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CHANGES TO THE HEIGHT ACT: SHAPING WASHINGTON, D.C., FOR THE FUTURE, PART II

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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CHANGES TO THE HEIGHT ACT: SHAPING WASHINGTON, D.C., FOR THE FUTURE, PART II

Monday, December 2, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 10:05 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Meadows, Norton and Connolly.

Staff Present: Ali Ahmad, Senior Communications Advisor; Will L. Boyington, Press Assistant; Molly Boyl, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; Daniel Bucheli, Assistant Clerk; John Cuaderes, Deputy Staff Director; Howard A. Denis, Senior Counsel; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Mark D. Marin, Deputy Staff Director for Oversight; James Robertson, Senior Professional Staff Member; Laura L. Rush, Deputy Chief Clerk; Sarah Vance, Assistant Clerk; Rebecca Watkins, Communications Director; Jedd Bellman, Minority Counsel; Peter Kenny, Minority Counsel; Adam Koshkin, Minority Research Assistant; Julia Krieger, Minority New Media Press Secretary; Elisa LaNier, Minority Director of Operations; Daniel Roberts, Minority Staff Assistant/Legislative Correspondent; and Juan McCullum, Minority Clerk.

Chairman ISSA. Good morning, and welcome. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles: First, Americans have a right to know that the money Washington takes from them is well spent; and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to secure these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. So our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Today's hearing is an oversight hearing, but it is not on waste, fraud or abuse. In this case today's hearing is on neglect. Limitations on the building heights in the District of Columbia stretch back to 1791 when President George Washington issued regulations on buildings in the city, stating that the wall of no house is

to be higher than 40 feet to the roof in any part of the city, nor shall any be lower than 35 feet on any of the avenues. As we all know, George Washington cared a great deal about architecture and helped in the design of this city and, of course, the roads leading to it.

In 1889 and again in 1910, Federal legislation was enacted to restrict building heights in the District of Columbia. The Heights of Building Act of 1910 was the last time that major legislation was considered before this body. At that time it modified the maximum heights for buildings and added enforcement measures for the first time, and it made clear that there were Federal interests in maintaining certain characteristics of the city, and that is true today.

Under the law, no building could be erected higher than the width of the adjoining street plus 20 feet, in residential areas that is. No building could be constructed higher than 85 feet in commercial areas. No building could be erected greater than 130 feet between the streets of First Street and 15th Street, Northwest. And on the Pennsylvania side, on the north side of Pennsylvania Avenue, there was a height restriction capped at 160 feet. One hundred sixty feet. At that point it's only a couple of inches higher than 60 feet to the top of the White House. So even then the heights above the most revered building in Washington were 100 feet above the White House.

The 1910 law very rightfully paralleled limitations in many U.S. cities during the time. However, unlike other cities who began modifying their height restrictions in 1915, the District of Columbia has maintained largely unchanged for 100 years. I might note all of these laws and the last attention to the Height Act came long before home rule, long before the city began organizing and running itself in a modern way.

Last year, on July 19th, 2012, our D.C. Subcommittee held a hearing to explore whether or not this century-old law should be modified and, if so, how. After that subcommittee hearing, I wrote the National Capital Planning Commission and the District of Columbia to ask them to work jointly to answer these questions. Although the right and the obligation lies completely within Congress, under home rule there is no question that it should be done in concert with the desires of the people of the District of Columbia.

Ultimately, the District of Columbia Office of Planning and the NCPC came to completely different conclusions about the need for change of the Height Act, and even further, there seems to be a growing dissension between city councilmen and the Mayor. Today we will hear from NCPC and the D.C. Office of Planning on their separate proposals.

I am here today because we will not close the Height Act consideration without full consideration, without full recognition of the benefits and the challenges in any changes to the Height Act and let it go to sleep for another 100 years.

Would you put the first picture up, please? Quickly.

During the process of review—go to the next one—the next one. There we go. The next one. One more. Next one. There we go.

During the process of review, we began to look at things that other cities have done and are great establishments.

Go one more picture.

And we understand that this may not be exactly everyone's look, but you will notice that they're architecturally different than they are today. The recognition is that 100 years from now, we will not have all the early 1900 buildings.

One more.

It may look like this.

One more. Back. Back one more.

It may look like this, or it may look much like it does today.

The question is will it be in keeping with the best interests of the Federal city as the seat of government for the American people and consistent with the best interests of the people of the District of Columbia? That's a question we're going to hear today. That's the reason this committee is putting so much time into it.

Chairman ISSA. To give another opening statement, I would recognize the gentlelady from the District of Columbia.

Ms. NORTON. Thank you, Mr. Chairman. And I thank you, Chairman Issa, for scheduling today's hearing as a follow-up to your hearing last year, the first hearing in anyone's memory on the Height Act. In more than 20 years of service, neither business interests nor D.C. residents have approached me regarding changing the Height Act, but I supported Chairman Issa's call for a hearing on whether a 100-year-old law continues to serve the interests of both the Federal Government and the District of Columbia.

The witnesses at that hearing, the National Planning Commission, the D.C. Office of Planning, the D.C. Chief Financial Officer, architect Roger Lewis, the D.C. Building Industry Association and the Committee of 100 on the Federal City opened the issue. But the chairman wisely called on D.C. and NCPC to conduct a joint study of the Height Act, which I supported, with results that bring us here today.

May I add how much I appreciate that this hearing reflects the chairman's pattern of unfailing support not only for the city's ongoing needs, including most recently his strong assistance in keeping the D.C. government open throughout the entire fiscal year after the Federal Government shut down, and the chief financial officer vacancy and salary bill he quickly got through committee and to the floor. I also appreciate the chairman's energetic and innovative work for budget autonomy and his strong support on many occasions for home rule, which he has raised as a factor in connection with the Height Act.

As the Height Act study unfolded in community meetings and hearings over the past year, it became clear that many D.C. residents fear the loss of the unique horizontal scale that is part of the city's hometown identity, and that there are differing views on whether or how it should be changed. In fact, the D.C. government itself appears divided. Twelve of the thirteen members of the D.C. Council cosponsored a resolution calling for no changes to the Height Act, quote, "at this time," while the Mayor has recommended several changes to the Height Act.

It is not surprising that the Height Act stirs passions and divisions. The Height Act implicates many important issues: home rule, D.C. status as the Nation's Capital, economic development, city planning, affordable housing, architecture, historic preserva-

tion, among many others. The District Office of Planning argues that changes may be necessary to accommodate projected population and job growth and to reduce the cost of housing in the future, and that the historic character of the city can still be preserved.

Opponents of changes argue just the opposite. They say that there is sufficient capacity in D.C. to accommodate projected population and job growth, that changes would increase the cost of housing, that changes would slow the spread of economic development across the city to areas that need development, and that changes would destroy the historic character of the city.

At bottom, the issue raised by the study the chairman requested unavoidably is if changes ever prove necessary, who should make changes to the Height Act affecting hometown D.C., the D.C. government or the Federal Government, and under what circumstances?

Every year the underlying development issues have been part of my own work here in the Congress. I spend considerable time both fending off attacks on home rule and proposing its expansion with local democracy, full congressional voting rights, budget autonomy and statehood, which have been and will continue to be overriding concerns.

Yet like any Member of Congress, one of my principal jobs also has been to bring jobs and economic development to my district. In my role as the chair of the Economic Development Subcommittee, I took great interest in land development to bring affordable housing and jobs to the city. Much of the city's development depends upon the Federal Government either because it owns a significant percentage of the land throughout the city, or because the location of Federal agencies in neighborhoods almost always stimulates the mixed-use development that residents desire.

My bills and other committee work have created new neighborhoods all away from downtown. In NOMA, at the Capitol Riverfront, on the Southwest Waterfront, and in Ward 8 where the new Department of Homeland Security complex of buildings is rejuvenating Martin Luther King, Jr., Avenue. Naturally I am interested in whether the spreading of development away from downtown would be helped or hampered if space for Federal and private offices were allowed in taller buildings.

When it comes to the Height Act, I wear two hats. As a Federal official I have an obligation to protect monumental Washington as a national symbol, as well as the values residents have come to associate over time with the scale of city life imposed by the Height Act. At the same time, as the congressional representative for the District, I have spent my career fighting for the District to have the right to make its own decisions, as every other local government in our country does. I have not regarded the two obligations as irreconcilable.

The differences between today's two witnesses, one Federal and one local, should not be allowed to mask internal differences within the District that the city should confront. I have not had the opportunity to speak personally with Mayor Gray as yet to hear his views, but D.C. Council chair Phil Mendelson called me, and in

that conversation I learned more about his concerns and perhaps the concerns of some other members of the council.

Unlike any other issue I have encountered while serving in the House, the concern seems not to be with what the Congress does, but with what the District itself will do. How ironic. There is fear that economic forces, perhaps pulled by business interests, would lead to undesirably tall buildings. The implicit argument is that Federal authority is necessary to protect the District from itself.

Although in my own congressional work on development here, no developer has ever approached me about the Height Act, there is some evidence from a 1990 council bill of only three congressional disapproval resolutions overturning D.C. legislation since the 1973 Home Rule Act. One involved the Height Act. In that case the council was convinced by a developer that buildings adjacent to public buildings could exceed the overall limits set forth in the Height Act because the Height Act permitted the District commissioners to select a schedule of heights for buildings next to public buildings. Congress, along with the Government Accounting Office and the Justice Department, disagreed, and the legislation became one of only three that have been disapproved through that process.

If the city had authority on its own to change the Height Act in hometown D.C., such changes might come to Congress for a layover period, but there might be no violation of the Federal interest to justify congressional intervention. Surely there is a better solution than coming to Congress to request that Congress violate a home rule decision or having the D.C. Height Act with too little defense against local interpretations and exceptions with results opponents fear.

Considering the strong views of District residents on home rule and, candidly, the risk to home rule posed by internal disagreement, I believe that elected officials have an obligation to avoid home rule division if at all possible. Are the differences between the NCPC and the D.C. Office of Planning so far apart that they cannot be reconciled? Even the D.C. Office of Planning position would not free the District from the existing multilayered Federal and District planning processes.

Are there changes in the comprehensive plan process, zoning process or local legislation that would give residents a meaningful opportunity to deter or stop risky changes in the District by the District? If changes by Congress to the Height Act are contemplated, should they be contingent on changes in the comprehensive plan process, zoning processes, local legislation or other changes as well? Can discussions between the council and the Mayor reconcile their differences between the two positions we hear today?

I hope the city confronts the issue before us consistent with its position on the scale of heights in our city and its position for two centuries that the District, not Congress, must make its own decisions. I appreciate very much the intensive work of today's very knowledgeable witnesses and look forward to hearing from them and to learning more from them of their study about the Height Act, whether changes are necessary, and, if so, the best way to see that they occur responsibly.

I thank you very much, Mr. Chairman.

Chairman ISSA. I thank you, Eleanor.

Chairman ISSA. Anyone else want to make any short comments? Mr. Meadows.

Mr. MEADOWS. Very briefly. I just want to thank the witnesses for coming and really want to thank the chairman. This particular issue of D.C. autonomy has been one that the chairman has championed really in a bipartisan way, which is really refreshing and unique, and I just look forward to the testimony, specifically looking forward to the testimony from an economic standpoint on why we need to address this now.

So as a developer and as someone who's made a living for many, many years in the real estate business, I look forward to your expert testimony.

I yield back. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

Chairman ISSA. Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. I also want to applaud you and Ranking Member Norton for your leadership on this issue. This committee has a tradition of respecting and trying to move forward home rule for the District of Columbia, and I thank you for your leadership in this area.

You know, it is important. You mentioned, Mr. Chairman, in your opening remarks that this issue goes back to 1791 in the——

Chairman ISSA. But not I.

Mr. CONNOLLY. But not you nor I. But it is interesting to note that the correspondence governing this issue between Thomas Jefferson and George Washington actually expressed concern—the height issue was less an aesthetic issue and more of a very practical one. They were concerned about fire. In those days, in the 18th century, fire was an ever-present hazard in all human habitation, in all cities, and not least of which the new Federal Capital City. So some of those concerns are long past us.

I would like to make three points as somebody who comes from local government. One is that the Constitution and the founding of D.C. had within it a built-in tension between the needs of the Federal Capital and, therefore, the role of Congress and the President, and the fact that a burgeoning local government needed to be established to deal with the local issues governing any city like Washington, and that tension is built into the system.

I come down in favor of moving home rule and full voting rights to full expansion. I think D.C. disenfranchisement in terms of the franchise and the fact that my dear friend and colleague Ms. Norton does not have a vote on the floor of the full House I think is really a national shame, and politics shouldn't have anything to do with it. The citizens of D.C. are entitled to representation, full representation, voting representation in the United States Congress.

Finally, I operate on the principle that, generally speaking, deference should be given to the local government. It is not the role of Congress to play mediator between the Mayor and D.C. City Council. Their form of government allows them to resolve those differences, as any other municipality in America does. So I think we should be loathe to involve ourselves unless clear and compelling Federal issues are involved, and that this issue, like many other

issues involving home rule, should largely be left to the discretion of the local government.

With that, Mr. Chairman, I look forward to the testimony this morning.

Chairman ISSA. Thank you.

Chairman ISSA. All Members will have 7 days to submit additional opening statements and extraneous material for the record.

Chairman ISSA. We now recognize our distinguished panel. Welcome. Ms. Harriet Tregoning is the Director of the D.C. Office of Planning. Mr. Marcel Acosta is the Executive Director of the National Capital Planning Commission, or NCPC.

Pursuant to the rules, would you please rise to take the oath and raise your right hands.

Do you solemnly swear that the testimony you give will be the truth, the whole truth, and nothing but the truth?

Please be seated.

Let the record reflect both witnesses answered in the affirmative.

My script says you have limited time, 5 minutes and so on, but this hearing is all about what your two organizations have done, so if you need a little extra time, I'm not going to cut you off, and we're going to do the same with questioning.

So please, Ms. Tregoning.

STATEMENT OF HARRIET TREGONING

Ms. TREGONING. Thank you very much.

Good morning Chairman Issa, Congresswoman Norton, members and staff of the committee. I am Harriet Tregoning, the Director of the District of Columbia Office of Planning. Thank you very much for this opportunity to appear before your committee today on behalf of Mayor Vincent C. Gray in support of the District of Columbia's proposed changes to the 1910 Federal Heights of Buildings Act. We've made recommendations for very modest changes to the Height Act intended to give the District the opportunity to exercise local autonomy in determining the future heights of buildings in areas of the city where Federal interests are less significant, while at the same time maintaining existing protections for Federal interests over height.

The District of Columbia is a growing city, now robustly adding population after more than five decades of steady population loss. Since the 2010 census we have grown to 632,323 District residents as of July of last year, and we continue to add more than 1,000 residents a month.

The District has begun to realize a long-held aspiration of retaining and attracting middle-class households and families back to the city. The population growth has boosted sales and income tax revenue even during the last recession. We are now seeing a pattern. Added residents are bringing increases in District tax revenues, which then fund greater investment in services, in infrastructure, in other amenities for residents, workers and visitors to the District.

This turnaround has been the result of very hard work by successive mayoral administrations and councils addressing crime, city services, transportation and transit, neighborhood retail, public school performance, upgrades of public infrastructure, new or revi-

talized libraries, parks, rec centers and schools. This hard-won population growth and the accompanying boost in local tax base are critical to the District's fiscal stability because this city has nearly 50 percent of its land off the tax rolls.

Our fiscal stability has to be sought and maintained on a much smaller, less diverse tax base than other cities. Dr. Gandhi, the District's Chief Financial Officer, testified before this committee last year that allowing taller and denser buildings by relaxing height and density restrictions would generate more residential units and commercial space, thereby helping the District more easily accommodate future population and job growth, as well increasing the value of the District's property base over time. These changes, he noted, would eventually slow the rising cost of housing and office spaces, already becoming too expensive for some residents and businesses.

The concern that we bring before you today is that the current Height Act limits constrain the city's ability to grow and accommodate future demand, which in turn threatens our ability to maintain our fiscal stability and continue to provide critical services to residents, workers and visitors of the city. The District proposes allowing the city to have more autonomy to work with its residents, the D.C. Council and the National Capital Planning Commission to determine building height maximums throughout a collaborative future comprehensive plan process.

There's one thing I want to emphasize about this proposal. The opposition we've heard, and we have heard opposition, to our recommendations, is primarily about opposition to actually and perhaps immediately raising building heights and doing so without the consultation with residents that they deserve. This is not what we are proposing.

The District is asking Congress for the ability to determine with our residents, with our council, with the National Capital Planning Commission whether to increase any height, and, if so, when, where and how to do it. The current law makes any such conversation moot, which is why we've never had that conversation before.

As more fully detailed in our report, we examined various reasonable future growth scenarios for D.C. The high-growth scenario that we examined using growth rates that are considerably lower than our current rate of growth indicated that the District will be experiencing capacity shortages well before 2040, even if we rezoned land throughout the entire city. Currently zoned land available for development would become increasingly scarce and see price pressure well before the next decade.

The District of Columbia and the National Capital Planning Commission recently completed the Joint Height Master Plan requested by this committee to determine the extent to which the Height Act continues to serve both the Federal and local interests. The study was guided by three core principles which were designed to ensure protection of the Federal interests: Number one, ensuring the prominence of Federal landmarks and monuments by protecting their views and settings; number two, maintaining the horizontality of our monumental city skyline; and, three, minimizing the negative impacts to nationally significant historic resources.

We modeled different buildings heights in the city using over 200 panoramic aerial and street-level views of the city in various locations inside and outside the District of Columbia. These modeling studies in particular indicated that there were options for making modest changes to the Height Act while fully addressing the core principles of the height master plan and protecting the Federal interests.

We also conducted analysis of future population and employment growth, existing development capacity, and the potential new capacity under various approaches to manage height to determine how well the District could accommodate future demands. The analysis demonstrated that the current Height Act limits constrain existing capacity to accommodate our growth over the next three decades, and will increasingly do so in subsequent decades, and that the District requires additional capacity in the future to meet our demand.

Our recommendations for Height Act modifications will enable the city to create a supply of developable space to accommodate future growth, maintain the character of the city's many historic neighborhoods, and avoid extreme upward price pressures on housing supplies that could greatly and negatively affect the city.

We believe that the Height Act can be reasonably modified to strike a balance between accommodating future growth and protecting significant national monuments and memorials. Our proposed approach shifts more decisionmaking indeed to local control, but maintains a very strong Federal consultation and approval role in order to accommodate future growth. Doing so will ensure a more prosperous, stable and vibrant District of Columbia, where residents enjoy a stronger and more resilient economy. The District's social, cultural and economic diversity will also be protected. The alternative of retaining unchanged a century-old law that constrains the city's ability to accommodate growth will place the District on the path to becoming a city comprised primarily of national monuments surrounded by exclusive neighborhoods affordable only to a very few.

What we propose specifically are the following recommendations to modify the Height Act. Amend the Height Act to create new limits based on the relationship between the street width and the building height within the L'Enfant City. We recommend using a ratio of 1 to 1.25 for street width to building height, resulting in a new maximum building height of 200 feet for 160-foot-wide avenues in the L'Enfant City. This is an urban design-based standard that reflects the proportionality between individual streets and their buildings to give us what we currently love about the L'Enfant City, a pedestrian scale, light and air, and variation; not an unpleasing uniformity, but variation in building heights, maintaining horizontality, but having pleasing variation based on street width.

To ensure that the tops of any future taller buildings contribute to the use of and views from rooftops, mechanical penthouses for any buildings that would gain more height we propose be required to be enclosed within the upper floors within the new height cap.

The second part of our proposal is language that we developed with the Chairman of the National Capital Planning Commission

and the staff to limit—to allow the limits currently established in the Federal Height Act to remain in place unless and until the District of Columbia completes an update to the District elements of the comprehensive plan where targeted areas that meet specific planning goals and don't impact Federal interests are identified.

Under this recommendation, building heights in targeted areas such as Friendship Heights at the edge of the District may be proposed to exceed the maximums under Federal law, and these may be authorized through the existing comprehensive plan process that also includes a congressional holdover period. Should targeted exceptions be authorized through the comp plan, the Height Act would remain in place for all other areas both inside and outside the L'Enfant City.

The third thing that we propose is to amend the Height Act to remove any Federal restrictions on the human occupancy of penthouses, and to set the maximum height of 20 feet and 1 story. Mechanical equipment will be continue to be required to be housed within a single structure, and that penthouse would be subject to a setback.

You might have more questions about the comprehensive plan, which I would be happy to answer, but in the meantime, what I would like to do is just conclude by saying that both the Federal and the local interests are served by having a vibrant, economically healthy and liveable Capital City. However, without changes to the Height Act to enable the District to expand its tax base, protect affordable housing and make further infrastructure investments, the vibrancy and fiscal stability as well as the character of the city's many historic neighborhoods are threatened. We believe that allowing the District to exercise more local control over how building height will be managed in the city, while protecting existing Federal controls over height will prevent those threats from happening.

On behalf of Mayor Gray, I respectfully ask for your support for these reasonable amendments to the Heights of Buildings Act. Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Ms. Tregoning follows:]

TESTIMONY OF HARRIET TREGONING

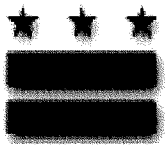
DIRECTOR, OFFICE OF PLANNING

BEFORE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

REPRESENTATIVE DARRELL ISSA, CHAIR



CHANGES TO THE HEIGHTS ACT: SHAPING WASHINGTON, D.C., FOR THE FUTURE, PART II

DECEMBER 2, 2013

10:00 AM

2154 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

Good morning Chairman Issa and Members and staff of the Committee. I am Harriet Tregoning, Director of the District of Columbia Office of Planning. Thank you for this opportunity to appear before your committee today on behalf of Mayor Vincent Gray in support of the District of Columbia's proposed changes to the 1910 federal Height of Buildings Act (The Height Act). We have made recommendations for very modest changes to the Height Act intended to give the District the opportunity to exercise local autonomy in determining the future heights of buildings in areas of the city where federal interests are less significant, while at the same time maintaining existing protections for federal interests over height.

The 100-year-old Height Act has created a uniquely low rise skyline and helped to push growth into adjacent neighborhoods in the city as downtown has become more fully built out. But the next 100 years are likely to be quite different in Washington, DC. Before I talk further about the Height Master Plan, I would like to talk about the city we have today and what we anticipate seeing in the future.

The District of Columbia is a growing city, now robustly adding population after more than five decades of steady population loss. DC's large population declines slowed by 1998 but growth did not begin to really take off until after 2005. We first saw the results of a solid decade's worth of growth in the 2010 Census. The Census counted 601,723 residents that year, an increase of 29,600 persons or 5.2 percent over the 2000 Census. Since the 2010 Census, we have grown to 632,323 District residents, a number not seen in DC since the early 1980s. And in the past five years, between 2007 and 2012, population growth has accelerated to 11,600 per year. We are also seeing a baby boom, with over 9,000 births annually since 2008. The District has begun to realize a long-held aspiration of retaining and attracting middle class households

and families back to the city. This population growth, which also included an influx of younger and higher-income residents with disposable income to spend, has boosted sales and income tax revenue, even during the last recession. We are now seeing a pattern: with added residents we are seeing increases in the District's tax revenues, which then funds greater investments in services, infrastructure and other amenities for residents and workers in the District. This turnaround has been the result of much hard work by successive Mayoral administrations and Councils – addressing crime, city services, transportation and transit, neighborhood retail, public school performance, upgrades of public infrastructure and new or revitalized public libraries, parks, recreation centers and schools. This hard-won population growth and the accompanying boost in the local tax base are critical to the District's fiscal stability because this city, like other capital cities, has nearly 50 percent of its land off the tax rolls. Our fiscal stability has to be sought and maintained on much a smaller, less diverse tax base than most other cities. Dr. Natwar Gandhi, the District's Chief Financial Officer, testified before this committee last year that allowing taller and denser buildings by relaxing height and density restrictions would generate more residential units and commercial space, thereby helping the District more easily accommodate future population and job growth as well as increasing the value of the District's property tax base over time. These changes, he noted, also would eventually slow the rising cost of housing and office space that is already becoming too expensive from some residents and businesses.

The concern we bring before you is that the current Height Act limits constrain the city's ability to grow and accommodate future demand, which in turn threaten our ability to maintain our fiscal stability and continue to provide critical services to residents, workers and visitors of

this city. The District proposes allowing the city to have more autonomy to work with its residents, the DC Council and NCPC to determine building height maximums through a collaborative future Comprehensive Plan process. The Comprehensive Plan is the 20-year blueprint, adopted as law, that guides the development of the District of Columbia by establishing official policies for land use, transportation, housing, historic preservation, urban design and other critical issues. There is one point I would like to emphasize about our proposal. The opposition we heard to our recommendations was primarily about opposition to actually and perhaps immediately raising building heights, and doing so without the consultation with residents that they deserve. That is not what we are proposing. The District is asking Congress for the ability to determine, with our residents, our Council and NCPC, whether to increase any height, and if so, when, where and how to do it. The current law makes any such conversation moot.

We have seen in other cities, including some recent examples in San Francisco, what can happen when a growing city puts constraints on its ability to develop more housing. While its population is growing, San Francisco is experiencing a major housing shortage. The city began downzoning itself in the 1980s, restricting how much development could occur. However, San Francisco's recent exploding tech industry is creating thousands of jobs and attracting thousands of new, higher-income residents into neighborhoods that for decades housed mostly middle and lower income families, artists and immigrants, resulting in a rapid growth in housing prices. Median rent in San Francisco grew from $2,968 in 2010 to $3,414 this year. Here in the District, we are already beginning to see the consequences of growing demand for a

constrained supply of housing stock: rising housing prices that threaten to force out longtime District residents.

As detailed more fully in our report, we examined various reasonable future growth scenarios for DC. The high growth scenario we examined – using growth rates that are considerably lower than our current rate of growth – indicated that the District will begin to experience capacity shortages well before 2040 even if we re-zone land throughout the city. Currently zoned land available for development will become increasingly scarce and see price pressure by the next decade.

The District of Columbia and the National Capital Planning Commission (NCPC) recently completed the joint Height Master Plan requested by this committee to determine the extent to which the Height Act continues to serve both the federal and District government interests. The Height Act restricts the height of all buildings within the boundaries of the District of Columbia. The study was guided by three core principles: 1) ensuring the prominence of federal landmarks and monuments by preserving their views and setting; 2) maintaining the horizontality of the monumental city skyline; and 3) minimizing the negative impacts to nationally significant historic resources. The DC Office of Planning (OP) led the District's efforts with NCPC on the study and completed two consultant studies that examined the impact of various height alternatives on different parts of the city: an Economic Feasibility Analysis and a Modeling Study that visualized alternative height approaches on the city's form, including its skyline, its most significant public spaces and streetscapes, and views to and from the city's most iconic structures such as the Washington Monument. We used over 250

different panoramic, aerial, and street level views of the city in various locations inside and outside the L'Enfant City, as well as across the Potomac River. OP and NCPC also held a vigorous public engagement process, including ten public meetings and additional facilitated discussions with key stakeholder groups. These modeling studies, in particular, indicated that there were options for making modest changes to the Height Act while fully addressing the core principles of the Height Master Plan.

OP also conducted analyses of future population and employment growth, existing development capacity and the potential new capacity under various approaches to manage height to determine how well District could accommodate this future demand. The analyses demonstrated that current Height Act limits constrain existing capacity to accommodate this growth over the next three decades and will increasingly do so over the subsequent decades and that the District requires additional capacity in the future to meet this demand. Our recommendations for Height Act modifications will enable the city to create a supply of developable space to accommodate future growth, maintain the character of the city's many historic neighborhoods and avoid extreme upward price pressures on housing supplies that could push out moderate and middle income households and families.

As a result of these studies, the District concluded that the Height Act can and should be reasonably modified to strike a balance between accommodating future growth and protecting significant national monuments and memorials. This approach shifts more decision-making to local control—while maintaining a strong federal consultation and approval role—in order to accommodate future population growth while at the same time protecting prominent national

monuments, memorials, and the unique character of local neighborhoods. Doing so will ensure a more prosperous, stable, and vibrant District of Columbia, where District residents enjoy a stronger and more resilient economy, and the District's social, cultural and economic diversity is protected. The alternative—of retaining unchanged a century-old law that constrains the city's ability to accommodate growth—will place the District on the path of becoming a city comprised primarily of national monuments and civic structures surrounded by exclusive neighborhoods affordable only to the very few.

The District proposes the following final recommendations to modify the Height Act:

1. **Amend the Height Act to create new limits based on the relationship between the street width and building height within the L'Enfant City.** We recommend using a ratio of 1: 1.25 for street width to building height, resulting in a new maximum building height of 200 feet for 160-foot wide streets in the L'Enfant City. This urban design-based standard would reflect the proportionality between individual streets and their buildings to ensure a pedestrian-scaled streetscape with lots of light and air without the strictures of late 19th century fire safety limitations under the current law. To ensure that the tops of any future taller buildings contribute to the use of and views from rooftops, mechanical penthouses for any buildings that would gain more height would be required to be enclosed within the upper floors within the new height cap.

2. **The limits currently established in the federal Height Act should remain in place unless and until the District completes an update to the District Elements of the Comprehensive Plan where targeted area(s) that meet specific planning goals and also do not impact**

federal interests are identified. Under this recommendation, building heights in targeted areas may be proposed to exceed the maximums under the federal law; and these may be authorized through the existing Comprehensive Plan process, pending Congressional approval. Should such targeted exceptions be authorized through the Comprehensive Plan, the Height Act would remain in place for all other areas both inside and outside of the L'Enfant City. The federal interests in height will continue to be adequately protected by the role of NCPC and the Congress in approving the District's Comprehensive Plan and by federal representatives on the Zoning Commission, which must approve zoning amendments reflecting Comprehensive Plan changes. The Comprehensive Plan and zoning amendment processes both require extensive District resident participation and review and must be completed in order for any changes in height to be implemented in the District.

3. **Amend the Height Act to remove any federal restrictions on the human occupancy of penthouses and set a maximum height of 20 feet and one story.** Mechanical equipment will continue to be required to be housed within a single structure on the roof of the building, and the penthouse will continue to be subject to a setback requirement of one foot from the building edge for every foot of penthouse height, as is currently required.

Our first two recommendations rely on the Comprehensive Plan being updated to make these changes possible. As I noted earlier, the Comprehensive Plan provides guidance for development in the city over the next 20 years. It is comprised of District Elements (prepared by OP) and Federal Elements (prepared by NCPC). The DC Council adopts the District Elements as legislation, and it is signed into law by the Mayor. Major revisions occur every 12 years, and

amendment cycles are undertaken every four years to reflect changes in policies, site-specific land use designations and other matters. The Mayor also can initiate a Comprehensive Plan amendment at any time. The Home Rule Act and the act establishing NCPC also give both NCPC and the Congress approval authority over changes to the District Elements of the Comprehensive Plan. NCPC, in particular, has line-item veto authority over amendments to the District's Comprehensive Plan as part of its approval authority, and has exercised this authority in 1990, 1999, 2007 and 2010 during prior Comprehensive Plan updates. During each of those instances, NCPC found a particular provision to have an adverse federal interest impact and sent the adverse impact findings back to the DC Council for action. The DC Council typically modifies the amendment to address the federal concern. If the Council doesn't modify a District Comprehensive Plan provision which NCPC finds to have an adverse federal interest impact, the provision "shall not be implemented" in accordance with the Home Rule Act and the NCPC Act.

As you can see, the Comprehensive Plan process is not new and has been executed successfully several times, resulting in a final plan that has served both District and federal interests. Our recommendation to use the Comprehensive Plan process as the mechanism to make height determinations will maintain the existing strong protection of the ongoing or future federal interest in height. In addition, changes to the Comprehensive Plan are not self-implementing and must be followed by zoning amendments. These amendments must be approved by the Zoning Commission, a five-member body with two federal appointees that will, again, help ensure federal interests are protected. The Comprehensive Plan and zoning amendment processes also require extensive District citizen and neighborhood participation and review.

A critical accompaniment to these recommendations is the need to protect viewsheds to nationally significant structures such as the U.S. Capitol and the Washington Monument. The District will work with NCPC to update the Federal and District Elements of the Comprehensive Plan to include those protections.

In conclusion, both federal and local interests are served by having a vibrant, economically healthy, livable Capital City. However, without changes to the Height Act to enable the District to expand its tax base, protect housing affordability, make further infrastructure investments and improve our public realm, that vibrancy and fiscal stability, as well as the character of the city's many historic neighborhoods, are threatened. We believe that allowing the District to exercise more local control over how building height will be managed in the city while protecting existing federal controls over height will prevent those threats from happening. On behalf of Mayor Gray, I respectfully ask your support for these reasonable amendments to the Height Act. Thank you.

Chairman ISSA. Mr. Acosta.

STATEMENT OF MARCEL C. ACOSTA

Mr. ACOSTA. Good morning, Mr. Chairman, Congresswoman Norton and members of the committee. My name is Marcel Acosta. I am the Executive Director of the National Capital Planning Commission, a 12-member body that has Federal and District of Columbia representatives, reflecting its role as a forum to consider local and national planning issues.

It's been a privilege for NPCP to jointly lead the height master plan as requested by the committee. The plan explores potential changes to the Federal Height Act that both protects national interests and meets important long-term goals for the District.

For more than a century, the Height Act has played a central role in shaping Washington's unmistakable and symbolic skyline that protects the setting and views to and from the National Mall, the institutions of our democracy, and our national parks and memorials.

Our written testimony and executive summary includes— and you have that before you—first a discussion of Federal operational and national interests related to heights; second, our approach to the study, including public outreach and visual modeling. Here it is of note that, as you mentioned before, that a majority of District residents who testified strongly support upholding the Height Act; third, the commission's final recommendations.

This morning I will speak to the Commission's central recommendation that the Federal Height Act should remain in place citywide and no change be made to the formula or approach for calculating allowable building heights.

The visual modeling work conducted for the height study shows the potential for significant adverse impacts to national resources, particularly within the L'Enfant City.

If you would turn the slides back on, and if you would go back to the beginning, please.

I'll show you a few examples where increased building heights affect settings and views, and I will refer you to the screen.

If you go to the next slide.

You will recognize this view of the National Mall from the U.S. Capitol. This is one of the most important settings in our city and in our country.

Next slide.

Even at 130 feet the sense of openness around the Mall changes.

The next slide.

And at 200 feet these buildings compete with the higher monuments, and the Mall changes from an area framed by buildings, not trees and open skies.

The next slide.

This is a view from the Jefferson Memorial looking north towards the White House.

Next slide.

This is the current setting. These are long views of our national symbols, which are, again, some of the most significant in our country.

Next slide.

Here again, even at 130 feet the White House is becoming overshadowed.

And next slide.

And at 200 feet the White House is overwhelmed, and our skyline shows none of the elegance that we see today.

Next slide.

More specifically, the District is recommending a ratio proposal to increase heights along the city's widest streets. Many of these streets terminate on the White House and on the U.S. Capitol. Now, I also acknowledge that some of the streets are located in the Capitol Hill Historic Residential Community. This proposal adds heights to where they're least appropriate. We do not have composite skyline views of what this would look like today, but let me share one street-level view with you.

Next slide.

This is the existing view from North Capitol Street looking south. Our forefathers who established this Capital planned a city that emphasizes views to and from important public places. Here you see an example of how this vision has been realized. The U.S. Capitol Dome is more than just an architectural feature, and it caps more than just a building. These are symbols of lasting meaning to Americans. And in Washington our symbols shine. This is a fundamental principle of our city and also a legacy tied to our Height Act.

Next slide.

A visual model of the District's ratio proposal shows that even at 160 feet, the preeminence of the Capitol becomes diminished, and this fundamentally changes the way people will experience Washington, especially if applied throughout the L'Enfant City as proposed.

So mindful of your guidance to proceed carefully in this area, we strongly recommend no changes to the Height Act within L'Enfant City. We do support amendments for human occupancy of penthouses and recommend further protections of critical view-sheds.

We also share the District's vision for a strong, vital Capital City that addresses long-term challenges in a very sophisticated, multidimensional way. We recognize there may be some opportunities for change outside of L'Enfant City where there is less concentration of Federal interests. However, we recommend completing an update to the comprehensive plan for the Nation's Capital prior to proposing any changes to the law.

Again, we appreciate the opportunity to conduct this important study. This reaffirmed the importance of the Height Act and the Federal Government's enduring stewardship in the form and the character of the Nation's Capital. Thank you.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Acosta follows:]

MARCEL ACOSTA
EXECUTIVE DIRECTOR
NATIONAL CAPITAL PLANNING COMMISSION

TESTIMONY ON "CHANGES TO THE HEIGHT ACT: SHAPING WASHINGTON, DC FOR THE FUTURE"

December 2, 2013

Good morning, Mr. Chairman and Members of the House Oversight and Government Reform Committee. My name is Marcel Acosta. I serve as the Executive Director of the National Capital Planning Commission (NCPC or Commission). Congress established NCPC to serve as the federal government's central planning agency for the National Capital Region and to protect and enhance its natural and historic resources. The NCPC addresses planning issues affecting the long-term development of Washington, DC as the nation's capital and seat of the federal government. Our twelve-member Commission has federal and District of Columbia representatives, reflecting its role as the forum to consider local and national planning issues. Our activities include, among others, jointly authoring the *Comprehensive Plan for the National Capital* with the District of Columbia and reviewing all federal development projects in the region.

It has been a privilege for NCPC to jointly lead the Height Master Plan (Height Plan), which explores the future of one of the most significant contributors to the form and character of our nation's capital, the federal Height of Buildings Act (Height Act). The Height Plan, requested by Chairman Darrell Issa on October 3, 2012, explores potential strategic changes to the Height Act that both protect national interests and meet important long-term goals for the District of Columbia. I am pleased to return today to present the Height Plan results and share the Commission's recommendations.

As the capital of the United States, Washington, DC is a unique place with its own authentic character and identity. For more than a century, the Height Act has played a central role in

shaping Washington's unmistakable and symbolic skyline. It protects the setting and views to and from the National Mall, the institutions of our democracy and our national parks and memorials. The Height Act fosters an open, pedestrian scale that is enjoyed and valued by residents of the District of Columbia, the nation's citizens, and millions of visitors who come here annually. The form of the capital city is a national trust and a legacy for future generations. Our year-long study reaffirmed the continuing importance of the Height Act.

Based on its actions beginning in 1790 and continuing until as recently as 1990, the U.S. Congress has identified the design of Washington, D.C as an abiding federal interest. Congress reaffirmed the federal interest in building heights as part of the 1973 Home Rule Act, to protect the interests of the federal government and ensure the city remains "a capital for all American citizens." Congress has acted as steward of the capital city's form to ensure that the image and experience of the capital city reflects the preeminence of our civic and democratic institutions and national icons, including a lasting, symbolic skyline recognized around the world. The NCPC – by mission and by statute –prioritizes and protects these national interests.

NCPC coordinated extensively with other federal agencies to identify numerous interests potentially affected by building height changes. These include federal properties and cultural resources, such as landscapes and vistas, especially those listed on the National Register of Historic Places and National Historic Landmarks. While the L'Enfant City has the highest concentration of these resources, they are located throughout Washington, and include among others the setting of the topographic bowl, national parks, monuments and historic sites, Civil War fortifications, federal headquarters and other facilities and foreign missions. Federal agencies raised concerns about potentially adverse impacts of height changes to historic and cultural resources, their views and settings, and the market conditions influencing historic preservation.

From a federal operational and mission perspective, the Height Act continues to meet the essential interests, protections, and needs of the federal government, and it is anticipated that it will continue to do so in the future. Federal agencies had operational and site specific

concerns requiring more detailed future evaluations related to any building height changes, including costs to evaluate and respond to new security concerns at federal facilities.

The Height Plan was conducted in three phases. First, NCPC developed case studies on the ways cities have regulated building heights, and NCPC and the District of Columbia Office of Planning (DCOP) framed issues shaping federal and local interests. In the second phase, the DCOP provided market feasibility findings and developed a digital model of the city to illustrate conceptual approaches for modifying building heights, selecting illustrative sites for visual modeling. During the last phase, NCPC released its draft findings and recommendations on September 12, and the DCOP released its draft findings and report, including new growth and capacity information based on recently observed short-term growth trends, on September 20. Following a formal comment period and public hearings conducted by NCPC and the District of Columbia Council, the Commission finalized its recommendations on November 19, 2013.

Extensive outreach occurred throughout all phases, including ten public meetings across the city, a robust website and online comment portal, and focused meetings with stakeholder groups. The outreach activities and public comments are included in NCPC's written Height Plan report.

Conducted under tight deadlines, the public outreach was as rigorous as time permitted, engaging District residents from across the city, civic, business, development, and historic preservation stakeholders, and federal agencies. At all hearings, we heard overwhelmingly that most valued the Height Act as it stands, understanding its role and significance for the national capital; for making District neighborhoods unique and distinct; for protecting panoramic and street-level views; and for providing a predictable context for city development. Many recognized the District's future growth and capacity needs, but found those pressures not immediate. Most civic and advocacy organizations expressed opposition to changes to the Height Act, although a limited number of business, development and design organizations expressed support for some changes to the Height Act and increased local control over development choices. The strong majority of the public discouraged any

changes to the existing height limits; some public testimony considered the Height Plan as a starting point of future work, and encouraged continued study, further growth and economic analysis, public engagement, and the need to thoughtfully tie any alterations in building heights to a fully-vetted future growth strategy.

A summary of the Commission's final recommendations is as follows:

- The Commission recommended that the federal Height Act remain in place city-wide and no changes be made to the formula or approach for calculating allowable building heights.
- The Commission recognized that there may be some opportunities for strategic change in the areas outside of the L'Enfant City where there is currently less concentration of federal interests. However, in the end the Commission determined additional study is required by both NCPC and the District to understand whether strategic changes to the Height Act would impact federal interests within this area.
- The Commission supported amendments to the Height Act to allow for human occupancy in existing and future penthouses citywide, subject to protections for select buildings and design criteria described in the NCPC report. These protections address the type of permitted uses and setback and height limitations.
- Both the District and NCPC agree that the city's most significant view-sheds, including those to and from the U.S. Capitol and White House, should be further evaluated and federal and local protections established. Based on the visual modeling studies, full build-out under the existing Height Act may adversely impact these important views.

The visual modeling work conducted as part of the Height Plan study demonstrated potential for significant adverse impacts to national resources, particularly within the L'Enfant City. Mindful of the Committee's guidance to proceed carefully in this area, NCPC strongly recommends no changes to the Height Act should be considered within the L'Enfant City, except as noted for penthouses. Although the District has proposed specific changes to add height within the L'Enfant City, it is of note that there is capacity to grow outside of the L'Enfant City, where impacts to national resources and federal interests are less likely at this time, and the constraints on maximum height and bulk are largely determined by the

District's zoning regulations rather than the Height Act. As a general principle, the L'Enfant City should not be the first place identified to accommodate future growth through height changes.

We also evaluated the District's proposed 'Ratio Approach' and found that it allowed greater height precisely where it was least appropriate, on L'Enfant streets framing views of the U.S. Capitol and the White House. Buildings along these avenues should be scaled in deference to these symbolic structures, an idea often reinforced in today's zoning. The "Ratio Approach" offers little new capacity and replaces a predictable regulatory framework with a new approach in some of the most nationally-significant parts of the city.

While certain areas were modeled for illustrative purposes, the District did not propose any geographically-specific areas outside the L'Enfant City for potential changes to building heights. The Commission believes that there may be opportunities for strategic changes to the Height Act in areas outside of the L'Enfant City where there is currently less concentration of federal interests. However, the Commission recommends sufficiently detailed, and joint planning work through the *Comprehensive Plan for the National Capital* prior to proposing any changes to this long-standing law by Congress. This includes an update to the District Elements of the Comprehensive Plan to account for the new growth forecasts as outlined in the District's Height Report. It also includes an update to the Federal Elements that more clearly protects federal interests on matters related to height. The Commission is prepared to continue this effort through the currently established comprehensive planning process as well as additional planning study and analysis, but does not support amending the law today.

Cities evolve and Washington must also respond to 21st century demands and opportunities. Like all cities, it must address changing development trends, manage long-term growth, provide necessary infrastructure and services, and balance a variety of interests as it plans for the future. The NCPC shares the District's vision for a strong, vital capital city that addresses long term challenges in a sophisticated, multidimensional way for the people of the District of Columbia and for all Americans. We understand that change may occur in the

future, but there is sufficient time to fully review any new growth forecasts in the context of a larger discussion about the city's future development, which may or may not include changes to the federal Height Act.

We appreciate the opportunity to conduct this important study, which has reaffirmed the importance of the Height Act and the federal governments' enduring stewardship role in the form and character of the nation's capital.

Chairman ISSA. Mr. Acosta, I heard two things as we often hear in Washington, and examples that were the critical areas, I think the areas that Ms. Tregoning would also agree, the areas leading directly in the line of sight to the White House, to the Capitol, the Washington Monument, and, of course, the Tidal Pool area. I don't think anyone is questioning, I think you two are probably very much in agreement, and if the D.C. plan doesn't reflect that properly, then we should have a discussion here today.

But I also heard you say what I think I have heard 100 times, if not more, during my tenure on this committee, which is there are areas. And I heard you also say that a comprehensive plan should be produced before we go to them. But when I drive up to Northeast, I'm perhaps by the XM facility there, I'm so far outside of what most people see as the District of Columbia except for Eleanor here. When I get past—and it is not a high-rise area, but when I get past, out to Cleveland Park, and I am past the cathedral, those views are no longer the case. And when I go to Georgetown and I look across the river at Virginia—and we have a distinguished Member from Virginia—what I see is an area much closer than the Northwest side of the cathedral, much closer than the XM building up by New York, up in the far reaches of Northeast, not to mention some of the areas that Eleanor has been working on developing. I see this area so close, it has no restriction that can, in fact, dwarf from there. And the question is not do we preserve Georgetown. I have no doubt that the city would choose to maintain that historic area even if the District was not prohibited in some way by the Federal Government.

And those views you showed, I completely agree with them. But I would like you to go to the first or second one that you put up there, if you could, quickly. One more, one more, one more, one more. Pretty close. Next one. Next one. There we go. One more. You were there. Go one more. Go back. Right there is good. Stop.

You see that ugly penthouse on the top right? I think the one area of agreement that I think I saw in both your findings was that big boxes with air conditioning towers or elevator shafts looking like that is an anomaly of the past of the Height Act, and that buildings—go to the next one where you do increase it. Here we go. Buildings of today and for a long time have a tendency not to have that on top of the roof, just as they no longer have water towers. Would you both agree with that?

Ms. TREGONING. Certainly.

Mr. ACOSTA. Yes.

Chairman ISSA. So if we do nothing else, addressing the penthouse issue, is that an area in which you both reached, subject to further consultation, agreement that we can do something about that architecturally and to the benefit of the city's potential income? Yes, Mr. Acosta.

Mr. ACOSTA. Yes, I do agree that that's an area of consensus. As you may recall from the previous committee meeting, actually the Mayor had submitted some recommendations as to how to improve penthouse design.

I think one of the restrictions, which is the ability to occupy a penthouse, is actually one of the things that kind of prohibits making improvements to those spaces, because as you have noted when

you came to our meeting in March, when you look at our skyline, you look at the penthouses, you notice some wonderful things that could happen on our rooftops, such as rooftop gardens, balconies, places for communal recreation, meeting rooms, party rooms, et cetera, which actually enliven these spaces, but right now because of their prohibition in the current law which doesn't allow those spaces to be occupied, you don't make those investments. And I think by actually eliminating kind of this barrier to allowing people—this regulation barrier to allow more investment on the roof, I think, would actually do a lot to beautify these spaces and make them better places for the public to enjoy.

Chairman ISSA. Ms. Tregoning, I know I'm going to go to you in a second, but I just want to comment that although we are dealing with the Height Act, and primarily we're dealing with commercial buildings, that's what we're really looking at, as a Washingtonian part time, I must tell you that I am envious that my neighbors, many of them can go up on their roofs, 90 percent of them probably not with a valid permit, and sit on their wooden terraces and enjoy those special days and evenings here in Washington, where I have to go through a ladder and a skylight and sneak up there and stand with my air conditioners.

So I think all of us in Washington know that view and how we achieve it and how the city plans for it will affect the value of properties, both commercial and residential.

But, Ms. Tregoning, the penthouse issue particularly.

Ms. TREGONING. I think we do have a considerable agreement on penthouses, although we may not agree exactly on the use. We would allow human occupancy and not restrict it in any way, and I don't know that that's the National Capital Planning Commission's position.

I would just comment that allowing human occupancy would mean that the materials that were used on the tops of those roofs would be very different. They would be much more architecturally significant. They would tend to look more like the building itself. Right now they use very inexpensive materials because it's just designed to shield and hide the mechanical equipment, and it's never architecture, and it does create that very unpleasing aspect that you pointed out in the last photograph.

Chairman ISSA. It's certainly hard to pay for beautiful glass fascias if it's just for an air conditioner.

Mr. Acosta, anything else?

Mr. ACOSTA. I think Ms. Tregoning actually answered the question quite well.

Chairman ISSA. Very good. I would now go to the gentlelady from the District of Columbia.

Ms. NORTON. Thank you, Mr. Chairman.

Ms. Tregoning, you noted the increases in residents, the District population boom, revenue boom. Have these residents had difficulty finding housing in the city?

Ms. TREGONING. I would say that the difficulty finding housing in the city has mostly to do with price and the rapidly increasing price of housing.

Ms. NORTON. Now, let's go to what yields increasing prices in housing. Much of the building in housing, the housing has occurred

on land where either there was no housing or where housing was such that people wouldn't want to live in the housing, and I indicated some of the areas that I've been interested in. So why has filling in those areas, or has filling in those areas had anything to do with what you indicated in your testimony was housing and office space—I'm looking at page 3—that is already becoming too expensive for some residents and businesses?

Ms. TREGONING. Well, as you mentioned in your opening statement, Congresswoman Norton, the—it's been a deliberate strategy because downtown has been largely built out for some time to try to move some of the demand for office and housing to adjacent areas, and it's been wonderful for the city and wonderful for many neighborhoods to see places——

Ms. NORTON. And yet there's a huge complaint in the city about affordable housing. I wonder if we're promising too much about affordable housing; either if it stays the way it is, or if we had storage, or if we do what I've tried to do, I really wonder whether you are serious about adding a story here and there, making some buildings taller, not increasing the value of land, which has effects throughout the city.

Ms. TREGONING. We have citywide inclusionary zoning that we passed in 2006. The council passed it in——

Ms. NORTON. That, of course, would mean that for some people—and I commend the city for this, if you're referring to the facts that there must be a certain number of affordable units in housing in the city.

Well, let me give you NOMA, which is an area that I worked on for 10 years. A resident told me recently that she moved into NOMA under the notion you spoke about. She's a middle-class person who works every day. So your limits are fairly robust, and I understand those, but she said that now that rent increases have become possible, there's a tremendous increase in rents in her area. Now, she moved in under this zoning, this special zoning of the District.

Ms. TREGONING. I think your point is absolutely a good point in many parts of the city, although NOMA isn't subject to IZ because it was already allowed to be developed at the maximum height because there was no height to give a density bonus for. NOMA——

Ms. NORTON. Are you saying this only occurs where you can give——

Ms. TREGONING. Give a density bonus.

Ms. NORTON. Where you can give a density bonus.

Ms. TREGONING. Most of downtown isn't included, and NOMA isn't included, and historic areas are not included.

Ms. NORTON. So if you increase the height of buildings in L'Enfant City—and would you describe what L'Enfant City is?

Ms. TREGONING. Well, it's the area that is essentially south of the escarpment. Florida Avenue, as you know, used to be Boundary Street. So it's basically that area of the city. We can show it on a map, I think.

Chairman ISSA. If I could interrupt, one might call it historic Washington. You're talking smaller than that, aren't you?

Ms. NORTON. Yeah. I want to get to the actual streets where you're talking about. If you're saying up to Florida Avenue——

Chairman ISSA. It is beyond what you call L'Enfant.

Ms. NORTON. It is beyond what I think most people think of as L'Enfant City. I think most people think you are talking about an area——

Chairman ISSA. I am just past Boundary, so I am very aware that is a long way from L'Enfant.

Ms. TREGONING. It is the area that's shown there. It is Florida Avenue. It's the Potomac and the Anacostia Rivers to the west and to the south, and to the north it's primarily Florida Avenue.

Ms. NORTON. It includes K Street?

Ms. TREGONING. It does include K Street, which is the 100 percent street in the District of Columbia. It is the most heavily used transit corridor in the entire region, and it's where most of our business activity is concentrated.

Ms. NORTON. And you believe that if heights are raised in these most desirable parts of the city, places where people are swarming to now, that affordable housing and office space will become more likely than now. I would like to understand that, please.

Ms. TREGONING. Well, in the L'Enfant City, if we go back to the map, through most of it we don't have density bonuses to grant in the downtown for additional height because the——

Ms. NORTON. How would that work to—how would the density bonuses help to keep down the cost of office space and housing?

Ms. TREGONING. Well, for housing it would require currently that at least 8 percent of all the housing that's built be permanently affordable, as long as the building stands, for people making 50 percent and 80 percent of the area median income.

Ms. NORTON. So it's your view that if you were to add—if there were to be taller buildings in the most desirable parts of the city, there would be no effect on spreading development to other parts of the city?

Ms. TREGONING. I think that you would want to allow any additional development capacity, wherever it is in the city, to be added gradually so as to not affect overly the market.

Ms. NORTON. Would you want to add capacity along K Street?

Ms. TREGONING. Potentially along K Street. But I would also just say——

Ms. NORTON. Well, why would you want to do that if you wanted to spread office space around the city?

Ms. TREGONING. Because even adding the modest amount of capacity on K Street that we're talking about doesn't narrowly meet the demand that we project coming to the city.

Ms. NORTON. Of course it doesn't. Don't you want—Ms. Tregoning, this is my point: We could not get the Federal Government to develop what is now Capitol Riverfront—this is this wonderful burgeoning area south of M Street which is a new community—because GSA said Federal agencies did not want to move so far from K Street. Now, that's not in the far reaches of the city. It took a bill; I had to introduce a bill in order to develop that part of Washington. And the same way NOMA, which I would say is a stone's throw from the Senate——

Ms. TREGONING. Absolutely.

Ms. NORTON. —stood there, a shambles, close to midtown with no development. What I had to do, frankly, was to get a Federal

agency to move there, and then another one, and then developers began to build there. Again, the Federal agencies were the stimulus, but the Federal Government—it was all I could do to pull teeth to make the Federal Government know, and there is an Executive Order that says they should build in outlying areas of the city, but the pull was so hard toward K Street that one would wonder why one would want to have any more development in that part of city, and whether it would not, in fact, slow development outside of L'Enfant City.

Ms. TREGONING. If the question is whether that would slow development into places, you could decide when and how you developed in different parts of the city. And we still have a very keen interest in the Capitol Riverfront, in the Anacostia, in Poplar Point, in St. Elizabeth's, so those would remain city priorities in terms of enticing development to those locations.

But our projections show with all of those places and the places that we proposed very modest height increases for inside the L'Enfant City, that we would still be looking at significant potential capacity constraints.

Chairman ISSA. Thank you.

Eleanor, we are going to do a second round, if that's okay.

Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

I want to pick up a little bit. You keep talking about the historic nature and about preserving the historic nature in your testimony. What historic nature are we talking about? Because this seems to be counterintuitive. If we are going to protect the historic nature, what are we talking about there?

Ms. TREGONING. So as part of a study that we did with the National Capital Planning Commission, we jointly agreed on some principles that would govern the study and that would govern our conclusions and recommendations, including determining that the Federal landmarks and monuments would continue to be prominent and preserve their views and settings.

Now, what's so interesting about the design of our city is that most of our streets, especially our diagonal streets, are designed with the beautiful views that terminate at the end of street. So having a little height, additional height, on many of the streets doesn't affect the views. In some cases it enhances the views that frame the building at the end of the street even better.

We also talk about maintaining the horizontality of the skyline. That's also something iconic——

Mr. MEADOWS. You're talking about primarily in those corridors as it looks to the Capitol. You are not talking about the historic nature of a neighborhood that is a mile out.

Ms. TREGONING. I am talking about those historic neighborhoods in the following sense, that if——

Mr. MEADOWS. Let me be specific. Like Henry's Soul Food that's right around the corner, is that historic, or is that not historic? That's the Mount Vernon Triangle. And I live in the city, and there's no one who wants cheaper rent than I do, I promise you that. But at the same time——

Chairman ISSA. You can live in your office.

Mr. MEADOWS. I'm not living in my office.

Is Henry's Soul Food, is that considered historic, or could that be torn down and developed?

Ms. TREGONING. So the actual building, I couldn't tell you off the top of my head, but that is a neighborhood that is designated a historic neighborhood. And so you raise a really critical point with your question, which is if we don't have any increases in height, the city can accommodate its growth, but it would probably change the character of most of our neighborhoods, because we would have to change those buildings. So having a row house neighborhood that's primarily two stories, if we made it four stories or eight stories, we could accommodate a lot of growth, but those neighborhoods be very, very different.

Mr. MEADOWS. Right.

Ms. TREGONING. Or we could accommodate the same amount of development in taller buildings in smaller—in fewer places and protect those neighborhoods.

Mr. MEADOWS. But your point is exactly where I'm going, because we would not see what has happened over by the ball field or the Navy Yards or any of that urban renewal if we allow the concentration to be downtown. It does not sprawl out. Now, if that's what we're—if that's what we're wanting to see, but what it does is creates pockets of unsure and questionable—we walk all over the city, and so there are certain areas that we walk in and certain areas that we don't, but that's based on that urban renewals aspect. And I live I think what they call a transitional area. Based on price, it wouldn't be transitional, but how does adding two stories to a building downtown actually make for more affordable housing, because I'm in this—I've been in this business for 28 years, and I don't see—because location is what you pay for, and if we add two stories to a building that's closer to the Capitol, generally what that will do is translate into much higher dollars for that rent, not lower. And that's following up on what Ms. Norton said.

Ms. TREGONING. So high rise buildings definitely have higher construction costs, but we do have city-wide inclusionary zoning. And the only reason it does not apply in some parts of the city is because we didn't have the height left——

Mr. MEADOWS. Right.

Ms. TREGONING. —to allow the density bonus that is the thing that enables it to happen.

Mr. MEADOWS. Right.

Ms. TREGONING. So that's one way in which that happens, but it's also true that we have tremendous demand for housing throughout the city. In the last year, our average housing price went up 22 percent. It's now $800,000 for a home on average in the District of Columbia. So what's happening is people who can afford $1 million house don't have enough million dollar house supply, so they start looking for $800,000 houses.

Mr. MEADOWS. Right.

Ms. TREGONING. The people who were buying $800,000 houses are seeing those prices bid up. They start buying $600,000 houses.

Mr. MEADOWS. Right.

Ms. TREGONING. And it trickles down and the price at every level ends up rising. So part of it is increasing the supply, period, at

every level affects the housing and the price of housing that's available throughout the entire market. The other thing is specifically in places where we haven't been able to offer inclusionary zoning with density bonuses, now we could do that.

I will finally say that we saw a lot of the modeling that showed city-wide increases. What we've actually proposed inside the L'Enfant City, it's a very, very few streets that would be affected. The vast majority of streets would not be affected. So it's not even like we're adding an enormous amount of supply inside the L'Enfant City, but we're adding it in places where it reinforces that urban design relationship that we really love about Washington, the height of buildings related to the width of streets that makes the city so walkable, so interesting and so pedestrian-friendly.

So we're saying the horizontality, the prominence of the monuments and memorials are unaffected by the proposal that we're talking about inside the L'Enfant City, but it does give us some critical capacity that, along with development outside the L'Enfant City in other parts of the city would accommodate.

Mr. MEADOWS. So how many square feet are we talking about in this critical area are you talking about adding?

Ms. TREGONING. I think it's about 109 million square feet total over time, which isn't an enormous amount, inside the L'Enfant City.

Mr. MEADOWS. So how would that affect prices? If it's not an enormous amount, how would it affect prices?

Ms. TREGONING. Well, and it would be about 317 million outside the L'Enfant City. So together, it would add a lot of supply and at least moderate——

Mr. MEADOWS. I'll wait for the second round. I see I'm out of time. That's a hard sell for me. You know, as you start to look at the economics, that's a real hard sell. So I will follow up, but I'll yield back. Thank you.

Chairman ISSA. Mr. Meadows, I'm surprised you didn't ask what you thought the—ask what the average square foot per square foot costs of that development would be. I've noticed there's a lot of $1000-a-square-foot development going on in D.C. sometimes.

The gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. And welcome, Ms. Tregoning and Mr. Acosta. I enjoyed working with both of you in local government and regional bodies over the years. Did I just hear you say, Ms. Tregoning, that you're talking about 109 million square feet?

Ms. TREGONING. Yes.

Mr. CONNOLLY. New?

Ms. TREGONING. [Nonverbal response.]

Mr. CONNOLLY. If my friend is familiar with Tyson's Corner, that's almost 2–1/2 times the size of everything that's in Tyson's Corner, one of the emerging edge cities in the United States, so that's a lot of square footage.

To your point, Mr. Meadows, I would also say just from my own observation, having worked on affordable housing, the best way to get affordable housing is to preserve what you've got. The idea that you're going to construct new affordable housing is, frankly, very problematic, even with the affordable density bonus that most ju-

risdictions, in fact, do try to encourage, but very difficult given today's construction costs. And so, you know, preservation's the key, and that may have something to do also with building height, because the two may not be compatible, but in terms of changing building height while trying to preserve affordable housing, so——

Let me just read what the Founders said they wanted to achieve in the design of the city. They envisioned, "a city with sweeping vistas that emphasized civic structures and an orderly system of boulevards with reverential private buildings."

Is that spirit still something the National Capital Planning Commission follows, Mr. Acosta?

Mr. ACOSTA. Yes. I think our recent updates to our comp plan, for instance, talk about the importance of vistas to and from the monuments throughout the city. I think that's not only a national interest issue, but I think the residents of our city enjoy that, too.

Mr. CONNOLLY. And Ms. Tregoning, listening to you describe things like pleasant views, it sounds consistent with also that original vision for the city.

Ms. TREGONING. Absolutely.

Mr. CONNOLLY. Help us understand a little bit the statutory framework here. I'm familiar with how we work in Virginia, but it may be a little bit different, because the National Capital Planning Commission, you have limited—I remember we had to submit things to the National Capital Planning Commission, but you didn't have statutory authority over zoning or planning per se in Virginia, did you?

Mr. ACOSTA. Not in Virginia. We—except for Federal property.

Mr. CONNOLLY. Right. But to the chairman's point, for example, if you look at Rosslyn in Arlington, lots of high rises, much closer to the L'Enfant part of the city, as the chairman pointed out, than say parts of northwest. You have no jurisdiction with whatever goes on in the County of Arlington?

Mr. ACOSTA. Except for Federal property.

Mr. CONNOLLY. Pardon me?

Mr. ACOSTA. Except for Federal properties.

Mr. CONNOLLY. Except for Federal properties. So do you have statutory authority over the planning process in the District of Columbia?

Mr. ACOSTA. Yes, we do.

Mr. CONNOLLY. Irrespective of whether they're Federal properties or not?

Mr. ACOSTA. It's—well, we look at certain zoning proposals in an advisory role to the District. The comprehensive plan for the Nation's capital both have Federal elements and local elements, as prescribed by the law, and that we work jointly in terms of putting together that plan, the focus has been.

Mr. CONNOLLY. Exactly. So the adoption of a comprehensive plan by the District of Columbia is not entirely its own willful act. It involves your consent, your review?

Mr. ACOSTA. Yes, it does.

Mr. CONNOLLY. And potentially a veto?

Mr. ACOSTA. Yes, it does.

Mr. CONNOLLY. The comprehensive plan, the D.C. law, is required before any zoning occurs?

Ms. TREGONING. That's correct.

Mr. CONNOLLY. And it presumably, like Virginia law, it runs with the land, so whatever the FAR on a particular site or the language granting density runs with the land. Is that correct?

Ms. TREGONING. Right. And zoning cannot—must be not inconsistent with the comprehensive plan.

Mr. CONNOLLY. When you're talking about building height changes, you know, we're going to add some stories, you're changing the FAR, the floor-to-area ratio. Is that consistent with the existing comprehensive plan or would you have to amend the plan to take that into account as well?

Ms. TREGONING. We would have to amend the plan to take that into account, absolutely.

Mr. CONNOLLY. And do we care about, Mr. Acosta, FAR? We're talking building heights, but what about the mass of a building on the same footprint?

Mr. ACOSTA. It's an important issue, I think. We do take a look at that, but in terms of reviewing it against conformity with the Federal law, it is about heights.

Mr. CONNOLLY. Ms. Tregoning and Mr. Acosta, are you familiar the residential high rise building called the Cairo?

Mr. ACOSTA. Yes.

Ms. TREGONING. Very familiar.

Mr. CONNOLLY. Now, refresh my memory. I used to—my wife and I had an apartment on P Street, and I am old enough to remember when that building, which had really been run down and became a flophouse, was bought and renovated, and there were stories at the time that that building exceeded the height limits in Washington, D.C. Is that correct?

Ms. TREGONING. It's the thing that caused the height limits to be. There were no height limits in the District until that building arose at 164 feet.

Mr. CONNOLLY. And when did that occur?

Ms. TREGONING. In the late part of the 19th century.

Mr. CONNOLLY. So that triggered, in many ways, the discussion we're having right now?

Ms. TREGONING. I mean, Mr. Connolly, you are very familiar with local government. So the residents and the citizens in the vicinity of that building did what your constituents did: They ran to their local government to protest, to make sure that it wouldn't happen again, and that local government at that time was the U.S. Congress.

Mr. CONNOLLY. Thank you. My time is up. Thank you, Mr. Chairman.

Chairman ISSA. Well, thank you for bringing up the 1894 construction of that building.

Mr. CONNOLLY. I can tell you, Mr. Chairman, as a then-resident of the District of Columbia, we were at least glad it got renovated.

Chairman ISSA. Yeah. Oh, you're talking about when it was renovated, not when it was built.

Mr. CONNOLLY. When it was renovated, yeah. I missed the original construction.

Chairman ISSA. I'm going to briefly ask a couple of related questions. Mr. Acosta, one of the other bans, I understand, here in the

District is after the fires of the early 20th century, we banned wooden construction down here in the District area. In other words, suddenly all those wooden buildings were all old, and there's a date and suddenly they were all brick and stone. Is that right?

Mr. ACOSTA. I believe so.

Chairman ISSA. But our Founding Fathers thought wood was just fine, apparently. So it was okay to build chicken coop houses for the first 100 years of our founding, but there came a day when we realized we needed to do better in a high density modern city.

Mr. ACOSTA. Absolutely.

Chairman ISSA. And that was going on all over the country, that in high density modern cities, the recognition that it was just about impossible for a fire department to keep up with, and particularly row homes, with what happens in fires. And that's still today. I mean, wood homes in the District, although precious and all protected, are hard to protect. Is that true?

Mr. ACOSTA. It depends on the fire fighting technology.

Chairman ISSA. And so leaving the Height Act alone for a moment and setting that aside, the architectural planning of the city, has it achieved all of the goals, in other words, this fairly eclectic high and low, because we don't have minimums, the penthouses we saw earlier? Can we do better than that?

Mr. ACOSTA. We can always do better, but I think in general, it has achieved some of the goals we've talked about, including the preeminence of the memorials, because of the lower heights. I think it has done a lot in terms——

Chairman ISSA. Well, I appreciate the memorials, but let me interrupt for a second. The Federal construction, there's been a lot mentioned about jurisdiction over Federal construction. When I look at Federal buildings and major embassies like the Canadian Embassy and so on, what I see is no consistency of height, no consistency of the architecture. There's some butt ugly Federal buildings that were built in the 60's. I don't know what it was in the 60s, but the protestors should have been protesting the architecture. Isn't that true?

So when I look at the development of the city, don't we have both in Federal building construction and in the commercial buildings epitomized by K Street, don't we have a need to do better than we're doing today? And if so, isn't it long overdue for us to update a master plan with great detail of the vision for the 21st century?

Mr. ACOSTA. I actually concur with that. I think one effort that——

Chairman ISSA. I'm looking for concurrence here. Trust me.

Mr. ACOSTA. Well, for instance, one effort that both the District and NCPC has looked at is kind of what is the future of the southwest of the—you know, south of the National Mall, which is the Federal Center down there. And that I think we both agree that times have changed. The buildings are inefficient, it's a single-use district. It could become much more of a vibrant place.

Chairman ISSA. And St. Elizabeth isn't really a new area. It's an area that fell into decay for a number of years that's being revitalized. Isn't that true?

Mr. ACOSTA. Yes, it is.

Chairman ISSA. It was once a great area apparently. I certainly look at some of the large structures there that either have been removed or, in some cases, renovated.

To a certain extent, aren't we dealing with the revitalization of a city where, and I think Ms. Tregoning mentioned this, it had 50 years of decline in population, in significance of people wanting to live in conventional residential structures, relatively little new construction until the post 70's period. And the last decade or so has been an amazing time for the District. I've served 13 years. I've watched the District go from, and Mr. Meadows mentioned this, these sort of no go zones versus go zones, and we're watching them being pushed out.

So in light of that, and recognizing what Ms. Norton said, don't we in Congress have an obligation to task you, as the two bodies overseeing the future, not just in the height, because I said I'd set it aside for a second, but also in the planning of a city, there are large areas that could have modern affordable homes. There are areas like K Street that have relatively little residential and a high capacity for lobbyists. We don't expect that if you build a residence on K Street, that it's going to be occupied by the downtrodden or the needy of the District, because the downtrodden and the needy of the District, I understand that we have the highest—to be in the top 5 percent of income producers, D.C. is the richest city from that standpoint. No city has more of, if you will, what it takes to be the top end of income. But, Ms. Norton——

Mr. CONNOLLY. Which is why, Mr. Chairman, we're glad you live here.

Chairman ISSA. I pay my taxes in California. Thank you. I do pay my property taxes here.

But I think, and I'll close with this. My concern is this: Ms. Norton needs areas of development that are currently underdeveloped. The K Street corridor has metastasized because of the growth of government. The concentration of Federal buildings, new Federal buildings in the District will only exacerbate that concentration.

Let me just ask a closing question, and I will go back to the height. If I go out to JFK Stadium, which is up and down. It's probably 12 feet above sea level. I think it's kind of down there. And I go from there to the river, don't I see an example of historic district where they mowed down probably huge amounts of homes to build that stadium.

And now the question is, how do we attract a football team or how do we attract something back to these underutilized areas? Isn't the challenge for the District of Columbia, for the Federal Government to challenge you, work with you and ask you to come back on the modification of the Height Act beyond anything we might mandate as a result of this study, and a real plan that is much more future looking? In other words, we're only going to deal with this every 40 or 50 or 100 years. What are you going to do to give us the vision for the next 100 years, and are you prepared to do it? And, Mr. Acosta, in your opening statement, you said it needed to happen. How long will it take?

Mr. ACOSTA. Well, typically the comp plan updates typically take 2 to 3 years to produce.

I do think you raise a couple of very good points. I think this is the first time that the city in a very long time has been faced with growth, and that I think it makes a lot of people nervous to some extent, but I also think it's an opportunity to kind of re-examine and revisit some of these issues.

The issues that you've raised with respect to property, actually the Federal Government over the last 10 years have actually, you know, through the assistance of Mrs. Norton, you know, you look at things like Walter Reed as being kind of a place for new private development to occur. The area by the stadium, which you pointed out had——

Chairman ISSA. That's not affordable housing up there.

Mr. ACOSTA. It isn't affordable housing, right, but it could be. But Reservation 13, which is adjacent to RFK Stadium is another piece of Federal land that was given to the District for future development. Poplar Point, which is across the river, with a huge track of land that could be redeveloped, that was an old Federal property that was transferred back to the District. So there are plenty of opportunities to grow with respect to these vacant lands, and the District has done a very good job of trying to identify what is going there.

But I do think what is needed today in terms of pulling together the pieces to make the community feel comfortable about the prospects of growth, to look at the implications in terms of what it may mean to our national symbols, you know, I do think we have to pull that together in terms of revisiting this comp plan. That is the one thing that we both have agreed to. I think the question is, you know, how does it relate to ultimately heights as a final matter, but I think this is all interrelated that——

Chairman ISSA. Well, I heard 2 years. And my time is up, so briefly, would you agree that 2 years for this kind of challenge is something that if we challenge you, that you can come back to Congress with much more—hopefully a consensus in 2 years on the long-term future of these areas for the District?

Ms. TREGONING. I think that a comp plan takes at least 2 years. What I would—I guess what I would say is that the process is already a well-known, well-understood, well-developed process within the city, that it already has the review and approval required by the National Capital Planning Commission. The comp plan has to be passed by the council, so it becomes a District law, so then you also get it again in the holdover period at Congress.

So my point is whether we do it now over the next 2 years or whether we do it 5 years from now or 10 years from now, you know, I don't know the next time we'll have a chairman of this committee who's as interested in ths issues as the current chairman is.

Chairman ISSA. Eleanor is looking forward to the opportunity.

Ms. TREGONING. I'm just saying, I don't know. We haven't been asked this question, in my memory: What does the District think the Height Act means and how does it affect its future. And honestly, I'm not very confident that when the need is imminent for the city, that we'll have someone who has an ear to that need.

So I would argue that those protections already exist. They could be made more robust, perhaps, if you'd like to make them so, but

they are already very, very well used. Every time the NCPC has vetoed a portion of the comp plan, the city has changed it, and must. Our own Home Rule Charter requires that we change it, otherwise, that provision shall have no effect in the city. So those are robust protections.

So I would argue that the changes that we're asking for have to be accomplished through the comprehensive plan, and that's something that we should indeed undertake together. I think the next comprehensive plan revision, there'll never be more interest in a comp plan than there will in this one, but that the law itself should change now.

Chairman ISSA. Thank you.

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. And I agree with Ms. Tregoning. The chairman's interest here came from his own understanding of the District. He didn't confer with me and said, do you think it's wise to have a hearing? He doesn't do that, but I'm very pleased he did, and I think Ms. Tregoning makes a good point that if the city doesn't want changes, it thinks it won't ever want changes and it's making that decision for better or worse right now, because these opportunities don't come up very often.

Mr. Chairman, I also associate myself with your views about the undistinguished look of downtown Washington. I'm not sure that's because of the Height Act. It seems to me there's got to be better architects than the ones who have built downtown Washington. It is one of the least distinguished, most pedestrian downtowns, and I have never thought that that had to do with the Height Act, and I hope that's not the reason.

And I also must say that among the things I try not to do is to say to residents in the great beyond, there is a hope for something that nowhere in the country for a reason that is structural, that affordable housing will come out of what we're doing here today, or what we're discussing here today. The fact is that there is no case to be made for affordable housing coming out of the status quo. There is, I think, even less case to be made for affordable housing coming out of taller buildings.

One way or the other, the country is going to have to live within the market system, and that's what we've got and that's what we're all going to have. And understand what is happening to big cities. How do you keep them diverse, how much does city planning have to do with it, but I for one do not see the elixirs either in the spread of development that I myself have put a priority on or in taller buildings.

That said, I'm making no promises that way. That doesn't decide the issue for me, because I do think we are getting growth and I think trying to figure out if that growth will continue is very difficult, but you certainly have to plan for it. And then there are differences on whether the way to plan for it is to look across the city or to also look for taller buildings.

Now, Mr. Acosta, I didn't get to ask you questions before. I note you said, page 4, Commission recommended that the Federal Height Act remain in place city-wide and no changes be made to the formula, et cetera, or the approach. Now, did not the Commis-

sion overrule the staff recommendation, and what was the staff recommendation?

Mr. ACOSTA. Well, the staff recommendation actually had to do with the comprehensive plan and kind of whether you put the cart before the horse, whether you change the law dealing with heights before you undertake the next comprehensive plan.

I think, based open the testimony that they heard during the hearings, we had several hearings on this matter, as well as the council, as you know, Mr. Mendelson sits on our Commission, his statements regarding his opposition to the mayor's position, and also kind of the need to do the comprehensive plan first and then change the law, I think our Commission was essentially swayed to——

Ms. NORTON. Now, Ms. Tregoning, did you disagree with that notion to do the comprehensive plan first?

Ms. TREGONING. I do disagree, in that the effect is essentially the same. You know, whether you change the law now or you change the law in the future, the only thing is you have no certainty in the future that there will be a Congressman or there will be a chairman of this committee who's in the slightest bit interested in this issue.

We have to change the comp plan, it has to be approved by the NCPC, it has to be passed by the council, it has to have public input. And even if we end up with the same result as if we don't change the Federal Height Act, it will be the District's decision, and that, in and of itself, is an important principle, but it is possible that a future city leader, a future planning director, a future council might find it very much in its interest to make judicious changes to heights of buildings in some parts of the city, and this would allow that to happen.

Ms. NORTON. Okay. See, I see room for accommodation there, but I don't want to pursue that further.

You also say in your testimony, Mr. Acosta, because you go right on right after that to say, Commission recognize that there may be opportunities for "strategic change" in areas outside of L'Enfant City.

Does that mean you don't see any opportunity for "strategic change" inside that massive area inside L'Enfant City?

Mr. ACOSTA. Well, I think we should kind of view this as a whole. I think the greatest concentration of Federal interest, the things that we care most about as a Nation are essentially the L'Enfant City.

Chairman ISSA. Would the gentlelady yield for a second?

Ms. NORTON. Certainly.

Chairman ISSA. We had a disagreement on what L'Enfant City was, and because I live at Boundary, now called Florida, you're talking, I assume, the smaller L'Enfant, not the expansive one that goes all the way to Florida.

Mr. ACOSTA. Well, we're talking about the L'Enfant City.

Chairman ISSA. You are? All the way to Florida?

Mr. ACOSTA. Yes, all the way the Florida.

Chairman ISSA. Okay. Thank you.

Mr. ACOSTA. Yes. I think that——

Ms. NORTON. So it's all the way to Florida. And on the east and the west——

Mr. ACOSTA. The rivers.

Ms. NORTON. —what is it, east and west?

Ms. TREGONING. The rivers.

Ms. NORTON. Huh?

Ms. TREGONING. The Potomac and the Anacostia Rivers.

Mr. ACOSTA. The rivers. The Potomac and the Anacostia——

Ms. NORTON. Okay.

Mr. ACOSTA. —rivers, roughly.

Ms. NORTON. So what neighborhoods does that include, if—you know, so——

Ms. TREGONING. Capitol Hill, Shaw. It includes, you know, most of Dupont Circle, of Georgetown, and Mt. Vernon.

Ms. NORTON. Now, you want to change heights within those areas?

Ms. TREGONING. For the most part, no, because only on streets that are basically, you know, 120 feet or higher would there be any actual change in——

Ms. NORTON. Yeah. This is old Washington. That is old Washington. So what kind of streets are we talking about?

Ms. TREGONING. It's——

Ms. NORTON. I mean, there's 14th Street.

Ms. TREGONING. It would—it would largely be not the—it would largely be the avenues, so it would be Pennsylvania Avenue, it could be Massachusetts Avenue, it could be parts of Rhode Island Avenue, parts of those avenues, and, again, not probably through historic districts, so it's modest. So those monolithic height increases that we saw in the modeling, we're not proposing that.

Ms. NORTON. Well, do you envision most changes, if any, coming outside of L'Enfant City or within L'Enfant City?

Ms. TREGONING. Over time, most of the changes will probably be outside the L'Enfant City, but you know, our proposal for the city is some very judicious changes inside the L'Enfant City that would make building tops more beautiful and would take advantage of the dense transit that we have inside the L'Enfant City.

Mr. CONNOLLY. Would the gentlelady yield just for a moment?

Ms. NORTON. Certainly.

Mr. CONNOLLY. The chairman asked this question, but let me ask it again. The monumental core of L'Enfant City is 10.7 square miles. That's 16 percent of the original L'Enfant City. You're talking about all of L'Enfant's plan, not just the monumental core?

Ms. TREGONING. Correct. Most of it would not be happening at the monumental core.

Mr. CONNOLLY. All right. I thank my colleague.

Ms. NORTON. But it does include downtown D.C.?

Ms. TREGONING. It does.

Ms. NORTON. Now, Mr. Acosta, you speak about the so-called ratio approach on page 5, that it allowed, and here I'm quoting you, greater height precisely where it was least appropriate on L'Enfant's streets, framing views of the U.S. Capitol and the White House.

Now, Ms. Tregoning, do you agree that those areas would not be protected if D.C. had flexibility?

Ms. TREGONING. I don't agree, for the reasons we earlier discussed, that the city is designed so that the views are at the end of streets, that they are terminated, those views, with significant civic and monumental structures, and so those views aren't destroyed by having——

Ms. NORTON. Well, just a moment.

Do you agree with that, Mr. Acosta, that the view is at the end and not——

Mr. ACOSTA. Well, the——

Ms. NORTON. —in the areas leading——

Mr. ACOSTA. Of the streets that are being proposed for taller buildings, the wider streets, they typically are the streets that radiate from the Capitol or terminate at the White House, these are significant view sheds.

One of the beauties of the L'Enfant plan of the city is kind of, like, the spaciousness that you see on the streets. That's why it's wide, that's why it's ceremonial, that's why you can see the whole dome. The taller the buildings are along the street, the more crowded it becomes, that you see, you know, kind of the spaciousness around the capital, the foreground of the buildings seem taller, your perception of the important symbol of the dome is—it's smaller, it's diminished. And I think what was the point we were trying to make with this.

I think the key issue here is really this: that we want to understand what's possible outside of L'Enfant City, because of the growth issue, because much of it is residential, what are some of the options to accommodate growth before we make determinations about what happens inside of L'Enfant City? From a national standpoint, from a Federal interest standpoint, that is what we care about collectively, and that I think it's—we should do no harm until we have a better understanding after the comp plan is completed what can be done to accommodate, if the District does grow, what can be accommodated there before we make any changes to those important views. That's our legacy. That has to be here centuries from now.

Ms. NORTON. Do you think in the past, we could pass a law—I mean, Ms. Tregoning, that it is very controversial, your position that the viewpoints at the end and not in between is what matters. I mean, isn't this the kind of thing that you and Mr. Acosta ought to be reaching some accommodation on?

Ms. TREGONING. And we would actually have to reach some accommodation in order for a comp plan to be approved. We've proposed to institute——

Ms. NORTON. Yes, but as has been indicated, what is before the Congress at the moment is not the comp plan but whether there should be any changes in the law. And the chairman and I are trying to find whether there are ways to satisfy the different views that we see even here before us, which may, by the way, reflect some of the views in the city. So would you continue?

Ms. TREGONING. I was just going to say that these differences are important differences and they do take time and study to understand and to work out, but a change to the Federal Height Act does not change the height of buildings in the city. They won't change until there's a comp plan. And we have to agree, because they

could veto, based on the Federal interest, the very things the they say they object to. So we could live with that. That's something that we know that we'll have to work with them on, but the change to the Federal Height Act doesn't do any harm, it doesn't do anything until there's a change to the comp plan.

Ms. NORTON. Well, what this says, it has to come before you before——

Mr. ACOSTA. Well, let me just make the recommendations clearer. I think what is on the table right now in terms of what Congress could consider are changes in the L'Enfant City. That is what the District is requesting. They aren't suggesting any changes outside of L'Enfant City.

Chairman ISSA. Would the gentlelady yield?

Ms. NORTON. Certainly.

Chairman ISSA. I think I have a certain role in presenting this. What I asked was for the city to review the Height Act and to figure out whether or not changes could be proposed. I never envisioned, and quite frankly, I was very pleased that a lot of the study and a lot of the proposals, a lot of the architects that participated began visualizing specific changes.

I only asked the not-so-rhetorical question of after 100 years, couldn't Congress consider a change to the Height Act, and if so, what would be some of the guidelines?

What I think I heard, and if the gentlelady would give me just another moment, is the city presented a hypothetical that included some specifics of the changes, which went beyond just should we consider a change to the Height Act. It actually proposed them. Those were treated, I think, as though they would go into effect if NCPC said yes. You said no, seven to three, with the two Members of Congress who have votes abstaining. That meant you rejected the District's specific proposal.

The interesting thing for me, and this also includes the city council's, Mr. Mendelson's, resolution, is that I heard separately to my astonishment for the first time ever a rejection of home rule, a rejection of could we give you a process to go further at some future time assuming you could reach a yes. And I think that's what I've heard today. And that's one of my frustrations is, I expected you all to say, gosh, this will take years and years, and it'll probably be done in bits and pieces. And I think Eleanor and I would hope that some of the first pieces would not be K Street, but, in fact, potentially blighted areas, areas of new development. I did not expect for the first time ever to have people say, Please don't give me authority. I can't be trusted, but to a certain extent, I'm hearing that. And all of us here, who've never shied away from being given more authority, one of my challenges now, not just today, but the public comment and so on afterwards is before I leave this chair, do I, in fact, find a way to make changes to the Height Act that in the future would leave you with choices, even if those choices required obviously the consent of both your agencies and even potentially a referral back to Congress, or do I simply close up the book on a 1910 law and wait until the city and NCPC come to us at some future time, and if so, am I living up to my obligation? So that's how I define it, which is a little different than I asked you to——

Ms. NORTON. Let them answer.

Chairman ISSA. Please. Any comments?

Ms. NORTON. I want to hear how they respond to that.

Ms. TREGONING. I would just say I think you framed it exactly right. And I have to say that I'm also confused and appalled that after the city fighting so hard for any increment of additional democracy—and democracy is messy, it isn't consensus-based, there's always disagreement.

I don't think that the Congress, and with all due respect, should protect the District from the consequences of its own choices in terms of electoral decisions. So if we want to retain heights, that is within our power even after you change the law. That's entirely within the control of the District of Columbia. And we may never have higher building heights, but we desperately want the ability to decide. And our pressure for growth gives us the sense of urgency to seek it. Thank you.

Chairman ISSA. Eleanor.

Ms. NORTON. Yeah. Just a couple more questions, if I could just finish——

Chairman ISSA. Well, why don't I come back to you, because I think Mr. Meadows will be done after one more.

Mr. Meadows.

Mr. MEADOWS. Thank you.

Mr. Acosta, I want to come back to you, because one of the troubling things, even though I've shared that there's a very high bar that I would look at from this standpoint, I would come back to you. Certainly there are areas of agreement and there's certainly areas of modification that I would encourage you and your board strongly to see how we can accommodate those, if nothing more, to make sure that we can get the chairman where he doesn't have to use that wood ladder to get up on the roof, but there has to be areas—it becomes very easy when you have a body like yours to just say no. And I've dealt with it all my life, and so I would encourage you strongly to look for those areas where we can find consensus.

I guess what I'm trying to figure out is what is our objective? Is it additional tax base? Is it affordable housing? Where exactly is the city wanting to go with this in terms of, at the end of the day, how do say you're successful?

Ms. TREGONING. So it's the things that you mentioned. It is additional tax base, it is affordable housing. The thing is, we've made the investments to make our city more livable and a place that's desirable for people to be, which is good, right?

Mr. MEADOWS. Sure.

Ms. TREGONING. We're not a shrinking city anymore.

Mr. MEADOWS. Right.

Ms. TREGONING. But the very thing that's made us successful is also putting a lot of pressure on our long-time residents, on the people who would like to be here, on the children of people who currently live here, can they afford to ever live in our city? The major——

Mr. MEADOWS. But I doubt that they will ever be able to afford to live on Pennsylvania Avenue.

Ms. TREGONING. The thing is, the tax base that's increased has given us the capacity to do amazing things. The mayor just an-

nounced $187 million worth of spending on affordable housing. That wouldn't have been possible 10 years ago.

Mr. MEADOWS. So are you saying that because of this height restriction, that development is going outside the city?

Ms. TREGONING. It is.

Mr. MEADOWS. So that's your premise here today is, is that people are building outside the city because of this height restriction?

Ms. TREGONING. We're about, and Mr. Connolly can help me with this, between 10 and 11 percent of the region's population. For the last several years, we've been capturing something closer to 14 or 15 percent of the region's population growth, and a similar—not as large a number, but we're batting above our—we're punching above our weight in terms of both jobs and housing. That may or may not continue into the future, but if our prices continue to rise, if our supply continues to be constrained over time, yes, we're absolutely going to lose more people to other jurisdictions.

Mr. MEADOWS. But you haven't seen that yet?

Ms. TREGONING. No. We have. That's been our story for 50 years, for the last 50 years. It's only recently that we've begun to do better relative to the rest of the region, and we still have very expensive rent, so we don't have the diversity of jobs, we don't have the diversity of housing that we'd necessarily like to have. And people who can't afford to be here are starting their companies somewhere else, because, you know, our rents are too high.

Mr. MEADOWS. Okay. What I would like for you, if you would just put a priority in terms of what you're hoping to see in terms of affordable housing, number of units that this would do, because I have a hard time grasping that, because actually what you're proposing would have the counter effect, because as you go further out, it would actually allow for more affordable housing there. We had a statement. I'll give you an analogy. It's like selling the filet from the beef cattle and saying, we're going to develop the filet and we're going to leave, you know, the rump roast for everybody else.

And so if you look at this, what we've got to do is we've got to figure out a way to allow for urban renewal, some of the great things that are happening here, and yet at the same time, not hamstring it so much, Mr. Acosta, that there is no growth within that critical area. And I think that's what I'm looking for. Where is the balance, because if not, we'll end up with greater heights in this corridor that we all want to protect from a visually aesthetic, pleasing manner, but we'll still have the Henry's soul food out close to where I live. And so that's what I'm looking for, is this balance, and I look forward to working with the chairman and the ranking member to hopefully come up with a solution. I'll yield back.

Chairman ISSA. I'm personally fond, by the way, of the tri tip, which is slightly outside that filet area.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. And my friend from North Carolina's beginning to sound like a bleeding heart conservative, but I really welcome his interest and his insight into affordable housing. I reiterate, my own experience is if you want affordable housing, you have to preserve it. You're not going to build a lot of new affordable housing, given today's construction. It just isn't economically viable. And so I don't know what the District is

doing in terms of preservation, but growth incentives can actually work against that. So you've got to be careful what parts of the city you target.

Mr. MEADOWS. If the gentleman will yield.

Mr. CONNOLLY. I will.

Mr. MEADOWS. That's my point exactly. And I concur with the gentleman from Virginia. In addition to that, we've been on a committee where we've talked about some of these Federal buildings that do not get used. I would look to work in a bipartisan fashion to get some of those where they're actually developed and used within the city on a regular basis. Thank you.

Mr. CONNOLLY. Point well taken.

Ms. NORTON. If the gentleman would yield, since we seem to have some kind of consensus, I don't know about the chairman, on this one. Look, the fact is that the major complaints in the city about the cost of housing more than I've ever seen before. Rents are too high, housing too high, we're in the top 10 already of most expensive cities in the United States.

That's why I take the gentleman's point. You lose credibility when you come before Members of Congress who believe in the market economy, understand the market economy, have seen its effects on housing throughout the country; when you say there is a way to reduce the cost of housing, and that is by adding more housing, which, and this is what I want to get across to you, Ms. Tregoning, that housing has not, except for that 8 percent, been for the people who've lived here most of their lives, that hasn't been for middle class people, that hasn't been for people in the lower middle class.

Let's face it. It's been for single people who don't yet have families. It's been for single people who are able to take the housing because two and three of them are living in housing that should have been occupied by one person, but it has two bedrooms, and that's how they can afford the rent.

So with all acclaim about spreading development, of which I have been a part, I will not say from this rostrum that that is the way to reduce the cost of housing in a city which does not have room to expand, or even if it expanded by four stories going up. And I thank the gentleman for yielding.

Mr. CONNOLLY. Absolutely. My friend from Washington, D.C., might be interested to know my wife and I bought our first home, it was a co-op apartment in the District of Columbia, and in 1974, that apartment cost $16,600. Even we could afford it. Housing was a lot more affordable when I first moved to this area than it is today, and it's a challenge for all of us throughout the region, I might add, not just for the District of Columbia, but particularly acute in the District.

Mr. Acosta, let me ask, you said in your testimony that there might be areas outside the L'Enfant City where maximum heights could be increased, but it's got to be studied. You want to give us some hints of targets, target areas that would fall under that rubric?

Mr. ACOSTA. Well, the study itself, the District put forward a series of illustrative areas, they ranged everything, as Ms. Tregoning

said, from Friendship heights to Poplar Point to other places. That could be considered for additional height.

Mr. CONNOLLY. Well, are you—I guess I'm—is the National Capital Planning Commission, is that study underway by the NCPC or is it just something you're saying we ought to study that?

Mr. ACOSTA. It's something that we would have to pursue in the next comp plan update. I think that's part of the answer.

Mr. CONNOLLY. In light of this hearing and other conversations, don't you think maybe that should be in the work plan?

Mr. ACOSTA. Yes.

Mr. CONNOLLY. The chairman made a good point. Looking at parts of the city and what they border; for example, do we really care that much about building heights in areas of the city that border Chevy Chase or Bethesda, where building heights right across the border are not restricted?

Mr. ACOSTA. There are fewer Federal interests with——

Mr. CONNOLLY. I'm sorry?

Mr. ACOSTA. There are fewer Federal interests with respect to——

Mr. CONNOLLY. Right. So, I mean, my only point is, I mean, we may reject them or not, but clearly, there are some areas of the city ripe for that kind of examination.

Mr. ACOSTA. There could be. I think you're absolutely right, that that's a discussion that we would have as part of this. I think one of the issues that, you know, because of the timing, the District could not put forward, you know, two or three areas explicitly that would be targeted for heights.

Mr. CONNOLLY. Yeah.

Mr. ACOSTA. They did it as part of this process. We could have evaluated it for Federal interest, but I do think it does take a discussion now with the community and that they want to be engaged in kind of where these targeted areas might be. And I think that's part of the bigger question out there, whether this could be accommodated under the current height limits or do you need more height to kind of get to the densities that it requires.

Mr. CONNOLLY. And, Mr. Chairman, let me just say, as I said to you privately, and to my friend from the District of Columbia, too, I hope we also, at some point, have a discussion about the Capitol Hill area. I think there are real security issues in terms of how this place is functioning and designed road-wise, pedestrian-wise, proximity to various and sundry transportation nodes, including CSX, that are of concern to many of us and ought to be of concern to everyone in the region.

Ms. Tregoning, I think you and I were on a panel once where we actually talked about some of those concerns under the aegis of the Council of Governments, and I would just hope at some point, Mr. Chairman, while you're chairman, we might be able to take a fresh look at that, because I think it really needs some planning help. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. I understand that the committee has received an inordinate, or an unusual amount of input from residents of the District of Columbia directly. I want to make sure that it's announced here today that we'll include all of those in our record.

Additionally, as I said in the beginning, I'm going to hold the record open for 7 days, so I would take additional comments from the District of Columbia from residents and interested parties.

I'm going to summarize a couple of things I heard today, because I think that leading up to this hearing, things that were said would make people believe that there's no area of agreement. What I believe I heard, and I want to be corrected if I go outside what I heard, there is no question but that a small change in penthouse could be beneficial to the city, and not be in any way objectionable to NCPC; that there is clearly a high level of concern when it comes to L'Enfant Plaza and particularly old L'Enfant Plaza; that as we go further away from the Capitol and the White House, and, of course, we normally rise on the north side, that these areas have generally less concern, and that the area of vista and preservation sadly is also at the area of greatest concentration request, in other words, we referred to K Street, but there are other areas.

Lastly, that when we ring the city, Maryland on the north, Virginia on the south in some cases, what we find is areas in which neither one of your organizations has any authority, and those States and their incorporated cities are free to expand to any height they want, and yet we have artificially in—let's just say, the first half mile or mile around the city, we've artificially created a similar, or not an identical limitation. Well, there's no identical need. I think I heard that, Mr. Acosta, specifically, that they would be seen as less Federal interest, but had hypothetically the city said for the first some distance, up in the north it would be a mile, in the south it might be less, if they'd submitted a ring and said we'd like to be able to essentially build and obstruct Maryland from looking at the building, we'd like to obstruct Virginia from looking at the building unless they want to raise higher, because we feel we have that right and no obligation to the people of Chevy Chase or the people of northern Virginia, that you might have looked at it and said, well, under home rule, what would be the harm, since 500 feet further in one direction or another, somebody could build if they chose to and obstruct effectively everybody else?

Was I accurate in saying that, even though I said it deliberately in sort of an extreme way, but recognizing that that's what I thought I heard you say is that you had little or no interest in those areas that are perimetered by two other States?

Mr. ACOSTA. Yeah. Those would be reviewed obviously on a case-by-case basis. In some locations there may be Federal parks, for instance, that abut it or Federal facilities that might abut it, there may be particular view sheds.

Chairman ISSA. I'm sure the Pentagon doesn't want to lose their view of the Capitol.

Mr. ACOSTA. Right. So, you know, again, that's actually part of this comp plan process, is that it does allow us to—for the District to make proposals, you know, to be fully vetted by the community so they understand the assumptions that go into it, as well as kind of the growth that may occur and what it may mean to them. Once it's vetted by the community and the council accepts it, it comes back to us for a Federal interest review. I think that's the way the process works in terms of how these height issues might be ad-

dressed in the future. That was essentially the proposal that the District had put forward.

Chairman ISSA. And lastly, what I think I heard, although previous statements may indicate differently, that you both agree that there's a check and balance, that the rejection that came from NCPC would have been if there were no Height Act, the same rejection at this time, that you were not prepared to approve the plan for greater height as it was submitted by the city, and that effectively your seven-to-three vote would have been exactly the same if there'd been no Height Act.

And I realize you were looking at both a hypothetical plan and a modification of the Height Act, but if the Height Act had no restrictions, you still would have had substantially the same vote, I assume.

Mr. ACOSTA. It would have occurred, yes.

Chairman ISSA. Okay. Well, I think we have a better understanding of how we got here today. I'm not done looking at this or listening and reading. I'm not done with the District of Columbia's residents having input.

And, Mr. Connolly, I am certainly—immediately following this, I look forward to having a further dialogue on Federal buildings in this area. And I think that Mr. Mica and a whole raft of Members want to try to get it right, including on some of those buildings I described less than kindly that were built in the '60s and '70s.

Ms. Norton, you had a closing comment?

Ms. NORTON. Mr. Chairman, I just wanted to clarify where the final authority would lie.

Before I do that, I noticed that on page 2, you indicate a full paragraph of consultation with Federal agencies and that they had views on adverse effects for all kinds of things, including Federal headquarters and the like. Were these all within L'Enfant City?

Mr. ACOSTA. They were actually throughout the entire city. The Federal facilities are throughout the entire city.

Ms. NORTON. All right. Therefore, in the plan that you have put forward and the plan that Ms. Tregoning as put forward, would there be retention of ultimate authority in the Federal Government?

Mr. ACOSTA. Well, the—yes. I think if you use this comp plan process, it becomes the law, it comes to the Hill for, you know, a 30-day preview period.

Ms. NORTON. I'm not talking about the 30-day period now, because remember, the reason I'm not talking about the 30-day period is that we're talking about changes both within and without L'Enfant City. And I indicated, and I gave the hypothetical, at least in my opening remarks, where the changes did not involve the Federal interest. And I think that some in the city are concerned about that kind of change, that you'd kind of have runaway development.

And, indeed, I'd like to ask you, if the District or the Federal Government stuck to the way it looks at legislation coming and there were changes in the Height Act, let's say outside of L'Enfant City, that did not involve the Federal interest such as perhaps what Mr. Acosta was alluding to on page 2 with all the Federal headquarters, it didn't involve any of that, how should the hypothetical that comes in real-time from the 1990s, apparently, the

early 1990s, where apparently a developer convinced the council to interpret the Height Act as it now stands as allowing for a height greater than the Height Act allows, the worry seems to be about exceptions like that, because they've seen at least one occur. How would that be handled?

Mr. ACOSTA. In terms of the comp plan? In terms of any height changes in the future?

Ms. NORTON. Yeah.

Mr. ACOSTA. I think part of the issue is, you know, how are these height changes going to be flagged as part of the comp plan process. I think there was a lot of concern that this could look more like spot zoning, where two or three parcels as opposed to kind of taking a thorough and kind of careful look at areas could occur. I think that was what we heard from some of the testimony, and that I think a lot of the concern was, you know, that process hasn't been thought all the way through. You know, changing heights this way is a new thing, would be a new thing. It would be a substantial difference in terms of how people and how the community interface with the planners and with the city and with even NCPC.

So I think there was lot of concern about, you know, we haven't set this up, they don't know exactly what would happen, they don't necessarily—you know, this is from the community. They're not sure, you know, how they would be notified about these things or whether it would be kind of done quickly or not or kind of at the last moment. A lot of the questions kind of ranged—were kind of in that area of focus.

So I think that's—you know, those are things that, you know, if Congress at some point in time decided to make a change, would have to be worked through.

I do think one of the bigger issues is really people enjoy the certainty that's out there today, and any change that you make, you know, affects their neighborhoods, affects their property, affects their assets, and I think to some extent, that's how people are reacting to this particular issue. It's an important issue, too, that they see this personally and they see this as, you know, very fundamental to their property, their communities, you know, to the way they live. And that, you know, while they—I think everybody, you know, appreciates the home rule arguments, I think, you know, they put the two together, and I think that's essentially what is happening over this process.

Ms. NORTON. Ms. Tregoning, do you see any way to avoid that hypothetical—it wasn't hypothetical—that example from the 1990s where an exception was made, and the Congress overturned it, and here we're talking about exceptions that would not violate the Federal interests. Do you think that the District could figure out a way to keep controversial exceptions or interpretations like that from occurring when there was no backstop in the Congress of the United States?

Ms. TREGONING. I do, and I have had this conversation with Chairman Mendelson of the Council of the District of Columbia that these are laws that we can change and strengthen if we feel the need to do so. For that matter, we could enact our own version of a height limit that would have to also be passed, but would also

have to be changed by an act of the council, a majority, a supermajority. You can imagine all sorts of ways.

But there is no perfect land-use process in any place in the country. And, again, the quality of our government, you know, is a consequence of the actions of our citizens. If democracy is messy, I relish the opportunity for our city to roll up our sleeves and figure out how to do this.

Ms. NORTON. Well, I urge you to try to think through some of the ideas you just laid on the table so that you can quiet some of the concerns in the city, and so that we are not faced with the embarrassment of some people not trusting themselves to make a home rule decision. But it will take some work, and it will take some consensus between the executive and the legislative branches.

And I thank you, Mr. Chairman, very much.

Chairman ISSA. I thank you.

I thank our witnesses and our panel. This was an unusual hearing.

I also want to thank the concerned audience. And, again, this is an ongoing process. It won't be closed, at least during my tenure.

With that, we stand adjourned.

[Whereupon, at 12:02 p.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
RANKING MEMBER, ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
AVIATION
WATER RESOURCES AND ENVIRONMENT

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEES
HEALTH CARE, DISTRICT OF COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES
FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND LABOR POLICY
GOVERNMENT ORGANIZATION, EFFICIENCY AND FINANCIAL MANAGEMENT

Congress of the United States
House of Representatives
Washington, DC 20515–1501

Statement of Congresswoman Eleanor Holmes Norton
Oversight and Government Reform Committee
"Changes to The Heights Act: Shaping Washington, D.C., for the Future, Part II"
December 2, 2013

Thank you Chairman Issa for scheduling today's hearing as a follow-up to your hearing last year, the first hearing on the Height Act in memory. In my more than 20 years of service in Congress, neither business interests nor D.C. residents have approached me regarding changing the Height Act, but I supported Chairman Issa's call for a hearing on whether a 100-year-old law continues to serve the interests of both the federal government and the District government. The witnesses at that hearing, the National Capital Planning Commission (NCPC), the D.C. Office of Planning, the D.C. Chief Financial Officer, architect Roger Lewis, the D.C. Building Industry Association and the Committee of 100 on the Federal City, opened the issue, but the chairman wisely called on D.C. and NCPC to conduct a joint study of the Height Act, which I supported, with results that bring us here today. May I add how much I appreciate that this hearing reflects the chairman's pattern of unfailing support not only for the city's ongoing needs, including, most recently, his strong assistance in keeping the D.C. government open throughout the entire fiscal year after the federal government shut down, and the Chief Financial Officer vacancy and salary bills he quickly got through committee and to the floor. I also appreciate the chairman's energetic and innovative work for budget autonomy, and his strong support on many occasions for home rule, which he has raised as a factor in connection with the Height Act.

As the Height Act study unfolded in community meetings and hearings over the past year, it became clear that many D.C. residents fear the loss of the unique horizontal scale that is part of the city's home town identity, and that there are differing views on whether or how it should be changed. In fact, the D.C. government itself appears divided. Twelve of the 13 members of the D.C. Council cosponsored a resolution calling for no changes to the Height Act "at this time," while the Mayor has recommended several changes to the Act.

It is not surprising that the Height Act stirs passions and divisions. The Height Act implicates many important issues: home rule, D.C.'s status as the nation's capital, economic development, city planning, affordable housing, architecture, and historic preservation, among many others. The District Office of Planning argues that changes may be necessary to accommodate projected population and job growth and to reduce the cost of housing in the future, and that the historic nature of the city can still be preserved. Opponents of changes argue just the opposite. They say that there is sufficient capacity in D.C. to accommodate projected population and job growth, that changes would increase the cost of housing, that changes would slow the spread of economic development across the city to areas that need development, and that changes would destroy the historic character of the city. At bottom, the issue raised by the

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study the chairman requested unavoidably is, if changes ever prove necessary, who should make changes to the Height Act affecting home town D.C.: the D.C. government or the federal government, and under what circumstances.

Every year, the underlying development issues have been part of my work in the Congress. I spend considerable time both fending off attacks on home rule and proposing its expansion with full local democracy, full congressional voting rights, budget autonomy and statehood, which have been and will continue to be overriding concerns. Yet, like any member of Congress, one of my principal jobs also has been to bring jobs and economic development to my district. In my role as the chair of the Economic Development Subcommittee, I took great interest in land development to bring affordable housing and jobs to the city. Much of the District's development depends upon the federal government either because it owns a significant percentage of land throughout the city or because the location of federal agencies in neighborhoods almost always stimulates the mixed-use development that residents desire. My bills and other committee work have created new neighborhoods, all away from downtown, in NoMa, at the Capitol Riverfront, on the Southwest Waterfront and in Ward 8, where the new Department of Homeland Security complex of buildings is rejuvenating Martin Luther King Jr. Avenue. Naturally, I am interested in whether the spreading of development away from downtown would be helped or hampered if space for federal or private offices were allowed in taller buildings.

When it comes to the Height Act, I wear two hats. As a federal official, I have an obligation to protect monumental Washington as a national symbol, as well as the values residents have come to associate over time with the scale of city life imposed by the Height Act. At the same time, as the congressional representative for the District, I have spent my career fighting for the District to have the right to make its own decisions, as every other local government in America does. I have not regarded the two obligations as irreconcilable.

The differences between today's two witnesses, one federal and one local, should not be allowed to mask internal differences within the District that the city should confront. I have not had the opportunity to speak personally with Mayor Gray to hear his views, but D.C. Council Chairman Phil Mendelson called me, and in that conversation, I learned more about his concerns and perhaps the concerns of some other members of the Council. Unlike any other issue I have encountered while serving in the House, the concern seems not to be with the Congress but with the District itself. There is fear that economic forces, pulled perhaps by business interests, would lead to undesirably tall buildings. The implicit argument is that federal authority is necessary to protect the District against itself. Although in my own congressional work on development here, no developer has ever approached me about the Height Act, there is some evidence from a 1990 Council bill. Of only three congressional disapproval resolutions overturning D.C. legislation since the 1973 Home Rule Act, one involved the Height Act. In that case, the Council was convinced by a developer that buildings adjacent to public buildings could exceed the overall limits set forth in the Height Act because the Height Act permitted the District Commissioners to set a Schedule of Heights for buildings next to public buildings. Congress, along with the Government Accountability Office and the Justice Department, disagreed, and the legislation was disapproved. If the city had authority on its own to change the Height Act in home town D.C., such changes might come to Congress for a layover period, but there might be no violation

of the federal interest to justify congressional intervention. Surely there is a better solution than coming to Congress to request that Congress violate a home-rule decision or having a D.C. Height Act with too little defense against local interpretations and exceptions with results that opponents fear.

Considering the strong views of District residents on home rule, and, candidly, the risk to home rule posed by internal disagreement, I believe that elected officials have an obligation to avoid home-rule division if at all possible. Are the differences between the NCPC and the D.C. Office of Planning so far apart that they cannot be reconciled? Even the D.C. Office of Planning position would not free the District from the existing multilayered federal and District planning processes. Are there changes in the Comprehensive Plan process, zoning process, or local legislation that would give residents a meaningful opportunity to deter or stop risky changes in the District by the District? If changes by Congress to the Height Act are contemplated, should they be contingent on changes in the Comprehensive Plan process, zoning processes, local legislation or other changes as well? Can discussions between the Council and Mayor reconcile their differences between the two positions we will hear today?

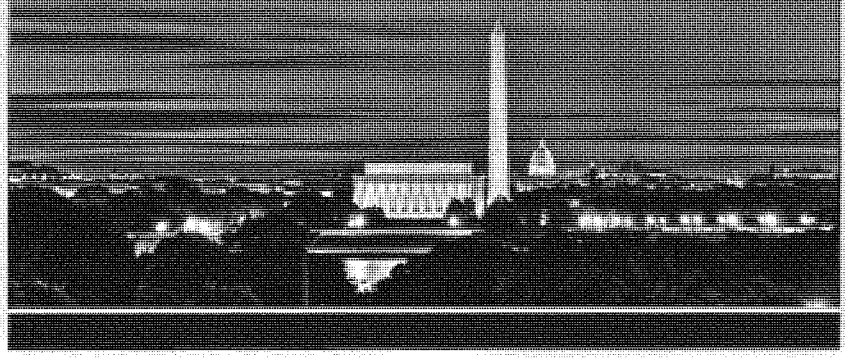
I hope that the city confronts the issue before us consistent with its position for two centuries that the District, not Congress, must make its own decisions. I appreciate the intensive work of today's very knowledgeable witnesses and look forward to hearing from them and to learning more from their study about the Height Act, whether changes are necessary and, if so, the best way to see that they occur.

THE HEIGHT MASTER PLAN *for* WASHINGTON, DC

Executive Summary

The National Capital's response to the joint
Height Master Plan for Washington, DC
as requested by the U.S. House Committee
on Oversight and Government Reform

Prepared by the
National Capital Planning Commission
November 28, 2013



EXECUTIVE SUMMARY

It has been a privilege for the National Capital Planning Commission (NCPC) to jointly lead the Height Master Plan (Height Plan or Height Study), which explores the future of one of the most significant contributors to the form and character of our nation's capital, the federal Height of Buildings Act (Height Act). The Plan, requested by the Honorable Darrell Issa, Chairman of the U.S. House Committee on Oversight and Government Reform, explores potential strategic changes to the Height Act that both protect national interests and meet important long-term goals for the District of Columbia. Chairman Issa requested a joint study between the NCPC, which includes both federal and District representatives, and the Mayor of the District of Columbia. The District Office of Planning (DCOP) led the effort on behalf of the District.

This year-long study reaffirmed the importance of the Height Act and revealed important findings:

- As the capital of the United States, Washington is a unique place with its own authentic character and identity. For more than a century, the Height Act has played a central role in shaping Washington's unmistakable and symbolic skyline. The Height Act also fosters an open, pedestrian scale that is enjoyed by residents of the District of Columbia, the nation's citizens, and the millions of visitors who come here annually. The form of the capital city is a national trust and a legacy for future generations.

- Washington, DC is one of the great planned capital cities of the world. Since its founding, the U.S. Congress has acted as the steward of the capital city's form, including on matters related to building height. Through the Height Act, Congress has ensured that the image and experience of the capital city reflects the preeminence of our democratic institutions, now and into the future. These actions fulfill the early planning vision for a magnificent capital city, as set forth by our nation's founding fathers.

- The visual modeling work conducted as part of the Height Study demonstrates potential for significant adverse impacts to national resources from increasing building heights, particularly within the L'Enfant City. The Height Act is tightly linked to form, character, and experience of the L'Enfant City, including the views and setting of the U.S. Capitol, the White House, the National Mall, the ceremonial streets and avenues, and many national parks and resources throughout this area. Mindful of the Committee's guidance to proceed carefully within the L'Enfant City,[1] NCPC strongly recommends no changes to the Height Act here.

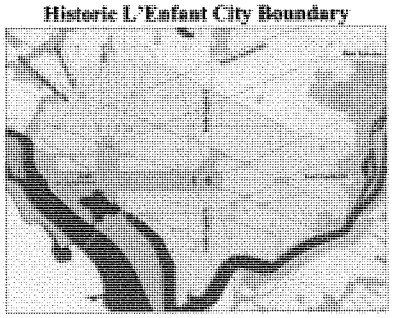


Image: District of Columbia Office of Planning

[1] See letter from Committee Chairman Darrell Issa, dated October 3, 2012 in Appendix A.

View from the steps of the U.S. Capitol showing the setting provided by the U.S. Capitol Grounds and the National Mall

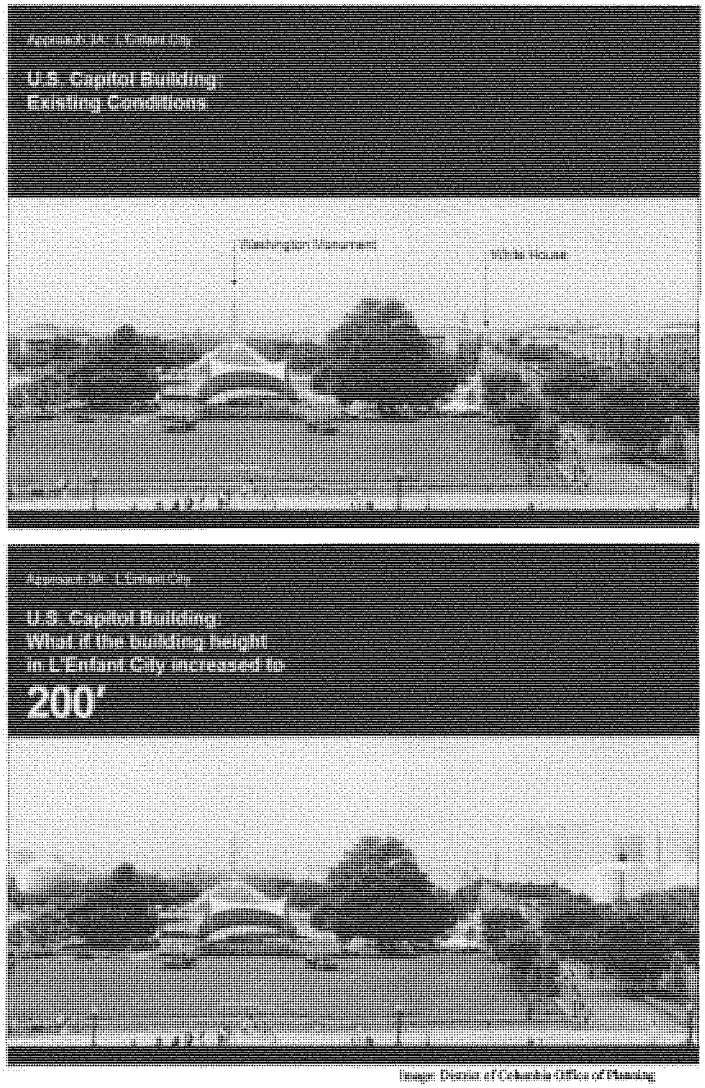


Image: District of Columbia Office of Planning

These 'before and after' images from the District's visual modeling study illustrate the impact of increased building heights on panoramic, skyline and street-level views. The modeling demonstrates potential for significant adverse impacts to national resources, particularly within the L'Enfant City.

View South on North Capitol Street to the U.S. Capitol

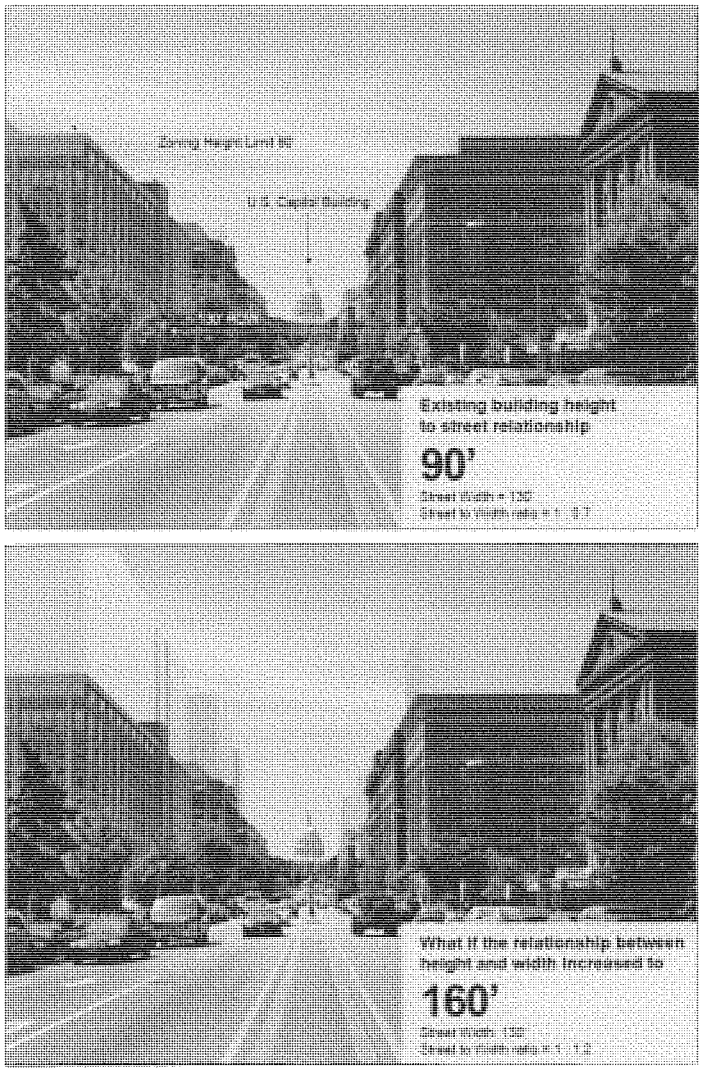
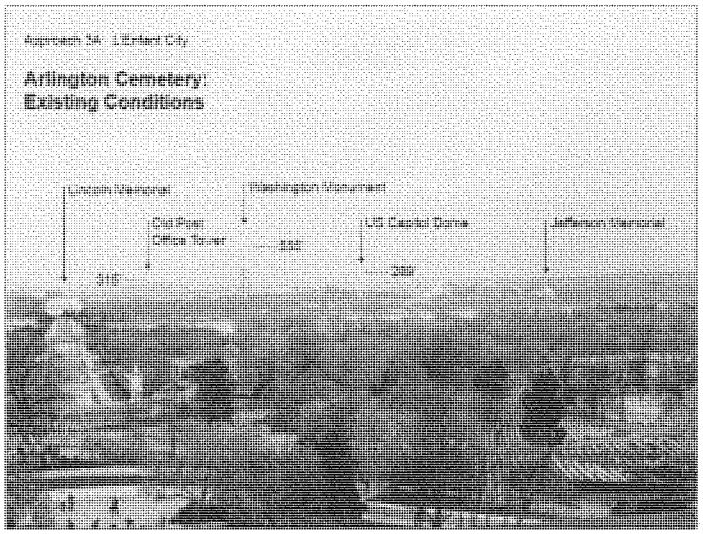


Image: District of Columbia Office of Planning

The District's visual modeling study shows that even increasing building heights to 160' under the ratio proposal begins to diminish the presence of the U.S. Capitol dome.

View Southeast from Arlington National Cemetery



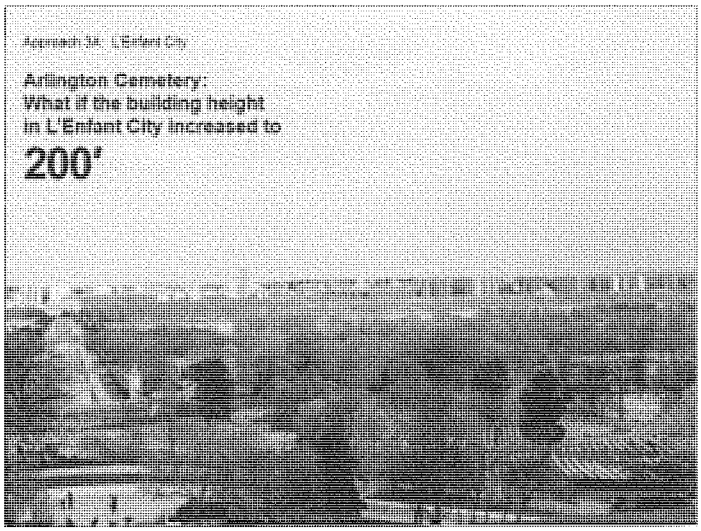


Image: District of Columbia Office of Planning

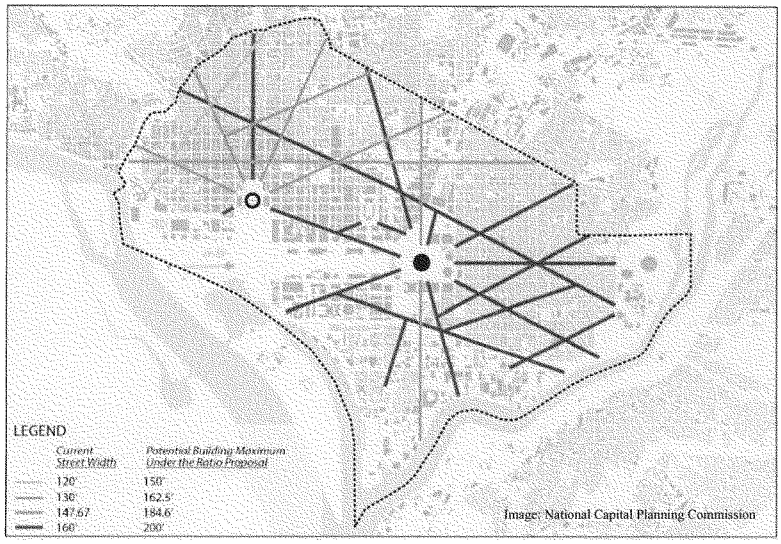
Unobstructed panoramic views of nationally significant structures and symbols is a defining feature of Washington's internationally recognized skyline.

The District, however, targets specific streets and avenues within the L'Enfant City for increased height. Two central reasons NCPC does not support the District's recommendation to implement a ratio proposal within the L'Enfant City are:

1. First, the District's ratio proposal would allow greater height precisely where it is least appropriate, primarily on streets framing views of the U.S. Capitol and the White House. Buildings along these avenues should be scaled in deference to these symbolic structures.

   Other streets targeted for increased height under this recommendation are located in the Capitol Hill historic residential neighborhood. The visual modeling studies show potential for adverse impacts to these views and settings under the ratio proposal, which replaces a predictable regulatory framework with a new approach in some of the most nationally significant parts of the city.

District's Ratio Approach:
Impacted Streets within the Historic L'Enfant City



A map of the streets where building maximums would increase under the Ratio Proposal within the L'Enfant City. Many of these terminate on the U.S. Capitol and White House or are located in the Capitol Hill historic neighborhood.

2. Second, the District's own analysis shows that most of the city's current capacity to grow is primarily located *outside of* the L'Enfant City. However – unlike its street-specific recommendation within the L'Enfant City - the District is *not* proposing any geographically specific or targeted locations where increased building height would be appropriate outside of the L'Enfant City. As a general principle, the L'Enfant City should not be the first place identified to accommodate future growth through height changes.

- Although many federal interests and national resources are concentrated within the L'Enfant City, there are numerous federal interests outside of the L'Enfant City. Several examples include federal headquarters and facilities, such as Saint Elizabeths; diplomatic areas such as the International Chancery Center; and national parks, such as the Civil War Defenses of Washington and Rock Creek Park. Although these federal resources tend to be less concentrated, they must be protected now and in the future.

- Upholding the Height Act and meeting the District's goals for growth are not mutually exclusive. Today, the District has development capacity throughout the city within the limits of the Height Act. In other words, local municipal zoning is often more restrictive than the limits under the Height Act and the District has room to grow within the current federal limits.

- Over the long-term, the Commission believes that there may be opportunities for strategic changes to the Height Act in areas outside of the L'Enfant City where there is less concentration of federal interests. However, the Commission recommends detailed, and joint planning work through the *Comprehensive Plan for the National Capital* prior to proposing any changes to the law. By contrast, the District recommends amending the law today to allow for a process where targeted areas are identified and authorized to exceed the limits under the Height Act outside the L'Enfant City through the *Comprehensive Plan*.

NCPC's recommendation responds to overwhelming public feedback in favor of completing the comprehensive planning prior to considering any amendments to the Height Act in the areas outside of the L'Enfant City. According to public testimony and comments from federal stakeholders, three commonly cited reasons for additional study include:

1. The public viewed the Height Plan as a starting point of future work, and encouraged continued study, public engagement, and the need to thoughtfully tie any alterations in building heights to a fully-vetted future growth strategy.

2. The capacity information and growth forecasts included in the District's Height report have not yet been incorporated into established, city-wide planning guidance, including the District Elements of the *Comprehensive Plan*. The established vetting process associated with an update to the District Elements weighs specific proposals for growth with neighborhood-level implications. Many residents argued that the *Comprehensive Plan* should be updated prior to considering amendments to the Height Act outside of the L'Enfant City.

3. From a federal interest perspective, the current Federal Elements of the *Comprehensive Plan* should also be updated prior to an amendment to the Height Act in the areas outside of the L'Enfant City. The policies in the current Federal Elements do not include specific protections for federal resources that anticipate a change to the Height Act in the areas outside of the L'Enfant City. A future update to the Federal Elements should more clearly protect federal interests on matters related to height.

- NCPC consulted with 17 federal agencies to identify how and whether amending the Height Act would impact federal interests, including mission and operations. A full description of their feedback is located in Part 1 of this report. First, it was generally noted from a federal operational and mission perspective, the Height Act continues to meet the essential interests and needs of the federal government. For example, there is no specific federal interest in raising heights to meet future federal space needs. Like the private market, the federal government's demand for office space is cyclical, and will be affected in the future by changing technology, workplace practices (such as telework and hoteling[2]) and mission needs. In the short term, agencies aim to use existing federal assets more effectively to meet future needs.[3] It was also noted that any uniform increases in the height of buildings near most federal agencies may result in costs associated with new security evaluations, such as assessments of new lines of sight to and from federal facilities.

- To support more active uses of penthouses, NCPC is recommending amendments related to human occupancy.

- To ensure that the Height Act is current with modern building regulation, NCPC provides comments and recommendations about specific antiquated provisions related to fire safety.

Final Recommendations

1. To protect the integrity of the form and character of the nation's capital, the federal Height Act should remain in place and no changes should be made to the formula or approach for calculating allowable building height.

2. There may be some opportunities for strategic change in the areas outside of the L'Enfant City where there is less concentration of federal interests. However, additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.

3. The city's most significant viewsheds, to include without limitation, those to and from the U.S. Capitol and the White House, should be further evaluated and federal and local protections established, which include policies in the Federal and District Elements of the Comprehensive Plan.

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[2] Hoteling is a management practice of providing office space to employees on an as-needed rather than on the traditional, constantly reserved basis. The goal is to reduce the amount of space required by an organization and to ensure that employees can access office resources and technology when necessary.

[3] For more information, see Section 3 of the Office of Management and Budget Memorandum (OMB) M-12-12, Promoting Efficient Spending to Support Agency Operations, "Freeze the Footprint" policies.

4. Amend the Height Act to allow for human occupancy in existing and future penthouses, with the following restrictions:

    - Include specific protections related to sightlines for select federal buildings including but not limited to, the U.S. Capitol and White House.

    - Support communal recreation space on rooftops by allowing human occupancy in roof structures, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as the facade of these structures continue to be set back from exterior building walls at a 1:1 ratio.

    - Impose an absolute 20 foot maximum height and a limitation of one story for penthouse structures above the level of the roof, which must contain within all mechanical equipment and elevator, stair and other enclosures, with no additional construction allowed above the penthouse roof for any purpose.

5. Delete Sections 2-4 of the Height Act, as contained at 36 Stat 452, chap 263, sec 2-4 (1910), which solely relate to fireproof construction. These proposed deletions are antiquated fire and safety requirements that have been updated and incorporated into modern day codes by the District of Columbia.

National Capital Planning Commission

Commission Action

November 19, 2013

PROJECT
Height Master Plan
Washington, DC

SUBMITTED BY
Staff of the National Capital Planning Commission

NCPC FILE NUMBER
6886

NCPC MAP FILE NUMBER
N/A

APPLICANT'S REQUEST
Authorization to transmit final recommendations to the U.S. House Committee on Oversight and Government Reform

REVIEW AUTHORITY
40 U.S.C. § 8711(a)

The Commission:

Authorized transmittal of the following final recommendations and accompanying report to the U.S. House Committee on Oversight and Government Reform:

1. To protect the integrity of the form and character of the nation's capital, the federal Height Act should remain in place and no changes should be made to the formula or approach for calculating allowable building height.

2. There may be some opportunities for strategic change in the areas outside of the L'Enfant City where there is less concentration of federal interests. However, additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.

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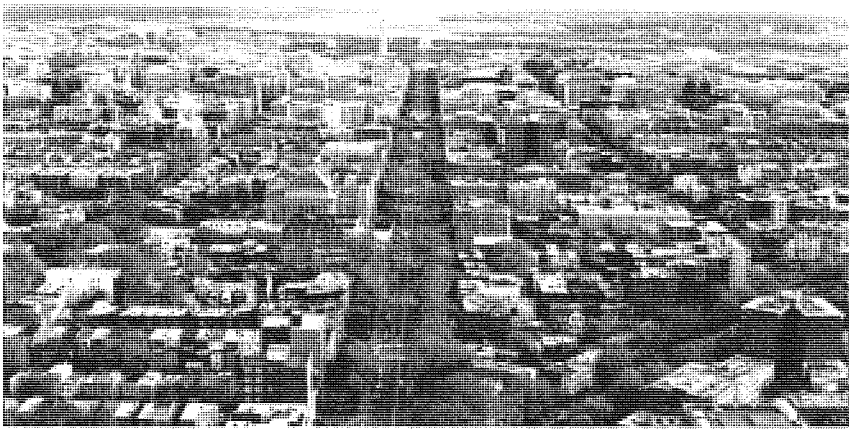
Deborah B. Young 11/20/13
Deborah B. Young [Date]
Secretary to the National Capital Planning Commission



Government of the District of Columbia

Height Master Plan for the District of Columbia

FINAL EVALUATION & RECOMMENDATIONS

November 20, 2013

District of Columbia
Office of Planning

DC
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ONE
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I. Overview

Washington, DC, recognized around the world as this nation's capital and as a monumental city of great beauty, is also a city that must provide services to over 630,000 residents as well as to hundreds of thousands of workers and visitors every day. These services run the gamut from those typically provided by municipal governments like police and fire safety, to those normally funded by counties or states such as public schools, transit and housing finance. The District has to fund all of these responsibilities from a tax base that excludes half of the District's land and is thus inordinately reliant on a small base of locally-generated property, income and sales taxes. This means that to maintain fiscal stability the District must attract and retain many of the middle class residents that fled the city in the previous four decades, while also diversifying our economy and increasing jobs for District residents. For more than one hundred years, the District has endeavored to achieve these goals under federal building height restrictions that apply citywide. For much of the first 100 years, these height limitations gave this city its unique horizontal character giving particular prominence to nationally significant monuments and structures and that reinforced the urban design principles of the L'Enfant Plan. However, over the next 100 years, the District is and will continue to face growing demand for space and services that are increasingly constrained under the current federal height limits.

The District of Columbia partnered with the National Capital Planning Commission (NCPC) between fall 2012 and November 2013 on a joint Height Master Plan requested by Congress to determine the extent to which the federal Height of Buildings Act of 1910 (The Height Act) continues to serve both the federal and District government interests. The Height Act is a federal law which provides uniform restrictions on the height of all buildings within the District of Columbia boundaries.

The District has looked carefully at a range of alternative approaches to adding height and modeled the results from several perspectives using over 250 different views of the city—including panoramic, aerial, and street level views—in various locations inside and outside the L'Enfant City, as well as from vantages across the Potomac. We have examined the ability of the city to accommodate continued population and employment growth at a range of growth rates under existing conditions, including the current Height Act limits, and with changes to zoning and the District's Comprehensive Plan.

Finally, we have analyzed the alternative approaches to managing height and the capacity they create to accommodate growth if the Height Act were amended.

We examined the processes in place that will allow the federal interest to continue to be protected if Congress were to enact modifications to the Height Act, including the Comprehensive Plan revisions that need to be submitted to Congress for approval and the eventual zoning changes that need to be approved by a Zoning Commission where 2 of 5 members are federally appointed.

The District concludes that the federal Height of Buildings Act can and should be reasonably modified to strike a balance between accommodating future growth and protecting significant national monuments and memorials. These modifications would give the District more autonomy to set different building height maximums through a collaborative future Comprehensive Plan process with NCPC, local citizens and the Council of the District of Columbia in limited areas in the city. This approach shifts more decision-making to local control—especially in areas where the federal interest is less significant—in order to accommodate future population growth while at the same time protecting prominent national monuments, memorials, and the unique character of local neighborhoods. Doing so will ensure a more prosperous, diverse, and vibrant District of Columbia, where District residents enjoy a diversified, stronger and more resilient economy, and the District's social and economic diversity is protected. The alternative—of retaining unchanged a century-old law that artificially constrains the city's ability to accommodate growth—will place the District on the path of becoming a city comprised primarily of national monuments and civic structures, surrounded by exclusive neighborhoods affordable only to the very few.

The District recommends retaining the Federal height limits outside the L'Enfant City unless and until the city amends the District Elements of its Comprehensive Plan to allow heights above 130 feet or otherwise above the current federal limits; that Comprehensive Plan is approved by the Council of the District of Columbia; the NCPC approves those amendments; and after submittal to Congress, that Comprehensive Plan is approved by Congress. The District also recommends allowing some streets within the L'Enfant City to have additional height in a manner that retains the characteristic relationship between street width and building height, ensuring light, air and a human-scaled city, but uncapped by 19th century fire safety constraints. The District's Comprehensive Plan and zoning processes guarantee both extensive public input and

the protection of federal interests—through the federal government's integral role in the District's Comprehensive Plan approval process and its significant presence on the District's Zoning Commission. These recommendations are accompanied by an additional proposal to create viewshed protection around the U.S. Capitol, White House and the Washington Monument as part of the Comprehensive Plan amendment process. In addition, we propose that any human occupation of penthouses be permitted with a maximum height of 20 feet, while enclosing mechanical penthouses in the top floors.

This report details the District's rationale behind its final recommendations for reasonable modifications to the Height Act. The central issue the District's recommendations attempt to address is how changes to the federal Height Act can be accomplished in a way that allows the federal government and the District of Columbia to reap the economic, fiscal and social benefits of additional height while preserving the visual preeminence of the Capitol and other national monuments and protecting their views, minimizing impacts to nationally significant historic resources, and maintaining the horizontality of the skyline. The District believes that its recommendations would protect the dual federal interests of preserving the prominence of federal monuments and landmarks, as well as ensuring the economic stability and vitality of the Capital City.

II. BACKGROUND ON THE HEIGHT ACT

On September 11, 1789, Major Pierre Charles L'Enfant expressed his desire to be of service to President George Washington in planning the development of the young nation's capital city:

> *No nation perhaps had ever before the opportunity offered them of deliberately deciding on the spot where their Capital city should be fixed, or of combining every necessary consideration in the choice of situation - and altho' the means now within the power of the country are not such as to pursue the design to any great extent it will be obvious that the plan should be drawn on such a scale as to leave room for the aggrandisement and*

embellishment which the increase of the wealth of the Nation will permit it to pursue at any period however remote[1].

From the beginning, his great plan was conceived on a grand scale, and was influenced by the plans for Paris and Versailles. While concerned with the city in all its dimensions, he laid the city out with a hierarchy of streets including broad avenues that provided long vistas with monumental focal points. His foresight was so great that what was considered a matter of ridicule by his 19th century critics, particularly the remark by Charles Dickens about the "City of Magnificent Intentions" with its "broad avenues that begin in nothing and lead nowhere,"[2] has now become a testament to the enduring "comprehensive, intelligent, and yet simple and straight-forward scheme devised by L'Enfant."[3] L'Enfant Plan also established an urban design relationship between building height and street width, which later became the foundational principle for the limits set by the Height Act.

Congress passed the Height of Buildings Act in 1910 to respond to concerns from residents and others about the construction of the Cairo building, built in 1894 at 1615 Q Street, NW. The Cairo, a residential building, reached 164 feet, making it the tallest building in the city. Residents and others were alarmed about the effect of the building's height on light and air, as well as the ability of firefighting technology to respond to emergencies. Other cities also had or were putting height limits in place during the time the Height Act was passed, including St. Louis (150 feet), London (80 feet), and Chicago (130 feet). Congress initially passed a law in 1899 restricting heights in the city to the width of the street at the building front, while setting a maximum height of 90 feet on residential streets and 110 feet on commercial streets.

The Height of Buildings Act is a federal law that applies citywide and that sets uniform maximum building heights throughout the District. The Act establishes the principle of relating the height of buildings to the width of the adjacent street. Heights on residential streets are determined by the width of the street, up to 90 feet (approximately 7 to 8 stories). For commercial streets, heights are determined by the

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[1] H. Paul Caemmerer, *The Life of Pierre Charles L'Enfant, Planner of the City Beautiful, The City of Washington*. Washington: National Republic Publishing Company, 1950, pp. 128-129.

[2] Charles Dickens, *American Notes for General Circulation*, 1842.

[3] U.S. 57th Congress 1st Session, Senate Committee on the District of Columbia, Senate Report Number 166, *The Improvement of the Park System of the District of Columbia*. (3rd Edition) Washington: Government Printing Office, 1906, p. 24.

width of the street plus twenty feet, up to a maximum of 130 feet (approximately 10-11 stories), as illustrated in Figure 1. The law permits the north side of Pennsylvania Avenue, NW between the U.S. Capitol and the White House to rise as high as 160 feet (approximately 12-13 stories). The south side of the avenue houses mostly federal and landmarked buildings such as the Old Post Office.

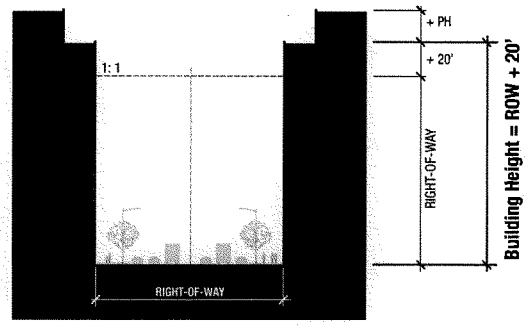


Figure 1: Height Act as Applied on Commercial Streets

III. HEIGHT MASTER PLAN OVERVIEW AND DISTRICT OF COLUMBIA PARTICIPATION

Since the enactment of the federal Height of Buildings Act of 1910, there have been only seven changes or exceptions to the law, and the Act has provided the District of Columbia with its generally uniform, low rise urban character. However, in recent years there has been consistent discussion about revisiting the law to allow greater building in various areas of the city.

Following a July 19, 2012 public hearing by the House of Representatives Committee on Oversight and Government Reform on "Changes to the Height Act: Shaping Washington, D.C., For the Future," Committee Chairman Darrell Issa and Congresswoman Eleanor Holmes Norton identified the need for a strategic study of building heights that would determine the extent to which the Height of Buildings Act of 1910 continues to serve both the federal and District government interests. Chairman

Issa sent a letter on October 3, 2012 to District of Columbia Mayor Vincent Gray and National Capital Planning Commission Chairman L. Preston Bryant formally requesting a joint proposal for the study. The District and NCPC submitted letters in November 2012 confirming their intention to conduct a joint Height Master Plan guided by the following principles:

- ensuring the prominence of federal landmarks and monuments by preserving their views and setting;
- maintaining the horizontality of the monumental city skyline; and
- minimizing the negative impacts to nationally significant historic resources, including the L'Enfant Plan.

Since then, the DC Office of Planning (OP) has led the District's efforts in partnership with NCPC on the study. The District contracted consultant services for two studies:

- An **Economic Feasibility Analysis** that looked at the effects or limitations of construction costs at various height-level alternatives and made some preliminary economic projections of the consequential effects of changes in building height at the same height alternatives; and
- The **District of Columbia Height Master Plan Modeling Study** that modeled existing and alternative building heights throughout the city and developed view analysis studies demonstrating the impact of these changes on the city's form, including its skyline, its most significant public spaces and streetscapes, and views to and from the city's most iconic structures such as the Washington Monument.

OP partnered with NCPC throughout the study to conduct a vigorous public engagement process, including co-hosting four Phase 1 public meetings in May and June 2013 to present an overview of the Height Master Plan, a discussion of the core study principles as well as federal and local interests, and case studies on how other cities have managed height. For Phase 2, OP and NCPC held a briefing to the Commission on the results of the economic feasibility analysis and the modeling study in July 2013 and hosted five public meetings to present the study results in August. OP and NCPC held a Phase 3 public information session in September to discuss NCPC's and the District's draft recommendations that were released that month. The District's draft recommendations and the consultant materials are also available on OP's website,

www.planning.dc.gov. OP provided materials from both of its consultant studies for the Height Master Plan website, www.ncpc.gov/heightstudy, including all public presentations, the final Economic Feasibility Analysis report and an index of all of the visualizations completed for the modeling study. Additionally, OP participated in facilitated discussions with key stakeholder groups, such as federal agencies, historic preservation organizations and private sector representatives. OP also testified at a DC Council Committee of the Whole public hearing on the District's draft recommendations on October 28, 2013 and participated in a special NCPC session to take public testimony on NCPC's and the District's draft recommendations on October 30th.

The Height Act is a federal law that can be modified only through congressional action. Any relaxation by Congress of the current Height Act restrictions would still require further review, public participation, and decisions by the District and federal governments about whether, when and where any changes to building heights would actually occur. The District would undertake amendments to its Comprehensive Plan and then initiate any zoning changes deemed appropriate through its normal processes, including substantial public input, to respond. It is worth noting that due to NCPC's review and approval authority over the District Element of the Comprehensive Plan and federal representation on the District's Zoning Commission, significant federal involvement in building height determinations through these processes will continue regardless of whether any changes are made to the Height Act.

IV. ECONOMIC FEASIBILITY ANALYSIS

The District of Columbia hired a consultant team led by Partners for Economic Solutions (PES) to conduct an Economic Feasibility Analysis that examined the feasibility of development at heights taller than currently allowed under the Height Act, factoring in the influence of construction costs, market demand and rents on development decisions. This analysis also identified the potential impacts of increased height on the District's economy. The study used in its analysis heights of 130 feet (the current maximum under the Height Act); 160 feet (currently allowed under the Act only on the north side of Pennsylvania Avenue, NW); 200 feet; and 250 feet. It should be noted that the PES report and the Modeling Study discussed later were conducted as

independent studies and not all of the height increments examined in these analyses are the same.

The study developed constructions cost estimates for new office and residential buildings at the four height increments and for the addition of one to four floors to existing office buildings. These cost estimates were incorporated into pro forma analyses to test the feasibility of development at heights in 15 illustrative submarkets throughout the District. The illustrative submarkets, which include areas such as 17th and K, NW, NoMa and Congress Heights, were selected based on criteria including high and medium density designation in the District's Comprehensive Plan Future Land Use Map, adjacency to transit and development opportunities. The pro forma analysis reflected whether market demand and rent in the illustrative submarkets could support the construction of higher-rise buildings. The analysis also assumed the buildings would fill the zoning envelope in order to maximize the value of building's Floor Area Ratio.

It is important to note that the Economic Feasibility Analysis walks us through the analysis any property owner would undertake in deciding whether to rebuild or add floors to a building if additional height were allowed. However, the Economic Feasibility Analysis examines the market's ability to support higher-rise development through a very short outlook of the next 5 to 10 years—notably, a period when capacity to continue to build still exists—while its fiscal impact calculations use only a 20-year period through 2040. Any potential changes to the federal Height Act are likely to have impacts well beyond a 5- or 20-year timeframe. The current Act is 100 years old, so the Height Master Plan considers how the Act will serve the District's needs and changes over the next 100 years. It is likely that submarkets in the District that currently do not support higher-rise development could experience market shifts over a 100-year timeframe such that new market support would likely emerge, although we expect that there will always be relative differences in demand among District submarkets albeit with different neighborhoods in relative ascendance.

A summary of the findings of the Economic Feasibility Analysis follow.

Development Feasibility Findings

Per square foot construction costs for new office and apartment buildings at 130, 160, 200 and 250 feet peak at 200 feet but begin to decrease at 250 feet due to cost efficiencies

that occur at taller heights. Beyond the cost of construction, other conditions need to be in place to make it financially attractive for a developer or property owner to be willing to tear down an existing building with tenants and build new and taller. These conditions include a substantial increase in rentable space due to taller height; the potential for higher rents; major leases expiring or the opportunity to attract a new anchor tenant; or the need for major investment into an obsolete building. There are also a number of constraints that affect new construction, such as the need to pre-lease a major portion of a new building to obtain financing and the inadequacies of existing transportation and utility infrastructure.

The study concluded that the illustrative areas studied vary in whether market rents and demand can support the construction of higher-rise office and apartment buildings at those locations (see Figures 2 and 3). Additionally, an illustrative submarket that can command the rents to support new construction may not have the demand over the next five years to support a building at taller heights.

Figure 2: Higher-rise Office Locations

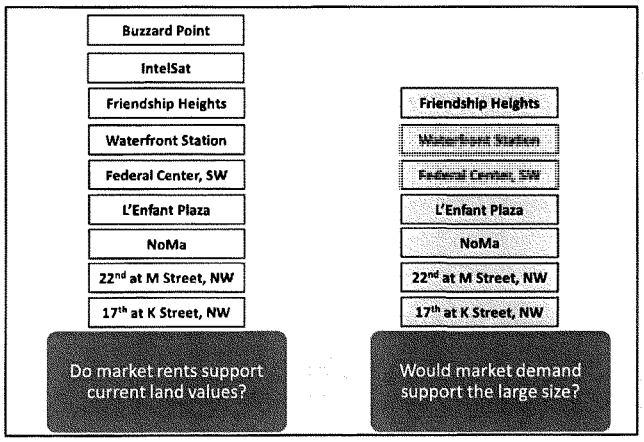
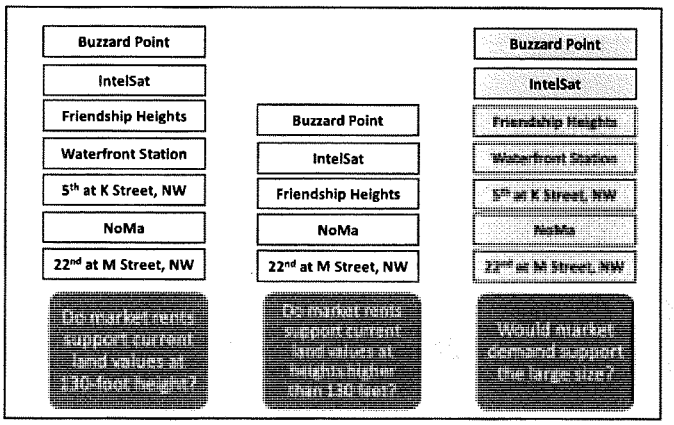


Figure 3: Higher-rise Apartment Locations



Vertical expansion for office use (the addition of two to three floors) is a more feasible option due to lower construction costs and the ability to redevelop without losing income-generating tenants. However, this option is most appropriate for the high demand Center City and Center City adjacent, Metro-accessible neighborhoods. Additionally, only existing buildings with at least 8 floors or more that were built prior to 2000 can support the load from additional floors.

Potential Economic Impacts

The Economic Feasibility Analysis concluded that having the flexibility to build taller than current height limits allow could strengthen the District's ability to compete in the regional market by targeting those heights to locations with high demand and Metro accessibility. Additionally, this flexibility to build taller would enable lower construction costs and more competitive designs such as taller ceiling heights and more windows and views. More competitive buildings could in turn attract more knowledge workers into the District as employees and residents, which would then support more retail. The analysis calculated a potential 1% to 2% increase in the District's capture rate of new regional office space (0.9 to 1.8 million SF) and 4,400 to 7,900 additional housing units over the next 20 years of development. During this period, capacity still otherwise exists in many of the submarkets to expand without additional height above 130 feet.

Additional capacity from added height need not be released to the market all at once, and could have negative economic impacts if that were to happen. The new developable capacity would increase property values and tax revenues if the capacity were released gradually. A flood of new capacity would depress the value of existing property, which would in turn put downward pressure on property tax revenues. One option to control the availability of new developable space is to decouple Floor Area Ratio (FAR) from height, so that FAR could increase at a smaller rate. Another option is for the District to auction the incremental FAR in order to capture that incremental value to fund infrastructure investments and affordable housing.

The Economic Feasibility Analysis developed a preliminary projection that from $62 million to $115 million in incremental annual tax revenues could be generated from property and sales taxes paid by workers and residents occupying new higher-rise office and apartment buildings developed over the twenty years. The range in preliminary tax revenue projections is based on the four height increments examined in the PES analysis. Note that this revenue projection applies only to the period before current capacity for growth is exhausted.

The Economic Feasibility Analysis concluded that increasing the maximum height cap could enhance the District's ability to attract more residents and capture more of the regional office market (with the associated jobs) if those increases were targeted to areas with high market demand. These areas would include Center City and other high demand, Metro-accessible Center City-adjacent locations where the rents are high enough to support the construction costs for higher-rise buildings.

In summary, the Economic Feasibility Analysis is intended to help us understand how private property owners and developers make decisions about expanding capacity. The report also illustrates that there will be a relative difference in parts of the city in terms of whether market rents would support the construction costs of taller buildings as well as whether demand would support increased capacity.

V. Height Master Plan Modeling Study

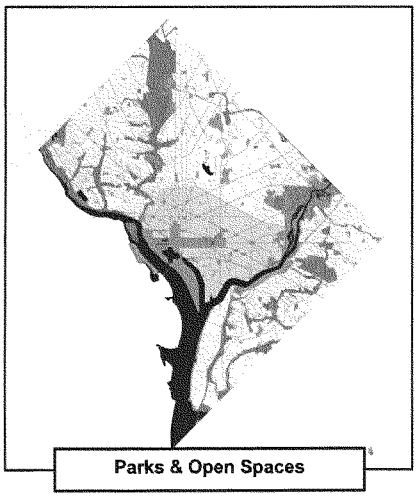
The Height Master Plan Modeling Study, conducted by OP's consultant team led by Skidmore, Owings and Merrill, are design studies of varying building heights to understand the impacts they could have on the District's character. The Modeling Study was guided by the three core principles of the Height Master Plan noted in

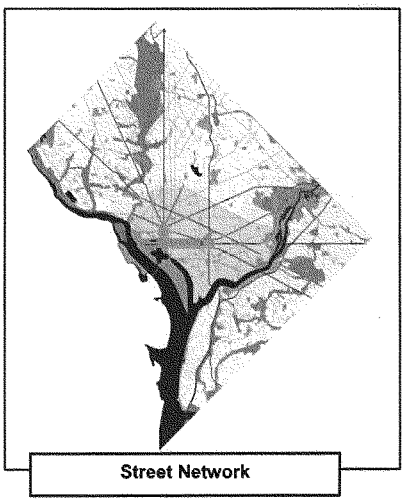
Section III. Over 250 images were produced that modeled the potential impacts of taller building heights on a variety of locations throughout the District. The Modeling Study does not include an analysis of infrastructure impacts of increased heights nor is it a zoning analysis. This study is primarily a visual massing study to illustrate how heights taller than currently allowed under the Height Act may appear in the District and what the potential visual impacts of that height could be. The Height Master Plan overall did not include an analysis of infrastructure. While such an analysis is beyond the scope of this study, OP and NCPC recognize that transportation and utility infrastructure is already seriously constrained and requires major investments to replace inadequate structures and expand capacity to address current and future needs.

A. Modeling Study Methodology

The Modeling Study used the following methodology in creating the visualizations of increased building heights. The study:

1. **Examined existing conditions in the city**, such as parks and open spaces and the street network: a series of maps showed these conditions;





2. **Defined areas to be modeled with increased height and those areas to be excluded from the modeling**: OP and NCPC worked with the consultant team to first identify which areas of the District should not be modeled with taller heights, due to their significance and important role in the city's character. These excluded areas included: all federal properties, all historic landmarks and sites; low density areas in historic districts; all remaining low density areas, including residential neighborhoods; institutional sites and public facilities. Those areas are illustrated in the Figure 4 map below. The project team determined that sites already designated as high and medium density (both commercial and residential) were most appropriate for the purposes of this study to model increased building heights because those areas had already been identified for targeting growth in the future through the District's prior Comprehensive Plan processes (see Figure 5);

Figure 4: Areas Excluded from the Modeling Study (*in red*)

Figure 5: Areas Included in the Modeling Study (*in red*)

High and Medium Density Areas on the Comprehensive Plan Future Land Map

3. **Updated the Citywide GIS 3D Database**: The existing database dated to 2005 and has been updated to reflect new construction and significant changes to buildings since then. While the Modeling Study used a selection of study areas for the visualizations, 3D building data was updated for the entire city in order to add it to the central repository of spatial data for the District of Columbia and make it available for future efforts;

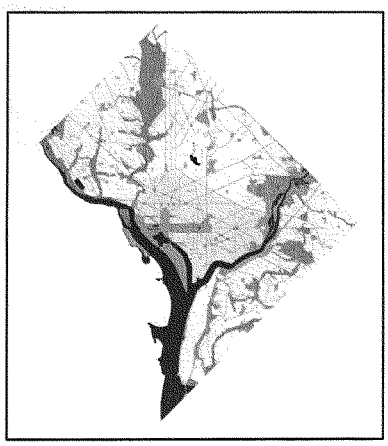
4. **Developed a photographic database of the study locations**, including aerial, skyline and street-level views;

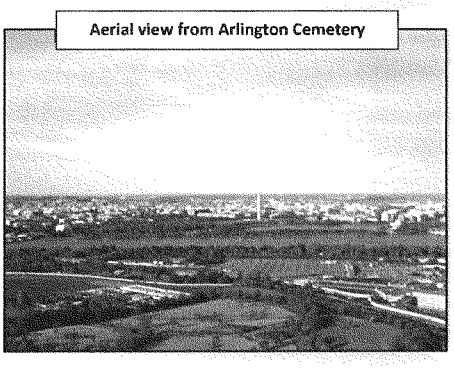
5. **Modeled various height increments**: Each modeled view used four height increments—130 feet (the existing limit under the current law); 160 feet; 180 feet; and a maximum 200 feet for study areas within the L'Enfant City and 225 feet for areas outside the L'Enfant City (including the Topographic Bowl and those Illustrative sites not within the L'Enfant City); and

6. **Considered the visual impacts of increased building height on the city's built form with respect to the core principles**: The Office of Planning presented the results of the Modeling Study at five Phase 2 public meetings and facilitated stakeholder discussions co-hosted with NCPC and posted the presentation and a collection of all modeled images on the Height Master Plan website. A key question asked of the project team and the public was whether the modeled images and the approaches to managing height they illustrate met the goals of the core principles.

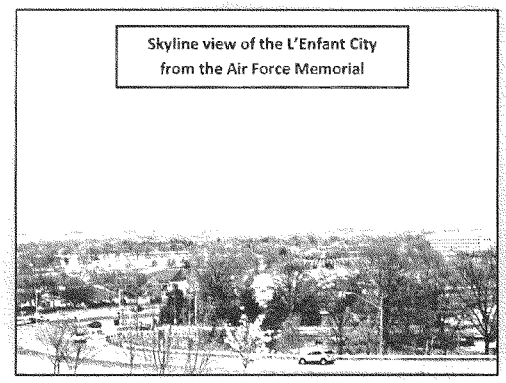
The Modeling Study modeled taller heights at study locations using three perspectives or views:

- Panoramic or aerial views that provided the larger context of height and the design of the city. Aerial photos were taken of views from iconic vantage points with open public access as well as gateways and corridors, all with views into the L'Enfant City;



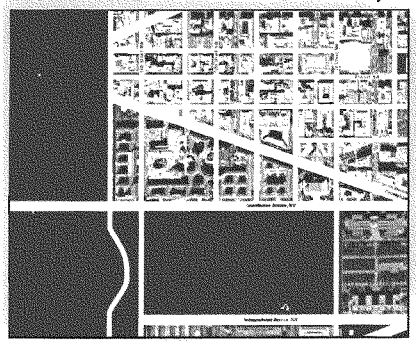


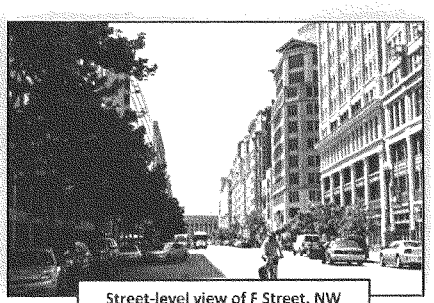
- Skyline studies that illustrate the potential impacts of increased height on the city's skyline character. These studies also used iconic vantage points with open public access; and



Skyline view of the L'Enfant City from the Air Force Memorial

- Street-level corridor studies to illustrated impacts on the pedestrian experience and public spaces. The Modeling Study used a selection of major streets and avenues within the L'Enfant City.



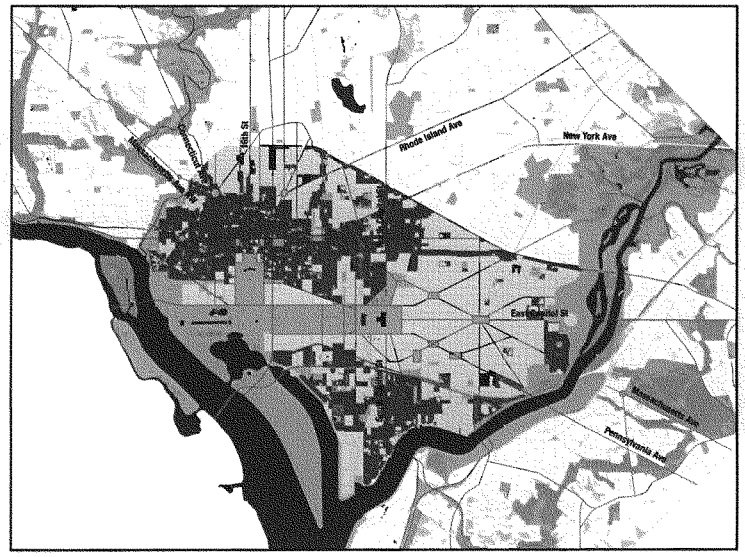


Street-level view of F Street, NW

Aerial and skyline views were used to model taller height increments in three geographic categories:

- The L'Enfant City (see Figure 6);
- The Topographic Bowl—the area beyond Florida Avenue and along the edges of the escarpment which reflect steep grade change beyond the L'Enfant City (see Figure 7); and
- Fourteen illustrative sites across the District that were selected based on criteria such as designation as high and medium density in the District's Comprehensive Plan Future Land Use Map; adjacency to transit; and the existence of development opportunities (see Figure 8).

Figure 6: Map of Modeled Areas within the L'Enfant City



The study locations for the skyline and aerial views were selected in particular to illustrate the impact of increased heights on the prominence of the U.S. Capitol Building, Washington Monument and other nationally-significant structures.

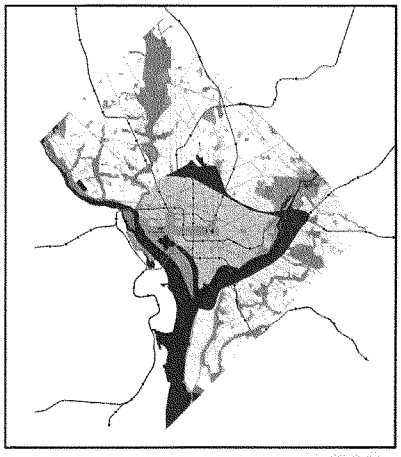


Figure 7: Modeled Areas within the Topographic Bowl

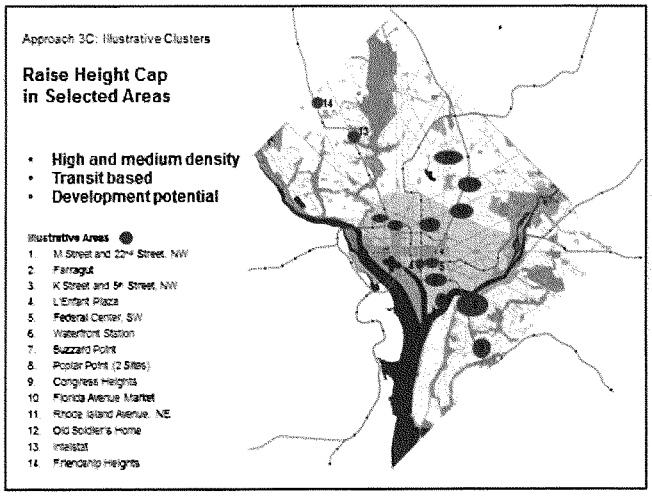


Figure 8: Illustrative Areas

B. Summary of Approaches to Manage Height

The Modeling Study presents four broad approaches to how height can be managed in them District. These approaches grew out of the modeling work conducted by the consultant team, the Office of Planning and NCPC and were developed collaboratively as options to present to the public for feedback during Phase 2 of the Height Master Plan. A summary of the four approaches follows:

Approach 1—Make no changes to the Height Act: This approach would maintain the existing height limits in the current Act. This approach includes two variations. Approach 1A notes there are areas within the District that are not currently built out to the 90-ft or 130-ft maximum due to zoning setting lower height caps. South Capitol Street is one example where zoning limits the height to 90 feet, although 130 feet is permitted under the Height Act. Figure 9 shows the view from South Capitol Street looking north to the Capitol Building with modeled buildings built out to the 130 foot limit currently allowed under the Act.

Figure 9: Approach 1A: View of South Capitol Street Built Out to 130 feet

The second variation, Approach 1B, would allow occupancy of the mechanical penthouse space permitted on top of buildings. Penthouses currently can rise to 18.5 feet above the maximum height and is not counted towards the height limit (see Figure 1). With this variation, existing 1 to 1 setbacks could be maintained (but little additional space gained) or the setbacks eliminated and the penthouse space expanded to the

building face. This would result in a new height of 148.5 feet, as illustrated on K Street, NW (see Figure 10).

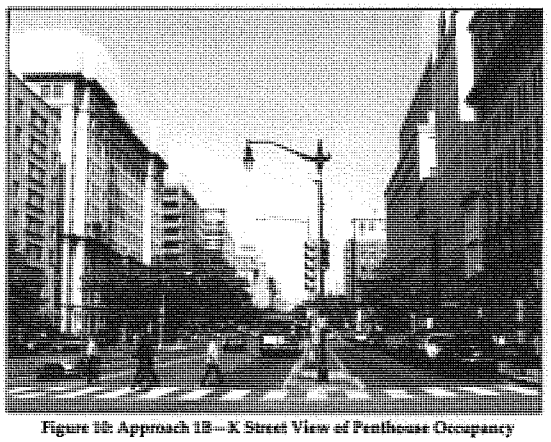


Figure 10: Approach 1B—K Street View of Penthouse Occupancy with No Setback

Approach 2—Reinforce the relationship between building height and street width: Approach 2 would replace the standard height cap of 130 feet for commercial streets and 90 feet for residential streets with a variable cap determined by the width of the individual street. The Height Act mandates a 1 to 1 ratio between street width and building height for residential streets to a maximum of 90 feet, and a 1 to 1 ratio plus 20 feet for commercial streets, up to 130 feet. Approach 2 would instead create an urban design-based standard reflecting the proportionality between individual streets and their buildings, maintaining a pedestrian-scaled streetscape without the limitations of late 19th century firefighting technology. The avenues would house the tallest buildings, as those streets are the widest, in keeping with the spirit of the hierarchy of streets and relative building heights in the L'Enfant Plan and as reflected in the Height Act. Streets within the L'Enfant City, for example, vary in width. Many are 80 to 110-feet wide. Most of the avenues are 120-, 130- or 160-feet wide. Heights also can vary because the District's zoning often sets lower limits than what is permitted under the Height Act. The Modeling Study illustrated some examples of current street width to building height ratios. These include 14th Street, NW at New York Avenue, which is a

110-ft wide street with 130-ft tall buildings, resulting in a current ratio of 1 to 1.2 (see Figure 11).

Figure 11: New York Avenue, NW— existing 1: 1.2 ratio

The north side of Pennsylvania Avenue, NW between 3rd and 15th Streets is 160-feet wide and is permitted under the Height Act to have heights up to 160 feet. If Approach 2 is applied to this portion of Pennsylvania Avenue using a ratio of 1: 1:25, the building height could go up to 200 feet due to the 160-foot street width (see Figure 12).

Figure 12: Approach 2— View of Pennsylvania Avenue, NW with 200-foot Building (1: 1.25 ratio)

Approach 3—Raise heights only in selected areas: Approach 3 would apply any increased height to targeted areas, as opposed to the current citywide Height Act applicability. Approach 3 has three variations for how to target height:

3A: Raise height only in the L'Enfant City: Approach 3A would raise building height only within the boundaries of the L'Enfant City. This approach was modeled at 130 feet, 160 feet, 180 feet and 200 feet as the maximum (see Figure 13).

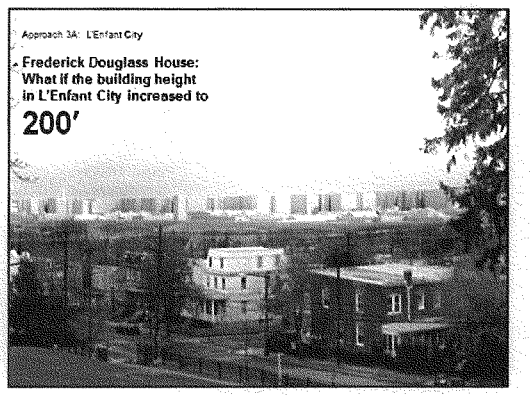


Figure 13: Approach 3A—Raise Height Only Inside the L'Enfant City

3B: Raise height only in the Topographic Bowl: Approach 3B would raise building height only in the Topographic Bowl, the area generally beyond Florida Avenue and along the edges of the escarpment which reflects the steep change in grade outside of the L'Enfant City (see Figure 7 map). This approach was modeled at 130, 160, 180, and 225 feet. The maximum height is taller than in the L'Enfant City based on the assumption that areas outside of the L'Enfant City may be able to accommodate taller heights. Figure 14 shows how this approach would look on Maryland Avenue, NE.

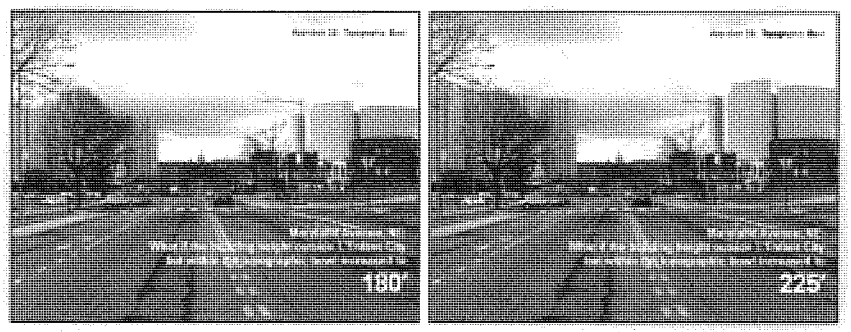


Figure 14: Approach 3B—Raise Height Only within the Topographic Bowl

3C: Raise height only in illustrative areas: This approach would target height to selected sites or clusters where future growth may be more appropriate. As noted earlier, for the purposes of this study, the selected illustrative sites (listed in Figure 8) are examples of sites already designated as high or medium density on the Comprehensive Plan Future Land Use Map, have close adjacency to transit and/or offer development opportunities. This approach was modeled at 130, 160, 180, and a maximum 200 feet for illustrative areas inside the L'Enfant City and 225 feet for those outside the L'Enfant City (see Figure 15). This clustered approach is used in cities such as London today.

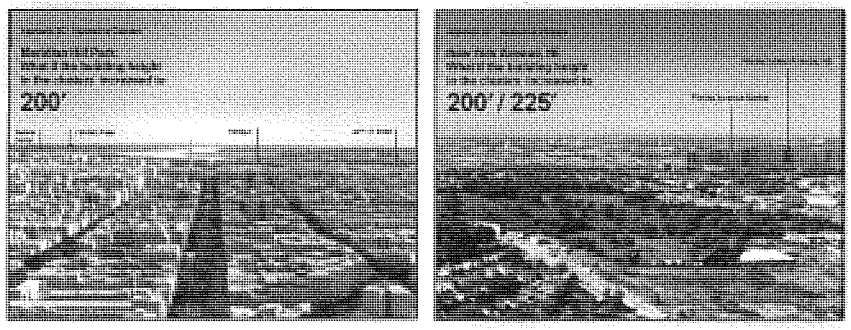


Figure 15: Approach 3C—Raise Heights Only in Illustrative Areas

Approach 4: Raise uniform height citywide: Approach 4 most closely follows the model of the current Height Act with its citywide applicability, but would set a new height limit. If this approach is used, the heights under consideration in the study were 130, 160, 180, a maximum 200 feet inside the L'Enfant City and 225 feet outside the L'Enfant City. Figure 16 below with a view from the Jefferson Memorial illustrates a height of 200 feet for buildings inside the L'Enfant City.

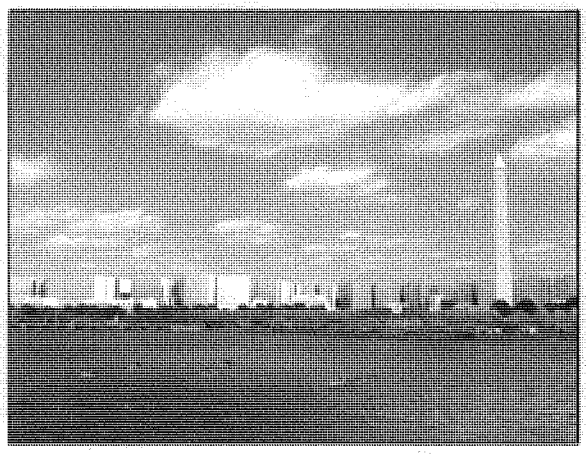


Figure 16: Approach 4: Raise Uniform Height Citywide

Viewshed Protection: All of the Modeling Study approaches incorporate the need to implement some type of viewshed protection to preserve views to nationally significant structures such as the White House, the Washington Monument, and the U.S. Capitol (see Figure 17). Some models identify cases where a viewshed approach would need to be applied. Figure 18 illustrates how views to the White House would be impacted if the Illustrative Areas in L'Enfant City were allowed to raise to 200 feet. Carving out specific view corridors for protection and stepping back buildings closest to a view corridor are two ways to protect significant viewsheds. London combines a clustering approach to manage heights with a defined protected view corridor of St. Paul's Cathedral that prevents taller heights from impeding into the view corridor.

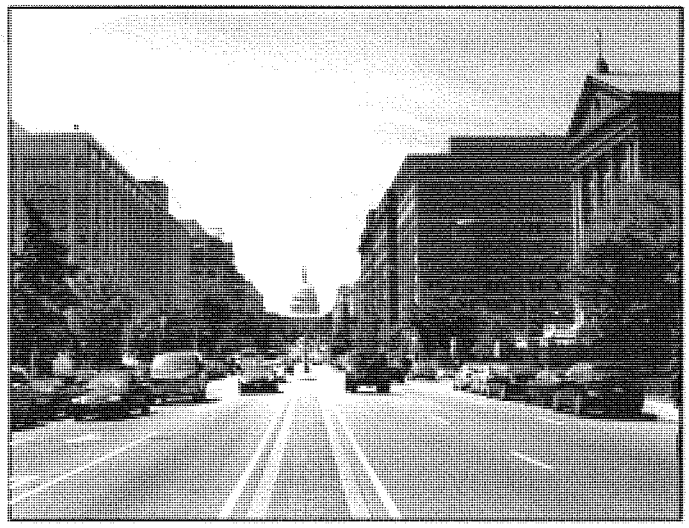


Figure 17: View of the U.S. Capitol from North Capitol Street

Figure 18: Meridian Hill View with Illustrative Clusters at 200 feet

VI. THE DISTRICT'S EVALUATION OF APPROACHES FOR MANAGING HEIGHT IN WASHINGTON, DC

A. Population and Job Growth Forecasts

The District is growing.
After decades of decline the District is now growing. The District stopped losing significant population by 1998 and started to grow rapidly after 2005. During the past five years (2007-2012) household and population growth has accelerated to 5,900 and 11,600 per year respectively. Enabling the city to grow is critical for a variety of reasons including fiscal stability and environmental sustainability. To ensure there is adequate capacity for long term growth OP compared current long range forecasts developed for local and regional transportation planning purposes with a capacity analysis of developable land at a variety of density assumptions both with and without potential changes in land use and height.

Scenarios for future growth of jobs and residents show capacity is constrained by the current height limits.
The District prepared 30-year forecasts (through 2040) of growth for population, households and jobs in five-year increments as part of the Metropolitan Council of Governments (MWCOG) Cooperative forecasts for regional transportation planning. OP's most recent officially approved forecast was Round 8.1 in 2012.

For the purposes of the Height Master Plan, the 8.1 forecast is considered the base or 'low growth' forecast. OP is currently developing a preliminary forecast for MWCOG's Round 8.3—this is considered the 'medium growth' forecast. Because of the similarity between the forecast and development capacity analysis methodology, OP also added a 'high growth' forecast that uses a simple extrapolation of growth rates over the past five years to establish a potential upper range of demand for space.

OP's forecast methodology uses a supply side technique of tracking a pipeline of projects as they progress through pre-development, construction and completion over the first two thirds of the forecast period (through 2030). The remainder of the forecast through 2040 is completed by an analysis of the remaining capacity spread out over the last two five-year increments. The feasibility of the supply side forecast is then

qualitatively validated and cross-checked based on five to 10 year historical absorption trends combined with shifts in macro-national factors such as smaller average household sizes, shifts toward urban living and changes in the nature of the work environment.

OP then uses basic multipliers to estimate how household and job growth translates into demand for space. For instance, the analysis assumes that a household on average will require 1,200 gross square feet of space in a multi-family residential development.[4]

Household Forecasts

The chart below presents the results of the household forecast scenarios. The chart shows household growth over time and the respective growth rates of each scenario.

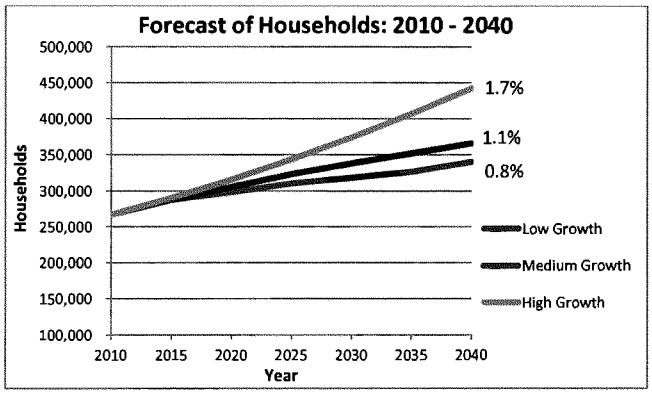


Table 1 below converts the Household Growth chart to summary totals for the full forecast period, the average annual growth and the calculated estimates of space required to absorb the demand. The space required to meet residential demand ranges between 87.8 million square feet and 210.6 million gross square feet of developed space.

[4] Current space demand is closer to 1,000 gross square feet per unit. Rapidly rising household incomes in the District versus overall smaller households push the per unit demand for space in opposite directions. However, 1,200 gross square feet was used as conservative risk adjustment.

Table 1

Household Summary Totals: 2010 - 2040			
Scenario	*Total Households*	*Annual Average*	*Residential Gross Square Feet*
Low Growth	73,200	2,440	87,840,000
Medium Growth	99,100	3,303	118,920,000
High Growth	175,500	5,850	210,600,000

Jobs Forecasts

The Jobs Forecast chart illustrates the three scenarios (low, mediums & high) and the respective rates of growth. OP is currently reviewing the assumptions of the MWCOG Round 8.3 Preliminary forecast. Current economic conditions may suggest that the forecast starts out too aggressively; however, the 3.4 percent difference between the 982,000 jobs in Round 8.1 and 1,015,000 jobs of 8.3 is negligible given the 30 year time frame.

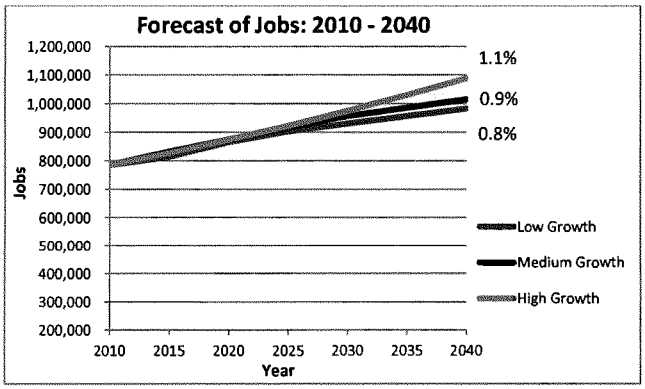


Table 2 converts the jobs growth chart into summary totals and the resulting estimated space required to absorb that demand. OP used the current average space requirements for all jobs including office, retail, and public/institutional of 350 square feet per job to

estimate the required space5. The square feet required to absorb the jobs demand ranges from 69.7 to 106.5 million.

Table 2

Jobs Summary Totals: 2010 - 2040			
Scenario	*Total Jobs*	*Annual Average*	*Gross Square Feet*
Low Growth	199,200	6,640	69,720,000
Medium Growth	231,500	7,717	81,025,000
High Growth	304,300	10,143	106,505,000

To summarize, OP estimates that the amount of new developed space required to meet residential demand over the next 25 years could range from 87.8 to 210.6 million square feet. To meet the jobs demand over that same time period, a range of 69.7 to 106.5 million square feet would be needed to absorb that growth. In total, the population and jobs demand through 2040 could require between 157 million and 317 million square feet.

The high growth scenario, where households are forecasted to grow by 1.7% and jobs by 1.1% between 2010 and 2040, would result in a demand for as much as 317 million square feet of new space—over 210 million square feet to house the population growth and over 106 million square feet in new office space. This scenario represents more than twice as much total demand as the low-growth scenario. At the same time, the high growth scenario falls below the actual population growth rate seen in the District in just the last two years: 2.7% from 2010 to 2011 and 2.1% from 2011 to 2012. If growth continues at this pace or more over the next several years, the demand for new space could be even greater.

B. Development Capacity Analysis

The District needs future capacity to meet future demand.

[5] The average of 350 square feet per job for all jobs is based on the estimated total jobs created by the types of development projects OP tracks and the standard job densities used for transportation modeling, such as 250 square feet per office job, 400 square feet for retail jobs, and 830 square feet for public/institutional jobs such as university and hospital space.

A supply of developable space is necessary for the District to accommodate its growth. Without the ability of supply to meet demand the city would face ever increasing price pressures that would limit who could afford to live here and constrain the city's economic growth. The District is already the most expensive jurisdiction in the region as well as one of the most expensive in the nation in terms of prices/rents per square foot.

Methodology

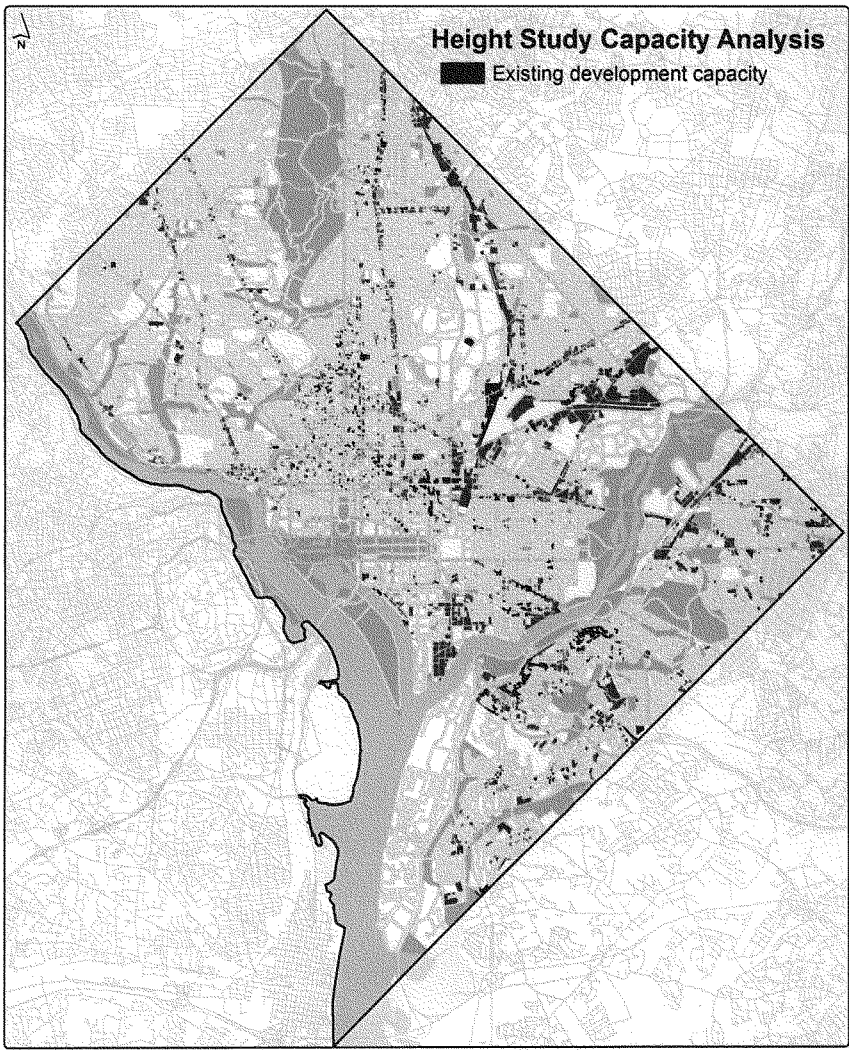
In order to ensure the District has the capability to achieve the number of jobs and households forecasted by or at least 2040 and beyond, OP reviewed the city's land use patterns, property records, development trends, and planning standards to develop a methodology for estimating the District's total capacity for growth. The process essentially created a series of filters to identify both vacant and underutilized parcels with development potential. The filters used to establish the District's base development potential[6] eliminated the following property types:

- ***Single-Family Zone Districts***: The District has very few properties with significant potential for single-family development. Only 5 percent of the 42,000 units of housing already in the pre-development pipeline are in single-family development. Therefore only properties with development potential controlled by zoning regulation of Floor Area Ratio (FAR) were considered and no land use changes to multi-family or commercial were considered.
- ***Historic Landmarks***: Historic preservation law significantly limits development potential of properties with buildings that are designated as historic landmarks, therefore all properties with local and federal landmark designations were eliminated.
- ***Land Designated for Public Use***: All properties designated as Local Public Facilities by the District's Comprehensive Plan were filtered out based on the assumption that growth will require their continued use as schools and parks. In some cases, this eliminated sites such as DC Village with significant capacity and in others where more efficient use could result in additional capacity.

[6] Note: These filters apply only to establishing the District's base development capacity. In some cases, the scenarios testing the impact of heights beyond the Height Act added some of these properties, such as certain federal properties, back in.

- ***Institutional and Federal Facilities***: Major institutions and federal properties are not governed by fixed FAR requirements, but by the campus plan and federal processes. This eliminated certain large federal facilities, especially those that have no planning efforts to establish actual capacity.
- ***Recently Developed Properties***: Required returns on investment often mean even significantly underdeveloped properties will not be redeveloped for 20 to 30 years.
- ***Transportation Rights-of-Way***: The expense of construction over railroad and highway rights of way makes the potential development capacity practically infeasible. Only two sites over existing rights-of way were included in the capacity analysis: the air-rights over the tracks leading into Union Station and those over I-395 in Downtown DC. Both of these sites are slated for future development projects.
- ***Greater than 30 Percent Built***: The final filter removed properties that were already built out to more than 30 percent of their capacity as permitted by zoning. The validity of this assumption was cross-checked by both a review of planning literature and the existing database of development projects in the pipeline. With few exceptions, all development in the pipeline of planned and conceptual projects were on properties that were built out to less than 30 percent of the FAR permitted by the zone district. The rare exceptions tended to be properties that: 1) had surface parking or other open land, which permitted additional structure versus having to demolish an existing structure; and 2) were built out to less than 40 percent of the available capacity.
- ***Quality Control on Properties with more 300,000 Square Feet Capacity***: The methodology relied heavily on data where errors resulted in significant potential capacity. OP reviewed all properties with greater than 300,000 square feet of potential capacity and removed those that resulted from clear errors in the data.

The map below shows the universe of properties that were identified by the above filters to establish the base of properties for estimating the District's remaining development potential. The areas highlighted in purple represent where existing development capacity remains after applying the above filters. Those areas account for approximately 4.9% of the total land area in the District (including parks and open space).


Height Study Capacity Analysis
Existing development capacity
N

The following steps were then applied to all those remaining properties built to less than 30 percent capacity to estimate the District's remaining net capacity for growth:

- Land area was multiplied by permitted FAR;
- The existing gross square footage built on the property was subtracted and the total was discounted by 25 percent to reflect the impact of unique site characteristics, light, air and circulation, Historic Districts that constrain redevelopment and other legal or ownership issues that result in a property never redeveloping during the given time horizon. Therefore the 25 percent discount reflects two factors affecting development. First, OP determined from analyzing recent developments that their average build out was 85 percent of the theoretical zoning capacity or a loss of 15 percent; and second, OP estimated that another 10 percent was lost to properties that do not redevelop at all within the time frame. Examples of the latter could include churches, institutional uses, family interests and/or clouded titles.

Development Capacity under Current Scenarios & Modeling Study Scenarios

OP developed three base scenarios under the current Height Act and also calculated development capacity for the Modeling Study's four approaches to manage height. These scenarios use properties with FAR in the analysis because: 1) there is very little vacant land zoned R-1 through R-4; 2) the properties that are vacant add very little capacity in terms of the percent of potential new units compared to lots governed by FAR; and 3) estimating capacity is a function of the efficient layout of lots and streets and not simply multiplying land area and FAR, making it almost impossible to estimate capacity across thousands of lots.

The three scenarios under the existing Height Act (see Table 3) include:

1. **Current Capacity Under Current Zoning**: This scenario included all properties identified by the methodology above built out to their matter-of-right FAR permitted by the zone or overlay. The analysis did not use the density permitted for Planned Unit Developments (PUD) because PUDs represent a smaller subset of development and tend to be limited larger parcels. OP estimates that under current zoning there is a total of 136.9 million square feet of potential capacity in parcels designated for Medium to High Density Residential and/or Commercial Development by the Comprehensive Plan and 253.0 million square feet for all

properties that were determined to have development capacity by the methodology above. When discounted by 25% to control for factors that may limit sites' full potential, these numbers are reduced to 102.7 and 189.8 million square feet respectively (see "Achievable Capacity" columns).

2. **Maximum Capacity Under the Comprehensive Plan, with Zoning Changes**: This scenario uses the same set of properties, but tests the capacity as if all development sites were zoned to the densest zone permitted by their Comprehensive Plan Land Use designation (e.g, Medium Density Commercial zoned up to an average of 5.5 FAR). This scenario resulted in total potential capacity of 177.2 million square feet in Medium to High Density Areas and 360.0 million square feet across all properties included in the analysis. These numbers are reduced to 132.9 million square feet of capacity in Medium to High Density areas and 270.0 million square feet for all properties studied when the 25% discount is applied.

3. **Further Capacity up to the Height Act Limits**: This final base capacity scenario limited the properties to only those designated Medium to High Density Residential or Commercial, which were the areas studied in the Modeling Study. In the downtown core this scenario kept the FAR at the current FAR to height ratio of 1 FAR to 13 feet in height. In all other areas it used a ratio of 1 FAR to 15 feet in height, or 8.6 FAR within 130 feet in response to the proximity to lower density land uses. This scenario resulted in 221.8 million square feet of development potential, which is reduced to 166.4 million square feet of expected potential when limiting factors are taking into consideration.

Table 3: Theoretical & Achievable Development Capacity under Current Zoning, Comprehensive Plan & Height Act

Current Scenarios	Medium & High Density Lots		All Lots With Capacity	
	Theoretical Capacity	Achievable Capacity	Theoretical Capacity	Achievable Capacity
Current local zoning	136.9	102.7	253.0	189.8
Current District Comprehensive Plan	177.2	132.9	360.0	270.0
Under current federal Height Act (full build-out at 130 ft)	221.8	166.4	NA	NA

Notes: Values in terms of millions of square feet.

The second set of scenarios[7] tested the potential capacity that could be achieved under the Modeling Study's approaches to manage height (see Table 4). Some of these approaches use four alternative height increments (130, 160, 180, 200 or 225 feet). All of the approaches under the Modeling Study were limited only to areas of the city designated on the Comprehensive Plan Future Land Use Map as Medium to High Density Residential and Commercial, with several categories of properties excluded, including federal properties and historic landmarks.

A key assumption is the potential additional FAR that is enabled by additional height beyond the Height Act. For instance, permitted FAR in Downtown DC ends up in a ratio of 1.0 FAR to 13 feet in height. OP's research of other major cities[8] found that the permitted FAR to height ratio was only 1.0 FAR to 20 feet in height. OP used as a starting point a ratio of 1.0 FAR to 15 feet in height. This is comparable to FARs achieved in areas of the city such as in the Capitol Riverfront neighborhood near the baseball stadium. After further planning and urban design principles are applied such as scale and shadow studies, the resulting setbacks or other techniques might likely reduce the achievable FAR closer to the 1.0 to 20 feet found in other cities.

The calculations in Table 4 below represent 100 percent of the potential or theoretical capacity for each of the Modeling Study approaches. Once again, when 25% of the capacity is discounted to reflect the impact of unique site characteristics, light, air and traffic circulation, Historic Districts and other factors, the theoretical capacity of these numbers are reduced to an estimate of achievable density for the areas studied. Note that a higher height to Floor Area Ratio might allow more of the development capacity to be achieved.

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[7] See Section V.B. Note: Allowing occupancy of penthouse levels was not tested due to the minimal increase in capacity it would permit.

[8] OP researched San Francisco, Boston, Chicago, Arlington

Table 4: Theoretical Development Capacity by Modeling Study Approach

Modeling Study: Approaches to Manage Height ** *(Medium & High Density Areas ONLY)*	Base Zoning (SF) *(no change to FAR or Height)*	Gross Development Capacity (SF)				Net Development Capacity (SF)			
1A: Status Quo--no change to Height Act (includes full build out at 130 ft)	136.9	221.8				84.9			
1B: Allow penthouse occupancy (*148.5 ft*)	Minimal	Minimal				Minimal			
2: Reinforce relationship between building height & street width *(Max Height = 1.25* ROW)*	136.9	258.4				109.1			
Modeled height increments		***130 ft***	***160 ft***	***180 ft***	***200 ft/ 225 ft****	***130 ft***	***160 ft***	***180 ft***	***200 ft/ 225 ft****
Approach 3: Raise height in targeted areas									
3A: Raise height only in L'Enfant City	78.1	119.6	158.0	182.2	208.0	41.50	79.9	104.10	129.90
3B: Raise height only in Topo Bowl	11.8	26.2	34.2	39.1	49.9	14.40	22.4	27.30	38.10
3C: Raise height only in illustrative areas *(Also includes **Federal** areas)*	49.4	67.9	87.7	100.1	118.7	18.50	38.3	50.70	69.30
4: Raise uniform height citywide	136.9	321.9	419.6	485.6	607.4	185.00	282.7	348.70	470.50
New Approach #5: Raise uniform height outside L'Enfant City*	58.8	202.3	261.6	303.4	399.4	***143.50***	***202.8***	***244.60***	***340.60***
	Values in million square feet								

** **Note**: Modeling Study used 200 feet maximum height within L'Enfant City; 225 feet maximum outside L'Enfant City*

*** **Note**: All Analyses in Modeling Study include **ONLY medium and high density commercial and residential areas** as defined by the Comp Plan, except Approach 3C, which also includes certain **Federal** areas.*

******Note**: New Approach 5 was not modeled directly as a component of the Modeling Study. The calculations are derived by subtrocting approach 3A (Raise height only in L'Enfant City) from Approach 4 (Raise height citywide).*

***General Note:** This analysis presents the max (100%) development capacity.*

Demand Forecast & Capacity Analysis Conclusions

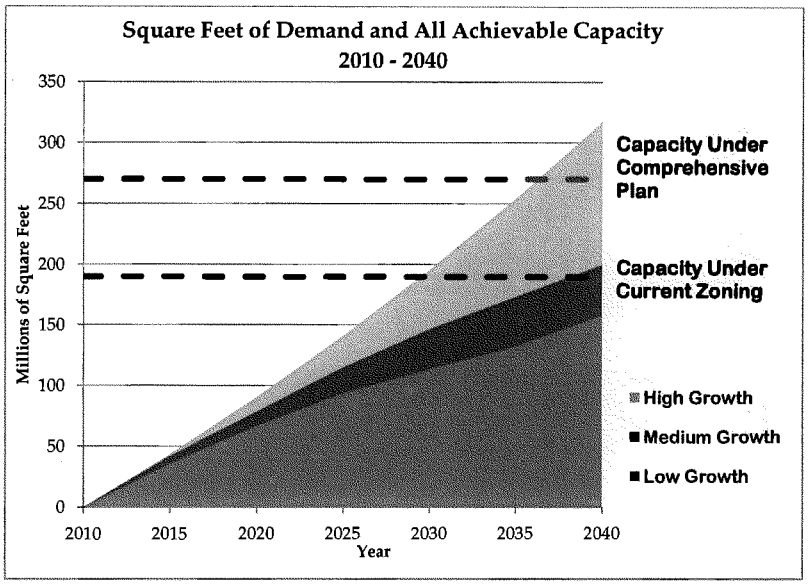
OP estimates a range of growth scenarios through 2040 that will require from 157 million to 317 million square feet to meet the forecasted demand for residential and non-residential space (see summary Table 5 below). Under current zoning we have less than a 30 year supply of development capacity. It is important to reiterate the methodology used the matter-of-right FAR permitted by zoning[9]. OP does not expect significant increases in capacity from PUDs because of the limited set of properties that can qualify for the PUD process due to the size eligibility. The vast majority of residential units and non-residential square footage is produced outside of the PUD process. This means PUDs under current zoning have some ability to absorb additional demand above this matter-of-right scenario, but not enough to extend our capacity to absorb additional demand significantly beyond 2040.

Table 5: Developable Space Demand by Growth Forecast (2010 to 2040)

Growth Forecast	*Household Demand*	*Jobs Demand*	*Total Demand*
Low Growth	87,840,000	69,720,000	157,560,000
Medium Growth	118,920,000	81,025,000	199,945,000
High Growth	210,600,000	106,505,000	317,105,000
		in square feet	

Looking at all lots with developable capacity, the graph below demonstrates that under current zoning the District has barely enough achievable capacity to meet the next 30 years of demand. Additionally, there is insufficient capacity to meet the 'high growth' demand even under the circumstance where the city rezones all land eligible under the current Comprehensive Plan. Even under just 30 years of forecasts, the current height limits constrain our ability to meet our expected growth.

[9] Inclusive of the 20 percent FAR bonus for residential development provided by the District's Inclusionary Zoning Program.



VII. THE ECONOMIC RATIONALE FOR CHANGING THE HEIGHT ACT

Unlike any other city in the United States, the District of Columbia has to fund and provide a range of services from a revenue base with significant constraints. The District of Columbia is a unique entity. Not only the Nation's Capital, the District provides the services of a city, county and state, all on a city budget. These additional responsibilities include, for example, addressing a high burden of poverty and social service needs that are normally paid for by a broader state-level tax base. The District also must meet the service needs of one of the largest commuter populations in the country, including transportation, police, fire and emergency management. With nearly 50% of land in the District off the tax rolls, due to in large part to federal and non-profit ownership, the District's budget is structurally imbalanced. Studies by the federal Government Accountability Office and others identified another major reason

the District's budget is structurally imbalanced. Congress prohibited through the Home Rule Act the District taxing income at its source—making 70% of the income earned in the District non-taxable by the city.

The challenges that face the city today are formidable, and it is important that we act to address them. To paraphrase a former Director of the National Capital Planning Commission, William Finley: "In the next fifty years, this city can attain its role as an international capital as well as the vital center of this metropolitan region, or it can become simply a collection of national monuments surrounded by the *wealthy living in exclusive residential areas served by high-rent commercial districts that cater only to those businesses who have no choice but to be in the nation's capital.*"[10]

The District's revenue structure is a hybrid of state and city taxes. However, contrary to what any state can do, the District cannot determine whom and what it taxes, and unlike any other city, it receives no state aid or compensation for the prevalence of tax-exempt property and organizations. We have a narrow tax base because nearly half our property and a significant portion of our sales are tax exempt, and—especially—because we are prohibited from taxing non-resident income. Since income earned by non-residents, mostly commuters, accounts for about two-thirds of the income earned in the city, our inability to tax that income stream is a serious restriction of resources. Moreover, because a considerable proportion of the District's population has low-incomes and lives in neighborhoods with high concentrations of poverty, the need for public services is greater and the cost of delivering them is higher than in the average community, where a broader state tax base can be tapped to address the proportionately higher city needs. For instance, the District of Columbia provides 42% of the region's subsidized housing units, although the city represents only 11% of the region's population[11]. The Government Accountability Office estimated our "structural deficit" at between $470 million and $1.1 billion annually.[12] The large number of taxes

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[10] Original quote: "In the next fifty years, this city can attain its role as an international capital as well as the vital center of this metropolitan region, or it can become simply a collection of national monuments surrounded by rundown residential areas served by second-rate business districts." The Washington Post, October 28, 1962, p. 1

[11] Metropolitan Washington Council of Governments—Affordable Housing Database, DC Office of Planning, 2012.

[12] *District of Columbia: Structural Imbalance and Management Issues*, GAO-03-666, May 22, 2003

the District imposes on its narrow tax base becomes a heavy burden for those taxpayers. According to the most recent annual report from the Office of the Chief Financial Officer, the tax rates in the District of Columbia are among the highest in the nation. Of 12 types of taxes compared, District tax categories where rates are higher than in most of the states include: cigarette; corporate income; individual income; deed recordation; motor vehicle excise; motor vehicle registration fees; and sales and use.[13]

Previous studies published by the Brookings Institute have estimated that our tax burden results in at least a 25-percent higher cost of doing business than in the surrounding area, discouraging location in the District and undermining our competitiveness.[14]

The District's financial health and fiscal stability have been a matter of Congressional concern at various times since the passage of the District of Columbia Home Rule Act in 1973. In 1995, the federal government endeavored to undertake a multi-phase solution for the nation's capital. Congress created the District of Columbia Financial and Management Responsibility Authority (also known as the control board) and created an independent Chief Financial Officer to ensure the District's financial integrity. It also passed the Revitalization Act of 1997. Recognizing that some of the District's spending requirements are typical of states, the federal government assumed the funding of prisons and courts, a larger share of Medicaid and the accrued pension liability. Congress also ended the annual federal payment which in the past was a supplemental source of funding for the District's budget. This recognition by Congress is noted in the Revitalization Act: "Congress has restricted the size of the "District of Columbia's economy[,] . . . imposed limitations on the District's ability to tax income . . . [, and that] the unique status . . . as the seat of the government . . . imposes unusual costs and requirements."[15]

The District cannot achieve long-term fiscal stability unless it has a growing and secure revenue base. One effect of the Revitalization Act was to shift the District toward

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[13] *Tax Rates and Tax Burdens in the District of Columbia -A Nationwide Comparison*, Office of the Chief Financial Officer, District of Columbia, September 2011.
[14] Ó'Cléireácain, Carol. *The Orphaned Capital: Adopting the Right Revenues for the District of Columbia*, Brookings, 1997.
[15] Ibid.

greater dependence on taxes as a source of revenue. The Revitalization Act eliminated the federal payment ($667 million in FY1997), a discretionary revenue with flexibility on how to spend it, and increased the percentage of the federal contribution to the District's Medicaid program to be more in line with the percentage of the federal contribution to other jurisdictions' Medicaid programs. This switch had the effect of reducing revenue to the District and shifting the source of the discretionary revenue to taxes (on residents and businesses), which were 53% of the budget in FY1997 while they carry 82% of the budget in FY2013.

There are two essential ways for the District to get more public resources:

1. ***Continue the efforts to grow the District's own tax base.*** This is our only other option, since raising tax rates significantly is likely to drive businesses and residents out of the city and narrow the tax base further. To grow the tax base we need higher incomes earned by District residents, a higher volume of local sales, and increasingly valuable taxable commercial and residential property. This means increasing the incomes, spending and wealth of the existing population and enlarging that population. However, those efforts have real limits in the physically height-constrained and land-locked city, where growth at current rates would exhaust the supply of land and developable height within a few decades, with escalating rents and prices felt by everyone, especially working class families, long before then.

2. ***Request further federal assistance:*** For instance, Congress maintains control over numerous aspects of District governance, including restrictions that limit the height of buildings in the city. Moderate changes in the L'Enfant City that still protect and acknowledge the federal interest in the monuments and memorials would be enabled by simply removing on certain streets and avenues the 130 foot limit that originated because of 19th century fire safety concerns. Outside the L'Enfant City, there are relatively fewer federal resources, and historic federal resources there can be and are currently protected under both federal and local historic preservation law. Other individual federal resources outside of the L'Enfant City can be protected through several existing mechanisms controlled or significantly influenced by the federal government, including but not limited

to the Comprehensive Plan and zoning. This type of federal assistance would allow the District to help itself.

Each is necessary to the other. To grow the tax base we need more people living in the city. The District certainly used to have more--about 200,000 more. The population lost was disproportionately middle-income working families, both black and white. It is essential that we woo them back, not only to grow the tax base, but also to be customers for neighborhood stores and to be advocates for improving the District's schools and other services. We recognize that we need many different kinds of people in the city—including young singles, childless couples, and empty nesters. Certainly higher income people with no kids contribute to a more balanced budget. They pay taxes, and they don't use many services. The downside is that the influx of higher income people into newly fashionable neighborhoods creates upward pressure on rents and housing values that particularly impact low-income people, especially renters, and may force some of them out of their neighborhoods. The downsides of gentrification are a serious concern, but the answer isn't to keep higher income people out. The answer is to channel those new tax revenues into subsidies for housing and other services that will help low-income people. Another important way to ease the pressure of gentrification is to create new mixed income neighborhoods on land where few now live. Washington still has some opportunities to create new mixed-income neighborhoods around the city - some are well underway - along the SW and SE waterfronts, at Walter Reed, on the St Elizabeth's East campus, and on part of the McMillan Reservoir site, for example. Creating new neighborhoods provides a way to add to the supply of housing—both subsidized, affordable housing and market rate—without displacing anyone. The mixed-income nature of the new neighborhoods, however, won't just happen. It will take deliberate efforts and tools, such as inclusionary zoning, to make it happen.

However, the resources that are needed to make neighborhoods more livable are not just public resources. Indeed, the resources needed to improve housing and commercial properties are primarily private and non-profit resources. Many parts of the city do not have ordinary neighborhood commercial services—grocery stores, hardware stores, drug stores, dry cleaners, movies, restaurants. Those establishments closed when the middle income customers that bought their wares moved out, and the jobs they supported disappeared with them. We need them back and the broad range of private

investment and job growth that comes with revitalized neighborhoods and new businesses, retail and services.

For more than a dozen years, through a succession of three Mayors and several Councils, there has been broad agreement that a growing population in the District of Columbia, especially an increasing number of working households and families, is absolutely essential to securing the District's financial and economic future. Moreover, the only way to increase our population would be to make the District of Columbia a better place for all of its residents to live and work and raise kids. We have been systematically working to make the city a better place with tangible results.

The District of Columbia has a lot of factors under its own control to help it achieve fiscal stability and its economic well-being. The city has shown demonstrable improvements over the last decade in its fiscal health, operations, infrastructure investments and attractiveness to new residents and jobs. However, its ability to benefit from these improvements is literally constrained by the Height Act.

Strategic changes to the Height Act would provide the District more flexibility and further options for meeting its current demands and the demands of future population and job growth. These changes can help the District maximize its regional competitiveness and capture the value of any increased heights to support further investments in areas such as affordable housing and transportation. The District's goal is for greater development capacity through increased heights to make more affordable housing possible in the city and enable a higher percentage of jobs added to the city being held by District residents who would pay income taxes to the District. These outcomes would not only generate more tax revenue to support increased services and infrastructure in the city, but also support District and federal policies to balance jobs and housing that bring transportation and environmental benefits to the entire region.

The analysis of existing development capacity in Section VI indicates that the District will feel constraints on its capacity to meet the medium growth forecast within 30 years, without any changes to the Height Act. For the high growth scenario, the current capacity under existing zoning will be depleted in just 15 years. Even if the District were to change zoning across the city to create additional capacity under the Comprehensive Plan, with no changes to the Height Act, to meet high growth demand, this capacity

would be exhausted in 20 years. Constrained supply will create price pressures long before the actual development capacity is consumed. As existing capacity under the current Act becomes more limited, market rate affordable housing will disappear, while rising prices will put housing, especially family housing, out of the reach of middle class families. If no changes are made to the Height Act, the District risks then becoming primarily a city of wealthy residents and investors, not the inclusive city that can house all people—long-time residents, returning middle class families, empty-nesters and retirees, service workers, and recent college graduates.

The Height Act has benefitted the District by helping to spread development across the city in areas such as NoMa and Capitol Riverfront. However, even with these areas available for development, the District cannot meet future demand without significant changes—either upzoning much of the city's residential neighborhoods through the Comprehensive Plan or changes to the Height Act.

Even without the significant additional demand that is forecast, the District's regional and national competitiveness would be greatly enhanced by the ability to use additional height to create taller, brighter retail and ground floors, greater floor to ceiling heights in office and residential buildings and a broader range of rents in higher buildings that would allow a more diverse set of firms and residents.

In 2001, then Mayor and former Chief Financial Officer Anthony Williams made an urgent call for the city to do what it would take to grow the population by 100,000 residents, projecting that the those residents (depending on how many households had children) would increase annual city revenues by $12 to 188 million per year.[16] While the District has not yet hit the 100,000 additional residents, in the past ten years (2003 - 2012), the population has increased by more than 64,000 residents. While the District's annual revenues have varied in part because of a severe recession during those years, by 2012 annual revenues had increased by more than $2.7 billion compared to 2003. Clearly, the strategy of growing the District's population is having an impact, both on our ability to continue to balance our budget, but also to provide infrastructure and services that both keep the current population and attract the middle class back to the

[16] O'Cleireacain, Carol and Rivlin, Alice M., ***Envisioning a Future Washington***. Brookings Institute, Research Brief, June 2001.

District. However, making no changes to the Height Act would put at risk the District's ability to maintain this hard-won fiscal stability, which in turn threatens our ability to provide better services demanded by our growing resident base and to enhance the District's competitiveness in a region where its suburban neighbors are rapidly urbanizing and providing similar amenities.

VIII. District of Columbia's Draft Recommendations for Changes to the Height Act

The Height Master Plan is a valuable opportunity to examine whether the current law, which well served this city over the last 100 years, will continue to do so over the next 100 years. For more than 50 years of those years, the city was shrinking, not growing but limits on height pushed growth into neighborhoods near downtown as downtown became more fully built out. Even those changes were during a time when the city had no or low growth. The analysis of the District's remaining development capacity under the limits of the current zoning regulations, the Comprehensive Plan and the Height Act and the expected diminution of this capacity over the next two to three decades due to increasing demand from population and job growth demonstrates a compelling need to make key changes to the current Act.

Moderate changes to the Height of Buildings Act would empower the District to continue to protect national civic, historic and federal resources under both a revised Height Act and the District's own laws and regulations while putting the city in the position to continue to expand its population and tax base, grow and stabilize its economy, diversify its employment, accelerate improvements in education, protect housing affordability and improve the quality of life for its residents, workers and visitors. The alternative approach—to maintain current Height Act restrictions—also would maintain those historic and federal protections but would result in a Washington, DC of the future where lower income and middle class residents would be priced out as housing prices due to constrained supply is affordable only to the wealthy.

It should be noted that any actual increases to building height due to a more flexible Height Act would be implemented gradually, commensurate with actual population

and job growth, and most significantly only through revisions to the District's Comprehensive Plan and zoning regulations. Both of these processes, which the District has undertaken several times successfully, require multiple opportunities for extensive public participation and input and must be approved by both District and federal entities before any actual building height changes can be implemented. The process would begin with the District consulting with the public and NCPC to identify appropriate locations for any new building height maximums. Amendments to the District Elements of the Comprehensive Plan reflecting these changes must be officially adopted by the Council of the District of Columbia following public hearings. The District transmits the Comprehensive Plan amendments to NCPC for review and approval. Upon NCPC approval, the amendments are submitted to Congress for final approval. The District-federal member Zoning Commission then must review and approve zoning amendments reflecting those approved Comprehensive Plan changes in order for new building height maximums to occur in the designated areas.

Federal protection of its interest in height takes place through NCPC's approval authority over the District Elements of the Comprehensive Plan, Congressional disapproval authority over the Comprehensive Plan legislation, and the federal government holding 40% of approval authority on the Zoning Commission which is required under federal law to adopt zoning that is "not inconsistent" with the Comprehensive Plan.

As part of its approval authority, NCPC has line-item veto power over amendments to the District's Comprehensive Plan. This veto power has been used four times during prior Comprehensive Plan updates over the last twenty years. During those instances, NCPC found a particular provision to have an adverse federal interest impact. NCPC adverse impact findings return to the DC Council for action, and Council typically modifies the amendment to address the concern. If the District doesn't modify a District Comprehensive Plan provision which NCPC finds to have an adverse federal interest impact, the provision "shall not be implemented" per the Home Rule Act and the NCPC Act.

Recommendation 1: Apply the Approach of Reinforcing the Relationship between Building Height & Street Width within the L'Enfant City

The District proposes that the Height Act be amended to replace the cap on citywide height limits in the current law with new limits based on the relationship between the street width and building height. Rather than using a specific number for the height cap applied citywide as the current law does, this approach, Approach 2 in the Modeling Study, would instead apply an urban design-based standard reflecting the proportionality between individual streets and their buildings to ensure a pedestrian-scaled streetscape with lots of light and air without the strictures of late 19th century fire safety limitations.

This approach would place the tallest buildings on the wide, grand boulevards that reflect the hierarchy of streets and relative building heights that were part of the L'Enfant Plan and a valued and enduring legacy of the 1910 Height Act. Approach 2 also harkens to the 1791 Building Code which reflected the vision of a hierarchy of streets and treated the avenues differently by articulating a minimum building height on those streets.

The current law mandates a 1 to 1 ratio between street width and building height, to a maximum of 90 feet, for residential streets and a 1 to 1 ratio plus 20 feet for commercial streets. The 160-ft wide Pennsylvania Avenue, NW between 3rd Street and 15th Street now has a 1:1 ratio. Under this proposed approach and applying a ratio of 1: 1.25, a 160-foot wide street would house the tallest building, up to 200 feet (see Figure 19).

Figure 19: Pennsylvania Avenue at a 1: 1.25 ratio (200 feet)

North Capitol Street, NW currently has a 1: 0.7 ratio because the District's zoning sets the height cap at 90 feet while the street is 130-ft wide. At 1: 1.25, the allowed height would be 162.5 feet. **The District recommends applying Approach 2 to the L'Enfant City using a ratio of 1: 1.25, which would result in a maximum building height of 200 feet for 160-foot wide streets.** Table 6 shows the range of possible heights using this ratio:

Table 6: Proposed Height Limits Under Approach 2 using 1: 1.25 Ratio

Street Width	New Height Limit Under Approach 2
80 feet	100 feet
110 feet	137.5 feet
120 feet	150 feet
130 feet	162.5 feet
160 feet	200 feet

<u>Recommendation 2</u>: The limits currently established in the federal Height Act should remain in place unless and until the District completes an update to the District Elements of the Comprehensive Plan where targeted area(s) that meet specific planning goals and also do not impact federal interests are identified. Under this recommendation, building heights in targeted areas may be proposed to exceed the maximums under the federal law; and these may be authorized through the existing Comprehensive Plan process, pending Congressional approval. Should such targeted exceptions be authorized through the Comprehensive Plan, the Height Act would remain in place for all other areas both inside and outside of the L'Enfant City.

The federal interest is less and much more attenuated outside of the L'Enfant City. While the Height Master Plan analysis and modeling studies serve to illustrate the impacts of additional height, they were not exhaustive nor intended to be because actual heights outside of the Center City would always be determined by an inclusive and thoughtful process through revisions to the District's Comprehensive Plan and eventually to its zoning regulations.

Significant capacity to accommodate the city's growth currently can be found outside the L'Enfant City, but, also noted previously, existing capacity is expected to be absorbed over the next three decades. The District recommends that Congress amend the Height Act to maintain current height restrictions outside the L'Enfant City but permit taller heights only if the District amends the Comprehensive Plan to identify and designate specific areas outside of the L'Enfant City where height can go taller than the current Height Act maximums. The District would adopt new land use categories, establish new height maximums for these designated areas, and map those future land uses. The District also would consult with NCPC to identify federal interests outside of the L'Enfant City that should be protected as part of the Comprehensive Plan amendment. The new Comprehensive Plan designations will undergo review and approval by the DC Council, NCPC and Congress prior to taking effect in those areas. For all other areas outside the L'Enfant City, the current Height Act maximums will remain in place.

Since NCPC must review the District's Comprehensive Plan and make a positive recommendation to Congress, and since two of the five members of the District's Zoning Commission are federally appointed, federal involvement and oversight would

continue with opportunities for review of specific locations, new zoning that allows greater height and evaluation of potential impacts on federal properties and interests outside the L'Enfant City. Therefore, there would continue to be a significant and critical federal role in establishing the heights of buildings that are actually constructed in the District of Columbia.

In addition, many federal resources enjoy historic protection under the District's local laws, such as the Historic Preservation Act, and would be subject to further review and evaluation to ensure the protection of those resources. Security, which NCPC has identified as a federal interest, is also already addressed through other means and local and federal review processes beyond the Height Act.

While the District recommends that the Height Act be amended to allow the city to determine building heights for appropriate locations outside of the L'Enfant City through its local processes, the District has yet to make any decisions about where specifically any additional height would go. These would be future conversations that can only take place if the law was amended to permit it.

Recommendation 3: Amend the Height Act to remove any federal restrictions on the human occupancy of penthouses and set a maximum height of 20 feet and one story. To ensure that the tops of any future taller buildings contribute to the use of and views from rooftops, mechanical penthouses also would be required to be enclosed within the upper floors and within the new height cap for areas inside the L'Enfant City where the ratio approach is applied.

Additional Considerations for the District's Recommendations

Viewshed Protection

Viewshed protection is a foundational component of both of the District's draft recommendations for changes to the Height Act. Civic structures and related views contribute to the unique character and attractiveness of Washington, DC. The protection of viewsheds is not only a federal but also a local interest. The District is firmly committed to protecting the majestic views to nationally significant buildings and monuments. In fact, the District already has local protections in place to protect

important viewsheds. The District's zoning code, for example, limits height on 16th Street, NW to 90 feet, lower than what is permitted under the Height Act. This local limit is specifically intended to protect the view corridor south on 16th Street towards the White House. As noted previously, federal interests in the District are already protected by other means in addition to the Height Act.

Proposed Additional Requirements for Increased Height

Recommendations 1 and 2, if accepted by Congress to modify the Height Act, can only be implemented in the District through amendments to the District's Comprehensive Plan and its zoning regulations. In addition to these requirements, the District proposes that any increased heights allowable under a modified Height Act also be subject to:

- A new special design review by the Zoning Commission in order to better ensure, in Chairman Issa's words, "how well we build high"; and
- New Comprehensive Plan and zoning requirements that development projects that receive increased heights provide for public benefits in support of affordable housing or infrastructure.

IX. CONCLUSION

The District concludes that it is necessary, desirable and in both the federal and local interest to make balanced modifications to the federal Height of Buildings Act to allow increased height in the District of Columbia. These modifications would allow the District to secure its future as a vibrant and prosperous city with an expanded tax base that will support better services for its growing population and housing affordability, enable the District's economy to continue to diversify and attract new jobs, and maintain the city's treasured diversity. If no changes are made to the Height Act, the law's restrictions will constrain the city's growth and ability to accommodate it in a future that is forecasted to see great demand from a growing population and job base. These constraints would create a city where nationally significant structures are protected but only wealthy people could afford to live here to enjoy them.

Within the L'Enfant City the District recommends allowing some streets to have additional height in a manner that retains the characteristic relationship between street

width and building height, ensuring light, air and a human-scaled city, but uncapped by 19th century fire safety constraints. We propose to add additional protections for views around the Capitol and the Washington Monument.

Outside the L'Enfant City, the District recommends that Congress maintain the current height limits unless and until the District amends the Comprehensive Plan and its zoning code to designate areas where taller heights will be permitted. For those areas outside the L'Enfant City that are not designated for greater height beyond the current maximums, the current limits would remain in place. This recommendation acknowledges the greatly diminished federal interest outside the monumental core and the opportunity for capacity gains from potential height increases. Moreover, the federal interests that remain can be adequately protected by the continuing federal, even Congressional, role in approving the District's Comprehensive Plan and the significant federal presence on the District's Zoning Commission, both bodies of which would be required to approve any local changes in allowed building height.

The District further proposes that Congress remove federal restrictions on the human occupancy of penthouses citywide and set a maximum height of 20 feet and one story but require that mechanical penthouses be enclosed in the top floors.

The District believes that the federal interests are protected and that both federal and local interests enhanced with these recommendations, which maintain the horizontality of the iconic L'Enfant City skyline, ensure the prominence of federal monuments and landmarks by preserving their views and setting, and minimize negative impacts to nationally significant historic resources.

The future household and job growth scenarios and development capacity analysis detailed in this report demonstrate that current height limits constrain existing capacity to accommodate this growth over the next three decades and that the District requires additional capacity in the future to meet future demand. The District's final recommendations for changing the federal Height of Buildings Act will enable the city to create a supply of developable space to accommodate future growth and avoid upward price pressures on existing supply that could push out the very residents the District needs. The creation of any additional capacity through increased heights would occur through rigorous public review and approval processes with District and federal

participation. These processes would ensure that any potential height increases made possible by modifications to the Height Act would respect the Height Master Plan's core principles.

Both federal and local interests are served by having a vibrant, economically healthy, livable Capital City. However, without changes to the Height Act to enable the District to expand its tax base, protect housing affordability, make further infrastructure investments and improve our public realm, that vibrancy and fiscal stability could disappear.

National Capital Planning Commission

Height Master Plan Study for Washington, DC

Hearing Before the U.S. House Committee on Oversight and Government Reform

Selected Visual Modeling Images

December 2, 2013

The National Capital Planning Commission

U.S. Capitol Building: Existing Conditions

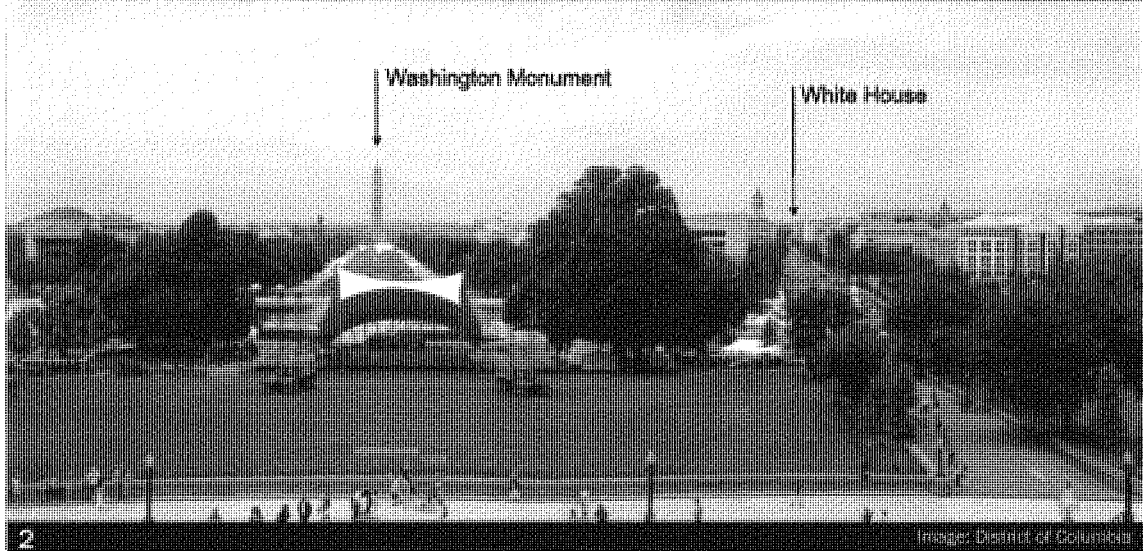
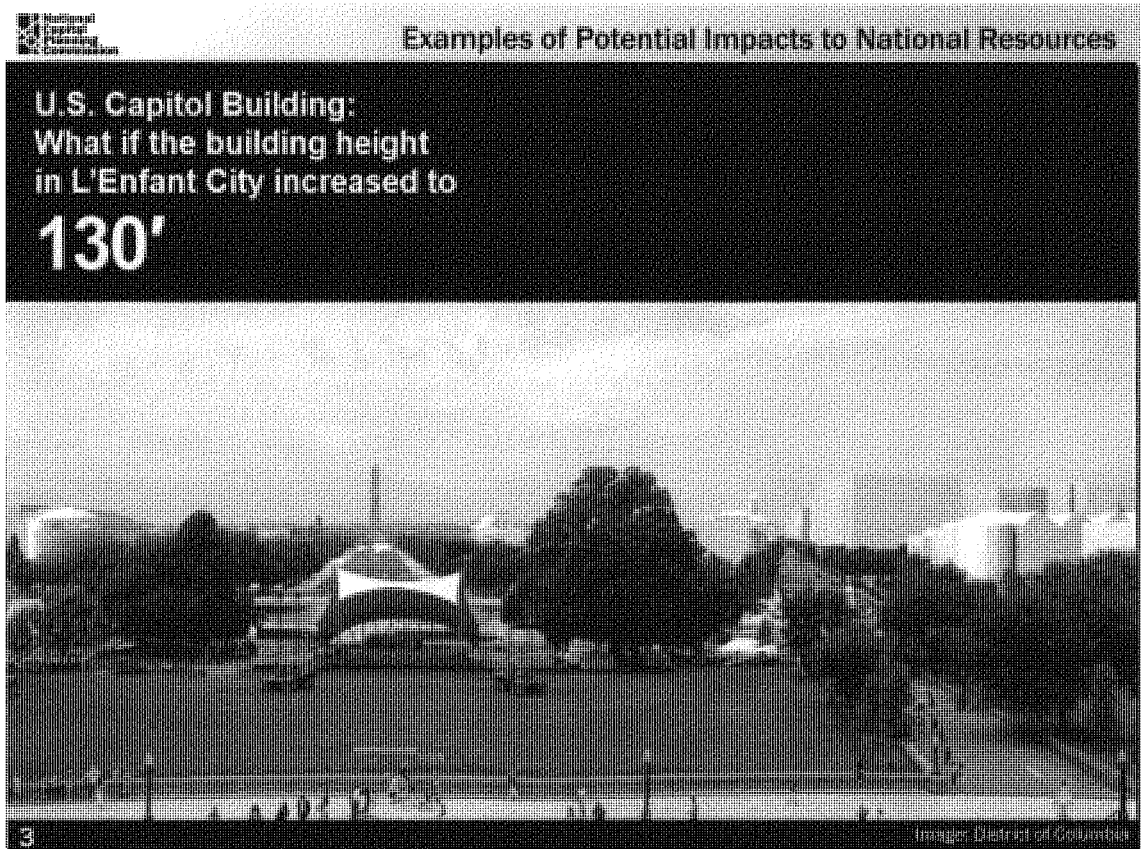
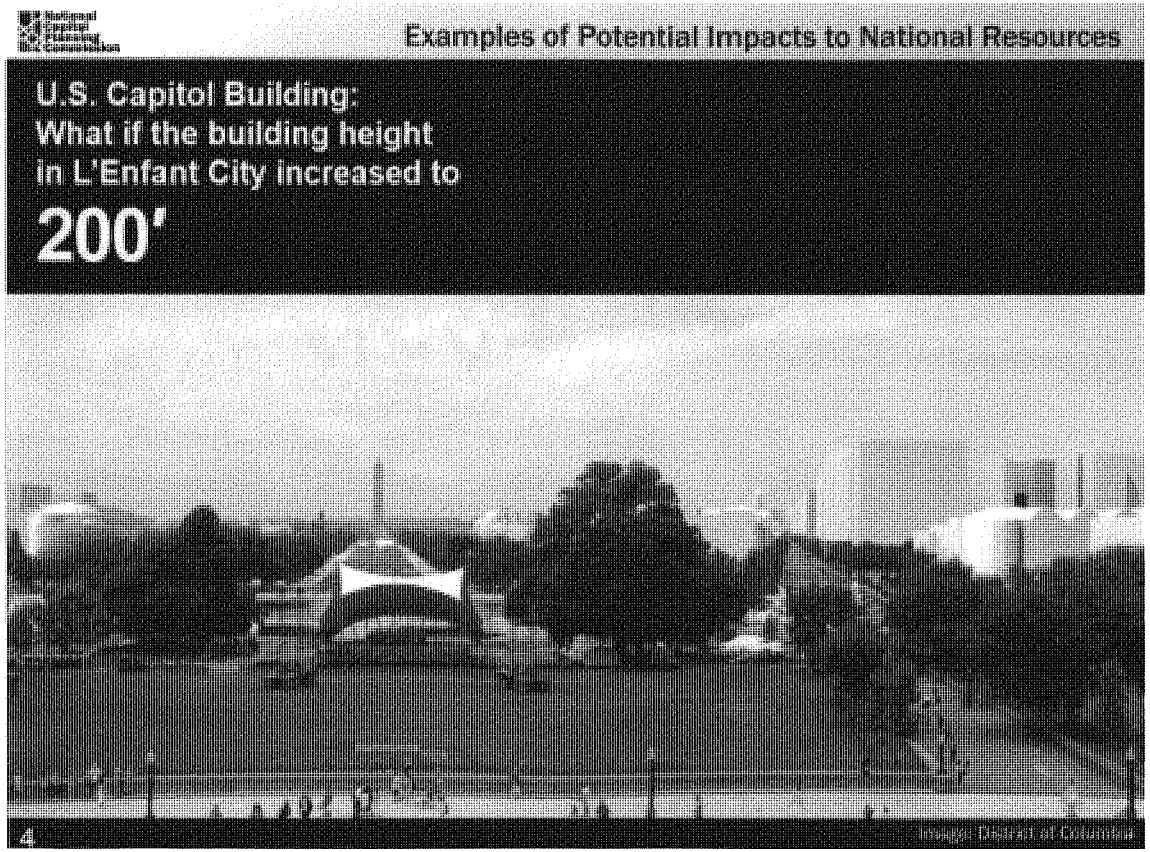
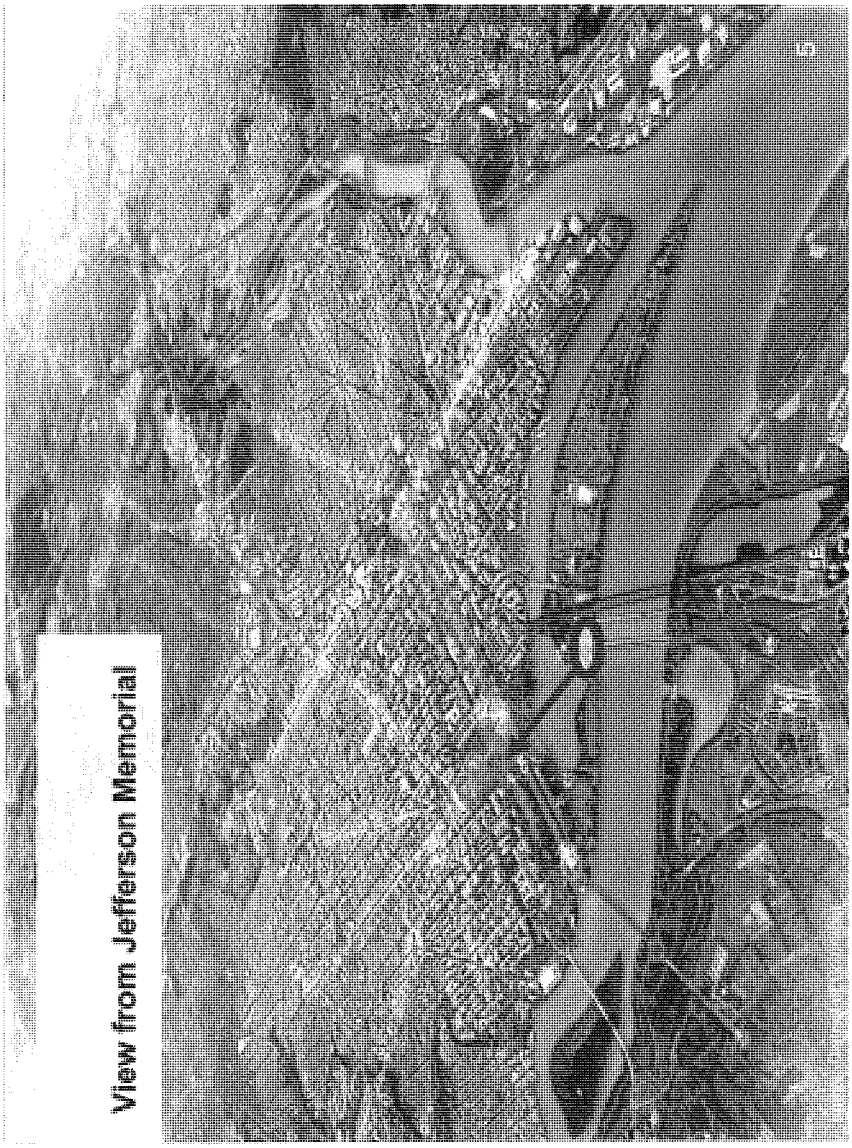


Image: District of Columbia


Examples of Potential Impacts to National Resources
U.S. Capitol Building:
What if the building height
in L'Enfant City increased to
130'
3
Image: District of Columbia

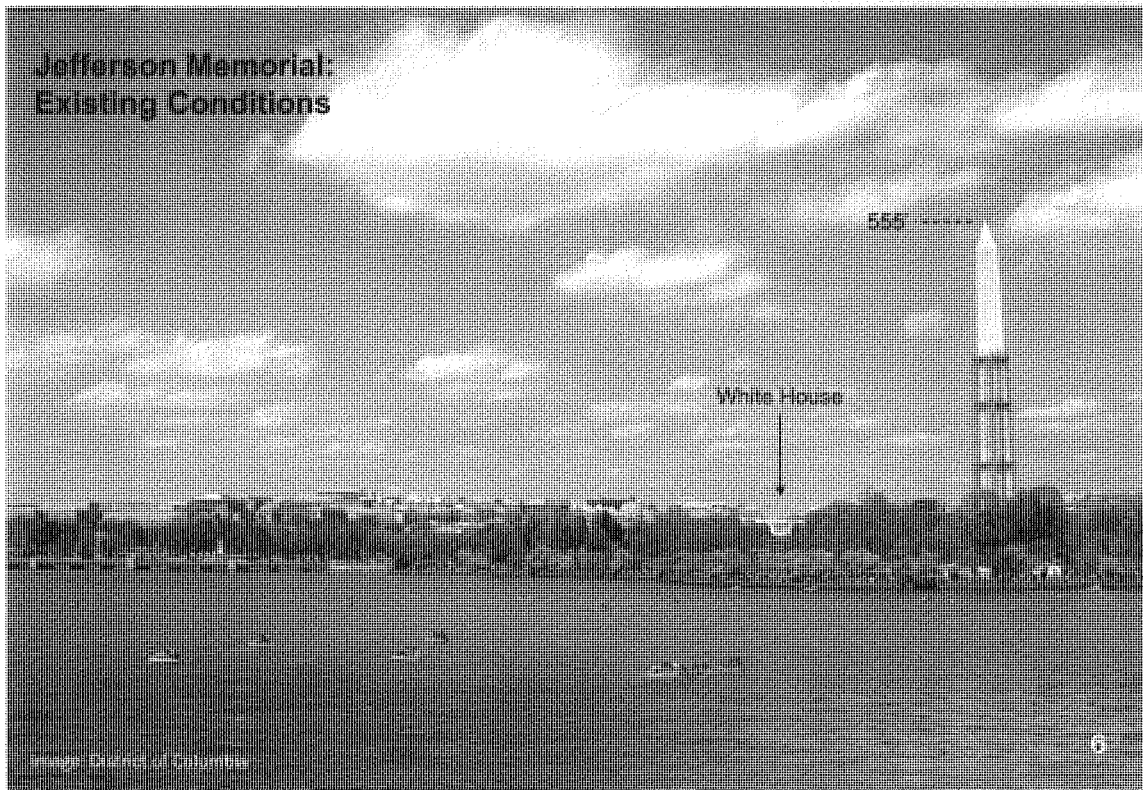

Examples of Potential Impacts to National Resources
U.S. Capitol Building:
What if the building height
in L'Enfant City increased to
200'
4



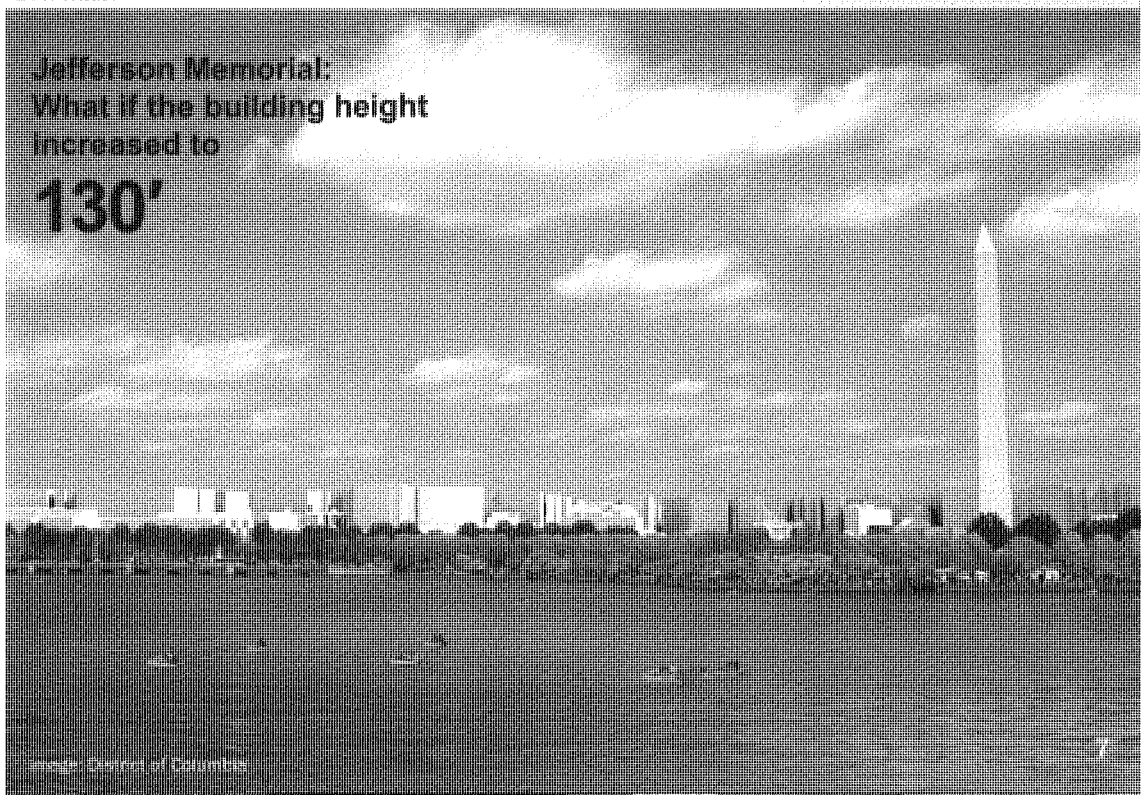
View from Jefferson Memorial

National Capital Planning Commission

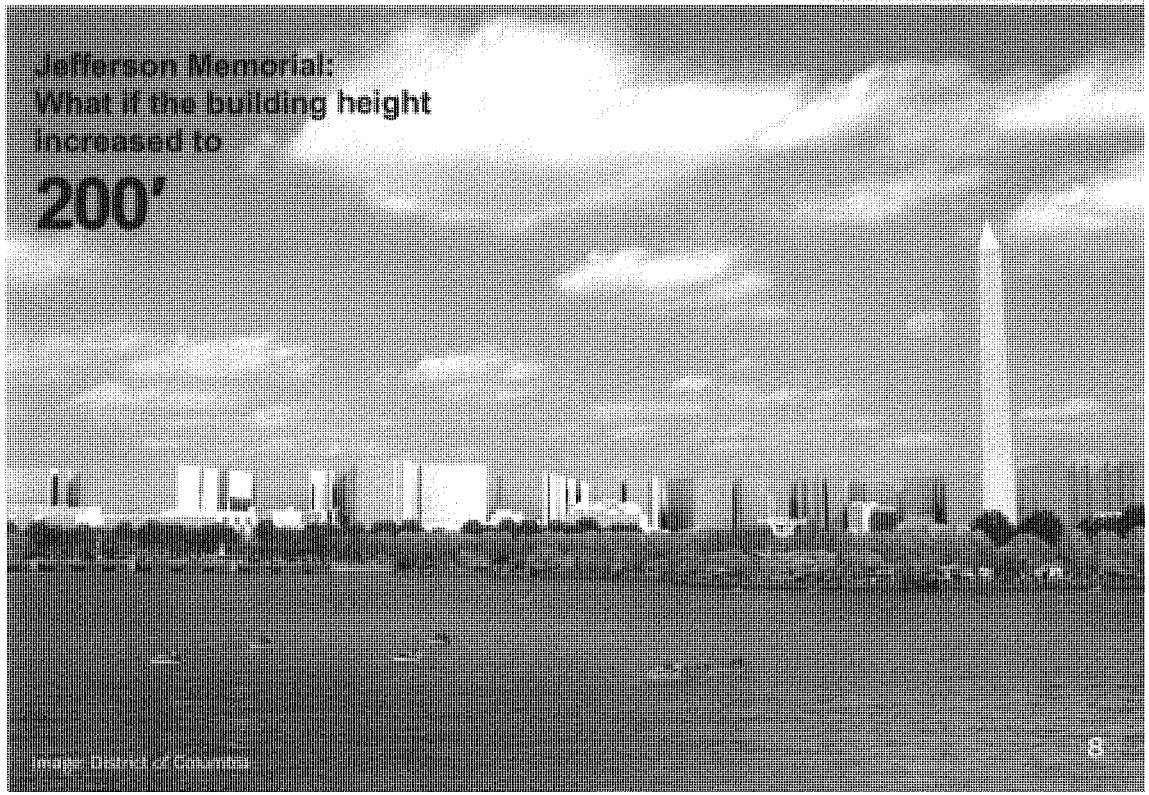
Examples of Potential Impacts to National Resources



Examples of Potential Impacts to National Resources



Examples of Potential Impacts to National Resources



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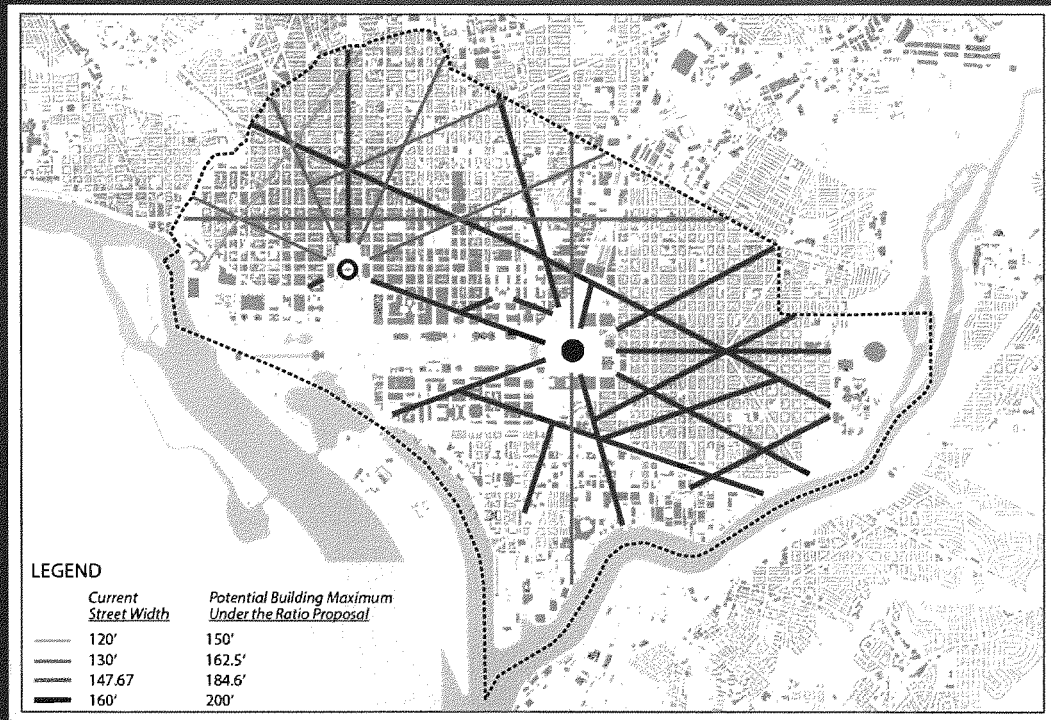
Streets Included in the District's Ratio Approach



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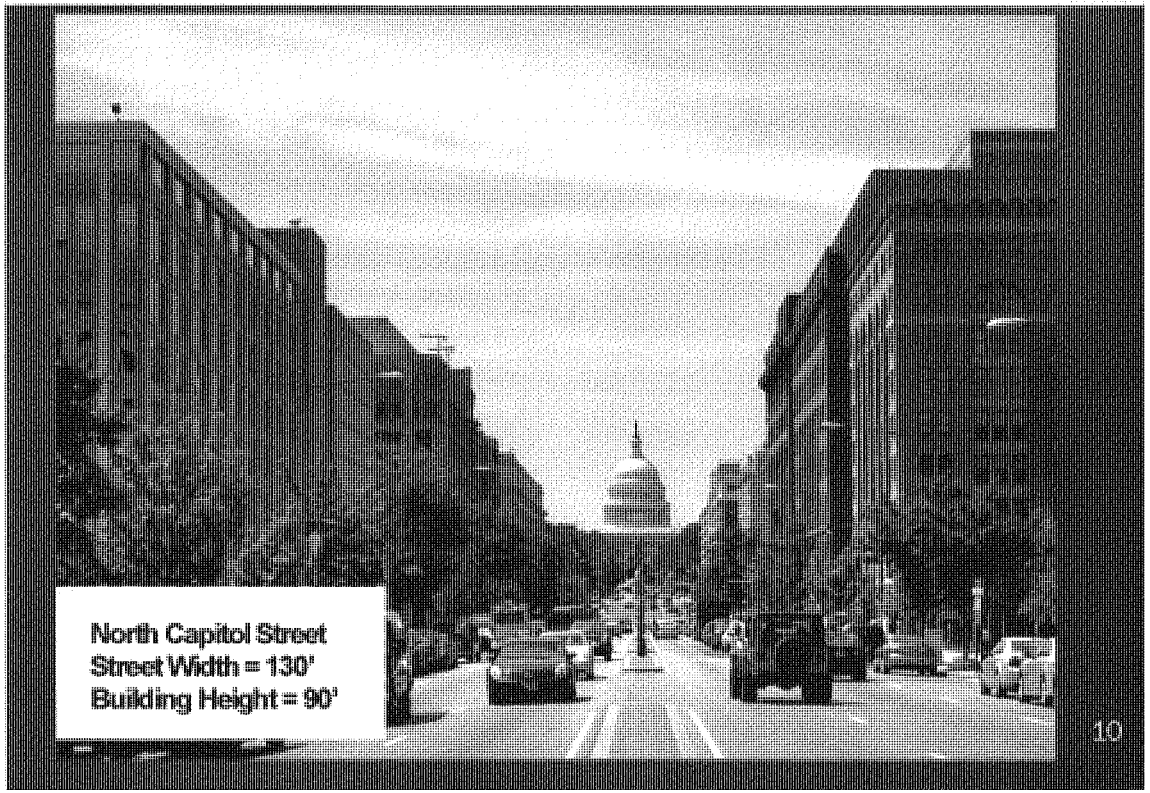
An Example of the District's Ratio Proposal



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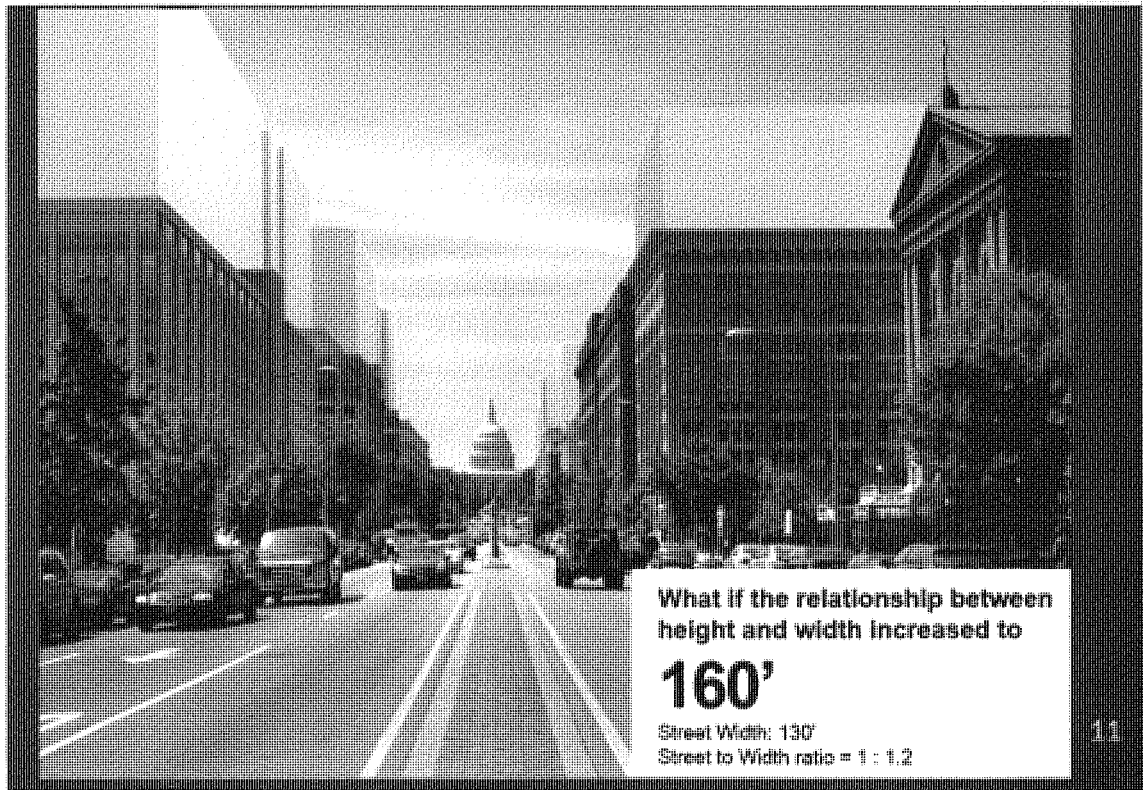
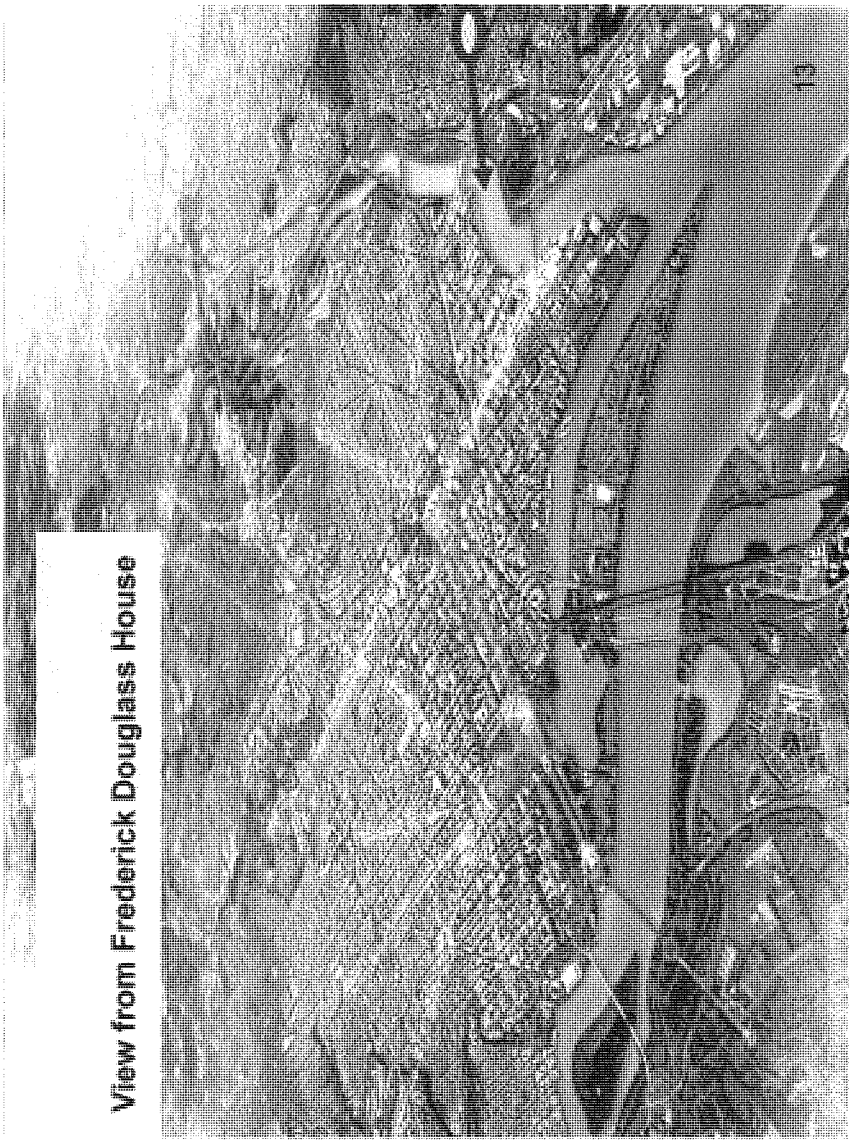
An Example of the District's Ratio Proposal



National Capital Planning Commission

Additional Slides for Discussion Purposes



View from Frederick Douglass House

Frederick Douglass House: Existing Conditions

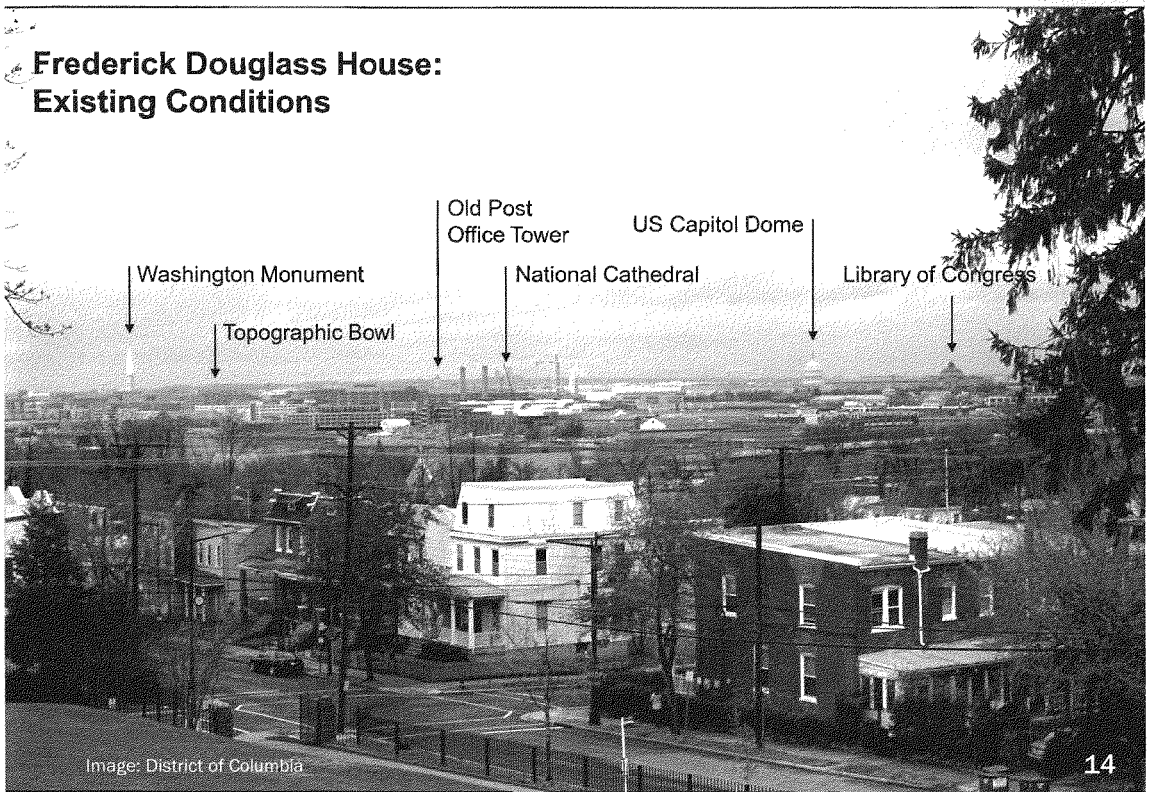


Image: District of Columbia

National Capital Planning Commission

Examples of Potential Impacts to National Resources

Frederick Douglass House: What if the building height in L'Enfant City increased to

130′

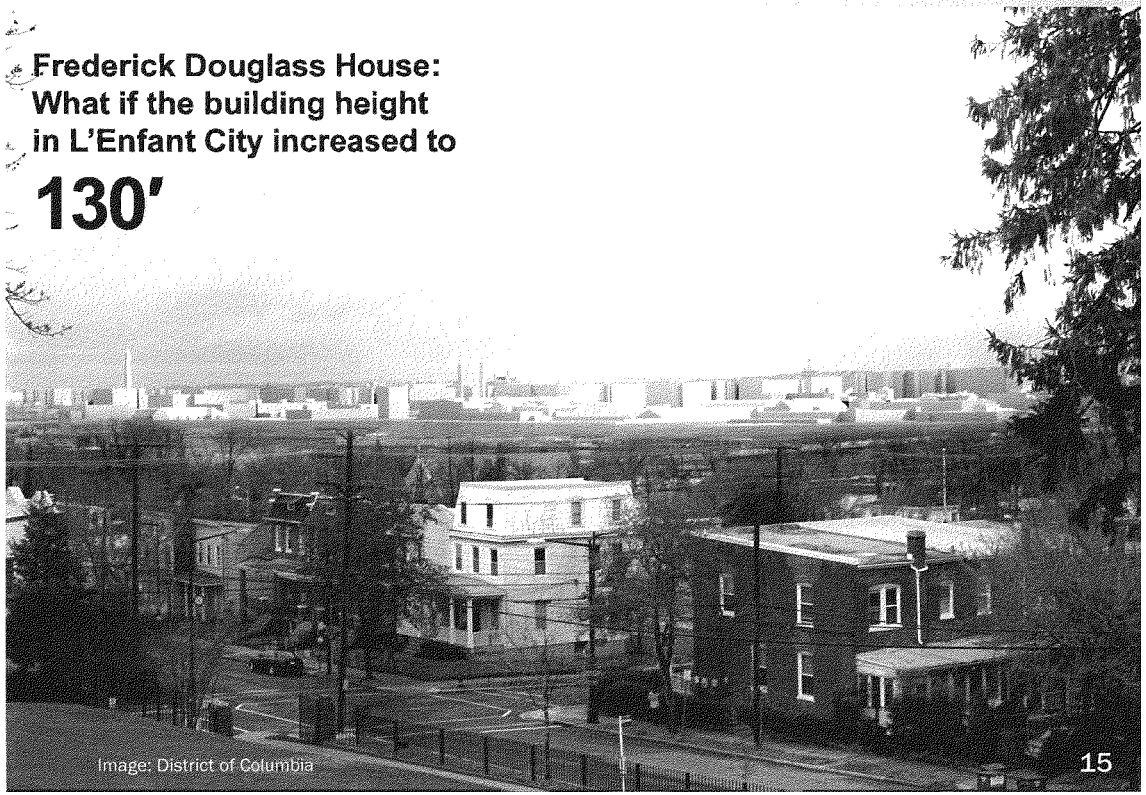


Image: District of Columbia

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Examples of Potential Impacts to National Resources

Frederick Douglass House: What if the building height in L'Enfant City increased to

200′

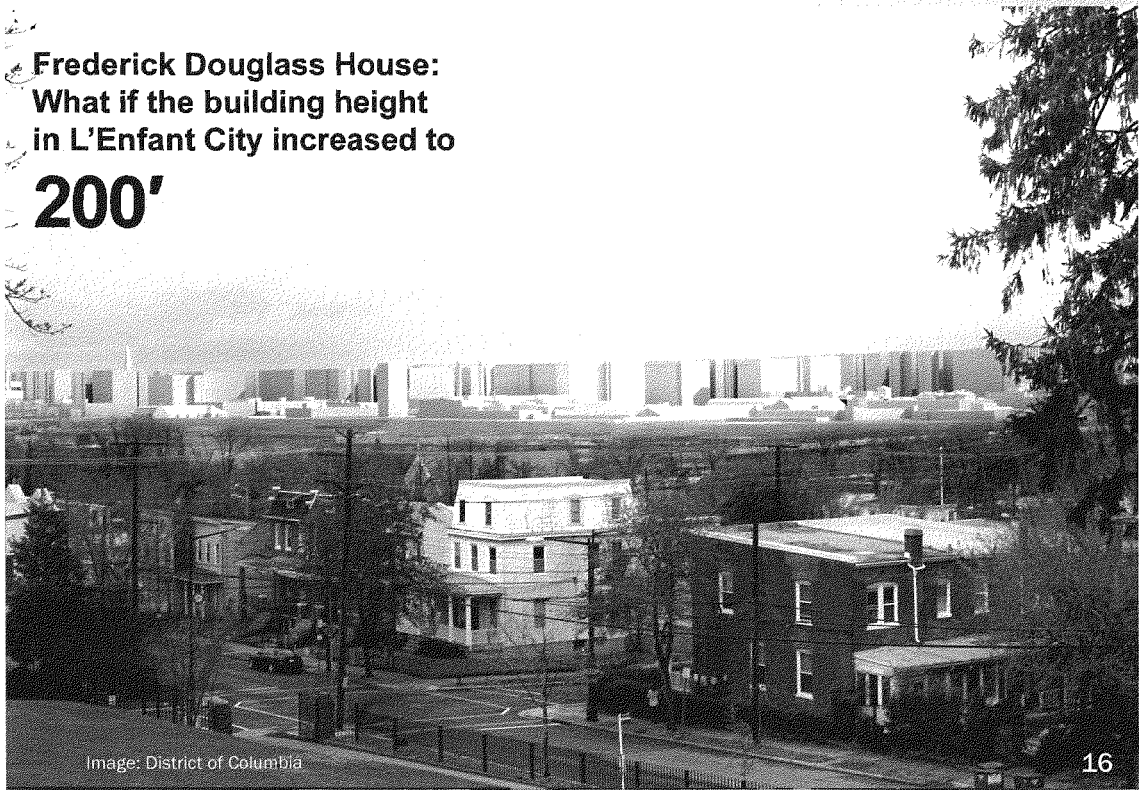

Image: District of Columbia

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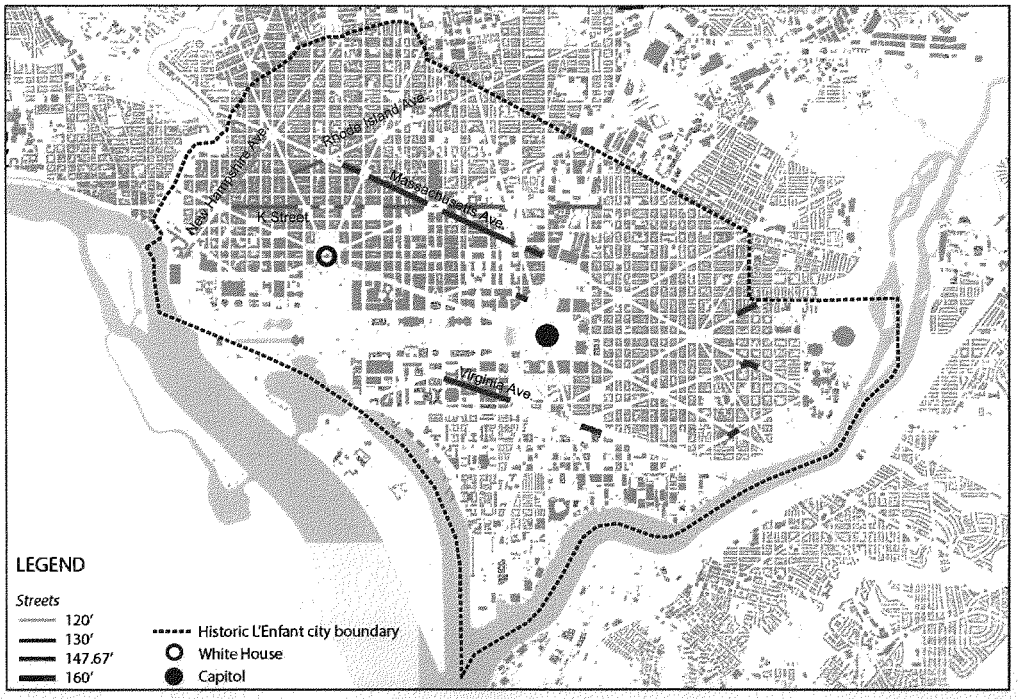
Streets and Avenues that Overlap with Growth Areas



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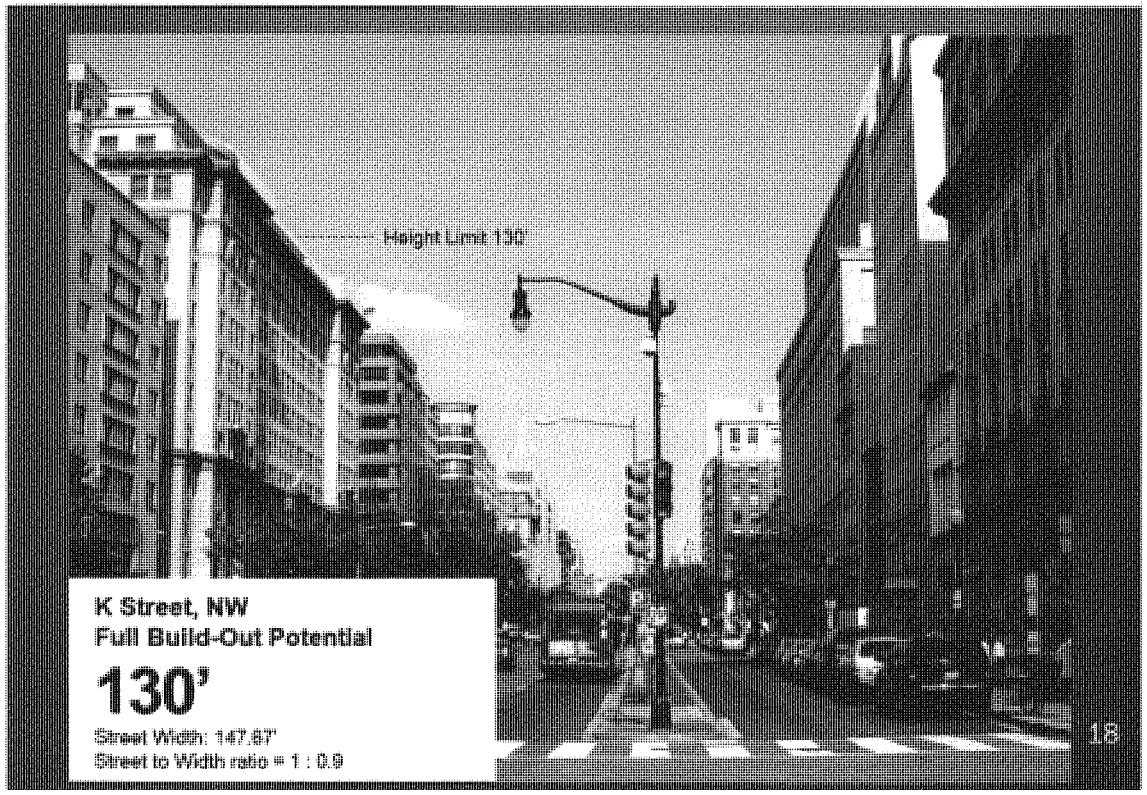
K Street



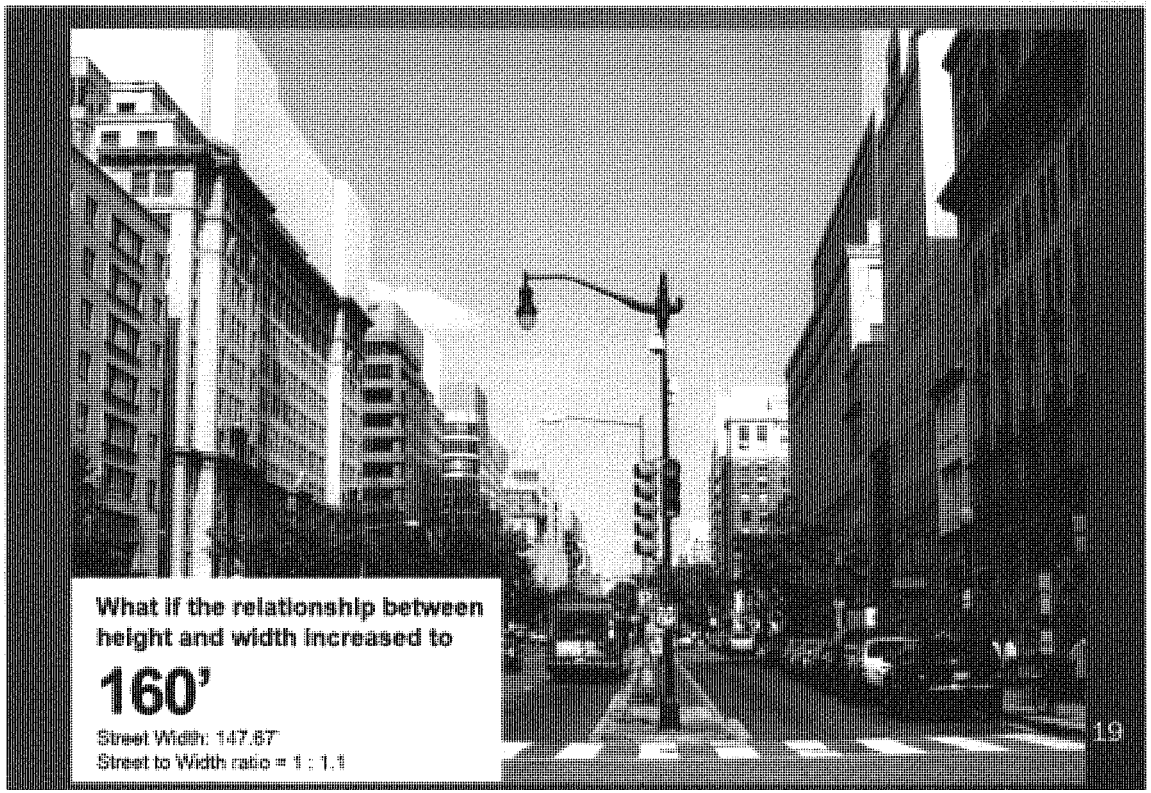
K Street, NW
Full Build-Out Potential

130'

Street Width: 147.87'
Street to Width ratio = 1 : 0.9

National Capital Planning Commission

K Street - An Example of the District's Ratio Proposal



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October 3, 2012

The Honorable Vincent C. Gray
Mayor
District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Mr. Preston Bryant, Jr.
Chairman
National Capital Planning Commission
401 9th Street, NW
North Lobby, Suite 500
Washington, D.C. 20004

Dear Mayor Gray and Chairman Bryant:

Since its establishment as our nation's capital, it has been necessary to balance the dual role of Washington D.C. as both the federal city and a home to local residents. One of the roles of my Committee is to help ensure that the proper balance is struck.

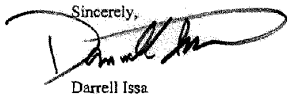
At a July 19, 2012, hearing entitled "Changes to the Height Act: Shaping Washington, D.C., for the future," I suggested that the National Capital Planning Commission (NCPC) could work jointly with the District of Columbia government to examine the extent to which the Height of Buildings Act of 1910 continues to serve federal and local interests, and how changes to the law could affect the future of the city.

The character of Washington's historic L'Enfant City – particularly the monumental core – establishes the city's iconic image as our capital. Any changes to the Height of Buildings Act that affect the historic L'Enfant City should be carefully studied to ensure that the iconic, horizontal skyline and the visual preeminence of the U.S. Capitol and related national monuments are retained. The Committee encourages the exploration of strategic changes to the law in those areas outside the L'Enfant City that support local economic development goals while taking into account the impact on federal interests, compatibility to the surrounding neighborhoods, national security concerns, input from local residents, and other related factors that were discussed at the July 19 hearing.

I understand that NCPC and the District are prepared to work jointly to examine this issue and make recommendations. I therefore request that NCPC work with the District to formulate and submit to the Committee a joint proposal and timetable for such work by November 1, 2012. If feasible, the timetable should indicate a summer 2013 completion date.

Thank you for your attention to this matter. If you have question, please contact James Robertson at (202) 225 5074.

Sincerely,



Darrell Issa
Chairman

THE DEVELOPER ROUNDTABLE

October 24, 2013

Harriet Tregoning
Director
D.C. Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

Re: Height Master Plan

Dear Director Tregoning:

The undersigned members of The Developer Roundtable are writing (a) to express our deep appreciation for the briefing you kindly provided us last Thursday on the District of Columbia Height Master Plan (the "Master Plan") and (b) to express our support for the key recommendations set forth therein. We find ourselves persuaded that the District's goal of long-term financial stability and its aspirations to be a diverse, inclusive and sustainable city will indeed be advanced by carefully-considered changes to the Height of Buildings Act (the "Act").

At the same time, we are mindful of the important federal interests that pertain to the original L'Enfant City and its monumental core. But, in our view, the need for great care with respect to the L'Enfant City, in this and all other matters, should not be a rationale for reluctance to examine the many benefits that can accrue from modest and selective modifications of the Act. We personally find ourselves drawn to the powerful economic development, tax base and job creation benefits that would accompany a measured increase in height and density. We are also struck by the Master Plan's forecast that all remaining density in the city could be fully utilized by 2027 without some adjustment in the city's overall development envelope.

Further, we believe this important conversation about the height of buildings goes to the heart of two other priorities: (1) the District's competitive position in the region and (2) its commitment to sustainability. The capacity to accommodate the city's anticipated growth in residents and jobs – and to accomplish this in a way that actually adds affordable housing units and entry level jobs – is an urgent matter for the District. Also of great importance is the promotion of sustainable, environmentally-sound growth which is only empty rhetoric unless appropriate increases in density are encouraged (e.g. increased height as part of transit-oriented development around Metro stations and along corridors that will be served by the planned streetcar system).

Finally, we believe it is not our role to recommend, at this time, specific areas where additional height might be accommodated or what those exact heights might be. And, while it's understood that many property owners might benefit by maintenance of the status quo and the almost

certain escalation in property values that would accompany ever-increasing demand coupled with artificially constrained capacity, we feel that the long-term health and well-being of the city can best be served by thoughtfully-considered changes in the Act.

We thank you and Mayor Gray for your leadership on this issue and the hard work required to reach the best possible conclusion.

Sincerely yours,

Jim Abdo
Abdo Development

William Alsup
Hines

Robert Braunohler
Property Group Partners

Robert Carr
Carr Properties

Dean Cinkala
The JBG Companies

Chris Gladstone
Quadrangle Development Corporation

Kingdon Gould III
Gould Property Company

Steven Grigg
Republic Properties Corporation

Douglas Jemal
Douglas Development Corporation

Norman Jenkins
Capstone Development Corporation

Peter Johnston
Boston Properties

Jair Lynch
Jair Lynch Development Partners

Greg Meyer
Brookfield Properties

Herbert Miller
Western Development Corporation

Deborah Ratner Salzberg
Forest City Washington

Chris Smith, Jr.
William C. Smith & Co.

Christian Spitz
DRI Development Services, LLC

Thomas Wilbur
Akridge

Charles (Sandy) Wilkes
The Wilkes Company

cc: Congressman Darrell Issa
Mayor Vincent C. Gray
Marcel Acosta, NCPC

Advisory Neighborhood Commission 1C
PO Box 21009, NW, Washington, DC 20009
www.anc1c.org
Representing Adams Morgan

Commissioners:

Brian Hart (1C01)

Marty Davis (1C02)

Ted Guthrie (1C03)

Gabriela Mossi (1C04)

Elham Dehbozorgi (1C05)

Billy Simpson (1C06)

Wilson Reynolds (1C07)

Jimmy Rock (1C08)

November 8, 2013

District of Columbia Office of Planning
Attn: Tanya Stern (Tanya.stern@dc.gov)

Re: ANC 1C Opposition to Proposed Draft Recommendations on Changes to Height Act

Dear Office of Planning:

At a duly-noticed public meeting held on November 6, 2013, with a quorum of seven out of eight Commissioners present, Advisory Neighborhood Commission 1C voted 7-0-0 to (i) oppose the Office of Planning's Draft Recommendations on changes to the Height Act and (ii) authorize me to send this letter conveying the position of the Commission.

The September 20, 2013 Evaluation and Draft Recommendations from the Office of Planning contemplates retaining the Height Act, with modification, within the confines of L'Enfant City, but lifting the Height Act for the remaining parts of the District and permitting the District to set the height for those areas through the Comprehensive Plan and the regular zoning process. If enacted, this change would bisect ANC 1C, with those portions south of Florida Avenue remaining subject to Height Act restrictions, but the height of buildings in areas north of Florida Avenue set by District zoning law.

ANC 1C opposes the recommendation to lift Height Act restrictions outside of L'Enfant City. The Commission believes that the District has been well served by the Height Act in the more than 100 years that it has applied to the City. The limit on the height of structures in the District lends the District an appearance and feel that is unique among American cities, which lifting the Height Act could undermine.

ANC 1C is also concerned that Adams Morgan would be cut in two by the proposed changes to the Height Act. The proposed changes would likely result in considerable pressure to maximize height and density in those areas of Adams Morgan on the north side of Florida Avenue. Some of that area is currently subject to height and density restrictions lower than the Height Act through the Reed-Cooke Overlay, which could be threatened should the dividing line for lifting the Height Act run through Adams Morgan.

ANC 1C therefore respectfully opposes the adoption of Recommendation No. 2 in the September 20, 2013 Evaluation and Draft Recommendation that the Height Act be lifted for those areas outside of L'Enfant City.

Sincerely,

Jimmy R. Rock

Jimmy Rock
Commissioner, ANC 1C08
Chair, Planning, Zoning and Transportation Committee, ANC 1C
Jimmyrockanc1C08@gmail.com

cc: D.C. Council Chairman Phil Mendelson
D.C. Councilmember Jim Graham

VINCENT C. GRAY
MAYOR

November 20, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

Enclosed is the District of Columbia's Height Master Plan final evaluation and recommendations for balanced modifications to the Height of Buildings Act. The District was careful to consider the effects of these recommended changes on the federal interest inside and outside the confines of the L'Enfant City. I believe these changes respect the federal interest within the L'Enfant City while also supporting the mutual federal and local interest in a robust, vibrant and economically stable District of Columbia.

By giving the District the flexibility to establish new maximum building heights as detailed by our final recommendations, these modifications would ensure the District can expand our tax base and improve services to our residents while preserving our social and economic diversity with affordable housing and other key infrastructure investments.

Thank you for the Committee's consideration of the District's final recommendations and our supporting analysis. If you have any questions about the Height Master Plan, please contact Harriet Tregoning, Director of the DC Office of Planning, at (202) 442-7636 or harriet.tregoning@dc.gov.

Sincerely,

Vincent C. Gray

Vincent C. Gray

cc: The Honorable Eleanor Holmes Norton, Congresswoman, District of Columbia
L. Preston Bryant, Jr., Chairman, National Capital Planning Commission
Harriet Tregoning, Director, DC Office of Planning

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Phil Mendelson
Chairman

Office:(202) 724-8032
Fax: (202) 724-8085

November 22, 2013

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Issa:

I was shocked to learn through the media that the Mayor of the District of Columbia has submitted recommendations to change the federal Height of Buildings Act of 1910, recommendations that are widely unsupported. Not only are these recommendations almost universally opposed by citizens throughout the District, as evidenced at an October 28th hearing held by the Council and at the several hearings held by the National Capital Planning Commission (NCPC), but, only the day before the Mayor's representative to the NCPC – the Director of the Office of Planning (OP) – had urged NCPC members to support something different. Rather than abide by a collaborative effort which OP itself urged, the Executive has now unilaterally gone to you for relief.

It is a core value of our local government than when we disagree with each other we do not go to Congress to get our way. Yet in essence that is what our Executive has done.

The Height of Buildings Act together with the L'Enfant plan and the McMillan Commission plan, has made Washington, D.C. unique and a world-class city, with both a magnificence and a human scale. It is a scale that respects and not overwhelms our local and national landmarks. Any change to the Height Act should carefully follow – *not precede* – thorough land use planning. But our Executive seeks amendment now, before adequate planning, notwithstanding that only three years ago the city revised its Comprehensive Land Use Plan with nary a word about changing the Height Act. And notwithstanding that the approach was overwhelmingly rejected by our planning partners, the NCPC.

Enclosed is a copy of a Sense of the Council resolution co-introduced by 12 of our 13 members objecting to the OP proposal. The Mayor's representatives to the NCPC reacted to this and the citizen criticism by saying it amounted to distrust of the government (the reason citizens don't want local authority to raise heights outside the L'Enfant city is because they don't trust their government). But the complete disregard for all that the citizens, Council, and NCPC have said underscores the distrust.

Please recognize that the Mayor's submission is not supported by the Council and the vast majority of District residents.

Sincerely,

Phil Mendelson, Chairman

enc.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Members of the Council

From: Nyasha Smith, Secretary to the Council

Date: November 20, 2013

Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, November 19, 2013. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Sense of the Council Against Amending the 1910 Height Act Resolution of 2013", PR20-0557

INTRODUCED BY: Chairman Mendelson and Councilmembers Catania, Orange, Evans, Bowser, Wells, Grosso, Graham, Cheh, McDuffie, Alexander and Bonds

Retained by the Council with comments from the Committee of The Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services

Chairman Phil Mendelson

Councilmember Anita Bonds

Councilmember David Catania

Councilmember David Grosso

Councilmember Vincent Orange, Sr.

Councilmember Jim Graham

Councilmember Jack Evans

Councilmember Mary Cheh

Councilmember Muriel Bowser

Councilmember Kenyan McDuffie

Councilmember Tommy Wells

Councilmember Yvette Alexander

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Mendelson and Councilmembers Bowser, Cheh, Evans, Gross, and Wells introduced the following proposed resolution which was _____.

To declare the sense of the Council that the Height of Buildings Act of 1910 should not be amended at this time.

1 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
2 resolution may be cited as the "Sense of the Council Against Amending the 1910 Height Act
3 Resolution of 2013".
4 Sec. 2. The Members of the Council of the District of Columbia find that:
5 (1) For over a century, the height of buildings in the District of Columbia has been limited by
6 the width of the abutting street: in residential areas, the height may be no greater than the width of the
7 street; in commercial areas, the height may be no greater than the width of the street plus 20 feet.
8 However, regardless of street width, residential building heights may not exceed 90 feet, and
9 commercial heights may not exceed 130 feet except on the north side of Pennsylvania Avenue
10 between the Capitol and the White House where the maximum height may be 160 feet. These
11 restrictions are part of the federal Height of Buildings Act of 1910, effective June 1, 1910, commonly
12 called the "Height Act."
13 (2) The effect of the Height Act has been to spread development across the city. This is
14 because the restriction on building heights has limited the concentration of skyscrapers and density
15 that characterize the downtowns of major American cities.
16 (3) Another effect of the Height Act has been to create a horizontal skyline that serves to
17 highlight such monumental buildings as the United States Capitol, the Washington Monument, the
18 Washington National Cathedral, and the Basilica of the National Shrine of the Immaculate
19 Conception.
20 (4) An additional effect of the Height Act is that throughout the city – from Anacostia to
21 Brookland to Cleveland Park – historic buildings have not been overwhelmed by dominating, taller
22 buildings, and a human scale has been maintained that is uncharacteristic of any other major U.S. city.

1 (5) In the 1960s and 1970s, as the District's population declined from a high of 802,178 in the
2 1950 census, urban planners thought the 1910 Height Act deterred development and encouraged
3 population flight to the suburbs. This gave rise to arguments for repeal of the Height Act. However,
4 the District's experience over the past decade demonstrates that factors other than the Height Act
5 influence economic development and population growth. The city's population has grown
6 significantly, and development is far outpacing virtually all other U.S. cities. It is clear that the Height
7 Act is not a factor in deterring development.
8 (6) On October 28, 2013 the Council's Committee of the Whole held a hearing on "The
9 District of Columbia's Recommendations on the Federal Height of Buildings Act of 1910."
10 (7) This was an opportunity for residents, developers, and others to voice their reaction to the
11 Office of Planning's September 20th draft recommendations.
12 (8) Overwhelmingly (94%), the testimony criticized the recommendations and urged no
13 change to the Height Act.
14 (9) As one witness (a former chairman of the Zoning Commission and Historic Preservation
15 Review Board) stated: "... the financial rewards and political pressures to build ever higher buildings
16 are intense. No big city municipal government in this country has been able to resist the allure of easy
17 real estate money. As proof positive: none has a skyline as low as Washington's. Our horizontality
18 will not survive..."
19 (10) Other witnesses noted, as stated by the DC Preservation League: "... everyone agrees
20 that, because of more restrictive zoning requirements, the Height Act is not the primary constraint on
21 building heights in the District. There is still room to grow within the limitations set by the Height Act
22 more than 100 years ago."

1 (11) Numerous witnesses emphasized the lack of urgency and need to act now. The impetus
2 for examining the Height Act came from a Congressman's inquiry, not the recent revisions to the
3 District's Comprehensive Plan or some other planning exercise.
4 (12) The Historic Districts Coalition testified: "We believe that the 1910 Height of Buildings
5 Act, through its effect on the physically shaping [of] the nation's capital is no less important than the
6 1791 L'Enfant Plan and the 1901 McMillan Plan, which revitalized L'Enfant's brilliant design. It has
7 given those plans the third dimension, limited height that has created the human scale and iconic
8 horizontal skyline that Washington enjoys today."
9 (13) The District government substantially revised its Comprehensive Plan in 2006, and then
10 updated the Plan in 2010. In spite of the extensive work done at the time by the D.C. Office of
11 Planning, there was no concern that development capacity was limited or that the Height Act of 1910
12 needed to be revised. Indeed, the current Comprehensive Plan fits comfortably within the framework
13 of the 1910 Height Act.
14 Sec. 3. It is the sense of the Council of the District of Columbia that:
15 (1) The Height Act of 1910 should not be amended or revised at this time.
16 (2) Someday there may be need to revise the Height Act, but such legislative action should
17 wait, be carefully limited to need demonstrated by thorough analysis, be informed by a clear
18 understanding of the impact on the District's unique urban design, and follow (not precede)
19 prescriptions of a new, well-vetted Comprehensive Plan.
20 (3) The District's skyline is a unique and distinguishing feature that promotes the human scale
21 as well as highlights national and local landmarks.
22 (4) The Height Act has not only distinguished the District from all other major U.S. cities, but
23 it has enabled a legacy that should be continued. Loss of that legacy can never be recovered.

1 (5) The Height Act also creates a dynamic that spreads economic activity across the city,
2 rather than concentrating it downtown.
3 Sec. 4. The Chairman of the Council shall transmit copies of this resolution to the National
4 Capital Planning Commission and to the Chairman of the Committee on Oversight and Government
5 Reform of the United States House of Representatives.
6 Sec. 5. This resolution shall take effect immediately.

Historic Districts Coalition
c/o Richard Busch, 1520 Caroline Street, NW, Washington, DC 20009 Rbusch1520@aol.com

November 26, 2013

The Honorable Eleanor Holmes Norton
Congresswoman for the District of Columbia
United States House of Representatives
Washington, DC

SUBJECT: Height Master Plan for the District of Columbia

Dear Congresswoman Norton:

I am writing on behalf of the Historic Districts Coalition, a District of Columbia-wide organization made up of representatives from many of our city's historic districts, to express the Coalition's opposition to the Gray administration's proposal to amend the 1910 Height of Buildings Act (the Act). The mayor proposes to increase the formula for determining the height of buildings in areas of the 1791 L'Enfant Plan, and seeks delegation to the District government of control building heights outside the boundaries of the L'Enfant Plan. These are not minor changes as some have characterized them.

As a member of the House Committee on Oversight and Government Reform, you know that Chairman Darrell Issa sent a letter dated October 3, 2012, to Mayor Gray and Preston Bryant, Chair of the National Capital Planning Commission (NCPC), requesting that they review the impact of possible changes to the Act and report back on their findings. The Gray administration and NCPC prepared separate initial draft reports and recommendations and then final ones; in each case, the administration sent its reports immediately to Chairman Issa before any public comment. Fortunately for the general public, NCPC held several hearings which provided venues where our serious concerns could be raised.

In addition, on October 28, DC Council Chair Phil Mendelson also held a hearing on the Gray administration's proposals. At this and the NCPC hearings mentioned above, public commentary was overwhelmingly against the Gray proposals and in favor of no changes to the Act. The DC Council hearing resulted in a Proposed Resolution, signed by 12 of its 13 members, to declare the sense of the Council that the Height of Buildings Act of 1910 should not be amended at this time.

On Thursday, November 21, the US Commission of Fine Arts held an informational hearing for its commissioners. The commissioners unanimously decided to send a letter to Congress indicating that the Height Act continues to serve the nation's capital well and that there is no need to amend it.

The Gray administration is presenting any opposition to its proposals as being tantamount to opposition to home rule and self-government for the District. Nothing could be further from the truth. The fact is that self-government for the District of Columbia is really about authority to control the city's annual budget, voting representation in Congress, and statehood. By ignoring public comment on its

recommended amendments to the Act, the administration is itself violating the precept of home rule and casting doubt on the mayor's "One City, One Future" motto. Even the *Washington Business Journal,* in an article dated November 21, 2013, stated that the discussion going on now about amending the Act is probably premature by 15 to 20 years.

This city that we all live in, have made commitments to, and call home is also the capital of the United States for the 300-plus million people of our country. Its horizontal skyline, punctuated by some of our most iconic symbols—the Capitol, Washington Monument, and Lincoln Memorial—is familiar to anyone who has ever visited here, US citizen or foreign traveler, and anyone who has ever seen a picture of the city. The prominence of these and other structures, indeed now of the entire city, is due to the 1910 Height Act, which gave a height-limiting third dimension to Pierre L'Enfant's 1791 baroque Plan for the City of Washington, with it orthogonal street grid, diagonal avenues, and reciprocity of sight lines, and the 1901 McMillan Plan that revitalized L'Enfant's vision. It is vital that this image be preserved.

On December 2, Chairman Issa will hold a hearing on the draft reports and recommendations provided by the Gray administration and NCPC. The Coalition asked that you vote against any change to the Height Act and use your committee influence with the chairman and other committee member to have them do the same.

Very truly yours,

Richard Busch on behalf of:

Historic Anacostia Preservation Society, Greta Fuller, Chair
Capitol Hill Restoration Society, Janet Quigley, President
Historic Chevy Chase, DC, Richard Teare, Treasurer
Frederick Douglass Community Improvement Council, Carolyn Johns Gray, President
Dupont Circle Conservancy, Thomas Bower, President
Citizens Association of Georgetown, Pamla Moore, President
Logan Circle Community Association, Tim Christensen, President
Historic Mount Pleasant, Inc., Fay Armstrong, President
Sheridan-Kalorama Historical Association, Kindy French, President
Sheridan-Kalorama Neighborhood Council, Christopher Chapin, President
Advisory Neighborhood Commission 2D (Sheridan-Kalorama) David Bender and Eric Lamar
Historic Takoma, Inc., Lorraine Pearsall, Vice President
Tenleytown Historical Society, Jane Waldman, President
Loretta Neumann
Scott Roberts
Leslie Kamrad
Mary Rowse
Evelyn Wrin
Sally Berk
Tersh Boasberg

U.S. COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS 17 MAY 1910

401 F STREET NW SUITE 312 WASHINGTON DC 20001-2728 202-504-2200 FAX 202-504-2195 WWW.CFA.GOV

26 November 2013

Dear Chairman Bryant:

In its meeting of 21 November, the Commission of Fine Arts was pleased to hear an information presentation on the recommendations of the Height Master Plan report recently adopted by the National Capital Planning Commission (NCPC), prepared in a year-long process undertaken with the District of Columbia Office of Planning in response to a request by the Chairman of the House Committee on Oversight and Government Reform. The Commission of Fine Arts appreciates the opportunity to comment on this issue of such great national symbolic importance.

The Commission affirmed that the physical character of Washington, D.C., the capital of the United States, is unlike any other city in the nation, with great symbolic value for all Americans. In its enduring constancy as a recognizable image of democracy across the nation and the world, Washington is the visual expression of the idealism of principle upon which our nation was founded. This image has been shaped and protected since 1910 by the Building Height Act, giving Washington its distinctive horizontal skyline punctuated by iconic architectural forms that symbolize the nation's history and governance, and emphasizing the predominance of public values. In the spirit of protecting this legacy, all the members of the Commission expressed strong support for the NCPC recommendation that the existing federal height limitations should remain in effect throughout the District of Columbia.

In their discussion of the NCPC report, the Commission members characterized the existing system of height regulation as being clear, time-tested, and equitable in its application, whereas any new process for creating exceptions would likely be unwieldy to administer in a manner that would adequately protect federal interests for future generations. While recognizing that taller buildings are part of the visual character of many American cities, they commented that Washington's special status as the nation's capital is appropriately expressed in its physical form, a part of our national heritage that must be judged as far more momentous than issues of real estate development.

The Commission members noted that many concerns addressed in the NCPC process and report raise fundamental questions about any urgency for changing the federal height limit. They noted that the existing envelope available for development in Washington is largely constrained by the District of Columbia's zoning regulations, rather than by the federal height limit; they agreed that there is a lack of compelling evidence for changing the limit. They also cited the general lack of advocacy by the development community, the lack of support from the District of Columbia Council, and the overwhelmingly negative reaction from District residents for raising the height limit. Furthermore, they cautioned that changing the existing height limit for specific excepted locations would introduce an unpredictable and unwelcome element of negotiability in the city's form. The transparency

and universality of the current height limit should not be compromised; any changes would almost certainly be irreversible and should be undertaken only after careful study. They concluded that substantial alteration of the height limit would be an attempt to fix a system that is not broken, and that the public value of the existing law in its integrity should be recognized.

In supporting the NCPC's conclusion that federal interests permeate the District of Columbia as a whole, the Commission members noted Washington's comprehensive system of public parks established in the Senate Park (McMillan) Commission Plan of 1901, extending outward from the commemorative core of the city envisioned in the L'Enfant Plan set within the topographic bowl of low hills and escarpments. They cited the examples of this national park system, which includes—in addition to the Mall system in the heart of the city—stream valleys such as Rock Creek Park, the Potomac and Anacostia waterfronts, and the circle of Civil War-era forts. While supporting the NCPC recommendation to continue studying the alteration of height limitations beyond the L'Enfant city and the monumental core of Washington, they emphasized the complex interdependence between the city's form and its historic and cultural landscapes; these issues require a comprehensive assessment if any potential for limited change to building height regulation is studied in the future. In its endorsement of the NCPC report, the Commission also made no objection to several other recommendations, including the provision to allow limited occupancy in penthouses, the deletion of outdated fire safety regulations, and the strengthening of policies to protect significant viewsheds within the federal and District elements of Washington's *Comprehensive Plan.*

The Commission members expressed appreciation for the NCPC's careful study of this nationally significant topic, as well as for the thoughtful and impassioned testimony from numerous members of the community and representatives of civic organizations. The Commission, in its role to advise the President and Congress on matters affecting the design of the national capital city, looks forward to participating in any further discussion of the city's special design character and possible changes to the building height limit.

Sincerely,

Thomas E. Luebke, FAIA
Secretary

Preston Bryant, Jr., Chairman
National Capital Planning Commission
401 9th Street, NW, Suite 500-N
Washington, DC 20004

cc: Hon. Darrell Issa, Chairman, House Committee on Oversight and Government Reform
Harriet Tregoning, Director, D.C. Office of Planning

CAPITOL HILL RESTORATION SOCIETY

November 27, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Re: Changes to the Height Act: Shaping Washington, DC, for the Future, Part II
December 2, 2013 Hearing of the Committee on Oversight and Government Reform

Dear Congressman Issa:

Thank you for initiating your inquiry into the role of the Height of Buildings Act in our nation's capital. For fifty years the Capitol Hill Restoration Society has dedicated its efforts to preserving and improving the quality of life on Capitol Hill. The Height Act preserves our iconic city's unique character and makes it a special place to live, work, visit and invest. We support the Act in its present form and to urge you to reject any changes that would relax it. We believe the record is inconclusive at this point and that further study will confirm that the Height Act promotes, not hinders, this great city's success.

As President of the Capitol Hill Restoration Society I have participated in numerous meetings on the height study in the past year, have written extensively on it in the Society's newsletter (see five articles attached), have reviewed every page of every NCPC and OP report, and have given testimony to the National Capitol Planning Commission and DC City Council. After much consideration I suggest:

1. **NCPC got it right.** They identified tangible federal interests that are Congress's right and responsibility to protect, such as the ring of Civil War Defenses, but equally important intangibles such as the elements of the L'Enfant Plan, viewsheds, the symbolic and cultural significance of the capital city, infrastructure, physical security and economic vitality. They further analyzed the Office of Planning's data and found that building up the Avenues would have negligible benefits (NCPC Final Report, p. 20) and multiple adverse effects (pp. 18, 21). It could confict with the existing Comprehensive Plan policy of protecting reciprocal views between the L'Enfant City and the rim of the Topographic Bowl (p. 13). They noted that the city is far from built out (p. vi). And they pointed out that a mechanism already exists, the comprehensive planning process, that not only would accomplish most of OP's goals but is also an essential prerequisite to any meaningful formulation of changes to this fundamental law (p. 22).

P. O. Box 15264 - Washington DC 20003-0264
202-543-0425 - www.chrs.org - info@CHRS.org

2. **The Office of Planning study's reasoning is flawed.** OP conducted an impressive amount of research to address the Committee's questions, but the result is incomplete. We believe it overestimated development demand (OP Final Report, p. 27) and was overly conservative on capacity (pp. 30-31), resulting in a manufactured crisis. The economic study did not include the likely-significant costs of additional infrastructure on transit and utility systems that are already stressed. OP mistakes an increase in the supply of luxury high-rise condos that would come from higher limits, for an increase in affordable housing, and predicts an influx of middle-class families although most new development will surely be one-bedroom and studio units. Clearly the data should be vetted and refined if it is to serve as the basis for making major changes to the appearance and character of our nation's capital.

3. **The public supports it.** The NCPC Final Report notes overwhelming support for completing comprehensive planning before undertaking any amendments to the Height Act (page vi). 36 of 38 civic organizations, 43 of 57 individuals and 23 of 25 advocacy groups opposed any changes to the Act (p. 9). Public informational meetings consistently drew 75 to 100 people. Citizens of 16 states and nine foreign countries took the time to submit comments, underscoring the global significance of this world-class city's character.

Given the important aspects that require further study, including impacts on emergency responders, communications and infrastructure; the vetting that the comprehensive planning process would provide; and the irreversibility of changes, we respectfully urge your concurrence with NCPC's assessment that it is inappropriate to implement any modifications to the Height Act at this time. Thank you for consideration of this important matter.

Sincerely,

Janet Quigley

Janet Quigley
CHRS President

644 Massachusetts Ave., NE
Washington, DC 20002

Copy to: Rep. Eleanor Holmes Norton
Enclosure: Five articles from *CHRS News*, April - November 2013

P. O. Box 15264 - Washington DC 20003-0264
202-543-0425 - www.chrs.org - info@CHRS.org

President's Column: NCPC Got It Right on Height

By Janet Quigley

Capitol Hill felt the effects of the Federal Government's October shutdown as did the rest of Washington, DC. Local businesses felt the pinch as fewer customers came through the doors. Playgrounds in National Park Service-maintained Lincoln, Stanton, and Marion (aka "Turtle Park") Parks were chained up. Street vendors disappeared as the usual crowds thinned. Local federal workers stayed home and economized under an uncertain pay outlook. If there was any silver lining it was that seats on Metro were plentiful.

The shutdown also demonstrated Washington's resilience as it maintained city services thanks to a healthy budget surplus of more than $400 million. Charitable services and annual events on Capitol Hill continued. Neighbors flocked to the Capitol Hill Cluster Schools' Renovators House Tour and the Capitol Hill Community Foundation's Literary Feast to make possible valuable support to our school children. Thankfully, Congress found a way to get back to business.

NCPC Report on Height Act

The city's year-over-year surplus is one of the factors cited in the National Capital Planning Commission's recent report for Rep. Darrell Issa finding no benefit and significant adverse effects of changing the Height Act. Washington, DC is a thriving, competitive city with an enviable quality of life and a highly desirable real estate market. It is not, as the DC Office of Planning avers, a needy city running out of buildable space whose only hope of survival is to attract the rich.

One by one the NCPC report refutes the OP report's rationales for taller buildings. City out of space? Most buildings are far below the current limit. Population overwhelming? We are 25% below peak population. Federal office space? Flatlining. Revenue needed? The city underspends by $50 million per year. No Federal interest beyond downtown? Try Rock Creek Park, the Civil War Defenses, the Naval Observatory and the Lincoln Cottage; Departments of Homeland Security and Transportation; the Bureau of Alcohol, Tobacco and Firearms; embassies. Issues needing study? Infrastructure costs; security measures and costs; flight paths; cell phone towers; areas outside the topographic bowl; protection of viewsheds.

NCPC's cautious approach is merited given the value of our iconic settings, the protection of the L'Enfant Plan's vistas, streets, reservations and open spaces, and the lasting damage that can be caused by unwise changes. I hope you will join CHRS in standing up for the Height Act.

Farewells

We regretfully note the passing of two Capitol Hill pioneers in October. **Linwood "Tip" Tipton** was a civic leader, strategist and philanthropist who was instrumental in shaping modern Capitol Hill. He secured federal funding from Congress to redevelop the Eastern Market Metro Plaza and worked tirelessly to improve the once dilapidated Barracks Row. He served as Chairman of the Board of Barracks Row Main Street for the past six years and saw the corridor's transformation into one of the city's most popular destinations. Tip and Connie Tipton were gracious entertainers and often opened their home, the well known "Deer House," to welcome friends and neighbors for causes and celebrations.

Innovative designer and prolific author **James van Sweden** revolutionized landscape architecture in the 1970s with drifts of color and a composed wildness that came to be known as the New American Garden. From its studio on Barracks Row, the highly regarded Oehme, van Sweden firm designed works including the New American and Friendship Gardens at the National Arboretum, the World War II Memorial and the Native American Plant Garden at the New York Botanical Garden. Mr. van Sweden's books include Bold Romantic Gardens, Gardening with Nature, Art in the Garden and many others. He received the American Society of Landscape Architect's Design Medal in 2010 and was recognized by the Garden Writers Association of America and the American Horticultural Society.

Both of these neighbors made tremendous contributions to life on Capitol Hill and beyond, for which they have our sincere appreciation and thanks. They will be missed. ★

President's Column: Height Does Not Equal Right

By Janet Quigley

How did I miss the start of open season on the Height Act? This may be premature since recommendations will not be made until the fall, but there are causes for concern.

Last fall Rep. Darrell Issa (R-CA) requested the National Capital Planning Commission (NCPC) and the DC Office of Planning to explore "strategic changes to the law in those areas outside the L'Enfant City that support local economic development goals," suggesting that Congress would relax the height limits to allow increased local control and development. Score 1 for developers.

Mayor Gray has hired eight consultants to assist the Office of Planning in developing a Height Master Plan. Not one has expertise in historic preservation, which is an essential component of Washington, DC's unique identity.

The public meetings being hosted by NCPC/OP focus on cities that have height-friendly policies, and do not address the handful of remaining "horizontal" cities—those with height limits. (See NCPC's informative website, www.ncpc.gov/heightstudy.)

The study plans to address nationally, not locally, significant landmarks, monuments and areas.

One goal of the study is to "Minimize negative impacts to nationally significant historic resources, including the L'Enfant Plan." What about our City's character-defining skyline? And are we resigned to *negative impacts*?

The framing of the questions for public input is disturbing: "What landmarks and monuments should be prominent? What views are important?" (Must we choose?) "Should private buildings become prominent landmarks in Washington's skyline? Can taller buildings coexist with the skyline?" (What about green space, walkable streets, sunlight, congestion, tourism?)

The question seems to be not *whether* to raise the limit but *where*, (another false choice): throughout the city, only outside the L'Enfant City, or outside the monumental core? We trust our government agencies to make informed and impartial decisions, but it is difficult to envision how a "no-change" recommendation can result from this line of inquiry.

Convincing arguments in favor of the height limit are made by Ed McMahon of the Urban Land Institute. In his article, also on the NCPC website, titled "Keep the Lid on DC: Build Better, Not Bigger," he points out that density can be achieved without height, and that in fact "DC is already much denser than many other large US cities with skyscrapers, including Baltimore, Dallas, Denver, Phoenix, San Diego and Seattle." Addressing the hope that taller buildings would increase the amount of urgently needed affordable housing, he notes that prices are even higher in cities and suburbs with skyscrapers, and that skyscrapers tend to offer luxury units. As an alternative, he recommends redeveloping the city's estimated 30,000 vacant or abandoned lots. Finally, he and several others argue that once the limit is changed, the genie is out of the bottle and there is no going back.

Attorney Laura Richards, our guest speaker at the June members' forum, is an eloquent advocate of the Height Act. Please join us at the Hill Center on June 19th for a spirited discussion on this matter that goes to the heart of Washington, DC's livability. ★

Volunteers Welcome!

As part of our "Beyond the Boundaries" program, CHRS volunteers are engaging in a variety of outreach activities. We're already looking forward to the Capitol Hill 4th of July Parade, when we will again march up Barracks Row, tossing Mardi Gras beads into the crowd. Usually, it's hot work—though worth it, given the response from the crowd. But if the weather holds, we may be marching in parkas this year! If you can be persuaded to join, please call or email Elizabeth Nelson (543-3512; Elizabeth_knits@yahoo.com). Even better, do you have an idea for a float? Or a vintage vehicle to transport the swag?

Not available on July 4? We plan to staff booths at both the H Street Festival and Barracks Row Day this fall. Our participation at these events is part of an on-going effort to introduce ourselves to newcomers on the Hill and to those living outside the boundaries of the Historic District. We'll offer children's activities to amuse our younger neighbors while we share information about our activities and future plans with their parents. Leftover House Tour catalogs are particularly well received. Volunteers are always more than welcome—they are truly needed! Plus it's a lot of fun to meet friends, old and new. Watch the CHRS newsletter for announcements of these events, which are also posted on the website.

Capitol Hill Restoration Society

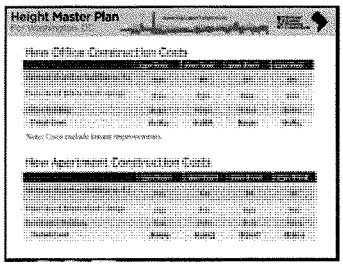
NEWS

www.chrs.org September 2013

Detailed Height Studies Available

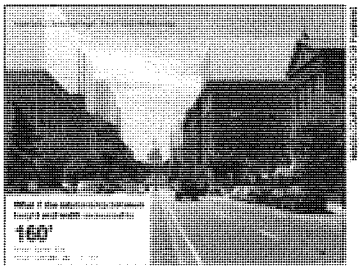
By Janet Quigley

Contrary to popular belief, taller buildings are not cheaper to build and will not result in lower housing costs. This is one finding of an economic feasibility study prepared by the city's consultants. The DC Office of Planning (OP) and the National Capital Planning Commission (NCPC) presented the findings of the economic feasibility and modeling studies in support of the Height Master Plan in a series of public meetings in August. The studies, which respectively evaluated and demonstrated, appear to provide no compelling reason to relax or eliminate the Height of Buildings Act of 1910, or even to identify any negative effects caused by the current limits.



Economic analysis found that taller apartment buildings will be less affordable, not more.

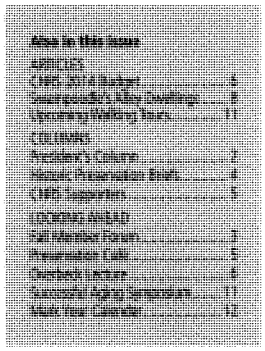
The economic study tested the feasibility of new construction and expansion of office and residential heights, and analyzed 15 areas of the District. It found a cost per square foot of $199 for a 130-foot apartment building, $207 for a 200-foot building, and $201 for a 250-foot building. It found relatively lower costs for adding two to four stories to existing buildings ($150 and $159, respectively). The study is still being finalized; an overview presentation is available on the NCPC website.



The modeling study visualizes 48 scenarios for increased height.

Surprisingly, historic districts were not exempted from consideration with the exception of low-density districts. Thus, the Capitol Hill Historic District could see taller buildings, but several conditions would have to change first. OP Chief of Staff Tonya Stern consistently reminded audiences that formal procedures would apply: "The Height Act

Continued on page 10



Height Act, *continued from cover*

is a federal law that can be modified only through Congressional action. Any changes to the law proposed by Congress will not pre-empt local decisions by the District government about whether and when any changes to building heights would occur. The District would undertake amendments to its Comprehensive Plan and then initiate any zoning changes deemed appropriate through its normal processes, including substantial public input, to respond to any Congressional modifications to the Height Act."

For the modeling study, the consultants prepared a variety of scenarios to help people visualize what streets and viewsheds would look like if buildings were 130 to 225 feet tall, either citywide or in selected areas. At present, most residential buildings have a limit of 90 feet; commercial structures are limited to 130 feet. Predictably, visibility of monuments and landmarks decreased as the building heights increased, and the airy quality of neighborhood streets was diminished. The renderings of 48 views of fifteen locations can be seen at: www.ncpc.gov/heightstudy.

NCPC and OP have conducted rigorous, but necessarily fast-tracked, public outreach in order to meet a fall deadline for delivering a report to Congress. In addition to five public meetings, they facilitated two in-depth discussions on historic preservation considerations with national and local preservation organizations, including CHRS. Those observations, as well as the public comments, will be incorporated into draft recommendations to be presented to the NCPC Commissioners, currently scheduled for the September 12, 2013 meeting. Approval for release will trigger a 30-day public comment period. NCPC will hold a Special Commission meeting October 2 to receive public comments on the height study findings. Ultimately, the Commission will vote on final recommendations, which the District and NCPC will submit to Congress later this fall. ★

Question: What is the Height of Buildings Act height limit?

1) The height of the US Capitol
2) The height of the Washington Monument
3) 130 feet
4) Determined by the width of the street

Answer: #4

Residential streets: Width of the street = building height, maximum 90 feet

Commercial streets: Width of the street + 20' = building height; maximum 130 feet.

Note: DC zoning regulations require lower heights in most areas of the city.

New Editor Needed

Do you have a solid background in journalism and editing? Do you love the work that CHRS does on Capitol Hill? If so, and if you're looking for a way to get more involved with CHRS, then editing this monthly newsletter may be just what you're looking for!

The responsibilities include assigning and editing articles for ten issues per year. You should be able to attend monthly Board meetings (the third Tuesday evening of the month, except August and December) and other CHRS events as necessary in order to either write about them or edit what someone else writes. Once a month, you'll need to devote the better part of two weekdays to preparing the next edition on a tight deadline. You will have a backup editor to help with final copyediting. The new editor will work alongside the current editor for several months to learn the job.

To find out more about this rewarding volunteer position, please contact Lisa Dale Jones at: lisadalejones@gmail.com.

Capitol Hill Restoration Society

NEWS

www.chrs.org July/August 2013

June Members' Forum Examines the Height Act

By Monte Edwards

Attorney Laura Richards was our guest speaker at the June 19th members' forum, on the subject of the Height Act. Ms. Richards provided an eloquent and understandable explanation about why the Height Act should not be changed.

Congress has asked the National Capitol Planning Commission (NCPC) and the DC Office of Planning (OP) to study whether the federal Height Act should be changed, and to make recommendations to Congress. The study will address the impact of changes to the 1910 Height of Buildings Act and the extent to which the Height Act continues to serve the interests of both the federal and District governments.

The federal Height Act currently limits the height of buildings to 130 feet (with certain exceptions). Our existing horizontal, sunlit city with unobstructed views is the result. DC zoning rules on building heights are limited to the maximum building height allowed by the federal Height Act. If the federal Height Act was amended to allow buildings taller than 130 feet, DC zoning could also be changed to allow buildings taller than 130 feet.

NCPC and OP's Guiding Principles for the Study state:

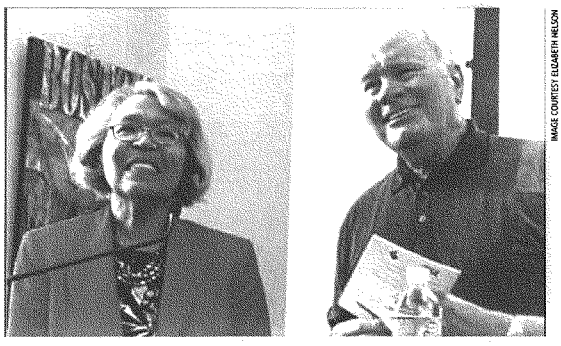


IMAGE COURTESY ELIZABETH NELSON

CHRS Vice President Monte Edwards introduces Attorney Laura Richards.

- Ensure the prominence of federal landmarks and monuments by preserving their views and setting
- Maintain the horizontality of the monumental city skyline.
- Minimize negative impacts to nationally significant historic resources, including the L'Enfant Plan.

Ms. Richards noted that these principles are open-ended and may be viewed as "declaring open season on the existing height limits." They "say nothing about the importance of vistas, viewsheds, local landmarks, or neighborhood character."

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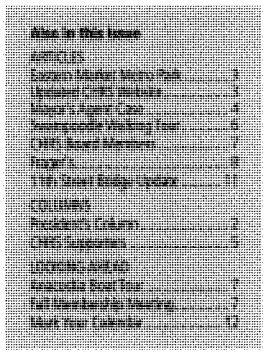


CHRS Letter Submitted on the Height Act

Congress has asked the National Capitol Planning Commission (NCPC) and the DC Office of Planning to study whether the federal Height Act should be changed, and to make recommendations to Congress.

The Capitol Hill Restoration Society has submitted a letter urging no change in the Height Act. The full text of our letter is available on our website.

The letter begins by tying the Height Act with the L'Enfant and McMillan Plans in shaping the City's distinctive character. It discusses the 2010 CapitalSpace Partners Report that identifies critical historical, cultural and environmental resources that must be protected and points out that, "Although London may 'want clusters of tall buildings along the Thames River,' the Anacostia River must remain an unspoiled cultural landscape."

The letter describes the importance of the Comprehensive Plan, resulting from public hearings and the deliberations of our elected representatives, and Overlay Zoning, resulting from extensive public hearings, administrative records, and review and findings of the Zoning Commission, as representing the will of the people.

The Eighth Street SE Overlay, the H Street NE Overlay, and the Zoning of Reservation 13 all resulted from multi-year public processes that required the local communities to invest many hundreds of hours.

They all resulted in heights considerably lower than would be allowed by the Height Act, because they all respected the scale and character of the area, and thus resulted in vibrant and distinctive communities.

The letter ends with the statement:

"In conclusion, the federal Height Act has furthered the principles of the L'Enfant and McMillan Plans, and fostered a beautiful sunlit horizontal city, with wide vistas and vibrant neighborhoods. CHRS strongly urges that NCPC and OP recommend that no changes be made to the Height Act."

Members: Please Speak Out on Height Act

The Height of Buildings Act limits the height of buildings in DC generally to 90 feet for residential buildings and 130 feet for commercial buildings. DC zoning rules regulate building height within the 90-foot and 130-foot limits.

If the federal height limits are raised, DC zoning rules can then be changed to allow higher buildings. The federal Height Act is the first line of defense in keeping the current DC building heights. A study mandated by Congress is underway to consider increasing the federal building height limit in DC. At the CHRS membership meeting on June 19, the sense of the members attending was to keep the current federal height limits.

National Capital Planning Commission (NCPC) and DC Office of Planning are conducting the study. It is important for CHRS members to speak out on the federal Height Act.

Please e-mail: info@ncpc.gov, or go to: www.ncpc.gov/heightstudy

Height Act, *continued from cover*

In response to the argument by proponents of changing the Height Act that increasing the height of buildings is necessary to accommodate growth, Ms. Richards pointed out that while a population of 632,000 at the end of 2012 seems to be a large increase compared to a population of only 576,000 in 1996, in fact, we had a population of over 800,000 in 1950. And since that time, we have experienced growth in the development of central downtown, West End, downtown east of 16th Street, Penn Quarter, NOMA, Hill East and H Street. These have already happened, and the City is continuing to grow.

In 2011, building permits were issued for 4,726 new residential units, and in 2012 permits were issued for 4,162 units. There are ten large tracts slated for mixed use developments that are slated to produce 15,000 housing units and accommodate 30,000–40,000 residents, including: St. Elizabeth's, DC Village, Poplar Point, Walter Reed, McMillan Reservoir and Reservation 13. Beyond that, the District several years ago identified another 30,000 vacant or underutilized sites that would accommodate another 60,000–80,000 residents.

According to Ms. Richards, raising the height limit to achieve affordable housing is a myth. Raising the height limit is probably the least effective way to deal with our affordable housing needs. It is the most expensive to build and maintain, and its ineffectiveness as a housing solution for large numbers of very low-income families has been tried and abandoned. Prevailing housing policy generally calls for housing families with children in mixed-income low-rise or townhouse dwellings, the same scale favored by families buying market rate housing. A prime example of this

11th Street Bridge Update

By Beth Purcell

The 11th Street Bridge project is well on its way to completion. It continues to be on time and on budget. Phase I will be complete by July 10, 2013. The overlooks on the local bridge will be almost complete on July 10, including lighting and benches.

DC Dept. of Transportation (DDOT) still hopes to build osprey nest platforms on the old upstream bridge supports (all concrete and steel from the old upstream bridge has already been removed). To construct the nest platforms, a permit modification by the Coast Guard will be needed, which will likely be in place the end of this summer.

In April 2014 there will be a new exit from the westbound Southeast Freeway at 11th Street, SE. This will be a new way to reach Capitol Hill (in addition to the westbound exits at South Capitol Street, C Street, and 6th Street).

IMAGE COURTESY FEDERAL HIGHWAY ADMINISTRATION

Scenic overlooks on 11th Street Bridge.

On September 7, 2013, there will be a celebration on the local bridge. See the calendar on the back page for details. ★

preference is the growth of families with young children in Capitol Hill neighborhoods, where heights are controlled by vigorously enforced historic district mandates.

Congress has charged DC to explore changing the law outside the L'Enfant City to "support local economic development goals." Wards 5, 7 and 8 are regarded as the areas most likely to be targeted for additional height. But, as Ms. Richards cautions: "Raising height limits outside the L'Enfant City has the potential to create significant distance between local and federal Washington. The city has an overall harmony and unity to its built environment. That can be lost if the unity of the built environment is shattered. Targeting the city's least affluent, most heavily African-American areas as the most likely candidates for increased heights is an additional insult. Such targeting says that residents of those neighborhoods don't really deserve the benefits of the height limit enjoyed in more affluent areas, that their views and neighborhoods don't count, that they are not part of the 'real' Washington." ★

Letter from Historic Districts Coalition Concerning the Height Act

CHRS signed onto the Historic Districts Coalition's September 9, 2013 letter to DC Mayor Vincent Gray and Mr. Preston Bryant, Jr., National Capital Planning Commission Chairman, urging them not to make any changes to the Height Act.

SUBJECT: Height Master Plan, NCPC File Number 6886

Dear Mayor Gray and Chairman Bryant:

The Historic Districts Coalition is an informal alliance of organizations and individuals representing Washington, DC's historic districts—those that have been designated under the provisions of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Public Law 2-144)—as well as others interested in historic preservation, including residents of undesignated neighborhoods and representatives of neighborhood organizations, historic preservation organizations, and preservation-related businesses.

We, the undersigned, have developed the following position on the Height Master Plan:

- The 1910 Height of Buildings Act, through its effect on physically shaping the nation's capital, is no less important than the seminal 1791 L'Enfant Plan for the City of Washington. The L'Enfant Plan, as revitalized by the 1901 McMillan Commission, provided the foundation by brilliantly imposing on the landscape a rhythmic pattern alternating open spaces—streets, parks, and squares—with closed spaces intended for structures. In so doing, the L'Enfant Plan effectively limited two of the dimensions of any structure. By regulating the third dimension through the Height Act, the Congress furthered the human scale of the city and created the iconic horizontal skyline that Washington enjoys today.
- There is no compelling case for allowing taller buildings to accommodate growth in population or economic activity. As noted in public presentations by the Office of Planning, large areas of the city are currently not "built out" to the maximum allowed under existing zoning regulations. Ample long-term opportunities for commercial and residential development remain in the District of Columbia, many of which are outlined in the National Capital Planning Commission's 1990s Extending the Legacy plan.
- Therefore, the Historic Districts Coalition endorses Approach 1, 1A Status Quo: Make No Changes to the Height Act. We do not support 1B Allow Penthouse Occupancy.

Respectfully submitted by the Historic Districts Coalition on behalf of:

Historic Anacostia Design Review Committee, Greta Fuller, Chair

Capitol Hill Restoration Society
Janet Quigley, President

Historic Chevy Chase, DC
Richard Teare, Treasurer

Frederick Douglass Community Improvement Corporation
Carolyn Johns Gray, President

Dupont Circle Conservancy
Thomas Bower President

Citizens Association of Georgetown
Pamla Moore, President

Logan Circle Community Association
Tim Christensen, President

Historic Mount Pleasant
Fay Armstrong, President

Sheridan Kalorama Historical Association, Kindy French, President

Historic Takoma, Inc.
Lorraine Pearsall, Vice President

Tenleytown Historical Society
Jane Waldman, President

Individuals: Loretta Neumann, Scott Roberts, Leslie Kamrad, Mary Rowse, Evelyn Wrin, Sally Berk ★

DISTRICT OF COLUMBIA GOVERNMENT
ADVISORY NEIGHBORHOOD COMMISSION 5D

National Capital Planning Commission and the Chairman of the Committee on Oversight and Government Reform of the United States House of Representatives

Testimony of Commissioner Kathy Henderson, 5D05 and Chairman, Advisory Neighborhood 5D

December 1, 2013

On September 10, 2013, at a properly noticed public meeting, with a quorum present, Advisory Neighborhood Commission (ANC) 5D voted unanimously to oppose any changes to the Height of Buildings Act of 1910. The Commission has heard from numerous residents in the Trinidad, Carver Terrace, Langston Terrace and Ivy City communities that views of DC's iconic skyline must be preserved. Residents can see clear views of the Washington monument, DC capitol and unique horizontal skyline from their neighborhoods and they strongly wish to preserve such views. Residents of ANC 5D enjoy fourth of July festivities by gathering atop Maryland Avenue and Lang Place NE, with food, friends, family and members of the Fifth District Police Headquarters. The annual event provides a safe venue for neighbors to socialize and celebrate the nation's birthday, underscoring an activity that promotes neighborhood cohesion. Residents in Fort Lincoln, Wards 1, 3, 4, 6, 7 and 8 enjoy similar activities. Residents were emphatic that they wish to maintain the light, air and sense of balanced proportion that characterizes the District's skyline and they believe strongly that no compelling reason exists to change the DC skyline.

The DC Office of Planning has created a recommendation that proposes raising building heights to 200 feet outside of the L'Enfant footprint, without offering a meaningful argument to support the recommendation. The District has approximately 70 viable development projects underway throughout the city, which forecloses on the notion that the city needs to raise building heights for economic reasons. The District of Columbia is listed among the ten top places to live according to information disseminated by the office of the Deputy Mayor for Economic Development. The District of Columbia does not have any difficulty accommodating the current population of approximately 610,000 residents; in fact, DC's population was closer to 900,000 in the mid 1960's, which also characterized a time of less economic development projects. The recommendation by the Office of Planning to "auction off higher building heights to the highest

bidder' is a particularly offensive and unwarranted recommendation, which is little more than a gift to developers.

The District of Columbia is the center of government for our nation and the beacon of democracy for the world and as such belongs to everyone. At no time should special interest groups like developers be given license to irrevocably alter the District of Columbia skyline. Creating taller buildings anywhere in the District does not address the needs of the Federal Government; the Office of Planning has failed to provide a compelling argument that raising building heights supports Federal Government interests or needs. The Office of Planning has proffered a recommendation that is not based on any real need or clearly identified problem. Many residents believe that where no problem exists, no premature solution should be offered; the typical refrain is "if it isn't broken, don't fix it". Representatives from the Office of Planning did not solicit input from our first responders regarding the impact raising building heights will have on fire safety and overall risk management protocols. It is dangerous to assume that an updated fire safety code alone will ensure that fire fighters and first responders will be able to respond quickly to threats to our buildings and infrastructure. More study is needed before we can reasonably move forward to raise our building heights.

Finally, the radical Office of Planning recommendation is divisive, underscoring social stratification at its worst. We will quickly become divided along racial and economic lines forming an undesirable city polarized starkly by the haves and the have nots. Protecting current building heights within the L'Enfant footprint and 16th Street, NW will favor wealthier residents. The Census Bureau provides clear and convincing data regarding the economic disparities in Wards 5, 7 and 8. Building taller buildings and destroying the skyline in these wards will not be offset by gains in affordable housing or opportunities for residents. Developers do not typically provide more affordable housing if given the opportunity to build taller buildings. Taller buildings typically translate into higher profits for the developer. The DC Office of Planning has been a poor steward of inclusionary zoning provisions that are designed to increase affordable housing opportunities. The city has not fully explored or actualized any significant increases in affordable housing as a direct result of offering developers increased density incentives through inclusionary zoning.

The National Capitol Planning Commission should continue to embrace the Height of Buildings Act of 1910 as is. The Commission on Fine Arts, DC Council and a growing number of ANC's agree that maintaining the Height Act as-is benefits the District of Columbia. There is an opportunity for District residents and the Federal Government to agree; protecting our building heights with sensible limits protects local and federal interests. DC residents deserve to be heard regarding this matter, underscoring a real example of Home Rule and self-determination. I respectfully request that my testimony on behalf of ANC 5D be given the "great weight" as afforded by District of Columbia law.

Respectfully Submitted,

Commissioner Kathy Henderson, 5D05

Chairman, ANC 5D

Statement for the Record before the
Committee on Oversight and Government Reform
on
Changes to The Heights Act: Shaping Washington, D.C. for the Future, Part II

December 2, 10:00 am
Rayburn House Office Building, Room 2154

Chairman Issa:

I am William Brown, the President of the Association of the Oldest Inhabitants of the District of Columbia, the District's oldest civic organization. Dedicated since 1865 to preserving and promoting the District's history and civic accomplishments, the AOI is currently celebrating its 148th year of continuous service to the residents and civic leaders of our great city. One of the AOI's primary goals is the preservation, maintenance and promotion of both the L'Enfant and McMillan Plans for the District of Columbia. We are on record for opposing many proposed street closures and in support of the reopening of ill-advised street closings. The low profile of the city's skyline is an important element in maintaining the original vision for our city, the Nation's Capital.

The AOI is opposed to any changes in the Height Act. We are concerned that changes to the Height Act will be a slippery slope toward future, more frequent and more radical changes. We believe the NCPC staff has done an excellent job in analyzing the issues, creating graphic animations, hosting community forums, taking both written and oral testimony and presenting their findings in easy-to-understand recommendations. However, we do not support their recommendations to relax even penthouse use regulations.

The AOI is ***particularly disappointed*** in the recommendations of the District of Columbia's Office of Planning as transmitted to the NCPC by Mayor Vincent Gray. These recommendations are contrary to what we heard at community forums and represent, we believe, an ill-advised attempt to assert District autonomy from the U.S. Congress at the expense of the District's century-old building height restrictions. This is not the time, place or circumstance for this debate. We agree with D.C. Council Chair Phil Mendelson that the Mayor's recommendation transmitted to you is "not supported by the Council or the vast majority of District residents."

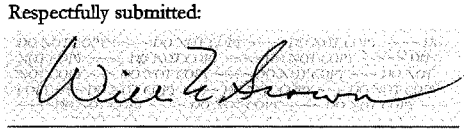
In 1946, the District's population was approximately 899,000 residents (we realize that 'residents' are not households, however…). Today, the city's population has enjoyed a revival and now approaches 633,000 residents. Let us encourage reasonable development within the current limits of the Height Act in blighted or underutilized areas of the city before we tamper with something that will forever change the character of our city.

As Vancouver, B.C. Planner Larry Beasley warned in his presentation to the NCPC in 2010: "*Take care not to open things up too casually. I dare say, those height limits may be the single most powerful thing that has made this city so amazingly fulfilling.*"

The Board of Directors and membership of the AOI respectfully requests that the Committee on Oversight and Government Reform consider these arguments and permit the century-old legislation limiting building heights to remain unchanged.

Thank you for the opportunity to bring these concerns to your attention and for what we hope is your support to maintain the Building Height Limits for the District of Columbia.

Respectfully submitted:



William N. Brown, President

President Lincoln at Ft. Stevens. July, 1864

Alliance to Preserve
The Civil War Defenses of Washington

1140 Connecticut Ave. NW, Suite 1210 | Washington, DC 20036

Phone: 202-296-7999 | Fax: 202-265-5048 | info@dccivilwarforts.org

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Testimony on Proposed Expansion of the DC Height Act
By Loretta Neumann, Vice President
For Hearing by the House Committee on Oversight and Government Reform
December 2, 2013

Mr. Chairman and Members of the Committee, thank you for the opportunity to present a statement on behalf of the Alliance to Preserve the Civil War Defenses of Washington. The Alliance is a non-profit association incorporated in DC in 2008. Our primary goal is to promote preservation of the Civil War Defenses of Washington – most of which are owned and administered by the National Park Service – and to advocate for their best interests.

The Alliance is alarmed by the proposal of the Mayor and Office of Planning to allow a substantial increase in the height limit of buildings in DC. For more than 100 years, this has been determined by the 1910 Height of Buildings Act. The new proposal could inalterably change the beautiful and historic setting of the nation's capital, both within and outside of the area of the original 1791 L'Enfant Plan for the City of Washington.

We further note that the Civil War Defenses of Washington (including the corridor of National Parkland added by Congress pursuant to the 1902 Senate McMillan Commission plan to link these sites) are an iconic design of Washington DC that could be severely impacted by the Mayor's proposal:

- First, they are visible from the core city, creating a blanket of green around the nation's capital, a view that could be irrevocably changed by an increase in building heights in their foreground.

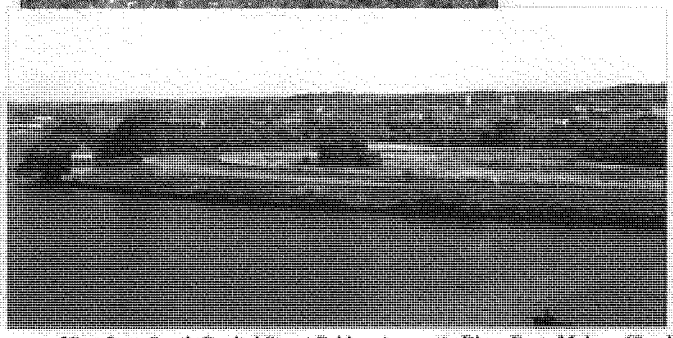
- Second, they are primarily located at high points around city. The views from them would be severely impacted by an increase in the heights of buildings.

Attached are several photographs showing the impact that increases in the District's building height could have on the Civil War Defenses of Washington, both the views of and from these nationally significant parks and historical resources.

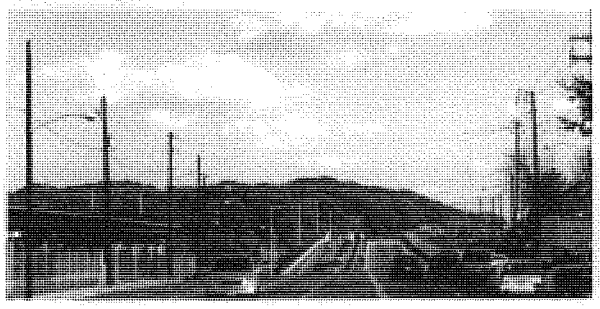
Our city is lovely and graceful because of the Height of Buildings Act, a tribute that is recognized throughout the world. We therefore urge Congress to leave it intact for future generations to benefit from and enjoy.

Thank you for the opportunity to submit this testimony.

View of Capital from Fort Stanton (built to protect Washington Navy Yard)



View from South Capital Street Bridge, Anacostia River Forts Mahan, Chaplin, Dupont & Stanton in the distance.



View of Fort Mahan across Anacostia River's Benning Bridge

December 2, 2013

Honorable Darrel Issa
Chair, House Committee on Oversight
And Government Reform
2347 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa,

I write you today to convey the resolution of the Kalorama Citizens Association (KCA) with regard to possible changes to the Federal Height of Buildings Act. Our resolution is shown in full on the next page.

We closely followed the series of meetings held jointly by the National Capitol Planning Commission and the DC Office of Planning. KCA found no good reason to change the Height Act at all, and numerous important reasons to leave it unchanged.

I am a 42 year residential property owner in the District. Many of the members of the KCA are also long-time property owners or renters here in the Adams Morgan neighborhood. Of late, the Mayor of the District and the Planning Director have attempted to cast the possibility of changes to the Height Act that would allow taller buildings in DC as a Home Rule issue. Nothing could be further from the truth. Home Rule to me is the ability for DC residents to have representation in the US Congress, equal and unrestricted, as do all other US citizens, and a local government that we could trust. DC has its own planning process, which the current Mayor and Planning Director seek to bypass. The US Congress should not be party to such shenanigans.

Please do nothing to allow the Mayor and the Planning Director to bypass the City's Comprehensive Plan process. We believe that "study first, reach a consensus, then seek change if called for" is a far better public process than "decide on a goal and bypass the public at every opportunity to get what you want".

Sincerely,
Denis James
President
202 232-8829 denisjames@verizon.net

Denis James □ President
Bob Ellsworth □ Vice President
Ted Guthrie □ Secretary
Christine Saum □ Treasurer

Founded 1919

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Washington, DC 20009

RESOLUTION OF THE KALORAMA CITIZENS ASSOCIATION IN OPPOSITION TO CHANGES TO THE HEIGHT OF BUILDINGS ACT

Whereas, the DC Office of Planning (OP) and the National Capitol Planning Commission (NCPC) are studying the Federal Height of Buildings Act, which along with DC Zoning Regulations controls the allowable height of all buildings in DC, and

Whereas, OP and NCPC have held two rounds of public meetings on this topic that featured describing the status quo and "modeling" what various taller heights would look like for the DC skyline, and

Whereas, OP's own presentation clearly showed that in the vast majority of cases, buildings in areas where maximum heights of 130 or 160 feet are allowed by the Height Act, those heights have not been approached, and

Whereas, DC's horizontal skyline, and human-scaled neighborhoods define the character of life in the city, and

Whereas, it would be grossly unfair to those with treasured views of the city to allow new height that would block those views, and

Whereas, adding height would likely detract from the monumental core of the city, putting at risk the tourist and hospitality trade which is the largest element of the DC economy, and

Whereas, adding height to neighborhoods or "clusters" would likely create a building boom in those locations, leading to escalation of land and building costs and a more expensive finished housing product, which will price many current residents out of their own neighborhoods and accelerate gentrification, and

Whereas, the proper place to begin a discussion of the heights of buildings in DC is through amendment of the DC Comprehensive Plan, with massive public outreach, and a vote of the DC Council approving any changes.

Now, therefore, the members of the Kalorama Citizens Association constituting a quorum hereby vote against changes being made to the Height Act that would lead to taller buildings in DC.

This resolution was approved at the August 15, 2013 meeting of the Kalorama Citizens Association.

Denis James □ President
Bob Ellsworth □ Vice President
Ted Guthrie □ Secretary
Christine Saum □ Treasurer

Founded 1919

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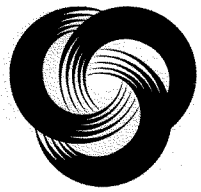

GREATER WASHINGTON
Board of Trade

Statement of James C. Dinegar, President and CEO
Greater Washington Board of Trade

U.S. House of Representatives
Committee on Oversight and Government Reform
The Honorable Darrell Issa, Chair

Submission for the Public Record
December 2, 2013 Hearing
"Changes to the Heights Act: Shaping Washington, DC For the Future, Part II"

Chairman Issa we are grateful for your leadership in calling for an examination of the federal interest in amending the 1910 Height of Buildings Act (Height Act). We appreciate the efforts of the District of Columbia Office of Planning and the National Capital Planning Commission in carrying this study forward.

Given the renaissance of the District of Columbia, the marked increase in population, new growth in commercial and office space, the continued focus of the District as an entertainment and sports destination, and the need for a broadened tax base -- all coupled with the realization of the diminishing availability of developable space -- it is prudent that a study of this nature has been carried out.

We offer several observations:

It is important to be mindful of the broader regional context between land use and development in the District of Columbia and the surrounding jurisdictions. The

District of Columbia is unique as the seat of the federal government, the Smithsonian, museums and iconic monuments, and sports and entertainment destinations. This will not change. However, if there is no latitude to increase the height of buildings in strategic, targeted locations, then the District will be at a competitive disadvantage with nearby sites less constrained by height limits including Rosslyn, Pentagon City, Tysons, Bethesda, Silver Spring, and New Carrollton.

The Board of Trade strongly supports the District of Columbia's ability to exercise its own decisions on land use with the input and oversight of NCPC. We support the District's flexibility to raise the height limits on buildings on a case by case basis in order to address its economic development, fiscal sustainability, environmental, and quality of life goals. In this regard, we are disappointed that the NCPC's report did not support the study recommendations of the District of Columbia.

We commend the District of Columbia's recommendation to create new height limits based on the relationship between the street width and building height within the L'Enfant City as well as the NCPC Executive Director's Recommendation (EDR) regarding accommodation of human habitation of penthouses. Both recommendations provide the option for additional opportunities for growth and a broadened tax base while respecting the proportionality between individual streets and their buildings consistent with the L'Enfant Plan. It is essential that the District Zoning Regulations reflect these amendments.

Finally, the District of Columbia's recommendation to allow it to determine building height maximums outside of the L'Enfant City through its comprehensive plan and zoning processes provides additional flexibility to compete with adjacent jurisdictions for future growth.

The Greater Washington Board of Trade is the regional business network representing Greater Washington which includes the District of Columbia, Northern Virginia and Suburban Maryland. We stand ready to assist in providing the business perspective as the Committee on Oversight and Government Reform moves forward with next steps in considering amendments to the Heights Act.

Thank you for this opportunity to comment.

December 9, 2013

2013 OFFICERS

David Haresign, FAIA
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Mary Fitch, AICP, Hon. AIA
Executive Director

Hon. Darrel Issa
Chairman, Committee on Oversight and Government Reform
US House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to comment on possible changes to the 1910 Height of Buildings Act. The Washington Chapter of the American Institute of Architects (AIA|DC) appreciates your efforts to review this century-old legislation and engage the city and federal government in a discussion of its relevancy.

AIA|DC advocates letting the District control its own height policy. We have testified and are on the record with written testimony to both NCPC and the DC City Council. Indeed, we believe that the zoning and building controls currently in effect in the District offer more protection to District residents than does the Act. Should your committee decide to change or remove its oversight of height concerns outside the Monumental Core, the city would have to engage in quite a lengthy process to change both its Zoning Code, to possibly accommodate more height, and it's Comprehensive Plan. These processes, which are mandated by law, require extensive public and agency input. Ultimately, it is Congress who approves the Comprehensive plan so the House Oversight Committee would still, in a sense, have the last word.

We commend your efforts to encourage the District Planning Office and NCPC to align their conclusions. Based on what we heard at the hearing, both from the witnesses and members, it would seem that the simplest thing to do is relax Congressional control outside the L'Enfant City. This would protect monumental vistas and also offer incentives, by means of height, to areas outside the federal enclave and downtown.

Where Architecture Meets the City

We would argue, however, that a better measure would be defined by the boundaries of the Monumental Core and historic areas governed by The Shipstead-Luce Act (Public Law 71-231and Public Law 76-248). It may be more difficult to define, but it will allow the inclusion of the District's thriving downtown – areas that significantly deviate from the L'Enfant's vision. As you pointed out, do we really like the way K Street looks? Wouldn't a small amount of variation in height help?

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We would like to underscore our strong support for the human occupancy of penthouses and the modest increase of height to twenty feet supported by both witnesses. Instead of "pinnacles" and "minarets' use more general language such as 'other rooftop embellishments." Finally, we ask that the specific and outmoded language of the Act that pre-dates adopted modern international building and life-safety codes and relies on the building science and architectural technology of the early 20th century be updated and made more general.

Thank you very much for this opportunity to comment and for encouraging Washington to have a city-wide discussion on design.

Sincerely:
David T. Haresign, FAIA
President

Mary Fitch, AICP, Hon. AIA
Executive Director

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December 9, 2013

VIA EMAIL

ali.ahmad@mail.house.gov

Rep. Darrell E. Issa
Chairman, House Committee on Oversight and Government Reform
2157 Rayburn House Office Building,
Washington, DC 20515

Re: Changes to the Height of Buildings Act of 1910: Shaping Washington, D.C. for the Future, Part II – Committee on Oversight's Consideration of the Reports of the National Capital Planning Commission and the District of Columbia Regarding the Limitations Imposed by the Height of Buildings Act of 1910

Dear Mr. Chairman,

This firm represents a number of developers and property owners who are active in Washington, DC area real estate. We have examined both NCPC's November 27, 2013 report and the District's November 20, 2013 report on recommendations for amendments to the Height Act that were the subject of your December 2, 2013 committee hearing, and we have a number of comments and suggestions. Our recommendations focus on the one area upon which NCPC and the District generally agree in their reports, concerning penthouses. Our comments are as follows:

1. Human Occupancy

Both NCPC and the District agree, overall, that the Act's prohibition on "human occupancy" of penthouses on rooftops should end. The basis of the Act's current prohibition on occupancy was to ensure that humans would not be living or regularly be located in unreachable and unseen roof top enclosures. Advances in building technology have made this moot.

The District would allow occupancy of penthouse areas by any use permitted in the building. However, NCPC's recommendation would allow only "communal recreation uses." This is an unnecessary restriction in the Height Act. The nature of the "human occupancy" use inside the penthouse walls, not readily visible from the outside,

will have no bearing on the height of the building or the setbacks of the roof structure from exterior walls, which have been the purposes of the Act for the past 103 years. There will be no discernible difference to the skyline of the District of Columbia whether the people gathered inside the rooftop penthouse are exercising or eating a meal, or are engaged in a book club discussion or a business meeting. We support the District's position on this human occupancy use issue.

The District's report also recommends that mechanical penthouses be "enclosed within the upper floors and within the new height cap for areas inside the L'Enfant City where the ratio approach is applied." District Report, at page 50. Whether the Committee adopts or does not adopt the District's position on its new formula for calculating maximum building heights, we recommend that mechanical equipment continue to be permitted within a penthouse that sits on the roof of a building, rather than be required to locate within an upper floor that is below the roof of the building.

2. Setback from Exterior Walls

The Act also provides that penthouses (along with certain water tanks and ventilation shafts) must be set back from the "exterior walls distances equal to their respective heights above the adjacent roof" (at Section 5(h)). Neither NCPC nor the District seek to change the long-standing interpretation of this provision. NCPC specifically recommends that this requirement remain in effect (NCPC Report at p. 45) and the District recommends no changes to the penthouse setback requirement (District Report at p. 50). We agree with these positions.

It is important for the Committee to note that the term "exterior walls" has long been interpreted to mean those building walls facing a street, while those walls facing or built to an adjacent lot line other than one facing a street do not have to meet the exterior wall setback requirement.

Specifically, this long-standing interpretation has been affirmed a number of times by the DC Zoning Administrator, the DC Zoning Commission, the DC Board of Zoning Adjustment, and NCPC. The most recent reaffirmation by the DC Board of Zoning Adjustment ("BZA") occurred on November 8, 2005 in its Order No. 17109, which is attached. See pages 11-12, which also references other similar but earlier interpretations by the Zoning Commission, the Zoning Administrator, and NCPC.

There is a practical reason for this interpretation. The Height Act does not contain any mechanism for waivers from the setback requirements, nor should it. Waivers from setback requirements should remain under the jurisdiction of the local zoning authorities, as they have for more than 90 years. If the Height Act penthouse setback requirement was interpreted to apply to side walls abutting or adjacent to neighboring properties, then buildings on narrow or shallow lots could be precluded from having penthouses on the roof, with no ability for a waiver.

Thank you for the opportunity to provide these comments

Respectfully,

Norman M. Glasgow, Jr.

NMGJr/ls

Enclosure – BZA Order No. 17109

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 17109 of Kalorama Citizens Association, pursuant to 11 DCMR § 3100 from the administrative decision of David Clarke, Director, Department of Consumer and Regulatory Affairs, from the issuance of Building Permit Nos. B455571 and B455876, dated October 6 and 16, 2003, respectively, to Montrose, LLC to adjust the building height to 70 feet and to revise penthouse roof structure plans to construct an apartment building in the R-5-D District at 1819 Belmont Road, N.W., Washington, D.C. and from the issuance of the original Building Permit No. B449218, dated March 11,2003.

HEARING DATES: Fe'bruary 17, March 9 and 16, April 6 and 20,2004
DECISION DATES: June 22,2004, December 7,2004 and February 1,2005

ORDER

INTRODUCTION

The Kalorama Citizens Association ("KCA") filed this appeal with the Board of Zoning Adjustment ("Board") initially challenging the decision of the Director of the Department of Consumer and Regulatory Affairs ("DCRA") to issue Building Permit Nos. B455571 and B455876 ("Revised Permits"), dated October 6 and 16, 2003, respectively, to Montrose, LLC ("Montrose"). The permits authorized Montrose to adjust the building height to 70 feet and to revise penthouse roof structure plans for a five-story apartment building ("Project") in the R-5-D District at 1819 Belmont Road, N.W., Washington, D.C. Montrose sought the Revised Permits after DCRA issued a stop work order on the Building Permit No. 449218 ("Original Permit").

KCA alleged DCRA erred in issuing the Revised Permits because the Project exceeded the maximum height and set back requirements 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) ("the Height Act"), and the applicable FAR and roof structure set back requirements of the Zoning Regulations. Prior to the hearing on the appeal, the Board granted KCA's motion to amend the appeal to include appeal of the Zoning Administrator's decision to issue the original building permit.

For the reasons stated below, the Board concludes that the Zoning Administrator erred in approving the building permits in the following respect:

The height of the building, with the roof deck, exceeds the height limitations set forth in the Height Act.

The Board also concludes that the Zoning Administrator properly determined that the building's floor area ratio was within the matter of right limit and that the penthouse structure was properly set back according to the Height Act and 11 DCMR §§ 411 & 400.7(b).

PRELIMINARY AND PROCEDURAL MATTERS

Parties. The parties to the proceeding are the KCA, Advisory Neighborhood Commission 1C ("ANC"), and Montrose LLC. The ANC was an automatic party pursuant to 11 DCMR § 3199.1. Montrose LLC owns the property, also making it an automatic party pursuant to 11 DCMR § 3199.1.

Notice of Hearing. The Office of Zoning provided notice of the hearing on the appeal to the parties, including Montrose, and to the ANC. The Office of Zoning advertised the hearing notice in the D.C. Register at 50 D.C. Reg. 11060 (Dec. 26,2003).

Motion to Dismiss. Montrose moved to dismiss the appeal on jurisdictional and equitable grounds. The Board denied the Motion for the reasons discussed below.

Motion to Amend. KCA moved to amend its appeal to include the decision to issue the Original Permit. The Board granted the motion for the reasons discussed below.

Further Proceedings: At its regularly scheduled meeting of June 8, 2004, the Board voted to grant the appeal with respect to Appellant's allegations regarding set back and height and denied the appeal with respect to the measurement of FAR. On December 7,2004 the Board on its own motion reopened the record to reconsider and receive more evidence on the set back issue. After reviewing the materials submitted, the Board, at its regularly scheduled public meeting held February 1, 2005, denied the portion of the appeal that challenged the legality of the penthouse setback under the Height Act. The remainder of its earlier decision was left intact.

FINDINGS OF FACT

A. Description of the Property

1. The property that is the subject of this appeal ("Subject Property") is located at 1819 Belmont Road, N.W., Washington, D.C., in the R-5-D District.

2. The Subject Property is improved with a multiple story townhouse.

3. The width of the 1800 block of Belmont Road, N.W., measured from building line to building line, is 80 feet.

4. Montrose LLC owns the Subject Property.

B. Issuance of the **Original** and Revised Building Permits and **KCA's** Investigation

5. On December 12, 2002, Montrose applied for a building permit to alter and repair the existing building on the Subject Property, construct an addition at the rear of the building, and add two floors and an attic (the "Project").

6. The plans submitted with the building permit application showed the following:

- the height of the building as measured from the curb opposite the middle of the building would increase the existing building height to 71 feet, 3 inches;
- a penthouse would be constructed on top of the attic story at a height of 10 feet, 4 inches;
- the penthouse would be set back from the front and rear building walls a distance greater than 10 feet, 4 inches;
- the penthouse would be set back six feet on the west wall and flush with the wall along the east property line;
- the roof deck and railing were shown to be several feet above the roof line;
- without including the railing, the roof deck was less than four feet in height;
- the overall density of the Project was listed as **3.49** FAR;
- the building was to be connected to the adjacent buildings by a party wall that ended short of the building's height, leaving a portion of the building's side walls exposed.

7. On March 11, 2003, DCRA issued Building Permit No. B449218 authorizing construction of the Project (the "Original Permit").

8. The Original Permit stated it was for, "Alteration and repair of exist. Bldg. Addition in rear, add 2 floors plus attic; retaining wall & stair at rear." The Original Permit also had a notation indicating 5 stories plus basement.

9. In the late spring and summer of 2003, the existing row house was demolished except for the façade, and a new building constructed from the ground up.

10. On September 10, 2003, and again on September 15, 2003, KCA wrote to Denzil Noble, Administrator of the Building and Land Regulation Administration of DCRA, alleging that the Project exceeded the allowable height under the 1910 Height Act and might exceed the maximum allowable Floor Area Ratio.

11. DCRA issued a stop work order for the Project on September 12, 2003. DCRA determined that the third party inspector for zoning only analyzed the Project's compliance with building height under the R-5-D provisions, which permit a height of 90 feet, while the Height Act limits the Project's height to 70 feet.

12. Montrose began displaying the Original Permit in a location visible from the street after the stop work order was issued on September 12,2003.

13. On September 22,2003, KCA submitted a Freedom of Information Act request to DCRA seeking the plans associated with the Original Permit.

14. On September 29, 2003, DCRA wrote to KCA requesting assurance that KCA would pay the cost of providing the documents sought in its FOIA request, and stating that the statutory 10 day deadline for responding to the request was "suspended until all processing issues are resolved."

15. On October 1, 2003, a Montrose representative appeared at an ANC meeting. After the meeting, KCA representative Ann Hargrove requested copies of the plans associated with the Original Permit. Montrose did not provide the plans to KCA.

16. On October 6, 2003, DCRA issued Building Permit No. B455571 (the "First Revision Permit") to Montrose to revise the Original Permit "to adjust the height of the building to 70'-0" [and] clarify FAR calculations, as per attached drawings." The drawings depicted:

- a section drawing through the east elevation showing the original height at the roof of the building;
- a section drawing through the east elevation showing the revised height at the roof of the building;
- a drawing showing the area of each level included in the FAR calculations; and
- the FAR calculations (the overall density remained 3.49 FAR).

17. The drawings did not depict the roof deck and railing, or the set back of the roof structure. Those details were provided only in the plans approved by the Original Permit.

18. The plans attached to the First Revision Permit show the Project's parapet 69 feet, 9 and 3/8ths inches from the top of the curb at the midpoint of the lot.

19. On October 16, 2003, DCRA issued Building Permit No. 445873 (the "Second Revision Permit") to "revise penthouse roof structure per DC request and per attached drawings." The drawing submitted with the Second Revision Permit showed the rear half of the roof structure gable removed. No other changes were made to the penthouse, the penthouse set backs along the interior lot lines remained as shown in the Original Permit, and no other changes were made to the Project.

20. On October 16, 2003, KCA representative Ann Hargrove met with ANC Commissioners Alan Roth and Bryan Weaver, and Councilmember Jim Graham in Mr. Graham's office. In the course of the meeting, in speakerphone conversation with DCRA officials, including Denzil Noble, Mr. Graham requested that DCRA provide the plans associated with the Original Permit to KCA.

21. On October 17, 2003, KCA received from DCRA copies of the plans, minus a certification of the actual height of the re-positioned roof, and initial FAR worksheets for the original and revised plans.

22. On November 10, 2003, KCA filed its appeal with the Board challenging the issuance of the First and Second Revision Permits.

23. On February 8, 2004, KCA filed a motion with the Board requesting that DCRA supply KCA with the documents listed in its FOIA request but not provided by DCRA.

24. On February 12, and 16, 2004, DCRA supplied the missing plan documents, minus the FAR worksheets.

25. On March 2,2004, KCP. moved to amend its appeal to include the Original Permit.

C. **Height and Set Back of Roof Structures**

26. The plans available to the Zoning Administrator depicted a penthouse on top of the attic story at a height of 10 feet, 4 inches from the roof.

27. If the height of the penthouse is added, the building's height, if measured in accordance with the Height Act, exceeds 70 feet.

28. The penthouse is set back from the front and rear building walls a distance greater than 10 feet, 4 inches.

29. The penthouse is set back six feet from the building's west wall, and flush with the wall along the building's east property line.

30. The roof deck and railing are several feet above the-roofline, and are over 70 feet in height.

D. **FAR Calculations**

31. The plans depict an attic space less than 6 feet 6 inches in height from the floor level of the attic space to the underside of collar ties that form the ceiling of the attic.

32. The collar ties shown in the plans work to brace the building against racking in a north-south direction.

33. When calculating the Floor Area Ration ("FAR") attributable to partial basements, the Zoning Administrator uses either the "perimeter wall method" or the "grade plane method".

34. For this building, the Zoning Administrator used the perimeter wall method to calculate FAR.

35. Under the perimeter wall method, FAR is determined by establishing a ratio between the linear square footage of the portion perimeter wall with more than 4 feet out of grade and the total square footage of the lower level.

36. Under the "grade plane" method, a plane is established between the grade at the front of the building and the grade at the rear of the building. The point at which this plane

intersects at a four foot level, any portion that exceeds that plane counts toward FAR and any portion that does not is considered a cellar.

37. Using the perimeter wall method, the amount of basement gross floor area assignable to FAR is 147.3 square feet, which results in a total FAR that is within the matter of right 3.5 limitation.

CONCLUSIONS OF LAW

1. Amendment to Include Original Permit

KCA initially appealed only the First and Second Revised Permits, and did not appeal the Original Permit. Prior to the Board's initial hearing in this matter, KCA moved to amend its appeal to include DCRA's decision to issue the Original Permit.

The Board has broad discretion to allow amendments to appeals, derived from its power to control its docket. The Board concludes that because the same errors alleged in the appeal (height of the roof deck and railing, set back of the penthouse, and bulk of the Project) are encompassed in the Original Permit and appeal of the original permit is timely pursuant to the Board's discussion below, it is iippropriate to include the decision to issue the Original Permit in the appeal.

2. Timeliness of the Appeal

Montrose moved to dismiss the appeal as untimely. The District of Columbia Court of Appeals has held that "[t]he timely filing of an appeal with the Board is mandatory and jurisdictional." ***Mendelson v. District of Colurabia Board of Zoning Adjustment, 645*** A.2d 1090, 1093 (D.C. 1994). The Board's Rules of Practice and Procedure (11 DCMR, Chapter 31) require that all appeals be filed within 60 days of the date the person filing the appeal had notice or knew of the decision complained of, or reasonably should have had notice or known of the decision complained of, whichever is earlier. 11 DCMR § 3112.2(a). This 60-day time limit may be extended only if the appellant shows that: (1) there are exceptional circumstances that are outside the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and (2) the extension of time will not prejudice the parties to the appeal. 11 DCMR § 3112.2(d).

The "decision" at issue in this case with respect to timeliness is the Original Permit. The height, FAR, and penthouse set back were depicted on the original plans. Neither of the subsequent revisions changed these aspects of the building's designs. The Board must therefore first determine when the Appellant knew or should have known that the permit was issued.

Whether or not the permit was visible prior to September 2003 is irrelevant since construction was visible to the public by at least the summer of 2003, and KCA knew enough about the project on September 10th to write to DCRA concerning potential height and FAR violations. (Findings of Fact 10 and 11). It is unnecessary in these circumstances to pinpoint a precise date

when the appellant knew or should have known that a permit had been issued. It is clear that whatever that date might have been, this appeal was filed more than 60 days from that time.

Nevertheless, the Board concludes that exceptional circumstances outside the KCA's control substantially impaired its ability to file a good faith appeal, and that in light of these circumstances, an extension should be granted. KCA could not file a good faith appeal until it had some reason to believe the Zoning Regulations were violated. Given these facts, KCA did not have reason to believe the Project was problematic until the framing of the structure was completed in mid September 2003. Even then, it could not tell the precise height and bulk of the Project without access to the plans supporting the permit application. Although its September 10, 2003 letter indicates some level of concern, DCRA's resistance to providing the necessary information made the filing of a timely appeal impossible.

Beginning in mid-September, KCA demonstrated considerable diligence in its efforts to acquire information about Montrose's permit and construction plans from DCRA, but these efforts were thwarted. DCRA did not provide the plans attached to the Original Permit until October 17, 2003. Meanwhile, Montrose had changed the design of the Project, seeking the Revised Permits in October 2003. This meant that KCA needed to determine whether their concerns had been ameliorated.

The Board concludes the extension will not prejudice the parties to the appeal. Montrose was on notice that the appellant had serious concerns with the project and was seeking information concerning project details. As late as October 3,2003, a Montrose representative refused KCA's request for such information. (Finding of Fact 16). Since Montrose contributed to KCA's inability to discern the true nature of the project, it cannot be heard to claim prejudice from a delay of its own making.

3. **Laches and Estoppel**

Montrose also moved to dismiss the appeal as barred by laches and estoppel. The defenses of laches and estoppel are disfavored in the zoning context because of the public interest in the enforcement of the zoning laws. Sisson v. District *of* Columbia Board of Zoning Adjustment, 805 A.2d 964, 972 (D.C. 2002) (quoting *Beins* v. District of Columbia Bd. of Zoning Adjustment, 572 A.2d 122, 126 (D.C. 1990). Application of estoppel is limited to situations where the equities are strongly in favor of the party invoking the doctrine. Wieck v. District of Columbia Bd. *of* Zoning Adjustment, 383 A.2d 7, 11 (D.C. 1978). To make a case of estoppel, Montrose must show that it: (1) acted in good faith; (2) on the affirmative acts of a municipal corporation; (3) made expensive and permanent improvements in reliance thereon; and (4) the equities strongly favor the party invoking the doctrine. Sisson, 805 A.2d at 971.

The Board notes that Montrose seeks to invoke the doctrine of estoppel against the Appellant, a private party, and not the government. The affirmative acts upon which Montrose is claiming reliance, namely the issuance of the building permits, were all taken by DCRA, not the appellant. The Board has previously taken the position that estoppel should not bar a neighboring property owner (as distinct from the District) from asserting rights under the Zoning Regulations. See Appeal *of Advisory* Neighborhood Commission 5B, BZA No. 16998 (August 26,2004); see also *Beins* v. D.C. Board *of Zoning* Adjustment, 572 A.2d 122, 125 (D.C. 1990). As noted by the

Board in the Appeal of *Advisory* Neighborhood Commission *5B*, "estoppel should not be used to preclude an innocent non-government appellant from seeking to eliminate a zoning violation."

Finally, laches is an equitable defense and may only be sought by a person with clean hands. The refusal of Montrose to provide KCA with project documentation contributed to the very delay it now complains of. Equity is not available under these circumstances.

Laches is rarely applied in the zoning context except in the clearest and most convincing circumstances. Sisson, 805 A.2d at 971-972. To determine the validity of a laches defense, the Board must look at the entire course of events. Laches will not provide a valid defense, unless two tests are met: the defendant has been prejudiced by the delay and that delay was unreasonable. In the absence of an analogous statute of limitations, the party asserting the defense has the burden of establishing both elements. Id.

Montrose did not carry its burden of establishing that KCA unreasonably delayed in bringing its appeal. Montrose claims that KCA was on constructive notice of the original permit in March, 2003 when it was available to the ANC, was published in the D.C. Register, and when Montrose met with the ANC's transportation committee. However, one cannot conclude that an Advisory Neighborhood Commission's knowledge of a permit is timely communicated to every person or association that may be affected. Similarly, persons and associations cannot be expected to subscribe to the D.C. Register to learn of construction activities that may impact them. As part of its discussion of the timeliness issue, the Board concluded that KCA was chargeable with notice of DCRA's decision when the new construction became visible in the late spring and early summer of 2003. However, the Board, in that same discussion, also found that exceptional circumstances prevented KCA from filing this appeal within the 60-day period set forth in the Board's rules of procedure. The same factors that justified extension of the 60 day time period also warrant a finding that there was not unreasonable delay in bringing the appeal.

4. <u>Authority of the Board to hear appeals alleging errors in interpreting the Height Act</u>

The Board now turns to a jurisclictional question raised as to its authority to hear an appeal based on alleged errors made in decisions interpreting the Height Act. KCA asserts the Project's penthouse, roof deck and railing exceed the maximum height permitted by the Height Act. In addition, KCA alleges that the set back of the penthouse violates both the Zoning Regulations and the Height Act. Montrose argues to the contrary that the Board lacks jurisdiction to hear appeals of administrative decisions interpreting the Height Act. DCRA concurs with Appellant that the Board does have authority and jurisdiction to interpret the requirements of the Height Act as they are incorporated in the zoning regulations.

For the following reasons, the Board concludes that the Zoning Act and the Zoning Regulations authorize the Board to interpret the Height Act in consideration of an appeal regarding an alleged violation of the Height Act.

Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799)("Zoning Act"), delineates the scope of the Board's appellate jurisdiction. It authorizes the Board to hear and

decide appeals based on errors made by District officials in enforcing the Zoning Regulations. Section 8 of the Zoning Act provides in relevant part that:

> Appeals to the Board of Adjustment may be taken by any person aggrieved ... by any decision ... based in whole or in part upon any zoning regulation or map adopted under this Act.

Section 8 of the Zoning Act further authorizes the BZA:

> To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Commissioners of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to this Act.

The Board concludes it has jurisdiction over all height and set back aspects of the appeal because the Height Act is incorporated throughout the Zoning Regulations that the Board is entrusted to interpret in hearing and deciding appeals. Of particular note is 11 DCMR § 2510.1 which expressly provides that all buildings or other structures shall comply with the height limitations of the Height Act. It reads:

> In addition to any controls established in this title, all buildings or other structures shall comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (2001) (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. and 1999 Supp.))).

11 DCMR § 2510.1.

In addition, 11 DCMR § 411.1 Roof Structures, requires that roof structures not be in conflict with the Height Act. See also § 400.1, which establishes height limits in Residence zone districts. That section provides that the heights set out in a table that follows apply, "except as specified ... in chapter[s] 20 thorough 25." Chapter 25 incorporates the Height Act's restrictions. Thus, the Zoning Regulation that establishes the maximum height permitted in Residence zone districts provides that the height limits in the zone district are circumscribed by the limitations of the Height Act.

Accordingly, the Board finds that it must interpret the Height Act in order to determine whether the Zoning Administrator erred with respect to his determinations regarding the height and set back issues. [1]

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[1] This conclusion is consistent with the BZA's decision in Howard *University*, BZA Appeal No. 15568 (October 21, 1991). In the *Howard University* case, the Zoning Administrator denied a building permit on grounds that the height of a proposed dormitory building violated the height limitations of the Zoning Regulations and the Height Act. The BZA affirmed the Zoning Administrator's determination, concluding that, "[t]he height of buildings in the District of

Montrose argues that the Height Act vests exclusive enforcement authority in the D.C. Attorney General's Office, and that the Board is therefore precluded from enforcing the Height Act's limits, citing the case *Techworld* Development Corporation *v.* D.C. Preservation League, 648 F. Supp. 106 (D.D.C. 1986). Montrose is correct that the Board has no enforcement responsibilities with respect to the Height Act. But the same is true with respect to the Zoning Regulations. Section 11 of the Zoning Act gives that responsibility to the Mayor of the District of Columbia. D.C. Official Code § 6-641.01 (a) (2001). The Board is not an enforcement body. It is, in this context, an appellate body that hears and decides allegations of errors made in the carrying out or enforcement of any regulation adopted under the Zoning Act. The incorporation of the Height Act into the Zoning Regulations makes decisions made under that Act reviewable by this Board. The Board is therefore not persuaded by Montrose's argument.

5. Merits of the Appeal

A. Height of the Building with Roof Structures

The maximum height permitted in an R-5-D district is 90 feet. 11 DCMR § 400.1. However, as discussed in section 3 above, the Zoning Regulations incorporate the height limitations of the Height Act into the height restrictions in every zone district. The Height Act limits the height of a building on a residential street to the width of the street diminished by ten feet. Height Act § 5, D.C. Official Code § 6-601.05 (c). The width of the 1800 block of Belmont Road, N.W., is 80 feet, yielding a maximum permitted building height of 70 feet.

Building height for both Height Act and zoning purposes is measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. Height Act § 7, D.C. Official Code § 6-601.07; 11 DCMR § 199.1 (Feb. 2003) ("Building, height of"). The height of the building to the highest point of the roof is 69 feet 9 and 3/8 inches. The revised plans depict a roof deck and railing at the front of the building extending several feet above the roof. Although the plans do not indicate a precise height of these structures, the Zoning Administrator should have known that the additional height depicted, if measured from the opposite curb, would cause the building to exceed the two and five eighth inches remaining in lawful height. The Board therefore concludes that the roof deck exceeds the maximum height permitted by the Height Act.

Montrose argues that the roof deck's height should not be counted because it is less than four feet in height. This argument relies upon § 411.17, which provides that:

> Roof structures less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section. (Emphasis added).

Columbia is governed by both the 11 DCMR Zoning Regulations and the Act to Regulate the Height of Buildings in D.C. June 10, 1910. When determining the allowable height of a structure, the more restrictive of the two laws must apply." Howard at 3.

The flaw in Montrose's argument is that the 'section' being referred to in the italicized language is § 411, which governs the height and location of roof structures under DCMR 11, however no provision in this section, or any of the Zoning Regulations, can authorize a structure to exceed the height limitations imposed by the Height Act under any circumstances not authorized in the Act itself.

Section 5 of the Height Act permitted the Commissioners, now the Mayor, to waive its height restriction for certain types of structures. D.C. Official Code § 6-601.05 (h).[2] As documented in this appeal, the Board finds that this specific deck is a structure and that this roof deck is not among the enumerated structures exempted under § 5 of the Height Act, neither is it one that can be construed to be included in that provision. See n.4, *infra*.

Accordingly, the Board concludes that the Zoning Administrator erred in issuing the Original Permit, and the Revised Permits, based upon plans depicting a roof deck that would have exceeded the 70 foot height limit imposed by the Height Act. And thus, the Board concludes that this roof deck must comply with the height limitations of the Height Act.

Because the roof deck exceeds the limitations of the Height Act and the railings are attendant to the deck, the Board need not reach the issue of whether safety rails alone may be exempt under the Act if they are attendant to a compliant deck.

B. <u>Penthouse Set back</u>

Elevator penthouses are listed among the enumerated structures specifically exempt from the Height Act pursuant to D.C. Official Code § 6-601.05(h). While the Height Act permits such penthouses, to receive height waivers it also requires that they "be set back from exterior walls distances equal to their respective heights above the adjacent roof." D.C. Code § 6-601.05(h).[3]

The Zoning Regulations subject roof structures to conditions not in conflict with the Height Act, including the requirement that an elevator penthouse "be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located." 11 DCMR § 400.7(b). § 400. 1 and § 400.2. This requirement applies to all elevator penthouses, including those that are within matter of right zoning height, regardless of whether the penthouse is "located below, at the same roof level with, or above the top story of any building or structure." 11 DCMR § 411.2.

---

[2] The record is silent with respect to whether a waiver was ever sought or granted in accordance with this provision for any roof structure in excess of the height limitations under the Act Appellants did not allege any error related thereto. While such waiver is required under the Act, the Board need not resolve this factual issue in light of its finding that the Zoning Administrator erred in issuing the building permit on other grounds.

[3] The Board concurs with the 1953 Office of the Corporation Counsel Opinion that the phrase "penthouses over elevator shafts" set forth in D.C. Official Code § 6-601.05(h) may be construed to include penthouses over stairways. See opinion of Vernon E. West, Corporation Counsel, D.C., July 27, 1953, at 4, attached as Exhibit 1 to Appellant's Supplemental Memo on Historical Treatment by Corporation Counsel and Zoning Authorities of Roof Structure and Basement FAR issues.

Accordingly, with respect to the set back requirement, the provisions of 11 DCMR § 400.7 (b) are similar, but not identical to § 5 of the Height Act, D.C. Official Code § 6-601.05 (h) (2001).

Appellants argue that the penthouse is not set back fiom all exterior walls in compliance with the Act or the Zoning Regulations because it is not set back the required distance from the two side walls. There is no dispute that the penthouse is properly set back from the front and back The side walls are partially exposed to the outside where they extend above the rooflines of the adjacent buildings,. Matter of right development on adjacent properties would allow the walls to be covered in the future.

A threshold issue is whether the Zoning Administrator, in applying the set back requirement for the stairway penthouse, looks to the current height of the roofs on adjacent lots to determine whether an exterior wall will result fiom the plans being reviewed, or to the potential height to which those rooflines may be brought as a matter of right. The Zoning Administrator's current practice when examining roof structure plans is to assume that adjacent structures are built to the maximum dimensions permitted by the zoning regulations

The Board finds that the Zoning Administrator must look at the potential height as a matter of right. To find otherwise, would be almost impossible for the Zoning Administrator to administer, would result in inconsistent application, and would regulate zoning based upon the whim of third parties. With respect to the subject property, since the connected buildings on the adjacent lots could reach the same maximum height of 70 feet and thereby cover the exposed portions of the walls, the Zoning Administrator did not err in considering the side walls to be interior.

This conclusion is in accord with the historical treatment of the term "exterior walls under the Zoning Regulations and the Height Act. While there have been differing opinions regarding the correct interpretation of exterior walls under the Height Act, the Zoning Commission has adopted the view that the Height Act requires set back only from a property line which abuts a street. See Zoning Commission Order No. 749–A, Case No.93-9C (1994) at 12, wherein the Zoning Commission concurred with the conclusion of the Zoning Administrator that the project did not violate the Height of Buildings Act. In that case the Zoning Administrator submitted a memorandum to the Zoning Commission stating that the setbacks of a roof structure under the provisions of the Height Act "have always been interpreted by the Zoning Division as being required to set back fiom the property line which adjoins a street." Memorandum to Madeleine H. Robinson, Acting Director, Office of Zoning fiom Joseph F. Bottner, Jr., Zoning Administrator, Subject: Commission Case No. 93-9C, (PUD and Map Amendment at 21st and H Streets, N.W. –GWU/WETA (hereinafter "Bottner Memorandum"). In accord, Note to George Oberlander, National Capital Planning Commission, from Sandra Shapiro, dated February 17, 1994; Report of the Zoning Advisory Council on Proposed Amendments to the Zoning Regulations, July 15, 1958. In that same memorandum, the Zoning Administrator advised that the Zoning Commission, under a Planned Unit Development Review, does have authority to "waive the setback of a roof structure from a property line that does not adjoin a street." Bottner Memorandum, supra, at 2.

The different interpretation under the Height Act and the Zoning Regulations of the term "exterior walls" may be explained by the fact that the term "exterior walls" is not defined in either the Act or the regulations, and the Act and the regulations governing the set back of penthouses serve different, if complementary, purposes. Under the regulations deviation from the set back provisions is allowed by special exception. Accordingly, the focus of analysis under the regulations is broader - whether the deviation will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. In contrast, the Height Act is prohibitive, allowing no flexibility or exception, and the focus is on the protection of views from the street or alley.

While the term "exterior walls" has been interpreted more broadly under the Zoning Regulations to include a wall set back from the property line that abuts a yard or court, as opposed to a street or alley, it has not been interpreted to apply to a side wall constructed to the lot line of an abutting property. This type of wall has been considered a "party wall" or "common division wall", not subject to the set back requirements. See testimony of Faye Ogunneye, Chief Zoning Review Branch, DCRA (March 16,2005 Transcript at 169 -71, 191-93; and 222). Accordingly, what distinguishes an exterior wall for zoning purposes is not whether it is exposed to the elements, but whether it is set back from a property line.

The Court of Appeals has stated that while the Board is not bound by past decisions, it must consider in its deliberations long-standing interpretations of the Zoning Regulations which have had precedential effect. *Smith v. District of Columbia Board of Zoning Adjustment,* 342 A.2d 356 (1975). In light of the fact that "exterior walls" is neither defined in the Height Act nor the regulations, but has a history of interpretation by the Zoning Commission, the Zoning Administrator, NCPC, and this Board, and that the historical interpretations referenced above support the stated purpose of the Act and the regulations, respectively, this Board concludes that these interpretations should apply.

Accordingly, in this case, the two walls from which the penthouse is not set back at a distance equal to its height are not exterior walls because they are built to the property line and abut the adjacent properties. For these reasons, the Board finds that pursuant to the Height Act and the Zoning Regulations the subject property has two exterior walls, at its front and back, and that the stairway penthouse was properly set back from both.

C. FAR Calculations

The Appellant asserts the Zoning Administrator committed two errors in calculating the FAR in the building permit. First, the area counted as attic space should have been included in the gross floor area of the Project. Second, the basement floor area was incorrectly calculated using the "perimeter wall method" instead of the "grade plane method."

All structures within the R-5-D Districts are limited to a maximum Floor Area Ratio ("FAR) of 3.5. 11 DCMR § 402.4. FAR is defined as "a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot." 11 DCMR § 199.1 ("Floor Area Ratio"). The term "Gross Floor Area" includes basements and attic space, whether or not a floor has actually been

laid, providing structural headroom of six feet, six inches or more. 11 DCMR § 199.1 ("Gross Floor Area").

Turning first to the attic issue, the Appellant contended that the plans showed that the attic's ceiling was not "structural" and therefore should not have been used to limit the height of the attic space. If the ceiling is not counted as "structural headroom" then the height would exceed six feet six inches and the space would be included in the Gross Floor Area, and the building would exceed 3.5 FAR.

The term "structural" is not defined in the Zoning Regulations, accordingly the definition for zoning purposes is provided by Webster's Unabridged Dictionary pursuant to 11 DCMR § 199. The dictionary defines "structural" as "of or relating to the load bearing members or scheme of a building, as opposed to the screening or ornamental elements."

The Board credits the testimony of the architect of record for the Project that because the building is framed from front to back, rather than relying on the adjacent walls of the abutting townhouses for support, the collar ties forming the attic ceiling were not ornamental, but served as structural members necessary to help brace the building against racking in a north-south direction. The Board therefore concludes that the collar ties created structural headroom of less than six feet, six inches, and thus the space was properly excluded from FAR calculations.

With respect to the basement issue, KCA argued that the Zoning Administrator failed to include more of its square footage to the building's FAR. Under the Zoning Regulations, a story that has a ceiling four feet or less out of grade is considered a cellar and does not count toward FAR. *See* 11 DCMR § 199.1 ("cellar"). Conversely, if a lower story has a ceiling height of more than four feet out of grade, it is considered a basement and the area must be included in the density calculations of the building. *See* 11 DCMR § 199.1 ("basement"). The difficulty arises when the lower level is partially above and partially below that four-foot plane, and when the adjacent grade cannot be determined. Such is the case here where the Project is bounded on either side by row dwellings and the finished grade is not apparent.

The Zoning Regulations provide no guidance on how to calculate the FAR of partial basements and partial cellars. The Zoning Administrator's office has employed at least two methods for calculating lower level FAR: the grade plane method and the perimeter wall method. In this instance, the Zoning Administrator utilized the latter. KCA asserted the "grade plane" method was the appropriate means to calculate partial basements/cellars.

Under the "perimeter wall" method, the FAR is determined by establishing a ratio between the linear footage of the portion perimeter wall with more than four feet out of grade and the total square footage of the lower level. Under the "grade plane" method, a plane is established between the grade at the front of the building and the grade at the rear of the building. The point at which this plane intersects at a four foot level, any portion that exceeds that plane counts toward FAR and any portion that does not is considered a cellar.

Both methods appear reasonable and the choice of which is most appropriate is within the Zoning Administrator's discretion.

The Board concludes the floor space in the basement was correctly calculated using the perimeter wall method in the plans submitted by Montrose. At most, only 147.3 square feet of space on the lower level is a basement, which counts toward FAR. The Project thus complies with the density limitation of 3.5 FAR for the R-5-D District.

6. Great weight given to ANC issues and concerns

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Official Code Ann § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's written recommendation. In this case, the ANC joined with KCA in the above arguments that the Board has fully considered and addressed above.

Accordingly, it is therefore **ORDERED** that the appeal is **DENIED** in part and **GRANTED** in part. The Appeal is **DENIED** with respect to the penthouse set back requirements under the Height Act and the Zoning Regulations, and as to the FAR calculations. The Appeal is **GRANTED** on the grounds that the height of the building with the roof deck exceeded the height limitations of the Height Act.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann, II and John G. Parsons to grant in part and deny in part).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: ___NOV 0 8 2005___

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPEAL NO. 17109

As Director of the Office of Zoning, I hereby certify and attest that on NOV 08 2005, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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BZA APPEAL NO. 17109
PAGE NO. 2

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ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

December 9, 2013

The Hon. Darrell Issa, Chair
U.S. House of Representatives Committee on Oversight and Government Reform
157 Rayburn House Office Building
Washington, D.C. 20515

RE: Support regarding Changes to The Height Act: Shaping Washington, DC, for the Future, Part II

Dear Chairman Issa:

Please accept these comments on behalf of the Coalition for Smarter Growth (CSG). The Coalition for Smarter Growth is the leading organization working locally in the Washington, D.C. metropolitan region dedicated to making the case for smart growth. Our mission is to promote walkable, inclusive, and transit-oriented communities, and the land use and transportation policies and investments needed to make those communities flourish.

We want to express our support for the District of Columbia's proposed changes to the 1910 federal Height of Buildings Act (the Height Act). We concur with the District of Columbia Office of Planning (OP) that careful modifications to the Height Act can both continue to protect the federal interest, while also address the needs of a growing city for the next 100 years. A key consideration for any change in the height regulations is how it addresses the city's need for more affordable housing. Modifying height regulations can both help the city better accommodate future demand for housing, and also leverage an opportunity to generate additional affordable housing resources either on-site or through a payment for increased height.

Even if the city does not keep up its current high pace of growth, it is projected to grow over the next century. Given the possible constraints to build out in as short as 30 years, as discussed in OP's report, we think it prudent to consider how the Height Act and locally-controlled building heights might be modified to address this long term need. We note that any decision to change the height regulations will only be implemented gradually, through extensive public consultation, detailed evaluation, and official procedures, such as the amendment process to the Comprehensive Plan and zoning regulations.

We agree with the recommendations by OP:

1. Amend the Height Act to replace the citywide height limits with new limits within the L'Enfant City based on the relationship between the street width and building height, and not subject to the original 19th century fire safety constraints.

While such an allowance in the Height Act would be the first step, implementation would require a detailed public process that includes revisions to the DC Comprehensive Plan and zoning regulations. NCPC and federal representatives on the DC Zoning Commission would also continue to play a leading role in review of any changes as they could relate to the federal interest, especially preserving the

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prominence of federal monuments and landmarks.

2. Allow DC to determine building height maximums outside the L'Enfant City through its Comprehensive Plan and zoning process, which the federal government maintains a substantial role.

DC should be enabled to set its own standards to address local needs, with continued federal oversight where a federal interest is involved, and ongoing participation through the DC Zoning Commission. We agree that Congress should affirm the District's authority to govern areas outside of the L'Enfant City.

3. Increased heights would only be allowable under a modified Height Act subject to a new special design review, and new Comprehensive Plan and zoning requirements that development projects that receive increased heights provide public benefits in support of affordable housing and infrastructure.

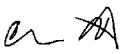
We believe the increased demand for housing, and the pressure on prices that it generates are reasons to consider modifying height regulations. More housing available through increased height can relieve pressure on existing housing prices. The value from new height can also be a source of dedicated affordable housing revenue for the city to directly address the need for lower cost housing preservation and construction.

We also agree with OP's argument that increasing the share of jobs captured by DC is an important goal as DC can offer a more efficient and sustainable location with a far smaller carbon footprint than areas not as well served by transit. Increasing the capture of DC's share of the region's jobs will also reduce demand to build far-flung highways and commercial development on former farmland and forests.

We are eager to continue to be involved in this long term effort to revise the Height Act and how DC, as a local government, approaches height to address the needs of the next century of growth. We are also eager to ensure a robust mechanism for leveraging any increase in height to create new resources for affordable housing and infrastructure for the city. We see capitalizing on the value from any height increase for the benefit of affordable housing and infrastructure as fundamental to the discussion of the overall benefits.

Thank you for your consideration.

Sincerely,



Cheryl Cort
Policy Director

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION

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Counsel
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December 9, 2013

Rep. Darrell E. Issa
Chairman, House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Re: Changes to the Height of Buildings Act of 1910: Shaping Washington, D.C. for the Future, Part II

Dear Congressman Issa:

Attached are the comments of the District of Columbia Building Industry Association on the reports filed by the District of Columbia and NCPC on the above matter. Please do not hesitate to contact me if you need more information or further clarification. Thank you.

Very truly yours,

DC Building industry Association

By: Christopher H. Collins
DCBIA Counsel

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Comments of the District of Columbia Building Industry Association
to the U.S. House Committee on Oversight and Government Reform
on the NCPC and District of Columbia
Recommendations on the Height Act
December 9, 2013

Introduction

DCBIA welcomes this opportunity to provide comments on the NCPC and District of Columbia recommendations on changes to the Height Act. DCBIA participated as a witness on the panel that testified on this issue before this Committee on July 19, 2012. DCBIA is vitally interested in this issue and welcomes the opportunity to provide these comments. A copy of our prior testimony to your Committee is attached hereto.

About DCBIA

The District of Columbia Building Industry Association (DCBIA) is the professional association representing both the commercial and residential real estate industries in the District of Columbia. Our membership of nearly 500 companies and organizations comprises several thousand real estate professionals. Association members are engaged in all aspects of real estate development and include developers, general contractors, architects and engineers, lenders, attorneys, brokers, title companies, utility companies, community development organizations and other industry members.

As an advocacy organization, DCBIA represents the interests and views of its members before the District of Columbia and the federal governments, community organizations and other business associations. DCBIA is an advocate for a vigorous, responsible real estate industry. We interpret that advocacy role broadly - to not only give voice to the specific concerns of our members, but also to speak out in support of public policies that promote the economic growth and vitality of the nation's capital.

Our members serve frequently on commissions, task forces and study groups to address crucial economic development and municipal governance issues. Our members work closely with agencies of the DC government to advise and assist in the efficient administration of city programs - most recently in areas related to land use, building regulation, comprehensive planning, tax issues and affordable housing and community

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development. We also work in collaboration with other business groups and community organizations to attract and retain business investment and to facilitate the revitalization of distressed areas in the City. For more information, see our website at www.dcbia.org.

DCBIA Comments

1. Penthouse Occupancy.

DCBIA requests that Congress amend the Height Act to allow human occupancy in penthouses.

NCPC and the District of Columbia have recommended that human occupancy be permitted in penthouses. See NCPC's November 27, 2013 "FEDERAL INTEREST REPORT AND FINAL RECOMMENDATIONS", at pages 45 and 46; District of Columbia's "FINAL EVALUATION AND RECOMMENDATIONS", dated November 20, 2013, at page 50. The NCPC report suggests that this use would be limit to "communal recreation space" whereas the District's position contains no such restriction. DCBIA believes that there is no qualitative or quantitative difference between the occupancy of a penthouse for a "communal recreation" purpose, or any other non-recreation purpose. The term "communal recreation" is not defined or described anywhere in the NCPC report. By definition, the "human occupancy" of the penthouse would be *within* the walls of the penthouse. The type of use within the penthouse walls would have absolutely no effect on the height on the building or the skyline of the District of Columbia. The activity or purpose for which a group of people are gathered in a penthouse has no bearing on the height of the building, or the skyline of the District of Columbia. Human occupancy of rooftops outside of the penthouse for all purposes is already permitted, and is not prohibited or otherwise regulated by the Height Act. Many buildings in the District have roof top patios and seating areas, which are accessed by elevators and stairways that are within the penthouse. DCBIA believes that penthouse restaurant, office or conference space, for example, in addition to communal recreation spaces, would provide wonderful opportunities to enjoy the vistas of the city, much the same way that outdoor rooftop terraces currently provide under the existing law. The District's skyline would be the same, whether the occupancy of penthouses is limited only to communal recreation space, or is allowed to be occupied for all permitted uses. DCBIA encourages a change to allow penthouse occupancy for all permitted uses.

2. Penthouse Setbacks.

The reports of NCPC and the District of Columbia recommend that the penthouse setback requirement from "exterior walls" be maintained. DCBIA agrees with this position, and requests that Committee recognize the long-standing interpretation of the D.C. zoning authorities and NCPC that the term "exterior wall" applies to building walls facing a street, and not to other walls of a building facing adjacent properties.

The decision of the D.C. Board of Zoning Adjustment in Appeal No. 17019 of Kalorama Citizens Association, at page 12, illustrates this point. The Board's Order states on page 12 in pertinent part:

> "While there have been differing opinions regarding the correct interpretation of exterior walls under the Height Act, the Zoning Commission has adopted the view that the Height Act requires set back only from a property line which abuts a street. See Zoning Commission Order No. 749-A, Case No. 93-9C (1994) at 12, wherein the Zoning Commission concurred with the conclusion of the Zoning Administrator that the project did not violate the Height of Buildings Act. In that case the Zoning Administrator submitted a memorandum to the Zoning Commission stating that the setbacks of a roof structure under the provisions of the Height Act 'have always been interpreted by the Zoning Division as being required to set back from the property line which adjoins a street.' (Citations omitted). In accord, Note to George Oberlander, National Capital Planning Commission, from Sandra Shapiro, dated February 17, 1994; Report of the Zoning Advisory Council on Proposed Amendments to the Zoning Regulations, July 15, 1958."

An interpretation of "exterior walls" that requires a setback from the side or rear walls of a building would be unduly restrictive, and would preclude the ability to place a penthouse on the roof of a building on narrow or shallow lot. There is no provision in the Height Act for waivers from the exterior wall setback requirement, nor would this be an appropriate subject of the Height Act. DCBIA requests that the Committee recognize this long standing interpretation.

Conclusion

Thank you for your consideration. We would be pleased to work with your staff on the details of these recommendations.

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Testimony of Christopher H. Collins, Counsel
District of Columbia Building Industry Association
on "Changes to the Height Act: Shaping Washington, DC for the Future"
Thursday, July 19, 2012 1:30 p.m.
Before the Committee on Oversight and Government Reform, Subcommittee on
Health Care, District of Columbia, Census and the National Archives
Congressman Trey Gowdy, Chairman
2154 Rayburn House Office Building

Good afternoon Chairman Gowdy and members of the Committee. I am Christopher Collins and I am testifying today as Counsel to the District of Columbia Building Industry Association.

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Background of the 1910 Height Act

The Act to Regulate the Height of Buildings (Act of June 1, 1910, 36 Stat. 452) is commonly referred to as the 1910 Height Act. The specific requirements of the 1910 Height Act for discussion today are found in Section 5, which is attached hereto. That section provides that buildings on "business streets" (those sides and portions of streets located in Special Purpose, Waterfront, Mixed Use, Commercial, or Industrial zoning districts) may be erected to a height equal to the width of the adjacent street plus 20 feet, with an overall maximum height of 130 feet, except for the north side of Pennsylvania Avenue between

First and 15th Streets NW, where a height of 160 feet is permitted. On residence streets, the maximum height is 90 feet, but is further limited by the width of the adjacent street, minus 10 feet. The point of measurement is required to be taken from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof or parapet, provided that if the building has more than one front, the height shall be measured from the elevation of the sidewalk that permits the greater height.

Above the maximum height of a building itself, Section 5 of the 1910 Height Act allows for two types of structures:

- architectural elements such as "spires, towers, domes, minarets and pinnacles", which has now evolved into what generally are known as "architectural embellishments"; and

- utilitarian elements such as penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks and fire sprinkler tanks. With the advent of central heating, ventilation, and air conditioning in multi story buildings, this equipment is now placed on the roof as the modern version of ventilation shafts, chimneys and smokestacks.

Congress set no limitation on the height of the permitted architectural elements, and they can be located anywhere above the roof of a building. Likewise, Congress set no limit on the height of the utilitarian roof structure elements, except that they are required to be constructed with a setback from the exterior walls of the building equal to their height above the roof, and they are prohibited from being used for "human occupancy."

Building heights in the District of Columbia are also governed by the DC Zoning Regulations, which in many instances permit maximum heights that are less than those permitted by the 1910 Height Act, and which also provide a height limit for roof structures of 18 feet, six inches above the height of the roof.

Proposed Modifications to the 1910 Height Act

DCBIA believes that the horizontal nature of our city skyline is an important component of the city's beauty and special character. We also understand that there are a wide variety of views on the wisdom and importance of the 1910 Height Act, and whether the established height limits should be retained or modified. DCBIA has examined this issue, and we believe that there is a practical approach for a minor change in the 1910 Height Act that would have absolutely no impact upon the skyline of the city as currently permitted by the 1910 Height Act. Simply stated, that is to remove the restriction on "human occupancy" above the top story of a building. Allowing habitable space in a roof structure in addition to the normal roof top machinery, while retaining the current roof structure setback requirement, would allow a wide variety of uses, such restaurants and lounges, health clubs, community rooms, and enclosed swimming pools as well as other residential and non-residential uses. Allowing such use of roof structure space would also likely promote a greater use of rooftops outside of these roof structures for active and passive outdoor recreation, and rooftop landscaping. We believe that this proposal will have a positive benefit on the quality of life of those using those facilities, and will also help to enhance the beauty of the skyline of our "horizontal city". The attached article provides more detail on this proposal.

On behalf of DBIA, I thank you for the opportunity to appear today. I would be pleased to answer your questions.

Proviso. Treaty rights not affected.

and pay over the proceeds received from the sale thereof only as received and as herein provided: *Provided*, That nothing in this Act shall be construed to deprive the said Indians of the Rosebud Indian Reservation of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act.

Approved, May 30, 1910.

May 30, 1910. [H. R. 9604.] [Public, No. 196.]

CHAP. 261.—An Act Granting certain lands in the Coconino National Forest, in Arizona, for observatory purposes.

Lowell Observatory, Ariz. Lands in Coconino National Forest granted for.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to Percival Lowell, his heirs and assigns, section numbered seventeen, in township numbered twenty-one north of range seven east of the Gila and Salt River base and meridian, the said tract of land being within the Coconino National Forest, in the Territory of Arizona, for observatory purposes in connection with the Lowell Observatory: *Provided*, That in the event of the removal or abandonment of the said observatory or the use of said land by the grantee for other than observatory purposes the said land shall revert to the United States: *Provided further*, That the title to the merchantable timber thereon and the right to cut and remove the same in such manner as to preserve the herbage and undergrowth in their natural condition shall remain in the United States.

Proviso. Reversion for nonuser.

Timber rights excluded.

Approved, May 30, 1910.

June 1, 1910. [H. R. 19070.] [Public, No. 196.]

CHAP. 263.—An Act To regulate the height of buildings in the District of Columbia.

District of Columbia. Height of nonfireproof dwellings, etc., limited.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of the approval of this Act no combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied as a dwelling, flat, apartment house, tenement, lodging or boarding house, hospital, dormitory, or for any similar purpose shall be erected, altered, or raised to a height of more than four stories, or more than fifty feet in height above the sidewalk, and no combustible or nonfireproof building shall be converted to any of the uses aforesaid if it exceeds either of said limits of height.

Business buildings.

SEC. 2. That from and after the date of the approval of this Act no combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied for business purposes only shall be erected, altered, or raised to a height of more than sixty feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height.

Fireproof materials required for buildings exceeding 60 feet. Churches excepted.

SEC. 3. That all buildings in the District of Columbia, including buildings of every kind, class, and description whatsoever, excepting churches only, hereafter erected, altered, or raised in any manner as to exceed sixty feet in height shall be fireproof or noncombustible and of such fire-resisting materials, from the foundation up, as are now or at the time of the erecting, altering, or raising may be required by the building regulations of the District of Columbia.

Hotels, etc.

Hotels, apartment houses, and tenement houses hereafter erected, altered, or raised in any manner so as to be three stories in height or over and buildings hereafter converted to such uses shall be of fireproof construction up to and including the main floor, and there shall be no space on any floor of such structure of an area greater than two thousand five hundred square feet that is not completely inclosed by

fireproof walls, and all doors through such walls shall be of noncombustible materials.

Every building hereafter erected with a hall or altered so as to have a hall with a seating capacity of more than three hundred persons when computed, as provided by the building regulations, and every church hereafter erected or building hereafter converted for use as a church, with such seating capacity, shall be of fireproof construction up to and including the floor of such hall or the auditorium of such church as the case may be. Halls. Churches.

SEC. 4. That additions to existing combustible or nonfireproof structures hereafter erected, altered, or raised to exceed the height limited by this Act for such structures shall be of fireproof construction from the foundation up, and no part of any combustible or nonfireproof building shall be raised above such limit or height unless that part be fireproof from the foundations up. Additions.

Towers, spires, or domes, hereafter constructed more than sixty feet above the sidewalk, must be of fireproof material from the foundation up, and must be separated from the roof space, choir loft, or balcony by brick walls without openings, unless such openings are protected by fireproof or metal-covered doors on each face of the wall. Towers, spires, and domes.

That full power and authority is hereby granted to and conferred upon every person, whose application was filed in the office of the Commissioners of the District of Columbia prior to the adoption of the present building regulations of said District, to construct a steel fireproof dome on any buildings owned by such person, in square three hundred and forty-five of said District, as set forth in the plans and specifications annexed to or forming a part of such applications so filed, any other provision in this Act contained to the contrary notwithstanding. And the inspector of buildings of said District shall make no changes in said plans and specifications unless for the structural safety of the building it is necessary to do so. Dome in square 345. Plans.

Every theater hereafter erected and every building hereafter converted to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof construction from the foundation up and have fireproof walls between it and other buildings connected therewith, and any theater damaged to one-half its value shall not be rebuilt except with fireproof materials throughout and otherwise in accordance with the building regulations of the District of Columbia. Theaters.

SEC. 5. That no building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet; but where a building or proposed building 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, the limit of height of the building shall be determined from the width of the wideat street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the commissioners. Width of street to govern height.

No building shall be erected, altered, or raised in any manner as to exceed the height of one hundred and thirty feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania avenue between First and Fifteenth streets, northwest, where an extreme height of one hundred and sixty feet will be permitted. Business streets.

Residence streets.

On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over eighty feet in height to the top of the highest ceiling joists or over eighty-five feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue, or highway sixty feet wide or less, where a height equal to the width of the street may be allowed.

Ante, p. 391.

Corner lots.

The height of a building on a corner lot will be determined by the width of the wider street.

Streets less than 90 feet wide.

On streets less than ninety feet wide where building lines have been established and recorded in the office of the surveyor of the district, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, in so far as it controls the height of buildings under this law, shall be held to be the distance between said building lines.

Adjoining public buildings.

On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.

Abutting Union Station plaza.

Vol. 32, p. 913.

Buildings hereafter erected to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February twenty-eighth, nineteen hundred and three, shall be fireproof and shall not be of a greater height than eighty feet.

Towers, chimneys, sprinkler tanks, etc.

Spires, towers, domes, minarets, pinnacles, pent houses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this Act when and as the same may be approved by the Commissioners of the District of Columbia: *Provided, however*, That such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed: *And provided*, That pent houses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof.

Provisos.
Fireproof requirements.

Distance from exterior walls.

Limit for frame dwellings.

Sec. 6. That no wooden or frame building hereafter erected, altered, or converted for use as a human habitation shall exceed three stories or exceed forty feet in height to the roof.

Basis of measurement.

Sec. 7. That for the purposes of this Act 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 one 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.

Violations declared nuisances.

Sec. 8. That buildings erected, altered, or raised or converted in violation of any of the provisions of this Act are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which said court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars per day for each and every day such nuisance shall be permitted to continue, and shall be required by said court to abate such nuisance. The corporation counsel of the District of

Penalty.

Injunction proceedings.

Columbia may maintain an action in the supreme court of the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the United States jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Punishment for violating injunction.

SEC. 9. That Congress reserves the right to alter, amend, or repeal this Act. All laws in conflict herewith are hereby repealed.

Repeal, etc. Vol. 30, p. 922.

Approved, June 1, 1910.

From the Washington Business Journal
:http://www.bizjournals.com/washington/stories/2010/02/22/tidbits9.html

OnSite

Guest comment: We can relax D.C.'s height limits

Keep city's character by using roof structures for human occupancy

Premium content from Washington Business Journal by Whayne S. Quin

Date: Monday, February 22, 2010, 12:00am EST

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Acrophobia is normally thought of as a fear of heights from the person's perspective looking down. But it's also a good way to describe the fear of seeing and permitting higher buildings in D.C.

Scores of articles have been written and many symposia have been held debating and commenting about the limitation on building heights. Local and federal agencies frequently reference the height of buildings as being one of the most sensitive parts of the city's planning and built environment. The core of this focus always seems to be the congressionally enacted 1910 height act. Most everyone takes pride in the horizontality of our capital city, arguing the city would not have that character without the act.

Unfortunately, myths, misunderstandings and strained interpretations sometimes cause public officials and preservationists to fear that real estate developers, architects and their attorneys want to breach the limitations and destroy that character with major vertical increases having an adverse impact on our skyline.

No doubt, there are those who would like to do away with the 1910 height act and, at the other extreme, there are those who would like to apply interpretations that restrict heights far below what was intended by the act.

Both are wrong. There is a middle ground — all completely within the framework of the overall heights of buildings as consistently permitted and built over the last 100 years.

The 1910 height act was initiated by the District of Columbia Board of Commissioners — not Congress — because, after the permitting of the Cairo Hotel at 1615 Q St. NW, our

city fathers felt that there should be appropriate height limits. The essential requirements of the act, as now in effect, are that buildings on business streets may be erected to a height of the width of the street plus 20 feet, with an overall maximum height of 130 feet, except for the north side of Pennsylvania Avenue between First and 15th streets NW, where "an extreme height" of 160 feet is permitted. On a residence street, the maximum height is 90 feet, but further limited by the width of the street diminished by 10 feet. The point of measurement is required to be taken from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof or parapet, provided that if the building has more than one front, the height shall be measured from the elevation of the sidewalk that permits the greater height.

Above the maximum height of a building itself, the law also provided for essentially two types of structures, namely architectural elements such as spires, towers, domes, minarets which has evolved into what generally has become known as "architectural embellishments"; and utilitarian elements such as penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks and fire sprinkler tanks. Congress set no limit for these roof structure elements but required them to be constructed with a setback from public street frontages on a 1:1 basis and prohibited them from being used for "human occupancy."

Since the inception of zoning in D.C., the Zoning Commission has established height limits by zoning districts. While there have been several limits regarding size of roof structures, no limit on the height of roof structures existed until December 1976, when the Zoning Commission adopted a general limit of 18 feet, 6 inches, with the right of the Board of Zoning Adjustment to approve higher structures.

So the result today is that a 90-foot building with an 18-foot, 6-inch roof structure would have a silhouette of 108.5 feet with setbacks above the height act restriction and a 130-foot building would have a silhouette rising to 148.5 feet with certain setbacks above the restrictions. Aside from setbacks imposed by zoning, the only setback required by the height act is from public streets. These heights have been deemed appropriate to preserve our horizontal city.

Within the overall height limitations, it is clear that Congress intended broad flexibility under the height act enabling the city to be competitive as evidenced by the fact that the act left to D.C. agencies the question of what constitutes a building, left to the city the enforcement of the act through the Office of Corporation Counsel (now the Office of the Attorney General), gave the city the right to adopt a schedule of heights for buildings adjacent to federal buildings and allowed the city to determine how high and how large roof structures should be. Originally, the primary purpose of the height limits was fire safety. That rationale has completely faded, and the sole arguments are now aesthetic and historic aimed at protecting the horizontality vision. Today, the city is at a distinct disadvantage in not being able to be more competitive with our surrounding jurisdictions in terms of design and availability of residential and commercial space.

So, within the existing framework, what additional height can be permitted without doing damage to the essential constraints of the 1910 act? Architects and engineers indicate that the ability to provide one or two more floors of first-class residential and commercial

space in new buildings could be provided with 10 to 20 feet more of height. We need to find a way to allow this without damaging the wonderful perspectives of our city. One solution would be to allow human occupancy within the established total framework of our buildings. This includes the space within buildings as now limited by the act and the space that is already permitted for roof structures with the additional 18 feet, 6 inches. Recently the Office of Planning has suggested that a roof structure height of 20 feet would make more sense.

The aesthetic and historic nature of the height act's application would then be respected and the horizontal nature of our city would not be impaired. While presenting technical and architectural issues on how to provide mechanical and safety measures within the same space above the basic height limits, in many cases additional residential units or commercial space could be provided. Two legislative actions would be required:

1. Congress would have to amend the 1910 height act to allow human occupancy in the space previously allowed for the architectural and utilitarian roof structures. Congress could limit how high human occupancy could go, for example, 20 feet, with the previously required public street 1:1 setback.

2. The Zoning Commission would have to amend the zoning regulations to follow such congressionally approved limitations and would need to determine what size and setback would be required and then provide for limited flexibility through the Board of Zoning Adjustment.

In this manner, the increase of height would be within the overall building heights now permitted and the competitive position of the District of Columbia could be enhanced without disturbing the long and widely respected structural height limitations.

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