ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA
CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS
MCLEAN GARDENS • WOODLEY PARK

Single Member District Commissioners
01-Cheryl A. Opacinch; 02-Kurt Vorndran; 03-Robert Martin (Secretary)
04-Richard C. Bartel (Vice Chair); 05-John Welsh; 06-(vacant)
07-Lars Hydle (Treasurer); 08-Rosalyn P. Doggett; 09-Nancy MacWood (Chair)

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January 7, 2003

Ms. Carol Mitten
Chair, Zoning Commission
DC Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001

Dear Chair Mitten,

At the regular December meeting of Advisory Neighborhood Commission 3C, at which a quorum was present, the commission considered proposed text amendments to amend zoning law to provide uniform methodology for measuring the height of new structures in residential zones. This is an issue that has periodically caused controversy in our ANC area and we are strongly supportive of the Zoning Commission's efforts to clarify the law. On motion of the Chair, the ANC 3C voted (7-0, with one abstention) to endorse the language proposed and submitted to the Zoning Commission by ANC 3D and its Chair John Finney.

We appreciate the opportunity to present our views to you.

Sincerely,

ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 10

Nancy J. MacWood
Chair, ANC 3C

Cc: John Finney

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.10

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ANC3C RESOLUTION 2002-047

ANC 3C endorses the language crafted by ANC 3D proposing 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

be from the finished grade level at the middle of the front of the building to the ceiling of the top story.

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

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

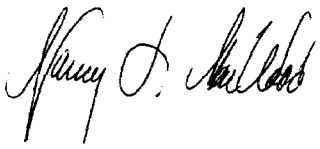
Rules regarding building height are designed to protect the character of the various neighborhoods in the District of Columbia, prevent overcrowding of land, and provide adequate light and air.

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.

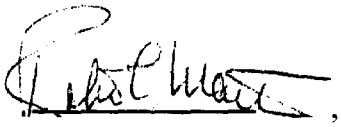
Section 400.1 mandates a residence building shall not exceed 40 feet in height and 3 stories tall in districts R-1 through R-5-A. 199.1 provides that the vertical distance shall be "measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or 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

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.

Attested by , Chair, on Dec. 16, 2002

Nancy MacWood Date

Attested by , Secretary, on Dec. 16, 2002

Robert Martin Date