

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Jennifer Steingasser, ^{JLS} Deputy Director Development Review & Historic Preservation
DATE: June 24, 2014
SUBJECT: ZC 14-11: Preliminary and Pre-hearing Report – Request for a Text Amendment to the Zoning Regulations: Chapter 1, Definitions and Chapter 4, R-4 Zones

I. PROPOSAL AND RECOMMENDATION

The Office of Planning recommends the Zoning Commission set the following text amendments down for a public hearing:

- 1) Change the by-right height for a detached, semi-detached, rowhouse, or flat building in the R-4 district from forty feet (40 ft.) to thirty five feet (35 ft.);
- 2) Allow up to forty feet (40 ft.) by special exception subject to conditions;
- 3) Change the definition of mezzanine so it is included in the number of stories;
- 4) Limit the permission to convert buildings to multi-family to non-residential building to facilitate the adaptive reuse of non-residential buildings in the R-4

Other Proposals previously submitted through the Zoning Regulations Review (ZRR) process (ZC Case 08-06A) that accommodate new dwelling units:

- 1) Allow Accessory Apartments as a matter of right; and
- 2) Create two new zones that allow three (3) units per building and four (4) units per building.

II. BACKGROUND

In various meetings with the community and hearings with respect to the Zoning Regulations Review, as well as in several unrelated small area planning activities, OP has heard a number of concerns voiced by city residents, particularly those in rowhouse neighborhoods. The first concern is that provisions in the current zoning code make it possible, either as a matter of right or through a zoning variance or special exception, to convert single family dwellings into flats or condominium buildings. The second concern is frequently related – the sizable increase in the number of “pop-ups”, generally defined as roof additions to row houses, sometimes two or three stories above the rest of the rowhouses in a block, and frequently designed out of character with the remaining homes in style, materials and scale.

OP is seeing a trend across the city in the conversions of buildings in the R-4 both by right, and through variance requests to allow conversions with less than 900 square feet of land area per unit. The conversion provision has been applied in a variety of ways and has allowed for the combination of two properties to form a new lot with the subsequent conversion of the adjoining buildings to a condominium; the demolition of a principal building on a lot with replacement

by an addition to the extant garage and subsequent conversion of the garage with its new addition to condominiums. OP is also seeing arguments for calculating R-4 density on an FAR basis equivalent to the R-5-B as opposed to the minimum lot area requirement used for the low density residential zones. This has had the effect of putting strong upward price pressures on single family housing stock with 3 or more bedrooms, pricing them out of the range of many families in many R-4 zoned areas.

III. OP ANALYSIS

In response to the issues raised by city residents and the Zoning Commission in the processes listed above, OP looked carefully at the issue of conversion pressure and inappropriate additions and ways to address and limit them. OP has focused on the existing R-4 rowhouse zones for a number of reasons:

- 1) The zone accommodates two dwelling units as a matter of right regardless of conforming lot size.
- 2) The zone contains a provision that permits the “Conversion of a building or structure to an apartment house” subject to a requirement of 900 square feet of land area per apartment with no minimum lot width for the converted building.
- 3) The zone allows a matter of right height of 40 feet, irrespective of the height of the other homes in the row.
- 4) The built environment is typically very close with small courts and little separation between dwelling units.
- 5) Due to the relative small size of the R-4 lots, narrowness of the lot and the adjoining structure, inappropriate additions are felt most immediately.
- 6) Many, if not most, inappropriate upper additions are in the R-4 zone.

The R-4 Zone

According to the Office of Planning’s Geographic Information System there are 37,600 record lots in the R-4 zone. The R-4 zone represents 22.2% of the low density residential zones in land area and 35.3% of low density residential lots.

Low Density Zone	No. of lots	% of R-1 thru R-4 lots	Low Density Zone	Area in Square Miles	% of R-1 thru R-4 lots
R-1-A	4023	3.8%	R-1-A	1.87	8.03%
R-1-B	24643	23.1%	R-1-B	9.26	39.74%
R-2	23532	22.1%	R-2	4.44	19.06%
R-3	16677	15.7%	R-3	2.55	10.94%
R-4	37600	35.3%	R-4	5.18	22.23%

Zone	Sq. Miles	% of Total Residential Zoned Land
R-1-A	1.87	5.64%
R-1-B	9.26	27.91%
R-2	4.44	13.38%
R-3	2.55	7.69%
R-4	5.18	15.61%
R-5-A	6.81	20.52%
R-5-B	1.9	5.73%
R-5-C	0.05	0.15%
R-5-D	1	3.01%
R-5-E	0.12	0.36%

The table to the left shows the area of each residential zone and the relative percentage of each residential zone.

Of the 37,600 R-4 record lots only 15,320, or 41%, are conforming to the minimum lot area requirement of 1,800 square feet and 59% of all the R-4 lots are non-conforming to lot area. This is the highest level of non-conformity in the low to moderate density zone districts. Approximately 11 % exceed 2700 square feet.

Zone	Minimum Lot Size	% Conforming	% Non-Conforming
R-4	1800 sf	41%	59%
R-3	2000 sf	46%	54%
R-2	3000 sf	43%	57%
R-1-B	5000 sf	57%	43%
R-1-A	75000 sf	78%	22%

A review of the land use codes revealed that approximately 70% of all the R-4 record lots have a land use designation of single family or flat; 15% are designated as apartments; and 15% are designated “other” (schools, places of worship, clubs, clinics, museums, etc.).

OP looked at approximately 17,000 record lots in rowhouse neighborhoods. Of these, 10,369 of the record lots are in the R-4 zone and developed with residential rowhouses and were reviewed by OP for height characteristics.

ROWHOUSE HEIGHT

OP evaluated over 10,000 lots zoned R-4 across the city for the predominant rowhouse building height and number of stories along each block front. The evaluation started with a computer generated height, followed by a GIS photo survey of each block front, and field checks as necessary.

In total, 94.4% of lots fall in a height range of 35’ or less; and 99.6% of developed lots have a height of 3 stories or less, with 89% having 2.5 stories or less (84% are 2 stories or less).

Stories	Total Lots	%
1	34	0.33%
1.5	4	0.04%
2	8,727	84.16%
2.5	458	4.42%
3	1,109	10.70%
3.5	7	0.07%
4+	30	0.29%
Total	10,369	

IV. OP RECOMMENDATIONS

Recommendation 1: Change maximum matter of right building height in R-4 to 35 feet.

Based on the survey results that establish the predominate rowhouse height as being between 25 and 35 feet, OP recommends that the maximum permitted building height in the R-4 zones be established at 35 feet.

Amend Section 400.1 by establishing the height in the R-4 zone at 35 feet as follows:

400.1 Except as specified in this chapter and in chapters 20 through 25 of this title, the height of buildings or structures in a Residence District shall not exceed that given in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Stories)	MAXIMUM HEIGHT (Stories)
<u>R-4</u>	<u>35</u>	<u>3</u>
R-1-A,R-1-B,R-2 R-3,R-4.R-5-A	40	3
R-5-B	50	no limit
R-5-C	60	no limit
R-5-D	90	no limit
R-5-E	90	no limit

Recommendation 2: Allow up to a maximum of forty feet (40 ft.) by Special Exception.

Amend Chapter 4 by adding a new § 400.23 with conditions that are very similar to those used to evaluate additions to non-conforming structures under existing section 223.

Amend Section 400.2 as follows:

400.2 Except as provided in § 2510, the height of buildings or structures specified in § 400.1 may be exceeded as provided in §§ 400.3 through ~~400.13~~ **400.23**.

Amend Section 400 by adding a new Section 400.23 as follows:

400.23 In an R-4 District, a building or other structure may be erected to a height not exceeding forty feet (40 ft.) by special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

- (a) The overall building 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) The resulting building 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 overall building 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.**
- (c) In demonstrating compliance with this section, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.**

Recommendation 3: Amend the definition of “mezzanine” so that a mezzanine is considered a story.

Under the current regulations a mezzanine does not count as a story but is floor space between stories. This partial floor space can cause the building to rise higher than a standard three stories. This floor space together with the maximum permitted zoning height can result in upper building additions that are inconsistent with the prevailing neighborhood heights.

Amend Section 199, Definitions as follows:

Mezzanine - a floor space within a story between its floor and the floor or roof next above it and having an area of not more than one-third (1/3) of the area of the floor immediately below. A mezzanine shall ~~not~~ be considered a story in determining the maximum number of permitted stories in a Residential zone.

Recommendation 4: Limit roof structures in the R-1 through R-4 zone to ten feet for single family and flat residential buildings.

In the comprehensive revisions to the zoning regulation (ZC Case No. 08-06A), there is a proposal to limit penthouse structures in the R-1 through R-4 zones to ten feet in height above the roof. There were comments from the public concerned that this limit could restrict the necessary roof structures for non-residential buildings which have historically been permitted 18 feet-6 inches. The Commission asked OP to clarify that the ten feet would not apply to these structures. OP proposes that the ten feet provision, as clarified, be considered as part of this case. Below is a photograph that shows how a roof structure can now legally sit atop an upper floor addition and emphasizes the incompatibility of upper floor additions. The roof structure is behind the roof deck.



Amend Sections 400.7 and 400.8 as follows:

- 400.7 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:
- (a) It shall meet the requirements of § 411;
 - (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
 - (c) ~~It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.~~ **For single family detached, semi-detached and row dwellings, and flats, it shall not exceed ten feet (10 ft.) in height above the roof upon which it is located;** and

- (d) **For all other structures it shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.**

400.8 Housing for mechanical equipment, a stairway, or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located **as permitted by § 400.7**

CONVERSION FROM ROWHOUSE

Recommendation 5 and 6: Remove the provision to allow for conversion of rowhouses to apartments, and allow conversion of non-residential buildings by special exception subject to amended conditions.

The existing regulations limit the R-4 rowhouses to two units which is defined as a “flat”. However, there is also a provision that allows a conversion of a building or structure to multi-family units subject to a required minimum lot area of 900 square feet per unit:

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-4 Row dwelling and flat	1,800	18
R-4 One-family semi-detached dwelling	3,000	30
R-4 Conversion of a building or structure to an apartment house	900/apartment or bachelor apartment	None prescribed

Section 401.3

To clarify the intent that there be a minimum of 900 square feet per unit the Zoning Commission added clarifying language in 2007 that states:

401.11 An apartment house in an R-4 District, whether converted from a building or structure pursuant to §330.5 or existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new.

330.5 Matter of Right Uses

330.5 (e) The conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by §§ 401.3 and 403.2

Coupled with the intent statement of § 330.3 which states:

330.3 The R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.

OP has always read the code to mean that R-4 is not intended to be an apartment zone, and that the conversion provision was intended to accommodate structures that existed prior to the adoption of the 1958 regulations, when the existing building is located on a lot with a minimum land area of 2,700 square feet with 900 square feet per unit thereafter. Over time, the provision has been interpreted in various ways and the meaning of conversion has been interpreted to include significant new construction, partial demolition, and additions - sometimes very extensive. About 11 percent of all lots in R-4 are larger than 2,700 square feet. Currently, only 6 percent of residential properties in the R-4 are more than two units, but 79 percent of those already exceed the one unit per 900 square feet of land limit.

In addition to the incentive to build upward, the conversion of established rowhouse dwellings and flats to apartments can have a real impact on the quantity and relative affordability of family sized housing stock. The Comprehensive Plan provides substantial policy guidance directed at providing a diversity of housing options including family housing and protecting single-family neighborhoods.

The District essentially has a fixed supply of family sized housing, both attached and detached. Buildings with one and two dwelling units represent approximately 38 percent of the District's housing stock, but only about 4 percent of the units in the housing pipeline over the next 15 years and that includes rowhouse projects currently under construction or substantially completed such as Chancellor's Row and Fort Lincoln. Conversely, the District has a large supply of land and developments in the housing pipeline for multi-family housing that is appropriate to meet the demand of smaller households and is in multi-family or mixed use zones.

The demand for larger, multi-bedroom family-size housing is reflected in the housing market, which is seeing price pressures for larger family style units. OP has noticed that very few new multifamily buildings are being delivered with three or more bedrooms, unless they are part of housing planned to replace similarly-sized public housing units. Over the past three years, three-bedroom units have risen in price almost three times as fast as one-bedroom units. This reflects the limited supply, subsequent demand pressure, and rapidly escalating prices. Families seeking to purchase larger units are competing with developers who can pay more for a larger house than a family because they can profit by splitting up the building and selling smaller units. Ensuring that the R-4 zone remains a single-family rowhouse or flat zone can begin to address this pressure.

The R-4 zone has the smallest required lot size in the low density residential zones. On average the homes in the R-4 are about 1,540 square feet. Although modest in size, the R-4 housing units are often characterized by pre-1958 rowhouse dwellings that feature two to four bedrooms and may also contain a second unit or English basement apartment that can be rented to help supplement mortgage payments.

The conversion provision has created a unique economic pressure on the R-4 zone that is not seen in any other low density residential zones. The pressure can result in a potential homeowner competing against a developer with an eye to converting a rowhouse to multi-family. The R-5-A zone, which is an apartment zone, requires special exception review for any residential development except one family detached and semi-detached dwellings. The conversion pressure in combination with the existing development standards has added to the R-4 zone often being more like the R-5-A apartment zone than a rowhouse zone, which is not the intent. The R-5-A zone represents 20.5% of all the residentially zoned land.

Zone	Sq Miles	% of Total Residential Zoned Land
R-1-A	1.87	5.64%
R-1-B	9.26	27.91%
R-2	4.44	13.38%
R-3	2.55	7.69%
R-4	5.18	15.61%
R-5-A	6.81	20.52%
R-5-B	1.9	5.73%
R-5-C	0.05	0.15%
R-5-D	1	3.01%
R-5-E	0.12	0.36%

OP has been working with the Mount Pleasant Citizen Association on the issues they raised before the Zoning Commission during the November 2013 and February 2014 public hearings. Their issues also arise from the ability to convert residential houses in the R-4 zone to more than two units. The Trinidad neighborhood and other R-4 zoned areas have also expressed concern about both the conversions, and the sometimes extensive building additions accompanying those conversions.

OP does not believe that limiting the conversion provision to institutional and non-rowhouse buildings will impact the provision of housing throughout the city. Through the ZRR process, OP is proposing two new residential zones to bridge the gap between the existing R-4 and R-5 zones – the RF-4 zone which proposes three (3) units as a matter of right and the RF-5 zone which proposes four (4) units as a matter of right. There is also a proposal to allow accessory apartments within the R-1, R-2 and R-3 zones as a matter-of-right.

OP recommends that the R-4 conversion provision be permitted only for the adaptive reuse of institutional, non-residential and other non-rowhouse buildings and only by special exception. OP recommends that new language be added clarifying when an addition qualifies as conversion and what qualifies as a meaningful connection for any addition.

Amend Section 401.3 as follows:

401.3 Except as prescribed in the other provisions of this chapter, the minimum dimensions of a lot in a Residence District shall be as set forth in the following table

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
R-4 Conversion of a non-residential building or structure pursuant §401.12 to an apartment house	900/apartment or bachelor apartment	n/a

Add a new Section 401.12 as follows:

- 401.12 A non-residential structure in an R-4 District may be converted to an apartment house by special exception subject to the following conditions:**
- (a) The building was built for non-residential purposes such as a school, place of worship, or government use.**
 - (b) The building was not built to be part of a residential row of homes.**
 - (c) The building may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new.**
 - (d) If the conversion involves an addition, on a parking lot or yard abutting a street right of way, the addition shall maintain or create a streetwall consistent with the immediate neighborhood.**
 - (e) The conversion and any associated addition shall 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;**
 - 3) The addition or accessory structure, together with the original building, 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; and**
 - 4) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.**
 - (f) The lot occupancy of all new and existing structures on the lot shall not exceed seventy percent (70%).**
 - (g) The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties.**
 - (h) This section may not be used to permit the introduction or expansion of a nonconforming use.**
 - (i) An apartment house in an R-4 District, converted from a building or structure prior to the effective date of this amendment shall be considered a conforming use and structure.**

After reviewing the R-4 areas, heights, and development pressure, OP recommends the above proposals be setdown for public hearing. The combination of proposed amendments work to limit inappropriate additions while respecting the property rights of owners and preserving the character of the District's residential rowhouse neighborhoods.

OP requests the flexibility to work with the Office of Attorney General on the Public Hearing Notice language.