

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Zoning Commission
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9 Special Public Meeting
10 1418th Meeting Session (18th of 2015)
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14 5:32 p.m. to 6:54 p.m.
15 Monday, October 26, 2015
16

17 Jerrily R. Kress Memorial Hearing Room
18 441 4th Street, N.W., Suite 220 South
19 Washington, D.C. 20001
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1 Board Members:

2 ANTHONY HOOD, Chairperson

3 MARCIE COHEN, VICE CHAIR

4 PETER MAY, Commissioner

5 ROBERT MILLER, Commissioner

6

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13

14 Other:

15 ALAN BERGSTEIN, ESQ.

16

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

2 CHAIRPERSON HOOD: Okay. We're going to go
3 ahead and get started, our special public meeting.
4 Today's date is October the 26th, 2015. My name is
5 Anthony Hood. This is the Zoning Commission Special
6 Public Meeting.

7 Joining me are Vice Chair Commissioner Cohen,
8 Vice Chair Cohen, Commissioner Miller, Commissioner
9 May, and Commissioner Turnbull, Office of Zoning
10 staff, Ms. Sharon Schellin, Office of Attorney
11 General, Mr. Ritting. I'm sorry, Mr. Bergstein. I'm
12 used to saying Mr. Ritting. Mr. Bergstein. And then
13 the Office of Planning, Mr. Lawson.

14 Okay. We do not take any public testimony at
15 our special public meetings and our agenda tonight is
16 very specific. It's Zoning Commission Case No. 14-
17 13. This is final action. Well, we're not going to
18 take final action tonight. These are comments
19 addressing, which we postponed from our meeting last
20 week for text amendments on rooftop and penthouse
21 regulations. We're going to start this off but I
22 think we're going to have a discussion. It will be a
23 lot of back and forth, I believe, with some
24 clarifications that need to be made by the -- to the
25 Office of Planning from the Zoning Commission for

1 specific discussion points.

2 Okay. With that let me turn it over to Ms.
3 Schellin. Do we have any preliminary matters?

4 MS. SCHELLIN: No, sir.

5 CHAIRPERSON HOOD: Okay, colleagues, I'm
6 going to dive right in to it and I guess, Mr. Lawson,
7 help me understand again, and I think I asked this at
8 the hearing, why are we even doing this? I think,
9 and I've asked that before when I looked -- when I
10 reviewed it again last night I remember that. Why
11 are we even doing this? What is the impetus or what
12 triggers us to have to even do this because some of
13 the comments I've read from some of the comments in
14 the record, that's what -- the way I envision all of
15 them together. Some people are asking, why are we
16 even doing this? What made us do this.

17 In Eleonore -- excuse me, Congresswoman
18 Norton's letter, she specifically says that the
19 option was there. Doesn't necessarily mean endorse
20 pro or con. Why are we doing this?

21 MR. LAWSON: If I could ask for -- you mean,
22 why are we amending the penthouse regulations at all
23 or why --

24 CHAIRPERSON HOOD: That's right.

25 MR. LAWSON: -- are we having this --

1 CHAIRPERSON HOOD: Well, yeah. No, why are
2 we doing it at all?

3 MR. LAWSON: Sure. Well, as of course you
4 know the Height Act was amended by Congress after a
5 very lengthy public meeting and hearing process that
6 was in planning process that was co-managed by NCPC
7 and the Office of Planning back in 2013/2014. It led
8 the -- the study was pretty all encompassing. It
9 dealt with building height throughout the city and in
10 various parts of the city. But in the end both
11 council, city council, and the federal government
12 ended up with specific changes to the Height Act
13 related to the allowances for habitable space within
14 a penthouse above the Height Act limit.

15 That led to some confusion, out, kind of in
16 the real world in terms of how this would be
17 administered through the Zoning Regulations because
18 of course it needed amendments to the Zoning
19 Regulations to make that effective. So the Zoning
20 Commission instructed the Office of Planning to take
21 a look at the penthouse regulations. We did that.
22 We felt that it was a good opportunity to, in
23 addition to allowing what the Height Act specifically
24 looked at, to look at penthouses a little bit more
25 all-encompassing. And as you know we went through a

1 fairly protected process now. It's being about a
2 year and a half, give or take, where the -- sorry,
3 the proposal has been amended significantly. In many
4 zones the ability to do a penthouse or the height of
5 the penthouse would be restricted compared to current
6 regulations. In other zones, particularly the high
7 density zones, Office of Planning has recommended
8 that the Height Act limit of 20 feet would apply.

9 But the big change, of course, is in regards
10 to habitable space within that penthouse, and in that
11 respect the Office of Planning is proposed, allowing
12 some forms of habitable space, most forms of
13 habitable space in many zones, not all zones. So if
14 the use is permitted in the zone it would be allowed
15 within that habitable portion of the penthouse.

16 While we were at it, we took it -- took a
17 look at a number of other issues related to
18 penthouses as well. Particularly the penthouse
19 design, how the setbacks are done, what the size of
20 the penthouse should be, whether the walls have to be
21 vertical, whether they can be multiple penthouse
22 heights, because all those issues have been frequent
23 objects of discussion before the Board of Zoning
24 adjustment. A very frequent request for relief from
25 those regulations, and they're almost entirely --

1 almost always, if not always, approved. So we
2 thought it was a good opportunity to kind of roll all
3 this and look at penthouses somewhat comprehensively
4 rather than on a piece meal approach. And that led
5 to where we are here.

6 The Zoning Commission, of course, has taken
7 proposed action to approve a set of text amendments.
8 After that a notice of proposed rulemaking went out,
9 and as is standard the record was reopened for
10 written comments. That record was open for an
11 extended period and we received some comments. The
12 comments that we received were typically very
13 thoughtful and very -- some of them were very, very
14 detailed, and they were very, very helpful.

15 You will be receiving a copy of a summary of
16 those comments, similar to what we did for ZRR. So
17 that summary, it's not intended to be all
18 encompassing. That's what the exhibits themselves
19 are for. But it's intended to kind of highlight many
20 of the issues that were brought up in the comments.
21 However, through that comment period there were a
22 number of issues; just over a dozen or so. Or I
23 think it was like 15, that we felt warranted kind of
24 a confirmation from the Zoning Commission at this
25 point. Typically this confirmation is received at

1 final action as part of a normal text amendment
2 process. You would make these decisions at final
3 action. In this case we thought it would be
4 instructive for us to get this feedback because there
5 was a fair amount, get this feedback from you before
6 we prepared a final version of the text.

7 So in short summary we did -- we brought this
8 forward because the proposals are consistent with the
9 Comprehensive Plan, they're consistent with the
10 actions taken by the federal government, and we felt
11 it was time to take a look at these.

12 CHAIRPERSON HOOD: Okay. Thank you, Mr.
13 Lawson. I will say, though, that the way I interpret
14 some of the comments that we received, the question
15 that I asked is still on the table even after all the
16 actions we have done and all the things we have been
17 through, and I think some of those points are very
18 valid and I will mention those as we move forward.

19 I won't belabor it because we do have a
20 hearing tonight. There's a discussion that Office of
21 Planning has asked the Commission to have and I'm
22 particularly going to take it straight from there.
23 Colleagues, on the back of the Office of Planning
24 report, page 2, we went through that and I would like
25 to use that as the roadmap. And there will be times

1 where we will be interacting with Mr. Lawson. And it
2 depends on how I start off, I may just turn it over
3 to Mr. Lawson so I can think about questions that I
4 may ask.

5 MR. TURNBULL: Mr. Chair, I just want to
6 confirm, you're referring to Exhibit 140, the last
7 supplemental report of OP then?

8 CHAIRPERSON HOOD: Yeah. Yeah, exhibit --
9 yeah.

10 MR. TURNBULL: Okay. Great. Thank you.

11 CHAIRPERSON HOOD: I'm scared to close my
12 file because it might not open. Okay. So let's go
13 straight -- I think we had to stop at the top of page
14 2. For those who don't know where we are, we're on
15 the back of the Office of Planning report, for those
16 who may be watching it, streaming it. They can look
17 at the Office of Planning report which is on -- it's
18 up on the web, right?

19 MS. SCHELLIN: Yes. At least it was earlier.

20 MR. LAWSON: Yes, sir.

21 CHAIRPERSON HOOD: And it's Exhibit --

22 MS. SCHELLIN: 140.

23 CHAIRPERSON HOOD: Exhibit 140. Thank you,
24 colleagues. Okay. 400.5 et cetera, penthouse
25 height, Exhibit 128 and 136 are some of the

1 references. In some zones -- and I'm going to read
2 through this quickly.

3 "In some zones penthouse height for
4 mechanical space will be reduced from 18 feet, six
5 inches, to 15 feet. Some of the comments, these are
6 not all of them, but some comments, that, "The
7 permitted mechanical space height should remain at
8 18'6" for these zones or reduced to no less than
9 16'6" to ensure the elevator overrides can be
10 provided efficiently and economically. Alternatively
11 a comment that penthouse height in these zones should
12 be limited to 10 feet with taller mechanical space
13 permitted with BZA approval."

14 OP's comments and directions, they -- "OP's
15 comments and some of the directions they need to
16 propose text consistent with the Zoning Commission
17 discussion, the suggestions would provide additional
18 elevator override, flexibility, while still providing
19 a height less than that currently permitted. Any
20 additional penthouse height will result in a
21 correspondently larger setback. OP would not support
22 the change to limit penthouse height to 10 feet in
23 these zones, which would be inconsistent with the
24 Zoning Commission discussions to date and would limit
25 the ability to provide elevators or utilize the

1 rooftop. Does the Commission wish to change the
2 permitted height to 16 feet, six inches, as
3 requested?"

4 Open that up for discussion. Commissioner
5 Miller.

6 MR. MILLER: Mr. Chairman, I would support
7 that change to provide additional elevator override
8 flexibility in those cases where we reduced it to 15
9 feet, to reduce it to 16 feet, six inches instead.

10 CHAIRPERSON HOOD: Any other comments?

11 MR. TURNBULL: Well, what zones are we
12 talking about?

13 CHAIRPERSON HOOD: Mr. Lawson, that's why
14 we're going to need you. Hey, Mr. Lawson, let me ask
15 you, do you think you can do better than what I just
16 did reading all that?

17 MR. LAWSON: I definitely do not. I'm sorry.
18 I'm just looking up to see which zones. These are
19 some of the more moderate to medium density
20 commercial zones, in particular. But I'm just
21 looking for the zone list here and for some reason
22 can't find it. I'm sorry.

23 CHAIRPERSON HOOD: If we need to we can put
24 that in the parking lot and come back to it, or you
25 want to --

1 MR. MAY: Well, while he's flipping around
2 maybe I'll talk a little bit.

3 CHAIRPERSON HOOD: Okay.

4 MR. MAY: Because I am interested in knowing
5 exactly what zones it would belong to.

6 I'm sensitive to the issue. I think that the
7 -- well, first of all I'm not interested in the
8 alternative, which would set the penthouse height at
9 10 feet with taller space permitted with BZA approval
10 because everybody is going to walk in the door and
11 want to have 18-6. And the BZA is going to wind up
12 giving it to them because they haven't -- you know,
13 they will not have done an exhaustive study of what
14 the alternatives are.

15 You know, my relatively limited experience
16 with penthouse heights in other jurisdictions is that
17 it's not uncommon to have them as low as 15 feet.
18 And it is possible to do that and still provide
19 access to the roof. Particularly with the newer
20 technologies that are available in elevators, granted
21 they may be a little bit more expensive or they may
22 be a little bit slower. But I expect all that to get
23 better over time rather than worse. I'm not saying
24 I'm absolutely committed to sticking with 15 feet.
25 Maybe 16 feet is better. I'm not convinced that we

1 need to go to 16-6, certainly. Don't need to go to
2 18-6.

3 So just, I think that we need to try to keep
4 it restrained. I mean, I think basically what we
5 have is a number of -- you know, there are a number
6 of situations where people just want to do something
7 that's quick and easy and not necessarily the
8 smartest thing to do or not necessarily putting in
9 the necessary effort to figure out how to make it
10 work. So I'm a bit skeptical that 16-6 is absolutely
11 necessary. But I could see more than 15,
12 potentially.

13 CHAIRPERSON HOOD: Okay. Mr. Lawson, did you
14 find which zones?

15 MR. LAWSON: Yes, I'm sorry. I found it in
16 Exhibit 136 on page 2. It's quite a list, R-5-A, R-
17 5-B, C-1, C-2-A, C-M-1, W-0, W-1, some of the overlay
18 zones that limit height, and there we go.

19 CHAIRPERSON HOOD: Mr. Turnbull, did that --

20 MR. TURNBULL: Yeah. Okay. Thank you. No,
21 I guess I'm a little skeptical too. I'm not really
22 sure how to jump into this and start modulating
23 heights like this willy-nilly.

24 CHAIRPERSON HOOD: I think for me it was -- I
25 haven't figured out, and maybe I missed something,

1 where are we going from the 18-6. So I understand
2 what we're trying to reduce, but -- and then to say,
3 well, we don't think we need to go down to 10 but
4 we're going to 16-6, I don't know if I'm where
5 Commissioner May is. I'm more in line with
6 Commissioner Miller because I think that the Office
7 of Planning has done the necessary research. I'm not
8 saying it's the right number but then again, I guess
9 I'm all over the place and that's probably the that I
10 been having with this to being with, is that I mean,
11 it's almost like putting numbers in a hat. And I
12 don't think that's the kind of decision making I
13 think that we should be making. I mean, that's just
14 my opinion. Maybe I'm the only one that has a hat
15 with numbers in it.

16 MR. MAY: So I'm just curious, though. I
17 mean, you're saying it as though OP is recommending
18 16-6. And I didn't read a recommendation in the OP
19 comments and direction needed. I mean, you actually
20 recommending 16-6?

21 MR. LAWSON: To be honest, we're, to some
22 extent, we're in the same boat as Chairman Hood. We
23 were not able, to be honest, to find really
24 definitive information that says that 16-6 is
25 possible and 15 feet is impossible. We received

1 testimony to that effect, and we certainly give a lot
2 of credence to that. If it helps the Zoning
3 Commission, you know, I would certainly point out
4 that we do whatever you end up approving or not
5 approving. We do intend to monitor that situation
6 over time and if adjustments to whatever is brought
7 forward or needed, we'll certainly bring those back
8 to the Zoning Commission. But in our searching
9 online, and our searching, you know, we're not
10 engineering experts either, whereas the people who
11 suggested this did consult with the engineering
12 experts.

13 But when we looked online we found, honestly
14 we found heights kind of all over the board and it
15 really does depend on the type of elevator that you
16 wish to use, the amount that you want to spend, and
17 you know, issues like that.

18 So we were pretty comfortable with the 15
19 foot because we thought there was a lot of discussion
20 around that at the public hearing. But we felt that
21 this was a very credible kind of a comment made from
22 the public so we wanted to make sure that the Zoning
23 Commission was comfortable one way or another.

24 CHAIRPERSON HOOD: Well, where do we come
25 from the 16-6? I actually thought that might have

1 been you all's recommendation. So it was --

2 MR. LAWSON: It actually came from one of the
3 exhibitors, from Holland and Knight, who suggested
4 that there were instances where an elevator in a
5 building of this height, we're typically talking
6 buildings in the 40 to 60 foot height range here,
7 that an elevator of 15 feet in some instances would
8 not be practical or would not be viable or would not
9 be economic. You know, those kinds of issues.

10 So, you know, once again, even if it's just
11 that the Commission wished to confirm the 15 feet, we
12 thought that it was appropriate to bring this very
13 specific comment to you for your direction on how you
14 would like us to proceed with this. If you'd like we
15 could of course attempt to do additional research.
16 I'm not sure what else we would find honestly, at
17 this point, and provide clarification at final -- at
18 the final action, which we're still hoping will be in
19 November. But, you know, again, I'm not promising
20 that we're going to be finding much more than what
21 we've found so far.

22 CHAIRPERSON HOOD: Okay. Vice Chair, you
23 haven't had a word.

24 MS. COHEN: Not yet. Thank you, Mr. Chair.
25 The testimony that I reviewed, a lot of it really was

1 more focused on the height of the walls surrounding
2 the penthouses and wanting greater flexibility there.
3 As far as I am concerned I think that 16-6 also in
4 addition to, provides greater flexibility for
5 possibly more useful space as opposed to limiting to
6 15 and then having to possibly design downward
7 instead of designing for practical purposes and
8 usefulness.

9 Again, not being an engineer, nor an
10 architect, it just seemed to me that allowing a --
11 and the difference, I don't think, is that great
12 between 15 and 16-6. So I would go -- I would
13 support the higher height for the penthouse at 16-6
14 and allow maybe for greater creativity, hopefully, in
15 the use of that space.

16 But the issue that I focused on more was the
17 height; the height of the surrounding walls.

18 MR. MAY: So, Mr. Chairman, you know, as we
19 talk about this and I start to consider the issues
20 and think about what was going through our heads, or
21 my head at least, when we first decided that we would
22 set it at 15 feet rather than leave it at 18-6, is
23 that in part I think -- I would like to be able to
24 have the regulation sort of push the design community
25 in the right direction, and the development community

1 in the right direction, which is lower height.

2 And in part because I know the technology
3 exists, and I, you know, I've talked to several
4 elevator sales people. Of course they're going to
5 tell you that they can do anything. But, you know,
6 it was pretty compelling information that I had
7 received. It was, you know, external to this case
8 but it's something that I happen to know, you know,
9 because I'm an architect and I wind up talking to
10 some of these people.

11 The only thing about it is that these lower
12 overhead elevators tend to be more efficient than
13 standard elevators. And I mean, granted, I think
14 everything is becoming more and more energy
15 efficient, but this pushes it in the right direction.
16 You know, the most advanced elevators are the ones
17 with the lowest overhead that use belts rather than
18 cables, and they use smaller spindles and, you know,
19 all of these things that actually make it possible to
20 have the lower heights. And I think it's worth
21 pushing in that direction. And I think frankly if we
22 decide on 15 and we wind up with a whole lot of
23 people coming in asking for an extra foot or two,
24 then we know it's smart to change it.

25 If we leave it at 16-6 we will never lower

1 it. It will never go down to 15 feet. We will not
2 wind up -- I mean, because there's no reason for us
3 to be paying attention to it if they're not coming in
4 and asking for relief. So I would be inclined to
5 stick with 15 feet and see how it goes. If it really
6 becomes a huge problem then we can consider
7 increasing it.

8 As for the flexibility of the occupiable
9 space that might come as a result, you know, even
10 with 15 feet we're talking about being able to have a
11 12 foot ceiling based on even the most simplistic and
12 conservative kind of dimensional requirements for a
13 roof slab and so on. So I mean, the more I think
14 about it the more comfortable I am sticking with 15
15 feet and seeing how it goes.

16 CHAIRPERSON HOOD: Okay. Mr. Turnbull.

17 MR. TURNBULL: Yeah. Mr. Chair, I was
18 just -- I guess I would go along with Commissioner
19 May in that I'd rather set it at something and let's
20 let it play out and see what comments we get back.

21 I just happened to go back and check the
22 drawings for the PUD we have tonight and that
23 elevator is somewhere around 15 feet, 16 feet. Right
24 around that moderate level, because it's got a
25 sloping penthouse roof it's hard to tell. But it's

1 very close to being around that level. This is a
2 brand new building. So I'm willing to let it play
3 out and see what kind of feedback we get. If we have
4 to make a modification, we make a modification.

5 MR. MILLER: Mr. Chairman, I would prefer
6 that we go to the 16. In Exhibit 140 from Holland
7 and Knight they're referencing DCBIAs, D.C. Building
8 Industry Association, which is making a statement,
9 which is just the opposite of what Commissioner May
10 just said, and when they say at the bottom of page 2,
11 I guess, of their testimony, when they're talking
12 about this issue, while alternatives to over the top
13 elevator systems are available, they come up to the
14 18 foot -- alternatives to the 18-6 are available,
15 these alternatives do not perform as well as an over
16 the top system.

17 So I guess whatever we do, I guess I would
18 like to take Mr. Lawson up on his offer to try to do
19 some research to see if they are working or confirm
20 whether, you know, whether -- or if it's still going
21 to be -- just to come back with us with whatever the
22 outcome of that research is at the final. I would be
23 inclined to go with Mr. May's original compromise at
24 16 feet, since you just said, Commissioner Turnbull,
25 that it seems to be 15 or 16.

1 MR. MAY: Yeah, I'm backing off from that.

2 MR. MILLER: Okay.

3 MR. MAY: That 16. I'm sticking with 15.

4 MR. MILLER: Oh, okay. I would note also --
5 I mean, that came up -- I think the original OP
6 recommendation was to retain the 18-6 and I'm looking
7 at the June 3rd memo and at that -- when we went
8 through the point by point discussion OP came in
9 verbally and said the recommendation, I think was
10 going to go along with the 15 feet because there was
11 exhibits in the record that talked about the
12 technology which Commissioner May is referring to.

13 MR. MAY: I would just comment that the
14 statement that -- the alternatives do not perform as
15 well as an over the top system. Generally speaking
16 over the top elevators are faster. But it is, you
17 know, the speed that you need is very much a function
18 of the height of the building and we are talking
19 about relatively low rise buildings. I mean, even
20 generally in Washington.

21 MR. MILLER: Glad to hear you say that.
22 Yeah. It is. I agree, that is relatively low-rise
23 buildings in Washington.

24 MR. MAY: Well, now you're -- you know, in
25 this particular case --

1 MR. MILLER: Having just come from New York
2 this past week.

3 MR. MAY: Particularly this case, 15, you
4 know, we're talking about, you know, R-5-A and C-1,
5 C-2-A, things like that. So we're talking about, you
6 know, really pretty small buildings, even by
7 Washington standards.

8 CHAIRPERSON HOOD: Okay. I would agree with
9 Commissioner May. I think his -- for me he
10 articulated some that possibly could happen dependent
11 again upon what Mr. Lawson mentioned about materials,
12 whether they can make the stuff work. And again, I
13 would do the -- I would say the same thing, like I
14 said when we were doing IZ. If we see there's a
15 problem and we need to push it up, let's do it. But
16 if you can continue to do the research -- because
17 again, we're not making a final decision. But if you
18 can continue to do the research as, Commissioner
19 Miller, as you eluded to and Commissioner Miller took
20 you up on that, that would be very helpful.

21 So is that enough discussion of guidance for
22 that?

23 MR. LAWSON: Yes, sir. We'll certainly go
24 with the 15 feet, we'll look into it as much as we
25 can, and if we come up with something that really

1 sways us otherwise prior to final action, we'll make
2 sure that that's included in the final action that
3 you receive.

4 CHAIRPERSON HOOD: Okay.

5 MR. LAWSON: Final action for you to receive.
6 Thank you.

7 CHAIRPERSON HOOD: All right. I don't know
8 if this next -- okay. The 400.5 was the penthouse
9 height. Is that -- okay. Yeah.

10 "Where the penthouse height is currently
11 proposed to be limited to 10 feet, which comments
12 that are slightly higher, a penthouse height of 12
13 feet should be allowed to provide the necessary roof
14 drainage and mechanical systems. See exhibit for the
15 diagram explaining this request. The text in this
16 draft is consistent with the Zoning Commission's
17 discussion. But the proposed height would be at --
18 would add flexibility, address reasonable
19 construction issues, and ensure reasonable design
20 penthouse habitable space. Any increase in penthouse
21 height would result in a correspondingly larger
22 setback required. Does the Commission wish to change
23 the permitted height as suggested?"

24 MR. TURNBULL: Mr. Lawson, is this in the R-4
25 zone?

1 MR. LAWSON: This is not. You've already
2 voted that a penthouse would not be permitted by
3 right in R-4.

4 MR. TURNBULL: Right.

5 MR. LAWSON: This would be in any zone and as
6 shown on the diagram. And we do think this one
7 actually does make a lot of sense.

8 MR. TURNBULL: Okay.

9 MR. LAWSON: Once you take into account the
10 depth of the roof itself, if it was limited to 10
11 feet because we measure to the top of the roof, you
12 would be left with what would be abnormally
13 shallower, not very deep habitable space. If it was
14 limited to 10 feet. At 12 feet you're certainly
15 granting more flexibility in that regard.

16 CHAIRPERSON HOOD: Any other comments on
17 this? Commissioner May?

18 MR. MAY: Yeah. So I looked at that diagram
19 too. And I mean, I understand how they got to 12
20 feet. They assume a nine foot ceiling height, which
21 is not essential. And they're allowing for, you
22 know, depth of structure and slope requirements that
23 are not absolute. There's flexibility in those. I
24 mean, I have no doubt that you could live within 10
25 feet and get decent habitable space.

1 In this circumstance, difference between 10
2 and 12 I'm not as convinced about and I'm willing to
3 go along with the OP recommendation to go to 12 feet.
4 But it's not because I'm particularly persuaded by
5 the diagram, which I think is -- it's not
6 particularly persuasive. I don't think you have to
7 have nine feet of ceiling. I don't think you have to
8 have two feet of structural depth at the lowest point
9 of the roof. It's easier and that's what I don't --
10 you know, I mean I'm not very sympathetic when people
11 are just trying to find the easiest way to get
12 buildings done.

13 MR. TURNBULL: So that would allow a setback
14 of only 10 feet, is what you're saying? I mean, the
15 illustration --

16 MR. MAY: It will still be setback 12 feet,
17 right?

18 MR. TURNBULL: Well, the diagram, if I'm
19 looking at it, shows a 12 foot height and a 10 foot
20 setback. Is that --

21 MR. LAWSON: Sorry. Sorry, that portion of
22 the diagram would be incorrect.

23 MR. TURNBULL: Okay.

24 MR. LAWSON: A 12 foot tall penthouse would
25 require a 12 foot setback.

1 MR. TURNBULL: Still one to one.

2 MR. LAWSON: Yes.

3 MR. TURNBULL: All right. When you made
4 reference to the drawing and I'm looking at it, I'm
5 like, well 12 feet is okay but the setback is wrong.

6 MR. LAWSON: No. Yeah, honestly I didn't
7 even notice --

8 MR. TURNBULL: Okay.

9 MR. LAWSON: -- that it was only 10 feet.

10 MR. MAY: I didn't either. But I mean, I was
11 looking at the, you know, the structural depths and
12 so on. I was not looking at the setback. But OP's
13 statement about that said it would have to have a
14 greater setback.

15 CHAIRPERSON HOOD: Okay. Any other comments
16 on that one? Vice Chair?

17 MS. COHEN: Yeah. Again, I think flexibility
18 is very important to -- as opposed to, you know, the
19 rigid interpretation of everything. And where we're
20 talking about the diagram and I don't have the
21 exhibit number, but I think there is a convincing
22 case and I would, you know -- it would be helpful to
23 hear from my colleagues. But SK&I Architecture said,
24 "We feel that a more appropriate minimal height of a
25 penthouse would be at least 12 feet as measured from

1 the adjacent roof surface to its highest point. This
2 is still fairly tight for most normal methods of
3 construction, whether wood, concrete, steel, or some
4 hybrid form of construction."

5 And then the nine foot clear floor to the
6 underside of the structure with a two foot minimum, I
7 mean, we're shrinking the footprint of a lot of
8 space, so I'm thinking height may make up for some of
9 the tightness that we're seeing in our new
10 construction. So, I don't know. I am very
11 comfortable with the 12 feet, based on some of the
12 information that has been provided to us. So I'm,
13 you know, more than happy to hear about what my
14 colleagues feel. But again, egress, roof drainage,
15 all of those issues I think I'd rather have more
16 space for greater comfort in knowing that they can --
17 you know, not everybody is a --

18 MR. MAY: As competent as I am?

19 MS. COHEN: Exactly. As competent as my
20 colleague, Commissioner May.

21 MR. MAY: Well, I remember i said, I could
22 live with 12 feet. But like I said, I didn't find
23 the diagram particularly persuasive and I think we
24 probably actually will see some with 10 feet because
25 then they only have to set back 10 feet. And we are

1 talking about new space. This is space that was not
2 previously available to be habitable space. So it's
3 a new thing.

4 CHAIRPERSON HOOD: Any other comments on
5 this? Again, we're not making a decision
6 wholeheartedly. We're just kind of giving some
7 direction. Commissioner Miller.

8 MR. MILLER: I support the 12 foot
9 recommendation by OP.

10 CHAIRPERSON HOOD: Okay. Are we ready to
11 move on? You are? Okay.

12 Okay. Penthouse storage, Exhibit 1, 2835.
13 "In most zones where habitable penthouse space is
14 permitted it is limited to one story, but with the
15 possibility of a second story for mechanical
16 equipment. In higher density zones where 20 foot
17 penthouse would be permitted a mezzanine for
18 habitable space is also proposed to be permitted.
19 Comments were received that the number of stories in
20 all instances should be limited to one, consistent
21 with the Height Act limit. The current zoning does
22 not limit the number of stories below the Height Act
23 and examples of placing mechanical space on top of
24 other penthouse space exists now. In most zones the
25 total permitted height including any mechanical space

1 would be lower than the current permitted height, and
2 allowing mechanical space to be placed on top of
3 habitable space would allow more efficient penthouse
4 space. Any penthouse above the Height Act limit
5 would be limited to one story. Does the Commission
6 wish to restrict the number of stories in a penthouse
7 to one when the penthouse is below the Height Act?"

8 Does the Commission want -- and I'm reading
9 this for myself. Does the Commission wish to
10 restrict the number of stories in a penthouse to one
11 when the penthouse is below the Height Act?
12 Commissioner Miller.

13 MR. MILLER: Mr. Chairman, the last two
14 sentences that you read from OP's report were
15 persuasive to me. Allowing mechanical space to be
16 placed on top of habitable space is all we're talking
17 about, below the Height Act, would allow more
18 efficient penthouse space. Any penthouse above the
19 Height Act would be limited to one story. So I don't
20 want to restrict to one story penthouses that are
21 below the Height Act because it can result in more
22 efficiencies as OP's recommendation outlines.

23 MS. COHEN: Mr. Chairman, I concur with
24 Commissioner Miller on this.

25 CHAIRPERSON HOOD: Okay. Are we all in

1 agreeance with Commissioner Miller, Commissioner May?

2 MR. MAY: Yeah, I mean, I certainly
3 understand why people want to stick with the single
4 story, even below the Height Act height. It makes it
5 a little bit easier to understand everything and it
6 does create a certain equity about the treatment of
7 penthouses. But I'm not troubled by our previous
8 direction that would allow mechanical space on top of
9 habitable space when we are above them. I'm sorry,
10 when we are below the Height Act height for the
11 building. Presumably that means the -- well, I'll
12 leave it at that. I'm fine with staying the course.

13 CHAIRPERSON HOOD: Any other comments?

14 MR. TURNBULL: No, I see where the comments
15 are coming from, from the Committee of 100 and
16 Friendship Heights. And I see their issues and --
17 but I think I'm willing to go along with this.

18 CHAIRPERSON HOOD: Yeah, and also Penn Branch
19 and Kalorama, Mr. Turnbull, and I want them to know
20 that I did read their comments. Okay. So we're all
21 in agreeance. All right.

22 Notice that we're all in agreeance? That's
23 the direction we're giving to -- okay. Give me one
24 second.

25 Okay. We're on page 3 now. Okay. Single

1 family dwellings and flats.

2 "The provision would allow, by special
3 exception, a penthouse on a single family dwelling or
4 flat for a rooftop access, plus a 30 square foot
5 storage area. Comments that the stair/elevator
6 access should be included within the 30 square foot
7 limit. OP believes that the provision as drafted is
8 consistent with the Zoning Commission's intent,
9 including the stair access would leave little space
10 for any rooftop storage. Did the Commission intend
11 to include the rooftop stair or elevator access in
12 the 30 square foot limit permitted by special
13 exception?"

14 MR. MAY: Well, I remember we wanted to
15 specifically have a limit on how much space would be
16 up there, and the original proposal was something
17 more significant than 30 feet. Certain we did not
18 intend to have the 30 feet include the area of the
19 stairway. That's just not practical. You can't get
20 a stairway in and even have a landing all within 30
21 feet, I don't believe.

22 Now it's arguable, you know, is a five foot
23 by six foot space enough for that purpose. Or more
24 likely, you know, something that's more like four by
25 seven. Is that enough or too much? You know,

1 certainly it's within the discretion of the BZA to
2 look at it and determine, you know, this is something
3 that's going to be a special exception and even
4 though 30 feet may be possible they could certainly
5 look at it and say, well, you know what, 30 feet is
6 too much in the given circumstances and you have to
7 reduce it.

8 I think, you know, we're setting a maximum
9 and I think that's probably okay. I mean, you know,
10 if people felt very strongly we'd need to cut it down
11 to 20 feet. You're already going to have half of
12 that as the landing at the top of a stair. So that
13 leaves you, you know, a three by three space. Or
14 something like that. Three by three and a half space
15 for storage. I don't know. I don't know that -- 20
16 feels like it's just too small to be practical if
17 we're going to allow anything at all.

18 CHAIRPERSON HOOD: Okay. Any other comments
19 on this?

20 MR. MILLER: I'm comfortable with our
21 previous discussion on that and agree it would limit
22 the practicality of that storage area. So I'm
23 comfortable that we did not intend to include the
24 rooftop stair or elevator access in the 30 square
25 foot limit permitted by special exception.

1 MR. TURNBULL: Yeah, I'm ready to leave it
2 too, like it is.

3 CHAIRPERSON HOOD: Okay. Anybody else?
4 Okay. Is that some direction, Mr. Lawson?

5 MR. LAWSON: Yes. Thank you.

6 CHAIRPERSON HOOD: It's currently the text
7 amendments up to .4 FAR of habitable space in
8 addition to habitable penthouse recreation space for
9 building FAR calculations. Did I skip one?

10 MS. COHEN: Yeah, you skipped.

11 CHAIRPERSON HOOD: Oh, I must be trying to --
12 okay.

13 "The Commission is taking proposed action to
14 allow two heights for enclosed penthouses, one for
15 mechanical space and one for habitable space.
16 Comments that the penthouse with no habitable space,
17 two heights should be allowed, one for elevator
18 overruns and a separate one for other mechanical
19 space to minimize penthouse bulk. OP agrees that an
20 amendment to allow this would be consistent with the
21 Zoning Commission's discussion regarding penthouse
22 height and could lessen the overall bulk of
23 mechanical penthouses. Is this supported by the
24 Zoning Commission?"

25 Commissioner Cohen.

1 MS. COHEN: Yes. Mr. Chairman, I support
2 this because I think penthouse bulk needs to be
3 minimized as much as possible. It often just, I
4 think, it just is not a very pretty feature of a
5 building often. So that's the only way I can put it.
6 It just is there and it often just overwhelms the
7 building.

8 CHAIRPERSON HOOD: Any other comments or
9 response?

10 MR. MAY: Yeah. Actually, I think that in
11 the future penthouses and rooftops are going to be a
12 lot more attractive as a result of the various
13 changes that have occurred and will occur. But
14 that's not really -- that's neither here nor there.
15 I mean, I assume what we're talking about is
16 essentially still just two heights, one predominant
17 height and then another one for elevator overruns.

18 MR. LAWSON: That's exactly what we're
19 talking about, yes.

20 MR. MAY: Right. And I think that's
21 perfectly fine. That's consistent with what I was
22 thinking. You know, we saw some comments indicating
23 that, you know, even more flexibility is necessary.
24 I really think that we've got to keep it simple on
25 the rooftop. So I support the two heights.

1 CHAIRPERSON HOOD: Okay. Anybody else? All
2 right.

3 MR. MILLER: I support it also.

4 CHAIRPERSON HOOD: Okay. Okay, now,
5 "Currently the text exempts up to .4 FAR with
6 habitable space, in addition to habitable penthouse
7 recreation space from building FAR calculations.
8 Comments were received that all penthouse habitable
9 space should be included in the building FAR limit.
10 Other submissions requested the Commission hold firm
11 on its .4 exemption and not increase it. The
12 Commission discussed whether to include habitable
13 penthouse space and building FAR. This would limit
14 the effectiveness of the initiative and could
15 essentially negate the affordable housing provisions,
16 but could allow additional opportunities for
17 sculpturing or building massing. Does the Commission
18 wish to reexamine this to include habitable penthouse
19 space and building FAR?"

20 MR. MILLER: No, is my own personal
21 direction.

22 MS. COHEN: No, I would agree with
23 Commissioner Miller.

24 CHAIRPERSON HOOD: I have a disconnect because
25 I'm still trying to figure out how some of this is

1 going to be affordable. I just -- but then again, I
2 don't want nobody to say I'm against affordable
3 housing because I'm not. But I just don't -- I don't
4 see any connection. Maybe I'm misunderstanding what
5 I'm reading. That does happen occasionally.

6 MR. LAWSON: So I think what we were trying
7 to do here is strike a balance. We certain want to
8 incentivize rooftop recreational space, and so that's
9 why that's exempt from the FAR calculation.

10 And then the .4 exemption was an attempt to
11 strike a balance between encouraging that additional
12 space on the roof and therefore triggering additional
13 affordable housing. And you know, I mean if we just
14 include it in the FAR it would theoretically, it
15 might give designers some greater flexibility to
16 shape their buildings because their FAR could go a
17 little bit higher on the building. But that's really
18 the only potential benefit by having at least some
19 exemption from the FAR calculation. That allows -- I
20 mean, it incentivizes the creation of this habitable
21 space on the roof, and therefore incentivizes some
22 modest increase in affordable housing.

23 CHAIRPERSON HOOD: Okay. Any other comments?

24 MR. TURNBULL: Yeah, I just have one comment,
25 is so how does this effect commercial buildings at

1 all? If they're looking to have a habitable
2 penthouse on an office building, commercial building,
3 does anything play into that?

4 MS. COHEN: They have to come up with a
5 certain amount of money for the trust fund. Isn't
6 that correct?

7 MR. LAWSON: That's essentially correct, yes.

8 MR. TURNBULL: All right. So it would go to
9 the trust fund?

10 MR. LAWSON: That's what we expect would
11 happen in most cases. We're using -- this is a
12 little bit later on but we're using the existing or
13 we've employed the existing provision for
14 discretionary density gained through a PUD. So there
15 would be some flexibility in terms of how that would
16 be provided, but given the limited amount we would
17 expect in most cases it would result in a
18 contribution to the housing production trust fund,
19 which would then go towards the production of
20 affordable housing in the district.

21 MR. TURNBULL: Right. Okay. Thank you.

22 CHAIRPERSON HOOD: I think we did have a lot
23 of comments that were asking us to keep that within
24 the FAR count. And I can't remember all of what was
25 said but I know we had -- I saw more comments asking,

1 at least from community groups asking us to make sure
2 we keep that within the FAR count.

3 But Commissioner May, what you're saying,
4 what I'm hearing from you is de minimis, but again,
5 we're not making a decision tonight. We're just
6 discussing it and I guess -- I'm not sure if I'm in
7 agreeance. I don't think I have the votes up here,
8 but I'm not sure if we called the vote. I'm not sure
9 if I'm in agreeance with taking that FAR out. And I
10 hear what you're saying, it gives them more
11 flexibility to do a design. I hear that.

12 MR. MAY: Well, and what I want to do -- what
13 I wanted to suggest was that it was it's not really
14 about creating flexibility in the design. It's
15 actually about incentivizing habitable space on the
16 penthouse level as a way of increasing -- I mean,
17 increasing not only the habitable space on the roof
18 but actually the net result is that it would add to
19 the percentage of the project that would have to be
20 affordable.

21 CHAIRPERSON HOOD: Affordable.

22 MR. MAY: Right? So you know, you get this
23 bonus FAR if you will, but then that also triggers a
24 higher IZ requirement.

25 CHAIRPERSON HOOD: Okay. All right.

1 MR. TURNBULL: Mr. Chair.

2 CHAIRPERSON HOOD: Yes.

3 MR. TURNBULL: Are you looking at the
4 Friendship Heights exhibit or what?

5 CHAIRPERSON HOOD: I'm just, I'm actually
6 going off the top of my head because if I close this
7 down I won't be able to open it back up. But I
8 remember reading a lot of residents, citizen's groups
9 have asked us to make sure that was included, FAR
10 state. And I'm kind of disadvantaged because I know
11 exactly -- I forgot which -- was it Friendship
12 Heights, you said? Hold on a second. Let me just
13 close this down.

14 MR. LAWSON: I can probably tell you that.
15 It was basically the -- where did it go now? The
16 Committee of 100 suggested that, Penn Branch
17 suggested that.

18 CHAIRPERSON HOOD: Okay.

19 MR. LAWSON: And I believe Friendship
20 Neighborhood Association may have -- and Friendship
21 Neighborhood Association, yes, also suggested that.
22 There were a number of other ANCs who did not request
23 that the .4 FAR exemption be removed, but they did
24 request that you not waiver from that number; not
25 increase the amount the to exception. So a number of

1 ANCs and neighborhood groups made that suggestion as
2 well.

3 CHAIRPERSON HOOD: Okay. But for me if --
4 and I'm still having a problem connecting the dots.
5 But if it includes the affordability as I'm hearing,
6 then I don't have an issue with it but I just, I just
7 still, I cannot connect all the dots so I'm only
8 going with what I'm hearing. Okay? We ready to move
9 forward?

10 Ms. Schellin, I'll be glad when my Surface
11 comes back. Can you check on that and see when it's
12 coming back, because this one here doesn't like me.

13 MS. SCHELLIN: Do you want a hard copy of
14 this?

15 CHAIRPERSON HOOD: No, I'm going to stay
16 electronic. I'm not going to kill any trees. No.
17 I'm going to stay electronic.

18 MS. SCHELLIN: I'll recycle.

19 CHAIRPERSON HOOD: Okay. Which one am I on?
20 I'm on page 3.

21 MR. TURNBULL: The last one. The last one.

22 CHAIRPERSON HOOD: Are we on the last one or
23 the second to the -- oh, it's the last one there.
24 Okay. I'm sorry. Thank you.

25 "As drafted the proposal is consistent with

1 the Zoning Commission action in the ZRR including
2 requiring a setback from a common side lot line, for
3 instance side lot line, in the R-1 through R-4 zones
4 if the adjacent property has a lower or equal
5 permitted matter of right building height, and in
6 other zones if the adjacent property has a lower
7 permitted matter of right building height, a less
8 restrictive requirement. Comments that the more
9 restrictive requirements should be applied to south -
10 -" what is that? Single family dwellings. Okay.
11 I'm sorry. "Single family dwellings or flats and
12 other residential zones such as R-5-A, R-5-B, where
13 row houses are common. Conversely a comment was also
14 received that the setback should not be a requirement
15 for properties subject to HPRB review."

16 "As drafted a setback would be required to
17 low density residential zones but the Commission has
18 also taken action to only allow a penthouse on top of
19 a single family dwelling or flat in all zones by
20 special exception and to limit the size and uses
21 permitted. As such if a penthouse is proposed the
22 setback could be part of the discussion. Does the
23 Zoning Commission wish to make this change to
24 penthouse setback regulations?"

25 Does the Zoning Commission wish to make this

1 change to penthouse setback regulations?

2 MR. MAY: Mr. Chairman, this is one that
3 resonated with me. I mean, I think that the idea
4 that we should be treating single family dwellings
5 and row houses the same way across all of the zones
6 regardless of what the zone might permit makes sense
7 to me. And I think we heard some compelling comments
8 from some particular neighborhoods that tend to be
9 zoned R-5-A and R-5-B, but are largely populated by
10 row houses where it's a significant issue.

11 So, you know, I think it would be a
12 consistent thing to do to explicitly make them -- you
13 know, make this apply to these other zones where
14 single family dwellings and flats, you know, happen
15 regularly such as R-5-A and R-5-B. I'm not sure if
16 that's the extent of that. I think we might need to
17 get a little advice from OP about how far to extend
18 it to really make sure we capture everything.

19 I do not think that allowing this, since it
20 requires a special exception in any zone, I don't
21 believe that leaving it up to the discretion of the
22 BZA is sufficient. I think we should provide a more
23 specific restriction.

24 CHAIRPERSON HOOD: Could you -- what about
25 HPR -- historic areas?

1 MR. MAY: No, I mean, you know, I'm not sure
2 why we would exempt it in that circumstance. It
3 doesn't seem to make particular sense to me. I mean,
4 I would think that you -- it would be kind of
5 automatic in HPRB. Any billing that would be subject
6 to HPRB review, I would think that it would be
7 automatic that you'd want to have that setback, so
8 I'm not sure why we would not require it.

9 CHAIRPERSON HOOD: Okay. Anyone else? Any
10 comments on that?

11 MR. TURNBULL: I would agree with
12 Commissioner May.

13 CHAIRPERSON HOOD: Okay. I would too, and
14 that's why I asked the question of what his thought
15 was on historic areas. Anyone else?

16 MS. COHEN: I would agree.

17 CHAIRPERSON HOOD: Okay. So we're all in
18 agreeance. Okay. Let's move to the next page and we
19 are just about finished, believe it or not.

20 MR. MAY: So I mean, on that one I think we
21 are looking -- I am looking for the Office of
22 Planning to recommend if there's anything other than
23 R-5-A and R-5-B. If there are other zones.

24 MR. LAWSON: I would suggest that you treat
25 it the same way that you treat single family

1 dwellings and flats otherwise, and just --

2 MR. MAY: All zones.

3 MR. LAWSON: Exactly, yes.

4 MR. MAY: Yeah. Okay. Makes sense to me.

5 CHAIRPERSON HOOD: Did the Eagles lose last
6 night? Okay. Just took a break for a second.

7 Okay, "The proposal would permit the
8 Commission to review as a minor modification and
9 request to add habitable penthouse space on top of a
10 building approved previously through a PUD or design
11 review process. Comments that this should not be
12 permitted as a minor modification so that a hearing
13 would be required, the proposed process would permit
14 conforming conversions or additions of penthouse
15 space to be considered expeditiously by the
16 Commission and notification requirements have been
17 included. If the Commission determines that a
18 request is not minor it would be removed from the
19 consent calendar and a public hearing held. Does the
20 Commission wish to retain this provision?"

21 MS. COHEN: Yeah. Mr. Chairman.

22 CHAIRPERSON HOOD: Yes.

23 MS. COHEN: I would say, yes, we wish to
24 retain that.

25 MR. MILLER: I would agree. I think the

1 process allows for a sufficient notification and
2 gives us the discretion to go to a public hearing if
3 we see something that needs to go.

4 CHAIRPERSON HOOD: One of the comments that I
5 remember offhand, I think one of the community groups
6 had an issue with us making some minor modification.
7 I'm trying to remember because they said it takes the
8 public process -- takes them out of the public
9 process. Do they weigh in now on -- I should know
10 this, because sometimes ones that are major we
11 usually take off the consent calendar? We usually
12 take it off the consent calendar item and then we
13 require it to have a hearing if we see something
14 that's flaring up.

15 Okay. And I think that process right now is
16 working. Right? But I saw one of the groups that
17 said that they would be taking out the process and
18 I'm trying to -- the ANC's are automatically in; would
19 automatically be in the process, am I correct, Mr.
20 Lawson? The ANC would automatically be in a process
21 if it was a --

22 MR. BERGSTEIN: Yes, they're given notice of
23 the consent calendar process.

24 MR. LAWSON: And in this case we wrote a
25 write-in to the minor modification process that the

1 applicant would have to verify that the ANC had been
2 -- that they had provided notice of this request to
3 the ANC. So we added that extra, I guess, level of
4 assurance.

5 CHAIRPERSON HOOD: Okay. All right. In that
6 case I feel good about leaving it just like it is.
7 We're not making a decision, we're just -- anybody
8 else on this?

9 Okay. Let's go to comments that the
10 regulations should allow for the conversions of
11 legally nonconforming roof structures. I.e. the --

12 MR. LAWSON: Sorry. Mr. Chair, I might --

13 CHAIRPERSON HOOD: Yes.

14 MR. LAWSON: -- interrupt you on this one and
15 just say that -- I apologize, I don't normally do
16 this. I had additional discussions with OAG on this
17 one. We agree that actually this has been addressed
18 already through current provisions in the
19 regulations, in Section 2001. So we think that any
20 change to this is just simply not required because
21 it's already addressed in the current regulations.

22 CHAIRPERSON HOOD: Okay. Now let me ask, did
23 we give you any guidance today that possibly would
24 have to have -- we may have to have another hearing?

25 MR. LAWSON: No.

1 CHAIRPERSON HOOD: Okay. All right. So in
2 that case, the last one.

3 MR. MAY: Just to clarify, 411.26, that was
4 the comment you said we don't need?

5 MR. LAWSON: That's correct.

6 MR. MAY: Yeah.

7 MR. LAWSON: Thank you.

8 CHAIRPERSON HOOD: Oh, we do have another
9 page. Thank you. Bottom of page 4. Okay. Okay.

10 "Housing linkage for habitable space on a
11 nonresidential building, on nonresidential buildings.
12 The proposed affordable housing linkage requirement
13 for a nonresidential building is based on the current
14 language of discretionary nonresidential density gain
15 through a PUD. This includes the proposed 20 year
16 term limit for the affordable units. Comments were
17 received that the expiration should be eliminated,
18 requiring the units to be provided in perpetuity."

19 "To minimize administrative issues the
20 existing process and provisions in the PUD chapter
21 and in the Comprehensive Plan, Chapter 25, including
22 the 20 year term limit was utilized. While OP would
23 support a requirement that affordable units provided
24 -- be provided in perpetuity similar to the IZ, the
25 full implications of this to the penthouse and the

1 PUD regulations would need to be studied. Does the
2 Commission wish to have OP study for the implications
3 of this amendment?"

4 Commissioner Miller.

5 MR. MILLER: Mr. Chairman, I would answer
6 that question, yes, I would be interested in OP
7 studying the implications of the amendment to change
8 the 20 year term limit for the affordable housing
9 linkage requirement to be in perpetuity like IZ, but
10 I don't see the down side unless someone can tell me,
11 of going to the in perpetuity for now while OP
12 studies it. I mean, the 20 years was going to --
13 they're not going to take 20 years to study it so
14 we'll get an answer to the question and we can
15 provide the direction that we generally support which
16 is that the affordable housing should be as long as
17 possible.

18 MR. BERGSTEIN: Just because I've been asked
19 this, this is one where I would like to provide
20 advice, not that you would need an additional
21 hearing, but whether or not you would need another
22 proposed rulemaking. I'd rather not go into it
23 publically, but it's enough of a change that I'd like
24 to provide you some advice on -- and give you some
25 notes that there might be a possibility having to do

1 an additional notice of proposed rulemaking to go
2 from 20 years to perpetual.

3 MR. MILLER: I guess we'll see how many
4 things might end up in that category. But --

5 MR. MAY: Is this something that we could
6 actually act on now, but then take up the perpetuity
7 question in the IZ case?

8 MR. BERGSTEIN: Well, what you could actually
9 do is, depending on these other changes you could go
10 final for 20 years, but then immediately authorize a
11 notice of proposed rulemaking to suggest perpetual.

12 MR. MAY: Right.

13 MR. BERGSTEIN: And not need a new hearing,
14 it would just be part of this docket. It's been
15 something the Commission has done before, in order it
16 to be able to go forward with final and what they're
17 looking at, but then also do a notice of proposed for
18 something additional. So you do have that option of
19 going with final with the 20 years and then proposing
20 perpetuity and with just a 30 day comment period and
21 then taking it up at the end of that comment period.

22 MR. MAY: Okay.

23 MS. COHEN: Well, just to express my opinion
24 is that the benefit of the additional penthouse space
25 is perpetual so why not the affordable units be

1 perpetual. So that's, I guess, my read on this.

2 CHAIRPERSON HOOD: Okay. Any other comments,
3 Mr. Turnbull?

4 MR. TURNBULL: Well, I would go along with
5 Commissioner Miller, I guess, so OP is going to study
6 it during the comment period then?

7 MR. LAWSON: Our preference would be to move
8 forward to final action.

9 MR. TURNBULL: Okay.

10 MR. LAWSON: And then we could take a -- we
11 could certainly take a look at it. We could take a
12 look at the comprehensive plan implications
13 associated with this, as with this as well.

14 I should just also point out that we really
15 don't think this is going to happen very often. We
16 do expect in most cases that applicants will make the
17 contribution to a trust fund rather than provide --

18 MR. TURNBULL: Okay.

19 MR. LAWSON: -- the affordable housing,
20 simply because the amount of space in the penthouse
21 that would be triggered through this is relatively
22 small. So it's probably an outside chance that this
23 will happen much, or at all anyways, but it's just
24 something that was brought up. Something that we
25 absolutely support, obviously. Housing in perpetuity

1 is just, we would need to go through the other way --
2 places where this provision applies and see how it
3 kind of, you know, relates.

4 CHAIRPERSON HOOD: Okay. Anything else on
5 this? Okay. So let's go up to the top of page 5.

6 "Comments, request for clarification, housing
7 linkage requirements should not be required for
8 habitable penthouse space and the penthouse of an
9 institutional or nonprofit use, such as libraries,
10 museums, schools, and universities provided that the
11 habitable penthouse space is used by the non-profit
12 or institution for uses consistent with its missions.
13 OP is not opposed to this change in many instances.
14 For example, for religious institutions and
15 universities provided that the use of the penthouse
16 space be exclusively for the institutional use, the
17 issue of nonprofits may be more complicated. Does
18 the Commission want OP to include this change for
19 institutional and/or nonprofit buildings?"

20 Is that a yes or no?

21 MR. MAY: I'm not inclined. I mean, I
22 understand the issue, but we're talking about
23 something that's completely optional for them from
24 the beginning. So you know, if that's the, you know,
25 the price of getting some penthouse space is that

1 they're subject to this requirement, so be it. I
2 mean, particularly, you know, we were talking about
3 potentially universities doing this. I'm not so
4 concerned about whether -- I mean, it's not like it
5 creates a new burden for them. It doesn't. It's you
6 know, if they want to -- it's just sort of the price
7 of getting that extra lovely rooftop space.

8 CHAIRPERSON HOOD: Okay. So your answer is
9 no. Anybody else? I can go with that.

10 MR. MILLER: I wouldn't have been opposed to
11 the change for institutional uses, and we would in
12 most cases be reviewing those projects here, campus
13 plans and other things. So.

14 CHAIRPERSON HOOD: Okay. Mr. Lawson, you've
15 heard two different views. Is that enough for you to
16 work with?

17 MR. TURNBULL: I guess I'm not concerned one
18 way or another. My only question would be the
19 nonprofits. Universities, institutions, I'm not sure
20 how the nonprofits get in to it and what they're
21 going to use that for and how do we rationally
22 explain that. So I mean, I'm not concerned going one
23 way or the other on this, except for the nonprofits.

24 CHAIRPERSON HOOD: I actually agree with
25 that, Mr. Turnbull. I guess one of the things we

1 could take back, Mr. Lawson, at least two of us --
2 how do we deal with the nonprofits on this? Or maybe
3 three of us.

4 MS. COHEN: Yeah, I think they need to
5 elaborate more on how it could benefit or harm them.

6 MR. LAWSON: Well, at this point the record
7 is closed so people can't elaborate more. But I
8 think the intent here is that, is -- you know, and
9 it's pretty well written up in the submissions that,
10 you know, if the space is not being used for, you
11 know, for purposes other than the core function, that
12 it should be exempted from this requirement. I'm
13 totally understanding the points that are being
14 brought up; brought up here. But like I said, we
15 thought this was -- this was definitely appropriate
16 one to get your feedback.

17 CHAIRPERSON HOOD: Okay. The record is
18 closed and you heard our concern about the
19 nonprofits, so that's just the way it is. Do you
20 have enough guidance?

21 MR. LAWSON: Yeah. Honestly I think that at
22 this point my guidance from you, what I'm hearing
23 from you is basically, leave it as it is. It's
24 something again that we could consider to look at as
25 we kind of monitor the situation over time. I didn't

1 hear an overwhelming response from the Commission
2 that you wanted to exempt these particular uses from
3 the requirement for the affordable housing linkage,
4 unless I misheard.

5 CHAIRPERSON HOOD: I think we -- unless
6 I'm -- I think the only issue we have was nonprofits,
7 right? Am I right? From the three of us?

8 MR. MAY: So you're saying it's okay to
9 exempt religious institutions and universities, but
10 maybe not all nonprofits?

11 CHAIRPERSON HOOD: Yeah. And that's kind of
12 where -- that's why we kicked it back to OP. Since
13 they like studying we wanted them to do a little more
14 -- you know, I know the record, what the record says.
15 But I guess I think, Mr. Turnbull, and I think he
16 worded it the best, the treatment of -- how does that
17 work with nonprofits?

18 MR. MAY: Okay. You know, I'll just say
19 again, I'm not that concerned about it. We're
20 talking about penthouse space on top of a, you know,
21 what's probably going to be a fairly substantial
22 building. It's completely at the option of this
23 nonprofit organization, whether it's a religious
24 organization or a university or whatever. If they're
25 going to go high, this is just part of the cost. I

1 don't think that's a big deal.

2 CHAIRPERSON HOOD: Okay.

3 MR. MAY: They don't have to go high.

4 CHAIRPERSON HOOD: And we may get to that
5 conclusion but that's just a question we have right
6 now up front. I thought I heard it from three of us
7 so -- but I have one of us who is wavering, but I'm
8 not going to -- we're going to move on.

9 MS. COHEN: Who is wavering?

10 CHAIRPERSON HOOD: You are. Okay. Which one
11 am I on? Number 2, the second one? Okay. Okay.

12 Housing linkage, Chapter 26. "As drafted
13 residential recreation space within a penthouse would
14 essentially result in a housing linkage requirement
15 for a nonresidential building or would contribute to
16 the IZ requirement for residential buildings.
17 Comments that the recreation space, particularly on
18 residential buildings such as a gym or a party room
19 on a roof should not be counted towards inclusionary
20 zoning or affordable housing contribution
21 requirements. The current IZ program does not count
22 community and recreation areas towards an IZ.
23 Requirement of the building, the requirement to
24 include rooftop recreation space and IZ calculations
25 as drafted may discourage rooftop amenity space but

1 excluding the recreation space on the roof from IZ
2 could limit the effectiveness of the affordable
3 housing provisions. Does the Zoning Commission --
4 does the Commission wish to exempt penthouse
5 recreation space from IZ requirements for residential
6 buildings?"

7 And then the next question is, "Does the
8 Commission wish to exempt penthouse recreation space
9 from housing linkage requirements for nonresidential
10 buildings?"

11 Any thoughts on that?

12 MR. MAY: So I think I'm okay with the idea
13 of exempting penthouse recreation space from IZ
14 requirements in a residential building. You know,
15 ostensibly that might be moving what would otherwise
16 be recreational space out of the rest of the building
17 and on to the roof and so therefore there's still
18 going to be a net increase in the residential square
19 footage and a requisite increase in the affordable
20 units that might result.

21 But plus I just think, you know, I like the
22 idea that rooftop space is best used as communal
23 space as opposed to private condos or apartments.

24 On the second one I don't see any reason to
25 exempt recreation space from housing linkage on a

1 nonresidential building. It just, you know, it seems
2 to me that this is a bonus for those buildings and,
3 yeah, it's great if they chose to put a gym up there.
4 But if it's just like a party room on top of an
5 office building. No, I think we need to have housing
6 linkage for that.

7 MR. MILLER: I would agree with Commissioner
8 May's split decision on those questions.

9 MS. COHEN: And I would agree with
10 Commissioners Miller and May on the split decision.

11 MR. TURNBULL: You can count me on that too.

12 CHAIRPERSON HOOD: Okay. All right. Let's
13 move forward to the last one. Is this the last one?

14 "The Southeast Federal Center is -- " let me
15 just use acronyms. "The SCFC is currently subject to
16 requirement as part of the land disposition, not
17 zoning. The 20 percent of the rental units which
18 would include those within a penthouse be set aside
19 for families earning 50 percent of the AMI or less.
20 So was exempted from the IZ requirement for the
21 building. Comments were received at the Southeast
22 Federal Center should therefore be exempt from the
23 penthouse habitable space IZ requirement. OP notes
24 that the existing Southeast Federal Center
25 requirement links only to rental units. Condo rental

1 units are not subject to the 20 percent requirement.
2 The provisions also relates only to units, not to
3 gross floor area, so rooftop habitable space on a
4 residential rental building would not trigger an
5 additional affordability requirement. Does the
6 Commission wish to exempt habitable space on a rental
7 building in the Southeast Federal Center?"

8 Anybody?

9 MR. MAY: So this is strange. The current
10 regulations require 20 percent of the units. So
11 if you could not wind up -- you could wind up with a
12 lot less than 20 percent of the space being required
13 to be affordable at 50 percent AMI, right? I mean, I
14 guess I wasn't thinking about that when we took up
15 this case so I can't remember what we were thinking
16 when the Southeast Federal Center guidelines were
17 done.

18 I mean, I think we should be incentivizing
19 additional affordable space, affordable housing as a
20 result of rooftop habitable space in the Southeast
21 Federal Center. Does that mean that it should be
22 triggering an IZ requirement? I'm not sure what the
23 best means is for that, but I think it should trigger
24 something.

25 MS. COHEN: I have a question for OP. I

1 thought that in the Southeast Federal Center though
2 the units had to be -- even though they were deeper
3 affordability they had to be like -- they had to be
4 distributed throughout the building and also be
5 likely existing units that are being built. Is that
6 correct? By size and amenities?

7 MR. LAWSON: To be honest, I don't know.
8 This is not part of the zoning. This is part of the
9 Federal Land Disposition, required this affordable
10 housing. It's because of that disposition
11 requirement, though, that Southeast Federal Center
12 generally was exempted from the overall IZ
13 requirement. You know, the basic IZ requirement, so
14 these federal -- so the Southeast Federal Center is
15 exempt from. However, that just applies to a rental
16 building, so the 20 percent requirement doesn't apply
17 to a non-rental building and it of course doesn't
18 apply to a nonresidential building. You know, an
19 office building or that kind of thing.

20 So I think our basic question here is, if
21 it's a condo building, or if it's a nonresidential
22 building, should it be subject to the penthouse
23 affordable housing provision as we had recommended.
24 But do you accept that for a rental building it
25 should be exempted from the penthouse IZ requirement

1 because it's already covered through the land
2 disposition.

3 MR. TURNBULL: Well, that sort of follows the
4 logic that says that it wouldn't be covered under
5 rental but it would under condo then. I mean,
6 following that logic through. I mean, that's my
7 feeling that it would cover nonresidential and condo
8 buildings. You would apply.

9 MR. LAWSON: Well, the comment, of course,
10 was to exempt Southeast Federal Center all together
11 from this provision. And we're kind of scaling that
12 back and we're just -- you know, our original
13 proposal was to apply the penthouse requirement
14 across the board as it would in any other part of the
15 city. But we agree that it is appropriate to
16 acknowledge this separate non-zoning requirement for
17 affordable housing that would include any housing
18 provided up on the penthouse within a rental
19 building.

20 MS. COHEN: We've had a lot of problems with
21 condos, and I know that DHCD has, you know, sort of
22 tried to address some of those problems. Especially
23 when it comes to condo fees. So I would like to see
24 that they either provide that IZ unit or how many, or
25 opt in to providing housing linkage.

1 MR. LAWSON: And they would have that option.

2 MS. COHEN: Yes.

3 CHAIRPERSON HOOD: Okay. So are we going to
4 stick with what we have or any --- okay. Is that
5 good, Mr. Lawson?

6 MR. LAWSON: Sorry. By stick with what you
7 have you mean stick with kind of the OP comment here,
8 or stick with what was in the notice of proposed
9 rulemaking which would apply the penthouse provision
10 even within a rental building where it applies
11 through the land disposition agreement as well?

12 CHAIRPERSON HOOD: I think you said that it
13 applies to the land disposition agreement, right?
14 And I think that's kind of what we have, started
15 there. At least from my standpoint.

16 MS. COHEN: Yeah, but I thought we'll add for
17 the condo that there is the choice of either
18 providing the IZ or the housing linkage so that they
19 would be required if they --

20 MR. LAWSON: Yeah, that doesn't have to be
21 added. That's already in there.

22 MS. COHEN: That's in there. Okay.

23 MR. LAWSON: Yeah.

24 MS. COHEN: I'm good with that.

25 MR. LAWSON: Okay. So applied to a condo

1 building, apply it to a nonresidential building, do
2 not apply it to a rental residential building.

3 CHAIRPERSON HOOD: Because it --

4 MR. LAWSON: Great.

5 CHAIRPERSON HOOD: -- shows up in another
6 fashion.

7 MR. LAWSON: Exactly.

8 CHAIRPERSON HOOD: Right. That's enough.

9 MR. LAWSON: Great. Thank you.

10 CHAIRPERSON HOOD: So we're going to stick
11 with what we have. Okay. Do we have anything else?

12 All right. Mr. Lawson, do you need to do
13 anything else?

14 MR. LAWSON: That was excellent direction. I
15 very much appreciate it. Thank you. So we'll be
16 taking this. We'll be incorporating it into the
17 final version which we'll get to you as soon as we
18 can.

19 CHAIRPERSON HOOD: Okay. We're going to need
20 about five minutes and then we will get set for our
21 hearing. And I want to apologize for being a few
22 minutes late, but appreciate your indulgence. Take
23 us about five minutes.

24 [Meeting adjourned at 6:54 p.m.]

25