

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

MONDAY

SEPTEMBER 20, 2010

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary  
DONNA HANOUSEK, Zoning Specialist  
ESTHER BUSHMAN, General Counsel

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO. null

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
TRAVIS PARKER  
LAINE CIDLOWSKI  
STEVE COCHRAN

The transcript constitutes the  
minutes from the Public Hearing held on  
September 20, 2010.

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AGENDA ITEM	PAGE
<b>CALL TO ORDER, Anthony J. Hood.....</b>	<b>5</b>
 <u>Z.C. Case Number 08-06</u>	
<u>Comprehensive Zoning Regulations Review:</u>	
<u>Chapters B2 (Uses) and B4 (Height)</u>	
<b>Office of Planning, Travis Parker.....</b>	<b>7</b>
<b>Report of Other Government Agencies.....</b>	<b>55</b>
<b>Report of ANCs</b>	
David Holmes, Proponent .....	56
Ann Heuer, Opponent .....	60
<b>Parties in Support</b>	
Steven Sher .....	69
Monte Edwards .....	75
<b>Parties in Opposition</b>	
Alma Gates .....	93
George Clark .....	97
Laura Richards, Penn Branch Citizens Civic Association.....	116
<b>Adjourn, Chairman Hood.....</b>	<b>135</b>

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

2 6:30 p.m.

3 CHAIRMAN HOOD: Good evening,  
4 ladies and gentlemen. This is the Public  
5 Hearing of the Zoning Commission of the  
6 District of Columbia for Monday, September 20.

7 My name is Anthony Hood. Joining me are  
8 Vice- Chairman Schlater, Commissioner  
9 Selfridge, Commissioner Turnbull, and we are  
10 expecting Commissioner May. We are also  
11 joined by the Office of Zoning staff and the  
12 Office of Planning staff.

13 This proceeding is being recorded  
14 by a court reporter and is also webcast live.

15 Accordingly, we must ask you to refrain from  
16 any disruptive noises or actions in the  
17 hearing room.

18 The subject of this evening's  
19 hearing is Zoning Commission Case No. 08-06.  
20 This is a request by the Office of Planning  
21 for Text Amendments to the Zoning Regulations  
22 to establish a new use category system and a

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1 consolidation of height regulations into our  
2 one general height chapter.

3 Notice of today's hearing was  
4 published in the D.C. Register on September  
5 10, 2010, and copies of that announcement are  
6 available to my left on the wall near the  
7 door.

8 The hearing will be conducted in  
9 accordance with provisions of 11 DCMR 3021 as  
10 follows; preliminary matters, presentation by  
11 the Office of Planning, reports of other  
12 government agencies, report of the ANC which  
13 is all in the city, organizations and persons  
14 in support, organizations and persons in  
15 opposition.

16 The following time constraints will  
17 be maintained in this hearing; organizations  
18 five minutes, individuals three minutes. The  
19 Commission intends to adhere to the time  
20 limits as strictly as possible in order to  
21 hear the case in a reasonable period of time.

22 All persons appearing before the

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1 Commission are to fill out two witness cards.

2 These cards are located to my left on the  
3 table near the door. Upon coming forward to  
4 speak to the Commission please give both cards  
5 to the reporter sitting to my right before  
6 taking a seat at the table. When you are  
7 finished speaking please turn your microphone  
8 off so not to pick up any background noise.

9 To avoid any appearance to the  
10 contrary the Commission request that persons  
11 present not engage members of the Commission  
12 in conversation during any recess or at any  
13 time. Please turn off all beepers and cell  
14 phones at this time so not to dispute these  
15 proceedings.

16 At this time the Commission will  
17 listen to any preliminary matters. Does the  
18 staff have any preliminary matters?

19 MS. SCHELLIN: No, sir.

20 CHAIRMAN HOOD: Okay. Let's get  
21 right into it. Let's go straight to Mr.  
22 Parker.

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1 Good evening.

2 MR. PARKER: Good evening, Chairman  
3 Hood, members of the Commission. My name is  
4 Travis Parker. Tonight in addition to Ms.  
5 Steingasser I'm joined by two other people  
6 from the Office of Planning; Laine Cidlowksi,  
7 who is responsible for the bulk of the use  
8 chapter that you're going to read tonight, and  
9 Steve Cochran who is responsible for the bulk  
10 of the work on the height. I'll be relying on  
11 them some as well hopefully tonight.

12 Just a reminder of where we are in  
13 our proposed code. These are general chapters  
14 that apply city wide so they are in the  
15 Subtitle B of our regulations. Most of the  
16 first chapters that we'll look at in this  
17 process will be in this general subtitle and  
18 in the future we'll get it down to individual  
19 zones. Nothing that we talk about tonight is  
20 zone specific like how high buildings could be  
21 in a particular zone. These are all general  
22 rules.

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1 I'm going to start tonight with the  
2 height chapter. If you will recall, the large  
3 issue in dealing with height was how to  
4 interact zoning height limits with the height  
5 limits of the 1910 Height Act. We had a lot  
6 of discussion at the set down and previously  
7 with the task force and working group about  
8 whether and how to incorporate the Height Act  
9 into zoning.

10 Ultimately, the Zoning Commission  
11 sat down a version of our height text that did  
12 not incorporate the Height Act in the Zoning  
13 Regs. Instead what we are proposing as part  
14 of this set down is to review the height  
15 chapter that's in front of us tonight.

16 Then concurrently with the adoption  
17 of these regs, or prior to the adoption of  
18 these regs, DCRA will adopt Height Act  
19 regulations codifying their interpretations of  
20 the Height Act including information that was  
21 previously in documents we sent to you  
22 including definition of residence street,

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1 definition of business street, and various  
2 other Height Act interpretations. Those  
3 things have come out of the document we're  
4 reviewing tonight from our previous version  
5 and won't be on the table for discussion  
6 tonight.

7 What remains in the chapter is  
8 what's on the board, Section 40.0 through  
9 40.4. I'm going to give you just a really  
10 brief synopsis of each one and then we'll go  
11 on to the use chapter.

12 At each of our general subtitle B  
13 chapter we'll start with an introduction. In  
14 this case it will be the purpose of regulating  
15 height in the District of Columbia. This  
16 section will also include the relationship of  
17 this chapter to the Height Act and provide a  
18 reference to the Height Act that will be  
19 located elsewhere in Title 11.

20 Section 40.1 is also a common theme  
21 throughout the general chapters and we'll talk  
22 about the relationship of this general chapter

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1 to the land use subtitles, how you find your  
2 individual height and how you relate the  
3 information in the two places.

4 Section 40.2 is the general rules  
5 of measurement. This applies to all zones.  
6 It talks about how you measure height within  
7 each zone. The bottom point in terms of  
8 starting, in terms of elevation to the top  
9 point in terms of the top of the roof or the  
10 parapet.

11 Section 40.3 gets into roof  
12 structures and exceptions to the maximum  
13 height. This details the types of structures  
14 that are allowed to go above zoning height and  
15 sets out the required setbacks and foot print  
16 limits as well as height limits for roof  
17 structures.

18 Finally, Section 40.4 lays out the  
19 available special exceptions in this chapter.

20 You are allowed to seek special exception  
21 from the roof structure setback for certain  
22 types of roof structures as well as the roof

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1 structure footprint limit. The criteria on  
2 special exceptions include impacts on zoning  
3 regulations, neighborhood, and nearby energy  
4 creation facilities.

5 That's our basic presentation on  
6 height. The main change from what you saw at  
7 set down again was the removal of three  
8 sections that had to do solely with the Height  
9 Act and there were several minor wording  
10 changes. The Zoning Commission had offered us  
11 some minor technical edits that we did make.

12 There is also a section in the  
13 report. I'm happy to go into further detail  
14 discussing the proposal to remove from the  
15 existing regulations the requirement that roof  
16 structures be a single structure of a uniform  
17 height. I would be happy to go into more  
18 discussion on that if you have further  
19 questions on the information presented in the  
20 report.

21 At this time -- oh, just one final  
22 note on the height issue. The version you had

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1 seen previously used the words "street-based  
2 height limits." Just a reminder that was in  
3 reference to Height Act height limits so all  
4 the language about street-based height limits  
5 has been striped out. The version in front of  
6 you attached to the report should strictly  
7 reference the Height Act directly.

8 The other document up for review  
9 tonight is our general use chapter. I've got  
10 a quick presentation very similar to what you  
11 saw last time, although this time you'll  
12 actually be able to see the screen and see  
13 what we're talking about.

14 Very quickly, the working group  
15 task force, and Zoning Commission in going  
16 through this process over the last couple  
17 years identified a series of problems with the  
18 current use system. Our current use system  
19 has nearly 650 discrete uses listed throughout  
20 our code. Zones have what is called use  
21 nesting where each zone refers to the previous  
22 zones in order to outline the acceptable uses.

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1           What we find, and what other cities  
2       have found throughout the country, is that  
3       these use systems lead to confusion. They are  
4       constantly outdated. A lot of the uses listed  
5       in our code lack a definition. We have  
6       identified a list of problems with using a use  
7       system.

8           Other cities in our best practice  
9       cadre have gone in the opposite direction of a  
10      use system. All of these codes that have been  
11      recently updated have gone to more of a use  
12      category system where they will have 30 or 40  
13      or 50 types of uses rather than the 600 plus  
14      that D.C. has. As we will see, hopefully it  
15      makes for a simpler and easier to use use  
16      system.

17          The general strategy is taking like  
18      uses, uses with similar types of activities,  
19      similar types of impacts, and categorizing  
20      them. Book store, drug store, shoe store are  
21      categories under retail. Tailor, bike repair,  
22      tax service are categorized under service.

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1 Then regulating the impacts of retail service  
2 or the other categories that are defined.

3 Ultimately through all the work  
4 with the working group, task force, and Zoning  
5 Commission OP has settled on 29 different use  
6 categories. Again, categories that are based  
7 on the activities and impacts of the various  
8 uses. Some of them are pulled out because  
9 they are particularly hard to categorize  
10 elsewhere or that they provide distinct  
11 performance or policy elements that are in the  
12 code now.

13 Each use category has a particular  
14 definition. In the general chapter that we're  
15 reviewing tonight is the list of definitions  
16 of use categories. The actual permission of  
17 what uses are permitted in which zones and  
18 what conditions are on those uses will be  
19 located with the zones in the future subtitles  
20 that we look at.

21 As we come back to talk about  
22 residential and commercial and industrial

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1 zones we will see a table of use permissions  
2 in each of those zones that is based around  
3 these 29 categories.

4 The 29 categories are on the  
5 screen. They should also be in the packet in  
6 front of you. I won't go through each one but  
7 the general strategy again with these is  
8 taking lists of uses in our current code and  
9 combining them.

10 I believe there are over 100 uses  
11 that fall into retail category. Just to give  
12 some examples, there's 20-plus uses that fall  
13 into service and/or office and so on and so  
14 forth through the code combining existing uses  
15 into categories.

16 One thing I want to call attention  
17 to is that this is a paradigm shift in one way  
18 from our current -- well, in more than one way  
19 from our current code but one particular way  
20 is that in the current code we list a series  
21 of uses that are allowed in Zone X.

22 Things that are not on the list are

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1 by default through the system not permitted or  
2 are prohibited in that zone. The difficulty  
3 is when a use is not listed. An example in  
4 our current code is yoga studio. The  
5 intention, I don't think, of anyone is to not  
6 allow yoga studios where other similar uses  
7 are so the zoning administrative has to make a  
8 case-by-case determination is this  
9 qualitatively like another type of use on our  
10 list and, if so, what is that use rather than  
11 prohibiting a yoga studio.

12 In the new system every use falls  
13 into a category. There are certainly  
14 prohibited categories but there are no holes  
15 in the system for a use. Every use falls into  
16 one of 29 categories either by direct  
17 reference or by interpretation of the zoning  
18 administrative. Each category then has a  
19 permission level; permitted, not permitted,  
20 etc.

21 Just to show you a little bit about  
22 how this works together, the chapter again

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1 that we're reviewing tonight is in subtitle B.

2 It will then directly relate to a use  
3 permission chart in each of the land use  
4 subtitles.

5 The residential mixed used,  
6 downtown, PDR, each of those subtitles will  
7 have a chart with all the permissions in it  
8 and the description of how to use that chart  
9 is here in the chapter we're discussing  
10 tonight. An example of that chart is here. I  
11 think a sample use chart went out with the  
12 original report as well.

13 Basically the charts will be  
14 organized by category and zone and there are  
15 five types of permissions. We'll get more  
16 into this when we get into the land use  
17 subtitle and actually work through what uses  
18 are permitted there.

19 Within the chart the five  
20 permissions levels are P for permitted, C for  
21 permitted with conditions, S for permitted  
22 only by special exception, N for not

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1 permitted, and A for permitted only as an  
2 accessory use.

3 For the conditional special  
4 exception and accessory use notations there  
5 will also be followed a reference to the  
6 conditions that relate to that use so the  
7 chart will contain a direct reference to where  
8 you can find the conditions.

9 I won't read through all this slide  
10 but, you know, we found a long list of  
11 problems with the existing use list system.  
12 This is the list of benefits that the working  
13 group, task force, and OP identified with  
14 switching to a category system, increased  
15 flexibility. We'll see in the next few slides  
16 it also improves our ability to meet our  
17 planning goals to make local policy changes  
18 and implement those in our use code.

19 I want to run through three  
20 examples. We ran through these in the set  
21 down meeting but hopefully now you'll be able  
22 to see them. Ways that we have either taken

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1 current information and can put it in the new  
2 system or can take future information and put  
3 it in the system.

4 One example that I want to run  
5 through is in the Macomb-Wisconsin Overlay.  
6 Combing through the list of permitted uses in  
7 the current overlay we pulled out three; self-  
8 service laundry, dry cleaning establishment,  
9 and tailor shop. Each of these are allowed if  
10 they are under 2,500 square feet. It takes a  
11 lot of text sort of to get that through and  
12 each one goes into a category.

13 In the future code all three of  
14 these uses would fall into the service  
15 category and the service category in general  
16 would be allowed but in the Macomb-Wisconsin  
17 Overlay we would put the service category as a  
18 conditional use and the conditional use would  
19 simply read something like cleaning,  
20 alteration, or repair of clothing is limited  
21 to less than 2,500 square feet in area.

22 In a way we can capture not only

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1 the permission of those three types of uses  
2 but the conditions on those uses in a single  
3 letter on a chart by saying service is  
4 conditional. If you are a service use, this  
5 is one of the conditions you must meet.

6 Another example is how home  
7 occupations will be dealt with. Right now the  
8 text provides a list of common home  
9 occupations; clergyman, academic, tractor  
10 repair, dress maker. Generally what we find  
11 is that these fall into two main categories,  
12 office and service.

13 Right now we have a difficulty of a  
14 very limited home occupation list. For  
15 example, city planner isn't on the list so I  
16 couldn't actually legally open my city  
17 planning office from my home right now but  
18 that's not necessarily something that we want  
19 to prevent.

20 The way we propose handling this in  
21 the future is office and service categories in  
22 residential districts would have a permission

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1 level of A. What this means is those uses are  
2 permitted as accessory to a permitted use  
3 being, in this case, residential.

4 The existing limitations on those,  
5 25 percent of the home, no more than one  
6 employee, etc., etc., would become conditions  
7 on that accessory use. It's a very simple way  
8 to make clear what the permission level is and  
9 to take all the conditions from our current  
10 code and include them in the new code.  
11 Hopefully that is a lot clearer, uses a lot  
12 less text.

13 The final example I want to talk to  
14 you about tonight isn't something that's in  
15 our current code but something that may be in  
16 the future. 2008 Deanwood Plan had a series  
17 of recommendations for what they do and don't  
18 want to see in their area. Deanwood is  
19 currently zoned C-1.

20 They are looking to prohibit carry-  
21 outs, encouraged restaurants, encourage  
22 grocery store, prohibit liquor, etc. If we

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1 categorize these into our categories, we can  
2 see we've got two food and alcohol service and  
3 three retail -- excuse me, four retails on  
4 this list.

5 Right now food and alcohol service  
6 is allowed conditionally in C-1. In other  
7 words, fast food is not allowed and retail is  
8 allowed unconditionally in C-1. The simple  
9 way to make these policy recommendations work  
10 in our new code, the first example is no  
11 carry-outs.

12 In order to limit carry-outs in the  
13 food and alcohol service we simply add another  
14 condition to that food and alcohol service  
15 saying no more than X percent of any food or  
16 alcohol service may be consumed offsite. For  
17 retail in order to prohibit liquor stores we  
18 say no more than X percent of retail sales on  
19 a site may be for offsite consumption of  
20 liquor.

21 Simply adding these two conditions  
22 to our list we accomplish the policies

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1 proposed by the Deanwood plan. You can see  
2 how this allows for easy tailoring and adding  
3 or removing or changing of conditions and  
4 permissions.

5 Two final subjects I want to cover.

6 One is when things fall on the line are  
7 difficult to categorize. Two examples of this  
8 that we found. The first is a funeral and  
9 mortuary service. Right now it meets both --  
10 when we went through this exercise it met the  
11 definitions of both service and institutional.

12 Something like that when we run  
13 across those if the Zoning Administrator ran  
14 across this after the code was adopted, the  
15 Zoning Administrator would make a call which  
16 that falls into. If needed we can add that  
17 particular use to the list of examples. In  
18 this case I think that became institutional  
19 but I don't remember.

20 The other example was a cabaret or  
21 dinner theater. This is a little more  
22 difficult because it not only meets the

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1 definition of both food and alcohol service  
2 and entertainment and performing arts, it  
3 actually has the impact of both.

4 It is a place where you are served  
5 dinner and where you go and watch a show. In  
6 a case like that a use like that would  
7 actually fall into both categories and would  
8 have to meet the requirements of both  
9 categories.

10 Finally, I want to talk about  
11 CBRFs, community-based residential facilities.

12 In working with OAG we were advised that  
13 certain types of CBRFs, specifically those  
14 that deal with disabled persons, community  
15 resident facilities, substance abuser's homes,  
16 and youth residential care homes, cannot be  
17 called out and given additional limitations  
18 that are not on residential uses.

19 Those uses will fall into the  
20 residential category, will be defined as  
21 residential, and the only limited that will be  
22 put on them are a unit limit just like

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1 residential. There won't be a distance limit  
2 or a location limit.

3 The other CBRFs, emergency shelters  
4 are going to be their own category. Health  
5 care facilities will be their own category.  
6 And the last two, adult and youth  
7 rehabilitation homes, we've proposed calling  
8 community-based institutional facilities and  
9 those would retain all of the existing  
10 limitations and restrictions on CBRFs.

11 So, with that, my last slide is  
12 just an example of the use chart. These are  
13 not real zones. I've got sample zone 1,  
14 sample zone 2, sample zone 3. Down the left  
15 side you see the 29 use categories. This is  
16 what the use chart in the code will look like  
17 when we get to the individual land use  
18 subtitles.

19 That is the presentation. Steve  
20 and Laine and I are happy to answer your  
21 questions and that's it.

22 CHAIRMAN HOOD: Who would like to

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1 start us off if you have any questions? I  
2 want to remind us to stay in the mic when we  
3 speak.

4 MR. PARKER: If I could add one  
5 more thing. I mentioned the changes we made  
6 to the general height chapter. The change  
7 that we proposed in our report to the use  
8 chapter had to do with temporary uses.

9 We did propose a list of five of  
10 these categories that would not be allowed as  
11 temporary uses in response to a comment we had  
12 heard from the Commission; animal care and  
13 boarding, firearm sales, PDR, sexually-  
14 oriented business, and waste-related  
15 categories wouldn't be allowed as temporary  
16 uses.

17 CHAIRMAN HOOD: Any comments?  
18 Commissioner Turnbull.

19 COMMISSIONER TURNBULL: Thank you,  
20 Mr. Chair. I just have a couple of comments  
21 related to some of the letters that we  
22 received. The first one I'm looking at is

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1 Exhibit 12 from NCPC. I don't know if they've  
2 got the right number. I think they must be  
3 looking at an older document. They talk about  
4 4.06.1(i)

5 MR. PARKER: Now 4.03.1.

6 COMMISSIONER TURNBULL: That's  
7 right. They don't seem to like that section.  
8 I'm wondering if you've gone through this  
9 what your reaction is to that.

10 MR. PARKER: It's not a new issue  
11 for us. This has been an issue from day one  
12 at the working group. There is --

13 COMMISSIONER TURNBULL: I guess in  
14 trying to -- I mean, if no one else as read it  
15 in the audience, basically I think they're  
16 concerned that the spires, domes, and all that  
17 could become occupied spaces on the roof is  
18 one of their concerns.

19 MR. PARKER: Yeah. I think the  
20 concern that they are getting to is  
21 specifically 4.03.1(j) where we propose  
22 penthouses over accessory amenity features,

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1 things like meeting space or a fitness room.

2 Common space in the building that  
3 is an amenity feature to the building could  
4 take place in the roof structure. Right now I  
5 think the Zoning Administrator allows things  
6 like bathrooms and changing rooms and things  
7 accessory to an outdoor swimming pool.

8 We've tried to codify that and take  
9 it to the next step of saying basically common  
10 recreation space or common meeting space for a  
11 building could take place in that penthouse.  
12 The opinion does exist that this violates the  
13 Height Act language of human occupancy and  
14 that is certainly up for debate.

15 COMMISSIONER TURNBULL: I guess  
16 that's not really defined whether it's  
17 temporary occupancy or occupancy that is meant  
18 to be permanent or somebody could always be up  
19 there. I'm thinking of an event or something  
20 which would be human occupancy rather than a  
21 function that's up there all the time.

22 MR. PARKER: Right. Right. Yeah.

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1 I mean, it's a fine line. Like I said, in  
2 the existing code we allow for bathrooms. We  
3 allow for things that allow humans in that  
4 space to use that space. We took the tack of  
5 defining occupancy as general use of a private  
6 nature so residences would be occupancy.

7 Offices would be occupancy. Things that  
8 are used continuously and generally and  
9 occasionally by particular individuals and  
10 went with common use as common and not  
11 continuous use as not meeting that definition.

12 COMMISSIONER TURNBULL: How do you  
13 see us getting resolution on this with NCPC  
14 from their interpretation of the Height Act  
15 and from a federal standpoint?

16 MR. PARKER: Well, ultimately, I  
17 mean, if you look at Section 4.00 it  
18 references the Height Act. Ultimately the  
19 Height Act rules and it's not the NCPC but the  
20 Zoning Administrative that interprets the  
21 Height Act.

22 COMMISSIONER TURNBULL: Right.

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1 MR. PARKER: So ultimately later in  
2 Title 11 the DCRA interpretations of the  
3 Height Act will be included in Title 11.  
4 Section 4.00 of these Zoning Regs points right  
5 to that. If that interpretation changes,  
6 that's what rules.

7 COMMISSIONER TURNBULL: We also had  
8 Exhibit No. 11. This is from ANC-6A.

9 MR. PARKER: I have it.

10 COMMISSIONER TURNBULL: Well, they  
11 have a few things on here but the one they're  
12 talking about I guess it starts in the second  
13 paragraph, or actually the third paragraph.  
14 While paragraphs 4.02.4(a) and 4.02.4(b)  
15 provide adjective standards for uniformly  
16 measuring height, paragraphs 4.02.4(c) and  
17 4.02.4(d) allow the designation of arbitrary  
18 and capricious zero height measurements.

19 They are basically talking about a  
20 20-year-old zero height measuring point  
21 determinations by the Zoning Administrator  
22 developed under obsolete Zoning Regulations to

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1 be used in place of uniform standards  
2 contained in paragraphs (a) and (b). I guess  
3 they are looking at precedent, how are we  
4 going to look at some of these old  
5 measurements. Is this a ZA choice?

6 MR. PARKER: I think if we were  
7 starting from scratch -- they make a great  
8 point. If we were starting from scratch we  
9 would just want (a) and (b). The problem is  
10 there are a lot of developments in the city.  
11 We've got a lot of existing stuff in the city.

12 There are things like L'Enfant  
13 Plaza and like portals on Maryland Avenue that  
14 had previous height determinations from some  
15 point. We have existing buildings that would  
16 be made nonconforming by changing that point.

17 COMMISSIONER TURNBULL: Yeah.

18 MR. PARKER: I think moving forward  
19 4.04.2 or whatever the section is, (a) and (b)  
20 should be the general rules but we have a lot  
21 of existing situations that we need to make  
22 sure we account for.

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1 COMMISSIONER TURNBULL: Okay.

2 MR. PARKER: Union Station North is  
3 another example.

4 COMMISSIONER TURNBULL: We are  
5 still going to have some nonconforming issues.

6 MR. PARKER: I think the point of  
7 CND is that they are not nonconforming. Where  
8 you have previous determinations --

9 COMMISSIONER TURNBULL: Oh, okay.  
10 I understand.

11 MR. PARKER: -- they would be  
12 nonconforming if we didn't have CND.

13 COMMISSIONER TURNBULL: Right.  
14 Okay.

15 Mr. Chair, those are -- I reserve  
16 the right to come back later but those are two  
17 of the items that I just picked out of some of  
18 the correspondence that we had here that I  
19 think we needed to put on the record.

20 There are some other things in here  
21 too which I think we have all touched upon  
22 before and I don't know OP has responded to

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1 any of these or not but I'll relinquish my  
2 time right now.

3 CHAIRMAN HOOD: Thank you, Mr.  
4 Turnbull. I would agree with your first  
5 point. I heard the discussion. Through this  
6 rewrite it appears to me, unless I'm missing  
7 something, Mr. Parker, about the Zoning  
8 Administrator determining the height of the  
9 NCPC, this is something we've been going  
10 around about for a long time.

11 I was hoping with the rewrite we  
12 wouldn't keep getting letters from NCPC and  
13 the District government or the city going back  
14 and forth about a violation of the Height Act.

15 I'm hoping at this point unless it's going to  
16 happen down the line or it's going to happen  
17 soon, we need to come to some type of  
18 agreement to where we won't -- this Zoning  
19 Commission won't keep getting letters saying  
20 the NCPC is saying it's a violation of the  
21 Height Act.

22 Some kind of way that needs to be

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1 resolved. You might not be the right person  
2 to talk to but I see my good friend Mr.  
3 Zaidain in the back you used to be with the  
4 Board of Zoning Adjustment. We want to  
5 welcome him tonight. At some point, I mean,  
6 to me we're not making any progress forward.

7 MR. PARKER: Well, on that last  
8 point I think we made a lot of progress. This  
9 letter from NCPC, this three-page letter is  
10 about a 10th of the length it was a couple of  
11 years ago. Not only that, if we had had this  
12 meeting two years ago this room would have  
13 been full and we've got a dozen people.

14 There's always going to be some issues  
15 until we set something down on paper but I  
16 think we've gone a long way towards  
17 alleviating a lot of people's concerns and I  
18 think we're headed in the right direction.

19 CHAIRMAN HOOD: Right. Put my  
20 point is that point is always there. That is  
21 the same point, that one point. I agree with  
22 -- you know, I'm not saying that you all

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1 haven't made any progress in that sense but  
2 that issue about them saying we are a  
3 violation of the Height Act. We're saying  
4 that the Zoning Administrator makes that  
5 determination. I thought we were going to try  
6 to -- I was hoping in this rewrite we could  
7 come to some -- close the gap a little more on  
8 that one particular issue only.

9 MR. PARKER: Gotcha. Yeah, we've  
10 done our best to close that gap. Ultimately  
11 it's going to be closed when this stuff gets  
12 codified.

13 CHAIRMAN HOOD: All right. Mr.  
14 Turnbull, can I reserve my right to ask some  
15 more questions?

16 COMMISSIONER TURNBULL: You  
17 certainly may.

18 CHAIRMAN HOOD: Thank you, Mr.  
19 Turnbull.

20 Let's open it up some more. Mr.  
21 May.

22 COMMISSIONER MAY: Thank you. I

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1 will try to speak loudly and clearly and into  
2 the microphone. Can you hear me?

3 CHAIRMAN HOOD: I won't mention off  
4 the record what was said but you may want to  
5 check with somebody else later.

6 COMMISSIONER MAY: All right.  
7 Fine. I'll try to speak loud and clear and  
8 briefly. Let's see how that goes. I want to  
9 go back to actually the NCPC issue. There are  
10 a couple of things -- well, there is one  
11 particular aspect of it.

12 What we are trying to allow in the  
13 Zoning Regulations is it intended that  
14 occupiable communal rooms or bathrooms or  
15 whatever it was, that range of things that  
16 you're talking about, is the idea that those  
17 would now be permitted above the Height Act  
18 limit or only above the zone height limit?

19 MR. PARKER: We tried to remove  
20 that distinction. We tried to say Zoning and  
21 Height Act have the same rules as much as  
22 possible. I mean, we've got these general

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1 rules of measurement in 4.02 that apply to  
2 both. If the Zoning Administrator and DCRA  
3 adopt the same set of rules that we propose it  
4 will be the same.

5 We can still make that distinction  
6 again. That distinction is in our current  
7 code. We can do it again but right now the  
8 only place where that distinction exist, a  
9 different rules at the Height Act limit from  
10 below the Height Act limit is with the  
11 parapets.

12 COMMISSIONER MAY: Okay. I'm not  
13 trying to create necessarily the distinction  
14 but I'm trying to understand where we are  
15 actually in conflict because it seems to me  
16 that we have within zoning when we are below  
17 Height Act height limits there is flexibility  
18 to do things with penthouses and such.

19 MR. PARKER: Absolutely.

20 COMMISSIONER MAY: This does not  
21 exist when you are at the Height Act height  
22 limit.

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1 MR. PARKER: Actually, that's a  
2 great point. You have complete authority to  
3 do this and more within penthouses in the  
4 Zoning Regulations. Ultimately the ZA could  
5 say that no communal space is allowed in roof  
6 structures above the Height Act. Put that in  
7 his interpretations your rule would still  
8 stand and apply to buildings below the Height  
9 Act. His rule would stand and apply to  
10 buildings at the Height Act.

11 COMMISSIONER MAY: I mean, is there  
12 a way for us to clarify that within our  
13 regulations? We're not making any statements  
14 about what is allowed above the height.

15 MR. PARKER: We already do say that  
16 the stricter of the two would apply.

17 COMMISSIONER MAY: In other words,  
18 the way this is written it really is not a  
19 conflict?

20 MR. PARKER: Correct. It's not  
21 possible for the local regulations to trump  
22 the Height Act. What it comes down to what is

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1 the correct interpretation of the Height Act  
2 and we rely on the Zoning Administrator  
3 because of a series of delegations that  
4 started with the Commissioners of the District  
5 of Columbia back in 1910 and 11 to interpret  
6 the Height Act. That interpretation can't be  
7 in conflict with itself. Therefore, it's not  
8 in conflict with the Height Act.

9 COMMISSIONER MAY: Okay. I was  
10 almost all the way there with you. I think I  
11 understand the general point. If there is, in  
12 fact, a conflict created by these clauses that  
13 NCPC is pointing out, if there is a conflict  
14 between this and the Height Act and the Height  
15 Act is stricter, the Height Act will rule and  
16 it's up to the Zoning Administrator to make  
17 that decision.

18 It might be useful for us to have a  
19 more thorough explanation of the interplay  
20 between the Height Act and the Zoning  
21 Regulations with regard to these gray areas.  
22 I don't know. I don't want to try to suggest

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1 the specific language but it seems to me that  
2 might be one way to deal with these sorts of  
3 letters from NCPC. Then maybe NCPC will start  
4 writing letters to the Zoning Administrator.

5 MS. STEINGASSER: Commissioner May,  
6 are you suggesting something more than Section  
7 4.00.3? We did try to give the Height Act  
8 prominence by putting it in the very first  
9 Section 4.00 that in addition to the  
10 limitations of zoning, the Height Act, you  
11 know, project must comply?

12 COMMISSIONER MAY: I'm implying  
13 that -- yes, I'm trying to say that maybe  
14 something more detailed than that would be  
15 appropriate. I'm not sure what it would be.  
16 Maybe it's something that you can actually  
17 work out with NCPC but something that really  
18 does clarify this relationship so that --

19 MS. STEINGASSER: We had this  
20 discussion a few weeks ago at set down and OAG  
21 had concerns about getting too intertwined  
22 between Zoning and the Height Act.

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1                   COMMISSIONER    MAY:           I'm    not  
2   suggesting   that   we   are   going   to   start  
3   interpreting the Height Act.   I was very much  
4   conscious   of   a   conflict   and   supported  
5   vigorously the idea that we not have redundant  
6   regulations in this regard.   It's just a  
7   question of, I guess, noting more explicitly  
8   for people who might be reading this for the  
9   first time that where there is interplay  
10   between these.

11                  MS.   STEINGASSER:        So   we   could  
12   phrase "when not in conflict with the Height  
13   Act?"   Something that simple?

14                  COMMISSIONER   MAY:        I   don't   know  
15   that it's necessarily that simple.   I'm not  
16   sure what it is.   It's still a subject that  
17   I'm somewhat uneasy about because, again, I  
18   don't like getting the letters with the same  
19   stuff from NCPC every time and I think that we  
20   want to try to --

21                  MR.   PARKER:        I   have   a   suggestion  
22   actually.

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1 COMMISSIONER MAY: Yeah. Okay.

2 MR. PARKER: If you look at

3 4.02.1 --

4 COMMISSIONER MAY: Yes.

5 MR. PARKER: -- we lead that  
6 section off by saying, "Unless otherwise  
7 stated the rules of this section are identical  
8 to the rules for measuring the Height Act  
9 which appear in Subtitle M." It might be  
10 helpful, is what I'm hearing, to have a  
11 similar section in 4.03 that says here is  
12 what's the same as the Height Act and here is  
13 what's different. Do you think that might get  
14 at it?

15 COMMISSIONER MAY: It's possible.  
16 It's possible that we might segregate some of  
17 those things that are slightly different and  
18 where we can say something like, "Where Zoning  
19 Height limits are the limiting factor there is  
20 also this additional flexibility with regard  
21 to communal rooms," or whatever, or with  
22 regard to certain key points.

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1 I don't know but just some way to  
2 sort out that difference. I think the same is  
3 also true for the second point in NCPC's  
4 letter where they talk about special  
5 exceptions and they claim that we don't have  
6 any flexibility to grant relief to setback  
7 requirements. I believe there is flexibility  
8 in the Zoning Regulations to do that when you  
9 are below the Height Act height limits. I  
10 think there is substantial flexibility there.

11 Okay. You mentioned Union Station  
12 North. What project is that?

13 MS. STEINGASSER: It's also called  
14 the Union Station Air Rights, Akridge Air  
15 Rights behind Union Station over the tracks.

16 COMMISSIONER MAY: Okay. Is that  
17 where a determination of the measuring point  
18 has been made or has been proposed?

19 MS. STEINGASSER: Has been  
20 proposed.

21 COMMISSIONER MAY: Has been  
22 proposed. Okay. I was going to ask are you

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1 talking about Union Station Air Rights.  
2 That's why we have Provision D which says  
3 elevation or means of determination  
4 established for a specific zone elsewhere in  
5 this title. Are we anticipating many projects  
6 like the Union Station North?

7 MS. STEINGASSER: No, thank  
8 goodness.

9 COMMISSIONER MAY: Okay.

10 MS. STEINGASSER: It's --

11 COMMISSIONER MAY: Unique  
12 situation.

13 MS. STEINGASSER: It's a unique  
14 situation and it's got a huge scar in the  
15 city. That's why I said thank goodness. We  
16 have three major Air Right projects that we  
17 know of with the possibility of there's the  
18 portals which is only partially constructed  
19 which is why they're concerned about their  
20 established Zoning Administrator's measurement  
21 point. There's I-395 hovering over that.  
22 There's Union Station. Those are the most

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1 significant. However, there is also another  
2 one north of 395 not far from here behind --

3 COMMISSIONER MAY: Yeah. North of  
4 Mass Ave?

5 MS. STEINGASSER: North of Mass  
6 Ave, yes. That one will also require some  
7 kind of interpretation on where the measuring  
8 point should be.

9 COMMISSIONER MAY: It's going to  
10 get very -- well, we'll see how it goes but I  
11 think actually establishing those measuring  
12 points may get a little sticky. Can we  
13 clarify under 4.02.4(c) that an elevation  
14 previously determined by the Zoning  
15 Administrator is previous to the enactment of  
16 this title or something like that?

17 MR. PARKER: Yes, we certainly can.

18 COMMISSIONER MAY: And I imagine  
19 that -- I mean, is there actually -- there  
20 isn't actually a list of those determinations  
21 that have been made. Are there? No, it's  
22 just a matter of going through the file case

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1 by case when it happens.

2 Okay. That's it for me for right  
3 now and I reserve the right to ask more  
4 questions, if I can. Thanks.

5 CHAIRMAN HOOD: Okay. Thank you.

6 Anybody else? Any additional  
7 questions? No addition questions. Okay.

8 VICE CHAIR SCHLATER: I have one.  
9 Sorry.

10 CHAIRMAN HOOD: Vice Chair.

11 VICE CHAIR SCHLATER: Less question  
12 and more recommendation. I think it would be  
13 helpful -- one thing I read in the NCPC  
14 report, which is I think right, it's hard to  
15 comment on this language which references  
16 Subtitle M when you don't know what the  
17 language in Subtitle M is going to be yet.

18 I know you guys gave us a draft of  
19 some of that language but I think before we  
20 take final action on this it would be good to  
21 understand the timing. What is the time line  
22 for the Zoning Administrator actually enacting

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1 this because we're talking about this at the  
2 set down for the parking and loading.

3 DDOT's got these plans to enact  
4 regulations for consistent zoning for parking  
5 and loading standards but they haven't done it  
6 yet and they are actually asking the Zoning  
7 Commission to lead that process but I don't  
8 know that we want to be put in that position  
9 all the time.

10 MR. PARKER: We've been working  
11 with DCRA. They have language. It's in the  
12 hands of their counselor right now. We asked  
13 them to have something ready before this  
14 meeting but that didn't happen. We're going  
15 to stay on top of them to make sure it  
16 happens. I have little doubt that it will be  
17 done well before we are back for any final  
18 action late next year. I hope to have it done  
19 in the next month or two.

20 VICE CHAIR SCHLATER: Okay. Great.  
21 The other thing I would just say is on the  
22 4.03.1(j) I think I understand where it would

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1     come down on this in that I don't think we  
2     would want to do anything more restrictive  
3     than the Zoning Administrator determines. I  
4     think it's okay having common use on the top  
5     of these buildings. I don't see the harm.

6                 CHAIRMAN HOOD: Anybody else? Any  
7     questions?

8                 COMMISSIONER MAY: Mr. Chairman.

9                 CHAIRMAN HOOD: Commissioner May.

10                COMMISSIONER MAY: I just have a  
11     couple of quick follow-ups. I'm sorry. On  
12     4.03.1 the initial sentence there the  
13     reference to street base or zone height  
14     limitations. That's suppose to be deleted?

15                MR. PARKER: You caught one, yes.  
16     I will make sure that --

17                COMMISSIONER MAY: I heard you  
18     mention something about it supposedly being  
19     deleted and I wanted to double check on that.

20                The last thing is also on in the  
21     NCPC letter the reference to private streets  
22     and public streets as points of measurement,

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1 do you have any comment on that?

2 MR. PARKER: I'm sorry. Could you  
3 repeat the second number?

4 COMMISSIONER MAY: On page 3 of the  
5 NCPC letter there is a suggestion that the  
6 Zoning Commission consider including private  
7 streets along with public streets as a point  
8 of measurement or by defining street frontage  
9 as any public or private street.

10 MR. COCHRAN: We've discussed it  
11 informally internally and we were trying to  
12 come up with an example of a building whose  
13 height would be measured from a private street  
14 and we haven't come up with one as of this  
15 afternoon so it was a little bit difficult for  
16 us to understand the relevance of the NCPC  
17 comment.

18 COMMISSIONER MAY: When we have  
19 those townhouse developments where they just  
20 pack them in they've got no rear yards and all  
21 that sort of stuff and just sort of an  
22 internal street there, the internal blocks how

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1 do those get measured?

2 MR. COCHRAN: From the public  
3 street.

4 COMMISSIONER MAY: From the public  
5 street? Okay. All right. Thanks.

6 COMMISSIONER TURNBULL: Mr. Parker,  
7 I just have one last question. I just  
8 wondered if you could clarify or help me  
9 understand 4.02.6. "Building height shall be  
10 measured to the top of the roof including any  
11 parapet or balustrade or exterior walls or any  
12 other continuation of the exterior walls.

13 For purposes of calculating zone  
14 specific height a parapet or balustrade of up  
15 to four feet may be excluded from the height  
16 measurement. This exclusion does not apply in  
17 calculating maximum height for the street-  
18 based height limitation. This exclusion does  
19 not apply in calculating maximum height under  
20 the Height Act."

21 MR. PARKER: First off, that's  
22 another instance of street based that we need

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1 to take that language out.

2 COMMISSIONER TURNBULL: Okay.

3 MR. PARKER: It shouldn't say  
4 street based. Basically what this paragraph  
5 means, and I'm more than open to ideas how to  
6 make it clear, for your zone height limitation  
7 if your zone height limitation is 90 feet you  
8 can build the roof to 90 feet and have a four-  
9 foot parapet above that. For the Height Act  
10 you can have the building including the  
11 parapet has to stop at 90 feet. Does that  
12 make sense?

13 COMMISSIONER TURNBULL: So how does  
14 somebody look at -- how does --

15 MR. PARKER: This is the one issue  
16 where we couldn't reconcile.

17 COMMISSIONER TURNBULL: Okay.

18 MR. PARKER: Every other issue we  
19 were in some way able to reconcile unless we  
20 go backwards with the penthouses over amenity  
21 structures. Every other subject we were able  
22 to reconcile the two this is one that very

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1 clear in the Height Act and we don't want to  
2 go there in the zoning. If you have the same  
3 Height Act and zoning height, you have to  
4 include the parapet within your height.

5 COMMISSIONER TURNBULL: Okay.

6 MR. PARKER: If your zoning height  
7 limits you more than the Height Act does, then  
8 you can do a parapet above that.

9 COMMISSIONER TURNBULL: Okay.  
10 Thank you.

11 CHAIRMAN HOOD: Any other questions  
12 or comments?

13 Mr. Parker, have you seen Mrs.  
14 Nancy McWood's letter that she wrote, Exhibit  
15 13?

16 MR. PARKER: Just received it two  
17 minutes ago. I haven't read it.

18 CHAIRMAN HOOD: Okay. At some  
19 later point. I'm just curious. At the bottom  
20 of the page where it starts, "Nothing has  
21 changed to provoke the Zoning Commission to  
22 throw out the measurements." Anyway, that

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1 piece if you could respond to that for me and  
2 she has a question mark, "Is this the year-  
3 round vision the Zoning Commission wants to  
4 encourage?"

5 We don't have to get into that now  
6 because I was just reading it myself, that  
7 part of it. So if we could maybe come back.  
8 She regretted that she can't be here because  
9 apparently they have their ANC meeting  
10 tonight.

11 As far as I know, I think  
12 everything else has been addressed in her  
13 letters. It's just that part. I don't know  
14 if we can do that at some later point unless  
15 you are ready to do it now. Okay. We can do  
16 that at some later point. Any other questions  
17 or comments?

18 Commissioner May.

19 COMMISSIONER MAY: Yes. Just one  
20 last clarification on 4.03.(j).

21 MR. PARKER: Yes.

22 COMMISSIONER MAY: Penthouses are

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1 accessory amenity features such as communal  
2 closed recreation space. Do we really mean  
3 penthouses over such? I mean, that seems to  
4 imply there will be a closed room and then  
5 there's a penthouse above it.

6 MR. PARKER: That's an unfortunate  
7 way to put it but it comes from the Height Act  
8 language. The Height Act allows for  
9 penthouses over A, B, and C. The way that  
10 this has been interpreted over the years is  
11 penthouse over your stairwell can also include  
12 your penthouse over your elevator shaft and  
13 penthouse over -- we could probably change the  
14 language. That's where it came from.

15 COMMISSIONER MAY: I would think  
16 penthouses enclosing accessory is a little  
17 clearer.

18 MR. PARKER: Over a stairwell makes  
19 sense because --

20 COMMISSIONER MAY: The same for (f)  
21 then?

22 MR. PARKER: Yeah, I guess so.

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1 Will do.

2 COMMISSIONER MAY: I think the idea  
3 of a -- let me put it this way. I don't think  
4 enclosing is inconsistent with the Height Act.

5 MR. PARKER: I agree. I agree.

6 COMMISSIONER MAY: Thanks.

7 CHAIRMAN HOOD: Any other questions  
8 or comments? Okay.

9 Reports of other government  
10 agencies. The NCPC report has been vetted  
11 quite a bit so we acknowledge that.

12 Also report of ANCs. We have some  
13 letters from 6B, 6C, and I'm not sure if it's  
14 an official letter from -- and also 6A. I'm  
15 not sure if the letter from 3C is official but  
16 Ms. McWood, who is a member of the Zoning  
17 Regulation Task Force mentioned in her letter  
18 she had an ANC meeting tonight.

19 Let me go to the list. Let me call  
20 the ANCs first. I'm going to go with -- we  
21 have one opposed and one proponent. Let me go  
22 to the proponent. Let me call both of them at

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1 the same time. We only have two  
2 commissioners, one from ANC-6A, Mr. David  
3 Holmes who is in support. With that I'm going  
4 to call Ms. Ann Heuer -- hopefully I  
5 pronounced that correct -- who's in  
6 opposition.

7 Did I pronounce your name  
8 correctly? Okay, good.

9 Do we have anyone else? Any other  
10 ANC Commissioners who would like to testify at  
11 this time whether proposed or opponent? I  
12 mean proponent or opponent.

13 Mr. Holmes, since you are a  
14 proponent, we're going to go with you first  
15 and then we'll hear from Ms. Heuer.

16 MR. HOLMES: Thank you, Mr.  
17 Chairman.

18 CHAIRMAN HOOD: Both of you will  
19 have five minutes.

20 MR. HOLMES: I won't use it. This  
21 is basically from the letter which you already  
22 have in front of you. There is no additional

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1 testimony here. I'll simply just summarize  
2 it. This is supported by the ANC by a vote of  
3 five to zero with a quorum present.

4 We're generally supportive of the  
5 entire process, of course. Clarification is a  
6 great value to the ANCs as we try desperately  
7 to understand how the zoning regulations apply  
8 within our districts.

9 The ANC believes strongly that  
10 fundamental concepts like the building height  
11 should be held to a uniform objective standard  
12 rather than balkanized by dozens of  
13 incompatible standards allowed by 4.02.4(c)  
14 and 4.02.4(d).

15 Where the proposed regulations do  
16 not state which paragraph should take  
17 precedence -- moreover, the regulations do not  
18 state which paragraph should take precedence  
19 when the provisions conflict.

20 If a 20-year-old zero height  
21 measuring point determination of the Zoning  
22 Administrator is 60 feet higher than what is

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1 obtained by applying 4.02.4(a), which standard  
2 is used? There needs to be additional  
3 clarification and we don't feel there's enough  
4 guidance for the order of precedent in the  
5 current paragraphs.

6 It's our belief that the city would  
7 be better served by striking 4.02.4(c) and (d)  
8 which would leave a uniform single standard  
9 for setting the zero height measuring point  
10 and, thereby, promote the Office of Planning's  
11 stated objectives of removing conflicts  
12 between policy objectives which do not  
13 necessarily work in conjunction with one  
14 another and avoiding regulatory  
15 contradictions. That's my testimony in  
16 essence.

17 CHAIRMAN HOOD: Commissioner  
18 Holmes, do we have that? Okay.

19 MR. HOLMES: You referred to it in  
20 your conversation earlier.

21 CHAIRMAN HOOD: Okay. Could you  
22 help me, again, the concerns? I want to hit

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1 the highlights. Could you go back over those  
2 quick highlights real quickly? I'm going to  
3 ask Mr. Parker -- we typically don't do this  
4 but I'm going to ask Mr. Parker to expound on  
5 some of the concerns that ANC-6A had.

6 MR. PARKER: Our concern basically  
7 is for maximum clarity possible. In our  
8 commission we rely on citizen volunteers to  
9 clarify. Our zoning committee is basically a  
10 group of lawyers, somebody from the League of  
11 Cities, a couple of reporters, people from  
12 EPA, people from the Department of Energy who  
13 volunteered to do this stuff for us.

14 The commissioners rely on them to  
15 do this for us. We almost always take their  
16 recommendations. They are the experts. The  
17 maximum clarity is of great value to all of  
18 us. This just seems to be a chance for a lack  
19 of clarity to creep into the regulations. To  
20 the extent that you can eliminate anything  
21 other than the simple standard I think it  
22 would be of great value.

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1 CHAIRMAN HOOD: Okay. Okay.

2 MR. PARKER: A simple set standard.

3 CHAIRMAN HOOD: I thought you had  
4 asked for like two provisions to be removed.

5 MR. PARKER: And to that purpose  
6 4.02.4(c) and (d) should be removed.

7 CHAIRMAN HOOD: Okay. I don't  
8 think we need to comment, Mr. Parker. Okay.  
9 I heard you loud and clear. Thank you.

10 If you could hold your seat,  
11 Commissioner Holmes.

12 Ms. Heuer. Commissioner Heuer.  
13 Excuse me.

14 MS. HEUER: Good evening, Chairman  
15 Hood and members of the Zoning Commission.  
16 ANC-3D has reviewed Case No. 08-06 of the  
17 Comprehensive Zoning Regulations rewrite. We  
18 thank the Zoning Commission for removing all  
19 references to the Height Act for the purpose  
20 of measuring height in low to moderate  
21 tendency residential-zoned districts by street  
22 width.

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1           It       would       have       been       most  
2       inappropriate as many of our residential  
3       streets are varying elevations with hills,  
4       slopes, and ravines. We testified in 2006 on  
5       the proposed amendment to the Zoning  
6       Regulations and in 2008 on the proposed policy  
7       recommendations. Today we have several  
8       modifications to this chapter that we would  
9       like to recommend.

10           To clarify the intent of Section  
11       4.02.5 insert a comma after the word  
12       "dwellings" and a comma after the word  
13       "height" and replace "ground level" with  
14       "natural grade."

15           The section would now read, "One  
16       family dwellings, and any building setback  
17       from all lot lines by a distance at least  
18       equal to its own height shall be measured from  
19       the natural grade at the mid-point of the  
20       building closest to the nearest public right-  
21       of-way.

22           In       the       case       of       residential

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1 properties ANC-3D also recommends adding the  
2 phrase "the highest point of the roof or  
3 parapet" to prevent the mischief that occurs  
4 between the ceiling of the top of the floor  
5 and the top of the roof and allows the fourth  
6 floor to be created after the final zoning  
7 inspection has taken place.

8 In September '08 OP suggested the  
9 following definition. The natural elevation  
10 or natural grade of a property is the ground  
11 elevation that existed immediately prior to  
12 the issuance of the first building permit  
13 including a raise permit needed to begin  
14 construction of the building for which a  
15 height measurement is being made.

16 Because little land in D.C. is  
17 undisturbed the proposed definition for  
18 natural grade would prevent the site from  
19 being artificially raised for purposes of  
20 increasing height prior to filing for a  
21 building-related permit. Where a viaduct or  
22 other artificial elevation would exist, then

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1 it would be measured from the street.

2 Section 4.02.6 add the "all" before  
3 "building" making buildings plural or indicate  
4 whether the reference is to commercial or  
5 residential buildings. In other categories,  
6 garages, accessory buildings 60 to 90-foot  
7 districts measurement is made from the highest  
8 point of the roof. ANC-3D advocated this in  
9 2006 and 2008 and we still have the same  
10 opinion.

11 Section 4.02 is too ambiguous,  
12 subjective, and open to many interpretations.

13 ANC-3D has many mixed-use blocks and  
14 commercial blocks that abut residential  
15 blocks. Transition areas between residential  
16 and business/commercial need to ensure height,  
17 massing, and setbacks are consistent with the  
18 character of surrounding districts.

19 Light and air to neighboring  
20 properties are very important but the question  
21 is who determines what is adequate? We  
22 encourage the Zoning Commission to direct OP

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1 to provide further clarification to the intent  
2 when the chapter on low to moderate density  
3 districts is written. Thank you.

4 CHAIRMAN HOOD: Thank you both.

5 Commissioners, any questions?

6 What I would ask, and I know Ms.  
7 Heuer --

8 COMMISSIONER MAY: I was going to  
9 ask a question but I was just going to see if  
10 the Office of Planning wanted to respond to a  
11 couple points, specifically the ground level  
12 versus natural grade issue. Does that make  
13 sense?

14 CHAIRMAN HOOD: Yes. What I was  
15 going to do is ask them because we have some  
16 specifics, and I especially agree with  
17 Commissioner Holmes in trying to make it, I  
18 would say, simplistical or so that the average  
19 person who doesn't do this all day long, like  
20 myself, can understand it.

21 I would concur with Commissioner  
22 Holmes. I put myself in that -- even though

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1 I'm sitting here I put myself in that  
2 situation because I've been there. Also to  
3 make sure that the person who doesn't do the  
4 zoning every day understand, who does  
5 something else from 8:00 to 4:00 and do zoning  
6 at 6:00 can also understand so I would like  
7 these two letters for the Office of Planning  
8 to respond.

9 Commissioner May, I think you were  
10 looking for a response tonight. I wasn't  
11 going to do that. I was going to give them  
12 some time unless there is something specific  
13 unless you're ready.

14 COMMISSIONER MAY: No, I think that  
15 would be fine to get feedback from the Office  
16 of Planning whether it's tonight or in a  
17 written supplemental support or something like  
18 that, whatever you have.

19 CHAIRMAN HOOD: Case in point.  
20 What can we do to deal with Commissioner  
21 Holmes' issue? Also Commissioner Heuer has  
22 mentioned some stuff previously. Why didn't

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1 we take this into consideration, or did we  
2 take it into consideration?

3 That's the kind of stuff I think  
4 -- I think both of these letters need to be  
5 answered. It doesn't need to be a book, a  
6 paragraph or so and let us know did we do it,  
7 did we not do it, why was it not done? I  
8 think that's what the commissioners are  
9 looking for so if we can do that at a later  
10 time.

11 Is that okay, Commissioners?

12 MR. PARKER: Thank you, sir.

13 CHAIRMAN HOOD: Ms. Heuer, is that  
14 okay or do you want it now? We want to give  
15 them time to respond.

16 MS. HEUER: I had talked to Mr.  
17 Brown on a couple of things. He actually  
18 agreed with some of it.

19 CHAIRMAN HOOD: Oh, okay. So he's  
20 well aware of this. Okay. Fire a response if  
21 you want to do it now.

22 MS. HEUER: I don't think so.

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1 MR. PARKER: We're happy to submit  
2 a supplemental.

3 CHAIRMAN HOOD: Okay. That would  
4 be good. On both of these. Okay. Thank you  
5 both. Hold on. Any other questions?

6 Vice Chairman.

7 VICE CHAIR SCHLATER: Just a  
8 question, Commissioner Holmes. Has ANC-6A  
9 been tracking a specific project that has  
10 raised concerns about this language or in  
11 general the language is ambiguous?

12 MR. HOLMES: In general. We've  
13 been watching battles over H Street in  
14 particular where it's difficult to determine.

15 VICE CHAIR SCHLATER: And if you  
16 deleted those two sections that you requested  
17 deletion, what would be the impact on that  
18 project?

19 MR. HOLMES: I am not referring to  
20 a specific project at this point.

21 VICE CHAIR SCHLATER: You've been  
22 following those battles. I gotcha. My sense

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1 is in that case it would reduce the height of  
2 the buildings significantly if you were to  
3 deleted those two provisions?

4 MR. HOLMES: Yes.

5 VICE CHAIR SCHLATER: Thank you.

6 CHAIRMAN HOOD: Any other  
7 questions?

8 Commissioners, we want to thank you  
9 both. We appreciate it.

10 I'm going to go down the list of  
11 proponents. Christopher Collins. I'm going  
12 to call their name anyway even though I don't  
13 see them. Christopher Collins, Steve Sher.  
14 Now, these are proponents; Monte Edwards.  
15 Okay. So I have Christopher Collins who is  
16 not present, Steve Sher and Monte Edwards who  
17 are proponents.

18 Do we have anyone else in the  
19 audience who would like to testify tonight who  
20 is in support and a proponent? Okay. Not  
21 seeing anyone, we will begin with Mr. Sher.  
22 You both have five minutes. No, I'm sorry.

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1 Mr. Sher, you have five minutes, and Mr.  
2 Edwards, you have three minutes.

3 Mr. Sher, you may begin.

4 MR. SHER: Mr. Chairman, Members of  
5 the Commission, for the record my name is  
6 Steven E. Sher, the Director of Zoning and  
7 Land Use Services with the law firm of Holland  
8 & Knight. Tonight my alter ego is Chris  
9 Collins who you see sitting next to me here.  
10 I'm going to deal with both of our pieces  
11 hopefully in the five minutes.

12 We are supportive of the direction  
13 taken by the Commission to take the  
14 regulations and requirements regarding the act  
15 of 1910 out of the Zoning Regulations. The  
16 issues that we were mainly concerned about in  
17 our prior testimony, which was voluminous as  
18 you may recall, are, therefore, no longer a  
19 part of what is before the Commission and we  
20 are good with that.

21 Other parts of the regulations that  
22 OP has proposed we support, raising the roof

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1 structure height from 18'6" to 20 feet,  
2 increasing the excluded parapet height from  
3 three feet to four feet allowing multiple roof  
4 structures, allowing walls of unequal height,  
5 clarifying what structures need to be setback  
6 from where, providing for special exception  
7 relief from those requirements. We think  
8 those are all good things and we are  
9 supportive of them.

10 One issue which you've already  
11 heard from some of the persons who testified  
12 before has to do with Section 4.02.4(c).  
13 Specifically, and now Mr. Collins, we are here  
14 on behalf of Portals Development Associates.  
15 Back in September of 2008, almost two years to  
16 the day, Mr. Collins submitted a lengthy  
17 treatise on all of the background on that.

18 I did not resubmit that. It's  
19 marked as Exhibit 22 of the record in an  
20 effort to save some paper. We are basically  
21 taking the same view on that and that is  
22 basically that there was general consensus and

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1 agreement from the Office of Planning that the  
2 new regulations would preserve the point of  
3 measurement for the Portals Development.

4 This is a project that would have  
5 six phases, or six buildings. Buildings A, B,  
6 C, and D have been constructed and they used  
7 Maryland Avenue SW as the point of  
8 measurement. That was something that this  
9 Commission adopted a regulation allowing.  
10 It's been something that was approved by the  
11 Fine Arts Commission and a bunch of other  
12 people all along the way. All that is  
13 detailed again in here.

14 There are two pieces of that;  
15 building Z and F have not been constructed so,  
16 therefore, the Zoning Administrator has not  
17 yet ruled on those last two parts because  
18 permit applications have not gone forward.

19 What we would hope that the  
20 Commission would do, and this is as indicated  
21 in the letter from Mr. Collins, which you now  
22 have in front of you, on the second page we

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1 would like to suggest that language be changed  
2 to say, "Not just by the Zoning Administrator  
3 but determined by a District of Columbia  
4 agency including the Zoning Administrator  
5 because we've been through this whole cycle of  
6 things that have been approved.

7 I guess it was Mr. May who  
8 suggested prior to the enactment of this we  
9 don't have any problem with that because all  
10 of that was done a long time ago. We're just  
11 trying to sort of preserve that thought for  
12 that particular project the measurement be  
13 allowed to be taken from the same point it has  
14 been taken for the first parts of the project.

15 That's really sort of all I had  
16 about height. I wanted to add a couple of  
17 comments which I'll loosely call comments at  
18 large. I like the idea of capitalizing define  
19 terms which you see -- I'm sorry, italicizing.

20 Not capitalizing for italicizing define  
21 terms. That was something that  
22 was done in the original 1958 Zoning

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1 Regulations and got lost along the way. But  
2 at least you know when you're looking in the  
3 book, or online or whatever it is, when you  
4 see a term that is italicized, you know to go  
5 find the definition section and read what it  
6 says. I think that's a good idea.

7 The second thing is the Commission  
8 as we're going through this process is looking  
9 at these sections individually. Tonight you  
10 have height, you have uses. As many other  
11 people have commented to Office of Planning  
12 and in these hearings, you don't have the  
13 whole picture.

14 You don't have an idea of what's  
15 going to happen in the individual zones. I  
16 don't know that there's necessarily a better  
17 way to do it but I think that the public and  
18 the Commission need one more chance to review  
19 and comment, whether that's at another hearing  
20 or in writing, on the package as a whole.

21 When you've been through all these  
22 various pieces and you've got a set of

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1 regulations that's coming, there may be pieces  
2 of the use chapter, which we haven't had much  
3 discussion about tonight, that could be  
4 affected by how terms are defined, for example  
5 and by how uses are permitted within  
6 individual zone categories that might make you  
7 go back and think maybe we need to take some  
8 consideration on the use chapter that's going  
9 to be affected by something that happens down  
10 the road.

11 I know I've said this one before.  
12 The concept of the maximum number of parking  
13 spaces is going to depend largely on what that  
14 maximum number is. If you tell me I can have  
15 one space or you tell me I can have a thousand  
16 spaces, I'm going to have a different view of  
17 the maximum number of parking spaces.

18 Until we see those charts that tell  
19 you what uses in what zones have what limits,  
20 it's a little hard to comment in the abstract.

21 I think that as you get down the road a year  
22 from now there just needs to be sort of one

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1 overall look at the whole package.

2 At that I have exhausted my time  
3 and I thank you very much.

4 CHAIRMAN HOOD: Thank you very  
5 much, Mr. Sher.

6 Mr. Edwards.

7 MR. EDWARDS: My name is Monte  
8 Edwards.

9 CHAIRMAN HOOD: Is your microphone  
10 one?

11 MR. EDWARDS: It is now. Thank  
12 you.

13 CHAIRMAN HOOD: Okay.

14 MR. EDWARDS: My testimony goes to  
15 4.02.4. I share the concerns expressed by  
16 ANC-6A that (a) and (b) are a clear definition  
17 understandable and an implementation of prior  
18 zoning policy and regulations. However, (c)  
19 and (d) are contrary to that clear definition  
20 and expression of prior zoning practices.

21 Specifically I refer to Case No.  
22 02-35 which I participated in back in 2003.

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1 That was the measuring point for height. It  
2 had to do with the H Street overpass. Let me  
3 read from page 1 of that order. This is the  
4 Zoning Commission order.

5 "The Commission instituted this  
6 rulemaking in response to recommendations of  
7 the DC Office of Planning. OP's  
8 recommendation was to clarify and reaffirm  
9 that the intent of the Zoning Regulations was  
10 to measure the height of buildings from the  
11 ground and not from an artificially created  
12 measuring point in determining their allowable  
13 height."

14 That has been the law. That has  
15 been the Zoning Regulation since November 7,  
16 2003. It is nicely preserved, I think, in  
17 4.02.4(a) and (b). I feel it is contradicted  
18 by (c) and (d). Well, about (c). There are  
19 cases when the Zoning Administration has  
20 previously determined a different method of  
21 determining grade.

22 We are familiar with L'Enfant Plaza

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1 and we have already heard from Mr. Sher about  
2 the Portals development. But that  
3 determination was based on the unique  
4 circumstances of that project and should not  
5 be applied to different projects with  
6 different circumstances.

7 As written now 4.02.4 ends with the  
8 word "either" which means the four subparts  
9 are in the alternative and will encourage  
10 someone, a layman like me, to think you can  
11 chose from any of the four. I think that for  
12 clarity we should have (a) and (b). If  
13 we need to say that it's not the intent of  
14 this change to overturn any prior  
15 determinations of the Zoning Administration,  
16 that should be either a footnote or separately  
17 and not given the same weight as (a) and (b).

18 Now, about Subpart D and discussion  
19 of air rights development, which we've heard  
20 about, and Union Station North proposed for  
21 the Akridge development at Union Station,  
22 there they are proposing that the measuring

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1 point be the overpass at H Street. That means  
2 that if as proposed by the Office of Planning  
3 the height of the development over the tracks  
4 would be 56 feet higher than the existing  
5 Securities and Exchange complex.

6 Now, there may be justification for  
7 a height adjustment but those height  
8 adjustments should be unique to the projects.

9 We've heard from Office of Planning there are  
10 a few of these air rights cases. Let's look  
11 at each one of them.

12 Let's see how the height  
13 measurement should be determined sensitive to  
14 the surroundings and based on the unique  
15 characteristics of each project and not by  
16 some arbitrary measuring point that is being  
17 proposed, at least in the case of Union  
18 Station North.

19 Again, let them stand by their  
20 merits on a case-by-case basis, come before  
21 this Commission with what the height should  
22 be. Is it the deck? Is it the bottom part of

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1 the deck? Is it the top of the deck? Where  
2 do you measure it and what is appropriate for  
3 the surroundings and how that development  
4 impacts the community. Thank you.

5 CHAIRMAN HOOD: All right. Thank  
6 you both.

7 Are there any questions or  
8 comments? Mr. May.

9 COMMISSIONER MAY: For Mr. Sher.  
10 You made a reference to a determination by the  
11 Zoning Administrator or other agency. I  
12 wasn't sure what clause you're referring to  
13 and what circumstance that might apply to.

14 MR. SHER: Other agencies included  
15 things like the Redevelopment Land Agency  
16 which doesn't exist any longer.

17 COMMISSIONER MAY: In what clause,  
18 in 4.02.4(c)?

19 MR. SHER: Right. Not just to be  
20 the Zoning Administrator but other district  
21 agencies only because it's not just the Zoning  
22 Administrator.

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1 COMMISSIONER MAY: So in the past  
2 at some point the RLA made determinations  
3 about heights of buildings?

4 MR. SHER: The council made  
5 determinations to amend the Commissioner's  
6 height schedule. Again, all that is detailed  
7 in here and I can resubmit this if you want  
8 it.

9 COMMISSIONER MAY: No. Okay. I  
10 still have that file from two years ago.

11 MR. SHER: Two years we went  
12 through all that. Mr. Collins was here.

13 COMMISSIONER MAY: Okay. I'm not  
14 sure that I'm totally comfortable with simply  
15 saying that's the right way to go. I mean,  
16 there may be other circumstances that we need  
17 to consider but I'm not totally sure about  
18 that one.

19 I guess in response to Mr. Edwards'  
20 comments, when it comes to a project like  
21 Union Station North and there are 56 feet  
22 difference in the measuring points between the

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1 proposed development and the adjacent  
2 development at the station place. I mean, are  
3 we actually going to wind up with a building  
4 that is 56 feet taller or is there going to be  
5 some other limit being proposed on this that  
6 makes the difference in height more  
7 understandable?

8 MS. STEINGASSER: You said Mr.  
9 Edwards but you looked at me.

10 COMMISSIONER MAY: I'm sorry. I'm  
11 looking at the Office of Planning to answer  
12 the question.

13 MS. STEINGASSER: Okay.

14 COMMISSIONER MAY: Sorry.

15 MS. STEINGASSER: The Zoning  
16 Commission has actually set that zoning text  
17 down for a public hearing and will be  
18 considering that in December for the Union  
19 Station air rights. No, it is not the  
20 intention that there would be a building that  
21 would be 56 feet higher. That's looking at a  
22 building only in one direction.

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1           When you look at the buildings to  
2           the west you're in a much higher density and  
3           many of those buildings have prior to 02  
4           measured from H Street so there is a much more  
5           narrow differential between the heights.

6           What we've asked the applicant to  
7           do is to provide an equivalent height survey  
8           of the entire area looking both to the high  
9           density down to the west as well as to the  
10          Union Station and the areas to the east  
11          because we are very sensitive.

12          All of those projects that would be  
13          built under that proposed zone would come to  
14          the Zoning Commission for public review. They  
15          would also be in front of the ANC and we  
16          specified that in the Zoning Regs that they  
17          have to have this public hearings.

18          COMMISSIONER MAY: Okay. So it's  
19          not simply that we're going to have these  
20          special circumstances where there is a viaduct  
21          and you get to measure from that higher point  
22          that's 20, 30, 40, 50 feet higher but that

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1 it's going to be a very special circumstance  
2 and there will be other controls over the  
3 height.

4 MS. STEINGASSER: Yes, sir.

5 COMMISSIONER MAY: That, in fact, a  
6 height that might otherwise be allowed for  
7 building with a normal measuring point it  
8 might actually be reduced to be able to keep  
9 the heights more or less.

10 MS. STEINGASSER: That's correct.  
11 The air rights are a very, very special  
12 situation. Like I said, we're grateful we  
13 don't have more complex situations like this  
14 throughout the city. The tracks have done all  
15 kinds of damage to the grade.

16 We don't know what the natural  
17 grade is. We don't know where the streets  
18 originally were. The tracks have various  
19 elevation so there is a lot of damage done  
20 there. We absolutely would bring these  
21 forward only on a case-by-case basis.

22 COMMISSIONER MAY: Did you consider

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1 the possibility of drawing a line between the  
2 starting point and the ending point of the  
3 viaducts and just using that as a measuring  
4 point? Does that achieve something similar or  
5 is it --

6 MS. STEINGASSER: It does but in  
7 this particular case because of the  
8 relationship to Union Station and the tracks  
9 we wanted to allow as much design flexibility  
10 and that height that we're proposing is not to  
11 create a 130-foot box but to allow for the  
12 maximum articulation of the design elements  
13 that come forward. That's why we did it only  
14 in conjunction with design review.

15 COMMISSIONER MAY: Okay. Thanks.

16 VICE CHAIR SCHLATER: Thank you,  
17 Mr. Chairman. First question is for Mr. Sher.  
18 I think I share Commissioner May's -- I  
19 understand what you're trying to get at with  
20 your proposed change to the language in  
21 4.02.4(c).

22 But by saying an elevation

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1 previously determined by a District of  
2 Columbia agency including the Zoning  
3 Administrator, I think we need to just clarify  
4 that it was lawfully determined by the  
5 District of Columbia agency.

6 I think we have a situation where  
7 agencies say things all the time and it might  
8 be in conflict with other agencies.  
9 Ultimately we're hoping to get to a point  
10 where I would hope there is a final say on  
11 these things. I think we just need to do some  
12 work on that.

13 I understand what you're trying to  
14 get at and support it but what we don't want  
15 to have is DDOT saying what the height of a  
16 building should be. Or we don't want DDOE  
17 saying what the height of a building should be  
18 because of you ask six different District  
19 agencies, you're going to get six different  
20 answers.

21 Then in response to Mr. Edwards'  
22 comments, I'm questioning whether -- this is

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1 probably directed at OP -- whether we actually  
2 need 4.02.4(d). If we come up with a separate  
3 chapter called Union Station Air Rights or  
4 whatever. I forget. Union Station North is  
5 what we're working on -- ultimately it's going  
6 to be written in there that it's a special  
7 case and special situation. Why do we need  
8 (d) in there when you have Union Station North  
9 elsewhere?

10 MR. PARKER: D is to alert you that  
11 there is the possibility that there is a Union  
12 Station North elsewhere in the code.  
13 Otherwise you look at 4.02.4 without knowing  
14 that you have Union Station North and you  
15 don't know it exist. Not only that then you  
16 have two sections that are in conflict. (d)  
17 is specifically to say there are other places  
18 in the code that deal with this issue. In the  
19 case of those it trumps A, B, and C.

20 VICE CHAIR SCHLATER: Okay. Mr.  
21 Edwards, I guess when I was listening to your  
22 testimony you were saying that it was okay to

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1 have special situations and address them as  
2 they arise. Is that correct?

3 MR. EDWARDS: That's correct.

4 VICE CHAIR SCHLATER: The general  
5 spirit? It seems to be what OP --

6 MR. EDWARDS: My concern is putting  
7 it in this general regulation on height  
8 measurement point. If you need them, put them  
9 in a separate category. Just as Mr. Sher as  
10 just explained about the special priority  
11 determinations, I would suggest that in terms  
12 of the current language just a statement that  
13 these regulations do not overturn any prior  
14 determinations period.

15 VICE CHAIR SCHLATER: Okay. Thank  
16 you.

17 CHAIRMAN HOOD: Any other questions  
18 or comments?

19 COMMISSIONER MAY: If I could just  
20 following up on this same sort of theme of  
21 elevations that have been determined by the  
22 Zoning Administrator. This is a question for

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1 the Office of Planning. Does it make sense  
2 perhaps to state that such determination would  
3 apply only for an existing structure and that  
4 a new determination would be necessary if the  
5 building were raised?

6 MR. PARKER: Perhaps not. I mean,  
7 the issue that comes to mind is, again, going  
8 back to L'Enfant Plaza. You've got existing  
9 buildings that were built based on the  
10 measuring point of the plaza. If one of those  
11 buildings was to be reconstructed, should we  
12 go through the process again of determining  
13 whether it should be built to that level?

14 COMMISSIONER MAY: Well, may be. I  
15 mean, if we're going to start messing around  
16 with L'Enfant Plaza, maybe it's a bit -- maybe  
17 it is more on the scale of the Union Station  
18 air rights. In effect, it's kind of an air  
19 rights project of its own and it may well make  
20 sense to have to have a more comprehensive  
21 look at it and not simply say that forever it  
22 will be the measuring point of the plaza.

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1 I wasn't thinking so much of the  
2 big projects like that. I mean, other ones  
3 where there was a determination somewhere  
4 along the line by the Zoning Administrator.  
5 God knows what the circumstances were at that  
6 particular moment. Somehow this kind of  
7 created or a fictional measuring point is now  
8 vested with the property in perpetuity. I'm  
9 not sure that really makes sense.

10 MR. PARKER: Well, only insomuch if  
11 you change it such that it's going to be  
12 reopened and it could theoretically be lower,  
13 you create a massive disincentive to perhaps  
14 redevelop.

15 COMMISSIONER MAY: Okay. Thanks.

16 CHAIRMAN HOOD: I have a process  
17 question again. I think Mr. Sher mentioned  
18 once we get everything together, once we get  
19 the complete book, once we get all the cross  
20 references, once we get everything together I  
21 guess -- don't let me put words in your mouth  
22 but I guess you were asking for another bite

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1 at the apple. Is that kind of where you were  
2 going?

3 MR. SHER: Yes.

4 CHAIRMAN HOOD: All right.

5 MR. SHER: Mr. Parker and I have  
6 had this conversation. You've got a lot of  
7 pieces and hopefully they will all mesh  
8 together, but it's when you see how they mesh  
9 together that you realize that something in  
10 that use thing that we talked about tonight  
11 doesn't quite line up with the definition that  
12 is yet to come.

13 Even when those two get put  
14 together they may or may not make sense for  
15 any particular zone district within which they  
16 are going to apply. I don't want to have 92  
17 more hearings and all that.

18 I just think the Commission needs  
19 to sort of look at that and the Office of  
20 Planning needs to look at it. I think the  
21 public ought to have an opportunity and it may  
22 just be in writing. It may be, "Here it is.

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1 If you have anything else you want to say  
2 about it, send us a letter."

3 I do really think that one more  
4 look and if it's another bite at the apple or  
5 the pear or the banana or whatever it is,  
6 yeah, I think everybody ought to be able to do  
7 that. Most students bring a teacher an apple  
8 and the teacher usually smiles so that's why I  
9 said apple. I haven't seen too many pears but  
10 I may try to make some.

11 Let me just ask. I will also ask  
12 Ms. Schellin of the Office of Zoning and  
13 Office of Planning. Didn't we put something  
14 in place to where -- I'm trying to remember --  
15 to where if that would happen, that extra bite  
16 of the pear or the apple or banana or whatever  
17 the case is, isn't there a mechanism already  
18 in place for that?

19 MR. PARKER: There are countless  
20 mechanisms. I mean, the long and short of it  
21 nothing is going to get enacted by this body  
22 if people have outstanding issues. There are

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1 going to be plenty of chances to write  
2 letters, to come to the hearing. We are going  
3 to have one final approval.

4 I don't think anybody has decided  
5 yet whether there is going to be a hearing at  
6 that stage or what the process is going to be.

7 I think it may be too early to know that. I  
8 think all we can do right now is move forward  
9 one chapter, one subtitle at a time, see what  
10 issues come up.

11 As we need to go back and look at  
12 things we can. If we need to schedule a  
13 series of final hearings at the end, we can.  
14 I know this Commission too well to think they  
15 are going to approve something that has  
16 outstanding issues.

17 CHAIRMAN HOOD: All right. Thank  
18 you.

19 Ms. Schellin, did you want to ask  
20 something? Okay. Thank you. I asked that  
21 for that reason. I'm glad you put that on the  
22 record.

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1 Any other questions of this panel?

2 Any comments? I want to thank you both. We  
3 appreciate it.

4 Next I'm going to opponents, Ms.  
5 Alma Gates, Neighbors United Trust, and Mr.  
6 George Clark, Committee of 100. Is there  
7 anyone else present tonight that is here in  
8 opposition of this particular case in front of  
9 us tonight?

10 Not seeing any, you two will be our  
11 last panel and we will begin with Ms. Gates.

12 MS. GATES: Good evening members of  
13 the Commission. My name is Alma Gates. I'm a  
14 member of the Zoning Task Force. It is  
15 fitting that in this centennial year of the  
16 Height Act the Zoning Commission is  
17 considering the subject of height.

18 In 2003 the Office of Planning  
19 recommended and the Zoning Commission approved  
20 a code change to clarify and reaffirm that the  
21 intent of the Zoning Regulations was to  
22 measure the height of buildings from the

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1 ground and not from an artificially created  
2 measuring point in determining their allowable  
3 height.

4 Zoning Case 02-35 determined that  
5 the height of buildings the vertical distance  
6 measured from the level of the curb opposite  
7 the middle of the front of the building to the  
8 highest point of the roof or parapet. The  
9 term "curb" shall refer to a curb at grade.

10 In the case of a property fronting  
11 a bridge or a viaduct the height of the  
12 building shall be measured from the lower of  
13 the natural grade or the finished grade at the  
14 middle of the front of the building to the  
15 highest point of the roof or parapet.

16 A new definition for natural grade  
17 was also adopted. The undisturbed level  
18 formed without human intervention or where the  
19 undisturbed ground level cannot be determined  
20 because of an existing building or structure  
21 the undisturbed existing grade.

22 Why would the Zoning Commission

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1 consider relaxing or revising its previous  
2 order? Won't this create the potential for  
3 inconsistent building heights opening the door  
4 to creative interpretation of the general  
5 rules of measurement for the rationalization  
6 of the Washington view shed?

7 While the comprehensive plan  
8 recognizes areas of the city exist that need  
9 to be reconnected and relinked to maintain the  
10 continuity of the street network over sunken  
11 freeways and railroad overpasses and  
12 underpasses, it does not recommend changing  
13 the zoning code or the rules of measurement to  
14 accomplishment this goal.

15 No one is complaining that the  
16 regulations are unclear. While it has been  
17 widely acknowledged that economic development  
18 is driving city planning, the zoning code  
19 should not give designers of the urban  
20 landscape carte blanche to change the  
21 horizontal skyline of the District for  
22 personal gain or attribution.

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1           OP's proposed changes appear to  
2       attack the established policy upon which  
3       people have relied since zoning began in 1958  
4       that the height of buildings is measured from  
5       the ground and not from an artificially  
6       created measuring point in determining their  
7       allowable height.

8           I strongly encourage the Zoning  
9       Commission to adopt only the following  
10      language for proposed Section 4.02.4. Where  
11      the curb at grade has been artificially  
12      changed by a bridge, viaduct embankment, ramp  
13      abutment, tunnel or other type of artificial  
14      elevation the height of a building shall be  
15      measured from either a street frontage not  
16      affected by the artificial elevation or the  
17      lower of the natural grade or the finished  
18      grade at the middle of the front of the  
19      building to the highest point of the roof or  
20      parapet, and then omit Section (c) and (d).  
21      You've heard that before tonight.

22           In May Larry Beasley ended his

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1 presentation on the equation of height and  
2 density in the form of economy of Washington,  
3 D.C. in the 21st century with this caveat. So  
4 I close with a cautionary note. Be very  
5 careful as you gamble with the 100-year legacy  
6 of Washington's Height Act.

7 Take care not to open things up too  
8 casually. I dare say those height limits may  
9 be the single most powerful thing that has  
10 made the city so amazingly fulfilling. Thank  
11 you.

12 CHAIRMAN HOOD: Thank you very  
13 much, Ms. Gates. If you could just hold your  
14 seat.

15 Mr. Clark.

16 MR. CLARK: Thank you, Mr.  
17 Chairman. My name is George Clark. I testify  
18 here tonight on behalf of the Committee 100 of  
19 the Federal City, a group that has advocated  
20 on behalf of intelligent and smart planning  
21 and land use in D.C. since 1923.

22 I also bring my perspective as a

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1 member of the Zoning Revision Task Force on  
2 behalf of the Federation of Citizens  
3 Association which is celebrating its 100th  
4 year this year just like the Height Act.

5 I've seen a lot of this from the  
6 inside. Actually a couple things I've heard  
7 tonight are pretty good because one of the  
8 things that has been remarkable is that Steve  
9 Sher and I have agreed on all kinds of things  
10 about the Height Act.

11 Maybe something we wouldn't have  
12 thought about at the very beginning but we  
13 have. This Commission in the set down, I  
14 think, had some of that similar agreement of  
15 let's not confuse the regulations with the  
16 Height Act and we're happy with that.

17 I have some things in my testimony  
18 that maybe have been solved tonight already by  
19 some of the street-based stuff that was still  
20 here coming out. That is a help for what we  
21 need to do. We did talk about this a lot  
22 including in the task force meetings this

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1 summer on three different occasions, I think,  
2 on the Height Act. We just said, "We don't  
3 need to get into this."

4 There is still one part of this  
5 that concerns me and that is we've been told  
6 that the Zoning Administrator is compiling a  
7 list of rulings made over the years on the  
8 Height Act. First of all, no one has ever  
9 been able to do this. Maybe Steve Sher and  
10 Allison Prince can do it but nobody else in  
11 this city can.

12 In fact, there was one case a few  
13 years ago where a FOIA request was made in a  
14 pending issue under the Height Act. It must  
15 have been in front of the BZA. The answer  
16 was, "We threw that all out." I don't know  
17 how we are going to deal with these  
18 interpretations by the Zoning Administrator.

19 If, on the other hand, what we have  
20 is that the Zoning Administrator is  
21 essentially writing regulations rather than  
22 saying, "Here are the rulings that I've made

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1 over the years. You can look at it.

2 This one from 1947 says what it  
3 says," that's a different case. If we're  
4 going to have regulations written, there's a  
5 process for that and the process is not as a  
6 appendix to the Zoning Regulations. I hope we  
7 don't get into that.

8 I've also heard, and I may be  
9 wrong, and I think what Mr. Parker says  
10 tonight, he says maybe I am wrong, is I've  
11 heard that the head of DCRA doesn't know  
12 that's what they're doing over there that the  
13 Zoning Administrator is doing this. I mean,  
14 that's still another question.

15 But there is one thing we have in  
16 the regulations right now that I think we  
17 ought to keep and that is at Section 25.10.1  
18 that says, "In addition to any controls  
19 established in this title, all buildings or  
20 other structures shall comply with the Act to  
21 regulate the height of buildings."

22 I mean, that we can keep. We have

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1 some wishy-washy language in the proposal by  
2 the Office of Planning on that that is kinda  
3 supposed to say that. I think I said 4.00.4  
4 but I think it's 4.00.3 after the change. We  
5 just got to watch that.

6 I think we should also depict  
7 what's happening in the Height Act and in  
8 height changes, something more than two-  
9 dimensional drawings. We've heard a lot about  
10 H Street and about where it's going to be  
11 measured from, how high it's going to be.

12 I'm glad to hear that it won't be 12 stories  
13 on top of that 56 feet. I'm not sure that's  
14 really true. We have to worry about some of  
15 the scenic vistas of the capital.

16 I mean, if we go up to the 11th  
17 floor here and look at that, although when we  
18 look from the 11th floor we'll have to look  
19 far over to the left to see what those  
20 buildings will be like, but you don't have to  
21 do that if you're at Cardoza High School, if  
22 you're at the Armed Forces retirement home, if

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1 you're on the New York Avenue corridor, or on  
2 H Street, N.E. Those are some important  
3 things that we've got to think about.

4 In my last minute I do want to make  
5 a point about the residential measuring  
6 height. Ms. Gates has made a similar point.  
7 The current definition of building height and  
8 the definitions of 199.1 will be eliminated.

9 Maybe something else is happening  
10 but again, as Mr. Sher said, maybe we won't  
11 know until we see everything together. This  
12 is something I'm very familiar with because  
13 it's the first case I ever got involved in in  
14 front of the BZA, where you measure height  
15 from in an R-1-A zone.

16 As I read the proposal here, my  
17 house is way below the street level. If  
18 you're standing on the curb in my house you  
19 see the roof line. I mean, that's where it is  
20 so I could add 40 feet on top of my house if  
21 we have a 40-foot limit. That doesn't make  
22 any sense to me.

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1           Now, if you go across the street,  
2       which is where the problem was, that range is  
3       15 feet above the street so that would only be  
4       a 25-foot house. That doesn't make any sense  
5       to me either. Here is what we don't know how  
6       things fit together and I don't see why we  
7       have eliminated the measuring point we've had  
8       for a long time. Thank you.

9           CHAIRMAN HOOD: Mr. Clark, in all  
10      fairness, if you wanted to finish, or if  
11      either one of you wanted to finish because I  
12      did allow the previous panel to go a little  
13      over.

14          MR. CLARK: I have one thing about  
15      uses. Now that I've moved my pages out of  
16      order we'll see if I can find it. Again,  
17      maybe it relates to something Mr. Sher said is  
18      that we don't know how this is all going to  
19      work together.

20          One of the things that upsets  
21      people in certain zones, especially in some R-  
22      5 zones even though the buildings may be all

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1 on a lower scale, is what happens with  
2 accessory uses in terms of does it change the  
3 character of the actual residential use.  
4 Sometimes this happens with respect to bed and  
5 breakfast but it can happen in other ways,  
6 too, especially in some rental buildings.

7 What happens is you really change  
8 the use from residential to whatever  
9 occupations may be there and that's something  
10 we don't really as we sit here, at least I  
11 don't, understand how that works.

12 CHAIRMAN HOOD: Ms. Gates, did you  
13 want to add something?

14 MS. GATES: I finished. Thank you.

15 CHAIRMAN HOOD: Okay. All right.  
16 Let me open it up. Are there any questions of  
17 this panel?

18 COMMISSIONER MAY: Sorry, Mr.  
19 Chairman.

20 CHAIRMAN HOOD: Mr. May.

21 COMMISSIONER MAY: I guess for Mr.  
22 Clark the question I have was with regard to

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1 the measuring point you point out your house  
2 is below the street grade. The way I read the  
3 proposed regulations, 4.02.5, "A one-family  
4 dwelling and any building..."

5 Sorry. "One-family dwellings and  
6 any building set back from all lot lines by a  
7 distance at least equal to its own height  
8 shall be measured from the ground level." In  
9 your circumstance I guess because your house  
10 is not set back by that distance?

11 MR. CLARK: It's set back in the  
12 front but it's not set back from all lot  
13 lines.

14 COMMISSIONER MAY: From all lot  
15 lines. Okay. I'm picturing where that can  
16 happen. MacArthur Boulevard is the example  
17 that you seem to have cited. That's something  
18 where we need to have greater clarity.

19 MR. PARKER: It was pointed out in  
20 testimony earlier. It's just a matter of two  
21 missing commas. This saying, "One-family  
22 dwellings shall be measured from ground level

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1 and any building set back from all lot lines  
2 by a distance equal to their own height shall  
3 be measured from ground level." All one-  
4 family dwellings are measured at ground level  
5 at the mid-point of the front.

6 MR. CLARK: And if I can ask the  
7 question is we've had a lot of litigation in  
8 other points in the working groups about  
9 artificially changing the grade. What happens  
10 there? That's the other concern.

11 COMMISSIONER MAY: Okay. We'll get  
12 to that in just a second. I want to clarify  
13 on this. "One-family dwelling shall be  
14 measured from ground level to mid-point." So  
15 that does need to be tweaked in the language.  
16 Yes?

17 MR. PARKER: It's a matter of a  
18 comma after "one-family dwellings" and a comma  
19 after "its own height." "One-family  
20 dwellings, and any building set back from all  
21 lot lines by a distance at least equal to its  
22 own height, shall be measured."

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1 COMMISSIONER MAY: Okay. So if it  
2 is a two-family dwelling --

3 MR. PARKER: It's measured from the  
4 curb.

5 COMMISSIONER MAY: It's going to be  
6 measured from the curb. Okay. I'm not sure  
7 that is going to catch everything that it  
8 should catch.

9 MR. PARKER: Okay.

10 COMMISSIONER MAY: I think we need  
11 to think about that. I can't think of  
12 specific examples within the city but it's not  
13 uncommon to have a duplex that is set back by  
14 less than that distance, and yet you really  
15 want the single-family home rules to apply.

16 MS. GATES: Mr. May, we also have  
17 those duplexes on MacArthur Blvd. that sit  
18 below the curb.

19 COMMISSIONER MAY: I can't remember  
20 whether I had seen them there but I know I had  
21 seen them around the city. All right. Then  
22 we get back to the question of the natural

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1 grade versus the grade in front of the house  
2 which is a question that came up earlier. I  
3 think OP is going to reply to that in a  
4 supplemental report. Right?

5 MR. PARKER: Yes.

6 CHAIRMAN HOOD: I just want to make  
7 sure we add the language. Obviously with Ms.  
8 Gates being on the task force I guess you've  
9 seen her proposal before 2.4 previously but I  
10 want to include that. Actually, Mr. Parker,  
11 since you have so much help over at the Office  
12 of Planning, I'm curious that we would look at  
13 all the testimony.

14 I know you all have done a lot of  
15 work because I actually attended the first  
16 work group on height. I attended that one. I  
17 will tell you that we've come a long way and I  
18 agree with you on that.

19 As I stated earlier, the same issue  
20 that has been graphed in and the Zoning  
21 Commission has dealt with continuously about  
22 the NCPC telling us it's a violation of the

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1 Height Act and then we say it isn't. That  
2 issue I'm hoping we can find some kind of way  
3 to resolve that.

4 Also, I'm looking here. We didn't  
5 have many people to testify, you're right, but  
6 they bring up some good points. I'm looking  
7 at the language specifically proposed by Ms.  
8 Gates for 2.4. I've heard a lot of people say  
9 we need to omit (c) and (d). I don't know if  
10 that has already been looked at.

11 I'm not saying we should or  
12 shouldn't but I would like for the Office of  
13 Planning to look at the testimony received  
14 from everyone, because we only had a few  
15 people to testify, and look at some of the  
16 points that they raised in that supplemental.

17 Maybe we could make it a page-and-a-half in  
18 that supplemental. Let's kind of find out why  
19 we should or should not take some of these  
20 recommendations if that's doable.

21 MR. PARKER: We'll look at it and  
22 try to keep it short.

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1 CHAIRMAN HOOD: Thank you.

2 Any other questions or comments?  
3 Commissioner Selfridge.

4 COMMISSIONER SELFRIDGE: Yes.  
5 Thank you, Mr. Chairman. I would just like to  
6 follow up on what he said about obviously  
7 4.02.4(c) and (d). I was struck by something  
8 that you said and this is my initial thought.

9 I would be curious what impact 4.02.4(c)  
10 would have on maybe smaller property owners.  
11 All the talk tonight has been about Union  
12 Station air rights. Obviously I've picked up  
13 on that hot seat issue.

14 I would be curious as well within  
15 that page-and-a-half if we know what the  
16 practical impact on maybe some of these  
17 smaller properties are existing, if there is  
18 any devaluation if this were to happen, if any  
19 change in any former ruling by the Zoning  
20 Administrator was just wiped out essentially.

21 Then, Ms. Gates, I just have one  
22 question for you I just want to clarify.

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1 4.02.4(c) and (d), if you wipe that out it  
2 wouldn't actually have any impact on  
3 Washington's Height Act because 4.00.3  
4 actually says notwithstanding essentially  
5 Zoning Regulations all buildings are subject  
6 to the Height Act so we wouldn't actually be  
7 impacting or having any impact on the Height  
8 Act by leaving 4.02.4(c) and (d) in place.

9 MS. GATES: Why wouldn't it if the  
10 Zoning Administrator has made a previous  
11 determination that is above the Height Act  
12 limitation?

13 COMMISSIONER SELFRIDGE: I guess  
14 that's a question from me for OP.

15 MR. PARKER: Well, the Zoning  
16 Administrator interprets the Height Act so by  
17 default any interpretation the Zoning  
18 Administrator makes is not in violation of the  
19 Height Act.

20 COMMISSIONER SELFRIDGE: Thank you.

21 VICE CHAIR SCHLATER: I just have a  
22 process comment. Since this language is going

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1 to come back to us, you're going to write a  
2 supplemental report, can I just ask that when  
3 the new language comes back that it's  
4 blacklined against the old language? I don't  
5 know if that has been your practice thus far  
6 but just so we can track the changes as we go  
7 along and respond to some stuff.

8 It would be very helpful to get it in  
9 blackline form.

10 MR. PARKER: Certainly. We'll use  
11 the one attached to the report, not the public  
12 hearing notice, and we'll blackline that.

13 CHAIRMAN HOOD: Any other comments?  
14 Mr. Turnbull.

15 COMMISSIONER TURNBULL: Just one,  
16 Mr. Chair. I was just going through the rest  
17 of Mr. Clark's submittal and one of the things  
18 you didn't talk about which is in here is  
19 exterior walls. It sounds like you are  
20 keeping to the very arrow definition of an  
21 exterior wall which is any side of a building.

22 MR. CLARK: I think that's right,

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1 yes.

2 COMMISSIONER TURNBULL: And  
3 basically you're saying that the setback  
4 should be the same on any side whether it's an  
5 alley or butting up to another building or  
6 whatever?

7 MR. CLARK: We shouldn't be looking  
8 at the inside but rather on the outside, yes.

9 COMMISSIONER TURNBULL: You don't  
10 see any opportunities where -- we've had  
11 instances like this before where you can't  
12 always get a penthouse or something exactly in  
13 the ideal situation. You have stairwells to  
14 meet code just happen to pop up.

15 A lot of times they are put in  
16 places to be as diminimus as possible but you  
17 can't get away from some place at some point.  
18 If you're going to sacrifice something,  
19 you're going to give up either the alley for  
20 some minimal elevation of the building.

21 MR. CLARK: There may be situations  
22 where that is the case. One of the things --

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1 I don't have the photographs with me tonight  
2 but there have been photographs taken of a lot  
3 of the buildings in the city in dealing with  
4 this issue and actually people have done a  
5 pretty good job.

6 COMMISSIONER TURNBULL: Yeah, I  
7 think in most part even the ones that have  
8 come before us where we have given relief from  
9 some of the setbacks I don't think any of them  
10 have been so egregious that we felt that  
11 uncomfortable about them. I just wanted to  
12 give you an opportunity to comment about it.

13 MR. CLARK: Thank you.

14 CHAIRMAN HOOD: Any other questions  
15 or comments? I want to thank this panel. We  
16 appreciate you coming down to testify.

17 MR. CLARK: Thank you.

18 CHAIRMAN HOOD: I think that's it.  
19 Is there anyone else here to testify?

20 Ms. Richards, I saw you come in.  
21 Come right on up.

22 Anyone else here to testify? We're

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1 going to cut it off with Ms. Richards. I did  
2 see Ms. Richards come in even though I did  
3 have the last call but she has served the city  
4 with great distinction and still does so we  
5 want to hear from her.

6 Anyone else? Okay. I've already  
7 cut it off. I'll probably be in trouble that  
8 I cut it off.

9 Okay. Ms. Richards. Turn your  
10 microphone on.

11 MS. RICHARDS: My name is Laura  
12 Richards and I'm here testifying on behalf of  
13 my civic association Penn Branch Citizens  
14 Civic Association in Ward 7. I'm also a  
15 member of the task force. Penn Branch has  
16 identified the following key points we want to  
17 call to your attention.

18 The first is the measurement rules.  
19 We would like the following language included  
20 in 4.02.1, "When a building abuts more than  
21 one street the street chosen to determine the  
22 maximum allowable height must also be used to

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1 determine the measuring point for building  
2 height. Then this measuring point will set  
3 the basis for all height measurements of the  
4 building."

5 This is a provision that was  
6 considered earlier and then dropped. We think  
7 it should be restored to avoid situations  
8 where broad streets are used to determine  
9 building heights and then the buildings are  
10 actually measured from the higher narrower  
11 streets. This would require a conforming  
12 amendment to Section 4.05.1.

13 Then Section 4.02.4, which I just  
14 heard discussed, "Measuring building heights  
15 where the curb grade has been artificially  
16 changed," there are four options. I would  
17 eliminate (b) and (d) and retain (a) and (c).

18 (a) says measure from street  
19 frontage not affected by the bridge or rampart  
20 or whatever. (c) relies on precedent. (b)  
21 and (d) allow for, I guess, a level of  
22 discretion that probably doesn't result in the

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1 sort of certainty that people need.

2 I think I heard some conversations saying that  
3 (c) was not acceptable because there might be  
4 some bad precedents lurking out there.

5 In regards to the response that the  
6 Zoning Administrator sort of cannot  
7 misinterpret the Height Act if that comes into  
8 play. As long as it's subject to judicial  
9 review, I suppose it can. I assume you meant  
10 that until it's been subjected to judicial  
11 review the decision stands.

12 Certainly reasonable minds may  
13 differ and mistakes can be made. I wouldn't  
14 think that any precedent would stand on the  
15 books that would allow something like  
16 measuring from the bridge. I guess that's  
17 everyone's favorite example. When that first  
18 came up a number of years ago it was sort of  
19 treated as kind of a joke, you know.

20 I guess it's still sort of a joke  
21 except in reality this may be really  
22 happening. It's sort of frightening so we

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1 certainly hope that you will fix that. You've  
2 heard several proposals tonight for addressing  
3 it and I hope that will be done.

4 Primacy of the Height Act. Retain  
5 Section 25.10.1, "In addition to any controls  
6 established in this title all buildings or  
7 structures shall comply with the Height Act."

8 This simply say, okay, it's there on the  
9 books.

10 No matter what we do that is the  
11 touchstone where it applies. It governs and  
12 preempts anything else that may be done. I  
13 think that it just states it very clearly. It  
14 has served us well so I would keep that broad  
15 language in the new regulations.

16 Residential blocks and business  
17 blocks. Section 4.03.1(b) operates to treat a  
18 block face that contains any mix of an  
19 apartment residential zone and any other zoned  
20 as a business street. This would allow  
21 business heights measured by the right-of-way  
22 plus 20 feet.

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1           The block face with any amount of  
2 neighborhood residential zoning is deemed to  
3 be a residential block for building height  
4 purposes. Height limits on residential  
5 streets are, of course, significantly lower.  
6 This provision considered together with  
7 Section 4.04.1 has the potential to adversely  
8 affect existing rowhouse neighborhoods and  
9 height in apartment neighborhoods.

10           I guess moreover there are OP  
11 proposals that are embodied in comp plan  
12 amendments and small area plans for treating  
13 large swats of the District as transit  
14 oriented development areas. These would  
15 mostly be mixed zones. Therefore, they would  
16 essentially be business streets. Therefore,  
17 the taller heights for business streets would  
18 more than likely apply.

19           Inasmuch as significant new  
20 construction is taking place in the eastern  
21 part of the city, we think the city's least  
22 empowered residents stand to bear the brunt of

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1 this provision. We think that Section 4.03  
2 and 4.04 should treat all block basis with a  
3 quantum of residential zoning equally without  
4 regards to what kind of residential density  
5 that is.

6 Moreover, predominately residential  
7 streets in established neighborhoods should be  
8 treated as such whether or not the underlying  
9 zoning actually matches the actual nature of  
10 the street. We all know that there are  
11 mismatches throughout the city and they are  
12 catching some of them. Design is catching up  
13 with some of them but they are going to  
14 persist so what's there should govern,  
15 especially for your established neighborhoods.

16  
17 Just to give some idea of the  
18 potential impact of TOD and how this could  
19 interplay with 4.03 and 4.04, the proposed  
20 comp plan amendments would make the major bus  
21 routes in the city all TOD zones so you  
22 wouldn't be having them clustered around kind

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1 of subways and Metro stations but just up and  
2 down the city.

3           Wherever there's a major bus zone  
4 or wide street that's TOD and that's  
5 potentially like mixed zone. Therefore, you  
6 are going to get like business heights all  
7 along. Where is the kind of lower density,  
8 gentler density in southeast Washington?

9           As you all know, we were affected  
10 adversely this way once before when southwest  
11 was emptied out 50 or 60 years ago and all  
12 sorts of jerry-rigged apartment buildings were  
13 crammed into southeast. It has taken a long  
14 time to kind of get rid of some of them or to  
15 integrate them effectively. We would not like  
16 to have this happen to us again.

17           Finally, we have roof structures.  
18 Section 4.06.1 identifies roof structures that  
19 may exceed height limitations in the Zoning  
20 Regulations and 4.06.2 sets out the setback  
21 requirement for some allowable roof  
22 structures.

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1           The esthetics of my community are  
2 adversely impacted by the industrial roof  
3 structures on our neighborhood shopping  
4 center.       They are large, prominent,  
5 undisguised, and apparently installed without  
6 regard to any setbacks at all.

7           Based on this experience and on  
8 behalf of the aesthetics of the entire  
9 District we urge that one-for-one setbacks be  
10 required from all exterior walls and that  
11 exterior walls be given its ordinarily  
12 understood meaning with the proviso that the  
13 party wall will be treated as the exterior  
14 wall for rowhouses or other adjoined  
15 structures.

16          We don't foreclose the possibility  
17 of special exceptions in any given case.  
18 Presumably some setback relief may be the best  
19 possible situation. But as the general rule,  
20 we think that the one-for-one setback should  
21 be applied.

22          Those are pinbranches, keypoints.

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1 Thank you.

2 CHAIRMAN HOOD: Thank you very  
3 much, Ms. Richardson.

4 Any questions of Ms. Richardson,  
5 Commissioners?

6 I will tell you we will also add  
7 Ms. Richardson's testimony. I think a number  
8 of the points have already been mentioned  
9 earlier. The only difference I think is most  
10 people recommended keeping (a) and (b), I  
11 believe, and you recommended (a) and (c) so it  
12 will be interesting to see what the Office of  
13 Planning comes back on that page-and-a-half,  
14 maybe two-pages-and-a-half sheet that we're  
15 going to grapple with.

16 Thank you, Ms. Richards. We  
17 appreciate it.

18 MS. RICHARDS: Um-hum.

19 CHAIRMAN HOOD: I think now, at  
20 least for me, I need to remember what the  
21 process is at this point. Sometime when your  
22 mind gets set in going somewhere else and

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1 you're still here, I'm just trying to  
2 remember. Also for the public to make sure  
3 that we know what the process is after this.

4 Mr. Parker, could you help us?

5 MR. PARKER: Certainly.

6 CHAIRMAN HOOD: Could you help me.

7 MR. MAY: Can I interrupt before we  
8 go to the process?

9 CHAIRMAN HOOD: Sure.

10 MR. MAY: Sorry. I wasn't quick  
11 enough to mention this right after testimony.

12 I was particularly intrigued by Ms. Richards'  
13 testimony. It's the paragraph labeled B on  
14 the front page where in referring to 4.02.4(c)  
15 she recommends that there be some, I guess,  
16 review of the previous determination to  
17 determine that the circumstances that led to a  
18 particular determination are essentially still  
19 in force.

20 I mean, that's what I'm taking out  
21 of it. I think there is something to that.  
22 The concern I had before about any of these

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1 previous determinations is that we don't know  
2 that the circumstances that led to a given  
3 determination are still acting and still  
4 enforced in that area.

5 I think that we ought to give that  
6 some consideration because something could be  
7 a remnant. The city is going to be around a  
8 really, rally long time so we need to make  
9 sure 50 years from now when they are looking  
10 at the Zoning Regs again that is not the next  
11 time they have to deal with this.

12 MS. RICHARDS: Could I step up and  
13 clarify?

14 MR. MAY: I was just meaning that  
15 as a comment for what I would like the Office  
16 of Planning to follow up on. I don't know  
17 that I necessarily need a reply. Thanks.

18 CHAIRMAN HOOD: Okay. Again,  
19 pretty much most of what we heard tonight we  
20 have asked for a supplement report from OP and  
21 I'm not sure how long that's going to take or  
22 when we are going to look at this again.

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1 That's why I wanted to go to Mr. Parker or Ms.  
2 Schellin. Mr. Parker first.

3 MR. PARKER: The process from here  
4 is we will resubmit to you a blacklined height  
5 chapter as well as a use chapter. We will  
6 submit to you a report as close to two pages  
7 as we can get it responding to all of your  
8 comments from tonight.

9 The Zoning Commission will then  
10 consider all of the information from the  
11 record and from our supplemental and we'll  
12 take proposed action on height chapter and use  
13 chapter. After an appropriate filing you will  
14 take a preliminary final action on just this  
15 piece. Then we'll do that for every other  
16 chapter in the code and then we'll come back  
17 and look at it all again as a whole.

18 CHAIRMAN HOOD: Any questions,  
19 Commissioners, on that?

20 I want to thank you, Mr. Parker,  
21 for that.

22 Ms. Schellin, did you want to add

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1 something?

2 MS. SCHELLIN: Just that we do have  
3 a request to leave the record open for a  
4 period of time if we could do that.

5 CHAIRMAN HOOD: I don't have any  
6 objections. Ms. Schellin, you want to give us  
7 some dates?

8 MS. SCHELLIN: I wanted to see when  
9 OP wanted to come back for proposed action  
10 first.

11 MR. PARKER: We could use at least  
12 two weeks to write our response.

13 MS. SCHELLIN: Okay. So if we  
14 could just -- the request to leave the record  
15 open was not for a long period of time so if  
16 we could just leave it open for a week.

17 CHAIRMAN HOOD: A week is all we  
18 need. I guess that will satisfy the request.

19 MS. SCHELLIN: That will satisfy  
20 the request if we could leave the record open.  
21 There were two -- do you want to leave it  
22 open for just the two requests that were

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1 received or for everyone?

2 CHAIRMAN HOOD: Probably just the  
3 two requests.

4 MS. SCHELLIN: Okay. It was a  
5 request from WCCA and also from ANC -- I want  
6 to find that ANC. We actually have a letter.

7 CHAIRMAN HOOD: 6B is what I'm  
8 hearing.

9 MS. SCHELLIN: 6B. We actually  
10 have a letter from them but I just can't put  
11 my hand on it right this second -- 6B and from  
12 WCCA. She had actually -- Mr. Clark is  
13 standing up.

14 CHAIRMAN HOOD: I thought Mr. Clark  
15 was ready to leave. Come back to the table,  
16 Mr. Clark.

17 MS. SCHELLIN: So we had a request  
18 from those two. Ms. Kayla had signed up to be  
19 here this evening but something came up and  
20 she could not be here so she did call and ask  
21 if the record could be left open for her  
22 testimony. Then, of course, ANC-6B submitted

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1 a letter requesting it be left open for them  
2 because they were meeting, I believe, this  
3 evening.

4 CHAIRMAN HOOD: Okay. Good. So  
5 we'll leave it open for those two  
6 organizations.

7 Mr. Clark, did you want to add  
8 something?

9 MR. CLARK: My question was only if  
10 OP is going to be submitting something in  
11 response to what we've all been talking about  
12 tonight, should the record be open to comment  
13 on what they submit? That's my question.

14 CHAIRMAN HOOD: Well, you know  
15 what? I think at some point we're going to  
16 have to cut it off. We're doing that because  
17 we want them to look at what you all submitted  
18 to us. I think at some point we need to move  
19 forward.

20 There is another time, I think, Mr.  
21 Clark for you all because here's the thing.  
22 We do that and you're probably going to come

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1 back with something else. I'll open it up to  
2 my colleagues and see what they think.

3 Then we are going to go back to  
4 them and then we'll probably be doing this  
5 back and forth. I will tell you honestly, and  
6 I'm sure my colleagues agree, what I heard  
7 tonight from the panels who spoke there were  
8 some very thought-out questions. It was very  
9 well done.

10 I just wanted them to respond so we  
11 can make sure we have all of the information  
12 because I'm sure some of you all have already  
13 probably talked to Mr. Parker at some point  
14 with this. I think the way I perceive this we  
15 are going to go back and forth.

16 Again, I want to make sure the  
17 folks like you all who have put all this time  
18 in and has vetted time to be able to get your  
19 points across make sure they respond because  
20 they've probably already responded once but we  
21 didn't know that.

22 I'm not sure or not but if they

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1 haven't, it has some well thought-out material  
2 that was given to us tonight and I've asked  
3 them just to give us a sound byte respond to  
4 that so I don't know.

5 Colleagues, let's open it back up.

6 Do you think we need to have responses to  
7 what we asked for?

8 COMMISSIONER TURNBULL: I think you  
9 had touched upon it. It's really the Zoning  
10 Commission's purview to look at all of that  
11 from the comments and make sure that they've  
12 been addressed and for us then to review it  
13 and then to weigh in on it at this point, I  
14 think. At this point. Not to say in the  
15 future there's not going to be another follow-  
16 up where the public can come back and weigh in  
17 on it.

18 CHAIRMAN HOOD: I'm sure there will  
19 be another one. I'm positive.

20 COMMISSIONER TURNBULL: But I think  
21 for just now it's just the Zoning Commission  
22 getting the feedback from OP with their

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1 comments.

2 CHAIRMAN HOOD: Okay.

3 COMMISSIONER TURNBULL: And then us  
4 going forward.

5 CHAIRMAN HOOD: Right. Mr. Clark,  
6 as you heard from Mr. Parker, this is a very  
7 open process. It can stop anytime in its  
8 tracks and open back up again.

9 MR. CLARK: Thank you, Mr.  
10 Chairman. I just wanted to make sure with  
11 that discussion because I wasn't sure quite  
12 frankly.

13 MS. SCHELLIN: Actually, Mr. Clark,  
14 because once they take proposed action it will  
15 be published for a 30-day comment period so  
16 when it gets published in the Register just  
17 like any other rulemaking so you will have  
18 another bite at it at that time, yes.

19 CHAIRMAN HOOD: Another bite at the  
20 pear.

21 MS. SCHELLIN: Yes. So going over  
22 our schedules sticking with what Mr. Parker

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1 suggested for OP, we'll leave the record open  
2 for WCCA and ANC-6B until September 27th and  
3 then OP would have until October 4th. That  
4 would give them two weeks. Then on October  
5 18th would be our next meeting we would put on  
6 the agenda.

7 MR. PARKER: Can we move it one  
8 more meeting?

9 MS. SCHELLIN: You want to make it  
10 November?

11 MR. PARKER: Is that possible?

12 MS. SCHELLIN: Sure.

13 MR. PARKER: First meeting of  
14 November?

15 MS. SCHELLIN: Uh-huh. We'll move  
16 it to November 8th for proposed action.

17 MR. PARKER: In light of that, you  
18 said leaving it open for WCCA and 6B until  
19 September 27th. Do you mind if we have two  
20 weeks after that so that we can respond to any  
21 issues?

22 MS. SCHELLIN: To their comments

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1 also? Okay. So then that would adjust it to  
2 October 12th since the 11th is a holiday.  
3 September 27th for WCCA and ANC-6B, October  
4 12th for OP, and we'll bring it back on the  
5 agenda November 8th for proposed. Got it?

6 MR. PARKER: Got it.

7 MS. SCHELLIN: Okay.

8 CHAIRMAN HOOD: We're all on the  
9 same page. Again, I want to thank everyone  
10 for their participation tonight. We greatly  
11 appreciate your comments, your research, and  
12 also your enthusiasm about what we are doing  
13 here in the District of Columbia. With that  
14 this hearing is adjourned.

15 (Whereupon, at 8:37 p.m. the  
16 hearing was adjourned.)  
17  
18  
19  
20  
21  
22

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