July 15, 1958

REPORT OF THE ZONING ADVISORY COUNCIL
ON PROPOSED AMENDMENTS TO THE ZONING
REGULATIONS

JULY 16, 1958, HEARING

"3201.26 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the district in which located, provided such penthouse is set back from all lot lines of the structure upon which located a distance equal to its height above the roof of the structure."

"4201.22 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the SP District provided such penthouse is set back from all lot lines of the building or other structure upon which located a distance equal to its height above the roof of the building or structure."

"5201.23 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the district in which located, provided such penthouse is set back from all lot lines of the building or other structure upon which located a distance equal to its height above the roof of the building or structure."

"6201.22 An elevator or stairway penthouse may be erected to a height in excess of that authorized in the district in which located, provided such penthouse is set back from all lot lines of the building or other structure upon which located a distance equal to its height above the roof of the building or structure."

These proposed amendments relate to the location of elevator and stairway penthouses. Set back provisions of such appurtenances are contained in the Act of June 1, 1910, (36 Stat. 452), regulating the height of buildings in the District of Columbia. The Act provides that when above the limit of height, a penthouse, etc., shall be set back from the exterior walls of the building on which it is located a distance equal to its height above the adjacent roof. Under the regulations recently repealed, the application of this provision was construed by the Zoning Commission to mean exterior walls from the street sides only, an interpretation considered in harmony with the Act and not in violation thereof. While regulations promulgated by the Commission are subject to minimum standards provided by the Act of June 1, 1910, ample authority exists to incorporate more restrictive provisions into the regulations which has been done in numerous instances with respect to other provisions of the Act.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17221
EXHIBIT NO. 39A2

The principal difficulty encountered in applying the provision of the new regulations is that the required set back of penthouses from all outside walls of the building does not in many instances serve any useful purpose since a set back from yards or courts required or provided is unnecessary to protect light and air for adjoining properties. It is for this reason that modification of these paragraphs in some form appears fully justified.

There are several ways in which these paragraphs could be amended, each of which merits consideration. In addition to the method advertised for this hearing, the Commission might either apply the set back to only those sides of a building abutting public streets, or to only those sides of a building abutting public streets or alleys; or to only those sides of a building abutting public streets, alleys, or a lower height district. There appears to be more support from builders and architects for one of the latter methods than there is for adoption of the proposal now before the Commission. However, the Council is of the opinion that the method proposed here will more closely follow the intent of the 1910 Act and assure adequate light and air for adjoining properties under all conceivable circumstances, whereas adoption of one of the other methods might in some instances adversely affect adjoining structures. The amendment as proposed does not provide a remedy for every conceivable situation since there will be a few buildings on narrow lots which will be unable to provide the set back and must therefore be erected (with penthouse) within the total height envelope, such penthouse area counting as a part of the floor area ratio. Since these cases will be limited and since there is ample opportunity to conform because of the decreased bulk of buildings now required, it is believed that no material hardship will result.

For the reasons outlined, approval of the amendments as advertised is recommended.

(S) R. O. CLOUSER

NATIONAL CAPITAL PLANNING COMMISSION
801 PENNSYLVANIA AVENUE, N.W., SUITE 301
WASHINGTON, D.C. 20576

NCPC File No. Z.C. 93-9C

21ST AND H STREETS, N. W.
(GEORGE WASHINGTON UNIVERSITY AND THE GREATER WASHINGTON EDUCATION TELECOMMUNICATIONS ASSOCIATION (WETA)) APPLICATION FOR A CONSOLIDATED PLANNED UNIT DEVELOPMENT AND RELATED AMENDMENT TO THE ZONING MAP OF THE DISTRICT OF COLUMBIA REZONING LOT 880 IN SQUARE 101 FROM R-5-D TO C-3-C

Report to the Zoning Commission of the District of Columbia

March 3, 1994

The Commission, pursuant to Section 5 of the Act of June 20, 1938, as amended by the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, 1981 edition, sec. 5-417), has reviewed the proposed Zoning Commission's Guidelines and Standards for the Planned Unit Development at 21st and H Streets, N.W. and the related zoning change from R-5-D to C-3-C for Lot 880 in Square 101. The Commission finds that the proposed Planned Unit Development and related amendment to the Zoning Map of the District of Columbia would not adversely affect the Federal Establishment or other Federal interests and would not be inconsistent with the Comprehensive Plan for the National Capital.

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Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
JUDICIARY SQUARE
441 FOURTH ST N W
WASHINGTON D C 20001

IN REPLY REFER TO:

May 16, 1994

TO: Mark Davis, Esquire
Committee on the District of Columbia

FROM: Peter Szegedy-Maszak
Assistant Corporation Counsel, D.C.

SUBJECT: Legal Citations regarding Constitutional Equal Protection Standards for H.R. 4242

I offered to provide the Committee legal citations regarding the possible equal protection issues raised by H.R. 4242. An equal protection issue arises from the denial of a building permit to one landowner and the granting of such permit to another landowner where such landowners are similarly situated and the differing treatment is unrelated to or inconsistent with the permissible zoning standards imposed by a zoning regulation or law. See City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985); Art Van Furniture, Inc. v. City of Kentwood, 437 N.W.2d 380 (Mich. App. 1989), appeal denied, 433 Mich. 918 (1989); Kisil v. City of Sandusky, 465 N.E.2d 485 (Ohio 1984); Durante v. Town of New Paltz Zoning Board, 90 A.D.2d 866, 456 N.Y.S.2d 485 (1982); Wolfner v. Board of Zoning Adjustment, 672 S.W.2d 147 (Mo. App. 1984). See also Bannum, Inc. v. City of Louisville, 958 F.2d 1354 (6th Cir. 1992); Crow v. Brown, 332 F. Supp. 382 (N.D. Ga. 1971), affd , 457 F.2d 788 (5th Cir. 1972); P.L.S. Partners, Women's Medical Center of Rhode Island, Inc. v. City of Cranston, 696 F. Supp. 788 (D.R.I. 1988). See generally 1 Ziegler Rathkopf's THE LAW OF ZONING AND PLANNING, § 4.09 and cases cited therein (1986). H.R. 4242 singles out the WETA/GWU PUD for special, discriminatory treatment under the 1910 Height Act when other similarly situated applicants have been treated uniformly on the basis of the 84 year interpretation of the Height Act by the District of Columbia government. Arguably, such discriminatory treatment raises an equal protection issue.

Moreover, under local PUD regulations, the WETA/GWU PUD meets all applicable standards. As you are award, PUD standards themselves need not be co-extensive with requirements of local zoning laws and regulations. See Dupont Circle Citizens

(D.C. 1981); Rudderow v. Township Committee of Township of Mount Laurel, 297 A.2d 583 (N.J. Super 1972). As the District of Columbia Court of Appeals has found in Dupont Circle Citizens Association:

> "[T]his [PUD] package approach to land use is an antidote to the ill effect of traditional Euclidian zoning where limitations on location, lot size, use, square footage and building height may frustrate the type of growth intended by the community."

426 A.2d at 332 (emphasis supplied). H.R. 4242 therefore also undermines the flexible zoning approach which the PUD regulations affords local landowners and developers by law. See 11 DCMR §§ 2400.1 et seq. (1991)

In the event that you may have further questions, please feel free to contact me at your convenience.

cc: Albert Dobbins, Office of Planning
Madeliene Robinson, Office of Zoning
Hampton Cross, Department of Consumer and Regulatory Affairs
Joseph Bottner, Zoning Administrator
James Randall, Office of Corporation Counsel
Mimi Mager, Office of Intergovernmental Affairs