

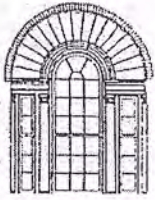
COMPILED PUBLIC COMMENTS | DC COUNCIL COMMITTEE OF THE WHOLE

Includes written testimony and letters received by the DC Council in response to the DC Council Committee of the Whole Hearing on the Federal Height of Buildings Act | Monday, October 28, 2013.

Donna Hays
Sheridan-Kalorama Historical Association, Inc.
Sue Hemberger
Nancy MacWood, Committee of 100
Loretta Newman, Alliance to Preserve the Civil War Defenses of Washington
Erik Hein, National Conference of State Historic Preservation Officers
Tersh Boasberg
Rob Nieweg, National Trust for Historic Preservation
Andrea Rosen
Jane Waldmann
Richard Busch, Historic Districts Coalition
Alma H. Gates, Neighbors United Trust
Penny Pagano, DC Advisory Neighborhood Commission 3D
Richard Houghton
Richard Longstreth, George Washington University
Judy Chesser
Laura Phinizy
Gary Thompson, DC Advisory Neighborhood Commission 3/4G02
Roger K. Lewis
Kenan T. Fikri
Victor Silveira, DC Advisory Neighborhood Commission 3C
Carol Aten
John Sukenik, Sheridan-Kalorama Neighborhood Council
Kindy French
David R. Bender, DC Advisory Neighborhood Commission 2D
Sally L. Berk
Marilyn Simon, Friendship Neighborhood Association
Fay Armstrong, Historic Mt. Pleasant
Dorn C. McGrath Jr.
Rebecca Miller, DC Preservation League
Denis James, Kalorama Citizens Association
Laura M. Richards, Penn-Branch Citizens/Civic Association
Robert T Richards, DC Advisory Neighborhood Commission 7B
Barbara Morgan, DC Federation of Civic Associations
Roger K. Lewis (B)
William N. Brown, Association of the Oldest Inhabitants of the District of Columbia
Benedicte Auburn
Richard Busch and Thomas Bower, Historic Districts Coalition (B)
Janet Quigley, Capitol Hill Restoration Society
Nan S. Wells, DC Advisory Neighborhood Commission 3D03
Penny Pagano, DC Advisory Neighborhood Commission 3D
Lindsley Williams
Don Alexander Hawkins
Melanie Ness
Kathryn A. Eckles

ADDITIONAL PUBLIC COMMENTS

www.ncpc.gov/heightstudy/comments.php



Sheridan-Kalorama Historical Association, Inc.
2330 California St. NW
Washington, D.C. 20008

October 28, 2013

Chairman Mendelson and Councilmembers,

The Sheridan-Kalorama Historical Association is strongly in support of retaining the Height of Buildings Act of 1910 in its current configuration. The residents of our historic district have chosen to live in the nation's capital for its beauty and livability. None has chosen the suburbs with its amorphous configuration and arbitrary building heights. Nor have we chosen the anonymity of a high-rise district like Roslyn or Crystal City.

We object to any action that would jeopardize the Height of Buildings Act of 1910. We are well aware of a significant amount of undeveloped land in neighborhoods that would benefit from new construction and find no justification in the Office of Planning's recommendation for raising the height limit. Furthermore, such a proposal should be a referendum at the ballot box that would allow the residents of Washington to decide their own fate. We ask the Council for a resolution that would put an end to any notion of drastically changing the nation's iconic capital city.

Thank you for the opportunity to comment.

Sincerely,
Donna Hays, Vice-President
Sheridan-Kalorama Historical Association

Testimony of Sue Hemberger
PUBLIC OVERSIGHT HEARING on
The District of Columbia's Recommendations on
the Federal Height of Buildings Act of 1910
Committee of the Whole, DC Council
October 28, 2013

Hi, my name is Sue Hemberger and I'm here today to offer you ten reasons why the Council should pass a resolution declaring its opposition to the Mayor's proposed changes in the Height Act.

1. This is not a home rule issue. The Mayor has not asked Congress to abdicate its power to legislate on building heights in DC. Nor has he asked Congress to grant DC's elected representatives the power to make such decisions themselves. Instead, he's asked Congress to pass a new law with a different set of height limits and to let an unelected five-member board (with two federal appointees) decide where higher heights will be allowed.
2. We're in no danger of being overwhelmed by newcomers any time soon. There is a lot of evidence that suggests we're experiencing more churn than growth. In fact, the 30,000 new arrivals that the Census Bureau projected between 2010 and 2012 required the production of only about 3500 new housing units. OP's so-called low growth scenario is actually 60% higher than what we experienced between 2000 and 2010. And the demand calculations assume that each new household or employee will require significantly more space than the people who currently live or work here do.
3. OP has systematically underestimated the development capacity available under existing Height Act constraints. Their model assumes that institutional sites (like Walter Reed) can't be redeveloped, that redevelopment won't happen on any parcel that is already built out to 30% of matter-of-right, and that, when redevelopment does occur, landowners will generally only be able to build 75% of the square footage that is theoretically possible under any given scenario. These are clearly counterfactual assumptions and, tellingly, when it comes time to calculate the economic benefits of height increases, OP quickly abandons them.
4. Increased height won't produce more affordable housing. OP's own study indicates that raising heights also raises construction costs and that taller buildings will be economically viable only in areas where rents are already quite high. And remember that in downtown, where developers will be most likely to take advantage of increased heights, residential projects are generally exempt from inclusionary zoning requirements.
5. Larger buildings mean less (and less flexible) redevelopment – a single 200 foot building can soak up a quite a bit of demand for either residential or commercial space in most submarkets. Which means that one or two slowly-absorbed projects will pre-empt a series of smaller projects

that would have contributed much more to neighborhood revitalization – more ground floor retail, a diversity of housing types and styles, units that come online at different times, and the elimination of blight and vacant lots.

6. Increased volatility will decrease the flow of foreign capital into DC's real estate market.

The Height Act has created an extraordinarily stable and predictable real estate market and, as a result, foreign investors have treated DC as a very safe investment, even during recessions and at times when domestic financing is difficult to obtain.

7. If the zoning rewrite passes, then changes in the Height Act will automatically take effect downtown. The proposed new zoning regs define maximum heights in most parts of downtown as whatever the Height Act allows. Outside of downtown, the consent of the unelected five-member Zoning Commission is all that would be required to raise heights. The Council would play no role in determining how much growth is acceptable where.

8. The combination of height limits and on-site parking requirements has enabled us to develop an extraordinarily walkable central business district, where most parking is undergrounded.

Downtown DC is notable for the fact that less than 1% of our land is devoted exclusively to parking lots or structures. This is in marked contrast to most American cities where taller buildings are frequently surrounded by surface garages or lots – and where the percentage of land devoted exclusively to parking is typically in the double digits.

9. Relaxing Height Act limits will steer new development to the places it is needed least. We're at a stage in our city's development where we should be growing out – that is, encouraging redevelopment in neighborhoods that have suffered from population loss and from disinvestment, as well as in the large tracts ceded to us by the federal government. But what raising the Height Act would do is steer investment capital to precisely the places that are already expensive and largely built-out. It's yet another deferral of the promise that DC's growth will contribute to prosperity citywide.

10. DC's livable, walkable, leafy, beautiful, historic neighborhoods and downtown have flourished under the Height Act. Our challenge is to replicate our successes as we grow – not to abandon the policies that have made our city so attractive.

For these reasons, I urge you to adopt a Sense of the Council resolution opposing the Mayor's proposed changes to the Height Act.

If you would like to see supporting documentation for any of the points I've made today, please feel free to email me (smithhemb@aol.com) and I will provide it.

D.C. Council Committee of the Whole
Hearing on the Mayor's Recommendation on the Height Act Master
Plan Study

Testimony of Nancy J. MacWood

Chair, The Committee of 100 on the Federal City

October 28, 2013

Mr. Chairman, Mayor Gray's and the Office of Planning's proposal that Congress should amend the Height Act to allow 200 foot buildings in the L'Enfant City and should rescind the act's applicability outside the L'Enfant City are simply the worst ideas since the freeway proposals. As a former Zoning Commission and Historic Preservation Review Board chair put it, "it's catastrophic. "

The Office of Planning says it supports all the principles that have created our admired city, but then it proposes to undo 100 years of disciplined planning. We have 3 reasons that Washington is visited by more than 18 million tourists annually: the L'Enfant Plan, the McMillan Plan, and the Height Act. Those tourists contribute more than 50% to our sales tax revenues and make tens of thousands of jobs possible.

So what is suddenly so pressing, so potentially damaging to our wonderful city that the Office of Planning couldn't tell the Council in 2010 when the Comprehensive Plan amendments were considered or when we repeatedly asked them this summer to tell us what need exists that suggests changes to the Height Act?

Now we are told that we don't have room for all the people who want to live in the District. It's true that the number of people moving to the District increased during the recession recovery. But according the CFO the rate of population growth has begun to decrease and will continue to decrease through 2017, which is the end year of his forecasts. Are we supposed to rely on a few years of unusually high growth that may have lot to do with federal government hiring during a recession as a reliable projection of population growth?

Whether we have room for growth seems to depend on where you want to focus the growth. The Comprehensive Plan cites large parcels, underutilized and vacant land for development. And those areas, some of which are in less marketable parts of the city, are more likely to be developed with an intact Height Act that forces developers to explore

opportunities where development isn't already robust. If you only want growth where developers can achieve the most profit then raise the Height Act limits.

The Mayor and the Office of Planning seem to have our values all mixed up. We want development across the city, we want affordable housing and all the experts say that raising the height limits won't achieve those goals. We want a lower unemployment rate, but the Office of Planning's own report tells us that the pattern of non-DC residents getting most of the jobs won't change if the Height Act is amended.

And we want self-determination through voting rights and control over spending and revenues. Will changes to the act that has helped to create the city's strengths somehow get us closer to home rule? It will not. Home rule is a transfer of power from the federal gov't to the local gov't. What the Office of Planning is proposing is smoke and mirrors. They want Congress to amend the act and then they want the congressionally created Zoning Commission with 40% federal representation to write new laws and not one of our elected representatives would have a hand in doing that. Giving the Office of Planning more power to play with heights is not home rule and frankly only sets up more battles between unrepresented residents and the Office of Planning.

This is about getting more development and doing it where developers can get good profit margins. It is a disgraceful proposal. The DC Council should rush to represent the vast majority of residents who were horrified by images showing how the city might change by passing a sense of the council resolution vehemently opposing changes to the Height Act



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

Testimony on Proposed Expansion of the DC Height Act By Loretta Neumann, Vice President Before the DC Council Committee of the Whole October 28, 2013

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Mr. Chairman and members of the DC Council, thank you for the opportunity to testify today. I have been a resident of Washington DC for more than 40 years and active in many city-wide and neighborhood organizations. Today I testify on behalf of the Alliance to Preserve the Civil War Defenses of Washington, a non-profit association incorporated in DC in 2008 that received its IRS 501(c)(3) tax exempt status in 2009. Our primary goal is to promote preservation of the Civil War Defenses of Washington and to advocate for their best interests.

The Alliance is extremely concerned about the proposal to for Congress to increase the height limit of buildings, which for more than 100 years has been determined by the 1910 Height of Buildings Act. The 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.

The Alliance is especially concerned because the Civil War Defenses of Washington (including the corridor of National Park land added by the Congress to link these sites) are impacted in two ways by the proposals:

- 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 of in their foreground.
- Second, they are primarily located at high points around city, and the views from them would be severely impacted by a change in the heights of buildings below.

The nation's capital is important to all the people of the United States, not just those of us who live here. Our nation's history is intertwined with these beautiful places that should be preserved not only for us but also for future generations.

Attached with this testimony are several photographs illustrating the impact that the proposed changes in the District's building height could have on the Civil War Defenses of Washington. Also attached is a backgrounder with further information, including the commemoration of the 150th anniversary of the Battle of Fort Stevens, which will highlight the importance of these sites to the rest of the nation next year.

Thank you for the opportunity to testify today.

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View of Capital from Fort Stanton (built to protect the Washington Navy Yard)



View from South Capitol Street Bridge, Anacostia River
Forts Mahan, Chaplin, Dupont & Stanton in the distance.



View of Fort Mahan across Anacostia River's Benning Bridge



President Lincoln at Ft. Stevens. July, 1864

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BACKGROUND SHENANDOAH VALLEY CAMPAIGN, 1864 SAVING THE NATION'S CAPITAL

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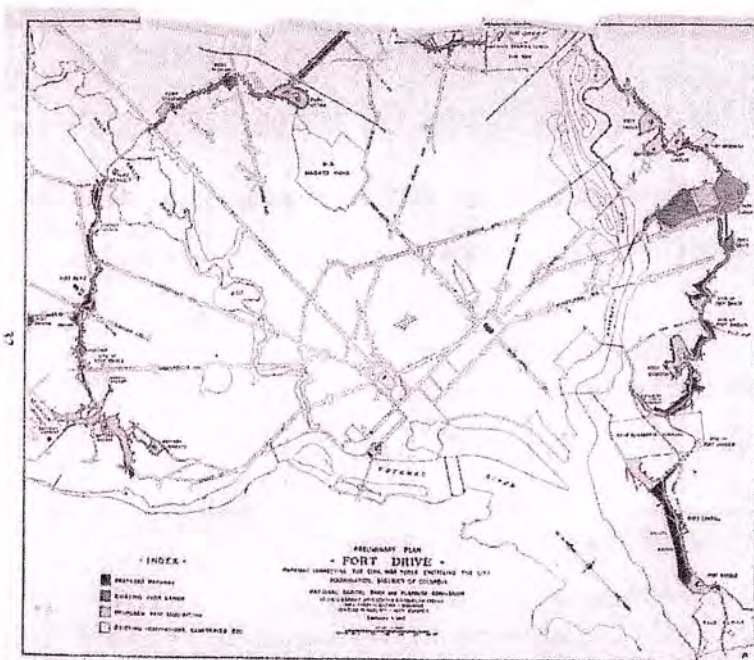
Overview of Relevant Historical Facts

- **The Civil War Defenses of Washington (CWDW)** were constructed at the start of the Civil War in 1861 to protect the nation's capital. By the end of the war in 1865, the CWDW contained 68 forts, 93 unarmed batteries, 807 mounted cannon, 13 miles of rifle trenches, and 32 miles of military roads.
- The major test of the CWDW came with the **Shenandoah Valley Campaign of 1864** when Confederate Gen. Robert E. Lee ordered Lt. Gen. Jubal Early to attack the nation's capital.
- Gen. Early was delayed by Union Maj. General Lew Wallace and his troops near Frederick MD at the **Battle of Monocacy on July 9, 1864** and was stopped at the northern edge of Washington DC at the **Battle of Fort Stevens on July 11- 12, 1864.**
- The Shenandoah Valley campaign ended when Union Lt. General Philip Sheridan defeated General Early at the **Battle of Cedar Creek, VA on October 19, 1864.**
- The **Battle at Fort Stevens was among the most critical and unsung battles of the Civil War.** President Abraham Lincoln came under hostile fire at the battle. The victory **saved the nation's capital, helped ensure Lincoln's re-election, and aided in the preservation of the Union.**

CWDW Preservation - Yesterday and Today:

The preservation of the CWDW has its beginnings in a national movement to promote battlefield preservation, begun by Civil War veterans in the 1890s. In 1902, the Senate **McMillan Commission Report to the U.S. Congress** recommended a **"Fort Drive" to connect the circle of forts in DC and form a landscaped greenbelt** around what was then the outskirts of the city.

In 1924, Congress created the National Capital Park and Planning Commission, which, among other duties, was charged with acquiring lands in the District of Columbia, Virginia, and Maryland for parks, including the Fort Circle sites linking the CWDW. In time, these properties were transferred to the National Park Service (NPS). They are an integral part of the CWDW.



Today, 19 surviving features of the CWDW (including lands acquired for the Fort Circle Drive) are **administered as parts of three National Park units**: Rock Creek Park, George Washington Memorial Parkway, and National Capital Parks-East. A few original defense sites are managed and interpreted by local public agencies in Virginia and Maryland.

Why the CWDW matter:

Not only did the defenses serve their purpose well by **detering Confederate attacks** on the nation's capital, they also substantially **impacted the District of Columbia culturally, socially, and politically**. The defenses served as a place of service for the Union Colored Troop units stationed at the CWDW. Many

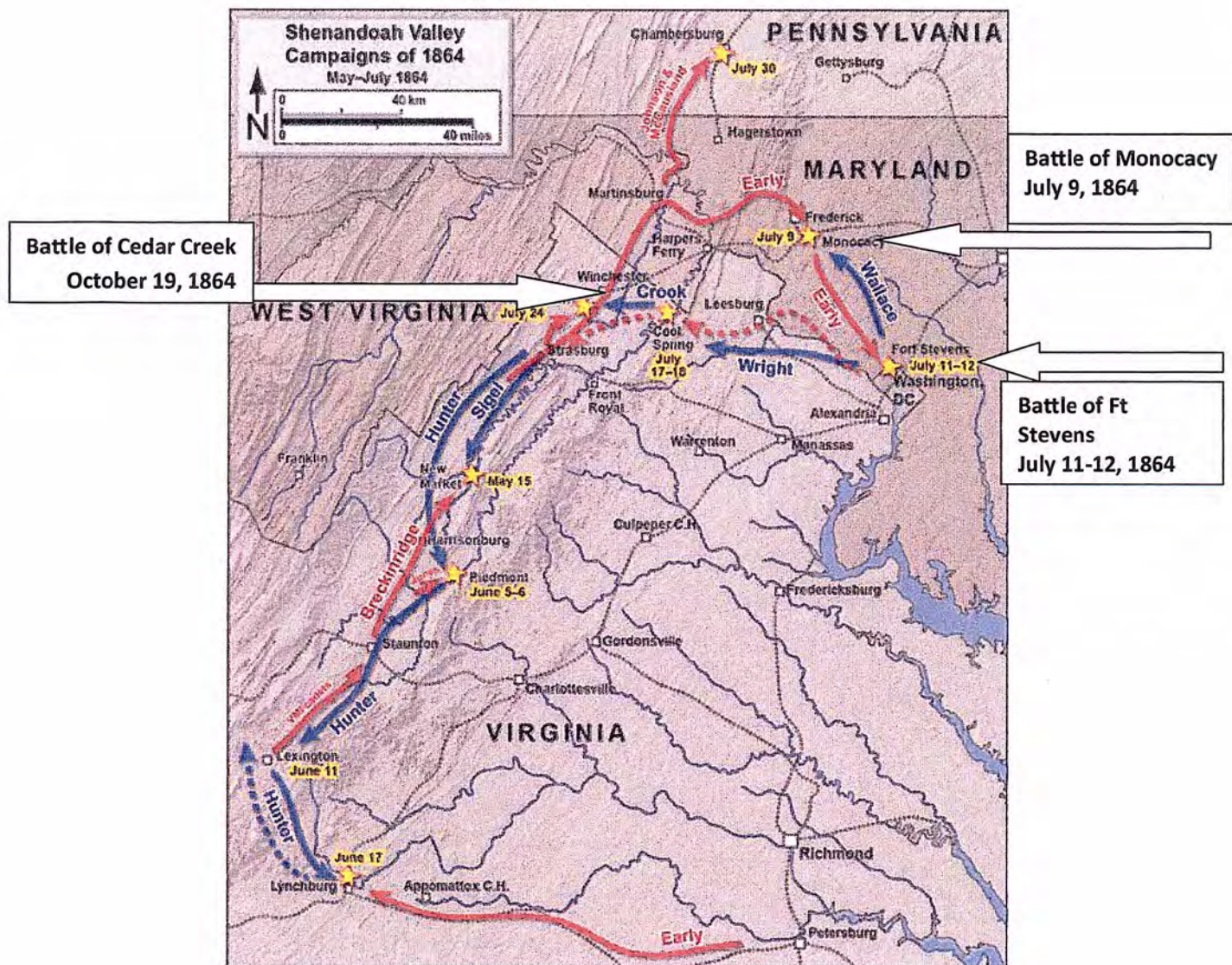
enslaved people came to the fort system for protection and settled nearby, changing the cultural landscape of the District. The city's population doubled in less than five years and changed in character from southern origin to northern newcomers.

Today these lands represent a rare urban setting, storied in the history of the defense of our nation and the struggle for freedom for all people living in the country. Persons and events associated with the forts contributed to the history of the Civil War and are relevant to modern society. The CWDW **provide significant natural, recreational and historical resources** to both residents and visitors to the nation's capital. Together, the fortifications and linking parklands create a magnificent curtain of green, a natural backdrop that softens the edges of our national capital.

Actions for the Future:

Plans are being made for the 150th anniversary of the **Battle of Fort Stevens** (July 11-12, 1864), **Battle of Monocacy** (July 9, 1864) and the **Battle of Cedar Creek** (Oct. 19, 1864). These will focus not only on **commemoration activities and events** to promote public understanding of the history and meaning of the Civil War to our nation then and now, but also on **ways to protect these historic resources and continue interpreting the Civil War in the future**. These include:

- **Commemoration:** Many activities and events, from seminars to celebrations, will be held throughout the year 2014 to provide a **historical context of the Civil War and the Battle of Fort Stevens**. These will be coordinated with commemorations of the Shenandoah Valley Campaign of 1864, including the **Battles of Harpers Ferry, Monocacy, and Cedar Creek**.
- **Educational Events and Materials.** A variety of informative and educational events and materials and programs in various media will be developed to reach audiences locally, regionally and nationally. **School and library programs** will be instituted that can continue long after the anniversary is over.
- **Protection of the CWDW in Legislation:** The U.S. Congress is being asked to pass new legislation to establish the **Civil War Defenses of Washington National Historical Park** as a distinct unit of the National Park System, to protect, preserve, enhance, and interpret for the benefit and use of present and future generations its cultural, historical, natural and recreational resources. This will provide the CWDW with clear direction and a unified mission.



Alliance to Preserve the Civil War Defenses of Washington

Contacts:

Susan Claffey, President, susankclaffey@gmail.com

Loretta Neumann, Vice President, Lneu@rcn.com

Frank Cooling, Historian & Member of the Board, bfcooling@verizon.net

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## Testimony of Erik Hein

### DC City Council

#### On The Height Master Plan Study: Draft Federal Interests Report and Findings

October 28, 2013

My name is Erik Hein. I am the Executive Director of the National Conference of State Historic Preservation Officers, an ex-officio board member of the US Committee of the International Council on Monuments and Sites, and a Trustee of the Committee of 100 on the Federal City. But today I am speaking to you simply as a DC resident from Columbia Heights.

I would like to first draw your attention to the following photograph:



This picture was taken looking Southeast from the parking lot at Cardozo High School at the corner of 13<sup>th</sup> & Clifton Streets NW— the edge of the city's topographic bowl just outside the L'Enfant City. Note the large cluster of buildings to the right of the Capitol Dome. These are the buildings under construction at the O Street Market in historic Shaw - already conforming to the "Height Act," and approved using existing zoning laws and processes. Add a few more floors and expand to the East and the Capitol Dome will disappear entirely. Note... I said this picture was taken FROM the topographic bowl. Not at the base level of the City. In my view, this is an example that demonstrates that our characteristically horizontal city is already in jeopardy under existing local

laws – I believe relaxing the Height limit will have a more substantial impact than any of us are prepared to imagine.

But let's not dwell entirely on the visual. Let's also discuss the practical. There are four key points I would like to make.

### **1. The DC Office of Planning's (OP) failed to follow the directions**

Exactly one year ago today, Rep. Darryl Issa asked for NCPC and the DC 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." Instead of starting from a neutral place discussing the impacts of potential changes, the very first sentence of OP's report tells us they sought to find out "... whether 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..." Starting from a place of "yes," is not a fact-finding endeavor. It is rather the selecting of facts to support a pre-determined position.

### **2. The OP Report fails to establish need**

To effectively contemplate changes to any 100-year-old law that has robust community support, it is an obvious mistake to not first clearly articulate the need, the reasons why, or the challenges being faced. This effort, with a pre-determined outcome, was consequently a solution looking for a problem. Citizens have been asked to review one aspect of our Capitol City's built environment and evaluate potential outcomes without the information necessary to actually consider the question. In fact the only "data" we have been able to access was released only on the 20<sup>th</sup> of September – after all of the meetings in the community had already taken place and only 24 hours in advance of NCPC's September public meeting.

Every day reasonable people make assessments based upon the facts presented to them. This entire exercise failed to truly get at the heart of the issue at hand by giving citizens the information necessary to weigh the pros and cons.

### **3. The OP's Report ignores input from citizens**

By all accounts there was a great deal of vocal opposition expressed in public meetings to changing the Height Act without further consideration, a clearly defined need, and without a number of questions answered. This is stated nowhere in the report and seems to have not influenced the Office of Planning whatsoever. Yet peppered throughout OP's report are references to the need for local control and determination. One has to ask – if they are not listening to their own citizens, who are they listening to?

Even more disturbing, however, is that in advance of public input and City Council review, and prior to the conclusion of this very process, the OP has taken the liberty of already sending a copy of this Report to Rep. Issa. If you remember nothing else from today's hearing, please remember that not only has the OP shown contempt for DC residents by short-circuiting the process, it has shown contempt for your opinion as well. Is this what we are to make of "home rule?"

### **4. Using the Height Act as a singular tool to meet poorly defined goals is the antithesis of good urban planning**

DC is in an envious position. It is a growing City. Our population has grown 10% over the last 10 years, although it is still quite far from its peak in the 1950's and subsequent 29% decline. It is a wealthy city, with a median income higher than 46 of 50 states. Last year we had more than a \$400 million surplus and we have over \$1 billion in reserves – despite the fact that almost half of our land area is tax exempt. Construction is seemingly everywhere as we look to add even more residents and businesses. All of this has been happening over the past several years – within the federally mandated Height limits, with a 50 year old zoning code, and under a 2006 Comprehensive Plan revised by OP in 2010 – which made no mention of constraints preventing further growth. Suddenly now OP sounds the alarm?

To be sure we also have some challenges. Because of our City's previous downward trajectory, we have 42% of the REGION's subsidized housing units despite only containing 11% of the region's population, and yet we still don't have enough "affordable housing." We have an unemployment rate of over 8% with two wards coming in at 15% and over 20%. We also have the highest tax rates in the metropolitan area – which as first-hand experience has taught me, encourages you to open a business outside the City. Despite substantial investment in previously struggling neighborhoods, we still struggle with crime, blight and neighborhoods with little or no retail service. Our crowded public transportation system does not earn enough revenue to support itself and is lacking in funding for long-deferred maintenance. Our schools, despite massive investment, continue to under perform and fail to attract families to the City.

The OP report posits that our economic situation and lack of taxing authority are the primary reasons why DC must look to adding more residents to stay "in the black." It further says the ONLY way to accommodate those new residents, since it will "exhaust the supply of land," is to build higher. The theory is that the benefits of new wealthy single, childless couples or empty nesters to be housed in tall, residential apartment complexes will trickle down and enable the City to reach its fullest potential. Although it is unclear what that potential is supposed to be.

I must live on another planet, because when I attempt to reconcile OP's case with our city's recent success and our ongoing challenges, there appears to be a disconnect. We are operating with a surplus but we need more revenue. Our schools are underperforming so we need more singles. We need to attract families so we need more luxury apartments. We need affordable housing but we house almost half of the region's poor. We need more transit-oriented development but we can't fund transit. We have empty buildings but we need taller buildings. Some neighborhoods lack retail, but ones that already have retail need more.

**Good planning requires thoughtful consideration towards a set of common goals. This document, riddled with inconsistencies and based upon a pre-determined outcome benefiting only a few is simply not good planning. If the OP truly wants to identify and meet the needs of a growing District of Columbia, let's have that discussion. The Height Act can be discussed then alongside any number of other potential planning strategies. Until that day comes, no other rational conclusion can be drawn that supports a change at this time.**

TERSHER BOASBERG  
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Washington, DC 20008

CHAIRMAN MENDELSON

2013 OCT 24 AM 11:16

October 23, 2013

Comment of Tersher Boasberg  
to the D.C. Council's Committee of the Whole  
On The  
District's Height Master Plan Draft Recommendations  
For modifications to the federal Height Act

To Chairman Phil Mendelson and Members of the Council. (Similar comments were submitted to NCPC and the DC Office of Planning.)

My name is Tersher Boasberg. I am a retired attorney who specialized in historic preservation and land use planning. I am a former Chairman and member of the DC Zoning Commission (1989-2001), a former Chairman of the DC Historic Preservation Review Board (2000-11), a former president of the Alliance to Preserve the Civil War Defenses of Washington, and a recipient of several lifetime achievement awards from local and national preservation/planning organizations, including in 2012 from the DC Office of Planning and Preservation. I have taught a seminar on Historic Preservation Law at Georgetown Law School for the past 13 years.

I believe that the Mayor's current proposal to remove the federal Height Limit is, in a word, **catastrophic**. This city belongs to *all* Americans—not just D.C. residents.

I actually think about the Height of Building Act every day as I walk and drive around this magnificent city—not only downtown but in all its quadrants. I am forever thankful for the Federal Government's stewardship of height limits in our National Capital (even though I wish that I, too, like my fellow Americans, had voting representation in the House and Senate).

I strongly support the NCPC Draft Federal Interest Report (DFIR), especially its *comprehensive* definition of what are the “**Federal Interests**” the Height Act seeks to protect – namely, the “symbolic and cultural significance of the nation’s capital for all Americans as well as the importance of a thriving, economically stable city.” (at p.10) I would add to this the importance and protection of the city’s “*quality of life*” for the same reasons as we seek to protect its economic vitality. As the seat of the Federal Government, thousands of federal workers and their children live here, attend school here, exercise here, and relax here. And beyond that, there is a similar need to enhance the quality of life for Washington’s millions of visitors, diplomatic families, international organizations, etc.

As the DFIR notes, “This carefully crafted airy and light-filled environment invites people in to explore and to appreciate the relationship amongst buildings, public spaces, and views to civic buildings and monuments.” In other words, this “carefully crafted” environment enhances the quality of life for all.

Moreover, the DFIR emphasizes that the benefits of the Height Act (i.e., the “**Federal Interests**”) extend well beyond the confines of the L’Enfant City. Thus, at p. 23 the DFIR notes:

“Within Washington DC’s neighborhoods and communities *beyond the L’Enfant City*, where the federal presence is less concentrated, the Height Act continues to shape a distinctive skyline, frame views, and protect the scale of residential streets and their adjacent business districts. These communities lie beyond the topographic bowl, a hillside that encompasses the District’s historic core and presents some of the city’s most distinctive viewsheds. As a great swath of this ridge line is preserved and managed by the U.S. National Park Service, it creates a backdrop of green for the city’s horizontal skyline and national icons.” (Emphasis added)

This is not a description of Crystal City or Ballston or Rosslyn. And make no mistake, once the Federal Height Limit is lifted, we will have 15-, then 20- and 30-story buildings throughout the District, well beyond the L’Enfant City. This is exactly what happened in Rosslyn where the height limit was raised from 15 stories in the 1960s to 30 stories today “for good cause.”

As a veteran of the planning/ preservation wars in this city for the past 50 years, I can tell you that the financial rewards and political pressures to build

ever higher buildings are intense. No big city municipal government in this country has been able to resist the allure of easy real estate money. As proof positive: none has a skyline as low as Washington's. Our horizontality will not survive what the DFIR styles as the "power and prestige of commercial enterprise." Only the *Federal* Government has the strength and resources and distance from "commercial enterprise" to protect the **Federal Interests** in Washington's quality of life. (Executive Director's Recommendation, hereafter EDR, p.9)<sup>1</sup>

I cannot accept the District's cavalier remark at p. 46 of its Evaluation (DCE) that the Federal Interest is "perhaps non-existent outside of the L'Enfant City." As noted above, the DFIR calls attention to the federal interests outside the L'Enfant City and specifically mentions those "federal interests related to preservation" ( pp. 39-47), like the ring of 17 Civil War forts and parks, St. Elizabeth's, the Frederick Douglass House, the Armed Forces Retirement Home. And, importantly, it also calls attention to the "... Historic Buildings, Districts, Sites, and Cultural Landscapes **listed on the National Register of Historic Places**" (p. 39; map at p.40).

There are 584 individual buildings listed on the National Register in DC. While hundreds of these are in the L'Enfant City, hundreds more are located outside of downtown or Georgetown.<sup>2</sup> Moreover, National Register Districts, containing thousands of individual buildings, are dispersed from Anacostia to Takoma Park to Mount Pleasant and Sheridan-Kalorama to Cleveland and Woodley Park, to LeDroit Park and Shaw.<sup>3</sup> They embrace or border on major commercial streets such as Wisconsin, Connecticut, 16<sup>th</sup> and 14<sup>th</sup>. Because of their historicity, and often fragility, these "Federal Historic Resources" must not fall prey to high-rise "commercial enterprise," which can only trivialize and overwhelm them.

Another important local and, at the same time, *national* historic resource is Washington's African-American heritage, spread throughout the city. Martin

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<sup>1</sup> I know because I was Chairman of the DC Zoning Commission. Any action that the 3 commissioners appointed by the mayor wanted, the two commissioners appointed by the federal government were powerless to stop. I also refer you to the elegant testimony of John G. Parsons, who occupied Peter May's seat on the Zoning Commission (and on NCPC) **for thirty years**, who noted that to leave the decisions regarding the federal height limit in local hands "is not wise." (Parsons' letter to NCPC 9.30.13, on file herein.)

<sup>2</sup> See Map of Historic Washington, D.C. Inventory of Historic Sites on file with the D.C. Historic Preservation Office. Virtually all properties on the DC Inventory are also listed on the National Register.

<sup>3</sup> Contrary to the DCR at p. 33, DC law protects not only "landmarks" but also contributing buildings to D.C. and National Register historic districts, of which there are more than 50 in Washington.

Luther King could not have given his iconic speech in any other American city. In 1900 Washington had the largest percentage of African-Americans of any city in the country. Here was Howard University; here *Bolling v. Sharpe* became an integral part of the landmark *Brown v. Board of Education* decision. The D.C. Office of Historic Preservation has noted at least 200 historic sites important to the city's and the nation's African-American heritage. Some, but only some, are on the National Register, and many are outside of downtown. These, too, should not be trivialized by next door high-rises. And the honor roll could go on: sites important to Immigration, to the Women's Movement, to Gay and Lesbian rights, spread through-out this historic, capital city of all Americans.

Moreover, any talk of removing the federal height limit at this time is greatly premature. By the District's own calculations, we will not run out of expansion space under our current *Comprehensive Plan* for 30 years; even then, there will be more expansion space remaining within the current *height limit*. Further, it would seem that a cardinal principle of planning would be to spread out allowable development into the least served neighborhoods rather than make now economically vibrant areas much denser. *Dispersion--not concentration--*of facilities is what NPCP is encouraging (EDR p.10).

Nor am I sympathetic to the notion advanced by the District that higher buildings will somehow make offices and apartments more affordable. (DCE p.42) First, the only people who will be able to afford the new construction are the wealthy. Second, New York City has the highest residential and commercial prices in the country; yet, it also has the tallest buildings.

Furthermore, any mayoral proposal to remove Washington's 100-year-old height limit is such a radical departure from current land use practice that it should be first presented to D.C. voters. Neither the Mayor nor any City Councilperson ever made this startling proposition an election issue. But then, asking residents to live next door to 20- and 30-story buildings is not exactly a winning campaign strategy in D.C.

Lastly, to those who decry that the Height Limit is sapping the vitality of our nation's capital, I offer the record of the last decade of Washington's impressive development. And come with me to other low-rise, metro-centric, and vital national capital, historic cities like Paris; or Rome, or St. Petersburg, or Madrid, or Amsterdam, or Helsinki or Prague, etc. There are no high-rises in their historic downtowns or neighborhoods. Thank you.



National Trust *for*  
Historic Preservation  
*Save the past. Enrich the future.*

October 25, 2013

Ms. Lucy Kempf  
National Capital Planning Commission  
401 9<sup>th</sup> Street, NW Suite 500  
Washington, DC 20004

Ms. Tanya Stern  
D.C. Office of Planning  
1100 4<sup>th</sup> Street, SW, Suite E650  
Washington, DC 20024

Dear Ms. Kempf and Ms. Stern:

I am writing on behalf of the National Trust for Historic Preservation regarding the Height Act Study conducted by the National Capital Planning Commission and the D.C. Office of Planning.

The National Trust is a privately funded nonprofit organization, chartered by Congress in 1949 to further the historic preservation policies of the United States and to facilitate public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. The mission of the National Trust is to provide leadership, education, and advocacy to save America's diverse historic places and revitalize our communities. The National Trust has been actively engaged in the public process for the Height Act Study.

One year ago Congressman Darrell Issa, Chairman of the House Committee on Oversight and Government Reform, requested a joint study "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." (Congressman Darrell Issa to Mayor Vincent Gray and NCPC Chairman Preston Bryant, Jr., Oct. 3, 2012.) Chairman Issa's request for a joint study makes good sense, as the federal government and local government share significant interests throughout the District of Columbia, our Nation's Capital. Congressman Issa's letter specifically directed

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 . . . . (*Id.*, emphasis added.)

The National Capital Planning Commission and the D.C. Office of Planning subsequently agreed to conduct the joint study, setting their goal of reaching a consensus recommendation: "The goal of the study is to reach a federal/local consensus on those areas of the city where height changes would be appropriate." (Height of Buildings Master Plan, Summary Proposal, Nov. 1, 2012.)

However, the agencies did not achieve consensus. Nor did the recommendations focus on "areas *outside* the L'Enfant City," as directed by Congress.

The National Capital Planning Commission, which released its report to the public on September 12, 2013, did identify several potential opportunities for strategic change to the Height Act, including changes impacting "areas outside the L'Enfant City and beyond the edge of the topographic bowl," (NCPC Executive Director's Recommendation, p. 13.) The NCPC report specifically observed that "changes to the Height Act within the L'Enfant City and within the topographic bowl may have a significant adverse effect on federal interests." (*Id.* at p. 10.) Consequently, the NCPC report does not recommend any major changes to the Height Act within the L'Enfant City.

By contrast, the D.C. Office of Planning, which sent its report to Congress on September 24, 2013, recommends major changes to the Act within the L'Enfant City. Those proposed changes would eliminate the current cap on building heights and replace it with "new limits based on the relationship between street width and building height ... using a ratio of 1:1.25, which would result in a maximum building height of 200 feet for 160-foot wide streets." (Height Master Plan, DC Office of Planning, pp. 45-46.) The Office of Planning's report also asserts that there is a "greatly diminished federal interest outside the monumental core," (Height Master Plan, DC Office of Planning, p. 1), and even implies that the federal interest outside the L'Enfant City may be "non-existent." (*Id.* at p. 46.) Consequently, the Office of Planning "recommends that Congress allow the city to determine the appropriate building height limits for those parts of the city outside the L'Enfant City through its statutorily-required Comprehensive Plan and zoning amendment processes[.]" (*Id.* at pp. 1, 46.)

In a nutshell, the experts at the two agencies looked closely at the same set of information but failed to achieve their express goal of a federal/local consensus regarding where Height Act changes would be appropriate in the city. NCPC recommended modest changes, especially focusing on penthouse structures, but the DC Office of Planning recommended much more drastic changes. The two sets of recommendations are incompatible, leaving the public with insufficient guidance for meaningful participation.

The National Trust is concerned that public participation during Phase 3 of the study was unintentionally undermined by the confusion that resulted from the agencies' decision to release separate reports and set separate deadlines for public comment. Public participation also was impaired by the federal government shutdown, when NCPC's website was off-line -- and all study-related information was unavailable -- during a critical portion of Phase 3.

The National Trust's review of the available study materials leads us to conclude that the Height Act has proven to be effective in shaping and protecting the character of the Nation's Capital, and the Height Act continues to serve the public interest. The studies conducted by the D.C. Office of Planning and the National Capital Planning Commission simply do not make a persuasive case for any changes to the Height Act. Therefore, we do

not support the changes to the Height Act proposed by the NCPC or by the DC Office of Planning. As noted in the public presentations, large areas of the city are not yet “built out” to the maximum height currently allowed under existing zoning regulations, and ample long-term opportunities remain for commercial and residential development in the District of Columbia.

If the local and federal governments decide to continue working together in an effort to address these issues, the National Trust recommends an expanded study of the many factors – including the Height Act -- which must be addressed to answer the question of how the federal and local governments can cooperate to accommodate growth without sacrificing historic character.

Thank you in advance for considering the views of the National Trust for Historic Preservation.

Sincerely,

A handwritten signature in black ink, reading "Rob Nieweg". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Rob Nieweg  
Field Director & Attorney  
Washington Field Office



**National Trust *for*  
Historic Preservation**  
*Save the past. Enrich the future.*

## **STATEMENT ON THE DRAFT HEIGHT ACT STUDY**

**Robert Nieweg, Field Director**

**National Trust for Historic Preservation**

**September 25, 2013**

My name is Robert Nieweg and I represent the National Trust for Historic Preservation. Thank you for the opportunity to provide preliminary comments regarding the draft Height Act Study.

The National Trust is a privately funded nonprofit organization, chartered by Congress in 1949 to further the historic preservation policies of the United States and to facilitate public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. The mission of the National Trust is to provide leadership, education, and advocacy to save America's diverse historic places and revitalize our communities.

The National Trust has been actively engaged in the public process for the Height Act Study. Representatives of the National Trust have participated in five meetings convened by the DC Office of Planning and the National Capital Planning Commission, reviewed informational material made available by the two agencies, and conferred with our partner organizations and National Trust members. Currently, the National Trust is preparing to submit written comments on the Height Act Study.

We have participated in the Study in order to assess potential impacts to historic properties from possible changes to the Height Act, including impacts to individual historic landmarks and to historic districts – especially those historic properties which are listed on the National Register of Historic Places. At the beginning of Phase 2 of the Study, we requested an opportunity to review key information, including the full report for the Economic Feasibility Analysis as well as maps and additional information to identify the many designated historic properties which are located within the modeling study area. The economic analysis was released to the public on September 24. At the beginning of Phase 3, the National Trust requested an opportunity to review the District's draft recommendations, which were not released to the public until September 24.

Given the time constraints of the Study, we are concerned that the delayed release of the economic analysis and of the District's draft recommendations may unintentionally limit public participation during Phase 3, and certainly with regard to the public's assessment of the two agencies' draft recommendations. The National Trust respectfully requests confirmation that the public will have at

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least 30 days to review and comment on the District's draft recommendations. (We note that the District's September 24 press release states: "Public comments will also be accepted on the recommendations for 30 days before the report is finalized.")

Our preliminary review of available material raises several issues for clarification:

1. **Purpose of the Joint Study.** The purpose of the Height Act Study is for the two agencies to jointly examine the extent to which the Height Act continues to serve federal and local interests and how potential changes to the Act could affect the future of the Capital City. A joint study of the entire city makes good sense, as we believe both the federal government and the local government have significant interests throughout the District of Columbia, our Nation's Capital. What is the rationale for the District's statement that: "Outside the L'Enfant City, there is relatively little federal interest in the height of buildings and historic federal resources there can be protected under both federal and local historic preservation law." [Height Master Plan for the District of Columbia, Evaluation and Draft Recommendations, Sept. 20, 2013, p. 5 (emphasis added).]
2. **Scope of the Study.** It was our initial understanding that the two agencies had been charged to explore changes to the Height Act in areas outside of the L'Enfant City, as Chairman Issa directed in 2012: "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." [Congressman Darrell Issa to Mayor Vincent Gray and NCPC Chairman Preston Bryant, Jr., Oct. 3, 2012 (emphasis added).] What is the rationale for expanding the exploration of changes to include the L'Enfant City?
3. **Federal-Local Consensus.** In response to Chairman Issa's request, NCPC and the DC Office of Planning developed a proposal for the Height Act Study which stated that: "The goal of the study is to reach a federal/local consensus on those areas of the city where height changes would be appropriate." [NCPC Chairman L. Preston Bryant, Jr. to Congressman Darrell Issa, Nov. 1, 2012, Height of Buildings Master Plan, Summary Proposal (emphasis added).]

What are the consequences for the Study of the agencies' failure to reach the intended federal/local consensus?

The National Trust believes that the Height Act continues to serve the public interest, and we are particularly supportive of the NCPC's observation that: "The law is simple, equitable, and has distributed development to all parts of the city rather than concentrating growth to a single high-rise cluster. It contributes to a stable and predictable real estate development climate." [NCPC Executive Director's Recommendation, Sept. 12, 2013, p. 4.]

In our view, the Height Act is a time-tested solution which the federal and local governments should not rush to change. Any proposal to change the Height Act should not move forward without additional careful study and public feedback regarding the two very different and apparently incompatible sets of draft recommendations which have been released by the NCPC and DC Office of Planning.

Thank you in advance for considering these preliminary comments of the National Trust for Historic Preservation.

Testimony for  
The Committee of the Whole's Public Oversight Hearing  
on The District of Columbia's Recommendations  
on the Federal Height of Buildings Act of 1910

CHAIRMAN MENDELSON  
2013 OCT 31 AM 10:08

October 28, 2013 at 9:30 AM

For people who have attended more than one of the D.C. Office of Planning's presentations on the Zoning rewrite and OP Director Harriet Tregoning's presentations on what, if anything, to do about the 103-year old Federal Height of Buildings Act of 1910, OP's zeal to build greater density has not been difficult to discern. Thus the extreme "draft" recommendations for amending the Act, issued by OP on September 24, were entirely predictable, public sentiment notwithstanding.

I awoke to the seriousness of the assault on the Height Act relatively late, catching the very last of the public meetings associated with Phase 2 of the Height Master Plan Study, the Modeling phase, held August 13. The centerpiece of the OP presentation that night was a selection of images from a massive series of computer-modeled simulations of "viewsheds" from different vantage points in, and into, the monumental city and downtown core, as they appear currently and as they would appear if various alternatives to the Height Act were adopted that allowed greater building heights.

What was striking — apart from the skepticism many attendees expressed about the need and desirability of raising building heights — was the omission of two types of information central to forming a reasoned conclusion about a complex subject. First, there were no simulations of the crucial **street-level** experience of taller buildings, in the L'Enfant City, the business district, or in the much larger residential expanses of the city, where the common building types are low-rise attached, semi-detached, and single-family homes. Several of the alternatives to the Height Act proposed taller buildings along public transit thoroughfares in these districts, but the effects of these changes were omitted.

Second, and perhaps more important to evidence-based decision making, was the absence of data pertaining to current and projected capacity, and analyses of the economic impact of increasing residential and commercial space. Much unexploited vertical and horizontal space for development presently exists in the city under the Height Act, a fact Ms. Tregoning has acknowledged. She has praised the Height Act for "enabl[ing] us to spread demand to emerging areas outside the center city." That job isn't done yet, and I believe it would be unwise to interfere with it. Further, as she also has pointed out, zoning changes recommended in the carefully vetted Comprehensive Plan could create additional capacity.

The following is an unofficial transcript of an exchange between an audience member and the OP director from the video of the final Phase 2 meeting on August 13:

Kent Slowinski (audience member): “I don’t think we have enough information here to make an informed decision here. Basic planning questions such as:  
 How much square footage do the various options provide?  
 What’s the current supply of office space?  
 How much capacity do we have under existing zoning regulations?  
 When will we exhaust this current supply?  
 These are all basic planning questions.”

Harriet Tregoning: Those are each . . . Each and every one of these questions we will have answers to when we are ready to write . . . to make the recommendation. We just didn’t want to wait to show you the modeling analysis that we had done because part of what people are concerned about is the visual impact . . . the impact on the viewshed, the impact on the skyline, the impact on how you experience a city street. But you are absolutely right. Those are exactly the questions that need to be answered before we make any decisions about whether, and when, and if, we should raise building heights in the city.”

Kent Slowinski: “The other part of the question is, how much are developers going to be making off this additional square footage?”

Ms. Tregoning did not answer that last question, but she promised in the future to address the two deficits in information previously provided to the public. There were no additional opportunities to have an exchange with the public between the final Phase 2 meeting on August 13 and Ms. Tregoning’s release of her “draft” recommendations on September 24. What’s worse, she put those recommendations in Congressman Darrell Issa’s hands directly. Rep. Issa had “request[ed] that NCPC work with the District to formulate and submit to the Committee [on Oversight and Government Reform] a joint proposal,”<sup>1</sup> but Ms. Tregoning apparently thought an end-run around the more deliberative NCPC might allow her to escape the tempering influence of the Federal agency altogether. While NCPC recommended leaving the Height Act essentially intact, DCOP recommended lifting the height limit in the L’Enfant City to as much as 200 feet, based on a 1:1.25 ratio of right-of-way to building height, and dispensing entirely with a Federal height limit outside the L’Enfant City. Ultimately it seems that Rep. Issa will have to choose between the two recommendations, an undesirable outcome.

I took the opportunity to hear Ms. Tregoning speak about her recommendations at an unofficial public information session at the NCPC the following day, September 25. While she neglected at this session to fulfill requests for on-the-ground simulations of raising the roof, Ms. Tregoning did come forward with the “Economic Feasibility Analysis of the Height Master Plan,” dated September 23, a mere day before she transmitted her recommendations to Chairman Issa. The support for radically altering the Height Act in this last-minute economic feasibility study strikes me as tepid at best: “Raising the height limits could play a role in helping the District to expand its population and employment base if focused in areas of high market demand – primarily

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<sup>1</sup> <http://oversight.house.gov/wp-content/uploads/2012/11/2012-10-03-DEI-to-Gray-DC-Bryant-NCPC-study-request-Height-Act.pdf.pdf>

Testimony by A. Rosen on Federal Height Act, October 28, 2013

Center City and selected Metro locations where rents are high enough to support higher-rise construction costs. Residential expansion offers particular opportunities. Although not studied, new development in response to higher height limits also could include hotels.” [https://www.ncpc.gov/heightstudy/docs/Econ\\_Feasibility\\_Analysis.pdf](https://www.ncpc.gov/heightstudy/docs/Econ_Feasibility_Analysis.pdf)

At the October 28<sup>th</sup> Committee of the Whole oversight hearing on OP’s recommendations, Ms. Tregoning presented a series of statistics that purportedly demonstrate that under a high-growth scenario, under current zoning and with the Height Act intact, the District would exhaust capacity in 17 years; and if we rezoned under the provisions of the Comprehensive Plan, we would reach the end of capacity in 24 years.

This strikes me as a manufactured emergency because this city’s history does not predict a straight line of sustained high growth. Moreover, the finding is predicated on the conclusion that only 4.9 percent of total land area in the District has significant capacity. (Did this calculation took into account the city’s own inventory of vacant buildings?) We were told that the figure was arrived at by excluding for development potential any building zoned for high or medium density that has already been built to 30 percent of capacity. The assumption that such properties will remain underutilized for decades seems unwarranted in a city where height limitations would naturally lead developers to exploit the 70 percent unused capacity. If they do not, then perhaps the demand will not be as great as postulated, which in turn, removes the pressure to lift the Height Act.

While she did not mention this at the oversight hearing, Ms. Tregoning earlier used as a rationale for the District to take an independent stand on the Height Act that the Federal government is downsizing physically and will soon have a smaller presence in the city. I understood that to mean that the Feds have a shrinking interest in the city and therefore shouldn’t have as much of a say in this matter. But the flip side of that is that as the Feds vacate, the city will be heir to quite a bit of vacant office space—in fact, the city may have an office space *glut*, which it would be unwise to exacerbate.

There is a shortage of affordable housing, but does raising the height limit provide a solution? Since taller buildings cost more to construct—and the District doesn’t adhere to its own inclusionary zoning regulations for protecting and providing housing for residents who cannot pay market rates, let alone meet the needs of its growing homeless population—it seems unlikely that raising the height limit will address the lack of affordable housing. Common sense suggests that raising height restrictions will lead to up-building in the already vibrant, expensive parts of the city, and remove much of the pressure on developers to move into parts of the city, such as east of the Anacostia River, where the ROI is less promising, where development and jobs have foundered. If allowing taller buildings to increase available office and residential space could bring down commercial and residential prices, Manhattan would be one of the least expensive markets in the U.S.

I am not a planner. But it seems to me that these studies of economic feasibility and capacity came late in the game; that a truly professional approach to the thorny and controversial question of altering height limits in an iconic city would make a study of

economic feasibility and capacity *foundational* to decision-making and the development of policy. **The conclusion that the “facts were being fixed around the policy” is inescapable.**

From the time of the last public meeting at the NCPC (September 25), 29 days remained for the public to weigh in with the OP on that agency’s just-released recommendations and the new information Ms. Tregoning presented at the NCPC public meeting; the OP deadline for public comment was October 24. During this interlude, an official public meeting of the NCPC was supposed to take place, on October 2, but due to the Federal government shut-down, that meeting was postponed until October 30. While NCPC extended its deadline for public comment, the OP deadline held fast. So no further opportunities for public outreach and input took place before last week’s OP deadline of the 24th. **The conclusion that public sentiment is of little consequence is also inescapable.** This is particularly egregious given the NCPC’s respectful deference to DCOP to represent local interests, as the Federal agency works to define Federal interests.

I wonder how our transportation infrastructure will accommodate a taller city and the additional residents and workers it will bring. Given the already overtaxed, inadequately built-out public transportation system and ongoing reductions in parking (through revisions to the D.C. Zoning Code’s parking minimums and DDoT’s Enhanced Residential Permit Parking program, which allows residents on a block to vote to entirely ban parking by nonresidents on one side of the street), I question how increasing density in already dense parts of the city benefits sustainability, livability, or economic development. I already know many people who live in Maryland *and* D.C. beyond easy access to Metro who decline to shop or dine in town because they find the combination of heavy traffic and scarce parking daunting. I fear that the District’s recovery will be brought to a halt not by a paucity of real estate capacity, but by a shortfall in coordinated transportation solutions. One streetcar line and a flotilla of bicycles is not a systemic solution.

But at the heart of the matter is the question of how a radical refashioning of the Height Act will affect the graceful, low profile of our city. Director Tregoning asserts that the changes she proposes to the Height Act will not affect what is built in D.C. because developers will still have to meet local zoning ordinances that dictate height limits, neighborhood by neighborhood, often more restrictively than the Height Act does. We are meant to take solace in the fact that when the Height Act is lifted outside the L’Enfant City, any build-outs that don’t meet local restrictions will have the Zoning Commission, whose members include two Federal appointees, and the Comprehensive Plan to contend with. The truth is that in practice neither the letter nor the spirit of the Comp Plan is recognized as binding, and developers have their way with the Zoning Commission, which seems to bend over backwards to accommodate them.

Through the Planned Unit Development, aka PUD, process, developers agree to provide certain amenities and public benefits in exchange for the Commission’s relaxing its restrictions on such elements as density and height. For example, in a commercial development of medium density (C-2-B), a height of 65 feet is matter-of-right, but it can

Testimony by A. Rosen on Federal Height Act, October 28, 2013

be up-zoned to 90 feet via a PUD. Sometimes the ZC relaxes the rules with such exuberance—even within a Historic District!--that it goes all the way to make the up-zoning permanent via a “map amendment.” When citizens find out about the ways in which both developers and the Planning and Economic Development office have misled the Zoning Commission—withholding information about true property value, who is actually paying for amenities and public benefits, and the erosion of required “affordable housing” units as one of those public benefits—it is an uphill battle in the D.C. Court of Appeals, usually lost, to reverse the zoning concessions that have been granted.<sup>2</sup> PUDs are undermining zoning, and neither the Zoning Commission nor the Court seems to recognize them for the Trojan Horses they are. Nor can we look to the D.C. Historic Preservation Review Board as a last bulwark against development pressures, as it is now situated within the Office of the Deputy Mayor for Planning and Economic Development, and thus hardly able to act independently.

I object to the way OP has conducted its study of the effects of altering the Federal Height Act of 2010. I believe that it has used the occasion to try to undermine the Act’s protections in order to make changes consistent with new trends in planning. I concur with the preliminary conclusion drawn by the NCPC that the Act may be left essentially intact, with an allowance for penthouses currently housing only mechanical systems to be adapted for business and residential use, without doing harm. In fact, the Act can continue to serve us well.

Thank you very much for taking this testimony under consideration.

Andrea Rosen  
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Washington, D.C. 20015  
[aerie@rcn.com](mailto:aerie@rcn.com)  
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<sup>2</sup> Two examples that I am aware of—they are not unique—involve the city’s own properties. One is in the West End, at L Street, NW, between 23<sup>rd</sup> and 24<sup>th</sup> Streets, site of a library, firehouse, and police station. Property was up-zoned from R-5-B (MOR general residential uses), maximum height of 50 feet, to CR (MOR residential, commercial, recreational, light industrial), maximum height 90 feet (ZC Case 11-12, 11-12A). Challenged by D.C. Court of Appeals Case 12-AA-1183, D.C. Library Renaissance Project/West End Library Advisory Group v. D.C. Zoning Commission and EastBanc-W.D.C. Partners. The other example is the site of the vacated Hine Junior High School across the street from Eastern Market in the Capitol Hill Historic District. On the strength of the Comprehensive Plan Future Land Use Map, up-zoned from R4 (MOR single-family residences, churches, public schools), maximum height of 40 feet, to C-2-B (MOR medium-density development, including mixed uses) to a maximum FAR of 3.5 for residential use and 1.5 FAR for other permitted uses, and a maximum height of 65 feet. Yet the PUD was approved with a total project FAR of 3.9 and a maximum height of 94.5 feet (ZC Case 11-24), which suggests a doubling up of up-zoning. Challenged in D.C. Court of Appeals Case 13-AA-366 & 13-AA-378, Christopher Howell et al v. D.C. Zoning Commission and Stanton-Eastbanc LLC et al.

## Jacobs, Jessica (Council)

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**From:** JWaldmann <jciw-centernet@erols.com>  
**Sent:** Tuesday, October 29, 2013 9:09 AM  
**To:** Bonds, Anita (Council); Catania, David A. (COUNCIL); Grosso, David (Council); Evans, Jack (COUNCIL); Graham, Jim (COUNCIL); McDuffie, Kenyan (Council); Barry, Marion (COUNCIL); Cheh, Mary (COUNCIL); Bowser, Muriel (Council); Mendelson, Phil (COUNCIL); Wells, Thomas (COUNCIL); Vincent Orange; Alexander, Yvette (COUNCIL); Mendelson, Phil (COUNCIL)  
**Cc:** Jacobs, Jessica (Council)  
**Subject:** Height Act

I am strongly opposed to any change in the Height Act. Change would lead, in a very short time, to higher buildings throughout the City – or at least in places where developers believe they can make money – and would quickly change the distinctive character of Washington, DC. DC is NOT New York, and aspiring to be is ridiculous and foolhardy. NCPG, the Committee of One Hundred, and a number of community organizations have expressed opposition to the proposal to change the Act. These groups have studied the proposal. They care about the City. Please, please – listen to them.

Jane Waldmann  
5332 42nd Street, NW  
202/686-1446

## HISTORIC DISTRICTS COALITION

c/o Richard Busch  
1520 Caroline Street, NW - Washington, DC 20009

September 7, 2013

CHAIRMAN REDELSO  
2013 OCT 28 PM 4:34

The Honorable Vincent C. Gray  
Mayor, District of Columbia  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

Mr. Preston Bryant, Jr.  
Chairman, National Capital Planning Commission  
401 Ninth Street, NW, North Lobby, Suite 500  
Washington, DC 20004

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:

Capitol Hill Restoration Society, Janet Quigley, President  
Frederick Douglass Community Improvement Corporation, Carolyn Johns Gray, President  
Dupont Circle Conservancy, Thomas Bower President  
Citizens Association of Georgetown, Pamela Moore, President  
Logan Circle Community Association, Tim Christensen, President  
Historic Mount Pleasant, Fay Armstrong, President  
Sheridan Kalorama Historical Association, Kindy French, President  
Tenleytown Historical Society, Jane Waldman, President

Individuals: Lesile Kamrad, Loretta Neumann, Scott Roberts, Mary Rowse, Evelyn Wrin

CC: DC Congresswoman Eleanor Holmes Norton

Thomas Luebke, Secretary, US Commission of Fine Arts; Frederick Lindstrom, Deputy Secretary, CFA

Marcel Acosta, NCPC Executive Director; Deborah Young, NCPC Secretariat; Lucy Kempf, Project Manager; Julia Koster, Public Engagement  
Phil Mendelson, Chair, DC Council

DC Councilmembers: Vincent Orange, David Catania, David Grosso, Jim Graham, Jack Evans, Mary Cheh, Murel Bowser, Kenyan McDuffie,  
Tommy Wells, Yvette Alexander, Marion Barry

Harriet Tregoning, Director, DC Office of Planning; Tamara Stern, DCOP Chief of Staff and Project Manager

Gretchen Pfahler, Chair, DC Historic Preservation Review Board

David Maloney, State Historic Preservation Officer; Stephen Callcott, Deputy State Historic Preservation Officer

National Trust for Historic Preservation: Rob Nieweg, Elizabeth Merritt, Christopher May

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE PUBLIC OVERSIGHT HEARING  
on  
The District of Columbia's Recommendations on the Federal Height of  
Buildings Act of 1910**

Monday, October 28, 2013

Testimony of Alma Hardy Gates  
Administrator, Neighbors United Trust

CHAIRMAN MENDELSON  
2013 OCT 28 PM 4:35

The legerdemain executed by the Mayor of the District of Columbia on September 24 requires Council action. It contradicts the Municipal Planning section of the Home Rule Act, SEC. 423. [D.C. Official Code § 1-204.23], which anticipates a public process for land use planning. However the Mayor preemptively forwarded the Office of Planning's Height Master Plan to Congressman Issa, and in so doing, is asking Congress to set new height limits without seeking NCPC or local input. This act of contempt demonstrates a lack of respect for residents by the Mayor and an agency that seeks total control over decisions affecting future land use development in the nation's capital.

When given the opportunity to address the city's "structural deficit" with Members of Congress and perhaps find a way to establish some financial reciprocity with the 500,000 commuters who visit our city every day, OP punted, and talked about enclosing penthouses. Following its foray to the Hill, OP contracted for two studies, an Economic Feasibility Study, and the District of Columbia Height Master Plan Modeling Study. The findings of the modeling study resulted in two draft recommendations for changes to the Height Act. The first deals with height increases within the L'Enfant City; but it is the second recommendation that is especially troubling, "The District recommends that Congress allow the city to determine the appropriate building height limits for those parts of the city outside of the L'Enfant City through its statutorily-required Comprehensive Plan and zoning amendment processes, both of which require extensive public participation and review and approval by local and federal bodies."

If there is a lesson to be learned from the way the Mayor and Office of Planning handled the Height Master Plan it is that there is very little interest in a public process or adherence to the Home Rule Act, no matter who the partner. Necessary

changes to the Comprehensive Plan and zoning regulations will be an after the fact exercise for OP if Congress chooses to act on the Height Master Plan Study recommendations; and, it will be the Office of Planning that brings forth amendments of the Comprehensive Plan and needed changes to the zoning regulations.

As the elected body with oversight for the Office of Planning, Council needs to recognize the necessity to reign in this agency that “knows what’s best for the city;” and, to protect the city’s 130 established neighborhoods from OP’s developers of choice. Further, Council needs to recognize the usurpation of power by the Mayor with regard to the Municipal Planning section of the Home Rule Act, as the public was denied any opportunity for participation in decisions regarding changes to the Height of Buildings Act of 1910. Finally, the time has come for Council to recommend the establishment of a Planning Commission.

**Government of the District of Columbia  
ADVISORY NEIGHBORHOOD COMMISSION 3-D**

P.O. Box 40486  
Palisades Station  
Washington, D.C. 20016

October 27, 2013

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

Harriet Tregoning, Director  
District of Columbia Office of Planning  
1100 4th Street, SW, Suite E650  
Washington, DC 20024

CHAIRMAN HEIDELSON  
2013 OCT 28 PM 4:34

**RE: Resolution of Advisory Neighborhood Commission 3D on the  
DC Recommendations to Change the Height of Buildings Act of 1910**

Dear Mr. Bryant and Ms. Tregonning:

At a publicly noticed meeting on Wednesday, Oct. 2, 2013, held at the American University, School of International Service, Founders Room, Washington, D.C., with a quorum present at all times, Advisory Neighborhood Commission (ANC) 3D voted 7-1-1 to support the attached Resolution of Advisory Neighborhood Commission 3D on the DC Recommendations to Change the Height of Buildings Act of 1910.

ANC3D is concerned about the draft recommendations proposed by the Office of Planning to modify the Height of Buildings Act of 1910 to allow increased heights within the District's boundaries. These proposals would include raising the building maximum height in the L'Enfant City from 160 ft. to 200 ft. and allowing the city to determine building height maximums for areas outside the L'Enfant City through the Comprehensive Plan and zoning processes.

In its draft recommendations, the city's Office of Planning maintains that the current height limits constrain existing capacity to accommodate projected household and job growth along with potential development opportunities over the next three decades. While residents want our city to grow and thrive, these draft proposals to alter long-established height limitations have generated serious concern over the impact such changes would have on existing neighborhoods and our city as a whole.

The ANC3D resolution also reflects the Commission's concern that the submission of draft recommendations by the Office of Planning prior to public participation and review by the National Capital Planning Commission did not provide an adequate opportunity for its own residents to weigh in and provide input on the future of the city where they live and work.

As a result of these concerns, ANC3D supports maintaining the existing Height of Buildings Act of 1910.

Sincerely,

A handwritten signature in black ink, reading "Penny Pagano". The signature is fluid and cursive, with the first name "Penny" and last name "Pagano" clearly distinguishable.

Penny Pagano  
Chair, ANC3D

Enclosure

Cc:

tanya.stern@dc.gov

Deborah.young@ncpc.gov

Marcella.brown@ncpc.gov

jjacobs@dccouncil.us

**RESOLUTION OF ADVISORY NEIGHBORHOOD COMMISSION 3D ON THE  
DISTRICT OF COLUMBIA'S RECOMMENDATIONS TO CHANGE THE HEIGHT OF  
BUILDINGS ACT OF 1910**

WHEREAS, the Height of Buildings Act of 1910 (the Height Act) is a federal law that can be modified only through congressional actions; and

WHEREAS, on October 3, 2012, the chairman of the House Committee on Oversight and Government Reform requested the National Capital Planning Commission (NCPC) and the District of Columbia government work jointly to examine the extent to which the Height Act continues to serve federal and local interests, and how the law could affect the future of the city; and

WHEREAS, the character of Washington's historic L'Enfant City, particularly the monumental core, establishes the city's iconic image as our national's capital; and

WHEREAS, any changes to the Height Act that affect the historic L'Enfant City should be carefully studied to ensure the iconic, horizontal skyline and the visual preeminence of the US Capitol and related national monuments are retained; and

WHEREAS, the Committee also encouraged 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; and

WHEREAS, the DC Office of Planning (OP) led the District's efforts on the study and contracted consultant services for two studies: an Economic Feasibility Analysis and a Height Master Plan Modeling Analysis; and

WHEREAS, on September 24, 2013, without consulting NCPC or District residents, the Mayor submitted the District of Columbia's Height Master Plan evaluation and draft recommendations for changes to the Height Act; and

WHEREAS, Recommendation 2 states, Congress should allow the District of Columbia to determine building height maximums for areas outside of the L'Enfant City through its Comprehensive Plan and zoning processes; and

WHEREAS, amendments to the Comprehensive Plan are reviewed and recommended for DC Council consideration by OP and amendments to the zoning regulations can be forwarded to the Zoning Commission only by the Office of Planning.

NOW THEREFORE BE IT RESOLVED, that ANC 3D opposes Recommendation 2 based on the premise that there is consensus that the federal interest is less and much more attenuated or perhaps non-existent outside of the L'Enfant City; and

BE IT FURTHER RESOLVED, that ANC take no solace in Recommendation 2, which would transfer jurisdiction to the city to determine the appropriate building height limits for those parts of the District outside of the L'Enfant City through its statutorily-required Comprehensive Plan and zoning amendment process; and

BE IT FURTHER RESOLVED, that ANC 3D rejects Recommendation 2 based on the fact OP exercises considerable control over the Comprehensive Plan and zoning amendment processes in the District; and

BE IT FURTHER RESOLVED, that ANC 3D is unable to support the core principles of the Height Master Plan as applied to areas outside the L'Enfant City as they are based on an economic feasibility analysis that fails to recognize the importance of neighborhood stability and character which is a guiding principal of the Comprehensive Plan's Land Use Element; and,

BE IT RFURTHER RESOLVED, that ANC 3D recognizes the extensive public process has not been followed as demonstrated by the transmittal of the District's Height Master Plan prior to public participation and review by the National Capital Planning Commission and public meetings; and

BE IT FURTHER RESOLVED, that ANC 3D strongly support maintaining the Height of Buildings Act of 1910 in its current state, without additions or deletions, as it has protected the monumental core and its surrounding neighborhoods for the past one hundred years.

October 2, 2013

Testimony of Richard Houghton, AIA, LEED AP  
Before the Council of the District of Columbia  
**Re: District of Columbia Height Master Plan Study**  
October 28, 2013

CHAIRMAN MENDELSON  
2013 OCT 28 PM 4:34

For the record, my name is Richard Houghton. I have lived in the District for 25 years. I work in the development sector and have managed the design and delivery of complex urban projects in the District and surrounding jurisdictions. I am also a registered architect and a member of the Committee of 100 on the Federal City. I am testifying on my own behalf today.

I want to thank Chairman Mendelson for holding these hearings and providing the opportunity for District residents to speak directly to our elected representatives.

The Height Act of 1910 as it is commonly known is a powerful piece of legislation that has shaped the urbane and humanely scaled city which we know and experience every day. It, together with the city's zoning regulations and the federal and District elements of the Comprehensive Plan, determine the form and character of the city. There is every reason to believe that the Height Act can continue to so function, unaltered. There may be a time in the future to consider amending the Height Act, but that time is not now and the mechanism for so doing is not the Office of Planning's recommendations.

A recent article in the *Wall Street Journal* noted that "to gain public acceptance, plans and their accompanying public investment must be part of a compelling vision and an agreed-upon public agenda."<sup>1</sup> The Office of Planning has not presented a compelling vision; and there is no broadly accepted ("agreed-upon") public agenda. And far from achieving a level of public acceptance, the Office of Planning's recommendations, in a gesture that mocks arguments for increased District autonomy, have been denied a public screening before being delivered to Congress. Today's public hearings are all the more timely given the lack of public debate.

The Office of Planning's proposals are not "moderate" as OP claims. They are extensive and sweeping changes and **I urge the Council to communicate the recommendation to Chairman Issa and the House Subcommittee on Oversight and Government Reform to reaffirm the Height Act and reject the Office of Planning's proposals as inappropriate at this time and lacking in credibility for the following reasons:**

- The District's population is growing but will a few years of rapid growth during the recession recovery be sustainable and should we make drastic changes to legislation that has worked so well for so long, based on a short term trend? *Actual population numbers need to be tracked and monitored for long term trends. Prudence and an abundance of caution suggests that Council request an independent and outside assessment of OP's projections.*
- The population is still below its peak of the early 1950s, yet significant additional housing, office and retail space has been added to the building stock without touching significant parcels, large and small throughout the city. Columbia Heights, NOMA and

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<sup>1</sup> Julia Vitullo-Martin, "How to Build a Better City". *The Wall Street Journal*, April 12, 2013.

the Ballpark are three areas of intense urban development that contribute to the economic and social vitality of their respective neighborhoods and advance the Office of Planning's goals for livability, walkability and sustainability. And all were planned and either implemented or are works in progress under the existing Height Act. *Economic prosperity can and should be spread throughout the city and not just to the high cost areas where the Office of Planning expects taller buildings.*

- Infrastructure implications have not been studied and evaluated. Costs, including but not limited to transportation and traffic control; police, fire and EMS; schools; parks and recreation; the special needs of the young and the aged; streets and streetscape and civic maintenance such as trash collection and snow removal, are unknown and unaccounted for. *With responsibility for approval of the city's budget and short and long term fiscal planning, Council needs nothing less than a full accounting of the projected cost increases associated with any change—or no change—to the Height Act.*
- The bifurcation of the study as one of federal interest versus local interest is simplistic and does not adequately convey the complex symbiosis of a healthy federal/local relationship. Security, for instance, is not just a federal interest; it must be the city's interest, too. Economic development and the promotion of financial stability is not just a District interest; it must be the federal government's interest, too. Preston Bryant, Chairman of the National Capital Planning Commission, in an interview with *Roll Call* has noted this.<sup>2</sup> *The existence of two sets of recommendations, one from NCPC and one from OP, is truly unfortunate and suggests an acrimonious future.*
- The historic Height Act applies city wide. Modifying it to allow a little more height some places and a little more height in selected, non-contiguous places is likely to create pockets of growth and to exacerbate socio-economic disparities rather than creating a unified, coherent, inclusive city. *The recommendations proposed by OP will fragment the city, utterly negating The District's banner tagline, found at <http://dc.gov/DC/> "One City, One Future."*

In closing I would like to quote from urban planner Jeff Speck's book *Walkable City: How Downtown Can Save America, One Step at a Time*:

"... A ten-story city like Washington simply does not need towers to achieve great walking density. Indeed, outside of Midtown and the Financial District, most of Manhattan's lively avenues are lined by buildings closer to ten stories tall. ... Ultimately, since most cities are not New York, there is a much more important [economic] argument to be made for height limits. Raising or abolishing the height limit. . . creates the outcome. . . where a single skyscraper lands on an empty block and sucks up an entire year's worth of development activity, while all the surrounding blocks stay empty—or fill up with skyscraper parking. . . In this context, it is tempting to do a bit of our own speculation, on how tremendous the District of Columbia's height limit has been for the city and its walkability. That limit . . . has caused new

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<sup>2</sup> Hannah Hess, "Tension Between District, Feds Might Define Height Act Debate". *Roll Call*, September 13, 2013.

development to fill many more blocks than it would otherwise. This strategy has created street after street of excellent urbanism. . . ."<sup>3</sup>

Loosening the regulations governing the height of buildings is likely to create islands of isolated urban towers characteristic of much of contemporary American urbanism, instead of furthering the goals of the Office of Planning in creating more walkable thriving neighborhoods. And it is likely that market volatility, and land speculation in conjunction with economic cycles would destabilize growth and development and prove unwieldy, unmanageable and perhaps uncontrollable.

Thank you for your consideration.

Richard Houghton, AIA, LEED AP  
930 Kearney Street, NE  
Washington, DC 20017

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<sup>3</sup> Jeff Speck, *Walkable City: How Downtown Can Save America, One Step at a Time*. New York, Farrar, 2012, p. 220.

TESTIMONY REGARDING THE REVIEW OF THE FEDERAL HEIGHT OF  
BUILDINGS ACT BEFORE THE D.C. CITY COUNCIL, 28 OCTOBER 2013

The report sent by Mayor Vincent Gray and the D.C. Office of Planning to U. S. Representative Darrell Issa recommending raising the height limit of most commercial development in downtown Washington to 200 feet is as extremist and counter-productive proposal for our city as any I have encountered in over thirty years of residency. Aside from running against the feelings expressed by an overwhelming number of citizens at public meetings conducted this summer and aside from making an end run to Congress before the D.C. Council conducted hearings, the report represents bad planning – arguably no planning at all, only fixation on a single agenda. There is no consideration on the implications of adding potentially many millions of square feet of commercial space on any of the city’s heavily strained, yet perpetually underfunded, public transportation systems, on traffic, or on the overall infrastructure. There is no consideration of how raising the height by 70 feet in many cases could induce premature demolition of a large new building stock. There is no consideration of how such increased bulk will negatively impact the streetscape – the city will not get skyscrapers only bigger, bulkier buildings. Most important, there is no consideration about how a focus only upon greater height will raise not only property values in many residential areas, but also property taxes, accelerating gentrification in the process. The planning office makes the extraordinary claim that increasing commercial building height will somehow increase affordable housing, but this is grasping at thin air. For cities worldwide, the greater the density of

CHARMAN RECORDS  
2013 OCT 28 PM 6:51

the business core, the higher the demand for housing in proximity and thus the higher the cost of that housing. As the late John Wilson used to incant, Washington is the most livable city in the nation – one of the most at least. What other city center is ringed by historic neighborhoods of choice? What other city has such a large percentage of solid, stable neighborhoods? What other city in the United States is so distinct – so much a city in a park. The attributes this city has acquired are not by accident; they are by virtue of generations of enlightened planning and citizen involvement. That Washington could be trashed as a result of ideologically driven ineptitude is a threat no resident can afford to let happen. I have heard some parties state that this is a home rule issue. Far from it. It is a matter of citizens preventing what is perhaps the worst “planning” proposal ever to occur in our city.

Richard Longstreth

Professor of American Studies, George Washington University

Residence: 1803 Irving Street, N.W., Washington, D.C. 20010

CHAIRMAN MENDELSON

2013 OCT 28 AM 8:51 TESTIMONY OF JUDY CHESSE

COMMITTEE OF THE WHOLE  
HEARING ON PROPOSED CHANGES TO THE HEIGHT ACT  
OCTOBER 28, 2013

Chairman Mendelson, Members of the Committee, I hereby submit the following testimony for inclusion in the record. I am a long time resident of Tenleytown in the District.

The Height Act of 1910 is a federal statute governing the District of Columbia, which restricts residential buildings to 90 feet and business to a height equal to the width of the adjacent street plus 20 feet (generally totaling 130 feet), plus some heights are extended to 160 feet along portions of Pennsylvania Avenue.

The Office of Planning already has sent to Congress their Height Act proposals which include:

- Change the ratio of height to street width to 1.25 width to height, which results in a new maximum height of 200 feet for any 160-foot wide street in L'Enfant City.
- Eliminate all height restrictions in the Height Act for areas outside L'Enfant City.

The National Capital Planning Commission has proposed much more modest changes to the Height Act which include:

- Preserving the Height Act restrictions but allow for consideration of expanding the use of penthouses.

Home Rule Considerations

Changes to the Height Act do not create or enhance home rule. Home Rule would be District residents living in a true democracy where they have a say through the electoral process in issues that affect their daily lives. To advance home rule the structure of governmental institutions for the District of Columbia would have to be changed. DC's current zoning process doesn't further democratic values and eliminating Height Act restrictions entirely outside downtown, does not alter the structure of DC government's institutions dealing with land use.

Although there is some uncertainty, it would appear that the National Capital Planning Commission reserves on to itself all issues regarding land use involving the national monuments. Outside of L'Enfant City, it appears that the Zoning Commission has been given jurisdiction. The Council, raising issues regarding its own jurisdiction over zoning issues has deferred to the Zoning Commission, which is a non-elected body. The Zoning Commission was created by federal law under the Home Rule Charter and its membership is dictated by federal statute: 2 federal officials and 3 appointed by the Mayor. With all respect for the individual members of the Zoning Commission, zoning decisions in DC aren't made democratically -- a 5 member unelected quasi-judicial board (40% federally appointed) typically decides.

Also to put the Home Rule argument in perspective, it is important to note that at this time, there are two land use changes being proposed by the Office of Planning -- the Zoning Regulation Rewrite (ZRR) and proposed amendments to the Height Act. The ZRR tags "downtown" height to whatever the Height Act dictates. This twin package is not advancing Home Rule. There is no step in the middle when DC residents would have a voice between Congress setting height limits and the ZRR automatically adopting them for

large parts of the City. This schematic would allow Congress to determine height in a vast area of DC. Note also that the ZRR triples what is designated as Downtown.

In the interest of clarity note that four zones (D-1-A-2 through D-4-B-1) do have independent height limits. But most of the land in the new downtown doesn't fall within those zones.

Also the Office of Planning arguing that they are making proposals to eliminate or raise restrictions in the Height Act, in the name of Home Rule are belied by their actions in ignoring the process announced by the National Capital Planning Commission and the Office of Planning to do a study, make proposals, solicit public comment and, if possible, send one joint proposal to Congress. When the Office of Planning got the Mayor's signature on the cover letter, blew on the ink to make sure it was dry and ran their proposal immediately to Chairman Issa, they pulled the curtain back on their real intentions – and giving the residents of the District of Columbia greater voice was clearly not one of their goals. OP's actions to submit their recommendations to Congress before they were made public and without consulting the DC Council was disrespectful to all concerned.

Finally, the District of Columbia is the nation's capital. It is natural for the national government and the residents of the District of Columbia to have shared interest regarding height and land use. There is a strong shared interest here to maintain the supremacy of the national monuments in the landscape – an interest not present in other cities. This should be preserved both for historic and economic reasons. Tourism is a large part of the District's economy and the tourist come because the federal government and monuments are here.

#### Is there any strong reason to change the Height Act at this time?

The current heights imposed by the Height Act have not been exhausted. Even Ms. Tregoning keeps saying that we don't need those restrictions raised now... but she contends that maybe we will need to raise them decades from now.

Federal control of a maximum height in commercial and residential areas still allows the District to determine height and we have experienced no limitation on our ability to do that since zoning heights are predominately below the federal maximum.

The studies made available in this process are woefully inadequate to justify the drastic proposals put forth by OP. The studies do not provide solid population projections. They do not provide data on how much future development could be achieved within current restrictions of the Height Act so the studies do not allow any reasonable estimate of need or capacity. The studies focus on whether increased height of buildings would be economically profitable for developers. But any increase in height for buildings does not solely result in increased profits and, hopefully, increased tax revenue; it also would result in new infrastructure demands on services, such as schools, public transit, sewer, and water. There is no study of these demands or how much money would be needed to build and maintain the infrastructure or how feasible such expansion of infrastructure would be.

Chairman Issa's letter requesting these studies and any proposals included a request for an analysis on nearby neighborhoods. This portion of his request has been ignored. Washington is a city of neighborhoods and each neighborhood has different and, in many instances, very desirable characteristics, which should be recognized and preserved in any consideration of amendments to the Height Act.

Proposals to increase height along the main avenues, Wisconsin, Connecticut, Georgia, New York, and others would dwarf residences abutting the avenues that are two-story single family detached in some areas but might be harmonious with multi-story office buildings and warehouses in others.

The restrictions of the Height Act have been cited as encouraging development outside the downtown core – a shared renaissance. Merely allowing taller buildings wherever a greater profit might be realized in already flourishing areas may result in a few very tall buildings with large capacity absorbing such a large percent of the demand that development would be deterred across the rest of the city, which has benefited from a dispersal of development activity throughout the city.

Not only have the height restrictions spread rejuvenation to many areas in the District, lifting height restrictions does not necessarily result in more affordable housing. If it is important to the District to share across socio-economic areas and populations, would raising the height limits be a deterrent rather than an incentive. There is no way to read their study, which is the best spin they could put on it, to conclude that more affordable housing will result. From *Economic Analysis of the Height Master Plan commissioned by OP from James Davis Construction (page xiv)*:

#### *Impact on Residential Rents*

*While newly constructed higher-rise apartments are likely to have relatively high rents, expansion of the housing supply should result in lower rents if new supply exceeds the growth in demand. The availability of new apartments will put competitive pressure on existing buildings to renovate and maintain their edge and/or lower their rents. Units that are not as well located and maintained will see a lessening of demand and lower rents. However, the impacts on prevailing rents are likely to occur primarily at the margin. The District's high costs of development and natural market forces will limit the extent of oversupply and rent reductions over the longer term, though during the down parts of market cycles, the additional supply could lead to lower rents until supply and demand are back in balance.*

In conclusion, there is unused potential available now that can accommodate new growth without any amendments to the Height Act because current height restrictions already allow more development in many areas. Unnecessarily eliminating height restrictions merely gives developers permission to build to the max.

Citing home rule on this particular issue is a distraction from meaningful home rule that includes voting rights and budget and revenue raising autonomy.

The overall building limits established in the Height Act are worth preserving because of the extraordinary contributions these restrictions have made to the distinctive character of the city of Washington, which is one of the most attractive and lovely cities in America not only because of its monuments but also because of its tree canopy and open spaces and because pedestrians can see the sun, the sky and the stars – important elements for walkability and the soul.

CHAIRMAN MENDELSON

2013 OCT 26 AM 8: 51

5811 33<sup>rd</sup> St NW  
Washington, D.C. 20015  
October 26, 2013

The Honorable Phil Mendelson  
Committee of the Whole  
John A. Wilson Building  
1350 Pennsylvania Ave, NW  
Washington, D.C.

Re: Written Testimony on the hearing to discuss the Office of Planning's recommendations on the Federal Height of Buildings Act of 1910

Dear Chairman Mendelson:

Thank you for holding a hearing to gather public comment. I regret that I cannot appear in person to testify, due to my work as a public school teacher. I respectfully submit my comments on the Office of Planning's recommendations.

The Height Act has created a beautiful and thriving city. When I take visitors to D.C., they are often struck by the number of trees and the beautiful vistas from our hills and parks. In the midst of a serious financial downturn for our country, D.C. is thriving. Why, then, does the Office of Planning want to tamper with conditions under which the city has flourished, both economically and environmentally? The Office of Planning seems to be framing the removal of the Height Act in two ways: first, as a necessity to increase D.C.'s tax base and revenues, and second, as a moral obligation under Home Rule. However, I see these as smokescreens for the Office of Planning's real motive: to fundamentally alter the character of our city in a way that fits the vision of the urban planners in the Office of Planning and developers who would profit from greater building heights.

Both the arguments and the process followed by the Office of Planning leading to its recommendations on the Height Act are fundamentally flawed.

First, raising heights is not a precondition to financial stability, as the Office of Planning would argue. Yes, it is true that unlike other states which tax incomes of non-resident workers, D.C. is not allowed to tax incomes of workers who work in D.C. but live in other states. Also, unlike residents of territories without full representation in Congress, D.C. residents pay full federal income tax. However, if either or both of these injustices were reversed by Congress, D.C. would find itself with a financial windfall, with absolutely no need to alter the Height Act and destroy the character of our city. The federal tax policies, not the heights of our buildings, need to be changed.

Second, the Office of Planning (OP) also argues that eliminating the Height Act is necessary to allow D.C. full control of its land use under "Home Rule." I find it completely ironic that OP uses the Home Rule argument, when the Office of Planning scheduled meetings when we were not "at home" and did not show pictures of our homes. First of all, as you well know, August is a month in which many residents take vacations. OP's decision to hold Phase 2 hearings only in the month when residents were least likely to attend smacks of callous disregard

at best. In fact, in July, when Commissioner May of the Department of the Interior learned of the timeframe for the public meetings, he was appalled. He stated in a meeting July 11,

“...I am concerned...the public meetings in August. And it’s just such a taboo things for us. We don’t even go near that in the Park Service. It just doesn’t ..it’s a bad thing to have to do. I was at another meeting on this topic that was not one you sponsored, but it was sponsored by another organization and the cries of conspiracy started going up about this. And I tried to defend NCPC because at that time, I didn’t know you were planning meetings in August... So anyway, if there is anything that can be done to repeat the information or do something in September to make sure that you touch the folks who would otherwise not be able to make one of the other ones.”

However, with OP claiming pressure from Congress, the hearings continued at the precise time of year to generate the least amount of public participation.

Furthermore, as I wrote to you and Mayor Gray back in August, although the Office of Planning was tasked by Congress to take into account "compatibility to the surrounding neighborhoods, national security concerns, [and] input from local residents...," in its Phase 2 meetings in August, OP did not provide a single slide in its presentation, nor could staffers direct me to a single image in its modeling study, from the ground level of a single-family residential street showing what our neighborhoods would look like if areas identified as medium or high density in the Comprehensive Plan were allowed to build up to heights allowed under the Height Act now or a more relaxed Height Act in the future. In other words, OP completely avoided showing any direct impact of height increases on single-family areas.

This glaring absence of modeling images from the residents' street-level perspective is inexcusable. I confirmed with NCPC that the choice of images created for the modeling study was up to OP, and was not limited or dictated by NCPC. OP deliberately chose not to include images of the immediate impact of increased heights in residential areas, and when that omission was brought to OP’s attention by both NCPC and residents, OP chose not to add new residential street-level slides to the study before going forward with the Phase 3 Draft Recommendations. Thus, OP ignored not only its citizens, and made it difficult for us to perceive the impact of proposed changes, but OP also ignored Congress' request to take into account "compatibility to the surrounding neighborhoods...[and] input from local residents."

Moreover, the Office of Planning has deliberately mischaracterized the nature of the Congressional hearing last July to downplay the potential impact of the proposed changes on the residents and their neighborhoods. Harriet Tregoning of the Office of Planning stated at the August 3 Phase 2 meeting that “The very minor change that was being contemplated in the [July 2012] hearing was whether the penthouses should be allowed to be used for something other than mechanicals.” Yet, in that same hearing, CFO Natwar Gandhi spoke of the complete elimination of height and density restrictions in the district. Then, in his written testimony, Gandhi explained the impact of potential height/density increases on revenues. He wrote, "under our current practices, our assessors will take into consideration the potential increase in value of highest and best uses of each parcel, and re-assess these properties at higher value." (emphasis added) Thus, not only did the Office of Planning obscure the profound visual impact of changing the Height Act in the Phase 2 comment process, but also they failed to reveal the full extent of the city’s ambition for change, and the profound financial impact of potential changes on residents.

I have two additional concerns about the process: first, the Office of Planning's claims that we need to develop because we will run out of room are on shaky ground. When Natwar Gandhi testified before Congress on July 19, 2012, he said the supply of housing is nowhere near exhausted. If there is more housing, how are we out of room? Second, in the Phase 2 meetings, Harriet Tregoning said that OP needs to wrap this process up soon, because Darryl Issa will not be Chairman on the Committee on Oversight and Government Reform after 2014. Shouldn't the case stand on the merits, and not on the Chairmanship of the Committee? In the July 2012 hearing, Gandhi noted, "Given our assessment cycle, even if such a policy [of eliminated height and density restrictions] would be [sic] in effect by October 1, 2013, the first revenue impact would not be realized until Fiscal Year 2015." Perhaps this 2-year delay is one of the real factors behind OPs push to wrap up the study so quickly and jump into changes to the Comprehensive Plan and Zoning.

In the hearings I have attended and read, I have rarely heard the Office of Planning speak positively of the existing architecture and existing neighborhoods in our city. The speakers' eyes have lit up as they talked about the "iconic skylines" of other cities or "tall, graceful" buildings that might be built along Metro's Red Line. However, what OP dismisses is what many in D.C. treasure. With lower heights, our conservative buildings give a sense of gravitas, history, and tradition. With lower heights, we have diffused our building, and thus our economic activity, across sections of the city. With lower heights, we have communities within the city that feel more like Mayberry than Manhattan, with generations that know each other from the parks, schools, baseball leagues, local churches, and libraries. With lower heights, we can still see the topographic relevance of the many Civil War Defense forts that ring the city. With lower heights, we have parks that can sustain the number of residents wishing to use them. With lower heights, we can see the sky and get sunlight in our homes. With lower heights, we have lower and middle-income residents who can afford to stay in their homes, because they are not being taxed as if they live on land that can be developed into high-rises. The changes proposed by the Office of Planning might benefit developers in the short term, but would irrevocably damage the character of our communities in the long run. Our vistas and residential neighborhoods are assets that should be celebrated and protected, not exploited.

Please reject the Office of Planning's proposal to eliminate the Federal Heights Act of 1910. If the city needs more revenue, by all means, let us publicize the unfair constraints for taxation under which the District operates and ask Congress to address them. But the issue of tax revenues should not be a justification for raising building heights. The Height Act has served us well and should continue for generations to come.

Thank you for your consideration.

Sincerely,

Laura Phinizy  
Resident, Chevy Chase, Ward 4

CHAIRMAN MENDELSON

2013 OCT 28 AM 8:51

Gary Thompson  
2840 Northampton St. N.W.  
Washington D.C. 20015  
ANC Commissioner 3/4G02

**October 23, 2013**

National Capital Planning Commission  
c/o William Herbig  
401 9<sup>th</sup> St. N.W., North Lobby, Suite 500  
Washington, D.C. 20004

D.C. Office of Planning  
c/o Tanya Stern  
1100 4th Street, SW, Suite E650  
Washington, DC 20024

**Re: Written Testimony on the Height Act Study  
for the Special NCPC Meeting of October 30, 2013**

**The District's Height Master Plan draft recommendations for  
modifications to the federal Height Act**

Dear Commission Members:

Thank you for holding a Special Commission Meeting on this topic to gather public comment. I apologize I cannot appear in person to testify Oct. 30, due to an out of town proceeding. I respectfully submit these comments on the Height Act study.

I have studied carefully the September 12, 2013 NCPC Executive Director's Recommendation ("EDR") and the September 20, 2013 D.C. Office of Planning Evaluation and Draft Recommendations ("DCR"). I am familiar with the matters raised in these reports by (a) my many years as a D.C. Advisory Neighborhood Commissioner (four as Chair of the Chevy Chase ANC); (b) my review and comment on the pending D.C. zoning regulations; (c) an officer in the Alliance to Preserve the Civil War Defenses of Washington; and (d) as one of the attorneys who brought suit (pro bono) to challenge the congressional prohibition on D.C. taxing non-resident income earned within D.C., creating the structural funding imbalance that is addressed so well in the DCR. I respectfully make the following comments:

1. Whatever the reasons for its historic origins, the federal height limitations in D.C. have worked to create a beautiful and successful city. I do not think the height limitations should be raised, whether within the "L'Enfant City" or otherwise. I largely agree with the EDR in this regard and disagree with the DCR. I feel confident in saying that the majority of D.C. residents favor the views in the EDR. The DCR suggests that within the L'Enfant City, building heights be increased based on a ratio of height to street width, and outside the L'Enfant City, with no federal height limit. DCR's idea, if

accepted, would mean that within the L'Enfant City, heights could increase up to 200 feet and be non-uniform depending on the width of various adjacent streets. There would soon be a race up, with new controversies about proper application of the height limit, especially where new buildings abut residential areas.

2. DCR's idea of height-to-street width ratio also addresses only a single factor: pedestrian perspective from street level (*i.e.*, the wider the street, the higher the building can be). But that is not the only factor to consider. The EDR properly discusses the many other important factors that weigh on the matter – “viewscape,” relation to federal spaces, buildings blocking each other out, etc.

3. The status quo has forced D.C. and developers to spread out beneficial development, and to also create mixed-use areas where residential, retail, and commercial uses mutually benefit each other. There is still much room in the City for development of buildings up to 12 floors. If greater heights were allowed, then the focus would revert back to the traditional downtown areas (K St. N.W., Penn. Ave. corridor, etc.), slowing beneficial development elsewhere. D.C. is unique in diffusing its development across the city, instead of concentrating everything in a small area of high-rise buildings.

4. Removing height limits outside the L'Enfant City could lead to contentious developments, possibly creating Roslyn like mini-high rise blocks in what are now residential areas like Anacostia, Friendship Heights, Takoma Park, Chevy Chase, etc. The economic pressures to develop these areas could eliminate all but the wealthiest pockets of these residential areas – adjacent lower and middle income residents could be displaced. Plus this could siphon away or depress development in downtown areas.

5. This is an anecdotal point, but I happen to be an avid runner (around 25-50 miles a week) and a constant business traveler. I spend substantial amounts of time in the downtown areas of dozens of U.S. cities (in 2012, over 100 business days in 18 different cities). Being a runner, I run through and beyond these downtown areas. On average, the cities that have the downtown high-rise cluster effect are failures. There is little to nothing in the downtown areas other than office buildings, there is massive congestion at rush hour, the downtown area clears out after the workday, and the areas that immediately ring the downtown areas are abandoned or severely underdeveloped. Houston and Baltimore are examples of this failed model, and many more reveal this failure to some degree or another. In places like New Orleans, Cincinnati, Chicago, Dallas, and Charlotte, you can run on a city block that contains a nice marble-surfaced high-rise building, but as you leave the downtown cluster, a mere one-block later you run past strings of old boarded-up buildings.

6. In contrast, D.C. is a model of success, especially the last two decades of positive economic development. For example, not long ago, the whole area north of Penn. Ave., from 15<sup>th</sup> St. N.W. to the Capitol was a half-abandoned part of town. If in 1970 a high-rise area had sprung up in, say, Foggy Bottom, that whole Penn. Ave. area likely would still be half-abandoned today (to say nothing of No-Ma, H St. N.E., South

Capitol St., etc.). If you can build up, why build elsewhere? Let history be your best evidence of what happens when maximum heights are kept in place.


7. The DCR rationale for greater building height is admittedly driven by an artificial constraint – the federal government’s severe constriction of D.C.’s ability to generate tax revenue. DCR’s core argument is that we must build up so D.C. can increase its tax base. First, it is worth pausing to note that DCR is absolutely correct about this egregious injustice in D.C. D.C. cannot tax the majority of land/property in D.C. (by value) because it is federal or otherwise exempt. The most glaring injustice is the exception made by Congress in the Home Rule Act to the universal rule that income is taxed where it is earned. In D.C., this universal rule of taxation is suspended, such that D.C. cannot tax about two-thirds of the income earned within D.C. because it is “non-resident” income. Instead, mostly Maryland and Virginia are permitted to steal this D.C. tax revenue from D.C. Why? Because they can – because they have representation in Congress and D.C. does not. This is the harsh financial outcome of taxation without representation. Many years ago, I helped put together and bring a federal lawsuit to challenge this Congressionally-imposed tax revenue shift, alas without success on constitutional grounds. But this unfair constraint on D.C.’s tax revenue is not, however, a reason to increase building heights. *The two issues are distinct.* The answer is to (a) keep heights as they are, and (b) remedy the injustice of the “structural imbalance” through other means (repeal the prohibition, statehood, etc.).

8. I am also a founding member and Treasurer of the Alliance to Preserve the Civil War Defenses of Washington, dedicated to helping preserve the ring of forts that stretches around the “Topographic Bowl.” As the EDR notes, “there is an abiding federal interest in protecting the views to and from them,” another compelling reason not to alter the current height limits. There is also an abiding local interest in this regard as well.

9. For these reasons, I agree with the EDR’s ultimate conclusion that changes to the Height Act would have a “significant adverse impact on federal interests,” and local interests as well – both within and outside of the L’Enfant City.

10. I also agree with EDR’s caveat that the City might permit a broader range of uses in building penthouses, “if properly implemented and with certain restrictions” (set-backs and other restrictions specified by the EDR). For example, set-back penthouses might be used as conference room centers with bathrooms and facilities.

Sincerely,



Gary Thompson

--ANC Commissioner 3/4G02 (Chevy Chase)  
--Treasurer, Alliance to Preserve the Civil War  
Defenses of Washington  
--Resident, 2840 Northampton St. N.W.

Testimony  
of  
Roger K. Lewis  
appearing before the  
Subcommittee on Health Care, District of Columbia, Census and the National Archives  
July 19, 2012  
Hearing to Examine Issues Surrounding the District of Columbia 1910 Heights Act

CHAIRMAN MENDELSON  
2013 OCT 25 PM 2:56

My name is Roger K. Lewis, and I thank you for inviting me to testify before this Subcommittee.

I am a practicing architect, urban designer, and professor emeritus of architecture at the University of Maryland. Since 1984, I have written the Washington Post's "Shaping the City" column, and since 2007 I have been a regular guest on WAMU-FM's Kojo Nnamdi radio show. District of Columbia height limits periodically have been a topic of my column and the Kojo Nnamdi show.

I believe some modifications of the 1910 statute, with appropriate zoning changes in carefully chosen areas, are needed and should be considered.

In America, building height limits were based initially on several considerations: (1) recognizing fire-fighting, structural, vertical transportation and other technical constraints; (2) ensuring adequate light, air, ventilation and views desirable for public streets, civic spaces and abutting private properties; (3) respecting historically prevalent building heights in established neighborhoods that pre-existed zoning; and (4) making necessary aesthetic value judgments about urban design and architectural form. Yet inevitably height limits are arbitrary - for example, why 90 feet rather than 85 or 95 feet? In fact, there are no formulas or universal standards for setting exact height limits.

In the District of Columbia since 1910, these considerations have constituted the basis for stipulating and maintaining height limits. Thanks to these historic limits, the nation's capital has remained a uniquely memorable, low- and mid-rise city. From many places in the city, views of America's most iconic, symbolically significant structures - the U.S.

Capitol, the Washington Monument, the Lincoln and Jefferson memorials, the White House - have been preserved because downtown skyscrapers cannot be erected.

Yet there are places in the District of Columbia where height limits established decades ago are today inappropriate and unnecessarily constraining, a reflection of outdated planning and zoning practices from the early and mid-20th century. These practices were characterized most notably by designation of large areas - land use zones - within the city limited to predominantly one use and uniform height limit. Broad-brush, one-size-fits-all planning and zoning failed to take into account, within each land use zone, locational variations in topography, solar orientation, views and vistas, proximity to parks, adjacency to civic open spaces, and infrastructure, especially transit. It did not differentiate between mid-block properties and properties at major intersections.

Today's city planning, urban design and architectural principles and techniques - such as computer-based Geographic Information Systems (GIS) - are far more sophisticated and effective. Broadbrush strategies of the past are obsolete. We now can engage in fine-grain planning, urban design and zoning. We can identify, analyze and designate specific sites in the city where increased building height and density make great sense aesthetically, environmentally, functionally, socially and economically. This "smart growth" approach can enhance the city's urban and architectural qualities while yielding fiscal benefits for the city. Furthermore, enacted as an incentive bonus overlaying existing zoning in appropriate locations, increased building height limits - and density - can engender development of much needed affordable housing.

Where should height limits change? In the downtown l'Enfant Plan area of the District, including traditional residential neighborhoods, height limits should remain substantially unchanged to preserve the center city's dominant character and skyline. But there are specific sites - such as the Southwest and Anacostia River waterfronts - where upward adjustment of height limits would be beneficial without jeopardizing the city's historic profile. Outside the l'Enfant Plan area, many sites could be suitable for higher buildings, especially near Metro stations and major roadways.

The only equitable, professionally responsible method for identifying places to raise height limits, and for determining new height limits, is to create a detailed, city-wide plan, prior to any rezoning, based on a rigorous, comprehensive study. This is essential to avoid piecemeal, property-by-property relaxation of height limits through variances, exceptions and ad hoc rezonings, a process too often influenced by political and financial pressures. Because municipal and federal interests are involved, the building height study and plan should be prepared collaboratively and transparently by the D.C. Office of Planning and the National Capital Planning Commission.

Many Washingtonians are apprehensive when anyone suggests modifying D.C. height limits. They envision Rosslyn-like skyscrapers rising all over town, ruining the capital's historic image. Some believe that raising D.C. height limits anywhere would set precedents invariably opening the proverbial "barn door" to greedy developers in league with corrupt politicians, enabling high-rise buildings throughout the city.

But skeptical citizens need to understand that, through fine-grain urban design, prudent legislation and precisely targeted, well enforced land use regulation, the barn door will not and cannot be thrown open. Therefore, revisiting D.C. height limits requires not only a credible, city-wide planning effort, but also an on-going public education effort to help citizens recognize that legislation adopted over a century ago can be improved.

Members of the National Capital Planning Commission 2013 OCT 22 AM 10:29

I would like to submit my comments to the Height Act studies prepared by the National Capital Planning Commission and the Government of the District of Columbia. I have lived in the District of Columbia since 2004, when this exceptional city drew me to American University for undergraduate studies. Today I have a Masters in Local Economic Development from the London School of Economics and work as a research analyst at the Metropolitan Policy Program at the Brookings Institution. My academic and professional training inform my thinking on this subject, but all views expressed here are my own and not those of the Metropolitan Policy Program or the Brookings Institution.

I feel strongly that the Height Act should be preserved in its current form to protect the interests of the District's residents and the American public today and for generations to come. I also feel strongly that proponents of changes to the Height Act have not yet satisfactorily answered a number of serious questions. I will discuss these first.

To begin, I would encourage the Commission to scrutinize the forecasts used by the District of Columbia to justify changes to the Height Act for a number of reasons, namely:

- **The low growth scenario may be too high to represent a credible conservative lower bound.** An appropriate conservative forecast for population or household growth would have been a natural baseline like the rate of population growth in the United States (0.7 percent annually). Even this might have been too high though, considering that most of the country's projected population growth will take place in other regions, and DC has lower fertility rates than the country on average (40 births per 1,000 women in DC in 2012 compared to 54 per 1,000 in the U.S., according to the ACS). Furthermore, the District should explain why it believes the 30 year forecasts it calculated to guide planning in 2012 should now be accepted as the lower bound. If anything, the District's official projection should count as this study's middle growth scenario.
- **The high growth scenario extrapolates from short-term trends established during an extraordinary period.** The District's population growth over the past five years has been extraordinary—and does not in itself represent a new normal. Economists and policy-makers should be innately skeptical of any "trends" established over the most disruptive few years in modern economic history. The Washington DC metro area barely suffered from the recession, bolstered as it was by the immense countercyclical force of the federal government. Accordingly, it became a relative magnet for in-migration—mostly for footloose young renters entering the labor market and unaffected by the housing crisis nationally—during a period in which, nationally, migration came to a halt. Even today, low interest rates connected to the Federal Reserve's extraordinary and on-going capital market interventions make District real estate a relatively more attractive investment than it would be in normal times.

Meanwhile over the past two years the District has seen stagnating federal employment seize up the local job market. In 2012, private employment in the District of Columbia increased by 1.2 percent (6,300 jobs)—in line with the District's high-growth scenario—but total employment including the federal government grew by only 0.4 percent in 2012, and has declined over 2013

as federal losses have outweighed private gains, according to the Bureau of Labor Statistics. This evidence suggests that the region's economy has not measurably decoupled from the federal government, though an increasingly robust private sector offsets more of the cyclical fluctuations in federal employment than it used to. Whether positive private sector job growth can continue in the region in light of further federal distress remains to be seen.

- **The District's projections fail to account for the cyclical nature of the economy.** The District's study contains no discussion of economic cycles and instead asks the Commission to assume that the present boom can reasonably be expected to continue indefinitely. This would be a dangerous and foolhardy assumption to make. The economy moves in cycles. Neither the District nor the metropolitan area is immune to this hard and fast law of economics. The local economy may be slightly out of step from the national economy given the dominance and countercyclical nature of federal spending. But the investment boom currently underway in the District cannot be assumed to last forever. It strikes me as seriously problematic that the District's projections were not calculated over an economic cycle, and that the possibility of a market correction was not even discussed.

At a minimum, planners should wait and measure the impact that the recent round of development has on real estate prices as new office space and housing comes onto the market. It would be a shame to abandon the Height Act on the eve of an easily anticipated market correction. Such a move would risk changing the very character of the nation's capital forever because decision-makers made the all-too-human mistake of assuming that present trends would last forever, and that markets could only go up.

I would also like to bring attention to some potentially dubious arguments for revising the Height Act:

- **While high housing costs can be indicative of scarcity, they also reflect structural characteristics of the regional economy.** No relationship is more robust in economic geography than that between average educational attainment in a region and its median household income. Washington DC is the country's most educated metropolitan area. It also has the highest median household income. These are facts of its economy—facts which go a long way in explaining the city's and the region's high housing costs. This is not to say that market constraints like the height limits do not distort prices—they likely do—only to say that the District will have high housing costs as long as it remains a magnet for highly educated knowledge workers, and the question the city's planners must answer is how much responsibility the Height Act truly bears. I do not yet know of long-term residents being priced out of the market; it seems like neighborhoods are actually becoming more mixed and infill development is occurring in a way that mends the fabric of the city quite remarkably. If the District has evidence to the contrary, it should show it.
- **Urban economics is clear about the benefits of density; Washington DC already has the requisite density to take advantage of them.** The District of Columbia is one of the densest jurisdictions in the country. The city enjoys a world-class transit system because of it. Any increase in density in the District could over-burden already taxed road and transit infrastructure. What is more, the city is a national and global leader in urban innovations such as Capital Bikeshare, Car2Go, and now Uber—all made viable by the District's density.

The District's density also suffices to catalyze the knowledge spillovers and other urbanization economies that drive economic development and innovation in regions. Most of these dynamics like labor market pooling and company specialization occur at the metropolitan scale. Evidence exists that knowledge spillovers—the natural flow of knowledge and ideas among people and firms within industries and across them which makes everyone in proximity more productive—do attenuate at smaller scales, but this attenuation is related by proximity to clusters of human capital (See Rosenthal and Strange, "The Attenuation of Human Capital Spillovers," 2005). In a dense, decentralized, and highly educated metropolitan area like Washington, knowledge spillovers will blanket the region.

- **Certain arguments in favor of lifting the height restrictions are actually in favor of better zoning.** Many blame the purported "boxiness" of Washington architecture on the Height Act, claiming that the restrictions force developers to maximize the built area within any given parcel, thus leading directly to cubic design. Allowing a few extra floors is unlikely to change the developers' calculus, though—especially since constraints in historical L'Enfant City will always keep office space close to downtown scarce. City planners meanwhile have a number of tools at their disposal to safeguard the city against "boxy" and monotonous development. The city can divide blocks into smaller parcels and zone them for a mix of retail, housing, and offices. Variety absolutely makes a streetscape, but relaxing the Height Act is not necessary to achieve it.

Finally, three elements of the District plan demand further explanation:

- The District claims to want to use changes to the Height Act to expand affordable housing opportunities in the city, but it also states that it only expects high density corridors with high rents to attract the necessary capital to construct at newly permissible heights. This points towards already prosperous Northwest and Upper Northwest, and does not support the District's own argument that lifting the height restrictions will boost affordable housing in the city. Instead, it currently sounds like the District's plan to alleviate price pressures is to divert new investment away from the very neighborhoods in desperate need of it. The District should explain more clearly how it intends to use relaxed height limits to expand affordable housing opportunities and channel new development to neglected areas.
- It strikes me that the high growth scenarios seem to call for more new square footage than minor adjustments to the Height Act could ever possibly provide given the present realities of the city's development patterns. This is especially true once one removes L'Enfant City and the topographical bowl from the equation, which the District plan barely discusses despite explicit instructions from the U.S. House Committee on Oversight and Government Reform. Either the District plans very large and very high development projects throughout the few remaining plots in the city, or it missed an opportunity to submit more realistic and useful accountings of development potential in line with the understood scope of this study.
- Given the city's current state of development, I cannot see how the District would retain the horizontality of the skyline if the height restrictions were lifted or relaxed. The map of developable sites is a patchwork. New builds would tower over old builds in a random manner,

puncturing the skyline and commanding undue attention. London's chaotic skyline works for a financial capital, but even a version with capped heights would not befit Washington DC.

For these reasons I urge the District and the Commission to make no significant or hasty changes to the Height Act.

For the residents of the District of Columbia, more here is at stake than views of the monuments and national landmarks. The Height Act has created a special character and distinctiveness that extends far beyond downtown and that is worth preserving. For residents, it is the National Cathedral, the Basilica at Catholic University, the bell tower at Howard, the clock tower at Georgetown, and the spires at 16<sup>th</sup> and Columbia—each steeped in national and local history—that characterize the city. Vibrant neighborhood life fostered by people-sized streets makes Washington DC home. Washington DC lacks no urban amenities; indeed its residents enjoy one of the largest continuous swathes of livable, walkable, bikeable urbanity in the United States. The Height Act combined with the city's recent population growth and smart planning are stitching the city's urban fabric back together after decades of segregation and disinvestment. Today residents in all four corners of the city enjoy a built environment balanced by greenery and sky.

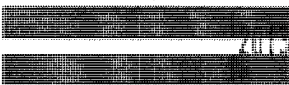
It disappointed me to read the District reject the Height Act as a 19<sup>th</sup> century anachronism. Regardless of its origins, the Height Act has had an immutable impact on the evolution of this city. For over 100 years the Height Act has guided the city's development. It is part of our history. It has shaped the nation's capital. And it is against the backdrop protected by the Height Act that the nation's monuments and the neighborhoods' symbols become something greater than the sum of their parts.

Washington DC is in that elite club of cities with a globally recognizable skyline. The world's great cities each have their own unique personalities—personalities reflected in the built environment. The stately elegance of Washington's skyline matches the heart and soul of the city. The skyline works with the monuments and landmarks to elevate the nation's capital into a majestic symbol of governance. The skyline of Washington DC is one of the nation's most prized public goods. It is one of its residents' most prized public goods as well, and it is the responsibility of government at all levels to defend that priceless public good against monetized private interests.

I thank you for your consideration of this very important subject and for the opportunity to comment.

Sincerely,

Kenan T. Fikri  
2535 13<sup>th</sup> Street, NW #401  
Washington, DC 20009

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| <div> <div>★ ★ ★</div> <div>CHAIRMAN MENDELSON</div> <div>  </div> <div>OCT 26 PM 1:32</div> </div>                                                                                                                 | <div> <div>ADVISORY NEIGHBORHOOD COMMISSION 3C</div> <div>GOVERNMENT OF THE DISTRICT OF COLUMBIA</div> <div>           CATHEDRAL HEIGHTS • CLEVELAND PARK<br/>           MASSACHUSETTS AVENUE HEIGHTS<br/>           MCLEAN GARDENS • WOODLEY PARK         </div> </div> |
| <div> <div>Single Member District Commissioners</div> <div>           01-Lee Brian Reba * 02-Gwendolyn Bole * 03-Jeffrey Kalie<br/>           04-Richard Steacy * 05-Margaret Siegel * 06-Carl Roller<br/>           07- Victor Silveira * 08-Catherine May * 09-Nancy MacWood         </div> </div> | <div> <div>3601 Connecticut Avenue, NW Suite L-06</div> <div>Washington, DC 20008</div> <div>Website <a href="http://www.anc3c.org">http://www.anc3c.org</a></div> <div>Email <a href="mailto:all@anc3c.org">all@anc3c.org</a></div> </div>                              |

## ANC 3C Resolution 2013-034

Regarding DC Recommendations to Change Height of Buildings Act

WHEREAS Congress passed the Height of Buildings Act in 1899 in reaction to the construction of the Cairo residential building's height of 164 feet, which affected other building's light and air, and views to landmarks and monuments; and

WHEREAS Congress, in 1910, amended the law to reassert maximum height of buildings on residential streets to 90 feet and to set the maximum height of buildings on commercial streets to 130 feet, with a small portion of Pennsylvania Avenue allowed to reach 160 feet; and

WHEREAS the District of Columbia Zoning Commission determines building heights within the maximums established by Congress; and

WHEREAS the District of Columbia is noted for its iconic skyline, human scale, open spaces and vistas, and is visited by over 18 million people annually, who contribute more than 50% of the city's sales tax revenues; and

WHEREAS Mayor Gray and the D.C. Office of Planning have recommended to Congress that it raise the height maximum in the L'Enfant City, where many commercial streets are located, to 200 feet, and rescind the maximums applied outside the L'Enfant City, which would include all of the area within ANC 3C; and

WHEREAS the zoning heights allowed within ANC 3C are well below the Height Act maximums and there appears to be no interest in exceeding the Height Act maximums, but strong interest in maintaining a complementary scale between heights on residential streets and heights on adjoining commercial streets:

BE IT RESOLVED that ANC 3C believes the Height of Buildings Act has served the city well and continues to serve our interests;

BE IT RESOLVED that ANC 3C does not believe it is in local or national interests to narrow or eliminate perspectives to our national landmarks and monuments, to remove vistas, or alter the human scale of the District of Columbia;

BE IT RESOLVED that ANC 3C finds no benefit in lifting the height maximums in our residential areas outside the L'Enfant City and further finds the existing range of scale, partly dependent on the Height of Buildings Act, allows for growth while maintaining livable communities;

BE IT THEREFORE RESOLVED that ANC 3C does not support recommendations that would

1. change the height maximums in the L'Enfant City and
2. rescind the application of the Height Act outside the L'Enfant City;

BE IT RESOLVED that the elected commissioners of ANC 3C are authorized to represent the commission on this matter.

**Attested by**

A handwritten signature in dark ink, appearing to read "V. Silveira/ANC3C". The signature is written in a cursive, somewhat stylized font.

**Victor Silveira**

**Chair, on October 21, 2013**

*This resolution was approved by a roll call vote of 6-1, with two abstentions on October 21, 2013 at a regularly scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.*

Testimony of Carol F. Aten  
before the  
Council of the District of Columbia Committee of the Whole  
on the  
District of Columbia Recommendations on the Federal Height of Buildings Act of 1910  
October 28, 2013

My name is Carol Aten. I have lived and worked in Washington, DC for over 40 years and treasure the very special place it is.

Washington, D.C. is not only the nation's capital, it is a beautiful and liveable city. This is in no small part due to the limitations contained in the Federal Height of Buildings Act of 1910 (Height Act). In fact, the result has been quite brilliant—likely way beyond what it's passage over 100 years ago might have anticipated. To change the Height Act in the midst of the city's current prosperity would seem akin to killing the goose that laid the golden egg. Certainly the shape and character of the city resulting from the Height Act has much to do with the city's current success.

I am horrified to think of buildings the height of those in Roslyn, Crystal City, Bethesda, and Tysons Corner appearing in Washington, dwarfing our monuments to democracy and turning our streets into canyons. I am additionally concerned with the zoning revisions now pending that would designate new areas of the L'Enfant City as downtown, tripling the size of the downtown area and then, coupled with changes in the Height Act, allowing taller buildings of up to 200 feet.

In response to Congressman Issa's request for a study, the city and the National Capital Planning Commission mutually agreed to three principles to guide them:

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

By suggesting the possibility of heights of up to 200 feet in the L'Enfant city that is filled with historic districts, buildings, monuments and important open spaces and boulevards, the Office of Planning's (OP) recommendations have ignored these principles.

Their recommendations are more the product of development-oriented planning than a considered evaluation of the costs and benefits. There is no evidence that increasing height will enhance or accelerate economic development. Neither is there any demonstrable correlation between taller buildings and lower rents, witness New York, San Francisco and, closer to home, Roslyn. So why believe that taller buildings will make housing more affordable? For that matter, is there any evidence that middle class or affordable housing families want to live in high-rise buildings? On the other hand, there is plenty of evidence that developers want to build the tallest buildings with the best views and that developers want to build small units for singles and couples to maximize their returns.

Similarly, the concerns about infrastructure and congestion are dismissed by the Office of Planning's report saying that increased revenues can be used to improve the infrastructure and address congestion. But those kinds of improvements are not quickly accomplished and would not be logically funded on a piecemeal basis as new buildings are built. We also know that congestion is already a disincentive for employers to locate or stay located in Washington. Increased height and density are likely to increase congestion despite plans to eliminate any requirements for parking in the "new downtown" which through the city's new zoning rules will become a downtown three times larger. In addition, Metro is at capacity and other infrastructure is not there to support the increased density either. Actions to address infrastructure needs and congestion need to be taken in preparation for increased development; they are not conditions to be "tolerated" over the many years that would be required to accomplish them. Simply put: The recommendations are a "solution" without foundation and a "solution" for a problem that doesn't exist.

Happily, the population of Washington, DC is growing after many years of decline. Nevertheless, even the most optimistic and aggressive projections do not suggest that we will reach previous resident levels for many years to come. The city is enjoying an economic and development boom and has recently had budget surpluses. The current reality undermines the assumption that we need to increase the tax base by adding more stories. Similarly, the limited scope of the undeveloped land analysis undermines the conclusion that we are running out of developable land. Further, DC is not an island nation and should not be looked at in isolation. We are located in a metropolitan area with increasingly dense development taking place around us. This trend is healthy both

for the city and for the region. All growth does not have to happen within DC's boundaries.

Despite OP's attempts to sell its recommendations on economics riddled with faulty assumptions and questionable projections, the decision about whether to allow an increase in the height of DC buildings should be fundamentally a judgment about aesthetics and character. The changes proposed in the Office of Planning's recommendations would radically and unwisely change the character of Washington, DC—a character widely praised by both visitors and residents.

Tourism is a major segment of the city's economy and visitors often comment favorably on the beauty, green spaces, light, and human scale of the city. Washington, DC is a distinctive city in a sea of look-alike big cities. I have visited many other cities around the world and the places I most enjoyed being were the ones with a human scale and a built environment that had ties to its past—Copenhagen, Amsterdam, St. Petersburg, Rome, Prague, Edinburgh, and Washington, DC, to name just a few. These are special places that help define the character of their countries for their citizens and for people from around the world.

With the proposed changes in downtown contained in the zoning revisions and the recommendations in the Office of Planning's Height Act report (both of which should be looked at together), height would not be directed outside the central city. It would allow buildings up to 200 feet in the new downtown that is part of the L'Enfant City. This is likely to mean maximally tall buildings along the Mall, waterfront, and with a view of the Capitol building. Tall new buildings would significantly impact the viewsheds from these places and from the places behind those buildings. This result would be antithetical

to the desire to have significant buildings and memorials stand out on the skyline and to see places like the National Cathedral.

I am strongly opposed to any change in the Height of Buildings Act and believe that the Office of Planning/Mayor's recommendations are irresponsible, an unwarranted gift to developers, and a blatant disregard for the well-being of citizens and neighborhoods and the distinctive character of Washington, DC. In addition, I object to the Mayor directly submitting recommendations to Congressman Issa with no public review and comment, including the DC City Council, or any coordination with their "partner", NCPC, especially since the study was supposed to result in consensus recommendations.

I urge the City Council to pass a resolution opposing any changes to the Federal Height of Buildings Act of 1910.

Thank you.

## SHERIDAN-KALORAMA NEIGHBORHOOD COUNCIL

2136 Leroy Place NW, Washington DC 20008  
202-387-7830

October 28, 2013

SUBJECT: Testimony of John Sukenik on behalf of the Sheridan-Kalorama Neighborhood Council, stating opposition to changes to the 1910 Height of Buildings Act, before the DC Council Committee of the Whole on October 28, 2013.

Mr. Chairman Mendelson,

I have resided on the edges of downtown Washington for 40 years, 32 of which have been spent in Sheridan-Kalorama. As a past president and a current board member of the Sheridan-Kalorama Neighborhood Council (SKNC), I am here today to express SKNC's opposition to changing the 1910 Height of Buildings Act.

The SKNC has existed since the early 1950s, and is dedicated to preserving the residential quality of Sheridan-Kalorama, and, inseparably, the characteristics of the entire city that make it an attractive place to live. Being such a close-in neighborhood, issues such as building height and related density are very important to our residents.

The widespread opposition to changing building heights already expressed so thoroughly today makes it unnecessary to hear from me in detail. I can concisely state the SKNC's position by simply saying that we extend our unqualified support to the position of the Historic Districts Coalition, as set forth a few minutes ago by Mr. Bauer.

Specifically, the SKNC agrees with the Coalition that:

- 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.

Thank you for the opportunity to be heard today,

John Sukenik

Board Member, for the Sheridan-Kalorama Neighborhood Council

Committee of the Whole - October 28, 2103 - Height Study

Council Chair Mendelson and Councilmembers.

I am kindly french. I have lived in DC for 44 years. Thank you for the opportunity to present.

Raising the height limit in the District is a drastic measure that would radically alter quality of life but which cannot provide any assurance whatsoever that we will maintain economic diversity in our population.

If economic diversity is truly the concern, we should be requiring developers - NOW -to set aside portions of any new development for lower-income residents and not allow - buy-outs. The existing provisions in the District code don't protect moderate and/or low income housing.

There is no assurance that most developers won't take advantage of the housing buy-out and result in a NW Washington that is all upper-middle and upper income residents. Adding stories doesn't change the story

Harriett Tregoning herself has said many times that taller buildings will likely not have affordable housing because it is so expensive to build tall, and luxury housing would be the expected outcome.

Thank You, kf

ANC 2D

## Minutes

September 16, 2013, 7:00PM

Our Lady Queen of the Americas

2200 California Street

The Meeting was opened with a moment of silence for the 12 people killed and the many who were wounded this morning at the Washington Navy Yard.

1. Meeting was called to order at 7:04 PM
2. A quorum was established: Present were 2 Commissioners and 33 residents/guests. Fr. Evelio Menjivar, the new Pastor at Our Lady Queen of the Americas was introduced and welcomed.

8.2 Height of Buildings Act. Sally Berk; Following a presentation and brief discussion; Commissioner Lamar moved that; ANC 2D agrees to support The Historic Districts Coalition endorsement to Make No Changes to the Height Act and agrees to be a signatory on future correspondence which state this position. Seconded **Approved**

### COMMISSIONERS:

ANC2D01.....David R. Bender, PhD, Chair/Secretary

[davidanc2d01@aol.com](mailto:davidanc2d01@aol.com)

ANC2D02.....Eric S. Lamar, Vice-Chair/Treasurer

[ericslamar@gmail.com](mailto:ericslamar@gmail.com)

*Advisory Neighborhood Commission 2D meets the third Monday of the month unless otherwise announced. There is an open forum at each meeting for discussion of relevant issues not on the regular agenda. For additional information go to the ANC website at ANC2D.ORG.*

SALLY LICHTENSTEIN BERK

Architectural History & Preservation

2214 Wyoming Avenue, NW

Washington, DC 20008

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TESTIMONY RE: THE REVIEW OF THE FEDERAL HEIGHT OF BUILDINGS ACT  
BEFORE THE DC CITY COUNCIL  
28 October 2013

Chairman Mendelson and Councilmembers,

My name is Sally Berk. I've been a preservation activist in Washington for more than three decades so I'm sure that few of you will be surprised that I'm here in an effort to preserve the Height of Buildings Act. My opposition to a proposal for drastic and irrevocable change is based on years of studying cities; first in architecture school, later in graduate school, and in my travels both in the United States and abroad. What has become quite clear to me is that controlled growth, based on maintaining a sense of place, is what makes a city desirable and what brings in the dollars.

Since the proposal to change the height limit first became public, I've discussed this issue with colleagues across the country. Unanimously, they have responded that they find Washington to be so very appealing because of its form. And they are horrified to learn that that very form is threatened.

Our city's form, which is so valued by visitors as well as residents, is the result of L'Enfant's brilliant plan on the ground and of the 1910 height limit in the air. And just as the plan of two centuries ago remains valid today, so does the height limit, which is neither an arbitrary nor an obsolete concept. It is a brilliant and timeless model, based on the width of our streets and resulting in a light-filled, human-scaled environment. It is also a ratio that results in a graceful and elegant environment. A change in the height would result in an alteration of that proportion that would no longer produce the serene built environment that is the pride of the nation's capital. (This is not to be interpreted to mean that I would find an increase in height acceptable if the streets were widened. I've been to Moscow and seen the tragic loss of history and culture when buildings were sacrificed to create wide avenues.)

I find the DC Office of Planning's argument that we will soon run out of space and that we need to increase our housing stock in order to accommodate our increased population to be a specious one. First, because the DC Office of General Services holds hundreds – perhaps thousands – of vacant housing units in its inventory. The Department of Housing and Community Development, in a 2010 report, claimed that there are 2,900 vacant buildings in the District. While not all are housing, many are. If all vacant city-owned housing units, as well as privately-held ones, were put back on-

line, it would go a long way toward providing housing for our increasing population (which, by the way, is now increasing at a slower rate than anticipated by the DC Office of Planning). Those units that would be put back on-line are far more likely to be affordable housing than the luxury units that would surely result from raising the height limit.

As to the argument that we are running out of developable land, I quote the developer who said in a recent interview "There is plenty of undeveloped FAR." This comes as no surprise to anyone familiar with our city. While it is true that our downtown is nearly built to capacity, and that close-in areas, like the Fourteenth Street Corridor, are now being developed at higher densities, there is still plenty of undeveloped land in other parts of the city. There is no justification for eliminating the height limit in those parts of the city. First, let's fill it in. Development in those areas would bring vitality to neighborhoods that have been experiencing decline for decades. Development in those areas would be Smart Growth.

I ask the Council to pass a resolution that opposes the Office of Planning's and the Mayor's recommendations regarding changes to the Height of Buildings Act. Furthermore, before any change is made to the Height Act, all the citizens of Washington, DC should be allowed to voice their opinions in a city-wide referendum.

Thank you for the opportunity to comment.

Monday, October 28, 2013

Committee of the Whole  
Phil Mendelson, Chairperson

Public Oversight Hearing on  
The District of Columbia's Recommendations  
on the Federal Height of Buildings Act of 1910  
Testimony of Marilyn J. Simon  
Friendship Neighborhood Association

My name is Marilyn Simon, and I am speaking today on behalf of Friendship Neighborhood Association.

The DC Office of Planning's Capacity Analysis, submitted to Congress last month prior to its release to the public, forms the basis for its radical recommendation to remove the Height Act limits outside the L'Enfant City, and dramatically increase those limits within the L'Enfant City. Yet, this analysis is seriously flawed and systematically understates the development capacity available under the current Height Act limits.

Because of the flaws in their analysis, OP has failed to demonstrate that an increase in the heights allowable by the Height Act is necessary in order to accommodate anticipated growth. There are also serious flaws in the growth projections that have been addressed by others here and in the NCPC proceeding.

In addition, OP's recommendations would jeopardize the qualities that make our city special, the qualities that struck me when I first came to Washington, after having lived and worked in New York City, experiencing the difference in the scale and how refreshing it was to work in downtown Washington, with its openness, light and air. We value the ability to see the sky as one walks through downtown, walking along streets where trees can thrive. Our iconic horizontal skyline should not be sacrificed.

#### Major Errors in OP's Capacity Analysis

I will briefly discuss three major flaws in OP's calculation of the development capacity available. A more detailed discussion is available in my written comments.

(1) The analysis did not include many sites with substantial development capacity. In calculating the development possible under various scenarios, OP did not include any land designated for public use, institutional use or federal use in the Comprehensive Plan and did not include any other properties that were developed to at least 30% of the capacity allowed as a matter of right with current zoning.

Examples of the type of development that OP excluded from its capacity analysis include development of large WMATA-owned sites, possible public-private partnerships such as the proposal to place 200 housing units on the campus of a elementary school, or redevelopment of the Franklin School. Also excluded was potential development on the Walter Reed site or redevelopment of the Third Church. Eliminating properties that are developed to at least 30% of the matter of right capacity eliminates many sites that could support profitable matter of right development, or development as a PUD. Excluded

would be many sites with one or two-story buildings along major corridors, where there would be substantial additional capacity if Height Act limits were the only constraint.

(2) In calculating the capacity within the Height Act limits, OP only included land designated in the Comp Plan maps as medium or high density. Yet OP's own calculations show that the areas designated as low and moderate density on the Comp Plan maps would support over 180 million square feet of additional development consistent with the Height Act and the Comprehensive Plan designations.

In table 3, OP claims that with the Height Act limits, there is additional development capacity of 221.8 million square feet. However, this estimate leaves out 180 million square feet of development that would be consistent with the Height Act and the Comprehensive Plan designations. In table 3, the relevant estimate of the theoretical capacity under the Height Act limits should include the low and moderate density areas, so the estimate (excluding the local public use, institutional and federal areas) should be 404.6 million square feet rather than 221.8 million square feet.

(3) In calculating the development capacity available under some of the scenarios, OP reduced each of the estimates by 25%, which they stated was to account for factors that limit the ability to build out to the full zoning or Comp Plan limits. With PUDs and map amendments, it is not unusual to see development far in excess of matter of right limits, and it is unusual to see development substantially below matter-of-right density, especially in those areas characterized as having sufficient market demand to support heights greater than 130 feet.

The graph on page 41 comparing the OP growth estimates with achievable capacity is based on applying this 25% reduction. If OP had not reduced development capacity by 25%, and had not graphed the grossly inflated "high growth" estimate, it would be clear that sufficient capacity is available for many decades to come with under current zoning and under the Comprehensive Plan, and that OP has not demonstrated a need to amend the Height Act.

#### The Capacity Study and the Feasibility Analysis

I would also like to add that while OP has substantially understated the capacity available under each of the scenarios, some of these assumptions such as compliance with the Comprehensive Plan, fall by the wayside when calculating the "economic benefit" to changing the Height Act. In its evaluation of areas that the Comp Plan describes as medium density, across the street from single family homes, OP includes buildings that are up to 250 feet in height, with ground floor retail and up to 918 housing units per acre.

#### Conclusion

Given the flawed analysis in the OP Report and the continuing value of the Height Act provision in shaping our city, with its iconic horizontal skyline, walkable downtown and leafy, walkable neighborhoods, we ask that the Council pass a resolution declaring its opposition to a change in the Height Act.

**DC OFFICE OF PLANNING'S HEIGHT ACT CAPACITY STUDY:  
A SHAKY FOUNDATION FOR OP'S RECOMMENDATION FOR CHANGING THE HEIGHT ACT**  
Comments of Marilyn J. Simon, Friendship Neighborhood Association

The DC Office of Planning's Capacity Analysis, submitted to Congress last month, forms the basis for its radical recommendation to remove the Height Act limits outside the L'Enfant City, and dramatically increase those limits within the L'Enfant City. Yet, this analysis is seriously flawed and systematically understates the development capacity available under the current Height Act limits.

Because of the flaws in their analysis, OP has failed to demonstrate that an increase in the heights allowable by the Height Act is necessary in order to accommodate anticipated growth.

In addition, OP's recommendations would jeopardize the qualities that make our city special, the qualities that struck me when I first came to Washington, after having lived and worked in New York City, experiencing the difference in the scale and how refreshing it was to work in downtown Washington, with its openness, light and air. We value the ability to see the sky as one walks through downtown, walking along streets where trees can thrive, and our iconic horizontal skyline should not be sacrificed.

**MAJOR ERRORS IN OP'S CAPACITY ANALYSIS**

I discuss three major biases in OP's analysis:

- (1) OP treats many sites with substantial development capacity as undevelopable;
- (2) OP fails to include the development capacity of land not designated as medium or high density in the Comprehensive Plan, and
- (3) OP arbitrarily discounts the development capacity it does analyze by 25%.

The OP report assumes, counterfactually, that much of the recent redevelopment and development in the pipeline is impossible.

While OP has consistently understated the development capacity available in each of the scenarios it examined, in its statements comparing capacity with its estimate of demand, OP's comparisons didn't examine the whether the Height Act constrained capacity. OP compared its "high growth" scenario with its estimate of capacity available with current zoning, and with its estimate of the capacity where development is only constrained by the Height Act only for a handful of sites,<sup>1</sup> neither of which can be a basis for concluding that it is necessary to radically change the Height Act, allowing a large increase in the limits in the L'Enfant City, and eliminating Height Act limits outside the L'Enfant City.

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<sup>1</sup> OP concluded on page 42 that "Even if the District were to change zoning across the city to create additional capacity under the Comprehensive Plan, with no changes in the Height Act, to meet high growth demand, this capacity would be exhausted in 20 years." For this comparison, the Height Act was a constraint only in those areas where the Comprehensive Plan had a high density residential or commercial designation, as mapped on page 17 of the OP Report, and which OP had designated as developable in the map on page 35 of the OP Report. In addition, the high growth demand lacks a reasonable foundation, being calculated as a simple extrapolation of estimated growth rates over the past five years

**(1) Eliminating sites with substantial development capacity**

OP applied broad filters to eliminate sites from the analysis, including sites that have substantial development potential in each of the three scenarios: current zoning, zoning flexibility that is consistent with the Comprehensive Plan, and only limited by the constraints of the Height Act.<sup>2</sup> These filters included:

- (1) The elimination of all land designated for public use, including all properties designated as “Local Public Facilities” in the DC Comprehensive Plan;
- (2) The elimination of all land designated as Institutional and Federal in the DC Comprehensive Plan; and
- (3) Properties which were built to greater than 30% of the capacity permitted as a matter of right with current zoning.

By applying the first two filters, OP eliminated from the analysis a large number of sites which have substantial development potential even with existing zoning. If constrained only by the Height Act limits, these sites would have even higher capacity.

For example, the local public facilities filter eliminates DC properties that had been considered for redevelopment with substantial increases in density, such as the proposal to add 200 housing units to one elementary school campus in Ward 3. The local public facilities filter also eliminates large WMATA-owned sites that had been considered for redevelopment, sometimes retaining the current function while adding commercial space and hundreds of housing units. The Franklin School site also is excluded from the analysis.

It appears as though OP eliminated the land designated as Institutional or Federal Facilities on the Comprehensive Plan map simply because some of that land is not currently regulated by floor area ratio limits, so the calculation of the first scenario would have been more complex. This includes a substantial amount of land owned by private schools, hospitals, retirement homes, religious institutions and other institutions which have substantial development opportunity under the current zoning regulations, and even more development opportunity within the limits of the Height Act. For example, potential development on the Walter Reed site is not included in the analysis, and neither is the Third Church located at 16<sup>th</sup> and I Street, NW.

The third filter listed eliminates all properties that are currently built to at least 30% of the current matter-of-right zoning limits. This aggressive filter eliminates many sites with substantial development potential even within the matter-of-right limits of current zoning, and certainly with planned unit developments or even map amendments consistent with the Comprehensive Plan. OP is excluding properties where the density could be tripled with matter of right development, and more than tripled with zoning relief consistent with the Comprehensive Plan. This filter eliminates from OP’s calculation sites with one or two story buildings on major corridors, where there would be substantial additional capacity were the Height Act limits the only constraint.

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<sup>2</sup> In addition to the filters discussed above, OP applied the following filters which further limited the area under consideration, and eliminated some potential development in each scenario: Single Family Zone districts; Historic Landmarks; Recently Developed Properties (time frame not specified in the report); Transportation Rights-of-Way; and certain other properties where the analysis indicated that there was more than 300,000 SF of capacity where OP determined that there might be an error in the data. See Height Master Plan for the District of Columbia, Evaluation and Draft Recommendations, DC Office of Planning, September 20, 2013, transmitted to Congress on September 24, 2013, pages 33-34.

## **(2) Inclusion of only land designated in the Comp Plan maps as medium or high density**

In addition to these filters, much of the OP analysis included only land designated on the Comprehensive Plan maps as medium and high density. Development of the properties designated as medium density in the Comp Plan is not limited by the Height Act limits since those are described as mid-rise (4-7 stories) apartments in residential zones (Comp Plan 225.5), and as generally not exceeding 8 stories in height in mixed use zones (Comp Plan 225.10).

There currently are significant development opportunities on sites with designated as low and moderate density designations in the Comprehensive Plan (with corresponding zone districts for the moderate density designations including R-3 through R-5-B, and C-2-A, C-2-B and C-3-A). These sites can have a floor area ratio up to 4.0, plus an inclusionary zoning bonus if applicable. Even the low-density designation includes land zoned C-2-A, which can have a floor area ratio of up to 3.0 with inclusionary zoning.

OP's analysis of the capacity available under a full build-out consistent with the Height Act does not include land designated as low or moderate density in Comprehensive Plan. According to the OP report, the development capacity under current zoning would increase by 85% if this land was included. According to OP's tables, these areas would support additional matter-of-right development of approximately 117 million square feet. With map amendments or PUDs consistent with the Comprehensive Plan, according to OP's tables, these areas would support additional development of over 180 million square feet. These areas were not included in OP's estimate in Table 3 of the amount of development possible under current federal Height Act limits.

In Table 3, OP claims that, with Height Act limits, there is additional development capacity of 221.8 million square based on a calculation that excludes areas that would support over 180 million square feet while maintaining densities consistent with the Comprehensive Plan.

## **(3) Arbitrary 25% Reduction in the development capacity of sites included in the analysis**

In calculating the capacity under the current (matter of right) zoning limits and the Comprehensive Plan with map amendment limits, OP reduced each of the estimates by 25% to account for factors that limit the ability to build out to the full zoning or Comprehensive Plan envelope. With PUDs and map amendments, it is not unusual to see development far in excess of matter-of-right limits and unusual to see redevelopment substantially below the matter-of-right density, especially in some of the areas characterized as having sufficient market demand to support heights greater than 130 feet. Given the amount of development that reaches or exceeds the current zoning envelope, there is no reasonable justification for the massive reduction in the estimate of developable capacity

### **RELATIONSHIP BETWEEN THE CAPACITY STUDY AND THE FEASIBILITY ANALYSIS**

While the limitations on the sites included in the study as well as the reduction in the estimated capacity by 25% result in a substantial understatement of the development capacity available as a matter of right with current zoning, it is astounding that OP would use the same limitations and reduction in their analysis of development capacity within the Height Act limits.

How can OP justify the assumption that it is not economical to redevelop a site that is developed to a FAR of 1.0 (where with current zoning, the FAR limit is 3.0) when considering the Height Act limits which could expand the development capacity to as much as 8.6, especially when we observe similar sites being redeveloped to much lower densities?

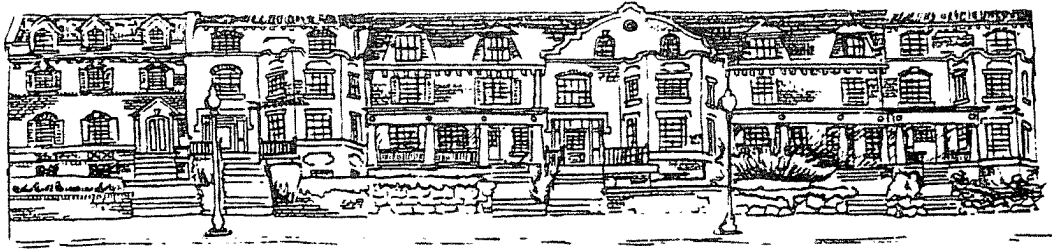
While those sites are eliminated in the determination of the city's development capacity with the Height Act limitations, a substantial portion of the analysis of the economic benefit of lifting the Height Act limitations is demonstrating how it would be profitable to add two stories to some eight story developments. The redevelopment scenarios that OP treats as impossible when it is claiming that there is insufficient room for growth under the Height Act limitations, it assumes will happen universally as it calculates the economic benefits from lifting the Height Act constraints.

While some of these limitations, such as not considering low and moderate density zones, might appear to be based on deference to the Comprehensive Plan, OP's deference to the Comprehensive Plan goes out the window when OP calculates the economic benefit to lifting the Height Act limits. In that case, suddenly they are evaluating buildings that are 250 feet tall, with ground floor retail and 918 housing units per acre in areas that the Comp Plan describes as medium density, across the street from a single family neighborhood.

And redevelopment limitations also fall by the wayside as there is significant emphasis on the feasibility of adding density to existing buildings, even buildings that clearly would not have made it through the filter on having development at least 30% of the density allowed as a matter of right.

### **CONCLUSION**

OP has made recommendations to dramatically change the shape of our city to address a problem that they cannot demonstrate exists. Those recommendations should be flatly rejected.



**Testimony before the DC Council Committee of the Whole  
On the  
District of Columbia's Recommendations on the Federal Height of Buildings Act of 1910  
Monday, October 28, 2013**

Good morning, Mr. Chairman and other Members of the Council. My name is Fay Armstrong. I am President of Historic Mount Pleasant. Our organization was formed in 1985 to further the purposes of historic preservation within our neighborhood and more generally throughout the Nation's Capital.

We have reviewed the recommendations of both the National Capital Planning Commission and the D.C. Office of Planning with respect to the continued effect of the 1910 Height of Buildings Act on federal and local interests. The joint study began last year with the explicit goal of developing consensus recommendations. The conclusions of the two study partners, however, diverge fundamentally. NCPC presents a compelling case for a lasting federal interest in the height of buildings throughout the District of Columbia and suggests only a very modest change to the law related to the occupation of penthouses. We endorse the NCPC analysis and conclusions.

As residents of the District of Columbia, we recognize the interest of the nation as a whole in preservation of the iconic horizontal Washington skyline. The federal government is the steward of that national interest. Over the years, the Height Act has provided a third dimension for the Capital City – complementing the original street grid laid down by L'Enfant and the expansion of that plan as a result of the McMillan Commission in 1906. The limits set by the Height Act, moreover, remain higher than local zoning allows. There is room to expand within the District without raising the limits set by federal law. The Height Act should not become part of the ongoing contest with Congress over home rule.

Other witnesses today have highlighted the weaknesses in the analyses presented by the DC Office of Planning and hence their conclusions. The OP study analyzed the Height Act in a vacuum, without considering, among other things, the costs associated with growth of the kind described (e.g., infrastructure) and or the possibility of other ways in which the federal relationship might change over the next 100 years. These are fundamental flaws that must be recognized by the DC Council. It is unfortunate that the Mayor chose to forward the study to the Congress without first hearing the views of residents or of the Council itself.

When and if changes are made to the Height Act, they must be predicated on much more thorough analysis of all the relevant factors. To ensure that ongoing federal and local interests are indeed being served, any such changes should have substantial support from both federal and local stakeholders. OP's recommendations do not. The recommendations, moreover, are

inconsistent with the DC Government's own Comprehensive Plan and seemingly beyond the scope of the study requested last year by the Congress. The Comprehensive Plan (at p. 10-3) calls for "respecting the historic physical form of the city." The Congressional letter of request urged consideration of "strategic changes to the Height Act outside the L'Enfant City (emphasis added)." What OP has proposed instead are fundamental and far-reaching changes that would usher in an era of great uncertainty about the direction of development in the city.

We call upon the members of the DC Council to reject the recommendations of the Office of Planning to amend the Height Act by increasing height limits within the L'Enfant City and eliminating all areas outside the L'Enfant City from its coverage. The Height of Buildings Act was good law in 1910 and remains so today.

**Testimony before the D.C. City Council**  
**Dorn C. McGrath, Jr., FAICP**  
**Delivered on October 30, 2013**

Once again, we are more or less involved in the argument on the Building Height Act and its effects on the City. This time, however, we are to be influenced by a congressman from California, Darrell Issa (R), from a district with no building height act on the fringes of Los Angeles, which doesn't care as long as the earth holds still. Congressman Issa sees this as a way to avoid more serious debate on such issues as the Continuing Resolution, or in Congress-ese, the CR. This time he is supported by the erstwhile congressperson habitually representing the District, Congresswoman Eleanor Holmes Norton.

There is a movement to have the architects, speaking through the AIA, stake a position in this debate. They won't, because more and more buildings – regardless of their architectural merit – means more work for architects, and heaven forbid that the AIA would speak about anything else. Moreover, the architects, alluding to their role in “shaping the city” have already spoken through the Washington Post and Roger Lewis, whose column, *Shaping the City*, appeared in a Saturday edition of the Real Estate section. Lewis, a good cartoonist, is clearly in favor of eliminating the Building Height Act, at least for certain parts of the City, beyond the so-called “topographic bowl.”

At a hearing staged on July 19, 2012, a carefully-chosen panel presented its ideas about the suggested elimination or modification of the Building Height Act. The panel was carefully chosen to include four advocates of Congressman Issa's position, and one opponent thereof. One of those chosen advocates was an emissary of the Mayor (now under investigation). The opponent selected was Committee of 100's former chairman, Laura Richards. Richards presented an eloquent set of reasons why the Building Height Act is important to the City and its identity, but the panel was clearly intent upon changing this.

Do we really believe that constructing high-rise buildings at all metro stops will attract low-income housing? Certainly not. Do we really believe that extending the Metro Silver Line to Loudoun County will result in more low-income housing? Certainly not. Do we really believe that the painful slog up four escalators and 2,000 more horizontal feet, often open to the weather, to the one-way temporary stop on the trolley line from “nowhere to nowhere else” will bring relief to the clubs, bars and businesses of H Street, NE? Obviously, we don't, and several businesses in this woeful corridor have already gone the way of failure for lack of customers.

Do we really believe that our esteemed City Council, despite its new leadership, will suddenly exercise restraint when it comes to the prospect of new revenue from new buildings erected, Rosslyn-style, at various metro stops around the city? Certainly not – even after they have filled the seats of the three of twelve members who have been convicted by courts of law.

In his book, Skylines of the World, Yesterday and Today, M. Hill Goodspeed writes, (Pg. 196-7) “[Washington] is a city like no other in the world. Its skyline is not marked by modern symbols of capitalism, but rather by monuments to the people and events that are pillars of American democracy, the very shapers of the national identity of the United States.”

Washington, DC, can chose to become the city of empty buildings seeking to be neighborhood foci at metro stations, or it can remain an attractive, controlled open space bringing in millions of tourists each year to enjoy. Washington is, after all, the Nation's Capital even today, and people tend to like it as it is, with its unblocked views, ample avenues, and lower buildings.

Recently, an almost hysterical letter signed by the Mayor differs with the more thoughtful approach of the National Capital Planning Commission. The letter reflects a "Just Do It" approach taken by the DDoT, which responds only to the Mayor. So much for the concept of "citizen participation," which is fundamental to our concept of democracy.

The so-called "Streetcar system" is not on the agenda of the Regional Transportation Planning Board, nor is the Building Height Act; thus, people are thoroughly confused. Does anyone really think that raising the Building Height act will raise the ridership on the failing Metro system? No, not even the lemmings. Will adjusting the Height of Buildings Act help the Congress to govern the country better? Certainly not.

Does anyone really believe that the featureless expansion by 20-200 feet by the modification of the Building Height Act, will attract any significant number of low- and moderate- income people to fill the so-called empty spaces above existing buildings? Certainly not.

The representation of the 20-200 ft. additions to the Height of Buildings Act is also flawed. Note that the featureless buildings shown are all as seen from street level, but that several of the aerial views shown are from several hundred feet above the same sites shown. Most of us do not walk several hundred feet above the city, but apparently some of the City's planners do. This is called "trick photography", and I'm glad to see that the NCPC has not fallen for it.

Does anyone believe that the levels of noise, traffic congestion and detours will be decreased by an increase in the Building Height Act? Certainly not. Does anyone believe that the 12,000 daily drivers alluded to by the Office of Planning (which reports only to the Deputy Mayor or Mayor himself) really want to live in the District? Certainly not. The City has undertaken the route of mendacity, or it would not lay claim to the fact that the Spingarn High School site is not a part of the so-called "system" that it intends to build connecting the neighborhoods of Anacostia with Union Station. Nor would the City ignore the Burnham Place reality of an at-grade street car "system".

Even Donald Trump knows that there is much to be lost by building – which he could – another skyscraper on the site of the Old Post Office, because he believes that there is dignity in the Building Height Act. There IS dignity in a city that does not try to be "like" Dubai or New York.

Does anyone believe that an increase in the Building Height will produce more congestion in the streets? Yes, most do.

Leave the congestion to the suburbs – let Arlington be Arlington, let Tyson's Corner be Tyson's Corner, let Bethesda be Bethesda, let Silver Spring be Silver Spring, let National Harbor be National Harbor. Each of these sub-areas of our metropolis has its own planning jurisdiction.

But leave the Building Height Act alone.

Thank you for this opportunity to present my views.



**Testimony of the  
DC PRESERVATION LEAGUE  
before the  
District of Columbia Council  
Committee of the Whole**

**October 28, 2013**

**On the  
Height Study Report - Draft**

Good afternoon, Mr. Chairman and Commission members. My name is Rebecca Miller and I am the Executive Director of the DC Preservation League. I am here to testify today about one of the country's most significant and precious historic resources – the City of Washington and the effects that proposed changes to the 1910 Height of Buildings Act would have on this nationally significant place.

The DC Preservation League was formed to preserve and protect historic resources, understanding their value both as important pieces of our past as well significant contributors to a rich and vibrant future. Although our work often focuses on individual buildings or sites, these are generally part of a broader urban fabric that may itself merit special attention and preservation. Washington – known the world over for its wide streets, open spaces and horizontal skyline – presents such a case. The Height of Buildings Act has been a major factor in development of the built environment of the District of Columbia. Any changes to that law can be expected to have a significant impact on the character of the city as a whole and thus deserve the most careful analysis and consideration.

DCPL has attended public meetings to discuss the Draft Height Act Study and has reviewed its accompanying analyses. We are concerned that the short time allotted for the study has prevented a comprehensive analysis of the impact of the Height Act in relation to other important factors affecting federal interests and the economic health of the District of Columbia. While we generally agree with the analysis in the NCPD staff report and can support its recommendation that other uses be considered for penthouses, as long as the existing size and setback restrictions are maintained, we take strong issue with the methodology and recommendations of the DC Office of Planning. The OP study is results-oriented. It assumes what it needs to prove – that there are clear economic, fiscal and social benefits to be found in raising the height limits – and then selects disputable data to make its case where it offers any data at all. Its objective is to undermine the Height Act and increase local control over future development throughout the District of Columbia. Its recommendations diverge sharply from those of NCPD, when consensus recommendations were specifically requested by Congress. We urge that the OP recommendations be rejected for the following reasons:



There are numerous analytical gaps in the OP study, indicating the need for much more serious analysis of economic trends in the District and an ongoing discussion with Congress about the nature of federal assistance and appropriate adjustments that might be made depending on future growth and other developments. The Height Act is by no means the only or even the most important aspect of the relationship between the local and the federal governments. However, it has been analyzed by itself, in a vacuum, assuming that all other aspects of the local-federal relationship are immutable. That is not the way to achieve an optimal lasting result for the District of Columbia.

On population growth, OP presents as authoritative projections it has developed with the Metropolitan Council of Governments for use in regional transportation planning (p. 29). However, such estimates differ markedly from figures released by the District government's own Chief Financial Officer, whose revenue certification letter of June 24, 2013, shows that the rate of population growth peaked in 2011. Different estimates from within the DC Government and any other available estimates need to be reconciled before they are used to project the need for housing or other kinds of construction in the city.

The current state of public infrastructure in the District is precarious. Utilities are pressed to the limit, as are transportation networks. The costs of expanding and upgrading these public services are an essential part of an analysis of current growth needs. They cannot be dismissed as they are here (p. 14) as simply an important related issue that could not be addressed in the time available for the present study.

One of the benefits of raising the height limit in OP's view is that it will provide additional tax revenue with which more affordable housing can be built, thus protecting middle and lower income families from being displaced by gentrification. However, no connection is actually demonstrated between the increased height limits proposed and the desired increase in affordable housing, except to refer to the possibility of inclusionary zoning. The study places off-limits most of the available land in the District, indeed most of the residential areas, focusing primarily on the downtown area and transportation corridors. (See map p. 16.) The additional housing that is likely to be developed in these areas would be for upper income individuals. Would inclusionary zoning be effective in those areas? How and where would any of the additional tax revenue be transferred to other neighborhoods?

Finally, everyone agrees that, because of more restrictive zoning requirements, the Height Act is not the primary constraint on building heights in the District. There is still room to grow within the limitations set by the Height Act more than 100 years ago. Moreover, the District is nearing the end of a several-year process to update the zoning code, which is likely to alter development opportunities in parts of the city. We see no urgency in making any fundamental changes to the Height Act under these circumstances.



DCPL recognizes the complexity of managing development in a modern urban context and the unique challenges facing Washington. Historic preservation does not require that the built environment of Washington be set in amber. However, the changes being proposed by the DC Office of Planning to the 1910 Height of Buildings Act would seriously damage and could gradually destroy the historic legacy of our Nation's Capital as a city with a unique, instantly recognizable horizontal skyline and human scale. The OP recommendations are based on questionable and incomplete data and should be rejected.

Thank you for considering the views of the DC Preservation League on this very important matter.



**TESTIMONY OF DENIS JAMES, PRESIDENT, KALORAMA CITIZENS  
ASSOCIATION FOR THE DC COUNCIL COMMITTEE OF THE WHOLE HEARING  
ON THE FEDERAL HEIGHT OF BUILDINGS ACT, OCTOBER 28, 2013**

Good morning Chairman Mendelson,

I have been a homeowner in Adams Morgan since 1971. As a very young adult, I was drawn to the architecture, human scale and wonderful skyline of Washington, DC. From my roof, I can see fireworks on the 4<sup>th</sup> of July, the Washington Monument, the US Capitol, RFK Stadium, and many of the wonderful old buildings that residents of this city have fought long and hard to protect through Historic District Preservation or Landmarking. During my time as president of KCA, we petitioned successfully for the creation of the Washington Heights Historic District in central Adams Morgan.

All this would be put at risk if the incredibly irresponsible notions of Director Tregoning and the hopelessly conflicted DC Office of Planning are allowed to proceed.

I have watched as the DC Historic Preservation Office and Historic Preservation Review Board have proved incapable of providing good stewardship for our Historic District and Landmarks. The projects they approve for row-house alterations are destabilizing for the neighborhoods which contain them. For instance, approving 9 condos where there was once a single family row-house inevitably leads to more similar projects being approved, and before you know it, the sense of scale, architectural integrity and the basic fabric of the neighborhood which caused us to seek preservation in the first place is lost.

This would only be hurried and intensified if taller heights are allowed. Whole row-house blocks could be lost through Planned Unit Developments, because the potential value of the land would make that attractive to developers. We would be left with a series of row-house facades fronting massive developments like Red Lion Row.

Apart from the "gentrification" that long-term Washingtonians are so sadly familiar with, this new destabilization would lead to another type of wholesale removal as close-in neighborhoods would be put under tremendous economic pressure. DC would become not a place where we could age in place, but just a place where neighborhood feeling is lost and an endless series of soulless condos would be built where vital neighborhoods once existed.

That the Office of Planning is pushing this idea now, at precisely the same time that its un-vetted, last minute alterations to the Zoning Regulations Re-write are before the Zoning Commission is an affront to the countless hours of citizen involvement in this effort. Changes to the Height of Buildings act as proposed by OP would throw the whole re-write out the window.

It's time for a change in leadership at the Office of Planning.

Denis James  
Adams Morgan

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Denis James □ President  
Bob Ellsworth □ Vice President  
Eric Clifton □ Secretary  
Christine Saum □ Treasurer

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Founded 1919  
  
P.O. Box 21311  
Kalorama Station  
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, and

Whereas, OP has not come close to proving their case for increased heights in DC.

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.

Post Office Box 6730  
Washington, D.C. 20020 -0430  
Kweku Toure, President

October 28, 2013

Committee of the Whole  
D.C. City Council  
John Wilson Building  
Washington DC 20004

Re: Opposition to Modifying the Height of Buildings Act

Dear Chairman Mendelson and Members of the Committee of the Whole:

The Penn-Branch Citizens/Civic Association objects in the strongest possible terms to the proposals by the D.C. Office of Planning (1) to allow building heights up to 200 feet within the L'Enfant City and (2) to remove *all* statutory building heights outside the L'Enfant City. As the Committee knows, the L'Enfant city consists generally of the area south of Florida Avenue to the Anacostia River. Neighborhoods east of the River are not part of the L'Enfant City. This means that most of Southeast and Northeast DC will be left completely unprotected by OP's proposal. The OP plan compromises our cherished views. These include the Point at St. Elizabeth's and the spectacular view of the Washington skyline from the Panorama Room at Our Lady of Perpetual Help Church. In addition, there is a strong sense of civic ownership in the views from the Fort Circle Parks (Civil War defenses) that ring the city. Finally, we risk losing the views many of us enjoy from our own backyards.

Raising the height limit under OP's plan will have additional negative effects. It will:

- Displace the poorest residents and put real estate tax pressure on owners;
- Create pressure for eminent domain and upzoning;
- Make it harder to designate new historic districts and exert greater economic pressures on existing districts, especially the Anacostia Historic District.

We have no reason to anticipate any spin-off economic benefits from OP's proposal – double-digit employment persists east of the River, despite waves of development booms.

OP's invidious plan is a slap in the face to Penn-Branch and other neighborhoods outside the central city. While OP wants to raise heights throughout the city, it would continue to *manage* heights within the L'Enfant City: there would still be a fixed relationship between maximum buildings heights and street widths and there would be an absolute cap on heights. Outside the L'Enfant City there would be no maximum height and no relationship of heights to street width. OP would usher in an era of free-for-all, anything goes development. Changing the Height Act to create a two-tiered city – a height-managed federal Washington surrounded by a local DC – will destroy irretrievably the existing physical unity between the two and harm the daily quality of life for local residents. It will make a mockery of the executive branch's "One City" plan. The city will be more divided than ever.

The National Capital Planning Commission eloquently describes on its website "How Washington's Low Skyline Contributes to the City's Character." The height limit has symbolic value, has allowed the city to develop at a livable scale, and has fostered a sustainable environment.<sup>1</sup> OP's plan denigrates these values, especially for those of us living in neighborhoods like Penn-Branch, where no statutory limits will apply.

OP proposes to establish heights through the Comprehensive Plan and zoning. However, long experience has shown that OP interprets the Comp Plan like the Bible, i.e., any way it wants, and it applies the zoning code with equal flexibility. OP's sole guiding principle, zealously pursued, is build high, tight and dense.

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<sup>1</sup> NCPC describes the Height Act's role in the city's character thusly:

"Symbolism. Great cities around the world have recognizable skylines. Washington's horizontal skyline is part of its unique character. It provides a backdrop for public buildings of national significance like the U.S. Capitol and the Washington Monument. Its openness — viewed from afar and at street level — has come to embody shared values of equality and freedom.

"Scale. Washington's broad streets and mid-sized buildings create an airy, light-filled environment. Its human scale invites people into public spaces and preserves views of historic buildings. In combination with the L'Enfant Plan, Washington's scale has made it one of the most walkable cities in the United States.

"Sustainability. "Zero-impact" developments and cities are under construction around the world. Planners are finding that smaller scales are desirable for creating communities that require less fuel and release much less pollution into the air and water. Indeed, Washington is cited as an example of livable urban density that that supports public transit and creates active street life."

<http://www.ncpc.gov/buildingheights> (last visited June 21, 2013).

When OP trotted out its proposal at a series of hastily called meetings held in the middle of the summer, it was met with gasps of disbelief and dismay. People didn't like it, they showed up and said so, and were roundly ignored.

So here we are, pleading with the Committee of the Whole to repudiate this proposal and make clear that it undermines the heritage of our built environment and does not reflect the desires and will of the vast majority of District of Columbia residents. Thank you for this opportunity to comment on this pressing civic issue.

Respectfully submitted,

/s/

Penn-Branch Citizens/Civic Association  
Laura M. Richards, Legislative Affairs Committee



# **NAYLOR DUPONT**

## **Advisory Neighborhood Commission 7B**



District of Columbia Government  
3200 S Street, S.E.,  
Washington, DC. 20020  
email: [anc7b@earthlink.net](mailto:anc7b@earthlink.net)  
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### **Testimony Before the Committee of the Whole of the Council of the District of Columbia on the Federal Height of Buildings Act**

Good afternoon, Chairman Mendelson and members of the Committee of the Whole. I am Robert Richards, Chair of Advisory Neighborhood Commission 7B, appearing in opposition to the Office of Planning's proposed modifications to the Height of Buildings Act.<sup>1</sup>

#### **The Height Act Proposal is at Odds with the Zoning Regulation Revision**

The ANC is at a loss to understand this radical restructuring of our city. First, the Office of Planning has spent the last five years on a major rewrite of the Zoning Code and has sent a 1000-page draft to the Zoning Commission. That new draft Zoning Code, which we are struggling to understand and make sense of, is based on and shaped by the existing Height Act. At the very outset of the zoning revision process, OP said it would seek no changes to the Height Act. OP now, without warning, proposes to do away with all existing height limits outside the old L'Enfant City and replace them with --- what? OP will have to set new height standards in a new Comprehensive Plan, which in turn will lead to more rezoning. This is an endless, disruptive cycle that accomplishes nothing except encouraging speculation and accelerating displacement. Moreover, OP ignores or reinterprets the Comp Plan whenever it feels like it.

#### **DC Doesn't Need the Height to Accommodate Development**

OP contends that the District needs more height to accommodate more development. There is no basis for this argument. As OP and the Deputy Mayor for Economic Development constantly point out, the city is growing by leaps and bounds, whether measured by population increases, per capita income, or cranes in the air. There is more than enough development capacity within existing height limits to accommodate the most aggressive growth target (250,000 new residents over the 2000 low point of 572,000 residents).<sup>2</sup>

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<sup>1</sup> This matter was discussed at the ANC's regularly scheduled meetings held on the third Thursdays of September and October, at which a quorum was present. On both occasions, the ANC voted unanimously to urge retention of the Height Act, with full support of those present.

<sup>2</sup> The District population shifts since 1950 are as follows:

|      |         |        |
|------|---------|--------|
| 1950 | 802,178 | +21.0% |
| 1960 | 763,956 | -4.8%  |
| 1970 | 756,510 | -1.0%  |

Back in 2004, the city's goal was to add 100,000 new residents.<sup>3</sup> To accommodate this growth, the District identified 10 large tracts for residential development, including Saint Elizabeth's Hospital, DC Village and Poplar Point, among others. These ten sites – which remain unbuilt but are in the pipeline – are projected to contain 15,000 units accommodating 30,000 to 40,000 residents.<sup>4</sup> In addition to these large sites, the District identified 30,000 vacant, abandoned or underutilized sites that it estimated could house 60,000 to 80,000 residents.<sup>5</sup>

By 2012, the District had gained 60,000 new residents, who were accommodated (1) within the existing height limit and (2) without development of most of the new large residential sites. It also should be noted that the city's zoning regulations set heights below the Height Act maximum. The city has ample room for growth within the existing statute. The National Capital Planning Commission made an explicit finding that OP did produce a solid economic analysis that demonstrates the economic need for more height. In our view,

NCPC has offered a far more measured proposal to allow non-residential human occupancy on rooftop penthouse floors. That should satisfy Height Act critics who want to exploit the use of rooftops as recreational spaces and/or to minimize the visual impact of mechanical equipment. Retention of the Height Act has been urged by a number of distinguished zoning, planning and preservation experts. Please give due consideration to their counsel.

More than anything else, we ask that you please listen to District residents and taxpayers. We don't want this. We don't need this. We resent OP's unceasing assault on our built environment and the values it embodies. We ask you to reject the OP proposal and keep the Height Act.

Thank you for your consideration of our view.

Respectfully submitted,

ANC 7B

/s/Robert T. Richards, Chairman

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|      |         |         |
|------|---------|---------|
| 1980 | 638,333 | - 15.6% |
| 1990 | 606,900 | - 4.9%  |
| 2000 | 572,059 | - 5.7%  |
| 2010 | 601,712 | +5.1%   |
| 2012 | 632,323 | +5.1%   |

The 2012 statistic is from <http://quickfacts.census.gov/qfd/states/11000.html> (last visited Oct. 27, 2013). The other statistics are in "Demographics in Washington, DC, [http://en.wikipedia.org/wiki/Demographics\\_of\\_Washington, DC](http://en.wikipedia.org/wiki/Demographics_of_Washington,_DC) (last visited Oct. 27, 2013).

<sup>3</sup> See, e.g., A Vision for Growing an Inclusive City: A Framework for the Washington, DC Comprehensive Plan Update at 28 (July 2004) ("Adding 100,000 residents – a long-range target set by Mayor Williams – will help restore many of our once-vibrant neighborhoods").

<sup>4</sup> Id. at 29, 31

<sup>5</sup> Id. at 29.

# **DC Federation of Civic Associations**

*Established 1921*

*<http://dcfca.org/>*

## **Testimony Submitted to the Committee of the Whole, D.C. City Council on the Federal Height of Buildings Act**

October 28, 2013

Chairman Mendelson and Members of the Committee:

The Federation, established in 1921, represents 41 organizations throughout the city. The Federation registers its opposition to the D.C. Office of Planning's suggestions for changing the Height of Buildings Act, which has shaped the city we love for the past century.

The Federation regards this proposal as a betrayal of all the citizens of the District of Columbia, and especially those who live outside the original L'Enfant City (the area bounded roughly by the Anacostia and Potomac rivers on the south, Florida Avenue on the north and east, and Rock Creek Park on the west). OP would remove all existing height limits outside the L'Enfant City and install itself as the driving force behind Height Act policy, through its dominant role in the Comprehensive Plan and zoning processes. The Federation does not regard restricting the Height Act to the L'Enfant City as a Home Rule issue. The existing height limits are part and parcel of the Home Rule Act and we embrace them. The Office of Planning's proposal does not bring about more home rule. What it does is treat residents who live outside the L'Enfant City as second class citizens, by taking away something of value.

Residents living inside the L'Enfant City are almost as badly affected, because the Office of Planning wants to increase buildings heights relative to street widths. In addition, the lower maximum limit on residential street heights would be removed. Maximum building heights under OP's plans will top out at 200 feet in the L'Enfant City and can go to any height in the outlying neighborhoods. This proposal is a recipe for disruption, displacement and higher taxes.

There is no explanation as to how this proposal fits with the zoning rewrite that OP has been conducting for the last five years. Those rules reshape the city in a major way. How are we to absorb and make meaningful comments on zoning rules that could be superseded by a massive change in the fundamental bones of the city?

This is completely a bad idea that serves no purpose. There is an abundance of development capacity and an ongoing economic boom. We are at risk of losing a beloved cityscape and magnificent views. The National Capital Planning Commission concluded that OP had not made a case for its position. The Council needs to drive a stake through the heart of this initiative – three times if necessary. Thank for this opportunity to appear on this important issue.

Federation of Civic Associations

/s/ Barbara Morgan, President

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Testimony  
of  
Roger K. Lewis  
before the  
District of Columbia City Council  
Public Hearing Concerning DC Building Height Limits

October 28, 2013

My name is Roger K. Lewis, and I appreciate the opportunity to testify.

I am an architect and planner, a professor emeritus of architecture at the University of Maryland, and a 46-year DC resident. Since 1984 I have authored the Washington Post's "Shaping the City" column. Since 2007 I have been a monthly guest on WAMU's Kojo Nnamdi radio show discussing "Shaping the City" issues, including DC building heights.

Last year Congresswoman Norton invited me to be one of six witnesses testifying at Representative Issa's Oversight Subcommittee July 2012 hearing concerning the 1910 DC Height of Buildings Act. I have submitted that testimony for today's hearing record and hope you will read it. I testified that modifying the 1910 statute deserved consideration, and that appropriate zoning changes in carefully chosen areas should be carefully studied. Also it was I who suggested that the DC Office of Planning (OP) and the National Capital Planning Commission (NCPC) jointly undertake such a study.

The findings and recommendations in OP's draft study report are well reasoned and reasonable from an urban and architectural design perspective. Height limits envisioned by OP will affect in positive ways a relatively small percentage of DC and its neighborhoods, as delineated in the draft report. Most important, such changes will not spoil Washington's historic, iconically horizontal skyline or jeopardize views of the city's historically significant structures and spaces. There will be no skyscrapers.

Further, based on multi-decade growth projections, the OP draft report makes a compelling demographic and economic case for increasing height and density where urbanistically and visually appropriate.

Skeptics argue that any height limit changes will open the proverbial barn door, leading to "height creep." They worry that developers and public officials will make backroom deals to build "skyscrapers" in violation of the city's comprehensive plan and zoning regulations. They foresee high-rise buildings popping up throughout the city, fearing that DC will become Rosslyn. I believe this is an unjustifiably cynical, bogus argument. The OP study makes clear that changing or departing from DC zoning regulations and height limits, now or in the future, necessitates transparent, exhaustively rigorous scrutiny by numerous city and federal oversight agencies, as well as by Congress and DC citizens.

I ask skeptical citizens to understand that, through fine-grain urban design, prudent legislation and precisely targeted, well enforced land use regulation, the proverbial barn door cannot and will not be thrown open. As for where buildings should be higher, the only equitable, professionally responsible method for identifying places to raise height limits, and for determining new height limits, is to create a new, detailed city-wide comprehensive plan prior to any rezoning.

Therefore, I urge the DC City Council to generally support the OP's draft study findings and recommendations as the OP and NCPC complete their studies for submission to Congress.

Again thank you for allowing me to testify.

**Testimony before the Committee of the Whole on  
The District of Columbia's Recommendations on the Federal Height of  
Buildings Act of 1910**

Monday, October 28, 2013

9:30 a.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

Chairman Mendelson, esteemed Council Members, Ladies and Gentlemen:

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 148<sup>th</sup> 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 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.

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 District of Columbia Council pass a Resolution that opposes the position put forth by the Office of Planning and endorsed by the mayor.

“Thank You” for the time today to bring these concerns to your attention and for your support to maintain the Building Height Limits for the District of Columbia.

Respectfully submitted:

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William N. Brown, President

CHAIRMAN PHIL MENDELSON COMMITTEE OF THE WHOLE ANNOUNCES A PUBLIC OVERSIGHT  
HEARING ON THE DISTRICT OF COLUMBIA 'S RECOMMENDATIONS ON THE FEDERAL HEIGHT OF  
BUILDINGS ACT OF 1910

Monday, October 30, 2013  
09:30 am, Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington DC 20004

Good afternoon Mr. Chairman. My name is Benedicte Aubrun and I wanted to thank the Board for the opportunity to testify on a very important topic today.

The reason why the District of Columbia is so different from other American cities, so attractive, so charming, so European, and so welcoming is thanks to the Federal Height of Buildings Act of 1910 that preserved a human scale city.

Nowadays, modern cities in the world with skyscrapers are quickly taking over, leaving human beings with a sensation of being out of scale and not belonging as part of the city.

I would like to understand why there is such a frenetic push for more housing since the population is smaller than the 1960s where there was adequate housing for everyone. Has the city the capacity to support that many people when the public transportation is badly failing the region, the government is restricting parking when even your study shows most of the new jobs will live outside the city. There is no reason to believe that the water and sewer capacity of the city can support the proposed population increases without any serious supporting studies. What about all the structural issues that raising the height will have on existing buildings, so easily dismissed in the study? Not one engineer company has come to make a presentation and explain what will be the consequences of such massive additions!

There is no such thing of low cost high-rise housing, neither environmentally friendly and energy efficient high rise towers, especially for affordable housing. It can't be done cost effectively as even the Chinese, master high-rise builders, have discovered.

Until now I haven't seen any statistics proving that raising the height in DC will help affordable housing development as suggested by the proponents and allow low income people to live in the city. Consider New York City, Dubai, Singapore, Tokyo, Shanghai, Hong Kong.

You are surely aware, even now under current regulations, due to intense housing re-development in DC, people are being displaced and there is a phenomenon of gentrification amplified all over town.

Adding height to certain neighborhoods or « clusters » or highly dense areas, will likely create a building boom in those locations; as is already the case right now, leading to an escalation of land and building costs and more expensive housing. This will push many current residents (renters and owners) out of their neighborhoods and speed up the gentrification we are already experiencing.

Being myself from Paris, I can say that Height is not the issue! Rents and costs of life are! DC doesn't lack space for building houses. Developers are converting Historic District row houses into condos and apartments that only a few people can afford. Also, do you believe that raising the height will stop developers from converting row houses into condos in high density overpopulated areas? We risk a real estate bubble, which like all bubbles will burst. Let's just be realistic!

DC is just not only an American city; it is also a very international city.

We hear from our representatives in DC: increase property values; generate more income to the city through taxes etc... But honestly, don't we have priorities in the city to spend money on other crucial studies than on raising the height when thousands of people are seeing cuts in their social aid? Cuts which can only get worse as we push low and middle income people out of the city.

Committee Chairman Darrell Issa wrote to the Mayor of the District of Columbia to « encourage the exploration of strategic changes to the Height Act in those areas outside the L'Enfant City that support local economic development goals while taking into account the impact on federal interests ».

I am questioning the extent that this DC Height Act report by the Office of Planning has gone overboard? Indeed pushing major substantial changes in the DC Height Act by waiving all Federal interests inside and outside the L'Enfant City is suspicious due to the fact that at the same time, OP is conducting a zoning regulations rewriting that was delivered to the Zoning Commission in September.

The DC Height Act sets the tone for development and as we all know DC zoning is more restrictive than the Height Act. Both of them combined (zoning and Height Act) will cause precedents and alter the DC skyline, put at risk the tourism and hospitality businesses that rely so much on our horizontal skyline and human scaled neighborhoods, affect the monumental core of the city and deprive neighborhoods of the exceptional and treasured views the city provides to so many residents.

Let the high-rise culture be built in the suburbs and leave the unique core of our precious city as it is. Let Rosslyn be Rosslyn, Crystal City be Crystal City with no personality what so ever!

Back in November 2008, The City Council in Paris did vote to raise the height ONLY on new constructions and did not allow additional penthouses on current constructions through its Local Zoning Plan (PLU). From 1977 until 2008, the height for building residential housing was limited to 37m. Nowadays, with the new Paris height, constructions for housing can go up to 50m and 160m to 180m for office towers, called office towers. I can't imagine doing so in the historic district of Paris! This will be equally absurd here...

Indeed, the constructions that fall under that bill will apply to the ring of the city not the heart of Paris. The Arrondissements or Districts that will be affected are District 13eme, 15eme, 17eme and 18eme and mostly for social and affordable housing.

To conclude:

People are attracted to the history of their country, it doesn't matter if it is only a few centuries old or thousands of years, History and culture are the roots, the identity of human beings. It is important to preserve what our ancestors have fought so hard for the future generations.

DC Height Act is not just only about Federal interest. It is about an entire city, both Historic Districts and non Historic Districts. It is about preservation and conservation of a "capital" our ancestors left us to cherish, to care and to remember. It is about History and architecture. And besides the admirable work they did, it is a way to honor their talent.

Don't take away from the residents what they love the most about DC. Have some decency!

As Tommy Wells said at the NCPC meeting back in September: "The whole city functions as a monument not just neighborhoods".

I urge the Board to take into consideration these crucial elements and dismiss the request to change the DC Height Act.

Thank you.

## **Historic Districts Coalition**

**c/o Thomas Bower, 1545 18<sup>th</sup> Street, NW, Washington, DC 20036 [tom1545@verizon.net](mailto:tom1545@verizon.net)**

**Testimony before the DC Council Committee of the Whole**

**Monday, October 28, 2013, 9:30 a.m.**

**Room 412, John A Wilson Building**

**1350 Pennsylvania Avenue, NW**

**Washington, DC 20004**

Good morning Mr. Chairman and Council members. My name is Thomas Bower; I am here today representing the Historic Districts Coalition and as President of the Dupont Circle Conservancy.

The Coalition is an informal alliance of organizations and individuals representing Washington, D.C.'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.

As you know, the height of buildings in the District of Columbia is determined by the 1910 Height of Buildings Act, legislation now under review by the National Capital Planning Commission and the District of Columbia government at the request of Congressman Darrell Issa. The Coalition is hereto voice its strong opposition to the Gray Administration's draft response already sent to Congressman Issa, proposing that building heights in the area of the original 1791 L'Enfant Plan for the City of Washington be increased up to 25%, and that Congress allow the District to determine the maximum height of buildings outside the L'Enfant city. We believe that the 1910 Height of Buildings Act, through its effect on the physically shaping the nation's capital is no less important than the 1791 L'Enfant Plan and the 1901 McMillan Plan, which revitalized L'Enfant's brilliant design. It has given those plans the third dimension, limited height that has created the human scale and iconic horizontal skyline that Washington enjoys today.

The following Coalition affiliates oppose Mayor Gray's recommendation:

- 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
- Sheridan-Kalorama Neighborhood Council, Christopher Chapin, President

- Advisory Neighborhood Commission 2D, David Bender and Eric Lamar
- Historic Takoma, Inc. Lorraine Pearsall, Vice President
- Tenleytown Historical Society, Jane Waldman, President

In addition, the following individuals associated with the Coalition oppose the Mayor's recommendations: Loretta Neumann, Scott Roberts, Leslie Kamrad, Mary Rowse, Evelyn Wrin, and Sally Berk.

The Coalition has been criticized for not being constructive in supporting the Gray Administration's rationale for height increases. We believe, however, that we are protecting the image of the capital of the United States by safeguarding the tenets of the 2006 DC Comprehensive Plan and its 2011 amendments, actions that were approved by the DC Council. We call your attention to the following elements in Chapter 10 of the Plan, the Historic Preservation Element that the DC Council has specifically approved:

**Historic Preservation Goal:** *Preserve and enhance the unique cultural heritage, beauty, and identity of the District of Columbia by respecting the historic physical form of the city (our emphasis) and the enduring value of its historic structures and places, recognizing their importance to the citizens of the District and the nation (our emphasis), and sharing mutual responsibilities for their protection and stewardship.* Page 10-3

***Policy HP-1.1.1: The City's Historic Image***

Recognize the historic image of the national capital as part of the city's birthright. After two centuries of growth, the original vision of the city remains strong and remarkable in an increasingly homogenous global world. Over the years this fundamental character has been protected by local and national laws and policies. It must remain inviolate (our emphasis). Page 10-5

**HP-2 Protecting Historic Properties**

Most of the city spreads far beyond its monumental core and out of the boundaries of the District of Columbia. The city's business center is richly endowed with lively commercial architecture and blessed by its unique mid-rise scale (our emphasis). Page 10-16, second paragraph

**HP-2.1 District Government Stewardship**

The District government should set the standard for historic preservation in the city.... Page 10-17

**HP-2.3 The Historic Plan of Washington**

The Plan of the City of Washington drawn by Pierre L'Enfant in 1791 has served as an enduring symbol and armature for growth of the national capital... Regulated building heights and mandated design review by agencies like the Commission of Fine Arts [have] further supported its enhancement and embellishment. Pages 10-19 (bottom) and 10-20 (top)

***Policy HP-2.3.2: Historic Image of the City***

Protect and enhance the views and vistas, both natural and designed, which are an integral part of Washington's historic image. Preserve the historic skyline formed by the region's natural features and topography and its historically significant buildings and monuments from intrusions such as communications antennas and water towers. Preserve the horizontal character of the national capital through enforcement of the 1910 Height of Buildings Act (our emphasis). Page 10-20 mid-page

**HP-2.5 Historic Landscapes and Open Space**

***Policy HP-2.5.1: The Natural Setting of Washington***

Preserve the historic natural setting of Washington and the views it provides.... Protect the topographic bowl around central Washington and preserve the wooded skyline along its ring of escarpments. Prevent intrusions into the views to and from these escarpments and other major heights throughout the city. (our emphasis) Page 10-24

**HP-3 Capitalizing on Historic Properties**

Whether as an economic opportunity or a set of new challenges, historic preservation needs strong advocates to promote its importance among the host of priorities facing community leaders. Preservation draws strength by forging effective partnerships and ensuring the development of preservation leaders for the future. Page 10-27 (bottom)

The preservation community in the nation's capital is standing up for good stewardship of the bedrock plans and legislation that has made the physical form of this city what is today. The DC Council can do no less.

Respectfully submitted,

Richard Busch and Thomas Bower  
Co-conveners, Historic Districts Coalition



**District of Columbia City Council Committee of the Whole**

**Testimony on the District of Columbia's Recommendations  
on the Federal Height of Buildings Act of 1910**

**By Janet Quigley, President, Capitol Hill Restoration Society**

**October 28, 2013**

Mr. Chairman and members of the Committee of the Whole, thank you for the opportunity to testify today. My name is Janet Quigley and I am testifying on behalf of the Capitol Hill Restoration Society. CHRS has promoted historic preservation and residential quality of life on Capitol Hill for more than 50 years.

I want to thank you for holding today's hearing and to commend the National Capital Planning Commission for their thoughtful and responsible report on the Height Act Master Plan. There is no compelling reason to change the Height of Buildings Act of 1910. In addition to aesthetics and history, CHRS believes there are four good reasons to support the Height Act and no good reasons to change it:

- The Height Act spreads development across the entire city so that every Ward can benefit and grow.
- It provides predictability for our real estate market, one of the healthiest in the country.
- It attracts visitors who come to appreciate our nation's history and who contribute millions in tax revenues.
- It supports the L'Enfant Plan, which is a National Landmark.

The Office of Planning recommendation would create many problems:

- It would concentrate development downtown.
- It would obligate the City for undetermined millions or billions in additional utility and other infrastructure costs.
- It would result in a net drain on city resources.
- The rush of applications to change existing buildings would create a "zoning and historic preservation employment act" for years to come.

I don't know how much money OP spent on the nine consultants who worked on this study, but we can thank one of them, the Partners for Economic Solutions, for clearing up a few misconceptions and exposing the drawbacks of any changes to the height limits. For example the economic consultant found that the law of supply and demand does not apply as might be expected:

- Taller buildings are more expensive to build and they command higher rents.
- Taller residential buildings will do nothing to make housing more affordable.
- Taller office buildings cannot provide the parking that businesses demand.
- Incremental revenue might be in the 1% range.
- Additional infrastructure costs were not factored in, but would be too significant for developers to cover. This means the city would have to pick up the tab, most likely wiping out any modest increases in revenue.
- The estimates are only valid for 5-10 years, but are being used to make decisions for the next 40 years.

Mr. Chairman, I believe that the proposal to change height limits is a solution in search of a problem and would do irrevocable damage to our remarkable home town. Washington, DC is a healthy, thriving city with an enviable real estate market and budget surpluses year over year. Its success is not in spite of the Height Act, but thanks to it. For these reasons I urge Council to reject the Office of Planning's recommendations and instead affirm its support of the Height Act which keeps our City strong.

October 28, 2013

Statement of Nan S. Wells, ANC Commissioner for 3D03, representing the residents of Spring Valley and Kent.

Chairman Mendelson, Councilmember Cheh, and other members of the Council, on behalf of the residents and the 10 elected Commissioners of ANC3D, I want to thank you for this hearing on the proposed modification of the DC Height Act. There are few issues that are as important to the residents as the environment and physical structure of our city. The changes recently proposed by Congressman Darell Issa of California would have a profound and lasting negative impact on this beautiful and historic city. A copy of our resolution strongly opposing the changes is attached.

At public meetings held in our area, the resident response has been very negative. Some of the residents' concerns expressed at these hearings and discussions include the following important issues. The OP's principal analysis was based only on "an economic feasibility analysis that fails to recognize the importance of neighborhood stability and character", which is a principle of the Comprehensive Plan's Land Use standards. In his request for review, Rep. Issa called for a study of neighborhood compatibility and impact.

Other resident issues include that the taxpayers would bear considerable responsibility for needed upgrades to city infrastructure in response to increased population density and buildings. Improvements are already needed for maintenance of roads, sewers, Metro, schools, utilities, police and fire protection, to name a few areas that would be affected. Even the tree canopy of the city could be affected by considerable loss of sun and light to vegetation.

There were also concerns that the development was not targeted to the areas most in need of additional resources and was likely to increase in the areas already highly developed. In response to assurances that nothing in the city could change without citizen approval, some residents noted that developers can fund campaign expenses for candidates and they would be likely to press for maximum changes.

ANC3D's resolution also reflects our concern that the Mayor and the Office of Planning submitted the city's draft recommendations prior to public participation and review of those draft recommendations. The National Capitol Planning Commission, asked to review this issue, has recommended that Congress continue the height restrictions in the interest of preserving views of the national monuments and the District's symbolic skyline.

We in DC, although denied some of the most cherished rights of US citizens, accept our special responsibility to preserve and protect the beauty and history of this city for all of the current and future residents, citizens, and tourists - American and foreign.

**Government of the District of Columbia  
ADVISORY NEIGHBORHOOD COMMISSION 3-D**

P.O. Box 40486  
Palisades Station  
Washington, D.C. 20016

October 27, 2013

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

Harriet Tregoning, Director  
District of Columbia Office of Planning  
1100 4th Street, SW, Suite E650  
Washington, DC 20024

**RE: Resolution of Advisory Neighborhood Commission 3D on the  
DC Recommendations to Change the Height of Buildings Act of 1910**

Dear Mr. Bryant and Ms. Tregonning:

At a publicly noticed meeting on Wednesday, Oct. 2, 2013, held at the American University, School of International Service, Founders Room, Washington, D.C., with a quorum present at all times, Advisory Neighborhood Commission (ANC) 3D voted 7-1-1 to support the attached Resolution of Advisory Neighborhood Commission 3D on the DC Recommendations to Change the Height of Buildings Act of 1910.

ANC3D is concerned about the draft recommendations proposed by the Office of Planning to modify the Height of Buildings Act of 1910 to allow increased heights within the District's boundaries. These proposals would include raising the building maximum height in the L'Enfant City from 160 ft. to 200 ft. and allowing the city to determine building height maximums for areas outside the L'Enfant City through the Comprehensive Plan and zoning processes.

In its draft recommendations, the city's Office of Planning maintains that the current height limits constrain existing capacity to accommodate projected household and job growth along with potential development opportunities over the next three decades. While residents want our city to grow and thrive, these draft proposals to alter long-established height limitations have generated serious concern over the impact such changes would have on existing neighborhoods and our city as a whole.

The ANC3D resolution also reflects the Commission's concern that the submission of draft recommendations by the Office of Planning prior to public participation and review by the National Capital Planning Commission did not provide an adequate opportunity for its own residents to weigh in and provide input on the future of the city where they live and work.

As a result of these concerns, ANC3D supports maintaining the existing Height of Buildings Act of 1910.

Sincerely,

A handwritten signature in black ink that reads "Penny Pagano". The signature is fluid and cursive, with the first name "Penny" and last name "Pagano" clearly distinguishable.

Penny Pagano  
Chair, ANC3D

Enclosure

Cc:

tanya.stern@dc.gov

Deborah.young@ncpc.gov

Marcella.brown@ncpc.gov

jjacobs@dccouncil.us

**RESOLUTION OF ADVISORY NEIGHBORHOOD COMMISSION 3D ON THE  
DISTRICT OF COLUMBIA'S RECOMMENDATIONS TO CHANGE THE HEIGHT OF  
BUILDINGS ACT OF 1910**

WHEREAS, the Height of Buildings Act of 1910 (the Height Act) is a federal law that can be modified only through congressional actions; and

WHEREAS, on October 3, 2012, the chairman of the House Committee on Oversight and Government Reform requested the National Capital Planning Commission (NCPC) and the District of Columbia government work jointly to examine the extent to which the Height Act continues to serve federal and local interests, and how the law could affect the future of the city; and

WHEREAS, the character of Washington's historic L'Enfant City, particularly the monumental core, establishes the city's iconic image as our national's capital; and

WHEREAS, any changes to the Height Act that affect the historic L'Enfant City should be carefully studied to ensure the iconic, horizontal skyline and the visual preeminence of the US Capitol and related national monuments are retained; and

WHEREAS, the Committee also encouraged 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; and

WHEREAS, the DC Office of Planning (OP) led the District's efforts on the study and contracted consultant services for two studies: an Economic Feasibility Analysis and a Height Master Plan Modeling Analysis; and

WHEREAS, on September 24, 2013, without consulting NCPC or District residents, the Mayor submitted the District of Columbia's Height Master Plan evaluation and draft recommendations for changes to the Height Act; and

WHEREAS, Recommendation 2 states, Congress should allow the District of Columbia to determine building height maximums for areas outside of the L'Enfant City through its Comprehensive Plan and zoning processes; and

WHEREAS, amendments to the Comprehensive Plan are reviewed and recommended for DC Council consideration by OP and amendments to the zoning regulations can be forwarded to the Zoning Commission only by the Office of Planning.

NOW THEREFORE BE IT RESOLVED, that ANC 3D opposes Recommendation 2 based on the premise that there is consensus that the federal interest is less and much more attenuated or perhaps non-existent outside of the L'Enfant City; and

BE IT FURTHER RESOLVED, that ANC take no solace in Recommendation 2, which would transfer jurisdiction to the city to determine the appropriate building height limits for those parts of the District outside of the L'Enfant City through its statutorily-required Comprehensive Plan and zoning amendment process; and

BE IT FURTHER RESOLVED, that ANC 3D rejects Recommendation 2 based on the fact OP exercises considerable control over the Comprehensive Plan and zoning amendment processes in the District; and

BE IT FURTHER RESOLVED, that ANC 3D is unable to support the core principles of the Height Master Plan as applied to areas outside the L'Enfant City as they are based on an economic feasibility analysis that fails to recognize the importance of neighborhood stability and character which is a guiding principal of the Comprehensive Plan's Land Use Element; and,

BE IT RFURTHER RESOLVED, that ANC 3D recognizes the extensive public process has not been followed as demonstrated by the transmittal of the District's Height Master Plan prior to public participation and review by the National Capital Planning Commission and public meetings; and

BE IT FURTHER RESOLVED, that ANC 3D strongly support maintaining the Height of Buildings Act of 1910 in its current state, without additions or deletions, as it has protected the monumental core and its surrounding neighborhoods for the past one hundred years.

October 2, 2013

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section   | As Codified (September 19, 2013)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Stated Federal Interest<br>(per NCPC 9/14) | Stated District Interest<br>(per OP 9/20)                              | LW's Comment                                                                                                                              | LW's Recommendation     |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Sec. 1    | <p><b>§ 6-601.01. Nonfireproof dwellings</b></p> <p>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 4 stories, or more than 55 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.</p> <p>HISTORY: June 1, 1910, 36 Stat. 452, ch. 263, § 1; May 20, 1912, 37 Stat. 114, ch. 124.</p>     | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1912. | Repeal in its entirety. |
| Sec. 2    | <p><b>§ 6-601.02. Nonfireproof business buildings</b></p> <p>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 60 feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height.</p> <p>HISTORY: June 1, 1910, 36 Stat. 452, ch. 263, § 2</p>                                                                                                                                                                                                         | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |
| Sec. 3(a) | <p><b>§ 6-601.03. Buildings exceeding 60 feet in height; hotels, apartments, and tenements of 3 or more stories; halls with seating capacity of 300 or more; churches</b></p> <p>(a) All buildings of every kind, class, and description whatsoever, excepting churches only, erected, altered, or raised in any manner after June 1, 1910, as to exceed 60 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.</p> <p>HISTORY: June 1, 1910, 36 Stat. 452, ch. 263, § 3.</p> | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |
| Sec. 3(b) | <p>(b) Hotels, apartment houses, and tenement houses erected, altered or raised in any manner after June 1, 1910, so as to be 3 stories in height or over and buildings converted after June 1, 1910, 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 2,500 square feet that is not completely inclosed by fireproof walls, and all doors through such walls shall be of noncombustible materials.</p> <p>HISTORY: June 1, 1910, 36 Stat. 452, ch. 263, § 3.</p>                                                                                              | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |
| Sec. 3(c) | <p>(c) Every building erected after June 1, 1910, with a hall or altered so as to have a hall with a seating capacity of more than 300 persons when completed, as provided by the building regulations, and every church thereafter erected or building converted after June 1, 1910, 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.</p> <p>HISTORY: June 1, 1910, 36 Stat. 452, ch. 263, § 3.</p>                                                                                                                                              | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section   | As Codified (September 19, 2013)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Stated Federal Interest<br>(per NCPC 9/14) | Stated District Interest<br>(per OP 9/20)                              | LW's Comment                                                                                                                              | LW's Recommendation     |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Sec. 4(a) | <p><b>§ 6-601.04. Additions; towers, spires, and domes; theaters</b></p> <p>(a) Additions to existing combustible or nonfireproof structures after June 1, 1910, erected, altered, or raised to exceed the height limited by §§ 6-601.01 to 6-601.08 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |
| Sec. 4(b) | <p>(b) Towers, spires, or domes, thereafter constructed more than 60 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. Full power and authority is hereby granted to and conferred upon every person, whose application was filed in the Office of the Mayor 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 345 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 §§ 6-601.01 to 6-601.08 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.</p> | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |
| Sec. 4(c) | <p>(c) Every theater erected after June 1, 1910, and every building converted thereafter 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.</p> <p>HISTORY: June 1, 1910, 36 Stat. 453, ch. 263, § 4.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Not discussed                              | Not discussed; DC draft dated 9/20 focuses on provisions of section 5. | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1910. | Repeal in its entirety. |

**Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW's Comments and Recommendations**

| Section          | As Codified (September 19, 2013)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Stated Federal Interest<br>(per NCPC 9/14) | Stated District Interest<br>(per OP 9/20)                                                                                                                                                                                                  | LW's Comment                                                                                                                                                                                                                                                                                                                                    | LW's Recommendation                                                                                                                                                                                                                                                                                                 |
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| <b>Sec. 5(a)</b> | <p><b>§ 6-601.05. Street width to control building height; <b>business streets</b>; residence streets; specified properties; structures above top story of</b></p> <p>(a) 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 <b>the width of the street, avenue, or highway in its front, increased by 20 feet</b>; but where a building or proposed building confronts a public space or reservation formed at the intersection of 2 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 widest street, avenue, or highway. <b>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 Mayor of the District of Columbia.</b></p> | Implicitly, retain with no change          | Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L'Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission. | <p>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission.</p> <p>Zoning regulations parallel final provision.</p> <p>In practice, "natural grade" seems obvious; in is often vague.</p> | <p>Try to gain approval for DC's position.</p> <p>Failing full concurrence by NCPC and Congress, consider allowing such added height but with setback starting at 1910 Act's present limits (other than technical refinements)</p> <p>Make final provision stand on its own wherever Act would otherwise apply.</p> |
| <b>Sec. 5(b)</b> | <p>(b) No buildings shall be erected, altered, or raised in any manner as to exceed the height of 130 feet on a <b>business street or avenue</b> as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Implicitly, retain with no change          | Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L'Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission. | <p>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission</p>                                                                                                                            | <p>Try to gain approval for DC's position.</p> <p>Failing full concurrence by NCPC and Congress, consider allowing such added height but with setback starting at 1910 Act's present limits (other than technical refinements)</p>                                                                                  |
| <b>Sec. 5(c)</b> | <p>(c) <b>On a residence street, avenue, or highway</b> no building shall be erected, altered, or raised in any manner so as to be over 90 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 10 feet, except on the street, avenue, or highway 60 to 65 feet wide, where a height of 60 feet may be allowed; and on a street, avenue, or highway 60 feet wide or less, where a height equal to the width of the street may be allowed; provided, that any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this subsection, and the Mayor of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of 95 feet above the level of the adjacent curb.</p>                                                                                                                                                                                                                              | Implicitly, retain with no change          | Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L'Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission. | <p>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission.</p> <p>Would 20 foot of height added to business street properties now apply to "residence streets"?</p>                      | <p>Try to gain approval for DC's position.</p> <p>Failing full concurrence by NCPC and Congress, consider allowing such added height but with setback starting at 1910 Act's present limits (other than technical refinements)</p>                                                                                  |

**Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW's Comments and Recommendations**

| <b>Section</b>   | <b>As Codified (September 19, 2013)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Stated Federal Interest<br/>(per NCPC 9/14)</b>                                                                       | <b>Stated District Interest<br/>(per OP 9/20)</b>                                                                                                                                                                                                                                                                                                   | <b>LW's Comment</b>                                                                                                                                                                                                                                                                                                      | <b>LW's Recommendation</b>                                                                                                                                                                                                                                                          |
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| <b>Sec. 5(d)</b> | (d) The height of a building on a corner lot will be determined by the width of the <b>wider street</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p><b>Not discussed; NCPC draft dated 9/14 focuses on section 5.</b></p> <p><b>Implicitly, retain with no change</b></p> | <p><b>Not discussed; DC draft dated 9/20 focuses on other provisions of section 5.</b></p> <p><b>Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L'Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission.</b></p> | <p><b>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission.</b></p> <p><b>Does only "width" matter or is it height allowed by width AND type of street?</b></p> | <p><b>Try to gain approval for DC's position.</b></p> <p><b>Failing full concurrence by NCPC and Congress, consider allowing such added height but with setback starting at 1910 Act's present limits (other than technical refinements)</b></p> <p><b>Clarify corner rule.</b></p> |
| <b>Sec. 5(e)</b> | (e) On streets less than 90 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, insofar as it controls the height of buildings under this subchapter, shall be held to be the distance between said building lines.                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p><b>Not discussed; NCPC draft dated 9/14 focuses on section 5.</b></p> <p><b>Implicitly, retain with no change</b></p> | <p><b>Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L'Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission.</b></p>                                                                                            | <p><b>Is this still needed?</b></p>                                                                                                                                                                                                                                                                                      | <p><b>Try to gain approval for DC's position.</b></p> <p><b>Failing full concurrence by NCPC and Congress, consider allowing such added height but with setback starting at 1910 Act's present limits (other than technical refinements)</b></p>                                    |
| <b>Sec. 5(f)</b> | (f) 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 <b>schedule</b> adopted by the Council of the District of Columbia. This restriction shall not apply to any structure that is set back from the 14th Street property line to a line that is continuous with the facade of the adjacent Bureau of Engraving and Printing annex building that is located along 14th Street, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of this subchapter and the Zoning Regulations (11 DCMR). | <p><b>Not discussed; NCPC draft dated 9/14 focuses on section 5.</b></p> <p><b>Implicitly, retain with no change</b></p> | <p><b>Not discussed; DC draft dated 9/20 focuses on other provisions of section 5.</b></p> <p><b>Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L'Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission.</b></p> | <p><b>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission</b></p>                                                                                              | <p><b>Try to gain approval for DC's position.</b></p> <p><b>Failing full concurrence by NCPC, Congress and the President, consider allowing the Schedule of Heights to remain and be subject to amendment as now provided</b></p>                                                   |

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section                                                  | As Codified (September 19, 2013)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Stated Federal Interest<br>(per NCPC 9/14)                                                                                                                                | Stated District Interest<br>(per OP 9/20)                                                                                                                                                                                                                                                                                                           | LW's Comment                                                                                                                                                                                                                                                                                                 | LW's Recommendation                                                                                                                                                                                                                                     |
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| Sec. 5(g)                                                | (g) Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than 80 feet.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Not discussed; NCPC draft dated 9/14 focuses on section 5.</b><br><br><b>Implicitly, retain with no change</b>                                                         | <b>Not discussed; DC draft dated 9/20 focuses on other provisions of section 5.</b><br><br><b>Change to provide that height would be capped at the lesser of 200 feet or 1.25 times the width of the right of way within the L’Enfant area, and more beyond that area if and as allowed by the Comprehensive Plan and Zoning Commission.</b>        | <b>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission</b><br><br><b>Moreover, this could be a location of particular interest to the Congress</b> | <b>Try to gain approval for DC's position.</b><br><br><b>Failing full concurrence by NCPC, Congress and the President, consider allowing the Schedule of Heights to remain and be subject to amendment as now provided</b>                              |
| Sec. 5(h)<br><i>basics</i>                               | (h) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this subchapter when and as the same may be approved by the Mayor of the District of Columbia; provided, however, that such structures when above such limit of height shall be fireproof, and <b>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 penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof;</b><br><br><i>[section5(h) continues immediately below, unbroken in original]</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Recommends allowing occupancy of areas above the top story</b><br><br><b>Recommends allowing up to twenty feet total for these enclosures, with setback 1:1 as now</b> | <b>Not discussed; DC draft dated 9/20 focuses on other provisions of section 5.</b><br><br><b>Potentially would be within height limits DC is proposing</b>                                                                                                                                                                                         | <b>DC's position on penthouse inclusion/exclusion from proposed limits is not clear, though it would seem part of DC's overall thrust.</b><br><br><b>Is setback needed from sides built to an interior lot line?</b>                                                                                         | <b>Allow occupancy of areas above present "top story", amending FAR allowances accordingly.</b><br><br><b>Clarify DC position on penthouse height being in/out of overall cap.</b><br><br><b>Allow all added height at sides on interior lot lines.</b> |
| Sec. 5(h)<br><i>specific exceptions added since 1910</i> | and provided further, that a building be permitted to be erected to a height not to exceed 130 feet on lots 15, 804, and 805, square 322, located on the southeast corner of 12th and E Streets Northwest, said building to conform in height and to be used as an addition to the hotel building located to the east thereof on lot 18, square 322;<br><br>and further provided, that the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of 14th and F Streets Northwest, be permitted to be erected to a height not to exceed 140 feet above the F Street curb<br><br>and provided further, that the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, and the east by 19th Street, and on the north by a property line running east and west 564 feet in length, said building to cover an area not exceeding 14,000 square feet and to be located on said property not less than 40 feet distant from the north property line, not less than 320 feet distant from the Connecticut Avenue property line, not less than 160 feet distant from the 19th Street property line, and not less than 360 feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of 20th Street meets said boundary, be permitted to be erected to a height not to exceed 180 feet above the level of the existing grade at the center of the location above described; and provided further, that the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Planning Commission, both of the District of Columbia<br><br>and further provided, that the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road Northwest in the District of Columbia, approximately opposite 39th Street, plans for which building are on file in the Office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed 110 feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building. | <b>Not discussed.</b><br><br><b>Implicitly, retain with no change</b>                                                                                                     | <b>Not discussed; DC draft dated 9/20 focuses on other provisions of section 5.</b><br><br><b>Potentially would be within height limits DC is proposing.</b><br><br><b>Implicitly, DC would likely not object to a savings clause for previously excepted properties that were actually built to heights above what would otherwise be allowed.</b> | <b>DC's recommendation seems dramatic, but in application it could be very selective as this would only occur where "not inconsistent" with the Comprehensive Plan and text and mapping by the Zoning Commission.</b><br><br><b>These rights could be affected if repeal provides no further protection.</b> | <b>If repealed, the properties relying on this permission should have that right continue until the building is razed.</b>                                                                                                                              |

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section           | As Codified (September 19, 2013)                                                                                                                                                                                                                                                                                                                                                   | Stated Federal Interest<br>(per NCPC 9/14) | Stated District Interest<br>(per OP 9/20) | LW's Comment | LW's Recommendation |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------------|--------------|---------------------|
| Sec. 5<br>HISTORY | HISTORY: June 1, 1910, 36 Stat. 452, ch. 263, § 5; Dec 30, 1910, 36 Stat. 891, ch. 8; June 7, 1924, 43 Stat. 647, ch. 340; Feb. 21, 1925, 43 Stat. 961, ch. 289; May 16, 1926, 44 Stat. 298, ch. 150; Apr. 29, 1930, 46 Stat. 258, ch. 220; Mar. 24, 1945, 59 Stat. 38, ch. 37; Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-281, § 1; Apr. 20, 1999, D.C. Law 12-234, § 2, 46 DCR 643 |                                            |                                           |              |                     |

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section | As Codified (September 19, 2013)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Stated Federal Interest<br>(per NCPC 9/14)                | Stated District Interest<br>(per OP 9/20)                                    | LW's Comment                                                                                                                                                                                                                                                                                                                                                                   | LW's Recommendation                                             |
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| Sec. 6  | <p><b>§ 6-601.06. Frame dwellings</b></p> <p>No wooden or frame building erected, altered, or converted after June 1, 1910, for use as a human habitation shall exceed 3 stories or exceed 40 feet in height to the roof.</p> <p>HISTORY: June 1, 1910, 36 Stat. 454, ch. 263, § 6</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Not discussed; NCPC draft dated 9/14 focuses on section 5 | Change to provide that the Act would only apply in central core.             | Provision is no longer needed as ample life safety codes are in effect thru building codes that have been adopted and applied since 1912.                                                                                                                                                                                                                                      | Repeal in its entirety.                                         |
| Sec. 7  | <p><b>§ 6-601.07. Measurement of building height; parapet walls</b></p> <p>For the purposes of this subchapter the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. <b>No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding 4 feet will be permitted above the limit of height of building permitted under this subchapter.</b></p> <p>HISTORY: June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Not discussed; NCPC draft dated 9/14 focuses on section 5 | Not discussed; DC draft dated 9/20 focuses on section 5.                     | <p>Provisions no longer, if ever, serve useful purposes.</p> <p><b>No need for two measuring points.</b></p> <p><b>Where "zoning" and "Height Act" have same stated height limit, the latter needlessly reduces height by that of any parapet (or balustrade) for most taller buildings.</b></p>                                                                               | Repeal in its entirety.                                         |
| Sec. 8  | <p><b>§ 6-601.08. Violation of subchapter</b></p> <p>Buildings erected, altered, or raised or converted in violation of any of the provisions of this subchapter, 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 Superior Court of the District of Columbia by the <b>Corporation Counsel</b> or any of <i>his</i> 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 \$ 10 nor more than \$ 100 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 <b>Corporation Counsel</b> of the District of Columbia may maintain an action in the Superior 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 \$ 100 nor more than \$ 500, or by imprisonment in the <b>Washington Asylum and Jail</b> for not less than 30 days nor more than 6 months, or by both such fine and imprisonment, in the discretion of the Court.</p> <p>HISTORY: June 1, 1910, 36 Stat. 454, ch. 263, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a), (c)(18).</p> | Not discussed; NCPC draft dated 9/14 focuses on section 5 | Not discussed; DC draft dated 9/20 focuses on section 5.                     | <p>"Corporation Counsel" is now the Office of the Attorney General.</p> <p><b>The penalties may need to be made more in line with current civil code for other infractions.</b></p> <p><b>Gender reference reflects the culture at the time adopted; time to update.</b></p> <p><b>The place of incarceration as stated no longer exists; update to something generic.</b></p> | Revise, to update authority and possibly stated penalties       |
| Sec. 9  | <p><b>§ 6-601.09. Right of Congress to alter or repeal</b></p> <p>Congress reserves the right to alter, amend, or repeal this subchapter.</p> <p>HISTORY: June 1, 1910, 36 Stat. 455, ch. 263, § 9.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Not discussed; NCPC draft dated 9/14 focuses on section 5 | Not discussed; DC draft dated 9/20 focuses on other provisions of section 5. |                                                                                                                                                                                                                                                                                                                                                                                | Unless totally repealed, don't touch this with a ten-foot pole! |

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section | As Codified (September 19, 2013) | Stated Federal Interest<br>(per NCPC 9/14) | Stated District Interest<br>(per OP 9/20)                                                                                       | LW's Comment                                                                                                                            | LW's Recommendation                                                                                                                          |
|---------|----------------------------------|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| NA      | NA                               | NA                                         | DC also recommends creation of a system to protect viewsheds to iconic buildings and structures.                                | This could be established as an added function of the Zoning Commission or the BZA, or even a "Height Act BZA"; input from NCPC and CFA | Conceptually open to such a process does not creep from selective to "universal" so that anything above 90 feet would be under its scrutiny. |
| NA      | NA                               | NA                                         | DC also recommends creation of a system to provide "special design review" where height is added under any modified Height Act. | This could be established as an added function of the Zoning Commission or the BZA, or even a "Height Act BZA"; input from NCPC and CFA | Conceptually open to such a process does not creep from selective to "universal" so that anything above 90 feet would be under its scrutiny. |

Height Controls under the Height Act of 1910, Draft Reports from NCPC and DC, and LW’s Comments and Recommendations

| Section                                                                                                                                                                        | As Codified (September 19, 2013) | Stated Federal Interest<br>(per NCPC 9/14) | Stated District Interest<br>(per OP 9/20) | LW's Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | LW's Recommendation                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Potential Omissions or Flaws:<br><br>No variance process                                                                                                                       | NA                               | NA                                         | NA                                        | If Act is retained in whole or part, some sort of appeal/variance process is needed to address the unexpected, as is the case for zoning code already and most other administrative codes.                                                                                                                                                                                                                                                                                                                                                                                                      | If Act is retained in whole or part, add provision for Zoning Commission to hear and decide, or delegate to BZA (or Height Act BZA, see above), requests for relief from "strict application" of stated terms as a variance. |
| Potential Omissions or Flaws:<br><br>No Law for Decks and Viaducts?                                                                                                            | NA                               | NA                                         | NA                                        | While measurement points on major decks as in the L’Enfant Plaza, over i_295, and over viaducts (bridges) such as at Union Station are now established, should this authority have a statutory base?                                                                                                                                                                                                                                                                                                                                                                                            | Evaluate issue posed and act as deemed appropriate                                                                                                                                                                           |
| Potential Omissions or Flaws:<br><br>Should Federal properties be allowed added height when security concerns warrant that?<br><br>Should Law Clarify Security Review of Plans | NA                               | NA                                         | NA                                        | Building mass can form physical barriers that curtail line-of-sight views to sensitive locations. Should Federal properties around such sites be allowed to exceed Height Act in the name of “security”?<br><br>While as Ms. Tregoning stated in remarks to NCPC, “security trumps all,” should this be given a clear statutory basis and, if so, can the code spell out when and how it would apply so “security review” does not stop a project at the permit-seeking stage instead of much earlier? Should this also apply to demolitions or razes that could/would open up sensitive views? | Evaluate issues posed and act as deemed appropriate                                                                                                                                                                          |

## Testimony in Opposition to the Office of Planning's Recommended Changes to the Heights of Buildings Acts

DC Council Committee of the Whole

October 28, 2013

George Washington was determined to build a beautiful capital city, not just a city with a beautiful plan. His understanding of beauty was that of his age, and it did not include extreme contrasts. His regulations guiding the development of the city limited the heights of all building on the new avenues to between 35 and 40 feet. This controlled range of only five feet between the tallest buildings and the shortest was a purely aesthetic regulation.

When the MacMillan Commission produced its designs and recommendations for the improvement of the city in 1902, alignment of cornices was a fundamental goal in the monumental area and in the city at large. Early waivers from the Height Acts' requirements were all based on the desirability of aligning roofs, because the sense of what was beautiful had not changed since Washington's time.

Nor has it changed to this day: it still requires minimizing of the contrast between large and small, short and tall. Innumerable decisions of the Historic Preservation Review Board, National Capital Planning Commission and Fine Arts Commission have established this fact beyond question.

But now, the Director of Planning's report absolutely ignores the aesthetic principles that have made Washington a universally admired triumph of design consistency. Radical changes to the skyline may be supported by manipulated statistics and carefully phrased arguments, but our eyes and the eyes of the future will not see those numbers or hear those explanations.

They will only see the jarring consequences of neglecting a principle.

Don Alexander Hawkins

The Committee of 100 on the Federal City,

**Jacobs, Jessica (Council)**

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**From:** Melanie Ness <melanie8ness@gmail.com>  
**Sent:** Friday, November 01, 2013 8:19 AM  
**To:** Jacobs, Jessica (Council)  
**Subject:** I can't testify

but I am TOTALLY AGAINST giving up the height restriction.

Thanks, Melanie B.Ness  
327 6 St SE  
Washington, DC 20003

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\*Melanie B. Ness LICSW\*  
\*Dupont Circle/Alexandria\*

**Council of the District of Columbia  
Committee of the Whole Public Hearing  
On Lifting the Federal Height Act of 1910**

**Monday, October 28, 2013**

**9:30 a.m., Room 412**

**John A. Wilson Building**

**1350 Pennsylvania Avenue, NW**

**Washington, DC 20004**

CHAIRMAN MENDELSON  
2013 NOV - 1 AM 11:43

Good afternoon, Chairman Mendelson, colleagues, ladies and gentlemen:

By way of introduction, I am Kathryn A. Eckles, resident of Washington, DC, since May 1948, and owner-dweller at 1524 T Street, NW, since November 1973.

Thank you for this opportunity to express my opposition to any tampering with the Height Act of 1910. I have learned that Commissioner White, at a recent meeting of the N.C.P.C., stressed that the current hearings were a chance to make the right decision.

You are now in a similar position to make the right decision. Let the better angels of your nature guide you.

I cite advice given to President George Washington in a crisis: "A precedent, once acknowledged, will be universally sought."

This is 200 years old, and 200 years wise, as pertinent now as then.

I close with a familiar saying: "If it ain't broke, don't fix it."

Thank you.

Kathryn A. Eckles

Kathryn A. Eckles