



**BEFORE THE NATIONAL CAPITAL PLANNING COMMISSION**

**Proposed Comprehensive Plan for the National Capital: District Elements-  
Comprehensive Plan Amendment Act of 2010**

File No. CP-19

**Statement of Monte Edwards**

January 6, 2011

My name is Monte Edwards. I am representing the Capitol Hill Restoration Society (CHRS). CHRS is opposed to the proposed *Policy CH-2.1.7: H Street Overpass* amendment to the Comprehensive Plan Amendment.

**The Proposed Amendment  
Would be Contrary to the Comprehensive Plan  
Would be at Variance With the 1910 Height Act and  
Would be Inconsistent With Existing Zoning Practice**

On November 23, 2010 the Council adopted the Comprehensive Plan Amendments of 2010 that contains amended language for the Capitol Hill Element of the Comprehensive Plan that would eliminate the requirement to measure height from existing grade (Section 1511.12 of the final Council Bill 18-867):

***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.

CHRS supports the added, underscored language but CHRS opposes the stricken language that would eliminate the requirement to measure height from “existing grade.” In adopting the amended language, the Council was told that the new language would provide “flexibility” in developing the air rights above Union Station and that the air rights development would reconnect the L’Enfant street grid. In fact, the “flexibility” amounts to removing the “existing grade” provision from the Comprehensive Plan and allowing the Office of Planning to propose that the measuring point be from the H Street overpass. A few short days after the Council adopted the amended language, the Office of Planning filed with the Zoning Commission Case No. 09-21, a proposed Text and Map Amendment to create and implement the Union Station North (USN) District to develop the area above the railroad tracks north of Union Station. § 2905 of the USN 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 proposed USN definition of “Measuring of building height” goes much further than merely providing “flexibility” for the development of the Union Station air rights: it is directly contrary to the currently effective Capitol Hill Element of the Comprehensive Plan:

***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 1<sup>st</sup> Street or 2<sup>nd</sup> Street NE, rather than from the overpass.

This provision implements the objectives in the Urban Design Element of the District Elements of the Comprehensive Plan that were in effect when it was adopted. 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.

The Council-approved amendment to the Comprehensive Plan should not be approved by NCPC. The Staff of NCPC made it very clear in their October 19<sup>th</sup> letter (letter attached) 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 actions. That is the position of CHRS in this proceeding.

### **The USN Proposal Would Not Reconnect the City**

The USN proposal would permit the construction of an air rights development up to 130 feet high on a 14 acre platform about 30-feet above the existing railroad tracks north of Union Station on both sides of H Street. The result will be a 160-foot high development (with 18.5 foot penthouses) immediately behind Union Station, which, at the highest point of its vaulted roof, is 125-feet. CHRS concedes that 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 1<sup>st</sup> and 2<sup>nd</sup> 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, the USN proposal will be a continuous 30-foot high barrier extending from H Street to K Street.

### **There is a Congressional Interest In Preserving 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 address what happens behind Union Station, it does indicate a clear Congressional interest in maintaining the prominence of Union Station as viewed from the Capitol. CHRS concludes that to allow a 160-foot high structure (with 18.5 foot penthouses) at the immediate rear of Union Station, while structures in front of Union Station are limited to 80-feet, would not preserve the prominence of Union Station. To the extent that the USN proposal would detract from the prominence of Union Station, it would be contrary to the intent of the 1910 Height Act.

## **The Present Comprehensive Plan Has been Consistently Implemented In Existing Zoning Practice**

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 (Order 02-35, page 2) was to implement certain key policies of the Comprehensive Plan designed to:

- maintain and enhance the horizontal character of buildings within the District to protect the skyline.
- 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, and
- 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:

“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 ZC Case No. 02-35 and at the March 17, 2003 hearing 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 1<sup>st</sup> or 2<sup>nd</sup> 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 by using the natural grade of 2<sup>nd</sup> Street, at a point near I Street, as the measuring point.

The sound Urban Design and Historic Preservation Elements of the Comprehensive Plan that the Zoning Commission implemented in Case No. 02-35 continue to be valid today. The Office of Planning’s proposal to change the measuring point to the top of the H Street Bridge would be contrary to the Zoning Commission’s thoughtful resolution in ZC No. 02-35 and would be inconsistent with the Urban Design and Historic Preservation Elements of the Comprehensive Plan.