



Advisory Neighborhood Commission 1C

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Representing Adams Morgan

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September 17, 2015

Zoning Commission

441 4th Street, N.W., Suite 200-S

Washington, D.C. 20001

RE: ANC 1C Resolutions on the ZRR

ANC 1C respectively submits the attached resolutions on the Zoning Regulations Review (ZRR). The first four resolutions are updates of resolutions submitted in 2014. The last resolution is newly passed. All five attached resolutions were unanimously adopted by ANC 1C at the duly noticed public meeting held September 9, 2015. Resolutions address:

1. Subtitle C – General Rules -- Roof Structures in RA and MU Zones
2. Mixed Use Zones – Subtitle G and (for Reed-Cooke) Subtitle K
3. Subtitle E - Residential Flat (RF) Zones
4. Subtitle F – “Residential Apartment - RA” Zones
5. Subtitle Y - Board of Zoning Adjustment Rules of Practice and Procedure

Sincerely,

Billy Simpson

Chair, Advisory Neighborhood Commission 1C

Attachments

Resolution of ANC1C Concerning Ongoing Review of the DC Zoning Regulations

September 9, 2015

Subtitle C – Roof structures in Residential Apartment (RA) & Mixed Use (MU) zones

1. ANC 1C notes that the District of Columbia Office Planning (OP), following the 2006 adoption of a revised Comprehensive Plan that is required by law to guide land-use policies including zoning, undertook a comprehensive Zoning Regulations Review (ZRR), and that the Zoning Commission has now submitted its final draft of proposed new zoning regulations resulting to the Zoning Commission for consideration and action.

2. Roof Structure Height. In connection with the height by which roof structures may exceed the allowable height of the building on which they are located, ANC 1C notes the following:

A. The development of DC’s regulatory policy on roof structures has very substantially evolved since the publication of the proposed final ZRR draft, through the development of a comprehensive new set of rules on roof structures in the Penthouse case (ZC 14-13), now pending for public comment. It would make no sense not to take those rules into account in commenting on proposed ZRR rules on the same subject, and this resolution does so.

B. For many zone districts in Subtitles F (“Residential Apartment - RA”) and G (“Mixed Use - MU”) zones, including those applicable in Adams Morgan, the maximum height of a roof structure under the proposed regulations is 18.5 feet.

C. For a large eight- or ten- story building, this constitutes a small proportion of the overall height and may well be hardly noticeable, but in a neighborhood of rowhouses mainly 40 feet or less in height such as Adams Morgan, an 18.5 foot box looming over the building is proportionately a very big and visually intrusive increase in the building’s height and mass, and

3. Setback. In connection with the distance by which roof structures must be set back from the exterior walls of the building, ANC 1C notes the following:

A. For many zone districts in subtitles F (Apartment) and G (Mixed Use), in order to reduce roof structures visual impact, the ZRR draft requires them to be set back from the front wall by a distance equal to their height and from a side wall by a distance equal to half their height.

B. As to side walls adjoining another building, the ZRR draft now requires setback where the adjacent property has a lower matter of right building height,¹ as we previously urged. However, it does not require setback where the two buildings have the same building height limit. This greatly increases the probability of visually offensive roof

¹ See C-1500.8(a)(2).

structures, because most interior rowhouses will have the same height limit as their neighbors, thus allowing a roof structure to extend across the whole width of the building. And for a row in which the height limit substantially exceeds the built height – a condition widespread in R4 and R5 -- a popup that takes one house up to the legal height limit will be rendered all the more visually offensive by a roof structure that extends to one or both side walls.

3. The twin problems of excessive height and excessive width can be effectively solved by turning to two provisions in the pending Penthouse draft:

(1) To curtail excessive height, §411.5 of the Penthouse draft limits roof structures for human occupancy on a “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone” to ten feet in height. They are allowed only by Special Exception and can contain only a stair or elevator for roof access and 30 square feet of storage space ancillary to a roofdeck. Assuming that 30 square feet is the total floor area of the roof structure – as we believe is intended, and this should be made clear – the dimensions of the structure’s exterior footprint would be proportionately curtailed, preventing it from spreading across the width of the building.

(2) The Penthouse draft requires setback from adjoining walls where the two buildings have the *same* legal height limit for R-1 through R-4 zones (§411.18(3)), but for R-5 and other zones limits the requirement to walls adjacent to a property with a *lower* permitted height (§411.18(4)).² There is no perceptible reason for this arbitrary exclusion of rowhouses in Adams Morgan and other R-5 and Mixed Use zones from the protection offered by the first of these provisions. The simple solution would be to amend it by applying it to any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone” rather than just to buildings in R-1 through R-4, using the same language as in the Penthouse draft’s provision on height just discussed.

4. In practical effect, incorporating these measures into the ZRR draft would largely achieve the objectives of the Comprehensive Plan provision that is specifically intended to deal with setback problems by requiring that common walls of row houses be regarded as exterior walls for setback purposes.³

² See ZC case 14-13, Notice of Proposed Rulemaking.

³ Action LU-2.1.B: Amendment of Exterior Wall Definition

Amend the city’s procedures for roof structure review so that the division-on-line wall or party wall of a row house or semi-detached house is treated as an exterior wall for the purposes of applying zoning regulations and height requirements.

5. Therefore it is resolved that ANC 1C urges the Zoning Commission to

- Limit the height and other dimensions of rowhouse roof structures by incorporating into the ZRR text §411.5 of the pending draft in the Penthouse case, and clarify that 30 square feet is the maximum floor area of roof structures covered by this provision; and
- Incorporate into the ZRR text the side-wall setback formula provided in §411.18(3) of the pending Penthouse draft, amended so as to apply to any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone.”

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Subtitle E – “Residential Flat” Zones

1. ANC 1C notes that the District of Columbia Office Planning (OP), following the 2006 adoption of a revised Comprehensive Plan that is required by law to guide land-use policies including zoning, undertook a comprehensive Zoning Regulations Review (ZRR), and that the Zoning Commission has now submitted its proposed final draft of revised zoning regulations resulting from that review.

2. Concerning Subtitle E of that draft, “Residential Flat Zones”, ANC 1C notes the following:

A. Subtitle E proposes new Zones RF-1, -2, and -3 to replace the current R-4 zone, and, in response to a mandate in the Comprehensive Plan, two new rowhouse zones RF-4 and -5.

B. The new RF-4 and -5 zones are intended principally to make it possible for areas like Adams Morgan to replace current R-5-B and higher R-5 (proposed A-2 and higher) zoning in neighborhoods having larger rowhouses with zoning more compatible with the physical character and general ambience of those neighborhoods.

C. As a result of the overly permissive development standards applicable until recently in the existing R-4 zones, and similar standards in the existing R-5-B and higher zoning in Adams Morgan, including in R-4 the allowance of conversion of one and two unit buildings to apartment houses and in R-5 the absence of any limitation on the number of units that a building may contain, R-4 and R-5 areas have been increasingly threatened by often grotesque multi-unit “pop-ups” and other over-redevelopment of its rowhouses both within and outside of its historic districts.

D. In the Order recently adopted in its case no. 14-11, the Zoning Commission enacted amendments to R-4 zoning that will significantly curtail such development in R-4 neighborhoods, through eliminating matter-of-right conversion to apartment houses, lowering the matter-of-right height limit, and other measures.

E. The current R-5-B and higher zoning is itself an historical anomaly, in that the Lewis Plan, on which the 1958 code was based, envisaged a lower density residential zoning - R-4, which has a limit of two units per rowhouse -- for Adams Morgan and much of Dupont Circle, but that position was changed by the District Commissioners under the then-prevailing view that these neighborhoods as built were blighted and could usefully be demolished to the extent needed to make way for the Inner Loop Freeway and the Adams Morgan Urban Renewal Plan. (Both of these projects were subsequently defeated, but R-5 zoning was left intact.)

F. The proposed two new RF zones, by revising development standards, including height and lot occupancy, limiting the height of roof structures and number of stories and imposing a limit on the number of dwelling units that a building may contain to 3 and 4 units respectively for RF-4 and -5, would go a long way in areas of larger rowhouses toward eliminating the unsightly pop-ups, ruined facades and bulging rear additions that have resulted when developers cram six or eight or more units into a row house.

G. There is substantial interest among homeowners in Adams Morgan in exploring the possibility of downzoning appropriate areas either to RF-1, with its two-unit limit, or to RF-4 or -5, with their limits of 3 and 4 units.

3. However, the proposed Subtitle E would present three obstacles to that downzoning, which the Zoning Commission should correct:

(1) Non-residential uses in residential neighborhoods.

- Subtitle E would authorize in all the RF zones a wide range of new commercial and other non-residential uses under the rubric of “corner stores.” (We note with approval that the provision making it possible for large historically-designated apartment buildings to be taken over for non-profit office use has now been deleted.)
- In Subtitle F, the Office of Planning properly eliminated these non-residential uses from R-5-B and higher (RA-2 and higher) residential neighborhoods, in view of the specific characteristics of those neighborhoods and the resulting inapplicability of the stated rationale for so-called “corner store” uses (as outlined in a separate ANC 1C resolution on subtitle F).
- These are the same R-5 neighborhoods where the two new rowhouse zones are principally intended to be considered for future mapping. Therefore, for the same reasons, these commercial and other non-residential uses should be eliminated from the two new rowhouse zones RF-4 and -5 as well as from any RF-1 district resulting from a future downzoning from R-5.

(2) Inconsistency of ZRR provisions applicable to proposed RF-1, -2 and -3 districts with the protective measures enacted by the Commission in Case 14-11, respecting height, conversion to apartment houses, definition of “mezzanine”, and other matters.

The R-4 final Order, while it retains a provision allowing conversion of one- or two-unit residential buildings to apartment buildings, requires a special exception hedged about by significant conditions, whereas the ZRR text allows matter-of-right conversion.⁴ The R-4 Order contains a 35-foot height limit for R-4, in contrast to the 40-foot ZRR height limit for RF-1, -2 and -3.⁵ And so on. (Its roof structure provisions⁶ are not incompatible

⁴ See E-700.

⁵ See E-303.1, 403.1 and 503.2.

⁶ See 330.7(g) and 400.24(b) and (c).

with ZRR roof structure provisions for RF,⁷ but the latter are incompatible with the currently pending Penthouse draft.)

The bizarre result is that the conversion and height issues and indeed any other issue resolved just months ago by the R-4 decision are open for re-litigation in commentary on ZRR, and it is obvious that if the proposed final ZRR text were to be adopted the R-4 decision would be undone. Consequently the Commission should incorporate all of the elements of its 14-11 order (which are now a part of the existing Zoning Regulations) into the final order on ZRR at every point where the ZRR order deals with the successor zones to R-4 (i.e. RF-1, -2 and -3). It should inform the public of its intention to do so, taking any issues resolved by that Order out of further contention.

(3) Omission of limit on allowable floor area for rowhouses in the RF-4 and -5 zones

Proposed Subtitle E has omitted “floor area ratio” (FAR) limits for row dwellings in RF-4 and -5 (as well as detached and semi-detached dwellings), while setting a 1.8 FAR limit for all other structures⁸ – which is the same as the current FAR limit for R-5. Limitations on total allowable floor area are very important in controlling pop-ups and other bulging re-development projects, and 1.8 FAR should be the rule for all structures at least in these two RF districts.

4. Therefore it is resolved that ANC 1C

- Welcomes the proposed two new rowhouse zones RF-4 and RF-5,
- Urges the Zoning Commission to:
 - Eliminate the proposed commercial and other non-residential uses, from the two new rowhouse zones RF-4 and -5 as well as from any RF-1 district resulting from future downzoning from and R-5 district.
 - Incorporate all of the elements of its 14-11 order into the final order on ZRR at every point where the ZRR order deals with the successor zones to R-4 (i.e. RF-1, -2 and -3). It should inform the public of its intention to do so, taking any issues resolved by that Order out of further contention in the consideration of ZRR.
 - Set an FAR limit of 1.8 for all structures in the proposed RF-4 and -5 zones.

⁷ See E-203 and C-1500.

⁸ See E-62.1 and .2

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**Subtitle F – “Apartment” Zones – RA Zones - Protection of Adams Morgan’s
Residential Neighborhoods from Intrusion of New Commercial and
Other Non-residential Uses**

1. ANC 1C notes that the District of Columbia Office Planning (OP), following the 2006 adoption of a revised Comprehensive Plan that is required by law to guide land-use policies including zoning, undertook a comprehensive Zoning Regulations Review (ZRR) and that the Zoning Commission has now published its final draft of revised zoning regulations to the Zoning Commission for consideration and action.

2. Regarding Subtitle F of that draft, designated “Residential Apartment - RA” zones, ANC1C notes:

A. The predominately row house residential neighborhoods of Adams Morgan and similarly situated areas now zoned R-5B Residential or higher would no longer be denominated “Residential” as in the current Zoning Regulations but would be designated “Residential Apartment” districts,

B. In previous OP drafts a wide variety of new commercial and other non-residential uses were to be allowed in “Apartment” districts as a matter of right or by special exception, all uses falling under the general categories of “retail”, “service”, “eating and drinking establishments”, and “arts design and creation”, and including, among many other examples listed in the then proposed Subtitle B: pawn shop, beer and wine carryout, appliance repair shop, grocery store, bank, yoga center, travel agency office, fast food establishment, delicatessen, dry cleaner, real estate agency office, shoe repair shop, recording studio, metal working shop and sales, café, and any other uses that the Zoning Administrator might be persuaded to find to be suitably “compatible” with like permitted uses;

3. Beginning in 2009, OP and/or the Zoning Commission heard opposition to this change, on the basis of considerations such as the following:

- Adams Morgan has a decades-long history of struggle to preserve its residential areas and resist intrusion of commercial uses into its residential neighborhoods, as exemplified by its opposition to freeways and urban renewal proposals, the Zoning Commission’s 1980 ban on hotel expansion into residential neighborhoods (which emanated from Adams Morgan), the Reed-Cooke overlay that replaced industrial zoning for that neighborhood, the home occupation regulations, and the prosecution of various individual zoning cases;

- OP's commendable stated objective in advancing its proposals for R-5 and other districts on this and other subjects has been to promote environmental sustainability by creating "walkable neighborhoods" and reducing reliance on cars,

Adams Morgan's residentially zoned areas lie in close proximity to commercial areas along Columbia Road, 18th Street, Florida Avenue and U Street as well as Connecticut Avenue and portions of Calvert Street, Adams Mill Road and Kalorama Road that provide walkable access to a wide variety of commercial establishments, including convenience stores that have long been allowed, and under the proposed new regulations would continue to be allowed, in the substantial number of large apartment buildings that are interspersed among Adams Morgan rowhouses,

- OP's own research shows that Adams Morgan already has a number of holdover nonconforming and other commercial uses located within its residential areas,
- OP's own research shows that Adams Morgan ranks among the city's best neighborhoods as regards "access to healthy living", considering the ready availability of grocery, pharmacy and certain other facilities in its adjacent commercial areas,
- For these reasons Adams Morgan residential areas are already eminently "walkable neighborhoods" having no need for new rules allowing commercial establishments to take over living space in their midst;
- By contrast to provisions that would allow non-resident commercial operators to displace residents and take over residential space, the Zoning Regulations have long allowed, and would continue to allow, Adams Morgan residents to pursue certain "home occupations" in their own residence, under conditions that maintain and respect the residential character of the neighborhood,
- Converting space in residential buildings to commercial and other non-residential uses, other than as authorized "home occupations" operated by residents in their own home, would both degrade the character of Adams Morgan's residential neighborhoods and erode the residential base on which schools, commercial strips and community activities depend.
- Such conversion would also create gratuitous competition for existing businesses in Adams Morgan's commercial strips and for owners seeking productive use of their commercially zoned properties, which would be especially damaging at a time of ongoing economic recovery.
- The desire of non-residential users to modify buildings to accommodate commercial or other non-residential enterprises would add one more incentive to deface Adams Morgan residential row houses and apartment buildings.

- The District’s Comprehensive Plan contains numerous provisions intended to preserve the integrity of residential row house neighborhoods and contains nothing that would justify the proposed commercialization of Adams Morgan residential neighborhoods.
- 4.** Additionally, OP’s earlier drafts would have carried forward an anachronistic provision allowing conversion of large historically designated apartment buildings in “Apartment” districts such as Adams Morgan to office use by non-profit enterprises; opposition was also expressed to this provision, which would make possible the conversion of entire apartment buildings in Adams Morgan’s historic districts to non-residential use.
- 5.** Accordingly, OP’s final ZRR draft, and the current proposed final draft of the Zoning Commission,⁹ do not allow new commercial and other non-residential uses, of non-profit office use of large historic apartment buildings, in Adams Morgan and other “Residential Apartment” areas.
- 6.** Therefore it is resolved that ANC 1C
- Commends OP and the Zoning Commission for having dropped the proposal to allow new commercial and office uses to intrude into residential neighborhoods under the new “RA” zoning,
 - Urges the Zoning Commission to reject any suggestion that those uses be allowed in the RA zones in whole or in part,
 - Notes, however, that in other respects, the proposed “RA” zoning is inadequate to protect those rowhouse neighborhoods from “pop-ups” and other grossly excessive over-redevelopment, and should be considered for downzoning in appropriate areas.

⁹ See U-420.1(c), and U Ch. 4 generally.

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Subtitle G – Mixed Use Zones: Maintaining the integrity of mixed residential-nonresidential zoning in Adams Morgan

1. ANC 1C notes that the District of Columbia Office Planning (OP), following the 2006 adoption of a revised Comprehensive Plan that is required by law to guide land-use policies including zoning, undertook a comprehensive Zoning Regulations Review (ZRR) and that the Zoning Commission has now published its proposed final draft of revised zoning regulations resulting from that review.

2. Regarding Subtitle G of that draft, concerning Mixed Use Zones, ANC1C notes:

A. The mixed used zones applicable to Adams Morgan, including Reed-Cooke, as adopted in 1958 and first amended were such as to encourage demolition, high-rise development and straight commercialization,

B. The present configuration of these zones is a result of three cases before the Zoning Commission initiated by Adams Morgan citizens that significantly remedied these conditions by lowering the C-2-B height limit from 90 to 65 feet, eliminating the possibility of straight commercialization of individual buildings (in the “Article 54” case), and doing away with industrial zoning in Reed-Cooke (through the Reed-Cooke overlay),

C. At present Adams Morgan’s commercial strips are zoned for mixed residential and non-residential use, with the clear intention that residential use shall predominate: C2-A and C2-B, which prescribe a limit on the floor area that can be devoted to commercial or other non-residential use, namely, 1.5 FAR out of a total allowable of 2.5 for C2A and 3.5 for C2B,¹⁰

D. Genuinely mixed-use zoning is an integral part of the diverse fabric of the Adams Morgan neighborhood,

E. Subtitles G and H propose certain changes that would have the effect of downgrading and diminishing the residential component of these mixed use areas in Adams Morgan, including:

- eliminating the existing 60% and 80% lot occupancy maximums for mixed-use buildings¹¹ -- a principal function of which is to ensure light and air to residentially-used portions of a building. The proposed final text restores the lot occupancy requirement only for buildings in residential use, but that would leave vulnerable the

¹⁰ See G-301.1 and G-901.1.

¹¹ See G-404.1 and K-703.1.

great majority of buildings in Adams Morgan mixed-use zones, which are not in exclusively residential use.

- providing that the 15-foot rear setback is to be measured from the center of the public alley.¹² In combination with the elimination of lot occupancy requirements, this means that a building can occupy the entire lot except for a narrow setback at the rear, thereby degrading the residential use and increasing the likelihood of alley congestion in the course of deliveries and trash collection;
- providing a matter-of-right increase of permitted non-residential FAR, from 1.5 to 2 for buildings on lots of 10,000 square feet or less in area¹³-- the great majority of mixed-use buildings in Adams Morgan -- constituting a further gratuitous creep toward predominant commercialization of our mixed-use areas, especially by already over-concentrated restaurant- and tavern-licensed establishments.

3. ANC 1C believes these changes to be unwarranted and harmful to Adams Morgan's special diverse character, and inconsistent with the widely recognized need to increase the District's housing supply. If there is a need to alter the ratio between residential and non-residential uses, any such alteration should favor residential use, and the amenities that render a building suitable for residential occupancy should be protected.

4. Therefore it is resolved that ANC 1C requests the Zoning Commission, as regard at least zones MU-4, MU-5, RC-2 and RC-3, the mixed use zones applicable to Adams Morgan, to

- restore the 60% and 80% lot occupancy maximums,
- provide for rear setback from the rear lot line for all portions of a building, and
- eliminate any increase in permissible non-residential FAR.

¹² See G-405.5 and K-704.3.

¹³ See G-402.2 and K-701.2. ¹³ .

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Subtitle Y - Board of Zoning Adjustment Rules of Practice and Procedure

ANC 1C recommends that the ZRR (08-06) adopt the Issuance of Orders submission date requirements for the Board of Zoning Adjustment (BZA) as used by the Zoning Commission, under 11-3028.5.