



Advisory Neighborhood Commission 1C

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February 21, 2006

D.C. OFFICE OF ZONING

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Commissioners:

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Alan Roth (1C01)

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Graham King (1C06)

Secretary

Mindy Moretti (1C04)

Treasurer

Jon Canty (1C02)

Bryan Weaver (1C03)

Andrew Miscuk (1C05)

Wilson Reynolds (1C07)

Lyn Taylor (1C08)

Chairman Geoffrey Griffis and Members of the
D.C. Board of Zoning Adjustment
441 4th Street, NW – Suite 210-South
Washington, DC 20001

Re: BZA Application No. 17431
Application of King's Creek, LLC at Premises
2329 & 2335 18th Street, NW (Square 2563, Lots 103 & 816)
Hearing Scheduled: February 28, 2006

Dear Chairman Griffis and Board Members:

Pursuant to 11 DCMR § 3115.1, the Adams Morgan Advisory Neighborhood Commission (ANC 1C) respectfully submits the following report to the Board of Zoning Adjustment (Board or BZA) on the above-referenced Application, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow a building height of 50 feet in the Reed Cooke (RC) Overlay District under section 1403, and three variances, as follows: (1) to permit an addition to a nonconforming structure under subsection 2201.3; (2) from the floor area ratio requirements under subsection 402; and (3) from the court requirements under section 406.

The Applicant proposes to construct an addition to these currently vacant structures, adjacent to one another and formerly used for commercial purposes, and to convert them into residential use in an RC/R-5-B District. ANC 1C's comments below are organized according to the applicable provisions of subsection 3115.1 of the Zoning Regulations:

3115.1(a) – The application under review is identified above.

3115.1(b) – The application was considered at a public meeting of ANC 1C on Wednesday, February 1, 2006. As explained in further detail below, the application was further considered at the monthly meeting of ANC 1C's Planning, Zoning and Transportation (PZT) Committee on Wednesday, February 15, 2006.

3115.1(c) – Proper notice of the February 1, 2006 meeting was given by ANC 1C in the form of publication in a community newspaper, transmittal of e-mail and Internet notice to approximately 1,700 neighborhood residents, stakeholders and other interested parties, posting of notice on the ANC 1C website (www.anc1c.org), and posting of notices on lampposts and on bulletin boards at various locations within the Commission area.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17431
EXHIBIT NO. 30

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BOARD OF ZONING ADJUSTMENT
District of Columbia

3115.1(d) – ANC 1C has eight Single Member Districts (SMDs). A quorum of five Commissioners is required for action. All eight sitting Commissioners were present at the February 1, 2006 meeting. However, one Commissioner recused himself from consideration of this matter in order to avoid the appearance of impropriety due to the potential perception of a conflict of interest. Accordingly, seven Commissioners considered the application.

3115.1(e) – ANC 1C takes no position with respect to the three variances requested by the Applicant. All comments below relate to the request for a special exception to allow a building height of 50 feet in the Reed Cooke Overlay under section 1403 of the Zoning Regulations.

Subsection 3104.1 of the Zoning Regulations requires an applicant for a special exception to prove that “the special exception : will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in [title 11 of the Regulations].” Several residents of the 2300 block of Champlain Street, NW complained to the ANC that the structure as originally designed would excessively block sunlight to their homes on the opposite side of the street. The Applicant did not present any evidence with regard to the effect that the requested additional 10 feet of height would have on the sunlight available to those neighboring homes. Accordingly, the ANC believed that the Applicant did not meet its burden of proof on this issue with respect to the plans and drawings originally submitted with the application and presented to the ANC for consideration.

Even if the Board were to conclude that this diminution of sunlight alone is not sufficient to demonstrate the adverse effect referred to in subsection 3104.1, the Applicant would still have to demonstrate that it satisfies the “special conditions” of section 1403. For the reasons set forth below, ANC 1C does not believe that the Applicant sustained that burden of proof based on the original plans and drawings. Two specific special conditions of the Reed Cooke Overlay regulations are implicated here:

Section 1403.1(a) – “*The use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the RC Overlay District.*” Among the purposes of the RC Overlay District are to “[m]aintain heights and densities at appropriate levels” and to “[p]rotect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts.” 11 DCMR § 1400.2(a)(2) and (c). Section 1403.1 provides that “an exception from the requirements of this chapter” – presumably including the 40-foot “maximum height permitted in the RC Overlay District” under section 1402.1 – “shall be permitted only if granted by the [BZA] as a special exception pursuant to § 3104 after a public hearing, and subject to [specified] criteria.”

The first such criterion is that the additional height must “substantially advance” the stated purposes of the Overlay. It is difficult to see how the addition of 10 feet to the structure as originally designed will “[p]rotect adjacent and nearby residences from

damaging . . . environmental . . . and aesthetic impacts,” which as noted above is one of those purposes. In addition to the diminution of sunlight described above and not refuted by the Applicant, which has the burden of proof on this issue, the requested additional height would, according to some Champlain Street residents, extend the “canyon effect” that earlier zoning relief has begun to create. Specifically, on this exceptionally narrow street, with a right-of-way only 30 feet curb-to-curb, they argue that the effects of a prior PUD provision allowing for 55 feet in height at 2328 Champlain Street, NW (across the street from the subject property here) and prior special exception relief allowing for 50 feet in height at 2327 Champlain Street, NW (immediately south of the subject project) would be exacerbated if a special exception for an additional 10 feet of height were granted here.

Section 1403.1(g) – *“The use, building, or feature at the size, intensity, and location proposed will not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.”* For the reasons stated above, the project as originally proposed failed as well to meet this criterion for a special exception. Some residents across the street assert that the proposed additional height will adversely affect their properties by depriving them of sunlight they would otherwise enjoy in the case of a matter-of-right project. Similarly, exacerbation of the “canyon effect” in the 2300 block of Champlain Street, NW is viewed by several residents of that block as detrimental to their general welfare.

Subsequent Plan Revisions – At the February 1st ANC meeting, the Commission observed that the Applicant’s plans contemplated a large penthouse/roof structure, set back 10 feet from each side of the property as required by its planned 10-foot height but otherwise occupying virtually the entire roof. Concerns about the penthouse’s size were enhanced by the absence of any detail on the submitted plans concerning the intended use of the interior space. Stairways drawn in each fourth-floor living unit led not to any clearly delineated stair, elevator, or mechanical enclosure, but rather to large open spaces, with individual doors opening out to a roof deck, and what appeared to be large floor-to-ceiling windows across each elevation included in the drawings. This led in turn to the expression of concern that the proposed roof structure, which would rise an additional 10 feet above the proposed special exception height of 50 feet, would not be limited to “housing for mechanical equipment, stairway and elevator penthouses, and . . . penthouses for storage,” as contemplated in subsection 411.1 of the Zoning Regulations, but rather was intended to be marketed and used as living space for the purchasers of the fourth-floor units. These questions may also impact the Applicant’s request for an FAR variance.

During discussion of this issue with the Applicant’s representatives at the ANC meeting, it was suggested that the Applicant consider revising the proposed roof structure in several respects. First and foremost, if the roof structure were to be significantly shrunk in size, it might be possible to alleviate some or all of the concerns expressed about the effect of the building on the availability of sunlight to neighboring properties. Second, the Applicant’s true intentions for the space would be more clearly demonstrated if the revised plans clearly defined the uses to be made of the spaces in the roof structure, so as to make clear that the roof structure would not be used as an additional floor of living space. This, the

Applicant was advised, might have an effect on how the Commission viewed the special exception request, particularly because even a matter of right project would allow a roof structure as described in subsection 411.1 to be as high as 18½ feet, leading to a total height of 58½ feet, with potentially less aesthetic appeal than what the Applicant proposes here at 60 feet. It might also impact how the Commission viewed the variance requests, particularly with regard to additional FAR.

Apparently based on that advice, the Applicant has indeed revised its plans and drawings to shrink the penthouse/roof structure by approximately 25%, and has substantially reduced the areas within that penthouse/roof structure that would be available for the use of fourth-floor unit occupants. The stairwells now provide for adequate but not excessive landings on that level, and areas intended for mechanical equipment are clearly marked. While the plans appear to contemplate giving certain sections of the fourth-floor units an additional 10 feet of ceiling height capped by skylights in the penthouse roof, that new design element seems mainly intended to make the best of another competing zoning requirement, namely that “[a]ll penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color.” 11 DCMR § 411.3. Other modifications have been made as well in the facade and in the gross floor area of living units adjacent to the facade, affecting the FAR calculation as well.

The Applicant was required by subsection 3113.8 to submit these revisions to the Board no later than 14 days prior to the date of the hearing. Unfortunately, because these revised plans were filed subsequent to ANC 1C’s February 1st meeting but prior to its March 1st meeting – one day after the Board is scheduled to hear this case – the full ANC has not had an opportunity to consider the revised plans and to determine whether the adverse effects described above have been mitigated sufficiently to change the ANC’s negative recommendation on the special exception, or to take a position on any of the variances. Accordingly, without addressing the merits of the application based on the revised plans and drawings, the ANC’s three-Commissioner PZT Committee, at its monthly meeting on February 15th, agreed unanimously that the “changes proposed are significant enough to warrant bringing the matter before the ANC again with a request to the BZA on behalf of the Commission to keep the record open” for the possible submission of an updated ANC recommendation. A motion to that effect is being filed contemporaneously with this report.

3115.1(f) – For the reasons stated above, ANC 1C opposes and recommends denial of the request for a special exception to allow a building height of 50 feet based on its review and consideration of the plans and drawings originally submitted as part of the application.

However, the full ANC has not had an opportunity to review and comment on the new set of plans and drawings submitted by the Applicant to the Board on February 14, 2006. These revisions make significant modifications to the proposed fourth floor and penthouse/roof structure, as well as to the facade and certain living units. At its February 15, 2006 monthly meeting, the PZT Committee examined the revised plans and drawings and, without making a recommendation on the merits to the full ANC, concluded that the changes proposed by the Applicant were significant enough to warrant the matter being brought

before the full ANC once again at its next regularly scheduled meeting on Wednesday, March 1, 2006. In the interim, on behalf of the full ANC, and on the recommendation of the PZT Committee, the undersigned Commission Chairperson respectfully moves that the Board keep the record in the case open for a reasonable period following the hearing, as authorized by subsection 3121.5, so that we may have a fair opportunity to consider the revised plans and drawings and make a further recommendation to the Board based on those revisions.

3115.1(g) – The full ANC recommendation opposing the special exception, as described in the preceding paragraph, was approved by a roll call vote of 6-1, as follows:

AYE Commissioners Roth, Canty, Weaver, Moretti, King, Reynolds

NAY Commissioner Taylor

3115.1(h) – The following Commissioners are authorized to present this report:

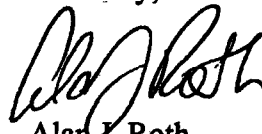
- ANC 1C Chairperson Alan Roth; or, in his absence,
- Commissioner Lynn Taylor, Chairperson of the ANC's PZT Committee; or, in her absence,
- Commissioner Wilson Reynolds, a member of the PZT Committee and in whose Single Member District the proposed project is located.

3115.1(i) – The signature of ANC 1C's Chairperson is provided below.

Please feel free to contact me at 347-3030 (W) or 667-7812 (H) if you have any questions about this report.

Thank you for your consideration of our views, which we trust will receive the "great weight" required by the Advisory Neighborhood Commission Act, D.C. Official Code § 1-309.10(d) (2001), and section 3012.6 of the Zoning Regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan J. Roth', written in a cursive style.

Alan J. Roth
Chairperson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and attachments were served by first-class mail, postage prepaid, this 21st day of February, 2006, on the following:

Christopher H. Collins
Holland & Knight
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Maxine Brown-Roberts
D.C. Office of Planning
801 North Capitol Street, NE
Washington, DC 20002


Alan J. Roth