

ANC1 Testimony for the DC Council Performance Oversight Hearing

Business, Consumer, and Regulatory Affairs – DCRA Performance

February 29, 2016

ANC1C Supports Responsible Growth

ANC1 represents Adams Morgan in Ward 1. Over the past several years, as with much of the city, we have been experiencing rapid growth and its benefits and challenges. ANC1C has been supportive of multiple developments that, in the past few years, have added around 500 new condominium and apartment units to our already tightly packed neighborhood. Hundreds more units are in the planning stages or are soon to start construction. Those numbers tell you that we embrace responsible development that proceeds according to the law.

ANC1C also appreciates the work of new DCRA Director Melinda Bolling to improve responsiveness to resident concerns and questions. DCRA appears to have improved its operations in a number of areas.

ANC1C Resolutions and BZA Cases Regarding Concerns with DCRA Oversight

However, much remains to be accomplished. Of particular concern are zoning determinations by the Zoning Administrator with regard to our rowhouse neighborhoods. ANC1C has found cause to pass four (4) resolutions in the past year regarding improper enforcement of the zoning regulations and has taken on four (4) Board of Zoning Adjustment (BZA) cases regarding what we see as errors by the Zoning Administrator in his interpretation of the regulations.¹ We anticipate that additional BZA cases may be brought in 2016, although we hope that proper oversight and responsible developers will relieve of us that duty.

Our resolutions and BZA cases reflect broader community-wide concerns regarding the adverse impact of improper regulatory oversight on property rights and property values of abutting neighbors and the quality of life in terms of loss of light and air and privacy. Equally important, we are concerned about the diminished integrity of the zoning regulations, the building codes, and the Zoning Administrator and DCRA staff as stewards of regulatory administration.

In order to address these concerns, our resolutions call for a special review of DCRA performance and enhanced enforcement of the regulations. Excerpts from our resolutions (attached) merit mention.

1. In a March 2015 resolution to Direct Improvements in DCRA Administration of Zoning Regulations, ANC 1C calls upon the Mayor of the District of Columbia, the Council of the District of Columbia and the Zoning Commission to conduct an administrative review of DCRA operations in terms of 1) oversight of building permit assessments; 2) review of the accuracy of building plans and their compliance with building codes; 3) monitoring of permitted projects for compliance, 4) and implementation of new Zoning Regulations Review provisions currently under review, using the results to prepare a report within 120 days, whereby such report identifies specific and tangible changes that may be made in DCRA operations.

¹ BZA Cases 18999, 19081, 19424, 19224

2. Another March 2015 resolution on a moratorium on additions to row dwellings (attached) states that “many of these conversions may be non-compliant with R-5-B zoning regulations that govern Gross Floor Area (GFA)/FAR, lot occupancy, and building codes.”
3. ANC1C’s April 2015 resolution (attached) speaks to concerns regarding proper enforcement of a regulation govern maximum density for structures and reads, in part, “[w]hereas, the District of Columbia is not consistently following established methods (perimeter wall method and grade plane method) for determining the lower level square footage as either cellar or basement for, respectively, exclusion or inclusion in GFA and therefore, FAR.”
4. In our May 2015 resolution (attached), ANC1C outlines concerns with inappropriate awarding of parking credits by the Zoning Administrator, the importance of following DCMR regulations for 9’ x 19’ spaces and two such spaces for R-5-B, and the need to seek variance relief from the Board of Zoning Adjustment, not by improper rulings by the Zoning Administrator.

Pattern of Problems

In Adams Morgan, we have seen a pattern of regulatory missteps that authorize overbuilding in rowhouse neighborhoods. Of particular concern are rowhouse conversions that allow for the addition of more square footage than permissible with less parking than is required. Each of these abuses is enabled by interpretations that frequently run contrary to the meaning of the regulations, including:

1. Failure to enforce regulations on the maximum allowable size of buildings (i.e., FAR limits including misapplication of the basement/cellar rule). As a consequence, a whole extra floor gets added to rowhouses as a result of measurement adjustments and faulty interpretations around the basement/cellar rule to evade FAR maximum size rules.
2. Misinterpretation of parking requirements results in sub-standard parking spaces in terms of number of spaces and space size. DCRA has made far too many incorrect determinations. Examples include: approval of plans for parking spaces where there is insufficient space to locate such regulation parking, improper assessment of what is called grandfathered parking spaces so as to allow extra units, violating the one space for every two units rule in R-5-B, and improper recognition of parking credits.

Short Term Recommendation and Solutions

In closing, ANC1C urges a special administrative review of DCRA in order to identify best practices and challenges and then work toward improving agency operations.

However, that goal can more immediately be addressed by simply enforcing existing current zoning regulations and building codes in a manner that is consistent with both the letter and spirit of the law.



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

www.anc1c.org

Representing Adams Morgan

Commissioners:

March 5, 2015

Vacant (1C01)

Hector Huevo (1C02)

Ted Guthrie (1C03)

Gabriela Mossi (1C04)

Alan Gambrell (1C05)

Billy Simpson (1C06)

Wilson Reynolds (1C07)

JonMarc Buffa (1C08)

To: Mayor Muriel Bowser
Councilmembers of the District Council
Zoning Commission

Re: Improvements in DCRA Administration of Zoning Regulations

Dear Mayor Bowser, Councilmembers, and Zoning Commission,

At a duly noticed public meeting held on March 4, 2015, with a quorum present, ANC1C voted 7-0 to adopt the attached resolution calling for improvements in the Department of Consumer and Regulatory Affairs' administration of the zoning regulations.

Sincerely,

Billy Simpson
Chair, Advisory Neighborhood Commission 1C

ANC1C Resolution to Direct Improvements in DCRA Administration of Zoning Regulations

Whereas, single family row house dwellings in Adams Morgan located in the R-5-B zone are being converted into multi-unit dwellings that are being enlarged to accommodate additional Gross Floor Area (GFA), and

Whereas, neighborhoods in the R-5-B zones that are not in registered historic districts are not afforded protections provided by architectural review under the Historic Preservation Office (HPO) guidelines, and

Whereas, these conversions (so-called pop-ups), to the extent they add additional floors and lot coverage, typically lack compatibility and are uncharacteristic to the existing building height and massing, creating an appearance that is visually incongruous to abutting buildings and the historic streetscape as a whole, and

Whereas, some conversions (both completed and planned) may be non-compliant with R-5-B zoning regulations due to DCRA and developer actions that include: 1) GFA/Floor Area Ratio (FAR) calculations that designate lower level square footage as cellar space in order to exclude square footage from GFA and FAR calculations; 2) failure to define existing porch and balcony square footage in lot occupancy calculations; 3) building plans that contain calculation errors; 4) plans that contain potential violations of specific building code requirements for additional floors in terms of, for example, means of egress and structural building requirements; and 5) interpretation of parking requirements that result in sub-standard parking spaces in terms of number of spaces and space size, and

Whereas, there are examples of row house dwelling conversions that adversely impact the property rights of abutting properties, resulting in structural damage, a decrease in quality of life issues (e.g., loss of light, air and privacy), and a deleterious impact on abutters' property values, and

Whereas, all property owners are entitled to equal consideration of their property rights, and

Whereas, DCRA has two options for calculating the lower level square footage for inclusion in GFA and FAR but opts to use—almost exclusively— what DCRA characterizes as the “perimeter wall method” when making these calculations for attached row house dwellings, which results in a biased exclusion of lower level square footage from GFA and FAR calculations, and

Whereas the arbitrary use of the perimeter wall method for row houses results in an undercount of GFA and FAR, allowing for additional stories previously not developable under traditional methods, thus inflating the Floor Area Ratio (FAR) beyond Title 11 limits, and

Whereas, DCRA rarely uses the grade plane method to determine row house lower level square footage as basement or cellar, even though this methodology is currently an available option for use by DCRA, and

Whereas, the grade plane method is a more accurate methodology than the perimeter wall method for determining the basement versus cellar designation for row houses, is endorsed as such by the International Building Code, and is designated by the draft ZRR as the appropriate methodology for attached buildings, and

Whereas, the Mayor and/or the Council of the District of Columbia may have the authority to direct DCRA to make exclusive use of the grade plane method for attached row dwellings when defining lower level square footage as basement or cellar for purposes of assessing and issuing building permits in compliance with zoning regulations, and

Whereas, a review of DCRA's administration of zoning regulations for the purposes of improving its performance can be achieved through a comprehensive review and plans for enhancement of current operations.

Therefore Be It Resolved, that ANC 1C calls upon the Mayor of the District of Columbia, the Council of the District of Columbia and the Zoning Commission to utilize their defined authority to issue an administrative directive for DCRA to immediately stop using the perimeter wall method to calculate lower level GFA/FAR for row house dwellings and to instead use the grade plane method.

Be it Further Resolved, that ANC 1C calls upon the Mayor of the District of Columbia, the Council of the District of Columbia and the Zoning Commission to conduct an administrative review of DCRA operations in terms of 1) oversight of building permit assessments; 2) review of the accuracy of building plans and their compliance with building codes; 3) monitoring of permitted projects for compliance, 4) and implementation of new Zoning Regulations Review provisions currently under review, using the results to prepare a report within 120 days, whereby such report identifies specific and tangible changes that may be made in DCRA operations.

And Finally Resolved, that the Chair of ANC 1C shall be authorized to communicate this resolution to the Mayor, the Director and General Counsel of DCRA, the Zoning Administrator, members of the District Council and the Zoning Commission.



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

www.anc1c.org

Representing Adams Morgan

Commissioners:

March 5, 2015

Vacant (1C01)

Hector Huevo (1C02)

Ted Guthrie (1C03)

Gabriela Mossi (1C04)

Alan Gambrell (1C05)

Billy Simpson (1C06)

Wilson Reynolds (1C07)

JonMarc Buffa (1C08)

To: Mayor Muriel Bowser
Councilmembers of the District Council
Zoning Commission of the District of Columbia

Re: Moratorium on Major Additions to Row Dwellings

Dear Mayor Bowser, Councilmembers, and Zoning
Commission,

At a duly noticed public meeting held on March 4, 2015, with
a quorum present, ANC1C voted 7-0 to adopt the attached
resolution calling for a moratorium on major additions to row
dwellings in Adams Morgan.

Sincerely,

Billy Simpson
Chair, Advisory Neighborhood Commission 1C

Resolution In Support of Moratorium on Major Additions to Row Dwellings in Adams Morgan, ANC 1C

Whereas Adams Morgan possesses a large number of residences in the R-5-B zoning category,
and

Whereas Adams Morgan possesses a large number of residential family homes not protected by
Historic designation, and

Whereas Adams Morgan has been overwhelmed with developers transitioning family dwellings
into multi-unit dwellings, and

Whereas the proliferation of these maximized conversions have given rise to a new terminology,
such as 'Pop Ups' and 'Pop Backs,' and

Whereas many of these conversions lack compatibility and harmony with the balance of the
community, especially neighboring buildings on the same block, and

Where many of these conversions may be non-compliant with R-5-B zoning regulations that
govern Gross Floor Area (GFA)/FAR, lot occupancy, and building codes, and

Whereas there are many examples of Pop Up and Pop Back construction that have hurt the
property rights of neighboring properties in the form of structural damage, decrease in quality of
life due to loss of light, air and privacy, and harm to property values, and

Whereas all property owners are entitled to equal consideration of their property rights, and

Whereas in December of 2014 ANC 1C did vote to downzone a portion of Lanier Heights from
R-5-B to R-4 in response to repeated complaints against Pop Ups and Pop Backs, and

Whereas the Zoning Commission and District Government are reviewing changes to both the
Zoning Regulations, and

Whereas the District of Columbia does have the power to hold back permits for Pop Ups and Pop
Backs.

Whereas the District of Columbia lacks a design review process for review of pop-up and pop-
back construction in row dwelling neighborhoods.

THEREFORE BE IT RESOLVED, that ANC 1C does urge the Mayor of the District of
Columbia and the Council of the District of Columbia to take all appropriate action to place a
moratorium on the construction of new floor additions to homes inside the boundaries of ANC
1C, and

Be it Further Resolved, that the Mayor and the Council are requested to work together to create and implement regulations and code changes to insure the continued protection of private property of adjacent neighbors impacted by a Pop Up or Pop Back, and

Be it Further Resolved that ANC 1C urges that this moratorium be kept in place until such time that the following conditions are met:

1. Zoning Commission Case 14-11 (text Amendment to R-4 Zones) is decided,
2. The Zoning Regulation Review (ZRR) is enacted.
3. Properties under historic designation are provided a more robust review process, such as the creation of proposed Conservation Districts.

And Finally Resolved, that the Chair of ANC 1C is authorized to communicate this resolution to the Mayor, the members of the District Council, and the Zoning Commission.



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

www.anc1c.org

Representing Adams Morgan

Commissioners:

April 6, 2015

Vacant (1C01)

Hector Huevo (1C02)

Ted Guthrie (1C03)

Gabriela Mossi (1C04)

Alan Gambrell (1C05)

Billy Simpson (1C06)

Wilson Reynolds (1C07)

JonMarc Buffa (1C08)

To: Mr. Lloyd Jordan
Chairperson, Board of Zoning Adjustment
441 4th Street NW, Room 220-South
Washington, DC 20001

Re: BZA Appeal #18980

Dear Board of Zoning Adjustment Members,

At a duly noticed public meeting held April 1, 2015, with a quorum present, ANC1C voted 6-0 to adopt the attached resolution stating ANC1C support for BZA appeal #18980, filed by Concerned Citizens of Argonne Place, and authorizing Commissioner Alan Gambrell to submit this resolution to the BZA and to represent ANC 1C before the BZA in connection with this matter.

Sincerely,

Billy Simpson
Chair, Advisory Neighborhood Commission 1C

ANC1C Resolution to Support BZA Appeal 18980 by Argonne Place Residents

Whereas, Residential Zoning District R-5-B (covering most of Adams Morgan) has a FAR limit of 1.8 and a lot occupancy limit of 60%.

Whereas, District of Columbia DCMR zoning regulations rely on key definitions of terms such as Floor Area Ratio (FAR), lot occupancy, Gross Floor Area (GFA) and parking.

Whereas, International Building Codes establish standards to ensure quality and safety of construction.

Whereas, the District of Columbia is not consistently following established methods (perimeter wall method and grade plane method) for determining the lower level square footage as either cellar or basement for, respectively, exclusion or inclusion in GFA and therefore, FAR.

Whereas, in December 2014, in response to Argonne Place neighbor concerns shared and documented over several months regarding potential zoning violations at the subject property, 1636 Argonne Place NW, DCRA issued a Stop Work Order after determining that the subject property's FAR was 2.07, over the prescribed FAR limit for R-5-B.

Whereas, DCRA subsequently reversed the above ruling in mid December 2014, stating that the property was now in compliance with the 1.8 FAR limit as a result of issuance of a building permit revision allowing an alteration of the finished grade to redefine the lower level as a cellar and thus not countable in FAR.

Whereas, 15 Argonne Place neighbors (Concerned Citizens of Argonne Place) submitted a Board of Zoning Adjustment (BZA) appeal of the above ruling in February 2015, disputing DCRA's determination of FAR and lot occupancy of the subject property, citing two errors: incorrect designation of the lower level as a cellar (thus excluding this square footage from GFA and FAR) and incorrect GFA building area calculations (which affect FAR and lot occupancy determinations).

Whereas, failure to enforce zoning and building code regulations on the subject property will set a flawed precedent for similar and identical properties in Adams Morgan and other neighborhoods in the District of Columbia.

Be It Resolved, that ANC 1C supports BZA appeal #18980 filed by the Concerned Citizens of Argonne Place.

Be It Further Resolved, that the Chair of ANC 1C shall be authorized to communicate this resolution to the Board of Zoning Adjustment.

Finally Be It Resolved that ANC 1C authorizes Commissioner Alan Gambrell to submit this resolution to the BZA and to represent ANC 1C before the BZA in connection with this matter.



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

www.anc1c.org

Representing Adams Morgan

Commissioners:

May 9, 2015

Vacant (1C01)

Melinda Bolling, Director

Hector Huevo (1C02)

Department of Consumer and Regulatory Affairs

1100 4th Street SW

Ted Guthrie (1C03)

Washington, DC 20024

Gabriela Mossi (1C04)

Lloyd Jordan, Chairperson

Board of Zoning Adjustment

Alan Gambrell (1C05)

441 4th Street NW, Suite 200-S

Billy Simpson (1C06)

Washington, DC 20001

Wilson Reynolds (1C07)

Re: Resolution Concerning Parking Regulations

JonMarc Buffa (1C08)

Dear Director Bolling and Chairperson Jordan,

At a duly noticed public meeting held on May 6, 2015, with a quorum present, ANC1C voted 7-0 to adopt the attached resolution concerning the parking requirements in the DC Municipal Regulations. The resolution stresses the importance of adherence to these regulations, particularly the 1 space/2 unit ratio, the 9' x 19' regulation space, avoidance of DCRA-issued parking credits, and the essential role of the Board of Zoning Adjustment as the entity to grant exceptions to these rules, only in exceptional cases.

Sincerely,

Billy Simpson

Chair, Advisory Neighborhood Commission 1C

cc: Mayor Muriel Bowser

The Councilmembers of the District Council

ANC1C Resolution on Parking May 6, 2015

DCMR regulations on parking are clearly delineated in DCMR 11-21 and cover requirements such as minimum size requirements for spaces (9' x 19') and number of parking spaces per number of units in a given building.

Parking credits issued by DCRA and waivers granted by the Board of Zoning Adjustment are extremely problematic for rowhouse conversions as parking in residential areas is insufficient.

Further, Adams Morgan residents have expressed their general opposition to excessive unit counts in rowhouse conversions and ANC1C has expressed support for that position in prior resolutions.

It has become clear that avoiding the parking requirements has become a routine tactic for developers seeking to over-build in rowhouse conversions.

Therefore, ANC1C supports full adherence to DCMR parking regulations and concurs with Zoning Administrator correspondence with our Ward 1 councilmember Brianne Nadeau, stating the essentiality of providing 9' x 19' regulation parking spaces and adhering to the ratio of 1 such space for every 2 units. The granting of relief from such requirements should only be in exceptional circumstances and be a matter for the Board of Zoning Adjustment to resolve.

And Finally Resolved, that ANC1C-05 Commissioner Gambrell shall be authorized to communicate this resolution to the Board of Zoning Adjustment, DCRA, the Mayor's office, and the City Council.