

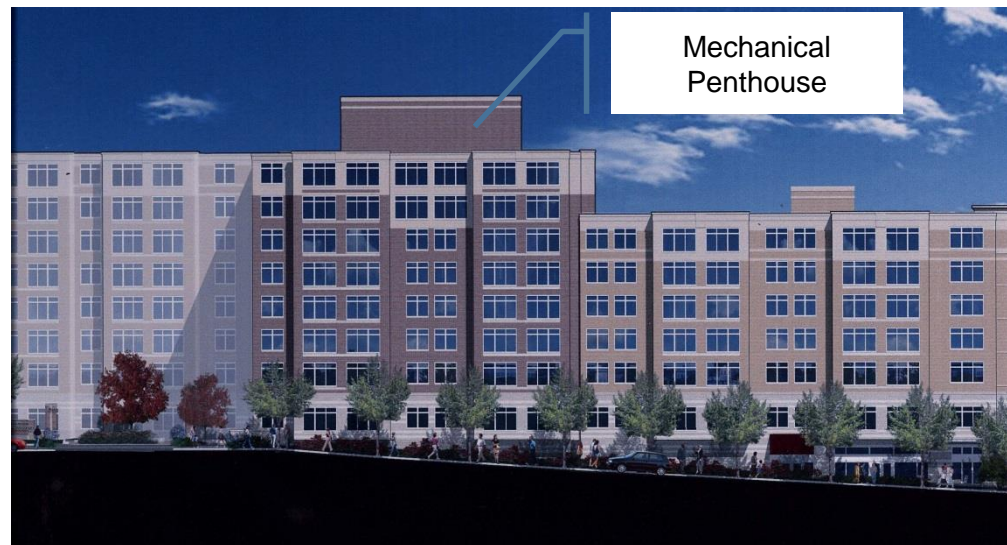
ZONING COMMISSION CASE 14-13 SUMMARY OF PROPOSED ROOFTOP PENTHOUSE REGULATION AMENDMENTS

March, 2015

THIS SUMMARY IS PROVIDED IN ADVANCE OF THE ZONING COMMISSION PUBLIC HEARING REGARDING ZC CASE 14-13, TO BE HELD APRIL 30, 2015.

What is a penthouse, and how is it regulated?

- A rooftop penthouse, in DC, is a small rooftop structure containing uses like rooftop mechanical equipment, elevator or stairwell over-runs, and sometimes a room supporting a rooftop deck – storage, washrooms, etc.
- Not every building has a penthouse. In fact, most one-family homes and rowhouses and many small commercial or apartment buildings – especially ones without an elevator or a rooftop deck - do not. Where they do exist, you may not always notice them, since current regulations require that they be set back from the edge of the building below, to minimize their visual impact
- The federal Act to Regulate the Height of Buildings in the District of Columbia of 1910 (the Height Act) was recently amended to permit habitable space (such as living space or office space) within rooftop penthouses, if the penthouse is one story and 20 feet in height or less.
- Habitable space in a penthouse would include residential living space, office space, common recreation space (which could be associated with a rooftop terrace), or even commercial space such as a lounge or a restaurant on the roof. In the current regulations, the only form of habitable space permitted within a rooftop penthouse is a small amount of auxiliary space associated with a rooftop terrace in residential zones.
- Non-habitable space, on the other hand, is enclosed penthouse area that is used for things like mechanical equipment, or stair or elevator overruns.



Why revise the zoning regulations for penthouses?

- In addition to being regulated by the Height Act, penthouses are also regulated by zoning, which generally:
 - Permits a height of 18'-6" for a rooftop penthouse in all zones (including low density residential zones);
 - Does not limit the number of stories within a penthouse;
 - Requires a 1:1 setback from the edge of the roof below; and
 - Does not permit most forms of "habitable" space within a penthouse



- The Zoning Regulations pertaining to penthouse are generally more restrictive than what the Height Act would permit. Therefore, the changes to the Height Act cannot be given full effect until changes to the Zoning Regulations are also adopted, and OP was instructed by the Commission to bring forward amendments to the zoning regulations. The Zoning Commission received OP's original proposal for penthouse regulation amendments in 2014, and the Zoning Commission held a public hearing on November 6, 2014. After the hearing, the Commission instructed OP to prepare an amended set of alternatives for penthouse regulations, to be discussed at an additional public hearing.
- This document provides a summary of the current proposals, including the alternatives advertised, with illustrations. Not all of the changes under discussion directly relate to the amendments to the Height Act, though – some are meant to provide additional clarity or new penthouse regulations or requirements not addressed by the Height Act; these are pointed out in the discussion of the proposals that follow.
- Additional background information is available on the DC Office of Zoning website, the Office of Planning website, and the Office of Planning blog – web addresses are all at the end of this document.
- The Zoning Commission will be holding a public hearing on this case on **April 30, 2015 at 6:30 pm** – more information on how to participate or provide comments is at the back of this document.

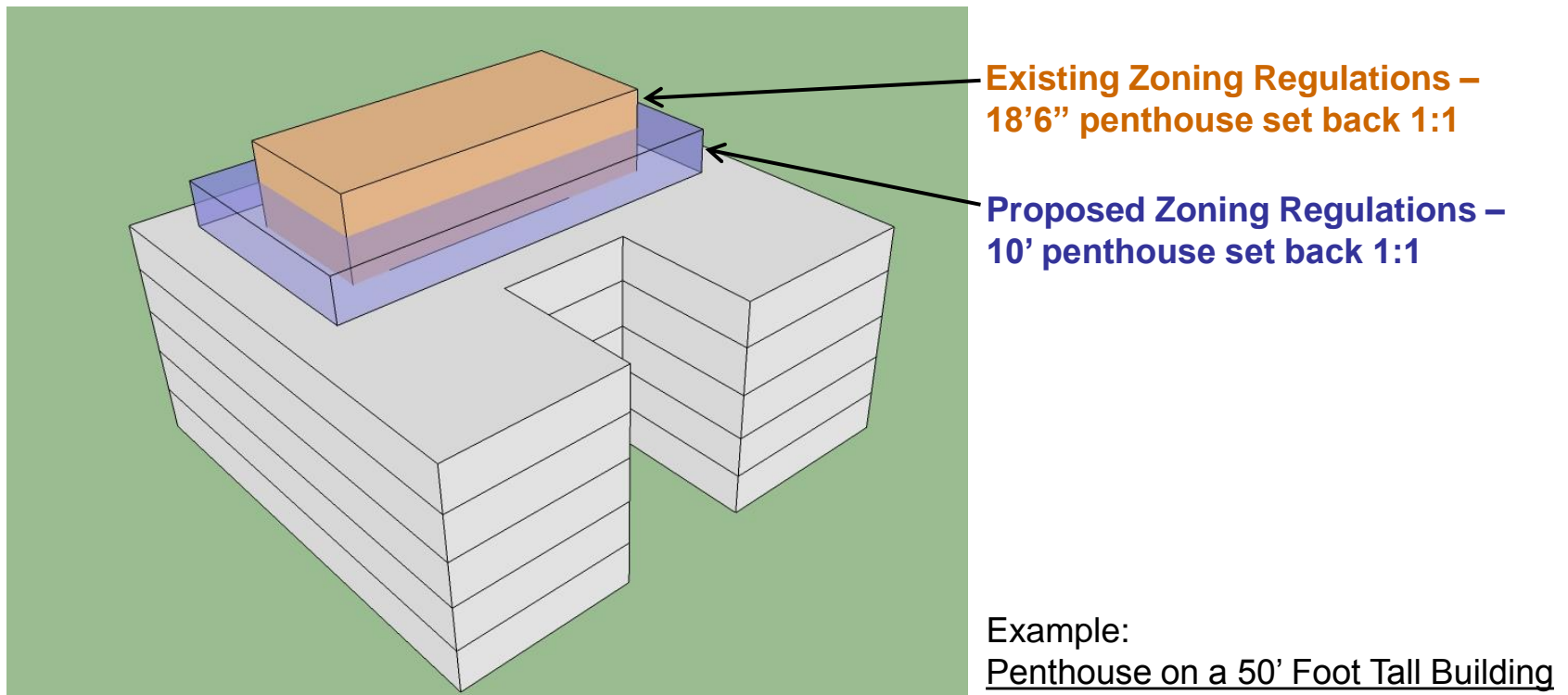
What are the proposals for penthouse height & stories?

- Penthouse Height:** Limit height of a penthouse to 10 feet maximum on the roof of a one-family dwelling or flat in any zone, or for any building within a zone (including any overlay zone) for which the maximum permitted building height is 50 feet or less. Otherwise, permit 20 feet maximum for other zones and uses.

In the alternative, do not permit, by right, a penthouse above a single family dwelling or flat in any zone; allow a 10 foot maximum height penthouse only with BZA approval of a special exception.

- Penthouse Stories:** Limit a penthouse to one story on the roof of a one-family dwelling or flat; or in any zone where the building height is limited to 50 feet maximum; permit 2 stories for other higher height and density zones.

In the alternative, limit habitable penthouse space to one story in all zones, but allow a second story for non-habitable (mechanical) space in zones where a penthouse of 20 feet in height is permitted.

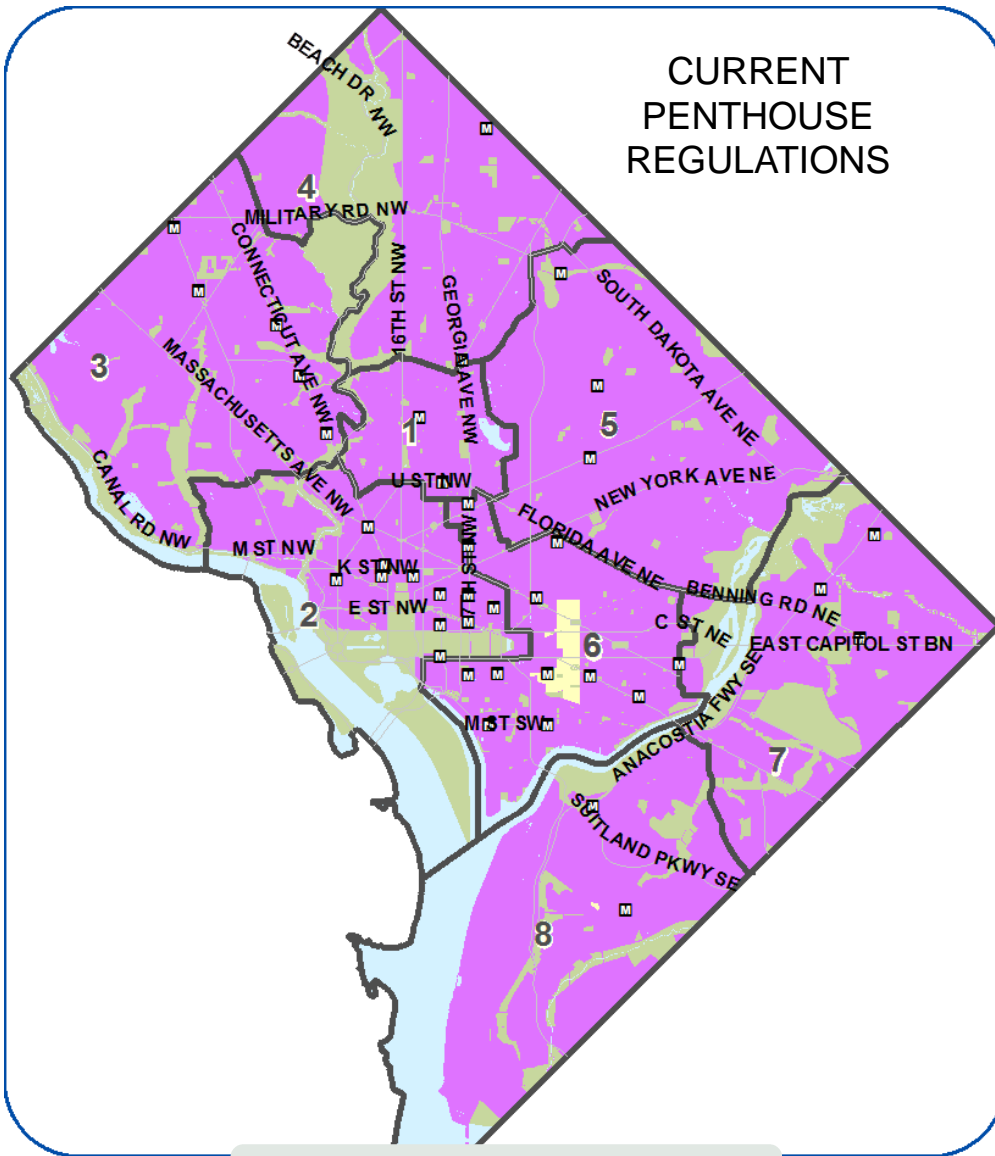


What are the proposals for penthouse height & stories?

Zones:	Permitted Building Height	Penthouse Height				Penthouse Number of Stories					
		Existing Zoning	Height Act	Alternative 1	Alternative 2	Existing Zoning	Height Act		Alternative 1		Alternative 2
							Above Ht Act	Below Ht Act	Above Ht Act	Below Ht Act	Below Ht Act
Residential:											
SFD/FLAT in Any Zone	40'	18.5'	20'	10'	Not permitted	unlimited	1	unlimited	1	1	1
Low (R-1 – R-4)	40'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Moderate (R-5-A – R-5-B)	40' - 50'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Medium to High (R-5-C, R-5-D, R-5-E)	60' - 90'	18.5'	20'	20'	20'	unlimited	1	unlimited	1	2	1 2 for non-hab.
Mixed Use:											
Low – Moderate (C-1, C-2-A, W-0, W-1)	40' – 50'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Medium – High (C-2-B, C-3-A, C-3-B, C-2-C, C-3-C, C-4, C-5, CR, SP-1, SP-2, W-2, W-3)	60' – 130'	18.5'	20'	20'	20'	unlimited	1	unlimited	1	2	1 2 for non-hab
Industrial:						unlimited	1	unlimited	1		
Low (CM-1)	40'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Medium - High (CM-2, CM-3, M)	60' – 90'	18.5'	20'	20'	20'	unlimited	1	unlimited	1	2	1 2 for non-hab
Capitol Interest Overlay (R-4, R-5-B, C-2-A, SP-1)	40'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Cleveland Park Overlay (C-2-A)	40'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Woodley Park Overlay (C-2-A, C-2-B)	40' – 50'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Eighth Street Overlay (C-3-A)	45'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Reed Cooke Overlay (R-5-B, C-2-A, C-2-B)	40' – 50'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Naval Observatory Overlay (R-1-A, R-1-B, R-3, R-5-A, C-2-A)	40'	18.5'	20'	10'	10'	unlimited	1	unlimited	1	1	1
Fort Totten Overlay		Within max building height	20'	Within max building height	same	unlimited	1	unlimited	1	1	1 2 for non-hab
Uptown Arts Overlay		83.5' above measuring pt.	20'	83.5' above measuring pt.	same	unlimited	1	unlimited	1	1	1 2 for non-hab

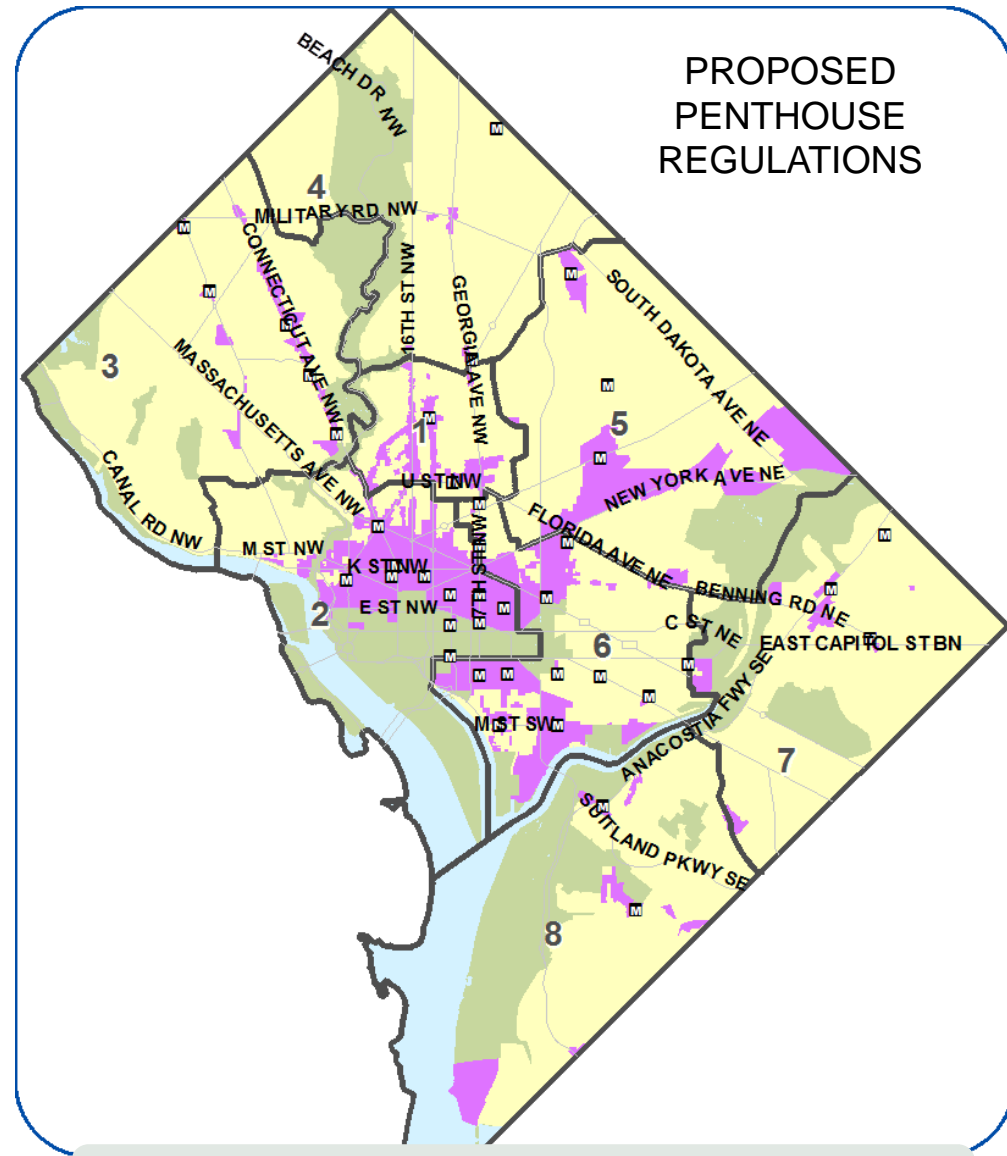
Note – for overlays not listed in the chart above, the permitted height and number of stories would be as permitted in the base zone

Penthouse height and number of stories - maps



Legend

- Current Zoning - Penthouse of 10'
- Current Zoning - Penthouse of 18'6"
- National Parks / Unzoned



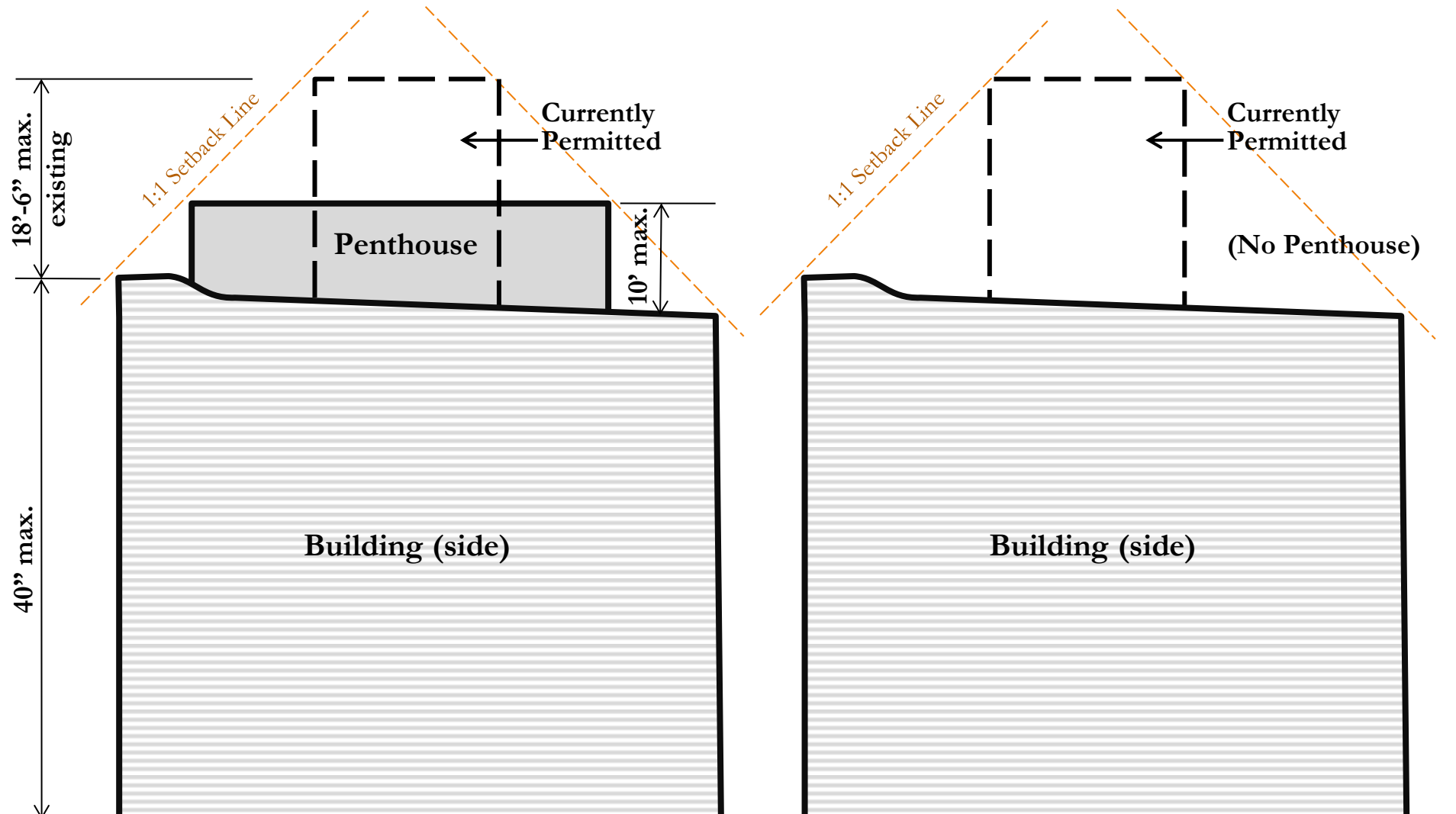
Legend

- Penthouse Limited to 10' / 1 Story in Height (i.e. permitted penthouse height would be lowered by 8.5' min.)
- Penthouse of 20' / 2 Stories in Height (i.e. permitted penthouse height would be raised by 1.5 feet)
- National Parks / Unzoned

Penthouse height & stories – one-family dwellings and flats:

Alternative 1 – limit height to 10' / 1 Story

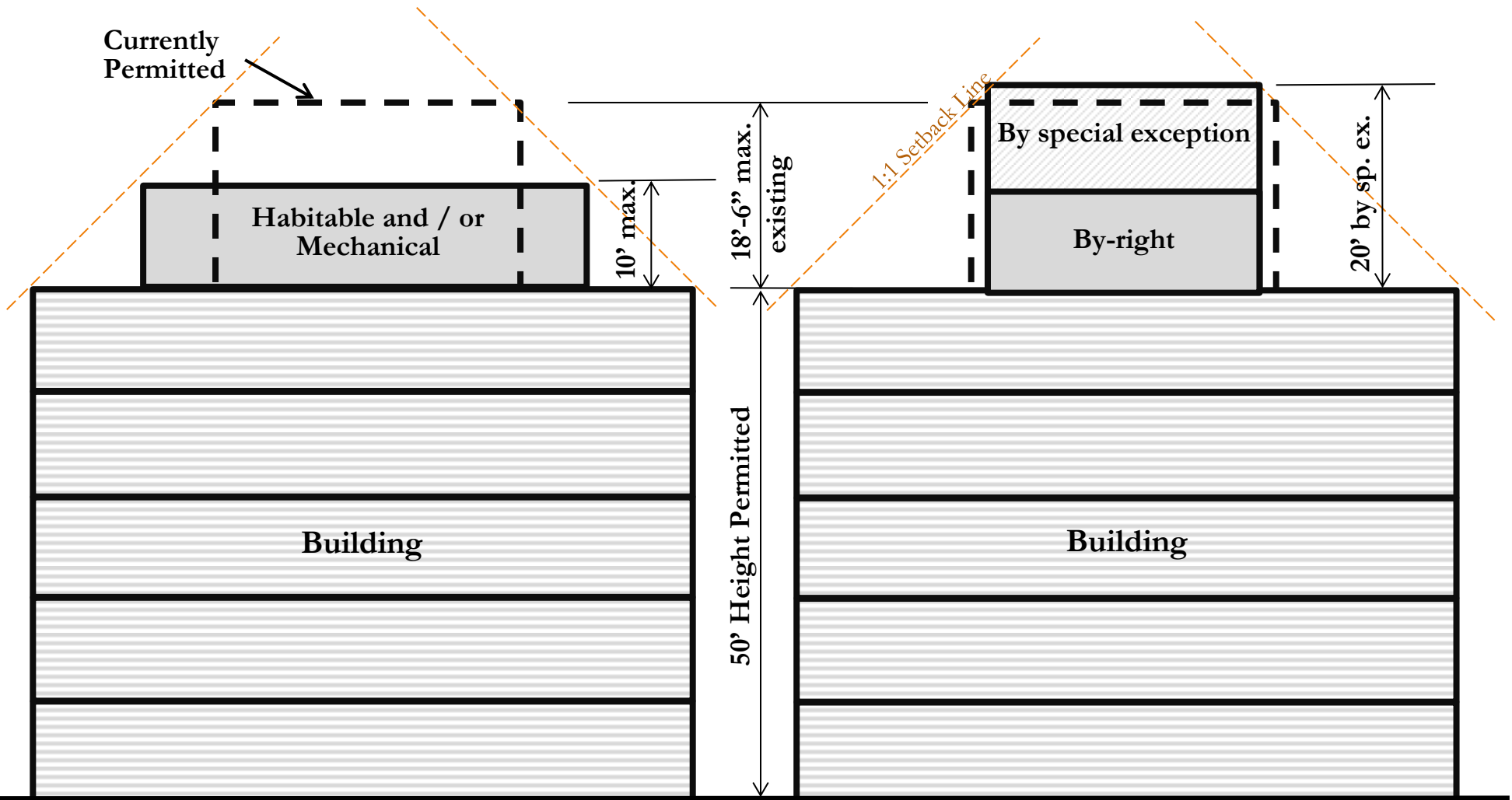
Alternative 2 – do not permit a penthouse



Penthouse height & stories – zones allowing buildings of 50' or less in height

Alternative 1 – permit 10' / 1 story

Alternative 2 – permit 10' / 1 story by right;
20' / 1 story by special exception

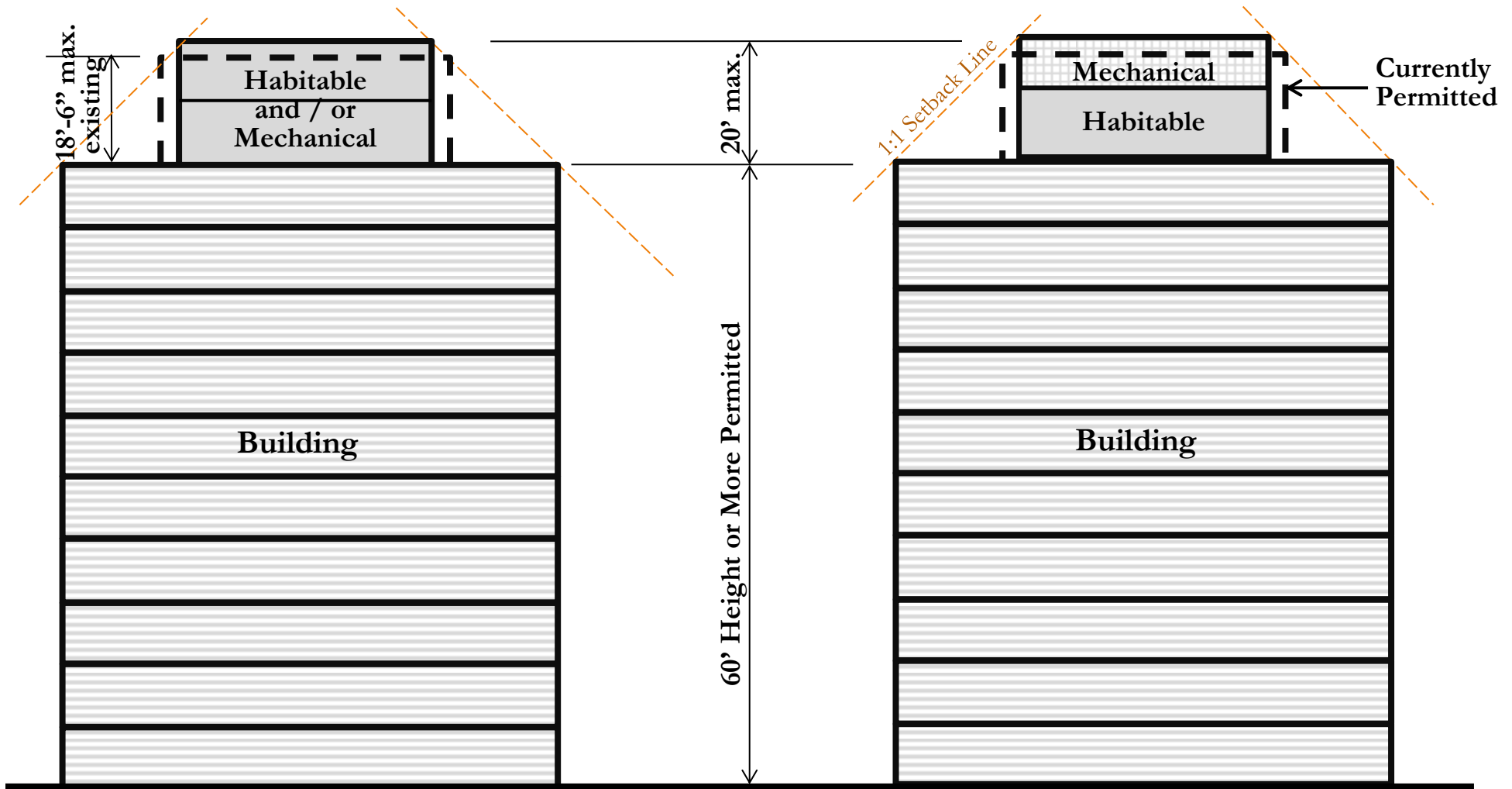


Building Elevations

Penthouse height & stories – zones allowing buildings of 60' or more in height:

Alternative 1 – permit 20' / 2 stories

Alternative 2 – permit 20' / 1 story of habitable space only, and one of mechanical space above



Building Elevations

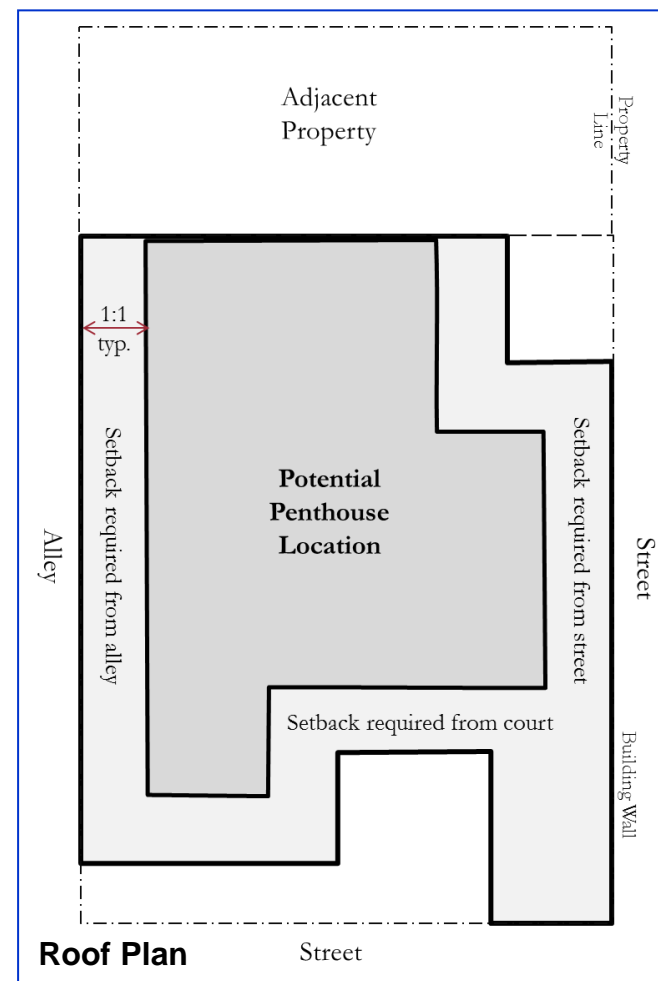
What are the proposals for penthouse setbacks?

A penthouse is required to be set back from the edge of the roof below it – the required setback is 1:1 – i.e. the distance that the penthouse is set back from the edge of the roof must be at least equal to or greater than the height of the penthouse structure. A 10 foot tall penthouse would have to be at least 10 feet from the edge of the roof. This is mainly to try to minimize the potential visual impacts of penthouses.

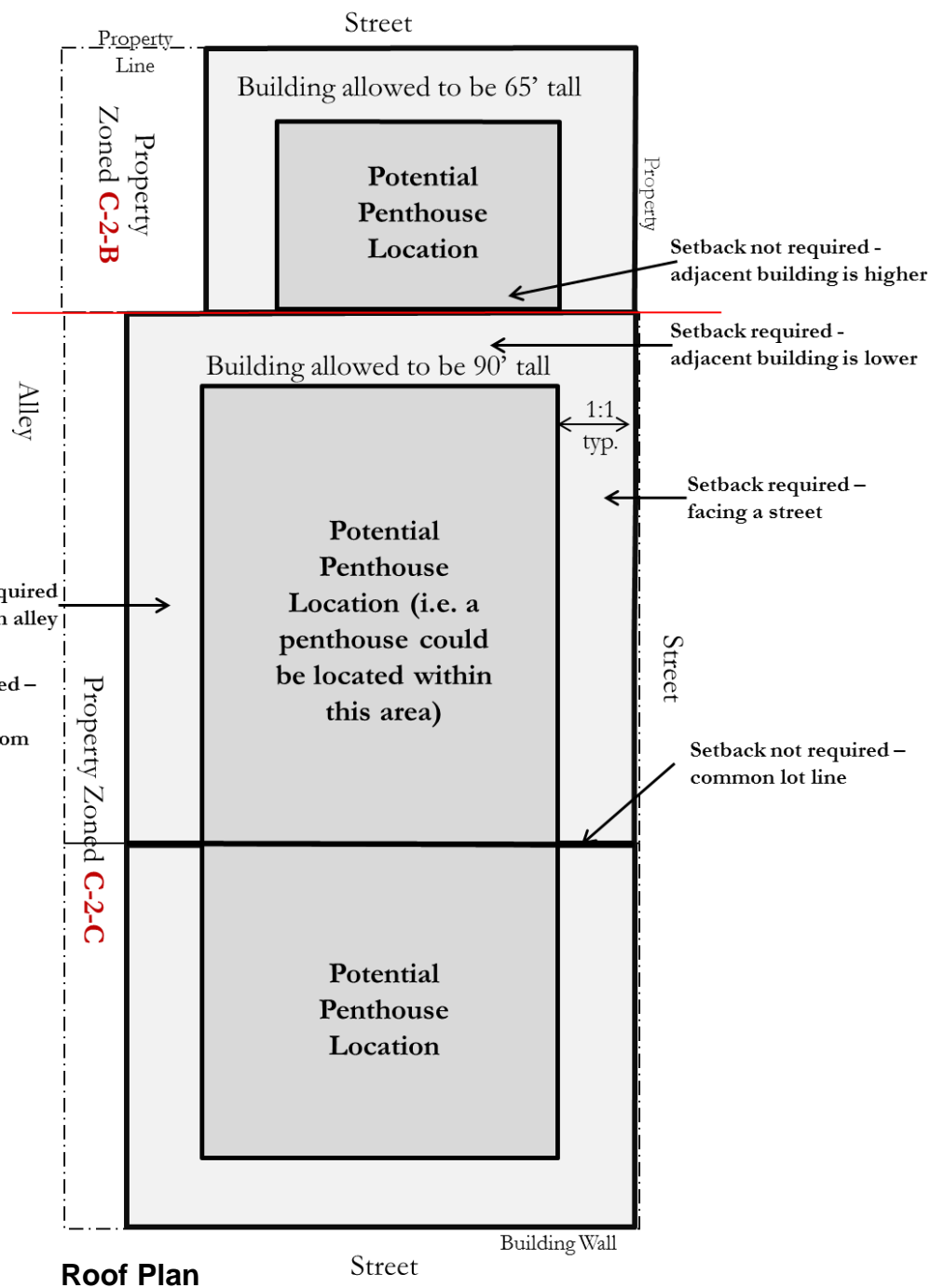
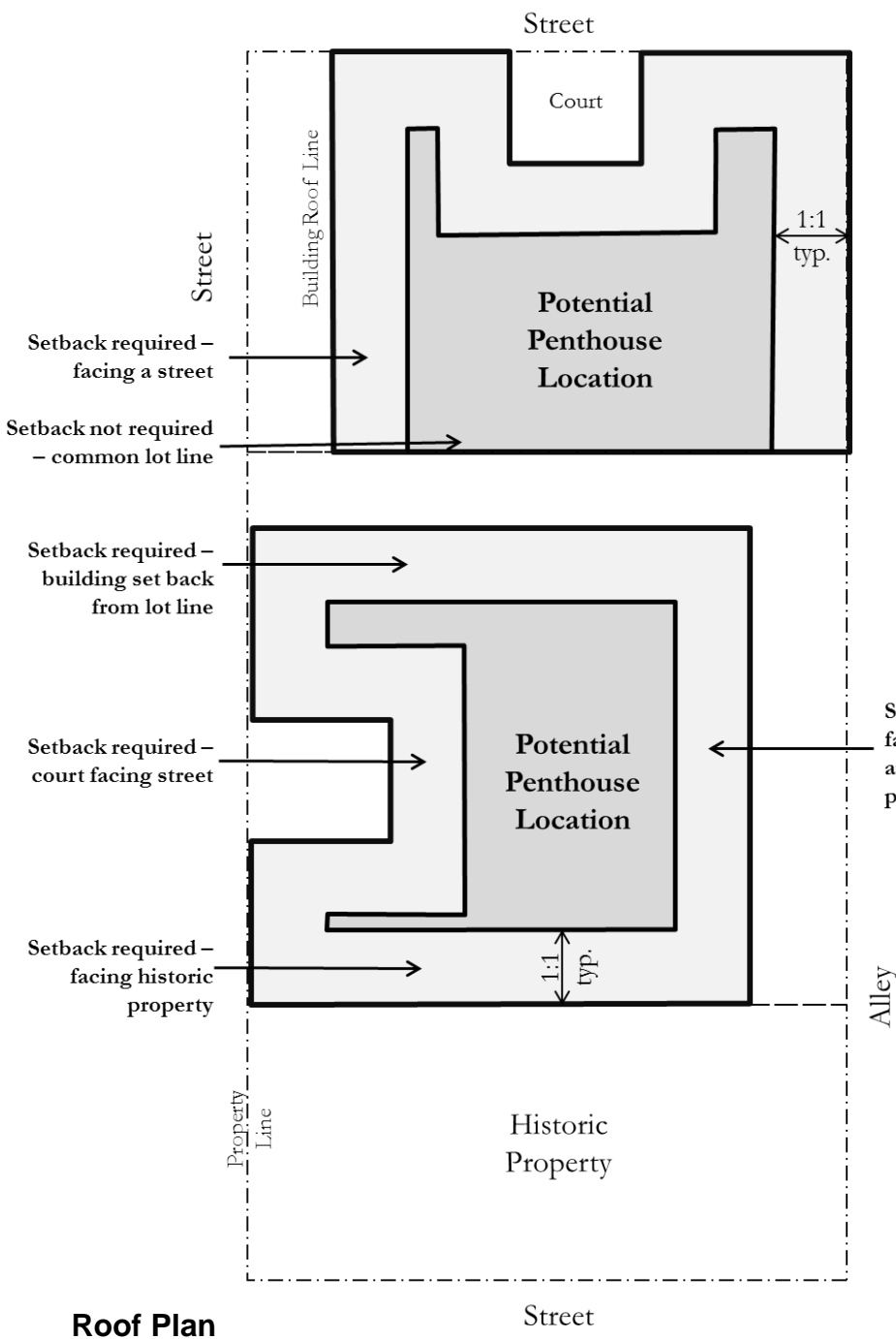
Although the amendments to the Height Act did not alter rooftop penthouse setback requirements, clarification is proposed in the zoning regulations for when the 1:1 setback is required, including establishing a new setback requirement from a common lot line with a historic building or property, if the historic building is lower than the subject building.

As proposed, a setback would be required from:

- Any building wall facing a public street;
- Any building wall facing a public alley;
- Any building wall facing a court open to a public street;
- Any building wall that provides a setback from a property line that it faces;
- Any building wall on a property line if the building is taller than the adjacent property's existing or permitted height; or
- Any building wall on a property line shared with a property which is historic or contains a historic building; except this setback would not be required if the adjacent historic building is of equal or higher height.



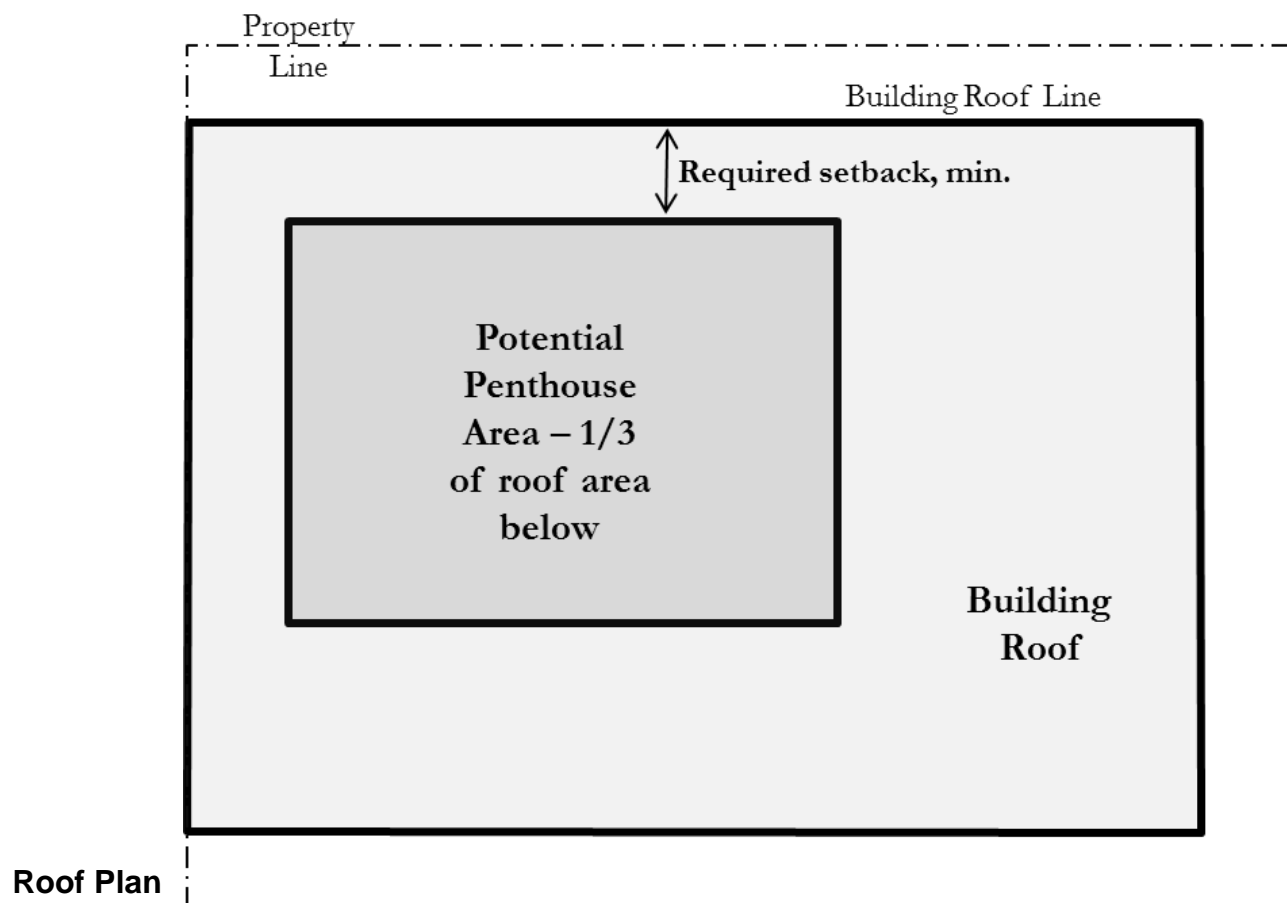
Penthouse setback – illustration of setback requirements



What are the proposals for penthouse maximum area?

- For zones which have a specified limit on the permitted number of stories within the building (R-1 – R-4, R-5-A, C-1, CM-1, and zones within the Capitol Interest Overlay), the current regulations limit the size of a penthouse to no more than 1/3 of the area of the building roof.

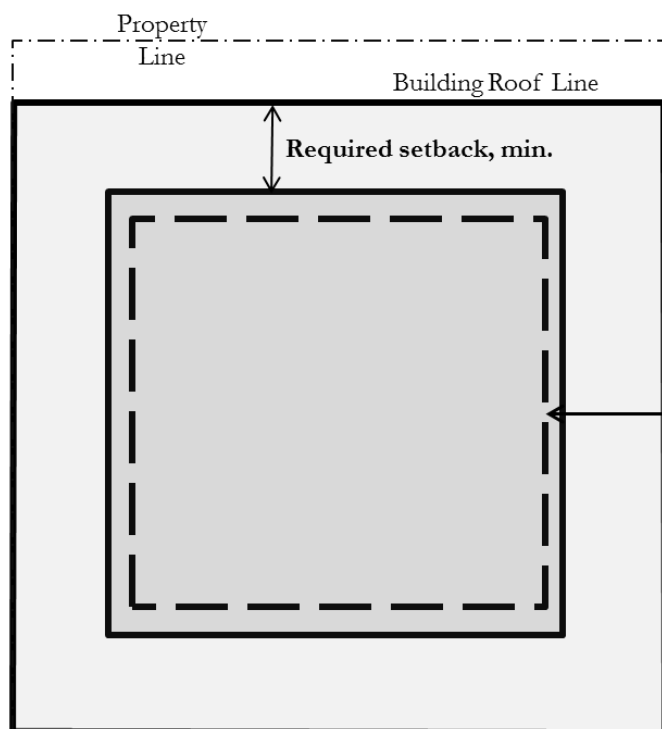
The proposal is to retain this limitation in the R-1 through R-4 zones and the CAP Overlay zones, but to delete this requirement in the R-5-A, C-1, and CM-1. Setbacks would limit the size of the penthouse.



What are the proposals for penthouse maximum area?

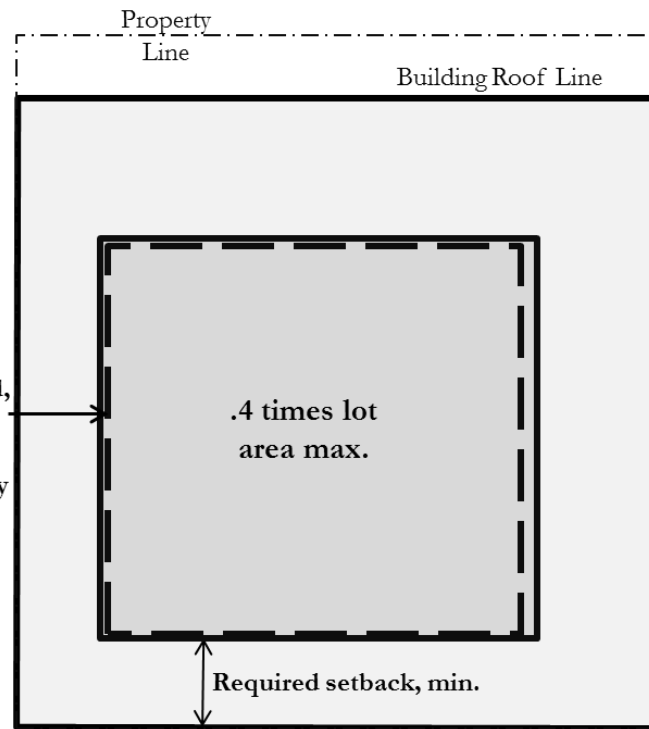
- The current zoning regulations also provide for a .37 exemption from overall building FAR for rooftop penthouse space. The Zoning Commission is looking at two alternatives to amend this provision:
 - Exempt all enclosed penthouse space, habitable and non-habitable, from building FAR, allowing the 1:1 setback and the 1/3 of roof area limitation (where applicable) to dictate penthouse size.
 - Exempt enclosed mechanical space in a penthouse from building FAR, but provide a maximum exemption for habitable space of 0.4 FAR. Any habitable penthouse space above that amount would count towards the overall building FAR.

Alternative 1 – no FAR limitation



Size of penthouse, including habitable space, defined by setbacks

Alternative 2 - .4 FAR limitation



Any amount greater than .4 FAR would count towards building FAR.

What are the proposals for penthouse uses?

- Under the proposed alternatives, additional forms of habitable space (such as actual residential or office space or recreation space) would be permitted in the penthouse, provided that the use is permitted within the zone. For example, new commercial space would not be permitted in the penthouse of a building in a residential zone.
- Alternative Proposals:
 - Allow habitable space within a penthouse in zones allowing a building height of more than 40 feet, by right.
 - Allow habitable space within a penthouse in zones allowing a building height of more than 50 feet, by right.
- The Zoning Commission also invited the public to comment on whether some specified uses, such as a nightclub, bar, lounge, restaurant, or others, should be permitted only by special exception within a penthouse.

Penthouse Habitable Space (living, office, retail, recreation space)					
Zones:	Existing Zoning	Height Act		Alternative 1	Alternative 2
		Above Ht Act	Below Ht Act	Above or Below Ht Act	Above or Below Ht Act
Any Zone SFD/FLAT	Limited	Yes	n/a	no	no
Zones allowing 40' or less of building height					
<ul style="list-style-type: none"> R-1, R-1, R-3, R-4, R-5-A C-1, W-0, W-1 CM-1 CAP/R-4, CAP/R-5-A, CAP/C-2-A, CAP/SP-1 CP/C-2-A WP/C-2-A RC/R-5-B, RC-C-2-A NO/all zones 	Limited	Yes	n/a	No	no
Zones allowing 45' or 50' of building height					
<ul style="list-style-type: none"> R-5-B, C-2-A WP/C-2-B ES/C-3-A RC/C-2-B 	Limited	Yes	n/a	yes	no
Zones allowing more than 50 feet in height					
<ul style="list-style-type: none"> R-5-C, R-5-D, R-5-E C-2-B, C-3-A, C-3-B, C-2-C, C-3-C, C-4, C-5, CR, SP-1, SP-2, W-2, W-3 CM-2, CM-3, M 	Limited	Yes	n/a	yes	yes
Fort Totten Overlay	Limited	Yes	n/a	yes	yes
Uptown Arts Overlay	Limited	Yes	n/a	yes	yes

Note: all overlay zones would be as per the underlying base zone, except as noted in the chart

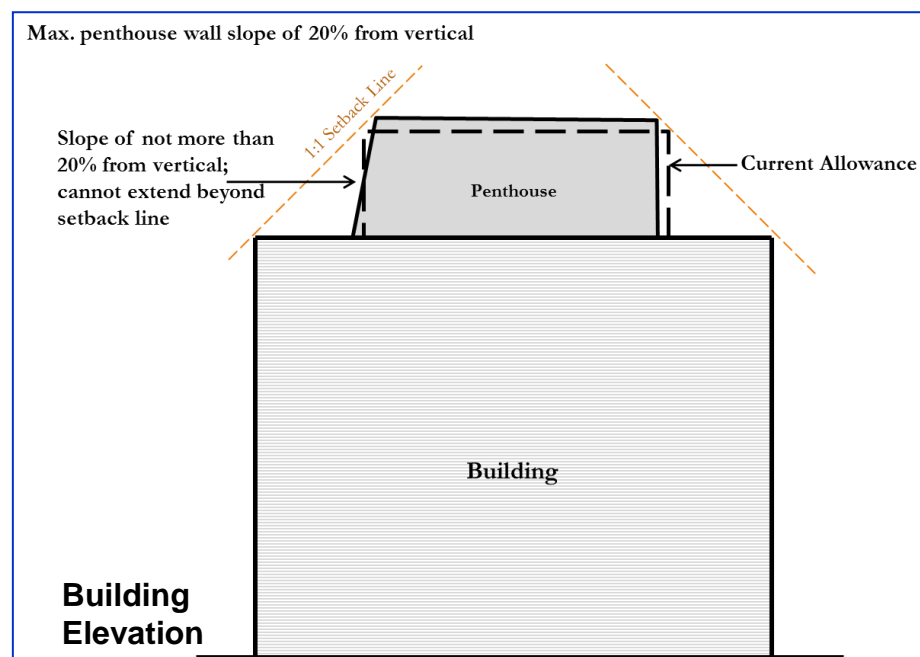
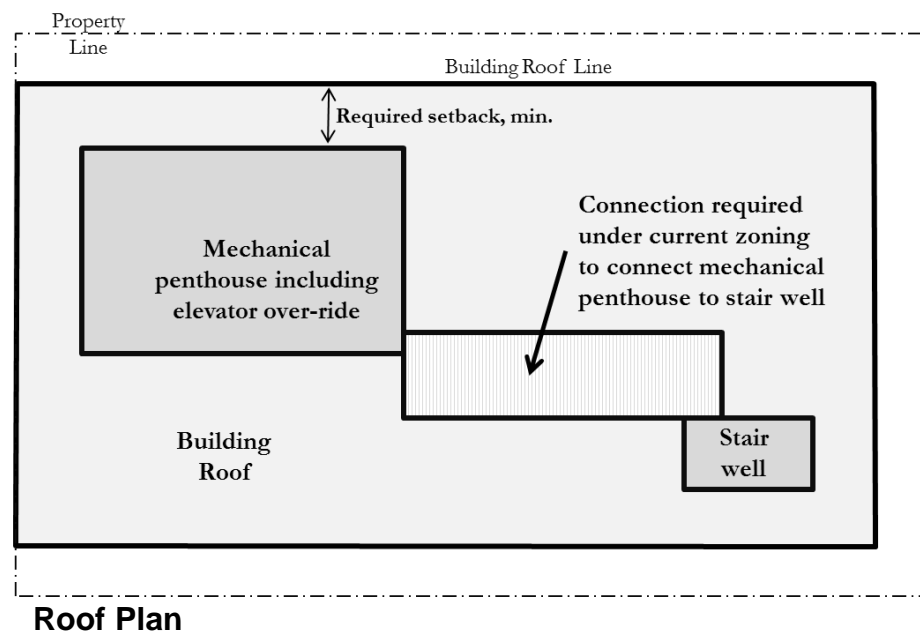
What are the proposals for penthouse walls?

- Single Structure:** Current zoning regulations require that there only be one penthouse structure – that all mechanical equipment, stair and elevator overrides, and (if permitted) habitable space be contained within one enclosure. This can result in unnecessarily large enclosures, for example to connect the mechanical penthouse to a required emergency egress stair.

While one option is to retain this requirement, the Zoning Commission also wanted an alternative advertised – to generally require that all penthouses and mechanical equipment be placed in one enclosure, but permit emergency egress stairwells as required by the building code to be in a separate enclosure.

- Vertical Walls:** Current zoning regulations require that the penthouse walls be vertical – sloping walls or walls that are not straight up-and-down are not permitted, although there has been some leeway in interpreting this section.

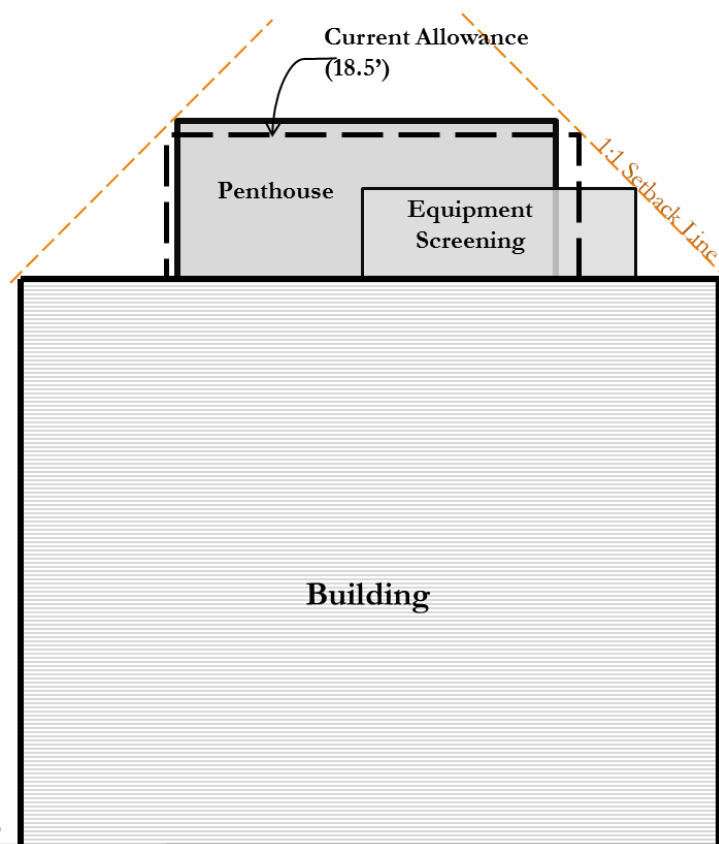
The Zoning Commission decided to retain this provision but clarify the interpretation of what is considered “vertical”, to allow some leeway in the interpretation of this section and allow some limited design flexibility. The proposal would allow walls that could vary as much as 20% from vertical, but alternative proposals are invited.



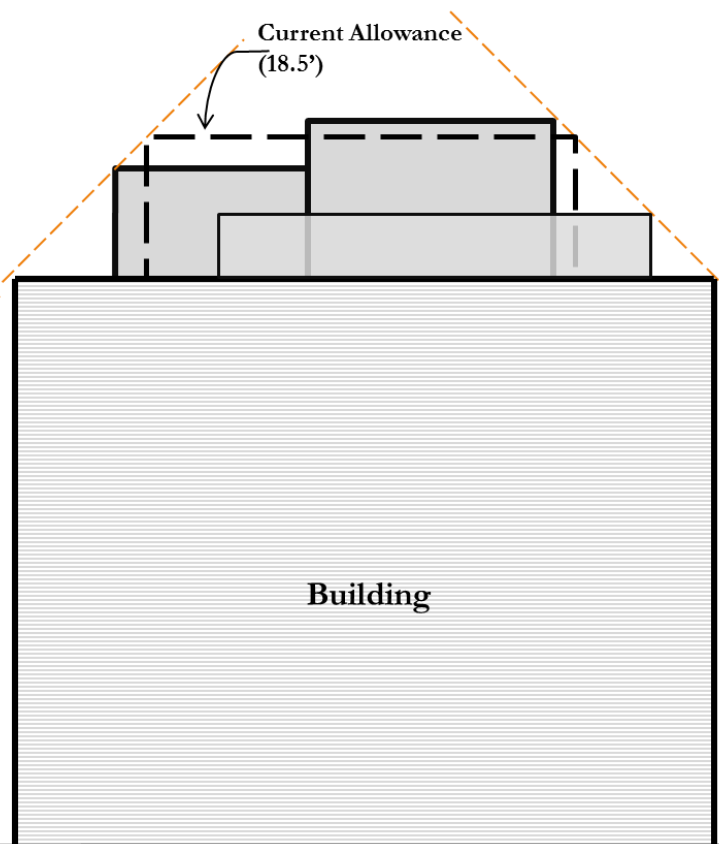
What are the proposals for penthouse walls?

- **Single Height:** Current zoning regulations require that the entire penthouse structure be of one height only – variation in penthouse structure height is not permitted. This can lead to penthouses that are larger than necessary, but can also result in a more unified penthouse design. Two alternatives were advertised:
 1. Retain the requirement that the walls of an enclosed penthouse shall be of equal height above roof level, but permit screening walls for mechanical equipment not contained within a penthouse to be of a second, uniform height.
 2. Delete the requirement that all penthouse walls be of equal height.

Alternative 1 (limit variation in height)



Alternative 2 (do not limit height variation)



What are the proposals for affordable housing linkage?

- Requiring an affordable housing linkage for the provision of habitable space within a penthouse would support broader DC objectives to address housing and housing affordability in the District, and would be consistent with housing linkage and affordable housing requirements of other regulations. The Zoning Commission examined alternatives for an affordable housing requirement for new penthouse space, balancing the feasibility of various options. The following proposals were generally supported by the Commission and members of the public, including developers and affordable housing advocates. Separate proposals for new habitable space in a penthouse for a residential building and for a non-residential building were proposed:

1. **Non-Residential Building:**

Establish a requirement that new habitable penthouse greater than 1,000 sq.ft. for a non-residential building provide affordable housing, using criteria generally consistent with a current housing linkage formula for new commercial space gained through a Planned Unit Development:

- Provide affordable housing (on or off-site) at a rate of $\frac{1}{2}$ to $\frac{1}{4}$ of the area of the applicable penthouse space, depending on the distance of the affordable housing from the subject site; or
Provide a contribution to a housing production trust fund equal to $\frac{1}{2}$ of the assessed value per square foot of the applicable penthouse area; and
- Apply this requirement to new non-residential habitable space in all parts of the city.

2. **Residential Building:**

Apply current Inclusionary Zoning (IZ) provisions to new habitable residential space within a penthouse (i.e. penthouse space not currently permitted), consistent with the current IZ regulations (i.e. 8% – 10% of residential space at a rate of 50% to 80% of AMI, depending on the zone and construction type).

Apply this requirement to new habitable penthouse space in zones and areas of the city where IZ currently does not apply.

As an alternative, the Commission is also considering requiring a deeper level of affordability for the IZ housing – 50% of AMI for all affordable housing required by this provision.

Other proposed changes:

- **Definitions** for “The Height Act” and for “Penthouse”, and an updated definition for “Story, top”.
- **Special Exception Relief:** Provide clarification of what is meant by “operating difficulties” as justification for special exception relief from penthouse requirements.
- **PUD Modification:** An approved PUD includes an “order” – a document that establishes exactly what can be constructed on the site. Other than very minor flexibility set out in the order, changes to the design or additions to the building – even if they conform to zoning regulations – are not permitted. The owner of a site with an approved PUD could not amend the penthouse design without a Zoning Commission public hearing, even if the changes would fully conform to any new penthouse provisions adopted by the Commission. As such, this amendment would allow the existing minor modification process for consent calendar review to apply in cases of a request to amend the approved penthouse design or use, subject to the following requirements:
 1. That the application include a dimensioned copy of the approved and the proposed roof-plan and elevations; a written comparison of the proposal to the zoning regulations; and verification that the affected ANC has been notified of the request.
 2. That the item not be placed on a Zoning Commission agenda for at least 30 days following the filing of the application.
 3. The submission of an OP report with analysis of the request.

As with any minor modification request, the Zoning Commission could remove it from their consent calendar and require a public hearing for the proposed changes.
- **Parking:** Current regulations do not require parking for penthouse space – not surprising, since most penthouse uses such as mechanical space would not result in increased parking demand. If habitable space is permitted, however, parking demand could also increase. The Commission is considering two options:
 1. Retain the current provision for mixed-use and industrial zones, that penthouse space not count towards parking requirements (residential zones do not currently have this exemption, so parking requirements would apply to any new residential penthouse space).
 2. Apply parking requirements of the zone and use to penthouse area such as additional residential units, office, or retail space, but not to communal recreation space.

Where to go for more information?

- www.planning.dc.gov (DC Office of Planning website), for more information, and larger scale maps and diagrams
- <http://op-inions.com> (DC Office of Planning blog-site)
- www.dcoz.dc.gov (DC Office of Zoning website) – ZC Case 14-13
- Call or email Joel Lawson, Associate Director for Development Review, 202-442-8808; joel.lawson@dc.gov

Where to go to provide comments?

- You may attend the Zoning Commission Public Hearing, to be held:
April 30, 2015 at 6:30 pm
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001
- You may submit written comments in advance of the public hearing to:
The Secretary of the Zoning Commission, DC Office of Zoning
Suite 210, 441 4th Street, N.W.
Washington, D.C. 20001.

Please include the case number, ZC 14-13, and your daytime telephone number.

For further information, please contact the Office of Zoning at (202) 727-6311.