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September 15, 2014

Anthony Hood, Chairman and Members
Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, DC 20001

Re: **Height of Buildings in ZC Case 08-06A** (Alternative Language to Certain Advertised Text - Title 11, Zoning Regulations – Comprehensive Text Revisions) and Potential Benefits from Adapting Many Provisions Already Established in **ZC Order 08-06-B** (Height and its Measurement) as a Preferable Alternative to Height Provisions Now in Effect that Would Otherwise Continue with Minor Modifications

Dear Chairman Hood and Members:

During the first half of September, the Commission heard testimony on the "alternatives" that OP recommended earlier this year (found at Exhibit 725 of the record in this case); in that context on September 10, I testified and strongly recommended that the Commission also take a fresh look at the Order it issued February 7, 2011 (ZC Order 08-06B), copy attached. On re-reading that Order, I find the provisions of ZC Order 08-06-B cleaner, more comprehensive, and substantively preferable to the recently adopted height definition (for other than Residence districts) and the similar, but separate, Residence district rules – neither of which harmonizes as fully as the single definition in ZC Order 08-06-B with the provisions of the Height Act of 1910 (as it existed until May 16 when Federal law changed to allow human occupancy of penthouses).

ZC Order 08-06-B did not set out any change in the overall definition of "building, height of". Instead, it clarified the steps to be taken to determine height rather than having only a definition for architects, designers, citizens and the Zoning Administrator to apply. As best as I can determine, the definition of "building, height of" was to remain that in effect, that having been last amended November 3, 2003, the effective date of the Order in ZC Case 02-35 (DC Register, 50 DCR 9387), in which:

Title 11, Zoning Regulations, § 199, DEFINITIONS, § 199.1 [was] amended as follows:

1) The definition “**Building, height of**” [was] amended by inserting the following text after the first sentence:

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

2) A new definition, “**natural grade,**” is added to read as follows:

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

ZC Order 08-06-B was issued following review of comments received on it by stakeholders, the public, and an OP-prepared "Height Worksheet" (Exhibit 50 of ZC Case 08-06-1). The Order provided for rules of application, leaving the definition alone. Brilliantly, it anticipated a range of circumstances the definitions and rules now in effect only partly capture, and then guides the Zoning Administrator (and thus property owners, designers and the public) as to how specific height determinations are to be made, as follows:

- 402.4 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 first of the following four methods that is applicable to the site:
- (a) An elevation or means of determination established for a specific zone elsewhere in this title *[for possible use at a later stage in revised zoning regulations]*.
 - (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 *[I would add “plans approved by NCPC and PADC”, to the list as well as ‘Small Area Plans’ approved by the DC Council” either prior to or after the effective date of this section to the list; of course, the latter would only apply if the “curb grade were artificially changed,” etc.]*;
 - (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.

Elsewhere, ZC Order 08-06-B distinguished how measurements would be made for one- and two-family dwellings or where all sides of a building were removed from its lot lines by at least the height of the building (402.5).

In that Order’s section 405, it provides for all current allowed exceptions, but usefully adds others such as “pergola” and, presciently given forthcoming changes in use of rooftops, “safety railings”.

Concise, elegant, comprehensive and comprehensible, its terms also work sites with slopes or rolling topography. Isn't this preferable to having two similar systems in play, one for Residence Districts and another for all other zone districts?

Other "pluses" for ZC Order 08-06-B is that it contains a diagram, something the Commission has stated it prefers; moreover, it independently also provides for measurement in almost

identical form to that under the Height Act of 1910, at the property line with a slope allowance of 2% (consistent with building and public space codes so sidewalks will drain toward the street).¹

You may also find that ZC Order 08-06-B provides a useful starting point for refinement of roof structure provisions, except that it was crafted prior to the "penthouse" amendments that became effective May 16, 2014 to the Height Act of 1910.

My analysis of ZC Order 08-06-B's roof structure provisions is incomplete, but my initial review suggests that it not be placed in official regulations exactly as issued, but it is a good start:

- Appropriately, it already gives six types of roof structure full rights to exceed stated height limits (at 403.1(a)(1) through (6)).
- Appropriately, it imposes setback requirements for structures that enclose something, presumably higher than four feet (4 ft.). It may be useful to divide the section into two parts, one by-right and the other for situations requiring a special exception, making the final "by right" in this section for enclosure whose height is four feet (4 ft.) or less.
- Usefully, it also provides for "appurtenances dedicated to safety, including safety railings". The meaning of safety railings² is not in question. Such railings can, and often are, fabricated with sturdy metal posts, with clear glass or closely spaced, highly tensioned (stiff) cables filling large areas in between posts and hand rails; if so designed and installed, these do not create a sense of mass or bulk when viewed from below (the way parapets and balustrades do); essentially clear safety railings should, in my opinion, be allowed by right to whatever height safety requires at the edges of buildings, even if higher than by-right parapets and balustrades. Other (more opaque) safety railings could require BZA review, along with whatever is meant by the overall universe of "appurtenances dedicated to safety," though I would think that what safety may **require** should also be allowed by right, even if in excess of four feet (4 ft.).
- As expressed, the section would require BZA review of "Building components or appurtenances dedicated to the environmental sustainability of the building." I would hope that some way could be found to allow such building elements by right, fostering sustainability instead of imposing a significant procedural hurdle through the BZA. (Some examples of such appurtenances would be useful.)
- Finally, this section's penthouse provision needs to be expanded to address "human occupancy" as recently authorized in the amendments enacted May 16, 2014 to the Height Act of 1910.

¹ ZC Order 08-06-B also states that the systems of measurement should be the same. But, the Height Act's measurement point is to the edge of the sidewalk closest to the property line. Where there is both a "sidewalk" and an additional public space *between* the sidewalk and the property line ("the public parking"), the Height Act could be viewed as more limiting when slope descends, as it usually does, toward the street from the property.

² "Safety rails" are not among the architectural elements specifically mentioned within the Height Act of 1910 as amended through May 16, 2014.

ZC Order 08-06-B also provides clear, but to me overly restrictive, specifications as to when elements on a rooftop must be set back from face wall of buildings. The Height Act clearly requires setbacks when a building faces a street; it is fitting that parallel provisions exist in zoning. The setback provisions in ZC Order 06-08-B impose some restrictions not found in present regulations. I would urge fewer restrictions than what was adopted in 2011, but address sensitive exposures. Specifically, I would also seek to make measurements on each property be a function of data specific to that property or, attributes readily determined such as **that other property** being an historic landmark, a contributing building in an historic district, or located in what is now classified as “a receiving zone” – with no metrics needed about that other one.

The following table lays out the set back requirements that ZC Order 08-06-B would impose if put into effect as issued; adjacent columns show what I understand to be the requirements under existing zoning regulations and under the Height Act of 1910, and what I would recommend.

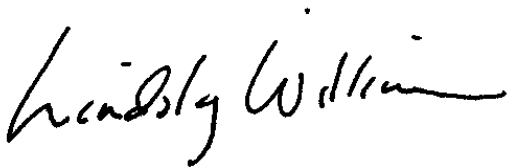
403.2 A structure listed under §403.1 (g) through (k) must be set back greater than or equal to its height above the roof on which it is situated from:	By terms of: ZC Order 08-06-B (2011) as issued	By terms of: Zoning Regulations Now in Effect	By terms of: Height Act of 1910, as amended	403.2 A structure listed under §403.1 (?) through (?) must be set back greater than or equal to its height above the roof on which it is situated or the top of any parapet or balustrade that forms one face of that structure from:
(a) Any wall facing a public street;	Required	Required	Treated as “exterior wall”	Consider revising to apply to any street open to the public (thus applying to private streets with public easement use rights)
(b) Any wall facing a public alley;	Required	Required	Treated as “exterior wall”	Consider applying only if property across alley is an historic landmark or contributing building
(c) Any wall facing a courtyard open to a public street;	Required	Required	Treated as “exterior wall”	Consider allowing when wall’s upper portion is decorative, as in Kennedy-Warren tower
(d) Any wall that maintains a setback from and faces a lot line; or	Required	Not addressed	Treated as “exterior wall”	Consider revising to apply only to “ required setbacks”
(e) Any wall that abuts a lot line and that is taller than the greater of the adjacent property’s existing or matter-of-right height.	Required	Not required	Not treated as an “exterior wall:	Consider revising to: (a) apply the adjacent site’s allowed height would be by right, but measure from face of building wall at its limit closest to the adjacent property’s common lot line facing a street; but, potentially, adding additional height allowed if adjacent site is in a receiving zone, even if not utilized or sought at that time, but (b) bar by right if a wall faces an adjacent property that is an historic landmark or contributing building in an historic district, subject to special exception approval.

Conclusions:

I cannot explain all the factors or situations came along leading the Commission to adopt the changes it did in 2013 in ZC Case 12-11 relating to “height of buildings”. When first presented to the Zoning Commission, OP asked (Exhibit 1 in that case record) for specific provisions for each group of districts: Residence, Commercial, Special, Mixed Use, Waterfront, and Industrial. The final order provided one rule for Residence districts (added to Chapter 4's "Height" provisions (at section 400), with all others districts following a common definition (at section 199.1) and any (thus-far never proposed for hearing or rulemaking) limits that could be developed and applied to all other zone district groups. Reviewing the transcripts to the extent practical, I could not find a hint of looking at what the Commission had created not too many months before leading up to the issuance of ZC Order 08-06-B.

Thus, as ZRR draws to a close, I urge the Zoning Commission to review and put into effect much of the thinking and many of its core “height” provisions it created, but held in abeyance, in ZC Order 08-06-B.

Thank you.

A handwritten signature in black ink, reading "Lindsley Williams". The signature is written in a cursive, flowing style.

Lindsley Williams

Appendices Follow:

- A - ZC Order 08-06-B, as issued
- B – Section 7 of the Height Act of 1910, with comment about its being a provision that the District of Columbia may alter as a legislative matter, subject to Congressional layover and review (the “Home Rule Act” provides that Congress alone may alter provisions of section 5; the others may be amended by either Congress or the legislative process DC is authorized for most other codes in the Home Rule Act.
- C – “Building, Height of” (for other than Residence Districts) as adopted by ZC Order 12-11, with added annotations and notes (e.g., highlighting where “balustrades” are allowed)
- D – “Building, Height of” for Residence Districts, as adopted by ZC Order 12-11, also with added annotations and notes (e.g., showing where “parapets” are allowed, but where there are no references whatsoever to “balustrades”)

Appendix A – ZC Order 08-06-B

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-06-B
Z.C. Case No. 08-06
(Comprehensive Zoning Regulations Review: Chapter B-4 Height)
February 7, 2011**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice that it took final rulemaking action to adopt amendments to Title 11 of the District of Columbia Municipal Regulations (“Title 11”). The amendments create a new chapter that consolidates and restates all of the existing provisions within Title 11 that concern the height of buildings and structures. More detailed information, discussion, and analysis for the proposed text can be found by clicking on “Setdown Report for Height and Use” at www.dczoningupdate.org/documentcenter.asp.

This new chapter will be part of a revised Title 11. The Commission has already approved a codification format that would divide the revised Title 11 into 10 subtitles. A description of this codification can be found at www.dczoningupdate.org/codereorganization.asp. The adopted Chapter 4 will be included within a new Subtitle B entitled “General Regulations.”

As noted in adopted § 400.3:

In addition to the height limitations of the Zoning Regulations, all buildings are also subject to and shall conform with the limitations of the Act to Regulate Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, D.C. Official Code §§ 6-601.01 to 6-601.09 (2001) (“Height Act”). The regulatory interpretation of, and rules pertaining to, the Height Act adopted by the District Department of Consumer and Regulatory Affairs (“DCRA”) are located in Subtitle M.

As of the date that these amendments were adopted, DCRA had not yet proposed these rules or confirmed that the rules will be codified in the proposed subtitle. The Commission has requested the Office of the Attorney General (“OAG”) and the Office of Planning (“OP”) to continue to work with DCRA towards the formal adoption of Height Act interpretations through rulemaking.

One area in which the Zoning Regulations and the Height Act should conform is the general measurement of height. Adopted § 402 sets out the rules for making such measurement and states at the outset in adopted § 402.1 that “unless otherwise stated, the rules of this section are identical to DCRA rules for the measurement of building height under the Height Act, which

appear in Subtitle M.” The Commission has been apprised that the Zoning Administrator has reviewed § 402, as proposed, and expressed his agreement with its applicable principles.

The Commission will not issue a notice of final rulemaking at this time, but will wait until it has reviewed all portions of the 10 subtitles and issued final orders for all approved text. At that point OP, OAG, and the Office of Zoning will make any editorial changes needed to achieve consistency within the approved text and then present a final consolidated version to the Commission. The Commission will then decide whether to authorize the publication of a notice of final rulemaking that will make the revised Zoning Regulations and Map effective, subject to whatever transitional measures the Commission may adopt.

Zoning Review Process to Date

The Zoning Review process began in 2007 with a pair of public roundtables before the Commission and the formation of a citywide Taskforce. Since then, OP has organized 19 public working groups by subject area and held over 180 public meetings. Each subject area has been reviewed in consultation with a public working group that discusses issues identified in the Comprehensive Plan as well as issues arising from the existing Zoning Regulations. Recommended changes have been forwarded to the 24-member appointed Taskforce for further review and input. Finally, recommendations for most subject areas have been made available for public review including a public hearing before the Commission. After the conclusion of public review for each subject areas, OP has worked with OAG to draft zoning language to reflect the proposed policy changes.

Proceedings Leading to the Adoption of this Amendment

In this case, a notice of public hearing containing policy recommendations regarding the regulation of height within the Zoning Regulations was published in the *D.C. Register*. The public hearing was advertised for and held on September 25, 2008. A guidance meeting scheduled for February 5, 2009 was deferred in order for OP and OAG to work with the Zoning Administrator to develop a unified set of height interpretations.

For the next 18 months, OP continued to work with the working group on this subject matter to draft text that comported with its understanding of the Zoning Administrator’s views. Notice of a public hearing on the proposed text was advertised in the August 6, 2010 edition of the *D.C. Register* based upon the Commission’s prior decision to waive the setdown process for hearings under this docket. At a special public meeting held September 2, 2010, the Commission rescinded the waiver, voted to setdown the case for hearing for September 20, 2010, and confirmed the continued validity of the public hearing notice. However, the Commission decided to remove those portions of the text that dealt exclusively with Height Act interpretations, concluding that the Zoning Administrator had exclusive jurisdiction in that area. The Commission expressed its preference that such rules as DCRA might adopt should be within the proposed Subtitle M.

A second notice of public hearing was published in the *D.C. Register* on September 10, 2010 that reflected the narrower scope of proposed height rules.

Pursuant to § 13 (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) notice was given to all Advisory Neighborhood Commissions (“ANCs”). The reports received, and the Commission’s response, will be discussed later in this Order.

The public hearing took place as scheduled on September 20, 2010 and the matter came before the Commission for proposed action on November 8, 2010, at which time it voted to refer the text to the National Capital Planning Commission (“NCP”) for review pursuant to § 492 of the District Charter and to authorize the publication of a notice of proposed rulemaking in the *D.C. Register*.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on December 3, 2010, at 57 DCR 11637. No comments were received.

NCP, through a delegated action dated January 6, 2011, noted that the proposed text amendments would not adversely affect the federal interest if the following changes were made:

1. Reflect in § 404 that the Height Act does not provide a mechanism for relief to be granted by the Board of Zoning Adjustment from the Height Act provisions for maximum building heights.
2. Add “...public or private street...” at the end of the sentence in § 402.2.
3. Add “...the height of a building shall not be measured from the human-constructed elevation, but shall be measured...” in § 402.4.

As to the first request, § 404 would authorize the Board of Zoning Adjustment to grant special exception relief from setback and other requirements that apply to roof structures permitted to exceed the maximum zoning height. The Height Act does not allow for similar relief from its setback requirement applicable to certain structures granted height waivers. The Commission does not believe it necessary to make this point in the Zoning Regulations. NCP may wish to explore with DCRA whether the contemplated Height Act regulations could be a suitable place to state the restriction.

NCP’s second comment would accomplish the following change to the second sentence of § 402.2.

Where no *street frontage* exists, the height of a *building* shall be measured from its midpoint along its façade nearest to a public or private street.

The Commission notes that the Height Act uses the term “street” with no qualifier and in the Zoning Regulations the term “street” is defined as “a public highway designated as a street, avenue, or road on the records of the Surveyor of the District of Columbia.” This reflects the long-standing practice of measuring height only from public streets. NCPC has furnished no analysis of the impact of allowing private streets to be used for this purpose as well, and this Commission is concerned that the consequences of doing so would be unpredictable and potentially adverse.

The third requested revision would make the following modification to the introductory language of § 402.4 as follows:

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 not be measured from the human-constructed elevation**, but shall be measured using the first of the following four methods that is applicable to the site:

The NCPC staff report indicates that the insertion of the bolded and underlined text would strengthen the provision. However, the phrase could be interpreted as precluding height measurement from an artificial elevation in all instances. This would directly conflict with § 402.4(a), which specifically allows height to be measured at a human-constructed elevation if permitted in a specific zone. The Commission appreciates NCPC’s drafting recommendation, but concludes that including the provision would result in the potential for misinterpretation.

In addition to the comments received from NCPC, the Commission received reports from ANC 6A, dated September 15, 2010; ANC 6B, dated September 22, 2010; and ANC 6C, dated September 13, 2010. ANCs 6A and 6C shared a common concern about what was advertised as § 402.4 (c), but which is now § 402.4(b). As just discussed in the context of NCPC’s concerns, § 402.4 provides rules for determining height when there is an artificial elevation. As revised from the notice of public hearing, the provision now indicates the order in which the rules apply, and thereby addresses one of ANC 6A’s concerns.

The second rule, as stated in (b), is to use “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”. ANC 6C was concerned that this would permit future Zoning Administrators to change these measuring points without public comment. The Commission notes that the rule clearly allows only the use of determinations made prior to the effective date of the section. ANC 6A views these 20-year-old determinations as obsolete. The Commission is sympathetic with this position, but cannot ignore the fact that buildings and structures were built under the authority of these decisions and that to disavow them would

create unacceptable nonconformities that are unlikely to be replaced by new building constructed under possibly stricter rules.

ANC 6A also views what is now § 402.4(a) as arbitrary, because it permits the Commission to establish the measuring point for an artificial elevation on a zone-by-zone basis. However, ZRR represents a rejection of one-size-fits-all zoning in favor of neighborhood focused zoning controls. When a neighborhood includes property constructed at an artificial elevation, the Commission must and will judge height limitations based upon what is best for that area.

Lastly, ANC 6B stated its concerns with respect to what constitutes a cellar or a story. Adopted § 401.4 provides that “*Zone* height limits shall be stated in terms of feet.” Therefore, concerns over what is a story, which in some circumstances depended upon whether a lower level was a basement or cellar, will no longer be relevant to the future measurement of height once these rules take effect. The ANC was also concerned about the inconsistent use of the phrases “building face” and “building façade.” The Commission notes that the latter phrase does not appear in the adopted text, but requests that OP determine whether there is a need to use both terms and, if so, formulate definitions that differentiate their meaning.

Having recognized each ANC as the source of its recommendation, and articulated why it did or did not find the advice persuasive, the Commission has given ANCs 6A, 6B, and 6C the great weight to which they are entitled by law.

At a properly noticed public meeting held on February 7, 2011, the Commission took final action to adopt the text amendments, but to delay publication of a notice of final rulemaking until the text has been finalized and conformed to all other text that will comprise the revised Zoning Regulations adopted under this docket.

The following new Chapter 4, **HEIGHT**, is adopted for inclusion within a proposed Subtitle B, **GENERAL REGULATIONS**, of a revised Title 11 DCMR:

CHAPTER 4 HEIGHT

400	Introduction to Height Regulation Chapter
401	Relationship to the Land Use Subtitles
402	General Rules of Measurement
403	Height Limit Exceptions
404	Height Special Exception Standards

400 INTRODUCTION TO HEIGHT REGULATION CHAPTER

400.1	This chapter provides height regulations for the District. The provisions of this chapter apply to all zones.
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- 400.2 The intent of regulating height is to:
- (a) Promote successful transitions between areas of differing density;
 - (b) Ensure adequate light and air to neighboring properties and zones; and
 - (c) Provide vertical control to accommodate appropriate density and good design.

400.3 In addition to the height limitations of the Zoning Regulations, all buildings are also subject to and shall conform with the limitations of *the Height Act*. The regulatory interpretation of, and rules pertaining to, the Height Act adopted by the District Department of Consumer and Regulatory Affairs ("DCRA") are located in Subtitle M.¹

401 RELATIONSHIP TO THE LAND USE SUBTITLES

- 401.1 In addition to the general regulations of this subtitle, each land use subtitle shall include a height regulations chapter containing height regulations specific to the zones within that subtitle, including tables identifying zone-specific height maximums, conditions, and exceptions.
- 401.2 Zone height limitations shall be codified and presented in the development standards table within each land use subtitle.
- 401.3 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.
- 401.4 *Zone* height limits shall be stated in terms of feet, and shall be evenly divisible by five (5).
- 401.5 The height limits in each zone district apply to structures located in the public space included within the zone district's boundary.

402 GENERAL RULES OF MEASUREMENT

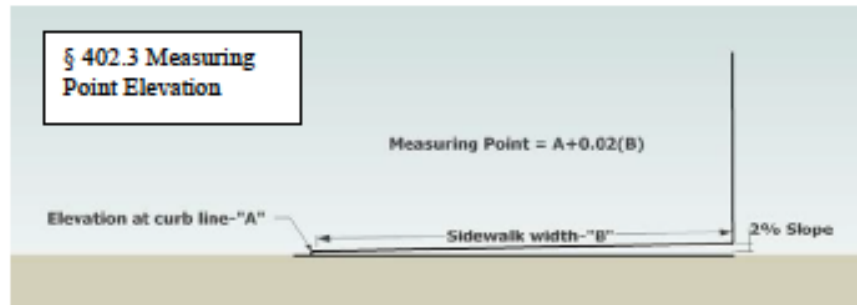
- 402.1 This section provides rules of measurement for the purpose of determining compliance with zone height limitations. Unless otherwise stated, the rules of this

¹ DCRA has not yet proposed such rules or determined where in the DCMR they would be codified.

section are identical to DCRA rules for the measurement of building height under the Height Act, which appear in Subtitle M.

402.2 The height of a *building* shall be measured from its midpoint along any abutting *street frontage*. Where no *street frontage* exists, the height of a *building* shall be measured from its midpoint along its façade nearest to a public street.

402.3 The measuring point for determining height shall be the elevation at the midpoint of the adjacent curb except as provided in § 402.4, plus a two percent (2%) gradient between the curb and the property line, up to a maximum height difference of twelve inches (12 in.). When an adjacent curb does not exist, the elevation for the measuring point shall be the elevation at the property line midpoint, where the street right of way meets the property line.



402.4 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 first of the following four methods that is applicable to the site:

- (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.

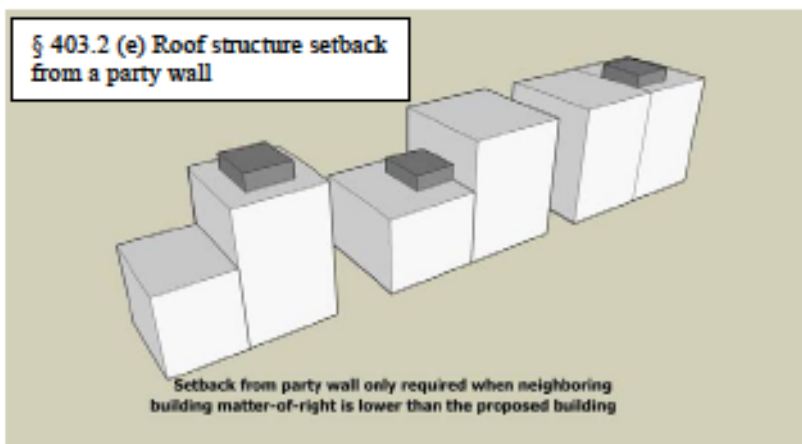
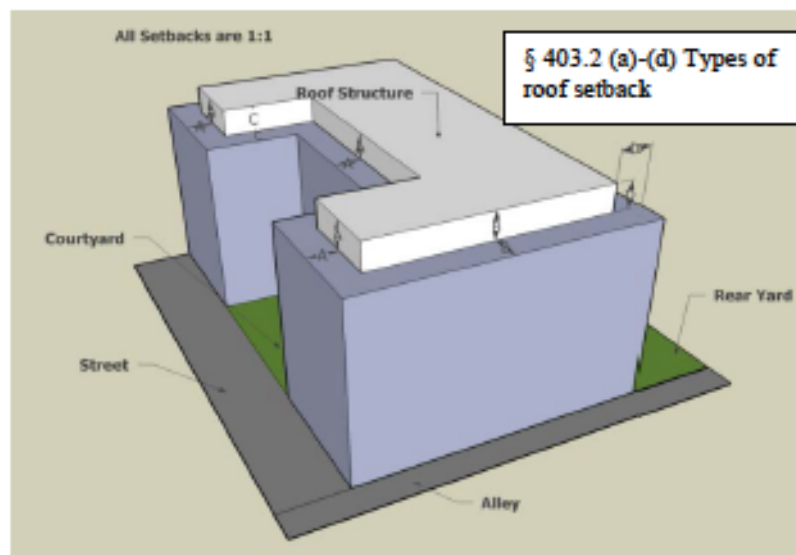
- 402.5 One- and two-family dwellings, and any building setback from all lot lines by a distance at least equal to its own height, shall be measured from the ground level at the midpoint of the building face closest to the nearest public right of way.
- 402.6 *Building* height shall be measured to the top of the roof including any parapet or balustrade on exterior walls, or any other continuation of the exterior walls. For purposes of calculating the *zone*-specific height, a parapet or balustrade of up to four feet (4 ft.) may be excluded from the height measurement. This exclusion does not apply in calculating maximum height under the Height Act.

403 HEIGHT LIMIT EXCEPTIONS

- 403.1 The following *structures* may be built above the zone height limitations, subject to the conditions of this section and the Height Act:
- (a) Spires;
 - (b) Towers, including towers erected from the ground;
 - (c) Domes, minarets, pinnacles;
 - (d) Chimneys or smokestacks;
 - (e) Skylights;
 - (f) Antennas;
 - (g) Penthouses fully or partially enclosing utilitarian features, including, but not limited to, mechanical equipment and its housing, elevators, and stairwells;
 - (h) Building appurtenances dedicated to safety, including safety railings;
 - (i) *Pergolas* and similar architectural embellishments;
 - (j) Building components or appurtenances dedicated to the environmental sustainability of the building; and
 - (k) Penthouses fully or partially enclosing accessory amenity features, such as communal recreation space, and structures accessory to outdoor recreation space.

403.2 A structure listed under § 403.1 (g) through (k) must be set back greater than or equal to its height above the roof on which it is situated from:

- (a) Any wall facing a public street;
- (b) Any wall facing a public alley;
- (c) Any wall facing a *courtyard* open to a public street;
- (d) Any wall that maintains a *setback* from and faces a lot line; or
- (e) Any wall that abuts a lot line and that is taller than the greater of the adjacent property's existing or matter-of-right height.



403.3 *Structures* listed under § 403.1 (f) through (k) shall not rise more than twenty feet (20 ft.) above the roof.

403.4 Space enclosed by walls on a roof is limited to forty percent (40%) of the *building's* total footprint.

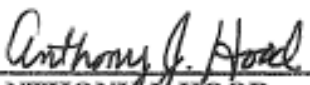
404 **HEIGHT SPECIAL EXCEPTION STANDARDS**

404.1 The Board may grant, by special exception, relief from §§ 403.2 (b) though (e) or 403.4 if, in addition to meeting the general requirements of [§ 3104], the applicant demonstrates that granting the relief would not:

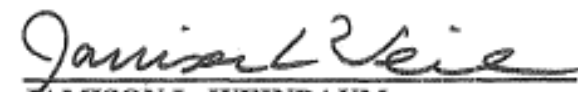
- (a) Be incompatible with the purpose and intent of height regulations listed in § 400.2; or
- (b) Result in adverse impact on:
 - (1) Existing solar or wind power generation facilities in the immediate vicinity; or
 - (2) The visual character of the surrounding neighborhood.

On November 8, 2010, upon a motion made by Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** this Petition at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull and Peter G. May to approve).

On February 7, 2011, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; Greg M. Selfridge to approve by absentee ballot).



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

Appendix B – Section 7 of the Height Act of 1910, noting that this section (unlike Section 5) may be amended by the District of Columbia as a legislative matter, subject, of course, to normal Congressional layover review.

Sec. 7	§ 6-601.07. Measurement of building height; parapet walls For the purposes of this subchapter the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding 4 feet will be permitted above the limit of height of building permitted under this subchapter. HISTORY: June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124.
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Thus, this section of the Height Act prevails now in the event of conflict that results in it being more or most restrictive as to both measurement point and having to “count” parapets in balustrades in determination of height of buildings (rule of measurement).

The Zoning Commission may want to suggest to the Office of Planning that it explore, with the Mayor and Council of the District of Columbia, the potential to develop legislation to revise this section to ensure that:

- The point of measurement is identical under zoning and the Height Act
- That up to four feet of parapet and balustrade are allowed for buildings, instead of being pushed down essentially half a story
- That safety railings (and other safety-related appurtenances?) are allowed free of height limitations or as provided for in applicable zoning or building codes.

Appendix C – Building, Height of for all but Residence Districts (section 199.1) annotated

Building, height of – *in other than Residence Districts (R)*, the vertical distance measured from the level of the **curb**,³ opposite the middle of the front of the building to the highest point of the roof or **parapet**⁴ or a point designated by a specific zone district; in Residence Districts (R) the vertical distance measured at the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line to a point designated in the zone district. Berms or other forms of artificial landscaping shall not be included in measuring building height.

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

Unless otherwise restricted or permitted in this title, in those districts in which the height of the building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

In those districts in which the height of the building is limited to sixty feet (60 ft.), in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or **parapet**, but the allowance for terrace height shall not exceed five feet (5 ft.).

Except as provided in § 400.20, where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or **parapet**.

Except as provided in § 400.21, if a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

Except as provided in § 400.19, in those districts in which the height of building is permitted to be ninety feet (90 ft.) or greater, the height of buildings shall be measured to the highest point of the roof excluding **parapets** not exceeding four feet (4 ft.) in height.

³ In contrast to measurements in Residence districts, zoning’s measurement of height of buildings in all other zone districts is from the level of the “curb at grade ... opposite the middle of the front of the building.” Neither the point of measurement in Residence districts nor any other zone district is identical to the point of measurement under the Height Act of 1910, as amended, which specifies that its height measurement is specified, with restrictions thereon, as follows:

“... the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a **parapet** wall or **balustrade** of a height not exceeding 4 feet will be permitted above the limit of height of building permitted under this subchapter.” (D.C. Code, § 6-601.07)

Where the sidewalk extends all the way to the property line, the measurement point is clear, namely the elevation at the middle of the front of the building be it built to the property limit or not. But, where there is an intermediate area known as “the public parking” between the edge of the sidewalk facing that property, but separated by “the public parking,” the interpretation is unclear (at least to this analyst). The fact that an area that is officially “the public parking” is clad with material similar to a parallel sidewalk does not convert it to “sidewalk” status for purposes of the measurement of height under the Height Act of 1910 as amended.

⁴ “Parapets” are highlighted in this definition as they appear officially because **parapets** are not paired with another, similar, architectural element that applies in the rule applicable to Residence (“R”) district, “**balustrades**.” “**Balustrades**” are also regulated by the Height Act and are generally treated as a functional equivalent to “**parapets**”.

This omission of “**balustrades**” in the current definition in the zoning regulations is likely a drafting oversight, but it should be corrected if possible or amended if necessary by a more formal process. In the provisions for Residence zones, the allowance for “**balustrades**” is typically set out as “... excluding **parapets** and **balustrades** not exceeding four feet (4 ft.) in height.” That language would appear to be appropriate for all but the first and last instances where “**parapet**” stands alone now; something similar should correct the first and last instances in an appropriate manner.

This entire provision has the same inherent limitations apropos the Height Act of 1910 as amended discussed earlier that should also be made more explicit. See Appendix B, above.

Appendix D – Building, Height of for Residence Districts (section 400) annotated

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), is amended by adding new § 400.15 through 400.22 to read as follows:

- 400.15 The height of buildings in R zones shall be measured in accordance with the rules provided in § 400.16 through 400.21. If more than one (1) of these subsections applies [*Sic., grammatically, this should be “apply”*] to a building, the rule permitting the greater height shall apply.⁵
- 400.16 The **building height measuring point (BHMP)** shall be established at the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line.⁶
- 400.17 The height of a building with a flat roof shall be measured from the BHMP to the highest point of the roof excluding **parapets** and **balustrades** not exceeding four feet (4 ft.) in height.⁷
- 400.18 The height of a building with a roof that is not a flat roof shall be measured as follows:
- (a) From the BHMP to the average level between the highest eave, not including the eave of a dormer and the highest point of the roof; and
 - (b) Where there are no eaves, the average level shall be measured between the top of the highest wall plate and the highest point of the roof.
- 400.19 The height of a building permitted to be ninety feet (90 ft.) shall be measured from the BHMP to the highest point of the roof excluding **parapets** and **balustrades** not exceeding four feet (4 ft.) in height.
- 400.20 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the BHMP to the highest point of the roof or **parapet**.
- 400.21 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.⁸
- 400.22 A conforming structure in existence on June 14, 2013 that would have been rendered nonconforming as a result of the adoption of amendments to this section made in Z.C. Order No. 12-11 shall be deemed conforming; provided that the height of the structure may neither be increased or extended.

⁵ The provisions in this section are solely those under the Zoning Regulations in R districts. The rules for all other zones appear elsewhere in this document. Moreover, the Height Act of 1910, as amended, is separate and may impose greater restrictions in any zone district and, if so, the more restrictive applies. This is particularly likely in locations where both specify a limit of “90 feet” but from two different measuring points and opposing treatment of parapets and balustrades, in which the zoning regulations provide an allowance of up to four feet (4 ft.) but the Height Act considers as part of the overall maximum allowed height.

⁶ Thus, while there is apparent discretion when both or all sides of a building either face on the property line, as in a corner lot, or are an identical distance from them, this is effectively limited by operation of section 400.21.

⁷ The provision could be moot if the property is in a location where overall height is limited by the provisions of the Height Act of 1910, as amended, particularly its provisions that overall height limits **include** parapets and balustrades.

⁸ Thus, where a building faces more than one street, for example on a corner lot, the “street frontage” that is utilized determines the street along whose axis the mid-point of that building’s façade on that street is the base from which that building’s height is measured.