

**Statement of Whayne S. Quin
Zoning Commission Hearing on Height
September 25, 2008**

Comments on Point of Measurement and "Building" Definition

1. As indicated by the Office of Planning, the 1910 Height Act was initiated by the DC Board of Commissioners – not Congress. Under the provisions of the Act, the District of Columbia, through the Mayor, City Council and Office of the Attorney General, is vested with applying and enforcing the Act. Neither the Zoning Commission nor any District or Federal agency has any authority to amend the Act.

2. Within the overall framework of the height limitations, Congress intended broad flexibility so as to allow the maximum use of the space available for development. I say that based upon the legislative history of the Act and its language mandating the highest point of measurement, the right of the City Council to determine the Schedule of Heights and the vesting of enforcement in the OAG's office. Annexation of additional land, conversion of parkland and federal land to private ownership, and significant increases in height under the Act, have never been realistic options. For the City to be competitive, flexibility for development under the general height constraints should be supported by the Planning Office and the Commission – not greater constraints that decrease the ability to develop residential and commercial space within those limitations.

3. Contrary to OP's assertion, the measurement of height, under the Act, is NOT ambiguous or uncertain. Pursuant to the authority of Congress, numerous rulings and interpretations of the Act, both administratively and judicially, have been made. Over the last 100 years, reliance upon these rulings has produced an attractive horizontal fabric of buildings in our Capitol City. There is no reason to depart from these rulings and legal precedents – and every reason to follow them – not just for consistency, but so as not to make hundreds of buildings non-conforming

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CASE NO. OF-46-1
EXHIBIT NO. 28

– and also to help meet economic competition from other jurisdictions adjacent to us that do not have similar height or building constraints.

4. I would like to address two areas: 1) The point of measurement where a building fronts on two or more streets, and 2) the definition of "building" under the Zoning Regulations.

Point of Measurement

5. The Height Act provides a two step process to determine maximum height. First, the permitted height is determined by the width of streets. Second, in a different section of the Act, the point of measurement is to be determined. Section 6-601.07 of the Act provides that "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" (emphasis added). This is a mandatory provision and any Zoning Regulation to the contrary would be contrary to the Act. (See Tab A.)

Consequently, we generally agree with the most recent recommendations of OP set forth in Recommendation A.1 and Option 2 of Recommendation B.1. It should be noted that the Zoning Regulations, under § 2510, provide that Zoning Regulations must comply with the 1910 Height Act. Attached as Tab B are 1) rulings of the Office of Corporation Counsel and 2) as Tab C, two BZA decisions following those opinions and confirming the two step process for the measurement of height.

Definition of "building"

6. The Height Act does not contain a definition of "building." However, since the inception of Zoning in the District of Columbia, the definition of "building" and its application has been essentially the same. (See Tab D containing Zoning

Regulation definitions of 1920, 1945 and 1958 and the 1956 Lewis Plan Zoning recommendation, as well as the 1951 Building Code definition) ---

Namely, that structures which are connected by way of pedestrian access at or above the main floor level have been considered a single building. In this manner, many buildings in the City have been built under the same, as well as separate, ownerships to allow greater height and density than might otherwise be built – but always complying with the overall height limitations of the Height Act. Virtually scores of buildings, likely hundreds, including residential, commercial, hotel, and even single family dwellings, have relied upon this consistent definition for almost 100 years.

7. Unfortunately, the report of the Planning Office seems to treat the existing definition and its long-term and consistent application as something that is untoward or improper; that somehow owners and builders are trying to get away with something that they shouldn't. To the absolute contrary, the definition has served the City well and has provided an important means of development for some of the most important buildings in the City. Significantly, in ALL cases, the height limitations of the Height Act and the requirements of Zoning Regulations have been met. Moreover, if the same property were developed by one owner/developer, the identical height and bulk would not be questioned.

The definition gives architects, owners and developers the ability to be more creative in design by breaking the massing of larger buildings and in providing separate phasing of construction and expansion capabilities for larger buildings. Typical residential implementations of this include Columbia Plaza, the Watergate, the Towers Apartment building at 4201 Cathedral Avenue and the Wardman Park Apartments. One of the major benefits has been the ability to permit a single structure to trade, transfer or extend development rights, including height, from one part of the lot to another and between owners. This is especially helpful in historic building situations, such as the Willard Hotel expansion, the National

Theater and adjacent development, the Homer Building, the Warner Theater, and Metropolitan Square, to name a few.

The definition is also especially helpful for mixed use projects so that the sanctity of uses can remain essentially separate while constituting portions of a single building, such as the Gibson Apartment and 2300 M Street, the residential and office structures at the Westbridge, and the Wardman Park and many other mixed use developments. Even single family homes and churches frequently have an arcade pedestrian connector to a garage or other accessory structure so as to constitute a single building under the Zoning Regulations. Even entire squares which include what appear to be separate buildings are connected under the long provided definition so as to permit pedestrian access throughout and to allow a consistent height for the entire square development. Two of these are 1) the Homer Building Square, 289, bounded by 13th, 12th, F and G Streets and 2) Square 254, including the National Press Building, the JW Marriott, the National Theater and 1301 E Street. Other partial square examples include Columbia Square at 12th and F and the Warner Theater at 13th and E with the office structure at 1201 E Street.

We can provide plats of these for the record, even photographs, if you would like.

Speaking for builders and developers, we do not see any reason that the definition of "building" should be changed. To change the definition in any significant way could be extremely damaging to the District of Columbia. The amendments proposed are not only contrary to long-term and consistent application of the definition to hundreds of building – but would place DC in an economic disadvantage for attracting major users so important for our horizontal City. We ask that you retain the existing definition.

Chip Glasgow will describe the impact that a change of the definition would have on the design of buildings, recent rulings made in reliance upon the existing definition



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Title 6. Housing and Building Restrictions and Regulations. (Refs & Annos)

Chapter 6. Zoning and Height of Buildings. (Refs & Annos)

Subchapter I. General.

→§ 6-601.05. Street width to control building height; business streets; residence streets; specified properties; structures above top story of building.

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

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

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

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

(e) On streets less than 90 feet wide where building lines have been established and recorded in the Office of the Surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the

width of the street, insofar as it controls the height of buildings under this subchapter, shall be held to be the distance between said building lines.

(f) On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia. This restriction shall not apply to any structure that is set back from the 14th Street property line to a line that is continuous with the facade of the adjacent Bureau of Engraving and Printing annex building that is located along 14th Street, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of this subchapter and the Zoning Regulations (11 DCMR).

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

(h) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this subchapter when and as the same may be approved by the Mayor of the District of Columbia; provided, however, that such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed; and provided, that penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof; and provided further, that a building be permitted to be erected to a height not to exceed 130 feet on lots 15, 804, and 805, square 322, located on the southeast corner of 12th and E Streets Northwest, said building to conform in height and to be used as an addition to the hotel building located to the east thereof on lot 18, square 322; and further provided, that the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of 14th and F Streets Northwest, be permitted to be erected to a height not to exceed 140 feet above the F Street curb; and provided further, that the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, and the east by 19th Street, and on the north by a property line running east and west 564 feet in length, said building to cover an area not exceeding 14,000 square feet and to be located on said property not less than 40 feet distant from the north property line, not less than 320 feet distant from the Connecticut Avenue property line, not less than 160 feet distant from the 19th Street property line, and not less than 360 feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of 20th Street meets said boundary, be permitted to be erected to a height not to exceed 180 feet above the level of the existing grade at the center of the location above described; and provided further, that the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Planning Commission, both of the District of Columbia; and further provided, that the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road Northwest in the District of Columbia, approximately opposite 39th Street, plans for which building are on file in the Office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed 110 feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building.

CREDIT(S)

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

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 5-405.

1973 Ed., § 5-405.

Legislative History of Laws

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

Change in Government

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

Transfer of Functions

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

Miscellaneous Notes

Office of Inspector of Buildings abolished: Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

D.C. Schedule of Heights Amendment Act disapproved by Congress: Pursuant to Pub. L. 102-11, 105 Stat. 33, effective March 12, 1991, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress hereby disapproves of the action of the District of Columbia Council described as follows: The Schedule of Heights Amendment Act of 1990 (D.C. Act 8-329),

signed by the Mayor of the District of Columbia on December 27, 1990, and transmitted to Congress pursuant to section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act on January 15, 1991.

DC CODE § 6-601.05

Current through June 4, 2008

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Title 6. Housing and Building Restrictions and Regulations. (Refs & Annos)

Chapter 6. Zoning and Height of Buildings. (Refs & Annos)

Subchapter I. General.

➔§ 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.

CREDIT(S)

(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.

DC CODE § 6-601.07

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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 *JEL*
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

S
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.

VEV:ehh
CCO-799.I -- Virginia Hotel Co.
5/10/50

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13276, of the Pennsylvania Avenue Development Corporation, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a structure which exceeds the height limitation (Paragraph 7107.21) and from the requirement that the building height be measured from the Pennsylvania Avenue curb (Sub-paragraph 5201.232) for a proposed addition to an existing hotel in a C-5 District at the premises 1401 Pennsylvania Avenue, N. W., (Square 225, Lots 4, 5, 31, 27, 32 and 801 and public alley proposed to be closed).

HEARING DATE: July 30, 1980

DECISION DATE: September 3, 1980

FINDINGS OF FACT:

1. The subject property is located in the C-5 PAD District on the west side of 14th Street between Pennsylvania Avenue and F Street, N. W. The site fronts on all three streets.

2. The subject property is improved with the eleven-story Willard Hotel, which was built in 1901. The hotel was closed in 1968 and has been vacant since. It is listed on the National Register of Historic Places and is a Category II Landmark.

3. The applicant has leased the property to a developer who intends to renovate and preserve the existing Willard Hotel and to build an addition to the Willard between the Washington Hotel and the Willard Hotel. The combined complex will be operated as a hotel with approximately 600 guest rooms.

4. The exterior facade and roof of the existing Willard will be repaired and preserved, but will not be changed in height. The "F" Street portion of the addition will be built to the same height as or below that of the existing Willard in order to match cornice and roof lines so as to blend harmoniously with the existing facade.

5. The subject property is located within the planning jurisdiction of the Pennsylvania Avenue Development

Corporation (PADC). The PADC has adopted a development plan known as the Pennsylvania Avenue Plan - 1974 which became effective on May 19, 1975. PADC is empowered by the provisions of the Pennsylvania Avenue Development Corporation Act, 40 U.S.C. Sec. 871 et seq., to establish restrictions, standards and other requirements that will assure conformance to the plan.

6. In the exercise of its authority, PADC has developed a plan for Square 225. The plan calls for the preservation of the Willard Hotel and permits new development in the area between the Washington and Willard Hotels. The plan also provides that the new development between the Willard and Washington Hotels can extend to the full height of the existing Willard Hotel.

7. On June 8, 1978 the Zoning Commission adopted text amendments to the Zoning Regulations designed to implement the intent and purpose of the Pennsylvania Avenue Development Corporation Act and the Pennsylvania Avenue Plan - 1974. Specifically, the Zoning Commission rezoned all of the property in Square 225 from C-4 to the newly created C-5 PAD District. In doing so, the Commission permitted buildings or other structures fronting on Pennsylvania Avenue between 10th and 15th Streets, Northwest to be erected to a height not exceeding 160 feet.

8. At the same time that it permitted a building height of 160 feet, the Zoning Commission also adopted Sub-paragraph 5201.232 which requires that, for buildings fronting on Pennsylvania Avenue, the height shall be measured only from the Pennsylvania Avenue curb opposite the middle of the front of the building. Using this point of measurement procedure, the existing Willard Hotel exceeds the 160 foot height limitation, and is thus a non-conforming structure. In addition, the addition to be constructed by the applicant between the Willard and Washington Hotels would be 163.11 feet in height if measured from Pennsylvania Avenue.

9. The site slopes up from Pennsylvania Avenue to "F" Street, such that there is a difference in elevation of approximately seventeen feet between the two streets. If the height of the building is measured from "F" Street, it would be approximately 151 feet. If measured from 14th Street, the height would be 157.13 feet. The applicant requests a variance to measure the height from 14th Street.

10. If the height is measured from 14th Street, as stated above, the existing building would be less than 160 feet in height, and would thus not be a non-conforming structure.

11. The Office of the Corporation Counsel, by memorandum dated July 29, 1980, advised that the 1910 Height Act permits the height of a building fronting on Pennsylvania Avenue to be measured from the Avenue or any other street upon which it fronts.

12. The applicant, in proposing to construct the addition to the existing Willard Hotel, is confronted with an unusual and unique circumstance by reason of the design review authority conferred upon PADC. Certification by PADC must be a matter of record prior to the issuance of a building permit. Plans for the proposed addition were submitted to PADC by the applicant. PADC deemed the design and height to be in conformity with the PADC Plan and, accordingly, gave it's approval. Thus, the plans before the Board are plans which have been approved by the agency responsible for implementing the Pennsylvania Avenue Plan.

13. As indicated by the testimony of the applicant, a representative of PADC and a representative of the Commission of Fine Arts, none of the other buildings on Pennsylvania Avenue in the C-5 PAD District will require a variance from the point of measurement set forth in Sub-paragraph 5201.232. Accordingly, the Willard Hotel is the only building on Pennsylvania Avenue that will be affected by the Board's granting of the requested variance relief.

14. The existing building is also an historic structure. It is listed on the National Register of Historic Places and is a Category II landmark, indicating that it is a landmark of importance that contributes significantly to the cultural heritage or visual beauty of the District of Columbia and its environs, and which should be preserved or restored. The applicant's proposal is intended to preserve the existing Willard Hotel and to allow it to be used once again for hotel purposes.

15. Finally, the Zoning Regulations permit the construction of an 18 foot, 6 inch penthouse for stairs and elevators and mechanical equipment, which could bring the permitted height of buildings to 178 feet, 6 inches as opposed to 160 feet. Due to the fact that the applicant wants to match the proposed addition with the existing building as much as possible, however, it is proposed to also match penthouses. Thus, the proposed addition will have very minimal additions to the roof and will, in fact, be lower than the height permitted.

16. The applicant's practical difficulties in this case are due to several factors. First, topographical problems make it practically difficult to build an addition which complies with the Zoning Regulations. Second, under the strict application of Sub-paragraph 5201.232, the existing building as well as the proposed addition are nonconforming as to height. Accordingly, no addition to the building is permitted including an addition which is itself conforming. It is therefore impossible to construct an addition without the requested variance relief. Additionally, from a design standpoint, it would be practically difficult to design the proposed addition differently. As it is proposed, the addition is intended to match the cornice and roof lines of the existing Willard Hotel so as to blend harmoniously with the existing facade.

17. As the testimony of the architect discussed, the proposed renovation of and addition to the existing Willard Hotel has been specifically designed so as to avoid any possible adverse impact. The addition will not exceed the existing height of the Willard and will, in fact, be lower.

18. The addition will be set back from Pennsylvania Avenue so that the line of sight will in fact be lower than a building built on 160 feet. The F street facade will blend harmoniously with the existing facade, matching cornice and roof lines. The proposed addition has also been designed so as to match penthouses and, for that reason, will have very minimal additions on the roof and, in fact, be lower in height than permitted under the Zoning Regulations. Further, the proposed addition is under the permitted FAR.

19. The Office of Planning and Development, by report dated July 25, 1980 and by testimony at the hearing, recommended that the application be approved. The Office of Planning and Development reported that a policy of measurement taken from Pennsylvania Avenue would adversely impact the final design of the Willard Hotel, and thus the public benefit through the restoration of an historic structure, by restricting the architect's ability to match both the cornice and roof lines of the existing hotel. The end result would be a composite building, with an identifiable historic structure on one side and an obvious new addition on the other. The public objective in this case is clear, to support the public interest of perpetuating the classic renovation of a fully designed integration of an expanded, functioning historic landmark that compliments both the Pennsylvania Avenue area and the city. It was the opinion of the Office of Planning and Development that the required variances to construct the building addition as proposed are within the intent and purpose of the Zoning

Regulations, the Height Act, the PADC Plan and would affirm the visual clarity of the surrounding area. The proposed addition would harmonize and blend with the existing building and the proposed building height for the addition will be in keeping with the existing height of the Willard. The need for the requested variances arises from the specific character and shape of the site and the historic nature of the existing development. The approval of variances will strengthen greatly the quality of a landmark building. The Board concurs with the findings and recommendation of the OPD.

20. The Pennsylvania Avenue Development Corporation, by statement dated July 30, 1980 and by testimony at the hearing, supported the application. The Corporation advised the Board that the proposed design of the applicant's project has been subject to rigorous review by the Corporation to assure its compliance with the Pennsylvania Avenue Plan - 1974. This review continues, and under the terms of the lease, the applicant is to submit its design development drawings to PADC on or about October 13, 1980. By December 6, 1980, PADC is obliged to deliver the site to applicant ready to build, with alleys closed and existing structures, except the Willard Hotel, cleared. The Corporation's request for the closure of public alleys on Square 225 received its first and favorable action by a Committee of the Council of the District of Columbia on July 23, 1980. Likewise, demolition of the structures adjacent to the Willard was begun recently by PADC's contractor. The Corporation is most anxious that this \$75 million project proceed without delay, and fully supported the applicant's request for this variance. Relief to the applicant in this regard would further the public interest in that it would facilitate timely implementation of this very important project -- a project that has been actively pursued by the Corporation and other public bodies for over three years. The Board agrees.

21. Advisory Neighborhood Commission 2-C, by letter from its chairperson dated July 28, 1980, supported the application.

22. The general manager of the Hotel Washington, by letter dated July 29, 1980, stated that he had no objection to the variance.

23. A representative of the Commission of Fine Arts testified in support of this application at the hearing, stating that the Commission had reviewed the plans and had given preliminary approval.

24. The National Trust for Historic Preservation, by letter dated July 23, 1980, urged approval of this application.

25. A representative of Don't Tear It Down testified in opposition to this application at the hearing. In her testimony, she did not object to the height of the proposed addition, but stated that Don't Tear It Down felt that the plans were in too preliminary a stage for the Board to approve. The Board disagrees. The plans submitted with the record are sufficient enough and the presentation of the applicant detailed enough for the Board to decide the issues raised by this application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of a practical difficulty. The Board concludes that several extraordinary or exceptional situations or conditions affect the subject site. These unusual and unique circumstances include the topography of the land, the existence of the historic structure, and the design review authority conferred upon PADC. The Board further concludes that topographical problems and the existence of the nonconforming structure make it practically difficult to build an addition which complies with the Zoning Regulations. The Board concludes that the Zoning Regulations impose a practical difficulty since under the 1910 Height Act, the applicant is free to choose either 14th Street or "F" Street as the point of measurement, either of which locations would make the building in full compliance with the height limitation. Additionally, the Board concludes that from a design standpoint, it would be practically difficult to design the proposed differently.

The Board notes that the application was advertised to request variances from two provisions of the Regulations. The Board notes that by allowing the height of the building to be measured from 14th Street, the existing building is no longer nonconforming. The Board concludes that no variance relief from Paragraph 7107.21 is therefore required. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations. Accordingly, it is ordered that the variance from Sub-Paragraph 5201.232 regarding the measuring point of the height is granted.

VOTE: 4-0 (Charles R. Norris, Connie Fortune and Leonard L. McCants to grant, William F. McIntosh to grant by proxy).

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 6 OCT 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

7.18

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13112, of Woodley Park Community Association, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator to issue a construction permit for a hotel/convention center in violation of the Zoning Regulations in the R-5-B and R-5-C Districts at the premises 2660 Woodley Road, N.W., (Square 2131, Lot 32).

HEARING DATES: January 30, February 6 and April 2, 1980
and January 14, 1981

DECISION DATES: November 5, 1980 and April 1 and May 6, 1981

FINDINGS OF FACT:

The Findings of Fact in this order are divided into the following parts:

- A. Introduction and Setting (Findings 1-20)
- B. The Sheraton's Motion to Dismiss (Findings 21-24)
- C. The Appellant's Response to the Motion to Dismiss (Findings 25-28)
- D. The Appellant's Arguments on the Merits (Findings 31-62)
 - Height (Findings 32-37)
 - Roof Structures (Findings 38-39)
 - Convention Center Use (Findings 40-41)
 - Parking Spaces (Findings 42-56)
 - Parking Plan (Findings 57-58)
 - Accessibility and Convenience of Parking (Findings 59-62)
- E. The Zoning Administrator's Arguments on the Merits (Findings 63-82)
 - Height (Findings 64-66)
 - Roof Structures (Finding 67)
 - Convention Center Use (Findings 68-72)
 - Parking Spaces (Findings 73-80)
 - Parking Plan (Finding 81)
 - Accessibility and Convenience of Parking (Finding 82)

F. The ANC Report (Findings 84-85)

G. The Board's Findings on the Merits (Findings 86-91)

A. Introduction and Setting

1. The subject property is located between Woodley Road and Calvert Street, west of 24th Street and Connecticut Avenue, N.W. The premises are known as 2660 Woodley Road, N.W. and consist of an irregularly shaped site comprising approximately sixteen acres.

2. Most of the site is zoned R-5-B, with the portion of the property lying within 175 feet of Calvert Street zoned R-5-C.

3. The subject property is owned by the Washington Sheraton Corporation, hereinafter referred to as the Sheraton. Pursuant to Section 1.151 of the Supplemental Rules of Practice and Procedure before the BZA which were in effect prior to August 27, 1982, and which govern the subject appeal, the Sheraton is an intervenor and party to this matter.

4. On December 16, 1976, the Sheraton Corporation, parent corporation of intervenor herein, announced plans for the redevelopment of the old Sheraton Washington Hotel which had been in existence on the subject site since the 1920's. The plans called for the demolition of portions of the existing building and their replacement with new hotel construction, including guest rooms and convention and exhibit space.

5. In August of 1977, plans for the rebuilding of the Sheraton Washington and a building permit application were submitted to the Zoning Regulations Division of the Department of Housing and Community Development of the District of Columbia Government.

6. In late November or early December, 1977, representatives of the Woodley Park Community Association, hereinafter referred to as the appellant, met with the Zoning Administrator to discuss several zoning issues regarding the proposed new construction.

7. The December, 1977, meeting was summarized by a letter dated December 5, 1977, marked as Exhibit No. 16 of the record, from William H. Carroll, President of the appellant, to James J. Fahey, Zoning Administrator. In the letter, the appellant asserted that:

- a. The proposed hotel complex is a nonconforming structure which does not comply with the setback provisions of Paragraph 3201.24, the

rear yard requirements of Section 3304 and the height regulations for the R-5-B District.

- b. Use of the structure for convention and exhibit purposes is a primary use which is not permitted as a matter of right.

8. The original plans proposed a total of 1,502 rooms or suites of rooms. Of that total, 306 units were to be in the Wardman Tower, 214 were in the Motor Inn, and 982 were to be in the newly constructed portion of the hotel.

9. Between August of 1977 and April, 1978, revised plans were submitted to the Zoning Administrator. These plans showed a decrease in the number of rooms or suites of rooms from 1,502 to 1,366, a reduction of 136 rooms or suites of rooms. The revised plans provided 209 units in the Wardman Tower, 212 units in the Motor Inn and 945 in the newly constructed portion of the hotel.

10. By April 27, 1978, the Chief of the Zoning Review Branch made computations from the revised plans for the Sheraton and determined that the proposed structure complied with all provisions of the Zoning Regulations. While the computation sheet dated April 27, 1978, reflected 1,502 sleeping rooms or suites, these plans had been previously revised and the Chief of the Zoning Review Branch had reviewed and approved the revised plans which contained a total of only 1,366 sleeping rooms or suites.

11. During this time period, Sheraton was issued a foundation permit No. B258259 for the new addition on March 2, 1978, and ground breaking occurred in the spring of 1978.

12. The Sheraton subsequently received a full building permit, No. B264384, from the Building Regulations Division issued on October 6, 1978. Several partial building permits were issued prior to that.

13. Construction continued on the building through the end of 1978 and the first half of 1979. The building was under roof, with the exterior shell completed in July of 1979.

14. On August 16, 1979, the Sheraton applied for a Certificate of Occupancy for a portion of the subject building. On August 17, 1979, that application was approved as complying with the Zoning Regulations.

15. In August of 1979, the Sheraton submitted plans which revised the plans which had been approved as part of the original full building permit.

16. On September 6, 1979, Gleason Wilson, the technician in the Zoning Administrator's office who worked on the project, prepared and signed a revised computation sheet. That sheet accurately reflected the development approved in April of 1978. It showed 1,366 rooms or suites of rooms, 579 parking spaces required and 595 parking spaces provided.

17. Pursuant to the application filed on August 16, 1979, Certificate of Occupancy No. B115883 was issued on September 12, 1979 for "Hotel-Restaurants (lobby level) front desk area Specialty restaurant Kitchen and guest rooms, S.W. & N.E. Wings; 2 passenger elevators-3 service elevators (320 rooms)."

18. The appellant filed the subject appeal on October 12, 1979.

19. Additional certificates of occupancy were issued to the hotel on November 6 and December 31, 1979.

20. Between November, 1976, and October 1979, the appellant and the Sheraton conducted many meetings and exchanged a great deal of correspondence and telephone calls in discussion over the proposed hotel, with most of the attention directed at the number of parking spaces, access and circulation. While there are conflicting views of much of those contacts by the respective parties, it is clear that no final written agreement was ever reached between the appellant and the Sheraton.

B. The Sheraton's Motion to Dismiss

21. On January 23, 1980, the Sheraton moved to dismiss the appeal. The Sheraton argued that the Board lacked jurisdiction to consider the matter because:

- a. The appeal herein was not 'timely' filed as required by the rule of special applicability as set forth in Section 2.21 of the Supplemental Rules of Practice and Procedure.
- b. The appeal was barred by the doctrine of laches.
- c. The District of Columbia was barred from revoking the Sheraton's building permit at this time by the doctrine of estoppel.

22. In support of the motion, the Sheraton argued that the instant appeal came too late. The Zoning Administrator's calculations that are the subject of this appeal were completed on April 28, 1978. On January 6, 1978, the first permit, for excavation, was issued and on March 3, 1978 a foundation permit was issued. Subsequently,

on October 6, 1978, the overall building permit was issued. Yet, the appellant delayed its appeal until October 12, 1979, more than eighteen months after the building permit. At the time of the appeal, construction had proceeded sufficiently for certificates of occupancy to be issued for 320 of the 945 new hotel units. A reasonable time for bringing the appeal had long since passed.

23. As to laches, the Sheraton argued that the appellant's unreasonable delay in bringing this appeal gives rise to the defence of laches. In Goto v. Board of Zoning Adjustment, 423 A.2d 917 (D.C. App., 1980), the District of Columbia Court of Appeals held that the doctrine of laches was applicable in zoning appeals. Goto reaffirms the rule that the two elements of laches are: (1) unreasonable delay in bringing the appeal; and (2) prejudice to the party asserting laches. The court held that:

"Laches will bar the claim of [Appellants] if they delayed unreasonably in bringing their appeal to the Board to [Appellee's] prejudice. "The principal element in applying the doctrine of laches is the resulting prejudice to the defendant, rather than the delay itself" (423 A.2d at 925)."

The original computation sheet dated April 27, 1978, provided substantially the same basis for appeal as the revised ruling from which the appeal was taken. The Sheraton expended a very large amount of money in reliance upon the approvals given pursuant to the April 27, 1978, ruling that the proposed building complied with the Zoning Regulations. The Sheraton argued that the appellant delayed unreasonably in filing the appeal.

24. As to estoppel, the Sheraton argued that the Government of the District of Columbia is estopped from revoking intervenor's building permit because the Sheraton, in good faith, has made a substantial change of position in reliance on the permit. It is well established that the doctrine of equitable estoppel applies to the enforcement of Zoning Regulations. Rathkopf, The Law of Zoning and Planning, 67-16 to 67-17, Volume 4 (4th Ed. 1978); Yokley, Zoning Law and Practice, §14-2, Volume 2 (4th Ed. 1978); District of Columbia, v. Cahill, 60 U.S. App. D.C. 342, 54 F.2d 453 (1931); Smith v. District of Columbia Board of Zoning Adjustment, 342 A.2d 356 (D.C. App. 1975); Wieck v. District of Columbia Board of Zoning Adjustment, 383 A.2d 7 (D.C. App. 1978). The effect of the doctrine is to bar challenges to good faith actions taken pursuant to approvals by properly empowered public officials. In Wieck, supra, the elements of estoppel are set forth as follows:

" . . . a party (1) acting in good faith, (2) on affirmative acts of a municipal corporation, (3) makes expensive and permanent improvements in reliance thereon, and (4) the equities strongly favor the party invoking the doctrine. . . . Furthermore, the reliance of the party must be justifiable."

The Sheraton argued that it met all procedural and substantive requirements in good faith in obtaining all issued permits for the construction and occupancy of the building. The Sheraton assumed it was proceeding in full conformity with the Zoning Regulations. All required plans were filed, such plans were reviewed and determined to be in compliance, permits were obtained and substantial expenditures incurred as a result of that reliance. The Sheraton expended over \$45 million. The Sheraton further argued that the instant appeal, if upheld by the Board, would cause the revocation of building permits for a ten story structure after it had been completed and was under roof, all of which was done with the appellant's full knowledge since May, 1977. The appellant waited while the Sheraton changed its position to its substantial detriment. If the appellant had timely filed the appeal, the issues raised in the appeal could have been resolved before the Sheraton made substantial expenditures and prior to the issuance of a full building permit on October 6, 1978. The Sheraton lastly argued that its reliance in this case was justifiable because the persons who approved the building permit as to zoning compliance were the properly empowered administrative officials to make such a decision.

C. The Appellant's Response to the Motion to Dismiss

25. The appellant opposed the motion to dismiss, arguing that the defenses of timeliness, laches and estoppel were without merit.

26. As to timeliness, the appellant argued that it filed the appeal thirty-seven days after the Zoning Administrator's revised computation sheet was prepared on September 6, 1979. Regarding the original decision made on April 27, 1978, and the subsequent permit issued, the appellant argued that the governing rule must be that the time for an appeal must run from the time when the party aggrieved was chargeable with knowledge of the decision from which it appeals. The appellant argued that it was not until the Zoning Administrator's decision of September 6, 1979, that the appellant became aware of the extent to which the Sheraton's revised building and parking plan fell short of the requirements specified in the Zoning Regulations. The appellant could not have been expected to appeal that plan prior to its approval by the Zoning Administrator and knowledge on the appellant's part of the existence of the revised plans. Accordingly, the appellant believed that

September 6, 1979, marked the date of the decision from which the appellant rightfully appeals.

27. As to the defense of estoppel, the appellant argued that the equitable defense of estoppel will lie only when the party asserting it has "clean hands" or is innocent of wrongful, deceptive, or unconscionable acts. In zoning cases, the defense of estoppel is not favored. The appellant argued that the record it laid out establishes that the indispensable element of good-faith is not present. The appellant argued that: (a) The equities are not with Sheraton. (b) There is no evidence of reliance. (c) Even if there were, this reliance plainly would not have been justified. At best, Sheraton can only urge that the appellant was lulled into inaction by its own misrepresentations. (d) To the extent that Sheraton relied upon the building permit of October 6, 1978, this reliance was based upon a permit secured on the basis of incomplete, misrepresented and untrue facts. The structure did not include, as represented in its plans, 1501 habitable rooms, there were not 784 existing parking spaces, etc.

28. As to the defense of laches, the appellant cited the D.C. Court of Appeals in Wieck v. District of Columbia Board of Zoning Adjustment, 383 A.2d 7 (D.C. App., 1978):

"A claim of laches in the zoning context is not judicially favored and is rarely applied except in the clearest and most compelling circumstances."

The defense of laches is available only to a party who in good faith and without misstating, failing to disclose, or misrepresenting facts, has acted in reliance upon another's acquiescence. The appellant argued that the record indicated that Sheraton did not act in good faith and did misrepresent the facts, thereby barring proper use of laches.

29. The Zoning Administrator, the appellee in this matter, took no position on the motion to dismiss.

30. At its public meeting held on April 1, 1981, the Board denied the motion to dismiss on all three grounds discussed above, for the reasons set forth in the conclusions of law, below at pages 22 and 23.

D. The Appellant's Arguments on the Merits

31. As the basis for the appeal, the appellant argued that the Zoning Administrator erred in approving the building permit application for zoning purposes because:

- a. The building exceeds the maximum height permitted in the R-5-B and R-5-C Districts.

- b. The roof structures exceed the maximum height permitted.
- c. The convention center use of the property is not an accessory use to the hotel but rather is a principal use and thus not permitted.
- d. The number of parking spaces provided is less than the number required.
- e. There was no valid parking plan submitted.
- f. The parking spaces are not reasonably accessible and convenient to users.

32. As to the building height, the appellant argued that the building height exceeds the maximum height permitted by the Act of 1910. Sub-section 7609.1 of the Regulations requires buildings to comply with the provisions of that Act. The Act of 1910 limits the height of buildings in a residence district to the width of the street less ten feet. Since Woodley Road is only ninety feet wide, the building should not exceed eighty feet in height. The building is approximately ninety feet in height, and thus is in violation.

33. The appellant further argued that the building exceeds the permitted height as specified in the Regulations.

34. In Section 1202, "building, height of" is defined as:

"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; ..."

35. Sub-section 3201.1 of the Regulations provides a maximum building height in feet of sixty feet in the R-5-B District and ninety feet in the R-5-C District.

36. Paragraph 3101.24 of the Regulations provides that:

"A building or other structure may be erected to a height not exceeding 90 feet, provided such building or structure is removed from all lot lines of its lot for a distance equal to the height of such building or structure above the natural grade."

37. From the provisions cited in Findings 34, 35 and 36, the appellant argued that if the height of the building were measured from the natural grade rather than the curb, in order to achieve a height of ninety feet, the building would be required to be set back ninety feet from all lot

lines. Since the building abuts the lot line in two places on the south, the building does not meet the setback mandated by Paragraph 3201.24, and thus violates the height requirements.

38. As to the roof structure height, the appellant argued that the pertinent part of Paragraph 3201.26 requires that all roof structures in excess of ninety feet must be "set back from all lot lines of the lot upon which such structure is located a distance equal to their respective heights above the roof of the top story." The two penthouses on the south side of the new construction are located on the lot line, and thus do not meet the setback requirement.

39. The appellant further argued that since the roof structures do not meet the setback requirements, they cannot be considered penthouses and must therefore be considered a part of the main building. If they are part of the main building, the height of the building would be considerably greater than ninety feet.

40. As to the convention center use, the appellant argued that an accessory use is one which is incidental to the principal use. The appellant cited Yokley, Zoning Law and Practice, 8-2, 8-3:

"...incidental uses have always been authorized when they are customary and do no violence to the plain intent of the ordinance. Incidental means that the use must not be the primary use of the property, but one which is subordinate in minor significance incorporating the concept of reasonable relationship with the primary use."

The appellant argued that the convention and exhibit facilities clearly exceed this concept. Such facilities contain approximately 200,000 square feet of floor area and can accommodate approximately 24,000 people. The appellant argues that the convention-exhibit facilities provide the financial life blood of the Sheraton's business and, are of paramount importance to the overall business conducted at the premises. There are over three acres of convention-exhibit space at the premises. The convention facilities alone are expected to attract more than 400,000 convention delegates annually to Washington, D.C. Most of the hotel's room bookings are generated by the assembly use. Over and above the convention business, the facility also regularly attracts large crowds of persons at banquets and other special social functions. These, too, play a large role in the financial life of the Sheraton. The appellant argued that most of the persons drawn to this facility are not hotel guests, that service to these persons comprises the paramount, dominant business conducted at these

premises, and that the presence of these persons is not "subordinate" and "incidental" to the hotel business. The number of persons regularly accommodated is not "minor" in relationship to the hotel business.

41. The appellant further argued that the Zoning Administrator also plainly erred by looking exclusively to the ratio of square feet in the convention-exhibit area to the total area of the entire complex. His calculation, made without reference to whether the use is "subordinate" or "incidental," excluded consideration of common hotel-assembly use support space, such as kitchens, lobbies, and dining areas, and of support space exclusively devoted to the convention-exhibit facilities such as the enormous convention lobby.

42. As to the number of parking spaces required for the subject property, the appellant argued that the Zoning Administrator erred in two respects. First, he did not require the Sheraton to provide parking as specified in prior Orders of the BZA and the Zoning Commission. Second, he excluded from the computation of required parking spaces the rooms in the Wardman Tower.

43. In BZA Appeal No. 5420, by Order dated March 18, 1959, marked as Exhibit No. 87 of the record, the Board granted variances "from the height, court and yard requirements of the R-5-B District to permit a ballroom addition to the then existing Hotel and for erection as a part thereof a parking garage to accommodate approximately 281 automobiles." As a part of the reasons for granting the appeal, the Board stated:

"The hotel will provide a parking garage to accommodate 281 automobiles. Although there is no requirement in the regulations for the additional parking spaces requested in this appeal, the request was made to provide additional parking for the increased facilities, namely the ballroom addition for the Hotel."

44. In BZA Appeal No. 6564, by Order dated December 18, 1961, marked as Exhibit No. 86 of the record, the Board granted a variance from the provisions of Section 3201.24 to permit an addition to the Sheraton Park Hotel.

45. By Order dated April 17, 1962, the Zoning Commission rezoned a portion of the subject property from R-5-B to R-5-C.

46. In BZA Appeal No. 6750, by Order dated December 5, 1962, marked as Exhibit No. 85 of the record, the Board granted a variance from the setback requirements of Section 3201.24 to permit an addition to the Sheraton Park Hotel and

approved roof structures in accordance with Section 3308. As a finding of fact in that Order, the Board stated:

"A traffic report relating to the proposed addition...was made part of the record before the Zoning Commission [in the above cited case]. This report disclosed that the existing off-street parking spaces totalling 564 will be increased to 898 and that the present hotel rooms, excluding permanent suites, will be increased from 910 to 1100 rooms."

Approval of the application was subject to the condition that:

"a. The building shall be erected substantially in accord with revised plans marked "Exhibit A - William E. Chase" dated December 5, 1962 and filed for the record on that date to comply with verbal instructions issued to the appellant by this Board immediately following the hearing of the case."

47. The appellant further cited testimony and evidence in the record of the above-cited zoning applications that indicated that the hotel would be providing parking that would total 898 spaces.

48. The appellant thus argued that the previous decision of the BZA requires that the Sheraton now provide at least 898 parking spaces and that the Zoning Administrator was in error in approving plans that showed any number of spaces less than 898.

49. As to the Wardman Tower, the computation sheet prepared on September 6, 1979, by the Zoning Administrator's office indicated that no parking was required for that portion of the building, since it was built prior to 1958.

50. Sub-section 7201.1 of the Regulations requires that:

"All structures erected on or after the effective date of these Regulations [May 12, 1958] shall be provided with parking spaces to the extent specified in Section 7202, ..."

51. Sub-section 7201.2 of the Regulations provides that:

"When the use of a structure is changed to another use which requires more parking spaces than required for the use existing immediately prior to such change, ..., parking spaces shall be provided for the additional requirement in the amount necessary to conform to Section 7202, ..."

52. Sub-section 7201.3 of the Regulations provides that:

"When the intensity of use of a structure existing before the effective date of these regulations is increased by an addition or additions of employees, dwelling units, gross floor area, seating capacity or other unit of measurement specified in Section 7202, ..., parking spaces shall be provided for such addition ..."

53. Paragraph 7201.31 of the Regulations provides that parking is required for an increase in intensity of use only when the increase exceeds twenty-five percent in the aggregate.

54. Paragraph 7201.34 of the Regulations provides that:

"The determination of the increase of intensity of use shall be based on the total increase in intensity of use such structure undergoes on or after the effective date of these regulations whether such total increase occurs at one time or in successive stages."

55. The appellant argued that the exclusion of the Wardman Tower from the computation of the required parking was based on the Sheraton's representation to the Zoning Administrator that the number of rooms decreased from 310 to 209.

56. A representative of the appellant testified that it was his best information and belief, citing a 1969 newspaper article, that the Wardman Tower contained sixty units in 1958. The appellant thus argued that parking should therefore be required for any number of units in excess of seventy-five, which is twenty-five percent more than sixty, and that the Zoning Administrator was in error in not requiring some parking for 209 rooms in the Wardman Tower.

57. As to the submission of a valid parking plan, Paragraph 7201.11 of the Regulations provides that:

"No application for a building permit for a structure to be erected on or after the effective date of these regulations shall be approved unless there is included with the plans for such structure a parking plan showing the location, dimensions, and grades of all required parking spaces and approaches thereto in accordance with the provisions of this article."

58. The appellant argued that the Sheraton did not submit a plan meeting the above-cited requirements. The drawings submitted by the Sheraton in support of its building permit application plainly failed to specify the

location, dimension, and grades of the parking spaces actually provided or to be provided. Instead, the drawings provided were wholly inaccurate and furnished none of the required information in respect to the garage spaces. With respect to most of the spaces, the Sheraton furnished only written lists of the numbers of spaces allegedly found within existing garages.

59. As to the issue of the location, accessibility and convenience of the parking spaces, the appellant asserted that the Regulations require the spaces to be located in such a way that they are reasonably accessible and convenient. The appellant argued that the spaces proposed did not meet that test.

60. The appellant lastly argued that the building permit was invalidly issued because the Zoning Administrator was not authorized to permit a reduction in the number of spaces existing at the subject premises. As the basis therefore, the appellant cited Sub-section 7206.2, as follows:

"Parking spaces shall not be reduced in total extent after their provision except upon approval of the Board of Zoning Adjustment and then only after proof that the parking spaces provided are no longer needed by reason of a reduction of employees, seats, gross floor area, dwelling units, or any other unit of measurement, provided the Board of Zoning Adjustment may impose any condition it shall deem necessary to assure the addition of parking spaces in case of a subsequent increase in employees, seats, gross floor area, dwelling units, or any other unit of measurement."

61. The appellant, through various citations to material in the record of previous BZA appeals, argued that there were at least 678, 898 or 784 parking spaces in existence at the site in the past. The appellant argued that the spaces could not be eliminated without BZA approval.

62. The appellant introduced some evidence and attempted to present further evidence and testimony on the adverse impact of the hotel on the surrounding neighborhood, particularly in terms of parking and traffic. Many letters were submitted to the Board on that subject.

E. The Zoning Administrator's Arguments on the Merits

63. The Zoning Administrator presented testimony and evidence in support of his decision to approve the building permit for the hotel as far as compliance with zoning was concerned. Part of the material presented by the Zoning Administrator to the Board during the course of the hearings

included the actual plans which he reviewed and approved. Those plans are the official records of the Department of Consumer and Regulatory Affairs, are physically in the possession of that Department, and thus are not in the files of the BZA.

64. As to the first issue on appeal, the height of the building, the Zoning Administrator argued that the building as approved meets the height requirements. The property is split between the R-5-B and R-5-C Districts. The table in Sub-section 3201.1 permits a maximum height of buildings of sixty feet in the R-5-B District and ninety feet in the R-5-C District. As to the R-5-C portion of the site, ninety feet is thus permitted as-of-right with no setback.

65. The Zoning Administrator testified that all of the paragraphs under Sub-section 3201.2, including the setback requirements of Paragraph 3201.24, apply only to the extent that a building or structure is proposed to exceed the normal limits set forth in Sub-section 3201.1.

66. The Zoning Administrator testified that that portion of the subject building at issue which is located in the R-5-B District and has a height in excess of sixty feet is set back from all lot lines at least ninety feet. That portion of the building that is in the R-5-C District need not be set back to reach a ninety foot height.

67. As to the second issue on appeal, the roof structures, the Zoning Administrator noted that the roof structures for the subject building were approved by the Board in Application No. 12949, by Order dated October 22, 1979. That application requested relief as to the requirement to enclose all roof structures in one enclosure. All of the roof structures for the subject building were shown on the plans submitted in that application, and the roof structures actually constructed on the building are those as shown on the plans approved by the Board.

68. As to the third issue on appeal, the convention center as accessory use, the Zoning Administrator cited as the basis for his ruling the decisions of the BZA in Appeals No. 9655 and 11018.

69. In Appeal No. 9655, by Order dated October 4, 1968, marked as Exhibit No. 91 of the record, the Board stated in its Order:

"There seems to be no question that a hotel may book conventions, as such conventions are merely the exercise of guests, whether registered or not, of the right to meet for the discussion of matters of common interest. Further, there seems to be no question that others having a relation to the interests of those

convening may exhibit their wares and services as an adjunct to the convention and within the hotel. The taking of orders and the making of incidental, casual sales by the exhibitors is, in our opinion, embraced within the broad language of Section 3105.53 of the Zoning Regulations which permits "--accessory uses-- customarily incident to the uses permitted in R-5 Districts under the provisions of this Section." Accessory uses contemplated by this Section do not require Board approval under Section 3105.4."

70 In Appeal No. 11018, by Order dated June 5, 1972, marked as Exhibit No. 92 of the record, the Board stated:

"The Board ... on proceeding to the merits decides the exhibition hall is permitted by the Zoning Regulations and by previous decisions of the Board of Zoning Adjustment ..."

71. The Zoning Administrator testified that the total gross floor area of the hotel was 1,205,312 square feet. The function rooms occupied 118,846.61 square feet of that total, or 9.86 per cent of the gross floor area. Even comparing the total square footage of the function areas, 165,212 square feet, to the total gross floor area, the function rooms comprised only approximately thirteen percent of the total space of the hotel.

72. The Zoning Administrator testified that the convention center use is located on the same lot as the hotel, another requirement for an accessory use.

73. As to the fourth issue on appeal, the number of parking spaces, the Zoning Administrator testified that the revised plans submitted before the permit was issued provided for 1,366 rooms or suites of rooms, as set forth in Finding No. 9. Parking for a hotel is required on the basis of one space for every two sleeping rooms or suites. For the Motor Inn, with 212 rooms or suites of rooms, 106 parking spaces are required. For the new construction, with 945 rooms or suites of rooms, 473 parking spaces are required. For the Wardman Tower, with 209 rooms or suites of rooms, no parking was required because the Wardman Tower was built prior to the requirement for parking and the Zoning Regulations are not retroactive. According to the Zoning Administrator, the parking required is thus 579 spaces.

74. The computation sheet dated September 6, 1979, which reflected the development approved in 1978, shows that 595 parking spaces are provided, including 144 on the surface, 310 in the Motor Inn and 141 in the Cotillion garage.

75. The Zoning Administrator testified that prior to the issuance of any certificates of occupancy for the new construction, he had been advised by a representative of the appellant that an on-site inspection had revealed that the Sheraton was not providing and could not provide all of the parking spaces shown on the plans. The Zoning Administrator advised the Sheraton through counsel that he would not approve any requests for certificate of occupancy unless the parking was provided. He also advised the Sheraton that he had reason to believe that there were obstructions of spaces that did not appear on the plans.

76. As a result of this communication from the Zoning Administrator, the Sheraton remeasured and revised the parking plan for the garage, which was field checked by the Zoning Administrator's office prior to the issuance of the partial certificate of occupancy. This parking plan was the plan submitted in August of 1979.

77. The Zoning Administrator testified that the final parking plan provides for 615 spaces, including 116 spaces on the surface, 360 in the Motor Inn and 139 spaces in the garage on the west side of the property.

78. As to the Wardman Tower, the Zoning Administrator further testified that it was built prior to 1942, at a time when the Regulations required no parking. He testified that he was unable to determine through official records what use the building was built for, when the building first received a certificate of occupancy for hotel use or how many units were in the building in 1958. As to the last point, the Zoning Administrator testified that he had checked the records of the Fire Marshall's office, the Building Inspector's office and the Housing Inspector's office in the Department of Housing and Community Development, the Permit Branch and the License Branch of the Department of Licenses, Investigations and Inspection and the Assessors office in the Department of Finance and Revenue. None of those available records contained information as to how many units were in the Wardman Tower in 1958. The Zoning Administrator further testified that there were no city records regarding any renovation of the building which may have occurred in 1976. The Zoning Administrator concluded that he had no basis to determine whether there was an increase in intensity of use of the Wardman Towers and if so, what that increase had been. Consequently, he did not require any parking for that portion of the hotel.

79. The Zoning Administrator further testified that no plans for renovation of the Wardman Towers were submitted with the original plans for the hotel in 1977. The original count of 306 units was a proposal by the applicant that was subsequently reduced in the approved plans to 209 rooms or suites.

80. As to the effect of the prior Orders of the Board, the Zoning Administrator testified that he carefully reviewed the orders cited in Findings 43, 44, 45 and 46. He further testified that all of the references to the number of parking spaces in those orders were either findings of fact or opinions, and that none of the orders contains a specific condition requiring the hotel to provide a specific number of parking spaces. The Zoning Administrator further testified that the consistent policy of his office, based on advice from the office of the Corporation Counsel, had been that statements of the BZA contained as findings or conclusions or opinions but not specifically enumerated as a condition on the granting of an application were not enforceable. The Zoning Administrator further noted that the BZA cases at issue were for variances regarding height and setback provisions, and were not for parking.

81. As to the fifth issue on appeal, the submission of a parking plan, the Zoning Administrator testified that the plans originally approved for zoning purposes did contain a plan showing the location of parking spaces. The revised plans submitted in August of 1979, showing 595 spaces, was drawn to scale, and showed the location and dimension of all parking spaces. Those plans were displayed to the Board at the public hearings on February 8 and April 2, 1980.

82. As to the last issue on appeal, the reasonable and convenient location of parking spaces, the Zoning Administrator testified that the provisions of Paragraph 7205.33, wherein the requirement for reasonable and convenient location is stated, apply only to applications for special exceptions under Sub-section 7205.3. The Sheraton did not seek such relief, and the requirement is therefore not applicable.

83. The Sheraton supported the testimony and position of the Zoning Administrator as set forth above.

F. The ANC Report

84. Advisory Neighborhood Commission 3C, by letter dated January 28, 1980, supported the appeal. The ANC noted its specific concern with the number of parking spaces provided, the ingress and egress to the site and the presence of the convention center/exhibit hall space as a principal use. The ANC, through the testimony of two specific witnesses, played an active role in the presentation of the appellant's case.

85. The Board finds that the first and third concerns cited by the ANC are integral to the appellant's case, and will be addressed as part thereof. The second concern, as to ingress and egress is not a zoning matter. It is not

controlled by the Zoning Regulations, and is not a part of the subject appeal.

G. The Board's Findings on the Merits

86. As to the appeal on the height of the building, the Board finds as follows:

- a. The Act of 1910, when read in combination with the Zoning Regulations, allows the selection of one street to be used for the purpose of measuring the height of the building and another street to be selected for the purpose of determining the height related to the width. Consequently, the Zoning Administrator committed no error in allowing the height to be measured on the Woodley Road side and allowing the building to take as the width of the street the width of Calvert Street.
- b. The plain language of Sub-section 3201.1 allows a building in an R-5-C District to have a height of ninety feet with no setback requirements.
- c. The language of Sub-section 3201.2 clearly states that the following paragraphs, including Paragraph 3201.24, apply only to the extent that the height exceeds that specified in the table in Sub-section 3201.1.
- d. The setback requirements of Paragraph 3201.24 apply only to that portion of the building in the R-5-B District, where the height exceeds the sixty feet specified in the table. All portions of the building located in the R-5-B portion of the site are set back the appropriate distance.

87. As to the appeal on the roof structures, the Board finds as follows:

- a. In application No. 12949, the Board had before it the question of the location of the roof structures, particularly in relation to whether such structures would be contained in one enclosure. The plans contained in the record of that case, specifically including Sheet A-9, show the location marked in red of all of the roof structures on the portion of the hotel that is new construction.
- b. By Order dated October 29, 1979, the Board approved Application No. 12949.

- c. The roof structures constructed on the building are in accordance with the plane approved by the Board in application No. 12949.
- d. The Zoning Administrator was within his authority to approve the construction plans as the Board had approved the plans.
- e. Representatives of the appellant and ANC 3C submitted letters to the record in Application No. 12949, indicating that they had questions and issues concerning the hotel then under construction. The evidence of record in that application indicates the appellant had the full opportunity to know and determine the location of roof structures on the new hotel building.

88. As to the appeal on the convention center as an accessory use, the Board finds as follows:

- a. By virtue of the previous rulings of the Board, the convention center and exhibit hall space are legitimate accessory uses to the principal hotel use.
- b. The relatively small percentage of the gross floor area of the building occupied by the convention center and exhibit halls is indicative of their position as accessory to the principal hotel use.
- c. The Zoning Administrator committed no error in failing to consider the proportion of the business generated by the convention center use. Such information would be based on projections by the Sheraton, and would be speculative, unreliable and not subject to precise determination.

89. As to the appeal on the number of parking spaces, the Board finds as follows:

- a. Review of the previous Orders of the Board and the Zoning Commission noted by the appellant reveal no legal requirement to provide a specified number of spaces. The Zoning Commission Order rezoned the property, and cannot be read to apply any conditions other than to permit what is allowed and required under R-5-C zoning. The BZA Orders are vague, very short and do not specifically require a set number of spaces. In one case, the Order referenced instructions given outside the context of the hearing and not found in writing anywhere.

- b. The construction permitted by the Orders cited was for additions to a building which no longer exists. The main portion of the previous hotel building was demolished after the construction of the new portion of the hotel. Even if any requirements had been imposed as a result of the previous orders, those requirements cease to be applicable when the building to which they were attached was substantially demolished.
- c. The building now at issue consists of portions which were in existence and are to remain and new construction. The total parking requirement must be based on the application of the present regulations to the structure as it is now proposed to exist.
- d. Under Sub-section 7203.1 of the Regulations, the increase in intensity of use of the Wardman Tower must be considered in determining the number of required parking spaces. The Board understands the Zoning Administrator's difficulty in determining what the intensity of use was in 1958, given the lack of official District of Columbia records on the matter. Further, the evidence before the Board is also conflicting. Evidence introduced by the appellant suggests that the Tower had only sixty units in 1958. The nomination form for landmark status introduced by the Sheraton indicates that the building was originally constructed with 350 rooms and has remained "remarkably unaltered." However, that form states no specific information as to the number of rooms on May 12, 1958. The most reliable information seems to be that the Wardman Towers had sixty permanent residential units in 1958.
- e. Given the requirement to provide one parking space for every two units or thirty parking spaces in 1958, and 105 parking spaces for 209 units in the present proposed arrangement, the Zoning Administrator was wrong in not requiring the incremental difference of seventy spaces for the Wardman Towers.

90. As to the appeal on the parking plans, the Board finds as follows:

- a. The Sheraton submitted scaled and accurate plans showing 615 parking spaces.
- b. Such plans met the requirements of Paragraph 7201.11 of the regulations.

- c. Such plans did not constitute a valid parking plan because they did not show a sufficient number of parking spaces to meet the requirements of the Zoning Regulations. As set forth in Finding No. 89, seventy spaces should have been provided for the Wardman Towers. The total number of parking spaces required is 649, including 106 for the Motor Inn, 473 for the new construction and seventy for the Wardman Towers. The parking plan submitted shows only 615 spaces. The plan is thus insufficient to meet the requirements of Article 72.

91. As to the appeal on the location of the parking spaces, the Board finds as follows:

- a. The Regulations regarding the size, location, access, maintenance and operation of parking spaces are set forth in Sections 7204, 7205 and 7206. Location is specifically provided for in Sub-sections 7205.1 and 7205.2. Sub-section 7205.3 specifically provides for the BZA to approve as a special exception a location of parking spaces other than those specified in Sub-sections 7205.1 and 7205.2.
- b. For the subject building, there is no allegation that the spaces are not located as required, and there is no application pending before the Board under Sub-section 7205.3. Consequently, the "reasonable and convenient" test of Paragraph 7205.33 is not applicable to the subject hotel.

92. Prior to the conclusion of the hearing and the decision on this appeal, on October 8, 1980, the appellant filed a "Petition to Refer Legal Issues to D.C. Corporation Counsel for Advisory Opinions." The Sheraton opposed the request by response filed on October 31, 1980. At its November 5, 1980, public meeting, the Board determined that it alone would make the determination of whether and when to seek advise of its counsel, and denied the request as an intrusion in the prerogatives of the Board.

93. Immediately following the Board's meeting date of April 1, 1981, at which the case was voted upon, the appellant filed a motion for reconsideration. Pursuant to Section 5.41 of the Supplemental Rules of Practice and Procedure before the BZA then in effect, such a motion may be filed within ten days of a decision having become final. A decision is final upon issuance of a written order. Consequently, at the May 6, 1981, meeting of the Board, the Chairman denied the motion as prematurely filed.

CONCLUSIONS OF LAW AND OPINION:

The subject case is before the Board as an appeal of the decision of the Zoning Administrator. The case is one of the most complicated appeal cases presented to the Board in some time. In these conclusions of law and opinion, the Board will address the following issues:

1. The motion to dismiss the appeal filed by the Sheraton.
2. The roof structures as related to BZA Application No. 12949.
3. The negotiations between the appellant and the Sheraton.
4. The impact of the Hotel on parking and traffic in the neighborhood.
5. The merits of the appeal.
6. The actions directed by the Board.

The Board is first presented with the motion to dismiss the appeal filed by the Sheraton. The basis of the motion as set forth in the Findings of Fact is that the appeal is barred by laches, estoppel and timeliness. The arguments in favor and against the motion are set forth earlier in the Findings. The key question in all the elements of the motion to dismiss revolves around the nature of negotiations and relations between the appellant and the Sheraton. Both parties presented their views of those negotiations and relations during the course of the hearings. It is clear from the record that those views differ. What is also clear from the record is that while the parties may have been negotiating and communicating, the nature of the discussions was such that neither side clearly understood the position of the other. The long series of communications and meetings back and forth reveal a history of misunderstood positions, changing positions and confusion over who would do what next. It is difficult for the Board to determine whether either party was not acting in good faith.

The merits of the motion to dismiss are further complicated by the state of the permit approval granted by the District. The computation sheet of record prepared by the Zoning Administrator's office in April of 1978 reflects a proposal which had been revised, which no longer existed and for which approval had not been granted. The zoning approval granted April 27, 1978, was not for a hotel of 1,502 rooms as the computation sheet stated, but was for only 1,366 rooms. The plans on file with the permit, as explained by the Zoning Administrator at the hearings,

clearly showed the number of rooms to be 1,366. However, the computation sheet, the record of approval maintained by the Zoning Administrator's office, still showed 1,502 rooms and 751 parking spaces required.

The Zoning Administrator maintained that he had explained the various aspects of the actual approval to the appellant, but the fact remains that the computation sheet record was not revised until September of 1979. That sheet also recognized and incorporated the amended parking plan filed in August of 1979. The subject appeal was filed on October 12, 1979, approximately one month after the preparation and sign-off of the revised computation sheet.

The Board concludes that the appellant reasonably asserted its rights, and filed the appeal in a timely manner. The appellant expected that it would be satisfied by the Sheraton as to the number of parking spaces, which was its principal concern. Upon discovering that the District of Columbia was on record as stating that only 579 parking spaces were required, and only 595 spaces were to be provided, the appeal was promptly filed. The appellant is not barred by either laches or timeliness. The defense of laches is not favored in zoning actions, and the Sheraton has not demonstrated that "the clearest and most compelling circumstances" exist to justify invoking that doctrine.

As to the estoppel issue, the Sheraton must demonstrate the elements of estoppel set forth by the Court of Appeals in the Wieck case, as cited in Finding No. 5. There is no question that the District acted affirmatively to approve the permits at issue, that the Sheraton made extensive and permanent improvements in reliance upon those permits, and that the reliance was justified. What is not clear is whether the Sheraton was acting in good faith and whether the equities strongly favor the Sheraton. Given that the defense of estoppel is also not favored in zoning actions, the Board concludes that the Sheraton has not sufficiently demonstrated that it acted completely openly, above-board and in good faith to justify dismissal of the appeal on the basis of estoppel. Furthermore, the Board concludes that there are equities on the side of both parties, and there is no clear showing that the equities "strongly favor" the Sheraton.

Thus in all three respects, the Board concludes that there is insufficient basis to grant the motion to dismiss. The motion is therefore hereby denied, and the Board will address the merits.

One of the points raised in the merits of the appeal is that the Zoning Administrator approved roof structures in violation of the Zoning Regulations and the Act of 1910. As set forth in the Findings, the plans for the roof structure

were approved by the Board in Application No. 12949. The plans approved by the Zoning Administrator and the roof structures actually constructed are identical to those approved by the Board. The appellant and the ANC both submitted letters to the Board, and a representative of the ANC who testified on behalf of the appellant appeared at the hearing.

Evidence in the form of a statement from an architect and testimony of the architect at one of the hearings was received by the Board. That evidence and testimony is partially addressed in the findings herein. However, the Board concludes that the doctrine of res judicata governs this issue of the appeal. The doctrine applies where a judgement has been rendered on the same issues in a prior action involving the same parties. The Board concludes that the same parties, assuming different roles, participated in the earlier application No. 12494 before the Board. The Board concludes that, even though the relief requested was as to the construction of multiple roof structures, the plans clearly show the construction of the roof structures now alleged to be in violation of the Regulations. The appellant clearly had the opportunity to raise objection to those roof structures. In fact, the appellant noted that it was concerned about all aspects of the hotel then under construction. Yet, no mention was made of any possible violation for the roof structures. The Board concludes that the appellant may not now raise as an appeal of the Zoning Administrator's decision an issue that the Board has already judged and disposed of.

The Board notes that extensive discussions occurred between the appellant and the Sheraton concerning the nature of the hotel to be constructed on the subject property. These discussions occurred from roughly the end of 1976 until shortly before the subject appeal was filed. The discussions were primarily aimed at the design of the subject site, the number of parking and loading spaces and the access and circulation elements of the proposed hotel. The discussions did not lead to any formal agreement between the parties on those issues. On several occasions during the course of the proceedings on the subject appeal, the Board urged the parties to resume discussions which might lead to a development proposal for the subject site which was acceptable to both the appellant and the Sheraton.

Discussions between the parties were resumed, but again no agreement was reached. The Board notes that its purpose in urging the parties to see if they could negotiate their differences was to see if an accommodation could be reached that would be satisfactory to all. The Board was prepared to decide the appeal. However, the Board anticipated that such a decision based on the strict interpretation of the Zoning Regulations would likely please no one, and hoped to

avoid that result by virtue of a negotiated agreement between the parties. The failure to reach such an agreement leads to the decision stated herein.

The appellants attempted to raise as an issue the impact of the hotel on parking and traffic in the subject area. Many letters were submitted to the Board asserting damage to the Woodley Park area that was occurring and would continue if the hotel did not provide sufficient parking spaces. The Board concludes that the assertions and the issue as to neighborhood impact are not relevant to the subject appeal. The Board must decide whether the Zoning Administrator correctly applied the relevant portions of the Zoning Regulations. The Zoning Administrator cannot apply other standards, and the Board in reviewing the Zoning Administrator's decision is limited to determining whether the Administrator correctly applied the Regulations.

The Board notes that the Zoning Commission has the full authority to adopt and amend the Zoning Regulations and Maps. The Board further notes that subsequent to the decisions made by the Zoning Administrator and the filing of this appeal, the Zoning Commission amended the Regulations to prohibit the construction of new hotels in residential districts. That prohibition addresses generally the problems noted by the appellant, but does not apply to the subject existing hotel or the rulings at issue in this appeal.

In addressing the merits of the appeal, the Board concludes that the Zoning Administrator committed no error in determining the height of the building. As set forth in the findings, the property is split zoned. Different requirements apply to the different portions of the buildings in accordance with the regulations for each district. The hotel as approved did not exceed the permitted height.

As to the convention center use, the Board concludes that such use is accessory to the proposed use of the hotel. The Zoning Administrator committed no error in allowing such use in the subject building. The Zoning Administrator followed past rulings and interpretations of this Board. He further determined that the convention center use occupied a relatively small percentage of the building. The Zoning Administrator did not err in not considering the proportion of the Sheraton's business that related to the convention center use. To do so, would have required a decision based on speculative and unverifiable information provided by the Sheraton, and would have exceeded the scope of the authority vested in the Zoning Administrator to apply the Regulations.

As to the accessible and convenient location issue, the Board concludes that the appellant is in error. Paragraph

7205.33 was in no way applicable when the Zoning Administrator reviewed the permit application, and he was not in error when he did not impose that standard of review on the application.

The key question for resolution is whether the Zoning Administrator correctly applied the parking requirements to determine how many parking spaces should be provided. The Board concludes that the one area where the Zoning Administrator did err was in not requiring some parking spaces to be provided for the Wardman Tower portion of the hotel. The Zoning Administrator testified that he had no basis in District of Columbia records to determine how many units existed in that Tower in 1958, and that he could thus not make the required computation. The Board understands the dilemma in which the Zoning Administrator found himself. Further, the record before the Board itself contains conflicting and contradictory evidence as to how many units were in the Wardman Tower in 1958. However, the Board concludes that the most reliable data suggests there were sixty units in the building. Consequently, the Zoning Administrator was in error in not requiring parking for the difference between sixty units and the number proposed.

The other allegations about the number of parking spaces to be required are without merit. The prior orders of the Board are vague and confusing, and do not impose any condition that requires that a specified number of spaces be provided. The prior orders were for applications for relief which did not relate to the parking requirement at all. Furthermore, all those orders relate to a hotel which does not now exist, the major portion of that building having been demolished following completion of the hotel under appeal. Even though portions of the building remain, including portions of the building for which relief was granted, the context of those orders must be viewed as related to the entire building which then existed. The Zoning Administrator was limited to dealing with a building including existing portions to remain and new construction, as proposed in 1977. He correctly applied the 1977 standards to that building, except as to the Wardman Tower already noted above.

Additionally, the appellant's confusion over how many rooms were to be provided derives at least in part from the failure of the Zoning Administrator's office to revise its computation sheet prior to approving the permit application. It is clear from the record that the plans as to the number of rooms were revised before the zoning sign-off was given in April of 1978.

As to the submission of a parking plan, the Board concludes that the plans submitted for the permit did contain sufficient information required by Paragraph

7205.11, for the Zoning Administrator to properly rule that a plan was submitted. However, given the Board's determination that the Zoning Administrator did not correctly establish the number of spaces which should have been required, the plans on file do not show enough parking spaces to meet the requirements. The plans therefore are not valid because they do not contain sufficient spaces to meet the requirements of Article 72.

Finally the Board must address the question of what is to be done next. The hotel is built, is in operation, and was so at the time this case was filed and heard. It is not reasonable for the Board to direct revocation of the entire building or occupancy permits at this time. The Board will, by Order herein, direct that the Sheraton provide a minimum of 649 parking spaces on the subject property in a timely fashion as set forth herein. Failure to do so should result in revocation of the Sheraton's right to occupy at least that number of units for which parking has not correctly been provided.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute.

In consideration of all of the findings of fact and conclusions of law set forth herein, it is therefore hereby ORDERED that:

1. The appeal as to the height of the building is DENIED, and the decision of the Zoning Administrator is UPHELD.
2. The appeal as to the roof structures is DENIED, and the decision of the Zoning Administrator is UPHELD.
3. The appeal as to the convention center use is DENIED, and the decision of the Zoning Administrator is UPHELD.
4. The appeal as to the accessibility and convenience of parking spaces is DENIED, and the decision of the Zoning Administrator is UPHELD.
5. The appeal as to the number of parking spaces is GRANTED, to the extent that the Zoning Administrator did not require parking spaces to be provided for the Wardman Tower. In all other respects, the appeal as to parking is DENIED and the decision of the Zoning Administrator is UPHELD.
6. The appeal as to the filing of a parking plan is GRANTED, to the extent that the plan did not show

a sufficient number of parking spaces to meet the requirements of Article 72.

7. The Zoning Administrator shall require that 649 off-street parking spaces be provided for the 1,366 hotel rooms or suites of rooms proposed.
8. Within sixty days of the final date of this Order, the Sheraton shall submit to the Zoning Administrator revised plans showing where and how the 649 parking spaces are to be provided. These plans are to be reviewed through the normal permit review process for compliance with the Zoning Regulations. Upon determining compliance with all applicable requirements, the Zoning Administrator shall approve said plans as part of the building permit originally issued on October 6, 1978.
9. If no parking plan is filed, or upon determination by the Zoning Administrator that the parking plan submitted does not meet the requirements set forth above, the Zoning Administrator, in conjunction with the other responsible agents of the District of Columbia Government, shall take appropriate action to see that the Sheraton shall not operate or occupy more rooms or suites of rooms than the number for which it has provided sufficient parking in accordance with the requirements of the Zoning Regulations as set forth in this Order.

Votes of the Board taken at the April 1, 1981 meeting:

1. To DENY the Sheraton's Motion to DISMISS as to laches: 4-1 (Walter B. Lewis, William F. McIntosh, Charles R. Norris and Connie Fortune to DENY the Motion; Leonard L. McCants OPPOSED to the Motion).
2. To DENY the Sheraton's Motion to DISMISS as to timeliness: 3-2 (Walter B. Lewis, William F. McIntosh and Charles R. Norris to DENY the Motion; Connie Fortune and Leonard L. McCants OPPOSED to the Motion).
3. To DENY the Sheraton's Motion to DISMISS as to estoppel: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Leonard L. McCants and Charles R. Norris to DENY the Motion).
4. To DENY the appeal and UPHOLD the Zoning Administrator as to the height of the building: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Leonard L. McCants and Charles R. Norris to DENY the Appeal).
5. To DENY the appeal and UPHELD the Zoning Administrator as to the convention center use: 5-0 (Walter B. Lewis,

William F. McIntosh, Connie Fortune, Leonard L. McCants and Charles R. Norris to DENY the Appeal).

6. To GRANT the appeal and REVERSE the Zoning Administrator as to the parking for the Wardman Tower: 4-1 (Walter B. Lewis, Connie Fortune, William F. McIntosh and Charles R. Norris to GRANT the Appeal; Leonard L. McCants OPPOSED to the Motion).
7. To GRANT the appeal and REVERSE the Zoning Administrator as to the filing of a proper parking plan: 4-1 (Walter B. Lewis, Charles R. Norris, Connie Fortune and William F. McIntosh to GRANT the appeal; Leonard L. McCants OPPOSED to the Motion).
8. To DENY the appeal and UPHELD the Zoning Administrator as to the parking required by previous Board Orders: 5-0 (Walter B. Lewis, Connie Fortune, Leonard L. McCants, William F. McIntosh and Charles R. Norris to DENY the Appeal).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: OCT 21 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

13112order/Jane12

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13112, of Woodley Park Community Association, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator to issue a construction permit for a hotel/convention center in violation of the Zoning Regulations in the R-5-B and R-5-C Districts at the premises 2660 Woodley Road, N.W., (Square 2131, Lot 32).

HEARING DATES: January 30, February 6 and April 2,
1980 and January 14, 1981

DECISION DATES: November 5, 1980 and April 1 and
May 6, 1981

DISPOSITION: Appeal Denied in part and Granted
in Part

FINAL DATE OF ORDER: October 21, 1983

ORDER

By Order dated October 21, 1983, the Board decided the subject appeal, denying in part and granting in part the appellant's request that the decision of the Zoning Administrator to issue a construction permit for the Washington Sheraton Hotel be reversed. The order was filed in the record on October 21, 1983. The order was served on the intervenor, the Sheraton Washington Corporation, hereinafter referred to as the Sheraton, by hand on October 21, 1983. The order was served by mail on the appellant, the Woodley Park Community Association, Advisory Neighborhood Commission 3C and the Zoning Administrator. Even though the order was deposited in the mail on October 21, 1983, evidence of record indicates that the order was received by the original counsel for the appellant on October 27, 1983, and by the former and present Presidents of the appellant on October 29, 1983.

As set forth in Finding of Fact No. 3 of the original order, the case is governed by the Supplemental Rules of Practice and Procedure before the BZA which were in effect prior to August 27, 1982. Concerning reconsideration, those Rules state in pertinent part:

5.41 A motion for reconsideration, rehearing or reargument of a final decision may be filed by a party

within ten (10) days. It shall be served upon all other parties or representative parties pursuant to designations made under 5.212.

- 5.42 A motion for reconsideration, rehearing, or reargument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. Within seven (7) days after a motion has been filed and served, any other party may file an answer in opposition to or in support of the motion.

On October 31, 1983, the Sheraton filed a Motion for Reconsideration, Rehearing or Reargument, alleging that:

1. The Board erred in finding that the Wardman Tower structure contained only sixty residential units as of May 12, 1958. The preponderance of the evidence shows that the Wardman Tower had 209 units at that time.
2. As a result of the error set out in paragraph 1 above, the Board erroneously concluded that the Sheraton is required to have 649 spaces for the existing Sheraton facility and that the Sheraton did not have on file a valid parking plan.
3. The Board erroneously denied Sheraton's Motion to Dismiss on the grounds of lack of timeliness, laches and estoppel.

Copies of the Motion were served on representatives of the appellant.

On November 29, 1983, William H. Carroll filed an "Answer in Opposition to Intervener's Motion for Reconsiderations, Rehearing and Reargument." Also included in that document was a Motion for Reconsideration, Rehearing or Reargument on behalf of the appellant. Mr. Carroll was President of the appellant at the time of hearings on the appeal, and appeared as a witness at the hearings. He signed the Motion as "Counsel for Appellant." The appellant's Answer argued that the Sheraton's Motion was devoid of new evidence and that the Motion merely stated that the Sheraton disagreed with certain aspects of the Board's decision.

In its own Motion, the appellant alleged that the Board erred in:

1. Not considering all evidence of the building's violation of height restrictions.

2. Not considering the appellant's evidence showing that the doctrine of res judicata did not preclude the Board from deciding the appellant's argument that the roof structures are in violation of the Zoning Regulations and the Act of 1910.
3. Determining that the public assembly use of the property was not a primary use by relying on prior orders of the Board, by not considering all relevant square footage ratios and by not allowing testimony on the impact on the neighborhood.
4. Not considering evidence as to business generated by the convention use.
5. Determining that prior orders of the Board did not require 898 parking spaces to be provided.

Copies of the Answer and Motion were served on counsel for the Sheraton.

On December 2, 1983, the Sheraton filed a motion to strike the appellant's Answer and Motion because:

1. The Answer and Motion were not timely filed.
2. Mr. Carroll may not appear as both witness and counsel for the appellant in the same proceeding.

In consideration of the various Motions and responses, the Final Order, the applicable Rules and the record itself in this matter, the Board finds as follows:

1. The Sheraton's Motion was timely filed.
2. The appellant's response to the Sheraton's Motion was not timely filed. Under Section 1.62 of the Rules, when service is made by mail, two days shall be added to the time provided. The deadline for response to the Motion was thus November 9, 1983. The response was filed on November 29, 1983, twenty days late.
3. The appellant's Motion was untimely filed. Even assuming that the time for filing a motion for reconsideration should be calculated on the basis of the delayed receipt of the original order by representatives of the appellant, the appellant had only until November 8, 1983, to file such a motion. The Motion was filed on November 29, 1983, twenty-one days late.

4. Mr. Carroll's filing of the Motion is inconsistent with the provisions of the American Bar Association Code of Professional Responsibility.
5. There is no basis to grant either of the Motions to reconsider or rehear. Neither motion presents or proffers new evidence which could not reasonably have been presented at the original hearings. Neither motion raises any new issues which were not completely and comprehensively raised in the record and which were disposed of in the original order. Both Motions merely restate issues and positions already considered and decided. As to the appellant's allegation that it was denied due process in consideration of the effect of prior orders of the Board, that subject was extensively discussed at the hearing and in the briefs of the parties. The basis of the Board's decision is explicitly addressed in the order. It is clear in the record that the appellant disagrees with the Board's decision on this issue, but it presents no different evidence or argument to compel the Board to change its decision.

The Board concludes that it has committed no error of fact or law in deciding this Appeal. Accordingly, it is therefore ORDERED that the Motions for Reconsideration, Rehearing or Reargument filed by the Sheraton and the appellant are denied. The appellant's request that the Board direct revocation of the occupancy permit is therefore moot.

DATE OF DECISION: December 7, 1983

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to deny, Charles R. Norris to deny by proxy, Douglas J. Patton abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: DEC 25 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

13112order/BJW1

Joining Regulations Front

Corrected To Mar. 1, 1921

2nd Ed.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

Washington, August 30, 1920

ZONING REGULATIONS

(Corrected to March 1, 1921)

Whereas the Act of Congress approved March 1, 1920, entitled "An Act to regulate the height, area and use of buildings in the District of Columbia and to create a Zoning Commission and for other purposes" (Public No. 153, 66th Congress) provides that within six months after passage of said Act and after public notice and hearing, the Zoning Commission shall divide the District of Columbia into certain districts to be known respectively as Height, Area, and Use Districts, and shall adopt regulations specifying the height and area of buildings thereafter to be erected or altered therein, and the purposes for which buildings and premises therein may or may not be used:

Now, therefore, the said Zoning Commission after public notice and hearing as prescribed by law has established, and by these regulations and maps accompanying them, does hereby establish said height, area and use districts and it does hereby adopt the following regulations, under the authority of said law and subject to the penalties prescribed in said law for the violation of any of said regulations.

The height, area and use districts prescribed in said regulations are shown on the accompanying set of maps of the District of Columbia, and the precise boundaries of the districts are shown in the "Official Height, Area and Use Atlases," on file in the office of the Engineer Commissioner of the District of Columbia. These maps and atlases are hereby made parts of said regulations.

These regulations shall become effective on and after August 30, 1920, and shall remain in force until modified or amended by subsequent regulations adopted by said Zoning Commission after public notice and hearing as prescribed by law.

Except as specifically superceded by these regulations the Building Regulations shall remain in full force and effect.

SECTION I—DEFINITIONS.

For the purpose of these regulations, certain terms and words are herewith defined as follows; but such definitions shall not be held to modify or affect in any way the legal interpretations of such terms or words where used in other regulations.

Words used in the present tense include the future; words in the

singular number include the plural number, and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. Any words not herein defined shall be construed as defined or construed in the Building Regulations.

Accessory Building: A subordinate building located in and occupying not more than 30 per cent of the rear yard of the main building, whose use is incidental to that of the main building, and which does not exceed 15 feet in height above the ground level.

Alley: A public way designated as an alley in the records of the Surveyor, District of Columbia.

Apartment: A household unit in a tenement or apartment house, suitable for occupancy by one or more persons.

Area: See Building Area.

Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels; and when separated by division walls from the ground up each portion of such building shall be deemed a separate building.

Building Area: The maximum horizontal projected area of a building and its accessory buildings, excluding open steps, terraces, and cornices.

Building Line: A line beyond which property owners or others have no legal or vested right to extend a building or any part thereof, without special permission and approval of the proper authorities; ordinarily a line of demarkation between public and private property, but also applied to a building restriction line, when recorded on the plats of the Surveyor's Office, District of Columbia.

Cellar: That portion of a building below the first floor joists, the floor of which is more than one-half the clear ceiling height below the adjacent ground. Such a story may not be used for habitation.

Community House: A group of not more than three single family dwellings so designed as to give the appearance of a single building and erected simultaneously. (Order of February 8, 1921.)

Depth of Rear Yard: The mean horizontal distance between the rear line of the building and the center line of the alley where an alley exists, otherwise the rear lot line.

Depth of Lot: The mean horizontal distance between the front building line and the rear lot line.

District: Sections of the District of Columbia for which the regulations governing the height, the area, or the use of buildings and premises are the same.

Enclosed Court: An open unoccupied space surrounded on all sides by walls, or by walls and a lot line.

Garage: Any premises used for housing of steam or motor driven vehicles, or where such vehicles are equipped for operation, repaired, or kept for hire or sale, not including exhibition or show rooms for model cars.

Height of Building: In the 110 foot, 85 foot and 55 foot height districts, the height is the vertical distance from the level of the curb opposite the middle of the front of the building to the top of any enclosure wall or to the highest point of the roof. Provided, that in the 55 foot height district in the case of a building located on a terrace the

ZONING REGULATIONS

OF THE

DISTRICT OF COLUMBIA

**ADOPTED BY THE ZONING COMMISSION
UNDER AND BY VIRTUE OF THE AUTHORITY CONFERRED
UPON IT BY ACTS OF CONGRESS
APPROVED MARCH 1, 1920, JUNE 20, 1938, AND MARCH 4, 1942**

EFFECTIVE JULY 1, 1945



**For sale by the Division of Printing and Publications, D. C.,
Room 527, District Building—Price 50 cents**

MAXIMUM BUILDING HEIGHTS

As regulated by act of Congress approved June 1, 1910, and amendments thereto, which heights shall not be exceeded in any zoning district.

1. For residential districts:

- (a) On streets over 65 feet wide—the width of the street less 10 feet, with a maximum of 90 feet.**
- (b) On streets 60 to 65 feet wide—60 feet.**
- (c) On streets less than 60 feet wide—the width of the street.**

2. For first commercial, second commercial, and industrial districts. Height equal to width of street increased by 20 feet. (The side and portion of any street is designated a business street which has contiguous land zoned first commercial, second commercial, or industrial.)

3. Buildings fronting on Union Station Plaza—height, 80 feet.

**ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA
WASHINGTON, AUGUST 30, 1920**

**ZONING REGULATIONS
REVISED TO JULY 1, 1945**

(The date of each revision follows the text)

Whereas the act of Congress approved March 1, 1920, entitled "An act to regulate the height, area, and use of buildings in the District of Columbia and to create a zoning commission, and for other purposes" (Act of March 1, 1920, 41 Stat. 500), provides that within 6 months after passage of said act and after public notice and hearing the Zoning Commission shall divide the District of Columbia into certain districts to be known, respectively, as height, area, and use districts, and shall adopt regulations specifying the height and area of buildings thereafter to be erected or altered therein, and the purposes for which buildings and premises therein may or may not be used:

Now, therefore, the said Zoning Commission after public notice and hearing as prescribed by law has established, and by these regulations and map accompanying them, does hereby establish said height, area, and use districts and it does hereby adopt the following regulations under the authority of said law and subject to the penalties prescribed in said law for the violation of any of said regulations.

The height, area, and use districts prescribed in said regulations and the precise boundaries thereof are shown in the "official height, area, and use atlases" on file in the office of the Engineer Commissioner of the District of Columbia. These atlases are hereby made parts of said regulations.

These regulations shall become effective on and after August 30, 1920, and shall remain in force until modified or

amended by subsequent regulations adopted by said Zoning Commission after public notice and hearing as prescribed by law.

Except as specifically superseded by these regulations, the building regulations shall remain in full force and effect.

SECTION I.—*Definitions*

For the purpose of these regulations certain terms and words are herewith defined as follows; but such definitions shall not be held to modify or affect in any way the legal interpretations of such terms or words where used in other regulations.

Words used in the present tense include the future, words in the singular number include the plural number and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. (As amended June 9, 1944.)

ACCESSORY BUILDINGS: A subordinate building located in and occupying not more than 30 per cent of the rear yard of the main building, whose use is incidental to that of the main building, and which does not exceed 15 feet in height above the ground level.

ALLEY: A public way designated as an alley in the records of the surveyor, District of Columbia.

APARTMENT: A household unit with kitchen facilities, except portable electrical table appliances, exclusively for the use of the person or persons occupying such unit. (As amended June 9, 1944)

APARTMENT HOUSE: A building in which there are three or more apartments. (June 9, 1944)

AREA: *See* Building area.

BOARDING HOUSE: A dwelling other than a hotel where for compensation meals, or lodging and meals, are provided for three or more guests. (Feb. 11, 1941)

BUILDING: A structure having a roof supported by columns or walls for the shelter, support, or inclosure of

persons, animals, or chattel. When separated from the ground up, or from the lowest floor up, each such portion shall be deemed a separate building. The existence of communication between separate portions of a structure below the main floor shall not be construed as making such structure one building. (As amended June 9, 1944)

BUILDING AREA: The maximum horizontal projected area of a building and its accessory buildings, excluding open steps, terraces, and cornices.

(Front entrance porches which do not extend more than 3 feet beyond the front wall and are not greater than 20 square feet in area will not be construed as part of the "Building Area", and the depth of such porches will be excluded from the depth of the building for the purpose of computing the width of side yards. Resolution, Oct. 26, 1937.)

BUILDING LINE: A line beyond which property owners or others have no legal or vested right to extend a building or any part thereof without special permission and approval of the proper authorities; ordinarily a line of demarkation between public and private property, but also applied to a building restriction line, when recorded on the plats of the Surveyor's Office, District of Columbia.

CELLAR: That portion of a building below the first-floor joists, the floor of which is more than one-half the clear ceiling height below the adjacent ground. Such a story may not be used for habitation.

COMMUNITY HOUSE: A group of not more than three single-family dwellings so designed as to give the appearance of a single building and erected simultaneously. (As amended Feb. 8, 1921.)

DEPTH OF REAR YARD: The mean horizontal distance between the rear line of the building and the center line of the alley where an alley exists; otherwise the rear lot line.

DEPTH OF LOT: The mean horizontal distance between the front building line and the rear lot line.

THE 1951 BUILDING CODE of the DISTRICT OF COLUMBIA

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WASHINGTON: FEBRUARY 1, 1951

DIVISION OF PRINTING AND PUBLICATIONS

GOVERNMENT OF THE DISTRICT OF COLUMBIA

SECTION III

Apartment House.—Any building or part thereof in which there are three or more apartments, occupied or offered for occupancy; or three or more such apartments, plus one or more bachelor apartments. An apartment house may contain in addition to the above, no more than two tenements, without being classified as a tenement house.

Approved.—Approved, as used with respect to materials and types of construction, refers to approval by the Director of Inspection as a result of investigation and tests conducted by him, or by reason of accepted principles, or tests by national authorities, technical or scientific organizations

Areaway.—An open subsurface space adjacent to a building, used to admit light or air or as a means of access to a basement or cellar.

Automatic Storage Water Heater.—An automatic appliance combining a water heating element and water storage tank and not used for space heating

Basement.—A story partly underground, but having at least one-half of the clear ceiling height above the curb level or the level of the adjacent ground

Boarding House.—Any building or part thereof, other than a hotel, used as, maintained as, advertised as, or held out to be an enclosure where meals or lunches are furnished to 5 or more transients who have sleeping accommodations on the premises or to 5 or more boarders.

Boiler.—A closed pressure vessel in which a fluid, usually water, is raised in temperature by the application of heat. It may be used for power or process work, heating by either steam or hot water, or the heating of water for commercial or domestic supply.

Building.—A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, chattels, or movable property of any kind. When separated from the ground up, or from the lowest floor up, each such portion shall be deemed a separate building, provided, however, that structure with dividing walls may be considered as one building for the purpose of these regulations upon submission to and approval of a

SECTION III

covenant by the Commissioners as provided in Article 201-63q. The existence of communication between the separate portions of the structure below the main floor shall not be construed as making them one building.

Building Line.—A line beyond which property owners or others have no legal or vested right to extend a building; or any part thereof, without special permission and approval of the proper authorities; ordinarily, a line of demarkation between public and private property; also a building restriction line, when recorded in the District of Columbia Surveyor's office.

Building Owner.—Wherever referred to in these regulations as "building owner," "property owner" or "owner," such terms shall mean "owner," as hereinafter defined. (January 11, 1951)

Cellar.—A story having more than one-half of its clear ceiling height below the level of the adjacent ground.

Central Heating Furnace.—A self-contained, automatically fired warm air furnace designed to supply heated air through ducts to spaces remote from the appliance location as well as the space in which it is located and with approved automatic temperature limit controls that cannot be set higher than 250° F. It may be either of the gravity or forced-air type.

Commissioners.—As used in this code, means the Commissioners of the District of Columbia.

Community House.—A group of not more than three single-family dwellings so designed as to give the appearance of a single building and erected simultaneously.

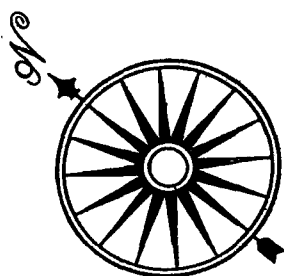
Convalescent.—Any person cared for, treated or lodged in a convalescent or nursing home, except employees of such convalescent or nursing home.

Convalescent or Nursing Home.—Any building or part thereof, except hospitals or asylums licensed under the Act of Congress approved April 20, 1908, used as, maintained as, advertised as, or held out for the care, treatment or lodging of three or more persons, not related by blood or marriage within the third degree of consanguinity to the owner, operator or manager thereof, which persons are either aged, infirm, senile, afflicted or suffering from

A NEW ZONING PLAN

for the

DISTRICT OF COLUMBIA



Final Report of the Rezoning Study

Prepared by
HAROLD M. LEWIS
Planning Consultant
New York, New York

November 9, 1956

Angle of light obstruction: an acute angle between a horizontal plane, at the level specified in these regulations, and an inclined plane intersecting such horizontal plane at the location specified in these regulations, rising from that location, and extending over the *lot*.

Apartment: one or more *habitable rooms* within a *dwelling* other than a one-family *dwelling*, having kitchen and bathroom facilities exclusively for the use of and under the control of the tenants thereof.

Apartment house dwelling: see *dwelling, apartment house*.

Area of light access: the amount of unobstructed horizontal area abutting each window required by the Building and Housing Codes of the District of Columbia, such area being located within a horizontal sector of 140 degrees centered on the window and being delimited by an arc extending for 70 degrees on either side of a line perpendicular to the *building* wall at the center line of the bottom of the window, and the exterior radii of such arc. The required *area of light access* may comprise any open sector or combination of sectors within said horizontal sector that total 90 degrees. (The radius of the sector and the limitations on its location shall be as provided in these regulations.)

Automobile laundry: a *structure* or portion thereof, the principal use of which is the washing of automobiles or other motor vehicles with the use of a chain or other conveyor and blower or steam cleaning device.

Basement: a *story* partly underground, but having at least one-half of the clear ceiling height above the average level of the adjacent finished grade.

Block: a tract of land bounded by *streets*, public parks, railroad rights-of-way, bulkhead lines, or boundary lines of the District of Columbia.

Boarding house: a *dwelling* other than a *hotel* or private club where, for compensation, meals or lodging and meals are provided for three or more guests on a weekly or monthly basis.

Building: a *structure* having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from other portions from the ground up, or from the lowest *story* up, each such portion shall be deemed a separate *building*. The existence of communication between separate portions of a *structure* below the main *story* shall not be construed as making such *structure* one *building*.

Cellar: that portion of a *building* below the first *story* joists, the floor of which is more than one-half the clear ceiling height below the average level of the adjacent finished grade.

Community house dwelling: see *dwelling, community house*.

Convalescent or nursing home: a *building*, except a hospital, used for the care, treatment or lodging for three or more persons who are either infirm, senile, afflicted or suffering from any chronic physical or mental disease, illness, or affliction, or who are drug or alcoholic addicts, or who are confined to bed or chair, or require or receive special diet, individual feeding in sleeping rooms, assistance in feeding, dressing, walking, or toileting, or assistance in any other ordinary daily activities of life.

Corner lot: a *lot* fronting on two or more *streets* at their junction, said *streets* forming with each other an angle of 45 degrees up to and including 135 degrees.

Court: an open unoccupied space, open to the sky, on the same *lot* with a *building* which is bounded on two or more sides by the exterior walls of such *building*, or by two or more exterior walls and *lot lines*.

Court, enclosed: see *enclosed court*.

Court, height of: see *height of court*.

Court, length of: see *length of court*.

Court, open: see *open court*.

Court, width of: see *width of court*.

Depth of rear yard: the mean horizontal distance between the rear line of the *building* and the rear *lot line*.

District: sections of the District of Columbia for which the regulations governing the use of land and the use, density, bulk, and height of *buildings* and other *structures* are the same.

ZONING REGULATIONS
of the
DISTRICT OF COLUMBIA

**ADOPTED BY THE ZONING COMMISSION
UNDER AND BY VIRTUE OF THE AUTHORITY CONFERRED
UPON IT BY AN ACT OF CONGRESS
APPROVED JUNE 20, 1938, AS AMENDED**

EFFECTIVE MAY 12, 1958



WASHINGTON, D. C.

CHAPTER 1

TITLE, ENACTMENT, DEFINITIONS, INTERPRETATION AND APPLICATION OF REGULATIONS

ARTICLE 11

TITLE AND STATEMENT OF ENACTMENT

Section 1101—Long Title and Statement of Enactment

REGULATIONS CONTROLLING AND RESTRICTING THE HEIGHT, BULK, NUMBER OF STORIES, AND SIZE OF BUILDINGS AND OTHER STRUCTURES, THE OPEN SPACES AROUND THEM, THE DENSITY OF POPULATION, AND THE USES OF BUILDINGS, STRUCTURES, AND LAND IN THE DISTRICT OF COLUMBIA, AND FOR SAID PURPOSES DIVIDING THE DISTRICT OF COLUMBIA INTO ZONING DISTRICTS.

1101.1 The Zoning Commission of the District of Columbia pursuant to authority conferred by Congress under the Zoning Act of June 20, 1938 (52 Stat. 797), as thereafter amended, after public notice and hearing prescribed by law, does hereby establish and adopt these regulations and the zoning map accompanying them to supersede in full the zoning regulations and the "official height, area and use atlases" previously in effect and which are hereby repealed, except that "The Zoning Regulations of the District of Columbia", adopted August 30, 1920, as amended, shall continue in full force and effect with respect to any construction or occupancy hereafter authorized by virtue of paragraphs 8103.5, 8103.6, 8103.7, 8104.6, 8104.7, 8104.8, or 8104.10 of these regulations; or with respect to any right accrued, any duty imposed, any offense committed, any penalty incurred, or any proceeding commenced under or by virtue of the regulations repealed; or with respect to any civil suit, action, or proceeding pending to enforce any right under the authority of the regulations repealed and such suit, action, or proceeding shall and may proceed with and conclude under the regulations in existence when the suit, action, or proceeding was instituted.

Section 1102—Short Title

1102.1 These regulations shall be known and may be cited by the short form title of the "Zoning Regulations of the District of Columbia."

ARTICLE 12

DEFINITIONS

Section 1201—Interpretation of Terms and Words

1201.1 For the purpose of these regulations certain terms and words are defined in this Article, but such definitions shall not be held to modify or affect in any way the legal interpretations of such terms or words where used in other regulations. Throughout these regulations the words printed in *italics* in the text are those for which definitions are given in this Article.

1201.2 Words in the present tense include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "*lot*" includes the words "plot" and "parcel"; the word "shall" is mandatory and not directory; the word "person" includes a corporation as well as an individual; and the words "occupied" and "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied, or offered for occupancy." Words not defined in this Article shall have the meanings given in Webster's Unabridged Dictionary.

Section 1202—Definitions

Accessory building: see *building, accessory*.

Accessory use: see *use, accessory*.

Alley: a public way designated as an *alley* in the records of the Surveyor, District of Columbia.

Alley lot: see *lot, alley*.

Apartments: one or more *habitable rooms* with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants thereof.

Apartment, bachelor: one or more *habitable rooms* with bathroom facilities exclusively for the use of and under the control of the occupants thereof in a *building* containing three or more *apartments*, provided that in said *building* no kitchen facilities or privileges are available to or used by the occupants of said *bachelor apartment*.

Apartment house: any *building* or part thereof in which there are three or more *apartments* or three or more *apartments* and one or more *bachelor apartments*.

Alterations, structural: any change in the permanent physical members of a *building* or other *structure*, such as bearing walls or partitions, columns, joists, rafters, beams, or girders.

Automobile laundry: a *structure* or portion thereof the principal use of which is the washing of automobiles or other motor vehicles with the use of a chain or other conveyor and blower or steam cleaning device.

Bachelor apartment: see *apartment, bachelor*.

Basement: that portion of a *story* partly below grade the ceiling of which is four feet or more above the adjacent finished grade.

Boarding house: a *building* or part thereof other than a *motel, hotel, or private club* where, for compensation, meals, or lodging and meals are provided for three or more guests on a weekly or monthly basis.

Building: a *structure* having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up each such portion shall be deemed a separate *building* except as provided elsewhere in these regulations. The existence of communication between separate portions of a *structure* below the *main floor* shall not be construed as making such *structure* one *building*.

Building, accessory: a subordinate *building* located on the same *lot* as the main *building*, the use of which is incidental to that of the main *building*.

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 in width and all *closed courts* less than six feet in width. This term shall not include any projections into open spaces authorized elsewhere in these regulations nor shall it include portions of a *building* which do not extend above the level of the *main floor* of the main *building* if so placed 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; provided, that in those *districts* in which the *height of building* is limited to 40 feet, such height may be measured from the finished grade level at the middle of the front of the *building* to the ceiling of the top *story*; and provided further, that in those *districts* in which the *height of building* is limited to 60 feet, in the case of a *building* located upon a terrace, the *height of building* may be measured from the top of such terrace to the highest point of the roof or parapet, but such allowance for terrace height shall not exceed five feet. 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 *street* any such front may be used to determine the maximum *height of building*, but the basis for the *height of building* shall be determined by the width of the *street* selected as the front of the *building*.

Building line: see *line, building*.

Cellar: that portion of a *story* the ceiling of which is less than four feet above the adjacent finished grade.

Chancery: the business offices of the chief of the diplomatic mission of a foreign government. The term *chancery* shall include a *chancery-annex* or the business offices of those attaches of a foreign government who are under the personal direction and superintendence of the chief of mission and who are engaged in diplomatic activities recognized as such by the Department of State, Federal Government. The term *chancery* shall not include the business offices of nondiplomatic missions of foreign governments, such as purchasing, financial, educational, or other missions of a comparable nondiplomatic nature.

Clinic: a *building* or part thereof in which members of the medical or dental professions are associated for the purpose of conducting a joint practice of such professions. Each *clinic* shall contain a diagnostic center and in addition may contain research, educational, minor surgical, or treatment facilities, provided all such facilities are limited to the treatment and care of out-patients. The term *clinic* shall be limited to those *buildings* in which the joint practice of medical or dental professions is conducted in such manner that all fees for services rendered are established by and paid to a common business office without direct payment thereof to individual practitioners and shall not include a *building* in which the separate and individual practice of the above professions is conducted.

Closed court: see *court, closed*.

Club, private: a *building* or portion thereof used by an association organized for the promotion of a common social objective and not for profit, whose facilities are limited to its members and their guests.

<u>Type of special exception</u>	<u>District</u>	<u>Section, paragraph, or subparagraph in which conditions are specified</u>
Exceptions to area and density regulations—groups of residential <i>buildings</i>	R-5-A or R-5-B.....	3307.2, 3307.4
Exceptions to carport location requirements	Any <i>district</i>	7205.3, 7401.2
Exceptions to <i>parking space</i> location requirements	Any <i>district</i>	7205.3
Exceptions to parking requirements for nonresidential uses	Any SP, C-M, or M District	7203
Extension of use, height, and bulk across <i>district</i> boundary line	Any <i>district</i>	2302, 7514.12
<i>Gasoline service station</i>	SP, C-1, C-2, or C-3.	4101.45, 5101.41, 5102.41, 5103.41
Hospital—college or university.....	R-1, R-2, or R-3....	3101.46
<i>Mechanical parking garage</i>	SP or C-3-A.....	4101.41, 5101.41, 5103.41
Motorcycle sales and repair.....	C-2 or C-3-A.....	5102.42, 5103.42
Natural gas regulator station.....	Any R District.....	3101.43
New office <i>building—chancery</i>	SP District.....	4101.42
New office <i>building—labor union</i>	SP District.....	4101.42
New office <i>building—nonprofit organization</i>	SP District.....	4101.42
New office <i>building—professional person</i> ..	SP District.....	4101.42
<i>Nonconforming use—change</i>	Any <i>district</i>	7104.2, 7109
<i>Nonconforming use—extension</i>	Any <i>district</i>	7105.2, 7109
Park of local community organization...	Any R District.....	3101.45
<i>Parking garage</i>	R-4, R-5, or SP.....	3104.43, 3105.43, 4101.41
<i>Parking lot</i>	Any R or SP District.	3101.48, 3104.43, 3104.44, 4101.41
<i>Philanthropic or eleemosynary institution</i> ...	R-1, R-2, R-3, or R-4.	3101.49
Playground of local community organization	Any R District.....	3101.45
<i>Private stable—accessory use</i>	Any R District.....	3101.44
<i>Public storage garage</i>	R-4, R-5, or SP.....	3104.43, 4101.41
Public utility pumping station.....	Any R, SP, or C District	3101.43, 4101.44, 5101.42, 5102.43, 5103.43, 5104.41
Reduction of <i>parking spaces</i>	Any <i>district</i>	7206.2
<i>Repair garage</i>	C-2 or C-3.....	5102.41, 5103.41
Residence of teachers and staff of private school	R-1, R-2, R-3 or R-4.	3101.42
School—college, university or other academic institution of higher learning	Any R District.....	3101.46
School—private kindergarten or pre-school	R-1, R-2, or R-3....	3101.41
School—private other than trade school..	Any R District.....	3101.42
Storage of wares and goods.....	R-4, R-5, or SP.....	3104.43, 4101.46
Swimming pool of local community organization	Any R District.....	3101.45
Telephone exchange.....	R-4, R-5, or SP.....	3104.42, 4101.43
Waiver or modification of <i>parking lot</i> standards	Any <i>district</i>	7404.2, 7404.3, 7404.4

8207.3 In addition to the authority granted above the Board shall exercise all other powers authorized by the Zoning Act of June 20, 1938 (52 Stat. 797), as amended.

Section 8208—Administrative Powers

8208.1 In exercising the above powers the Board may in conformity with the provisions of the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, reverse or affirm, wholly or partly, or may modify the

and the impact on TDR's and Combined Lot Development. Chris Collins will deal with the impact on buildings that have been built under the existing and previous definitions and Steve Sher will be, as usual, our clean-up hitter covering many of the significant problems that would be created by some of the proposals.

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