

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

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 IN THE MATTER OF: :  
 :  
 OFFICE OF PLANNING - : Case No.  
 PROPOSED TEXT AMENDMENTS TO : 19-14  
 SUBTITLES C, D, E, AND F TO :  
 CLARIFY THE REGULATIONS ON :  
 NONCONFORMING STRUCTURES :  
 :  
 ----- :

Thursday,  
November 7, 2019

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

The Public Hearing of Case No. 19-14 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Jerrily R. Kress memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson  
ROBERT MILLER, Vice Chairperson  
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON  
CRYSTAL MYERS

D.C. Office of the Attorney General Staff Present:

PAUL GOLDSTEIN, ESQ.

The transcript constitutes the minutes from the  
Public Hearing held on November 7, 2019.

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ZC CASE NO. 19-14

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to Clarify the Regulations on Nonconforming Structures:

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

6:30 p.m.

CHAIRMAN HOOD: This is a Public Meeting of the Zoning Commission of the District of Columbia. My name is Anthony Hood, joining me is Vice Chair Miller and Commissioner May, as well.

We're also joined by the Office of Zoning staff, Ms. Donna Hanousek, Office of Attorney General, Mr. Goldstein, Office of Planning --- I'm sorry, Mr. Lawson and Ms. Myers.

Notice of this hearing was published in the D.C. Register and copies of that announcement are available in the bin near the door. Because this hearing is being recorded by a court reporter, it is also webcast live, we ask that you refrain from any disruptive noises or actions in the hearing room.

I'm sorry, I'm having some technical problems here.

Okay. This hearing will be conducted in accordance with the provisions of 11Z DCMR Chapter 5 as follows:

Preliminary matters; presentation by the Office of Planning; report of other Government agencies; report of the ANCs; testimony of organizations and individuals each having 5 to 3 minutes, respectively; and we will hear in

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1 order from those who are in support, opposition, undeclared  
2 and I think that will be adjusted, as I think we only have  
3 one person tonight.

4 The Commission reserves the right to change the  
5 time limits for presentations, if necessary. It intends to  
6 adhere to the time limits as strictly as possible and notes  
7 that no time shall be ceded.

8 Again, there are a couple of housekeeping, we  
9 would ask that you, please, turn off your electronic devices.  
10 When you are finished speaking, turn off your microphone.  
11 The staff will be available throughout the hearing to discuss  
12 procedural questions.

13 At this time, the Commission will consider any  
14 preliminary matters. Does the staff have any preliminary  
15 matters?

16 MS. HANOUSEK: Yes, sir. The Office of Planning  
17 report was due on October 28th and it came in on October  
18 30th, so you need to waive the rules to accept their report  
19 two days late.

20 CHAIRMAN HOOD: Okay. Commissioners, any  
21 objections?

22 (No audible response.)

23 CHAIRMAN HOOD: No? Okay. So we will accept the  
24 report, Ms. Hanousek. Anything else?

25 MS. HANOUSEK: No, sir.

1 CHAIRMAN HOOD: Okay. So we will open it up. Ms.  
2 Myers?

3 MS. MYERS: Good evening, Commissioners. The  
4 Office of Planning is pleased to bring forward these text  
5 amendments to Subtitle C, D, E, X and F. The proposed  
6 amendments, which were advertised in the Public Hearing  
7 Notice will help to provide more clarity and certainty to  
8 these sections of the regulations.

9 Since setdown, we made a few changes to the text.  
10 The majority of these changes provide more clarification and  
11 more concise language. We are now proposing to also include  
12 Title F, because it has similar special exception provisions  
13 with the other sections.

14 And following the discussions with OAG, we are  
15 proposing an additional change to expand § 5201, special  
16 exception relief, to allow new development on existing vacant  
17 substandard lots to obtain special exception relief from the  
18 listed Zoning Regulations.

19 The area provisions for Residential Zone, such as  
20 regulations on setbacks and lot occupancy, are based on the  
21 provision of a reasonable house on a conforming lot.  
22 Consequently, it is difficult to provide appropriate new  
23 housing on vacant infill lots without needing variance  
24 relief.

25 OP feels that the special exception test, which

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1 generally focuses on the impact of the proposed development  
2 on the neighborhood and adjacent properties, is the more  
3 appropriate test for these cases. Of course, as with  
4 additions to existing houses, special exception relief from  
5 height, the number of stories or use would not be permitted.

6 And in conclusion, the Office of Planning will  
7 continue to work with OAG to prepare final text. Thank you.

8 CHAIRMAN HOOD: Thank you, Ms. Myers.  
9 Commissioners, any follow-up questions or comments?

10 (No audible response.)

11 CHAIRMAN HOOD: Ms. Myers, let me ask you, have  
12 you had a chance to review the two ANC letters that we have?

13 MS. MYERS: I believe ANC-6C's letter came in  
14 today, but we did have a chance to take a quick look at it,  
15 yes.

16 CHAIRMAN HOOD: Okay. What about B? Did you  
17 have --

18 MS. MYERS: Yes, we were able to review that one  
19 as well.

20 CHAIRMAN HOOD: So what I think for the -- after  
21 we finish our questions that we have, and I think with  
22 interest, we will kind of do a discussion in which we would  
23 include Mr. Eckenwiler as well, because from what I'm seeing  
24 is there seems to be a lot of confusion and some of it may  
25 just be on my part.

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1           So we can kind of -- we are going to do not our  
2 normal procedures, we don't have a full room, and we can go  
3 through that. But let me see, any other questions up here  
4 right now?

5                                 (No audible response.)

6           CHAIRMAN HOOD: Okay. So, Mr. Eckenwiler, we will  
7 come to you.

8           MR. ECKENWILER: Thank you, Mr. Chairman, Members  
9 of the Commission. Mark Eckenwiler here on behalf of ANC-6C.

10           At the outset, Mr. Chairman, I want to apologize  
11 for dropping this filing on you at the 11th hour. I can talk  
12 about that a little more later, but let me say I do have hard  
13 copies if those would be useful to the Commission. I can  
14 hand them up to Ms. Hanousek. If OP would like hard copies,  
15 I have got -- okay, so you are all -- everybody is set?

16           CHAIRMAN HOOD: Different from what we have? We  
17 already have it.

18           MR. ECKENWILER: Yeah, I just -- I didn't --

19           CHAIRMAN HOOD: Okay.

20           MR. ECKENWILER: -- some people work better with  
21 paper.

22           CHAIRMAN HOOD: Okay.

23           MR. ECKENWILER: I just wanted to offer it.

24           CHAIRMAN HOOD: I think we are good. Thank you.

25           MR. ECKENWILER: Okay, thank you. So, Mr.

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1 Chairman, Members of the Board, on the rulemaking as  
2 proposed, as you can see on page 1 of our filing, we have a  
3 very small set of fairly technical comments. In the interest  
4 of brevity, I'm not going to spend any time on those, unless  
5 the Commission would like me to.

6 The second bullet point there on lot occupancy  
7 relief, those particular edits in the Notice of Rulemaking  
8 appear on pages 9 and 13. I apologize for not inserting  
9 those citations in the letter.

10 If you don't have anything on that, I am happy to  
11 keep going.

12 The larger issue here is that nearly two years  
13 ago, I engaged with OP about a parallel provision, Section  
14 5203. So to frame this, as we do in our letter, 5201 is  
15 obviously-- it's in Title E, Section 5201 is dealt with in  
16 the proposed rulemaking.

17 It has a companion provision because for the RF  
18 Zones and therefore this is exclusively applicable to  
19 Subtitle E of Title 11, there are these additional  
20 restrictions. So the 35 foot height limit and Section E206,  
21 which deals with rooftop architectural elements, obstructions  
22 to chimneys, qualifying solar systems, you know, those sorts  
23 of issues. All of that gets funneled into E5203, which is  
24 nowhere addressed in this rulemaking.

25 And what is perplexing to me and my colleagues

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1 about this is I raised this with OP and just so it's clear,  
2 I'm not putting anybody on the spot. It's not the folks who  
3 are here tonight. That there were some significant issues  
4 with both the internal operation of each of those sections  
5 and how they relate to each other.

6 And in fact, we had a public ANC Committee meeting  
7 about this. It became clear that it was even more  
8 complicated than I had thought initially. I conveyed those  
9 subsequent thoughts back to OP and I was assured that OP was  
10 working with DCRA on some text amendments, which is why it  
11 is a little frustrating now to see this come forward to do  
12 some clean-up and I think we would be happy to concede that,  
13 you know, clean-up is much needed for parts of 5201 and other  
14 provisions.

15 But nowhere addressing these significant issues  
16 in 5203 and its companion provision E206. So if the  
17 Commission would like, I can walk through those.

18 So page 2 and the very top of page 3 in our letter  
19 enumerates what we think the current problems are with  
20 existing texts, ranging from a mismatch, because when the  
21 Commission amended E206 in Case 14-11B to add -- basically  
22 put some more meat on the bones, you know, you added cornices  
23 to the list of, you know, protected rooftop architectural  
24 elements. You described what it meant to, I think,  
25 significantly interfere with a solar system.

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1           You provided clarity about what kind of solar  
2 system we were talking about, not just some little set of  
3 lawn lights. You know, it had to be at least a two kilowatt  
4 system.

5           Unfortunately, none of those changes got executed  
6 to the companion provisions in E5203. So you have this odd  
7 circumstance right now where if someone is seeking relief  
8 from E206, they are pointed at E5203, which currently  
9 provides for this sort of formless special exception relief.  
10 No criteria set forth at all.

11           But the things that you are supposed to comply  
12 with under E5203 aren't really aligned with the restrictions  
13 in E206. There is sort of this no-man's-land in between them  
14 and there is really no reason for that. So that's just one  
15 example of where the interplay between those two sections is  
16 not ideal.

17           But then there are some aspects --

18           COMMISSIONER MAY: Can I make a suggestion?

19           MR. ECKENWILER: Please.

20           COMMISSIONER MAY: I'm sorry to interrupt, but--

21           MR. ECKENWILER: Sure.

22           COMMISSIONER MAY: -- you know, this whole series  
23 of issues is very technical and very in the weeds and it's,  
24 you know, almost 7:00 at night.

25           It would help me greatly if we took them sort of

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1 one at a time.

2 MR. ECKENWILER: Sure.

3 COMMISSIONER MAY: And on that one, I would like  
4 to ask the Office of Planning, you know, right at this moment  
5 what they think of that issue or whether they agree this is  
6 something that should be corrected.

7 MR. LAWSON: Good evening. Joel Lawson with the  
8 Office of Planning. We actually really appreciate the letter  
9 from ANC-6C. We totally acknowledge that we have been  
10 working with this ANC and we have been -- or having  
11 discussions with this ANC and having discussions with the  
12 Zoning Administrator's office about this specific provision,  
13 which has to do with, basically, alterations to front facades  
14 in RF-1.

15 I believe that a couple of these issues are being  
16 addressed through a current text amendment that is before  
17 you. I think it is Case 19-21. The basic provisions though,  
18 as they deal with front facades, we think needs a more  
19 comprehensive look. It is not -- and I think the  
20 commissioner would agree and I think that is what the  
21 commissioner is seeing here. And we are undergoing that look  
22 and we understand the frustration of it not coming forward  
23 yet, but it is a bit of a complicated issue.

24 As I said, we have had some pretty extensive  
25 ongoing discussions with OAG and we see these changes as

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1 being a separate text amendment and so that's why they are  
2 not included.

3           That's not an answer to this specific point, but  
4 kind of an answer to the points that are raised on page 2 of  
5 the ANC's letter, kind of in general. Our intention is to --  
6 and it's really actually helpful to have these, you know,  
7 written out and enumerated, what some of the issues with the  
8 ANC are, but we consider that as requiring a bit of a more  
9 comprehensive look, more than just kind of cleaning up the  
10 regulations, which is what the current amendment is before  
11 you.

12           COMMISSIONER MAY: Okay. So I tried to do it one  
13 at a time and you cut him off at one issue and then you just  
14 answered all of them.

15           MR. LAWSON: I'm kind of stating where our -- what  
16 our position is --

17           COMMISSIONER MAY: Okay. But I mean --

18           MR. LAWSON: -- and so --

19           COMMISSIONER MAY: -- this particular one, it  
20 falls into that category of this is something that might be  
21 addressed under 19-21 or is it something that you would want  
22 to include in another text amendment clarifying the --

23           MR. LAWSON: Our intention is to bring forward an  
24 amendment that deals with the front facade issue in general.

25           COMMISSIONER MAY: Okay.

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1 MR. LAWSON: There is a current one before you  
2 which deals with, and I'm not an expert on this one, because  
3 I haven't really been involved in it, but it deals with solar  
4 issues.

5 COMMISSIONER MAY: Yes.

6 MR. LAWSON: And it deals with one of the issues  
7 that I believe is raised in at least one of the ANC letters.  
8 And I think it's the one from ANC-6C.

9 COMMISSIONER MAY: Sure. So if I could try to  
10 keep this all pretty simple, the gist of what we are trying  
11 to deal with today has to do with nonconforming lots and how  
12 they are treated when relief is needed and whether you need  
13 relief or what kind of relief you would need when you have,  
14 you know, a lot that is not wide enough or doesn't have  
15 enough square footage or things like that.

16 MR. LAWSON: Well, that's one of the things.

17 COMMISSIONER MAY: Yes.

18 MR. LAWSON: We are trying to provide some  
19 additional clarity to the regulations in terms of these kind  
20 of -- what we now call the 5201, it used to -- generally,  
21 they used to be under the old zoning called the 223  
22 provisions.

23 COMMISSIONER MAY: Right.

24 MR. LAWSON: You may remember. So the 5201  
25 provisions provides some additional clarity, some additional

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1 consistency between those aspects of the relief. The one  
2 that you mentioned is definitely part of that, but it's a  
3 little bit broader than that. And definitely dealing with  
4 the C202, the nonconforming structure issue.

5 COMMISSIONER MAY: Okay. All right. Thank you.  
6 So I am going to stop cutting you off and if you would just  
7 want to finish and --

8 CHAIRMAN HOOD: So I will add this and I was  
9 thinking about this as I was reading all of this and maybe  
10 it's just me and I appreciate the attempt in what  
11 Commissioner May was doing about one-for-one. We will look  
12 at one bullet line and we will have a discussion.

13 But when I was reading this and I was looking at  
14 ANC and I will say this to Mr. Eckenwiler, what really  
15 troubled me with this confusion is a lot of ANCs across the  
16 city, you know, they don't do this every day. So to be able  
17 to interpret and try to understand it can pose a problem.  
18 And I can see us just confusing it. It's like a snowball,  
19 just we are confusing it and confusing it and confusing it.

20 So my overall problem, and I hope Mr. Eckenwiler  
21 doesn't mind me saying this, is that if we are having some  
22 understanding issues now, what is going to happen to the  
23 folks in this city who don't use this at all? You know, I'm  
24 always a layman guy. I like to break it down, make it as  
25 simple as possible, understandable as possible.

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1           And one of the ANC letters, I'm not sure which one  
2 it was, I'm saying well, they said we were supposed to be  
3 making it easier. It seems like we are making it more  
4 complicated. And maybe it's just the way we are coming,  
5 maybe we still have some things out there that we need to  
6 deal with. I think 19-20, whatever the case number is, maybe  
7 there is a sequential order we need to do some of this in,  
8 so it will be less confusing. I don't know.

9           I don't have the answer, but I think the  
10 discussion, I would like for us to go back and look at this  
11 as you all have, I think, alluded to and work with Mr.  
12 Eckenwiler and others who have opined on this and let's see  
13 how we can make it easier. What things, what we need to do  
14 first. If all that makes any sense, it might not even make  
15 sense, but it's the way it is coming off and the way I'm  
16 understanding it.

17           MR. LAWSON: I appreciate that, Commissioner Hood.  
18 I think that is what we are trying to do. We are trying to  
19 bring forward what we thought needed to be dealt with first,  
20 which was to deal with the C202 issue and to provide some  
21 additional clarity to the general special exception  
22 provisions.

23           I don't want to speak for either commission,  
24 obviously, but when I read the letters, it is interesting,  
25 I didn't get as much of a sense of confusion. I got a sense

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1 of that, particularly, 6C was disappointed that we weren't  
2 addressing some of the issues that the ANC had brought up  
3 before.

4           What I'm saying is we perfectly intend to deal  
5 with those issues and we are dealing with those issues, it's  
6 just a separate text amendment because it's going to be  
7 broader than the kind of clarifications that we are looking  
8 at in this provision.

9           We just felt that it is more appropriate to deal  
10 with these things in bite-sized chunks, and as you put it,  
11 to deal with kind of the critical ones that are causing a lot  
12 of kind of confusion out there first and then deal with other  
13 things kind of on a more topical basis, front facade being  
14 one of those issues we would deal with as a kind of topic  
15 basis.

16           CHAIRMAN HOOD: I have some more on that, but I'll  
17 go back to Mr. Eckenwiler and let him finish. And then we  
18 will probably have, like I said earlier, all of us will be  
19 going back and forth with discussions. So Mr. Eckenwiler?

20           MR. ECKENWILER: Thank you, Mr. Chairman. So to  
21 take those in rough reverse order, just to be clear, this is  
22 not just about E206 and rooftop architectural elements. It's  
23 about the structure of 5203, because remember 5203 wears two  
24 hats. It's the 35 to 40 foot special exception provision.  
25 As well, it just turns out that the way it is structured, it

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1 has many of the same elements in it, many of the same  
2 requirements that are also found in E206, at least some  
3 version of them and as I mentioned earlier, not in every case  
4 identical text.

5           On the disappointment, yes, certainly there is  
6 disappointment here, but this is not just some sort of  
7 abstract concern on my part or, you know, on ANC-6C's part.  
8 There are casualties in the interim. We do have decisions  
9 being made by DCRA on the basis of the present text.

10           I have talked with a colleague in another ANC, I'm  
11 not going to call them out, where a permit was granted for  
12 the construction of a building above 35 feet where there was  
13 concern about that interfering with an adjacent solar system,  
14 but because the term used in E5203 is "addition," in that  
15 particular provision, a new principal building was felt not  
16 to be within that provision.

17           So you know, there are some real world  
18 consequences to this and I do have to say that  
19 notwithstanding the fact that we did struggle with this  
20 internally within ANC-6C and our Zoning Committee, at one  
21 point, I feel like two years is enough to come to grips with  
22 this, especially since RF Zones are not particularly scarce  
23 in Washington, D.C.

24           I mean it is easily more than half of our ANC, but  
25 as you know, it's -- there is a lot of ground to cover in

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1 that zone. And these are important provisions that come up  
2 all the time. We see them now infrequently, so I understand  
3 that OP has its priorities and I understand they are doing  
4 other things besides this like, you know, Comp Plan  
5 amendments.

6 But this is not some low-down on the listing, in  
7 our view, and that is, frankly, why instead of just offering  
8 the technical comments on the rulemaking as proposed, we  
9 wanted to get this on the Commission's radar, because we do  
10 think that this is important and we feel like sufficient  
11 progress has not been made.

12 So with that said, I am happy to continue to walk  
13 through the individual provisions, if the Commission would  
14 like. I know Commissioner May seemed to feel that maybe, you  
15 know, we shouldn't, you know, wrestle with this tonight. And  
16 so I will be guided by the Commission's wishes.

17 CHAIRMAN HOOD: So let me -- oh, Commissioner May?

18 COMMISSIONER MAY: No, I mean, I think -- I  
19 certainly don't want to interfere with your desire to give  
20 the full testimony. So I think you should go ahead and do  
21 that. I mean how we dispose of it after you do that, I think  
22 we will just have to have some discussion.

23 MR. ECKENWILER: Okay. So let me see if I can do  
24 this economically.

25 So I already mentioned that first bullet point

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1 there on page 2.

2           The second point is just sort of an interpretive  
3 gap in E206, because it has this, basically, blanket  
4 provision on altering or removing, you know absent special  
5 exception relief under 5203, a protected rooftop  
6 architectural element.

7           And so there is a practical question in there,  
8 what does that actually mean? And does that mean if someone  
9 is going to replace, you know, slate-for-slate, you know,  
10 wood-for-wood, you know, identically, because they have got  
11 something that is so compromised, you know, wood boring  
12 insects, you know, whatever the damage is, they just need to  
13 replace it.

14           Is that something that should be within the  
15 provision? Should they have to come to BZA for that relief?  
16 Is that something where it ought to just be understood that  
17 that is acceptable and it shouldn't have to go through public  
18 review? So that's the nature of gap filling.

19           CHAIRMAN HOOD: Excuse me, Mr. Eckenwiler?

20           MR. ECKENWILER: Sure.

21           CHAIRMAN HOOD: I'm going to ask Donna to come  
22 down and get a copy of what you was going to give us. I need  
23 a hard copy. Yeah, all of us need a hard copy.

24           MR. ECKENWILER: Okay.

25           CHAIRMAN HOOD: Yeah, I should have took one.

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1 MR. ECKENWILER: If you don't have them, I --

2 CHAIRMAN HOOD: I should have took the offer at  
3 first. I mean, it's on here, but I want to look at the  
4 regulations when I look at the copy at the same time. Yeah,  
5 I think that will be better to do that, instead of going back  
6 and forth. Thank you. I should have took it when you  
7 offered it. Okay. All right. So if you could -- I'm not  
8 going to ask you to start back over with the first one.

9 MR. ECKENWILER: Okay.

10 CHAIRMAN HOOD: But if you could start back over  
11 with the second one?

12 MR. ECKENWILER: Okay. So the second one is, if  
13 you look to the text of current E206, it simply has a blanket  
14 provision. It says "thou shalt not remove or significantly  
15 alter a rooftop architectural element of the building, such  
16 as cornices, porch roofs," et cetera, et cetera.

17 But there is a practical question that arises.  
18 What if one needs to make, you know, reasonable perhaps  
19 significant repairs or even wholesale replacement, but do so  
20 in kind in a way that is, you know, using the appropriate  
21 materials that is respectful to the original profile of that  
22 element, that feature.

23 Is that something that should, you know, require  
24 zoning relief or not? And I think it's an open question  
25 right now under the regs.

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1           The third point, and so this is the third bullet  
2 on page 2, Section E206.2 under the current regulations says  
3 you can get special exception relief from the above  
4 requirements and those are all of the provisions in E206 that  
5 say you cannot -- not only can you not remove or  
6 significantly alter a rooftop architectural element, but then  
7 it goes on to talk about additions not blocking or impeding  
8 the function of a chimney or external vent and not  
9 significantly interfering with a qualifying solar system.

10           So for relief from any of those constraints,  
11 E206.2 says well, there are these general requirements under  
12 Subtitle X, Chapter 9, which are -- they are just the  
13 baseline for any special exception. It doesn't set forth any  
14 particular criteria for deciding why for these particular --  
15 for this particular kind of relief, you know, these  
16 particular requests what the criteria are.

17           And a companion issue is that if you look at  
18 Section E5203.3, so now dropping to the following bullet  
19 point, 5203 has had shoehorned into it that it is the  
20 mechanism for also seeking special relief from E206, but  
21 hereto there are no criteria for telling us how should BZA  
22 decide whether or not to grant the relief.

23           I mean, as you know, for a typical special  
24 exception, there is some enumerated, you know, highly sort  
25 of tailored and particularized set of criteria and that is

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1 absent here. And sort of contributing to the problems and  
2 this goes back to something you said earlier, Mr. Chairman,  
3 about, frankly, members of the public including ANC  
4 commissioners who may not, you know, eat, sleep and drink  
5 this stuff in the way that some of us do, current 5203.3 is  
6 just a mess.

7           It is really hard to read. It has got a cross-  
8 reference to something that doesn't exist and you can kind  
9 of reading between the lines, figure out what that probably  
10 is, but it only contributes to the confusion.

11           And then on top of that, let me skip down to the  
12 bottom bullet point on page 2. In addition to all of this,  
13 5203.2, unlike in Section 5201, so if you want to get a 70  
14 percent -- you know, up to 70 percent lot occupancy special  
15 exception or a special exception for a yard, you have to meet  
16 all the requirements of the special exception provision.

17           5203 currently has this rather peculiar out in it  
18 where the BZA may waive any two of the provisions of 5203  
19 with one exception and that's the one that incorporates air,  
20 light, and privacy and character, scale, and pattern, which  
21 gets you into this sort of weird snake swallowing its tail  
22 problem. You know, you came here from E206, you know,  
23 because you had all these requirements and now you go to  
24 E5203, what even are the requirements?

25           A lot of them read the same as an E206. If the

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1 BZA waives a couple of them, you know, what is even left?  
2 I mean, really what are the grounds for deciding when it's  
3 appropriate or not? And the larger issue there is should  
4 there really be special exception relief for doing something  
5 like completely blocking, you know, 98 percent of the  
6 adjacent neighbor's solar system for impeding -- I mean,  
7 things that would violate the Building Code. And I  
8 understand that is not your shtick, that's, you know,  
9 somebody else.

10 But still, granting zoning relief for something  
11 that would completely block a chimney or a vent doesn't  
12 really make a lot of sense, certainly not doing that as a  
13 special exception.

14 So there are, you know, all these sort of  
15 functional conundrums and, frankly, I think irrational  
16 elements in 5203 and then on top of it there is the one point  
17 that I had mentioned before, so this is bullet point 1, 2,  
18 3, 4, 5 on page 2, which is the difference between a new  
19 principal residential building and an addition. And because  
20 current E5203 in various places alludes only to additions,  
21 but not to a new building, there raises a question about  
22 well, what are the rules then for new buildings?

23 And that's why if you will flip to the attachments  
24 to our letter, you can see we provided in redline strikeout  
25 form, you know, some proposed amendments. And I have

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1 highlighted in yellow, in 5203 just to call out that  
2 particular issue, the places where right now the regulation  
3 only says addition and where it, we think, would be a very  
4 good idea to include, you know, a new principal building as  
5 well.

6           So I know it's a lot of text, I just thought that  
7 would be helpful, you know, additional sign post. So that's  
8 a walk-through of what we think the problems are. As I say,  
9 we have attached a redline strikeout and on page 3 of our  
10 letter, we summarize how we would resolve those, because we  
11 don't want to just throw all these problems in your lap and  
12 OP's lap. We want to be helpful. And it is entirely  
13 possible that, in fact probable, not everybody will agree  
14 with the way that, you know, we would weigh the different  
15 factors, but it at least brings into sharp focus what the  
16 issues are, so what the decision points are for the  
17 Commission, should it choose to address these.

18           So let me just pause there and if the Commission  
19 has any questions, I'm happy to answer them.

20           CHAIRMAN HOOD: So let's see, colleagues, any  
21 questions or comments?

22           VICE CHAIR MILLER: Yes, just one.

23           CHAIRMAN HOOD: Vice Chair Miller?

24           VICE CHAIR MILLER: Well, thank you for your  
25 testimony and I always appreciate folks who bring forward

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1 proposed solutions to apparent problems. So appreciate all  
2 the work that you have put into that.

3 On the new -- on the issue of the new buildings  
4 with solar as opposed to just the existing regulations only  
5 applying to additions, I thought that is an appending case  
6 and I just wanted to ask Office of Planning about that. I  
7 saw that we recently set it down or had a hearing or that it  
8 is pending.

9 MR. ECKENWILER: Yes. And this is why the  
10 commissioner may not be aware of it yet. The Commission set  
11 that down in October. And just to kind of very briefly  
12 summarize what -- and this is Case No. 19-21. And just to  
13 summarize the three things that that text amendment does, it  
14 is to apply the Solar Energy System Regulations to semi-  
15 detached and row buildings in all R Zones, so not just RF,  
16 because we had a lot of requests to do that.

17 It is to apply the Energy Solar System Regulations  
18 more broadly to new construction as well as to additions to  
19 existing buildings. So it does that.

20 And it is to also clarify and modify how you  
21 measure significantly interfere with the solar system energy  
22 properties. So that was just setdown. As far as I know, the  
23 Public Hearing Notice has not been completed, is not being  
24 published, so it wouldn't have gone to the ANC yet, so you  
25 wouldn't know about it.

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1           And so but that part of what the Commissioners  
2 raised is currently in the works and you could set that down.

3           VICE CHAIR MILLER: It sounded familiar to me and  
4 given it's been two weeks ago, my memory at least captures  
5 two weeks ago sometimes.

6           So I don't have any specific questions for Mr.  
7 Eckenwiler, but I may have some further comments, Mr.  
8 Chairman, as we go forward generally.

9           CHAIRMAN HOOD: Okay. Commissioner May, you have  
10 anything?

11           COMMISSIONER MAY: I do not. I appreciate you  
12 walking through all those issues. I do feel like it is  
13 something where I think I'm going to want to rely on the  
14 Office of Planning to go through your comments in more detail  
15 and see which is appropriate to fit into this case and which  
16 is appropriate to deal with in 19-21 or in the other cases  
17 that are pending.

18           That's kind of my reaction because, you know, for  
19 us to sort of sort that out here and make -- you know, give  
20 guidance and decisions, I think I would rather have the  
21 Office of Planning be acting on what you had to offer  
22 tonight.

23           CHAIRMAN HOOD: I would agree with Commissioner  
24 May's comments and the Vice Chair's, but again, what gives  
25 me pause is like I said earlier is when -- and I know there

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1 are some things, you know, that we may be working with in  
2 another case, some things that are coming down the pipe, but  
3 I like to know what is not -- what are we not looking at that  
4 Mr. Eckenwiler has brought to us that we need to tighten up  
5 and we need to put it on the fast track, because these issues  
6 need to be taken care of.

7           But again, I want to make sure that the person who  
8 does not do this as much, and I include myself to that to a  
9 point, understands it, because I think, you know, while Mr.  
10 Eckenwiler and the ANC-6B will be coming down and they are  
11 kind of up on top of it, we have some that may not be as  
12 polished on it as -- but we will make sure that it's  
13 conducive for them to be able to understand what they are  
14 dealing with as well.

15           So that's where I am, Mr. Lawson, Office of  
16 Planning has always gone there when I have asked that and I'm  
17 going to ask us to get there again, especially with this.  
18 I think it's critical.

19           MR. LAWSON: Well-taken. Thank you.

20           CHAIRMAN HOOD: Okay. Thank you. All right.  
21 Normally I ask is there anybody else who would like to  
22 testify, but I don't think I need to do that.

23           Do we have anything else, Commissioners? Are we  
24 all straight? Vice Chair?

25           VICE CHAIR MILLER: Well, I agree with -- thank

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1 you, Mr. Chairman. I agree that -- with your comments that  
2 we need to just -- and with Commissioner May's comments that  
3 we need to just hear back from OP as to what would be  
4 appropriate in terms of the two ANC comments, what to change.

5 In this case versus dealing within the other case  
6 or merging the two cases somehow, whatever, what the  
7 recommendation is from Office of Planning and OAG.

8 I think ANC-6B also had some comments unrelated  
9 necessarily to the case, but about our Zoning manual and if  
10 Office of Zoning staff can look at that in terms of how to  
11 improve the -- what is permitted and not permitted in each  
12 zone by right, by special exception, by variance, I think  
13 they had some specific suggestions for clarity there, which  
14 -- and I know that our website is always a work in progress.  
15 It is an award-winning website, as it should be, and I think  
16 OP may be as well.

17 But it always can be improved and I just recently  
18 saw on there the -- when I was looking for something else,  
19 DC Court of Appeals' status cases. I didn't realize that  
20 was already on there. I know we were getting updates  
21 occasionally and that's helpful since there are so many of  
22 those. But many of them had been disposed and some in our  
23 favor.

24 A couple other, just unrelated -- it might be  
25 helpful when OP does this analysis of the ANC comments and

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1 gets back to us on what should be dealt with, whether they  
2 should be dealt with and whether they should be dealt with  
3 in this case or the other case, 19-21, it might be helpful  
4 just for clarity to know what is going from a variance to a  
5 special exception, or vice versa from a special exception to  
6 a variance. I think I saw references that some things were  
7 going from a variance to a special exception, which I  
8 generally favor, as my fellow Commissioners know, because  
9 they usually are on the winning side of that argument in ZR16  
10 and 1411.

11 But I just wanted to say for the record that  
12 because one of those issues of what is a -- of what has to  
13 be a variance, which I lost in one of our previous battles  
14 on a 3-2 vote, was the issue of the minimum land. It's just  
15 restated here. It's not being changed here, but it's in one  
16 of the sections that is referenced, because -- but the  
17 minimum land area for units in RF Zones, I'm just noting for  
18 the record that I continue to think that that should be a  
19 special exception, rather than a variance.

20 I think that was one of the things we carved out  
21 as not being able to be done, not being able to be waived or  
22 not -- maybe by a variance, but certainly not -- it wasn't  
23 allowed to be waived by special exception, because I remember  
24 losing it to a 3-2 vote. And I don't think any of the votes  
25 have changed, even though that commissioner has changed, who

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1 might still be with me on that, the new commissioner.

2           But anyway, I just want to say for the record, I  
3 don't want to relitigate that issue, but OP might, because  
4 there is a housing policy in the city that has been  
5 reinforced recently by the Mayor and I think it gets to the  
6 whole issue of housing supply and this would just be not that  
7 there wouldn't be relief that would be required, but it would  
8 be getting -- focusing it on adverse effects only as opposed  
9 to requiring all these hoops for minimum land area for the  
10 variance.

11           Anyway, I just wanted to say that for the record,  
12 not to reopen the argument, but just maybe for OP to look at  
13 it when -- I know they are constantly looking at all those  
14 regulations, which reminds me just of another unrelated  
15 issue, which I thought up for OP. I'm sorry, I appreciate  
16 the indulgence of everybody, all the people here for this  
17 very long hearing.

18           That I asked -- I have asked a couple of times  
19 that in those conversion cases, in the Rowhouse Zone, where  
20 an additional unit is being added, I think the current --  
21 what we adopted, I think it was part of 1411, one of the  
22 versions of that case, that every other unit would be at the  
23 50 percent median family income.

24           And I think I have asked that you look at, given  
25 the housing situation in the city, every unit that we

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1 otherwise find is okay in meeting the criteria, every unit  
2 at that 50 percent MFI level, not just -- I think it starts  
3 at every 4th, 6th, 8th is the way it goes now.

4           And I thought Ms. Steingasser at the previous  
5 hearing, said you were looking at that whole issue, a lot of  
6 housing issues and that was one of them. So I just wanted  
7 to remind you and myself and the record about that.

8           CHAIRMAN HOOD: I just have one quick question and  
9 then I have a comment to Office of Planning, to you, Mr.  
10 Eckenwiler.

11           We have some regulations that exactly -- say  
12 exactly what you said. You may waive two of these, but you  
13 know, we have one or two that you can't waive. But what do  
14 you think about that policy or that format?

15           MR. ECKENWILER: I'm opposed to it because I think  
16 it is -- it creates great uncertainty about what the actual  
17 requirements are. It doesn't really tell you when you should  
18 waive.

19           I mean, I think my personal view is for a special  
20 exception, it should be clear what the requirements are.  
21 They are enumerated in the provision and either you satisfy  
22 them or you don't and we know that there is always variance  
23 relief behind that. And if I can, I think this is still on  
24 point, just to speak for a moment from my own personal  
25 experience to Vice Chair Miller's comments earlier.

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1           One of the curious things that I have learned I  
2 think in the last year or two is that both OP and DCRA regard  
3 an application where the applicant is able to satisfy, let's  
4 say, five out of six of the requirements for special  
5 exception, they actually treat it as a hybrid. They don't  
6 say well, you know, if you are not really within 100 feet of  
7 a, you know, numbered street or whatever the requirement is,  
8 then you just -- you are off in variance land.

9           In fact what you apply for and the way that the  
10 BZA habitually handles these, and I apologize if I'm telling  
11 you stuff you already know, this was certainly news to me.  
12 They treat it as a special exception, but the applicant just  
13 has to seek a variance for that one prong, which it seemed  
14 to be a little illogical and strange, but I just want to make  
15 sure that you are bearing in mind that that is certainly the  
16 current practice, both within the Agency and BZA, where, of  
17 course, I know you sit.

18           I don't know if I answered your question or --

19           CHAIRMAN HOOD: Well, you actually did answer.  
20 I kind of fall in line. So this goes back to my next  
21 question and also comment to Office of Planning, while I was  
22 not the most favorable of waiving in the whole special  
23 exception piece on a specific area, I would like to know as  
24 we are looking through this, Mr. Lawson and Ms. Myers, if we  
25 can -- I'm just curious. What is the track record on that?

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1 I would just like to know some kind of way if you  
2 can find out how is the BZA and how are we handling that on  
3 the BZA with the provisions which allow us to waive and  
4 whatever else we can do in that provision, in those  
5 provisions? I think that would be very helpful to kind of  
6 set a benchmark, at least from my perspective. Even I'll  
7 admit for full disclosure, I was not in favor of all of that,  
8 but it was a compromise to a certain point. So anyway, we  
9 can do that.

10 All right. Anything else?

11 COMMISSIONER MAY: Is it my turn to complain about  
12 something that is going on?

13 CHAIRMAN HOOD: Well, since we are doing it.

14 COMMISSIONER MAY: That's okay, I'll pass.

15 VICE CHAIR MILLER: I was just going to agree with  
16 you that it was -- all that it is -- a lot of what we do is  
17 compromise and balance. I think in that particular case, all  
18 those criteria, we were kind of getting into an area or  
19 getting the BZA into an area, design review, that normally  
20 they weren't getting into.

21 CHAIRMAN HOOD: Which I think to some degree I  
22 would like for them to get into.

23 MR. ECKENWILER: So I mean, yes, so that's the  
24 whole balance. The balancing, so anyway.

25 CHAIRMAN HOOD: Do you have something you want to

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1 add on that?

2 MR. ECKENWILER: I just want to offer, Mr.  
3 Chairman, I mean, depending on how you look at it, design  
4 review has been in the Zoning Regs. I mean, that goes back,  
5 you know, to Section 223 that Mr. Lawson adverted to earlier.  
6 You know, the character, scale and pattern is viewed from the  
7 public street prong, that's there now in 5201. It has been  
8 in the special exception criteria for as long certainly as  
9 I have been making trouble in this area.

10 So it is not entirely novel proposition that the  
11 BZA would be looking at, what I think we can fairly  
12 characterize as, you know, aesthetic concerns.

13 CHAIRMAN HOOD: So I have -- I will tell you this.  
14 I have asked, inquired about that on a number of occasions  
15 over the years and I always get -- I forgot exactly what the  
16 answer is, but I always end back up to the same place. So  
17 anyway, I'll keep pushing, we will keep pushing and hopefully  
18 we eventually will figure it out how to get them there.

19 All right. Anything else up here? All right.  
20 So again, as we stated, we can continue to work on what we  
21 have asked and maybe we can have the ANCs if you need to  
22 reach out to them to clarify, let's see what we can do to  
23 move this thing forward.

24 I don't know if we have a time frame or if we need  
25 to come back and have another hearing. I don't know,

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1 colleagues. What do you all think? Okay. So we just need  
2 some missions and we will go from there. And I'm sure there  
3 will be a response period and all that.

4 So, Ms. Hanousek, can you work all that out for  
5 us?

6 MS. HANOUSEK: So how long? This is a question  
7 to OP. How long do you think it will take for you to give  
8 the Commission the response?

9 MR. LAWSON: It should not take as long at all.  
10 I suspect that you are looking at putting this on the agenda  
11 for December the 9th, I think is the next meeting, so we  
12 would just ask you work back from that date and kind of tell  
13 us when you would like us to submit the information.

14 MS. HANOUSEK: I would say as long as you got it  
15 back a week before, it would be all right, December 2nd.

16 MR. LAWSON: Just in case the ANC wanted to  
17 comment on those comments --

18 CHAIRMAN HOOD: If they have time for that.

19 MR. LAWSON: Yeah. We could probably --

20 MS. HANOUSEK: Okay.

21 MR. LAWSON: -- submit our comments --

22 MS. HANOUSEK: The 25th?

23 MR. LAWSON: -- that would be very comfortable,  
24 yes.

25 MS. HANOUSEK: Okay. Let's make it due the 25th

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1 at 3:00. And then the ANC would have until the 2nd.

2 MR. LAWSON: You meet again?

3 MR. ECKENWILER: So that's exactly what I'm  
4 looking at, Mr. Chairman. And the difficulty is that our  
5 November meeting is the 13th, so six days from now, and then  
6 our Zoning Committee meets on December 4th, the full ANC then  
7 meets a week later on December 11th. So I think --

8 CHAIRMAN HOOD: So what's wrong with our January  
9 meeting? What's the rush?

10 MR. LAWSON: I don't think that it is so much  
11 there is a rush. If that date works better for you --

12 CHAIRMAN HOOD: Yeah.

13 MR. LAWSON: -- like I mean, you are in charge of  
14 that, it's just there are a lot of issues before the Zoning  
15 Commission. It's just nice to get ones that are relatively  
16 straightforward sorted out. That's all.

17 CHAIRMAN HOOD: Because you want to have the  
18 opportunity for you all to revisit it and I want to give you  
19 all that opportunity.

20 MR. ECKENWILER: We would appreciate that, Mr.  
21 Chairman.

22 CHAIRMAN HOOD: So let's do it our first meeting  
23 in January, if there are no objections up here. When is our  
24 first meeting in January?

25 MS. HANOUSEK: January 13th.

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1 CHAIRMAN HOOD: Oh, good, that's not Friday the  
2 13th. Okay. So all right, so is there any objections,  
3 Commissioners?

4 (No audible answer.)

5 CHAIRMAN HOOD: Okay. So let's schedule January  
6 13th and work back from there.

7 MS. HANOUSEK: All right. So January 13th, and  
8 when does the ANC meet, did you say?

9 MR. ECKENWILER: For which month?

10 MS. HANOUSEK: I guess December now.

11 MR. ECKENWILER: The full ANC meets on December  
12 11th.

13 MR. LAWSON: Ms. Hanousek, we are comfortable with  
14 the November 15th date, just keeping that, if that helps.

15 MS. HANOUSEK: Oh, it was November 25th, but --

16 CHAIRMAN HOOD: November 25th.

17 MR. LAWSON: I'm sorry, I meant the 25th. I'm  
18 sorry.

19 MS. HANOUSEK: Okay. Fine. So then --

20 MR. LAWSON: And you know to the extent it  
21 matters, I mean, that's fine as long as we have it a few days  
22 before the committee meeting on December 4th, you know, just  
23 enough time to digest it and kind of work through most of the  
24 issues in committee, that's fine. So I mean, the 25th is  
25 perfectly adequate for our purposes, even with Thanksgiving.

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1 MS. HANOUSEK: Okay. So when would --

2 CHAIRMAN HOOD: So hold on, let me make sure,  
3 maybe I'm confused. So you don't need the January date,  
4 you --

5 MR. LAWSON: Oh, no.

6 MS. HANOUSEK: No.

7 CHAIRMAN HOOD: Let me stay out of it. Okay. All  
8 right. All right. Forget it.

9 MS. HANOUSEK: So then you would want to hear from  
10 the ANC by the week before, like January 6th.

11 CHAIRMAN HOOD: That will be fine, January 6th.

12 MR. ECKENWILER: Oh, I think that -- sorry, I  
13 apologize. Let me pull up the calendar again.

14 CHAIRMAN HOOD: But you all meet in December  
15 though?

16 MR. ECKENWILER: So our December meeting is  
17 December 11th, with the committee meeting a week before. Our  
18 January full ANC meeting is Wednesday, the 8th, and the  
19 committee meeting is January 2nd. We had to push it one day  
20 because of New Year's.

21 CHAIRMAN HOOD: So you have a full -- do you have  
22 a committee meeting and a full meeting in December?

23 MR. ECKENWILER: Yes. So we always -- those are  
24 typically first Wednesday, second Wednesday.

25 CHAIRMAN HOOD: What's the first Wednesday? The

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1 full committee?

2 MR. ECKENWILER: The committee meets one week  
3 before the full ANC.

4 CHAIRMAN HOOD: Okay. So the full ANC. So can  
5 this possibly be handled in January, so we could deal -- I  
6 mean, in December, so we can deal with it in January?

7 MR. ECKENWILER: If you -- if OP gets us something  
8 in time, we absolutely can do that.

9 MR. LAWSON: Our report will be entered to the  
10 record on November the 25th. If it makes sense to file it  
11 in advance of that to help out the ANC, we can work with  
12 that, too.

13 VICE CHAIR MILLER: And when is our December  
14 meeting, Mr. Chairman?

15 CHAIRMAN HOOD: December --

16 VICE CHAIR MILLER: That's earlier.

17 CHAIRMAN HOOD: -- is not going to work.

18 VICE CHAIR MILLER: Okay.

19 CHAIRMAN HOOD: Yeah, December is not going to  
20 work.

21 MS. HANOUSEK: No. So we are looking at the  
22 January 13th meeting, which means the ANC would need to get  
23 in their responses by January 6th.

24 MR. ECKENWILER: We can certainly do that through  
25 our deliberations in December.

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1 CHAIRMAN HOOD: Okay. All right. So I think we  
2 are all on the same page.

3 MS. HANOUSEK: Okay. I have one question. So if  
4 this hearing is finishing tonight, the record is left open  
5 for --

6 CHAIRMAN HOOD: The ANC. I also want to give --  
7 what's the other ANC, 6B? I also want to give 6B an  
8 opportunity as well.

9 MS. HANOUSEK: Okay.

10 CHAIRMAN HOOD: So it's only open for ANC-6C and  
11 6B and I guess any ANC.

12 MS. HANOUSEK: Okay.

13 CHAIRMAN HOOD: I can't just -- I can't limit  
14 that.

15 MS. HANOUSEK: Okay. So, sir, it's only open to  
16 ANC comments?

17 CHAIRMAN HOOD: ANC right. I have to do that,  
18 right, the ANCs.

19 MS. HANOUSEK: Okay. Thank you.

20 CHAIRMAN HOOD: All right. Anything else?

21 (No audible response.)

22 CHAIRMAN HOOD: Is that right, Mr. Goldstein? I  
23 think that's -- it has to still be open to all ANCs, even  
24 though nobody is going to add to the response. I think  
25 that's the safest bet, yeah. Okay.

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1 All right. So we all on the same page. Do you  
2 have anything? All right. I want to thank everybody for a  
3 very thorough and good discussion. We appreciate Mr.  
4 Eckenwiler with ANC-6C, as well as ANC-6B for submitting  
5 something and we are looking forward to seeing what we come  
6 back with and we will deal with it accordingly.

7 So if I don't hear anything else with that, this  
8 hearing is adjourned.

9 (Whereupon, the above-entitled matter went off the  
10 record at 7:20 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 11-07-19

Place: Washington, DC

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



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