



Executive Director's Recommendation

Commission Meeting: September 3, 2015

PROJECT
**District of Columbia Comprehensive
Zoning Regulations Review**

Washington, DC

SUBMITTED BY
Zoning Commission
of the District of Columbia

REVIEW AUTHORITY
Approval of Comments to the Zoning
Commission of the District of Columbia
per 40 U.S.C. § 8724(a) and D.C. Code § 2-1006(a)

NCPC FILE NUMBER
ZC 08-06A

NCPC MAP FILE NUMBER
00.00(06.20)44196

APPLICANT'S REQUEST
Approval of report to the Zoning
Commission of the District of
Columbia

PROPOSED ACTION
Approve comments as requested

ACTION ITEM TYPE
Staff Presentation

PROJECT SUMMARY

The Zoning Commission of the District of Columbia has referred for comment zoning case ZC 08-06A, the District of Columbia Comprehensive Zoning Regulations Rewrite (ZRR). The purpose of the ZRR is to update the District's 56 year old zoning ordinance by adding clarity, relevance and ease of use. The District of Columbia's Zoning Regulations provide an important framework that regulates the design and development of many sites, buildings, roadways, and open spaces in the nation's capital. As such, the regulations may direct future development in a manner that affects the interests of the federal government.

The proposed zoning regulations are approximately 1,000 pages and consist of 16 subtitles. The District of Columbia Office of Planning (DCOP) began the update to the regulations in 2007. Over the last eight years, they have engaged working groups, a Task Force, community stakeholders, and the general public on several drafts of the regulations. The District published the Notice of Proposed Rulemaking for the final draft in the DC Register on May 29, 2015. There is a 120-day public comment period which ends on September 25, 2015. The Zoning Commission is tentatively scheduled to hold a special public meeting on October 22nd, 2015.

This zoning referral does not address any proposed changes to the penthouse regulations based on federal law H.R. 4192 that Congress passed in May of 2014. The Zoning Commission has referred proposed penthouse regulations to the NCPC under Case #ZC 14-13, which staff will bring to the Commission in September.

RECOMMENDATION

The Commission:

Commends the District of Columbia for its significant effort in updating the District's Zoning Code and appreciates the productive collaboration that NCPC staff has enjoyed with District staff in addressing matters important to the nation's capital.

Finds that the District of Columbia's Zoning Regulations provide an important framework that regulates the design and development of many sites, buildings, roadways, and open spaces in the nation's capital. As such, the regulations may direct future development in a manner that affects the interests of the federal government. These include:

- 1) Federal Interests: Federal land, buildings and operations, including security and public open space. The federal interest also extends to the location, expansion and replacement of chanceries. To ensure reciprocal treatment with regards to its chancery facilities abroad, the United States Government must ensure adequate provision of facilities for foreign missions and international organizations in the District of Columbia.
- 2) National Interests: The form, character and experience of the nation's capital, particularly within the historic L'Enfant City.

Finds that these interests and staff comments on the zoning regulations are grounded in previously approved or endorsed NCPC policies and plans such as the Federal Elements of the Comprehensive Plan, the Legacy Plan, the Monumental Core Framework Plan, and the SW Ecodistrict Plan.

Advises that NCPC's review and comments are narrowly focused on matters important to the federal and national interests within the L'Enfant City and in particular the monumental core of DC, including areas near prominent national resources such as the White House, the National Mall and Union Station in addition to special streets and viewsheds.

Finds that NCPC review of the District's Zoning Regulations is especially important now that that the proposed regulations streamline the development process. In certain zones the regulations increase the matter-of-right height in downtown zones, eliminating the need for the planned-unit-development (PUD) review process. The result is that NCPC and the Zoning Commission will no longer review projects during the design phase that would have used the PUD¹ process to receive additional height in areas adjacent to sensitive federal assets. While NCPC's recommendations are only advisory in this process, historically it has offered the federal government an opportunity to comment on projects that might have an impact on federal buildings, land, and form and character of the nation's capital.

Notes that the Zoning Commission and the District Office of Planning (DCOP) have addressed a majority of the comments previously raised by the NCPC and staff. NCPC staff has worked closely with DCOP staff over the last year. These collaborative discussions, with the exception of proposed

¹ Per the National Capital Planning Act, NCPC reviews map and text amendments to the Zoning Code.

chancery regulations, have resulted in regulations that largely protect federal and national interests.

Advises the Zoning Commission that there are eight federal comments/concerns that still remain:

1) Design Criteria for the D8 Zone (Independence Avenue, SW)

Finds that like Constitution Avenue, Independence Avenue is a major avenue adjacent to the National Mall within the monumental core of the city. It is home to the Smithsonian Institution's southern campus and a host of large federal buildings that are relatively low in height and compatible with the Smithsonian Campus.

Finds that the massing, siting, and composition of buildings on Independence Avenue today generally cannot be seen over the rooflines of the Smithsonian buildings when standing on the National Mall, creating an experience of a truly public space within a park-like setting framed by trees and civic institutions.

Finds that this is the first time NCPC had to contemplate a new backdrop to the south side of the National Mall – one that will be more visible and private as proposed in the proposed zoning regulations.

Acknowledges that NCPC's SW Ecodistrict Plan recognizes that redevelopment on and around Independence Avenue presents a significant opportunity to increase density and the mix of uses that would make the area south of the National Mall a more enjoyable place to live, work, and visit.

Recognizes that the amount of redevelopment necessary to make this area an exceptional place will inevitably change the backdrop of the National Mall and the Smithsonian Campus.

Finds that the proposed zoning is impactful to views of the Smithsonian's south campus from the Mall but strives to achieve a balance by increasing density without completely overwhelming the architectural features of the Castle and the other Smithsonian buildings.

Finds that this unique circumstance warrants exceptional design and planning and therefore:

Recommends that the Zoning Commission strengthen the proposed criteria for their review of projects in the D8 Zone (Independence Avenue) in Subtitle I Section 581.2 by adding:

- The design of buildings on Independence Avenue should complement, not compete with, the Smithsonian buildings when viewed from the National Mall and the Independence Avenue.
- Rooftop structures, architectural embellishments, and penthouses should be carefully located and designed to not compete with the architectural features of the Smithsonian Institution's original building when viewed from its center point on the National Mall and from 10th Street.

Finds that the proposed zoning restricts structures/development in the first twenty-five (25) vertical feet of rights-of-way but allows structures above 25' similar to the Forrestal Building extending over 10th Street. This should not be allowed if redevelopment occurs.

Recommends in Subtitle I Section 575.2(a) delete the following: "...no structure, building or building addition may be constructed above ~~or within twenty-five (25) vertical feet of~~ the grade of a street right-of-way that..."

Notes that the zoning restricts structures on street rights-of-way that were included in the 1791 L'Enfant Plan, closed by the Council of the District of Columbia, and incorporated into the District of Columbia's official Highway Plan. There is uncertainty with regard to which streets were actually closed during urban renewal. As such, the District Elements of the Comprehensive Plan (which would inform a future update of the Highway Plan) should be updated to include the restoration of the 1791 L'Enfant Plan streets (including C Street, 11th Street, and Virginia Avenue) and therefore:

Recommends removing the provision that "the right-of-way must have been closed" from the zoning regulations to allow the restoration of the 1791 L'Enfant Plan streets (including C Street, 11th Street, and Virginia Avenue).

2-3) NCPC Referral: Independence Avenue and Burnham Place/Union Station

Finds that unlike streets with terminating viewpoints where the protection of the view corridor can be achieved through straight forward development controls, the protection of larger views not defined by a single viewpoint is more complicated. Independence Avenue across from the National Mall and Burnham Place next to Union Station are of special interest to NCPC because they are areas where major redevelopment is likely to occur adjacent to significant national resources in the monumental core. In the proposed zoning, there will not be a mechanism for the NCPC (and therefore federal agencies) to formally review and comment on proposed redevelopment. Granting NCPC referral for projects in these areas is warranted because of the potential for major redevelopment; the proximity to national resources; and because NCPC as a planning agency analyzes projects and potential impacts to federal and national resources at the multi-block scale and therefore:

Recommends NCPC Referral for:

- Independence Avenue, SW between 6th and 12th Street, SW (Subtitle I Section 618)
- The future Master Plan and Stage 1 submission for Burnham Place - Union Station North Zone (Subtitle K; Chapter 3). Note: this referral exists in the current zoning code but was removed in the proposed zoning.

4) Zoning Commission Review on North Capitol Street

Finds that the vista of the U.S. Capitol along North and South Capitol Streets is one of the most important gateways and viewsheds in the city. Both of these streets are located in areas undergoing major redevelopment and increase in density.

Finds that while Zoning Commission Review of new development on South Capitol Street is proposed in accordance with rigorous criteria that protect and enhance local and national interests, the review does not extend to North Capitol Street.

Finds that it would be beneficial to have Zoning Commission review of North Capitol Street to help create a consistent public realm and a strong urban design framework for this prominent gateway and viewshed and therefore:

Recommends that the Zoning Commission review projects on North Capital Street south of M Street in accordance with the criteria of Subtitle I: Section 701.2(b).

5) Pennsylvania Avenue Sub-Area

Finds that the proposed zoning creates the Pennsylvania Avenue Sub-Area for the blocks within the PADC Boundary (3rd – 15th Streets, NW) and that the Sub-Area regulations state that this area is also governed by the PADC Plan of 1974, as amended.

Recommends the following minor modifications to the zoning text:

In Section 608: Modify the objective for the Pennsylvania Avenue Sub-Area to read “maintain Pennsylvania Avenue as a mixed-use monumental but lively street with additional height on its north side and active ground floor uses to bridge the downtown with the National Mall and the monumental core”.

In Section 608.10: Change the term “PADC Plan of 1974, as amended” to “as implemented by the Pennsylvania Avenue Development Corporation General Guidelines and Uniform Standards 36 CFR §910.1 et seq.” to reference all the related documents in the PADC legislation.

6) J. Edgar Hoover Site (FBI) on Pennsylvania Avenue

Finds that unlike the proposed zoning for the rest of Pennsylvania Avenue which has a matter-of-right height of 160', the zoning for the J. Edgar Hoover site (on Pennsylvania Avenue between 9th and 10th Streets, NW) allows a matter-of-right height of 130'. A property owner can achieve 160' feet in height through the PUD process.

Notes that development within the PADC Boundary is unique in that the PADC plan and square guidelines for Pennsylvania Avenue between 3rd and 15th govern development and take precedent over zoning and that there may not be incentive to pursue a PUD if the square guidelines allow a height above 130'.

Notes that NCPC has initiated the process of a plan amendment and square guidelines (40 U.S.C. § 6702(d)) for the J. Edgar Hoover site in coordination with GSA, NPS, the Commission of Fine Arts, the DC State Historic Preservation Office, the DC Office of Planning and Department of Transportation.

7) Future Urban Design Study

Notes that NCPC staff's analysis of the ZRR and the Urban Design Element of the Comprehensive Plan for the National Capital highlight the need for a close look at development controls, review processes, and the public realm for streets that form an edge at important reservations and streets with significant views and terminating vistas. Examples include 16th Street, North Capitol Street, New Jersey Avenue, Virginia Avenue, and Constitution Avenue.

Comments that NCPC staff would like to work with the District Office of Planning in the update to the federal and local elements of the Comprehensive Plan to ensure that policies (and subsequent zoning) protect and enhance prominent view corridors and reservations through an urban design and public realm framework.

8) Chanceries

Finds that the regulations governing Chancery Applications (Subtitle X, Chapter 2) violate federal policy and law established by the Foreign Missions Act of 1982 (FMA). The proposed chancery regulations alter the congressionally mandated review process and procedures and the balance between federal and local interests by requiring the Board of Zoning Adjustment (BZA) to consider:

- Use a square as the first and preferred area for evaluation; and
- Use 50% or more of a square devoted to office and/or institutional uses as the definition of mixed-use in its determination of whether to disapprove a chancery application "in any other area" where mixed uses are present.

Finds that these proposed requirements negate the discretion afforded the BZA by the FMA as confirmed by the District of Columbia Office of Attorney General (formerly the District of Columbia Office of the Corporation Counsel), the District of Columbia Zoning Commission, and the United States Court of Appeals for the District of Columbia Circuit.

Recommends:

- Adopt the following language as an alternative for § 201.4:

For the purposes of Subtitle X § 201.3 determination, the "area" shall be the area the BZA determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery.

- Adopt the following language as an alternative for § 201.5:

An area shall be considered to be a mixed-use area if as of the date of the application more than 50% of the zoned land within the area is devoted to uses other than residential uses as defined in Subtitle B, Chapter 2. In addition, the BZA may find that an area with less than or equal to 50% of non-residential uses is a mixed-use area upon a showing of non-residential uses, as may be submitted by the applicant, the Secretary of State, or the Mayor of the District of Columbia.

PROJECT REVIEW TIMELINE

Previous actions	EDR 01/06/11: Use Categories and Height EDR 02/02/11: Parking, Bicycle Parking, Loading Delegated Action: 04/28/11 Production Distribution and Repair Zones EDR 05/05/11: Green Area Ratio NCPC Information Presentation 12/4/14: Overview of Zoning Regulations Review Draft 11/14/14.
Remaining actions	None.

Prepared by D. Sullivan

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I. PROJECT DESCRIPTION

Site / Background

History of the Zoning Regulations

The District of Columbia began the Zoning Regulations Review in 2007. The purpose of the ZRR is to update the District's 56 year old zoning ordinance by adding clarity, relevance and ease of use.

The current zoning ordinance of the District of Columbia was approved in 1958. The only major city in the U.S. with an older zoning ordinance is Philadelphia. As a result of its age, there are many problems with the current regulations such as outdated terms like "telegraph office" and "tenement house"; outdated regulations such as those for parking and antennas; and an overall lack of standards and regulations associated with sustainable development.

To address development in the city over the last 50 years, the District of Columbia Zoning Commission has made hundreds of amendments to the zoning ordinance so that it would remain relevant. The effect over time however is an extremely complicated document that is difficult to cross-reference and prone to unintended consequences.

In 2005, in response to a petition for a map amendment from the Sheridan Kalaroma Citizen's Association to delete certain areas of the Sheridan Kalaroma neighborhood from the provisions of the regulations allowing the location of chanceries, the DCZC advised DCOP it preferred to take a comprehensive, citywide approach to reevaluating the regulations pertaining to the location of chanceries. Subsequently, the regulation of the location of chanceries was rolled into the ZRR.

In 2006 the District proposed "a comprehensive review of the zoning regulations" as a goal in the 2006 *District Elements of the Comprehensive Plan for the National Capital*. Soon thereafter the District launched the Zoning Regulations Review.

Zoning Regulations Review Process

DCOP officially launched the first stage of the ZRR in 2007 by dividing the regulations into 20 subject areas. Each subject area was reviewed separately by a public working group who then submitted recommendations to the Zoning Review Task Force. - The Task Force is made up of community representatives appointed from all parts of the city by DC Councilmembers, as well as representatives from government agencies, including NCPC, and building industry representatives.

The Task Force is made up of community representatives appointed from all parts of the city by DC Councilmembers, as well as representatives from government agencies, including NCPC, and building industry representatives.

The Task Force's recommendations for each subject area were made available for public review and were presented to the Zoning Commission at public hearings. DCOP then prepared draft

regulations based on the recommendations and submitted them to the Zoning Commission for preliminary review.

The Zoning Commission first held hearings on five components of the draft regulations (general height regulations, use categories, the Green Area Ratio, parking and loading, and PDR zones). The NCPC provided comments on each of these components.

DCOP then developed a complete draft of the zoning regulations which was reviewed by the Task Force and then the Zoning Commission in September of 2012.

After receiving input from the Zoning Commission on the draft regulations, DCOP conducted a series of public outreach meetings in 2012-2013 to get broad public input on the draft zoning code. Based on feedback received during the public comment period, DCOP made revisions to the draft regulations.

The multi-year project started a new phase when the DC Office of Planning (OP) submitted its revised draft text for the ZRR to the Zoning Commission on July 29, 2013. On September 9, 2013, the Zoning Commission set down the proposed ZRR text for public hearings and then held a series of public hearings during 2014.

In December of 2014, staff presented the November draft of the ZRR to the Commission as an information presentation. Soon thereafter, the Zoning Commission voted to take proposed action on the draft regulations on December 11th. The Notice of Proposed Rulemaking was published in the DC Register on May 29, 2015 and then referred to NCPC. There is a 120-day public comment period which ends on September 25, 2015. The Zoning Commission is tentatively scheduled to hold a special public meeting on October 22nd.

History of NCPC Comments

Throughout the seven year process, NCPC staff has sent several sets of comments (based on the Commission's previously adopted or endorsed plans and policies) to the Zoning Commission on draft text. The NCPC has also submitted reports to the Zoning Commission based on the referral of specific sections. These documents are listed in the table below. With the exception of specific staff comments highlighted in the body of this report, all of NCPC's previous comments and how they have been addressed appear in:

- Appendix A: *Staff Analysis of the 11/14/14 Draft of the ZRR*; and
- Appendix B: *NCPC Comments Between 2007 and 2014*.

Figure 1: Table of Previous NCPC Comments

Date	Subject of Comments/Report
Staff Letter: 07/28/08	Parking and loading
Staff Letter: 10/28/08	Building frontage; single vs. multiple buildings; location of measuring point; natural grade, permitted roof structures
Staff Letter: 01/05/09	Single vs. multiple buildings; location of measuring point; natural grade, permitted roof structures and setbacks

Date	Subject of Comments/Report
Staff Letter: 02/19/09	Campus and institutional uses
Staff Letter: 03/05/09	Low/moderate density residential uses
Staff Letter: 06/03/09	Sustainability
Staff Letter: 10/30/09	Downtown and adjacent high density commercial and mixed-use areas
Staff Letter: 01/06/10	Waterfront zones
Staff Letter: 9/14/10	Rooftop Structures and relief from rooftop regulations
NCPC EDR: 01/06/11	Use Categories and Height
NCPC EDR: 02/02/11	Parking, bicycle parking, and loading
NCPC Delegated Action: 04/28/11	Production, distribution and repair zones
NCPC EDR: 05/05/11	Green Area Ratio
Staff Letter: 06/24/11	Building heights on major streets and avenues with the L'Enfant City; PADC; advisory review in overlay zones
Staff Testimony at Zoning Commission: 09/04/11	Building heights on major streets and avenues with the L'Enfant City; PADC; advisory review in overlay zones
Staff Letter: 09/15/14	Building heights on major streets and avenues with the L'Enfant City and the need for a design review process; PADC; advisory review in overlay zones
Staff Letter: 12/16/14	NCPC report based on information presentation 12/4/14

Table of NCPC/DOS Comments Regarding Chanceries

Date	Subject of Comments/Report
DOS Staff Letter: 11/18/13	Request to keep record open in Subtitle X
DOS Staff Letter: 07/21/14	Comments on multiple subtitles
NCPC Staff Letter: 09/12/14	Comments on Subtitle X - Chancery Applications
DOS Staff Letter: 03/6/15	Request to reopen record to receive comments
DOS Staff Letter: 03/6/15	Chancery Text

II. KEY NATIONAL AND FEDERAL INTERESTS RELATED TO ZONING

As it relates to zoning, the federal government's interests include those related to Washington's role as the seat of the federal government (federal interests) and those related to Washington's role as the nation's capital (national interests).

- 1) Federal Interests: Federal land, buildings and operations, including security and public open space.** The federal government is the largest property owner in the District of Columbia. Federal interests include federal land, buildings, parks, and open spaces. These physical assets play a key role in the ability of federal agencies to achieve their missions, provide secure and appropriate workplaces, public open spaces, and conduct a variety of operations. Changes in zoning could potentially impact already developed and future federal assets, as well as federal responsibilities to design and program assets, provide physical and operational security, and meet requirements for such things as historic preservation, environmental protection, sustainability, and efficiency.

The location of chanceries is identified in Section 8712(a)(1) of National Capital Planning Act as a federal interest. See, D.C. Code § 2-1002(a)(1) (West 2014). The federal interest derives from the United States Government's treaty obligation to provide secure locations for foreign missions and international organizations in the District of Columbia (District). This assures that the United States receives reciprocal accommodations in foreign countries with which it maintains diplomatic relations.

- 2) National Interests: The form, character and experience of the nation's capital, particularly within the historic L'Enfant City.** National interests include the views and settings of the U.S. Capitol, White House, and National Mall; nationally significant civic spaces and institutions; national memorials and parks; and those streets, avenues, and reservations that link these national resources and reflect the fundamental design framework of the original city plan. The DC Zoning Regulations have helped to enhance the pre-eminence of these national resources and protect the unique characteristics that have defined this part of the city for decades.

In its guidance to the Commission on the Height Master Plan for Washington, DC, Congress reaffirmed the importance of matters related to the form and character of the nation's capital, particularly building height, as a fundamental national interest. This year, President Obama signed H.R. 4192 into law, which changes restrictions related to human occupancy of penthouses as set forth in the 1910 Height of Buildings Act. H.R. 4192 was introduced following completion of a year-long study² and extensive public process that examined the extent to which

² The NCPC jointly conducted the Height Study with the Mayor of the District of Columbia at the direction of the U.S. House Committee on Oversight and Government Reform. NCPC's final Height Report and Recommendations outlined national interests, including: the visual pre-eminence of the U.S. Capitol dome and the White House; the setting and views to and from the nation's civic institutions and national memorials; site specific security concerns; major infrastructure matters; and other goals related to the urban form and function of the nation's capital. The study also considered whether and how height restrictions affect important long-term local interests related to economic development.

restrictions related to building height continue to serve national and local interests. The limited scope of the changes in the law's language is consistent with NCPC's final recommendations to Congress, which both affirm the continuing importance of the Height of Buildings Act as well as federal stewardship of matters related to height.

The federal and national interests discussed above are defined and guided by policies in the Federal Elements of the *Comprehensive Plan for the National Capital* and Commission endorsed plans such as *the Legacy Plan*, *the Monumental Core Framework Plan*, and *the SW Ecodistrict Plan*. For example, the Comprehensive Plan includes policies that: aim to protect the vistas and views that are integral to the national capital's image; respect and preserve the monumental character of the National Mall and surrounding areas; prevent new development from diminishing the integrity of the National Mall and surrounding monumental core, and plan a secure and welcoming environment for the location of diplomatic and international activities in Washington. The Comprehensive Plan, along with NCPC's planning documents, guide staff's analysis of how the zoning update may impact these interests.

III. PROJECT ANALYSIS/CONFORMANCE

Staff's analysis of the proposed zoning regulations is divided into two parts:

- Part 1: All Subtitles/Chapters except Subtitle X: Chapter 2 Chanceries
- Part 2: Subtitle X: Chapter 2 Chanceries

Analysis: Part 1 – All Subtitles/Chapters except Subtitle X: Chapter 2 Chanceries

Staff's review of the proposed zoning regulations is grounded in previously approved or endorsed NCPC policies and plans such as the Federal Elements of the Comprehensive Plan, the Extending the Legacy Plan, the Monumental Core Framework Plan, and the SW Ecodistrict Plan.

Staff began its review of the zoning rewrite by focusing on federal and national interests within the L'Enfant City as shown here. These include L'Enfant plan viewsheds, historic properties and federal properties.

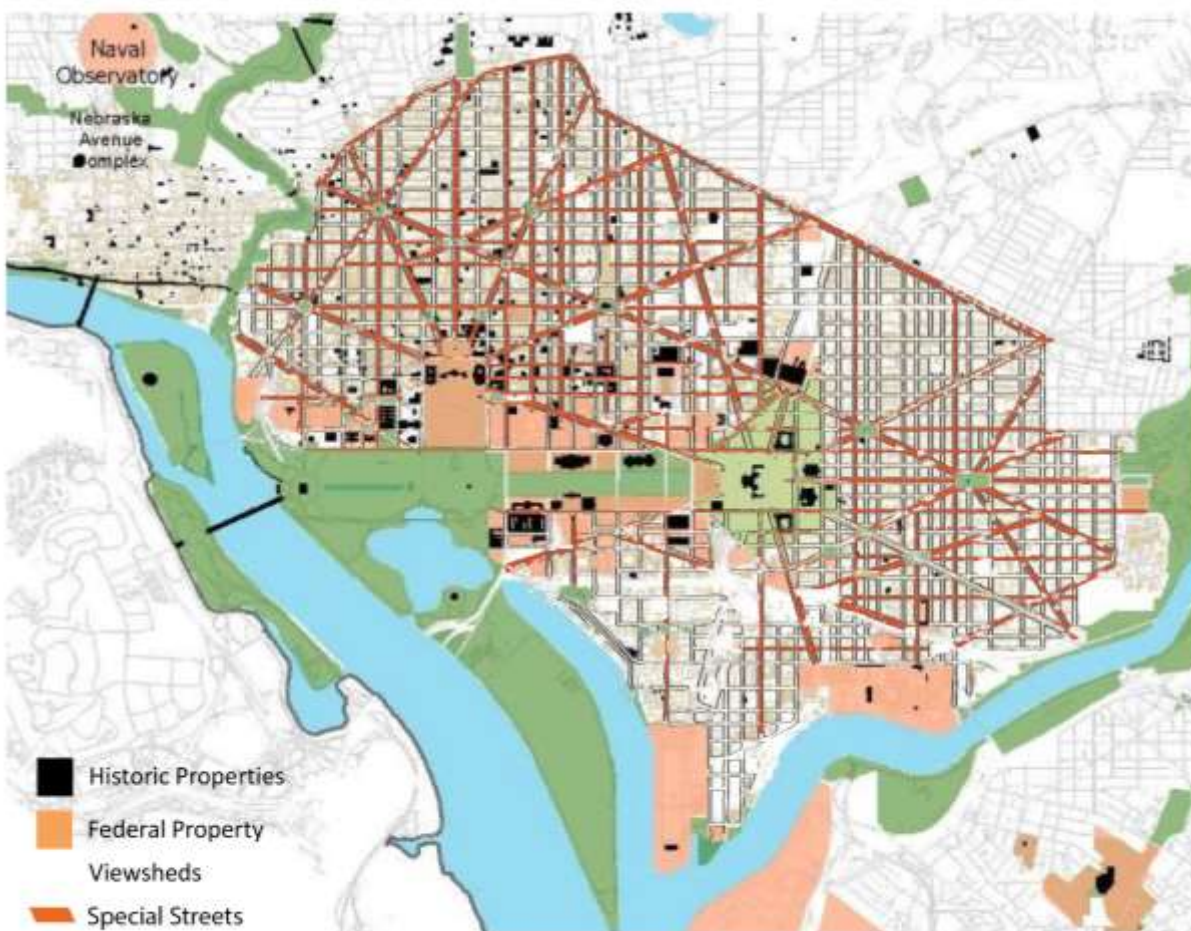
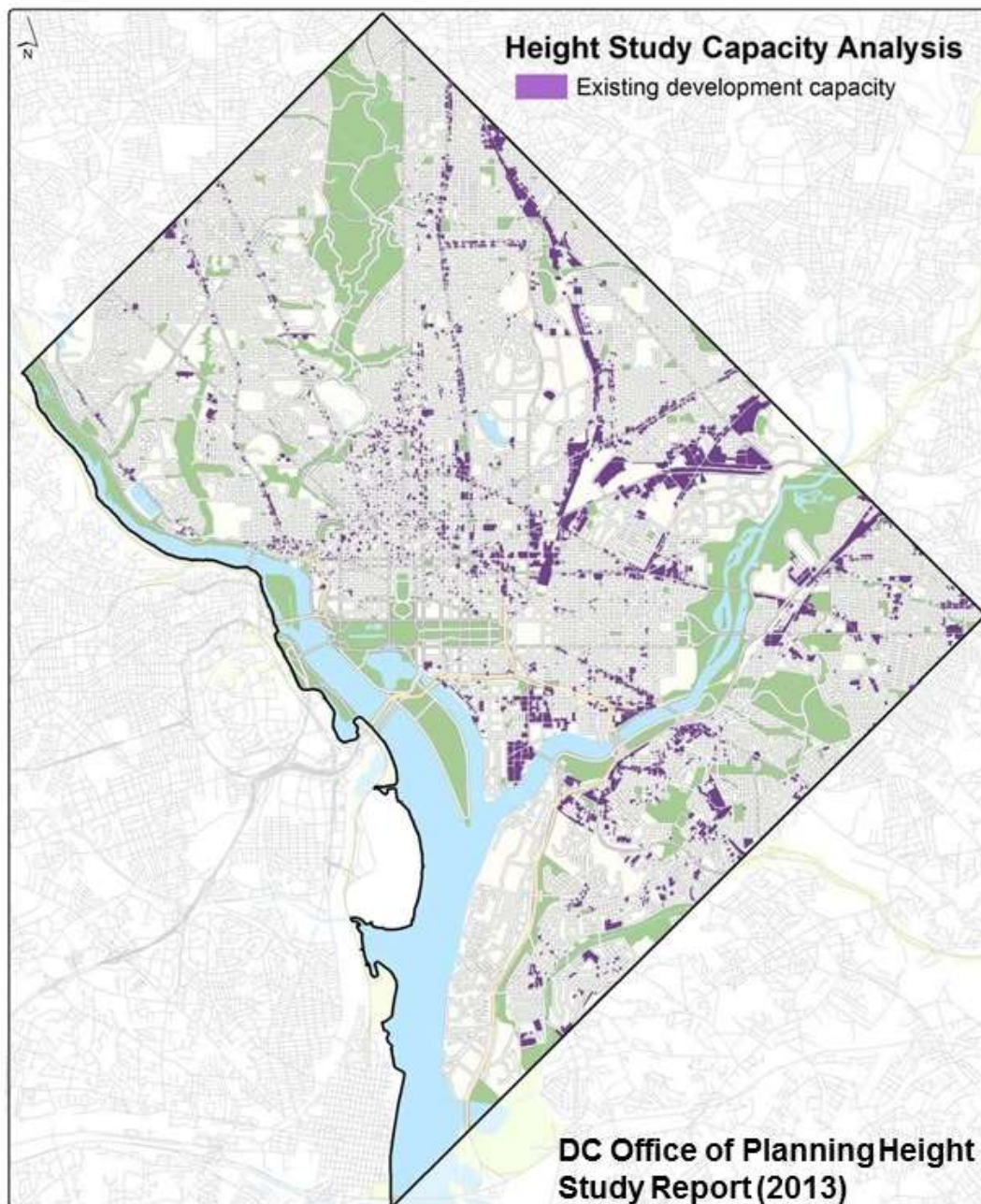


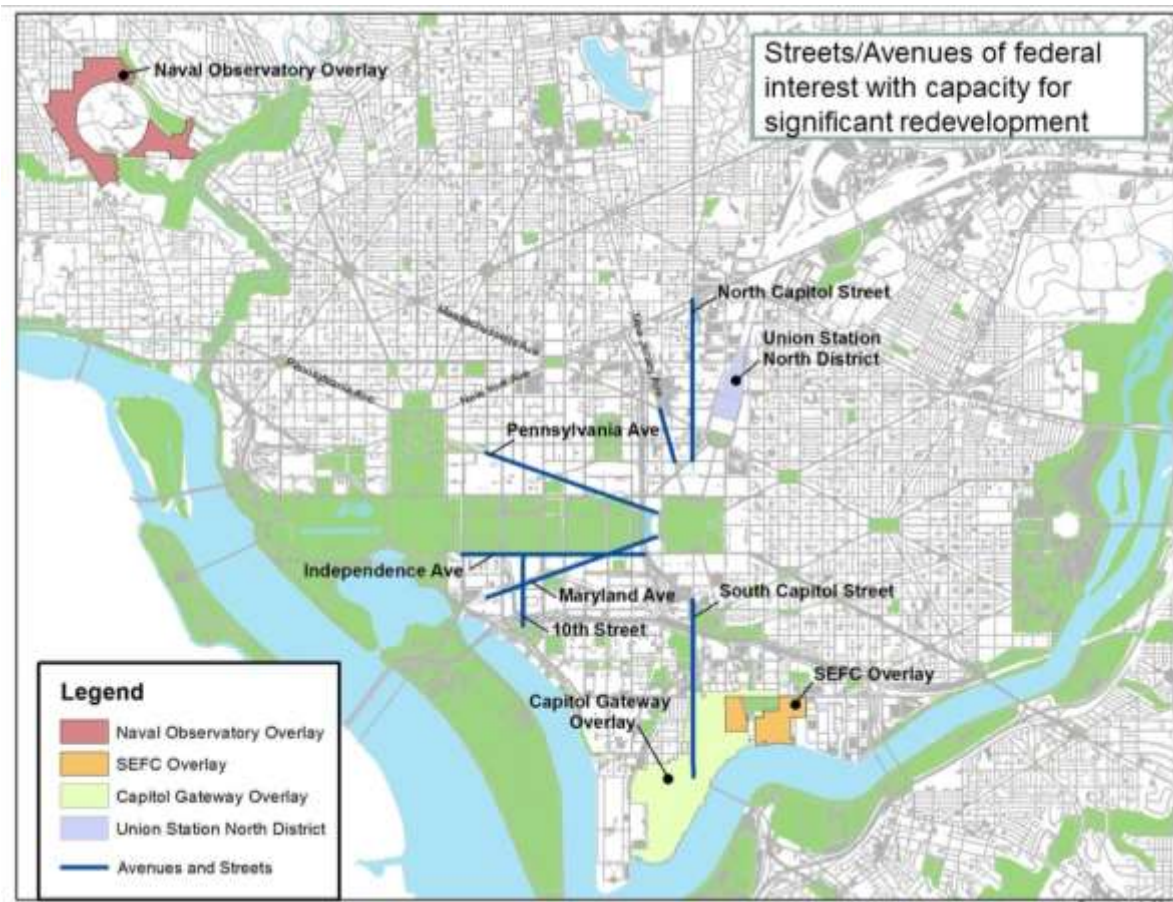
Figure 2: Federal and National Interests within the L'Enfant City
Staff began its initial review of the ZRR by focusing on the L'Enfant City and then narrowed its focus even more as described on pgs. 15 and 16.

Building on the work of the Height Master Plan for Washington, DC that NCPC approved in 2013, staff narrowed its focus to streets with significant viewsheds (most notably the U.S. Capitol) and streets and areas that are adjacent to significant federal interests such as Independence Avenue.



Next staff analyzed these viewsheds and adjacencies with regard to the District's 2013 Height Study Capacity Map (see below) and with regard to the proposed matter-of-right height set forth in the ZRR. The purpose was to see the overlap between viewsheds and adjacencies important to the federal interest and areas designated for high density redevelopment. See below for the DCOP map of existing development capacity and page 17 for the overlap between viewsheds and adjacencies with these areas of development capacity.





Finally, staff analyzed the proposed zoning for these areas. One of the District's main goals with the ZRR is to streamline the development process. This means that the matter-of-right height for many of these streets is increasing which eliminates the need for the planned-unit development (PUD) review process. To be clear, the overall allowable height is not changing with the proposed code. The change is that now an applicant/property owner is given the height as a matter-of-right whereas before it was discretionary (based on impacts and/or the provision of amenities) through the PUD process.

NCPC staff is supportive of the City's goal to streamline the development process; however, the result is that NCPC and the Zoning Commission no longer review projects that would have used the PUD process to receive additional height in areas adjacent to sensitive federal assets.

Thus, on these particular streets, staff's review looked at whether development controls were needed to protect federal interests and if yes, whether they were included in the ZRR; and whether there was a need for project or design review on these streets. Development controls and project review are the two tools available through local zoning for protecting the federal interests related to urban design.

Base on this analysis, staff has worked closely with DCOP staff to address the concerns NCPC staff have raised over the past year and a half. For example: South Capitol Street now has development controls in the form of upper-story setbacks to enhance views of the Capitol in addition to building setback requirements that create a consistent building line. There is also a

requirement for Zoning Commission review of development projects. For staff's complete analysis of these concerns and how they have been addressed please see Appendix A. This was the topic of staff's information presentation on December 4, 2014. For a list of all of the comments/concerns raised by staff and the NCPC between 2007 and 2014, see Appendix B.

Staff has seven federal comments/concerns based on its review of the final draft ZRR (in addition to staff's concern regarding Chancery Applications which is discussed in Part 2).

These include:

- 1) Design Criteria for the D8 Zone (Independence Avenue, SW between 6th and 12th Streets).

NCPC Referral for:

- 2) Independence Avenue, SW between 6th and 12th Street, SW
- 3) The future Master Plan and Stage 1 submission for Burnham Place (Union Station North Zone)
- 4) The need for Zoning Commission Review of Projects on North Capitol Street.

Proposed zoning for:

- 5) Pennsylvania Avenue
- 6) The J.Edgar Hoover site.
- 7) Future Urban Design Study

1) Design Criteria for the D8 Zone (Independence Avenue)

Federal Interest

Like Constitution Avenue, Independence Avenue is a major avenue adjacent to the National Mall within the monumental core of the city. It is home to the Smithsonian Institution's southern campus and a host of large federal buildings that are relatively low in height. These federal buildings are similar in height to the Smithsonian buildings and generally cannot be seen over the rooflines of the Smithsonian buildings when standing on the National Mall. As a result, the experience of the National Mall is that of a truly public space within a park-like setting framed by trees and civic institutions. The Comprehensive Plan for the National Capital preserves this setting with policies such as *"the National Mall's historic open space and monumental character should be respected and preserved for the benefit of future generations. New development should not infringe on the integrity of the National Mall and the surrounding monumental core..."*³ The Smithsonian Institution's original building ("the Castle") and its setting were designated a national historic landmark in 1977.

Proposed Zoning

Over the past year, NCPC staff has worked closely with GSA and DCOP to develop zoning regulations for the area south of Independence Avenue. This area could transition to private development in the future. The proposed zoning includes many of the recommendations in the SW Ecodistrict Plan including building setbacks from Independence Avenue and upper-story setbacks that help to mitigate the impact of taller buildings that could someday replace one or more of the federal buildings on Independence Avenue.

Prior to the most recent publication of the ZRR, NCPC staff submitted two sets of comments to the Zoning Commission with the same position on the matter-of-right height for buildings on Independence Avenue. These comments were based on the Comprehensive Plan and the SW Ecodistrict Plan (2009) and Plan Addendum (2014), both accepted by NCPC.

Staff commented that the matter-of-right height of 130' in addition to penthouses for parcels on Independence Avenue would have a negative impact on views from the National Mall, views of the Smithsonian Castle, and the composition of buildings on the north and south side of Independence Avenue. While the proposed zoning includes a building setback of 88' from the centerline of Independence Avenue, it also allows an increase of approximately 60' in overall development height resulting in 148.5' buildings (including penthouses).

Since staff submitted these comments, DCOP has modified the proposed zoning regulations to add more certainty to future development:

- The regulations do not allow structures within 25 feet of vertical grade on historic L'Enfant Plan rights-of-way that have been closed by the District of Columbia, and incorporated into the official Highway Plan. Restricting development in the historic L'Enfant plan rights-of-way adds clarity to the future parcelization – parcels will be smaller and this helps to reduce the impact of such a large increase in height. (Note:

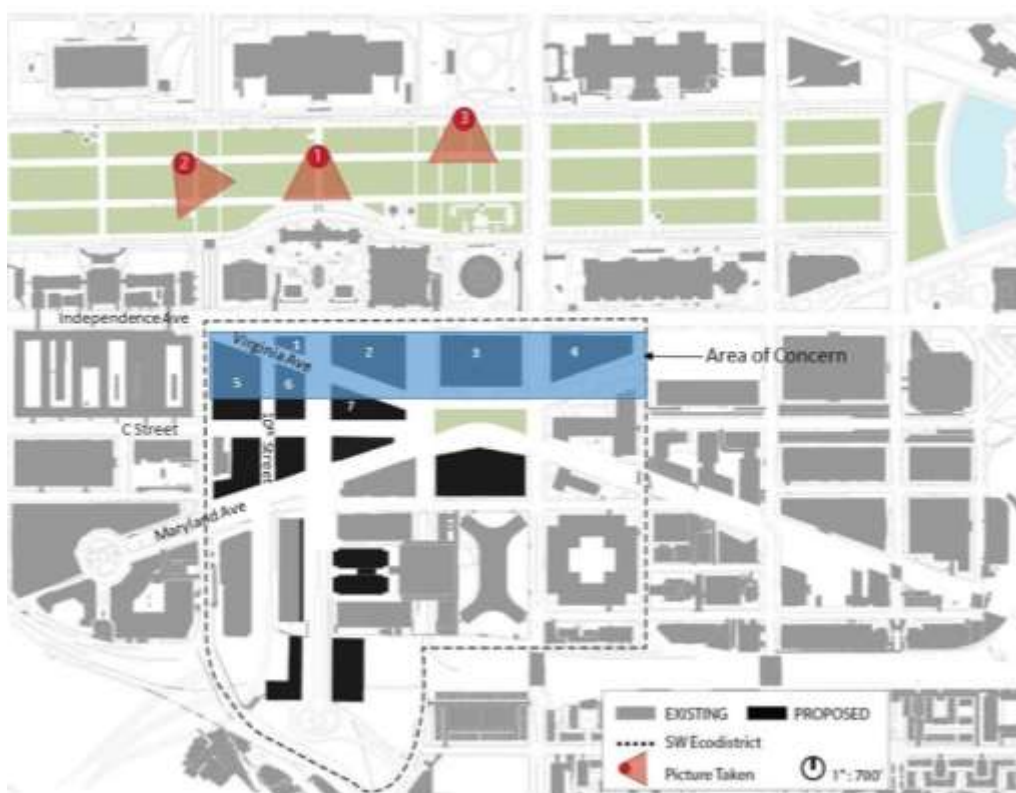
³ *The Comprehensive Plan for the National Capital: Federal Elements, Preservation and Historic Features*, page 166.

see recommendations regarding the 25 feet provision and the closed streets/Highway Plan).

- Penthouses for buildings on Independence Avenue may only occupy one-third of the total roof space at a setback of 2:1: and
- Zoning Commission review is now required for new development/exterior renovations in the D8 zone in accordance with specific design criteria.

Analysis

The proposed zoning will dramatically increase the size of buildings on Independence Avenue if they were to become private. When standing at the center of the National Mall, the backdrop behind the Castle will change from that of an open sky to a backdrop of buildings as a result of development increasing from 88' to 148'.



Numbers reference the images on the following pages.



Above: View 1 of the Smithsonian Castle today from the center of the National Mall.



Above: View 1 of the Smithsonian Castle with new buildings as proposed in D8.
Note: Building 1 is not seen because it is assumed the footprint will only allow 90' in height.



Above: View 3 of the Hirshhorn and Arts and Industries Building at approximately 7th Street looking south on the National Mall today.



Above: View 3 of the Hirshhorn and Arts and Industries Building and new development as proposed in D8.

Staff has struggled with this change largely because this is the first time staff has had to contemplate a new backdrop for the National Mall – one that is much more visible and private. At the same time, NCPC's SW Ecodistrict Plan recognizes that if some of the federally-owned land on Independence Avenue were to become private, there is a significant opportunity to increase density and the mix of uses that would make this area a more enjoyable place to live, work, and visit.

Staff believes that the amount of redevelopment necessary to make this area an exceptional place will inevitably change the backdrop of the National Mall and the Smithsonian Campus. Replacing the Forrestal Building with new 88' buildings to replicate current massing will not create the density that this area needs to be successful.

Staff finds that proposed zoning is impactful to views of the Smithsonian's south campus from the Mall but strives to achieve a balance by increasing density without completely overwhelming the architectural features of the Castle and the other Smithsonian buildings. The proposed penthouse restrictions help to keep the overall line of development below a point that would completely overwhelm the spires and towers of the Castle. Therefore, this is a situation where exceptional design and good planning are critically important. As it relates to views of the Castle, the design of new buildings and especially the penthouses should not compete with or diminish the architecture of any of the Smithsonian buildings.

NCPC staff is pleased that DCOP has elevated the need for high quality urban design in the proposed D8 zone through the proposed regulations and Zoning Commission design review in accordance with established criteria. The most relevant criteria that addresses staff's concerns regarding impacts on the viewshed is:

581.2 (a) Building height, mass and siting shall respect or re-establish vistas to the U.S. Capitol, the Washington Monument, and the Smithsonian Institution's original building;

While this specific criteria is a good starting point, staff believes that stronger more specific criteria are warranted for this truly unique place and circumstance in Washington.

Recommendation:

In Subtitle I Section 581.2 strengthen the following design criteria for the Zoning Commission review of projects in the D8 Zone by adding:

- *The design of buildings on Independence Avenue should complement, not compete with, the Smithsonian buildings when viewed from the National Mall and Independence Avenue.*
- *Rooftop structures, architectural embellishments, and penthouses should be carefully located and designed to not compete with the architectural features of the Smithsonian Institution's original building when viewed from its center point on the National Mall and from 10th Street.*

In Subtitle I Section 575.2(a) delete the following: "...no structure, building or building addition may be constructed above ~~or within twenty-five (25) vertical feet of the grade of a street right-of-~~

way that..." Building connections above rights-of-way (such as the one that currently exists with the Forrestal Building over 10th Street) should not be allowed if redevelopment occurs.

Note that the zoning restricts structures on street rights-of-way that were included in the 1791 L'Enfant Plan, closed by the Council of the District of Columbia, and incorporated into the official District of Columbia's official Highway Plan. Because there is uncertainty with regard to which streets were actually closed during urban renewal, the restoration of the 1791 L'Enfant Plan streets (including C Street, 11th Street, and Virginia Avenue) should be incorporated into the update of the District Elements of the Comprehensive Plan (which would inform a future update of the Highway Plan). NCPC recommends removing the provision that "the right-of-way must have been closed" from the zoning regulations to allow the restoration of the 1791 L'Enfant Plan streets (including C Street, 11th Street, and Virginia Avenue).

2-3) NCPC Referral: Independence Avenue and Burnham Place/Union Station

NCPC staff has performed an in depth analysis of which streets and areas warrant project review and the type of review that different agencies offer. In general, for streets with terminating viewpoints (such as the U.S. Capitol), NCPC staff believe that views can be protected through development controls and that NCPC referral is not necessary; however, in some cases staff believes that it would be beneficial to have Zoning Commission review (see section on North Capitol Street on page 26) of these streets to help create a consistent public realm and strong urban design framework.

Unlike streets with terminating viewpoints where the protection of the view corridor is relatively straight forward, the protection of larger views not defined by a single street is more complicated. NCPC staff is particularly interested in Independence Avenue and Union Station where major redevelopment is likely to occur adjacent to significant national resources in the monumental core where the impact of development on viewsheds needs to be analyzed.

Independence Avenue (between 6th and 12th)

As discussed in the section above for Independence Avenue, there is the possibility that federal land in the D-8 zone could be privately developed in the future. This includes a good portion of land fronting Independence Avenue. As previously discussed, Independence Avenue is a major avenue adjacent to the National Mall within the monumental core of the city. It is home to the Smithsonian Institution's southern campus and a host of large federal buildings that are relatively low in height to protect the open sky views from the National Mall.

The proposed zoning for D-8 includes Zoning Commission review of projects in accordance with specific urban design criteria in the zoning regulations. Some of the sites (including all on Independence Avenue) will be referred to the Commission of Fine Arts under the Shipstead Luce Act for advisory review. The proposed zoning does not include NCPC as a referral agency for private development on Independence Avenue. As such there is no way that the NCPC could offer formal comments on impacts to federal resources and national interests that need to be studied

as part of a project proposal (the proposed matter-of-right zoning eliminates the need for a PUD and therefore referral to NCPC).

Whereas CFA typically focuses on building architecture and design, NCPC is a planning agency which works at the multi-block scale. It seems unlikely for example that CFA or the Zoning Commission would model new development to assess impacts from the National Mall. Project referral to NCPC would also offer the federal government the opportunity to provide consolidated comments to the Zoning Commission for their consideration. While staff from different agencies could testify at the Zoning Commission, the Zoning Commission does not value staff's comments as much as it does an official action from the National Capital Planning Commission.

Recommendation:

In Subtitle I; D8 Zone - Grant NCPC referral agency status for new development on Independence Avenue in the D8 zone.

The future Master Plan and Stage 1 submission for Burnham Place on the South Side of H Street (Union Station North Special Purpose Zone)

Historically, the Zoning Commission has granted NCPC advisory review for development projects within a few areas of the city where there are significant national interests. These areas include the SE Federal Center⁴, Capitol Gateway⁵, Union Station North⁶, and Naval Observatory Overlay Zones⁷. The purpose of this review is for NCPC to ensure national interests are protected while supporting the city's development goals.

In earlier drafts of the proposed zoning regulations, staff concluded that the regulations maintained NCPC's advisory review as a special exception for the Naval Observatory Zone but not for the SE Federal Center, Capitol Gateway, and Union Station North zones. As presented at staff's December 4th Information Presentation, staff does not believe there continues to be a need for NCPC referral in the Capitol Gateway or SE Federal Center zones. The general rationale is that these areas have been developed, have sufficient development controls in place to protect federal interests, and have other review processes in place that will offer the opportunity to consider federal interests.

Unlike these areas, Burnham Place in the Union Station North Special Purpose Zone has yet to be developed. In 2011 the Zoning Commission granted NCPC referral for the Stage 1 and master plan submissions for Burnham Place based on the reasons below. This has now been deleted in the proposed zoning.

Staff believes that NCPC referral for the Burnham Place Master Plan and Stage 1 submission should be maintained for the following reasons:

⁴ Zoning Commission Action, Notice of Final Rulemaking & Order No. 96-3/89-1(November 2002)

⁵ Zoning Commission Action, Notice of Final Rulemaking & Order No. 96-3/89-1 (November 2002)

⁶ Zoning Commission Action, Notice of Final Rulemaking & Order No. 09-21 (April 2011)

⁷ March 1992, the Zoning Commission approved the amendments to adopt a new Section of Chapter 15 that allowed for NCPC review and report.

- The federal/national interest in this overlay is the impact of development on the character of Union Station, Columbus Plaza and the contributing viewsheds of Louisiana and Delaware Avenues. Union Station was placed on the National Register of Historic Places in 1969 and is described in the McMillan plan as “the grand gateway to the capital” the style of which “should be equally as dignified as that of the public buildings themselves”. In 1979, the National Register was amended to include the plaza in front of the station as well as Columbus Fountain. The station and plaza are proximate to the United States Capitol Building and supporting Senate Office buildings, as well as the Smithsonian Postal Museum.
- The purpose of NCPC’s review is to advise the Zoning Commission on the potential impacts to the federal/national interest including accessibility and function, the historic character and setting of Union Station, its relationship to the Capitol Complex, and the character of the Washington skyline. *The Comprehensive Plan for the National Capital: Federal Elements* clearly states that NCPC should protect the settings of historic properties, including views to and from the sites where significant, as integral parts of the historic character of the property.⁸
- This area has yet to fully redevelop and will likely redevelop on a large scale. Because the Master Plan is not complete and because there is discretion within the zoning, it is not clear how the proposed zoning may impact national resources, such as the character and setting around Union Station or accessibility and function of the station. Without NCPC consultation, there won’t be a step in place to address national/federal interests as this planning work continues and at decision points related to accessibility and function, and to the mass and bulk of buildings immediately adjacent to Union Station.

Recommendation:

In Subtitle K Chapter 3: Reinstate NCPC as a referral agency for the master plan and stage 1 submission for Burnham Place.

4) Zoning Commission Review of Projects on North Capitol Street

The vista of the U.S. Capitol along North and South Capitol Streets is one of the most important gateways and viewsheds in the city. Both of these streets are located in areas undergoing major redevelopment and increase in density.

NCPC staff believe that views can be protected through development controls and that NCPC referral is not necessary; however, in some cases staff believes that it would be beneficial to have Zoning Commission review of these streets to help create a consistent public realm and a strong urban design framework.

⁸ *The Comprehensive Plan for the National Capital: Federal Element, Preservation and Historic Features*, page 164.

NCPC staff have worked closely with DCOP staff to put development controls in place for both North and South Capitol Streets that enhance views of the U.S. Capitol and help to elevate the urban design framework for these streets. The proposed zoning regulations include Zoning Commission review for projects on South Capitol Street in accordance with a robust set of design criteria which requires:

- The building or structure incorporate massing, materials, and buildings and streetscape landscaping to further the design and development of properties in a manner that is sensitive to the establishment of South Capitol Street as a monumental civic boulevard.
- The application shall include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome and other federal monumental buildings.

NCPC staff believes that applying this criteria to new development on North Capitol Street (south of M Street) through Zoning Commission review would also help to create a strong urban design framework for this part of the city.

Recommendation:

Require Zoning Commission review for projects on North Capital Street south of M Street in accordance with the criteria of Subtitle I Section 701.2(b).

5) Proposed zoning for Pennsylvania Avenue and the J.Edgar Hoover site

When Congress dissolved the Pennsylvania Avenue Development Corporation (PADC) in 1996, it transferred various responsibilities along Pennsylvania Avenue to the GSA, NCPC and NPS.⁹ 40 U.S.C. § 6702(d) states that “The National Capital Planning Commission is responsible for ensuring that development in the Pennsylvania Avenue area is carried out in accordance with the Pennsylvania Avenue Development Corporation Plan – 1974.”

The Pennsylvania Avenue Development Corporation Plan (the PADC Plan) and Square Guidelines provide federal guidance on the planning, design and development of 23 squares along and near Pennsylvania Avenue, NW. U.S. Code Chapter 40 § 6712 states that select agencies or instrumentalities of the federal or District of Columbia governments may exercise any lawful powers in the PADC Plan area that are consistent with the PADC Plan. These currently include

⁹ See 40 U.S.C § 6701 et. seq

GSA, NPS, and NCPC. The District Department of Transportation has jurisdiction over the Avenue's cartway.

Pennsylvania Avenue Sub-Area (Subtitle I Section 608)

The proposed zoning creates the Pennsylvania Avenue Sub-Area for the blocks within the PADC Boundary (3rd – 15th Streets, NW). NCPC staff has two comments on the proposed regulations as they relate to the overall sub-area:

1. The zoning states that the objective of this sub-area is to “maintain Pennsylvania Avenue as a mixed-use monumental but lively street with ground floor retail and additional height on its north side, to emphasize its role in physically linking the executive and legislative branches of the federal government”. This reads as if it is the additional height on the north side of the Avenue that emphasizes Pennsylvania Avenue's role in physically linking the executive and legislative branches which is not correct.
2. In section Subtitle I Section 608.10 the zoning states that “a building within the Pennsylvania Avenue sub-area is also governed by the Pennsylvania Avenue Development Corporation (PADC) Plan of 1974, as amended”. It is not clear with the term “PADC Plan of 1974, as amended” that it includes the square guidelines, general guidelines, development policies and procedures and related documents in the PADC legislation.

Recommendation:

Modify the objective in Subtitle I Section 608 for the Pennsylvania Avenue Sub-Area to read “maintain Pennsylvania Avenue as a mixed-use monumental but lively street with additional height on its north side and active ground floor uses to bridge the downtown with the civic institutions and National Mall to the south of Pennsylvania Avenue.”

In Section 608.10: Change the term “PADC Plan of 1974, as amended” to “as implemented by the Pennsylvania Avenue Development Corporation General Guidelines and Uniform Standards 36 CFR §910.1 et seq.” to reference all the related documents in the PADC legislation.

J.Edgar Hoover Site

Unlike the proposed zoning for the rest of Pennsylvania Avenue which allows 160' in height as a matter-of-right, the zoning for the J. Edgar Hoover site (on Pennsylvania Avenue between 9th and 10th Streets, NW) allows a matter-of-right height of 130'. A property owner can achieve 160' feet in height through the PUD process.

Development within the PADC Boundary is unique in that the PADC plan and square guidelines for each block on Pennsylvania Avenue between 3rd and 15th govern development and that there may not be incentive to pursue a PUD if the square guidelines allow a height above 130'.

NCPC has initiated the process of a plan amendment and square guidelines for the J.Edgar Hoover site in coordination with GSA, NPS, the Commission of Fine Arts, the DC State Historic

Preservation Office, the Office of Planning, and the Department of Transportation. The guidelines will include proposed land use, FAR, building envelope, height, build-to-lines, build-to-height, upper-story setbacks, curb cuts, parking, loading, and interface with public space. GSA and NCPC will review any development proposals in accordance with their delegated authorities.

6) Future Urban Design Study

NCPC staff's analysis of the ZRR and the Urban Design Element of the Comprehensive Plan for the National Capital highlight the need for a coordinated look at development controls, review processes, and the public realm for streets with significant views, and reservations. Some examples include 16th Street, North Capitol Street, New Jersey and Virginia Avenue, NW. NCPC staff have taken an initial look at these streets in relation to the proposed zoning but would like to work with the District in their update to the Comprehensive Plan and subsequent zoning to ensure that the development controls, review processes and public realm guidance will elevate these significant streets and reservations, and enhance viewsheds.

For example, during the height study work, both the District and NCPC cited 16th street as an example of an important view corridor in the city that merits protection. It was used as an example where local zoning protects significant views (in this case – the White House) through development controls. This is largely true for the majority of the street which is allowed a matter-of-right height of 90 feet; however the Hay Adams site across the street from Lafayette Park and the White House was rezoned in 2008 to C-4 (renamed D-6-R in the proposed zoning) which allows a matter-of-right height of 130'.

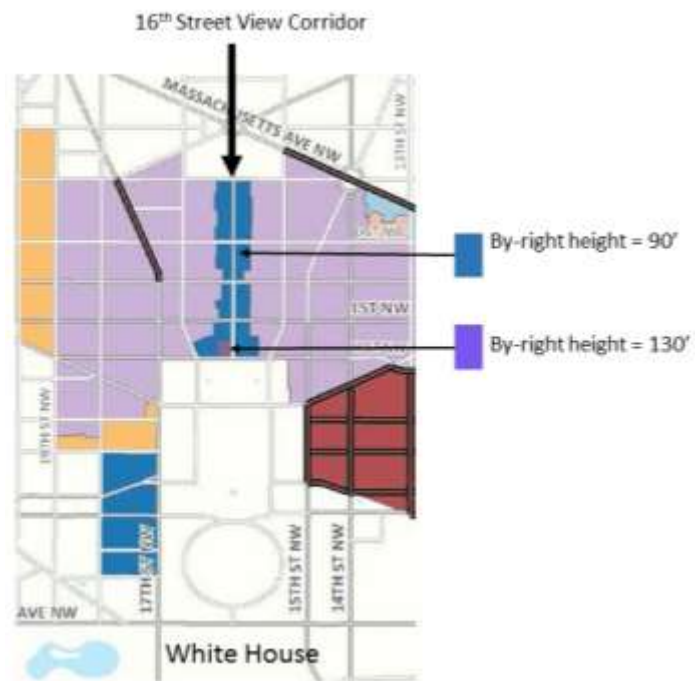
While the purpose of the zoning request was to allow only a 1-story increase of 16' to the existing hotel (all of which is under 110'), the zoning now allows a matter-of-right height of 130' at the end of this significant view corridor. DCOP and the Zoning Commission supported the map amendment based on a specific policy in the Comprehensive Plan that supported the one-story 16' increase to the Hay Adams Hotel. NCPC also supported the map amendment, not having had the benefit of the urban design analysis that informed the Height Act Study and the update to the Urban Design Element of the Comprehensive Plan.

While staff is not in opposition to the 1 story addition that is now built on the Hay Adams hotel, we do not think that zoning the site a matter-of-right height of 130' (40' greater than the rest of the view corridor) is good urban design policy especially given the site's location at the focal point of a viewshed that is zoned for 90' in height. NCPC staff would like to work with the District on these types of urban design issues as the District updates its Comprehensive Plan.

Recommendation:

Notes that NCPC staff's analysis of the ZRR and the Urban Design Element of the Comprehensive Plan for the National Capital highlight the need for a close look at development controls, review processes, and the public realm for reservations, and streets with significant views and terminating vistas.

Comments that NCPC staff would like to work with the District Office of Planning in the update to the federal and local elements of the Comprehensive Plan to ensure that policies (and subsequent zoning) protect and enhance prominent view corridors and reservations through a an urban design and public realm framework.



Analysis: Part 2 –Subtitle X: Chapter 2 Chanceries

Congress enacted the FMA to provide, among other things, a regulatory framework and review procedures governing the location, replacement and expansion of chanceries in the District of Columbia (D.C. or District).¹⁰ Any zoning regulations adopted by the DCZC must comport with these requirements. The FMA balances both the federal and municipal interests. The federal interest, perhaps among the most important of all federal interests, is to ensure and promote adequate facilities for chanceries and international organizations in the District to ensure reciprocal treatment for United States' chanceries abroad. The municipal interest is to protect residential neighborhoods with little to no office or institutional uses from chancery encroachment and to guard against potential traffic, parking and other neighborhood concerns associated with chancery operations.

The FMA provides for the location of chanceries in all zone districts subject to different review processes.¹¹ The FMA permits matter-of-right chancery use in areas zoned commercial, industrial, waterfront and mixed-use (CR).¹² In areas zoned medium-high and high density residential and in "any other area determined on the basis of existing uses which includes office or institutional uses," the FMA permits chancery use subject to review and disapproval by a specially constituted Board of Zoning Adjustment (BZA).¹³ The phrase, "any other area" generally refers to those zone districts not previously referenced by the FMA. This includes the low-, moderate-, and medium-density residential and the Special Purpose (SP) zone districts.

The BZA must evaluate and make its determination on a chancery application subject to disapproval using "solely" six enumerated criteria.¹⁴ The six criteria include: (1) the international obligation of the U.S. to facilitate the provision of adequate and secure facilities for foreign missions in the National Capital; (2) historic preservation as determined by the BZA, provided that substantial compliance with D.C. and federal regulations governing historic preservation is required; (3) the adequacy of off-street parking and accessibility to mass transit to permit parking reduction; (4) the extent to which the area is capable of being adequately protected, as determined by the Secretary of State in consultation with protective services; (5) the municipal interest as determined by the Mayor; and (6) the federal interest as determined by the Secretary of State.¹⁵ To ensure a balanced approach, the Act includes three federal and three municipal criteria for the BZA's consideration.

The chancery regulations proposed for adoption by the Zoning Commission includes two provisions that the Department of State and NCPC's General Counsel find legally insufficient.¹⁶ These provisions -- § 201.4 and § 201.5 -- are as follows:

¹⁰ 22 U.S.C. § 4306 (2014) and D.C. Code § 6-1306 (West 2014).

¹¹ 22 U.S.C. § 4306(b)) (2014) and D.C. Code § 6-1306(b) (West 2014).

¹² 22 U.S.C. § 4306(b)(1) (2014) and D.C. Code § 6-1306(b)(1) (West 2012).

¹³ 22 U.S.C §§ 4306(b)(2)(A)-(B) and 4306 (i)(2) (2014) and D.C. Code §§ 6-1306(b)(2)(A)-(B), and (i)(2) (West 2014). For non-chancery cases, the BZA consists of three members appointed by the Mayor, a representative of the NCPC, and one member of the Zoning Commission on a rotating basis. For chancery applications, the BZA consists of the three Mayoral appointed citizens, the Executive Director of the NCPC and a representative of the National Park Service (NPS).

¹⁴ 22 U.S.C § 4306(d) (2014) and D.C. Code § 6-1306(d) (West 2014).

¹⁵ *Id.*

¹⁶ The complete list of DOS and NCPC submissions to the Zoning Commission discussing the legal insufficiency of various iterations of proposed chancery regulations is set forth on page 11. The most recent submission is a Letter from Patrick F. Kennedy, Assistant

201.4 For the purposes of the Subtitle X § 201.3 determination, the “area” shall be the square within which the proposed chancery is to be located, except that the Board of Zoning Adjustment at the request of an applicant, Secretary of State, or the Mayor of the District of Columbia may use a larger area if the Board of Zoning Adjustment finds the larger area provides a more accurate depiction of the existing mix of adjacent uses, based on calculations of the land area devoted to existing uses including office and institutional uses.

201.5 An area shall be considered to be a mixed-use area if as of the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than residential uses as defined in Subtitle B, Chapter 2. Notwithstanding the foregoing, the Board of Zoning Adjustment may find that an area with less than this amount of non-residential uses is a mixed-use area based in credible evidence, as may be submitted by the applicant, Secretary of State, or the Mayor of the District of Columbia.

The legal flaw in the cited provisions is the compulsion imposed upon the BZA to: (1) use a square as the first and preferred area for evaluation and (2) use a 50% threshold as the first and preferred methodology for determining if an area is characterized as mixed-use.

Both the DOS and NCPC's General Counsel maintain the mandatory and primary focus on the square as the geographic area for examination by the BZA ignores the discretion granted to the BZA by the FMA. The FMA's regulatory language for “any other area” in § 4306(b)(2)(B) refers to proposed chanceries to be located in the residential zone districts thus making the zone district the minimum area to be considered by the BZA in determining a mixed-use character. However, whether the correct area is a square, a zone district, or an area greater than a zone district is a matter left to the discretion of the BZA by the FMA on a case-by-case basis. The Office of the Corporation Counsel of the District of Columbia (OCC) (subsequently renamed the District of Columbia Office of Attorney General) acknowledged this critical fact in a legal memorandum to the BZA in 1988.¹⁷ This legal opinion endorsed the position of the D.C. Court of Appeals that indicated the interpretation of the FMA as it applies to chancery applications “involves the exercise of judgement which Congress viewed as best made by the FM-BZA.”¹⁸ The BZA concurred with this advice noting it was “constrained . . . to exercise its authority and responsibility” as provided by the FMA and was therefore not bound by a rule limiting analysis to a square with at least 1/3

Secretary for Management, Department of State to Anthony J. Hood, Chairman of the District of Columbia Zoning Commission, (August 21, 2015) and is contained in Appendix D.

¹⁷ Letter from Patrick F. Kennedy, Assistant Secretary for Management, Department of State to Anthony J. Hood, Chairman of the District of Columbia Zoning Commission, page 2 (August 21, 2015). As noted in the DOS letter. The Corporation Counsel opined:

Notwithstanding the D zone district the [FMA] permits chanceries to be located in other areas based on existing uses, which includes office or institutional uses, subject to the disapproval of the FMA-BZA . . . The FMA-BZA must interpret “any other area, determined on the basis of existing uses, which includes office and institutional uses . . . The FMA-BZA must determine the relevant area, identify the existing office and institutional uses within the area, determine whether the amount of such uses would qualify the area as within the language of the statute and then, if the finding is in the affirmative, determine on the basis of the six criteria whether the chancery should be permitted to locate there.

¹⁸ *Embassy of the Peoples Republic of Benin v. D.C. Board of Zoning Adjustment*, 535 A.2d 310, 321-322 (D.C. 1987).

nonresidential uses.¹⁹ While the BZA initially used the square and 1/3 nonresidential uses as the basis for its decision-making, over time and with increased experience in dealing with chancery applications, the BZA correctly moved away from this approach.²⁰

Both DOS and NCPC's General Counsel maintain that the mandatory and preferred focus on a greater than 50% nonresidential threshold as a method for determining if an area is characterized by mixed-uses suffers from the same defects as those discussed above for a square. The determination of what constitutes a mixed-use area is left to the discretion of the BZA by the FMA and is to be determined based on the facts and circumstances of each case rather than an arbitrary rule mandated by the Zoning Commission. A 50% methodology ignores the FMA's intent to balance the federal and municipal interests and imposes, with a discriminatory planning approach skewed in favor of the municipal interest. As indicated by a NCPC planning analysis, this approach eliminates 75 percent of the squares zoned low- to medium-density residential for potential chancery use.²¹ Further, the 50% methodology ignores the legislative history of the FMA which acknowledges that a minimal presence of mixed-uses qualifies an area as an appropriate location for a chancery. The legislative history clearly states that the FMA is intended to protect those areas that are "essentially" or "entirely" residential.²² This means the applicant only needs to make a minimal showing that there are some non-residential uses present in the area designated by the BZA to permit the BZA to determine the application based on the six criteria.

The NCPC respects the District's desire to protect its residential neighborhoods and acknowledges that the reliance upon the smallest possible area (square) and a more than 50% non-residential use requirement is a logical way to obtain the desired objective. However, this approach ignores the intent of the FMA, as interpreted by District's own attorneys' and its own court (D.C. Court of Appeals) as well as the Zoning Commission, the BZA and the U.S. Court of Appeals for the D.C. Circuit. All have opined that the area and methodology for determining whether an area is

¹⁹BZA Order No. 14820 (September 7, 1988). The reference to 1/3 nonresidential uses derives from a planning methodology devised by NCPC staff in the course of its 1983 update of the Foreign Missions and International Agencies (now Organizations) Element of the Comprehensive Plan (Foreign Missions Element). These amendments followed passage of the FMA and were intended to provide planning and policy guidance to the Zoning Commission and the BZA. In preparing its guidance, NCPC staff analysis revealed a consistent pattern of existing chancery development in squares citywide consisting of 1/3 office and institutional uses and 2/3 residential uses. This methodology became known as the "1/3 – 2/3 method" and served as the basis for the identifying and mapping areas with the D Overlay Zone that permitted chancery use subject to BZA review and disapproval. It is important to note that NCPC never intended codification of the 1/3 -2/3 methodology in the zoning regulations for use by the BZA as a basis for determining a mixed-use area; it was solely intended as a tool to aid NCPC staff in its planning analysis. NCPC's most recent update to the Foreign Missions Element discontinues its reliance upon the "1/3–2/3 method". Instead, it reinforces policies giving priority consideration to areas compatible for chancery uses, e.g. those areas identified as matter-of-right areas by the FMA and the proposed foreign missions center at the old Walter Reed Medical Center. Therefore, any square/percentage based test written in the proposed zoning regulation is both legally insufficient and inconsistent with the Comprehensive Plan.

²⁰ See, for example BZA Order No. 17841 (Dec. 1, 2006); BZA Order No. 17787 (Feb. 23, 2009); and BZA Order No. 18242 (Oct. 24, 2011).

²¹ Letter from Marcel C. Acosta, Executive Director, National Capital Planning commission to Eric Shaw, Acting Director, District of Columbia Office of Planning, p. 5 and Enclosure A (Feb. 3, 2015). Pursuant to the Home Rule Act, the Mayor's planning authority does not extend to, among others, international projects and developments. 40 U.S.C. § 8712(a)(1)(2014) and DC Code § 2-1002(a)(2) (West 2012), as originally contained in the Home Rule Act, 87 Stat 774, 780 and 792. (December 24, 1974). Because assuring suitable facilities for foreign countries' diplomatic missions is a federal, treaty obligation, NCPC has consistently exercised planning authority over chanceries and international projects. See, Vienna Convention on Diplomatic Relations, opened for signature April 18, 1961, 23 U.S.T. 3229, 500 U.N.T.S. 96. In the dispatch of its duty, NCPC has prepared a Foreign Missions Element beginning in 1977 with subsequent amendments in 1978, 1979, 1980, 1983, 2004 and 2014. In advocating a discriminatory planning approach for incorporation into the District zoning regulations, the DCOP is in violation of its planning authority.

²² See, H.R. Conf. Rep. No. 97-693 at 39 (the FMA "will not permit chanceries to be located in any area which is essentially a residential area").

characterized by mixed, office and institutional uses is a matter left to the discretion of the BZA. As such it is not within the Zoning Commission's authority to circumscribe this discretion with arbitrary regulations. Thus, if the Zoning Commission and DCOP wish to proceed in the manner proposed, the only remedy available to them is to petition Congress to amend the Foreign Missions Act. Pending such amendments, the Zoning Commission is precluded from adopting § 201.3, § 201.4, and § 201.5 as proposed.

Accordingly, to bring the proposed chancery regulations into conformity with the purpose and legal requirements of the FMA, the Zoning Commission is advised to modify its proposal as follows:

Adopt the following language as an alternative for § 201.4:

For the purposes of Subtitle X § 201.3 determination, the "area" shall be the area the BZA determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery.

Adopt the following language as an alternative for § 201.5:

An area shall be considered to be a mixed-use area if as of the date of the application more than 50% of the zoned land within the area is devoted to uses other than residential uses as defined in Subtitle B, Chapter 2. In addition, the BZA may find that an area with less than or equal to 50% of non-residential uses is a mixed-use area upon a showing of non-residential uses, as may be submitted by the applicant, the secretary of State, or the Mayor of the District of Columbia.

Appendix A: Staff Analysis of the 11/14/14 ZRR Draft

1) Building heights and mass on major streets and avenues and near national resources within the monumental core, (Downtown Zone, Subtitle I).

Staff's analysis identified three areas where matter of right (MOR) building height in the proposed zoning updates will impact the views and settings of prominent national resources: Independence Avenue, North Capitol Street, and South Capitol Street.

Independence Avenue –Proposed D-8-B-1 Zone

Staff's comments on Independence Avenue were based on the SW Ecodistrict Plan (2009) and Plan Addendum (2014), both accepted by NCPC.

Like Constitution Avenue, Independence Avenue is a major avenue adjacent to the National Mall within the monumental core of the city. It is home to the Smithsonian Institution's southern campus and a host of large federal buildings that are relatively low in height. These federal buildings are similar in height to the Smithsonian buildings and generally cannot be seen over the rooflines of the Smithsonian buildings when standing on the National Mall. As a result, the experience of the National Mall is that of a truly public space within a park-like setting framed by trees and civic institutions. The Comprehensive Plan for the National Capital preserves this setting with policies such as *"the National Mall's historic open space and monumental character should be respected and preserved for the benefit of future generations. New development should not infringe on the integrity of the National Mall and the surrounding monumental core..."*²³

The proposed D-8-B-1 zone in the September 13 draft allowed for 130' buildings with an additional 20' penthouse (setback at a 1:1 ratio) at the property line. As proposed, this would have impacted the character of the Mall and in particular the views of the Smithsonian Institution building (the castle) when standing in the center of the Mall. The castle and its setting was designated a national historic landmark in 1977. The proposed zoning would have also impacted the urban design of Independence Avenue by creating 150' buildings (penthouse included) on the south side of the avenue when the Smithsonian buildings across the street are 50-80' in height.

²³ *The Comprehensive Plan for the National Capital: Federal Elements, Preservation and Historic Features*, page 166.



Left: View of the Smithsonian Castle today from the center of the National Mall.



Left: View of the Smithsonian Castle with new buildings as proposed in D8B1. Note: This model assumes the proposed SW Ecodistrict parcelization. If Virginia Avenue and 11th Street are not rebuilt, the impact of development would be more significant because parcel size would increase.

Staff provided the Zoning Commission with the following recommendations but also noted that a more detailed planning effort is needed to address the relationship between the street grid, street widths, parcel configuration, and building massing.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
Independence Avenue: Proposed D-8-B-1 Zone Allow a maximum allowable building height of 110' (plus the 20' penthouse setback at a 1:1 ratio) for the <u>area</u> on the south side of	- Maximum building height is 130' with an upper story setback at a ratio of 1:1 above 110'. - The penthouse above 130' must be for mechanical	See EDR.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
Independence Avenue shown in Appendix A. Setback the buildings 88' from the right-of-way centerline on Independence Avenue to align with the corner of the USDA building at 12th and Independence. This would be similar to the setbacks of the Smithsonian buildings and help to mitigate the proposed height.	equipment/storage and setback at a ratio of 2:1 from each exterior wall and cannot exceed one-third of the total roof area. Setback the buildings 88' from the right-of-way centerline on Independence Avenue to align with the corner of the USDA building at 12th and Independence.	

North Capitol Street – Proposed D-3-B-1, D-4-B-1, and D-5-B-1 Zones

The vista of the U.S. Capitol along North Capitol Street is one of two primary north/south axes that establish the urban design framework and fundamental symbolic design basis for the city and it is one of the most important gateways to the monumental core. NCPC reinforced the importance of this avenue – and all axial streets to the U.S. Capitol – when it adopted the 2013 Height Act Study.

North Capitol Street's topography is similar to 16th Street north of the White House. From Florida Avenue, the street generally slopes down towards the Capitol, therefore, the mass and location of buildings along these blocks strongly influence our perceptions about the scale of the Capitol dome and its preeminence within the pedestrian's line of site. At the same time, North Capitol is at the confluence of the new, higher densities of the NOMA commercial neighborhood on the east, and lower densities that have historically characterized this area on the west.

NCPC staff prepared two conceptual visual studies to better understand how and whether the proposed zoning would have impacted the viewshed to the U.S. Capitol and the urban design character of the street (see Appendix C).

(1)The first visual study of North Capitol Street faces south from K Street, an area that defines the composition of buildings and open spaces immediately to the north of the U.S. Capitol. *As proposed in the zoning update, there are four separate zones with different MOR heights that bisect North Capitol within this five-block area: D-5-B-1, D-4-B-1, D-3-B-1, and an additional zone (not part of the Downtown Zone) on the west side of the street north of G Street.* There are also several prominent federal properties and lands within this portion of North Capitol Street. The visual study considered strategies to create a cohesive building edge on these blocks and to ensure that the dome is not diminished by the proposed Matter of Right building heights.

(2)The second visual study south of M Street illustrates the undefined edges along each of the blocks within the corridor, weakening the composition among buildings on either side of the street. This results in North Capitol being defined by the edges of the areas around it, rather than the preeminence of the dome and as a distinctive place unto itself. North Capitol Street should be developed as a distinct, cohesive corridor with urban design strategies that address these important transitions in density and land use, reinforce the quality of views to the Capitol, and promote the potential of this street as one of our city's most important gateways. Given the complexity of the land use conditions and urban design issues, NCPC staff does *not* make a recommendation for the blocks to the north of K Street. However, we welcome the opportunity to work with the Office of Planning through the Comprehensive Plan or a more specific study, as appropriate, to consider urban design strategies for the entirety of North Capitol Street within the L'Enfant City.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
North Capitol Street: Proposed D-3-B-1, D-4-B-1, and D-5-B-1 Zones - On lands subject to zoning and not subject to any other height restrictions²⁴: require a 1:1 step back at 110' feet within the Proposed D-5-B-1 Zone from Louisiana Avenue to K Street, NW. - NCPC staff seeks to clarify the status of the D-3-B-1 Zone, which has a proposed MOR height of 110 feet. However, this is also identified as a receiving zone area. If, as a receiving zone, the maximum height allowed is 130 feet, staff recommends a 1:1 step-back at 110 feet. See Appendix B for an illustration. - Over the longer-term, NCPC staff recommends that the urban design framework for North Capitol Street corridor within the L'Enfant City be addressed through the Comprehensive Plan or a more specific study as appropriate.	For designated street segments between D Street and H Street (west side) and G Street and K Street (east side): Any portion of a building that exceeds 110' in height shall provide an additional 1:1 stepback from the building line along North Capitol Street.	None The proposed development controls are consistent with staff's earlier comments. Note: the upper story setback was not extended on the west side of North Capitol Street in between H and K Streets. The existing building at the corner of H and North Capitol is approximately 130' with an upper story setback. The other sites are historic and will not likely be redeveloped in a manner that will impact viewshed analysis.

²⁴ Additional height requirements identified in the Schedule of Heights of Buildings Adjacent to Public Buildings found in Subtitle A, Chapter 4, §403, Appendix G.

South Capitol Street – Proposed D-4-B-1 and D-5-B-1 Zones

Like North Capitol Street, South Capitol Street is a primary axis that establishes the urban design framework and symbolic basis for the city, and is also one of the most important gateways into the capital city. Historically, there has been a tremendous gap between the potential of this corridor and its condition. However, in recent years, new development, such as the stadium, a handful of buildings, and the proposed Frederick Douglas Bridge have begun to reclaim South Capitol as an important place for both the future growth of the District and as a monumental civic boulevard.

In 2003 the South Capitol Street Urban Design Study was prepared for the entire corridor by the District of Columbia, the NCPC, and the Anacostia Waterfront Corporation. To this day it remains the vision for this important gateway from the waterfront to Independence Avenue; however, the zoning (to implement this vision) as proposed in the September 2013 draft stops short at M Street where the area transitions to high density zoning. The proposed zoning would have created the following situation from the waterfront to the Capitol:

- The four blocks between the waterfront and M Street would have maximum allowable heights ranging from 80' – 110' and must setback 15' from the property line.
- The next 5 blocks north of M Street would have a maximum allowable height of 130' with no setback from the property line and no upper story setback.

The result when developed would be an incongruous street wall and poorly framed viewshed that would have diminished the street's potential to achieve more than the appearance of a thoroughfare.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
South Capitol Street: Proposed D-4-B-1 and D-5-B-1 Zones • At a minimum, on lands subject to zoning and not subject to any other height restrictions²⁵: require a 1:1 step back at 110' feet for the blocks between M Street, SW and the freeway. • As previously indicated in the National Capital Planning Commission's 2006 comments, the Commission recommended	For designated segments between M Street and Washington Avenue, SW (west side) and M Street and Virginia Ave, SW (east side): • the street wall shall be setback 15 feet from the property line²⁶. • Any portion of a building that exceeds 110' in height shall provide an	None The proposed regulations now create a consistent streetwall and massing for new development which will positively frame views of the Capitol and enhance the street as a grand urban boulevard.

²⁵ Additional height requirements identified in the Schedule of Heights of Buildings Adjacent to Public Buildings found in Subtitle A, Chapter 4, §403, Appendix G.

²⁶ There are a handful of squares where the building setback is described in terms of a setback from the centerline instead of the 15' from the property line because of a shift in the ROW and property lines along South Capitol Street.

that the Zoning Commission consider extending the Capitol Gateway Overlay along South Capitol Street north of M Street	additional 1:1 setback along South Capitol Street.	
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2) The need for a review process for development on streets and avenues near national and local landmarks and resources within the monumental core.

As proposed in the September 2013 draft, the review process within the Downtown Zone (Subtitle I) would have been limited to a portion of South Capitol Street (South of M Street) for development that exceeded a high FAR threshold. No other downtown streets were subject to review.

The Downtown Zone area includes and abuts the monumental core and many L'Enfant Plan viewsheds, which are protected cultural resources under the National Register of Historic Resources.^[1] NCPD staff is concerned that there is not sufficient opportunity for the Zoning Commission, NCPD, or the public to provide input on the impacts or urban design quality of new development on streets adjacent to nationally important places such as the U.S. Capitol or the National Mall.

Review should be tied to geography and resources and linked to urban design goals and criteria. Subtitle Z contains urban design criteria that support many of NCPD's Comprehensive Plan goals. Under section 800.1, design review is in place to "Recognize that some areas of the District warrant special attention due to particular or unique characteristics of an area or project" and to "promote high-quality, contextual design." However, as written only a small portion of South Capitol Street is subject to these criteria.

Staff believes that a basic level of review may be appropriate for certain streets that are adjacent to critical national resources or that contribute to the quality of views to critical landmarks within the monumental core.

- Viewsheds are defined by the visibility of the landmark at the end of the street, as well as its visual quality and preeminence within its immediate setting. Viewshed quality is generally defined by a composition of natural and built elements on a multi-block scale, including such primary elements as street trees, streetscape infrastructure (lights, furniture, etc.), open spaces, and building mass.
- Planning considerations for streets that are "adjacent" to critical national resources is more complex particularly when major redevelopment of buildings and infrastructure is anticipated. In these cases additional planning work is necessary to understand how future projects may impact the urban design character of the area. For example, there are visual and other physical impacts that should be analyzed, including circulation and massing of adjacencies to significant historic resources.

^[1] For more information, see the National Register Nomination Form:
<http://pdfhost.focus.nps.gov/docs/NRHP/Text/97000332.pdf>.

Over the long term, we would welcome the opportunity to work with the Office of Planning or others, as appropriate, to evaluate areas within the monumental core that warrant review to protect and strengthen important corridors.

In the interim, there are several steps we can take through the ZRR to immediately ensure that a process is in place to balance local and national goals and to protect the city's major landmarks. Staff recommended that the ZRR address the corridors where redevelopment is most likely to occur on a multi-block scale.

Using the District's *2013 Height Study Capacity Analysis Map*, the *District's Zoning Map*, and the *proposed Matter-of Right heights* as set forth in the ZRR, staff identified blocks along those streets and avenues located within high density areas where redevelopment is anticipated or planned near major national landmarks or within significant viewsheds.

Review should be in place to ensure that these areas evolve in such a way that meets both local and national goals to protect and enhance the city's major cultural resources. The areas of national interest include:

- b. Major axial streets and viewsheds that establish the urban design framework of the city, particularly on axis to the U.S. Capitol and White House and establish the preeminence of the city's national icons; and
- c. Streets with adjacencies to critical national resources.

Based on this analysis, staff identified the streets within the monumental core that merit Zoning Commission review and NCPC advisory review as recommended below.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
Independence Avenue (between 6th and 12th): • Zoning Commission review • NCPC Advisory review	• Proposed Zoning Commission review in accordance with specific urban design criteria in the zoning code. • No NCPC review • CFA already has review (under Shipstead Luce Act)	See EDR.
North Capitol Street: • Zoning Commission review between	• No Zoning Commission or NCPC review for North Capitol Street between Louisiana	None Staff previously asked for NCPC review because development controls were not in place in the September draft to protect the national/federal interests. Staff is

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
Louisiana and New York Avenue • NCPC review between Louisiana and K Street	and New York Avenue. • CFA has review between Louisiana Avenue and G Place NW.	satisfied with the proposed development controls for North Capitol Street in between Louisiana and K Street. Additional Comments • Staff believes it would be beneficial for the Zoning Commission to review projects on North Capitol Street between D and New York Avenue (similar to its review on South Capitol Street) • As part of the District's Comprehensive Plan process, staff would like to work with DCOP to develop an urban design framework for North Capitol Street (from Louisiana Ave to New York Avenue) that would address the public realm and building massing for the entire corridor.
South Capitol Street: • Zoning Commission review and NCPC review between the waterfront and D Street.	• Proposed Zoning Commission review in accordance with specific urban design criteria in the zoning code. • No NCPC review • CFA has review from D Street to the Freeway (under Shipstead Luce Act)	None Staff previously asked for review because development controls were not in place in the September draft to protect the national/federal interests. Staff is satisfied with the proposed development controls for South Capitol Street in addition to Zoning Commission review and limited CFA review. Additional Comments; • As part of the District's Comprehensive Plan process, staff would like to work with DCOP to develop an urban design framework for South Capitol Street that would address the public realm.
Maryland Avenue • Zoning Commission review and NCPC review between the	• Proposed Zoning Commission review in accordance with specific urban design	None Staff previously asked for review by both the Zoning Commission and NCPC to be consistent with NCPC's comments on other streets of national importance. Staff

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
6 th Street and the Portals Development.	criteria in the zoning code for Maryland Avenue. • No NCPC review • CFA already has review (under Shipstead Luce Act)	is satisfied with the zoning for Maryland Avenue and review by the Zoning Commission and CFA.
16th Street • Zoning Commission review and NCPC Advisory Review between H Street and I Street	• No Zoning Commission review • No NCPC review • CFA has review of the northeast and northwest parcels at the intersection of I and 16th Streets, NW (under Shipstead Luce Act)	See EDR.
New Jersey Avenue • Zoning Commission review and NCPC review between Louisiana Avenue and Massachusetts Avenue	• No Zoning Commission review • No NCPC review • CFA already has review between Louisiana Avenue and E Street NW (under Shipstead Luce Act)	None Staff previously asked for review by both the Zoning Commission and NCPC to be consistent with NCPC's comments on other streets of national importance. Staff is satisfied with the zoning for New Jersey Avenue. Additional Comments: • Staff believes it would be valuable for the Zoning Commission to review projects on New Jersey Avenue between Louisiana and Massachusetts Avenue (similar to its review on South Capitol Street)
10th Street • Zoning Commission review between Independence Avenue and Banneker Park	• Proposed Zoning Commission review in accordance with specific urban design criteria for 10th Street	None Staff previously asked for review by both the Zoning Commission and NCPC to be consistent with NCPC's comments on other streets of national importance. Staff is satisfied with the zoning for 10th Street

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
	from Independence to Maryland Avenues. • No NCPC review • CFA already has review from Independence to the L'Enfant Plaza Buildings (under Shipstead Luce Act)	(with the exception of those parcels that would abut Independence Avenue) and review by the Zoning Commission and CFA.

3) Zoning inconsistencies with the Pennsylvania Avenue Development Corporation Plan

When Congress dissolved the Pennsylvania Avenue Development Corporation (PADC) in 1996, it transferred various responsibilities along Pennsylvania Avenue to the GSA, NCPC and NPS.²⁷ 40 U.S.C. § 6702(d) states that "The National Capital Planning Commission is responsible for ensuring that development in the Pennsylvania Avenue area is carried out in accordance with the Pennsylvania Avenue Development Corporation Plan – 1974."

The Pennsylvania Avenue Development Corporation Plan (the PADC Plan) and Square Guidelines provide federal guidance on the planning, design and development of 23 squares along and near Pennsylvania Avenue, NW. U.S. Code Chapter 40 § 6712 states that select agencies or instrumentalities of the federal or District of Columbia governments may exercise any lawful powers in the PADC Plan area that are consistent with the PADC Plan. These currently include GSA, NPS, and NCPC. The District Department of Transportation has jurisdiction over the Avenue's cartway.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
Amend the proposed text in the zoning updates to recognize the Pennsylvania Avenue Development Corporation Plan and Square Guidelines, and address inconsistencies between the proposed text and the plan/guidelines. The zoning updates regarding <i>Pennsylvania Avenue Sub-Area (Subtitle I, Section 608)</i> fail	The proposed boundaries of the sub-area have been expanded to include all of the PADC plan's boundaries and references have been made to use and dimensional compatibility with the PADC plan of 1974, as revised in 1990. The PADC plan has also been referenced as a	See EDR.

²⁷ See 40 U.S.C § 6701 et. seq

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
to encompass all squares within the PADC Plan statutory defined area. See 40 U.S.C. § 6711 and Appendix B for boundary map. Thus, while some portions of the Plan area are zoned D-7-B-1, other areas are zoned D-6-B-1 or D-6-B-2. However, the character described in the Sub-Area <i>Objectives</i> is applicable to all squares within the PADC Plan boundary. The sections of D-6-B-1 (<i>Subtitle I, Section 210</i>) and D-6-B-2 (<i>Subtitle I, Section 211</i>) regarding building setbacks, upper story step-backs, and overall height requirements were inconsistent with the PADC Plan. This would have led to confusion regarding the development potential of a site. It appears that the Height and Upper Story Setback Development Conditions (<i>Subtitle I, Section 306</i>) allows a matter of right height of 160 feet beginning at the building line for buildings within the Pennsylvania Avenue Historic District and fronting Pennsylvania Avenue. This proposed requirement was not consistent with the building setbacks and upper story step-backs required in the Plan before the maximum height is attained. Note: Provisions in DCOP's Subtitle memo dated November 4, 2013 were also unclear. NCPC staff also notes that the agency is launching a collaborative process with federal and District agencies to improve maintenance and operations along Pennsylvania Avenue and address near-term and long-term improvements in keeping with a 21st century capital city. While updates to the PADC Plan and Square Guidelines may occur as part of this initiative, the Zoning Code should be consistent with the current guidance.	supplementary authority to the zoning regulations.	

4) NCPC advisory authority in existing overlay zones

Historically, the Zoning Commission has provided for NCPC advisory review for development projects within a few discrete areas of the city where there are significant national interests, and that advisory review authority is included in the existing zoning regulations. Those areas are also

identified in several overlay zones (defined as special purpose zones in the proposed code): the SE Federal Center²⁸, Capitol Gateway²⁹, Union Station North³⁰, and Naval Observatory Overlay Zones³¹. The purpose of this review is for NCPC to ensure national interests are protected while supporting the city's development goals.

Based on conversations with DCOP, NCPC staff understands that the intent of the proposed zoning updates is to preserve NCPC's advisory review in Subtitle K; however, there is no reference to NCPC in this subtitle in the September or November drafts.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
<i>Capitol Gateway:</i> Retain language that includes NCPC in the agency referral process prior to the Zoning Commission's consideration of projects within the CG/W-2 District. The project is referred to NCPC for review and report when the application is accepted for filing.	NCPC is no longer included in the referral process.	None This area is in the midst of redevelopment. DCOP has proposed development controls that enhance views of the Capitol and help to create a monumental boulevard by proposing a consistent street wall. The Zoning Commission will review projects in accordance with specific design criteria that support NCPC's interests. The Executive Director, the Chairman, or the Commission can provide testimony at the Zoning Commission public hearings.
<i>Southeast Federal Center:</i> Retain existing referral of special exceptions by the Board of Zoning Adjustments to the NCPC for review and report.	NCPC is no longer included in the referral process.	None This is an area that has redeveloped over the past decade according to a multi-agency vision that included NCPC for the Anacostia Waterfront Initiative and NCPC's Legacy Plan. The redevelopment is largely complete. New development still needs Zoning Commission Review. The Executive Director, the Chairman, or the Commission can provide testimony at the Zoning Commission public hearings.
<i>Union Station North:</i> Retain existing referral status that was granted by the Zoning Commission in	NCPC is no longer included in the referral process	See EDR.

²⁸ Zoning Commission Action, Notice of Final Rulemaking & Order No. 96-3/89-1(November 2002)

²⁹ Zoning Commission Action, Notice of Final Rulemaking & Order No. 96-3/89-1 (November 2002)

³⁰ Zoning Commission Action, Notice of Final Rulemaking & Order No. 09-21 (April 2011)

³¹ March 1992, the Zoning Commission approved the amendments to adopt a new Section of Chapter 15 that allowed for NCPC review and report.

NCPC Recommendation (Letters from 6/24/14 and 9/15/14)	DCOP Proposed Language 11/14/14	Outstanding Issues
2011 for the future Master Plan and Stage 1 submissions for Burnham Place in the Union Station North Special Purpose Zone.		
<i>Naval Observatory:</i> Retain existing referral of special exceptions by the Board of Zoning Adjustments to the NCPC for review and report	Existing referral language was retained. Before taking action on a special exception application, the BZA shall submit the application to NCPC for review and report.	None

5) Security

NCPC staff has been consulting with federal agencies in particular the Architect of the Capitol and the US Secret Service, who have expressed concerns regarding the lack of notification of development/redevelopment projects around the White House and the Capitol Complex. Staff is working with these federal partners to analyze different mechanisms for early consultation with property owners and may propose a recommendation in January or February.

Resolved: These issues have been resolved. The Architect of the Capitol worked with DCOP to create a new zone around the Capitol Complex that refers projects to the AOC for review. With regard to the White House, NCPC staff and the U.S. Secret Service have worked with DCOP staff to limit the proposed penthouse regulations (see EDR for ZC 14-13) and with the Department of Consumer and Regulatory Affairs to update the referral process for building permits around the White House.

Appendix B: Table of NCPC Comments from 2007-2014

This table includes all of the comments that NCPC staff and the Commission have made to the Zoning Commission between 2008 and 2014 (with the exception of those already in the EDR and in Appendix A). Many of these comments were made in reference to general concepts that the District Office of Planning proposed in the early stages of the ZRR (as opposed to specific zoning regulations). NCPC's comments were based on potential impacts to federal interests and/or basic principles of urban planning. Staff has determined that all of NCPC's previous comments in this table have either been addressed in the proposed regulations (as indicated) or do not have an impact on federal interests.

NCPC comment on earlier concepts/drafts of the Zoning Rewrite Review	
General Comments on Terms/Procedures (Staff has determined that all comments have been addressed)	
1. NCPC staff recommended all references to the term "Central Area" be changed to "Central Washington" to avoid confusion with "Central Area" references such as in Subtitle I Section 100.2(g) with the term as defined in Subtitle B and 45 DCR 1046. (Staff Letter: 06/24/14)	The proposed regulations now includes both terms: Subtitle A defines "Central Area" as the area included within the combined boundaries of the Urban Renewal Plan for the Downtown Urban Renewal Area and the Urban Renewal Plan for the Shaw School Urban Renewal Area. Subtitle I Downtown Zones uses the term Central Washington when referring to areas within the downtown.
2. NCPC staff recommended language specifying NCPC's authorities in Subtitle A: Authority and Applicability, Section 400.1 to provide clarity to administrators, building permit applicants, architects and lay people reviewing the zoning regulations. It's advisable to specify NCPC's role in processing and reviewing proposed buildings or other structures. (Staff Letter: 06/24/14)	While Subtitle A Chapter 4 references other authorities, such as the Commission of Fine Arts, it does not include the National Capital Planning Commission. It does, however, make the following references: Subtitle A, §401.1 states that, "The Zoning Commission is charged with preparing, adopting and subsequently amending the Zoning Regulations and Zoning Map in a means not inconsistent with the Comprehensive Plan for the National Capital area."; Subtitle A also references the Pennsylvania Avenue Plan; and Subtitle Z §603.1 states the specific types of cases that must be referred to the NCPC for review and comment.
3. NCPC staff recommended adding a provision to Subtitle Z, Chapter 900 that reflects Section 12 of the District of Columbia Public Space Utilization Act. Staff finds that Chapter 9—Air Space Development clearly outlines the policies and procedures, including NCPC's	Subtitle X, §700.2 includes the following language, "Under § 5 of the District of Columbia Public Space Utilization Act, approved October 17, 1968 (D.C. Official Code § 10-1121.01 et seq.), the Zoning Commission shall, after public hearing and after securing the advice and

authority to review and approve all development applications for airspace. To clarify policies and procedures for development by public agencies, NCPC staff recommended adding a provision that refers to the authority of the Federal and District governments to construct structures in airspace, per Section 12 of the District of Columbia Public Space Utilization Act (DC Official Code § 10-1121.01). (Staff Letter: 06/24/14)	recommendations of the National Capital Planning Commission, review and approve all air space development. The recommendation regarding referencing Section 12 was a suggestion but not necessary. Staff has no further comment.
Parking and Loading (Staff has determined that all comments have been addressed)	
4. NCPC staff conceptually supported the proposal to employ maximum parking requirements and reduce the use of minimum parking requirements (specific quantities had not been proposed at that time). (Staff Letter 07/28/08)	The proposed regulation in Subtitle C, §706 includes maximum parking requirements with 100,000 sf above grade limit. Parking increases are granted with special exceptions. The proposed regulation in Subtitle C, §701 includes minimum parking requirements and includes a list of qualifying exemptions from minimum parking requirements in §702 (in non-residential zones: to include locations ½ mile from Metrorail or ¼ mile from streetcar lines or Priority Corridor Network Metrobus routes).
5. NCPC staff supported the idea of contributions to a transportation fund in lieu of providing fewer parking spaces than the minimum required or providing more spaces than the maximum allowed. Staff suggested that funds should support alternative transportation methods. (Staff Letter 07/28/08)	Subtitle C, §703 includes special exceptions from minimum parking requirements and Subtitle C, §707 identifies mitigation measures for parking significantly in excess of the minimum parking requirement (including providing bicycle parking, trees, electric car charge stations, car share spaces, GAR increases, location of Capital Bikeshare stations). The proposed draft does not include a transportation fund.
6. NCPC staff supported the inclusion of car sharing and stated that special consideration should be given to buildings with federal tenants due to security issues. (Staff Letter 07/28/08)	Subtitle C, §708 includes provisions and incentives for shared parking however it is not required.
7. NCPC suggested that an incentive be given for priority parking of carpools. (Staff Letter 07/28/08)	Subtitle C, §708.2 incentivizes car-share spaces by allowing up to 2 dedicated car-share spaces to each count as 3 regular spaces.
8. NCPC staff supported the concept of unbundling parking costs from leases or sale of development space to make the cost of vehicle	This concept is not addressed in the zoning code. It does not have an impact on federal interests.

ownership and use more transparent. (Staff Letter 07/28/08)	
9. NCPC supports the requirement for TDM strategies but is unclear whether it is in the regulations. (Staff Letter 07/28/08)	Subtitle C, §706.2 includes provision of excess parking spaces as a special exception and the applicant would need to demonstrate that a transportation demand management plan approved by DDOT will be implemented.
10. NCPC staff strongly supported liner buildings fronting off-street parking facilities to activate streets with ground-floor retail uses and pedestrian sidewalk traffic. (Staff Letter 07/28/08)	The proposed regulations on parking restrictions (Subtitle C) respect the pedestrian environment, foster good urban design, and provide space for active uses to line parking structures.
11. NCPC staff commended the proposed concept of allowing pervious surfaces and recommended adding an incentive for developers who use low impact materials. (Staff Letter 07/28/08)	Subtitle C, §713.1 includes provisions for all parking areas, including access aisles, driveways, and ramp areas to be surfaced and maintained with an all-weather surface including the use of pervious surfaces. The green area ratio regulations also provide incentive for pervious surfaces.
12. NCPC recommended that the regulations include an incentive to place parking in structures and preferably underground. (Staff Letter 07/28/08)	Subtitle C, §710.2 states that parking should be located within or below a building or structure in all zones except for any zone of Subtitles D, E, or K. No incentives were included in the zoning regulations.
13. NCPC staff strongly supported the bicycle parking requirements. (Staff Letter 07/28/08)	Subtitle C, Chapter 8 includes several bicycle parking requirements including any building permit must include a bicycle parking plan.
14. NCPC staff supported the proposed language that limits locations for loading berths, platforms and service delivery spaces to so as not to be visible from the public rights-of-way. (Staff Letter 07/28/08)	Subtitle C, §903 provides Loading Location Restrictions and §908 provides Loading Screening and Lighting Requirements.
15. NCPC commended the District on developing citywide parking and loading regulations that are consistent with federal policies in the Federal Elements and Monumental Core Framework Plan. NCPC advised the Zoning Commission that the proposed language establishing new citywide motor vehicle parking, bicycle parking and loading regulations as described will not adversely affect the 2004 Comp Plan: Federal	Subtitle C, Chapters 7-9 address the parking and loading requirements.

Elements or any other federal interests. (NCPC EDR: 01/27/11)	
Building frontage; single vs. multiple buildings; location of measuring point; natural grade; permitted roof structures; setbacks; height categories. (Staff has determined that all comments have been addressed)	
16. NCPC staff recommended that the regulations include a definition for building front to address frontage on multiple streets (Staff Letter: 10/10/08).	As stated in Subtitle B, §308.7, "If a building fronts on more than one (1) street, any front may be used to determine street frontage; but the basis for measuring the height of the building shall be established by the street selected as the front of the building." In Subtitle B, a street frontage is defined as, "The property line where a lot abuts upon a street. When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage."
17. NCPC staff supported the concept of buildings confronting federal reservations or open space. (Staff Letter: 10/10/08)	Subtitle B, §306.1 and 2 states that "In addition to the height limitations of the Zoning Regulations, all buildings are also subject to and shall conform to the limitations of the Act to Regulate the height of Buildings in the District of Columbia (Height Act). Where the maximum height permitted within a zone differs from the maximum height permitted by the Height Act, the more restrictive maximum height shall apply."
18. NCPC staff supported the concept of residence and business streets. (Staff Letter: 10/10/08)	Subtitle B defines designated business street as the following, "For the purpose of administering this title, that portion of the Height Act that designates certain streets as "business streets" shall be interpreted to mean those sides and portions of any street located in a Mixed Use, Neighborhood Mixed Use, Production Distribution and Repair, or Downtown zone, or any zone in Subtitle K"
19. NCPC staff commented to continue to work on a clear, usable definition of single v. multiple buildings. At the time staff commented that the regulations may still create uncertainty in application. NCPC did not believe that a roofed-only connection with no enclosed walls should be used to establish building connections. (Staff Letter: 01/05/09)	Subtitle B, §309.1 addresses NCPC staff concerns considering a roofed-only connection with no enclosed walls to establish building connections. Structures are considered parts of a single building if they are joined by an enclosed connection that is fully above grade, is heated and artificially lit; and either a common space shared by users of all portions of the building, such as a lobby or recreation

	room, or space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.
20. NCPC staff is concerned that the approach that the city is proposing, which allows the use of any street to establish height and the selection of any street to measure height, is allowable as an interpretation of the Height Act language, but less likely to provide uniformly consistent interpretations as the other options. (Staff Letter: 01/05/09)	While the proposed regulations do not address this comment, they are not inconsistent with the Height of Buildings Act. The proposed regulations allow the use of any street to establish height and the selection of any street to measure height. As stated in Subtitle B, §308.7, "If a building fronts on more than one (1) street, any front may be used to determine street frontage; but the basis for measuring the height of the building shall be established by the street selected as the front of the building." In Subtitle B, a street frontage is defined as, "The property line where a lot abuts upon a street. When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage." This does not address NCPC's earlier comments from 2009, however staff proposes to update its recommendation: Topography is a major contributing element in the form and character of the city. The link between building height and topography should be addressed through a comprehensive approach that weighs planning and urban design outcomes through the Comprehensive Plan, land use maps. The measuring point for determining height on a parcel should not be structured to address core urban design issues that affect national resources.
21. NCPC staff supported the intended goal of preventing measurements taken from artificial elevations and necessary to maintain the iconic horizontal skyline. NCPC staff suggested clarifying where the measurement may not be taken, with the suggested language, " <i>Where natural elevation</i>	Subtitle B, §307.7, states that when the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation, tunnel, or other type of artificial elevation or depression, the height of a building shall be measured using the following four (4) methods that is applicable to the site.

<i>is interrupted by a bridge, viaduct, embankment, ramp, abutment, tunnel or other type of artificial elevation, the height of a building <u>will not</u> be measured from the human-constructed elevation..."</i> (Staff Letter: 09/14/10)	(a) An elevation or means of determination established for a specific zone elsewhere in this title; (b) An elevation for the site that was determined prior to the effective date of this section by the Zoning Administrator, or the Redevelopment Land Agency, its predecessors or successors; (c) A street frontage of the building not affected by the artificial elevation; or (d) 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. This means that unless the height measuring point was established prior to the adoption of the zoning code or by the Redevelopment Land Agency, the building shall be measured from the street frontage of the building not affected by the artificial elevation.
22. NCPC staff recommended removing the proposed zoning regulations which allows penthouses over accessory amenity features to be built above the street-based or zone height limits, which allows for occupied spaces to be constructed above the limit of height permitted under the Height Act. Alternatively, a clarification can be made which states that when a building is at the maximum height allowable under the Act, these occupied structures are not permitted. (Staff Letter: 09/14/10)	Federal Law H.R 4192 now allows occupiable penthouses so this comment is no longer relevant. The District has referred the new penthouse regulations to NCPC as a separate case ZC: 14-13 Rooftop Penthouse Regulations.
23. NCPC staff commented that maximizing rooftop development in the interior area of the rooftop is acceptable, only if all of the setbacks are maintained and uses are consistent with the Height Act. The special exception review for enclosed features within the setback area is not consistent with the Height Act. (Staff Letter: 01/05/09)	NCPC staff will address this issue in its review of ZC: 14-13 Rooftop Penthouse Regulations.
24. NCPC staff agreed that the proposed setbacks for rooftop structures should be provided from walls facing streets, walls facing alleys, any wall facing a court open to the street, any wall setback and facing a lot line and	NCPC staff will address this issue in its review of ZC: 14-13 Rooftop Penthouse Regulations.

any lot line wall built higher than the greater of the neighboring building's actual or matter of right height. However, the Height Act requires setbacks from exterior walls, and the long-standing interpretation of our agency is that all these walls are exterior walls. The definition of exterior walls becomes important when considered together with the proposals to provide setback relief for rooftop structures. (Staff Letter: 01/05/09)	
25. NCPC staff stated that the proposed language which allows the BZA to provide setback relief where a rooftop structure is proposed at or above the limits of height established by Height Act through special exception should be changed to be consistent with the requirements of the Height Act. The law does not allow for relief to be granted from these requirements by the BZA. (Staff Letter: 09/14/10)	NCPC staff will address this issue in its review of ZC: 14-13 Rooftop Penthouse Regulations.
26. NCPC Commission advised the Zoning Commission that the proposed language establishing a set of use categories will not adversely affect any federal interests. (NCPC EDR: 12/30/10)	The proposed use categories in Subtitle B Chapter 2 do not adversely affect federal interests.
27. The Height Act establishes a strong relationship between street-widths and building heights. The proposed regulation only identifies public streets, but should also include private streets that are publicly accessible, such as those private streets located in subdivisions. NCPC recommended including private streets along with public streets to reinforce the building-height to street-width relationship established in the Height Act as it would allow for height to be taken from these private streets as well. (NCPC EDR: 12/30/10)	The proposed zoning does not differentiate between public and private streets. This comment was only a recommendation to add clarity. No further comment.
28. NCPC Commission noted that relative to the proposed text on building height that the federal interest would not be adversely affected, if the following changes to the proposal are made: • Reflect in Subsection 404 that the Height Act does not provide a mechanism for relief to be granted by	See recommendations above regarding staff comments of the same nature. • See Answer to #25

the Board of Zoning Adjustment form the Height Act provisions for maximum building height. • Add "...public or private street" at the end of the sentence in Subsection 402.2 • Add" ...the height of a building shall not be measured from the human-constructed elevation, but shall be measured..." in Subsection 402.4 (NCPC EDR: 12/30/10)	• See Answer to # 27 • See Answer to #20
Campus and Institutional Uses (Staff has determined that all comments have been addressed)	
29. NCPC staff generally supports the intent of the recommendations to regulate institutional uses of similar sizes in similar ways to better address the range of impacts in a uniform way. NCPC staff notes that District of Columbia Office of Planning's (DCOP) recommended text and policy changes do not represent a change in zoning and land-use for federally-owned property and that federally-owned property within the District of Columbia is not subject to local zoning regulations. (Staff Letter: 02/19/09)	As noted in 2009, the institutional use regulations do not have an impact on federally owned property.
30. NCPC staff suggested that impacts from antenna or satellite dishes should be added to the Conservation section. (Staff Letter: 02/19/09)	The campus plan application requirements found in Subtitle X, Chapter 1 Campus Plans and School Plans, §101.14 includes Environmental Impacts under the Conservation section, which would include impacts from antenna or satellite dishes.
31. NCPC staff appreciated that chanceries and foreign missions are considered in a separate review and recommends that future review be coordinated with NCPC and the Department of State. (Staff Letter: 02/19/09)	See text in this EDR regarding Chanceries.
Low/Moderate Density Residential Uses (Staff has determined that all comments have been addressed)	

32. NCPC staff suggested that additional information be provided to clarify how existing development standards would be incorporated into the new customized residential zones. (Staff Letter: 03/05/09)	Subtitle D includes tables which outline zone-specific development standards and general development standards.
33. NCPC staff suggested that additional information be provided to clarify how existing unit densities for existing zones will be maintained yet permit flexibility from the standard for new customized residential zones. (Staff Letter: 03/05/09)	This is not addressed in the proposed regulations; however, it does not have an impact on the federal interest.
Sustainability (Staff has determined that all comments have been addressed)	
34. NCPC staff commended the efforts to develop sustainable development standards in a comprehensive manner in its Zoning Regulations. (Staff Letter: 06/03/09)	Sustainable development standards are proposed throughout the zoning regulations.
35. NCPC staff encouraged DDOT to consider TDM policies in the Federal Elements as a model for the District's TDM strategies. (Staff Letter: 06/03/09)	The TDM policies of the Federal Element and the proposed zoning regulations reflect similar strategies.
36. NCPC staff supported the efforts to accommodate future growth by providing housing options that may be more affordable and address diverse needs including the federal workforce. (Staff Letter: 06/03/09)	Subtitle C, Chapter 10 outlines the intent of Inclusionary Zoning to provide affordable housing in Washington DC. Density bonuses and dimensional adjustments to incentivize affordable housing are found in tables in §1002. Set-aside floor areas requirements for affordable housing are dictated by building construction type in tables in §1003.
37. NCPC staff committed to continue to work with the District to explore alternative streetcar technologies that could meet environmental, transportation and urban design goals that are not overhead wires. (Staff Letter: 06/03/09)	The streetcar is not addressed in the ZRR.
38. NCPC staff was concerned with the potential adverse impacts of renewable energy production equipment and sustainable energy features on historic, cultural and natural resources, including resources protected through the Heights of Buildings Act and rights-of-way and setback policies and regulations. (Staff Letter: 06/03/09)	Will be addressed in the review of ZC: 14-13 Rooftop Penthouse Regulations

39. NCPC staff noted that sustainability and energy efficiency features would be considered mechanical equipment with regulations under the Height Act allowing for a 1:1 setback to height ratio is maintained, with no allowances for intrusions, and other regulations limit mechanical equipment to a height of 18 feet 16 inches. (Staff Letter: 06/03/09)	Will be addressed in the review of ZC: 14-13 Rooftop Penthouse Regulations
40. NCPC staff will consider how to ensure that renewable energy generation technologies can be allowed while protecting viewsheds, vistas and public space qualities in and around iconic national buildings, landscapes and commemorative works, historic structures and districts, national parks and along the escarpment. NCPC requested continued coordination with the District on this topic as more specific recommendations are developed. (Staff Letter: 06/03/09)	NCPC staff will address this issue in its review of ZC: 14-13 Rooftop Penthouse Regulations.
41. NCPC staff encouraged to propose regulations and standards that limit adverse impacts of outdoor lighting on historic, cultural, and natural resources within the District. (Staff Letter: 06/03/09)	Subtitles C, J, K and U includes proposed regulations and standards that limit outdoor lighting within the District.
42. NCPC staff noted that green roofs and water conservation accessories installed on roofs would be considered comparable to other mechanical equipment for the purposes of regulation under the Height Act; allowed up to a height of 18 feet 6 inches provided a 1:1 setback to height ratio is maintained. (Staff Letter: 06/03/09)	NCPC staff will address this issue in its review of ZC: 14-13 Rooftop Penthouse Regulations.
43. NCPC staff encouraged to consider ways to promote the restoration and enhancement of environmentally sensitive area buffers through the zoning review process. (Staff Letter: 06/03/09)	The proposed zoning regulations includes development controls that protect natural resources in environmentally sensitive areas: Subtitle C, §1102.1 establishes a 75' waterfront setback, and limits development; Subtitle C, Chapter 4 includes tree protection to limit adverse impacts to sensitive natural areas. Subtitle D has tree and slope protection requirements for residential areas.
44. NCPC staff encouraged identifying how existing development located within or adjacent to designated buffer areas would be treated	Subtitle C, §1102.1 establishes a 25' zone within the waterfront setback which shall be reserved for public bicycle and pedestrian

and look at how active and passive recreational uses would be addressed in the regulations. (Staff Letter: 06/03/09)	trails. However other environmentally sensitive areas and buffers have not been identified through zoning nor have recreational uses.
45. NCPC requested DDOE coordinate with NCPC in the development of floodplain protection standards, consistent with federal regulations. NCPC encouraged appropriate uses in the floodplain to protect the city from river overbank flooding. (Staff Letter: 06/03/09)	Subtitle C, §1102.4 prohibits uses within the 100 year floodplain (such as residential uses with 1-2 dwelling units, animal car/boardings, community-based institutional facilities, daytime care, education, emergency shelter, hospitals, and lodging) and is generally consistent with federal regulation to reduce the risk of flood loss by minimizing the impact of floods on human safety.
46. NCPC staff supported the proposal of small scale start-up green businesses including those that are manufacturing in nature to locate in moderate to high-density commercial zones. NCPC encouraged identifying impacts from green job development to federal facilities and surrounding properties/neighborhood. (Staff Letter: 06/03/09)	Green businesses and green job development are not addressed in the zoning code. There is no impact on the federal interest.
47. NCPC staff supported the approach of using LEED-ND for large tract development. The approach of using LEED-ND for large tract development is comparable to the approach of using LEED standards for individual buildings, a practice currently supported in the Framework Plan and by several federal agencies. (Staff Letter: 06/03/09)	Subtitle I (Downtown Zones) which addresses the Zoning Commission Review of Buildings, Structures, and Uses includes the evaluation of the proposal against LEED certification standards.
48. NCPC found that the propose green area ratio which is a weighted, value-based system intended to set requirements for landscape and site designs that meet District goals for limiting stormwater runoff, air quality and urban heat island effect would not be inconsistent with the Comp Plan, nor would it adversely affect any other identified federal interests. (NCPC EDR: 05/05/11)	The proposed regulations still include the green area ratio regulations.
Downtown and Adjacent high density commercial and mixed-use areas (Staff has determined that all comments have been addressed)	
49. NCPC staff conceptually supported simplifying the number of zoning districts in the monumental core and combining zoning districts with similar goals such as the promotion of mixed-use high-density development or encouraging high-density	The zones have been simplified.

residential development near mass transit and employment centers. (Staff Letter: 10/30/09)	
50. NCPC staff appreciated the report's clarification that the bonus height of buildings is subject to the Height of Buildings Act. (Staff Letter: 10/30/09)	The proposed regulations have not changed.
51. NCPC staff recommended looking at establishing a direct link between the new residential units developed and the amount of parkland needed as a basis for requiring parks and/or open spaces in the new DD zoning districts. Demand for parks and useable open space by the new population should be taken into account by including the provision of new recreational amenities and useable open spaces as part of the zoning requirements. (Staff Letter: 10/30/09)	Subtitles D, E, F (residential/apartment) include maximum lot occupancies but do not directly relate to the development or preservation of parkland. This was a recommendation. The proposed regulations do not negatively impact the federal interest.
52. NCPC staff suggested that the zoning regulations incentivize the development of grocery stores in areas where a high concentration of high-density residential development is anticipated and consider TDR generation for grocery store sites that meet a minimum gross floor area requirement. (Staff Letter: 10/30/09)	The proposed zoning regulation does not incentivize development of grocery stores in high-density residential zones. There is no impact on the federal interest.
53. NCPC staff supported the efforts to strengthen the zoning requirements for Arts-related uses in the Central Area as a means to provide another layer of diversity in the mix of uses in the DD zoning districts. NCPC staff recommended that locations adjacent to or across the street from commemorative sites and public parks and squares be considered as viable areas for the Arts-related uses. (Staff Letter: 10/30/09)	The proposed zoning regulations include a Downtown Arts Sub-Area to create strong arts and entertainment corridors including a spine of theaters, movie theaters, restaurants, and arts-related uses and a pedestrian-oriented concentration of museums, art galleries, and other performing or visual arts uses. This sub-area is largely in the vicinity of Pennsylvania Avenue.
54. NCPC staff requested that OP staff consider when allowing the conversion of underground parking spaces to other uses, the zoning regulations must account for restrictions on uses in underground vaults. (Staff Letter: 10/30/09)	The proposed zoning regulations do not include restrictions on uses for the conversion of underground parking spaces to other uses in underground vaults. No further comment – this is not a federal interest.
55. NCPC staff encouraged the continued consideration of multi-modal transportation strategies to minimize single-occupant vehicle	Subtitle C, §706 establishes Maximum Parking Requirements and requires a DDOT approved Transportation Demand Management plan for

commutes in downtown and Central Washington area like ample bicycle storage facilities in garages. (Staff Letter: 10/30/09)	special exceptions to increase parking maximums. In addition, §707 provides Mitigation for Parking Significantly in Excess of Minimum Requirements to include: bicycle parking, trees, electric car charge station, car-share spaces, increased GAR standards, Capital Bikeshare stations.
56. NCPC staff supported the time limit for surface parking lots as a temporary use in the downtown and Central Washington area. (Staff Letter: 10/30/09)	Subtitle C, §718 permits temporary surface parking lots for ballparks on specific Squares and Lots (and as a special exception in MU-13 zones). The certificate of occupancy for temporary parking shall expire no later than April 1, 2018. No further comment – this is not a primary federal interest.
Waterfront zones (Staff has determined that all comments have been addressed)	
57. NCPC staff supported the use of current design review criteria contained in the CG Overlay and SEFC Overlay as a basis for specific criteria for waterfront PUDS. (Staff Letter: 01/06/10)	Subtitle K, Section 513 contains design review criteria for the Capitol Gateway Overlay that protect national interests (such as creating a monumental boulevard for South Capitol Street). Subtitle K Section 241 contains Zoning Commission review standards for the SEFC.
58. NCPC staff generally supported the allowance of surface parking by special exception only in W zones if these lots are subject to special exception conditions similar to those currently in the W-0 zone and SEFC Overlay. Staff requested clarification whether surface parking lots may be a temporary use within W zones. (Staff Letter: 01/06/10)	Subtitle C, §1102.5 precludes parking spaces, passenger drop-off areas, and access lanes from the waterfront setback with exceptions for recreational waterfront access facilities meeting one or more of 12 criteria found in Subtitle C, §1102.5 (provisions for exceptions are found in Subtitle Y). Subtitle C, §718 permits temporary surface parking lots for ballparks on specific Squares and Lots (and as a special exception in MU-13 zones). The certificate of occupancy for temporary parking shall expire no later than April 1, 2018. No further comment – this is not a primary federal interest.
59. NCPC staff generally supported the use of the street grid as a basis for the limitation of a building's dimensions so as to establish visual access to the water. (Staff Letter: 01/06/10)	The proposed regulations have not changed.
60. NCPC generally supported the establishment of a minimum setback from the waterfront to provide for trail connections and	Minimum setbacks are provided throughout the waterfront zones.

active and passive open spaces. (Staff Letter: 01/06/10)	
Production, Distribution and Repair Zones (Staff has determined that all comments have been addressed)	
61. NCPC staff found the proposed text in Subtitle J: Production, Distribution, and Repair (PDR) Zones which puts a cap on the amount of non-PDR uses such as office and retail in PDR zoned areas is not inconsistent with the Comprehensive Plan nor would it adversely affect any other federal interest. PDR zones would limit, but continue to permit, retail and office use while most residential development would be prohibited. (NCPC EDR: 4/28/11)	The proposed regulations have not changed.

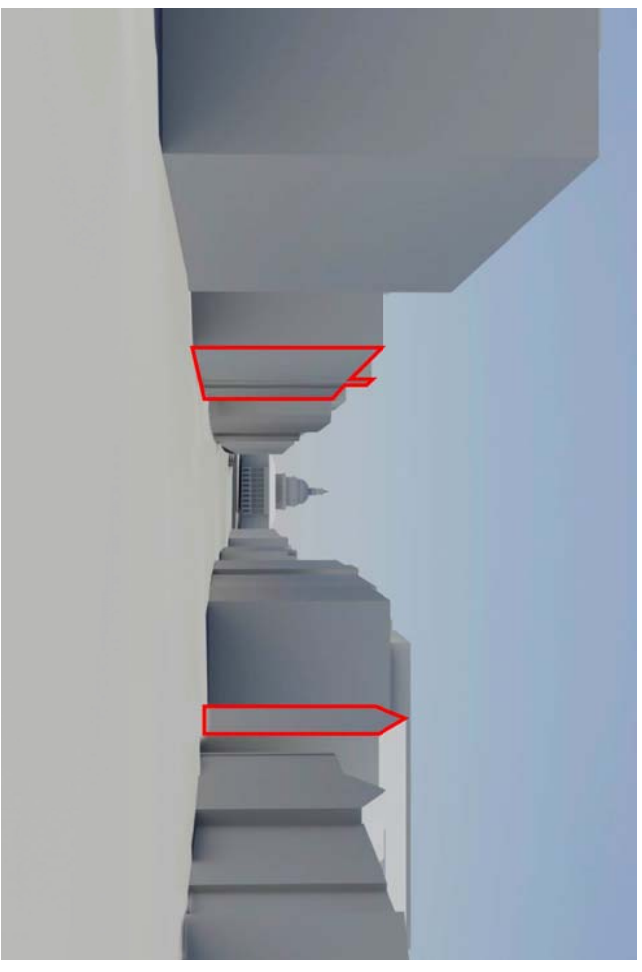
Appendix C: North Capitol Street Visual Study

North Capitol Street Visual Study

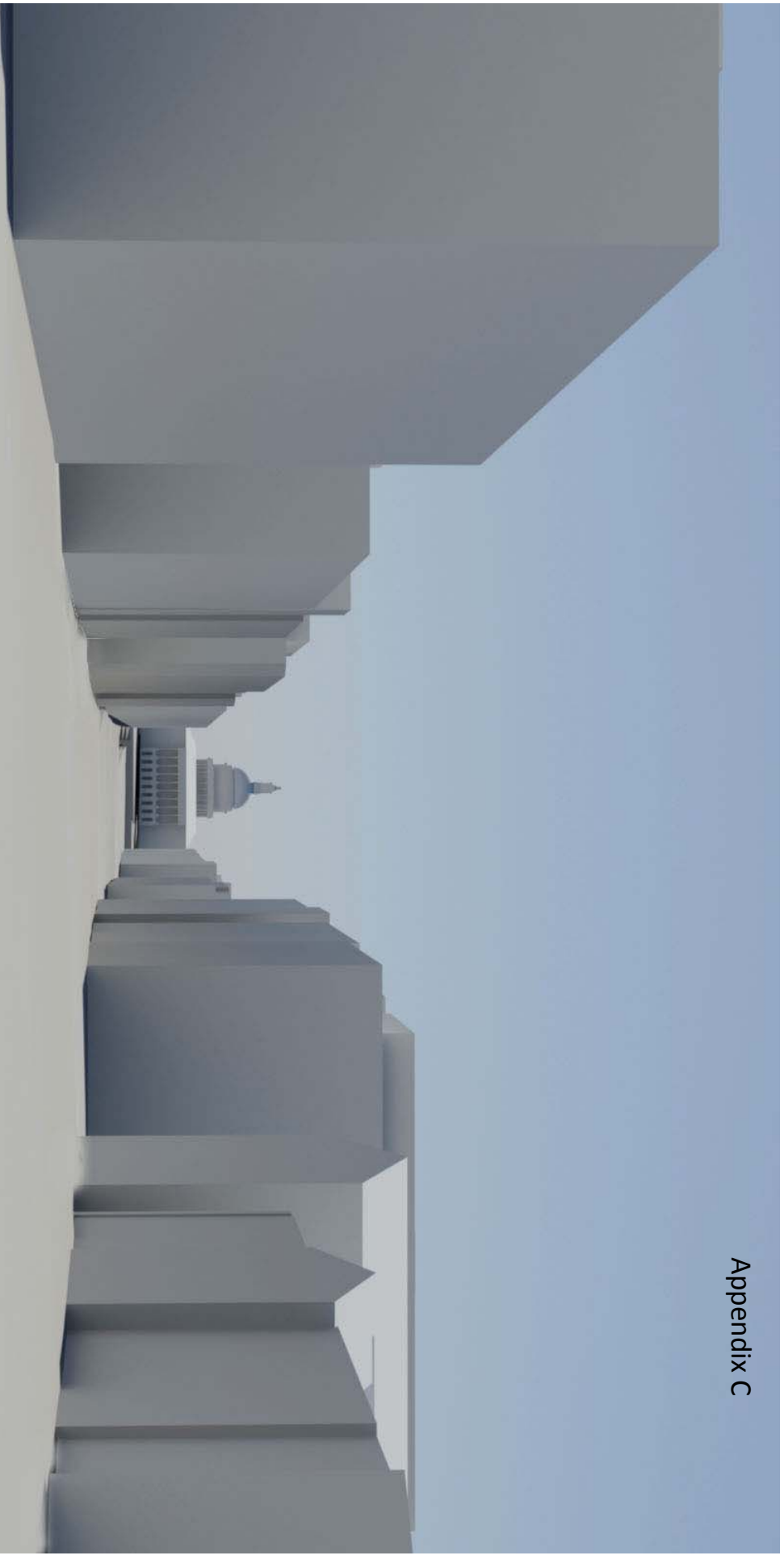
The rendered simulation on the right shows the existing condition standing at the K Street NW intersection. The buildings outlined in red in both images below serve as reference points to compare the real photo (left) with the rendered simulation (right).

Photo source: DCOP Height Master Plan Modeling Study

Modeling data source: DCGIS

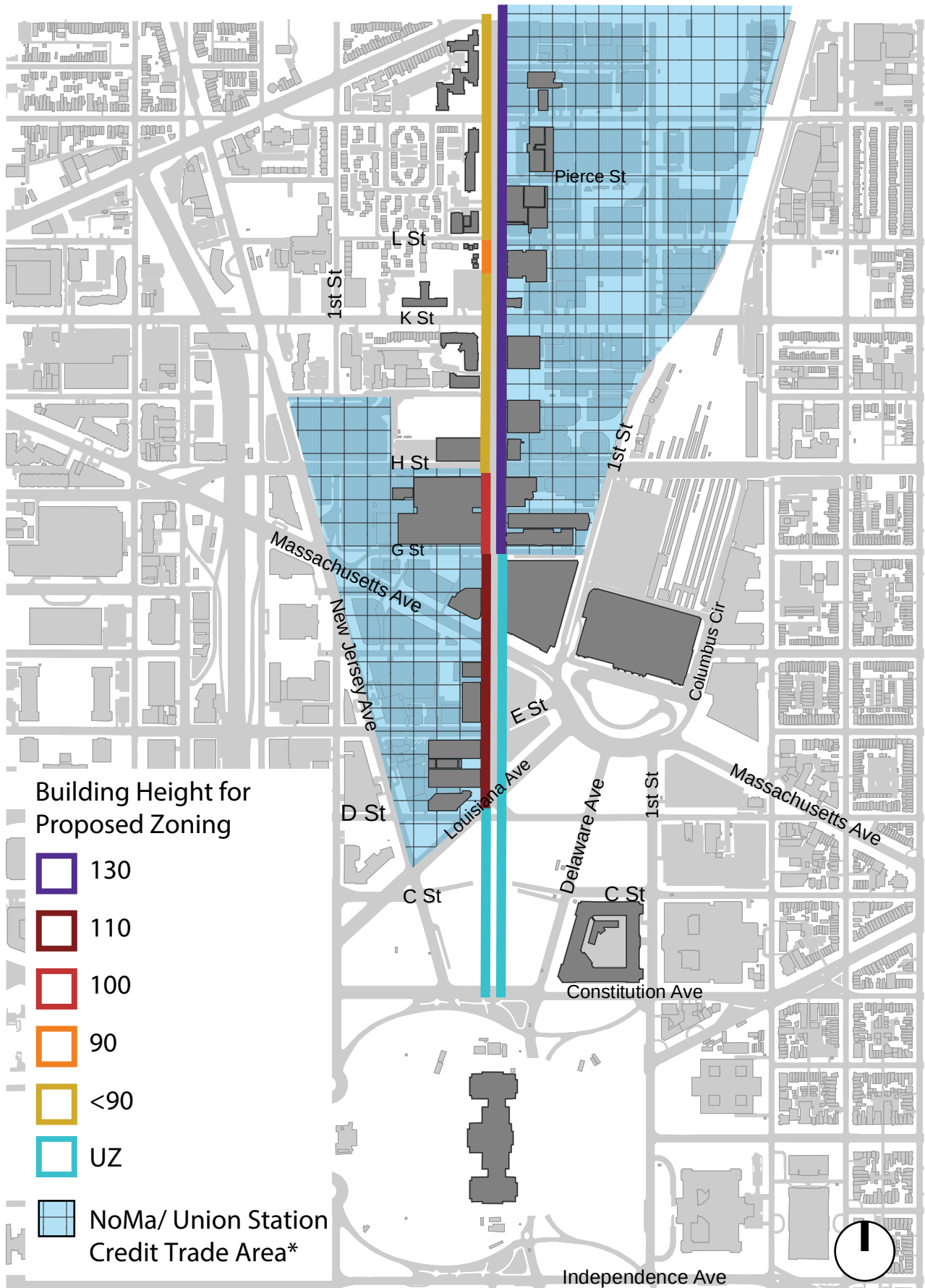


Appendix C - NOTE: This modeling was in response to earlier drafts of the ZRR. It illustrates NCPC staff's initial analysis. The recently published draft of the ZRR (the purpose of this EDR report) addresses staff's recommendations.



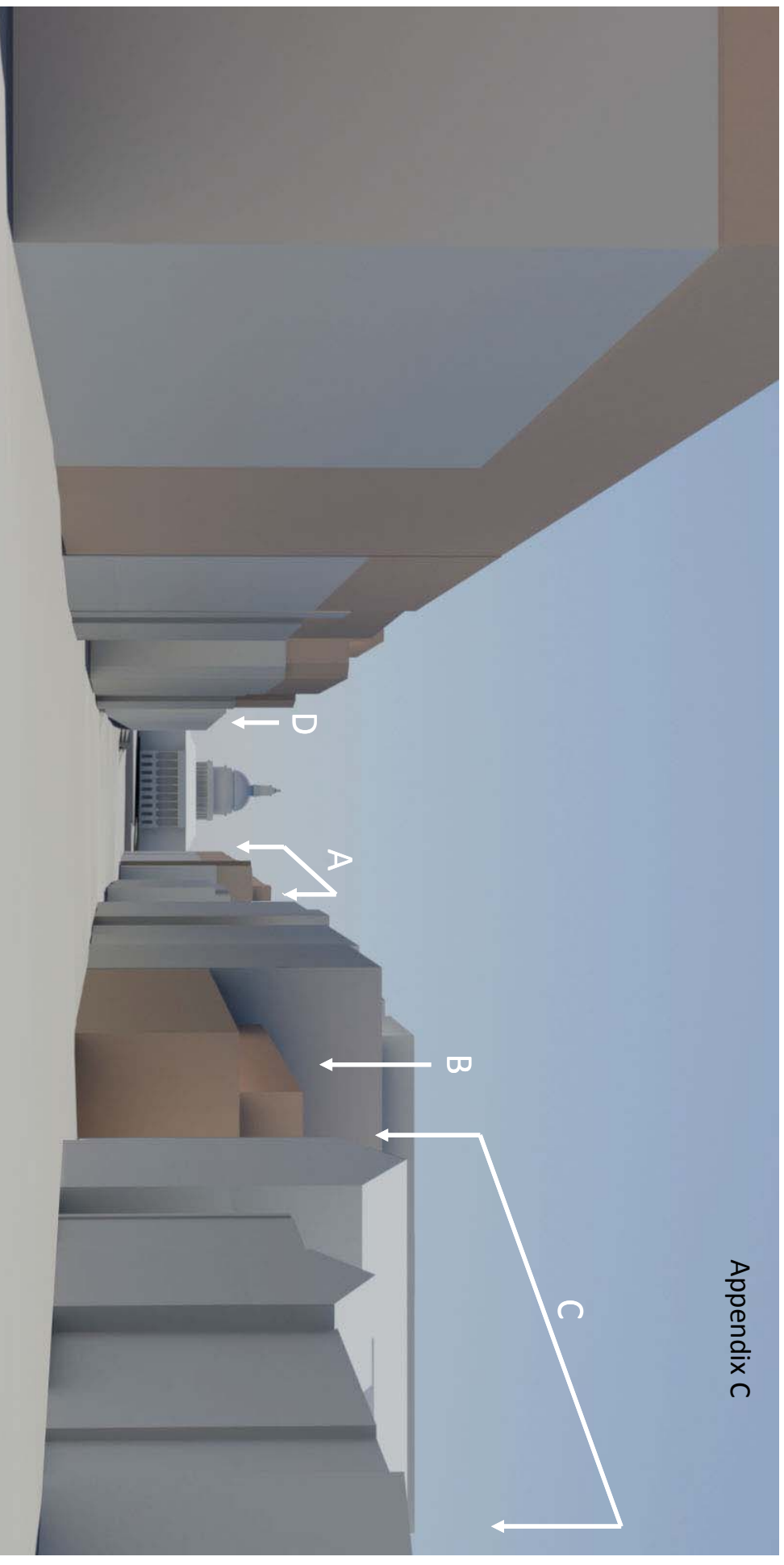
Existing Condition

Standing at K Street Intersection



North Capitol Street Existing Structures and Proposed Zoning Heights

* Note: Assumes all buildings within the NoMa/ Union Station Credit Trade Area can achieve a height of 130'

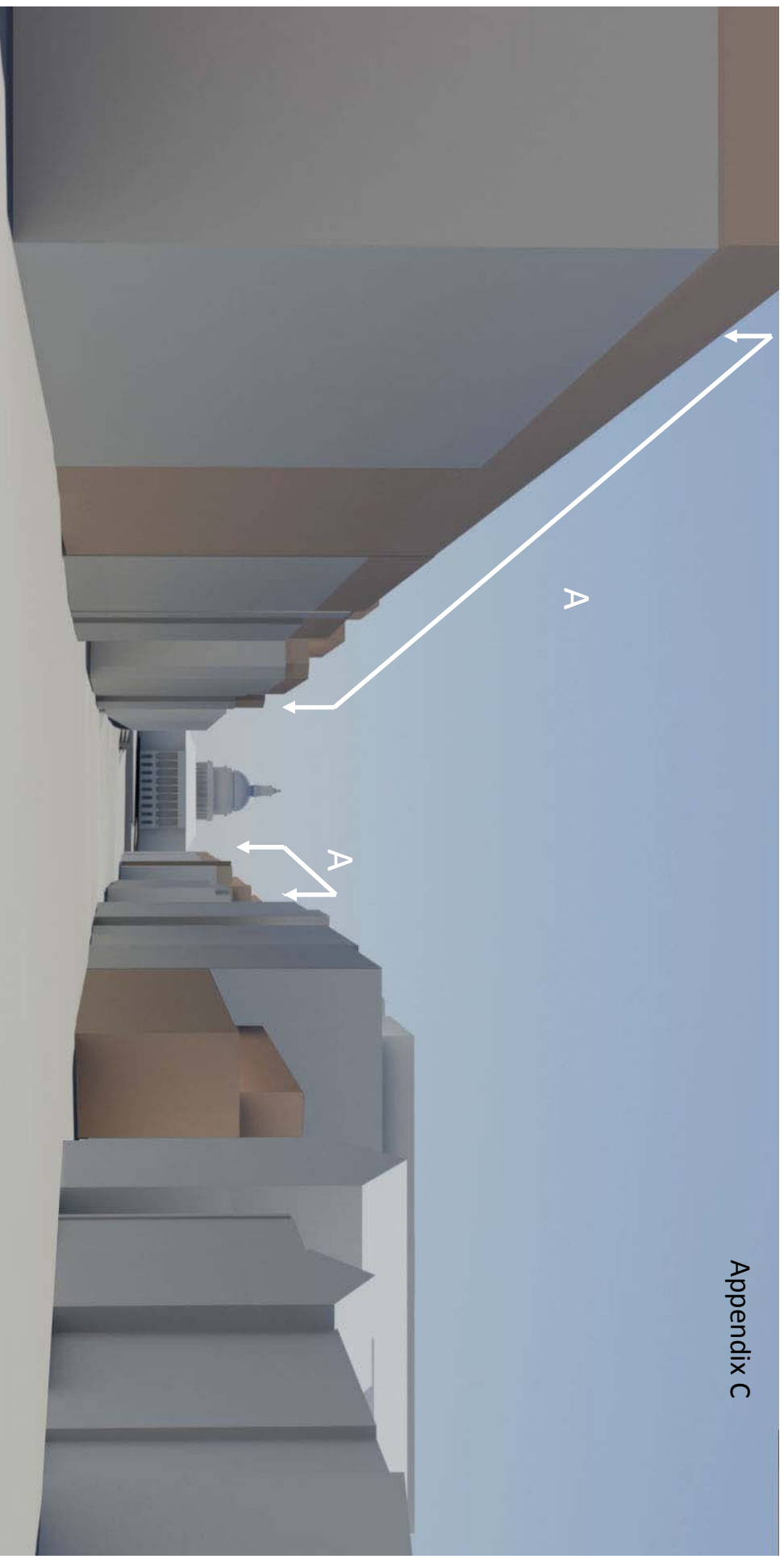


Proposed Zoning*

*Notes for the purpose of visual analysis:

- A. Assumes the structures within the NOMA/Union Station Credit Trade Area on the west side of North Capitol Street can achieve a maximum height of 130 feet
- B. Assumes the football field in S.Q. 622 will redevelop
- C. Assumes historic structures and places will not redevelop
- D. Height restricted under the Height of Buildings Act of 1910, as amended.

Standing at K Street Intersection



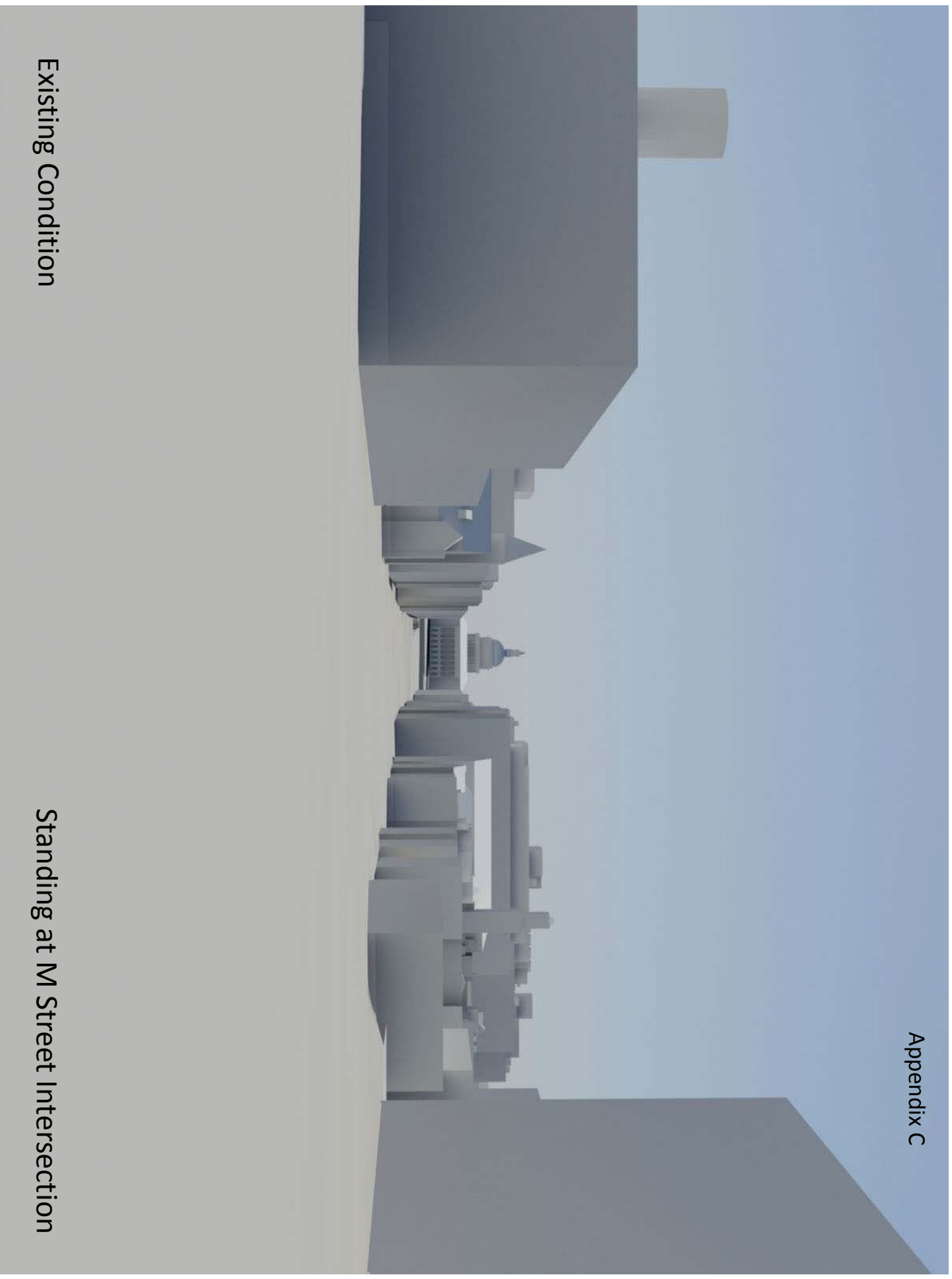
Concept Proposal*

110' + additional 1:1 height step back
for 20' + penthouse

*Notes:

A. Proposes a base height of 110' feet with a 1:1 height step back for any additional height for all areas where 130 feet may be achieved as a matter of right or within credit trading areas.

Standing at K Street Intersection



Existing Condition

Standing at M Street Intersection



Proposed Zoning

Note: This conceptual visual study illustrates the undefined edges and difficult transitions between densities on either side of this corridor under proposed zoning. This potential building composition results in the impression that North Capitol is defined by the edges of the zones around it, rather than the preeminence of the dome and as a distinctive corridor. Given the complexity of the land use conditions and urban design issues, NCP staff does *not* make a recommendation for the blocks to the north of K Street, including the intersection shown in this illustration. However, we recommend that the urban design framework for North Capitol Street up to Florida Avenue be addressed through the Comprehensive Plan or more specific study, as appropriate. Future study should consider urban design strategies that address these important transitions in density and land use, reinforce the quality of views to the Capitol, and promote the potential of this street as one of our city's most important gateways.

Standing at M Street Intersection

Appendix D: Letter from Department of State to District of Columbia Zoning Commission

**UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON**

AUG 21 2015

REF: 15-782

Anthony J. Hood
Chairman, Zoning Commission
Office of Zoning
441 4th Street, N.W., Ste. 200-S
Washington, D.C. 20001

Re: ZRR – ZC Case No. 08-06A

Dear Chairman Hood:

The Department of State (Department) appreciates the opportunity to submit these public comments on the Zoning Commission's (ZC) proposed regulations, particularly Subtitle X, Chapter 2, Chancery Applications.

Congress enacted the Foreign Missions Act (FMA) (codified at 22 U.S.C. §§ 4301-4316) in 1982 to address, among other things, the location, replacement, or expansion of chanceries in the District of Columbia. 22 U.S.C. § 4306. Section 4306(e)(1) provides, in relevant part, that

Regulations . . . of . . . the Zoning Commission for the District of Columbia . . . affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d)) and shall reflect the policy of this chapter.

As drafted, proposed regulations Subtitle X §§ 201.4 and 201.5 do not comply with the mandate set forth in subsection 4306(e)(1) because they are not consistent with section 4306 and do not reflect the policy of the chapter (i.e., the FMA). The Department believes that any regulation that attempts to alter the congressionally mandated balance between federal and local interests set by Congress impinges upon the Secretary's ability to determine the treatment to be accorded a foreign mission as necessary to secure, on the basis of reciprocity, benefits for the United States. The proposed regulations currently at issue have such a negative impact. Both sections 201.4 and 201.5 impose an additional burden on the Secretary of State by creating certain presumptions as to the applicable area under consideration and the concept of mixed use. While the Board of Zoning Adjustment (BZA or FMA-BZA) has the discretion to disregard the problematic square and mixed use defaults established in the regulations, that only occurs after a request from the applicant, the Secretary of State, or the mayor of the District of Columbia and in the case of section 201.5 requires the submission of "credible evidence." These are additional burdens not contemplated by the FMA. Accordingly, the proposed regulations run afoul of the requirement in subsection 4306(e) that regulations concerning the location, replacement and

expansion of chanceries shall be consistent with the section and shall reflect the policy of this chapter.

Zoning Regulations Must be Consistent with § 4306

For purposes of this comment letter, key subsections of section 4306 include subsections (b) and (d). Subsection (b) describes the matter of right areas in which a chancery may locate, as well as other permissible areas which are subject to disapproval by the BZA in accordance with section 4306. One of these permissible areas is "any other area, determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed-use diplomatic [the "D" overlay] or special purpose." § 4306(b)(2)(B). Subsection (d) provides that any determination concerning the location of a chancery under subsection (b)(2) shall be based solely on six enumerated criteria.

The FMA grants the BZA discretion to determine whether an area meets the requirements of subsection 4306(b)(2)(B) as well as the criteria in subsection 4306(d). The critical role of the BZA has been confirmed by the D.C. Court of Appeals, the District's Office of Corporation Counsel (OCC), the ZC, the BZA, and the U.S. Court of Appeals for the D.C. Circuit.¹ In 1987, shortly after the ZC modified the D overlay to include only squares with at least 1/3 non-residential uses, the D.C. Court of Appeals concluded that section 4306 is "the exclusive procedure available to chanceries in the District of Columbia" and that the interpretation of the FMA as it applies to a chancery application "involves the exercise of judgment which Congress viewed as best made by the FMA-BZA."² In light of this decision, the BZA requested the OCC to advise the BZA whether it had the authority to determine whether an area which is not within the D overlay could still be considered under subsection 4306(b)(2)(B).³ In an April 8, 1988 memorandum, the OCC advised:

Notwithstanding the D zone district, the [FMA] permits a chancery to be located in areas based on existing uses, which includes office or institutional uses, subject to the disapproval of the FMA-BZA. . . . [T]he FMA-BZA must apply criteria contained in the [FMA] before reaching its final determination. . . . In order to make a final determination through a rule-making procedure, . . . the FMA-BZA must interpret "any other area, determined on the basis of existing uses, which includes office or institutional uses". . . . The FMA-BZA must define the relevant area, identify the existing office and institutional uses within the area, determine whether the amount of such uses would qualify the area as within the language of the statute and then, if the finding is in the affirmative, determine on the basis of the six criteria whether the chancery should be permitted to locate there.

¹ The FMA "gives the DCFMA-BZA exclusive jurisdiction over all proposals involving 'the location, replacement, or expansion' of a chancery." *Sheridan Kalorama Historical Association v. Christopher*, 49 F.3d 750, 757 (D.C. 1995).

² *Embassy of the People's Republic of Benin v. D.C. Board of Zoning Adjustment*, 534 A.2d 310, 321-22 (D.C. 1987).

³ BZA Order No. 14820 (Sep. 7, 1988).

The ZC summarized this guidance in its Order No. 555 (July 1, 1988). The BZA quoted and concurred with this advice, noting that it was “constrained . . . to exercise its authority and responsibility” as provided in the FMA and was therefore not bound by a rule that limited permissible areas to squares with at least 1/3 nonresidential uses.⁴ Most recently, the BZA has continued to exercise this authority in its orders where it uses an area larger than a square and does not impose a minimum requirement of 1/3 nonresidential uses.⁵

Zoning Regulations Must Reflect the Policy of the FMA

One essential policy of the FMA is to enable the United States “to support the secure and efficient operation of United States missions abroad.” § 4301(b). In order to do so, the Department needs flexibility that will enable it to tailor treatment of foreign missions in the United States to address considerations of reciprocal treatment and other foreign policy issues that would not be applicable to any other entity. Congress advised: “The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.” § 4301(c).

However, mindful of the municipal interest of the District and its residents, Congress enacted section 4306 in the FMA to govern the location, expansion, replacement and other matters relating to the physical structures of chanceries located in the District. Congress determined how the municipal interests would be taken into account through a carefully designed scheme. In particular, the criteria to be considered include historic preservation, availability of parking and public transportation, and the municipal interest. See § 4306(d)(2), (3) and (5). The FMA also requires notice to the public to ensure that the view of the neighbors can be heard, and states that the Secretary shall require substantial compliance with the District’s building and related codes. § 4306(c)(3) and (g). It further provides for a specially constituted board that includes District of Columbia and federal representation to make the ultimate decisions regarding the location, expansion or replacement of chanceries in certain areas. Through the FMA, Congress decided the appropriate scope and avenues for local participation in this decision making – including the extent of local participation in the question of the location of chanceries in the District.

We wish to note that, prior to approving a foreign mission’s acquisition of property for its chancery (and prior to permitting the foreign mission to put forward its application to the BZA), the Department works very closely with the mission to ensure that the desired location for the chancery will take into account all of the criteria in section 4306(d), given the expected volume of chancery operations. This includes ensuring that the mission will make appropriate and

⁴ Id.

⁵ BZA Order No. 17481 (Dec. 1, 2006); BZA Order No. 17787 (Feb. 23, 2009); BZA Order No. 18242 (Oct. 24, 2011).

necessary accommodations for neighborhood interests, such as off-street parking, traffic control, and historic preservation issues.

The FMA imposes the guidance and constraints that BZA must follow in its decision making and it is inappropriate for the ZC to attempt to impose additional criteria or constraints upon the BZA's determination whether a particular area is mixed-use. The FMA was intended to remove the historical barriers to locating chanceries in the certain areas of the District, barriers which could result in reciprocal restrictions being imposed on the United States.

Proposed regulations Subtitle X §§ 201.4 and 201.5 have effectively replaced those barriers. Both sections begin with new rules that denote whether an area is a "mixed-use area." First, the proposed regulations provide that the "area" shall be the square within which the proposed chancery is to be located (with discretion to use a larger area under certain conditions), and second, that area shall be considered a mixed-use area if more than 50 percent of the zoned land within the area is devoted to uses other than residential uses.

Proposed Regulation Subtitle X § 201.4

The Office of Zoning defines a square as "a unit of land defined by the D.C. Surveyor that normally consists of a single city block and contains record and tax lots." See Zoning Map Glossary. A square is a uniform measurement that has nothing to do with the use of the properties within it. This fact renders the use of a square in this context arbitrary. We recognize that Subtitle X § 201.4 allows the BZA to "use a larger area" than a square if the BZA "finds the larger area provides a more accurate depiction of the existing mix of adjacent uses." We agree that the BZA should identify the area that provides the most accurate depiction of the existing mix of adjacent uses. First, an area larger than a square will undoubtedly provide a more accurate depiction of the existing mix of adjacent uses. But more importantly, the ZC's attempt to guide the BZA's decision making process by making the square the default and requiring an additional finding in order for the BZA to exercise its discretion to determine the appropriate area for consideration is simply not consistent with policy of the FMA.

To minimize the impact on the requirements and policy of the FMA, we propose the following language for § 201.4 to provide minimal guidance to the BZA in identifying an area, but to not dictate a default area:

For the purposes of the Subtitle X § 201.3 determination, the "area" shall be the area that the BZA determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery.

Proposed Regulation Subtitle X § 201.5

Proposed section 201.5 sets up a standard for what constitutes a mixed use area: "An area shall be considered to be a mixed-use area if as of the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than Residential Uses as defined in Subtitle B, Chapter 2." We recognize that Subtitle X § 201.5 allows the BZA to find that an area with 50 percent or less of non-residential uses is a mixed-use area based on "credible

evidence” as may be submitted by the applicant, Secretary of State, or the Mayor of the District of Columbia. However, the proposed regulation impermissibly places a burden on the Secretary of State by setting up a presumption that less than 50 percent is not mixed-use and only then allows discretion by the BZA based on a request supported by credible evidence. Section 201.5 is even more problematic than 201.4 because it is confusing and provides no guidance as to what the applicant must demonstrate to the BZA in order to pass the mixed-use area threshold. It is unclear what would constitute “credible evidence,” or what the applicant is providing such evidence to show. The proposed regulation leaves uncertain whether a showing of 35 percent non-residential use will qualify the area as “mixed-use” as it has in the past. Also uncertain is what further showing of mixed-use an applicant would be expected to make if the BZA has already determined that the area is 40 percent non-residential. In any event, the proposed changes are inconsistent with the statutory requirement that the determination of whether it is appropriate to locate a particular chancery in a particular location under section 4306(b)(2) must be made using the criteria in section 4306(d).

The language of subsection 4306(b)(2)(B) along with the legislative history indicates Congress expected the BZA to consider requests based on the criteria in subsection (d) unless the proposal was to locate a chancery in an “essentially” or “entirely” residential area. See H.R. Conf. Rep. No. 97-693, at 39 (1982) (the FMA “sets forth the mechanism and criteria under which issues relating to the location of foreign missions in the District of Columbia are to be decided”); *id.* at 41 (the FMA’s section 206(b)(2) “will not permit chanceries to be located in any area which is essentially a residential use area”). Further, Congress affirmatively anticipated that the FMA’s provisions would balance Federal-municipal interests. *Id.* at 41 (the FMA’s “section 206(d) sets forth the criteria to be applied in the determination of chancery issues, which are intended to balance the municipal and Federal interests”). The intent in the FMA, as explicitly stated in subsection (d), is to use the six criteria as the sole basis on which the BZA should make a determination concerning the location of a chancery. The BZA is given wide discretion to disapprove an application under subsection (d) whereas an applicant needs to make only a minimal showing for purposes of subsection (b)(2)(B) that there are some non-residential uses. Therefore, creating a presumption that an area with 49 percent non-residential uses is not a “mixed-use area” is indefensible.

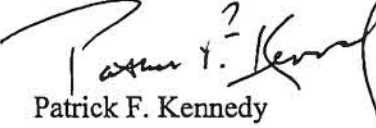
While the Department would prefer to leave the determination of mixed-use entirely to the BZA, the Department agrees that the only reasonable conclusion that can be drawn when an area has more than 50 percent non-residential uses is that it is a mixed-use area within the meaning of the FMA. Thus, to minimize the impact on the requirements and policy of the FMA, we would be willing to accept the following language for § 201.5:

An area shall be considered to be a mixed-use area if as if the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than residential uses as defined in Subtitle B, Chapter 2. In addition, the Board of Zoning Adjustment may find that an area with less than or equal to 50 percent of non-residential uses is a mixed-use area upon a showing of non-residential uses, as may be submitted by the applicant, Secretary of State, or the Mayor of the District of Columbia.

In summary, we believe that sections of the regulations discussed above, as currently drafted, are inconsistent with Foreign Missions Act. We would urge the Zoning Commission to make changes as set forth in this letter.

Thank you for your consideration of these comments.

Sincerely,



Patrick F. Kennedy

Copy to:
L. Preston Bryant, Jr.
Chairman, National Capital Planning Commission