

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

MONDAY

SEPTEMBER 20, 2010

+ + + + +

The Public Hearing of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel

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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
TRAVIS PARKER
LAINE CIDLOWSKI
STEVE COCHRAN

The transcript constitutes the minutes from the Public Hearing held on September 20, 2010.

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1 P-R-O-C-E-E-D-I-N-G-S

2 6:30 p.m.

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is the Public
5 Hearing of the Zoning Commission of the
6 District of Columbia for Monday, September 20.

7 My name is Anthony Hood. Joining me are
8 Vice- Chairman Schlater, Commissioner
9 Selfridge, Commissioner Turnbull, and we are
10 expecting Commissioner May. We are also
11 joined by the Office of Zoning staff and the
12 Office of Planning staff.

13 This proceeding is being recorded
14 by a court reporter and is also webcast live.

15 Accordingly, we must ask you to refrain from
16 any disruptive noises or actions in the
17 hearing room.

18 The subject of this evening's
19 hearing is Zoning Commission Case No. 08-06.
20 This is a request by the Office of Planning
21 for Text Amendments to the Zoning Regulations
22 to establish a new use category system and a

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1 consolidation of height regulations into our
2 one general height chapter.

3 Notice of today's hearing was
4 published in the D.C. Register on September
5 10, 2010, and copies of that announcement are
6 available to my left on the wall near the
7 door.

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

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

22 All persons appearing before the

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1 Commission are to fill out two witness cards.

2 These cards are located to my left on the
3 table near the door. Upon coming forward to
4 speak to the Commission please give both cards
5 to the reporter sitting to my right before
6 taking a seat at the table. When you are
7 finished speaking please turn your microphone
8 off so not to pick up any background noise.

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

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

19 MS. SCHELLIN: No, sir.

20 CHAIRMAN HOOD: Okay. Let's get
21 right into it. Let's go straight to Mr.
22 Parker.

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1 Good evening.

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

12 Just a reminder of where we are in
13 our proposed code. These are general chapters
14 that apply city wide so they are in the
15 Subtitle B of our regulations. Most of the
16 first chapters that we'll look at in this
17 process will be in this general subtitle and
18 in the future we'll get it down to individual
19 zones. Nothing that we talk about tonight is
20 zone specific like how high buildings could be
21 in a particular zone. These are all general
22 rules.

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1 I'm going to start tonight with the
2 height chapter. If you will recall, the large
3 issue in dealing with height was how to
4 interact zoning height limits with the height
5 limits of the 1910 Height Act. We had a lot
6 of discussion at the set down and previously
7 with the task force and working group about
8 whether and how to incorporate the Height Act
9 into zoning.

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

16 Then concurrently with the adoption
17 of these regs, or prior to the adoption of
18 these regs, DCRA will adopt Height Act
19 regulations codifying their interpretations of
20 the Height Act including information that was
21 previously in documents we sent to you
22 including definition of residence street,

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1 definition of business street, and various
2 other Height Act interpretations. Those
3 things have come out of the document we're
4 reviewing tonight from our previous version
5 and won't be on the table for discussion
6 tonight.

7 What remains in the chapter is
8 what's on the board, Section 40.0 through
9 40.4. I'm going to give you just a really
10 brief synopsis of each one and then we'll go
11 on to the use chapter.

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

20 Section 40.1 is also a common theme
21 throughout the general chapters and we'll talk
22 about the relationship of this general chapter

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1 to the land use subtitles, how you find your
2 individual height and how you relate the
3 information in the two places.

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

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

18 Finally, Section 40.4 lays out the
19 available special exceptions in this chapter.

20 You are allowed to seek special exception
21 from the roof structure setback for certain
22 types of roof structures as well as the roof

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1 structure footprint limit. The criteria on
2 special exceptions include impacts on zoning
3 regulations, neighborhood, and nearby energy
4 creation facilities.

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

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

21 At this time -- oh, just one final
22 note on the height issue. The version you had

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1 seen previously used the words "street-based
2 height limits." Just a reminder that was in
3 reference to Height Act height limits so all
4 the language about street-based height limits
5 has been striped out. The version in front of
6 you attached to the report should strictly
7 reference the Height Act directly.

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

14 Very quickly, the working group
15 task force, and Zoning Commission in going
16 through this process over the last couple
17 years identified a series of problems with the
18 current use system. Our current use system
19 has nearly 650 discrete uses listed throughout
20 our code. Zones have what is called use
21 nesting where each zone refers to the previous
22 zones in order to outline the acceptable uses.

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1 What we find, and what other cities
2 have found throughout the country, is that
3 these use systems lead to confusion. They are
4 constantly outdated. A lot of the uses listed
5 in our code lack a definition. We have
6 identified a list of problems with using a use
7 system.

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

17 The general strategy is taking like
18 uses, uses with similar types of activities,
19 similar types of impacts, and categorizing
20 them. Book store, drug store, shoe store are
21 categories under retail. Tailor, bike repair,
22 tax service are categorized under service.

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1 Then regulating the impacts of retail service
2 or the other categories that are defined.

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

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

21 As we come back to talk about
22 residential and commercial and industrial

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1 zones we will see a table of use permissions
2 in each of those zones that is based around
3 these 29 categories.

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

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

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

22 Things that are not on the list are

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

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

21 Just to show you a little bit about
22 how this works together, the chapter again

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1 that we're reviewing tonight is in subtitle B.

2 It will then directly relate to a use
3 permission chart in each of the land use
4 subtitles.

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

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

19 Within the chart the five
20 permissions levels are P for permitted, C for
21 permitted with conditions, S for permitted
22 only by special exception, N for not

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1 permitted, and A for permitted only as an
2 accessory use.

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

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

19 I want to run through three
20 examples. We ran through these in the set
21 down meeting but hopefully now you'll be able
22 to see them. Ways that we have either taken

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1 current information and can put it in the new
2 system or can take future information and put
3 it in the system.

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

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

22 In a way we can capture not only

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1 the permission of those three types of uses
2 but the conditions on those uses in a single
3 letter on a chart by saying service is
4 conditional. If you are a service use, this
5 is one of the conditions you must meet.

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

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

20 The way we propose handling this in
21 the future is office and service categories in
22 residential districts would have a permission

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1 level of A. What this means is those uses are
2 permitted as accessory to a permitted use
3 being, in this case, residential.

4 The existing limitations on those,
5 25 percent of the home, no more than one
6 employee, etc., etc., would become conditions
7 on that accessory use. It's a very simple way
8 to make clear what the permission level is and
9 to take all the conditions from our current
10 code and include them in the new code.
11 Hopefully that is a lot clearer, uses a lot
12 less text.

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

20 They are looking to prohibit carry-
21 outs, encouraged restaurants, encourage
22 grocery store, prohibit liquor, etc. If we

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1 categorize these into our categories, we can
2 see we've got two food and alcohol service and
3 three retail -- excuse me, four retails on
4 this list.

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

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

21 Simply adding these two conditions
22 to our list we accomplish the policies

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1 proposed by the Deanwood plan. You can see
2 how this allows for easy tailoring and adding
3 or removing or changing of conditions and
4 permissions.

5 Two final subjects I want to cover.

6 One is when things fall on the line are
7 difficult to categorize. Two examples of this
8 that we found. The first is a funeral and
9 mortuary service. Right now it meets both --
10 when we went through this exercise it met the
11 definitions of both service and institutional.

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

20 The other example was a cabaret or
21 dinner theater. This is a little more
22 difficult because it not only meets the

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1 definition of both food and alcohol service
2 and entertainment and performing arts, it
3 actually has the impact of both.

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

10 Finally, I want to talk about
11 CBRFs, community-based residential facilities.

12 In working with OAG we were advised that
13 certain types of CBRFs, specifically those
14 that deal with disabled persons, community
15 resident facilities, substance abuser's homes,
16 and youth residential care homes, cannot be
17 called out and given additional limitations
18 that are not on residential uses.

19 Those uses will fall into the
20 residential category, will be defined as
21 residential, and the only limited that will be
22 put on them are a unit limit just like

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1 residential. There won't be a distance limit
2 or a location limit.

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

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

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

22 CHAIRMAN HOOD: Who would like to

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1 start us off if you have any questions? I
2 want to remind us to stay in the mic when we
3 speak.

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

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

17 CHAIRMAN HOOD: Any comments?
18 Commissioner Turnbull.

19 COMMISSIONER TURNBULL: Thank you,
20 Mr. Chair. I just have a couple of comments
21 related to some of the letters that we
22 received. The first one I'm looking at is

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1 Exhibit 12 from NCPD. I don't know if they've
2 got the right number. I think they must be
3 looking at an older document. They talk about
4 4.06.1(i)

5 MR. PARKER: Now 4.03.1.

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

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

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

19 MR. PARKER: Yeah. I think the
20 concern that they are getting to is
21 specifically 4.03.1(j) where we propose
22 penthouses over accessory amenity features,

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1 things like meeting space or a fitness room.

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

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

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

22 MR. PARKER: Right. Right. Yeah.

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1 I mean, it's a fine line. Like I said, in
2 the existing code we allow for bathrooms. We
3 allow for things that allow humans in that
4 space to use that space. We took the tack of
5 defining occupancy as general use of a private
6 nature so residences would be occupancy.

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

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

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

22 COMMISSIONER TURNBULL: Right.

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

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

9 MR. PARKER: I have it.

10 COMMISSIONER TURNBULL: Well, they
11 have a few things on here but the one they're
12 talking about I guess it starts in the second
13 paragraph, or actually the third paragraph.
14 While paragraphs 4.02.4(a) and 4.02.4(b)
15 provide adjective standards for uniformly
16 measuring height, paragraphs 4.02.4(c) and
17 4.02.4(d) allow the designation of arbitrary
18 and capricious zero height measurements.

19 They are basically talking about a
20 20-year-old zero height measuring point
21 determinations by the Zoning Administrator
22 developed under obsolete Zoning Regulations to

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1 be used in place of uniform standards
2 contained in paragraphs (a) and (b). I guess
3 they are looking at precedent, how are we
4 going to look at some of these old
5 measurements. Is this a ZA choice?

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

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

17 COMMISSIONER TURNBULL: Yeah.

18 MR. PARKER: I think moving forward
19 4.04.2 or whatever the section is, (a) and (b)
20 should be the general rules but we have a lot
21 of existing situations that we need to make
22 sure we account for.

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1 COMMISSIONER TURNBULL: Okay.

2 MR. PARKER: Union Station North is
3 another example.

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

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

9 COMMISSIONER TURNBULL: Oh, okay.
10 I understand.

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

13 COMMISSIONER TURNBULL: Right.
14 Okay.

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

20 There are some other things in here
21 too which I think we have all touched upon
22 before and I don't know OP has responded to

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1 any of these or not but I'll relinquish my
2 time right now.

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

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

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

22 Some kind of way that needs to be

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

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

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

19 CHAIRMAN HOOD: Right. Put my
20 point is that point is always there. That is
21 the same point, that one point. I agree with
22 -- you know, I'm not saying that you all

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1 haven't made any progress in that sense but
2 that issue about them saying we are a
3 violation of the Height Act. We're saying
4 that the Zoning Administrator makes that
5 determination. I thought we were going to try
6 to -- I was hoping in this rewrite we could
7 come to some -- close the gap a little more on
8 that one particular issue only.

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

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

16 COMMISSIONER TURNBULL: You
17 certainly may.

18 CHAIRMAN HOOD: Thank you, Mr.
19 Turnbull.

20 Let's open it up some more. Mr.
21 May.

22 COMMISSIONER MAY: Thank you. I

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1 will try to speak loudly and clearly and into
2 the microphone. Can you hear me?

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

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

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

19 MR. PARKER: We tried to remove
20 that distinction. We tried to say Zoning and
21 Height Act have the same rules as much as
22 possible. I mean, we've got these general

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1 rules of measurement in 4.02 that apply to
2 both. If the Zoning Administrator and DCRA
3 adopt the same set of rules that we propose it
4 will be the same.

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

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

19 MR. PARKER: Absolutely.

20 COMMISSIONER MAY: This does not
21 exist when you are at the Height Act height
22 limit.

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1 MR. PARKER: Actually, that's a
2 great point. You have complete authority to
3 do this and more within penthouses in the
4 Zoning Regulations. Ultimately the ZA could
5 say that no communal space is allowed in roof
6 structures above the Height Act. Put that in
7 his interpretations your rule would still
8 stand and apply to buildings below the Height
9 Act. His rule would stand and apply to
10 buildings at the Height Act.

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

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

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

20 MR. PARKER: Correct. It's not
21 possible for the local regulations to trump
22 the Height Act. What it comes down to what is

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1 the correct interpretation of the Height Act
2 and we rely on the Zoning Administrator
3 because of a series of delegations that
4 started with the Commissioners of the District
5 of Columbia back in 1910 and 11 to interpret
6 the Height Act. That interpretation can't be
7 in conflict with itself. Therefore, it's not
8 in conflict with the Height Act.

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

18 It might be useful for us to have a
19 more thorough explanation of the interplay
20 between the Height Act and the Zoning
21 Regulations with regard to these gray areas.
22 I don't know. I don't want to try to suggest

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1 the specific language but it seems to me that
2 might be one way to deal with these sorts of
3 letters from NCPC. Then maybe NCPC will start
4 writing letters to the Zoning Administrator.

5 MS. STEINGASSER: Commissioner May,
6 are you suggesting something more than Section
7 4.00.3? We did try to give the Height Act
8 prominence by putting it in the very first
9 Section 4.00 that in addition to the
10 limitations of zoning, the Height Act, you
11 know, project must comply?

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

19 MS. STEINGASSER: We had this
20 discussion a few weeks ago at set down and OAG
21 had concerns about getting too intertwined
22 between Zoning and the Height Act.

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1 COMMISSIONER MAY: I'm not
2 suggesting that we are going to start
3 interpreting the Height Act. I was very much
4 conscious of a conflict and supported
5 vigorously the idea that we not have redundant
6 regulations in this regard. It's just a
7 question of, I guess, noting more explicitly
8 for people who might be reading this for the
9 first time that where there is interplay
10 between these.

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

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

21 MR. PARKER: I have a suggestion
22 actually.

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1 COMMISSIONER MAY: Yeah. Okay.

2 MR. PARKER: If you look at

3 4.02.1 --

4 COMMISSIONER MAY: Yes.

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

15 COMMISSIONER MAY: It's possible.
16 It's possible that we might segregate some of
17 those things that are slightly different and
18 where we can say something like, "Where Zoning
19 Height limits are the limiting factor there is
20 also this additional flexibility with regard
21 to communal rooms," or whatever, or with
22 regard to certain key points.

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1 I don't know but just some way to
2 sort out that difference. I think the same is
3 also true for the second point in NCPC's
4 letter where they talk about special
5 exceptions and they claim that we don't have
6 any flexibility to grant relief to setback
7 requirements. I believe there is flexibility
8 in the Zoning Regulations to do that when you
9 are below the Height Act height limits. I
10 think there is substantial flexibility there.

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

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

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

19 MS. STEINGASSER: Has been
20 proposed.

21 COMMISSIONER MAY: Has been
22 proposed. Okay. I was going to ask are you

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1 talking about Union Station Air Rights.
2 That's why we have Provision D which says
3 elevation or means of determination
4 established for a specific zone elsewhere in
5 this title. Are we anticipating many projects
6 like the Union Station North?

7 MS. STEINGASSER: No, thank
8 goodness.

9 COMMISSIONER MAY: Okay.

10 MS. STEINGASSER: It's --

11 COMMISSIONER MAY: Unique
12 situation.

13 MS. STEINGASSER: It's a unique
14 situation and it's got a huge scar in the
15 city. That's why I said thank goodness. We
16 have three major Air Right projects that we
17 know of with the possibility of there's the
18 portals which is only partially constructed
19 which is why they're concerned about their
20 established Zoning Administrator's measurement
21 point. There's I-395 hovering over that.
22 There's Union Station. Those are the most

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1 significant. However, there is also another
2 one north of 395 not far from here behind --

3 COMMISSIONER MAY: Yeah. North of
4 Mass Ave?

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

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

17 MR. PARKER: Yes, we certainly can.

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

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1 by case when it happens.

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

5 CHAIRMAN HOOD: Okay. Thank you.

6 Anybody else? Any additional
7 questions? No addition questions. Okay.

8 VICE CHAIR SCHLATER: I have one.
9 Sorry.

10 CHAIRMAN HOOD: Vice Chair.

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

18 I know you guys gave us a draft of
19 some of that language but I think before we
20 take final action on this it would be good to
21 understand the timing. What is the time line
22 for the Zoning Administrator actually enacting

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1 this because we're talking about this at the
2 set down for the parking and loading.

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

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

20 VICE CHAIR SCHLATER: Okay. Great.
21 The other thing I would just say is on the
22 4.03.1(j) I think I understand where it would

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1 come down on this in that I don't think we
2 would want to do anything more restrictive
3 than the Zoning Administrator determines. I
4 think it's okay having common use on the top
5 of these buildings. I don't see the harm.

6 CHAIRMAN HOOD: Anybody else? Any
7 questions?

8 COMMISSIONER MAY: Mr. Chairman.

9 CHAIRMAN HOOD: Commissioner May.

10 COMMISSIONER MAY: I just have a
11 couple of quick follow-ups. I'm sorry. On
12 4.03.1 the initial sentence there the
13 reference to street base or zone height
14 limitations. That's suppose to be deleted?

15 MR. PARKER: You caught one, yes.
16 I will make sure that --

17 COMMISSIONER MAY: I heard you
18 mention something about it supposedly being
19 deleted and I wanted to double check on that.

20 The last thing is also on in the
21 NCPC letter the reference to private streets
22 and public streets as points of measurement,

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1 do you have any comment on that?

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

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

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

18 COMMISSIONER MAY: When we have
19 those townhouse developments where they just
20 pack them in they've got no rear yards and all
21 that sort of stuff and just sort of an
22 internal street there, the internal blocks how

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1 do those get measured?

2 MR. COCHRAN: From the public
3 street.

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

6 COMMISSIONER TURNBULL: Mr. Parker,
7 I just have one last question. I just
8 wondered if you could clarify or help me
9 understand 4.02.6. "Building height shall be
10 measured to the top of the roof including any
11 parapet or balustrade or exterior walls or any
12 other continuation of the exterior walls.

13 For purposes of calculating zone
14 specific height a parapet or balustrade of up
15 to four feet may be excluded from the height
16 measurement. This exclusion does not apply in
17 calculating maximum height for the street-
18 based height limitation. This exclusion does
19 not apply in calculating maximum height under
20 the Height Act."

21 MR. PARKER: First off, that's
22 another instance of street based that we need

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1 to take that language out.

2 COMMISSIONER TURNBULL: Okay.

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

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

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

17 COMMISSIONER TURNBULL: Okay.

18 MR. PARKER: Every other issue we
19 were in some way able to reconcile unless we
20 go backwards with the penthouses over amenity
21 structures. Every other subject we were able
22 to reconcile the two this is one that very

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1 clear in the Height Act and we don't want to
2 go there in the zoning. If you have the same
3 Height Act and zoning height, you have to
4 include the parapet within your height.

5 COMMISSIONER TURNBULL: Okay.

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

9 COMMISSIONER TURNBULL: Okay.
10 Thank you.

11 CHAIRMAN HOOD: Any other questions
12 or comments?

13 Mr. Parker, have you seen Mrs.
14 Nancy McWood's letter that she wrote, Exhibit
15 13?

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

18 CHAIRMAN HOOD: Okay. At some
19 later point. I'm just curious. At the bottom
20 of the page where it starts, "Nothing has
21 changed to provoke the Zoning Commission to
22 throw our the measurements." Anyway, that

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1 piece if you could respond to that for me and
2 she has a question mark, "Is this the year-
3 round vision the Zoning Commission wants to
4 encourage?"

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

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

18 Commissioner May.

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

21 MR. PARKER: Yes.

22 COMMISSIONER MAY: Penthouses are

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1 accessory amenity features such as communal
2 closed recreation space. Do we really mean
3 penthouses over such? I mean, that seems to
4 imply there will be a closed room and then
5 there's a penthouse above it.

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

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

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

20 COMMISSIONER MAY: The same for (f)
21 then?

22 MR. PARKER: Yeah, I guess so.

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1 Will do.

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

5 MR. PARKER: I agree. I agree.

6 COMMISSIONER MAY: Thanks.

7 CHAIRMAN HOOD: Any other questions
8 or comments? Okay.

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

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

19 Let me go to the list. Let me call
20 the ANCs first. I'm going to go with -- we
21 have one opposed and one proponent. Let me go
22 to the proponent. Let me call both of them at

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1 the same time. We only have two
2 commissioners, one from ANC-6A, Mr. David
3 Holmes who is in support. With that I'm going
4 to call Ms. Ann Heuer -- hopefully I
5 pronounced that correct -- who's in
6 opposition.

7 Did I pronounce your name
8 correctly? Okay, good.

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

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

16 MR. HOLMES: Thank you, Mr.
17 Chairman.

18 CHAIRMAN HOOD: Both of you will
19 have five minutes.

20 MR. HOLMES: I won't use it. This
21 is basically from the letter which you already
22 have in front of you. There is no additional

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1 testimony here. I'll simply just summarize
2 it. This is supported by the ANC by a vote of
3 five to zero with a quorum present.

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

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

15 Where the proposed regulations do
16 not state which paragraph should take
17 precedence -- moreover, the regulations do not
18 state which paragraph should take precedence
19 when the provisions conflict.

20 If a 20-year-old zero height
21 measuring point determination of the Zoning
22 Administrator is 60 feet higher than what is

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1 obtained by applying 4.02.4(a), which standard
2 is used? There needs to be additional
3 clarification and we don't feel there's enough
4 guidance for the order of precedent in the
5 current paragraphs.

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

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

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

21 CHAIRMAN HOOD: Okay. Could you
22 help me, again, the concerns? I want to hit

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1 the highlights. Could you go back over those
2 quick highlights real quickly? I'm going to
3 ask Mr. Parker -- we typically don't do this
4 but I'm going to ask Mr. Parker to expound on
5 some of the concerns that ANC-6A had.

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

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

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1 CHAIRMAN HOOD: Okay. Okay.

2 MR. PARKER: A simple set standard.

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

5 MR. PARKER: And to that purpose
6 4.02.4(c) and (d) should be removed.

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

10 If you could hold your seat,
11 Commissioner Holmes.

12 Ms. Heuer. Commissioner Heuer.
13 Excuse me.

14 MS. HEUER: Good evening, Chairman
15 Hood and members of the Zoning Commission.
16 ANC-3D has reviewed Case No. 08-06 of the
17 Comprehensive Zoning Regulations rewrite. We
18 thank the Zoning Commission for removing all
19 references to the Height Act for the purpose
20 of measuring height in low to moderate
21 tendency residential-zoned districts by street
22 width.

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1 It would have been most
2 inappropriate as many of our residential
3 streets are varying elevations with hills,
4 slopes, and ravines. We testified in 2006 on
5 the proposed amendment to the Zoning
6 Regulations and in 2008 on the proposed policy
7 recommendations. Today we have several
8 modifications to this chapter that we would
9 like to recommend.

10 To clarify the intent of Section
11 4.02.5 insert a comma after the word
12 "dwellings" and a comma after the word
13 "height" and replace "ground level" with
14 "natural grade."

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

22 In the case of residential

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

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

16 Because little land in D.C. is
17 undisturbed the proposed definition for
18 natural grade would prevent the site from
19 being artificially raised for purposes of
20 increasing height prior to filing for a
21 building-related permit. Where a viaduct or
22 other artificial elevation would exist, then

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1 it would be measured from the street.

2 Section 4.02.6 add the "all" before
3 "building" making buildings plural or indicate
4 whether the reference is to commercial or
5 residential buildings. In other categories,
6 garages, accessory buildings 60 to 90-foot
7 districts measurement is made from the highest
8 point of the roof. ANC-3D advocated this in
9 2006 and 2008 and we still have the same
10 opinion.

11 Section 4.02 is too ambiguous,
12 subjective, and open to many interpretations.

13 ANC-3D has many mixed-use blocks and
14 commercial blocks that abut residential
15 blocks. Transition areas between residential
16 and business/commercial need to ensure height,
17 massing, and setbacks are consistent with the
18 character of surrounding districts.

19 Light and air to neighboring
20 properties are very important but the question
21 is who determines what is adequate? We
22 encourage the Zoning Commission to direct OP

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1 to provide further clarification to the intent
2 when the chapter on low to moderate density
3 districts is written. Thank you.

4 CHAIRMAN HOOD: Thank you both.

5 Commissioners, any questions?

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

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

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

21 I would concur with Commissioner
22 Holmes. I put myself in that -- even though

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

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

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

19 CHAIRMAN HOOD: Case in point.
20 What can we do to deal with Commissioner
21 Holmes' issue? Also Commissioner Heuer has
22 mentioned some stuff previously. Why didn't

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1 we take this into consideration, or did we
2 take it into consideration?

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

11 Is that okay, Commissioners?

12 MR. PARKER: Thank you, sir.

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

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

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

22 MS. HEUER: I don't think so.

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1 MR. PARKER: We're happy to submit
2 a supplemental.

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

6 Vice Chairman.

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

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

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

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

21 VICE CHAIR SCHLATER: You've been
22 following those battles. I gotcha. My sense

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1 is in that case it would reduce the height of
2 the buildings significantly if you were to
3 deleted those two provisions?

4 MR. HOLMES: Yes.

5 VICE CHAIR SCHLATER: Thank you.

6 CHAIRMAN HOOD: Any other
7 questions?

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

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

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

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1 Mr. Sher, you have five minutes, and Mr.
2 Edwards, you have three minutes.

3 Mr. Sher, you may begin.

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

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

21 Other parts of the regulations that
22 OP has proposed we support, raising the roof

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1 structure height from 18'6" to 20 feet,
2 increasing the excluded parapet height from
3 three feet to four feet allowing multiple roof
4 structures, allowing walls of unequal height,
5 clarifying what structures need to be setback
6 from where, providing for special exception
7 relief from those requirements. We think
8 those are all good things and we are
9 supportive of them.

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

18 I did not resubmit that. It's
19 marked as Exhibit 22 of the record in an
20 effort to save some paper. We are basically
21 taking the same view on that and that is
22 basically that there was general consensus and

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1 agreement from the Office of Planning that the
2 new regulations would preserve the point of
3 measurement for the Portals Development.

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

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

19 What we would hope that the
20 Commission would do, and this is as indicated
21 in the letter from Mr. Collins, which you now
22 have in front of you, on the second page we

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1 would like to suggest that language be changed
2 to say, "Not just by the Zoning Administrator
3 but determined by a District of Columbia
4 agency including the Zoning Administrator
5 because we've been through this whole cycle of
6 things that have been approved.

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

15 That's really sort of all I had
16 about height. I wanted to add a couple of
17 comments which I'll loosely call comments at
18 large. I like the idea of capitalizing define
19 terms which you see -- I'm sorry, italicizing.

20 Not capitalizing for italicizing define
21 terms. That was something that
22 was done in the original 1958 Zoning

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1 Regulations and got lost along the way. But
2 at least you know when you're looking in the
3 book, or online or whatever it is, when you
4 see a term that is italicized, you know to go
5 find the definition section and read what it
6 says. I think that's a good idea.

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

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

21 When you've been through all these
22 various pieces and you've got a set of

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1 regulations that's coming, there may be pieces
2 of the use chapter, which we haven't had much
3 discussion about tonight, that could be
4 affected by how terms are defined, for example
5 and by how uses are permitted within
6 individual zone categories that might make you
7 go back and think maybe we need to take some
8 consideration on the use chapter that's going
9 to be affected by something that happens down
10 the road.

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

18 Until we see those charts that tell
19 you what uses in what zones have what limits,
20 it's a little hard to comment in the abstract.

21 I think that as you get down the road a year
22 from now there just needs to be sort of one

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1 overall look at the whole package.

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

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

6 Mr. Edwards.

7 MR. EDWARDS: My name is Monte
8 Edwards.

9 CHAIRMAN HOOD: Is your microphone
10 one?

11 MR. EDWARDS: It is now. Thank
12 you.

13 CHAIRMAN HOOD: Okay.

14 MR. EDWARDS: My testimony goes to
15 4.02.4. I share the concerns expressed by
16 ANC-6A that (a) and (b) are a clear definition
17 understandable and an implementation of prior
18 zoning policy and regulations. However, (c)
19 and (d) are contrary to that clear definition
20 and expression of prior zoning practices.

21 Specifically I refer to Case No.
22 02-35 which I participated in back in 2003.

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1 That was the measuring point for height. It
2 had to do with the H Street overpass. Let me
3 read from page 1 of that order. This is the
4 Zoning Commission order.

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

14 That has been the law. That has
15 been the Zoning Regulation since November 7,
16 2003. It is nicely preserved, I think, in
17 4.02.4(a) and (b). I feel it is contradicted
18 by (c) and (d). Well, about (c). There are
19 cases when the Zoning Administration has
20 previously determined a different method of
21 determining grade.

22 We are familiar with L'Enfant Plaza

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1 and we have already heard from Mr. Sher about
2 the Portals development. But that
3 determination was based on the unique
4 circumstances of that project and should not
5 be applied to different projects with
6 different circumstances.

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

18 Now, about Subpart D and discussion
19 of air rights development, which we've heard
20 about, and Union Station North proposed for
21 the Akridge development at Union Station,
22 there they are proposing that the measuring

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1 point be the overpass at H Street. That means
2 that if as proposed by the Office of Planning
3 the height of the development over the tracks
4 would be 56 feet higher than the existing
5 Securities and Exchange complex.

6 Now, there may be justification for
7 a height adjustment but those height
8 adjustments should be unique to the projects.

9 We've heard from Office of Planning there are
10 a few of these air rights cases. Let's look
11 at each one of them.

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

19 Again, let them stand by their
20 merits on a case-by-case basis, come before
21 this Commission with what the height should
22 be. Is it the deck? Is it the bottom part of

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1 the deck? Is it the top of the deck? Where
2 do you measure it and what is appropriate for
3 the surroundings and how that development
4 impacts the community. Thank you.

5 CHAIRMAN HOOD: All right. Thank
6 you both.

7 Are there any questions or
8 comments? Mr. May.

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

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

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

19 MR. SHER: Right. Not just to be
20 the Zoning Administrator but other district
21 agencies only because it's not just the Zoning
22 Administrator.

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1 COMMISSIONER MAY: So in the past
2 at some point the RLA made determinations
3 about heights of buildings?

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

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

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

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

19 I guess in response to Mr. Edwards'
20 comments, when it comes to a project like
21 Union Station North and there are 56 feet
22 difference in the measuring points between the

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1 proposed development and the adjacent
2 development at the station place. I mean, are
3 we actually going to wind up with a building
4 that is 56 feet taller or is there going to be
5 some other limit being proposed on this that
6 makes the difference in height more
7 understandable?

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

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

13 MS. STEINGASSER: Okay.

14 COMMISSIONER MAY: Sorry.

15 MS. STEINGASSER: The Zoning
16 Commission has actually set that zoning text
17 down for a public hearing and will be
18 considering that in December for the Union
19 Station air rights. No, it is not the
20 intention that there would be a building that
21 would be 56 feet higher. That's looking at a
22 building only in one direction.

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1 When you look at the buildings to
2 the west you're in a much higher density and
3 many of those buildings have prior to 02
4 measured from H Street so there is a much more
5 narrow differential between the heights.

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

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

18 COMMISSIONER MAY: Okay. So it's
19 not simply that we're going to have these
20 special circumstances where there is a viaduct
21 and you get to measure from that higher point
22 that's 20, 30, 40, 50 feet higher but that

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1 it's going to be a very special circumstance
2 and there will be other controls over the
3 height.

4 MS. STEINGASSER: Yes, sir.

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

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

16 We don't know what the natural
17 grade is. We don't know where the streets
18 originally were. The tracks have various
19 elevation so there is a lot of damage done
20 there. We absolutely would bring these
21 forward only on a case-by-case basis.

22 COMMISSIONER MAY: Did you consider

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1 the possibility of drawing a line between the
2 starting point and the ending point of the
3 viaducts and just using that as a measuring
4 point? Does that achieve something similar or
5 is it --

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

15 COMMISSIONER MAY: Okay. Thanks.

16 VICE CHAIR SCHLATER: Thank you,
17 Mr. Chairman. First question is for Mr. Sher.
18 I think I share Commissioner May's -- I
19 understand what you're trying to get at with
20 your proposed change to the language in
21 4.02.4(c).

22 But by saying an elevation

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1 previously determined by a District of
2 Columbia agency including the Zoning
3 Administrator, I think we need to just clarify
4 that it was lawfully determined by the
5 District of Columbia agency.

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

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

21 Then in response to Mr. Edwards'
22 comments, I'm questioning whether -- this is

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1 probably directed at OP -- whether we actually
2 need 4.02.4(d). If we come up with a separate
3 chapter called Union Station Air Rights or
4 whatever. I forget. Union Station North is
5 what we're working on -- ultimately it's going
6 to be written in there that it's a special
7 case and special situation. Why do we need
8 (d) in there when you have Union Station North
9 elsewhere?

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

20 VICE CHAIR SCHLATER: Okay. Mr.
21 Edwards, I guess when I was listening to your
22 testimony you were saying that it was okay to

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1 have special situations and address them as
2 they arise. Is that correct?

3 MR. EDWARDS: That's correct.

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

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

15 VICE CHAIR SCHLATER: Okay. Thank
16 you.

17 CHAIRMAN HOOD: Any other questions
18 or comments?

19 COMMISSIONER MAY: If I could just
20 following up on this same sort of theme of
21 elevations that have been determined by the
22 Zoning Administrator. This is a question for

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1 the Office of Planning. Does it make sense
2 perhaps to state that such determination would
3 apply only for an existing structure and that
4 a new determination would be necessary if the
5 building were raised?

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

14 COMMISSIONER MAY: Well, may be. I
15 mean, if we're going to start messing around
16 with L'Enfant Plaza, maybe it's a bit -- maybe
17 it is more on the scale of the Union Station
18 air rights. In effect, it's kind of an air
19 rights project of its own and it may well make
20 sense to have to have a more comprehensive
21 look at it and not simply say that forever it
22 will be the measuring point of the plaza.

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1 I wasn't thinking so much of the
2 big projects like that. I mean, other ones
3 where there was a determination somewhere
4 along the line by the Zoning Administrator.
5 God knows what the circumstances were at that
6 particular moment. Somehow this kind of
7 created or a fictional measuring point is now
8 vested with the property in perpetuity. I'm
9 not sure that really makes sense.

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

15 COMMISSIONER MAY: Okay. Thanks.

16 CHAIRMAN HOOD: I have a process
17 question again. I think Mr. Sher mentioned
18 once we get everything together, once we get
19 the complete book, once we get all the cross
20 references, once we get everything together I
21 guess -- don't let me put words in your mouth
22 but I guess you were asking for another bite

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1 at the apple. Is that kind of where you were
2 going?

3 MR. SHER: Yes.

4 CHAIRMAN HOOD: All right.

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

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

18 I just think the Commission needs
19 to sort of look at that and the Office of
20 Planning needs to look at it. I think the
21 public ought to have an opportunity and it may
22 just be in writing. It may be, "Here it is.

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1 If you have anything else you want to say
2 about it, send us a letter."

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

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

19 MR. PARKER: There are countless
20 mechanisms. I mean, the long and short of it
21 nothing is going to get enacted by this body
22 if people have outstanding issues. There are

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1 going to be plenty of chances to write
2 letters, to come to the hearing. We are going
3 to have one final approval.

4 I don't think anybody has decided
5 yet whether there is going to be a hearing at
6 that stage or what the process is going to be.

7 I think it may be too early to know that. I
8 think all we can do right now is move forward
9 one chapter, one subtitle at a time, see what
10 issues come up.

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

17 CHAIRMAN HOOD: All right. Thank
18 you.

19 Ms. Schellin, did you want to ask
20 something? Okay. Thank you. I asked that
21 for that reason. I'm glad you put that on the
22 record.

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1 Any other questions of this panel?

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

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

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

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

18 In 2003 the Office of Planning
19 recommended and the Zoning Commission approved
20 a code change to clarify and reaffirm that the
21 intent of the Zoning Regulations was to
22 measure the height of buildings from the

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1 ground and not from an artificially created
2 measuring point in determining their allowable
3 height.

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

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

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

22 Why would the Zoning Commission

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1 consider relaxing or revising its previous
2 order? Won't this create the potential for
3 inconsistent building heights opening the door
4 to creative interpretation of the general
5 rules of measurement for the rationalization
6 of the Washington view shed?

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

15 No one is complaining that the
16 regulations are unclear. While it has been
17 widely acknowledged that economic development
18 is driving city planning, the zoning code
19 should not give designers of the urban
20 landscape carte blanche to change the
21 horizontal skyline of the District for
22 personal gain or attribution.

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1 OP's proposed changes appear to
2 attack the established policy upon which
3 people have relied since zoning began in 1958
4 that the height of buildings is measured from
5 the ground and not from an artificially
6 created measuring point in determining their
7 allowable height.

8 I strongly encourage the Zoning
9 Commission to adopt only the following
10 language for proposed Section 4.02.4. Where
11 the curb at grade has been artificially
12 changed by a bridge, viaduct embankment, ramp
13 abutment, tunnel or other type of artificial
14 elevation the height of a building shall be
15 measured from either a street frontage not
16 affected by the artificial elevation or the
17 lower of the natural grade or the finished
18 grade at the middle of the front of the
19 building to the highest point of the roof or
20 parapet, and then omit Section (c) and (d).
21 You've heard that before tonight.

22 In May Larry Beasley ended his

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1 presentation on the equation of height and
2 density in the form of economy of Washington,
3 D.C. in the 21st century with this caveat. So
4 I close with a cautionary note. Be very
5 careful as you gamble with the 100-year legacy
6 of Washington's Height Act.

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

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

15 Mr. Clark.

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

22 I also bring my perspective as a

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1 member of the Zoning Revision Task Force on
2 behalf of the Federation of Citizens
3 Association which is celebrating its 100th
4 year this year just like the Height Act.

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

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

17 I have some things in my testimony
18 that maybe have been solved tonight already by
19 some of the street-based stuff that was still
20 here coming out. That is a help for what we
21 need to do. We did talk about this a lot
22 including in the task force meetings this

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1 summer on three different occasions, I think,
2 on the Height Act. We just said, "We don't
3 need to get into this."

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

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

19 If, on the other hand, what we have
20 is that the Zoning Administrator is
21 essentially writing regulations rather than
22 saying, "Here are the rulings that I've made

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1 over the years. You can look at it.

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

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

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

22 I mean, that we can keep. We have

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1 some wishy-washy language in the proposal by
2 the Office of Planning on that that is kinda
3 supposed to say that. I think I said 4.00.4
4 but I think it's 4.00.3 after the change. We
5 just got to watch that.

6 I think we should also depict
7 what's happening in the Height Act and in
8 height changes, something more than two-
9 dimensional drawings. We've heard a lot about
10 H Street and about where it's going to be
11 measured from, how high it's going to be.

12 I'm glad to hear that it won't be 12 stories
13 on top of that 56 feet. I'm not sure that's
14 really true. We have to worry about some of
15 the scenic vistas of the capital.

16 I mean, if we go up to the 11th
17 floor here and look at that, although when we
18 look from the 11th floor we'll have to look
19 far over to the left to see what those
20 buildings will be like, but you don't have to
21 do that if you're at Cardoza High School, if
22 you're at the Armed Forces retirement home, if

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1 you're on the New York Avenue corridor, or on
2 H Street, N.E. Those are some important
3 things that we've got to think about.

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

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

16 As I read the proposal here, my
17 house is way below the street level. If
18 you're standing on the curb in my house you
19 see the roof line. I mean, that's where it is
20 so I could add 40 feet on top of my house if
21 we have a 40-foot limit. That doesn't make
22 any sense to me.

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1 Now, if you go across the street,
2 which is where the problem was, that range is
3 15 feet above the street so that would only be
4 a 25-foot house. That doesn't make any sense
5 to me either. Here is what we don't know how
6 things fit together and I don't see why we
7 have eliminated the measuring point we've had
8 for a long time. Thank you.

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

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

20 One of the things that upsets
21 people in certain zones, especially in some R-
22 5 zones even though the buildings may be all

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1 on a lower scale, is what happens with
2 accessory uses in terms of does it change the
3 character of the actual residential use.
4 Sometimes this happens with respect to bed and
5 breakfast but it can happen in other ways,
6 too, especially in some rental buildings.

7 What happens is you really change
8 the use from residential to whatever
9 occupations may be there and that's something
10 we don't really as we sit here, at least I
11 don't, understand how that works.

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

14 MS. GATES: I finished. Thank you.

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

18 COMMISSIONER MAY: Sorry, Mr.
19 Chairman.

20 CHAIRMAN HOOD: Mr. May.

21 COMMISSIONER MAY: I guess for Mr.
22 Clark the question I have was with regard to

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1 the measuring point you point out your house
2 is below the street grade. The way I read the
3 proposed regulations, 4.02.5, "A one-family
4 dwelling and any building..."

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

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

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

19 MR. PARKER: It was pointed out in
20 testimony earlier. It's just a matter of two
21 missing commas. This saying, "One-family
22 dwellings shall be measured from ground level

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1 and any building set back from all lot lines
2 by a distance equal to their own height shall
3 be measured from ground level." All one-
4 family dwellings are measured at ground level
5 at the mid-point of the front.

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

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

17 MR. PARKER: It's a matter of a
18 comma after "one-family dwellings" and a comma
19 after "its own height." "One-family
20 dwellings, and any building set back from all
21 lot lines by a distance at least equal to its
22 own height, shall be measured."

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1 COMMISSIONER MAY: Okay. So if it
2 is a two-family dwelling --

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

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

9 MR. PARKER: Okay.

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

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

19 COMMISSIONER MAY: I can't remember
20 whether I had seen them there but I know I had
21 seen them around the city. All right. Then
22 we get back to the question of the natural

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1 grade versus the grade in front of the house
2 which is a question that came up earlier. I
3 think OP is going to reply to that in a
4 supplemental report. Right?

5 MR. PARKER: Yes.

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

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

19 As I stated earlier, the same issue
20 that has been graphed in and the Zoning
21 Commission has dealt with continuously about
22 the NCPC telling us it's a violation of the

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1 Height Act and then we say it isn't. That
2 issue I'm hoping we can find some kind of way
3 to resolve that.

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

11 I'm not saying we should or
12 shouldn't but I would like for the Office of
13 Planning to look at the testimony received
14 from everyone, because we only had a few
15 people to testify, and look at some of the
16 points that they raised in that supplemental.

17 Maybe we could make it a page-and-a-half in
18 that supplemental. Let's kind of find out why
19 we should or should not take some of these
20 recommendations if that's doable.

21 MR. PARKER: We'll look at it and
22 try to keep it short.

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1 CHAIRMAN HOOD: Thank you.

2 Any other questions or comments?

3 Commissioner Selfridge.

4 COMMISSIONER SELFRIDGE: Yes.

5 Thank you, Mr. Chairman. I would just like to
6 follow up on what he said about obviously
7 4.02.4(c) and (d). I was struck by something
8 that you said and this is my initial thought.

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

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

21 Then, Ms. Gates, I just have one
22 question for you I just want to clarify.

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1 4.02.4(c) and (d), if you wipe that out it
2 wouldn't actually have any impact on
3 Washington's Height Act because 4.00.3
4 actually says notwithstanding essentially
5 Zoning Regulations all buildings are subject
6 to the Height Act so we wouldn't actually be
7 impacting or having any impact on the Height
8 Act by leaving 4.02.4(c) and (d) in place.

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

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

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

20 COMMISSIONER SELFRIDGE: Thank you.

21 VICE CHAIR SCHLATER: I just have a
22 process comment. Since this language is going

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1 to come back to us, you're going to write a
2 supplemental report, can I just ask that when
3 the new language comes back that it's
4 blacklined against the old language? I don't
5 know if that has been your practice thus far
6 but just so we can track the changes as we go
7 along and respond to some stuff.

8 It would be very helpful to get it in
9 blackline form.

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

13 CHAIRMAN HOOD: Any other comments?
14 Mr. Turnbull.

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

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

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1 yes.

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

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

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

15 A lot of times they are put in
16 places to be as diminimus as possible but you
17 can't get away from some place at some point.

18 If you're going to sacrifice something,
19 you're going to give up either the alley for
20 some minimal elevation of the building.

21 MR. CLARK: There may be situations
22 where that is the case. One of the things --

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1 I don't have the photographs with me tonight
2 but there have been photographs taken of a lot
3 of the buildings in the city in dealing with
4 this issue and actually people have done a
5 pretty good job.

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

13 MR. CLARK: Thank you.

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

17 MR. CLARK: Thank you.

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

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

22 Anyone else here to testify? We're

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1 going to cut it off with Ms. Richards. I did
2 see Ms. Richards come in even though I did
3 have the last call but she has served the city
4 with great distinction and still does so we
5 want to hear from her.

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

9 Okay. Ms. Richards. Turn your
10 microphone on.

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

18 The first is the measurement rules.

19 We would like the following language included
20 in 4.02.1, "When a building abuts more than
21 one street the street chosen to determine the
22 maximum allowable height must also be used to

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1 determine the measuring point for building
2 height. Then this measuring point will set
3 the basis for all height measurements of the
4 building."

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

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

18 (a) says measure from street
19 frontage not affected by the bridge or rampart
20 or whatever. (c) relies on precedent. (b)
21 and (d) allow for, I guess, a level of
22 discretion that probably doesn't result in the

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1 sort of certainty that people need.

2 I think I heard some conversations saying that
3 (c) was not acceptable because there might be
4 some bad precedents lurking out there.

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

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

20 I guess it's still sort of a joke
21 except in reality this may be really
22 happening. It's sort of frightening so we

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1 certainly hope that you will fix that. You've
2 heard several proposals tonight for addressing
3 it and I hope that will be done.

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

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

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

16 Residential blocks and business
17 blocks. Section 4.03.1(b) operates to treat a
18 block face that contains any mix of an
19 apartment residential zone and any other zoned
20 as a business street. This would allow
21 business heights measured by the right-of-way
22 plus 20 feet.

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1 The block face with any amount of
2 neighborhood residential zoning is deemed to
3 be a residential block for building height
4 purposes. Height limits on residential
5 streets are, of course, significantly lower.
6 This provision considered together with
7 Section 4.04.1 has the potential to adversely
8 affect existing rowhouse neighborhoods and
9 height in apartment neighborhoods.

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

19 Inasmuch as significant new
20 construction is taking place in the eastern
21 part of the city, we think the city's least
22 empowered residents stand to bear the brunt of

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1 this provision. We think that Section 4.03
2 and 4.04 should treat all block basis with a
3 quantum of residential zoning equally without
4 regards to what kind of residential density
5 that is.

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

16
17 Just to give some idea of the
18 potential impact of TOD and how this could
19 interplay with 4.03 and 4.04, the proposed
20 comp plan amendments would make the major bus
21 routes in the city all TOD zones so you
22 wouldn't be having them clustered around kind

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1 of subways and Metro stations but just up and
2 down the city.

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

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

17 Finally, we have roof structures.
18 Section 4.06.1 identifies roof structures that
19 may exceed height limitations in the Zoning
20 Regulations and 4.06.2 sets out the setback
21 requirement for some allowable roof
22 structures.

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1 The esthetics of my community are
2 adversely impacted by the industrial roof
3 structures on our neighborhood shopping
4 center. They are large, prominent,
5 undisguised, and apparently installed without
6 regard to any setbacks at all.

7 Based on this experience and on
8 behalf of the esthetics of the entire
9 District we urge that one-for-one setbacks be
10 required from all exterior walls and that
11 exterior walls be given its ordinarily
12 understood meaning with the proviso that the
13 party wall will be treated as the exterior
14 wall for rowhouses or other adjoined
15 structures.

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

22 Those are pinbranches, keypoints.

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1 Thank you.

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

4 Any questions of Ms. Richardson,
5 Commissioners?

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

16 Thank you, Ms. Richards. We
17 appreciate it.

18 MS. RICHARDS: Um-hum.

19 CHAIRMAN HOOD: I think now, at
20 least for me, I need to remember what the
21 process is at this point. Sometime when your
22 mind gets set in going somewhere else and

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1 you're still here, I'm just trying to
2 remember. Also for the public to make sure
3 that we know what the process is after this.

4 Mr. Parker, could you help us?

5 MR. PARKER: Certainly.

6 CHAIRMAN HOOD: Could you help me.

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

9 CHAIRMAN HOOD: Sure.

10 MR. MAY: Sorry. I wasn't quick
11 enough to mention this right after testimony.

12 I was particularly intrigued by Ms. Richards'
13 testimony. It's the paragraph labeled B on
14 the front page where in referring to 4.02.4(c)
15 she recommends that there be some, I guess,
16 review of the previous determination to
17 determine that the circumstances that led to a
18 particular determination are essentially still
19 in force.

20 I mean, that's what I'm taking out
21 of it. I think there is something to that.
22 The concern I had before about any of these

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1 previous determinations is that we don't know
2 that the circumstances that led to a given
3 determination are still acting and still
4 enforced in that area.

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

12 MS. RICHARDS: Could I step up and
13 clarify?

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

18 CHAIRMAN HOOD: Okay. Again,
19 pretty much most of what we heard tonight we
20 have asked for a supplement report from OP and
21 I'm not sure how long that's going to take or
22 when we are going to look at this again.

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1 That's why I wanted to go to Mr. Parker or Ms.
2 Schellin. Mr. Parker first.

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

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

18 CHAIRMAN HOOD: Any questions,
19 Commissioners, on that?

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

22 Ms. Schellin, did you want to add

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1 something?

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

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

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

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

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

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

19 MS. SCHELLIN: That will satisfy
20 the request if we could leave the record open.
21 There were two -- do you want to leave it
22 open for just the two requests that were

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1 received or for everyone?

2 CHAIRMAN HOOD: Probably just the
3 two requests.

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

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

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

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

17 MS. SCHELLIN: So we had a request
18 from those two. Ms. Kayla had signed up to be
19 here this evening but something came up and
20 she could not be here so she did call and ask
21 if the record could be left open for her
22 testimony. Then, of course, ANC-6B submitted

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1 a letter requesting it be left open for them
2 because they were meeting, I believe, this
3 evening.

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

7 Mr. Clark, did you want to add
8 something?

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

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

20 There is another time, I think, Mr.
21 Clark for you all because here's the thing.
22 We do that and you're probably going to come

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1 back with something else. I'll open it up to
2 my colleagues and see what they think.

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

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

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

22 I'm not sure or not but if they

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1 haven't, it has some well thought-out material
2 that was given to us tonight and I've asked
3 them just to give us a sound byte respond to
4 that so I don't know.

5 Colleagues, let's open it back up.

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

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

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

20 COMMISSIONER TURNBULL: But I think
21 for just now it's just the Zoning Commission
22 getting the feedback from OP with their

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1 comments.

2 CHAIRMAN HOOD: Okay.

3 COMMISSIONER TURNBULL: And then us
4 going forward.

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

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

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

19 CHAIRMAN HOOD: Another bite at the
20 pear.

21 MS. SCHELLIN: Yes. So going over
22 our schedules sticking with what Mr. Parker

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1 suggested for OP, we'll leave the record open
2 for WCCA and ANC-6B until September 27th and
3 then OP would have until October 4th. That
4 would give them two weeks. Then on October
5 18th would be our next meeting we would put on
6 the agenda.

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

9 MS. SCHELLIN: You want to make it
10 November?

11 MR. PARKER: Is that possible?

12 MS. SCHELLIN: Sure.

13 MR. PARKER: First meeting of
14 November?

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

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

22 MS. SCHELLIN: To their comments

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1 also? Okay. So then that would adjust it to
2 October 12th since the 11th is a holiday.
3 September 27th for WCCA and ANC-6B, October
4 12th for OP, and we'll bring it back on the
5 agenda November 8th for proposed. Got it?

6 MR. PARKER: Got it.

7 MS. SCHELLIN: Okay.

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

15 (Whereupon, at 8:37 p.m. the
16 hearing was adjourned.)
17
18
19
20
21
22

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