

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
 ----- :

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.

TABLE OF CONTENTS

OFFICE OF PLANNING	8
Travis Parker, Steve Cochran	
PROPONENTS	111
Julia Koster,	
National Capital Planning	
Commission	111
Barbara Laurie	
David Powell	
Washington Chapter American	
Institute of Architects	118
OPPONENTS	132
Barbara Kahlow	
West End Citizens Association	133
Whayne Quinn	139
N. M. Glasgow	
Holland & Knight	143
Chris Collins	
Holland & Knight	146
Steven Sher	
Holland & Knight	152
Commissioner Alma Gates	
ANC 3D	159
David Avitable	
Pillsbury, Winthrop, Shaw,	
Pittman	201
David Tuchmann	
Ackridge Development Company	207
Barbara Zartman	
Committee of 100	213
Larry Hargrove	
Kolorama Citizens Association	219
Bill Crews	232
Lindsley Williams	236
Jay Hellman	237

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

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

1 webcast live. Accordingly, we must ask you
2 to refrain from any disruptive noises or
3 actions in the hearing room.

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

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

16 Notice of the hearing was
17 published in the D.C. Register on August 8,
18 2008, and copies of the announcement are
19 available to my left on the wall near the
20 door.

21 This hearing will be conducted in
22 accordance with the provisions of 11 DCMR

1 3021 as follows:

2 Preliminary matters;

3 Presentation by the Office of
4 Planning;

5 Reports of other government
6 agencies, if any;

7 Reports of the ANCs;

8 Organizations and persons in
9 support;

10 Organizations and persons in
11 opposition.

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

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

20 All persons appearing before the
21 Commission are to fill out two witness
22 cards. These cards are located to my left

1 on the table near the door. Upon coming
2 forward to speak to the Commission, please
3 give both cards to the reporter sitting to
4 my right before taking a seat at the time.

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

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

17 At this time does the staff have
18 any preliminary matters?

19 SECRETARY SCHELLIN: No, sir.

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

1 Office of Planning Mr. Parker, Mr. Cochran.

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

4 My name is Travis Parker with the
5 Office of Planning

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

9 MR. PARKER: I'll do my best.

10 ZC CHAIR HOOD: Yes, there we go.
11 Thank you.

12 MR. PARKER: All right. Good
13 evening.

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

17 On the screen you'll see, and I
18 don't know if we want the lights off or on.
19 We've got a long presentation. But on the
20 screen you'll see that the process that
21 we've been through thus far. We started work
22 on this height topic in January of this year

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1 with a working group comprised of citizens
2 and architects and some business
3 representatives as well and a lot of
4 discussion about a lot of these issues. And
5 in march we went to the Task Force and
6 presented some very, very preliminary
7 concepts. And since then we've had a lot of
8 back and forth with all sides of this issue.
9 This has been a very completed, as you're
10 all well aware, issues with height in D.C.
11 And we've received an awful lot of comments
12 which we're very happy to have and have
13 worked with developers and community people.
14 And all sides of this contentious issue.

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

19 One thing that's important to
20 remember tonight is that everything here is
21 conceptual. We expect to continue to work on
22 these with you and with parties on all sides

1 of the issue. What we're most interested in
2 hearing, and what we've been hearing a lot
3 over the past few weeks, is things that
4 really don't work, things that prevent
5 certain types of buildings or certain types
6 of construction or certain sustainability
7 features. Other things we're looking fatal
8 flaws in what we've proposed that might
9 cause trouble in the development of
10 buildings in our city. And we'll get into a
11 lot of those issues tonight.

12 The height in D.C., unlike any
13 other city in the country, is regulated in
14 two separate ways. We have the 1910 Height
15 Act in passed in Congress nearly a 100 years
16 ago. And I'll leave it my friend Whyane
17 Quinn to explain why that's a local
18 regulation. But the Height Act bases the
19 allowable height of buildings on the width
20 of the street. And it also allows for
21 further regulation of height by the city,
22 specifically by the Zoning Commission. And

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1 for better or worse in the Zoning
2 regulations height is not regulated by the
3 width of the street but by the zone in which
4 the building is located.

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

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

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

21 The basic goal of what we're
22 doing in all of our work in the Zoning

1 review is and make things clearer and easier
2 to use. And what we're not necessarily
3 trying to incorporate, not at all trying to
4 incorporate the 1910 Height Act into our
5 regulations. This is an issue where it's
6 impossible to know given that there are two
7 separate regulations over height of
8 buildings in D.C., it's impossible to know
9 the limitations of any one building without
10 knowing the basic restrictions of both sets
11 of rules. And one of our goals in this
12 process, and specifically height, is to make
13 things clearer and predictable, if not more
14 simple. But at least clearer and more
15 predictable. And to do that we need to do a
16 few things.

17 We need to acknowledge that there
18 are ambiguities in the regulation of height.
19 There are very few sections of the Height
20 Act that are completely clear. I can think
21 of very few that we haven't heard arguments
22 on both sides, or at least two sides, of how

1 sections of the Height Act could be
2 interpreted. But what we'd like to do as
3 part of this process is resolve those
4 potential differences and find ways to
5 clarify the intent of these height
6 regulations in our development guidance
7 document in our Zoning regulations in a way
8 that balances all of the separate interests
9 that takes into account to 100 years of
10 precedent in how buildings were build in
11 D.C., and that's one of the most important
12 factors is maintaining our precedent and
13 respecting the buildings that have already
14 been built in the city. But where there's
15 questionable precedent or changing
16 precedent, e also need to be aware of the
17 horizontal nature of the city and the
18 symbolism involved with that, the physical
19 factors of development.

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

1 the building.

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

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

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

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

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

22 Okay. We in this discussion

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

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

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

22 We all think that we know how

1 something should be measured across an open
2 space, but what does that really mean? Are
3 we looking at should it be higher because
4 the open space is wider like we do streets
5 or are there constraints that we have to
6 work with that aren't parallel to the street
7 width to height correlation?

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

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

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1 four.

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

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

15 There have been people that have
16 interpreted the Height Act to require a
17 doorway or an entrance. The term "front" is
18 used in the Height Act, and that has been
19 interpreted by a some to require a doorway
20 or an entrance. So that's sort of the other
21 way to look at this issue. But our
22 recommendation in working with the Task

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1 Force and the working group would be that we
2 maintain existing precedent. Allow buildings
3 to draw their height from any of the streets
4 on which they have a building face or a
5 building frontage or not require a door or
6 an entrance. And this would not be a change
7 from existing practice.

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

15 This is an issue that doesn't
16 have quite the level of history and
17 precedent that a lot of these do. It's very
18 hard to find two buildings on a reservation
19 that have been interpreted in the same way
20 and that we have written record that they
21 were sited in the way. So the two things
22 that we need to balance in this area are:

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1 (a) The urban design
2 considerations in terms of a system that
3 basis the height the building of the width
4 of the space in front of them. We should
5 consider that our public spaces can be
6 framed by, you know, among the largest
7 buildings that we allow; the 110/130 foot
8 buildings that ar allowed. On the other
9 hand, we need to balance that with the
10 language in the Height Act that talks about
11 the building being able to choose from the
12 right-of-ways of the streets that form the
13 reservation.

14 So the recommendation that's come
15 out of our working group if you'll look on
16 the screen and if you can see my pointer, is
17 to allow a building that faces this
18 reservation to draw its height from any of
19 the right-of-ways, A,B,C or D that sit
20 parallel to and on this reservation but not
21 right-of-ways that come off of the
22 reservation necessarily or continuations of

1 these same right-of-ways that get wider when
2 they're off of the reservation.

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

18 Mount Vernon Square you'll see up
19 here is the home of Techworld, which was one
20 of the cases that has been through this
21 process and had this discussion, and also
22 the new Convention Center would both be

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1 affected by this rule but are both,
2 obviously, already standing.

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

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

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

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

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1 an issue here.

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

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

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

19 The current and existing practice
20 is that every building is judged to be on a
21 residence or business street based on its
22 zoning. The result of this is that a

1 commercial building and a residential
2 building next to each other on the same
3 block on the same street would be deemed to
4 be on a business street and a residential
5 street respectively, even though they are
6 next to each other on the same street.

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

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1 residence street or a business street.

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

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

18 In this graphic you can see any
19 street that was all commercially zones, of
20 course, would be a business street. Any
21 street that has some R-4 in it, like these,
22 would be a residential street. And even in

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1 case of R-5-E where it's all R-5-E you'd
2 have residential, but where you have a
3 combination of R-5-E in a commercial zone,
4 you'd have a business street.

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

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

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1 building. And the street on the left is a
2 narrower street. And let's suppose that that
3 allows 90 foot building.

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

14 The existing practice is not
15 entirely clear. The existing regulations
16 don't get into what a connection is and
17 don't even require a connection per se. The
18 existing regulations basically say that
19 below ground connections don't count to
20 connect buildings. It doesn't say anything
21 about a above ground connections; that's
22 implied by the fact that below ground

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1 connections don't count that above ground
2 connections do. But it provides for
3 definition for what constitutes a connection
4 that would make two buildings into or two
5 structures into one.

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

21 Our original recommendation we
22 have since realized was somewhat flawed. Our

1 original recommendation involved two things.

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

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

21 We've also heard that it's often
22 difficult to have connections on all the

1 buildings. We received dozens of examples of
2 residential buildings, for example, with two
3 residential towers connected by a lobby or
4 similar things like that where obviously
5 buildings that were obviously one building
6 and built together were connected just on
7 the main floor or just on one floor in
8 particular. So we're also quite willing to
9 change our recommendation on that front as
10 well.

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

22 Either an enclosed connection

1 that permits passage between the two halves
2 of the structure. For example, a hallway
3 between the two or a connection between one
4 common area and another common area, and/or;

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

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

19 I'm going to stop here. These
20 are our first four recommendations on how to
21 determine the maximum height allowed of the
22 building and open it up to questions.

1 ZC CHAIR HOOD: Thank you very
2 much, Mr. Parker and Mr. Cochran.

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

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

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

20 Okay. So who would like to
21 begin?

22 I know this is new. We don't

1 want to start the round until --

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

4 ZC CHAIR HOOD: -- the
5 Commissioner starts. So who would like to
6 go first? I wasn't trying to stifle anyone.
7 Okay. Chair Miller?

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

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

20 MR. PARKER: Well where it exists
21 we'd certainly like to present that to you,
22 and I'm sure you'll have lots of it

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1 presented to you tonight as well. There are
2 issues that we're going to discuss tonight
3 with 50 plus years of precedent and actual
4 court decisions saying that this is the way
5 to go. And in most cases we have or already
6 will recommend that we will continue to
7 abide by that.

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

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

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

20 MR. PARKER: No. The way that
21 we've done it, the way that we've
22 recommended it is that each side of the

1 street would be its own designation.

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

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

15 MR. PARKER: A block face?

16 BZA CHAIR MILLER: A block face.
17 Thank you. I obviously don't know what that
18 means.

19 MR. PARKER: Let me run back here
20 to this. Basically what we're saying is if
21 this -- you know if this is a block, well
22 this is four blocks, but everywhere that you

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1 see residential or business or residential,
2 that's a block face as we define it. So one
3 side of a block. A block side.

4 BZA CHAIR MILLER: Okay. Okay.
5 Thank you.

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

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

17 MR. PARKER: Right. The way that
18 we're working forward, certainly in parking
19 and loading and height with things that can
20 be written in separate chapters we'll have
21 the hearing tonight. You'll get lots of new
22 information, and assuming that we progress

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1 like we have with the others, you'll leave
2 the record open for further comments. And
3 we'll continue to take those in and work
4 with all the people here tonight to modify
5 this even further if necessary. And then at
6 some point in the future, maybe at your
7 November meeting, maybe further out, the
8 Commission will work with all that
9 information and provide us some guidance on
10 how you'd like to see us move forward on
11 these. With that guidance then we'll write
12 language and bring it back to you.

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

20 BZA CHAIR MILLER: Okay. Because
21 I was just looking at the announcement that
22 went out to the ANCs, I guess, and I wasn't

1 clear. And I remember in the Task Force
2 meetings that there was a concern about
3 being able, the public being able to comment
4 on specific language in addition to
5 concepts. And that's going to happen?

6 Okay.

7 I don't have any other questions.

8 Thank you.

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

11 COMMISSIONER TURNBULL: Thank
12 you, Mr. Chair.

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

20 MR. PARKER: Well, in that we
21 considered R-5-A to be a moderate density
22 zone.

1 COMMISSIONER TURNBULL: Okay.

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

4 COMMISSIONER TURNBULL: Would be
5 residential?

6 MR. PARKER: Yes.

7 COMMISSIONER TURNBULL: Okay.
8 But an R-5-E in a C-2-A is then business?

9 MR. PARKER: Yes.

10 COMMISSIONER TURNBULL: Okay.
11 All right. Thank you.

12 On recommendation four --

13 MR. PARKER: Yes.

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

17 MR. PARKER: Again, our OP
18 report--

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

21 MR. PARKER: That was the
22 discussion. Yes. In our OP report we had

1 recommended that these two buildings would
2 have to be connected on half the floors. But
3 since that report came in we have received
4 multiple, multiple comments about buildings
5 all over the city that are clearly one
6 building, but are just connected by via a
7 lobby or some other mechanism on the ground
8 floor.

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

12 COMMISSIONER TURNBULL: Yes.

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

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

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

22 COMMISSIONER TURNBULL: I know

1 Mr. Glasgow went out of his way to document
2 to us on one particular case that I remember
3 all of those buildings? Do you remember
4 that?

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

8 COMMISSIONER TURNBULL: Okay.
9 Thank you.

10 ZC CHAIR HOOD: Okay.
11 Commissioner May?

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

15 On the frontage issue, you know I
16 remember this coming up in cases where we
17 wind up because of circumstances of
18 topography or very narrow streets next to
19 very broad streets that we wind up in
20 circumstances where it feels like, you know,
21 two tall buildings being built and facing
22 these narrow residential streets where it's

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1 really the issue, I would think. But I'm
2 wondering if there was any discussion of --
3 and maybe I'm just thinking too far out of
4 the box, I don't know. Any discussion of
5 trying to limit the height on such narrower
6 streets and requiring some sort of setback
7 or stepback?

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

18 First, the Height Act seems
19 clearly to anticipate if not through lots,
20 but included to anticipate at least on
21 corner lots if one side is much higher than
22 the other, you would still be allowed to

1 have the higher building on that lower
2 street that's drawing its building from the
3 wider street. And doesn't anticipate having
4 to stepdown in that case. And so you can
5 carry that forward to a through lot as well
6 and say that the Height Act doesn't really
7 anticipate having to stepback. back to the
8 other street.

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

14 COMMISSIONER MAY: Well, I would
15 think that if they could figure out ways in
16 San Francisco to design buildings to not
17 have shadows cast, there are certainly ways
18 that we ought to be able to figure that one
19 out. Not that I'm really advocating for
20 that. But I think it's a problem and it
21 gets exacerbated by issues of topography
22 where the broad street or the narrow street

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1 may be at the bottom of or the low end of
2 the hill of the site and so on.

3 MR. PARKER: And if I may,
4 another issue that came up that caused real
5 problems with that type of scenario is that
6 we're going to see when we get into
7 recommendation five and six how hard it is
8 to identify a single measuring point for a
9 property. And when you start having to
10 measure on both sides of the property it
11 gets expedientially harder. And when you
12 have to have a measuring point on different
13 frontages it starts to get really difficult
14 and complicated.

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

19 For the two buildings issue, the
20 two buildings or one building, the
21 definition of common usable space I assume
22 would not include a parking garage?

1 MR. PARKER: I think we wouldn't
2 have any intention of changing the existing
3 precedent that it would have to be above
4 ground.

5 COMMISSIONER MAY: I'm talking
6 about above ground.

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

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

12 MR. PARKER: Right.

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

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

18 You know, what I find troubling
19 about trying to define this is trying to
20 define it in a way that allows for the kind
21 of the circumstances that you describe where
22 you have the two residential towers and a

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1 low rise connection between them versus the
2 kind of games that go on now where somebody
3 knocks in a corridor to the adjacent
4 building which is on a taller street or a
5 higher street topographically or a wider
6 street and allows you to manipulate the
7 height of the downhill building. And I know
8 specific examples where that happens. And I
9 would just encourage you to try to define
10 that connection in a way that really makes
11 it one building as opposed to two buildings
12 connected for zoning purposes.

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

16 MR. PARKER: Okay.

17 COMMISSIONER MAY: On the lower
18 left hand corner you have R-5-E and C-2-A
19 and the street to the right is business and
20 the street at the bottom is residential.
21 What's the difference?

22 MR. PARKER: That is a mistake.

1 Right.

2 COMMISSIONER MAY: Okay.

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

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

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

12 MR. PARKER: On the bottom.

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

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

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

21 MR. PARKER: R-4.

22 COMMISSIONER MAY: Okay. But at

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1 the top --

2 MR. PARKER: Of that same block.

3 I'm sorry.

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

6 MR. PARKER: Yes.

7 COMMISSIONER MAY: -- is defined
8 as residential?

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

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

14 MR. PARKER: Yes.

15 COMMISSIONER MAY: I got it.
16 Okay.

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

20 COMMISSIONER MAY: All right.
21 Because that confused me.

22 MR. PARKER: Wonderful catch.

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1 COMMISSIONER MAY: And then what
2 about when you've got a C-2-A block? Say,
3 take the upper left hand block and you got a
4 C-2-A block and you've got a house in the
5 middle of it?

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

8 COMMISSIONER MAY: The zone is C-
9 2-A but it's just a house. Because what you
10 described in your language talks about
11 buildings, it doesn't talk about the zoning
12 of the buildings as what makes it a
13 residential street.

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

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

20 MR. PARKER: Under eight minutes.

21 COMMISSIONER MAY: Yes. And you
22 did most of the talking.

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

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

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

19 MR. PARKER: No. Their issue is
20 actually, and I've talked with them about
21 this, specific to single-family and rowhouse
22 buildings.

1 They had a case, I think, where
2 someone measured the height from the porch
3 rather than the structure proper. And I
4 think that's a very specific issue that
5 they're talking about. Not an issue where
6 one house had two frontages.

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

17 MR. PARKER: No.

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

21 MR. PARKER: The mistake is the
22 very bottom left where it says

1 "Residential." That block contains R-5-E
2 high density residential and C-2-A a
3 commercial zone. So it doesn't meet either
4 of the tests. It doesn't have a low or
5 moderate density zone and it's not all
6 residential, therefore its a business
7 street. Does that make sense?

8 There are two tests.

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

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

22 One of my concerns is, first of

1 all, I think the ordinance will we have a
2 definition of block face?

3 MR. PARKER: You certainly can,
4 yes.

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

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

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

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1 when you have industrial right next to
2 residential. If we could look at that, that
3 would be great.

4 MR. PARKER: Okay.

5 ZC CHAIR HOOD: Okay. All right.

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

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

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

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

18 In the example you see on the
19 screen you've got a building that goes all
20 the way through the block and you've got two
21 street frontages. The one on the right is a
22 wider street, 130 feet. The one on the

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1 left, say, allows 90 feet.

2 The existing practice in this
3 city for more than 50 years has been that
4 since the Height Act talks about these in
5 two separate portions and the Zoning
6 regulations as well talks about determining
7 your height in one section and measuring
8 your height in another, the interpretation
9 over many, many years has been that you can
10 determine your height down here, we're
11 allowed a 130 foot building and you can
12 measure it up here. So you can measure your
13 130 feet up to here.

14 The potential result, of course,
15 on certain lots where the wider street is
16 lower is that this building is taller on
17 both sides than it would otherwise be able
18 to be on either side. But that is certainly
19 the working interpretation of the Height Act
20 that this city has been under for many, many
21 decades. So basically you have two options
22 here.

1 One is that the measuring point
2 would have to be on the same street that you
3 chose to calculate your building maximum
4 height. This would be a new approach and it
5 would ensure that on one side at least the
6 frontage is based on the street width. But
7 what it would do is it could significantly
8 decrease the amount of square footage
9 developable on through block sites from the
10 existing pattern of growth around the city
11 on any sites with severe elevation or
12 significant elevation changes. And it could
13 potentially make dozens of downtown
14 buildings that we've identified as well as a
15 few out of downtown nonconforming. I mean,
16 these are buildings that would either not be
17 able to redevelop to their existing height
18 or not be able to go up to the height that
19 they'd be allowed now.

20 So option two certainly is to
21 continue the existing practice that any
22 abutting street may be used to determine the

1 measuring, even a different street than the
2 one you used to determine your maximum
3 height. This option would follow the
4 existing precedent and existing
5 interpretations over many years. It would
6 not affect any existing or planned projects.
7 And it does preserve the existing
8 development potential that a lot of, you
9 know like I said, with the dozens of
10 existing projects and a lot of planned
11 projects as well have been working under.

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

19 Recommendation six then is
20 determining the elevation of that bottom
21 measuring point. The Height Act and the
22 Zoning regulations do it two different ways.

1 The Height Act says that you'll
2 measure from the sidewalk. And the Zoning
3 regulations say that you'll measure from the
4 curb. And there's positives and negatives to
5 each one.

6 The negatives about measuring
7 from the sidewalk are:

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

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

16 The curb doesn't have those
17 problems. It is always the same elevation.
18 It's set by DDOT so it's not subject to
19 private property manipulation and its not
20 something that goes up and down or varies
21 widely in elevation. But the downside to the
22 curb is that it is often below the ground

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1 level at the front of the building because
2 sidewalks drain down towards the curb.

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

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

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

18 Basically we want to do two
19 things. We want to clarify that definition
20 of natural grade by itself and then we also
21 want to clarify how to handle unique
22 situations of elevated viaducts and bridges

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1 as well as sunken like the 395 tunnel
2 entrances and that sort of thing.

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

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

18 Finally in this section
19 recommendation eight has to do with the top
20 measuring point. And this is a fairly simple
21 and not much of a change from -- not any
22 change, I believe, from existing practice.

1 I'll correct that in a second. But
2 basically you measure a building to the top
3 of the parapet, to the top of the roof or
4 parapet, the highest point of either one.
5 And for Height Act purposes that's where
6 your limit's drawn.

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

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

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

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1 height.

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

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

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

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

14 MR. PARKER: Basically.

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

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

20 COMMISSIONER MAY: I mean the
21 concept is the same?

22 MR. COCHRAN: Okay. There are a

1 couple of changes. For instance, right now
2 there's ambiguity on whether you can --
3 there's no ambiguity on whether you can
4 measure from a bridge or not. You have to go
5 underneath the bridge to the logical
6 continuation of the street grade.

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

20 The other thing is it clarifies
21 since we're anticipating some development on
22 some of our partially sunken expressways

1 that you don't necessarily have to measure
2 from the bottom of where the expressway is.
3 That you can go back up to the level of
4 where the street grade is.

5 So we tried to do both.

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

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

14 ZC CHAIR HOOD: Any other
15 questions?

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

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1 group and in the Task Force?

2 MR. PARKER: And so --

3 ZC CHAIR HOOD: Basically
4 developers?

5 MR. PARKER: This isn't something
6 that's much of a change from what we have
7 now. Really the only change to this from
8 the existing practice is right now we allow
9 three foot parapet and we're suggesting a
10 four because of building code issues for
11 railings on the roof. But this is no change.
12 This is one of our two least commented on
13 provisions.

14 MR. COCHRAN: If there's any
15 confusion it's because for a few years the
16 buildings were permitted to be -- basically
17 the height, the parapet didn't count. And
18 then the District realized wait a minute,
19 wait, that's wrong. And so we went back to
20 the former practice of counting the parapet
21 into the height. So this just clarifies
22 that.

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

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

10 ZC CHAIR HOOD: Okay. All right.

11 Any other questions?

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

18 MR. PARKER: Again, the curb
19 itself is a more constant measuring point
20 and something that's actually built by the
21 city rather than privately. So it would be
22 in our recommendation the basis of any

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1 measuring point. But if you draw a straight
2 line over from the curb to the building in
3 the picture, you're actually measuring from
4 a few inches or a foot below the surface at
5 the face of that building. So we've modified
6 the recommendation to say the curb plus a
7 two percent grade up to the building where
8 the building face is.

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

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

21 What we're saying, there's got to
22 be a limit to the difference between the

1 curb and the point on the sidewalk from
2 which you measure. And that limit is two
3 percent, a two percent slope above the curb.
4 If you've got a four percent slope between
5 where the sidewalk hits the building face
6 and the curb, you're sort of out of luck.
7 You have to measure from no more than two
8 percent above the curb.

9 ZC CHAIR HOOD: Okay.

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

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

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

18 ZC CHAIR HOOD: Fifty.

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

22 MR. PARKER: I believe that's our

1 recommendation. Yes.

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

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

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

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

15 COMMISSIONER MAY: Okay.

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

19 Okay. Anybody else want to go
20 another round?

21 Okay. If we can go to our third
22 part, Mr. Parker and Mr. Cochran?

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1 MR. COCHRAN: Okay. I'll just
2 wait until the lights go up. Being a little
3 older than Travis, let me move over towards
4 the light.

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

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

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

20 The first one is ornamental. Now
21 you've seen the language that says "spires,
22 towers, dome, minaret, et cetera" can go

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1 above the roof and they don't have to be
2 setback. Those are some examples of a tower
3 or a spire.

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

9 Okay. I skipped back there.

10 Okay.

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

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

21 On the right side you're looking
22 at what we want to have considered as an

1 expanded concept of what constitutes a
2 utilitarian feature that's allowed. These
3 are more sustainably oriented. This happens
4 to be a green roof atop the headquarters for
5 the American Society of Landscape
6 Architects. We feel that we'll eventually be
7 needing to look at possibly small wind
8 turbines, but we want to make it clear that
9 those will be structures that are permitted
10 atop a roof.

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

15 Now you're not supposed to have
16 anything that is occupied inhabitable space
17 by humans atop the roof. We had long
18 discussions about this. And the consensus
19 that was developing is that it's only
20 occupied and inhabited if there's a
21 permanent inhabitation. That if it has
22 limited hours, then it is permissible as

1 long as its only for communal space. What
2 that means is not only can you get your
3 swimming pool up there, but you can also get
4 wash up facilities, you can get an enclosed
5 recreation area up there but you can't have
6 an office, you can't have an apartment
7 building, et cetera.

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

12 First, we're saying let's remove
13 the provision that limits the amount of
14 additional FAR that a roof structure can
15 have and make it a simpler measurement.
16 Let's just say that a roof structure can
17 occupy no more than 40 percent of the roof
18 area. Right now you get an additional .37
19 FAR. Very confusing.

20 Right now the District says that
21 there has to be a uniform height to these
22 roof structure. The District has put that

1 at 18 feet 6 inches max. And if you're at a
2 screened in roof structure, and usually they
3 do need to be screened, that screening has
4 to be just a single enclosure and it also
5 has to be of a uniform height and vertical
6 and so on and so forth.

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

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

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1 controls.

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

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

17 With respect to setbacks, the
18 utilitarian and the amenity features would
19 continue to have to be setback at a one-to-
20 one ratio from exterior walls, from a wall
21 that's facing the side lot line. And we'll
22 go into an illustration of this. And from a

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1 lot line wall that's taller than an adjacent
2 building. And again special exceptions for
3 these. Now let's look at it because those
4 need a little bit of visual explanation.

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

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

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

22 The second area has to do with

1 buildings that abut each other but have
2 different heights. You can see that
3 Building A has its roof structure setback.
4 Building A on the left has its roof
5 structure setback. That's because that
6 building is taller than the building on the
7 right. Presumably the building on the right,
8 let's just give an example. The building on
9 the right is at it's matter of right height
10 and the building on the left has got an
11 additional height through a PUD. So it has
12 to be setback.

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

21 Finally we get to party walls
22 that either are on the lot line, as is the

1 case with the building on the left, or
2 aren't on the lot line, as is the case with
3 the building on the right.

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

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

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

17 MR. PARKER: The piece that Steve
18 just went back through, under Zoning there
19 are the three situations in which you'd have
20 to set your roof structure back one-to-one.
21 And the first was from exterior walls. And
22 the current practice is that that is

1 considered to be walls facing a street. You
2 saw four walls facing a street in the
3 previous example.

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

20 So our recommendation is that
21 alley walls and street walls would require a
22 setback as an exterior walls. And, again,

1 this is a change from precedent in that the
2 alley walls have not recently been
3 considered or have not traditionally been
4 considered to be exterior walls for purposes
5 of the Height Act.

6 And that, I believe, wraps up our
7 12 recommendations. And we're happy to talk
8 about the next, these last four.

9 ZC CHAIR HOOD: Okay. Okay. Any
10 questions on these recommendations?
11 Commissioner Turnbull?

12 COMMISSIONER TURNBULL: Thank
13 you, Mr. Chair.

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

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

20 COMMISSIONER TURNBULL: Right.
21 And in the OP report on page 28 you clearly
22 show in your picture the top right

1 horizontal trellis architectural
2 embellishment not permitted. Recommendation
3 makes prohibition clear.

4 MR. COCHRAN: Right.

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

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

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

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

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

18 COMMISSIONER TURNBULL: Okay.

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

22 COMMISSIONER TURNBULL: Okay. Is

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1 that clear?

2 MR. PARKER: Obviously not.

3 COMMISSIONER TURNBULL: Okay.

4 All right. Just questioning that.

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

21 MR. COCHRAN: We did have
22 discussions on those. And we were finally

1 convinced that even some of the
2 sustainability features could be
3 accommodated atop a roof even if there's a
4 one-to-one setback.

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

18 COMMISSIONER TURNBULL: Okay.
19 Thank you.

20 ZC CHAIR HOOD: Let me ask, I
21 guess it's a legal question. Anyway. I saw
22 something on the slide that said the BZA

1 could not-- I cannot remember exactly what
2 it is. I thought the BZA was there to make
3 changes or alterations, anything in the
4 Zoning code that the Commission has already
5 made as a rule. So has that been tested
6 through OAG?

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

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

20 ZC CHAIR HOOD: Okay. Gotcha.
21 Okay. And thanks for putting that up.

22 Okay. Anyone else? Commissioner

1 May?

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

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

17 COMMISSIONER MAY: Right.

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

20 MR. PARKER: No, no. But the list
21 is very brief in the Height Act of things
22 and it doesn't include a lot of the

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1 mechanical systems or it doesn't even
2 mention stairwell access. The Height Act
3 talks about water tanks and penthouses and a
4 few other things.

5 COMMISSIONER MAY: It's
6 utilitarian.

7 MR. PARKER: Right, but it --

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

10 MR. PARKER: Not just, but yes.
11 But we believe that there's reasonable
12 leeway in that to include things like
13 sustainability features that could be
14 considered that and things that could be
15 considered to be within a penthouse over an
16 elevator shaft. And these things are
17 allowed now. This is not a far departure
18 from existing practice.

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

22 What doesn't fit in the 18 foot 6

1 limit in terms of mechanical equipment? I
2 mean, you've heard from developers that
3 certain technical equipment don't fit.

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

6 MR. COCHRAN: Actually, I heard
7 from architects.

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

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

15 COMMISSIONER MAY: Never heard of
16 it.

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

21 COMMISSIONER MAY: Yes.

22 MS. STEINGASSER: And those,

1 though as they exit the building they're
2 like 24 feet tall. So there are certain
3 types of structures that just don't meet the
4 18 feet.

5 COMMISSIONER MAY: Okay.

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

12 COMMISSIONER MAY: Okay. Yes.
13 And what I was fearing is that, you know,
14 we're going to have stacked, you know,
15 condenser farms. And I don't think that
16 that's really, you know, the individual unit
17 kind of things that I don't think are
18 particularly energy efficient in the first
19 place so I'm not sure that we'd want to
20 encourage that. But if there's other major
21 equipment that might be stacked, then I'd be
22 more amenable to that.

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1 When you do have a tower such as
2 the Warner Building where there is some
3 functional stuff, whatever it is, would that
4 be subject to the 40 percent limit? Because
5 you suggested a 40 percent limit to the
6 roof?

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

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

13 MR. PARKER: Right

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

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

20 I'm not sure I agree with there
21 shouldn't be a setback there. If that's the
22 front of a building and you're able to see

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1 it from the street I think there needs to be
2 a setback. If it's the back of a building
3 that's facing an alley, maybe it doesn't
4 need to have that. And I think that's a
5 more common circumstance, certainly of late.

6 MR. PARKER: So you would
7 suggest--

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

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

19 COMMISSIONER TURNBULL:
20 Commissioner May, you're basically saying
21 that a courtyard is the principal entrance
22 way into the building, perhaps. And so that

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1 visibly you're going to see it as you go in?

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

5 COMMISSIONER TURNBULL: Okay.

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

10 COMMISSIONER TURNBULL: When you
11 look up?

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

15 COMMISSIONER TURNBULL: Yes.

16 COMMISSIONER MAY: Setbacks when
17 you have adjoining buildings like diagram C,
18 that's a pretty clear example. But the
19 things, the circumstances where I do have a
20 bit of a concern is where you have, you
21 know, you're building up to the side lot
22 line and you're saying that you can go right

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1 up to the edge of it. But what if the
2 building next door is a different lower
3 zone? I think that you said that maybe it
4 does still have to be setback if it's a
5 lower zone?

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

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

19 And I guess the only other
20 question I have is there anything that we
21 can put in there to make sure that the
22 ornamental features don't glow and change

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1 colors and all that sort of stuff?

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

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

6 Thank you.

7 MR. COCHRAN:

8 VICE CHAIRMAN JEFFRIES: Thank
9 you.

10 Vice Chairman?

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

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

18 VICE CHAIRMAN JEFFRIES: A.

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

21 VICE CHAIRMAN JEFFRIES: Yes, off
22 the courts. What was the rationale? I'm

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1 sorry. I know you brought it up, but what
2 was the rationale?

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

5 MS. STEINGASSER: I'll take it
6 on.

7 VICE CHAIRMAN JEFFRIES: I'm
8 asking the Office of Planning. I don't ask
9 for testimony from fellow Commissioners.
10 Thank you.

11 MS. STEINGASSER: One of the
12 issues that came up in the working group and
13 was highlighted to us by the practicing
14 architects in the room is that often times
15 those corners in the C are very inefficient
16 floor space and they make great locations
17 for the core. But the core can't be placed
18 there because of the setback requirements.
19 So the core gets pushed in and you end up
20 with these really uncomfortable residential
21 spaces, especially where you've got windows
22 that are inches away from adjoining

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1 neighbors or these kind of odd corner
2 spaces. So that was an attempt to try to
3 work through some of the practicable
4 problems that were expressed to us.

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

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

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

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1 corners.

2 VICE CHAIRMAN JEFFRIES: Right.

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

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

12 VICE CHAIRMAN JEFFRIES: Okay.
13 Okay. Thank you.

14 ZC CHAIR HOOD: Okay. Chairman
15 Miller?

16 BZA CHAIR MILLER: Looking at
17 that diagram, before going to my other
18 questions, I mean I understand basically the
19 rationale for the setbacks are views from
20 the street. But I think it's also you
21 somewhat want to take into consideration any
22 adverse impacts on other properties or

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1 whatever. So I'm just curious about number
2 C where you have a structure on top of B
3 that's right next to a facade of A. I mean,
4 I don't know the chronology here. But if
5 there were, for instance, you know windows
6 and if A was built first or something and
7 there were windows there, would that be
8 allowed to be placed there?

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

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

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

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

22 Utilitarian and amenity features

1 not rising more than 20 feet above the roof,
2 is that within the Height Act? That's our
3 regulations or what?

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

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

12 MR. PARKER: Exactly.

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

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

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

21 MR. PARKER: Well, the height
22 restriction is --

1 BZA CHAIR MILLER: Within our
2 zones they do, but not within the Height
3 Act, is that what you're saying?

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

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

17 MR. PARKER: The existing
18 practice is that only the street side is
19 exterior wall. And we're certainly open to
20 staying with that. Our current
21 recommendation is that alleys would also be
22 considered exterior walls. But we know that

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1 there are strong arguments on both sides of
2 that. We're completely open to being
3 relaxed on the alley side.

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

11 BZA CHAIR MILLER: Right. Okay.

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

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

22 This is pretty basic, but just

1 looking at the diagrams when you're talking
2 about poles on roofs they don't even have
3 any height, right, so they're not even an
4 issue, are they?

5 MR. PARKER: Correct.

6 BZA CHAIR MILLER: Okay. Thank
7 you.

8 COMMISSIONER TURNBULL: Mr.
9 Chair, could I ask?

10 ZC CHAIR HOOD: Mr. Turnbull?

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

18 MR. PARKER: If you look at
19 number A here, the Kennedy-Warren actually
20 does that. The Kennedy-Warren has a tower
21 right here that has all its core functions
22 in it facing the street right in the middle.

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1 It's a beautiful, you know, tower projection
2 here and that's where their mechanical
3 features are.

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

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

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

18 MR. PARKER: Right.

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

22 COMMISSIONER TURNBULL: Right.

1 You have to be able to read that from the
2 facade? Okay. Thank you.

3 ZC CHAIR HOOD: Okay. Any other
4 questions.

5 COMMISSIONER MAY: Mr. Chair?

6 ZC CHAIR HOOD: Commissioner May.
7 This start the two minute rounds now.

8 COMMISSIONER TURNBULL: He has a
9 minute left.

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

12 Well, I'll try to be quick.

13 We mentioned wind turbines at one
14 point, and I'm just wondering particularly
15 since I left the conference that NCPC held
16 last week about greening the world's
17 capitals and walked away with visions of all
18 sorts of crazy things happening on building
19 including turbines across all the tops of
20 our buildings. So are they permitted now
21 just so long as they're set back by a
22 distance equal to the --

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1 MR. COCHRAN: Yes. They're not
2 specified in the Height Act, so that's one
3 of the things we're trying to address. We
4 actually came across a building that is
5 probably about eight stories tall around
6 1905/1910 that had a wind turbine on it, a
7 windmill on top of it that was probably 15
8 feet high. I mean, it was really quite a
9 feature. Certainly wouldn't have been torn
10 down under historic preservation now. But
11 we're trying to clarify all of these things.
12 And we do feel that wind turbines are going
13 to be sustainability features. But we also
14 feel that anything over 20 feet is certainly
15 going to have to be subject to some sort of
16 a aesthetic or appropriate regulation.

17 COMMISSIONER MAY: Yes. And I
18 mean maybe when it comes to having some of
19 these design features or towers or whatnot
20 that things like moving parts be considered.
21 Because I'm not sure that -- I mean I'm sure
22 somebody could try to marry a spire like

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1 that one that we see on the Realtors
2 Building on page 28 of your report with a
3 windmill on it. And I'm not sure we'd want
4 to see that.

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

9 COMMISSIONER MAY: Vertical
10 turbines.

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

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

16 Okay. I think that's it.

17 VICE CHAIRMAN JEFFRIES: I just
18 want to go back again to 28A and this whole
19 business of the side lot line off the court.
20 I know that our process here is that when we
21 have questions and you go back and do
22 further investigation or whatever. And I'd

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1 just like to as it relates to that
2 particular point, you know perhaps a graphic
3 or something that you could provide just to
4 make certain that I'm clear about the
5 internal workings or the plan within these
6 buildings that might cause a problem for
7 setbacks. If you could sort of provide
8 that, that would be very careful.

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

13 MR. COCHRAN: I just want the
14 Commission to be clear that rules can be
15 made by you to require those to be setback.
16 We're not --

17 VICE CHAIRMAN JEFFRIES: Yes.
18 But I don't want to be in the position here,
19 and I don't think the Commission should be
20 in the position of making these projects
21 more difficult developers and builders and
22 so forth. I mean, they need to be liveable

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1 and the interiors. And so I just wanted to
2 be clear.

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

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

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

19 I think that I would make -- the
20 concern that I have has to do with does it
21 deal with what could be seen from the
22 street. And so, you know, if that back side

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1 of the building is facing an alley or if,
2 you know, they can treat any elements that
3 went beyond that court facade as a
4 decorative piece, as part of a tower or
5 something like that, you know I'd certainly
6 be open to that kind of a treatment.
7 Because I understand the difficulty of
8 planning those buildings and we certainly
9 don't want make malformed interiors as a
10 result of these sort of restrictions. But,
11 you know, I'm picturing that now. I can
12 easily picture a developer building
13 something just as bland on its interior
14 faces as that diagram, and it would be very
15 unpleasant from the street.

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

1 helpful as well.

2 BZA CHAIR MILLER: I just have
3 one more question.

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

7 MR. PARKER: Height, right.

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

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

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

20 Typically when the Height Act was
21 written the kinds of structures that would
22 go above a fairly common roof line would be

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1 those that represent civic or national
2 values: A church spire, a dome, et cetera.
3 I think what we're trying to avoid is having
4 something that doesn't necessarily represent
5 common values, something that is just a
6 private office building want to call
7 attention to itself going very, very high
8 up. We're saying that may be permitted, but
9 somebody should have oversight on this to
10 make sure that its not excessive. That's
11 all.

12 BZA CHAIR MILLER: But they could
13 do it right now and it hasn't happened?

14 MR. COCHRAN: That's correct.

15 BZA CHAIR MILLER: Okay.

16 ZC CHAIR HOOD: Anyone else?

17 Okay. If we can do the last
18 part, Mr. Parker?

19 MR. PARKER: You've heard it all.

20 ZC CHAIR HOOD: I think I saw
21 next steps.

22 MR. PARKER: Oh, well we kind of

1 talked about that.

2 ZC CHAIR HOOD: Oh, we did?

3 MR. PARKER: Yes, back and forth
4 and you'll leave the record open and we'll
5 keep working.

6 ZC CHAIR HOOD: Okay. All right.
7 Anything final?

8 Okay. Thank you all, Office of
9 Planning. Appreciate it.

10 MR. PARKER: Thank you.

11 ZC CHAIR HOOD: Let me just
12 acknowledge, I see one of our former
13 colleagues Mr. David Levy who served very
14 accomplished here on the Board of Zoning
15 Adjustment for some time. It's good to see
16 David in the audience. David, could you
17 raise your hand? Okay.

18 Let's begin with proponents
19 first. I have Ms. Barbara Kahlow the West
20 End Citizens Association.

21 Oh, I'm sorry. Ms. Kahlow, you're
22 in opposition. I'm sorry. It's getting

1 late. My eyes must be getting bad.

2

3 Okay. Let's go with proponents.

4 Loretta Newman. Ms. Koster. Barbara

5 Laurie.

6 How many can we sit at a table?

7 Six?

8 David Powell. And Mr. Williams

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

10 going to call him now for the question

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

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

13 We'll leave it there.

14 Okay. Let's begin with Ms.

15 Newman. It's Loretta Newman? Okay.

16 Ms. Koster?

17 MS. KOSTER: Good evening. My

18 name is Julia Koster. I'm with the National

19 Capital Planning Commission.

20 Thank you for the opportunity to

21 offer comments on the Office of Planning

22 September 15th memorandum providing concept

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1 level recommendation on the regulation of
2 height in the city Zoning codes. My staff
3 testimony is a preview of the more detailed
4 written comments that we'll be providing.

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

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

21 It's important to ensure that the
22 Zoning code is consistent with the Height

1 Act and to provide clarity and consistency
2 in interpretation.

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

12 In some cases resolution has been
13 reached by mutually recognizing that the
14 provisions of the Zoning code offer greater
15 flexibility where development is fully under
16 the limits established by the Height Act
17 than for develops at or extending above the
18 Height Act.

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

22 Open streets framed by strong

1 consistent street walls and uncluttered roof
2 lines as viewed from the street;

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

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

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

13 The top measuring point;

14 The elevation at the bottom
15 measuring point;

16 The definition of natural grade;

17 Measurements for buildings
18 confronting reservations;

19 The definition of building, and;

20 The definition of residence and
21 business streets.

22 There are four other important

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1 areas where NCPC and DC OP staff must work
2 together to reach agreement. In several of
3 these areas detailed analyses that identify
4 the magnitude of a recommendation's impact
5 on the overall city are needed to better
6 guide future discussions.

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

15 Option two has the potential to
16 allow buildings that are out of scale with
17 adjacent streets and the size and character
18 of adjacent development. We are concerned
19 about the impact of this interpretation not
20 just downtown, but throughout the city
21 particularly in areas that transition from
22 residential to commercial and in steeply

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1 sloped area. We urge OP to prepare an
2 analysis of the impact of either of these
3 options across the entire city before
4 choosing an option.

5 NCPC has a long and consistent
6 history of interpreting an exterior wall as
7 each wall that is part of the exterior
8 envelop of the building, not just street
9 walls. We describe our view as each wall
10 exposed to the elements or to the earth.
11 This definition of exterior wall also
12 applies to courtyards and step buildings.

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

20 The Height Act is explicit about
21 what rooftop elements are permitted and
22 which must be setback from the exterior

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1 wall. The concepts put forward for exterior
2 walls and rooftop structures could result in
3 cluttered roof lines with structures visible
4 from the street, rooftop structures that
5 give the appearance of an additional story
6 and could result in the proliferation of
7 inappropriately located architectural
8 embellishments built to hide structures
9 rather than advance a coherent design.

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

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

21 I do have more, but I'll
22 certainly stop.

1 ZC CHAIR HOOD: Okay. Fine. If
2 you can just hold your seat, we may have
3 some questions.

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

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

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

1 length in our written testimony.

2 I would like to take time to
3 bring to the Commission's attention several
4 recommendations that we believe need further
5 work, and these include:

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

17 When energy efficiency and smart
18 growth are so important to the future of our
19 city, we believe that greater density and
20 mixed uses, especially in areas that are
21 Metro accessible are appropriate. With
22 creative design and careful massing

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1 additional density and height can be
2 integrated into buildings adjacent to public
3 reservations.

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

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

21 The massing concern raised by OP
22 can easily be mitigated by requiring

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

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

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

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1 practice be maintained.

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

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

14 Thank you.

15 ZC CHAIR HOOD: Okay. Thank you
16 very much.

17 Mr. Powell, will you be speaking?
18 Okay. All right.

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

22 MS. KOSTER: No. We intend to

1 submit written comments. There's quite a
2 lot to talk about.

3 ZC CHAIR HOOD: Okay. All right.
4 I gotcha. Thank you.

5 Colleagues, any questions of this
6 panel? Commissioner Turnbull?

7 COMMISSIONER TURNBULL: Thank
8 you, Mr. Chair.

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

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

19 COMMISSIONER TURNBULL: To date.

20 MS. LAURIE: Yes. But given the
21 fact that what has been built or designed
22 and built have not necessarily created a

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1 problem or an issue, that limiting that
2 height is not necessary.

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

16 MS. LAURIE: Yes. I mean, I could
17 imagine that there might be some maximum,
18 but that that maximum -- I guess in terms of
19 the design of the way that architects are
20 designing buildings and maybe perhaps
21 creating an image icon or something like
22 that, that you're relatively in proportion

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1 to that, you know the total height of the
2 building. And so in terms of aesthetic as an
3 iconic building, you know, you're going to
4 do something inappropriate now. Obviously
5 somebody could go outside of that, you're
6 right.

7 COMMISSIONER TURNBULL: Okay.
8 All right. Thank you.

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

20 I guess I mean are you finding
21 that it constrains some design features and
22 so forth or just always seems to work out?

1 Because clearly, I mean if we hadn't had
2 this problem, as you've said why do we have
3 to put this in place? I mean, what are some
4 of the constraints that you -- are you
5 finding any constraints in terms of what's
6 in place?

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

11 VICE CHAIRMAN JEFFRIES: Yes.

12 MS. LAURIE: But if you have a
13 spire that this is sort of a sinuous spire -
14 -

15 VICE CHAIRMAN JEFFRIES: Right.

16 MS. LAURIE: -- that that could
17 go up a certain height because of its
18 proportion relative to the top of the roof
19 or the width of a building and so on as
20 opposed to a wider sort of spire structure
21 that you would proportionally adjust in
22 height. And so, yes, I guess this is all

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1 based on the assumption that there's great
2 design, you know.

3 VICE CHAIRMAN JEFFRIES: Right.
4 Right.

5 MS. LAURIE: And that you
6 wouldn't want to limit great design.

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

19 And so I appreciate your
20 comments. I mean, I was going to ask the
21 Office of Planning where did they get 30
22 feet from. But, you know, I guess that

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1 could be as good as anything. And I just
2 wanted to make certain -- I mean I
3 appreciate your comments. And also I
4 appreciate your comments in terms of the
5 reservation. And those, you know, could be
6 places where we could see greater height.
7 So I appreciate that comment. So thank you.

8 BZA CHAIR MILLER: I just want to
9 comment that's somewhat where I was coming
10 from. And being on the BZA we're not a
11 design review board, we're a Zoning board.
12 And so my concern was what would we actually
13 be looking at with what kind of expertise.
14 You know, is this really something that the
15 Zoning board should look at or an
16 architectural review board, or whatever. I'm
17 just throwing it out because it is new. But
18 I also think sometimes when you're thinking
19 about regulations that they oft times can be
20 based on fixing problems that have become
21 apparent, and this isn't one of this,
22 apparently.

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1 COMMISSIONER MAY: I just wanted
2 to talk to Ms. Koster a little bit about the
3 issue of the definition of an exterior wall.
4 And I just got a little bit confused.

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

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

17 And I think the thing that we do
18 have strong concerns about is the side wall,
19 and in particular where the building is
20 setback so you do have a wall that is
21 exposed all the way from the ground up. And
22 that the intent here is not to treat it as

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1 an exterior wall so that you can then offer
2 relief through an exception process when
3 it's above the height limit.

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

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

13 COMMISSIONER MAY: Yes.

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

20 COMMISSIONER MAY: What about in
21 circumstances have a court that's facing an
22 alley or something like that?

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1 MS. KOSTER: I think that, you
2 know up until what we saw in this most
3 recent memorandum we would have viewed all
4 those walls as exterior walls.

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

7 MS. KOSTER: A little bit. Yes.

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

18 MS. KOSTER: I think first of
19 all, we do agree with the same perspective
20 that you have that it's what you can see
21 when you're on the street. And that's why
22 we've been very concerned about courtyards.

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1 I think that given some of the
2 cases we've looked at in the past what does
3 occur facing an alley is frequently visible
4 to other streets. And so we have looked at
5 it in that regard. And I think we'll
6 continue to look at the testimony that's
7 received here.

8 COMMISSIONER MAY: Okay. Thanks.

9 ZC CHAIR HOOD: Okay. Thank you.

10 Any other questions?

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

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

18 Okay. Next opponents. Ms.
19 Barbara Kahlow. Brie Houston. It's Brie --
20 hopefully I'm pronouncing, if it sounds like
21 it, I'm calling you. Brie Houston. Okay.
22 Mr. Sher. Mr. Quinn. Mr. Glasgow. All at

1 the table at the same time. And Mr.
2 Collins. Did I call six. Yes. Okay. Let's
3 see what we have so far.

4 VICE CHAIRMAN JEFFRIES: I need
5 my medication.

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

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

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

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

20 MS. KAHLOW: Yes. Are you ready?

21 Yes.

22 I Barbara Kahlow live at 800 25th

1 Street, Northwest. I'm testifying on behalf
2 of the West End Citizens Association, the
3 oldest citizens association in the Foggy
4 Bottom West End area.

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

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

17 I testified in opposition to that
18 plan before you and NCPC, and I provide some
19 of the testimony before NCPC, I want to do a
20 little about it. Does GW's application
21 violate the Height of Buildings Act? The
22 answer is: Yes, it would set a precedent

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1 for excessive height off the main avenues of
2 D.C. Current Zoning provides a maximum
3 height of 90 feet in all parts of the
4 square. GW's application identified three
5 separate buildings, one commercial fronting
6 on Pennsylvania and two residential on I
7 Street. Later GW asserted there's only one
8 building, thus allowing the height for all
9 three buildings to be measured from the
10 higher frontage on Pennsylvania Avenue.

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

17 GW's plan additionally called for
18 147 feet composed of a 122 feet from the
19 sidewalk with a 25 foot outdoor room above
20 the top story in the southeast corner of
21 22nd and I.

22 Using its one building logic by

1 using Pennsylvania as a frontage GW said the
2 southeast corner would be 110 versus 122
3 feet.

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

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

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

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1 have been allowed.

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

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

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

21 And then I go into something
22 about recommendation ten, which was not in

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1 the hearing notice but was in the
2 supplemental notice.

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

7 Lastly, we were encouraged by
8 OP's statement that further study is needed
9 to determine setback requirements that would
10 strike the appropriate balance between
11 allowing some structures atop low and
12 moderate density buildings, especially
13 rowhouses in minimizing light, shadow and
14 visual impacts. In fact, we recommend the
15 Commission require shadow studies whenever
16 the community expresses concerns about
17 blocks air and light, as we did for Square
18 54 and we were promised to have those shadow
19 studies that never materialized.

20 Thank you for consideration of
21 our views.

22 ZC CHAIR HOOD: Okay. Thank you,

1 Mr. Kahlow.

2 Mr. Sher?

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

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

14 MR. SHER: Great.

15 MR. QUINN: Can you hear me all
16 right?

17 Over the last 90 to 100 years
18 consistent rulings relating to the Height
19 Act and the definition of building have
20 produced an attractive horizontal fabric of
21 building in our capital city. We see that
22 there is no reason to depart from those

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1 rulings and legal precedents and every
2 reason to follow them, not just for
3 consistency and better buildings but so as
4 not to make hundreds of buildings
5 nonconforming. And also to help meet
6 economic competition from our surrounding
7 jurisdictions.

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

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

22 Since the inception of zoning in

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

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

22 Significantly, in all of those

1 cases if the same property were developed by
2 one owner, the identical height and bulk
3 would not be questioned. The definition
4 gives architects the ability to be more
5 creative in design by breaking the massing
6 of larger buildings and in providing
7 separate phasing of construction for larger
8 buildings. Residential examples of this
9 include Columbia Plaza, the Watergate, the
10 Towers Apartment on Cathedral Avenue and
11 Wardman Park Apartments.

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

22 The definition is also especially

1 helpful for mixed use projects so that the
2 sanctity of uses can remain essentially
3 separate while constituting portions of a
4 single building such as the Gibson Apartment
5 and 2300 M Street.

6 Is that three minutes?

7 ZC CHAIR HOOD: Yes.

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

11 We think that you should stay
12 with the existing definition.

13 Thank you.

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

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

19 Also I was going to be discussing
20 the IV A4, which is the single building
21 issue. And we appreciate the comments that
22 the Office of Planning has made this evening

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1 because we are getting a lot closer on that
2 issue. Because we were very concerned about
3 and presently are working on several major
4 mixed use projects, some of which are in the
5 NoMa area, Constitution Square being one
6 where we have office, residential, hotel,
7 grocery store all in a single building all
8 along 1st Street.

9 If we had what was originally
10 proposed, we couldn't do that type of
11 project without carving a lot up in a
12 completely different way. Instead of
13 building the 1st frontage, both 1st Street
14 in northeast and in southeast, we're looking
15 at a number of major mixed use projects. We
16 need to be able to have the flexibility to
17 connect on a single level. We don't have
18 any problem with that. But connecting
19 disparate uses on multiple levels the floors
20 don't align. You have a lot of different
21 issues that occur. So we need to have that
22 flexibility that we've had in the past for a

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1 number of these projects which the most
2 recent Office of Planning testimony tonight
3 would allow that to occur so that we could
4 keep doing those type of mixed use projects.
5 Otherwise as is stated on page 17 of the OP
6 report there's also concern that the
7 proposed language would have the unintended
8 consequences of preventing mixed use
9 buildings.

10 The safest thing to do is build
11 an office building. With the floor plates
12 lining up you can do them readily and match
13 them together over a period of time. You
14 have mixed use projects, that is very
15 difficult to do. So you would not use your
16 wide street frontage on a mixed use project.
17 You'd want to put your office there and then
18 wait and see what ends up happening down the
19 line. And in these areas the logical way to
20 develop those, particularly in NoMa and in
21 the South Capital Street area which is where
22 some of the largest projects are being

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1 developed in the city right at this point in
2 time, is build out 1st Street first and then
3 have the subsequent phases tie in to that as
4 they go down the block from the east and the
5 west.

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

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

16 ZC CHAIR HOOD: Okay. No ceding
17 of time.

18 Okay. Mr. Collins?

19 MR. COLLINS: Chris Collins,
20 Holland & Knight.

21 I would like to focus my comments
22 on just a few examples of what would happen

1 to existing buildings if the OP
2 recommendations are adopted. What would the
3 District achieve and what that means to the
4 property owner. Focusing particularly on
5 point of measurement and method measurement,
6 what constitutes a single building and
7 business streets versus residence streets.

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

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

21 What is the impact to the owner?
22 Section 2001.2 allows ordinary repairs,

1 alternations, modernizations to a
2 nonconforming structure. Under Section
3 2001.3 you can make additions or
4 enlargements, but only if certain
5 requirements are met. What if those
6 requirements are not met? Then the only
7 option for an owner is to go to the Board of
8 Zoning Adjustment which an alternative that
9 is lengthy in time and costly in fees.

10 Perhaps more importantly Section
11 2001.4 addresses the ability to
12 reconstructing nonconforming structure.

13 Ever since 9/11 the issue of the
14 ability to reconstruct a nonconforming
15 building that is destroyed has become an
16 increasingly important consideration to
17 lenders and equity sources considering
18 whether to participate in real estate
19 transactions, particularly here in the
20 Nation's Capital. In an increasingly tight
21 lending environment where real estate deals
22 can be rejected for the slightest

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1 imperfections this is a real issue with real
2 impacts.

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

7 The office building at 2445 M
8 Street, Northwest was built in the 1980s
9 with an above grade covered walkway to the
10 Fairmont Hotel at the northwest corner of
11 24th and M. Both buildings are in the C-R
12 zone. The C-R zone allows the permitted
13 residential and nonresidential FAR to be
14 apportioned between two lots anywhere in the
15 square. But that's not the way these
16 buildings were built.

17 These buildings are located on a
18 single record lot with a covered walkway
19 connection between the hotel and the office
20 building and with a single building
21 covenant, an allocation of development
22 rights covenant and a parking covenant.

1 There's one point of measurement
2 because its one building and its on 24th
3 Street. But the difference between 24th and
4 M Streets is not that significant for
5 building height measurement purposes.

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

13 The result of OP's language in
14 recommendation A4 is that these would be
15 deemed two buildings on one record lot. The
16 office building would then exceed the
17 permitted height. In addition, one of the
18 two buildings would not comply with the
19 ground floor open space requirements and the
20 open court area requirement. And the hotel
21 would not comply with the parking
22 requirement.

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1 What does the city gain by this?
2 What does the private party owner experience
3 by this? There are real problems with this.

4 There are many other developments
5 around the city approved with covered
6 walkway connections where these and other
7 issues will arise from single-family homes
8 connected to garages --

9 ZC CHAIR HOOD: Mr. Collins, Mr.
10 Collins?

11 MR. COLLINS: Yes.

12 ZC CHAIR HOOD: Mr. Collins, if
13 you could just finish up.

14 Let me ask you, do we have your
15 statement?

16 MR. COLLINS: Yes, you do.

17 ZC CHAIR HOOD: Okay. Is it in
18 this package here?

19 MR. COLLINS: Yes, it is.

20 ZC CHAIR HOOD: Okay.

21 MR. COLLINS: I'd just like to
22 call your attention to the last part about--

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1 ZC CHAIR HOOD: Could you just
2 end your thought -- you know, just give us
3 your closing thought, please.

4 MR. COLLINS: All right.
5 Changing the interpretation would
6 constitutes a business street and what a
7 resident street is. Simply stated, the
8 change will render existing buildings not
9 only nonconforming of the Zoning
10 regulations, but also in violation of the
11 1910 Height Act.

12 Thank you.

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

17 MR. COLLINS: Where my statement
18 is?

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

22 Mr. Sher?

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

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

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

14 An overarching issue for us
15 that we start from is whether to incorporate
16 into the Zoning regulations clarifications,
17 interpretations, whatever you call them, of
18 the Act of 1910. The Act and the regulations
19 are two fundamentally different propositions
20 for measuring height. The Act relates
21 height to the width of the street. The
22 regulations relates height to the zoned

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1 district classification.

2 So a lot of the things we've been
3 talking about go back to the Act of 1910
4 clearly, but they don't have any
5 relationship to the Zoning regulations.
6 Because you don't measure height in the
7 Zoning regulations based on the width of the
8 street. In an R-4 district you can build a
9 40 foot high building. In a C-2-A district
10 you can build a 50 foot high building.
11 That's without regard to the width of the
12 street.

13 So you need to keep in mind that
14 there is a clear distinction here. And
15 notwithstanding the fact that a lot of what
16 we've heard from OP and a lot of the
17 discussions in the Task Force and elsewhere
18 have said we need to bring all these things
19 together so that everybody understands them.
20 The Zoning regulations are not all things
21 for all people. They don't have the
22 subdivision regulations in them, they don't

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1 have environmental regulations in them, they
2 don't have historic landmark controls in
3 them. They're Zoning regulations. You ought
4 to keep them as Zoning regulations. And if
5 the 1920 Height Act has issues, I don't
6 think it belongs here.

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

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

17 The location of the measuring
18 point which says you can use one street for
19 the width of the street and a different
20 street to measure the height is consistent
21 with interpretation of the Act since 1910.
22 And we don't see any reason why: (a) it

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1 doesn't belong in the regulations to begin
2 with, but if it belongs here it doesn't
3 belong here in the format that's proposed
4 here.

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

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

16 Regulations means something else.

17 What we're concerned about here
18 really is not trying to change the Act.
19 Nobody can change the Act other than the
20 Congress. You can't change it, the Council
21 can't change it, the Mayor can't change it.
22 The Congress can change the Act.

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1 As somebody earlier, I guess it
2 was Mr. Parker in his presentation, nobody
3 wants to go out and start down the road of
4 we need to change the Act. But what you need
5 to make clear here is that authority to
6 waive the setback requirements applies to
7 those things that are not limited by the
8 Act. And if the Act says exterior wall
9 means a wall facing a street, then our view
10 has always been that the Zoning Commission
11 and a PUD, the BZA in a case before it can
12 grant flexibility from those setback
13 requirements as long as it's not
14 inconsistent with the Act.

15 And we are firm and fervent
16 believers in the Act. We've got among the
17 four of us probably a 135 years of
18 experience doing this stuff. And there
19 isn't anybody anywhere who knows more about
20 the Act of 1910 and how its applied and what
21 it was intended for than we do. We go out
22 there and tell people all the time you can't

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1 forget about the Act. You got to look at the
2 regulations, you got to look at the Act;
3 whichever is more restrictive among the two
4 you've got to comply with.

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

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

20 We have gone through lots of
21 other things here. And the only other one I
22 want to point out is something that Mr.

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1 Parker mentioned where he talked about
2 height related to natural grade. We're
3 working on a project to deck over the
4 freeway. And we just want to be sure those
5 streets that cross over the deck are
6 technically bridges or a platform. And we
7 don't want to have to be measuring the
8 height from the bottom of the freeway. You
9 know, we're extending those streets at the G
10 Street cross where the grades are roughly
11 comparable on either side, but it is a
12 platform or --

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

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

18 ZC CHAIR HOOD: All right. Okay.

19 Ms. Gates, Commissioner Gates.

20 COMMISSIONER GATES: Mr.
21 Chairman, with all due respect, you may want
22 to go ahead and ask your questions of the

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1 135 years of experience. I'm going in a
2 very different direction.

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

6 COMMISSIONER GATES: Okay. Thank
7 you. Thank you.

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

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

19 More recent develops like
20 Phillips Park and individual in-fill houses
21 do not possess the same height uniformity
22 and often push limits through creative roof

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1 treatments that provide additional height
2 and space for residential properties while
3 casting unwanted shadows on neighboring
4 properties.

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

17 The first point I want to address
18 in my five minutes is found in OP's
19 September 15 memorandum section 4B measuring
20 a building. Here is an opportunity to the
21 Zoning Commission to bring clarity and
22 consistency in measurements for residential

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1 zones where limits are set at 40 feet. To
2 the highest point of the roof rather than
3 the ceiling of the top floor.

4 Currently there is no maximum
5 height restriction for a house in the 40
6 foot district since there could be unlimited
7 building above the top ceiling. In all
8 other categories, garages, accessory
9 buildings, 60 and 90 foot districts and even
10 40 foot buildings that face a bridge or
11 viaduct measurement is made to the highest
12 point of the roof or parapet.

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

21 A second point of concern,
22 natural grade, is found under section 4B3 of

1 the OP memorandum. For too long developers
2 have mounded up the earth at the front of
3 houses and ended up with a roof line in the
4 clouds. Approval of the intent of the
5 recommendation on natural grade coupled with
6 consistency in the height limits of
7 residential buildings in the 40 foot
8 category will help create or maintain a more
9 consistent street scape in residential zoned
10 district.

11 On behalf of ANC 3D I
12 respectfully request the Zoning Commission
13 red the entire report of the Zoning
14 Committee which is attached.

15 Thank you.

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

18 Colleagues, any questions of this
19 panel? Chair Miller?

20 BZA CHAIR MILLER: Okay. Thank
21 you.

22 I guess my first question is for

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

13 And I guess it's my view, and I'm
14 not sure whether the Board actually decided
15 this way in a case, though the issue did
16 come up, that if a building interpreted to
17 be two buildings instead of one or if the
18 regulation changes, I don't see why that's
19 necessarily a violation of the Height Act
20 because when the building was built it was
21 constructed at least in accordance with the
22 interpretation of the Height Act with the

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1 approval of the Zoning Administrator. So I
2 don't see all of these buildings all of a
3 sudden being in violation of the Height Act.

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

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

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1 my point.

2 BZA CHAIR MILLER: Oh, okay.
3 Because I understand what you're saying
4 about there are other complications that go
5 with the building becoming nonconforming.
6 Because all of a sudden they're subject to
7 different regulations.

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

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

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

20 BZA CHAIR MILLER: Other than?
21 Good. Okay.

22 And, Mr. Sher, is it your basic

1 point that Office of Planning is making a
2 mistake by trying to mix together the Height
3 Act and the regulations to try to create
4 regulations to somewhat interpret the Height
5 Act or they should be totally separate, that
6 anything dealing with the Height Act should
7 be ought of the regulations?

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

15 If in a C-3-C district a 90 foot
16 height is permitted and on one side of the
17 site there's a wide street, on the other
18 side of the site there's a narrow street, on
19 the other side of the narrow street there's
20 a lower density zone of some sort, then
21 that's something that gets addressed by the
22 way you map the zoning map. And it's

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1 something by the way you design your zoned
2 districts rather than saying there's
3 something inherently wrong about the width
4 of the street on one side or the width of
5 the street on the other.

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

21 So you have Act, just like you
22 have an Historic Preservation Act or you

1 have an Environmental Policy Act, or you
2 have a set of subdivision regulations. And
3 if you're involved in this stuff, in this
4 business, if you're involved in development
5 you are charged with knowing what all these
6 various pieces of laws and regulations are.
7 And you can't just say well it's not in the
8 Zoning regulations, therefore I don't need
9 to be concerned about it. If it's not in the
10 Zoning regulations applies, you need to
11 know. And if it's the Height Act or any one
12 of these other pieces of legislation, I
13 don't think they always all get mixed
14 together.

15 BZA CHAIR MILLER: Okay. But--

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

20 BZA CHAIR MILLER: Okay. So the
21 question of exterior walls, though, that
22 belongs in the regulations because we have

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1 regulations that can be stricter than the
2 Height Act.

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

19 BZA CHAIR MILLER: That is my
20 final question. On that ornamental features
21 issue, do you think a regulation like that
22 would discourage some design because

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1 architects would want to have to pay the
2 costs or the hassle of coming before the
3 BZA?

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

10 BZA CHAIR MILLER: Yes. Okay.
11 Thank you.

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

14 COMMISSIONER TURNBULL: Thank
15 you, Mr. Chair.

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

22 MR. SHER: It has always been my

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1 understanding that the designation of the
2 street was related to the zoning of the
3 immediately adjacent private property, and
4 the Act uses the term "street or portion of
5 a street." I don't think the Act anywhere
6 uses the term block face or block front, or
7 what have you. And I think the various
8 examples of that were in the report and were
9 shown on the slides before indicate in some
10 cases some greater allowance and in some
11 cases some more restrictive allowance than
12 applying it strictly on the basis of if my
13 property's zoned commercial, C-2-A, C-3, C-
14 1, the street that I'm on is a business
15 street. If my property is zoned residential,
16 R-1 through R-5, then the street that I'm on
17 is a residence street. And in the one case
18 I get the width of the street plus street,
19 on the other hand it's the width of the
20 street less ten feet and other
21 considerations that go again that.

22 Again, that's always been my

1 understanding of how that's been applied.
2 There was a case before the Zoning
3 Commission many years ago involving a piece
4 of property owned by Howard University where
5 the one side of the street was getting
6 rezoned and the other side wasn't, and it
7 was some question. And I think all that got
8 worked out.

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

18 Now we've had this discussion in
19 many cases that have come before the
20 Commission. In particular,, the idea that
21 we've concentrated our density on our radial
22 corridors and then as you get off the 14th

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1 Streets and the Connecticut Avenues and the
2 Wisconsin Avenues, you step down pretty
3 quickly to lower density residential stuff.
4 Sometimes 90 foot apartment houses across a
5 ten foot alley from a single-family
6 dwelling. And we've given many examples of
7 that to the Commission and submitted plats
8 and photographs and things like that. And
9 sometimes it's a problem and many times it's
10 not.

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

19 COMMISSIONER TURNBULL: Okay.

20 Thank you.

21 ZC CHAIR HOOD: Vice Chairman?

22 VICE CHAIRMAN JEFFRIES: Yes. I

1 have to tell you, I mean Office of Planning
2 has done a lot of great work. Some of the
3 discussion was rather arcane and very
4 technical and just made my eyes roll over.
5 But I am somewhat quite alerted to this
6 whole notion of intended consequences,
7 particularly around the business around
8 these mixed use developments and how they
9 can be harmed.

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

20 So I just want to put a big pin
21 in that and make certain that we think about
22 that. I mean, I feel very strongly that I

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1 don't want to do anything to harm that if
2 there's some way that we can skin a cat here.

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

11 Thank you.

12 ZC CHAIR HOOD: Thank you.

13 Commissioner Etherly?

14 COMMISSIONER ETHERLY: Thank you
15 very much, Mr. Chair.

16 Mr. Sher, coming back a little
17 bit that conversation, the exchange that you
18 just had with Commissioner Turnbull, the
19 issue again of business versus residential
20 street it strikes me as though you're saying
21 this essentially taking a mallet, if you
22 will, to -- I don't even want to call it a

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1 mole hill. Because I think what you're
2 saying is there's not a problem here to be
3 fixed necessarily. Is that an accurate
4 characterization of your position on that
5 issue of clarifying business versus
6 residence street?

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

11 COMMISSIONER ETHERLY:
12 Understood.

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

21 I'm not saying that there aren't
22 situations in the city where the Commission

1 needs to look at its regulations and decide
2 whether allowing this level of height
3 compared to allowing what's next to it needs
4 to be looked at. You do that in particular
5 cases brought to you all the time. And I've
6 been involved in many of those and we've had
7 a lot of discussions about what's the right
8 level of height with this building and so
9 forth. And we've gone through all kinds of
10 processes and discussions to get to the
11 right answer on that. But I don't believe
12 that carving out new applications of the
13 business versus residence street is really
14 necessary or solves a problem.

15 COMMISSIONER ETHERLY: Okay.

16 Thank you. That answers my question.

17 Thank you, Mr. Chair.

18 ZC CHAIR HOOD: Commissioner May?

19 COMMISSIONER MAY: Okay. Ms.

20 Kahlow, you made a reference to that
21 particular issue, the definition of
22 residence streets and business streets

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1 suddenly transforming what would be
2 residential streets to business streets in
3 Foggy Bottom. I mean, has there been any
4 sort of analysis of that or can you even
5 provide a sampling of how many blocks might
6 be affected or what the result might be in
7 the end?

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

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

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

17 COMMISSIONER MAY: Unless the R
18 zone was sufficient density.

19 MS. KAHLOW: Some are, some
20 wouldn't and it's just a mixture because we
21 have little townhouses all over both in the
22 West End and in Foggy Bottom. We have little

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1 townhouses on some streets. Let's use 25th
2 Street. We have a row of little townhouses
3 and then we have commercial C-2-C next to it
4 and across from it is CR. I mean we have
5 such a mixture everywhere that all of our
6 little townhouses --

7 COMMISSIONER MAY: What was the R
8 zone there?

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

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

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

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

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

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

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1 definition.

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

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

9 COMMISSIONER MAY: Okay.

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

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

19 COMMISSIONER MAY: That's okay.
20 I'm kind of getting the point.

21 What I was really wondering is
22 whether you really have done some sort of

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1 analysis kind of block-by-block to see
2 whether --

3 MS. KAHLOW: We have not.

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

6 MS. KAHLOW: Okay.

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

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

19 COMMISSIONER MAY: Yes. Okay.

20 MS. KAHLOW: Okay.

21 COMMISSIONER MAY: Ms. Gates, the
22 40 foot limit thing I find a little bit

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1 puzzling because I'm not sure that there's a
2 real problem with, you know, 80 foot tall
3 buildings with 40 feet of attic space or
4 whatever the concern is. I'm not sure what
5 the real concern is.

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

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

16 COMMISSIONER MAY: Yes.

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

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

21 COMMISSIONER GATES: But the
22 houses, if you look at Spring Valley, Wesley

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1 Heights --

2 COMMISSIONER MAY: Yes.

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

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

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

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

20 COMMISSIONER MAY: Well, I guess
21 what I would say is, though, that if we're
22 going to have a limit that really is the top

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1 of the building, it's probably not going to
2 be 40 feet. It's probably going to be
3 higher than that to allow for three stories
4 and a roof of some reasonable proportion.
5 And that's why I'm a little concerned about
6 making it the top there.

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

9 I've got nine seconds.

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

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

19 COMMISSIONER MAY: We will, but
20 next time around it might be good if you're
21 going to come and give us that much paper to
22 get it in advance.

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1 MR. SHER: It only got done this
2 afternoon.

3 COMMISSIONER MAY: That's right.
4 I understand completely. I'm making a
5 suggestion. You know, it's bang for the
6 buck.

7 So that's it. Thanks.

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

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

20 MR. COLLINS: Yes. Thank you.

21 I would like to just call to your
22 attention another, as I call, a real live

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1 example of possibly an unintended
2 consequence, possibly not. This is The
3 Portal along Maryland Avenue in Southwest
4 D.C. This is a site, the Portal site was
5 subject to an RFP or PDA way, way back in
6 the mid-'80s. It's a 20 year project in
7 phases.

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

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

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

22 This project in its various forms

1 and for different reasons different times
2 has always been recognized to allow Maryland
3 Avenue as the point of measurement at a plus
4 47 elevation. The Council has done it in an
5 amendment to the schedule of heights. The
6 Executive Branch of DHCD through the Zoning
7 Administrator. This Commission four years
8 ago. And I submitted a booklet earlier in
9 the week on this very issue --

10 ZC CHAIR HOOD: Yes.

11 MR. COLLINS: -- where I
12 recounted the history of the Zoning
13 Commission's review of this and included the
14 record that we submitted to the Zoning
15 Commission in that case so you would have it
16 in this case so that you would lose sight of
17 the fact that the Portal is maybe a special
18 case. It's certainly a particular case with
19 a particular history. And as a result of our
20 participation four years ago before this
21 Commission on the last time that you looked
22 at the height issue or definition of height

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1 and natural grade, that OP changed their
2 original proposals to take into
3 consideration the specific issue of the
4 Portals.

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

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

17 One of the other things I wanted
18 to say, another thing and I paid attention
19 to everybody's testimony. It seems as
20 though Mr. Collins and Ms. Gates agree on
21 the street, the business street, the
22 residential street. And he asks us a

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1 question at the end. And I would like for
2 the Office of Planning to look at that
3 question and at some point in time I think
4 we need to respond to those questions.

5 While it seems to appear to me to read kind
6 of identical in Ms. Gates -- not necessarily
7 identical, but saying the same thing. And I
8 would just like some clarification on it.

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

15 And I agree in part with
16 Commissioner May. Now that I know that
17 someone was working on it later this
18 afternoon, but for us to be able to absorb
19 it, this is a 135 plus whatever the amount
20 of years experience that Ms. Gates that we
21 can all put this together and try to read
22 this and ask questions so we can understand

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1 further puts us kind of -- and my time is
2 up. I'm going to be an example. Okay.

3 Let's do the second round.
4 Anybody else second round? Lead by example.
5 Second round? Okay.

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

14 ZC CHAIR HOOD: Let me ask this,
15 Ms. Schellin. I know this is out of -- let
16 me not say that it.

17 But if we get ready to
18 deliberate, can we check with OAG? If we
19 have questions of materials that we read
20 while deliberation, is it improper? And I
21 don't want an answer tonight. I want an
22 answer from OAG. Is it improper at that

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1 time if the persons are in the in audience
2 if we just ask them for clarification as we
3 deliberate? That's something for us to just
4 think about.

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

7 SECRETARY SCHELLIN: While you're
8 deliberating?

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

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

20 SECRETARY SCHELLIN: I think it
21 would probably be just like the regular
22 meetings. Unless you guys call someone

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1 forward, there's no testimony. So I think --
2 but I'll verify.

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

7 Chair Miller, you had another
8 question you said?

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

13 In particular, do you have an
14 issue with, for instance, the utilitarian
15 and amenity features, and particularly
16 amenity features where it seems to me the
17 ones that are listed by Office of Planning I
18 don't believe that they've ever been
19 interpreted specifically by the courts. So
20 what I see Office of Planning doing here is
21 asserting that in their interpretation
22 they're allowed under the Height Act and

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1 putting it out there. Do you have a problem
2 with that?

3 MR. SHER: One of the things
4 that's attached to my outline under Tab 3 is
5 an opinion of the Corporation Counsel going
6 back to 1953 which talked about construing
7 what the Act allowed and basically it was
8 either Mr. Cochran or Mr. Parker said things
9 that are not explicitly defined in the Act
10 but were determined to be similar enough to
11 the things that were listed in the Act where
12 you had vent shafts and fire sprinkler and
13 then you have air conditioning cooling
14 towers which probably didn't exist in 1910
15 by interpretation were allowed to be above
16 the normal limit of the height of the
17 building.

18 Again, the Zoning Commission can
19 in its regulations adopt things that are
20 more restrictive than the Act. It cannot
21 expand what the Act allows. But if by
22 interpretation the Act has already been

1 interpreted to allow certain things, there
2 it is.

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

13
14 So the Zoning regulations can be
15 more restrictive, but nothing that you do or
16 that the Commission does can amend the Act.

17 BZA CHAIR MILLER: But I don't
18 think they think they are amending the Act;
19 that's the point. I think that they're
20 interpreting it or the Zoning Commission
21 would be interpreting it in a regulation
22 just like OAG would be giving an

1 interpretation that, well it's you know
2 several years later and they didn't have
3 these sustainability things or they didn't
4 have whatever. And in their interpretation
5 it's allowable. And then it could be
6 challenged just like a BZA decision could be
7 challenged.

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

22 BZA CHAIR MILLER: Are you saying

1 the Zoning Commission can't interpret the
2 Act in doing a regulation? Because I think
3 it probably happens all the time when its
4 made its regulations, its interpreted that
5 this doesn't violate the Height Act. That's
6 why the promulgate the regulation.

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

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

20 BZA CHAIR MILLER: I mean I don't
21 know if you wanted me to start this whole
22 thing. I thought it was a basic that the

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1 Zoning Commission has the authority to do.

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

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

10 VICE CHAIRMAN JEFFRIES: You got
11 seconds to do it.

12 MR. QUINN: If it's seconds, I'm
13 not sure I can do it. But clearly the
14 Zoning Commission, you know like Lew Robbins
15 used to say, there it goes. Even the
16 elevator operator can give their opinion on
17 what happens. I mean, that's your opinion.
18 But clearly in 1910 and before, actually
19 starting in 1910 the Office of Corporation
20 Counsel was given the obligation to deal
21 with the enforcement of the Act. And always
22 since then every interpretation ultimately

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1 has gone to the Office of Attorney General,
2 even though the Zoning Administrator
3 sometimes is asked initially what is his
4 view. And normally it has not been the
5 Zoning Commission, but Zoning Commission can
6 certainly express themselves.

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

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

15 Any other questions?

16 COMMISSIONER MAY: Mr. Chairman,
17 I just want to clarify something here.
18 mean, I think the past when the Zoning
19 Commission has dealt with project where
20 height is an issue, we don't I think
21 knowingly approve things that we see as
22 violations of the Height Act. But we also

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1 don't get into the issue of whether or not
2 it truly is a violation of the Height Act.
3 We defer to the Zoning Administrator to
4 interpret that.

5 ZC CHAIR HOOD: Okay. Thank you.
6 I don't have anything that has been
7 typically what we have done.

8 Anyone else?

9 Okay. Again, I want to thank
10 this panel. We appreciate you all coming
11 down and providing 135 plus years of
12 testimony.

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

18 David Tuchmann. Okay.

19 Barbara Zartman.

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

22 And what I'm going to ask is Mr.

1 Crews and Mr. Williams are going to bring up
2 the last panel and anyone else who would
3 like to testify in opposition in the last
4 panel.

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

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

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

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

17 MR. AVITABLE: Close. Avitable.

18 ZC CHAIR HOOD: Avitable. Okay.
19 Mr. Avitable?

20 MR. AVITABLE: Thank you. Again,
21 my name for the record is Dave Avitable. I'm
22 here representing Phillipsbury, Winthrop,

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1 Shaw, Pittman. I'm actually pinch-hitting
2 for Paul Tummons tonight who was supposed to
3 be here but had a family emergency. So
4 forgive me if my comments are a little bit
5 jumbled.

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

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

15 I think certainly particularly
16 when you consider the tension between a
17 strict definition that might have been based
18 on a certain number of building floors
19 versus either what the Zoning Commission
20 might want to see in a PUD. And I think
21 Square 54 actually would be a good example
22 where you wanted to see articulation and you

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1 didn't see a single monolithic building
2 wrapping around a site. You wanted to see
3 differentiation in the types of uses, the
4 types of structures.

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

19 And the other point I think I'd
20 want to make on that is the way the system
21 works now is it really relies heavily on the
22 ability of the Zoning Administrator to take

1 a look at these buildings, take a look at
2 what the definition is and make an
3 interpretation of what seems reasonable.
4 And I've been on both sides of this, as
5 Chairperson Miller knows. You know,
6 sometimes that interpretation doesn't go the
7 way that you want, but that's the Zoning
8 Administrator's responsibilities is to take
9 a look and say this looks like a single
10 building. This meets the substantive
11 criteria. It feels like a building, it looks
12 like a building.

13 I think the other point that I'd
14 like to make on that front is the point that
15 Chris Collins made about unintended
16 consequences. And that's not just for the
17 impact on existing buildings, but also for
18 the impact that that would have on buildings
19 going forward where you have someone who
20 would be looking to develop a mixed use
21 project on a single record lot and a
22 stricter definition of building based on a

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1 stricter definition of what the connection
2 should be would limit their ability not just
3 to use a shared measuring point, but also
4 it would create multiple buildings on a
5 record lot, it would create rear yard
6 issues. And that's one of the Zoning code
7 currently, and I don't know yet because we
8 haven't gotten to rear yard set, but I
9 imagine we'll continue to do going forward,
10 the idea that through lots you measure your
11 rear yard from the middle of the street
12 behind it or corner lots that there's relief
13 there.

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

17 One other point, I think again
18 echoing what Chris Collins said about the
19 changes creating nonconforming structures,
20 the same point about if you change the rules
21 of the games you'll create buildings that
22 will be considered to be nonconforming,

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1 which does create significant issues when it
2 comes to either selling or refinancing.
3 Because banks, particular banks based up in
4 New York who are not familiar with our code,
5 when you try to explain to them the Height
6 Act that's difficult as it is. But then try
7 to explain on top of that oh don't worry,
8 it's really okay. It's because of this
9 change in the definition. It's a very
10 difficult thing to explain.

11 And I think one of the
12 suggestions that we might have, and this is
13 a suggestion that I believe Paul made to the
14 Task Force, is you can add an section and
15 this might come later on in the
16 implementation stage, but add a section that
17 clearly states that any building that was
18 previously approved and constructed to a
19 certain date is considered to be a
20 conforming building. And there's precedent
21 for this. There's a provision about the
22 Southwest Urban Renewal Plan. This also

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1 happened when the Zoning Commission changed
2 the definition of whether hotels were
3 permitted in residential zones in 1980.

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

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

17 With that I'll --

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

21 Mr. Tuchmann?

22 MR. TUCHMANN: Thank you,

1 Chairman Hood and members of the Commission.

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

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

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

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

20 Our intent for this site
21 established during multiple years of
22 negotiations and planning has always been to

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1 create an exciting mixed use development
2 which leverages the existing transit
3 infrastructure as well as considerable
4 public and private investment in the
5 adjacent areas.

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

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

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

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

21 The buildings on each side of H
22 Street will be separated by a publicly

1 accessible mid-lot courtyard. This
2 configuration of the development plan is
3 based upon a well known and recognized
4 interpretations within the developmental and
5 architectural communities and has been used
6 by us and others in assembling land and
7 developing large multiphased projects in the
8 central area of the city.

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

16 We have reviewed proposals which
17 OP has submitted to the Zoning Commission as
18 part of the zoning revision project, and we
19 are particularly concerned about a number of
20 the proposals contained in the height
21 amendments. A number of these provisions if
22 adopted could significantly adversely affect

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1 our ability to build the project as planned
2 with a series of smaller interconnected
3 buildings with a mix of uses.

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

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

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1 site nearly impossible.

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

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

21 We believe that the District will
22 benefit substantially from what we are

1 planning at Vernon Place. The project will
2 mend a century old scar in the fabric of our
3 city, just blocks from the U.S. Capitol and
4 adjacent to the region's premier intermodule
5 transportation center.

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

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

14 Thank you for your consideration.
15 I'd ge happy to provide you with any
16 additional information or answer any of your
17 questions that you might have.

18 Thank you.

19 ZC CHAIR HOOD: Thank you, Mr.
20 Tuchmann.

21 Ms. Zartman?

22 MS. ZARTMAN: Good evening, Mr.

1 Chairman and members of the Commission, and
2 Ms. Miller.

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

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

20 Overall the OP recommendations
21 need to reviewed with a sense of
22 perspective, and their report indicates they

1 are willing to do that.

2 The recommendation to change the
3 penthouse limit from 18½ to 20 feet for
4 reasons that we don't see standing very well
5 needs to be considered in light of the
6 different base building height limits.
7 Adding another 20 feet to a 40 foot building
8 is profoundly different than adding it to a
9 10 story building. Even so, changing the
10 measurement to allow a full two story
11 additional floors of development to any
12 building crosses a threshold that we believe
13 should be protected.

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

22 I'm going to surprise you tonight

1 and give a very brief statement with regard
2 to other specific recommendations.

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

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

18 Recommendation seven we believe
19 moves in the right direction, but it needs
20 to make clear that berming and shaping are
21 unacceptable alterations to the natural
22 grade.

1 Recommendation eight should be
2 amended to eliminate language that appears
3 to license violation of the Height Act.

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

19 I think of one property that the
20 design approval was completed. It's a
21 commercial property that backs up to
22 residential rowhouses. And it's a five

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1 story building with a swimming pool on the
2 top and shops in the basement. But it's the
3 impact of the spillover of the swimming pool
4 activity that the neighbors are most
5 particularly concerned about.

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

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

18 Recommendations eleven and twelve
19 need to reflect the policy set forth in the
20 Comprehensive Plan regarding party walls.
21 We believe they should be treated as other
22 exterior walls are treated in the plain

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1 language of the plan. The proposed language
2 is inconsistent with that Comprehensive Plan
3 language. I would ask you were an adjacent
4 building razed, is there any doubt that the
5 party wall would become the exterior wall of
6 that building?

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

15 Thank you.

16 ZC CHAIR HOOD: Thank you, Ms.
17 Zartman.

18 Mr. Hargrove?

19 MR. HARGROVE: Thank you,
20 Chairman Hood and members of the Commission.

21 I'm Larry Hargrove speaking
22 tonight for the Kolorama Citizens

1 Association.

2 I'd like before turning to the
3 specific recommendations of the OP and the
4 Commission, to make three general comments.

5 First, I would appeal for the
6 most scrupulous respect for the terms of the
7 Height Act. Perhaps that doesn't need to be
8 said, but much of what this Commission will
9 be doing in dealing with this subject is an
10 interpretation of a statute, in this case
11 federal statute that happens to be binding
12 on the District of Columbia. For this sort
13 of thing one must adhere strictly and
14 scrupulously to the established legal canons
15 of statutory interpretation. There are
16 rules and principles about this sort of
17 thing. We have no authority to draft
18 regulations on a blank slate, and we must
19 avoid the temptation to embrace tenuous or
20 even fanciable interpretations of the Height
21 Act in pursuit of outcomes that may be
22 perceived currently as desirable.

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1 I'm afraid there are some
2 proposals before us that do not meet that
3 standard. I mention only one, and that is
4 the proposal for allowing something called
5 amenity features on the top of a roof. The
6 Height Act is not going to permit that. And
7 to my knowledge there's no effort even to
8 reconcile that proposal with the terms of
9 the Height Act. I mention that only as an
10 example.

11 Secondly, I would urge that you
12 look with a very skeptical eye at assertions
13 of clearly established precedents of many
14 decades standing regarding some of the key
15 concepts of the Act. Exterior wall is an
16 example. Particularly where the evidence
17 for those assertions consists mainly in the
18 mere existence of buildings configured in
19 such a way as to comply with the alleged
20 precedent. Unfortunately, there's a
21 substantial history of buildings in the
22 District having been allowed to be construed

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1 in ways that arguably might be said to be in
2 conflict with the Height Act in which there
3 is no record of the Height Act issue ever
4 having been raised, let alone addressed and
5 determined by any official or agency in the
6 District Government. Such situation does not
7 give rise to legal precedent.

8 Finally by way of general
9 comment, and this goes directly to the issue
10 addressed at length by Mr. Sher, we are
11 concerned at the omission of a provision
12 which was previously included in OP drafts,
13 namely section 2510.1 of the present Zoning
14 regulations. That is the provision that
15 incorporates the provisions of the Height
16 Act into the Zoning regulations. It is
17 important that that provision be retained,
18 thus retaining the established authority of
19 this Commission, the BZA and the Zoning
20 Administrator within their respective
21 spheres of confidence to interpret and apply
22 all provisions in District law and

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1 regulations relating to the height of
2 buildings.

3 IF we were to abandon the present
4 legal arrangements in which these two sets
5 of rules are incorporated into a single
6 unitary body of regulatory law, interpreted
7 and applied by the same officials, it would
8 mean one of two things. At worst it would
9 mean that we would revert to a situation in
10 which the federal height issues in
11 particular cases would be overlooked in the
12 routine administration of zoning matters.
13 This has happened with disturbing frequency
14 in the past. At best it would mean that the
15 federal height issues would be carved out
16 from the non-height issues in a given case
17 and heard and determined by separate
18 procedures not involving the Commission, the
19 BZA or the Zoning Administrator. At least
20 the BZA and the Zoning Administrator would
21 rely on that provision of the existing
22 Zoning regulations for their authority to

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1 deal with Height Act matters at all. This
2 sort of bifurcation would make no sense. It
3 would be enormously wasteful of resources of
4 time and expertise and money of all
5 concerned. It would be an invitation to
6 endless confusion.

7 Now as to specific
8 recommendations. Let me turn to
9 recommendation one and five dealing with the
10 street abutting a property line which may be
11 used to the maximum height allowable and the
12 situation in which a street -- a building
13 faces more than one street. Let me say
14 simply that these two provisions should be
15 adopted selecting option one rather than
16 option two under recommendation five. We
17 will explain in our written statement
18 exactly why we think that's true, and others
19 have addressed that competently as well. But
20 we would also urge at this point that the
21 Commission restore provisions which were
22 previously recommended by OP but later drop

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1 that would require in the case of buildings
2 front on more than one street and having a
3 maximum allowable height greater than that
4 allowed on one or more of those streets,
5 that there be appropriate setbacks and
6 stepdowns.

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

16 Thank you very much.

17 ZC CHAIR HOOD: Okay. Thank you
18 very much.

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

22 I would just say this: I wanted

1 to comment on, you're right, Ms. Zartman,
2 when I first read the first paragraph I was
3 surprised. But I will say that I appreciate
4 the way that your testimony was outlined and
5 the history of recommendations. It makes it
6 a lot easier up here when you want to make
7 sure you encompass or include everything
8 that everyone has.

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

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1 that anyone has. And I will just say that we
2 appreciate things like this.

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

13 Okay. Chair Miller?

14 BZA CHAIR MILLER: I just have
15 one question for your testimony, which I
16 thought was pretty enlightening. But on top
17 of Mr. Sher's, is your position that the
18 Zoning Commission can craft some regulations
19 that touch upon the Height Act but they just
20 need to do it very scrupulously like in
21 accordance with the established canons and
22 statutory interpretation?

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1 MR. HARGROVE: I'm not sure that
2 I got the question.

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

15 MR. HARGROVE: Well, my basic
16 concern is that there be no lack of clarity
17 that the Zoning Commission as well as the
18 BZA and the Zoning Administrator all have
19 authority to interpret the Act and apply it
20 within their respective areas of competence.
21 Otherwise you'd have a completely separate
22 jurisprudence developing with its own

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1 procedures for determining close issues and
2 making decisions about particular cases.
3 And it would be an endless invitation to
4 confusion. It is not unlike what has
5 prevailed to some extent in years past.
6 And, as I said, there's an established
7 history in which it was not clear that Board
8 of Zoning Adjustment for example had the
9 authority to interpret the Act. As you may
10 recall, the BZA addressed and decided that
11 question just three years ago.

12 These agencies and individuals
13 are smart to tell what it is that the Act
14 governs and distinguish that from what the
15 Zoning regulations govern. But if you're
16 talking about the height of a building, you
17 need to have a unitary procedure and a
18 unitary body of substantive rules to which
19 those procedures are applied. At least
20 that's my feeling, the feeling of our
21 organization. We've had a little bit of
22 experience with that in particular cases.

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1 BZA CHAIR MILLER: What do you
2 ~~mean by "unitary" as opposed to what?~~

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

20 I will say that it is not the
21 case, to my knowledge, that every question
22 of interpretation of the Height Act has been

1 in the past referred to the Office of the
2 Attorney General. I, myself while I do not
3 have a 134 years of experience in these
4 matters, I have enough experience to have
5 been involved in cases in which those
6 interpretations were made by the Board of
7 Zoning Adjustment, and probably so.

8 BZA CHAIR MILLER: Thank you.

9 ZC CHAIR HOOD: All right. Any
10 other questions?

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

14 Okay. Mr. Bill Crews from D.C.
15 Zoning. Mr. Williams and also Mr. Hellman.

16 Is there anyone else who would
17 like to testify tonight? Okay.

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

21 ZC CHAIR HOOD: All right. Okay.
22 Mr. Crews, we'll begin with you.

1 MR. CREWS: Thank you very much,
2 Chairman Hood and members of the Commission,
3 and Chair Miller, members of the staff and
4 Office of Planning.

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

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

15 The first one is on the height
16 measurements. And those provisions talk
17 about, and we've had a lot of discussion
18 tonight about that in terms of a good
19 example of the current interpretation is the
20 Wardman Park Marriott Hotel where they have
21 the Calvert Street at the bottom of the
22 hill, a wide street. They used that to

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1 determine how high the building can be. And
2 then they measure from Woodley Road up on
3 the hill to see how high that height
4 actually goes.

5 And what we've talked about both
6 in the work group and the Task Force that
7 disappeared in any of OP's recommendations
8 were when you have those sorts of issues of
9 transition of adjoining -- high buildings
10 adjoining low height districts is the
11 concept of setbacks. And that is mentioned
12 in the Comp Planning. So I don't have
13 specific comments right now in terms of how
14 that could work, but I think that that's a
15 way of trying to get around -- not to much
16 get around, but maybe accommodate the two
17 conflicts, the fact that the history has
18 been that you can use two different streets
19 for those two different measurements. But
20 that if it does come along and adjoins a
21 lower height district, that there are
22 setbacks are required so that the massing

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1 does come again. And that is, you know,
2 it's probably going to be a theme along,
3 say, D.C. Zoning in these hearings is the
4 transition issues as we talked about it in
5 parking and spill over parking and here in
6 terms of height and transitioning.

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

20 So I think they need the 20 feet
21 so they can have two stories. Eighteen and
22 a half feet just doesn't make it under the

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1 building code to have two stories, and
2 that's really what we're talking about.

3 And then I think the second
4 aspect is that the whole concept of
5 amenities. How do you get from the Height
6 Act talk about mechanical needs. And I
7 think the sustainability I think is a really
8 good transition and inclusion in the Height
9 Act's uses of the penthouse for mechanical
10 stuff. I think the sustainability stuff can
11 fit under there very rationally. But the
12 amenities, you know, I think they started
13 with a swimming pool and then something else
14 well the health things, you got to have
15 bathrooms. And so well if you're going to
16 have bathrooms, can't we have little locker
17 rooms or little kitchenette. And now we're
18 at fitness centers. And all of this, you
19 know, gives it more use and why they need a
20 bigger 40 percent of area when if it was
21 just mechanical those penthouses would be
22 smaller and our view shed would be less

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1 impacted. And so I'm really thinking that
2 this really is just a slippery slope and
3 we're just going to get higher and higher
4 and bigger and bigger masses. And that
5 doesn't do anything for the heritage and the
6 history and the future of the city other
7 than help developers make more money.

8 Thank you very much.

9 ZC CHAIR HOOD: Thank you very
10 much.

11 Mr. Williams?

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

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

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

21 What I didn't hear a whole lot
22 about tonight was looking forward. And I'm

1 looking to you to be thinking about looking
2 forward to the implementation and the means
3 of implementation. I direct you to one of
4 the provisions in the parking regulations
5 that were adopted in the mid '80s which
6 provided for a forward implementation date.
7 It didn't happen on some Friday and just
8 drop down from the sky as a function of the
9 publication of the *D.C. Register*. So think
10 about when buildings have to be designed.
11 Think about the consequences of what happens
12 if something becomes more restrictive and
13 you have to eeck out six more inches of
14 something that affects the whole stair core.
15 Everything like that is a practical measure.
16 We need to figure out some way to make it
17 work whenever it happens.

18 And with that, I bid you good
19 evening.

20 ZC CHAIR HOOD: Thank you very
21 much.

22 Mr. Hellman?

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

10 But I come from the philosophy of
11 if you ask the wrong question, you're going
12 to get the wrong answer. So I'd like to
13 take you to the first page, which is just a
14 single sheet. And I start with a report that
15 was issued by the World Bank that there are
16 1.4 billion severely poor people in the
17 world. In 1800 there weren't even 1 billion
18 world in the entire world.

19 What I'm saying is is we live in
20 a world of change and evolution. My Ph.D is
21 in complex nonlinear dynamic feedback
22 systems. The reason that we're suffering

1 from the sprawl and the congestion and the
2 automobile pollution and the like that we
3 are is: (a) We invented automobile, but;
4 (b) There are a heck of a lot more people
5 than there ever were before.

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

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

18 The next one, my daughter sent me
19 that email recently, which was a quote from
20 Henry Ford that said: "Thinking is the
21 hardest work there is, which is probably the
22 reason so few engage in it."

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1 Those are the base for the last
2 one, which is my favorite quote from Mark
3 Twain, although he's got many. And that is
4 "You can't depend on your eyes if your
5 imagination is out of focus."

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

10 Now I'm a big believer in
11 aesthetics. I'm the fellow that introduced
12 the one step PUD almost 30 years ago and
13 created Lafayette Center, which I think is
14 still one of the prettiest urban
15 developments that we've got in Washington.
16 So I'm not going to suggest that aesthetics
17 isn't important. But I'm going to suggest
18 that the best your eyes can do is see
19 yesterday and it takes imagination to see
20 tomorrow. And tomorrow that's driven by
21 technology change and increasing population
22 takes imagination and thinking.

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1 We have a Metro system. Metro was
2 never thought about when the Height Act was
3 created. And, again, with respect to
4 precedent if we go, I was just at a lecture
5 at the National Archives today on the
6 creation of the Capitol. Slavery was the
7 way we did things. Women didn't vote. So
8 precedent is good to a point, but we have to
9 use our intellect to be able to put it into
10 perspective and context.

11 And what my second page was doing
12 was suggesting that within walking distance
13 of Metro we need to recognize that an
14 elevator is a Metro rail. It delivers a
15 pedestrian to the sidewalk without a rubber
16 wheeled vehicle and without any gasoline.
17 But elevators make no sense vertically
18 without horizontal elevators. And the
19 horizontal elevator is no good unless you
20 can walk to where you're going. Because why
21 are you going to take the train if it
22 doesn't take you to where you're going?

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1 So I think we need to think at a
2 bigger scale and think in an integrated way.
3 So I just wanted to encourage you to try and
4 step back and also see things in the right
5 context. Where aesthetics is important, but
6 it's a small piece of a bigger puzzle.
7 Public health safety and welfare is why
8 government has the right to regulate land.
9 And health, safety and welfare includes a
10 whole lot more than just aesthetics. That a
11 piece of the puzzle.

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

21 Thank you very much.

22 ZC CHAIR HOOD: Go ahead and

1 finish your last statement.

2 MR. HELLMAN: It's listed at the
3 bottom of the page. Virtualadjacency.com.
4 I gave a lecture at Catholic University Law
5 School in March called "Virtual Adjacency
6 and the Meaning of 'Place.'" And this whole
7 -- Woodmont Triangle book is a page on that
8 website. I would love to be a resource to
9 you if you would like.

10 Thank you.

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

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

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

19 I just want to thank Mr. Crews
20 for, you know his reference to the
21 channeling, that I wound up on the right
22 side of that. I'm sorry.

1 MR. CREWS: But see you're not
2 Ms. Palin.

3 COMMISSIONER MAY: Yes.

4 And I also was reminded in Mr.
5 Hellman's testimony actually, and this is a
6 comment not a question. But I was reminded
7 in his testimony about what I was thinking
8 about when Mr. Sher was talking about the
9 Height Act and the relationship of the
10 Height Act to Zoning. And that reminded me
11 of a prior conversation that I had with --
12 or a question that I had asked of the Office
13 of Planning, which was that the -- I forget
14 what the question was. But the answer was
15 framed only within the context of the Height
16 Act. And I don't even know if it my
17 question that was asked, but that's the way
18 the answer came.

19 And it just struck me that as we
20 try to strike that right balance and make
21 sure that the Zoning regulations work with
22 the Height Act that the right place to start

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1 for the guidance is good planning principles
2 and other objectives, and not just the
3 Height Act. And I'm sure that's in mind,
4 but it's kind of hard to keep our focus.

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

9 COMMISSIONER MAY: Oh, I --

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

17 COMMISSIONER MAY: Right.

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

21 COMMISSIONER MAY: Right. And I
22 wasn't suggesting you were. I'm just

1 suggesting that in your work in trying to
2 develop the right rules for dealing with
3 health, that it be driven not by the Height
4 Act. It's got to work with the Height Act,
5 but that's not the driving force. And I
6 know that's the case, but I just wanted to
7 reenforce that.

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

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

12 Okay. Again --

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

21 Thank you.

22 ZC CHAIR HOOD: Okay. All right.

1 Thank you all for this panel and being our
2 last panel and sticking with us tonight, we
3 appreciate that. Thank you very much.

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

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

11 We will have discussions/dialogue
12 at a special public meeting on November the
13 6th at 6:30.

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

16 COMMISSIONER MAY: Mr. Chairman?

17 ZC CHAIR HOOD: Yes.

18 COMMISSIONER MAY: Can I make one
19 more request? And I'm sorry, I should have
20 probably this up earlier. But there was
21 useful information that was in the
22 PowerPoint that was not in the OP report.

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1 And I think it would be helpful to have that
2 information.

3 ZC CHAIR HOOD: Okay. Good. All
4 right.

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

9 The record is going to close
10 October the 10th.

11 All right. I appreciate
12 everyone's participation tonight.

13 And this hearing is adjourned.

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

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