PART I: HISTORICAL BACKGROUND ON THE HEIGHT OF BUILDINGS ACT

PART I (A): HISTORY OF THE HEIGHT OF BUILDINGS ACT OF 1910

In 1894, the construction of the 12-story, 164-foot Cairo Hotel building resulted in the tallest privately owned residential building in the District of Columbia. When the building permit was issued for the Cairo Hotel, located at 1615 Q Street, NW, there were no laws or regulations prohibiting a private structure of that height. Neighbors filed several complaints claiming that the building posed a fire hazard and limited light and air. Although the Cairo project moved forward, the neighbors’ concerns about fire hazards and impacts to their properties prompted lawmakers to prohibit future projects of that height. In 1899, the U.S. Congress passed a height law (Act) that restricted heights in the District of Columbia to generally the width of the street at the building front. In addition, the Act established maximum height limits of 90 feet in residential areas and 110 feet in commercial areas. In addition, 160-foot wide business streets and avenues were limited to a maximum height of 130 feet. Spires, towers, and domes could be erected to a greater height than the limit proscribed, when approved by the Commissioners of the District of Columbia.¹

In 1910, Congress amended the Act to provide more comprehensive height regulations. The resulting law is commonly referred to as the Building Height Act of 1910 (“Height Act”).² The Height Act remains in effect today and includes the following restrictions:

- Mixed use or commercial areas: buildings may be as high as the width of the street plus 20 feet, but may not exceed 130 feet.
- Residential areas: heights are limited to 90 feet.
- Pennsylvania Avenue between First Street, NW and Fifteenth Street, NW: buildings can rise to 160 feet.³

Recognizing that a handful of federal buildings were of particular importance, the Height Act included a provision requiring a Schedule of Heights that restricted building heights for buildings on private lands near certain federal buildings.⁴

*The Schedule of Heights*

The Height Act requires a Schedule of Heights that places further height restrictions on buildings situated near identified federal buildings. The Schedule of Heights is administered by the District of Columbia and specifically the Zoning Administration in the Department of Consumer and Regulatory Affairs. Identified federal buildings currently include, among others, the U.S.

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¹ Act of March 1, 1899, ch. 322, 30 Stat. 922 (1899).
Supreme Court, the U.S. Treasury Building on 15th St. NW, and the Jefferson Building of the Library of Congress. The Schedule of Heights prescribes the following restrictions:5

1. G Street, NW, between 7th and 9th Streets, adjacent to the Civil Service Commission Building: No building shall be higher than the horizontal line 90 feet above the top of the curb, at the northwest corner of 8th and G Streets, NW.

2. F Street, NW, between 7th and 9th Streets, adjacent to the United States Patent Office: No building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb at the southwest corner of 8th and F Streets, NW.

3. 15th Street, NW, between Pennsylvania Avenue and G Street, adjacent to the Treasury Building: The cornice line or parapet wall of any building shall not extend above a horizontal line 80 feet above the top of the curb, at the southeast corner of 15th and G Streets, NW, and no part of the roof of any building shall be higher than a horizontal line 95 feet above the top of curb.

4. 17th Street, NW, between New York Avenue and G Street, confronting the State Department Building: No building shall be higher than a horizontal line 80 feet above the top of the curb at the northwest corner of Pennsylvania Avenue and Jackson Place.

5. Pennsylvania Avenue, NW, in squares 167 and 221, confronting the Treasury Building and the State Department Building: No building to be higher than a horizontal line 80 feet above the top of the curb at the northeast corner of Pennsylvania Avenue and Madison Place for buildings to be erected or altered in square 221, and the curb at the northwest corner of Pennsylvania Avenue and Jackson Place for buildings to be erected or altered in square 167.

6. North Capitol Street, in square 625, confronting the City Post Office Building: No building shall be higher than a horizontal line 90 feet above the top of the curb at the northwest corner of North Capitol Street and Massachusetts Avenue.

7. North side of Maryland Avenue, NE, between 1st and 2nd Streets, adjacent to the Supreme Court Building: No building shall be higher than a horizontal line 60 feet above the top of the curb at the northeast corner of the intersection of 1st Street and Maryland Avenue. NE.

8. East side of 2nd Street, NE, between East Capitol Street and Constitution Avenue, adjacent to the Supreme Court Building: No building shall be higher than a horizontal line 60 feet above the top of the curb at the northeast corner of the intersection of 2nd and A Streets, NE.

9. East side of 3rd Street, SE, between East Capitol Street and Pennsylvania Avenue, adjacent to the new Library of Congress Annex: No building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of 3rd and A Streets, SE.

10. South side of Pennsylvania Avenue, SE, between 2nd and 3rd Streets, adjacent the Library of Congress Annex: No building shall be erected or altered so as to be higher than the horizontal line 70 feet above the top of the curb at the southeast corner of the intersection of 2nd Street and Pennsylvania Avenue, SE.

11. South side of Independence Avenue, SE, between 1st and 2nd Streets, adjacent to the Library of Congress: No building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of 1st Street and Independence Avenue, SE.

12. East side of 1st Street, SE, between Independence Avenue and C Street, adjacent to the House Office Building: No building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of 1st Street and Independence Avenue, SE.

13. South side of C Street, SE, between 1st and South Capitol Streets, SE, and between South Capitol Street and Delaware Avenue, SW, adjacent to the House Office Building and Annex: No building shall be erected or altered so as to be higher than a horizontal line 90 feet above the top of the curb at the southeast corner of South Capitol and C Streets, SE.

14. 14th Street, SW, between D and Water Streets, confronting the Bureau of Printing and Engraving: No building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the southeast corner of 14th and D Streets, SW. This restriction shall not apply to any structure that is set back from the 14th Street property line to a line that is continuous with the facade of the adjacent Bureau of Engraving and Printing annex building that is located along 14th Street, SW, between C and D Streets, SW.

15. North side of C Street, NE, between 1st and 2nd Streets adjacent to the Senate Office Building Annex: No building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of 1st and C Streets, NE.

Amendments to the Building Height Limitation Act of 1910

The U.S. Congress amended the Height Act on eight occasions since its initial passage. Once Congress raised the maximum height of residential buildings by five feet. An additional

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amendment permitted residential buildings to have ten versus eight stories within the overall 90-feet maximum height limitations. Five amendments provided exemptions for specific buildings.

The specific buildings which received relief from the Height Act include: St. Matthew’s Roman Catholic Church, the Harrington Hotel, the National Press Club, a Masonic Temple that was proposed for the site currently occupied by the Washington Hilton, and Georgetown University Hospital. The details of these amendments are as follows:

1. The first amendment to the Height Act was enacted into law on December 30, 1910, permitting the construction of the 95 feet Saint Matthew’s Roman Catholic Church located at Rhode Island Avenue (between 17th Street and Connecticut Avenue, NW) – five feet above the maximum prescribed by the Height Act.9

2. The third amendment to the Height Act was enacted into law on June 7, 1924, permitting the erection of the Harrington Hotel (southwest corner of 12th and E Streets, NW) to a height of 130 feet – 20 feet above the maximum prescribed by the Height Act.10

3. The fifth amendment to the Height Act was enacted into law on April 16, 1926, permitting the National Press Club Building (14th and F Streets, NW) to a height 40 feet above the maximum prescribed by the Height Act.11

4. The sixth amendment to the Height Act was enacted into law on April 29, 1930, permitting the United Masonic Temple to build a tower structure to 180 feet – an increase of 80 feet above the maximum prescribed by the Height Act.12

5. The seventh amendment to the Height Act was enacted into law on March 24, 1945, permitting the Georgetown University to construct a hospital to approximately eight feet above the maximum prescribed by the Height Act.13


PART I (B): A HISTORICAL PERSPECTIVE OF THE HEIGHT OF BUILDINGS ACT

On July 16, 1790, the U.S. Congress passed the Residence Act or “An act for establishing the temporary and permanent seat of the Government of the United States.” This Act stated that the permanent location of the federal government would along the Potomac River. The Act gave President George Washington authority to hire three commissioners to plan and define the district’s boundaries. President Washington worked closely with Thomas Jefferson on the early planning and design for the nation’s capital. Many of the preliminary planning decisions regarding the capital’s design are discussed in correspondence between Jefferson and Washington. Washington had not travelled outside of North America and therefore relied heavily on Jefferson, who was widely travelled and had seen some of Europe’s national and provincial capitals. Correspondence indicates that there was an interest in building height limits in the nation’s capital as early as 1791. Washington and Jefferson envisioned a city with sweeping vistas that emphasize civic structures and an orderly system of boulevards with reverential private buildings.

Jefferson’s notes from March 1791 indicate that he was concerned about building heights as a means of controlling fires and considered a recommendation to Washington to limit building heights. Regarding building height Jefferson wrote, “To provide for the extinguishment of fires, and the openness and convenience of the town, by prohibiting houses of excessive heights.” Washington requested recommendations from Jefferson regarding building materials and building heights in a 1791 letter. These writings culminated in Washington’s Proclamation of 17 October 1791 Establishing First Building Regulations, Including a Height Limitation, for All Private Construction in the Federal City. This proclamation stated that “The wall of no house to be higher than forty feet to the roof, in any part of the city; nor shall any be lower than thirty-five feet on any of the avenues.” While Washington would ultimately relax these building regulations in 1796, it is clear that building height was a key consideration during early planning for the city.

Plan of the City of Washington

In 1791, George Washington chose a site for the nation’s capital in the environs of Georgetown at the confluence of the Potomac River with the Eastern Branch. Shortly after selecting the site, Washington hired Pierre Charles L’Enfant and Andrew Ellicott to survey and map the area. L’Enfant’s initial observations of the geographic setting influenced his design of the city. In a letter to Jefferson, L’Enfant wrote of the level area between Ferry Road, the Potomac River, and Tiber Creek as “a situation most advantageous to run streets and prolong them on grand and far
L’Enfant’s notes and writings indicate he wanted to take advantage of the flat area located in the center of a surrounding, triangle-shaped topographic bowl and the intersection of two rivers. L’Enfant concluded that “…Jenkins Hill, the highest spot in the land between the Potomac and Anacostia, was the most desirable location for the Capitol.” This conclusion proved to be critical in the design for the city as L’Enfant placed the White House opposite the Capitol on the slight rise just north of Tiber Creek and he designed a grand avenue to connect the two sites.

With the location of the U.S. Capitol on a prominent site at the center of his plan, L’Enfant divided the city into four quadrants and designed a system of diagonal avenues superimposed on an orthogonal grid. The avenues were to be wide, grand boulevards, lined with trees, and designed in such a manner that would visually connect topographical sites throughout the city. At these sites important structures, monuments, and fountains were to be constructed. The result of L’Enfant’s design was a plan with ceremonial spaces and grand boulevards that respected the natural contours of the land in a manner of picturesque English garden design.

L’Enfant’s design created a system of open space and parks where the orthogonal grid and diagonal avenues intersected. Large open areas were created at the intersection of avenues and smaller open spaces and were shaped in the form of circles, squares, and triangles. L’Enfant shaded and numbered fifteen large open spaces (reservations) at the intersection of the avenues and indicated that these spaces were to be “divided among the several States in the Union, for each of them to improve, or subscribe a sum additional to the value of the land for that purpose.” L’Enfant indicated on the plan that each reservation would feature statues and memorials to honor citizens important to the nation’s history. L’Enfant’s idea was that the city would grow around each reservation, but he also emphasized the visibility between the spaces and that they could be “…reciprocally seen from each other…” and connected by avenues.

The open space and vistas that were established by the L’Enfant Plan were as integral to the design of the city as the street network and configuration. Along with Pennsylvania Avenue, the L’Enfant Plan clearly called out the grand axes of the National Mall and the Ellipse. On the manuscript map, L’Enfant wrote of the Mall that it would be a “…Grand Avenue, 400 feet in breadth, and about a mile in length, bordered with gardens, ending in a slope from the houses on each side. This Avenue leads to the monument A and connects the Congress Garden with the Presidents Park.” The Mall was to extend west from the Capitol, and intersect with the lawn to the south of the White House. Views of the Potomac River from the White House and Capitol were intended to be expansive and convey the powers of the Legislative and Executive branches of government. Central to L’Enfant’s vision for the city was the idea of public space resulting in

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23 Ibid., 23.
25 Leach and Barthold, Section 8, p. 7.
26 Ibid.
27 Charles Pierre L’Enfant, Plan of the City intended for the Permanent Seat of the Government of the United States, 1791. Text is within the references section of the map.
68 percent of the original city being dedicated to avenues, streets, squares, circles, and public reservations.\(^{28}\)

While L’Enfant was focused on the design of the city, Washington, Jefferson, and the commissioners were concerned with the promotion and sale of city lots. In order to market the lots, the officials needed copies of L’Enfant’s Plan, but L’Enfant believed the sale of lots would hinder the city’s development and he refused to provide copies of the map.\(^{29}\) In addition, L’Enfant demolished a portion of a house belonging to Daniel Carroll, nephew of one of the three commissioners because the house projected into the right-of-way for New Jersey Avenue south of the Capitol site. As a result these actions, Washington dismissed L’Enfant and hired Ellicott to reproduce the plan as envisioned by L’Enfant. Ellicott used his own surveyor’s notes as well as his memory of the plan to reproduce a map that was published in 1792.\(^{30}\)

The city did not develop as quickly as anticipated and the period between 1800 and 1860 was one of slow growth. L’Enfant imagined that the gradual improvement of public space into parks and tree lined boulevards would enhance the value of lots and encourage development. Thomas Jefferson ordered the improvement of Pennsylvania Avenue in 1803 and his inauguration in 1805 was the first ceremonial use of the Avenue.\(^{31}\) Though development of the city was slow, it followed the overall framework established by the L’Enfant Plan. A map prepared by A. Boschke in 1857-1861 shows that private development was contained within city squares.\(^{32}\) After the end of the Civil War, Congress passed legislation to improve the city’s infrastructure and required the federal government to fund road improvements on streets, avenues, or alleys located on or adjacent to federal property.\(^{33}\) Through the 1880s and 1890s, the Commissioners of the District of Columbia and the Army Corps of Engineers worked together to improve the city’s infrastructure. However, overall the development of Washington did not progress as had been anticipated.

At the turn of the 20\(^{th}\) century, as the country was beginning to celebrate the centennial anniversary of the establishment of the capital city, the Senate issued an order on March 8, 1901 for the preparation and submission of a development plan for the District of Columbia.\(^{34}\) This legislation sponsored by Senator James McMillan called for the creation of a Commission to develop a comprehensive plan for the capital. Known as the Senate Park Commission or McMillan Commission, members included Daniel Burnham, Frederick Law Olmsted Jr., Charles McKim, and Augustus St. Gaudens. Their goal was “…to prepare for the city of Washington such a plan as shall enable future development to proceed along the lines originally planned—namely, the treatment of the city as a work of civic art—and to develop the outlying parks as portions of single, well-considered system.”\(^{35}\)


\(^{29}\) Gutheim and Lee, 28 and Leach and Barthold, Section 8, p. 9.

\(^{30}\) Gutheim and Lee, 29.

\(^{31}\) Leach and Barthold, Section 8, p. 13.

\(^{32}\) Ibid., Section 8, p. 15-16.

\(^{33}\) Ibid., Section 8, p. 18.


\(^{35}\) Ibid., 12.
In 1901, the McMillan Commission completed a tour of Europe in order to understand the European influences of the L’Enfant Plan. After they returned from this trip, the Commission put forward the McMillan Plan in 1902 which built upon the Baroque ideals of the L’Enfant Plan and reinforced the idea of grand public spaces and civic buildings based on the City Beautiful Movement. The McMillan Plan was concerned with “…two main problems: the building of a park system and the grouping of public buildings. By connecting existing parkland and carrying the park system to the outlying areas of the District and across the river as far as Mount Vernon and Great Falls, it addressed the regional character of the city.” By grouping public building in formal compositions, the McMillan Plan created a highly concentrated central core.36

The McMillan Plan built upon the principles of the L’Enfant Plan and focused on restoring the National Mall as originally envisioned by L’Enfant as an uninterrupted green space. It also created an enclave for government offices in the triangle formed by Pennsylvania Avenue, 15th Street, and the Mall; consolidating city railways and alleviating at-grade crossings; and expanding the park system along the Potomac River and in Rock Creek Park as well as protecting the Civil War fortifications. The plan removed the Pennsylvania and Potomac Railroad terminal from the Mall, and Union Station was established as a central point for city’s rail lines to converge.37 Once the railroad station was removed, the Mall could be developed as a ceremonial green space as L’Enfant had envisioned. Union Station was constructed in 1908 north and east of the Capitol at the intersection of Massachusetts and Delaware Avenues. Though changes to L’Enfant’s streets were required to construct Union Station, the Beaux Arts station opened onto a semicircular plaza, a grand ceremonial space and therefore its siting respected L’Enfant’s ideas for important public spaces. Collectively, the McMillan Plan and the L’Enfant Plan have become what is known as the Plan of the City of Washington and together they established an urban design framework that is unique to the nation’s capital.

PART I (C): RELATED LAWS, REGULATIONS, AND AGENCIES

Home Rule

Congress included specific protection for the Height of Buildings Act in the 1973 District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), which transferred certain congressional powers over the District to local government.38 The Home Rule Act includes the District Charter (also called the Home Rule Charter), which provides for an elected Mayor and Council.39 Under the "Home Rule" government, Congress reviews all legislation passed by the Council before it can become law and retains authority over the District's budget.40 Also, the president appoints the District's judges.41

36 Gutheim and Lee, 132.
35 Leach and Barthold, Section 8, p. 33.,
The Home Rule Act specifically prohibits the Council from enacting certain laws including changes to the Height of Buildings Act of 1910.\(^\text{42}\) Other restrictions include:

- lend public credit for private projects;
- impose a tax on individuals who work in the District but live elsewhere;
- pass any law changing the composition or jurisdiction of the local courts;
- enact a local budget that is not balanced; and
- gain any additional authority over the National Capital Planning Commission (NCPC), Washington Aqueduct, or District of Columbia National Guard.\(^\text{43}\)

**District of Columbia Zoning Regulations**

The DC Zoning Regulations govern land use, density, height, and bulk characteristics of property in the city, and the Zoning Map identifies designated zoning for all city land. All construction or rehabilitation on private land must conform to the requirements imposed by the District of Columbia Zoning Regulations and Zoning Map or seek relief before the appropriate bodies. The Zoning Regulations stipulate the building height limits for various zoning districts, which vary from the single-family residential zones to the high-density mixed-use downtown zoning districts.\(^\text{44}\) The maximum height for buildings allowed through the Zoning Regulations cannot exceed the height restrictions in the Height of Buildings Act, and, in fact the heights prescribed by the zoning regulations are often more restrictive than what is provided in the Height of Building Act.\(^\text{45}\)

If a proposed project does not conform to the Zoning Regulations and Zoning Map, the Zoning Administrator will indicate the required zoning relief. Necessary relief involving a map or text amendments, air rights development in public space, or a Planned Unit Development (PUD) requires approval by the Zoning Commission (ZC),\(^\text{46}\) while a variance, special exception, or appeal is handled by the Board of Zoning Adjustment (BZA).\(^\text{47}\) Special reviews of proposed chancery development by the BZA may be required for facilities proposed to be located in certain mixed-use areas of the city.\(^\text{48}\)

The Office of the Zoning Administrator (ZA) (within the Department of Consumer and Regulatory Affairs (DCRA)) is responsible for administering and enforcing the Zoning Regulations as well as Zoning Commission and Board of Zoning Adjustment orders. The ZA has the authority to interpret and administer the Zoning Regulations as adopted by the Zoning

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\(^{46}\) This conclusion is reached by comparing the heights prescribed by the Height Act of 1910 and those prescribed by the Zoning regulations.


The determination of acceptable methods for measuring the height of buildings falls under the purview of the ZA. Likewise, the ZA makes the determination whether a project complies with the height restrictions in the Zoning Regulations and the Height of Buildings Act.

The Zoning Commission (ZC) is a five-member quasi-judicial body created by the Zoning Act of 1920, as amended, and charged with preparing, adopting, and subsequently amending the Zoning Regulations and Zoning Map. The ZC also hears Planned Unit Development (PUD) cases -- a planning tool which allows a project greater development flexibility and other incentives, including allowing a proposed project to exceed the maximum height limit within certain zoning districts, in exchange for public benefits. The ZC has final approval of PUDs, public space air rights development, and campus plans after holding public hearings where the ZC considers public comments regarding the proposals.

The Board of Zoning Adjustment (BZA) is a five-member quasi-judicial board created by the Zoning Enabling Act of 1938, as amended, and charged with hearing cases related to variances, special exceptions, and appeals of administrative decisions related to zoning. Historically, the BZA has heard variances concerning heights of residential buildings that do not involve exceeding the height limits provided in the Height Act. The BZA has also reviewed cases granting relief for minimum setbacks to penthouses as required by the Height Act.

The Office of Zoning (OZ) is an independent District agency created by the Office of Zoning Independence Act of 1990 to provide professional, technical, and administrative assistance to the ZC and the BZA in support of their oversight and adjudication of zoning matters in the District. The agency reviews an application for completeness, schedules and arranges hearings and meetings, sends the application file to the appropriate city agency or agencies for review and comment, and undertakes all other necessary administrative tasks. OZ maintains and updates the Zoning Regulations and the Zoning Map to reflect decisions made by the Zoning Commission (ZC) or the BZA. The Office of Zoning does not develop policies or evaluate requests for relief from the zoning regulations.

The DC Office of Planning (OP), the central planning agency for the District of Columbia, was established on January 3, 1983 through Mayor’s Order 83-25. OP’s Development Review Division prepares zoning text and zoning map amendments for submission to the ZC in order to

50 Id.
52 See, supra note 46.
54 For examples, see application 18502 dated February 5, 2013 and
56 Id.
57 D.C. Reg., page no xx (January 3, 1983).
implement the Comprehensive Plan and to ensure the zoning text and map are not inconsistent with the Comprehensive Plan. The Development Review Division also reviews applications for PUDs, amendments to the Zoning Regulations or Zoning Map (which come before the ZC), variances, or special exceptions (which come before the BZA) for consistency with DC policies and the Comprehensive Plan for the National Capital District Elements. OP submits written recommendations to the ZC and BZA on these matters, which are given “great weight” by the ZC and BZA.58

Federal Agencies Involved in Height Regulation

The Federal government plays a role in planning and regulating development in Washington. Agencies like NCPC and the U.S. Commission of Fine Arts (CFA) have jurisdiction over specific federal projects and also work in coordination with the District of Columbia to plan for the city. NCPC and CFA enforce the Height of Buildings Act through their project review functions.

NCPC approves site plans and exterior building plans for federal buildings in the District of Columbia, DC public buildings within the Central Area, and private development within the Pennsylvania Avenue Historic Site through the authority granted to it by the National Capital Planning Act. The National Capital Planning Act, set forth at 40 U.S.C. §§8701 et seq., establishes the National Capital Planning Commission as the central planning agency for the federal government in the National Capital Region (NCR). The Act provides for the agency's essential functions, including development of the Federal elements of the Comprehensive Plan; review of federal and some District of Columbia (DC) proposed developments and projects; review of DC zoning amendments; development of the Federal Capital Improvements Program and review of the DC Capital Improvements Program; and the development of special planning projects.59

NCPC can influence the location, massing, height and character of a federally-funded development or program, through the implementation of the National Capital Planning Act, the National Environmental Policy Act (NEPA) and occasionally, through the National Historic Preservation Act (NHPA). Through special legislation by Congress, NCPC can also develop design policies and development standards that affect the height, mass, bulk and setbacks for specific buildings in Washington, DC, such as the Southeast Federal Center, in coordination with DCOP.

Under NEPA,60 NCPC must undertake an environmental review to inform its analysis of project proposals. Environment is broadly defined by the act to include social, economic, and historic impacts as well as effects on the natural environment. The NHPA, at 16 U.S.C. §470, establishes a program for preserving historic properties throughout the nation. By carrying out its obligations under this law, NCPC serves as a steward of the region's historic buildings, districts, landscapes, and views61. The determination of the impacts of the height of buildings on historic landmarks,

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59 40 U.S.C. §§ 8721, 8722(a), (d) - (e); 8724, and 8723 (2012). See also, D.C.ST. §§ 2-1003-2-1005 (2001).
monumental view corridors, and high security federal buildings are often part of the review and consideration for approval of projects.

Federal lands and properties are not subject to local zoning; therefore, NCPC’s review over zoning matters is advisory in most cases. One exception is the approval of variances and special exceptions, under the purview of the Board of Zoning Appeals, in which NCPC is a voting member.62 NCPC reviews text and map amendments to the Zoning Regulations and the Zoning Map, as well as PUDs, to determine if they have an adverse effect on the “federal interest” or are inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Congress established CFA in 1910 and charged it with giving expert advice to the President, Congress and the heads of departments and agencies of the Federal and District of Columbia governments on matters of design and aesthetics, as they affect the federal interest and preserve the dignity of the nation's capital. Within the District of Columbia, the CFA advises on design matters affecting the Historic District of Georgetown, under the Old Georgetown Act,63 as well as other private sector areas adjacent to federal interests, under the Shipstead-Luce Act64. Through their design review purview, the CFA has historically set design standards that determine building heights for federal districts such as Lafayette Square65 and the Federal Triangle66. It continues to influence the height of buildings in Washington, DC as part of its overall review of the artistic and urban design merits of projects.

The Architect of the Capitol (AOC), the federal government official in charge of the U.S. Capitol grounds, reviews special exception applications in the Capitol Interest Overlay District of the DC Zoning Regulations. The Capitol Interest (CAP) Overlay District was established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction, in a manner consistent with the goals and mandates of the Congress. The overlay controls land use, as well as the height and bulk of buildings, for the areas south of the U.S. Capitol and the historic residential district to the east of the U.S. Capitol. The overlay restricts some of the permitted uses allowed in the existing zone districts and provides for more control of the height and bulk allowed in existing underlying zone districts. The maximum height of buildings or structures in the CAP Overlay District is forty feet (40 ft.) or three (3) stories in height. Roof structures are not allowed to exceed ten feet (10 ft.) in height above the roof upon which they are located.67

62 D.C. ST. § 6-641.07(a).
66 Ibid., p. 125.