



MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Joel Lawson, Associate Director, Development Review
JL for Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: June 1, 2015
SUBJECT: ZC 14-13, Text Amendment to the Zoning Regulations: Rooftop Penthouses Supplemental Report

I. BACKGROUND

On April 30, 2015 the Zoning Commission held a second public hearing regarding proposed amendments to the Zoning Regulations pertaining to rooftop penthouses. At the close of the hearing, the Commission held the record open for two weeks and requested that OP submit a report to specifically address (generally in the order that they were raised by the Commission):

1. Concerns raised by the National Capitol Planning Commission (NCPCC) staff regarding properties within the PADC along Pennsylvania Avenue NW (Exhibit 65);
2. Issues raised by the US Secret Service (Exhibit 74);
3. Parking requirements for new penthouse space on existing buildings;
4. Clarification of the affordable housing information provided by Bolan Smart;
5. Conditions associated with obtaining special exception relief;
6. Penthouse permissions for institutional uses in the low density residential zones;
7. The provision of affordable housing linkage for habitable communal recreation space within a penthouse;
8. Forms of habitable space that would trigger an affordable housing linkage, how that contribution could be required, and the appropriate level of affordability;
9. Penthouse limitations for zones allowing a building height of fifty feet (50 ft.) or less;
10. Specific language tweaks submitted by DCBIA and Holland & Knight, including viability of a ten foot penthouse limit for providing required rooftop access;
11. Re-Affirmation of Consistency with the Comprehensive Plan;
12. Viability of counting penthouse space in FAR in some (moderate to low) density zones, and not counting it in higher density zones;
13. The appropriate height at which habitable space would be permitted;
14. Clarification of rooftop penthouse setback from common (party) walls, particularly in lower density zones.

The Office of Planning is also, in a separate report, providing a refined worksheet for the Commission to use in deliberations. As noted in testimony and earlier OP reports, there are a number of penthouse related issues before the Commission for consideration, many with alternative proposals advertised and discussed. These are not discreet issues – they are highly interdependent,

and any Zoning Commission direction or action on one can impact the relevance and appropriate response to other issues.

It became clear through public hearing testimony and Commission discussion that there is a different comfort level in amending the regulations for different zones and different parts of the city. This was particularly the case for the major changes being discussed – penthouse height, penthouse number of stories, and permissions for habitable space within the penthouse, although there was also much discussion about some of the design-related, non-Height Act specific proposals brought forward as part of this initiative.

There appeared to be less support for amending the provisions in the low density zones, even though the advertised alternatives would generally *restrict* penthouse regulations in these zones, when compared to the current regulations. Conversely, there was typically more advocacy for (or less concern with) amending the regulations to *expand* permissions in the higher density zones, and many calls for urgency to make these amendments expeditiously for the higher density zones. Much of the discussion at the hearing and in submitted comments focused on how to address zones in between these two ends of the zoning spectrum – the moderate to medium density zones.

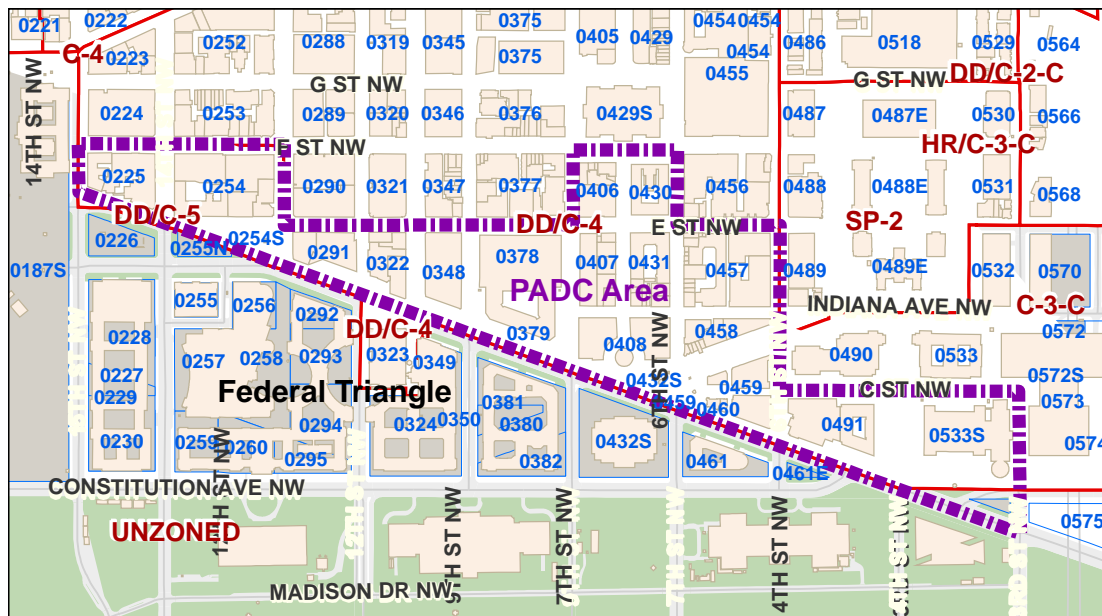
OP has structured the worksheet accordingly, with some of the major issues under discussion organized by zone type, with a separate worksheet for single family and flat uses in all zone.

As noted by the Commission, a “gateway” question is whether to change the penthouse regulations at all. Although this would restrict the effectiveness of the approved changes to the Height Act, this option is reflected in the worksheet.

II. DESCRIPTION AND ANALYSIS OF ALTERNATIVES ADVERTISED

1. Concerns raised by National Capitol Planning Commission (NCPC) staff regarding properties within the Pennsylvania Avenue Development Commission (PADC) Plan and along Independence Avenue NW (Exhibit 65)

PADC - As noted in the NCPC staff submission, squares on the north side of Pennsylvania Avenue (generally located between 3rd Street NW and 15th Street NW) are within the 1974 PADC Plan. Most, but not all, of the squares front onto Pennsylvania Avenue.



The land within this area is zoned DD/C-5 or DD/C-4 – the highest density zones in the District. Within the C-5 zoned portion, a building height of 160 feet is permitted if it fronts on Pennsylvania Avenue. Neither the PADC Plan nor the current zoning nor the changes to the Height Act limit penthouse height above that height. An upper level step-back of 50 feet from Pennsylvania Avenue above a building height of 135 feet is required in the zoning, to address this nationally important view-shed, and a penthouse is required to provide an additional setback equivalent to its twice its height. To the south of Pennsylvania Avenue is Federal Triangle, a federal area that is generally unzoned.

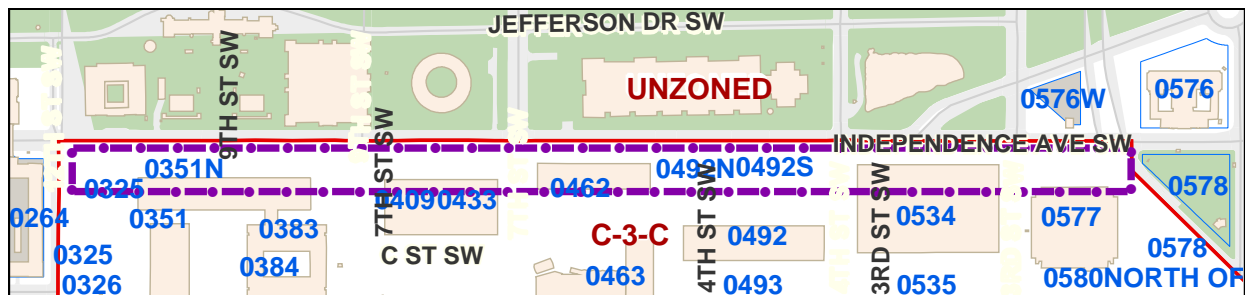
As such, any further restriction on the penthouse height or use (other than as discussed below) are warranted within this high density, high value portion of the District. OP does recommend that the current larger penthouse setback requirement be retained. However, if the NCPC proposal to not allow a penthouse in this area were to be adopted by the Commission, OP would recommend that the restriction apply only to those squares or portions of squares fronting directly onto Pennsylvania Avenue NW.

Independence Avenue – NCPC staff also made recommendations for buildings fronting onto the south side of Independence Avenue SW – either:

- a) No penthouse be permitted if a building of 130 feet in height is permitted; or
- b) Building height be restricted to 110 in which case a penthouse of 20 feet in height be permitted subject to normal setback requirements.

All of the land is owned and occupied by federal government uses, and is zoned C-3-C (high density mixed use), which permits a building height of 90 feet by right and 130 feet through a PUD, with penthouse restrictions standard to the zone. As part of ZRR, OP, following discussions with NCPC staff, has proposed that a 130 foot tall building be allowed with a 1:1 step-back above 110 feet in height and has proposed additional penthouse restrictions within this area, including that any penthouse provide a 2:1 setback, twice the normal rate, and a size limitation on the penthouse area (1/3 of the roof).

While zoning does not apply to federal development on federal properties, if divested to the private sector, any penthouse restrictions would also negate any affordable housing linkage that would otherwise be possible for penthouse habitable space, and could impact the usability of the rooftops. As such, OP does not recommend the NCPC penthouse prohibition, but rather the proposal which the Zoning Commission took proposed action to approve through ZRR – allowing a penthouse but establishing specific setback requirements such as a 2:1 setback ratio and the area limitation.



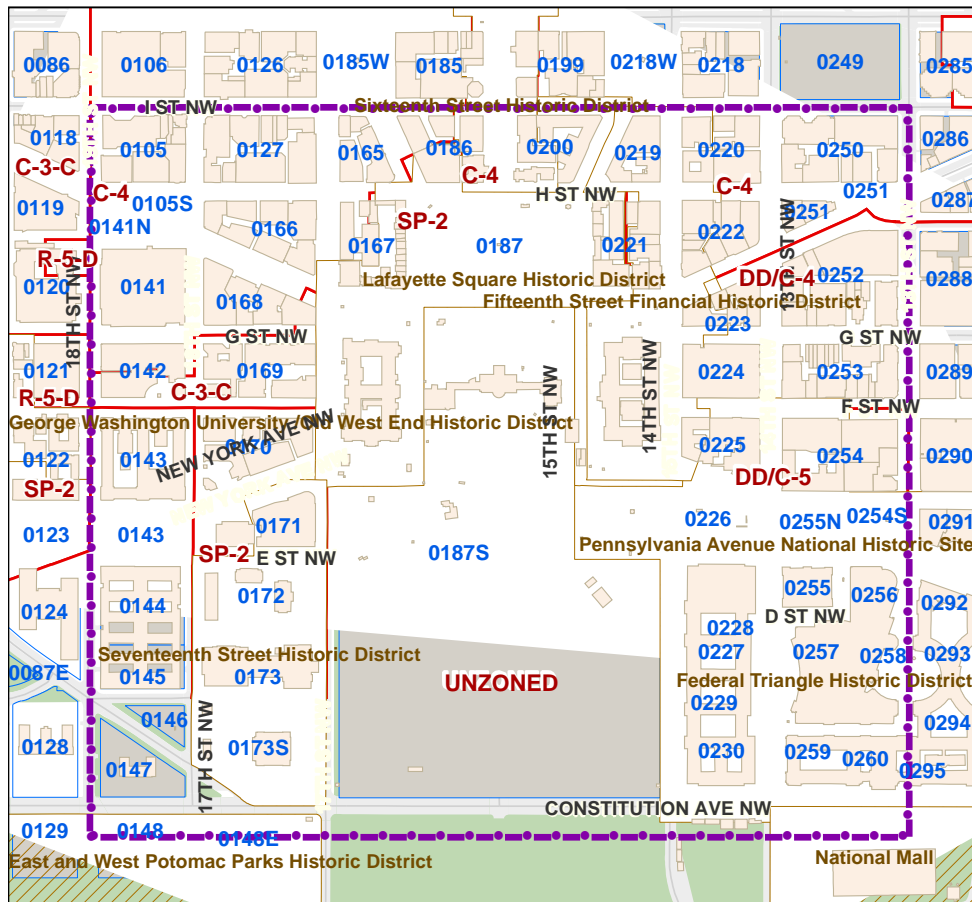
2. Issues raised by the US Secret Service (Exhibit 74)

OP met with representatives of the US Secret Service (USSS) and NCPC staff to discuss the two main issues raised in the USSS memo:

- a) The USSS memo recommended that residential living space not be permitted within the penthouse, in areas proximate to the White House. In subsequent discussions, the USSS specified that the requested restriction include an area bounded by I Street NW to the north; Constitution Avenue to the south; 19th Street to the west and 13th Street to the east. A significant amount of the land is owned by the Federal Government, of which some is currently unzoned; and much of it is located within various Historic Districts (shown hatched on the map below).

The USSS also subsequently requested that the prohibition on habitable space be expanded to include any form of habitable space within the penthouse, including uses permitted under existing zoning, other than mechanical equipment. While these restrictions may limit the (re)development or conversion of the high density / high value properties within this area, and negate any affordable housing linkage in this area, OP has incorporated these restrictions into the worksheet and recommends their approval.

- b) The USSS memo also requested that the permitted penthouse height within this area be limited to 10 feet maximum. During discussions, it became clear that the USSS intention was to ensure that an additional 10 feet of penthouse would not be permitted on top of the currently permitted penthouse height. When advised that this is not proposed, the USSS representatives did not object to the proposed 20 foot penthouse height.



3. Parking requirements for new penthouse space on existing buildings

OP is not opposed to applying existing parking requirements to new habitable penthouse space that would generate additional parking needs, such as additional residential units, additional office space, or new restaurant / retail space. In this regard, it would be similar to any other form of addition to an existing building which could require additional parking. If this results in a parking deficit, the applicant could seek parking relief, or adjust the building so that the required number of parking spaces is provided. A building which already provides more parking than required by zoning would be able to add penthouse space with no relief needed.

4. Clarification of the affordable housing information provided by Bolan Smart

OP had additional discussions with representatives of Bolan Smart, and reviewed the submission and the assumptions. OP found the assumptions to be generally conservative, but, given the premium for upper level floor space, the affordable housing provisions as recommended would appear to provide for a modest but sufficient return to developers who wish to take advantage of any approval to provide habitable space within the penthouse.

5. Conditions associated with obtaining special exception relief

The existing, standard special exception criteria require a demonstration that “*the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps*” (§3104.1). Likewise, the provision which currently permits special exception review of many forms of penthouse related relief includes the following language:

*Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; **provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.** (§411.11)*

If the Commission decides that additional criteria are needed, the following possible criteria (also reflected in the worksheet) are loosely based on the special exception criteria for §223 relief:

“The requested relief shall not result in a rooftop penthouse that substantially adversely affects the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(a) The light and air available to neighboring properties shall not be unduly affected;

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

- (c) The penthouse addition or structure, 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;*
- (d) 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; and*
- (e) 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.”*

6. Penthouse permissions for institutional uses in the low density residential zones

The worksheet document includes separate sheets for single family dwellings / flats, and for other uses, such as institutional, within the low density zones.

7. The provision of affordable housing linkage for habitable communal recreation space within a penthouse

The current housing affordability criteria, both Inclusionary Zoning for residential buildings and the Housing Linkage for non-residential buildings, do not exclude communal recreation space from the calculations. Both affordable housing requirements use gross square footage including all enclosed recreation space. Recreation space adds value to the building, and is reflected in rents or costs for units. Carving out recreation space would reduce the effectiveness of the affordable housing proposals, and would be inconsistent with current programs, and is not recommended.

8. Forms of habitable space that would trigger an affordable housing linkage, how that contribution could be required, and the appropriate level of affordability

As noted above, OP has recommended that only non-habitable (mechanical) penthouse space be excluded from an affordable housing requirement, which is consistent with the existing affordable housing requirements.

Residential Buildings: Submissions to the record note that a provision to allow an offsite affordable housing contribution to a housing trust fund, similar to the process currently available for non-residential buildings, or for habitable penthouse space on a residential building not otherwise be subject to Inclusionary Zoning requirements. OP has incorporated this into the worksheet and recommends its adoption.

Non-residential Buildings: The original proposal included a minimum square footage trigger of 1,000 square feet of new habitable penthouse space for non-residential buildings. OP's intent was to recognize that the potential administrative burden might outweigh the small contribution from small penthouse additions. Above that amount, all habitable space (including the first 1,000 square feet) would count towards the affordable housing requirement. OP would be opposed to instead making this an exemption of the first 1,000 square feet as proposed in some submissions to the record. Exempting the first 1,000 square feet would be contrary to the intent of the provision, would be different from existing affordable housing processes, and would diminish the impact of the program. OP will discuss the

administrative issue with DHCD – if DHCD feels that the administrative burden is not too high, OP may recommend the removal or reduction of this 1,000 sq.ft. trigger for simplicity and to maximize the impact of the provision; OP will provide additional information or updates, if requested, at the public meeting.

9. Penthouse limitations for zones allowing a building height of fifty feet (50 ft.) or less

The worksheet includes separate key issue discussions for low and moderate density zones, which will allow the Commission to evaluate them separately from the higher density zones.

10. Specific language tweaks submitted by the District of Columbia Building Industry Association (DCBIA) (Exhibit 105) and Holland & Knight (Exhibit 109); including viability of a ten foot penthouse limit for providing required rooftop access

DCBIA: The DCBIA commented on the viability of a 10 foot penthouse, and the ability to provide an elevator within that limit. Elevator access to any rooftop recreation space or otherwise publicly accessible space is required by the Americans with Disabilities Act. The DCBID advised that a penthouse of at least the current 18’-6” height is required to provide a high speed elevator in buildings of 90 feet or more – this is consistent with the OP recommendation to allow 20 feet, and generally consistent with options before the Zoning Commission as outlined in the worksheet for higher density zones. However, they also note that an elevator penthouse of 16’-6” minimum is typically needed even for shorter buildings, and notes the problems with hydraulic elevators, especially if the building has below grade levels of parking or other uses which effectively expands the vertical distance that the elevator travels. These concerns were echoed in a number of other submissions to the record - that even for lower density zones, and even using alternative elevator technologies, a penthouse of 10 feet would not typically be acceptable, or would not permit elevator access to the roof.

Based on these submissions and inconclusive additional research, OP has revised its recommendation, as reflected in the worksheets:

- Permit 20 foot penthouse within the medium to high density zones;
- Permit a 10 foot penthouse height by special exception for single family dwellings or flats; and
- Retain the current penthouse height of 18’6” in other zones and uses, but providing a limit on the internal clear height of any habitable space within the penthouse, suggested at ten (10) feet maximum. This would be particularly effective if the Zoning Commission decides to allow some flexibility in the current restriction that penthouses must all be of one height.

Holland & Knight: In addition to more general comments, H&K made the following text suggestions, with OP comments following:

- *Incorporate recommendations for maximum design flexibility, but if not, provide for special exception relief from height, setback, and number of roof structures.* In the current and proposed text, special exception relief is permitted for penthouses of different height, penthouse setback when located below the Height Act limit, and from number of roof structures. OP would not support special exception relief from the penthouse height limit, particularly the 20 foot height limit; OP also supports

permitting a penthouse height of 10 feet maximum by special exception for single family dwellings and flats.

- *For residential buildings, provide flexibility in satisfying any required affordable housing provision.* As noted above, OP agrees that a contribution to a housing trust fund in lieu of providing an IZ unit within the building makes sense for a penthouse addition on an *existing* building or on a building in an area not otherwise subject to IZ, and this is reflected in the worksheet options. For other *new* buildings, the rooftop habitable space would simply count towards the Inclusionary Zoning determination of gross square feet and be incorporated within the building, consistent with the intent of IZ.
- *Do not subject rooftop recreation space to the affordable housing requirement.* As noted in number 7 above, OP does not support excluding recreation space from the affordable housing requirement, for either residential or non-residential space as this would be inconsistent with the existing programs.

11. Re-affirmation of Consistency with the Comprehensive Plan

As noted in OP's setdown report of July 24, 2014, the text amendments are not inconsistent with the Comprehensive Plan. Issues were raised regarding the usable space, particularly in the low and moderate density zones. Historically the additional floor area permitted for roof structure uses has not been included within floor area ratio calculations per §§ 411.7 and 411.8 (11 DCMR)¹, therefore are not inconsistent with the Comprehensive Plan. OP has included revisions through the worksheet that would restrict penthouses height and use, particularly in low to moderated density zones, therefore would also be not inconsistent with the Comprehensive Plan, and would be similar to proposed action taken as part of the comprehensive ZRR of the zoning regulations in case 08-06A.

12. Viability of counting penthouse space in FAR in some (moderate to low) density zones, and not counting it in higher density zones

The proposals before the Zoning Commission would restrict penthouses on low to moderate density zones, in terms of height and permitted uses. The 1/3 limit on penthouse area is proposed to be retained in most of the zones in which it currently applies, and the Zoning Commission is considering whether to continue to count penthouse space above a set limit (.37 FAR in the current regulations, .4 FAR in ZRR) in overall building FAR. These would apply regardless of zone.

While this is not OP's recommended course of action, the advantage of counting habitable penthouse space in FAR is that it would allow additional opportunities for building sculpting (equal square footage in slightly more height) and could potentially even result in more ground level green space; although the generally small amount of penthouse area would not have a significant impact in most cases. However, since this would not constitute additional square footage, the benefit to the developer would be limited to the relatively small premium for habitable space "higher" in the building so the opportunity for additional affordable

¹ 411.7 Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted.

411.8 Roof structures shall not exceed one-third (1/3) of the total roof area for those districts where there is a limitation on the number of stories.

housing or linkage would be, at best, minimal. As such, if penthouse space is counted in building FAR, additional affordable housing linkage for penthouse space would not be possible.

13. The appropriate height at which habitable space would be permitted

The worksheet document provides separate penthouse height and use discussions for the following groupings of permitted building height:

- 45 feet or less (with a separate worksheet for single family dwellings/flats);
- 50 feet or less
- 65 feet or less
- 70 feet or more

This will allow the Commission to separately evaluate appropriate penthouse height and number of stories and whether habitable space should be permitted.

14. Clarification of rooftop penthouse setback from common (party) walls, particularly in lower density zones

The interpretation of the current roof structure setback requirement is that a setback is not required from a party wall. The additional provisions recommended by OP provide further restrictions where the common lot line is also a zone boundary line, or for historic buildings. In case 08-06A (ZRR) the Commission took proposed action in Subtitle C to address roof structures as follows:

Chapter 15 – Roof Structures:

1502.1 Roof Structures shall be setback from the edge of the roof as follows:

- (a) *A distance equal to its height from the following:*
 - (1) *Front building wall provided that when located atop a building with differing levels, the roof structure shall be setback from the front wall of the level on which it is located;*
 - (2) *Rear building wall;*
 - (3) *Side building walls in the R and RF zones that are adjacent to a property which has a lower or equal permitted matter of right building height;*
 - (4) *Side building walls in other than the R and RF zones that are adjacent to a property which has a lower permitted matter of right building height;*
 - (5) *Adjacent property that is improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter of right building height; and*
- (b) *A distance equal to half of its height from any side building wall that is not adjoining another building wall and not meeting the conditions of C §1502.1 (a) (3) through (5);*

1502.2 Except as required by C § 1502.1, no setback is required from any side building wall that is adjoining another building wall with an equal or greater matter of right height.

OP recommends additional text as part of this case to clarify that setbacks shall be measured from the edge of the roof on which any roof structure or penthouse is located.

III. COMPREHENSIVE PLAN

Land Use:

The Land Use Goal is: Ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries. 302.1

Urban Design:

The character of the central city has largely been shaped by the L'Enfant and McMillan Plans and the 1910 Height of Buildings Act. ... The Height Act has resulted in a predominance of structures that are as wide as they are tall, and a street environment that has more in common with Paris than it does with New York, Chicago, and other cities in North America. 902.2

Policy UD-1.1.4: Height Act of 1910

Protect the civic and historical character of the city, particularly the "horizontal" urban quality of Central Washington, by limiting building heights in accordance with the Height Act of 1910. ... 903.10

UD-2.1 Place-Making in Central Washington

Design decisions for Central Washington should also address the peculiar architectural dynamics created by the 1910 Height Act. Currently, the desire to maximize buildable floor area while adhering to height limits often results in buildings with very little sculptural form. The most innovative and distinctive buildings tend to be public places—museums, libraries, and other structures where maximizing rentable space is not the primary objective. This is consistent with the city's architectural heritage in some respects, but there are still opportunities to improve the design of office, residential, and retail buildings in the central city. 909.4

While the height limit clearly affects building form, it also affects street life in unexpected ways. It results in ground floors that are sunken below grade by as much as several feet to maximize the number of stories that can be accommodated in each building. This in turn creates challenges for street-level retailers, and impacts the experience of walking or shopping downtown. Other challenges include the appearance of vents, mechanical equipment, and other essential rooftop elements that exceed the maximum building height. The design of these elements takes on special importance given their high visibility on an otherwise "flat" downtown skyline. 909.5

Housing:

Policy H-1.2.1: Affordable Housing Production as a Civic Priority

Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city. 504.6

Policy H-1.2.7: Density Bonuses for Affordable Housing

Provide zoning incentives to developers proposing to build low- and moderate-income housing. Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when

the effect of such increased density does not significantly undermine the character of the neighborhood.
504.14

Action H-1.2.C: New Revenue Sources

Identify and tap new sources of revenue for the Housing Production Trust Fund (HPTF) to produce affordable housing and keep rental and owned housing affordable. ... 504.20

Table 25.2: Housing Linkage

The housing linkage objective requires applicants who obtain bonus commercial office space as a result of a discretionary and otherwise appropriate street or alley closing or zoning density increase to produce housing or contribute funds to the production of housing, particularly housing that is affordable to low and moderate-income households throughout the District, in an amount based on a formula tied to the amount or value of the additional commercial office square footage obtained. 2520.1

In 1994, the District of Columbia adopted zoning provisions that linked the granting of bonus density in commercial development projects to requirements for affordable housing. The "linkage" recognized that the demand for housing in the city was driven in part by new commercial development and rising land values. The linkage provisions are currently triggered by:

- *The approval of a "discretionary and otherwise appropriate street or alley closing which results in the provision of additional commercial office space" by the Council; or*
- *The approval of a "discretionary and otherwise appropriate zoning density increase which results in the provision of additional office space" by the Zoning Commission. (p.5-14)*

Economic Development:

Policy ED-2.1.1: Office Growth

Plan for an office sector that will continue to accommodate growth in government, government contractors, legal services, international business, trade associations, and other service-sector office industries. The primary location for this growth should be in Central Washington and in the emerging office centers along South Capitol Street and the Anacostia Waterfront. 707.6

Policy ED-2.1.5: Infill and Renovation

Support the continued growth of the office sector through infill and renovation within established commercial districts to more efficiently use available space while providing additional opportunities for new space. 707.10