Testimony to the Committee of the Whole
On the Office of Zoning
April 6, 2016

Chairman Mendelson:

My name is Fay Armstrong. I am President of Historic Mount Pleasant, a local nonprofit organization formed in 1985 to obtain historic designation for our neighborhood, which was achieved the following year. One of our principal functions is to review proposed alterations to existing buildings and new construction to ensure that such changes are compatible with the character of the historic district.

I listened with interest to your exchange today with Zoning Commission Chairman Hood regarding continuing problems with conversions of single family homes in R-4 zones to apartment houses of three or more units. Thank you for suggesting that I submit testimony to be forwarded to the Office of Zoning for comment along with other statements presented at the hearing itself.

Conversions have a long history in Mount Pleasant, and Historic Mount Pleasant has been working for several years now to obtain relief from the very prejudicial rules enacted in 1958 that are eroding the quality of life and the historic character of our community. In November 2013, I testified before the Zoning Commission asking that the conversion provision be removed from the proposed new zoning regulations ("ZRR"). The Commission expressed surprise that our status as a historic district was not providing sufficient protection from what are now commonly known as oversized "pop-backs." I explained that the design review provided by the Historic Preservation Review Board generally did not prevent developers from pursuing maximum zoning envelopes. The Office of Planning (OP) confirmed my statement on the spot, and the Commission asked OP to work with us to develop relief for Mount Pleasant. In the spring of 2014, OP proposed adding the following language to the ZRR: "A building or other structure in the Mount Pleasant Historic District may not be converted to more than two dwelling units regardless of lot size."

On June 24, 2014, OP initiated a new case (No. 14-11) proposing text amendments to the 1958 regulations affecting R-4 zones generally – meaning that, at least for Mount Pleasant, two potential avenues for relief were on the table at the same time. In this later proposal, OP linked the conversion problem we were experiencing to the broader problem of "pop-ups" occurring in non-historic districts. OP proposed simple, sensible, long overdue amendments to the R-4 regulations to address these related problems. We supported the proposed amendment to the ZRR, as well as OP's initial recommendations in Case 14-11, which would have permitted conversions to continue for non-residential buildings only, and as special exceptions. We were disappointed when the Commission failed to approve the relief proposed for Mount Pleasant as

part of the ZRR in October 2014 and looked forward to gaining relief instead through Case 14-11.

At first, discussions by the Zoning Commission of OP's initial proposal seemed promising. However, it was immediately clear that some Commissioners wanted conversions of houses to continue. They did not want to end matter-of-right conversions or to make conversions to 3 or more possible only as variances. They saw "pop-ups" as a design as opposed to a density or zoning problem. They asked OP for more options and more information and, as the months passed, a confusing array of alternative texts took the place of OP's original proposal. Finally, in June 2015, the Commission voted to limit the number of units in R-4 houses as a matter-of-right to 2 but to allow conversions to 3 or more units (depending on lot size) as special exceptions, specifying an array of new conditions many of which may be waived by BZA. On January 13, 2016, a number of participants in Case 14-11 requested a clarification of that decision to the effect that the ten-foot limitation on "pop-backs" discussed should also have been included in the final text. On March 28, 2016, the Commission agreed that this change should be made – with the proviso that the additional condition could be waived by BZA. As experience under the new rules is already showing, the R-4 amendments adopted in June 2015 are a wholly ineffective way to address the longstanding problem of conversions.

Contrary to your exchange with Chairman Hood, this is not a matter of closing loopholes but recognizing the need for fundamental reexamination and repeal of the 1958 provision unique to the R-4 zone that allowed the conversion of houses to apartment houses. As originally enacted, Section 3104.1 of the 1958 zoning regulations read as follows:

> The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of such dwellings into dwellings for two or more families. Very little vacant land would be included within this district since its primary purpose would be the stabilization of remaining one-family dwellings. Since much of this district would lie within urban renewal areas as designated by the Redevelopment Land Agency, the demolition of substandard structures and replacement with low density apartment houses should be encouraged. The district would not be an apartment house district as contemplated under the General Residence (R-5) Districts since the conversion of existing structures will be controlled by a minimum lot area per family requirement.

The R-4 zone was distinguished from the R-3 (primarily Georgetown) where neither new apartments nor conversions of houses to apartment buildings were allowed. The Old Georgetown Act, protecting Georgetown as a historic district, had been enacted in 1950. It took many years for an appreciation of the architectural character of other parts of the city to take hold and a local historic preservation law to be enacted. However, the zoning regulations and zone maps have never been examined and adjusted in a comprehensive way to eliminate inconsistencies between zoning and preservation regulations, or to recognize the inherent value in our city's older row house neighborhoods east of Rock Creek Park. The Comprehensive Plan makes numerous recommendations toward these ends – including many related directly to the issue of conversions of R-4 rowhouses. They provided the policy framework for OP's initial recommendations in Case 14-11 and are set out in its Preliminary Report of June 24, 2014.

Chairman Hood also spoke of the need for "balance" in responding to the current pop-up/conversion problem and said they were on the right track with the recent amendments which

gave the BZA new authority to consider neighborhood "character." With all due respect, this is simply not the case. The "new" language related to light, air, privacy and character was copied directly from section 223 of the zoning regulations, which was enacted in 1998 to facilitate "reasonable" additions to single family homes and flats by allowing minor deviations from the zoning regulations by special exception as opposed to variance. The BZA regularly rubber stamps applications for special exception relief under section 223, even where neighbors have raised objections based on intrusions to their rights (e.g., air, light, privacy or protection of neighborhood character). Practices developed under this section are already being seen in cases under new section 336 for special exception relief for conversions. If a developer can prevent neighbors or an ANC from objecting at the hearing, approval of special exception relief is virtually assured. According to testimony from other neighborhoods, developers are using different tactics to achieve this result. We know of no such cases in Mount Pleasant – yet.

With more than 200 lots measuring 2700 square feet or more – most of them under 3600 square feet – new conversions to 3 units are the primary threat to remaining single family homes in Mount Pleasant. As the law stands, a developer purchasing a house in Mount Pleasant on one of these large lots may substantially expand it to the rear and convert it to three units with only the inconvenience and delay of obtaining special exception relief from BZA. Thus, we remain very disappointed that – after all our effort to demonstrate our need and the broad desire for zoning relief in Mount Pleasant – we have had to report to our members and neighbors that the amendments adopted through Case 14-11 provided no meaningful relief for our neighborhood.

What is needed now is not "balance" but decisive action. The problems associated with conversions and oversized additions to houses in R-4 zones have arisen because of the overly generous development standards enacted in 1958 and the inappropriate zoning of many parts of the city since then. Long-term solutions to these problems undoubtedly require more analysis, more fine-tuning of the zoning regulations and map amendments. However, decisive action is needed now more than ever to stop further conversions and inappropriate additions to pre-1958 houses on large lots east of the park. We thus call upon the Zoning Commission once more to repeal the conversion provision and to act without further inexcusable delay. The Office of Planning provided the Commission with an excellent proposal in its Preliminary and Pre-hearing Report in Case No. 14-11 dated June 24, 2014. Those recommendations received wide public support and should now be adopted in their entirety.

Thank you for your attention.