

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Case No. 14-13 (Office of Planning – Text Amendments to Chapters 1, 4, 5, 6, 7, 12, 15, 19, 26, 27, 29, and 33: Definitions, Use Permissions, and Size Restrictions for Rooftop Penthouses).

Comments of Kalorama Citizens Association

November 24, 2014

Kalorama Citizens Association (KCA) has strong reservations concerning these proposals as set out in the Notice of the Commission's November 6, 2014 hearing. They relate both to the appropriateness and wisdom of the Commission's moving forward with proposals of this sort at this time, and the likely effect of the proposals, if implemented, on row-house neighborhoods such as the R-5, C2-A and C2-B row house areas found in Adams Morgan and elsewhere. Our views are as follows:

1. The proposals should be tabled indefinitely, or at the least until a new administration has been installed and has had a chance to address the serious issues that they raise.

These proposals, effectively raising height limits across the city, would move the District's land use law in a direction decisively rejected by the NCPC, the Council, and most organizations and individuals who addressed the matter, in the course of the recent discussion of the current administration's proposals on amendments to the Height Act. Nor do the narrow amendments on penthouse height and uses that were eventually enacted amount to a mandate to make any changes at all in the historic height of roof structures or their permissible uses: they merely give the District permission to do so. Nonetheless these penthouse proposals, whether by design or otherwise, appear to be an effort by a waning administration to bring about, through the Zoning Commission and under the rubric of implementing those amendments, as sweeping an increase in DC's effective building height limits as that legislation could possibly be said to authorize, despite the strong and recent evidence of official and public sentiment in favor of maintaining historic building height limits in the Nation's Capital. We do not find that acceptable, and we trust the Zoning Commission will not

In short, we find these proposals substantively ill-conceived and procedurally inappropriate, and urge the Commission to set them aside. In the unfortunate event that the case does proceed, however, we urge the Commission to take account of the serious damage that OP's proposals could inflict on row-house neighborhoods such as Adams Morgan, and modify the proposed text so as to avoid it. Specifically, we would point out the following:

2. The proposals would greatly enhance incentives, already ample, for damaging out-of-scale over-development in row house areas.

The prospect of hundreds of square feet of free additional marketable space will be a powerful incentive to developers. A resulting proliferation of two story structures atop larger buildings originally constructed as apartments, which are scattered throughout R-5 neighborhoods in particular and most of which in Adams Morgan are historic, would pose an obvious threat to the scale and character of the row house neighborhood. But the most severely damaging assault would emanate from placement of these newly authorized multi-use penthouses on the row-houses themselves, because of the much greater proportionate increase in the smaller buildings' height and mass that would result from adding the penthouse.

Consider one example: as proposed by OP, a penthouse measuring 20' deep x 20' high and with a width equal to the width of the lot could be constructed on probably any two-story interior row house that has a depth of at least 60 feet -- approximately doubling its height and greatly increasing its mass. That's bad enough, but the greater likelihood in that situation is that a pop-up developer, appetite further whetted by the prospect of all that free marketable space on top, would first expand a two- or three-story row-house to its maximum FAR, lot occupancy and height (which in R-5 could fall somewhere between 50 and 90 feet) -- and then add one or two penthouse stories on top of that. Anyone who thinks this would be too grotesque to be seriously considered by any developer should take a drive around almost any row-house neighborhood in the District, to see what pop-up developers are doing already *without* the added incentive of a free roof-top apartment.

3. To curtail damaging overdevelopment of this sort, at least three changes in the proposals are necessary:

A. The setback requirements must be tightened

Over-development of the sort described above would be possible in

row-houses because of the inadequacy of the proposed setback provisions. The Proposed Text for each zone (see 400.7(b) and elsewhere) would require setback from “all exterior walls”, this language has long been interpreted – incorrectly in our view – not to include party walls or walls on line. The Alternative Text for each zone would require setback from side walls only where they exceed the **greater** of the actual or by-right height of the adjacent building. For most row houses this will permit building the penthouse flush to each side wall, since most row houses are interior and will have the same building height limits as their neighbors on either side.

The only way to avert the prospective damage to row house areas is to revert to the original intent of the Height Act as to setback, namely, that setback is required from all exterior walls and that the side walls of an attached building are exterior walls. This should be done for all districts and all structures, but it is especially important to do this for row-houses – not just due to the damage which can be expected, but also because *the Comprehensive Plan explicitly and unequivocally requires it*, in a provision that thus far has been simply ignored in the Zoning Rewrite.

“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. ”

Note that the Alternative Text, requiring setback from a wall higher than the greater of the adjacent building’s actual or by-right height, was at one point incorporated into the ZRR proposals as C §505 2(e) and seems to have been retained in substance in modified roof structure setback provisions found in the current C §1500.8. KCA accepted this provision in commenting on ZRR, as providing protection in some cases, unlike an “all exterior walls” setback requirement that excludes setback from party walls or walls on line. In view of the greatly enhanced threat that would be posed by penthouses under OP’s proposals, however, that provision is seen to be clearly inadequate. What the Commission should do is *either* adopt the alternative text after amending numbered paragraph (5) to comply with the Comprehensive Plan mandate, *or* discard the Alternative Text in favor of the Proposed Text, supplemented by an explicit definition of “exterior walls” that complies with the Comprehensive Plan mandate.

B. The added incentive provided by the prospect of free marketable rooftop space must be curtailed by including penthouse area in gross floor area.

The proposals before us seem to have been written on the assumption that allowing any permissible human occupancy use in a penthouse would be an acceptable way to increase density in fact without changing the density allowances for each zone in the Regulations. That is not an acceptable way for this Commission to go about making decisions about density or any other development standard. More importantly, on the merits, such an exclusion from GFA would have damaging consequences particularly in row-house areas and should be rejected. If these proposals are adopted and a developer wants rooftop space in which any use permitted in the zone is allowable, he or she should be required to allocate a portion of allowable floor area for that purpose, as would be required for such usable space anywhere else in the building.

C The Special limitations on penthouse construction that the proposals apply to residential districts R-1 through R-4, or to “one-family dwellings or flats” in any zone district, should apply also to R-5 and to mixed residential/commercial districts at least through C-2-B.

OP’s proposals provide a number of important limitations on penthouse construction applicable only to R-1 through R-4 – e.g. limitations on permissible uses (411.2), on area of roof occupied (411.9), on number of stories (411.18). Additionally, “one-family dwellings and flats” in any zone district have 10-foot penthouse height limitation. All of these limitations should be extended to R-5. While R-5 has substantial numbers of large multifamily buildings, the predominant residential land use in R-5, like R-4, is row-houses built as single-family residences – OP’s insistence on designating R-5 as “apartment” is based on the use permissions provided in the Zoning Regulations, not on the predominant physical characteristics of the built environment. For reasons explained above, these proposals would create special vulnerabilities for row-houses, and the reasons for protecting R-4 and lower-zoned row house districts from the threat of out-of-scale overdevelopment apply equally in R-5. The same can be said for mixed residential/commercial row-houses, which in Adams Morgan are the predominant land use in our C2-A and C2-B zones

Conclusion

In the long course of hearings and public comment on ZRR, the Commission has heard repeated pleas for help in coping with the increasing problem of damaging, often grotesque over-development in the District's row-house neighborhoods, sometimes summarized as "pop-ups" It received a cogent plea from now-outgoing Councilmember Jim Graham on this score, to which the Chairman vowed a concrete response Thus far we have seen the proposal by OP, apparently developed at the Commission's suggestion, for helpful text changes in R-4, and discussions are underway, with OP's participation, about further downzoning from R-5 in certain areas But obviously a great deal more needs to be done to better position row-house communities in any zone to counter the damaging pressures of developers' heedless quest for maximizing marketable space at the expense of the neighborhood's scale and character

Implementing OP's ill-considered penthouse proposals would have exactly the opposite effect It would move things abruptly backward, accelerating rather than slowing the de facto erosion of historic district protections in Adams Morgan and elsewhere, enhancing rather than diminishing incentives for pop-up development of row-houses. And incidentally, by hastening the conversion of row house occupancy from one, two or three households to as many as nine or ten households, it would exacerbate Adams Morgan's already severe parking problem.

We repeat that the proposals should be set aside, failing that, they need be radical alterations to protect the many of us who live in row-house communities from damaging overdevelopment

Thank you for your consideration,

Denis James



denisjames@verizon.net

202 705-7411 C

202 232-8829 LL