GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

PUBLIC HEARING

MONDAY

SEPTEMBER 20, 2010

The Public Hearing 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 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

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
LAINE CIDLOWSKI
STEVE COCHRAN

The transcript constitutes the minutes from the Public Hearing held on September 20, 2010.
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CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is the Public Hearing of the Zoning Commission of the District of Columbia for Monday, September 20. My name is Anthony Hood. Joining me are Vice-Chairman Schlater, Commissioner Selfridge, Commissioner Turnbull, and we are expecting Commissioner May. We are also joined by the Office of Zoning staff and the Office of Planning staff.

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

The subject of this evening's hearing is Zoning Commission Case No. 08-06. This is a request by the Office of Planning for Text Amendments to the Zoning Regulations to establish a new use category system and a
consolidation of height regulations into our
one general height chapter.

Notice of today's hearing was
published in the D.C. Register on September
10, 2010, and copies of that announcement are
available to my left on the wall near the
door.

The hearing will be conducted in
accordance with provisions of 11 DCMR 3021 as
follows; preliminary matters, presentation by
the Office of Planning, reports of other
government agencies, report of the ANC which
is all in the city, organizations and persons
in support, organizations and persons in
opposition.

The following time constraints will
be maintained in this hearing; organizations
five minutes, individuals three minutes. The
Commission intends to adhere to the time
limits as strictly as possible in order to
hear the case in a reasonable period of time.

All persons appearing before the
Commission are to fill out two witness cards. These cards are located to my left on the table near the door. Upon coming forward to speak to the Commission please give both cards to the reporter sitting to my right before taking a seat at the table. When you are finished speaking please turn your microphone off so not to pick up any background noise.

To avoid any appearance to the contrary the Commission request that persons present not engage members of the Commission in conversation during any recess or at any time. Please turn off all beepers and cell phones at this time so not to dispute these proceedings.

At this time the Commission will listen to any preliminary matters. Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Okay. Let's get right into it. Let's go straight to Mr. Parker.
Good evening.

MR. PARKER:  Good evening, Chairman Hood, members of the Commission. My name is Travis Parker. Tonight in addition to Ms. Steingasser I'm joined by two other people from the Office of Planning; Laine Cidlowski, who is responsible for the bulk of the use chapter that you're going to read tonight, and Steve Cochran who is responsible for the bulk of the work on the height. I'll be relying on them some as well hopefully tonight.

Just a reminder of where we are in our proposed code. These are general chapters that apply city wide so they are in the Subtitle B of our regulations. Most of the first chapters that we'll look at in this process will be in this general subtitle and in the future we'll get it down to individual zones. Nothing that we talk about tonight is zone specific like how high buildings could be in a particular zone. These are all general rules.
I'm going to start tonight with the height chapter. If you will recall, the large issue in dealing with height was how to interact zoning height limits with the height limits of the 1910 Height Act. We had a lot of discussion at the set down and previously with the task force and working group about whether and how to incorporate the Height Act into zoning.

Ultimately, the Zoning Commission sat down a version of our height text that did not incorporate the Height Act in the Zoning Regs. Instead what we are proposing as part of this set down is to review the height chapter that's in front of us tonight.

Then concurrently with the adoption of these regs, or prior to the adoption of these regs, DCRA will adopt Height Act regulations codifying their interpretations of the Height Act including information that was previously in documents we sent to you including definition of residence street,
definition of business street, and various other Height Act interpretations. Those things have come out of the document we're reviewing tonight from our previous version and won't be on the table for discussion tonight.

What remains in the chapter is what's on the board, Section 40.0 through 40.4. I'm going to give you just a really brief synopsis of each one and then we'll go on to the use chapter.

At each of our general subtitle B chapter we'll start with an introduction. In this case it will be the purpose of regulating height in the District of Columbia. This section will also include the relationship of this chapter to the Height Act and provide a reference to the Height Act that will be located elsewhere in Title 11.

Section 40.1 is also a common theme throughout the general chapters and we'll talk about the relationship of this general chapter
to the land use subtitles, how you find your
individual height and how you relate the
information in the two places.

Section 40.2 is the general rules
of measurement. This applies to all zones.
It talks about how you measure height within
each zone. The bottom point in terms of
starting, in terms of elevation to the top
point in terms of the top of the roof or the
parapet.

Section 40.3 gets into roof
structures and exceptions to the maximum
height. This details the types of structures
that are allowed to go above zoning height and
sets out the required setbacks and foot print
limits as well as height limits for roof
structures.

Finally, Section 40.4 lays out the
available special exceptions in this chapter.
You are allowed to seek special exception
from the roof structure setback for certain
types of roof structures as well as the roof
structure footprint limit. The criteria on special exceptions include impacts on zoning regulations, neighborhood, and nearby energy creation facilities.

That's our basic presentation on height. The main change from what you saw at set down again was the removal of three sections that had to do solely with the Height Act and there were several minor wording changes. The Zoning Commission had offered us some minor technical edits that we did make.

There is also a section in the report. I'm happy to go into further detail discussing the proposal to remove from the existing regulations the requirement that roof structures be a single structure of a uniform height. I would be happy to go into more discussion on that if you have further questions on the information presented in the report.

At this time -- oh, just one final note on the height issue. The version you had
seen previously used the words "street-based height limits." Just a reminder that was in reference to Height Act height limits so all the language about street-based height limits has been striped out. The version in front of you attached to the report should strictly reference the Height Act directly.

The other document up for review tonight is our general use chapter. I've got a quick presentation very similar to what you saw last time, although this time you'll actually be able to see the screen and see what we're talking about.

Very quickly, the working group task force, and Zoning Commission in going through this process over the last couple years identified a series of problems with the current use system. Our current use system has nearly 650 discrete uses listed throughout our code. Zones have what is called use nesting where each zone refers to the previous zones in order to outline the acceptable uses.
What we find, and what other cities have found throughout the country, is that these use systems lead to confusion. They are constantly outdated. A lot of the uses listed in our code lack a definition. We have identified a list of problems with using a use system.

Other cities in our best practice cadre have gone in the opposite direction of a use system. All of these codes that have been recently updated have gone to more of a use category system where they will have 30 or 40 or 50 types of uses rather than the 600 plus that D.C. has. As we will see, hopefully it makes for a simpler and easier to use use system.

The general strategy is taking like uses, uses with similar types of activities, similar types of impacts, and categorizing them. Book store, drug store, shoe store are categories under retail. Tailor, bike repair, tax service are categorized under service.
Then regulating the impacts of retail service
or the other categories that are defined.

Ultimately through all the work
with the working group, task force, and Zoning
Commission OP has settled on 29 different use
categories. Again, categories that are based
on the activities and impacts of the various
uses. Some of them are pulled out because
they are particularly hard to categorize
elsewhere or that they provide distinct
performance or policy elements that are in the
code now.

Each use category has a particular
definition. In the general chapter that we're
reviewing tonight is the list of definitions
of use categories. The actual permission of
what uses are permitted in which zones and
what conditions are on those uses will be
located with the zones in the future subtitles
that we look at.

As we come back to talk about
residential and commercial and industrial
zones we will see a table of use permissions in each of those zones that is based around these 29 categories.

The 29 categories are on the screen. They should also be in the packet in front of you. I won't go through each one but the general strategy again with these is taking lists of uses in our current code and combining them.

I believe there are over 100 uses that fall into retail category. Just to give some examples, there's 20-plus uses that fall into service and/or office and so on and so forth through the code combining existing uses into categories.

One thing I want to call attention to is that this is a paradigm shift in one way from our current -- well, in more than one way from our current code but one particular way is that in the current code we list a series of uses that are allowed in Zone X.

Things that are not on the list are
by default through the system not permitted or are prohibited in that zone. The difficulty is when a use is not listed. An example in our current code is yoga studio. The intention, I don't think, of anyone is to not allow yoga studios where other similar uses are so the zoning administrative has to make a case-by-case determination is this qualitatively like another type of use on our list and, if so, what is that use rather than prohibiting a yoga studio.

In the new system every use falls into a category. There are certainly prohibited categories but there are no holes in the system for a use. Every use falls into one of 29 categories either by direct reference or by interpretation of the zoning administrative. Each category then has a permission level; permitted, not permitted, etc.

Just to show you a little bit about how this works together, the chapter again
that we're reviewing tonight is in subtitle B. It will then directly relate to a use permission chart in each of the land use subtitles.

The residential mixed used, downtown, PDR, each of those subtitles will have a chart with all the permissions in it and the description of how to use that chart is here in the chapter we're discussing tonight. An example of that chart is here. I think a sample use chart went out with the original report as well.

Basically the charts will be organized by category and zone and there are five types of permissions. We'll get more into this when we get into the land use subtitle and actually work through what uses are permitted there.

Within the chart the five permissions levels are P for permitted, C for permitted with conditions, S for permitted only by special exception, N for not
permitted, and A for permitted only as an accessory use.

For the conditional special exception and accessory use notations there will also be followed a reference to the conditions that relate to that use so the chart will contain a direct reference to where you can find the conditions.

I won't read through all this slide but, you know, we found a long list of problems with the existing use list system. This is the list of benefits that the working group, task force, and OP identified with switching to a category system, increased flexibility. We'll see in the next few slides it also improves our ability to meet our planning goals to make local policy changes and implement those in our use code.

I want to run through three examples. We ran through these in the set down meeting but hopefully now you'll be able to see them. Ways that we have either taken
current information and can put it in the new
system or can take future information and put
it in the system.

One example that I want to run
through is in the Macomb-Wisconsin Overlay.
Combing through the list of permitted uses in
the current overlay we pulled out three; self-
service laundry, dry cleaning establishment,
and tailor shop. Each of these are allowed if
they are under 2,500 square feet. It takes a
lot of text sort of to get that through and
each one goes into a category.

In the future code all three of
these uses would fall into the service
category and the service category in general
would be allowed but in the Macomb-Wisconsin
Overlay we would put the service category as a
conditional use and the conditional use would
simply read something like cleaning,
alteration, or repair of clothing is limited
to less than 2,500 square feet in area.

In a way we can capture not only
the permission of those three types of uses but the conditions on those uses in a single letter on a chart by saying service is conditional. If you are a service use, this is one of the conditions you must meet.

Another example is how home occupations will be dealt with. Right now the text provides a list of common home occupations; clergyman, academic, tractor repair, dress maker. Generally what we find is that these fall into two main categories, office and service.

Right now we have a difficulty of a very limited home occupation list. For example, city planner isn't on the list so I couldn't actually legally open my city planning office from my home right now but that's not necessarily something that we want to prevent.

The way we propose handling this in the future is office and service categories in residential districts would have a permission
level of A. What this means is those uses are permitted as accessory to a permitted use being, in this case, residential.

The existing limitations on those, 25 percent of the home, no more than one employee, etc., etc., would become conditions on that accessory use. It's a very simple way to make clear what the permission level is and to take all the conditions from our current code and include them in the new code. Hopefully that is a lot clearer, uses a lot less text.

The final example I want to talk to you about tonight isn't something that's in our current code but something that may be in the future. 2008 Deanwood Plan had a series of recommendations for what they do and don't want to see in their area. Deanwood is currently zoned C-1.

They are looking to prohibit carry-outs, encouraged restaurants, encourage grocery store, prohibit liquor, etc. If we
categorize these into our categories, we can see we've got two food and alcohol service and three retail -- excuse me, four retails on this list.

Right now food and alcohol service is allowed conditionally in C-1. In other words, fast food is not allowed and retail is allowed unconditionally in C-1. The simple way to make these policy recommendations work in our new code, the first example is no carry-outs.

In order to limit carry-outs in the food and alcohol service we simply add another condition to that food and alcohol service saying no more than X percent of any food or alcohol service may be consumed offsite. For retail in order to prohibit liquor stores we say no more than X percent of retail sales on a site may be for offsite consumption of liquor.

Simply adding these two conditions to our list we accomplish the policies
proposed by the Deanwood plan. You can see how this allows for easy tailoring and adding or removing or changing of conditions and permissions.

Two final subjects I want to cover. One is when things fall on the line are difficult to categorize. Two examples of this that we found. The first is a funeral and mortuary service. Right now it meets both -- when we went through this exercise it met the definitions of both service and institutional.

Something like that when we run across those if the Zoning Administrator ran across this after the code was adopted, the Zoning Administrator would make a call which that falls into. If needed we can add that particular use to the list of examples. In this case I think that became institutional but I don't remember.

The other example was a cabaret or dinner theater. This is a little more difficult because it not only meets the
definition of both food and alcohol service and entertainment and performing arts, it actually has the impact of both.

It is a place where you are served dinner and where you go and watch a show. In a case like that a use like that would actually fall into both categories and would have to meet the requirements of both categories.

Finally, I want to talk about CBRFs, community-based residential facilities. In working with OAG we were advised that certain types of CBRFs, specifically those that deal with disabled persons, community resident facilities, substance abuser's homes, and youth residential care homes, cannot be called out and given additional limitations that are not on residential uses.

Those uses will fall into the residential category, will be defined as residential, and the only limited that will be put on them are a unit limit just like
residential. There won't be a distance limit
or a location limit.

The other CBRFs, emergency shelters
are going to be their own category. Health
care facilities will be their own category.
And the last two, adult and youth
rehabilitation homes, we've proposed calling
community-based institutional facilities and
those would retain all of the existing
limitations and restrictions on CBRFs.

So, with that, my last slide is
just an example of the use chart. These are
not real zones. I've got sample zone 1,
sample zone 2, sample zone 3. Down the left
side you see the 29 use categories. This is
what the use chart in the code will look like
when we get to the individual land use
subtitles.

That is the presentation. Steve
and Laine and I are happy to answer your
questions and that's it.

CHAIRMAN HOOD: Who would like to
start us off if you have any questions? I want to remind us to stay in the mic when we speak.

MR. PARKER: If I could add one more thing. I mentioned the changes we made to the general height chapter. The change that we proposed in our report to the use chapter had to do with temporary uses.

We did propose a list of five of these categories that would not be allowed as temporary uses in response to a comment we had heard from the Commission; animal care and boarding, firearm sales, PDR, sexually-oriented business, and waste-related categories wouldn't be allowed as temporary uses.

CHAIRMAN HOOD: Any comments? Commissioner Turnbull.

COMMISSIONER TURNBULL: Thank you, Mr. Chair. I just have a couple of comments related to some of the letters that we received. The first one I'm looking at is
Exhibit 12 from NCPC. I don't know if they've got the right number. I think they must be looking at an older document. They talk about 4.06.1(i)

MR. PARKER: Now 4.03.1.

COMMISSIONER TURNBULL: That's right. They don't seem to like that section. I'm wondering if you've gone through this what your reaction is to that.

MR. PARKER: It's not a new issue for us. This has been an issue from day one at the working group. There is --

COMMISSIONER TURNBULL: I guess in trying to -- I mean, if no one else as read it in the audience, basically I think they're concerned that the spires, domes, and all that could become occupied spaces on the roof is one of their concerns.

MR. PARKER: Yeah. I think the concern that they are getting to is specifically 4.03.1(j) where we propose penthouses over accessory amenity features,
things like meeting space or a fitness room.

    Common space in the building that
is an amenity feature to the building could
take place in the roof structure. Right now I
think the Zoning Administrator allows things
like bathrooms and changing rooms and things
accessory to an outdoor swimming pool.

    We've tried to codify that and take
it to the next step of saying basically common
recreation space or common meeting space for a
building could take place in that penthouse.
The opinion does exist that this violates the
Height Act language of human occupancy and
that is certainly up for debate.

    COMMISSIONER TURNBULL: I guess
that's not really defined whether it's
temporary occupancy or occupancy that is meant
to be permanent or somebody could always be up
there. I'm thinking of an event or something
which would be human occupancy rather than a
function that's up there all the time.

    MR. PARKER: Right. Right. Yeah.
I mean, it's a fine line. Like I said, in the existing code we allow for bathrooms. We allow for things that allow humans in that space to use that space. We took the tack of defining occupancy as general use of a private nature so residences would be occupancy.

Offices would be occupancy. Things that are used continuously and generally and occasionally by particular individuals and went with common use as common and not continuous use as not meeting that definition.

COMMISSIONER TURNBULL: How do you see us getting resolution on this with NCPC from their interpretation of the Height Act and from a federal standpoint?

MR. PARKER: Well, ultimately, I mean, if you look at Section 4.00 it references the Height Act. Ultimately the Height Act rules and it's not the NCPC but the Zoning Administrative that interprets the Height Act.

COMMISSIONER TURNBULL: Right.
MR. PARKER: So ultimately later in Title 11 the DCRA interpretations of the Height Act will be included in Title 11. Section 4.00 of these Zoning Regs points right to that. If that interpretation changes, that's what rules.

COMMISSIONER TURNBULL: We also had Exhibit No. 11. This is from ANC-6A.

MR. PARKER: I have it.

COMMISSIONER TURNBULL: Well, they have a few things on here but the one they're talking about I guess it starts in the second paragraph, or actually the third paragraph. While paragraphs 4.02.4(a) and 4.02.4(b) provide adjective standards for uniformly measuring height, paragraphs 4.02.4(c) and 4.02.4(d) allow the designation of arbitrary and capricious zero height measurements.

They are basically talking about a 20-year-old zero height measuring point determinations by the Zoning Administrator developed under obsolete Zoning Regulations to
be used in place of uniform standards contained in paragraphs (a) and (b). I guess they are looking at precedent, how are we going to look at some of these old measurements. Is this a ZA choice?

MR. PARKER: I think if we were starting from scratch -- they make a great point. If we were starting from scratch we would just want (a) and (b). The problem is there are a lot of developments in the city. We've got a lot of existing stuff in the city.

There are things like L'Enfant Plaza and like portals on Maryland Avenue that had previous height determinations from some point. We have existing buildings that would be made nonconforming by changing that point.

COMMISSIONER TURNBULL: Yeah.

MR. PARKER: I think moving forward 4.04.2 or whatever the section is, (a) and (b) should be the general rules but we have a lot of existing situations that we need to make sure we account for.
COMMISSIONER TURNBULL: Okay.

MR. PARKER: Union Station North is another example.

COMMISSIONER TURNBULL: We are still going to have some nonconforming issues.

MR. PARKER: I think the point of CND is that they are not nonconforming. Where you have previous determinations --

COMMISSIONER TURNBULL: Oh, okay. I understand.

MR. PARKER: -- they would be nonconforming if we didn't have CND.

COMMISSIONER TURNBULL: Right.

Okay.

Mr. Chair, those are -- I reserve the right to come back later but those are two of the items that I just picked out of some of the correspondence that we had here that I think we needed to put on the record.

There are some other things in here too which I think we have all touched upon before and I don't know OP has responded to
any of these or not but I'll relinquish my
time right now.

CHAIRMAN HOOD: Thank you, Mr.
Turnbull. I would agree with your first
point. I heard the discussion. Through this
rewrite it appears to me, unless I'm missing
something, Mr. Parker, about the Zoning
Administrator determining the height of the
NCPC, this is something we've been going
around about for a long time.

I was hoping with the rewrite we
wouldn't keep getting letters from NCPC and
the District government or the city going back
and forth about a violation of the Height Act.

I'm hoping at this point unless it's going to
happen down the line or it's going to happen
soon, we need to come to some type of
agreement to where we won't -- this Zoning
Commission won't keep getting letters saying
the NCPC is saying it's a violation of the
Height Act.

Some kind of way that needs to be
resolved. You might not be the right person
to talk to but I see my good friend Mr.
Zaidain in the back you used to be with the
Board of Zoning Adjustment. We want to
welcome him tonight. At some point, I mean,
to me we're not making any progress forward.

MR. PARKER: Well, on that last
point I think we made a lot of progress. This
letter from NCPC, this three-page letter is
about a 10th of the length it was a couple of
years ago. Not only that, if we had had this
meeting two years ago this room would have
been full and we've got a dozen people.

There's always going to be some issues
until we set something down on paper but I
think we've gone a long way towards
alleviating a lot of people's concerns and I
think we're headed in the right direction.

CHAIRMAN HOOD: Right. Put my
point is that point is always there. That is
the same point, that one point. I agree with
-- you know, I'm not saying that you all
haven't made any progress in that sense but that issue about them saying we are a violation of the Height Act. We're saying that the Zoning Administrator makes that determination. I thought we were going to try to -- I was hoping in this rewrite we could come to some -- close the gap a little more on that one particular issue only.

MR. PARKER: Gotcha. Yeah, we've done our best to close that gap. Ultimately it's going to be closed when this stuff gets codified.

CHAIRMAN HOOD: All right. Mr. Turnbull, can I reserve my right to ask some more questions?

COMMISSIONER TURNBULL: You certainly may.

CHAIRMAN HOOD: Thank you, Mr. Turnbull. Let's open it up some more. Mr. May.

COMMISSIONER MAY: Thank you. I
will try to speak loudly and clearly and into
the microphone. Can you hear me?

CHAIRMAN HOOD: I won't mention off
the record what was said but you may want to
check with somebody else later.

COMMISSIONER MAY: All right.
Fine. I'll try to speak loud and clear and
briefly. Let's see how that goes. I want to
go back to actually the NCPC issue. There are
a couple of things -- well, there is one
particular aspect of it.

What we are trying to allow in the
Zoning Regulations is it intended that
occupiable communal rooms or bathrooms or
whatever it was, that range of things that
you're talking about, is the idea that those
would now be permitted above the Height Act
limit or only above the zone height limit?

MR. PARKER: We tried to remove
that distinction. We tried to say Zoning and
Height Act have the same rules as much as
possible. I mean, we've got these general
rules of measurement in 4.02 that apply to both. If the Zoning Administrator and DCRA adopt the same set of rules that we propose it will be the same.

We can still make that distinction again. That distinction is in our current code. We can do it again but right now the only place where that distinction exist, a different rules at the Height Act limit from below the Height Act limit is with the parapets.

COMMISSIONER MAY: Okay. I'm not trying to create necessarily the distinction but I'm trying to understand where we are actually in conflict because it seems to me that we have within zoning when we are below Height Act height limits there is flexibility to do things with penthouses and such.

MR. PARKER: Absolutely.

COMMISSIONER MAY: This does not exist when you are at the Height Act height limit.
MR. PARKER: Actually, that's a great point. You have complete authority to do this and more within penthouses in the Zoning Regulations. Ultimately the ZA could say that no communal space is allowed in roof structures above the Height Act. Put that in his interpretations your rule would still stand and apply to buildings below the Height Act. His rule would stand and apply to buildings at the Height Act.

COMMISSIONER MAY: I mean, is there a way for us to clarify that within our regulations? We're not making any statements about what is allowed above the height.

MR. PARKER: We already do say that the stricter of the two would apply.

COMMISSIONER MAY: In other words, the way this is written it really is not a conflict?

MR. PARKER: Correct. It's not possible for the local regulations to trump the Height Act. What it comes down to what is
the correct interpretation of the Height Act and we rely on the Zoning Administrator because of a series of delegations that started with the Commissioners of the District of Columbia back in 1910 and 11 to interpret the Height Act. That interpretation can't be in conflict with itself. Therefore, it's not in conflict with the Height Act.

COMMISSIONER MAY: Okay. I was almost all the way there with you. I think I understand the general point. If there is, in fact, a conflict created by these clauses that NCPC is pointing out, if there is a conflict between this and the Height Act and the Height Act is stricter, the Height Act will rule and it's up to the Zoning Administrator to make that decision.

It might be useful for us to have a more thorough explanation of the interplay between the Height Act and the Zoning Regulations with regard to these gray areas. I don't know. I don't want to try to suggest
the specific language but it seems to me that
might be one way to deal with these sorts of
letters from NCPC. Then maybe NCPC will start
writing letters to the Zoning Administrator.

MS. STEINGASSER: Commissioner May,
are you suggesting something more than Section
4.00.3? We did try to give the Height Act
prominence by putting it in the very first
Section 4.00 that in addition to the
limitations of zoning, the Height Act, you
know, project must comply?

COMMISSIONER MAY: I'm implying
that -- yes, I'm trying to say that maybe
something more detailed than that would be
appropriate. I'm not sure what it would be.
Maybe it's something that you can actually
work out with NCPC but something that really
does clarify this relationship so that --

MS. STEINGASSER: We had this
discussion a few weeks ago at set down and OAG
had concerns about getting too intertwined
between Zoning and the Height Act.
COMMISSIONER MAY: I'm not suggesting that we are going to start interpreting the Height Act. I was very much conscious of a conflict and supported vigorously the idea that we not have redundant regulations in this regard. It's just a question of, I guess, noting more explicitly for people who might be reading this for the first time that where there is interplay between these.

MS. STEINGASSER: So we could phrase "when not in conflict with the Height Act?" Something that simple?

COMMISSIONER MAY: I don't know that it's necessarily that simple. I'm not sure what it is. It's still a subject that I'm somewhat uneasy about because, again, I don't like getting the letters with the same stuff from NCPC every time and I think that we want to try to --

MR. PARKER: I have a suggestion actually.
COMMISSIONER MAY: Yeah. Okay.

MR. PARKER: If you look at 4.02.1 --

COMMISSIONER MAY: Yes.

MR. PARKER: -- we lead that section off by saying, "Unless otherwise stated the rules of this section are identical to the rules for measuring the Height Act which appear in Subtitle M." It might be helpful, is what I'm hearing, to have a similar section in 4.03 that says here is what's the same as the Height Act and here is what's different. Do you think that might get at it?

COMMISSIONER MAY: It's possible. It's possible that we might segregate some of those things that are slightly different and where we can say something like, "Where Zoning Height limits are the limiting factor there is also this additional flexibility with regard to communal rooms," or whatever, or with regard to certain key points.
I don't know but just some way to sort out that difference. I think the same is also true for the second point in NCPC's letter where they talk about special exceptions and they claim that we don't have any flexibility to grant relief to setback requirements. I believe there is flexibility in the Zoning Regulations to do that when you are below the Height Act height limits. I think there is substantial flexibility there.

Okay. You mentioned Union Station North. What project is that?

MS. STEINGASSER: It's also called the Union Station Air Rights, Akridge Air Rights behind Union Station over the tracks.

COMMISSIONER MAY: Okay. Is that where a determination of the measuring point has been made or has been proposed?

MS. STEINGASSER: Has been proposed.

COMMISSIONER MAY: Has been proposed. Okay. I was going to ask are you
talking about Union Station Air Rights. That's why we have Provision D which says elevation or means of determination established for a specific zone elsewhere in this title. Are we anticipating many projects like the Union Station North?

MS. STEINGASSER: No, thank goodness.

COMMISSIONER MAY: Okay.

MS. STEINGASSER: It's --

COMMISSIONER MAY: Unique situation.

MS. STEINGASSER: It's a unique situation and it's got a huge scar in the city. That's why I said thank goodness. We have three major Air Right projects that we know of with the possibility of there's the portals which is only partially constructed which is why they're concerned about their established Zoning Administrator's measurement point. There's I-395 hovering over that. There's Union Station. Those are the most
significant. However, there is also another one north of 395 not far from here behind --

COMMISSIONER MAY: Yeah. North of Mass Ave?

MS. STEINGASSER: North of Mass Ave, yes. That one will also require some kind of interpretation on where the measuring point should be.

COMMISSIONER MAY: It's going to get very -- well, we'll see how it goes but I think actually establishing those measuring points may get a little sticky. Can we clarify under 4.02.4(c) that an elevation previously determined by the Zoning Administrator is previous to the enactment of this title or something like that?

MR. PARKER: Yes, we certainly can.

COMMISSIONER MAY: And I imagine that -- I mean, is there actually -- there isn't actually a list of those determinations that have been made. Are there? No, it's just a matter of going through the file case
by case when it happens.

    Okay. That's it for me for right
now and I reserve the right to ask more
questions, if I can. Thanks.

    CHAIRMAN HOOD: Okay. Thank you.
Anybody else? Any additional
questions? No additional questions. Okay.

    VICE CHAIR SCHLATER: I have one.

Sorry.

    CHAIRMAN HOOD: Vice Chair.

    VICE CHAIR SCHLATER: Less question
and more recommendation. I think it would be
helpful -- one thing I read in the NCPC
report, which is I think right, it's hard to
comment on this language which references
Subtitle M when you don't know what the
language in Subtitle M is going to be yet.

    I know you guys gave us a draft of
some of that language but I think before we
take final action on this it would be good to
understand the timing. What is the time line
for the Zoning Administrator actually enacting
this because we're talking about this at the
set down for the parking and loading.

DDOT's got these plans to enact
regulations for consistent zoning for parking
and loading standards but they haven't done it
yet and they are actually asking the Zoning
Commission to lead that process but I don't
know that we want to be put in that position
all the time.

MR. PARKER: We've been working
with DCRA. They have language. It's in the
hands of their counselor right now. We asked
them to have something ready before this
meeting but that didn't happen. We're going
to stay on top of them to make sure it
happens. I have little doubt that it will be
done well before we are back for any final
action late next year. I hope to have it done
in the next month or two.

VICE CHAIR SCHLATER: Okay. Great.

The other thing I would just say is on the
4.03.1(j) I think I understand where it would
Come down on this in that I don't think we would want to do anything more restrictive than the Zoning Administrator determines. I think it's okay having common use on the top of these buildings. I don't see the harm.

Chairman Hood: Anybody else? Any questions?

Commissioner May: Mr. Chairman.

Chairman Hood: Commissioner May.

Commissioner May: I just have a couple of quick follow-ups. I'm sorry. On 4.03.1 the initial sentence there the reference to street base or zone height limitations. That's suppose to be deleted?

Mr. Parker: You caught one, yes. I will make sure that --

Commissioner May: I heard you mention something about it supposedly being deleted and I wanted to double check on that.

The last thing is also on in the NCPC letter the reference to private streets and public streets as points of measurement,
do you have any comment on that?

MR. PARKER: I'm sorry. Could you repeat the second number?

COMMISSIONER MAY: On page 3 of the NCPC letter there is a suggestion that the Zoning Commission consider including private streets along with public streets as a point of measurement or by defining street frontage as any public or private street.

MR. COCHRAN: We've discussed it informally internally and we were trying to come up with an example of a building whose height would be measured from a private street and we haven't come up with one as of this afternoon so it was a little bit difficult for us to understand the relevance of the NCPC comment.

COMMISSIONER MAY: When we have those townhouse developments where they just pack them in they've got no rear yards and all that sort of stuff and just sort of an internal street there, the internal blocks how
do those get measured?

MR. COCHRAN: From the public street.

COMMISSIONER MAY: From the public street? Okay. All right. Thanks.

COMMISSIONER TURNBULL: Mr. Parker, I just have one last question. I just wondered if you could clarify or help me understand 4.02.6. "Building height shall be measured to the top of the roof including any parapet or balustrade or exterior walls or any other continuation of the exterior walls. For purposes of calculating zone specific height a parapet or balustrade of up to four feet may be excluded from the height measurement. This exclusion does not apply in calculating maximum height for the street-based height limitation. This exclusion does not apply in calculating maximum height under the Height Act."

MR. PARKER: First off, that's another instance of street based that we need
to take that language out.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: It shouldn't say street based. Basically what this paragraph means, and I'm more than open to ideas how to make it clear, for your zone height limitation if your zone height limitation is 90 feet you can build the roof to 90 feet and have a four-foot parapet above that. For the Height Act you can have the building including the parapet has to stop at 90 feet. Does that make sense?

COMMISSIONER TURNBULL: So how does somebody look at -- how does --

MR. PARKER: This is the one issue where we couldn't reconcile.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: Every other issue we were in some way able to reconcile unless we go backwards with the penthouses over amenity structures. Every other subject we were able to reconcile the two this is one that very
clear in the Height Act and we don't want to
go there in the zoning. If you have the same
Height Act and zoning height, you have to
include the parapet within your height.

COMMISSIONER TURNBULL: Okay.

MR. PARKER: If your zoning height
limits you more than the Height Act does, then
you can do a parapet above that.

COMMISSIONER TURNBULL: Okay.

Thank you.

CHAIRMAN HOOD: Any other questions
or comments?

Mr. Parker, have you seen Mrs.
Nancy McWood's letter that she wrote, Exhibit
13?

MR. PARKER: Just received it two
minutes ago. I haven't read it.

CHAIRMAN HOOD: Okay. At some
later point. I'm just curious. At the bottom
of the page where it starts, "Nothing has
changed to provoke the Zoning Commission to
throw our the measurements." Anyway, that
piece if you could respond to that for me and
she has a question mark, "Is this the year-
round vision the Zoning Commission wants to
courage?"

We don't have to get into that now
because I was just reading it myself, that
part of it. So if we could maybe come back.
She regretted that she can't be here because
apparently they have their ANC meeting	onight.

As far as I know, I think
everything else has been addressed in her
letters. It's just that part. I don't know
if we can do that at some later point unless
you are ready to do it now. Okay. We can do
that at some later point. Any other questions
or comments?

Commissioner May.

COMMISSIONER MAY: Yes. Just one
last clarification on 4.03.(j).

MR. PARKER: Yes.

COMMISSIONER MAY: Penthouses are
accessory amenity features such as communal closed recreation space. Do we really mean penthouses over such? I mean, that seems to imply there will be a closed room and then there's a penthouse above it.

MR. PARKER: That's an unfortunate way to put it but it comes from the Height Act language. The Height Act allows for penthouses over A, B, and C. The way that this has been interpreted over the years is penthouse over your stairwell can also include your penthouse over your elevator shaft and penthouse over -- we could probably change the language. That's where it came from.

COMMISSIONER MAY: I would think penthouses enclosing accessory is a little clearer.

MR. PARKER: Over a stairwell makes sense because --

COMMISSIONER MAY: The same for (f) then?

MR. PARKER: Yeah, I guess so.
Will do.

COMMISSIONER MAY: I think the idea of a -- let me put it this way. I don't think enclosing is inconsistent with the Height Act.

MR. PARKER: I agree. I agree.

COMMISSIONER MAY: Thanks.

CHAIRMAN HOOD: Any other questions or comments? Okay.

Reports of other government agencies. The NCPC report has been vetted quite a bit so we acknowledge that.

Also report of ANCs. We have some letters from 6B, 6C, and I'm not sure if it's an official letter from -- and also 6A. I'm not sure if the letter from 3C is official but Ms. McWood, who is a member of the Zoning Regulation Task Force mentioned in her letter she had an ANC meeting tonight.

Let me go to the list. Let me call the ANCs first. I'm going to go with -- we have one opposed and one proponent. Let me go to the proponent. Let me call both of them at
the same time. We only have two commissioners, one from ANC-6A, Mr. David Holmes who is in support. With that I'm going to call Ms. Ann Heuer -- hopefully I pronounced that correct -- who's in opposition.

Did I pronounce your name correctly? Okay, good.

Do we have anyone else? Any other ANC Commissioners who would like to testify at this time whether proposed or opponent? I mean proponent or opponent.

Mr. Holmes, since you are a proponent, we're going to go with you first and then we'll hear from Ms. Heuer.

MR. HOLMES: Thank you, Mr. Chairman.

CHAIRMAN HOOD: Both of you will have five minutes.

MR. HOLMES: I won't use it. This is basically from the letter which you already have in front of you. There is no additional
testimony here. I'll simply just summarize it. This is supported by the ANC by a vote of five to zero with a quorum present.

We're generally supportive of the entire process, of course. Clarification is a great value to the ANCs as we try desperately to understand how the zoning regulations apply within our districts.

The ANC believes strongly that fundamental concepts like the building height should be held to a uniform objective standard rather than bulkanized by dozens of incompatible standards allowed by 4.02.4(c) and 4.02.4(d).

Where the proposed regulations do not state which paragraph should take precedence -- moreover, the regulations do not state which paragraph should take precedence when the provisions conflict.

If a 20-year-old zero height measuring point determination of the Zoning Administrator is 60 feet higher than what is
obtained by applying 4.02.4(a), which standard is used? There needs to be additional clarification and we don't feel there's enough guidance for the order of precedent in the current paragraphs.

It's our belief that the city would be better served by striking 4.02.4(c) and (d) which would leave a uniform single standard for setting the zero height measuring point and, thereby, promote the Office of Planning's stated objectives of removing conflicts between policy objectives which do not necessarily work in conjunction with one another and avoiding regulatory contradictions. That's my testimony in essence.

CHAIRMAN HOOD: Commissioner Holmes, do we have that? Okay.

MR. HOLMES: You referred to it in your conversation earlier.

CHAIRMAN HOOD: Okay. Could you help me, again, the concerns? I want to hit
the highlights. Could you go back over those
quick highlights real quickly? I'm going to
ask Mr. Parker -- we typically don't do this
but I'm going to ask Mr. Parker to expound on
some of the concerns that ANC-6A had.

MR. PARKER: Our concern basically
is for maximum clarity possible. In our
commission we rely on citizen volunteers to
clarify. Our zoning committee is basically a
group of lawyers, somebody from the League of
Cities, a couple of reporters, people from
EPA, people from the Department of Energy who
volunteered to do this stuff for us.

The commissioners rely on them to
do this for us. We almost always take their
recommendations. They are the experts. The
maximum clarity is of great value to all of
us. This just seems to be a chance for a lack
of clarity to creep into the regulations. To
the extent that you can eliminate anything
other than the simple standard I think it
would be of great value.
CHAIRMAN HOOD: Okay. Okay.

MR. PARKER: A simple set standard.

CHAIRMAN HOOD: I thought you had asked for like two provisions to be removed.

MR. PARKER: And to that purpose 4.02.4(c) and (d) should be removed.

CHAIRMAN HOOD: Okay. I don't think we need to comment, Mr. Parker. Okay. I heard you loud and clear. Thank you.

If you could hold your seat, Commissioner Holmes.

Ms. Heuer. Commissioner Heuer.

Excuse me.

MS. HEUER: Good evening, Chairman Hood and members of the Zoning Commission. ANC-3D has reviewed Case No. 08-06 of the Comprehensive Zoning Regulations rewrite. We thank the Zoning Commission for removing all references to the Height Act for the purpose of measuring height in low to moderate tendency residential-zoned districts by street width.
It would have been most inappropriate as many of our residential streets are varying elevations with hills, slopes, and ravines. We testified in 2006 on the proposed amendment to the Zoning Regulations and in 2008 on the proposed policy recommendations. Today we have several modifications to this chapter that we would like to recommend.

To clarify the intent of Section 4.02.5 insert a comma after the word "dwellings" and a comma after the word "height" and replace "ground level" with "natural grade."

The section would now read, "One family dwellings, and any building setback from all lot lines by a distance at least equal to its own height shall be measured from the natural grade at the mid-point of the building closest to the nearest public right-of-way.

In the case of residential
properties ANC-3D also recommends adding the phrase "the highest point of the roof or parapet" to prevent the mischief that occurs between the ceiling of the top of the floor and the top of the roof and allows the fourth floor to be created after the final zoning inspection has taken place.

In September '08 OP suggested the following definition. The natural elevation or natural grade of a property is the ground elevation that existed immediately prior to the issuance of the first building permit including a raise permit needed to begin construction of the building for which a height measurement is being made.

Because little land in D.C. is undisturbed the proposed definition for natural grade would prevent the site from being artificially raised for purposes of increasing height prior to filing for a building-related permit. Where a viaduct or other artificial elevation would exist, then
it would be measured from the street.

Section 4.02.6 add the "all" before "building" making buildings plural or indicate whether the reference is to commercial or residential buildings. In other categories, garages, accessory buildings 60 to 90-feet districts measurement is made from the highest point of the roof. ANC-3D advocated this in 2006 and 2008 and we still have the same opinion.

Section 4.02 is too ambiguous, subjective, and open to many interpretations. ANC-3D has many mixed-use blocks and commercial blocks that abut residential blocks. Transition areas between residential and business/commercial need to ensure height, massing, and setbacks are consistent with the character of surrounding districts.

Light and air to neighboring properties are very important but the question is who determines what is adequate? We encourage the Zoning Commission to direct OP
to provide further clarification to the intent when the chapter on low to moderate density districts is written. Thank you.

CHAIRMAN HOOD: Thank you both. Commissioners, any questions?

What I would ask, and I know Ms. Heuer --

COMMISSIONER MAY: I was going to ask a question but I was just going to see if the Office of Planning wanted to respond to a couple points, specifically the ground level versus natural grade issue. Does that make sense?

CHAIRMAN HOOD: Yes. What I was going to do is ask them because we have some specifics, and I especially agree with Commissioner Holmes in trying to make it, I would say, simplistical or so that the average person who doesn't do this all day long, like myself, can understand it.

I would concur with Commissioner Holmes. I put myself in that -- even though
I'm sitting here I put myself in that situation because I've been there. Also to make sure that the person who doesn't do the zoning every day understand, who does something else from 8:00 to 4:00 and do zoning at 6:00 can also understand so I would like these two letters for the Office of Planning to respond.

Commissioner May, I think you were looking for a response tonight. I wasn't going to do that. I was going to give them some time unless there is something specific unless you're ready.

COMMISSIONER MAY: No, I think that would be fine to get feedback from the Office of Planning whether it's tonight or in a written supplemental support or something like that, whatever you have.

CHAIRMAN HOOD: Case in point. What can we do to deal with Commissioner Holmes' issue? Also Commissioner Heuer has mentioned some stuff previously. Why didn't
we take this into consideration, or did we take it into consideration?

That's the kind of stuff I think -- I think both of these letters need to be answered. It doesn't need to be a book, a paragraph or so and let us know did we do it, did we not do it, why was it not done? I think that's what the commissioners are looking for so if we can do that at a later time.

Is that okay, Commissioners?

MR. PARKER: Thank you, sir.

CHAIRMAN HOOD: Ms. Heuer, is that okay or do you want it now? We want to give them time to respond.

MS. HEUER: I had talked to Mr. Brown on a couple of things. He actually agreed with some of it.

CHAIRMAN HOOD: Oh, okay. So he's well aware of this. Okay. Fire a response if you want to do it now.

MS. HEUER: I don't think so.
MR. PARKER: We're happy to submit a supplemental.

CHAIRMAN HOOD: Okay. That would be good. On both of these. Okay. Thank you both. Hold on. Any other questions?

Vice Chairman.

VICE CHAIR SCHLATER: Just a question, Commissioner Holmes. Has ANC-6A been tracking a specific project that has raised concerns about this language or in general the language is ambiguous?

MR. HOLMES: In general. We've been watching battles over H Street in particular where it's difficult to determine.

VICE CHAIR SCHLATER: And if you deleted those two sections that you requested deletion, what would be the impact on that project?

MR. HOLMES: I am not referring to a specific project at this point.

VICE CHAIR SCHLATER: You've been following those battles. I gotcha. My sense
is in that case it would reduce the height of
the buildings significantly if you were to
deleted those two provisions?

MR. HOLMES: Yes.

VICE CHAIR SCHLATER: Thank you.

CHAIRMEN HOOD: Any other
questions?

Commissioners, we want to thank you
both. We appreciate it.

I'm going to go down the list of
proponents. Christopher Collins. I'm going
to call their name anyway even though I don't
see them. Christopher Collins, Steve Sher.
Now, these are proponents; Monte Edwards.
Okay. So I have Christopher Collins who is
not present, Steve Sher and Monte Edwards who
are proponents.

Do we have anyone else in the
audience who would like to testify tonight who
is in support and a proponent? Okay. Not
seeing anyone, we will begin with Mr. Sher.
You both have five minutes. No, I'm sorry.
Mr. Sher, you have five minutes, and Mr. Edwards, you have three minutes.

Mr. Sher, you may begin.

MR. SHER: Mr. Chairman, Members of the Commission, for the record my name is Steven E. Sher, the Director of Zoning and Land Use Services with the law firm of Holland & Knight. Tonight my alter ego is Chris Collins who you see sitting next to me here. I'm going to deal with both of our pieces hopefully in the five minutes.

We are supportive of the direction taken by the Commission to take the regulations and requirements regarding the act of 1910 out of the Zoning Regulations. The issues that we were mainly concerned about in our prior testimony, which was voluminous as you may recall, are, therefore, no longer a part of what is before the Commission and we are good with that.

Other parts of the regulations that OP has proposed we support, raising the roof.
structure height from 18'6" to 20 feet, increasing the excluded parapet height from three feet to four feet allowing multiple roof structures, allowing walls of unequal height, clarifying what structures need to be setback from where, providing for special exception relief from those requirements. We think those are all good things and we are supportive of them.

One issue which you've already heard from some of the persons who testified before has to do with Section 4.02.4(c). Specifically, and now Mr. Collins, we are here on behalf of Portals Development Associates. Back in September of 2008, almost two years to the day, Mr. Collins submitted a lengthy treatise on all of the background on that.

I did not resubmit that. It's marked as Exhibit 22 of the record in an effort to save some paper. We are basically taking the same view on that and that is basically that there was general consensus and
agreement from the Office of Planning that the new regulations would preserve the point of measurement for the Portals Development.

This is a project that would have six phases, or six buildings. Buildings A, B, C, and D have been constructed and they used Maryland Avenue SW as the point of measurement. That was something that this Commission adopted a regulation allowing. It's been something that was approved by the Fine Arts Commission and a bunch of other people all along the way. All that is detailed again in here.

There are two pieces of that; building Z and F have not been constructed so, therefore, the Zoning Administrator has not yet ruled on those last two parts because permit applications have not gone forward.

What we would hope that the Commission would do, and this is as indicated in the letter from Mr. Collins, which you now have in front of you, on the second page we
would like to suggest that language be changed to say, "Not just by the Zoning Administrator but determined by a District of Columbia agency including the Zoning Administrator because we've been through this whole cycle of things that have been approved.

I guess it was Mr. May who suggested prior to the enactment of this we don't have any problem with that because all of that was done a long time ago. We're just trying to sort of preserve that thought for that particular project the measurement be allowed to be taken from the same point it has been taken for the first parts of the project.

That's really sort of all I had about height. I wanted to add a couple of comments which I'll loosely call comments at large. I like the idea of capitalizing define terms which you see -- I'm sorry, italicizing. Not capitalizing for italicizing define terms. That was something that was done in the original 1958 Zoning
Regulations and got lost along the way. But at least you know when you're looking in the book, or online or whatever it is, when you see a term that is italicized, you know to go find the definition section and read what it says. I think that's a good idea.

The second thing is the Commission as we're going through this process is looking at these sections individually. Tonight you have height, you have uses. As many other people have commented to Office of Planning and in these hearings, you don't have the whole picture.

You don't have an idea of what's going to happen in the individual zones. I don't know that there's necessarily a better way to do it but I think that the public and the Commission need one more chance to review and comment, whether that's at another hearing or in writing, on the package as a whole.

When you've been through all these various pieces and you've got a set of
regulations that's coming, there may be pieces of the use chapter, which we haven't had much discussion about tonight, that could be affected by how terms are defined, for example and by how uses are permitted within individual zone categories that might make you go back and think maybe we need to take some consideration on the use chapter that's going to be affected by something that happens down the road.

I know I've said this one before. The concept of the maximum number of parking spaces is going to depend largely on what that maximum number is. If you tell me I can have one space or you tell me I can have a thousand spaces, I'm going to have a different view of the maximum number of parking spaces.

Until we see those charts that tell you what uses in what zones have what limits, it's a little hard to comment in the abstract. I think that as you get down the road a year from now there just needs to be sort of one
overall look at the whole package.

At that I have exhausted my time and I thank you very much.

CHAIRMAN HOOD: Thank you very much, Mr. Sher.

Mr. Edwards.

MR. EDWARDS: My name is Monte Edwards.

CHAIRMAN HOOD: Is your microphone one?

MR. EDWARDS: It is now. Thank you.

CHAIRMAN HOOD: Okay.

MR. EDWARDS: My testimony goes to 4.02.4. I share the concerns expressed by ANC-6A that (a) and (b) are a clear definition understandable and an implementation of prior zoning policy and regulations. However, (c) and (d) are contrary to that clear definition and expression of prior zoning practices. Specifically I refer to Case No. 02-35 which I participated in back in 2003.
That was the measuring point for height. It had to do with the H Street overpass. Let me read from page 1 of that order. This is the Zoning Commission order.

"The Commission instituted this rulemaking in response to recommendations of the DC Office of Planning. OP's recommendation was to clarify and reaffirm that the intent of the Zoning Regulations was to measure the height of buildings from the ground and not from an artificially created measuring point in determining their allowable height."

That has been the law. That has been the Zoning Regulation since November 7, 2003. It is nicely preserved, I think, in 4.02.4(a) and (b). I feel it is contradicted by (c) and (d). Well, about (c). There are cases when the Zoning Administration has previously determined a different method of determining grade.

We are familiar with L'Enfant Plaza.
and we have already heard from Mr. Sher about
the Portals development. But that
determination was based on the unique
circumstances of that project and should not
be applied to different projects with
different circumstances.

As written now 4.02.4 ends with the
word "either" which means the four subparts
are in the alternative and will encourage
someone, a layman like me, to think you can
chose from any of the four. I think that for
clarity we should have (a) and (b). If
we need to say that it's not the intent of
this change to overturn any prior
determinations of the Zoning Administration,
that should be either a footnote or separately
and not given the same weight as (a) and (b).

Now, about Subpart D and discussion
of air rights development, which we've heard
about, and Union Station North proposed for
the Akridge development at Union Station,
there they are proposing that the measuring
point be the overpass at H Street. That means
that if as proposed by the Office of Planning
the height of the development over the tracks
would be 56 feet higher than the existing
Securities and Exchange complex.

Now, there may be justification for
a height adjustment but those height
adjustments should be unique to the projects.
We've heard from Office of Planning there are
a few of these air rights cases. Let's look
at each one of them.

Let's see how the height
measurement should be determined sensitive to
the surroundings and based on the unique
characteristics of each project and not by
some arbitrary measuring point that is being
proposed, at least in the case of Union
Station North.

Again, let them stand by their
merits on a case-by-case basis, come before
this Commission with what the height should
be. Is it the deck? Is it the bottom part of
the deck? Is it the top of the deck? Where
do you measure it and what is appropriate for
the surroundings and how that development
impacts the community. Thank you.

CHAIRMAN HOOD: All right. Thank
you both.

Are there any questions or
comments? Mr. May.

COMMISSIONER MAY: For Mr. Sher.
You made a reference to a determination by the
Zoning Administrator or other agency. I
wasn't sure what clause you're referring to
and what circumstance that might apply to.

MR. SHER: Other agencies included
things like the Redevelopment Land Agency
which doesn't exist any longer.

COMMISSIONER MAY: In what clause,
in 4.02.4(c)?

MR. SHER: Right. Not just to be
the Zoning Administrator but other district
agencies only because it's not just the Zoning
Administrator.
COMMISSIONER MAY: So in the past at some point the RLA made determinations about heights of buildings?

MR. SHER: The council made determinations to amend the Commissioner's height schedule. Again, all that is detailed in here and I can resubmit this if you want it.

COMMISSIONER MAY: No. Okay. I still have that file from two years ago.

MR. SHER: Two years we went through all that. Mr. Collins was here.

COMMISSIONER MAY: Okay. I'm not sure that I'm totally comfortable with simply saying that's the right way to go. I mean, there may be other circumstances that we need to consider but I'm not totally sure about that one.

I guess in response to Mr. Edwards' comments, when it comes to a project like Union Station North and there are 56 feet difference in the measuring points between the
proposed development and the adjacent
development at the station place. I mean, are
we actually going to wind up with a building
that is 56 feet taller or is there going to be
some other limit being proposed on this that
makes the difference in height more
understandable?

MS. STEINGASSER: You said Mr.
Edwards but you looked at me.

COMMISSIONER MAY: I'm sorry. I'm
looking at the Office of Planning to answer
the question.

MS. STEINGASSER: Okay.

COMMISSIONER MAY: Sorry.

MS. STEINGASSER: The Zoning
Commission has actually set that zoning text
down for a public hearing and will be
considering that in December for the Union
Station air rights. No, it is not the
intention that there would be a building that
would be 56 feet higher. That's looking at a
building only in one direction.
When you look at the buildings to the west you're in a much higher density and many of those buildings have prior to 02 measured from H Street so there is a much more narrow differential between the heights.

What we've asked the applicant to do is to provide an equivalent height survey of the entire area looking both to the high density down to the west as well as to the Union Station and the areas to the east because we are very sensitive.

All of those projects that would be built under that proposed zone would come to the Zoning Commission for public review. They would also be in front of the ANC and we specified that in the Zoning Regs that they have to have this public hearings.

COMMISSIONER MAY: Okay. So it's not simply that we're going to have these special circumstances where there is a viaduct and you get to measure from that higher point that's 20, 30, 40, 50 feet higher but that
it's going to be a very special circumstance and there will be other controls over the height.

MS. STEINGASSER: Yes, sir.

COMMISSIONER MAY: That, in fact, a height that might otherwise be allowed for building with a normal measuring point it might actually be reduced to be able to keep the heights more or less.

MS. STEINGASSER: That's correct. The air rights are a very, very special situation. Like I said, we're grateful we don't have more complex situations like this throughout the city. The tracks have done all kinds of damage to the grade.

We don't know what the natural grade is. We don't know where the streets originally were. The tracks have various elevation so there is a lot of damage done there. We absolutely would bring these forward only on a case-by-case basis.
the possibility of drawing a line between the starting point and the ending point of the viaducts and just using that as a measuring point? Does that achieve something similar or is it --

MS. STEINGASSER: It does but in this particular case because of the relationship to Union Station and the tracks we wanted to allow as much design flexibility and that height that we're proposing is not to create a 130-foot box but to allow for the maximum articulation of the design elements that come forward. That's why we did it only in conjunction with design review.

COMMISSIONER MAY: Okay. Thanks.

VICE CHAIR SCHLATER: Thank you, Mr. Chairman. First question is for Mr. Sher. I think I share Commissioner May's -- I understand what you're trying to get at with your proposed change to the language in 4.02.4(c).

But by saying an elevation
previously determined by a District of Columbia agency including the Zoning Administrator, I think we need to just clarify that it was lawfully determined by the District of Columbia agency.

I think we have a situation where agencies say things all the time and it might be in conflict with other agencies. Ultimately we're hoping to get to a point where I would hope there is a final say on these things. I think we just need to do some work on that.

I understand what you're trying to get at and support it but what we don't want to have is DDOT saying what the height of a building should be. Or we don't want DDOE saying what the height of a building should be because of you ask six different District agencies, you're going to get six different answers.

Then in response to Mr. Edwards' comments, I'm questioning whether -- this is
probably directed at OP -- whether we actually
need 4.02.4(d). If we come up with a separate
chapter called Union Station Air Rights or
whatever. I forget. Union Station North is
what we're working on -- ultimately it's going
to be written in there that it's a special
case and special situation. Why do we need
(d) in there when you have Union Station North
elsewhere?

MR. PARKER: D is to alert you that
there is the possibility that there is a Union
Station North elsewhere in the code.
Otherwise you look at 4.02.4 without knowing
that you have Union Station North and you
don't know it exist. Not only that then you
have two sections that are in conflict. (d)
is specifically to say there are other places
in the code that deal with this issue. In the
case of those it trumps A, B, and C.

VICE CHAIR SCHLATER: Okay. Mr.
Edwards, I guess when I was listening to your
testimony you were saying that it was okay to
have special situations and address them as they arise. Is that correct?

MR. EDWARDS: That's correct.

VICE CHAIR SCHLATER: The general spirit? It seems to be what OP --

MR. EDWARDS: My concern is putting it in this general regulation on height measurement point. If you need them, put them in a separate category. Just as Mr. Sher as just explained about the special priority determinations, I would suggest that in terms of the current language just a statement that these regulations do not overturn any prior determinations period.

VICE CHAIR SCHLATER: Okay. Thank you.

CHAIRMAN HOOD: Any other questions or comments?

COMMISSIONER MAY: If I could just following up on this same sort of theme of elevations that have been determined by the Zoning Administrator. This is a question for
the Office of Planning. Does it make sense perhaps to state that such determination would apply only for an existing structure and that a new determination would be necessary if the building were raised?

MR. PARKER: Perhaps not. I mean, the issue that comes to mind is, again, going back to L'Enfant Plaza. You've got existing buildings that were built based on the measuring point of the plaza. If one of those buildings was to be reconstructed, should we go through the process again of determining whether it should be built to that level?

COMMISSIONER MAY: Well, may be. I mean, if we're going to start messing around with L'Enfant Plaza, maybe it's a bit -- maybe it is more on the scale of the Union Station air rights. In effect, it's kind of an air rights project of its own and it may well make sense to have to have a more comprehensive look at it and not simply say that forever it will be the measuring point of the plaza.
I wasn't thinking so much of the big projects like that. I mean, other ones where there was a determination somewhere along the line by the Zoning Administrator. God knows what the circumstances were at that particular moment. Somehow this kind of created or a fictional measuring point is now vested with the property in perpetuity. I'm not sure that really makes sense.

MR. PARKER: Well, only insomuch if you change it such that it's going to be reopened and it could theoretically be lower, you create a massive disincentive to perhaps redevelop.

COMMISSIONER MAY: Okay. Thanks.

CHAIRMAN HOOD: I have a process question again. I think Mr. Sher mentioned once we get everything together, once we get the complete book, once we get all the cross references, once we get everything together I guess -- don't let me put words in your mouth but I guess you were asking for another bite
at the apple. Is that kind of where you were going?

MR. SHER: Yes.

CHAIRMAN HOOD: All right.

MR. SHER: Mr. Parker and I have had this conversation. You've got a lot of pieces and hopefully they will all mesh together, but it's when you see how they mesh together that you realize that something in that use thing that we talked about tonight doesn't quite line up with the definition that is yet to come.

Even when those two get put together they may or may not make sense for any particular zone district within which they are going to apply. I don't want to have 92 more hearings and all that.

I just think the Commission needs to sort of look at that and the Office of Planning needs to look at it. I think the public ought to have an opportunity and it may just be in writing. It may be, "Here it is."
If you have anything else you want to say about it, send us a letter."

I do really think that one more look and if it's another bite at the apple or the pear or the banana or whatever it is, yeah, I think everybody ought to be able to do that. Most students bring a teacher an apple and the teacher usually smiles so that's why I said apple. I haven't seen too many pears but I may try to make some.

Let me just ask. I will also ask Ms. Schellin of the Office of Zoning and Office of Planning. Didn't we put something in place to where -- I'm trying to remember -- to where if that would happen, that extra bite of the pear or the apple or banana or whatever the case is, isn't there a mechanism already in place for that?

MR. PARKER: There are countless mechanisms. I mean, the long and short of it nothing is going to get enacted by this body if people have outstanding issues. There are
going to be plenty of chances to write letters, to come to the hearing. We are going to have one final approval.

I don't think anybody has decided yet whether there is going to be a hearing at that stage or what the process is going to be. I think it may be too early to know that. I think all we can do right now is move forward one chapter, one subtitle at a time, see what issues come up.

As we need to go back and look at things we can. If we need to schedule a series of final hearings at the end, we can. I know this Commission too well to think they are going to approve something that has outstanding issues.

CHAIRMAN HOOD: All right. Thank you.

Ms. Schellin, did you want to ask something? Okay. Thank you. I asked that for that reason. I'm glad you put that on the record.
Any other questions of this panel?

Any comments? I want to thank you both. We appreciate it.

Next I'm going to opponents, Ms. Alma Gates, Neighbors United Trust, and Mr. George Clark, Committee of 100. Is there anyone else present tonight that is here in opposition of this particular case in front of us tonight?

Not seeing any, you two will be our last panel and we will begin with Ms. Gates.

MS. GATES: Good evening members of the Commission. My name is Alma Gates. I'm a member of the Zoning Task Force. It is fitting that in this centennial year of the Height Act the Zoning Commission is considering the subject of height.

In 2003 the Office of Planning recommended and the Zoning Commission approved a code change to clarify and reaffirm that the intent of the Zoning Regulations was to measure the height of buildings from the
ground and not from an artificially created measuring point in determining their allowable height.

Zoning Case 02-35 determined that the height of buildings the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. The term "curb" shall refer to a curb at grade.

In the case of a property fronting a bridge or a viaduct the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.

A new definition for natural grade was also adopted. The undisturbed level formed without human intervention or where the undisturbed ground level cannot be determined because of an existing building or structure the undisturbed existing grade.

Why would the Zoning Commission
consider relaxing or revising its previous order? Won't this create the potential for inconsistent building heights opening the door to creative interpretation of the general rules of measurement for the rationalization of the Washington view shed?

While the comprehensive plan recognizes areas of the city exist that need to be reconnected and relinked to maintain the continuity of the street network over sunken freeways and railroad overpasses and underpasses, it does not recommend changing the zoning code or the rules of measurement to accomplishment this goal.

No one is complaining that the regulations are unclear. While it has been widely acknowledged that economic development is driving city planning, the zoning code should not give designers of the urban landscape carte blanche to change the horizontal skyline of the District for personal gain or attribution.
OP's proposed changes appear to attack the established policy upon which people have relied since zoning began in 1958 that the height of buildings is measured from the ground and not from an artificially created measuring point in determining their allowable height.

I strongly encourage the Zoning Commission to adopt only the following language for proposed Section 4.02.4. Where the curb at grade has been artificially changed by a bridge, viaduct embankment, ramp abutment, tunnel or other type of artificial elevation the height of a building shall be measured from either a street frontage not affected by the artificial elevation or the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet, and then omit Section (c) and (d).

You've heard that before tonight.

In May Larry Beasley ended his
presentation on the equation of height and density in the form of economy of Washington, D.C. in the 21st century with this caveat. So I close with a cautionary note. Be very careful as you gamble with the 100-year legacy of Washington's Height Act.

Take care not to open things up too casually. I dare say those height limits may be the single most powerful thing that has made the city so amazingly fulfilling. Thank you.

CHAIRMAN HOOD: Thank you very much, Ms. Gates. If you could just hold your seat.

Mr. Clark.

MR. CLARK: Thank you, Mr. Chairman. My name is George Clark. I testify here tonight on behalf of the Committee 100 of the Federal City, a group that has advocated on behalf of intelligent and smart planning and land use in D.C. since 1923.

I also bring my perspective as a
member of the Zoning Revision Task Force on behalf of the Federation of Citizens Association which is celebrating its 100th year this year just like the Height Act.

I've seen a lot of this from the inside. Actually a couple things I've heard tonight are pretty good because one of the things that has been remarkable is that Steve Sher and I have agreed on all kinds of things about the Height Act.

Maybe something we wouldn't have thought about at the very beginning but we have. This Commission in the set down, I think, had some of that similar agreement of let's not confuse the regulations with the Height Act and we're happy with that.

I have some things in my testimony that maybe have been solved tonight already by some of the street-based stuff that was still here coming out. That is a help for what we need to do. We did talk about this a lot including in the task force meetings this
summer on three different occasions, I think, on the Height Act. We just said, "We don't need to get into this."

There is still one part of this that concerns me and that is we've been told that the Zoning Administrator is compiling a list of rulings made over the years on the Height Act. First of all, no one has ever been able to do this. Maybe Steve Sher and Allison Prince can do it but nobody else in this city can.

In fact, there was one case a few years ago where a FOIA request was made in a pending issue under the Height Act. It must have been in front of the BZA. The answer was, "We threw that all out." I don't know how we are going to deal with these interpretations by the Zoning Administrator.

If, on the other hand, what we have is that the Zoning Administrator is essentially writing regulations rather than saying, "Here are the rulings that I've made
over the years. You can look at it.

   This one from 1947 says what it says," that's a different case. If we're going to have regulations written, there's a process for that and the process is not as a appendix to the Zoning Regulations. I hope we don't get into that.

   I've also heard, and I may be wrong, and I think what Mr. Parker says tonight, he says maybe I am wrong, is I've heard that the head of DCRA doesn't know that's what they're doing over there that the Zoning Administrator is doing this. I mean, that's still another question.

   But there is one thing we have in the regulations right now that I think we ought to keep and that is at Section 25.10.1 that says, "In addition to any controls established in this title, all buildings or other structures shall comply with the Act to regulate the height of buildings."

   I mean, that we can keep. We have
some wishy-washy language in the proposal by
the Office of Planning on that that is kinda
supposed to say that. I think I said 4.00.4
but I think it's 4.00.3 after the change. We
just got to watch that.

I think we should also depict
what's happening in the Height Act and in
height changes, something more than two-
dimensional drawings. We've heard a lot about
H Street and about where it's going to be
measured from, how high it's going to be.
I'm glad to hear that it won't be 12 stories
on top of that 56 feet. I'm not sure that's
really true. We have to worry about some of
the scenic vistas of the capital.

I mean, if we go up to the 11th
floor here and look at that, although when we
look from the 11th floor we'll have to look
far over to the left to see what those
buildings will be like, but you don't have to
do that if you're at Cardoza High School, if
you're at the Armed Forces retirement home, if
you're on the New York Avenue corridor, or on H Street, N.E. Those are some important things that we've got to think about.

In my last minute I do want to make a point about the residential measuring height. Ms. Gates has made a similar point. The current definition of building height and the definitions of 199.1 will be eliminated.

Maybe something else is happening but again, as Mr. Sher said, maybe we won't know until we see everything together. This is something I'm very familiar with because it's the first case I ever got involved in in front of the BZA, where you measure height from in an R-1-A zone.

As I read the proposal here, my house is way below the street level. If you're standing on the curb in my house you see the roof line. I mean, that's where it is so I could add 40 feet on top of my house if we have a 40-foot limit. That doesn't make any sense to me.
Now, if you go across the street, which is where the problem was, that range is 15 feet above the street so that would only be a 25-foot house. That doesn't make any sense to me either. Here is what we don't know how things fit together and I don't see why we have eliminated the measuring point we've had for a long time. Thank you.

CHAIRMAN HOOD: Mr. Clark, in all fairness, if you wanted to finish, or if either one of you wanted to finish because I did allow the previous panel to go a little over.

MR. CLARK: I have one thing about uses. Now that I've moved my pages out of order we'll see if I can find it. Again, maybe it relates to something Mr. Sher said is that we don't know how this is all going to work together.

One of the things that upsets people in certain zones, especially in some R-5 zones even though the buildings may be all
on a lower scale, is what happens with
accessory uses in terms of does it change the
character of the actual residential use.
Sometimes this happens with respect to bed and
breakfast but it can happen in other ways,
too, especially in some rental buildings.
What happens is you really change
the use from residential to whatever
occupations may be there and that's something
we don't really as we sit here, at least I
don't, understand how that works.

CHAIRMAN HOOD: Ms. Gates, did you
want to add something?

MS. GATES: I finished. Thank you.

CHAIRMAN HOOD: Okay. All right.
Let me open it up. Are there any questions of
this panel?

COMMISSIONER MAY: Sorry, Mr.
Chairman.

CHAIRMAN HOOD: Mr. May.

COMMISSIONER MAY: I guess for Mr.
Clark the question I have was with regard to
the measuring point you point out your house is below the street grade. The way I read the proposed regulations, 4.02.5, "A one-family dwelling and any building..."

Sorry. "One-family dwellings and any building set back from all lot lines by a distance at least equal to its own height shall be measured from the ground level." In your circumstance I guess because your house is not set back by that distance?

MR. CLARK: It's set back in the front but it's not set back from all lot lines.

COMMISSIONER MAY: From all lot lines. Okay. I'm picturing where that can happen. MacArthur Boulevard is the example that you seem to have cited. That's something where we need to have greater clarity.

MR. PARKER: It was pointed out in testimony earlier. It's just a matter of two missing commas. This saying, "One-family dwellings shall be measured from ground level
and any building set back from all lot lines by a distance equal to their own height shall be measured from ground level." All one-family dwellings are measured at ground level at the mid-point of the front.

MR. CLARK: And if I can ask the question is we've had a lot of litigation in other points in the working groups about artificially changing the grade. What happens there? That's the other concern.

COMMISSIONER MAY: Okay. We'll get to that in just a second. I want to clarify on this. "One-family dwelling shall be measured from ground level to mid-point." So that does need to be tweaked in the language. Yes?

MR. PARKER: It's a matter of a comma after "one-family dwellings" and a comma after "its own height." "One-family dwellings, and any building set back from all lot lines by a distance at least equal to its own height, shall be measured."
COMMISSIONER MAY: Okay. So if it is a two-family dwelling --

MR. PARKER: It's measured from the curb.

COMMISSIONER MAY: It's going to be measured from the curb. Okay. I'm not sure that is going to catch everything that it should catch.

MR. PARKER: Okay.

COMMISSIONER MAY: I think we need to think about that. I can't think of specific examples within the city but it's not uncommon to have a duplex that is set back by less than that distance, and yet you really want the single-family home rules to apply.

MS. GATES: Mr. May, we also have those duplexes on MacArthur Blvd. that sit below the curb.

COMMISSIONER MAY: I can't remember whether I had seen them there but I know I had seen them around the city. All right. Then we get back to the question of the natural
grade versus the grade in font of the house which is a question that came up earlier. I think OP is going to reply to that in a supplemental report. Right?

MR. PARKER: Yes.

CHAIRMAN HOOD: I just want to make sure we add the language. Obviously with Ms. Gates being on the task force I guess you've seen her proposal before 2.4 previously but I want to include that. Actually, Mr. Parker, since you have so much help over at the Office of Planning, I'm curious that we would look at all the testimony.

I know you all have done a lot of work because I actually attended the first work group on height. I attended that one. I will tell you that we've come a long way and I agree with you on that.

As I stated earlier, the same issue that has been graphed in and the Zoning Commission has dealt with continuously about the NCPC telling us it's a violation of the
Height Act and then we say it isn't. That issue I'm hoping we can find some kind of way to resolve that.

Also, I'm looking here. We didn't have many people to testify, you're right, but they bring up some good points. I'm looking at the language specifically proposed by Ms. Gates for 2.4. I've heard a lot of people say we need to omit (c) and (d). I don't know if that has already been looked at.

I'm not saying we should or shouldn't but I would like for the Office of Planning to look at the testimony received from everyone, because we only had a few people to testify, and look at some of the points that they raised in that supplemental. Maybe we could make it a page-and-a-half in that supplemental. Let's kind of find out why we should or should not take some of these recommendations if that's doable.

MR. PARKER: We'll look at it and try to keep it short.
CHAIRMAN HOOD: Thank you.

Any other questions or comments?

Commissioner Selfridge.

COMMISSIONER SELFRIDGE: Yes.

Thank you, Mr. Chairman. I would just like to follow up on what he said about obviously 4.02.4(c) and (d). I was struck by something that you said and this is my initial thought.

I would be curious what impact 4.02.4(c) would have on maybe smaller property owners. All the talk tonight has been about Union Station air rights. Obviously I’ve picked up on that hot seat issue.

I would be curious as well within that page-and-a-half if we know what the practical impact on maybe some of these smaller properties are existing, if there is any devaluation if this were to happen, if any change in any former ruling by the Zoning Administrator was just wiped out essentially.

Then, Ms. Gates, I just have one question for you I just want to clarify.
4.02.4(c) and (d), if you wipe that out it wouldn't actually have any impact on Washington's Height Act because 4.00.3 actually says notwithstanding essentially Zoning Regulations all buildings are subject to the Height Act so we wouldn't actually be impacting or having any impact on the Height Act by leaving 4.02.4(c) and (d) in place.

MS. GATES: Why wouldn't it if the Zoning Administrator has made a previous determination that is above the Height Act limitation?

COMMISSIONER SELFRIDGE: I guess that's a question from me for OP.

MR. PARKER: Well, the Zoning Administrator interprets the Height Act so by default any interpretation the Zoning Administrator makes is not in violation of the Height Act.

COMMISSIONER SELFRIEDGE: Thank you.

VICE CHAIR SCHLATER: I just have a process comment. Since this language is going
to come back to us, you're going to write a supplemental report, can I just ask that when the new language comes back that it's blacklined against the old language? I don't know if that has been your practice thus far but just so we can track the changes as we go along and respond to some stuff. It would be very helpful to get it in blackline form.

MR. PARKER: Certainly. We'll use the one attached to the report, not the public hearing notice, and we'll blackline that.

CHAIRMAN HOOD: Any other comments?

Mr. Turnbull.

COMMISSIONER TURNBULL: Just one, Mr. Chair. I was just going through the rest of Mr. Clark's submittal and one of the things you didn't talk about which is in here is exterior walls. It sounds like you are keeping to the very arrow definition of an exterior wall which is any side of a building.

MR. CLARK: I think that's right,
yes.

COMMISSIONER TURNBULL: And basically you're saying that the setback should be the same on any side whether it's an alley or butting up to another building or whatever?

MR. CLARK: We shouldn't be looking at the inside but rather on the outside, yes.

COMMISSIONER TURNBULL: You don't see any opportunities where -- we've had instances like this before where you can't always get a penthouse or something exactly in the ideal situation. You have stairwells to meet code just happen to pop up.

A lot of times they are put in places to be as diminimus as possible but you can't get away from some place at some point. If you're going to sacrifice something, you're going to give up either the alley for some minimal elevation of the building.

MR. CLARK: There may be situations where that is the case. One of the things --
I don't have the photographs with me tonight but there have been photographs taken of a lot of the buildings in the city in dealing with this issue and actually people have done a pretty good job.

COMMISSIONER TURNBULL: Yeah, I think in most part even the ones that have come before us where we have given relief from some of the setbacks I don't think any of them have been so egregious that we felt that uncomfortable about them. I just wanted to give you an opportunity to comment about it.

MR. CLARK: Thank you.

CHAIRMAN HOOD: Any other questions or comments? I want to thank this panel. We appreciate you coming down to testify.

MR. CLARK: Thank you.

CHAIRMAN HOOD: I think that's it. Is there anyone else here to testify?

Ms. Richards, I saw you come in. Come right on up.

Anyone else here to testify? We're
going to cut it off with Ms. Richards. I did see Ms. Richards come in even though I did have the last call but she has served the city with great distinction and still does so we want to hear from her.

Anyone else? Okay. I've already cut it off. I'll probably be in trouble that I cut it off.

Okay. Ms. Richards. Turn your microphone on.

MS. RICHARDS: My name is Laura Richards and I'm here testifying on behalf of my civic association Penn Branch Citizens Civic Association in Ward 7. I'm also a member of the task force. Penn Branch has identified the following key points we want to call to your attention.

The first is the measurement rules.

We would like the following language included in 4.02.1, "When a building abuts more than one street the street chosen to determine the maximum allowable height must also be used to
determine the measuring point for building height. Then this measuring point will set the basis for all height measurements of the building."

This is a provision that was considered earlier and then dropped. We think it should be restored to avoid situations where broad streets are used to determine building heights and then the buildings are actually measured from the higher narrower streets. This would require a conforming amendment to Section 4.05.1.

Then Section 4.02.4, which I just heard discussed, "Measuring building heights where the curb grade has been artificially changed," there are four options. I would eliminate (b) and (d) and retain (a) and (c).

(a) says measure from street frontage not affected by the bridge or rampart or whatever. (c) relies on precedent. (b) and (d) allow for, I guess, a level of discretion that probably doesn't result in the
sort of certainty that people need.
I think I heard some conversations saying that
(c) was not acceptable because there might be
some bad precedents lurking out there.

In regards to the response that the
Zoning Administrator sort of cannot
misinterpret the Height Act if that comes into
play. As long as it's subject to judicial
review, I suppose it can. I assume you meant
that until it's been subjected to judicial
review the decision stands.

Certainly reasonable minds may
differ and mistakes can be made. I wouldn't
think that any precedent would stand on the
books that would allow something like
measuring from the bridge. I guess that's
everyone's favorite example. When that first
came up a number of years ago it was sort of
treated as kind of a joke, you know.

I guess it's still sort of a joke
except in reality this may be really
happening. It's sort of frightening so we
certainly hope that you will fix that. You've heard several proposals tonight for addressing it and I hope that will be done.

Primacy of the Height Act. Retain Section 25.10.1, "In addition to any controls established in this title all buildings or structures shall comply with the Height Act."

This simply say, okay, it's there on the books.

No matter what we do that is the touchstone where it applies. It governs and preempts anything else that may be done. I think that it just states it very clearly. It has served us well so I would keep that broad language in the new regulations.

Residential blocks and business blocks. Section 4.03.1(b) operates to treat a block face that contains any mix of an apartment residential zone and any other zoned as a business street. This would allow business heights measured by the right-of-way plus 20 feet.
The block face with any amount of neighborhood residential zoning is deemed to be a residential block for building height purposes. Height limits on residential streets are, of course, significantly lower.

This provision considered together with Section 4.04.1 has the potential to adversely affect existing rowhouse neighborhoods and height in apartment neighborhoods.

I guess moreover there are OP proposals that are embodied in comp plan amendments and small area plans for treating large swaths of the District as transit oriented development areas. These would mostly be mixed zones. Therefore, they would essentially be business streets. Therefore, the taller heights for business streets would more than likely apply.

Inasmuch as significant new construction is taking place in the eastern part of the city, we think the city's least empowered residents stand to bear the brunt of
this provision. We think that Section 4.03 and 4.04 should treat all block basis with a quantum of residential zoning equally without regards to what kind of residential density that is.

Moreover, predominately residential streets in established neighborhoods should be treated as such whether or not the underlying zoning actually matches the actual nature of the street. We all know that there are mismatches throughout the city and they are catching some of them. Design is catching up with some of them but they are going to persist so what's there should govern, especially for your established neighborhoods.

Just to give some idea of the potential impact of TOD and how this could interplay with 4.03 and 4.04, the proposed comp plan amendments would make the major bus routes in the city all TOD zones so you wouldn't be having them clustered around kind
of subways and Metro stations but just up and down the city.

Wherever there's a major bus zone or wide street that's TOD and that's potentially like mixed zone. Therefore, you are going to get like business heights all along. Where is the kind of lower density, gentler density in southeast Washington?

As you all know, we were affected adversely this way once before when southwest was emptied out 50 or 60 years ago and all sorts of jerry-rigged apartment buildings were crammed into southeast. It has taken a long time to kind of get rid of some of them or to integrate them effectively. We would not like to have this happen to us again.

Finally, we have roof structures. Section 4.06.1 identifies roof structures that may exceed height limitations in the Zoning Regulations and 4.06.2 sets out the setback requirement for some allowable roof structures.
The esthetics of my community are adversely impacted by the industrial roof structures on our neighborhood shopping center. They are large, prominent, undisguised, and apparently installed without regard to any setbacks at all.

Based on this experience and on behalf of the aesthetics of the entire District we urge that one-for-one setbacks be required from all exterior walls and that exterior walls be given its ordinarily understood meaning with the proviso that the party wall will be treated as the exterior wall for rowhouses or other adjoined structures.

We don't foreclose the possibility of special exceptions in any given case. Presumably some setback relief may be the best possible situation. But as the general rule, we think that the one-for-one setback should be applied.

Those are pinbranches, keypoints.
Thank you.

CHAIRMAN HOOD: Thank you very much, Ms. Richardson.

Any questions of Ms. Richardson, Commissioners?

I will tell you we will also add Ms. Richardson's testimony. I think a number of the points have already been mentioned earlier. The only difference I think is most people recommended keeping (a) and (b), I believe, and you recommended (a) and (c) so it will be interesting to see what the Office of Planning comes back on that page-and-a-half, maybe two-pages-and-a-half sheet that we're going to grapple with.

Thank you, Ms. Richards. We appreciate it.

MS. RICHARDS: Um-hum.

CHAIRMAN HOOD: I think now, at least for me, I need to remember what the process is at this point. Sometime when your mind gets set in going somewhere else and
you're still here, I'm just trying to remember. Also for the public to make sure that we know what the process is after this.

Mr. Parker, could you help us?

MR. PARKER: Certainly.

CHAIRMAN HOOD: Could you help me.

MR. MAY: Can I interrupt before we go to the process?

CHAIRMAN HOOD: Sure.

MR. MAY: Sorry. I wasn't quick enough to mention this right after testimony. I was particularly intrigued by Ms. Richards' testimony. It's the paragraph labeled B on the front page where in referring to 4.02.4(c) she recommends that there be some, I guess, review of the previous determination to determine that the circumstances that led to a particular determination are essentially still in force.

I mean, that's what I'm taking out of it. I think there is something to that. The concern I had before about any of these
previous determinations is that we don't know that the circumstances that led to a given determination are still acting and still enforced in that area.

I think that we ought to give that some consideration because something could be a remnant. The city is going to be around a really, rally long time so we need to make sure 50 years from now when they are looking at the Zoning Regs again that is not the next time they have to deal with this.

MS. RICHARDS: Could I step up and clarify?

MR. MAY: I was just meaning that as a comment for what I would like the Office of Planning to follow up on. I don't know that I necessarily need a reply. Thanks.

CHAIRMAN HOOD: Okay. Again, pretty much most of what we heard tonight we have asked for a supplement report from OP and I'm not sure how long that's going to take or when we are going to look at this again.
That's why I wanted to go to Mr. Parker or Ms. Schellin. Mr. Parker first.

MR. PARKER: The process from here is we will resubmit to you a blacklined height chapter as well as a use chapter. We will submit to you a report as close to two pages as we can get it responding to all of your comments from tonight.

The Zoning Commission will then consider all of the information from the record and from our supplemental and we'll take proposed action on height chapter and use chapter. After an appropriate filing you will take a preliminary final action on just this piece. Then we'll do that for every other chapter in the code and then we'll come back and look at it all again as a whole.

CHAIRMAN HOOD: Any questions, Commissioners, on that?

I want to thank you, Mr. Parker, for that.

Ms. Schellin, did you want to add
something?

MS. SCHELLIN: Just that we do have a request to leave the record open for a period of time if we could do that.

CHAIRMAN HOOD: I don't have any objections. Ms. Schellin, you want to give us some dates?

MS. SCHELLIN: I wanted to see when OP wanted to come back for proposed action first.

MR. PARKER: We could use at least two weeks to write our response.

MS. SCHELLIN: Okay. So if we could just -- the request to leave the record open was not for a long period of time so if we could just leave it open for a week.

CHAIRMAN HOOD: A week is all we need. I guess that will satisfy the request.

MS. SCHELLIN: That will satisfy the request if we could leave the record open.

There were two -- do you want to leave it open for just the two requests that were
received or for everyone?

CHAIRMAN HOOD: Probably just the two requests.

MS. SCHELLIN: Okay. It was a request from WCCA and also from ANC -- I want to find that ANC. We actually have a letter.

CHAIRMAN HOOD: 6B is what I'm hearing.

MS. SCHELLIN: 6B. We actually have a letter from them but I just can't put my hand on it right this second -- 6B and from WCCA. She had actually -- Mr. Clark is standing up.

CHAIRMAN HOOD: I thought Mr. Clark was ready to leave. Come back to the table, Mr. Clark.

MS. SCHELLIN: So we had a request from those two. Ms. Kayla had signed up to be here this evening but something came up and she could not be here so she did call and ask if the record could be left open for her testimony. Then, of course, ANC-6B submitted
a letter requesting it be left open for them because they were meeting, I believe, this evening.

CHAIRMAN HOOD: Okay. Good. So we'll leave it open for those two organizations.

Mr. Clark, did you want to add something?

MR. CLARK: My question was only if OP is going to be submitting something in response to what we've all been talking about tonight, should the record be open to comment on what they submit? That's my question.

CHAIRMAN HOOD: Well, you know what? I think at some point we're going to have to cut it off. We're doing that because we want them to look at what you all submitted to us. I think at some point we need to move forward.

There is another time, I think, Mr. Clark for you all because here's the thing. We do that and you're probably going to come
back with something else. I'll open it up to my colleagues and see what they think.

Then we are going to go back to them and then we'll probably be doing this back and forth. I will tell you honestly, and I'm sure my colleagues agree, what I heard tonight from the panels who spoke there were some very thought-out questions. It was very well done.

I just wanted them to respond so we can make sure we have all of the information because I'm sure some of you all have already probably talked to Mr. Parker at some point with this. I think the way I perceive this we are going to go back and forth.

Again, I want to make sure the folks like you all who have put all this time in and has vetted time to be able to get your points across make sure they respond because they've probably already responded once but we didn't know that.

I'm not sure or not but if they
haven't, it has some well thought-out material that was given to us tonight and I've asked them just to give us a sound byte respond to that so I don't know.

Colleagues, let's open it back up.

Do you think we need to have responses to what we asked for?

COMMISSIONER TURNBULL: I think you had touched upon it. It's really the Zoning Commission's purview to look at all of that from the comments and make sure that they've been addressed and for us then to review it and then to weigh in on it at this point, I think. At this point. Not to say in the future there's not going to be another follow-up where the public can come back and weigh in on it.

CHAIRMAN HOOD: I'm sure there will be another one. I'm positive.

COMMISSIONER TURNBULL: But I think for just now it's just the Zoning Commission getting the feedback from OP with their
CHAIRMAN HOOD: Okay.

COMMISSIONER TURNBULL: And then us going forward.

CHAIRMAN HOOD: Right. Mr. Clark, as you heard from Mr. Parker, this is a very open process. It can stop anytime in its tracks and open back up again.

MR. CLARK: Thank you, Mr. Chairman. I just wanted to make sure with that discussion because I wasn't sure quite frankly.

MS. SCHELLIN: Actually, Mr. Clark, because once they take proposed action it will be published for a 30-day comment period so when it gets published in the Register just like any other rulemaking so you will have another bite at it at that time, yes.

CHAIRMAN HOOD: Another bite at the pear.

MS. SCHELLIN: Yes. So going over our schedules sticking with what Mr. Parker
suggested for OP, we'll leave the record open for WCCA and ANC-6B until September 27th and then OP would have until October 4th. That would give them two weeks. Then on October 18th would be our next meeting we would put on the agenda.

MR. PARKER: Can we move it one more meeting?

MS. SCHELLIN: You want to make it November?

MR. PARKER: Is that possible?

MS. SCHELLIN: Sure.

MR. PARKER: First meeting of November?

MS. SCHELLIN: Uh-huh. We'll move it to November 8th for proposed action.

MR. PARKER: In light of that, you said leaving it open for WCCA and 6B until September 27th. Do you mind if we have two weeks after that so that we can respond to any issues?

MS. SCHELLIN: To their comments
also? Okay. So then that would adjust it to October 12th since the 11th is a holiday. September 27th for WCCA and ANC-6B, October 12th for OP, and we'll bring it back on the agenda November 8th for proposed. Got it?

MR. PARKER: Got it.

MS. SCHELLIN: Okay.

CHAIRMAN HOOD: We're all on the same page. Again, I want to thank everyone for their participation tonight. We greatly appreciate your comments, your research, and also your enthusiasm about what we are doing here in the District of Columbia. With that this hearing is adjourned.

(Whereupon, at 8:37 p.m. the hearing was adjourned.)