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WHAYNE S. QUIN
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March 13, 2003

BY MESSENGER

Mr. Robert W. Kelly
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE - Suite 2000
Washington, DC 20002

Re: Measurement of Building Height for Buildings Fronting on 100 Block of H Street, N.E.

Dear Mr. Kelly:

This office represents The John Akridge Companies ("Akridge"), who have been awarded the right to develop the air rights above the railroad tracks north of Union Station on both the north and south sides of H Street, N.E. By previous correspondence dated July 25, 2002 addressed to Denzil Noble, Deputy Administrator, Building and Land Regulation Administration, we stated our position on the right to measure the height of building on either side of H Street from H Street which is elevated above the railroad tracks serving Union Station. No response or ruling has been made as of this date concerning our letter and information supplied to the District (namely, Mr. Noble, and office of counsel for DCRA). Attached as Exhibit A for your reference is the July 25, 2002 letter to Mr. Noble and some additional information furnished to Mr. Grant Moy, Assistant Corporation Counsel, advising DCRA.

Since the submission of our information, concerns have been expressed about the point of measurement for buildings fronting on a street that is elevated. The Office of Planning has sought a text amendment before the Zoning Commission in Case No. 02-35. In an effort to eliminate concerns about the measuring point for this important site, representatives of Akridge have met with Office of Planning representatives and have reached an understanding of an appropriate way to establish the point of measurement for permitted height. Without waiving any rights under previous precedents, Akridge is prepared to concur in the methodology for determining the point of measurement in a manner consistent with this understanding.

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.23

More specifically, as shown in the section drawing attached as Exhibit B and labeled "Union Station Air Rights Summary of Building Envelope" the point of measurement would be established on the basis of the top of the bed of the upper level of the railroad tracks for each building north and south of H Street. We believe that the elevation above sea level at the center point of the buildings as otherwise required by law, would be approximately 83 feet.

We request that you confirm that the methodology for establishing the point of measurement as described above and shown in concept on the attached section drawing meets with your approval and complies with the Zoning Regulations and 1910 Height Act. This is extremely important because Akridge will be relying upon this confirmation in proceeding with the acquisition of the property at very substantial expense. The Akridge Companies also expect to file a Planned Unit Development application before the Zoning Commission for the project both north and south of H Street so as to provide more flexibility in the height over existing zoning, but utilizing the described point of measurement.

If you have any questions, please do not hesitate to call me. I would appreciate your confirmation in the space provided below.

Respectfully submitted,

HOLLAND & KNIGHT LLP

Whayne S Quin

By: Whayne S. Quin

Confirmed:

_____

Robert W. Kelly
Zoning Administrator
March __, 2003

WSQ:lsn
Attachments

cc: Ellen McCarthy
Deputy Director
District of Columbia Office of Planning

David McGettigan
Development Review Specialist
District of Columbia Office of Planning

WAS1 #1165796 v1

A

W59

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July 25, 2002

CHRISTOPHER H. COLLINS
202-457-7841

Internet Address:
ccollins@hklaw.com

BY HAND

Mr. Denzil Noble
Deputy Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N. E.
Suite 2000
Washington, D. C. 20002

Re: Measurement of Building Height for Buildings Fronting on the 100 Block of H Street, N.E.

Dear Mr. Noble:

The purpose of this letter is to obtain your written confirmation that buildings fronting on the elevated portion of the 100 block of H Street, N.E. may be measured from the top of the curb at the middle of the front of the building, consistent with the regulations that are applicable on all other streets in the District of Columbia.

Through an RFP process by the GSA, the John Akridge Companies have been awarded the right to develop the air rights above the railroad tracks north of Union Station, on both the north and south sides of H Street, N.E. These air rights begin at elevation 80 (and elevation 70 for a portion of the site). The top of the curb in the 100 block of H Street, N.E. is at elevation 83 feet at its highest point. The surface area of the railroad tracks beneath the air rights range between elevation 37.3 feet and elevation 56.2 feet. The land beneath the 100 block of H Street, N.E., where the railroad tracks are located, is privately owned, and is not a part of the H Street right-of-way.

The measurement of building height in the District of Columbia is controlled both by the Zoning Regulations and the Act of 1910. The Regulations, in the definition of "Building, height of" (§199.1), provide that the height is:

> "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 definition further provides that "If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building ..."

The Act of 1910 (D.C. Code, 2001 Ed. § 6-601.07) provides that:

> "the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height *shall* be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height." (emphasis added)

Therefore, the height may or shall be measured from the curb on the elevated portion of the 100 block of H Street, N.E., which is the only existing curb on that street.

This reading of the Regulations and the Act is consistent with prior interpretations and rulings by the Zoning Administrator and the District. In 1985 and again in 1988, the Zoning Administrators concurred in the conclusion that the height could be measured from the curb in front of the building on H Street, N.E., which was determined to be approximately elevation 70. Copies of these rulings are attached. In its report on the large tract review of a development proposed in 1989, the Office of Planning noted that the height of the buildings was to be measured from a point along the elevated portion of the roadway. A copy of the OP report, dated October 9, 1990, is also attached. Thus, with respect to the property at issue, there are consistent rulings indicating that the height may be measured from the elevated portion of the H Street roadway.

The District has also applied that same ruling to buildings constructed on the unit block of the elevated H Street adjacent to 1st Street, N.E. The building at 750 1st Street, N.E. (Square 677, lot 144, Z.A. #89-564), fronts on both H and 1st Streets, was built as a matter-of-right in the C-3-C District and has a height of ninety feet measured from the elevated H Street and eleven stories above grade on 1st Street. The building at 810 1st Street N.E. (Z.A. 86-371), likewise fronts on both H and 1st Streets, was built as a matter-of-right in the C-3-C District and has a height of ninety feet measured from the elevated H Street. Phase II of the building built at 810 1st Street, N.E. (Square 675, lot 297, Z.A. #88-656), has a height of ninety feet measured from the elevated H Street and eleven stories above grade on 1st Street. The computations for Phase III of the building at 810 1st Street, N.E. (Square 675, lot 297, Z.A. #91-284), show the building with a proposed height of ninety feet measured from the elevated H Street and eleven stories above grade on 1st Street. The plat included in that job showed elevations along 1st Street to be ±28 and the elevated H Street to be ±52. Accordingly, all previous interpretations of the Regulations allowed the height to be measured from the curb on the elevated H Street.

The Ward 6 element of the Comprehensive Plan (§1703.1(u)) contains a provision to "Require any building located directly adjacent to the H Street Overpass to measure its allowable height (from street level to parapet and permissible penthouses) from the existing grade of Second Street, N.E., or First Street, N.E., and not from any part of the Overpass itself." However, §112.3 of the Plan provides that "the District elements of the Plan are a guide intended to establish broad policies and goals while affording flexibility for future implementation and are not binding policy directives." The Comprehensive Plan is not self-executing and does not amend either the Zoning Regulations or the Congressionally-enacted Act of 1910. Unless and until those controlling requirements are changed, the longstanding administrative interpretations must continue to control.

Under the Zoning Regulations and the Act of 1910, the height of the proposed air rights development over the railroad tracks on both the north and south sides of the 100 block of H Street, N.E. may be measured from the top of the curb on the elevated H Street, which is approximately elevation 83 at its highest point. Please confirm the matters above by signing a copy of this letter in the space provided below and returning it to us. Thank you.

Very truly yours,

HOLLAND & KNIGHT LLP

Whayne S. Quin

Christopher H. Collins

CHC/skp
Enclosures

CONFIRMED:

_____
Denzil Noble
Deputy Administrator
Building and Land Regulation Administration

Date: _____

WAS1 #1105708 v1

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CABLE: MOLIN

December 20, 1988

BY HAND

Mr. Joseph F. Bottner
Zoning Administrator of the
District of Columbia
Department of Consumer and
Regulatory Affairs
Room 331
614 H Street, N.W.
Washington, D.C. 20004

Re: Development in Square 719 and 720

Dear Mr. Bottner:

Pursuant to our meeting in your office with Mr. David Meiners of Quadrangle Development Corporation, Mr. David King of Keyes, Condon and Florance and myself on November 17, 1988, the purpose of this letter is to confirm, in writing, a number of zoning principles that were presented and discussed at the meeting on behalf of the developer of the site adjacent to Union Station that are necessary to have resolved in order to proceed with planning and design for the project.

The subject site is comprised of Square 719 and parts of Square 720. It is bounded by H, 2nd and F Streets, N.E. and a railroad right-of-way adjacent to Union Station (a plat of the property is attached to this letter as Exhibit A). The site is approximately 5.5 acres in size and is currently in the C-M-3 Zone District. As we discussed, the project will contain only matter-of-right uses and be built to all matter-of-right standards

DELIVERED 12/20/88

for the designated zone. The entire project is expected to be built in phases, and connected as one building at a new grade described herein. The location of the first phase has not yet been determined and will be established in response to the final design and/or market conditions.

The north boundary of the property fronts on the elevated roadway of the H Street Overpass. Our client intends to connect the project to H Street at this location by creating a new private elevated throughway, for pedestrian or vehicular use, and by positioning the front entrance of the building on the H Street Overpass. This throughway, as shown on the sketch attached as Exhibit B, will be a minimum of 20 feet in width. The actual length or whether, in fact, the throughway will ultimately run the entire length of the site from the Overpass to F Street as indicated will be established in the final design phases of the master planning process. The throughway provides direct access from the H Street right-of-way to the subject site for use by the public and connects to the sidewalk on the H Street Overpass. In effect, the throughway will actually be an extension of the sidewalk and the H Street vehicular right-of-way.

Our client intends to use the H Street frontage as the "front" of the building for height measuring purposes in conformance with the applicable District of Columbia Zoning Regulations. The measuring point will be the curb in front of the building on H Street. This elevation is approximately 70 feet (the actual elevation will be determined by a survey) and will be, as we discussed, our measuring point for height purposes.

The above-mentioned throughway, will, for its ultimate length, establish a new ground level resulting in the creation of additional cellar area, as defined in the Zoning Regulations, below the throughway level. It is our understanding that the appropriate portion of this cellar, as is normally calculated by your office, should be excluded from the gross floor area for FAR calculations of the building.

As we discussed in our meeting, your predecessor, Mr. James J. Fahey, agreed to this concept for a previous client who was seeking to develop the subject site. A copy of Mr. Fahey's signed concurrence is attached for your use and information as Exhibit C to this letter.

If you concur with the zoning precepts as described herein, and sustain those reached by Mr. Fahey, it would be of great assistance to our client if you could indicate your concurrence by placing your signature in the space provided below and returning this letter to us.

Thank you for your assistance and cooperation in this matter. Please call me at 872-9080 if you have any questions or require additional information.

Sincerely,

LINOWES AND BLOCHER

Phil Feola

2/15/89

Joseph F. Bottner

Enclosures

cc: Robert Gladstone
Robert Knopf
David Meiners

PF/dls

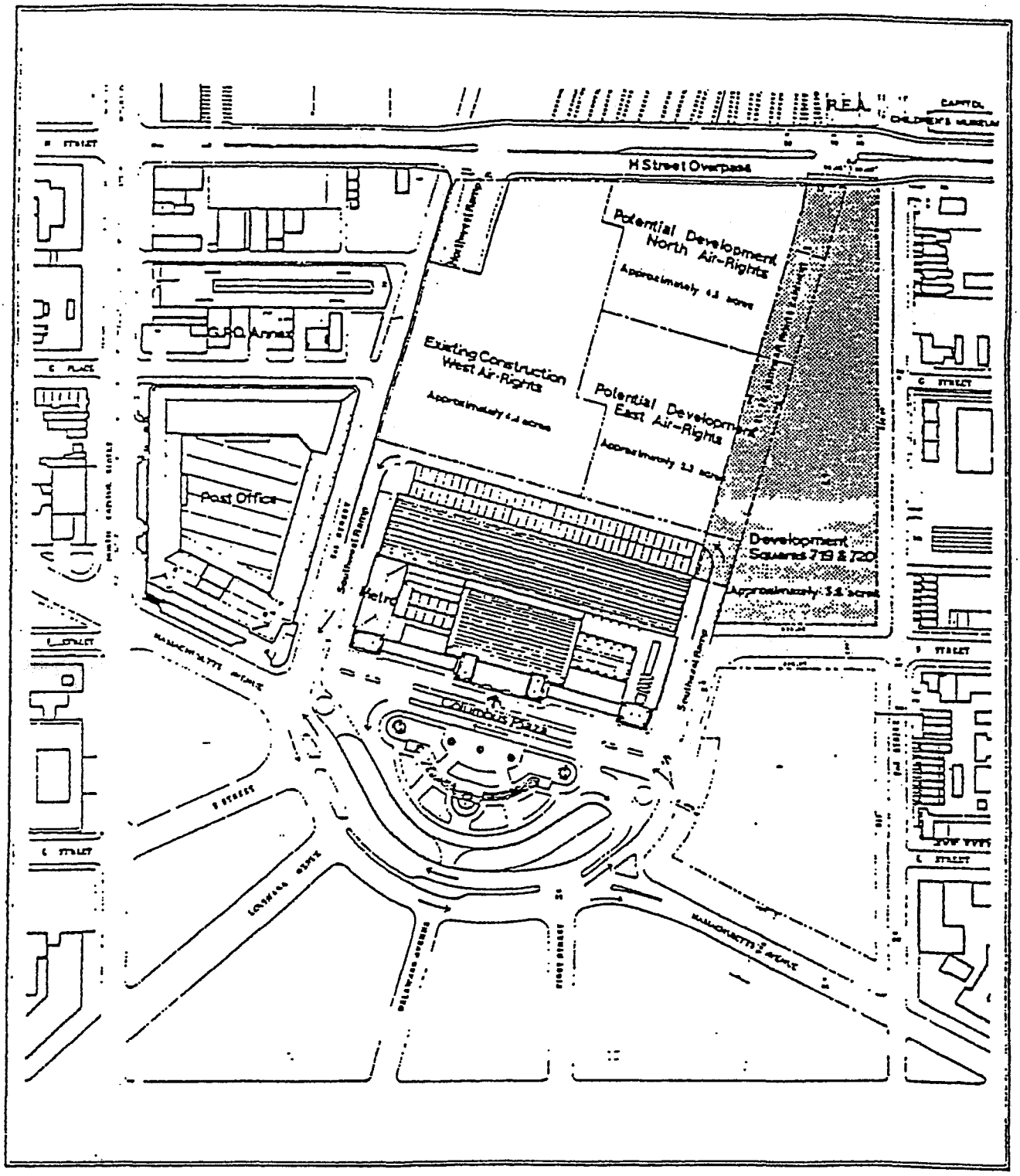
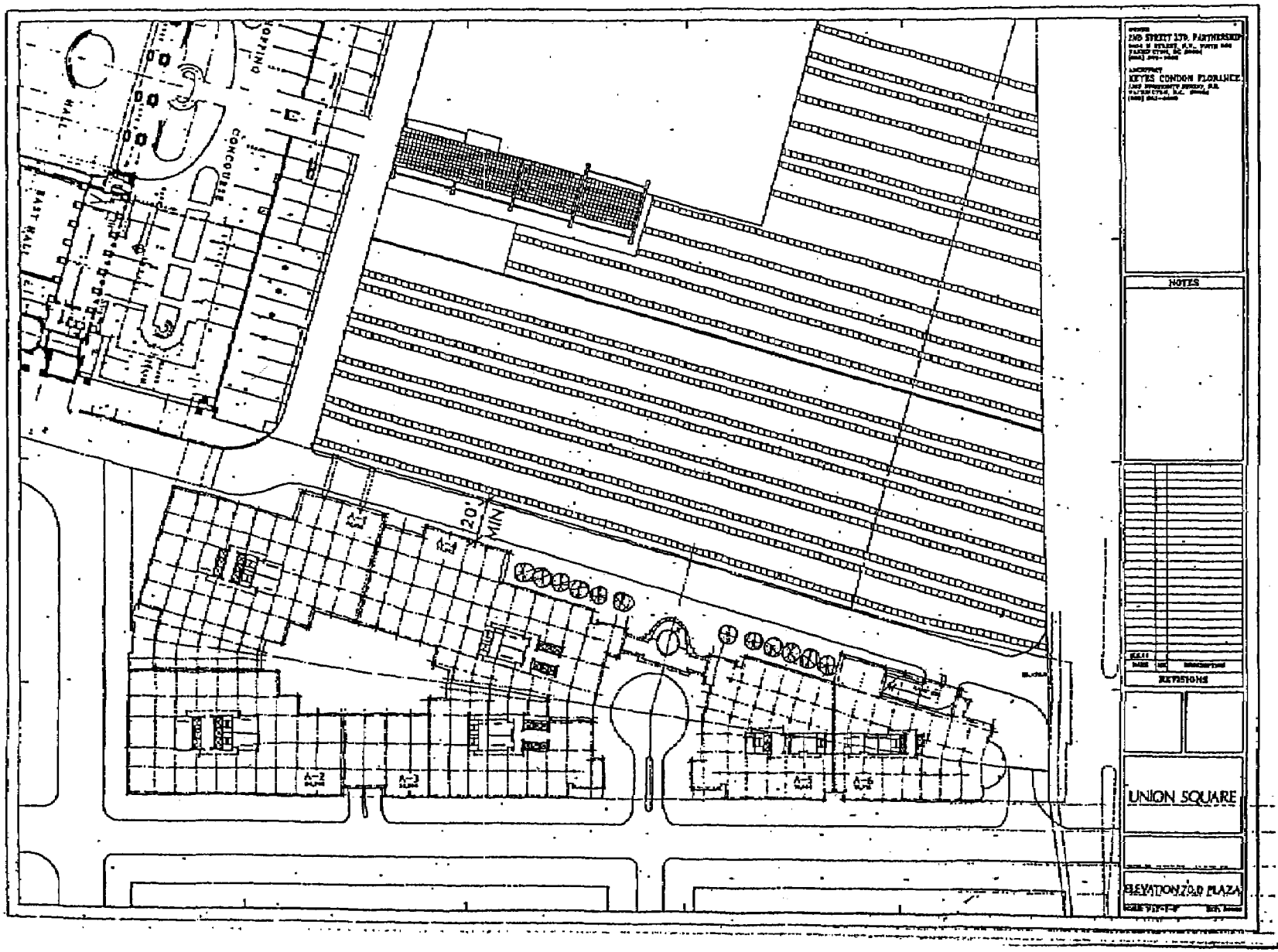

H Street Overpass
Potential Development North Air-Rights
Existing Construction West Air-Rights
Potential Development East Air-Rights
Post Office
Development Squares 719 & 720
Metro
Columbus Plaza

Exhibit A



Exhibit

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SPECIAL COUNSEL

PLUMMER M. SHEARIN, P.A.
ELMER MOSTOW
OF COUNSEL

July 11, 1985

BY HAND

Mr. James J. Fahey
Zoning Administrator of the
District of Columbia
Department of Consumer and
Regulatory Affairs
Room 331
614 H Street, N.W.
Washington, D.C. 20004

Re: Development in Square 719 and 720

Dear Mr. Fahey:

Pursuant to a meeting you had with Mr. Walt Borek, Mr. Richard Giegengack of Skidmore, Owings and Merrill and myself on July 1, 1985, the purpose of this letter is to confirm a number of zoning principals that will allow our client, a joint venture development of Walker, Urquhart, Inc. and Mendelsohn Associates, Inc. to proceed with the planning of a project that will be located next to Union Station.

As you recall, the subject site, which is comprised of Squares 719 and 720, is bounded by H Street, 2nd Street, F Streets, N.E. and the railroad right-of-way adjacent to Union Station (a plat of the property is attached to this letter as Exhibit A). The site

is approximately 5.6 acres in size and is in the C-M-3 Zone District. As we discussed, the project will be a mixed-use development consisting of office, retail and a printing uses. It will be comprised of five towers, connected as one building at grade.

Our client's plans include developing an H Street plaza to allow direct vehicular and pedestrian access from the H Street right-of-way to the subject site. The plaza plans are shown in concept on Exhibit B of this letter. The plaza will be open to the public and connect to the sidewalk on the H Street overpass. It will actually be an extension of that sidewalk and the vehicular right-of-way.

We intend to use the H Street frontage as the "front" of the building for height measuring purposes in conformance with the applicable District of Columbia Zoning Regulations. The measuring point will be the curb in front of the building on H Street. This elevation is approximately 70 feet (the actual elevation will be determined by survey) and will be, as we discussed, our measuring point for height purposes.

The plaza will run the entire length of the site's western property line, adjacent to Union Station, from H Street to F Street, N.E. It will thus establish a new ground level resulting in the creation of additional cellar area, as defined in the Zoning Regulations, below the plaza level. It is our position that the appropriate portion of this cellar, as is normally calculated by your office, will be excluded from the gross floor area for FAR calculations of the building.

If you concur in our conclusions, it would be of great assistance to our clients if you could indicate your concurrence by placing your signature in the space provided below and returning this letter to us.

Thank you for your assistance and cooperation in this matter Please call me at 872-9080 if you have any questions or require additional information.

Sincerely,

LINOWES AND BLOCHER

Phil Feola

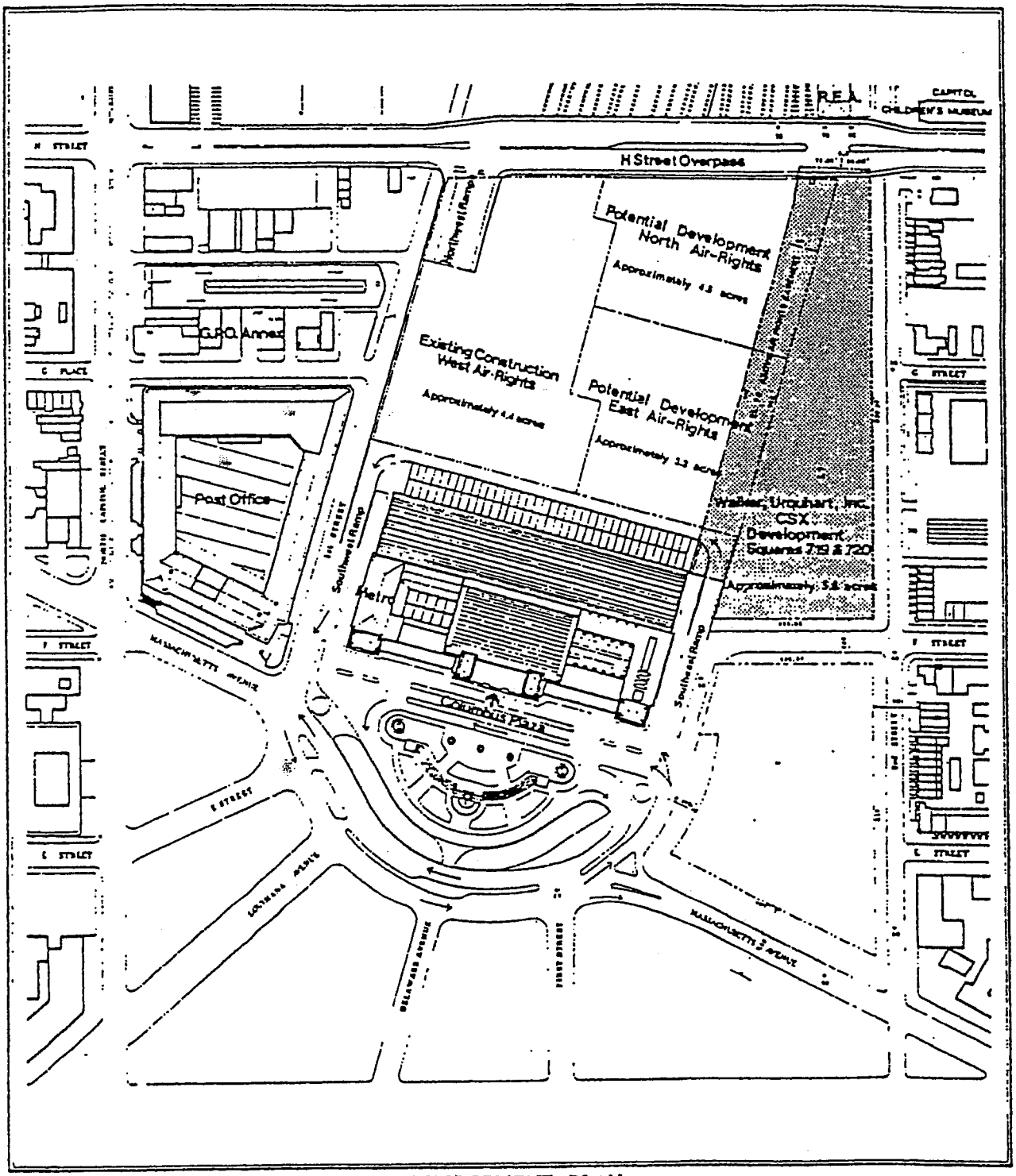
Phil Feola

James J. Fahey 7-29-85
James J. Fahey, Zoning
Administrator

Enclosures

cc: Walt Borek
Richard Giegengack

PF/dls

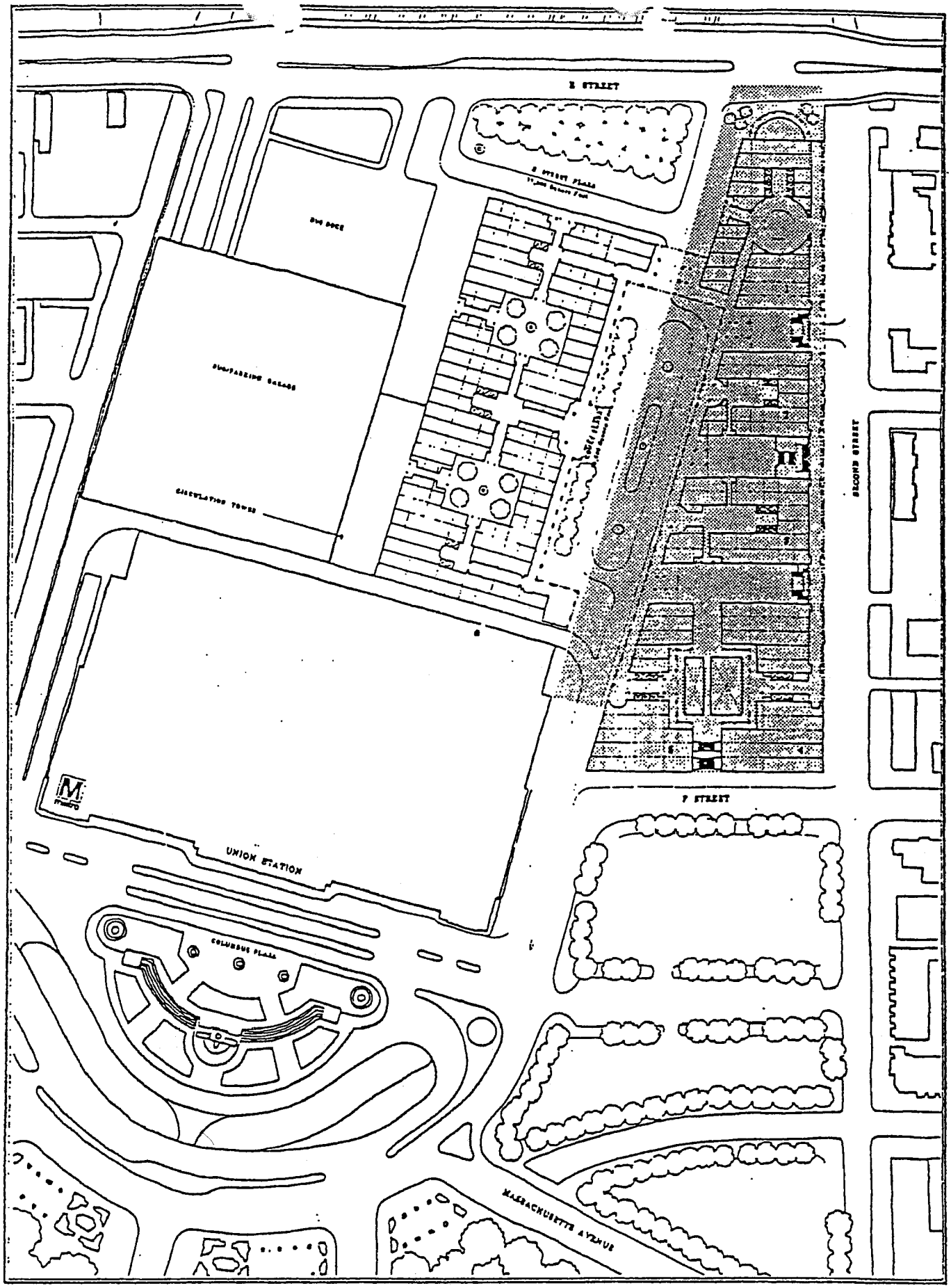


DEVELOPMENT PLAN

CAPITOL GATEWAY

SKIDMORE, OWINGS & MERRILL

Exhibit A



H STREET LEVEL

CAPITOL GATEWAY

Government of the District of Columbia

Office of the
Director

Office of Planning
415 12th Street, N.W.,
Washington, D.C. 20004

OCT 9 1990

Mr. Phil Feola
Linowes and Blocher
Techworld Plaza
800 K Street, N.W.
Suite 840
Washington, D.C. 20001

Dear Mr. Feola:

Enclosed is a copy of the final Office of Planning report for Large Tract Review of Station Place. Approval was recommended with the conditions listed in the enclosed report. That approval provides for substantial resolution of the issues directly associated with this project and identifies a future role in the implementation of transportation mitigating measures.

I appreciate your patience and willingness to cooperate with us, the other District agencies and the affected community in addressing various development issues raised during the Large Tract Review process.

Sincerely

Fred L. Greene
Director

Enclosure

STATION PLACE
600 - 700 2ND STREET, N.E.
LARGE TRACT REVIEW
FINAL REPORT

The Large Tract Review (LTR) application for Mount Clare Properties, Inc. is for a project proposed to be developed by the Second Street Limited Partnership at 600 - 700 2nd Street, N.E. in Square 719, all lots, and Square 720, Lots 821 and 822. The proposed development would contain a total of approximately 1,638,893 square feet of commercial space above and below grade (1,423,910 square feet of commercial office FAR space, 20,000 square feet of commercial retail FAR space and 194,983 square feet of below grade non-FAR space not including parking). The site contains approximately 5.5 acres of former railroad yard land.

The proposed development would consist of two buildings having the appearance of five joined buildings, on two lots. Construction would be undertaken in five phases, beginning at the southern end (depending upon leasing), over a period of approximately ten years.

The Office of Planning (OP) recommends approval of the Station Place project with modifications and with the conditions contained in this report.

The Station Place project would be located in a C-M-3, commercial/light industrial, zone district immediately to the east of Union Station (the District's transportation hub) and the railroad right-of-way. The C-M-3 zone district permits matter-of-right office use with buildings up to 90 feet in height and 6.0 FAR. The C-M-3 zone district also has a significant requirement for off-street parking.

The Station Place site is located in an area that is designated for mixed use medium-high density commercial and production and technical employment on the Comprehensive Plan Generalized Land Use Map. The Plan further identifies the general location as a Special Treatment Area, designated to encourage development of a secondary (lower rent) office district, to evaluate design standards and to implement public improvements. The District is mandated to assign greater weight to the Land Use Element of the Comprehensive Plan within project reviews.

Comments were received from the Metropolitan Police Department (MPD), D.C. Fire Department (DCFD), Department of Public Works (DPW), and Advisory Neighborhood Commissions (ANC's) 2C and 6A.

Comments were also received from the following community groups: Capitol Hill Traffic Task Force (CHTTF), Stanton Park Neighborhood Association, and the Capitol Hill Restoration Society. A number of letters, generally opposing the project in its original and early revised forms, were received from nearby property owners.

The comments, as part of the Large Tract Review, raised a number of issues that were discussed over a lengthy Large Tract Review period and resulted in modifications to the project. A supplemental application was submitted for the modified project on July 10, 1990. Comments on the revised proposal have not been received from all parties; however, discussions with representatives of the different community groups have indicated support, with reservations.

The comments raised the following issues:

Height and Bulk

The context surrounding the Station Place project contains a range of densities bespeaking distinct and different neighborhood characters. Height and bulk generally increase from north to south. On the south, the neighbors would be the monumental Union Station and the planned Judiciary Office Building. On the north, an approved mixed use PUD for 2nd and H Streets, N.E. is planned to have a maximum height of 82.5 feet. Between G and H streets the existing uses along 2nd Street are predominantly commercial in the C-1 commercial zone district, housed in renovated rowhouse structures. A large portion of the adjacent R-4 residential zone district between F and G streets is occupied by the District's Logan School and Special Police Forces complex, containing substantial open space. The remainder of the residential zone there is occupied by seven row structures. A significant community of two and three story residential structures begins half-way between 2nd and 3rd streets along G Street and runs along both sides of 3rd Street, a block away.

Buildings 1 and 2 along F Street are proposed to be 90 feet in height measured from a point along F Street, which is approximately equal to the height of the Judiciary Office Building planned there. Buildings 3, 4 and 5 were originally proposed to be 90 feet in height measured from a point along the H Street overpass. The height gain due to measurement from a point approximately 35 feet above the level of 2nd Street would have produced an overall height for buildings 3, 4 and 5 of 125 feet. It is arguably true that the portion of the building between the level of the overpass and the grade at 2nd Street would not contribute to building height for views from inside the building along H Street. However, the impact for views along 2nd Street would be unlike the effect of an analogous situation where height gains occur due to steeply sloped natural grades, the more

likely condition foreseen by the framers of the Zoning Regulations. Nevertheless, other buildings along the H Street overpass measure their heights there also.

As originally conceived, the project's massing would have reinforced the height, notwithstanding the setback of a portion of Building 4 opposite G Street. The two block long development, lacking real breaks in the facade, would likely have produced the appearance of a wall. The carving out of space that might have occurred at the street was provided at the rear, instead, where the building setback from the railroad tracks.

Setbacks at the top and implied breaks in the 2nd Street facade, provided in response to community and OP comments, were a partial solution. However, those modifications, while they did substantially resolve the concerns due to the project's apparent mass, did not completely address the issue of height.

Subsequent discussions produced further modifications shown on the revised Station Place LTR submission drawings dated May 11, 1990. In response to the concerns expressed by the community and OP and, importantly, by the Commission of Fine Arts, which reviews the project under the provisions of the Shipstead-Luce Act, Buildings 3 and 5, and the notches in-between were reduced in height by a minimum of 22 feet, or two stories, to a maximum of 68 feet above the H Street datum. The revisions would eliminate the tower embellishments originally proposed along H Street.

Building 4 continues to be proposed at an overall height of 125 feet. That effective height would be somewhat diminished by setbacks of the floors above the height of buildings 3 and 5. While the community has supported the height reductions in the other buildings, they do not support the proposed height of building 4.

The substantial reductions in height, coupled with the design and setbacks, while they would not result in heights which would be totally compatible with the existing 40 foot heights in the neighborhood, are not inappropriate across the street from commercial and institutional uses. The heights would not be visible from the larger residential community with the exception noted of the few houses just north of F Street and the houses beginning half way between 2nd and 3rd Streets along G Street. The height of the one remaining taller building would be ameliorated by the setbacks and the context of 90 foot and 100 foot high buildings (1,2,3, and 5). The greatest impact and change will be from the length/mass of the project which has been broken up with notches and facade details. The community and the Fine Arts Commission have commented favorably on the design.

Transition Between Downtown and the Residential Community

Comments from the community spoke to the need for a transition between downtown type office development to the west and the residential and historic neighborhoods to the east and south. While this project would not provide that transition, it would, at the least, hold the edge of that downtown development -- an accomplishment that gains significance in anticipation of future development plans that would build a massive federal government office project over the railroad tracks.

Streetscape

The community expressed concern for the relationship with the existing neighborhood where the buildings meet the street. The revised Station Place plan proposes an enhanced streetscape along 2nd Street including the provision of raised planters (which would also act as seats) with a row of flowering trees over the vault space and a row of street trees in a continuous tree strip at the curb, street furniture and special pavers along 2nd Street

On balance, the community expressed approval of the positive landscaping and also endorsed the arcade along F Street proposed to connect the project to Union Station.

Parking

The community initially expressed concern for the number of parking spaces to be provided. The Zoning Regulations require 2,097 spaces. Additionally, the Station Place proposal would provide for reasonably accessible bicycle parking spaces as required by the Zoning Regulations. The project proposes to provide 1,380 parking spaces for cars in a below grade parking garage, of which 910 spaces would be required with Board of Zoning Adjustment (BZA) approval. The community has endorsed this reduction. The BZA may approve reduced amounts of parking as a special exception for a project outside the Central Employment Area having a direct connection to a Metrorail Station.

The revised Station Place proposal included a transportation management plan (TMP) that would provide for controlled access to the 2nd Street entrance, downgrading its use, employment of a transportation coordinator, and increased use of public transit to reduce the number of cars coming to the site. The community and DPW have expressed their support for the mitigating measures included in the TMP, and OP has recommended implementation of the TMP in the BZA order if the Board grants the subject reduction in required parking spaces.

Traffic

The community and DPW expressed major concerns regarding

increased traffic likely to be generated by the proposed Station Place development. Specifically, those concerns were for the impacts on surrounding streets, the connection to the H Street overpass, and for the impacts on the nearby residential area generally due to truck traffic. The comments noted that traffic increases are likely to be generated by other commercial development in the area also, including the Judiciary Office Building under construction at 2nd Street and Massachusetts Avenue. AMTRAK commented that traffic generated by the Station Place project shouldn't be allowed to impede access to Union Station.

It should be noted that the District is undertaking a transportation study for development occurring within a larger area, generally between Union Station on the south, and Florida and New York Avenues on the north, North Capitol Street on the west and 2nd Street on the east. That study is expected to identify major infrastructure improvements required to accommodate the increased traffic generated by new development and to recommend implementation measures, including funding mechanisms.

A major feature of the Station Place project would be an elevated roadway extending the entire length of the project along the west front, providing the primary parking access from H Street. This roadway, Station Place Drive, has been widened in the revised proposal to accommodate a service lane for dropoff and vehicular (bicycle and auto) turnaround, in response to community and DPW comments. Loading docks which would also serve Union Station are to be provided on a lower level.

DPW, working with the developer, has addressed the transportation related issues in its comments and has made recommendations that would substantially resolve the issues. DPW has also noted that traffic mitigating measures should be coordinated with certain phases of the proposed development. Many of those suggestions have been included as conditions as part of the Large Tract Review.

The community also recommended reopenning the H Street underpass between 1st and 2nd Streets, N.E. for improved truck access to the project, a proposal that DPW endorsed also.

Other

The Metropolitan Police Department typically recommends incorporation of physical security protection measures including illumination of building entrances, surveillance equipment, alarm systems and locking devices as part of their crime prevention efforts.

The D. C. Fire Department, without expressing objections, noted that the project would be reviewed for compliance with life safety code requirements at a later date in the permit process.

The Station Place proposal indicates that the developer would cooperate with the District agencies to provide a First Source Agreement and a Memorandum of Understanding with the Minority Business Opportunities Commission.

Conclusion

The community, the Office of Planning and the Commission of Fine Arts commented through the Large Tract Review process that the project as originally proposed, while it had positive features, would have been too tall and bulky. Substantial reductions in height coupled with modifications in the previously unbroken length, in response to the concerns expressed, go a long way toward mitigating the visual impacts of a major new commercial office development to be located on industrial land between the railroad tracks and a nearby residential community.

The Commission of Fine Arts has yet to review the revised Station Place proposal; however, Commission members, in a meeting subsequent to the initial review, applauded the many improvements they observed in the project, notwithstanding their concerns about the height of Building 4.

The developer has worked with the Department of Public Works and the community to resolve their transportation concerns. The developer has agreed to make significant infrastructure improvements and to implement a transportation management plan, ameliorating the most egregious impacts. While it is clear that there are remaining issues, some of them due to development in the area generally, they will be addressed again within the context of an areawide transportation study. The developer has indicated a willingness to work with the City on this project.

The Station Place project would contribute to an important District objective, stated in the Comprehensive Plan, to provide secondary office space. The project would provide approximately 169 temporary and 5,600 permanent jobs and an estimated $5.9 million annually through real estate, income, sales and other taxes. Finally, the developer has agreed to make infrastructure improvements along H Street mitigating potential traffic impacts and to participate in implementing the city's transportation planning efforts in the Union Station/North Capitol Street area.

Thus, the Office of Planning recommends approval of the Station Place project with the following conditions:

1. Ensure that the project is built in overall

conformance with the drawings submitted as part of the Large Tract Review dated August 18,1989 and revised July 10, 1990 (Keyes Condon Florance drawings dated June 29, 1989 and May 11, 1990, respectively). Building heights are not to exceed the heights shown on the revised drawings;

2. Provide continuous, uninterrupted access from the H Street overpass for both construction traffic and, ultimately, for tenants with the initial phase of construction;

3. Enter into discussions with the affected parties to reopen the H Street underpass between 1st and 2nd Street, N.E., if possible prior to the first phase of construction, for public transportation (pedestrian and vehicles) and the required improvements to complete the underpass to D.C. standards. In that event, the location of the service entrance along 2nd Street may be relocated to H Street;

4. Provide an easement to the District for public access to the proposed Station Place Drive for transportation purposes;

5. DPW has proposed that a ramp consisting of two lanes, one in either direction, should ultimately be provided connecting the middle two lanes of H Street at 3rd Street to 2nd Street. A major transportation study is to be undertaken dealing with traffic concerns, possible improvements and funding mechanisms on a comprehensive basis in the Union Station vicinity. The developer shall cooperate with and contribute to this study.

6. Coordinate roadway design and construction with the Department of Public Works;

7. Provide streetscape improvements as shown on the revised drawings as part of the July 10, 1990 LTR submission, including, but not limited to: two rows of trees along 2nd Street, paving, street furniture and street lights; and

8. Implement the mitigating measures of the attached draft transportation management plan, provided in the July 10, 1990 LTR submission, and restrict access to the proposed 2nd Street garage entry to non-peak hours only.

Attachments

OCT 9 1990

HOLLAND & KNIGHT LLP

www.hklaw.com

1-888-688-8500

WHAYNE S. QUIN

Suite 100
2099 Pennsylvania Ave., N.W.
Washington, DC 20006

202-663-7274

COPY

July 26, 2002

Grant,

Enclosed is additional information, including three Corporation Counsel opinions on the 1910 Height Act.

I have also included a memorandum dated April 28, 1950 from Chief Engineer Daly which concludes that the "matter of grades" is covered by the wording "the middle of the front that will permit of the greater height." I thought that might be helpful.

WSQ:lsn

§ 6–601.06. Frame dwellings.

No wooden or frame building erected, altered, or converted after June 1, 1910, for use as a human habitation shall exceed 3 stories or exceed 40 feet in height to the roof.

(June 1, 1910, 36 Stat. 454, ch. 263, § 6.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 5–406.
1973 Ed., § 5–406.

Cross References

Section References

This section is referred to in §§ 6–601.04, 6–601.05, 6–601.07 to 6–601.09, and 6–641.06.

Library References

Key Numbers

Health and Environment ⇐32.
Zoning and Planning ⇐62.1.
Westlaw Key Number Searches: 199k32; 414k62.1.

Encyclopedias

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

§ 6–601.07. Measurement of building height; parapet walls.

For the purposes of this subchapter the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding 4 feet will be permitted above the limit of height of building permitted under this subchapter.

(June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 5–407.
1973 Ed., § 5–407.

Cross References

Section References

This section is referred to in §§ 6–601.04, 6–601.05, 6–601.08, 6–601.09, and 6–641.06.

Library References

Key Numbers

Health and Environment ⇐32.
Zoning and Planning ⇐65.
Westlaw Key Number Searches: 199k32; 414k65.

Encyclopedias

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

Building area - the maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title, nor shall it include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property.

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.

In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

In those districts in which the height of the building is limited to sixty feet (60 ft.), in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or parapet, but the allowance for terrace height shall not exceed five feet (5 ft.).

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.

If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

In those districts in which the heights of building is permitted to be ninety feet (90 ft.) or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet (3 ft.) in height.

Cabaret - a restaurant or nightclub providing as the main focus of its business, programs of live entertainment such as singing, dancing, comedy, literary readings, or performance art. In a cabaret, the clientele generally sit at tables in order to watch the entertainment and are attended by waiters or waitresses who serve food or drink. Typically, there may be more than one show in an evening and a complete turnover in patrons. (39 DCR 8328)

Caregiver - an individual who is responsible for the supervision and administration of a child development home or child development center. (29 DCR 4913)

Caterer, catering establishment - a person or business that prepares and provides food or beverages or both, along with the necessary accessories for serving these products, for ordinary home consumption. The food and beverages are provided for events that are located off the business establishment's premises. Any establishment that receives more than seventy-five percent (75%) of its sales from orders placed less than three (3) hours prior to delivery or pick-up will not be considered a catering establishment. (40 DCR 3744)

Cellar - that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
DISTRICT BUILDING
WASHINGTON, D. C. 20004

IN REPLY REFER TO:
LCD:ELC:pah

July 29, 1980

MEMORANDUM TO: James O. Gibson
Assistant City Administrator for
Planning & Development

FROM: James E. Lemert
Deputy Corporation Counsel, D.C.
Legal Counsel Division

SUBJECT: Height Limitations on the North Side of Pennsylvania Avenue at Square 225.

In a letter dated June 30, 1980, with enclosed memorandum, you have requested whether, under the 1910 Height Act, the 160' height limit for a building fronting on Pennsylvania Avenue, N.W. may, if the building also fronts on 14th Street and F Street, be measured from a point on one of the latter two fronts.

In a May 11, 1950 opinion, the Corporation Counsel concluded that the provisions of Sections 5 and 7 of the 1910 Height Act (Sections 5-405 and 5-407, D.C. Code) "are separate and distinct," in that, once the maximum height classification is ascertained in accord with the provisions of Section 5, the actual height of the building is measured in accord with Section 7. With specific reference to Pennsylvania Avenue, nothing in either section establishes any different measuring scheme for buildings fronting on Pennsylvania Avenue.

Accordingly, it is my conclusion that the 1910 Height Act permits the height of a building fronting on Pennsylvania Avenue, N.W., to be measured from the Avenue or any

other street upon which it fronts. Accordingly, the BZA may, if it finds grounds for a variance, grant a variance from the more restrictive provisions of subparagraph 5201.232 of the Zoning Regulations.

Should the BZA be inclined to grant the variance, it should not be framed in terms of the 160' height limit, since such may raise a question of the BZA improperly authorizing a deviation from the height limit in the 1910 Act and the provisions of section 5-424, D.C. Code. It is recommended, rather, that the variance be framed in terms of the measuring scheme, and that conditions be imposed as may be necessary to protect against any overly broad effects.

JEL

C O P Y

April 28, 1950

To the Director of Inspection:

Re: Virginia Hotel Co. Bldg. Height

The appeal to the D. C. Commissioners of the Virginia Hotel Company comprises three briefs or statements, one by the Hotel Company thru its secretary, one by the architect, A. R. Clas thru the firm of Davies, Richberg, Beebe, Busick and Richardson, presumably attorneys, and one by the firm of Lord, Day and Lord as attorneys for the hotel company.

These statements are not entirely alike, in that some attempt to bring the Zoning Regulations into the picture, others, what are purported to be the regulations prior to 1910. The question at issue is purely based on the Act of June 1, 1910, over which the Zoning Regulations may exert no influence.

Before specifically answering any of the statements and allegations contained in these submissions, I think it well to set forth the basis upon which is founded the decision which is being appealed.

There are two sections of the Act which are pertinent to the present discussion. Section 5 states what height may be used. Section 7 states where the height is to be measured. This much is agreed on by all parties.

Those portions of Section 5 applicable are as follows:

Par. 1. "That no building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue or highway in its front, increased by 20 ft., - - - -."

Par. 2. "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 - - -."

Par. 4. "The height of a building on a corner lot will be determined by the width of the wider street."

It is clear from the above that a "front" is a street front and not merely the facade which contains the main entrance.

It is to be noted that there is no reference contained in any of the above paragraphs to differences of grade of the streets.

to be determined by the width of the wider street.

The applicab portion of Section 7 of the A is as follows:

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

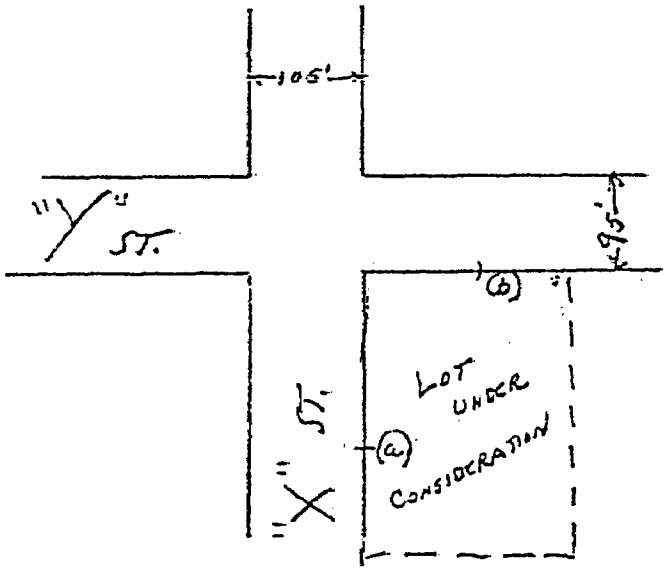
Here again it is to be noted that the Act does not go into differences of grades of the two streets. The matter of grades is covered in the sentence "- - - opposite the middle of the front - - -". This statement completely covers the intent of Congress in the matter of grades. If the street is on a grade, the middle of the front generally gives the average grade which the wording of this sentence specifically shows Congress intended.

The entire crux of the appeal and difference of opinion lies in the 2nd sentence of Section 7. It is all contained in the wording "- - the middle of the front that will permit of the greater height. - -" The front that will permit of the greater height is 11th St. by reason of its greater width. The permission of greater height is based on the width of the street under the Act and is not based on any grade condition, grade conditions not being mentioned as a criterion in the determination of height. Grades have been specifically disposed of by the use of the sentence "- - middle of the front - -."

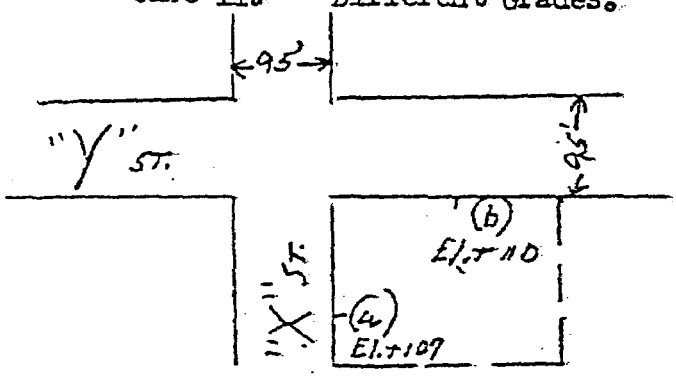
I shall give several illustrations of corner lot conditions showing the substance of this interpretation. Different street widths from those of the case in hand are purposely given in order to show the principle involved.

Case I. Level Grade.

Different width of Street. Ht. allowed 105' plus 20' equals 125' Pt. of measurement (a)

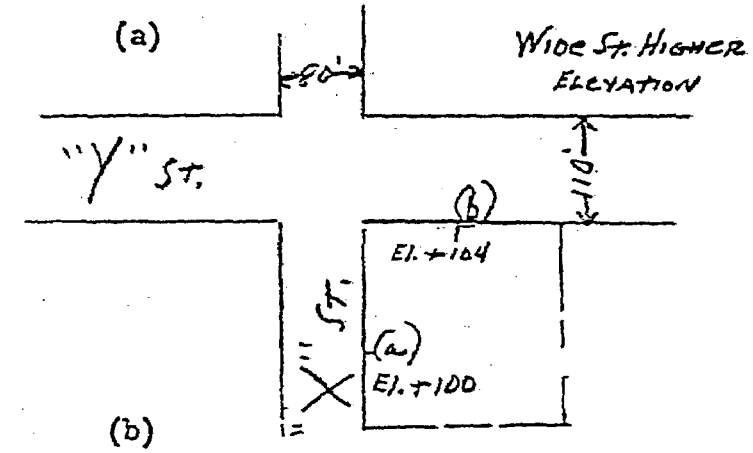


Case II. Different Grades.

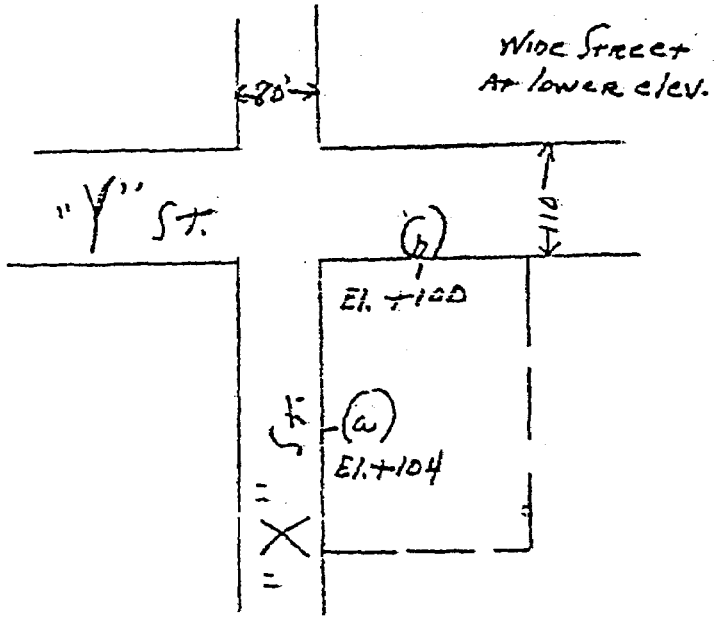


Same Street Widths-Ht. allowed 95' plus 20' equals 115' Pt. of measurement (b)

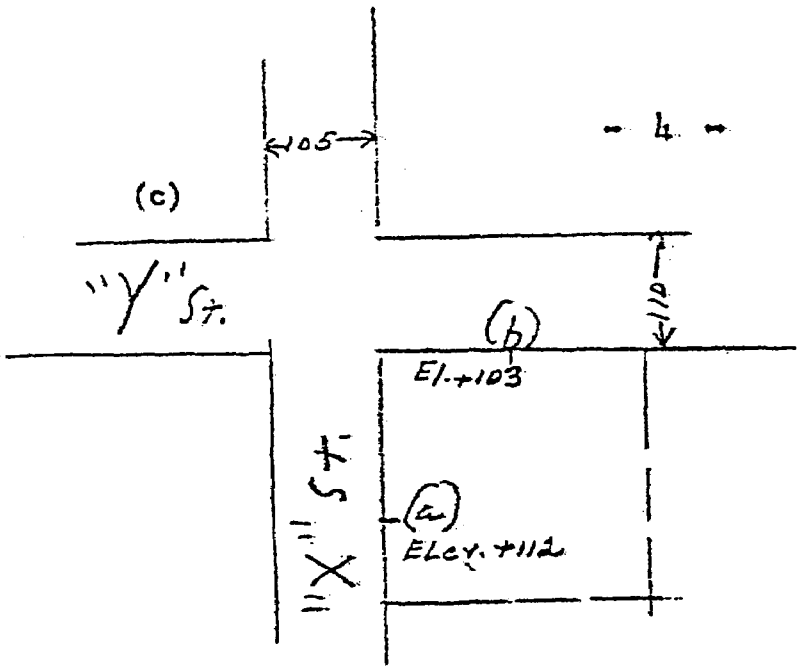
Case III. Different Grades.



Different Street Widths-Ht. allowed 110 plus 20 equals 130 Pt. of measurement (b)



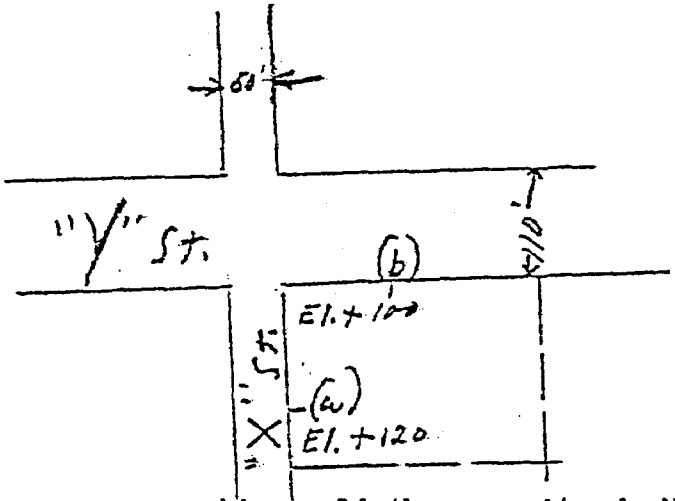
Ht. allowed 110' plus 20' at (b) plus elev. 100. Overall roof elev. plus 230
Ht. allowed at (a) 80' plus 20' Plus elev. plus 104
Overall roof elev. plus 204.
Advantageous to measure at (b)



Height allowed at (b) 110' plus 20' plus elev. 103. Overall roof elev. plus 233
Ht. allowed at (a) 105' plus 20' plus elev. 112. Overall roof elevation plus 237.
Advantageous to take height at (a) which is the narrower street but permits of the greater overall height.

Case IV

The condition which could be created by the requested interpretation.



Y street would permit a height of 110' plus 20' or 130 ft. Taking this height on X street the overall roof elevation would be 130 plus 120 or plus 250.

This would then permit a building 130 ft. high on the narrow street and 150 ft. high on the wide street. It is easy to see the comparative effect on adjoining property on each of the streets.

There is nothing to indicate that Congress intended any such thing. On the contrary, it is clear that Congress intended each street to stand on its own merits, but offered the builder an option of which street to select, basing each street's height on its own width and measurement at the middle of the street under consideration.

Considering the briefs submitted in order, that submitted by Mr. Wyatt, Secretary of The Virginia Hotel Company is a statement without supporting argument.

This office feels that its position is correct and does not request an opinion. The Virginia Hotel Company is requesting an opinion of the Corporation Counsel, to which this office has no occasion to object. This office wishes the matter determined on its merits only, regardless of the number of alleged conflicting opinions.

The brief of Davies, Richberg et al in behalf of A. R. Clas, the architect, presumes a congressional intent based on what they claim was the method of determination prior to the Act of 1910. Any such clarification as they state the Act of 1910 makes, is in support of the position of this office. The point of measurement is now clearly stated to be at the "middle of the front - -" instead of the mean elevation of the sidewalk at the street corners. This alone disposes of the matter of grades.

In seeking an advantageous interpretation the appellants on page 4 of their brief have ignored the rest of the sentence which is the pertinent part as outlined in my explanation of this section of the Act.

Reference is made on page 5 of this brief to the purpose of Congress to maintain a reasonably uniform skyline. My sketch showing the manner in which their interpretation would operate (Case IV) belies such an intent of Congress. To preserve the intent of a uniform skyline, treating each street on its own width clearly follows the intent of a uniform skyline.

On page 6 of the brief there is reference to certain provisions of the Zoning Regulations. In making this reference, there can only be an intent to confuse the issue. The Zoning Regulations are made by the Zoning Commission and not the D. C. Commissioners. The section of the Zoning Regulations to which they refer is not pertinent in any case, dealing with a thru lot, which is not the subject of the present discussion, although the building extends from "H" St. to New York Ave.

The conclusion reached (in the brief) is incorrect as pointed out in the answer given to the statement on page 4 of the brief.

In discussion of the brief submitted by Messrs. Lord, Day and Lord in behalf of The Virginia Hotel Company, I wish to reiterate that the sentence of Section 7 upon which the request is granted, as underlined on page 3 of the brief, does not state that the measurement is to be taken at the middle of the front which has the higher elevation, but the middle of the front which permits of the greater height, such height as outlined under Section 5 for the width of the street under consideration.

The statements contained in Section III on pages 6 and 7 of the brief, have been answered previously. This office is not using the method of measurement alleged to have been used prior to 1910 as stated. The only case in which the method described would create the same result would be in the single case of a building, the full length of the square. This is coincidental. The method of calculation used is under the Act of 1910.

The arguments contained in section IV on page 8 of the brief are fallacious. The floor level of the commercial space is not affected by this ruling. The principle or ability to step down the floor elevation with the grades is not influenced by this decision. It is true that by using the incorrect interpretation proposed, the owner might in extreme grade conditions secure one or even two stories more than the Act intended.

In answer to the statements in section V on Page 9, the interpretation given by the appellants is in violation of the purpose, the spirit, and wording of the Act.

In answer to section VI page 10, this office can see no ambiguity in the Act of 1910.

Lastly, this office denies the conclusion as set forth on page 12 of the brief.

J. B. Daly
Chief Engineer
Dept. of Inspection

JBD:mec



C
O
P
Y

May 11, 1950

TO: THE COMMISSIONERS

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

REPORT:

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

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

> "Sec. 5. That no building shall be erected . . . . so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet;".
>
> "No building shall be erected . . . . as to exceed the height of 130 feet on a business street . . . . except on the North side of Pennsylvania Avenue between First and Fifteenth Sts., N.W., where an extreme height of 160 feet will be permitted."
>
> "The height of a building on a corner lot will be determined by the width of the wider street."

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

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

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

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

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

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

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

Section 6 of the Act provided:

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

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

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

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

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

RECOMMENDATION:

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

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

VEW:ehh
CCO-799.1 - Virginia Hotel Co.
5/10/50

SA:CFM:bb

May 24, 1965

IN RE: Interpretation of Section 5 of the Act of June 1, 1910 Governing Heights of Buildings. (CCO: 799.1-Wandell Construction Co., Inc.)

THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA

Gentlemen:

You forwarded a request from the Director of the Department of Licenses and Inspections that this office render an opinion concerning the interpretation of Section 5 of the Act of June 1, 1910, 36 Stat. 452, Section 5-405, D. C. Code, 1961 ed., regulating the heights of buildings in the District of Columbia.

Section 5 of the above-mentioned Act provides:

> "No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of two or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue or highway".

This section further provides that on a residence street, avenue, or highway buildings are limited in height to the width of the street, avenue, or highway diminished by ten feet, the total height not to exceed ninety feet.

The Department has before it an application to erect a building on Lot 182, Square 70, known as premises 1260 21st Street, N. W. The applicant proposes that the building be ninety feet in height, whereas the Department's position is that the building cannot exceed eighty feet in height. There is attached hereto a sketch reflecting the location of the proposed building and the reservation.

From the Director's memorandum, it appears that the applicant contends that if any part of the building can be said to confront the public space or reservation formed as provided in Section 5, the entire building may take advantage of the height permitted by the wider street. The Department's construction of the Act is, in effect, that unless the center line of the building intersecting the street lines at right angles passes through the public space or reservation, the building is restricted to the height permitted by the street of the lesser width.

The word "confront" is defined in Webster's Unabridged Dictionary (2d ed.) as meaning, among other things, "to stand facing * * * face * * * to put or bring face to face". It seems clear that, since the street space in front of buildings which can fairly be said to be opposite the space formed by intersecting streets includes the space which results from the intersection of the streets and is common to both streets, Congress intended to permit such buildings to take advantage of the wider street forming said intersection. It is noted that the statute speaks of the "building or proposed building."

Obviously, the interpretation given by the Department results in less than the full building being opposite the public space or reservation. Such an interpretation is not unreasonable since it may fairly be said that Congress would not exclude a building from this height provision if only a portion thereof could not be said to confront the space or reservation. Thus, the interpretation given by the Department is, in effect, that a substantial portion of the building involved must confront the intersection as provided by the statute.

It also appears that the applicant has pointed to the case of Stanley Company of America v. Tobriner, et al., 289 F. 2d 318 (1961) for the proposition that the height act should be construed so as to include buildings which may be said to confront the space or reservation at the intersection in the sense

that the building could be viewed from the said space or reservation That case was concerned with an Act designed to accomplish different purposes than the height act and, to a large extent, the Court relied on a long-standing administrative interpretation of the Act by the Fine Arts Commission. Significantly, in the instant case, there is no indication that the statute has ever been construed in any other way since its enactment in 1910. I do not believe that the word "confronts" in Section 5 can be reasonably construed in any other manner than to mean, essentially, "directly opposite." Thus, it would seem clear that a building which is directly opposite the property above the intersection can hardly be said to confront the public space or reservation formed at the intersection of the streets although it may be entirely viewable from such space.

CONCLUSION:

In order to confront the public space or reservation formed at the intersection of two streets within the meaning of Section 5 of the "height act", a building must be fairly said to be directly opposite the said space or reservation.

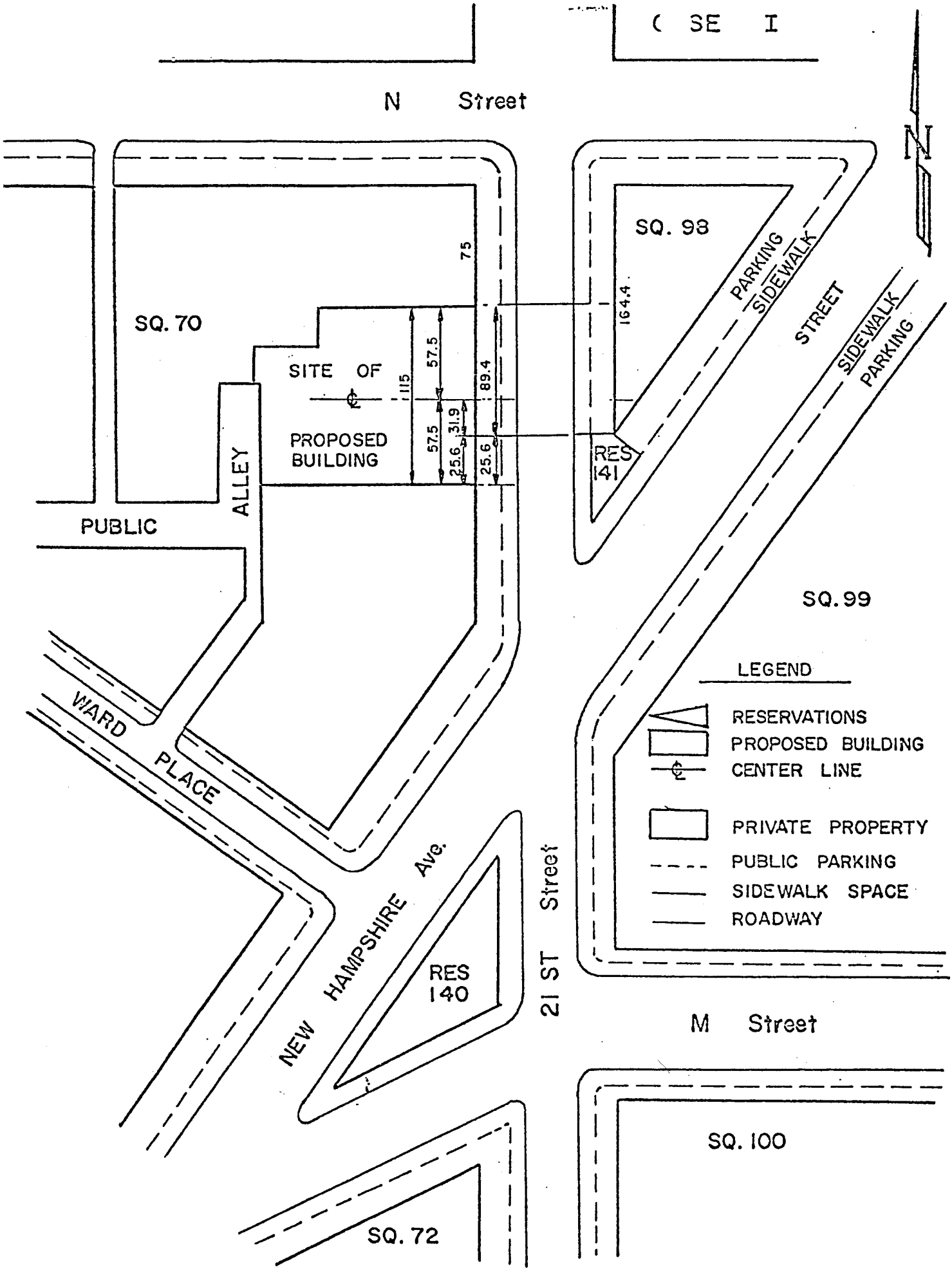
Respectfully,

CHESTER H. GRAY
Corporation Counsel, D. C.

NOTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA SITTING AS A BOARD
MAY 25 1965

SECRETARY

CHM:lik:bb
5-20-65


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N Street
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SQ. 98
SQ. 70
SQ. 99
SQ. 100
SQ. 72
PARKING
SIDEWALK
STREET
SIDEWALK
PARKING
75
164.4
SITE OF
PROPOSED BUILDING
115
57.5
89.4
57.5
31.9
25.6
25.6
RES 141
ALLEY
PUBLIC
WARD PLACE
NEW HAMPSHIRE Ave.
21 ST Street
RES 140
M Street
LEGEND
RESERVATIONS
PROPOSED BUILDING
CENTER LINE
PRIVATE PROPERTY
PUBLIC PARKING
SIDEWALK SPACE
ROADWAY

D.C.-44
APRIL 1980

Memorandum • Government of the District of Columbia

TO: Wylie Williams
Deputy Mayor for Economic Development

Department, Agency, Office: OCC:CDD:LUS:P.Maszak:la

FROM: Richard L. Aguglia RLA
Deputy Corporation Counsel,
Community Development Division

Date: April 11, 1989.

SUBJECT: Permissible Building Height for Warner Theater Rehabilitation under 1910 Height Act, D.C. Code § 5-405 (1981)

The Developer (Kaempfer Company) has requested confirmation from this office that a building height of approximately 140 feet is permissible for the Warner Theater site under the 1910 Height Act, D.C. Code § 5-405 (1981). Based upon our review of relevant case law and Developer's compliance with all applicable administrative approval procedures, we conclude that the Developer's proposed height for the project is supported by the 1910 Height Act.

Currently, the Warner Theater is zoned C-4, a designation generally applicable to the Central Business District. See 11 DCMR § 105.1, § 751.1 et seq. (1987). For this project the maximum permissible building height is 130 feet. See D.C. Code § 5-405 (a); 11 DCMR § 770.1. Development plans already approved by both the Commission of Fine Arts ("CFA") and the Historic Preservation Review Board ("HPRB") contemplate such height of the project as approximately 140 feet.

The 1910 Height Act provides in pertinent part as follows:

> No building shall be erected, altered, or raised in any manner as to exceed the height of one hundred and thirty 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 First and Fifteenth Streets, Northwest where an extreme height of one hundred and sixty feet will be permitted.

D.C. Code § 5-405 (b) (emphasis added). The limited legal question arising for purposes of compliance with the 1910 Height Act is whether the Warner Theater is located "on the north side of Pennsylvania Avenue".

In a case decided by the United States Court of Appeals for the District of Columbia Circuit, the Court affirmed a trial court decision that the Warner Theater Building "fronted" on Pennsylvania Avenue for purposes of CFA jurisdiction under the Shipstead-Luce Act. Stanley Company of America v. Tobriner, 298 F.2d 318, 321 (D.C. Cir. 1961). The Court based its decision on the "physical relationship" of the Warner Theater Building to Pennsylvania Avenue and Pulaski Park (now Western Plaza), which the Court found "to be clearly in the line of a well nigh unobstructed view from the Avenue as well as in close proximity thereto. "Id. at 321.

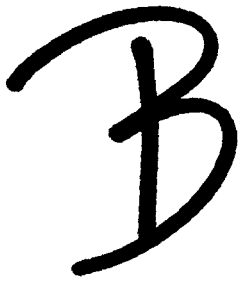
In light of the above Court decision and in the interests of maintaining a consistent administrative interpretation of the location of the Warner Theater Building for all local or federal agencies involved in land use decisions for the site, we advise that the Warner Theater Building is located on "the north side of Pennsylvania Avenue" for purposes of the 1910 Height Act. See D.C. Code § 5-405 (b). As such, a 160 foot height limit is permissible so long as the Developer meets any other conditions imposed by the Height Act (e.g. width of the street). Id.

Moreover, Developer's counsel has assured this office that Developer will proceed immediately to seek a height variance from the C-4 height requirement from the Board of Zoning Adjustment ("BZA"). The BZA will therefore have to provide final approval for the proposed height. As noted previously, the CFA and HPRB have already provided similar approvals for the project at its proposed height.

We also note a consistent administrative practice in that in 1984 the Council designated the subject portion of E Street as Pennsylvania Ave, and that in 1988, DCRA approved a Pennsylvania Avenue address for the Warner Theater.

If you have any further questions, please contact me or Peter S. Maszak of this office at 535-1550.

cc: Fred Cooke/Eric Washington
Edward Curry



UNION STATION AIR RIGHTS

Summary of Building Envelope

