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:            :
                           :
COMPREHENSIVE ZONING        :
REGULATIONS REWRITE:         :
HEIGHT                     : Case No.
                           : 08-06-1
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Thursday, September 25, 2008

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
08-06-1 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the
Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001,
Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD        Chairperson
GREGORY N. JEFFRIES    Vice-Chairperson
MICHAEL G. TURNBULL    Commissioner FAIA
                        (OAC)
PETER MAY              Commissioner (NPS)
CURTIS ETHERLY         Commissioner
BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE MILLER    Chairperson

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
TRAVIS PARKER
STEVEN COCHRAN

The transcript constitutes the minutes from the Public Hearing held on September 25, 2008.
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6:44 p.m.

ZC CHAIR HOOD: Good evening, ladies and gentleman. This is the Public Hearing of the Zoning Commission of the District of Columbia for Thursday, September the 25th, 2008.

My name is Anthony J. Hood. Joining me soon will be Vice Chairman Jeffries also joined by Commissioner Etherly, Commissioner May and Commissioner Turnbull.

We are also joined by our Chair of the Board of Zoning Adjustment, Ms. Ruthanne Miller.

We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, Ms. Donna Hanousek and Ms. Esther Bushman.

Also the Office of Planning staff under the leadership of Ms. Steingasser.

This proceeding is being recorded by a Court Reporter and is also
webcast live. Accordingly, we must ask you
to refrain from any disruptive noises or
actions in the hearing room.

The subject of tonight's hearing
is Zoning Commission Case 08-06-1. This is
a request by the Office of Planning for the
Commission to review and comment on proposed
concepts for text amendments to the Zoning
regulations.

This is one of the series of
hearings on various subjects currently under
review as part of the broader review in new
light of the Zoning regulations. Tonight's
hearing we'll consider general rules
applicable to building height.

Notice of the hearing was
published in the D.C. Register on August 8,
2008, and copies of the announcement are
available to my left on the wall near the
door.

This hearing will be conducted in
accordance with the provisions of 11 DCMR
3021 as follows:

- Preliminary matters;
- Presentation by the Office of Planning;
- Reports of other government agencies, if any;
- Reports of the ANCs;
- Organizations and persons in support;
- Organizations and persons in opposition.

The following time constraints will be maintained in these hearings. ANCs, government agencies, organizations five minutes, individuals three minutes.

The Commission intends to adhere to the time limits as strictly as possible in order to hear this case in a reasonable period of time.

All persons appearing before the Commission are to fill out two witness cards. These cards are located to my left.
on the table near the door. Upon coming forward to speak to the Commission, please give both cards to the reporter sitting to my right before taking a seat at the time.

The decision of the Commission in this case must be based exclusively on the public record. To avoid any appearance to the contrary the Commission requests that persons present not engage the members of the Commission in conversation during any recess or any time. The staff will be available throughout the hearing for any procedural questions.

Please turn off all beepers and cell phones at this time so not to disrupt these proceedings.

At this time does the staff have any preliminary matters?

SECRETARY SCHELLIN: No, sir.

ZC CHAIR HOOD: Okay. We will begin with the Office of Planning, Mr. Parker. And we're also joined from the
Office of Planning Mr. Parker, Mr. Cochran.

MR. PARKER: Good evening, Mr. Chairman, the Commission. I thank you.

My name is Travis Parker with the Office of Planning.

ZC CHAIR HOOD: Mr. Parker, you may want to bend over, you know, to the microphone.

MR. PARKER: I'll do my best.

ZC CHAIR HOOD: Yes, there we go.

Thank you.

MR. PARKER: All right. Good evening.

We're here tonight to chat about recommendations as part of the overall Zoning review.

On the screen you'll see, and I don't know if we want the lights off or on. We've got a long presentation. But on the screen you'll see that the process that we've been through thus far. We started work on this height topic in January of this year.
with a working group comprised of citizens
and architects and some business
representatives as well and a lot of
discussion about a lot of these issues. And
in March we went to the Task Force and
presented some very, very preliminary
concepts. And since then we've had a lot of
back and forth with all sides of this issue.
This has been a very completed, as you're
all well aware, issues with height in D.C.
And we've received an awful lot of comments
which we're very happy to have and have
worked with developers and community people.
And all sides of this contentious issue.

And have even received a lot of
comments since our report went into you a
couple of weeks ago. And we'll be talking
about some of those comments tonight.

One thing that's important to
remember tonight is that everything here is
conceptual. We expect to continue to work on
these with you and with parties on all sides
of the issue. What we're most interested in hearing, and what we've been hearing a lot over the past few weeks, is things that really don't work, things that prevent certain types of buildings or certain types of construction or certain sustainability features. Other things we're looking fatal flaws in what we've proposed that might cause trouble in the development of buildings in our city. And we'll get into a lot of those issues tonight.

The height in D.C., unlike any other city in the country, is regulated in two separate ways. We have the 1910 Height Act in passed in Congress nearly a 100 years ago. And I'll leave it my friend Whyane Quinn to explain why that's a local regulation. But the Height Act bases the allowable height of buildings on the width of the street. And it also allows for further regulation of height by the city, specifically by the Zoning Commission. And
for better or worse in the Zoning regulations height is not regulated by the width of the street but by the zone in which the building is located.

Zoning regulations can be more restrictive than the Height Act, but not less.

And every property in the city is governed by both of these sets of regulations. And in all cases, the stricter of the two applies. In most cases that is the Zoning regulations. But quite often, and more often in this day of high development pressure that there are overlaps between the two. And that's why we're here to chat tonight.

The final point on this slide is that both documents, both the Height Act and the Zoning regulations, are ultimately interpreted by the Zoning Administrator.

The basic goal of what we're doing in all of our work in the Zoning
review is and make things clearer and easier
to use. And what we're not necessarily
trying to incorporate, not at all trying to
incorporate the 1910 Height Act into our
regulations. This is an issue where it's
impossible to know given that there are two
separate regulations over height of
buildings in D.C., it's impossible to know
the limitations of any one building without
knowing the basic restrictions of both sets
of rules. And one of our goals in this
process, and specifically height, is to make
things clearer and predictable, if not more
simple. But at least clearer and more
predictable. And to do that we need to do a
few things.

We need to acknowledge that there
are ambiguities in the regulation of height.
There are very few sections of the Height
Act that are completely clear. I can think
of very few that we haven't heard arguments
on both sides, or at least two sides, of how
sections of the Height Act could be interpreted. But what we'd like to do as part of this process is resolve those potential differences and find ways to clarify the intent of these height regulations in our development guidance document in our Zoning regulations in a way that balances all of the separate interests that takes into account to 100 years of precedent in how buildings were build in D.C., and that's one of the most important factors is maintaining our precedent and respecting the buildings that have already been built in the city. But where there's questionable precedent or changing precedent, we also need to be aware of the horizontal nature of the city and the symbolism involved with that, the physical factors of development.

Something new that we're considering now are sustainability features in building and in the ultimate height of
the building.

And finally, of course, the impact of the potential development in a city that's severely constrained by development.

MR. COCHRAN: Early on we realized that there are three major topics that really need to be considered in our work. We need to look at how we determine a building's maximum permitted height.

We then need to look at how we measure a building's height after we determine well what can its maximum theoretically be.

And finally we need to look at what's atop the roof; what are the types of things that are atop of the roof, what can be their heights involved, et cetera.

There were a couple of things that we didn't look at, however. We very consciously didn't.

Okay. We in this discussion
didn't look at what heights were appropriate for particular zones or particular locations of the city. All that's going to be coming up when we deal with physical areas of the city or other types of zoned districts later in this process or even after this process is finished by the Zoning Commission.

And we very consciously did not want to wade into whether the Height Act should be changed or not. Almost everything we're looking at has to do with technical matters that tend to resolve some of the ambiguities that you see in the next slide. Ambiguities like: Well what's an architectural embellishment? We keep referring to it, but nowhere is it mentioned in the Height Act.

The rest of these, we all think we know what a residential street is but what is it really in the Height Act and in the Zoning regulations?

We all think that we know how
something should be measured across an open space, but what does that really mean? Are we looking at should it be higher because the open space is wider like we do streets or are there constraints that we have to work with that aren't parallel to the street width to height correlation?

Any number of these things we will go through in our recommendations, which Travis is going to start in on now.

MR. PARKER: As you've seen in our report, we have 12 recommendations in this subject area and they're divided into the three areas that Steve just talked to you about. And what we would like to do tonight, because we know there's probably going to be a lot of discussion and a lot of questions from the Commission, we'd like to tackle these in three groups. And we'll present the first four recommendations and then stop and see if you'd like to have some discussion. And do that with each set of
four.

So the first set of four has to do with determining the maximum height to which a building can go. And the first recommendation in that section is talking about frontage and what it means for a building to have frontage on a street.

The existing practice, all of the existing practice that we're aware of is that a building can draw its height from either of the streets that it faces when it faces more than one street or any of the streets it faces when it faces more than one street.

There have been people that have interpreted the Height Act to require a doorway or an entrance. The term "front" is used in the Height Act, and that has been interpreted by some to require a doorway or an entrance. So that's sort of the other way to look at this issue. But our recommendation in working with the Task
Force and the working group would be that we maintain existing precedent. Allow buildings to draw their height from any of the streets on which they have a building face or a building frontage or not require a door or an entrance. And this would not be a change from existing practice.

The except to where you draw your street is more rare, but exists in several places around our city. Is when your building faces a public space or a reservation. This occurs in bowtie parks, in our circles or in a lot of squares around our city.

This is an issue that doesn't have quite the level of history and precedent that a lot of these do. It's very hard to find two buildings on a reservation that have been interpreted in the same way and that we have written record that they were sited in the way. So the two things that we need to balance in this area are:
(a) The urban design considerations in terms of a system that basis the height the building of the width of the space in front of them. We should consider that our public spaces can be framed by, you know, among the largest buildings that we allow; the 110/130 foot buildings that are allowed. On the other hand, we need to balance that with the language in the Height Act that talks about the building being able to choose from the right-of-ways of the streets that form the reservation.

So the recommendation that's come out of our working group if you'll look on the screen and if you can see my pointer, is to allow a building that faces this reservation to draw its height from any of the right-of-ways, A,B,C or D that sit parallel to and on this reservation but not right-of-ways that come off of the reservation necessarily or continuations of
these same right-of-ways that get wider when they're off of the reservation.

Now we have done some looking into see if this would have a detrimental impact or if this would prevent full development of buildings in high density zones around reservations. And we looked at all the areas of the city that currently allow more than 90 feet of development. And there are actually only five reservations that we found in the entire city where we have reservations in those areas that abut streets less than 110 feet or that wouldn't allow 130 foot buildings. And four of these I think we can say are not having any development opportunities in the near future.

Mount Vernon Square you'll see up here is the home of Techworld, which was one of the cases that has been through this process and had this discussion, and also the new Convention Center would both be
affected by this rule but are both, obviously, already standing.

   Rawlins Park, west of the White House but its surrounded largely by federal enclave.

   Judiciary Square has it's own height issues and limitations around here.

   There's a reservation in the southwest that is under transfer to the D.C. Government and will probably be right-of-way or something else.

   And so the remaining issue is Canal Blocks Park on 2nd Street, Southeast. And on the west side of that we have two newly built existing buildings. On the south we have the new DDOT -- or excuse me, new USDOT building. There's a new building underway on the southeast side. So that leaves one lot in the entire city that we found that might potentially be affected by this. But even that based on the ruling used on the 2nd and M site might not even be
an issue here.

So the short story is that our research shows that this interpretation shouldn't have an impact on development on severely hampering the height of buildings in D.C. around public reservations.

Our next recommendation has to do with residence and business streets. Once you've determined which street you would like to draw your height from, the Height Act then makes a determination of height based on whether a street is known as a resident street or a business street.

Resident street allow ten feet less than the width of the right-of-way. And business streets allow buildings to go 20 feet more than the width of the right-of-way in general.

The current and existing practice is that every building is judged to be on a residence or business street based on its zoning. The result of this is that a
commercial building and a residential building next to each other on the same block on the same street would be deemed to be on a business street and a residential street respectively, even though they are next to each other on the same street.

In our working group discussions since this was the only area of the Height Act itself that talked about streets rather than buildings, the thought was in OP and in the working group that the intention of this section was to regulate by some definition of street rather than by each building and it's an individual zoning classification. So the question became what level of street or what designation of street would we use. Because, obviously, Connecticut Avenue from one end to the other is not solely residence or solely business; it's a mix of the two. So the middle ground that we settled on was to regulate each block face as a street. So one side of a block to regulate as either a
residence street or a business street.

And the way that that could be done to have the least impact and the least change from existing practice would be to protect existing low and medium density residential areas from future PUDs and things going above 90 feet by saying that any building on a block with a low or moderate density residential zone, you know rowhouses or single-family, would be a residence street as well as any block face that was entirely residually zoned. And in the next slide I've got a graphic that shows this and we'll go through this.

Anything that doesn't fit one of those two definitions would be a business street.

In this graphic you can see any street that was all commercially zones, of course, would be a business street. Any street that has some R-4 in it, like these, would be a residential street. And even in
case of R-5-E where it's all R-5-E you'd have residential, but where you have a combination of R-5-E in a commercial zone, you'd have a business street.

So rather than regulating streets property-by-property we'd regulate them block-by-block. And again, the difference is a residence street would be limited 90 feet regardless what the zoning was on top of that. And a business street would be allowed to go to the higher street under the Height Act. Everything would still be limited by zoning height. You'd still have both ruling over any particular property. And I'm sure we'll have questions about this, and we'll come back to it.

The final recommendation in this section has to do with when you have single versus multiple buildings. In the example on the screen you'll see the street on the right is a wider street. And let's suppose that that street allows a 130 feet foot.
building. And the street on the left is a narrower street. And let's suppose that that allows 90 foot building.

So a building with only frontage on this street could go to 130 and only frontage on this street could go to 90 feet. But a building that went all the way through, as we learned earlier, could choose its frontage and could built at 130 feet throughout. So the question becomes: What makes one building versus two buildings? What type of connection creates this as one building versus two separate buildings?

The existing practice is not entirely clear. The existing regulations don't get into what a connection is and don't even require a connection per se. The existing regulations basically say that below ground connections don't count to connect buildings. It doesn't say anything about a above ground connections; that's implied by the fact that below ground
connections don't count that above ground connections do. But it provides for definition for what constitutes a connection that would make two buildings into or two structures into one.

There's little existing consistency in the existing practice, as you've seen. We've seen things from complete connections on all floors to all the way to exterior trellises with 51 percent connection. And this is something that you certainly have worked with and struggled with on many occasions. And its something that the burden is on the applicant often to go to the Zoning Administrator or come to you and to prove that they've met some undefined standard of meaningful connection. And this is certainly something that needs to be clarified.

Our original recommendation we have since realized was somewhat flawed. Our
original recommendation involved two things.

We basically said that buildings
going up had to connect on at least half of
the floors internally and also had to share
one single mechanical systems. This is one
of those areas that we've received a lot of
comment since we published our
recommendations, and I wanted to share a few
of those with you.

Certainly in a day of
sustainability we've learned that sometimes
a single mechanical system on a large
structure or large structures is not the
most efficient way or the greenest way to
go. And often separate HVAC and separate
system, mechanical systems, are necessary to
have a completely sustainable building. And
that may be more so in the future. And so
we certainly are sympathetic to that and we
dropped that from our requirements.

We've also heard that it's often
difficult to have connections on all the
buildings. We received dozens of examples of residential buildings, for example, with two residential towers connected by a lobby or similar things like that where obviously buildings that were obviously one building and built together were connected just on the main floor or just on one floor in particular. So we're also quite willing to change our recommendation on that front as well.

Right now what we'd like to discuss tonight and certainly where we're standing right now is that we certainly need to clarify this. And we need in the Zoning regulations to have a better understanding of what this connection is other than just below ground doesn't count and above ground may. And we would like to start the discussion by saying to be considered a single building, a building must have one of two things:

Either an enclosed connection
that permits passage between the two halves
of the structure. For example, a hallway
between the two or a connection between one
common area and another common area, and/or;

A common useable space in the
middle. A lobby in the middle, for example,
for a function room in the middle that's
accessible to both sides of the building.
Not that in a mixed use building the
residents could get into the office side or
the office could get into the residence side
but both could use the common space in the
middle.

Those are our suggestions and the
most recent comments that we've heard, but
this is an area that we're certainly willing
to look at as many more ideas as we can get
our hands on.

I'm going to stop here. These
are our first four recommendations on how to
determine the maximum height allowed of the
building and open it up to questions.
ZC CHAIR HOOD: Thank you very much, Mr. Parker and Mr. Cochran.

What we're going to do, colleagues, we're going to some -- like the counsel does, we're going to put ourselves on eight minute rounds and we'll go two rounds if we need to. Because I'm sure as in these things we all want to hear from our public. So we want to see what the comments are. So, hopefully, no one objects to that.

VICE CHAIRMAN JEFFRIES: Only one comment. Can I, like, give my minutes to someone else if they need to them.

ZC CHAIR HOOD: No time shall be ceded. That is in the -- Okay. And we're trying to do it so we can be a little efficient: Getting the questions and getting the answers and try to move to the time so we can hear from the public.

Okay. So who would like to begin?

I know this is new. We don't
want to start the round until --

COMMISSIONER MAY: Well that was Greg's time. He already used 7 seconds.

ZC CHAIR HOOD: -- the Commissioner starts. So who would like to go first? I wasn't trying to stifle anyone.

Okay. Chair Miller?

BZA CHAIR MILLER: I don't have that long. I just have a few basic questions.

One is with respect to the regulations that specifically relate to the Height Act. You mentioned all the precedents that was out there. And I'm just curious in general how you dealt with that with respect to certain questions, say, that had been already decided by the Court of Appeals interpreting the Height Act or what did you do with that precedent?

MR. PARKER: Well where it exists we'd certainly like to present that to you, and I'm sure you'll have lots of it
presented to you tonight as well. There are
issues that we're going to discuss tonight
with 50 plus years of precedent and actual
court decisions saying that this is the way
to go. And in most cases we have or already
will recommend that we will continue to
abide by that.

There are others, a lot of these
though, that don't have that. A lot of
these haven't been cited by court cases. Or
in the case of Techworld were vacated later.

So I'd say the ones that we are
most interested in clarifying in a way
that's not the existing practice, that
doesn't exist

BZA CHAIR MILLER: Okay. And
with the residential and business street
designations is it going to be the same on
both sides of the street?

MR. PARKER: No. The way that
we've done it, the way that we've
recommended it is that each side of the
street would be its own designation.

And we actually did have this discussion, but there are significant parts of the city that have a different zoning classification on one side than the other or different structures and different heights on one side than the other. So in order to stay as close as possible to what's done now but shift to a more street-based than building-based system that's how we ended up where we are.

BZA CHAIR MILLER: I think I saw in the regulations something about a "face block," and I wasn't sure what that meant.

MR. PARKER: A block face?

BZA CHAIR MILLER: A block face.

Thank you. I obviously don't know what that means.

MR. PARKER: Let me run back here to this. Basically what we're saying is if this -- you know if this is a block, well this is four blocks, but everywhere that you
see residential or business or residential, that's a block face as we define it. So one side of a block. A block side.

BZA CHAIR MILLER: Okay. Okay.

Thank you.

I think and then my only other question right now is a general one about the process. This is conceptual and the public is here to present testimony on the conceptual. And then I understand the Zoning Commission's going to deal with the conceptual at their meeting.

And then is there going to be specific language that's drafted and is the public going to again come back and testify on that?

MR. PARKER: Right. The way that we're working forward, certainly in parking and loading and height with things that can be written in separate chapters we'll have the hearing tonight. You'll get lots of new information, and assuming that we progress
like we have with the others, you'll leave
the record open for further comments. And
we'll continue to take those in and work
with all the people here tonight to modify
dis even further if necessary. And then at
some point in the future, maybe at your
November meeting, maybe further out, the
Commission will work with all that
information and provide us some guidance on
how you'd like to see us move forward on
these. With that guidance then we'll write
language and bring it back to you.

The one thing that remains
unclear is whether we'll bring that back to
you as a separate document, just have
another height discussion or whether we'll
wait until we have the entire document and
then do a series of meetings over the entire
document, including the height.

BZA CHAIR MILLER: Okay. Because
I was just looking at the announcement that
went out to the ANCs, I guess, and I wasn't
clear. And I remember in the Task Force meetings that there was a concern about being able, the public being able to comment on specific language in addition to concepts. And that's going to happen? Okay.

I don't have any other questions.

Thank you.

ZC CHAIR HOOD: Okay. Who would like to go next? Commissioner Turnbull?

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

I just had getting back to this recommendation three. In the OP report there's actually six squares that you had. The two that weren't shown, are they -- the only thing I'm asking is that on that one there was an R-5-A and a C-2-A and you classified them as residential.

MR. PARKER: Well, in that we considered R-5-A to be a moderate density zone.
COMMISSIONER TURNBULL: Okay.

MR. PARKER: And so any street face with a moderate density zone on it --

COMMISSIONER TURNBULL: Would be residential?

MR. PARKER: Yes.

COMMISSIONER TURNBULL: Okay.

But an R-5-E in a C-2-A is then business?

MR. PARKER: Yes.

COMMISSIONER TURNBULL: Okay.

All right. Thank you.

On recommendation four --

MR. PARKER: Yes.

COMMISSIONER TURNBULL: -- this seems to be a little bit different than what you had in your OP report?

MR. PARKER: Again, our OP report--

COMMISSIONER TURNBULL: There you mentioned like half the floors had to be --

MR. PARKER: That was the discussion. Yes. In our OP report we had
recommended that these two buildings would
have to be connected on half the floors. But
since that report came in we have received
multiple, multiple comments about buildings
all over the city that are clearly one
building, but are just connected by via a
lobby or some other mechanism on the ground
floor.

For example, the most common is a
ground floor lobby with two residential
towers.

COMMISSIONER TURNBULL: Yes.

MR. PARKER: But other buildings,
even downtown buildings that are separated
by a wall but have common lobby or access on
the first.

COMMISSIONER TURNBULL: So we're
sticking -- I know we've run into this a
couple of times.

MR. PARKER: And this is a very
tricky -- yes.

COMMISSIONER TURNBULL: I know
Mr. Glasgow went out of his way to document
to us on one particular case that I remember
all of those buildings? Do you remember
that?

VICE CHAIRMAN JEFFRIES: Was it
the Dorchester? I don't know. Anyway.
Sorry.

COMMISSIONER TURNBULL: Okay.

Thank you.

ZC CHAIR HOOD: Okay.

Commissioner May?

COMMISSIONER MAY: Okay. This is
going to be a challenge. No, it won't be too
bad.

On the frontage issue, you know I
remember this coming up in cases where we
wind up because of circumstances of
topography or very narrow streets next to
very broad streets that we wind up in
circumstances where it feels like, you know,
two tall buildings being built and facing
these narrow residential streets where it's
really the issue, I would think. But I'm wondering if there was any discussion of -- and maybe I'm just thinking too far out of the box, I don't know. Any discussion of trying to limit the height on such narrower streets and requiring some sort of setback or stepback?

MR. PARKER: We did have that discussion, actually. And then in the working group we went back and forth about that and actually had a discussion at one point about just that, about through buildings that are counting their height on a 130 foot street but have a 90 foot street in the back, stepping down for that 90 foot level. The issue comes back to a couple of things.

First, the Height Act seems clearly to anticipate if not through lots, but included to anticipate at least on corner lots if one side is much higher than the other, you would still be allowed to
have the higher building on that lower
street that's drawing its building from the
wider street. And doesn't anticipate having
to stepdown in that case. And so you can
carry that forward to a through lot as well
and say that the Height Act doesn't really
anticipate having to stepback, back to the
other street.

And the other, is just -- well,
yes. It's also an issue of, yes, the
efficiency of building buildings like that
and floor plates and having to find a way to
step back is a developmental issue as well.

COMMISSIONER MAY: Well, I would
think that if they could figure out ways in
San Francisco to design buildings to not
have shadows cast, there are certainly ways
that we ought to be able to figure that one
out. Not that I'm really advocating for
that. But I think it's a problem and it
gets exacerbated by issues of topography
where the broad street or the narrow street
may be at the bottom of or the low end of
the hill of the site and so on.

MR. PARKER: And if I may,

another issue that came up that caused real
problems with that type of scenario is that
we're going to see when we get into
recommendation five and six how hard it is
to identify a single measuring point for a
property. And when you start having to
measure on both sides of the property it
gets expedientially harder. And when you
have to have a measuring point on different
frontages it starts to get really difficult
and complicated.

COMMISSIONER MAY: Yes. And I'm
not sure I would necessarily be advocating
that either. Just wondering where the
discussion went.

For the two buildings issue, the
two buildings or one building, the
definition of common usable space I assume
would not include a parking garage?
MR. PARKER: I think we wouldn't have any intention of changing the existing precedent that it would have to be above ground.

COMMISSIONER MAY: I'm talking about above ground.

MR. PARKER: But you're talking about above ground?

COMMISSIONER MAY: Well, just a way which is not specific and it just refers to a common useable space.

MR. PARKER: Right.

COMMISSIONER MAY: It doesn't exclude something under ground.

And then can we go back to the -- oh, I'm sorry. I want to say something on it.

You know, what I find troubling about trying to define this is trying to define it in a way that allows for the kind of the circumstances that you describe where you have the two residential towers and a
low rise connection between them versus the kind of games that go on now where somebody knocks in a corridor to the adjacent building which is on a taller street or a higher street topographically or a wider street and allows you to manipulate the height of the downhill building. And I know specific examples where that happens. And I would just encourage you to try to define that connection in a way that really makes it one building as opposed to two buildings connected for zoning purposes.

Can we go back to the residence/business. Okay. I'm really confused by this.

MR. PARKER: Okay.

COMMISSIONER MAY: On the lower left hand corner you have R-5-E and C-2-A and the street to the right is business and the street at the bottom is residential.

What's the difference?

MR. PARKER: That is a mistake.
Right.

COMMISSIONER MAY: Okay.

MR. PARKER: Yes, they should both be business. See, it's already getting hard.

COMMISSIONER MAY: Both be business? Okay. And so does that mean the one at the top should be business as well?

MR. COCHRAN: No, they should not -- excuse me. The one on the left would be residential because it's all residential.

MR. PARKER: On the bottom.

MR. COCHRAN: On the bottom. I'm sorry. You're right.

MR. PARKER: The reason the two along the top you're asking are residential is because those are low density residential zone.

COMMISSIONER MAY: R-5-E is a low density residential zone?

MR. PARKER: R-4.

COMMISSIONER MAY: Okay. But at
MR. PARKER: Of that same block.

I'm sorry.

COMMISSIONER MAY: The lower left hand block is R-5-E. The top street there --

MR. PARKER: Yes.

COMMISSIONER MAY: -- is defined as residential?

MR. PARKER: There are two situations where you have a residential street. One where you have --

COMMISSIONER MAY: Or it's all where it's everything?

MR. PARKER: Yes.

COMMISSIONER MAY: I got it.

Okay.

MR. PARKER: But then at the bottom there is still that mistake. Yes.

Yes.

COMMISSIONER MAY: All right.

Because that confused me.

MR. PARKER: Wonderful catch.
COMMISSIONER MAY: And then what about when you've got a C-2-A block? Say, take the upper left hand block and you got a C-2-A block and you've got a house in the middle of it?

MR. PARKER: A house that's zoned C-2-A?

COMMISSIONER MAY: The zone is C-2-A but it's just a house. Because what you described in your language talks about buildings, it doesn't talk about the zoning of the buildings as what makes it a residential street.

MR. PARKER: Our intent is to continue with the zoning of the building. Okay. That's the existing practice.

COMMISSIONER MAY: So that's just a clarification of language. Okay. I think that's it. A record for me.

MR. PARKER: Under eight minutes.

COMMISSIONER MAY: Yes. And you did most of the talking.
ZC CHAIR HOOD: All right. Okay.

Any other questions?

Let me just ask in the ANC letters, and this might need to come up in the second section but let me ask now when while we're talking about fronts. One of the things, and I'm taking this straight from ANC 6B's letter, specifically the ANC recommends that the text be amended to make clear that any measurement of building heights be taken from the front facade. And we're talking about measurements yet. But it still says from the front facade of buildings not including any porches or other projections from the building facade.

Now with your recommendation, recommendation one, that would negate the concern or issue here, I believe, correct?

MR. PARKER: No. Their issue is actually, and I've talked with them about this, specific to single-family and rowhouse buildings.
They had a case, I think, where someone measured the height from the porch rather than the structure proper. And I think that's a very specific issue that they're talking about. Not an issue where one house had two frontages.

ZC CHAIR HOOD: Okay. And while we're looking at that I'm not sure if I'm clear on it. Now I didn't want to interrupt. Normally we interrupt but tonight we're trying something different. But, Mr. Parker, if you could explain to me what you were speaking of with Commissioner May R-4 in the C-2-A at the bottom of that. And I'm talking to upper left hand side of the slide. That should be business, right?

MR. PARKER: No.

ZC CHAIR HOOD: Okay. Which one was that that you said was labeled incorrectly?

MR. PARKER: The mistake is the very bottom left where it says
"Residential." That block contains R-5-E high density residential and C-2-A a commercial zone. So it doesn't meet either of the tests. It doesn't have a low or moderate density zone and it's not all residential, therefore it's a business street. Does that make sense?

There are two tests.

ZC CHAIR HOOD: I'll get that on the way home. That actually makes sense. I'm just looking to see if I have anymore questions.

Now let me ask this about the definitions. I'll move away from that because I think I understand for the second. In the definition, for example, of business street it would mean any other block face as with recommendations A1 or property adjacent to both a commercial and a resident street could choose this frontage and utilize the greater of the zone's permitted heights.

One of my concerns is, first of
all, I think the ordinance will we have a
definition of block face?

MR. PARKER: You certainly can,
yes.

ZC CHAIR HOOD: Because over the
years I can tell you that will change.

MR. PARKER: Absolutely. One of
the things that is going to take us some
time at the end of this process is going
through and finding all the terms in all of
these sections that need to be defined, and
that's certainly one of them.

ZC CHAIR HOOD: And what I would
ask is when we start crafting the language
anytime you have commercial or industrial
zones near residential zones we need to
probably handle that. And I'm not sure if
this would effect it. Pretty much, I'm just
asking you to be on the lookout for those
things that may it Commission or BZA, even
though I'll be long gone by then, at a very
uneven place to try and strike that balance
when you have industrial right next to residential. If we could look at that, that would be great.

MR. PARKER: Okay.

ZC CHAIR HOOD: Okay. All right.

Any other comments? Anybody else want to -- no time should be ceded. Okay. Anybody else with any follow up questions?

Okay. We can move on to the second part. Thank you.

MR. PARKER: We'll move on into recommendation number five.

So once you've determined how high your building can be, the next step is to actually measure it. And in order to start that process you have to decide where you're going to measure from.

In the example you see on the screen you've got a building that goes all the way through the block and you've got two street frontages. The one on the right is a wider street, 130 feet. The one on the
left, say, allows 90 feet.

The existing practice in this city for more than 50 years has been that since the Height Act talks about these in two separate portions and the Zoning regulations as well talks about determining your height in one section and measuring your height in another, the interpretation over many, many years has been that you can determine your height down here, we're allowed a 130 foot building and you can measure it up here. So you can measure your 130 feet up to here.

The potential result, of course, on certain lots where the wider street is lower is that this building is taller on both sides than it would otherwise be able to be on either side. But that is certainly the working interpretation of the Height Act that this city has been under for many, many decades. So basically you have two options here.
One is that the measuring point would have to be on the same street that you chose to calculate your building maximum height. This would be a new approach and it would ensure that on one side at least the frontage is based on the street width. But what it would do is it could significantly decrease the amount of square footage developable on through block sites from the existing pattern of growth around the city on any sites with severe elevation or significant elevation changes. And it could potentially make dozens of downtown buildings that we've identified as well as a few out of downtown nonconforming. I mean, these are buildings that would either not be able to redevelop to their existing height or not be able to go up to the height that they'd be allowed now.

So option two certainly is to continue the existing practice that any abutting street may be used to determine the
measuring, even a different street than the one you used to determine your maximum height. This option would follow the existing precedent and existing interpretations over many years. It would not affect any existing or planned projects. And it does preserve the existing development potential that a lot of, you know like I said, with the dozens of existing projects and a lot of planned projects as well have been working under.

So right now we are certainly leaning towards not trying to change the existing precedent since we have certainly come into contact with a lot more than we originally started with on this particular issue and are certainly recommending option two that we stay with the existing practice.

Recommendation six then is determining the elevation of that bottom measuring point. The Height Act and the Zoning regulations do it two different ways.
The Height Act says that you'll measure from the sidewalk. And the Zoning regulations say that you'll measure from the curb. And there's positives and negatives to each one.

The negatives about measuring from the sidewalk are:

(a) You don't always have a sidewalk. There are a lot of areas in the city that don't, and;

(b) The sidewalk is often graded. It doesn't always have a uniform elevation and can be maneuvered up or down. Isn't always going to be in the same elevation.

The curb doesn't have those problems. It is always the same elevation. It's set by DDOT so it's not subject to private property manipulation and it's not something that goes up and down or varies widely in elevation. But the downside to the curb is that it is often below the ground.
level at the front of the building because sidewalks drain down towards the curb.

So our recommendation is that we continue to use the curb as a starting point for measuring elevation, but allow a two percent gradient grade up to the building and actually measure from the ground level of the building based on the height of the curb, if that makes any sense at all.

To try and take the best of both worlds: Use the curb as our starting point and go up so we're not measuring from under the ground when we actually get to the face of the building.

Recommendation seven talks about natural grade. Natural grade needs a more clear definition in our Zoning regulations.

Basically we want to do two things. We want to clarify that definition of natural grade by itself and then we also want to clarify how to handle unique situations of elevated viaducts and bridges.
as well as sunken like the 395 tunnel
entrances and that sort of thing.

So our two recommendations here
are that natural grade is the ground level
existing prior to the issuance of any
permits for a new project, whether they be
raze permits or anything else. Before you
start your project that that would be the
natural elevation.

And then where you have bridges,
viaducts and unique situations the height
would ultimately be determined by the Zoning
Administrator but that determination would
be based on the continuation of the
surrounding street grids: The elevation of
the street outside of that man-
made disturbance.

Finally in this section
recommendation eight has to do with the top
measuring point. And this is a fairly simple
and not much of a change from -- not any
change, I believe, from existing practice.
I'll correct that in a second. But basically you measure a building to the top of the parapet, to the top of the roof or parapet, the highest point of either one. And for Height Act purposes that's where your limit's drawn.

If your entire building including the parapet is below the Height Act, under Zoning we will allow a four foot parapet not to count against your zoning height.

So if you have a Height Act limit of 90 feet and a Zoning limit of 70 feet, you can build a 70 foot building with a four foot parapet. But if you're allowed 90 feet under both, your 90 feet has to include any parapet that you want to put in.

We'd certainly like to allow for that parapet to be on any building and not count for the height. But the Height Act is very clear that parapets count in the Height Act measurement of height. So we certainly can't give that allowance at the Height Act
height.

So that concludes our recommendations for how to measure building heights and we'll break again for questions.

ZC CHAIR HOOD: Great. Thank you again, Mr. Parker, Mr. Cochran.

We'd like to start off our first eight minute round. Okay. Since we have no questions -- okay.

COMMISSIONER MAY: Just to clarify a natural grade. I mean, you're essentially recommending that we go with something similar to what we have right now?

MR. PARKER: Basically.

COMMISSIONER MAY: No tweaks or changes because that was refined relatively recently?

MR. PARKER: Yes. I mean, there's language changes.

COMMISSIONER MAY: I mean the concept is the same?

MR. COCHRAN: Okay. There are a
couple of changes. For instance, right now there's ambiguity on whether you can -- there's no ambiguity on whether you can measure from a bridge or not. You have to go underneath the bridge to the logical continuation of the street grade.

There has been ambiguity on whether you can measure from an embankment or not. And it's relatively clear that that's an artificial elevation on the land. If you've got an earthen embankment going up for the purpose of making a bridge that has less steel structure, you know that you can push up the dirt. So this makes that clear that the Zoning Administrator has the authority to determine that maybe that's not the continuation of the surrounding street grade, and therefore it should be lower than that.

The other thing is it clarifies since we're anticipating some development on some of our partially sunken expressways
that you don't necessarily have to measure
from the bottom of where the expressway is.
That you can go back up to the level of
where the street grade is.

So we tried to do both.

MR. PARKER: One other minor
thing on the natural grade itself, we've
added sort of a time element by saying that
natural grade is based on the time before
you start getting these permits. That's not
something that's there now.

COMMISSIONER MAY: Okay. I think
that's it for me.

ZC CHAIR HOOD: Any other
questions?

Let me ask Mr. Parker, your last
comments about if it allows 90 feet and now
Zoning regs allow you to do the parapet and
go up an additional amount of feet, what was
the response? And, unfortunately, I have
not read -- I haven't read anything yet.

What was the response from like the work
group and in the Task Force?

MR. PARKER: And so --

ZC CHAIR HOOD: Basically

developers?

MR. PARKER: This isn't something

that's much of a change from what we have

now. Really the only change to this from

the existing practice is right now we allow

three foot parapet and we're suggesting a

four because of building code issues for

railings on the roof. But this is no change.

This is one of our two least commented on

provisions.

MR. COCHRAN: If there's any

confusion it's because for a few years the

buildings were permitted to be -- basically

the height, the parapet didn't count. And

then the District realized wait a minute,

wait, that's wrong. And so we went back to

the former practice of counting the parapet

into the height. So this just clarifies

that.
ZC CHAIR HOOD: And let me ask you when you say "a practice," was it something that just got started here or was it language that was written?

MR. COCHRAN: I don't know the history of that. I do know that it's been in corrected and we're just continuing with that correction except for the increase from three to four feet.

ZC CHAIR HOOD: Okay. All right. Any other questions?

And the thing about it, let's go back to the slide where we talked about the curb, measuring the curb. And I just ask you to explain it to me again what the recommendation, where we're talking about now measuring from?

MR. PARKER: Again, the curb itself is a more constant measuring point and something that's actually built by the city rather than privately. So it would be in our recommendation the basis of any
measuring point. But if you draw a straight
line over from the curb to the building in
the picture, you're actually measuring from
a few inches or a foot below the surface at
the face of that building. So we've modified
the recommendation to say the curb plus a
two percent grade up to the building where
the building face is.

MR. COCHRAN: It takes care of
some situations that have existed around
the city where either a builder will
construct a very shallow embankment so that
the sidewalk starts a foot or so above the
street or there are some cases of having
sort of split level sidewalks, you know on U
Street.

What this does is start with the
curb and go with the Height Act's
specification of being able to -- you have
to measure from the sidewalk.

What we're saying, there's got to
be a limit to the difference between the
curb and the point on the sidewalk from which you measure. And that limit is two percent, a two percent slope above the curb. If you've got a four percent slope between where the sidewalk hits the building face and the curb, you're sort of out of luck. You have to measure from no more than two percent above the curb.

ZC CHAIR HOOD: Okay.

MR. COCHRAN: We're trying to prevent any abuses.

ZC CHAIR HOOD: Okay. All right. We'll see. I'm sure as we go down this road I'll have some more comments.

COMMISSIONER MAY: Let me just say, the two percent grade? That's one inch in about --

ZC CHAIR HOOD: Fifty.

COMMISSIONER MAY: Yes. I mean it maxs out at a foot, right, that you've allowed?

MR. PARKER: I believe that's our
recommendation. Yes.

COMMISSIONER MAY: I mean to get
to a foot you'd have to be 60 feet back.

MR. PARKER: Yes. Yes, 50 feet
back from the curb.

COMMISSIONER MAY: Yes. And in
circumstances like the U Street building
that you would cite, that's really not going
to help that much because the sidewalk is
very narrow there.

MR. PARKER: It's not intended to
help a lot. I mean, it's not meant to be a
big number. It's just meant to allow for
drainage.

COMMISSIONER MAY: Okay.

ZC CHAIR HOOD: Okay. I know for
a fact I'll have some more questions as we
go down the line on this.

Okay. Anybody else want to go
another round?

Okay. If we can go to our third
part, Mr. Parker and Mr. Cochran?
MR. COCHRAN: Okay. I'll just wait until the lights go up. Being a little older than Travis, let me move over towards the light.

Now we're going to consider what structures go above the roof and how should they be configured, how tall can they be, et cetera. We're trying to organize and also modernize the list of structures that has typically been considered to be permissible atop the roof. And we're considering them in three categories.

ZC CHAIR HOOD: Excuse me. Can you get just a little closer to the mike, please? Thank you.

MR. COCHRAN: We're looking at the structure atop the roof and we're organizing them into three categories for consideration.

The first one is ornamental. Now you've seen the language that says "spires, towers, dome, minaret, et cetera" can go
above the roof and they don't have to be setback. Those are some examples of a tower or a spire.

The one on the right is the Warner Building, and that's a tower but it also happens to have a functional element in it. It was the overrun for the elevators when it was first built.

Okay. I skipped back there.

Okay.

In addition to ornamental we're looking at utilitarian features. This is what you're most used to considering, mechanical penthouses.

You can see on the left there's a mechanical penthouse. The white one on the red brick building is a mechanical penthouse. The feature that's sticking up in the middle is an ornamental feature, a tower.

On the right side you're looking at what we want to have considered as an
expanded concept of what constitutes a
utilitarian feature that's allowed. These
are more sustainably oriented. This happens
to be a green roof atop the headquarters for
the American Society of Landscape
Architects. We feel that we'll eventually be
needing to look at possibly small wind
turbines, but we want to make it clear that
those will be structures that are permitted
atop a roof.

And finally we're looking at
amenity features. This happens to be the
brochure for an apartment building that has
a pool and a communal room atop the roof.

Now you're not supposed to have
anything that is occupied inhabitable space
by humans atop the roof. We had long
discussions about this. And the consensus
that was developing is that it's only
occupied and inhabited if there's a
permanent inhabitation. That if it has
limited hours, then it is permissible as
long as its only for communal space. What that means is not only can you get your swimming pool up there, but you can also get wash up facilities, you can get an enclosed recreation area up there but you can't have an office, you can't have an apartment building, et cetera.

That describes the type of structures that can go atop the roof. Let's look at what their height and width and massing can be.

First, we're saying let's remove the provision that limits the amount of additional FAR that a roof structure can have and make it a simpler measurement.

Let's just say that a roof structure can occupy no more than 40 percent of the roof area. Right now you get an additional .37 FAR. Very confusing.

Right now the District says that there has to be a uniform height to these roof structure. The District has put that
at 18 feet 6 inches max. And if you're at a
screened in roof structure, and usually they
do need to be screened, that screening has
to be just a single enclosure and it also
has to be of a uniform height and vertical
and so on and so forth.

We're suggesting that those
requirements actually make a roof structure
look bigger, much more intrusive. So we're
saying let's minimize the appearance of them
by allowing them to be smaller where they
can be smaller and not connected by an
arbitrary enclosure where they don't need to
be.

Because of new technology we're
finding in some instances it's not possible
to get the equipment into a roof structure
of 18 feet 6 inches in a very efficient way.
So we're suggesting at the recommendations
of architects and engineers that we allow
that height to go up to 20 feet. That's
again it's something that the District
controls.

Right now an ornamental feature like a tower, spire or dome or minaret can go up to any height. It's not mentioned anywhere. So we're saying 30 foot is a reasonable limit for that, and anything above that should go as a special exception to the BZA.

We're also being clear that the kinds of things that happened with the Warner Building, and actually with the Kennedy-Warren where you've got an ornamental feature that also has equipment in it, that's permitted too. So you've got a tower, it's okay to put a functional feature in there.

With respect to setbacks, the utilitarian and the amenity features would continue to have to be setback at a one-to-one ratio from exterior walls, from a wall that's facing the side lot line. And we'll go into an illustration of this. And from a
lot line wall that's taller than an adjacent building. And again special exceptions for these. Now let's look at it because those need a little bit of visual explanation.

Let me just go back. Yes. There we go. Okay.

We're looking at setbacks from exterior walls under A. Walls facing the street, what you can see, are four. There are the two walls that face the street on the left. You've got a C-shaped courtyard. And the back of the courtyard has a wall facing the street. And, of course, the side wall has a wall facing the street.

From each of those walls facing the street a roof structure would have to be setback. Where you're not looking at a wall facing the street is on the sides of that court. And as you can see, you don't have the roof structures being setback from those walls.

The second area has to do with
buildings that abut each other but have
different heights. You can see that
Building A has its roof structure setback.
Building A on the left has its roof
structure setback. That's because that
building is taller than the building on the
right. Presumably the building on the right,
let's just give an example. The building on
the right is at its matter of right height
and the building on the left has got an
additional height through a PUD. So it has
to be setback.

The building on the right doesn't
have to have its roof structure setback
because it is either below the matter of
right height of the building on the left or
its below the PUD height of the building on
the left. So it makes no visual distinction
to have it setback. So we're saying it
doesn't have to be setback.

Finally we get to party walls
that either are on the lot line, as is the
case with the building on the left, or
aren't on the lot line, as is the case with
the building on the right.

On the left it's a somewhat
similar situation to the A and B on the
upper right. You aren't going to see that
roof structure.

The building on the right where
you have the wall pulled back from the
property line, you have a much greater
chance of seeing the roof structure. So
we've said, okay, you still need to set it
back from there.

And Travis is going to go into
explanation of what actually constitutes an
exterior wall.

MR. PARKER: The piece that Steve
just went back through, under Zoning there
are the three situations in which you'd have
to set your roof structure back one-to-one.
And the first was from exterior walls. And
the current practice is that that is
considered to be walls facing a street. You saw four walls facing a street in the previous example.

The recommendation that came out of OP after working with the working group and the Task Force that would be that we would consider both street walls and alley walls to be exterior walls. This would not include side walls, party walls and any walls not facing a street or alley. Again, under situations B and C that Steve went through you'd still have to setback from those walls under Zoning, but they wouldn't considered exterior walls. And the distinction is that once you've reached the Height Act limit a special exception isn't available from exterior walls because the Height Act requires a setback from exterior walls in addition to the Zoning setback.

So our recommendation is that alley walls and street walls would require a setback as an exterior walls. And, again,
this is a change from precedent in that the alley walls have not recently been considered or have not traditionally been considered to be exterior walls for purposes of the Height Act.

And that, I believe, wraps up our 12 recommendations. And we're happy to talk about the next, these last four.

ZC CHAIR HOOD: Okay. Okay. Any questions on these recommendations?

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

I wanted to go back to the amenity features. And under the amenity features I think you talked about not rising more than 20 feet above the roof?

MR. PARKER: Both utilitarian and amenity features involved at the 20 feet.

COMMISSIONER TURNBULL: Right.

And in the OP report on page 28 you clearly show in your picture the top right
horizontal trellis architectural
embellishment not permitted. Recommendation
makes prohibition clear.

MR. COCHRAN: Right.

COMMISSIONER TURNBULL: Could not
a trellis be considered an amenity feature?

MR. COCHRAN: If you're looking
at it as something that gives --

COMMISSIONER TURNBULL: Shade,
shade to the people on the roof.

MR. PARKER: I think the reason
that this would not be permitted is its not
setback. I think this is an issue of it
rising up the street wall --

MR. COCHRAN: Right. We were
trying to clarify that that certainly
doesn't count as an ornamental feature.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: But it is an amenity
feature and is allowed if its setback one-
to-one.

COMMISSIONER TURNBULL: Okay. Is
MR. PARKER: Obviously not.

COMMISSIONER TURNBULL: Okay.

All right. Just questioning that.

Because the only other thing I get into, and I don't want to -- I mean, this sort of gets back to John Parsons and you could hear his heart beating whenever he saw a trellis showing up. And I guess what I'm concerned about is that we get into sustainable design features, we get into the aspect of a brief sala and there's going to be a fine point where you have a brief sala and then it elevates to a trellis. So I'm not sure if you had discussions with the working group on that or looking down the road on what kind of features get added and when it becomes an amenity and sustainable design? Did you have arguments or anything on that?

MR. COCHRAN: We did have discussions on those. And we were finally
convincing that even some of the sustainability features could be accommodated atop a roof even if there's a one-to-one setback.

At first we were concerned that it would need to go over to the structure at the wall in order to hold up some of the tags or whatever else might be up there. In fact, we found out on further exploration that they could be accommodated if they're setback from that structure of -- that building structure that the wall comprises. So we felt that we should stay with the one-to-one in any instance where it's not clear by the Height Act that you can go without a one-to-one setback. And that's on the ornamental features.

COMMISSIONER TURNBULL: Okay.

Thank you.

ZC CHAIR HOOD: Let me ask, I guess it's a legal question. Anyway. I saw something on the slide that said the BZA
could not-- I cannot remember exactly what it is. I thought the BZA was there to make changes or alterations, anything in the Zoning code that the Commission has already made as a rule. So has that been tested through OAG?

MR. PARKER: This is a unique situation. The intent is that all of the Zoning regulations would be amenable through special exception by the BZA. The issue with exterior walls is when your building reaches the level of the Height Act, the Height Act requires a setback from exterior walls and the BZA can't variances to the Height Act.

So only when your building's at that level, that's why we have to define exterior walls separately from other walls that require a setback.

ZC CHAIR HOOD: Okay. Gotcha.

Okay. And thanks for putting that up.

Okay. Anyone else? Commissioner
COMMISSIONER MAY: Okay. When it comes to, I guess, the allowance of some form of semi-habitable space or whatever we wind up calling that stuff that goes up there that has some functionality or amenity to it, how does that square with Height Act limitations? Is this all when we're below the Height Act limitations or is there somehow an exception within the Height Act that allows for, you know, cabanas by the pool?

MR. COCHRAN: Well, there's a lack of definitions on these things. And occupied inhabitable space are not defined under the Height Act

COMMISSIONER MAY: Right.

MR. COCHRAN: There's trouble with this one.

MR. PARKER: No, no. But the list is very brief in the Height Act of things and it doesn't include a lot of the
mechanical systems or it doesn't even
mention stairwell access. The Height Act
talks about water tanks and penthouses and a
few other things.

COMMISSIONER MAY: It's
utilitarian.

MR. PARKER: Right, but it --

COMMISSIONER MAY: More structure
kind of things, sort of?

MR. PARKER: Not just, but yes.

But we believe that there's reasonable
leeway in that to include things like
sustainability features that could be
considered that and things that could be
considered to be within a penthouse over an
elevator shaft. And these things are
allowed now. This is not a far departure
from existing practice.

COMMISSIONER MAY: Okay. I have
to understand that a little bit better as we
go along.

What doesn't fit in the 18 foot 6
limit in terms of mechanical equipment? I mean, you've heard from developers that certain technical equipment don't fit.

MR. PARKER: It's been a while, but --

MR. COCHRAN: Actually, I heard from architects.

COMMISSIONER MAY: Yes. Like what doesn't fit? I mean, is it just the equipment is getting taller, is it --

MS. STEINGASSER: In certain cases, especially in the laboratory situations on for instance the city's forensics lab has exhaust pipes --

COMMISSIONER MAY: Never heard of it.

MS. STEINGASSER: I'm sure you have. Has exhaust systems that required that the air be exchanged something like 60 times a day.

COMMISSIONER MAY: Yes.

MS. STEINGASSER: And those,
though as they exit the building they're like 24 feet tall. So there are certain types of structures that just don't meet the 18 feet.

COMMISSIONER MAY: Okay.

MR. COCHRAN: Some architects have pointed out that with just a couple more feet or a foot and a half even more you can stack some of the utilitarian features so that you then can open up more of the roof to green roof type of situation.

COMMISSIONER MAY: Okay. Yes. And what I was fearing is that, you know, we're going to have stacked, you know, condenser farms. And I don't think that that's really, you know, the individual unit kind of things that I don't think are particularly energy efficient in the first place so I'm not sure that we'd want to encourage that. But if there's other major equipment that might be stacked, then I'd be more amenable to that.
When you do have a tower such as the Warner Building where there is some functional stuff, whatever it is, would that be subject to the 40 percent limit? Because you suggested a 40 percent limit to the roof?

MR. PARKER: We actually hadn't considered that question. We will certainly do so.

COMMISSIONER MAY: Yes. Because I think there has to be some sort of limit because --

MR. PARKER: Right

COMMISSIONER MAY: -- you know, there is some area associated with towers, some more than others. Okay.

Can we go to 28A. Twenty-eight, excuse me, 28A. Yes. Diagram A. There we go. This condition here.

I'm not sure I agree with there shouldn't be a setback there. If that's the front of a building and you're able to see
it from the street I think there needs to be a setback. If it's the back of a building that's facing an alley, maybe it doesn't need to have that. And I think that's a more common circumstance, certainly of late.

MR. PARKER: So you would suggest--

COMMISSIONER MAY: Yes. I mean, it all has to do with the visibility from the street in my understanding of the Height Act and what the core purpose of it is. And I think that we're pushing it a little too close.

It's kind of similar to the side lot line. I mean, you're saying it's got to be setback off of a side yard but it doesn't have to be setback off a court? So I think that's a bit inconsistent.

COMMISSIONER TURNBULL:
Commissioner May, you're basically saying that a courtyard is the principal entrance way into the building, perhaps. And so that
visibly you're going to see it as you go in?

COMMISSIONER MAY: Not even that it's a principal entrance. I mean, it could even be above a first floor --

COMMISSIONER TURNBULL: Okay.

COMMISSIONER MAY: -- you know that occupies all of that court on the first floor. It's that walking down the street its visible when you look up --

COMMISSIONER TURNBULL: When you look up?

COMMISSIONER MAY: -- from the street. And I think that's what drives it for me.

COMMISSIONER TURNBULL: Yes.

COMMISSIONER MAY: Setbacks when you have adjoining buildings like diagram C, that's a pretty clear example. But the things, the circumstances where I do have a bit of a concern is where you have, you know, you're building up to the side lot line and you're saying that you can go right
up to the edge of it. But what if the
building next door is a different lower
zone? I think that you said that maybe it
does still have to be setback if it's a
lower zone?

MR. PARKER: Basically we've said
that if your building is higher than the
matter of right height of the building next
door or if the building next door goes
higher than the matter of right height then
higher than that building.

COMMISSIONER MAY: All right. So
what if the building next door is an
historic structure that's not likely to ever
be built out to that maximum height? And
that's the sort of circumstance that I find
troubling. Because that does occur in
recent history.

And I guess the only other
question I have is there anything that we
can put in there to make sure that the
ornamental features don't glow and change
colors and all that sort of stuff?

MR. PARKER: Probably not. You underestimate the power of Zoning.

COMMISSIONER MAY: No. All right. I guess that's for another body.

Thank you.

MR. COCHRAN:

VICE CHAIRMAN JEFFRIES: Thank you.

Vice Chairman?

VICE CHAIRMAN JEFFRIES: Just a quick question. Now that Commissioner May brought it up, what was the rationale in terms of without removing the setback at the side lot line?

MR. PARKER: You're talking about example B?

VICE CHAIRMAN JEFFRIES: A.

MR. PARKER: A. On the courts you mean?

VICE CHAIRMAN JEFFRIES: Yes, off the courts. What was the rationale? I'm
sorry. I know you brought it up, but what was the rationale?

COMMISSIONER MAY: Are you asking me or you asking them?

MS. STEINGASSER: I'll take it on.

VICE CHAIRMAN JEFFRIES: I'm asking the Office of Planning. I don't ask for testimony from fellow Commissioners.

Thank you.

MS. STEINGASSER: One of the issues that came up in the working group and was highlighted to us by the practicing architects in the room is that often times those corners in the C are very inefficient floor space and they make great locations for the core. But the core can't be placed there because of the setback requirements. So the core gets pushed in and you end up with these really uncomfortable residential spaces, especially where you've got windows that are inches away from adjoining
neighbors or these kind of odd corner spaces. So that was an attempt to try to work through some of the practicable problems that were expressed to us.

MR. COCHRAN: And they become a bit exacerbated when you have to have setbacks from the alley also. So you do need a place to put those extra stairwells if they can't go in the corners next to the exterior wall and alley if you're now having to setback from the alley. So this addresses that consideration.

VICE CHAIRMAN JEFFRIES: And, obviously, I mean there's been a lot of commentary from the developers on this particular point. This has been the case for years, I mean or what --

MS. STEINGASSER: Well, some of the architects did some excellent research for us and provided us with photographs all over the city where, indeed, the building core and the roof structures are at those
corners.

VICE CHAIRMAN JEFFRIES: Right.

MS. STEINGASSER: And those were all built after the Height Act was adopted. So there was some question over really what was the intent of the Commissioners at the time of the Height Act.

We see it a lot in the PUDs, especially that come before us, at the Zoning Commission. And we see it a lot with variances in front of the BZA.

VICE CHAIRMAN JEFFRIES: Okay.

Okay. Thank you.

ZC CHAIR HOOD: Okay. Chairman Miller?

BZA CHAIR MILLER: Looking at that diagram, before going to my other questions, I mean I understand basically the rationale for the setbacks are views from the street. But I think it's also you somewhat want to take into consideration any adverse impacts on other properties or
whatever. So I'm just curious about number C where you have a structure on top of B that's right next to a facade of A. I mean, I don't know the chronology here. But if there were, for instance, you know windows and if A was built first or something and there were windows there, would that be allowed to be placed there?

MR. PARKER: Well, certainly if A is on the lot line, those are at-risk windows. A building on a lot line --

BZA CHAIR MILLER: Oh, I see that's a lot line. Okay. Okay. That's good.

MR. PARKER: If A is setback, then you have a situation like example BG there where the setback building has to setback its roof structure.

BZA CHAIR MILLER: Okay. Yes. I wasn't thinking about the lot line. So that makes sense.

Utilitarian and amenity features
not rising more than 20 feet above the roof, is that within the Height Act? That's our regulations or what?

MR. PARKER: Absolutely. The Height Act doesn't have a height limit for roof structures other than a one-to-one setback. Under the Height Act you could theoretically build a pyramid on top of every roof.

BZA CHAIR MILLER: So long as it's not occupied by humans, is that right?

MR. PARKER: Exactly.

BZA CHAIR MILLER: Okay. What do you mean by enclosed recreation areas?

MR. PARKER: Party rooms, common space, changing rooms for pools. A lot of what's allowed now.

BZA CHAIR MILLER: All right. Okay. So they don't have a height restriction?

MR. PARKER: Well, the height restriction is --
BZA CHAIR MILLER: Within our zones they do, but not within the Height Act, is that what you're saying?

MR. PARKER: Well, the height restriction is structured for human occupancy. So the question is what's human occupancy. And we've recommended that a full time office or housing would not be allowed, but communal space, space that's open to all the residents of the building would not be human occupied space.

BZA CHAIR MILLER: Okay. And then the setbacks from the alley. You're saying that under the Height Act that it's set back from the street but now from the alley that's required?

MR. PARKER: The existing practice is that only the street side is exterior wall. And we're certainly open to staying with that. Our current recommendation is that alleys would also be considered exterior walls. But we know that
there are strong arguments on both sides of that. We're completely open to being relaxed on the alley side.

MR. COCHRAN: And there's certainly been precedent where BZA has permitted relaxation of that setback requirement in order to decrease the visibility of the roof structure from the street or because of historic preservation consideration and so on and so forth.

BZA CHAIR MILLER: Right. Okay.

MR. PARKER: So we're open to that not being considered an exterior wall.

BZA CHAIR MILLER: I was just wondering. You know, I heard you say that about the Height Act and it went to my previous question about in general, you know, there are though some interpretations out there separate from the Height Act, and you've obviously looked at them and considered them. Okay.

This is pretty basic, but just
looking at the diagrams when you're talking about poles on roofs they don't even have any height, right, so they're not even an issue, are they?

MR. PARKER: Correct.

BZA CHAIR MILLER: Okay. Thank you.

COMMISSIONER TURNBULL: Mr. Chair, could I ask?

ZC CHAIR HOOD: Mr. Turnbull?

COMMISSIONER TURNBULL: I just wanted to get back to 28A. And I think Commissioner May has a good point. But I'm assuming that under recommendation nine under A ornamental features that an architect could create that as a tower and be able to accommodate that as a spire or --

MR. PARKER: If you look at number A here, the Kennedy-Warren actually does that. The Kennedy-Warren has a tower right here that has all its core functions in it facing the street right in the middle.
It's a beautiful, you know, tower projection here and that's where their mechanical features are.

COMMISSIONER TURNBULL: I guess what I'm saying is that under strict interpretation of a penthouse, Commissioner May is saying it should be setback. But as a design feature an architect could incorporate that into --

MR. PARKER: And that's our recommendation, yes. A strict utilitarian or amenity feature would have to setback. But if you incorporate it within a design element of the building.

MR. COCHRAN: Just to be clear on that. It still has to be within the spirit of the tower, dome, et cetera --

MR. PARKER: Right.

MR. COCHRAN: -- which tends to more horizontal -- excuse me, more vertical than horizontal.

COMMISSIONER TURNBULL: Right.
You have to be able to read that from the facade? Okay. Thank you.

ZC CHAIR HOOD: Okay. Any other questions.

COMMISSIONER MAY: Mr. Chair?

ZC CHAIR HOOD: Commissioner May.

This start the two minute rounds now.

COMMISSIONER TURNBULL: He has a minute left.

COMMISSIONER MAY: I had a minute left. So I get three minutes then?

Well, I'll try to be quick.

We mentioned wind turbines at one point, and I'm just wondering particularly since I left the conference that NCPC held last week about greening the world's capitals and walked away with visions of all sorts of crazy things happening on building including turbines across all the tops of our buildings. So are they permitted now just so long as they're set back by a distance equal to the --
MR. COCHRAN: Yes. They're not specified in the Height Act, so that's one of the things we're trying to address. We actually came across a building that is probably about eight stories tall around 1905/1910 that had a wind turbine on it, a windmill on top of it that was probably 15 feet high. I mean, it was really quite a feature. Certainly wouldn't have been torn down under historic preservation now. But we're trying to clarify all of these things. And we do feel that wind turbines are going to be sustainability features. But we also feel that anything over 20 feet is certainly going to have to be subject to some sort of aesthetic or appropriate regulation.

COMMISSIONER MAY: Yes. And I mean maybe when it comes to having some of these design features or towers or whatnot that things like moving parts be considered. Because I'm not sure that -- I mean I'm sure somebody could try to marry a spire like
that one that we see on the Realtors
Building on page 28 of your report with a
windmill on it. And I'm not sure we'd want
to see that.

MR. PARKER: Well, technology may
save us on that problem. We were in a
meeting a couple of weeks ago where we
learned that they are now creating --

COMMISSIONER MAY: Vertical
turbines.

MR. PARKER: -- vertical turbines
and turbines that fit in things that look
like conditioning units, right.

COMMISSIONER MAY: Right. Right.
Yes, I've seen those, too.

Okay. I think that's it.

VICE CHAIRMAN JEFFRIES: I just
want to go back again to 28A and this whole
business of the side lot line off the court.
I know that our process here is that when we
have questions and you go back and do
further investigation or whatever. And I'd
just like to as it relates to that particular point, you know perhaps a graphic or something that you could provide just to make certain that I'm clear about the internal workings or the plan within these buildings that might cause a problem for setbacks. If you could sort of provide that, that would be very careful.

I guess what I'm saying is I don't want you to just remove that right away. I'd just like to get a better understanding of some of the issues.

MR. COCHRAN: I just want the Commission to be clear that rules can be made by you to require those to be setback.

We're not --

VICE CHAIRMAN JEFFRIES: Yes.

But I don't want to be in the position here, and I don't think the Commission should be in the position of making these projects more difficult developers and builders and so forth. I mean, they need to be liveable
and the interiors. And so I just wanted to be clear.

    I mean, we're responding to this physically from the outside, but these buildings need to work and we need to make certain that the inner workings make sense. So in terms of what Ms. Steingasser brought up, I just want to get a physical or graphic or illustration to really indicate what some of those problems are.

    I mean, I clearly agree with Commissioner May that, you know, it does seem problematic because you can see it as you're walking down the street. But, you know, I'd just like to make certain I'm clear about what's happening internally.

COMMISSIONER TURNBULL: Mr. Chairman, can I just follow that?

    I think that I would make -- the concern that I have has to do with does it deal with what could be seen from the street. And so, you know, if that back side
of the building is facing an alley or if, you know, they can treat any elements that went beyond that court facade as a decorative piece, as part of a tower or something like that, you know I'd certainly be open to that kind of a treatment. Because I understand the difficulty of planning those buildings and we certainly don't want make malformed interiors as a result of these sort of restrictions. But, you know, I'm picturing that now. I can easily picture a developer building something just as bland on its interior faces as that diagram, and it would be very unpleasant from the street.

VICE CHAIRMAN JEFFRIES: And I would imagine, I don't know if the Office of Planning has made any examples of -- I mean, in certain terms of some of the buildings that these courtyard, residential courtyard buildings if you could just show to just see what those issues look like, that would be
helpful as well.

BZA CHAIR MILLER: I just have
one more question.

I think you said that ornamental
features are not regulated at all, haven't
been restricted as far as size goes, height?

MR. PARKER: Height, right.

BZA CHAIR MILLER: Height? And I
just wanted to ask you why you think there's
a need to do it? Have there been examples
where it should have been restricted?

And then one other question. If
it were to come to the BZA, would we just be
making a decision based aesthetics or what?

MR. COCHRAN: Well, I suppose
it's conceivable that you'd be trying to
anticipate what the Federal Aviation
Administration would be saying if it went up
that high. But, no.

Typically when the Height Act was
written the kinds of structures that would
go above a fairly common roof line would be
those that represent civic or national values: A church spire, a dome, et cetera.
I think what we're trying to avoid is having something that doesn't necessarily represent common values, something that is just a private office building want to call attention to itself going very, very high up. We're saying that may be permitted, but somebody should have oversight on this to make sure that its not excessive. That's all.

BZA CHAIR MILLER: But they could do it right now and it hasn't happened?
MR. COCHRAN: That's correct.
BZA CHAIR MILLER: Okay.
ZC CHAIR HOOD: Anyone else?
Okay. If we can do the last part, Mr. Parker?
MR. PARKER: You've heard it all.
ZC CHAIR HOOD: I think I saw next steps.
MR. PARKER: Oh, well we kind of
talked about that.

ZC CHAIR HOOD: Oh, we did?

MR. PARKER: Yes, back and forth

and you'll leave the record open and we'll

keep working.

ZC CHAIR HOOD: Okay. All right.

Anything final?

Okay. Thank you all, Office of

Planning. Appreciate it.

MR. PARKER: Thank you.

ZC CHAIR HOOD: Let me just

acknowledge, I see one of our former

colleagues Mr. David Levy who served very

accomplished here on the Board of Zoning

Adjustment for some time. It's good to see

David in the audience. David, could you

raise your hand? Okay.

Let's begin with proponents

first. I have Ms. Barbara Kahlow the West

End Citizens Association.

Oh, I'm sorry. Ms. Kahlow, you're

in opposition. I'm sorry. It's getting
late. My eyes must be getting bad.

Okay. Let's go with proponents.


Laurie.

How many can we sit at a table?

Six?

David Powell. And Mr. Williams

has gotten hip. He put question mark, so I'm

going to call him now for the question

marks. You're going to come later? Okay.

So it's changed now. Question marks. Okay.

We'll leave it there.

Okay. Let's begin with Ms.


Ms. Koster?

MS. KOSTER: Good evening. My

name is Julia Koster. I'm with the National

Capital Planning Commission.

Thank you for the opportunity to

offer comments on the Office of Planning

September 15th memorandum providing concept
level recommendation on the regulation of height in the city Zoning codes. My staff testimony is a preview of the more detailed written comments that we'll be providing.

The 1910 Height of Buildings Act has shaped the horizontal character of the city and the skyline and the urban form and airy light filled streets that comprise the unique look of our Capital.

Planning policies in both the District and federal elements of the Comprehensive Plan for the Nation's Capital support the Height Act and the qualities it advances. We've been pleased to work closely and cooperatively with DC OP staff and the Zoning Task Force on this important topic, and we've been making significant progress on reaching agreement in areas where we have had different implementation approaches.

It's important to ensure that the Zoning code is consistent with the Height
Act and to provide clarity and consistency in interpretation.

The September 15th memorandum reflects many of the agreements we have reached. There are four areas where we have yet to reach agreement or where recommendations are different than what had previously been discussed. Most notably the issue of linking the street from which height is established to the street where height is measured.

In some cases resolution has been reached by mutually recognizing that the provisions of the Zoning code offer greater flexibility where development is fully under the limits established by the Height Act than for developments at or extending above the Height Act.

Our approach to the Height Act in Zoning code provisions is based on broad urban design objectives. They are:

Open streets framed by strong
consistent street walls and uncluttered roof lines as viewed from the street;

The general horizontality of the city attention focused on iconic structures that represent our shared federal and local ideals and aspirations, and;

Buildings with height and scale in relationship to street width and street use.

There are six important topics in the memorandum on which NCPC generally concurs. They are:

The top measuring point;

The elevation at the bottom measuring point;

The definition of natural grade;

Measurements for buildings confronting reservations;

The definition of building, and;

The definition of residence and business streets.

There are four other important
areas where NCPC and DC OP staff must work
together to reach agreement. In several of
these areas detailed analyses that identify
the magnitude of a recommendation's impact
on the overall city are needed to better
guide future discussions.

So first using the same street to
determine maximum allowable height and
measuring point identified as option one in
section 4B1 is in keeping with the Height
Act and the urban design concept of ensuring
that the height and scale of buildings is in
relationship to street width and adjacent
use.

Option two has the potential to
allow buildings that are out of scale with
adjacent streets and the size and character
of adjacent development. We are concerned
about the impact of this interpretation not
just downtown, but throughout the city
particularly in areas that transition from
residential to commercial and in steeply
sloped area. We urge OP to prepare an
analysis of the impact of either of these
options across the entire city before
choosing an option.

NCPC has a long and consistent
history of interpreting an exterior wall as
each wall that is part of the exterior
envelope of the building, not just street
calls. We describe our view as each wall
exposed to the elements or to the earth.
This definition of exterior wall also
applies to courtyards and step buildings.

We're pleased that the memorandum
identifies walls fronting alleys as exterior
calls. The memorandum identifies new
approaches to defining exterior walls,
particularly as it relates to setback
requirements which merit further study of
their urban design impacts.

The Height Act is explicit about
what rooftop elements are permitted and
which must be setback from the exterior
wall. The concepts put forward for exterior walls and rooftop structures could result in cluttered roof lines with structures visible from the street, rooftop structures that give the appearance of an additional story and could result in the proliferation of inappropriately located architectural embellishments built to hide structures rather than advance a coherent design.

Further, we note that the proposed concepts do not define a building wall setback from a side property line as an exterior wall and that local Zoning regulations -- can I finish the sentence? Would require a setback for rooftop structures unless allowed by special exception.

We support the stronger protection provided by the finding it is an exterior wall.

I do have more, but I'll certainly stop.
ZC CHAIR HOOD: Okay. Fine. If you can just hold your seat, we may have some questions.

I have Barbara Laurie. Ms. Laurie. I didn't want to call you Barbara Laurie, so I'm sorry.

MS. LAURIE: Good evening, Chairman Hood and distinguished members of the Commission. My name is Barbara Laurie. I am President of the Washington Chapter of the American Institute of Architects. I'm speaking today on behalf of our chapter, which represents more than 1885 architects who live and practice in Washington, D.C. and the surrounding metropolitan community.

The chapter is pleased to be part of the task force and commends OP's process for its inclusiveness. There is much to commend in the Office of Planning's recent height report. We believe that the report provides sufficient clarification on many of our concerns which we have detailed in
length in our written testimony.

I would like to take time to

bring to the Commission's attention several

recommendations that we believe need further

work, and these include:

While recommendation two which
describes buildings confronting federal
reservations or open space provides much
greater clarity of interpretation in the
report, OP points out the current Zoning
regulation relationship between wider
streets and taller buildings and lack of
relationship between larger open spaces and
taller building. OP states: "This
dysfunction may warrant additional
consideration."

When energy efficiency and smart
growth are so important to the future of our
city, we believe that greater density and
mixed uses, especially in areas that are
Metro accessible are appropriate. With
creative design and careful massing
additional density and height can be integrated into buildings adjacent to public reservations.

Thus, we support an approach that would provide flexibility for taller buildings adjacent to larger open spaces. The 1910 Height Act reenforces this approach by allowing height to be determined from width of the widest adjacent to public space.

Recommendation five describes the building measurement. We do not support option one, which is a significant change from current practice and will reduce allowable density of sites abutting multiple streets. Again, when energy efficiency and smart growth are so important to the future of our city I believe that greater density and mixed uses, especially in areas that are better accessible, are appropriate.

The massing concern raised by OP can easily be mitigated by requiring
setbacks from the narrower street and the wider street rather than making a drastic change to its existing practice. If the slope in OP's illustration is reversed and their recommendation is follows, the result is still a taller building on a narrow street. However, this massing problem can also be easily mitigated by requiring setbacks on the narrow street.

Thus, we strongly support option two which reflects existing practice and over 50 years of precedent while enhancing a smart growth strategy for the future of our city. The Height Act will also serve as a backstop to prevent excessive height.

On recommendation ten, which describes height, width and massing of rooftop structures would limit the height of ornamental features to 30 feet unless approved by special exception. This is a significant change from current practice and we strongly recommend that the current
practice be maintained.

We look forward to continuing to work with OP on the Task Force and working groups to further refine the proposed revisions to the Zoning regulations. By working together we believe the result in changes to the regulations will be in the best interest of the community as a whole.

And I thank you very much. I also have David Powell here who worked as our representative from the AIA on the Task Force and if you have any questions for him as well.

Thank you.

ZC CHAIR HOOD: Okay. Thank you very much.

Mr. Powell, will you be speaking?

Okay. All right.

Let me ask this first before we ask questions. Do we have everyone's submission? Yes.

MS. KOSTER: No. We intend to
submit written comments. There's quite a
lot to talk about.

ZC CHAIR HOOD: Okay. All right.

I gotcha. Thank you.

Colleagues, any questions of this
panel? Commissioner Turnbull?

COMMISSIONER TURNBULL: Thank
you, Mr. Chair.

I just had a question for Ms.
Laurie. Are you saying that on
recommendation ten you're for unlimited
height of spires and towers?

MS. LAURIE: What we're saying is
that -- and has been sort of reiterated
here, that we don't really see that there
have been issues or problems surrounding,
you know, there not being a height
requirement there.

COMMISSIONER TURNBULL: To date.

MS. LAURIE: Yes. But given the
fact that what has been built or designed
and built have not necessarily created a
problem or an issue, that limiting that height is not necessary.

COMMISSIONER TURNBULL: But it could happen where we could have a significant design feature that is proposed to be a height that I think -- OP has just I think raised a concern that somebody could come up with a feature that's 60 feet tall or whatever. I mean it hasn't been done, but that doesn't say that somebody could set a precedent for doing that. I think there's just a concern about although its not had a potential impact so far, I think OP's raised a good point about a reasonable height limit on something.

MS. LAURIE: Yes. I mean, I could imagine that there might be some maximum, but that that maximum -- I guess in terms of the design of the way that architects are designing buildings and maybe perhaps creating an image icon or something like that, that you're relatively in proportion
to that, you know the total height of the
building. And so in terms of aesthetic as an
iconic building, you know, you're going to
do something inappropriate now. Obviously
somebody could go outside of that, you're
right.

COMMISSIONER TURNBULL: Okay.

All right. Thank you.

VICE CHAIRMAN JEFFRIES: I
appreciate your commentary. And I guess I'm
on the same place. You know, I've had so
many problems with these rooftop
embellishments. And it seems like our
federals are more concerned about that.
Because you're right, based on the scale and
proportions of so many of our horizontal
buildings, I mean you're just going to throw
some very vertical thing that this really
doesn't fit.

I guess I mean are you finding
that it constrains some design features and
so forth or just always seems to work out?
Because clearly, I mean if we hadn't had this problem, as you've said why do we have to put this in place? I mean, what are some of the constraints that you -- are you finding any constraints in terms of what's in place?

MS. LAURIE: No. I mean I guess what it is is that, you know when you think about -- I'm really thinking more about proportional issues and things like that.

VICE CHAIRMAN JEFFRIES: Yes.

MS. LAURIE: But if you have a spire that this is sort of a sinuous spire -

VICE CHAIRMAN JEFFRIES: Right.

MS. LAURIE: -- that that could go up a certain height because of its proportion relative to the top of the roof or the width of a building and so on as opposed to a wider sort of spire structure that you would proportionally adjust in height. And so, yes, I guess this is all
based on the assumption that there's great
design, you know.

VICE CHAIRMAN JEFFRIES: Right.

Right.

MS. LAURIE: And that you

wouldn't want to limit great design.

VICE CHAIRMAN JEFFRIES: Well,
you know, that's the problem that's I've
always had on this Commission as long as
I've been on here. I just -- you know, and
I've always sort of conflicted somewhat with
our former Commission John Parsons since
that I didn't really get into this business
of restricting design. And particularly if
the anchors, the building's of a certain
proportion and so forth, I mean its going to
really start to dictate how you cap it. And
you weren't going to go off the reservation.

And so I appreciate your

comments. I mean, I was going to ask the
Office of Planning where did they get 30
feet from. But, you know, I guess that
could be as good as anything. And I just
wanted to make certain -- I mean I
appreciate your comments. And also I
appreciate your comments in terms of the
reservation. And those, you know, could be
places where we could see greater height.
So I appreciate that comment. So thank you.

BZA CHAIR MILLER: I just want to
comment that's somewhat where I was coming
from. And being on the BZA we're not a
design review board, we're a Zoning board.
And so my concern was what would we actually
be looking at with what kind of expertise.
You know, is this really something that the
Zoning board should look at or an
architectural review board, or whatever. I'm
just throwing it out because it is new. But
I also think sometimes when you're thinking
about regulations that they oft times can be
based on fixing problems that have become
apparent, and this isn't one of this,
apparently.
COMMISSIONER MAY: I just wanted
to talk to Ms. Koster a little bit about the
issue of the definition of an exterior wall.
And I just got a little bit confused.

What do you agree with or
disagree with in the way OP is trying to
define exterior walls?

MS. KOSTER: I think what we do
agree with is the alley walls. We're still
looking at the same issue that you were
where they proposed on a courtyard where the
back wall is considered an exterior wall but
the sides would not be. That's been a very
new proposal that just came out in the
September 15th memorandum. And we're still
trying to evaluate that.

And I think the thing that we do
have strong concerns about is the side wall,
and in particular where the building is
setback so you do have a wall that is
exposed all the way from the ground up. And
that the intent here is not to treat it as
an exterior wall so that you can then offer
relief through an exception process when
it's above the height limit.

COMMISSIONER MAY: Yes. Are you
sticking with the definition of the exterior
wall being basically any wall that's on the
outside face of a building?

MS. KOSTER: I think that's been
our starting point. But we have been willing
to work with the Office of Planning of
different proposals. Like I said, one of
these was quite new to us.

COMMISSIONER MAY: Yes.

MS. KOSTER: And we certainly
looked at the party wall issue. We've been
much more willing to, I think, look at what
they've been proposing when it's a party
wall and the building adjacent appears to be
the same or greater in height.

COMMISSIONER MAY: What about in
circumstances have a court that's facing an
alley or something like that?
MS. KOSTER: I think that, you know up until what we saw in this most recent memorandum we would have viewed all those walls as exterior walls.

COMMISSIONER MAY: Yes. And you're still kind of in that camp now?

MS. KOSTER: A little bit. Yes.

COMMISSIONER MAY: Okay. And philosophically what is it that you're trying to protect there? Because it seems, you know, the Height Act always struck me as being concerned about the public perception of height: How we perceive the height when we're walking down the street. And if it's something that its only facing an alley or only visible from private property, what's the issue?

MS. KOSTER: I think first of all, we do agree with the same perspective that you have that it's what you can see when you're on the street. And that's why we've been very concerned about courtyards.
I think that given some of the cases we've looked at in the past what does occur facing an alley is frequently visible to other streets. And so we have looked at it in that regard. And I think we'll continue to look at the testimony that's received here.

COMMISSIONER MAY: Okay. Thanks.

ZC CHAIR HOOD: Okay. Thank you.

Any other questions?

Okay. Thank you all very much for allowing us some testimony and insight.

Okay. That's all I have on my list signed for proponents. Is there anyone else here who is in support of what we have thus far? In other words, any more proponents?


Mr. Sher. Mr. Quinn. Mr. Glasgow. All at
the table at the same time. And Mr. Collins. Did I call six. Yes. Okay. Let's see what we have so far.

VICE CHAIRMAN JEFFRIES: I need my medication.

ZC CHAIR HOOD: Ms. Gates, if you want to join. She may not want to come? Do you want to come or do you want wait, Ms. Gates? Okay. You can come.

VICE CHAIRMAN JEFFRIES: What a panel. This is really very interesting. Ms. Kahlow. Oh boy. We should take a photo. We need to take a photo.

ZC CHAIR HOOD: Actually, I will tell you this. The Commission is prepared, as you see, we brought a camera because we would expect this.

Okay. We're going to go ahead and begin. Ms. Kahlow.

MS. KAHLOW: Yes. Are you ready?

Yes.

I Barbara Kahlow live at 800 25th
Street, Northwest. I'm testifying on behalf of the West End Citizens Association, the oldest citizens association in the Foggy Bottom West End area.

The WCA is primarily interested in maintaining and improving the quality of life for the existing residential community in our neighborhood.

To better understand the impact of today's proposal, if the proposed new height regulations were in place, they would have prevented some of the adverse effects to be imposed on our community by the recently approved massive development by the George Washington University for the site of the former GW Hospital known as Square 54.

I testified in opposition to that plan before you and NCPC, and I provide some of the testimony before NCPC. I want to do a little about it. Does GW's application violate the Height of Buildings Act? The answer is: Yes, it would set a precedent.
for excessive height off the main avenues of D.C. Current Zoning provides a maximum height of 90 feet in all parts of the square. GW's application identified three separate buildings, one commercial fronting on Pennsylvania and two residential on I Street. Later GW asserted there's only one building, thus allowing the height for all three buildings to be measured from the higher frontage on Pennsylvania Avenue.

NCPC staff report disagreed and said there were two buildings. To allow the additional height NCPC staff considered the residential buildings to front of 23rd Street even though they really fronted on I Street.

GW's plan additionally called for 147 feet composed of a 122 feet from the sidewalk with a 25 foot outdoor room above the top story in the southeast corner of 22nd and I.

Using its one building logic by
using Pennsylvania as a frontage GW said the southeast corner would be 110 versus 122 feet.

Now let me skip along to your proposals tonight. OP's height proposal addresses some but not all of the issues raised in our Zoning Commission NCPC testimonies.

Recommendation four would clarify the number of buildings involved since it before tonight required a physical connection on at least half of the share of floors. Under that recommendation GW plan would have resulted in three buildings, not one or two. We strongly support that original recommendation.

Recommendations nine and ten would allow rooftop amenity features including communal and closed recreation space to exceed the height limit. Therefore, a scaled down version of GW-s 25 foot outdoor room for recreational purposes would
have been allowed.

Recommendation ten says the space enclosed should not count towards the overall building FAR and may not exceed 20 feet.

We oppose the communal enclosed recreation space as exceeding the height limit and we believe that any such excess should be included in the overall building FAR.

Recommendation three raises additional problems, resident street versus commercial street. Since much of Foggy Bottom/West End includes mixed use properties such as zoned S-B-2 and C-2 under OP's recommendation they'd be considered business streets which allow for more height. Such a determination would adversely affect the entire character of many blocks in Foggy Bottom/West End.

And then I go into something about recommendation ten, which was not in
the hearing notice but was in the
supplemental notice.

We oppose that the provision
permit amenity features located entirely
within an ornamental feature to be relieved
of the setback requirements.

Lastly, we were encouraged by
OP's statement that further study is needed
to determine setback requirements that would
strike the appropriate balance between
allowing some structures atop low and
moderate density buildings, especially
rowhouses in minimizing light, shadow and
visual impacts. In fact, we recommend the
Commission require shadow studies whenever
the community expresses concerns about
blocks air and light, as we did for Square 54 and we were promised to have those shadow studies that never materialized.

Thank you for consideration of
our views.

ZC CHAIR HOOD: Okay. Thank you,
Mr. Kahlow.

Mr. Sher?

MR. SHER: Mr. Chairman, we've coordinated our presentation. And the order we'd like to go in Mr. Quinn, Mr. Glasgow and Mr. Collins. And then I'll go last. They'll take the three minutes and I'll take the five. So with your permission, we'll proceed that way. IS that all right to proceed that way?

ZC CHAIR HOOD: That's fine. And it's actually the same way we have it here, so somebody knew how to call it in.

MR. SHER: Great.

MR. QUINN: Can you hear me all right?

Over the last 90 to 100 years consistent rulings relating to the Height Act and the definition of building have produced an attractive horizontal fabric of building in our capital city. We see that there is no reason to depart from those
rulings and legal precedents and every reason to follow them, not just for consistency and better buildings but so as not to make hundreds of buildings nonconforming. And also to help meet economic competition from our surrounding jurisdictions.

I'm going to speak just briefly on the point of measurement, and I think basically there have been changes in the recommendations. And based on the longstanding application that we've set an interpretation of the 1910 Height Act and the point of measurement. See Tabs B and C in our presentation.

We generally agree with the most recent recommendations of OP set forth in recommendation A1, option two of recommendation one. What I'd like to do is concentrate more on the definition of building.

Since the inception of zoning in
the District of Columbia the application of
the definition has been essentially the
same. Namely, that structures which are
connected by way of pedestrian access at or
above the main floor level have been
considered a single building. In this manner
residential and commercial buildings have
been built to allow great height and density
that might otherwise be built, but always
complying with the overall limitations of
Zoning and height. And you can see the
definitions in Tab D over the years.

In the original report of the
Office of Planning, and I think there's been
a long march in I think the right direction,
so we're very pleased with that. The OP
seemed to treat the long term and consistent
application in some questioning manner. But
what we think is that the definition has
served the city well and it's produced some
of the most important projects in the city.

Significantly, in all of those
cases if the same property were developed by
one owner, the identical height and bulk
would not be questioned. The definition
gives architects the ability to be more
creative in design by breaking the massing
of larger buildings and in providing
separate phasing of construction for larger
buildings. Residential examples of this
include Columbia Plaza, the Watergate, the
Towers Apartment on Cathedral Avenue and
Wardman Park Apartments.

One of the major benefits has
been the ability to permit a single
structure to transfer development rights
from one part of a lot to another. This is
especially helpful in historic building
situations such as the Willard Hotel
expansion, the National Theater and adjacent
development, the Homer Building, the Warner
Theater in Metropolitan Square, just to name
a few.

The definition is also especially
helpful for mixed use projects so that the
sanctity of uses can remain essentially
separate while constituting portions of a
single building such as the Gibson Apartment
and 2300 M Street.

Is that three minutes?

ZC CHAIR HOOD: Yes.

MR. QUINN: I'll simply say thank you. And if there are questions, I'll be glad to answer them.

We think that you should stay with the existing definition.

Thank you.

ZC CHAIR HOOD: Okay. I'm reading your testimony. Are you next, Mr. Glasgow?

MR. GLASGOW: Yes, I am, Mr. Chairman. Ready? Okay. Thank you.

Also I was going to be discussing the IV A4, which is the single building issue. And we appreciate the comments that the Office of Planning has made this evening
because we are getting a lot closer on that issue. Because we were very concerned about
and presently are working on several major mixed use projects, some of which are in the NoMa area, Constitution Square being one where we have office, residential, hotel, grocery store all in a single building all along 1st Street.

If we had what was originally proposed, we couldn't do that type of project without carving a lot up in a completely different way. Instead of building the 1st frontage, both 1st Street in northeast and in southeast, we're looking at a number of major mixed use projects. We need to be able to have the flexibility to connect on a single level. We don't have any problem with that. But connecting disparate uses on multiple levels the floors don't align. You have a lot of different issues that occur. So we need to have that flexibility that we've had in the past for a
number of these projects which the most recent Office of Planning testimony tonight would allow that to occur so that we could keep doing those type of mixed use projects. Otherwise as is stated on page 17 of the OP report there's also concern that the proposed language would have the unintended consequences of preventing mixed use buildings.

The safest thing to do is build an office building. With the floor plates lining up you can do them readily and match them together over a period of time. You have mixed use projects, that is very difficult to do. So you would not use your wide street frontage on a mixed use project. You'd want to put your office there and then wait and see what ends up happening down the line. And in these areas the logical way to develop those, particularly in NoMa and in the South Capital Street area which is where some of the largest projects are being
developed in the city right at this point in
time, is build out 1st Street first and then
have the subsequent phases tie in to that as
they go down the block from the east and the
west.

So that's what I mainly wanted to
cover at this point in time. And because of
the progress that we've been making in
reviewing what is the difficult issue with
the Office of Planning in working on that.

I don't need to use my entire
three minutes. I've covered what it is that
I wanted to cover on that issue and
certainly would be happy to answer any
questions on that.

ZC CHAIR HOOD: Okay. No ceding
of time.

Okay. Mr. Collins?

MR. COLLINS: Chris Collins,
Holland & Knight.

I would like to focus my comments
on just a few examples of what would happen
to existing buildings if the OP recommendations are adopted. What would the District achieve and what that means to the property owner. Focusing particularly on point of measurement and method measurement, what constitutes a single building and business streets versus residence streets.

One result of the adoption of the OP proposal is that many buildings in the District will become nonconforming structures. Because of the scope of the OP proposals the magnitude of the resulting nonconformities will be enormous.

What is the benefit to the city of these buildings become nonconforming? Nothing really. Most, if not all, the buildings affected by the change in regulations will remain place for an indefinite future but from that point on they will be classified as nonconforming.

What is the impact to the owner? Section 2001.2 allows ordinary repairs,
alternations, modernizations to a nonconforming structure. Under Section 2001.3 you can make additions or enlargements, but only if certain requirements are met. What if those requirements are not met? Then the only option for an owner is to go to the Board of Zoning Adjustment which an alternative that is lengthy in time and costly in fees.

Perhaps more importantly Section 2001.4 addresses the ability to reconstructing nonconforming structure.

Ever since 9/11 the issue of the ability to reconstruct a nonconforming building that is destroyed has become an increasingly important consideration to lenders and equity sources considering whether to participate in real estate transactions, particularly here in the Nation's Capital. In an increasingly tight lending environment where real estate deals can be rejected for the slightest
imperfections this is a real issue with real impacts.

I'd also like to talk about unintended consequences, things having nothing to do with height. By way of illustration one example.

The office building at 2445 M Street, Northwest was built in the 1980s with an above grade covered walkway to the Fairmont Hotel at the northwest corner of 24th and M. Both buildings are in the C-R zone. The C-R zone allows the permitted residential and nonresidential FAR to be apportioned between two lots anywhere in the square. But that's not the way these buildings were built.

These buildings are located on a single record lot with a covered walkway connection between the hotel and the office building and with a single building covenant, an allocation of development rights covenant and a parking covenant.
There's one point of measurement because its one building and its on 24th Street. But the difference between 24th and M Streets is not that significant for building height measurement purposes.

The covered walkway approved by the Zoning Administrator allows the sharing of other features such as the ground floor open space requirement, the measurement of an open court between the hotel and an office, and the placement of the hotel's parking below the office building.

The result of OP's language in recommendation A4 is that these would be deemed two buildings on one record lot. The office building would then exceed the permitted height. In addition, one of the two buildings would not comply with the ground floor open space requirements and the open court area requirement. And the hotel would not comply with the parking requirement.
What does the city gain by this?
What does the private party owner experience by this? There are real problems with this.
There are many other developments around the city approved with covered walkway connections where these and other issues will arise from single-family homes connected to garages --

ZC CHAIR HOOD: Mr. Collins, Mr. Collins?
MR. COLLINS: Yes.
ZC CHAIR HOOD: Mr. Collins, if you could just finish up.
Let me ask you, do we have your statement?
MR. COLLINS: Yes, you do.
ZC CHAIR HOOD: Okay. Is it in this package here?
MR. COLLINS: Yes, it is.
ZC CHAIR HOOD: Okay.
MR. COLLINS: I'd just like to call your attention to the last part about--
ZC CHAIR HOOD: Could you just end your thought -- you know, just give us your closing thought, please.

MR. COLLINS: All right.

Changing the interpretation would constitutes a business street and what a resident street is. Simply stated, the change will render existing buildings not only nonconforming of the Zoning regulations, but also in violation of the 1910 Height Act.

Thank you.

ZC CHAIR HOOD: Okay. Before I go to Sher, Mr. Collins, can you tell me exactly where your statement is? I don't see it.

MR. COLLINS: Where my statement is?

ZC CHAIR HOOD: Yes. Okay. I'll find it. Okay. Actually, I was interested in your story, but your time was up.

Mr. Sher?
MR. SHER: Mr. Chairman, members of the Commission, for the record my name is Steven E. Sher, land use services with the law firm of Holland & Knight.

Got a lot to say and five minutes to say it in, so I'll talk faster than I usually do.

We've given you a detail analysis of these proposals. We spent a lot of time with it. We think they're important. They have a lot of potential consequences. And we've looked at them. We hope you'll look at them too.

An overarching issue for us that we start from is whether to incorporate into the Zoning regulations clarifications, interpretations, whatever you call them, of the Act of 1910. The Act and the regulations are two fundamentally different propositions for measuring height. The Act relates height to the width of the street. The regulations relates height to the zoned
district classification.

So a lot of the things we've been talking about go back to the Act of 1910 clearly, but they don't have any relationship to the Zoning regulations. Because you don't measure height in the Zoning regulations based on the width of the street. In an R-4 district you can build a 40 foot high building. In a C-2-A district you can build a 50 foot high building. That's without regard to the width of the street.

So you need to keep in mind that there is a clear distinction here. And notwithstanding the fact that a lot of what we've heard from OP and a lot of the discussions in the Task Force and elsewhere have said we need to bring all these things together so that everybody understands them. The Zoning regulations are not all things for all people. They don't have the subdivision regulations in them, they don't
have environmental regulations in them, they
don't have historic landmark controls in
them. They're Zoning regulations. You ought
to keep them as Zoning regulations. And if
the 1920 Height Act has issues, I don't
think it belongs here.

We have a number of issues that
we've discussed, and some of my colleagues
have already made reference to them. The
idea of what is a single versus a multiple
building. And we've covered that in our
statement.

There's a significant deviation
from the current regulations and we don't
know that that make sense or that's a
reasonable thing to do.

The location of the measuring
point which says you can use one street for
the width of the street and a different
street to measure the height is consistent
with interpretation of the Act since 1910.
And we don't see any reason why: (a) it
doesn't belong in the regulations to begin
with, but if it belongs here it doesn't
belong here in the format that's proposed
here.

With respect to the question of
setbacks for roof structures and the
question of exterior wall. The Act uses the
term exterior wall, the regulations uses the
term exterior wall. But they mean two
different things.

It is clear from the history of
application of the Act that exterior wall
meant wall facing a street, not wall facing
a side lot line, not wall facing an alley in
the rear. But a wall facing the street.

Regulations means something else.

What we're concerned about here
really is not trying to change the Act.
Nobody can change the Act other than the
Congress. You can't change it, the Council
can't change it, the Mayor can't change it.
The Congress can change the Act.
As somebody earlier, I guess it was Mr. Parker in his presentation, nobody wants to go out and start down the road of we need to change the Act. But what you need to make clear here is that authority to waive the setback requirements applies to those things that are not limited by the Act. And if the Act says exterior wall means a wall facing a street, then our view has always been that the Zoning Commission and a PUD, the BZA in a case before it can grant flexibility from those setback requirements as long as it's not inconsistent with the Act.

And we are firm and fervent believers in the Act. We've got among the four of us probably a 135 years of experience doing this stuff. And there isn't anybody anywhere who knows more about the Act of 1910 and how its applied and what it was intended for than we do. We go out there and tell people all the time you can't
forget about the Act. You got to look at the regulations, you got to look at the Act; whichever is more restrictive among the two you've got to comply with.

And there are lots who think well we're just trying to manipulate and all the rest of that stuff. That's really not true. We're trying to take advantage of what the Act allows to do and what it allows our clients to do, but we're very conscious of that all the time.

I wanted to say I concurred with Ms. Miller's question about trying to put a height limit on ornamental features. Would you really want to send the National Cathedral or the Shrine of the Immaculate Conception to the BZA for a determination about whether those things should exceed 30 feet or not? I wouldn't want to do that.

We have gone through lots of other things here. And the only other one I want to point out is something that Mr.
Parker mentioned where he talked about height related to natural grade. We're working on a project to deck over the freeway. And we just want to be sure those streets that cross over the deck are technically bridges or a platform. And we don't want to have to be measuring the height from the bottom of the freeway. You know, we're extending those streets at the G Street cross where the grades are roughly comparable on either side, but it is a platform or --

ZC CHAIR HOOD: All right. Mr. Sher, you know, I got to be fair across the board.

MR. SHER: I'm done. All right. I was the last one.


COMMISSIONER GATES: Mr. Chairman, with all due respect, you may want to go ahead and ask your questions of the
135 years of experience. I'm going in a very different direction.

ZC CHAIR HOOD: Your experience matters, too, so we want to hear from you before we ask questions.

COMMISSIONER GATES: Okay. Thank you. Thank you.

Good evening, Chairman Hood and members of the Commission. My name is Alma Gates and I am representing ANC 3D as Chair of its Zoning Committee.

ANC 3D includes many well known residential developments: Spring Valley, Wesley Heights, Berkley and Foxhall Village to name a few. What makes these developments distinctive is their uniformity with regard to design, massing, lot size, setbacks and height.

More recent developments like Phillips Park and individual in-fill houses do not possess the same height uniformity and often push limits through creative roof
treatments that provide additional height
and space for residential properties while
casting unwanted shadows on neighboring
properties.

The height of residential
buildings and the point from which height is
measured have been long term concerns. And
in 2006 ANC 3D sent the Zoning Commission
proposed amendments to the Zoning
regulations. In this latest round of
rewrites ANC 3D participated in the work
group on height, and is pleased to furnish
the Zoning Commission with a report from its
Zoning Committee which was approved by a
vote of six-zero-zero at the September
meeting.

The first point I want to address
in my five minutes is found in OP's
September 15 memorandum section 4B measuring
a building. Here is an opportunity to the
Zoning Commission to bring clarity and
consistency in measurements for residential
zones where limits at set at 40 feet. To
the highest point of the roof rather than
the ceiling of the top floor.

Currently there is no maximum
height restriction for a house in the 40
foot district since there could be unlimited
building above the top ceiling. In all
other categories, garages, accessory
buildings, 60 and 90 foot districts and even
40 foot buildings that face a bridge or
viaduct measurement is made to the highest
point of the roof or parapet.

This inconsistency does not
protect the physical character of neighbors.
ANC 3D would suggest that the regulations
followed in Montgomery County, Fairfax
County and Arlington County be reviewed as
they measure vertical distance to the
highest point of the roof and none measures
to the ceiling of the top story.

A second point of concern,
natural grade, is found under section 4B3 of
the OP memorandum. For too long developers
have mounded up the earth at the front of
houses and ended up with a roof line in the
clouds. Approval of the intent of the
recommendation on natural grade coupled with
consistency in the height limits of
residential buildings in the 40 foot
category will help create or maintain a more
consistent street scape in residential zoned
district.

On behalf of ANC 3D I
respectfully request the Zoning Commission
read the entire report of the Zoning
Committee which is attached.

Thank you.

ZC CHAIR HOOD: Thank you very
much, Commissioner Gates.

Colleagues, any questions of this
panel? Chair Miller?

BZA CHAIR MILLER: Okay. Thank
you.

I guess my first question is for
Mr. Collins. There is a point maybe that I would differ with you on with respect if there's a change in the regulation that gives the definition for building, that that would put all these buildings in violation of the Height Act. And thanks to the outline of Mr. Sher, but I guess it's from all of you, I've looked at the Height Act before and the way that it reads is that no building shall be erected, altered or raised in the District of Columbia in any manner so as to exceed in height, et cetera.

And I guess it's my view, and I'm not sure whether the Board actually decided this way in a case, though the issue did come up, that if a building interpreted to be two buildings instead of one or if the regulation changes, I don't see why that's necessarily a violation of the Height Act because when the building was built it was constructed at least in accordance with the interpretation of the Height Act with the
approval of the Zoning Administrator. So I don't see all of these buildings all of a sudden being in violation of the Height Act.

MR. COLLINS: That was my very point that they are not. They wouldn't be in violation of the Height Act. But they would become nonconforming structures.

My point was the unintended consequences of trying to deal with height by making all these regulations. What you're doing in that situation that I cited at 24th and M is that the two frontages don't -- there was one building, determined to be one building, one measuring point. The two streets don't vary significantly in elevation so it didn't result in any kind of undue advantage. But the point is other aspects of the buildings became nonconforming. And the building now is a nonconforming structure or two nonconforming structures, it has an impact on the ability to finance or refinance a property. That was
my point.

BZA CHAIR MILLER: Oh, okay.

Because I understand what you're saying about there are other complications that go with the building becoming nonconforming. Because all of a sudden they're subject to different regulations.

MR. COLLINS: In trying to address the height, OP has either intentionally or unintentionally scooped up a whole bunch of other issues having nothing to do with height that cause problems and render buildings nonconforming.

BZA CHAIR MILLER: Okay. So you didn't mean that they would be in violation in the Height Act?

MR. COLLINS: No. I thought I prefaced my remarks by saying the unintended consequences other than height.

BZA CHAIR MILLER: Other than?

Good. Okay.

And, Mr. Sher, is it your basic
point that Office of Planning is making a mistake by trying to mix together the Height Act and the regulations to try to create regulations to somewhat interpret the Height Act or they should be totally separate, that anything dealing with the Height Act should be ought of the regulations?

MR. SHER: Essentially yes. It's two fundamentally different ways to look at measuring height. And if our regulations talk about height by zone category, then we don't need to worry about all these various things that talk about measuring based on the width of the street.

If in a C-3-C district a 90 foot height is permitted and on one side of the site there's a wide street, on the other side of the site there's a narrow street, on the other side of the narrow street there's a lower density zone of some sort, then that's something that gets addressed by the way you map the zoning map. And it's
something by the way you design your zoned
districts rather than saying there's
something inherently wrong about the width
of the street on one side or the width of
the street on the other.

I know you've heard me at the
Task Force and I've sort of been a one note
-- that's not my only note, but it's a
consistent note that I've said along. I just
think we're -- the Zoning Commission wasn't
even in existence when the Act of 1910 was
adopted. It came along ten years later.
There's no way that the Congress or the
Commissioners who forwarded the thing to the
Congress could have meant or said or thought
that there was any role for the Zoning
Commission in that Act, because there was no
Zoning Commission. There were no Zoning
regulations. They didn't come along until
ten years later also.

So you have Act, just like you
have an Historic Preservation Act or you
have an Environmental Policy Act, or you have a set of subdivision regulations. And if you're involved in this stuff, in this business, if you're involved in development you are charged with knowing what all these various pieces of laws and regulations are. And you can't just say well it's not in the Zoning regulations, therefore I don't need to be concerned about it. If it's not in the Zoning regulations applies, you need to know. And if it's the Height Act or any one of these other pieces of legislation, I don't think they always all get mixed together.

BZA CHAIR MILLER: Okay. But--

ZC CHAIR HOOD: Let me just say there. We're going to do five minute rounds, but go ahead and finish and ask your question.

BZA CHAIR MILLER: Okay. So the question of exterior walls, though, that belongs in the regulations because we have
regulations that can be stricter than the Height Act.

MR. SHER: Clearly you can, but my point there only was where it's not inconsistent with the Height Act, the BZA and the Zoning Commission has been able to grant flexibility. And we want to do is preserve that ability for reasons that have been discussed many times. Because of historic preservation or narrow sites or mixed use buildings or what have you you want to be able to say we're not going to get anywhere near messing with the Height Act stuff with structures facing the streets exterior walls, but for the other things we'd like to be able to come and get relief somewhere. Because we don't think the Act precludes that.

BZA CHAIR MILLER: That is my final question. On that ornamental features issue, do you think a regulation like that would discourage some design because
architects would want to have to pay the costs or the hassle of coming before the BZA?

MR. SHER: I think if that was the only reason someone had to come to the BZA, I could very well believe that that would just get passed away. It comes under the general heading in my mind of it's not broken and we don't need to fix it.

BZA CHAIR MILLER: Yes. Okay.

Thank you.

ZC CHAIR HOOD: Okay. Anyone else? Commissioner Turnbull?

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

Mr. Sher, residence and business streets. You're at different odds here with OP on how they defined that. And maybe you could comment a little bit more. But I'm thinking about Ms. Kahlow brought up the question between an SP and a CR district.

MR. SHER: It has always been my
understanding that the designation of the street was related to the zoning of the immediately adjacent private property, and the Act uses the term "street or portion of a street." I don't think the Act anywhere uses the term block face or block front, or what have you. And I think the various examples of that were in the report and were shown on the slides before indicate in some cases some greater allowance and in some cases some more restrictive allowance than applying it strictly on the basis of if my property's zoned commercial, C-2-A, C-3, C-1, the street that I'm on is a business street. If my property is zoned residential, R-1 through R-5, then the street that I'm on is a residence street. And in the one case I get the width of the street plus street, on the other hand it's the width of the street less ten feet and other considerations that go again that.

Again, that's always been my
understanding of how that's been applied.

There was a case before the Zoning Commission many years ago involving a piece of property owned by Howard University where the one side of the street was getting rezoned and the other side wasn't, and it was some question. And I think all that got worked out.

Again, if there are reasons that height on one piece of property is creating some kind of effect on impact on the adjoining piece of property or the piece of property across the street, then you need to be looking at the zoning categories. You need to be looking at whether that much height should be allowed on this site immediately adjacent to that use.

Now we've had this discussion in many cases that have come before the Commission. In particular, the idea that we've concentrated our density on our radial corridors and then as you get off the 14th
Streets and the Connecticut Avenues and the Wisconsin Avenues, you step down pretty quickly to lower density residential stuff. Sometimes 90 foot apartment houses across a ten foot alley from a single-family dwelling. And we've given many examples of that to the Commission and submitted plats and photographs and things like that. And sometimes it's a problem and many times it's not.

So if there's a problem in a particular location, you fix the location. It just seems like we're going beyond fixing that kind of a problem to creating a different set of criteria that to me are at odds with the way it's been interpreted universally up to now and for which I don't really see a need.

COMMISSIONER TURNBULL: Okay.

Thank you.

ZC CHAIR HOOD: Vice Chairman?

VICE CHAIRMAN JEFFRIES: Yes. I
have to tell you, I mean Office of Planning
has done a lot of great work. Some of the
discussion was rather arcane and very
technical and just made my eyes roll over.
But I am somewhat quite alerted to this
whole notion of intended consequences,
particularly around the business around
these mixed use developments and how they
can be harmed.

I'm from the economic development
school and I would be somewhat concerned if
that is a consequence of this single versus
multiple building use. Because particularly
in a place like D.C., I mean you know we're
still trying to revitalize and stabilize a
lot of neighborhoods. And given the
scarcity of horizontality in terms of land
here, I mean the mixed use develop is
absolutely important.

So I just want to put a big pin
in that and make certain that we think about
that. I mean, I feel very strongly that I
don't want to do anything to harm that if
there's someway that we can skin a cat here.

    Again, you know we sit here and
we listen to the technical aspects of curbs
and this and that and setbacks. But, you
know, I'm appreciative that you, Mr.
Glasgow, really brought the practicality of
some of these things to the fore so we can
see sort of what the consequence could be.
So I'm appreciative of that.

    Thank you.
ZC CHAIR HOOD: Thank you.
COMMISSIONER ETHERLY: Thank you very much, Mr. Chair.

        Mr. Sher, coming back a little
bit that conversation, the exchange that you
just had with Commissioner Turnbull, the
issue again of business versus residential
street it strikes me as though you're saying
this essentially taking a mallet, if you
will, to -- I don't even want to call it a
mole hill. Because I think what you're saying is there's not a problem here to be fixed necessarily. Is that an accurate characterization of your position on that issue of clarifying business versus residence street?

MR. SHER: Again, remembering our start from the basic premise that the Act is over here and the regulations are over there.

COMMISSIONER ETHERLY:

Understood.

MR. SHER: But having said that, I do think that there is a pretty common understanding of folks that this is the way the Act has applied. That if you're in a zone that allows commercial you're on a business street and otherwise you're on a commercial SP/CR that group of zones. And the R zones are resident streets.

I'm not saying that there aren't situations in the city where the Commission
needs to look at its regulations and decide whether allowing this level of height compared to allowing what's next to it needs to be looked at. You do that in particular cases brought to you all the time. And I've been involved in many of those and we've had a lot of discussions about what's the right level of height with this building and so forth. And we've gone through all kinds of processes and discussions to get to the right answer on that. But I don't believe that carving out new applications of the business versus residence street is really necessary or solves a problem.

COMMISSIONER ETHERLY: Okay.

Thank you. That answers my question.

Thank you, Mr. Chair.

ZC CHAIR HOOD: Commissioner May?

COMMISSIONER MAY: Okay. Ms.

Kahlow, you made a reference to that particular issue, the definition of residence streets and business streets
suddenly transforming what would be residential streets to business streets in Foggy Bottom. I mean, has there been any sort of analysis of that or can you even provide a sampling of how many blocks might be affected or what the result might be in the end?

MS. KAHLOW: I think almost every block in the West End has both R and some version SP-2 or CR or C-2-C or something. So almost every block is affected.

COMMISSIONER MAY: They would remain residential streets, so it's more likely --

MS. KAHLOW: No, they wouldn't necessarily.

COMMISSIONER MAY: Unless the R zone was sufficient density.

MS. KAHLOW: Some are, some wouldn't and it's just a mixture because we have little townhouses all over both in the West End and in Foggy Bottom. We have little
townhouses on some streets. Let's use 25th Street. We have a row of little townhouses and then we have commercial C-2-C next to it and across from it is CR. I mean we have such a mixture everywhere that all of our little townhouses --

COMMISSIONER MAY: What was the R zone there?

MS. KAHLOW: The R zone is like an R-3.

COMMISSIONER MAY: So an R-3 zone remain a residential street?

MS. KAHLOW: Yes. But everything else around it would be commercial.

COMMISSIONER MAY: And across the street if it were all commercial, it would remain commercial.

MS. KAHLOW: Yes. And around the corner there's one townhouse that's R-3 and then everything is CR.

COMMISSIONER MAY: Right. And that would remain residential on their
definition.

MS. KAHLOW: Okay. But the next one would all be commercial because it's CR.

Each block you have so many little townhouses all over. We had a case today in front of the Historic Preservation Review Board where we had R-5-D and all around it was C-2-C.

COMMISSIONER MAY: Okay.

MS. KAHLOW: And the answer is we would keep that one side and everything else would be lost. There has to be just one building of C-3 or below it. And it would change it to commercial all the way around.

And what's more important is the fact if it turns to a PUD. That's the more important. So let's pretend we have C-5 because much of --

COMMISSIONER MAY: That's okay.

I'm kind of getting the point.

What I was really wondering is whether you really have done some sort of
analysis kind of block-by-block to see whether --

    MS. KAHLOW: We have not.

    COMMISSIONER MAY: And that might be helpful at some point.

    MS. KAHLOW: Okay.

    COMMISSIONER MAY: Whether you can provide it or Office of Planning to provide it just to know anecdotally even what the potential impacts are here. I mean, it's easier to understand the impact in the other direction. In other words, what it might do to an otherwise commercial block, I think it's a little bit easier to understand that. For me anyway.

    MS. KAHLOW: And I think that with the PUDs, because I think that's the biggest impact.

    COMMISSIONER MAY: Yes. Okay.

    MS. KAHLOW: Okay.

    COMMISSIONER MAY: Ms. Gates, the 40 foot limit thing I find a little bit
puzzling because I'm not sure that there's a real problem with, you know, 80 foot tall buildings with 40 feet of attic space or whatever the concern is. I'm not sure what the real concern is.

The 40 foot limit, I mean basically allows you to have a roof, a visible roof above the 40 feet and still have a three floor house. So I'm not sure what the -- I mean, if you limit it to 40 feet, you're going to wind up with a lot of flat topped buildings. Flat top houses.

COMMISSIONER GATES: No. Mr. May, we have a number of new developments where it's clear the roofs are significant.

COMMISSIONER MAY: Yes.

COMMISSIONER GATES: There is a lot of living space up there.

COMMISSIONER MAY: But it's not supposed to be living space.

COMMISSIONER GATES: But the houses, if you look at Spring Valley, Wesley
Heights --

COMMISSIONER MAY: Yes.

COMMISSIONER GATES: Where as I said the massing and the height are similar through the development, they didn't need that extra height.

I grew up in Berkley. We didn't have that extra height.

COMMISSIONER MAY: Okay. Well, I guess again it would be helpful to see some examples of that if there really is a problem with the heights of the buildings growing much more beyond that 40 feet. I mean, it is sort of a weird definition, undoubtedly. But it would be useful to know what the real impact is.

COMMISSIONER GATES: Well, it would be helpful also I think to have the consistency and include it.

COMMISSIONER MAY: Well, I guess what I would say is, though, that if we're going to have a limit that really is the top
of the building, it's probably not going to be 40 feet. It's probably going to be higher than that to allow for three stories and a roof of some reasonable proportion.

And that's why I'm a little concerned about making it the top there.

So, again, examples of where there have been problems would be helpful.

I've got nine seconds.

And in 135 years of experience did you guys perhaps figure out that getting advanced copies of 50 page testimonies might be helpful? Because it would have been nice. And it would be really good to have read all of this before we got a chance to talk to you about it.

MR. SHER: Well, we hope you'll read it now.

COMMISSIONER MAY: We will, but next time around it might be good if you're going to come and give us that much paper to get it in advance.
MR. SHER: It only got done this afternoon.

COMMISSIONER MAY: That's right.

I understand completely. I'm making a suggestion. You know, it's bang for the buck.

So that's it. Thanks.

ZC CHAIR HOOD: Okay. Good. And what we'll do is we'll -- kind of take the panel of the counsel, which works I think very good. And if we get to the point we will go over it and ask one quick question. You do that. If not, we'll do another round.

I have one question. What I've noticed, Mr. Collins, on page 3. And let me go back to you because, like I said, I was interested in what you were saying. Could you explain B3 of your testimony? However you want to do it. You can read it.

MR. COLLINS: Yes. Thank you.

I would like to just call to your attention another, as I call, a real live
example of possibly an unintended
consequence, possibly not. This is The
Portal along Maryland Avenue in Southwest
D.C. This is a site, the Portal site was
subject to an RFP or PDA way, way back in
the mid-'80s. It's a 20 year project in
phases.

Maryland Avenue was built over
the railroad tracks specifically to
facilitate the development the Portal site.
The Mandarin Oriental Hotel and the office
buildings around there.

Four of the six phases are done.
Two more phases have yet to be done.

The OP recommendation in I think
it was B3 would not allow Maryland Avenue to
be used as the point of measurement because
it would be deemed an artificial elevation.
And the measurement would have to be done at
the natural grade at the bottom of the
railroad tracks.

This project in its various forms
and for different reasons different times
has always been recognized to allow Maryland
Avenue as the point of measurement at a plus
47 elevation. The Council has done it in an
amendment to the schedule of heights. The
Executive Branch of DHCD through the Zoning
Administrator. This Commission four years
ago. And I submitted a booklet earlier in
the week on this very issue --

    ZC CHAIR HOOD: Yes.
    MR. COLLINS: -- where I

recounted the history of the Zoning
Commission's review of this and included the
record that we submitted to the Zoning
Commission in that case so you would have it
in this case so that you would lose sight of
the fact that the Portal is maybe a special
case. It's certainly a particular case with
a particular history. And as a result of our
participation four years ago before this
Commission on the last time that you looked
at the height issue or definition of height
and natural grade, that OP changed their
original proposals to take into
consideration the specific issue of the
Portals.

Now the Portals is not the only
one type of project that there's an
artificial grade as a measurement point for
an existing building. The L'Enfant Plaza,
the whole L'Enfant Plaza project is all
based on an elevated platform and the height
is taken from the elevated platform. That
would be deemed nonconforming if this OP
recommendation was adopted in its current
form.

ZC CHAIR HOOD: Okay. Thank you,
Mr. Collins.

One of the other things I wanted
to say, another thing and I paid attention
to everybody's testimony. It seems as
though Mr. Collins and Ms. Gates agree on
the street, the business street, the
residential street. And he asks us a
question at the end. And I would like for
the Office of Planning to look at that
question and at some point in time I think
we need to respond to those questions.
While it seems to appear to me to read kind
of identical in Ms. Gates -- not necessarily
identical, but saying the same thing. And I
would just like some clarification on it.

Again, we had not had the
opportunity to read this prior. So as other
people were asking questions, I sit here and
try to read stuff. And there's a lot of
information here. Good information from
everyone who had sat here at the table.

And I agree in part with
Commissioner May. Now that I know that
someone was working on it later this
afternoon, but for us to be able to absorb
it, this is a 135 plus whatever the amount
of years experience that Ms. Gates that we
can all put this together and try to read
this and ask questions so we can understand
further puts us kind of -- and my time is up. I'm going to be an example. Okay.

Let's do the second round.

Anybody else second round? Lead by example.

Second round? Okay.

MR. QUINN: Could I just note on the record, and that is what we tried to do with our exhibits, we didn't think that you all had in your records a number of the opinions of Corporation Counsel and rulings of boards. And we thought that would be helpful. So we ask you specifically to look at those.

ZC CHAIR HOOD: Let me ask this, Ms. Schellin. I know this is out of -- let me not say that it. But if we get ready to deliberate, can we check with OAG? If we have questions of materials that we read while deliberation, is it improper? And I don't want an answer tonight. I want an answer from OAG. Is it improper at that
time if the persons are in the audience
if we just ask them for clarification as we
deliberate? That's something for us to just
think about.

Okay. I know it might sound out
of the norm.

SECRETARY SCHELLIN: While you're
deliberating?

ZC CHAIR HOOD: Yes, while we're
deliberating. Because some of these when
we're deliberating here and we're looking at
recommendation one and Mr. Quinn or Mr.
Glasgow or Commissioner Gates may have said
something, they may be here while we
deliberate. And that would help us give us
some confidence level as we move on and
understand exactly.

I know we go to OP, but we also
sometime in the case may need to go to --

SECRETARY SCHELLIN: I think it
would probably be just like the regular
meetings. Unless you guys call someone
forward, there's no testimony. So I think -- but I'll verify.

ZC CHAIR HOOD: Okay. Let's check on it. I don't want to do anything that's illegal. Okay. Or that may cause a problem.

Chair Miller, you had another question you said?

BZA CHAIR MILLER: I did. I think it's for Mr. Sher again. It's a follow up on the discussion about the Height Act coming into the regulations.

In particular, do you have an issue with, for instance, the utilitarian and amenity features, and particularly amenity features where it seems to me the ones that are listed by Office of Planning I don't believe that they've ever been interpreted specifically by the courts. So what I see Office of Planning doing here is asserting that in their interpretation they're allowed under the Height Act and
putting it out there. Do you have a problem
with that?

MR. SHER: One of the things

that's attached to my outline under Tab 3 is

an opinion of the Corporation Counsel going

back to 1953 which talked about construing

what the Act allowed and basically it was

either Mr. Cochran or Mr. Parker said things

that are not explicitly defined in the Act

but were determined to be similar enough to

the things that were listed in the Act where

you had vent shafts and fire sprinkler and

then you have air conditioning cooling
towers which probably didn't exist in 1910

by interpretation were allowed to be above

the normal limit of the height of the

building.

Again, the Zoning Commission can

in its regulations adopt things that are

more restrictive than the Act. It cannot

expand what the Act allows. But if by

interpretation the Act has already been
interpreted to allow certain things, there it is.

As an example, the Act contains no limit on the height of a roof structure. It only says it has to be setback one-to-one. It's the Zoning regulations that contain the 18 foot 6 limit that applies today. So that was put in around 1976 or so. Prior to that you could have, and there were many, roof structures built considerably higher than 18.6 as long as they met the one-to-one setback.

So the Zoning regulations can be more restrictive, but nothing that you do or that the Commission does can amend the Act.

BZA CHAIR MILLER: But I don't think they think they are amending the Act; that's the point. I think that they're interpreting it or the Zoning Commission would be interpreting it in a regulation just like OAG would be giving an
interpretation that, well it's you know
several years later and they didn't have
these sustainability things or they didn't
have whatever. And in their interpretation
it's allowable. And then it could be
challenged just like a BZA decision could be
challenged.

MR. SHER: All right. I think
that enforcement and application of the Act
originally was left to the District's Chief
Legal Officer, the Office of the Corporation
Counsel and now the Office of the Attorney
General. If the OAG were requested to opine
whether such-and-such was permitted under
the Act, that would be a ruling that in
general is binding upon District Government
employees. It's not binding necessarily on
the Zoning Commission or the BZA, it's
advice, but it's binding otherwise on D.C.
Government employees. They're the ones that
I think would have to opine on that.

BZA CHAIR MILLER: Are you saying
the Zoning Commission can't interpret the Act in doing a regulation? Because I think it probably happens all the time when its made its regulations, its interpreted that this doesn't violate the Height Act. That's why the promulgate the regulation.

MR. SHER: Well, the Commission promulgates regulations and if the Commission were to adopt a regulation that says you could have a height of 250 feet, they could do that. But it would be of no effect because the Act is more restrictive than that.

I got three lawyers sitting with me here and I almost want to defer to one of them to answer whether that's within the legal authority of the Commission. I have a view on that, but they're probably better able to answer that than I am.

BZA CHAIR MILLER: I mean I don't know if you wanted me to start this whole thing. I thought it was a basic that the
Zoning Commission has the authority to do.

ZC CHAIR HOOD: That's fine. If you want to get an answer, you have 19 seconds--

BZA CHAIR MILLER: If anybody else, you know, wanted to comment, they could. I'm not necessarily seeking more. But if you want to clarify it, if you have a position on it --

VICE CHAIRMAN JEFFRIES: You got seconds to do it.

MR. QUINN: If it's seconds, I'm not sure I can do it. But clearly the Zoning Commission, you know like Lew Robbins used to say, there it goes. Even the elevator operator can give their opinion on what happens. I mean, that's your opinion. But clearly in 1910 and before, actually starting in 1910 the Office of Corporation Counsel was given the obligation to deal with the enforcement of the Act. And always since then every interpretation ultimately
has gone to the Office of Attorney General, even though the Zoning Administrator sometimes is asked initially what is his view. And normally it has not been the Zoning Commission, but Zoning Commission can certainly express themselves.

BZA CHAIR MILLER: Okay. And we don't want a long discussion here. But I don't think this is enforcement.

ZC CHAIR HOOD: Well, we wanted to take time for that, Chairman. Because anytime we get a panel -- I was at the Building Museum yesterday evening and we wanted to make sure we get all that input.

Any other questions?

COMMISSIONER MAY: Mr. Chairman, I just want to clarify something here. mean, I think the past when the Zoning Commission has dealt with project where height is an issue, we don't I think knowingly approve things that we see as violations of the Height Act. But we also
don't get into the issue of whether or not it truly is a violation of the Height Act. We defer to the Zoning Administrator to interpret that.

ZC CHAIR HOOD: Okay. Thank you. I don't have anything that has been typically what we have done. Anyone else? Okay. Again, I want to thank this panel. We appreciate you all coming down and providing 135 plus years of testimony.

Okay. Let's move right on. The hour is getting late. Make sure. Dave Avitable. Hopefully I pronounced your name correctly. If not, you can straighten me out when you come up.


This says and/or Larry, but I'm going to say Ann and Larry Hargrove.

And what I'm going to ask is Mr.
Crews and Mr. Williams are going to bring up the last panel and anyone else who would like to testify in opposition in the last panel.

Let's see, we have a new. Say D.C. Zoning. I'm interested in hearing about that. I wondered if that had anything to do with the internet group that testified once before.

And you're the same, D.C. Zoning gets five minutes.

VICE CHAIRMAN JEFFRIES: See, he learned from before, right? He learned his lesson.

ZC CHAIR HOOD: Okay. Mr. Avitable? Did I pronounce your name right?

MR. AVITABLE: Close. Avitable.

ZC CHAIR HOOD: Avitable. Okay.

Mr. Avitable?

MR. AVITABLE: Thank you. Again, my name for the record is Dave Avitable. I'm here representing Phillips, Winthrop,
Shaw, Pittman. I'm actually pinch-hitting for Paul Tummons tonight who was supposed to be here but had a family emergency. So forgive me if my comments are a little bit jumbled.

Actually, the friendly colleagues from Holland & Knight kind of covered most of our points.

I think in listening tonight I was actually quite happy to hear the movement on the definition of what a building connection is. And I think we've already hashed out at length the reasons why that movement should happen.

I think certainly particularly when you consider the tension between a strict definition that might have been based on a certain number of building floors versus either what the Zoning Commission might want to see in a PUD. And I think Square 54 actually would be a good example where you wanted to see articulation and you
didn't see a single monolithic building wrapping around a site. You wanted to see differentiation in the types of uses, the types of structures.

And similarly another example that I don't think that was discussed at great length tonight. You know, a lot of times you have situations where someone is going into a adaptively reuse a historic property. And when they're doing that, they may not necessarily be able to link up floors or they may not even the ability to link up 50 percent of the floors if you're linking a seven story building to a 2½ story townhouse. And so I don't think you'd want to get into some sort of strict definition that based on a number of floors or shared mechanic systems.

And the other point I think I'd want to make on that is the way the system works now is it really relies heavily on the ability of the Zoning Administrator to take
a look at these buildings, take a look at what the definition is and make an interpretation of what seems reasonable. And I've been on both sides of this, as Chairperson Miller knows. You know, sometimes that interpretation doesn't go the way that you want, but that's the Zoning Administrator's responsibilities is to take a look and say this looks like a single building. This meets the substantive criteria. It feels like a building, it looks like a building.

I think the other point that I'd like to make on that front is the point that Chris Collins made about unintended consequences. And that's not just for the impact on existing buildings, but also for the impact that that would have on buildings going forward where you have someone who would be looking to develop a mixed use project on a single record lot and a stricter definition of building based on a
strict definition of what the connection
should be would limit their ability not just
to use a shared measuring point, but also
it would create multiple buildings on a
record lot, it would create rear yard
issues. And that's one of the Zoning code
currently, and I don't know yet because we
haven't gotten to rear yard set, but I
imagine we'll continue to do going forward,
the idea that through lots you measure your
rear yard from the middle of the street
behind it or corner lots that there's relief
there.

Again, when you get into these
strict definitions you have these unintended
consequences that we might want to avoid.

One other point, I think again
echoing what Chris Collins said about the
changes creating nonconforming structures,
the same point about if you change the rules
of the games you'll create buildings that
will be considered to be nonconforming,
which does create significant issues when it comes to either selling or refinancing.

Because banks, particular banks based up in New York who are not familiar with our code, when you try to explain to them the Height Act that's difficult as it is. But then try to explain on top of that oh don't worry, it's really okay. It's because of this change in the definition. It's a very difficult thing to explain.

And I think one of the suggestions that we might have, and this is a suggestion that I believe Paul made to the Task Force, is you can add an section and this might come later on in the implementation stage, but add a section that clearly states that any building that was previously approved and constructed to a certain date is considered to be a conforming building. And there's precedent for this. There's a provision about the Southwest Urban Renewal Plan. This also
happened when the Zoning Commission changed
the definition of whether hotels were
permitted in residential zones in 1980.

And I think with that, I only
have one more comment, which would be just
on this issue of roof structures and lot
occupancy. It was the first time I'd really
focused on it.

The impact that that might have
for building that are otherwise required to
setback if they're required to have, let's
say, a 45 degree setback from adjacent
property, their roof is going to get a lot
smaller than their footprint at the base
level. And that might make 40 percent a
little more challenging.

With that I'll --

ZC CHAIR HOOD: Thank you very
much. If you'll just hold your seat, we may
have some questions.

Mr. Tuchmann?

MR. TUCHMANN: Thank you,
Chairman Hood and members of the Commission.

My name is David Tuchmann, and I'm a development manager at the John Ackridge Development Company.

I'm speaking tonight on behalf of Vernon South, Central and North, the owners of 14.3 acres of air rights above the rail yards directly adjacent to the north of Union Station.

Spanning both sides of the H Street overpass development of this project, which we call Vernon Place, will reconnect and serves as a nexus for the Capitol Hill near Northeast and NoMa neighborhoods.

I'm here this evening to point out the potentially extremely harmful effects a component of the proposed changes to Zoning regulations could have on this important project.

Our intent for this site established during multiple years of negotiations and planning has always been to
create an exciting mixed use development which leverages the existing transit infrastructure as well as considerable public and private investment in the adjacent areas.

The Comprehensive Plan's designation on the future land use map of the site predominately indicates mixed use for high density commercial as desired uses.

The generalized policy map shows the entire site as a land use change area.

And the Central Washington Element identifies it as a catalytic site.

Because of their depth and very limited street frontage each of our parcels, both north and south of H Street, will likely be constructed as a single building for zoning purposes with meaningful connections between structures at or above the main floor.

The buildings on each side of H Street will be separated by a publicly
accessible mid-lot courtyard. This configuration of the development plan is based upon a well known and recognized interpretations within the developmental and architectural communities and has been used by us and others in assembling land and developing large multiphased projects in the central area of the city.

Furthermore, as early as five years ago we began discussions with the Office of Planning and the Zoning Administrator to establish general parameters for the treatment of this project causing us to rely even more greatly on interpretations such as these.

We have reviewed proposals which OP has submitted to the Zoning Commission as part of the zoning revision project, and we are particularly concerned about a number of the proposals contained in the height amendments. A number of these provisions if adopted could significantly adversely affect
our ability to build the project as planned with a series of smaller interconnected buildings with a mix of uses.

The proposed revisions would instead force us to design a single mega-block building each on a footprint greater than six acres on each side of H Street.

Our most serious concern with the height proposal is the proposed definition of a building for zoning purposes requiring parts of the building to share mechanical systems and to share open access in at least half the floors, although we understand that the shared mechanical systems requirement may no longer be part of the proposal and that's that our design team has yet to have a chance to analyze the implications of some of the changes proposed this evening by Mr. Parker and Mr. Cochran. The requirement for open access between the portions of at least half the shared floors renders a mixed use development with multiple buildings on this
site nearly impossible.

Furthermore, sharing floors makes little sense, as you've heard at other points this evening, in a mixed use project where the floor-to-floor heights imply don't line up for different uses.

As I mentioned previously, the bases upon which we are proceeding in our design as well as our acquisition of this extremely complex and clearly unique site for several years is well known and recognized in the industry and has been used by developers and designers in planning and constructing mixed use multiphased project. For the District to change these principles at this time would be a serious impediment for us and others to develop these large projects that are desired and necessary to enhance the areas of the District where development is favored.

We believe that the District will benefit substantially from what we are
planning at Vernon Place. The project will mend a century old scar in the fabric of our city, just blocks from the U.S. Capitol and adjacent to the region's premier intermodule transportation center.

   The proposed height amendments place serious obstacles in front of our collective realization of this vision in a manner that will enhance the vibrancy of the area and create an attractive pedestrian-oriented destination.

   We hope that you will consider these adverse impacts in your deliberations.

   Thank you for your consideration.

I'd ge happy to provide you with any additional information or answer any of your questions that you might have.

   Thank you.

ZC CHAIR HOOD: Thank you, Mr. Tuchmann.

Ms. Zartman?

MS. ZARTMAN: Good evening, Mr.
Chairman and members of the Commission, and
Ms. Miller.

Thank you for the opportunity to be here tonight. I'm speaking for the Committee of 100 on the Federal City, which has for many decades been a strong supporter of the Height of Buildings Act. We believe its character defining effect on the District has been essential to the appreciation of the Nation's Capital, as well as assisting in maintaining the human scale of many neighborhoods.

The Zoning Commission we believe can adopt rules to strengthen the positive impact of Height Act provisions. We acknowledge that the pressure to expand the development envelop has been a constant in District land use and may have led to some less than wise proposals for change.

Overall the OP recommendations need to reviewed with a sense of perspective, and their report indicates they
are willing to do that.

The recommendation to change the penthouse limit from 18½ to 20 feet for reasons that we don't see standing very well needs to be considered in light of the different base building height limits. Adding another 20 feet to a 40 foot building is profoundly different than adding it to a 10 story building. Even so, changing the measurement to allow a full two story additional floors of development to any building crosses a threshold that we believe should be protected.

In considering rules for the measurement of buildings we would agree with Commissioner Gates that the top measuring point should be the highest point of a building, as is practiced in three of our neighbor communities. It cannot have profoundly harmful effects if they are making it work and promote development.

I'm going to surprise you tonight
and give a very brief statement with regard to other specific recommendations.

The Committee would largely agree with OP's recommendations one, two, four, five and six; that is if you use option one on recommendation five. And we'll be submitting suggestions for language that we think could strengthen or clarify that.

As to other specific recommendation, we believe recommendation three should be amended to extend to any residential property regardless of density. It should also clearly provide for stepdowns from business streets to significantly lower residential streets if indeed the change from zone base designation to street face designation is adoption.

Recommendation seven we believe moves in the right direction, but it needs to make clear that berming and shaping are unacceptable alterations to the natural grade.
Recommendation eight should be amended to eliminate language that appears to license violation of the Height Act.

Recommendation nine should not include the new communal activity functions now introduced. Shall I say that more firmly? These activities could greatly affect neighboring properties and parsing definitions particularly unwise and indulgence of development interests. Just think of what might occupy as an activity the rooftop of a building near your home. I'm not kidding. Shuffleboard, anyone? Movies? Any activity that is shared by the residents of that building would presumably by the terms being offered here be a legitimate activity. I cannot see how that makes sense. The impacts to neighbors.

I think of one property that the design approval was completed. It's a commercial property that backs up to residential rowhouses. And it's a five
story building with a swimming pool on the
top and shops in the basement. But it's the
impact of the spillover of the swimming pool
activity that the neighbors are most
particularly concerned about.

Recommendation number ten we
believe needs considerable policy guidance
from the Commission. Ornamental features is
a term that needs a great deal more
specificity. And I wouldn't worry about the
National Cathedral. I believe there are
design review processes that affect all of
those landmark and special properties.

We would note that as written the
relief through the special exception review
on recommendation ten would not seem
possible under the Height Act.

Recommendations eleven and twelve
need to reflect the policy set forth in the
Comprehensive Plan regarding party walls.
We believe they should be treated as other
exterior walls are treated in the plain
language of the plan. The proposed language is inconsistent with that Comprehensive Plan language. I would ask you were an adjacent building razed, is there any doubt that the party wall would become the exterior wall of that building?

And last, one of the suggestions in the OP report is that these provisions be ultimately be adoptee as a stand alone zoning rule. I urge you to make part of the Omnibus recommendations that will come at the end of this process. Too much interplay of these provisions and others are going to be possible if they stand alone.

Thank you.

ZC CHAIR HOOD: Thank you, Ms. Zartman.

Mr. Hargrove?

MR. HARGROVE: Thank you, Chairman Hood and members of the Commission. I'm Larry Hargrove speaking tonight for the Kolorama Citizens
I'd like before turning to the specific recommendations of the OP and the Commission, to make three general comments.

First, I would appeal for the most scrupulous respect for the terms of the Height Act. Perhaps that doesn't need to be said, but much of what this Commission will be doing in dealing with this subject is an interpretation of a statute, in this case federal statute that happens to be binding on the District of Columbia. For this sort of thing one must adhere strictly and scrupulously to the established legal canons of statutory interpretation. There are rules and principles about this sort of thing. We have no authority to draft regulations on a blank slate, and we must avoid the temptation to embrace tenuous or even fanciable interpretations of the Height Act in pursuit of outcomes that may be perceived currently as desirable.
I'm afraid there are some proposals before us that do not meet that standard. I mention only one, and that is the proposal for allowing something called amenity features on the top of a roof. The Height Act is not going to permit that. And to my knowledge there's no effort even to reconcile that proposal with the terms of the Height Act. I mention that only as an example.

Secondly, I would urge that you look with a very skeptical eye at assertions of clearly established precedents of many decades standing regarding some of the key concepts of the Act. Exterior wall is an example. Particularly where the evidence for those assertions consists mainly in the mere existence of buildings configured in such a way as to comply with the alleged precedent. Unfortunately, there's a substantial history of buildings in the District having been allowed to be construed
in ways that arguably might be said to be in conflict with the Height Act in which there is no record of the Height Act issue ever having been raised, let alone addressed and determined by any official or agency in the District Government. Such situation does not give rise to legal precedent.

Finally by way of general comment, and this goes directly to the issue addressed at length by Mr. Sher, we are concerned at the omission of a provision which was previously included in OP drafts, namely section 2510.1 of the present Zoning regulations. That is the provision that incorporates the provisions of the Height Act into the Zoning regulations. It is important that that provision be retained, thus retaining the established authority of this Commission, the BZA and the Zoning Administrator within their respective spheres of confidence to interpret and apply all provisions in District law and
regulations relating to the height of buildings.

IF we were to abandon the present legal arrangements in which these two sets of rules are incorporated into a single unitary body of regulatory law, interpreted and applied by the same officials, it would mean one of two things. At worst it would mean that we would revert to a situation in which the federal height issues in particular cases would be overlooked in the routine administration of zoning matters. This has happened with disturbing frequency in the past. At best it would mean that the federal height issues would be carved out from the non-height issues in a given case and heard and determined by separate procedures not involving the Commission, the BZA or the Zoning Administrator. At least the BZA and the Zoning Administrator would rely on that provision of the existing Zoning regulations for their authority to
deal with Height Act matters at all. This sort of bifurcation would make no sense. It would be enormously wasteful of resources of time and expertise and money of all concerned. It would be an invitation to endless confusion.

Now as to specific recommendations. Let me turn to recommendation one and five dealing with the street abutting a property line which may be used to the maximum height allowable and the situation in which a street -- a building faces more than one street. Let me say simply that these two provisions should be adopted selecting option one rather than option two under recommendation five. We will explain in our written statement exactly why we think that's true, and others have addressed that competently as well. But we would also urge at this point that the Commission restore provisions which were previously recommended by OP but later drop
that would require in the case of buildings
front on more than one street and having a
maximum allowable height greater than that
allowed on one or more of those streets,
that there be appropriate setbacks and
stepdowns.

We do have our written
submission. And I invite your attention to
it. I would point out that we have
considerable difficulty with the definition
of exterior walls, and we have attached two
our statement some material which I think
will be particularly useful drawn from the
recent hearing of the National Capital
Planning Commission on that issue.

Thank you very much.

ZC CHAIR HOOD: Okay. Thank you
very much.

Okay. We're going to do five
minute rounds. Who would like to begin? No
questions on this end.

I would just say this: I wanted
to comment on, you're right, Ms. Zartman,
when I first read the first paragraph I was
surprised. But I will say that I appreciate
the way that your testimony was outlined and
the history of recommendations. It makes it
a lot easier up here when you want to make
sure you encompass or include everything
that everyone has.

Sometime when you give us a lot,
we lose some very good points. And I will
also say to Mr. Hargrove, I've seen now
behind a few pages how you have it outlined.
Those are the kind of ways that make it, at
least for this Commission, easier for me
when we're doing deliberations and trying to
get my colleagues to chime in and see
exactly how we're going to move. So these
are pinpointing places where I can go to and
points that I can't remember where I can't
keep it all in my head. I'm getting a little
older, but this makes it very easy for us.
And we don't want to lose any good points
that anyone has. And I will just say that we appreciate things like this.

Anyway, thank you for what's it worth. But we'll look at everything that everyone supplies to us. And we take everything under consideration, even though sometime we may have to look for it, as my colleague said, out of 100 pages. Sometimes we find it, sometimes we forget that it's in there. But, you know, when you have this record -- I'm just saying that to say this makes it a lot easier for us.

Okay. Chair Miller?

BZA CHAIR MILLER: I just have one question for your testimony, which I thought was pretty enlightening. But on top of Mr. Sher's, is your position that the Zoning Commission can craft some regulations that touch upon the Height Act but they just need to do it very scrupulously like in accordance with the established canons and statutory interpretation?
MR. HARGROVE: I'm not sure that I got the question.

BZA CHAIR MILLER: Okay. I think that Mr. Sher was basically I thought saying that anything dealing with the Height Act should not be in the new regulations. That it should be totally separate. And I wasn't sure from your testimony I thought you were just a little different in that the Zoning Commission could touch upon height issues, but that they needed to do it in a very careful way in accordance with what you stated were the canons of statutory interpretation.

MR. HARGROVE: Well, my basic concern is that there be no lack of clarity that the Zoning Commission as well as the BZA and the Zoning Administrator all have authority to interpret the Act and apply it within their respective areas of competence. Otherwise you'd have a completely separate jurisprudence developing with its own
procedures for determining close issues and
making decisions about particular cases.
And it would be an endless invitation to
confusion. It is not unlike what has
prevailed to some extent in years past.
And, as I said, there's an established
history in which it was not clear that Board
of Zoning Adjustment for example had the
authority to interpret the Act. As you may
recall, the BZA addressed and decided that
question just three years ago.

These agencies and individuals
are smart to tell what it is that the Act
governs and distinguish that from what the
Zoning regulations govern. But if you're
talking about the height of a building, you
need to have a unitary procedure and a
unitary body of substantive rules to which
those procedures are applied. At least
that's my feeling, the feeling of our
organization. We've had a little bit of
experience with that in particular cases.
BZA CHAIR MILLER: What do you mean by "unitary" as opposed to what?

MR. HARGROVE: The present provision 2510.1 says in addition to any controls established in this title all buildings noticed shall comply with the Act to regulate the height of buildings. That in one fell swoop incorporates the terms of the Height Act into the Zoning regulations. Therefore establishing the authority of the BZA and the Zoning Administrator and possibly even this Commission to address questions of height, as Mr. May and others have said, when they arise in a particular case. Otherwise, anytime there was a question raised as to whether there we compliance with the Height Act you're out of the picture and you have to call in the Office of the Attorney General, for example.

I will say that it is not the case, to my knowledge, that every question of interpretation of the Height Act has been
in the past referred to the Office of the
Attorney General. I, myself while I do not
have a 134 years of experience in these
matters, I have enough experience to have
been involved in cases in which those
interpretations were made by the Board of
Zoning Adjustment, and probably so.

BZA CHAIR MILLER: Thank you.

ZC CHAIR HOOD: All right. Any
other questions?

Okay. I want to thank this
panel. We appreciate you coming out and
providing testimony.

Okay. Mr. Bill Crews from D.C.
Zoning. Mr. Williams and also Mr. Hellman.
Is there anyone else who would
like to testify tonight? Okay.

VICE CHAIRMAN JEFFRIES: So what
we'll do just to get two more minutes of
testimony.

ZC CHAIR HOOD: All right. Okay.

Mr. Crews, we'll begin with you.
MR. CREWS: Thank you very much, Chairman Hood and members of the Commission, and Chair Miller, members of the staff and Office of Planning.

I've submitted some testimony and I'll just highlight two main points, although the second point has three subpoints.

In my testimony I've provided excerpts provided by the Office of Planning of the Comp Plan's comments on height. And the two points I have to make are ones that I have highlighted in the OP Comp Plan provisions.

The first one is on the height measurements. And those provisions talk about, and we've had a lot of discussion tonight about that in terms of a good example of the current interpretation is the Wardman Park Marriott Hotel where they have the Calvert Street at the bottom of the hill, a wide street. They used that to
determine how high the building can be. And then they measure from Woodley Road up on the hill to see how high that height actually goes.

And what we've talked about both in the work group and the Task Force that disappeared in any of OP's recommendations were when you have those sorts of issues of transition of adjoining -- high buildings adjoining low height districts is the concept of stepbacks. And that is mentioned in the Comp Planning. So I don't have specific comments right now in terms of how that could work, but I think that that's a way of trying to get around -- not to much get around, but maybe accommodate the two conflicts, the fact that the history has been that you can use two different streets for those two different measurements. But that if it does come along and adjoins a lower height district, that there are stepbacks are required so that the massing
does come again. And that is, you know, it's probably going to be a theme along, say, D.C. Zoning in these hearings is the transition issues as we talked about it in parking and spill over parking and here in terms of height and transitioning.

But the real concern I have is on the roof structures and the enlargement of the ability of the roof structures. I thought Commission May and the Office of Planning staff were channeling Katie Couric and Sarah Palin by Commissioner May playing the role of Katie saying "give me some examples." And as she asked Sarah Palin about John McCain's accomplishments. And she said she would have to get back to them. And I think your question was why do we need the 20 feet, and they didn't really come up with an idea.

So I think they need the 20 feet so they can have two stories. Eighteen and a half feet just doesn't make it under the
building code to have two stories, and
that's really what we're talking about.
And then I think the second
aspect is that the whole concept of
amenities. How do you get from the Height
Act talk about mechanical needs. And I
think the sustainability I think is a really
good transition and inclusion in the Height
Act's uses of the penthouse for mechanical
stuff. I think the sustainability stuff can
fit under there very rationally. But the
amenities, you know, I think they started
with a swimming pool and then something else
well the health things, you got to have
bathrooms. And so well if you're going to
have bathrooms, can't we have little locker
rooms or little kitchenette. And now we're
at fitness centers. And all of this, you
know, gives it more use and why they need a
bigger 40 percent of area when if it was
just mechanical those penthouses would be
smaller and our view shed would be less
impacted. And so I'm really thinking that this really is just a slippery slope and we're just going to get higher and higher and bigger and bigger masses. And that doesn't do anything for the heritage and the history and the future of the city other than help developers make more money.

Thank you very much.

ZC CHAIR HOOD: Thank you very much.

Mr. Williams?

MR. WILLIAMS: Good evening, ladies and gentlemen, the Commission.

My name is Lindsley Williams. I came down here to listen and learn. I've listened and I've learned. And the evening has been successful for that.

I will only mention one thing, and then I'll give you something in writing later on.

What I didn't hear a whole lot about tonight was looking forward. And I'm
looking to you to be thinking about looking forward to the implementation and the means of implementation. I direct you to one of the provisions in the parking regulations that were adopted in the mid '80s which provided for a forward implementation date. It didn't happen on some Friday and just drop down from the sky as a function of the publication of the D.C. Register. So think about when buildings have to be designed. Think about the consequences of what happens if something becomes more restrictive and you have to eek out six more inches of something that affects the whole stair core. Everything like that is a practical measure. We need to figure out some way to make it work whenever it happens.

And with that, I bid you good evening.

ZC CHAIR HOOD: Thank you very much.

Mr. Hellman?
MR. HELLMAN: My name is Jay Hellman. And I have prepared just two pages. One page, which is the second page with the red outline deals with some of my thoughts on building height. But I'm dealing with this at a much different philosophical level, and it may be inappropriate for tonight. So I'll be very short.

But I come from the philosophy of if you ask the wrong question, you're going to get the wrong answer. So I'd like to take you to the first page, which is just a single sheet. And I start with a report that was issued by the World Bank that there are 1.4 billion severely poor people in the world. In 1800 there weren't even 1 billion world in the entire world.

What I'm saying is is we live in a world of change and evolution. My Ph.D is in complex nonlinear dynamic feedback systems. The reason that we're suffering
from the sprawl and the congestion and the automobile pollution and the like that we are is: (a) We invented automobile, but;
(b) There are a heck of a lot more people than there ever were before.

The Height Act, I hear a lot of talk tonight as though it was the 11th commandant that God said that buildings are this tall. And I want to suggest that not that there's an easy answer, because there isn't and that's why the bottom points on my first page, I'd like to take you to the top one of those three.

Thinking is hard work. This is what I've always told my kids. That if you're not sweating when you're thinking, you're not really thinking.

The next one, my daughter sent me that email recently, which was a quote from Henry Ford that said: "Thinking is the hardest work there is, which is probably the reason so few engage in it."
Those are the base for the last one, which is my favorite quote from Mark Twain, although he's got many. And that is "You can't depend on your eyes if your imagination is out of focus."

And what I heard in the discussion tonight was an incredible amount of focus on some almost imperceptible detail, and it was dealing with aesthetics.

Now I'm a big believer in aesthetics. I'm the fellow that introduced the one step PUD almost 30 years ago and created Lafayette Center, which I think is still one of the prettiest urban developments that we've got in Washington. So I'm not going to suggest that aesthetics isn't important. But I'm going to suggest that the best your eyes can do is see yesterday and it takes imagination to see tomorrow. And tomorrow that's driven by technology change and increasing population takes imagination and thinking.
We have a Metro system. Metro was never thought about when the Height Act was created. And, again, with respect to precedent if we go, I was just at a lecture at the National Archives today on the creation of the Capitol. Slavery was the way we did things. Women didn't vote. So precedent is good to a point, but we have to use our intellect to be able to put it into perspective and context.

And what my second page was doing was suggesting that within walking distance of Metro we need to recognize that an elevator is a Metro rail. It delivers a pedestrian to the sidewalk without a rubber wheeled vehicle and without any gasoline. But elevators make no sense vertically without horizontal elevators. And the horizontal elevator is no good unless you can walk to where you're going. Because why are you going to take the train if it doesn't take you to where you're going?
So I think we need to think at a bigger scale and think in an integrated way. So I just wanted to encourage you to try and step back and also see things in the right context. Where aesthetics is important, but it's a small piece of a bigger puzzle. Public health safety and welfare is why government has the right to regulate land. And health, safety and welfare includes a whole lot more than just aesthetics. That a piece of the puzzle.

The last thing I'll encourage is flexibility. I'm a strong believer in good design, but numbers are arbitrary and they're restrictive. No two sites are identical. And I've been applying, this comes from my work in Bethesda but it's a similar thought process. Each Metro stop is more related to each other Metro stop than anything else.

Thank you very much.

ZC CHAIR HOOD: Go ahead and
finish your last statement.

MR. HELLMAN: It's listed at the bottom of the page. VirtualAdjacency.com.

I gave a lecture at Catholic University Law School in March called "Virtual Adjacency and the Meaning of 'Place.'" And this whole -- Woodmont Triangle book is a page on that website. I would love to be a resource to you if you would like.

Thank you.

ZC CHAIR HOOD: Okay. Thank you all very much for your testimony. Just hold your seats.

Do we have any questions? We're going to do a five minute round. Yes, five minutes rounds.

COMMISSIONER MAY: I'll be very, very fast.

I just want to thank Mr. Crews for, you know his reference to the channeling, that I wound up on the right side of that. I'm sorry.
MR. CREWS: But see you're not
Ms. Palin.

COMMISSIONER MAY: Yes.

And I also was reminded in Mr. Hellman's testimony actually, and this is a comment not a question. But I was reminded in his testimony about what I was thinking about when Mr. Sher was talking about the Height Act and the relationship of the Height Act to Zoning. And that reminded me of a prior conversation that I had with -- or a question that I had asked of the Office of Planning, which was that the -- I forget what the question was. But the answer was framed only within the context of the Height Act. And I don't even known if it my question that was asked, but that's the way the answer came.

And it just struck me that as we try to strike that right balance and make sure that the Zoning regulations work with the Height Act that the right place to start
for the guidance is good planning principles
and other objectives, and not just the
Height Act. And I'm sure that's in mind,
but it's kind of hard to keep our focus.

MS. STEINGASSER: Let me put it
flat out on the record. The Office of
Planning is not trying to interpret the
Height Act.

COMMISSIONER MAY: Oh, I --

MS. STEINGASSER: We are writing
zoning under the Home Rule Act, the Zoning
Act. We are writing zoning based from the
Comprehensive Plan forward. Where there are
opportunities to alleviate confusion and
conflict and bring continuity, we will seize
those.

COMMISSIONER MAY: Right.

MS. STEINGASSER: We are not
trying to write any type of interpretation
of the Height Act.

COMMISSIONER MAY: Right. And I
wasn't suggesting you were. I'm just
suggesting that in your work in trying to
develop the right rules for dealing with
health, that it be driven not by the Height
Act. It's got to work with the Height Act,
but that's not the driving force. And I
know that's the case, but I just wanted to
reenforce that.

So, I'm sorry. I didn't really
have any questions. So thanks.

ZC CHAIR HOOD: Okay. Any other
questions of the panel? Comments?

Okay. Again --

MR. HELLMAN: I was at the
Building Museum last night at a program on
building height. And I learned that the
Height Act was created by the District of
Columbia. It was Congress was the only body
that could do it. So we created it and we
can address the questions. I'm just
encouraging you ask the big questions.

Thank you.

ZC CHAIR HOOD: Okay. All right.
Thank you all for this panel and being our last panel and sticking with us tonight, we appreciate that. Thank you very much.

Okay. Let me just tell you where we're going to move, and you can chime in and help me with this.

The record is going to be open for further comments until October 10th. The Office of Planning supplemental report by October 24th.

We will have discussions/dialogue at a special public meeting on November the 6th at 6:30.

Okay. With that, Michelle, is everything in order?

COMMISSIONER MAY: Mr. Chairman?

ZC CHAIR HOOD: Yes.

COMMISSIONER MAY: Can I make one more request? And I'm sorry, I should have probably this up earlier. But there was useful information that was in the PowerPoint that was not in the OP report.
And I think it would be helpful to have that information.

ZC CHAIR HOOD: Okay. Good. All right.

With that, I see a hand. You can discuss that with staff unless it's something germane to what I just said. And you have a question, come back to the mike.

The record is going to close October the 10th.

All right. I appreciate everyone's participation tonight.

And this hearing is adjourned.

(Whereupon, the hearing was adjourned at 10:28 p.m.)