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IN REPLY REFER TO:
NCPC File No. ZC 08-06

September 14, 2010

Chairman Anthony Hood
Zoning Commission of the District of Columbia
441 4th Street NW, Suite 220
Washington, DC 20001

Re: ZC 08-06, Proposed Building Height Regulations

Dear Chairman Hood:

The staff of the National Capital Planning Commission has reviewed the proposed zoning amendments related to building height that are the subject of the Zoning Commission's hearing scheduled for September 20, 2010. We believe these regulations have improved since the Office of Planning's September 2008 memorandum to the Zoning Commission. However, we are bringing to your attention two areas that remain in conflict with the federal 1910 Height of Buildings Act (the Height Act).

The first area in conflict with the Height Act is in relation to rooftop structures. Section 406.1 of the proposed zoning regulations state, "the following structures may be built above the street-based or zone height limitations, subject to the conditions of the section:

- a) Spires;
- b) Towers, including towers erected from the ground;
- c) Domes, minarets, pinnacles, pergolas and similar architectural embellishments;
- d) Chimneys or smokestacks;
- e) Skylights;
- f) Penthouses over utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;
- g) Building appurtenances dedicated to safety, including safety railings;
- h) Building components or appurtenances dedicated to the environmental sustainability of the building;
- i) Penthouses over accessory amenity features, such as communal enclosed recreation space, and structures accessory to outdoor recreation space; and
- j) Antennas.

The 1910 Height of Buildings Act is clear in its prohibition of occupied spaces above the limit of height. Section 5 of the Height Act states: *“that such structures when above such limit of height shall be fireproof and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed.”* Although the proposed regulations rightfully require that all rooftop structures be appropriately setback from all building walls, it appears 406.1(i) would allow for occupied spaces to be constructed above the limit of height permitted under the Height Act. We therefore recommend the Zoning Commission remove this section. Alternatively, a clarification can be made which states that when a building is at the maximum height allowable under the Act, these occupied structures are not permitted.

The second area of concern is Section 404 which allows for relief from the rooftop regulations through Special Exception. The Act provides specific requirements for rooftop structures and the manner in which they should be set back once a building is at the maximum height permitted. However, the law does not allow for relief to be granted from these requirements by the Board of Zoning Adjustment. For consistency with the requirements of the Height Act, the Zoning Regulations should reflect this.

In addition to the two areas that conflict with federal law, there are areas that can be strengthened and we offer the following suggestions. Proposed Section 402.4 states, *“when the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation, the height of a building shall be measured from either:*

- a) A street frontage not affected by the artificial elevation;
- b) A level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation;
- c) An elevation previously determined by the Zoning Administrator; or
- d) An elevation or means of determination established for a specific zone elsewhere in this title.”

NCPC staff supports the Office of Planning’s intended goal of preventing measurements taken from artificial elevations and believes this is necessary to maintain the iconic horizontal skyline that is so unique to Washington, DC. We believe this language could be made clearer by inserting language previously discussed by DCOP in its September 15, 2008 memo stating *“Where natural elevation is interrupted by a bridge, viaduct, embankment, ramp, abutment, tunnel or other type of artificial elevation, the height of a building will not be measured from the human-constructed elevation...”*. Clarifying where the measurement may not be taken strengthens the language. Further, it appears that Subsection 402.4(c) is intended to prevent the creation of non-conforming structures that do not adhere to the new regulations. However, the regulations should be clear and provide more detail as to when, and in what form, the applicable determination has been made by the Zoning Administrator. It is NCPC staff’s recommendation that 402.4(c) include language such as: *“An elevation determined by the Zoning*

Administrator prior to the adoption of these regulations” or language to the same effect. Finally, we have some concern with 402.4(d) as it relates to interpretations in other zones. It is unclear as to the intent of this provision. Allowing differing interpretations in varying zones could lead to inconsistent applications of determining a building’s measuring point and result in confusion as to how a building’s height is measured.

Proposed Section 402.2 states that the height of a building shall be measured from its midpoint along any abutting street frontage. Where no street frontage exists, the height of a building shall be measured from its midpoint along its façade nearest to a public street. NCPC staff generally supports this provision as being consistent with the Height Act but it is unclear how the regulation relates to private streets. The overall goal of the Height Act is to maintain the relationship between buildings and the streets on which they reside. As such, the Zoning Commission should consider including private streets along with public streets as a point of measurement or by defining street frontage as any public or private street.

Finally, Section 400.3 states that “in addition to the height limitations of the zoning regulations described in this chapter, all buildings are also subject to the height limitations of the Height Act, D.C. Official Code 6-601.08. Height Act language adopted by the Department of Consumer and Regulatory Affairs (DCRA) matches the general height limitations of this chapter and is attached as Subtitle M.” As of the writing of this letter, Subtitle M has not been issued from DCRA and it is unclear how this would relate to the proposed zoning regulations. It is imperative that the DCRA language in Subtitle M be consistent with the proposed zoning regulations to avoid inconsistent Height Act interpretations and confusion among users of the zoning code.

The staff at NCPC appreciates the challenge of developing modern zoning regulations that balance the interests of development and preservation. We also appreciate DCOP’s effort to coordinate all of its zoning amendments with NCPC during its public process. The staff of NCPC looks forward to providing input on other areas of the zoning text changes as they come before the Zoning Commission for public hearing. If you have any questions related to these comments, please direct them to Senior Urban Planner David Zaidain at 202-482-7230.

Sincerely,



Marcel C. Acosta
Executive Director

cc: Harriet Tregoning, District of Columbia Office of Planning
Jennifer Steingasser, District of Columbia Office of Planning
Travis Parker, District of Columbia Office of Planning
Lori Monroe, District of Columbia Office of Attorney General