



401 9<sup>th</sup> Street, NW  
Washington, DC 20004  
Suite 500, North Lobby  
Tel: 202 482-7200  
Fax: 202 482-7272  
[www.ncpc.gov](http://www.ncpc.gov)

IN REPLY REFER TO:  
NCPC File No. 08-06-01

**JAN 05 2009**

Anthony Hood, Chair  
Zoning Commission of the District of Columbia  
441 4<sup>th</sup> Street NW, Suite 220  
Washington, DC 20001

RE: Case No. 08-06-1: Updates to Zoning Codes Related to Height

Dear Chairman Hood and Members of the Commission:

We have received the District of Columbia Office of Planning (DCOP) December 1, 2008 memorandum providing revisions to their conceptual approaches to measuring height, for use in updating the District's zoning codes. Our understanding is that the Zoning Commission will be reviewing and providing direction on this topic at their January 5 meeting. The December 1 memorandum proposes several significant changes from the previous memorandum, about which we have a number of concerns which will be discussed in more detail below. Several of the conceptual recommendations could result in continuing conflicts in interpretation, as several of the proposals do not appear consistent with our agency's interpretation of the 1910 Height of Buildings Act (Height Act). This could lead to an approach where buildings at or above the limits established by the Height Act would have to meet zoning requirements to ensure consistency with the Height Act, while buildings fully below the Height Act limits could meet different standards set by District codes. While a solution, this provides neither the desired consistency in interpretation, nor does it promote uniformity in the built environment. Our concerns regarding the December 5 memorandum are not just with individual sections, but with the result of the proposal in total. Many of the current recommendations could result in buildings that are significantly higher and out of scale with surrounding streets and adjacent development, particularly in areas of the city with sloping topography; and where rooftop structures occupy the majority of the roof area, providing de facto additional floors, and are clearly visible from adjoining streets.

As noted in our earlier testimony to the Zoning Commission, the Height Act has shaped the horizontal character of the city and the skyline, and the urban form and airy, light-filled streets that comprise the unique look of our nation's capital. Planning policies in both the District and Federal Elements of the *Comprehensive Plan for the Nation's Capital* support the Height Act

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and the qualities it advances. Within the framework of this shared support for the Height Act, we acknowledge that NCPC and the District have had some differences of interpretation. For your information, we have attached a letter providing background on NCPC's authority to interpret the Height Act (Attachment A). Our Commission and the Board of Zoning Adjustment requested that staff from our agency work cooperatively with DCOP to resolve differences in interpreting height requirements within the context of the Height Act. The September 15, 2008 memorandum presented by DCOP provided a number of recommendations which reflected consensus between the staff of our two agencies, as well as the input of the zoning task force. We remain committed to working cooperatively with the District and other interested stakeholders to develop mutually consistent interpretations, which would benefit agencies, developers and the public, and ensure that the character and urban design of the city continue to be protected and enhanced.

Our prior comments on the September 15 memorandum are included as Attachment B. The following items remain as previously proposed, and we concur with DCOP's proposals: Item 2: Streets Fronting on Open Space, Item 3: Business v. Residential Streets, Item 6: Elevation of Bottom Measuring Point and Item 8: Top Measuring Point. Item 1: Streets with Multiple Frontages would benefit from a definition of a building front, a term used in the Height Act, and distinct from the "frontage."

Our comments on the remaining items follow. Items 5 and 7 are related, and our key concern is that long term, areas of the city with significant grade changes may develop in a manner significantly out of scale with surrounding development and steps should be taken to identify and address this possibility. Items 9 through 12 are also related. To ensure consistency with the language and urban design intent of the Height Act, all rooftop structures *at or above* the limits of the Height Act must be set back from exterior walls, which we define more broadly than the District, and relief cannot be granted from this requirement.

#### Item 4: Single v. Multiple Buildings

We believe that DCOP should continue to work on a clear, usable definition. The definition offered in the December 1 memorandum is headed in this direction, but may still create uncertainty in application. We do *not* believe that a roofed-only connection with no enclosed walls, as suggested at the end of the discussion, should be used to establish building connections.

#### Item 5: Location of Bottom Measuring Point

A long-standing concern of our agency has been the possibility that a combination of site topography on through lots adjacent to streets of different widths could result in buildings with heights that are significantly higher than adjacent development, and potentially high enough to negatively impact the horizontal character of the city. The approach that the city is proposing, which allows the use of any street to establish height and the selection of any street to measure height, is allowable as an interpretation of the Height Act language, although based on our agency's experience, is less likely to provide uniformly consistent interpretations as the other option presented in the September 15 memorandum. However, the most extreme cases, where the widest street is also at the highest elevation, are permissible under either proposed interpretation. Note that we did not find the arguments regarding non-conformity to be

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compelling, as non-conformity can and does occur under zoning code changes. Further, to our knowledge neither the District nor other groups raising this argument appear to have conducted a thorough analysis that could quantify issues of non-conformity in regards to this specific topic, and such an analysis would be useful.

A broader concern may not be successfully addressed through the proposed District zoning changes. Attachment C is a GIS map developed by NCPC staff that identifies topography changes across parcels with business code classifications. Grade changes across parcels in the downtown area could result in one to three stories of additional allowable height for development, as compared to a flat site. The downtown is generally flat and has parcels of generally consistent size. This is not true throughout the rest of the District, as illustrated on this map. Large parcels with grade changes are present along the highway and railroad corridors, near NoMa, and the New York Avenue corridor. Steep topography is present along the entire escarpment, and many of the city's commercial corridors have adjacent sites with steep topography as they move across the escarpment. Although not shown on the map, some residential areas on steeply sloped areas near the escarpment or stream valleys may, over time, move towards more urban, mixed-use or commercial development that approaches the limits established through the Height Act. These are the areas where we anticipate that future development - outside of the traditional downtown - may use site grade changes to propose significantly taller structures that are dramatically out of scale with adjacent development. We strongly encourage the District to fully analyze this issue throughout the city, and to contemplate an innovative approach, such as establishing overlay zones or parcel-specific height limits on parcels of large size or with significant grade changes. This is also a compelling reason to ensure that Item 7: Natural and Artificial Grade, is appropriately addressed.

#### Item 7: Artificial and Natural Grade

While agreeing with the originally proposed concept, the proposed additional language is confusing and could lead to difficulties in consistent interpretation and require significant record-keeping. The District should have clearly defined standards for when projects vest under current codes; if any proposed developments have not vested, they should be subject to the new code language. This section should be clear in how the idea of "precedent" would apply to new additions and redevelopment of existing sites. Please refer also to the discussion in Item 5, above.

#### Item 9: Structures Permitted Atop the Roof:

The District could allow rooftop amenity structures in their own zoning codes where they are completely under the limits of the Height Act; however, specifically allowing amenity features when at or above the height limit established by the Height Act does not appear to be consistent with the Height Act. Amenity features are not specifically provided for in the Height Act as allowable rooftop structures. Practically, many of the recent development proposals our agency has reviewed relative to this issue have proposed exercise areas and lounges with features that appear to be occupiable space not consistent with the intent or language of the Height Act.

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**Item 10: Height, Width and Massing of Roof Structures:**

Maximizing rooftop development in the interior area of the rooftop is acceptable, but *only if*: 1) all of the setbacks are maintained (see discussion in item 11) and rooftop uses are consistent with the Height Act (see discussion in item 9). A special exception review for enclosed features *within the setback area* would not be consistent with the intent or language of the Height Act. We have no specific issues with the deletion of the special exception for the height of ornamental features, as the District can choose to be more restrictive than allowed by the Height Act.

**Items 11: Roof Structure Setbacks and 12: Exterior Walls**

We agree with District staff that setbacks for rooftop structures should be provided from all of the following: walls facing streets, walls facing alleys, any wall facing a court open to the street, any wall setback and facing a lot line and any lot line wall built higher than the greater of the neighboring building's actual or matter of right height. However, the Height Act requires setbacks from exterior walls, and the long-standing interpretation of our agency is that all of these walls noted above are *exterior* walls. The related provisions of the Height Act are intended to achieve urban design objectives – namely, that rooftop structures should be set back to reduce visibility from adjacent streets and public spaces. This distinction regarding the definition of exterior walls becomes important when considered together with the proposals below to provide setback relief for rooftop structures.

We do not believe it is appropriate for the Board of Zoning Adjustment (BZA) to provide setback relief where a rooftop structure is proposed at or above the limits of height established by the Height Act. The BZA cannot grant relief from a federal law. Again, this leads to an approach with one set of codes for rooftop structures fully below the limits of the Height Act and a different set for those at or above the limits of the Height Act. This approach could work, but does not provide a single, consistent interpretation, nor does it advance a consistent urban design approach.

We appreciate the opportunity to provide the Zoning Commission with these comments. Should you have any questions, please call me at 202-482-7211.

Sincerely,



Julia Koster, AICP  
Director, Planning Research and Policy Division

**Attachments**

Cc:  
Jennifer Steingasser, DCOP  
Travis Parker, DCOP  
Steve Cochran, DCOP