

## CAPITOL HILL RESTORATION SOCIETY



June 28, 2013

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Subject: Height Act Master Plan Study (Heights of Buildings Act (“Height Act,” 36 Stat. 452)

Dear Mr. Acosta and Ms. Tregoning:

As requested at the public meetings on this study, the Capitol Hill Restoration Society (CHRS) hereby submits comments on the Height Act Master Plan Study.

### **Summary**

The federal Height Act is the first line of defense in protecting our city. If the Height Act limits are raised, this opens the door to raising building heights in the Comprehensive Plan and in the zoning regulations. Communities will be forced to defend against raising building heights in the Comprehensive Plan and zoning regulations. Therefore, any changes in the federal Height Act are a grave matter. CHRS believes that the Height Act has served the city well, and should remain unchanged.

The City of Washington’s distinctive character is shaped by several guiding documents, all of which need to be taken into account by any study of potential changes to the Height Act:

The L'Enfant Plan  
The McMillan Plan  
The CapitalSpace Partners Final Report  
The DC Comprehensive Plan  
DC Zoning Regulations, including overlay districts

CHRS strongly urges that no changes to the Height Act be recommended in the study now being undertaken by the National Capital Planning Commission (NCPC) and the DC Office of Planning (OP). This letter describes the adverse impacts which any changes would have on the following areas in which CHRS has particular familiarity:

1. The L'Enfant City;
2. The Capitol Hill Historic District;
3. Anacostia Park and other areas identified "ecologically sensitive resources" by CapitalSpace Partners, a planning initiative of NCPC, OP, the National Park Service and the DC Department of Parks and Recreation;
4. The Eighth Street Southeast Neighborhood Commercial Overlay District;
5. The Hill East Waterfront (Reservation 13) and;
6. H Street, NE Overlay (yet to be written).

We understand that NCPC and OP will be working with federal agencies to study security issues relating to building height. We urge that this study include:

1. The area under the jurisdiction of the Architect of the Capitol;
2. The Washington Navy Yard; and
3. The Marine Commandant's House and the Marine Barracks.

## **Introduction**

The 1791 L'Enfant Plan for the City of Washington (listed in the National Register of Historic Places on April 24, 1997); the 1901 McMillan Plan, that more fully realized L'Enfant's design and captured the essence of the City Beautiful Movement both within the Monumental Core and beyond it, to the outer limits of the District of Columbia; and the 1910 Height Act with its height limits that have helped establish the citywide scale of Washington, which is a distinguishing feature of Washington. Collectively, these guiding resources and careful adherence to them have helped make the District of Columbia unique among American cities, rightly so as our nation's capital. To that end, we note the following Guiding Principle in the Framework Section of the District of Columbia Comprehensive Plan:

31. The District's communities are connected by a shared heritage of urban design, reflecting the legacy of the L'Enfant Plan, the McMillan Plan, the Height Act of 1910, and the preservation of much of the historic urban fabric. After more than two centuries of building, the nation's capital is still a remarkable place. Urban design and streetscape policies must retain the historic, majestic, and beautiful qualities that make Washington unique among American cities. (p. 2-26).

The 1791 L'Enfant and 1901 McMillan plans, as well as the Height Act have played and continue to play highly significant roles in the physical appearance of Washington, DC as our nation's capital, world city, and home town to those who live within its boundaries. Significantly, two-thirds of the 1901 McMillan Plan addresses the creation and preservation of green space outside the central core.

## **L'Enfant Plan**

The L'Enfant Plan for the City of Washington, District of Columbia is a national landmark. Wide avenues link squares into a network of public space and grand vistas. The unimpeded views of the avenues are an integral part of the plan. Residents and visitors can see the Capitol and the monuments from a long distance away. As NCPC noted in its Draft Federal Urban Design and Historic Preservation Elements for the Comprehensive Plan for the National Capitol (November 6, 2012):

The L'Enfant Plan's streets and places—and their extension by the 1893 Permanent System of Highways Act—as well as the 1901 McMillan Plan and the 1910 Height of Buildings Act have directed the character and orderly development of the entire city. Page 24.

L'Enfant described the setting of the Capitol as “a pedestal waiting for a superstructure. . . .no other situation could bear a competition with this.” Michael Bednar, L'Enfant's Legacy: Public Open Spaces in Washington, D.C. (Baltimore, Md.: Johns Hopkins Univ. Press, 2006, 76). In addition to the Capitol and its grounds, Capitol Hill is blessed with other distinctive, much-used and much-loved public spaces in the L'Enfant Plan, including Stanton Square (Reservation 5 in the 1791 plan), and Seward Square (Reservation 14 in the 1791 plan). L'Enfant's Legacy, Table A. Lincoln Park, Garfield Park, and what later became Eastern Market Park, appear as rectangular spaces in the 1791 Plan. Folger Park appears on Ellicott's plan as a rectangular area. To respect L'Enfant's Plan, the Height Act must remain unchanged in the L'Enfant City, Capitol Hill and in the Capitol Hill Historic District.

## **CapitalSpace Partners Final Report (2010)**

CapitalSpace Partners resulted from a three-year initiative of NCPC, OP, the National Park Service and the DC Department of Parks and Recreation to plan and manage the city's parks for the future. This is an important planning document for the District of Columbia. The final report dated March 2010, is at [www.ncpc.gov](http://www.ncpc.gov) (and attached to this letter). CapitalSpace Partners identifies a number of critical historical, cultural, and environmental resources that must be protected. A key planning goal is:

### Protect, Connect, and Restore Natural Environments

Natural resources within the city's parks and open spaces, including wetlands, floodplains, wooded areas and streams and rivers, offer natural habitats and beneficial ecological functions that support a sustainable and livable city.

See final report pages 3, 51, 58. The map on page 24 of the final report shows the L'Enfant City, historic districts, parks in historic districts, and cultural landscapes, including the Capitol Hill Historic District and the Anacostia Park (a cultural landscape). Tall buildings in or near any of these areas would degrade them. To protect these critical resources, no changes in the Height Act should be made with respect to the L'Enfant City, Capitol Hill Historic District or Anacostia Park. In the design of the Height Act study NCPC and OP recognized that increased height in the L'Enfant Plan area, and near parkland might be a special concern. Although London may "want clusters of tall buildings along the Thames River," the Anacostia River must remain an unspoiled cultural landscape.<sup>1</sup>

In addition, parks and green space increase real property values by 8 to 20 percent. See CapitalSpace Partners final report, page 17. Other studies suggest that the view of green space also adds value. Delores Conway, "A Spatial Autocorrelation Approach for Examining the Effects of Urban Greenspace on Residential Property Values," J. Real Estate Finan. Economics (Vol. 41, 150-169, 152, 2010). To maximize real property values in DC, changes in views of parks or green space (such as blocking views by buildings over 130 feet) are not advisable. NCPC and OP rightly flagged this issue in the design of their study.

CapitalSpace Partners also identifies ecologically sensitive resources including wooded areas and wetlands, including Anacostia Park. See final report page 22. No change in building height should be recommended in or near these areas. Despite any other federal and DC laws restricting building, or building heights, the recommendations to Congress and any amendments to the Height Act must take into account and be consistent with those policy considerations. For example, building in wetlands is limited by section 404 of the Clean Water Act of 1977, as amended (33 U.S.C. 1344; 33 C.F.R. 231, 232).<sup>2</sup> However, if amendments to the Height Act, enacted after 1977, allow buildings higher than 130 feet (and thus allow buildings at all) in wetlands, attorneys for developers may argue that the Height Act amendments repealed section 404 of the Clean Water Act as to DC wetlands. See 73 Am Jur 2d Statutes § 89, citing Great Northern Ry. Co. v. United States, 315 U.S. 262 (1942). It is critical that any recommendations on changing the Height Act not open the door to constructing buildings where construction is now prohibited.

### **Respect the people's will as reflected in the Comprehensive Plan and overlay zoning**

NCPC and OP have held public meetings and requested public comment, and plan additional public meetings. While it is commendable to seek input from individuals and organizations, the people's will as expressed in the Comprehensive Plan, approved by the Council, and implemented in zoning and area overlays resulting from extensive public hearings, an administrative record, and careful review and findings by the Zoning Commission, are far more important, and deserve far more weight than emails, however earnest, to NCPC's Height Act website. In several instances, as a result of the Zoning Commission's public process, the maximum height of buildings is below the Height Act maximum. NCPC and OP must respect

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<sup>1</sup> See Phase 1 Public Meeting Workbook, page 6, case studies.

<sup>2</sup> See EPA's wetlands website [www.epa.gov/owow/lwetlands/regs](http://www.epa.gov/owow/lwetlands/regs).

the people's will and recommend no changes to the Height Act in these areas. Examples include:

1. The Eighth Street Southeast Neighborhood Commercial Overlay District, 11 DCMR 1309. This overlay zone applies to Squares 906, 907, 929, and 931, near the entrance to the Washington Navy Yard, and limits the height of buildings to 45 feet. Case No. 98-11. The Zoning Commission initiated the overlay zone process as part of a process to eliminate zoning inconsistencies with the Comprehensive Plan. See Notice of Public Hearing for March 18, 1999. ANC 6B, CHRS, Capitol Hill Association of Merchants and Professionals, Barracks Row Business Alliance and others in the community participated in the case. OP's final report to the Zoning Commission explains the reasons for the 45-foot height limit:

Comment: The recommended maximum building height of 45 feet will keep the height profile of the new buildings relatively low, thereby respecting the scale and historic character of adjacent Navy Yard buildings, and also the scale of continuing older buildings in the overlay zone. This proposed height limit will also allow for a functional and attractive ground floor height of 12 to 15 feet for retail or other active uses, plus up to three additional stories having a 10-foot floor-to-floor plan. Four stories will allow a degree of architectural flexibility in accommodating the permitted 3.0 FAR of building bulk (see 1309.6, following. OP Final Report, p. 5 (March 8, 1998).

2. Hill East (HE) District Zoning, 11 DCMR 2800. The Hill East Waterfront (also known as Reservation 13) has its own zoning. The Zoning Commission's Notice of Final Rulemaking & Order, No. 04-05 mandates three height ranges for buildings, beginning with the lowest, fronting on 19<sup>th</sup> Street, SE and the highest, on the Anacostia River:

- HE-1: minimum 26 feet; maximum 50 feet;
- HE-2: minimum 40 feet; maximum 80 feet; and
- HE-3: minimum 80 feet; maximum 110 feet.

In considering recommendations for any possible changes to the Height Act, CHRS urges NCPC and OP to keep faith with the Reservation 13 Master Plan approved by the Council and form-based code zoning regulations. The Capitol Hill community has worked for years to achieve the Master Plan and the form-based code. Any recommended changes to the Height Act should be consistent with the Master Plans and the form-based code. These maximum building heights resulted from a multi-year public process that required the Capitol Hill community to invest many hundreds of hours. Although, in theory, a developer might attempt to increase height limit in the zoning regulations for Hill East Waterfront from 110 feet to 130 feet, a height increase of 20 feet would probably not warrant the effort to overcome community opposition. But if, for example, the Height Act limit were increased to a greater extent, the cost/benefit for a developer would change, and a developer might well decide that the additional profits made it worthwhile to battle the community to try to change the zoning regulations to obtain additional building height. After years of broken promises, DC government may be finally about to begin developing Reservation 13, based on the current zoning regulations. NCPC and OP must keep

faith with the community, respect these height limits, and recommend no change to the Height Act concerning the Hill East Waterfront.

3. H Street NE Neighborhood Commercial Overlay Zone District, 11 DCMR 1320.

The H Street Overlay evolved as a result of community meetings with the Office of Planning that began in 2002. That process resulted in the H Street NE Strategic Development Plan. In 2004, the Zoning Commission received a petition from OP to advance the objectives of the Development Plan, and on January 9, 2006 issued their Order No. 04-27, establishing the Overlay.

Most of H Street is zoned C-2-A that allows a maximum building height of 50 feet. Four specific large lots that could accommodate greater density were rezoned from C-2-A to C-2-B allowing a height of 65 feet.<sup>3</sup> The Overlay requires that development of any lot containing more than 6,000 square feet be approved through a special exception process. That process requires that the project be consistent with the criteria specified in the H Street Design Guidelines (11 DCMR 1324) that establish height criteria for different types of development. The Design Guidelines specify three types of development:

Type I: 4 to 8 stories

Type II and Type III: 2 to 4 stories

The Overlay also provides height bonuses to encourage ground level retail. A bonus of five feet of building height is available for developments that provide a minimum clear floor-to-ceiling height of 14 feet for the ground floor level (11 DCMR 1324.13).

The Eighth Street Southeast Neighborhood Commercial Overlay District, the Hill East Waterfront, and the H Street NE Neighborhood Commercial Overlay Zone District each resulted from an extensive public process with community input. Through this process the community expressed its will for maximum building heights below the current federal Height Act limits. NCPC and OP must keep faith with the community, respect these height limits, and recommend no change to the Height Act in these areas.

In conclusion, the federal Height Act has furthered the principles of the L'Enfant and McMillan Plans, and fostered a beautiful sunlit horizontal city, with wide vistas and vibrant neighborhoods. CHRS strongly urges that NCPC and OP recommend that no changes be made to the Height Act.

Thank you for the opportunity to submit comments.

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<sup>3</sup> A project that qualifies for a PUD proceeding can have a maximum height of 65 feet in C-2-A and up to 90 feet if it were one of the four parcels zoned C-2-B.

Sincerely,

Janet Quigley  
President

Attachment:

CapitalSpace Partners final report (2010)

cc:

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