Testimony before the Zoning Commission
ZC Case 19-21
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Fay Armstrong on behalf of the DC Preservation League

Good evening, Chairman Hood and members of the Commission. My name is Fay Armstrong. I am Vice President of the DC Preservation League (DCPL), Washington's citywide nonprofit dedicated to the preservation and protection of the historic and built environment of our Nation's Capital. We welcome the opportunity to comment on proposed amendments to the zoning regulations for roof top and upper floor elements.

Zoning as a planning tool is generally used to regulate density and use -- not design. As a result of Case 14-11 (decided June 8, 2015), the zoning regulations were amended in an effort to protect character-defining roof top architectural elements in R-4 zones as more and more houses were being expanded and converted into apartment houses. The biggest complaint was the extraordinary sizes of the resulting structures - both height and depth - and the destruction of important architectural elements on the facades, such as turrets and mansard roofs.

To control these "pop-ups" and other oversized additions on houses, the Office of Planning (OP) initially proposed to limit further conversions in R-4 zones to non-residential buildings and only by special exception. DCPL supported this proposal. The Zoning Commission rejected it, contending that the real problem with conversions of houses was one of design - not height or density. It asked OP to develop alternatives - and then more alternatives - for its review. The result was a confusing set of new regulations for R-4 zones (later brought into the zoning rewrite for RF zones) which are really design standards and which OP has proposed to amend to extend the protection for adjacent solar installations to all residential house zones.

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Solar Installations

We fully support the use of solar power and extending protection for existing solar panels to other residential house zones, wherever and however appropriate. Nevertheless, we question whether the zoning regulations are the place to do so. After just a few years of experience with the R-4 amendments, OP is proposing to change the way in which "interference" with a neighboring solar system is measured. As solar technology advances, more periodic updates may be expected. This is not an area of expertise of the Zoning Administrator. Should not any rules that may be developed about potential interference with residential energy production be some place other than the zoning regulations?

Currently, the green construction code and other legal requirements related to sustainability apply to commercial and multi-family residential properties over 50,000 square feet in gross floor area and not to other residential properties. OP has now identified a need for citywide rules for solar installations in residential house zones. Surely, there are other areas of environmental concern that could be addressed at the same time, possibly in new sustainability guidelines for smaller existing residential properties. For example, there are no effective controls on the indiscriminate use of concrete for parking in both rear and sometimes front yards, even though the latter is against public space regulations. This is a continuing problem in row house neighborhoods such as Capitol Hill and Mount Pleasant. Oversight of such issues falls naturally to the Green Building Department of DCRA, in collaboration with DOEE. We recommend that they be the ones to develop and enforce any regulations in this area, not the Zoning Commission, BZA and the Zoning Administrator.

Contrary to what one may hear, there is no incompatibility between historic preservation and green building. The greenest building is the one that is already built. Washington's historic districts are inherently sustainable by design and have for the last decade been keeping up with other residential areas in terms of the percentage of homes with solar installations - many of which produce more energy than the homeowner consumes. DCPL welcomes the opportunity to work with other groups interested in these issues to develop appropriate guidelines for homeowners.

Reexamining the R-4 Amendments of 2015

Today we are concerned primarily with the changes OP is proposing to other aspects of the 2015 amendments. From a preservation standpoint, there were two key provisions: reduction of the matter-of-right height limit from forty (40) to thirty-five

(35) feet and prohibition of the removal of roof top architectural elements when additions are built, particularly in the context of conversions to multi-family residences. Both of these changes were seen as essential to gaining the support of individuals outside historic districts who desperately sought some real protection for their neighborhoods in the zoning regulations.

As OP explained in its June 24, 2015, pre-hearing report for Case 14-11 (at pp.3-4), the recommendation to reduce the height limit to thirty-five (35) feet was based on its survey of over 10,000 lots zoned R-4 that found the predominate height to be between 25 and 35 feet. In support, OP cited several provisions of the Comprehensive Plan, among them Land Use Policy 2.1.7: "Protect the character of row house neighborhoods by requiring the height and scale of structures to be consistent with the existing pattern, ... Upward and outward extension of row houses which compromise their design and scale should be discouraged." That provision and the others cited all remain in effect today.

In fact, the protections for architectural elements adopted in 2015 came in a web of contradictions. Under Sections E-206.2 and E-5203.3 (which had to be read side-by-side to discern their meaning), the BZA was authorized to provide special exception relief from some of the new "design requirements" but not the one on architectural elements. However, under Section E-5203.2, the BZA could waive the architectural elements requirement entirely where relief was being sought from the new height limitation. Then again, in Section U-320.2 governing the conversion of a residential building to an apartment house, the same two-step occurred. Architectural elements had to be protected in any special exception to the height limit under subsection (a), but that same protection could be waived under subsection (l) where a conversion was proposed.

Thus, with respect to the two issues of most concern to R-4 homeowners, protection came with authorization to revoke it. How could this simultaneous giving with one hand and taking back with the other ever have been considered a possibly adequate response to the urgent pleas of homeowners for protection from oversized additions in the conversions of pre-1958 houses to multi-family dwellings? What is the experience to date?

OP reports a total of 50 special exception requests since 2017 to allow the conversion of a residential row building into an apartment house. No number has been reported for exceptions to the height limitation. Given the inadequacies of the BZA case search feature, we have been able to identify only a handful of cases under the new rules. The sample is not encouraging.

In one of the first cases to test the 2015 amendments, OP recommended issuance of a special exception to remove a turret where relief from the height limit was not needed and no conversion was being made. OP's recommendation was thus contrary to the law. DCPL, among others, objected. The BZA made no independent finding that the relief was necessary and deferred to the ZA to "deny any application for which additional or different zoning relief is needed." Application No. 19425 of William Gowin, decided March 22, 2017. Not surprisingly, the ZA also failed to recognize the distinction in the new regulations, despite the fact that the turret removal fundamentally changed the character of a row of six intact row houses and the neighborhood streetscape. There was nothing "special" about this special exception, as DCPL pointed out at DC Council Oversight Hearings in 2018 and 2019.

This is but one example of the confusion created by the R-4 amendments. It is not the only case we have found where OP and the BZA failed to protect architectural elements as required by the 2015 amendments. The cases, moreover, demonstrate the ineffectiveness of ordinary special exception standards to protect broader issues of neighborhood character. Special exceptions are generally intended to recognize the potential impact (light, air, etc.) on immediate neighbors, specifically those within 200 feet of an applicant's property. The BZA is free to ignore more distant objections. OP's proposal to fall back solely on ordinary special exception requirements to "protect" roof top elements is a bid instead to remove any meaningful protection for them.

Another of the amendments before you today would exempt "properties subject to review by the Historic Preservation Review Board or the U.S. Commission of Fine Arts" (CFA) from protection of their roof top architectural elements in the zoning regulations. This makes no sense whatsoever. Why should such properties in RF zones receive less protection for defining architectural features than others? All properties in an RF zone should be treated alike under the zoning regulations, even if some are designated for protection under the historic preservation law or fall within CFA jurisdiction. These are different laws with different purposes.

CFA, for example, does not apply preservation standards and is not required to protect roof top architectural elements. It protects the federal government's interests more generally. CFA looks to HPO for input whenever a property within its jurisdiction is also subject to the preservation law. Similarly, zoning authorities should readily find a way of working with HPO and CFA on cases with concurrent jurisdiction. The preservation law should not excuse compliance with the zoning regulations or vice versa.

In fact, since enactment of the Historic Landmark and Historic District Protection Act of 1978, aspects of the 1958 zoning regulations have intruded upon and made it difficult to protect individual landmarks and neighborhood character as the law intended. Houses zoned R-4 were particularly at risk because the 1958 regulations invited demolitions and authorized conversions of single family houses and flats to apartment houses in that zone alone. The long-simmering frustration and growing anger of residents of these historic (small "h") row house zones was finally taken up by OP and the Zoning Commission in 2014 in Case 14-11. When adopting the amendments in 2015, the Commission acknowledged that they might not be effective to achieve the desired results and there might be a need to revisit those changes in the future

That time has come. OP has now proposed to strike amendments critical to approval of the R-4 amendments in 2015. It proposes to do so in the context of a case initiated to expand solar protections to all residential house zones and on the theory that the changes proposed to the earlier amendments are required "for clarity" or "to remove duplicative provisions." The Zoning Commission cannot accept these recommendations on that very deceptive premise.

We call on the Zoning Commission to reopen the discussion of how best to protect the character of row house neighborhoods now zoned RF-1 through 3 from continued degradation as a result of conversions to multi-family dwellings and the attendant additions (up and out), once memorably referred to by a member of this Commission as "pop-arounds." The many stakeholders in Case 14-11 deserve a report from OP on experience under the 2015 amendments, including the identification of all special exceptions approved for conversion of a residential row building into an apartment house or for raising the height limit above 35 feet, and a review of the impact on their individual neighborhoods.

These important issues may not be swept aside in the haste to protect solar installations - an entirely worthy endeavor in our view but one separate and distinct from the issues raised by Case 14-11 that continue to reverberate in our neighborhoods.

The following neighborhood organizations have endorsed this statement: Bloomingdale Historic District Designation Coalition, Dupont Circle Conservancy, Foxhall Community Citizens Association, Foxhall Village Historical Society, Historic Anacostia Block Association, Historic Anacostia Preservation Society, and Historic Mount Pleasant. DCPL in turn endorses the testimony of the Kalorama Citizens

Association, which offers a more complete legal analysis of the issues raised by this case.

Thank you for your attention.