

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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 IN THE MATTER OF: :
 :
 Text Amendment to Subtitles : Case No.
 B, D, E, and F for Accessory : 20-19
 Building Requirements :
 ----- :

Monday,
December 21, 2020

The Public Hearing of Case No. 20-19 by the District of Columbia Zoning Commission convened via videoconference at 4:00 p.m., EDT, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J, HOOD, Chairperson
- ROBERT MILLER, Vice Chair
- PETER SHAPIRO, Commissioner
- MICHAEL G. TURNBULL, Commissioner
- PETER G. MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- SHARON SCHELLING, Secretary
- PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

ELISA VITALE
JENNIFER STEINGASSER

ANC 6C PRESENT:

MARK ECKENWILER, Vice Chair

The transcript constitutes the minutes from the
Regular Public Hearing held on December 21, 2020

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(4:00 p.m.)

CHAIRMAN HOOD: Good afternoon, ladies and gentlemen. Today's date is December 21st, 2020. We are convened and broadcasting this public hearing by videoconferencing. My name is Anthony Hood. Joining us this evening are Vice-Chair Miller and Commissioners Shapiro, May, and Turnbull. We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, as our secretary, and Mr. Paul Young who will be handling all of our virtual operations. I will ask others to introduce themselves at the appropriate time.

Copies of today's virtual public notice are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video will be available on Office of Zoning's website after the hearing.

Accordingly, all of those who listen on Webex, or attending by phone will be muted during the hearing, and those who have signed up to testify will be unmuted at the appropriate time.

When speaking, please state your name and home address before providing your testimony. When you are finished speaking, please mute your audio so that your microphone is no longer picking up sound or background noise. If you experience any technical difficulty, or any problems during these proceedings, then please call our OZ hotline number at 202-727-5471, and the

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1 Office of Zoning staff will assist you.

2 The hearing will be conducted in accordance with
3 provisions of 11Z DCMR, Chapter 5, as follows: preliminary
4 matters; presentation, in this case will be the Office of Planning
5 which has up to 60 minutes, but I don't believe we need 60
6 minutes; report of other government agencies; report of the ANC,
7 this is citywide; testimony of organizations. Organizations will
8 have five minutes and individuals will have three minutes,
9 respectively, and we'll hear in the order for those in support,
10 opposition and undeclared.

11 While the Commission reserves the right to change the
12 time limits for presentations if necessary, it intends to adhere
13 to the time limits as strictly as possible and no time shall be
14 ceded. Again, any issues, please call the OZ Hotline number at
15 202-727-5471.

16 And at this time, the Commission will consider any
17 preliminary matters. Does the staff have any preliminary matters?

18 MS. SCHELLIN: No preliminary matters this evening.

19 CHAIRMAN HOOD: Ms. Schellin, if you could for me,
20 could you identify the case and the case number? I would
21 appreciate it.

22 MS. SCHELLIN: Yes, sir. This is Zoning Commission
23 Case No. 20-19. It is a text amendment brought by the Office of
24 Planning to Subtitles B, D, E, and F regarding accessory buildings
25 -- accessory building requirements.

1 CHAIRMAN HOOD: Okay. Thank you. Again, for a few
2 moments, I may not be able to see people, so I can see you now,
3 but there are times when I won't be able to see you, so if you
4 need to get my attention, please speak up.

5 So let's bring up the Office of Planning at this time,
6 Ms. Schellin.

7 MS. SCHELLIN: Yes. That will be Ms. Vitale and Mr. --
8 and Ms. Steingasser.

9 CHAIRMAN HOOD: Okay. Ms. Vitale and Ms. Steingasser,
10 when you're ready you all may be begin.

11 MR. YOUNG: For some reason, I can't bring Ms. Vitale
12 in. I can only unmute her.

13 CHAIRMAN HOOD: Okay. Well, that's fine. We can, we
14 can hear her, if that's okay.

15 MS. VITALE: Can you hear me?

16 CHAIRMAN HOOD: Yes, we can hear you.

17 MS. VITALE: Okay. Great. Good evening or good
18 afternoon, Mr. Chair, and members of the Commission. Elisa Vitale
19 with the Office of Planning in Case 20-19. The Commission set
20 down the text amendment for public hearing in September. This is
21 a text amendment to align and provide consistency in the accessory
22 building regulations in the R, RF and RA zones.

23 The Office of Planning, as we outlined in our hearing
24 report, we have made a few minor revisions to the text since set
25 down, and these were published in the public hearing notice.

1 These were largely based on discussions that we were able to have
2 with ANC 6C. We have proposed to -- proposed language to clarify
3 the regulations regarding penthouses on accessory buildings. We
4 know you'll be having a hearing for the penthouse regulations in
5 January, and we will obviously work to ensure that any text
6 regarding penthouses or rooftop structures on accessory buildings
7 is aligned with the penthouse text amendment that you'll be taking
8 up early next year.

9 We've also modified the general provisions for
10 accessory buildings in the RF zones to reflect a second principal
11 unit. We have language in there that referred to an accessory
12 dwelling unit. Since the RF Zone doesn't permit accessory
13 dwelling units but would permit a second principal unit in an
14 accessory building, we made that change.

15 And then finally, we did make some changes to the
16 numbering. I think based on comments received in the record, we
17 may still have some work there to do, so we would appreciate the
18 flexibility to work with OAG to make sure that all of our
19 numbering is correct.

20 Finally, there were some comments that were received in
21 the record from ANC 6C that the Office of Planning did not
22 address. This had to do with the proposed 10-foot height limit
23 for sheds. We heard comments that people were interested in
24 seeing a lower height limit for sheds. We are still proposing to
25 maintain that 10-foot maximum height. DCRA currently permits the

1 replacement in kind of a garden shed without a permit up to ten
2 feet in height, so we don't want to create any inconsistencies
3 between DCRA policies and practice and the zoning regulations, so
4 we're maintaining that proposed 10-foot height for sheds.

5 ANC 6C also had a comment regarding the rules of
6 measurement for accessory building height. Again, OP did not
7 propose any further changes to the draft text based on this
8 comment. We think it's prudent to follow the historical practice
9 for how building height is measured for accessory buildings.
10 Again, we don't want to make a change there and have any
11 unintended consequences.

12 And then I think the final comment had to do with the
13 alley centerline setback. We know that fences, things like roll-
14 up doors, we're even proposing that sheds would be able to be
15 built up to the property line, whereas a garage or other accessory
16 building would be required to respect that 7.5-foot alley
17 centerline setback, so that would give a 15-foot alley width.
18 This mirrors what's been adopted for alley lots, so it aligns the
19 alley centerline setback requirements for alley lots, and then
20 accessory buildings on street-facing lots. But, again, we
21 wouldn't recommend any additional changes here as it relates to
22 fences, roll-up gates, or sheds.

23 That concludes my report. I keep it short this
24 evening. I'm happy to answer any questions that you might have.
25 Thank you.

1 CHAIRMAN HOOD: Thank you so much, Ms. Vitale. Let's
2 see if we have any questions or comments. Commissioner May, any
3 questions or comments?

4 COMMISSIONER MAY: Yes, I appreciate the response in
5 advance, I guess, to the ANC 6C comments. I do have a question
6 about the measurement of height. And what I'm wondering about is
7 whether, you know, whether the measurement of the height of a roof
8 would be done the way the height of a principal building would be.
9 In other words, if it's a sloped roof, is it taken from the, you
10 know, the midpoint of the sloped roof, or is it an absolute 10-
11 foot limit for sheds, or 22-foot for the 22-foot version?

12 MS. VITALE: For both. For sheds and accessory
13 buildings, the height measurement goes to the absolute top. It's
14 not, it's not an average, or if you have a peaked roof, you don't
15 go to the, you know, the midpoint of the peak, so it would be to
16 the absolute top for both.

17 COMMISSIONER MAY: And that's explicit in the
18 regulations? I didn't --

19 MS. VITALE: I believe so. I'm happy to, to confirm
20 that. I know it's clear for the accessory buildings. I do want
21 to check and make sure that that is clear for sheds.

22 COMMISSIONER MAY: Okay. Because I think it -- I do
23 think it should be clear. I mean, there happens to be a shed in a
24 rear yard in my block. It's a very odd sort of peaked roof thing,
25 and it's well above 10 feet. Well, it's above 10 feet, I think,

1 and it's sort of odd, and I don't think it's a problem in my
2 neighborhood, but I can easily see it being problematic in a lot
3 of areas or something like that. So I think the 10 -- I can live
4 with the 10 foot if it's an (audio interference) height. I was
5 sympathetic to dropping it to 9 feet, but I understand the
6 complication with the DCRA rules, so I'm okay with that. So
7 thanks.

8 MS. VITALE: Okay. Thank you.

9 CHAIRMAN HOOD: Okay. Thank you. Commissioner
10 Shapiro, any questions or comments?

11 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. I
12 would agree with Commissioner May regarding -- my sympathies might
13 be toward the 9 feet, but I think that consistency makes sense,
14 even at the 10 feet.

15 If you could, Ms. Vitale, talk about this, the issue of
16 height -- your recommendation is that this would be measured to
17 the finished grade rather than the natural grade, and how you came
18 to the conclusion that that sort of allows for either more or less
19 clarity, or more or less mischief, et cetera, et cetera.

20 MS. VITALE: Sure, I'm happy to speak to that. The
21 Commission might remember that there was a text amendment that was
22 brought forward and adopted previously that addressed how building
23 height is measured for principal buildings, and that, you know,
24 clarified how height was measured. It took into account cellar
25 versus basement, things like areaways, and that was a change in

1 | how building height is measured, or a clarification I guess I
2 | should say, for principal buildings.

3 | For accessory buildings, height has always been
4 | measured from the interior of the lot, so you know, facing the
5 | back of the principal structure, not from the alley, and height is
6 | measured from the finished grade for accessory buildings at the
7 | middle of the accessory building, and that has the way -- that's
8 | the way it's been since '58.

9 | We didn't propose changing that. I think the comment
10 | was that that may allow for individuals to build up or modify
11 | grade because we're talking finished grade versus natural grade,
12 | so if someone had a berm, say, in the rear yard, that could create
13 | an ability, you know, to gain additional height for that 10-foot
14 | or 22-foot height measurement.

15 | I think, again, the use of finished grade on the
16 | interior side of the lot in the middle of the accessory building
17 | has been the practice for years for how accessory building height
18 | is measured. So we didn't hear from folks that there have been
19 | egregious examples of folks manipulating that. Certainly, we're
20 | happy if we find that it is problematic, and we do need to take
21 | another look at this, we can certainly bring it back to the
22 | Commission, but at this point we didn't think that modifying that
23 | rule of measurement for accessory building height was necessary
24 | and would potentially create more just confusion or potential for
25 | unintended consequences by starting to tinker with how that

1 measurement is made.

2 COMMISSIONER SHAPIRO: Thank you. That's very clear
3 and very helpful. Thank you. That's all I have, Mr. Chairman.

4 CHAIRMAN HOOD: Okay. Thank you. Commissioner
5 Turnbull.

6 COMMISSIONER TURNBULL: Thank you, Mr. Chair. Ms.
7 Vitale, thank you for your report. Just for -- is there a -- I
8 can't recall. Is there a definition for a finished grade we've
9 established?

10 MS. VITALE: I believe so, but I would have to check.
11 I don't have -- let me -- I don't have Subtitle B pulled up and
12 handy right now.

13 COMMISSIONER TURNBULL: It sounds like we're allowing
14 the owner to change his grade then? Am I reading you correctly?

15 MS. VITALE: Not to change it, but just that the
16 measurement would be taken from the finished grade. And this is
17 how the measurement has been done, you know, since 1958 when
18 garages were permitted as accessory buildings in, you know, in the
19 rear yard of properties.

20 CHAIRMAN TURNBULL: Okay. I'm just getting back to
21 what the ANC 6C was concerned about was that the ability to make a
22 change, and that if you have -- their idea of natural grade could
23 be exactly what you mean as finished grade, but it's a grade
24 that's been established for so many years in that, in that back
25 yard, and I think it would be good to clarify that somehow.

1 MS. VITALE: Certainly. It appears that both natural
2 grade and finished grade are defined in Subtitle B.

3 COMMISSIONER TURNBULL: They are.

4 MS. VITALE: So that's correct.

5 COMMISSIONER TURNBULL: I don't have it in front of me.
6 What does it say for finished grade? Do you --

7 MS. VITALE: Sure. "Finished grade is defined as the
8 elevation of the ground directly abutting the perimeter of the
9 building or structure, or directly abutting an exception to
10 finished grade." And then it goes on to state that exceptions to
11 finished grade are set forth in another definition, so we also
12 define exceptions to finished grade, and those include things like
13 window wells, or areaways.

14 COMMISSIONER TURNBULL: Uh-huh.

15 MS. VITALE: And again, I think another thing that
16 factored into our consideration of this, and why we believed it,
17 it could or should be treated differently than principal
18 buildings, normally an accessory building isn't going to have --
19 or a shed isn't going to have a basement or a cellar. They're not
20 going to have window wells. They're not going to have, you know,
21 areaways or that sort of thing, so that that method of measurement
22 for a principal building really is different based on kind of the
23 different use and way in which those structures are constructed
24 and accessed when you have a habitable space below grade.

25 COMMISSIONER TURNBULL: Okay. Thank you. The other

1 | thing, and maybe you could -- on the ANC report is they were
2 | talking about parapets on the penthouse, and they were concerned
3 | about the height, what was included and what was not included.
4 | Could you clarify that?

5 | MS. VITALE: Because the height of an accessory
6 | building is measured to the absolute top, that would include the
7 | parapet. The parapet would be within that 22-foot maximum height.

8 | COMMISSIONER TURNBULL: That's what I thought. That's
9 | what I thought. Okay. Yeah, it sounds like they were concerned
10 | that it wasn't included, or it -- or they were confused by it, I
11 | guess. Okay. Thank you.

12 | MS. VITALE: Sure.

13 | CHAIRMAN HOOD: All right, thank you, Mr. Turnbull.
14 | Vice Chair Miller, do you have any questions or comments?

15 | VICE CHAIR MILLER: Thank you, Mr. Chairman. No, I
16 | don't have any questions. My colleagues have asked the questions
17 | that -- some of the questions that I might have had, and Ms.
18 | Vitale in her comprehensive report, and her response to your
19 | questions has also answered my questions, so I'm ready to move
20 | forward. Thank you, Mr. Chairman.

21 | CHAIRMAN HOOD: Okay. Thank you. I would agree. I
22 | think it's been well vetted. I appreciate ANC 6C taking the time
23 | to do all the work and the involvement that they did to help us as
24 | we scope this part of our text amendment.

25 | I will say though, I would not have supported the 9

1 feet, on the shed, so I'm glad that we left it as it was, and I
2 appreciate that, and I think the residents in the city for the
3 most part would appreciate that. So, all right. I don't have
4 anything other than we do have a report. It's already been
5 discussed from ANC 6C. We appreciate that.

6 Ms. Schellin, do we have anybody signed up to testify
7 either in support or opposition?

8 MS. SCHELLIN: Yes, we had two signed up for
9 undeclared, but I only see one, and that's Mark Eckenwiler. Oh,
10 he's on now. I don't see the other gentleman on, so I guess we
11 just have Mark up.

12 CHAIRMAN HOOD: Okay. So, Mr. Eckenwiler, if you can
13 identify yourself, and you can begin.

14 MR. ECKENWILER: Thank you, Mr. Chairman. Mark
15 Eckenwiler, Vice Chair, ANC 6C, on behalf of the ANC. I'm going
16 to turn on my video here, and we'll see if it works. If I get a
17 little (audio interference).

18 And just also preliminarily, Mr. Chairman, because I
19 know you wonder about these things, a resolution did, in fact,
20 authorize me as a witness. I requested to do that in a letter,
21 but I was authorized to present today.

22 So you've already talked about most of the points in
23 our letter. Let me just hit the points briefly. As has been
24 averted to, we have a recommendation that (audio interference) be
25 capped at no more than 9 feet.

1 I'm reading the room here on this, and so I don't
2 intend to dwell it. You have our letter. You have the benefit of
3 our thoughts, and obviously if there are any questions on that
4 afterward, I would have to pursue that, but I don't really see
5 that there's value in dwelling on that at the moment.

6 The second point was for the rules for measuring the
7 height of all accessory buildings, not just sheds, and as both
8 Commissioners Shapiro and Turnbull mentioned, there is an issue
9 here. OP's graph proposes the use of finished grade, and our
10 concern about that is the same concern that the Zoning Commission
11 addressed back in ZC 17-18. You know, one of the issues there
12 was, you know, you had developers who were using berms to play
13 games, basically to create new grade, and our concern is that
14 there is room for similar mischief here if finished grade means
15 what it says in Subtitle B, and that is basically whatever is
16 there, so somebody can change that, you know, they can raise the
17 grade 4 or 5 feet if they choose, and then build atop that. We
18 think it makes much more sense to choose the lower of either
19 finished grade or natural grade, and as Ms. Vitale says, go
20 through those already defined terms in B100.

21 There is a look-back. If you will recall from ZC 17-
22 18, natural grade excludes recent changes, so basically it says,
23 you know, if you've tampered with the grade in the last five
24 years, basically we're going to ignore that tampering. And our
25 view on that is, you know, most accessory structures in the

1 District are going to be more than five years so there's no
2 functional difference, and if you're worried about, you know,
3 grandfathered structures, there's no difference at all between
4 natural grade and finished grade, you know, if there's no change
5 today. Those two are the same right now.

6 On the rules for measuring accessory building height,
7 there was a second point, and this goes to one of the issues that
8 was also raised just now. We read -- so if we look at 11 B 308.3,
9 that provision does say that on flat roofs you can have a 4-foot
10 parapet. So we understand that to mean that, you know, whatever
11 the cap is on the height of a building, whether it's principal or
12 accessory, you can have another 4 feet of parapet on top of that,
13 and our recommendation is that the height for accessory buildings
14 which OP has proposed, you know, to include any penthouse on such
15 a structure, also explicitly include the parapet. Just for
16 clarity, it sounds like, you know, Ms. Vitale is saying that was
17 their intent. I don't think the text actually quite accomplishes
18 that goal.

19 And then the last item of substance has to do with the
20 setback from alley centerlines. On this one, ANC 6C, you know, we
21 previously commented in, you know, 19-13 earlier this year that we
22 thought there should be harmonization between alley lots and
23 street-facing lots, but there was also concern, and Ms. Vitale
24 also mentioned this, that there is a lot of inconsistency here
25 that you have to setback if you build a garage, but if you build a

1 roll-up gate, and I have these in my SMD, I have residents who are
2 unhappy about them being built right up to the alley, and it is a
3 seeming paradox that those are not subject to the same sort of
4 setback requirement. And really, that raises the larger question,
5 what is that setback requirement doing there.

6 And to be clear, ANC 6C is not saying get rid of the
7 setback requirement and, quite honestly, I think there's a
8 diversity of views on our Commission about whether or not that
9 setback requirement should exist or not, but presuming that we
10 have the setback requirement, there is reason to question why it
11 is so limited in scope, and so we just wanted to, you know, flag
12 that there is a very real question about what the impact, or lack
13 of impact is of imposing that requirement only on, you know, one
14 type of structure, but not on the other kinds of structures.

15 And then the rest of our comments, these are, I think,
16 either purely ministerial like, numbering corrections, or issues
17 that I think were adequately addressed in OP's hearing report.

18 So that concludes my testimony. I'm happy to answer
19 any questions.

20 CHAIRMAN HOOD: Thank you, Mr. Eckenwiler. Vice Chair,
21 stand by because I may disappear anytime. Any questions or
22 comments? Let's start with Commissioner May. Any questions or
23 comments?

24 COMMISSIONER MAY: So, Commissioner Eckenwiler, good to
25 see you. On the rules for measurement, the -- I mean, do you

1 | actually -- are you aware of instances where developers are
2 | manipulating the grade related to accessory buildings because this
3 | is not -- I mean, this rule the way it's being written, I don't
4 | think is a departure from what has been happening. So I mean,
5 | we're not -- I don't see it as a huge change from what already
6 | existed, so do you see any examples of this?

7 | MR. ECKENWILER: I can't tell you that I know of any
8 | specific examples, but I would just make the observation that just
9 | as water seeks its own level, builders will seek every opportunity
10 | to manipulate and exploit, you know, aspects of the zoning
11 | regulations, and so our view is it is better to nail this down.

12 | COMMISSIONER MAY: So the theory is that somebody
13 | could, you know, berm up to their new garage by two or three feet,
14 | and therefore get two or three more feet above the 22 feet,
15 | essentially?

16 | MR. ECKENWILER: Correct.

17 | COMMISSIONER MAY: Yeah, I mean, I don't think it's a
18 | big -- I don't think it's a problem with things like sheds, but I
19 | can easily see it being a problem for a two-story garage that's
20 | already 22-feet, and that way you get, you know, if you can get
21 | another couple of feet, you'll wind up with taller ceilings either
22 | in the lower, you know, well, in the two floors that you wouldn't
23 | have to work with, so you could wind up with a 24-foot or 25-foot
24 | tall building pretty easily.

25 | All right. I think that's -- I think that's it for my

1 questions. Thanks.

2 CHAIRMAN HOOD: Okay. Commissioner Shapiro.

3 COMMISSIONER SHAPIRO: No further questions on that,
4 Mr. Hood. Thank you.

5 CHAIRMAN HOOD: Mr. Turnbull.

6 COMMISSIONER TURNBULL: Not really. The question I
7 had, the comment, I think you raised a good point on the -- I
8 think I'm struggling with finished grade and natural grade also as
9 to the manipulation what can be done, especially if there's a hump
10 in there now, (audio interference) and they have the flexibility
11 to remove the little hump to make it level, which would be a
12 positive thing, but the alternative to that is there is no upward
13 flat grade but they are making it a hump to make it allowable for
14 them to go higher, so it's -- I'm not sure how we address that.
15 I'm not sure how OP can either put something in the language that
16 can help clarify this or tighten it up, and maybe there is a way
17 to do that.

18 Same thing. You know, you also mentioned about the,
19 the height, and you see a possible, depending upon how you read
20 the regulation, some misconstruing of what the intent was, that it
21 would be a maximum of 22. That somebody could construe it a
22 little bit differently, and maybe you -- you're looking to OP to
23 tighten that language up then; is that correct?

24 MR. ECKENWILER: Yes, Commissioner Turnbull. The
25 concern is that the new language in, I believe it's B 308.10 which

1 was added in the hearing report, that was not in the original
2 hearing notice, does specifically call out penthouses. It says
3 that if there is a penthouse, and penthouse is defined very
4 broadly within the zoning regs, that that counts toward the 22-
5 foot maximum. It does not say a parapet though, and I don't
6 believe that a parapet qualifies as a penthouse, so I think
7 there's a pretty clear implication by omission there.

8 COMMISSIONER MAY. MAY: Okay. Thank you.

9 CHAIRMAN HOOD: Okay. Vice Chair, you have any
10 questions or comments?

11 VICE CHAIR MILLER: No questions, Mr. Chairman. I just
12 want to thank Mr. Eckenwiler and ANC 6C for your thoughtful
13 comments as always.

14 CHAIRMAN HOOD: I, too, Mr. Eckenwiler, want to thank
15 you for your -- the time and attention that you all put into this
16 and helping us scope this. You have helped us in a lot of
17 different regulations that we have put -- and your insight has
18 helped us with a fresh pair of eyes. Sometimes our eyes get a
19 little stale, but we appreciate the input you've given us.

20 I could go on to the conversation and ask you why did
21 you all like the 9 feet, but that's probably a discussion -- yeah.
22 Yeah. I will. I'm just curious. I'm just curious now.

23 MR. ECKENWILER: Thanks, Mr. Chairman. I think the
24 short answer is it wasn't clear to us as a practical matter why
25 feet needed to be allowed going forward. I do understand OP's

1 position about potential impacts with existing sheds, although
2 one, it's not clear to me how many of those there really are; two,
3 our view is that if you're creating nonconforming structures,
4 that's one thing when you're talking about the rowhouse itself,
5 you know, the principal dwelling. But we're talking about
6 something as minor as a shed, I'm not sure, you know, what the
7 real consequences of saying to somebody, no, that's now
8 nonconforming and if you build it back, you're, you know, you're
9 going to have to bring it down a foot. I don't what the practical
10 reason is that, you know, somebody couldn't do that, and so it
11 doesn't seem to me that it really is going to (audio interference)
12 a change, or, you know, really, you know, adversely impact
13 people's ability to use their property with their accessory
14 structure. So that's it in a nutshell.

15 CHAIRMAN HOOD: Thank you very much for that insight.
16 We appreciate it. And we thank you for taking the time to come in
17 and give us 6C's views as well. So thank you.

18 MR. ECKENWILER: Thank you. I just want to say I
19 appreciate the opportunity to be heard, and wish you all happy
20 holidays, and a better new year in 2021.

21 CHAIRMAN HOOD: Same to you. All right. Let me ask
22 this, Mr. Turnbull. The exchange that you and Mr. Eckenwiler had
23 about clarifying some of the language, is that something you'd
24 like to push back to OP before we take any action or do anything?
25 I'm just curious.

1 CHAIRMAN TURNBULL: Well, I don't know how the rest of
2 the Commissioners feel. It sounds like it maybe might could be a
3 valid point, depending on how OP looks at it, whether or not an
4 extra tweak might be worth it, I am not sure. I don't know how
5 everyone else feels.

6 CHAIRMAN HOOD: Okay. Mr. May.

7 COMMISSIONER MAY: It seems to me that we could move
8 forward and request that the Office of Planning work with the
9 Office of Attorney General to make absolutely clear that the
10 height of these buildings is to the -- is to the absolute top of
11 the building, including any parapets or other rooftop structures.
12 I think that would be --

13 COMMISSIONER TURNBULL: I could go along with that.

14 COMMISSIONER MAY: I mean, I think the bigger question
15 is the finished grade versus natural grade, and I'm actually --
16 I'm -- I guess I would ask -- can I ask a question of the Office
17 of Planning about that? I don't see Ms. Steingasser on. I don't
18 know -- is Ms. Vitale, you want to talk to this as well?

19 MS. VITALE: I'm still here, so --

20 COMMISSIONER MAY: All right. My question is, I mean,
21 is there, is there any real disadvantage to simply changing the
22 wording to finished grade, or natural grade, whichever is lower?

23 MS. VITALE: I don't know that there is an issue with
24 that. I think -- I know there's often a situation where the grade
25 of the alley may be lower than the grade in the rear yard which is

1 | where the measuring point is taken from, so if someone is
2 | constructing a new accessory building and trying to provide access
3 | from that alley, there may be a need to modify the grade on the
4 | interior side just to make, you know, particularly now that we're
5 | permitting an accessory unit on the second floor. I don't know
6 | that we have enough information to really know what, what the
7 | implications of changing that might be which again was a reason
8 | why we were kind of reluctant to make that change in the first
9 | place because we didn't want to start to change how that
10 | measurement was done, and then create unintended consequences.

11 | COMMISSIONER MAY: Okay. I mean, I appreciate that,
12 | the fact that you haven't looked at that question very carefully.
13 | It is a little bit hard to imagine why that in itself would be
14 | problematic, and I can see the potential for mischief. It does
15 | seem though that, you know, if you're dealing with a situation
16 | where the alley grade is higher than the grade of the yard, that
17 | would be the circumstance, I think, where you wind up needing to
18 | sort of berm up in order to make sure you get the full height.

19 | If the alley is lower, if anything, I mean, there are
20 | plenty of properties where the alley is lower than at the front of
21 | the house, and so -- or the backyard, and so you wind up with that
22 | bonus of extra, you know, couple of feet. In some cases, I've
23 | seen, you know, ones where the alley is 6 or 8 feet below the
24 | grade of the yard, so you could wind up with quite a tall
25 | structure, but still only limited to two stories. So it's hard

1 for me to imagine what the unintended consequence might be.

2 If we were to ask that the Office of Planning, you
3 know, study that further and report back to us, how much of an
4 impact does that have on getting these regulations published?

5 MS. VITALE: I just -- this is one where I think it's
6 hard to study it in more detail just because -- yeah, I just, I
7 don't honestly know how we would study this further to know the
8 implications. I guess we just didn't see, we didn't see instances
9 or examples of people manipulating that grade since you're (audio
10 interference) two stories and the height is measured to the
11 absolute top of the roof, and it's inclusive of penthouse or roof
12 structures, we'll clarify that it is inclusive of parapet. So,
13 yeah, I guess I'm not sure what kind of looking into it further
14 would reveal.

15 COMMISSIONER MAY: Okay.

16 MS. STEINGASSER: Commissioners, I would, I would
17 suggest that the proposed -- if the Commission is going to take
18 proposed action this evening, that we include the phrase, "the
19 lower of the elevation," as you suggested, and then we -- if we do
20 run across anything between proposed action and final action, we
21 can report back then as well.

22 COMMISSIONER MAY: Okay. So you're okay with making
23 that change (audio interference)?

24 MS. STEINGASSER: Yes. We can make that change.

25 COMMISSIONER MAY: Yeah. Okay. All right. Well, that

1 makes me feel good. Not that I really felt bad, but --

2 MS. STEINGASSER: Kind of thin skin issue there.

3 COMMISSIONER MAY: Okay. I'm sorry, Commissioner. Are
4 you there? I see the Chairman's name, but not his --

5 COMMISSIONER TURNBULL: I think we'll have to do with
6 the Vice Chair.

7 VICE CHAIR MILLER: I'll recognize Commissioner
8 Shapiro.

9 COMMISSIONER SHAPIRO: Thank you. I was just struck
10 Commissioner May. This is in part in response to you. I was
11 struck by what you said about the opposite way because I can think
12 of, in fact, my previous house, and I can think of tons of
13 examples where the alley is actually higher than the yard, and I'm
14 thinking -- maybe there are none, but Ms. Steingasser, are there -
15 - what are the, what are the implications of that? I mean, talk
16 about unintended consequences. Are we limiting?

17 MS. STEINGASSER: We could do two things: we could say
18 the lower of except as necessary to match the level of -- the
19 elevation of the alley, or -- and then we could also allow for a
20 special exception (audio interference) because -- when they don't
21 match.

22 COMMISSIONER SHAPIRO: Yeah, I mean, I guess it is
23 getting more and more complicated, right, but I just -- talking
24 about unintended consequences. I just know firsthand of, you
25 know, dozens and dozens of homes that are below the level of the

1 alley.

2 VICE CHAIRPERSON MILLER: I think that was a good
3 suggestion that Ms. Steingasser made in response to Commissioner
4 Shapiro to include that exception to match -- to do the lower of
5 one or the other, and then with the exception, except there it's
6 to match the grade of the alley. I thought that was a good
7 suggestion of my colleague and would agree.

8 Commissioner Turnbull, did you have any questions,
9 further questions?

10 COMMISSIONER MAY: No. I think the proposed changes
11 that Ms. Steingasser was talking about and with the -- with the
12 add of Commissioner Shapiro, I think those little tweaks, I think
13 they're fine. I think we're trying to -- we're trying to (audio
14 interference) flexibility --

15 COMMISSIONER MAY: I think, I believe that's the
16 Chairman.

17 CHAIRMAN HOOD: Give me, give me one minute. Give me
18 one minute. Yep, give me one minute. I'm having some problems
19 here.

20 COMMISSIONER MAY: Let's all be quiet for a minute
21 because you're quite the echo there.

22 CHAIRMAN HOOD: In this game, we just have to be
23 patient, so I ask for your patience.

24 All right. I think we're good now, so let's go.

25 COMMISSIONER TURNBULL: I'll go back Mr. Chair. I'm

1 fine. I think the little tweaks, I think we want flexibility for
2 applicants. I think we're trying to give flexibility, but we're
3 also trying to, as you say, safeguard against unintended
4 consequences, so I think the little tweaks we're proposing are
5 worthwhile, and I would be okay with thar.

6 CHAIRMAN HOOD: Okay. So considering I hade to move
7 over to another piece of equipment, I'm just trying to figure out,
8 it sounded like I heard Ms. Steingasser give a report.

9 COMMISSIONER SHAPIRO: Yeah, I think Ms. Steingasser
10 summarized it quite well.

11 CHAIRMAN HOOD: So are we ready to -- so we still will
12 be able to accomplish some of those concerns of Mr. Eckenwiler and
13 Mr. Turnbull after -- for proposed, and we'll deal with it during
14 final. My only question to that is does that call for another
15 advertisement?

16 CHAIRPERSON MAY: I think the proposal is to approve
17 the -- or take proposed action on what's before us. However, the
18 Office of Planning and OAG, the flexibility to address the height
19 issue to make sure that penthouses and parapets are included and
20 change the language to finished grade or natural grade, whichever
21 is lower, except as maybe needed to address a situation where the
22 alley height is higher than the finished grade. And I would make
23 that motion.

24 CHAIRMAN HOOD: Okay.

25 COMMISSIONER TURNBULL: And I would second.

1 CHAIRMAN HOOD: Okay, it's been moved and properly
2 seconded. Any further discussion?

3 Ms. Schellin, would you do a roll call vote, please?

4 MS. SCHELLIN: Commissioner May.

5 COMMISSIONER MAY: Yes.

6 MS. SCHELLIN: Commissioner Miller.

7 VICE CHAIR MILLER: Yes.

8 MS. SCHELLIN: Commissioner Hood.

9 CHAIRMAN HOOD: Yes.

10 MS. SCHELLIN: Commissioner Shapiro.

11 COMMISSIONER SHAPIRO: Yes.

12 MS. SCHELLIN: Commissioner Turnbull.

13 COMMISSIONER TURNBULL: Yes.

14 MS. SCHELLIN: The vote is 5 to 0 to 0 to approve
15 proposed action in Zoning Commission Case No. 20-19 as discussed
16 this evening with the revisions stated. And that's it.

17 CHAIRMAN HOOD: Okay, Ms. Schellin, do we have anything
18 else?

19 MS. SCHELLIN: No. That is it for the year. You guys
20 have a Merry Christmas, Happy New Year. I guess Hanukkah has
21 already started. I forgot, Kwanzaa. Whatever else is out there.
22 Happy Holidays, how about that? That covers everything.

23 CHAIRMAN HOOD: That'll do it. Commissioners, any
24 questions or comments? Anything else? All right.

25 I wish everyone a Happy Holiday, and as Mr. Eckenwiler

1 | said, hopefully you have a better New Year, as we continue to
2 | press forward.

3 | So with that, be safe, and this hearing is adjourned.

4 | (Whereupon, the above-entitled matter went off the
5 | record at 4:43 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 12-21-20

Place: Teleconference

was duly recorded and accurately transcribed under my
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