

# STAFF RECOMMENDATION



D. Zaidain  
NCPC File No. Z.C. 09-21

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## TEXT AND MAP AMENDMENTS TO THE ZONING REGULATIONS OF THE DISTRICT OF COLUMBIA, UNION STATION NORTH (USN) ZONING DISTRICT

Northeast, Washington, D.C.

Referred by the Zoning Commission of the District of Columbia

March 31, 2011

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### Abstract

The Zoning Commission of the District of Columbia has taken a proposed action to approve map and text amendments to the DC Zoning Regulations to create the Union Station North zoning district. This new zoning district will be applied to a 14-acre, air-rights site above the rail lines behind Union Station and abutting the north and south sides of the H Street, NE bridge (Square 717, Lots 7001 and 7002 and Square 720, Lots 7000 and 70001). The site is being zoned in advance of it being developed as a mixed-use project referred to as “Burnham Place.”

### Commission Action Requested by Applicant

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

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### Executive Director’s Recommendation

The Commission:

**Supports** the District’s efforts to develop the air-rights over a large portion of the Union Station railyard into an active, mixed-use development, and the urban design approach of stepping down building heights toward Union Station.

**Notes** that the Federal Elements of the Comprehensive Plan include policies that protect the character of historically significant buildings such as Union Station as well as the horizontal character of the National Capital.

**Finds** that the bonus height permitted for exemplary architecture could negatively impact the integrity and character of Union Station and the historically significant views toward the station from surrounding streets and that overall building heights allowed by the zoning envelope could negatively impact the horizontal character of the National Capital.

**Requests** that NCPC be afforded an opportunity to review and provide comments on the Union Station North Stage 1 and Master Plan review process so as to further advise the Zoning Commission on the potential impacts to the federal interest in this case, including the historic character and setting of Union Station and the character of the Washington skyline.

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## PROJECT DESCRIPTION

In 1997, the United States Congress, passed Public Law 105-33 which directed the General Services Administration to sell, at auction, the federally owned air rights above the railroad infrastructure behind Union Station for development purposes. In 2002, Akridge Development won the public auction and the transaction was closed in 2006. Subsequently, the air-rights lots were then created and recorded with the District of Columbia Office of the Surveyor. As these lots were created as a result of the property transaction, no zoning classification has been applied and the District of Columbia Office Planning (DCOP) has developed the Union Station North (USN) zoning classification for this site. The Zoning Commission took a proposed action to approve the new zoning classification on March 14, 2011 and has now referred the proposal to the National Capital Planning Commission for federal interest review.

### Site

The Union Station North zoning district will be applied to approximately 14-acres of air rights located above the railroad infrastructure behind historic Union Station and adjacent to the H Street, NE Bridge, otherwise known as the Hopscotch Bridge, Union Station's parking structure directly to the west and Station Place is adjacent to the site on the east. The only public street accessing the site is H Street, NE. The following images reflect the site location:



### Union Station North Zoning

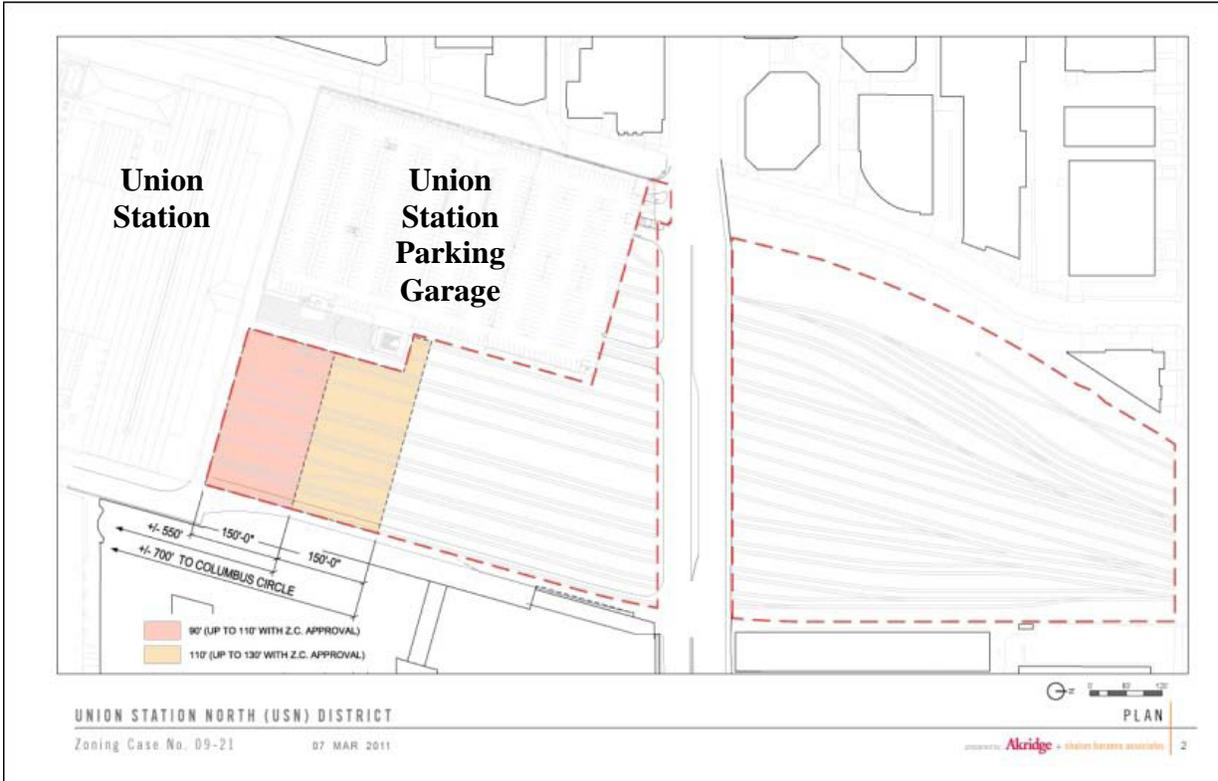
The proposed Union Station North Zoning District is a new zoning category being proposed by the District of Columbia Office of Planning and is considered a “Unique Location District”. This is defined in the zoning as a district intended to apply to single, large-sites that require a self-contained set of regulations to guide site design and development. In this instance, the USN zoning will guide the development of Burnham Place, a mixed-use development being proposed for the entire site by Akridge Development. The Burnham Place project will be constructed on two platforms on the north and south sides of the H Street, NE Bridge.

### *Permitted Uses*

The Union Station North zoning will allow any use that is permitted as a matter-of-right in the C-3-C (Commercial) zone, which includes most commercial uses permitted in other districts as well as residential uses. The USN also establishes a requirement that 100% of the ground floor uses along H Street, NE shall consist of retail, service or arts use. In terms of allowable Floor-Area-Ratio (FAR), the USN zoning establishes a maximum of 6.5 FAR for individual buildings, a 5.5 maximum FAR for non-residential uses, and incremental requirements for the inclusion of residential uses as the project is built out.

### *Building Height*

The USN zoning provides specific regulations for building height and bulk. The proposed regulations consider “each platform and all improvements constructed thereon” to be a single building. Hence, all buildings on the north platform will be considered a single building for zoning purposes as will all buildings on the south platform. Regarding building height, the USN zone would allow a 130-foot maximum building height on the north platform. On the south platform the regulations would allow for 130-foot building heights on the areas adjacent to H Street, NE. The zoning then requires a step down approach moving south towards Union Station. In the middle area of the south platform, buildings are allowed to be 110 feet and in the area directly adjacent to Union Station, the buildings are restricted to 90 feet. However, buildings in these two areas could receive bonus height of 20 additional feet if the Zoning Commission determines the architectural design to be exemplary. The following image depicts this step down and bonus height scenario:



### *Building Height Measuring Point*

Included in the requirements for building height, the Union Station North Zoning District establishes the point from which the buildings will be measured. The zoning states that “the measurement of building height shall be taken from the elevation of the sidewalk on H Street, NE at the middle of the front of the building, to the highest point of the roof or parapet rather than from grade”. This provision, coupled with the provision that qualifies buildings on either platform as a “single building”, effectively establishes the measuring point for all buildings within the project to be taken from the elevated H Street, NE Bridge.

### *Parking & Loading*

The Union Station North zoning also establishes parking and loading requirements. It includes a detailed schedule of bicycle parking requirements, broken down by use, including requirements for support space such as common locker rooms and signage. The zoning states that there are no minimum requirements for the number of vehicle parking spaces to be provided and the sale or lease of residential units can not include the sale or lease of automobile parking spaces. The loading requirements for the C-3-C (Commercial) zoning district are incorporated by reference in the USN with the Zoning Commission able to approve reductions, consolidation or elimination of loading spaces at its discretion through the design review process, as well as establish conditions for screening, lighting, setbacks and access points.

### *Design Review*

The USN zoning proposes to establish a design review process for all new buildings, open spaces and associated improvements in the Burnham Place project. Generally, the design review process will require two stages of review. The first stage review, will require the applicant to submit a Master Plan to the Zoning Commission depicting building sites, open spaces and the transportation network servicing the project. This Stage One review will also include building massing and height as well as the location of uses. The Stage Two review will include the more detailed appearance of buildings, landscape design, and additional details on the transportation network. Submission requirements for the design review process include a comprehensive circulation plan, site plans and elevations, water usage information, as well as ground-level studies which should show the relationship between proposed buildings and Union Station. Other standards set forth in the USN zone include requirements for external multi-modal connectivity between the project and its surroundings, the visual relationship between Burnham Place and surrounding historic areas and landmarks, as well as standards for community outreach. It is during this design review process that the Zoning Commission will determine the existence of exemplary architecture and grant the 20 feet of bonus height behind Union Station.

## PROJECT ANALYSIS

The Union Station North zoning and the Burnham Place project represent a solution to activating areas of Washington which have been scarred by the existence of necessary transportation infrastructure. Developing the space above infrastructure as proposed in this effort is a solution that generally could be applied to other critical areas of the city including the Southeast/Southwest Freeway or the reconstitution of Maryland Avenue, SW. Staff is supportive of the Union Station North Zoning District and the concept of Unique Location Districts as the appropriate regulatory approach to areas of the city that have physical challenges because of associated infrastructure. Further, staff commends the inclusion of residential uses and particularly the requirements for residential uses to be incrementally included as the project is built out. This will allow for increased activity and an expansion of the area's service market while this large project is built to completion. However, staff has concerns related to the overall design of the project and its effects to the historic character of Union Station and Columbus Plaza (Federal Reservation 334), both historic resources listed on the National Register of Historic Places and effects to the significant views along Louisiana and Delaware Avenues, both

contributing avenues and vistas to the historic L'Enfant Plan. An additional concern is the impacts the building heights will have on the horizontal skyline profile of the city. The preservation of this character is supported by several policies in the Federal Elements of the Comprehensive Plan for the National Capital. As related issues, staff has concerns regarding the measuring point designation as well as the classification of multiple buildings as a single building for zoning purposes. Many of these initial concerns were provided to the Zoning Commission in a letter dated December 16, 2010 from the NCPC Executive Director (**copy attached**). While the zoning has been revised and has evolved in a positive manner, some of the concerns related to the overall height of the buildings still remain.

### *Impacts to Union Station*

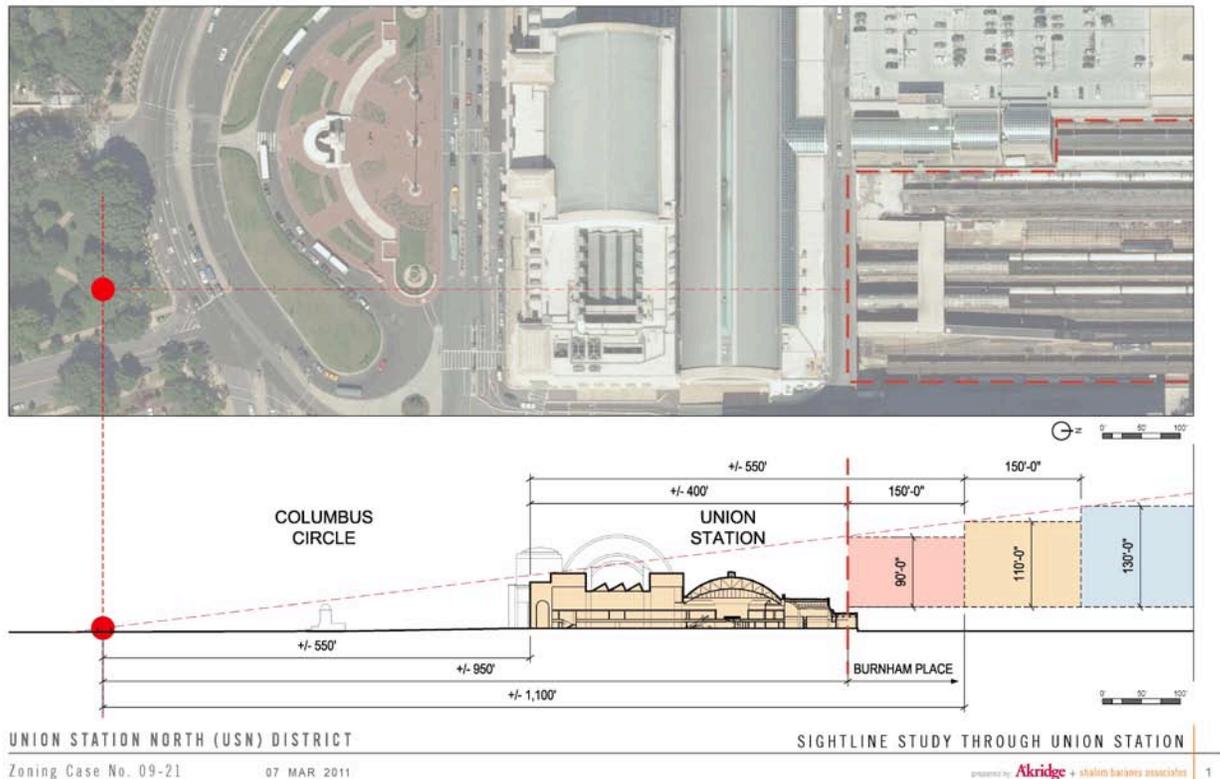
A federal interest in this proposed Zoning Commission action is the impact on the character of Union Station, Columbus Plaza and the contributing viewsheds of Louisiana and Delaware Avenues. Designed by Daniel Burnham, Union Station was completed in 1908, was placed on the National Register of Historic Places in 1969, and is the central hub for rail transportation in Washington DC. It is described in the McMillan plan as “the grand gateway to the capital” the style of which “should be equally as dignified as that of the public buildings themselves”. In 1979, the National Register was amended to include the plaza in front of the station as well as Columbus Fountain. The Station and plaza are proximate to the United States Capitol Building, supporting Senate Office buildings as well as The Smithsonian Postal Museum. The physical and visual connection between Union Station and the US Capitol is a key aspect of the McMillan Plan and are part of the defining character of this part of the city. It is also specifically referred to as a place of interest in Height of Buildings Act of 1910. The Burnham Place project and the Union Station North Zoning District are directly adjacent to Union Station and its design has the potential to affect the character of this area. At its January 6, 2011 meeting, NCPC reviewed amendments to the District Elements of the Comprehensive Plan for the National Capital. One particular amendment pertained to the importance of Union Station and maintaining its character during development of the Burnham Place project. NCPC staff worked directly with DCOP staff to develop policy language that reflects the sensitivity of this area. The language, as reviewed by NCPC and adopted by The Council of the District of Columbia states:

“The allowable height of any building constructed in the air rights should be measured consistent with the Height Act and relate positively to the surroundings with special attention to Union Station and other historic buildings, the federal precincts on Capitol Hill, and existing neighborhoods to the east and west. Development must give special attention to the preservation and enhancement of and views to Union Station and its historic surroundings by ensuring the provision of exemplary architecture and encouraging upper story setbacks and minimized penthouses.”

In the original DCOP proposal for the Union Station North zoning, the regulations would have permitted buildings measuring 130 feet, as measured from the elevated H Street, NE overpass to directly abut Union Station. This would have resulted in buildings being approximately 34 feet above the Union Station vault and approximately 85 feet above the Station’s east wing. These height regulations were subsequently modified by the Zoning Commission.

The current proposal is to now step down the buildings towards Union Station. The USN zoning now provides that the height of the buildings directly behind Union Station are to be 90 feet, with

the next building to the north, in the middle of the platform, permitted to reach 110 feet. The image below depicts this step down approach:



The proposed USN zoning further provides that if the Zoning Commission determines that the structures in these two areas are of “exceptional architectural quality,” an additional 20 feet of height may be granted. This additional height would then result in buildings directly adjacent to Union Station being approximately 13 feet above the Union Station vault and 64 feet above the east wing.

Staff is supportive of the step down approach as employed in the current USN zoning proposal. This represents a sound solution relating this development to its surroundings and preserving the character of historic buildings and adjacent neighborhoods. However, staff has concerns with the bonus height provision included in the USN zoning as it is unclear what standard will be used to determine “exceptional architectural quality” and therefore that the bonus height could negatively affect the character of Union Station and the historically significant viewsheds to it. Further, this would be contrary to the aforementioned policy language in the District Elements of the Comprehensive Plan which specifically call out preservation of Union Station and the viewsheds to it. This goal is further reflected in the Federal Elements of the Comprehensive Plan, Preservation and Historic Features Element which state “views and vistas, both natural and designed, that are an integral part of the national capital’s image should be protected and enhanced”. The Element also states that “the reciprocal views along the rights-of-way of the Historic Plan of Washington DC as well as to and from squares, circles and reservations should be protected”. Regarding historic properties like Union Station, the Comprehensive Plan

establishes a policy to “protect the settings of historic properties, including views to and from sites where significant, as integral parts of the historic character of the property.” Union Station, as well as the plaza in its front, Federal Reservation 334, has significant viewsheds to it, particularly through Louisiana and Delaware Avenues. The determination of whether the project meets the exemplary architecture standard and is permitted to utilize this bonus height will be made through the USN zoning design review process. This bonus height and overall design of the Burnham Place buildings could have significant impacts to Union Station, its surrounding character, and the viewsheds to it, which is of a federal interest. To ensure that this interest is protected, it is staff’s recommendation that the Zoning Commission include NCPC as a referral agency in the Master Plan and Stage 1 review process as created by the Union Station North zoning. Doing so will allow NCPC to further advise the Zoning Commission on Burnham Place’s effects on the federal interest at a point where more information on the project’s design will be available.

### *Effects of Measuring Point*

An additional staff concern pertains to the issue of allowing a measuring point for building height from an elevated overpass, in this case the H Street, NE Bridge. Staff appreciates the challenge in determining a measuring point in this case that is consistent with the intent of the Height of Buildings Act of 1910 given that the only public street this project fronts is H Street, NE. However, allowing an elevated measuring point as opposed to measuring from a point at grade will, in this case, provide a point that is approximately 53 feet above the surrounding natural grade, measured at the H Street, NE and North Capitol Street intersection. The effect of this will be the creation of uneven buildings heights in the area and potentially negative impacts to the character of the horizontal city, a character created by the consistent buildings heights established in the Height Act. While this particular air-rights site is challenged, it is not the only site within the District of Columbia affected by elevated overpasses. Allowing this measurement could establish a precedent that would allow similar development out of scale with other areas of the city in the future. Furthermore, the proposed elevated measuring point is a different approach than what the Zoning Commission had established for measuring points in the city in 2003 through case 02-35. This zoning text amendment added the following to the definition of building height:

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

On August 6<sup>th</sup> 2003, the NCPC Executive Director determined, through delegated action, that this text amendment would not have a negative effect on the federal interest and the amendment was subsequently approved by the Zoning Commission. The proposed USN alters the regulations to allow a project fronting on a bridge or viaduct to be measured in a method opposite than that of the lower of the natural grade.

Further, the elevated measuring point is 53 feet above the lower, natural grade, which will allow buildings that are 45 feet taller than Station Place, a building directly adjacent to this project on H Street, NE, and 61 feet taller than the upper deck building line of the adjacent Union Station parking garage to the west. Additionally, the zoning to the west is C-3-C and to the east is C-2-B and C-2-A, which provide for a maximum, matter-of-right building height of 90 feet, 65 feet and

50 feet respectively. Allowing buildings that would reach a zoning height of 130 feet plus the 53 feet of elevation, will create buildings that will be significantly taller than the adjacent buildings and districts to the east and the west. This could diminish the horizontal character of Washington's skyline and create buildings which are out of scale with the surrounding area. Policies relating to the maintenance of Washington's horizontal skyline are established in the Federal Elements of the Comprehensive Plan for the National Capital. Located within the Preservation Element, these policies include:

- Preserve the horizontal character of the national capital through enforcement of the 1910 Height Act
- Protect the skyline formed by the region's natural features, particularly the topographic bowl around central Washington, as well as historically significant built features, from intrusions such as antenna towers, water towers, and rooftop equipment.

Allowing buildings that are measured from an artificial surface at an elevated height of 53 feet could violate these policies of preserving the horizontal integrity of Washington's skyline.

#### *Effects of Single Building Definition*

Staff also has concerns with the proposed USN zoning regulations method of defining multiple buildings as single buildings. The proposed regulations state that for the purposes of the USN District each platform and all improvements constructed thereon are deemed to comprise a single building. As there are two platforms, one on the north side of H Street, NE and one on the south side of H Street, NE, the result of this regulation will be that for zoning purposes all of the buildings on the north side are considered one building and all buildings on the south side will be considered one building. In terms of the measurement of building height, this will allow all buildings to draw their height allowance and measurement from the H Street, NE Bridge without actually having frontage on that street. A main intent of the Height Act is to relate the height of buildings to the width of the street on which they front. For example, this notion is reflected in the Height Act provision that buildings in commercial districts can be as tall as the width of the street in its front plus twenty feet, with no distinction given between public or private streets. The USN zoning notes that new roads, defined as transportation ways, will be constructed in the Burnham Place project to provide access to the buildings constructed on the platform. Therefore, the new buildings should be based on the width of the street on which they physically front, which would in some cases be these new streets, so as be consistent with Height of Buildings Act.

#### *Recommendation*

While staff acknowledges that the USN zoning applies to a site that is challenging, it maintains its concern that the net effect of the measuring point and the definition of a single building will result in buildings that could negatively impact Union Station as a historic resource and its surrounding precincts. However, at this stage the Union Station North zoning is creating a variable height envelope in the area adjacent to Union Station with allowable heights being based on a subjective criterion of "exemplary architecture". Because of this, it is difficult to ascertain the full impacts the project will have to the character of Union Station and its surroundings. As such, staff recommends that the Commission find that allowing the building heights as described

in the Union Station North zoning could negatively impact the federal interest and further request to be a part of the design review process established in that zoning so as to further advise the Zoning Commission on the project's effects on the adjacent federal interests. In the past, NCPC has provided similar requests for cases with significant federal interest. Two examples include the Capitol Gateway Overlay (ZC 05-10) and Southeast Federal Center Overlay (ZC 03-06). The Zoning Commission subsequently accepted that request and NCPC continues to advise on projects within those zoning districts.



IN REPLY REFER TO:  
NCPC File No. ZC 09-21

December 16, 2010

Commission Members

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L. Preston Bryant, Jr., Chairman  
Herbert F. Ames  
John M. Hart

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Arrington Dixon  
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Mayor  
District of Columbia  
The Honorable Adrian M. Fenty

Chairman  
Council of the District of Columbia  
The Honorable Vincent C. Gray

*Executive Director*  
Marcel C. Acosta

Chairman Anthony Hood  
Zoning Commission of the District of Columbia  
441 4<sup>th</sup> Street NW, Suite 220  
Washington DC, 20001

RE: ZC 09-21, Union Station North Text Amendment

Dear Chairman Hood:

On December 16, the Zoning Commission is holding a public hearing on the Union Station North (USN) text and map amendments. These amendments will apply to the Burnham Place development, a project made possible after Congress authorized the sale of the air rights in 2006.

Recently, the Council of the District of Columbia (Council) passed several amendments to the District Elements of the Comprehensive Plan which relate to the Burnham Place development. On September 3, staff of the National Capital Planning Commission (NCPC) issued a letter to Council Chairman Vincent Gray regarding our initial analysis of these proposed amendments (copy attached). Subsequently, NCPC staff worked with staff of the District of Columbia Office of Planning (DCOP) on language addressing the design of the Burnham Place project. This language is included in the proposed amendments to the Capitol Hill Element of the Comprehensive Plan.

I would like to take this opportunity to clarify the position of NCPC staff on both the Union Station North text and map amendments and the District's Comprehensive Plan language as it pertains to the project's measuring point to determine height and how the point conforms to the Height Act of 1910. We recently addressed this matter in a response to an inquiry by the Committee of 100 and I have enclosed a copy of my correspondence for your reference.

NCPC staff is very supportive of the Burnham Place project's potential to reconnect neighborhoods in an area of the city disrupted by the rail yards. The inclusion of residential use as a component of the project is very positive.

Chairman Anthony Hood

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However, the proposed Union Station North zoning, in our view, is not consistent with the Comprehensive Plan language recently approved by Council and agreed upon by DCOP and NCPC staff.

That language states that the “the allowable height of any building constructed in the air rights should be measured consistent with the Height Act and relate positively to the surroundings with special attention to Union Station and other historic buildings, the federal precincts on Capitol Hill, and existing neighborhoods to the east and west. Development must give special attention to the preservation and enhancement of and views to Union Station and its historic surroundings by ensuring the provision of exemplary architecture and encouraging upper story setbacks and minimized penthouses.”

In our view, allowing buildings to be measured from an elevated surface and creating height that is out of scale with the project’s surrounding context—as proposed in the Union Station North zoning—is not consistent with this policy. Further, we are concerned that using the elevated H Street surface as the measuring point, is contrary to the intent of the Height Act and inconsistent with past Zoning Commission actions that restrict such measurement.

In zoning case 02-35 from 2003, the Zoning Commission approved a text amendment, proposed by DCOP, which established that “in the case of a property fronting a bridge or viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.” The final order for that case states that DCOP initiated the text amendment “to clarify and reaffirm that the intent of the Zoning Regulations was to measure the height of buildings from the ground, and not from an artificially created measuring point, in determining their allowable height.” This intent has been carried through to the zoning text amendment related to height, case 08-06, to which the Zoning Commission preliminarily approved. This amendment requires building height measurement to be taken from a street frontage not affected by an artificial elevation. Allowing an exception in the Union Station North zoning is inconsistent with earlier Zoning Commission actions.

Chairman Anthony Hood

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An additional issue is the treatment of multiple buildings as one building, as proposed in Section 2904 of the Union Station North text amendment. Treating the buildings as such distorts the ability to properly relate the measurement of a building's height to the width of the street that it fronts, which is the underlying intent of the Height Act. It is our understanding that there will be streets providing public access to new buildings in the project. The width of these roads, regardless of whether they are public or private, should be the basis by which a building is measured. In essence, a street is a street and it is logical planning practice to treat them as such in creating zoning for a project. The Zoning Commission should carefully consider these technical zoning issues in the context of the project's entire design and the impact of that design on surrounding areas.

We look forward to reviewing this project and bringing a recommendation to our Commission once the Zoning Commission has taken a proposed action on case 09-21. If you have any questions related to this matter please direct them to David Zaidain, Senior Urban Planner at 202-482-7230.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcel C. Acosta". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Marcel C. Acosta  
Executive Director

Enclosures

cc: Harriet Tregoning, Director, District of Columbia Office of Planning