

From: ahhjlh@verizon.net [mailto:ahhjlh@verizon.net]
Sent: Monday, October 18, 2010 9:13 AM
To: Gray, Vincent (COUNCIL)
Subject: Opposition to "air rights" amendments to Comp Plan

Please see attached letter explaining why you should vote against these amendments.

Thanks,

Ann Hargrove

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October 18, 2010
Council Chairman Vincent Gray
John A. Wilson District Building
1350 Pennsylvania Avenue
Washington, D.C. 20004

Re: Bill 18-867, Comprehensive Plan

Amendment Act of 2010

Dear Chairman Gray:

I am writing as a past chairman of the Committee on 100 on the Federal City and as a former member of the Comprehensive Plan Task Force, regarding the proposed air rights text amendments. The practical intent of these amendments is to change, for purposes of air rights development, the height measurement criteria presently found in the Zoning Regulations, the Height Act, and (for the Union Station area) the Comprehensive Plan, all of which envisage measuring the height of a building from the grade level.¹ Instead, they would allow a practically unfettered discretion to select some higher measuring point, including, in the case of Union Station, the highest point on the H Street viaduct or new viaducts to be built, or possibly some point on a built platform above the grade at the site of construction or at that of nearby streets.

I urge you to turn down these amendments, in favor of retaining the current measuring point provided in the Comprehensive Plan for the Union Station area (Policy Ch-2.1.7). I urge you as well to recommend the submission of an alternative Comprehensive Plan amendment that would treat the air rights issue as one necessitating a review of various scenarios and cost-benefit analyses by decision makers before any decision is reached as to feasibility or desirability of various approaches to the air rights development issues. Otherwise the Council and the Zoning Commission cannot adequately fulfill their responsibilities. The Council should not predetermine outcome by changing the approach now countenanced in the Comprehensive Plan, which is a reasonable interpretation of the Height Act and

¹ Specifically as to the Union Station area, the provision of the Comprehensive Plan now proposed to be deleted, Policy CH-2.8.E, provides: "The allowable height of any building constructed in the air rights should be measured from the existing grade on 1st Street or 2nd Street NE." This provision was based in part on the premise that interior lots – lots not fronting on a street -- under separate ownership from adjoining properties that do front on a street, take their height limits from that established under zoning for the area as well as the street-based height limits provided by the Height Act. The Zoning Regulations require measuring height from the curb opposite the middle of the front of the building, and where a property fronts on a bridge or viaduct, measuring from the lower of the natural grade or finished grade at the middle of the front of the building. § 199.1, Definitions, "Building, Height of". This is consistent with the Height Act, which, while it does not deal explicitly with buildings fronting on a bridge or viaduct, does clearly manifest the intent that measurement is to be done from grade level: "[T]he 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." DC ST § 6-601.07

consonant with the related Zoning Regulations. Nor in my view should it even consider doing so in the absence of adequate studies, concept plans and cost benefit scenarios for what will not only be extremely complicated public/private projects, but also will entail precedent-setting interpretations for the future.

While there is nothing inherently wrong with investigating the feasibility of air rights development for areas north of Union Station or other potential air rights areas, and reviewing concept plans and their costs and benefits--and potentially much good to be accomplished by encouraging such future development--that is not what is proposed here. In effect, since zoning cannot be inconsistent with the Comprehensive Plan, the Council is being asked to nullify the existing height measurement criteria and predetermine the applicable zoning rule for a specific project or group of projects. It is also being asked to endorse a change in the interpretation of the Height Act that is probably not legally sustainable. In the absence of a planning commission for the District of Columbia to review necessary possibilities in advance of Council action, the appropriate role for the Council at this stage is to see to it that OP performs the necessary due diligence before the Council acts to endorse any outcome. And, in this process, careful attention should be paid to what appears to be a mischaracterization of the NCPC views on this matter.

Finally, specifically as to the Union Station area, the Council must consider the possible effects on the visual profile of this part of the city. The changes sought in the proposed amendments would make possible future approval of a development that may extend height very substantially over that of nearby structures whose allowable height is measured from grade on the nearby public streets, visually dominating and overpowering Union Station and other structures in area.

The proposal is put forward in part, no doubt, on the premise that concessions to a developer in the form of greater height and thus greater marketable floor area will be necessary to bring about air rights development because of its inherently greater cost. But to accept that premise uncritically at this stage, along with the premise that the benefits of such development will outweigh its public and other costs including the assault on the existing Height Act, is to put the cart very substantially before the horse. Again, the Council should fulfill its duty of due diligence and vote against these air rights amendments, and it should require the city to provide it additional crucial information before considering any changes that predetermine outcome.

Sincerely,

Ann Hughes Hargrove