Kalorama Citizens Association

Resolution regarding Zoning Commission Case 14-11

Whereas, proposed amendments to the Zoning Regulations currently pending in Zoning Commission Case 14-11 have important implications for R-4-zoned and other rowhouse neighborhoods,

Whereas the following Supplemental Statement prepared by KCA member Larry Hargrove addresses serious concerns raised by those proposed amendments,

Be it resolved that that Statement be submitted to the Commission on behalf of KCA

Adopted by the Kalorama Citizens Association Executive Committee, May 31, 2015

Denis James, President

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Case No. 14-11 (Office of Planning -- Text Amendments to Chapters 1, 3 and 4, Definitions, Maximum Height and Minimum Lot Dimension Requirement in Residence Zones, and R-4 Zone Use Permissions)

Supplemental Statement of Kalorama Citizens Association

June 1, 2015

Summary

For reasons rooted in the 1958 Zoning Regulations, the District's R-4 and other rowhouse neighborhoods are especially vulnerable to destructive redevelopment. Accordingly, an extensive collection of Comprehensive Plan policies and actions call for protection of these neighborhoods. These measures include limiting the R-4 zone to one- and two-family rowhouses. OP's original June 2014 proposal would have implemented this mandate as to R-4.

However, the amendments proposed in the pending Notice of Proposed Rulemaking ("the current draft"), which would allow as many as four units matter-of-right, are flatly inconsistent with the Comprehensive Plan. By lowering the matter-of-right height to 35 feet and placing a limitation on "pop-backs" of ten feet beyond the wall of an adjacent structure, they would moderately constrain upward and rearward redevelopment of R-4 rowhouses But they would leave the overwhelming majority -- 80 to 90 per cent -- of these

buildings still vulnerable to severely intrusive matter-of-right pop-up redevelopment, and, by creating a special incentive for assembly and demolition of adjoining blocs of three or more of them, newly vulnerable to total demolition.

Moreover, they are badly out of sync with pending proposals for R-4 in the current ZRR texts, which, also in implementation of the Comprehensive Plan, provide a means of protecting the larger rowhouses that are characteristic of R-5 districts, in the form of two new rowhouse zones (RF-4 and -5) limited to three and four units respectively. It appears that, in written submissions, one but only one ANC supports retaining matter-of-right conversion of a rowhouse to an apartment building. For any ANC in an R-4 area that favors retaining an option to convert to more than two units as a matter of right, these new zones will provide the means for doing that, without having their position unfairly imposed on the other R-4 ANCs who do not share their view.

To provide R-4 rowhouses with effective protection and bring the current draft into consistency with the Comprehensive Plan, the following changes should be made:

Height:

• *Amend the proposed 35 foot matter of right height limit so as to allow the lesser of (1) 35 feet or (2) an appropriately worded limit based on, and designed to conform to, the height of existing buildings on the blockface*

• *Eliminate the forty-foot matter-of-right height limit for sets of newly constructed houses, and in all other respects require them to meet the same development and design standards as apply to existing houses*

• *If an increase in the height limit is to be allowed by Special Exception, tighten the criteria to be applied by the BZA by eliminating subjective qualifiers such as "unduly" and "substantially" to ensure that those criteria will be rigorously applied*

Conversion of rowhouses to apartments

• *Eliminate any matter of right increase in the number of units above two, as original proposed by OP*

• *If an increase in the number of units is to be allowed by Special Exception, restore the protective language that OP proposed for the Special Exception criteria[1] and that has now been dropped, eliminate provisions making some criteria waivable by the BZA, and eliminate subjective qualifiers such as "unduly" and "substantially" to ensure that those criteria will be rigorously applied*

Roof structures (penthouses)

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[1] OP's Supplemental Report and Worksheet of March 25, 2015, p 9

• *To reduce both the height and mass of roof structures, require roof structures on rowhouses in historic districts and elsewhere to be set back from side walls by an amount at least equal to their height, as mandated by the Comprehensive Plan*

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1. The District's R-4 and other rowhouse neighborhoods are especially vulnerable to destructive redevelopment

As we noted in our testimony on the Penthouse case, 14-13, there are three principal reasons why this is the case, having to do with the history of residential zoning in the District, marketplace economics, and the design characteristics of rowhouses:

First, rowhouse neighborhoods are generally overzoned. In the 1958 Zoning Regulations, the rules for the R-4 and R-5 districts – covering large portions of the city – built in a bias toward treating row house areas as irredeemably blighted (which for some at the time meant "too black") and as grist for the redevelopment mill They therefore imposed substantially higher heights and greater densities than were reflected in the row house neighborhoods as actually built (For example, the Regulations originally described all of R-4 as an Urban Renewal area in which "substandard buildings" should be demolished and replaced by apartments, which could be done as a matter of right Twenty-five to thirty-five-foot high row houses were often given height limits ranging from fifty to ninety feet Many two- and three-story dwellings ended up with no limit on the number of dwelling units they could contain, and with allowable floor area greatly exceeding their existing size)

This zoning made them especially attractive targets for redevelopment, either by mass demolition or by addition of marketable space to individual buildings by expansion upward and outward

Secondly, *expansive redevelopment of individual buildings is peculiarly destructive in row house neighborhoods.* From the point of view of architectural integrity and neighborhood character, rowhouse neighborhoods are peculiarly vulnerable For them, what is important both aesthetically and functionally, is not just the individual row dwelling but the row itself It is a special vulnerability of this iconic form of urban design in our city that a thoughtless change to the mass of one row house can automatically both directly diminish the livability of its immediate neighbors and rupture the integrity of the whole row And this is true even if the alteration doesn't rise to that level of cartoonish excess that many row house "popups" have achieved Each time this happens, the harm is, in practical terms, irreparable and both the neighborhood, and to that extent the city, are impoverished

Finally, the market increasingly incentivizes popup developers to exploit the gaps between zoning standards and rowhouse neighborhoods as built. It was only decades after 1958, with an increasing District population and a rapidly accelerating housing market, that the destructive effects of redeveloping row houses to those more lenient standards that there zoning allowed began to reach significant proportions and eventually something like epidemic – proportions That accelerating assault on our row house neighborhoods is the principal reason why there is so much in the Comprehensive Plan about preserving them

2. Accordingly, the Comprehensive Plan mandates the protection of rowhouse neighborhoods generally and R-4 neighborhoods specifically.

The Comprehensive Plan is replete with provisions that make its policy with respect to the future of Washington's rowhouse neighborhoods unmistakably clear the scale, character and architectural integrity of those neighborhoods, as well as their role in providing housing for larger households, are to be protected, and *changes in zoning, including downzoning to reduce density and better conform development standards to the actual built environment, are to be an integral part of that protection*

a. Comp Plan provisions on protection of rowhouse neighborhoods generally

The plan calls for

> *Protect[ing] the character of row house neighborhoods by requiring the height and scale of structures to be consistent with the existing pattern, considering additional row house neighborhoods for "historic district" designation, and regulating the subdivision of row houses into multiple dwellings Upward and outward extension of row houses which compromise their design and scale should be discouraged* [2]

And again,

> *Generally discourage[ing] increases in residential density resulting from new floors and roof structures (with additional dwelling units) being added to the tops of existing row houses and apartment buildings, particularly where such additions would be out of character with the other structures on the block Roof structures should only be permitted if they would not harm the architectural character of the buildings on which they would be added or other buildings nearby* [3]

Further as to roof structures on row houses, the Plan explicitly mandates a setback from shared side walls

> *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* [4]

Finally, a collection of Comp Plan provisions similarly calling for downzoning and other measures for the protection of row house neighborhoods applies specifically to the Mid-city area, which includes much of R-4 (see endnote below) [1]

b. Comp Plan provisions on protection of R-4 rowhouse neighborhoods specifically

There are two

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[2] Policy LU-2.1.7
[3] Policy LU-2 1 9
[4] Action LU-2 1-B

> *During the revision of the city's zoning regulations, review the residential zoning regulations, particularly the R-4 (row house) zone Make necessary changes to preserve row houses as single-family units to conserve the city's inventory of housing for larger households As noted in the Land Use Element, 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.***[5]

and in the Land Use Element

> *Develop a new rowhouse zoning district or divide the existing R-4 district into R-4-A and R-4-B to better recognize the unique nature of rowhouse neighborhoods and conserve their architectural form (including height, mass, setbacks, and design)* [6]

OP responded to this mandate in two ways *First*, by including in ZRR not one but two new rowhouse zones within R-4, to accommodate larger rowhouses, these are the RF-3 and RF-4 zones, which are set out in the Commission's current ZRR text and which would allow three and four units respectively Along with RF-1, they would be available for use in selective downzoning of current R-5 neighborhoods where the zoning is substantially more dense than that of the existing built environment *Secondly,* OP responded to the call for an R-4 zone limited to one- and two-family households by putting forward its proposal in the current R-4 case, eliminating the ability to breech R-4's two-unit limit by converting row houses to apartments of three or more units

3. The net effect of the current draft would be to leave the overwhelming majority of R-4 rowhouses still vulnerable to severely intrusive matter-of-right pop-up redevelopment, and, by creating a special incentive for assembly and demolition of adjoining blocs of three or more of them, newly vulnerable to total demolition.

By lowering the matter-of right height to 35 feet and placing a limitation on "pop-backs" of ten feet beyond the wall of an adjacent structure, the current draft would somewhat moderate redevelopment R-4 rowhouses that extends the structure upward and rearward. But it would leave eighty to ninety per cent of them critically vulnerable To see why this is the case, consider what the current draft will allow a popup developer to do, matter-of-right or through special exception, as owner of the following highly typical R-4 building A two-story brick flat-front interior rowhouse 25 feet in height (one of the 94.4 % of R-4 houses that are 35 feet or less in height and the 84% that are two stories or less[7]), 17 feet wide and 40 feet long, with a front porch, traditional fenestration and an ornamental cornice at the top of the facade, in a row of houses of similar height and design features, not in a historic district

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[5]Action H-1 3 A

[6] Action LU-2 1-A

[7] OP Preliminary and Pre-Hearing Report of June 24, 2014, p 3

a. Matter-of-right

Under the current draft, the developer can demolish the porch and façade – which he or she may especially want to do if the house does not extend to the building restriction line -- and replace them with an unornamented wall of any code-approved material extending to a height of 35 feet (§400 1), and then increase the height of the structure to 45 feet by adding a penthouse extending across the full 17-foot width of the house,10 feet high by 13 feet deep, set back a mere 10 feet from the front wall [8] The structure is now an anomalous mass looming two stories above the rest of the row, all matter-of-right It is clear that OPs' original proposal-- reducing the height limit from 40 feet to 35 -- was too timid For a zone in which the overwhelming majority of houses are closer to 25 feet in height, 35 feet leaves the door to matter-of-right pop-up development wide open

Further, also as a matter of right, the developer can convert that same now bastardized structure into three or four units, extending the structure in the rear by ten feet beyond the rear wall of the neighboring houses, if it is among the 11% that have lots of 2700 sf or more [9] He or she has only to make sure that it does not impede the functioning of existing vents, chimneys or solar equipment on neighboring property. The protections of neighbors' light, air and privacy of use, the requirement for visual compatibility with the character, scale and pattern of the row, and the 70% lot occupancy maximum – all of which would have governed this development had had the Commission opted for OP's earlier special exception proposal[10]– have been omitted, along with the ability of the BZA to impose design, materials or other special requirements for the protection of other houses in the row.

b. By special exception

If the developer wants to increase height to 40 feet or expand beyond four units, he or she can do so by convincing the BZA that the project meets the six specific criteria for a Special Exception set out in proposed §400 23 for increasing height [11] or the

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[8] According to alternatives in the currently pending text on penthouses set out in ZC Notice of April 28, 2015 Public Hearing in case no 14-13, pp,15 - 18 The penthouse could not contain a residential use, but could contain a stairway for access to a roof deck, and/or mechanical equipment

[9] OP Preliminary and Pre-Hearing Report of June 24, 2014, p 8

[10] See OP's Preliminary and Pre-hearing Report of June 24, 2014, p. 10, and Supplemental Report and Worksheet of March 25, 2015, p. 9

[11] "(a) The Applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular

(1) The light and air available to neighboring properties shall not be unduly affected;

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised, and

(3) Any upper floor addition shall not block or impede the functioning of a chimney or other external vent required on an adjacent property by any municipal code

similar criteria set out in §336 for increasing number of units On their face those criteria seem fairly stringent, and if scrupulously applied could prevent adverse impact on the integrity of the row that result just from the increased height – although they would not protect against alteration of "defining architectural features" or other adverse impact as a result of other changes, such as partial or total façade demolition or expansion at the rear

Historically, however, the protection afforded neighboring property owners by the requirement of a Special Exception, as distinguished from a use or area variance, has proven to be fairly unreliable Moreover, it would be all the flimsier under the current draft because the BZA may waive some Special Exception conditions relating to increasing the number of units (§336 9), and because most of the Special Exception conditions in both sections (§§440 23 and 336) provide the BZA with familiar terminological escape hatches such as "unduly" or "substantially" At the very least, these subjective qualifiers should be omitted if the Special Exception requirement is to offer any real protection, as they already have been in the drafting of the two criteria that deal with impeding the function of chimneys, vents or solar equipment

c. By demolition and new construction, matter-of-right

If the developer wants the 40-foot height but does not want to be bothered by a BZA case and any of those pesky compatibility requirements, the current draft creatres a special incentive to acquire two or more additional houses contiguous to the first and demolish all three (or more) of them, leaving him or her free to replace them with new forty-foot structures of unconstrained design, topped by an additional "story" in the form of a ten-foot-high roof structure (§ 400 1) These new houses would not carry the same right as is now proposed for pre-May1958 houses to contain three or more units, depending on lot size, but – according to OP – could do so by Special Exception. Moreover, the proposed rule governing increasing the number of units by Special Exception (§ 336) applies only to pre-May 1958 houses Consequently, in order to get a Special Exception to increase to three or more the number of allowable units in these new buildings, the developer apparently would not have to comply with the conditions

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(4) An addition shall not interfere with the operation of a solar energy system on an adjacent property; and

(5) The resulting building or structure height, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage

(b) The Applicant shall demonstrate that overall building or structure height or upper addition resulting from the additional five feet (5 ft.) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features. 400.26

(c) In demonstrating compliance with § 400 24 and 400 25, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways "

applicable to pre-May 1958 houses – only with the essentially vacuous general criteria applicable to all Special Exceptions that are found in §3104 1 [12]

The result would be that for many smaller houses (the 94 4 % of R-4 houses that are 35 feet or less in height and the 84% that are two stories or less and thus around 25 feet high) the prospect of an additional ten or fifteen feet of height, especially when coupled with the relatively greater likelihood of obtaining permission for three or more units, would be a strong inducement to assemble and demolish blocs of rowhouses, even if the developer could not be assured in advance of the ability to add units beyond two per building And the fact that the now-mutilated row will make it easier for would-be pop-up developers of other houses in the row to pass the compatibility test would be special bonus to everyone in the pop-up business Once the row moves past the tipping point, compatibility constraints fade away

4. The current draft is therefore flatly inconsistent with the relevant policies and actions of the Comprehensive Plan, and would appear to have been formulated without having taken them account – most importantly the Plan's explicit call for an R-4 Zone limited to one- and two-family households.

The Home Rule Charter requires that zoning shall not be inconsistent with the Plan The Court of Appeals gives the Zoning Commission substantial discretion in determining "inconsistency". This is partly because of the deference that the Court extends to all agencies in the interpretation and application of laws and regulations within their scope of authority But it is also because the Comp Plan is a sprawling document containing hundreds of sometimes competing general policy directives, and the Court defers to the Zoning Commission in balancing the competing interests at stake in the particular situation [13]

So while it is perhaps unusual that a proposed action by the Commission can be said to be "flatly inconsistent" with the Plan, the Commission's discretion is not unlimited, and what is proposed in the current draft is such an action In light of the specificity and precision of the Plan's provisions calling for a one- and two-family R-4 zone, and the similar specificity of the collection of buttressing provisions calling for the protection of row house areas, the discrepancies between the current draft and the explicitly applicable provisions of the Plan are stark

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[12] "The Board is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions 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 he Zoning Regulations "

[13] For a recent example, see *Durant v DC Zoning Commission* 65A 3rd 1161 (2013), in which the interest in preserving existing lower density residential areas was pitted against the interest in higher-density development near Metro stops This Court of Appeals remanded this case to the Zoning Commission with directions to further address certain Comp Plan provisions

Nor does the Plan provide competing policies that might be thought to justify setting these provisions to one side For example, the Plan contains no basis for looking to rowhouse neighborhoods for increasing the supply of housing -- affordable or otherwise, on the contrary it calls for *"preserv[ing] row houses as single-family units to conserve the city's inventory of housing for larger households" and "discourag[ing] increases in residential density resulting from new floors and roof structures (with additional dwelling units) being added to the tops of existing row houses "*

To our knowledge the issue of consistency with the Plan has thus far not been addressed in this case [14] We strongly urge the Commission to do so, which we believe will engender important changes in what is currently proposed

5. The current draft for R-4 is out of sync with pending ZRR provisions for denser row house areas

A further consequence of the current draft is that going forward with an R-4 zone that would allow conversions to four units matter of right would be badly of sync with the pending ZRR provisions creating the two new rowhouse zones, mentioned above These proposed new zones, RF-4 and RF-5, are designed for possible rezoning of existing R-5 rowhouse areas that are typically more densely developed, with larger rowhouses, than typical R -4 areas, and in accord with the Plan's mandate for protection of these rowhouse neighborhoods are limited to three and four units respectively

These ZRR provisions have a further special relevance to the current case on R-4. We believe it is accurate to say that, in written submissions on record as of the date of May 31, 2015, only one ANC has supported allowing conversion of rowhouses to apartment buildings as a matter of right This being the case, the fair and appropriate position for the Commission is to eliminate the matter-of-right conversion provision in R-4, leaving an ANC that favors an option to convert to more than two units as a matter of right to seek rezoning to one of the new rowhouse zones.

Conclusion

We respectfully urge the Commission to reconsider the current draft in light of its practical consequences for R-4 neighborhoods as built and the relevant provisions of the Comprehensive Plan, making the specific changes outlined at p. 2 above.

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1 **Mid-City Area Element**

Overview, 2000.9.

. . . There are also visible threats to the historic integrity of many of the area's residential

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[14] OP's Preliminary and Prehearing Report of June 24, 2014, contained a one-sentence reference to the Plan at p 8 "The Comprehensive Plan provides substantial policy guidance directed at providing a diversity of housing options including family housing and protecting single-family neighborhoods "

structures, particularly in areas like Adams Morgan, Columbia Heights, Bloomingdale, and Eckington, which are outside of designated historic districts In some instances, row houses are being converted to multi-family flats, in others, demolitions and poorly designed alterations are diminishing an important part of Washington's architectural heritage

Planning and Development Priorities, 2007.2.d:

The row house fabric that defines neighborhoods like Adams Morgan, Columbia Heights, Pleasant Plains, Eckington, and Bloomingdale should be conserved Although Mid-City includes six historic districts (Greater U Street, LeDroit Park, Mount Pleasant, Strivers' Section, Washington Heights and Kalorama Triangle), most of the row houses in Mid-City are not protected by historic district designations Some are even zoned for high-density apartments A variety of problems have resulted, including demolition and replacement with much larger buildings, the subdivision of row houses into multi-unit flats, and top story additions that disrupt architectural balance Intact blocks of well-kept row houses should be zoned for row houses, and not for tall apartment buildings, and additional historic districts and/or conservation districts should be considered to protect architectural character

Policy MC-1.1.5: Conservation of Row House Neighborhoods: *Recognize the value and importance of Mid-City's row house neighborhoods as an essential part of the fabric of the local community Ensure that the Comprehensive Plan and zoning designations for these neighborhoods reflect the desire to retain the row house pattern Land use controls should discourage the subdivision of single family row houses into multi-unit apartment buildings but should encourage the use of English basements as separate dwelling units, in order to retain and increase the rental housing supply*

Policy MC-2.7.2: Eckington/Bloomingdale:

Protect the architectural integrity of the Eckington/Bloomingdale neighborhood, and encourage the continued restoration and improvement of the area's row houses

Policy MC-1.1.1: Neighborhood Conservation

Retain and reinforce the historic character of Mid-City neighborhoods, particularly its row houses, older apartment houses, historic districts, and walkable neighborhood shopping districts The area's rich architectural heritage and cultural history should be protected and enhanced

Action MC-1.1.A: Rezoning Of Row House Blocks

Selectively rezone well-established residential areas where the current zoning allows densities that are well beyond the existing development pattern The emphasis should be on row house neighborhoods that are presently zoned R-5-B or higher, which include the areas between 14th and 16th Streets NW, parts of Adams Morgan, areas between S and U Streets NW, and sections of Florida Avenue, Calvert Street, and 16th Street

Action MC-2.7.B: Conservation District:

Consider the designation of the Eckington/Bloomingdale/Truxton Circle neighborhood as a Conservation District, recognizing that most of its structures are 80-100 years old and may require additional design guidance to ensure the compatibility of alterations and infill development