GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA  

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ZONING COMMISSION  

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PUBLIC HEARING  

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IN THE MATTER OF:             :  

Comprehensive Zoning          :  

Regulations Review:           : Case No.  

Administration, Enforcement   :  08-06-15  

and Procedures                :  

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Thursday,  
February 17, 2011  

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

The Public Hearing of Case No. 08- 
06-15 by the District of Columbia Zoning  
Commission convened at 6:30 p.m. in the Office  
of Zoning Hearing Room at 441 4th Street,  
N.W., Washington, D.C., Anthony J. Hood,  
Chairman, presiding.  

ZONING COMMISSION MEMBERS PRESENT:  

ANTHONY J. HOOD            Chairman  
KONRAD SCHLATER            Vice Chairman  
GREG M. SELFRIDGE           Commissioner  

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FAIA
PETER G. MAY Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM Director
SHARON S. SCHELLIN Secretary
DONNA HANousek Zoning Specialist
ESTHER BUSHMAN General Counsel
SARA BARDIN

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER
MATT JESICK

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- Anthony Hood, Chairman
CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is the Public Hearing of the Zoning Commission for the District of Columbia for February 17, 2011.

My name is Anthony Hood. Joining me are Vice Chairman Schlater, Commissioner Selfridge, Commissioner May, and Commissioner Turnbull.

We are also joined by the Office of Zoning staff, Director Weinbaum, Ms. Sharon Schellin, Ms. Esther Bushman, Ms. Sara Bardin.

Also, this proceeding is being recorded by a court reporter. It is also webcast live. Also, we are joined -- Let me back up. We are joined by the Office of Planning, Mr. Travis Parker and Mr. Jesick.

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. 08-06-15. This is a request by the Office of Planning for the Commission to review and comment on proposed concepts for text amendments to the Zoning Regulations.

This is one in a series of hearings on various subjects currently under review as part of a broader review of the Zoning Regulations. Tonight's hearing will consider general administration and enforcement of the Zoning Regulations, as well as Zoning Commission and Board of Zoning Adjustment procedures.

Notice of today's hearing was published in the D.C. Register on December 31, 2010, and copies of that announcement are available to my left on the wall near the door.

This hearing will be conducted in accordance with revisions of 11 DCMR 30-21 as follows: Preliminary matters; presentation by the Office of Zoning; presentation by the
Office of Planning; reports of other
government agencies; report of the ANC, which
is all 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. The commission
reserves the right to change the time limits
for presentations, if necessary, and notes
that no time shall be ceded.

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. When you are finished
speaking, please turn your microphone off, so
that your microphone is no longer picking up
sound of background noise.

The decision of the Commission in
this case must be based exclusively on the public record. The staff will be available throughout the hearing to discuss procedural questions.

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

At this time, the Commission will consider any preliminary matters. Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: I think we have a joint presentation. What I would like to do – and we can talk about the process, because we have a number of items, and I know that we have at least two people who, I believe, will be testifying. I would ask them at this point to come to the table.

What I want to do is -- I think what we will do is take -- and I am not sure who is going to lead off. Okay, Director Weinbaum is going to lead off. What I would
like to do is for us first -- and I will wait and give them a chance to be seated.

What I would like to do first is for us, after we go through the first one, we will ask our questions, and if either Ms. Kahlow or Ms. Gates have an issue on that particular one, we will go to them. I think that will be more of a better exchange.

MR. WEINBAUM: Will it be for each question, sir -- each recommendation, rather?

CHAIRMAN HOOD: Each recommendation. Let me ask you all, is that okay with you, if we move in that fashion?

MS. KAHLOW: It is all right with me. My testimony covers both within the OP and a whole separate section on what is left out. So I will still need to testify on what is left out that we thought should be added additionally. Is that okay?

CHAIRMAN HOOD: Well, why don't we do this. Since you are the only two, we will just go ahead, and we will go through it and
ask ours, since you already have prepared testimony. That way, we can get the fullness of your testimony at one time, but we won't break up your testimony. So you can still sit there, but we will wait until we finish, and then we will come to you.

MS. KAHLOW: That is fine. I am willing to entertain, though, when you go one by one. That would be wonderful, but then if I could also add the other things, because what I do is I go one by one, one, two, three, four, so and so, and then I have a whole 'nother section on what is missing.

CHAIRMAN HOOD: Vice Chairman, did you want to add something?

VICE CHAIRMAN SCHLATER: I think maybe the best way to go ahead with it is maybe to have them give their testimony first. That way, we understand maybe some of the issues beforehand, and that can inform our questions.

CHAIRMAN HOOD: So we want to hear
from them before we hear from the Director of Office of Planning? Is that what we want to do? Somebody said no.

COMMISSIONER MAY: No.

VICE CHAIRMAN SCHLATER: I think Ms. Gates was going to --

CHAIRMAN HOOD: Ms. Gates?

MS. GATES: If we are going to present testimony -- and I also have an opening statement that has, really, nothing to do with this particular case -- I think it would be best if we just go with the normal.

CHAIRMAN HOOD: Okay, let's do that. I wandered off of that. I got it. So okay.

MS. KAHLOW: So should we go back then to the --

CHAIRMAN HOOD: Oh, you can sit at the table. You can turn your mikes off so we won't overhear any comments that you might want to make.

Director, are you going to start
off?

MR. WEINBAUM: Yes, I will. thank you very much, Chairman Hood, and good evening, Commissioners.

I am going to take you through a series of recommendations, but before I start, I will just say this was the only series of working groups that the Office of Zoning had an official role in participating in. So along with the Office of Planning, we worked together to host the public at, I believe, four different -- three or four different working group meetings -- three.

As well, we went to the Task Force with some recommendations, and met with them. So we have been looking at this for a while. Before we even began this process and going out to the public, I conducted a number of internal working group meetings.

We broke it up into Zoning Commission and BZA, and met with Office of Zoning staff members last spring in a series
of 10 meetings, actually, on Zoning Commission issues, Chapter 30, and 10 meetings on Chapter 31 with BZA, and really, with the Office of Zoning staff bringing a tremendous amount of expertise with respect to these rules, they are the ones who are sitting here pouring through them every day. So I really wanted to hear from everybody on the team to find out what they think works and where we can make improvements.

So we did that, and I think it will inform us as we go through, not only with these recommendations but when we eventually bring you text. There were a lot of items that are smaller that don't rise to the level of actual recommendations, but things that maybe weren't written in the way that are so helpful as they can be. So when we get to that point in the process, you will see that.

For this evening, it boils down from the Office of Zoning to about seven main recommendations. Our first recommendation --
COMMISSIONER MAY: Could I interrupt for just a second? I thought that in previous hearings on zoning and the zoning rewrite that we had asked that we get a PowerPoint at the start of the presentation, a version of this. Am I incorrect on that?

MR. WEINBAUM: Sure. This has been -- Travis. This is the first one I have participated like this.

MR. PARKER: You are not, and we did not do so tonight.

COMMISSIONER MAY: Do you have paper copies of it that the staff could make copies of? It would just be very helpful, because there is so much good stuff in these presentations.

MR. WEINBAUM: Okay, Sara, do you want to get one, and Donna will make the copies.

MR. PARKER: I apologize, because this was a joint presentation, and we hadn't--

COMMISSIONER MAY: Understand.
Thanks.

CHAIRMAN HOOD: So what we will do, so we will get the full effect out in front of us, we will wait about five minutes. It won't take long. You all have good copies in the office. Right?

MR. WEINBAUM: Yes. Sara is going to run, and we will get copies.

MR. PARKER: My apologies.

CHAIRMAN HOOD: You are doing all right. Thank you. We will just wait about five minutes.

(Whereupon, the foregoing matter went off the record at 6:39 p.m. and went back on the record at 6:48 p.m.)

CHAIRMAN HOOD: Okay. I think we can go back on the record, and we can go ahead and get started. Director, you may continue.

MR. WEINBAUM: Thank you very much. Again, good evening, and I will get right to the first of the recommendations, which is with respect to the Chairperson of
the Board and the Zoning Commission.

As a common practice, the Chairperson of each of these bodies has been a District resident, Mayoral appointee, but in the official code, what it says is that the Chairman of the Zoning Commission shall be selected by the members, and that the Board of Adjustment, meaning the Board of Zoning Adjustment, shall choose its chairman and its other officers.

So our first recommendation is that we create a requirement that the Chairperson of the Zoning Commission and the BZA be one of the three District resident Mayoral appointees of each body.

The rationale here is that we received a lot of feedback in the working group meetings indicating that there is a perception with respect to the bodies of two much Federal involvement or Federal control in zoning processes in the District, and individuals felt that it would be simply
codifying a common practice to put this into the regulations.

As well, if we were to do this, the Vice Chair could still be a Federal representative and, of course, the provision could always be waived if we were to ensure that, much like the regulations now, which allow any section to be waived, that we ensure that this section could be waived. So that is the first recommendation based on our work with the working group.

Do you want me to keep going or do you guys want to comment at this point?

CHAIRMAN HOOD: Let's comment. I would like to comment after each one. Let me start off. I think we want to make sure going forward that we put the correct information out there, not in this case of what you have on the handout, but I am looking at Office of Planning's report.

I don't know. I guess it is a tag team effort here. In the report in one of
your paragraphs -- I think it is the third paragraph under discussion -- change is particularly important, because the Chairperson of each body is responsible to testify before the District's City Council pertaining to the performance and budget of the Office of Zoning, and participate in hiring and oversight of the Director of the Office of Zoning and, by extension, the Office of Zoning staff.

If you read that, it implies that the Board of Zoning Adjustment Chairperson has something to do with the hiring of the Office of Zoning Director, while someone who is hired to, I wish they would have. I will tell you, they have nothing to do with it. It is three Mayoral appointments of the Zoning Commission.

Also, when we put information they testify in front of the City Council, the Chairperson, yes, the Chairperson possibly may testify, but the Vice Chairperson also may testify, because in the past there has been
instances where the Chairperson of this Commission was not able to testify, and I was the Vice, and I had to go down and testify, which means the Vice at sometime possibly may be a Federal employee.

Now while I agree with the recommendation we have there, Mr. Director, the issue is what we say here in this report. That is what people will go back and look and read, and then we will be more mixed up than what we were now.

So I just would like to see this either stricken from the record, because the Chairperson of the BZA has nothing to do with the hiring, while I might wish they did have, but they did not have -- or they will not have anything, at least under the charter.

MR. WEINBAUM: I think that was just an error. We will get that fixed.

CHAIRMAN HOOD: Okay. Any other questions, Commissioners? Comments? Okay, thank you.
MR. WEINBAUM: Recommendation

Number 2 is with respect to proponents and opponents in Zoning Commission and BZA cases. The issue here is that individuals often discuss both positive and negative aspects of an application or a petition when testifying before the Commission or the Board. Yet they are forced under our current regulations to come out either in favor or in opposition to an application or a petition when they fill out their witness card.

So our recommendation this evening would be to remove the requirement that individuals wishing to testify in a Zoning Commission or BZA case identify whether they are in support of or in opposition to a case.

The rationale here is that there really isn't a rationale for why individuals have to take a side in cases. If we were to eliminate this need, individuals would really be able to provide any type of comment, including clarifying statements.
Parties would present their cases, and then all public witnesses would be called to testify, much as how, if you go before the Council, they just call public witnesses, and it is not that you have to come down in favor or opposed to legislation or anything like that.

Here, from what we heard from the public, they sometimes get very worried or concerned: Well, we are really not opposed to all this, but we are forced to say we are in opposition, because there is one aspect we don't like, or we are forced to say we support it when we really have a few reservations.

So to just get them up in panels in the order that they sign up in seems to be -- you know, you guys could -- Our opinion is you guys could ferret out, okay, well, they are in opposition or they are in support. It is not necessary to be tagged as one or the other.

CHAIRMAN HOOD: Commissioner May.
COMMISSIONER MAY: What you are saying seems to be contrary to what I thought I read in the report, which was that -- Let's see. Hold on a second. Oh, parties in support and parties in opposition and then all public witnesses.

MR. WEINBAUM: Yes.

COMMISSIONER MAY: Oh, okay. When I first read that, I thought it was all witnesses in support and all witnesses in opposition.

I honestly think there is some utility in having the people who are in favor and against a particular project testify as a group, for a couple of reasons. One is that we are dealing with so much information. It is helpful to have it grouped like that and hear all of the arguments for at one time and then hear all of the arguments against afterward.

Now I understand the problem of people who don't know where they are, but they
have something to say, and I could see having
those people testify at the end so that they
are not forced to identify themselves one way
or the other.

The other reason I think it is
good sometimes to have people who are on one
side or another of a case testify at the same
time is that there is a certain synergy from
dealing with a panel of all supporters or all
opposed, particularly since we now have this
lovely new array of tables and microphones,
and we can get a whole bunch of people up
there at the same time.

I think we get something out of
that, because we can ask a question of one of
the folks, and somebody else might have
something to add, and we often accept that
testimony. So I think there is a reason to do
that. That is my two cents on that one.

CHAIRMAN HOOD: Any other
comments?

MR. WEINBAUM: Can I respond? I
don't want to cut anybody off.

CHAIRMAN HOOD: Okay, go ahead.

MR. WEINBAUM: One thing we did consider, and it is a great comment, Commissioner May, is we did consider when we talked about it really doing three groupings, those in support, those in opposition, and those who wish to make general comments.

If the Commission is more comfortable with that, we can certainly break it down into three categories. It seems to me -- My strong recommendation would be that we not keep it simply support/opposition and that is it, because that is really what makes people feel uncomfortable, from what we are hearing.

If you weren't comfortable having them all just in whatever they sign up, my recommendation would be that we do support, opposition, and then give some area for people who just have general comments to provide those. I will throw it to you, but that would
be my recommendation then.

COMMISSIONER MAY: I would just think that the way we could handle this is have both options available for us when we take any action on this.

MR. WEINBAUM: That is totally fine. Yes.

COMMISSIONER MAY: And if you all want to make a recommendation for one of those options, that is fine, too.

MR. WEINBAUM: Okay.

CHAIRMAN HOOD: Any other comments?

COMMISSIONER TURNBULL: Yes. I guess I would agree that someone need not declare what position they are on, but if they wanted to, they could.

CHAIRMAN HOOD: Okay.

Commissioner Selfridge.

COMMISSIONER SELF RIDGE: I would just agree with Commissioner May in terms of having that third option seems to be the best
way to do it. You have seen people come up here, and they are, as you say, very uncomfortable. They just want to make the comments. But his point about kind of a synergy in terms of the way the information is presented is very helpful.

I don't know if we want to discuss it or if we need to have options. It makes sense to me.

CHAIRMAN HOOD: Let me also associate myself with Commissioner May's comments. The way I look at it, if it is not broken, don't fix it. But I have dealt with those who had reservations, and I think this Commissioner has handled it well, but I think having that third column -- I didn't buy what I had here in front of me, but having that third issue of opposition but reservations or support with reservations -- having that third key there, I think, might be very helpful.

MR. WEINBAUM: Okay. Do you still want both or it seems like there is agreement
that doing three would be the way to go, but I am just curious.

CHAIRMAN HOOD: We probably want both, because as we think about it, it may change between then. Just give us -- Let's keep going.

COMMISSIONER MAY: Yes. We are talking about it now. Let's do the decision making when we have to.

CHAIRMAN HOOD: We are thinking out loud right now. As we read it again, we will be thinking to ourselves.

MR. WEINBAUM: No problem.

CHAIRMAN HOOD: And it is dangerous when we think out loud. Okay.

COMMISSIONER MAY: Thus we have public witnesses who have something to say on this topic. We want to have the benefit of that before we make any decisions.

MR. WEINBAUM: Okay.

Recommendation 3 is regarding language. Basically, right now while the Zoning
Commission can hear all cases that the BZA can hear and provide any type of relief the BZA can, it is not stated anywhere in Chapters 30 or 31 as they currently stand.

So our recommendation would be that we clarify that the Zoning Commission can determine at its sole discretion to hear any case the BZA can hear. This can't be sought or requested by any party or individual, however.

The rationale here is that we think there should be some more clarity for applicants, and we talked about this in the working group, that cases properly before the BZA but perhaps more appropriately before the Zoning Commission can, in fact, be heard by the Zoning Commission.

An example I will give is a project where an applicant might be seeking a variance and a map amendment. It may be more appropriate for the Zoning commission to hear all of that as one case rather than the
applicant filing their variance before the BZA and then their map amendment before the Zoning Commission.

So even if we were to just put in the regulation something that the Zoning Commission has this power, and it is not something, again, that can be sought or requested, it would probably work out more either as an administrative matter through the Office of Zoning, in fact, or perhaps, if there was a Zoning Commissioner who was on the BZA and maybe saw it or what-not.

It is a little different than sua sponte. It is more about kind of processing it and which body it goes before.

COMMISSIONER TURNBULL: Well, how would that get determined? I mean, normally when the schedules come out, somebody has either gone before -- they are either choosing BZA or the Zoning commission. How would this body -- Would we be looking at a BZA schedule or how would that be determined?
MR. WEINBAUM: I think, because oftentimes we are the one who gets the call in the office where somebody has both or they are going to both, there is a communication; because Rick, who is the one who schedules and sees all the BZA cases, is Sharon's supervisor. So Rick and Sharon are often in concert in terms of all the cases that are coming forward.

So when we are dealing with potential applicants, we will see these cases and that they might want to go before both bodies, will be unsure how to do it, and it would then be that we would make a recommendation: Hey, you can file this before the Zoning Commission; they could handle both, and if you guys are comfortable with that.

Again, it is your sole discretion to be comfortable with it, if it is filed like that. You may decide you don't want to hear that part of it. That is, again, your call. It is more just clarifying that you have that
power, which you do have. It just doesn't say it anywhere in the 30 or 31.

COMMISSIONER TURNBULL: Does that happen in Executive Session or is this out in the public forum then?

MS. SCHELLIN: Director Weinbaum, if I may remind the Commission, recently there is a map amendment case that you guys set down and, if you recall, they asked permission or asked you guys to also hear and allow them to file -- I can't remember if it was a special exception or a variance to go along with that map amendment, and that you guys hear it along with the map amendment. It is just recently. I don't think the hearing has actually come up yet. So I don't want to go into any details about it. So it would be that kind of situation.

MR. WEINBAUM: If I could just add, I think that it was something where they were unsure, and we advised them, you know, it is possible; the Zoning Commission has the
authority all these matters. But if it was in Chapter 30 or 31, if it was in the regulations, they would perhaps know that, but they didn't know of that power that you had. So it is really getting it in the regs that you have that power, because it is not.

CHAIRMAN HOOD: Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: What about the situation where the process has already started in front of the BZA, and a member of the Zoning Commission thinks it would be more appropriate for it to be heard in front of the Zoning Commission? Are you saying mid-process, we could pull a case from BZA and hear it in front of the Zoning Commission?

MR. WEINBAUM: I think that is sua sponte. I think, once a case has gone --

VICE CHAIRMAN SCHLATER: No. Sua sponte, my understanding, it doesn't happen until --
MR. WEINBAUM: No, you are right.

VICE CHAIRMAN SCHLATER: -- after the order has been issued. But I think it could be more timely and effective to jump in the process midway, something to consider.

CHAIRMAN HOOD: Let me just, somewhere in this report, in the Office of Planning's report, it mentioned about clarifying -- I don't know if this would be the recommendation, but clarifying the sua sponte, because we had a request from an outside person about sua sponte, and we want to make sure that we clarify that.

Is this the recommendation? I read it somewhere.

MR. WEINBAUM: No.

CHAIRMAN HOOD: Okay. Well, we haven't got there. There that is fine. So we are coming to that point, because I agree with it. I just wanted to know where it was. It was somewhere, but anyway --

MR. WEINBAUM: Yes. It is
somewhere.

VICE CHAIRMAN SCHLATER: So is that the intention, I guess, is the question? Can we pull a case that is already in the middle of the process?

MR. WEINBAUM: That wasn't the intention.

VICE CHAIRMAN SCHLATER: Because the way it reads, you could infer that from reading this recommendation.

MR. WEINBAUM: You could, because it doesn't say that it -- The recommendation doesn't specifically say this is before a case is filed.

VICE CHAIRMAN SCHLATER: And I don't understand. It also says the Zoning Commission can determine at its sole discretion, but we don't even know anything about the case. So how would it be at our discretion to determine whether it is coming to us or BZA?

MR. WEINBAUM: Executive Session?
MS. SCHELLIN: Yes, and I think it is more, Commissioner Schlater, if you think about like the CG Overlay cases, you know, they can also file. It is like it is stuff that you are already doing, but actually putting it in the regulations, like the CG Overlay, the Southeast Federal Center, and Travis may help me out here, if I am incorrect.

In those cases, they can also ask for special exceptions and variances, which typically go before the BZA, but Southeast Overlay reviews and the CG Overlay reviews come to the Zoning Commission.

So rather than coming to you for those reviews, the design reviews, and then having to go to the BZA for the variance and special exceptions, you guys hear all of it at the same time.

So it is just basically memorializing what you are already doing, I think, is the intent of this. It is not
taking anything from the BZA that they are doing. It is just basically memorializing in writing what you are already doing, because it doesn't state it.

MR. WEINBAUM: The power you have.

MS. SCHELLIN: If I am incorrect, Travis?

MR. PARKER: No, you are correct. Maybe the language of this recommendation should say the Office of Zoning may at its discretion send cases, and the Zoning Commission can always send it back to the BZA, but say the Office of Zoning can send cases to the BZA hen they feel it appropriate.

COMMISSIONER MAY: Yes. I think this is a -- I hate slippery slope arguments, but this is a slippery slope, because it is understandable when it is part of some other process, when it is part of a map amendment or a CG Overlay or whatever, that you would want to take care of everything at the same time. It makes sense. It is efficient. We are
doing things. You know, we are not making the applicant go through a lot of extra hoops.

The idea that this would somehow open the door potentially to certain cases, certain BZA type cases, coming to the Zoning Commission because the Zoning Commission wants to assert its authority over a particular case, because -- for whatever reason it may be, and I can imagine a whole lot that I don't need to say on the record -- I am not sure that this is something that really has to be -- Well, it certainly does not have to be memorialized, because it is already in the regulations to allow it, and to memorialize it is to encourage people to urge us to take these things on in one form or another.

I don't think we want to do that.

I am getting ahead of myself, because we are not at a decision making. I just think this is -- You have to think about all of the potential bad that could come from this, if it is codified, and think carefully about that.
when you make a recommendation to us.

MS. SCHELLIN: But I think that what you just said is correct. It is only if it is part of a case that the Zoning Commission already has the authority over. It is not like --

COMMISSIONER MAY: Is that what you are proposing be codified, because that is not what I read.

MR. WEINBAUM: That is actually: not what we are saying with this recommendation. That is not to say we couldn't, but it is a power you have already.

COMMISSIONER MAY: Right.

MR. WEINBAUM: So the question is -- What we saw and what we heard from the working group is people don't know that it is possible that you guys could hear a variance when they have, let's say, a map amendment, that you have that power.

COMMISSIONER MAY: Right. But a map amendment is going to go through the
Office of Planning, and the Office of Planning
is aware of that, and they can suggest that it
is the most efficient thing to do, and that is
the way we have seen them in the past.

The one most recently decided that
comes to mind was the Francis Gregory Library
where we did a map amendment and certain
variance or special exception relief.

Anyway, I am just suggesting that
maybe we are trying to fix a problem that
doesn't really exist or it is not really that
bad a problem.

MR. WEINBAUM;  I don't think it is
a huge problem, to be frank. I think what we
heard form the community is it would be good
if the regulations said it, because some
people are in the know, and other people
aren't in the know that this exists.

You know, you guys get calls in
your office where you say, actually, it is
possible for the Zoning Commission to hear
this whole thing. Oh, well, we didn't know
that; where does it say that -- things like
that.

COMMISSIONER MAY: I am afraid of
those. What some people might make of this is
that, oh, this means that I can appeal
directly to the Zoning Commission in some
form, or someone can make that appeal on my
behalf. So it becomes a lobbying effort to
get us to hear a case instead of the BZA on
any BZA type case. So anyway, I have said
enough.

CHAIRMAN HOOD: Let me ask. I am
hearing on these recommendations "what we
heard from the community." Was it the work
group and the Task Force or was it the work
group, the Task Force and the community?

MR. WEINBAUM: I think that it
depends on the recommendation. I don't think
we can say this was a recommendation the
community said. I think it was a cumulative
effort. We talked among our internal working
group and then we vetted ideas before the
working group that we held among the public, and kind of comprised this. It was a joint effort to put these together.

CHAIRMAN HOOD: So it in front of the Task Force?

MR. WEINBAUM: Yes.

CHAIRMAN HOOD: Was there more than one person there?

MR. WEINBAUM: At the Task Force? We had about four.

CHAIRMAN HOOD: So I have a problem with that already. Okay. Already I have a problem with that. Thank you.

COMMISSIONER TURNBULL: Would this also -- You said any case. That would be appeals?

MR. WEINBAUM: Right now, I believe the Zoning Commission has the power to hear any case the BZA can hear. I believe that is appeals. We can get clarification on that. Yes, we can get clarification on that.

MR. PARKER: I think that is the
issue here. It is not -- I understand what you are saying, Commissioner May, that we run a risk by informing people that this right exists. But I think it is a basic equity issue, that if that is the actual procedure, it needs to be written down somewhere, or if that is the actual regulation.

COMMISSIONER MAY: And I agree with you, if our intention was to open the door for us to start hearing appeal cases or other BZA cases. I mean, if that is what we are trying to do, that is one thing, but if what we are trying to do is make it more efficient for an applicant who has a map amendment and a variance or a special exception case, I am just suggesting there might be other ways to make that clear to people that are just more efficient and doesn't open the door for potential abuse.

Sorry. I spend a lot of time worrying about potential bad outcomes on things.
MR. WEINBAUM: Okay. Our next recommendation is with respect to ANC's setdown form. This was an issue that we got a lot of feedback on. Right now, only the Office of Planning may submit a report to the Zoning Commission to be considered at setdown. ANCs cannot weigh in, independent of going through the Office of Planning.

So our recommendation here would be that we allow affected ANCs to submit an ANC setdown form prior to the Zoning Commission setdown meeting in contested or potentially contested cases in which ANCs could provide comments on particular items related to the proposed project.

The why here is that we found, and we talked again at the working group, about this, and there were lots of comments on this one. ANCs and community groups who felt that they have useful information to convey that can be of value to the Commissioners in deciding whether to set down a case, whether a
case should be set down as contested or as a rulemaking, and whether there are items the Commissioners should ask to be addressed at the hearing or by the time of the hearing.

With this one, we heard from members of the public, and I am sure you will hear tonight from members of the public, and they feel that it is not even just ANCs, that community groups as well should be allowed to file something for the Commission to consider at setdown.

The Office of Zoning, in discussing it -- Our view was that this was a middle ground. The ANCs are the representatives of the public, and allowing for a limited opportunity for the ANCs to weigh in at this stage would be helpful to the Commissioners, rather than doing -- There wouldn't be any oral testimony. It would be a form that the Office of Zoning would create, and that form would say, you know, we probably have the three -- we haven't created the form,
but it would probably say, you know, the issues about whether it should be contested or rulemaking, whether there are items the Commissioners should ask to be addressed by the time of the hearing, and whether there is a consistency with the Comprehensive Plan, those sort of basic things that setdown is officially for. The ANCs would get to complete that form.

Here, there were concerns which the Office of Planning actually put into the report about timing and about what this would look like. One of the Office of Planning concerns was map amendments, and specifically whether they should be included. They felt that PUDs would work, and PUDs with related map amendments would work, but because map amendments may be contested and they may be rulemaking cases, it would become difficult. If it was a rulemaking or if you had a number of affected ANCs, you might get a number of letters.
personally, I don't think that it is overly burdensome if the Commissioners were to receive a number of letters or forms, rather, because again it is not a whole report. You are not listening to testimony. It would just be something else in your package that you would have more information to review.

Then there is also raised a side issue, which is that, if you are going to allow for ANCs to weigh in at setdown, there needs to be sufficient time between when the application is filed and when setdown occurs for the ANC to actually meet.

So a byproduct of this would be that there would not be any setdown before 35 days had passed since an application is filed, and that would provide sufficient time for the ANCs to meet to discuss whether or not they wanted to submit an ANC setdown form in the matter.

There, it brings up the question
of, well, does that really slow up the process? We did a study internally, which Sharon ran for us, looking at how much time has elapsed in the process. We did three years, I think -- three years -- between when an application is filed and when setdown occurs, and there were instances, certainly, where it was less than 35 days.

I don't remember if we had the direct percentage. It was like 25 percent. It was like low. In maybe 20 percent of the cases, it is less than 35 days, and there may be a time where there is an urgency for that.

So what we thought is that what might work is if an applicant can get the Office of Planning and the affected ANC to sign off that they were okay with a waiver of the 35 day waiting period, they put that in with their application. Then Sharon would go ahead and schedule it sooner.

So if you already know you have that support and everyone wants to go forward,
and you are not waiting, you could still have it. But if not, it is an opportunity for the ANC.

We felt this was really a window to give the ANCs a little more of a voice at that stage, but again not a door, not saying everybody put in a form if they want, not saying even the community groups. I know that has been a dispute in the community groups. We will speak about that, but that is our recommendation, if that makes sense. I will answer any questions.

CHAIRMAN HOOD: Any questions?

COMMISSIONER MAY: Could you structure the form in such a way that -- and the regulation in such a way that it cannot be set down until the form has been received, because sometimes it is not going to take 35 days, and if the form is received sooner, particularly if there is a checkbox on the form saying, you know, no objection, and the applicant can work with the ANC, get it heard.
timely, get the checkbox done, get the form submitted, and then you are good to go, you know, just as a way of shortening the process.

MR. WEINBAUM: Yes, I think that is possible if it comes in. It is just a question of us getting it on the meeting schedule to be set down.

CHAIRMAN HOOD: Let me ask this about the affected ANC. When we say affected ANC, typically it is within the bounds of ANC, and then sometimes there is a project that is right on the corner. I mean right on the same street, right across the street.

So when we say affected, are we going to be clear? Are we going to do it where the project is within the ANC or are we saying affected ANC?

MR. WEINBAUM: We would do it to both. We would send it to both ANC in that instance. That is our common practice now. If there is one on the cusp, we make sure we send it out to both.
CHAIRMAN HOOD: Okay, because the one on the cusp is the one that we have to grant party status when we do party status. They don't just get it automatically. We have to grant it.

MR. WEINBAUM: Right. They request it.

CHAIRMAN HOOD: So all that stuff, I think, still needs to be clear. Well, since you automatically send it -- but who is going to make that decision? It might not be right on the line. It may be two blocks over.

MS. SCHELLEN: If it was in 200 feet or across the street, when we look at them -- It is just like now. When we do our referral letter when a case comes in, we actually look at the map and see what ANC they are in, but then we also look, because of prior instances, across the street and see if there is an ANC across the street or within the boundaries; because sometimes, as you said, there is another ANC that is affected.
CHAIRMAN HOOD: So what happens if it's an ANC that -- We had one case, they were like six or seven blocks away.

MS. SCHELLIN: We are not sending it to them. They are not considered an affected ANC. They could apply for party status. That is a whole different thing. They are not going to be that we are going to send notice to, but it doesn't mean that they couldn't apply for party status, but that is at the hearing stage.

CHAIRMAN HOOD: Realistically, it sounds real easy, but I am just thinking. While I agree with you, but I am just thinking we have to make stuff very clear of that, because we don't want to mislead community folks, and also let them think that we are not -- that we don't want to hear from them, because if I was not informed on zoning and I wasn't here all the time, I would think that I am being excluded, and we need to make sure it is very clear. Thank you. Comments?
COMMISSIONER SELFRIDGE: When I was reading -- Thank you, Mr. Chairman. When I was reading the OP report, the thing that jumped out at me -- and it was addressed by Director Weinbaum -- is just any additional delays. You know, sometimes the wheels of government can move slowly.

When I read this, I was thinking of something like the Office of Administrative Hearings. It can take months, and I would hate to see that this process slowed that down.

So, to what Mr. May said, anything that we can do to maybe streamline this process or allow for a way to shorten any potential delays and not automatically build in the 35 days, I think, would be helpful to applicants going forward and, certainly, I think, would be a beneficial part of the process.

MR. WEINBAUM: Should I go on to the next recommendation?
CHAIRMAN HOOD: Any other comments? Okay, yes.

MR. WEINBAUM: Recommendation number 5: The issue is that for the Zoning Commission an affidavit of posting is required to be filed 30 days prior to the hearing, but no evidence is submitted before the hearing that the applicant is ensured that the posting has been properly maintained.

This is something that came from our internal working group as a staff. There was a concern we had. I don't actually know if somebody on the staff had received calls about this, but basically, we were a little worried; because it seems like, if you put in your affidavit of posting 30 days before, there is no check that does the posting actually stay up.

So we thought a good idea here in our recommendation is that we require applicants in Zoning Commission cases to submit an affidavit of maintenance of posting.
between two and six calendar days before the hearing.

This would basically ensure, like I said, that it remains in place during the time leading up to the hearing, and we would do two to six days, because it would give us an opportunity to obtain the affidavit before the hearing and, if we didn't get it, we would have a chance to contact the applicant if it wasn't timely to ask them to submit a waiver form for you all to consider.

Sometimes when things aren't due until the hearing, it becomes a little trickier because, if they haven't done it, we are not telling them until that night you didn't do it, and if they are trying to waive it, it becomes a little harder.

It is a little easier administratively for us to administer it, if it is due between two and six days before. If you make it due more than six days before, then again you have a longer period of time
where it may come down. So we thought this was a good way to ensure that the posting actually stays up for neighbors to see.

COMMISSIONER TURNBULL: So it is basically a check. They still have to submit the affidavit of posting.

MR. WEINBAUM: Right.

COMMISSIONER TURNBULL: Two to six days before, they got to basically come back and say, hey, it is still there.

MR. WEINBAUM: Yes.

COMMISSIONER TURNBULL: Okay.

CHAIRMAN HOOD: Any other questions?

MR. WEINBAUM: Our next recommendation is: Right now, there is no ethics section in the Zoning Commission or BZA rules discussing disqualification or disciplinary responsibilities of Commissioners and Board members.

This was something that also came up from our internal working group. As a
staff, we looked at certain other boards and commissions in other jurisdictions, and I think it only makes our regulations better if we have a strong ethics section which talks about some of the issues that, of course, all of you adhere to now, but to have that in the regulations strengthens, I think, the reputation of the bodies.

So our recommendation would be that such language become added and, while we haven't drafted it yet, we would look toward conduct for the District of Columbia courts, canons such as that, to provide us with some models and examples.

COMMISSIONER MAY: Is this something that is actually codified somewhere else for boards and commissions? I mean, rather than incorporate it into our regs, is it something that simply can be incorporated by reference?

MR. WEINBAUM: I would have to go back and look again to refresh my memory on
general boards and commissions, but I have seen it also with specific regulations for other boards. So it is not that no other board does this in their regulations.

            COMMISSIONER MAY: I think it just might be worth checking to see if there is something there that already fits the bill.

            CHAIRMAN HOOD: It actually is. It is actually in the -- Boards and Commissions some years ago had a document. Now the issue is I don't know if it applies to everyone. I know it applies to the Mayoral appointees. So that may be the out for Commissioner Turnbull and Commissioner May, but it applies to us.

            Okay, any other questions? Okay.

            MR. WEINBAUM: Our last recommendation for the Office of Zoning is regarding the stay of final decision pending appeal. The issue here is that the Zoning Commission and BZA may choose to stay a final decision pending an appeal, but the
regulations don't actually articulate that.

So we think it would be good to clarify the ability of the Zoning Commission and BZA to stay a final decision pending appeal. Essentially, if there is a power that you all have, we think that it makes sense, certainly here, to spell this out.

In this instance, there is a four-part test that makes up the parameters that each body uses to make a determination, and we could put that in so that individuals and parties would know that.

That test includes whether there is a substantial likelihood of success on appeal, whether the denial of the stay would result in irreparable injury, whether granting a stay would prejudice other parties and the public interest.

That is a test, and I think it is certainly a power you and the Board have, and I think it makes sense to have that in the regulations, and that was something that came
from an attorney in our Task Force meeting.

VICE CHAIRMAN SCHLATER: So the Zoning commission is going to make a decision, and then immediately after making that decision, it is going to make an evaluation of whether there is a substantial likelihood of a success on appeal?

MR. WEINBAUM: It is a power the Zoning Commission and the Board have. They have stayed decisions in the past.

VICE CHAIRMAN SCHLATER: No, but making -- You are going to make that determination? That is the part I am a little confused about. If you are voting on something, I assume you wouldn't think there is a substantial likelihood of success on appeal. I wouldn't vote for it if I thought there was a substantial likelihood of success on appeal. It doesn't seem to make sense to me.

MR. WEINBAUM: Okay. That is just the legal test they have used that has been
the test for appeals. I didn't create that one.

CHAIRMAN HOOD: Any other comments?

VICE CHAIRMAN SCHLATER: That may well be the legal test, but it might be the test that a higher court uses when evaluating a lower court's decision, as opposed to the same body making that ruling that just made the decision. It just doesn't seem to fit in this context.

CHAIRMAN HOOD: Okay. Anything else? Let's go ahead. You have a recommendation or we can deal with it in deliberation?

VICE CHAIRMAN SCHLATER: I think we can just deliberate.

CHAIRMAN HOOD: Go ahead.

MR. WEINBAUM: So those are our recommendations. I didn't know if you wanted to hear from the public on those or just go on to Office of Planning's.
CHAIRMAN HOOD: Let me ask. What is the pleasure of my colleagues? I could go either way. You know, they have their testimony outlined the way they want it, and we can deal with that accordingly. So why don't we just go ahead to the Office of Planning, if we all agree. Let's go straight to Office of Planning? Okay.

MR. JESICK: Thank you, Mr. Chairman and members of the Commission. The Office of Planning looked at three chapters, Chapters 20 which deals with nonconforming uses and structures; Chapter 25, the miscellaneous zoning chapter; and Chapter 32, which is the administration and enforcement chapter. I will take our recommendations through in that order.

Now to begin, we looked at Chapter 20 and the organization of that chapter, and through our own experience we have found that Chapter 20 has a lot of overlap between use regulations and structure regulations.
Just by looking at the titles of the sections in the chapter, you can see that those two concepts are intermingled: Nonconforming structures devoted to conforming uses, nonconforming uses within structures, changing uses within structures, etcetera.

So we have found that this chapter is somewhat cumbersome, and our recommendation is to clarify the organization of the chapter by separating, to the extent possible, the use regulations from the structure regulations.

We feel that this will meet some of the overall zoning review goals of clarity and ease of use, generally make the chapter more user friendly, and this would also be conforming with direction that has been taken in other areas of the zoning review to separate rules for buildings from rules for uses.

So that is our first recommendation. Any questions?

One particular section we looked
at in Chapter 20 is 2001.3, which is familiar to most of us. This deals with additions to nonconforming structures, and what it says is that additions can be made to that structure, provided (a) the existing structure conforms to lot occupancy, (b) don't expand an existing nonconformity, and (c) don't create a new nonconformity.

Now the second two bullets definitely make sense and are kind of no-brainers. The first one is where we see some issues when BZA applications come through our office. The reason is the current regulations for lot occupancy were developed as averages over the entire city, and they don't necessarily recognize the variable sizes of the lots in the District, especially due to our numerous angled avenues.

I think the numbers bear that out. Almost a fifth of buildings in residential zones are already over lot occupancy, and when you look at the R-4 through R-5-B zones, about
a third of buildings are already over lot occupancy.

We do want homeowners in the District to be able to make small, reasonable additions to their houses to make them more livable, and for minor additions we would like them to be able to avoid the variance test, if possible.

So we are recommending to delete Section 2001.3(a), which is the section that states that a building must be conforming with lot occupancy at the time of the application.

On the right, you can see an example of what happens with our angled streets where a relatively consistent building footprint exists throughout the square, but there is a high variability of lot occupancy, and those people on the smaller lots, if they want to make minor changes to their homes, would certainly be forced into a variance to 2001.3.

Now it should be noted that any
additions permitted by this change would be within the Matter of Right building envelope unless, of course, additional variance relief is sought, but we feel that this change will give a little more flexibility to the homeowners in the city.

CHAIRMAN HOOD: We might be digesting some of it again. Commissioner Turnbull.

COMMISSIONER TURNBULL: I am assuming this is the principal structure, not accessory structures.

MR. JESICK: That is correct. 2001.3 addresses the principal structure.

CHAIRMAN HOOD: Any other questions? Okay. Thank you.

MR. JESICK: Another section we looked at is 2003, and this is the section which addresses changes between two nonconforming uses. We feel that the intent of this section is fine as it is. However, it is based on the hierarchy of uses between
zones, where one zone builds on another zone. Under the proposed use category system, however, you couldn't say that one zone necessarily consists of more intense uses than the zone below it. So what we would like to do is keep the same intent as the current system, but simply make it work for the use category system.

So there would still be a hearing before the BZA, and the BZA would still use evaluative criteria such as the ones that exist in 2003 today. We feel that this would present an opportunity before the public for the BZA to judge the impacts of any use, to make sure that it is the same or less intense than the preceding use, and of course, it would give an opportunity for the neighborhood to weigh in on whether the new use is appropriate.

CHAIRMAN HOOD: Okay. This has nothing to do with this recommendation, but I need to ask this question. You did a working
group, your working group, and also the Task Force. How many people were in attendance?

MR. JESICK: At the working group meetings, we had anywhere from -- Well, I can't remember the exact numbers. I would say 15 to 20 members of the public.

CHAIRMAN HOOD: That is better than, with all four. Okay.

MR. JESICK: Right. The Task Force did have a lower attendance. I don't remember the exact number. It was the same that Mr. Weinbaum referenced.

CHAIRMAN HOOD: So it was four people there?

MR. JESICK: I think there were actually a few more than that, but --

CHAIRMAN HOOD: Go ahead.

COMMISSIONER TURNBULL: Now you need to do a special exception. Are you still looking to do a special exception?

MR. JESICK: That is correct. It would still be a special exception. The one
section in there references the hierarchical use system, and that is how it makes its judgment on what uses are appropriate. This would be just based on the special exception criteria dealing with noise, traffic, light impacts for the uses.

COMMISSIONER TURNBULL: Okay.

CHAIRMAN HOOD: Any other questions? Okay.

MR. JESICK: Now the working group brought up the idea of grandfathered uses, and these are uses that exist and are considered conforming uses, but would not be allowed as new uses today.

Some common examples are hotels in R-5. If a hotel existed before 1980 in an R-5 zone, it is considered a conforming use, but you couldn't start a new hotel in an R-5 zone today. Same with Pepco facilities in some areas that have been rezoned from industrial to some other zone. Another example is in the CG overlay, industrial uses are considered
conforming, but they are not permitted as new uses today, and if it ceased operation, it would not be able to resume.

So our recommendation is to create a new section to address these types of uses to formalize the rules that are now just scattered throughout the regulations, and we are calling these nonexpandable conforming uses.

The reason this is necessary is because these uses -- they need conforming status to get insurance and financing, if they want to make improvements to their property. It is important to note that they are different than nonconforming uses, because if a nonconforming use is destroyed by an act of God, it cannot rebuild. However, these uses could rebuild, if destroyed. But again, in all cases, the nonexpandable conforming uses, as the name suggests, cannot expand in size.

Any questions?

COMMISSIONER SELFridge: Just by
way of example, this addresses that issue we discussed previously as well about the corner stores in the R-4 zones. They burn down; they can build them back up. So it would help preserve some of those types of businesses?

MR. JESICK: Well, that would actually be a nonconforming use. So that would be governed by the other rules in Chapter 20 which deal specifically with the nonconforming uses.

This is a slightly different animal that, over time, a few uses have been designated as conforming legally, but you couldn't start a new business in that zone, for whatever reason.

COMMISSIONER SELFRIDGE: So if it is nonconforming and it burns down, it is gone, stays gone?

MR. JESICK: Yes, right.

CHAIRMAN HOOD: Any other questions?

MR. JESICK: So moving on to
Chapter 25, 2507 deals with alley lots. What we have heard anecdotally and seen in applications that come through our office is that tax lots are being created, sold, and then the new owner expects to be able to build something on that lot.

We want to make extra clear in the regulations that a record lot is required to obtain a building permit on an alley lot and, if that lot doesn't meet the dimensional or area requirements for a lot in that zone, that you would need a variance just like any other vacant lot.

A conforming change would also require a slight modification to Section 401, which talks about frontages for record lots, and in this case the lots on the alley would also need that same amount of frontage.

Now we value our alley lots. We think they are a resource. However, they can be problematic, we have heard from various city agencies, for emergency vehicle access,
utility access, etcetera. So we do want to prevent, to the extent possible, the creation of new alley lots.

Again, many tax lots exist without a corresponding record lot underneath, and the example on the screen is something that we do see at various locations in the city. You see two main homes facing the main street, two smaller dwellings facing the alley, all with their own tax lot. When you remove the tax lot layer, however, you see that they are all on a single lot of record.

This, of course, is a historical example, but we do want to prevent this situation from recurring in the future. So that is the purpose of our recommendation. Questions?

VICE CHAIRMAN SCHLATER: Would this in any way restrict people from dividing up their record lot into A&T lots and then selling off the existing alley structures?

MR. JESICK: I don't believe so.
Tax lots can be created by the Office of Tax and Revenue. I don't think the zoning can necessarily prevent that. You know, technically, you do need a record lot to obtain a building permit. So if they want to make any kind of improvements to those structures, they would still need to get a record lot.

VICE CHAIRMAN SCHLATER: You could conceivably still build an alley structure, if it was an accessory unit or something like that?

MR. JESICK: Yes, sure. If your zone allows accessory buildings on your record lot, you could still build an alley structure.

VICE CHAIRMAN SCHLATER: Has ZRR looked into that? I know I had a few cases at BZA looking for variances with respect to alley dwellings, and OP at the time said this is something that we are going to take a fresh look at as part of ZRR. It is something we want to encourage, because it is good for the
vitality of the city.

This seems to be swinging a little bit in a different direction. So I am surprised to see the recommendation.

MR. PARKER: We did look pretty comprehensively at alley lots. This is a minor piece of alley lots, just clarifying this record lot issue. I think what you are talking about is the use of buildings, whether residential can be in them or not.

We started down that path, looking into that as part of this working group, and we met with D.C. Water and Public Works and Fire and a bunch of people, and one thing that we realized is this is going to take a much more significant time investment to determine what the appropriate standards are for either defining city-wide standards or more probably looking block by block where these alleys exist and mapping where there are houses, because some of these alleys are appropriate for homes that have sewer and water, etcetera.
Some are inappropriate, either because of access, because of utilities.

It has turned into a much bigger task than we can accomplish as part of this. So we are still committed to doing that work, but it is probably not going to come forward as part of this process.

VICE CHAIRMAN SCHLATER: I guess I am just confused as to why this needs to be clarified. Is this something the -- Is the Zoning Administrator -- My understanding is you can't -- you have to look to the record lot in order to get a building permit. So is it just practice that this was treated differently?

MR. JESICK: We are not sure how the practice of generating A&T lots and then getting building permits for them -- how that all happened, but it has been happening. We would just like to make it as clear as possible for potential purchasers of those lots that, really, you do need a record lot.
You are absolutely correct. That is the current standard. They do need a record lot. We just want to make it abundantly clear in the regulation.

VICE CHAIRMAN SCHLATER: Okay, thanks.

COMMISSIONER TURNBULL: We are looking not to create any new ones, but on existing ones, looking at the definitions on lot lines, the alley would correspond to a street lot line?

MR. JESICK: That is the corresponding edit that I mentioned to Section 401.

COMMISSIONER TURNBULL: You would change?

MR. JESICK: Right. We would say that they need frontage on the alley. It couldn't be like a pipestem lot, for example.

COMMISSIONER TURNBULL: Right. And then all your other definitions follow. They would be similar to those. I don't think
it affects. It is just the alley has to be in parentheses after street, I guess.

MR. JESICK; Right. It would be a very similar thing.

VICE CHAIRMAN SCHLATER: Just a follow-up question for Mr. Parker. So you say you looked at it, particularly this whole issue of alley lots and allowing residential on alleys. Just avoid the topic altogether, aside from this change, or are there other changes sprinkled through other working groups?

MR. PARKER: I wouldn't say avoid. I have to say punt. Basically, what we found is it is a block by block determination whether residential should be allowed in alley lots. It has really become -- We did spend a lot of time on it, and it is really a complicated issue.

VICE CHAIRMAN SCHLATER: It is not a purely zoning issue? You are saying it is a city service issue?
MR. PARKER: It is a city services issue. It is a fire protection access issue. There is a lot of issues on the table, and it is something that we really feel strongly about getting solved, but it is something that is going to be a major time commitment on top of all the other work we are doing. So it is something that we are looking right now as follow-up to this general work.

VICE CHAIRMAN SCHLATER: Okay. Thank you.

COMMISSIONER TURNBULL: You know, just going back to the recent map amendment we did regarding H Street, we had a couple of situations in which we didn't go along with the recommendation for alley areas. Are those areas -- Talking about things we are going to look at as what could be developed and what couldn't, are those the kinds of things you need to -- Is that the block by block? You get into situations where you could have something. I mean, it is a huge
area back there. What can happen?

MR. PARKER: Yes. That is the sort of thing we are talking about. We originally looked at using alley width as the determining factor of whether something would be allowed. Right now, if you have a 35-foot wide alley, you can do residential use, and we looked at, you know, is 20 feet right, is 15 right.

We found out that that is not the only variable, and so the more work we put into it, the more variables came up. So that was our issue.

CHAIRMAN HOOD: Any other comments? Okay.

MR. JESICK: Moving on to Section 2516, of course, this is the section that allows multiple buildings on a residential record lot, and a suggestion by our working group was to look at modifications to a single family home within a development that had been approved through Section 2516.
Our recommendation is that, when an individual homeowner applies for a small change -- say, the addition of a deck or a small expansion of their house -- that it may be reviewed in an expedited review. This would be similar to, say, a 223 application which today could be reviewed in an expedited manner.

Now the reason for this is that 2516 cases are approved as a unit for the entire development. So they have to be modified in the same way, but we want to make that process as quick and as easy for individual homeowners as possible.

CHAIRMAN HOOD: Okay, any comments, questions? Okay.

MR. JESICK: Another recommendation coming from our working group was to examine institutional uses in the context of 2516, and they actually recommended exempting institutions from that process, the reason being that in the Institutions Working
Group, recommendations coming out of that group said there would be two processes for institutions, either a special exception or a full blown campus plan, depending on the size of your institution, and those processes would look at the same things that a 2516 would, arrangement of buildings, traffic impacts, lot occupancy, open spaces, etcetera. So doubling up on the review, we felt, was unnecessary. Any questions?

CHAIRMAN HOOD: Okay.

MR. JESICK: Next recommendation:

We want to clarify in the regulations that private rights-of-way may not be used in FAR calculations in 2516 developments.

This is really to get at an apples to apples comparison. Of course, public rights-of-way are not counted toward land area for FAR calculation purposes, and if private rights-of-way were to be counted, they would result in effectively higher floor areas for those developments.
Right now, it does say this in the regulations, but it is not very clear. We just want to make sure that any future applicants know right up front that they cannot count their private rights-of-way toward their lot area.

COMMISSIONER MAY: I am glad this is in here. That's all. I want to understand how this works with the next one, though. I am just suggesting that we might want to actually talk about 15 and 16 at the same time.

MR. JESICK: Sure. Well, our next recommendation, just to jump right in, is to prohibit private streets. There are concerns from various District agencies, FEMS, D.C. Water, about the maintenance of infrastructure on private streets.

Of course, we all know about fire hydrants. Now there are some concerns about access for emergency vehicles, even the water and sewer infrastructure under these streets.
There are these concerns out there about how well they are being maintained.

So our recommendation is to prohibit private streets for subdivisions or extended apartment complexes, require that those streets be dedicated to the public, but allow private driveways to a single apartment building or a small cluster of apartment buildings, or as access to a parking area.

We feel that in the long run the public maintenance of utilities will lead to a greater degree of public safety. Now I think Commissioner May is correct that, if we do require public streets, then perhaps our previous recommendation will no longer be needed. We wanted to throw that last recommendation in there, just out of an abundance of caution.

VICE CHAIRMAN SCHLATER: Is it a purely administrative process, accepting a street for dedication, or do you have to go through a City Council legislative process?
MR. PARKER: It is a legislative process, but it is not --

VICE CHAIRMAN SCHLATER: That takes a long time, doesn't it?

MR. PARKER: It can. It can.

VICE CHAIRMAN SCHLATER: And while DDOT may -- and part of that process is building those streets to DDOT standards, which I understand is part of the impetus behind this recommendation, but you also have a fairly -- People who I know who have gone through that process, it is like banging your head up against the wall, frankly, because you have to pay for DDOT inspectors to go out there and watch the construction of the street. You need them to sign off then on the street, to accept the dedication.

I know that it is a huge undertaking, getting a street dedicated in the District. So I would be concerned about adding this.

MR. PARKER: I know they have made
some -- I don't know if they have made improvements in the timing, but I know they have made some -- They have started accepting narrower streets, for example, with narrower street legislation.

VICE CHAIRMAN SCHLATER: They are accepting -- Their ability to accept a narrower street is not the same thing as them accepting narrower streets. It just means they have the authority to do so.

MR. PARKER: Understood.

I think we could -- how to say this? We've got definitions of what the difference between an alley and a private street is. I think we could potentially develop standards for what a private street -- you know, certain minimum standards for what a private street needs to achieve, but to put somebody through a public street opening process seems like a big step.

COMMISSIONER SELFRIDGE: Vice Chairman, I don't have the familiarity with
this. Is there a cost savings to the District if there is private streets done or how does that work?

VICE CHAIRMAN SCHLATER: There is a cost savings to the District in that the District doesn't have to then maintain the streets. The first thing is that there is always the possibility that DDOT is not going to want the street, and they can just say, no, we are not accepting it, and we are not going to go through that process.

So then what happens? If we have outlawed private streets as a zoning matter, then DDOT -- then you are empowering DDOT to basically shape the site plan of one of these projects by saying, no, we actually want a 65-foot right-of-way here. It has got to be to our standards, and it has to be shaped in a certain way, or we just don't want to maintain it. It is going to be public, but you are going to have to maintain it. It seems to open up a low of issues, only because I have
seen it happen in real life before.

So does it add cost to the District? It adds the ongoing maintenance costs, and it adds up-front costs for the developer, because the standards of construction are significantly different as well.

MR. PARKER: If I could reframe the issue, though, right now there is no such thing as a private street. Private streets -- All streets are defined as public streets in the zoning regs. 2516 has a loophole that allows private drives, and the difficult is when private drives, which are 24 foot and not built to DDOT standards, are used for large subdivisions of mainly single family homes.

The problems that we have heard from the public agencies are they don't have control of the land; they don't have access to the underground, the sewer pipes, the water pipes. The fire hydrants are often substandard and can't be maintained as well.
Snow removal: Over time, the pressure from these neighborhoods on the city to -- you know, why isn't my snow being removed? Why aren't my potholes being filled?

In the short term, it is a cost saving for the developer. It is a cost saving for the city. In the long term, it is generally a loss for the city, and that is what we are hearing from all of these city agencies.

VICE CHAIRMAN SCHLATER: In order to go through -- In order to put one of these private drives through your subdivision, you either need to go through a BZA or a Zoning Commission process, which affords the opportunity for DDOT, Fire and EMS, and any other city agencies to provide comments, and we haven't been hearing a lot of those comments recently.

COMMISSIONER TURNBULL: In one version of this, in the hearing notice, it talks about -- It is a little different from
what you have got here, but it talks about, in
limited circumstances where private drives
are permitted in order to ensure safety,
standards should be based on provision of
public utilities and road engineering
standards. But I think you really want to say
D.C. road engineering standards.

I think, instead of being generic,
pin it down so that there is a definite set of
guidelines that they have to follow.

VICE CHAIRMAN SCHLATER: Just
following up on Commissioner Turnbull, I think
I like the idea of creating standards for what
these streets are, and I don't even know if
that is a zoning issue, frankly.

To me, it may be a building code
issue, which is -- I am not sure exactly where
it belongs. It doesn't feel like a zoning
issue, but if you want to build a private
drive that is going to be basically acting
like a public street, then you need to build
it to public street standards.
So I think a lot of these concerns can be addressed short of push these applicants through a street opening dedication process.

COMMISSIONER MAY: I am not convinced that we need to back away from this proposal. Just out of curiosity, we have three images here of site developments. Are those all actually within the District?

MR. JESICK: Yes. Those are all within the District.

COMMISSIONER MAY: The one on the left is kind of understandable, although it is just an awful lot of paving, and then the sort of spaghetti in the middle with cul de sacs.

I think I am a little bit concerned that, by prohibiting private streets for the sake of infrastructure, we are opening the door for sort of civil engineering concerns to overtake good urban design.

So I am not totally convinced of the rationale here. I hope that there is
enough of an urban design component that some
of the things that we do want to have, like
narrower streets and alleys and things like
that that are part of what makes the great
neighborhoods of this city great -- that those
are achieved. But I, frankly, have never been
comfortable with private streets that have
come to us for approval as parts of PUDs. I
can't remember an example where a really good
street was being created.

So I am definitely open to the
idea of prohibiting private streets entirely.
I also think it is a little bit odd that we
have streets that connect to the grid, and
they don't theoretically look any different,
but they are private streets. They are not
public streets. So they are not going to get
the same services, and they are not going to
get plowed or what have you.

I mean, I don't know who we have
to rely on for maintenance in those
circumstances, but I am not sure that that
model of development is what we really want to be encouraging anyway. There is nothing wrong with extending the grid of streets and making them public. In the long run, that is, I think, the best way to get a really good structure for the city.

So I am definitely open to that. I think that there is more to understand about it, because if we are sending -- if we are going to condemn potential development projects to an endless street dedication process, then maybe we need to move slowly in implementing something like this, and maybe there is some intermediate step or what have you while they get the street dedication process smoothed out. But I am definitely open to the idea. I just think a little more information would help us make the decision.

In the meantime, I think we have to keep recommendation 15 going, no matter what.

MR. JESICK: Our final
recommendation in Chapter 25 deals with Zoning Administrator flexibility. Right now, scattered throughout the regulations, are a few different sections that grant the Zoning Administrator flexibility to make minor adjustments to approvals or to the zoning standards themselves. We would like to consolidate those flexibility standards into one location, establish consistency between different types of approvals.

For example, the regulations say that the ZA can make decisions on flexibility from PUD orders, but makes no mention of BZA orders. We would also like to add criteria by which the ZA could determine if that flexibility request is appropriate.

This would, of course, simplify the regulations and make them more logical. If the ZA had the ability to accommodate minor deviations from a BZA order, that would eliminate a lot of trips back to the BZA for public hearings.
Then right now, the only guidance the ZA has in the regulations to determine if flexibility is appropriate is that it has to meet the intent of the regulations. If we can flesh that out a little bit by saying what the intent is -- you know, to provide light and air and privacy, etcetera -- even if there are some basic guidelines there, the Zoning Administrator has said that that would help him make those judgments.

COMMISSIONER TURNBULL: I just have one concern. I mean, I am all for the flexibility, but I just want to be very careful that -- and I know on a Zoning Commission order, there are some very specific aspects, whether it involves what is being proper for community groups and everything else -- that we are very careful that there is -- I mean, he can do minor modifications.

I think we have got to be very clear, because otherwise -- I sat on a BZA case. There was an appeal by a community
group on a ZA interpretation, and I believe he exceeded it, and I was going to sua sponte it, but the situation resolved itself.

So I guess I am just very nervous about how much -- I want him to be able to make the minor mods, but I think, when we do these orders, I think there are some very specific things in thee that, if they are going to be changed or modified, they should come back to the body that put the order together.

So I know you haven't got that language set up, but I would be --

MR. JESICK: Maybe I should clarify. We are not proposing to change what the ZA has the power to change. That is spelled out, you know, two percent of certain parameters, 10 percent of other parameters.

COMMISSIONER TURNBULL: Right.

MR. JESICK: That would all stay the same. We just want to allow it for BZA approvals.
COMMISSIONER TURNBULL: As long as
-- Again, it is for minor mods, however you
define minor modifications.

MR. JESICK: Yes. That is all
spelled out. So we wouldn't touch that.

All right. Moving on to Chapter
32, the administration and enforcement
chapter, our first recommendation here is to
institute a sunset clause for setdowns.

This is important, because
especially in the case of map amendments, once
an area is proposed to be remapped and that
proposal is set down, property owners must
abide by the more strict of the two zones.

In a few cases over the years,
this has gone on for several years. We would
like to provide more certainty to those
property owners that this ambiguous state of
affairs will not continue indefinitely. With
a two-year sunset clause, we feel that would
provide them a little bit more certainty about
what the eventual possibilities for their
property can be.

COMMISSIONER TURNBULL: Let me just ask one thing. I thought that on -- I thought it came up at a BZA hearing that -- and I don't know whether it is written in the order that expires at a certain time or whether -- I thought some BZA orders expired after a year already.

MR. PARKER: We are not talking about the orders here. We are talking about the setdown. So when the Zoning Commission sets down a case and then it doesn't come back to you for hearing, that setdown is right now indefinite.

COMMISSIONER TURNBULL: I will step back. Thank you.

MR. JESICK: All right. Section 3202 deals with building permits, and we would like to describe what specific building permits vest the zoning regulations for a property.

Now what is happening here is, if
you get a building permit, say, for a 90-foot building which is permitted, then for some reason the zoning changes on your property to only permit 65-foot buildings, you would still be entitled to what you got your building permit approved for.

That is where the vesting comes in. However, Title 12 lists numerous types of building permits, Title 12 being the building code, and we would like to pull out four specific building permits that we feel are substantial enough to vest a property, vest the zoning on a property.

All of these would either establish a new use as a principal use or establish a new structure as a principal structure. Of course, number one, just being new construction of a building. Number seven is a canopy or a tent as a principal structure, television or telecom antennas as a principle structure, and then the changing of a use or occupancy, etcetera.
So we feel that these will, again, clarify that some minor permits will not vest a property like the construction of a fence or something, and give more clarity to the regulations.

CHAIRMAN HOOD: Any comments? Anything else, Mr. Jesick?

MR. JESICK: That concludes our presentation, but we would be happy to entertain any other questions.

CHAIRMAN HOOD: Any additional questions or comments? Director, any last comments?

MR. WEINBAUM: No, sir.

CHAIRMAN HOOD: I think what we will do then is go to the --

MS. SCHELLIN: Before we do, Mr. Chairman, can we -- Ms. Simon, do you have the testimony you could submit to us, or not? I just wanted to check before we started.

CHAIRMAN HOOD: Okay. Ms. McCarthy, could you join us at the table. I
think I don't need the witness list. I think
I know everybody's name.

Let me start to my left, to your
right. I will start with Ms. Simon, and we
will go down, Ms. Simon, then Ms. Gates, then
Ms. Kahlow, and then Ms. McCarthy.

COMMISSIONER MAY: Wait a minute.

Are they all in support?

MS. KAHLOW: How long each are
going to have, because there are only four of
us.

CHAIRMAN HOOD: We have already
extended the -- As a result of what I heard
yesterday, we have already extended it. Is
anybody representing -- All represent
organizations?

MS. KAHLOW: No, she is not.

CHAIRMAN HOOD: We will give her
five minutes. Does anybody have a problem? I
will tell you what. Let's do six minutes. Is
that okay?

MS. KAHLOW: Thank you.
CHAIRMAN HOOD: As a result of the good testimony we heard yesterday, we will do six minutes. We will start with Ms. Simon.

MS. SIMON: Thank you. My name is Marilyn Simon, and I would like to address OP's recommendation 4 to allow effective ANCs to submit an ANC setdown form prior to a Zoning Commission setdown meeting in all contested or potentially contested cases.

At previous hearings and in working groups, I spoke about the benefit of having public input prior to the setdown meeting. In the past, that had been allowed, and the Commission benefitted from having that information.

At the setdown meeting, the Zoning Commission was able to provide the applicant with guidance as to how they might revise their project or additional information that would be useful to the Zoning Commission that they might include in their prehearing submission.
In more recent years, that was not allowed. OP's proposal is a step in the right direction, and I believe it is a mistake to limit pre-setdown input to ANCs. Given the time constraints, the ANCs notice requirements and meeting schedules, it is difficult for the ANC to provide input in a timely manner, especially if the ANC is going to want to be able to include comments on the OP report, which is only received a fairly short time before the setdown meeting.

More importantly, it is frequently the citizens or civic associations or an ad hoc neighborhood group that is in the best position to review the application and provide the Commission with information that might be missing from the application or the OP report.

In my earlier testimony on PUD recommendations, I gave an example of information provided to the Zoning Commission on a 2002 PUD application. In that case, several neighbors wrote letters, which
included photographs of trees on the site, as well as providing basic information about the square footage that would be allowed as a matter of right on that site, information that was not included in the OP report.

The information in those letters was discussed by the Commissioners on the dais, and they provide guidance to the developer, guidance that resulted in improvements in the project prior to the hearing.

I would also ask that you consider leaving the record open for a reasonable period of time for additional comments. Thank you very much.

CHAIRMAN HOOD: Thank you very much, Ms. Simon. Ms Gates.

MS. GATES: I am going to start off on a little different track. If you have read my testimony, you know that.

Good evening, Chairman Hood and members of the Commission. I am Alma Gates.
representing the Committee of 100 on the Federal City. The Committee of 100 is before you tonight as a Zoning Task Force member who is concerned about zoning regulation rewrite, about the rewrite process, procedures and communication.

This is not intended to be personal. So I apologize if anyone interprets my comments otherwise.

I clicked on the Office of Zoning website to print out the meeting notice for production, distribution, and repair for tonight, and discovered tonight's hearing was something different than what has been noticed to the Task Force.

OP does have a change noted on its website, but frankly, the notice from the staff to the Task Force that is attached as the back page is what I was using as guidance. Task Force members who are still participating have been somewhat overwhelmed by the ZRR process, as you have, and this was
noticed at yesterday's oversight hearing.

The proposed schedule on the announcement is more ambitious than what was previously proposed, and speeding up the process may not be the best way to address a new zoning code for the city. After all, we are no longer working under a hurry up and get it done mandate in the city.

Also, it would be very useful if, as a matter of course, Task Force members were sent hearing and meeting notices on the ZRR. Communication and transparency are lacking in this process. Little effort has been made to move the ZRR beyond the Zoning Commission hearing room.

There are lots of residents who are going to be very surprised when the rewrite is released, and they are afforded a 30-day comment period.

I ask that the Zoning Commission hold open the record on Case No. 08-06-15 until the close of business on March 5th for
all submissions on this case be put in the file.

I do have some comments to make on this case. Recommendation 4: I am going to pretty much echo what Ms. Simon said. I want to comment about the actual form before I go on, and this is not in here.

The Public Space Committee requires the ANC to complete a form as well, and it notes what the decision was. The entire Commission must vote on it, and the date of the hearing. So that might be helpful for you.

This recommendation was widely discussed during the Work Group meetings and by the Task Force, and I will say, this work group was well attended, and I think people were really engaged in it.

Recommendations were also resisted. In her testimony on October 4th, Marilyn Simon stated the following: First, the Zoning Commission should have access to
input from the community prior to the setdown meeting. This should not be limited to the applicants or OP's summary of the community concerns. The Zoning Commission should be able to read comments from the ANC, community organizations, and individuals prior to the setdown meeting. In the past, this was possible and, based on those comments, the Zoning Commission provided the applicant with guidance for preparing its prehearing submission.

In the form, the ANC does not carry great weight, and if it is to be accepted into the record prior to the hearing, why not community groups. They are often more on top of issues than a group of elected individuals who represent diverse areas.

A lengthy discussion took place about when a record is created. Perhaps the Zoning Commission would add at what point a record exists to its list of issues, items in need of clarification.
If a record does not exist prior to a hearing, where does the OP report go? Logic would tell us that lots of paper exists before a record exists, and it must be going into some type of file or record.

Allowing communities to file a form similar to that proposed for ANCs is not going to prove burdensome, and goes a long way in showing balance that the community often feels is missing when contested cases come before the Zoning Commission. I think Mr. Weinbaum also noticed that he didn't think it would be overwhelming.

Just from your comments on recommendation 9, this argument appears to create more rather than reduced nonconforming structures. Why are there so many? Is it because we just continue to issue special exceptions, and suddenly we are facing that?

Recommendation 10: An additional note I have on this work group meeting addressed Section 2005, Discontinuance. It
was suggested that the term be changed to Abandonment. This doesn't appear anywhere in the notes.

Recommendation 17, work with the Zoning Administrator: This recommendation is timely, and criteria are clearly needed. A thorough review of the proposed criteria should cycle through the same process as other changes under the ZRR.

I would just end by asking, are you convinced the ZRR is simplifying the zoning process? I am not.


MS. KAHLOW: Thank you. I, Barbara Kahlow, live at 820 25th Street. I am testifying on behalf of the West End Citizens Association, the oldest citizens organization in Foggy Bottom/West End.

I wanted to mention my professional qualifications. For those looking on television, I spent 25 years at the
Office of Management and Budget in the Executive Office of the President where I was primarily involved in regulatory policy development.

After OMB, I served in the legislative branch for seven years, retiring as Staff director of the House Government Reforms Subcommittee on Regulatory Affairs. This was the only subcommittee in either chamber devoted to regulatory process and policy. I have been recognized by the Zoning Commission as an expert in the regulatory process.

First, I want to go to the actual draft test, and then I have other recommended changes. Because the time -- you are shortening the amount of time we have, I will only be discussing certain of the sections.

I participated in five working groups, including this group. During the five groups, OP largely ignored comments from the permanent residential community participants.
Because of this unfortunate and unusual practice, which I have never seen in a rulemaking in any other body in the United States, few community activists participated as time went on, particularly in this working group. Only three, Mr. Hood -- Only three, the three ladies right here, were the only community activists who participated in this working group, unlike, let's say, the university one. You may have had 30 people in the room.

The bottom line is the process is not working as the Mayor and the Commission had intended. The only exception where I felt the community's voice was heard was during the first meeting of this group, which was chaired by the Office of Zoning. I think Mr. Weinbaum listened. He wanted our input in four areas: prehearing; hearing; post-hearing; and administrative items.

Now let me go into different sections that I want to mention, particularly.
Recommendation 2: I strongly support -- We strongly support removing the requirement for witnesses to identify if they are in support or in opposition.

Part of the reason, and the most important reason, is so parties can testify before non-parties. We just sat through a hearing, as you know, a week or so ago where we had to sit through a bunch of witnesses before we could present our case. That was actually not helpful, I think, to the Commission.

Recommendation 4: I echo what the two other ladies to my right said. I previously participated in many setdown cases where you were able to hear a our recommendations. They made a great deal of difference. It was the AG who stopped that practice. We do not know why.

We think it is important that citizens associations like the WECA be allowed to provide information. I have numerous
examples, which I keep mentioning to you guys, of recent cases where we have provided information to the Office of Planning, and they have neglected to provide it to you at setdown.

In fact, you have asked questions. Mr. Schlater asked the Office of Planning in one case recently was there any -- what did the community say, and they said, ah, nothing. Well, they had in front of them what we had said, and it is very frustrating for us. So we think that -- and I have listed some cases -- that it is very important that we be given an opportunity.

The ANCs often have too many things on their plate. They don't have the time to do pre-setdowns. They are not experts in this or almost anything else.

Recommendation 14: I don't understand it, but anything that removes requirements for campus plans and universities gets me very nervous.
Recommendation 17, Zoning

Administrator flexibility: This two percent, 10 percent is not unsubstantial. Ten percent is a pretty big deal, and I think that the Zoning Administrator should be required to reach out to the ANC, especially if they are 10 percent, and the immediately affected residents, the 200-footers or the next-door owners.

This was a big deal. The 10 percent, for example, is for rear yard and side yard. We should not just allow this flexibility, as Ms. Gates said. We need to look at this and see if it makes sense anymore.

Now as for other recommended changes, I am only going to mention a few of them, and then I go by the sections to the 2002.3, my first one, adding a cite to the considerable case law on nonextension of grandfathered nonconforming uses. This addition would have helped the BZA make a
different decision in the case.

    Number 2, 2500, Accessory Uses: Since there is Federal preemptive law, referencing would help the Zoning Commission and the BZA make more informed decisions.

    Number 4, Penalties: I think that, for violations, they should be more than $100 a day. People are willing to take that risk.

    Number 5 is the most important, Building Permits, Section 3202. I think you need to add a clarifying requirement to identify which applications for building permits require pre-issuance review by the ANC, as required by law.

    Currently, almost no building permits, including biggies, are sent to the ANC. That is just not the way the statute, the ANC statute, was written, and it doesn't help anybody, because then we are in the appeal stage all over again.

    On number 6, Compliance With
Conditions and Orders, for poor compliance I think we need to add dollar penalties for noncompliance and the threat of a possible CFO revocation.

Lastly under Hearing Procedures -- and this is very difficult. To ensure fairness, we recommend that there be training for new BZA members. We suffered through a BZA hearing where we were not allowed -- We were the appellant, and we were not allowed to present our case.

In fact, of my eight-page statement, I was allowed to present about a page and a half. Thank goodness, it is in the written record, but now as a consequence, the end result is we have to go to the D.C. Court of Appeals for something that they, clearly, did not understand the law and did not provide us a fair opportunity to be heard.

So the WECA respectfully requests that you ask OP to make the recommended changes and additions. Thank you for your
consideration of our testimony.

CHAIRMAN HOOD: Thank you very much. Ms. McCarthy.

MS. McCARTHY: Good evening, Mr. Chair and members of the Commission.

Generally, most of what you have before you are good suggestions. So I won't spend time on them, but I want you to know that I feel that way, because I will just focus on things I have issues with, and I don't want it to seem unduly negative.

My primary concern is the provisions permitting comment by ANCs on setdown. I think this is a very ill advised provision, and my concerns are in no way to be taken as denigrating ANCs, but land use is a matter of striking a balance, as you know well from your position.

On the one hand, in order to have good development, there needs to be good communication between developers and community members, especially with PUDs. On the other
hand, developers and their investors and lenders need predictability and certainty of process, especially now when the capital markets are still in such a fragile state.

So let's review the purpose of a setdown. A setdown is not to hear the pros and cons of a case. That is the public hearing. A setdown is merely to confirm that a prima facie case has been made, that the application meets the zoning regulation requirements, and there is a presumption built into the zoning regs in favor of every applicant deserving their day in court.

If you want to deny setdown, you have to have an absolute majority of the Board, not just a simple majority of whichever members must be sitting. That is very different than accepting setdown and for making any other kinds of decisions. So, clearly, the regs felt that it was important for people, as long as they met the basic requirements, to have the ability to have a
public hearing.

The issues that the Office of Zoning is asking ANCs to address are just not appropriate. Consistency with the Comprehensive Plan? That is what the Office of Planning, whose professional responsibility is drafting and maintaining the Comprehensive Plan -- that is what they are experts in.

I don't understand why there is a need to have someone else commenting on that, particularly because the Office of Planning is looking at the overall Comprehensive Plan, and the ANC is just looking at a perception of how the Comprehensive Plan addresses their local circumstance.

Contested case or not? Again, that is an objective, technical consideration. That is not something that requires or is even appropriate for the ANC to weigh in on.

Last, additional issues: That is a great one for the ANC, but that is what we have the public hearing for, so the ANC can
address any additional issues, things that they want the Zoning Commission to take a look at, concerns they have, whatever.

A good reason not to go into that at the setdown is that very frequently, as you know, there are substantial changes that are made to applications from what is originally submitted to you and set down to what is actually submitted in the prehearing statement because of the negotiations that take place during that period of time between ANCs and the Office of Planning.

So you may end up wasting your time considering objections or concerns that are made in an ANC form that aren't even in the case when you finally get to the public hearing.

All this wouldn't be so important, but for the prospect of what, I fear, are serious delays. Mr. Weinbaum indicated earlier that there were several cases that had less than 35 days between the submission of
the application and setdown.

At the Office of Planning, we encouraged that, because we encouraged applicants to come in and work with us closely through the process, so that submitting a setdown report took very little time, because we were already very familiar with the case.

A PUD, for example, takes between six and 12 months, and six is near miraculous. A developer before that time works to acquire the property, get the financing, get the design done, meet with the Office of Planning, DDOT, get a traffic engineering report done, all the rest of it.

By the time the developer is ready to submit, they need to move quickly. They have made a major investment in this project. So what if the ANC doesn't meet in December or August, as is frequently the case? What if the ANC didn't have a quorum for the session that was taking place after they received this application? The Zoning Commission doesn't
meet in August and has limited dates in December.

So first of all, there is likely to be a real burden on you of ANCs coming back to you and saying, well, you know, we know there was a 35-day delay, but you know, we didn't have a quorum or there was a holiday or we received it; when we received the application, we didn't have time to notice the meeting that was coming up, and the next meeting won't be held until after the 35 days are over with.

It is a nightmare, and you will be there, not even being able to consider the merits of the case, because you will have to be deciding, well, should I give an extra delay or not? I don't that is something that you want to get into.

Mr. May talked about slippery slopes earlier, and not liking them. So I am sorry about getting into this, Mr. May, but one part of the slipper slope is the demand
for delay because of the reasons I gave already, that the ANC couldn't get their vote in on time.

You start this, and there will be a demand that great weight be given to the ANC reports. I think that is only a matter of time. Then every time you would make a setdown decision, you are also going to have to have an order published explaining why you did or did not give the ANC great weight. Other community groups will want to weigh in.

Ms. Simon was talking about commenting on the Office of Planning report in the reports that would be submitted for setdown, which is beyond even the scope of what you are talking about and, certainly, not appropriate for consideration at the setdown of a case.

So I think those are all pretty serious reasons to be very careful about that requirement.

I have a number of other issues
that I wanted to raise. Let me just mention with regard to the vesting provisions two issues. Number one, in addition to the building permits that are listed as permits that should vest setdown, I would certainly say it ought to include the sheathing and shoring, which is a standard initial building permit, and once somebody has dug a deep hole in the ground, it is not like they are then likely to turn around and leave or not follow through with the project. So I think that is a pretty serious commitment.

Secondly, there is a discrepancy now in the rules. The zoning rules say you can only vest for two years that the building permit is valid. But in fact, through DCRA building permit procedures, permits can be valid for up to two and a half years, and the way the regs work now, you may be a developer with a perfectly valid building permit, as one of my clients was. You turn around and try to proceed with your building and be informed by
the Zoning Administrator, oh, no, see, this provision of the zoning regs only says that your vesting provisions last for two years.

So at the very least, that discrepancy needs to be rectified. I think it is just a technical issue, but it can be very important for somebody that is caught in that six-month Neverland. Thank you.

CHAIRMAN HOOD: Okay. I want to thank you all for your testimony. I am going to take a page out of Ms. Gates' book, and I am going to do something different.

I know that we have our recommendations in front of us in a particular hearing, but after two days in a row of hearing the process of the ZRR -- and I am not sure where my colleagues are, and what I am getting ready to say, everybody is going to probably cringe, but I will tell you that I have been around long enough to know that, when we proceeded with the campus plan -- I don't want to say takeover, but when we dealt
with the campus plans, we were going back and forth whether or not the Zoning Commission should have a campus plan.

What we did at that time, we had a roundtable, and we heard from the public. We are hearing from -- I just want to make sure we afford the opportunity, because I am hearing that one or two people are only coming to the Task Force, and I think, Mr. Parker, you were there, I heard, yesterday, and I am hearing a lot of that.

I know that the advertisement has been out there. The reason I know that, because I have done it myself in my own ward. when I go to meetings, I have talked to Ward 4. I have been in Ward 7 personally. But for some reason, we don't get a response.

I guess what I want to know is why we are not getting response, but I will tell you this. The way I understand it is that, when people are making suggestions or making comments, they are feeling as though that the
plan is already made, and they are having problems with it, because when it gets there -- I will tell you, I am not going to say exactly what I am dealing with right now, but every time -- I have been making a suggestion for about five years, and I have gotten to the point that I am kind of -- I don't even go to the meeting anymore.

So if that is what indicative of what is going on here, then we have a problem, and I am going to be recommending to my colleagues -- now, you know, I am only one vote -- that at some point in time, either we need to slow down the process and figure out why people are not participating, but on the other hand, just like we just heard here, you know, about the ANC form, we want to make sure that we at least make every attempt to make sure that we get it out to the public.

As I have heard people say, that things are going to change, and people are going to wake up one morning, and the whole
zoning in their neighborhood has changed. That is not going to go over well. I can tell you, that is not going to go over well in this city, and this city can be very mean, and I don't want to be one of the ones that had a part with it, when I know we have not exhausted all we can do to make sure we get the word out.

Case in point: I want to use this example tonight. Three people testifying that they wanted the ANC form, and I understand that some people want to take it a little further, and I have further comments on that. One person testified that that will be burdensome.

Now I will tell you, I really want to hear what a lot of the folks in the city have to say, at least afford them the opportunity. Now we are not going to get everybody down here.

I will tell you, the ladies we have in front of us are consistent, and I want
to applaud you, and I appreciate you coming down and being consistent, but there are some other people who are out here in this city who may agree with them or who may not, and the case is, have we done all we can do to reach out to them.

So I will tell you, what I am proposing -- everyone can cringe -- at some point we need to have a process roundtable. The question is what do -- Some people say, we are not going to get anything out of that? Well, we are going to get the same thing. But guess what? We made an attempt.

I remember telling the late Ms. Zartman a while back that we tried to stop the process. Let's revisit our process. Why aren't the people on the Task Force coming to the Task Force meetings? I keep hearing it. Why have they stopped coming?

I know why I stopped coming, but why have they stopped coming? Let me just ask. Ladies, can you tell me, why have people
stopped coming to the -- well, I am not going to say the work groups, but I know the Task Force. Why have they stopped coming? If you want to respond, you can. If not, I understand.

MS. GATES: I think both Ms. McCarthy and I are on the Task Force.

CHAIRMAN HOOD: Oh, okay. I am sorry.

MS. GATES: I think -- I really did think about this. I don't know whether it was the fact that the meetings were moved from North Capital Street down to the Office of Planning Headquarters. It is much more difficult to get there.

The hearings -- Things have not been done -- and again, this is not personal. Things have not been done in a consistent way. So I might go to a meeting tonight on PDR, but tomorrow night there is a Zoning Commission hearing on a totally different subject.
So if I want to come and give testimony tomorrow night, just -- I often say I feel as if my head is a Cuisinart, and I have all this stuff whirling around in it, and it is really hard to keep it straight.

So there has been a lot of information put out there. It has been done in a less than -- It hasn't been easy to follow the progress of where the zoning rewrite is going. Surely, you have experienced the same concerns through this hearing process. Nothing is building on anything else. it is just a whole bunch of stuff happening.

Perhaps it is that people come and make recommendations, have concerns, and they are not -- They don't see their recommendation in any of the recommendations put forth to the Commission. So I suppose that is part of it.

I will just turn the microphone over to Ms. McCarthy.

MS. MCCARTHY: I think that there
-- Let's see. Part of it probably stems from some of the issues that Ms. Gates was talking about, that we have gone from having meetings at OP's 801 to 14th and U, to One Judiciary Square, to the new OP Headquarters.

So it has been a little confusing, and not all of them are equally easy to get to by Metro or for those Task Force members that don't do Metro and drive, and meetings at 14th and U were like a sweat bath. But that is just -- You know, that is what you had to deal with all the time during the day. We only had to deal with it for a few hours at night.

I think that the initial notion of the working groups was designed to try to reach out and get a broad cross-section of people. It didn't really end up that way. It ended up being a lot of what Claude Rains would describe as the usual suspects, but it also burnt out everybody, because many of the members of the Task Force were interested in the working groups. So they would go to a
working group meeting. They would have a Task Force meeting. They had have testimony before you all, and I suspect that burnout is a big part of it.

So I definitely got to the point where, for Task Force meetings, if it wasn't on a subject that I felt I had a lot to add or there was of burning of interest to me, you know, I just decided I could skip that night, or sometimes, you know, clients have you, you have to go to an ANC meeting or whatever. There are other things that interfere.

So I think, you know, we -- I know that under the Lewis plan, even when Harold Lewis brought the regs down from New York and presented them in whole cloth to the District of Columbia, it took a year of meetings with various advisory committees and making presentations and all of that before the regulations were adopted, and that was a point in time in which there were a lot fewer people in the city. There were a lot fewer empowered
people in the city.

So I think it is a very good idea for the Commission to think about what other mechanisms can we use to get out there and tap a broader set of people. Certainly, we discovered from parking, because it was picked up by many elements of the blogosphere, that there was a lot of input and concern about that, and we ought to think about what else we can do. But zoning regulations are really important.

So if it is going to take more time to get more input and discuss it, especially when we have more understanding of how the whole thing is going to fit together, you know, let's take more time and discuss it and reach out and make sure that in the end, when we adopt something, it is something that people can be relatively comfortable with.

CHAIRMAN HOOD: Thank you. My next question is the ANC form. Again, I am going to preface it with this. I am a civic
association president myself, and when I have thought this thing over and over again, I think what is being presented in front of us tonight is the way to go, and I want to put this especially to Ms. Kahlow, who I know represents WECA a lot.

Oftentimes -- and I am not sure. I can't remember exactly what area. I can see us trying. If one group says, well, I am the real civic association, the other group says, I am the one, I can see us having -- If we go that far, I just see us having a lot of problems, and then we ask people to bring their -- I don't know where we got this from, but we ask them to bring their constitution and bylaws down. I don't know what the reason was for that, but I can just tell you that I can just see us going down -- I don't want to say a slipper slope. I just see us slipping, because while we were creative, if we open it up any further than what we have done is mass confusion, because we heard tonight from Ms.
McCarthy -- and I am asking a question, because I am trying to figure out how do we get there.

I have heard from Ms. McCarthy that we shouldn't even do the form. We shouldn't even do it, and the ANC commissioners are the elected officials. Civic associations are supposed to be working with their ANC commissioners, but I know some -- I know everybody don't function the same. Some ANC commissioners might not bring it like we might want them to bring it.

I just think, though, that that is when we have to vote our ANC commissioners out. So I think that needs to be -- That is another form, but I just think that, if we open it up any further than what has already been recommended by the Office of Zoning, I think we are going down a road that is going to cause us a lot of problems. But I will hear from you, Ms. Kahlow.

MS. KAHLLOW: I hear what your
I don't agree. I think, if we limit to factual information. The Commission asks, one, is there an objection. You can hear it. But more importantly, factual information.

I am thinking of the case in Brookland where I am representing a group in Brookland, and you haven't heard the case yet. You will hear it eventually.

CHAIRMAN HOOD: Can we just not maybe mention Brookland. Just don't say anything.

MS. KAHLOW: Okay, not to say what the case is. But the Office of Planning that supposedly knows its stuff has been told what the law is, what the applicable regulations are, and they agree, but they do not intend to show it to you. You, the Commission, need to know it is inconsistent with the Comprehensive Plan. It is inconsistent with the Small Area Plan, and you deserve to hear that as a factual matter, and if the Office of Planning
is not going to tell you, how are you going to know?

That is the key. I think that, to make a decision on setdown, you need to know the factual things. So you could limit some opinions to facts, and I would be perfectly happy.

CHAIRMAN HOOD: I have a comment, but let me go to Commissioner May

COMMISSIONER MAY: I appreciate the sentiment, but trying to say, okay, you can only present factual information is just impossible. I think the only thing that we can do is say, you know -- is define the format in which the input can come and who it can come from, and I think that is a valid question to ask, you know, whether it should be just ANCs or whether it should be ANCs and groups, but then there is ANCs and groups and people within 200 feet, ANCs, groups and -- you know.

So you have to be very careful
about the prospect of opening the door at all, and then define exactly what it is open for. Like I say, I appreciate the idea of trying to state some sort of difference between what is fact and what is not, but frankly, very few of the things that we deal with here are facts that are not in dispute.

So when a fact is in dispute, is it a fact or not? So I am not really looking to debate how you define what a fact is.

MS. KAHLOW: I wasn't there. These are not facts in dispute. These are facts that weren't presented to you.

COMMISSIONER MAY: It doesn't really matter. There is a reason why it wouldn't be presented to us, if it wasn't going to be presented. That is why it is -- I mean, a lot of this stuff is premature, because it is a question of whether something is ripe for a hearing. That is really all we are deciding at that point, and it is rare that we actually turn something away.
I am not aware of any case that I have been on where we simply -- well, maybe there probably has been one or two; can't remember them, though -- where we just simply decided not to set something down, but we have decided on many occasions that something is simply not ready and told them to go away and work on it some more.

MS. KAHLOW: Well, how about -- I put it in my testimony. I didn't get a chance to say it out loud. How about if we send something to OP asking them to attach it? I mean, that is -- You know, if they refuse to mention it, at least they could attach it.

CHAIRMAN HOOD: I think, in the report -- and I am not going to belabor, but in the report -- and a lot of times we ask the question to the Office of Planning, what are you hearing from the community? I know I have asked that question a number of times.

Also, there is a spot in the OP
report which tells us kind of where the community -- where it is. I mean it doesn't go in depth. It is not in detail. It may be one or two lines, but it triggers to us that there is a problem. There is an issue, or there may not be a problem, either way.

MS. KAHLLOW: But we have experienced they are saying there is no problem when, in fact, they have a memo in front of them laying out a lot of problems. So they have not given you proper information.

COMMISSIONER MAY: But this memo is something that you have produced. Right?

MS. KAHLLOW: Yes.

COMMISSIONER MAY: Right, and so I appreciate the desire to share that information with us, and we want to hear it, but it is a question of when we will hear it, and the fact that it doesn't get in at setdown doesn't mean that it is not going to be heard during the hearing.

If the Office of Planning does not
agree with what you have stated in their memo, they may not spell out everything that is in your memo, but I wouldn't necessarily expect them to spell out and then refute every piece of information that they have gotten from the community.

MS. KAHLOW: I would be happy if they just did as Mr. Hood said. There are objections from the community groups. I would be happy if they said that. They don't say it.

COMMISSIONER MAY: That is what we expect from them. If we find -- Well, I have not -- I haven't personally experienced that they have misled us in that section, but they are here tonight, and I think that they probably would get the sense that we don't want to be misled about community concerns. Right? Right.

MS. SIMON: We have certainly had instances where we have actually met with OP, and the things we discussed with OP were not
included in the OP report, and we have also
had the instance where we actually wrote
letters before the setdown meeting. We
provided information such as what the matter
of right size of the building could be and
comparing it to what they were asking for.
That was not in the OP report. It should have
been in the OP report. It wasn't, and that --
Actually, seeing that stark comparison changed
the type of discussion that the Commission had
and what the told the developers about scaling
down the building somewhat to be a little bit
closer.

COMMISSIONER MAY: And that all
happened during the hearing.

MS. SIMON: No, that happened at
the setdown meeting.

COMMISSIONER MAY: At setdown, and
how did the information come up at --

MS. SIMON: This was before the
rules changed.

COMMISSIONER MAY: Oh, before the
rules changed.

MS. SIMON: And there were other things such as being able to tell whether or not it is consistent with the Comprehensive Plan, because there are a lot of things the neighbors know, say, about the trees on the site, other issues that bring in the Comp Plan concerns and are facts that OP may not have seen. The developer may not have included it in the application.

COMMISSIONER MAY: Right. Well, we are not looking for the Office of Planning to present the laundry list of neighborhood concerns and then their own reaction or explanation of those things.

The setdown report necessarily is summary in nature and describes the state of the project overall, and if the input that you are providing to them is, in fact, not coming through and we see a gap in that, then we have an issue with the Office of Planning. But I am not sure that simply having to receive all
that information at the setdown is the best way for that information to come to us, because we have, in effect, having two hearings on a case.

You know, you talk about your mind being like a Cuisinart -- I mean, you know, the number of cases that we have to juggle, we have to take this in mouthfuls that we can digest.

MS. SIMON: We are talking about a handful of written letters.

COMMISSIONER MAY: But we are not necessarily talking about that. We could have 100 letters in a given case, depending on what is going on with that case. There is no way to say that it is only going to be a few, if you start to open the door too much.

I am not saying I have decided anything about this. I think, actually, when it comes to deliberation, we might want to consider a range of alternatives on this one, so that we have this debate at that point,
having had a chance to digest these mouthfuls.

MS. GATES: I served as Chair of an ANC for four years. We never got setdown reports. We never got reports on BZA cases from the Office of Planning. We never got them from the Department of Transportation.

So what you are hearing tonight is that there is an information vacuum. Communities have a lot invested. They want to be heard, and if that little form allows them a voice at the table, that is one thing, but it goes much further than that. It really does.

it goes back to how we process information, how we get it out there, and that is what you are talking about.

COMMISSIONER MAY: Can I follow up on a question on that.

CHAIRMAN HOOD: You are going to ask a question. Let me just follow up with Ms. Gates. Let me ask you, Ms. Gates, I wonder if I remember. What year were you the
Chairperson?


CHAIRMAN HOOD: Okay. We should have been -- I will tell you, 1998 when I first got here, the Office of Planning was not giving even us reports on BZA cases. So it took a while to staff it up. So when you said you all weren't getting reports, I am thinking to myself, I wasn't even getting reports in 1998. But 2000 when you were the Chair, we should have been given reports. All right.

COMMISSIONER MAY: So my question is whether there is an opportunity here for the Office of Zoning to actually make these reports more available, because right now, you know, in the Park Service, when we do planning processes, we post documents online all the time as we get them. Comments, things like that that come in, they get posted.

I know NCPC does the same thing for their public discussions. Everything gets posted, and people know when they are going to
get posted, you know, how many days before meetings and so on.

MR. WEINBAUM: May I respond? This is something that was brought up at the working group, and these ladies can attest. As soon as it was brought up, what we did is we linked to the OP reports through our website, because --

MS. KAHLOW: The OP reports are not posted timely. That is the problem, because I immediately went back. So you can't get them, Mr. May, because they won't post them.

COMMISSIONER MAY: Because Office of Planning doesn't post them?

MS. KAHLOW: That is correct. So you need to, because they won't.

COMMISSIONER MAY: Is there any reason why you can't post them?

MR. WEINBAUM: If we get them electronically, we can. It is the manhours. If we get them, then we have to scan them in,
but if we get them from OP, we are happy to post them on our website if we get them electronically.

We have been linking to OP's website. After the working group where they mentioned that they couldn't find them on OP's website, we created an icon right on our Home Page so you could do that, as Ms. Kahlow asked, but if I am hearing now that OP doesn't have them --

MS. KAHLOW: That is correct.

MR. WEINBAUM: -- if we get them from OP timely, we are happy to post them.

MR. PARKER: When was the last time you checked? They are posted weekly.

MS. KAHLOW: The last two cases, they were not posted right before the hearing.

MR. PARKER: That doesn't sound right.

MS. GATES: If we are talking about procedures tonight, this is something we might want to consider getting put into the
regs about furnishing reports.

COMMISSIONER MAY: I understand the desire to have them actually furnished, but delivery of these things, I think, is more problematic. I think the idea -- If we could simply just get everything posted on the OZ website, even if it does come in on paper and it has to be scanned, I think we should have the entire thing electronically and available online. It is not that hard to do.

MS. GATES: But, Mr. May, I also think that the Office of Planning staff member responsible for a case should show the courtesy to the ANC to let them know, and email "we have posted the report." It just doesn't happen.

COMMISSIONER MAY: I don't disagree with that sentiment, and I think the Office of Planning will be wise to heed that advice, but we don't really have any say over what the Office of Planning does with their staff and their staff time. But we do have
some influence over the Office of Zoning.

MS. GATES: But you heard me.

CHAIRMAN HOOD: So did Office of Planning.

MR. PARKER: We hear you.

MS. KAHLOW: Can I try to elaborate on something Ms. Simon said? This used to work. I have a series of PUDs that I was involved in before the AG cut this off where we would send stuff in, and it was used in setdown, and you decided not to set down cases.

I can use the Blacky's Parking Lot, which is now the Ritz, and I have used this example with you guys many times. They came at 25 percent residential, then 33 percent. Eventually you set it down at 50 percent, and it was only when we told you what the history of the whole thing was, factual matters, because it wasn't presented in OP's report. You said, aha, and did not set it down twice.
So it worked before, and I don't know why it can't work again to get essential information to the Commission.

COMMISSIONER MAY: Is it conceivable that the same result might have come if the project was actually heard at 25 percent, and we received all that factual information at the hearing?

MS. KAHLOW: I think now, because Ms. Simon makes wonderful points in meetings, which was the cost, the cost to the community. We had to hire a transportation person, and we had to hire a lawyer, and it is just too much cost for us for every single one.

COMMISSIONER MAY: I am just asking you about presenting exactly the same information at the hearing.

MS. KAHLOW: Our experience has not been positive at all that you will reject it in the hearings. It is, I think, more efficient for our time and your time if you reject it at setdown, and it used to work.
COMMISSIONER MAY: Was it a rejection or was it a --

MS. KAHLOW: Rejection. You rejected it. You would not set it down at 25 percent.

COMMISSIONER MAY: Okay. This is a finer point. We did not set it down or we dismissed it? I was not on that case.

CHAIRMAN HOOD: You are talking about the Ritz Carlton?

MS. KAHLOW: The Ritz Carlton, and it was before it was a Ritz. It was a Blacky's Parking Lot.

COMMISSIONER MAY: We simply deferred. We said, no, this is not ready.

MS. KAHLOW: No. You rejected it. It was dismissed for -- to go back to the drawing board. I don't know -- Denied. It was denied.

COMMISSIONER MAY: It was denied.

MS. KAHLOW: Twenty-five percent was denied; 33 percent was denied; 50 you
actually had a conversation.

COMMISSIONER MAY: We did -- I mean, there are other cases in recent history where we simply did not set something down and sent the applicant away.

MS. SCHELLIN: You are saying that they came back at 50 percent.

MS. KAHLOW: They came back the third time.

MS. SCHELLIN: So then what they did is they revised their application.

MS. KAHLOW: But what I am saying is it used to work. You used to get all that community input, and it used to be very helpful, and it was very simple and factual stuff, and history of the zoning on the site or whatever, if it wasn't in an OP report. If it worked before, why can't we do it now?

MS. GATES: Mr. Hood, have we moved away from your original point of a process roundtable?

CHAIRMAN HOOD: No. Actually, I
am going to be bringing it up. I know everybody is going to cringe, and they are going to go home tonight and think about how they can kill me, but I am actually going to bring it up at our next meeting. That way, I have the Office of Planning. I have Office of Zoning. I am scared to look over there. No, I am not -- and also my colleagues.

I want to have that dialogue. I don't know where it is going to go. I may be the only one thinking that, but I know, when we did the campus plans, I know exactly how that process went, because I will tell you, this city will be mean to you. I know. I have been out there. This city will be mean.

The community will.

This happened. We have done all this, and they didn't know about it. We are going to have some problem. But I want to make sure we have exhausted every possibility or every resource within budget or within reason to get it out there.
Like I said, personally I have been in different wards in a few meetings. People were there, and I have expounded, please get involved with this process; we have the work group. Contact the Office of Planning. I have done it personally on more than one occasion, but I am hearing one and two people come into the Task Force meeting.

Again, you talk about having a conglomerate of information. All the stuff I heard yesterday at the Oversight hearing and then hearing it again, and this is not the first time we have heard it.

So yesterday -- not because you went in front of the Council, but it is time now for us to take a step back. We need to do a roundtable. Guys, I know nobody is interested in having another, but at some point in time we need to take a step back and look at our process. That is where I am. I may be the only one there, but that is where I am. Anyone else?
COMMISSIONER MAY: I am not cringing.

CHAIRMAN HOOD: You are not?

COMMISSIONER MAY: I am not cringing.

CHAIRMAN HOOD: Okay, good. That is one person. Any other questions for this panel?

MR. WEINBAUM: I would like to respond, if I could, to the public with respect to this recommendation, if that is all right.

First, I just wanted to say, with respect to the process in general, the Office of Zoning has only had a co-lead role on these two chapters that we did, but with our working group, one of the things we really wanted is, even if every recommendation wasn't going to make it into the recommendations that came out of the Office of Planning/Office of Zoning, we really wanted to try to work with the community so they understood the basis, even
if we were going in a slightly different direction.

I think the ANC setdown form is pretty much the prime example of where we were hearing certain things from some folks, other things from other folks. Ms. McCarthy was at the Task Force meeting and was real vocal about how she wasn't in favor of the form at all, but we felt that this form struck the right balance in terms of these are representatives, and I agree wholeheartedly with what you said.

The ANC members are the representatives of the community, and it provides an avenue for some limited input at that time. It, of course, doesn't do anything to take away from the opportunity to provide input at the hearing.

The one thing I will also point out is that, when an application is filed, I think it is important that everyone understand, the Notice of filing is only sent...
to the relevant affected ANC, to the register, and to the relevant Council member. There is no notice to people within 200 feet.

So what that means is that the types of folks and community groups who might be putting in forms, if we were to allow it to be community groups, are those who are more in the know, probably the folks who are represented here.

There may be other community groups who don't get to put in a form, because they don't know until a hearing is set, and then the notice of the hearing goes out to those within 200 feet.

What I mean by that is I don't think it will foster a level playing field if those community groups that are more aware of zoning issues get their forms in, and those other ones don't, as opposed to ANCs where they are always going to have the notice of filing at that stage.

So I think, if you open it to
community groups, the community groups you are
going to see are these community groups. Not
to take away from them. They are as involved
as they can be, but I think we are not going
to hear from all the community groups at that
time, and I think it might create an
imbalance, and I am concerned about that.

CHAIRMAN HOOD: Then again, I also
think that, at least what I read -- I don't
know if it was in the OP report or Office of
Zoning's report -- is there are some factors
that will not constitute us delaying a case,
just because -- Now I will take it -- I forgot
who mentioned it about not having a quorum.
Now I don't think that is a factor, but I will
tell you, doing something around August when
commissions don't meet, and December around
the holiday season, that is something that we
need to consider, and we need to figure out
how we work that. But I understand, at least
what I read, is that some things will not
factor or constitute anything as far as
stopping us from moving forward with setdowns.

MR. WEINBAUM: That is correct, yes.

CHAIRMAN HOOD: So I would agree with that, but I also want to take in consideration August. So, you know, that is a — and that was a good point. I forgot who made it, but that is something that we need to look at.

MR. WEINBAUM: I will say, though, because the Commission also doesn't meet in August, it is unlikely that you would have the period where they had to have the consideration happen when they were on holiday, because you are on holiday at the same time, just so you are aware.

CHAIRMAN HOOD: I will tell you, Director, in this city I have heard enough sitting down here that, if you want to try to get something over on people, do at the Zoning Commission, you do it in July and August. I've heard that enough. That is why I don't
like to do really anything in July and August, especially not August.

All right. Any other comments?

I'm sorry. Ms. McCarthy.

MS. McCARTHY: While you were on the subject of process, just in case I am not around for the roundtable, I wanted to mention: In spirit of bipartisanship and Democrats and Republicans sitting together for the State of the Union, etcetera, we have already addressed not requiring people to say that they had to be in support or in opposition.

A pet peeve of mine -- and I bet it applies to all of my fellow testifiers up here -- is why do -- Unlike the City Council, we still will say, okay, supporters, you testify first; opponents, you go after that. Maybe we will have neutral after that.

As somebody who represented a number of community groups over the years, I kind of felt like I was getting the short end
of the stick when I was always the one

testifying at 10:30 when the Commission was,

obviously, tired, and I wondered.

When the City Council doesn't

require supporters to come first and opponents
to come afterward, why do we? Why don't we
just say, in the order that anybody signs up,
they can testify?

CHAIRMAN HOOD: That is actually a

very good point. You know, we don't usually

get tired until about 11:30, but I shouldn't

have told you that, but 11:30 is when we

usually get tired.

I know that people say, well, you
know, I sit here all night. That is why, if
you notice, we try to refrain from some of our
questions so we can hear from the public.
Oftentimes, it doesn't happen. Actually, all
of us get a little itchy when we start asking
questions for an hour of the developer, and we
know that we have a roomful of citizens who

volunteer who want to come in here.
I will tell you, like I said yesterday, it doesn't fall on deaf ears. It does not go unnoticed, but I think you bring up a good point, and I am sure in deliberations we will hash that out. There may be a reason for us to -- We will see and see how it goes. Commissioner Selfridge?

COMMISSIONER SELFRIDGE: Just a real quick comment, Mr. Chairman. I saw the same thing you did in the OP report about failure to file a form will not be sufficient grounds to seek a postponement of the Zoning Commission consideration of the setdown of the case.

This slipper slope argument which has come up numerous times in favor and against -- I think this is a very accommodating Commission. You often give people additional time to testify.

CHAIRMAN HOOD: That is a good point, because I heard tonight -- We doubled the time, didn't we? Did we double it? And I
heard tonight I still didn't give enough time.

MS. KAHLOW: One minute more. You gave us one minute more. You doubled it for her, but for the rest of us, you gave us one minute more.

CHAIRMAN HOOD: Okay, one minute more. But even at that, look at the discussion. Look how this dialogue has been. That is additional time. Sometime we got to -- you know. Okay. I will remember that next time.

MS. KAHLOW: Thank you. That is why I asked.

CHAIRMAN HOOD: I didn't mean to cut you off.

COMMISSIONER SELFRIDGE: No, no. It is an important point. I guess I would only say, as we deliberate on this, that certainly in my short time, I have rarely seen the Chairman deny somebody an opportunity to weigh in. So I could see, even though it wouldn't be grounds to have a postponement of
a setdown or consideration of a setdown, I could see that happening, and that these things would be delayed, and they would be delayed again.

That would be my only concern as we kind of work through this process, because I think the devil is in the details, is that we find a way to keep the process on track.

CHAIRMAN HOOD: I will tell you that I think this has been a very good discussion. Again, I will be bringing it back up. I would ask Ms. Schellin to put the process under whatever it needs to be on for our next meeting on the agenda. If I don't see it, I will try to remember it. Hopefully, somebody will be here when we have our meeting. Then I can look at you, and I will remember it.

Anyway, I think the discussion tonight has been very helpful to us, and I am looking forward -- I am sure we are all looking forward to deliberations on these
issues. Anything else for tonight?

MS. SCHELLIN: We need to decide whether we are going to leave the record open or not on this case.

CHAIRMAN HOOD: Did we have a request to leave the record open?

MS. SCHELLIN: Until March 5th.

CHAIRMAN HOOD: March 5th? Okay.

March 5th is fine?

MS. SCHELLIN: So we will leave the record open for everybody until March 5th?

CHAIRMAN HOOD: Yes.

MS. SCHELLIN: Then we are expanding the process right tonight.

CHAIRMAN HOOD: We are doing it already.

MS. SCHELLIN: We are doing it already.

CHAIRMAN HOOD: Ms. Shelling, you know what? That requires another gold star.

MS. SCHELLIN: I will be expecting it on Tuesday. So we will leave the record
open until March 5th, and we will put this on our agenda for guidance. Mr. Parker, when would you like to do guidance?

MR. PARKER: There is a meeting the following week, isn't there?

MS. SCHELLIN: That is pushing it. I think we have a proposed action that night, so we can't really do it then. How about March 14th?

MR. PARKER: That works.

MS. SCHELLIN: Okay, March 14th, because the record is not going to close until March -- Yes, March 14th, the following week, that will work. I was thinking February. So March 14th for guidance.

MR. PARKER: So if we have the worksheet in by the 14th, is that sufficient? -- or by the 5th, I mean. Sorry.

MS. SCHELLIN: The 5th? Actually, you know what, we can't close the record on the 5th, because that is a Saturday, and there will be no one here to accept. So we need to
do that on the 4th, march 4th. Does that work?

MS. GATES: Sure. I guess I just looked at my calendar without my glasses.

MS. SCHELLIN: So March 4th. Does that work, Mr. Parker? Okay. So if you could have it on the 4th, then we could still schedule for the 14th.

CHAIRMAN HOOD: Okay. Is there anything else, Ms. Schellin, for us?

MS. SCHELLIN: That is it.

CHAIRMAN HOOD: I want to thank everyone for their participation. I think it has been a very healthy discussion, and on behalf of my Commissioners and myself, we greatly appreciate it, and all the work that the Office of Zoning has done, and all the work that the Office of Planning has done, and all the work that you all do in these cases. Thank you very much.

MS. KAHLOW: Thank you for really giving us an opportunity.
CHAIRMAN HOOD: All right. With that, this hearing is adjourned.

(Whereupon, the Public Hearing was concluded at 9:12 p.m.)