

9/22/10 Written Statement of Barbara Kahlow
on ZC Case No. 08-06 – Comprehensive Zoning Regulations Review: Uses & Height

I, Barbara Kahlow, live at 800 25th Street, N.W. I am submitting a written statement on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area of Ward 2. The WECA is primarily interested in maintaining and improving the quality of life for the existing residential community in Foggy Bottom-West End.

To date, I have participated in five of the Office of Planning's (OP's) "Comprehensive Zoning Regulations Review" Working Groups: Height, Retail Strategy, Campus/Institutional, PUD, and Administration and Enforcement. On 9/25/08, I testified for the WECA on ZC Case No. 08-06-01, Comprehensive Zoning Regulations Rewrite: Height. I have attached the WECA's 9/25/08 testimony for the current hearing record. Some of the points therein are now moot due to the Zoning Commission's 9/2/10 setdown decision to exclude Height Act provisions from the Zoning Regulations and to, instead, append to the zoning regulations "explicit" Height Act interpretations approved by the Department of Consumer and Regulatory Affairs (DCRA).

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Height

The WECA's comments on the current OP proposal for a new 11 DCMR Chapter 4, Height, are indicated in order of presentation versus importance:

- Height Limit Exceptions, Sec. 403.1(b), p. 18 – Do towers include habitable space? If so, the WECA believes that the height of the tower should be subject to the height limits.
- Height Limit Exceptions, Sec. 403.1(j), p. 19 – The WECA believes that "enclosed recreation space" should be subject to the height limits.
- Height Limit Exceptions, Sec. 403.3, p. 20 – The WECA believes that structures listed in Sec. 403.1 (f) through (k) should not be allowed to rise 20 feet about the roof. This is excessive.
- Height Limit Exceptions, Sec. 403.4, p. 20 – The WECA believes that "Space enclosed by walls" should be subject to the height limits, i.e., allowing 40% of the building's footprint for such space is okay if and only if the added height is subject to the height limits.

In addition, the WECA has concerns about "explicit" interpretations of Federal law (the Height of Buildings Act) by DCRA's Zoning Administrator. We were unable to find explicit legal authority for such an interpretative role by the Zoning Administrator and this DCRA office is understaffed. In fact, for years, zoning enforcement, for which the Zoning Administrator is currently responsible, has not worked satisfactorily. As a consequence, the WECA has needed to file multiple Form 300s ("Complaint of Non-Compliance with BZA/ZC Order") about non-delivery of Planned Unit Development (PUD) amenities which were explicitly stated in zoning Orders and multiple Appeals of Zoning Administrator-issued Certificates of Occupancy (CofOs). Timeliness for resolution of these WECA complaints and appeals has been problematic. Lastly, the Zoning Administrator process does not systematically provide for public input, in contrast to the Zoning Commission's public hearing process and officially recorded testimony of witnesses.

Thank you for your consideration of our views.

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 08-06-01
EXHIBIT NO. 31

ZONING COMMISSION
District of Columbia
CASE NO. 08-06
EXHIBIT NO. 31

9/25/08 Testimony of Barbara Kahlow
on ZC Case No. 08-06-1 – Comprehensive Zoning Regulations Rewrite: Height

I, Barbara Kahlow, live at 800-25th Street, N.W. I am testifying on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area. The WECA is primarily interested in maintaining and improving the quality of life for the existing residential community in Foggy Bottom-West End.

To better understand the impact of today's proposal, if the proposed new height regulations were in place, they would have prevented some of the adverse effects to be imposed on our community by the recently-approved massive development by the George Washington University (GWU) for the site of the former GWU hospital, known as Square 54. On 11/20/06, I testified for the WECA in opposition to GWU's development plan for Square 54 ("Consolidated PUD and Related Map Amendment for Square 54," Case No. 06-27). We raised a host of issues, including about height. On 5/3/07, I updated our testimony before the National Capital Planning Commission (NCPC). Here is a section from our NCPC testimony:

1. Does GWU's application violate the Height of Buildings Act of 1910?

The answer is "yes." It would set a precedent for excessive height off the main avenues of DC¹. Current DC zoning (R-5-D) provides for a maximum height of 90 feet in all parts of Square 54. GWU's Application to the Zoning Commission (5/30/06, pp. 10-11) identified three separate buildings -- one commercial building fronting on Pennsylvania Avenue and Washington Circle and two residential buildings along I Street. Later, GWU asserted that there is only one building, thus allowing the height for all three buildings to be measured from the higher frontage on Pennsylvania Avenue. The National Capital Planning Commission (NCPC) Staff Report (p. 1 ff) determined that there are two buildings (one commercial and one residential). To allow additional height, NCPC staff considered the two residential buildings to front along 23rd Street even though the 12-story residential building in the Southeast corner (along 22nd and I Streets) is separated by a wide courtyard from the separate 12-story residential building in the Southwest corner (along 23rd and I Streets). A look at the documentation shows two separate residential buildings.

GWU's plan was for a 147-foot height composed of 122 feet from the sidewalk with a 25-foot "outdoor room" above the top story in the Southeast corner of 22nd and I Streets. The building at the Southwest corner of 23rd and I Streets has a 125-foot height from the sidewalk. It is unclear if the "outdoor room" is included in the latest revised design. Using its all-one-building logic by using Pennsylvania Avenue as the frontage, GWU says that the Southeast corner height would be 110 rather than 122 feet. The Southwest corner would then be 110 rather than 125 feet. The NCPC Staff Report (p. 5) indicated the maximum allowable height for buildings along 22nd and I Streets is 110 feet and along 23rd Street is 120 feet. Thus, the WECA believes that, to meet the requirements of

¹ At its 3/1/07 decision meeting on the "Consolidated PUD and Map Amendment for the GWU Campus Plan 2006-2025," NCPC's GSA Member asked if any of the proposed PUD sites to be rezoned to C-3 (which allows height up to 130 feet) could be sold for non-GWU uses. The answer provided was inaccurate. In fact, after one of the PUD development sites within the campus boundaries was developed by GWU to 110 feet, it could be sold for non-university use and the new owner could add height to 130 feet as a matter-of-right.

the Height of Buildings Act, the second residential building in the Southeast corner of 22nd and I Street should be no higher than 110 feet and without an “outdoor room.”

With one exception, the buildings around Washington Circle and to its West in the Foggy Bottom-West End residential area are no higher than 90 feet. As one goes around the Washington Circle, the buildings at the North of the Circle include the low-scale, landmarked Schneider’s Triangle townhouses and the 3 Washington Circle Condominium; to the West, the 90-foot GWU hospital; and, to the South, the two 85-foot GWU dorms on I Street. In addition, the WECA requested and GWU committed but failed to present full shadow studies, as normally required both by the DC Board of Zoning Adjustment and DC Zoning Commission in cases impacting issues of residential safety or sufficient air and light. The proposed buildings for Square 54 could significantly block light and air for the residences surrounding Washington Circle, individuals passing through the Circle, and the historic Circle itself.

The Office of Planning’s (OP’s) Height proposal addresses some but not all of the issues raised in our Zoning Commission and NCPC testimonies. **Recommendation 4** would clarify the number of buildings involved since it requires a physical connection on “at least half of the shared floors.” Under Recommendation 4, GWU’s plan would have been determined to have three buildings (one commercial and two residential), as the WECA had argued. The effect would have been a 12-foot reduction in height (from 122 to 110 feet) for the residential building at 22nd and I. So, we strongly support Recommendation 4.

Recommendations 9 and 10 raise problems. **Recommendation 9** would allow roof-top “Amenity features,” including “communal enclosed recreation space,” to exceed the height limit. Therefore, a scaled down version of GWU’s proposed 25-foot high “outdoor room,” if used for recreation purposes, would have been allowable. **Recommendation 10** says “Space enclosed by walls on a roof ... shall not count toward overall building FAR” and may not exceed 20 feet. The WECA believes that “communal enclosed recreation space” should not be allowed to exceed the height limit and, if allowed, should be included in the overall building FAR.

Recommendations 3 also raise problems. **Recommendation 3** defines “Residence street” as containing residential property in a low to moderate density zone or any block with 100% residential use. Much of Foggy Bottom-West End includes mixed use properties, such as those zoned SP-2 and CR. So, under Recommendation 3, blocks with any mixed use properties would be treated as “business streets,” which would allow for more height. Such a determination could adversely change the entire character of a block.

We also have a comment on the unpublished (OP’s 7/10/08 report) text for tonight’s hearing, which is referenced in the hearing notice. We oppose the following amplification of **Recommendation 11**: “permit ... amenity features located entirely within an ornamental feature to be relieved of setback requirements” (p. 32). Lastly, we are encouraged by OP’s statement that “Further study is needed to determine setback requirements that would strike the appropriate balance between allowing some structures atop low and moderate density buildings, specifically rowhouses, and minimizing light, shadow, and visual impacts of those structures” (p. 33). In fact, we recommend that the Commission require shadow studies whenever the community expresses concerns about blocked air and light.

Thank you for your consideration of our views.