Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 02-35

As Secretary to the Zoning Commission, I herby certify that on OCT 3 1 2003 copies of this Z.C. Notice of Final Rulemaking & Order No. 02-35 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. ANC Chairpersons (see attached list)
3. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
4. All Councilmembers (see attached list)
5. Office of Planning (Ellen McCarthy)
6. Ken Laden, DDOT
7. Zoning Administrator
8. Corporation Counsel (Alan Bergstein)

ATTESTED BY: _____
Alberto P. Bastida, AICP
Secretary to the Zoning Commission

ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 37

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.37

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 02-35
Z.C. Case No. 02-35
(Text Amendment – 11 DCMR)
(Definitions of Building Height and Natural Grade)

October 20, 2003

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1, hereby gives notice of the adoption of the following amendment to § 199 (Definitions) of the Zoning Regulations, Title 11 DCMR, to clarify the measuring point for building height for buildings fronting a bridge or viaduct. The Commission took final action to adopt the amendments at a public meeting held on October 20, 2003.

This final rulemaking is effective upon publication in the *D.C. Register*.

The Commission initiated this rulemaking in response to recommendations of the D.C. Office of Planning ("OP"). OP's recommendation was to clarify and reaffirm that the intent of the Zoning Regulations was to measure the height of buildings from the ground, and not from an artificially created measuring point, in determining their allowable height.

OP's recommendation was offered in light of an issue raised in the Station Place Planned Unit Development ("PUD"), Zoning Commission Case No. 01-09. The applicant in that case proposed that, when calculating the allowable building height for its project, the measuring point should be the adjacent H Street, N.E., overpass. It based this conclusion on the first paragraph of the current definition for "Building, height of". That paragraph defines height of building, in relevant part, as: "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."

Description of Text Amendment

In its report dated August 8, 2003, OP proposed that the term "curb" be clarified by adding the following sentences to the above-referenced paragraph: "The term curb shall refer to a curb at

grade. In the case of property fronting on a street that is elevated above grade, the height of the building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet." This language was published in the Notice of Hearing for this case. However, in a memorandum dated March 7, 2003, OP recommended substituting the language "on a bridge or viaduct" for the language "on a street that it elevated above grade," in order to provide further clarity. This change was adopted[1] by the Commission in the Notice of Proposed Rulemaking and remains in this final notice.

In its August report, OP also stated that if the Commission determined that the term "natural grade", as used above, needed clarifying, it suggested defining "natural grade" as "the undisturbed level formed without human intervention or, where the undisturbed ground level cannot be determined because of an existing building or structure, the undisturbed existing grade." This language was included in the hearing notice and proposed rulemaking and has not been changed in this notice.

As recognized by OP in its report dated August 8, 2003, building heights are regulated by zoning controls for many reasons, including fire safety and urban design considerations. In the Lewis Report (*A New Zoning Plan for the District of Columbia*, Harold M. Lewis, November 9, 1956, the basis for the current Zoning Regulations), building height limitations were introduced into the Zoning Regulations to further the Federal Interest in the control of building height, provide compatibility with residential development, provide adequate light and air, and to reduce traffic congestion through control of bulk and density.

Prior to this rulemaking, inconsistent interpretations of the building height measuring point have created matter-of-right developments that do not fit in the character of their zoning district. Therefore, OP concluded, the measurement of building height from a point that is artificially raised is neither an equitable interpretation nor one that protects the physical character of the District.

Relationship to the Comprehensive Plan

The proposed text amendment is not inconsistent with the objectives of the Comprehensive Plan. Specifically, § 1703.1(u) of 10 DCMR recommends that buildings not be measured from the H Street Overpass. Other relevant objectives can be found in the Urban Design Element of the District Elements of the Comprehensive Plan. Subsection 707.2 recommends, among other policies, that the District maintain and enhance the horizontal character of buildings within the District to protect the skyline. Also, § 708 states that its objective is, "to encourage developments which respond to the horizontal skyline of the District so as to maintain its low-scale image and contribute to the enhancement of the District's character." The amendment is also consistent with § 804.1(k) of the Historic Preservation Element of the Comprehensive Plan, which seeks to protect and enhance the horizontal skyline to preserve the character of the District. Allowing construction next to bridges and viaducts to exceed the height of other

[1] The word "on," however, was not included, as the Commission felt it was not necessary.

construction nearby would create anomalies in the skyline and would therefore be inconsistent with these policies.

Public Hearing

A Notice of Public Hearing containing the proposed amendment and setting a hearing date for March 17, 2003, was published in the *D.C. Register* on January 24, 2003, at 50 DCR 748. The Commission held a public hearing on the date advertised.

Representatives from ANC 3D, ANC 6C, The Committee of 100, the Wesley Heights Historical Society, and the Forest Hills Citizens Association testified in support of the amendment.

Whayne Quin, Esquire, of the law firm of Holland and Knight, representing the Akridge Companies, testified in support of the amendment, but suggested that the definition be reworded to measure from the greater of heights rather than the lesser of heights. Additionally, he suggested that the definition of "natural grade" be modified to add "where the undisturbed ground level can be ascertained, or the undisturbed existing grade" instead of "where the undisturbed ground level cannot be determined because of an existing building or structure, the undisturbed existing grade."

Chris Collins, Esquire, also of the law firm of Holland and Knight, representing Republic Properties, testified in opposition of the originally advertised text, but in support of the change from "street elevated above grade" to "bridge or viaduct."

Harriet B. Hubbard, citizen, testified in opposition, because she felt the entire definition should be looked at comprehensively.

Proposed Rulemaking

The Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regularly-scheduled monthly meeting on April 14, 2003, to approve the proposed amendments. A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 4, 2003, at 50 DCR 5336, for a 30-day notice and comment period.

The Commission received numerous comments regarding this rulemaking, most of which expressed support for the proposal. Many comments were also directed at issues involving building height that were not relevant to this rulemaking, but may be revisited by the Commission in the near future.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated August 6, 2003, found that the proposed text amendment will neither adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Also, the Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

Final Rulemaking

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

The Commission therefore took final action to adopt the rulemaking at its regularly scheduled public meeting on October 20, 2003. No substantive changes have been made to the text of the proposed rulemaking.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 1 of the Zoning Regulations, Title 11 DCMR.

Title 11, Zoning Regulations, § 199, DEFINITIONS, § 199.1 is amended as follows:

1) The definition "Building, height of" is amended by inserting the following text after the first sentence:

> The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.

2) A new definition, "natural grade," is added to read as follows:

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

Vote of the Zoning Commission taken at its public meeting on April 14, 2003, to **APPROVE** the proposed rulemaking: **4-0-1** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, and James H. Hannaham, to approve, Peter G. May abstaining by absentee ballot).

This Final Rulemaking and Order were **ADOPTED** by the Zoning Commission at its public meeting on October 20, 2003, by a vote of **4-0-1** (Anthony J. Hood, Carol J. Mitten, and Peter G. May to adopt; John G. Parsons to adopt by absentee ballot; James H. Hannaham, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on NOV - 7 2003.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 02-35
Z.C. Case No. 02-35
(Text and Map Amendments – 11 DCMR)
(Definition of Building Height and Natural Grade)

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.