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MEMORANDUM

To: Jerrily Kress, Director, D.C. Office of Zoning

From: Jonathan L. Farmer

Date: August 13, 2002

Subject: 2329 Champlain Street, N.W.
Height Act of 1910
Board of Zoning Adjustment Case No. 16893

BZA
Case No. 16893
Exhibit No. 30

By vote on August 4, 2002, the Board of Zoning Adjustment ("BZA") approved a variance for the above-referenced site that allows the construction of a mixed-use building 68.6 feet tall on Champlain Street. An issue was subsequently raised by inquiry as to whether the variance would violate provisions of the Height Act of 1910 (D.C. Code § 6-601.05) which states that the height of buildings is dictated by the width of the street upon which they front.

In the instant case, Champlain Street, N.W. has a width of 50 feet, including 2 feet of parking, and an additional 8 feet from the parking to the building restriction line on each side (*see* Attachments 1 and 2).

The Height Act provides, in part, that no building shall be erected so as to exceed the width of the street, avenue or highway in its front, increased by 20 feet. *See* D.C. Code § 6-601.02(a) (Attachment 3). The Act further provides that on a business street, no building shall be erected in any manner as to exceed the height of 130 feet, and that no building may be erected to

Board of Zoning Adjustment
District of Columbia
CASE NO.16893
EXHIBIT NO.30

exceed the height of 90 feet on a residential street. The Act places further height limitations on residence streets according to street widths.

The issue arises because there are no definitions of either "business street" or "residence street" contained in either the Height Act or its legislative history. The problem is compounded by the fact that Champlain Street is abutted by both commercial and residential zoning districts, further abutts a mixed-use overlay area, and has commercial, industrial and residential uses on both sides of the street. Indeed, the above-referenced proposed project is a mixed-use project with commercial use on the lower floors and residential use on the upper floors, as is characteristic in the area.

At the time of the original enactment of the Height Act, Champlain Street was in a commercial/industrial area with very little housing on the street. Subsequent development on the street was both commercial and residential. The Zoning Commission imposed the Reed-Cooke Overlay on portions of the squares abutting the east side of Champlain Street which was formerly industrial or commercial by designation. However, the Zoning Commission clearly intended to maintain appropriate commercial uses of the street, while encouraging the retention of existing residential units and the construction of additional residential units. The mixed-use character of Champlain Street was clearly retained.

The land use maps and the Ward 1 Plan of the Comprehensive Plan both indicate that the area surrounding Champlain Street is both a mixed-use and a special treatment area. The Comprehensive Plan does not designate Champlain Street as either "business" nor "residence."

Indeed, the Comprehensive Plan can be read as encouraging the retention and development of the mixed-use nature of the street.

The proposed project of 2329 Champlain Street does not violate the Height Act because, as proposed, it does not exceed the limits set for a residence street. The Act only provides limits for buildings on a residence street; Champlain Street is not so easily defined. It's mixed nature is more characteristic of a business street than a residence street.

It should be noted that the Height Act was intended to ensure that buildings did not exceed fire safety limits and that adequate light and air would be maintained on all streets. As noted by the BZA, the proposed project has been designed in a manner that assures that air and light are enhanced for Champlain Street, thus meeting the intent of the Height Act. The proposed project is across the street from a newly constructed 59 foot building that is nearly equal in actual height because of the topography.

For the foregoing reasons, Champlain Street should not be regarded simply as a residence street but, rather, should also be recognized for its mixed-use and commercial aspects as well. It's eclectic nature allows for a variety of heights, as long as safety, air, and light considerations are adequately met.

ATTACHMENT 1

12

STREET WIDTHS

12

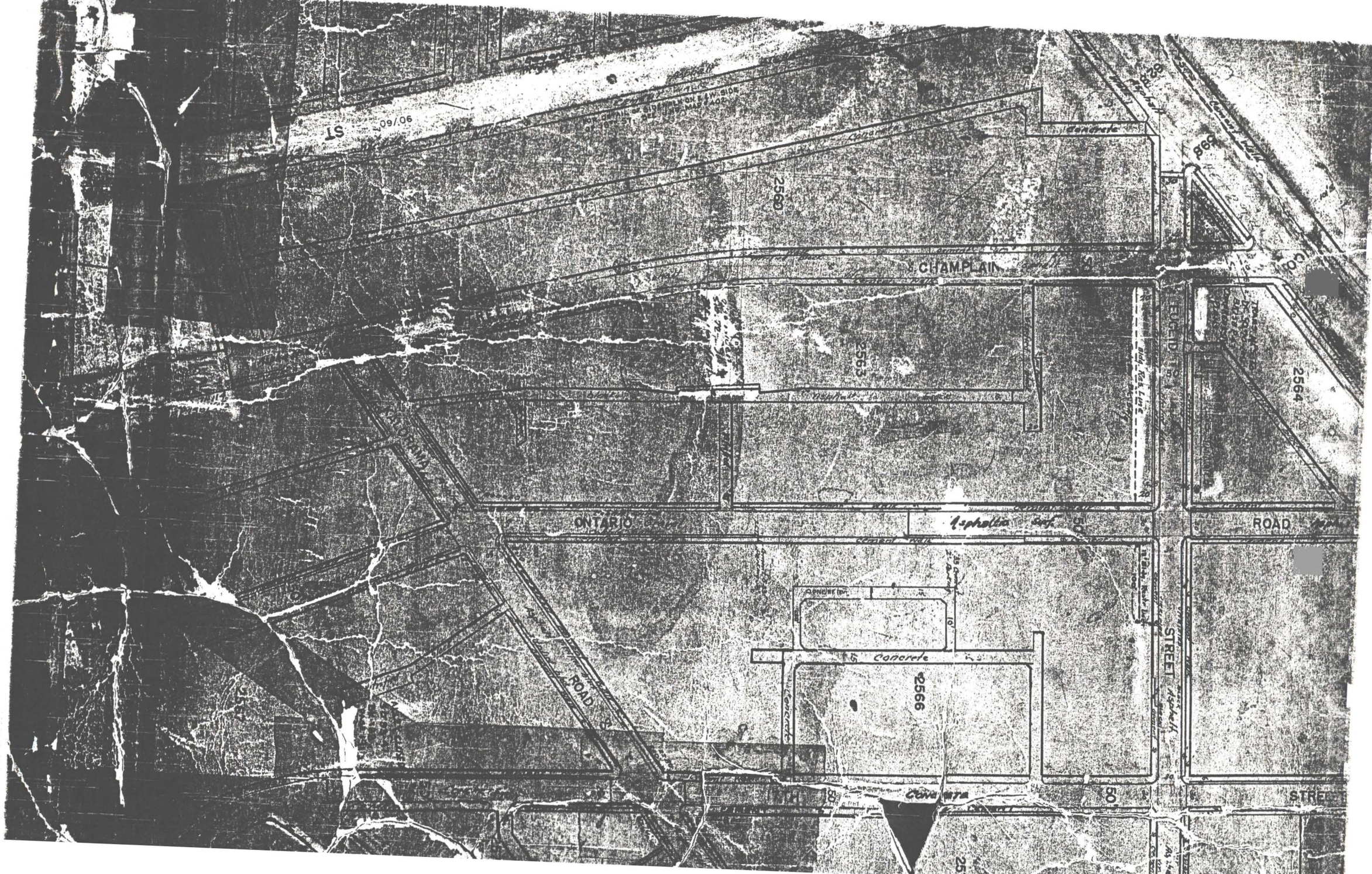
Street Champlain St., Northwest

PLEASE DO NOT CREASE OR FOLD

LOCATION	REMARKS	STREET	ROADWAY	SIDEWALK		PARKING	
Fla. Ave. to Col. Rd.		50	30	10	10	---	---

P-4186

Attachment 2


ST
2560
S. CHAMPLAIN
2563
EUCLID TER.
2564
ONTARIO
Asphalt
ROAD
STREET
Concrete
2566
ROAD
STREET

Attachment 3

Encyclopedias
C.J.S. Health and Environment §§ 28 to 36, 52.
C.J.S. Zoning and Land Planning §§ 25, 48, 51, 53.

§ 6-601.03. Street width to control building height; business streets; residence streets; specified properties; structures above top story of building.

(a) No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of 2 or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the Mayor of the District of Columbia.

(b) No buildings shall be erected, altered, or raised in any manner as to exceed the height of 130 feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted.

(c) On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over 90 feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by 10 feet, except on the street, avenue, or highway 60 to 65 feet wide, where a height of 60 feet may be allowed; and on a street, avenue, or highway 60 feet wide or less, where a height equal to the width of the street may be allowed; provided, that any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this subsection, and the Mayor of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of 95 feet above the level of the adjacent curb.

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

(e) On streets less than 90 feet wide where building lines have been established and recorded in the Office of the Surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, insofar as it controls the height of buildings under this subchapter, shall be held to be the distance between said building lines.

(f) On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at

the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia. 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, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of Chapter 6 of Title 6.

(g) Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than 80 feet.

(h) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this subchapter when and as the same may be approved by the Mayor of the District of Columbia; provided, however, that such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed; and provided, that penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof; and provided further, that a building be permitted to be erected to a height not to exceed 130 feet on lots 15, 804, and 805, square 322, located on the southeast corner of 12th and E Streets Northwest, said building to conform in height and to be used as an addition to the hotel building located to the east thereof on lot 18, square 322; and further provided, that the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of 14th and F Streets Northwest, be permitted to be erected to a height not to exceed 140 feet above the F Street curb; and provided further, that the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, and the east by 19th Street, and on the north by a property line running east and west 564 feet in length, said building to cover an area not exceeding 14,000 square feet and to be located on said property not less than 40 feet distant from the north property line, not less than 320 feet distant from the Connecticut Avenue property line, not less than 160 feet distant from the 19th Street property line, and not less than 360 feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of 20th Street meets said boundary, be permitted to be erected to a height not to exceed 180 feet above the level of the existing grade at the center of the location above described; and provided further, that the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Planning Commission, both of the District of Columbia; and further provided, that the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road

Northwest in the District of Columbia, approximately opposite 39th Street, plans for which building are on file in the Office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed 110 feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building.

(June 1, 1910, 36 Stat. 452, ch. 263, § 5; Dec. 30, 1910, 36 Stat. 891, ch. 8; June 7, 1924, 43 Stat. 647, ch. 340; Feb. 21, 1925, 43 Stat. 961, ch. 289; May 16, 1926, 44 Stat. 298, ch. 150; Apr. 29, 1930, 46 Stat. 258, ch. 220; Mar. 24, 1945, 59 Stat. 38, ch. 37; Sept. 22, 1961, 75 Stat. 583, Pub. L. 87–281, § 1; Apr. 20, 1999, D.C. Law 12–234, § 2, 46 DCR 643.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 5–405.
1973 Ed., § 5–405.

Legislative History of Laws

Law 12–234, the "Schedule of Heights of Buildings Amendment Act of 1998," was introduced in Council and assigned Bill No. 12–170, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998 and December 1, 1998, respectively. Signed by the Mayor on December 21, 1998, it was assigned Act No. 12–558 and transmitted to both Houses of Congress for its review. D.C. Law 12–234 became effective April 20, 1999.

Change in Government

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(120) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1–207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1–207.14(a)), appropriate changes in terminology were made in this section.

Transfer of Functions

"National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Miscellaneous Notes

Office of Inspector of Buildings abolished: Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the

District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

D.C. Schedule of Heights Amendment Act disapproved by Congress: Pursuant to Pub. L. 102-11, 105 Stat. 33, effective March 12, 1991, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress hereby disapproves of the action of the District of Columbia Council described as follows: The Schedule of Heights Amendment Act of 1990 (D.C. Act 8-329), signed by the Mayor of the District of Columbia on December 27, 1990, and transmitted to Congress pursuant to section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act on January 15, 1991.

Cross References

Limitations on authority of council, see § 1-206.02.

Section References

This section is referred to in §§ 6-601.04, 6-601.07 to 6-601.09, and 6-641.06.

Library References

Key Numbers

Health and Environment ⇐32.

Zoning and Planning ⇐65.

Westlaw Key Number Searches: 199k32; 414k65.

Encyclopedias

C.J.S. Health and Environment §§ 28 to 36, 52.

C.J.S. Zoning and Land Planning §§ 25, 48, 51, 53.

Notes of Decisions

Administrative determinations 1
Judicial review 2

1. Administrative determinations

Determination of the corporation council, that the Height of Buildings Act permitted proposed international trade center in the District of Columbia to be 130 feet high, was based on consistent, demonstrable, administrative practice and was reasonable and consistent with language of the HBA; therefore, alternative interpretations of the HBA did not provide basis to overturn corporation council's determination. D.C.Code 1981, §§ 1-361, 5-405. Techworld Development Corp. v. D.C. Preservation League, 1986, 648 F.Supp. 106. Zoning And Planning ⇐ 253

2. Judicial review

Issue concerning maximum height permissible under the Height of Buildings Act for international trade center, which was to cover two city blocks in the District of Columbia, was ripe for resolution, even though local authorities had not yet issued construction permit allowing developers to rise to any specific height, where developers made clear their intention to build center to height of 130 feet and where federal Government and preservationists had made equally clear their position that such height was unlawful. D.C.Code 1981, § 5-405. Techworld Development Corp. v. D.C. Preservation League, 1986, 648 F.Supp. 106. Zoning And Planning ⇐ 570

Preservationists, who sought to prevent developers from constructing international trade center in the District of Columbia to height of 130 feet, had no right of action under the Height of Buildings Act. D.C.Code 1981, § 5-405. Techworld Development Corp. v. D.C. Preservation League, 1986, 648 F.Supp. 106. Zoning And Planning ⇐ 764

Federal Government's property interest in property, which was neighboring property to proposed site for international trade center in the District of Columbia, provided basis for Government to have right of action under the Height of Buildings Act to prevent developers from building center to height of 130 feet. D.C.Code 1981, § 5-405. Techworld Development Corp. v. D.C. Preservation League, 1986, 648 F.Supp. 106. Zoning And Planning ⇐ 764