

October 10, 2008

VIA HAND DELIVERY

D.C. Zoning Commission
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D.C. OFFICE OF ZONING
2008 OCT 10 PM 2:56

Re: Case No. 08-06-1
Zoning Review Process - Height

Dear Members of the Commission:

We have had further discussions with the Office of Planning (OP) concerning the proposed concepts for the regulation of height under the Zoning Regulations. We continue to believe that the Zoning Commission should be looking at these issues to determine what is appropriate for provisions of the *Zoning Regulations* and that this *should not* be an exercise to interpret, define or otherwise implement the *Act of 1910*. The Act and the Regulations are two different schemes for regulating height, the former based on the width of streets and the latter based on the establishment of height appropriate for each of the zone districts. The Act of 1910 exists separate and apart from the Regulations, and one must comply with both.

With respect to the twelve recommendations set forth in the OP report dated September 15, 2008, and as presented by OP at the hearing on September 25, 2008:

- **Recommendation #1 – frontage on multiple streets:** We support the recommendations of OP that any street which abuts a property line may be used to determine the maximum height and that there should be no requirement for the presence of an entrance to designate a building front or face.
- **Recommendation #2: - buildings confronting Federal reservations or open space:** We support retention of the current interpretation of the Act which allows the street width to be taken from the edge of the street abutting the subject property full across the reservation or open space to the opposite edge of the street on the other side (as described by the Court of Appeals in *Techworld Development v. D.C. Preservation League* (648 F. Supp. 106 (D.D.C., 1986, at 121)). As noted on OP's Figure 1 of the September 15, 2008, report, this would include the width of Street "A" plus the width of the reservation or open space plus the width of Street "D."
- **Recommendation #3 – residence and business streets:** We believe that the clear, easily-understood language of Section 2511.1 of the Zoning Regulations should be retained, i.e., that a residence street is and should remain any portion of a street that is

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within a Residential District (as set forth in the current Chapter 3 of the Regulations) and that a business street is any portion of a street that is within any other district. We believe that this determination should continue to be made on a building by building basis rather than on a block front basis.

- **Recommendation #4 – single vs. multiple buildings:** We recommend that the definition of building be revised to state positively what makes portions of a building a single building, as opposed to the present language which states what does not make a single building. We propose that the revised definition read as follows:

"Building – a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. ~~The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.~~ The existence of a connection at or above the level of the main floor enabling persons to pass from a common area in one portion of an otherwise separate building to a common area in another portion of an otherwise separate building shall be construed to make the structure one building. Such a connection may be through an interior doorway or an enclosed connection between the portions of the building, except that where enclosing the connection creates a barrier for vehicular or pedestrian circulation, the connection may be covered with a solid roof but need not be enclosed." (deleted language struck through, added language underlined)

- **Recommendation #5 – location of bottom measuring point:** We support the recommendation of OP (Option 2) to continue the existing practice of allowing height to be measured from a street that is not the same street used for the purposes of determining the maximum height under the Act based on the width of the street.
- **Recommendation #6 – elevation of bottom measuring point:** We have no objection to either leaving the measuring point as currently defined (the level of the curb opposite the middle of the front of the building) or changing it as recommended by OP (elevation determined by level of curb plus gradient of 2% up to a maximum of 12 inches).
- **Recommendation #7 – natural grade:** We support revising the recommendation of OP regarding its definition of natural grade to make it clear that projects which are built on elevated streets (e.g., the Portals, L'Enfant Plaza) may measure from the curb of the street and not the lower point of grade below the elevated street. The revised definition would read as follows:

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"The "natural elevation" or "natural grade" of a property is the ground elevation that existed prior to the issuance of the first special or building permit, including a raze permit, needed to begin the construction of the building for which a height measurement is being made. Where natural elevation is interrupted by a bridge, ~~viaduct, ramp, abutment, tunnel or other type of artificial elevation, the height of a building will not be measured from the human constructed elevation, but will be measured from either a street frontage not affected by the artificial elevation or from a level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation.~~ or viaduct, the height of a building will be measured from the logical continuation of the surrounding street grid, provided that where a building fronts on an elevated street that is constructed as part of the project, the height may be measured from the level of the curb of the elevated street." (deleted language struck through, added language underlined)

- **Recommendation #8 – top measuring point:** We support the recommendation of OP, to measure the height to the top of the roof including any parapet or exterior walls and to exclude parapets up to four feet in height if not in conflict with the Act.
- **Recommendation #9 – structures permitted atop a roof:** We support the recommendation of OP, to classify roof structures as either ornamental, utilitarian or amenity features.
- **Recommendation #10 – height, width and massing of structures atop a roof:** We support the recommendations of OP to (1) eliminate the requirements for a single enclosure, vertical walls and walls of equal height; and (2) allow utilitarian and amenity features to be 20 feet above the roof, rather than 18 feet, 6 inches. We are not in favor of limiting ornamental features to 30 feet in height and sending those above 30 feet to the BZA.
- **Recommendation #11 – setbacks atop a roof:** We support the recommendation of OP to require a 1:1 setback from exterior walls (consistent with our discussion of exterior walls, in item #12, below) and from a wall which is setback from and facing a lot line. With regard to lot line walls, we suggest that the setback be required only if the maximum permitted height of the property on the other side of the lot line is limited to a lower height than that of the subject building, rather than basing that distinction on the height of any existing building on the lot line. We support the recommendation of OP that relief be available through the BZA as a special exception.
- **Recommendation #12 – exterior wall:** We support the recommendation of OP as stated at the hearing, that an alley wall would not be considered an exterior wall, nor would party walls or other side walls. The BZA should be able to grant relief from any setback

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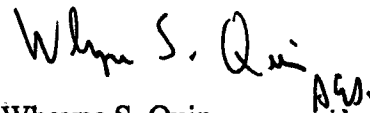
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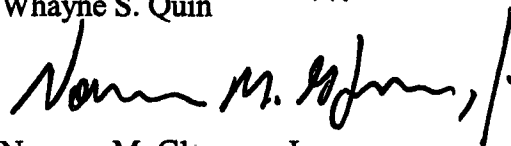
requirement that is not also required by the Act (i.e., from any setback other than that from a wall facing a street).

We appreciate the opportunity to submit these further comments to the Commission and we hope that the Commission will take them into account favorably in its discussions.

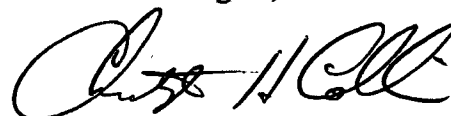
Sincerely,

Handwritten signature of Wayne S. Quin in black ink.

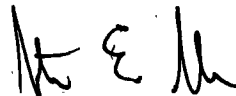
Wayne S. Quin

Handwritten signature of Norman M. Glasgow, Jr. in black ink.

Norman M. Glasgow, Jr.

Handwritten signature of Christopher H. Collins in black ink.

Christopher H. Collins

Handwritten signature of Steven E. Sher in black ink.

Steven E. Sher

Director of Zoning and Land Use Services

cc: Jennifer Steingasser, OP
Travis Parker, OP
Stephen Cochran, OP

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