GOVERNMENT OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

SPECIAL PUBLIC MEETING

THURSDAY

SEPTEMBER 2, 2010

The Special Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 7:00 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
KONRAD SCHLATER, Vice Chairman
PETER MAY, Commissioner (NPS)
GREG SELFRIIDGE, Commissioner
MICHAEL G. TURNBULL, FAIA,
  Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM, Director
SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
TRAVIS PARKER
STEPHEN VARGA
LAINE CIDLOWSKI

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTIG, ESQ.
LORI MONROE, ESQ.

The transcript constitutes the minutes from the Special meeting held on September 2, 2010.
**TABLE OF CONTENTS**

Motion to Put Back in Place the Setdown Rule for All Text Regarding the Zoning Rewrite or Review Process

Vote to Approve Motion (5-0-0) .......................... 9

Hearing Action
Z.C. Case No. 08-06
Comprehensive Zoning Regulation Review: Use & Height Text

Office of Zoning Report
Travis Parker ............................................. 10

Vote to Approve the Structural Organization Hierarchy Demonstrated by the Office of Planning for the Proposed Future Regulations (5-0-0) .......................... 17

Vote to Set Down Zoning Commission Case No. 08-06 With Regard to Height, Option 3 (5-0-0) ......................... 54

Vote to Set Down Zoning Commission Case No. 08-06 With Regard to Uses (5-0-0) .......... 90
CHAIRPERSON HOOD: Okay. We're back. We'll go ahead and begin our special public meeting.

Again, my name is Anthony Hood. Joining me are Vice-Chairman Schlater, Commissioners Selfridge and May and Turnbull. We're also joined by the Office of Zoning staff under the leadership of Director Weinbaum, also Attorney General all the way to my far left. And to my right the Office of Planning staff under the leadership of Ms. Steingasser.

Copies of today's meeting agenda are available to you and are located in the bin near the door.

We do not take any public testimony at our meetings unless the Commission requests someone to come forward.

Please be advised that this proceeding is being recorded by a court.
report. It is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. Please turn off all beepers and cell phones.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. If not, let us proceed with the agenda.

Preliminary matters, already said by Ms. Schellin, we have none.

Before we go into our hearing action, I would ask Mr. Rittig, our Attorney General, to kind of give us a history of how we got to set downs and not having set downs as we go through this process.

So, Mr. Rittig?

MR. RITTIG: Sure, I'd be happy to. At a public meeting on April 14th, 2008 the Commission approved a procedural motion waiving its normal rules requiring a petition
setdown and supplemental filings for the zoning rewrite case. It specifically waived Zoning Regulations 30-10.1, 30-11 and 30-13. It authorized the Office of Planning to proceed without filing any further petitions requesting changes to the zoning text, authorized the Office of Zoning to advertise hearing notices submitted by OP without going through the normal setdown process so long as the text was first vetted by the Attorney General, and waived the required prehearing supplemental filings normally required from petitioners so that OP did not have to make the filings before the hearings were scheduled.

When it did so, it did it with a caveat that this was very early in the zoning rewrite process and that the Commission would revise its procedural rules and its motion as the process progressed and text was ready to be presented to the Commission. And now we are at the point where text is being presented.
to the Commission, so it seems like an appropriate time to revisit that procedural motion.

CHAIRPERSON HOOD: Thank you very much, Mr. Rittig. And I would just echo that even when we started this process, the zoning rewrite process, we went in front the Council. And it was stated that we hadn't done one in over 50 years, so we knew that there were going to be some things that may change as we go along the process. And I want to commend the Commission for having the thought, the wherewithal at the beginning to say let's revisit this if we get to this point.

So, as already stated, I think we're at this point, but let me open it up to my colleagues for any comments or motions, or however you'd like to proceed.

VICE-CHAIRMAN SCHLATER: Mr. Chairman?

CHAIRPERSON HOOD: Vice-Chairman?

VICE-CHAIRMAN SCHLATER: Well, I'm
glad we're revisiting this as well. I think it's important that these text changes go through the same process that we've instituted for other text amendments, namely going through the setdown process.

So, I move to amend the Commission's procedural motion approved April 14, 2008 to restore the requirement that the Office of Planning submit a setdown report to the Commission containing its recommendations ten days before the meeting and that the Commission vote to set down the text contained in the report before a public hearing notice is published in the D.C. Register as required by 11 DCMR 30-11.2 through 30-11.4.

CHAIRPERSON HOOD: Great. Thank you, Vice-Chairman.

It's been moved. Can I get a second?

COMMISSIONER SELFRIDGE: Second.

CHAIRPERSON HOOD: Thank you, Commissioner Selfridge.
Moved and properly seconded. Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: Are you ready for the question? All those in favor? Aye.

VICE-CHAIRMAN SCHLATER: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

COMMISSIONER SELFRIDGE: Aye.

CHAIRPERSON HOOD: Not hearing any opposition, Ms. Schellin, would you please record the vote?

MS. SCHELLIN: Yes, sir. Staff would record the vote five to zero to zero to put back in place the setdown rule for all text regarding the zoning rewrite or review process. Commissioner Schlater moving;

Commissioner Selfridge seconding;

Commissioners Hood, Turnbull and May in support.

CHAIRPERSON HOOD: Thank you very much, Ms. Schellin.
Let's move right along, hearing action. Zoning Commission Case No. 08-06, Comprehensive Zoning Regulations Review: Use and Height Text.

Office of Planning, Mr. Parker?

MR. PARKER: Good evening, Mr. Chairman. I'm Travis Parker with the D.C. Office of Planning. To my right are Steve Varga and Laine Cidlowski who are largely responsible for much of the material you'll see tonight, just as a heads up.

The first question I have for the Commission is we seem to be short a large screen. Are you all comfortable looking at the three smaller screens?

CHAIRPERSON HOOD: I think we are. If not, we'll move closer.

MR. PARKER: All right. We've got a use and height chapter to talk about tonight, but before we get to that we wanted to formally present to you what we've presented to the task force; we've shown you
as well, the proposed code reorganization. Wanted to formally present it to you tonight and ask for your feedback and blessing on that tonight.

I think everyone in the room has seen this document. We're proposing a restructuring of the regulations that takes all the general information from our regulations and puts it up front. We're proposing to add a new level of hierarchy of subtitles to our Title 11, so breaking information out into subtitles, the first three of which would be general and the next seven or more would be land use-specific. And I'll go through those briefly.

The first one, Subtitle A, called Administration Procedures, would include such things as, you know, the introduction to the code, the legal applicability. New to our code would be basically a how-to, a user's guide to the code, how to access the information in this code and use the code.
This subtitle would contain the process for amending the code and rules for BZA and Zoning Commission.

Subtitle B is going to be the meat of the code. A lot of information here, a lot of bulk. This is the general rules, rules that apply city-wide, things like how to measure height, you know, how to require parking. And I don't know if you can or cannot read that, but things like the two chapters that we're going to look at tonight. Use and height are both in this general chapter and these are the regulations again that apply city-wide.

Subtitle C then is general processes. This is special exception, variance, PUD, campus plan, etcetera. Depending on the formal format, this is where a lot of these process rules and regulations will go. There may be some still play between this and Subtitle A that remains to be seen.

And then finally on the bottom
tier are the land use subtitles. So, right
now they number D through J. There's the
potential for one or two more. But these
contain all the zone information. These are
the equivalent to our chapters now; commercial
chapter, residential chapter. Right now they
number, you know, neighborhood residential,
apartment residential, transit residential,
mixed-use, mixed-use transit, downtown and
PDR, which is industrial. And within each of
those there will be a table for each zone that
contains the development standards, the
height, FAR, setbacks, etcetera. There will
be a use permission chart, and we're going to
go into that later when we talk about the use
chapter that contains the use permissions for
each zone within that subtitle. There will be
parking requirements for the subtitle and then
other rules that are specific either to that
group of zones or to individual zones within
that.

So with that, I just wanted to
give you that short background, what we are
asking from you tonight. This doesn't need
further setdown or public hearing. This is
not policy change, just a basic structural
organizational change. We'd like your
blessing to proceed with this structure
throughout the rest of the process and
chapters and subtitles that we bring forward
to you for text review will be in this format.

CHAIRPERSON HOOD: Commissioners,
any comments on this format that's being
presented tonight?

COMMISSIONER TURNBULL: I just
have one.

CHAIRPERSON HOOD: Commissioner
Turnbull?

COMMISSIONER TURNBULL: I notice
that under the general requirements you had
height.

MR. PARKER: Yes.

COMMISSIONER TURNBULL: But then
again height comes up in the next row down,
too.

MR. PARKER: Let me explain that.
Yes, absolutely. Height is actually one of
the chapters we're reviewing tonight. And
what you'll see in that general chapter is how
to measure height basically. So, the rules
about how height is measured, where it
applies, you know, that sort of thing is here.
When you go to your specific zones, there will
be a table and it will say the height for this
zone is 40 feet or whatever. If I look at my
R-1-A Zone, I see that it's 40 feet. I go
back to the general chapter if I don't know
how to measure that, if I don't know where the
bottom elevation is and the top elevation,
because how to measure it is universal across
the code, rather than repeating that in every
chapter.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: So, that's the
information there.

COMMISSIONER TURNBULL: Thank you.
MR. PARKER: Yes.

CHAIRPERSON HOOD: Okay. Ms. Schellin, I don't think we need a motion on this.

MS. SCHELLIN: I believe that when we spoke, if Ms. Monroe will clarify, I believe that Mr. Bergstein thought that a motion should be made to say that you were in agreement with the structural organization, or he suggested it.

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: Is that correct?

MS. MONROE: Yes, we discussed this the other night.

CHAIRPERSON HOOD: Okay. Thank you.

Any other comments or questions?

(No audible response.)

CHAIRPERSON HOOD: If not, I would move that we approve the proposed organizational hierarchy presented tonight by Office of Planning, Mr. Parker, and as for a
second.

COMMISSIONER TURNBULL: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor? Aye.

VICE-CHAIRMAN SCHLATER: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

COMMISSIONER SELFRIDGE: Aye.

CHAIRPERSON HOOD: Any opposition?

(No audible response.)

CHAIRPERSON HOOD: Not hearing any, Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes, staff would record the vote five to zero to zero to approve the structural organization hierarchy demonstrated this evening by the Office of Planning for the proposed future regs.

Commissioner Hood moving; Commissioner
Turnbull seconding; Commissioners Schlater, Selfridge and May in support.

CHAIRPERSON HOOD: Okay. Thank you.

Okay, Mr. Parker.

MR. PARKER: All right. With no further ado, we'll get onto the first of our general chapters in Subtitle B. We're going to talk first about height.

The main issue when talking about the height chapter is the two different types of height regulations that we have in D.C. In D.C. we regulate height by zone through Zoning, and Congress has also instituted an Height Act that controls height by the width of the street. So, we have two different limitations and both operate in different ways.

When we addressed this issue at our original guidance hearing, the discussion was that there was a general desire to see as much as possible in one place. So, if there
was a way to put both of these types of height restriction into zoning into one chapter, we should explore that. We have. We worked a lot with the working group, we worked a lot with the task force. And we really came across three options, three ways that we can present height regulation within the zoning code. I'm actually going to present what has been submitted to you as Option 1, but I'm going to explain the three variations that we've gone through and then I'll talk about what we've presented to you.

So, the first option is having in the height chapter both a zone height and street-based height. The street-base height would be the same as the Height Act height. And the intent of this is to get everything as a zoning regulation in the same chapter, the thought being then if you have a street-based zone regulation, a developer or property owner doesn't need to go look at the Height Act. One universal principle that would be
throughout all of these is we've been working with the Department of Consumer and Regulatory Affairs and the Zoning Administrator to have them publish their rules of interpretation of the Height Act. That, when approved by DCRA, would ultimately be codified within Title 11, within a non-zoning portion of Title 11. So, regardless of which option you choose, Height Act interpretations will be somewhere in Title 11. In Option 1, we'd also have a zoning rule in the height chapter that mirrored them.

Option 2, very similar. We would have a zoning rule for height and then we would have sections within the height chapter that directly copied the Height Act language from DCRA and said the Height Act limits are these. This offers the same advantage of having everything in one place. The disadvantage of Option 2 is that you have sections within the height chapter that are not zoning and are actually not subject to your change, and OAG has expressed some
concerns with that.

Option 3 then, which has been

OAG's preference, is that we not try and put

Height Act regulations within the Zoning Code

or create a new zoning standard that

replicates them. Option 3 would just have

zoning within the height chapter and it would

have reference to where DCRA's Height Act

interpretations are elsewhere in the code.

So, the document in front of you

tonight and in the public hearing notice

represents one Option 1.

I'm going to walk quickly through

what the sections are in that and what it

would mean to try the different options.

There are eight sections. Really

quickly, Section 400 is an introduction. This

is going to be a common section throughout all

the chapters in Subtitle B. It's going to

give us the intent of regulating height, some

general statements. And this is where there

will also be the reference to the Height Act
saying whatever happens in this chapter, properties in the District of Columbia are still subject to the Height Act and the more restrictive applies.

Section 401 is also something that you're going to see in every chapter in Subtitle B. This is the relationship between this chapter and the land use subtitles, the residential/commercial chapters. It talks about how this chapter interacts with those, where you find the information in those chapters and how you relate it to this chapter, and it gives rules for how you will codify height. An example of that is, we propose a rule in Section 401 that says when you set height limits for a zone, they'll be divisible by five. So, you can set a height limit of 35 or 40 feet, but not 372 feet, for example.

Section 402 then starts getting into the meat. This is how to measure height. This section applies both to zoning height and
to Height Act height, and it talks about how
you determine the bottom measuring point, that
it's in the middle of the building, that it's
from grade level and talks about what grade
level is, how you determine the top measuring
point. And that is actually something that
differs between zone height and Height Act,
whether you count the parapet or not.

Section 403 is strictly street-
based and/or Height Act-related. This is when
you're basing your height on the street, if
you're on a residential block, it gives us a
definition of residential block and it tells
us what the maximum heights would be if you're
under the street-based regulations on a
residential block.

Section 404 is the same for
business blocks. Again, definition of
business block and what your street-based
height regulation would be on a business
block.

Section 405 again deals just with

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street-based interpretations and/or Height Act. This is basically the miscellaneous rules for determining your height based on the street width. If you have multiple street frontages, which do you use? If you have a reservation across from you, you know, what are the rules there? And actually this is where the section on whether you are a single building or multiple buildings belong. We actually mis-codified it in the public hearing notices 402.7, but it belongs with the Height Act or the street-based interpretations in Section 405, and we'll correct that.

Two more. Section 406 is the exception. This is roof structures, what's allowed above the height limit. And this section has rules for the required setbacks of roof structures, what types of structures are allowed, the height limit of those and the footprint limit of those.

And finally, Section 407 is special exception standards for height. This
is strictly zoning. You can't get special exception from street-based and/or Height Act rules, but you can get special exception from zoning in terms of the roof structure setbacks or the roof structure footprint limit.

So, the version that you saw here looks something like this, and I apologize, you can't see it very well, but there are eight sections, three that deal strictly with zoning, Sections 400, 401, 402. Whatever option you choose, these three sections will appear in the height chapter.

There are three that deal specifically with Height Act issues; 403, 404, 405. If you choose Option 3, these will come out. These three sections will come out of the zoning code and will be strictly dealt with in DCRA's interpretations of the Height Act.

There are two sections then; 402 and 406, that are common between both. This is how to measure height and what you can do in...
terms of roof structures. These will be in
the zoning code, whatever choice you make, and
they will also be in DCRA's interpretations,
whatever you choose you make. So, the
difference for you is whether we keep section
403, 404 and 405 in the Zoning Regulations or
not.

And that's my presentation on
height and I'm open to questions and
discussion.

CHAIRPERSON HOOD: Okay. Let me
ask a question. Maybe this is for the
Attorney General. We're being asked to set
these down. Are we going to set them down
individually, or are we doing them in block,
if we set them down?

MS. MONROE: If you want me to
answer this; I don't know if OP wants to weigh
in, but you can even make a choice. You can
set them all down in the alternative, or you
can make a choice and pick which one you want
to set down. I think that's what OP is after
tonight.

    MR. PARKER: Absolutely. We want three things tonight: We'd ask you to set this down on September 20th. At this point everybody's had a chance to weigh in. We've made our recommendation. The taskforce has had their crack at it. OAG has made their recommendation. We'd like your guidance on which one you want to see on September 20th. We will publish that version.

    CHAIRPERSON HOOD: Let me ask.

    What did the taskforce come back with?

    MR. PARKER: The taskforce were all over the board. Every member thought something different, and often on different nights thought different things. So, we got lots of conflicting information from the taskforce.

    CHAIRPERSON HOOD: Okay. Let me open it up. Commissioners, any questions, comments, options? Commissioner Turnbull?

    COMMISSIONER TURNBULL: just to
clarify, we're talking about process.

MR. PARKER: Yes.

COMMISSIONER TURNBULL: Are we talking about tonight or looking at any of the content of these?

MR. PARKER: Forgive me. Absolutely. If you have questions or concerns about the content, I'd love to hear those now. We'll talk more about that on the 20th, but certainly we want your questions and concerns about the content as well.

COMMISSIONER TURNBULL: Well, I have -- one of the questions, one that's been around for a long time and --

COMMISSIONER MAY: Mr. Turnbull, can I interrupt for just a second?

COMMISSIONER TURNBULL: Sure.

COMMISSIONER MAY: I was just wondering if it might make sense to just address the question of what we think we would set down first.

COMMISSIONER TURNBULL: First?
That's fine.

COMMISSIONER MAY: If we can. If we can come to some conclusion about it. If we can't, then I think we leap into the individual questions.

COMMISSIONER TURNBULL: I think your right.

COMMISSIONER MAY: Yes, because I think it might save us some time.

COMMISSIONER TURNBULL: Yes, that's fine.

COMMISSIONER MAY: I for one am in favor of the third option, which is to only reference the Height Act. And since it's in the same chapter and since people will be looking at these things online anyway, I think it's handy enough. And I think that the real difficulty of trying to integrate them is that now you have the same regulations in two places and it's just going to be a nightmare making sure that they're in sync. And it's not just a nightmare in terms of like a
paperwork task, it's rule making by two
different agencies that would have to occur.
So, I think that the cleanest thing is to
simply make reference to it, make reference to
the fact that the most restrictive applies and
just set it down that way. I mean, that's the
cleanest thing from my perspective.

CHAIRPERSON HOOD: Okay. Anybody
else like to comment on the options?

COMMISSIONER TURNBULL: Where
would you make reference to that the strictest
would apply?

COMMISSIONER MAY: I think in the
Zoning Regulations where it makes reference to
the Height Act. I think there actually is a
clause in here somewhere that when there's a
conflict between them, the strictest --

COMMISSIONER TURNBULL: Okay. The
most stringent applies?

COMMISSIONER MAY: Right, which is
a matter of law I think anyway. So, it's just
repeating something.
COMMISSIONER TURNBULL: Yes.

CHAIRPERSON HOOD: Okay. Well, Vice-Chairman?

VICE-CHAIRMAN SCHLATER: This is a question for OAG and maybe Ms. Monroe. As to what it means to reference Subtitle M in this case, would these regulations promulgated by DCRA be part of the Zoning Regulations that the Zoning Commission enforces?

MS. MONROE: That's a hard question, because we've had this before and there was a recent BZA decision. It was the Kalorama case, which was dealing with the Height Act and the BZA specifically said that because the Height Act was referenced in the Zoning Regulations the BZA felt that it had the authority to interpret the Height Act. The case was appealed to the Court of Appeals but not on that issue. So, it wasn't actually decided by the Court of Appeals but it also wasn't brought up by the Court of Appeals as incorrect.
So, I think there's a question. I don't think I have an absolute answer for you, but I think there would be a question that if it were referred to in the Zoning Regulations it could be considered as within the Zoning Regulations.

On the other hand, the Height Act is not a zoning regulation. The Height Act is a separate act that is implemented by DCRA, not by the Zoning Commission. So, the Zoning Commission doesn't have any authority to interpret it.

VICE-CHAIRMAN SCHLATER: I guess maybe what I'm concerned about is if you have an application that comes through either the Commission or BZA that's in clear violation of the Height Act. We could be putting ourselves in a situation where we're not even able to weigh in on that issue. And I think if we are able to weigh on that currently, I'd still like to be able to weigh in. And I understand that the Zoning Administrator has the final
say over this, but you wouldn't want to be
handcuffed in such a way that you couldn't
even comment on it because it's outside of our
purview. I think that would be a concern.

MS. MONROE: I think the way it's
handled now; and Mr. Rittig can maybe talk
about this because he does a lot of PUDs, but
I guess in the PUDs the Zoning Commission will
often say there's an ambiguity as to whether
or not there is a Height Act violation here,
and so therefore we not defer to the Zoning
Administrator, but we'll leave it up to him to
make this decision. I think that's the way
it's handled now and that seems to be where we
are.

CHAIRPERSON HOOD: That's correct.
That's exactly how we handle it now. So, I
don't know. But that's what we do now, unless
it's a clear violation and we know. We
usually stop it up front, but normally we let
the Zoning Administrator make the
interpretation.
COMMISSIONER MAY: I believe that we have asked applicants to make their case that they're not violating the Height Act just to demonstrate, because the last thing we want to do is approve a PUD that's going to get lopped off because of Height Act concerns and they'd have to come back. So, we just want to have some assurance that they're going to be in compliance, and so we've gotten testimony to that effect. It's not always been perfectly resolved when they leave here. There were definitely some open issues, and I can recall a few cases where there were open issues, but to my recollection none of those have actually come back to us as a result. I mean, the things I think of immediately are things like the Department of Transportation headquarters. There was a Height Act issue there. And then there were a few that I know NCPC made an issue of setbacks. Those issues were raised by others in the course of our hearing and I know that
NCPC latched onto them and commented to us that there was a Height Act issue. And at that point we simply say it's the Zoning Administrator's job.

MS. MONROE: Let me say one thing: I don't want to pontificate about this; and OP should weigh on this, but the Height Act is interpreted and implemented by DCRA, but there have never been any written Height Act regulations put out by DCRA since 1910. And I think what OP has been -- and OAG's been working with DCRA is to put out their own independent Height Act regulations. So, maybe the Zoning Commission could step away from it at this point if DCRA's going to have its own regulations. And that is something again maybe Mr. Parker wants to address, because they've been working with the Zoning Administrator to come up with a set for DCRA. And then the set for the Zoning Commission could either include or not, and I think that's Option 3, is to not include what comes
up from DCRA.

CHAIRPERSON HOOD: Mr. Parker, did you want to comment on that?

MR. PARKER: Sorry, I've been somewhat distracted here.

COMMISSIONER MAY: Can I just step in for a second? I think what actually is being proposed in Option 3 is that what gets referred to is the DCRA regulations once they are published, right? So, I mean, I don't think that's going to substantively change what happens in the course of PUDs. I think that we're going to still wind up with Height Act questions and we're going to ask applicants to prove that they are in compliance with the regulation and not the Act, and they'll have to make that case. And if we're satisfied, you know, it'll move on. Anyway.

CHAIRPERSON HOOD: Ms. Monroe, because I forgot exactly now, could you repeat what you were saying before you wanted --
MS. MONROE: Oh, I'm sorry.

CHAIRPERSON HOOD: I'm sorry.

MS. MONROE: Basically I was just saying, Mr. Parker, that there have never been any written Height Act regulations put out by DCRA since 1910. And so, now that OP and OAG were working with DCRA to come up with their own set of Height Act regulations, it might make the Zoning Commission feel more comfortable not including everything in zoning if you don't want to, because there will be separate regulations. And that's what Mr. May was saying.

To kind of answer your question, if you don't reference the Act, you reference the DCRA Regs, then anybody who's building anything and is worried about height is going to go both sets of regs.

MR. PARKER: Right.

MS. MONROE: And the Act doesn't come in the back door into the Zoning Regulations that way.
Now, I'm not, you know, for or against. I'm just saying that's the way it would work.

MR. PARKER: And those regs will be in the same title even, so easily reference-able.

CHAIRPERSON HOOD: So, I guess, Commissioners, we're being asked -- and did that take care of your concern, Commissioner?

VICE-CHAIRMAN SCHLATER: Yes, absolutely. I don't think it serves any good purpose to have two dualing regulations and the ambiguity that comes from that as those regulations change over time. So, I think we need to pick one place for those sections to be, and it seems to make sense that since DCRA is the final arbiter on Height Act issues, that it should be in a title that they control.

CHAIRPERSON HOOD: Okay. But I think now we're being asked by the Office of Planning to pick one of those three options.
So far I think I've heard Option 3, and I know I'm in favor of Option 3. Option 3?

Let me ask this: Are you finished with your presentation on height?

MR. PARKER: On height, yes.

CHAIRPERSON HOOD: Okay. I guess what we'll do, Commissioners, we're going to go ahead and go with Option 3 unless I see something else. Okay.

Let's make a motion to set this down.

VICE-CHAIRMAN SCHLATER: I will say that. So, Option 3, I agree with that. I do have some comments on the text outside of just which option we're going to go down.

MR. PARKER: Please.

VICE-CHAIRMAN SCHLATER: One is that I realize that the Zoning Administrator is promulgating the rules now if we go with Option 3 for Sections 403 to 405.

MR. PARKER: Yes.

VICE-CHAIRMAN SCHLATER: I will
say that there are provisions within the text that I saw that was in the setdown report that I don't necessarily agree with. And so I don't want the Zoning Administrator to get the sense that the Zoning Commission is endorsing necessarily all of the recommendations within those sections. And specifically I would just highlight the meaningful connection, single building versus multiple buildings. I'm not 100 percent clear that that's in keeping with the current interpretation. Or, I've seen that issue come up on a few projects.

MR. PARKER: Right.

VICE-CHAIRMAN SCHLATER: And the way it's written right now does not seem entirely consistent with the way the Zoning Administrator has been interpreting it, and it's a little more strict. And I will say that we want to encourage breaking down the mass of buildings, and I'm worried that the way that language is currently written actually encourages super blocks. I think you
need to very careful in how that language gets done. I think we need to be able to break up the mass on these large blocks, because what's happening is you've got people trying to pull the height from one side of their square all the way to the other side of the square. And if they're forced to, they'll do it in one giant building just to take advantage of their density, but it's much preferable to have separate buildings that break down the massing of that square. It's an arcane issue. I've seen it play out though on numerous occasions and it's a big deal.

The other is on the fronting of these reservations. I think my sense is that it's inconsistent. The language that's written right now is not consistent with the way that's been interpreted in the last few years, at least as long as I've been watching it. And so I'd just have them take another look at that and just know that I don't entirely endorse that. Otherwise, I think the
language looks great. I'm excited about the
direction you're going in and just wanted to
highlight those two things.

MR. PARKER: Great. Thank you.

CHAIRPERSON HOOD: Thank you. Mr.

Turnbull?

COMMISSIONER TURNBULL: I just had
a question in 406. Four-oh-six we get into
our favorite topics of spires, towers, domes,
minarets, pinnacles, pergolas and similar
architectural embellishments, chimneys and
skylights. In 406.4, we say that space
enclosed by walls on a roof is limited to 40
percent of the building's total footprint.
Looking down the road with sustainable design,
green roofs and a lot of other aspects. I
mean, to me that's just the penthouse proper
or elevator shafts, the overruns. And what I
look at then is how much more on the roof can
be taken up with domes, pinnacles and
pergolas? We've had some cases where a
pergola runs the whole length. We've also had
some places where structures can be made into
tents on a roof and could be habitable, you
know, three-quarters of the year. And we want
to be creative and allow people to develop the
architecture that's exciting, but I wonder how
we structure the 40 percent limited to
penthouses and then suddenly have a dome, a
spire, a minaret, a pergola that could be
enclosed at some point, could be terraced.
I'm just wondering what kind of limitations
are you looking at when you look at it that
way?

MR. PARKER: Well, and actually if
you take a look at 406.4, this one
specifically stays away from penthouses. The
language here is space enclosed by walls, so
towers and domes would be included in that 40
percent.

COMMISSIONER TURNBULL: Okay. But
a pergola, an open-framed --

MR. PARKER: Pergola would not.

COMMISSIONER TURNBULL: --
structure could possibly take up 40 percent of
the roof?

MR. PARKER: More.

COMMISSIONER TURNBULL: Or more.

MR. PARKER: That wouldn't be
subject to that limitation, just like now.

COMMISSIONER TURNBULL: Are we
comfortable with that? I'm just throwing that
out as to what we see on the roof now.

COMMISSIONER MAY: It would still
have to be set back, wouldn't it?

MR. PARKER: It would. It would.

COMMISSIONER TURNBULL: Still have
to be set back? Okay. I was just curious
about the visual character that you would see
now up on this, this potpourri of items that
suddenly may come out.

The other thing is on your
diagram; I don't know which one it is,

406.2(3), the roof structure setback from a
party wall where the building is higher, we're
saying that the penthouse could be built right
up to that structure?

MR. PARKER: We're saying there's not a setback required in areas where you couldn't see it, yes.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: On a party wall.

COMMISSIONER TURNBULL: All right.

Thank you.

CHAIRPERSON HOOD: Anybody else?

Commissioner May?

COMMISSIONER MAY: Yes, is this time for all my questions? Do you want to start the clock? No.

CHAIRPERSON HOOD: I probably should, but no.

COMMISSIONER MAY: Yes, it's not a hearing. We don't usually do it a meetings, right?

I'll try to talk quickly. Four-oh-two-point-three, there's a reference where it says, "Except as provided in 102.4." Is that correctly referenced?
MR. PARKER: No, it should be 402.4.

COMMISSIONER MAY: Four-oh-two-point-four?

MR. PARKER: That's a typo.

COMMISSIONER MAY: Okay. So, at 402.4. So, is the exception to the maximum height difference of 12 inches, or is the exception to the midpoint of adjacent curb?

MR. PARKER: The exception is from using the adjacent curb.

COMMISSIONER MAY: Okay. So, I think that dependent phrase, the "except" should be inserted immediately after "curb" so it makes sense.

MR. PARKER: Can do.

COMMISSIONER MAY: On 402.4, since it's not stated I'm assuming that there's no actual order of preference among these items and I wonder if there should be. And I'm not asking necessarily for an answer. I just think that this might be one of those things
you make note of because I may still have that question when it comes time for the hearing. So, give that some thought and if there's anything to say.

MR. PARKER: I guess my immediate question though is how would a preference work? Like A always exists somewhere, so would you never -- if the current order was the order, would you not be able to do B or --

I don't understand what you mean by set a preference to.

COMMISSIONER MAY: Well, I mean, there may not be a street frontage affected by an artificial elevation, and so therefore you go onto No. 2, or B.

MR. PARKER: I see.

COMMISSIONER MAY: I don't know. I mean, again I'm not expecting to have all these answered at this moment.

MR. PARKER: Okay.

COMMISSIONER MAY: I'm just sort of raising the question.
Can you tell me on C what circumstances an elevation might have been previously determined by the Zoning Administrator?

MR. PARKER: L'Enfant Plaza.

COMMISSIONER MAY: Oh, okay. So, is that the only one, or are there just a few of those circumstances where they've --

MR. PARKER: There are just a few. I don't know of others off the top of my head, but things like that.

COMMISSIONER MAY: If they're actually small enough numbered a list, do we know that?

MR. PARKER: I just don't know if it would be exhaustive, but I can look into it, yes.

COMMISSIONER MAY: Oh, well then, I'm just concerned about what that would mean. I don't know if it's a big issue or not, so I don't really have a specific question on that one.
MR. PARKER: Okay.

COMMISSIONER MAY: Okay. Height limit exceptions. There's no height limits set for these additional structures, right?

MR. PARKER: There are actually. Four-oh-six-point-three.

COMMISSIONER MAY: Four-oh-six-point-three? Oh, right. Okay. Nothing can rise more than 20 feet. Well, a dome or a pinnacle might be more than 20 feet.

MR. PARKER: Well, they can, A through E. The 20 feet applies to F through J.

COMMISSIONER MAY: All right. So, okay. A pergola then therefore could be more than 20 feet?

MR. PARKER: Ah, interesting question. That should probably be moved lower into the list.

COMMISSIONER MAY: Okay. Yes, I mean, chimneys, smokestacks, domes, minarets, pinnacles, towers, spires I could see.
potentially no limit.

MR. PARKER: Right.

COMMISSIONER MAY: Or having some process when it's above 20 feet, something like that.

And the setbacks apply only on F through J, but setbacks should apply to pergolas as well?

MR. PARKER: Correct, we can fix that.

COMMISSIONER MAY: Yes. Okay. I like the idea that on the setback requirements that you include an adjacent property's existing or matter of right height and a wall that abuts a lot line and that is taller than the greater of the matter of right or the existing. So, that means that if there's an existing historic structure that's never going to go to the matter or right height, you could still have a --

MR. PARKER: That is true.

COMMISSIONER MAY: -- penthouse
without a setback?

MR. PARKER: That is true.

COMMISSIONER MAY: I think that's an issue.

MR. PARKER: Okay.

COMMISSIONER MAY: And you can address that issue whatever way you want. I'm just raising it, like I think I did at the previous hearing.

All right. I think that's it for my questions.

CHAIRPERSON HOOD: Any other questions or comments?

(No audible response.)

CHAIRPERSON HOOD: If we set this down, when are we supposed to have this, the 20th? Okay.

All right. Any other comments, Commissioners?

(No audible response.)

CHAIRPERSON HOOD: Okay. I would move that we set down 08-06, height text, with
Option 3. I think that's what you're going to advertise, Option 3. And also to take under consideration the comments that my colleagues have mentioned. And I move that we set that down and ask for a second.

VICE-CHAIRMAN SCHLATER: Second.

CHAIRPERSON HOOD: It's been moved and properly seconded. Thank you, Vice-Chairman.

Moved and properly seconded. Any further discussion?

MS. MONROE: Can I ask a question? Was Option 3 the one that was in the public hearing notice?

VICE-CHAIRMAN SCHLATER: It was not.

MS. MONROE: It was not? I just want you to know that. That's not the one that was advertised, but that's okay. I mean, you've chosen Option 3.

CHAIRPERSON HOOD: Which one was advertised?
MS. MONROE: I think Option 1. Am I correct?

MS. SCHELLIN: Yes, we'll issue a new public hearing notice.

MS. MONROE: I just don't want to cause confusion to people, hearing all that, you know?

CHAIRPERSON HOOD: I'll be perfectly honest, when I heard that the taskforce was with all three, I was thinking all three, but I said, no.

MS. MONROE: Option 1 is the one that was in the hearing notice. But you've chosen Option 3, so Option 3 is the one that will be set down.

CHAIRPERSON HOOD: Okay. Option 3.

MS. MONROE: With the comments.

CHAIRPERSON HOOD: Right.

MR. PARKER: Could I ask, OAG, is any special action required because of the short -- the retroactive setdown approval?
MS. MONROE: No.

MR. PARKER: Okay.

CHAIRPERSON HOOD: Okay. Did I get a second.

MS. SCHELLIN: Commissioner Schlater.

CHAIRPERSON HOOD: Okay. It's been moved and properly seconded. Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor? Aye.

VICE-CHAIRMAN SCHLATER: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

COMMISSIONER SELFRIDGE: Aye.

CHAIRPERSON HOOD: Not hearing any opposition, Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes, staff records the vote five to zero to zero to set down Zoning Commission Case No. 08-06 with regard
to height, Option 3. Commissioner Hood moving
Commissioner Schlater seconding; Commissioners
Turnbull, Selfridge and May in support.

CHAIRPERSON HOOD: Okay. Now,
we'll go to use. But let me ask this: Is use
going to be the same night, too, the 20th?

MS. SCHELLIN: If you set it down,
yes.

CHAIRPERSON HOOD: Okay. All
right. If set down.

Okay. Let's go to Mr. Parker for
use.

MR. PARKER: Absolutely. I'm
going to try and go quickly through this, but
there's a lot of information to cover here and
I want to make sure you're all familiar with
it.

Really quickly, we spent a lot of
time discussing with you and with a couple
different working groups a lot of the problems
with our current use system. You know,
there's nearly 650 discreet uses. We've got
a code now that if you want to know all the
uses that are allowed in your zone, we have to
go look at all the previous zones because the
uses are nested. Some of the problems with
use lists include, you know, they're
continuously out of date, and I talk a little
bit more about that on the next slide.

We don't define a lot of the uses
listed in our code. Definitions, where they
do exist, are scattered throughout and just a
range of problems comes from permitting uses
by a list of names rather than using a table
with categories. And, you know, just the
example that we show in all of our
presentations is some of the dated uses that
we have in our code, like telephone exchange
and penny arcade. Lists call for constant,
constant updating and changing in order to
keep them current, and you can never stay on
top of it.

So, what we've seen in other
cities around the country is going away from
lists and, you know, rating uses or organizing uses by their type and basically creating categories of uses. Right now, you know, D.C. has over 600. All of our other best practice cities have far fewer uses than us. You know, Portland and Miami down, you know, categories of 30 or 40 use types, all the way up to San Antonio which still has many hundred, but everybody is far below us. And the trend has been for the newer codes to go down to broader categories and to regulate them through conditions. And that's sort of what we're proposing and what we're going to talk about tonight.

The basic concept is taking things that are similar in their type and impact and creating a category. So, bookstore, drugstore, shoe store, they're all stores that people come in and buy products, so they're all retail business. You know, bank, tailor, bike repair, they're all people purchasing a service. And so, you know, using our
knowledge of the impacts and characteristics of uses to start defining what are some categories of use that we can regulate.

Based on this and the work that we've done throughout the process, we've devised 29 different use categories and these categories are based on, you know, again the different activities and impacts that they have. Particular ones come about because they are particularly hard to characterize elsewhere, things like marine uses or waste-related. And then we do have some categories that provide a distinct performance or policy elements.

There are two real components to this system. The one that you're going to review tonight is in the general use chapter, is the use definitions. And so, every category that we propose has a definition and that definition is composed of, you know, the characteristics of the use, but also examples of that type of use and exemptions, things
that clearly are not, that give a guide to the
user of the code and ultimately to the Zoning
Administrator of what these categories mean
and what's in each one.

We're going to have a chance to
talk about these categories, but the 29 are on
the screen; and I'm sorry you can't read them
from here, but you've got them in your packet
as well. We've proposed 29 use categories.
And you won't be able to read this on the
screen either, but basically we've taken the
multiple different uses from our current code
and grouped them. And retail's the biggest
one. There's, you know, one or two hundred
different retail designations in our code.
And then you get to, you know, service and
office that have 20 or 24 different types of
offices that are listed. And just going
through the list. You know, we always have 10
or 12 of these uses that fit one of our
categories. We had education, health care.
Even antennas has six or seven different
listed uses. So, we want through this process of taking every use in our current code and categorizing them by their type.

One thing that I want to note is that this change involves a paradigm shift in the way that we think about uses. Right now a zone has a list of uses that are permitted and it's assumed that if a use is not listed in that list, that use is not permitted. But this causes trouble when you have something like a yoga studio. Our code doesn't list yoga studio. So, the basic rule of zoning is that the yoga studio wouldn't be permitted. But in point of fact, it's a matter of the Zoning Administrator making a call that, well, it's actually kind of like public health spa or some of the old terms that are in our code. So, the existing system puts a lot of pressure on the Zoning Administrator.

The new system is designed around these categories. Every use of land that you can possibly imagine or do fits into one of
these categories or is intended to fit into one of these categories. My staff spent a lot of time thinking of things like heliports, and I can't name all the different ways we tried to break the system and make sure that everything that we could possibly do with a piece of property had a place in this system. So, unlike the existing system, there's nothing left out. Everything has a home and every category has a permission level; permitted, not permitted, etcetera.

So where this fits in our organization is in two places. In the general chapter is the list of definitions and, you know, what the rules are, the general rules regulating use. Within each of the land use subtitles then there is a use permission chart. And you've seen an example of one of those in your report, in your setdown report. Attached to it was an example of a use permission chart and there's one on the screen that again it is kind of small, but basically
across the top are listed the zones within that use category.

Down the side listed are 29 use categories. And in each box is a permission level. And there are five letters that can be in that box. P means that use is permitted, and you can do any type of that use that you want. N means that use is not permitted and you can't do anything related to that use category. The other three permission levels are C for conditional, or permitted with condition; S for permitted through special exception; and A permitted as accessory. And what that means is for example if I have a conditional use on service, the condition might be no more than 2,500 square feet of service, which means I can still build whatever building I'm allowed to do in that zone, but I can't have a service use larger than 2,500 square feet. Special exception, and example is, you know, CBRFs are allowed in some zone by special exception. We're going
to talk about CBRFs later, but that use
category would have an S by it. And finally,
accessory, if you have an A it just means that
use is only permitted as an accessory use to
another use and not permitted as a stand alone
use. So, those are the five potential use
permissions for each type of use.

So, the benefits of this type of
system, A, it's easier to find your
permission. All your permissions for, you
know, your C-2-A Zone are listed in one place.
You don't have to look at C-2-A and C-1 and R-
5 and look back and forth. There's a lot more
flexibility in customizing permissions to a
local area. We're going to look at some
examples later that show this, that show how
it's easier to implement plans, it's easier to
achieve specific planning policy. This system
solves for the omissions and inaccuracies of
a list system, it eliminates the redundancy in
our current code of repeating conditions and
it focuses our restrictions on the impacts of
uses rather than what name they fall under.

So, I want to go through some examples. The first example; and I'll tell you what's on the screen is from the Macomb-Wisconsin Overlay. And we pulled some of the existing permitted uses from that overlay and three of them include self-service laundry up to 2,500 square feet, dry cleaning establishment up to 2,500 square feet and tailor or valet shop up to 2,500 square feet. So, we've got three different use permissions. All of these are service uses in our new code and this is another way that we can reduce a lot of text through this system by simply making services a conditional use in that overlay and the condition being cleaning, alteration or repair of clothing is limited to 2,500 square feet. We can allow all service uses that don't meet that definition. Services that are laundries or tailor or valet shops are limited to 2,500 square feet. So, it's a very simple and easy way to put
conditions on uses and make very clear what your permission levels are in a very little amount of text.

Another example is home occupations. Right now we have a list of a few things, like clergymen, academic, tax preparer and dressmaker that you can do from home. There's a lot of other things that you probably should be able to do from home and people probably do do from home that may not be on our 40-year-old list of home occupations. So, the easy way around this is these uses on our current list generally fall into two of our use categories; service and office. And the way that home occupations are solved for in this new code is service and office are allowed in residential zones as an accessory use. They have an A in their category. And the conditions that apply to them now are conditions on that accessory use. So, you have A. You have a section reference that points you to the conditions on doing
office or service uses in your home.

And the final example I want to go through is about something that isn't even in zoning now, but how we would take a plan and implement it. The 2008 Deanwood Plan has a bunch of goals for their neighborhood including no carryouts, getting some new sit-down restaurants, a full-service grocery store, no liquor store, office supply store and adding some retail clothing stores. Well, if we categorize those uses, the top two are within our food and alcohol service category and the bottom two are in retail. This area of Deanwood is currently in the C-1. There are no retail requirements currently or conditions currently. It's just a permitted use in the C-1. And for food and alcohol there are some current conditions limiting fast foods. But simply by adding two new conditions we can limit carryouts. By adding a condition to food and alcohol service saying no more than 25 percent of food sales may be
off-premise consumption, we suddenly
eliminated carryouts in Deanwood without
having to have add carryout to a list or
define what a carryout is.

For retail, you know, we can put a
condition on retail saying no more than 15
percent of gross floor area may be used for
the sale of liquor. Now, anything not
involving liquor, that condition doesn't
apply, so retail is unencumbered. But where
liquor's involved, that condition kicks in.
So again, a simple way to take to our plans
and implement them easily in zoning.

Two more points to make on this
system. There are some uses that become
difficult to categorize. One is funeral home.
It met both the definitions of service and of
institutional. Uses like that, the best way
for us to handle them is probably to -- and
what we have done throughout the code is to
determine which one they should be in and put
them in the example of that so that the Zoning
Administrator can easily find that use doing a search, find which category that is.

Others like a cabaret or a dinner theater, cabaret or dinner theater falls into both food and alcohol service and performing arts, and it rightly so does because it has the impacts of both of those uses. So some uses like a dinner theater would fall into two categories and would have to meet the conditions of both categories because it has the impacts of both categories.

The final thing I want to talk with you about is CBRFs. Right now there are seven types of CBRFs and they're all heavily restricted in residential zones. The city has run into some legal issues on limiting some of these in residential zones because they are determined to be housing or homes for disabled as that's legally defined. So, there are three types of CBRFs as we define them currently; community residents facility, substance abuser's homes and youth residential
care homes that legally cannot be limited anymore than the residential uses in those zones can be limited. So, where we have zones with unlimited residential, we can't limit these at all. Where we have zones with limited unit residential, we can limit the number of people in these facilities, but we can't put location restrictions on them because we don't put location restrictions on single-family homes.

But the other CBRFs can continue to be regulated. Rehabilitation homes for adults and youth, we've proposed that those be called community-based institutional facilities and would carry over the existing limitations on those. Emergency shelters and health care are now each their own categories of use.

So, that's my presentation. I've got on the screen there then the example of the use permission chart that's also in your packet. But basically what we're asking again
is for your comments on this system, your
thoughts on this system and hopefully for a
setdown to the 20th of September.

CHAIRPERSON HOOD: Okay. Thank
you, Mr. Parker. Let me start off, and help
me walk through this. Let's look at 206.13.
I see the definition, and I meant definitions.
Any use providing 30 days or less of temporary
housing to indigent, needy, homeless,
transient individuals. Emergency shelter uses
may also provide ancillary such as counseling,
vocational training or similar social and
career assistance.

Now, when I look at that, then
it's got the exception. The term does not
include uses which more precisely meet the
definition of residential. And with this new
undertaking would this emergency shelter be
permitted in a PDR, or how is that going to
work?

MR. PARKER: Well, actually one
thing I can answer is where these things are
permitted, because when we come forward with
the PDR Zone, we'll have a table of which of
these uses is permitted in the zone. All I
can tell you now, or what I'm prepared to
discuss now is, you know, whether this is the
right definition for emergency shelter or
whether we need to tweak that. Where it's
permitted, we're going to maintain the same
permission levels. Where those are permitted
now they'll be permitted in the future. Where
they're a special exception now, they'll be a
special exception in the future. And when we
bring those zones forward, it will have a use
table with those permissions in it.

CHAIRPERSON HOOD: And I guess I'm
asking is this a real life situation? So,
basically you want to know about the
definition and tweaking it 30 days?

MR. PARKER: Yes, if you have
questions or concerns with the definition, we
want to solve that, because, you know, when we
come back with the PDR Zones, there will be a
table and it will say, you know, permitted or
not permitted or conditional. And by that
time we -- you know --

CHAIRPERSON HOOD: Mr. May
probably could help. When I look at this it
says any use providing 30 days or less. We
might want to work with some of those who may
know a little more than I do about emergency
shelters, because I know it's much more than
30 days. So, we might want to work and find
out exactly what's real, what's really real,
what's really happening. And Mr. May may be
able to help us with that at some point.

Okay. Let me open it up. Did you
want to comment?

COMMISSIONER MAY: I'll start
there. Actually it was one of my questions.

I don't see a reference to a
longer term. Homeless shelters, is that what
you're referring to as a community residence
facility?

MR. PARKER: Yes, a longer term.
So, lease periods of more than a month would be --

COMMISSIONER MAY: I'm not talking about lease periods because there are no leases.

MR. PARKER: Well, actually yes, stay periods, are they -- yes.

PARTICIPANT: (Off microphone.)

MR. PARKER: Right, right. When that goes to 31 days. The intent here is, yes, facilities where people commonly stay more than 30 days are under the residential category.

COMMISSIONER MAY: So, a community residence facility; in other words a homeless shelter where people would stay longer than 30 days will now be treated like any other residential facility?

MR. PARKER: And limited to the same number. So, in an R-1 Zone --

COMMISSIONER MAY: You can only have four unrelated people or six unrelated
people, whatever it is?

MR. PARKER: Right. Right.

COMMISSIONER MAY: Okay. Unless it were actually an apartment building or something like that. You couldn't have that in R-1. You'd have to have that in R-5-D --

MR. PARKER: Right. Right.

COMMISSIONER MAY: -- or the equivalent.

MR. PARKER: Right.

COMMISSIONER MAY: Okay. Yes, I'm not sure exactly what it is, but there might be something to tweak in the definitions because the way we define these forms of shelters.

MR. PARKER: Okay.

COMMISSIONER MAY: And how the mechanics of living there actually occur. The ones who require that everybody leave in the middle of the day --

MR. PARKER: Right.

COMMISSIONER MAY: -- I mean, does
that mean if they come back to the same one
every night does that mean that it's now an
emergency shelter because they have to leave
every day?

MR. PARKER: Right.

COMMISSIONER MAY: You know, I
don't know. I mean, there are rules -- or not
rules, but more customs I guess in the
operation of homeless shelters that we might
want to have a finer look at.

MR. PARKER: I think all of these
though -- it's not a matter of people staying
more than 30 days, because a hotel has the
same 30-day cutoff. Basically if it's more
than 30 days it's residential. If it's less
than 30 days, it's, you know, either emergency
shelter or a hotel. I can stay in a hotel for
three months, but I'm making arrangements on
a nightly or weekly basis. Same for emergency
shelter. I may stay there for 90 days, but
that's a day-to-day decision or a week-to-week
decision. Does that make more sense?
COMMISSIONER MAY: I think what it's going to boil down to is where it will now be possible to have such facilities. I think that's when you're start dealing with the land use sections that's when it's I think going to get more complicated.

MR. PARKER: Yes.

COMMISSIONER MAY: So, I don't think it really necessarily affects the definition. Maybe it does. I don't know. I just wanted to touch on that one.

I can continue with my other questions if you'd like.

CHAIRPERSON HOOD: I'm glad you did because I know you have more experience in that than I do. Okay.

COMMISSIONER MAY: Would you like me to continue with my other questions?

CHAIRPERSON HOOD: Yes.

COMMISSIONER MAY: Okay. Two-o-h-six-point-three. My question is; I'm a little confused, if you have a garden in your yard
and you're growing vegetables, does that mean that you have agriculture as an accessory use?

MR. PARKER: Well, we're talking about things that would require a C of O probably. So, I mean, if you're going to build a barn for it or, you know --

COMMISSIONER MAY: Not in my yard. No, it just seems sort of like a basic common sense question. Is this going to effect, you know, the home garden?

MR. PARKER: More appropriately this is intended to provide a home for things like community gardens, like where you have a plot of land and, you know, we want to ensure that this could be used for a community garden or something like that. So, that's the intent there.

COMMISSIONER MAY: Okay. Well, and so the reference to examples including a garden, I mean, you could read this with a really fine point and say oh, my gosh, my neighbor's got -- he's growing pumpkins. He's
got a garden and agriculture is not permitted as an accessory use in my neighborhood.

MR. PARKER: Well, and I don't know anywhere that it's not.

COMMISSIONER MAY: And you've got rats that like to eat the pumpkin.

MS. CIDLOWSKI: It is intended to be a clarification of the existing rules which list truck garden, but not necessarily something like a community garden at all in our current regulations. So, we're just giving the example of what it is now to help people how the old code will translate.

MR. PARKER: And it is permitted.

COMMISSIONER MAY: Right.

MR. PARKER: So, I think this is to ensure that gardening is permitted in all residential zones.

COMMISSIONER MAY: Well, but this is just the agriculture definition. You're going to have agriculture permitted in all residential zones?
MR. PARKER: Yes.

COMMISSIONER MAY: Okay. The individual solar panels or windmills that I'm going to put on my roof, how is that allowed? Is that an accessory use under basic utilities?

MR. PARKER: I wouldn't even say that those are an accessory use at all. Those are a building function. Those are like a heater.

COMMISSIONER MAY: Okay. Going to 206.9, commercial parking, storage of vehicles made available to the public for a fee. I mean, does that include a circumstance where a single tenant takes the whole building, leases the entire parking lot and gives it to their employees?

MR. PARKER: No, this is parking that's open to the public, or available to the --

COMMISSIONER MAY: Only open to the public? Okay.
The education facilities, when it comes to public schools versus private schools is there going to be some sort of differentiation in terms of what's going to require special exception approval versus --

MR. PARKER: It will be done through a condition. So, education will be a conditional use and the condition is, you know, you're required to get a special exception for particular types of this category.

COMMISSIONER MAY: Okay. You know, for some reason I'm thinking that maybe that this idea that was apparent in your presentation about adding the conditions -- I'm not sure that that's coming across in just the language that we're seeing here. It raised a lot of questions for me about that.

MR. PARKER: Yes.

COMMISSIONER MAY: But seeing what you presented made it a lot easier. So, I don't know how we can get that information
shared, but --

MR. PARKER: I'll certainly send

my presentation if that would help.

COMMISSIONER MAY: Well, not

necessarily to me.

MR. PARKER: Oh, yes.

COMMISSIONER MAY: I'm also

cconcerned about people in the general public,

that alarm bells that were going off for me as

I was reading this might be going off for

them.

MR. PARKER: Did you find the

sample table with the conditions attached

useful, or was that --

COMMISSIONER MAY: Sort of.

MR. PARKER: Okay.

COMMISSIONER MAY: It was more

useful seeing it in the presentations.

MR. PARKER: Understood.

COMMISSIONER MAY: Long term

homeless shelters, we talked about.

I understand how nightclubs would
work theoretically under 206.14. I'm sorry

Okay. Yes, a lot of these have to
do with the conditions that would apply in
some of these circumstances.

We have some very interesting
examples. Under PDR we have very interesting
examples that I'm not sure will occur very
frequently. Smelting, acetylene gas
manufacturing. Maybe that happens; I don't
know. But we don't have concrete and asphalt
plants, which actually do occur I think. They
certainly have. We have concrete plants.

MR. PARKER: Okay.

COMMISSIONER MAY: We used to have
asphalt plants and it used to be a big issue
for DDoT to make sure that there was an
asphalt plant close to where they were making
roads.

MR. PARKER: We can add those to
the examples.

COMMISSIONER MAY: Yes. Where's a
large lumber yard like a Home Depot go in this? Is that going to be PDR, or is it going to be retail?

MR. PARKER: Well, a Home Depot itself would be in retail and would be controlled by, you know, square footage limits.

COMMISSIONER MAY: Square footage conditions?

MR. PARKER: Yes.

COMMISSIONER MAY: Okay.

MR. PARKER: Or outdoor storage as well.

COMMISSIONER MAY: Okay. Just as long as it's clear to the Home Depot what they're subject to.

MR. PARKER: Right.

COMMISSIONER MAY: Transportation infrastructure. So, Metro stations are only going to be allowed in certain zones under transportation infrastructure?

MR. PARKER: To the best of my
knowledge that would be permitted pretty much across the board.

COMMISSIONER MAY: Yes. Okay.

All right. That was it for my questions.

Thank you. The presentation cleared up a lot of my thinking.

MR. PARKER: All right.

COMMISSIONER MAY: And I would say overall I think that what we got in the way of language was really excellent and well written and covered. I mean, it was very inclusive even though I have a few nitpicky questions. And I think that overall the structure and the process is all coming together very well. So, I think you all deserve a compliment. Thanks.

CHAIRPERSON HOOD: Anybody else?

Commissioner Turnbull?

COMMISSIONER TURNBULL: Mr. Parker, you mentioned that there could be uses that could fall under two categories or whatever.

MR. PARKER: Right.
COMMISSIONER TURNBULL: What governs, the most stringent of the two, or is it kind of just --

MR. PARKER: No, if the Zoning Administrator determines that it falls into both and there's conditions on both, they'd have to meet the conditions of both.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: So, yes.

MR. VARGA: Also, sir, they would be cumulative. But in cases where you had two conditions that spoke in the same terms, it would be the more restrictive of the two. So for instance, if you had a 2,500 square-foot maximum on one case and a 2,000 square-foot maximum on the other, you'd be subject to the more restrictive for that portion.

COMMISSIONER TURNBULL: Do I have a problem if I own a theater and I'm putting on "Hair" or "Old Calcutta?" I'm just throwing that out. I might have a problem now. Or something along that line. I'm just
curious.

MR. PARKER: I think the answer to that question is always yes.

COMMISSIONER TURNBULL: Okay. I mean, does the ZA got to decide then or --

MR. PARKER: No, I think the only time that theaters get in trouble is when they actually become dinner theaters, when you have a full food service establishment with --

COMMISSIONER TURNBULL: And you're watching "Hair?"

MR. PARKER: Right.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: That may be a health code issue, yes.

COMMISSIONER TURNBULL: All right.

Thank you.

CHAIRPERSON HOOD: Anybody else?

Okay. Commissioner Selfridge?

COMMISSIONER SELFRIEDGE: Yes.

Thank you, Mr. Chairman. I just had one question on temporary uses. Where does the
permission for that show up for the certain zones? Is anything potentially a temporary use that's allowed in any zone?

MR. PARKER: Yes, that's a good question. Right now in the code it's relatively undefined and we don't have a lot there now. It's very much Zoning Administrator discretion in terms of temporary uses. We didn't have a lot of examples in other codes to go on on good rules for temporary uses, but we're open to suggestions.

MS. CIDLOWSKI: This is something that's come up increasingly over the past couple of years, especially with the state of the economy where projects have stalled. People have wanted to do things with sites in the interim, so there's been demand for having restrictions about temporary uses. So, we've been talking with DCRA and the Zoning Administrator about what those should be. And we just wanted to make sure that we codify it so that people are able to do things within
properly set out restrictions. So, we don't
have a lot of precedent for what it should be,
but we want to set up a system to allow where
it should go.

COMMISSIONER TURNBULL: Is this
the right place to set that system up? It
just seems very broad. I'm sure the Zoning
Administrator would never allow this, but you
could put a firearm store in a residential
zone, I mean, as a temporary use in theory,
right?

MR. PARKER: Well, yes, the
question is whether you'd allow uses that
aren't otherwise allowed in that zone as a
temporary use.

COMMISSIONER TURNBULL: Why
wouldn't you just put it as an additional
permission category so you could exclude those
uses which would never be allowed, by
implication if it's not an allowed temporary
use?

MR. PARKER: I don't follow you
exactly.

COMMISSIONER TURNBULL: Well, I guess should there be an exclusion? Something cannot be a temporary use?

MR. PARKER: That makes good sense that some of them could never -- you know, rock quarrying for example could never be a temporary use. Yes, that makes good sense that some of them could not be. And, yes, we can put that in the general instructions.

COMMISSIONER TURNBULL: That was my only question.

CHAIRPERSON HOOD: Anybody else?

(No audible response.)

CHAIRPERSON HOOD: Okay. Thank you very much, Mr. Parker, and Office of Planning staff.

We have a request, Commissioners, to set down the use categories for a hearing. What's your pleasure?

COMMISSIONER MAY: I would move that we set down for a public hearing Case No.
08-06 with regard to uses as described in OP's report. And that should be enough, right?

CHAIRPERSON HOOD: That's just fine. Can I get a second?

(No audible response.)

CHAIRPERSON HOOD: Second. Moved and properly seconded. Any further discussion?

(No audible response.)

CHAIRPERSON HOOD: All those in favor? Aye.

VICE-CHAIRMAN SCHLATER: Aye.

COMMISSIONER MAY: Aye.

COMMISSIONER TURNBULL: Aye.

COMMISSIONER SELFRIDGE: Aye.

CHAIRPERSON HOOD: Not hearing any opposition, Ms. Schellin, would you record the vote?

MS. SCHELLIN: Yes. Before I do, I want to go back and say that the height was set down as a rule making case, of course.

And this too will be set down as a
rule making case, Zoning Commission Case No. 08-06 with regard to use. Commissioner May moving; Commissioner Hood seconding. By a vote of five to zero to zero, Commissioners Schlater, Turnbull and Selfridge in support.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. Do we have anything else before us tonight?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: All right. I want to thank everyone for their participation in this special public meeting and appreciate all the work and effort that went into this. And this special public meeting is adjourned.

(Whereupon, the meeting was adjourned at 8:16 p.m.)