, with respect to pre-'58
14 buildings and that type of thing, with regs that have
15 recently been changed. But having that additional habitable
16 space allows additional bedrooms, things like that. And so,
17 I think it provides a lot of flexibility that is warranted
18 under the regulations, and I don't think that you would want
19 to lose that flexibility.

20 So, I support what has been proposed by the Zoning
21 Administrator and is in the Office of Planning report on that
22 issue.

23 CHAIRMAN HOOD: All right. Well, thank you, Mr.
24 Glasgow.

25 Next?

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1 MS. CHANG: Hi. Do you mind if I go next?

2 CHAIRMAN HOOD: Sure.

3 MS. CHANG: My name is Jennie Chang, and I live
4 in Dupont Circle. So, I'm coming in as a resident.

5 And I've actually been in the situation where this
6 whole basement versus cellar -- I'm coming from a person who
7 doesn't have a background in zoning, an architect, or
8 anything like that; just as a homeowner.

9 So, came across the situation two years ago with
10 a neighbor who had bought the property adjacent to ours, and
11 with the intent of turning it into a four-unit condo. We got
12 him to scale it down to three units because of the historic
13 preservation. And we were able to get some concessions.

14 So, basically, the house next door to us is -- you
15 know, I live in amongst 12 rowhouses. So, next door to us
16 is a rowhouse. It was classified as a cellar downstairs, and
17 the owner is in the process, hasn't started building but is
18 looking to add a third level, or maybe a fourth level, add
19 another level to his existing rowhouse to convert it into a
20 three-unit condo.

21 So, meanwhile, I live adjacent next door. And we
22 don't have a cellar. The previous owner made it into a
23 basement. And we're looking to -- initially, we were looking
24 to extend outward to make our house longer because I didn't
25 really want to climb any more stairs living in D.C. So, I

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1 was like, oh, we were just going to extend outward. So,
2 we've exceeded our FAR.

3 So now, we're looking to extend upward, but
4 because we have a basement, we've already exceeded -- I'm not
5 sure what all the ratios are. But, in any case, we would
6 have to go for like a variance or a special exception.

7 I'm looking at Alan.

8 In any case, it's pretty complicated; whereas, my
9 neighbor, because he has a cellar, he just had to go in and
10 go in with his plans, and is able to convert it to a three-
11 unit condo. Whereas, I have two little kids, my husband, and
12 I, and we'd just like to have a little more space.

13 So, I actually met with Mr. Le Grant, who was
14 helpful, but in terms of understanding from a layman's
15 person, it was like listening to Greek. I mean, I had no
16 clue. He was explaining like, oh, the patio, and if it's
17 above grade and it's below 4 feet and if you have this, it
18 counts as a patio or a way -- I have to go back and look at
19 my notes. But, in any case, you know, I find that these
20 rules are somewhat or, actually, they're totally arbitrary,
21 and what you qualify as a basement -- so, you're basically
22 looking to live down there. So, the guy is turning it into
23 a one-bedroom basement apartment and adding two additional
24 units. Whereas, I am not able to add another one and, then,
25 have to go through a long process to add another level, just

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1 to make it so we would have more space for my family. The
2 same setup, the same -- you know, built at the same time.

3 So, that's my only -- thank you.

4 CHAIRMAN HOOD: Okay. Thank you.

5 We'll come back to you.

6 MR. FLANNIGAN: How you doing? My name is Neil
7 Flannigan.

8 I support the substance of OP's changes. I am
9 commenting to suggest improvements to the specifics of the
10 proposed text amendment, and as well to rebut some assertions
11 of those opposed to cellar dwelling units.

12 My only suggestion for improvements, just off the
13 top, is to define the word "berm" because I don't think that
14 the Webster's dictionary definition of "berm" is particularly
15 clear. I would like to request that the text have a more
16 flexible way of defining setting a building height measuring
17 point on an attached dwelling. And I would like to limit
18 areaways not through absolute dimensions, as the current text
19 proposed, but, rather, through percentages of lot size or
20 facade size. And I would like to collapse the categories of
21 basement and cellar into a single category called "basement"
22 that does not count for its GFA, as this is the way that the
23 International Building Codes, as amended in the D.C.
24 Construction Codes, counts basement area, which it doesn't
25 count towards building area in the Building Codes.

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1 I want to make the case here for thoughtful,
2 future-facing regulations rather than simply trying to tie
3 down a problem. While OP's regulations are adequate for some
4 of the most egregious abuses, the zoning regulations should
5 continue to replace mid-century bugbears and guesswork with
6 evidence-based regulations informed by modern building
7 systems and modern building codes.

8 The Commission has the opportunity to pass
9 language that it gives the city that is more inclusive and
10 more attractive at the same time. I understand that OP just
11 went through the rewrite and they are busy with the comp
12 plan, but this is up now and it's a great opportunity to
13 clarify the purpose of the provisions that are under
14 discussion.

15 I will submit a longer testimony that will show
16 that FAR does not regulate density, and in most of the zones
17 or several of the zones that are controversial we are almost
18 exclusively talking about RA-1, RA-8, and RA-9 zones, because
19 there are unit density buildings, as this gentleman
20 mentioned, in RF and R zones.

21 Only certain elements of the Construction Codes
22 are models for zoning and people should be very careful about
23 language that they're interpreting, particularly that GFA,
24 gross floor area, in the Building Codes, and basements have
25 completely different definitions or significantly different

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1 purposes. The Building Code's definition of a basement is
2 our equivalent to a cellar and it is measured at 6 feet above
3 grade. And they never do a measure of grade plane, which I'm
4 not getting into.

5 But, similarly, GFA and the Building Code is
6 measured as -- is actually used only for egress calculations
7 and that the equivalent concept is building area, and
8 building areas in basements are explicitly -- one-level
9 basement is excluded from counting the building area in the
10 Building Code and the D.C. Construction Codes.

11 And then, finally, counting the finished cellar
12 floor would have extreme consequences city-wide. And I want
13 to bring this up because it hasn't really been discussed,
14 which is that, if you take the interpretation of habitability
15 including any living space, there are tens of thousands of
16 converted basements, what we're calling basements, that are
17 properly legally cellars in R-1 and RF zones that would
18 immediately become nonconforming. And the burden on the BZA
19 to deal with this would be outrageous, and it cannot be
20 interpreted that those have a separate rule of measurement
21 for a cellar than every other unit in the city.

22 That's all.

23 CHAIRMAN HOOD: Thank you.

24 Next?

25 MR. GAMBRELL: My name is Alan Gambrell, and I'm

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1 a former ANC 1C Commissioner. And I think my tombstone is
2 going to say, "Cared way too much about basements and
3 cellars."

4 (Laughter.)

5 I want to just acknowledge that the Office of
6 Planning, I really appreciate the fact that they put some
7 language forward and worked with residents on the matter.
8 I really think they've gone a long way toward making
9 improvements and to prevent some of the manipulations that
10 have been going on in recent years. These changes are really
11 a big deal.

12 I'm in support, but also in opposition, to some
13 of the proposals. I consider this a work-in-progress, as
14 some of OP's recommendations, and actually in DCRA's
15 presentation in particular, simply they're not logical.

16 One is the proposal to define finished grade as
17 the ground directly abutting the perimeter of a building, but
18 to turn right around in that same definition and exclude that
19 very ground and areaway as representing the finished grade.
20 It's not only contradictory, but I'll use a technical term;
21 that's actually kind of appalling.

22 Second, striking attics and cellars as non-
23 habitable is also quite problematic. In my time, I want to
24 discuss these two in terms of focusing on why these ideas,
25 they destroy the logic behind why there is a definitional

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1 difference between a basement versus a cellar. It's not just
2 a matter of measurement. Rather, these terms are intended
3 to capture the impact of the occupancy, of density of people,
4 of demand on the infrastructure. I'll cover this in six
5 points in real rapidly.

6 First, it's pretty basic. Density rules include
7 all livable space. Why else would you define something as
8 a basement or a cellar? A cellar is not space where people
9 reside and, thus, is not counted in density formulas. A
10 basement, however, is occupied space and it is counted.

11 I also want to point out the Zoning Commission in
12 recent years, when it came to inclusionary zoning, came up
13 with a term, "cellar dwelling unit," in terms of compliance
14 with IZ, but you also in those regulations, and DCR in the
15 implementation, you count the cellar dwelling units in IZ.
16 So, that's the fundamental point here, is you're counting the
17 space that's being lived in. And from that standpoint, we
18 have some consistency with what you've already agreed upon.

19 Secondly, there are two rules of measurements when
20 it comes to cellars and basements. One is the rule of
21 measurement, and the second is the use, which is the
22 habitable room, which there's ample discussion and debate at
23 this hearing tonight.

24 Third, I disagree strongly about the discussion
25 earlier. The DCR said that habitability is not relevant.

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1 The word "habitable" is sprinkled throughout the zoning
2 regulations. And if you look at all eight of these
3 definitions, they all relate to the density formulas. So,
4 this matter of habitability does, in fact, matter in terms
5 of being counted.

6 Next, the issue of excluding an areaway as a
7 measurement point, which this graph shows. An areaway is
8 actually making -- just a few more seconds -- it's making the
9 so-called cellar on the right side more livable in terms of
10 access, light, and air. Actually, it's turning that cellar
11 into a basement. And yet, the proposal is to exclude the
12 areaway, which I think is -- what you're being asked to do,
13 you're being asked to codify manipulation.

14 Next, in terms of looking at consistency with the
15 Building Code, I think we have some disagreements with your
16 interpretation of the Building Codes. In the zoning
17 regulations, under A11.3(d), it calls for alignment with
18 other codes. And if you look at the Building Codes,
19 basements are mentioned eight times. The cellar pretty much
20 is zero. And there's a reason for that, because there's no
21 point in having Building Codes to modify cellars to make them
22 more livable because nobody's envisioning a cellar being as
23 a place you would live.

24 Finally, six, the issue about whether or not this
25 longstanding practice, the prior Zoning Administrator in 2007

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1 actually did use both the measurement and, also, the
2 habitability issue in terms of a project in Dupont Circle in
3 deciding on whether to allow a project to move forward. So,
4 we do have, even though it was 11 years ago, we have some
5 history here that this has been looked at differently. So,
6 I think that history is worth taking a look at.

7 In closing, I hope these recommendations are
8 welcome and well-intentioned. However, all parties are going
9 to benefit from rule revisions that further clarify the
10 existing intent of the zoning regulations. Spaces that serve
11 as habitable living spaces should be included in density
12 formulas.

13 Thank you.

14 CHAIRMAN HOOD: Thank you.

15 Next?

16 MR. RUEDA: Thank you.

17 I would like to preface my presentation by saying
18 that timeliness has silenced many a voice in the District.
19 And so, you don't have my remarks ahead of time. And also,
20 three minutes is not enough.

21 So, good evening, and thank you for this time to
22 offer comments and suggestions to OP's 10/6 memorandum and
23 setdown report amended 1/8. I appreciate the amount of time
24 and effort put forth by the Office of Planning and Zoning and
25 to the Zoning Commission for hearing this.

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1 My name is Guillermo Rueda, an architect and a
2 resident of the District of Columbia for 30 years. And I've
3 been involved in countless meetings and discussions with
4 Council Members, DCRA, OP, and the Zoning Administrator to
5 bring attention to zoning matters that affect properties
6 across the city. I support many of the changes proposed with
7 some suggestions and maybe a few objections.

8 As can be seen by this evolving language and the
9 recent addition of the PowerPoint presentation from Mr. Le
10 Grant, there's still work to do to ensure consistent and
11 informed interpretation of many of the zoning terms and
12 regulations.

13 My presentation is submitted for the record -- I
14 guess I'll have to do that some other way; it was emailed
15 earlier today -- to detail some of the language concerns and
16 nuances. So, these three minutes will, hopefully, give some
17 clarity to areas that I think need work.

18 The Zoning Administrator's recent exhibit
19 submitted to the record does bring some new information that
20 I think is useful and helpful, and it addresses a lot of the
21 comments that people have made. Yet, with this new exhibit,
22 it's not clear to me where the final language stands or how
23 much time this will add to the process of putting forth this
24 amendment. It would be helpful to have a conclusive memo to
25 identify some of the terms and ideas being put forth.

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1 First, I would say that the proposed language
2 needs to include some submission requirements for
3 applications. I think the concluding remarks of the Zoning
4 Administrator pointed to this. Drawings and analysis that
5 depict the applicant's conformance with regulations need to
6 include existing conditions, proposed work, and referenced
7 standards with defined in terms in one place in the drawings.
8 Too many permit applications submit vague, incomplete
9 drawings that rely on the zoning reviewer or Administrator
10 to allow or disallow proposed work, based on them throwing
11 around some loose terms.

12 Three, I added the language for the definition of
13 basement and cellars. I think it should include wording to
14 account for stories that measure sufficiently above grade,
15 the kinds of story in zones that limit development by story.
16 And so, the only three words that I've added to this
17 definition is "any story or portion of a story," with the
18 rest of the definition incorporated.

19 The same thing for cellars, "any story or portion
20 of a story partly below grade where the finished floor or the
21 ground floor is less than 5 feet above an adjacent or natural
22 finished grade".

23 I think that whichever is lower in elevation,
24 obviously, solves a lot of the problems that we have.

25 I can't believe I'm already at three minutes. So,

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1 I guess I beg your indulgence.

2 So, with finished grade, the definition of
3 finished grade is contradictory and seeks to formalize the
4 controversial interpretation that excludes areaways from
5 finished grade. The presentation acknowledges this, and
6 there seems to be language now that measures to the ground
7 and not to the top of the wall, as is suggested by the
8 language. The areaways, which in my experience are not
9 measured after they're built, so compliance obviously becomes
10 an issue once they're built, if the Commission agrees that
11 areaways can be excluded from finished grade calculations,
12 then, per the definition, finished grade must be measured at
13 the ground abutting the areaway structure. And as has been
14 pointed out in the slide, if you look at it, obviously, we
15 have a couple of examples where the wall was used to
16 determine the cellar, when, in fact, there is a basement
17 present.

18 Seven, or this slide is talking about mean
19 finished grade. Actually, I didn't get there yet. But,
20 rather than exclude areaways from finished grade, I would
21 submit that using the idea of mean finished grade, as
22 suggested in the 1/8 memo, would account for variations in
23 natural or finished grade at the perimeter of a building.
24 And that needs to be further explored, not only for BHMP
25 determinations, but story counts and GFA. The elevation of

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1 natural and finished grade can be counted as part of the
2 average determined at a minimum of three points across the
3 facade.

4 To conclude my thoughts, I would point out that
5 various revisions to Sections B304.4 and .5 could use more
6 defined terms and potentially word that language so that
7 you're describing that counts, and not the area that doesn't
8 count.

9 And so, I will submit this for the record for you
10 to read, if it so interests you. I do have it recorded in
11 these slides.

12 But I would further add that a lot of these that
13 we're talking about are often used to incorporate development
14 that, then, is allowed to trump life safety zones in the
15 Building Code, which obviously shouldn't be the case.

16 Thank you very much for your time.

17 CHAIRMAN HOOD: Okay. Thank you.

18 Next?

19 MS. FLINN: Hi. My name is Susan Flinn. I'm a
20 long-time resident of the District of Columbia, and I am very
21 appreciative and very supportive of the OP language and their
22 willingness to work with citizens and residents to address
23 the basement/cellar manipulation. So, I'm supportive with
24 two caveats.

25 I first became aware of this issue when an eight-

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1 unit building was approved and is now being built behind my
2 house, of which two units are designated as cellars, which
3 will be on the market at very non-affordable rates soon. So,
4 it's an eight-unit building with two cellars that are going
5 to be inhabited.

6 I'm one of those people with concerns about
7 habitability and how it's defined and how it's used. I
8 oppose any language that would enable space that's designated
9 as a cellar or an attic to be used as independent living
10 space.

11 I hope the Commission will support language
12 specifying that any space that's going to be used as living
13 space must be included in the density formulas, charged for
14 the gross floor area, for the FAR, and accounted as a story.

15 Second, I oppose the Office of Planning's proposal
16 to exclude areaways. I think this is time for our slide.
17 We oppose excluding areaways from being defined as the
18 adjacent finished grade.

19 As has been noted before, creation and use of the
20 areaway is exactly what makes space habitable. They're
21 intrinsic in converting non-habitable cellar spaces into
22 habitable basement spaces. The areaway creates a new lower
23 grade and allows light and air into living spaces. It both
24 creates basement grade to floor distance and makes space
25 habitable.

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1 So, in the slide you will see how an areaway turns
2 a cellar into a basement. On the left is a basement, just
3 based on the 5-foot measurement distance. On the right, if
4 you don't measure from the areaway, where it says 4'11", just
5 based on the measurement distance, you have a cellar. But
6 there's no logical reason not to use the areaway. It is the
7 adjacent finished grade. It should be considered to be the
8 adjacent finished grade and used for measurements.

9 So, this slide also shows how that 1-inch
10 difference between 5 feet and 4'11" results in illogical
11 cellar definition when the areaway is excluded. When the
12 areaway is included, this space has a new 7-foot grade
13 measurement. It doesn't make any sense to deem the living
14 space on the right as a cellar.

15 So, my main point is that areaways should be used
16 as the adjacent finished grade. Excluding them invites
17 manipulation of the measurement rules that have resulted in
18 so much overbuilding in historic rowhouse neighborhoods like
19 mine.

20 I would also like to point out that the city's
21 Building Codes -- I am not an architect -- but the ICC
22 designates the grade measurement point at the facade space
23 and includes areaways.

24 Maybe 20 more seconds, if you'll indulge me?

25 In addition, OP's proposed measurement of an

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1 areaway as 5 feet from the building facade is inconsistent
2 with the city's Building Code which designates the areaway's
3 distance from the facade at 4 feet. The city's various
4 definitions and designations should align and not conflict.

5 In conclusion, I thank the OP staff for working
6 with us and considering these issues and submitting these
7 recommendations. I hope the Zoning Commission both closes
8 the loophole which has enabled overbuilding and ensures
9 consistent alignment of the city's various definitions and
10 regulations.

11 Thank you.

12 CHAIRMAN HOOD: Okay. I want to thank you all for
13 your testimony to us.

14 Let's see if we have any questions or comments up
15 here. Anybody?

16 (No response.)

17 Okay. Thank you all very much. We appreciate it.

18 And if you have something that you said you want
19 to turn into us, if you could do that as well?

20 We're going to leave it open for the people who
21 mentioned to me that they want -- don't you have something
22 you have to turn in? Yes, just those things, and I think you
23 have something to turn in?

24 MR. RUEDA: I already emailed it.

25 CHAIRMAN HOOD: Oh, you did.

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1 MR. RUEDA: It should be submitted already.

2 CHAIRMAN HOOD: Okay. Okay. All right.

3 All right. Are you all support or? Come right
4 on up. Do we have any other opponents? Anyone who is here
5 in opposition, if you can come forward at this time?

6 Okay. So, whoever wants to start, that's what
7 we've been doing, whoever wants to go first.

8 MR. SALONIA: Okay. Good evening. I'm Lance
9 Salonia, the Chair of the Regulatory Committee of the Dupont
10 Circle Citizens Association. For those of you who are not
11 aware, DCCA, we've been in existence since 1922 and we have
12 a long history of working for civic and social improvements
13 in the Dupont Circle area and in the District in general, as
14 well as engaging in charitable and educational activities.
15 Over the course of its existence, we've been particularly
16 engaged in issues related to development, zoning, safety, and
17 noise.

18 Dupont Circle is blessed with a variety of
19 buildings, including, most prominently, a wide array of
20 rowhouses dating back to before the turn of the last century.
21 The importance of the areas both architecturally and
22 historically has been recognized by the establishment of an
23 Historic District.

24 From the beginning, habitable apartments partially
25 below grade, and known as English basements, have played a

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1 large part in meeting the neighborhood's and the District's
2 housing needs. These habitable basements are separate and
3 distinct from cellars, which are uninhabitable areas either
4 wholly or mainly below ground and intended to be used for
5 other purposes such as storage.

6 More recently, however, developers have been
7 converting of our rowhouses into multi-unit rental apartment
8 buildings and condominiums. In that effort, developers have
9 undertaken extreme efforts to fit as many profitable units
10 as possible into a structure, as you have been hearing all
11 night tonight. Developers have been aided in their efforts
12 by clever manipulation of the zoning regulations. Since
13 cellars are excluded from the density calculations while
14 basements are not, they try to fashion their lower units in
15 such a way as to claim status as a cellar rather than a
16 basement. This trick is presently achieved, as we know,
17 through reducing the window area of the unit, lowering the
18 ceiling, or modifying the grading of a building. And now,
19 different ways of doing it will be proposed under the new
20 regs, it is our opinion.

21 However, this ignores the fact that, by
22 definition, not by logic, a cellar and basement are
23 distinguishable because basements are habitable and cellars
24 are not. It is this practice which creates unlawful
25 congestion that the proposed amendments fail to address and,

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1 in fact, will exacerbate.

2 DCCA has an overriding concern and interest in
3 ensuring that the zoning laws and regulations of the District
4 of Columbia are clear, logical, consistent, and fairly
5 applied. We are concerned that this has not been the case
6 with respect to the application of the regulations related
7 to basements and cellars. All too frequently, developers
8 have been able to game the system to unfairly expand the
9 square footage of their projects by converting habitable
10 living space into cellars in name only.

11 The proposed amendments, while addressing some
12 aspects of the questionable manipulation of the zoning
13 regulations, fail to tackle the core issue. In fact, the
14 proposed amendments, by removing the concept of habitability
15 from the definitions of basements and cellars, will greatly
16 exacerbate the problem.

17 The District of Columbia zoning regulations were
18 expressly drafted for controlling and restricting the height,
19 bulk, number of stories, and size of buildings, and density
20 of population. And that comes from the DCMR 11-100.4. The
21 regulations are consistent with this overarching goal and
22 date back to 1958. Contemporaneous urban planning sources
23 indicate that FAR, in particular, was considered as a basic
24 bulk control. In other words, it was considered to be a
25 device to regulate the volume of buildings and, thus, limit

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1 the concentration of people and their activities, as well as
2 to afford access of light and air into buildings and the
3 space surrounding them.

4 In Washington, D.C., a cellar has until now been
5 consistently defined in law and regulation as a story that
6 is not suitable for habitation because of inadequate light,
7 air, and head room. Thus, there are two distinct definitions
8 for partially below-grade space, one being a basement and the
9 other being a cellar. A cellar being uninhabitable, is
10 logically excluded from the definitions of gross floor area,
11 which is used to calculate floor area ratio. A basement, on
12 the other hand, is habitable and is included in gross floor
13 area.

14 Excluding an entire floor of habitable space from
15 GFA and FAR calculations by simply relabeling habitable space
16 as a cellar renders meaningless the definitional difference
17 between a basement and a cellar. What is the point of having
18 two definitions for below-grade space unless the spaces are
19 clearly differentiated? There is no logical reason to
20 exclude a cellar from calculations in determining the total
21 permissible habitable space on a lot unless it is
22 uninhabitable. A habitable cellar is not a cellar. It is
23 a basement and it should be counted toward the GFA and the
24 FAR.

25 It is the position of DCCA that all habitable

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1 space needs to be considered under zoning rules as part of
2 the calculations for appropriate density, irrespective of
3 whether it is being called a basement or a cellar. We
4 believe that doing so would allow you get rid of all these
5 rules that you've been looking at. That is the simply
6 solution, habitable or not, and then, you won't be worrying
7 about how someone can play the rules because those rules will
8 be ineffective or will be simply do they have a CFO for that
9 space or not.

10 Now, if it's believed that the density
11 restrictions as they exist, I'll say in places like Dupont,
12 are too low, then the solution is to amend the densities
13 allowable. It's not to engage in illogical contortions where
14 a cellar is a cellar for calculating max GFA and FAR, but a
15 cellar is a basement for purposes of habitability and
16 Certificates of Occupancy.

17 So, I would say we kind of agree a lot with a lot
18 the proponents you had earlier, but we definitely think you
19 need to look at the more simplified route there of just
20 basing it on habitability or not.

21 Thank you.

22 CHAIRMAN HOOD: Thank you.

23 Next?

24 MR. NATAN: My name's Tom Natan. I live at 1642
25 Argon Place.

1 I wanted to talk about my concern with the
2 definitions, but not from a technical perspective. I'm going
3 to give you some of the history of 1636 Argon Place, which
4 has been mentioned before, how it relates to this proposal,
5 and why the language might not work.

6 In the early 2002s, the owners of 1636 excavated
7 the lowest level to make it into a legal apartment. They
8 installed a full-height door that led out to the slab behind
9 the house and didn't change the back grade. So, there was
10 nearly 7 feet of height from the ground outside to the top
11 of the door which was entirely in that lower-level unit. It
12 was an apartment that was clearly intended to be rentable,
13 compliant, and habitable space and was used that way.

14 In 2014, the house was purchased for development
15 into a multi-unit building. DCRA issued the original permit
16 based on the developer's application, excluding the floor
17 area of the lowest-level unit from the total floor area. We
18 neighbors challenged the permit based on clear photographic
19 evidence that the lowest level should be included in the
20 floor area, and this began 18 months of the developer and
21 DCRA trying to come up with a plan to discount that floor
22 area and allow the developer to build higher and create more
23 units.

24 So, this first photo that you've got here shows
25 the evolution of the design over time. First, after DCRA

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1 agreed with the neighbors and issued a stop work order, the
2 developer proposed this retaining wall that you see here.
3 DCRA approved it, but we pointed out that it shortened the
4 parking spaces below legal limits. So, they had to
5 disapprove it.

6 In the next iteration, suddenly, there was a
7 notch. The proposed retaining wall was moved inside the
8 building envelope as a planter and the adjacent finished
9 grade got defined as the top of the planter and was inside
10 the building envelope.

11 Finally, the driveway was sloped up, as you see
12 here, because the cellarizing trick allowed the popped-up
13 building height to be too high to comply with the rear yard
14 setback limit. You can see the finished product in the
15 second photo here.

16 When we went to BZA to appeal, they didn't agree
17 that adjacent meant outside the building, which suggested
18 that the word "adjacent" needs to be further defined. So,
19 the developer used the current rule and DCRA's help to turn
20 a habitable unit into what's considered non-habitable space
21 in the proposed rule. Anybody passing by in the alley can
22 see how ridiculous and unnatural it looks. We neighbors who
23 use the alley hope that the cars parked on the slope all have
24 working emergency brakes.

25 So, that's the problem with this, as I see it.

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1 It encourages more supposedly non-habitable spaces that we
2 know will be sold and inhabited. And as for the proposed new
3 language on the finished grade, I mean, take a look at this
4 sloped driveway. It's finished grade, but the concrete slab
5 below it was finished grade. So, you know, we're going to
6 use the lower of the two? I guess.

7 Developers are in the business of finding creative
8 solutions to existing rules. And as you can see with this,
9 DCRA has been willing to assist in the creativity. I can
10 only imagine what kind of solutions that are going to be
11 devised in the future with the proposed changes.

12 Thanks for the opportunity to speak to you this
13 evening.

14 CHAIRMAN HOOD: Okay. Thank you.

15 Next?

16 MR. CLEVELAND: Yes. Hi. My name is Will
17 Cleaveland. I'm an architect practicing in Washington, D.C.

18 I wrote a letter to the Board concerning the
19 areaway definition. And if I understand correctly, the 5-
20 foot length along the building language has been eliminated
21 from that proposed rule change. Do I understand that
22 correctly?

23 CHAIRMAN HOOD: I'm sorry, what was your question?

24 MR. CLEVELAND: In any case, my concern was that
25 a 5x5 space for an areaway is not adequate to serve many of

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1 the disabled people that rely on those type of spaces to
2 access their houses or to access their houses in the future.
3 And I think that should be an important consideration, and
4 I didn't see that any of those institutions within the
5 government had been consulted.

6 Many times in neighborhoods, historic
7 neighborhoods like Dupont Circle, we're commissioned as
8 architects oftentimes to find creative ways to access space
9 that otherwise is inaccessible. If we are penalized or
10 somehow driven into a variance process to do this, to
11 accommodate people with disabilities, I think it presents an
12 unnecessary burden upon a certain portion of the population.
13 That was the one consideration.

14 And then, the second consideration was the
15 Department of Transportation already regulates areaways, and
16 I hadn't heard any of that in the discussion of the proposed
17 rule changes.

18 Again, I am really indifferent to the basement or
19 cellar rule, or whether it's counted or not. I'm for
20 clarity.

21 And the definition of "areaways" to me didn't seem
22 to be consulted with that segment of government. Right now,
23 an areaway in public space, if it's permitted where the
24 street width can extend the full width of the property,
25 within 8 inches of the property line, as I understand it,

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1 many times when we're renovating older houses, we have a
2 situation where an areaway extends from that public space to
3 the building face. And I was concerned whether the
4 definition of an areaway would affect that rule and, in fact,
5 whether an approved projection in public space could extend
6 all the way to the building face. To me, that's not really
7 clear in the regulation.

8 And lastly, it came up earlier about stairs
9 serving areaways. I'm less concerned about that, although
10 that should be clarified in terms of whether that's counted
11 as part of the areaway or not. More importantly, ramps,
12 which can be quite long and quite extensive, but that is the
13 primary device that we use in accessibility design to access
14 lower levels, and ramps should be very much clarified as to
15 whether those are counted. And are we measuring grade plane
16 along a ramp? I don't think there's any clear answer to
17 that.

18 And I know the District has several offices that
19 work with people with disabilities and disability advocates.
20 And I really felt that that should have been consulted before
21 we talk about changing what an areaway is or the size
22 limitations of it.

23 So, that's it.

24 CHAIRMAN HOOD: Okay. All right. Thank you.

25 Let's see if we have any questions or comments.

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1 (No response.)

2 I'm not seeing or hearing any.

3 Okay. You had a series of questions, I think, and
4 maybe we can -- can you repeat your question? Maybe we can
5 get the answer. Because I thought about that, but I was
6 going to ask at the end for you.

7 COMMISSIONER SHAPIRO: I'm interested about the
8 disability issues and the access. And I'm curious. Maybe
9 if you were to turn to Mr. Le Grant and see if you have a
10 response to that and whether we may be missing something
11 related to accessibility.

12 MR. LE GRANT: Well, Mr. Cleaveland has brought
13 up what was, I believe, the original advertised text as a 5-
14 foot maximum horizontal width that we are now proposing be
15 struck from the proposal that's before the Commission.

16 In terms of accessibility, already BZA has a
17 reasonable accommodations process. If an individual cites
18 the need for reasonable accommodation, the District of
19 Columbia, under the Federal Housing Act, has incorporated a
20 process to address reasonable accommodations on a case-by-
21 case basis, dependent upon the individual involved.

22 I will say that, for the above-grade projections,
23 right now there's zoning regulations which tonight was not
24 discussed, but just for the Commission's information.
25 Already the stairs have an exemption from counted as outside

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1 uncovered stairs that serve the entrance floor from being
2 compliant with setbacks and lot occupancy. And it's been my
3 office's longstanding practice that any ramp that is to
4 provide access is to be treated the same way.

5 But, truthfully, I have not looked at specifically
6 if anything would change in the recommendation on
7 substituting a stair entrance, a ramp entrance for a person
8 that's maybe disabled in a wheelchair from a stair to be
9 treated any differently.

10 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

11 CHAIRMAN HOOD: Any other questions or comments
12 or clarification needed?

13 (No response.)

14 All right. Thank you all very much. We
15 appreciate your testimony.

16 Now let's go to persons who are undeclared.

17 MS. SCHELLIN: We do have a list.

18 CHAIRMAN HOOD: Oh, we have a list?

19 Okay. Mr. Hargrove, Pat Bryant, Anne Sellin, and
20 Betsy McDaniel.

21 Anybody else who's undeclared?

22 Come right on up.

23 Anybody else?

24 (No response.)

25 Okay. So, we'll end with this panel, with the

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1 undeclared panel.

2 We'll start to my right, your left. You may
3 begin.

4 MS. BRYANT: Hi. I'm Pat Bryant, and I am not
5 going to read the whole of my pages because I don't think
6 I'll fit it in in three minutes, but 1892 Ontario Place is
7 what brought me here.

8 And if you notice the photos, you can see that
9 this is what this meeting is all about, is the basement,
10 cellar, and four floors versus three floors, how you count
11 everything.

12 I would further like to mention that, in my
13 opinion, the rear of our rowhouses matters. That space, the
14 quality of that space matters. The amount of light, the
15 amount of air does make a difference. And I know nobody
16 talks about that in terms of it being of any particular
17 consequence, but it is.

18 And as it relates to this particular topic, my
19 sense is that -- and I feel like this has been said here
20 tonight -- it's not the height, the depth, whether it's a
21 basement or a cellar, but what is the impact of the
22 development on the block, the neighborhood, the adjoining
23 properties? How will the character be improved of these
24 particular areas?

25 My request to you is, No. 1, to take the necessary

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1 time to engage with and listen to those long-term residents
2 who have expertise, perspective, and demonstrated public
3 interest to provide the technical and practical response to
4 these proposed changes. Any changes will likely create
5 unintended consequences. So, please don't resist any final
6 review or two prior to adoption.

7 And then, No. 2, it's not possible for the
8 regulations to address each and every situation perfectly.
9 Interpretations and debates will happen. But the guidance
10 to reaching the resulting decisions must come from the intent
11 of the rule or the regulation. Please build into DCRA
12 decisionmaking the question, what is the intent of this
13 regulation and is my decision meeting the intent? And 1892
14 Ontario Place is, again, another good example of that. It's
15 not meeting the intent of the regulation.

16 No. 3, if any resident makes the effort to share
17 their concerns, please respond. Your work, good, better, and
18 different, likely has a lasting impact on their quality of
19 life. Residents deserve timely and helpful information and
20 at least as much assistance as the developers and their
21 attorneys receive.

22 No. 4, consider establishing a fund and possibly
23 a list of experts to assist residents with the financial
24 burden of protecting their homes from illegal construction.
25 The current system with DCRA responsible for enforcement, yet

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1 being outgunned by zoning attorneys, is stacked against
2 residents who are forced to spend thousands of dollars to
3 protect their properties or just give up. And that's what
4 we did for 1892.

5 No. 5, consider the surrounding properties and the
6 total picture, not only the front of the property, when
7 writing and interpreting Code.

8 And, No. 6, ensure penalties for incorrect data
9 on architectural plans are effective, which means they have
10 to be more significant.

11 Thank you for your time.

12 CHAIRMAN HOOD: Thank you.

13 Next?

14 MS. McDANIEL: Good evening, Commissioners,
15 Chairman Hood. My name is Betsy McDaniel. I'm a Ward 5
16 resident, and I think my tombstone will be more interested
17 in mentioning turrets, but here it goes with the
18 basement/cellar.

19 I submitted four examples, screenshots and
20 pictures. The first example has already been mentioned
21 tonight. It's an excerpt from the Zoning Administrator's
22 letter of determination and a sheet from the accompanying
23 plans for a proposed project that was posted on DCRA's
24 website on December 13th, 2017.

25 I do not support any language, current or

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1 proposed, that encourages the use of an artificial berm to
2 increase the height of, in this case, new construction and
3 that allows for the creation of an extra unit in the cellar
4 that circumvents the existing maximum number of units allowed
5 within the zone. We're seeing this all the time. However
6 many units, whether it's two or three that are allowed, the
7 bottom unit is the main floor and the basement, and the
8 basement is being used as an additional unit.

9 As someone mentioned on Twitter today, this is a
10 big concern in New York right now with the upcoming Census,
11 that there are going to be people who are not counted because
12 there's no mailbox; there's no indication that these people
13 are living down there.

14 The second example was access. It offers a look
15 at the permit review process by the Zoning Office of a recent
16 building application. You can see that the comments went
17 from this is not allowed, this is an extra story, to the
18 final comment with the approval of the permit was that the
19 owner has been ordered to fill in the front yard to make the
20 existing height and story meet the zoning.

21 The third example, that's an older project. The
22 third picture is from where an existing front yard was
23 removed, a street-level entrance created, leaving the
24 appearance of a four-story rowhouse. The owner has been
25 ordered to fill in the front yard, but has not yet complied

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1 with that order. That's been to BZA twice.

2 In the fourth image, one can see that the existing
3 front yard was removed and the street-level entrance was
4 created. But this project included a new planter berm at the
5 sidewalk. You can also see that the first floor was raised.
6 You can see it by looking at the window opening. It was
7 bricked-in to accommodate a new floor. So, some people do
8 raise the floor because it's cheaper than digging out the
9 basement. So, I hope that you will consider all the
10 different possibilities of what people do to get around the
11 regulations.

12 And if you'll let me just say one more thing, just
13 as a sum-up, I just hope whatever you do, it will be
14 consistent in the wording and the implementation, and that
15 you get it right. Take your time; get it right, because I
16 don't want to have to come back like we did for 1411 and
17 tweak and tweak and tweak.

18 Thank you very much.

19 CHAIRMAN HOOD: Okay. Thank you.

20 Next?

21 MR. HARGROVE: Commissioner May, Chairman Hood,
22 Members of the Commission, and other Members of the
23 Commission, I'm Larry Hargrove, speaking for Kalorama
24 Citizens Association.

25 This case was generated by concerns about the way

1 the treatment of cellars, basements, and attics in the zoning
2 regulations promotes incompatibly dense development in
3 rowhouse areas, sometimes called "popups," "popbacks," and
4 the like. It is useful to review how this came about.

5 For decades, the zoning regulations have made
6 quite clear on their face that cellars and attics were
7 regarded as unsuitable for use as living space and were, for
8 that reason, explicitly excluded from the list of spaces that
9 could be qualified as a habitable room. Since both
10 apartments and dwelling units, defined terms in the old
11 regulations, were required to be a habitable room, one could
12 not lawfully have an apartment or a dwelling unit in a cellar
13 or an attic. The original idea was evidently that shutting
14 off poor old grandma to a dark, dank, moldy cellar or a
15 cramped, duty, old attic was not to be countenanced.

16 Accordingly, cellars and attics without a
17 tolerably high ceiling, 6'6" or higher, were not counted
18 against a building's density limits. By contrast, basements,
19 not being as far below grade as cellars, were deemed
20 accessible for living space, and the same was true for an
21 attic with a comfortably high ceiling. Similarly, cellars
22 were not regarded as stories and, thus, did not count against
23 the maximum number of stories.

24 Now, at some point in the more recent past, some
25 Zoning Administrator was apparently persuaded that this

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1 policy had become obsolete, perhaps because of advances in
2 the Building Code. The effective result was a policy
3 decision by the Zoning Administrator, a de facto amendment
4 of the zoning regulations to begin allowing apartments and
5 cellars, as well as to allow projects in which attics with
6 ceilings under 6'6" were designed to be used as living space.

7 The result of this decision was that a rowhouse
8 redeveloper could add as much as an entire floor or more to
9 the building without paying any cost to the allowable floor
10 area or the allowable number of stories. So, this is a
11 highly valuable prize, as you will appreciate. It increased
12 the likelihood of popups or popbacks in rowhouse
13 neighborhoods proportionately.

14 This state of affairs generated a slew of powerful
15 and often perverse incentives to figure out ways to design
16 the building so as to actually degrade the amenities of the
17 living space, just in order to get the free gross floor area.

18 The incentive to drop the ceiling in the basement
19 has been well-discussed tonight. Another example detailed
20 among those that are detailed in our written statement is the
21 incentive to reduce the size of the basement's window well
22 or areaway, thus, diminishing the light and air available to
23 the apartment as well as the areaway's potential for use as
24 an outdoor living space, just in order to be sure that the
25 area doesn't count against FAR.

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1 The difficulty, as we try to make clear in our
2 written statement, is that OP's proposed amendments, while
3 they are a commendable effort, do not completely eliminate
4 such incentives and, in fact, would allow and add new
5 incentive to gut or diminish a rowhouse in order to get the
6 free marketable living space. Commissioner May's comments
7 earlier indicate that that is already an incentive that is
8 motivating the treatment of rowhouse redevelopers because of
9 the incentive to get the free marketable space.

10 So, how is this problem to be eliminated? One
11 obvious way would be for the Commission simply to affirm that
12 the regulations are to be applied in accordance with their
13 plain meaning, which can only be changed by the Commission
14 after due notice and hearing. And this is not a bad idea,
15 after all.

16 But if, on the contrary, the Commission is to
17 accept OP's proposal to allow dwelling units in cellars and
18 the low-ceiling attics, the only other effective way to
19 eliminate the problems outlined above is to eliminate their
20 root cause. And that root cause is the perverse and,
21 frankly, absurd incentives generated by the possibility of
22 securing free marketable living space.

23 This can be done simply by requiring that any
24 cellar or attic floor area that is used for habitable space
25 be included in the calculation of gross floor area, as others

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1 have pointed out before me, and that any cellar so used be
2 counted as a story.

3 Now, significantly, this is the general approach
4 that the Office of Planning itself suggested in an early
5 setdown report destined for this case. Those provisions
6 proposed by OP are reproduced in our written statement. Now
7 they did not survive into the current draft which is now
8 before the Commission.

9 As to cellars and gross floor area, others have
10 already pointed out the Commission has already taken the
11 extent of the 2016 inclusionary zoning regulations by
12 including cellars that are to be used as dwelling space in
13 the total gross floor area that is used in calculating
14 setback requirements.

15 Accordingly, we strongly urge that, if cellars and
16 attics are to be permitted to continue to be used as
17 habitable rooms, the Commission adopt these recommendations
18 tentatively proposed by OP in its December 2nd, 2016 draft,
19 which, as I say, is set out in our written statement, with
20 certain changes that would make them applicable to cellars
21 and attics in all the especially vulnerable zones. And in
22 consequence, we recommend, also, that they amend the rules
23 of measurement for the number of stories so as to provide
24 that a cellar used as a habitable room is counted as a story.
25 This would be a clean, simple, and comprehensive solution to

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1 the problem and one which we believe strikes a fair and
2 reasonable balance among the competing interests.

3 Thank you.

4 CHAIRMAN HOOD: Thank you.

5 Next?

6 MS. SELLIN: My name is Anne Sellin. I'm speaking
7 as a long-time resident of Dupont Circle, one of Washington's
8 many residential rowhouse neighborhoods.

9 As a practical matter, this case is mainly about
10 rowhouses, specifically about problems that arise in
11 connection with the conversion of them, designed as single
12 family, to two or more units. Conversion often makes sense
13 financially to the owner, but it also makes sense for the
14 District by expanding the housing supply. I've added a
15 basement apartment to my own rowhouse.

16 And I might say that the use of basements for
17 living space is certainly a very good thing to be encouraged
18 by the Zoning Commission because of our shrinkage of housing.
19 If you put a false ceiling in an English basement to call it
20 a cellar, and then, add another story, it's a total
21 distortion of useful space and a nuisance to the
22 neighborhood, frankly.

23 So, I think it really should be considered, since
24 cellars are used as a measurement for inclusionary zoning,
25 that they should be also considered as living spaces and used

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1 as matter of right in that manner, at least in the zones that
2 don't have a limit on the number of units, which my zone does
3 not. I'm on 16th Street.

4 Conversion can be done without materially changing
5 a rowhouse's external appearance. And I have long been
6 concerned about the need to ensure that, in our efforts to
7 meet the District's need for more affordable housing, that
8 it proceed in a way that is respectful of these
9 neighborhoods.

10 For this reason, I worked to bring about the
11 rezoning of some Dupont Circle areas several years ago from
12 R-5-B to R-4, and I welcomed the change to R-4 zoning that
13 the Commission adopted in 2015 and, therefore, to curtail
14 popups and popbacks.

15 So, I have been distressed to see the damaging
16 measures that commercial redevelopers have employed in Dupont
17 Circle and other neighborhoods in order to make sure that the
18 first level of a rowhouse qualifies as a, quote, "cellar";
19 thus, providing it an extra floor's worth of marketable floor
20 area, or an extra story. I'm referring to measures like
21 dropping the basement ceilings, which I've already mentioned.

22 So, we really do have a problem in this proposal
23 now not really considering the most advantageous effect of
24 encouraging cellars to be used for living space. It's
25 unreasonable to think that such practices by developers --

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1 that is, putting in false ceilings and that sort of thing --
2 can and will be fully eliminated so long as the underlining
3 motivation to engage them remains. And in fact, some of OP's
4 proposals may encourage even more damaging practices, such
5 as a partial or total demolition.

6 Second, the problem can be readily solved by
7 simply removing the motivation, which, of course, is the fact
8 that a cellar doesn't count against FAR or the number of
9 stories, and that cellars have lately started to be allowed
10 to be used for habitable space. So far as I can tell, the
11 fact that cellars are not included in gross floor area and
12 don't count as stories is the only reason for the
13 longstanding distinction in the zoning regs between cellars
14 and basements. If a cellar is now to be allowed to be used
15 as an apartment or other living space, the whole distinction
16 of zoning between basements and cellars, and, likewise,
17 exclusion of cellars from FAR, make no sense.

18 So, I urge you to amend the definition of gross
19 floor area to ensure that any area used as habitable space
20 of any sort be included in gross floor area, and amend the
21 definition of story to ensure that a cellar used as habitable
22 space be counted as a story.

23 And I would to say something about enforcement.
24 We've had a terrible problem in Dupont Circle in enforcement.
25 There are about three or four Historic Districts in Dupont

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1 Circle, and we have many violations. And we've talked to the
2 Preservation Office about this, and Zoning as well as
3 Preservation, but it's easier for the Preservation people to
4 see these because they're external.

5 And what we've learned, and to the dismay of the
6 Preservation Office, is that these are noted. The city's
7 attention has been given to them, but there are never any
8 fines levied. There used to be \$6,000, as you know, a
9 violation, but that just doesn't happen.

10 And I don't know if this is true with zoning or
11 not, but I think it might be. And it is really very bad
12 because Ms. McDaniel mentioned her problem with extra cellar
13 space, or cellar space being used illegally as an extra unit
14 that is not allowed in zoning, but enforcement is terrible.
15 It's really terrible.

16 So, this could be solved if we had enforcement,
17 and a cellar could be used for living space for the family
18 in areas like the old R-4, which are restricted to the number
19 of apartments that can be implanted in a building.

20 So, I agree with a number of people who have
21 testified that cellars should be used. I think they should
22 be 6'6", no higher than that. But this does need more study,
23 and I hope we can come to a much simpler solution than the
24 very convoluted one that has been suggested by the Zoning
25 Office.

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1 CHAIRMAN HOOD: Okay. Thank you.

2 Next?

3 MR. J. MILLER: Good evening. My name is John
4 Miller. I am a D.C. resident and a real estate developer.
5 I came here tonight because I am concerned about the
6 unintended consequences of the proposal and believe
7 additional study is needed.

8 Specifically, my concern is that the proposed
9 regulation does not account for sites where the natural grade
10 of the site slopes downward from the sidewalk elevation. For
11 our upcoming project, the site slopes down from the sidewalk
12 into the site as a result of historical excavation on the
13 site.

14 In my first slide, Exhibit 1, you can see a
15 section of how we propose to develop the site. Today this
16 elevation can be built by right. As you can see, the
17 elevation of the homes is raised, so that the front doors are
18 at the sidewalk level. If the proposed regulation is passed,
19 however, the building would have to be pushed down into the
20 ground and the front doors will be a full 7 feet below the
21 adjacent sidewalk level.

22 You can see this illustrated on my last page,
23 Exhibit B. The effect on the quality of the streetscape is
24 dramatic, would diminish the street frontage and impact
25 public safety and stormwater management. I understand the

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1 intention of this proposed regulation is to stop developers
2 from building above the sidewalks on sites where the slope
3 is flat or rises from the sidewalk. In that sense, I think
4 it is a good idea. However, the law does not account for
5 those lots where the elevation of the property line is below
6 the sidewalk elevation.

7 The law's definition of natural grade is also
8 problematic as it does not take into account historic
9 modifications to sites that result in a grade that is
10 actually unnatural and non-contextual with neighboring
11 properties. If the regulation is enacted as written, I am
12 concerned that in these circumstances developers will build
13 new structures that actually detract from the quality of the
14 streetscape and that the effects will be most dramatic in
15 Wards 7 and 8, which are witnessing more development and
16 which have a great deal of topographic variation.

17 I request further study be done to identify and
18 analyze sites that slope downwards from the sidewalk, so that
19 the city can better understand how the proposed changes will
20 affect these sites. I believe the case I present shows that
21 this law may have unintended consequences as bad as those the
22 law seeks to mitigate, at least in some circumstances.

23 I suggest some provisions be made for sites like
24 the one I described that allows for the natural grade to be
25 reestablished to at least the elevation of the sidewalk. A

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1 natural grade plane could be established at this level and
2 berming could be allowed at the sides and the rear of the
3 property to maintain a building's outer level. Such a change
4 would have no negative impacts on the pedestrian's
5 perspective of the project's height or density.

6 When the law is passed, I also request that
7 implementation is delayed, so projects like ours do not need
8 to be changed dramatically in the middle of the design
9 process. I fear that if the law is approved as designed, I
10 will have to pursue Option B, shown in the provided exhibit,
11 even though I do not wish to.

12 If I don't lower the units as required under the
13 proposed law, we would lose units from a 100-percent
14 affordable development plan. Our city has an affordable
15 housing crisis and we must maintain the ability to build
16 cellars to responsibly add to the city's density. I fear,
17 if passed as written, other developers would make the same
18 decision.

19 Thank you.

20 CHAIRMAN HOOD: Okay. Well, thank you all.

21 Let's see if we have any questions up here or
22 comments.

23 Commissioner May?

24 COMMISSIONER MAY: Yes. Mr. Miller, I'm a little
25 confused by your diagrams. Okay? So, Exhibit A, I mean,

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1 we're seeing sections basically cut in both directions?

2 MR. J. MILLER: No, sir. Those are two sections
3 along a string of six rowhouses.

4 COMMISSIONER MAY: Oh, okay.

5 MR. J. MILLER: I apologize for the --

6 COMMISSIONER MAY: No, that's okay.

7 MR. J. MILLER: And the other thing that's not
8 clear is that the site actually slopes dramatically away.
9 So that you're not seeing an original or current grade of the
10 site.

11 COMMISSIONER MAY: Right. So, that was my real
12 question. I mean, what's the difference in grade at the face
13 of the building compared to the height of the curb?

14 MR. J. MILLER: I'd have to get the architect to
15 look at that. It's significant. I'd say 7, 8, 9 feet and
16 over a very short duration, 10 to 15 feet from the sidewalk
17 level.

18 COMMISSIONER MAY: Okay. Seven, 8, 9 feet, and
19 you're allowed 35 feet because it's an RF-1 or something like
20 that?

21 MR. J. MILLER: Right. I mean, we like, I mean,
22 we would prefer, actually, to bring the buildings up more
23 than what you see in option A. And I apologize, everybody
24 can't see this. But it has to do with getting the buildings
25 down to a level where they're touching undisturbed earth.

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1 As you might imagine, we have quite a grade change there.

2 COMMISSIONER MAY: Uh-hum. And so, if I
3 understand this correctly, just looking at Section A(2), what
4 you're doing there is essentially building with minimal
5 excavation from the existing grade, but you're building,
6 essentially, four stories?

7 MR. J. MILLER: Well, what the plan is -- and I
8 apologize, the architect could not be with us tonight -- but
9 we have one fully compliant basement story, as the Building
10 Code would read it, and then, three stories above the grade.

11 COMMISSIONER MAY: Right. Well, one fully
12 compliant basement which is a story?

13 MR. J. MILLER: Right.

14 COMMISSIONER MAY: So, it would be four stories?

15 MR. J. MILLER: I suppose -- I think this gets
16 into the distinction between zoning and building --

17 COMMISSIONER MAY: Yes.

18 MR. J. MILLER: -- a Building Code, and I'm not
19 sure if I know the distinction.

20 COMMISSIONER MAY: Right. Okay.

21 MR. J. MILLER: But I know from what --

22 COMMISSIONER MAY: I mean, I think you make a
23 valid point. It's just a little hard to understand from
24 these diagrams.

25 MR. J. MILLER: Yes, I apologize.

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1 COMMISSIONER MAY: No, no, that's okay.

2 MR. J. MILLER: I think our concern goes to this
3 idea that -- I mean, I think this is a great idea. You know,
4 it's a defensive measure that's necessary because people in
5 my occupation who are active and neighbors like Capitol Hill
6 and Columbia Heights, and elsewhere, are doing things that
7 look terrible. But I'm afraid that -- you know, we want to
8 build a really good project, and we don't want to sink the
9 buildings as they relate to the street. But that's what the
10 architect, OP, and everybody who's looked at our plans has
11 told us we would have to do to remain compliant with the
12 change. I think, speaking with the ANC and others, no one
13 is going to be happy about it.

14 COMMISSIONER MAY: Well, I mean, not just with the
15 change. I mean, even with the existing regs, I would imagine
16 they would push you to -- you would have to push it down in
17 order to comply.

18 MR. J. MILLER: Well, according to the --

19 COMMISSIONER MAY: No, because you could
20 manipulate the finished grade now.

21 MR. J. MILLER: Exactly.

22 COMMISSIONER MAY: Yes.

23 MR. J. MILLER: And I have other exhibits I could
24 have brought. We don't have a lot of time here.

25 COMMISSIONER MAY: That's all right.

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1 MR. J. MILLER: I want to be respectful of that.

2 COMMISSIONER MAY: Yes.

3 MR. J. MILLER: But I have exhibits where all of
4 the adjoining structures have what we think of as historic
5 berming. You know, dirt came out of people's foundations;
6 it got put in the front yard. We didn't even want to do
7 that. That would be even better, more contextual. We just
8 want to come up to the point where the front doors are on the
9 same level as the sidewalk, which seems like the responsible
10 thing to do.

11 COMMISSIONER MAY: Right. And then, you would,
12 essentially, be showing to the street three stories?

13 MR. J. MILLER: Yes, sir.

14 COMMISSIONER MAY: And then, you would have a
15 walkout basement or something?

16 MR. J. MILLER: That's right.

17 COMMISSIONER MAY: It's an interesting question.
18 You're right, it's not the norm.

19 MR. J. MILLER: And I hate to say it, but I have
20 not heard from anybody here in Wards 7 or 8 tonight. A lot
21 of those neighborhoods look a lot like this site. There's
22 a lot of topographic variation, like I said.

23 COMMISSIONER MAY: Yes.

24 MR. J. MILLER: And my concern is that, for folks
25 that are building new buildings that would hope to emulate

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1 these beautiful historic neighborhoods that my fellow
2 citizens have identified, that we won't be able to do. And
3 in fact, we'll get something that's much worse. And I think
4 folks in those Wards deserve better than that.

5 COMMISSIONER MAY: Yes. Okay. Thanks. And I
6 appreciate your bringing this issue, in particular, to our
7 attention.

8 CHAIRMAN HOOD: Any other questions or comments?
9 Mr. Turnbull?

10 COMMISSIONER TURNBULL: Well, yes, I guess other
11 than for Mr. Miller, the rest of you, basically, as was
12 pointed out at the end of the hearing for the most part, I
13 think, but with the witnesses, you've reiterated what others
14 have said, some others have said. It is that, if you have
15 a story partially in the ground, and whether you call it a
16 basement, a cellar, or some other name, if it has livable
17 space, there is really no distinction. You have livable
18 space and that it's a construct to call one a basement and
19 one a cellar if you're not including this as the gross floor
20 area or it counts toward the FAR. You're basically saying
21 there's no distinction. You've basically created underground
22 living space, and they both should be counted the same?

23 MS. McDANIEL: Yes.

24 MR. HARGROVE: Yes, I think that's exactly right,
25 Commissioner Turnbull. But questions about the habitability

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1 of the space should be determined by the Building Code. And
2 if we eliminated this artificial distinction, which generates
3 what we have called perverse incentives to degrade --

4 COMMISSIONER TURNBULL: The densities, yes.

5 MR. HARGROVE: -- you solve the problem.

6 Commissioner May has a cellar that is only 6-feet
7 high, I understand?

8 COMMISSIONER MAY: At the tallest point.

9 MR. HARGROVE: But what if his lower level was
10 almost 8-feet high in ceiling height, which happens to be the
11 case with the rowhouse that I live in? There's no reason
12 that he should have to, if he were a developer of that space,
13 he should have to degrade that space by lowering the ceiling
14 or lower the floor, or some other device, just in order to
15 get FAR. Problems like that could just be eliminated by
16 eliminating the anomaly of not having living space included
17 in gross floor area.

18 COMMISSIONER TURNBULL: All right. Okay. Thank
19 you. I just wanted to clarify that.

20 CHAIRMAN HOOD: Okay. Thank you.

21 Any other questions or comments?

22 MS. McDANIEL: Well, there are a number of --

23 CHAIRMAN HOOD: I was actually asking my
24 colleagues.

25 MS. McDANIEL: Oh.

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1 CHAIRMAN HOOD: And I know you have plenty.

2 (Laughter.)

3 MS. McDANIEL: Pardon me.

4 CHAIRMAN HOOD: But I was asking them up here.

5 Let me check with them first.

6 MS. McDANIEL: Certainly.

7 CHAIRMAN HOOD: Then, I'll come to you.

8 (Laughter.)

9 Are there any other questions now?

10 (No response.)

11 Okay. None. All right.

12 Okay, Ms. McDaniel?

13 MS. McDANIEL: There are a number of cellars that
14 were dug out, oh, maybe 30 years ago, even longer, that have
15 been converted and met Code. This doesn't happen, it's not
16 happening as much now because of this gimmick of lowering the
17 ceilings and adding a floor on the top. So, digging out is
18 not unusual --

19 CHAIRMAN HOOD: All right.

20 MS. McDANIEL: -- in order to meet Code.

21 CHAIRMAN HOOD: I want to be fair to everybody.

22 Any other comments? Any other comments down there?

23 All right. Ms. Bryant?

24 MS. BRYANT: Popbacks, that's something new that
25 has come after 1411. I don't know, the two buildings that

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1 are -- one building, because they have a meaningful
2 connection, I don't know how they're measured and I hope
3 we're not going to see any more in my neighborhood. But I
4 don't know how they're measured now or if this addresses how
5 they're measured, if there would be any change. But I know
6 the ones in my neighborhood, they look a lot taller than the
7 building in the front on the street. Yes.

8 CHAIRMAN HOOD: All right.

9 MS. BRYANT: Do you know what I'm talking about?

10 CHAIRMAN HOOD: I know exactly what you're talking
11 about.

12 MS. BRYANT: The two buildings and the meaningful
13 connection, which actually has not been built yet, but --

14 CHAIRMAN HOOD: Okay.

15 MS. BRYANT: The back building, I mean, it could
16 be it's an optical illusion, but it certainly seems a lot
17 taller than the front building, which has been popped up,
18 too.

19 CHAIRMAN HOOD: Okay.

20 MS. BRYANT: So, I don't know, I mean, from the
21 alley, it looks like four stories.

22 CHAIRMAN HOOD: Okay.

23 MS. BRYANT: So, if you could look into how that's
24 measured?

25 CHAIRMAN HOOD: Okay. We all have heard that, and

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1 as we continue to go through this process, we'll keep that
2 in mind as well.

3 MS. BRYANT: Okay. Thank you.

4 CHAIRMAN HOOD: Okay. Anything else down there?

5 (No response.)

6 Okay. All right. Thank you all very much. We
7 appreciate your testimony.

8 Okay. Ms. Schellin, this is a rulemaking. So,
9 I think that's it. And the record is closed other than --
10 I think we got everything that we needed other than the
11 PowerPoint.

12 MS. SCHELLIN: Yes, I think that there were like
13 two or three people that you asked for --

14 CHAIRMAN HOOD: Yes, those are the only three
15 things.

16 MS. SCHELLIN: So, if they could do that within
17 a week, they have one week to do that.

18 CHAIRMAN HOOD: Okay.

19 MS. SCHELLIN: Were there additional submissions
20 from OP or DCRA you wanted them to do?

21 CHAIRMAN HOOD: Let me ask my colleagues. I know
22 we probably have some different additional comments and stuff
23 that we probably want to make -- I don't know if we want to
24 do it tonight.

25 COMMISSIONER MAY: I have a list of things that

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1 I think I need further information from OP and the Zoning
2 Administrator on. Would you like me to read them?

3 CHAIRMAN HOOD: Okay. Yes. And there are a
4 number of things, comments. I want a lot of the comments,
5 and I made a list. My list is probably not as eloquent as
6 yours. So, I'm going to let you --

7 COMMISSIONER MAY: Well, I'll go first and you
8 can --

9 CHAIRMAN HOOD: Mine is just terrible. Go ahead.
10 But there are some things I would like to hear some reaction.

11 COMMISSIONER MAY: To quote Alberto Bastita, "I'll
12 go first. So, then, you can fossilate' me." How's that?

13 CHAIRMAN HOOD: Okay, I'll "fossilate," whatever
14 that means.

15 (Laughter.)

16 COMMISSIONER MAY: It's a very inside joke. You
17 would have to have been here 15 years ago.

18 Anyway, so my list:

19 There are measurement issues. So, I think that
20 we do need to explicitly address the issue of split floors
21 when the ground floor is split between two heights, because
22 I think there is potential for some mischief there. And I
23 think that we should try to come up with a conservative way
24 of assessing that.

25 Addressing the lowering of floors when the

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1 building is redevelopment, and we saw pictorial evidence of
2 that. And again, I have seen numerous gut renovations where
3 they just take it down to the brick and build a new house
4 inside of that brick facade and sidewalls. And so, they can
5 put the floor heights wherever they want when they do that.
6 And I don't know that that necessarily is going to lead to
7 particular problems, but I think it's something that we ought
8 to at least consider the issue. And maybe that ties to
9 existing openings within a frame or something like that, or
10 within a facade.

11 Okay. So, on areaways, I think that we need to
12 address the question of the extent across the face of a
13 building. I can see arguments that it could be across the
14 full extent or I could see arguments that it would be more
15 limited. Again, I think we're looking for a recommendation,
16 and I think that's more of a policy question. So, it's more
17 in the OP Corp, I think, than the Zoning Administrator.

18 I do think there's a valid question about
19 coordinating that question with DDOT's treatment of areaways.
20 So, I think that has to factor in on some level.

21 I think that if the practice is to exclude
22 stairways and ramps from areaway measurement, then that
23 should be explicit, again, because it's not just about the
24 practice of the Zoning Administrator; it's people being able
25 to understand what that measurement standard is when they

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1 read the regulations.

2 And then, I think, also, the driveway question
3 that Mr. Le Grant raised in his presentation, so how those
4 get treated when there is a driveway approaching the
5 building. Does that change the measuring point?

6 I do think that there needs to be an explicit
7 attempt on the part of the Zoning Commission to address the
8 question of cellars versus basements. We have taken it for
9 granted for a long time, and have accepted the thought, that
10 cellars are basically free FAR and a free story, or free GFA
11 and a free story. And I don't recall at any point having
12 given that a very thorough consideration. We just sort of
13 all accepted that that's the way it is. And that may be
14 perfectly reasonable to continue it that way, but I think
15 that, from a policy perspective, we need to have a rationale
16 for that, if we stick with it. But I also think that we
17 should give consideration of whether it should be changed in
18 some fashion.

19 I do think that simply calling everything, every
20 bit of habitable space, and counting it in GFA and counting
21 it as a story, can be problematic. I mean, less probably
22 maybe on the GFA side, I'm not sure, but I think that we are
23 creating this incentive to add stories when you could get a
24 free story if it's more than 5 feet below the level of the
25 ground floor. And I think that we need to be mindful of what

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1 that incentive creates.

2 I would also note that, if we do wind up clamping
3 down too hard, we could wind up incentivizing other
4 problematic development patterns such as popbacks, right?
5 If people can't push up, they're more likely to push back.
6 I know we have limits on both of those things in our F
7 neighborhoods, but we don't have those in every single zone.
8 So, I think that's a consideration across the board.

9 I think we should also think about the question
10 of whether, if we do want to deal with habitable floor space,
11 whether there should be perhaps some discounting of cellar
12 space. So, a space could be 50 percent of normal floor area
13 or something like that. That doesn't really address the
14 story issue, but, again, the story issue I think is probably
15 what drives popups more than the gross floor area issue. It
16 may not be really an issue at all.

17 It may be a really big issue in commercial areas.
18 And that's another way that we could potentially draw a
19 distinction, because is it really a problem if we have
20 meeting rooms in a hotel that are below grade that don't
21 count against GFA? Is that really a problem that we want to
22 try to address here? So, I wouldn't want to try to paint
23 everything with the same brush, but I think we have to give
24 some careful consideration to those questions.

25 And then, lesser questions:

1 How you measure the distinction between cellar and
2 basement for a semi-detached unit. That's just a language
3 tweak. I think that's probably wise to put in there.

4 And then, some sort of phase-in period or vesting.

5 So, that's my recap of issues. And I'm not trying
6 to signal any particular opinion on the question of cellar
7 versus basement and habitable space, and all that. I just
8 think that we have to have a more explicit discussion of a
9 policy basis for that distinction or that we should no longer
10 have that distinction.

11 So, thank you.

12 CHAIRMAN HOOD: Okay. Anybody else like to add
13 something?

14 COMMISSIONER TURNBULL: Yes, I would agree with
15 Commissioner May. We really do need further talk. We need
16 to really go into the cellar/basement issue.

17 And again, one of the people that was here tonight
18 -- unfortunately, she left before we could ask her any
19 questions -- which was Jennie Chang who lives in Dupont
20 Circle. And her question was that, I mean, she brought up
21 a point that she lives next door to another rowhouse, which
22 I can imagine they look the same or pretty close. And next
23 door to her was classified as a cellar, but hers is being
24 classified as a basement. My first question was going to be,
25 well, what's the grade difference between your two units?

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1 Are they the same?

2 And it's those kinds of issues that really need
3 to be looked at. And she's going to have to jump through the
4 hoop now to go through the BZA to get either a variance,
5 special exception, or whatever, while the other person,
6 because it got classified as a cellar, oh, you get a bonus.
7 Where is the equity or the fairness in doing that?

8 Those are the kind of questions we need to look
9 at. I think we need to look at, if there's going to be a
10 bonus for somebody developing a space, that's something to
11 think about. But I think if it's going to be just carte
12 blanche that, if you can get classified as a cellar, you get
13 the free space, but, oh, you're a foot higher, you've got to
14 go the full nine yards or you don't get to do it, those are
15 the kinds of issues that I think we really need to take a
16 hard, long look at and analyze it, and especially if we're
17 talking about density.

18 Since the Zoning Commission is looking at
19 densities of areas, especially in the rowhouse areas, the
20 rowhouse zones, those are going to be critical elements that
21 we need to think about. And I think we need a lot more study
22 or talk about how that really affects and how far we can
23 drive density in the rowhouse zones.

24 So, I would agree with you, Commissioner May, I
25 really think we need to have some more input, some more

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1 either roundtable talk about how this really is going to
2 affect a lot of these neighborhoods.

3 CHAIRMAN HOOD: Okay. Any other comments?

4 Vice Chair Miller?

5 VICE CHAIR MILLER: Thank you, Mr. Chairman.

6 Yes, I appreciate Commissioner May's and
7 Commissioner Turnbull's summaries of many of the issues that
8 we need OP and the Zoning Administrator to look at and give
9 us a response.

10 I was just going to ask more broadly for a matrix
11 really, which I think we've asked for before in some of these
12 complicated cases, a matrix that summarizes each of the
13 concerns and recommendations that have been made, and OP and
14 BZA's analysis, you know, a brief analysis or response, so
15 that we had an organized one document that shows us all the
16 concerns and recommendations that were made, and what your
17 response is.

18 And on the cellar, if we're going to make a change
19 -- well, part of the analysis of the whole cellar/basement
20 issue, which I guess OP is going to look at, if we're going
21 to a change where we're counting space as part of the gross
22 floor area that hasn't been counted previously, I just would
23 run some analysis of what the consequences are for all of it.
24 I think somebody mentioned we'll have thousands of non-
25 conforming uses around the city. And I don't know if you

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1 have any grip on the number or the universe, but I don't
2 think I want to be part of creating thousands of non-
3 conforming spaces throughout the city with one small,
4 seemingly small change. But maybe they wouldn't be non-
5 conforming.

6 I just need some analysis from the Office of
7 Planning on that specifically, but on all the comments that
8 have been made, so that we can have it in one document. I
9 think it will guide our discussion when we get to it easier.
10 It will give us a roadmap as to how to get through this case.

11 CHAIRMAN HOOD: Commission Shapiro?

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

13 I thank Commissioners May and Turnbull, and
14 Commissioner May for the thoroughness of that. It captures
15 most of what I heard.

16 I couldn't agree more with Vice Chair Miller how
17 important it would be to have some kind of a matrix
18 addressing all the issues that we've heard. I mean, so many
19 of the speakers -- I think Ms. Bryant, Mr. Miller, others,
20 talked about all the unintended consequences.

21 As there's a matrix that's developed, I mean, Mr.
22 Le Grant, you took it -- and I commend you for this -- in
23 your presentation you kind of took, I guess you would call
24 it a hacker's mentality, you know, try to see the ways in
25 which people try to get around things and how do we address

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1 that. And I appreciate that. I just think there's more of
2 that that needs to be done.

3 And what some of the speakers mentioned around
4 what their experiences have been is, I think, very
5 instructive. And so, to hear specific responses around that
6 would be quite useful for our decisionmaking.

7 And there's an underlying issue around, is the
8 goal here to encourage more density or not, in the right way?
9 What is the right way? These are issues which are either
10 spoken or not spoken, but a couple of the speakers mentioned
11 that. And I think there's a way in which, from the Office
12 of Planning, it would be healthy to be explicit about what
13 the goals of this are, beyond just trying to get people to
14 avoid the end-runs.

15 And I think that's incumbent upon us to be
16 explicit, too, with what our intentions are with this. It's
17 not just a staff, it's not just staff's position. It's about
18 where we are as a body.

19 So, that's it, Mr. Chair.

20 CHAIRMAN HOOD: Okay. Thank you.

21 I would concur wholeheartedly with Vice Chair
22 Miller about the matrix. We can lay out the issues as we
23 move forward. Because I heard -- I think it was Gambrell --
24 someone mentioned about this is a work-in-progress, and I
25 think it is.

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1 And I remember a case we just did last week, or
2 maybe two weeks ago. We were talking about how we were going
3 to deliberate. And something of this magnitude, I'm not in
4 any rush to be back here four years from now having the same
5 hearing. So, I want to make sure that -- well, I don't know
6 if I'll be here four years from now -- but, anyway, I want
7 to make sure that we do it at least as long as I'm around,
8 and I'm sure all of us around -- we want to do it right.

9 So, like I mentioned in another case recently, I
10 think that when we do get ready to deal with this, have a
11 discussion once we get all the matrix and all the issues.
12 Because I think there were some very live, real-live
13 situations that we heard from residents and how that's
14 working all with the DCRA and what we have here.

15 So, I think it's important that we proceed with
16 caution, that we do some further discovery, as well as take
17 our time. So, I would like for us to set something -- and
18 I don't know if we do it tonight because we are going to need
19 that matrix. And when we do have a matrix and we have our
20 discussion, I would also ask if Mr. Le Grant and his team
21 would come back. Because, as we are having our discussion,
22 there may be some questions we might want to throw at him
23 while we're doing that. So, I think that would be very
24 beneficial.

25 And I can't coordinate all of that. I am going

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1 to leave that up to Ms. Schellin to get all that straight.
2 And then, we will decide how we did in another case where I
3 said we weren't going to make a decision that night. What
4 we were going to do was toss out some stuff and see what
5 additional information Commissioner May and others have
6 already mentioned. And we just have an exhaustive discussion
7 and see how far we get in that manner. I don't know; that's
8 kind of what I'm proposing. Let me see if others agree.

9 COMMISSIONER SHAPIRO: Yes.

10 CHAIRMAN HOOD: Okay. I guess Commissioner
11 Shapiro agrees. I see your head shaking.

12 (Laughter.)

13 So, okay. All right. I just want to make sure
14 we're on the same page.

15 MS. SCHELLIN: So, you just want to put it on
16 further deliberation?

17 CHAIRMAN HOOD: Further deliberations. And can
18 we put it on a night that we're not busy?

19 (Laughter.)

20 MS. SCHELLIN: I don't know when that's going to
21 be.

22 CHAIRMAN HOOD: Whatever night that is. But we've
23 got to get the matrix first.

24 MS. SCHELLIN: Yes.

25 CHAIRMAN HOOD: I don't know. Can we come up with

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1 a date?

2 MS. SCHELLIN: How much time does OP and DCRA --

3 CHAIRMAN HOOD: Let me ask this: is OP -- I
4 thought OAG does our matrix?

5 MS. SCHELLIN: No.

6 CHAIRMAN HOOD: Okay.

7 MS. SCHELLIN: OP does that.

8 CHAIRMAN HOOD: OP? Oh, thank you, OP.

9 MS. STEINGASSER: We usually do the matrices of
10 the public comments and responses.

11 CHAIRMAN HOOD: Okay.

12 MS. STEINGASSER: OAG does your legal --

13 CHAIRMAN HOOD: Oh, okay. All right.

14 MS. STEINGASSER: Yes.

15 CHAIRMAN HOOD: So, I guess it depends on who much
16 time you may need.

17 MS. SCHELLIN: How much time, please?

18 CHAIRMAN HOOD: We don't have to rush.

19 COMMISSIONER MAY: We don't have to figure it out
20 right now, do we?

21 CHAIRMAN HOOD: I guess we need to announce it for
22 the public.

23 MS. SCHELLIN: We announce it. We always announce
24 it.

25 CHAIRMAN HOOD: We need to announce it for the

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1 public.

2 MS. SCHELLIN: And they need to know what
3 agenda --

4 COMMISSIONER MAY: Right. So, before we get to
5 that question, one other question I have for the Commission
6 is that, if we are going to look very seriously at this
7 question of how we treat cellar space versus basement space,
8 that wasn't really on the table in any of the previous
9 announcements of this case. And so, I think it would behoove
10 us to somehow make that -- well, at least leave the record
11 open for some further submissions on that topic.

12 Because I think if members of the development
13 community, for example, were aware we were considering that
14 question, they would have things to say. We would have --
15 you know, Mr. Glasgow would have been down here with a lot
16 more to say than what he had to say, for example.

17 MS. SCHELLIN: I think it would have to be set
18 down. It would actually have to be set down and advertised
19 for hearing.

20 COMMISSIONER MAY: I mean, yes, I understand --

21 MS. SCHELLIN: Yes.

22 COMMISSIONER MAY: -- in terms of the rulemaking
23 process there may be extra steps --

24 MS. SCHELLIN: Yes.

25 COMMISSIONER MAY: -- associated with it. I'm

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1 just trying to get a head start on that by leaving the record
2 open for further submissions. I mean, I don't think we need
3 further submissions from the folks who have already given us
4 their opinions on that, as many people in the audience have.
5 I think it's more -- and I don't really want to have that
6 sent again, you know, sort of rewording the same things.
7 We've read it once. But I think that leaving it open for,
8 leaving the record open for a few more days in case people
9 have something to say --

10 MS. SCHELLIN: You mean just as far as how the
11 cellar and basement issue related to tonight's case?

12 COMMISSIONER MAY: The way it has been discussed
13 tonight in testimony.

14 MS. SCHELLIN: Yes. Okay.

15 COMMISSIONER MAY: There may be others who were
16 not expecting that to be an issue that we would give
17 consideration to as a result of what we had announced the
18 hearing was about, what we had proposed as potential changes
19 to the regulations. Like we didn't say anything about
20 reinterpreting how we treat cellars.

21 MS. SCHELLIN: Right.

22 CHAIRMAN HOOD: And you know, let me say, here's
23 my take on that whole issue: we're going to have to go back
24 out again. And I think we have enough as it is with the
25 matrix, and that issue will still come up. We heard it

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1 tonight. As a result of the birth of what we heard tonight,
2 and we deal with the matrix, having that conversation, I
3 think we are going to have to re-advertise something anyway.

4 COMMISSIONER MAY: Yes.

5 CHAIRMAN HOOD: So, that way, we will accomplish,
6 I think, what you're asking for.

7 COMMISSIONER MAY: And that's fine. Just I
8 thought it was something I would ask the Commission.

9 CHAIRMAN HOOD: Because if we do it now, we're
10 going to get comments now, and we really hadn't exhaustively
11 heard it.

12 COMMISSIONER MAY: Right.

13 CHAIRMAN HOOD: I think that's the cleaner way to
14 do it.

15 COMMISSIONER MAY: So, it would be better to get
16 comments based on specific proposals that we might be
17 considering?

18 CHAIRMAN HOOD: Yes, once we had our conversation.
19 We need to have our conversation and see, first of all, where
20 we are, I think.

21 COMMISSIONER MAY: Yes.

22 COMMISSIONER SHAPIRO: I mean, I appreciate your
23 asking the question, Commissioner May. My response to the
24 question is that it feels fairly explicit to me in the
25 setdown report that this issue around basements and cellars

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1 and definitions, I mean, that feels like was the primary
2 point of the rulemaking case. So, I agree that, if we come
3 to some decision about this, it may need to be re-advertised,
4 but I'm not sure what we're going to get out of keeping the
5 record open, because it was so explicit.

6 COMMISSIONER MAY: That's fine.

7 CHAIRMAN HOOD: I think we have a path going
8 forward. I think we can work that out as we have our
9 discussion, which is more critical.

10 So, Ms. Schellin, have we got some dates?

11 MS. SCHELLIN: I was waiting to hear from OP and
12 DCRA how much time they need.

13 MS. STEINGASSER: So, the meetings in April are
14 the 9th and the 30th, is that correct?

15 MS. SCHELLIN: Correct.

16 MS. STEINGASSER: Okay.

17 CHAIRMAN HOOD: Do we have a lot at those meetings?

18 MS. SCHELLIN: Not yet.

19 CHAIRMAN HOOD: Oh, well, we need to keep one kind
20 of clear because this is exhausting.

21 MS. STEINGASSER: I think we would request the
22 30th, just because of the amount of time it's going to take
23 us to coordinate internally. Then, we have to file it 10
24 days before the meeting.

25 CHAIRMAN HOOD: For some reason, the 30th rings

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1 a bell to me. I heard that earlier today. Don't we have
2 something else on the 30th? I hate to do this, but what if
3 we did a special -- boy, they said, "No, no."

4 (Laughter.)

5 MS. SCHELLIN: If you move it to the 14th of May
6 -- oh, Shapiro is out.

7 COMMISSIONER MAY: No, let's keep it on the 30th,
8 but --

9 CHAIRMAN HOOD: So, can we just do those two on
10 the 30th?

11 COMMISSIONER MAY: Yes, let's try to just limit
12 the rest of the agenda on the 30th. We don't have that many
13 other hearings coming up.

14 MS. SCHELLIN: No, no setdowns, that's right. So,
15 maybe no setdowns that meeting?

16 MS. STEINGASSER: We'll do what we can.

17 CHAIRMAN HOOD: Okay.

18 MS. SCHELLIN: I mean, they're saying to limit it.
19 So, I'm just telling you that would be the only thing.

20 COMMISSIONER MAY: Well, they can request these
21 things to be put on the agenda for setdown, but we have some
22 authority over saying what we're going to consider.

23 MS. SCHELLIN: That's true.

24 COMMISSIONER MAY: Right?

25 CHAIRMAN HOOD: So, here's the thing: on the 30th,

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1 we have the same style cases and our same discussion, but
2 they're just different cases. I would rather -- I don't know;
3 you all -- well, the order, I'll leave it up to the staff.

4 All right. So, we're going to proceed in that
5 fashion. I hate to really put both of them on the same
6 night, but if we feel we can do it, let's do it.

7 May 3rd, is that another meeting night?

8 MS. SCHELLIN: No, that's a Thursday night.

9 CHAIRMAN HOOD: Okay, let's just keep it at April
10 30th, yes.

11 MS. SCHELLIN: Okay.

12 CHAIRMAN HOOD: I mean, our minds will be fresh,
13 if that was the only case. But, anyway, everybody wants to
14 do the 30th. That's fine. Okay. Yes, okay, so we'll just
15 leave it at the 30th.

16 Ms. Schellin, anything else?

17 MS. SCHELLIN: Nothing else.

18 CHAIRMAN HOOD: All right. Anything else,
19 Commissioners?

20 (No response.)

21 All right. I want to thank everyone for their
22 participation tonight.

23 And this hearing is adjourned.

24 (Whereupon, at 10:14 p.m., the hearing was
25 adjourned.)

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