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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 . . . . so 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

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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.

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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