A N C – 3 D

Task Force on Zoning Regulations

Committee Members

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December 19, 2002

Ms. Carol J. Mitten, Chair
Zoning Commission for
The District of Columbia
441 4th Street NW, Suite 220
Washington, DC 20001

Dear Ms. Mitten:

On behalf of ANC3D and the members of its appointed task force, we're pleased to forward a series of proposed amendments to Title 11 of the District of Columbia's Municipal Regulations. We believe these changes are needed to slow the drastic effects in the transformation of our neighborhood's character and scale and that of other neighborhoods in the city.

My wife and I moved to the Palisades in 1997. Since then, we have witnessed changes in residential construction that have included many houses built too high on lots too small and thus, have altered the character of the Palisades. In 2000, I was appointed chair of the Palisades Citizens Association's zoning committee. I began my work by reviewing the existing zoning code in order to recognize the underlying causes for such changes.

During the past year, the visual evidence of such change has become irrefutable. We look forward to testifying before the Zoning Commission next month and to working with you to affect a positive outcome on these and other issues in the future.

Sincerely yours,

Alan Z. Aiches

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ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 9

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.9

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

MEMORANDUM

To: The District of Columbia Zoning Commission
Date: 3 December 2002
Subject: Proposed Amendments to the Zoning Regulations

On behalf of Advisory Neighborhood Commission 3D and its task force on zoning, I respectfully propose the following amendments to Title 11 of the District of Columbia Municipal Regulations:

AMENDMENTS

In §199.1 **delete** the following provision regarding the measurement of building height for private residences:

" *... the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet.*"

and also **delete** language in the following paragraph reading:

" *... the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.*"

and **replace** with:

In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building shall be measured from the natural grade level at the middle of the front of the building to the highest point of the roof or parapet; except the height of a building on a corner lot fronting two (2) or more streets shall be measured from the natural grade at the middle of the building side having the lowest elevation to the highest point of the roof or parapet.

In §400.3 **delete** *"in excess of that"* on the first line and **insert** *"not to exceed eight (8) feet and the floor area square footage (exterior footprint) shall not exceed 35 square feet"* so the new paragraph reads:

A spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment, or an antenna may be erected to a height not to exceed eight (8) feet and the floor area square footage (exterior footprint) shall not exceed 35 square feet which this section otherwise authorizes in the district in which it is located.

and add a new definition in §199.1 to read:

Natural Grade the undisturbed ground level formed without human intervention or, where the undisturbed ground level cannot be ascertained because of an existing building or structure, the undisturbed existing grade.

EXPLANATION

These amendments combine features from both regulations by using grade level rather than curb and the "highest point of the roof" rather than the "ceiling of the top story."

By changing "finished grade level" to "natural grade level" architects and contractors will be restricted from artificially mounding landscape to create unnatural height for constructing a residence building.

Because of the possibility that developers may select the highest grade on corner lots to designate the building "front" for purposes of measuring height, this amendment would require that the measurement from the lower side would prevail in all cases.

The current DCMR §400.2 provides that building height limits may be exceeded for architectural embellishments, and §400.3 lists examples. Therefore, there are no height limits placed on towers, domes, etc., and contractors have used this provision to increase the overall building height. Sometimes towers and domes have extended 10-20 feet above the normal roofline making a mockery of building height limitations. This amendment limits embellishments to 8 feet and proscribes that the floor area square footage of the embellishment shall not exceed 35 square feet so that there is no question that these spaces be considered uninhabitable.

BACKGROUND

Rules regarding building height are designed to protect the character of the various neighborhoods in the District of Columbia, prevent overcrowding of land, and provide adequate light and air.

Too often zoning officers approve permits for building structures that far exceed the height limit envisioned in the DCMR. Generous interpretations have allowed some contractors to "mound up" the grade to achieve even greater height, thereby dwarfing neighbors, cutting off sunlight and airflow.

Section 400.1 mandates a residence building shall not exceed 40 feet in height and 3 stories tall in districts R-1 through R-5-A. §199.1 provides that the vertical distance shall be "measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet." In those districts in which the height of the building is limited to forty feet, there is an exception that provides the measurement may be from the finished grade level at the middle of the front of the building to the ceiling of the top story. [Emphasis added.]

Although the mandatory "shall" should prevail unless the government has good and sufficient reason to use the less restrictive and discretionary "may" exception, the zoning authority consistently and uniformly applies the latter as a matter of rule. This has resulted in the fact that there is no building height requirement for private residences! This is true because there is not a limit on height above the ceiling of the top story, and it could extend beyond that five, ten, fifteen feet, or more.

The only recourse citizens have to correct this anomaly is through an amendment to the Zoning Regulations that must become enforceable. Otherwise, citizens are left to fight the developers as construction continues. This often happens when inspectors have not had time to re-inspect and confirm compliance. In cases where construction has been completed, inspectors have been reluctant to enforce the code, leaving buildings in non-compliance for years at a time.

JUSTIFICATION

If it were the intent of the regulation drafters of §199.1 to measure in all circumstances from grade to the top ceiling they would not have written, "curb to the highest point of the roof or parapet." It seems clear the Zoning Commission created an alternative "may" to accommodate special considerations such as construction on hills or depressions where curb measurement would be unfair for steeply slopped sites.

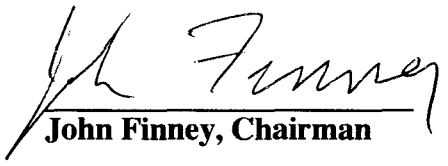
It is instructive that measurements to the "highest point of the roof or parapet" prevail in all other cases, including buildings limited to 60 feet in height, those limited to 90 feet in height, and buildings removed from all lot lines by a distance equal to its proposed height. Additionally, the height of an accessory building is measured to the "highest point of the roof," (§2500.7) and provisions in the National Observatory Precinct District call for measurement to the "highest point of the roof or parapet." (§1534.2) Only in other districts where buildings are limited to forty feet are the measurements made as a matter of rule to the ceiling of the top story.

Looking at other jurisdictions for guidance, the following measure vertical distance to the highest point of the roof with some variations for mansard, gable, or gambrel roofs but none to the ceiling of the top story:

Montgomery County, Maryland
Prince William County, Virginia
Fairfax County, Virginia
Arlington County, Virginia
Philadelphia, Pennsylvania
Toledo, Ohio
Albuquerque, New Mexico

It should be noted that many of these jurisdictions limit a residence building to a height of 35 feet rather than the 40 feet in the District of Columbia. We are willing to offer a separate zoning amendment to the regulations in order to limit the single family and duplex residential building height, and that it shall not exceed 35 feet. This would be more in keeping with the long existing character of the earlier housing stock in older neighborhoods that already exists within the District of Columbia.

The commissioners of ANC3D recommend approval of these amendments to 11DCMR.



John Finney, Chairman

ANC3D Task Force on Zoning

Alan Z. Aiches, Chair
Bill Timmons
George Watson
John Finney, ex-officio