

January 8, 2008

VIA HAND DELIVERY

D.C. Zoning Commission  
Suite 210  
441 4<sup>th</sup> Street, N.W.  
Washington D.C. 20001

Re: Zoning Commission Case No. 05-37 – Capitol Place  
Response to Request from National Capital Planning Commission

RECEIVED  
D.C. OFFICE OF ZONING  
2008 JAN -8 AM 10: 08

Dear Members of the Commission:

On behalf of the Applicant in the above-referenced case, we request that the Zoning Commission re-open the record to accept the filing of this letter in response to a request from the National Capital Planning Commission ("NCPC").

By delegated action dated December 28, 2007, and approved on January 3, 2008, NCPC found that the proposed planned unit development ("PUD") and zoning map amendment would not be inconsistent with the Comprehensive Plan for the National Capital nor would it have an adverse impact on any other federal interest. A copy of the delegated action is attached as Tab A. As part of this review, staff for NCPC advised the Applicant that the mechanical penthouse above the tower element, which fronts on 2<sup>nd</sup> Street near the intersection of H Street and has been characterized as an architectural embellishment to create a gateway to the H Street corridor ("Tower Element"), was not in technical compliance with the Act to Regulate the Height of Buildings in the District of Columbia ("Act of 1910"), Section 6-601.01, et seq., D.C. Official Code. NCPC's position is that the Act of 1910 requires a 1:1 setback for any penthouse, not only for penthouses fully above the maximum height permitted by the Act of 1910. Based on that interpretation, the penthouse above the Tower Element fronting on 2<sup>nd</sup> Street, NE, does not meet the set back requirement at the maximum elevation (108 feet, two inches) of the Tower Element.

The District's position, with which the Applicant agrees, has been consistently that the set back requirement in the Act of 1910 applies only to those portions of the penthouse above the maximum height permitted by the Act of 1910. Any other portion of the penthouse not in compliance with the 1:1 setback may be granted zoning flexibility from such deviation of the Zoning Regulations. The project rises to a height of 100 feet, at which point there is a mechanical penthouse with a maximum

ZONING COMMISSION  
District of Columbia

CASE NO. 05-37  
EXHIBIT NO. 125

# HOLLAND & NIGHT LLP

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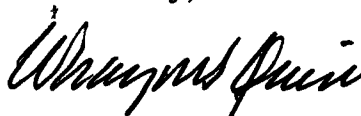
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height of eighteen feet, six inches. This penthouse is setback ten feet from the edge of the roof upon which it sits. At the 110-foot elevation – the maximum height permitted by the Act of 1910 – the penthouse is set back more than 1:1. At the top of the Tower Element, the penthouse is set back nine feet, eight inches.

In order to prevent this issue from causing delay with the PUD, staff for NCPC and the Applicant agreed that raising the maximum elevation of the Tower Element from 108 feet, two inches to 108 feet, six inches would resolve the issue. The penthouse would then rise ten feet from the edge of the Tower Element and be set back ten feet from the Tower Element. The result would be an imperceptible change to the overall design of the building. Accordingly, the Applicant requests that the Zoning Commission permit the substitution of pages 14 and 15 from the October 22, 2007, plan submission with pages 1 and 2 dated December 19, 2007, attached as Tab B. The only change on these plans is an overall increase in the height of the parapet and architectural embellishment of the Tower Element by a total of four inches. The entirety of the four-inch increase is devoted to the architectural treatment at the top of Tower Element and does not in any way impact the top floor of the building intended for human occupancy.

We appreciate your consideration of this request. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact me.

Sincerely,



Wayne S. Quin



Christine Moseley Shiker

Enclosures

cc: Parties to Case (See Attached Proof of Service)  
Jennifer Steingasser, Office of Planning (Via Hand; w/enc)  
Travis Parker, D.C. Office of Planning (Via Hand; w/enc)

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David Levy, National Capital Planning Commission (Via Hand; w/enc)

Advisory Neighborhood Commission 6C (See Proof of Service)

Mediation Committee

Lee Quill, Cunningham + Quill (Via Hand; w/enc)

Karen Wirt, ANC 6C Chair (See Proof of Service)

Monte Edwards, SPNA (See Proof of Service)

Drurry Tallant, Square 752 Residents (See Proof of Service)

Drew Ronnenberg, ANC 6A Representative (Via Hand; w/enc)

Gary Peterson, CHRIS (Via Hand; w/enc)

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**PROOF OF SERVICE**

I hereby certify that on January 8, 2008, a copy of the foregoing Applicant's Response to NCPC was served on the following parties:

Advisory Neighborhood Commission 6C  
c/o Karen Wirt, Chair  
234 E St., NE  
Washington DC 20002

Via Hand Delivery

and

c/o Alan Kimber,  
Single Member District Representative  
228 Parker Street, NE  
Washington, DC 20002

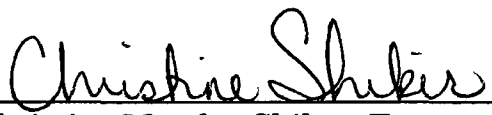
Via Hand Delivery

Square 752 Residents  
c/o Drury Tallant  
732 3rd Street, NE  
Washington, DC 20002

Via Hand Delivery

Stanton Park Neighborhood Association  
c/o Monte Edwards  
330 E Street, NE  
Washington, DC 20002

Via Hand Delivery

  
\_\_\_\_\_  
Christine Moseley Shiker, Esq.  
Holland & Knight

**HOLLAND & KNIGHT LLP**

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bcc: Bob Braunohler, LDPG (Via Hand; w/enclosure)  
Sean Cahill, LDPG (Via Hand; w/enclosure)  
Mark Rusitzky, Cook + Fox (Via US Mail; w/enclosure)  
Steve Sher, Director of Zoning and Land Use Services (w/enc)

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