

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, September 25, 2008, @ 6:30 PM**
 Office of Zoning Hearing Room
 441 4th Street, N.W., Suite 220
 Washington, D.C. 2001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06-1 (Comprehensive Zoning Regulations Rewrite: Height)

THIS CASE IS OF INTEREST TO ALL ANCs

This Notice of Public Hearing announces the postponed date for one of several proposed subject areas the Zoning Commission for the District of Columbia (the "Commission") will consider under this docket. All recommendations offered by the Office of Planning ("OP") under this docket have been or will have been reviewed by a working group and a subject matter task force as part of a process designed to augment the public hearing(s) required in the Zoning Act as part of the Commission's responsibility to consider the merits of each proposal submitted to it.

This hearing will consider general rules applicable to the measurement of height. The rules also set forth the circumstances under which parapets and roof structures may exceed otherwise applicable zoning height limitations, up to the limit allowed by the Height Act, and also set forth associated setback requirements. In addition, the rules propose definitions for "a building" and an "exterior wall." If adopted, the Commission may later move the definitions to a definition section applicable to the entire title. As to the proposed definition of "exterior wall," this definition is not binding upon the Department of Consumer and Regulatory Affairs with respect to its interpretation of the same term, which appears in the Height Act, unless it adopts a similar provision.

This hearing, like all others to follow under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

This proposal presents policy recommendations regarding the regulation of height within the zoning regulations. It does not present proposed rulemaking language. The explanations for the proposed recommendations are the Office of Planning's, and have not been considered or accepted by the Zoning Commission.

It is anticipated that a proposed action on this subject area will involve at least one public hearing and two decision meetings. At the first decision meeting, based upon the record before it, the Commission will accept, reject, modify, or add to the concepts and recommendations presented herein. At the second meeting, the Commission will review text prepared by OAG and OP that

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codifies the Commission's determinations into a legally sufficient form. If approved, that text will be published as a Notice of Proposed Rulemaking and forwarded to the National Capital Planning Commission for the review period mandated by the District Charter.

Thereafter, the Commission may wait to take final action until after all hearings under this case number are concluded.

Additional information about the height proposals, including illustration of several of the concepts, is available in a July 10, 2008 report on the website dedicated to OP's zoning review process. It is located online at <http://www.dczoningupdate.org/height.asp>. There will be another OP report in September addressing the advertised proposals and any comments received before the public hearing.

Written comments should be sent to the Office of Zoning. Commentors are encouraged to post a copy on the zoning review website, or mail / e-mail them to Stephen Cochran at the DC Office of Planning 801 N. Capitol Street, N.E., Washington, DC 20009 – Stephen.Cochran@dc.gov.

The twelve recommendations are grouped into three topic areas:

THE RULES APPLICABLE TO DETERMINING A BUILDING'S MAXIMUM PERMITTED HEIGHT.

- Recommendation 1: Streets with multiple frontages
- Recommendation 2: Streets fronting on open space
- Recommendation 3: Business vs. Residence streets
- Recommendation 4: Single vs. Multiple Buildings

THE RULES APPLICABLE TO MEASURING A BUILDING'S HEIGHT

- Recommendation 5: Location of Bottom Measuring Point
- Recommendation 6: Elevation of Bottom Measuring Point
- Recommendation 7: Natural Grade
- Recommendation 8: Top Measuring Point

THE RULES GOVERNING THE TYPES OF STRUCTURES PERMITTED ABOVE A ROOF

- Recommendation 9: Structures Permitted Atop a Roof
- Recommendation 10: Height, Width and Massing of Structures Atop a Roof
- Recommendation 11: Roof Structure Setbacks
- Recommendation 12: Exterior Walls

RECOMMENDATIONS CONCERNING THE DETERMINATION OF A BUILDING'S MAXIMUM HEIGHT.

Recommendation 1: Any street abutting a building's property line may be used to determine the maximum height allowable, based on the street's width, designation, and

height restrictions imposed by this Chapter. There should be no requirement for the presence of an entrance to designate a building “front.”

This addresses how to determine from which street a building may draw its permitted height when the building faces multiple streets. It retains the basic principle that maximum permissible height should be related to the width of the widest street which a building faces. The existing term for making this distinction is “front,” however, the term “front” is not defined in the Zoning Regulations. To avoid uncertainty, the proposal would substitute building face for front to account for larger buildings occupying multiple sides of a Square, where there may not be an obvious “front.”

Recommendation 2: When any portion of a building face abuts a property line that is directly across a street from a public open space or reservation, the building’s maximum allowable height may be determined by the width of any single right of way that is not divided by the public open space or reservation and that is adjacent and parallel to any single side of the open space or reservation.

The Zoning Regulations permit a building that “confronts a public space or reservation formed at the intersection of two or more streets, avenues or highways, the course of which is not interrupted by said public space or reservation” to draw its maximum permitted height category from the widest street, avenue or highway. The existing language is unclear and has been interpreted differently over the years. The proposed concept would clarify that a building may draw its height from any right of way that is parallel to the side of the open space or reservation on which the building has frontage. This would tie a building’s maximum possible height to the width of a single right of way paralleling a side of the open space that the building confronts.

Recommendation 3: A “Residence street” would be any block face that contains any residential property located in a low to moderate density zone district, as those zones may be described after completion of the zoning review process, OR any block face entirely made up of properties of any residential zone. “Business streets” would mean all other block faces. As with the above recommendations, any property facing more than one street could choose its frontage and rise the greater of the zones’ permitted heights.

This proposes a clarified definition of business and residence streets. The Regulations incorporate the concept that the Commission may permit business street buildings to be higher than residence street buildings, subject to limitations imposed by street widths.

In the Zoning Regulations, “business streets” are defined as “those sides and portions of any street” located in a Special Purpose, Waterfront, Mixed Use, Commercial, or Industrial District. While not officially interpreted anywhere, “sides and portions of any street” has for years been interpreted to apply separately to each and every individual property. Where a Commercial-zoned building abuts a Residential-zoned building on the same street, the former has been considered to be on a “business street” and the latter to be on a “residence street”. This has allowed the Commission to rezone

properties and permit buildings taller than 90 feet on streets wider than 70 feet, even when adjacent buildings are zoned for low or moderate density residential uses. The proposed language would extend the 90' protection to any block face with low to moderate density residential zoning (as defined in future working groups but currently R-1 through R-4 and large portions of R-5-A and R-5-B) and for blocks that are zoned entirely residentially.

Recommendation 4: A “building” is a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or tangible property. When separated from the ground up or from the lowest floor up by common division walls, each separate portion shall be deemed a separate building unless there is open access between each portion on at least half of the shared floors. Two or more structures that are in all other respects physically separate from each other cannot be combined to form a single building through the introduction of any type of physical connection between the structures, including a trellis, walkway, garage or tunnel, at any location.

This addresses questions of when structures constitute one building or multiple buildings. The definition would replace the concept of a “meaningful” above-ground connection that has been used by the Zoning Commission to determine whether structures are single or multiple buildings. It would help to clarify which street would determine a structure’s maximum permissible height.

RECOMMENDATIONS CONCERNING THE MEASUREMENT OF A BUILDING’S HEIGHT

Recommendation 5: Clarify the determination of the measuring point for building height when a building faces more than one street. **Option 1:** The street chosen to determine the maximum allowable height must also be used to determine the point from which building height is measured. **Option 2:** Any abutting street which a building faces may be used to determine the measuring point regardless of which abutting street is used to determine maximum allowable height.

The Zoning Regulations anticipate that a building on a corner lot could be higher on one of its faces than would otherwise be allowed due to the opportunity to choose between streets of potentially different widths and/or elevations for height allowances. Traditionally, the Regulations have been interpreted to allow the same for a through-block building. However, separating height determination and measuring point allows, in some cases, a building to be higher on all frontages than would be permitted if the measuring point were also on the same street used to determine maximum permissible height. The Commission’s guidance is requested on the proper determination of measuring point.

Recommendation 6: The height of a building shall be measured from the midpoint of the building’s property line along a public street. The elevation for this point is determined by the level of the curb approved by the District government plus a 2% gradient between the curb and the line, up to a maximum height difference of 12 inches.

This would reconcile existing differences between the Height Act, which specifies that the measuring point is taken from the midpoint of the curb, and the Zoning Regulations, which specify that the measuring point is the property line. It would also account for sidewalk slopes required for drainage.

Recommendation 7: The “natural elevation” or “natural grade” of a property is the ground elevation that existed immediately prior to the issuance of the first special or building permit, including a raze permit, needed to begin the construction of the building for which a height measurement is being made. Where natural elevation is interrupted by a bridge, viaduct, embankment, ramp, abutment, tunnel or other type of artificial elevation, the height of a building will not be measured from the human-constructed elevation, but will be measured from either a street frontage not affected by the artificial elevation, or from a level determined by the Zoning Administrator to represent the logical continuation of the surrounding street grid where height is not affected by the discontinuation of the natural elevation.

This would clarify that the natural grade is the elevation existing prior to the initiation of a project covered by the Zoning Regulations to prevent the site from being artificially raised or lowered for height prior to filing for a building-related permit.

Recommendation 8: A building shall be measured to the top of the roof including any parapet on exterior walls, or any other continuation of the exterior walls. When a building’s measurement, inclusive of the full height of a parapet or balustrade, is below the maximum permitted height under the Height Act, a parapet or balustrade of up to 4’ may be excluded from the height measurement.

This reconciles differences between the Zoning Regulations, which permit a parapet, and the Height Act, which does not permit a parapet, when a building is at the maximum height permitted under the Act.

STRUCTURES ATOP ROOFS

Recommendation 9:

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

- (a) **Ornamental features** limited to spires, towers, domes, pinnacles, and minarets, that are aesthetic, primarily vertical elements of a building, even if also enclosing or screening utilitarian or amenity features;
- (b) **Utilitarian features** including, but not limited to, mechanical equipment, safety railings, stairwell access, elevator penthouses, and building

components or appurtenances dedicated to the environmental sustainability of the building; and

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

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

This would group roof structures into three categories for regulation. Ornamental features are those listed in the Height Act and traditionally noted as features "serving as architectural embellishments" in the Zoning Regulations. Utilitarian features would include any mechanical, safety, or access functions of the building, as well as structures or equipment dedicated to the environmental sustainability of the building (such as machines that generate electricity from wind, solar panels, hot water collectors and green roofs. Amenity features would include the traditionally allowed bathrooms and access to private units, as well as adding a provision for enclosed recreation space on the roof accessible to all building tenants.

This proposal is intended to clarify the types of uses and structures are allowed on the roofs of buildings, and to indirectly assist in clarifying their setback requirements.

Recommendation 10:

Space enclosed by walls on a roof shall be limited to 40% of that roof's total area, but shall not count toward overall building FAR. The enclosing walls need not be vertical or of uniform height, and multiple roof structure enclosures shall be permitted.

Utilitarian and amenity features may not rise more than twenty feet (20 ft) above the roof.

Ornamental features shall be restricted to those now permitted and may not rise more than thirty (30) feet above the roof, unless approved by the Board of Zoning Adjustment as a Special Exception.

Under Special Exception review, utilitarian and amenity features could be entirely enclosed within ornamental features not setback from exterior walls. The provisions of this section could be waived by Special Exception.

The proposed language would increase the maximum penthouse height by from 18.5' to 20', and the maximum area from 37% to 40% of roof area. Roof structures with multiple enclosures, different heights and sloping walls would be permitted as a matter of right. Special exceptions would be required for ornamental features more than 30' higher than the roof. These are now

permitted as a matter of right. Utilitarian and amenity features would not have a 1:1 setback requirement if they were located within a spire, tower, dome, pinnacle or minaret, – which have no setback requirements -- and were approved as special exceptions.

Recommendation 11: Utilitarian and amenity features shall be set back a distance at least equal to their height above the adjacent roof from (a) any exterior wall; (b) any wall that is set back from and facing a lot line; and (c) any lot line wall built higher than the greater of the neighboring building’s actual height or matter-of-right height.

The following shall not be subject to the requirements of this section: skylights; gooseneck exhaust ducts; and plumbing vent stacks.

The Board of Zoning Adjustment may approve relief as a special exception from the requirements of this section where compliance would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area, provided that the intent and purpose of this chapter and title shall not be affected adversely.

The concept would permit a roof structure to be built up to the side wall of a building, unless the side wall is set back from a lot line, or is higher than the greater of an adjacent building’s actual height or the height to which the adjacent building could rise as a matter-of-right. This would require fewer roof structures to need relief in order to be built up to party walls, but relief would still be required to reduce side wall setback requirements for the most potentially visible roof structures. Setbacks would not be required from interior courts, but would continue to be for street-facing walls of open courts.

Recommendation 12: An exterior wall is any wall facing a public street, alley, or any area dedicated to the District for the public use of pedestrians or vehicles.

This is intended to clarify which of a building’s walls are exterior walls, from which setbacks are required. Under Recommendations 11 and 12, the BZA would continue to be prohibited from granting setback relief from building walls facing a public street and would continue to be able to grant relief to setback requirements from party walls and from lot line walls higher than an adjacent building’s existing height (excluding roof structures) or its matter of right height – whichever is taller. Contrary to current practice, it would no longer be able to grant relief to setback requirements from alley walls or those facing public easements for pedestrians or vehicles.

PROCEDURES

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations,

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Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, GREGORY N. JEFFRIES, CURTIS L. ETHERLY, JR., PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.