

MEMORANDUM TO: Zoning Commission for the District of Columbia

FROM: Ann Hughes Hargrove
Kalorama Citizens Association Zoning
and Historic Preservation Chair

SUBJECT: Supplemental comments on
Case No. 08-06-1 (Comprehensive Zoning Rewrite: Height)

DATE: October 7, 2008

These comments supplementing our written testimony submitted on September 25 address three of the recommendations proposed in the Commission's published notice, as follows:

1. "Amenity features" as allowable roof structures under the Height Act.

Recommendation 9 states:

The following features may exceed the limitations on height set forth in this title, subject to the provisions of this section:

(a) Ornamental features limited to spires, towers domes, pinnacles, and minarets, that are aesthetic, primarily vertical elements of a building, even if also enclosing or screening utilitarian or amenity features;

(b) Utilitarian features including, but not limited to, mechanical equipment, safety railings, stairwell access, elevator penthouses, and building components or appurtenances dedicated to the environmental sustainability of the building; and

(c) Amenity features such as structures accessory to communal outdoor recreation space, communal pergolas, communal enclosed recreation space, and structures limited to providing individual unit access to private, unenclosed space atop a roof.

No enclosed structures for human habitation shall be constructed above the limit of a building's roof height unless otherwise authorized by District law or regulation.

At pp. 7-8 of our written testimony we set out the reasons why so-called "amenity features" are not allowable under the Height Act. The Commission should take note of the fact that this question has been explicitly addressed and decided by the Board of Zoning Adjustment, in BZA Appeal No 17109, November 8, 2005 (Appeal of Kalorama Citizens Association). In that case the owner had constructed a roof deck that extended above the Height Act limit. The Board decided that the deck violated the Height Act (it was thereupon

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dismantled and constructed at an elevation at only the railing extended above the Height Act limit). No appeal was taken from this element in the Board's order, which was appealed on other grounds. Pursuant to this BZA decision, regarding so unobtrusive a roof top structure as a deck extending perhaps a foot beyond the Act's height limit, it is clear that the Act would not allow the veritable cornucopia of "amenity features" protruding as much as 20 feet above the Act's height limit that are envisaged by Recommendation 9.

2. What approach to determining when roof structure setback is required would be consistent with the Height Act?

Recommendation 11 states, in part:

Utilitarian and amenity features shall be set back a distance at least equal to their height above the adjacent roof from (a) any exterior wall; (b) a wall that is set back from and facing a lot line; and (c) any lot line wall built higher than the greater of the neighboring building's actual height or matter-of-right height.

....

Recommendation 12 states:

An exterior wall is any wall facing a public street, alley, or any area dedicated to the District for the public use of pedestrians or vehicles.

When roof structures are required to be set back from the outer perimeter of a building is determined, in the Height Act, solely by the requirement that they be set back for "exterior walls". At present the Zoning Regulations carry forward this requirement simply by providing that roof structures be set back from "all exterior walls". The current Recommendations assume that it is necessary and appropriate to provide an explicit definition of "exterior wall", and we have set out at pp. 9-10 of our written testimony the reasons why we believe the particular definition proposed is inconsistent with the Height Act.

In fact we see no reason why any definition of "exterior wall" is required. During the extensive examination of this question by the Commission and the NCPC that led to Zoning Order No. 476, Case No., 84-10 (1986), attention was focused not on defining "exterior wall" but in stating a setback requirement that would be consistent with the Height Act's criterion. To that end, the Commission at one point put forward a proposal that setback be required from "the perimeter of the roof" – a position favored also by the NCPC. A careful examination of the record of that case suggests that the Commission believed that that setback requirement was implied in its adoption ultimately of the requirement that setback be required from "all exterior walls".¹ So understood, the present Zoning Regulations are quite consistent with the Act. Supplementing that requirement with a provision explicitly requiring setback from the perimeter of the roof would be a useful addition, making that consistency explicit.

¹ Please see Attachment 1 to our September 25 testimony, pp. 2-3.

3. Setback from lot line or party walls: What's wrong with requiring setback from a lot line wall only when it is higher than the actual or matter-of-right height of the neighboring wall (Recommendation 11)?

In the course of the September 25 hearing, we understood Commissioner May to express misgivings – rightly, in our view-- about the inclusion of “matter-of-right height” in this Recommendation. The first thing wrong with this is that one cannot imagine that the Height Act drafters would have had in mind that the setback requirements for building A would depend on the vagaries of the future intent of the owner of building B. Beyond this, such a provision is out of touch with the reality of a city such as Washington with its vast expanses of attached buildings built below their Height Act limit in neighborhoods that are long established and stable and in which the percentage of buildings likely to be extended upward remains relatively low. The result can be, and has been, severely obtrusive roofs structures in row house neighborhoods, which in point of practical effect will likely remain for many decades to come. The visual impact is magnified in row houses because of the greater height and mass of the roof structure in proportion to the building than would be the case in a large commercial or apartment building. If this portion of Recommendation 11 survives, the reference to matter-of-right height should be struck, and Comprehensive Plan LU 12.1.B – which was intended to correct problems such as those just described -- should be straightforwardly implemented.