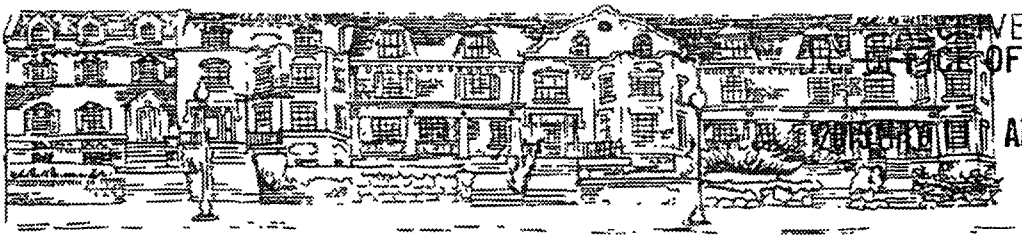



**Comments on Proposed Rulemaking**
**Submitted by Historic Mount Pleasant, Inc.**
**Zoning Commission Case No. 14-11**
**R-4 Text Amendments**
**May 10, 2015**

In its discussion and preliminary vote on March 30, the Zoning Commission rejected the key element of the proposed R-4 text amendments of critical importance to Mount Pleasant – elimination of matter-of-right conversions of houses to apartment houses of 3 or more units based on lot size. Historic Mount Pleasant calls on the Commission to reinstate and adopt Recommendation 5 from the OP Report of June 24, 2014. Only by eliminating all matter-of-right conversions can the Zoning Commission provide any meaningful protection for remaining single family homes in Mount Pleasant and R-4 zones generally as directed by the Comprehensive Plan.

**The Threat to Mount Pleasant**

With more than 200 lots measuring 2700 square feet or more and many in use as single- or two-family dwellings, Mount Pleasant is an attractive target for developers seeking to take advantage of the matter-of-right conversion authority. Under current market conditions, we may expect that every house in Mount Pleasant acquired by a developer will either be kept at or be converted to the maximum number of units, and its footprint expanded to the maximum lot coverage, allowed by zoning. As this is an historic district, the projects are subject to design review. However, generally speaking, neither the Historic Preservation Office nor the Review Board will push back firmly against established zoning rights. Thus, the only way to protect remaining single- and two-family houses in Mount Pleasant is to repeal the matter-of-right conversion authority enacted in 1958.

**Zoning Correction Long Overdue**

The conversion authority – unique to R-4 residential zones – is an anomaly that should have been repealed years ago. It has not preserved "remaining" single family homes – the stated purpose of R-4 zones – but rather encouraged the gradual transformation of R-4 neighborhoods into apartment zones with a different scale of construction. The conversion authority was enacted as part of the zoning regulations in 1958, when broad swaths of the city east of Rock Creek Park were intended for urban renewal. The original text for the R-4 zone actually encouraged "the demolition of substandard structures [and their] . . . replacement with low density apartment houses." It was during the 1960's – before this language was repealed -- that Mount Pleasant lost some distinctive original homes and "gained" some misplaced apartment houses. All pre-1958 structures in the neighborhood that may have once been considered "substandard" are now protected as contributing structures in our historic district.

The 1958 zoning regulations also permitted existing rooming houses to become apartment houses with no limitation on the number of units. Until 1978, when the law was changed, apartment houses in R-4 zones could add units without reference to the 900 square foot rule. Further, over the years, variances were approved with regularity granting relief from the 900 square foot rule. As a result, the R-4 area of Mount Pleasant is already a mixed residential area with many apartments and/or condominiums having taken the place of single- and two-family homes. The neighborhood has already reached what many residents consider maximum density. Infrastructure, in particular demand for on-street parking, is stretched.

**ZRR Sidestepped Issue**

Action Item H-1.3.A of the Comprehensive Plan as approved in 2006 called for making the "necessary changes [during revision of the city's zoning regulations] to preserve row houses as single-family units to conserve the city's inventory of housing for larger households." It specified that "this should include creating an R-4-A zone for one and two family row houses and another zone for multi-family row house flats." The structure of the pending Zoning Regulations Rewrite (ZRR) follows this guidance – with a new basic "residential flat" zone (known as RF-1) defined as being limited to no more than two units, and then separate zones for new 3- and 4-unit house flats. Existing R-4 zones other than Dupont Circle or Capitol Hill (which have additional rules based on existing overlays) would become RF-1, while the 3- and 4-unit zones would be mapped later at the request of neighborhoods. However, by retaining the conversion authority for the RF-1, the ZRR nullifies the stated limitation to two units and violates the Comprehensive Plan.

Historic Mount Pleasant pointed out this contradiction in its November 2013 testimony to the Zoning Commission, when it first asked that the conversion authority be eliminated. The Commission immediately instructed OP to work with us to craft a legislative fix. With our support, OP proposed that the Mount Pleasant Historic District be exempted from the conversion authority in the ZRR; but last fall the Commission rejected that proposal – asking why Mount Pleasant should be singled out when a broader proposal was under consideration. The broader proposal originally made in the present case was to eliminate the conversion authority for all R-4 areas. For the many reasons given in OP's report of June 24, 2014, that is the correct approach and the one that implements the Comprehensive Plan. We are very disturbed that the Zoning Commission is now poised to adopt, in its place, a series of contradictory provisions that are merely excuses to continue matter-of-right conversions contrary to the Comprehensive Plan and that will ensure the further loss of single- and two-family dwellings in Mount Pleasant.

**Proposed Conditions Are Illusory**

In seeking to find a middle ground between supporters and detractors of its original recommendation, OP now proposes twelve conditions if the Commission decides to continue conversions as a matter of right, as well as other conditions for special exception relief. Five of those "conditions" restate requirements found elsewhere in the zoning regulations and thus add nothing to the discussion. Two relate to the number of units and a new Inclusionary Zoning (IZ) requirement. Two propose restrictions on interference with adjacent chimneys or solar systems and either are or should be matters of general applicability in the building code. The other three

– letters (g), (h), and (i) in Section 330.7 – relate to design problems with conversions. They would prevent removal or alteration of original rooftop architectural elements and limit the extent of demolition and the rear extension of additions. These address problems identified with some conversions, but how would they be enforced?

As an historic district, Mount Pleasant already has protection for important exterior architectural elements. We also have considerable experience with demolition and rear additions and enforcement of building permits. Under the Commission's proposed text, an applicant could accept the new conditions as part of his building permit and then – as is often the case – build something quite different with no expectation of enforcement action being taken against him. Or he could apply to BZA for relief from them entirely – and have his application judged under the looser standard of "adverse effect" on the use or enjoyment of an adjacent property. Should those requirements prove insufficiently permissive, BZA has the authority under section 336.9 to modify or waive some of them. In short, it is impossible to determine from the proposed text what the true standards for continuation of conversions to 3 or 4 units would be, except that the fourth unit would be subject to IZ. The proposed design limitations vanish entirely upon close examination.

**Zoning and Design**

The problem is that zoning is not designed to address the design of buildings. It regulates land use and the height, area, and density of buildings – not their architectural characteristics. This very contradiction seems to be at the root of OP's new unsatisfactory language. If, for example, the BZA cannot be expected to enforce a new and completely arbitrary requirement on the rear extension of an addition, it needs to be given a way out – and OP has done just that – providing not only language already familiar to BZA ("adverse impact") but language in the interpretation of which BZA has traditionally looked to OP for guidance in individual cases. The BZA gives "great weight" to OP opinions in each and every case before it. So, in a contested case – and public opposition should be expected – who would really be determining whether a project met the new conditions? In cases involving historic districts, would OP ask the Historic Preservation Office for its opinion? Should HPO be providing guidance to BZA? How would standards be developed for non-historic districts? Indeed, the whole idea of seeking to impose design limits on conversions through zoning seems fundamentally misguided and unworkable.

**Inclusionary Zoning**

The proposal to attach IZ requirements to conversions of houses is also ill-conceived. The Comprehensive Plan directs that single- and two-family houses in R-4 zones be protected, and the Zoning Commission is duty bound to follow that instruction. It may not substitute its own judgment that there is an overriding need for affordable housing and encourage the continued conversion of houses in order to create affordable housing units. That said, the Commission may wish to consider the possibility of adding IZ incentives to the renovations of the larger institutional or non-residential structures within R-4 zones. These larger structures would seem to offer more realistic possibilities for creating affordable units and for doing so consistent with the Comprehensive Plan.

**Other Issues**

As stated in previous submissions, Historic Mount Pleasant supports the proposed changes related to height and the definition of mezzanine. We take no position on new rules proposed for the conversion of non-residential or institutional structures, as there are only three such structures zoned R-4 in our neighborhood and all are in active use. Indeed, the public school is just embarking on a major renovation.

**In conclusion**, we urge the Zoning Commission to embrace its responsibility to implement the Comprehensive Plan and repeal the matter-of-right conversion provision that is now subject to widespread misuse and abuse. This action is necessary to protect remaining single- and two-family houses in Mount Pleasant and other R-4 neighborhoods. We call on the Commission to approve this change without further delay and to ensure that it take effect immediately.

Respectfully submitted,

Fay Armstrong
President