



September 25, 2015

Anthony J. Hood, Chairman
DC Zoning Commission
441 4th Street NW Suite 200S
Washington, DC 20001

Dear Chairman Hood and members of the Commission,

Please find attached to this letter four resolutions of the Kalorama Citizens Association for your consideration in ZC Case 08-06A, the Zoning Regulations Review. These resolutions were approved en bloc at KCA's regular monthly meeting, September 24, 2015, by a vote of 20-3, with 1 abstaining.

The subjects covered are, in order:

Resolution 1. Subtitle E
Resolution 2. Subtitle F
Resolution 3. Subtitles G & K
Resolution 4. Roof Structures

Sincerely,

A handwritten signature in blue ink that reads "Denis James".

Denis James
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RESOLUTION 1

KCA_ZRR_res_SubtitleE_final_Residential FlatZones_092115

Resolution of Kalorama Citizens Association Concerning the Ongoing Review of the DC Zoning Regulations: Subtitle E

Whereas the District of Columbia's 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) ,

Denis James ☐ President
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EXHIBIT NO. 1064
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Whereas the Zoning Commission has issued a Notice of Proposed Rulemaking setting out its proposed final text of the revised Zoning Regulations,

Whereas Subtitle E of that draft, “Residential Flat Zones”, 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,

Whereas the new RF-4 and -5 zones are intended principally to make it possible for areas like Adams Morgan to replace R-5-B and higher zoning with zoning more compatible with the physical character and general ambience of their neighborhoods,

Whereas 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 residential 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;

Whereas 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 over-redevelopment in R-4 neighborhoods, through eliminating matter-of-right conversion to apartment houses, lowering the matter-of-right height limit, requiring that a mezzanine be counted as one of the allowable stories, and other measures.

Whereas the proposed final ZRR text, in its Subtitle E, contains provisions applicable to the successor zones of current R-4 (RF-1, -2, and 3) that are inconsistent with the 14-11 order as to conversion of pre-1958 residential buildings to apartment houses, maximum height, definition of “mezzanine”, and other particulars:

- As to conversion, the R-4 final order does retain a conversion provision, now §700 of the Zoning Regulations, but allows conversion only as a special exception hedged about by very significant conditions. By contrast, the proposed final ZRR draft retains provisions for matter-of-right conversion of residential buildings to apartment houses in RF-1, -2, and -3, limited by the requirement of 900 square feet of lot area per unit.¹
- The R-4 final order contains a 35-foot height limit for R-4,² in contrast to the 40-foot ZRR height limit for RF-1, -2 and -3.³
- The R-4 final order’s definition of “mezzanine” requires mezzanines to be counted as a story in R-4,⁴ whereas ZRR exempts mezzanines from being counted as a story;⁵

¹ See U-301.1(j) and E-700.

² Now 400.1 of the Zoning Regulations

³ See E-303.1, 403.1 and 503.2 of the ZRR text.

⁴ 109.1 of the Zoning Regulations.

⁵ .B-100.2 of the ZRR text.



Whereas the absurd result is that the conversion, height and mezzanine issues and any other issue resolved by final order just months ago in the R-4 case are procedurally open for re-litigation in the course of further comment on and consideration of ZRR, and that if the proposed final ZRR text were to be adopted the R-4 case decision would be nullified;

Whereas 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 -- R-4 -- 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 which projects were subsequently defeated, but R-5 zoning was left intact);

Whereas the 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 for RF-4 and -5 respectively, would go a long way 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,

Whereas there is substantial interest among homeowners in Adams Morgan in exploring the possibility of applying the new rowhouse zones in appropriate areas of Adams Morgan,

Whereas the previous draft proposed allowing certain new commercial and other non-residential uses under the rubric of "corner stores", as well as non-profit office use of large historic buildings, in RF zones, and KCA and others strongly objected to these proposals,

Whereas the proposed final draft has dropped the proposed non-profit office use in RF zones, but has retained the other proposed non-residential uses for RF-1, -2 and -3;

Whereas in Subtitle F, OP several years ago properly eliminated those "corner store" non-residential uses from the zones proposed to replace R-5B through -D, in view of the specific characteristics of those neighborhoods (as outlined in a separate KCA resolution on subtitle F) and the resulting inapplicability of the stated rationale for the "corner store" uses, and

Whereas the Zoning Commission's proposed final draft, in §U-420.1(c), likewise prohibits "corner store" uses in the residential zones proposed to replace R-5-B through -D (RA-2 and higher),

Whereas these are the same neighborhoods where the two new row house zones RF-4 and -5 are principally intended to be considered for future mapping, and it is therefore appropriate that the proposed final draft also eliminates "corner store" uses from these proposed two new rowhouse zones, as we had urged the Commission to do;

Whereas, however, for some R-5 rowhouse areas, RF-1 (currently R4) would be the more appropriate choice for downzoning (and one Adams Morgan R-5 neighborhood is currently pursuing



that course), and therefore these commercial and other non-residential uses should in our view also be eliminated from any RF-1 district resulting from a future downzoning from R-5-B (RA-2);

Whereas 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 structures⁵ – which is the same as the current FAR limit for R-5, and **whereas** limitations on total allowable floor area are very important in controlling pop-ups and other bulging redevelopment projects, and 1.8 FAR should therefore be the rule for all structures at least in these two RF districts;

THEREFORE BE IT RESOLVED that the Kalorama Citizens Association

- **Continues to welcome** the proposed two new rowhouse zones RF-4 and RF-5,
- **Welcomes** the elimination from the proposed RF zones of non-profit office use of large historic buildings previously proposed,
- **Welcomes** the elimination of commercial and other non-residential “corner store” uses from the proposed two new rowhouse zones RF-4 and -5;
- **Calls on** the Zoning Commission
 - To exclude the commercial and other non-residential uses proposed under the rubric of “corner stores” from any RF-1 district resulting from downzoning from a R-5-B (RA-2) district;
 - To establish an FAR limit of 1.8 for all buildings in the RF-4 and RF-5 zones, and
 - By whatever procedural means necessary, to incorporate its order in ZC 14-11 into the final order on ZRR, making clear in the meantime that issues resolved by 14-11 order are not in contention in the further consideration of ZRR.

⁵ See E-62.1 and .2

RESOLUTION 2

KCA_ZRR_res_SubtitleF_nonresidential_uses_final_092315

Resolution of Kalorama Citizens Association Concerning the Ongoing Review of the DC Zoning Regulations: Subtitle F -- Protection of Adams Morgan’s Residential Neighborhoods from Intrusion of New Commercial and other Non-residential Uses

Whereas the District of Columbia’s Office Planning (OP), following the 2006 adoption of a revised Comprehensive Plan that is required by law to guide land-use policies including zoning, is engaged in a comprehensive Zoning Regulations Review (ZRR) ,



Whereas OP has now submitted its final draft of proposed new regulations to the Zoning Commission for consideration and action,

Whereas in Subtitle F of that draft, 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,

Whereas in previous OP drafts a wide variety of new commercial and other non-residential uses were to be allowed, under the rubric of "corner stores", in Residential Apartment districts as a matter of right or by special exception; these would have included all uses falling under the general categories of "retail", "service", "eating and drinking establishments", and "arts design and creation", allowing, among many other examples listed in the 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;

Whereas from as far back as 2009 KCA expressed its 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 R-5 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 reason Adams Morgan residential areas are already highly “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 its 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 sluggish 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;

Whereas OP’s earlier drafts would have carried forward an anachronistic provision allowing conversion of large historically designated apartment buildings in RA districts such as Adams Morgan to office use by non-profit enterprises,

Whereas KCA called for this provision, which would make possible the conversion of entire apartment buildings in Adams Morgan’s historic districts to non-residential use, to be struck from the OP draft,

Whereas the proposed final ZRR draft does not allow new commercial and other non-residential uses, or non-profit office use of large historic apartment buildings, in Adams Morgan and other RA areas,

Whereas §U-420.1(c) prohibiting any “corner store” uses in RA zones is confusingly misplaced under the heading of “Special Exception Uses”, creating the risk that the user may be misled by the earlier §U-401.1(a) that standing alone would be taken to authorize “corner store” uses in RA zones, and **whereas** §U-420.1(c) should therefore be relocated to §U-401.1;



Whereas the additional provision prohibiting any “corner store” uses in RA zones, § U 254.1, is located in the chapter concerning uses in R zones,

THEREFORE BE IT RESOLVED that the Kalorama Citizens Association

- ***Again commends*** OP and the Zoning Commission for having dropped provisions allowing non-profit office uses in large historic buildings, as well as “corner store” commercial and other non-residential uses, uses in RA zones,
- ***Urges*** the Commission to reject any suggestion that they be reinstated in whole or in part, and
- ***Urges*** the Commission, as a matter of clear and user-friendly drafting, to relocate §U-420.1(c) to §U-401(a).

RESOLUTION 3

kca_zrr_res_subtitleG_final_092115

Resolution of Kalorama Citizens Association Concerning the Ongoing Review of the DC Zoning Regulations: Subtitles G and K – Maintaining the integrity of mixed residential-nonresidential zoning in Adams Morgan

Whereas the District of Columbia’s 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),

Whereas the Zoning Commission has issued a Notice of Proposed Rulemaking setting out its proposed final text of the revised Zoning Regulations,

Whereas 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,

Whereas 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),

Whereas at present Adams Morgan’s commercial strips are zoned for mixed residential and non-residential use – 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,⁶ thereby making residential use the intended dominant use,

Whereas genuinely mixed-use zoning is an integral part of the diverse fabric of the Adams Morgan neighborhood,

Whereas Subtitle G of the previous draft proposed certain changes that would have the effect of downgrading and diminishing the residential component of these mixed use areas, including

- eliminating the existing 60% maximum lot occupancy limitation, a principal function of which is to ensure light and air to residentially-used portions of a building, while at the same time providing that the 15-foot rear setback at the ground level is to be measured from the center of the public alley, with the result 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 areas -- 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 ABC-licensed establishments,

Whereas KCA has previously strongly objected to these provisions, but with two narrow exceptions, the proposed final draft carries forward them forward unchanged --the exceptions being:

- (1) The 60% and 80% lot occupancy requirements are restored for all Adams Morgan mixed-use zones only *in the case of residential use*,⁷ i.e., in Adams Morgan, for the relatively small proportion of buildings in our mixed-use districts that contain exclusively residential use. There would be no lot occupancy limitation for the great majority of buildings, which have mixed residential/non-residential use, where the need for such a limitation is the greatest;
- (2) The immediately previous draft limited the increase in non-residential FAR for lots of 10,000 SF or less to the first and second floors; the current draft retains that provision, but adds a requirement, only for the two Reed-Cooke mixed-use zones, that "the use shall not include eating or drinking uses".⁸

Whereas this move to downgrade the residential component of mixed use districts is curiously and harmfully incompatible with the current emphasis in the Commission and elsewhere on increasing the District's housing supply, and

Whereas Considering the proposed increase in non-residential FAR from that point of view, it is clear that if there is a need to ensure that all of a second story can be devoted to a single use, it

⁶ See 11 DCMR 771.2.

⁷ See G-404.1 and K-703.1.

⁸ See K-701.2.



makes no sense to opt for doing this by increasing the commercial, rather than the residential, component of the building;

Whereas we believe these changes to be unwarranted and harmful to Adams Morgan's special diverse character;

THEREFORE BE IT RESOLVED that the Kalorama Citizens Association

Calls on the Zoning Commission, as regard at least zones MU-4, MU-5, RC-2 and RC-3, to

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

RESOLUTION 4

KCA_ZRR_res_roof_structures_final_092215

Resolution of Kalorama Citizens Association Concerning the Ongoing Review of the DC Zoning Regulations: Height and setback of roof of row\house roof structures

Whereas the District of Columbia's 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) ,

Whereas the Zoning Commission has issued a Notice of Proposed Rulemaking setting out its proposed final text of the revised Zoning Regulations,

Whereas the development of DC's regulatory policy on roof structures has very substantially evolved since the publication of the proposed final ZRR text, through the formulation of a comprehensive new set of rules on roof structures in the Penthouse case (ZC 14-13), now pending for public comment in a Notice of Proposed Rulemaking, which can only reasonably be taken into account in commenting on proposed ZRR rules on the same subject,

Roof Structure Height

Whereas for many zone districts in Subtitles F ("Residential Apartment - RA"), G ("Mixed Use - MU"), including those applicable in Adams Morgan, the maximum height by which a roof structure by which roof structures may exceed the allowable height of the building on which they are located under the proposed ZRR final draft is 18.5 feet (except that Reed-Cooke has a 10-foot limit, only for single-household dwellings⁹);

⁹ See K 702.4



Whereas 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 often 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.

Roof Structure Setback

Whereas for many zone districts in subtitles F and G, 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 not adjoining another building* by a distance equal to half their height;

Whereas 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,¹⁰ 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 structures, because most interior rowhouses will have the same legal 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 increases the height of one house up to the legal limit will be rendered all the more visually offensive by a roof structure that extends to one or both side walls;

Changes needed to curtail excessive roof structure height and width on rowhouses

Whereas the twin problems of excessive height and excessive width can be effectively solved by turning to two provisions in the pending Penthouse draft, as follows:

(1) §411.5 of the Penthouse draft¹¹ prohibits roof penthouses other than for mechanical equipment or a guardrail on any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone” They are allowed for other purposes by Special Exception, however, and to curtail excessive height are limited to ten feet in height. They 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(a)(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)). 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. This unwarranted discrepancy can be readily corrected by amending

10 For zone other than R and RF; see C-1502.1(a)(4).

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



§411.18(a)(3) to apply 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.

Whereas in practical effect, incorporating these measures into the ZRR text 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 rowhouses be regarded as exterior walls for setback purposes;¹²

Whereas it is especially important to base zoning rules for such visually important building features as penthouse height, width and setback on the physical characteristics of the building – as in the phrase “detached dwelling, semi-detached dwelling, rowhouse or flat” employed in the Penthouse draft’s provision discussed above -- rather than its zoning, which often is seriously divergent from the built environment;

Therefore it is resolved that Kalorama Citizens Association urges the Zoning Commission

- to prohibit matter-of-right roof structures on any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone, and limit the height and other dimensions of rowhouse roof structures allowed by special exception, by incorporating into the ZRR text §411.5 of the pending draft in the Penthouse case, and clarifying that 30 square feet is the maximum floor area of roof structures covered by this provision; and

- to 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.”

12 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.