

**Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D**

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September 30, 2008

Mr. Anthony Hood
Chair
Zoning Commission
of the District of Columbia
441 4th Street, NW, Suite 220
Washington, DC 20001

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2008 OCT - 1 PM 2:51

Re: Case No. 08-06-1 (Comprehensive Zoning Regulations Rewrite: Height)

Dear Chairman Hood:

At the public hearing on September 25, one of the points made in my testimony focused on "Measuring a Building," and, stated that no maximum height restriction currently exists for buildings in the 40' zone districts. Commissioner Peter May asked me to "explain why that is a problem?"

Title 11, §199 Definitions notes the following under "Building, height of – 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...In those districts in which the height of buildings is limited to forty feet (40 ft.), 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."

Then, Title 11, § 401, Height of Buildings or Structures, states that the maximum height in the R-1-A through the R-5-A district is limited to 40". This statement provides a definitive height – 40 feet, but the "may be measured" found in § 199 indicates the height of the roof is not included in the measurement.

The permissive use of "may" has encouraged builders to construct taller roofs on bigger houses to accommodate another story once the plumbing and electrical inspectors have left the premises of a new home or a renovation. In comes the drywaller to finish off the area between the ceiling of what appears to be the top story and the roof. The new vertical distance from the finished grade level at the middle of the front of the building to the ceiling of the top story is most likely at 48 feet or above; and, a fourth story has been created. Excessive height and bulk are precisely what the zoning code intends to prevent when addressing low density residential zones. Lot sizes and lot occupancy further clarify "low density" for those residential zones.

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If examples of a fourth story creation are important, I draw the Commission's attention to a group of four houses in the 5500 block of MacArthur Boulevard, Square 1445, lots 0064, 0065, 0067 and 0068. All have high roofs and artificial mounding at the front.

Mr. May also noted that the 40' limit to the top of the roof "would cause the creation of flat roofed buildings." This argument loses validity when three twelve foot stories would only reach a height of 36 feet.

For the purposes of this discussion, there are two problematic points regarding measurement found in § 401, specifically "may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story."

1) "Finished grade" has led to artificial mounding at the front of the building thus creating additional height. This practice appears to be addressed in the new definitions through the introduction of the term "natural grade."

2) "May be measured to the ceiling of the top story" has led to the creation of a fourth story in homes with tall roofs and the ability to finish off another story (out of sight) under the roof.

Artificial mounding and tall roofs are changing the character and definition of low density neighborhoods. While "low," in and of itself, does not regulate the height of buildings, it does imply that there is a limit; and, that limit is being exceeded because measurement is to the ceiling of the top floor rather than the top of the roof. As new developments fill in open space throughout the city it is critical that developers respect the character of established neighborhoods and the intent of low density. It is also critical that the Zoning Commission provide a definition in the new zoning code that clearly defines low density so it is no longer left open to creative interpretation and hidden interior stories where only three are allowed.

Sincerely,



Alma H. Gates
Chair, Zoning Committee

Enclosures

List of Enclosures:

- 1) Testimony presented on September 25, 2008, including a report from ANC 3D's Zoning Committee.**
- 2) Exhibit 1: 5524.5 MacArthur Boulevard (rear) showing a fourth story. The front porch of 5524 is shown with a flag. The deck to the right of the photo is in an adjacent side yard and the roof line of that property is also shown. The front of the adjacent property is shown in Exhibit 3.**
- 3) Exhibit 2: 5524 MacArthur Boulevard (rear) showing a fourth story.**
- 4) Exhibit 3: 5524.5 MacArthur Boulevard (front) showing relationship to surrounding building stock and additional height gained through artificial mounding at the front of the property.**
- 5) Exhibit 4. 5526 MacArthur Boulevard (side) showing height of roof line in comparison to adjacent property.**

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September 25, 2007
Testimony of Advisory Neighborhood Commission 3D

The Land Use Element of the Rock Creek West Planning Area notes that residential uses represent the largest land use within the area. It goes on to note that 80 percent of the residential use is for single family detached homes.

The Plan also cites the necessity to “[P]rotect and conserve the District’s stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale. (*Policy LU-2.1.5: Conservation of Single Family Neighborhoods*) 309.10h

ANC 3D includes many well known residential developments within the study area – Spring Valley, Wesley Heights, Berkeley and Foxhall Village to name a few. What makes these developments distinctive is their uniformity with regard to design, massing, lot size, setbacks and height. More recent developments, like Phillips Park, and individual infill houses, do not possess the same height uniformity and often push limits through creative roof treatments that provide additional height and space for residential properties while casting unwanted shadows on neighboring properties.

The height of residential buildings and the point from which height is measured have been long-term concerns and in 2006 ANC 3D sent the Zoning Commission proposed Amendments to the Zoning Regulations. In this latest round of rewrites, ANC 3D participated in the work group on Height and is pleased to furnish the Zoning Commission with a report from its Zoning Committee which was approved by a vote of 6-0-0 at the September meeting.

The first point I want to address in my five minutes is found on page 17 of OP’s September 15 Memorandum, Section IV.B *Measuring a Building*. Here is an opportunity for the Zoning Commission to bring clarity and consistency in measurement for residential zones where limits are set at 40’ – **to the highest point of the roof rather than to the ceiling of the top floor**. Currently there is no maximum height restriction for a house in the 40’ district since there could be unlimited building above the top ceiling. In all other categories (garages, accessory buildings, 60’ and 90’ districts and even 40’ buildings that face a bridge or viaduct) measurement is made to the highest point of the roof or parapet. This inconsistency does not protect the physical character of neighborhoods. ANC 3D would suggest that the regulations followed in Montgomery County, Fairfax County and Arlington County be reviewed, as they measure vertical distance to the highest point of the roof and none measures to the ceiling of the top story.

As more modest homes are torn down and replaced with larger homes concern has grown about *mansionization* throughout established neighborhoods. As a result, communities like the Palisades have expressed interest in the “conservation district” concept that

would preserve neighborhood identity. This concern could be alleviated further by establishing a “top of the roof” height limit for residential zone districts.

A second point of concern, “natural grade,” is found under Section IV.B.3 on page 22 of the OP Memorandum. For too long, developers have mounded up the earth at the front of houses and ended up with a roof line in the clouds. Approval of the intent of the recommendation on natural grade coupled with consistency in the height limits of residential buildings in the 40’ category will help create or maintain a more consistent streetscape in residential zone districts.

The following policy found in the Rock Creek West section of the Plan (*Policy RCW-1.1.1: Neighborhood Conservation*) further supports the findings of ANC 3D’s Zoning Committee:

“Protect the low density, stable residential neighborhoods west of Rock Creek Park and recognize the contribution they make to the character, economy, and fiscal stability of the District of Columbia. Future development in both residential and commercial areas must be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods.” 2308.2

On behalf of ANC 3D, I respectfully request the Zoning Commission read the entire report of the Zoning Committee which is attached.

d) The measuring point of a “through” infill building is not sufficiently addressed in terms of height on the exposed faces of the building relative to existing buildings and the height should be stepped back to transition to lower neighboring heights.

e) A commercial building draws its height from the width of a surrounding street, while under the zoning regulations a residential building draws its height from the midpoint at its front. Further clarification is needed regarding the definition of the term “measuring point.”

f) The committee strongly advocates for consistency in measurement for residential properties to the highest point of the roof rather than to the ceiling of the top floor. Currently there is no maximum height restriction for a house in the 40' district since there could be unlimited building above the top ceiling. All other categories (garages, accessory buildings, 60' & 90' districts, the National Observatory Precinct District, and even 40' buildings that face a bridge or viaduct) measurement is made to the highest point of the roof or parapet. The measuring point for residential properties is inconsistent, inequitable, and does not protect the physical character of neighborhoods to measure some properties to the ceiling of the top floor and others to the highest point of the roof or parapet. [It is worth noting that Montgomery County, Fairfax County, Arlington County, and many other jurisdictions measure vertical distance to the highest point of the roof, and none measures to the ceiling of the top story. Additionally, many jurisdictions limit a residence building to a height of 35 feet rather than the 40 feet in the District of Columbia.]

g) The committee supports the findings outlined in the July 11 Memorandum, “NCPC Staff Comments on the Office of Planning’s Recommendations Regarding Measurement and Regulation of Height.”

h) Definitions: The committee noted the need for clarification of some terms and the need to address terms not listed in the OP Recommendations.

Building. The definition is cumbersome and may not be relevant for residential uses.

Measuring point. The recommendations in OP’s Memo needs clarification with regard to the type of property addressed.

Natural Elevation. The recommendation needs clarification with regard to the type of property addressed.

Not addressed but necessary when considering residential buildings: Attic, Loft, Basement, Cellar, Story, Story, top, and mezzanines.

Advisory Neighborhood Commission 3D
Zoning Committee Report:
August 12, 2008

Present: Ann Haas, Ann Heuer, Alma Gates, Bill Timmons, Rachel Thompson, Don Velsey AIA, George Watson, Bill Crews, Nancy MacWood. Absent: Alan Aiches

The committee reviewed the proposed policy recommendations presented in the "Notice of Public Hearing on the Comprehensive Zoning Regulations Rewrite: Height," that will be discussed at the September 25, 2008 Zoning Commission hearing. A copy of the notice and recommendations is attached.

The committee acknowledged the extensive work done by the Office of Planning (OP) staff, the work group and Zoning Task Force. It was felt more attention should be paid to residential zone districts in the height recommendations.

After reviewing the proposed recommendations, the committee found it would be more appropriate for ANC 3D to take a very general approach in its report to the Zoning Commission (ZC) rather than attempt to change specific language in the recommendations. The committee discussed their complexity and decided that it would be very difficult to properly convey its findings in a limited amount of time at the September ANC meeting.

Therefore, the following general comments are submitted for ANC 3D consideration.

- a) The use of the word "building" needs clarification in the recommendations. Building is used interchangeably to mean both "residential" and "business/commercial." In some cases it is unclear whether specific recommendations pertain to residential or business buildings. For example, it is unclear to which buildings the term "natural grade" refers.
- b) The term "street" does not determine the zoning for a district but the category of street establishes the maximum height allowable under any zone category. Mixing residential and commercial properties under the Height Act is a very slippery slope. For example, in the case of a PUD application where property is upzoned from R-4 to C-2-B the density may not change significantly but the use does change. This fairly benign zoning change would result in residential buildings on a street that could be defined as a commercial street. Were this to happen, it would allow OP to go to the Zoning Commission and advocate for a map amendment because "this is a commercial street and greater height is allowed here under the Height Act."
- c) Transition areas (between residential and business/commercial) need to ensure height, massing and set backs are consistent with the character of surrounding districts. In order to do this, the zoning regulations should set stricter limits than the Height Act and require transition heights when any side of a commercial building adjoins residential zones.

Exhibit 1

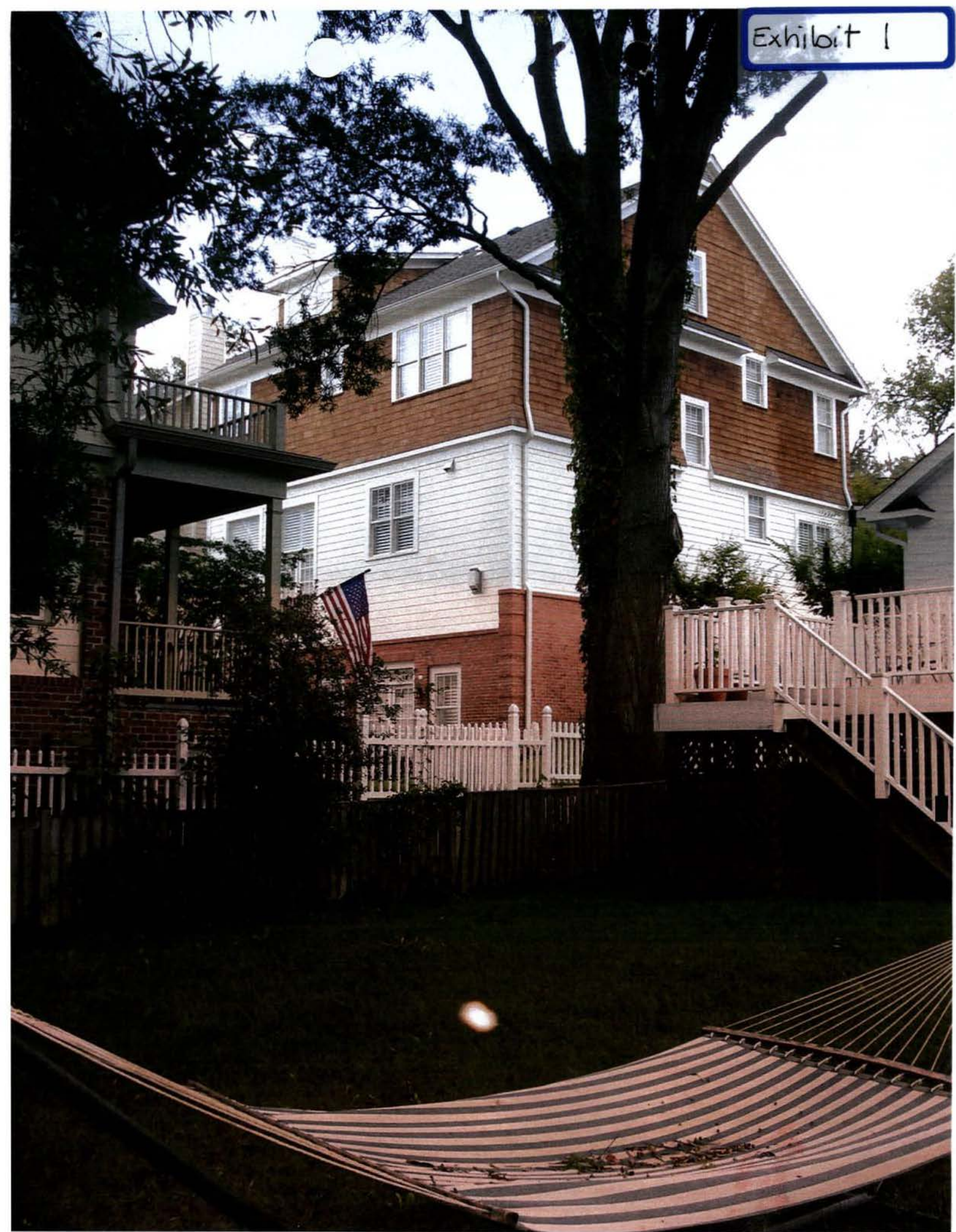


Exhibit Z



Exhibit 3



Exhibit 4

