GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: March 7, 2003

TO: District of Columbia Zoning Commission

THROUGH: Andrew Altman, Director OP
Ellen McCarthy, Deputy Director OP

FROM: David J. McGettigan, AICP

SUBJECT: Text Amendment - Measuring Point for Building Height
ZC Case #02-35

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Summary

The Zoning Commission setdown a minor text amendment to clarify ambiguous wording in the definition of building height (11DCMR§199) as follows (changes in bold):

> Building, height of - the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. **The term curb shall refer to a curb at grade. In the case of a property fronting on a street that is elevated above grade, the height of the building shall be measured from the lower of the natural grade or finished grade at the middle of the front of the building to the highest point of the roof or parapet.**

In addition, a new definition for natural grade was provided:

> **Natural Grade – the undisturbed ground level formed without human intervention or, where the undisturbed ground level cannot be ascertained because of an existing building or structure, the undisturbed existing grade.**

Recommended Action:

The Office of Planning recommends that the Zoning Commission modify **In the case of a property fronting on a street that is elevated above grade** to **In the case of a property fronting on a bridge or viaduct**.

ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 13

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.13

Bridge vs. Street that is elevated above grade

The letter from Holland and Knight of September 9th, ZC 02-35, Exhibit # , (HK letter) indicates that the phrase "In the case of property fronting on a street that is elevated above grade..." is not understandable (HK letter, pg. 3, 2nd paragraph). The HK letter indicates that confusion may arise in the meaning of the term grade in this context. Additionally, in meetings with citizens groups[1], the intention of the phrase was questioned in regards to the case where a building might be below the level of the street and the street "elevated" above the grade of the building. The intention was to capture cases where the property fronted on a bridge or overpass (as indicated in the setdown report, page 1).

Therefore, the Office of Planning recommends the phrase be modified to "In the case of a property fronting on a **bridge or viaduct**. Webster's Third New International Dictionary of the English Language, Unabridged, 1986 (Webster's) provides the following definition of bridge and viaduct:
Bridge - a structure erected over a depression or an obstacle to travel (as a river, chasm, roadway, or railroad) carrying a continuous pathway or roadway (as for pedestrians, automobiles, or trains)

Viaduct - a bridge esp. when resting on a series of narrow reinforced concrete or masonry arches, having high supporting towers or piers, and carrying a road or railroad over a valley, river, road, or other low-lying obstruction.

The inclusion of the term viaduct is included to express the intent that elevated roads such as the Whitehurst Freeway and the Southeast-Southwest Expressway, which don't seem very bridge-like, are included in the definition. This should address concerns of Holland and Knight that the phrase is not understandable.

Additionally, this change will preclude designed urban spaces like The Portals site, which terminates Maryland Avenue over the railroad tracks in a plaza. The plaza interfaces with the surrounding buildings in a level ground plane. The Portals site was approved by the D.C. Redevelopment Land Agency (RLA) in an agreement to develop the property with a high quality development. The project was approved by the Commission of Fine Arts and partially developed under the Urban Renewal Plan for the Southwest Urban Renewal Area. When the Urban Renewal Plan expired the property was rezoned from unzoned to C-3-C. Two of the five building pad sites have been developed with office buildings and a third is under construction with the Mandarin Oriental Hotel. The Schedule of Heights of Buildings Amendment Act of 1998 was passed by Council to allow the fourth building to be measured from Maryland Avenue and to ensure a uniform height. Other wording may be contemplated to exempt this complex development, but OP felt the change to the

[1] These include the ANC 6C Planning and Zoning Committee and an Ad Hoc Committee on Building Height made up of representatives of Wesley Heights Historical Society, ANC 3F, ANC 3D, and the Forest Hills Citizen's Association.

use of bridge or viaduct would provide a simpler, cleaner solution that meets the intent of the amendment.

Natural Grade

The HK letter stated the term "natural grade" was unworkable based on the lack of definition of natural grade and the temporal question of when was it natural. It was therefore important that the Zoning Commission decided to add the definition of natural grade. The term "natural grade" is already used in the Height Act of 1910 and the current definition in §199:

> Height Act - 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
>
> 11DCMR§199 - Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the **natural grade** at the middle of the front of the building to the highest point of the roof or parapet.

The Office of Planning does not believe that the phrase has become suddenly unworkable as the HK letter suggests, but does believe that the proposed definition adds clarity. The first phrase of the definition clearly defines natural grade as "the undisturbed ground level formed without human intervention". The HK letter asks if one needs to look to 1791 for a determination of natural grade. The State Archaeologist located in the Office of Planning Historic Preservation Division indicates that a topographical survey from 1791 is available, as well as a Geodetic Survey from 1892, both of which are currently used to identify possible archaeological sites. However, the second phrase in the definition saves us from using this source by giving the option to use the existing grade in situations where the natural grade could not be discerned.

The inclusion of the phrase "the lower of natural or finished grade" is also helps make the definition more workable. The phrase addresses several of the questions brought up by the HK letter regarding multiple grading changes. This preserves some relationship to the street in cases where the natural grade is much higher than the street and eliminates questions when the grade changed to increase the finished grade elevation. However, the insertion of this phrase in the clarifying text only affects properties fronting a bridge. The Commission may want to consider inserting this phrase in other areas of the definition where the term natural grade and finished grade are used.

Urban Design Issues

As indicated in the setdown report, the Comprehensive Plan discusses height in several areas. Particularly, in the Urban Design Element, which seeks to strengthen and enhance

the physical image of the District and maintain and enhance the horizontal character of buildings within the District. The interpretation that has been used in the past that has allowed the measurement of buildings from bridges is not consistent with these policies. The proposed text amendment is more consistent with the intent of the zoning regulations to control the height of buildings. Property owners fronting on bridges will no longer be able to build 2-3 stories higher than the neighboring property owner, whose land is in the same zone and at the same topographic elevation. This will apply the measurement of building height more equitably and further the intent of the zoning ordinance and the goals of the Comprehensive Plan.

The Office of Planning has analyzed other bridges and viaducts in the District with the aid of the Geographic Information System and determined that the measurement of building height from a bridge or viaduct is the exception and not the rule. The findings are presented in Attachment 1.

Recommendation

The Office of Planning recommends that the Zoning Commission modify **In the case of a property fronting on a street that is elevated above grade** to **In the case of a property fronting on a bridge or viaduct**. The remainder of the proposed text amendment should be adopted advertised.

Attachment:

1. GIS Analysis
2. Jurisdictional Survey
3. History of Height Act

GIS Analysis

Elevated roads were identified through WGIS data from the Bidge/Tunnel data set. The Whitehurst Freeway, Eisenhower/Southeast Freeway and South Capitol Gateway areas were chosen for study because of the significant clusters of tall buildings along these elevated roads. Buildings fronting these elevated roadways were identified.

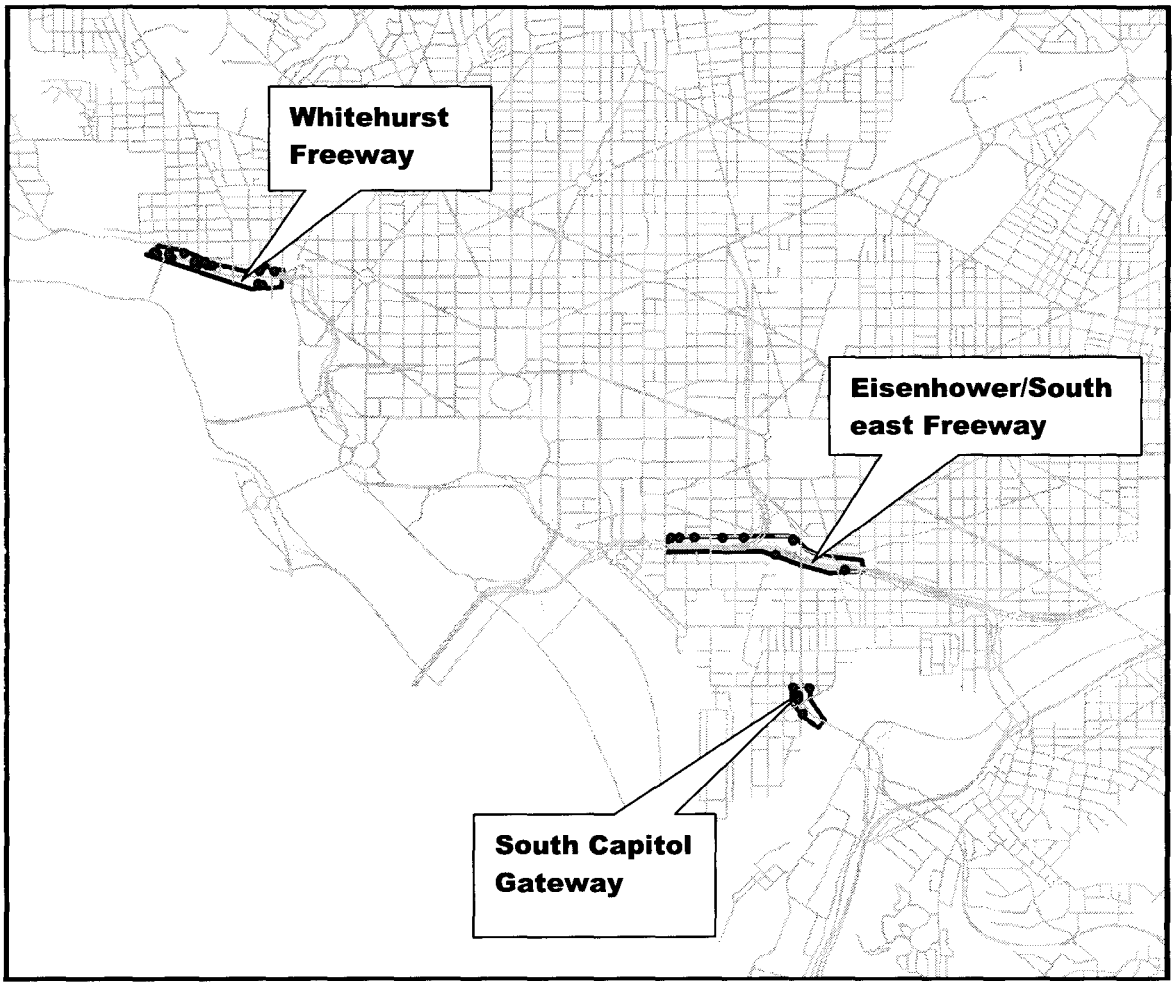


Figure 1 GIS Study Areas

Roof elevations from the GIS for these buildings were compared to a 3-D surface generated from GIS topographic information. The building height was compared to the height limit of the underlying zone as shown in the following table:

Bldg Height	Zone Height	ZONE	Difference
62	60	W-2	2
18	40	W-1	(22)
20	40	W-1	(20)
27	40	W-1	(13)
24	40	W-1	(16)

7	40	W-1	(33)
34	60	W-2	(26)
86	60	W-2	26
85	60	W-2	25
71	60	W-2	11
17	60	W-2	(43)
14	60	W-2	(46)
34	60	W-2	(26)
84	60	W-2	24
70	90	W-3	(20)
66	90	W-3	(24)
72	90	W-3	(18)
72	90	W-3	(18)
89	90	C-3-C	(1)
18	90	C-3-C	(72)
93	90	C-3-C	3
95	90	C-3-C	5
97	90	C-3-C	7
33	90	C-3-C	(57)
43	90	C-3-C	(47)
13	60	R-5-C	(47)
14	90	M	(76)
23	90	M	(67)
33	60	C-M-2	(27)
13	60	C-M-2	(47)
15	60	C-M-2	(45)

As can be seen from the table, 74% of the buildings were below the building height limit and most of the remainder were within a few feet of the limit, which can be accounted for in the accuracy of the GIS data (+/- 1 Meter) and differences in the location of the building height measuring point and the location of the rooftop elevation point. In no case does a building exceed the height requirement by the 30-35-foot difference between grade and the curb on the elevated road.

Jurisdiction	Building Height Definition	Grade Definition
West Vancouver, British Columbia	The vertical distance measured from the lower of average natural grade or average finished grade.	Natural Grade – the undisturbed ground level formed without human intervention or, where the undisturbed ground level cannot be ascertained because of an existing building or structure, the undisturbed existing grade
Montgomery Co., Maryland	The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof; to the deck line of a mansard floor; and [***5] to the mean height level between eaves and ridge of a gable, hip or gambrel roof; except, that if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace . . .	
Prince William Co., Virginia	The vertical distance from grade to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between the eaves and the ridge for gable, hip, or gambrel roofs. This term shall mean a reference plane representing the average elevation of finished ground level adjoining the building or structure at all exterior walls or surfaces.	Grade: This term shall mean a reference plane representing the average elevation of finished ground level adjoining the building or structure at all exterior walls or surfaces
Fairfax Co., Virginia	The vertical distance to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs measured from the curb level if the building is not more than ten (10) feet distant from the front lot line, or from the GRADE in all other cases.	GRADE: A reference plane representing the average of finished ground level adjoining a building at all exterior walls.
San Francisco, California	The vertical distance by which a building or structure rises above a certain point of measurement, which point shall be taken as indicated herein. For this purpose, the term "building" shall be deemed to include the term "structure." (a) In the case of either (b) or (c) below, such point shall be taken at the centerline of the building or, where the building steps laterally in relation to a street that is the basis for height measurement, separate points shall be taken at the centerline of each building step.	

Jurisdiction	Building Height Definition	Grade Definition
	(b) Where the lot is level with or slopes downward from a street at the centerline of the building or building step, such point shall be taken at curb level on such a street. This point shall be used for height measurement only for a lot depth not extending beyond a line 100 feet from and parallel to such street, or beyond a line equidistant between such street and the street on the opposite side of the block, whichever depth is greater. Measurement of height for any portion of the lot extending beyond such line shall be considered in relation to the opposite (lower) end of the lot, and that portion shall be considered an upward sloping lot in accordance with Subsection (c) below, whether or not the lot also has frontage on a lower street. (c) Where the lot slopes upward from a street at the centerline of the building or building step, such point shall be taken at curb level for purposes of measuring the height of the closest part of the building within 10 feet of the property line of such street; at every other cross-section of the building, at right angles to the centerline of the building or building step, such point shall be taken as the average of the ground elevations at either side of the building or building step at that cross-section. The ground elevations used shall be either existing elevations or the elevations resulting from new grading operations encompassing an entire block. Elevations beneath the building shall be taken by projecting a straight line between ground elevations at the exterior walls at either side of the entire building in the same plane. (d) Where the lot has frontage on two or more streets, the owner may choose the street or streets from which the measurement of height is to be taken, within the scope of the rules stated above. Where the height limits for buildings and structures are established by this Code, the upper points to be taken for measurement of height shall be as prescribed in the	

Jurisdiction	Building Height Definition	Grade Definition
	provisions relating to such height limits.	
New York City, New York	The "height factor" of a #building# is equal to the total #floor area# of the #building# divided by its #lot coverage#. If two or more #buildings# are located on the same #zoning lot#, their #height factor# is the sum of their #floor areas# divided by the sum of their #lot coverages#. The #height factor# is thus equal to the number of #stories#, if the #building# were erected without setbacks. In computing a #height factor#, a fraction of .5 or more may be considered a whole number, and smaller fractions shall be disregarded.	Base plane (6/29/94) The "base plane" is a plane from which the height of a #building or other structure# is measured as specified in *certain Sections. For #buildings#, portions of #buildings#* with #street walls# at least 15 feet in width, or #building segments# within 100 feet of a #street line#, the level of the #base plane# is any level between #curb level# and #street wall line level#. Beyond 100 feet of a #street line#, the level of the #base plane# is the average elevation of the final grade adjoining the #building# or #building segment#, determined in the manner prescribed by the Building Code of the City of New York for adjoining grade elevation. In either case, where the #base flood elevation# is higher than grade, the #base flood elevation# may be the level of the #base plane#. In addition, the following regulations shall apply: (a) Within 100 feet of a #street line#: (1) The level of the #base plane# for a #building# or #building segment# without a #street wall# shall be determined by the average elevation of the final grade adjoining such #building# or #building segment#. (2) Where a #base plane# other than #curb level# is established, the average elevation of the final grade adjoining the #street wall# of the #building# or #building segment#, excluding the entrance to a garage within the #street wall#, shall not be lower than the level of the #base plane#, unless the #base plane# is also the #base flood elevation#. (3) Where the average elevation of the final grade adjoining the #street wall# of the #building#, excluding the entrance to a garage within the #street wall#, is more than two feet below #curb level#, the level of the #base plane# shall be the

Jurisdiction	Building Height Definition	Grade Definition
		elevation of such final grade, unless the #base plane# is also the #base flood elevation#. This paragraph shall not apply to #buildings developed# before June 30, 1989 in R2X, R3, R4 or R5 Districts. Furthermore, this paragraph shall not apply to #buildings# in C1 or C2 Districts mapped within R2X, R3, R4 or R5 Districts, or in C3 or C4-1 Districts, unless such #buildings# are located on #waterfront blocks#. (4) As an option, on sites which slope from the #street wall line level# to the #rear wall line level# by at least ten percent to the horizontal, the level of the #base plane# may extend in a sloping plane from such #street wall line level# to such #rear wall line level#. When a sloping #base plane# is thus established, the average elevation of the final grade at the #rear wall line# shall not be lower than the #rear wall line level#. (b) For all #buildings#, where #base planes# of different elevations apply to different portions of a #building#, only that portion of the #building# to which such #base plane# applies may be used to determine such #base plane#. (c) For #buildings# located partially within and partially beyond 100 feet of a #street line#, or where #corner lot# or #through lot# regulations subject different portions of a #building# to #base planes# of different elevations, separate #base planes# may be determined for each such portion of the #building# or, as an option, the elevation of each such #base plane# may be multiplied by the percentage of the total #lot coverage# of the #building# to which such #base plane# applies. The sum of the products thus obtained may be the elevation of the adjusted #base plane# applicable to such #building#.

Jurisdiction	Building Height Definition	Grade Definition
Chicago, Illinois	Building height" is the vertical distance from the curb level, or its equivalent, opposite the center of the front of a building to highest point of the under side of the ceiling beams, in the case of a flat roof; to the deck line of a mansard roof; and to the mean level of the under side of the rafters between the eaves and the ridge of a gable, hip, or gambrel roof. Where no curb level has been established, the height of a building may be measured from the mean elevation of the finished lot grade at the front of the building.	The "curb level" for any building is the level of the established curb in front of such building measured at the center of such front. Where no curb elevation has been established, the mean elevation of the finished lot grade immediately adjacent to a building shall be considered the "curb level."
A Unified Development Ordinance, by Michael B. Brough, Planners Press, APA	The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the building.	

[COMMITTEE PRINT]

BUILDING HEIGHT LIMITATIONS

STAFF REPORT

FOR THE

COMMITTEE ON THE DISTRICT OF COLUMBIA

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

APRIL 1, 1976

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Early Attempts To Regulate Building Heights in the National Capital

In an act of July 16, 1790 (1 Stat. 130) President George Washington was authorized to appoint three commissioners to plan and develop a capital city. The act further authorized the President to issue regulations to assure the orderly development of the planned city and all actions of the commissioners were subject to the "approbation of the President of the United States."

Thomas Jefferson, Secretary of State in the Washington Administration, was the President's liaison with the commissioners and Pierre L'Enfant and Andrew Ellicott. Therefore, many of the early planning decisions regarding the national capital are discussed in Jefferson's correspondence to President Washington. Secretary Jefferson traveled often to the site of the projected capital from Philadelphia, the provisional seat of the national government, in order to carry out the liaison duties assigned by the President. Secretary Jefferson also took detailed notes during or subsequent to his various contacts with the commissioners, L'Enfant and Ellicott.

Jefferson's correspondence reveals that the public and private development of the capital had to be regulated if the integrity of an overall plan was to be preserved. The President apparently perceived that private building height standards and construction materials should be specified in any initial promulgation of building regulations, according to Jefferson's notes and correspondence.

Therefore, on October 17, 1791 the President promulgated the first building regulations for the projected capital city. Two of those regulations read as follows:

> That the outer and party walls of all houses within said city, shall be of brick or stone.
>
> That the wall of no house [is] to be higher than forty feet to the roof, in any part of the city; nor shall any be lower than thirty-five feet on any of the avenues.[1]

It can be documented, then, that attempts to limit building heights in the nation's capital began as early as 1791. However, the reasons for such limitations can be somewhat elusive to the researcher and Jefferson remains the primary source in this regard. Jefferson's correspondence reveals that the President often sought the counsel of his Secretary of State on various matters pertaining to the planning and development of the permanent seat of the national government. Secretary Jefferson was well read and widely travelled, having visited or resided for a time in many of the better known national and provincial capitals of Europe, while the President had never travelled outside of North America. It is through the correspondence and notes of Jefferson, therefore, that one finds the genesis of this inital building height limitation.

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[1] The Acts of Congress [and Related Administrative Actions] in Relation to the District of Columbia—July 16, 1790 to March 4, 1831, Inclusive. Washington, William A. Davis, 1831. Washingtoniana Collection, Public Li[illegible]

For example, in an extensive collection of notes dated November 29, 1790 pertaining to the projected planning and development of the capital city, Jefferson made the following observation:

> In Paris it is forbidden to build a house beyond a given height, & it is admitted to be a good restriction, it keeps the houses low and convenient, & the streets light and airy, fires are much more manageable where houses are low. This however is an object of Legislation.[2]

In notes dated March 11, 1791, made prior to a meeting with President Washington at Georgetown in the spring of 1791, Secretary Jefferson indicated that he planned to suggest that the President consider a building regulation for the Federal City:

> To provide for the extinguishment of fires, and the openness and convenience of the town, by prohibiting houses of excessive height.[3]

Several months later, President Washington would request, in a letter of August 29, 1791, that Secretary Jefferson offer specific advice on the following questions:

> Ought there be any wood houses in the town?
> What sort of Brick or Stone Houses should be built; and what height; especially on the principal Streets or Avenues?[4]

Secretary Jefferson met with the Commissioners at Georgetown on September 8, 1791 and Jefferson indicated in notes of that date that the Commissioners had voted to recommend that:

> There ought not be any wood houses in the town.

And that

> No house wall [be] higher than 35 feet in any part of the town. None lower than that on any of the avenues.[5]

By the year 1796, however, it became apparent to President Washington that those of the manual working class who wished to reside with their families in the Federal City could not afford to construct a house of stone or brick at the specified heights. To accommodate this class, the two building regulations, promulgated on October 17, 1791 as previously cited, were suspended by President Washington in a Proclamation of June 25, 1796. The suspension was to remain in force until the first Monday in December 1800. The Proclamation stated that the two regulations were suspended because they had:

> been found, by experience, to impede the settlement in the City, of mechanicks, and others, whose circumstances do not admit of erecting houses of the description authorized by said Regulations.[6]

Materials presented later in this section indicate that President Jefferson issued proclamations on March 11, 1801 and January 15, 1803 modifying and continuing in force President Washington's 1796 suspension of the building height regulations. And at least one secondary source further indicates that President Monroe issued at least two proclamations regarding the suspended building height regulations in the Federal City.[7]

[2] Padover, Saul K. *Thomas Jefferson and the National Capital:* Containing notes and correspondence exchanged between Jefferson, Washington, L'Enfant, Ellicott, Hallett, Thornton, Latrobe, the Commissioners, and others relating to the surveying, planning, designing, constructing, and administering the City of Washington. Washington, U.S. Govt. Print. Off., 1946. p. 31.
[3] Ibid. p. 48.
[4] Ibid. p. 67.
[5] *Op. cit.* Padover, p. 71.
[6] Records of the Columbia Historical Society. Washington, 1914. vol. 17, p. 160.
[7] Ibid. Washington, 1899. vol. 2, p. 264.

In addition, the revised corporation charter for the city of Washington enacted by Congress in 1820 (3 Stat. 583) provided for presidential approval of any building regulations enacted by the local government. Section 7 of that federal charter said that the corporation of Washington

> shall have full power and authority . . . to regulate, with the approbation of the President of the United States, the manner of erecting, and the materials to be used in the erection of houses. . . .

In a concluding observation it should be mentioned that while much of the literature on the planning and development of the permanent seat of government contends that L'Enfant planned a "city of magnificent distances,"[8] the published notes and correspondence of the French-born engineer do not contain specific discussions of building heights in the Federal City.

There is evidence, however, that L'Enfant, in planning the Federal City, acted with deliberation to provide for magnificent, monumental vistas. To achieve such an end, L'Enfant located the Capitol on a commanding height and street width, direction, and topography were to be used as a means of promoting "reciprocity of sight."

For example, in regard to providing for diagonal streets and broad avenues, and the location of public buildings, L'Enfant noted that:

> The positions for the different Grand Edifices, and for the several Grand Squares or Areas of different shapes as they are laid down, were first determined on the most advantageous ground, commanding the most extensive prospects, and the better susceptible of such improvements as the various intents of the several objects may require.
> Lines or Avenues of direct communication have been devised, to connect the separate and most distant objects with the principal, and to preserve through the whole a reciprocity of sight a the same time. Attention has been paid to the passing of those leading Avenues over the most favorable ground for prospect and convenience.[9]

In some undated notes, L'Enfant relates his thoughts regarding the placement of the public buildings on commanding heights:

> There, where the level ground [borders] on the water and all round where it descends, but most particularly on that part terminating in a ridge to Jenkin's Hill and running in a parallel with and at half a mile off from the river Potomac, separated by a low ground intersected with three grand streams—many of the most desirable positions offer for to erect the Public Edifices thereon—From these hights every grand building would rear with a majestic aspect over the Country all around and might be advantageously seen from twenty miles off . . . [from] the first settlement of the City they would stand to ages in a central point to it, facing on the grandest prospect of both . . . branches of the Potomac. . . .[10]

In these same undated notes, L'Enfant does observe that the Anacostia River shore might appropriately be used for the development of "naval stores" and "arsenals" and that "warehouses for merchantmen might safely be raised on the edge of the water without fear of impeding the prospect from the high flat behind."[11]

Therefore, this observation does demonstrate a concern of L'Enfant that the construction of commercial buildings at certain locations in

[8] Actually, an early Ambassador of Portugal to the United States. Abbé Corrêa da Serra, apparently originated this designation. See, H. Paul Caemmerer, *Washington the National Capital.* Senate Document No. 71–322. Washington Govt. Print. Off., 1932. p. 41.
[9] Kite, Elizabeth S. *L'Enfant and Washington, 1791–1792.* Baltimore, Johns Hopkins Press, 1929, p. 62.
[10] Ibid. p. 45.
[11] *Op. cit.* Kite. p. 45.

the Federal City could result in "impeding the prospect" of attendant areas.

President George Washington's Proclamation of 17 October 1791 Establishing First Building Regulations, Including a Height Limitation, for All Private Construction in the Federal City [12]

RULES AND REGULATIONS

Established by the President of the United States, and by the Commissioners of the City of Washington, for the erection of buildings, &c. in said city.

Terms and conditions declared by the President of the United States, this seventeenth day of October, seventeen hundred and ninety-one, for regulating the materials and manner of the buildings and improvements on the Lots in the City of Washington.

Regulation No. 1

1st. That the outer and party walls of all houses within the said city, shall be built of brick or stone.

2d. That all buildings on the streets shall be parallel thereto, and may be advanced to the line of the street, or withdrawn therefrom, at the pleasure of the improver: but where any such building is about to be erected, neither the foundation or party wall shall be begun, without first applying to the person or persons appointed by the commissioners to superintend the buildings within the city, who will ascertain the lines of the walls to correspond with these regulations.

3d. The wall of no house to be higher than forty feet to the roof, in any part of the city; nor shall any be lower than thirty-five feet on any of the avenues.

4th. That the person or persons appointed by the commissioners to superintend the buildings, may enter on the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof: which foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built, and shall be of the breadth and thickness determined by such person proper; and the first builder shall be reimbursed one moiety of the charge of such party wall, or so much thereof as the next builder shall have occasion to make use of, before such next builder shall any ways use or break into the wall. The charge or value thereof, to be set by the person or persons so appointed by the commissioners.

5th. As temporary conveniences will be proper, for lodging workmen, and securing materials for building, it is to be understood that such may be erected, with the approbation of the commissioners: but they may be removed or discontinued by the special order of the commissioners.

6th. The way into the squares, being designed, in a special manner, for the common use and convenience of the occupiers of the respective squares, the property in the same is reserved to the public, so that there may be an immediate interference on any abuse of the use thereof by any individual, to the nuisance or obstruction of others. The proprietors of the lots adjoining the entrance into the squares, on arching over the entrance, and fixing gates in the manner the commissioners shall approve, shall be entitled to divide the space over the arching, and build it up with the range of that line of the square.

7th. No vaults shall be permitted under the streets, nor any encroachments on the footway above, by steps, stoops, porches, cellar doors, windows, ditches, or leaning walls; nor shall there be any projection over the street, other than the eaves of the house without the consent of the commissioners.

8th. These regulations are the terms and conditions under and upon which conveyances are to be made, according to the deeds in trust of the lands within the city.

George Washington.

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[12] *The Acts of Congress* [and Related Executive Actions] *in Relation to the District of Columbia: 1790–1831.* Washington, William A. Davis, 1831 (Public Library of the District of Columbia, Washingtoniana Collection K859 D.296). pp. 71–72.

President George Washington's Proclamation of 25 June 1796 Suspending, Until December 1800, Certain Building Regulations, in the Federal City, Promulgated on 17 October 1791 [13]

Building Regulations

By the President of the United States

Whereas, by the first article of the terms and conditions declared by the President of the United States on the seventeenth day of October, seventeen hundred and ninety one, for regulating the materials and manner of buildings and improvements on the lots in the City of Washington, it is provided, "that the outer and party walls of all houses in the said City shall be built of brick or Stone" and by the third article of the same terms and conditions, it is declared, that "the wall of no house shall be higher than forty feet to the roof in any part of the City, nor shall any be lower than thirty five feet on any of the Avenues". And whereas, the above recited articles have been found, by experience, to impede the settlement in the City, of mechanicks and others, whose circumstances do not admit of erecting houses of the description authorized by the said Regulations. It is therefore declared, that the operation of the said first and third articles above recited, shall be, and the same is hereby suspended, until the first Monday of December, in the Year, One thousand, eight hundred, and that all the houses which shall be erected in the said City of Washington prior to the said first Monday in December, one thousand, eight hundred, conformable, in other respects, to the Regulations aforesaid, shall be considered as lawfully erected.

Given under my hand this 25th. day of June in the Year one thousand, seven hundred & ninety six.

Go. Washington.

President Thomas Jefferson's Proclamation of 11 March 1801 Suspending and Amending Certain Building Regulations in the Federal City [14]

Proclamation

By the President of the United States

Whereas by the first article of the Terms and conditions declared by the President of the United States on the 17th day of October 1791, for regulating the Materials and manner of Buildings and Improvements on the Lots in the City of Washington it is provided, "that the outer and party walls of all Houses in the said City, shall be built of Brick or Stone," and by the third article of the same Terms and Conditions, it is declared, "that the wall of no House shall be higher than forty feet to the Roof, in any part of the City, nor shall any be lower than thirty five feet on any of the Avenues" and whereas the above recited articles were found to impede the settlement in the City of Mechanics and others whose Circumstances did not admit of erecting Houses authorized by the said Regulations for which cause the President of the United States, by a writing under his Hand, bearing Date the twenty fifth Day of June 1796 suspended the operation of the said Articles until the first Monday of December 1800, and the beneficial effects arising from such Suspension having been experienced, it is deemed proper to revive the same. Wherefore, I Thomas Jefferson, president of the United States do declare, that the operation of the first and third Articles above recited shall be, and the same is hereby suspended until the first Day of January 1802, and that all the Houses which shall be erected in the said City of Washington previ-

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[13] *The Writings of George Washington Relating to the National Capital.* Records of the Columbia Historical Society, Washington, D.C., 1914. Vol. 17, p. 160. Original is contained in the Library of Congress, Manuscript Division Collection.

[14] Padover, Saul K. *Thomas Jefferson and the National Capital:* Containing notes and correspondence exchanged between Jefferson, Washington, L'Enfant, Ellicott, Hallett, Thornton, Latrobe, the Commissioners, and others relating to the surveying, planning, designing, constructing, and administering the City of Washington. Washington, U.S. Govt Print. Off., 1946, pp. 196–197. Copy available in the Library of Congress: E160.U629.

ous to the said first day of January 1802 conformable in other respects to the regulations aforesaid shall be considered as lawfully Erected except that no Wooden House shall be erected within twenty four feet of any brick or Stone House.

Given under my Hand this 11th Day of March 1801.

TH: JEFFERSON

COMMISSIONERS WRITE PRESIDENT JEFFERSON REQUESTING CONTINUED SUSPENSION OF CERTAIN BUILDING REGULATIONS IN THE FEDERAL CITY [15]

Sir *Commissioners Office* 22nd *January* 1802.

The term having expired during which the first and third Articles of the Terms and Conditions, declared by the President of the United States on the 17th October 1791 for regulating the materials and manner of building and improvements on the Lots in the City of Washington, have been suspended—We have taken the subject into consideration and are of opinion that it may be expedient to extend the indulgence last given to the end of the present year, with this difference that no wooden building covering more than 320 Square feet, or more than 12 feet high from the Sills to the eve, shall be permitted; houses of that description will be sufficient for Tradesmen or others of small property for whose encouragement and accommodation alone we should think it adviseable to permit Wooden buildings of any dimensions to be erected in the City. We inclose a writing agreeably to former precedents for your signiture should you approve of the measure proposed.

We are &c.

WM. THORNTON
A. WHITE
T. DALTON

PRESIDENT OF THE UNITED STATES.

PRESIDENT JEFFERSON EXTENDS SUSPENSION OF CERTAIN BUILDING REGULATIONS IN THE FEDERAL CITY 15 JANUARY 1803 [16]

PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES

Whereas by the first Article of the Terms and Conditions declared by the President of the United States on the seventeenth day of October 1791 for regulating the Materials and manner of Buildings and Improvements on the Lots in the City of Washington, it is provided that the outer and party walls of all Houses in the said City, shall be built of Brick or Stone"—and by the third Article of the same terms and Conditions it is declared, that the wall of no house shall be higher than 40 feet to the roof in any part of the City, nor shall any be lower than 35 feet on any of the Avenues; And Whereas the above recited Articles were found to impede the Settlement in the City of Mechanicks and others whose Circumstances did not admit of erecting houses authorized by the said Regulations, for which cause the operation of the said Articles has been suspended by several Acts of the President of the United States from the fifth day of June 1796 to the first day of January 1803 and the beneficial effects arising from such suspensions having been experienced—it is deemed proper to revise the same, with the exception hereafter mentioned. Wherefore I Thomas Jefferson President of the United States do declare that the first and third Articles above recited shall be, and the same are hereby suspended until the first day of January 1804, and that all Houses which shall be erected in the said City of Washington previous to the said first day of January 1804 conformable in other respects to the regulations aforesaid shall be considered as lawfully erected, except that no wooden house covering more than 320 square feet or higher than twelve feet from the Sill to the Eve shall be erected—nor shall such house be placed within 24 feet of any brick or Stone house.

Given under my hand this 15th January 1803

TH: JEFFERSON

[15] *Op. cit.* Padover. pp. 260–261.
[16] *Op. cit.* Padover. pp. 290–291.

ADDITIONAL CORRESPONDENCE AND NOTES OF THOMAS JEFFERSON, SECRETARY OF STATE AND CHIEF COUNSEL TO PRESIDENT WASHINGTON REGARDING THE PLANNING AND DEVELOPMENT OF THE NATIONAL CAPITAL [17]

(The following materials have been abridged and pertinent items concerning building height limitations have been italicized for convenience of reference)

JEFFERSON NOTE

November 29, 1790

Proceedings to be had under the Residence act

a territory not exceeding 10. miles square (or, I presume, 100 square miles in any form) to be located by metes and bounds.

3. commissioners to be appointed
I suppose them not entitled to any salary.

[if they live near the place they may, in some instances, be influenced by self interest, & partialities: but they will push the work with zeal. if they are from a distance, & Northwardly, they will be more impartial, but may affect delays.]

the Commissioners to purchase or accept 'such quantity of land on the E. side of the river as the President shall deem *proper for the U.S.*' viz. for the federal Capitol, the offices, the President's house & gardens, the town house, Market house, publick walks, hospital. for the President's house, offices & gardens, I should think 2. squares should be consolidated. for the Capitol & offices one square. for the Market one square. for the Public walks 9. squares consolidated. the expression 'such quantity of land as the President shall deem *proper for the U.S.*' is vague. it may therefore be extended to the acceptance or purchase of land enough for the town: and I have no doubt it is the wish, & perhaps expectation. in that case it will be to be laid out in lots & streets. I should propose these to be at right angles as in Philadelphia, & that no street be narrower than 100. feet, with foot-ways of 15. feet. where a street is long & level, it might be 120. feet wide. I should prefer squares of at least 200. yards every way, which will be of about 8. acres each.

The Commissioners should have some taste in architecture, because they may have to decide between different plans.

They will however be subject to the President's direction in every point.

When the President shall have made up his mind as to the spot for the town, would there by any impropriety in his saying to the neighboring landholders, 'I will fix the town here if you will join & purchase & give the lands.' They may well afford it from the increase of value it will give to their own circumjacent lands.

The lots to be sold out in breadth of 50 feet; their depths to extend to the diagonal of the square.

I doubt much whether the obligation to build the houses at a given distance from the street, contributes to its beauty, it produces a disgusting monotony, all persons make this complaint against Philadelphia, the contrary practice varies the appearance, & is much more convenient to the inhabitants.

In Paris it is forbidden to build a house beyond a given height, & it is admitted to be a good restriction, it keeps the houses low & convenient, & the streets light and airy, fires are much more manageable where houses are low. This however is an object of Legislation. [Various pages follow]

JEFFERSON OPINION

Opinion relative to locating the Ten Mile Square for the Federal Government, and building the Federal City.

March 11, 1791.

Objects which may merit the attention of the President, at Georgetown.
The commissioners to be called into action.
Deeds of cession to be taken from the land-holders.

Site of the capitol and President's house to be determined on.

Proclamation completing the location of the territory, and fixing the site of the capitol.

Town to be laid off. Squares of reserve are to be decided on for the capitol, President's house, offices of government, townhouse, prison, market, and public walks.

Other squares for present sale designated.

Terms of sale to be settled. As there is not as yet a town legislature, and things may be done before there is one to prevent them, which yet it would be desirable to prevent, it would seem justifiable and expedient that the President should form a capitulary of such regulations as he may think necessary to be observed, until there shall be a town legislature to undertake this office; such capitulary to be indented, signed, sealed, and recorded, according to the laws of conveyance in Maryland. And to be referred to in every deed for conveyance of the lots to purchasers, so as to make a part thereof. The same thing might be effected, by inserting special covenants for every regulation in every deed; but the former method is the shortest. *I cannot help again suggesting here one regulation formerly suggested, to wit: To provide for the extinguishment of fires, and the openness and convenience of the town, by prohibiting houses of excessive height.* And making it unlawful to build on any one's purchase any house with more than two floors between the common level of the earth and the eaves, nor with any other floor in the roof than one at the eaves. To consider in what way the contracts for the public buildings shall be made, and whether as many bricks should not be made this summer as may employ brick-layers in the beginning of the season of 1792, till more can be made in that season. [Various pages follow]

Memorandum

Washington to Jefferson

[*August* 29, 1791]

Will circumstances render a postponement of the Sale of Lots in the Federal City advisable? If not

2. Where ought they to be made.

Will it in that case, or even without it, be necessary or prudent to attempt to borrow money to carry on the difft. works in the City?

Whether ought the building of a bridge over the Eastern branch to be attempted; the Canal set about; and Mr. Peter's proposition with respect to wharves gone into *now*, or postponed until our funds are better ascertained and become productive?

At what time can the several Proprietors claim, with propriety, payment for the public squares wch. is marked upon their respective tracts?

Ought there to be any wood houses in the town?

7. What sort of Brick or Stone Houses should be built; and of wh[a]t height; especially on the principal Streets or Avenues?

When ought the public buildings to be begun, and in what manner had the materials best be provided?

How ought they to be promulgated, so as to draw plans from skilful Architects? and what would be the best mode of carrying on the Work?

Ought not Stoups, and projections of every sort and kind into the Streets, to be prohibited *absolutely?*

11. What compromise can be made with the Lot holders in Hamburgh and Carrollsburgh by which the plan of the Federal City may be preserved?

Ought not the several Land holders to be called upon to ascertain their respective bounderies previous to the Sale of Lots?

13. Would it not be advisable to have the Federal district as laid out (comprehending the plan of the Town) engraved in one piece?

Jefferson's Notes on Commissioners' Meeting

Thursday 8th *Sept.* 1791.

At a meeting of the Commissioners at Georgetown on Thursday the eighth day of September, 1791, and continued by adjournment till Friday, the 9th, present Thomas Johnson, David Stuart and Daniel Carroll, Esquires. The Hon. Thomas Jefferson, Secretary of State, and the Hon. James Madison attended the Commissioners in conference, (see Mr. Jefferson's letter of the 28th August last).

The following queres were presented by the Secretary of State to the Commissioners and the answers thereto with the resolutions following were given and adopted:

Will circumstances render a postponement of the sales of lots in the Federal City advisable? If not Where ought they be made?	Not advisable. Left to be considered ultimately on the spot, the general opinion being only that the leading interests be accomodated.
Will it in that case, or even without it, be necessary or prudent to borrow money to carry on the different works in the city?	Doubtful if a loan can be proposed without previous legislative authority, or filled till a sale shall have settled something like the value of the lots which are to secure repayment.
The ready money payments increased to one-fourth. Whether ought the building of a bridge over the Eastern Branch to be attempted—the canal set about, and Mr. Peter's proposition with respect to wharves gone into *now* or postponed until our funds are better ascertained and become productive?	Must wait for money. The property of reclaimed lands considered of—
At what time can the several proprietors claim with propriety payment for the public squares which are marked upon their respective tracts?	Whenever the money shall have been raised by the sale of their own lands.
Ought there to be any wood houses in the town.	No.
What sort of brick or stone should be built, and of what height, especially on the principal streets or avenues?	Liberty as to advancing or withdrawing the front, but some limits as to height would be advisable.
"No house wall higher than 35 feet in any part of the town." *"None lower than that on any of the avenues."*	
When ought the public buildings to be begun, and in what manner had the materials best be provided?	The digging the earth for brick this fall is indispensable, provisions of other materials to depend on the funds.

[Various pages follow]

Numerous popular "historians" of the architectural development of the National Capital, such as Wolf Von Eckardt of the *Washington Post*, claim that members of Congress and certain Washingtonians of influence were so displeased with the erection of the 12-story (160 feet) Cairo Hotel (1615 Q Street, N.W.) that Congress passed the 1910 building height limitation law now in force.[18] The available evidence does not support this contention.

The Cairo, a steel superstructure building, remains the tallest privately owned residential building in the District of Columbia, and it is one of the first generation of "skyscrapers" built in the United States. At the time a building permit was issued for its construction in 1894, there were no laws or regulations in force in the District of Columbia prohibiting the building of a private structure of then "skyscraper" proportions.

However, it was the three-member, presidentially appointed Board of Commissioners of the District of Columbia, and not Congress, who would take expeditious action to preclude the construction of other buildings of the Cairo's height class. On July 27, 1894 the Board of Commissioners unanimously approved the following regulations:

> No building will be erected in the District of Columbia whose height exceeds the width of the street in its front.
>
> No building will be erected on a residential street in the District of Columbia whose height exceeds 90 feet.
>
> No building will be erected on a commercial street in the District of Columbia whose height exceeds 110 feet.[19]

The regulations became operative on August 27, 1894. A press report of that date described, as follows, the reasoning the Board of Commissioners applied in formulating and promulgating these regulations:

> It was the erection of the Cairo Flats that directed the attention of the Commissioners to this matter. . . . When the permit was granted several protests were filed with the Commissioners by the neighbors in the vicinity who claimed that the building would not only be a menace to the surrounding dwellings in case of fire or other catastrophe, but would depreciate their property by shutting off the light and air. When the Board of Commissioners met several days after the receipt of the protests, Commissioner Truesdell called the matter up for consideration. He agreed with the protesters and argued at length against such a building. Should a fire break out in any of the upper stories, there was not an engine in the city that could throw a stream high enough to extinguish it, and there was no ladder or series of ladders in the fire department long enough to reach a roof 160 feet above the sidewalk. Then, again, there was the argument advanced by the surrounding property owners that such a high building was a constant menace and depreciated adjacent property.
>
> He [Commissioner Truesdell] believed it did, and while nothing could be done to stop the erection of the present building, he thought the Commissioners should

[18] See, for example, Wolf Von Eckardt, "Schneider's Folly to Live Again," *The Washington Post*, August 30, 1972, p. A–22. And, Charles A. Krause, "Cairo Hotel Getting Complete Overhaul," *The Washington Post*, July 13, 1975, pp. B–1, 4.

[19] "New Building Rules," *The Washington Post*, Saturday, July 28, 1894, p. 8, col. 3.

pass an amendment to the building regulations forbidding such high buildings in the future.

Further, there was no necessity for such high buildings in this city. It was all right for high buildings in commercial cities where there was little room, but here in Washington, where there was ample space, he did not see the necessity for such high structures. In Berlin, he said, high buildings are not allowed, and the building regulations there strictly prohibit them. The new amendment to the building regulations [of the District of Columbia] was fashioned after the regulations in force there [in Berlin], and there was no reason why they should not be applicable here.[20]

Research today would probably reveal that some of Commissioner Truesdell's arguments retain ample validity, while others might manifest less validity. It is of interest to note that this press account did not mention the argument that buildings of the Cairo's height might interfere with the panoramic vistas of the Capitol and the monumental core of the National Capital.

However, a respected journal of architecture of that time did obliquely criticize the Cairo, in part, for its height and related impact on the panoramic vistas and ambiance associated with the monumental aspect of the Natonal Capital. The unsigned critical commentary stated that:

Public control has produced the beauty of Washington. The right of an American citizen to do as he likes with his own has gone too far to destroy its beauty. . . . a twelve-story [160 feet] building in a city of magnificent distances is a contradiction in terms. . . . The aspect of the national capital is a matter of concern not only to its own inhabitants, but to all American citizens. We understand that since this sky-scraper has been reared to this bad eminence, the authorities of the district have taken steps to prevent the rearing of any more like it. But the shameful fact remains that there has been no way found of preventing the erection of the Cairo in the capital of the United States.[21]

The public records of the Congress during this period contain no mention of the Cairo or building heights in the District of Columbia in general. The only action recorded for the 53d and 54th Congresses (1893–1897) which might be related to the construction of the Cairo was the resolution introduced on December 17, 1894 in the U.S. Senate by the Honorable Joseph R. Hawley (R-Conn.). The text of that resolution, which was referred to the Committee on the District of Columbia where no further action is revealed in the public records of Congress, follows:

RESOLVED: That the Committee on the District of Columbia is hereby instructed to make inquiry concerning the building regulations established by the Commissioners of the District of Columbia, and further, as to the wisdom and necessity of setting a limit on the height of buildings; and to report by bill or otherwise.[22]

[20] "No High Buildings." *The* [Washington] *Evening Star.* Monday, August 27, 1894. p. 2, col. 5.
[21] "Architectural Aberrations: No. XIII—The Cairo." *The Architectural Record.* April-June, 1895. vol. IV, no. 4. p. 473, 474, 476.
[22] *Congressional Record.* Senate. 53d Congress, 3d session. December 17, 1894. p. 343.

The Washington Post apparently did not comment editorially on the 1894 building height regulations. *The Evening Star*, however, did comment. The *Post* during that period devoted its resources almost exclusively to international and national political affairs, while the *Star* covered local national capital affairs in addition to national and foreign political developments.

For example, the *Star* editorialized as follows on July 28, 1894:

The Commissioners are entitled to praise for their wise amendment to the building regulations so that hereafter no building shall be erected or altered so as to exceed in height above the sidewalk the width of the street. This provision is dictated by local experience and by the experience of other municipalities; it is one end of a Parisian building regulation which not only fixes the maximum height—but fixes the minimum height also—this bringing about a very desirable condition of uniformity.[23]

In the same edition, a weekly column in the real estate section of the *Star*, entitled "Real Estate Gossip," added:

. . . It seems these regulations are in line with the policy of making this city the handsomest in the world. It has already obtained that enviable distinction, and it is believed that the tendency toward the erection of sky-scrapers, if left unchecked, would mar rather than increase the beauty of the city.[24]

According to that same column of a week later, the District of Columbia Board of Commissioners acted none too soon to prevent the erection of additional Cairo-class "skyscrapers" in the National Capital:

. . . The regulations limiting the height of buildings came in for a goodly share of comment during the week from architects and builders. Mr. T. F. Schneider architect and owner of the Cairo appeared before the Commissioners and protested against the amendment regulating the height of buildings. He said he was about to erect another apartment house in the northwestern section of the city and did not think its height should be limited by the commissioners. The Commissioners informed him that the regulations would not be enforced for thirty days during which time permits would be issued as usual.[25]

[23] *The Evening Star.* Saturday, July 28, 1894. p. 4, col. 2.
[24] *Ibid.* "Real Estate Gossip—Important Amendments to the Building Regulations." p. 9, col. 4, 5.
[25] *Op. cit.* Saturday, August 4, 1894. p. 9, col. 7.

While the 1910 building height act of Congress currently in force is often cited as the first action by Congress to regulate the height of buildings in the District of Columbia, there was an earlier act (30 Stat. 922). A legislative history of that act follows:

On December 7, 1898, Mr. Joseph W. Babcock (R-Wisconsin), Chairman of the Committee on the District of Columbia, introduced, in the House, a bill (H.R. 11023) to regulate the height of buildings in the District of Columbia. The bill was drafted in the office of the Board of Commissioners of the District of Columbia. H.R. 11023 was referred to the Committee on the District of Columbia.[26] There is no public record of hearings being held by the Committee, although at that time it was common Committee procedure to have interested parties attend a pre-markup session where informal testimony was heard and amendments suggested, but no record kept.[27]

H.R. 11023 was reported (H. Rept. 55–1704) from the Committee on December 20, 1898. The bill was reported with an amendment regarding building lines and street measurements which was, according to the report, requested by "a number of citizens." A full text of the bill, all Committee reports, and all floor debates follows this legislative history.

Essentially, H.R. 11023 modified and made statutory law the Commissioners' building height regulations of 1894. Two significant provisions of H.R. 11023 read 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, and in no case shall a building exceed ninety feet in height on a residence street nor one hundred and ten feet on a business street, as designated by schedule approved by the Commissioners of the District of Columbia, except on business streets and business avenues one hundred and sixty feet wide, where a height not exceeding one hundred and thirty feet may be allowed. The height of buildings on corner lots shall in all cases be regulated by the limitations governing on the broader street: *Provided*, That spires, towers, and domes may be erected to a greater height than the limit herein prescribed, when approved by the Commissioners of the District of Columbia.
>
> * * * * * * *
>
> SEC. 7. That the limitations of height herein prescribed shall not apply to Federal or municipal buildings.

An extracted summary of the House District of Columbia Committee's report accompanying H.R. 11023 follows:

> The question of limiting the height of buildings is comparatively a recent one. It is only in late years that buildings have been erected to such heights and in such numbers as to attract serious public attention, and the high buildings themselves have not yet had that test of time necessary to convince the more

[26] *Congressional Record*. House. 55th Congress, 3d session. Wednesday, December 7, 1898. p. 51.

[27] A preliminary search of pertinent Committee records for the 55th Congress has failed to uncover any information not contained in the public records of Congress.

conservative of the entire safety and lasting power of the class of construction employed in their erection. In general terms, they are constructed of iron or steel framework, with a veneer of brick or stone, all electric light and power wires and pipes for steam, gas, water, etc., being carried up through the structural ironwork. The metal is hidden from view, where it is subject to corrosion and electrolytic action, which could easily cause serious and fatal defects before its presence became known. In view of these conditions the best authorities agree that under unfavorable circumstances the life of these structures might not be more than seventy-five years.

In addition to the uncertainty of structural conditions, serious objections can be urged on the grounds of light and ventilation and danger from fire.

Of course, the higher the building the more light and air is shut out from the street and the adjacent premises on all sides. The drafts of chimneys of houses in the vicinity of high buildings are also injuriously affected.

Danger from fire is a very serious objection. It would seem that the fire chiefs in the large cities who have had experience with high buildings are agreed that it is absolutely impossible for them to successfully fight flames over 85 feet above the ground with the fire apparatus now manufactured, as the pressure is so great that no hose now made can stand the strain and the men are unable to handle the hose.

A number of cities throughout the country have taken up the question of limiting the height of buildings, and some of them have passed laws on the subject. In Boston the height is limited to 125 feet; in St. Louis, 150 feet; in Chicago, 130 feet; in London, 80 feet. Paris, which is generally considered as having model regulations, limits the height to 64 feet, and Vienna and Berlin follow the Paris standard in this respect.

The regulations of Boston and Chicago were followed in arriving at the limit employed in the bill, as these regulations are believed to represent the views of the highest authorities in the United States on the subject in question.

H.R. 11023 was sent to the Senate where on January 24, 1899 it was referred to the Committee on the District of Columbia.[28] On January 26, 1899, H.R. 11023 was reported without additional comment, as passed by the House, by Senator James McMillan (R-Michigan), Chairman of the Committee on the District of Columbia. On February 25, 1899, H.R. 11023 came to the Senate floor for consideration and was passed, without debate, by voice vote.[29] H.R. 11023 was signed into law by President William McKinley on March 1, 1899.

[28] *Congressional Record*. Senate. 55th Congress, 3d session. Tuesday, January 24, 1899. p. 957.
[29] *Ibid*. Saturday, February 25, 1899. p. 2366.

55TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1704.

REGULATING HEIGHTS OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

DECEMBER 20, 1898.—Referred to the House Calendar and ordered to be printed.

Mr. CURTIS, of Iowa, from the Committee on the District of Columbia, submitted the following

REPORT.

[To accompany H. R. 11023.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 11023) to regulate the height of buildings in the District of Columbia, after careful examination report the same back to the House with the recommendation that it do pass with the following amendment:

Page 2, line 18, strike out the period and insert in lieu thereof a colon, and add the following:

Provided further, That on streets less than 90 feet wide, where building lines have been established so as to be a matter of public record and so as to prevent the lawful erection of any building in advance of said lines, the width of the street, in so far as it controls the height of buildings under this law, may be held to be the distance between said building lines.

A number of citizens have requested that an amendment be added to the bill which will permit the construction of buildings in accordance with adopted building lines, although the actual width of the street to which the District has title may be somewhat narrower. If the building line is so firmly established that there is no danger of an individual building his house in advance of the private building line there would seem to be no reason why these private lines should not be considered as fixing the width of the street for the purposes of this bill, and the above amendment was prepared, to which the Commissioners of the District of Columbia have no objection, and which is added to section 4 of the bill.

The question of limiting the height of buildings is comparatively a recent one. It is only in late years that buildings have been erected to such heights and in such numbers as to attract serious public attention, and the high buildings themselves have not yet had that test of time necessary to convince the more conservative of the entire safety and lasting power of the class of construction employed in their erection. In general terms, they are constructed of iron or steel framework, with a veneer of brick or stone, all electric light and power wires and pipes for steam, gas, water, etc., being carried up through the structural ironwork. The metal is hidden from view, where it is subject to corrosion and electrolytic action, which could easily cause serious and fatal defects before its presence became known. In view of these conditions the best authorities agree that under unfavorable circumstances the life of these structures might not be more than seventy-five years.

In addition to the uncertainty of structural conditions, serious objec-

tions can be urged on the grounds of light and ventilation and danger from fire.

Of course, the higher the building the more light and air is shut out from the street and the adjacent premises on all sides. The drafts of chimneys of houses in the vicinity of high buildings are also injuriously affected.

Danger from fire is a very serious objection. It would seem that the fire chiefs in the large cities who have had experience with high buildings are agreed that it is absolutely impossible for them to successfully fight flames over 85 feet above the ground with the fire apparatus now manufactured, as the pressure is so great that no hose now made can stand the strain and the men are unable to handle the hose.

In the recent case of Bliss *v.* the District of Columbia, to compel the issuance of a permit for the erection of a house 110 feet high on a residence street, the chief of the District fire department made affidavit to the effect that it was impossible for his force, with its present equipment, to successfully fight flames over 85 feet above the ground. The chief of the fire department of New York City, if credence can be placed in press reports, is also of the same opinion. The recent disastrous conflagrations in New York, when the "fireproof" buildings of the Home Life Insurance Company and the Postal Telegraph Company were burned, would seem to bear out the statements of these experienced men. Of course, the higher the building the greater the danger zone, and in the cases cited the entire street was barricaded to prevent possible accident from falling walls, etc. It might be added here that in deciding the case of Bliss *v.* the District the court upheld the Commissioners in refusing permit to build and denied the mandamus prayed for, holding that the regulation under which the Commissioners acted was a wise and proper one.

A number of cities throughout the country have taken up the question of limiting the height of buildings, and some of them have passed laws on the subject. In Boston the height is limited to 125 feet; in St. Louis, 150 feet; in Chicago, 130 feet; in London, 80 feet. Paris, which is generally considered as having model regulations, limits the height to 64 feet, and Vienna and Berlin follow the Paris standard in this respect.

The regulations of Boston and Chicago were followed in arriving at the limit employed in the bill, as these regulations are believed to represent the views of the highest authorities in the United States on the subject in question.

This bill was prepared in the office of the Commissioners of the District of Columbia as a substitute bill for H. R. 10430, relating to this same subject, and has their approval in the following communication, which is made a part of this report:

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, November 8, 1898.

DEAR SIR: With respect to H. R. bill 10130, "To regulate the height of residences in the city of Washington," which was referred to the Commissioners at your instance for their examination and report, the Commissioners have the honor to recommend as a substitute therefor the inclosed draft of bill entitled "A bill to regulate the height of buildings in the District of Columbia," which applies to all kinds of buildings and is fuller in its specifications than the original bill.

Very respectfully,

JOHN B. WIGHT,
President Board of Commissioners District of Columbia.

Hon. J. W. BABCOCK,
Chairman Committee on the District of Columbia,
House of Representatives.

55TH CONGRESS, 3d Session. SENATE. REPORT No. 1532.

REGULATING HEIGHT OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

JANUARY 26, 1899.—Ordered to be printed.

Mr. MCMILLAN, from the Committee on the District of Columbia, submitted the following

REPORT.

[To accompany H. R. 11023.]

The Committee on the District of Columbia, to whom was referred the bill (H. R. 11023) to regulate the height of buildings in the District of Columbia, recommend that it do pass.

The report made by Mr. Curtis, of Iowa, from the House Committee on the District of Columbia, is adopted, as follows:

A number of citizens have requested that an amendment be added to the bill which will permit the construction of buildings in accordance with adopted building lines, although the actual width of the street to which the District has title may be somewhat narrower. If the building line is so firmly established that there is no danger of an individual building his house in advance of the private building line there would seem to be no reason why these private lines should not be considered as fixing the width of the street for the purposes of this bill, and the above amendment was prepared, to which the Commissioners of the District of Columbia have no objection, and which is added to section 4 of the bill.

The question of limiting the height of buildings is comparatively a recent one. It is only in late years that buildings have been erected to such heights and in such numbers as to attract serious public attention, and the high buildings themselves have not yet had that test of time necessary to convince the more conservative of the entire safety and lasting power of the class of construction employed in their erection. In general terms, they are constructed of iron or steel framework, with a veneer of brick or stone, all electric light and power wires and pipes for steam, gas, water, etc., being carried up through the structural ironwork. The metal is hidden from view, where it is subject to corrosion and electrolytic action, which could easily cause serious and fatal defects before its presence became known. In view of these conditions the best authorities agree that under unfavorable circumstances the life of these structures might not be more than seventy-five years.

In addition to the uncertainty of structural conditions, serious objections can be urged on the grounds of light and ventilation and danger from fire.

Of course, the higher the building the more light and air is shut out from the street and the adjacent premises on all sides. The drafts of chimneys of houses in the vicinity of high buildings are also injuriously affected.

Danger from fire is a very serious objection. It would seem that the fire chiefs in the large cities who have had experience with high buildings are agreed that it is absolutely impossible for them to successfully fight flames over 85 feet above the ground with the fire apparatus now manufactured, as the pressure is so great that no hose now made can stand the strain and the men are unable to handle the hose.

In the recent case of Bliss *v.* The District of Columbia, to compel the issuance of a permit for the erection of a house 110 feet high on a residence street, the chief of the District fire department made affidavit to the effect that it was impossible for his force, with its present equipment, to successfully fight flames over 85 feet above the ground. The chief of the fire department of New York City, if credence can be placed in press reports, is also of the same opinion. The recent disastrous conflagrations in New York, when the "fireproof" buildings of the Home Life Insurance Company and the Postal Telegraph Company were burned, would seem to bear out the statements of these experienced men. Of course, the higher the building the greater the danger zone, and in the cases cited the entire street was barricaded to prevent possible accident from falling walls, etc. It might be added here that in deciding the case of Bliss *v.* The District the court upheld the Commissioners in refusing permit to build and denied the mandamus prayed for, holding that the regulation under which the Commissioners acted was a wise and proper one.

A number of cities throughout the country have taken up the question of limiting the height of buildings, and some of them have passed laws on the subject. In Boston the height is limited to 125 feet; in St. Louis, 150 feet; in Chicago, 130 feet; in London, 80 feet. Paris, which is generally considered as having model regulations, limits the height to 64 feet, and Vienna and Berlin follow the Paris standard in this respect.

The regulations of Boston and Chicago were followed in arriving at the limit employed in the bill, as these regulations are believed to represent the views of the highest authorities in the United States on the subject in question.

This bill was prepared in the office of the Commissioners of the District of Columbia as a substitute bill for House bill 10430, relating to this same subject, and has their approval in the following communication, which is made a part of this report:

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, November 8, 1898.

DEAR SIR: With respect to H. R. bill 10430, "To regulate the height of residences in the city of Washington," which was referred to the Commissioners at your instance for their examination and report, the Commissioners have the honor to recommend as a substitute therefor the inclosed draft of bill entitled "A bill to regulate the height of buildings in the District of Columbia," which applies to all kinds of buildings and is fuller in its specifications than the original bill.

Very respectfully,

JOHN B. WIGHT,
President Board of Commissioners District of Columbia.

Hon. J. W. BABCOCK,
Chairman Committee on the District of Columbia,
House of Representatives.

House Debate

CONGRESSIONAL RECORD. House. 53d Congress, 3d session. Monday, January 23, 1899. p. 935

HEIGHT OF BUILDINGS, DISTRICT OF COLUMBIA.

Mr. CURTIS of Iowa. Mr. Speaker, I call up for present consideration the bill (H. R. 11023) to regulate the height of buildings in the District of Columbia.

The bill was read, as follows:

Be it enacted, etc., That from and after the date of the approval of this act no combustible or nonfireproof building intended to be used or occupied as a residence or as an apartment house or hotel in the District of Columbia shall be erected to a height of more than five stories or raised to a height exceeding 60 feet above the sidewalk, the measurement to be made as hereinafter prescribed.

SEC. 2. That buildings intended for business purposes solely may be erected to a height of 75 feet without being of fireproof construction.

SEC. 3. That all buildings, except churches, hereafter erected or altered to exceed 75 feet in height shall be fireproof or noncombustible and of such materials throughout as may be prescribed by the Commissioners of the District of Columbia. Churches must be of fireproof construction up to and including the main or auditorium floor.

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, and in no case shall a building exceed 90 feet in height on a residence street nor 110 feet on a business street, as designated by schedule approved by the Commissioners of the District of Columbia, except on business streets and business avenues 160 feet wide, where a height not exceeding 130 feet may be allowed. The height of buildings on corner lots shall in all cases be regulated by the limitations governing on the broader street: *Provided*, That spires, towers, and domes may be erected to a greater height than the limit herein prescribed, when approved by the Commissioners of the District of Columbia.

SEC. 5. That no wooden or frame building hereafter erected or altered and intended to be used for human habitations shall exceed in height three stories, or 40 feet to the roof.

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. No parapet wall shall extend above the limit of height.

SEC. 7. That the limitations of height herein prescribed shall not apply to Federal or municipal buildings.

SEC. 8. That Congress reserves the right to alter, amend, or repeal this act.

The Committee on the District of Columbia recommended the adoption of the following amendment:

Page 2, line 16, strike out the period and insert in lieu thereof a colon, and add the following:

"*Provided further*, That on streets less than 90 feet wide, where building lines have been established so as to be a matter of public record and so as to prevent the lawful erection of any building in advance of said lines, the width of the street, in so far as it controls the height of buildings under this law, may be held to be the distance between said building lines."

The amendment recommended by the committee was agreed to.

The bill as amended was ordered to be engrossed and read a third time; and it was accordingly read the third time, and passed.

Senate Debate

CONGRESSIONAL RECORD. Senate. 53d Congress, 3d session. Saturday, February 25, 1899. p. 2366

HEIGHT OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

Mr. MCMILLAN. I call up the bill (H. R. 11023) to regulate the height of buildings in the District of Columbia.

The Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

THE BUILDING HEIGHT ACT OF 1899
(30 Stat. 922)

March 1, 1899.

CHAP. 322.—An Act To regulate the height of buildings in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of the approval of this Act no combustible or nonfireproof building intended to be used or occupied as a residence or as an apartment house or hotel in the District of Columbia shall be erected to a height of more than five stories or raised to a height exceeding sixty feet above the sidewalk, the measurement to be made as hereinafter prescribed.

District of Columbia. Height of buildings limited.

—of business houses.

SEC. 2. That buildings intended for business purposes solely may be erected to a height of seventy-five feet without being of fireproof construction.

Buildings hereafter erected to be fireproof

—churches.

SEC. 3. That all buildings, except churches, hereafter erected or altered to exceed seventy-five feet in height shall be fireproof or noncombustible and of such materials throughout as may be prescribed by the Commissioners of the District of Columbia. Churches must be of fireproof construction up to and including the main or auditorium floor.

Maximum height.

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, and in no case shall a building exceed ninety feet in height on a residence street nor one hundred and ten feet on a business street, as designated by schedule approved by the Commissioners of the District of Columbia, except on business streets and business avenues one hundred and sixty feet wide, where a height not exceeding one hundred and thirty feet may be allowed. The height of buildings on corner lots shall in all cases be regulated by the limitations governing on the broader street: *Provided*, That spires, towers, and domes may be erected to a greater height than the limit herein prescribed, when approved by the Commissioners of the District of Columbia: *Provided further*, That on streets less than ninety feet wide, where building lines have been established so as to be a matter of public record and so as to prevent the lawful erection of any building in advance of said lines, the width of the street, in so far as it controls the height of buildings under this law, may be held to be the distance between said building lines.

Provisos.
—spires, etc., excepted.

—streets less than 90 feet wide.

Maximum height frame buildings.

SEC. 5. That no wooden or frame building hereafter erected or altered and intended to be used for human habitations shall exceed in height three stories, or forty feet to the roof.

Measurement of height.

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. No parapet wall shall extend above the limit of height.

Public buildings excepted.

SEC. 7. That the limitations of height herein prescribed shall not apply to Federal or municipal buildings.

Amendment.

SEC. 8. That Congress reserves the right to alter, amend, or repeal this Act.

Approved, March 1, 1899.

THE MCMILLAN COMMISSION REPORT

Senator James McMillan (R-Michigan) served on the Senate Committee on the District of Columbia from 1889 until his death in 1902. For nine years, Senator McMillan chaired the Senate District Committee and became the leader in the effort to develop the Mall, parklands, and Federal core areas of the Nation's Capital along the lines of the original L'Enfant Plan. The Mall as it is seen today exists largely through the initiating efforts of Chairman McMillan. Before coming to the Senate, Mr. McMillan, for many years, had been a member of the Detroit Board of Park Commissioners and had been active in the development of Belle Isle Park and other park areas in the City of Detroit. The Senator, therefore, brought the expertise and enthusiasm of his park commissioner background to his chairmanship of the Senate District Committee.

At an executive session of the Senate on March 8, 1901, Chairman McMillan secured the passage of the following Senate resolution:

> That the Committee on the District of Columbia be, and it is hereby, directed to consider the subject and report to the Senate plans for the development and improvement of the entire park system of the District of Columbia. For the purpose of preparing such plans the committee may sit during the recess of Congress, and may secure the services of such experts as may be necessary for a proper consideration of the subject. The expenses of such investigation shall be paid from the contingent fund of the Senate.[30]

Senator McMillan moved quickly to establish a subcommittee of the District Committee to organize and oversee the operations of a commission to develop the plans proposed in the enabling resolution. The eminent architects Daniel Burham and Charles McKim, and Frederick Law Olmsted, Jr., the landscape architect, whose father had worked with Senator McMillan on Detroit Park Commission projects, were appointed to the Senate Park Commission, its formal designation, but since popularly called the "McMillan Commission".

The Commission's report[31] was published in 1902. The report or Senate District Committee hearings held in connection with the report do not specifically discuss the Building Height Limitations Act of 1899, or building height matters in general.

There is evidence, however, that Senator McMillan and other members of the Senate District Committee wanted the Building Height Limitations Act of 1899 amended.

A press report of February 3, 1902 contains the following letter directed from the McMillan chaired Subcommittee on the Improvement of the Park System of the District of Columbia:

> The matter of the height of buildings in the District of Columbia was brought before the Committee at its meeting this morning [Friday, March 31, 1902],

[30] Apparently, Senator McMillan did not choose to act on this matter in concert with the House in that Speaker Cannon was unalterably opposed to federal funding of such a commission. See John W. Reps. *Monumental Washington*, p. 92.

[31] U.S. Congress. Senate. Committee on the District of Columbia Report on the Improvement of the Park System of the District of Columbia. Senate Report 57–166. Washington, U.S. Government Printing Office, 1902.

and it was decided to take up at once the matter of amending the present law so as to prevent the erection of buildings calculated to disfigure the District. The Subcommittee will be glad to meet the Commissioners of the District of Columbia at 2 o'clock P.M. on Monday next [February 3, 1902] to discuss this matter with them; and in the meantime; the subcommittee will be pleased to have the Commissioners draft such amendments to the law as in their judgment will be calculated to attain the object sought.

It is understood that generally speaking the Commissioners are in favor of the regulations as they stand at present. The Senate Committee is understood to have taken up the subject further limiting the height of buildings in connection with a grand scheme for the beautification of the capital city in accordance with the report of the park commission recently printed.[32]

A move to amend the 1899 Act did not develop, however. Perhaps the death of Senator McMillan in August, 1902 was a significant factor in that the Senator was the leader of amendment efforts.

[32] "Building Heights—Conference Today. Between Commissioners and Senate Committee." *The Evening Star*, Monday, February 3, 1902. p. 1, Col. 1.

The Building Height Limitation Act of 1910

A Legislative History

On January 24, 1910, Mr. Samuel Smith (R-Michigan), Chairman of the Committee on the District of Columbia, introduced in the House, at the request of the Board of Commissioners of the District of Columbia, H.R. 19070. The bill was referred to the Committee on the District of Columbia.[33]

Essentially, H.R. 19070 added certain enforcement features to and modified provisions of the existing Height Act of 1899. Furthermore, the bill recognized the need for Congress to be particularly mindful of regulating the height and certain aspects of design of buildings fronting on federally developed sections of the District of Columbia. The latter authority was to be delegated to the presidentially appointed, and Senate confirmed, Board of Commissioners of the District of Columbia.

The bill was reported (H. Rept. 61–720) from the Committee on March 10, 1910 by Committee member William P. Borland (D-Missouri). There is no evidence that public hearings were held on the measure. A copy of the report can be found at the end of this section. Upon examination one can determine that there is little justificatory material included in the report that was not covered, and in more detail, in the legislative history previously presented for the Building Height Act of 1899.

On April 11, 1910, H.R. 19070 was brought to the House floor for consideration. Two amendments were offered by Mr. Philip P. Campbell (R-Kansas), a member of the Committee on the District of Columbia. One amendment was technical, while the other provided for assuring the continued construction of certain roof alterations on a downtown building. These alterations had already been approved by the Board of Commissioners, but would not be permissible under H.R. 19070 as reported.[34]

A significant subject of debate involved an inquiry regarding a provision of the bill permitting the erection of structures twenty feet higher than existing regulations, to a maximum of 130 feet, in certain cases, if fireproof designs and materials were used throughout. The concern of one member, regarding the desirability of maintaining a low building height limitation in the District of Columbia, was recorded in the following exchange:

Mr. Stafford [William H., R-Wisconsin; not a member of the Committee on the District of Columbia]. Will the gentleman explain the demand for and the purpose of increasing the height of buildings as proposed in the pending bill?

Mr. Campbell [Philip P., R-Kansas; a member of the Committee on the District of Columbia]. The city of Washington is growing and a great many buildings are being erected here, some of them running up to seven or eight stories,

[33] *Congressional Record*. House. 61st Congress, 2d session. January 24, 1910. p. 343.
[34] *Op. cit.* House. 61st Congress, 2d session. April 11, 1910. p. 4535.

and the purpose of this bill is to require that all such buildings that are built to a certain height are to be built of fireproof material and construction. The regulations now permit buildings to be erected to the height of one story below the provisions of this bill. We are practically raising the limit one story, and providing for fireproof material and construction.

Mr. STAFFORD. What is the demand for that change? I assume that in Washington we are seeking to keep down the height of these structures which so affect the general view of some of our large cities. Now, why should we in Washington, when we are seeking to make it "the city beautiful," raise the height of the buildings still more?

Mr. CAMPBELL. This bill does not permit the increase of height of buildings materially—only one story.

Mr. STAFFORD. What is the demand for that?

Mr. CAMPBELL. The demand for higher buildings in the business portion of the city and the fireproof construction of certain other buildings.[35]

The balance of the House debate was consumed by a discussion of how the legislation would improve the fire safety of public theaters.

In the Senate, on January 25, 1910, Mr. Jacob H. Gallinger (R-New Hampshire), Chairman of the Committee on the District of Columbia, introduced S. 5714 at the request of the Board of Commissioners. S. 5714 was identical to H.R. 19070, as introduced, and was referred to the Committee on the District of Columbia.[36]

There is no published evidence that recorded public hearings were held and S. 5714 was reported, without amendments, on April 1, 1910. The report (S. Rept. 61–494) contains no substantive justificatory explanations for the enactment of S. 5714 other than the legislation had been requested by the Commissioners and was needed, by implication, to promote public safety. Action on S. 5714 was subsequently postponed in lieu of H.R. 19170.[37]

On April 22, 1910, the Senate Committee on the District of Columbia reported (S. Rept. 61–581), without additional explanation, the House passed bill, H.R. 19070 and the Senate took up that bill on May 3, 1910.

On the Senate floor two amendments were offered by Mr. Thomas H. Carter (R-Montana), a member of the Committee on the District of Columbia. Both amendments were approved. The first amendment concerned fireproof towers, spires, and domes. The second amendment, which would force a conference on the legislation, provided for an exemption to the 130-foot limitation on the north side of Pennsylvania Avenue, between 11th and 12th Streets, N.W., where structures of 160 feet would be permitted. The amendment read as follows:

No building 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 Eleventh and Twelfth streets NW, where an extreme height of 160 feet will be permitted.[38]

The origins or motivations for this amendment are not revealed in the official published records of Congress. However, press accounts and editorial commentary do provide an ancillary of information in this matter. The Washington *Evening Star* had followed closely the legislative course of the 1910 Building Height Act.

On May 5, 1910 the *Star's* editor, Theodore W. Noyes, denounced the amendment, as follows, on the editorial page:

[35] *Op. cit.* House. 61st Congress, 2d session. April 11, 1910. p. 4535.
[36] *Op. cit.* Senate. 61st Congress, 2d session. January 25, 1910. p. 952.
[37] *Op. cit.* Senate. 61st Congress, 2d session. April 26, 1910. p. 5405.
[38] *Op. cit.* Senate. 61st Congress, 2d session. May 3, 1910. p. 5910.

Without a word of discussion the Senate on Tuesday May 3, 1910 adopted an amendment to House bill 19070 regulating the height of buildings in the District of Columbia, specifically exempting from the limitations prescribed by the present law one single block in the city of Washington. The bill was then passed without debate, and goes into conference. The amendment thus summarily made a part of the measure, without opportunity for consideration or objection on the part of the citizens of the District or the advocates of harmonious development of the capital.

If the House does not reject this amendment, and if it should become a part of the law, the extraordinary spectacle will be presented of a system of maximum heights, wisely adopted several years ago to prevent unevenness in the sky line and to exclude freak architecture from the capital's streets, violated in one respect on a single specified block, a block so short that its designation must be construed as an effort to set aside the law which governs all for the benefit of one individual piece of property.

If this exception can be effected by means of an amendment quietly adopted without discussion, other exceptions are possible as individual cases arise, what was a beneficent regulation becomes a harmful, unjust imposition upon those property owners who, originally obeying the law and seeking no exemption from its restrictions, find themselves overtopped by neighbors and drawfed through the workings of the system of influence. This is the most pernicious form of legislation. The District should have building height restrictions, but they should apply without exception to all classes and all individuals and all blocks, and should not be waived either by administrative dispensations or by legislative exceptions for the benefit of the favored few.

It is hoped that the House will promptly refuse to accept this amendment, and instruct its conferees to resist it to the end.[39]

The *Star* revealed some pertinent facts in an article of May 10, 1910. It appeared, according to the article, that the Raleigh Hotel Company was interested in developing the particular block on Pennsylvania Avenue exempted in the amendment. The Company, however, reportedly proposed to certain members of the Senate District of Columbia Committee that the entire north side of Pennsylvania Avenue between 1st and 15th Streets, NW, be designated for a 160-foot height maximum. The *Star* reported as follows:

. . . the House conferees are inclined at first blush to question the wisdom of any such amendment proposing to give preferential treatment to any block on the avenue and thus throwing out of gear the whole proposition with reference to a uniform height of buildings on the avenue. The three House conferees say that they propose to look into the matter very thoroughly.

It is understood that the Raleigh Hotel Company, which desires to erect a building on the avenue to a height of 160 feet—thirty feet higher than is now permitted by law—did not make a request that the single block on the north side of the avenue between 11th and 12th be exempted from the law governing the height of buildings. This proposition, it is said originated with the Senate Committee. The Hotel Company, it is stated, asked that the entire avenue be exempted and that for its entire length a height of 160 feet be permitted, representing, it is urged, the proportionate increased height allowed on other streets and avenues.

It is considered practically certain by those who are familiar with the situation that the House conferees will not agree to the Senate amendment exempting the block from 11th to 12th streets.[40]

A few days later, the *Star's* editorial page carried the following commentary:

It is gratifying to learn that the Raleigh Hotel Company did not request the narrowly limited exception to the building laws in order to promote its own enterprise to the exclusion of virtually all others. It appears that the Company asked for an increase of the permissible height on the whole of Pennsylvania

[39] "A Pernicious Amendment." *The Evening Star.* May 5, 1910. p. 6, col. 2.
[40] "Buildings on Avenue." *The Evening Star.* May 10, 1910. p. 1, col. 6.

avenue to 160 feet, which is the height of the Willard Hotel. It is contended, and with reason, that inasmuch as the building heights along other business streets of the city are to be increased, those on Pennsylvania avenue should not remain under the old restriction; especially as Pennsylvania avenue, the broadest of the city's streets, is best suited for occupancy by high buildings.[41]

The House-Senate conferees recommended in their subsequent report (H. Rept. 61–1382) to extend the 160-foot exception to all of Pennsylvania Avenue from 1st to 15th Streets between the Capitol and the Treasury Building. On May 20, 1910, the Senate adopted the conference report. No debate was recorded.[42]

In the House, however, a point of order was raised by Mr. Herbert Parsons (R-New York) when the conference report was brought up for consideration on May 24, 1910. Mr. Parsons, not a member of the District of Columbia Committee, argued that the conferees exceeded their authority. After debating the subject at some length and citing a number of precedents covering similar cases, Speaker Joseph Cannon held that the compromise attained in the conference report was germane and consequently overruled the point of order.[43] Mr. Parsons then made an inquiry as to whether the Board of Commissioners of the District of Columbia objected to the compromise. Mr. Campbell (R-Kansas) of the Committee on the District of Columbia indicated that the Commissioners were not opposed to a 160-foot maximum limitation on Pennsylvania Avenue.[44] After a final few minutes of debate on the merits of raising the building height limitation thirty feet on Pennsylvania Avenue, the House approved, without a division, the conference report.[45] The legislation was subsequently signed into law by President Taft on June 1, 1910.

[41] "Avenue Building Heights." *The Evening Star.* May 13, 1910. p. 6, col. 2.
[42] *Congressional Record.* Senate. 61st Congress, 2d session. May 20, 1910. p. 6583.
[43] *Congressional Record.* House. 61st Congress, 2d session. May 24, 1910. pp. 6797–6798.
[44] *Ibid.* p. 6798.
[45] *Ibid* p. 6798–6799.

61ST CONGRESS, 2d Session. | SENATE. | REPORT No. 494.

HEIGHT OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

APRIL 1, 1910.—Ordered to be printed.

Mr. MARTIN, from the Committee on the District of Columbia, submitted the following

REPORT.

[To accompany S. 5714.]

The Committee on the District of Columbia, to whom was referred the bill (S. 5714) to regulate the height of buildings in the District of Columbia, having considered the same, report thereon with the recommendation that it pass.

Following is a memorandum prepared by the Commissioners of the District of Columbia in explanation of the bill:

Section 1: Present act permits the erection of a nonfireproof building to a height of five stories or 60 feet above the sidewalk.

Proposed act permits four stories or 50 feet in height.

Section 2: Present act permits the erection of a building used for business purposes solely to a height of 75 feet without being of fireproof construction.

Proposed act reduces this height to 60 feet.

Section 3: Proposed act requires all hotels, apartment houses, and tenement houses three stories in height or over to be of fireproof construction up to and including the main floor, and increases the floor area that must be inclosed by fireproof partition walls to 2,500 square feet.

The present act has no requirement that this class of buildings shall be fireproof up to and including the main floor, but there is a building regulation (sec. 122a) requiring a subdivision of area not greater than 1,600 square feet to be completely inclosed by fireproof partition walls.

Under the proposed act every building, including churches with a hall having a seating capacity of more than 300 persons, shall be of fireproof construction up to and including the auditorium floor.

The present law makes this requirement for churches only, whatever their size.

The present building regulations make this requirement for other buildings than churches.

Section 4 prohibits additions in height to combustible buildings when such addition would raise the height of the combustible building to a greater limit than that permitted for combustible buildings.

The present act makes this same requirement, but the wording has proved to be ambiguous.

The proposed act provides: Towers, spires, and domes constructed more than 60 feet above the sidewalk must be fireproof throughout.

The present act does not make this requirement.