



MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: JL Joel Lawson, Associate Director, Development Review
Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: October 14, 2015
**SUBJECT: ZC 14-13, Text Amendment to the Zoning Regulations: Rooftop Penthouses
Supplemental Report and Request for Additional Zoning Commission Guidance**

I. BACKGROUND

This case was filed in response to amendments to the Height Act of 1910 adopted by Congress and signed into law in 2014. After multiple public meetings and hearings, the Zoning Commission took proposed action to approve corresponding zoning amendments, and set October 9, 2015 as the date upon which the record would close for written comments from the public and October 19, 2015 as the date for final action. The proposed penthouse regulations, compared to existing, would restrict penthouse height in many zones, including not permitting a penthouse on a single family dwelling or flat by right in any zone, limiting height, and expanding setback requirements. Penthouse permissions would be expanded in many zones in other respects – specifically use, in that habitable space would be permitted by right, except on the roof of a single family dwelling or flat.

II. PUBLIC COMMENTS

Many thoughtful and detailed comments were received into the record, many on the final day that the record was open. In addition, OP has also held additional discussions with Department of Consumer and Regulatory Affairs (DCRA) staff regarding the administration and enforcement of the proposed changes.

OP continues to review the public comments, discuss them with Office of the Attorney General (OAG) and DCRA Staff, and prepare corrections or clarifications to the proposed penthouse text, as necessary. Additional time, prior to the Zoning Commission taking final action is respectfully requested, to ensure that all of the comments have been adequately addressed. OP anticipates providing a final summary of all of the written comments with OP analysis and responses, and revised draft text prior to the Zoning Commission regularly scheduled public meeting of November 9, 2015, so that the Zoning Commission could take final action on that date.

Many of the public submissions raise issues or suggest alternatives or amendments to the proposed text. While some are very straight-forward, others would benefit from obtaining additional Zoning Commission direction (or, in some cases, re-affirmation) regarding the Commission's intent. OP is requesting this discussion from the Commission at the October 19, 2015 public meeting, prior to OP preparing the final summary and final draft copy of the proposed text for Zoning Commission consideration in November.

A list of these issues, with limited OP analysis, follows. All of these relate to issues discussed as part of the two public hearings; any new issue would, in OP's opinion, require re-notification and a new public hearing. In addition to these issues, many submissions provide comments on the definitions, such as the use of the term "penthouse" or the need for additional definitions. OP is reviewing these with OAG and DCRA staff, and will provide additional definitions as needed prior to Commission final action.

Comment/Testimony	OP Comments and Direction needed
<p>400.5 etc. - Penthouse Height (exhibit 128, 136) In some zones, penthouse height for mechanical space would be reduced from 18'6" to 15'.</p> <p>Comments that the permitted mechanical space height should remain at 18'6" for these zones, or reduced to no less than 16'6", to ensure that elevator over-rides can be provided efficiently and economically. Alternatively, a comment that penthouse height in these zones should be limited to 10 feet, with taller mechanical space permitted with BZA approval.</p>	<p>The proposed text is consistent with Zoning Commission discussion. The suggestion would provide additional elevator override flexibility while still providing a height less than that currently permitted. Any additional penthouse height would result in a correspondingly larger setback. OP would not support the change to limit penthouse height to 10 feet in these zones, which would be inconsistent with the Zoning Commission discussion to date, and would limit the ability to provide elevators or utilize the rooftop.</p> <p><i>Does the Commission wish to change the permitted height to 16'6" as requested?</i></p>
<p>400.5 etc. - Penthouse Height (exhibit 136) Where the penthouse height is currently proposed to be limited to 10 feet, comments that a slightly higher penthouse height of 12 feet should be allowed to provide the necessary roof drainage and mechanical systems (see exhibit for a diagram explaining this request).</p>	<p>The text as drafted is consistent with Zoning Commission discussion, but the proposed height would add flexibility, address reasonable construction issues, and ensure reasonably design penthouse habitable space. Any increase in penthouse height would result in a correspondingly larger setback required.</p> <p><i>Does the Commission wish to change the permitted height as suggested?</i></p>
<p>400.5 etc. - Penthouse stories (exhibit 128, 135) In most zones where habitable penthouse space is permitted, it is limited to one story but with a possibility of a second story for mechanical equipment. In higher density zones, where a 20 foot penthouse would be permitted, a mezzanine for habitable space is also proposed to be permitted.</p> <p>Comments were received that the number of stories in <u>all</u> instances should be limited to one, consistent with the Height Act limit.</p>	<p>The current zoning does not limit the number of stories below the Height Act, and examples of placing mechanical space on top of other penthouse space exist now. In most zones, the total permitted height, including any mechanical space, would be lower than the current permitted height, and allowing mechanical space to be placed on top of habitable space would allow more efficient penthouse space. Any penthouse above the Height Act limit would be limited to one story.</p> <p><i>Does the Commission wish to restrict the number of stories in a penthouse to one when the penthouse is below the Height Act?</i></p>

Comment/Testimony	OP Comments and Direction needed
<p>411.5 - Single family dwellings and flats (exhibit 133, 137) The provision would allow by special exception a penthouse on a single family dwelling or flat for a rooftop access plus a 30 sq.ft. storage area. Comment that the stair / elevator access should be included within the 30 sq.ft. limit.</p>	<p>OP believes the provision as drafted is consistent with the Zoning Commission's intent. Including the stair access would leave little space for any rooftop storage. <i>Did the Commission intend to include the rooftop stair or elevator access in the 30 sq.ft. limit permitted by special exception?</i></p>
<p>411.9 – Penthouse enclosure walls (exhibits 127, 134) The Commission has taken proposed action to allow two heights for enclosed penthouses – one for mechanical space and one for habitable space. Comment that for penthouses with NO habitable space, two heights should be allowed - one for elevator overruns and a separate one for other mechanical space, to minimize penthouse bulk.</p>	<p>OP agrees that an amendment to allow this would be consistent with Zoning Commission discussions regarding penthouse height, and could lessen the overall bulk of mechanical penthouses. <i>Is this supported by the Zoning Commission?</i></p>
<p>411.13 – Penthouse Area (exhibit 128, 138) Currently the text exempts up to .4 FAR of habitable space, in addition to habitable penthouse recreation space, from building FAR calculations. Comments were received that all penthouse habitable space should be included in the building FAR limit. Other submissions requested that the Commission “hold firm” on this .4 exemption and not increase it.</p>	<p>The Commission discussed whether to include habitable penthouse space in building FAR. This would limit the effectiveness of the initiative and could essentially negate the affordable housing provisions, but could allow additional opportunities for sculpting of building massing. <i>Does the Commission wish to re-examine this to include habitable penthouse space in building FAR?</i></p>
<p>411.18 – Setbacks (exhibits 129, 130, 132, 133, 137, 139) As drafted, the proposal is consistent with the Zoning Commission action in ZRR, including requiring a setback from a common (side) lot line:</p> <ul style="list-style-type: none"> • in the R-1 through R-4 zones if the adjacent property has a <u>lower or equal</u> permitted matter of right building height; and • in other zones if the adjacent property has a <u>lower</u> permitted matter-of-right building height, a less restrictive requirement. <p>Comments that the more restrictive requirement should be applied to SFDs or flats in other residential zones, such as R-5-A and R-5-B, where rowhouses are common. Conversely, a comment was also received that the setback should not be a requirement for properties subject to HPRB review.</p>	<p>As drafted, a setback would be required in low density residential zones, but the Commission has also taken action to only allow a penthouse on top of a single family dwelling or flat in all zones by special exception, and to limit the size and uses permitted. As such, if a penthouse is proposed, the setback could be part of the discussion. <i>Does the Zoning Commission wish to make this change to penthouse setback regulations?</i></p>

Comment/Testimony	OP Comments and Direction needed
<p>411.24 – Approved PUD and Design Review cases (exhibit 138) The proposal would permit the Commission to review as a minor modification a request to add habitable penthouse space on top of a building approved previously through a PUD or design review process. Comments that this should not be permitted as a minor modification so that a hearing would be required.</p>	<p>The proposed process would permit conforming conversions or additions of penthouse space to be considered expeditiously by the Commission, and notification requirements have been included. If the Commission determines that a request is not minor, it would be removed from the consent calendar and a public hearing held. <i>Does the Commission wish to retain this provision?</i></p>
<p>411.26 – Conversions of penthouses on existing buildings (exhibit 134) Comments that the regulations should allow for the conversion of legally non-conforming roof structures (i.e., those roof structures authorized by building permits and/or certificates of occupancy) to habitable space, by-right.</p>	<p>Converting conforming mechanical space to habitable space would be permitted by-right, provided no new non-conformities are created. OP is concerned that a conversion of non-conforming penthouse space to habitable use could, in some instances (depending on why it is non-conforming) result in unintended impacts. OP is also concerned that this proposed change could be considered a new provision, requiring re-notification and a new public hearing. An alternative may be to allow a conversion of existing non-conforming penthouse space by special exception. <i>Does the Commission wish to include language to address conversion of existing non-conforming penthouse space?</i></p>
<p>414- Housing Linkage for habitable space on a non-residential buildings (exhibit 135) The proposed affordable housing linkage requirement for non-residential buildings is based on the current language for discretionary non-residential density gained through a PUD. This includes the proposed 20 year term limit for the affordable units. Comments were received that this expiration should be eliminated, requiring the units to be provided in perpetuity.</p>	<p>To minimize administrative issues, the existing process and provisions in the PUD chapter and in the Comprehensive Plan (Chapter 25), including the 20 year term limit, was utilized. While OP would support a requirement that affordable units provided be provided in perpetuity (similar to IZ), the full implications of this to the penthouse and the PUD regulations would need to be studied. <i>Does the Commission wish to have OP study the implications of this amendment?</i></p>

Comment/Testimony	OP Comments and Direction needed
<p>414 - Housing linkage for habitable space on a non-residential buildings (Exhibit 134) Comments requested clarification that a housing linkage requirement should not be required for habitable penthouse space in the penthouse of an institutional or non-profit use, such as libraries, museums, schools, and universities, provided that the habitable penthouse space is used by the non-profit or institution for uses consistent with its mission.</p>	<p>OP is not opposed to this change in many instances – for example, for religious institutions and universities, provided the use of the penthouse space is exclusively for the institutional use. The issue of non-profits may be more complicated.</p> <p><i>Does the Commission want OP to include this change for institutional and/or non-profit buildings?</i></p>
<p>414 – Housing Linkage and Chapter 26 – IZ (exhibit 134) As drafted, residential recreation space within a penthouse would essentially result in a housing linkage requirement, for non-residential buildings, or would contribute to the IZ requirement for residential buildings.</p> <p>Comments that recreation space, particularly on residential buildings, (such as a gym or party room) on a roof should not be counted towards inclusionary zoning or affordable housing contribution requirements.</p>	<p>The current IZ program does not count communal or recreation area towards an IZ requirement for the building. The requirement to include rooftop recreation space in IZ calculations, as drafted, may discourage rooftop amenity space, but excluding the recreation space on the roof from IZ could limit the effectiveness of the affordable housing provision.</p> <p><i>Does the Commission wish to exempt penthouse recreation space from IZ requirements for residential buildings?</i></p> <p><i>Does the Commission wish to exempt penthouse recreation space from housing linkage requirements for non-residential buildings?</i></p>
<p>Chapter 18 - The Southeast Federal Center and IZ requirement (exhibit 134) The SEFC is currently subject to a requirement, as part of the land disposition (not zoning), that 20% of rental units (which would include those within a penthouse) be set aside for families earning 50% AMI or less, so was exempted from the IZ requirement for the building.</p> <p>Comments were received that SEFC should therefore be exempt from the penthouse habitable space IZ requirement.</p>	<p>OP notes that the existing SEFC requirement relates only to rental units (condo residential units are not subject to the 20% requirement) The provision also relates only to "units", not to gross floor area, so rooftop habitable space on a residential rental building would not trigger an additional affordability requirement.</p> <p><i>Does the Commission wish to exempt habitable space on a rental building in the SEFC?</i></p>