

COMPILED PUBLIC COMMENTS | DRAFT FINAL RECOMMENDATIONS

Includes written testimony and letters submitted to NCPC in support of NCPC's Special Commission Meeting to consider the Height Master Plan draft final recommendations, held on November 19, 2013.

RESOLUTION

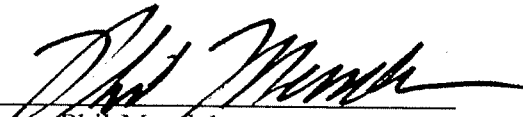
Council of The District of Columbia

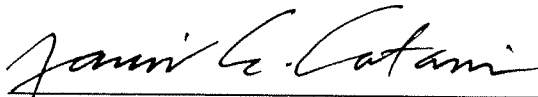
TESTIMONY AND LETTERS

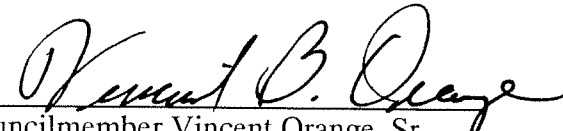
Tersh Boasberg, Georgetown Law Center
Lindsley Williams
David Sobelsohn
Sue Hemberger
Nancy MacWood, Committee of 100 on the Federal City
Dorn McGrath, Jr.
Alma H. Gates, Neighbors United Trust
George Gaines
George Oberlander, AACP, National Coalition to Save Our Mall
Benedicte Aubrun
Melissa Kunstadter
Janet Quigley, Capitol Hill Restoration Society
Carol Aten
Denis James, Kalorama Citizens Association
Robert Nieweg, National Trust for Historic Preservation
Laura Richards, Penn-Branch Citizens/Civic Association
Johnnie Rice, Alabama-Mass Avenue/Barker Lane Block Club
ANC 5B
Advisory Council on Historic Preservation

ADDITIONAL PUBLIC COMMENTS

www.ncpc.gov/heightstudy/comments.php

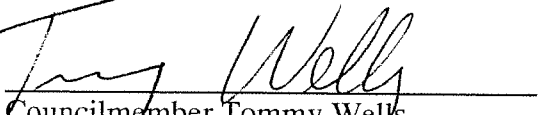
1 
2 Chairman Phil Mendelson

3
4 
5 Councilmember David Catania

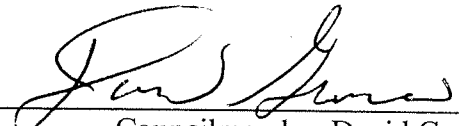
6
7
8 
9 Councilmember Vincent Orange, Sr.

10
11
12 
13 Councilmember Jack Evans

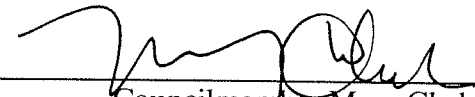
14
15
16 
17 Councilmember Muriel Bowser


18
19
20 
21 Councilmember Tommy Wells

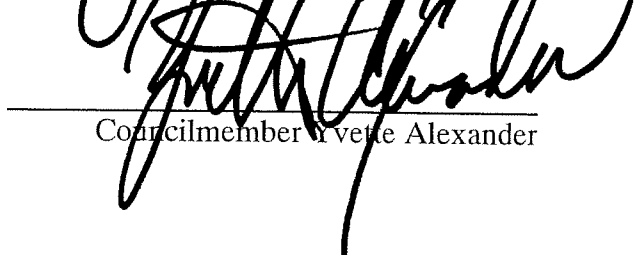

Councilmember Anita Bonds


Councilmember David Grosso


Councilmember Jim Graham


Councilmember Mary Cheh


Councilmember Kenyan McDuffie


Councilmember Yvette Alexander

22
23
24
25
26
27
28
29
30 A PROPOSED RESOLUTION

31
32
33
34
35 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

36
37
38
39
40 Chairman Mendelson and Councilmembers Bowser, Cheh, Evans, Gross, and Wells introduced
41 the following proposed resolution which was _____.

42
43 To declare the sense of the Council that the Height of Buildings Act of 1910 should not be
44 amended at this time.

1 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
2 resolution may be cited as the “Sense of the Council Against Amending the 1910 Height Act
3 Resolution of 2013”.

4 Sec. 2. The Members of the Council of the District of Columbia find that:

5 (1) For over a century, the height of buildings in the District of Columbia has been limited by
6 the width of the abutting street: in residential areas, the height may be no greater than the width of the
7 street; in commercial areas, the height may be no greater than the width of the street plus 20 feet.
8 However, regardless of street width, residential building heights may not exceed 90 feet, and
9 commercial heights may not exceed 130 feet except on the north side of Pennsylvania Avenue
10 between the Capitol and the White House where the maximum height may be 160 feet. These
11 restrictions are part of the federal Height of Buildings Act of 1910, effective June 1, 1910, commonly
12 called the “Height Act.”

13 (2) The effect of the Height Act has been to spread development across the city. This is
14 because the restriction on building heights has limited the concentration of skyscrapers and density
15 that characterize the downtowns of major American cities.

16 (3) Another effect of the Height Act has been to create a horizontal skyline that serves to
17 highlight such monumental buildings as the United States Capitol, the Washington Monument, the
18 Washington National Cathedral, and the Basilica of the National Shrine of the Immaculate
19 Conception.

20 (4) An additional effect of the Height Act is that throughout the city – from Anacostia to
21 Brookland to Cleveland Park – historic buildings have not been overwhelmed by dominating, taller
22 buildings, and a human scale has been maintained that is uncharacteristic of any other major U.S. city.

1 (5) In the 1960s and 1970s, as the District's population declined from a high of 802,178 in the
2 1950 census, urban planners thought the 1910 Height Act deterred development and encouraged
3 population flight to the suburbs. This gave rise to arguments for repeal of the Height Act. However,
4 the District's experience over the past decade demonstrates that factors other than the Height Act
5 influence economic development and population growth. The city's population has grown
6 significantly, and development is far outpacing virtually all other U.S. cities. It is clear that the Height
7 Act is not a factor in deterring development.

8 (6) On October 28, 2013 the Council's Committee of the Whole held a hearing on "The
9 District of Columbia's Recommendations on the Federal Height of Buildings Act of 1910."

10 (7) This was an opportunity for residents, developers, and others to voice their reaction to the
11 Office of Planning's September 20th draft recommendations.

12 (8) Overwhelmingly (94%), the testimony criticized the recommendations and urged no
13 change to the Height Act.

14 (9) As one witness (a former chairman of the Zoning Commission and Historic Preservation
15 Review Board) stated: "... the financial rewards and political pressures to build ever higher buildings
16 are intense. No big city municipal government in this country has been able to resist the allure of easy
17 real estate money. As proof positive: none has a skyline as low as Washington's. Our horizontality
18 will not survive ..."

19 (10) Other witnesses noted, as stated by the DC Preservation League: "...everyone agrees
20 that, because of more restrictive zoning requirements, the Height Act is not the primary constraint on
21 building heights in the District. There is still room to grow within the limitations set by the Height Act
22 more than 100 years ago."

(11) Numerous witnesses emphasized the lack of urgency and need to act now. The impetus for examining the Height Act came from a Congressman's inquiry, not the recent revisions to the District's Comprehensive Plan or some other planning exercise.

(12) The Historic Districts Coalition testified: "We believe that the 1910 Height of Buildings Act, through its effect on the physically shaping [of] 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."

(13) The District government substantially revised its Comprehensive Plan in 2006, and then updated the Plan in 2010. In spite of the extensive work done at the time by the D.C. Office of Planning, there was no concern that development capacity was limited or that the Height Act of 1910 needed to be revised. Indeed, the current Comprehensive Plan fits comfortably within the framework of the 1910 Height Act.

Sec. 3. It is the sense of the Council of the District of Columbia that:

(1) The Height Act of 1910 should not be amended or revised at this time.

(2) Someday there may be need to revise the Height Act, but such legislative action should wait, be carefully limited to need demonstrated by thorough analysis, be informed by a clear understanding of the impact on the District's unique urban design, and follow (not precede) prescriptions of a new, well-vetted Comprehensive Plan.

(3) The District's skyline is a unique and distinguishing feature that promotes the human scale as well as highlights national and local landmarks.

(4) The Height Act has not only distinguished the District from all other major U.S. cities, but it has enabled a legacy that should be continued. Loss of that legacy can never be recovered.

1 (5) The Height Act also creates a dynamic that spreads economic activity across the city,
2 rather than concentrating it downtown.

3 Sec. 4. The Chairman of the Council shall transmit copies of this resolution to the National
4 Capital Planning Commission and to the Chairman of the Committee on Oversight and Government
5 Reform of the United States House of Representatives.

6 Sec. 5. This resolution shall take effect immediately.

TERSH BOASBERG

TershBoasberg@aol.com

3136 Newark Street NW

Washington, DC 20008

November 19, 2013

Testimony of Tersh Boasberg
Before the
National Capital Planning Commission
On The
Height Master Plan Study: Draft Federal Interests Report and Findings

Mr. L. Preston Bryant, Chairman, and Members of the Commission:

My name is Tersh Boasberg. I am speaking on behalf of the Alliance to Preserve the Civil War Defenses of Washington. I am a retired attorney who specializes 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, a former Chairman of the Committee of 100 on the Federal City, 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.

While I fully support the Executive Director's 9/12/13 Recommendations (EDR Sept); I am less happy with his 11/19/13 Recommendations (EDR Nov), especially No.2. But the Mayor's proposal to increase the Height Limit in the L'Enfant City and remove it entirely in the rest of the City 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 Sept.), 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 DFIR notes at p. 22, “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 9/12/13, p.9)¹

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 over 650 historic landmarks and 25,000 contributing buildings in over 50 historic districts listed on the DC Inventory of Historic Sites, about ¾ of them are also listed on the National Register. While thousands of these are in the L'Enfant City, thousands more are located outside of downtown or Georgetown.² National Register Districts are dispersed from Anacostia to Takoma Park to Mount Pleasant and Sheridan-Kalorama to Cleveland and Woodley Parks, to LeDroit Park and Shaw.³ They embrace or border on major commercial streets such as Wisconsin, Connecticut, 16th and 14th. Because of their historicity, and often fragility, these "**Federal Interests**" must not fall prey to high-rise "commercial enterprise," which can only trivialize and overwhelm them.

It's all about how one construes the term "Federal Interests"

¹ 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' ltr to NCPC 9.30.13 on file herein.)

² District of Columbia Historic Preservation Plan (2016) at p.50.

³ 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. It is most worrisome that the DCR at p.16 seems to protect only the "low density areas in historic districts"—not all the contributing buildings.

Another important local and, at the same time, *national* historic resource is Washington's African-American heritage, spread throughout the city. Martin 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 can I agree with the simplistic notion advanced by the District that higher buildings will somehow make offices and apartments more affordable in the District. (DCE p.42) First, the only people who will be able to afford the new construction are the middle class and affluent. Second, new lawyers, lobbyists, and other professionals will rush in to occupy the offices and apartments closest to their workplaces. This increased competition among the better-off will ratchet overall real estate prices in the District *up* not *down*. For example, 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 the City Council and D.C. voters. **It is notable that the current DC Comprehensive Plan, agreed to after two years of**

public participation, calls for adjusting zoning heights in historic districts downwards not upwards⁴

To those who decry that our early 20th Century Height Limit is sapping the vitality of our nation's capital, I offer the record of the last decade of Washington's impressive growth and 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 Amsterdam, or Helsinki, or Prague, etc. There are no high-rises in their historic downtowns or neighborhoods.

Fifteen years ago, the late CFA Chairman, J. Carter Brown, who knew the design and history of Washington probably better than anyone before or since, spoke these words about our height limit on the occasion of the 75th Anniversary of the Committee of 100,

“Washington is blessed by a height limitation. Following a recommendation of Jefferson's, and finally legislated when the invention of the elevator became a real threat, it is hard to over-emphasize how important the retention of this city's character as a horizontal city has been.

Let us all sign in blood this evening our resolve never to allow the pressure of developer greed to get *that* changed, as has been often proposed over the years!” (Emphasis original)⁵

⁴ “Zoning for each historic district should be consistent with the predominant height and density of the significant and contributing buildings in the district.” *Preserving Communities and Character*, The Historic Preservation Plan for the District of Columbia 2008-2012, at p.19

⁵ “Washington at the Millennium: City by Design” by J. Carter Brown, Chairman, U.S. Commission of Fine Arts, on the occasion of the Celebration of the 75th Anniversary of the Committee of 100 on the Federal City, National Building Museum, November 18, 1998, at p.4, attached.

NCPC Comments of Lindsley Williams -- November 19, 2013:

- Good afternoon, etc
- First settlements were Georgetown (ca. 1750, Maryland), Alexandria (ca. 1750, Virginia) and Bladensburg (ca. 1742, also Maryland), all seaports at the upper reaches of the Potomac.
- Washington came later, as "seat of Government" and remain so, always a "company town" to some extent. Intrinsic tensions between Federal interests and those of residents, businesses, and visitors.
- 103 years ago, the Act itself (At the request of City Commissioners, as with later amendments)
- Then 1920 Zoning Act, then 1938 Amendments, 1958 Lewis Plan, 1973 Home Rule, and Comp Plans since, ZRR (2006 and thereafter)
- NCPC September 12, Mayor September 24. Both careful and considered. Mayor added forward projection of needs, not just immediate quick fixes, but then sought overall formula change, but never specific changes for anywhere in DC, that to wait for Comp Plan and zoning (in coming decades).
- Final Executive Director's Recommendation (long period of labor after first contractions, delivery by forceps? -- but baby is doing well, and parents here today, not hospitalized)
- Comp Plan process could identify and establish not just greater height limits, but also reductions, and zoning would be obliged to be developed that would "not be inconsistent" with that, up or down.
- Existing authority exclusion (section 5 or whole Act?); if just section 5, then Mayor and Council should not cede that authority in the final recommendation by silence and inaction. Building codes (sections 1, 2, 3, 4, and 6). Measurement point and parapets (section 7). Violations (section 8, needs updating to current Civil code). Use this apparent authority, among other things, to establish the height limits for penthouses (20 feet, possibly a bit more for just the elevator core), don't bake into Federal law as well as provide for decks (SW EcoDistrict) and viaducts (Union Station) as future provisions to expanded section 7). **If DC has no authority to amend any part of Act, then fix that as part of amendments to Height Act's section 9 and, if need be, the Home Rule Act itself.**
- As to EDR, given overall power of NCPC in review of Council-adopted changes in District elements of Comp Plan, what is need to distinguish L'Enfant area from rest of DC? Instead, I would think a "gradient of Federal sensitivity" should be expected as changes come closer to present and future Federal sites or places of known Federal interest (including "viewsheds"). NCPC has the needed authority to "look after" the full range of Federal interests, including "security" if that becomes a part of the specified Federal elements, as I think it should.
- As to occupancy of penthouses, **bravo** but see if the bullet on page 17 can't be conformed to more inclusive language in recommendation itself (page 16) from:

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

to:

~~Support communal recreation space on rooftops by allowing~~ **Allow** human occupancy in roof structures, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as the façade of these structures continue to be set back from exterior building walls at a 1:1 ratio.
- Thank you very much. **WELL DONE!**

**PUBLIC HEARING
NATIONAL CAPITAL PLANNING COMMISSION**

November 19, 2013

TESTIMONY
of
DAVID C. SOBELSOHN

U.S. Citizen
Resident of Southwest Washington, DC

I am a community activist from Southwest Washington, DC, and a former Advisory Neighborhood Commissioner. My name is David Sobelsohn.

The Height Law raises two issues: the proper limit to building heights in this city, and who should decide that limit. I express no opinion on the first issue. But I am an American citizen and a resident of Washington, DC. While paying appropriate attention to the national interest, Washington, DC, either ourselves or through our elected local representatives, should decide the limit to building heights in Washington, DC. Outside a narrow geographic core, where the federal government has a uniquely national interest, it is intolerable for a Congress in which we have no voting representation to limit the height of our buildings.

Even in the governmental core of the city, DC's interests generally coincide with those of the federal government. Like the federal government, Washington has an interest in maintaining our status as an international symbol of democracy. Like the federal government, Washington has an interest in attracting tourists and foreign dignitaries. Like the federal government, Washington has an interest in making the city pleasant and beautiful for those who work here.

As a result, even in the city's governmental core, even complete repeal of the federal Height Act would leave building heights largely unchanged. Washington, DC, itself would continue to limit building heights. Our own elected officials won't let this city become Manhattan.

Occasions might arise when the federal interest differs from the city's interests. As a result, it would be an acceptable compromise for Congress to narrow the Height Act to that part of the city in which the federal interest is acute. A new Height Act could use the same borders statehood proponents call for a new federal district, to be formed after we achieve statehood. A new Height Act would impose a federal limit on building heights in that small federal district, while leaving the decision outside those borders to the citizens of Washington.

Democracy means the right to make our own decisions. If we don't trust our elected representatives to make the right decision about local building heights, let's have a popular referendum on the proper heights for buildings in DC.

Democracy means the right to make our own mistakes. Washington, DC, will never achieve self-government, let alone statehood, if we make exceptions to self-government for any issue on which we expect to disagree with those we elected to represent us. Letting Congress continue to set the limit to building heights throughout the city makes it hard to complain when Congress tells us how we must spend our tax dollars or how we must regulate drugs.

By contrast, letting DC decide building heights will make this city more than just a symbol of democracy. It will at least marginally increase the actual amount of democracy enjoyed by those who live and vote in Washington. Thank you.

Revised, October 30, 2013

-xxx-

Hi, my name is Sue Hemberger. I'm a DC resident who lives in Friendship Heights.

I support Recommendations 1 and 3, but feel strongly that Recommendation 2 needs to be reworked. At a minimum, the suggestion (on page 13) that "Congress amend the law today to allow for targeted exceptions" outside the L'Enfant City should be eliminated. I agree whole-heartedly with the principles behind that recommendation – i.e. that changes to the Height Act, anywhere in the District, must be made through a democratic process in which both local and federal interests are effectively represented. But I think that the specific approach being recommended here will not only fail to achieve that objective, but will also compromise another crucial principle articulated in the Report – that changes to the Height Act should be based on careful study and long-range planning rather than ad hoc decision-making.

As someone who is relatively well-informed about planning and development issues, I can attest to the fact that Comp Plan amendments typically fly completely under the public's radar; outreach has been non-existent. It's a somewhat different situation when the entire Comprehensive Plan is being rewritten – that has happened once in the 26 years I've lived here. There's more publicity but, as with the current zoning rewrite, citizens find themselves confronted with hundreds of pages of text, very little time to read it, and then three minutes to comment on it. The bottom line is that putting OP and the Council in a position where they can propose exceptions to the Height Act is an invitation to backroom deal-making – not to the robust civic dialogue that NCPC staff anticipates. And it will distort the planning process by shifting the focus from the big picture and from policy choices to who-can-deliver-what-for-whom.

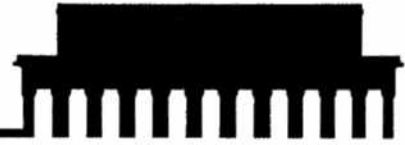
The other issue here is one of timing. I'm not an absolutist when it comes to the Height Act. I can certainly imagine scenarios under which it would make sense to lift existing height restrictions. First and foremost among them would be that the District has reached a point where we're actually built out – that is, at a time when every part of the city has experienced population growth and reinvestment.

We're nowhere near that point – in part, I think, because, at least as long as I've lived here, that's never been a priority. DC's fundamental planning problem has been uneven development.

We make lots of plans, but the most difficult and most necessary projects never get built. Instead, OP *helps developers find ways to build more in low-risk high-reward areas that are already fully developed* – that is, in places like the West End and Friendship Heights. The first strategy was to use the PUD process for site-specific upzoning. Then, as the land for redevelopment in these areas ran out, the next approach was public land sales (and giveaways) – basically, the cannibalization of our infrastructure. Now we're seeing attempts to undermine (or even repeal) the Height Act.

Obviously, transformative redevelopment tends to be gradual -- it doesn't happen overnight. But, in some places, it won't happen at all if you short circuit the process that, eventually, forces developers to look elsewhere for new opportunities. We're at a stage in our development where we need to build out before we build up. This is true from both an infrastructural and an equity point of view.

If you care about the symbolism of the nation's capital, then recognize that it's not all skylines and viewsheds and monuments. High-rise enclaves in some areas and decades of neglect in others isn't an appealing picture. Nor is it a good strategy for housing federal workers or for creating an economically sustainable city.



National Capital Planning Commission Special Meeting

Hearing on Executive Director's Recommendation, Height Master Plan for Washington, DC

**Testimony of Nancy J. MacWood
Chair, The Committee of 100 on the Federal City**

November 19, 2013

The Committee of 100 has historically supported the Height Act, which has provided a height framework for implementing the L'Enfant and McMillan Plans and has contributed significantly to creating our grand capital city. Until today the title of this hearing would be readily understood since "Height Master Plan for Washington, DC" does not suggest that there only some parts of Washington that need height protections. But the EDR before you would irrevocably divide the city into protected and unprotected, and would result in visual documentation of the action you may approve today.

The whole of Washington was built with a singular aesthetic vision. Streets are oriented east and west and broad avenues are planned to frame views and accommodate a natural topography and a scale of building that avoids stark differences and ensures a good human experience with the built environment. This isn't a whimsical design but one that originated with George Washington and has been the guiding template to demonstrate our national principles through design. No other city has shared our high aspirations or had our success. Your vote today will decide if you intend to continue the legacy.

The NCPC EDR continues one aspect of the legacy in Recommendation 1 by ensuring the prominence of federal landmarks and monuments and prohibiting private building from damaging the L'Enfant City. The Committee of 100 strongly supports the EDR in this regard.

But we think the goal of protecting this part of the city will fall short if its form no longer has meaning within the context of the city that frames it.

The EDR states emphatically that the Height Act should not be eliminated outside the L'Enfant City in Recommendation 2, but then proceeds to recommend that it be eliminated. It's clear that no solid data and analysis were presented to change the application of the Height Act outside the L'Enfant City. The only reason offered in the EDR for removing more than 100 years of height protection is the need for better long-range planning in the capital city. How do you make the leap that eliminating our protections would motivate participatory and vigorous, data-driven comprehensive planning? Hasn't it been demonstrated to you that this is exactly what we are lacking? You should not comfort yourself that all will be well and somehow local systems that do not work as presented on paper will magically work as you hope they will. If you vote today to eliminate height protections outside the L'Enfant City you must understand that you are endorsing spot zoning and haphazard planning.

The substance of the EDR has been overshadowed by a sense that there must be consensus between NCPC and the Office of Planning. Often compromise is a worthy goal, but sometimes it leads to detrimental concessions. The EDR displays a formidable conflict in not wanting to give free rein to adding height and density outside the L'Enfant City, but needing to concede something to the Office of Planning. Why? They couldn't make their case.

The EDR recommendation is not based on solving a problem; in fact, it acknowledges that there really isn't a problem that requires a solution. The assumed need to compromise led to an artificial intellectual dilemma. Should this federal law only protect the parts of the city that have the iconic symbols of our democracy or should it continue to protect the entire capital city? That is not a weighty issue and it's answered at the beginning of the EDR when it is stated in clear terms that the federal government has "primary stewardship in the form of the nation's capital." The entire city contributes to that form and not just a few blocks near the White House or Capitol.

It is enticing to avoid controversy by fashioning an analysis that emphasizes process. But is process really what this is about? The EDR is not premised on any confidence or trust that the recommendation will result in a good process that leads to good decisions and effective controls.

You know that DC residents don't want this change. None of us want to be the generation that enshrined the L'Enfant City as a Disneyland-type attraction that is surrounded by a city that once shared its form. We urge you to find that Washington is one city with a common form and a common story. We urge the rejection of Recommendation 2 and the approval of the other recommendations.

Testimony before the National Capital Planning Commission
Dorn C. McGrath, Jr., FAICP
November 19, 2013

Once again, I would like to compliment the National Capital Planning Commission on doing a difficult job well. I admire your reasonable approach to a difficult topic.

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. This was unfair and was wrong. It reflected what is wrong with our concept of "participatory democracy."

In his book, Skylines of the World, Yesterday and Today, M. Hill Goodspeed writes, (pp. 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, has to choose whether to become the city of empty buildings seeking to be neighborhood foci at metro stations, or to 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.

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.

The draft recommendations suggest that the Comprehensive Plan and subsequent re-zoning will offer needed changes to the Height of Building Act. To be perfectly frank, no one KNOWS anything about the Comprehensive Plan EXCEPT IN CRISIS TIMES, such as this. The Comprehensive Plan comes to life only when it is needed, and is seen as complete fiction to most of the city's populace. Hinging the Commission's reticence not to fool around with the Building Height Act is based on a fiction. The fact is that most people in the city do not understand the Comprehensive Plan, nor the zoning process.

For the moment, your approach seems reasonable. But is only another way of "kicking the can down the road." It leads to the extinction of the NCPC. This would be a great loss. In terms of professionalism, thoughtfulness and attention to substance.

NCPC has provided the substance that the opponents of the Building Height Act lack. You, as Commissioners, have been able to ~~steer a~~ straight course to your own undoing, alas. Given the general public impatience and ignorance of the Comprehensive Plan for the city, you will be easy meat for those who oppose you and prefer to pursue the art of deal-making. We have ample evidence of this already. Given the general public apathy about the lack of planning countrywide, your sense of planning for the Capitol of the Free World makes no sense at all. You may well render yourselves dispensable.

In the rush to simplify Washington, the NCPC would be fair game. The local planning office would be seen as sufficient. Think about this!

Leave the Building Height Act alone.

Thank you for this opportunity to present my views.

NATIONAL CAPITAL PLANNING COMMISSION
Special Commission Meeting

Testimony of Alma Hardy Gates
Administrator, Neighbor's United Trust
November 19, 2013

Good afternoon Chairman Bryant and members of the Commission. My name is Alma Gates and I am the administrator of Neighbors United Trust.

The Executive Director's Recommendation on the Height Master Plan for Washington, DC is well written, thorough and its five recommendations make clear the actions the commission proposes for each. Actions outlined in Recommendation Two raise some serious concerns.

Imagine what Pierre L'Enfant would say if he were standing here today looking out over the city he designed, with its ceremonial spaces and grand avenues. These avenues, which respect the contours of the land have been imposed over a grid, and radiate from the two most significant building sites, which are occupied by houses of Congress and the President. For nearly 100 years, a height limit has preserved the broad, horizontal nature of the city, allowing light and air to reach the pedestrian level, which has resulted in a picturesque skyline pierced by steeples, domes, towers and monuments. NCPC is wise to recognize that the approach proposed by the Office of Planning would "likely add the most height where it is least appropriate - those streets and views focused on the US Capitol and the White House."

Perhaps L'Enfant would have this advice for the National Capital Planning Commission, "Areas outside the city I designed were 'distant' in my day, but today, more than ever, they need the Height Act, which has protected both my plan and areas outside my plan for more than a century." He would certainly recognize that relegating the Comprehensive Plan amendment process to the Office of Planning is like putting the fox in the hen house. L'Enfant would point out that Recommendation two in the EDR highlights the dangers of leaving future decisions to politicians, lobbyists and a complicated, never-ending process of possibly differing views, pitting federal vs. local officials; and, that the recommendation fails to recognize that OP has the ability to control those differences when it suits its purposes.

Let the preemptive actions taken by OP and the Mayor on the submission of the District's draft Height Master Plan recommendations serve as a reminder of how business is done by our planning agency. NCPC had no opportunity for review; the DC Council was bypassed; and, the directive of Congressman Issa regarding input from local residents was ignored. NCPC should recognize that the Office of Planning handles the Comprehensive Planning process no differently.

NCPC should not recommend that Congress amend the Height Act today to allow for targeted exceptions through the federally-legislated comprehensive planning process. Even if Congress determines to keep the Height Act in place city-wide, NCPC must be very deliberative in its approval of a process by which questions of the city's long-term growth can be addressed in areas outside the L'Enfant City. Recommendation two is a major concern, which would cause L'Enfant to bristle and caution, "Amending the Comprehensive Plan to allow targeted height exceptions appears to be an open invitation to engage in ad hoc decision making, which, leaves the city's 130 identified neighborhoods with a very uncertain future and even ripe for influence peddling and huge abuses."

Testimony of George Gaines
National Capital Planning Commission
Tuesday, November 19, 2013

I am George Gaines, a DC resident for 58 years, and a DC tax-paying property owner for 44 years. I love the District and want my city to continue to be beautiful, inviting, and inspiring to its residents and our many visitors. Cities, especially those that are cherished and have long been protected by its residents and visitors, develop a distinct character and look. No one would dispute that DC's unique look and character are widely recognized and appreciated across the country and around the world.

That is why I have lived here, raised my family here, worked here, and gladly pay my taxes to help maintain that character and look. That is why I oppose the final version of the Executive Director's Recommendation (EDR) and call on the Commission to reject it, and instead to approve and send to Congress the earlier draft EDR which found that there are no persuasive reasons to recommend that Congress change the current Height of Buildings Act. I, as most, agree that the L'Enfant City or at least the Federal District should be protected by height restrictions. Unlike some, I also strongly believe that substantial elimination of height controls throughout much of the rest of the District will negatively impact the entire city, including its central core.

Some of our political decision-makers have heavily focused on expanding the District's tax base. While a worthy goal, it should be pursued with recognition of the potential negative impacts of substantial population density increases that are not balanced with critical and very expensive expansion of reliable mass transit, better traffic control even on densely built residential streets, and enforced restrictions to require wise urban planning that makes neighborhoods more walkable and sustainable.

Most importantly, unless the impact on our city's residents and neighborhoods is taken very seriously, growth policies will damage, if not destroy a substantial portion of the District's existing tax base. I, and the large of tax-paying residents like me, who are rapidly changing the age demographic of our city, will find that we will have no choice but to flee the city. The character and look that first attracted me to the city, and encouraged me to essentially commit to living my life here, will be substantially changed or eliminated. I fear that would so cut my connection to my long cherished home, that it likely would leave me no choice but to move elsewhere to live and pay taxes.

You have a critical decision to make, one that will impact our city for the foreseeable future. I hope you will carefully weigh all the consequences that will necessarily follow your decision. I respectfully request that you not approve the final EDR recommendation, and instead adopt and send to Congress the earlier draft EDR, which essentially recommends that Congress not change the Height of Buildings Act.

George Gaines
3700 Kanawha Street, NW
Washington, DC 20015-1810

**National Coalition to
Save Our Mall**
Preserving Our Monument to Democracy



Please Reply To:
George H. F. Oberlander, AICP
11750 Old Georgetown Road
North Bethesda, MD 20852
301-816-1153; fax 301-816-1168
goberland@verizon.net
www.savethemall.org

**STATEMENT
On
Executive Director's Recommendation
For
Commission Meeting November 19th, 2013**

Good afternoon Commissioners. My name is George Oberlander, a vice chair of the National Coalition to Save Our Mall. I am also the retired Associate Executive Director for DC Affairs of NCPC, having served this Commission from 1965 to 1996, mainly in that capacity.

As I only have 5 minutes to comment on the EDR seeking authorization to transmit final recommendations to the House Committee on Oversight and Government Reform, I will high-light the Coalitions' comments and concerns, submitted Oct. 28th, 2013, but will first react to the EDR issued to the public Sunday Nov. 17th at 6PM, which has been a very short final comment period for citizen organizations.

The Coalition can support:

- Recommendation #1, which indicates that for the **areas inside** the L'Enfant City, the Height Act limitations "**SHOULD** remain in place and **no changes** should be made to the formula or approach for calculating allowable building height".
- We certainly agree with the last paragraph on page 2 of the EDR, recommending "focus on an established planning process, the Comprehensive Plan for the National Capital – to responsibly articulate the District's ...needs to provide capacity and growth, while implementing these changes in a way that protects federal interests and national resources". (The DC study should have been approached that way from the beginning). (NCSOM statement p.2 last paragraph)

- We also agree with the staff finding, second paragraph on page 9 of the EDR, examining the proposed Ratio Approach, that that approach “does not appear that the city would realize much additional capacity under this proposal”. In addition this approach adversely impacts the Federal interest.
- We also concur in Recommendation #3 requiring much more further evaluation of **all city-wide viewsheds**, not only the most significant ones as commented on in our original October 28th statement. This evaluation should be undertaken as part of City wide and neighborhood Comprehensive Plan policy updates. Not on an ad-hoc height change study. (NCSOM major comments p. 2)
- **We do not agree with that portion of Recommendation #2 suggesting “NCPC recommends that Congress amend the law today to allow for targeted exceptions through the federally legislated comprehensive planning process”. This is premature and putting the cart before the horse.** Page 10 of the EDR, first paragraph of Recommendation #2 states “...**for areas outside of the L’Enfant City the Height Act should remain in place unless and until the district completes an update to the District Elements of the Comprehensive Plan where targeted area(s)...are identified**”, and we suggest adding, **approved via formally amending the Comprehensive Plan. Only then should the Height Act and the Zoning Regulations be amended in conformance with the Comprehensive Plan. (Emphasis added)**
- **We are concerned with Recommendation #4 dealing with human occupancy in existing and future penthouses which could allow the camel’s nose under the tent.** More additional study of the implications of such a regulation change must be made, **as staff cautioned** on page 16 of the EDR. In addition we do not find any justification for the additional recommendation “**that a 20 foot maximum height for penthouses be imposed**” increasing the current height from 18’ 6”

to 20 feet. Just because the current DCOP proposed zoning update suggests this change does not justify the need for such a change.

- We question **Recommendation #5**, that the requirement for **fire proof construction should be deleted**. Such a deletion has nothing to do with the height of buildings. It is a legal matter as to how to update the Act concerning construction requirements to reflect more modern technologies.
- We support the “Key Tasks and Deliverables” outlined on pages 19-21. We encourage any graphics being forwarded to a Congressional Committee be at a more readable scale than that shown on page 18. We reiterate, as outlined in our original statement, that there are numerous views and viewsheds that have not been researched and identified.
- We implore the Commission not to **“...recommend that Congress amend the law today to allow for targeted exceptions...”** EDR page 13 first full paragraph. This is not consistent with and contrary to the beginning of Recommendation #2, EDR page 10.

Thank you for your consideration of our concerns and comments. Without further study and comprehensive planning, proposing alterations to the 1910 Height Act would negatively impact the current internationally recognized character of the National Capital.

**Comments on the National Capital Planning Commission's
Federal Interest Report and Findings
for the Joint Height Master Plan for Washington, DC
by the
National Coalition to Save Our Mall**

October 28, 2013

The National Coalition to Save Our Mall welcomes this opportunity to comment on the "Federal Interest Report and Findings" prepared by the National Capital Planning Commission. In short, we are concerned that the report while beginning a useful inquiry falls short in analyzing and considering the impacts of relaxing the height limits that have preserved the character of the nation's Capital for several generations.

The Coalition is a 13- year old, non-profit citizens' organization working to safeguard and enhance the National Mall as a symbol of America's founding ideas and the stage for our evolving Democracy.

In particular, the Coalition has a significant concern about changes to height limits that would damage the character of the National Mall and other capital historic landmarks, parks and open spaces, major avenues, and other special places that form an essential part of the Capital city.

The Height Act together with the historic L'Enfant and McMillan Plans for Washington, D.C. are a primary reason the planning of the Nation's Capital has been so successful. Congress charged NCPC with the responsibility for maintaining the federal interests, particularly the two historic plans. Congress reinforced its protections of the historic plans in 1986 with the Commemorative Works Act the purpose of which is "to preserve the integrity of the comprehensive design of the L'Enfant and McMillan plans for the Nation's Capital." The importance of the Height Act in protecting our Capital's planning heritage was not fully understood until Washington developed as an urban center, particularly after the Second World War. Today, taken together, the Height Act and the two historic plans make us what we are. It is NCPC's responsibility, indeed, obligation, to protect this heritage.

But the Report and Findings on the Height Act prepared by NCPC fails to take the strong, unequivocal position called for from the federal government's planning agency that is charged with protecting federal interests. The findings repeatedly say raising height limits "may" have an impact when there can be little doubt that taller buildings "will" adversely impact views from the Mall and other federal interest. We believe this position needs to be strengthened.

In the paragraphs below we provide detailed comments on the report and identify instances where this weak language occurs. NCPC, in our view, should take a fully positive position about the importance of the Height Act to preserve the quality of our city in the years to come.

A. General Comments

- The Report mentions the National Mall as a federal interest, **indicating visual modeled height increases may have significant adverse interest on the Mall.** The Federal Interest Report does not identify and/or examine sufficiently height impacts on the existing historic significance of the National Mall, vis-a-vis increases from surrounding and adjoining areas. The Report's text clearly demonstrates that the findings are premature, rather general and vague, and require a much more detailed federal interest analysis, particularly with respect to the impact on the Mall and the overall character of the entire Capital city.
- The Commission's authorizing legislation, the National Capital Planning Act of 1952, established the Commission as the planning agency for the Federal Government in the National Capital and also made it responsible to **"Preserve the important historical and natural features of the National Capital."** (emphasis added) Under this responsibility the Commission's Report needs to be more assertive.
- Page 24 of the Report indicates "the conceptual nature of the **visual modeling is insufficient to make specific recommendations**" and recognizes that the current local Zoning Regulations and the Congressional (1910) Height Act "work together to **protect the character of the city.**"(emphasis added) **This would seem to indicate further modeling before any report is finalized.**
- Since a Congressional Committee asked for the study, NCPC and the Mayor, as chief planner for the City, must respond, but the current modeling study is **"limited to conceptual massing studies. It is not a comprehensive picture of how height increases may permanently alter Washington's streets, views and public spaces."** (Report p. 24)
- To help in the view shed studies, members of the Coalition respectfully suggest referring to the "Citywide Framework for Urban Design" and the "City Sections Design Diagrams" contained in the **NCPC Proposed Comprehensive Plan For The National Capital, February 1967**, for identified view sheds, reciprocal axis, significant sight lines or skyline interest, gateways and additional urban design considerations and guidelines.
- **The Report makes no mention of how much building envelope (or theoretical space) still remains to be built under the maximum height allowed *currently* by the Zoning Regulations and the Height Act.** Nor is there a specific study of total future development needs and its relationship to housing, transportation, the federal establishment, and other relevant Comprehensive Plan matters, including public service and utility capacities. The current adopted Comprehensive Plan for the National Capital, both Federal and District Elements, provides no basis for changing the height or density for development for the next twenty or so years. The District Elements only suggest zoning changes in keeping with the Plan's Land Use Map and Policies. Building height is an integral aspect of the different land use density categories contained in the Zoning Regulations and in the Capital City further regulated by the Congressional Height Act of 1910.
- In the opinion of the Coalition, a comprehensive city wide street and places study needs to be undertaken jointly, in relation to any increases to the height of buildings within the city overall and all existing view sheds identified, analyzed in detail, and accurately portrayed. Conceptualized studies are inadequate for this documentation due to page size and scale, and provide a misleading picture to readers who may then draw erroneous conclusions.

B. Report Key Findings. The Report Key Findings section, starting on Page 32, states the crucial role of NCPC and other federal agencies but then fails to take a strong position to protect the federal interest:

- “Only the federal establishment can protect these and other national interests in perpetuity.”
- “Based on the visual modeling...changes to the Height Act within L’Enfant City and within the topographic bowl **may have a significant adverse effect on federal interest.**”
- Height “increases **may also impact the character of L’Enfant streets and public spaces.**”
- Federal interests “are also present outside of the L’Enfant City and beyond the edge of the Topographic Bowl... Visual modeling studies (by the City) **has excluded much of this area for review.**”
- “The visual modeling studies demonstrate impacts to some federal resources if **full build out occurred** under the current Height Act. **View shed protection merit further study.**” (emphasis added)

C. Federal Security. The Report deals with increased height impacts on Federal Security but takes no strong stand in favor of the federal interest.

- The Report finds “**Any uniform increases in the height of buildings near most federal agencies may result in costs associated with new security evaluations, such as assessments of new lines of sight to and from federal facilities.**” (Page 34)
- The Report also mentions a reference to “An increase in building height **could potentially impact** the existing building security measures already in place.” (emphasis added) (Page 34)

D. Infrastructure. Infrastructure is recognized to be a federal interest but is not adequately evaluated.

- The Report finds that “**Taller buildings could impact infrastructure capacity if they result in greater density.**” Again the NCPC study declares infrastructure to be a federal interest but identifies this study’s time and funding constraints as Report limitations. Such studies must relate to the current Comprehensive Plan for the National Capital **which does not suggest any substantial increases in the infrastructure of the National Capital.** In addition, Page 36 of the Report states “Large or uniform increases in height **may** impact the city’s infrastructure.” This finding is based on “federal agency representatives and local resident’s strong expressions of concern about impacts to infrastructure from increases in height.”

E. Federal Development Trends.

- Pages 37-39 deal with Federal Development Trends including employment levels. In addition to finding that “it cannot be said that the federal interest is limited to any certain area within the District, now or in the future,” and that “the economic vitality of the national capital is also a federal interest”...“from a federal operational and mission

perspective, the Height Act continues to meet the essential interests and needs of the federal government and it is anticipated that it will continue to do so in the future. **There is no specific federal interest in raising heights to meet future federal space needs. Like the private market, the federal government's demand for office space is cyclical, and will be affected in the future by changing technology, workplace practices and mission needs."** (Key Finding 3.4c; emphasis added)

- We agree with such trend findings but they should be more fully substantiated by documentation of future needs to build and rebuild (City and Federal) beyond the current Zoning Regulations and Height Act restrictions. It should be noted that the lands for federal public buildings are not zoned by the City but subject to the Height Act and NCPC approval.

F. Historic Resources. The weak and ambiguous language in this section **can be interpreted as undecided** and not answering the Congressional request.

- Section 3.5 of the Report deals with major Historic Resources and the "many community organizations, neighborhood and other groups expressed concern about the impacts of raising height on the scale and character of neighborhoods." The identified issues in this section, the L'Enfant and McMillan Plans, are well described but again with an ambiguous statement such as "Any changes to the Height Act **could impact or alter (Historic Plans) views by introducing new elements that may disrupt or narrow the view shed, thus potentially causing adverse effects on the Plan of the City of Washington.** In addition, changes to the Height Act have the potential to change the streetscape's character, and alter L'Enfant's vision of grand boulevards and public spaces, thereby causing adverse effects on the Plan of the City of Washington." (emphasis added) These statements are true and can be made stronger and more compelling with better documentation.
- Page 44 of the Report states, "The horizontality of the city allows these landmarks to stand out and emphasizes their importance and symbolism. It goes on to say **changes to the Height Act could impact the scale of nationally significant landmarks, their setting, and alter or reduce their symbolic meaning.**" (emphasis added) We agree but this needs more documentation than a few pictures and general diagrams.
- Page 44 only gives a few examples of historic resources outside the L'Enfant City. There are numerous others that need to be protected. The Report states that "Views to and from these resources contribute to their significance. Depending on the location and proposed changes to the Height Act, the setting of these resources may be impacted. **Altering the setting of these historic resources, including views to and from the sites could diminish their importance.**" (emphasis added) We agree.

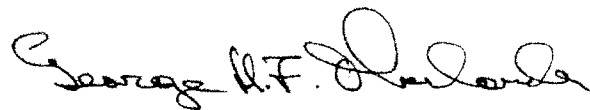
In our opinion, the magnitude of potential increases in building height within the 67 square miles of the District of Columbia requires a much more definitive identification, detailed site studies and analysis. **This document is not adequate or sufficient to develop a Master Plan that would designate locations for buildings taller than 160 feet.** It only identifies adverse impacts which, in our opinion, should be avoided. Key Findings 3.5a, 3.6 and 3.6a begin to identify additional complexities and the all-engulfing aspects of increasing the height of buildings in the National Capital.

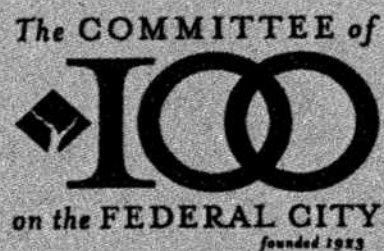
In addition to the Capitol building, major national monuments and federal/international buildings, the seat of our nation's government and **the planned historic horizontal character of the Capital is the city's primary attribute.** No other city in the country can claim this distinction. When visitors and officials from this and other countries visit our Capital City, they marvel at the historic character established by George Washington/L'Enfant and the subsequent enactment by the Congress of the current Height Act of 1910.

Submitted on behalf of the National Coalition to Save Our Mall by:

Judy Scott Feldman, PhD
Chair

George H.F. Oberlander, AICP
Vice Chair

Handwritten signature of Judy Scott Feldman in cursive script.Handwritten signature of George H.F. Oberlander in cursive script.



**WASHINGTON AT THE MILLENNIUM:
CITY BY DESIGN**

**On the Occasion of the Celebration of the 75th Anniversary of
The Committee of 100 on the Federal City**

**National Building Museum
November 18, 1998**

**J. Carter Brown
Chairman, U.S. Commission of Fine Arts**

- First of all it is a city by design. The L'Enfant plan of 1791, and developed by Ellicott the next year, goes back to Versailles where L'Enfant grew up, and in turn to Baroque Rome. The natural topography gave us a great start.

We should also credit the Army engineers who created the second half of our wonderful Mall—within the possible living memory of some—by reclaiming land that L'Enfant never dreamt would be available for the Lincoln and other memorials.

The McMillan Commission story is too familiar to this audience to recount. It did lead to the creation of the Commission of Fine Arts in 1910, growing out of the art commission whose report was characterized by the *Washington Star* in 1908 as, "A SHOWY SHAM, THE CONCOCTION OF A SHAM COMMISSION."

(I guess controversy is always with us.)

- Washington is blessed by a height limitation. Following a recommendation of Jefferson's, and finally legislated when the invention of the elevator became a real threat, it is hard to over-emphasize how important the retention of this city's character as a horizontal city has been.

Let us all sign in blood this evening our joint resolve never to allow the pressure of developer greed to get *that* changed, as has been often proposed over the years!

- And there's this city's setting, in its topographic bowl, with two rivers running through it in addition to the idyllic Rock Creek, and its great swards of grass and open breathability—what a thrill it is to come from somewhere else and drive into it from either National or Dulles airports, or to come by train and step out from Burnham's great station and see the Capitol before us!

- One reason we are so lucky is that we get federal help, so that all the good taxpayers of our nation help tend these parks, open our museums free, and help us weather periods of economic trial.

- We have not been burdened by heavy industry and its pollution. (Although we *are* a manufacturing town: we make laws, which seem to require a great deal of hot air.)

- We are also blessed by a great historic legacy, at two scales: the monumental buildings, some of which are among the most beautiful in the U.S.; and the charms and delight of our historic neighborhoods, most of which are

NATIONAL CAPITOL PLANNING COMMISSION (NCPC) HOSTS A SPECIAL MEETING FOR THE PUBLIC
TO PROVIDE FEEDBACK
ON FEDERAL AND DISTRICT PORTIONS OF THE HEIGHT MASTER PLAN FINAL RECOMMENDATIONS
AUTHORIZATION TO TRANSMIT FINAL RECOMMENDATIONS TO THE U.S. HOUSE COMMITTEE ON
OVERSIGHT AND GOVERNMENT REFORM
NCPC File number 6886

Tuesday, November 19, 2013
02:00 pm, Hearing Room 500,
401 9th Street, NW
Washington DC 20004

Good afternoon Mr. Chairman, Members of the Commission. My name is Bénédicte Aubrun and I wanted to thank the Commission for the excellent work done by the staff on the final recommendations of the DC Height Act.

Your recommendation to preserve the Height Act in the L'Enfant City greatly pleases the DC residents and is truly admirable.

Congratulations on saving the DC Height Act so cherished by Washingtonians, visitors from out of town and tourists in the L'Enfant City. Thank you for preserving the unique and human scale city of Washington DC. Thank you for listening and taking into consideration the testimonies of numerous residents, civic and professional organizations that voiced their concerns on October 30, 2013 about altering the horizontal skyline and affecting the monumental core of our beloved city. But I still have reservations on the proposal for the 20-foot maximum height for penthouses you are referring to p.16 #4 to increase the city's tax base.

Nevertheless, the DC Height Act is not only about Federal interests within the L'Enfant City. It is about an entire livable city that showcases our monuments, the White House and Capitol. The final report released Sunday evening does not provide enough protection for the whole city. The Comprehensive Plan is what is supposed to be protecting us, regarding zoning, but could be amended in a way that could jeopardize neighborhoods in Washington DC. The Comp Plan process is due for minor update at the end of 2014 (but depending on what will happen with this legislation, it might be done until the next Comp Plan to take this matter up). We do not trust our government that regularly fails to represent the well-being of the residents. Any changes to the DC Height Act will destabilize communities, and some of them are already experiencing major changes, causing gentrification.

We have been told by our elected officials that you can read the Comp Plan however you want. It offers the same protection as a sieve in the rain.

There is no need to abandon the Height Act. DC doesn't lack space or land for building houses as it is shown in the OP's report; millions of square feet of land can still be developed. And I do not believe that there is substantial data provided to support OP's growth claim.

I urge the Commission to vote on the recommendations for the historic L'Enfant City provided in the final report of the DC Height Act and to keep the Height Act in place city-wide.

Thank you.

Bénédicte Aubrun
Resident Ward I

Testimony of Melissa Kunstadter

National Capital Planning Commission
Special Commission Meeting on the Height Act
401 9th Street, NW
Washington DC 20004

November 19, 2013

Thank you for the opportunity to testify this afternoon.

My name is Melissa Kunstadter; I am an officer of the Tenleytown Neighbors Association but I am speaking today as an individual. I am here to testify against any changes to the existing Height Act, which needs to be preserved for the entire city. I applaud the Commission's proposed plan that came out just recently, but I remain concerned that it does not provide enough protection for the city outside of a limited area around and about the White House.

My family and I have lived in Tenleytown for the last 25 years, just a block and a half east of Wisconsin Avenue. Our block is quiet and tree-lined, my neighbors are young families, single professionals, empty-nesters, seniors, academics. We are but a short walk to the convenient shopping and restaurants along Wisconsin Avenue, bus transportation and the Tenley-AU metro stop. Despite Wisconsin Avenue's being a major transportation corridor and evacuation route, I believe it is because of the existing Height Act, which has kept the heights of most commercial buildings on that avenue to two or three stories, that our "neighborhoodiness" has been preserved.

Should the Height Act be changed and therefore the issues of height, density and parking be affected, it will be the ruination of my neighborhood. Noise, traffic, the blocking of sunshine and open skies will be the result - a drastic change unlikely ever to be undone once built.

Tenleytown is not only the second oldest neighborhood in the city, it also, like many other areas embracing the city, includes Civil War forts on its heights. Because Washington DC was planned as a whole, its beauties were meant to be seen from all prospects. Should building heights be mismanaged, not only Tenleytown's but also the city's intentions and ambience will be badly affected. How can we, as stewards of such historical and modern inheritance, allow our dwelling place to be so despoiled?

The Office of Planning has been remiss in offering substantiated data about the reasons for their changes to the Height Act and the consequent impacts upon our communities and city. Where are their substantiated data that our existing infrastructure can successfully serve such imposed new density? From sewers to parking to the metro system - Tenleytown is already nearing capacity.

Washington is a city of unique neighborhoods which ought to be cherished out of a sense of our history and also for the nurturing benefit of the people living there. It is also our nation's capital and thus bears importance beyond our city's gates and throughout our country to all of our citizens and residents. And because we are America, what Washington does and how it looks and operates, resonates throughout the rest of the world. Our city matters as a political and cultural entity and symbol. We, therefore, have a responsibility to be extra prudent in any changes we might consider to what has served us so well and for so long.

Please - retain the existing Height Act in its entirety.

Thank you,
Melissa Kunstadter

3821 Veazey Street, NW
Washington DC 20016



**National Capital Planning Commission
Special Commission Meeting
Final Recommendations on the Height Master Plan for Washington,
DC
NCPC File Number 6886**

November 19, 2013

Statement of Janet Quigley, President, Capitol Hill Restoration Society

Chairman Bryant and Commissioners, thank you for the opportunity to testify once again on this matter. 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.

After numerous hours of hearings and discussions on the Height Act and Height Master Plan, just about everything has been said. This year-long process, diligently facilitated by the NCPC and DC Office of Planning staffs, has certainly made an important contribution to the dialogue on what one of the world's great capital cities is, can be and should be.

CHRS stands by its position that no changes to the Height Act are necessary, and continues to respectfully disagree with the Office of Planning's arguments for increases. Consistent with that position, we concur with Recommendations 1 and 3 of NCPC's Final Report: Barring increases within the L'Enfant City will retain the "landscape" character of the historically significant avenues that host our public buildings, and additional protections for the City's viewsheds are certainly important and welcome.

We do not concur with Recommendations 2 or 4. Washington DC is one city and all residents should benefit equally from its protections. Thus it is not necessary to establish a process to allow targeted exceptions for height outside the L'Enfant City. As for #4, occupied penthouses would be the camel's nose under the tent for ad-hoc increases and would invite "height creep," which would not serve the City well.

In summary, we commend NCPC for its exhaustive work on this important matter, and recommend the Commission reject any proposals related to height increases.

Thank you for your time.

Good afternoon Mr. Chairman and members of the Commission. My name is Carol Aten. I have lived and worked in multiple areas of the city for over 40 years. I currently live in the Palisades.

I am testifying in support of Recommendation 1 of the Executive Director's Staff Report and in opposition to Recommendation 2. I urge NCPC to apply Recommendation 1 to the entire city.

Both the draft report and the final report very cogently describe a federal interest in Washington, DC that reaches beyond the L'Enfant Plan area. Federal parks and facilities are distributed throughout the city and current plans would further that effort.

Conversely, no compelling case has been made for the "need" to raise the height limitations. The "need" described by the Office of Planning's studies is far into the future and very speculative. The "risks" of allowing taller buildings without a clear understanding of the impacts on views, infrastructures, security, etc. far outweigh the speculative benefits that the Office of Planning's draft report suggested.

Why risk ruining the views of downtown and the monuments from the higher points in the city and around the topographic bowl? Notably, Cedar Hill—the Frederick Douglass National Historic Site—and its amazing views of the city, as well as the Civil War defense sites, St. Elizabeth's and the National Cathedral.

While the processes described in Recommendation 2 may sound eminently reasonable, we would be naïve to think decisions would not be heavily influenced by developers and their economic interests. The concept of "targeted exceptions" described in Recommendation 2 almost screams out for such pressure to make amendments to the Comprehensive Plan.

The last paragraph of Recommendation 2 emphasizes the need for "additional, careful study". Those studies should be done before any process to make changes in heights limits is approved. I urge you not to open this "can of worms" until it is known that height changes are required.

Recommendation 1 should apply to the entire city.

11/19/13

**Testimony of Denis James, President, Kalorama Citizens Association
for the November 19, 2013 Special Meeting of the
National Capitol Planning Commission on the DC Height Act**

Chairman Bryant and Commissioners, why are we here **today**? What's the hurry? As members of the concerned public, we are here with one business days' notice of a 27 page report, that if its recommendations are approved by this commission, will lay the groundwork for massive further destabilization of many DC neighborhoods, particularly mine, Adams Morgan, which sits just above the topographic bowl, with many fine views of downtown and the Federal monuments.

Why do I say this? Because giving an inch to this Office of Planning will lead to more and more demands by development interests, and that is all that this discussion is about: More money for the DC Treasury. Not quality of life and respect for the history of a place.

The DC Office of Planning's "policies" already lead to serious destabilization in many neighborhoods. Their Historic Preservation Review Board and staff allows grotesque redevelopment of wonderful historic single family row-houses into 8 and 9 unit condos, the approvals for which are in direct contradiction of the Department of Interior's and their own guidelines. The profit that developers can make from such projects is large, and thus destabilizing, in that homeowners can't resist the selling prices being offered. Those neighbors remaining are left to deal with the results of bad design, using inferior materials, such as plastic brick veneer, and the instability of an endless cycle of new neighbors in efficiency and one-bedroom apartments in which few ever put down permanent roots. This is the type of "planning" that DC's OP engages in.

We can only expect such economic pressures to grow if additional heights are allowed. Allowing them anywhere will create constant pressure to allow them in more places.

The process by which we got here is illegitimate and this **must** be recognized. The public meetings that were held were grossly inadequate to engage the residents of the District of Columbia. Every Advisory Neighborhood Commission should have been visited and engaged. The time of year of many of the meetings, summer, was not conducive to civic engagement, due to vacations, and some ANC's and civic groups were in recess.

To push the city into such a discussion at the very time that OP was presenting its final revisions of the Zoning Regulations Review is typical of this Office of Planning, seeking a time where those most involved in such issues were up to their eyeballs in the minutiae of that process. It's a shame that NCPC has been drawn into such a process.

I hope it is clear from these comments that many DC residents have no confidence in this Office of Planning. Only because Chairman Mendelson held a City Council hearing on this matter did DC residents have **any** opportunity to comment on a local level.

The Kalorama Citizens Association held a special meeting in August, 2013, just so that we could address this matter at the earliest possible moment and be on the record whatever turns this process should take. Today, I resubmit our previous testimony and resolution, which calls for no changes to the Height Act.

Denis James, President, Kalorama Citizens Association – denisjames@verizon.net



**TESTIMONY OF DENIS JAMES, PRESIDENT, KALORAMA CITIZENS ASSOCIATION
FOR THE NATIONAL CAPITOL PLANNING COMMISSION MEETING
ON THE FEDERAL HEIGHT OF BUILDINGS ACT, OCTOBER 30, 2013**

I have been a homeowner in the Adams Morgan neighborhood since 1971. As a very young adult, I was drawn to the architecture, human scale and wonderful skyline of our beautiful city. From my roof, I can see fireworks on the 4th 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 and more would be put at risk if the proposals of the DC Office of Planning are allowed to proceed. These proposals would inevitably lead to an inability to provide good stewardship of DC's historic resources, whether in the so-called historic "bowl" of the L'Enfant city, or the many other neighborhoods that have decided in favor of historic protections.

DC has been going through a multi-year Zoning Regulations Review process. If heights are changed, much of the time and effort spent in this process will have been wasted. Significantly taller buildings will require changes to the basic architecture of DC's zoning: the allowable floor area ratios; lot coverage; side and rear yards; and of course, the appropriate amount of parking. DC government will be seen as not honestly serving its residents, those whose participation it has actively sought.

DC OP's irresponsible desire to pack as many residents into the city as possible has led to destabilization within settled, mature neighborhoods, often those that are historic districts, as oversized projects are approved, often exceeding what the historic preservation law would seem to allow. This type of activity would only be 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 built where vital neighborhoods once existed.

For this reason, we must depend on the NCPC to be the wise advocate on behalf of DC residents, businesses and the many visitors to our beautiful city. I urge NCPC to reconsider even its modest proposal with regard to penthouse occupation. Such changes can be accomplished in a reasonable fashion through DC's own zoning process.

Denis James
Adams Morgan

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

Founded 1919

P.O. Box 21311
Kalorama Station
Washington, DC 20008



RESOLUTION OF THE KALORAMA CITIZENS ASSOCIATION IN OPPOSITION TO CHANGES TO THE HEIGHT OF BUILDINGS ACT

Whereas, the DC Office of Planning (OP) and the National Capitol Planning Commission (NCPC) are studying the Federal Height of Buildings Act, which along with DC Zoning Regulations controls the allowable height of all buildings in DC, and

Whereas, OP and NCPC have held two rounds of public meetings on this topic that featured describing the status quo and "modeling" what various taller heights would look like for the DC skyline, and

Whereas, OP's own presentation clearly showed that in the vast majority of cases, buildings in areas where maximum heights of 130 or 160 feet are allowed by the Height Act, those heights have not been approached, and

Whereas, DC's horizontal skyline, and human-scaled neighborhoods define the character of life in the city, and

Whereas, it would be grossly unfair to those with treasured views of the city to allow new height that would block those views, and

Whereas, adding height would likely detract from the monumental core of the city, putting at risk the tourist and hospitality trade which is the largest element of the DC economy, and

Whereas, adding height to neighborhoods or "clusters" would likely create a building boom in those locations, leading to escalation of land and building costs and a more expensive finished housing product, which will price many current residents out of their own neighborhoods and accelerate gentrification, and

Whereas, the proper place to begin a discussion of the heights of buildings in DC is through amendment of the DC Comprehensive Plan, with massive public outreach, and a vote of the DC Council approving any changes.

Now, therefore, the members of the Kalorama Citizens Association constituting a quorum hereby vote against changes being made to the Height Act that would lead to taller buildings in DC.

This resolution was approved at the August 15, 2013 meeting of the Kalorama Citizens Association.



**National Trust *for*
Historic Preservation**

Save the past. Enrich the future.

November 19, 2013

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

Re: Height Master Plan for Washington, D.C.

Dear Chairman Bryant and Members of the Commission:

On behalf of the National Trust for Historic Preservation, I appreciate the opportunity to comment on the Executive Director's Recommendations, released on Sunday evening November 17, regarding the proposed Height Master Plan for Washington, D.C., conducted by the National Capital Planning Commission (NCPC) and the D.C. Office of Planning.

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." (Rep. Issa to Mayor Gray and NCPC Chairman Bryant, Oct. 3, 2012.) 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.)

At the outset of the study process, the NCPC and D.C. Office of Planning agreed on three principles that were intended to guide the Height Act Study:

- 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.

We agree with and support these principles. In considering what recommendations to approve and send to Congress, we respectfully recommend that the Commissioners should ask: Are the proposed recommendations for changes to the Height Act consistent with these three principles?

The National Trust offers the following comments regarding the November 17 Executive Director's Recommendation:

First, the National Trust strongly supports the Executive Director's recommendation that no changes should be made to the Height Act inside the L'Enfant City.

We concur with the Executive Director's general determination 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." [NCPC, Nov. 17, 2013, p. 4.] Furthermore, we concur with NCPC that the federal interests in our Nation's Capitol include historic sites – especially those on the National Register of Historic Places. [*Id.* at p. 3.] These historic places are, indeed, "at the core of the city's image and the experience millions of visitors have of our national capital." [*Id.*]

The National Trust also concurs with the Executive Director's specific analysis that the dramatic changes to the Height Act within the L'Enfant City, as proposed by the D.C. Office of Planning, "would adversely affect federal interests." [*Id.* at p. 6.] In particular, the evaluation by the Commission staff indicates that the District's proposed approach "would likely add the most height where it is least appropriate: on streets and views focused on the U.S. Capitol and the White House, where building heights should be lower to emphasize views of these national resources." [*Id.* at p. 5.]

Furthermore, the National Trust notes the Commission staff's analysis that the District's proposed changes to the Height Act within the L'Enfant City would create little new developable capacity. "[O]nly a few of the streets that would be impacted under the District's proposed ratio approach are actually located in areas currently designated for medium and high density growth in the District Elements of the Comprehensive Plan. Thus, it does not appear that the city would realize much additional capacity under this proposal." [*Id.* at p. 9.] Thus, the cost would be high, in terms of adverse visual impact, while the benefit would be slight.

Second, the National Trust does not support the recommendation by the D.C. Office of Planning to eliminate the Height Act outside of the L'Enfant City. Among other things, that recommendation relies on the Office of Planning's mistaken assumption that there is little or no federal interest outside the L'Enfant City. We do not agree with the District's assumption that there is a "greatly diminished federal interest outside the monumental core." [DC OP, Sept. 20, 2013, p. 1.] Instead, we strongly support the Executive Director's determination that there are "significant and diverse federal interests located outside the L'Enfant City." [NCPC, Nov. 17, 2013, p. 10.]

If the Height Act were eliminated outside of the L'Enfant City, we do not share the confidence expressed by the D.C. Office of Planning that any and all federal interests outside the L'Enfant City could be "protected by the federal government's integral role in the District's comprehensive plan approval process and its significant presence on the District's Zoning Commission." [DC OP, Sept. 20, 2013, p. 1]

Third, the National Trust currently is reviewing the Executive Director's new recommendation (released for the first time on November 17) that the protections of the Height Act should remain in place outside the L'Enfant City "unless and until the District

completes an update to the *District Elements of the Comprehensive Plan*.” [NCPC, Nov. 17, 2013, p. 10 (emphasis in original).] According to the proposed approach, the update to the *Comprehensive Plan* would identify targeted areas outside the L’Enfant City where exceptions to the height limit would be allowed “that meet specific planning goals and also do not impact federal interests.” [*Id.*]

The Executive Director’s report essentially recommends that the local government could plan for tall buildings outside the L’Enfant City and then the federal government could authorize exceptions to the Height Act in accordance with the local plan. In contrast, the Office of Planning recommends that, outside the L’Enfant City, the federal government should eliminate the Height Act altogether, and then the local government could plan for tall buildings. While the Commission’s approach would seem to be less potentially harmful to the historic character of the city than the District’s approach, we believe that more careful study is needed to determine whether adequate safeguards would be in place under the approach recommended by the Executive Director. It is not clear, for example, what criteria would be used to identify exceptions to the Height Act, or how the public would be engaged in the proposed new approach.

Once the Executive Director’s new recommendation has been fully evaluated by the interested public and stakeholders, we anticipate that this new proposal will raise many questions. We note, for example, the Advisory Council on Historic Preservation has already raised a key question as to “whether the authorization of exceptions to the Height Act by NCPC through the Comprehensive Plan process would constitute an undertaking as defined in Section 106” of the National Historic Preservation Act and its implementing regulations[.]” [ACHP to NCPC, Nov. 18, 2013.]¹ If NCPC’s authorization of exceptions does constitute a federal undertaking, then the agency would need to comply with the requirements of Section 106 prior to approving the proposed approach.

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

The Commission assured Congress last year that “The study and its recommendations will be vetted through a public process and presented to the Commission for action before submission to the Committee.” [Chairman Bryant to Congressman Issa, Nov. 1, 2012.] However, the Executive Director’s new recommendations, released less than 48 hours ago, have not had the time to be vetted through a public process. These recommendations for changes to the Height Act should not be approved until that kind of meaningful public involvement has occurred.

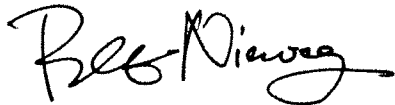
In summary, the National Trust believes the Height Act has proven to be effective over the course of the past century in shaping and protecting the character of the Nation’s

¹ See *McMillan Park Committee v. NCPC*, 759 F. Supp. 908 (D.D.C. 1991), *rev’d on other grounds*, 968 F.2d 1283 (D.C. Cir. 1992). In that case, the GSA had already accomplished Section 106 compliance, through a binding historic preservation covenant, prior to the NCPC’s review of the comprehensive plan. Those circumstances are not involved here.

Capital, and the Height Act continues to serve the public interest. The studies conducted by the local and federal governments do not make a persuasive case for any significant changes to the Height Act. In the National Trust's view, additional careful study is necessary before any amendments to the Height Act are considered.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Nieweg". The signature is fluid and cursive, with the first name "Rob" and last name "Nieweg" clearly distinguishable.

Rob Nieweg
Field Director & Attorney
Washington Field Office

Interests of the National Trust. The National Trust for Historic Preservation 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.

Penn-Branch Citizens/Civic Association

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

November 19, 2013

National Capital Planning Commission
401 9th Street NW
Washington, DC 20004

Re: Don't Repeal the 1910 Height of Buildings Act

Ladies and Gentlemen:

The Penn-Branch Citizens/Civic Association has reviewed the revised staff recommendation regarding the Height of Buildings Act and objects, objects, objects. If NCPC feels that it must tinker with the Height Act, please go no further than your original proposal. In requesting the Height Act Study, Rep. Darrell Issa (R-Cal.) asked NCPC and the District to *consider* changes to the Act – he did not command you to propose them. It is perfectly reasonable for you to respond thanks but no thanks, nothing is broken so there's nothing to fix. That is what your staff largely concluded in its original draft, and more importantly, that is what was said in the overwhelming weight of the testimony received at your earlier hearing.

NCPC's revised staff recommendation largely echoes the D.C. Office of Planning (DCOP) report. The revised NCPC proposal, stripped of its verbiage regarding study, advice and review, repeals the Height Act outside the L'Enfant City. As Penn-Branch said in our earlier testimony:

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.

NCPC received testimony in opposition to the DCOP report from across the city, from preservationists, newcomers, longtime residents, planning professionals, and people like those who reside in Penn-Branch, who love their city and its views, and who respond viscerally to its physical cityscape and the values of equality and democracy it embraces. In contrast, a bare handful of witnesses supported the changes sought by DCOP. Witnesses at a D.C. City Council hearing also

November 19, 2013

Page 2

testified overwhelmingly against the repealing the Height Act anywhere in the city. Please bear in mind the extraordinary unity on this issue. District residents are deeply divided over gentrification, parking, bike lanes, affordable housing and school boundaries. But we all embrace the Height Act. Penn-Branch cannot understand why NCPC would sign onto the destruction of one of the District's few unifying principles. Your own staff has demonstrated that DCOP has not made a persuasive economic or demographic case for change. In the end, this is about hubris. That cannot be the basis for destroying a national cityscape and legacy.

Do not seduce yourselves that this recommendation is a reasoned compromise. It is a betrayal. Please reject this recommendation and affirm the importance and permanence of the Height Act for all of the District of Columbia.

Respectfully submitted,

/s/

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

Alabama/Massachusetts/Barker Lane Block Club

November 19, 2013

National Capital Planning Commission
401 9th Street NW
Washington, DC 20004

Dear Members of the National Capital Planning Commission,

I am Johnnie Scott Rice, a native Washingtonian, former ANC Commissioner and today, the representative of a neighborhood that sits on the eastern edge of the District, well outside the L'Enfant City.

The staff proposal before you today retains the Height Act inside the L'Enfant City, and repeals it elsewhere. This proposal tells me that I and my neighbors are second-class citizens.

As east of the River residents, we have the highest crime rates, the worst-maintained schools, the fewest amenities, etc., etc., etc. Now you would take away even the Height Act and leave our neighborhoods to be sliced and diced and sold to the highest bidder. No more relationship between height and street width. Just whatever feels good. No more views from our backyards of the Capitol and the Monument. No more daily visual evidence that, despite all the things we don't have, we are part of the nation's capital. We are connected to the grand heritage.

Southeast knows exactly what the Office of Planning thinks we're good for, and where we can go, and how fast we can get there.

As a child, I lived through the great Southwest clearances. I have read the chilling Supreme Court decision ^{of} ~~the~~ slammed the final door on our hopes for justice before we were swept away.

Today it's your turn to decide. You have a chance "to act justly, and to love mercy, and to walk humbly" in the footsteps of a great civic legacy. Please reject the staff proposals and keep the District a unified city.

Respectfully submitted,

Johnnie Scott Rice



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 5B**

DEMOUNTABLE TRAILER

1322 Irving Street NE Washington, DC 20017

Phone: (202) 635-6563 • Fax: (202) 635-6565 • Website: anc.dc.gov

November 12, 2013

OFFICERS

Shirley Rivens-Smith
Chairperson

Carolyn C. Steptoe
Vice Chairperson

Shirley Rivens-Smith
Treasurer

Jenese L. Jones
Recording Secretary

Ursula Higgins
Correspondence Secretary

Jenese L. Jones
Parliamentarian

SENT VIA ELECTRONIC MAIL

D.C. Council Chairman Phil Mendelson
Council of the District of Columbia - Committee of the Whole
The John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

**RE: ADVISORY NEIGHBORHOOD COMMISSION 5B's
RESOLUTION TO SUBMIT COMMENTS TO THE D.C.
COUNCIL COMMITTEE OF THE WHOLE REGARDING THE
DISTRICT OF COLUMBIA'S RECOMMENDATIONS ON THE
FEDERAL HEIGHT OF BUILDINGS ACT OF 1910**

COMMISSIONERS

5B01 Shirley Rivens Smith
5B02 Ursula Higgins
5B03 Michael Morrison
5B04 Carolyn C. Steptoe
5B05 Jenese L. Jones

Dear D.C. Council Chairman Mendelson and Committee of the Whole Members:

At its regular monthly community meeting held October 23, 2013, Advisory Neighborhood Commission 5B ("ANC 5B" or "the Commission") considered the above-referenced matter.

With four of the four current commissioners present at this duly noticed, public meeting, a quorum was declared wherein ANC 5B voted unanimously (4-0-0) to submit comments to the D.C. Council Committee of the Whole regarding *The District of Columbia's Recommendations on the Federal Height of Buildings Act of 1910* ("the Height Act").

Background:

D.C. Council Chair Phil Mendelson convened a public oversight hearing of the Committee of the Whole ("COW") on Monday, October 28, 2013. The subject of said October 28, 2013 was the *District of Columbia's Recommendations on the Federal Height of Buildings Act of 1910* ("the Height Act"). The purpose of the October 28, 2013 oversight hearing was to receive testimony on the District's recommendations to Congress on potential modifications to the Federal Height of Buildings Act of 1910. Since the House Committee on Government Reform requested a joint study in October 2012, the District of Columbia (vis-à-vis D.C. Office of Planning/"OP") has been jointly conducting a height master plan with the National Capital Planning Commission ("NCPC") in order to assess how the Height Act continues to serve federal and local interests. In its preliminary findings and recommendations, the National Capital Planning Commission did not recommend substantial changes to the Height Act. Its recommendations included allowing for human occupancy of penthouses. The District of Columbia however, in separate draft recommendations, proposed increasing the height limits within the L'Enfant City (the original city), and that Congress should allow the District to determine the maximum height of buildings outside the L'Enfant City. The Committee of the Whole invited residents to share their views on these recommendations.

ANC 5B did not testify or submit testimony at the October 28, 2013 oversight hearing. Neither did ANC 5B review either NCPC's or the District's draft recommendations prior to the October 28, 2013 oversight hearing.

However, upon review of (i) the COW October 28, 2013 oversight hearing testimony, (ii) both NCPC and the District's separate draft recommendations and (iii) the Economic Feasibility Analysis of the Height Master Plan prepared for OP by Partners for Economic Solutions ("PES"), ANC 5B submits the following comments:

WHEREAS, ANC 5B raises concerns with OP Director Harriet Tregoning's October 28, 2013 testimony wherein she stated:

"the District used as our guiding principle in even considering height was our Comp [Comprehensive] Plan because in many ways our Comp Plan has talked about where we are going to grow in the city and how important it is to protect our single family home residential neighborhoods; that we have only designated certain parts of the city, a relatively small portion as having the infrastructure, having the capacity, having the appropriateness of having additional higher density development." (OCTO 10-28-13 COW; start 10:41.) and;

WHEREAS, ANC 5B supports no change in the Height Act to accommodate projected increased population primarily because, along the vein of Director Tregoning's testimony, provisions of the Comprehensive Plan and its land use elements allow the D.C. Zoning Commission extraordinary leeway to approve precedent rezoning/upzoning/increased height & footprint land use in single family residential neighborhoods, especially land close to Metrorail stations; and

For example, currently, as a result of the 2009 DC Council approval of the Brookland Small Area Plan, an ANC 5B single family home residential neighborhood was not protected either by the Comprehensive Plan or the D.C. Zoning Commission ("ZC") from a large, rezoned/upzoned condo/apartment development project; and

Instead, the ANC 5B propertyowners residing in an R-2 and C-1 zone district (low scale density residential) within yards of a Zoning Commission-approved C-2-B/90 feet development (moderate-density mixed use and medium-density mixed use) face obstruction of air, light and quality of life. The ZC-approved rezoned/upzoned C-2-B development will accommodate a 6-7 story building with 220+ apartment units. These most nearby ANC 5B propertyowners challenged Zoning's approval of the upzoning application as "inconsistent" with elements of the Comprehensive Plan (Future Land Use Map & Generalized Policy Map, respectively) and the Brookland Small Area Plans, to no avail. Instead, D.C. Zoning Commission posited that "the Comprehensive Plan must be considered in totality" when determining whether a project is not inconsistent with the Comprehensive Plan and the elements thereof. (See Exhibit 1, Zoning Commission Order 10-28,(1)); and

WHEREAS, ANC 5B observes that since the Comprehensive Plan affords the elected/appointed Zoning Commission body the “in totality” rezoning/upzoning clause (in ANC 5B from low density residential to moderate-density, mixed-use and medium-density mixed use), there is no need to change the Height Act to build for a projected new population growth; and

WHEREAS, ANC 5B is already experiencing residual apartment and condo development projects in one district as a direct result of the C-2-B upzoning approval. To date, there are four (4) new apartment and condo development projects in the pipeline for ANC 5B; and

WHEREAS, current ANC 5B boundaries include substantial vacant commercial buildings along the Rhode Island Avenue corridor which can be renovated as new housing for prospective residents and population growth, thereby preserving ANC 5B’s neighborhood character; and

WHEREAS, according to OP’s Brookland/CUA Metro Small Area Plan prior to the 1960s, ANC 5B boundaries had a population of 11,000 nearby residents, none of whom lived in high rise buildings. (*See Exhibit 2, pg. 10*), Introduction/Brookland CUA Metro Small Area Plan); and

WHEREAS, ANC 5B objects to OP and PES identifying portions of Rhode Island Avenue, NE (between 4th Street and 12th Street) as one of the 15 high density Illustrative Analysis Areas for Height Study (*see Exhibit 3*). In the September 23, 2013 Economic Feasibility Analysis prepared by PES, Rhode Island Avenue is cited as one of the high density illustrative areas to test the likely market response and impacts of raising building height limits. The new construction test feasibility heights range from 130, 160, 200 and 250 feet; and

WHEREAS, at least one half of the height study area is located within the current ANC 5B. ANC 5B objects to the prospect of a 10-24 story building located within its boundaries as unnecessary and inappropriate for the character of the ANC 5B single residential community.

The Conversion table (p. i/Executive Summary) notes:

<u>Height in Feet</u>	<u>Commercial/stories</u>	<u>Residential/stories</u>
130	10	12
160	13	15
200	17	19
250	21	24

WHEREAS, ANC 5B boundaries already suffer from the District’s aging infrastructure. Power outages, stormwater/flooding, transportation, road work, etc. are all upgrades needed by current ANC 5B residents. Continued and projected development will constrain the 5B residential community and escalate infrastructure problems.

**BE IT RESOLVED THAT ANC 5B approved the foregoing Advisory
*Neighborhood Commission 5B Resolution To Submit To The D.C. Council Committee
Of The Whole Regarding The District Of Columbia's Recommendations On The
Federal Height Of Buildings Act Of 1910.***

ANC 5B requests "great weight" from be accorded the foregoing ANC 5B Resolution.

Sincerely,

/s/
Shirley Rivens Smith
Chairperson, ANC 5B

/s/
Ursula Higgins
Correspondence Secretary, ANC 5B

Attachments – Exhibits 1 through 3
cc: Jessica Jacobs, Legislative Counsel, D.C. COW
Director Harriet Tregoning, D.C. Office of Planning
Chairman Anthony Hood, D.C. Zoning Commission
Councilmember Kenyan McDuffie. Ward 5

EXHIBIT 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-28(1)
Z.C. Case No. 10-28
901 Monroe Street, LLC
(Consolidated Approval for a Planned Unit Development and Zoning Map Amendment)
Order on Remand
July 25, 2013

This proceeding concerns an application submitted by 901 Monroe Street, LLC ("Applicant") for a planned unit development ("PUD") and related Zoning Map amendment in connection with the development of a property adjacent to the Brookland/CUA Metrorail station in Northeast Washington, D.C. (the "Project"). By Order effective June 8, 2012, the Zoning Commission for the District of Columbia (the "Commission") approved the application subject to conditions ("Z.C. Order No. 10-28").

Parties to this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission ("ANC") 5B, the Brookland Neighborhood Citizens Association ("BNCA"), and a group of residents residing within 200 feet of the subject property (the "200-Footers"). The 200-Footers petitioned the District of Columbia Court of Appeals ("Court of Appeals" or "DCCA") to review the Commission's Order. By decision dated May 16, 2013, the Court of Appeals concluded that although "the Commission addressed this case with an open mind and considerable care and deliberation" and "for the most part, the Commission's findings are supported by substantial evidence on the record as a whole and that its legal analysis is generally sound," the Court nevertheless found that "that the Commission failed to make findings on several disputed issues" and therefore remanded the case back to the Commission for additional findings of fact and conclusions of law. *Guy Durant, et al., v. D.C. Zoning Comm'n*, 65 A3d 1161, 1163 (D.C. 2013).

Specifically, the decision contained the following remand instruction:

During the public hearing, the petitioners raised a number of material issues, calling into question whether the application was consistent with the Comprehensive Plan. Based on our own review of the Commission's order and the record, we conclude that the Commission did not address or explain its resolution of three of these issues . . . Specifically, the Commission should:

1. Resolve the dispute regarding the FLUM designations, and determine whether the project is consistent with the Plan as a whole in light of its resolution of that issue;
2. Explain whether the proposal is consistent with the written Plan policies discussed above: UNE-1.1.1, LU-2.16, LU-2.1.8, LU-2.3.1, and with the portions of the UNE-2.6.1 and LU-1.3.1 omitted from its quotation of these policies;
3. Make findings regarding the GPM's designation of the property as a Neighborhood Conservation Area, and determine whether the developer's application is consistent with the Plan in light of that designation; and

4. Make any other necessary findings of fact and conclusions of law, in accordance with this opinion."

65 A.3d 1171 -1172.

PRELIMINARY MATTERS

Pursuant to the Court of Appeals' instruction to the Commission that it provide "supplemental findings and related conclusions of law" on the stated issues, the Commission, through the issuance of a Procedural Order on Remand requested the Applicant, as the prevailing party, to provide a proposed order on remand that makes the determinations, explanations, and findings required by the Court of Appeals. The Applicant provided a draft order on June 24, 2013. (Exhibit ("Ex.") 347.)

The Commission also provided ANC 5B, the 200-Footers, and BNCA the opportunity to each provide a response that identifies any alleged errors or omissions in the findings of fact and conclusions of law stated in the proposed order.

This Order reflects the Commission's supplemental Findings of Fact and Conclusions of Law on the issues remanded by the Court. This Order, therefore, will not restate all facts concerning the Project, but only those relevant to the remand issues. Where appropriate, this Order will identify those finding of facts contained in Z.C. Order No. 10-28 that support the supplemental findings made.

FINDINGS OF FACT

THE LAND USE ELEMENT

1. Based on the provisions of the Comprehensive Plan itself and the testimony of Office of Planning ("OP"), the Commission finds the Comprehensive Plan and the Brookland Small Area Plan must be considered in totality, not by individual land use elements, when determining whether the Project is not inconsistent with the Comprehensive Plan and elements thereof. (Ex. 80, 320.)
2. The Land Use Element of the Comprehensive Plan provides:

The District's Metrorail stations include 15 stations within the Central Employment Area and 25 "neighborhood" stations (see Map 3.5). Looking forward, certain principles should be applied in the management of land around all of the District's neighborhood stations. These include: A preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground floor retail uses; A preference for diverse housing types, including both market-rate and affordable units and housing for seniors and others with mobility impairments; A priority on attractive, pedestrian-friendly design and a de-emphasis on auto-oriented uses and surface parking; Provision of well-designed, well-programmed, and well-maintained public open spaces; A "stepping down" of densities with distance away from each station, protecting lower density uses in the vicinity; Convenient and comfortable connections to the bus system, thereby expanding access to the stations and increasing Metro's ability to serve all parts of

the city; and A high level of pedestrian and bicycle connectivity between the stations and the neighborhoods around them.

(10-A DCMR § 306.4 (LU-1.3.))

3. The Project supports the principles to be applied in the management of land around Metrorail stations set forth directly above because it creates: mixed residential and commercial uses with housing above ground floor retail; an attractive, pedestrian-friendly design and a de-emphasis on auto-oriented uses and surface parking; well-designed, well-programmed, and well-maintained public open spaces; and a high level of pedestrian and bicycle connectivity between the Brookland/CUA Metro Station and the neighborhood around it. (Ex. 25; 1/19/12 Transcript ("Tr.") pp. 35-54.)

4. The Land Use Element of the Comprehensive Plan also provides:

Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area.

(10-A DCMR § 306.10 (LU-1.3.1).)

5. The Project will support the development of the Brookland/CUA Metrorail station as an anchor for economic and civic development in an area that currently lacks adequate neighborhood shopping opportunities and employment. The Project will reduce automobile congestion, improve air quality, increase jobs, provide a range of goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, and capitalize on the development and public transportation opportunities which the Brookland/CUA Metrorail station provides. (Ex. 25; 1/19/12 Tr. pp. 35-54; Z.C. Order No. 10-28 Findings of Fact ("FOF") 29-32, 39.)
6. The Commission acknowledges that the policies embodied in LU-1.3.1 do not outweigh other land use policies, including those which call for neighborhood preservation, in every instance. The Commission considers the unique characteristics of the area surrounding the Brookland/CUA Metrorail station and the specific features of the Project in their totality in arriving at its decision regarding the Project. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 26-27.)

7. The Land Use Element of the Comprehensive Plan also provides:

Ensure that development adjacent to Metrorail stations is planned and designed to respect the character, scale, and integrity of adjacent neighborhoods. For stations that are located within or close to low density areas, building heights should “step down” as needed to avoid dramatic contrasts in height and scale between the station area and nearby residential streets and yards.

(10-A DCMR § 306.14 (LU-1.3.5).)

8. The Project’s design respects the character, scale, and integrity of the adjacent neighborhoods. The Project’s scale mediates between the 70-foot-high developments being constructed at CUA campus, the densities the Small Area Plan supports adjacent to the Brookland Metrorail station, and the single-family residences to the east and south of the Project. The Project has been designed to “step down” as needed to avoid dramatic contrasts between the Project and surrounding areas. The Commission gives due deference to OP’s recommendation that the Project’s scale is consistent with the adjacent neighborhoods. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 35.)

9. The Land Use Element of the Comprehensive Plan also provides:

Protect and conserve the District’s stable, low density neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale.

(10-A DCMR § 309.10 (LU-2.1.5).)

10. The Land Use Element of the Comprehensive Plan also provides:

Discourage the replacement of quality homes in good physical condition with new homes that are substantially larger, taller, and bulkier than the prevailing building stock.

(10-A DCMR § 309.11 (LU-2.1.6).)

11. The Commission acknowledges that LU-2.1.6 discourages “Teardowns.” The Commission finds that the Project tears down four existing residential homes and that the removal of the homes is necessary in order to complete the Project. The Commission further finds that, on balance, the loss of four homes is outweighed by the benefits that will accrue to the neighborhood and the city by advancing the land use policies that support development of the Project, such as encouraging development around Metrorail stations. The Project will provide such benefits as new housing and affordable housing; urban architecture, landscaping, and creation of open spaces; site planning and efficient and economical land uses; effective and safe vehicular and pedestrian access; environmental benefits; revenue for the District; and employment and local business stimulation. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 29-32, 39.)

12. The Land Use Element of the Comprehensive Plan also provides:

Discourage the zoning of areas currently developed with single family homes, duplexes, and rowhouses (e.g., R-1 through R-4) for multifamily apartments (e.g., R-5) where such action would likely result in the demolition of housing in good condition and its replacement with structures that are potentially out of character with the existing neighborhood.

(10-A DCMR § 309.13 (LU-2.1.8).)

13. The Commission acknowledges that LU-2.1.8 discourages the rezoning of areas currently developed with single family homes in order to accommodate multifamily apartments where such rezoning would result in the demolition of homes in good condition and the construction of structures out of character with the existing neighborhood.

14. However, the Project is not out of character with the existing neighborhood. The Applicant incorporated changes into the Project that included the provision of additional public amenities, increased building setbacks, refinements to the building's massing and appearance, a decrease in the number of proposed apartments, additional landscaping and parking spaces, and an enhanced transportation demand management plan. These changes enhanced the Project's compatibility with the surrounding neighborhood and result in a structure compatible with the surrounding neighborhood. Moreover, the Commission finds that LU-2.1.8 must be considered together with the other policies of the Land Use Element and the Comprehensive Plan encouraging new mixed use transit oriented development. The Commission concurs with OP's view that the Project is not inconsistent with this policy. (Ex. 80, p. 8; FOF 35.)

15. The Land Use Element of the Comprehensive Plan also provides:

Maintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood.

(10-A DCMR § 311.3 (LU-2.3.1).)

16. The Commission acknowledges that Land Use Policy LU-2.3.1 encourages zoning regulations and development review procedures to prevent inappropriate encroachment of commercial uses in residential areas and to limit the scale and extent of non-residential uses that may create conflicts or be out of scale with a neighborhood. This policy does not prohibit commercial uses in residential areas as long as such uses are appropriately reviewed to assess their impact.

17. The Commission finds that the many changes made to the Project by the Applicant during the application process — including increased building setbacks, refinements to the massing and appearance, enclosed loading facilities, and enhanced landscaping along Monroe Street — reflect the Commission's careful review and assessment of the Project with respect to encroachment of commercial uses in residential areas. In light of these changes and the Commission's careful review, the Commission finds that the Project does not extend inappropriate commercial uses into residential

areas and is not excessively concentrated or out of scale with the neighborhood. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 35.)

THE UPPER NORTHEAST AREA ELEMENT

18. The Upper Northeast Area Element of the Comprehensive Plan provides:

Protect and enhance the stable neighborhoods of Upper Northeast, such as Michigan Park, North Michigan Park, University Heights, Woodridge, Brookland, Queens Chapel, South Central, Lamond Riggs, and Arboretum. The residential character of these areas shall be conserved, and places of historic significance, gateways, parks, and special places shall be enhanced.

(10-A DCMR § 2408.2 (UNE-1.1.1).)

19. The Upper Northeast Area Element of the Comprehensive Plan provides:

Capitalize on the presence of the Metro stations at Rhode Island Avenue, Brookland/CUA, and Fort Totten, to provide new transit-oriented housing, community services, and jobs. New development around each of these three stations is strongly supported. The District will coordinate with WMATA to ensure that the design, density, and type of housing or other proposed development at these stations is compatible with surrounding neighborhoods; respects community concerns and feedback; serves a variety of household incomes; and mitigates impacts on parking, traffic, and public services. Development shall comply with other provisions of the Comprehensive Plan regarding the compatibility of new land uses with established development, the provision of appropriate open space, and mitigation of impacts on traffic, parking, and public services.

(10-A DCMR § 2408.4 (UNE-1.1.3).)

20. The Upper Northeast Area Element of the Comprehensive Plan provides:

Encourage moderate-density mixed use development on vacant and underutilized property in the vicinity of the Brookland/CUA Metro station, including the parking lot east of the station. Special care should be taken to protect the existing low-scale residential uses along and east of 10th Street NE, retain the number of bus bays at the station, and develop strategies to deal with overflow parking and cut-through traffic in the station vicinity.

(10-A DCMR § 2416.3 (UNE-2.6.1).)

21. The Commission acknowledges that UNE-1.1.1 encourages the protection, enhancement, and character of residential neighborhoods of Upper Northeast, including Brookland. However, based on its own terms and OP's analysis, the Comprehensive Plan requires that this policy must be balanced with other competing land use policies. In addition, this policy does not prohibit new development in residential neighborhoods in the Upper Northeast area.

22. The creation of a Moderate-Density Mixed-Use development at this location near the Brookland/CUA Metrorail station is appropriate and not inconsistent with the Upper Northeast Element and the Comprehensive Plan as a whole. Policies, such as UNE-2.6.1, encourage this type of development, and the Project's features reflect the careful balance of protecting the existing residential neighborhood and the development of mixed-use transit-oriented projects. (FOF 29-35.)
23. Because of the Project's many features and benefits, such as neighborhood-serving retail and features intended to preserve the residential character of the neighborhood, including the building's setbacks, the building's massing and appearance, the number of proposed apartments, and landscaping, the Project will not destabilize the existing residential neighborhood. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 29-31, 33-34.)
24. The Commission acknowledges that policy UNE-2.6.1, which encourages moderate-density mixed-use development in the vicinity of the Brookland/CUA Metro station, also encourages special care for protecting low-scale residential uses along and east of 10th Street, N.E. However, the policy does not advise that no development should occur along 10th Street.
25. When the totality of policy UNE-2.6.1 is considered with the many elements of the Comprehensive Plan that encourage this mixed-use transit oriented development, the Project is not inconsistent with the this policy or the Comprehensive Plan as a whole. The Project incorporates many design features, such as setbacks, to respect and protect the low-scale residential character of the surrounding neighborhood, particularly along 10th Street. (Ex. 25; 1/19/12 Tr. pp. 35-54; FOF 30.)

THE FUTURE LAND USE MAP

26. The FLUM is not a zoning map in that it is not parcel specific and it does not set forth specific requirements for setback, height, use, and the like. Rather, the FLUM is to be interpreted broadly in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (10-A DCMR § 226.1.) The Comprehensive Plan permits the Commission to approve heights and densities through the PUD process that exceed those set forth in the FLUM. ("It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here."). (10-A DCMR § 226.1(c).)
27. The FLUM designates the existing zoning classification for the Project as part Low-Density Residential, part Low-Density Mixed-Use, and part Moderate-Density Mixed-Use. More than half of the Project's square footage is classified under the FLUM as Low-Density Residential. The balance of the Project is classified as Moderate-Density Mixed-Use and Low-Density Mixed-Use. Because the FLUM is not boundary or parcel specific, the exact distribution of land among different land use classifications cannot be determined. (FOF 28.)
28. OP incorrectly stated in its January 9, 2012 report that that the FLUM designates more than half the Project as Moderate-Density Mixed-Use. The Commission repeated the mistake in its Order. OP corrected its mistake in its February 23, 2012 supplemental report in which it recognized that the majority of the Project is classified as Low-Density Residential. The Commission corrects its mistake as set forth in the preceding paragraph. (Ex. 320.)

29. The Commission's approval of the Project changes the zoning from the R-2 and C-1 Zone Districts to the C-2-B Zone District. The C-2-B Zone District is congruent with both Moderate-Density Mixed-Use and Medium-Density Mixed-Use. The change to the C-2-B Zone District is limited by the PUD restrictions, in particular those with respect to the Project's height and density. (Ex. 25; FOF 35.)
30. The Project will extend a Moderate-Density Mixed-Use into areas that are designated Low-Density Residential and Low-Density Mixed-Use on the FLUM. (Ex. 25.)
31. Interpreted broadly in conjunction with the Comprehensive Plan as a whole, the FLUM's designation of more than half of the Project as Low-Density Residential does not render the Project inconsistent with the FLUM. The precise amount of the Property that is designated as Low-Density Residential on the FLUM is not a material consideration for the Commission to approve the Project. The neighborhood context, the characteristics of the Project, and the applicable policies in the Comprehensive Plan allow the Commission to conclude that extending the proposed Moderate-Density Mixed-Use into the Low-Density Residential-designated area of the Property is appropriate for this Property. (Ex. 25, 80, 320.)
32. The PUD limitations placed on the height and density of the Project mitigate against the potential adverse impacts from the imposition of Moderate-Density Mixed-Use into portions of a lot designated Low-Density Residential on the FLUM. (Ex. 25; FOF 35.)
33. The competing policies encouraging transit oriented mixed use growth near Metrorail stations outweighs the policies embodied in the FLUM's designation of more than one-half the Project as Low-Density Residential. (Ex. 25, 80.)

THE GENERALIZED POLICY MAP

34. The Generalized Policy Map (GPM) of the Comprehensive Plan provides:

Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated. Neighborhood Conservation Areas that are designated "PDR" on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided.

(10-A DCMR § 223.4.)

35. The GPM of the Comprehensive Plan also provides:

The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new

development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map.

(10-A DCMR § 223.5.)

36. The Commission acknowledges that the Project is designated as a Neighborhood Conservation Area on the GPM. The Project is adjacent to, but not part of, the Land Use Change Area for the Brookland/CUA Metrorail station.
37. By its own terms, the GPM is not a zoning map. It is not parcel specific and it does not set forth specific requirements for setbacks, height, use, parking, and the like. Rather, the GPM is to be interpreted broadly in conjunction with the text and other maps of the Comprehensive Plan. A site's designation on the GPM is not dispositive for how the land should be used. (10-A DCMR § 223.2; Ex. 80, 320.)
38. The categories of the GPM are broad and, if a developed residential area is not designated as a Land Use Change Area on the GPM, then it is generally designated as a Neighborhood Conservation Area. By its own terms, the GPM does not offer a category for redevelopment of a non-vacant residential area. (10-A DCMR § 223.)
39. The Commission finds that the Project is compatible with the existing scale and architectural character of the area. (Ex. 25, 80; 1/19/12 Tr. pp. 35-54.)
40. The Commission finds that when the GPM is considered along with the applicable written policies and other maps of the Comprehensive Plan that encourage moderate-density mixed-use transit-oriented development and the Project's features that will enhance and respect the neighborhood, the Project is not inconsistent with the GPM or the Comprehensive Plan. The GPM's designation of the Project as a Neighborhood Conservation Area does not alter the Commission's conclusion that the Project is not inconsistent with the Comprehensive Plan as a whole.

CONCLUSIONS OF LAW

1. The Commission must consider the competing policies encouraging transit-oriented mixed-use development near Metrorail stations and preserving the residential nature of District neighborhoods set forth in the various elements of the Comprehensive Plan, including the Land Use Element, Northeast Area Element, FLUM, and GPM.
2. Having considered these competing policies in light of the Comprehensive Plan as a whole, the Commission concludes that the Project is not inconsistent with the Comprehensive Plan.
3. The Commission concludes that the Project is not inconsistent with the Land Use Element of the Comprehensive Plan. Specifically, the Project is not inconsistent with the policies set forth in LU-1.3.1, LU-1.3.5, LU-2.1.6, LU-2.1.8, and LU-2.3.1 for the reasons set forth in the Findings of Fact.
4. The Commission concludes that the Project is not inconsistent with the Northeast Area Element of the Comprehensive Plan. Specifically, the Project is not inconsistent with the policies set forth in UNE-1.1.1 and UNE-2.6.1 for the reasons set forth in the Findings of Fact.

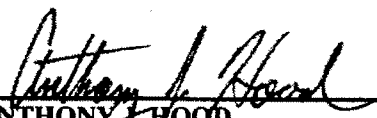
5. The Commission concludes that the Project is not inconsistent with the FLUM. Specifically, the Project is not inconsistent with the FLUM's designation of more than one half of the Project as Low Density Residential for the reasons set forth in the Findings of Fact.
6. The Commission concludes that the Project is not inconsistent with the GPM. Specifically, the Project is not inconsistent with the GPM's designation of the Project as a Neighborhood Conservation Area for the reasons set forth in the Findings of Fact.
7. For these reasons, the Commission finds that the Applicant has met its burden of addressing each material contested issue. The Commission's judgment that the Project is not inconsistent with the Comprehensive Plan is supported by sufficient findings of fact. The record supports each finding of fact with respect to the FLUM, the six written policy elements, and the GPM.

DECISION


Based upon the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia hereby **ORDERS** that Zoning Commission Order No. 10-28, effective June 8, 2012, shall be supplemented by the addition of the above Findings of Fact and Conclusions of Law.

On July 25, 2013, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Robert E. Miller, not having participated, not voting.

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 8, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

EXHIBIT 2



12th Street NE



Brookland/CUA Metro Station



Commercial Area - North



Monroe Street



Commercial Area - South

Within the Brookland neighborhood there are variances in accessibility to amenities and transit options. For example, areas around the metro have a very high Walk Score, averaging around 83 out of a 100 and considered 'very walkable'. Areas farther away from the Metro have lower scores and are considered 'car dependent'¹. This means that residents in low-walkable areas cannot run errands or perhaps buy groceries in their immediate neighborhood. An important goal is to give all Brookland residents the opportunity to shop and recreate close to their homes.

With more people out of their cars and in the neighborhood, increased foot traffic will support local businesses who can better offer convenient goods and services to residents. Also, more dense and walkable neighborhoods attract and sustain a diversity of retail, which makes neighborhood shopping for items previously only available outside the area a reality.

Promoting walkability and enhanced retail opportunities is possible in Brookland, and the area is seeing a resurgence of activity. In the mid 20th century the Brookland population of nearly 11,000 supported a thriving main street, engaged in institutional offerings, and enjoyed a cohesive community.² As people moved out of the District starting around 1960,

neighborhoods suffered. The current Brookland population of just over 6,000 has begun to see a resurgence of new activity. The area maintains the infrastructure and design to support new residents. As more people become interested in Brookland, the neighborhood will be able to meet many more development goals, increase amenities and enrich the community spirit.

The intimate connection between the changes happening in our region, elsewhere in the United States, and around the globe have true impacts in our communities. Energy, climate and environmental concerns will increasingly shape development preferences and goals for the types of uses and transit options that are desired by communities; our own choices of how we grow and develop, what form that growth takes, and the choices we make also will have their impact on climate, energy demand, and the environment.

This inter-relationship underscores how important it is to make sure our neighborhoods contain the services and amenities that allow our citizens to meet their daily needs in their neighborhoods and provide them real and economical choices about how they travel to work, school and play.

Overview

The Brookland/CUA Metro Station Small Area Plan is a community-based plan developed for the purpose of guiding the growth, development and revitalization of under utilized areas within a quarter mile, or ten-minute walk, of the Metro Station. As areas of the city grows, under utilized land, especially at and near Metro Stations, is under pressure for redevelopment. This document serves as a framework for guiding that future growth.

The Small Area Plan document conveys a shared vision for the neighborhood, records the Guiding Principles that were developed through the community-based planning process, and illustrates the resulting concepts. It includes an implementation strategy for transforming the plan into reality with recommendations regarding specific issues. It provides residents, land owners, stakeholders, developers and city officials and agencies with a framework and recommendations for guiding future development in the study area.

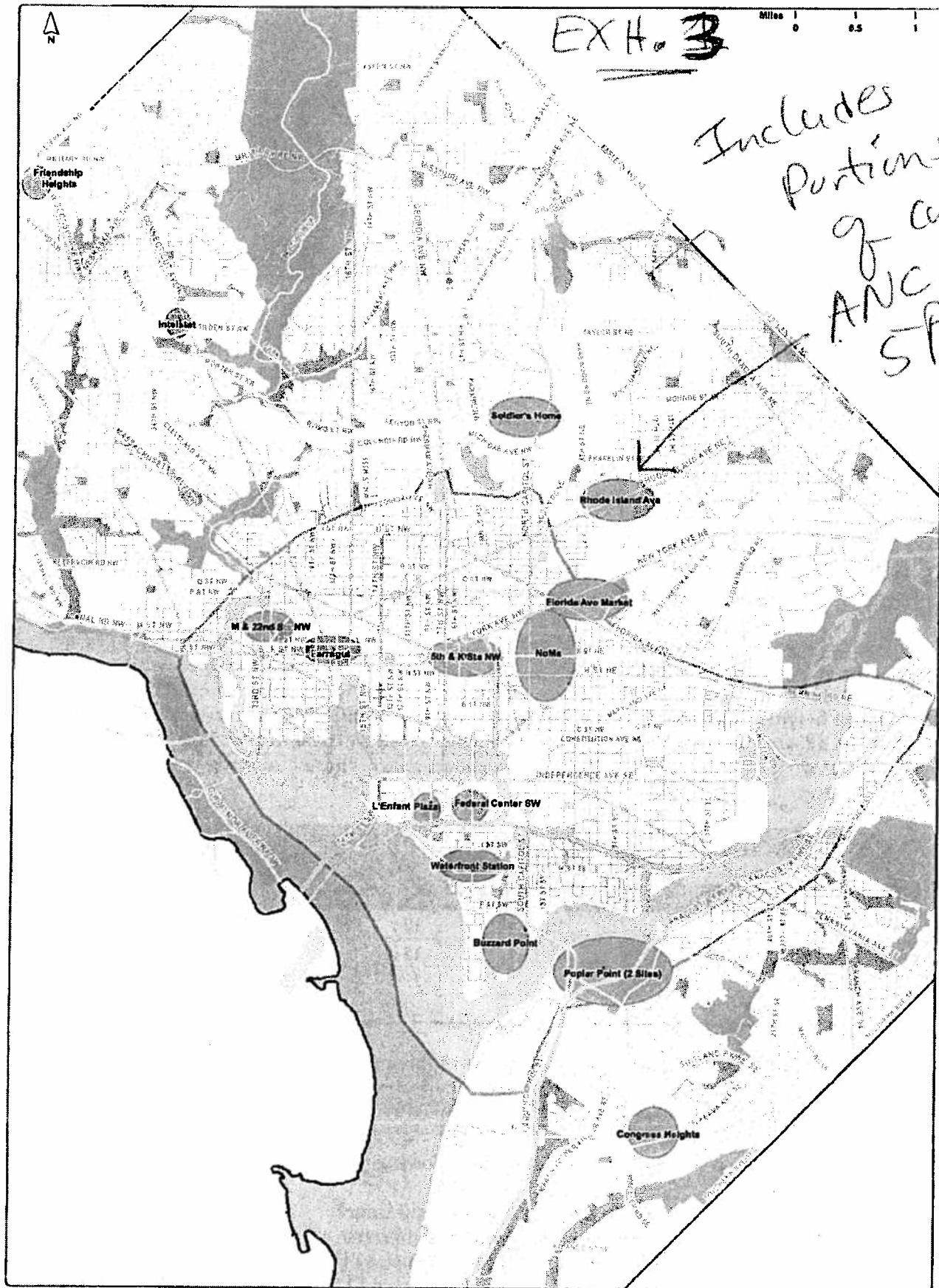
Goals of the Area Plan

The 2006 DC Comprehensive Plan established goals and policies for development and revitalization in the District of Columbia. The *Comprehensive Plan* specifically calls for the development of a Small Area Plan for the Brookland

¹ www.walkscore.com

² Information for the Brookland Study Area: www.census.gov

EXHIBIT 3



**Analysis Areas
Height Study**



Office of Planning - January 30, 2013

Government of the District of Columbia

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.



Study Areas

Topographic Bowl



Preserving America's Heritage

November 18, 2013

Mr. Marcel Acosta
Executive Director
National Capital Planning Commission
401 9th Street, NW, Suite 500 North
Washington, D.C. 20004

Re: *Final Executive Director's Recommendation for the Proposed Height Master Plan for Washington, D.C.*

Dear Mr. Acosta:

As you know, the Advisory Council on Historic Preservation (ACHP) is an independent federal agency responsible for promoting the preservation, enhancement, and sustainable use of our nation's diverse historic resources. In accordance with the *National Historic Preservation Act* (16 U.S.C. 470) (NHPA), we advise the President and the Congress on national historic preservation policy. Given this role, we were pleased to participate in discussions regarding the consideration of modifications to the *Heights of Buildings Act* (Heights Act) (DC ST § 6-601) administered jointly by the National Capital Planning Commission (NCPC) and the District of Columbia Office of Planning (DCOP). We recently reviewed NCPC's proposed Executive Director's Recommendations to the U.S. House Committee on Oversight and Government Reform, for which a formal vote at NCPC will occur tomorrow, and offer the following comments.

We support NCPC's recommendation to retain the Heights Act in place within the L'Enfant City, the plan for which is listed in the National Register of Historic Places (National Register) and includes numerous historic properties. For areas outside the L'Enfant City, however, NCPC recommends that the Heights Act should remain in place "unless and until the District completes an update to the District Elements of the Comprehensive Plan" (*Comprehensive Plan for the National Capital*). We urge you meet with us to discuss whether the authorization of exceptions to the Heights Act by NCPC through the Comprehensive Plan process would constitute an undertaking as defined in Section 106 of the NHPA and its implementing regulations "Protection of Historic Properties" (36 CFR § 800.16(y)). If so, effects to historic properties must be taken into account, and ACHP must be afforded a reasonable opportunity to comment. The views of the public (36 CFR § 800.2(d)) and consideration of the cumulative effects (36 CFR § 800.5(a)(1)) to historic properties must also be taken into account given that individual exceptions may be contemplated by NCPC separately over many years.

We are also concerned that NCPC recommends amending the Heights Act to allow for 20' high "existing and future" penthouses. In order for rehabilitation projects applied to historic buildings to utilize federal historic tax credits, these rehabilitations must proceed in accordance with the *Secretary of the Interior's Standards* (Secretary's Standards) to receive such credits. While NCPC's recommendation includes setback restrictions and provisions for mechanical structures, the Secretary's Standards generally do not

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

permit rooftop additions which change a property's historic character. We advise NCPC to study the point at which potential height increases could discourage the pursuit of federal historic tax credits and encourage demolition or substantial alteration to historic properties listed in or eligible for the National Register.

Finally, we support NCPC's recommendation that the city's most significant viewsheds, including those to and from the U.S. Capitol and the White House, should be "further evaluated and federal and local protections established." NCPC should coordinate these evaluation efforts with appropriate federal agencies, to assist them with their responsibilities to identify and evaluate historic properties for listing in the National Register under Section 110 of the NHPA.

We commend NCPC's extensive efforts to work with DCOP and to consider federal interests alongside those of the local community on this important matter. Thank you for the opportunity to provide written comments. Should you have any questions, you may contact Ms. Charlene Dwin Vaughn, AICP, Assistant Director, Office of Federal Agency Programs, at (202) 606-8533 or via e-mail at cvaughn@achp.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Reid Nelson", with a long horizontal flourish extending to the right.

Reid Nelson
Director
Office of Federal Agency Programs