

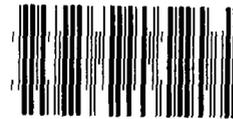
GAO

Briefing Report to the Honorable
Frank R. Lautenberg
United States Senate

July 1986

HEIGHT LIMITATIONS

Limitations on Building Heights in the District of Columbia



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General Government Division

B-205447

July 18, 1986

The Honorable Frank R. Lautenberg
United States Senate

Dear Senator Lautenberg:

This report responds to your January 22, 1986, letter requesting that we

- gather information to describe the current laws limiting building heights in the Nation's Capital (see app. I),
- discuss the administrative apparatus in place to implement building height limitations (see app. II), and
- elicit comments from federal and District officials on whether the current laws and regulations satisfactorily protect the federal interest with respect to security and to the architectural and aesthetic character of the Nation's Capital as well as the Federal Enclave (see app. III).

Your letter also requested that we interpret the meaning and objectives of the Home Rule Act relating to the District government's authority to amend building height limitations. As discussed with your office, this interpretation will be provided under separate cover.

SUMMARY

The Building Height Act of 1910 and the Schedule of Heights of Buildings Adjacent to Public Buildings (the Schedule of Heights) govern private sector maximum building heights in the District of Columbia.¹ In addition, D.C. zoning regulations often place further restrictions on private sector building heights.

The administrative apparatus in place to enforce the Building Height Act of 1910 and the Schedule of Heights lies with the District government. In that respect, protection of the federal interest is locally enforced. The federal government, however, has building height approval authority over public building projects in some parts of the Nation's Capital.

¹ The Building Height Act of 1910 required that a Schedule of Heights be adopted by the Board of Commissioners of the District of Columbia to further regulate the height of buildings fronting on federally developed sections of the city.

Though the federal government is not involved in enforcing the Building Height Act of 1910 or the Schedule of Heights, federal organizations such as the Secret Service and the Commission of Fine Arts provide advice on private sector building heights in some situations. For example, proposed projects in some historical areas are referred by the D.C. government to the Commission of Fine Arts for its advice on whether the projects, including their height, are compatible with other buildings in the surrounding vicinity.

Responses to a questionnaire we sent to federal, District, and private organizations showed no clear consensus as to whether building height laws or the administrative apparatus to enforce those laws satisfactorily protect the federal interest. Some officials from federal agencies and private organizations are concerned, however, that pressures to allow for taller buildings in the District are increasing. Security is another issue raised; several federal officials are concerned that the federal government lacks a comprehensive, unified security plan for reviewing new construction in the District. Currently, there is no legal requirement for such a security review. Additionally, there is concern that tall buildings in the suburbs will mar the scenic vistas leading in and out of the Nation's Capital.

SCOPE AND METHODOLOGY

We researched building height laws and reviewed legislative histories and materials developed by the staff of the House Committee on the District of Columbia, the National Capital Planning Commission, and the Commission of Fine Arts. We sent questionnaires to 22 agencies, commissions, and private associations soliciting comments on aesthetics, architecture, and security as those subjects related to building heights. (A list of the organizations we surveyed is provided in app. IV.)

We also met with representatives of federal, District, and private organizations closely involved with building height issues--e.g., the D.C. Department of Consumer and Regulatory Affairs, the National Capital Planning Commission, the Commission of Fine Arts, the Secret Service, the D.C. Preservation League, and the Federal City Council.

We obtained oral comments on this report from officials of the National Capital Planning Commission, the Commission of Fine Arts, the Secret Service, the National Park Service, and the District of Columbia government. The officials generally agreed with the content of this report and made several suggestions to correct technical details. These suggestions were incorporated as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after its issue date. At that time, we will send copies to interested congressional committees and the organizations that responded to our questionnaire. Copies will be available to others upon request.

If there are any questions regarding the contents of this briefing report, please call me on 275-8387.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gene L. Dodaro".

Gene L. Dodaro
Associate Director

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BUILDING HEIGHT LIMITATION LAWS

Current building height laws for the District of Columbia essentially limit the maximum height of commercial buildings to 130 feet and residential structures to 90 feet. These limits have evolved over time. The federal government has been involved in regulating building heights in the Nation's Capital since 1791 when President George Washington established the District's first limitations on building heights. Correspondence between President Washington and Thomas Jefferson indicates that early building height regulations limiting private buildings to 40 feet were intended to aid in controlling fires and to provide for the "openness and convenience" of the federal city. Although the regulations were subsequently suspended, concerns about openness and fire safety were recurring themes in later building heights debates.

Building heights again became a documented concern in 1894 when a building permit for the 12-story, 160 foot, Cairo Hotel at 1615 Q Street, N.W., was issued. Since earlier regulations had been suspended, there were no laws or restrictions in force in the District to prohibit the building of private structures of such "skyscraper" proportions. To preclude the construction of more buildings in the Cairo's height class, the presidentially appointed Board of Commissioners of the District of Columbia established new height regulations. These regulations limited building heights to the width of the street in front of proposed buildings, with a maximum height of 90 feet for buildings in residential neighborhoods and 110 feet for buildings in commercial areas. Records from that period show that a primary concern of the Board in establishing building height limitations was the fear that fires in buildings of excessive heights would prove difficult to extinguish and that such buildings would create an unhealthy atmosphere by blocking light and air from the street below.

The Congress' first involvement in limiting building heights in the District of Columbia came several years later when it passed the Building Height Act of 1899. The act was drafted by the Board and generally consisted of the regulations, with slight modifications, that were promulgated in 1894. The history of the 1899 act does not identify the reason for legislating building heights other than to note a continuing concern for fire and safety and the need for light and ventilation on the streets of Washington.

The Congress again became involved with building heights when, at the request of the Board, the Building Height Act of

1910 was passed. The 1910 act continued the process, started by the Board in 1894, whereby maximum building heights were determined by the width of the street in front of the proposed building, but reduced the maximum allowable height from 90 feet to 85 feet in residential areas and increased allowable heights in commercial areas from 110 to 130 feet--except along Pennsylvania Avenue between 1st and 15th Streets, N.W., where the maximum allowable height was increased to 160 feet. The act of 1910, as amended, continues to govern building heights in the Nation's Capital.

The 1910 act also required the Board to establish a separate Schedule of Heights within the general parameters outlined in the act to further regulate the height of buildings fronting on federally developed sections of the District. The Schedule, by limiting the height of private sector buildings adjacent to federal buildings, has served to maintain the prominence of federal buildings and monuments in the District.

Since its passage the 1910 act, which governs building heights in the District at large, has been amended by the Congress on several occasions. Some amendments were concerned with building height restrictions in general. For example, one amendment raised the maximum height for residential buildings back to 90 feet, while another amendment established additional height limitations on nonfireproof buildings. Other amendments, however, provided specific exemptions for individual projects. For example, both the Georgetown University Hospital located on Reservoir Road and the National Press Club Building at 14th and F Streets were the subjects of amendments to the 1910 act. In both situations, exemptions were made to allow for taller structures than provided for under the act.

Officials we spoke with, including the D.C. Zoning Administrator, the National Capital Planning Commission's Associate Executive Director for D.C. Affairs, and the Secretary of the Commission of Fine Arts, were unaware of any amendments to the Schedule of Heights, prior to the Metropolitan Square Project, to allow for taller private sector buildings adjacent to public buildings.

ADMINISTRATION OF BUILDING HEIGHT LIMITATIONS

Protection of the federal interest, with regard to the administrative apparatus in place to enforce the Building Height Act of 1910 and the Schedule of Heights, lies with the D.C. government. The federal government's administrative authority is advisory, although agencies such as the Secret Service, the Commission of Fine Arts, and the Pennsylvania Avenue Development Corporation sometimes influence building height decisions unrelated to the enforcement of the Building Height Act of 1910 or the Schedule of Heights. For example, as a result of the controversy over the Metropolitan Square Project, the District government sends plans for proposed construction projects in the vicinity of the White House to the Secret Service for a security review. Private organizations--to a lesser extent--also provide occasional input on building height issues not related to the enforcement of the Building Height Act of 1910 or the Schedule of Heights.

Private sector building permit applications are processed through the D.C. government's Department of Consumer and Regulatory Affairs. The Department's Zoning Division reviews building permit applications to ensure that proposed projects conform with applicable zoning regulations and do not exceed the height limitations established by the act of 1910 or the Schedule of Heights.² The federal government is not involved in reviewing building permit applications to ensure compliance with the act or the Schedule of Heights.

The Permit Processing Division of the D.C. government's Department of Consumer and Regulatory Affairs also examines building permit applications to determine whether the applications need to be sent to other organizations for review. Some of the organizations that have an interest in reviewing proposed construction plans include the Secret Service, the Commission of Fine Arts, the D.C. Historic Preservation Review Board, and the Pennsylvania Avenue Development Corporation. Though these organizations do not review proposed building projects for compliance with the maximum height limitations specified by the act of 1910 or the Schedule of Heights, they do review various projects, within their geographic areas of interest, to ensure compliance with factors that can be affected

²Proposed projects in the Southwest Urban Renewal Area are reviewed by the D.C. Department of Housing and Community Development to ensure compliance with the urban renewal plan, the act of 1910, and the Schedule of Heights.

by building height, such as security, aesthetic beauty, or architectural purity.

For example, as a result of the Metropolitan Square Project, an arrangement was worked out between the D.C. government and the Secret Service for security reviews. The arrangement requires the D.C. government to submit proposed plans for a project in the White House area to the Secret Service for review before issuing a building permit for the project. The Secret Service reviews the plans to ensure that the project's height or design will not compromise the security of the White House area. The Secret Service's findings and recommendations are not binding on the developer or the District government. Secret Service officials told us, however, that private sector developers and the D.C. government generally agree to make recommended changes.

Proposals for private sector building projects within the Georgetown Historic District, the Rock Creek Park perimeter, and the area around the major monuments--such as the Lincoln and Jefferson memorials, the Capitol, and the Washington Monument--are forwarded by the Permit Processing Division to the Commission of Fine Arts for its review. While the Commission does not have approval authority over building heights in the District, it can influence decisions regarding building heights through its advice regarding matters of building design, historic preservation, and the planning of projects in the Nation's Capital.

The D.C. Historic Preservation Review Board reviews plans for building projects or alterations in historic districts. The Board, consisting of 11 members nominated by the Mayor and confirmed by the City Council, influences building heights in the District through its authority relating to the protection, preservation, enhancement, and perpetuation of the historic, architectural, cultural, and aesthetic heritage of Washington. Proposed building plans that do not conform to historic areas' architectural, aesthetic, or engineering designs, including building heights, are not approved by the Board, and it recommends that building permits not be issued.

The Pennsylvania Avenue Development Corporation reviews and approves the heights of new building projects (that have been determined to meet the requirements of the act of 1910 and the Schedule of Heights) along Pennsylvania Avenue as part of its overall mission of ensuring that the development, maintenance, and use of the Pennsylvania Avenue area is compatible with its historic and ceremonial importance. The Pennsylvania Avenue Development Corporation is governed by a 15-member board of directors. Eight members are appointed by the President and come

from private life. The other seven are designated by act of Congress and serve on the board by virtue of their positions with the federal or District of Columbia government. The board also has seven nonvoting members, designated by act of Congress, who represent federal or District agencies concerned with urban planning or the arts and sciences.

The National Capital Planning Commission (NCPC), the agency charged with protecting the federal interest³ in the District of Columbia and the central planning agency for the federal government in the Washington, D.C., area, does not have approval authority over the heights of proposed private sector buildings and is not typically involved in the review of private sector building projects unless a zoning change or planned unit development is proposed.⁴ It does, however, have building height approval authority over federal building projects throughout the District and D.C. government building projects within the central area (the area generally bounded by Pennsylvania Avenue, N.W.; 15th Street, N.W.; Florida Avenue, N.W.; New York Avenue, N.W.; New Jersey Avenue, N.W.; North Capitol Street, N.W.; and Constitution Avenue, N.W.). D.C. government projects outside the central area are reviewed by the D.C. Department of Administrative Services.

Prior to the Home Rule Act, NCPC's five citizen members were all presidentially appointed, and the Commission was responsible for comprehensive planning (both federal and city) in the National Capital. The Home Rule Act, however, transferred the preparation of local elements of the Comprehensive Plan from NCPC to the District government, thus lessening NCPC's influence over private building activity.

Depending upon the particular situation, private organizations may exert some degree of influence over building

³In an earlier report, Mission and Functions of the National Capital Planning Commission (GAO/RCED-83-115, June 24, 1983), GAO found that the term "federal interest" is an undefined and sometimes controversial term relating to the image, character, and functioning of Washington, D.C., and its environs. The report discusses federal, state, regional, and local officials' views on the federal interest and how it should be protected.

⁴Planned unit development encourages diversification in the use, size, type, design, and location of buildings and other structures. It provides for greater flexibility in planning and design than may be possible under conventional zoning procedures.

height issues in the District of Columbia. These organizations include the D.C. Preservation League, the Committee of 100 on the Federal City, and the Federal City Council.

COMMENTS ON BUILDING HEIGHTS AND THE
PROTECTION OF THE FEDERAL INTEREST

To elicit comments on whether current building height laws satisfactorily protect the federal interest, we sent a questionnaire to 22 agencies, groups, and organizations involved in one way or another with security or the architectural and aesthetic character of the city as the Nation's Capital. The questionnaire asked respondents to categorize the extent to which the federal interest is being protected and to provide narrative explanations for their answers.

Responses to the standardized portion of our questionnaire do not indicate a consensus on the extent to which the federal interest is being protected in regard to building heights in the Nation's Capital. Of the completed questionnaires we received, respondents were divided on whether the federal interest is being satisfactorily protected. For example, six respondents indicated that overall, the federal interest is being satisfactorily protected while four respondents believed that it is not. However, from the written statements and narrative comments received, we were able to summarize several common concerns about building heights that key officials shared.

First, some officials believe there may be a need for additional guidance to ensure that buildings do not exceed height limitations specified by the act of 1910. For example, the Executive Secretary to the Commission of Fine Arts stated that because of economic pressures to develop the District of Columbia, he is concerned that building height laws will increasingly be interpreted in such a way as to justify buildings which are higher than envisioned under the act of 1910. Citing buildings at L'Enfant Plaza which were built using measurements from raised roadways, he stated that although the height of those buildings might technically comply with the law, he believed measuring them from raised roadways allowed them to exceed heights envisioned in the act of 1910. He also believed that the potential for similar interpretations exists in other places in the city, for example at St. Elizabeth's Hospital and at H Street behind Union Station.

Officials from the D.C. Preservation League, the Commission of Fine Arts, and the Advisory Council on Historic Preservation noted that Techworld is another project where there is controversy over where the street should be measured for the purpose of determining the allowable building height. Since the street fronting the project varies in width at different points, the location of the measurement could significantly affect the

height of the proposed building in question.

An official from the National Park Service, noting that the Department of Interior is a party in the Techworld litigation, agreed that current building height restrictions are being subjected to varying interpretations. He believes that problems with identifying the point from which to measure street widths for the purpose of determining the allowable building height should be addressed by adding clarifying language to the District's Zoning Regulations.

On the other hand, other organizations, including the Pennsylvania Avenue Development Corporation, NCPC, the Federal City Council and the D.C. Office of Planning, believe that current laws and regulations are satisfactory as written. The Pennsylvania Avenue Development Corporation stated that "the D.C. Zoning Regulations and height of building act are very satisfactory in enforcing the heights of private buildings." In NCPC's response to our questionnaire, the Executive Director wrote that the Commission "... believes that the current legislation governing the building height limitations in the District of Columbia serves the architectural and aesthetic aspects of buildings in the Federal Enclave, as well as the District-at-large, satisfactorily." The Executive Vice President of the Federal City Council, a nonprofit organization, believes that additional height restrictions are not necessary. He stated that current laws have served well, over time, to maintain the city's horizontal, open quality and preserve the Washington Monument and the Capitol as the dominant buildings that define the Nation's Capital. An official from the D.C. Office of Planning told us that the D.C. government finds the Building Height Act of 1910 to be very clear as to where streets are to be measured for the purpose of determining building height.

A second concern, mentioned several times in the course of our work, involved the effect of building heights on security. The recent increase in terrorism directed against Americans and American facilities has served to focus attention on the need for security considerations in building plans. As noted, the D.C. government and the Secret Service have worked out an arrangement whereby the Secret Service reviews proposed building plans for projects in the vicinity of the White House, and Secret Service officials indicated that arrangement adequately addresses security concerns in that area. However, several officials we spoke with noted that, when new building projects are being planned in other sections of the District, there is no security review to ensure protection of the federal interest. While officials from the D.C. government's Office of Planning told us

that from a security standpoint they believed the federal interest in the District was adequately protected, officials from other agencies believed that more emphasis was needed.

The United States Capitol Police for example, maintain that the current process for conducting security reviews is very unsatisfactory for protecting the federal interest. The Capitol Police indicated that as long as the D.C. government has the authority to amend the Schedule of Heights, federal security interests will be compromised. The Capitol Police believe only the Congress should have the authority to approve building construction in the vicinity of the U.S. Capitol.

The D.C. Zoning Administrator believes that formal guidelines for conducting security reviews of new building projects in the District need to be established. Officials from the FBI and the U.S. Capitol Police suggested that the feasibility of a multiagency advisory panel on security be considered. Such a panel could work with the private builders and the D.C. government to ensure that appropriate security issues receive consideration.

Another security concern raised was building design. Officials from the Secret Service and the FBI told us that open-access penthouses, balconies, and other such aspects of a building's design create security concerns regardless of the building's height.

A third commonly mentioned concern was building heights outside the Nation's Capital. While the Building Height Act of 1910 regulates building heights in the District of Columbia, there are no federal limitations on the height of buildings in the Washington suburbs.⁵ Several officials stated that the recent development of Rosslyn, Virginia, and the planned PortAmerica project in Prince Georges County, Maryland, if constructed, will adversely affect the federal interest by detracting from the visual prominence of the Nation's Capital. In a written statement submitted to the Prince Georges County Planning Board, the National Park Service maintained that if the proposed 52-story PortAmerica tower is constructed, "... our important vistas downriver, a part of our Nation's heritage that is part of the pride of all Americans, will be permanently

⁵Two recently introduced bills, S. 2537 and H.R. 5030, seek to, among other things, limit the height of buildings in the National Capital Region to 400 feet.

compromised and would effectively reduce the qualities that make Washington and its surrounding areas different, beautiful, and a unique Capital city."

Many officials concerned about building heights outside the District noted that any action regarding building heights in the suburbs should be in the nature of a cooperative agreement between the federal government, District government, and the various suburban jurisdictions. Such an agreement, we were told, should balance the needs of the suburbs with the federal interest in protecting the panoramic views of the nation's monuments. The Advisory Council on Historic Preservation believes that increased efforts are needed on the part of NCPC to work with the Metropolitan Washington Council of Governments to come to agreement on areawide building height limitations. The Committee of 100 on the Federal City believes that NCPC should more actively promote regional cooperation on building heights issues.

Other organizations maintain that agreement needs to be reached on specific scenic vistas leading in and out of the city. The D.C. Preservation League suggested that the federal government attempt to reach agreement with the surrounding jurisdictions on the critical sightlines of the Nation's Capital that should be protected from interference from suburban development. A National Park Service official suggested that a presidentially appointed blue-ribbon commission be considered to identify the critical sightlines to be protected from suburban development.

Organizations Surveyed by GAO

- 1) Advisory Council on Historic Preservation
- 2) Architect of the Capitol
- 3) Commission of Fine Arts
- 4) Committee of 100 on the Federal City
- 5) D.C. Historic Preservation Review Board
- 6) D.C. Office of Planning
- 7) D.C. Preservation League
- 8) D.C. Zoning Administrator
- 9) Federal Bureau of Investigation
- 10) Federal City Council
- 11) General Services Administration (Public Buildings Service and Federal Protective Service)
- 12) Library of Congress, Protective Services Office
- 13) Marshal of the Supreme Court
- 14) Metropolitan Washington Council of Governments
- 15) National Capital Planning Commission
- 16) National Gallery of Art Police
- 17) National Park Service
- 18) Pennsylvania Avenue Development Corporation
- 19) Smithsonian Police
- 20) United States Capitol Police
- 21) United States Park Police
- 22) United States Secret Service



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