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February 5, 2003

MEMORANDUM

BY HAND

TO: Jennifer Steingasser,
Office of Planning

FROM: Christopher H. Collins 

RE: Zoning Commission Case No. 02-35
(Text Amendment – Definition of Building Height) – Impact on Development
of Portals Site at 12th, 14th and D Streets and Maine Avenue, S. W.

Introduction

As a follow-up to our recent meeting and our subsequent discussion, the following information is to provide you with a background of the development of the Portals site. This project, which has been in various stages of planning and development since January of 1986, uses Maryland Avenue, S.W. as the point of measurement of building height. This measuring point has been approved and confirmed by a number of D.C. government agencies over the years. Parcels A, B and C of the Portals site were developed with this point of measurement. A change in the point of measurement for Parcels D and E, as proposed in Case No. 02-35, would have significant impacts on the project.

Exclusive Rights Agreement

The proposed development of the Portals site was approved by the D.C. Redevelopment Land Agency (RLA) in early 1986. RLA controlled the property at that time, and executed an Exclusive Rights Agreement (ERA) with Portals Development Associates (PDA) on January 24, 1986 (Exhibit A). The ERA stated, *inter alia*, that in consideration of PDA's investment of both time and resources in the preparation of a

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proposal for development, the RLA would forego consideration of other proposals. Initial plans were due within 30 days, and the objective of the Agreement was "to create a high quality development."

Project plans were prepared by Arthur Cotton Moore Associates for submission to RLA. The Portals site, like most of Southwest D.C. at the time, was not subject to the 1958 Zoning Regulations, but instead to the pre-1958 regulations and the Southwest Urban Renewal Plan. The original plans for the project showed that the buildings in the Portals development would be constructed to a height of 90 feet, as measured from the Maryland Avenue roadway to be constructed over the railroad tracks. The attached Site Plan, dated February 21, 1986 (Exhibit B), shows the proposed development in roughly four quadrants, bordered by 12th, 14th and D Streets, S.W. and Maine Avenue, with the project divided into quarters by Maryland Avenue and 13th Street. The Site Plan shows that the elevation of the first floor levels of all of the proposed buildings was to be at D.C. datum plus 44, which was the then-proposed elevation of Maryland Avenue and the central plaza. Maryland Avenue was eventually constructed at a width of 160 feet, with a central plaza of 320 feet in diameter, at a building measuring point elevation of plus 47.

In order to confirm the then-current status of Maryland Avenue, S.W., PDA sought the input of the D.C. Surveyor. On January 16, 1986, Ralph Shaeffer, the then-Surveyor of the District of Columbia, confirmed that Maryland Avenue was vacated and abandoned for public use in 1901, and use of the street was granted to the railroad. (Exhibit C). He also confirmed that, subsequently, Congress then transferred certain portions of Maryland Avenue to the RLA, with the remainder of the right-of-way to be known as a "railroad street".

Land Disposition Agreement

In May of 1989, the Developer and RLA entered into a Land Disposition Agreement (LDA). Section 1 of Part I of the LDA includes the definitions to be used throughout the Agreement. The term "Basement-Type Space" was defined as anything below D.C. datum plus 46 (the elevation of the Maryland Avenue roadway).¹ Section 7 of Part I of the LDA required PDA to construct the Maryland Avenue roadway as a public improvement, and also required the RLA to review and approve the plans for the Maryland Avenue roadway prior to construction. Section 105 of Part II of the LDA required PDA to dedicate the Maryland Avenue roadway to the District of Columbia.

¹ The subsequent drawings indicate a point of measurement of the buildings abutting the Avenue at elevation plus 47.

Development

The Maryland Avenue roadway and Parcels B and C of the Portals site were developed in the early 1990's pursuant to the controls of the Southwest Urban Renewal Plan. The office buildings are now known as 1250 and 1280 Maryland Avenue, S.W. The plans for the buildings and the roadway were subject to RLA review and approval, as well as review and approval by the Commission of Fine Arts, under the Shipstead-Luce Act. The buildings were developed using the Maryland Avenue roadway as the point of measurement.

The Urban Renewal Plan for the Southwest Urban Renewal Area, Project Area C expired in 1997. The Zoning Commission then approved a Zoning Map Amendment to rezone the property from its then unzoned status to C-3-C. PDA then sought and received confirmation from the Zoning Administrator that, under the Zoning Regulations, the height of the buildings in the Portals development could be measured from Maryland Avenue. (Exhibit D).

Parcel A is currently being developed pursuant to the C-3-C zoning regulations with the Mandarin Oriental Hotel, and also uses Maryland Avenue as the point of measurement. The hotel was also reviewed and approved by the Commission of Fine Arts. The hotel development is using financial assistance by the city, through the Tax Increment Financing (TIF) program. The entire Portals site is identified by the Comprehensive Plan as medium-high density commercial, and is a Development Opportunity Area.

Schedule of Heights Amendment

In 1999, the Council of the District of Columbia enacted D.C. Law 12-234, the "Schedule of Heights of Buildings Amendment Act of 1998". The purpose of the legislation was "to amend Paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings to provide more uniformity in the heights and setbacks of buildings to be developed on a site bounded by 14th Street, S.W., D Street, S.W., 12th Street, S.W., and Maine Avenue, S.W. in Ward 2."

The Report to Members of the Council from Chairman Linda Cropp on that legislation, dated October 20 1998 (Exhibit E), notes on page 3 that "The Portals site is zoned C-3-C, which permits a building to be constructed as a matter-of-right to a height of 90 feet, as measured from the highest elevated sidewalk adjacent to the building (which, in this case, is the Maryland Avenue frontage)." Chairman Cropp also recognized on page 3 of the Report that "the maximum building height of the Portals building under the 1910 Height Act is 130 feet, as measured from the Maryland Avenue frontage."

The purpose of the legislation was to amend the Schedule of Heights to allow a building on the portion of the Portals site adjacent to 14th Street to be set back an additional 20 feet, and thereby have its height measured from Maryland Avenue, the same as the other buildings in the Portals development. On page 4 of the Report, Chairman Cropp notes that the permitted zoning height of this parcel "would be still 40 feet lower than the overall maximum limits set forth in the 1910 Height Act". She further noted on page 4 that, under either the PUD or TDR scenario, "such additional height, if approved, would still be consistent with the overall maximum limits set forth in the 1910 Height Act."

The Executive Branch, through the D.C. Department of Housing and Community Development (DHCD), testified in support of the amendment to the Schedule of Heights. (Exhibit F). Mr. Smith of DHCD testified that the intent of the project design was "to provide balanced development along Maryland Avenue, framing views to the Capitol and the Tidal Basin and to ensure unified height along the grand new avenue". He testified that the proposed amendment would prevent "an awkward and unbalanced building scheme with three of the buildings along new Maryland Avenue with a uniform height of 90 feet and a fourth building at a height of less than 60 feet". He testified that the DHCD's Architectural Review Panel (ARP) and the U.S. Commission of Fine Arts both reviewed and approved the building height that would be permitted by the amendment, i.e., to measure the building height from Maryland Avenue.

Conclusion

Maryland Avenue was constructed for the purpose of facilitating this multi-phase development. At this point, the office buildings identified as 1250 and 1280 Maryland Avenue, S.W. have been completed and occupied, and the Mandarin Oriental Hotel is under construction. All of these buildings have used the plaza at Maryland Avenue (elevation plus 47) as the point of measurement. Those projects were subject to design review and approval by the Commission of Fine Arts, and the ARP, and were approved by those agencies. PDA has prepared plans for development of the parcels bordered by Maryland Avenue, D Street and 14th Street, S.W. Those plans have been reviewed and approved in concept by the Commission of Fine Arts, using Maryland Avenue as the point of measurement, and the site plan including those buildings as measured from Maryland Avenue was reviewed and approved by the ARP. DHCD testified in support of the proposed amendment to the Schedule of Heights. The testimony clearly indicates that DHCD was aware of, and supported, the development of the vacant parcels north of Maryland Avenue to be measured from Maryland Avenue with an elevation of plus 47, to allow for a comprehensive development with consistent building heights.

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A change in the rules at this late stage of the Portals development would have significant adverse consequences on the project. We would like an opportunity to discuss this again with you before OP proceeds back to the Zoning Commission on this case.

CHC/skp

cc: Ellen McCarthy (w/attachments)
Steven Grigg (w/attachments)

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