

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).

Statement of Larry Hargrove for Kalorama Citizens Association April 20, 2015

I want to direct your attention to the potential effect of the penthouse proposals now before you on the city's row house row house neighborhoods. By this I mean those neighborhoods as built, not as they might have been built under current zoning -- because that difference is a key element in understanding the problems posed by this proposal. In so doing I want to pay particular attention to the Comprehensive Plan.

The Comprehensive Plan Mandates the Protection of Rowhouse neighborhoods

First, on the one issue of what should be the zoning future of the city's rowhouse neighborhoods, the Comp Plan is clear: the scale, character and architectural integrity of row house neighborhoods, as well as their role in providing housing for larger households and thus helping to keep young families in the District, are to be protected. The plan is replete with precise actions and policies, including some specifically relating to curtailing penthouses and added stories, that collectively constitute an *action program* by which by which this protection is to be achieved. The plan directs the Commission to

[g]enerally discourage 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

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permitted if they would not harm the architectural character of the buildings on which they would be added or other buildings nearby.¹

And again to

[p]rotect 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

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

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 requirements³

A more extensive list of relevant Comp Plan provisions is attached.⁴

The Comp Plan’s program for protection of rowhouse areas did not come about by happenstance, but was a deliberate response to circumstances having to do with the history of residential zoning in the District, marketplace economics, and the design characteristics of rowhouse neighborhoods

Rowhouse neighborhoods are generally overzoned

First, 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-

¹ Policy LU-2 1.9

² Policy LU-2 1.7

³ Action LU-2 1-B

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.

Expansive redevelopment of individual buildings is peculiarly destructive in row house neighborhoods

Secondly, from the point of view of architectural integrity and neighborhood character, row house 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.

The market increasingly incentivizes popup developers to exploit the gaps between zoning standards and rowhouse neighborhoods as built

Finally, 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 their 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.

Nobody can read these provisions objectively without concluding that they constitute a powerful mandate from the Comp Plan, which is after all the way we do basic long-term land use planning in this city, and as to which this Commission has a legal obligation under the city's Charter to ensure that the regulations it promulgates are not inconsistent with it.

The penthouse proposals' implications for R-5 neighborhoods are at odds with the full range of Comp Plan objectives for rowhouse neighborhoods

OP has done a creditable job of trying to implement this mandate, by means of the R-4 anti-popup proposal (now unfortunately on life support) and the new rowhouse zones proposed in ZRR. Regrettably, the same cannot be said for the penthouse proposal. While the present penthouse draft treats R-4 moderately well in that regard, for R-5B and above there are options on the table that could produce regulations disastrously at odds with what the Plan calls for. They would be at odds not just with the Plan's provisions specifically on curtailing roof structures, but with virtually the whole range of provisions calling for protection of the character, scale, architectural integrity and role in the housing market of rowhouse areas.

Specifically, they could offer popup developers the following irresistible incentive, as a matter of right, for any interior R-5B or higher rowhouse: a penthouse ten feet high and as wide as the house itself, providing up to several hundred square feet of prime marketable apartment space ("great view, access to private roof deck"), without any sacrifice of allowable FAR – an FAR freebie. If experience with existing popup projects is any guide, the result will often be a project that first adds at least one story and possibly as many as three, to get up to the 50-foot height limit, builds out horizontally if necessary to fill out the full zoning envelope, and then adds another 10-foot "story" of height with the penthouse, with the finished project towering above the rest of the row like a big one-fingered salute to the neighborhood, destroying the architectural and visual integrity of the row, and impairing neighbors' light, air and privacy. Bear in mind that popup developers have already done just this *without* the added incentive of being able to market the penthouse as apartment space.

What needs to be done to avoid these damaging effects?

So as it now stands the proposal could produce regulatory changes that would generate a disastrous deluge of popup development in R-5 rowhouse neighborhoods, exactly the opposite of what the Comp Plan mandates. For anyone the least concerned about preserving rowhouse areas against damaging redevelopment, this is madness! To avoid this, the final regulations will need to do three things:

•**Extend to *all* of R-5 rowhouses the prohibition on habitable space in penthouses that now applies to R5-A and lower.**

•**Hold penthouse height in *all* of R-5 and R-4 rowhouses to 10 feet (eliminating the 20-foot matter-of-right and special exception options).**

NOTE In Adams Morgan, for example, there are a few R-5-D row houses, physically indistinguishable from their 35-foot R-5-B neighbors in the same area. To discourage really grotesquely incompatible pop-ups, these R-5-D houses, with their 90-foot zoning height limit, must be treated like their neighbors for penthouse purposes.

•**Require 1-to-1 setback from adjoining side walls of row houses, as required by the Comp Plan.**

In addition, in those districts where use as habitable space use, there should be no exclusion of penthouse floor area from the calculation of allowable Gross Floor Area other than for space used for mechanical equipment. The only purpose of the proposed exclusion would be just to encourage penthouse construction and to use penthouse rules as a device for increasing density generally. We do not believe the OP or the Commission has any mandate for such action—certainly not from the Congressional action on the Height Act height limit and allowable penthouse uses.

A word about penthouse setback, penthouse use, and the Comp Plan

The Comp Plan provision requiring setback from adjoining side walls of row houses and semi-detached houses has been in the Plan since 2006. It has been simply ignored by OP in the drafting of regulations since the early days of ZRR. We understand that OP doesn't like it, because it would make it impossible for a very narrow row house to have even a penthouse for stairway access to the roof. To this we would say three things:

First, the fact that a Comp Plan provision is unloved by OP is not a good reason for OP – or this Commission -- to ignore it.

Second, there are very good reasons for the rule called for by the Comp Plan, having to do with geometry and optics: Rowhouses are relatively short buildings. The shorter building, the greater the proportionate contribution that a penthouse of a given height makes to the total mass of the structure, the shallower the viewing angle from the street, and thus the greater the visual intrusiveness of the penthouse and the greater the need for side-wall setback. A twenty-foot penthouse on a twenty-five foot rowhouse is very much more visually jarring than the same penthouse on a 60-foot building.

Thirdly, if – as the current draft suggests -- it is thought that every rowhouse owner must be able to get to the roof via an enclosed stairway, even in zones where the penthouse cannot be marketed as apartment space, then surely OP can devise rules by which, in the case of a rowhouse that is too narrow to be able to have a code-compliant stairway with the one-to-one side setback, the side setback distance could be reduced by the minimum amount necessary to accommodate such a stairway. For you should bear in mind that, even where stairway access is the only legal use of the penthouse, popup developers will make the penthouse as big and capacious (and visually intrusive) as the rules on height and setback will allow. This is because they know that in fact it will be “inhabited” for a variety of purposes and that preventing that use is beyond DCRA’s enforcement capacities. OP’s Memorandum of June 24, 2014 in the R-4 case, No. 14-11, provides a photo of a pop-up development that exemplifies the problem.

So we strongly urge you to revisit the side-wall setback issue and deal with it in a way that comports with the Comprehensive Plan.

The October 2014 penthouse proposal made a significant concession as to side wall setback in deference to historic preservation, requiring setback from a lot line shared with a historic property. This was largely carried forward in OP’s February 13, 2015 Supplemental Report, but has now been watered down by limiting the requirement to situations in which the built height of the adjacent historic property is lower than that of the building on which the penthouse is located. This would deprive many rowhouses in historic districts of the benefit of this protection, since rows

are often composed of houses of identical height. **The original proposal should be restored.**

Comprehensive Plan provisions mandating protection of row house neighborhoods

Action H-1.3.A: Review Residential Zoning Regulations (make necessary zoning changes to preserve row houses as single family units):

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

Policy LU-2.1.7. Conservation of Row House Neighborhoods (require height and scale of structures in rowhouse neighborhoods to be consistent with existing pattern):

Protect 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

Policy LU-2.1.9: Addition of Floors and Roof Structures to Row Houses and Apartments (discourage additional floors and roof structures on row houses and apartments, particularly where out of character with other structures on the block, etc.):

Generally discourage 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 "

Action LU-2.1-A : Rowhouse Zoning District: (create new zones within R-4 for larger houses):

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)

Action LU-2.1-B: Amendment of Exterior Wall Definition (establish appropriate criteria for roof structure setback on row houses and semi-detached houses):

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

Action LU-2.1-C: Residential Rezoning (pursue residential re-zoning to match zoning with existing uses).

Provide a better match between zoning and existing land uses in the city's residential areas, with a particular focus on

(a) Blocks of well-established single family and semi-detached homes that are zoned R-5-A or higher

(b) Blocks that consist primarily of row houses that are zoned R-5-B or higher

(c) Historic districts where the zoning does not match the predominant contributing properties on the block face

In all these instances, pursue rezoning to appropriate densities to protect the predominant architectural character and scale of the neighborhood

Action HP-2.4-C: Preservation Standards for Zoning Review (ensure consistency between zoning and existing buildings in historic districts):

Work jointly with planning and zoning officials to ensure consistency between zoning regulations and design standards for historic properties Zoning for each historic district should be consistent with the predominant height and density of contributing buildings in that district Where needed, develop specialized standards or regulations to help preserve the characteristic building patterns of historic districts and minimize design conflicts between preservation and zoning controls

Mid-City Area Element

Overview, 2000.9.

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

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.