

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC MEETING

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THURSDAY

OCTOBER 19, 2023

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The Public Meeting of the District of Columbia Zoning Commission convened via teleconference, pursuant to notice at 4:00 p.m. EDT, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT E. MILLER, Vice Chair
JOSEPH IMAMURA, Commissioner
TAMMIE STIDHAM, Commissioner

OFFICE OF ZONING STAFF PRESENT:

ELLA ACKERMAN, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

JACOB RITTING, Esquire

The transcript constitutes the minutes from the Regular Public Meeting held on October 19, 2023.

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T-A-B-L-E OF C-O-N-T-E-N-T-S

Case No. 22-23

Alan Gambrell, Hugo Roell, AIA, Guillermo Rueda, AIA ...5

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

(4:00 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. We are convening and broadcasting this public hearing by videoconferencing. My name is Anthony Hood. Joining me this evening -- excuse me -- are Vice Chair Miller, Commissioner Imamura, and Commissioner Stidham. We're also joined by our Office of Zoning' staff, Ms. Ella Ackerman, and also Mr. Paul Young, who'll be handling all of our virtual operations.

Copies of today's virtual public hearing notice -- oh, also, Office of Zoning legal division, Mr. Ritting.

Copies of today's virtual public hearing notice are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and it is also webcast live, Webex and YouTube Live. Accordingly, all those listening on Webex or by phone will be muted during the hearing and only those who have signed up to participate or testify will be unmuted at the appropriate time. Excuse me. Please state your name and home address before providing oral testimony on your presentation.

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 difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number at 202-727-0789 to sign up or to receive Webex log-in or

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1 call-in instructions.

2 All persons planning to testify either in favor,
3 opposition, or undeclared, we encourage you to sign up in advance.

4 If you wish to file written testimony or additional
5 supporting documents during the hearing, then please be prepared
6 to describe and discuss it at the time of your testimony.

7 The hearing will be conducted in accordance with the
8 provisions of 11 Z DCMR Chapter 5 as follows: preliminary
9 matters, in this case we have a Petitioner and I will name them
10 as we move forward, which has up to 60 minutes, but I've been
11 informed that they can do it about 15; we have the report of
12 other government agencies; report of the Department of
13 Transportation, if needed; and then we also have the report of
14 the ANC. And then -- oh, no, before that we have the Office of
15 Planning's report. Then we have the report of the ANC. Then we
16 have the testimony of organizations and individuals. Each are
17 five and three minutes. Organizations five minutes, and
18 individuals three minutes, respectfully, and we will hear in the
19 order from those in support, opposition, and undeclared.

20 While the Commission reserves the right to change the
21 time limits to presentations if necessary, it intends to adhere
22 to the time limits as strictly as possible and no time shall be
23 ceded. Again, any issues, please call our OZ hotline number at
24 202-727-0789.

25 All right. At this time, the Commission will consider

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1 any preliminary matters. Does the staff have any preliminary
2 matters?

3 MS. ACKERMAN: We do not have any preliminary matters
4 today.

5 CHAIRPERSON HOOD: Okay. Thank you. Could we just
6 hold one moment please?

7 (Pause.)

8 CHAIRPERSON HOOD: All right. I'm terribly sorry about
9 that. Again let me just say that the subject of this evening's
10 hearing is Zoning Commission Case Number 22-23. This is the Alan
11 Gambrell, Hugo Roell, AIA, Guillermo Rueda, AIA, text amendment
12 to Subtitle B, Section 3324.1, it's to clarify, or potentially
13 clarify, the rules of measurement of lot occupancy.

14 Again, today's date is October the 19th 2023. And if
15 I mispronounce your names, forgive me. Let's bring -- Ms.
16 Ackerman and Mr. Young, let's bring the Petitioner up. And while
17 I'm thinking about it, Ms. Ackerman, remind me, I need to send --
18 -- we don't do a lot of rulemakings -- excuse me -- and I'm reading
19 a very old one, I'd like for you or Ms. Schellin to update that
20 for me and let's work together so I can read it a little more
21 fluently.

22 MS. ACKERMAN: Okay.

23 CHAIRPERSON HOOD: Okay, thank you.

24 All right. Mr. Gambrell, are you taking the lead?
25 Once you all get ready, you may begin. You want to introduce

1 everybody? I'll turn it over to you, Mr. Gambrell, I believe.

2 MR. GAMBRELL: All right. Good afternoon. I had to
3 unmute myself. And if Paul or someone else can bring the slides
4 up?

5 Terrific. Okay. Good afternoon, Zoning Commission.
6 I wanted to start out -- my name is Alan Gambrell, along with
7 Hugo Roell and Guillermo Rueda, and I wanted to start off by
8 thanking the Office of Planning for working with us over the past
9 year. Christopher -- I'm sorry, Crystal, Jennifer, Joel, thanks
10 very much for your work. It's been very collegial. I'm going
11 to present, but I'm really just a pretty face even though you
12 can't see me. We have on the line Hugo and Guillermo, our two
13 architects with intimate knowledge of the zoning rules and are a
14 part of this team, so I think they can really be the people to
15 field the more technical questions.

16 As you probably remember, originally, we just wanted
17 to add a simple comma to make it clear what is and what was
18 already clear, we believe, in the zoning regulations, which says,
19 "portions of building that are less than 4 feet in height are
20 not exempt from lot occupancy calculations." That regulation
21 change was enacted by the Zoning Commission in '17-'18 and was
22 part of your larger work to clarify rules around the basement
23 cellar density calculations and popups, given all that
24 gainsmanship and manipulations that were taking place across the
25 city.

1 What I'm going to do today is focus on two broad areas.
2 First is the various reasons why the text amendment is needed and
3 second is why we think the Zoning Commission should reject the
4 Department of Building's last-minute edits and retain the
5 language above natural or finished grade, whichever is lower in
6 elevation. This came in just about a week ago. For their part,
7 the Office of Planning will go after us, I thought they were
8 going to be presenting today, and they will go after us and
9 provide a more complete review of the various text changes, which
10 we largely endorse.

11 So on to point one. This is really our most fundamental
12 concern is to ensure the proper application of the actual words
13 in the regulations. And one really need go no further into the
14 Office of Planning's report on page 1, which includes the two
15 sentences, and they really put into contrasts the problem
16 regarding mis-application of the lot occupancy and rear yard
17 regulations. You'll see on the left there's an assertion about
18 the zoning administrator saying, "a longstanding interpretation."
19 That's irrelevant in this case. Why? Because it does not reflect
20 the 2018 regulation change. I will add that that phrase
21 "longstanding interpretation", it's used a lot by the former
22 zoning administrator, and in my experience no evidence is ever
23 used to support that assertion. In the present case, the zoning
24 administrator's weak evidence is to use old zoning language that
25 was enforced before the '17-'18 text amendment.

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1 Now, shift your eyes over to the right, which is a
2 clear statement by the Office of Planning on the actual intent
3 of the zoning regulations regarding the calculations of lot
4 occupancy.

5 MR. RUEDA: I don't think our slides are moving.

6 MR. GAMBRELL: What's that?

7 MR. RUEDA: I don't think our slides are keeping up.

8 MR. GAMBRELL: Oh, I'm sorry. I'm supposed to say next
9 slide. Sorry about that.

10 CHAIRPERSON HOOD: Just let him know, he'll keep up.

11 MR. GAMBRELL: Go to the next slide, please? Okay.
12 Sorry about that. Thanks, Willie.

13 So we already talked about what was on the left, so
14 imagine you're looking there. So now shift your eyes over to
15 the right, which is the Office of Planning's statement on the
16 actual intent of the zoning regs regarding lot occupancy, that B
17 24 -- 324 is about the ability to locate structures other than
18 buildings and required yards. This regulation "is not intended
19 to regulate lot occupancy." I almost feel like I could stop at
20 this point, the case is made, but I'm going to continue. Next
21 slide please?

22 So point two. In recent years, it's been our experience
23 that DCRA and now DOB to have been misunderstanding or ignoring
24 or simply violating the regulation change made in 2018, and
25 instead have mis-applied the B 324 rear yard language and used

1 | it to allow for construction of living space square footage in
2 | rear yards, space that is less than 4 feet in height, and to not
3 | count that space in lot occupancy calculations, which essentially
4 | renders the 60 percent lot occupancy rule meaningless. These
5 | spaces -- and I like to call them bunkers -- they're often built
6 | in required open space in rear yards and courtyards. They add
7 | excessive gross floor area to projects, space that does not get
8 | counted in lot accuracy. Developers are doing what they can to
9 | squeeze more sellable square footage space that isn't by any
10 | reasonable measure substandard subterranean living space. Next
11 | slide?

12 | As for the rule that DOB is ignoring, here's the pre
13 | and post 2018 revision. The exception -- this exception allows
14 | portions of buildings that did not rise above the main floor to
15 | be exempt from lot occupancy. The 2018 revision, however, ensured
16 | that any portion of a building above grade would count in lot
17 | occupancy. The change eliminated building height as a factor in
18 | calculating lot occupancy. In the words of the Office of Planning
19 | in their 2018 report on '17-'18, they referenced this revision
20 | "removes the allowance for space that is still above grade," so
21 | you see the strikeouts. Next slide?

22 | And yet DOB is continuing to use that so-called
23 | longstanding practice by relying on language within B-24, the
24 | rear-yard language, instead of the regulation change that's
25 | enacted in 2018 under '17-'18. Your changes are being ignored.

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1 As for B-24, the phrase "not including a building" is being
2 ignored. And really this gets back to the heart of our original
3 idea about adding a comma. In the absence of a comma after the
4 word building, a problem for the zoning administrator and
5 Department of B'uilding's staff seems to be in terms of
6 interpretation. Next slide please?

7 So a comma really does matter apparently. On the left
8 you see "Let's eat Grandma." Probably not a good idea. On the
9 right, there is "Let's eat, Grandma." She would probably prefer
10 that safety comma. And that's our original text amendment
11 submission to add a comma to B-24, to more clearly offset building
12 so that it would read "comma not including a building end comma.
13 " We had actually hoped that this comma would do the trick to
14 put a stop to the Department of Building's abuse of this
15 regulation, but the Office of Planning advised us that more
16 changes were needed, which is why you have the more thorough
17 submission by the Office of Planning, which once again we endorse
18 for the most part and with the exception of the last
19 (indiscernible) DOB suggestions. So what follows are -- next
20 slide please? Next slide please?

21 So what follows are specific examples of how DOB has
22 been misapplying these rules. Most of these can be found in our
23 Exhibit 2 submission. First, this is 20'19 determination letter.
24 Note how it avoids using the word building, and then it goes on
25 to say that "any enclosed projection under 48 inches is not

1 considered a structure." That's completely contrary to the '17-
2 '18 rule change. The interpretation completely distorts the
3 definition of building by positing that a building cannot be
4 considered to be a structure. As you know, does any regulation
5 have a definition for a building, which is, you know, it's in
6 the regulations, and they'll get lengthy, but I just did a visual
7 there to show that structures of the broader term and buildings
8 are a subset of that. Next slide?

9 Here's another example. It's a 2021 email by DCRA
10 staff that again uses the word structures and again avoids using
11 the word building. This is an email exchange with DCRA's response
12 to an inquiry that -- about that lot occupancy is calculated from
13 the ground. Next slide?

14 So what's going to follow in the next set of slides is
15 how this zoning rule abuse has played out on various properties,
16 and please note this is only what we know about. We really have
17 no way of knowing how widespread this practice is. And notably
18 a good number of -- well, three of these are on Ontario Road,
19 which is where Hugo Roell lives. I mean, his neighborhood's
20 being decimated in part by this rule. Next slide?

21 This is probably visually the most powerful. It's the
22 developer's drawing by the way. The space at the rear that
23 looks like a deck, but it's not. It's living space. It's a
24 bunker. And it's not being counted in lot occupancy. This
25 building exceeds the 60 percent count by more than 5 percent.

1 Next slide?

2 MR. RUEDA: Can I interrupt?

3 MR. GAMBRELL: Here's a -- yes, sure.

4 MR. RUEDA: It also exceeds the pushback regulations.

5 MR. GAMBRELL: Correct. That's correct.

6 MR. RUEDA: Right.

7 MR. GAMBRELL: Next slide. You got it. Good. So
8 these two -- go back one please?

9 So these two red squares depict extra bunker space
10 that's not being counted in lot occupancy. The one in the
11 middle, it's in a courtyard, the one on the right is in the
12 front under the porch. Next slide?

13 And here this red square highlights a courtyard bunker
14 that's not being counted in lot occupancy. Next slide?

15 Here's another determination letter from Mr. LeGrant
16 for this property. It was sent to the developer and states that
17 "the living space at the bottom of this courtyard does not count
18 towards lot occupancy because it is less than 48 inches in
19 height." Again, notice there's a studious omission of the word
20 building. Next slide?

21 Again -- and Willy can probably speak to this a bit
22 more in detail. This is a -- Willy, actually, do you want to do
23 this one?

24 MR. RUEDA: Sure. As far as the violations here. So
25 I think it should be pointed out that the determinations are

1 basically using the language that a building is not considered a
2 structure when it's less than 48 inches and that is the -- that
3 is what the lack of comma has brought about because it's not a
4 statement that's excluded from structures, instead they're saying
5 that a building is not considered a structure if it's' less than
6 48 inches. And so the red square or rectangle on the right is
7 actually the same rectangle -- the same space that is depicted
8 in the original -- in the first rendering that Alan showed, and
9 basically says that that portion of the basement or cellar -- I
10 don't recall - is not considered towards lot occupancy or subject
11 to pushback regulations, because it's less than 4 feet. There
12 are additional problems with this project, in particular, with
13 lot occupancy because they were counting -- the language in this
14 case that we had tried to insert regarding the grade, which is
15 being ignored now, is actually relevant on this left -- this left
16 portion, which is an accessory building, and the existing grade
17 is down at the bottom and the -- excuse me -- the existing grade
18 is at the top there, but the revised (audio blank) space with
19 living space above. And so that portion you can see that there's
20 a dimension from the floor level of the accessory building what
21 you, you know, might consider the ground-floor level, that's
22 structure is a deck over top of a garage and because it's less
23 than 4 feet above the original grade, right, which is not
24 contemplated in the old 324 language, it just says ground. So
25 they used that measurement to say that that is a structure less

1 | than 4 feet, and therefore doesn't count towards lot occupancy.

2 | MR. GAMBRELL: Okay. Thank you.

3 | MR. RUEDA: I'm not sure if that was clear. Sorry.

4 | MR. GAMBRELL: Okay. We can always come back to that.

5 | Next slide please?

6 | So this slide is an example of how this
7 | misunderstanding has infected the Board of Zoning Adjustment.
8 | This is a case from 2021 and the BZA was told in error by the
9 | Office of Planning that the building height measurement point is
10 | relevant to the calculation of lot occupancy, which board members
11 | subsequently adopted as their understanding based on comments on
12 | the record, which are on the screen. First, is developer,
13 | Attorney Sullivan who references B-24, and again we have that
14 | sleight of hand. Sullivan uses the word structures and even
15 | quotes "it" but that does not say buildings. Furthermore,
16 | Sullivan mangles 'understanding by alleging citing precedent, but
17 | not more recent changes made to the regulations. Again, this is
18 | '17-'18 regulations. I want to pause for a moment on this
19 | particular slide, and I want to read 'a December 8th, 2020 email
20 | I wrote to DCRA after this case about -- in order to really try
21 | to clarify directly with Mr. LeGrant about the misunderstanding.
22 | "Mr. LeGrant, today I weighed in on Case 20537 regarding the
23 | miscalculation of lot occupancy. The board intends on reaching
24 | out to you to seek clarification of the lot occupancy rule.
25 | Please note Stephen Mordfin of OP provided an incorrect

1 explanation to the board, referencing the DHMP. As you know,
2 DMHP bears no relationship to calculation of lot occupancy. The
3 developers' attorney stated that DCRA has consistently not
4 counted buildings less than 4 feet from grade and lot occupancy.
5 As you know this is not correct. Several Board Members suggested
6 that DHMP bore some relevance to the calculation of lot occupancy.
7 Again, as you know, this is incorrect." I got no response from
8 Mr. LeGrant. Next slide?

9 So the next point, to the literature earlier, what's
10 the impact of this? I think it's pretty clear. And we've given
11 examples that the 50 percent lot occupancy rule is being
12 circumvented by these bunkers -- by these courtyards, where this
13 states it's not being counted. And again, as Guillermo mentioned
14 earlier, it's essentially subverting its inset/pushback rule
15 because it's allowing buildings go back beyond that and not be
16 counted. Next slide. Okay. I think we went one slide too many.
17 Can you go back one please? Yeah.

18 And these are some of the other implications of this
19 rule. Environmental, in terms of having more of the permeable
20 vent space covered. Also quality of light, which you know is
21 fundamental to the zoning regulations in terms of light and air,
22 overcrowding, distribution of people. Next and final slide?

23 And this gets to the I don't know how to put it else
24 way -- this very, very last minute suggestions by the Off- --
25 the Department of Buildings to remove the language "above natural

1 | or finished grade, whichever is lower in elevation," just wanted
2 | to point out that this is a very peculiar submission from the
3 | Department of Buildings. It's -- last minute is an
4 | understatement. This text amendment has been out there for the
5 | past six months. We've started working on this last year with
6 | the Office of Planning and they were in contact with DOB. They
7 | had plenty of time to weigh in. It's just perplexing why they
8 | are now looking for these changes and the implications. As far
9 | as the request and their assertions, we don't think they're
10 | accurate. First, we believe adding this language is well-
11 | established, it's consistent with other density rules, those
12 | being definitions, building height, and GFA and FAR, that whole
13 | basement/cellar stuff. Been there, done that. Next, we think
14 | the specificity is going to help all parties; it'll help reduce
15 | uncertainty. Just went through a BZA case where there was clearly
16 | a lack of certainty on the part of all parties about what the
17 | rules are. As far as the other assertion that DOB said, which
18 | they suggested it would be a burden on homeowners. The evidence
19 | just doesn't support that whatsoever. Measurement of grade is
20 | always necessary. There are codes around that. I don't think
21 | DOB's suggesting not to implement its own codes, but they're on
22 | the codes, and as the Architects Hugo and Guillermo can verify,
23 | DOB does not require verification of grade measurements. So we
24 | don't think that the burden on homeowners who want to build decks
25 | is a valid argument, so that's why we would endorse you keeping

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1 that language.

2 That's our presentation. I want to stop and ask
3 Guillermo or Hugo if you'd like to add any particular comments?

4 MR. RUEDA: Yeah, I can just reinforce a couple of
5 things that you said, Alan.

6 MR. GAMBRELL: Follow the slides too, if you want.

7 Mr. RUEDA: Sorry?

8 MR. GAMBRELL: If there's any particular slide you want
9 to get to, let us know.

10 MR. RUEDA: Sure. I think initially -- I think the
11 idea is that by allowing buildings to creep at 4 feet across a
12 lot, you do impact the pervious surface requirements, because
13 they're triggered typically at 10 percent, but if they're not
14 counting the lot occupancy at 4 feet and under, then the pervious
15 surface requirement is automatically subverted basically because
16 the trigger isn't in place and the maintenance of the pervious
17 surface obviously is not there, it's been eliminated. The issue
18 of the grade is -- well, let me back up. But the other issue
19 that was shown in the first rendering, if you want to go back to
20 that first rendering in our examples. There.

21 So you can see there where the cellar or the basement
22 is being pushed out to, in that case, I think it was 15 feet, I
23 don't recall at this point, but well beyond the 10-foot projection
24 of the addition, right, so that property is dealing with -- the
25 property next door, the red property is dealing with the

1 additional pushback of the deck with a space below. And as Alan
2 said, you know, this is increasing, you know, gross floor area
3 many times discounted, if not always discounted in this case, and
4 not necessarily the best quality of space.

5 The language of grade in this case that DOB has
6 rejected, whether or not it gets added as we suggested, we do
7 strongly believe that there needs to be a tie in to actual
8 definitions that are established by the regulations and using
9 actual, you know, natural grade and finished grade obviously
10 would be preferable to 'just referring to the ground because in
11 this case the ground is really not known, what that refers to,
12 and we've actually had different interpretations based on which
13 reviewer we've talked about with regards to this. I think that
14 the case for -- if you go forward to the section, the case for
15 talking about the lower of -- or just even identifying whether
16 it's natural grade or finished grade, if you go to the section.
17 which is I think three slides ahead. One more. There.

18 So you can see in that case where excavation was
19 performed on the site to create garage. It was at least a 10-
20 foot retaining wall, which the ceiling of the -- excuse me --
21 the floor of what was proposed as the living space above that
22 garage, only rose I believe in that case like 'three feet above
23 the original backyard elevation. I don't remember to what extent
24 that was filled or removed. But because of the language of 324
25 is very specific to at any point, you know, the structure, the

1 deck, cannot rise above 4 feet above the ground, and so in this
2 case it was very vague, and I believe now that I look at this,
3 the original solution was just to have the deck and not to have
4 the living space above, and so which portion of this structure
5 was considered deck versus living space and building also became
6 an issue, at least as far as interpretation of the regulations.
7 I think that it is --

8 MR. GAMBRELL: It is a complicated thing.

9 MR. RUEDA: Yeah, it's complicated, so I'm happy to
10 answer questions on this point.

11 MR. GAMBRELL: Hugo, do you have any thoughts you want
12 to share? He might be muted. Maybe I'll turn it back over to
13 you, Chairman Hood.

14 MR. ROELL: I'm good for the moment. I'm happy to
15 answer questions later maybe.

16 MR. GAMBRELL: Okay. Terrific.

17 CHAIRPERSON HOOD: Thank you. I get it. I'm trying -
18 - I think I might have been on this case myself. But let me just
19 ask this question, Mr. Gambrell, and I probably could ask the
20 Office of Planning. What's going on with the ZA now? I don't
21 know -- I don't know where we started it, but when he has
22 interpretations of how he's interpreting our regulations, he
23 sends out an -- and we don't always get it, we've asked for it,
24 and this jogged my memory just now, I have not seen one in a
25 while, but they're supposed to notify us when they get

1 interpretation letters and I know he -- does he still do that,
2 or whoever the ZA is now? I think it's Ms. Beaden (sic), does
3 she still do that, send out interpretation letters of how they
4 are interpreting different regulations that we have?

5 MR. RUEDA: I don't know if she has a policy in place
6 at this point, but she has talked about increased communication
7 with the public and education, so I would assume that the answer
8 is yes. I will note that in her testimony yesterday, she did
9 say that they're going to be taking a look at some of these
10 determinations to provide additional information and maybe even
11 revise some of the determinations.

12 CHAIRPERSON HOOD: Okay. I'll ask the Office of
13 Planning. I do know as recently at least within the last few
14 years, we were informed that Matt LeGrant was doing that, and I
15 know she was his right -- her -- his right hand, and I'm sure
16 she probably followed the same process, I assume that's normal.

17 I have some other questions, and I also want to come
18 back and ask Mr. Gambrell, I know that there's a sticking point
19 where you and the Petitioner and the Office of Planning still
20 have an outstanding issue of how to proceed, but I want to make
21 sure I drill down on that. My colleagues may do it, but let me
22 start off first, even though I kind of went first, let me go to
23 Commissioner Imamura.

24 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.

25 This certainly gets down into the weeds, if you will,

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1 for this text amendment. I guess one of the questions that I
2 have just at the outset here is why now? As you know, the ZA
3 has mentioned there's sort of this longstanding interpretation
4 of this text. Why are you all bringing this forward now, what's
5 driving your request here?

6 MR. GAMBRELL: Yeah. Let me take a quick stab and we
7 all may have a slightly different way to express it, but as far
8 as now, I mean, first off, the longstanding interpretation is I
9 believe a misrepresentation of the actual regulations because if
10 there were a longstanding interpretation, that would have changed
11 in 2018 as a result of the '17-'18 changes that were brought
12 forward under the basement/cellar revisions. So that's point
13 one.

14 Point two is that the regulations changed. Matt
15 LeGrant did not change. He continued to use the old
16 interpretation.

17 Point three, why now? Because we've taken efforts to
18 work with DCRA, DOB to point out this error. We've taken efforts
19 to work with BZA to point out the error. We've gotten nowhere.
20 And so how do -- where do you go next? Well, you use the tools
21 available by just seeking a text amendment to clarify what we
22 think is already clear.

23 COMMISSIONER IMAMURA: So this is just --

24 CHAIRPERSON HOOD: Can I just interrupt? Commissioner
25 Imamura, can I just interrupt? I had requested, I did not see,

1 and Commissioner forgive me, we'll come back to you. I actually
2 think it's better to do it this way. Let us here from the Office
3 of Planning first because that way we can coordinate all of our
4 questions. I'm so busy always trying to go by procedure and
5 every time I do what I'm getting ready to do, we end up in court,
6 but I think this is not going to be an issue because I don't see
7 a lot of people on there. So if you don't mind, Commissioner
8 Imamura, unless you have something and you want to continue, but
9 I think you can take -- we can take what Office of Planning has
10 and the Petitioner and we can ask our questions both ways, and
11 that way we can kind of do a colloquy and kind of hash through
12 this, unless there's some objections.

13 COMMISSIONER IMAMURA: I think that'd be much better.
14 Thank you, Mr. Chairman. I'll --

15 CHAIRPERSON HOOD: Okay. And just know I'm coming back
16 to you first. Okay.

17 COMMISSIONER IMAMURA: Sure.

18 CHAIRPERSON HOOD: Okay. Let's go 'to the Office of
19 Planning. And thank you Vice Chair. I thought about doing that,
20 but as you know, before I got in trouble, so.

21 VICE CHAIR MILLER: And I said it very late. Sorry.

22 CHAIRPERSON HOOD: Yeah, okay.

23 All right. Ms. Myers? Good afternoon, Ms. Myers. If
24 you could give us OP' report. We'll just keep everybody up
25 because we may have questions. Okay.

1 MS. MYERS: Understood. Good evening, Commissioners,
2 or good afternoon, Commissioners. Crystal Myers for the Office
3 of Planning. This text amendment, 22-23, looks at the portion
4 of a building that is under 4 feet in height to be exempt from
5 the building's lot occupancy calculations. There's just been a
6 longstanding interpretation on this. This interpretation is
7 based on the structures and required open spaces section in
8 Subtitle B 324, which allows short structures to be in required
9 open spaces. OP agrees with the Applicant that this section is
10 not intended to regulate lot occupancy and clarification is
11 needed. The Applicant submitted a proposed text amendment to
12 modify the structures and required open spaces section. After
13 considering the intent of this amendment, the Office of Planning
14 recommended expanding the text amendment to also modify B 312,
15 rules of measurement for lot occupancy section, and B 100, which
16 has the yard definition. This was the version advertised in the
17 public hearing notice and set down by the Commission. A key
18 change that was made in the version of the text amendment that
19 was set down is that a sentence is proposed in B 324.1 stating
20 that "this section shall not be used to exclude any portion of a
21 building from lot occupancy calculations." Another change is
22 that adding a new B 312.4(g) to exempt 4 feet and under porches
23 and decks from building area when calculating lot occupancy.
24 After set down, the Office of Planning further consulted with the
25 Department of Building, and DOB expressed concerns over some of

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1 the proposed changes. Please change the slide. Thanks.

2 The Department of Building's key concern was over
3 changing the language in B 312 and B 324 from requiring building
4 measurements to be taken from the natural or finished grade,
5 whichever is lower in elevation. Their concern that it would be
6 an added burden to homeowners applying for permits to do small
7 projects, such as deck additions. Typically those doing small
8 projects apply for permits without hiring professional
9 assistance. This measurement requirement would likely result in
10 them having to hire professionals to determine their natural or
11 finished grade and to provide measurements from it. This would
12 significantly increase the cost of doing a small improvement
13 project. As for the change to return to the original language
14 of no more than 4 feet, it provides a clear whole number, which
15 is easier for reviewers and applicants to understand, instead of
16 the less than 4 feet, which is really 3 feet and 11 inches. There
17 was also concern over amending the yard definition and moving the
18 rule that no structure occupy in excess of 50 percent of a yard
19 to the structures in open space section. This is because upon
20 further reflection we realized this would lead to other
21 amendments that would expand the scope of this text amendment
22 beyond its original intent. OP agrees with the Applicant that
23 the lot occupancy rules of measurement language should be further
24 addressed; however, in order to avoid unintended consequences,
25 we feel further study is needed for some of the additional changes

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1 we originally recommended, and rather than delaying this text
2 amendment further, these additional changes would be best
3 considered for a future text amendment. Therefore, OP removed
4 some of these recommended changes and this is shown in red in
5 the hearing report version that you have in front of you. This
6 text amendment should not impact racial equity in the District
7 because it would clarify how to measure lot occupancy, which is
8 a density control used throughout the city. OP recommends
9 approval of the amended version of the text amendment, which is
10 in the hearing report. Thank you.

11 CHAIRPERSON HOOD: Thank you, Ms. Myers. And let me
12 just say, I too having been applying for permits here recently
13 find that -- and it's a totally different, even though I'm on
14 the Zoning Commission, it's a total difference we out here doing
15 permits, the homeowner, and doing them themselves and I have
16 found -- I understand now, I understand wholeheartedly, but we're
17 fighting through it. I'm not saying everything's right, but I'm
18 fighting through it to get it done. But I will tell you that I
19 do not want, and I'm saying this to OP as well as Mr. Gambrell,
20 anything that's going to make it more burdensome on a homeowner,
21 and I'm not too sure -- I'm not going to go in that direction.
22 I know firsthand in the last couple of months. So anything that's
23 going to make it more burdensome, I want to make sure that we
24 make it as easy as possible and clear, and I think that's what
25 we're kind of doing here, and I will tell you, I did not know -

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1 - and I don't know whether I -- whether it happened and it just
2 got over me and I know a lot of stuff does because we have a lot
3 of stuff we deal with, I didn't know that was not counted, and I
4 appreciate the Petitioner showing that example because it's very
5 clear that it should be, and I would agree with both OP and the
6 -- and this is me talking -- agree with both OP and the
7 Petitioner.

8 But Ms. Myers, let me ask you, is the ZA still sending
9 out those determination letters with how he makes the
10 interpretation, or she now?

11 MS. MYERS: It's my understanding that when an
12 interpretation is made, it is posted to their website and then
13 the new interpretations of the regulations are sent to you all
14 for confirmation.

15 CHAIRPERSON HOOD: Right. And --

16 MS. MYERS: I don't know if that's going to change, but
17 that's my understanding of how things have been working.

18 CHAIRPERSON HOOD: Okay. I haven't seen one in a while.

19 Vice Chair Miller, have we seen one in a while? I
20 haven't seen one. We usually put on our agenda and that's my
21 point. I have not seen one.

22 VICE CHAIR MILLER: I don't recall seeing it recently.

23 CHAIRPERSON HOOD: Okay. I saw one about two or three
24 years ago, but I haven't seen one since.

25 Okay. Let me go back to Commissioner Imamura. And we

1 both have Office of Planning now and the Petitioner. Thank you.

2 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.

3 I'll first direct my question to OP. Ms. Myers, thank
4 you for your report. And I'm kind of wrestling with this, the
5 definition here, the natural or finished grade compared to
6 measured at the ground level. I guess I'm not fully convinced
7 by DOB's statement that it would require anybody filing for a
8 permit, additional money, to develop a set of plans for a permit.
9 And I guess what I'm trying to get at here is what is, you know,
10 what would be the fallout, if any, if we were to -- I believe
11 consistency is really important here. We know what natural or
12 finished grade is, you know, at ground level. It's sort of
13 pedestrian. That's something I suppose that everybody kind of
14 understands. But I do believe, you know, consistency's
15 important, natural and finished grade is defined. So if we were
16 to move forward with natural or finished grade, you know, what
17 are the unintended consequences of that?

18 MS. MYERS: It's been explained to me by DOB that it
19 makes it more challenging for the homeowner. So they were
20 explaining to me that typically someone may do a simple sketch
21 of what they're going to do for like a deck project, you know,
22 essentially like, you know, on a basic piece of paper, you know,
23 just sort of explaining what they're -- were trying to do, and
24 having terminology like ground level allows for DOB's reviewers
25 to have more flexibility on how they review it and interpret it,

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1 working with the applicant in those kinds of cases. If they were
2 to have to have natural or finished grade, it would require more
3 definition of the measurement, determining where that is, and so
4 they are just concerned that even just getting the bare minimum
5 of a basic drawing of what kind of project that is trying to be
6 applied for can be challenging. Something like asking a regular
7 homeowner to provide information about their natural or finished
8 grade may be a little too much.

9 From an OP side of things, we don't disagree that this
10 section should be looked at more. You know, our original intent
11 was to try to establish consistency, but we just were not as
12 aware of some of the challenges when it comes to the reviewer
13 side of things, when it comes to DOB. And so perhaps we should
14 look at this a little bit more carefully and this particular text
15 amendment may not be the right text amendment to address it, but
16 we're not saying it shouldn't be addressed. We're just saying
17 this may not be the time and that we need to be a little bit more
18 careful about it.

19 COMMISSIONER IMAMURA: Okay. From your understanding
20 it allows the reviewers more flexibility in terms of using the
21 language at the ground level versus finished grade or natural
22 grade. I'm just really wrestling, like what is that flexibility
23 that they're looking for?

24 MS. MYERS: Not having to know exactly where the natural
25 or finished grade is. At least that's how they've explained it.

1 You know, it could take a little bit more information.

2 COMMISSIONER IMAMURA: I understand. I guess if
3 there's a -- I'm just trying to think this through. If there's
4 a homeowner that's sketching this out on their own and they say
5 this is my ground level, and a reviewer -- and maybe this is,
6 you know, heading into some dangerous territory here, I'm trying
7 to hypothesize what that conversation looks like, but I think
8 obviously the reviewer is a technical expert and can easily
9 surmise that perhaps what the homeowner really meant is this is
10 probably my natural grade or finished grade. So I'm still kind
11 of wrestling with that.

12 I guess the other question I have, Ms. Myers -- and
13 then I'll redirect my question to the Petitioner, or the Applicant
14 -- there was an image that they showed in their presentation and
15 just about permeable surface area, and so you know, whether, you
16 know, these are bunkers, right, occupiable bunkers, you know,
17 conditioned space or having, but then if it's a deck that's on,
18 you know, posts, you know there's still somewhat permeable
19 surface area, I guess I'm curious is there any comment that you
20 might want to address with that to their point that, you know,
21 that's impermeable surface area?

22 MS. MYERS: I don't have any specific comment. I mean,
23 we tried to pretty much keep to the ori- -- the language that's
24 in the regulations today. We really -- this text amendment should
25 do as minimal as possible, so we didn't try to do anything that

1 | would be drastically different than what the text is today when
2 | it comes to that section.

3 | COMMISSIONER IMAMURA: Okay. I agree with that point,
4 | Ms. Myers. I think these sort of changes -- small changes allow
5 | time for evaluation, and so I'm certainly in agreement with that.
6 | For the Applicant, I just wanted to ask if you could perhaps
7 | hypothesize and maybe help me understand and then maybe help you
8 | understand, put yourselves in the DOB's shoes here, sort of what
9 | they're thinking and why homeowners might be required to, you
10 | know, why changing the language would be an increase in cost to
11 | them because I'm still trying to wrestle with that. Yeah, I
12 | can't figure that out, so. I don't know. Can you put yourself
13 | in DOB's shoes and hypothesize why they might have suggested
14 | that?

15 | MR. RUEDA: I have a hypothesis regarding this. The
16 | difference is in what is accepted and what is required, right,
17 | so the building code in 106.213 has very clear guidelines for
18 | drawings that are submitted to DOB to show zoning compliance,
19 | okay, and all of the points speak to showing whether the grade
20 | is altered, showing the original condition, showing the new
21 | condition. And the cost associated if you're just doing a deck
22 | would be in whether or not you're hiring an architect, a surveyor,
23 | a structural engineer, or if you're hiring a contractor who's
24 | certified to do this and since it's your home, you're not required
25 | the same level of certification as your drawings. And so the

1 onus for small projects like just a deck would be I think tied
2 up in who you hire to do the work. And so I understand that
3 comment, but I question whether or not it is appropriate for the
4 language of the regulations to ignore the fact that if the grade
5 changes, it has an effect on the lot occupancy, and if it's just
6 a structure that we're talking about that's not a building, is
7 that structure tied to the original grade, the new grade, or the
8 lower of the two. And I do agree with OP that that needs to be
9 reviewed further. But the language adopted in this text
10 amendment, we feel strongly that should be anchored in
11 definitions provided by the regulations and not something that -
12 - I'm surprised to hear DOB suggests that they want the reviewers
13 to have flexibility in how they interpret submissions. Maybe
14 that's true and actually it makes a lot of sense given the variety
15 of drawings that come into DOB and the variety of responses that
16 come out of the DOB.

17 If I can make a different -- well, I can make a
18 different point later, but you asked about pervious surface, and
19 I think that that wasn't necessarily a focus of a change in the
20 regulation, it's just additional support for why we believe that
21 this misinterpretation of the 324 -- it's really not a
22 misinterpretation. It's really a misapplication of that language
23 to allow buildings to creep on a site where you can potentially
24 a 100 percent lot occupancy and only be considered 60 percent
25 because the portions that rise above 4 feet are 60 percent, but

1 | therefore by having a change in lot occupancy greater than 10
2 | percent not being recorded doesn't require that you then comply
3 | with pervious surface because the trigger point for that
4 | regulation in residential zones is 10 percent of a change if
5 | there's an existing building.

6 | And I'm going to add one last point. Maybe it's
7 | premature, but there was mention of including porches in the
8 | language for lot occupancy, being porches under 4 feet, and the
9 | caution that I would have in this case is that porches with roofs
10 | always count towards lot occupancy, so it would have to be
11 | considered an uncovered porch, which effectively is a deck. So
12 | the language -- the use of the word porch may be confusing unless
13 | it's defined somehow with or without a roof or somehow, but in
14 | the definitions. Anyway, I hope that was helpful.

15 | COMMISSIONER IMAMURA: It was, thank you. I appreciate
16 | that explanation and set of examples there.

17 | Mr. Chairman, I think for this moment those are all the
18 | questions that I have for both Planning and the Applicant, but
19 | may have additional questions after my other -- my fellow
20 | Commissioners.

21 | CHAIRPERSON HOOD: Okay. Thank you.

22 | Commissioner Stidham, any questions or comments?

23 | COMMISSIONER STIDHAM: No. I think Commissioner
24 | Imamura covered it. I have the same questions and trying to wrap
25 | my head around the same notions and understanding why it would

1 be more burdensome to the homeowner when I sort of feel like it
2 provides additional specificity so that the homeowner better
3 knows where it's measured from instead of -- it sort of releases
4 the ambiguity about what is ground level. You know, is it new
5 ground level or is it the ground level where you started where
6 the language that the Applicant's suggesting is more specific and
7 I think a homeowner would know where they're supposed to measure
8 from, so just confused why it's more burdensome. It's more of a
9 comment than a question.

10 CHAIRPERSON HOOD: Okay. Thank you.

11 Vice Chair Miller, any questions or comments?

12 VICE CHAIR MILLER: Thank you, Mr. Chairman, and thank
13 you Alan Gambrell, and Hugo Roell, and Guillermo Rueda, and others
14 for bringing this case forward, and Office of Planning, Crystal
15 Myers, for your report today.

16 I have concerns which might go beyond this specific
17 text amendment. I appreciate the text amendment being brought
18 forward to -- I think we can always further clarify and provide
19 better consistency, internal consistency, with our very extensive
20 expansive zoning regulations and there is always that tension or
21 balance, constructive tension maybe I should put it, or bal- --
22 and balance between consistency and clarity and flexibility to
23 allow projects to go forward without overburdensome regulations.
24 I think we all can agree generally on that concept. And I
25 certainly appreciate the internal inconsistencies or -- and lack

1 of clarity that is being presented with this case, so I want to
2 see more clarity. But I have broader concerns. I think this -
3 - first of all, we don't have any community concerns -- community
4 input as far as I know, other than from the Petitioners/Applicant
5 in this case, and I think this does have wide ranging implications
6 for projects given that this is a longstanding interpretation -
7 - I see somebody's going to want to comment, and I will you an
8 opportunity to comment for sure, but my comment is that I have
9 concerns that there's been a longstanding interpretation by the
10 Zoning Administrator, misinterpretation, misapplication,
11 whatever you want to call it, but it's been there for a long
12 time. Also adopted wrongly or whatever by the BZA that I've been
13 a part of in cases over the last several years about these
14 structures that are 4 feet or less and whether they apply to lot
15 occupancy requirements.

16 There were two cases this week before BZA. I'm sure
17 Mr. Gambrell is aware of them. He follows our -- follows Zoning
18 very carefully. I know Anthony Hood is aware because he was on
19 one of them and I was on one of them. I think they're still
20 outstanding, so I don't want to get into the specifics of those
21 cases, but they are emblematic of the kind of cases that have
22 come before the BZA, and in terms of open air decks, open air
23 decks that don't have occupiable or other space below it, they
24 are permeable to the ground. I just built -- I didn't build,
25 our contractor did, with an expansion of our open air deck, which

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1 had to go through a lot of regulatory reviews, so I'm familiar
2 with the issue generally and the burden that is on homeowners
3 just to do a simple -- a deck to their house or open air deck to
4 their house or in our case an expansion of a deck, open air deck,
5 to their house, and I personally -- I don't know if this is the
6 case that this should be brought up in or it's a separate case,
7 Ms. Myers, but I had a dialog with your colleague, Mr. Jesick,
8 about open air decks, I don't know if you're aware of, and then
9 Mr. Kirschenbaum I think was on the other case this week in BZA,
10 which I'm not as familiar with because I didn't follow this
11 closely, but I have a problem with -- I don't have a problem with
12 open air decks applying continuity to lot occupancy of a lot, but
13 I do have a problem with it being a variance, a variance relief,
14 if it's an open air deck because I think that variance requirement
15 for open air decks where the threshold is very high for that
16 exceptional or extraordinary condition to -- for that first and
17 second prong to be satisfied in the variance relief test is very
18 difficult to overcome. And I think it could have been overcome
19 -- I think there's a reasonable interpretation of the zoning
20 regulations where it can be overcome in certain cases, but I can
21 see where my colleagues on the board and Office of Planning and
22 the community might have problems with that, but I really have a
23 concern that of what the unintended consequences of this text
24 amendment is, even though we're trying to clarify -- provide
25 certainty, because I think if it's going to say that even if it's

1 under 4 feet, an open air deck that's even under 4 feet, it's
2 going to be a variance when I think that it shouldn't even be -
3 - I'm going to give you an opportunity, Mr. Rueda, believe me, I
4 will. This is -- we all go - we'll go on for hours if we need
5 to. So I realize that's a bigger issue than what you're trying
6 to deal with I think in this case, but you can correct me and
7 provide me greater understanding what I'm -- of where I'm off
8 base in terms of talking about this in the context of this case,
9 but it's just in front of my mind that Office of Planning was
10 going to look into the issue of open air decks. I don't know
11 about screens, the porches and the enclosures, that gets into
12 other issues, but there also can be clear to the ground and not
13 have bunkers or structures, or occupa- -- because maybe they
14 should be -- I don't think 4 feet or under a 4 feet and over open
15 air decks should be subject to a variance test under the zoning
16 regulations. That's just my own personal opinion. I understand
17 the Office of Planning is looking at that issue, and I see Ms.
18 Steingasser has come up. I would welcome any comments on anything
19 I've said from both the Office of Planning and from the
20 Petitioners in this case to enlighten me as to -- on this
21 particular subject, and it may be an appropriate subject for a
22 different case, rather than this one, tacking it onto the issues
23 of this particular case, which I think I understand, and I don't
24 really have a problem with what the Applicant is suggesting, and
25 I don't have a problem with the Office of Planning, so I'll turn

1 to recommendation and look further at that ground level. I don't
2 have a problem with either one of those actually. My issue really
3 is beyond that, it's about open air decks, period, being subject
4 to a variance test if they're over 4 -- if they're over 4 feet.

5 So maybe, Ms. Steingasser, you could start us off and
6 enlighten me and all of us as to what we're talking about.

7 MS. STEINGASSER: Yes, sir. I hate to jump and cut to
8 the front of the line with comments, but they are two very
9 different issues. This is not relevant to decks and it -- that
10 and the standards for relief for different types of deck activity,
11 so I would ask that we hold that discussion for a separate case,
12 which we heard very clearly on Tues- -- Wednesday from the Board
13 and proceed with finishing this case first, because I fear that
14 we keep adding pieces to this case that the intent of what the
15 Petitioner was trying to get at, the protections and
16 clarification, will get further and further afield from where we
17 were starting. So the deck issue, the height, the type of relief,
18 that's another case and this case will not impact that, so we
19 will be looking --

20 VICE CHAIR MILLER: Well, that's my question. Would
21 this case, if we went with these clarifications, whether they're
22 yours -- language or the Petitioners', would they disallow --
23 would they clarify I guess, these are clarifying text amendments
24 that clarify that under 4 feet, open air deck amendment, even an
25 under 4 foot open air deck amendment would require a variance

1 under our current zoning regulations, which is not the case now,
2 but I have a problem with it being over 4 feet even in an open
3 air deck, but with this text amendment, with its clarification
4 that either you've suggested or the Petitioner suggested, say
5 that even under 4 feet an open air deck would require a variance
6 under 4 feet?

7 MS. STEINGASSER: I don't believe it would, but I'm -
8 -

9 MR. RUEDO: Nope, it won't.

10 MS. MYERS: It wouldn't. I mean, this -- it won't do
11 that

12 MS. STEINGASSER: I'm getting Teams chats from all of
13 my colleagues at OP confirming that it would not.

14 MR. RUEDA: Yeah, and from the Applicant, it won't.

15 MS. STEINGASSER: Even from the Applicant there.

16 MR. RUEDO: Can I make a further comment on that?

17 VICE CHAIR MILLER: I welcome the
18 Applicant's/Petitioner's -- are you the Applicant or the
19 Petitioner? Are they the Applicant, what is the proper
20 nomenclature?

21 MS. STEINGASSER: Their application is a petition, so
22 they're both.

23 VICE CHAIR MILLER: Okay. So can I hear from Mr. Rueda
24 or -- and Mr. Gambrell on that point?

25 MR. RUEDO: Thank you. Thank you very much. I wanted

1 to clarify a little bit. I'm not aware of some of the concerns
2 that you're talking about with variances. We're simply -- the
3 simple rationale was that 324, which is a section that was
4 designed to talk about structures other than buildings that could
5 be in open space, right, that they could only be 4 feet or less,
6 right, and with that missing comma, that provision in 2020 started
7 to develop into allowing buildings to project either by
8 themselves or under a deck, but at 4 feet or less and the
9 interpretations -- the determinations from the Zoning
10 Administrator had devolved into calling these portions of
11 buildings not structures, so they use the language of 324, and I
12 confirmed this at one point with Mr. Vollin because I couldn't
13 understand how they were using this -- how they were justifying
14 portions of buildings to remain not being counted towards lot
15 occupancy, and so the language of 324 was what was brought to my
16 mind, a section that has nothing to do with buildings in its --
17 in principle, just about things that could occupy on a site and
18 not count towards lot occupancy, things in required open spaces,
19 that's the title of the provision.

20 I'm not trying to go into the weeds, but the bottom
21 line here is that the distortion to suggest that portions of
22 buildings would not be considered structures if they're less than
23 4 feet is completely manufactured. And it's not a longstanding
24 interpretation. It is completely manufactured out of 324, which
25 is what we were trying to address by initially inserting the

1 comma to show that buildings were excluded. It's really as simple
2 as that. There's no attempt to disqualify the decks or all the
3 things that you were talking about requiring a variance, because
4 open air decks obviously are, you know, sufficiently defined, at
5 least under the current practice, it's just that it's -- okay,
6 I'm going to stop there. I think that we're good with what Ms.
7 Steingasser said too, as far as it not affecting -- not requiring
8 a variance.

9 VICE CHAIR MILLER: Okay. Thank you.

10 MS. STEINGASSER: The other thing I'd like to kind of
11 clarify is the discussion of ground level versus the language
12 that we are not recommending as part of this case. And the
13 conflict shows up when you look at the definitions. There is a
14 definition of natural grade and there is a definition of finished
15 grade and they have to do with human intervention. And almost
16 all lots in D.C. have had some level of human intervention, so
17 it then puts kind of an onus on the homeowner to figure out when
18 was the last time my grade was manipulated or changed in any way,
19 and that can be through landscaping, it could be through an
20 addition, it could be through a swimming pool, it can be through
21 just, you know, extensive gardening, and now what does that do
22 to this elevation? So now, they've got to establish within the
23 last five years what was the grade and now at the time of building
24 permit what is the grade, and it just -- that is a much more
25 burdensome on a homeowner who's going out to put in a deck or,

1 | you know, some kind of small addition as opposed to being able
2 | to stand on the ground and say okay, it's 4 feet from basically
3 | where my feet are, you know, and so it's that kind of burden that
4 | we just haven't been able to assess as part of this case.

5 | We are going to loo- -- we do think it needs additional
6 | looking at, but we want to be able to look at, you know, what is
7 | the case history, are there -- is there proliferation of
8 | difficulties, and if not, then why are we changing? So we just
9 | feel like wrapping that into this case became more of an issue,
10 | as Ms. Myers was saying, of unintended consequences that we really
11 | weren't comfortable with.

12 | VICE CHAIR MILLER: Okay. Well, thank you for that
13 | response, Ms. Steingasser. I guess I'll just conclude at this
14 | point by saying I agree with the Chairman. I'm not interested
15 | in doing anything that increases burdens on homeowners to expand
16 | marginally their property with open air decks and maybe porches
17 | that don't have occupiable space below them to increase the use
18 | and enjoyment of their space. It's -- under a special exception
19 | procedure rather than a variance procedure, which is currently
20 | required in cases as interpreted by the Zoning Administrator of
21 | 4 feet or higher. So I don't support that current interpretation
22 | for open air decks or maybe even open air screened porches. So
23 | I'm -- I appreciate Office of Planning looking at the larger
24 | issues associated with the case, and I think I understand the
25 | complications that you want to study further in terms of the

1 grade, but that's not my issue here, which goes to the larger
2 issue that I guess this text amendment case is not designed to
3 address, and I just want to make sure that this text amendment
4 didn't exacerbate the concern I had about existing interpretation
5 of open air decks and making it even harder for homeowners to do
6 a simple expansion that's supported in a case I sat on by the
7 adjacent neighbors, the Advisory Neighborhood Commission, and the
8 Office of Planning, even the Office of Planning, after additional
9 information was provided to meet that high threshold of that
10 first exceptional condition prong.

11 So I guess that's it, Mr. Chairman. I am concerned.
12 generally though that we don't have more community here to --
13 it's a kind of an issue that doesn't jump out maybe to ANCs, so
14 they may not want to be testifying on it in general, but I'm a
15 little concerned that we have no other citizen or public input
16 on this other than from the Petitioner, although I realize -- I
17 appreciate all the information that the Petitioner and Applicant
18 has provided in terms of how this could be clarified going
19 forward. So thanks, Mr. Chairman.

20 CHAIRPERSON HOOD: Thank you. There are some
21 advantages of going last because we get muddy and put a lot of
22 stuff in it. I too agree with the Office of Planning. I do not
23 want to talk about natural grade and finished grade. We just
24 talked about it, Vice Chair, I think you remember, maybe two
25 years ago or three years ago on H Street. That comes up every

1 three years, so. And I appreciate you all for taking it out and
2 I understand, Mr. Gambrell, but what I will ask though, Ms. Myers
3 and Ms. Steingasser, is that we again revisit that and put it on
4 fasttrack. In the case I was in -- well, I better no talk about
5 that case, but I do agree with your comments, Vice Chair. We
6 need to -- and I think you probably heard my comments and I heard
7 yours yesterday -- we need to do that, but there's so many things
8 we have in the pipeline and things we need to straighten out,
9 and this is just one of them. And I appreciate Mr. Gambrell and
10 his team. I mispronounced everybody else's names so bad I don't
11 want to do it again, Mr. Rueda, and I don't even want to start
12 with that, but I will tell you, I appreciate it. I'm not that
13 concerned about a lot of people not being here for this particular
14 case and the -- and that's hard for me to say. The reason being,
15 I know Mr. Gambrell has a following, and I know he just didn't
16 start telling us today, I'm sure he told a lot of the people in
17 the community, because I watched it when we did the pop backs,
18 so I'm sure that he has communicated. Is that a fair assessment,
19 Mr. Gambrell, that you've talked to others in the community about
20 what you're doing and what's going on, can I say that without
21 knowing that? Yes?

22 MR. GAMBRELL: If I -- I must be muted. Am I unmuted?

23 CHAIRPERSON HOOD: Yes, you're unmuted.

24 MR. GAMBRELL: No. And I think here's the reason why.

25 The reason why this should be a very simple text amendment --

1 I'll get back to the core of this. For us, this is a comma, and
2 it was a comma because we were interested in having the regulation
3 as modified in 2018 under '17-'18 to have it be enforced, because
4 it was being ignored by the Zoning Administrator effective 2018
5 or whenever he started misinterpreting the change that was made
6 in 2018. So that was that simple as it was. This text amendment
7 should have been, in my estimation, a no-brainer because it wasn't
8 really a text amendment. It was a clarification of existing --
9 an existing regulation that was being circumvented by the Zoning
10 Administrator.

11 The Office of Planning introduced -- and we appreciate
12 them introducing the language around the rear yards and decks,
13 and -- because that came up as an area that was a bit gray for
14 people. Maybe the solution -- I'll just go ahead and on the fly
15 negotiate this out and I hope that Guillermo and Hugo don't get
16 mad at me on this, but maybe let's just go with the Department
17 of Building's language on ground and move this thing forward
18 because, you know, our central concern was not about decks in the
19 back, and in fact a deck is a structure. We're concerned about
20 buildings, livable space. The deck issue never came up for us
21 whatsoever. It was not a point for us to be concerned about.

22 CHAIRPERSON HOOD: Okay.

23 MR. GAMBRELL: We don't want --

24 CHAIRPERSON HOOD: Okay. I get it. Because I would
25 associate myself with the Vice Chair's comments as well, as he's

1 already enumerated on that, both issues that he and I both are
2 concerned about.

3 I think this is pretty straightforward for me. I'm not
4 sure -- Ms. Myers, are there -- we always talk about unintended
5 consequences and there must -- do we know the reason, and I may
6 -- it may be in here, I may have missed it or I may have forgotten
7 it, is there a reason why the ZA was interpreted like that way
8 or do you all -- does the Office of Planning see -- because you
9 all obviously agreed with Mr. Gambrell -- was there a reason the
10 ZA, is interpreting -- and then here's the other problem I've had
11 for years even when we did the ZR '16 or whatever we call it now,
12 2016, or whatever it's called, our new regulations, the
13 interpretation sometime changes when the ZA changes, and that's
14 why I wanted to kind of pull back some of the authority with my
15 colleagues at the time from the ZA, because I wanted to be exactly
16 codified and memorialized in our regulations, but that didn't
17 happen. He still has some flexibility, and we had a good -- I
18 think Matt LeGrant -- I'll call his name, it was very good. I
19 didn't always agree with him, but he stayed the test of time,
20 but before that we had zoning administrators like every year, so
21 my problem was interpretations and the way we do things changes
22 depending upon who's in office. So back to my original question,
23 Ms. Myers, did the -- did you all see with this change any
24 unintended consequences of what Mr. Gambrell and what you all
25 have agreed with Mr. Gambrell with?

1 MS. MYERS: In this amendment, we do not. I mean, we
2 tried to remove what we thought would result in unintended
3 consequences and simplify it to look like what was advertised in
4 the public hearing notice. So we feel that the version that you
5 have in front of you now in the public -- in our OP draft for
6 the hearing is a more simplified version and should not result
7 in unintended consequences. But you know, there could something
8 where, you know, we didn't think of, but we did try to keep this
9 very simplified.

10 CHAIRPERSON HOOD: Okay. All right. I'm glad we took
11 out that natural or finished grade because I can tell you that's
12 goes on and on and on and it never disappears from my plate, so
13 I'll leave it at that.

14 And I will tell you, I agree with you Vice Chair, I don't want
15 to add anything else into trying to get permission myself. And
16 I can tell you, it has not been easy, but we've been weathering
17 this storm. And I'm a resident too. I don't always just sit on
18 the Zoning Commission. I'm a resident too, and I have to go
19 through that same process.

20 All right. Let's see. Any other questions or comments?

21 Commissioner Imamura?

22 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. This
23 is for OP. Ms. Myers, the Petitioner made a comment, I'm curious,
24 have we seen because of the lack of a comma there in the original
25 text, which the intent -- at least from my reading of it and

1 grammatically probably there should have been a comma there, but
2 because there wasn't, have we seen a proliferation of building
3 creep, as they call it?

4 MS. MYERS: There has been an increase. I mean, just
5 from, you know, the way we look at things and the 4 foot rule is
6 what we sometimes will call it has been around for many, many
7 years. I'm usually more familiar with it when it comes to
8 reviewing deck cases, but I understand from the Petitioner that
9 it has also caused complications when it comes to buildings
10 themselves. I personally have not noticed that as much, but I'm
11 not saying they're wrong, it's just not something that I had been
12 as aware of.

13 COMMISSIONER IMAMURA: Okay. Thank you, Ms. Myers. Or
14 is that -- I admit Ms. Steingasser, I'd like to hear your
15 comments, and then, Petitioner, I have a question for you to
16 respond to.

17 MS. STEINGASSER: I've been here a little bit longer
18 than Ms. Myers, so yes, I have seen the extension of unintended
19 lot occupancy and I think the Applicant/Petitioner has --

20 CHAIRPERSON HOOD: Ms. Steingasser, I think we're
21 having a problem hearing you, at least I am.

22 COMMISSIONER IMAMURA: I can hear her a little bit, so.

23 CHAIRPERSON HOOD: Yeah, but I don't think nobody else
24 can hear her. Can you speak up or --

25 COMMISSIONER IMAMURA: Just a bit more.

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1 CHAIRPERSON HOOD: Try it now.

2 MS. STEINGASSER: Is that better?

3 COMMISSIONER IMAMURA: That's better.

4 MS. STEINGASSER: Okay.

5 CHAIRPERSON HOOD: Can anybody else hear? Okay. The
6 majority of us can't hear you.

7 MS. STEINGASSER: We have seen and there have been many
8 appeals based on that lack of a comma, so we have seen that there
9 are effects and that's why the Petitioner brought this forward.

10 COMMISSIONER IMAMURA: And I guess some might argue,
11 Ms. Steingasser, that might be a creative, for those that are
12 using that, sort of a creative interpretation that would allow
13 for that.

14 MR. RUEDA: It's called a believable fiction. The
15 Office of the Zoning Administrator was good at accepting
16 alternate realities of the regulations based on inconsistencies
17 or lack of clarity. I know Hugo has a lot of experience with
18 this.

19 MR. ROELL: Yeah. I live on the 2300 block of Ontario
20 Road and there are now full projects on just my block that use
21 the interpretation. One of the reasons this upset me was that
22 it's being used creatively, I agree, but to create some units for
23 which I have serious questions about light and air, not only
24 zoning issues, but also the building code issues, these cellars,
25 these extra cellars or bunkers as Alan calls them have created

1 | some properties that I don't think are suitable for sale or rent
2 | in the District of Columbia, and that is one of the things that
3 | made me -- upset me about what's going on in my block. Developers
4 | are coming to my block because they like the looks of it. I'm
5 | not opposed to what they're doing in terms of building, that the
6 | zoning changed, and you know, we're encouraging more density, but
7 | I do -- I'm not fond of these units that are being created in
8 | cellars that I feel are, you know -- I think if the occupiers
9 | realized that they were not in compliance with the code, they
10 | could cause some trouble. So I, you know, that's one reason it
11 | -- why I started looking into this. And you know, I think that
12 | really what we're talking about is the building area definition
13 | and that was amended by the Office of Zoning to not include a
14 | little section that was about if, in the opinion, it doesn't
15 | affect the light and air of the neighbors. And my question is
16 | the person at the Zoning reviewing that, what kind of
17 | understanding do they have of that before they sign off of it?
18 | I don't think that they really, you know, they spend five minutes
19 | maybe looking at it and then sign off and say it doesn't affect
20 | the neighbors. But the way it's written, you could do -- in my
21 | neighborhood, you could do an addition and cover the whole lot
22 | with a 4 foot extension, you know, over and above the 60 percent,
23 | and I think that would, you know, if that would happen next door
24 | to me, I would seriously be upset, and particularly if there was
25 | a deck on top too, which is what happens.

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1 So I -- you know, these are the -- it has affected me
2 and it's very -- and the forty buildings on my block, so most
3 probably over the District it's got to be a lot more.

4 COMMISSIONER IMAMURA: All right. Mr. Roell, I
5 appreciate your point of view. I'm reluctant to interpret what
6 the reviewers know or don't know. They work very hard for the
7 city, and they are technical experts in their own field and that's
8 why they've been hired to do what they've been hired to do. Also
9 what's made me uncomfortable is casting a lot of blame on the
10 Zoning Administrator and the interpretation. I would prefer the
11 Petitioner to stick to the facts and describe it in a way that
12 this is what the outcomes are, rather than placing blame on
13 individuals. And so I think if we stuck to, you know, what the
14 interpretations were or what the outcomes were, that would have
15 been a little bit better, so just in the future please remember
16 that, at least when I'm on the Commission.

17 I don't think it's fair when people aren't able to
18 defend themselves. And you know, the projection of accusations
19 when somebody is not here, I think is unfair and unwarranted, but
20 I do understand the issues around this and the outcome and what
21 you've described. I think just please articulate your message a
22 little bit better next time.

23 All right. Mr. Chairman, I don't think I have any
24 other questions.

25 CHAIRPERSON HOOD: Okay. Thank you. Anybody else?

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1 All right.

2 COMMISSIONER IMAMURA: Sorry, Mr. Chairman, I do. Mr.
3 Gambrell had yielded the definition of a natural and finished
4 grade I think, and made a comment to that and I just wanted to
5 confirm that the Petitioner here is now at least amenable to
6 grade -- to ground level as described.

7 MR. GAMBRELL: That would be in the -- Crystal, I don't
8 have it right in front of me, the Department of Buildings' edits.
9 That would be in the section that kind of deals with decks,
10 correct?

11 MS. MYERS: Ground level is actually in the I think
12 the building area, pulling it up as well, in the building area
13 definition or a lot occupancy calculation definition as well. So
14 it's used I believe a couple of times, so ground level would be
15 in B 312. -- B 312.3, sorry, B 312.3, and it is used again in B
16 312.4(g), in our new (g), which is the exemption for decks and
17 porches that are 4 feet and under, so it would be in that section.
18 In the 324 section, it would be going back to the terminology is
19 grade, so rather than adjacent natural or finished, whichever is
20 lower in elevation, this would just say above the grade instead,
21 so it's just taking out that adjacent natural or finished grade
22 terminology.

23 MR. RUEDA: I would just say that I do object to the
24 use of the word porch, unless it's somehow clarified that it's
25 an uncovered porch, because it's been -- this has been

1 longstanding practice of the Zoning Administrator. A roof over
2 a deck counts towards lot occupancy, so writing porches to me is
3 unclear, unless you describe whether it has a roof or not.

4 MS. MYERS: I don't have a problem with putting
5 uncovered porch. And since we're saying it on the record, I
6 think we're okay unless legal says something. But I think we're
7 okay with that change, so instead it would say porch -- uncovered
8 porches and decks would be the way it would be termed.

9 MR. RUEDA: I would agree with that. And the thing I
10 would just add is I heard something about a fasttrack to
11 considering how to refer to grade., is that what I understood
12 because I would be supportive of that in that light.

13 CHAIRPERSON HOOD: Thank you. We'll see how that goes.
14 I'm the one who said that. I just don't like things to linger,
15 but I will tell you, Mr. Rueda, this is not our first time, it's
16 not our first rodeo dealing natural grade and finished grade.
17 The reason I remember it because I remember Commissioner -- our
18 former Commissioner May, we had a long discussion about that, so
19 anyway I'll leave it at that for now.

20 Ms. Myers, I'm going to ask you and Ms. Stein- -- oh,
21 wait a minute. Commissioner Imamura, have you finished?

22 COMMISSIONER IMAMURA: Yes, Mr. Chairman. I'm supportive of the
23 added specificity for the uncovered porch and just want to comment
24 that, you know, Commissioner Stidham and I both, you know -- the
25 increase specificity is important, but also appreciate the

1 Applicant in yielding to the term of ground level, so I think
2 that makes a lot of sense in order to move this forward, and
3 certainly it's Vice Chair Miller's point and certainly don't want
4 to put any additional onus on homeowners, so I'm comfortable
5 where we are, Mr. Chairman.

6 CHAIRPERSON HOOD: Okay. I'm not yet, so, I'm going
7 to ask you, Ms. Myers, because I think we put a lot of stuff that
8 shouldn't have been in this conversation. So could you or Ms.
9 Steingasser tell me what the bottom line is -- I could go to the
10 Petitioner, but I'd rather go to the Office of Planning since you
11 all agree -- if you can put that together right quick because
12 there was some things that we brought up and other concerns that
13 should probably not have come up at this point, as you also -- I
14 want to make sure that we know exactly what's before us, and for
15 me it's basically dealing with the 4 foot, but I'll leave it to
16 you all to explain on the record what's actually before us and
17 what are we dealing with only, if you all could do that?

18 MS. MYERS: Certainly. So what we're looking at is
19 what is presented in the OP report that you all have in front of
20 you for this hearing and the changes what we've discussed today,
21 the only change from these changes is that we are now going to
22 be saying uncovered porches, so in 312.4(g), it will say uncovered
23 porches and decks, and that's the only change from what is in
24 the report. Otherwise, the Petitioner has agreed to allow for
25 the adjacent natural or finished grade to be removed from this

1 text amendment, which is what we show in the OP report.

2 So this text amendment will essentially be taking the
3 4 foot rule out of B 324.1 and by doing that it has that sentence
4 that says, "this section shall not be used to exclude any portion
5 of a building from lot occupancy calculations pursuant to
6 Subtitle B 312." And the other key thing we did was make sure
7 that there is an exemption for porches and decks that are no more
8 than 4 feet in height from the building area definition, and
9 that's the B 312.4. And that's really the big thing we did, we
10 took out most of the other significant changes, because like we
11 said, there needs more time to review it. The other changes that
12 you see in front of you are more smaller changes, just clarifying
13 some language and like really, you know, just really cleaning
14 some things up, but the substantive ones were the two that I
15 mentioned earlier. And so that's it.

16 CHAIRPERSON HOOD: Thank you, Ms. Myers. You did that
17 off the cuff. I wanted that for the record. I appreciate it,
18 and I think more and more I think more study needs to be done
19 when we start talking about other topics, I know other things
20 come into play, but I think that's very important. Anything else
21 on this?

22 Ms. Ackerman? Let me see, Ms. Ackerman?

23 MS. ACKERMAN: Yes, sir.

24 CHAIRPERSON HOOD: You see why I don't never predict
25 how hearings are going to go? You and I talked about earlier

1 about how long this would go. That's why I --

2 MS. ACKERMAN: Uh-huh.

3 CHAIRPERSON HOOD: That's why I never do that. Okay.
4 I'm just having fun. So do we have anyone here to testify?

5 MS. ACKERMAN: I do not believe so, no.

6 CHAIRPERSON HOOD: All right. Typically that's it.
7 Thank you all. Let me hear -- let me hear what my -- you've heard
8 the recap from Ms. Myers. I don't think -- and this is
9 rulemaking, so I don't need to go back to the Applicant and the
10 Office of Planning and do anything. You've heard what's before
11 us. We are going to go on the assumption of what Ms. Myers has
12 -- how she's recapped that and briefed it for us, and I thank
13 you again, Ms. Myers, job well done.

14 Is anyone uncomfortable about moving forward for -- I
15 think this is a two-vote case, right, Ms. Ackerman? I think text
16 amendment's a two --

17 MS. ACKERMAN: Let's let Mr. Ritting comment on that.

18 CHAIRPERSON HOOD: It's two.

19 MR. RITTING: Yes. You have to take proposed action
20 to refer it to NCPC and to do a proposed rulemaking notice.

21 CHAIRPERSON HOOD: Thank you. Thank you, Mr. Ritting.
22 Yeah, I figured it -- two votes then it's NCPC. Okay. Anybody
23 have any objections to moving forward?

24 VICE CHAIR MILLER: Well, so we're going to get
25 clarification language, right, apparently, I think, clarifying

1 | that this doesn't affect open air decks or porches in terms of
2 | the existing interpretation of the 4-foot rule or are we going
3 | to get an additional language that would be added to the proposed
4 | rulemaking for that to clarify that it doesn't affect that or -
5 | -

6 | CHAIRPERSON HOOD: Do we need that?

7 | VICE CHAIR MILLER: -- see that between proposed and
8 | final, and let the public comment on it as well? I just -- I'm
9 | unclear on that.

10 | CHAIRPERSON HOOD: So do we need to do that as an
11 | alternative? Are you requesting that because I thought Ms. Myers
12 | had captured everything.

13 | VICE CHAIR MILLER: I thought she captured it, and I
14 | just didn't know if she was proposing language to further clarify
15 | this clarifying amendment, so I just didn't know whether there
16 | was going to be additional language in the propo- -- which I --
17 | it's fine, I'm willing to accept that they will provide that and
18 | go forward and not stop this from going forward tonight with
19 | proposed action, if that's the case. I think it's -- I think
20 | it's either necessary or I need some -- I own -- I need some
21 | reassurance that it isn't necessary in terms of this
22 | clarification to have that additional clarification. I also have
23 | asked -- you've asked that the whole issue of nat- -- the grade
24 | thing be looked at further, which OP is looking at further. I
25 | also want them to look at the whole open air deck, open air

1 porches issue, not to make it subject to the variance, period.

2 CHAIRPERSON HOOD: I do too, and I've actually
3 mentioned that a while back.

4 VICE CHAIR MILLER: Right. So I just wanted to recap
5 where I was.

6 CHAIRPERSON HOOD: Okay.

7 VICE CHAIR MILLER: And I'm willing to go forward with
8 those understandings and maybe we are going to get clarifying
9 language in the proposed rulemaking, but I think it's pretty
10 established on the record that it doesn't affect --

11 CHAIRPERSON HOOD: Right.

12 VICE CHAIR MILLER: -- open air porches or open air
13 decks.

14 CHAIRPERSON HOOD: Exactly. And the process has always
15 been if the Office of Planning sees that it does, they bring it
16 right back to us immediately and we deal with it.

17 VICE CHAIR MILLER: Right. Okay.

18 CHAIRPERSON HOOD: So Ms. Myers, I was going to ask you
19 for some clarifying language to clarify what we clarified, but I
20 figured I won't, but we'll see what happens, and if you -- if
21 the Office of Planning thinks we need to do that, working with
22 the Petitioner, then let's clarify to clarify the clarification.
23 But if not, I think on the record, as the Vice Chair and I have
24 just had that discussion, I think that should be sufficient, and
25 we will put it back out I think it's 30 days before we do final

1 and let's see and let's make -- I'm sure we are going to make
2 sure it gets out to the public and then we'll see what where the
3 citizens are. So going forward, I think that's the plan.

4 Any other questions from anyone? And when I say anyone,
5 not just my colleagues, anyone? Okay. All right.

6 VICE CHAIR MILLER: Ms. Steingasser had a raised hand.

7 MS MYERS: Ms. Steingasser.

8 CHAIRPERSON HOOD: I didn't see -- I don't see her on
9 my screen. Hold on. Ms. Steingasser, go right ahead.

10 MS. STEINGASSER: I've got to make sure my mic is on.

11 CHAIRPERSON HOOD: There you go.

12 MS. STEINGASSER: Regarding Commissioner Miller's
13 concern, the clarifying language is in the existing regulations
14 that are proposed this evening and if you look at page 3 of the
15 OP hearing report, it's 3. -- 312.4(g), and that's where it's
16 clarifying that building area shall not include now uncovered
17 porches and decks that are 4 feet in height -- that are no more
18 than 4 feet in height, so that language is already in our proposed
19 regulations.

20 VICE CHAIR MILLER: I thank you for pointing that out,
21 and I appreciate your willingness to look at the larger issue of
22 variance versus special exception for the 4 feet or higher, open
23 air decks and porches, so thank you.

24 CHAIRPERSON HOOD: All right. Okay. If not, I'm going
25 to move that we approve the proposed action Zoning Commission

1 Case No. 22-13 as noted with the correction from Ms. Myers and
2 Ms. Steingasser as noted in this conversation, and ask for a
3 second.

4 COMMISSIONER IMAMURA: I will second, Mr. Chairman.

5 CHAIRPERSON HOOD: Thank you. It's been moved and
6 properly second. Any further discussion? Not hearing any, Ms.
7 Ackerman -- oh, I'm sorry.

8 VICE CHAIR MILLER: We have an OP hand raised, Mr.
9 Chairman.

10 CHAIRPERSON HOOD: Ms. Myers?

11 MS. MYERS: It's just 22-23. I just want to make sure
12 on the record. I think you said 22-13.

13 CHAIRPERSON HOOD: What did I say? I said 22 -- is it
14 22-23?

15 MS. MYERS: 23, yes.

16 CHAIRPERSON HOOD: What did I say?

17 MS. MYERS: 22-13, so I just want to make sure there's
18 no confusion on that.

19 CHAIRPERSON HOOD: I must be --

20 MS. MYERS: It's 22-23.

21 CHAIRPERSON HOOD: I must be thinking about Friday, the
22 13th. Thank you, Ms. Myers. Okay. Zoning Commission Case No.
23 22-23 with the correction by my good friend, Ms. Myers. Thank
24 you. All right. It's moved and properly second. Any further
25 discussion?

1 Okay. Ms. Ackerman, could you do a roll call vote
2 please?

3 MS. ACKERMAN: Yes. Before I do, I just wanted to
4 clarify. Do you guys want the Petitioner to --

5 CHAIRPERSON HOOD: There's a lot of clarifying going
6 on.

7 MS. ACKERMAN: I know. I'm sorry. Do you want the
8 Petition to submit a summary order or no?

9 CHAIRPERSON HOOD: Well, this is proposed action, so
10 what we'll do is we'll decide that when we do final action.

11 MS. ACKERMAN: Okay. All right. Sorry.
12 Commissioner Hood?

13 CHAIRPERSON HOOD: Yes.

14 MS. ACKERMAN: Commissioner Imamura?

15 COMMISSIONER IMAMURA: Yes.

16 MS. ACKERMAN: Commissioner Miller?

17 VICE CHAIR MILLER: Yes.

18 MS. ACKERMAN: Commissioner Stidham?

19 COMMISSIONER STIDHAM: Yes.

20 MS. ACKERMAN: Zoning Case 22-23 is approved four to
21 zero to one for proposed action. Final action will be considered
22 at the Commissioners -- at the -- sorry, the Commission's November
23 30th public meeting.

24 CHAIRPERSON HOOD: Okay. Thank you. Before I close
25 out this hearing, anybody else have anything else to say? Okay.

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1 Before I close out --

2 MR. GAMBRELL: Thank you.

3 CHAIRPERSON HOOD: Before I close out this hearing, the
4 Zoning Commission will meet again October the 23rd -- I think I
5 got -- yeah, October the 23rd on these same platforms. Zoning
6 Commission Case No. 23-15, this is the Brookland Plaza Owner, LLC
7 on these same platforms.

8 With that, I want to thank everyone for their
9 participation, Petitioners, OP, and my colleagues and the staff
10 for all of the discussion. I think we will have a better outcome.
11 So thank you all and have a great evening. Good night.

12 MR. GAMBRELL: Thank you.

13 MS. STEINGASSER: Thank you.

14 (Whereupon, the above-entitled matter was adjourned.)
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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCOZ

Date: 10-19-2023

Place: Videoconference

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

Donna S. Smith

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