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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Zoning Commission of the District of Columbia

SPECIAL PUBLIC MEETING
1401st MEETING SESSION (26th of 2014)
CASE NO. 08-06A
ZONING REGULATIONS REVIEW

6:05 to 9:21 p.m.
Wednesday, December 11, 2014

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIA COHEN, Vice-Chairperson

4 ROBERT MILLER

5 PETER MAY

6 MICHAEL TURNBULL

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10 SARA BARDIN, Director

11 ESTHER BUSHMAN

12 ZEE HILL

13

14 Office of Planning:

15 JENNIFER STEINGASSER

16 JOEL LAWSON

17 ELISA VITALE

18 STEVE COCHRAN

19

20 Also Present:

21 ALAN BERGSTEIN, OAG

22

23

24

25

P R O C E E D I N G S

1
2 CHAIRMAN HOOD: Good evening, ladies and
3 gentlemen. This is a Special Public Meeting, the
4 1041st meeting of the Zoning Commission. Today's
5 date is Thursday, December the 11th. The time now
6 is about 6:05 p.m. We are located in the Jerrily
7 R. Kress Memorial Hearing Room, 441 4th Street,
8 N.W., Suite 220 South.

9 My name is Anthony Hood. Joining me are
10 Vice-Chair Cohen, Commissioner Miller,
11 Commissioner May, and Commissioner Turnbull. We
12 are also joined by the Office of Zoning staff, Ms.
13 Sharon Schellin, and also the Director of the
14 Office of Zoning, Ms. Bardin; the Special
15 Assistant, Ms. Hill; Office of Attorney General,
16 Mr. Bergstein; and also the Office of Zoning, Ms.
17 Bushman. Also the Office of Planning, Ms.
18 Steingasser and Mr. Lawson, Ms. Vitale, and Mr.
19 Cochran, and we do have members of the Office of
20 Zoning staff in the -- I'm sorry, the Office of
21 the Attorney General in the audience.

22 We do not take any public comment. This
23 is our interaction of the proposed text for the
24 ZRR, Zoning Revision Review, and I will open up --
25 we do not take any public comment from the

1 audience unless we ask someone to come forward.

2 We ask that you please not have any
3 disruptive noises or actions in the hearing room.

4 Let's go straight to preliminary matters.
5 Ms. Schellin.

6 MS. SCHELLIN: Yes, sir. Actually, we do
7 have one preliminary matter. As the Commission
8 has probably noticed, Subtitles Y and Z were
9 published without any fee schedules inserted, and
10 the Office of Zoning would like to ask, or,
11 actually, is requesting to advertise a Notice of
12 Public Hearing for the fee schedule, without set
13 down.

14 CHAIRMAN HOOD: Okay. You're asking us
15 to --

16 MS. SCHELLIN: Yeah. If we could go
17 ahead and publish a Notice of Public Hearing
18 without set down.

19 CHAIRMAN HOOD: Okay. Commissioners, any
20 questions on what Ms. Schellin just said, or any
21 objections? If not, we will so authorize. Any
22 objections? Okay. So authorized.

23 MS. SCHELLIN: Thank you.

24 CHAIRMAN HOOD: Anything else, Ms.
25 Schellin?

1 MS. SCHELLIN: No, sir. Nothing else
2 that we have for preliminary.

3 COMMISSIONER TURNBULL: Mr. Chair, I do
4 have one preliminary --

5 CHAIRMAN HOOD: Yes.

6 COMMISSIONER TURNBULL: -- issue which I
7 would like to bring before the Commission.

8 CHAIRMAN HOOD: Okay.

9 COMMISSIONER TURNBULL: I've been talking
10 with both OAG and the Office of Planning regarding
11 a slight change to some language that would apply
12 to certain squares near Capitol Hill, and there's
13 some concerns expressed by the Architect of the
14 Capitol and Congress about looking to have
15 basically that anything above 90 feet would be
16 treated as a special exception, and then would be
17 referred to the Architect of the Capitol and
18 Capitol Police Board for review, basically
19 regarding -- it gets down to security issues.

20 So that would be the one amendment, and
21 OAG has weighed in on the text that the Office of
22 Planning has prepared, and this just happened
23 about an hour ago, or so, so I just wanted to
24 bring that forward and see if I could get some
25 consensus on it. You probably want to see the

1 language, and I don't know how we can get that to
2 you.

3 CHAIRMAN HOOD: Okay. You want a
4 response from Office of Planning now?

5 COMMISSIONER TURNBULL: No. I just was
6 putting that in, since we're dealing with the
7 zoning regs.

8 CHAIRMAN HOOD: I'm not sure when we --
9 but I think, now that you mention it, I think that
10 brings a lot of merit. I know there are a lot of
11 security concerns, as you've already stated.

12 COMMISSIONER TURNBULL: Right.

13 CHAIRMAN HOOD: So I would ask -- I'm not
14 sure how we get it done -- but Office of Planning
15 and OAG, or whomever, that we try to institute
16 exactly the concern. I think that's a major
17 security concern here in the nation's capital, so
18 that's something that I think, I would advise that
19 we deal with that.

20 COMMISSIONER TURNBULL: Okay.

21 MR. BERGSTEIN: If you're okay with the
22 concept, we already have text that we can work on,
23 and insert it as part of the Notice of Proposed
24 Rulemaking, if you take proposed action this
25 evening.

1 CHAIRMAN HOOD: Okay. Do we already have
2 that in front of us? We've got so much stuff, and
3 if we did, I probably missed it.

4 MR. BERGSTEIN: No. You haven't seen it.
5 We've seen the text. You haven't. Mr. Turnbull
6 is sharing the concept with you.

7 COMMISSIONER TURNBULL: Yeah. I'm just
8 sharing the concept.

9 CHAIRMAN HOOD: Okay.

10 MR. BERGSTEIN: So if you agree with the
11 concept that these squares that are adjacent to
12 the Capitol, if they exceed 90 feet, then the
13 additional height would be permitted only by
14 special exception. That's the concept.

15 VICE-CHAIR COHEN: Can you talk into the
16 mic? I can't hear you.

17 MR. BERGSTEIN: Oh, I'm sorry. The
18 concept that Mr. Turnbull just suggested is there
19 are certain squares that are adjacent to the
20 Capitol grounds that there's a concern about any
21 height in addition to 90 feet, so the concept
22 would be that height in addition to 90 feet would
23 be subject to a special exception review that
24 would focus on security concerns of the Capitol
25 police and Architect of the Capitol, and,

1 therefore, there would be referral.

2 So if you agree with that concept, we
3 have text, and we would, if you take proposed
4 action, insert it into the proposed text of the
5 revised Title 11. That's basically what Mr.
6 Turnbull was asking you to do, and that's what
7 we're prepared to do if you agree with the
8 concept.

9 CHAIRMAN HOOD: Okay. Any objections?

10 COMMISSIONER MAY: I just have a question
11 about what squares we're talking about.

12 COMMISSIONER TURNBULL: Well let me --

13 MR. COCHRAN: I can answer that, if you'd
14 like. 625, 626, 628, 630, 629, and 631. There
15 are six squares that are north of Louisiana Avenue
16 and immediately west of North Capitol Street.
17 It's in that same area where the Jones Day case
18 brought the Architect of the Capitol --

19 COMMISSIONER MAY: It's basically the
20 ones that are along Louisiana Avenue, is what
21 you're talking about.

22 MR. COCHRAN: And a little bit north.

23 COMMISSIONER MAY: Okay.

24 CHAIRMAN HOOD: Okay. So any other
25 questions or comments?

1 COMMISSIONER MILLER: Yeah. I had a
2 question of the Office of Planning. Did you have
3 a -- you all were okay with this? Did you have a
4 recommendation?

5 MS. STEINGASSER: We do agree with this,
6 and we've been working with the Architect of the
7 Capitol's office for several days on this. It's
8 very similar to the referral that's already
9 required for the Capital Interest Overlay, in
10 terms of the standards and the referral to AOC,
11 and the feedback to the BZA. So it's more of an
12 extension of that referral.

13 COMMISSIONER MILLER: And you don't have
14 any concern about it being a precedent for the
15 similar type of review being requested for squares
16 adjacent to the White House grounds, or other
17 federal facilities? I have a concern about the
18 precedent, that it might just mushroom.

19 MS. STEINGASSER: We did not. Around the
20 Naval Observatory and the White House grounds,
21 already there's a referral to the Secret Service.
22 It's not quite that onerous, as those referrals,
23 so we're not worried that it would be expanded
24 further.

25 MR. COCHRAN: If I could mention, this

1 area already is height-restricted in the TDR
2 receiving zone for just these reasons. In most
3 TDR receiving zones, you can get up to 130 feet.
4 In this you can get only to 110, and the Architect
5 of the Capitol has stepped in before, above 110.

6 COMMISSIONER MILLER: Okay. Thank you.

7 CHAIRMAN HOOD: Okay. Any other
8 preliminary matters? Okay, Commissioners. I have
9 been notified. We received some additional text,
10 as you know, from the Office of Attorney General,
11 that are responses and concerns about vesting.
12 It's my understanding this text was formulated by
13 OAG, DCRA, Office of Planning, and Office of
14 Zoning. The text is not in the record. I think
15 it is valid but would like to see how my fellow
16 Commissioners feel about the whole vesting issue,
17 the vesting language.

18 Any comments, concerns, questions? Are
19 we fine with moving forward with vesting -- and I
20 think, right now, possibly leaving it open, the
21 dates open, and moving forward, and as time goes,
22 we will evolve about a date for vesting, making
23 sure that it's fair to the public as well as to
24 the Commission and Office of Zoning, Office of
25 Planning -- well, Office of Zoning, as well as

1 some other things that have to happen in between
2 the time we take proposed and other things.

3 So I think we need to leave that date.

4 We have some language. I just think we don't need
5 to necessarily, at this point, nail down the date.

6 COMMISSIONER TURNBULL: I'm fine with
7 that, Mr. Chair. I think it makes sense until we
8 can get to a point that we can feel comfortable.

9 CHAIRMAN HOOD: Okay. Now, the way I
10 plan on proceeding this evening, and I know we've
11 got a lot in front of us, 972 pages. I think I've
12 got the full amount, 972, something like that. So
13 what I want to is --

14 MS. SCHELLIN: 921.

15 CHAIRMAN HOOD: Okay, 921. Maybe I
16 looked at an old version. I don't know what I
17 did. But, anyway, I added 20 pages and that's not
18 what I want to do. I want to take pages away.
19 So, anyway, thanks for the correction.

20 What I plan on doing is looking at the
21 memo to us dated November the 14th, and also going
22 by each subtitle. So I think we'll start with the
23 memo dated to us November the 14th, which were
24 actually things that we asked the Office of
25 Planning to go back and look at, of our concerns

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1 of our first discussion, and I'd like to start
2 telling our comments in that order, and it's not
3 exactly in order, I'm sure, with how any of us
4 have actually planned. So, as we go along, then
5 we can come back and start going through
6 subtitles.

7 Some of this we may hit early on and some
8 we might have to go back. So, at any time, if
9 somebody can just interject. Now, I'm not going
10 to remember everything verbatim, but I do know
11 that some of the questions -- and I want to start
12 with the definitions. I don't necessarily know if
13 we need to talk about the authority and
14 acclability [ph].

15 But, anyway, let's start with
16 definitions, and I'm on page 2 of the report that
17 was given to us from November the 14th.

18 Okay. As you know, some of the
19 definitions, Office of Planning has included a
20 graphic depicting lot with measurement. Office of
21 Planning has provided a definition for theoretical
22 lot. Some of the things, if you all remember, and
23 as stated here, in follow-up, consult with the
24 Office of Attorney General regarding
25 enforceability of definitions. OAG responded that

1 a definition which defines a term is not
2 enforceable. Compliance with the regulations is
3 enforceable. And they have an example, and I'm
4 just going to read it.

5 For example, if a business is permitted
6 as a restaurant but operates as a fast-food
7 restaurant, then the failure of the business to
8 operate within the parameters of the definition of
9 the permitted use is enforceable. And that's one
10 of the things, I think, that we asked them to look
11 at, about definition. I'm not sure but I think
12 the public may have asked us, "Are these
13 definitions enforceable?"

14 Any comments or questions on that?

15 COMMISSIONER MAY: No. I think anything
16 they did in the area of definitions makes sense to
17 me, and I appreciate the clarification on
18 enforceability of definitions. I think some of
19 the definitions also got cleaned up, because there
20 was some regulatory language embedded in a few of
21 the definitions. I think all that's been cleaned
22 up.

23 CHAIRMAN HOOD: Okay. So, I'm going to
24 ask -- I do have one question about that, Mr.
25 Bergstein. In the past, I think in cases we've

1 had to look at definitions and try to figure out
2 how things fit into a different perspective, and I
3 think, are we deviating from this, the way I read
4 this analysis that's been given to us?

5 MR. BERGSTEIN: No, not at all. The
6 cases, the reason you'd look into the definitions
7 is to determine whether or not the use that comes
8 before you in the BZA context, which I guess is
9 what you're talking about, falls within the
10 definitional term, and that was the point that OP
11 and I was trying to make, that a definition itself
12 isn't enforceable. It's the application of the
13 definition to a particular operation, that then
14 becomes enforceable.

15 So, for example, if someone says, "I'm a
16 restaurant," and you go in there and the
17 investigators find out that people are paying for
18 their food first, well, then you know it can't be
19 a restaurant. So the definition, it relates to
20 the Certificate of Occupancy. The Certificate of
21 Occupancy is for use. That means the use has to
22 fall within the definition. If it's alleged the
23 use doesn't fall within the definition, that's
24 when you take enforcement action. That's when the
25 BZA gets an appeal, and that's when the BZA looks

1 at a definition.

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

4 Okay. Let's go to uses and use groups
5 follow-up. Some of this I'm not going to read,
6 because we've got it in front of us. Any
7 questions on that? You see what's to determine
8 the number of theater uses in a residential zone.
9 Any comments? Commissioner Miller.

10 COMMISSIONER MILLER: Yes, Mr. Chairman.
11 I had a question. So I saw that, under use
12 permissions, in Subtitle U, that theaters are
13 permitted by special exception in the RF zones. My
14 first question was, it is also incl-- -- I
15 couldn't find it, but maybe it's just because I
16 couldn't find it. Is it also in the RA? Was it
17 also in the RA zone? We had testimony to that
18 effect, and I thought we had some dialog about
19 that.

20 MS. STEINGASSER: Yes, sir. It should
21 pull through into the RA zones.

22 COMMISSIONER MILLER: So it doesn't have
23 to be called out, necessarily, in the RA zone, or
24 it should be? I didn't find the language in the
25 RA, but you're saying it should be there.

1 MS. STEINGASSER: It should be there, so
2 it either should be by reference that the special
3 exceptions in the RF zone are also allowed by
4 special exception in the RA zones, or it should be
5 called out specifically.

6 COMMISSIONER MILLER: If you can just
7 double-check, because I, for some reason, couldn't
8 find it in the RA zone.

9 The other question I had on that was, it
10 still had the language that I thought that was
11 going to be deleted. It limited it to live
12 theatrical and performing arts. I'm reading
13 203.19 in Subtitle U. "Live theatrical and
14 performing arts use of an existing theater or a
15 performance based in an institutional, educational
16 performing arts building by a group otherwise not
17 related to the building owner or tenant," and I
18 had thought we wanted to remove that restriction,
19 not related to the building owner or tenant, just
20 leave it as theater use in the -- I went back and
21 tried to look at that dialog of that, and then my
22 computer, for some reason, while Marcie was
23 talking, went into its holding mode before I could
24 -- and I had to catch the Metro and I couldn't see
25 how it got resolved.

1 MS. STEINGASSER: If that's the consensus
2 of the Commission, we'll be happy -- I don't think
3 we had that down as being an issue that the
4 Commission was in full consensus on, but if that's
5 where you want to go, we're happy to do that as
6 part of this proposed action.

7 VICE-CHAIR COHEN: I just want to state
8 that I concur with Commissioner Miller's
9 recollection, so the change, I believe, should be
10 made.

11 CHAIRMAN HOOD: Okay. I hate to ask you
12 to repeat that, but I'm trying to get my --

13 COMMISSIONER MILLER: Sorry. It's
14 Section 203.19 in Subtitle U, which is dealing
15 with uses, and this is 203.19 deals with live
16 theatrical and performing arts use. We're in the
17 RF zone uses, right here, I believe. And the
18 phrase that I wanted deleted, if there was
19 consensus on it or a majority for it, it was, "by
20 a group otherwise not related to the building
21 owner or tenant." I wanted to have that deleted.

22 CHAIRMAN HOOD: Okay. Does everyone
23 agree to take that out? I think we talked about
24 that, didn't we.

25 COMMISSIONER MAY: I remember talking

1 about it, but I don't remember what the consensus
2 was in the end, but I don't have any problem with
3 it, because it's really talking about special
4 exception language anyway. So, if there's a
5 concern -- I mean, I think the concern would be
6 that a space like this simply becomes a full-time
7 performing arts space, as opposed to the theater
8 that's in the church that gets used on weekends.
9 But I think all that would come out in a special
10 exception.

11 COMMISSIONER MILLER: I agree with you,
12 Commissioner May.

13 CHAIRMAN HOOD: Okay. Thank you. All
14 right. Any objections? All right. I think,
15 yeah, I'm fine with it. I had a few technical
16 problems.

17 Okay. Anyone else on uses and use
18 groups, some follow-up from the Office of
19 Planning?

20 Okay. Let's go right to administrative
21 chapters, BZA and Zoning Commission follow-up. I
22 know I was one who may have asked about, describe
23 how other jurisdictions handle publications of
24 their zoning codes using either in-house services
25 or other services such as Westlaw. Any comments

1 on that? It looks to me like it's a tie. We've
2 got 6 and 3 to 3, so that really helped me out a
3 lot. But, anyway, that may be something I still
4 would like to pursue, but I'll see as we go along.

5 Anyone else, any comments on this?
6 Commissioner May?

7 COMMISSIONER MAY: No. I'd just say that
8 this is a practical consideration and I would
9 leave it up to the discretion of the Office of
10 Zoning to come up with the right strategy for
11 publishing it.

12 CHAIRMAN HOOD: Okay. Any comments on
13 that?

14 MS. SCHELLIN: I don't think we have any
15 comments at this time. We haven't really taken a
16 lot at it, until probably we get to the point of
17 final.

18 CHAIRMAN HOOD: Okay. All right. Any
19 other comments so far? Okay. And we can come
20 back and go over all the subtitles if I'm missing
21 stuff. I'm just going over things that we asked
22 for follow-up on.

23 Okay. Residential development standards
24 and uses. Apparently we didn't ask for any follow-
25 up.

1 Corner stores. Clarify whether seller
2 space is included in the 1,200 square foot limit
3 for corner stores. The proposal is the seller
4 space not be included in the 1,200 square foot
5 limit. Any objections? Okay. I think I voted
6 against it. I'm a fair guy. I need you all to
7 help with some of this.

8 Clarify whether storage space for beer
9 and wine would be included in the 15-percent
10 limit. The proposal is the store space for beer
11 and wine not be included in the 15-percent limit.
12 Any storage space is required to be internal to
13 the building. Are we all in agreement with this?

14 BOARD MEMBERS: Yes.

15 CHAIRMAN HOOD: Okay. I actually agree
16 with that.

17 COMMISSIONER MILLER: I agree with it,
18 but I would note what I noted at the time we
19 considered this, that, by statute, no ABC license
20 can be given in a residential zone. So unless
21 that changes, I'm not -- that would have to change
22 in order for any of these beer and wine corner
23 store provision to have any effect.

24 CHAIRMAN HOOD: Okay. But I still would
25 say, maybe it's better to be safe than sorry. We

1 never know when something may change around here.
2 Okay. I think we all agree with that and I
3 appreciate you bringing that to our attention.

4 Determine whether the Department of
5 Health would be involved in inspections and
6 permitting for corner stores. The recommendation
7 is the Department of Health reviews and inspects
8 corner store, all applicants for basic business
9 license for the food products, category, and on
10 and on. Has address, telephone number, and all
11 that.

12 I'm just making sure now, the telephone
13 number, I didn't see it. The telephone number and
14 all that stuff is not in the text, is it?

15 MS. STEINGASSER: No, sir.

16 CHAIRMAN HOOD: Okay. I'm just making
17 sure. All right. All right. Thank you. Any
18 questions on that? Okay.

19 Accessory apartments. We have a couple
20 of bullet points. We have six, uh, five bullet
21 points. OP is to provide some provisions to allow
22 an accessory apartment to be occupied no more than
23 35 percent of the gross floor area of the house.
24 Also, Planning has revisited the provision to
25 allow interest on a street-facing wall, providing

1 the entrance is below grade. Also, Planning has
2 included provisions to allow for an accessory
3 apartment in the accessory building if the
4 accessory building is located within 300 feet of a
5 street.

6 Office of Planning reviewed the draft
7 text and determined the language was included,
8 that stated that an accessory building with an
9 accessory apartment can't be used for an accessory
10 use other than parking. Also, Planning has
11 revised the text to prohibit roof decks on
12 accessory buildings but to allow balconies and
13 projecting windows.

14 Any issues on accessory apartment? Any
15 comments?

16 VICE-CHAIR COHEN: Yeah. I just want to
17 state for the record that I think it's short-
18 sighted of us not to allow more than three people
19 to live in an accessory building that's part of a
20 large house.

21 CHAIRMAN HOOD: Okay. Does anyone else
22 have --

23 COMMISSIONER MAY: Yeah. I have comments
24 on some of the other points and have OP follow up
25 on.

1 CHAIRMAN HOOD: Okay.

2 COMMISSIONER MAY: One is that the -- I
3 appreciate the fact that we now are allowing
4 accessory apartments in an accessory building if
5 the accessory building is located within 300 feet
6 of the street, but the provision also still calls
7 for an alley access, and the alley is typically
8 dimensioned throughout the regulations at 15 feet.
9 And I'm wondering if that really is a hard and
10 fast requirement, because at 15 feet you're ruling
11 out a lot of historic neighborhoods that might
12 have these sorts of accessory buildings.

13 MS. STEINGASSER: Well, our original
14 proposal was 24 feet.

15 COMMISSIONER MAY: I remember. Fifteen
16 is better than 24.

17 MS. STEINGASSER: And through our notes,
18 we thought there was consensus to bring it to 15.
19 Anything less than 15 would then kick it into
20 special exception.

21 COMMISSIONER MAY: Okay. I mean, I would
22 be comfortable going less than 15, going to 10 or
23 12, which pretty much captures everything, so long
24 as there's not a safety reason not to do it.

25 VICE-CHAIR COHEN: I would agree with

1 reducing it, as well.

2 COMMISSIONER MILLER: I think I would,
3 too, but I had a question. I thought it was --
4 does it -- I thought it read 15 feet or -- 15-foot
5 alley access or --

6 COMMISSIONER MAY: And.

7 COMMISSIONER MILLER: I thought it was an
8 "or." I thought it was alternative, or 300 feet
9 from a street.

10 MS. STEINGASSER: We wrote it as "and."

11 COMMISSIONER MILLER: That's why I didn't
12 have a problem with the "or."

13 COMMISSIONER MAY: I mean, if you did the
14 15 feet "or," that would be --

15 COMMISSIONER MILLER: That, I think --

16 COMMISSIONER MAY: -- that would be fine,
17 too.

18 COMMISSIONER MILLER: Yeah. That would
19 work for me. That's how I read it, wrongly, I
20 guess.

21 COMMISSIONER MAY: Are we changing it to
22 15 feet or 300?

23 CHAIRMAN HOOD: I thought that's how it
24 was at first, wasn't it?

25 COMMISSIONER MAY: No. It was 24 feet,

1 period.

2 CHAIRMAN HOOD: I remember the 24. I
3 actually wanted to stay the 24, but there were
4 some other -- I remember having this discussion,
5 but, you know, I think that 300 feet and the 15 --
6 I don't necessarily want to drop that 15 to 12,
7 but I know there are some stipulations from, I
8 think, it was 15. Did it say "and" or "or"? I'm
9 --

10 VICE-CHAIR COHEN: Or.

11 CHAIRMAN HOOD: Okay. I can go with the
12 15 "or."

13 COMMISSIONER MAY: Okay. So let's go
14 with 15 "or."

15 CHAIRMAN HOOD: I can go with that.

16 COMMISSIONER TURNBULL: I can go along
17 with that also.

18 COMMISSIONER MAY: Okay.

19 CHAIRMAN HOOD: I just wanted to -- okay,
20 I'm sorry.

21 COMMISSIONER MAY: I appreciate that.
22 That's okay, and I'm trying to move quickly
23 through my questions.

24 And the Office of Planning, with regard
25 to roof decks on accessory buildings, that change.

1 As I recall, where I saw it in the text, it was
2 when it's being used for a dwelling unit, or
3 something like that. The language is not, you
4 know, every single roof deck is out. It's when
5 there's, you know, when there's a dwelling unit in
6 it, or something like that.

7 MS. STEINGASSER: Right. It was related
8 to an accessory apartment.

9 COMMISSIONER MAY: Right. And accessory
10 apartment, and I think that makes sense,
11 qualifying it in that form, because there are -- I
12 assume that that means that if somebody just has a
13 garage and it's a single-story garage, and they
14 have a roof deck on it, that that would still be
15 okay, and I think that's a pretty common use in
16 real-house neighborhoods.

17 All right. Thank you.

18 CHAIRMAN HOOD: Okay. Any issues on
19 accessory apartments? Okay.

20 Alley lots. Office of Planning has
21 included a provision to allow for camping,
22 providing the individuals camping in a tent have a
23 bedroom in the principal structure on the lot.
24 Also, Office of Planning has incorporated a 300-
25 foot roof deck provisions addressed under

1 Accessory Apartments into the relevant alley lot
2 sections.

3 Ms. Steingasser, this first bullet that
4 we have, is this again talking about those tiny
5 houses, or am I getting this confused again?

6 MS. STEINGASSER: We didn't focus on any
7 particular community. We just looked at the use,
8 in general, and how they would be -- what
9 constituted camping and living in an alley
10 dwelling. There is provisions where you could
11 live in an alley dwelling, or an alley lot, and we
12 wanted to make sure that was distinct from camping
13 in an alley, which is regulated also by the
14 Metropolitan Police.

15 CHAIRMAN HOOD: But didn't we say that
16 you could only camp there for -- was it 30 days?
17 That's a long camping trip. But didn't we say --
18 we had a time limit. I can't remember.

19 MS. STEINGASSER: We did.

20 COMMISSIONER MAY: That's in the regs.

21 CHAIRMAN HOOD: Okay. I just wanted to
22 make sure.

23 COMMISSIONER MAY: Yeah, and it's also --
24 I mean, there are other regulations that provide
25 that limit, as well, right?

1 MS. STEINGASSER: Yes, sir.

2 COMMISSIONER TURNBULL: I think what we
3 were looking at here was that the way it was
4 written before, it sounded like that if you lived
5 in your house, you were prohibiting like the
6 father and son, or the mother and daughter, one of
7 the family, to camp out in their back yard. I
8 think this is trying to clarify that.

9 CHAIRMAN HOOD: I understand that, but
10 I'm really trying to make sure that we have this
11 in place for those tiny houses. Okay. All right.
12 Any other issues on this, or questions?

13 COMMISSIONER MAY: So in here, with the
14 300-foot rule, I assume that we would go to the
15 300 or 15-foot alley, right?

16 MS. VITALE: That's correct. We would
17 pull that change through.

18 COMMISSIONER MAY: Got it. Perfect.
19 I'll stop asking about it.

20 CHAIRMAN HOOD: Okay. RF zones. OP has
21 eliminated the proposed conversions restrictions
22 for the Mount Pleasant Historic District. Did we
23 ask them -- did the Commission ask them to do
24 that?

25 COMMISSIONER MAY: I recall that there

1 was actually a vote on it, and it was a split
2 vote.

3 CHAIRMAN HOOD: Was it a split vote?

4 MS. STEINGASSER: Yes, sir. It was a
5 split vote. We had proposed -- the original text
6 that was set down did not address the R4 issue in
7 Mount Pleasant. Mount Pleasant came forward,
8 through a series of the public hearings, and
9 requested that their issue of conversion be looked
10 at. The Commission asked us to look at it. We
11 brought forward some text, and the Zoning
12 Commission declined to incorporate that text, so
13 we did not include it.

14 CHAIRMAN HOOD: Okay. Hold on a second.
15 I'm just trying to see, because this actually --
16 here it is. The vote was 2 to 3 and the motion
17 failed. No, I'm sorry. That wasn't it.

18 Ms. Schellin, could you do me a favor and
19 look and see what the vote was, right quick? You
20 probably can find this a lot quicker than I can.

21 COMMISSIONER MAY: I recorded it as 2 to
22 3, that the motion to accept OP's alternate
23 language failed, 2 to 3.

24 CHAIRMAN HOOD: Could you let Anthony
25 Hood know which way you voted?

1 COMMISSIONER MAY: You and Mr. Turnbull
2 voted in favor of the alternate language, and
3 Cohen, Miller, and May voted against the alternate
4 language.

5 CHAIRMAN HOOD: Okay. Does anybody want
6 to change their mind? Well, I can't even do that,
7 because I'm in the minority. Okay.

8 COMMISSIONER MAY: I think that
9 ultimately this can be accomplished through a
10 customized RF zone, or other protections that
11 we're looking at.

12 CHAIRMAN HOOD: But I think we heard
13 testimony -- and I don't want to rehash it. I'm a
14 good loser. Okay. Thank you. I don't want to
15 rehash it. I think the history, though, is that a
16 lot of people, there's some other areas that are
17 getting in at the first bite of the apple, and
18 it's probably going to be a lot harder. While we
19 may not want to admit it, it's going to be a lot
20 harder for other areas to do some of the things
21 that other areas are doing. But, you know what?
22 The vote was 2 to 3, and let's move on.

23 COMMISSIONER MILLER: Well, Mr. Chairman
24 --

25 CHAIRMAN HOOD: Commissioner Miller.

1 COMMISSIONER MILLER: Since you asked if
2 anyone was willing to consider changing their vote
3 --

4 CHAIRMAN HOOD: Okay. Go right ahead.

5 COMMISSIONER MILLER: I might be willing
6 to, if one of you would change your vote on the
7 bigger conversion issue and make them both by
8 special exception, so that if they wanted to go to
9 3 or 4, beyond 2 units in Mount Pleasant, they
10 could do it, but it would have to be a special
11 exception process. So that's the compromise I was
12 --

13 COMMISSIONER MAY: You mean the 900-foot
14 rule?

15 COMMISSIONER MILLER: Yeah. Yes. That's
16 what this alternate proposal by OP said, that
17 regardless of the 900 feet, regardless of the lot
18 size, you could only have two dwelling units, and
19 so I was just suggesting, as an alternative to
20 that, that you could go beyond two, and in
21 accordance with the 900-foot rule, as long as it
22 went through a special exception process. But I
23 was only offering that if you would change the
24 overall conversion prohibition restriction for 900
25 feet, where it remains a variance, because those

1 of us, two of us who wanted it to be a special
2 exception process were not successful in getting
3 one of you to change your mind on that.

4 CHAIRMAN HOOD: Okay.

5 COMMISSIONER MILLER: I'd be willing to
6 make that deal, though.

7 CHAIRMAN HOOD: Okay. Well, thank you.
8 I'm going to withdraw what I said --

9 COMMISSIONER MILLER: Okay.

10 CHAIRMAN HOOD: -- and let's move
11 forward. Any other comments. Okay. Let's move
12 forward. Thank you for trying, and I tried, too.

13 [Laughter.]

14 CHAIRMAN HOOD: Okay. Let's go to
15 Subtitle C, the General Rules. I'm not going to
16 read everything. It's here in front of us. We've
17 already reviewed it -- unless I need to read it to
18 refresh our memory, because this is a lot.
19 Believe me.

20 I tell you what. Let me read through
21 some of it. Just cut me off when y'all are ready
22 for me to stop reading.

23 Height. Office of Planning has included
24 a provision requiring a roof structure setback for
25 buildings adjacent to historic buildings. Office

1 of Planning notes that this was also proposed as
2 part of the separate penthouse regulations, text
3 amendment, per Zoning Commission case 14-13. At
4 the hearing for that case, concerns about this
5 requirement were raised. Generally, the
6 Commission discussed reviewing these setback
7 requirements as part of the 14-13, rather than as
8 part of 14-13. Again, that's ongoing. Any
9 comments on that?

10 COMMISSIONER MAY: Yeah. I mean, how far
11 are we going with -- I mean, we're deferring some
12 issues to 14-13. Are we essentially trying to
13 carry over all of the existing language with
14 regard to rooftop structures, or just regarding
15 setbacks?

16 MR. LAWSON: Well, I guess that would be
17 your call. Our understanding of what you were
18 saying is that you wanted to deal with rooftop
19 structures through 14-13, and that would be
20 height, setback, the whole gamut.

21 COMMISSIONER MAY: So it's the whole
22 shebang.

23 MR. LAWSON: That was our understanding.

24 COMMISSIONER MAY: And that was mine too.
25 I just thought the way it described it here, it

1 was about setbacks, so I just wanted to be sure.

2 MR. LAWSON: Yeah. This was one of the
3 issues that was specifically called out.

4 COMMISSIONER MAY: All right. That's
5 good. Thanks.

6 CHAIRMAN HOOD: Okay. I'm going to speed
7 it up a little bit, and if you need time to slow
8 up and reread it -- I'm not going to read
9 everything, because we have a whole lot of
10 subtitles that we may need to go through and we
11 may not, and then we have some other things that
12 we may want to add.

13 Front setback. Any issues? Okay.

14 Green area ratio. And I'm going to have
15 to refresh my memory, too.

16 VICE-CHAIR COHEN: I just want to confirm
17 that the tree canopy and the size of the trees
18 conform to what Casey Trees has proposed, because
19 I think that they had some very legitimate
20 suggestions.

21 MS. VITALE: Yes. The revisions that are
22 proposed reflect the comments that we received
23 from Casey Trees.

24 VICE-CHAIR COHEN: Thank you.

25 CHAIRMAN HOOD: Anything else on green

1 area ratio?

2 All right. Tree protections. Loading.

3 Let me ask. Is this planning report
4 online also? Okay, good, because I don't --
5 anyone can refer to the November 14th --

6 MS. SCHELLIN: It's Exhibit 890.

7 CHAIRMAN HOOD: Exhibit 890. So if
8 you're home watching this, I don't want you to
9 think that we're cutting it short, but you can
10 review it, because it's uploaded.

11 MR. BERGSTEIN: It also is right on the
12 ZRR front page, before all the titles.

13 CHAIRMAN HOOD: Okay. Yeah. Okay.
14 Where did I leave off? Vehicle parking.

15 COMMISSIONER MAY: So on the first one, I
16 have a question.

17 CHAIRMAN HOOD: The look at prohibiting
18 garage parking at the front of --

19 COMMISSIONER MAY: At the front of row
20 houses. I know that OP has proposed to eliminate
21 parking requirement for a dwelling if there's no
22 reasonable alley access, and it should limit the
23 need for this kind of parking, but it does not
24 prevent this kind of parking, and that's what I
25 was seeking to do, was just say, we're just not

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1 going to do this anymore. It's a rare
2 circumstance where I think it actually is an
3 appropriate solution, and that's what I was aiming
4 for, but I don't know if anybody, if there's
5 consensus on that point.

6 VICE-CHAIR COHEN: I would agree with
7 Commissioner May with regard to that. I thought
8 we were trying to, again, eliminate it. It's
9 really not walking-friendly, sidewalk-friendly.
10 It's often just the cars are all fit into the
11 public space. So I really believe -- I just feel
12 that we should discourage it. It's not very
13 aesthetically pleasing, as well, to look at a row
14 of houses and just see cars parks. That's your
15 entry to the home.

16 COMMISSIONER MAY: And just the garages
17 themselves. You know, the Office of Planning also
18 noted that the regulations currently prohibit or
19 require parking between the principal building and
20 the front lot line, but when you start having
21 these garage-front townhouses, people do park in
22 that driveway, in the public space, and it's
23 become an issue of controversy, trying to enforce
24 on that. And so I don't have any faith that the
25 fact that it's not allowed means that it's not

1 going to happen.

2 CHAIRMAN HOOD: Commissioner May, I'm
3 just trying to get an example. Is this something
4 of that situation like on Pennsylvania Avenue,
5 S.E.?

6 COMMISSIONER MAY: If you go down the
7 hill toward the McDonald's?

8 CHAIRMAN HOOD: Yeah.

9 COMMISSIONER MAY: Yeah. Yeah. There's
10 a bunch of them there.

11 CHAIRMAN HOOD: Yeah. I agree with you,
12 because you have to walk in the street. I've
13 experienced that. Okay. I think that is actually
14 a good point, and I would agree. Let me see, do
15 we have enough -- we've got three.

16 COMMISSIONER MILLER: This is just
17 limited to the provision on the row house zone?

18 COMMISSIONER MAY: Well, it's row houses,
19 and they're permitted in a number of zones.

20 COMMISSIONER MILLER: Right.

21 COMMISSIONER MAY: So, I think it should
22 be for all row houses.

23 MR. LAWSON: That was the clarification I
24 wanted to ask, as well. Your concern here is the
25 row house form of development.

1 COMMISSIONER MILLER: As one who has a,
2 unfortunately, a garage in the front, and I'm in
3 an R1 zone, I think it's a matter of how it's
4 designed.

5 COMMISSIONER MAY: I think the basic
6 principle with the row house is that if you've got
7 18 feet of width and 10 or 12 of it is devoted to
8 garage, it's really not very --

9 COMMISSIONER MILLER: You probably can't
10 --

11 COMMISSIONER MAY: -- attractive.

12 COMMISSIONER MILLER: -- design it very
13 well.

14 CHAIRMAN HOOD: I think it's very well
15 warranted to especially the situation I'm thinking
16 of, and it's also a safety issue, where I'm
17 thinking of.

18 Okay. Anything else on that one? I'm
19 going to read these, because these are
20 significant.

21 Revisit the minimum parking requirement
22 for the following uses: clinic, medical office,
23 public library, public recreation facility, public
24 community center/armory, child development center,
25 and public school.

1 OP has reviewed the parking requirement
2 for these uses and has proposed modifications to
3 the parking requirement intended to typically
4 raise the parking requirement to ensure that the
5 provided parking -- and we have the chart behind,
6 on page 5 --- 1,000 square feet with a minimum of
7 one space required. We have the chart behind us.
8 Any objections or concerns?

9 VICE-CHAIR COHEN: I just have one
10 question. Community center/armory -- how many
11 armories do we have in the city? I'm not aware of
12 many. Just one. So should we just delete the
13 armory, because that's maybe redeveloped,
14 eventually, isn't it?

15 COMMISSIONER MAY: Yeah. It's a historic
16 building.

17 VICE-CHAIR COHEN: Historic building.
18 Well, I just didn't think that that terminology
19 was necessary.

20 CHAIRMAN HOOD: You know, is this a call
21 for existing or is supposed to be one for the
22 future? So I'm just curious. So we might need to
23 leave it there. We don't never know what's going
24 to happen in the future.

25 VICE-CHAIR COHEN: I hope we don't have

1 more armories.

2 CHAIRMAN HOOD: Well, I don't know what's
3 proposed. We almost didn't have the Verizon
4 Center, but look how -- well, I don't want to go
5 to that argument. Commissioner Miller.

6 COMMISSIONER MILLER: No. I just wanted
7 to thank OP for responding to the Commission's
8 concerns about having enough parking at these
9 particular efforts, so I appreciate the effort.

10 COMMISSIONER MAY: I do too, and I agree
11 with, pretty much across the board, with the
12 changes that were made. There were some increases
13 but I think they were not extraordinary increases.
14 We had some existing conditions where there were
15 extraordinary amounts of parking that were
16 required, and those have been reduced
17 substantially, so thanks.

18 COMMISSIONER TURNBULL: I think these
19 numbers reflect exactly what we talked about, at
20 the night of the hearing.

21 CHAIRMAN HOOD: Okay. Next. Well, it
22 says a chart sent to the warrant review by the
23 Zoning Commission of the proposed action meetings
24 which provide examples of the parking requirement
25 under current, previously proposed, and revised

1 regulations is attached. Okay.

2 These next ones, I'm going to actually
3 read the first line, and I'm going to take a
4 moment to review and to come from me again with
5 what responses we got. Examine whether reduced
6 parking permission for areas in proximity to
7 priority bus corridors, PCBs, may be tied to
8 requirement that the site be ineligible for RPP.

9 COMMISSIONER MAY: Okay, so I thought of
10 an issue on this one, and mostly it's with DDOT.
11 I mean, I understand that it's going to be
12 difficult for them to enact the RPP
13 disqualification into their system and in
14 coordination with DMV, and all that sort of stuff,
15 but I think that we acted with the intention of
16 pushing them to do it. I think it's going to take
17 a long time before these regulations are actually
18 put into effect, another 8, 10 months. Nothing
19 gets done without a deadline in Washington, right?

20 MS. STEINGASSER: We have already met
21 with DDOT, and they're aware of this provision,
22 and they are beginning to work with their
23 contractors and their computer people on how to
24 incorporate that.

25 COMMISSIONER MAY: So the language that

1 you're proposing, which basically says that it
2 would apply -- the parking reduction could be used
3 for any property for which participation in RPP is
4 not permitted. So, basically, that opens the door
5 for them to start disqualifying properties if it's
6 requested by the landowner, and then -- so, in
7 other words, you're proposing a sort of
8 intermediate stage, but it would work once they
9 get the system running, so that they could be
10 disqualified.

11 MR. LAWSON: Well, there is a system in
12 place now, where RPP does not apply on every
13 street. On a commercial street, for example, RPP
14 does not apply, and this is intended to get to
15 that.

16 COMMISSIONER MAY: Right.

17 MR. LAWSON: So that's how we addressed
18 it, and I think you're right. I think it could
19 very well be an interim measure, for now, but it's
20 intended, then, to allow this provision to apply,
21 this reduced parking requirement to apply only in
22 those situations where RPP doesn't apply.

23 COMMISSIONER MAY: Doesn't apply. Right.
24 So, I would just suggest that the language could
25 be written in such a manner that, as DDOT rolls

1 out their new, improved system, and they can start
2 disqualifying them, that those properties that
3 have been disqualified can then apply for the
4 reduction in parking, and that way we don't have
5 to go and revisit it once they roll out their
6 system.

7 CHAIRMAN HOOD: Okay. Any other comments
8 on this? Okay, next, we asked, I believe, the
9 Office of Planning to look at compact parking
10 spaces policies and trends in other jurisdictions,
11 and they basically have few -- Prince George's,
12 Baltimore, Fairfax, Arlington, and Montgomery
13 counties. That's what they looked at, and it
14 says, "While there was no established norm for
15 compact spaces, the compact space allowance varied
16 between those jurisdictions, as stated here,
17 between 15 percent to 40 percent of the total
18 number of required spaces."

19 So we asked them to look at that. I'm
20 trying to figure out why did we ask them to look
21 at it, so we know how many spaces -- Ms.
22 Steingasser, why did we ask you all to look at
23 this? I can't remember.

24 MR. LAWSON: I'll take that one. To be
25 honest, I can't say for sure. I suspect it was

1 because we have proposed some changes to the
2 number of spaces that can be devoted to compact
3 spaces from the current regulations. We're
4 proposing that, I believe the number is 50 percent
5 of the spaces could be compact spaces. It's to
6 allow for -- essentially, it's to allow for a
7 better utilization of parking area that is being
8 provided, whether it's a surface parking lot or a
9 below-grade parking structure, to allow the best
10 possible utilization of that space. So, you
11 probably asked it because we proposed a change to
12 that number from the current regs.

13 CHAIRMAN HOOD: And we're looking at 50
14 percent.

15 MR. LAWSON: That's what we proposed,
16 yes.

17 CHAIRMAN HOOD: All right. Thank you.
18 Any questions on that, Commissioners? Comments?

19 Let me just say this. I want to do this
20 before I forget, while I have this in front of me,
21 and this may not even be -- this is not going
22 along, so I'm going to jump out right quick. No,
23 let me save it to there. I'm sorry.

24 Okay. Let's move right on. Potentially,
25 one of the things asked, potentially remove

1 minimum parking requirement for all uses in the
2 Capitol Gateway, Southeast Federal Center, MU-11
3 [ph], WO [ph] zones, based on additional research.
4 OP consulted further with DDOT, which indicated
5 they do not have research or parking plans
6 specific for the Buzzard Point, Southeast Federal
7 Center area, but did indicate that they were
8 generally not opposed to reestablishing a parking
9 requirement for Buzzard Point west of South
10 Capitol Street.

11 OP served for record and did not find
12 additional comments from the relevant ANC and ANC
13 6D on the issue, so OP reached out to the ANC and
14 did not receive a response. While OP is
15 comfortable with the original proposal to not
16 require parking in this area, OP has provided
17 language for Zoning Commission review and
18 discussions which would reestablish a parking
19 requirement for the area of Buzzard Point that is
20 west and not fronting on South Capitol Street.

21 As we move forward to propose action, and
22 the comment period, we need to make sure that we
23 reach back out again to those ANCs, 6D,
24 especially, because I find that very -- I don't
25 know if the word got back to them. I know you

1 reached out to them, but I think it's very
2 important. I don't want anybody to say, like
3 they're already saying, we're sneaking something
4 in, because we're not. Okay?

5 COMMISSIONER MILLER: Where is the
6 language that OP provided, to put the parking
7 requirement back in? I missed it.

8 MR. LAWSON: That would be Section -- I'm
9 sorry. That would be Section 702.3d, where it
10 stipulates, when it talks about the Capitol
11 Gateway Overlay, all of this area is within the
12 Capitol Gateway Overlay. It stipulates -- this is
13 the section that deals with where there are
14 exemptions to the parking requirement, and it
15 refines that to not include the entirety of the
16 Capitol Gateway Overlay but just any property with
17 frontage on or located east of South Capitol
18 Street, kind of the reverse.

19 So those properties east of South Capitol
20 Street, in other words, closer to the Metro
21 station, would not require parking. The
22 properties west of and not fronting on South
23 Capitol Street, i.e., the ones between South
24 Capitol Street and Fort McNair, therefore, there
25 would be a parking requirement, based on what the

1 use on that property would be.

2 CHAIRMAN HOOD: Mr. Lawson, 7-what?

3 MR. LAWSON: I'm sorry. 702.3d.

4 CHAIRMAN HOOD: Okay.

5 COMMISSIONER MAY: I'm personally
6 comfortable with the compromised language, or
7 whatever. this language, as proposed in the
8 regulations, because I think that, on the one
9 hand, while we haven't heard concerns from 6D, we
10 don't know that they necessarily understand it,
11 and that the neighbors necessarily understand it,
12 and I'm very concerned that we don't actually have
13 research that is specific to that area, that
14 indicates that it makes sense not to have a
15 parking requirement there.

16 I mean, I would default to having that
17 parking requirement for right now. It's certainly
18 something that could be revisited later on, as the
19 area starts to develop, but I'd rather be cautious
20 and be concerned for this area.

21 CHAIRMAN HOOD: But I would also rather
22 highlight it and get their input as we go through
23 this process. Yeah. Okay. Any other comments?

24 Okay. Let's move on. I'm on page 6.
25 Include affordable housing as a condition for

1 consideration for relief. Vice-Chair Cohen, would
2 you like to read that one, since you --

3 VICE-CHAIR COHEN: OP has added this
4 section that dedication of all or significant
5 proportion of dwelling units as affordable housing
6 units would be a criteria for special exception
7 relief from parking requirements. The current
8 draft also includes the presence of healthy and
9 mature canopy trees on or directly adjacent to the
10 property as a criteria for special exception
11 relief from parking requirements. And I think
12 that this addresses the concerns that have been
13 discussed during our deliberations.

14 CHAIRMAN HOOD: Any comments?

15 COMMISSIONER MILLER: And I would echo
16 the Vice-Chair's comments and express appreciation
17 to OP for being responsive in this regard.

18 CHAIRMAN HOOD: Okay. Let's keep moving.
19 Include a minimum dimensional requirement, either
20 width of 25 feet for one space and 35 feet for two
21 spaces of rear yard depth for the provisions of
22 shop [ph] spaces in residential zones. The
23 proposal, provided in response to a community
24 member comment -- okay, so this is the community -
25 - was intended to establish a minimum lot width

1 requirement for the provisions of one or two car
2 share spaces as currently permitted within the
3 low-density residential zones. The Commission
4 noted that many lots in these zones are narrow but
5 deep, so could accommodate such parking and will
6 provide the desired open space.

7 In response, OP has proposed a revision
8 provision, requiring the lot with, as previously
9 proposed, the provision of 15 feet between the
10 house and the parking area. Any issues?

11 COMMISSIONER MAY: No. I think that was
12 a good way to solve the issue.

13 CHAIRMAN HOOD: Okay. Bike parking. No
14 items to follow up on. We had no items to follow
15 up on bike parking. I wonder why. I guess we've
16 been talking about bikes quite a bit.

17 COMMISSIONER TURNBULL: We've got lots of
18 bike parking.

19 CHAIRMAN HOOD: Yeah. Plenty of bike
20 parking. Plenty of bikes. Okay, loading. No
21 items -- okay. Let's go to planning in a
22 development zone. OP has added, in Section X-
23 312.3, which now reads, the Commission shall, at
24 its sole discretion, determine if the modification
25 qualifies for the category requested and whether a

1 public hearing should be held. Can somebody help
2 me understand that?

3 COMMISSIONER MAY: I had to ask for extra
4 language on this one because I couldn't understand
5 what we were talking about there either.

6 CHAIRMAN HOOD: So I don't feel bad. I'm
7 not the only one.

8 COMMISSIONER MAY: Well, and this is a
9 portion that I don't think actually appeared in
10 the final version of the, or the draft version
11 that we reviewed. Let me just see if I can find
12 it.

13 MS. STEINGASSER: Can I help the
14 Commission with an explanation?

15 COMMISSIONER MAY: Please.

16 CHAIRMAN HOOD: Yes, please. Thank you.

17 MS. STEINGASSER: The Office of Planning
18 has proposed different types of modifications and
19 the Commission wanted to make sure that if you
20 disagreed with the type of modification applied
21 for, it was at your discretion as to whether you
22 could bump it up to a different modification,
23 require a hearing, similar to now we have, with
24 minor modifications, but we also have proposed
25 different types of modifications. And we had put

1 it into Subtitle X, and then as Subtitle X was --
2 some of the repetition between Y and Z, we think
3 it might have dropped off. But that's the
4 intention, is that the Commission has, it's
5 reinforcing your authority to determine whether
6 the modification applied for is what you want to
7 hear.

8 MR. BERGSTEIN: That's correct. Move
9 over to Y, so that, in addition, to be able to
10 grant minor modifications without a hearing, you
11 can grant what are called modifications of, I
12 think it's consequence, without a hearing. And
13 then you have modifications of significance, which
14 would always require a hearing, and the way that
15 the minor modification provision has now been
16 revised is that the first thing you do, at the
17 public hearing, is say, "Is this actually the
18 right category?"

19 And so, if they're applying for a
20 modification of consequence and you think it's a
21 modification of significance, you just set it down
22 for hearing. So, in fact, it has been
23 accomplished, but it's been accomplished in a
24 different title. That's Subtitle Z -- I'm sorry.

25 CHAIRMAN HOOD: So this would be

1 different than the consent calendar item?

2 MR. BERGSTEIN: It actually is going to
3 be part of the consent calendar.

4 CHAIRMAN HOOD: Part of the consent
5 calendar.

6 MR. BERGSTEIN: But now the consent
7 calendar is going to have two different types of
8 modifications -- minor modifications, and I
9 believe it's called modifications of consequence,
10 which are those that need additional comment time.
11 So rather than having a 10-day period before the
12 public meeting to deal with minor mods,
13 modifications of consequence, there would be no
14 comments before the first public meeting, but then
15 you would decide you need 30 days, 40 days, 60
16 days for the parties to talk about this
17 modification, and then you would come back at a
18 second meeting and decide whether or not to grant
19 it.

20 So it's sort of a two-stage process for
21 granting these modifications, but they would not
22 have a hearing.

23 CHAIRMAN HOOD: Okay. Right now we don't
24 have anything, that I know of, I don't believe, of
25 the -- a lot of time Mr. Glasgow will come down

1 and tell us it's a minor mod and we really think
2 it's a major mod. I just did that because he's in
3 the audience. But, do we have anything right now
4 -- because I know that's always the discussion. I
5 don't think that's a minor mod. Are we depicting
6 the difference between a minor mod and a major
7 mod?

8 MR. BERGSTEIN: Again, the new provision
9 has a definition for what's a minor modification,
10 that has a definition of what's a modification of
11 consequence, that has a definition of modification
12 of significance, and actually gives examples of
13 all three.

14 CHAIRMAN HOOD: Okay. So we have a
15 definition, which is not enforceable, but it's
16 something for us, to guide us -- I'm just trying
17 to make sure I understand this -- but it's
18 something for this Commission, to guide in our
19 decisions, because at the end of the day it's up
20 to the Commission whether it's a minor, whether
21 it's consequence, or whether it's major.

22 MR. BERGSTEIN: That's right, but now
23 you're going to have examples of each that you can
24 say this falls within one or two or three, and
25 based upon that you either decide to take it off

1 the consent calendar and have a hearing, or, if
2 someone says, "Is this a minor modification?" you
3 can say, "No. I think this is a modification of
4 consequence, and I believe the parties need to
5 have an additional 60 days to discuss it."

6 CHAIRMAN HOOD: Okay. Thank you. And on
7 that note, while we're talking about that, I would
8 like for my colleagues, and I would ask the Office
9 of Zoning to find out, and Planning, and work with
10 OAG, to find out how we can put this into the
11 regulations. Whenever there is an inconsistency
12 between the text and the plans, the text governs.
13 Okay? I have another half to that, but I haven't
14 figured that out yet. Whenever there's an
15 inconsistency, when you have the plans and you
16 have the text -- because a lot of times the plans
17 show something totally different than what the
18 text, so typically we say we go by the plans. But
19 if the verbal language says something different, I
20 think the text governs. And I'd like to put that
21 out there for comment.

22 COMMISSIONER MILLER: The text of the
23 zoning order.

24 CHAIRMAN HOOD: The text of the zoning
25 order should govern, okay?

1 COMMISSIONER TURNBULL: Mr. Chair, I
2 think just what we were talking about, is really
3 Section Z, 703, 704. It's the modification
4 language.

5 CHAIRMAN HOOD: Okay. Okay. Forgive me
6 for not looking it up, because when I go to
7 certain things, I don't know whether it's an
8 operating problem up here at times. Maybe an
9 operator's problem. But anyway --

10 [Laughter.]

11 CHAIRMAN HOOD: But that last piece, I
12 think, does anyone disagree with that?

13 MS. SCHELLIN: We'll add that to Subtitle
14 Z.

15 CHAIRMAN HOOD: There's actually another
16 piece to it, but I haven't figured -- we haven't
17 figured that out yet. I've got to work on that.

18 Okay. Anything else? Let's move on.

19 On requiring that the expert witnesses be
20 present, when requiring that the expert witnesses
21 be present at the hearing and available for cross-
22 examination, including the evidence to be provided
23 in advance to the Zoning Commission, documenting
24 the qualifications that make the witness an
25 expert.

1 So, yeah, because that's -- okay. Any
2 objections? I think that's founded, for sure.

3 Revisit exempting the DD [ph] from
4 housing linkage will require additional studies,
5 part of a separate case, in 2015. Okay. Anybody?
6 Okay.

7 Campus and private schools. Ensure that
8 the objectionable standard is consistent across
9 the regulations with respect to the new language
10 regarding commercial activities within a campus.
11 The recommendations are revised so that the
12 language should be consistent between sections and
13 Subtitle X, which is our general procedures.
14 Okay.

15 Clarify that an amendment may be heard if
16 related to further processing. OP added the
17 following: the further processing of one or more
18 buildings within a campus plan boundary shall not
19 be filed simultaneous with a full campus plan
20 application. However, an amendment to an approved
21 campus plan may be considered simultaneously with
22 an application for further process, and to be
23 determined necessary by the Commission.

24 Okay, and I think we got a lot of
25 testimony on that, if I'm not mistaken, a lot of

1 public testimony.

2 Okay. Follow up and evaluate the 1,500-
3 square-foot threshold when allowing for minor
4 modifications. That's still under review.

5 COMMISSIONER MAY: I'm sorry. Is that
6 still under review or did you come up with a
7 square footage?

8 MS. STEINGASSER: We were going to be
9 recommending 450 square feet, which is the
10 standard for accessory buildings, so if it's meant
11 to be a minor accessory addition, we felt that was
12 consistent.

13 COMMISSIONER MAY: Okay. I mean, I think
14 that's --

15 CHAIRMAN HOOD: Comments?

16 COMMISSIONER MAY: I think that's fine,
17 450. Fifteen hundred always seemed big, to me.

18 CHAIRMAN HOOD: Yeah, that's quite a bit.
19 Four-fifty is the recommendation. Any comments,
20 concerns?

21 VICE-CHAIR COHEN: No.

22 CHAIRMAN HOOD: So we'll concur with the
23 450. Thank you, Vice Chair.

24 Okay. Chanceries. Clarify that the
25 FMBZA promulgate rules to be included within the

1 zoning regulations that determine an area as being
2 a square for purposes of determining any other
3 area as acceptable, pursuant to 4306(b) of the
4 Foreign Missions Act. OP has added this language
5 to Subtitle X, Chapter 2, 201.3, "In determining
6 the suitability of a site for chancery use, a
7 square shall be considered a site, area for
8 determination of any other area as OAG also
9 continues to review the language."

10 Any comments on that?

11 COMMISSIONER MAY: Yes, Mr. Chairman. I
12 would like to suggest that we actually defer
13 taking action on changing the chancery rules and
14 allow the Office of Planning and the Department of
15 State and NCPC to continue their discussions and
16 come to some mutual agreement on this. I'm
17 hopeful that if they actually can come to the
18 table and have a constructive discussion, that
19 they can come to some agreement on this.
20 Otherwise, we'll wind up with an impasse and
21 Department of State will oppose this. So I would
22 just like to suggest that we defer action on the
23 entire topic, not just the question of what is
24 considered an area, as mentioned in the Foreign
25 Missions Act.

1 CHAIRMAN HOOD: Okay. Any comments?
2 Commissioner Turnbull.

3 COMMISSIONER TURNBULL: Thank you, Mr.
4 Chairman. I'm not opposed to that. I just want
5 to make sure that this has a limited time frame
6 for doing this, that's an urban planning issue,
7 not a legal issue, and that the Office of Planning
8 -- I think the key players are going to be -- I
9 don't think the State Department has planners that
10 deal with urban planning. So I want this to be a
11 planning issue, talk about urban planning, not a
12 legal issue arguing the plusses and minuses of
13 whether who's right.

14 And I would like to say that this should
15 be, we should revisit this by our second meeting
16 in November -- I mean, in January, in January.
17 Our second meeting in January of 2015. I don't
18 think this should be out there too long.

19 VICE-CHAIR COHEN: Mr. Chairman, thank
20 you. I strongly concur with Commissioner Turnbull
21 about the appropriateness of having it be a
22 planning issue, and I would just emphasize and
23 concur with what he said.

24 COMMISSIONER MILLER: Mr. Chairman, thank
25 you. I also agree with Commissioner Turnbull,

1 that it should be a planning issue. I made that
2 point at NCPC a week ago, when that commission
3 received information presentation, mostly about
4 legal interpretation that the State Department has
5 had for a while.

6 But I don't agree with deferring it. I
7 don't think that there's anything to be -- there's
8 always something to be gained from continuing to
9 talk, but I'm not in favor of deferring it. I
10 think there can be proposed action and they can
11 continue to talk, and maybe that will get to more
12 of a resolution.

13 This is -- the legal -- it's only
14 recently that the NCPC has taken a position that's
15 so aligned with -- or NCPC staff has taken a
16 position that's so aligned with the State
17 Department on this issue, which should be a
18 planning issue. We're talking about low-density,
19 residential areas where those areas don't think
20 it's appropriate for commercial office uses, which
21 is what chanceries are. We're not talking about
22 embassies here. We're talking about office uses,
23 chanceries.

24 So it should be a planning issue, but I
25 think the discussions can occur whether or not we

1 take proposed action. I think the neighborhoods
2 that are affected by this provision are strongly
3 supportive of this going forward, including the
4 Sheridan-Kalorama. So I would urge us not to
5 defer action tonight.

6 CHAIRMAN HOOD: Okay. I would agree a
7 lot with what Mr. Turnbull has mentioned, and we
8 do this in a lot of cases, where we give parties
9 time to try to come to some middle ground and some
10 resolve.

11 I will tell you, though, that I
12 definitely agree with Mr. Turnbull's last
13 statement, that planners should be talking to
14 planners. I have nothing against lawyers because
15 I need them every now and then to get me out of
16 trouble. But I would concur, and I hope it sends
17 a strong message to parties involved that planners
18 -- and I understand the State Department doesn't
19 have planners, but maybe they need to work through
20 NCPC's planners, and leave it out of the legal
21 realm of things.

22 So I would agree with Mr. Turnbull. My
23 vote would be if, we're voting -- I don't think we
24 need to, because I've heard it -- my vote would
25 be to hold off on this, as requested by

1 Commissioner May, and follow the guidance that has
2 been mentioned by Commissioner Turnbull. And I
3 think, if I'm not mistaken, I think it's 4 to 1.
4 Okay.

5 All right. So with that, I don't think
6 we need to call a vote on that, do we, Mr.
7 Bergstein?

8 MR. BERGSTEIN: No.

9 CHAIRMAN HOOD: All right. Any other
10 questions?

11 COMMISSIONER MAY: I would also suggest,
12 and Mr. Turnbull made the suggestion that we take
13 this up at the second meeting in January. That
14 does give them time to resolve it. It may even
15 give them time to get it resolved in time for us
16 to include it in the publication of the proposed
17 text, because I know that there's some editing
18 that still has to occur in the proposed text. So
19 maybe we can all be satisfied.

20 CHAIRMAN HOOD: That's a good point. We
21 might just have to revisit this at our second
22 meeting in January, to include it, because I know
23 it's going to take some time, depending upon how
24 things go tonight. And then, again, and even with
25 these parties, I have a problem. We do stuff

1 around the holidays, but I think it's enough time
2 after the holiday for them to deal with this.

3 Okay. Anything else?

4 MR. BERGSTEIN: I'm assuming that you
5 don't want us to -- if you take proposed action,
6 you're going to want us to go forward
7 expeditiously and try to get everything published
8 except one particular chapter, and if it just so
9 happens that it's still under process and you do
10 decide to add to proposed action some chancery --
11 there's got to be some chancery text. You can't
12 have a hole in this volume for chanceries. So, at
13 some point, you're going to have to take proposed
14 action for chancery text, and if we happen to be
15 working on the text, we could add it in. If not,
16 we'll just have to do another Notice of Proposed
17 Rulemaking.

18 CHAIRMAN HOOD: Well, the goal -- I think
19 if we could shoot for that time frame that
20 Commissioner May was mentioning, the goal was to
21 try to get in towards the end of January.

22 MR. BERGSTEIN: The goal is to resolve
23 the chancery issue by the end of January --

24 CHAIRMAN HOOD: Oh, that's the goal.

25 MR. BERGSTEIN: -- but if, by the first

1 or second week of January, before that meeting,
2 O'Day's [ph] ready to publish, we publish, without
3 the chancery chapter.

4 COMMISSIONER MAY: I would agree, or with
5 carrying over the current chancery regulations, in
6 essence.

7 MR. BERGSTEIN: Well, that may be --
8 that's stuff we need guidance on, because it would
9 take a lot of jerry-rigging. But basically what
10 you would do is create a D district, and --

11 COMMISSIONER MAY: Oh, right, so leave
12 the D overlay in place.

13 MR. BERGSTEIN: Right, which is
14 inconsistent with everything else you're doing.
15 So, that's the issue. It would be easier just to
16 say that the Commission is not taking any action
17 with respect to this particular chapter, that all
18 cross-references to the chapter remain in place,
19 but that the actual substance of the chapter will
20 be the subject of a subsequent proposed action.
21 That's what we have to do.

22 COMMISSIONER MAY: That makes sense to
23 me, and I was just suggesting that if they
24 happened to sync up --

25 MR. BERGSTEIN: Yes.

1 COMMISSIONER MAY: -- then it could all
2 be published at once. If they don't, and you're
3 ready to go with everything but chanceries, in the
4 first week of January, then, yes, you should go.

5 MR. BERGSTEIN: Okay.

6 COMMISSIONER MAY: That was my sense, Mr.
7 Chairman.

8 MR. BERGSTEIN: I just to clarify that.

9 CHAIRMAN HOOD: Now I've gotten confused,
10 but you know what? When it syncs up -- I think
11 you and I are on the same page, because there's a
12 possibility they may sync up.

13 COMMISSIONER MAY: Right. Right.

14 MR. BERGSTEIN: But we wouldn't want to
15 hold up publication of this draft.

16 CHAIRMAN HOOD: I don't see that
17 happening in January, I'm sorry, and I'm not even
18 doing the editing. I just don't see that. But if
19 it does, I mean, there's a lot of weekend work
20 that went into this. I mean, it may. I just
21 don't see that happening. I really don't.

22 Okay. But, anyway, we'll govern
23 ourselves, Mr. Bergstein, accordingly, but I agree
24 with you. The syncing up will probably be sometime
25 in late January or early February.

1 Okay. Are we straight on chanceries?

2 Okay.

3 Creation of new zones, some of the
4 follow-up. Look at the use of term "great
5 consideration." OP amended language to read, "If
6 the proposed new zone involves a reduction in any
7 development standard or property right, effective
8 property owner in opposition shall be given an
9 equal amount of time as the applicant to present
10 their opposition. The opposing party owner shall
11 not be required to meet the same burden as that of
12 significant community support."

13 Any objections. Mixed zones. Let's read
14 that. I'm not going to read all that. Are we
15 ready to move on?

16 COMMISSIONER MAY: Yep. I think that all
17 makes sense.

18 CHAIRMAN HOOD: All right. Subtitle I,
19 Downtown. Okay? I will read this because it
20 says, "Follow-up to address the NCPC and the
21 Zoning Commission concerns about the length of
22 North and South Capitol Streets, from which it is
23 appropriate to set back upper stories to protect
24 the view of the Capitol," and they have the
25 planning proposed, the North Capitol Subarea,

1 which includes the previously proposed upper story
2 setbacks and extends the October 2014 proposal one
3 block further to the north. The one-to-one
4 setback above 110 feet would now include the east
5 side, between G and K; the west side, between D
6 and H -- G and K is Northeast, D and H is
7 Northwest. The South Capitol Street Subarea has
8 been expanded north to subarea, and the Zoning
9 Commission's review authority for new construction
10 or external renovations would now extend from M
11 Street, S.E., to Virginia Avenue, S.E., on the
12 east side of South Capitol Street, and from M
13 Street, S.W., to Washington Avenue, S.W. Building
14 setback lines have also been clarified to account
15 for changing width of the South Capitol Street
16 right-of-way.

17 Any concerns? Accepted.

18 Next, let's go to Independence Avenue.

19 Wait a minute. Do you need the chart, Mr.

20 Turnbull?

21 COMMISSIONER TURNBULL: No, I'm good, Mr.
22 Chairman.

23 CHAIRMAN HOOD: Okay. I had it down.

24 Did you want the parcels? Is that what you want?

25 Yeah, we've got it.

1 COMMISSIONER TURNBULL: I'm fine. I'm
2 find.

3 CHAIRMAN HOOD: All right. Independence
4 Avenue, upper story setbacks.

5 COMMISSIONER MAY: Mr. Chairman, on this
6 one, I thought that we had -- the discussion I
7 had, the notes that I have from our meeting was
8 that the Office of Planning was going to do some
9 further simulations of that area, and that we were
10 going to see some sort of comparison to
11 Constitution Avenue, because I'm not convinced
12 that a setback at 110 feet is sufficient to
13 address the concerns that we have about the
14 visibility of these tall buildings looming over
15 the Smithsonian buildings, as you look at them
16 from the Mall, and I don't think that the two-to-
17 one setback necessarily addresses it either, so I
18 was hoping to see something more.

19 MR. COCHRAN: Commissioners, we worked
20 closely with NCPC after this, and the language
21 that you see is actually language that NCPC either
22 developed or helped develop, having done further
23 studies themselves on the setbacks.

24 COMMISSIONER MAY: Okay. So they're
25 completely in sync with this?

1 MR. COCHRAN: Yes. There is one error in
2 the text.

3 COMMISSIONER MAY: Okay.

4 MR. COCHRAN: Let's see. In what is
5 618.4, subcategory A3, strike out "or penthouse"
6 in the end of that sentence.

7 COMMISSIONER MAY: Ah, yes. Thank you.
8 That was my other question.

9 MR. COCHRAN: Okay.

10 COMMISSIONER MAY: That didn't make any
11 sense to me, the "or penthouse" part of it.

12 MR. COCHRAN: Okay.

13 COMMISSIONER MAY: Okay. Well, if that's
14 the case, that's fine. I'm sure we'll hear from
15 NCPC if they think it's still an issue and they'll
16 have simulations of it. Thank you.

17 CHAIRMAN HOOD: Okay. Anything else on
18 Independence Avenue? Okay. Pennsylvania Avenue.
19 Designated street clarification names, we asked
20 for follow-up, simplify the category names.
21 Primary, Secondary, and Unclassified have been
22 replaced with Category 1, 2, and Category 3. And,
23 Ms. Steingasser, we spell out the definitions of
24 Category 1, 2, and 3, correct?

25 MR. COCHRAN: They're not in the

1 definitions section at the beginning of the
2 regulations. They are described in the downtown
3 regulations.

4 CHAIRMAN HOOD: Okay, but --

5 MR. COCHRAN: This is the only place they
6 apply.

7 CHAIRMAN HOOD: -- is this a request that
8 the Commission made? Did we make this request, or
9 why did we do this?

10 MR. COCHRAN: I don't know.

11 [Laughter.]

12 CHAIRMAN HOOD: Okay. Well, I don't
13 know. To me, for me, unless this is the reason --
14 and there may be a reason, I may have forgotten.
15 I forget a lot of things. Primary, secondary, and
16 Unclassified, I don't have to look and see what
17 Category 1, Category 2, and Category 3 are. It's
18 easy for me to say Primary, Secondary, and
19 Unclassified. I don't know if anybody else agrees
20 with that.

21 MS. SCHELLIN: I think that one of the
22 Commissioners, I believe it was Commissioner
23 Cohen, because Unclassified wasn't a designated
24 street, that she didn't like the name or
25 something, so she was thinking for another name

1 for that, to define it.

2 MR. COCHRAN: I believe that the concern
3 about this actually came from Office of Planning
4 and then was seconded by one of the Commissioners.

5 MS. SCHELLIN: Right.

6 MR. COCHRAN: We simply thought that
7 using tertiary was just going a bit far.

8 MS. SCHELLIN: Right.

9 MR. COCHRAN: Primary, Secondary, and
10 Tertiary, so that's why we substituted, but we
11 could call it anything. The concept is the same.
12 We just need to come up with a name that is
13 reasonable, clear, and passes the laugh test.

14 CHAIRMAN HOOD: Well, Category 1, 2, and
15 3 does not pass my test, and, for me -- maybe the
16 public will understand it and they can help me,
17 but I come down here and I do a little bit of this
18 and, for me, Primary, Secondary, and Unclassified
19 is easy for me.

20 MR. COCHRAN: Okay.

21 CHAIRMAN HOOD: Why don't we --

22 Cohan: I don't have a problem with that.
23 I don't know why I would have.

24 CHAIRMAN HOOD: Okay. Does anybody
25 object to going back to Primary, Secondary, and

1 Unclassified? Maybe we should put all of it out
2 there.

3 COMMISSIONER MAY: I agree. Primary,
4 Secondary, and Unclassified makes perfect sense.
5 Category 1, 2, and 3, I don't know which end of
6 the spectrum is which. Is 1 more intense than 3?
7 I don't know.

8 CHAIRMAN HOOD: Well, 3 obviously is
9 Unclassified.

10 COMMISSIONER MAY: Well, we know that now
11 because they're right next to each other, but the
12 next time we see it --

13 CHAIRMAN HOOD: I figured I would make it
14 easier for you. Okay, so can we revert back to
15 where we were? Okay. Thank you.

16 Okay. Building with pre-1936
17 Certificates of Occupancy. The follow-up was to
18 reduce or eliminate FAR restrictions on such
19 buildings if they have not been historically
20 protected. Any concerns? Comments? Let's keep
21 moving.

22 Areas to which historic preservation FAR
23 restrictions apply. Follow-up, clarify whether
24 these restrictions apply to the entirety of the
25 property that includes the historic landmark or

1 contributing building, 03410.11 have been
2 clarified to apply only to the site of the
3 historic landmark or contributing building to a
4 historic district. Any issues?

5 Okay. Parks and open space credits. To
6 provide additional information about whether
7 credits are needed to provide for adequate NoMa
8 park and open space, or whether such credits would
9 substantially reduce housing incentives in other
10 areas of downtown. Continuing the study, at this
11 point the ability of parks and open space to
12 generate credits has not been reinstated due to
13 concern about the potential for reducing housing
14 incentives, particularly in areas that are subject
15 to in the inclusionary zoning. This does not
16 preclude further study of the subject at a later
17 date.

18 COMMISSIONER MAY: So this continues to
19 be a concern for me. I'm not comforted by the
20 fact that we're not acting, or we're taking this
21 out due to a concern for the potential to reduce
22 housing incentives. I mean, I think that that
23 area, in particular, is starving for park space,
24 and I think that it's something that does need to
25 be addressed. I'm not going to lay down in front

1 of the bulldozer right at this moment, but I think
2 this is something that absolutely needs further
3 study, and it's something that, frankly, needs
4 study across the city, because I don't think that
5 we're paying adequate attention to planning for
6 park space.

7 CHAIRMAN HOOD: I was seeing if the court
8 reporter needs a break. He doesn't need one, but
9 I do. Vice-Chair?

10 VICE-CHAIR COHEN: Yeah. I just wanted
11 to state that I concur that it needs additional
12 study, I concur we need additional park space, but
13 I would hate to have more park space and have
14 homeless people living in it. So I think it is
15 critical to have an appropriate balance and not
16 compromise the ability to meet housing needs.

17 COMMISSIONER MAY: Well, we can get into
18 a debate about whether the availability of park
19 space and homelessness are actually, there's any
20 kind of causal relationship or anything like that.

21 VICE-CHAIR COHEN: I think in the spring
22 and summer, at least, the open space that I visit
23 tends to have a number of --

24 COMMISSIONER MAY: And in my neighborhood
25 they live in the arcades in the office buildings.

1 Homelessness and the availability of housing
2 aren't necessary as connected as we might be
3 concerned about. I just think this is something
4 that absolutely needs further study.

5 VICE-CHAIR COHEN: I agree.

6 CHAIRMAN HOOD: Commissioner Miller.

7 COMMISSIONER MILLER: Yeah. I would just
8 chime in that I agree with both of my fellow
9 Commissioners and that it does need further study.
10 I think there's probably a way you can keep the
11 parks and open space credit. Without it, you can
12 probably devise some kind of alternative. This is
13 a very complicated subject and beyond my
14 understanding of it all, but I think there's
15 probably a way you could devise it, where it
16 doesn't reduce housing incentives in other areas.
17 I know the NoMa bid was very concerned about the
18 removal of these parks and open space credits.

19 MR. COCHRAN: Just to clarify, do you
20 want this studied as part of ZRR or as a follow-up
21 from ZRR?

22 COMMISSIONER MAY: I think it can be done
23 as a follow-up. You know, we have momentum to get
24 this proposed action taken and published, and I
25 don't want to interrupt that, but I do think it is

1 something that needs to be studied and addressed,
2 and not just put on the back burner.

3 VICE-CHAIR COHEN: And I also believe
4 that it needs to be a thorough investigation, as
5 opposed to a quick Band-Aid fix.

6 MS. STEINGASSER: If I could jump in, we
7 are working with Department of Parks and Rec on
8 their Parks and Open Space Master Plan, through a
9 capital project, so we will be bringing something
10 back.

11 CHAIRMAN HOOD: We've been going for
12 about an hour and a half. I'd like to take about
13 an 8-minute break. No. Let's make it a 6-minute
14 break, and then we'll come back and finish up, and
15 then we'll go through subtitles.

16 [Break taken from 7:27 to 7:35 p.m.]

17 CHAIRMAN HOOD: Okay. Are we ready to go
18 back on the record? Are we ready? Okay. Thank
19 you for the break.

20 Let's go right to arts credits. Clarify
21 that arts credits generated within the arts
22 subarea should be traded only within the subarea
23 in order to retain the area's art focus. Proposed
24 regulations clarify that the art credits may be
25 used only within the arts subarea, not within the

1 entire trade area in which they are generated.

2 Any questions? Concerns?

3 VICE-CHAIR COHEN: Yeah. I don't
4 remember why we're just so focused on keeping the
5 credits within a targeted area.

6 MR. COCHRAN: One of our rules of thumb
7 was we don't change things unless either there's a
8 very good reason to do it or we're asked for it,
9 in terms of substance and regulations. Right now,
10 the arts credits -- the arts TDRs that are
11 generated can be used only within the arts subarea
12 of downtown. We've retained an arts subarea in
13 downtown. We've made sure that it's all within
14 the same trade area, but there was desire
15 expressed by several citizens to make sure that we
16 keep a concentrated focus on arts in the downtown
17 area, where it now exists, rather than being able
18 to trade it all around that same trade area.
19 Presumably it's to enhance the life of the street
20 and genuinely create the arts district that the
21 arts credits attempted to do.

22 VICE-CHAIR COHEN: But I thought we had -
23 - maybe I'm wrong -- a surplus of credit, and why
24 couldn't they be expanded to other neighborhoods
25 that also need to be enlivened and improved with

1 art?

2 MR. COCHRAN: What we have is one
3 institution that built a very large space and
4 generated credits, that need to be bought.
5 Presumably, in other parts of the city, one
6 wouldn't want to add the additional expense of
7 buying an arts credit, to generate arts. There's
8 just not the need for it. There is an arts
9 requirement downtown, in the arts area, so it's
10 just keeping all of that swap within the same
11 area, just as we do with the housing priority
12 areas now. We want to make them relatively
13 compact and viable, so we don't let housing, in
14 effect, credits be traded to some distant part of
15 the city, lest we lose the concentration of
16 housing downtown. The same idea applies to the
17 various subareas, like retail, arts, and
18 Chinatown, for that matter.

19 VICE-CHAIR COHEN: I just still need to
20 get my arms around all of that, because I just
21 believe strongly that cities are so vibrant when
22 you visit them, and there are arts all over the
23 city, and it seems to be in a holding pattern. I
24 don't see much change occurring.

25 MR. COCHRAN: We can certainly explore

1 this further. OP was just responding to the
2 comments of some of the people that originally
3 drafted it, and that do live in the arts area.

4 VICE-CHAIR COHEN: Okay. I would
5 appreciate more exploration.

6 CHAIRMAN HOOD: Okay. Any other
7 questions? Did we reach out to Arts and
8 Humanities? I mean, we have a lot of subject
9 matter experts in this city, about arts, and I
10 don't know if we did that. I know everybody had a
11 chance to come down. We have boards, so that was
12 one of the things, one of the topics that was on
13 Transition Team, I think, yesterday evening. I
14 would agree that we explore more, and nothing is
15 new under the sun. Sometimes we might need to
16 reach out and get some help. I don't know if
17 that's been done already.

18 MS. STEINGASSER: We work very closely
19 with Arts and Humanities. We sit on several of
20 their boards and we've put them on co-grants, and
21 things.

22 CHAIRMAN HOOD: Okay. Good. Okay.
23 Great. Thank you. Okay, any other questions?
24 Let's go to inclusionary zoning clarification.

25 Ensure that the commitment is met to

1 retain inclusionary zoning requirements where they
2 now are in effect. I think we all concur. Any
3 issues?

4 VICE-CHAIR COHEN: Mr. Chairman, for the
5 record, the inclusionary zoning requirements need
6 to be revisited, and I believe that that's on the
7 agenda for the Office of Planning, and they are
8 working on it now with the Department of Housing
9 and Community Development.

10 MS. STEINGASSER: That is correct.

11 COMMISSIONER MILLER: And I would concur.

12 CHAIRMAN HOOD: Okay. Next, to clarify
13 the existing C4 zone outside of DD [ph], and
14 existing DDC49 [ph] housing priority area zones
15 have been regrouped. The former retains the D6
16 designation with IZ required. The latter has been
17 grouped with the D7 zone, to which inclusionary
18 zoning does not apply. In each zone, regulations
19 governing FAR and height remains the same, as
20 previously proposed, with the existing C7 zone
21 height maximums and setbacks continuing to be
22 limited to buildings with frontage on Pennsylvania
23 Avenue. The Downtown Zone and Conversion Table
24 has been revised below, and we have the table in
25 front of us.

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1 Any comments? Okay. I think we've been
2 through a lot of this.

3 Let's go to the housing credits. Follow-
4 up, make sure that only credits generated by
5 residential use and converted, unassigned CODs may
6 be used for reduced residential requirements on
7 ascending lot. OP has revised 920 to clarify the
8 types of credits that may be used to reduce the
9 housing requirements within the existing DD
10 overlay. The only types of credits that may be
11 used to achieve a reduction of 304.3's housing
12 requirements are those from the unused, combined
13 lot and new housing credits.

14 And I'm sure a lot of this has changed,
15 due to the testimony or due to concerns that we've
16 had. Any comments on that? Okay.

17 Again, a lot of this we talked about
18 earlier. These are the charts showing the
19 proposed changes to parking, and I think a lot of
20 that was discussed earlier on. That's the last
21 several pages.

22 Any questions on any of this?

23 Okay. We have completed that document,
24 which we've heard comments from, and I want to
25 thank the Office of Planning for putting a lot of

1 that together and capturing our comments. I'm
2 sure that we're now, once we get to that point,
3 we'll hear a lot of other comments when we get to
4 that period.

5 But let's do this. Let's go through the
6 text, for the most part, and what I would suggest
7 is that we just start with Subtitle A and work our
8 way down. I'll call them out, and if you have
9 issues or concerns, then we can -- and if you need
10 a few minutes, I'm not going to rush through it.
11 Some things may come up, because this is quite a
12 bit. There's only 900 and, what, 20 pages.

13 All right. Let's start with Subtitle A,
14 Authority and Applicability. Any issues on any of
15 this?

16 VICE-CHAIR COHEN: No, sir.

17 CHAIRMAN HOOD: And I would say, as we
18 look at the Table of Contents, that may refresh
19 it. At least that's what I'm doing. That may
20 refresh your memory. Oh, I'm sorry.

21 COMMISSIONER MILLER: I think it's in
22 Subtitle A. I can't find the piece of paper where
23 I wrote this note about, but if OAG can just look
24 at the language that says that District government
25 properties in the central area are exempt from

1 zoning, and only go through the NCPC in lieu of
2 zoning approval process. If you could just look
3 at that. I had thought that -- I don't know if
4 the language that's in the statute, the NCPC
5 statute, requires us to actually exempt our own
6 buildings from zoning.

7 MR. BERGSTEIN: It does, in the central
8 area, yes.

9 COMMISSIONER MILLER: I thought we wanted
10 to maintain a position, at least, in some case, we
11 want our centrally located buildings to go
12 through zoning. If you can just look at it, maybe
13 offline, communicate with me.

14 MR. BERGSTEIN: We can discuss that, but,
15 yeah. Okay.

16 COMMISSIONER MAY: I would add, I think,
17 when was it? Maybe in late '90s or early 2000s,
18 the Council passed a law saying that all District
19 buildings should be subject to zoning, right?

20 MR. BERGSTEIN: There's a lot to talk
21 about there, and I've looked into it, and I don't
22 know if I want to set my position online, but
23 basically the National Planning Act was amended to
24 say that the exemption for federal public
25 buildings is extended to District properties in

1 the central area, so, the Council's statement that
2 all District buildings are subject to zoning still
3 had to be taken into the context of that larger
4 exemption, if you know what I mean. So because
5 all District buildings in the -- because the
6 Congress had said that the exemption applies to
7 the central area, the Council couldn't sort of un-
8 exempt it. But that's been the view as of this
9 point, and, in fact, things like the Verizon
10 Center went through the NCPC lieu of zoning
11 process.

12 COMMISSIONER MILLER: We'll talk further
13 about that offline. There also was, in Subtitle
14 A, I thought there -- I know that there's a
15 section that talks about the Comp Plan, but
16 there's a section in the beginning somewhere,
17 which I'll share with you, which I think the Comp
18 Plan should be referenced, as well. It's
19 basically talking about what the basic purpose of
20 zoning is, and I just thought I'd previously
21 asked, somewhere during the CR process, that a
22 reference to the Comp Plan be added there. Again,
23 I've lost my note where exactly that should go,
24 but if I find it I'll come back to it.

25 CHAIRMAN HOOD: Okay. Anyone else on

1 Subtitle A? And if something comes up, let's just
2 bring it up at that time.

3 Okay, let's go to B, Definitions. C, the
4 General Rules.

5 COMMISSIONER MAY: Let's see. I had a
6 couple of comments on this. Bear with me just a
7 second. So, I guess I would just point out that
8 the draft that we had read did not include the
9 Office of Planning's recommendation regarding
10 proximity to priority bus corridors, and that
11 would need to be updated. But, we asked -- I
12 mean, I suggested further updates on that today,
13 so I assume that will get taken care of.

14 And the only other comment I had in this
15 section was on 1400.1, which was regarding
16 retaining walls, and the restrictions on retaining
17 walls apply only in R and RF zones, is the way I
18 read it, and I'm wondering if it should be
19 extended to mixed use and residential apartment
20 zones. This is a question for the Office of
21 Planning.

22 MS. STEINGASSER: Well, we just
23 incorporated Case 1306, which only regulated them
24 in the R and the RF zones, so that's why we
25 brought that forward that way.

1 COMMISSIONER MAY: So that explains why
2 we did it, but, I mean, I guess it's a question
3 for -- I mean, does it make sense that we should
4 be considering extending it to the other zones,
5 where they're, in mixed-use zones there's still a
6 fair number of townhouses and row house and things
7 like that, where we have retaining wall issues?

8 MS. STEINGASSER: We could look at that
9 as a separate case and look at it more by use type
10 --

11 COMMISSIONER MAY: I see.

12 MS. STEINGASSER: -- development than
13 zone, so if it is a residential row house, you
14 know, that kind of approach to it.

15 COMMISSIONER MAY: Okay. All right. I'm
16 not pressing for that at this moment. That's it
17 for this section.

18 CHAIRMAN HOOD: Okay. Anyone else on
19 Subtitle C? Subtitle D.

20 COMMISSIONER MAY: Yeah, I have a few
21 here. So, the language -- I'm looking at 306.3 --
22 and this is language that is common to a number of
23 residential zones. Basically, it's the language
24 having to do with a freestanding wall, if there's
25 going to be a freestanding wall there has to be a

1 side yard. I know we've talked about this for
2 years and years and years, and I probably have
3 even asked about this in prior ZRR cases, but I'm
4 still confused about whether the language that's
5 in 306.3 eliminates the possibility of a new row
6 house being built basically on the lot line. I
7 mean, to me, when you build on a lot line and it's
8 not attached to something else, it's a
9 freestanding wall and, therefore, there has to be
10 a side yard. Is that what that regulation is now
11 saying?

12 MS. STEINGASSER: I agree this has always
13 been an unresolved issue, because we view this as
14 -- correct me if I'm offline here -- we view this
15 as trying to address the end unit of a row house.

16 COMMISSIONER MAY: Exactly.

17 MS. STEINGASSER: Yeah, and most of them,
18 historically, do go up to the property line, and
19 that's how the regs have always been written, but
20 they have been interpreted back and forth, back
21 and forth.

22 COMMISSIONER MAY: Right. So, and I
23 understand that's how many have been built. Of
24 course, many of them were built before 1958, many
25 of the ones that we see. But I also know that,

1 when we've looked at PUDs, over time, there was
2 always a side yard at the end unit, and very often
3 there had to be relief, because the side yard
4 couldn't be a full 8 feet. But if there was a
5 freestanding wall, there was a side yard, in those
6 cases. Again, sometimes it required relief to get
7 through.

8 I mean, I'm probably the only one who
9 really cares about this issue.

10 VICE-CHAIR COHEN: I care.

11 COMMISSIONER MAY: Thank you, but I think
12 it's something that we should be very clear about.
13 We either are very explicitly allowing a row house
14 to go property line to property line -- because
15 this language implies something different. And
16 I'm not saying that we should. I think that the
17 way it should work is that we should treat the
18 last house in a row as a semi-detached house,
19 because, defintionally, it is semi-detached.

20 MS. STEINGASSER: We're happy to take
21 whatever direction the Commission wants to give
22 us. We've been working off the BZA precedents as
23 they've set the regulations from back and forth,
24 as they flip back and forth, and so we have always
25 read this to allow the row house to build up to

1 the property line. We've also -- I mean, I'm as
2 flummoxed as you are.

3 [Laughter.]

4 COMMISSIONER MAY: So I guess it's really
5 a question for the Commission. In the
6 circumstance when you have a row of houses, and
7 you come to the end of the row, should that last
8 house be just like the other townhouses and have,
9 essentially, as face-on-line wall, or should they
10 be required to have that side yard? I had always
11 interpreted the regulations, up to this point, as
12 requiring that side yard, and that's why, for
13 example, a semi-detached house, in an R4 zone,
14 typically was limited to 40-percent lot occupancy,
15 so that you could have that side yard. Or do we
16 want to just let the row houses go wall-to-wall
17 and allow face-on-line houses, because that's
18 essentially what we would be doing is having zero-
19 lot-line houses.

20 I mean, that's a common development
21 pattern. It's not very common here, but it's
22 common in other places, to have a face-on-line
23 wall. But bear in mind that that face could be
24 on-line on one side of the lot and not on the
25 other, and you'd have a side yard on one side and

1 not on the other, which is, as I said, that's
2 unusual for here.

3 COMMISSIONER TURNBULL: Well,
4 Commissioner May, the way I'm reading this is that
5 on the freestanding side you'll have a side
6 setback.

7 COMMISSIONER MAY: Right, but the Office
8 of Planning just said that that's not the way it's
9 been interpreted and that's the way they're not
10 reading that language. They're saying that a row
11 house can go property line to property line,
12 period. I agree with you. I read that language
13 to say that if it's not actually attached to
14 something, it's got to be --

15 COMMISSIONER TURNBULL: Side setback.

16 COMMISSIONER MAY: -- there's got to be a
17 side setback.

18 COMMISSIONER TURNBULL: Right. That's
19 the way I would read it.

20 MS. STEINGASSER: If that's what the
21 Commission wants, we can make it very explicitly
22 clear that that's, that there is that side yard on
23 that freestanding wall, but Mr. Lawson also had a
24 comment.

25 MR. LAWSON: I think the only

1 clarification -- I totally understand that, and,
2 actually, in the District, if you look at the lot
3 distributions, often, for the existing lot
4 patterns, the end lot of a row of row houses will
5 actually be a wider lot. Not always, but often.

6 I think, though, one clarification we'd
7 ask is, are you considering applying that just to
8 the -- how can I put this? -- to the end row of
9 row houses where there's a street or an alley,
10 something there? We can also see situations where
11 there's a series of row houses, and then there's
12 an interior lot that's undeveloped, or something,
13 you know, in areas that are still developing.

14 Are you considering this just for the
15 very end, or if it's an interior lot, i.e., a
16 situation where there is no other lot on the other
17 side, or in a situation where the row houses are
18 being built incrementally along a street, and only
19 a portion of them are being built, would you want
20 that side yard to be provided for what would be
21 the end at that point, knowing that, at some point
22 in the future, those other lots, the other lot
23 adjacent to it, would be developed, presumably
24 with another row house -- in which case each one
25 of those would be required to provide a setback,

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1 and the lot probably wouldn't be established to
2 provide for that setback.

3 COMMISSIONER MAY: So, when it's built
4 out incrementally, I certainly wouldn't want to
5 have to require that the last one built would have
6 the side yard, and then there's a gap between it
7 and the next one, and I also don't think that you
8 need to require a side yard when you're abutting a
9 street or an alley, and that's, actually, I think,
10 covered in the regulations now. When you abut a
11 public way, there's not a requirement for the side
12 yard. It's not in the same clause but it's in a
13 different clause, that if you abut an alley, you
14 don't need to have a side yard.

15 I just think that that -- I mean, more
16 than anything, I just want it to be clear so that
17 we're not going back and forth with the BZA on how
18 it's interpreted.

19 VICE-CHAIR COHEN: I would like to go out
20 -- I think a lot of the row house development, at
21 least that I'm familiar with, with HOPE VI
22 developments, and there has been quite a few
23 hundred built -- and I just would like to know
24 what has been done, so that we don't end up
25 stating, one way or the other, something that's

1 going to create difficulties for developers and
2 nonconformants in many units.

3 So, if it's at all possible for you to
4 come back with some guidance on what has been
5 done, I know that, and I agree with Commissioner
6 May that there shouldn't be this interpretation
7 where we do it one way and a different way on the
8 BZA, and it should be clear. But I'm concerned
9 about what has been done to date, and most of the
10 development has been HOPE VI projects, I think.

11 MR. LAWSON: Right. Our understanding is
12 typically what's being done is that that side yard
13 has not been required. That's our understanding.
14 We can certainly take another look at that, but
15 that's the typical situation.

16 VICE-CHAIR COHEN: And has it not been
17 required because of the way it's being built out,
18 in phases, or is it just how it's been designed?

19 MR. LAWSON: It is not a question of
20 design. It's a question of regulations, and it's
21 not being required because the zoning
22 administrator -- again, my understanding is that
23 if it's a property that allows a row house, in
24 other words, if it's zoned for a row house, if you
25 build from property line to property line it's a

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1 considered a row house. So, in other words,
2 you're allows -- the side yard just simply isn't a
3 requirement of the regulations. So whether it's
4 provided or not, it's not a requirement of the
5 regulations, typically.

6 COMMISSIONER MILLER: Mr. Chairman, I
7 would just suggest, like to suggest that maybe we
8 take this up as part of the R4 row house zoning
9 case that's pending, and consider it there rather
10 than making a change in policy, which I'm not sure
11 changing an interpretation of the -- I agree there
12 needs to be clarity, but I'm not sure that making
13 a change in what might be longstanding
14 interpretation right here, in this proposed
15 action, without hearing more of the -- hearing
16 from anybody, is -- I'm not comfortable with
17 making the change.

18 COMMISSIONER MAY: Yeah. I certainly
19 have no problem with deferring it. I mean, it's
20 clear we're not going to get it figured out right
21 here and now. Whether it gets deferred and
22 included with that, or whether it's something that
23 we take up, even at final, with some slight
24 revision of what we're doing here -- I think it's
25 just a matter of understanding how we intend to

1 interpret this language.

2 MS. STEINGASSER: So when the Commission
3 says defer, do you mean to stay with the current
4 language as is --

5 COMMISSIONER MAY: Yes.

6 MS. STEINGASSER: -- until such time as
7 we're comfortable making a change.

8 COMMISSIONER MAY: Right, because the
9 language right now is ambiguous. I mean, I read
10 it -- I believe that if the extent to which this
11 has been, the regulations have been interpreted to
12 allow a row house to go from property line to
13 property line is a misinterpretation of the zoning
14 regulations, because of this language, because of
15 the freestanding wall language. So, I think it's
16 still open to interpretation. What we're going to
17 have right now is still that kind of back-and-
18 forth, but let's keep it as it is and try to get
19 it figured out.

20 COMMISSIONER TURNBULL: Yeah. I would
21 just add, I would agree about deferring it, but I
22 also would throw out that maybe there's a
23 possibility for more than one scenario, that we
24 should have some opportunities, especially in new,
25 planned-unit developments that have the ability to

1 make some changes to certain ways that things are
2 laid out. So, I mean, I've sat on enough BZA
3 cases where you've gone to the property line and
4 you've got the sidewalk right next to the row
5 house, and there's still been some, I've seen some
6 that have a bit of a side yard, too.

7 So, I don't know. Maybe there's a little
8 bit of flexibility, depending upon where you are
9 and what you're doing, and if it's whether new or
10 existing, I guess. Maybe OP can look at that.

11 CHAIRMAN HOOD: I would agree with Mr.
12 Turnbull's comments. At first I was thinking this
13 space, but I think I would associate myself with
14 Mr. Turnbull's comments. It may be a design
15 issue, flexibility. We might want to allow that.
16 I don't have a problem deferring it.

17 Okay. Anything else?

18 MR. BERGSTEIN: Just a reminder that
19 relief from this provision is available under 223,
20 which happened in the first case called Pritchard,
21 where there was an appeal, and the BZA agreed that
22 a side yard was required in the circumstances, and
23 they got 223 to eliminate the side yard.

24 COMMISSIONER MAY: Thank you. I was
25 racking my brain trying to remember the name of

1 that case, because I sat on it, and I thought we
2 had settled it then, but anyway.

3 MR. BERGSTEIN: It was actually a bizarre
4 -- well, they said that the only reason they --
5 they later limited it and said the only reason
6 they required a side yard was because it was
7 adjacent to a row of houses that were
8 perpendicular, and they decided that because of
9 the need for light and air, they would only impose
10 a side yard requirement if, in fact, the side yard
11 was adjacent to a perpendicular row of dwellings.
12 So -- but then they changed their mind again, so I
13 can't even tell you where it is.

14 CHAIRMAN HOOD: All right. Anything else
15 on this? Okay. Let's go to --

16 COMMISSIONER MAY: I'm sorry. No. I have
17 others in the same zone. Sorry.

18 On 402.1, the requirement for 9,500
19 square feet for lots subdivided after July 30th,
20 1999. I looked at the previous draft of the
21 regulations and it was not that large, and I'm
22 wondering where that change came from. I don't
23 remember what it was.

24 MS. STEINGASSER: That's the current
25 language.

1 COMMISSIONER MAY: It is the current
2 language?

3 MS. STEINGASSER: Yes.

4 COMMISSIONER MAY: But it wasn't in the
5 previous draft that way. It was reduced. Was it
6 reduced?

7 MS. STEINGASSER: If it was, it was by
8 error --

9 COMMISSIONER MAY: All right.

10 MS. STEINGASSER: -- because we've always
11 been clear that we were going to maintain all the
12 conditions of the overlays.

13 COMMISSIONER MAY: All right. All right.
14 That's it for the R zones.

15 CHAIRMAN HOOD: Anyone else? Okay.
16 Let's go to Subtitle E, Residential Flats.

17 COMMISSIONER MAY: Okay. I have
18 questions here, too. In 303.2 and 303.3, there
19 are allowances for 90-foot buildings, and I just
20 wanted to check -- that's something that was in
21 the existing regulations, because, again, it's not
22 something that was in the previous draft.

23 MS. STEINGASSER: Yes, it is. It's
24 currently in Chapter 4.

25 COMMISSIONER MAY: Got it. Okay. All

1 right. Another one, and this may just be a
2 language issue, but I was very confused by it. It
3 was in 804, and it had to do with -- do I have
4 that right, 804.2? Oh, yeah. So, 804.2 says, "An
5 accessory building shall be permitted in the rear
6 setback of a principal building pursuant to the
7 following conditions," and it says, under B, it
8 says, "The accessory building is less than 100
9 square feet in gross floor area," but there was
10 previously, under 803.1, something that says that
11 "An accessory building in an RF zone can be the
12 greater of 30 percent of the required rear
13 setback, or 450 square feet." So I thought those
14 two were in conflict, and I'm not sure what we
15 were trying to do.

16 MS. STEINGASSER: It definitely needs
17 clarification. The current regulations allow
18 garages to be within the rear yard, and in the
19 current regulations they distinguish between
20 accessory buildings and garages. We've merged
21 those two but we need to make that distinction.

22 COMMISSIONER MAY: Got it. Okay. Now I
23 understand. So it is a language thing, primarily.
24 Thank you. That's it for RF zones.

25 CHAIRMAN HOOD: Anyone else? Okay.

1 Let's go to Subtitle F. Commissioner May?

2 [Laughter.]

3 COMMISSIONER MAY: Maybe I should just
4 keep talking all the time. All right. I found
5 some very confusing language, again, and maybe
6 it's just because I've been reading so much
7 zoning, my brain is mush. But -- I'm stalling as
8 I try to pull up the paragraph. Under 201.2 in RA
9 zones, the language reads that -- hold on a second
10 -- "In the RA-1 zone, each row dwelling shall have
11 at least 1,800 square feet of gross land area,
12 exclusive of any land area, and the project uses a
13 basis for determining the floor-area ratio of
14 multi-household buildings.

15 "Each row dwelling, however, need not
16 have a site of 1,800 square feet, and the
17 difference between the site area and the gross
18 land area may be accumulated in the common spaces.
19 Land area used to support the floor-area ratio of
20 multi-household buildings may also be used for
21 common spaces."

22 So, you know, the word "project" is not
23 defined, "multi-household building" is not
24 defined, and -- I mean, I guess the point of this
25 is that you can have an average of 1,800 square

1 feet for row houses in this type of a development,
2 but that some of that 1,800 square feet might
3 actually be included within the common space.

4 MS. STEINGASSER: That's correct.

5 COMMISSIONER MAY: Okay. So, that needs
6 to be worded in a way that we can understand it.

7 MS. STEINGASSER: We'll clarify that.
8 That's drawn from the theoretical lot subdivisions
9 that permit the current R5A development. We'll
10 get that clarified.

11 COMMISSIONER MAY: Okay. All right. And
12 then under 303.3, which is height, so -- actually,
13 303.2 says that a building can go to 90 feet if
14 it's set back, you know, a certain way, but then a
15 church can be erected to 60 feet. Oh, I'm sorry.
16 It's 303.1, which says -- sorry -- 303.1 says,
17 "The maximum height in an RA1 zone -- sorry, in a
18 RA4 and RA5 zones is 90 feet," but then later in
19 the same chapter it says, "A church can only be
20 erected to 60 feet." So, can a church be 60 feet
21 or 90 feet in an RA4 and 5 zone?

22 MS. STEINGASSER: It should be allowed,
23 90 feet, as well.

24 COMMISSIONER MAY: It should be allowed,
25 90 feet, as well. So there just needs to be an

1 exception, except for, where this only applies in
2 RA1, 2, and 3.

3 COMMISSIONER TURNBULL: Is that inclusive
4 of its spire?

5 COMMISSIONER MAY: Of course not.

6 MS. STEINGASSER: No.

7 COMMISSIONER TURNBULL: I just wanted to
8 be clear.

9 COMMISSIONER MAY: Spires, domes, and
10 minarets.

11 COMMISSIONER TURNBULL: That's what I --
12 I just wanted to make that clear.

13 COMMISSIONER MAY: All right. I'm ready
14 to move on to Mixed Used Zones. Anybody else?

15 CHAIRMAN HOOD: Okay. Subtitle G.
16 Commissioner May?

17 [Laughter.]

18 COMMISSIONER MAY: All right. So, I
19 found some inconsistency in the way courtyards,
20 courtyard dimensions were described, and so open
21 courtyard with a specified and closed courtyard
22 area are described, but the closed courtyard with
23 is not described in the mixed-use zones, and I
24 think that actually occurs in some other places,
25 and in some places that have regulations,

1 courtyards are, you know, we show limitations on
2 width or minimums for width for open and closed,
3 and a minimum dimension for closed. So it is just
4 omitted accidentally under mixed-use?

5 MS. STEINGASSER: We'll go with yes.

6 COMMISSIONER MAY: Okay.

7 [Laughter.]

8 MS. STEINGASSER: We were trying to
9 incorporate both the existing court requirements,
10 because the Commission had expressed concerns
11 about maintaining light and air --

12 COMMISSIONER MAY: Right.

13 MS. STEINGASSER: -- as well as the
14 courtyard changes, and I think we may have made a
15 little mess. We'll get those straightened out.

16 COMMISSIONER MAY: All right. So,
17 throughout the RA zones, lot occupancy for
18 residential use is specified but non-residential
19 lot occupancy -- this is mixed-use -- non-
20 residential lot occupancy is not specified.

21 MS. STEINGASSER: That reflects the
22 current code.

23 COMMISSIONER MAY: So it's just --

24 MS. STEINGASSER: Lot occupancy in the
25 current commercial zones and in the SP zones is

1 only applicable for residential.

2 COMMISSIONER MAY: Only for residential.

3 I should remember that.

4 And then the last thing in this zone is
5 508.2, waterfront setback, which requires a
6 setback of 100 feet to any building or structure,
7 but in Section 1102.1 it says a minimum waterfront
8 setback is 75 feet, and it says it may vary by
9 zone, but there's no variation in zone that's
10 shown in 508. So --

11 MS. STEINGASSER: That's a remnant of
12 formatting from the very, very first proposal back
13 in 2011. It should be 100 feet, and it should be
14 required in what's equivalent to the W-0, which is
15 the MU-11 zone.

16 COMMISSIONER MAY: Got it. Okay. I'm
17 trying not to look at what are very obviously just
18 editing glitches, and the ones that are -- I'm
19 trying to stick with the things that might have
20 some substantive difference in it. All right. So
21 neighborhood mixed-use zones.

22 CHAIRMAN HOOD: Let me ask -- oh, let me
23 ask. Let me go first. Let me give you a break.
24 I was just noticing, as I was reviewing again, one
25 of the questions I had, and I think -- and I have

1 to find it, Mr. Turnbull -- I think some of the
2 language is already there for the Capitol, but I
3 know you all probably know more about that one
4 than I do.

5 Ms. Steingasser, I notice in this, and I
6 think we're doing this as we go through this
7 version, case in point, the mixed-use zones, we
8 always highlight like SP1 and SP2. Why don't we
9 always refer -- and I think this is just for us to
10 keep it straight. As we move forward, we won't
11 reference the old zones.

12 MS. STEINGASSER: That's correct. It was
13 just to allow people to, that transition, to
14 understand where they were.

15 CHAIRMAN HOOD: Is that going to be --
16 are we proposing to do that in the first edition?

17 MS. STEINGASSER: No.

18 CHAIRMAN HOOD: Okay.

19 MS. STEINGASSER: No, sir.

20 CHAIRMAN HOOD: Okay. All right. It
21 looks like a good idea, but, anyway, okay.

22 MS. STEINGASSER: It will be part of the
23 handbook. There will be a reference, a cross-
24 reference, but it won't be in the official
25 regulations.

1 CHAIRMAN HOOD: Okay. All right.
2 Commissioner May, I gave you a break. You can
3 continue, unless somebody else -- does anybody
4 else have -- okay.

5 COMMISSIONER MAY: Now I'm ready to skip
6 straight to downtown.

7 CHAIRMAN HOOD: I'm sorry. Subtitle H,
8 Neighborhood Mixed Uses. Anybody? Okay. Well,
9 let's go to downtown.

10 COMMISSIONER MAY: So, downtown. I think
11 I've got the wrong section. Hold on. I'm looking
12 at the parking that we adjusted for the D5 zone,
13 so that's the west end, and I think that we
14 decided that we wanted to include a parking
15 minimum for west end, and the Office of Planning
16 has suggested that the line that determines where
17 the parking requirement is, would be at 20th
18 Street. I'm just wondering if we all agree that
19 that's the right place to draw the line. And I
20 guess I would ask the Office of Planning if you
21 have a rationale for 20th versus 19th, or even
22 further.

23 MR. COCHRAN: We came up with -- excuse
24 me. We came up with 20th Street because that's
25 the first street that's adjacent to the CR zone or

1 any residential zone that's in the west end. That
2 has one advantage. And advantage to using 19th
3 Street is it's already a zone boundary line in the
4 proposed new zones.

5 COMMISSIONER MAY: I mean, you picked
6 20th because it was where the CR was starting?

7 MR. COCHRAN: The CR zone is essentially
8 along New Hampshire. It starts along New
9 Hampshire Avenue, on the east side --

10 COMMISSIONER MAY: Right.

11 MR. COCHRAN: -- and the first street to
12 the east of that zoning, completely, because of
13 the angle that New Hampshire Avenue is on, is 20th
14 Street.

15 COMMISSIONER MAY: Got it.

16 MR. COCHRAN: So that's hwy we went with
17 the west side of 20th Street.

18 COMMISSIONER MAY: Right. I mean, I
19 don't feel very strongly one way or another. I
20 just wanted to make sure that the Commission knew
21 that, because I don't think that we discussed it
22 when we actually made the decision before.

23 VICE-CHAIR COHEN: I think we did.

24 COMMISSIONER MAY: You think we did? I
25 didn't have it in my notes. All right. I'm done

1 with downtown.

2 CHAIRMAN HOOD: All right. Subtitle J.
3 Oh, I'm sorry. Let's go back. Mr. Miller.

4 COMMISSIONER MILLER: I just wanted to
5 note what you -- it was in OP's memorandum and you
6 read it previously, but I wanted to note it while
7 we're here, on downtown, on housing linkages.
8 They said they were going to revisit the very old
9 housing linkage provisions, to see if they should
10 be applicable to downtown and the affordability
11 levels and everything, and maybe sync it up with
12 the IZ revisiting that also is going on, which I
13 think is a good thing to revisit.

14 CHAIRMAN HOOD: Okay. Let's go to
15 Subtitle, is it J?

16 COMMISSIONER MAY: Yeah.

17 CHAIRMAN HOOD: Yeah, Subtitle J, PDRs.
18 I'm sorry. I have something.

19 COMMISSIONER MAY: Oh, good.

20 CHAIRMAN HOOD: I just want to know, is
21 there any other interests -- and I know we talked
22 about the -- I'm having a slight operator's
23 problem here. Okay. Ms. Steingasser, you all
24 probably can help me direct. I think we had
25 testimony from an ANC commissioner in Ward 4, and

1 I think I've talked about this 100 times after the
2 Commissioner did, about exempting certain uses on
3 -- and this may go to my 101 class that I still
4 need. Help me understand -- and I know this is
5 920 pages. Can you show me where that is in PDRs,
6 where -- I can't think of her name, the young lady
7 from Ward 4.

8 MS. STEINGASSER: Ms. Judy Jones.

9 CHAIRMAN HOOD: Oh, yeah, Commissioner
10 Jones, Judy Jones. Commissioner Jones and I
11 agreed on something, and I think I've asked this
12 before, but I just can't never remember where it
13 is, about one use --

14 MS. STEINGASSER: Auto repair.

15 CHAIRMAN HOOD: Yeah, okay. Did we just
16 specifically point out auto repair, or was it
17 other -- I don't want to say undesirable, but
18 other uses that are, well, I'll say undesirable.

19 MS. STEINGASSER: We did look at other
20 uses that were, I think they call them LULUs,
21 locally undesirable -- bars, nightclubs, anything
22 with a dance floor, as well as the auto repair.

23 CHAIRMAN HOOD: Where can I find this?

24 MS. STEINGASSER: I believe they're now
25 in Subtitle U, which is Uses, and they would be

1 Chapter 8.

2 CHAIRMAN HOOD: But these typically
3 happen in a PDR zone, right?

4 MS. STEINGASSER: That's correct.

5 CHAIRMAN HOOD: So show me how I know to
6 go to U.

7 MS. STEINGASSER: Well, there will be a
8 reference to -- all the uses are now in Subtitle
9 U. So Section 102 --

10 CHAIRMAN HOOD: Okay.

11 MS. STEINGASSER: -- on Page J3, says Use
12 Permissions, and it refers you to Subtitle U.

13 CHAIRMAN HOOD: Okay, 102-point -- it's
14 102?

15 MS. STEINGASSER: 102.

16 CHAIRMAN HOOD: Right, 102, Use
17 Permissions. Use permissions in a PDR zone are
18 specified in Subtitle U. Okay. Commissioner May
19 -- thank you. That's the first part of my 101.
20 Commissioner May.

21 COMMISSIONER MAY: Yeah. Just a quick
22 one. Are we also going to deal with roof
23 structures in PDR zones in 14-13, or can we?

24 MR. LAWSON: Sure.

25 CHAIRMAN HOOD: Okay. Now, Ms.

1 Steingasser, work with me here for a minute. I'm
2 in U.

3 MS. STEINGASSER: Yes, sir.

4 CHAIRMAN HOOD: Let's go to U. Let's
5 jump to U for a second. Now, where do I go from
6 here?

7 MS. STEINGASSER: Chapter 8 is the PDR
8 uses.

9 CHAIRMAN HOOD: Okay. Use permissions
10 and mixed-use. Okay. Okay. Chapter 8.

11 MS. STEINGASSER: And it starts on page
12 U-83.

13 CHAIRMAN HOOD: Okay. Let's go to the
14 next one. By the time I get to 83 -- hold on. I
15 can do a search. Okay. Where did you say that
16 was, Ms. -- 802?

17 MS. STEINGASSER: Which one are you
18 looking for?

19 CHAIRMAN HOOD: I'm looking for -- I'm
20 going to use the uses in PDR zones. You said it
21 was 802?

22 MS. STEINGASSER: It's on page 83.

23 CHAIRMAN HOOD: Oh, 83.

24 MS. STEINGASSER: In Subtitle U.

25 CHAIRMAN HOOD: Okay. All right. Let's

1 go to the next subtitle, and I may have some more
2 questions on this.

3 MS. STEINGASSER: Okay.

4 CHAIRMAN HOOD: Okay. What's the next
5 subtitle?

6 COMMISSIONER MAY: I'm ready to go all
7 the way to Uses.

8 CHAIRMAN HOOD: Oh, we're already there.
9 Anybody have anything on Subtitle K? I mean, I'm
10 sorry, Subtitle K.

11 COMMISSIONER MAY: No.

12 CHAIRMAN HOOD: Okay. Let's go to U,
13 where we are. Commissioner May.

14 COMMISSIONER MAY: So, 508.13, which
15 states that any use -- this is the special
16 exceptions section, under uses, and I forget which
17 zone this is, but it's Group C, which is MU 12,
18 13, 14, and it applies, actually, in many other
19 zones. And the language -- I want to wait for the
20 Chairman to get caught up with us. I'd like you
21 to listen to this.

22 CHAIRMAN HOOD: Oh, you want me to
23 listen? Okay. I'm still trying to get to page
24 82.

25 COMMISSIONER MAY: Okay. I'm sorry.

1 CHAIRMAN HOOD: You can go ahead.

2 COMMISSIONER MAY: So the language that's
3 in 508.13 says, "Any use that's permitted as a
4 matter of right in Use Group C, with conditions,
5 does not comply with the required conditions for
6 Use Group C, may apply for permission as a special
7 exception," and I just thought that was a pretty
8 broad thing. I mean, is that new to this version?
9 Is that in the earliest versions? Is that what we
10 have now? It's not what we have now, because we
11 don't have matter of right with conditions.

12 MS. STEINGASSER: It's something that the
13 Commission gave us guidance on back in 2011, and
14 we've carried forward.

15 COMMISSIONER MAY: Okay. All right. I
16 appreciate that. In 2011?

17 MS. STEINGASSER: In 2011 was when you
18 gave it.

19 COMMISSIONER MAY: That explains why I
20 don't recall. Just looking at that and looking at
21 some of the conditions that we had on some of
22 these uses, it was just a little bit of a concern
23 for me that we would treat all of these variations
24 from the conditions as being something that's
25 worthy of a special exception, as opposed to

1 requiring a variance.

2 CHAIRMAN HOOD: What section are you in
3 again?

4 COMMISSIONER MAY: 508.13 is where the
5 language occurs.

6 CHAIRMAN HOOD: 508.13. Okay.

7 MS. STEINGASSER: It is repeated.

8 COMMISSIONER MAY: Yeah, it is repeated.
9 Yeah. It happens in many of them. Let's see if I
10 can find one that's particularly concerning. I
11 think one of them -- I don't think it appears
12 here, but --

13 CHAIRMAN HOOD: Yeah, I actually share
14 your concern, Commissioner May.

15 COMMISSIONER MAY: You know, there's one
16 where firearms sales, for example, are
17 conditioned, and I'm not sure that those sorts of
18 conditions are something that we would want to
19 treat as a special exception, and it's just
20 because a special exception, I mean, the basic
21 presumption with a special exception is that the
22 use is appropriate and that it should be allowed,
23 but it's a question of having the right conditions
24 on that allowance.

25 I just think it's something that made me

1 a little bit uneasy, reading it this time around,
2 and reading it in conjunction with the various
3 conditions. Maybe it is fine, but I just thought
4 it's something that we ought to look at again, and
5 I'm not sure how we do that at this stage. I
6 mean, I'm okay taking proposed action based on
7 this, but I think it's something that we should
8 revisit when we come back to final, the final
9 language.

10 And maybe it would be helpful to have the
11 Office of Planning look at it a little bit, and
12 see whether there's anything that gives them
13 pause, in terms of conditions that they would not
14 want to have waived as a special exception. Is
15 that all right?

16 MS. STEINGASSER: We have that by --

17 CHAIRMAN HOOD: Let me just say, on that
18 note, I thought I asked previously -- and if I got
19 it, forgive me -- I had asked previously, from
20 things that were either a variance or a special
21 exception, I thought, things that we're now making
22 the matter right. I thought I had asked for that
23 list, and you may have given it to me. If you
24 did, forgive me, but I don't remember seeing it.

25 MS. STEINGASSER: We did do that list.

1 We did provide it to the Commission. I think you
2 had it in the August deliberations.

3 CHAIRMAN HOOD: Was that when it is?
4 Okay. Ms. Schellin, I'll depend on you. Can you
5 help me find that? I need to review that again.
6 I probably looked at it in August. That was
7 August? But, anyway, okay, and I would agree with
8 Commissioner May on that.

9 Any other comments?

10 COMMISSIONER MAY: I had one more.

11 CHAIRMAN HOOD: On that issue. I was
12 seeing if anybody else wanted to comment.
13 Nothing? Okay.

14 COMMISSIONER MAY: All right. So,
15 similarly, the services uses special exception
16 language in 511.13, I think that's something we
17 ought to just take another look at, as well, and
18 there the language basically says, "Service uses
19 permitted as a matter of right with conditions
20 that do not comply with the conditions." Again,
21 that's another broad statement about what could be
22 treated as a special exception versus what should
23 be considered as a variance. It's 511.13, and it
24 appears elsewhere. I mean, that's part of that
25 same question, essentially.

1 MS. STEINGASSER: Can I -- I know it's
2 completely irregular, but while we're on this
3 page, 511.12(i)(2) has been of particular interest
4 to Mr. Krupnick, who has diligently followed this
5 case, and I just want to make sure we get it on
6 the record, for his benefit, that we are going to
7 clarify that language to make sure that it's not
8 an optional, that you can't opt into a large track
9 as a way to get out of that. I just wanted to get
10 that on the record for him.

11 COMMISSIONER MAY: I appreciate you
12 clarifying that, because --

13 MS. STEINGASSER: I don't know if that
14 was on your list.

15 COMMISSIONER MAY: Well, I went looking
16 for that and I didn't find it. I just read right
17 over it.

18 Okay, so that was it for that subtitle,
19 for me.

20 CHAIRMAN HOOD: Okay. Ms. Steingasser, I
21 finally got the page. It's on page 73, but it's
22 still 802.2. Is this 803.2, regardless of
23 omissions and additions to any restrictions or
24 conditions of the chapter following, you shall not
25 be permitted on any lot located in a whole, or in

1 part, within 100 feet of a residential zone -- is
2 that it? Is that what we're talking about, Ms.
3 Jones?

4 MS. STEINGASSER: I believe the parking
5 issue started with the special exception
6 provisions.

7 CHAIRMAN HOOD: No. I meant the issue
8 with the --

9 MS. STEINGASSER: The auto repair.

10 CHAIRMAN HOOD: -- the auto repair, yeah.

11 MS. STEINGASSER: Auto repair. And --
12 let's see if I can find those.

13 CHAIRMAN HOOD: Because I know you said
14 82. Was it U-82?

15 MS. STEINGASSER: That's where the
16 industrial uses start.

17 CHAIRMAN HOOD: I must have another
18 version because mine only goes up to U-75.

19 MS. STEINGASSER: Oh, I'm sorry. I
20 printed this out with my own comments on it, so it
21 gave you the extra page numbers.

22 CHAIRMAN HOOD: Oh. Okay. Okay, so I
23 think I'm where you are, though. It's 803? 803?
24 We're in the area somewhere. I'm just looking for
25 that language that says how many feet that it

1 needs to be separated and not on the same lot. I
2 see everything about the hours of operation within
3 500 feet of a residential zone. I see that.

4 MS. STEINGASSER: I think it's actually
5 back in Section 801.19, which is a matter of right
6 with conditions, and that condition is that motor
7 vehicle-related sales and repairs, provided the
8 use is not within 200 feet of any residential --
9 be it single-family, apartments, or flats --
10 development or zone.

11 CHAIRMAN HOOD: But did we capture the
12 intent. I know we may have captured her intent,
13 but did we capture the actual intent, because we
14 were looking at --

15 MS. STEINGASSER: I think we did. We
16 pumped it up to 200 feet, and we, first we had
17 talked about residential zone, but then we
18 recognized that there could be residential uses in
19 non-residential zones, so we included that, as
20 well.

21 CHAIRMAN HOOD: I thought it was
22 identical uses on the same parcel of land within a
23 lot. I think that's where we were going. I
24 thought that's where she was going. But, you know
25 what? There's a comment period. If she wasn't

1 going there, I'm sure we'll hear from here.

2 MS. STEINGASSER: We will check back with
3 her, because we did work closely with her on that.

4 CHAIRMAN HOOD: Right. I thought that's
5 where she was going, even though I was going
6 somewhere else, but I just wanted to make sure
7 what she has is in there. But, anyway, let's just
8 wait and see what the comments say, because I
9 think it's important.

10 Okay. Anything else? All right. Anyone
11 else on this? Okay, you want to go to the next
12 one?

13 COMMISSIONER MAY: I don't have anything
14 on mapping, I'm ready to go to Subtitle X.

15 CHAIRMAN HOOD: X, okay. Does anybody
16 else have anything on mapping? Let's go to X.
17 Mr. May.

18 COMMISSIONER MAY: So, I have one
19 question here about PUDs, and this is 303.11.

20 MS. STEINGASSER: I'm going to engage Mr.
21 Bergstein with this subtitle, as well, because a
22 lot of sections have been moved here.

23 COMMISSIONER MAY: I see. Okay. Well,
24 303.11 says that, "As part of any planned unit
25 development, the Applicant may request the

1 Commission to grant an area variance to permit
2 additional height or FAR beyond that permitted by
3 this subsection." It says, "The Commission shall
4 apply and not deviate from the variance standards
5 stated at Y, section," whatever it is.

6 So, looking at the previous version of
7 the text -- and I don't know what's in the current
8 regulations, but the previous version of the text
9 did not include variances for height and FAR. It
10 was the other restrictions, development standards.
11 Is this a new authority that's being added, or is
12 this carried from the old?

13 MS. STEINGASSER: This was to capture, in
14 the current regulations, the 5-percent provision
15 that the Zoning Commission has at your discretion.

16 COMMISSIONER MAY: But there's not a 5-
17 percent limit there?

18 MS. STEINGASSER: The 5 percent probably
19 needs to be reclassified. I'm not sure where it
20 ended up in Subtitle Y.

21 COMMISSIONER MAY: Okay. So, I think
22 that that's -- I mean, that needs to be spelled
23 out, because, to me, this was sort of throwing the
24 gate wide open on a PUD, to grant height and FAR
25 variances.

1 MR. BERGSTEIN: Let me tell you where
2 this came from. If you remember the PUD involving
3 the WASA, it was an above-ground egg, and they
4 needed PUD relief for the FAR, but that only got
5 them just so far. So they needed to also request
6 variance relief, because height and FAR are the
7 only two aspects of a FAR that have a limitation
8 on what you can grant. In any other type of area
9 requirement and zoning regulations, you can grant
10 any flexibility.

11 So, what I think this was also intended
12 to capture was to make it clear that someone in a
13 PUD, who needs to go beyond the FAR limit,
14 including the 5 percent, and the height limit,
15 can't, as part of the same application, request
16 variance relief, and to make it clear that when
17 you move from density PUD increases and PUD height
18 increases, the PUD standard ends, variance
19 standard begins. And it's really no different
20 from, in CG Overlay, where it says additional
21 zoning relief may be requested in the same
22 application.

23 It's what was once referred to as one-
24 stop shopping, that if you need additional relief,
25 you can request it as part of a PUD, just as you

1 can request it as part of a CG. But for a PUD, as
2 I said, the only type of variance relief that
3 isn't covered by the general PUD rules are height
4 and FAR.

5 COMMISSIONER MAY: So, does that mean
6 that if it were within the 5 percent, it would be
7 granted under the PUD guidelines --

8 MR. BERGSTEIN: That's right.

9 COMMISSIONER MAY: -- but above and
10 beyond that it would be just judged by the
11 variance standard?

12 MR. BERGSTEIN: Right, and the purpose of
13 that provision is to draw that line in the sand.

14 COMMISSIONER MAY: Right. So, is this
15 something where -- I mean, is this an authority
16 that more or less exists anyway?

17 MR. BERGSTEIN: Yes. It's just to
18 clarify --

19 COMMISSIONER MAY: It's just clarifying
20 that it exists.

21 MR. BERGSTEIN: -- that there is a
22 demarcation, even in a PUD, where different
23 standards would apply, and not to suggest that
24 once you request a variance above PUD height,
25 above PUD FAR, somehow the PUD standards might

1 apply and you could somehow get additional height
2 if you did public benefits.

3 COMMISSIONER MAY: Right.

4 MR. BERGSTEIN: Do you understand it?

5 COMMISSIONER MAY: Got it. Okay. So
6 that makes me feel a little bit more comfortable,
7 because it was -- I felt like we were opening the
8 door to doing exactly what you were describing,
9 but granting additional relief, just under a PUD,
10 without dealing with the true potential impacts.
11 All right. That helps me.

12 VICE-CHAIR COHEN: I have -- you're
13 finished?

14 COMMISSIONER MAY: Yeah.

15 VICE-CHAIR COHEN: Okay. I have a
16 question, concern, kind of, on 305.11, where we
17 cannot add to proffered public benefits but we can
18 deny a PUD application. Often, now, the
19 development community seems to be retracting on
20 certifying silver, or whatever they're proposing,
21 and they call for an equivalent, and, to me,
22 during development, there's always a stage called
23 value engineering, where if they don't hit their
24 numbers in construction they've going to look at
25 the project, and often the first things to go are

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1 those related to the proffer of the green
2 certification that they're proposing.

3 My concern is that if you proffer
4 something, you need an accountability of it, as
5 well, and the accountability is through a third
6 party. So I'd like that explored further. I'd
7 like the general counsel to provide us with some
8 insights here.

9 MR. BERGSTEIN: That issue is addressed
10 in the process that exists now and is being
11 carried over here, which we call the final proffer
12 process, where they give us a list of all their
13 proffers and a list of all their conditions, and
14 then we report to you whether or not we think it's
15 enforceable. So, if you believe that someone is
16 proposing a LEED condition, and you don't believe
17 that it's verifiable, that means that you should
18 discount the value of that proffer. That's really
19 what the process is supposed to be.

20 But you can also say to the Applicant,
21 "We think we can't give you credit for what you're
22 proffering here because we think ultimately it's
23 not verifiable. If you want us to count this as a
24 valid proffer, you have to come back and provide
25 us some certainty that what you're proffering here

1 can be verified by a third party," but that's a
2 different issue from what this provision is
3 seeking to address, which is where often
4 opposition parties will say, "Commission, can't
5 you get them to provide additional funding for a
6 school?" or "Can't you get them to provide an
7 addition WMADA entrance," or something like that,
8 and the answer is that you can't.

9 What you can say is that, "We don't think
10 your proffers are sufficient to warrant the
11 flexibility you're requesting and you should come
12 up with something stronger, and, by the way, here
13 are some things you might consider." So that's
14 what this provision goes to.

15 VICE-CHAIR COHEN: Thank you.

16 COMMISSIONER TURNBULL: Mr. Chair, Mr.
17 Bergstein, just continuing on with that, it say,
18 "may at any time note the insufficiency," but
19 wouldn't that be before proposed action?

20 MR. BERGSTEIN: It could be at proposed
21 action. Well, actually, no. It could be actually
22 at final, because the way the process works is
23 that the final proffer is between proposed and
24 final, because we really -- it's only until they
25 get to proposed that they sort of really have a

1 handle on what their proffers are. So the way it
2 works now is, when you take proposed action, and
3 now it's in the regs -- you just issue orders --
4 but 7 days after proposed, they give us their
5 proffers. Seven days after that, we write back
6 and say what we think about it. Seven days after
7 that, they respond to what we say.

8 So it is a process that goes on between
9 proposed and final, but by saying "at any time,"
10 the Commission, at final, is presented with our
11 report, and we say -- as you might recall -- we
12 might say, "Well, everything here is being
13 delivered after a Certificate of Occupancy," or
14 they're just giving money but they're not
15 explaining what the money is going to be used for,
16 and that's where you can say, "We think you need
17 to strengthen this," or "You know, now that we
18 look at what your final proffer is" -- because
19 sometimes they'll withdraw proffers as we talk to
20 them about it. So you could say up to final. Now
21 that we see your final proffers, now that we see
22 your list, now that we contrast it with the degree
23 of height or density, or even the map that they're
24 offering, it doesn't balance. It doesn't balance,
25 and you need to augment it.

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1 So, yes, you could do it, really, at any
2 time, for the time that you have the sense of what
3 their proffers are, which can begin at the
4 hearing, until final action.

5 COMMISSIONER TURNBULL: Okay. Great.
6 Thank you.

7 CHAIRMAN HOOD: Okay. Any more on
8 Subtitle Y?

9 COMMISSIONER MAY: That was X.

10 CHAIRMAN HOOD: Oh, X. Okay. Well, any
11 more on Y? I'm in Y right now --

12 COMMISSIONER MAY: Yeah, I have some
13 things on Y.

14 CHAIRMAN HOOD: Okay, Y, Mr. May.

15 COMMISSIONER MAY: So, the issue had been
16 raised about accepting e-mails submissions -- this
17 is 206.3 -- e-mail submissions. The rules had
18 been for a while that you had to make your e-mail
19 submission with comments in the form of a PDF, and
20 that -- we were told at the decision meeting that
21 that was fixed and that now they just be included
22 in the e-mail, the body of the e-mail. Is that
23 correct?

24 MS. BARDIN: No. What we've done is in
25 the IZIS system, somebody can enter their

1 comments directly into the system without having
2 to PDF it. That's what this is about.

3 COMMISSIONER MAY: So, but we do allow
4 comments by e-mail, as well, right?

5 MS. BARDIN: We allow them as long as
6 they're PDF'd and signed by e-mail.

7 COMMISSIONER MAY: Right, and so why do
8 they have to be in a PDF?

9 MS. BARDIN: For the signature.

10 COMMISSIONER MAY: But they don't put a
11 signature in IZIS.

12 MS. BARDIN: No, but that's authenticated
13 by the fact that you have an account.

14 COMMISSIONER MAY: Okay. I think we had
15 testimony that there are other jurisdictions where
16 all you have to do is send an e-mail. You don't
17 necessarily have to sign it. I'm not sure why we
18 have to have a signature.

19 MS. BARDIN: If you would like us to
20 accept e-mails, we're happy to do it.

21 COMMISSIONER MAY: I mean, is there a
22 reason why? I mean, I'm asking my fellow
23 Commissioners. Is there a reason why we wouldn't
24 want to just accept e-mails directly, with the
25 comments right in them, even though there's not a

1 signature on them?

2 CHAIRMAN HOOD: Haven't we been through
3 that before?

4 VICE-CHAIR COHEN: Yes.

5 COMMISSIONER MAY: Well, I mean, I would
6 think so long as the person identifies who they in
7 the e-mail, I think that that would be sufficient.
8 I don't just have a reason to accept anonymous
9 comments, but if we have somebody who identifies
10 who they are, you know, and that information comes
11 in by e-mail, why wouldn't we accept it?

12 CHAIRMAN HOOD: I don't have any problems
13 with it. I just -- as long as it holds up to
14 legal scrutiny, I personally don't have any
15 issues.

16 MR. BERGSTEIN: The only issue, and I've
17 got to look at the rest of this, is it's got to be
18 clear that if you're going to contest a case, you
19 have to have a certificate of service that's
20 signed, and showing that you submitted not just e-
21 mail to the Office of Zoning but to all the
22 parties.

23 COMMISSIONER MAY: Well, I'm not talking
24 about anything that's done by parties. I'm
25 talking about --

1 MR. BERGSTEIN: So you're talking about
2 in a rule --

3 COMMISSIONER MAY: -- individual
4 comments.

5 MR. BERGSTEIN: But you're talking about
6 in a rulemaking situation?

7 COMMISSIONER MAY: No. I'm just talking
8 about comments from an individual.

9 MR. BERGSTEIN: Oh, I see. An individual
10 who is submitting a written statement in the
11 record. Okay. We may just have to demarcate
12 that, in terms of what can be filed electronically
13 by an individual as opposed to what can be filed
14 electronically by a party, where we need a
15 signature.

16 COMMISSIONER MAY: I mean, I think we
17 should be doing whatever we can to make it easy
18 for people for people to submit their comments,
19 and I think that this is something that's commonly
20 done. As long as they identify themselves -- I
21 mean, again, I wouldn't want to have anonymous
22 commenters, but --

23 CHAIRMAN HOOD: Yeah. As long as it
24 holds up to legal scrutiny. Do you have anything
25 else, Commissioner May?

1 COMMISSIONER MAY: I do. There was also
2 a limit on e-mail submissions of ten pages. Has
3 that gone away?

4 MS. BARDIN: No. That's still -- it's a
5 matter of the megabytes, I think, the size of the
6 document.

7 COMMISSIONER MAY: If it's a PDF file,
8 but that doesn't apply if it's in IZIS. It's an
9 8-megabit limit on IZIS.

10 MS. BARDIN: Exactly, in IZIS.

11 COMMISSIONER MAY: Well, I guess as long
12 as there's a way for people to submit more than
13 ten pages in IZIS.

14 MS. BARDIN: No, we can do away with
15 that, actually, because I think that dealt more
16 with the copies that we were making for you guys,
17 rather than --

18 COMMISSIONER MAY: Oh, okay. Yeah. Do
19 we still have the -- I'm moving on to another
20 topic. We're all set? Okay.

21 Do we still have the provision to allow
22 party status in sort of different classes, limited
23 or general, because that was -- and is that -- I
24 assume that was something that was in the --

25 MR. BERGSTEIN: I thought I saw, not for

1 that, but there's something in the appeal rules in
2 Y that I think I still saw, that talked about
3 limited participation in appeal, which is a
4 carryover from the existing rules. So it's not a
5 question of party status being limited, but I
6 remember still seeing, in the zoning appeals
7 provisions, of why something, like you can allow
8 someone to participate limitedly, or not.
9 Frankly, I've never seen it done. But that's, I
10 think, the context you might be thinking of. It
11 was eliminated for applications. I remember there
12 was a comment very on, by, I think, Ms. Kaylo [ph]
13 that that sort of limitation, if you were in an
14 application, you were in a application. So that
15 was dropped, and dropped very early.

16 COMMISSIONER MAY: Okay. Well, and I
17 thought it happened -- I saw some reference to it
18 somewhere. I don't think it was necessarily in
19 the draft regulations, but it might have just been
20 in the, in my notes from our last decision-making
21 meeting.

22 And the last thing that I had -- and I
23 don't know where this fits in, in X, Y, or Z --
24 but I recall that Chairman Hood wanted to do
25 something to codify the hiring of the Director of

1 the Office of Zoning. Did that get put in?

2 MS. SCHELLIN: It's in Z.

3 COMMISSIONER MAY: It is in Z?

4 MS. SCHELLIN: Yes.

5 COMMISSIONER MAY: Okay. That's it.

6 CHAIRMAN HOOD: Okay. Thank you for
7 remembering that, Commissioner May. I don't want
8 anybody to have to go through what I had to go
9 through, and others, at that time.

10 Okay. Let me look at 105.8. Mr.
11 Bergstein, I'm just curious, and when I read
12 through this, I thought about a situation I had.
13 And I don't want to make it personal but I just,
14 you know, there was an issue where my sister was
15 an officer, and I didn't know that until the
16 hearing. I don't know everything my sister does.
17 She doesn't know everything I do. I didn't even
18 know she attended this civic meeting at the time,
19 and she happened to be Treasurer. I didn't find
20 that out until the hearing. So, I don't go around
21 asking her everything she does. She doesn't ask
22 everything that I do.

23 But here, it would eliminate, is a party
24 to the proceedings or an officer directly. Even
25 though she didn't come to the hearing, she

1 happened to be the Treasurer of something that
2 came in front of Commission. So I'm just trying
3 to figure out the difference.

4 MR. BERGSTEIN: The standard is knew or
5 at least we should have known.

6 CHAIRMAN HOOD: Okay, but, in that case -
7 - and I'm looking at that case because I did not
8 recuse myself, because I didn't know; I was
9 actually surprised. So, if that's the standard,
10 in that case I was advised that because -- the
11 advice I got at that time, from OAG, was "You
12 don't know everything your sister does," and I
13 didn't know that. So I'm just saying, in general,
14 you know, I think there's a point in time where
15 you know when to recuse yourself and you know not
16 to, and I just think that -- I don't know.

17 I just have some problem with
18 automatically having to recuse -- because here's
19 the thing. Everybody up here has personal
20 relationships with people that come in front of us
21 all the time, but if you don't get into the case
22 or to the specifics -- and I think some of us up
23 here go out of our way to stay out of issues. We
24 make sure we don't.

25 So I think this is a disservice, the way

1 I read it, and I know there's some case law or
2 standards. But I think the way we have it written
3 here, unless it came from somewhere else, just
4 automatically say you should recuse yourself
5 because somebody, or your spouse is an officer in
6 a group and you --

7 MR. BERGSTEIN: Well, it's not just where
8 they're an officer. I believe, as I'm reading
9 this -- I didn't draft these ones -- that the
10 person has an economic interest in the matter, or
11 more than a de minimis interest that could
12 substantially be affected by the proceeding. So
13 that's the standard. So even the fact that your
14 sister might have been an officer may or may not
15 know, may not mean that she had more than a de
16 minimis interest.

17 But the issue of this qualification is
18 all about perception. It's about whether or not
19 there's a personal bias or there could be a
20 perception of personal bias, and I think that's
21 what this goes to. But, certainly, if you know
22 that your sister was very interested in the
23 proceeding because she would be affected by it,
24 either financially or professionally, then that's
25 the type of person bias does require

1 disqualification.

2 CHAIRMAN HOOD: Okay, and I agree with
3 that. But if you don't know, that's where I am.

4 MR. BERGSTEIN: Well, that's why there's
5 a requirement that you reasonably should have
6 known. In other words, it's not that -- there
7 would have to have been a reason why you actually
8 knew, or that a reasonable person would have known
9 that your sister was an officer, and actually,
10 other than actual notice, I don't know how that
11 could be. But, you know, it is not just an actual
12 notice standard, as I'm reading this, but a
13 reasonable person should have known that your
14 relative had this interest.

15 CHAIRMAN HOOD: Okay.

16 MR. BERGSTEIN: And, again, I don't know
17 exactly where this came from, where the standard
18 came from, but that is, I'm assuming they looked
19 at ethical norms, bar standard, judicial
20 standards, and applied it to this case.

21 CHAIRMAN HOOD: Okay. I'm not going to
22 belabor it. I just know what happened and I was
23 just trying to make sure that hopefully that never
24 happens with me again, or with any of us. But I
25 just wanted to make sure there was some wiggle

1 room, because there are times, at least in my
2 case, I don't know what certain people are doing,
3 and that was evident in that case.

4 MR. BERGSTEIN: There is, I believe, an
5 ability to seek a waiver. I'm very sorry. In
6 Point 9, as I'm reading it, even if you are
7 subject to disqualification, or Point 8, you can
8 ask the parties to consider whether or not waive
9 disqualification. So even then it's not
10 automatic.

11 CHAIRMAN HOOD: Okay. All right. And I
12 have some questions about 105.10, 11, and 12, but
13 I think I understand that. Let me just ask,
14 105.12, "For a period of 2 years after the date of
15 which the member's service on the Board
16 terminates, no former member of the Board shall
17 assist in representing, including aiding,
18 counseling, advising, and consulting another
19 person in a particular matter involving a specific
20 party before the Board or Commission, other than
21 himself or herself, if he or she participated
22 personally or substantially in the particular
23 matter while a member of the Board."

24 Okay. I understand that. So if I was
25 not participating in a particular matter on the

1 Board, and I came off, I can go to the clause for
2 the 1 year, I fall within that germane, and if I
3 was participating in the case here, it would have
4 to be 2 years.

5 MR. BERGSTEIN: And I would just -- these
6 are all based upon either the Judicial Code of
7 Conduct or the District's personnel rules. There
8 aren't inventions. This is just codifying
9 existing law.

10 CHAIRMAN HOOD: Okay. Well, in that
11 case, I was informed -- I think this body was
12 informed through testimony, since we're going
13 there and we're talking about the BZA rules -- I
14 think by the Chair of the BZA, that, even though I
15 didn't agree with it, and I think his testimony
16 speaks for itself, early on in this process
17 Chairman Jordan mentioned to this Commission that
18 the Administrative Procedures Act or Rule said
19 that Board members and Commission members can
20 teleconference. So, again, if what you just said
21 is true, then that's not within the germane of
22 this commission. You actually can do that, if I'm
23 correct. I mean, from what you just told me.

24 MR. BERGSTEIN: I'm just not following
25 the connection between the two.

1 CHAIRMAN HOOD: The connection between
2 the two is you saying there's another regulation
3 out there that says -- and we're just codifying it
4 here. So when the statement was made to this
5 Commission during testimony from the Chair of the
6 BZA that we could do teleconference or
7 videoconference, a member in, so if there's
8 regulations that say that, then we actually have
9 to abide by that. Am I correct?

10 MR. BERGSTEIN: That's correct.

11 CHAIRMAN HOOD: Okay. So we need to find
12 out of there are regulations out there that say
13 that. You know, I kind of brushed it off because
14 I was against it. I don't know if my colleagues
15 were for it. But obviously, from what you just
16 told me, I want to make sure we're right.

17 MR. BERGSTEIN: I have not researched it,
18 whether or not the DC APA allows it, but I believe
19 when the issue came up it was more of a technical
20 issue about whether or not, because of real-time
21 issues between locations, whether or not there
22 would be a delay in the ability of the Chair to
23 actually preside in that circumstance. But I
24 believe that, in fact, electronic meetings are
25 permitted under the Open Meetings Act. I mean,

1 that's absolutely true.

2 CHAIRMAN HOOD: So what he said to us is
3 actually true. We need to consider that, then.

4 MR. BERGSTEIN: You can consider having
5 the ability to have an electronic meeting, where
6 the -- there's a requirement that your meetings be
7 public. All meetings must be public, which means
8 that there must be an ability of the public to
9 come into the place where you're having the
10 meeting, or somehow be able to participate or view
11 the meeting, and I just don't know how it works in
12 a context of a BZA or a Zoning Commission meeting,
13 and if you want us to explore that and see how
14 electronic meetings work when it's not just a
15 closed group, but where you're talking about
16 receiving testimony and all that. We could
17 certainly explore it and see, also, technically,
18 if it could work. But if you want us to explore
19 that and create rules for that, we can see if we
20 can do that.

21 CHAIRMAN HOOD: Well, I'm actually, I'm
22 not actually -- I'll be frank and honest. I'm not
23 actually in favor of that. I'm just going by what
24 we said here, and I want to make sure that we
25 discover everything and come to some final

1 conclusion. Is anyone else up here interested in
2 this? I know I've asked that before. Okay,
3 because I think if you all recall, at the hearing
4 Chairman Jordan told me, or when I asked that
5 question, that it's not necessarily up to us
6 because it's already there.

7 So, anyway, I just wanted to make sure
8 we're moving down the correct lines, because --
9 anyway, if nobody else feels -- I guess you can,
10 that's some work y'all aren't going to have to do
11 if nobody else up here feels that. I'm just going
12 by what your discussion was with me, about this
13 disqualification issue. So, anyway.

14 MR. BERGSTEIN: I mean, this is a rare
15 instance where it was decided to state something
16 that's already in district law. It's not
17 necessary for the BZA to restate every principle
18 of district law that applies to it or we'd have a
19 ten-volume version of just the BZA rules. So, a
20 decision was made, in this case, to actually take
21 the ethical laws that apply to the BZA and restate
22 them.

23 CHAIRMAN HOOD: I understand that, but
24 that request was made of us, and, personally, I
25 kind of just dismissed it because I didn't think

1 it was workable. But if there's something out
2 there, there's a statute out there that says this
3 is permissible, then I think we need to put it
4 back on the table.

5 MR. BERGSTEIN: That's fine. How would
6 you like to do that?

7 CHAIRMAN HOOD: I have no idea. I have
8 to go back to his testimony.

9 MR. BERGSTEIN: Oh, I understand. In
10 other words, would like us, some time before --
11 would you like to consider it as a proceeding
12 within this proceeding? In other words, if we
13 want to add text that would explain how you could
14 have electronic meetings -- and we'd have to
15 explore how that could happen -- and by that I
16 assume you mean that some Board members would here
17 and other Board members would not, and then we'd -
18 -

19 CHAIRMAN HOOD: I think, even at that, I
20 think, from what I understood the statute said, on
21 an emergency basis, like if we didn't have a
22 quorum or something. I'm not sure. Can we just
23 look and see if it exists? I'm sure it does --
24 he's a lawyer. I'm sure it exists.

25 MR. BERGSTEIN: Okay. We'll look into it

1 and then we can provide you with a narrative, sort
2 of about what your options would be, and you can
3 then tell us how to proceed.

4 CHAIRMAN HOOD: And that way we can get
5 some final closure on that whole issue.

6 COMMISSIONER MAY: Mr. Chairman, I'm just
7 curious. I mean, does anybody on the Zoning
8 Commission actually support having that as a
9 practice, because I certainly don't.

10 VICE-CHAIR COHEN: I don't either.

11 CHAIRMAN HOOD: Well, I don't either, but
12 I'm going by the conversation that I just had
13 about another issue, that it's already there, and
14 I understand you can't put anything here. The
15 Chairman of the BZA basically said, really, if you
16 all listened to him like I did -- and maybe I just
17 heard it like this -- really -- and I think he
18 said that, and if you're watching, if I didn't say
19 it, just tell Sharon. But I think he said that
20 that is already there, and, really, it wasn't
21 within our purview, because it's already there.

22 COMMISSIONER MAY: You mean it's not up
23 to us to decide whether or not to do that?

24 CHAIRMAN HOOD: It's already there, in
25 some kind of, I think the Administrative

1 Procedures Act.

2 MR. BERGSTEIN: Well, as I said, among
3 the types of meetings that agencies in the
4 District of Columbia are permitted to have, are
5 electronic meetings, and you have closed -- well,
6 BZA does. Every week, the BZA has a closed,
7 teleconference meeting. It is a meeting of the
8 BZA and it takes place by telephone.

9 CHAIRMAN HOOD: Okay. So what about
10 hearing?

11 MR. BERGSTEIN: What we'd have to explore
12 is how that gets done in the context of what you
13 do. In other words, we'd have to decide how a
14 public body, like you or the Council, can have a
15 meeting where some members are here and some
16 members are not there, and we'd have to explore
17 how that works, and whether or not that is
18 permissible, and then come up with a set of
19 procedures. For example, do you -- assuming that
20 the law is blank about the circumstances under
21 which a member can participate electronically, do
22 you want to establish those standards? Things
23 like that.

24 CHAIRMAN HOOD: I just want to make sure
25 we're clear. I will tell you that, let the record

1 reflect that I am not in support of it, but if
2 it's there, it's there.

3 COMMISSIONER MAY: Well, when you say that
4 it's there, are you saying if it's there as an
5 option, or if it's there as a requirement, or
6 something that we must avail ourselves of?

7 CHAIRMAN HOOD: The way I understood it
8 is that we had no other option.

9 COMMISSIONER MAY: We have to avail
10 ourselves of it if it's there.

11 CHAIRMAN HOOD: That's the way I
12 understood it.

13 MR. BERGSTEIN: I don't think that's
14 true.

15 CHAIRMAN HOOD: Okay.

16 MR. BERGSTEIN: An electronic meeting is
17 an option for any body, any administrative body,
18 okay?

19 CHAIRMAN HOOD: Okay.

20 MR. BERGSTEIN: There's no compulsion
21 that you do your meetings electronically.
22 Basically, it's more saying, guess what, in terms
23 of the Open Meetings Law, don't think you can all
24 go on a telephone call and think that's not going
25 to be a meeting. That's really the thrust of it.

1 It's not saying to you, you can't have electronic
2 meeting. It's saying if you do have electronic
3 meeting, you'd better have a record, you better
4 give a public pronouncement of it, and you better
5 have a vote before you do it.

6 CHAIRMAN HOOD: Okay. Let the record
7 reflect that we have discussed it. We're going to
8 get a very quick sound bite on narrative. Don't
9 spend a whole lot of time. I just want to make
10 sure that we're covered.

11 COMMISSIONER TURNBULL: I think, Mr.
12 Chairman, we have teleconferencing in our agency,
13 and technically it's possible, because we have
14 people in several different buildings, so we have
15 teleconferencing. You have cameras and you can
16 look and you can see people in a building half a
17 mile away. But for a hearing, I don't know how
18 you'd do it. We've have to have screens. I
19 think, technologically, to satisfy the hearing,
20 the Open Hearing Act, it may be technologically,
21 right now, very difficult to do, to meet it. I'm
22 not sure. But, I mean, in theory, it's possible,
23 but, I mean, to connect with these screens and
24 everything --

25 CHAIRMAN HOOD: Okay. Yeah, I

1 understand.

2 COMMISSIONER TURNBULL: -- it may be more
3 complicated. Yeah, I think it's very complicated.

4 CHAIRMAN HOOD: Okay. All right. I
5 think we've beat that one.

6 [Laughter.]

7 CHAIRMAN HOOD: Okay. What's the
8 subtitle we're on? Anything on Y?

9 COMMISSIONER MILLER: Yeah.

10 CHAIRMAN HOOD: Commissioner Miller.

11 COMMISSIONER MILLER: Is Y the --

12 CHAIRMAN HOOD: BZA.

13 COMMISSIONER MILLER: Okay. Is that
14 where the remand procedures are?

15 CHAIRMAN HOOD: Yeah.

16 COMMISSIONER MILLER: So I had a
17 question. Did we do anything in response to
18 testimony that we received that said there should
19 be some kind of time frame set forth in our rules
20 during which the Commission or the BZA would take
21 up a remand, because there seems to be no time --

22 MR. BERGSTEIN: No, there's not.

23 COMMISSIONER MILLER: -- there is no
24 definite time frame at all.

25 MR. BERGSTEIN: There is not, and because

1 every remand is different, some remands require
2 you, for everyone to read the record, which can be
3 voluminous. Sometimes a remand has to be in
4 multiple stages, where we might say first you need
5 to hear submissions from the parties. Then, after
6 that, you decide what you want to do. Then you
7 might issue a procedural order. Then you might
8 have oral hearing, and then you might need to have
9 a limited hearing. Or you could simply go right
10 from receipt of the mandate to a decision meeting.

11 But every remand is different, and to
12 impose a strict timeline on any particular remand,
13 I think, would simply result in the rule just
14 becoming either meaningless, or force you into
15 making decisions before you're ready to.

16 COMMISSIONER MILLER: I appreciate that
17 explanation. I think there would be some value
18 in, not necessarily a strict timeline for all of
19 those procedures that you outlined but an outside
20 time period by which the Commission or the BZA
21 needs to take it up. I mean, I don't think
22 anybody would think that if you took it up years
23 later, that would be a reasonable thing to do.
24 So, we don't have any deadline here.

25 MR. BERGSTEIN: Well, if you would like

1 to -- if you're saying that there should be a
2 timeline between the issuance of the mandate,
3 which means that we're done with petitions for
4 rehearing and all that, and the time that the BZA,
5 the Zoning Commission votes on the remand, that's
6 for you to do. I'm concerned about the interim
7 steps. But then, what's the consequences if you
8 don't meet that deadline?

9 I mean, years that someone goes to court
10 and mandamus you to have a meeting?

11 COMMISSIONER MILLER: I just think it's
12 reasonable that we take it up in a reasonable time
13 period, and I think it should be defined in our
14 regulations that they shouldn't languish forever,
15 or for too long a period. I'm not sure what the
16 correct period is, but it just seems to be -- when
17 I heard that testimony, I thought it seemed
18 reasonable.

19 So, I put that out there, not necessarily
20 for us to deal with in this proceeding, but for us
21 to think about, maybe see, in one of our training
22 sessions, what the average time period is. Of
23 course, every case is different, but it just might
24 be useful for us to see that.

25 MR. BERGSTEIN: I would point out, in

1 case you're interested, that my logs now, which I
2 guess you don't receive, but the Director does,
3 and the BZA does, now contains an entry for remand
4 memos, and due dates for remand memos. So I've
5 actually put that in my processes, so everybody
6 can see that we're working on something. But I
7 understand what you're saying, Commissioner.

8 COMMISSIONER MILLER: The other issue,
9 which I'm sure OAG and OP probably would disagree,
10 but I've always thought it might be useful, is in
11 appeal cases, to have some report from the Office
12 of Planning, but that's just me. I don't know if
13 any fellow Commissioners feel that way. I know
14 the reasons why that doesn't happen. It's being
15 looked at from a legal perspective. They're both
16 sister agencies in the government and you don't
17 want to put them in an awkward position.

18 But in some of the cases that I've
19 observed, not necessarily participated in, it just
20 seemed it would be useful to have the professional
21 planning advice of the Office of Planning in some
22 of those appeal cases. I don't know if any of my
23 other Commissioners share that view, but I just
24 thought I'd put that out there again.

25 CHAIRMAN HOOD: Okay. Any other

1 comments, questions?

2 COMMISSIONER TURNBULL: Yeah, I just have
3 one.

4 CHAIRMAN HOOD: Let me ask, does anybody
5 want to respond to Commissioner Miller, and then
6 I'll go to Mr. Turnbull? I actually have thought
7 about that, too, but as I've been on some appeal
8 cases, I think it's better that they stay out of
9 it. That's just kind of where I am, for the exact
10 reasons that you mentioned. I think it's a lot
11 better, especially some of the ones I've been on.
12 But, anyway, okay. Commissioner Turnbull.

13 COMMISSIONER TURNBULL: Thank you, Mr.
14 Chair. On 300.6, where we talk about the
15 Applicant's representative, which can either be an
16 architect or an attorney, or I guess they can do
17 it themselves, but if it's an architect or an
18 attorney, they have to be licensed in this
19 jurisdiction. Is that new? Has that always been
20 there?

21 MR. BERGSTEIN: Yes.

22 COMMISSIONER TURNBULL: For some reason -
23 - because I thought we've had some architects on
24 some BZA cases that may not have been licensed in,
25 or they were from Maryland. I may have -- I

1 didn't realize that. 300.6. I just think -- I
2 think I've seen it, not necessarily an attorney
3 who was not licensed here, but I think there may
4 have been some architects who may not have been
5 licensed in this jurisdiction.

6 MR. BERGSTEIN: That language was just
7 lifted.

8 COMMISSIONER TURNBULL: Lifted. Okay.
9 Well, somehow that went right over my head, and I
10 think I'll be more aware of that in the future on
11 some of these BZA cases.

12 VICE-CHAIR COHEN: They usually have
13 somebody with them who is licensed, not at the
14 hearing, necessarily, but developing the plans.

15 COMMISSIONER TURNBULL: Well, a lot of
16 the architects on the BZA cases that I've sat in
17 are, you get to know some of the same players, on
18 a lot of the cases. But I think on some of them,
19 I think I had some architects that may not have
20 been in this jurisdiction.

21 MR. BERGSTEIN: Mr. Turnbull, this is for
22 the self-certification, not who can testify. You
23 can have an architect do the self-certification
24 and a totally different architect represent the
25 Applicant.

1 COMMISSIONER TURNBULL: No. I
2 understand, but I think some that have done this
3 certification for them may not have been licensed,
4 so, here, anyways. But I'll be more aware of that
5 in the future, though.

6 MR. BERGSTEIN: We were just saying that
7 the form actually makes them certify that, that
8 they sign, so what you're saying is
9 extraordinarily interesting. Let me just say
10 that.

11 COMMISSIONER TURNBULL: Yeah. I mean,
12 the lot of the cases, I mean, there's a lot of
13 different architects in the city that constantly
14 reappear at these BZA cases, but every once in a
15 while you get somebody who is not. Now, maybe
16 they had an attorney that was here, too. I can't
17 remember the cases, but I'm glad it's -- I'm more
18 aware of it now. Thank you.

19 CHAIRMAN HOOD: Okay. Anything else on
20 Y? Okay. Let's go to Z. We've got make sure we
21 get Z right.

22 [Laughter.]

23 CHAIRMAN HOOD: Mr. May, do you have
24 anything Z? Okay. I'm going to go the Office of
25 Zoning. Ms. Bardin and Ms. Schellin, where is the

1 road map of ho to hire a director? Where should I
2 be looking?

3 MS. BARDIN: It's the last section.

4 CHAIRMAN HOOD: It should be in the front
5 page. Okay. Where is it? Procedure for
6 appointing -- okay.

7 MS. BARDIN: Chapter 17.

8 CHAIRMAN HOOD: All right. Good. All
9 right. Anything else on Z?

10 I would ask, I'm not sure. I think
11 there's an issue that we need to cover,
12 colleagues, about the fees, and I think that the -
13 - I would ask the Office of Zoning, as we go
14 through this, to look at the fees. It's been some
15 years, I think, and we put it off, and we put it
16 off, and I think we've put it off. So it's now
17 the time -- everything is going up, and I think
18 it's time for us to revisit that. Ms. Bardin, do
19 you want to comment?

20 MS. BARDIN: Yes. When we do the
21 Schedule of Fees, we'll give you some options,
22 whether you want to stay with the current fees and
23 any of the new reliefs. We'll figure some fees
24 for that. And then we'll give you some ideas on
25 where you could also go with those fees.

1 CHAIRMAN HOOD: Okay. Commissioners,
2 we'll be looking forward to seeing that
3 recommendation.

4 Anything else on the text? Anything
5 else?

6 The other thing is the comment period. I
7 think, I believe it was NCPC asked for -- was it
8 60 days or 90 days -- 60 days. I'm not sure if
9 anybody else had asked for any time, that I can
10 remember. I know NCPC asked for 60 days. Let's
11 have that discussion. Commissioner May.

12 COMMISSIONER MAY: I'm very much in favor
13 of allowing them 60 days. I mean, it's taken us 7
14 years to get to this point, so what's another 30
15 days to allow them to make a thorough review of
16 it.

17 CHAIRMAN HOOD: Okay. Anyone else?

18 COMMISSIONER MILLER: Is the 60 days just
19 on this case, or on all the referrals that we --

20 CHAIRMAN HOOD: No. It's just for this -
21 -

22 COMMISSIONER MILLER: You all outvoted me
23 and did exactly what they wanted us to do and
24 deferred the big issue of chanceries. Do they
25 really need that, at this point?

1 CHAIRMAN HOOD: Did they really need the
2 60 days?

3 COMMISSIONER MILLER: That's what they
4 wanted to comment on.

5 COMMISSIONER TURNBULL: But the 60 days
6 is for the whole thing. I think the chancery
7 issue is separate.

8 COMMISSIONER MAY: Yeah. They have an
9 obligation to go through the final language of
10 this, and the language has evolved. Having read
11 through the latest version of it, and tried to
12 compare it to the earlier versions of it, a lot of
13 stuff moves around, and I think it's only
14 reasonable. It's still going to be close to 1,000
15 pages. So I don't -- I just don't -- I don't see
16 any problem with adding a few extra days, again,
17 after 7 years.

18 CHAIRMAN HOOD: You know, by the time
19 this is ready to be -- and I'm just talking out
20 loud, which is dangerous -- but by the time this
21 is ready to be -- once everybody does what they,
22 depending upon -- it looks like we're going to be
23 moving forward, I think -- but once everybody does
24 what they need to do to get it ready for
25 publishing, that's going to some time within

1 itself. So, but then we're talking about 60 days
2 on top of that, so we're actually going to be
3 looking at probably 120 days -- and I'm not saying
4 how quick things are going to move, because I
5 don't know.

6 COMMISSIONER MAY: Well, I think the
7 indication we got is that this will be ready to go
8 sometime in January, so 60 days from that, so
9 we're in March.

10 CHAIRMAN HOOD: That's the indication we
11 got, but I try to be a realist. I'm thinking more
12 like February. Okay, I see heads nodding.

13 COMMISSIONER MAY: Right.

14 CHAIRMAN HOOD: So, I guess, I'm just
15 making sure. I don't mind giving NCPC or the
16 public 60 days, but I just want us to know that
17 we've got some time between now and the time it's
18 ready to go, and then it's going to be another 60
19 days on top of that.

20 And then, you know what? Now that I
21 think about it, I may agree with that, because
22 then we've got our new ANC commissioners. That's
23 972 pages they have to read in 2 or 3 months, and
24 come up to speed on it. So maybe that's a good
25 thing. Okay. Anybody else? Maybe that's just a

1 good thing. I don't know. I'm more concerned
2 about hiring a director.

3 COMMISSIONER MAY: Hopefully you don't
4 have to do that gain for a while.

5 CHAIRMAN HOOD: I'm sure I won't, but I
6 just -- see, one thing, this is supposed to be
7 goal for the future, and I don't want anybody to
8 have to do what I had to do, what I had to be
9 involved with. It was not pleasant. It's
10 pleasant now, though, very pleasant. Okay. All
11 right, so we're good for 60 days?

12 VICE-CHAIR COHEN: Yes.

13 COMMISSIONER MAY: Yes.

14 CHAIRMAN HOOD: Okay. All right.
15 Anything else?

16 COMMISSIONER MAY: Mr. Chairman.

17 CHAIRMAN HOOD: Commissioner May.

18 COMMISSIONER TURNBULL: But the chancery
19 -- I just want to -- but the chancery date that we
20 talked about is etched in stone.

21 CHAIRMAN HOOD: Right.

22 COMMISSIONER TURNBULL: We're still
23 looking at that. That's separate.

24 COMMISSIONER MAY: We'll take it up at the
25 second meeting in January.

1 COMMISSIONER TURNBULL: Right.

2 CHAIRMAN HOOD: Okay. Commissioner May.

3 COMMISSIONER MAY: Mr. Chairman, I'd like
4 to make a motion.

5 CHAIRMAN HOOD: Go right ahead.

6 COMMISSIONER MAY: So it is with great
7 feelings of elation and exhaustion that I would
8 move that we approve Zoning Commission Case 08-
9 06A, Zoning Regulations Review, for proposed
10 action, noting that the final language will be
11 worked out with the Office of the Attorney General
12 and others, and noting, also, that the changes
13 that we have discussed today, still have to be
14 incorporated into the language.

15 VICE-CHAIR COHEN: I second.

16 CHAIRMAN HOOD: I'm going to second that.

17 VICE-CHAIR COHEN: Yeah. He should
18 second.

19 CHAIRMAN HOOD: I've been here the whole
20 year, so I should have made the motion. But,
21 anyway, it's been moved and properly seconded.

22 I think -- has anybody else? No, that's
23 all right. That's all right. It's been so long I
24 probably wouldn't know how to make a motion. So
25 it's been moved and properly seconded. Any

1 further discussion?

2 VICE-CHAIR COHEN: No.

3 CHAIRMAN HOOD: So noted, as Commissioner
4 May has already mentioned. Any further
5 discussion? All those in favor?

6 [Chorus of ayes.]

7 CHAIRMAN HOOD: Any opposition? Staff,
8 would you record the vote?

9 MS. SCHELLIN: Yes. Staff gladly records
10 the vote 5-0-0 to approve proposed action on
11 Zoning Commission Case Number 08-06A.
12 Commissioner May moving, Commissioner Hood
13 seconding, Commissioners Cohen, Miller, and
14 Turnbull in support. And this is going to be
15 published for a 60-day comment period after
16 changes are made, per the discussion on the dais
17 this evening, and to give OAG permission to make
18 any legal changes that are necessary, and any
19 other changes that staff and OP need to make.

20 CHAIRMAN HOOD: Okay. I will just say
21 that, while we still have some more work to be
22 done, we've gotten to a point that there's light
23 at the end of the tunnel. We may not have all
24 agreed to getting to this point, but I want to
25 thank the Office of Zoning, Office of the Attorney

1 General, Office of Planning, who really took the
2 lead on a lot of this, and the public, and the
3 business owners and the developers, and everybody
4 who had anything to do with this, up to this
5 point.

6 I think more things will come as we
7 proceed, because we still have some work to do.
8 But I think we've set a milestone. We just need
9 to keep continuing to press forward and press on.
10 We may not always agree, but at the end of the day
11 we're going to try to get it done for the best of
12 the city.

13 So, with that, Ms. Schellin, do we have
14 anything else.

15 MS. SCHELLIN: No, sir.

16 COMMISSIONER TURNBULL: Mr. Chairman, I
17 just want to say thank you for your leadership
18 during all of this.

19 CHAIRMAN HOOD: Thank you. Thank you.

20 COMMISSIONER TURNBULL: You've done an
21 excellent job.

22 CHAIRMAN HOOD: I think all of us have,
23 and I appreciate tonight's comments, but that goes
24 to all of us. Thank you very much.

25 Anything else? Okay. With that, this --

1 what is this, a meeting or hearing? I don't know
2 even know -- the meeting is adjourned.

3 [Whereupon, at 9:21 p.m., the Special
4 Public Meeting of the Zoning Commission was
5 adjourned.]

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