

EXHIBIT 6

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May 11, 1950

TO: THE COMMISSIONERS

IN RE: Request of Lt. Col. T. J. Hayes, Assistant Engineer-Commissioner, for an opinion as to the place from which the height of a building to be erected in the triangle bounded by H Street, 14th Street, and New York Avenue, N. W., shall be measured under the provisions of the Act of 1910 regulating the height of buildings in the District of Columbia.

REPORT:

The Virginia Hotel Company is the owner of the above-mentioned property and proposes to erect thereon an office building to the full height permitted by the laws and Zoning Regulations of the District. The plans as submitted call for a building approximately 130 feet in height with setbacks above the 110 foot level as required by Paragraph 11 of Section XIII of the Zoning Regulations. 14th Street and New York Avenue are of sufficient width to permit, under Section 5 of the Act of 1910 (Section 5-405, D. C. Code 1940 edition), the erection of this building to a height of 130 feet. H Street is not wide enough to permit a height of 130 feet, but it has an elevation greater than New York Avenue.

Section 5 of the Act of 1910 reads in part as follows:

"Sec. 5. That no building shall be erected . . . as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet;"

"No building shall be erected . . . as to exceed the height of 130 feet on a business street . . . except on the North side of Pennsylvania Avenue between First and Fifteenth Sts., N.W., where an extreme height of 160 feet will be permitted."

"The height of a building on a corner lot will be determined by the width of the wider street."

The question has arisen as to the point from which the height allowed by Section 5 should be measured. The owners of the building contend it should be measured from H Street which has the greatest elevation, while the Building Department insists the measurement must be made

from the front facing 14th Street, the street from which the height of the building is taken. Section 7 of the Act of 1910 (Section 5-407, D. C. Code, 1940 edition) provides as follows:

"Sec. 7. That for the purposes of this Act the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height."

The Building Department construes this Section as if it read that the height shall be measured from the elevation of the sidewalk opposite the middle of the front facing the street the width of which permitted the greater height. In my opinion there is no basis for this construction. Section 5 establishes maximum height classifications for all buildings, based on width of streets, business or residential use of the streets, and occupation of adjacent blocks for parks, reservations or public buildings. The maximum height classification having been determined under Section 5, Section 7 then furnishes the rule for determining the permissible height of a particular building within that class. Section 7 states that "the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height". Neither the elevation of the sidewalk nor the front of the building determines the maximum height classification. The words "that will permit of the greater height" refer to the height to be determined by the actual measurement, rather than to the maximum height classification which has already been determined by the width of one or more of the streets. Sections 5 and 7 are separate and distinct. As before stated the maximum height classification is determined by the widest street. When that has been ascertained the actual height of the building is measured from the middle of the front of the building opposite the sidewalk having the greatest elevation.

There is nothing in the Committee Reports on the Act of 1910 which throws any light upon this problem. However, some help is obtained from a consideration of the Act which the Act of 1910 superseded. On March 1, 1899 Congress passed an Act to regulate the height of buildings in the District of Columbia (30 Stat. 922). This Act provided in part in Section 4, as follows:

"Sec. 4. That no building shall be erected or altered on any street in the District of Columbia to exceed in height above the sidewalk the width of the street in its front, * * *. The height of

buildings on corner lots shall in all cases be regulated by the limitations governing on the broader street: * * *."

Section 6 of the Act provided:

"Sec. 6. That the height of all buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof; if the building has more than one front the measurement shall be made upon the front facing the street of steepest grade. * * *."

It will be noted that the Act of 1899 provided that the height of buildings on corner lots would be regulated by the limitations governing on the broader street, and that if the building had more than one front the measurement was to be made from the front facing the street of steepest grade. The method prescribed for measuring the height had nothing to do with the width of the street from which the theoretical height was ascertained since that street was not necessarily the one having the steepest grade. In fact, if the narrower street had the steepest grade and that grade ascended the actual height of the building would be increased because of the condition on the narrower street. On March 3, 1903 the provisions of Section 6 of the Act of 1899 prescribing the method of measuring the height of a building having more than one front was amended to read as follows: (32 Stat. 1022).

"Sec. 6. That the height of all buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height should be measured from the mean elevation of the sidewalk at the street corners."

Here, again, the measurement of the height was determined without reference to the width of the street from which the theoretical height was taken. The Act of 1899, both as originally enacted and as amended, clearly shows the intent of Congress that the measurement of the actual height of the building was to be made without regard to the street the width of which permitted the greater theoretical height, and there is nothing in the 1910 Act which indicates that Congress intended to change this principle.

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I am therefore of the opinion that the height of the building here involved should be measured from the middle of the front of the building on H Street, the elevation of the sidewalk on that street permitting the greater height.

RECOMMENDATION:

It is recommended that a copy of this opinion be furnished Lt. Col. T. J. Hayes.

/s/ VERNON E. WEST
Corporation Counsel, D. C.

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as one of the comprehensive elements and planning goals which bear on such classifications, but ownership, as opposed to use, may not be controlled, per se.

2. In connection with the second question I have reviewed Sections 5 and 7 of the 1910 Height Act (D.C. Code Sections 5-405 and 5-407, 1973 edition) together with the definition of "height of building" in Section 1202 of the Zoning Regulations and Sections 5-424, D.C. Code, 1973 edition. Section 5-424 provides, in pertinent part:

Whenever the regulations made under the authority of sections 5-413 to 5-428 require*** a lower height of buildings*** or impose other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of said sections shall govern***.

"Higher" standards in this context means more restrictive standards. The remainder of Section 5-424 provides the converse, that is, when a statute or regulation other than the Zoning Regulations imposes higher standards, the other statute or regulation governs. Section 5-424 is in substance [*8] the same as Section 9 of the Standard State Zoning Enabling Act, which is intended to resolve apparent conflicts between zoning regulations and other regulations or statutes, by making the more stringent requirement applicable. See 1 Anderson, American Law of Zoning Sec. 5.20.

The question therefore becomes whether the definition of building height in Section 1202 of the Zoning Regulations provides a more stringent standard than sections 5 and 7 of the 1910 Height Act.

The last sentence in that paragraph of Section 1202 which defines "height of building" reads:

If a building fronts on more than one street any such front may be used to determine the maximum height of building, but the basis for the height of building shall be determined by the width of the street selected as the front of the building.
[Italics in original.]

This provision does not purport to require that the permissible height must be measured from the same street whose width is used to determine the permissible height. Although the Zoning Commission has the authority to enact height limits which are more restrictive than those of the 1910 Act, it would require a strained reading of [*9] the quoted portion of the definition to find such a purpose. Such a course should be avoided, particularly in light of the plain language of the 1910 Act.

Accordingly, the height need not be measured from the elevation of the wider street. This conclusion, of course, should not be understood to limit the Zoning Commission's authority under Article 75.

3. Finally, I conclude that the Commission, notwithstanding its broad authority under Article 75, may not order that historic buildings or an interior arcade shall be excluded from the calculation of gross floor area. The exclusions which are suggested as precedents effected reasonable interpretations of the floor area ratio regulations. The exclusions which are presently sought would effect an improper amendment of those regulations. The exclusion in Order No. 101, moreover, was applicable to an area which the Commission required to be used as a pedestrian

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OFFICE OF PLANNING



MEMORANDUM

TO: Zoning Commission

FROM: Jennifer Steingasser, Deputy Director *JS*
Travis Parker, Zoning Review Manager
Stephen Cochran, Zoning and Special Projects Planner

DATE: September 15, 2008

SUBJECT: Recommendations Regarding Measurement and Regulation of Height
ZC #8-06-01

I. Overview of Zoning Review Process

This report considers general rules and recommendations applicable to the measurement of height in the Zoning Regulations. It is the third of approximately twenty subject area reports to come before the Zoning Commission (the Commission) as part of the zoning review process mandated by the 2006 Comprehensive Plan.

Regulations are currently being reviewed by policy subject areas. Public working groups discussions are centered on issues identified in the Comprehensive Plan and on potential conflicts within the Zoning Regulations. Recommend changes are then forwarded to the twenty-four member Taskforce for additional review and input. Finally, recommendations for each subject area will be available for public review including a hearing before the Zoning Commission. After the conclusion of public review for all subject areas, OP will work with the Office of the Attorney General to draft zoning language to reflect the proposed policy changes.

II. Context of the District's Regulation of Height

The height of buildings is of concern to cities throughout the world. Historically, height limits are based on the analysis of direct physical factors such as light, air, shadows, important views, or fire protections, and factors such as a city's goals, urban form, technology, traffic, infrastructure capacity, historic preservation, air quality, and sustainability. These factors are weighed and balanced against the returns that may come from permitting taller development on sites.

In the District of Columbia, this weighing and balancing of height concerns has not been done on a comprehensive basis since 1910. At that time, the 1910 Congressional Act to Regulate the Height of Buildings in the District of Columbia (Height Act or 1910 Height Act) was introduced to the Congress

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There are several concepts that need to be clarified or simplified. There are four recommendations in this section. The first two deal with determining the bottom measuring point. The third defines natural grade. The final recommendation clarifies the top measuring point.

IV.B 1. Location of Bottom Measuring Point

Existing Practice

For buildings that have frontage on more than one street, a building's height may be drawn from "the street that permits of the greater height." The District has traditionally permitted a building to determine its allowed height based on one of those streets and the point from which that height is measured to be on another of those streets. Court and Office of the Attorney General opinions have reinforced this tradition. This practice has permitted larger buildings with multiple frontages to rise higher than would otherwise be permitted on some streets.

Issues

The Working Group has asked for greater clarity and predictability determining a building's maximum allowed height.

Recommendation B.1 (Recommendation 5)

Clarify the determination of the measuring point for building height when a building faces more than one street. Option 1: The street chosen to determine the maximum allowable height must also be used to determine the point from which building height is measured. Option 2: Any abutting street which a building faces may be used to determine the measuring point regardless of which abutting street is used to determine maximum allowable height.

Analysis

Since the Height Act separates the sections for determining allowed height and determining the measuring point, it can easily be read that these have no relation and can be considered in isolation. However, this existing system is counterintuitive and often difficult ~~for laypeople~~ to understand. Whether the existing interpretation is kept or modified, it is important that the method for determining the measuring point is clearly delineated in the regulations.

Clearly, the Act anticipates that a building on a corner or through lot with two frontages could result in a building that is higher on one of those frontages than would otherwise be allowed. However, separating height determination and measuring point allows, in some cases, a building to be higher on *both* frontages than would otherwise be allowed on either one (See Figure 5).

Option 1 would require both the maximum permitted height and the measuring point to be taken from the same street ensuring that at height on at least one frontage is based on the street width. Option 2 would maintain the long-time existing practice of permitting precedent of over 50 years that would allow measuring point and permitted height to be determined by different streets. It reflects official 50 years of precedent and opinions of the District's Corporation Counsel/Attorney General. Either policy would need to be written clearly and consistently in the regulations.

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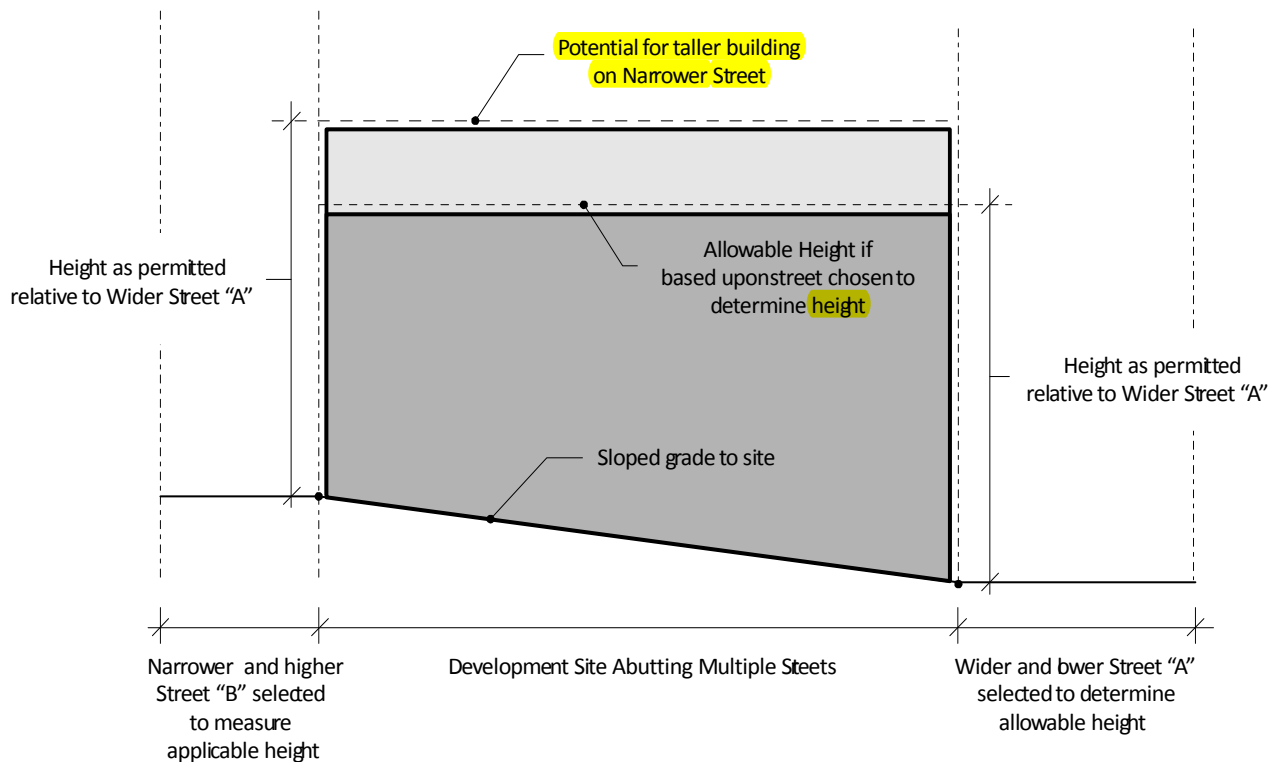


Figure 5

Comments and OP Response

- *The existing measuring method has been favorably viewed by the development community and, until recently by federal review agencies,*
- *It has been of concern to some citizens when the situation occurred next to residential areas.*
- *Option 1 is not controversial with the latter groups, but is of considerable concern to the development community.*
- *They development community has stated that:*
 - *Several court decisions and Corporation Counsel / OAG opinions have endorsed the traditional practice (Option 2);*
 - *Land values and purchase prices have been based on the square footage that is possible with the existing practice, rather than on the reduced square footage that would result from the proposed concept. This may diminish property values.*
 - *There is no justification for making an implicit distinction between through block buildings with different elevations on each block-front, and buildings that run between a street front and an alley with different elevations.*

Option 1 represents the simplest way to regulate measuring point and addresses the concerns of the Working Group. For some properties Option 1 could result in lower total heights and decreased

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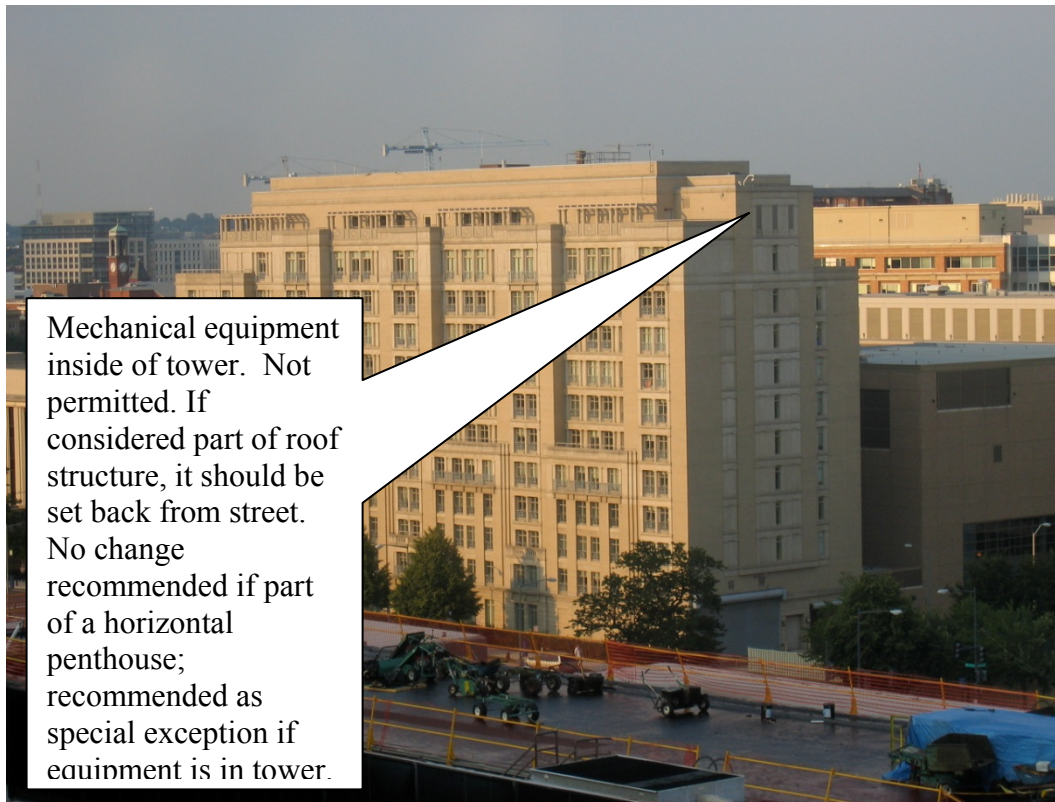


Figure 8

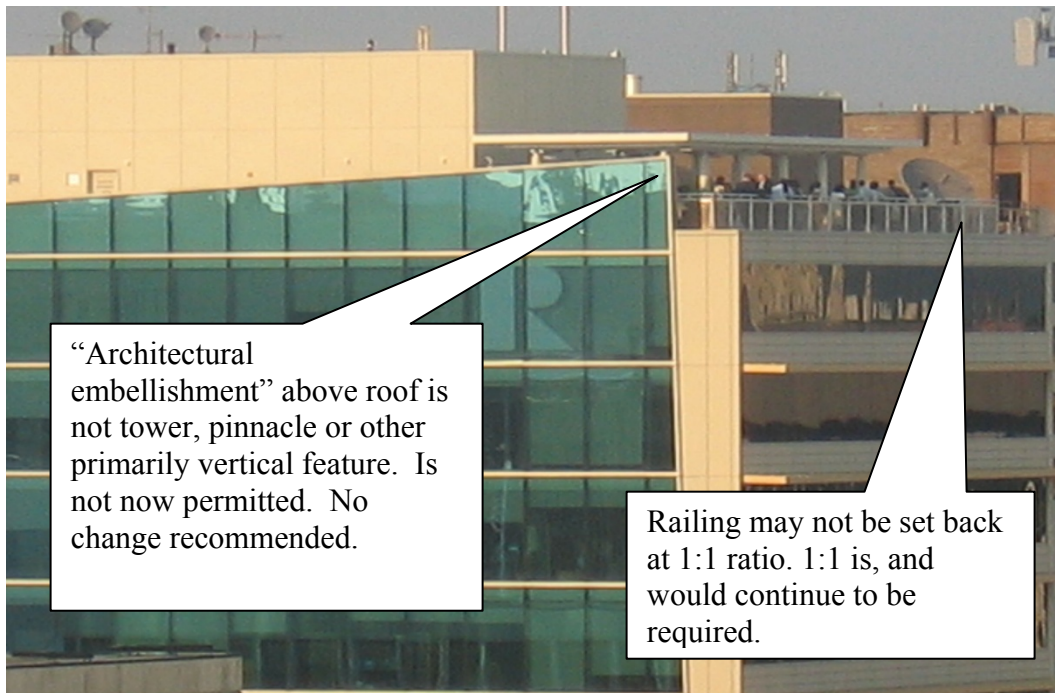


Figure 9