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**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**

**Proposed Text and Map Amendments for the
Union Station North Zone**

Case No. 09-21

**Statement of Monte Edwards
January 6, 2010**

My name is Monte Edwards. I am representing the Capitol Hill Restoration Society (CHRS). CHRS is generally supportive of the proposal to develop the area above the railroad tracks north of Union Station. However, CHRS has concerns about the proposed Text and Map Amendment to create and implement the Union Station North (USN) District, reservations about what will actually be achieved by this proposal, and is opposed to the proposed measuring point for determining the height of this development.

Reconnecting the City

The proposal would permit the construction of an air rights development on a 14 acre platform about 30-feet above the existing railroad tracks north of Union Station on both sides of H Street. The development south of H Street would likely provide a better connection between Union Station and the H Street Bridge than is now provided by the Union Station garage. The development north of H Street will be located between 1st and 2nd Streets, NE, but will not front on 1st Street (separated by the Railway Express building and transformer structure) or 2nd Street (separated by the Metro tracks). Thus, the northern part of the development will not connect to the existing street grid and it will be located on a platform, 30-feet above the existing streets. The result will be the equivalent of a walled city, not unlike a medieval castle, with its entrance or "gate" located on the H Street bridge. If the H Street Bridge is regarded as a barrier between NOMA and near northeast, this will be a continuous 30-foot high barrier extending from H Street to K Street. CHRS urges that the Commission require a complete design of stairs and terraces that might minimize this barrier.

ZONING COMMISSION
District of Columbia

CASE NO. 09-21
EXHIBIT NO. 21
ZONING COMMISSION
District of Columbia
CASE NO. 09-21
EXHIBIT NO. 26

There is a Congressional Interest In the Prominence of Union Station

The 1910 Height Act (*An Act to Regulate the Height of Buildings in the District of Columbia*), Section 5, specifies heights for buildings based on the width of streets and whether the street is a residential or a business street, but provides a more restrictive limitation to this general formula for the Union Station area:

Section 5 (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 (24 m).

While this does not amount to a prohibition to what happens behind Union Station, it does indicate a clear Congressional interest in maintaining the prominence of Union Station as viewed from the Capitol. To the extent that the USN proposal would detract from the prominence of Union Station, it would be contrary to this intent.

The Proposed Measuring Point Conflicts with the Comprehensive Plan

§ 2905 of the proposed text provides:

The measurement of building height may be taken from the elevation of the sidewalk on the H Street bridge at the middle of the front of the buildings, to the highest point of the roof or parapet rather than from grade as would otherwise be required by § 199.

This definition of “Measuring of building height” is directly contrary to the Capitol Hill Element of the present Comprehensive Plan that provides:

Capitol Hill CH-2-1.7

The allowable height of any building constructed in the air rights should be measured from the existing grade of 1st Street or 2nd Street NE, rather than from the overpass.

On November 23, 2010 the Council adopted the Comprehensive Plan Amendments of 2010 that contains alternative language for the Capitol Hill Element of the Comprehensive Plan that would eliminate the existing grade requirement. Section 1511.12 was amended to read as follows:

“Policy CH-2.1.7: H Street Overpass

“Ensure that any future development in the air rights adjacent to the H Street overpass recognizes the limitations of the streets beneath the bridge to serve high volume commercial traffic, and includes provisions for parking and delivery ingress and egress from the bridge itself. The allowable height of any building constructed in the air rights should be measured ~~from the existing grade~~

of 1st Street or 2nd Street NE, rather than from the overpass. consistent with the Height Act and relate positively to the surroundings with special attention to Union Station and other historic buildings, the federal precincts on Capitol Hill, and existing neighborhoods to the east and west. Development must give special attention to the preservation and enhancement of and views to Union Station and its historic surroundings by ensuring the provision of exemplary architecture and encouraging upper story setbacks and minimized penthouses.”

This Council-amended version has been submitted to the National Capital Planning Commission for their review, but will not be on the NCPC agenda until their January meeting. It is questionable whether the Council-approved amendment to the Comprehensive Plan will be approved by NCPC because in their October 19th letter, NCPC made it very clear that while they agree to the new language about design, they do not agree to the technical aspects concerning measuring points and specifically state that measuring from the H Street bridge would be contrary to the 1910 Height Act and past Zoning Commission actions¹. Following review by NCPC there is the required period for Congressional review². Until these both occur, the Comprehensive Plan Amendments of 2010 are not effective³. Rather, the exiting CH-2-1.7 provision is effective, and proposed §2905 of the USN Zoning is in direct conflict, and cannot be considered by the Zoning Commission.

The Proposed Measuring Point Conflicts with the Existing Zoning Regulations

In large part because of the Station Place development (that now houses the SEC), the Zoning Commission initiated ZC Case No. 02-35 “Definition of Building Height and Natural Grade”. The goal of this zoning proceeding was to implement the objectives in the Urban Design Element of the District Elements of the Comprehensive Plan. At that time, Subsection 707.2 recommended, among other policies, that the District maintain and enhance the horizontal character of buildings within the District to protect the skyline. Also, § 708 provided additional guidance with the objective, “to encourage developments which respond to the horizontal skyline of the District so as to maintain its low-scale image and contribute to the enhancement of the District’s character.” Section 804.1(k) of the Historic Preservation Element of the Comprehensive Plan also sought to protect and enhance the horizontal skyline to preserve the character of the District.

In determining the need to amend the Zoning Regulations, The Commission stated (Order 02-35, pp 2-3) that:

¹ The October 19th NCPC letter is attached.

² Comprehensive Plan, Volume One: The District Elements, Introduction, is included as Attachment B.

³ Municipal Planning, the District of Columbia Home Rule Act, is included as a part of Attachment B.

“Allowing construction next to bridges and viaducts to exceed the height of other construction nearby would create anomalies in the skyline and would therefore be inconsistent with these policies.”

To accomplish this purpose, the Commission amended Title 11, Zoning Regulations, § 199, DEFINITIONS, § 199.1 as follows:

1) The definition “Building, height of” is amended by inserting the following text after the first sentence:

The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet.

2) A new definition, “natural grade,” is added to read as follows:

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

Because of concerns about the Union Station air rights, Akridge, through their attorney, Wayne Quin, took an active role in the proceeding and stated:

MR. QUINN (Tr. 35):

I do want to note that the Akridge Air Rights case will come before the Zoning Commission as a planned unit development, so you'll have approval rights in terms of the height and massing.

MR. QUINN (Tr. 39):

The point of measure will be from the upper level of the track bed, where there are two levels. And there is an improvement there of tracks running across the bed, and we would be measuring from the upper tracks.

The Height Act and Zoning Regulations are expressed in terms of “street grade” or “curb,” and not “railroad tracks.” Provision CH-2.1.7 was added to the Comprehensive Plan that designates a street grade that would be comparable to the upper railroad track grade:

“The allowable height of any building constructed in the air rights should be measured from the existing grade of 1st Street or 2nd Street NE, rather than from the overpass.”

This provision in the Comprehensive Plan gave Akridge exactly what they had asked for. Going north on 2nd Street from the H Street overpass, 2nd Street rises, and at I street is about the same elevation as the upper railroad tracks. Further, since the air rights do not front on 1st Street (separated by the Railway Express building and transformer structure)

or 2nd Street (separated by the Metro tracks), the air rights development would not have been able to use 1st or 2nd streets as measuring points under a typical application of the zoning regulations. This CH-2.1.7 provision in the Comprehensive Plan allows them to use 1st or 2nd Street as the measuring point. Thus, the existing Zoning Regulation definition of “Building Height” is related to the continued validity of CH-2.1.7 of the Comprehensive Plan in order to effectuate exactly what Akridge and the Office of Planning asked for in Zoning Case No. 02-35: the equivalent of measuring from the upper railroad tracks.

The sound Urban Design and Historic Preservation Elements of the Comprehensive Plan that the Zoning Commission implemented in Case No. 02-35 remain valid today, but are not even addressed by the Office of Planning in the context of USN. Further, Provision CH-2.1.7 of the Comprehensive Plan remains in effect unless and until the Council-amended version survives review by NCPC and Congressional review. The Office of Planning’s proposal that this Commission adopt a new §2905 and change the measuring point to the top of the H Street Bridge would be contrary to the Commission’s action in ZC No. 02-35 and would be inconsistent with the Comprehensive Plan.

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The Honorable Adrian M. Fenty

Chairman
Council of the District of Columbia
The Honorable Vincent C. Gray

Executive Director
Marcel C. Acosta

IN REPLY REFER TO:
NCPC File Nos. CP19/7151

OCT 19 2010

Ms. Alma H. Gates
Committee of 100 on the Federal City
1317 G Street, NW
Washington, DC 20005

Re: Letter to Chairman Vincent Gray dated October 4, 2010

Dear Ms. Gates:

We are in receipt of a courtesy copy of a letter from you dated October 4, 2010 to Vincent Gray, Chairman of the Council of the District of Columbia. The letter focused on the recent hearing regarding the proposed amendments to the District Elements of the Comprehensive Plan and in particular the amendments dealing with the forthcoming Union Station Air Rights Project proposed for the H Street, NE overpass. The letter sought to clarify our position on this project in light of our letter to Chairman Gray dated September 3, 2010 (copy attached) and in light of Harriet Tregoning's testimony at the September 20, 2010 Council hearing. Ms. Tregoning offered alternative language for the Capitol Hill Element of the Comprehensive Plan, stating that the language was agreed upon by NCPC and the District of Columbia Office of Planning (DCOP). I would like to clarify our position on this project as it stands at this time.

After submitting our letter of September 3, 2010 to Council stating NCPC's position on the proposed amendments, DCOP staff contacted NCPC staff and proposed alternative language regarding the project. It is our understanding that the details of what is certainly to be a complex project are still being developed. It is our intent that the alternative language agreed upon by DCOP and NCPC staff was meant to cover NCPC's concerns related to *design* of the project and not the technical details of the measuring point for the buildings. Without seeing the project's details, it is difficult to ascertain what the appropriate measuring point should be, although we reiterate that measuring from the crown of the H Street, NE overpass would be, in our view, contrary to the Height Act and past Zoning

Ms. Alma Gates

Page 2

Commission actions related to measuring from elevated roadways or man-made grades. Hence, the language that was verbally agreed to between DCOP staff and NCPC staff is related to the overall design of the project and NCPC will take a position on the measurement of the project once the design details are known.

I hope this clarifies our position on this issue. We look forward to reviewing these amendments to the District Elements of the Comprehensive Plan once the Council has taken a formal action. We also look forward to reviewing aspects of the Union Station Air Rights project as the Zoning Commission establishes zoning at the site. If you have any questions, please contact David Zaidain of my staff at 202-482-7230.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marcel Acosta', with a stylized, cursive script.

Marcel Acosta
Executive Director

Attachment

cc: Chairman Vincent Gray
Council of the District of Columbia

Councilmember Tommy Wells
Council of the District of Columbia

Anthony Hood
District of Columbia Zoning Commission

Robert Miller
Council of the District of Columbia

Harriet Tregoning
DC Office of Planning

The Comprehensive Plan, Volume One: The District Elements, Introduction, page 1-3:

**The Comprehensive Plan's Legal
Basis, Role and Content 101**

Legislative Foundation 102

The DC Code vests the Mayor with the authority to initiate, develop and submit a Comprehensive Plan to the DC Council, as well as the power to propose amendments following the plan's adoption. In the course of adoption, the DC Council may alter the Comprehensive Plan, subject to the approval of the Mayor and review by the National Capital Planning Commission (NCPD) and Congress.

From The District of Columbia Home Rule Act:

MUNICIPAL PLANNING

SEC. 423. [D.C. Code 1-244]. (a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 [An Act To define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes (60 Stat. 718, 721), D.C. Code 9-106 and 9-128], or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any state or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the federal establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the federal establishment as determined in the manner provided by act of Congress.