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The Honorable Vincent C. Gray

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The Honorable Kwame R. Brown

Executive Director

Marcel C. Acosta

IN REPLY REFER TO:
NCPC File No. ZC 07-21B

DEC 07 2011

Zoning Commission of the
District of Columbia
2nd Floor, Suite 210
441 4th Street, NW
Washington, D.C. 20001

Members of the Commission:

The National Capital Planning Commission, at its December 1, 2011 meeting,
approved the enclosed action on the proposed modification to the previously
approved Planned Unit Development at Square 55 Lot 87. The Staff

Recommendation for the project is also enclosed.

Sincerely,

Marcel C. Acosta
Executive Director

Enclosures

cc: Harriet Tregoning, Director, D.C. Office of Planning
Anthony Hood, Chairman, Zoning Commission
Frederick Lindstrom, Commission of Fine Arts

2011 DEC -7 PM12:22

RECEIVED
D.C. OFFICE OF ZONING

ZONING COMMISSION
District of Columbia

CASE NO. 07-21B
EXHIBIT NO. 52

COMMISSION ACTION

NCPC File No. Z.C. 07-21B



PLANNED UNIT DEVELOPMENT MODIFICATION AT SQUARE 50

(Per Star M Street Partners, LLC)

Square 50 Lot 87 (Formerly Lots 82, 84, 813, and 816)

2201 M Street, NW
Washington, DC

Referred by the Zoning Commission of the District of Columbia

December 1, 2011

2011 DEC - 7 PM 12:22
OFFICE OF ZONING

Commission Action Requested

Approval of the report to the Zoning Commission of the District of Columbia pursuant to 40 U.S.C. Section 8742(a) and D.C. Code Section 2-1006(a)(1).

Commission Action

The Commission:

Advises the Zoning Commission of the District of Columbia that the proposed modification to the previously approved Planned Unit Development at Square 55 Lot 87 would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other federal interest.

A handwritten signature in cursive script, appearing to read 'Deborah B. Young', written over a horizontal line.

Deborah B. Young
Secretary to the National Capital Planning Commission

STAFF RECOMMENDATION



NCPC File No. ZC 07-21B

**PLANNED UNIT DEVELOPMENT MODIFICATION AT SQUARE 50
(PER STAR M STREET PARTNERS, LLC)
SQUARE 50 LOT 87 (FORMERLY LOTS 82, 84, 813, AND 816)**

2201 M Street, NW
Washington, DC

Referred by the Zoning Commission of the District of Columbia

November 29, 2011

Abstract

The Zoning Commission of the District of Columbia has taken a proposed action to approve a modification to a Planned Unit Development (PUD) located at 2201 M Street, NW in Washington, DC. The proposal modifies the plans for a previously approved hotel and includes a redesign of the exterior facades, increases in the number of hotel rooms and parking spaces, and a reduction in building height from 110 to 107 feet, or from 11 stories to 10 stories. In addition, the building's Floor Area Ratio is increased from 7.84 to 7.99. The project's overall massing remains similar to the approved PUD, with an L-shaped building (extending out from the corner of 22nd Street and M Street, NW) creating an open court at the rear of the building facing a public alley.

Commission Action Requested by Applicant

Approval of the report to the Zoning Commission of the District of Columbia pursuant to 40 U.S.C. Section 8742(a) and D.C. Code Section 2-1006(a)(1).

Executive Director's Recommendation

The Commission:

Advises the Zoning Commission of the District of Columbia that the proposed modification to the previously approved Planned Unit Development at Square 55 Lot 87 would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other federal interest.

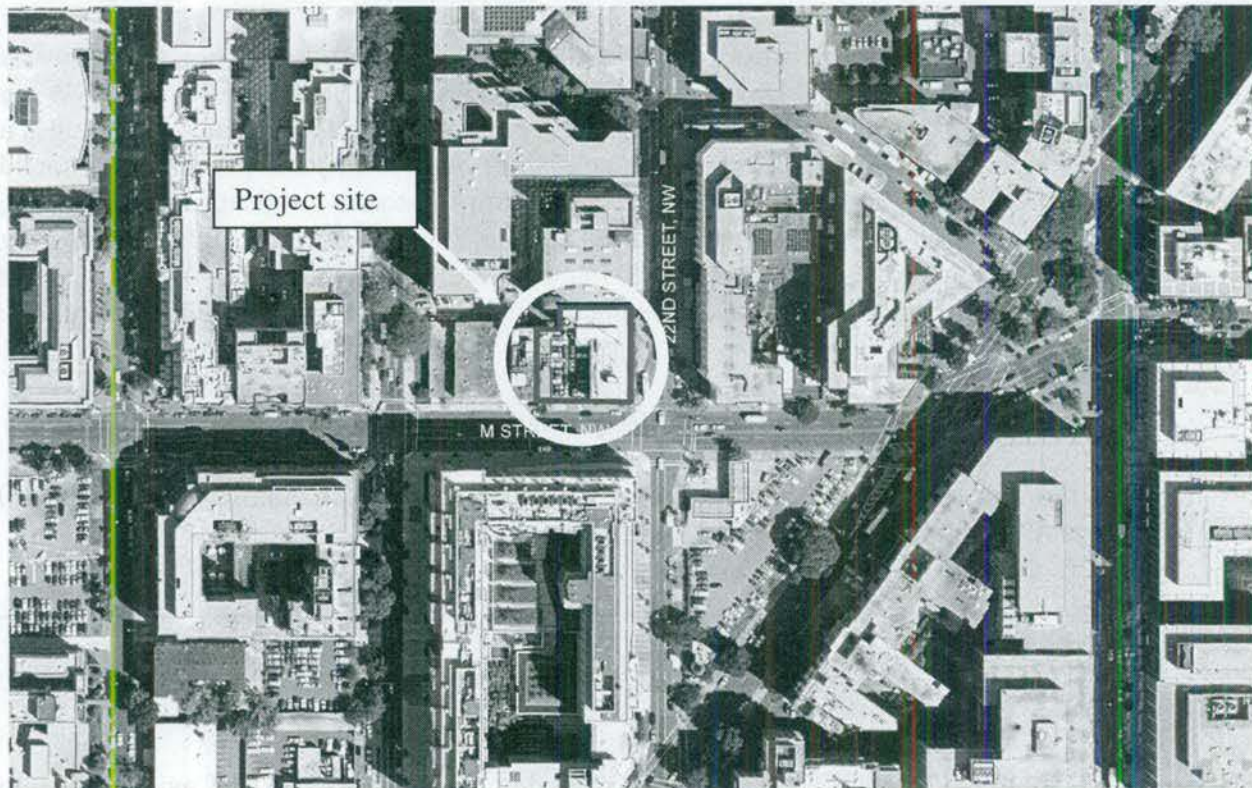
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PROJECT DESCRIPTION

Site

The 15,588-square-foot site is located at the northwest corner of the intersection of M and 22nd Streets in the West End area of Northwest Washington. The West End is a former industrial area that was rezoned in the 1970's to encourage mixed-use development. The neighborhood has a high concentration of hotel uses. Metrorail's Dupont Circle station is six blocks to the northeast and Farragut North station is six blocks to the southeast; the Foggy Bottom Metrorail station is four blocks to the south.

The site is currently vacant, but was most recently occupied by the former Nigerian Embassy and Chancery. It is part of Square 50, which is bound by M, N, 22nd, and 23rd Streets. This site is zoned CR, which encourages mixed-use structures and high-density developments on the periphery of Washington's Central Employment Area. Within the CR zone, Planned Unit Developments (PUD's) are permitted up to an 8.0 Floor Area Ratio (FAR), where at least 4.0 FAR must be residential, including hotel uses, and 110 feet of height (the CR zone allows a matter-of-right zoning height of 90 feet).



Project site

Background

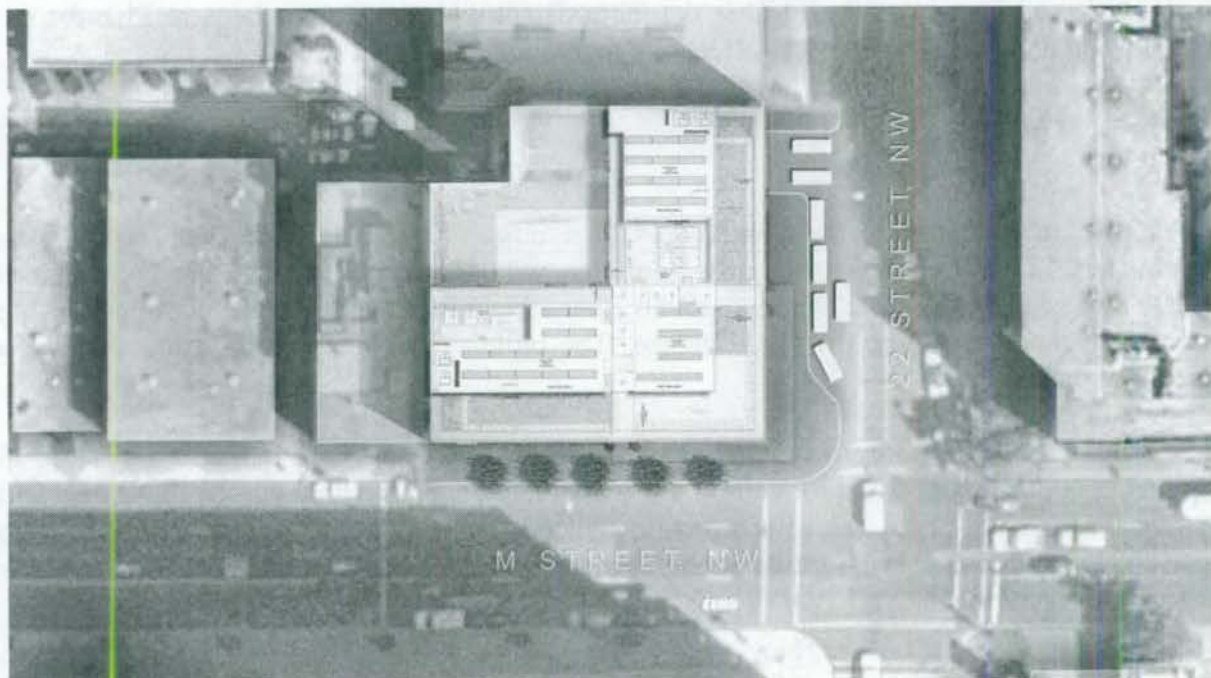
At its May 2008 meeting, the Commission reviewed the original PUD for the site.¹ That original proposal was for an 11-story luxury hotel with approximately 120,000 square feet of gross floor

¹ See NCPC File No. ZC 07-21.

area, an overall FAR of 7.84, and a building height of 110 feet. It included a total of 182 hotel rooms and suites, ground floor restaurant space, a spa, and 48 off-street parking spaces in a valet-operated below-grade garage that has a maximum capacity of 71 vehicles.



Illustrated view of previously approved PUD



Site and roof plan of previously approved PUD

At the time of its review of the original PUD, the Commission determined that the proposal did not conform to the requirements of the 1910 Height of Buildings Act, as amended (Height Act). The Height Act, a federal law separate from allowable building heights regulated under District matter-of-right or PUD heights, regulates building heights in the District according to the width of the right-of-way on which a building fronts. As such, it establishes the maximum building height for the subject property at 110 feet, since the M Street and 22nd Street rights-of-way are both 90 feet wide. The Height Act permits rooftop structures to exceed the maximum allowable building height, however, these rooftop structures must be set back from all exterior walls a distance equal to their height above the adjacent roof (that is a rooftop structure that is 18 feet 6 inches in height must be set back 18 feet 6 inches from all exterior walls). Regarding the aforementioned penthouse setback requirement, in its previous review of this case the Commission determined that the proposal did not conform to the requirements of the Height Act because the rooftop penthouses were not set back from all exterior walls as defined by the Commission at the time of its review. As such, the Commission recommended that the Zoning Commission require the applicant to modify the project design to set back the penthouses from all exterior walls of the building a distance equal to their height above the adjacent roof as required by the Height Act.

Happening concurrently with the Commission's review of the original PUD, NCPC staff was engaged in discussions with the District of Columbia Office of Planning on several Height Act interpretation issues as part of the District's ongoing Zoning Regulation revision effort. One of these issues pertained to the definition of an exterior wall. These discussions continued past the Commission's review of the PUD and ultimately resulted in staff submitting formal comments to the Zoning Commission. Included in these comments was staff's position on what should be considered an exterior wall for purposes of determining compliance with the Height Act. As described in the Project Analysis section below, application of this new definition of an exterior wall to the proposed PUD modification results in the PUD no longer being in violation of the Height Act. Thus, staff recommends that the Commission advise the Zoning Commission that the proposed modification of the PUD is not inconsistent with the Comprehensive Plan for the National Capital, nor will it adversely affect any federal interest.

Proposal

The proposed modification to the approved PUD results in a 10-story hotel that encompasses approximately 125,000 square feet of gross floor area, with an overall FAR of 7.99. The proposal will include a total of 238 hotel rooms, ground floor restaurant space, and 53 off-street parking spaces in a valet-operated below-grade garage. The building height is reduced to 107 feet, a reduction of three feet.

The building will have one roof structure (three were previously approved in the PUD) that is 18 feet 6 inches tall. The roof structure will be setback 18 feet 6 inches from both the 22nd Street and M Street facades. However, the roof structure will not be set back from the west and north property lines, and will only be set back one (1) foot from the west and north walls of the rear courtyard that faces the alley.



VIEW LOOKING NORTHEAST

Illustrated view of current proposal (the modification to the previously approved PUD)

PROJECT ANALYSIS

Executive Summary

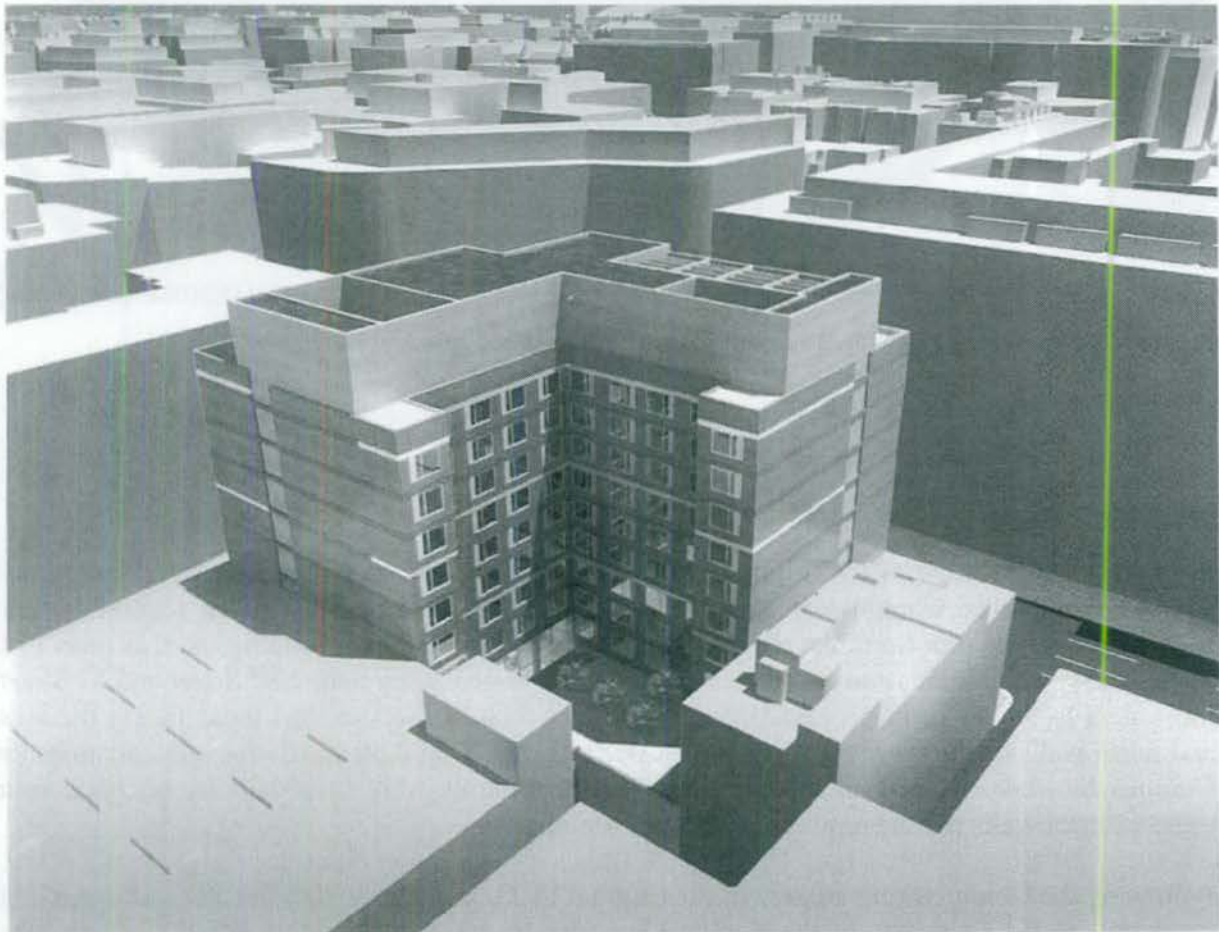
In its May 2008 review of the original Planned Unit Development for the site, the Commission advised the Zoning Commission that the proposal would be adverse to the federal interest because it did not conform to the requirements of the 1910 Height of Buildings Act, as amended. Specifically, the Commission had determined that the walls facing both 22nd Street and M Street, those next to the adjacent properties both north and west of the site, and those facing the west and north walls of the rear courtyard were exterior walls. Based on staff's recommendation, the Commission then determined that the proposed penthouses were insufficiently set back from those exterior walls per the requirements of the Height Act.

Following the Commission's review of the original PUD, in January 2009 NCPC staff submitted comments to the Chairman of the Zoning Commission regarding building heights, which were under review by the Zoning Commission as part of the District's Zoning Regulations revision effort. The comments clarified staff's position on exterior wall and penthouse setback

requirements. Specifically, the letter states that setbacks for rooftop structures should be provided from all of the following:

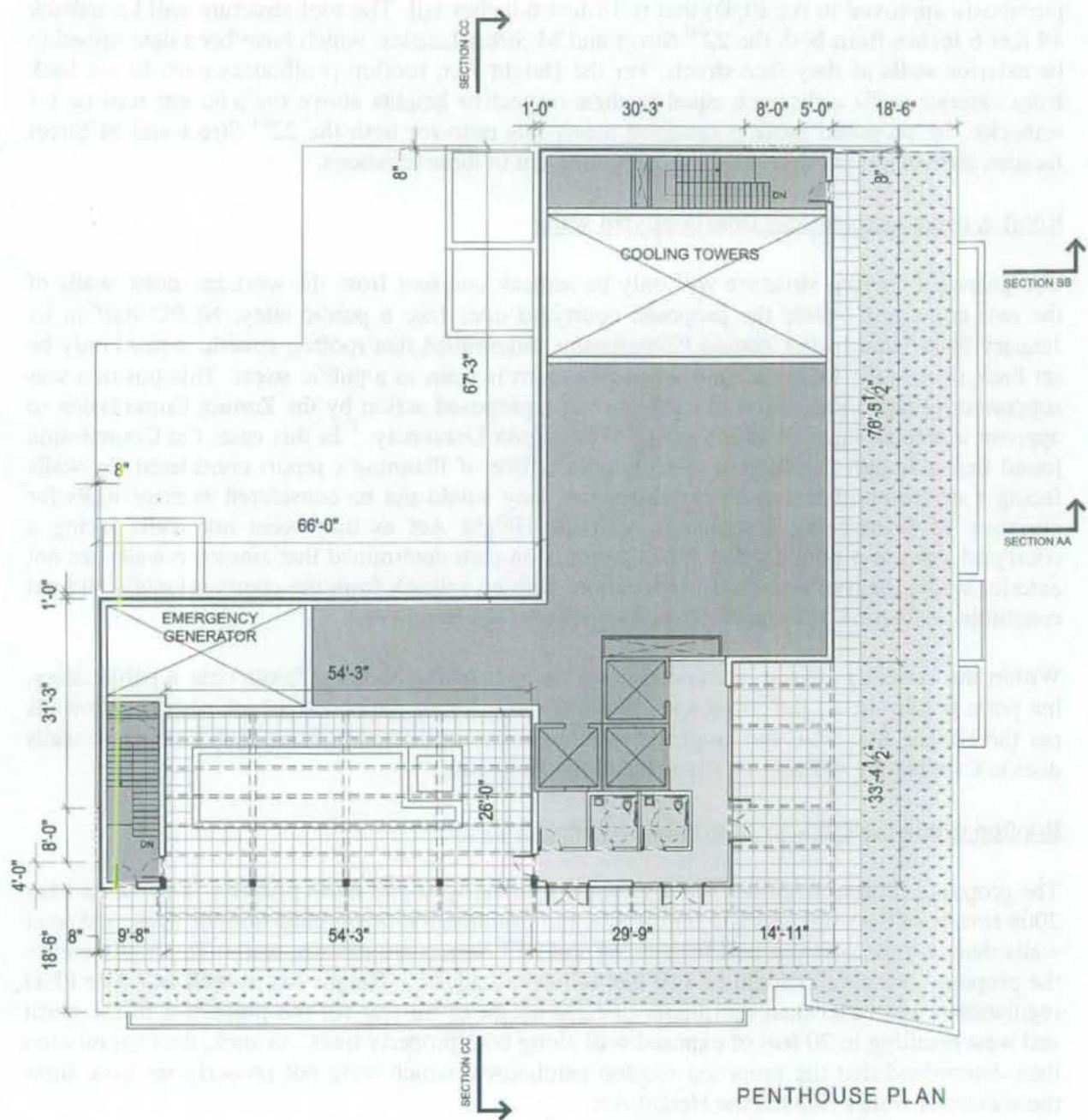
- walls facing streets
- walls facing alleys
- any wall facing a court open to the street
- any wall setback and facing a lot line and any lot line wall built higher than the greater of the neighboring building's actual or matter of right height, which for purposes of NCPC's review of zoning map and text amendments, and PUDs, pertains to the maximum allowable height permitted under the Height Act.

As discussed further below, since submission of these comments to the Zoning Commission, NCPC has taken subsequent actions that reflect staff's position on what constitutes an exterior wall and how this affects determinations as to whether a proposal meets the Height Act's penthouse setback requirement. In reliance upon staff's comments submitted to the Zoning Commission, and subsequent Commission actions, staff now finds that the proposed building complies with the penthouse setback requirements of the Height Act. Staff's analysis is below.



VIEW LOOKING SOUTHWEST

Illustrated view of current proposal (the modification to the previously approved PUD)



Roof plan of the current proposal (the modification to the previously approved PUD) with setback dimensions for rooftop structures

Rooftop penthouse setbacks from streets

As noted above, the Height Act regulates building heights in the District according to the width of the right-of-way on which a building fronts. It establishes the maximum building height for this building at 110 feet, given M Street's or 22nd Street's 90-foot right-of-way. The proposed building height to the roof line is 107 feet. The building will have one roof structure (three were

previously approved in the PUD) that is 18 feet 6 inches tall. The roof structure will be setback 18 feet 6 inches from both the 22nd Street and M Street facades, which have been determined to be exterior walls as they face streets. Per the Height Act, rooftop penthouses must be set back from exterior walls a distance equal to their respective heights above the adjacent roof (a 1:1 setback); the proposed rooftop structure meets this ratio for both the 22nd Street and M Street facades and thus meets this Height Act requirement in these locations.

Rooftop penthouse setbacks from courtyard walls

The proposed rooftop structure will only be setback one-foot from the west and north walls of the rear courtyard. While the proposed courtyard does face a public alley, NCPC staff in its January 2009 letter to the Zoning Commission, determined that rooftop structures need only be set back from walls facing a court when that court is open to a public street. This position was supported by the Commission in its review of a proposed action by the Zoning Commission to approve a second stage PUD at George Washington University.² In this case, the Commission found that although the District of Columbia Office of Planning's report considered the walls facing a closed courtyard to be exterior walls, they would not be considered exterior walls for purposes of determining compliance with the Height Act as they were not walls facing a courtyard open to a public street. The Commission then determined that since the walls are not exterior walls, the rooftop penthouse location, with no setback from the courtyard walls, did not constitute a violation of the setback requirements of the Height Act.

Within the current proposal, the courtyard at the rear of the building fronts onto a public alley, but not a public street, and as such the building walls facing the courtyard are not exterior walls per the Height Act. Thus the proposed rooftop penthouse setback of one-foot from these walls does not violate the setback requirements of the Height Act.

Rooftop penthouse setbacks from adjacent property lines

The proposed rooftop structure is not setback from the west and north property lines. In its May 2008 review of the original PUD for the site, the Commission determined that the north and west walls that abut the adjacent buildings on M and 22nd Streets are exterior walls. This was because the proposed building's height of 110 feet (allowed under the Height Act as well as under PUD regulations) was taller than the matter-of-right height of 90 feet for the properties to the north and west resulting in 20 feet of exposed wall along both property lines. As such, the Commission then determined that the proposed rooftop penthouses, which were not properly set back from these exterior walls, violated the Height Act.

Since this action, NCPC staff in its January 2009 letter to the Zoning Commission determined that setbacks for rooftop structures should be provided for any lot line wall built higher than the greater of the neighboring building's actual or matter-of-right height. This determination, however, is made in the context of the requirements of the Height Act, where buildings may have a greater matter-of-right height under the Height Act than what is currently permitted under the Zoning Regulations as a matter-of-right. Thus, walls of a building built to the maximum height permitted by the Height Act that abut adjacent building walls that are below the maximum height allowed, should not be considered exterior walls when considering rooftop setback requirements

² See NCPC File No. ZC 06-11B/06-12B.

under the Height Act (when the allowable height for both structures under the height act is the same).

This position was supported by the Commission in its February 2009 review of a proposed action by the Zoning Commission to approve a consolidated PUD and map amendment for the Marriott Marquis Hotel at 9th Street NW and Massachusetts Avenue NW.³ In this case, the Commission found that since the maximum allowable height under the Height Act for the property located west of the Marriott Marquis Hotel site is 130 feet, the same maximum height for the Marriott Marquis Hotel site, the wall along the adjoining property line could be considered a party wall and thus the Height Act penthouse setback requirement need not apply.

Within the current proposal, the walls along the property lines of the adjacent properties both north and west of the site can be considered, for their full height, party walls under the Height Act. This is due to the fact that the properties both north and west of the site could be built to the same 110-foot height as the subject property under the Height Act (given M Street's or 22nd Street's 90-foot rights-of-way). Thus, the lack of rooftop penthouse setbacks from these walls does not violate the requirements of the Height Act.

³ See NCPC File No. ZC 08-13.