

MEMORANDUM

TO: Sara Bardin, Director, Office of Zoning
FROM: *JL* Joel Lawson, Associate Director, Development Review
DATE: March 11, 2016
SUBJECT: **Zoning Commission Case No. 14-13, Penthouse Regulations.**
**Request for Consent Calendar consideration of a technical correction to
§ 3202 of DCMR 11 Zoning Regulations**

The Office of Planning (OP) respectfully requests that the Commission consider making a technical correction to Zoning Commission Order No. 14-13 and that the matter be placed on the first available consent calendar pursuant to § 3030 of the Commission's rules. The amendment would establish vesting provisions for the newly adopted penthouse regulations.

As part of Zoning Commission Case 14-13, comments were received from the public regarding the vesting of development proposals that had already been accepted into the building permit approval process (see Exhibit 134). These comments were included in the summary of public comments provided to the Zoning Commission as part of the OP supplemental report dated October 26, 2015 (Exhibit 141, page 10 of 19). Although raised by the public and included in the attachment to the OP report, OP did not highlight this for Zoning Commission action, and transcripts indicate that the Commission did not specifically discuss this issue at its October 26, 2015 meeting, or at the subsequent public meeting of November 9, 2016 at which the Commission took final action to approve the text amendments. However, the approved Order for this case notes that the Commission was "not persuaded by comments suggesting the need for vesting provisions and therefore no such provisions were included" (page 9).

Vesting can be a normal and reasonable part of any discussion regarding potentially significant changes to the zoning regulations, particularly when the regulations in some zones, and specific regulations in other zones, would become more restrictive. OP has been contacted by an applicant explaining that their building permit for a downtown hotel has been in the review process since April of 2015 and has now been determined noncompliant due to the change in penthouse regulations. The applicant received a letter from the Zoning Administrator's Office in October 2013 confirming that the plans were consistent with the zoning regulations at that time. The applicant began the building permit application drawings and submitted them in 2015 and continued to coordinate weekly with the Department of Consumer and Regulatory Affairs (DCRA) as the permit application was reviewed by various divisions. However, the building permit was not issued prior to the effective date of the penthouse text amendments.

To rectify this, OP is proposing the addition of vesting language similar to that approved for the recent R-4 text amendments (ZC Case 14-11). The language would allow for the use of the old regulations for projects for which building permit applications were submitted to and accepted by DCRA prior to the date of final action for Case 14-13, Penthouse Regulations, or to use the

new regulations. The amendment would not allow a developer to combine the two, utilizing both aspects of the old and aspects of the new regulations.

Chapter 32, ADMINISTRATION AND ENFORCEMENT, §3202, BUILDING PERMITS:

Modification to Section 3202 as follows:

3202.4 Except as provided in §§ 3202.8 **through 3202.11, ~~and 3202.9 and 3202.10~~**, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

New §3202.11 to read as follows:

3202.11 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving penthouse structures may be processed, and any work authorized by the building permit may be carried to completion, pursuant to the provisions of the roof structure regulations in place as of November 19, 2015, if the Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to that date.

This new language would also be translated into the newly adopted zoning text approved under Case 08-06A, ZR-16, also as a technical correction.