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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission

Regular Public Meeting  
1404th meeting Session (4th of 2015)

6:30 p.m. to 9:32 p.m.  
Monday, February 23, 2015

Jerrily R. Kress Memorial Hearing Room  
441 4th Street, N.W., Suite 220 South  
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairperson

3 MARCIE COHEN, Vice-Chairperson

4 ROBERT MILLER, Commissioner

5 PETER MAY, Commissioner

6 MR. TURNBULL, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10 Office of Planning:

11 STEPHEN COCHRAN

12 JENNIFER STEINGASSER

13 JOEL LAWSON

14 STEPHEN GYNOR

15

16 Office of Attorney General:

17 ALAN BERGSTEIN

18

19

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21

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

1  
2 CHAIRPERSON HOOD: Good evening,  
3 everyone. This is the 1,404th meeting session of  
4 the Zoning Commission, Monday, February 23rd,  
5 2015, 6:30 p.m. We're located in Jerrily R. Kress  
6 Memorial Hearing Room, 441 4th Street Northwest,  
7 Suite 220 South.

8 My name is Anthony Hood. Joining me are  
9 Vice Chair Cohen, Commissioner May, Commissioner  
10 Turnbull, and Commissioner Miller. We're also  
11 joined by the Office of Zoning Staff, Ms. Sharon  
12 Schellin, Office of Attorney General, Mr.  
13 Bergstein, Office of Planning, Ms. Steingasser and  
14 Mr. Cochran, soon to be joined by Mr. Lawson.

15 We do not take any public testimony at  
16 our meetings unless we ask someone to please come  
17 forward. We ask you to refrain from any  
18 disruptive noises or actions in the hearing room  
19 because we're being webcast live.

20 We have an agenda. It is on the table to  
21 my left, and at this time I will see if we have  
22 any preliminary matters.

23 MS. SCHELLIN: No, sir.

24 CHAIRPERSON HOOD: Okay. What I would  
25 like to do is on the proposed action, we have

1 under B, Zoning Commission Case No. 14-13, Office  
2 of Planning Text Amendment, Penthouse Roof  
3 Regulations. I would actually like to do that  
4 last on the agenda. I would like to take up  
5 everything else except for that and we will do  
6 that last if my colleagues, we all agree.

7 Okay. And also from the Office of  
8 Planning we have Mr. Gynor. We've already  
9 announced Mr. Lawson will be joining us. Okay.

10 Let's get right in to it, under Final  
11 Action Zoning Commission Case No. 13-12, 1333 M  
12 Street, LLC., first stage PUD related map  
13 amendment and consolidated PUD at Square 1025E and  
14 1048S. Ms. Schellin.

15 MS. SCHELLIN: Yes, sir. At Exhibits 39  
16 through 41B, 43, and 43B, and Exhibit 45, we have  
17 the applicant's post-hearing submissions. At  
18 Exhibit 45 the applicant is requesting waiver for  
19 the late filing of their draft order, which they  
20 state is late because of working with Ms. Harris  
21 and DDOT. Exhibit 42 is a submission from Karen  
22 Harris that the Commission did ask that she  
23 submit. And Exhibit 46 is a report from NCPC  
24 which found that the project is not inconsistent  
25 with the comp plan for the National Capitol.

1 Would ask the Commission to consider final action  
2 this evening.

3 CHAIRPERSON HOOD: Okay. Thank you, Ms.  
4 Schellin. As stated we do have some submissions  
5 and responses to things that we've asked for, and  
6 we have some submissions from the applicant. And  
7 we also have proposed findings of facts and  
8 conclusions of law.

9 Let me open up any comments. Vice Chair  
10 Cohen.

11 MS. COHEN: Thank you, Mr. Chairman. I  
12 just want to note that at proposed action I had  
13 asked for a perimeter lighting plan and the  
14 applicant did not submit it. However, the  
15 applicant's attorney and the Office of Attorney  
16 General addressed it in the proposed order and I  
17 find the language acceptable. But I'm still upset  
18 that they didn't submit it.

19 CHAIRPERSON HOOD: Okay. Any other  
20 questions? Comments?

21 I would tell you, I was really concerned.  
22 I looked at a response from Ms. Harris and I also  
23 see that the ANC in this case submitted their --  
24 reaffirmed their support. One of the things that  
25 disturbed me is the way this letter was written

1 about -- they understand the height and everything  
2 we had already dealt with, but for example one  
3 such example is a mere 500 annual donation of over  
4 five years to the Anacostia Watershed Society.

5           You know, I know that you have a MOU and  
6 some things with the ANC, but there are times  
7 sometimes when those two are directly impacted,  
8 should be considered. And it bothers me when  
9 folks who want to be most effective still come in  
10 with concerns. Case in point, unless I read this  
11 wrong, and sometimes I do mix cases together, the  
12 issue about when you start construction. I think  
13 it's an hour difference. I think that's owed to a  
14 neighborhood. I mean, you know, instead of 7:00 -  
15 - I can tell you, when you get to my neighborhood  
16 at 7:00 I have some problems. I mean, those are  
17 things I think that developers -- and I'm not just  
18 picking on this developer, but I see a lot of  
19 that. That's why we have a lot of no trust from  
20 residents and development.

21           Yeah, we need development, but we also  
22 need to be able to work with those who are going  
23 to be enduring what we do because a lot of us who  
24 make these proposals, we'll be at home resting at  
25 7:00 in the morning, while Ms. Harris and her

1 neighbors will be up being disturbed.

2 But anyway, I don't think this is a show  
3 stopper for me, but I just think that her letter,  
4 which is Exhibit 42, was disturbing for me. And I  
5 mean, just mere things like an hour. I think  
6 those are some of the things.

7 I know there's some other issues about  
8 the development of the 673 units, the parking  
9 spaces. And when I looked in the order, the  
10 proposed order, most of it was addressed in bike  
11 parking, which I have no issues with but I just  
12 think that sometimes we have these discussions.  
13 That's what we asked them to do when we were doing  
14 proposed.

15 Again, it's not a show stopper for me but  
16 I think more consideration should be given to this  
17 community. And even if this commission takes  
18 final action, and I'm sure that the developer  
19 would probably say that some of the things in this  
20 letter he may disagree with, overall the community  
21 is extremely disappointed with the insensitive and  
22 meager response it has received from the  
23 developer, and discouraged about the results,  
24 impact, and the quality of life for residents in  
25 the neighborhood.

1           You know, when you read those letters you  
2 grapple with that on Sundays and I looked at what  
3 some of the things that the community asked for,  
4 and I know there's an MOU with the ANC but I'm  
5 looking at some of the things in this MOU or some  
6 of the things that the homeowners of the 13 block  
7 of L Street asked for and I checked off some which  
8 I thought could be considered but, anyway, that's  
9 why I'm on this. Again, it's not a show stopper  
10 for me but it's just, I have to agree sometimes  
11 some of this can be insensitive. That's where I  
12 am.

13           Okay. Any other comments?

14           MR. TURNBULL: Well, Mr. Chair, what else  
15 would you like to see? I mean, we have that  
16 ability to make some changes.

17           CHAIRPERSON HOOD: Well, when I look at  
18 this construction should be limited from 8:00 to  
19 5:00, and the reply was Monday through Friday 7:00  
20 to 7:00, and Saturday 8:00 to 7:00. Where is the  
21 relief for the neighborhood?

22           While you know, I know that there's a  
23 time schedule, but some of that could have been  
24 worked out. That was what I was looking for.  
25 Some of that could have been negotiated,



1 realistically. Even if it was an hour, because  
2 how many of us have people working in front of our  
3 houses at 7:00 in the morning?

4 MR. TURNBULL: Many of us.

5 CHAIRPERSON HOOD: Yeah. Okay.

6 MR. TURNBULL: I mean normal -- they're  
7 abiding by normal --

8 CHAIRPERSON HOOD: On Saturday?

9 MR. TURNBULL: Normal -- yeah, normal  
10 DDOT --

11 CHAIRPERSON HOOD: I understand. I  
12 understand that. But --

13 MR. TURNBULL: Or normal, sorry, DCRA  
14 rules.

15 CHAIRPERSON HOOD: I understand that.  
16 But what I'm saying is, those are the kind of  
17 things that could be worked out. That's all I'm  
18 saying. I know what this downtown says. I know -  
19 - I live right across from an industrial area so I  
20 know, I get it first-hand. But they're  
21 considerate too, believe it or not. They don't  
22 come down there and start doing anything at 7:00.  
23 And this is Monday through Friday. They're very  
24 considerate. So.

25 MR. MAY: Chairman Hood, I think I would

1 agree with you a bit more if the neighbors were  
2 more proximate to the construction site. I think  
3 there's a substantial distance between the  
4 neighbors and where this site actually is, and I  
5 think it's far enough away that starting at 7:00  
6 in the morning shouldn't be a real inconvenience  
7 for those neighbors.

8 CHAIRPERSON HOOD: Right. I understand  
9 that. I just used that as a mere fact showing how  
10 -- I think you missed my point, Commissioner May.  
11 My point is to show how some things can be worked  
12 out. I just used that meager thing of the time as  
13 showing you what I'm saying as far as a difference  
14 of how you can make a difference for an hour.  
15 That's all I'm saying.

16 I'm not saying that, you know, they're  
17 right around the corner or anything. But we have  
18 a list here from the homeowners on 13th Street who  
19 are going to endure a lot of this.

20 Now the building height and some of that  
21 is stuff that we've already dealt with. But, you  
22 know, and we have approved and moved forward so  
23 much. But I mean, some of these other things here  
24 that I think can be worked out. Some of the stuff  
25 we'll say yes to. But then again, the ANC also

1 has an agreement with this applicant. But then  
2 again, how many of them are going to be affected.  
3 That's kind of where I am.

4 Okay. Commissioner Miller.

5 MR. MILLER: Thank you, Mr. Chairman. I  
6 mean, I think you raised, I mean, a legitimate  
7 point. The hours of construction always -- the  
8 balance is between giving more hours of  
9 construction and the construction project will be  
10 over more quickly and the neighbors won't have to  
11 endure it for a longer period of time.

12 I had in my neighborhood, an addition, a  
13 total renovation of a house adjacent to ours  
14 that's going on at least 18 months, maybe more.  
15 And they do start at 7:00 a.m.

16 But I would note that the applicant did,  
17 in response to Mrs. Harris's concerns, they did  
18 add some addition restrictions on retail uses that  
19 she in particular, or her neighbors in particular  
20 found objectionable, even though they would be  
21 permitted as a matter of right in the C3C  
22 district, and that they did, in order to address  
23 Ms. Harris's concern about the demand for on-  
24 street parking that might be generated by the PUD,  
25 the applicant's traffic consultant did confirm

1 with DDOT that the residents of the PUD will not  
2 be eligible to apply for DDOT for a residential  
3 parking permit because the development will be on  
4 M Street which will not be part of DDOT's RPP  
5 inventory.

6           And I would note also that the applicant  
7 did -- even though they did not get to the  
8 perimeter security -- perimeter lighting plan that  
9 the Vice Chair, they did -- that the Vice Chair  
10 had requested, they did provide a revised lighting  
11 plan that showed that it would be down lighting on  
12 the roof and the penthouse to minimize impacts on  
13 the adjacent neighborhood.

14           So I think there is the issue we need to  
15 address about the Boathouse Row marker that I  
16 think they came back with additional renderings  
17 and three options and I think we had a diversity  
18 of opinion about this previously but I have no  
19 problem with any of the options. But I prefer  
20 Option 1. But I think that the way they've --  
21 that they're proposing to sandblast the white  
22 paint with the gray background is an appropriate  
23 way to have a place maker sign of that type on  
24 this building. So I personally have no problem  
25 with that.

1           CHAIRPERSON HOOD: Okay. Any other  
2 comments?

3           MR. MAY: Mr. Chairman, on that topic I  
4 do have an inherent difficulty with signs like  
5 this because of the nature of them as -- I mean,  
6 you referred to them, Commissioner Miller, as  
7 place maker signs. Just the idea that these  
8 places need to be marked in that fashion on the  
9 penthouse is troublesome to me because I don't  
10 like the idea of that kind of signage and I think  
11 that it opens the door for other less agreeable  
12 versions of this.

13           However, you know, I do appreciate the  
14 further study that they've given to it and I could  
15 go along with Option 1 in the circumstance because  
16 it's subtle compared to what was originally there.

17           I mean, I understand the things like the  
18 Brooklyn. It's on the side of the building and  
19 that makes the place. Yeah, that makes perfect  
20 sense. It's what happens at the top of the  
21 building I think is the greatest concern to me.  
22 But as I said, I can go along with Option 1. I  
23 think it's the best of the ones that they  
24 submitted and it's an improvement over what they  
25 had originally done.

1           CHAIRPERSON HOOD:   Okay.  Vice Chair  
2   Cohen.

3           MS. COHEN:   Thank you, Mr. Chairman.  I  
4   would go along with Option 1 too.  It is the most  
5   subtle of all of them.

6           CHAIRPERSON HOOD:   Okay.  I just want to  
7   expound on something that Commissioner Miller  
8   mentioned as far as the leases and certain streets  
9   they're on.  To this date we don't really know if  
10   that even works.  Honestly, to this date.  And I'm  
11   not picking on this developer.  I'm saying in  
12   general.  We don't know if that whole system with  
13   DDOT and not being able to go over an RPP and not  
14   being able to apply, to this date there's no  
15   evidence to this Commission that I've seen that  
16   really shows that this actually works.

17           We've had cases where we come down and we  
18   talk about it, but I think people in the  
19   neighborhood need -- they need assurances that  
20   this actually works.  And I can tell you, I've  
21   approved quite -- and I'm not going to take it out  
22   on this applicant, but I've approved a whole lot  
23   of them where they say they can't do it and then I  
24   hear that it doesn't work that way in the  
25   database.

1           So, you know, this is a rough stance to  
2 be in. Yeah, it sounds good here, but does it  
3 really work? No, I don't think we can answer that  
4 because we really don't know, unless somebody up  
5 here knows it will work because I heard DDOT say  
6 they're not sure.

7           MR. MAY: So, Mr. Chairman, there is one  
8 difference in this case versus some of the other  
9 ones where we have approved them, which is that  
10 this building is on a block where RPP is not  
11 permitted and I don't think there's going to be a  
12 block in that vicinity in any kind of walking  
13 distance from that site where RPP would be  
14 permitted.

15           So it's a little different from some of  
16 the other ones where we're seeking to remove a  
17 single building from the RPP system, and we've had  
18 to have -- you know, that's where we get into  
19 the things like requirements for leases that, you  
20 know, that people have to swear they'll never  
21 apply for residential parking and so on. It's a  
22 little bit different from some of the other ones  
23 that we've approved in that regard only.

24           I would agree with you that we don't have  
25 factual evidence that simply because we don't have

1 RPP eligibility for a given building, that we know  
2 that there's not going to be a spill-over effect  
3 from that. I think there's a little bit more that  
4 needs to be done in that regard and hopefully DDOT  
5 is going to be jumping on that because it's a  
6 problem city-wide. It's not just related to  
7 buildings without residential parking permit  
8 eligibility. I mean, there are many buildings  
9 that don't have RPP eligibility simply because  
10 they're on commercial streets and there may be  
11 spill-over effects from those buildings, and  
12 that's something that DDOT needs to be addressing.

13 CHAIRPERSON HOOD: Okay. I stated my  
14 opinion and I'm not going to debate with you on  
15 that. I still say we don't know whether it works.  
16 Even what we have here in front of us tonight.  
17 That's what this Commissioner says, and that's  
18 just where I'm going to stand. I'm not going to  
19 go back and forth and debate on that issue.

20 Okay. Anything else? Commissioner  
21 Turnbull.

22 MR. TURNBULL: Thank you, Mr. Chair. My  
23 only comment is on the graphics on the penthouse.  
24 And I think you know that I don't like any kind of  
25 graphics on penthouses. I think its



1 commercialism. It's not covered under the zoning  
2 regulations and I don't think it really is an icon  
3 setting up a neighborhood or anything else.

4 I do appreciate the fact the fact that  
5 Option No. 1 is probably the least offensive of  
6 any of it and I will only go along with this as  
7 long as I understand that according to the  
8 renderings that they've shown of this building at  
9 night, that there are not lights on this sign;  
10 that this is not a lit up graphic at all. And  
11 that's my understanding from what I'm looking at  
12 on these illustrations, that there are no lights  
13 on this graphic at night.

14 CHAIRPERSON HOOD: Okay. Anything else?

15 MR. MAY: I think that was actually  
16 affirmed in the applicant's submission that they  
17 said explicitly that it wouldn't be lit.

18 MR. TURNBULL: Yeah, I --

19 MR. MAY: Yeah.

20 MR. TURNBULL: -- just wanted to have it  
21 on the record here.

22 MR. MAY: So I assume that would be a  
23 condition that would be incorporated into the  
24 order.

25 MR. TURNBULL: Right.

1           CHAIRPERSON HOOD: So Option 1 as far as  
2 the signs. And I do think that this is different  
3 from another case that we had when we talk about  
4 the view. I like the way this is etched in  
5 because I actually was trying to figure out what  
6 was the difference. And I can go along with the -  
7 - as far as the signage that Commissioner Miller  
8 was talking about earlier.

9           I think even though it's some  
10 similarities, I do think this one is a little  
11 different. So I don't want the applicant to think  
12 I'm just talking negative about his project. So I  
13 do think this is pretty different and I do like  
14 what's being presented.

15           Any other questions?

16           MR. MILLER: Yeah.

17           CHAIRPERSON HOOD: Commissioner Miller.

18           MR. MILLER: Yeah, I meant to note also,  
19 Mr. Chairman, that I think it's important in terms  
20 of the transportation plan that the applicant has  
21 committed to run a shuttle service from the Metro  
22 to the PUD site and to review with DDOT after a  
23 five year period of the building being open,  
24 whether all of the transportation demand  
25 management measures are being effectively applied

1 and are mitigating the parking demand issue. So,  
2 I'm ready to move forward tonight, Mr. Chair.

3 CHAIRPERSON HOOD: Okay. And I will note  
4 again, this order will point to the MOU that is --  
5 I don't know, is it signed? Yeah. Okay. Yeah,  
6 the MOU from the ANC as well as from the  
7 applicant.

8 Okay. So, again, it's not a show  
9 stopper. It's just concern for me from the letter  
10 that we received from the neighborhoods on the  
11 1300 block.

12 Okay. Anything else? Okay. Someone  
13 that can make a motion?

14 MR. MILLER: Mr. Chairman, I would move  
15 that the Zoning Commission take final action on  
16 Zoning Commission Case No. 13-12, 1333 M Street,  
17 LLC., first stage PUD related map amendment and  
18 consolidated PUD at squares 1025E and 1048S, and  
19 ask for a second.

20 MS. COHEN: Second.

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

23 MR. MAY: Just to clarify that we all  
24 agree that Option A is the preferred option for  
25 the sign.

1 MS. COHEN: Option 1.

2 CHAIRPERSON HOOD: Option 1.

3 MR. MAY: Option 1, sorry. 1A. Okay.

4 MS. COHEN: Yes.

5 CHAIRPERSON HOOD: Okay. Anything else?  
6 Any other discussion? All those in favor? Aye.

7 ALL: Aye.

8 CHAIRPERSON HOOD: Any opposition? Ms.  
9 Schellin, would you record the vote?

10 MS. SCHELLIN: Yes, sir. Staff records  
11 the vote five to zero to zero to approve Zoning  
12 Commission Case -- final action in Zoning  
13 Commission Case No. 13-12 with Option 1 regarding  
14 the signage, Commissioner Miller moving,  
15 Commissioner Cohen seconding, Commissioners Hood,  
16 May, and Turnbull in support.

17 CHAIRPERSON HOOD: Okay. Next, let's go  
18 to Zoning Commission Case No. 02-38E, Waterfront  
19 375 M Street, LLC. and Waterfront 425 M Street,  
20 LLC., two year PUD time extension at Square 542.  
21 Ms. Schellin.

22 MS. SCHELLIN: Yes, so as you said this  
23 is a request for a two year PUD time extension for  
24 the East and West M Street office buildings that  
25 were approved in Zoning Commission Order No. 02-

1 38A. The applicant has stated that the project  
2 has had difficulty with funding due to the very  
3 limited market for initial financing for office  
4 buildings and we're asking that the Commission  
5 would consider final action on this case this  
6 evening.

7 CHAIRPERSON HOOD: Okay. I do have a  
8 question for the Office of Planning, and I'm going  
9 to go out of order because -- unless my colleagues  
10 can help me with this. I looked at this report  
11 and kept looking at the report, and I wasn't sure  
12 -- you know, normally just one line say we  
13 recommend the time extension. Unless it's on  
14 here, I missed it because I actually looked --  
15 maybe I looked for it too hard and it's right in  
16 front of me.

17 I guess, it really like it was the  
18 recommendation for the two year extension.

19 MR. LAWSON: We're recommending the two  
20 year extension, yes.

21 CHAIRPERSON HOOD: Oh, did I miss it? Or  
22 was it --

23 MR. LAWSON: Actually I'm just looking at  
24 it myself, now and I'm not sure that you did miss  
25 it.

1 CHAIRPERSON HOOD: Okay.

2 MR. LAWSON: I think it's implied there.  
3 I don't think it's quite as explicit as it could  
4 have been.

5 CHAIRPERSON HOOD: It read like it was  
6 that, but I just, you know, I look for that one-  
7 liner sometimes. It helps me out.

8 MR. LAWSON: We'll make sure it's there  
9 in the future.

10 CHAIRPERSON HOOD: All right. No  
11 problem. Thank you.

12 Okay, Commissioners, we have the  
13 recommendation from the Office of Planning and as  
14 you can state and the applicant has made the case,  
15 I believe, in this. Any other questions to open  
16 it up? Commissioner May?

17 MR. MAY: I would just make note of the  
18 applicant's additional submission regarding the  
19 treatment of the lots in the meantime. And it  
20 looks like that was an effort to address concerns  
21 that were raised by the ANC and the neighbors, and  
22 I appreciate the fact that we're -- that it's not  
23 just going to be vacant lots and an eyesore to the  
24 neighborhood.

25 CHAIRPERSON HOOD: Okay. Anything else?

1 Any other comments?

2 MR. MILLER: Yeah.

3 CHAIRPERSON HOOD: Commissioner Miller,  
4 and then --

5 MR. MILLER: Yeah, I just wanted to echo  
6 Commissioner May's comment, thanking the applicant  
7 for working with the ANC and garnering their  
8 support by developing a concept plan for both site  
9 maintenance and site activation during the  
10 requested extension period.

11 CHAIRPERSON HOOD: Okay. Commissioner  
12 Turnbull.

13 MR. TURNBULL: No, I was just going to  
14 echo the same thing that Commissioner Miller had  
15 stated that I really appreciated the applicant's  
16 submission on working in the neighborhood and the  
17 plans to make the changes.

18 CHAIRPERSON HOOD: Okay. Any other  
19 comments, Vice Chair Cohen?

20 MS. COHEN: Yeah, I just would like to --  
21 you know, there are two sites, two buildings. If  
22 we're having problems leasing one of them with  
23 office, maybe the applicant needs to do a further  
24 market analysis of what one of the sites could  
25 accommodate, like housing and retail.

1 CHAIRPERSON HOOD: Okay. That was a  
2 suggestion. Any other comments?

3 Okay. So I would move that we grant the  
4 two year time extension. I think that the merits  
5 in the record in this case are complete. I think  
6 it shows a warrant of a two year time extension  
7 and I would move that we approve the two year  
8 extension for Zoning Commission Case No. 02-28E  
9 and ask for a second.

10 MR. TURNBULL: Second.

11 CHAIRPERSON HOOD: It's been moved and  
12 properly seconded. Any further discussion? All  
13 those in favor, aye.

14 ALL: Aye.

15 CHAIRPERSON HOOD: Any opposition? Ms.  
16 Schellin, would you record the vote?

17 MS. SCHELLIN: The staff records the vote  
18 five to zero to zero to approve final action  
19 Zoning Commission Case 02-38E. Commissioner Hood  
20 moving, Commissioner Turnbull seconding,  
21 Commissioners Cohen, May, and Miller in support.

22 CHAIRPERSON HOOD: Okay. Let's go to  
23 proposed action, Zoning Commission Case No. 03-  
24 12Q/03-13Q, Capper-Carrollsborg modification to  
25 PUD at Square 739, 767, and 768. Ms. Schellin.



1 MS. SCHELLIN: Yes, sir. At Exhibit 54  
2 we have ANC 6D's report in opposition. The letter  
3 is late. It was due on February 13th. They sent  
4 it via e-mail on Sunday, the 15th. The office was  
5 closed -- opened on the 18th, 16th was a holiday,  
6 the 17th was a snow day, so we did not open until  
7 the 18th, which is the date it was marked as  
8 received.

9 Exhibit 55 is the applicant's response to  
10 the ANC's letter, and so we asked the ANC to  
11 submit a request for waiver for the late filing  
12 but we've not received anything.

13 CHAIRPERSON HOOD: Okay. I think due to  
14 the fact of the snow and ice and everything else  
15 that went into effect there, not knowing what --  
16 not being predictable, I don't have a problem with  
17 accepting this late submission without the waiver.  
18 And this is not something that we would normally  
19 do, but I think in this case this is a special  
20 circumstance. Any disagreement up here?

21 Okay. So we will accept this letter.  
22 And that's Exhibit 53?

23 MS. COHEN: Fifty-four.

24 CHAIRPERSON HOOD: Fifty-four. Okay. So  
25 we don't need to accept -- okay. Fifty-four.

1 Letter. Okay. Exhibit 54. Okay.

2 Anything else, Ms. Schellin?

3 MS. SCHELLIN: No, sir.

4 CHAIRPERSON HOOD: Okay. Colleagues, let  
5 me open it up for discussion in this case. And  
6 again, we do have a letter in opposition from the  
7 ANC.

8 Again, this is the project -- remember  
9 where the -- Square 737 is a matter of right  
10 development and they just wanted to move the 30  
11 affordable units there. Just trying to rehash  
12 what this was again. Okay. That's pretty much  
13 the gist from my standpoint, and modification to  
14 the squares 739, 767, and 768. Any comments?  
15 Vice Chair Cohen.

16 MS. COHEN: Thank you, Mr. Chairman. In  
17 either the most current or one of the earlier  
18 submissions by the ANC they do refer to Hope 6 as  
19 being an opportunity for mixed income housing.

20 However, the whole entire Hope 6 program  
21 was also established by the federal government to  
22 help address the issue of distressed public  
23 housing. And this particular project, Capper  
24 Carrollsburg, was a former public housing site.  
25 The success of the project is, is that the area is

1 mixed income. The area, the neighborhood is mixed  
2 income. And one of the problems I have with the  
3 motions or points made by the ANC is that people  
4 have been relocated from this site probably at  
5 least 10 years ago, and they were -- and the  
6 Housing Authority and the City made a commitment  
7 to bring these people back to the neighborhood.  
8 And right now the financial climate is preventing  
9 this mixed income. There is not enough money to  
10 gap finance this project.

11 In other words, to offset the  
12 construction costs so that the former residents  
13 can come back to the site and pay lower rents that  
14 they could afford, 30 percent of their income. I  
15 don't have a problem when public housing is a full  
16 project in a mixed income neighborhood. The  
17 problem, a large part of the problem was it was  
18 very isolated from everything; whether it was  
19 retail, better schools, whatever.

20 But this particular neighborhood has gone  
21 through a great deal of change and I think the  
22 people who have been displaced have a right to  
23 come back. I do believe the applicant has come up  
24 with a plan that is satisfactory with regard to at  
25 least not making the property fully very low

1 income, meaning ACC units. But as having a  
2 mixture of incomes about 50 percent of median.

3 The financing vehicles are now driving  
4 housing policy. And therefore I find that I would  
5 go ahead with this project so that the Housing  
6 Authority can secure the proper financing, build  
7 the project, and get some of the people who were  
8 promised to come back, to come back if they  
9 choose.

10 CHAIRPERSON HOOD: Okay. Any other  
11 opening -- not opening, but any other comments?

12 Commissioner Miller.

13 MR. MILLER: Thank you, Mr. Chairman. I  
14 would concur with the Vice Chair that a mixed  
15 community has been created thus far, and I think  
16 it's a legitimate concern of the ANC that there  
17 continue to be that mixture of incomes in each  
18 square. And might want to make sure that it's in  
19 each building.

20 I think we'll have, when we see the  
21 second stage applications, they'll have the  
22 ability and we'll have the ability to make sure  
23 that that range that they came back with since the  
24 time of the public hearing, both a maximum and a  
25 minimum number, or percentage, I think it was 15

1 to 50 percent, it wouldn't be below 15 percent, it  
2 wouldn't be more than 50, by my calculations it  
3 does get in the range of the number that was  
4 originally in the zoning order. So I too don't  
5 have a problem with going forward. I think the  
6 second stage -- I think if we didn't allow this  
7 flexibility the financing will be much more  
8 difficult and just will delay further the getting  
9 the remaining 200 or so public housing units  
10 replaced.

11 So I'm prepared to move forward this  
12 evening as well.

13 CHAIRPERSON HOOD: Okay. Any other  
14 comments? Commissioner Turnbull?

15 MR. TURNBULL: Yeah. Thank you, Mr.  
16 Chair. I would agree with Commissioner Miller and  
17 the Vice Chair. And just also note that I think  
18 that the applicant's response to the ANC on  
19 Exhibit 55 answered my concerns. And as they  
20 state in their letter, we have a chance to review  
21 all of this on the second stage. So I think my  
22 concerns are answered by this.

23 CHAIRPERSON HOOD: Okay. Any other? Any  
24 other comments? Commissioner May?

25 MR. MAY: I think everything has been

1 said that I would have said, so I'm prepared to  
2 move forward.

3 CHAIRPERSON HOOD: Okay. All right. I  
4 would agree with the comments I've heard. And you  
5 know, we've already lost a lot of time with not  
6 keeping in touch with some of those who want to  
7 come back, as we've heard at the hearing. So I  
8 actually would agree with everything I've heard as  
9 Commissioner May mentioned, especially with the  
10 Vice Chair's comments in this case. So, would  
11 somebody like to make a motion?

12 MR. TURNBULL: Mr. Chair.

13 CHAIRPERSON HOOD: Mr. Turnbull.

14 MR. TURNBULL: I would move that we  
15 approve Zoning Case No. -- let me make sure I've  
16 got the right one here. Zoning Commission number  
17 03-12Q/03-13Q, Capper Carrollsburg modification to  
18 PUD at Squares 739, 767, and 768, and look for a  
19 second.

20 CHAIRPERSON HOOD: Second. All of us  
21 second. You can give that to Commissioner Miller.  
22 Commissioners, we had three seconds, or do we have  
23 four? Okay. We had three seconds. So  
24 Commissioner Miller will win that one. He's the  
25 closest to the motion maker.

1           So moved and properly seconded. Any  
2 further discussion?

3           All those in favor, aye.

4           ALL: Aye.

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

8           MS. SCHELLIN: Yes. Staff records the  
9 vote five to zero to zero to approve proposed  
10 action Zoning Commission Case 03-12Q/03-13Q,  
11 Commissioner Turnbull moving, Commissioner Miller  
12 seconding, Commissioners Cohen, Hood, and May in  
13 support. And I just want to confirm that they do  
14 not need to go through the process of 2403.15  
15 through 20, which is the benefits, proffers, and  
16 conditions --

17           CHAIRPERSON HOOD: That's correct.

18           MS. SCHELLIN: -- based on what they're  
19 doing. Thank you.

20           CHAIRPERSON HOOD: That's correct. Okay.  
21 Okay. Again, I've asked us to do 13-14 last.  
22 We're going to skip over that. Let's go to 14-09,  
23 it's QC369, LLC. consolidated PUD and related map  
24 amendment at Square 369. Ms. Schellin.

25           MS. SCHELLIN: Yes, sir. Exhibit 63

1 through 64A are the applicant's post-hearing  
2 submissions and we'd ask the Commission to  
3 consider proposed action on this case this  
4 evening.

5 CHAIRPERSON HOOD: Okay. Okay,  
6 Commissioners, this is in front of us for proposed  
7 actions. Any comments? We do have some  
8 submissions that came in.

9 MR. MAY: Mr. Chairman.

10 CHAIRPERSON HOOD: Yes.

11 MR. MAY: So, I really do appreciate the  
12 applicant's lengthy submission addressing setbacks  
13 and I appreciate many of the moves that they've  
14 made to try to address the concerns about  
15 setbacks. But I still have a few problems with  
16 it, and some of them are minor. For example on  
17 A215 and 16 where they have done all the sections  
18 that show the setbacks. And very helpful  
19 diagramming. I really, really appreciate seeing  
20 that.

21 But some of them, as I said, have some  
22 minor problems, line number 6. It does not look  
23 like the setback of what they have referred to in  
24 their submission as the mechanical plinth space,  
25 that first four or 3 feet 11 of additional height



1 above the roof, is not setback by a distance equal  
2 to its height. The building -- the floor below it  
3 is stepped back a foot or so from the front of the  
4 building. And so as a result that red line that  
5 should be hitting the edge of the roof level is  
6 not hitting it. It's missing it by, I don't know,  
7 something less than a foot it seems.

8           So and there are a number of  
9 circumstances where that occurs, and it's  
10 relatively minor. I think it's number 6 on both  
11 pages, number 7 on 216. Like I said, those are  
12 relatively small. I think they can be fixed.

13           The areas where I have a bigger issue --  
14 well, there are two areas. I don't really  
15 understand how there can be a handrail on top of  
16 that 3 foot 11 plinth, because I would think that  
17 that's a structure that's above the allowed  
18 height. You know, anything that's above four  
19 feet, my understanding in past practice, anything  
20 that's above four feet has to be considered part  
21 of the mechanical penthouse. And they've got  
22 handrails that are on top of the 3 foot 11, you  
23 know, mechanical plenum as they call it. And so  
24 in affect we have something like a seven foot  
25 structure on the roof that's not really a

1 penthouse but is above the grade. I mean,  
2 typically a handrail that's set back that's on the  
3 roof, that's set back four feet from the edge, or  
4 42 inches from the edge, that's fine because  
5 that's normal. You know, we allow that amount of  
6 play within that first four feet.

7           But going up four feet and then going up  
8 42 inches I think is a problem. And I know that  
9 in some recent cases we've seen some, I think some  
10 creative solutions to that about how to step  
11 things down and how to avoid that need for a  
12 railing in that circumstance.

13           You know, thinking back on other cases  
14 where we've seen rooftop recreation and pools and  
15 things like that, I don't recall how they all  
16 treated that need for the handrail that comes when  
17 you have people at the level of height, building  
18 height, plus four feet. So I can't see how -- I  
19 can't remember how that issue is solved in all  
20 those other circumstances, and maybe there have  
21 been other cases where something like similar to  
22 this has been done, but it's, you know, because  
23 we've been seeing so many more of these sorts of  
24 things lately, have become more attune to it and I  
25 think this is an issue.

1           The second area where I have an issue is  
2 that if we look at Section 3 on A216, what we see  
3 is that first four feet of mechanical plenum, and  
4 then above that there's a platform. Well, that  
5 platform above it is the deck level for the pool.  
6 So the pool appears to be, you know, the top of  
7 the pool seems to be at about eight feet above the  
8 roof of the building. And I believe that in the  
9 past when we've seen pools that were on rooftops,  
10 and they were higher than the level of the roof,  
11 they were only at the four foot level. They were  
12 not above and beyond that.

13           Now, I don't know how they got the depth  
14 of the pool in that they needed, and whether that  
15 ate into the top floor of the building or what,  
16 but I don't think -- I do not recall ever seeing a  
17 pool that was eight feet above the height of the  
18 building, and I think that's something that needs  
19 to be addressed. I mean, as I said, typically  
20 it's just at that four foot level.

21           In fact usually what happens is the roof  
22 deck is at the roof level, and then the only area  
23 where you have a raised platform is where the pool  
24 is, and there you go up four feet to get to where  
25 the pool is. That's my recollection of past

1 cases. So maybe somebody remembers something  
2 different or, you know, knows something more about  
3 this. But that's my recollection of it and I  
4 think these need to be fixed.

5 CHAIRPERSON HOOD: Okay. Anything else?  
6 Any other comments, Commissioner May?

7 MR. MAY: We heard some concerns about  
8 from Commissioner Padro about the previous cases  
9 involving a nearby property, and concerns about  
10 this one, and you know, I think that the applicant  
11 submitted some information to rebut that on some  
12 level. Frankly I don't think that the issues  
13 raised by Commissioner Padro are something that we  
14 need to address any further. I think that's been  
15 satisfied from my perspective.

16 I do think that -- well, I did have a  
17 concern that the amenities were a bit light.  
18 Understanding that there's a great cost in the  
19 historic preservation aspect of the project, and I  
20 think that the small contribution of affordable  
21 housing is a welcome benefit of the project. I  
22 think I said it.

23 I mean, I still have a quibble with the  
24 air shaft that's within the noncompliant  
25 courtyard, but you know, that's relatively minor.

1 CHAIRPERSON HOOD: Okay. Vice Chair  
2 Cohen.

3 MS. COHEN: Thank you, Mr. Chairman. And  
4 I concur with Commissioner May. I kind of mistook  
5 or wrongly cited the swimming pool. I thought it  
6 was actually one level down, but now that I see it  
7 I concur with his observations that it is a  
8 problem.

9 And then I also think that again, I  
10 really appreciate adding the units, the two units  
11 in the housing. But I also agree that the  
12 benefits are very modest, except for, again, the  
13 historic preservation is as Commissioner May said,  
14 very costly.

15 I would suggest and would really, I  
16 think, strengthen the benefits if the two units  
17 went for a 10 year period at least. I mean, five  
18 years goes by so quickly and a lot of people  
19 likely will not want to turn over because, you  
20 know, there's no place to go that they could  
21 afford. So my hope is that the applicant will  
22 consider a 10 year period instead of the five year  
23 period which I think is very de minimis.

24 CHAIRPERSON HOOD: Okay. Anything else?  
25 Okay. Commissioner Turnbull.

1           MR. TURNBULL: Oh, thank you, Mr. Chair.  
2 I do appreciate the applicant's submission of all  
3 the extra materials, the drawings on the sections  
4 and I'm not going to get into any more of that  
5 because I think Commissioner May has covered that  
6 fairly well.

7           I do note that -- or I will note, I'm not  
8 sure in their proposed findings in fact, which is  
9 Exhibit 64A, on page 16D, Item D, maybe I'm just  
10 reading this wrong, but it says to set back the  
11 mechanical penthouses, a distance less than their  
12 height. I don't think that's worded quite right.  
13 Doesn't it mean not less than their height?

14           If it's less than their height then you  
15 could be whatever you want. So I think they just  
16 made a typo on that, but it just sounds like we're  
17 not going to meet the setback on it. But that,  
18 just going along with this whole setback issue, I  
19 just think it's badly worded.

20           The other thing, and I know -- I went  
21 back -- what I don't see her on the findings of  
22 fact or anything, and I went back to the archives  
23 and watched our video for the last hearing, and I  
24 note toward the end there, I know I made a comment  
25 and Mr. Chair, you made a comment. We talked

1 about employment. And in the proffer they say  
2 there's going to be 170 full-time permanent jobs,  
3 and 450 full-time construction temporary jobs.  
4 But there's nothing in here that talks about how  
5 that affects the city and the city residents. At  
6 least I don't -- I mean, I didn't -- unless  
7 somebody has seen it somewhere that they're talked  
8 -- and I think we even talked about a first source  
9 and that was ignored. So there's nothing in here  
10 that talks about how this benefits the city with  
11 all this new work. So that bothers me.

12           You know, so that just is something that  
13 that I think we need to -- something has to be  
14 done about that.

15           The other -- let me have my note here.  
16 But they do reference -- it's not in the findings  
17 of fact, but in their letter they do mention that  
18 they're going to have a -- they're entering into a  
19 construction management agreement in Exhibit 63,  
20 similar to what they did at the Marquis. I think  
21 that should just be at least referenced in the  
22 order. I just think they need to talk about a  
23 point of contact and just cover all that that we  
24 normally cover in the PUD, although it's nothing  
25 enforceable by us, but I think it ought to be at

1 least referenced into it, which is their Exhibit  
2 C. Part of exhibit.

3 So anyway, those are the only things that  
4 I think ought to be picked up in the order.

5 CHAIRPERSON HOOD: Thank you.  
6 Commissioner Miller.

7 MR. MILLER: All right. Thank you, Mr.  
8 Chairman. Yeah, I would echo my colleagues'  
9 commending the applicant for providing the updated  
10 renderings and making all the revisions that they  
11 did make to the penthouse to try to address  
12 Commission concerns.

13 I guess I would like to hear from the  
14 Office of Planning before we take final action. I  
15 don't know if I need to hear it tonight. But as  
16 to whether the issues that Commissioner May raised  
17 about the glass rail and the pool deck level,  
18 whether they are permitted under the height act.  
19 So I just would like the professional opinion of  
20 either our -- the Office of Attorney General  
21 and/or the Office of Planning on that point.

22 On the affordable housing, also, I  
23 appreciate the applicant adding the affordable  
24 housing proffer which didn't exist prior to our  
25 asking that they consider offering affordable



1 housing offer.

2 Madam Vice Chair, I think it's four  
3 units, not two units. They did increase it to --  
4 they increased it to four units. I would have  
5 preferred --

6 MS. COHEN: To 10 years.

7 MR. MILLER: No, not to 10 years.

8 MS. COHEN: No, five.

9 MR. MILLER: It's still five. Yeah. No,  
10 I also would have liked to have seen it at a  
11 deeper affordability level, particularly for that  
12 neighborhood. But I do appreciate them trying to  
13 be responsive. It will last for more than five  
14 years if the eligible tenant is there. They can  
15 continue to stay there at the affordable rental  
16 rates. So, in many cases it will go beyond the --

17 MS. COHEN: (Inaudible.)

18 MR. MILLER: Yeah. On the employment,  
19 Commissioner Turnbull, I think that's a good  
20 point. I think the applicant did note at the  
21 hearing in response to Commissioner Padro's  
22 testimony, that in the development of the Marriott  
23 Marquis, which they were involved with, I think  
24 they gave the -- it's not here in the written  
25 material but maybe they can just supplement before

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1 final reading, the track record that they did have  
2 there at the Marriott Marquis, which was pretty  
3 impressive, both on the construction side, in  
4 terms of District resident employment, and in  
5 terms of the hotel permanent employment. I think  
6 they're well above 50 percent of the hotel  
7 employees. I think it might have been 70. But  
8 maybe I'm not recalling the right number. But  
9 they do have a track record here in a nearby, very  
10 nearby, development and they're putting a similar  
11 hotel development here. So I think they probably  
12 could supplement in writing --

13 MR. TURNBULL: I would agree,  
14 Commissioner Miller.

15 MR. MILLER: Supplement in writing what  
16 they testified to.

17 MR. TURNBULL: I remember their  
18 discussion and I agree wholeheartedly that -- it  
19 was very successful. I was just hoping that we  
20 would have seen something here.

21 MR. MILLER: Right. So that the record  
22 is complete. Yeah.

23 So, I guess that's -- there is a lot of  
24 historic preservation involved with this project  
25 and I think the applicant has really created a

1 beautiful project that will benefit the  
2 neighborhood and the city with all the residential  
3 units and with the hotel.

4 So I think the issues that have been  
5 raised can be resolved between now and the final  
6 reading. That's my own personal -- final reading,  
7 final action. But I'll wait to hear the Chairman.

8 CHAIRPERSON HOOD: Okay. I actually  
9 would agree, Commissioner Miller. I think a lot  
10 of this can be resolved if we move forward. I  
11 know I would be inclined to move forward tonight.

12 I want to thank the applicant for  
13 responding to DDOE because they made it very clear  
14 for me, they put it in red so I got their  
15 responses, and that means a lot instead of giving  
16 me a book and I've got to go search for it. It  
17 was right there in red and I appreciate that. So  
18 that's a plus.

19 Also, I would agree with Commissioner  
20 May's comments about Mr. Padro. When I look at  
21 the list of things that have actually been  
22 proposed and that are happening and receipts, I  
23 want to thank the applicant for providing that  
24 information to us. And actually the work that  
25 they are doing in that neighborhood.

1           Also, Quincy Court had no objections. I  
2 can't remember whether that came up at the  
3 meeting, at the hearing, but we did get a  
4 submission on that, which they have no objections.  
5 And again, we need to fine-tune or at least file  
6 for the record, the track record as Commissioner  
7 Miller spoke on the DOES.

8           Other than that, I don't have anything  
9 else. Anything else?

10           MR. MAY: Mr. Chairman.

11           CHAIRPERSON HOOD: Commissioner May.

12           MR. MAY: Commissioner Miller suggested  
13 the Office of Planning submit something to the  
14 record to address the concerns that I had raised  
15 about how these structures and the roof complied  
16 with the Height Act. And I agree with that. I'd  
17 like to hear what they have to say about that. I  
18 mean, frankly I would like to hear what they have  
19 to say about how they comply with zoning because  
20 that was my initial concern. I try not to get  
21 into, you know, interpretations of the Height Act  
22 if I can avoid it. But just from a zoning  
23 perspective these things don't seem to fit with  
24 the way I understand roof structures should work.  
25 But I'm very interested in hearing what the Office

1 of Planning has to say on it. So I would welcome  
2 that.

3 CHAIRPERSON HOOD: Okay. Do you want to  
4 hear it now or --

5 MR. MAY: Well, I mean, if they're  
6 prepared to answer now, but if they're not then  
7 I'm prepared to move ahead tonight and get a  
8 report from them. But hopefully they can work  
9 with the applicant to --

10 CHAIRPERSON HOOD: Okay.

11 MR. MAY: -- make sure that what they  
12 submit for final is going to be acceptable.

13 CHAIRPERSON HOOD: Because I think --

14 MR. MAY: They support it. I mean, they  
15 should need to support it.

16 CHAIRPERSON HOOD: I think you bring up a  
17 good point but I wanted to make sure you were  
18 included in this. It seems like it's going to be  
19 a positive vote. And I didn't know if that was a  
20 show stopper for you, and I was trying not to  
21 leave your vote behind even though I really didn't  
22 mind. But okay.

23 MR. MAY: I'm happy to see it at final so  
24 long as it's right when it's final.

25 CHAIRPERSON HOOD: All right. Do we have

1 anything else? Okay, I would move --

2 MS. COHEN: Yes. No, I just want to  
3 clarify with Commissioner Miller, you know, I went  
4 back and obviously it is four units. I think I  
5 was just looking at the two one-bedrooms.

6 What I'm looking for is more of a long-  
7 term solution to a problem that even though  
8 they're giving the person or family that moves  
9 into the property, you know, if they remain in  
10 place for five, six, seven years, they remain.  
11 But if they move out, you know, the five year  
12 period, I believe, expires. That's the way I  
13 reread it, and if that's the case I still think  
14 you need to push it to 10 years at least.

15 CHAIRPERSON HOOD: Okay. Anything else?  
16 I would move approval of Zoning Commission Case  
17 No. 14-09 QC369, LLC., consolidated PUD and  
18 related map amendment at Square 369 and propose it  
19 for proposed action with the necessary comments,  
20 looking forward to the Commission seeing it at  
21 final action and ask for a second.

22 MR. MILLER: Second.

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

25 All those in favor, aye.

1 ALL: Aye.

2 CHAIRPERSON HOOD: Any opposition? So  
3 ordered. Ms. Schellin, would you record the vote?

4 MS. SCHELLIN: The staff records the vote  
5 five to zero to zero to approve proposed action  
6 with the expected changes or submissions discussed  
7 this evening, five to zero to zero, Commissioner  
8 Hood moving, Commissioner Miller seconding,  
9 Commissioners Cohen, May, and Turnbull in support.  
10 And this case will need to provide the information  
11 in 2403.15 through 20.

12 CHAIRPERSON HOOD: Okay. Next I think we  
13 have a correspondence item, Zoning Commission Case  
14 No. 08-06A, letter from the Committee of 100  
15 requesting extension of comment period. Ms.  
16 Schellin.

17 MS. SCHELLIN: Yes, sir. As you stated,  
18 it is a letter from the Committee of 100. They  
19 are asking for an extension of the comment period  
20 to be extended to 90 days instead of the 60 days  
21 that the Commission voted on in December, would  
22 ask the Commission to consider this letter this  
23 evening.

24 CHAIRPERSON HOOD: Okay. Colleagues, we  
25 have a request from the Committee of 100, which is

1 our Exhibit -- well, which is Zoning Commission  
2 Case No. -- it's Exhibit, actually, 892. That's a  
3 lot of exhibits. But anyway, this request at this  
4 -- we will presumably be the final review  
5 opportunity prior to the publication. Committee  
6 of 100 requests that the Zoning Commission extend  
7 the review period from 60 days to 90 days for the  
8 submission of comments.

9 Let me open it up. Any comments,  
10 Commissioners, on this request?

11 MR. MAY: It's taken so long for us to do  
12 this I don't see what difference it makes to go  
13 another 30 days if it's going to help members of  
14 the public to a thorough review.

15 CHAIRPERSON HOOD: Okay. Any other  
16 comments?

17 MR. MILLER: I would concur with that,  
18 Chairman, Mr. Chairman. I think the 60 days was  
19 more than the normal time provided to begin with.  
20 So the additional 30 -- let me ask a question. Do  
21 we have any kind of idea when it will be  
22 published?

23 MS. STEINGASSER: The subtitles, all but  
24 one, are with the Office of Zoning. They're doing  
25 their editing and I think several of them have



1 already been submitted to the Office of Documents.

2 MR. MILLER: Okay. So one of those, soon

3 --

4 MS. STEINGASSER: Yes. I would defer to  
5 the Office of Zoning.

6 MS. SCHELLIN: We anticipate probably the  
7 beginning to mid-March. We've sent four subtitles  
8 already to ODAI, and we're working very quickly on  
9 the others.

10 MR. MILLER: Thank you. Thank you to the  
11 Office of Zoning staff and the Office of Planning  
12 staff for all your work on this major multi-year  
13 project.

14 CHAIRPERSON HOOD: For those of us who  
15 are not familiar with ODAI, Ms. Schellin, could  
16 you tell us what ODAI is?

17 MS. SCHELLIN: Yes. It's the Office of  
18 Documents, the administrative office of  
19 administrative issuance. Yeah. Documents of  
20 administrative issuance.

21 CHAIRPERSON HOOD: Okay. Thank you.

22 MS. COHEN: And then for those of us who  
23 are not familiar with the process, it goes to them  
24 and when is it published and what is the normal  
25 process for people who may be watching, and me.

1 MS. SCHELLIN: They publish on Fridays,  
2 and so we're providing it to them ahead of time so  
3 that they can be doing their review so that there  
4 is not this big delay. So that's why we're  
5 sending it up to them as we're finishing so that  
6 they can be reviewing it ahead of time so if they  
7 have any issues they can let us know. So that's  
8 why they're getting it piecemealed so that they  
9 can look at them by subtitle so that we can get it  
10 all published at one time. So.

11 MR. BERGSTEIN: And by published we mean  
12 on the web there's no hard --

13 MS. SCHELLIN: Right.

14 MR. BERGSTEIN: -- issue anymore of the  
15 D.C. Register so the public would go to D.C. Regs,  
16 I believe, .org.

17 MS. SCHELLIN: Right.

18 MR. BERGSTEIN: Or just search D.C.  
19 Register and you'll go to the D.C. Register  
20 homepage and then when it's announced, the date of  
21 the issue of D.C. Register, you'll just be able to  
22 hit the link and then it will all come up.

23 MS. SCHELLIN: Right. And Director  
24 Bardin advised me today that she plans on putting  
25 a notice in a couple newspapers and then to all

1 ANCs, civic associations, citizen associations,  
2 putting it on our website so people will be  
3 noticed when it is published, so they will have  
4 that full 60 days to be able to provide comments.  
5 So it's not like they won't know that it's been  
6 published.

7 CHAIRPERSON HOOD: Okay. And I'm hoping  
8 we're moving it earlier as opposed to midway  
9 through, because we don't want to take any time  
10 away.

11 Now, I will say this; while we are -- we  
12 may get other requests. I'm not sure. The  
13 request came from the Committee of 100, which is  
14 just one group in this city. We may get other  
15 requests and I just want us to keep an open mind.  
16 Now, the Committee of 100 is asking for 90 days.  
17 Hopefully we will be able to achieve what the  
18 Director of Office of Zoning is trying to do and  
19 notify other agencies and other groups what's  
20 going on because I just see that request right now  
21 while Committee of 100 who has been on top of the  
22 ZRR, there are some other groups who may come back  
23 and say, we need additional time. So I just don't  
24 want to cut off and say, 90 is it. We started  
25 with 60, we have 90. But at some point in time

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1 after eight, nine years, we do need to get  
2 finished with the zoning regs.

3 And if you read it the way I'm reading  
4 it, and I've been involved with it a while, it  
5 seems to be a lot easier than the regs that I came  
6 in with that were written in 58 and it's been  
7 amended I guess over two or 3,000 times in the  
8 code. So I think if we read it and just read it,  
9 practice reading it, I think it becomes more  
10 easier to read, at least from my standpoint.

11 And I know people say, well, you go down  
12 there doing it all the time. No, I actually, it  
13 just -- I think if you read it over it becomes  
14 more easy. I just don't want us to say 90 days  
15 and we got one request and the Committee of 100,  
16 and just negate anything else. I think 90 days is  
17 enough time, but I just want us to be cognizant  
18 that we may get other requests. Okay.

19 So do we need to do anything on this 90  
20 days, or can we just wait, or what do we need to  
21 do?

22 MS. SCHELLIN: You need to either say yes  
23 or no.

24 MR. BERGSTEIN: We're going to go with  
25 what you say. When we do the notice of proposed

1 rulemaking it will say, you know, that the  
2 Commission intends to take final action, you know,  
3 no less than this number of days. So --

4 CHAIRPERSON HOOD: Well, by the time this  
5 is all ready to go for that, we may have -- and  
6 I'm not asking for it. You know, what? I'm going  
7 to reserve that because every time I say something  
8 it happens. So I'm just going to leave it alone.  
9 We'll -- right now, let's --

10 MR. MAY: So you need to have a vote, or  
11 just a consensus?

12 MR. BERGSTEIN: I think, actually, you  
13 should have a vote on this because you're changing  
14 the normative time. You've already voted once and  
15 stated what the comment period was. So if you're  
16 going to revise that, just someone make a motion  
17 that the comment period should be 90 days and that  
18 would suffice.

19 CHAIRPERSON HOOD: Okay.

20 MR. MAY: Mr. Chairman.

21 CHAIRPERSON HOOD: Yes.

22 MR. MAY: I would make a motion that we  
23 extend the comment period for the Zoning  
24 Regulation rewrite to 90 days from 60 days.

25 MS. COHEN: I'll second.

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

3 And I will also note, I'll just say this,  
4 this may not be the only request. I don't know of  
5 another one, but this may not be the only one and  
6 that's just for --

7 MR. MILLER: I think that not less than  
8 90 days covers that; allows us to --

9 MR. MAY: Well, you know, if we get  
10 another request we take another vote, right?

11 MR. MILLER: That's what I mean. Yeah.

12 CHAIRPERSON HOOD: Okay. All right.  
13 Then moved and properly seconded. Any further  
14 discussion? All those in favor, aye.

15 ALL: Aye.

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

19 MS. SCHELLIN: Yes, staff records the  
20 vote five to zero to zero to extend the time  
21 period for public -- or for the comment period to  
22 90 days, Commissioner May moving, Commissioner  
23 Cohen seconding, Commissioners Hood, Miller, and  
24 Turnbull in support.

25 CHAIRPERSON HOOD: Okay. Thank you. And

1 I would echo what Commissioner Miller said and I'm  
2 going to echo a lot of it. All the work that has  
3 been done through that whole ZRR process. And  
4 we'll do that if we ever get the final. Okay.  
5 Did we have anything else on the agenda other than  
6 -- that's it?

7 Okay. Let's go to Zoning Commission -- do  
8 we need a two minute break or everybody is  
9 alright.

10 Okay. Let's take a two minute break.

11 (Recess from 7:34 p.m. until 7:39 p.m.)

12 CHAIRPERSON HOOD: Okay. We're ready to  
13 get back on the record.

14 Next we're going to have the Zoning  
15 Commission Case No. 14-13. This is the Office of  
16 Planning Text Amendment, Penthouse Roof  
17 regulations. Ms. Schellin.

18 MS. SCHELLIN: Yes, sir. On this case we  
19 have Exhibit 55, which the record was left open to  
20 allow the ANC-1C to provide their report. Exhibit  
21 56 is the OP supplemental report with the matrix  
22 that the Commission asked them to provide and we'd  
23 ask the Commission to consider this. I don't  
24 believe the Commission at the time they considered  
25 this case in December, planned on taking action

1 this evening, but rather wanted to go through the  
2 matrix, have the discussion with the Office of  
3 Planning this evening.

4 CHAIRPERSON HOOD: Okay. Thank you, Ms.  
5 Schellin. That's exactly right.

6 Colleagues, what I suggest is that we do  
7 kind of like the format we did with the -- and I  
8 know this is out of scope. A lot of things we've  
9 been taking on have not been of the norm. This is  
10 out of scope for us typically in our meetings, but  
11 I would like for the Office of Planning, kind of  
12 do like we did when we did the guidance hearings,  
13 where we go through them as you've done in Exhibit  
14 56. And let's take them one by one and let's talk  
15 about it, and expound upon it, and then we'll have  
16 a discussion back and forth in that order. Is  
17 that okay with everybody?

18 MS. COHEN: Yes.

19 CHAIRPERSON HOOD: Okay. Mr. Lawson, are  
20 you taking the lead on this?

21 MR. LAWSON: I am. Thank you, Mr. Chair.

22 So if the Commission would like I can  
23 just kind of jump right in. Did you want me to  
24 kind of go through the matrix as a whole, or did  
25 you want to kind of go through it point by point



1 as we went through just -- which is easier for  
2 you?

3 CHAIRPERSON HOOD: For me -- well, I  
4 would suggest point by point.

5 MR. LAWSON: Okay. Sure.

6 CHAIRPERSON HOOD: Okay.

7 MR. LAWSON: Whatever is easier for you.

8 CHAIRPERSON HOOD: Is that okay with  
9 everybody, point by point?

10 MS. COHEN: Yes.

11 MR. MILLER: Yes. Mr. Chairman, before  
12 we begin I just wanted to thank the Office of  
13 Planning for providing the point by point matrix  
14 of options. I think it is very helpful. Probably  
15 is a useful exercise for you as well.

16 MR. LAWSON: It was.

17 MR. MILLER: Glad we can facilitate that.

18 MR. LAWSON: I would just like to point  
19 out, of course, you know, just before you start,  
20 just a couple of general things. First of all, of  
21 course, this isn't an exhaustive list of options.  
22 You know, there is an endless number of options.  
23 So this was intended to provide kind of some of  
24 the main directions and there certainly could be  
25 nuances within those options and we're very

1 interested in hearing the Zoning Commission's  
2 feedback on all of these.

3           The second thing I want to make really  
4 clear is that of course everything we propose we  
5 propose to be consistent with the Height Act. So  
6 in some cases we've used some almost like  
7 shorthand language to keep things clear and  
8 simple. But of course we're not proposing  
9 anything in here which when the final wording is  
10 done would be written to be inconsistent with the  
11 Height Act. We think it's important that in this  
12 regard the zoning regulations be fully consistent  
13 or as is the current case, more restrictive than  
14 the Height Act, not that we bring forward changes  
15 to the zoning regulations that would be, I guess,  
16 less restrictive than the Height Act. It just  
17 would be confusing for I think the D.C. Community  
18 if that was the case.

19           And I think --

20           CHAIRPERSON HOOD: Mr. Lawson --

21           MR. LAWSON: I'm sorry.

22           CHAIRPERSON HOOD: Oh, I'm sorry. I'm  
23 sorry. I wanted to ask you a question before you  
24 go too far because I'm probably further back than  
25 anybody up here. And I mentioned this, we talked

1 about this before. When I look at Exhibit 20 from  
2 my delegate, the Honorable Eleanor Holms Norton,  
3 she says, "I do not take a position with these  
4 merits to this public hearing report submitted  
5 last week on local implementation of the Height  
6 Act amendment by the D.C. Office of Planning  
7 because these are home rule matters. I write only  
8 to clarify that the bill's intent was to give the  
9 city, using this home rule authority the  
10 discretion to implement the amendment as the city  
11 desires.

12           Maybe we talked about this earlier and  
13 maybe I just forgot. How did we get to this  
14 point? Well, what triggered us to even do  
15 anything?

16           MR. LAWSON: Well, you may remember that  
17 a few years ago NCPC and the Office of Planning,  
18 at the request of Congress, took a look at heights  
19 in the city in general. There was a proposal  
20 brought forward that was the subject of a huge  
21 amount of public discussion, an NCPC discussion,  
22 to amend how we treated height in the District.  
23 And that included proposals all the way up to  
24 easing the Height Act in parts or in all of the  
25 city to allow additional height and additional

1 density and development potential.

2           As I said, that went through a great many  
3 public meetings. I wasn't -- to be honest, I  
4 wasn't directly involved in those meetings but our  
5 office certainly was. It included coming up with  
6 a great many illustrations and as I said, a number  
7 of public meetings.

8           In the end the decision was to undertake,  
9 instead of kind of a full-blown change to the  
10 height act in allowing additional height above 130  
11 feet, and things like that, allowing relatively  
12 minor adjustments, I guess, through the Height  
13 Act, directly related to what goes on in the  
14 penthouse.

15           And eventually what NCPC recommended and  
16 then Congress approved and the President signed,  
17 was an amendment to the Height Act which would  
18 allow habitable space within the penthouse.  
19 That's something that -- above the Height Act.  
20 And that's something that's current not -- or  
21 before this change was not permitted under the  
22 Height Act. And the other change was to adjust  
23 the height of a penthouse slightly, and that  
24 height was adjusted to 20 feet. Although, I'm  
25 trying to remember now, I think under the old

1 Height Act there really was no height limit  
2 listed. The 18 foot 6 was in zoning, but I don't  
3 think it was in the Height Act. So I guess more  
4 clearly it would be kind of to establish a height  
5 of 20 feet maximum for habitable space within a  
6 penthouse. And it always also established a  
7 stories limit for that habitable space. So 20  
8 feet and one story maximum for habitable space in  
9 a penthouse above the Height Act limit.

10 CHAIRPERSON HOOD: So technically, and  
11 I'm going to get off of this because I wasn't  
12 involved with some of that either, whether here or  
13 at NCPD. Technically the request before us --  
14 well, something that we have been considering with  
15 penthouses, the City, the way I understand  
16 Delegate Norton's memo to us is that really we  
17 didn't have to do anything. We just needed to  
18 have the right if the City chose to do something.  
19 It's not like we had to rush in and do something.  
20 Is that correct?

21 MR. LAWSON: That's absolutely correct.  
22 And that was pointed out by Congressman Norton as  
23 well for sure. It was also --

24 CHAIRPERSON HOOD: That's where I got it  
25 from.

1           MR. LAWSON: Yes. It was also pointed  
2 out by some members of the public frankly, in  
3 their comments that just because, you know,  
4 Congress did this it doesn't mean that the city  
5 has to do anything and that's absolutely right.  
6 However it was our position was the position of  
7 the administration at the time that we should take  
8 a look at penthouses given this change to the  
9 Height Act and see whether changes should be made  
10 to the Height Act.

11           We brought forward a series of proposals,  
12 I think originally back in July of last year,  
13 which quite frankly were pretty expansive and it  
14 would address penthouses below the Height Act  
15 limit as well as penthouses above the Height Act  
16 limit.

17           The Commission raised many questions.  
18 You had a hearing of course, and you had many  
19 questions about what we proposed, and that's kind  
20 of what brought about this matrix. I think  
21 members of the Commission wanted to see a fuller  
22 discussion of what some of the options might be.  
23 And particularly kind of, I got the sense that  
24 there were Commission members who wanted to tailor  
25 the permissions a little bit more, based on zone

1 and based on what heights and densities are  
2 permitted in some of these zones, and maybe what's  
3 appropriate in one zone is not appropriate in  
4 another.

5 CHAIRPERSON HOOD: And I promise this is  
6 my last question. Does that continuum goes with  
7 the administration that we have now?

8 MR. LAWSON: We've heard nothing that has  
9 requested that we not take this forward.

10 CHAIRPERSON HOOD: Okay. Okay. Any  
11 other questions on this?

12 MR. MAY: I just want to mention one  
13 thing which is that the passage of this change to  
14 the Height Act did immediately have one effect on  
15 rooftop uses, which is that the zoning regulations  
16 right now state something. I don't know exactly  
17 where it is. But it says something like, when not  
18 in conflict with the Height Act you can have a  
19 rooftop interior space that is accessory to an  
20 outdoor use.

21 And so we had been accustomed to having  
22 rooftop party rooms in buildings that were below  
23 the Height Act height. And once this bill was  
24 passed we could have them when a building was at  
25 the Height Act height. So you could have that

1 outdoor recreation space, patio, pool, whatever,  
2 and then have a party room that was accessory to  
3 that use. And that was an immediately effect of  
4 that change in law. We didn't have to do  
5 anything.

6 So already something has changed as a  
7 result of that act of congress.

8 CHAIRPERSON HOOD: All right.

9 MR. TURNBULL: Wasn't that primarily  
10 residential?

11 MR. MAY: Well, I think the benefit  
12 accrues primarily to residential uses --

13 MR. TURNBULL: Right.

14 MR. MAY: -- but there's nothing in the  
15 Height Act that says that it applies only in  
16 residential.

17 MR. TURNBULL: Yeah, I don't think --

18 MR. MAY: I don't know. I mean, I forgot  
19 what the particulars are of the zoning reg that  
20 says when not in conflict with the height act,  
21 blah, blah, blah. I don't know where that is.

22 MR. LAWSON: Under the current zoning  
23 regulations that applies just to residential  
24 buildings, but --

25 MR. TURNBULL: That's what I thought.



1           MR. LAWSON: -- the height act is, the  
2 language is certainly broader. There's not that  
3 restriction.

4           CHAIRPERSON HOOD: Okay. Any other  
5 questions? Okay. Commissioner Miller.

6           MR. MILLER: I'm sorry to delay, but just  
7 as an amplification of the legislative history, I  
8 just wanted to note a couple things. One is that  
9 I went back and read the House Committee report  
10 accompanying this Federal Height Act change. They  
11 have language there that says -- that clearly  
12 recognizes that it's the Zoning Commission's  
13 authority to do this or not to do this. But they  
14 do have a sentence there that says that the  
15 Committee anticipates that the Zoning Commission  
16 will take action to implement. They had -- I just  
17 wanted to point that out as, just as a matter of  
18 legislative history.

19           And the other thing is that the council  
20 chairman and the mayor's office and OAG were  
21 involved with the drafting consulted on the  
22 language that was ultimately adopted by the  
23 congress.

24           CHAIRPERSON HOOD: Okay. My only  
25 question to that, though, was it the current

1 administration or was it the past administration  
2 because --

3 MR. MILLER: In previous years.

4 CHAIRPERSON HOOD: Because I have been  
5 here, and I will put it out there, it's been so  
6 long ago don't nobody remember. In November the  
7 Commission got an Office of Planning report that  
8 said, do something. And in February we got the  
9 same report, they said don't do something. So I  
10 was just asking the question. That's all. And  
11 I'm sure I'll get in trouble for that too, but I'm  
12 not worried about it.

13 Okay. Any other questions up here?

14 Okay. Thank you, Mr. Lawson.

15 MR. LAWSON: No, thank you, those are all  
16 great questions and clarifications. I appreciate  
17 it.

18 So we kind of organized this a little bit  
19 differently and then we kind of went with some of  
20 the big items first. One of the things we wanted  
21 to really kind of point out was that in many  
22 respects the recommendations are very much  
23 interrelated. The decision we make on one will  
24 have an impact on some of the decisions you'll  
25 make on some of the other things.

1           So we bought up some of the kind of  
2 bigger items first so that you can start to address  
3 them and it may help you in your deliberation for  
4 some of the more detailed points that come up  
5 later in the report.

6           So the first one that we brought up was  
7 penthouse height. Of course under the current  
8 regulations a penthouse height of 18 and a half  
9 feet is permitted. Under ZRR the Zoning  
10 Commission has actually of course already taken  
11 proposed action to change that a little bit  
12 already. Under ZRR you would limit the penthouse  
13 to 10 feet. We would limit the penthouse height  
14 to 10 feet, and that would be in any zone where  
15 the height of the building is restricted to 40  
16 feet. So that would be R1 through R4, R5A, W1,  
17 C1, and CM1, all of those zones limit height to 40  
18 feet for the building, so the penthouse height  
19 would be limited to 10 feet.

20           So that's pretty similar to some of the  
21 options that are up there. Again, just kind of  
22 going through these options quickly and I don't  
23 think I'll read through all of them, but I'm  
24 certain available to answer questions if you would  
25 like to. Obviously the first option is just to

1 allow 20 feet in any penthouse in any zone.

2 That's not what we recommended.

3           We did recommend something a big closer  
4 to what's in ZRR. In discussions with OAG there  
5 is some nuancing to this language and what we  
6 originally proposed in that we proposed that the  
7 10 feet height for a penthouse be limited to any  
8 single family dwelling or flat regardless of the  
9 zone. So it would apply to a single family  
10 dwelling or flat in any zone. But I think one of  
11 the things the Commission was discussing was  
12 should that 10 foot limit be expanded to other  
13 uses that are permitted within those zones, and  
14 that would actually be more similar to what you  
15 took proposed action in under ZRR where the 10  
16 foot limit is based on zone as opposed to what was  
17 in our October report, which was really more based  
18 on use.

19           Of course we also propose that where  
20 there is an overlay that limits the -- has  
21 potentially limits the penthouse height, that  
22 those limits be retained.

23           So based on some of your discussions we  
24 did bring forward a couple of other options that  
25 you may want to consider. For example, expanding

1 the zones where a 10 foot height penthouse would  
2 be permitted. Potentially limiting height to 10  
3 feet in some zones but allowing a higher height,  
4 whatever that may be, by special exception. And  
5 of course there's always the option of retaining  
6 the existing height of 18 and a half feet in all  
7 zones other than the low density zones.

8 So with that I'm happy to take questions  
9 on this one.

10 CHAIRPERSON HOOD: Any questions? Okay.

11 MR. LAWSON: I should say questions or  
12 direction.

13 MR. MAY: Well, I mean, we're just going  
14 to go into our discussion of the options. Is that  
15 what we're --

16 MS. COHEN: Yeah.

17 MR. MAY: Where we're heading right now,  
18 or is this just questions of Mr. Lawson?

19 CHAIRPERSON HOOD: Yeah. You want to  
20 talk about them or questions, either one.

21 MR. MAY: All right.

22 CHAIRPERSON HOOD: We can do both.

23 MR. MAY: All right. So I have one  
24 question. You indicated in your matrix that  
25 you're not adverse to reducing or setting the

1 height limit for R5A or R5B and the low density  
2 mixed use, C1, C2A, and C2B to only 10 feet. Are  
3 those generally buildings that are going to be in  
4 the 50 foot range? Is that where --

5 MR. LAWSON: Well, C2B would certainly be  
6 well above --

7 MR. MAY: Right.

8 MR. LAWSON: -- 50 feet. C2A, C21, R5B,  
9 those are all in the 50 foot range. C2B is more  
10 of a 65 and up --

11 MR. MAY: Yeah.

12 MR. LAWSON: -- foot zone.

13 MR. MAY: Right. So it's not so much  
14 based on the height as it is the density of the  
15 zone.

16 I'm sorry, say again. R5B was what  
17 height?

18 MR. LAWSON: I believe it's 50 feet.

19 MR. MAY: Fifty feet.

20 MR. LAWSON: And that would be -- what  
21 we're talking, just for the sake of the audience,  
22 we're always talking the by right permitted  
23 height.

24 MR. MAY: Right.

25 MR. LAWSON: Many of these zones have a

1 PUD amount as well.

2 MR. MAY: Okay.

3 MR. LAWSON: Which would be higher.

4 MR. MAY: Right.

5 MR. LAWSON: Or in some cases, an IZ,  
6 inclusionary zoning amount that might be a bit  
7 higher.

8 MR. MAY: Uh-huh. And at 10 feet, that's  
9 not high enough to have an elevator go to the  
10 roof.

11 MR. LAWSON: It can be. I think it  
12 depends on the nature of the elevator. I think it  
13 would make it certainly more difficult. From  
14 discussions we've had with some developers it's  
15 certainly easier on a lower building just because  
16 they can use somewhat different technologies in  
17 some cases for that elevator. I'm honestly not an  
18 expert on this so I won't get into it too much.  
19 But certainly as the building goes higher it  
20 becomes more and more difficult to fit a penthouse  
21 within 10 feet.

22 MR. MAY: Right. So I mean, just based  
23 on that discussion, I am inclined to, you know, go  
24 with what's been proposed with the exception that  
25 the two numbers that were footnoted at 20 feet,

1 that you could go with 10 feet. I would be  
2 inclined to stick with 10 feet on those. Maybe  
3 not with C2B which starts at 65 feet, but -- and  
4 maybe the way to word it is that any zone that's  
5 50 feet or less by right, that it be limited to 10  
6 feet.

7           And then if we get -- you know, I think  
8 the concern I would have is that if that means  
9 that when you have an apartment building that's 50  
10 feet tall, that you can't have an elevator going  
11 up to a roof deck. I think that might be a  
12 problem. So maybe we'll hear testimony or we'll  
13 find out more, somehow, about how technically  
14 feasible that is.

15           MR. LAWSON: I think that's exactly the  
16 case. I think whatever is advertised now the  
17 development community is watching very closely as  
18 is, you know, ANCs and community groups.

19           MR. MAY: Right.

20           MR. LAWSON: So I think you'll get great  
21 feedback on --

22           MR. MAY: Right.

23           MR. LAWSON: -- just technically what's  
24 possible.

25           MR. MAY: Right. And okay. I guess I'm



1 hoping for that. That's all I have to say about  
2 this one.

3 CHAIRPERSON HOOD: Yeah, speaking of  
4 that, now I'm going away from this again, Mr.  
5 Lawson not to keep beating a dead horse, but I  
6 think I have to go away because the submissions  
7 that I read, I think we ask that -- and I know  
8 we're doing this in the middle -- well concluding  
9 the ZR. I think the Commission asked, I know  
10 specifically I may have, I believe I asked, that  
11 we have some kind of outreach to do something to  
12 the community.

13 And what I've noticed from ANC, one of  
14 the ANCs in Ward 7, is that again I'm hearing the  
15 same thing I heard with ZRR, that nobody knows  
16 what we're doing or what's going on. What was  
17 done for outreach to like community groups, as  
18 opposed to developers? I know developers are  
19 watching, but what about the community groups?

20 MR. LAWSON: For the Height Act  
21 discussion?

22 CHAIRPERSON HOOD: For this whole  
23 discussion with penthouses.

24 MR. LAWSON: Well, we could certainly  
25 supply you with a copy of the outreach efforts

1 that went on as a part of that discussion. Again,  
2 our intent was to build on the discussion that  
3 already had happened in the community and to  
4 address changes to the zoning based on that  
5 discussion. It included a number of meetings in  
6 the community, various communities throughout the  
7 District, the whole community outreach process, I  
8 believe, lasted close to a year, so it wasn't a  
9 short process.

10 CHAIRPERSON HOOD: So, November 24th,  
11 Exhibit No. 54 from ANC 7B, it says be it further  
12 resolved, advise your neighborhood commission 7B  
13 and employ the Zoning Commission to hold the  
14 record open for a further 90 days to allow full  
15 public comment, and in the interim hold two  
16 roundtables requiring visual presentations by the  
17 Office of Planning, explaining the intent of  
18 changes so proposed by them, and to make a  
19 roundtable available on the Zoning Commission  
20 website and coordinate this issue with -- well,  
21 I'm not going to read the last part because we're  
22 not going to do any coordinating efforts since.

23 But I'm just trying to figure out why --  
24 let me ask this. Did we go out to 7B, or did 7B  
25 come in?

1           MR. LAWSON: I didn't administer that  
2 public outreach process. It was done by other  
3 parts of the Office of Planning. So as I said, I  
4 can certainly get that list of community meetings  
5 that happened. I'm not sure if there was a  
6 meeting directly with 7B, but I know that there  
7 were a number of community meetings and they were  
8 spread out around the city.

9           CHAIRPERSON HOOD: Okay. And I'm not  
10 picking on you, Mr. Lawson. I'm just saying one  
11 of the things that we get accused of a lot is that  
12 we're down here making decisions in a vacuum, we  
13 don't outreach, nobody knew about it, and I hear  
14 that a lot. Quite a bit. Even if I'm just  
15 walking down the street. I don't know about my  
16 other colleagues, but we hear that a lot and then  
17 the record also shows evidence of it. At least  
18 the comments we got.

19           And one of my comments I had previously  
20 was, where is everybody at, at the hearing? Where  
21 was everybody? Again, you know, it's always that  
22 we're trying to sneak something in. I live in the  
23 city. I'm one of the recipients. I'm not trying  
24 to sneak anything in. And I don't think nobody up  
25 here is.

1 MR. LAWSON: Right, and neither are we,  
2 you know. And I think --

3 CHAIRPERSON HOOD: Well, that's why, I  
4 thought I covered all of us.

5 MR. LAWSON: Right.

6 CHAIRPERSON HOOD: So, my point is, what  
7 is it that we're possibly may not be doing to get  
8 people engaged, and then they get engaged after  
9 the fact? I don't know. Maybe if I had that  
10 question I'd be a multimillionaire. I don't know.

11 But anyway, I'm not going to interrupt  
12 anymore but those are some of the concerns that I  
13 have as we move forward because we're not trying  
14 to slip anything in on anyone. Ms. Steingasser.

15 MS. STEINGASSER: Could I add, Chairman  
16 Hood? At the very minimum they get the official  
17 notice from the Office of Zoning. That goes to  
18 ever single ANC. So they were noticed and they  
19 will be noticed again with this public hearing.

20 And at the end of the public hearing in  
21 December -- was it December? November. The  
22 Commission expressed concern and OP put together  
23 an unofficial but a detailed summary of the  
24 proposals and sent those out to every single ANC.  
25 And that was in addition to what the Office of

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1 Zoning officially does. So we did do a bit of  
2 extraordinary outreach, just for this particular  
3 case in addition to what we've done for the Height  
4 Act Study.

5 CHAIRPERSON HOOD: Okay. All right. Mr.  
6 Lawson, I won't interrupt anymore. I don't think.

7 MR. TURNBULL: Yeah, Mr. Chair, I wonder  
8 if I may just make a comment?

9 Part of the thing with the heights on  
10 some of these penthouses, I mean, some of it is  
11 definitely a technical aspect. I mean, you either  
12 have an hydraulic elevator, you can have a  
13 traction elevator. Hydraulic elevators are listed  
14 by the oil pressure of the piston, how much it can  
15 raise an elevator up, whether it's 40 feet, 50  
16 feet. So that is definitely a question. Once you  
17 get up to a point where you're beyond 60 feet, you  
18 definitely need a traction elevator. You need  
19 more height to be able to put the equipment up  
20 there.

21 The other thing, though is I think, and  
22 even the Committee of 100 mentioned this is that  
23 allowing a higher density -- a higher penthouse  
24 and a lower -- in an area, residential area, from  
25 the standpoint of height, there have been a lot of

1 comments about the over -- that the density of the  
2 neighborhood is going to grow and going to take  
3 away from the character by having a larger  
4 penthouse. So you've got to balance the technical  
5 aspects with the density of the neighborhood and  
6 what is going to be best for that. So I think  
7 it's a double-edge way to look at this.

8 CHAIRPERSON HOOD: Any other comments on  
9 this first?

10 MS. COHEN: Yeah. My question is that  
11 presently the existing zones, all them allow 18.5.  
12 And in two of them, now, you're suggesting to be  
13 reduced to 10 feet. Can you explain that?

14 MR. LAWSON: Sure. It's actually more  
15 than two zones because right now under the current  
16 regulations a penthouse height of 18 and a half  
17 feet is permitted in all zones.

18 MS. COHEN: Yeah.

19 MR. LAWSON: So through ZRR, and through  
20 this process we've proposed lowering the height to  
21 10 feet in R1, R2, R3, R4, R5A --

22 MS. COHEN: No, I can read.

23 MR. LAWSON: That would be 1, C1 and C1.  
24 So that would be eight zones, all together.  
25 That's what was proposed under ZRR. And under

1 this proposal it's basically similar to that,  
2 although as I said, we've proposed an option that  
3 it could be related more to the kind of use than  
4 it is to the kind of zone. And I think that's  
5 intended to reflect the nature of those areas.  
6 The buildings are lower, so the penthouse itself  
7 can typically be lower. And so we honestly, we  
8 don't often see an 18 and a half foot penthouse,  
9 you know, on a row-house anyways.

10 MS. COHEN: Thank goodness.

11 MR. LAWSON: So it's just kind of  
12 reflecting reality to some extent. But also that  
13 I think there is some feeling that an 18 and a  
14 half foot penthouse on a 40 foot building just has  
15 a greater impact than an 18 and a half foot  
16 penthouse on a 65 or 130 for that matter, foot  
17 building. It's just a question kind of scale. So  
18 that's where this proposal came from.

19 MS. COHEN: Thank you.

20 CHAIRPERSON HOOD: Mr. Lawson -- any  
21 other questions?

22 Okay. Help me understand. In moderate,  
23 for example in the matrix we have R5A and R5B.  
24 Existing right now is 18.5 and proposed was 20.  
25 So it's just a difference of that. Are we talking

1 about one and a half additional? What is it?  
2 Help me understand.

3 MR. LAWSON: There's kind of two things  
4 you're dealing with with height here. One of them  
5 is that the Height Act increase the height from 18  
6 and a half to 20 feet, so that's kind of question  
7 number 1. Are there zones where you think it's  
8 appropriate for the zoning to mimic, I guess, the  
9 Height Act to allow 20 feet instead of 18 and a  
10 half?

11 And then the second part of the question  
12 is, are there some zones where you would actually  
13 like to follow your lead from ZRR, and instead of  
14 raising the height to 20 feet, lower the permitted  
15 height down to what you've looked at so far as 10  
16 feet.

17 CHAIRPERSON HOOD: Okay.

18 MR. LAWSON: So it's kind of a two-part  
19 question.

20 CHAIRPERSON HOOD: Got you. Okay,  
21 anything else? Anybody else?

22 MR. MILLER: Yes.

23 CHAIRPERSON HOOD: Commissioner Miller.

24 MR. MILLER: So just in terms of  
25 providing maybe direction, although I'm not even



1 sure of my own position being locked in any kind  
2 of zone at this point. We're going to have a  
3 whole another round of public hearing. So, I want  
4 to hear that testimony but in terms of what's on  
5 this matrix of options, I am supportive of the  
6 option B, which is the current Office of Planning  
7 proposal, as I understand it.

8           And I guess following up on Commissioner  
9 May's dialog with you, option C, which would  
10 extend that lower penthouse height to additional  
11 zones, I think if we had that language there in  
12 Option C, that he suggested adding where the  
13 matter of right height is no more than 50 feet, I  
14 would take out the medium, personally. I wouldn't  
15 want to see medium. Just limit, so that it would  
16 be limit height to 10 feet. This is just a  
17 summary statement. But limit height to 10 feet in  
18 additional moderate density residential and/or  
19 mixed use zones where the matter of right height  
20 is no more than 50 feet, but allowing additional  
21 height up to 20 feet by special exception.

22           If there is a way we can get it to be  
23 matter of right instead of through a special  
24 exception or process where these technical issues  
25 need to be accommodated, I don't know if there's a

1 way to do that. But where there's a PUD in a  
2 certain district.

3 But anyway, that would be my preference  
4 at this point for this particular subject.

5 MR. MAY: I mean, I think I can go along  
6 with that approach and at least you know, in terms  
7 of the draft that we share with the public and we  
8 hear what they have to say. I think that's  
9 reasonable. You know, it's a little tighter than  
10 what we had originally from the Office of Planning  
11 but it's, I think, a reasonable, you know, kind of  
12 middle ground.

13 CHAIRPERSON HOOD: Okay. I'm not sure if  
14 I'm there with that. Maybe it's just that I need  
15 to understand it a little better. But I'm not  
16 sure if I'm there because you said not less --  
17 what was it, 50 feet. In the option there's a  
18 special exception. Or we're taking special  
19 exception out and then we'll add another 20 feet.  
20 Is that what you're saying?

21 MR. MAY: No, the ideas is that anything  
22 at 50 feet or less is limited to 10 feet.

23 CHAIRPERSON HOOD: Okay. Ten feet.

24 MR. MAY: If you need more than 10 feet  
25 for some reason you could go there by special

1 exception as opposed to having to get a variance,  
2 which is the other way that you could go there.

3 MR. MILLER: And right now it's 18 and a  
4 half.

5 MR. MAY: Right. I mean, and that's  
6 another thing to consider is whether we actually  
7 want to change the 18 and half to 20 because  
8 remember, in ZRR it was proposed to go to 20 and  
9 then the Office of Planning, I think backed away  
10 from that based on public input. And the only  
11 reason we're talking about 20 again is because the  
12 Height Act modification actually included the 20  
13 foot limit, and I think that was necessary because  
14 it was, you know, the change in the height act was  
15 opening the door for occupiable space on  
16 penthouses and there had to be some controls on  
17 that.

18 CHAIRPERSON HOOD: I'm not there yet. I  
19 still, you know, I don't have a problem with  
20 advertising but I just think we're going to have  
21 some character issues for neighbors. At least the  
22 way I perceive it.

23 MR. MAY: Are you concerned that even the  
24 special exception is a problem? Or are you  
25 concerned that --

1 CHAIRPERSON HOOD: Well, no, I don't  
2 think that's --

3 MR. MAY: -- about 10 feet being too low?

4 CHAIRPERSON HOOD: No, I'm talking about  
5 the character of neighborhoods.

6 MR. MAY: Right.

7 CHAIRPERSON HOOD: In those zones.  
8 That's kind of where I am now. I'm looking at  
9 that. But we can put it out there and let's hear  
10 the discussion. Maybe I'm in a forest right now,  
11 I don't know.

12 MS. COHEN: I think the way I'm  
13 understanding this is that it's the technical  
14 problems that if you limit certain penthouses  
15 you're going to compromise the use of what type  
16 of, you know, elevator shaft they can -- or  
17 elevator they can put in. And what we want to do  
18 is accommodate that. Is that my --

19 MR. MAY: Well, I mean, that's one of the  
20 considerations. But I think what the Chairman may  
21 be concerned about is that, you know, allowing a  
22 penthouse at all in an R4 neighborhood may not  
23 make sense. I mean, we understand that there's a  
24 -- you know, people want to have roof decks. Some  
25 people do. But frankly the way I've seen many

1 roof techs done of late, they really look awful.  
2 Not all of them, but they often look awful, and  
3 they're quite visible. Especially if it's on top  
4 of a third floor addition beside two-story houses.  
5 And then you wind up with a stairway that makes it  
6 go even higher.

7           So I mean, I see a concern with that. I  
8 mean, part of me would like to just say nothing.  
9 You know, no penthouses without a special  
10 exception at 40 -- when you're talking about a 40  
11 foot building.

12           MS. COHEN: Well, not everybody has  
13 usable outdoor space. But if you have a setback,  
14 is that what you are referring to?

15           MR. MAY: Well, and that's not the only  
16 way to get to the roof either. In years past the  
17 way to get to the roof was with a stairway off of  
18 the rear balcony. Or the rear porch. You know,  
19 which still works and it's much lower tech.

20           CHAIRPERSON HOOD: You know, you know,  
21 let me ask the Office of Planning. When we do the  
22 proposed, can we put diagrams with it? I'm  
23 asking, can we -- so people can see exactly what  
24 we're talking about? Maybe the diagrams will just  
25 be for me, but can we have diagrams?

1           MR. LAWSON: We can certainly prepare  
2 diagrams. We can post those on our website. We  
3 can certainly have them available for the Zoning  
4 Commission. I would defer to OAG whether or not  
5 the actual public hearing notice could include  
6 those diagrams.

7           MR. MAY: I think it can. In other  
8 words, we have a lot of leeway what we put into a  
9 public hearing notice, as opposed to a notice of  
10 proposed rulemaking. So we can be pretty creative  
11 in terms of what's in the public hearing notice.

12           CHAIRPERSON HOOD: Okay. I think that  
13 would be very helpful. For me. No, I'm just --  
14 for me too. So.

15           MR. TURNBULL: I think I'm okay with  
16 this. But let me just, if we're talking about  
17 moderate, are we now extending that to R5A, R5B?  
18 Is --

19           MR. MAY: Well, what Commissioner Miller  
20 suggested was 50 feet. So that would be R5A and  
21 B, and then C1 and C2A. But not C2B.

22           MR. TURNBULL: That's my understanding of  
23 it. So I just wanted to be sure that that was it  
24 because I think I'm okay with that then.

25           MR. MAY: All right.

1           CHAIRPERSON HOOD: Okay. I think we're  
2 moving pretty fast here. So let's go to the next  
3 one.

4           MR. MAY: I'm sorry. I didn't want to  
5 beat this to death, but, Mr. Chairman, do you  
6 actually want to suggest as an alternative that we  
7 might ask people about limiting -- I mean, there  
8 being no allowance for penthouses at buildings of  
9 40 feet or less, or at least residential buildings  
10 at 40 feet or less?

11           CHAIRPERSON HOOD: Honestly, I don't know  
12 what I want. I just know that what I'm reading,  
13 the way I'm understanding it, it looks like we're  
14 changing the character. But if you think that  
15 will help me get what I've expressed, then I'm all  
16 for it.

17           MR. MAY: Well, I mean, this is right now  
18 you can have an 18 foot 6 penthouse on top of an  
19 R4 house. And that's allowed under zoning. But  
20 obviously that's a character changing kind of  
21 thing to do and honestly there's no incentive to  
22 do it.

23                   But once we introduce habitable space  
24 within penthouses there becomes a -- there becomes  
25 a very strong incentive.

1 CHAIRPERSON HOOD: Strong incentive.

2 Right. Right. I understand that.

3 MR. MAY: So maybe that's, you know --

4 CHAIRPERSON HOOD: Okay. Yeah, let's put  
5 that as the alternative, about --

6 MR. MAY: As an alternative add-on to not  
7 allow --

8 CHAIRPERSON HOOD: Not allowing in the R  
9 --

10 MR. MAY: -- anything on a 40 foot  
11 building. Of course we're talking about -- yeah,  
12 40 feet or less, which would include R1 through  
13 R4.

14 MS. COHEN: But then you are limiting the  
15 opportunity to build up for a family who may want  
16 to add a room for an additional, let's say they  
17 have an extra child. And you're --

18 MR. MAY: Well, no, you'd still be able  
19 to do that. I mean, for an R4 you can have three  
20 stories anyway, and you know, you can grow that  
21 way.

22 CHAIRPERSON HOOD: Well, we can also put  
23 that alternative out there and let's see what the  
24 public says.

25 MS. COHEN: I think that's fine. I mean,



1 I want to make sure that 50 foot remains.

2 CHAIRPERSON HOOD: I mean, we may have  
3 our opinions, but I still think we need to hear  
4 from the public. What I'm saying may not even be  
5 a discussion. I don't know.

6 MS. COHEN: No, I'm not arguing about  
7 that, Mr. Chairman. I just want to make sure that  
8 people -- that we don't have these, quote,  
9 unintended consequences that create problems for  
10 people who need to expand in their own dwelling  
11 unit.

12 CHAIRPERSON HOOD: Again, let's put it  
13 out there and I'm sure the public will let us  
14 know.

15 MR. LAWSON: We're happy to include that  
16 in the alternative. Just so I'm clear from the  
17 commission members, the alternative, was that to  
18 apply to any development within a zone that's  
19 limited to 40 feet in height, or is this to apply  
20 to single-family dwellings and row-houses?

21 I have some concern about it applying to  
22 any development because for example R5A does allow  
23 a multi-family building.

24 CHAIRPERSON HOOD: Right.

25 MR. LAWSON: With, you know, BZA review.

1 So I just want to make sure I'm clear on that.

2 MR. MAY: I mean, my thought is that it  
3 would apply for row-houses and single-family  
4 homes.

5 CHAIRPERSON HOOD: Yes.

6 MR. MAY: Not the R5s where you have  
7 potentially a need for multiple people to have  
8 access to a roof deck or something like that.

9 MR. LAWSON: But, sorry, now I'm the one  
10 who is kind of belaboring something. Just so I'm  
11 absolutely clear. To the use of single-family and  
12 flat, or to the single-family and flat zones  
13 because those zones do allow some other uses, such  
14 as a church or a school. I haven't seen, you  
15 know, providing an elevator being a big issue in  
16 uses like that. But just so the notification is  
17 as clear as possible.

18 MR. MAY: I would think uses because  
19 again it really -- I mean, what we're trying to  
20 get at is, does it make sense to have a 10 foot  
21 penthouse on top of an R4 row-house, or a single  
22 family detached house? And it kind of doesn't.

23 MR. LAWSON: Got it. Thank you.

24 MR. MAY: Or one could argue that it  
25 doesn't.

1           MR. MILLER: Yeah, I would agree with the  
2 applying to uses and not the zone, because I  
3 thought we had done something else previously in  
4 this proposal that took institutional uses out of  
5 it all together. Or wasn't treating them the same  
6 way.

7           MS. COHEN: Through the zoning rewrite we  
8 did --

9           MR. MILLER: Oh, it was in the zoning  
10 rewrite.

11          CHAIRPERSON HOOD: Okay.

12          MR. MILLER: Okay. So let me just  
13 understand, on this alternative that prohibits a  
14 penthouse in single flat -- flat uses that are no  
15 more than -- allowed to be no more than 40 feet  
16 high, are we going to allow special exception  
17 relief valve in case there's the odd case that  
18 someone comes forward with? I would suggest that  
19 we allow it. I mean, going from an 18 and a half  
20 by right I think that we should -- I think the  
21 special exception relief valve would be  
22 appropriate, and that would allow the neighborhood  
23 to address neighborhood character.

24          MR. MAY: You know, I don't have any  
25 problem with that. I mean, certainly if people

1 think that having that special exception is a  
2 problem, we'll hear testimony to that affect.

3 MR. MILLER: I just --

4 MR. MAY: So but let's put it out there.

5 MR. MILLER: -- didn't know if it was in  
6 there or not.

7 MR. MAY: Yeah. Yeah.

8 MR. MILLER: Okay.

9 MR. MAY: I mean, I wouldn't have any  
10 problem with that. Chairman?

11 CHAIRPERSON HOOD: Add it on. You know,  
12 I want to hear from the public.

13 MR. MAY: Right.

14 CHAIRPERSON HOOD: Put it all out there.  
15 Okay. What number are we on now?

16 MR. LAWSON: Thank you, Mr. Chair.

17 CHAIRPERSON HOOD: We're really moving  
18 fast, so Mr. Lawson?

19 MR. LAWSON: Well, as I said, the tough  
20 ones kind of came early so maybe some of the rest  
21 won't be so difficult. But this one actually may  
22 not be an easy one. This is the number of stories  
23 within a penthouse.

24 As we noted down below, currently the  
25 zoning regulations do not limit the number of

1 stories within a penthouse. The Height Act now  
2 does provide this limit, as we said, for habitable  
3 space above the penthouse height. We had  
4 originally proposed to allow two stories within a  
5 penthouse where the penthouse would not be in  
6 conflict with the Height Act. And we certainly  
7 got lots of feedback on that.

8           And just to be clear, that would be two  
9 stories for either habitable or non-habitable  
10 space, or potentially one story of each. Which  
11 actually is something we see now from time to  
12 time. We have seen examples of penthouses that  
13 have a story that is like recreation space or kind  
14 of more communal space, and then some of the  
15 mechanical equipment is up above, so that wouldn't  
16 be unusual.

17           But our reasonable proposal was to allow  
18 two stories in most zones, but limit it to one  
19 story in some of the lower density zones. And  
20 that's kind of spelled out in the chart down below  
21 based on some of the discussion we just had. I  
22 think that that one-story limit would expand in  
23 the notification to include the zones where height  
24 of the penthouse would also be limited to 10 feet.  
25 Or of course there are other options of simply

1 limiting the penthouse height to one story,  
2 period. Or one of the ones that we raised for  
3 your consideration was to limit the habitable  
4 space to one story but to allow a second story for  
5 mechanical for non-habitable type uses.

6 So those are some of the options before  
7 you and I'm happy to answer any questions and take  
8 direction.

9 CHAIRPERSON HOOD: Okay. Thank you. Any  
10 comments? Vice Chair Cohen.

11 MS. COHEN: I just want to state that I  
12 believe the October 2014 OP proposal is acceptable  
13 to me.

14 CHAIRPERSON HOOD: Okay. Anyone else?  
15 Commissioner May?

16 MR. MAY: Yeah. You know, I think that  
17 the conclusion I came to after hearing as much  
18 testimony as we did about this case originally,  
19 has pushed me into the single story limit for any  
20 habitation. And I feel that way across the board,  
21 whether it's above the Height Act or below the  
22 Height Act. That really this is not -- I mean,  
23 the intention was, as I understand it, within the  
24 modifications of the Height Act, that I had some  
25 role in how that came about, was to allow

1 habitation within the existing penthouse envelope  
2 the way it is, because it can be done with you  
3 know, no real effect on the overall Height Act.

4           And I think that as soon as we start to  
5 get into second stories you wind up, you know,  
6 incentivizing in essence, you know -- I mean, it's  
7 too strong an incentive, I guess is the way to put  
8 it. I think the idea that you could have a  
9 habitable floor in a penthouse and then maybe have  
10 mechanical equipment above it or you know, maybe  
11 part of it is a, you know, is a double height  
12 habitable space, and then part of it is all  
13 mechanical space. I mean, I think that that's  
14 really sufficient. And I think that if we add the  
15 ability to have that second floor in there it just  
16 creates this incentive to just kind of jam extra  
17 stuff in there and it's going to wind up -- you  
18 know, people are going to wind up going to the BZA  
19 for special exceptions on setback rules. I mean,  
20 we've already seen people come to us trying to  
21 maximize their rooftop habitable space at the  
22 expense of setbacks. And I feel very strongly  
23 that, you know, the setbacks should be met first  
24 and then you know, the rest of it has to live  
25 within that envelope and I think that part of what

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1 we're up against is that adding second stories,  
2 even below the Height Act height, just  
3 incentivizes the wrong things.

4 CHAIRPERSON HOOD: Okay. Any other  
5 comments on that? Commissioner Miller?

6 MR. MILLER: I agree that the setback  
7 should come first, but I support the -- generally  
8 support the October 2014 Office of Planning  
9 proposal because I think it provides the  
10 flexibility to maximize, incentivize, whatever  
11 word you want to use, habitable space and  
12 affordable housing linkages. So I think that's  
13 part of the overarching goal of this proposed  
14 regulation.

15 CHAIRPERSON HOOD: Okay. Vice Chair  
16 Cohen.

17 MS. COHEN: Well, how can we, you know,  
18 assure because I concur with my colleagues about  
19 the setback. So how can we assure that, because I  
20 think that is one of the major problems that  
21 people have in R4 zones in general, is that, you  
22 know, things are not set back. And when they are  
23 set back they don't look so bad. So can we add  
24 that in some way to assure that that is met and  
25 then two stories would be permitted? Is that --



1           MR. MAY: You know, I think we'll get  
2 into the specifics of setbacks in another section.

3           MS. COHEN: Oh, all right.

4           MR. MAY: But, and I don't think we're  
5 talking about R4 zones here. I think we're  
6 talking about all other zones.

7           MS. COHEN: Oh, I understand.

8           MR. MAY: Because R4 is not a -- Height  
9 Act isn't in play. I mean, I guess what I would  
10 prefer to see in this circumstance in order to  
11 kind of move us along here, that we have two  
12 versions of this that we advertise -- readvertise  
13 the October 2014 proposal. And then I think F is  
14 the one that's most aligned with what I was  
15 thinking, which is habitable penthouse space on  
16 one story, allowing a second story for  
17 nonhabitable mechanical space in some or all  
18 zones.

19           CHAIRPERSON HOOD: So I kind of go along  
20 with what you're saying, Commissioner May. But  
21 you said F is --

22           MR. MAY: Yeah. F. I mean, you know,  
23 it's either F or G because it depends on how far  
24 you want to go. But I do see the utility. I  
25 mean, that came up at a recent PUD, the utility of

1 having, you know, a single story and then have the  
2 mechanical space immediately above it. Even if it  
3 was -- in that case I think it was just a  
4 condenser farm above it. And I don't have any  
5 problem with that if you can get it all in, and  
6 you know, in that case they got it in in like  
7 within 15 feet or something.

8 CHAIRPERSON HOOD: So let me go to Mr.  
9 Turnbull.

10 MR. TURNBULL: Yeah, I just had one --  
11 I'm confused by the chart in light of what we just  
12 talked about on one. And the October 2014 chart,  
13 the proposed below height act for moderate, it's  
14 got two. Wouldn't that really be one?

15 MR. LAWSON: The October 14th was the  
16 proposal that you saw then.

17 MR. TURNBULL: Right.

18 MR. LAWSON: At that time what we were  
19 proposing was a little bit different.

20 MR. TURNBULL: Right.

21 MR. LAWSON: Our main proposal in October  
22 was to allow a 20 foot high penthouse in R5B and  
23 R5A. Now I think the Zoning Commission has spoken  
24 very clearly about, in our new advertising,  
25 limiting that and I think the chart would reflect

1 that.

2 MR. TURNBULL: A one?

3 MR. LAWSON: So where certainly in any  
4 zone where --

5 MR. TURNBULL: Except by special  
6 exception, right.

7 MR. LAWSON: -- where height is limited  
8 to 10 feet --

9 MR. TURNBULL: I got you.

10 MR. LAWSON: -- then it would be limited  
11 to one story as well.

12 MR. TURNBULL: Okay. Thank you.

13 CHAIRPERSON HOOD: Any other comments on  
14 this? Are we clear on how we're going to move  
15 forward?

16 MR. LAWSON: Yes, very clear. Thank you.

17 MR. MAY: So we're going to advertise C  
18 and F as the alternatives? Okay.

19 MR. LAWSON: Moving on to the third point,  
20 which is uses allowed within a penthouse, again  
21 this is spurred on by the changes of the height  
22 act, which was the first time that the Height Act  
23 kind of addressed this issue in allowing some  
24 habitable space above the Height Act limit. The  
25 Height Act doesn't stipulate what that habitable

1 space is, and Commissioner May very readily  
2 pointed out that the current zoning regulations do  
3 allow for some very limited forms of habitable  
4 space within a penthouse for a residential  
5 building. Habitable space being enclosed space  
6 related to rooftop recreation on a recreational  
7 building.

8           Certainly our reading of the intent was  
9 that that should be -- that permission should be,  
10 or could be -- I shouldn't say should be -- could  
11 be expanded. And so that's why we proposed in our  
12 October proposal to allow habitable space within a  
13 penthouse, however kind of get to Commissioner  
14 Cohen's point, we did propose in October that  
15 habitable space not be permitted within a  
16 penthouse on a low density zone, those single-  
17 family dwellings and flats. We felt that should  
18 be restricted to simply providing access and very  
19 limited support space directly related to a  
20 rooftop deck, and not full blown habitable space  
21 such as new rooms. But that's certainly something  
22 that the Zoning Commission could consider.

23           So we brought forward these proposals.  
24 It's also outlined in the chart what we proposed  
25 and comparing that to the Height Act. And once

1 again, happy to take questions.

2 CHAIRPERSON HOOD: Mr. Lawson, just let  
3 me ask on this one, what option again did the  
4 Office of Planning recommend?

5 MR. LAWSON: In October our option was to  
6 basically allow any form of use within a penthouse  
7 in any zone. And that would be for residential or  
8 a nonresidential building. The exception would be  
9 in low-density residential zones where that  
10 habitable space would be much more restricted to,  
11 as I said, provide access to a roof deck or space  
12 like storage space directly associated with that  
13 roof deck. Not new living space or that kind of  
14 stuff.

15 CHAIRPERSON HOOD: Thank you. Any other  
16 questions?

17 MR. MAY: So given the fact that we're  
18 tweaking how we would advertise the height  
19 limitations on some of those zones, I mean, I'm  
20 not sure how we approach -- how best to approach  
21 this. I mean, I guess I would think it would have  
22 to be in two alternate ways. You know, one is  
23 that for the 40 foot zones for lack of a better  
24 term, single family dwellings and row-houses, that  
25 there would be no permitted habitable space period

1 because we're, you know, we're considering not  
2 having that.

3           An alternative would be to allow -- I  
4 mean, I think I'm concerned about space associated  
5 with supporting a rooftop use as well, and would  
6 think that we maybe -- maybe an alternative there  
7 might simply be only to provide access to the  
8 rooftop, period. Not to provide support space  
9 because you know, if you need to have storage  
10 space on the roof you can, you know, add a, you  
11 know, a Rubbermaid shed kind of thing on the roof.  
12 Not that that's really that attractive looking,  
13 but at least it's not permanent. And it's  
14 probably not going to be visible because it's  
15 going to be small.

16           And I think that the idea of limiting the  
17 uses -- I think the limit on the uses should apply  
18 all the way up to the 50 foot buildings and  
19 shouldn't be limited to just the -- only in our 1  
20 through R4. But I don't know. Those are my  
21 thoughts on it. I'm interested in what others  
22 have to say.

23           CHAIRPERSON HOOD: Anybody else?

24           MS. COHEN: Yeah, what if -- and I'm just  
25 now thinking out loud because I do not in any way

1 want to inhibit someone who starts a family for  
2 maybe having the opportunity to expand upward. So  
3 does that inhibit it? Like, what if I had a  
4 pitched roof, and you know, behind that roof I  
5 wanted a push-up, would this prohibit it if we go  
6 through yes and everything?

7 MR. LAWSON: It would depend on the  
8 building.

9 MS. COHEN: Yeah, that's --

10 MR. LAWSON: You know, again, as long as  
11 you're within the permitted height limit and the  
12 story limit --

13 MS. COHEN: Of 50 feet.

14 MR. LAWSON: -- then you would be able to  
15 expand. And in the low-density zones that's  
16 currently 40 feet.

17 So within that limit, within that height  
18 limit and that three story limit you would be able  
19 to expand. So, for example, if it was a two story  
20 building you could add a story --

21 MS. COHEN: Okay.

22 MR. LAWSON: -- on top. But office of  
23 planning, anyways, did not propose in our original  
24 proposal that beyond that 40 foot limit if you did  
25 a penthouse, that that penthouse could be devoted

1 to habitable space such as a new room. That was  
2 not part of our original proposal.

3 MS. COHEN: And so we're going to be more  
4 flexible in this proposal. No?

5 MR. LAWSON: That's not what's being  
6 discussed so far.

7 MS. COHEN: That's what I thought. So I  
8 have a concern about why can't we be consistent on  
9 the 50 feet? I'm just asking because --

10 MR. MAY: I'm not sure that -- when you  
11 say the 50 feet, you mean 40 plus 10, or do you  
12 mean a 50 foot zone?

13 MS. COHEN: Forty plus 10.

14 MR. MAY: Forty plus 10. But the Office  
15 of Planning in the original proposal did not  
16 propose that there would be habitable space in a  
17 penthouse on top of a 40 foot residential  
18 building. And we're not talking about making it  
19 more restrictive now. It already was restrictive  
20 before.

21 I also don't know that there is a great  
22 amount of utility in adding an occupiable  
23 penthouse on top of a 40 foot row-house, for  
24 example, because you're already at three stories -  
25 -



1 MS. COHEN: Yeah.

2 MR. MAY: -- and I don't know, it takes a  
3 lot of stamina just to have three stories in your  
4 house, and go all the way up.

5 CHAIRPERSON HOOD: You mentioned an  
6 alternative, Commissioner May. What was your  
7 alternative?

8 MR. MAY: Well, what I was suggesting is  
9 that first of all the limitation -- the Office of  
10 Planning's original limitation was to provide  
11 rooftop access plus storage or other support space  
12 related to the rooftop activities. And my  
13 suggestion is that access alone, in my mind, ought  
14 to be sufficient. And that if there's a storage  
15 need or something else, that it can be addressed  
16 in another manner. Simply because it's -- we've  
17 seen already in other -- not in the low-density  
18 zones, but in other cases we've seen people  
19 stretch the definition of access. And so you wind  
20 up with a little, you know, eight by 10 loft space  
21 or something like that alongside with the stairway  
22 that accesses your private roof deck, or something  
23 like that.

24 And I just think providing storage space  
25 in support of it kind of opens the door for abuse.

1           CHAIRPERSON HOOD: Okay. So, Office of  
2 Planning is already going to -- when we advertise,  
3 how are we going to -- I guess I'll leave that up  
4 to them, how we're going to frame that issue.  
5 Does everyone agree with what Commissioner May is  
6 saying, or do you have some other alternative?  
7 Because that's where we are.

8           MR. MILLER: Well, I'm not sure I  
9 understand the -- what he's saying. Are you  
10 saying that there wouldn't be -- in what zones or  
11 what areas would there not be allowed on a 10 foot  
12 high penthouse, where there wouldn't be allowed to  
13 be habitable space. Is it beyond --

14           MR. MAY: Well, I guess I mean, the way -  
15 - one way to put it --

16           MR. MILLER: Is it R5A and C2 and C1 and  
17 --

18           MR. MAY: Well, there are two ways to  
19 look at it and I'm not sure I've clearly have  
20 staked out an opinion at this moment. But at the  
21 very least, in the buildings limited to 40 feet --

22           MR. MILLER: Right.

23           MR. MAY: -- there would be only a means  
24 of access, not any kind of storage space.

25           MR. MILLER: That's fine.

1           MR. MAY: Another way to look at that  
2 would be to say that any of the buildings that  
3 were 50 feet or less, that it's providing access  
4 only, not storage.

5           MR. MILLER: Okay. That's the later part  
6 that I don't support to having --

7           MR. MAY: Okay.

8           MR. MILLER: Not having --

9           MR. MAY: So I mean, at the 40 feet level  
10 then -- I mean, and there are a couple of ways to  
11 do it. One it so say that it's for access only.  
12 The other would be to actually put a square  
13 footage limit on it, which, you know, would be a  
14 way of effectively limiting it because you can  
15 calculate how big the stairway would need to be  
16 and the landing would need to be, and say that  
17 it's only going to be, you know, 40 feet, 40  
18 square feet, something like that.

19           Of course, you can go a lot less than  
20 that with a spiral staircase. So I wouldn't do  
21 that. I take it back. I would just say access  
22 only.

23           MS. COHEN: On 40 feet, what about above  
24 40 feet, the zones that allow above 40 feet? What  
25 are you proposing there?

1           MR. MAY: Well, I threw out the idea that  
2 it might be all buildings 50 feet -- all  
3 residential buildings, 50 feet or less.  
4 Commissioner Miller was not with me on that. I'm  
5 guessing you're not with me on that. I don't know  
6 what Chairman Hood or Commissioner Turnbull think.

7           And maybe we, you know, we advertise  
8 both, right?

9           CHAIRPERSON HOOD: You know where I am,  
10 honestly, with all this? I want us to put what we  
11 believe out there --

12          MR. MAY: Yeah.

13          CHAIRPERSON HOOD: -- and then let the  
14 citizens --

15          MR. MAY: Right.

16          CHAIRPERSON HOOD: -- decide. I mean,  
17 and those parties who are going to be -- that's  
18 kind of where I am. I mean, we can sit up here  
19 and your analogy is great, Commissioner Miller.  
20 How do we put all that together and put it out  
21 there for the public? That's where I'm trying to  
22 get.

23          MR. MAY: So then I would suggest that we  
24 advertise both. That it's a limit --

25          CHAIRPERSON HOOD: Does that cover

1 whatever -- okay. Let's do it.

2 MR. MAY: Do you understand what to  
3 advertise?

4 MR. LAWSON: I think so.

5 CHAIRPERSON HOOD: I know it's going to  
6 be a lot of advertisement, but let's do it.

7 MR. MAY: What? Yes?

8 MR. LAWSON: I think so. Yes.

9 MR. MAY: Okay. Good.

10 CHAIRPERSON HOOD: Okay. Do we need to  
11 say anything else on this? Mr. Turnbull, did you  
12 have anything on this?

13 MR. TURNBULL: No, I think I'm okay with  
14 having both.

15 MR. LAWSON: But I think there are some -  
16 - and I just want to make sure that you guys are  
17 okay with this. I think what I've heard so far is  
18 to advertise in the alternative allowing -- first  
19 of all, allowing a range of habitable spaces  
20 within penthouses. The exception is where the  
21 alternatives are. One is to say except for in  
22 zones that allow a 40 foot height limit, and the  
23 other one is except for zones which allow a 50  
24 foot height limit.

25 I think there was another issue that was

1 raised in some of the discussions, and that was to  
2 limit certain uses or allow certain uses only by  
3 special exception, kind of regardless of the zone.  
4 I think there were some questions about -- and  
5 this is not -- we're now no longer talking R1  
6 through R4, we're talking our mixed use zones and  
7 whether or not some uses that are permitted by  
8 right in those zones should be permitted by right  
9 or by special exception, or not at all on the  
10 penthouse in some of those zones.

11 MS. COHEN: I thought that it was just  
12 the, you know, nighttime activities that we made  
13 an exception for. That's my recollection.

14 MR. LAWSON: Well, there's no exception  
15 yet.

16 MS. COHEN: Yeah.

17 MR. LAWSON: So that's what I want to get  
18 clarified from you, whether you would like that  
19 advertised.

20 MR. MAY: So as I recall when we got into  
21 that discussion, we thought that there were some  
22 other regulatory controls on objectionable rooftop  
23 uses such as ABC license.

24 MR. TURNBULL: Bars or night clubs.

25 MR. MAY: Yeah. Well, you know, ABC

1 licensing and noise restrictions and things like  
2 that that relate to that. Is that sufficient  
3 control? I mean, otherwise you know, ideally what  
4 I'd like to do is simply allow the zone -- you  
5 know, the uses permitted in the zone to be the  
6 controlling factor. But we also don't really want  
7 to open the door for the potentially objectionable  
8 uses to migrate to the roof and cause problems.

9 MR. TURNBULL: That's why I think we need  
10 to do it in the alternative for both. Do that one  
11 in the alternative.

12 MR. MAY: Okay.

13 MR. TURNBULL: At this point.

14 MR. MAY: So it would place limits on  
15 particular uses.

16 MR. TURNBULL: Or allow whatever is  
17 allowed in the zone.

18 MR. MAY: Right. Right.

19 MR. TURNBULL: Yeah.

20 MR. MAY: So either/or.

21 MR. TURNBULL: Yeah. Yeah.

22 CHAIRPERSON HOOD: Okay. I would agree  
23 with that.

24 MR. LAWSON: Did you want to stipulate  
25 exactly what those uses would be, or keep it

1 relatively general and open for public comment at  
2 this point?

3 CHAIRPERSON HOOD: I thought we started a  
4 list somewhere. We do so many. We had a list  
5 somewhere that we could probably start with, I  
6 thought.

7 MR. LAWSON: Yeah. In one of our reports  
8 we raise the option of it could be uses such as a  
9 night club, which we're really not expecting on a  
10 rooftop. It could happen.

11 I think it becomes more questionable or  
12 we would appreciate more direction for slightly  
13 more iffy uses, something like a restaurant. Is  
14 that something that would be permitted only by  
15 special exception? I understand you certain want  
16 night club, bar, lounge, those kinds of uses  
17 included in that potential list of special  
18 exception uses in the alternative. I guess the  
19 one that I'm not clear on is how you feel about  
20 restaurant.

21 MR. MAY: Well, I mean, I think for now  
22 we make the list broad and then we hear testimony.

23 MS. COHEN: I think they already exist in  
24 some of the C2A and B districts. I think they  
25 already exist. So I would really focus more and



1 hear from the public, focus more on what you had  
2 said about noise productions. I mean, restaurants  
3 often are -- well, no, they're not, they're open  
4 to the outdoors.

5 We'll get enough feedback on that, I  
6 assure you.

7 MR. LAWSON: Yeah, and you're absolutely  
8 right. There certainly are currently examples of  
9 --

10 MS. COHEN: But there are currently,  
11 yeah.

12 MR. LAWSON: -- restaurants and bars,  
13 actually up on the rooftop of hotels, for example,  
14 and they do exist now.

15 MS. COHEN: Well, we could also say you  
16 know, those that are open versus closed. You  
17 know, but we're going to hear from the public. I  
18 think that could be a final decision.

19 MR. LAWSON: Great. Thank you.

20 CHAIRPERSON HOOD: Okay. Yeah. So are  
21 we all straight on that? I agree with how we're  
22 moving forward on that one.

23 Which number are we on?

24 MR. LAWSON: Great. Thank you. Point  
25 number 4.

1           CHAIRPERSON HOOD: Number 4. Okay.

2           MR. LAWSON: Which is setbacks. This is  
3 not something that was addressed under the Height  
4 Act changes. The Height Act requires a one-to-one  
5 setback. However we had heard from the Zoning  
6 Commission and we thought you were definitely  
7 right that some additional clarification of that  
8 was needed.

9           Now we already did some of that. A lot  
10 of that, actually, through the ZRR process, where  
11 we proposed some clarification to the setbacks. I  
12 think that certainly we're pretty comfortable with  
13 what we put forward in our October 2014 proposal.  
14 The one that seemed to generate some conversation  
15 was a new setback requirement that doesn't exist  
16 in the current regulations, which is a setback  
17 from any historic property, and how that would  
18 relate. Particularly, you know, we certainly  
19 understood how that would be applied as a setback  
20 from a historic building within a historic  
21 district such as DuPont Circle or Capitol Hill.  
22 Some of our lower density residential areas. The  
23 setback requirement from the common lot line would  
24 probably make a penthouse not possible, which may  
25 or may not be a good thing. And to be honest, to

1 some extent you've addressed this already in some  
2 of your previous comments about proposing  
3 additional restrictions on penthouses in some of  
4 these lower density zones.

5 But that's probably the one place where  
6 we were looking for some additional direction from  
7 the Commission before notification.

8 CHAIRPERSON HOOD: Okay.

9 MR. LAWSON: Oh, and I did mean to point  
10 out that the penthouse proposal, the setback  
11 proposal that we took forward through ZRR and as  
12 part of this provision, is actually more  
13 restrictive than the current interpretation of  
14 setback requirements. So these would not be less  
15 restrictive than what we have now. They would  
16 actually be, in some cases depending on the nature  
17 of the building, more restrictive than the current  
18 regulations. Or sorry, the current interpretation  
19 of the setback regulations.

20 CHAIRPERSON HOOD: So, Joe, what do you  
21 need from us?

22 MR. LAWSON: I think that if you have any  
23 direction on whether or not there should be some  
24 massaging of the setback from a common lot line in  
25 a historic district. If not, then we would simply

1 include that in the notification which means that  
2 the members of the public would be able to comment  
3 on whether a setback from a common lot line in a  
4 historic district is an appropriate provision or  
5 not.

6 MR. MAY: You're talking about reducing  
7 the setback requirement on a common lot line in a  
8 historic district?

9 MR. LAWSON: It could be a reduction or  
10 it could be keeping the one to one setback, or it  
11 could be not requiring a setback at all --

12 MR. MAY: Right.

13 MR. LAWSON: -- from the common lot line.  
14 Typically a setback is not required from a common  
15 lot line, but this proposal would require that  
16 setback within a historic district. So, for  
17 example, on a 16 foot wide lot with a row-house on  
18 it, you basically wouldn't be able to do a  
19 penthouse and meet the setback requirement.

20 MR. MAY: Right.

21 MR. LAWSON: Which may or may not be a  
22 good thing.

23 MR. MAY: No, I mean, I think that is one  
24 of the good controls over it. I mean, practically  
25 speaking when you're talking about a row-house

1 neighborhood, the neighborhood itself is more  
2 likely to be historic than the property is, and so  
3 it's very hard to do any kind of a penthouse. And  
4 that's why you don't see pop-ups in historic  
5 neighborhoods as readily as you do in other  
6 neighborhoods.

7 I don't see that there's any real need to  
8 tweak that setback requirement. I'm in favor of  
9 option A and adding option B-I, and then leaving  
10 it at that. Yeah, option B, which is requiring a  
11 new setback for historic properties, which was  
12 basically the 2014 -- October 2014 proposal. I  
13 don't see a reason to sort of tweak it further. I  
14 don't know about anybody else.

15 CHAIRPERSON HOOD: Okay. Anybody else?

16 MS. COHEN: I actually agree with you.

17 MR. MAY: All right.

18 MR. MILLER: I remember some testimony  
19 that was expressing concern that you're going to  
20 treat the -- so the historic building wouldn't be  
21 required to have the setback but the adjacent  
22 building would. So and I actually had some  
23 concern that a neighbor is being forced to do  
24 something that the historic building isn't even  
25 being required to do.

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1           And I would -- I don't mind it. I don't  
2 have any objection to it being advertised the way  
3 that Commissioner May has suggested because I  
4 think we'll get the same testimony expressing  
5 concern. So, some of which I share.

6           MR. LAWSON: Right. And we could  
7 certainly add language that this would apply to a  
8 historic building or a building in a historic  
9 district or a building adjacent to a historic  
10 building. You know, certainly any historic  
11 district of any historic building would be subject  
12 to HP review, and so they would certainly be  
13 looking at any impact of a rooftop structure like  
14 this, and they look at pretty closely and try to  
15 minimize that impact. But we'd be happy to add  
16 that language to get -- I just kind of got the  
17 potential unfairness of that provision. So we'd  
18 be happy to make that a little bit more fair.

19           MR. MAY: So there's one aspect to this  
20 that I think we would want to consider tweaking  
21 further, which is that when you have two houses  
22 that are of equal height, I can see not requiring  
23 the setback in that circumstance. I think that's  
24 the only circumstance. When the one next door is  
25 lower, that's where I think we need to have the --

1 we have to have the setback.

2 MR. MILLER: The historic building could  
3 be higher.

4 MR. MAY: Right.

5 MR. MILLER: So --

6 MR. MAY: It could be higher. But when  
7 that historic building is lower --

8 MR. MILLER: Lower, yeah.

9 MR. MAY: -- then I think that you have  
10 to setback from the common lot line. That make  
11 sense?

12 I mean, because that's what we don't get  
13 into in the language.

14 MR. MILLER: And the HP process would not  
15 address that as opposed to zoning addressing it?

16 MR. MAY: Not necessarily because it's  
17 possible to have a historic building in a row. It  
18 may be historic for some reason other than being  
19 in a historic district.

20 CHAIRPERSON HOOD: So, Mr. Lawson, I  
21 believe we're going to advertise as-is, I believe,  
22 everything that you have here on A and B. Am I  
23 correct? Is that what we agreed to?

24 MR. LAWSON: I think that what  
25 Commissioner May in particular was talking about

1 was advertising A plus B1, and then it sounds like  
2 there will be an alternative for B1 that would  
3 address situations in low-density zones of two  
4 houses of equal height, not requiring the  
5 penthouse setback.

6 CHAIRPERSON HOOD: So B2, why would we  
7 not put that out there for comment?

8 MR. LAWSON: And we certain could, if the  
9 Commission would like us to. Yes.

10 MR. MAY: I was suggesting it's not  
11 really necessary. Well, not really desirable  
12 because what it does is it allows a -- hold on a  
13 second. Let me -- yeah.

14 You know, just because the property is  
15 narrow, they can get a pass on the setback  
16 requirement and I think it shouldn't have to do  
17 with how narrow the property is. It should have  
18 to do with the height of the building it's next  
19 to. So that's why I was suggesting that. And  
20 really, just to keep things simple, all I'm  
21 suggesting is B1 be modified so that the setback  
22 of the one-to-one setback is only required when  
23 you are next to a historic building that is lower  
24 than your building.

25 CHAIRPERSON HOOD: I see what you --



1           MR. MAY: So if it's at the same height  
2 or higher, the setback is not required.

3           CHAIRPERSON HOOD: Okay. All right. I  
4 will go along with that. I guess where I'm coming  
5 from is, I want to make sure that we vet as much  
6 as what the Office of Planning has put in the  
7 report as possible. I know that's a lot, and  
8 that's a lot for the community to chomp on and  
9 distinguish, but I want to make sure that they  
10 have everything in front of them that they can  
11 come to this Commission and mention back. That's  
12 kind of where I am.

13           MR. LAWSON: Sure. And we can also make  
14 sure that our Office of Planning report is  
15 definitely out there so that people will see the  
16 full range of options that -- you know, kind of  
17 the more complete range of options that may be  
18 available to people, whether it's in the  
19 notification or not.

20           CHAIRPERSON HOOD: Okay.

21           MR. MILLER: I think that's good, Mr.  
22 Chairman.

23           CHAIRPERSON HOOD: Okay.

24           MR. MILLER: But we were trying to --  
25 part of the goal of this was to try to narrow it.

1 But I agree that this has been such a helpful  
2 document it would be helpful for the public to  
3 have an immediate link to it when they see our  
4 proposal.

5 CHAIRPERSON HOOD: Along with those  
6 diagrams.

7 MR. LAWSON: Yes. Yes, sir.

8 CHAIRPERSON HOOD: And don't have to be  
9 professional stick diagrams. Everything works.  
10 Okay. Okay. Let's move to number 5. Okay.

11 MR. MAY: Oh, I'm sorry. I do have one  
12 other thing on setbacks, which is that I would  
13 like to get into a discussion of what we touched  
14 on before which is requiring that setback in  
15 circumstances where, you know, we're talking about  
16 larger apartment buildings or even office  
17 buildings where there's a lot of mechanical  
18 equipment that has to go on the roof, and they  
19 want to try to get as big a party room on top as  
20 they can, and so the size of the party room  
21 somehow drives a need for setback relief.

22 And I think that the, you know, the  
23 requirement for a one-to-one setback as we have  
24 described it in this section, should be absolute  
25 for you know, in any circumstance where habitable

1 space is being included, and that there shouldn't  
2 be an ability -- I mean, I know we probably can't,  
3 you know, tie the hands of the BZA in actuality.  
4 But I would like to basically say that, you know,  
5 you can't get relief on the one-to-one setback if  
6 you're going to put habitable space up there. You  
7 know, when you need to have that relief it's  
8 because you have an absolute need for mechanical  
9 space and not, you know, the extra space.

10           So I don't know how that could be done or  
11 whether it can be done legally, given the BZA's  
12 inherent authorities.

13           MR. LAWSON: We'll certainly discuss that  
14 with the Office of the Attorney General. If it's  
15 subject to special exception review, there could  
16 be some standards or guidelines associated with  
17 that review. It's not uncommon for special  
18 exception review to include some specific  
19 guidelines. I'm not quite sure yet what that  
20 guideline would be, but we're happy to take a look  
21 at that.

22           MR. MAY: Yeah. I mean, I thought about  
23 it as the fact that we can provide guidelines for  
24 special exceptions. But again, if they don't meet  
25 the guidelines then they're just in variance

1 territory anyway. So, I mean, I do want to try to  
2 tie the hands of the BZA, and I don't mean in  
3 particular this BZA. I mean, just generally  
4 speaking because we've seen it already how  
5 developers and architects will try to, you know,  
6 request relief on this point just to make the  
7 party room, you know, 100 feet larger or something  
8 like that. And I think that's something that we  
9 should be avoiding.

10 CHAIRPERSON HOOD: I guess you won't be  
11 getting invited to any parties. Commissioner  
12 Miller.

13 MR. MILLER: I guess I would be -- I  
14 would prefer the special exception guidelines  
15 approach because if it's not visible from the  
16 street I'm just not sure if there's a problem.

17 MR. MAY: Well, and I agree. I mean,  
18 what I'm really --

19 MR. MILLER: Where there's a problem, you  
20 know, you need to have --

21 MR. MAY: Yeah, where there's a problem.  
22 I guess so if --

23 MR. MILLER: So, you've got to --

24 MR. MAY: Maybe relief could be granted  
25 in a circumstance where it's not visible from

1 anywhere on the street. Yeah. Okay. That's one  
2 special exception circumstance. But I leave it up  
3 to the Office of Planning to try to figure out.  
4 How about that?

5 CHAIRPERSON HOOD: Okay.

6 MR. LAWSON: Thank you.

7 CHAIRPERSON HOOD: All right. Number 5,  
8 Mr. Lawson.

9 MR. LAWSON: Number 5 and number 6 are  
10 both aerial limitations. Number 5 is a pretty  
11 limited one. It applies only to those zones that  
12 have a cap on the number of stories. Those zones  
13 are listed in the title of this, and OP had  
14 proposed in October to eliminate that restriction  
15 in some of those zones. Most notably in CM1 and  
16 C1 and in R5A. We'd propose that that one-third  
17 limit be retained in the R1 through R5 zones, and  
18 that it also be retained for any single-family  
19 dwelling or flat, regardless of the zone. So that  
20 was our proposal in October.

21 MR. MAY: So I mean, a lot of this stuff  
22 is speculative because it's hard to picture the  
23 circumstances where it could make sense. And  
24 we're dealing with, you know, even with -- when it  
25 comes to R5A zones or C1, we're talking about

1 relatively small properties. So I don't know that  
2 there are going to be a lot of circumstances where  
3 the limitations, the one-third limitation would  
4 even take effect. And for me the most important  
5 thing is setback.

6 So, you know, if this makes sense I'd go  
7 along with it so long as the setbacks are sacred.

8 MS. COHEN: I agree with you for a second  
9 time.

10 CHAIRPERSON HOOD: Okay.

11 MR. TURNBULL: I'm okay with this.

12 CHAIRPERSON HOOD: Okay. Everybody.

13 MR. LAWSON: Thank you.

14 CHAIRPERSON HOOD: I'm okay with it being  
15 advertised. I'm not sure yet. I'm okay with  
16 everything right now, being advertised.

17 Okay. You said six is already  
18 encompassed with the area?

19 MR. LAWSON: Number 6 is also an area 1  
20 and it relates to the FAR that is allowed to be in  
21 and above. Under the current regulations -- well,  
22 sorry. I'll go back.

23 The current regulations allow a certain  
24 amount of FAR for a penthouse in addition to the  
25 FAR cap for the building as a whole. It tends to

1 not be a problem, but of course that's under the  
2 current regulations habitable space is generally  
3 not permitted within the penthouse.

4           That limit, right now, is .37 FAR.  
5 That's the kind of extra that you can put in the  
6 penthouse. Presumably anything beyond that amount  
7 would start to count toward your building's total  
8 FAR. Although again, frankly, we so far haven't  
9 found any examples of that actually happening. It  
10 doesn't mean that it has never happened, we just  
11 didn't find any examples of it.

12           We had proposed in October to eliminate  
13 that FAR exemption, so penthouse space, habitable  
14 or mechanical space would not count towards FAR  
15 for the building as a whole. And in that way we  
16 would allow the one-to-one setback and the one-  
17 third of roof area limitation to dictate the  
18 penthouse size. We did certainly hear some  
19 comments from people on that one, so we brought  
20 forward options that you could consider to keep an  
21 FAR bonus, I guess, for the penthouse space, but  
22 to make a different larger number to accommodate  
23 the habitable space. And of course there's always  
24 the option of continuing the exact situation it is  
25 right now, which would be .37 FAR or under ZRR

1 we'd propose a minor change to that to .4 FAR and  
2 I think that's all I've got. So available for  
3 questions.

4 MS. COHEN: I note, though, in your  
5 review with regards to removing the area  
6 limitation with support, more habitable space and  
7 possibly more housing linkage. So the other  
8 options would not be as enabling. Is that my  
9 understanding or --

10 MR. LAWSON: That's absolutely correct.  
11 Certainly the more the zoning regulations would  
12 allow habitable space within the penthouse, the  
13 more space would be captured for the affordable  
14 housing linkage requirement. Whatever that may  
15 end up being.

16 MS. COHEN: So and I would support your  
17 proposal to not limit for the penthouse.

18 MR. LAWSON: And just to make sure we  
19 clarify, there still would be very much a limit.  
20 The number of stories would limit it. The setback  
21 would be the main limit. And in those few zones  
22 the one-third of roof area would be a limit.

23 CHAIRPERSON HOOD: Commissioner May.

24 MR. MAY: So I like the fact that you  
25 used the word bonus, because that's what this



1 really is. We're talking about allowing a, you  
2 know, a .5 or more FAR bonus and I think that when  
3 we get to some of the subsequent issues here,  
4 seven, eight, nine, that we'll be talking about  
5 what the greater good is that comes from that  
6 bonus because I think that that's the vitally  
7 important component of it.

8 I agree that it's, you know, the setback  
9 is probably the biggest controlling factor and  
10 they're only going to get so far with the,  
11 whatever quantity of additional FAR bonus they're  
12 going to get here because of those setback  
13 considerations and the fact that they have to  
14 accommodate mechanical equipment and so on.

15 So I think I'm comfortable advertising it  
16 with no limit, but I think that to be prudent we  
17 probably ought to advertise an alternative that  
18 does include a limit. And I don't know whether  
19 that's .4 or .5, but something like that.

20 CHAIRPERSON HOOD: That was going to go  
21 to my question. We just did this in the ZR.4, and  
22 I'm just trying to figure out now, we're coming  
23 right back and we haven't even finished the ZR and  
24 saying, do not limit. So I guess, what changed?  
25 Maybe it will go back to what you said. Let's

1 advertise that what we already made a decision on,  
2 I would believe --

3 MR. LAWSON: Okay.

4 CHAIRPERSON HOOD: -- would go a .4, and  
5 then the no limit.

6 MR. LAWSON: Right.

7 CHAIRPERSON HOOD: That's my  
8 recommendation. Anybody else? Commissioner  
9 Turnbull?

10 MR. TURNBULL: So really for the no limit  
11 and then in the alternative, .4?

12 CHAIRPERSON HOOD: Should we do point --  
13 I guess, yeah.

14 MR. MILLER: A or B?

15 MR. LAWSON: Okay.

16 CHAIRPERSON HOOD: Anything else on this?  
17 We straight?

18 Okay. Let's go to seven. Mr. Lawson,  
19 whenever you're ready.

20 MR. LAWSON: This, again, is one of those  
21 ones that was not really directly related to the  
22 height act changes. But as we're dealing with  
23 penthouses we thought we should deal with this  
24 one. It does certainly relate to a number of the  
25 other ones, and also addresses -- starts to relate

1 to some concerns as noted here that are being  
2 raised by our historic preservation division with  
3 in the Office of Planning.

4 Our October proposal was to remove the  
5 requirement that penthouses would have to be of  
6 equal height. I don't think that the Commission  
7 as a whole is very comfortable with that  
8 suggestion. So we brought forward some  
9 alternatives for your consideration. Including  
10 one that would allow -- that would still restrict  
11 the number of different heights in a penthouse,  
12 but would allow a penthouse to be one height and  
13 screening to be of a second different height. And  
14 that certainly most directly addresses the HP  
15 issues that they were starting to see on some of  
16 the historic buildings. So that's kind of issue  
17 number 1.

18 The second issue under this one is that  
19 the penthouse walls have to be, under the current  
20 regulations, have to be vertical. That can raise  
21 some design constraints, and so we brought forward  
22 a proposal that they not be required to be  
23 vertical. And so those are the kind of two issues  
24 that we're bringing forward to you in this one.

25 CHAIRPERSON HOOD: Okay. Any questions?

1 Comments?

2 MR. MAY: So I have a question. I mean,  
3 we're talking about not being vertical. I mean,  
4 we're talking about sloped walls. But to what  
5 degree? I mean, already I think your report  
6 indicated that the zoning administrator was  
7 granting some flexibility on the interpretation of  
8 vertical. Is that like five percent slope, or --

9 MR. LAWSON: He did not give us an actual  
10 figure.

11 MR. MAY: Okay.

12 MR. LAWSON: I think that it's something  
13 he's looking at a little bit on a case by case  
14 basis. But it's very limited. It certainly  
15 wouldn't be a significant slope.

16 MR. MAY: Right. So I think maybe we  
17 want to try to -- rather than simply eliminate the  
18 word vertical, maybe try to define what the limit  
19 should be. And maybe that's just too complicated  
20 in the long run. But I think we ought to think  
21 about that consideration, because I think part of  
22 the reason for having them vertical and having  
23 them uniform height and so on, is that we don't  
24 want the penthouses themselves, or at least  
25 historically we have not wanted penthouses

1 themselves to become spectacles and a distraction.  
2 And so, you know, if you have some sort of wacky  
3 penthouse with lots of, you know, sort of the  
4 deconstructivist penthouse might not be the effect  
5 that we're looking for. So some limitation on it  
6 that would go to how far out of away from 90  
7 degrees they could be. And how many different  
8 angles might there be, because we don't  
9 necessarily want to have too much shifting around.  
10 I don't know.

11 CHAIRPERSON HOOD: I think, though, this  
12 Commission has said no to a lot of the  
13 ununiformity on the rooftops. So, I think as much  
14 uniformity as we can get there I would believe  
15 would be consistent with what we've done in the  
16 past. And how we get there, I don't know what's  
17 being proposed. But I can tell you that in the  
18 past we've had some very challenging things on the  
19 roof that are happening. So we want to stay as  
20 uniform -- at least I would suggest that we stay  
21 as uniform as possible.

22 Any other comments?

23 MS. COHEN: Yeah. I'm going to take --  
24 oh, did you want to go?

25 I will take, actually, the opposite

1 approach because I think one of the things that I  
2 find problematic in this city is that there is no  
3 creativity in moving buildings forward and making  
4 them beautiful. I don't know if it's the  
5 penthouse that needs to be tangled with. I just  
6 would like to see more diversity and interest.  
7 And I don't think we're getting that.

8           Again, I would like to propose language  
9 that encourages actual creativity in the rooflines  
10 of the city. Right now I think it's rather boring  
11 and I think you and I have differed over this many  
12 times. But I would like to see much more ability  
13 to use the roof to make a more organic structure,  
14 a structure that really will stand out and give  
15 people an opportunity to actually enjoy  
16 architecture in the city.

17           CHAIRPERSON HOOD: Okay. I have no  
18 problem with that at all.

19           MR. MAY: You're hitting on something  
20 that's essentially not really a zoning issues. I  
21 mean, this is one of the things that we struggle  
22 with in the Height Act discussions is that this  
23 desire to make Washington architecture more  
24 interesting. And the greatest, you know,  
25 impediment to having more interesting shapes of

1 buildings and everything else is that we have  
2 maximized the FAR for the allowable height. So  
3 unless we're willing to, you know, reduce FAR or  
4 perhaps not give the bonus for a penthouse,  
5 because you know, if we don't allow that bonus but  
6 you still want to get that height, that means your  
7 building is going to be a little bit slimmer or be  
8 modulated more or something like that.

9 I will say that it is possible to have  
10 very interesting penthouse structures. And I  
11 would cite the Forensic Lab as one of those. If  
12 you've, you know, seen it from the freeway in  
13 Southwest Washington, it's got two oval shaped  
14 penthouses on the top. And it's, you know, it  
15 meets the rules and it's a lot more interesting.  
16 And it was, you know, designed well.

17 I don't know that we can do anything that  
18 would incentivize that, but anyway.

19 CHAIRPERSON HOOD: Anybody else?  
20 Commissioner Turnbull?

21 MR. TURNBULL: Well, I would agree with  
22 your comments, Mr. Chair, about uniformity. I  
23 mean, part of this is not so much trying to be  
24 rigid but we have had issues at times where the ZA  
25 may have gone a little bit too far in one way in

1 interpreting what the Zoning Commission has  
2 approved. So I think we need some guidance and I  
3 think some slip is fine. I just think to what  
4 degree is -- I think the office of planning maybe  
5 needs to come back and look at that and see what  
6 makes sense and whether it's a talk with the  
7 zoning administrator as to what he's given. Is it  
8 2 percent, is it 5 percent, is it 10 percent? You  
9 know, I think that's the kind of flexibility we  
10 would be looking at.

11 CHAIRPERSON HOOD: Anybody else?  
12 Commissioner Miller.

13 MR. MILLER: Yeah. Since I hadn't spoke  
14 on it.

15 I would suggest that this is probably one  
16 of those we need to advertise in the alternative.  
17 The A or B or E or a modified F that defines the  
18 permissible vertical slope.

19 My recollection, Mr. Chairman, is  
20 somewhat different from yours where in the PUD  
21 cases particularly, but I guess some of the BZA  
22 cases too, where we've allowed the unequal  
23 heights, the argument has been made that requiring  
24 one uniform height would actually look bigger.  
25 Not only on the roof but from the street or



1 somewhere else. And so that's where we've often  
2 done the variance through the -- is the variance?  
3 Through the PUD process or through BZA.

4           So, I think we do need greater  
5 flexibility in this area and I think the  
6 advertised OP proposal with the advertised OP  
7 alternatives, maybe as modified to define vertical  
8 and that E or F thing might do it.

9           CHAIRPERSON HOOD: Commissioner Miller,  
10 what I was saying, some uniformity and I think I  
11 prefaced my remarks with some uniformity. I  
12 didn't say uniformity. I said some. So to me,  
13 that's a difference.

14           MR. MAY: So, you know, I think that the  
15 -- I mean, I don't have any problem with  
16 advertising A and B as alternatives. I do support  
17 B more strongly and I think it's a reasonable  
18 compromise because if we just left everything go  
19 and, you know, eliminate it entirely what we wind  
20 up with is, you know, sort of a skyline on the  
21 roof and it's not done for any artistic reason.  
22 It's done for the convenience of well, I've got  
23 one piece that's got to be this tall, I've got one  
24 piece that's got to be that tall, and then you  
25 wind up with it just looking junky.

1           So, now the other thing I would suggest  
2 one other change that I like to throw in there and  
3 it's down in the text, which has to do with all  
4 penthouse structures to be located within one  
5 structure, and I know we have an exception right  
6 now if you have a separate elevator core you can  
7 have two structures. And I would suggest that if  
8 you have to have a remote stairwell that you could  
9 have a separate structure. Because that's one of  
10 the very common things that we see in BZA and it's  
11 very common in apartment buildings which tend to  
12 have a single central core, but then they have to  
13 have remote stairwells. And so if you have  
14 another stairwell that has to go to the roof, it  
15 can go to the roof. But it does have to be set  
16 back.

17           CHAIRPERSON HOOD: Okay. Anything else?  
18 Any other setbacks?

19           MR. TURNBULL: And underline setback.

20           CHAIRPERSON HOOD: Okay. Okay. I think  
21 we can go on to number 8.

22           MR. LAWSON: Thank you. We can add that  
23 as a new proposal.

24           Number 8, A and 8B are both the  
25 affordable housing linkage. We separated them out

1 just because of course the vehicle that we brought  
2 forward to the Commission for habitable space in a  
3 nonresidential building is different from the  
4 mechanism for habitable space. So, rather than go  
5 through this in a lot of detail the first one is  
6 for non-residential buildings and we basically  
7 utilize the current housing linkage formula from  
8 the zoning regulations for the addition of office  
9 space in -- that exists in the current  
10 regulations.

11 The Zoning Commission did ask us to look  
12 at options that would broaden this both  
13 geographically, and that's option number B. So  
14 option number B would basically be A plus B, and  
15 then you also asked us to look at an option which  
16 would require a deeper level of affordability, and  
17 that would be option number C. So those options  
18 are before you.

19 CHAIRPERSON HOOD: Okay. Any comments?

20 MS. COHEN: Yeah.

21 CHAIRPERSON HOOD: Vice Chair Cohen.

22 MS. COHEN: Thank you, Mr. Chairman. I  
23 think the deeper level of affordability is a non-  
24 starter. I mean, doing some of the math in my  
25 head I feel that A and B are appropriate to

1 advertise. But I think C may end up just being a  
2 disincentive.

3 MR. MAY: It's my turn to agree with you.

4 MR. MILLER: I also share -- I strongly  
5 support A plus B, and not the others. And I say  
6 that as one who, I think, suggested C originally.  
7 But I am persuaded by the testimony we received.

8 CHAIRPERSON HOOD: Okay. Anybody else?  
9 Mr. Turnbull?

10 MR. TURNBULL: A and B.

11 CHAIRPERSON HOOD: Okay. Let me ask  
12 this, and this may go to my questioning that I  
13 asked earlier, Mr. Lawson. In that whole -- I  
14 didn't do the legislative history of what went on  
15 in the United States Congress and what went on,  
16 and I didn't sit on NCPC and all that, so I'm  
17 coming from a different angle.

18 Was the affordable housing in  
19 consideration in the act in which United States  
20 Congress passed when they -- was that included in  
21 the Height Act with allowing us to be able to have  
22 the ability to do it if we wanted to? Was that a  
23 factor?

24 MR. LAWSON: It was not. The Height Act,  
25 at least most of the portions I read, it was

1 related more to allowing for additional  
2 development opportunities within the District and  
3 increasing out tax base accordingly. And also for  
4 design improvements to allow for habitable space  
5 to screen mechanical space. Affordable housing  
6 linkage was not brought up. But it's certainly  
7 not unusual. We do have this provision in the  
8 current regulations --

9 CHAIRPERSON HOOD: Right. Right.

10 MR. LAWSON: -- so it's consistent with  
11 other things that we do in the zoning regs.

12 CHAIRPERSON HOOD: I just was wondering  
13 if that was a factor in their considerations.  
14 Okay. I didn't do the legislative or history.  
15 Okay.

16 All right. So we're all straight and I  
17 would agree with my colleagues on number 8. Let's  
18 go to number 9. Oh, and I'm sorry, 8B.

19 MR. LAWSON: That's right. 8B is very  
20 similar but it's for the residential buildings.  
21 The OP proposal was to apply IZ, which it would do  
22 anyways, to habitable space within the penthouse.  
23 Once again, the Zoning Commission asked us to look  
24 at broadening that geographically to areas where  
25 IZ current does not apply but would apply to

1 penthouse space and to apply it at a deeper level.  
2 So applying it broader geographically would be B,  
3 so that option again would be A plus B, and then  
4 applying it at a deeper level of affordability  
5 would be option C.

6 CHAIRPERSON HOOD: Vice Chair Cohen.

7 MS. COHEN: Thank you, Mr. Chairman. I  
8 think it's A and B again.

9 MR. MILLER: I would agree.

10 MR. MAY: So, but you're not interested  
11 in the --

12 CHAIRPERSON HOOD: Deeper level.

13 MR. MAY: -- deeper level of  
14 affordability?

15 MR. MILLER: I am in the IZ case. I  
16 think we could deal with it in the IZ case.

17 CHAIRPERSON HOOD: Why wouldn't we deal  
18 it now, I guess?

19 MR. MILLER: Because, I think it's --

20 MR. MAY: See, I mean, I --

21 MR. MILLER: I'm worried that we're going  
22 to not get anything up there.

23 MR. MAY: Right.

24 CHAIRPERSON HOOD: Well, again, this is  
25 again, for public comment. For me I was thinking

1 A, B, and C.

2 MR. MAY: Yeah, and I thought C was the  
3 stronger alternate than B even, because the areas  
4 where it's not -- where IZ doesn't apply I didn't  
5 think that that -- I mean, it's my gut reaction is  
6 that that's not really where the gap is and we're  
7 better off trying to get more at 50 percent.

8 MR. MILLER: Well, that's the part of C  
9 that I like. It was the one-to-one --

10 CHAIRPERSON HOOD: Oh.

11 MR. MILLER: It's the one-to-one  
12 requirement that I think will act as a  
13 disincentive --

14 MR. MAY: You're right.

15 MR. MILLER: -- to get anything.

16 MR. MAY: Right. I'm sorry. I missed  
17 the word, one-to-one.

18 MR. MILLER: That's the part.

19 MR. MAY: So I mean --

20 MR. MILLER: That's the part. We can  
21 advertise just the --

22 MR. MAY: Just the 50 percent?

23 MR. MILLER: Yeah.

24 MR. MAY: Not the one-to-one.

25 MR. MILLER: As an alternative.

1           MR. MAY: Yeah. Yeah, I wasn't -- for  
2 some reason I was --

3           MR. MILLER: That's the part I was --  
4 yeah, and I was only focusing on the one-to-one  
5 requirement which is something that I mistakenly  
6 suggested.

7           MR. MAY: It's interesting and I  
8 completely glossed over the one-to-one and focused  
9 on the 50 percent.

10          CHAIRPERSON HOOD: Yeah, I saw the 50  
11 percent. Okay.

12          MR. MAY: All right.

13          CHAIRPERSON HOOD: Okay.

14          MR. MAY: That's why there are five of  
15 us. We all --

16          CHAIRPERSON HOOD: Okay. So, at least  
17 the 50 percent, we just take the one to one.

18          MR. MAY: Yeah.

19          CHAIRPERSON HOOD: Okay. I didn't see  
20 that. I just saw 50 percent.

21          MR. LAWSON: So it would basically be  
22 option A, plus option B, within the alternative at  
23 a 50 percent AMI rather than the current IZ  
24 requirement which is either 80 or a combination of  
25 80 and 50 percent. Got it. Thank you.



1           CHAIRPERSON HOOD: All right. Let's move  
2 on. Everybody is okay? Let's move on to number  
3 9.

4           MR. LAWSON: Number 9 is a technical one.  
5 It has to do with allowing special exception  
6 relief from penthouse regulations. That's what  
7 the current situation is. For most forms of  
8 relief we're not proposing to change those areas  
9 where special exception relief would be required.  
10 There was a request to define operating  
11 difficulties a little bit better, and so that's  
12 what we have proposed.

13           CHAIRPERSON HOOD: Okay. Any questions?

14           MR. MAY: No, it's okay.

15           CHAIRPERSON HOOD: We all good? Okay.  
16 Let's go to 10.

17           MR. LAWSON: Number 10 is a tougher one  
18 to explain, than it is some of the other ones,  
19 perhaps. And that's because we will have a number  
20 of PUDs that are approved but not yet constructed,  
21 or frankly PUDs that have been constructed. And  
22 there was a question of whether or not those  
23 projects, which would be allowed under the new  
24 regulations to do something by right should be  
25 allowed to take advantage of whatever the

1 Commission approves for penthouses without having  
2 to go through a full blown public hearing  
3 associated with approving that change.

4           So we brought forward a change that would  
5 allow an applicant to submit their application, to  
6 take advantage of things that conform to new  
7 penthouse regulations as a minor modification,  
8 which means you could, if you elected to, consider  
9 it as part of your consent calendar. You would  
10 also, of course, have the option of removing it  
11 from your consent calendar and holding a public  
12 hearing. But it would allow for that process of  
13 them being able to apply as a minor modification.

14           We did think that it was important to  
15 propose some conditions on that. Mainly to make  
16 sure that people had an opportunity to see what  
17 was actually being proposed and had an opportunity  
18 to digest it. And that's what B outlines. And  
19 that's just that they provide an appropriate level  
20 of plans, that they provide a verification that  
21 the ANC had been notified of this change, and that  
22 we provide enough time between when the  
23 application is filed and when it's put on your  
24 consent calendar for an ANC to actually meet and  
25 provide comments if they wish to, and frankly

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1 enough time for the Office of Planning to review  
2 the documents and provide a report.

3 And that, again, is option B.

4 CHAIRPERSON HOOD: Mr. Lawson, typical  
5 with some other language that we have about  
6 consent calendars and expedited review on the BZA,  
7 could a ANC take it off of the consent calendar,  
8 or how do we --

9 MR. LAWSON: I don't believe they can.  
10 They could certainly request that the Zoning  
11 Commission take it off the consent calendar. That  
12 could be something they could do. Although,  
13 actually, I'm going to ask Ms. Schellin whether  
14 there would be an opportunity actually for an ANC  
15 -- I guess they could -- actually would the Zoning  
16 Commission get that comment from the ANC?

17 MS. SCHELLIN: On a consent calendar  
18 item?

19 MR. LAWSON: Yes.

20 MS. SCHELLIN: Absolutely.

21 MR. LAWSON: Yeah. Okay.

22 MS. SCHELLIN: The ANC is considered an  
23 automatic party so they do get to file a response  
24 within seven days. That's the process right now.  
25 Once they're served we have to allow at least

1 seven days for them to respond before it will even  
2 go on the consent calendar.

3 CHAIRPERSON HOOD: Because I believe on  
4 the BZA, and I may be mistaken, but I thought if  
5 it's expedited review or consent, then if the ANC  
6 says anything, then it comes off. So I was  
7 wondering if that same trigger happens here.

8 But they can request us to do it?

9 MR. LAWSON: They can request that --

10 CHAIRPERSON HOOD: Okay.

11 MR. LAWSON: -- you can do it. And I  
12 think with the BZA that's the same case. An ANC  
13 can request that I don't think that an ANC can  
14 automatically remove an item from the consent  
15 calendar.

16 MR. MILLER: They wouldn't be advised --

17 CHAIRPERSON HOOD: Okay. I thought --

18 MR. LAWSON: But is definitely a criteria  
19 of the BZA that the ANC not be opposed to the  
20 expedited review.

21 CHAIRPERSON HOOD: I thought if they even  
22 said something that it automatically came off.  
23 Maybe I'm confused.

24 MR. MILLER: I think it's just because we  
25 give them great weight when they do request it.

1 CHAIRPERSON HOOD: Oh, okay. Okay. Well,  
2 I'm glad you --

3 MR. MILLER: The great weight they  
4 deserve.

5 CHAIRPERSON HOOD: I hope they're  
6 watching. I'm glad you mentioned that. Okay.  
7 Anything else?

8 MR. MAY: So, Mr. Lawson, you mentioned  
9 the time for the Office of Planning to file a  
10 report, but I don't see a requirement that you  
11 have to.

12 MR. LAWSON: I think that's part of any  
13 minor modification.

14 MR. MAY: Is it?

15 MR. LAWSON: A request. Yes.

16 MR. MAY: Okay.

17 MR. LAWSON: But I can check into that  
18 and make sure that's clear.

19 MS. SCHELLIN: I think what it is, is  
20 right now it's not required for a minor mod, but  
21 because OP is so good they've been weighing in and  
22 we've just gotten used to it.

23 MR. MAY: I know. Well, yeah. We want  
24 to make sure that this continues in perpetuity  
25 regardless of -- yeah.

1 CHAIRPERSON HOOD: Okay. So what number  
2 are we on?

3 MR. LAWSON: We can add that.

4 CHAIRPERSON HOOD: What number?

5 MR. LAWSON: Was it 10 already?

6 CHAIRPERSON HOOD: Ten?

7 MR. LAWSON: We can add that.

8 CHAIRPERSON HOOD: Okay. So we're going  
9 to number 11?

10 MR. LAWSON: Yes, sir. This is -- now  
11 we're getting really down to the weeds. This is  
12 definitions. We'd propose the new definition for  
13 Height Act simply to avoid having to repeat the  
14 long title of the Height Act every time it appears  
15 in the zoning regulations. We actually already  
16 did that through ZRR, so this is consistent with  
17 ZRR.

18 We'd propose the definition for  
19 penthouse. That's not a term that's used on the  
20 zoning regulations right now, but to be consistent  
21 with the Height Act we are proposing that the  
22 language reflect penthouses being that rooftop  
23 structure.

24 And some minor adjustments to the  
25 definition for story, and to top story will be

1 needed, depending on exactly what the Zoning  
2 Commission ends up approving for other changes as  
3 noted here.

4 CHAIRPERSON HOOD: Okay. Anything else  
5 on this one? We're being consistent here so I  
6 don't think we have a -- I don't think we're going  
7 to have a lot on that one.

8 Twelve. Number 12, Mr. Lawson.

9 MR. LAWSON: And last but not least, this  
10 has to do with parking. The original proposal  
11 from OP simply recommended that we maintain the  
12 current parking requirements, which is no parking  
13 requirement, basically for habitable space. But  
14 we certainly recognize that that no parking  
15 requirement was based on a current provision which  
16 didn't really allow habitable space within a  
17 penthouse.

18 So there is an alternative proposal that  
19 would establish that new, kind of new leasable  
20 space I guess, within the penthouse, new office  
21 space, new residential, additional residential  
22 units, you know, those kinds of things would  
23 contribute towards the otherwise required parking  
24 for that zone. So those options are there before  
25 you.

1 CHAIRPERSON HOOD: Okay. Anyone want to  
2 comment on any of this?

3 MS. COHEN: I have a general question.

4 CHAIRPERSON HOOD: A general question,  
5 Vice Chair Cohen.

6 MS. COHEN: Yeah, I just am confused. We  
7 had talked about getting some guidance on solar,  
8 you know, and to make sure that the solar issues  
9 were compatible with all of our discussions and I  
10 don't think I've seen anything on that. So --

11 MR. LAWSON: You have not seen anything  
12 on that. We did bring this forward to the Zoning  
13 Commission and suggested that you not deal with  
14 solar as part of this provision and instead deal  
15 with it as part of a more omnibus solar thing. We  
16 anticipate that will be -- I know I've said this  
17 before, but it will be coming to you very shortly.  
18 Now we have two staff members who are working on  
19 this proposal to come forward to you and they've  
20 been working closely with DDOE and with the solar  
21 industry people to bring forward something that  
22 would address this issue. Not just on penthouses,  
23 but rooftops and on properties in general.

24 MS. COHEN: Thank you. I forgot that  
25 entirely. If you had stated it before. Maybe I



1 was on vacation.

2 MR. LAWSON: I think you were on  
3 vacation, actually.

4 MR. MAY: So for number 12 we would be  
5 advertising A and B? Is that we think?

6 MR. MILLER: I have no problem  
7 advertising A and B. I think B does make sense.

8 MR. MAY: Okay.

9 CHAIRPERSON HOOD: Okay. So, A and B it  
10 is. Anything else?

11 MR. LAWSON: No, sir. I guess I would  
12 just have one last question for you for the  
13 Commission, whether or not you wanted to see a  
14 final version of this, or if you are comfortable  
15 with OP working with OAG to draft the public  
16 hearing notice based on your direction. I think  
17 your direction was pretty clear. I think we're  
18 pretty comfortable with it. I can get that public  
19 notice out and get the hearing date set.

20 CHAIRPERSON HOOD: Mr. Lawson, with the  
21 great work that you do I would suggest that you  
22 all move forward in that fashion.

23 MR. LAWSON: Great. Thank you.

24 CHAIRPERSON HOOD: I hope my colleagues  
25 agree because I don't want to speak for them.

1 MS. COHEN: I agree.

2 CHAIRPERSON HOOD: Okay. And we  
3 appreciate all the work that Office of Planning  
4 has done on it.

5 MR. LAWSON: We very much appreciate the  
6 feedback.

7 CHAIRPERSON HOOD: I takes a lot for all  
8 five of us to agree, but we definitely agree on  
9 that last statement.

10 MR. LAWSON: Thank you.

11 CHAIRPERSON HOOD: Okay. Ms. Schellin,  
12 one thing that I do want us to do, though, if it's  
13 appropriate, we have our oversight, and I would  
14 like to use the television time to let people know  
15 what we're doing with the penthouse. So if Ms.  
16 Bardin and you can come with something and I will  
17 just read it, if the Chairman allows me to read  
18 it, at the oversight hearing. Because one of the  
19 things that I am trying to get away from is always  
20 hearing that we don't -- nobody knows that we're  
21 trying to do something under the table. And  
22 that's not the case here.

23 So I would like to use that opportunity  
24 to help get the word out about penthouses. Right.  
25 So.

1 MS. SCHELLIN: Yes, we've already picked  
2 a date for this hearing that we've set aside for.

3 CHAIRPERSON HOOD: Okay. So maybe if you  
4 all can get something for me to read?

5 MR. MILLER: What is that date?

6 MS. SCHELLIN: April 30th.

7 MR. MILLER: April 30th. Okay. Great.

8 CHAIRPERSON HOOD: So that way I can make  
9 sure I have done what I can with the little TV  
10 time that I'm going to have. Or possibly have.  
11 Okay.

12 MS. SCHELLIN: Okay.

13 CHAIRPERSON HOOD: All right. Do we have  
14 anything else?

15 MS. SCHELLIN: No, sir.

16 CHAIRPERSON HOOD: Again, thank everyone  
17 for their -- well, for their work on this and we  
18 appreciate Office of Planning as well as the  
19 Office of Zoning, and this meeting is adjourned.

20 (Hearing adjourned at 9:32 p.m.)

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