GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

PUBLIC HEARING

IN THE MATTER OF:

Title 11, Zoning Regulations : Case No.
- Comprehensive Text : 08-06A
Revisions : 

Tuesday, November 5, 2013

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

The Public Hearing of Case No. 08-06A by the District of Columbia Zoning Commission convened at 6:00 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
PETER MAY, Commissioner (NPS)
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SARA BARDIN, Director of the Office of Zoning
SHARON S. SCHELLIN, Secretary
ESTHER BUSHMAN
ZEE HILL

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development Review & Historic Preservation
JOEL LAWSON
ELISA VITALE

The transcript constitutes the minutes from the Public Hearing held on November 5, 2013.
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(6:03 p.m.)

CHAIRMAN HOOD: Good evening, Ladies and Gentlemen. This is the public hearing of the Zoning Commission for the District of Columbia for Monday, November 5, 2013.

My name is Anthony Hood. Joining me this evening are Vice Chair Cohen, Commissioner Miller, Commissioner May, and Commissioner Turnbull.

We're also joined by the Office of Zoning Director Sara Bardin, Sharon Schellin, Esther Bushman, and Zee Hill; and Office of Planning staff, Ms. Steingasser, Mr. Lawson, and --

Do you know what? I can't remember this young lady's name.

MS. VITALE: Elisa Vitale.

CHAIRMAN HOOD: Ms. Vitale -- sorry about that.

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

I think I know most of you. You all wouldn't throw up a sign or object or anything. I know most of you guys.

The subject of this evening's hearing is the Zoning Commission Case Number 08-06A. This is a request by the Office of Planning for comprehensive revisions and amendments to the zoning regulations, Title 11, DCMR. The specific subject of tonight's hearing is proposed new Subtitle B. Notice of today's hearing was published in the DC Register on September 20, 2013, and copies of that announcement are available to the left on the wall near the door.

This hearing will be conducted in accordance with the provisions of 11 DCMR 3021, as follows: Preliminary matters;
presentation by the Office of Planning; reports of other government agencies; testimony from the public, and we will take questions by the Commission of the Office of Planning.

The following time constraints will be maintained in this meeting: The Office of Planning, 60 minutes; organizations, five minutes; individuals, three minutes.

As noted in the Notice of Public hearing, I will be calling witnesses in the order in which the Office of Zoning received Notices of Intent to testify. After those witnesses have been called, I will ask others who have registered to testify this evening and then ask others in the audience if they wish to testify.

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

    When presenting information to
the Commission, please turn on and speak into
your microphone, first stating your name and
home address. When you are finished
speaking, please turn your microphone off so
that your microphone is no longer picking up
sound or background noise.

    As noted, testimony this evening
will be limited to proposed new Subtitle B.
If you have testimony on other subtitles and
cannot come back on the scheduled hearing
nights for those subtitles, you may hand in
your written testimony or submit it before
the hearing date. We will read it.

    I would also ask that you not
repeat testimony that has already been given.
    Rather than repeating the same comments, I
would suggest that you state that you agree
with the testimony that has already been
given and add additional comments that we have not heard yet.

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

At this time, the Commission will consider any preliminary matters.

PRELIMINARY MATTERS

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Okay, we'll go right to the Office of Planning.

Ms. Vitale or Ms. Steingassser.

MS. STEINGASSER: Yes, sir.

PRESENTATION BY THE OFFICE OF PLANNING

(Jennifer Steingasser)

MS. STEINGASSER: We're going to start moving pretty quickly through the guidance given to us on the definitions, starting with the action that the Commission has taken to date. This is as much for kind
of bringing everybody up to date.

We've been discussing uses as an issue since 2008. The Commission had hearings both in terms of public hearings on guidance and concepts, as well as public hearings on the actual text, and have taken some final actions, which is in the DC Register as a notice of opinion. So we built on that. We did make a few changes, and we'll get to those.

I'm just going to get real quick -- I'm not going to read the definitions -- but the guidance that the Commission gave us was to look at setbacks. Right now, our current code talks about required rear yards. There's been a lot of confusion in a lot of cases before the BZA about when a rear yard is measured from the building outward verses from a lot line inward. So we established setbacks, which are proposed to be measured from the property line inward, creating a buffer between the properties. The resulting
space that exists between the building and the property line is considered a yard.

I'm not going to read the definitions of the yards, but the Commission did take final actions on these definitions as yards for the front, the side, and the rear.

They also give us definitions on "courts." And when we talked about courts, we were interested in doing courtyards and how those were defined.

"Lot Occupancy" -- there was a big issue on removing nonconforming narrow courts and side yards from the definition of "lot occupancy," which was serving as an incentive to fill them in, especially in the row house areas.

We defined "lot line," "street lot line," and "side lot line."

We also looked at the definition of "rear lot line." I pulled out separately because I know this was an issue that
Commissioner Turnbull had asked about. And so this is the definition that we proposed. We've also included some graphics to show what those lots would look like, when a lot line would exist, and when a rear lot line would not exist.

The Zoning Commission gave us guidance to remove the definitions for corner lots and triangular lots because they weren't needed, based on the previous definition of "lot line."

However, after meeting with the Zoning Administrator, he requested that "corner lot" be reinstated as a definition, which we have proposed in the 9913 draft text that was set down, and "flag lot" and "dormer." These are things that they, he and his staff work through in terms of building permit review quite frequently, and they've asked that those be reinstated. So those were advertised in the set-down.

The Commission also gave us
guidance on different types of food issues. One was to permit individual food sales as a temporary use. And we did indeed do that through "temporary use" definition and Subtitle B.

You also asked us to look at local food production and removing potential barriers. This would allow for things like the community gardens, rooftop gardens, composting, and also farmers markets. So we've proposed in the September 9, 2013 text that was set down, definition -- actually, I'm sorry. We did not propose it in that text. We are proposing that it be considered prior to a proposed action, a definition of "farmers market." We did a survey of several communities throughout the country, and we propose this particular language.

We also did include in this -- this was in September 9 set-down text -- a definition for "cottage food." This was to correlate a little bit with the Cottage Food
Act in front of the City Council. It defines the use and implements it. It's basically a type of home occupation.

Then we moved on to use groups. The Commission was supportive of use groups. There was some discussion in 2010 as to whether 29 use groups that were originally proposed were sufficient. As we started to work through them and started to put on the series of conditions that would limit the uses, we agreed that there were not sufficient use groups. And we've since added six more.

We broke the "service" use group into both "general" and "financial services."

"Institutional" -- we broke those into "general" and "religious-based."

"Government" -- we went from just "Government, Local" to "Government, Local and Large."

"Education" had been one group. We broke that into three: "Universities,"
"public," and "private."

And then "agriculture," we broke that into both "large agriculture" and "residential agriculture." That was to try to recognize the difference of how those things operate and to correlate the residential agriculture with the local food businesses.

As a clarification, we have heard a lot, and I believe you'll see in the comments provided, some issues with fast food and the definitions of "fast food" and what they're calling a "fast casual" in a restaurant. A lot of this overlaps with the public space regulations.

We've tried to establish that by creating this new niche called "fast food restaurant," which would be different than a "fast food establishment," as well as "fast food drive-through." So there would be
designations.

That brings us up to tonight's
hearing.

CHAIRMAN HOOD: Okay. Well, thank you, Ms. Steingasser for your very succinct and quick presentation.

We're going to do like we did last night. We're going to hear from our public witnesses next, and we will ask our questions on the back end.

First on the list, I have Gary Thompson or his designee.

David Bardin,
Gary Peterson,
Michael Kroopnick,
Nancy MacWood,
Sian Ofalolain,
Frederick Gorove,
Lindsley Williams,
John Forrer,
Mike Wilson,
Judy Jones.

You can come on up.

Okay, we will start to my left.
Mr. Bardin, if you could, start us off introduce yourself. You may begin your testimony.

TESTIMONY BY DAVID BARDIN

MR. BARDIN: Good evening, Chairman Hood and other members of the Commission. I'm David Bardin. I live in Ward 3 in the Forest Hills neighborhood in ANC 3F. Address: 4701 Connecticut Avenue, Northwest.

I'm testifying in favor of two additional definitions, which are not now in the zoning regulations and not in the proposal of OP, and in favor of an amendment to one of the existing definitions.

I have written testimony I submitted on October 1. In each case, I've given you the text, the context, to tell you where I get the proposed new definitions -- they come from federal sources and such documents -- and the reason why I am proposing these definitions.
The two new definitions for "sustainability" or "sustainable," on the one hand, and "urban tree canopy" on the other.

Now, for professionals, the term "sustainability" is commonplace. We've heard Director Tregoning talk at length last night in which she used term both orally and on the OP slides, but there are people in the community who are not familiar with the term. So I'm suggesting that you take the definition that the President has used in an executive order and put it into our DC zoning regulations.

In the case of "urban tree canopy," that's a little bit more complicated. A lot of people think they know what it means, but I've given you the full definition that appears in a recent document by the U.S. Forest Service and the Center for Watershed Protection. I think it would be well worth your including that in the zoning regulations so that when there are references
to "tree canopy" in the regulations or in the application of them, the people will be using something which is technically correct and have a good example of what "tree canopy" does.

Again, this is something that the Mayor and the Office of Planning and the Department of Environment talk about a lot.

Now, the third is an amendment to the definition of "permeable paving." The examples do not include a new technology, which didn't exist when the Zoning Advisory Committee first recommended the present definition, and that is "flexible porous paving," including porous rubber. It is a product which the Urban Forestry Administration uses, the Georgetown BID uses. Before that, Arlington Cemetery tried it out.

It is now in use, it's t's been referred to in some proposed guidelines that DDOT has, for low-impact development and
green infrastructure, but it's not now in the zoning regulations. And I'd like you to include "flexible porous pavement," which is the generic term. At the moment, there's only one product, a porous rubber product, but in time, we would expect there will be competing products also available.

My prepared testimony has references where you can find out more information about that, and that concludes my testimony.

CHAIRMAN HOOD: Okay, thank you very much.

Next.

TESTIMONY BY MICHAEL KROOPNICK

MR. KROOPNICK: Good evening, Chairman Hood and Members of the Zoning Commission.

My name is Michael Kroopnick. I'm an attorney with the Law Office of G. Macy Nelson. I want to thank the Commission for giving me an opportunity to speak.
tonight.

We represent labor as well as residents throughout the District, a coalition of residents, who support the regulation of big-box development. My testimony tonight reflects the more formal comments that we submitted last Monday, October 28. I am testifying tonight regarding the definition of "retail" in the draft zoning code.

Currently, the definition of "retail" is stated as, "any use engaging primarily in the onsite sale of goods, wares, or merchandise directly to consumer or persons without a resale license. These uses include goods commonly sold to individuals in small quantities for their direct use." The draft then provides examples of what retail would include and then also provides a few discrete exceptions.

The problem with this definition is that it doesn't draw a distinction based
on square footage, and it treats all retail equally. We think all retail should not be viewed or considered equally, particularly as it relates to big-box development, which presents problems, uniquely adverse problems to traffic, adjacent small businesses, and the character of the neighborhood.

So we would propose and suggest more than one definition of "retail" or more specifically, have a definition for "big-box retail," which we would define as, "any single use, whether standalone or within a multi-building development, wherein a said single-use building occupies at least 75,000 square feet of gross leasable area."

As I will discuss next week, I would use this definition for big-box retail, which would be distinct from the existing definition of "retail" to establish a big-box, requiring it to get a special exception or a conditional use.

Thank you again for the
opportunity to testify tonight.

    CHAIRMAN HOOD: Sure. Thank you.

Next.

TESTIMONY BY GARY PETERSON

    MR. PETERSON: Good evening, Mr. Chairman.


    CHAIRMAN HOOD: You have a little more time, then.

    MR. PETERSON: That was fast.

    CHAIRMAN HOOD: You have a little more time than that.

    MR. PETERSON: I know I'm getting old and slow, but I didn't think I was that slow.

TESTIMONY BY GARY PETERSON (cont'd)

    MR. PETERSON: First, I want to get something right on the record that we totally agree with, and that is, in the submission of October 28, OP has "eating and
drinking establishments," and we think that is the right step in the right direction and support that clarification. That would be a use.

Then, going back to definition of times, there are four terms in the Definitions section that start out with the word "historic": "historic district", "historic landmark," "Historic Landmark and Historic District Protection Act of 1978," and "historic resource."

For three of those -- "historic district," "historic landmark," and "historic resource," we have suggested very minor changes, but it brings the definitions, we believe, in line with what Historic Preservation uses as the definitions. And I think one of the goals of the comp plan and the rezoning was to try and reconcile any differences between historic preservation and zoning. I've given you new draft language in my letter, and I would recommend that you
adopt the language. It should be noncontroversial. It's not meant to change anything; it's just meant to clarify.

Then, I would like to get to my favorite subject, which is "agriculture, large" and "agriculture, residential." I'm from Iowa originally, and I married the farmer's daughter, and I spend every July on the farm in Iowa. And I'm more than 50 miles away from there now. So I think I'm qualified to say a few things about it.

First of all, in "Agriculture, Large," the Section V gives examples of what "Agriculture, Large" is, and I don't believe "community gardens" really belongs in the "Agricultural, Large." For many years, we had community gardens in our residential neighborhood, and I don't consider them large agriculture. I think they should be put into the "Agricultural, Residential" section.

The other thing that I think needs to be changed is, "Agriculture,
Residential" refers to keeping of domestic animals intended for personal use or eventual sale off site. And the only problem is that means you could have a milk cow if you wanted to, or you could have the bull that services the milk cow in your neighbors' yards.

I think we need to modify that by saying, "keeping of small animals intended for". In other words, we need to cut that back a little bit. When they get the typical uses, they're talking about honeybees, which I would consider a small animal, as opposed to a milk cow. So I think we need to cut down the -- because, in speaking of domestic animal, they could be any size, and I'd be afraid of what some of my neighbors might think of doing.

And with that, I'm finished.

Thank you.

CHAIRMAN HOOD: Okay. Thank you very much.

Next.
TESTIMONY BY JOHN FORRER

MR. FORRER: Good evening. My name is John Forrer. I live in Ward 3 in a neighborhood called Colony Hill, 1714 Hoban Road, Northwest. I'm here speaking for myself, not as a representative of my neighborhood.

I'm concerned about some definitions that may seem fairly pedestrian to you but are quite important to us because there isn't a single flat lot in our neighborhood, and the interaction of the definitions of "cellar," "basement," "story," and "building height" lead to some apparent anomalies.

All of our houses are most of our houses were designed by the same architect and built by the same builder back in the 1930s. They all have four levels, a lower level, which has maybe a recreation room, and maybe a bedroom and laundry facilities; a main level with living room, dining room,
kitchen, et cetera; a next level, with three or four bedrooms; and a top level with probably one or two bedrooms.

Depending on which side of the street -- we have street that cut across the slope; we have streets they go up and down the slope. The streets that go across, depending on which side of the street you're on, as we read the definitions, the same house that's a three-story house on one side of the street becomes a four-story house on the other side of the street simply because of the manner in which a neighborhood has to be built when it's built on the side of a hill.

If you're on the uphill side, you want to have the living room level so you can go out, into the backyard, and not just go into a pile of dirt. And if you're on the downhill side of the street, you want your lower level to be able to go out into the backyard. So all of our houses are, if you
will, four stories on one side and three stories on the other.

But height is measured from the front of the house, and it appears that we don't know whether we are three-story house is a four-story houses. We're in the R-2 zone, which is limited to three stories, and half of our houses, as we read the definition -- as I read the definitions; I won't speak for the rest of the neighborhood -- might not qualify.

I think there are some other minor anomalies with these definitions, as, for example, the definitions "cellar" and "basement." As I read them, it would sound like I might be standing in the lowest level of the house, and the bottom half of my body would be in the cellar and the top half of my body would be in the basement because they have to do with whether you're less than four feet from the dirt outside, or whether you're below four feet under the dirt outside, and
they don't say which side of the house you look at, to determine that. And in all of our houses, on one side, the entire lower level is above ground. And on the opposite side, the entire level is below ground.

CHAIRMAN HOOD: Okay, let us have your closing thought.

I'm not going to cut everybody off because we don't have as many, but give us your closing thought.

TESTIMONY BY JOHN FORRER (cont'd)

MR. FORRER: All of this is in my written testimony. I would just add one thing that's not, and I'll stop. In an exchange with Ms. Steingasser, she and her staff tried to be quite helpful to us.

But in an email exchange with her recently, I asked about the definition of a flat roof versus a non-flat roof. Neither term is defined in the definitions, but they are both of critical importance in the height measurement section.
She opined that as for she's concerned, if any portion of the roof is not flat, then it's a non-flat roof, but she couldn't speak to the Zoning Director. Since, when someone goes in for a building permit, they won't be going to Ms. Steingasser, they'll be going through Zoning Department, I think it's important that this be clarified in writing in the zoning regulations so that it is clear that if you have a front part of the roof that sloping, but behind it you have a flat portion, that is a non-flat roof.

CHAIRMAN HOOD: Okay.

MR. FORRER: Thank you.

CHAIRMAN HOOD: We'll end on that note.

Let me ask you three, did you all have anything else because I'd like to be fair about the time. Do you have anything else you want to add, since Mr. Forrer already started us going over the three
minutes or five minutes? I want to make sure we're straight.

When the buzzer goes off, what I'll do is ask you to give your closing thought. I won't cut you off; okay? All right.

Okay, next.

MR. THOMPSON: Thank you. I think I have five minutes.

TESTIMONY BY GARY THOMPSON

MR. THOMPSON: My name is Gary Thompson. I'm from the Chevy Chase ANC and a resident of Ward 4. Thank you for what you're doing. You have a lot of work to do to balance out a lot of interests, and we appreciate it.

I'm here on behalf of the Chevy Chase ANC and also the Chevy Chase Zoning Task Force. We submitted written comments by letter of October 22, and they are quite detailed. And we hope that you've had time to read the letter.
I know tonight is only about Subtitle B and we'll be here on some other nights, so I thought I would take just a moment to give you a little background.

At our ANC, we've held about a dozen meetings on this topic, hearing from our constituents going back three or four years when this first started. Recently, we formed our own citizen zoning task force and we opened it to everybody in our neighborhood. It was very well-publicized, and a number of people stepped forward to join our task force. We had all kinds of views on that task force. I was the chair of it, so I appreciate the challenge in trying to join together disparate points of view.

But we were able to form a consensus, and we are proud of that, and it's reflected in our letter. And I want to publicly thank the members of our task force whose names are recited in our letter.

One other big-picture comment I
wanted to get out there is those of us who've
been following this have noticed there's a
lot of tussle out there in the public
commentary on those of us who have comment
from residential neighborhoods like ours in
Chevy Chase. And of course, most of DC is in
fact residentially zoned, and most of that is
R-1 and R-2.

I just want to assure this
Commission that those of us in residential
areas truly have the best interest of the
District in mind when we look at these
regulations. We're looking for the same type
of balance that you are, especially in the
gray area where commercial development abuts
residential areas. And that's the case not
just in Chevy Chase, but all over the city,
in neighborhoods like Hill Crest and
Palisades and Good Hope we're seeing these
issues.

So, with respect to Subtitle B
itself, we're obviously focused on
residential issues. The first issue we spotted is that there is a definition in there called "building height, residential zones," and it sort of pulls together the wording that comes from other parts of the draft Code, and it's largely redundant with Subtitle C, Section 502, and also to some extent Subtitle D, 1501.2.

So, when you're trying to understand the rules on height in residential zones, you've got these three overlapping provisions, and it does cause confusion because the words are slightly different. And if the point is to tell people what are the rules for height and residential zones, then naturally, you would look to Subtitle D or at least Subtitle C, 502, which has the real rules. We think that the definition in Subtitle B that's called "Building Height, Residential Zones" should be redundant and should be eliminated to avoid confusion.

The last substantive comment we
have is on the definition of "Cellar." The definition of "Cellar," as it currently stands, defines it as "that portion of the story, the ceiling of which is less than four feet above the adjacent finished grade." So you've got some ground next to a building, the adjacent finished grade, and if you have less than four feet sticking up, then that's a cellar. And that can be important because the cellar does not count towards floor-area ratio, as you know.

We think it should be changed to the word "Existing Grade," not "Adjacent Finished Grade." And the reason why is because "Existing Grade" is easy to define. "Adjacent Finished Grade" is something that can be manipulated or changed by what the developer chooses to do with the adjacent land.

The hot example we have in Chevy Chase is a building being developed at 5333 Connecticut, where they're constructing a
berm next to the building and using the top
of that berm to define adjacent finished
grade. It creates a weird situation where
you can have a prior walkout floor that's
technically a cellar, and that just creates
mischief. We think you'd be much better
advised to use the word "Existing" to you
define that adjacent grade.

And that's it with respect to
Subtitle B. I will see you all tomorrow
night on the very important Subtitle D
sections.

Thank you.

CHAIRMAN HOOD: Thank you.

Next.

TESTIMONY BY JUDY JONES

MS. JONES: Good evening. My
name is Judy Jones. I'm in ANC 4-B 07. I
want to thank the Zoning Commission for
sending overnight the entire draft of the
zoning rewrite to me. I appreciate that. I
didn't read it, so -- I just want to
acknowledge that.

    I appreciate the Commission
having these hearings, as well. And OP, I
hope you're open to the suggestions that come
from them.

    I am here tonight because of
Definition "CM-1 to P-1." CM-1 includes
commercial manufacturing, and as I understand
the term, it does include "repair." We have
an industrial district. It was called
Chillum Place; it's now called Takoma
Industrial Area, I guess, in the new zoning
regs.

    We have six schools, charter,
private schools, in the area. Every other
business on that strip is unique, except for
auto repair shops. They have a tremendous
impact on our quality of life. And at some
point, included in the regulations, there
should be a saturation point where it becomes
not a matter of right. I don't think auto
repair shops should be a matter of right,
anyway, because of their impact on environment, but there should be a saturation point.

They equal the number of schools, and the environmental impact is tremendous. At least three of them have been closed due to public safety concerns. MPD has closed them, not just the Department of Environment.

So as an ANC and a neighbor to an industrial zone, repair shops have pooled the most safety and environmental resources. More consideration for their existence near residential areas should be of special exception, rather than a matter of right. Their description as "repair" within "CM-1 to P" definition should be deleted and explicitly defined with environmental restrictions in place, and one of those restrictions should be consulting with the residential community about its operation and impact on the environment.

In addition -- I testified to
this last night -- "industrial zone" should be categorized as potential overlays or PUDs.

No residential area that abuts an industrial zone wants the industrial zone to stay the way it is.

Ward 4 uses the -- I'm sorry.

To move industries that are contrary to the plans of the community and some businesses on the industrial strip is asking for a political suicide. The industrial zone in the Lamond-Takoma area has a nonprofit community development corporation that is happy to work with the DC agencies to redesign and re-fit the industrial zone. We are business-friendly, but we do take into consideration the environmental impact of the businesses that are along there.

So that is my testimony for tonight. I hope that you will take consideration of last night, "no industrial area should be a matter of right when located within 200 or 500 feet near a residential
Thank you.

CHAIRMAN HOOD: Okay, thank you.

Next.

TESTIMONY BY FRED GOROVE

MR. GOROVE: My name is Fred Gorove, formally Gorove-Slade Associates here in Washington, DC. Now I'm here tonight. Thank you, Chairman Hood and the Commission for listening. I'm here to speak regarding automated parking.

PDS is a firm organized here in Washington, DC, to promote and implement the use of automated parking. When I was with Gorove-Slade Associates for about 25 years, I studied and planned automated parking systems, so that's my background that qualifies me to be here tonight.

I'm here with Lindsley Williams, who will help me, maybe, through some of the definitions if I misspeak on those. He has helped me a bit in preparing what I'm going
to talk about.

The request is that the term "mechanized parking," which is already in the regulation, be amended to recognize the term "automated parking" also as a matter of right. Automated parking is a modern version of mechanized parking -- I have trouble with that word -- and it's a modern version. And there are compelling reasons why it should be a matter of right.

Actually, the impacts of automated parking are less than those of conventional parking in a number of ways -- in terms of its usability, in terms of its impact on the environment, in terms of the desirability for developers. There are advantages, and we have submitted documents that describe these advantages.

In general, the impacts are lessened because the cars are not being driven in the garage as they are in conventional garages, so there's less
pollution. There's a number of other things. There's last lighting; it's safer because people are not subject to people being in the garage -- no person can enter the garage; and the delivery and storage and retrieval is faster than you would find in a conventional parking garage. One of the things that we want to mention is, while we're talking about definitions right now and we're talking about this being included in the regulation, we're suggesting that the Commission is dealing with a lot of issues beyond what we're talking about here. And we're hoping that this can be advanced to be a matter of right because it takes a long time to implement garages.

One of the first steps in the implementation of a garage or in the planning a garage is to decide the structure that should be there. That decision may allow automated parking to be in place, or it may invalidate automated parking; it may make it
difficult to do it. If there are a lot of columns that are closely spaced and the like, you'll find it very difficult to implement automated parking. In fact, it seems like, in many garages, the planning of the parking as an afterthought because the columns are in place, and all of us have been in these garages where you're trying to duck around columns to find a suitable parking place.

What automated parking does is it provides parking so that every parking space is an easy parking space to get into because the only place you're subject to in the garage is that the entry point.

The other important point about is, because the entry places where you enter the garage are all ADA-compliant, the whole garage is ADA-compliant by virtue of it.

That's the substance of my testimony.

CHAIRMAN HOOD: Sir, you still have some more time left.
MR. GOROVE: Oh, I do more time.

CHAIRMAN HOOD: Yes.

MR. GOROVE: Okay. I wanted to show you some boards, just one of the things we have to do.

I might say there are a few of these in the United States, but there's thousands of them in Europe and Asia. I mean I went to Europe to tour these, and -- it would be best to show the board.

I wanted to show you this one picture.

CHAIRMAN HOOD: That's okay if they're in the record.

MR. GOROVE: Are they in the record?

Automated parking -- what it really is, is it's a form warehousing, so the mechanics of the system are very similar to warehousing. There's hundreds of these systems in place, but they're used for warehousing in the United States. In Europe
and Asia, they're used for parking.

There are a few of these in the United States, maybe 20 to 30. There's one right here in Washington on I Street, which everybody cannot see. It's underneath an apartment building. When they looked at conventional parking, they could only put in 25 parking spaces. They could put in 75 of these automated spaces in.

But you can see the difference. This is a warehouse. There's an automated parking garage. They look very, very similar. And I'll just show you two other diagrams. The reasons they use less space is there's no ramp; the parking spaces are smaller; the parking spaces are closer together. You don't have to park them. They're mechanically parked.

And you can see they're --

(Feedback interference.)

MR. GOROVE: And that's what these diagrams show.
CHAIRMAN HOOD: Okay. All right, thank you very much.

Next.

TESTIMONY BY MR. LINDSLEY WILLIAMS

MR. WILLIAMS: Good evening, Ladies and Gentlemen, Mr. Chairman. My name is Lindsley Williams. I live at 3307 Highland Place, Northwest, Washington, DC, and I'm speaking here tonight as an individual, not on behalf of anyone else. I'm delighted to have the opportunity to be here.

You will be relieved to know that the 62-page document that I submitted to you is nothing that I'm going to read to you. But it serves to provide the Commission and, I hope, others an opportunity to ask the question of, why are we changing the definitions? And that leads me to request, as the Commission has done in years past, to develop some kind of a statement of reasons when changes are being made.
To a certain extent, the OP report talks about that, particularly as to use groups, but there are many, many places were definitions are being changed. And when changes are made to the bedrock definitions that are in the zoning code, that can lead to the identification of nonconformities because something is from the good side to the bad, or from the bad side to the good.

We need to really have a statement of reasons and have a review, it seems to me, from the Zoning Administrator that says, what you're proposing to do won't cause a host of unexpected consequences. I'll leave it at that.

I will just say that, for example, even the definition of "person," which was included in the original regulations, the existing regulations, is vaporized right now. So I don't know what a "person" is, but it used to be a corporation as well as an individual.
As to the use groups themselves, I think it's a very good concept to go forward with the simplified administration going forward, but I have a cautionary note to ask that the Commission consider looking again at the newly created group, which is "institution, religious-based."

It seems to me this could get into difficulty as to whether or not it is exclusively focused on what I will call RLUIPA organizations -- Religious Land Use and Institutionalized Persons Act -- or whether it includes things that have some sort of trace history into a religious community.

Holy Cross Hospital in Silver Spring could be described that way. Sidwell Friends has Quaker heritage. We could go on and on and on. I don't think that's what is intended, but I think you need to focus on places of worship, which is the focus of RLUIPA, and not have anything else slip in.
I also want to echo the comments that I've heard early this evening about "cellar" and "basement" confusion, but I want to take it further in that to the definition of "gross floor area," which has in it several things relating to the parking, which I won't go into. But also, it has a standard that says, we want to look at the measurement of the floor above, which is an eight-foot standard from the floor instead of having the four-foot headroom kind of thing to the adjacent grade.

I believe that you want to have consistency between the way in which you calculate gross floor area and the way in which you look at cellars and basements, and straighten out a few other things in the "GFA" definition as it exists, which happened to be identified and Mr. Gorove's document.

I think I have come to the end.

Thank you very much.
very much.

I want to thank each and every one of you for providing testimony.

Commissioners, any questions of anyone on this panel?

Vice Chair.

VICE CHAIR COHEN: Mr. Kroopnick, I really did not follow your argument with regard to separating big-box retail. So can you be more explicit about what you're asking for?

MR. KROOPNICK: Sure.

I was reluctant to get too much into the policy that we are proposing, which is a special exception policy for big-box development, which is reserved for next week. But as a premise of that policy, you need a definition for big-box retail stores.

VICE CHAIR COHEN: Okay, we can go on to next week on. Now I understand where you're coming from.

MR. KROOPNICK: So, tonight, I
just wanted to establish a definition for big-box stores, but I didn't want to overstep my time or my ability to speak tonight.

VICE CHAIR COHEN: I know your context.

Thank you.

MR. KROOPNICK: Thank you.

CHAIRMAN HOOD: Any other questions of this panel?

Commissioner May.

COMMISSIONER MAY: Yeah, Mr. Kroopnick, did you actually submit testimony on Subtitle B, or is it all in your testimony that we'll here next week? Because, we have written submissions for you on a couple of other subtitles, but not this.

MR. KROOPNICK: In hindsight, I probably should have submitted this for Subtitle B.

I submitted it for Subtitles G, H --

COMMISSIONER MAY: Yeah, I saw
the list of what you did submit.

MR. KROOPNICK: So, in hindsight, it should have gone into Subtitle B.

COMMISSIONER MAY: Well, I mean if the crux of it is the definition of "big-box," if we've got that, we're covered.

MR. KROOPNICK: Yeah.

COMMISSIONER MAY: And we'll get into it next week.

MR. KROOPNICK: Great. Thank you.

COMMISSIONER MAY: Mr. Peterson, on, I guess, the definition of "residential agriculture," you're urging that it be small domestic annals? Because, right now it's domestic animals, in which I wouldn't necessarily include cow. I mean, maybe it's a question I need to ask the Office of Planning in terms of how they would differentiate.

But are you saying "residential agriculture" should include -- I mean where
do you draw the line?

MR. PETERSON: Well, I guess --

COMMISSIONER MAY: How small does "small" have to be?

MR. PETERSON: The problem is "domestic" isn't defined, so your "domestic" might not be my "domestic."

COMMISSIONER MAY: Right. Well, your "small" might not be my "small."

MR. PETERSON: Well, that's true.

COMMISSIONER MAY: Your, actually, your "small" is probably like my size because I know you're, you know, very tall.

(Laughter.)

MR. PETERSON: All I'm saying is, I think, "small" at least would make it, you know, so you can have smaller animals.

COMMISSIONER MAY: Okay, but you're not taking a specific position about what should or should not be permitted, just that the needs to be that differentiation.
MR. PETERSON: Right.

COMMISSIONER MAY: Okay, so we're

--

MR. PETERSON: I'm afraid it will have to be dealt with on a case-by-case basis because human nature is very inventive on what people want to raise in their backyards.

COMMISSIONER MAY: Right; and I think these are subject to other regulations, as well.

MR. PETERSON: Right.

COMMISSIONER MAY: So it's just a matter of --

MR. PETERSON: But I remember, I raised racing pigeons as a kid, so are racing pigeons a lot are not? I mean, they're at least small.

COMMISSIONER MAY: That's true.

I think that was actually it for my questions. I have some follow-up for Office of Planning.

CHAIRMAN HOOD: Okay.
Anybody have any other questions?

Commissioner Turnbull.

COMMISSIONER TURNBULL: Thank you, Mr. Chairman.

Yeah, Mr. Peterson -- Gary -- I hope we don't have a rash of chicken or chinchilla ranches trying to sprout up. I can't imagine anybody wanting to do that. But, like you say, people can be creative.

MR. PETERSON: Right.

COMMISSIONER TURNBULL: But you're right. I think we do need to expand the definition and make sure we're covered on that.

And Mr. Forrer, you talked about a "flat roof" definition. I think it's a good point. Hopefully, no architect is going to define it totally flat roof, so there is always a spoke to it.

But the point is maybe there is a definition that defines where flat roof ends and a sloped roof takes over, so I think you
nailed a point that, at least from a definition standpoint, we ought to totally define what a flat roof really is. Thank you for your comment.

And Mr. Gorove, I want to thank you for your -- I heard your presentation before at Lambda Alpha. And you always remain the silent partner of the Gorove-Slade. We've always seen Lou here at the hearings, but you're always the one in the background during the work. So I want to thank you for your presentation on that.

MR. GOROVE: Actually, I didn't do the work. We have --

COMMISSIONER TURNBULL: You don't need to -- I'm giving a lot of credit here.

MR. GOROVE: Okay, I'll take it.

Thank you.

COMMISSIONER TURNBULL: Thank you all very much for coming here tonight. I really appreciate it. I think there's a lot of good comments that OP needs to look at, so
we want to thank you again.

CHAIRMAN HOOD: Okay.

Commissioner Miller.

COMMISSIONER MILLER: Thank you, Mr. Chairman.

Yeah, I would agree with Commissioner Turnbull that there are some very useful comments here, and some questions that we may need to thrash out and pose to OP.

Mr. Bardin, I think your suggestions are useful, and would be a useful addition.

The "sustainability" definition -- I realize you're saying it came from the President's executive order. It seems kind of vague. Did you consider other definitions or -- it doesn't even have the word "environmental" in there -- maybe just throwing in "environmental conditions" or something like that?

MR. BARDIN: Commissioner Miller,
you can certainly amplify it. But the concept is not a very precise concept.

COMMISSIONER MILLER: Right.

MR. BARDIN: Let's be candid about that.

But it's like public safety or many of the other concepts that we have in Subtitle A, where people generally understand, or think they understand, what it means.

Now, "sustainability" is kind of drawing a balance of all of these factors that the President's executive order mentions. It's been discussed more and more over the years. And now, our mayor has made this a major area of activity.

COMMISSIONER MILLER: We have a whole plan.

MR. BARDIN: if you want to put in the word "environmental," fine. However, the concept is striking a balance --

COMMISSIONER MILLER: Okay.
MR. BARDIN: -- which is what you do all the time at the Zoning Commission. And there are environmental factors, but there are economic factors, social factors, also being worked, and I think that's also what the Executive Order is trying to get to.

I don't have a -- you know, I don't have any particular wording. I did feel I owed it to you, one, to have a definition because -- I have had people ask me, what does 'sustainability' mean -- and two, to give you a source for a definition that you and your colleagues can --

COMMISSIONER MILLER: I think it's useful. I think it just may need a little bit of tweaking, maybe through that sustainability plan of the District, of the Mayor's that maybe has a -- there may be a definition in there.

MR. BARDIN: No, if I found a definition in the mayor's sustainability plan, I would have shared it with you.
COMMISSIONER MILLER: Okay, thank you.

MR. BARDIN: I found it in this executive order by the President, and there was an earlier one a couple of years earlier with the same definition.

VICE CHAIR COHEN: And Commissioner Miller, this is like the UN definition, so it's a universal definition with a little tweaking.

COMMISSIONER MILLER: Yeah, it just seemed very 'motherhood and apple pie'. And I guess it's one of those things, 'you know it when you see it' kind of thing.

MR. BARDIN: Well, it's definitely 'motherhood' and it's definitely under 'apple pie'. But if you look at 101.1 and see the other terms in it, you see they are full of 'motherhood and apple pie' terms which we've been using for 50 years in some cases, and actually going all the way back to Secretary of Commerce Herbert Hoover in the
original zoning regulations of DC, which were
the second in the country after New York
City's. And we think we understand that, or
at least we think we know what we're driving
at.

And both the Commission and the
BZA have been comfortable in trying to find
them.

COMMISSIONER MILLER: Thank you.

CHAIRMAN HOOD: I, too, want to
agree with all of my colleagues. I think the
information you all have shared with us is
very helpful as we move forward.

Especially -- you know the
neighborhood where I live in, which is an
industrial zone. As soon as I hear "CM-1," I
look up because I've had to deal with CM-1.
So I think some of the insight that all of
you have given us is very helpful.

But Mr. Williams, let me ask, the
statement of reason -- I think you called it
the statement of reason. I'm trying to
figure out, what are we getting from the stamina reason other than, okay, why are we changing the definitions? What are we looking for out of the statement of reasons?

MR. WILLIAMS: What I believe you're looking for, Mr. Chairman, is something that identifies what's wrong with the present definition, what is changing in the new definition, and how did that better advance the consistency between what you're doing through the regulations and the provisions of the Comprehensive Plan, and how does it better informed the Zoning Administrator as to what should and should not happen?

I realize that also sort of sounds like motherhood and apple pie, but it seems to me that you can -- look at the change in the definition of the courts, for example. I heard what Ms. Steingasser said; I read the report. But I'm not sure that I'm aware of what host of problems exists with
the current definition of "court."

You've been all through this. You've made your decisions. I'm not trying to put you on a rack over that, but there are a lot of definitions in these 62 pages, some of which are really critical to understanding the metrics of where you can put properties, buildings on a property, where you measure the height from. We're heard critiques now about the building height measurement point.

And all I'm trying to get at is that when you have a statement of reasons, it's like a preface to why are we doing this particular thing. The judgment should be, is it so broken that we really want to change it right now, given the possibility that it will affect what is conforming and what is nonconforming going forward? And how do we make sure that places that somehow fall on the other side of something because of a definitional change are not then cast into some dreadful nonconforming status that lives
with them in perpetuity going forward. So I think we need to be cautious in making changes.

Lord knows, I could probably rewrite the Lord's Prayer, but I won't.

I just am asking us to exercise restraint and find a really good purpose for each of the changes that we are doing and just take that into heart. That's what I would look for in a statement of reasons, along with the referral to the ZA to make sure that he doesn't see some problem that our trained eyes and your trained eyes don't see before we go forward and say, final, effective six months from now, or whatever.

So thank you for the question.

CHAIRMAN HOOD: All right, thank you. That was a good point.

Okay, any other questions?

(No response.)

CHAIRMAN HOOD: Okay, that's it.

Thank you all very much. We
appreciate you coming down.

Let me go back over the list. I see Ms. MacWood came in.

Sian Ofalolain?

(No response.)

CHAIRMAN HOOD: Sian Ofalolain?

(No response.)

CHAIRMAN HOOD: Mike Wilson?

(No response.)

CHAIRMAN HOOD: I think I called everybody I have on the list.

Everyone else who wants to testify, if you can come forward, this will be our last panel.

If there's anyone else in the audience who would like to testify on Subtitle B, if you could come forward.

Okay, we will end on this panel, Colleagues, and then we will ask our questions.

Ms. MacWood, we will begin with you whenever you're ready.
TESTIMONY BY NANCY MACWOOD

MS. MacWOOD:  Good evening, Mr. Chairman and Commissioners. I'm going to be really brief your tonight. I'm Nancy MacWood representing the Committee of One Hundred.

As you know, predictability and clarity are strong attributes of any zoning code. Subtitle B of the Definitions section should provide a base line for the meaning of zoning concepts. We think there are a few definitions that could be improved to further that goal.

One issue is the legal authority of the definitions. Do they establish requirements, or are they only descriptions of terms? Chapter 1 states that the zoning definitions are not intended to change the legal meanings used in other regulations, but it is not stated whether the zoning definitions are actually enforceable provisions of the Code or are simply helpful bits of information to orient the code user.
For example, the definition of "home occupation" describes a resident-practitioner relationship, but in the Subtitle D provisions that establish the rules for home occupations, it is not clear that the resident must be the business practitioner. So, is the definition an additional enforceable provision or not?

"Affordable housing" -- the definition is "no more than 30 percent of household income spent on housing." I don't think that definition is applied to any specific zoning provisions, but the term is used in the planned unit development provisions. It may also be mentioned in other parts of the Code.

The confusion arises because inclusionary zoning rules apply to a proffer that affordable housing beyond what is required could be a benefit of a PUD. IZ has income requirements based on area median income levels and not on the percentage of
income spent on housing.

It would seem that a clearer definition of "affordable housing" would relate to the IZ income criteria, which is based on percentage of AMI. There should be a review, in our opinion, to determine the term "affordable housing" is ever used in the Code without referencing IZ regulations. If it is always associated with IZ, a better definition would use the IZ income rules and would cross-reference affordable housing "affordable housing" with definitions for "low and moderate income," or 30 or 50 percent of AMI, whichever is the clearer reference to icy.

"Apartment building" -- the current definition describes buildings with three units or more. The proposed definition describes buildings with five units or more. This may be to distinguish apartment buildings from four-unit row houses, but there are existing apartment buildings that
will be included in the new apartment zone that have fewer than five units.

The new definition of implies that apartment building density has a base of five units, and the buildings with four units are some undefined housing option or perhaps would become nonconforming structures.

"Household" -- the definition is confusing. OP seems to intend to have this explain how and when numbers of people living together is limited, but OP is only including two types of households and is not including other types of households where the proposed regs would limit the number of people living together. Included in the definition is a family household where everyone is related and the total number of occupants is on limited. The other is a group household of no more than six unrelated persons living under one roof with common living features, like kitchen and bathrooms. OP has not including "accessory dwelling units" even
though they create a separate household.

   And OP has included a limit on
the number of people living on a lot in
Subtitle D.

   To be comprehensive and clear,
the "household" definition should include all
types of households with accompanying limits
on number of occupants.

   Thank you, Mr. Chairman. That
concludes my testimony.

   CHAIRMAN HOOD: Thank you.
Next.

   TESTIMONY BY MICHAEL WILSON

   MR. WILSON: Hi. Thank you.

   My name is Michael Wilson. I'm
with the Respect DC Coalition and a resident
of Ward 4. I came out here tonight to
support the addition of a definition of the
"big-box retail" as retail stores that are
75,000 square feet and up.

   Our coalition, Respect DC, is a
group of labor, faith, environmental, and
community groups that has been working on issues of new retail stores that are been coming into DC. We feel that big-box is a fairly new and recent development. The first big-box stores in DC have only been coming in, in the last 10 to 15 years.

We feel that it's important to have a definition of these reflected in the zoning code. I think, again, as was mentioned before -- I know that the special exception will be discussed next week, but we do need to have the definition in there.

Big-box retail creates traffic, environmental, infrastructure, and other impacts that have a disproportionately large impact on the surrounding community, and should be defined separately, as it has a different and distinct impact from other retail uses.

The 75,000 square feet that is being propelled, we feel, makes sense. It includes only retail of a size that will have a
disproportionate impact if it's within a range that's used in other jurisdictions to define big-box retail, and it leaves out traditional grocery stores that don't fit under the definition.

I cannot testify next week, but hopefully, some others from our coalition will be able to. But as has been said, we support this definition so that we can create a special exception in the Code that takes into account the existence and impacts of big-box retail versus traditional retail.

Thank you.

CHAIRMAN HOOD: Thank you. Thank you both, actually. We appreciate your testimony.

Commissioners, any questions of this panel? Any questions?

Mr. Turnbull.

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

Ms. MacWood, on your comments
about -- I want to thank you for your comments, by the way -- the apartment building, do you think we should go back to three? Otherwise, you've got a flat, which is covered between one and two.

MS. MacWOOD: Exactly.

COMMISSIONER TURNBULL: So three would set the minimum level.

MS. MacWOOD: There doesn't seem to be any real reason for changing it, and for some of the reasons that Lindsley Williams provided and the potential for creating a nonconforming structure, it seems like it ought to stay the way it is.

COMMISSIONER TURNBULL: Okay, thank you.

CHAIRMAN HOOD: Okay, any other questions?

(No response.)

CHAIRMAN HOOD: All right, thank you all very much. We appreciate your testimony. It's been very helpful.
We'll ask their questions now of the Office of Planning.

Do we need 10-minute rounds? Let's be consistent. Let's do 10-minute rounds. I don't think I'm going to need my 10 minutes tonight. I don't want to sound like Commissioner May; he doesn't need his 10 minute rounds; he takes 20. (Laughter.)

CHAIRMAN HOOD: So I don't think I need my 10-minute round.

Come on, man.

(Off-mic comment.)

CHAIRMAN HOOD: That was last night.

VICE CHAIR COHEN: I'm going to start. Is that okay, Mr. Chairman?

CHAIRMAN HOOD: Go ahead, Vice Chair.

VICE CHAIR COHEN: I am very concerned about "agriculture" for several reasons. One, I think the first zoning case. The reason why we had zoning that separated
uses is because there's a pig -- this is Euclid, I think; you probably remember better than I -- but you know, the pig farm was getting close to the residential area.

I don't really support separation of uses, other than I don't want a pig farm next to me. I lived in New York City, and for 10 years, I had a rooster on the roof next door.

So those are issues that we need to consider when we allow even "small" because a rooster is small and a lot of pigs are small domesticated animals. So I think that we need to be very, very careful.

I know there was a letter in support of having chickens, which -- they don't make as much noise as a rooster. So I want to be very cautious about that, and I don't want to bring into neighborhoods certain uses that are going to be offensive.

The question that I have is, did
the zoning administrative officer review all of these definitions so that as was mentioned, there are no unintended consequences?

MS. STEINGASSER: We did. We sat down with the Zoning Administrator and two of his staff and went through all the subtitles. And obviously, A, B, and C were the most critical for us, to make sure that they were comparable because that gets to where their work comes from. And that's why you'll see tonight, he requested certain definitions be reinstated or initiated into the regulations.

VICE CHAIR COHEN: Okay.

How come we have not defined an area variance and a use variance? The reason why I ask that is, when I have sat on BZA, it has confused people who people come forward. They describe a use variance when it's an area variance.

MS. STEINGASSER: The Commission may remember, in Case Number 12-11, the
Commission considered that definition as part of the administrative regulations.

VICE CHAIR COHEN: Yes.

MS. STEINGASSER: And it became very difficult to sort them out in a way that didn't bind the BZA, the Board of Zoning Adjustment, when they heard these cases. OAG felt it was in the best interest to pull that definition.

VICE CHAIR COHEN: Thank you for reminding me.

COMMISSIONER MAY: Can I just follow on that --

VICE CHAIR COHEN: Sure, of course.

COMMISSIONER MAY: I know I am succeeding her time. Maybe you want to stop the clock for a second and charge it to me.

But isn't the difference between "use variance" and "area variance" explained in the BZA rates, in that segment, that Subtitle?
MS. STEINGASSER: I believe it is. There is some explanation, but as far as going further into it --

VICE CHAIR COHEN: No, okay, but --

MS. STEINGASSER: I'm looking to the Office of Zoning, and they're shaking her head yes.

VICE CHAIR COHEN: I guess I just didn't catch it in my 997 pages.

What about the definition for "density credits," "arts credit," those types of credits? Are they defined somewhere else?

MS. STEINGASSER: Those will be defined as part of the downtown zone because they're integral to that.

VICE CHAIR COHEN: But why wouldn't you put them as definitions up front? 

MS. STEINGASSER: We can pull them back. I mean -- 

VICE CHAIR COHEN: I think that's helpful for people who then don't have to
sort for a lot of people.

MS. STEINGASSER: Okay.

VICE CHAIR COHEN: That's my recommendation.

Also, "transferable development rights," "strip zoning," those are the kinds of things that I think people -- you know, it would be helpful. That's all, and that's my opinion.

Thank you.

CHAIRMAN HOOD: Okay, who would like to go next?

Commissioner May?

COMMISSIONER MAY: Sure.

So, first of all, I want to thank you for Exhibit 83, which is the side-by-side definitions, old and new; right? Is that yours?

MS. STEINGASSER: Mr. Williams provided that.

COMMISSIONER MAY: Mr. Williams provided it. Oh, that was Mr. Williams.
Then I thank Mr. Williams for that.

Where did he go? Oh, there he is. Okay.

So I just assumed that -- I mean it didn't have anybody's name on it. How did that happen? But I thought that was useful, and I know it's the sort of thing that makes it a little easier to understand. Anyway, so thank you.

I guess I'm interested in hearing your response to Mr. Peterson's comment about small animals and residential agriculture, and what you're imagining might be allowed.

MS. STEINGASSER: Well, what we tried to do is -- do you remember way back with the sustainability workgroup? There was a lot of talk about urban agriculture and animals. Most of it in DC is regulated by the Department of Health. We were very careful not to try to tread into that area so that we would have conflicting regulations, much like we have done in some of the
sustainability things. That's where are roosters were prohibited, that's where the spacing of the chicken coop in that kind of stuff -- that's all regulated as part of the health code. So we didn't go there.

I think it would be easy to try to separate out animal from vegetation, that type of agriculture. I've never seen anyone have livestock. We could probably pull out obvious things like that and say, you know, "domestic" does not include livestock. I don't --

COMMISSIONER MAY: Yeah, and then you've got more definitions to make.

I mean it's sort of tricky because there is a certain pressure to allow residential farming on some level.

MS. STEINGASSER: Right.

COMMISSIONER MAY: It was even in the City Paper this week, where you can have chickens and where you can't in local jurisdictions, and where you can have
roosters, and one jurisdiction allowed roosters and not chickens. It's very strange. So I think there's pressure on that. There have been cases on Capitol Hill where somebody wanted to have chickens.

So do you plan for that eventuality, or do you plan against it and create another hurdle? If the Council decides certain things should be allowed, is an automatic that it should be allowed in certain areas, or does it get taken up at that point?

MS. STEINGASSER: That's why we have left it with the health department and not tried to codify it in zoning beyond what you have now. I mean we don't regulate dog houses --

COMMISSIONER MAY: Right.

MS. STEINGASSER: -- and those kinds of things. We do regulate stables, horse stables, and there are some requirements on the conditions of that.

COMMISSIONER MAY: So is there an
explicit pointer within the regulations that says 'For animals, go to Department of Health chapter in the DCMR'?

MS. STEINGASSER: I'll be honest; it's getting to the statement, it's not broke, so we didn't go after it.

COMMISSIONER MAY: Got it.

MS. STEINGASSER: It becomes a very contentious issue. It creates, in some ways, a very artificial debate. So we didn't go there with it. If the Commission wants us to look into it -- in our experience, when we talk to the jurisdictions, it becomes a very emotional issue

COMMISSIONER MAY: Right.

MS. STEINGASSER: So, it's --

COMMISSIONER MAY: So I think the bottom line is maybe some attention to Mr. Peterson's question. Is it warranted just to make sure that were not allowing something accidentally?

MS. STEINGASSER: Livestock and -
- right. I think we can fine-tune it more.

  COMMISSIONER MAY: Right.

So, to Mr. Thompson's question about the definition of "cellar" and "finished grade," I know this something that we've dealt with before. There really isn't a great solution because "existing grade" is always hard to define. You know, it seems like it wouldn't be, but it actually is hard to define.

  MS. STEINGASSER: They're all hard to define because they're all time-triggered. Is it existing at the day of building permit?

  COMMISSIONER MAY: Right.

  MS. STEINGASSER: We've had a case --

  COMMISSIONER MAY: We wrestled with that in "building height measurement."

  MS. STEINGASSER: Right. And so, since the Commission just adopted new language regarding building height and how to
measure it, and how it would be implemented in different times, we haven't proposed anything different than that because that case just became final in February of this year. So we've tried to stay with that.

You know, what we do need to do, admittedly, is make sure there's consistent use of times as they go through. I think we've -- every report kind of opens with the fact that we know there's a lot of redundancy. His point of having those nuanced differences between B, C, and D, that's valid, and we will be pulling those out and making them reflect the language that the Commission just adopted.

COMMISSIONER MAY: Okay, yeah. I mean I don't know that there's any better solution than what you already have in the language, so, yeah, it invites some potential for mischief.

But by a large, I think I don't think we're getting huge mountains of earth
leading up to --

   MS. STEINGASSER: We're not -- in

the new language, we did address that, that

you couldn't artificially raise, you couldn't

create a berm and measure from it.

   COMMISSIONER MAY: Right.

   MS. STEINGASSER: And we tried to

hit at that issue head on.

   COMMISSIONER MAY: Right.

   MS. STEINGASSER: So I think that

will help the issue.

   COMMISSIONER MAY: It makes

sense. Is there a way to

incorporate that into the "cellar"

definition?

   MS. STEINGASSER: No, the

"cellar" and "basement" definitions --

   COMMISSIONER MAY: That really

has to follow the --

   MS. STEINGASSER: That follows

the -- yeah.

   COMMISSIONER MAY: -- line of the
building all the way around, yeah.

    MS. STEINGASSER: Right. Right, and we didn't change that. We didn't propose any changes to the in the administrative case last year, or in regulations going forward.

    COMMISSIONER MAY: Right.

    So one last question -- this goes to lot occupancy, and I have to look at the definition again as I'm sitting here, but I made a note to myself. Did we want to change the definition of "lot occupancy" to include buildings and structures? Because, there's the one zoning case where we had an elevated platform structure.

    MS. STEINGASSER: Right.

    COMMISSIONER MAY: It was a question of whether it counts toward lot occupancy, and I'm wondering if it was --

    MS. STEINGASSER: Well, the flag we have on that in our system is that once that case gets complete --

    COMMISSIONER MAY: Yes.
MS. STEINGASSER: -- which won't be until December, then we'll adjust accordingly and incorporate that. But I'm not sure whether "lot occupancy" included structures -- total building area of all buildings, and then you go on and look at it. So we could make sure that -- they'd have to be justified because the language of the "retaining walls" specifically states it will be considered in lot occupancies, so somehow that has to be --

COMMISSIONER MAY: Right, so it has to be some kind of tweak.

All right, thanks.

CHAIRMAN HOOD: Commissioner Miller.

COMMISSIONER MILLER: Thank you, Mr. Chairman.

So, on the "cellar" definition, why shouldn't it refer to the natural grade, which is a defined term in these definitions?

I don't know if -- is that a newly defined --
MS. STEINGASSER: No, we did not change the definition --

COMMISSIONER MILLER: Of "natural grade."

MS. STEINGASSER: Of "natural grade," yeah.

COMMISSIONER MILLER: Can you just give me the rationale of why it shouldn't be -- this is my lack of understanding of the whole issue -- why it shouldn't relate to the natural grade versus the adjacent finished grade. And also, why shouldn't cellar space, in any event, wherever it is, be counted toward the FAR? What's the rationale for not including it within FAR?

MS. STEINGASSER: Well, it's to recognize it as truly subterranean space.

When it comes out at a certain point, the walkouts, then it does start to include -- excuse me -- then it does start to be included in the FAR and the lot occupancy,
and the Zoning Administrator has a very long history of how they interpret it by how much it comes out, at what point, and how they measure that.

The deal with "natural grade" is there's very little natural grade left in Washington, so much of it has already been altered in one way or another. There also has been a lot of issues with viaducts because, you know, the Height Act has always been the leading edge of how we measure height, and that talks about from the curb, and the curb starts to rise. And so we've tried to find ways to bring that down a bit.

I mean we can take another look at it, but that's --

COMMISSIONER MILLER: But explain to me -- we can count basement space as a part of FAR, but not the cellar; is that --

MS. STEINGASSER: I believe that's correct.

COMMISSIONER MILLER: So that's
why I don't understand. What's the "subterranean" argument? What is --

MS. STEINGASSER: I don't --

COMMISSIONER MILLER: I'm just trying to understand the original rationale.

MS. STEINGASSER: That's been in the zoning regs since 1958.

COMMISSIONER MILLER: Yeah, and what was the original rationale?

MS. STEINGASSER: It would be my guess, based on my read of the Lewis Report -- he did not spend a lot of time in Washington -- that he anticipated the most of these would be fairly flat buildings, and that there would be a basement and there would be a cellar, and that it would be fairly uniformly applied. And, that which appeared to be below grade would not count, and that which appeared to be above -- as Washington was already well built out by that time, and you get out into the edges where there's so many holes. It just has created a
bit of a challenge.

If we unify those, we will create, I think, a lot of unintended consequences because we won't be able to anticipate how many nonconformities will result from it. So, unless we're either going to go more lenient and then up the height and density, that --

COMMISSIONER MILLER: That's the problem with nonconformity. Although you can say, going forward, it's this way and everything else is still conforming, I guess, could you do that in other cases?

MS. STEINGASSER: We could. There's not that much left. You know, we're talking about, really, when we're getting into these areas, it's been infill. You know, the new developments are usually larger-scale ones and usually before the Commission in some kind of PUD or theoretical lot subdivision. So there's different types of ways to review them.
COMMISSIONER MILLER: On the "industrial use" that Commissioner Jones testified to, was there any change in the permissibility of auto repair shops?

MS. STEINGASSER: No, there was no change.

In the industrial zones, what we looked at, we put a limit on nonindustrial uses, which we'll talk about in a couple weeks. We also put a special exemption on nightclubs and those kinds of late-night activities that spill over, but we did not go after the car repair.

COMMISSIONER MILLER: There was one other thing I wanted to ask. I think maybe Mr. Turnbull will get into that.

I assume that all the definitions, including "Institution, religious-based" were reviewed OAG in light of --

MS. STEINGASSER: Absolutely. Absolutely, that was.
I think there is a good point to mentioning the schools. We do talk about religious-based schools, so, a parochial school that's part of a church versus something like Sidwell, which falls under, as a private school. There may be some fine-tuning we need to do in that area.

COMMISSIONER MILLER: And I assume that you wouldn't have any problem with tweaking "mechanized parking" to take into account and to make an accommodation for this newer --

MS. STEINGASSER: No, not at all.

COMMISSIONER MILLER: -- to take into account this newer kind of automated parking -- okay.

Thank you, Mr. Chairman.

CHAIRMAN HOOD: Commissioner Turnbull.

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

I want to thank Ms. Steingasser

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for the work you're doing on all the tweaking of these things.

We had a lot of input tonight, and I'm just wondering, what's your next step on looking at some of the input that we got?

I think Ms. MacWood talked about the apartment building quirk. Do you see that as a valid point, or?

MS. STEINGASSER: My concern is that we've created two new zones that the Commission will be considering this week, and they redefine "flat." A "flat" is now a two-unit, three-unit, or four-unit. So I think, just like a single-family detached is not a nonconforming use in R-5 zone, we just need to make sure that all residential uses move forward.

To call a three-unit building an apartment -- and we're proposing these new residential "flat" zones -- would create apartments in these zone, which is exactly
what we were trying to get at. It got to some of the issues of neighborhood character and the concern about inappropriate subdivision of buildings, these large row house buildings, these larger estate homes. So we were trying to find zones, create new zones that would allow for their reasonable subdivision yet would still maintain the character and not turn it into apartment buildings.

So I'd rather be straight up that from OP's position, we recommend that a five-unit and above be an apartment building, and everything between two and four be considered a flat.

COMMISSIONER TURNBULL: A flat. So you could have a four-unit flat.

MS. STEINGASSER: Yes, sir. That's what we're recommending

COMMISSIONER TURNBULL: Which is not typically what we have always thought of as a "flat."
MS. STEINGASSER: No, sir. We typically think of just a two-unit --

COMMISSIONER TURNBULL: Two units.

MS. STEINGASSER: As a flat. And so, the way the housing is distributed in DC right now, you have single-family detached, you have a flat, and then you have unlimited apartments.

There was a large rezoning in the '60s that created R-5B and R-5C over a lot of our historic row house areas. And by "historic", I use a little "H," not a historic district.

COMMISSIONER TURNBULL: Okay

MS. STEINGASSER: And it has caused, in areas like Lanier Heights, Adams-Morgan, Sheridan, Kalorama, the ability to make apartments out of this large homes is kind of inappropriate, and we've heard a lot from the community that they were very uncomfortable with it. So we tried to, you
know, fine-tune down some newer zones that
were neither apartments nor just two-unit
dwellings.

We've also seen a rash of cases
in front of the BZA where people are trying
to turn large row homes into more than two
units. So this is a way to kind of get at it
in a neighborhood way that creates a little
bit more stability.

COMMISSIONER TURNBULL: Okay.

MS. STEINGASSER: We were talking
about that.

COMMISSIONER TURNBULL: One of
the things that Commissioner Jones brought up
was she mentioned the term "saturation point"
of uses within an area.

Have you thought about that, or -
- well, we have done some of the overlays
where you can have too many bars on a
frontage. But have we put too many uses of
one kind in one area?

MS. STEINGASSER: We didn't do
that kind of planning work as part of this zoning case.

COMMISSIONER TURNBULL: Right.

MS. STEINGASSER: We've distinguished between the planning and zoning. Commissioner Jones has done a lot of work. She's been very vocal with us about her concern for that. She invited us out to -- it's not the only work, but it's certainly work I'm familiar with.

But we've not proposed anything along those particular lines, outside of looking at the nightclub issue.

COMMISSIONER TURNBULL: There were some other comments that were made tonight about a lot of different issues and points and terms; you know, "urban canopy," "sustainability."

MS. STEINGASSER: Yes.

COMMISSIONER TURNBULL: How are you looking at going forward on this? I guess, getting back to what Mr. Williams
talked about before, you know, about a statement of reasons, the definitions, and then why we're doing it, do you think it's possible to get something like that?

MS. STEINGASSER: Well, a lot of this, the Commission has already done; right?

So this is a continuum of a longer case.

COMMISSIONER TURNBULL: Right.

MS. STEINGASSER: And so, in terms of some of the definitional changes to the development standards -- what makes a courtyard -- the Commission has already looked at that. So we're happy to pull those reports and provide them to you again.

I'm thinking this would be something along what Commissioner Miller was suggesting last night, that as we go from collect all the comments --

COMMISSIONER TURNBULL: Okay.

MS. STEINGASSER: -- there will be an OP kind of response --

COMMISSIONER TURNBULL: I got
you.

MS. STEINGASSER: -- or recommendation as to what we think is appropriate.

COMMISSIONER TURNBULL: So you would do this on the definitions, then, too.

MS. STEINGASSER: Oh, yeah. This is the easiest one.

COMMISSIONER TURNBULL: And then -- I was just on a BZA case today where a use came up. And I was like, well, it should fit into this; well, it's not really classified. So I mean there's going to be those kinds of things that are going to come up, too, that we're going to input on.

MS. STEINGASSER: Yes, and we'll always be open to that.

But in terms of trying to get our arms around --

COMMISSIONER TURNBULL: Around this whole --

MS. STEINGASSER: -- these
hearings, that's how we were going to do it.

COMMISSIONER TURNBULL: Well, I think it would be good.

MS. STEINGASSER: Okay.

COMMISSIONER TURNBULL: I think it would be good for you to give this annotated concept for things like that, that we're getting. I think it would help us -- I think it would help everyone of us who's come here -- to know that their comments have been looked at.

MS. STEINGASSER: I mean we've always been of the position that whether we agree or disagree, we couldn't pay for this kind of expertise --

COMMISSIONER TURNBULL: Right.

MS. STEINGASSER: -- to look at these regulations, so we are more than happy to get those, to synthesize it and sort it through.

COMMISSIONER TURNBULL: Okay, thank you.
CHAIRMAN HOOD: I want to piggyback on what Mr. Turnbull was talking about.

Even though the Commission may have looked at some of these things previously -- we may even have approved it -- one thing we can do is undo what we've done if we all agree.

I'm sitting here thinking, what happened to the trash transfer? In 1998, this zoning commission dealt with the trash transfer -- was it "trash facility"? I can't think of what it's called. But I was sitting in the audience and I remember when this commission voted on this. I guess now, it's covered in PDR if I'm --

MS. STEINGASSER: It's considered a waste-related service. It's its own use category, and it's included in the examples of "solid waste handling facility" and "non-intensive recycling facility." And all the restrictions and conditions of those are
listed.

When we get into the PDR "Industrial" chapter, then those will be the conditions of its operation.

CHAIRMAN HOOD: So I wouldn't see it right here in this definition.

MS. STEINGASSER: You would not.

No, sir.

CHAIRMAN HOOD: Okay, that's what I was looking for.

I still agree with Mr. Williams on the statement of reasons. That's something that I would -- are we just changing for the sake of changing? Are we changing because we're modernizing our code? I think he brings up a good point, and I'd like to get into that. I really would. I think he brings up a very good point.

I don't know, Mr. Turnbull, if that was along the lines you were going. Yes, we need to do that.

I'm not saying we have to go by
everyone, but why are we making these changes? Are we making them because we need to update -- I don't want to answer the question.

Let me just tell you why I think we're making them. I think we're making them because, first of all, the Code is moving in a different direction, to a certain point, and we're trying to fine-tune the direction and make it consistent with the modern day.

Is that the answer?

MS. STEINGASSER: That is a very good answer. Yes, sir. Yes, sir.

CHAIRMAN HOOD: Well, so I'll see that in your report.

MS. STEINGASSER: You will.

But we've also tracked with the BZA cases and see what kind of problems are they have with the existing definitions and what kind of new uses have evolved that are not anticipated. What are we seeing in how buildings are being constructed versus 1958?
And so, trying to accommodate that, some of it is as simple as we're modernizing it. Some of it, a lot of the use definitions are that they've been put into use groups and they don't need to be called out anymore.

But I think some of it, as we work through it, I mean, we're still finding -- that's why every one of our reports have a little bit of a caveat that some stuff got dropped out unintentionally because we've been through three or four different formats.

So all of this helps us, you know, comb back through it over and over and over. We don't mind doing that. Especially since Mr. Williams put it in a table, we can just add another column over there and work through the definitions pretty quickly.

But I think it also will get to, I think, some of the issues we were hearing last night about what's changed. So I think they kind of go hand-in-glove.
CHAIRMAN HOOD: All right. Well, that was my only question. I was the shortest one tonight.

Commissioner Miller, do you have something additional?

(Whereupon, there was an off-mic response.)

CHAIRMAN HOOD: Thank you.

Does anybody else have any questions?

COMMISSIONER MILLER: Yes, I do; I'm sorry. I just had a couple of additional points.

I agree with the conversation about the statement of reasons. I think that would be a good of the legislative history of what we're doing here. I don't think it has to be, it's not going to be part of the zoning code but it would be a good part of the legislative history.

We'll get to this when we get to this chapter that has the subtitle that has
inclusionary zoning, but that do seem to be some definitions missing of "low"- and "moderate-income housing." And maybe you want to comment on that.

MS. STEINGASSER: Just to say we agree with you.

COMMISSIONER MILLER: Okay. So I guess we can address that, discuss that more at the inclusionary zoning.

I know, just to answer Ms. MacWood's -- not answer, but to address one of the points she raised -- I know that term "affordable housing" is used throughout. It's used in many more places than "inclusionary zoning" is. It's used in the housing linkage sections. It's used in the "PUD, Public Benefits" section.

We do need to have a definition, though, of "low and moderate income housing," and I would associate with myself with the Vice Chair's that someday soon, I'd like to adjust those targets to some kind of a lower
level than the 80 percent that's currently
given for our own populations, median income
versus area median income.

I guess the last one is, on the,
I think Chevy Chase ANC also brought up
"community gardens" being added to
"agricultural, residential." Do you have any
concern about that?

MS. STEINGASSER: No, I think
that's fine use that we will probably do.

COMMISSIONER MILLER: Thank you.

Thank you for all the work that
you have done for so many years on this
project.

CHAIRMAN HOOD: Okay, that's it.

Let me just say this: I noticed
that our "asks" get more and more of what
we're ask for. The public asks for stuff;
we're asking for stuff. And I really
appreciate the attitude of the Office of
Planning and as well as the Office of Zoning
because the "asks" get larger and larger,
even though this is just the second night. I'm sure the third night is going to be -- and this time next week might not be as friendly. (Laughter.)

CHAIRMAN HOOD: But I really appreciate the "ask" and the receptiveness of being able to accommodate the requests that we make from the Office of Planning as well as the Office of Zoning.

Okay, Ms. Schellin, do you have anything else?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: All right.

I want to thank everyone for their attention. Which Subtitle is tomorrow night? "D" and "F"?

MS. SCHELLIN: "D."

CHAIRMAN HOOD: Oh, "D."

Okay, with that, this hearing is adjourned.

(Whereupon, the hearing adjourned at 7:37 p.m.)