

The Committee of 100
on the Federal City



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May 11, 2015

Mr. Anthony Hood, Chair
DC Zoning Commission
441 4th Street, NW, Suite 220 –S
Washington, DC 20001

Re CASE NO. 14-13 (Office of Planning – Text Amendments to Chapters 1, 4, 5,
6, 7, 8, 9, 12, 15, 19, 26, 27, 29, and 33: Definitions, Use Permissions, and Size
Restrictions for Rooftop Penthouses)

Dear Chairman Hood and Members of the Zoning Commission:

Thank you for the opportunity to provide additional comments on the proposed zoning changes to allow penthouses in low density residential zones throughout the city.

While this train has left the station, the city has spent over five years working on text amendments to the zoning regulations; and, while they have not been published in the DC Register, they have nevertheless been given the Zoning Commission's approval. Now, along the same track with the Zoning Regulation Review (ZRR) comes a new set of regulations that will affect many of the decisions previously made as well as the basis upon which those decisions were made, specifically height, density (FAR) and parking. These zoning aspects are of especial concern in zones where height is currently limited to 65 ft. or less, but as the allowable height of buildings increases, so will these aspects change.

At the April 30 hearing, the Office of Planning (OP) referenced its July 24, 2014 Memorandum to the Zoning Commission (ZC) for Comprehensive Plan References. The ZC will recall that this memo is “in response to requests from the ZC and the development community that OP submit, as soon as possible, proposed amendments to the zoning regulations which reflect the recent federal amendments to The Act to Regulate the Height of Buildings in the District of Columbia of 1910 (the Height Act). Because the current Zoning Regulations pertaining to penthouse are in some instances more stringent than what the amendment would permit, the

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changes to the Height Act should not be given effect until corresponding changes to the Zoning Regulations are also adopted.”

The Land Use Goal of the Comprehensive Plan provided in the July 24 OP memo 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

In addition to the Land Use goal, OP provided Comprehensive Plan sections which address Urban Design; Housing; and, Economic Development. Little evidence is presented in the proposal which would ensure the stability and character of residential areas where the height is limited to 65 ft. or under. At the April 30, 2015 hearing, the ZC suggested that perhaps height in this context should be raised to 90 ft. to allow for elevator overrides. It is unclear whether that means the top of the mechanical penthouse is at 90 ft. or the height of the building is at 90 ft. with additional height for an elevator penthouse. These kinds of issues might be resolved if the proposal is limited to roof structures above Height Act maximum height and should conform to the restrictions and allowances in the amendment.

The term *penthouse* does not appear in the Comprehensive Plan. Approximately five policies use the term “roof structure,” and the instruction given is *to better regulate the design and to avoid pop-ups*. OP's current proposal is not grounded in Comprehensive Plan policies. One can say the Comprehensive Plan is silent on penthouses, and given that, wouldn't the conclusion be that the ZC should wait for Council to address what city policy will be relative to penthouses rather than the ZC preemptively determining the policy?

Guidelines for Using the Generalized Policy Map and the Future Land Use Map 226

The Generalized Policy Map and Future Land Use Map are intended to provide generalized guides for development and conservation decisions. Several important parameters, defined below, apply to their use and interpretation.

a. The Future Land Use Map is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or

dimensional standards. By definition, the Map is to be interpreted broadly.

b. The Future Land Use Map is a generalized depiction of intended uses in the horizon year of the Comprehensive Plan, roughly 20 years in the future. It is not an “existing land use map,” although in many cases future uses in an area may be the same as those that exist today.

c. The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area. Similarly, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. **It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here.**

d. The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans.

e. **The designation of an area with a particular land use category does not necessarily mean that the most intense zoning district described in the land use definitions is automatically permitted. A range of densities and intensities applies within each category, and the use of different zone districts within each category should reinforce this range.** There are more than twice as many zone districts (about 30, plus more than a dozen overlay zones) as there are Comprehensive Plan land use categories

PUDs should be a vehicle for approving heights that are outside typical heights. There are no Comprehensive Plan policies that encourage ZC to raise matter of right heights -- none! Also, subparagraph “e” announces that the OP practice of encouraging the most intense density is not endorsed by the Comprehensive Plan

Additional Comprehensive Plan Policies and Action Items address height, density scale and design standards for a variety of areas and zones:

Policy LU-1.3.5: Edge Conditions Around Transit Stations

Ensure that development adjacent to Metrorail stations is planned and designed to respect the character, scale, and integrity of adjacent neighborhoods. **For stations that are located within or close to low density areas, building heights should “step down” as needed to avoid dramatic contrasts in height and scale between the station area and nearby residential**

streets and yards. 306 14

Policy LU-2.1.7: Conservation of Row House Neighborhoods

Protect the character of row house neighborhoods by requiring the height and scale of structures to be consistent with the existing pattern, considering additional row house neighborhoods for “historic district” designation, and regulating the subdivision of row houses into multiple dwellings. Upward and outward extension of row houses which compromise their design and scale should be discouraged. 309 12

Policy LU-2.3.3: Buffering Requirements

Ensure that new commercial development adjacent to lower density residential areas provides **effective physical buffers to avoid adverse effects. Buffers may include larger setbacks, landscaping, fencing, screening, height step downs, and other architectural and site planning measures that avoid potential conflicts.** 311.5

Policy LU-2.4.4: Heights and Densities in Regional Centers

Maintain heights and densities in established and proposed regional centers which are appropriate to the scale and function of development in adjoining communities and **which step down to adjacent residential areas**, and maintain or develop buffer areas for neighborhoods exposed to increased commercial densities. 312 8

Policy LU-2.4.5: Encouraging Nodal Development

Discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” of commercial development at key locations along major corridors. **Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them** 312 9

Policy LU-2.4.6: Scale and Design of New Commercial Uses

Ensure that **new uses within commercial districts are developed at a height, mass, scale and design that is appropriate and compatible with surrounding areas.** 312 10

UD-1 Toward A Stronger Civic Identity

Washington’s identity is defined by a particular set of physical features, including the Potomac and Anacostia Rivers, the topographic “bowl” of the original city and

the rolling hills that surround it, the open spaces and dense tree canopy of its parks and neighborhoods, and the wide diagonal boulevards and rectangular street grid. The city is further defined by its horizontal skyline. The Virginia and Maryland suburbs contain the region's tallest buildings while the central city is characterized by lower buildings of relatively uniform mass and height. 902 1

Action UD-2.2.A: Scale Transition Study

Complete a "Scale Transition Study" which evaluates options for improving design compatibility between more dense and less dense areas. The study should respond to the varying situations where higher density development is (or will be) situated adjacent to lower density, predominantly residential neighborhoods. It should include design guidelines and provisions for buffers (including open space), stepping down of building heights, and solutions that reflect the different lot dimensions, block faces, and street and alley widths found in different parts of the city. 910 25

(Where is this study?)

Action UD-2.2.B: Using Zoning to Achieve Design Goals

Explore zoning and other regulatory techniques to promote excellence in the design of new buildings and public spaces. Zoning should include incentives or requirements for facade features, window placement, courtyards, buffering, and other exterior architectural elements that improve the compatibility of structures, including roof structures, with their surroundings while promoting high architectural quality. 910 26

(This Action Item does not address increasing the heights of roof structures -- what's called for is targeted regulations to improve quality of design.)

Policy CW-1.1.12: Reinforcing Central Washington's Characteristic Design Features

Reinforce the physical qualities that set Central Washington apart from all other major American city centers, including the L'Enfant framework of diagonal avenues and park reservations, relatively low building heights, the great open spaces of the National Mall and Tidal Basin, the large number of historic and/or monumental buildings, and the blending of historic and contemporary architecture. 1608 13

Policy MC-2.4.1: Protecting the Character of Adams Morgan

Protect the historic character of the Adams Morgan community through historic landmark and district designations, and by ensuring that new

construction is consistent with the prevailing heights and densities in the neighborhood. 2014 5

(One example of area element that addresses retraining urge to increase heights because goal is to respect prevailing heights.)

Policy NNW-2 2.2: Dupont Circle Area Policies

Use the following standards in evaluating new buildings and alterations in the Dupont Circle area:

- a. **Require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk;**
- b. Ensure a general compatibility in the scale of new buildings with older low-scale buildings by **restricting the maximum permitted height and floor area ratio** of the new buildings to that of the underlying zone;
- c. **Preclude demolitions or partial demolitions that would lead to an increase in height and floor area ratio** inappropriate to the area;
- d. Enhance the residential character of the area by **maintaining existing residential uses and controlling the scale, location, and density of commercial and residential** development; and
- e. Ensure compatibility of development with the Comprehensive

Plan. 2112 4

Policy LU-2.1.9: Addition of Floors and Roof Structures to Row Houses and Apartments

Generally **discourage** increases in residential density resulting from **new floors and roof structures (with additional dwelling units) being added to the tops of existing row houses and apartment buildings**, particularly where such additions would be out of character with the other structures on the block. **Roof structures should only be permitted if they would not harm the architectural character of the building on which they would be added or other buildings nearby.** 309 14

(This policy addressed the fact the ZC should be improving the quality of roof structure design!)

New mixed use areas with significant housing have been developed in the expanded downtown area. Young families have testified often that when planning was done, parks and green space were not factored into the development. This is especially true in NOMA where plans have placed a park under an overpass! How might rooftops be used to accommodate the urban needs of young families as well as the needs of all downtown residents for some green space? Perhaps this is the

potential for a bright spot or something that can be supported in the proposed changes to rooftop heights in denser urban areas.

The Comprehensive Plan policies and action items cited demonstrate a significant inconsistency between the proposed penthouse regulations and the Comprehensive Plan. Proposals for more height and density (and the incentive to exploit it) would be allowed so that the matter of right height and density for various zones would be inconsistent with the designations on the Future Land Use Map (FLUM). For example, C-2-A is designated as low-density-commercial on the FLUM. Bonus density has already been given for IZ, and now there is the potential (and incentive) for a two-story habitable (or partially habitable) penthouse on top of the currently allowable 50 feet. FAR which was originally 2.5 would be upped to 3.0 with IZ. Additional density would be added on the rooftop. It is a stretch to say these increases are consistent with the Comprehensive Plan designations.

Low Density Commercial: This designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. **Their common feature is that they are comprised primarily of one- to three-story commercial buildings.** The corresponding Zone districts are generally C-1 and C-2-A, although other districts may apply. 225 8

Moderate Density Commercial: This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but **generally do not exceed five stories in height.** The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply. 225 9

Medium Density Commercial: This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas but **generally do not exceed eight stories in**

height. The corresponding Zone districts are generally **C-2-B, C-2-C, C-3-A, and C-3-B**, although other districts may apply. 225 10

High Density Commercial: This designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are interspersed. The corresponding Zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply. 225 11

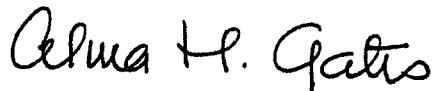
The lesson from the Framework Element is that most commercial zones do not neatly fit within a common density category. The Comprehensive Plan envisions a more nuanced response to determining appropriate heights within a zone category. It is not accurate for OP to say C-2-A is moderate density or that C-2-B is medium density because the Comprehensive Plan points out that in many cases the former is low density and the latter is moderate density. The ZC should err on side of protecting the examples of lower density because there is potentially more to be lost. For example, the Comprehensive Plan cautions that commercial heights have been determined partly to reflect appropriate uses but also to maintain comfortable scale between commercial and adjacent residential neighborhoods. The notion of uniformly bumping up penthouses and thus, heights, has to take into consideration other goals

On April 30, the ZC noted that the Comprehensive Plan says “we should increase housing and this proposal would do that;” however, the Comprehensive Plan does not advocate for changes to the integrity of neighborhood scale and character and the proposal to allow additional height through penthouses would also do that. There is no guarantee **affordable** housing would be increased through this proposal regardless of payments to the Housing Trust Fund.

The Committee of 100 finds the penthouse proposals for additional height and density (without accountable FAR) a potential threat to the integrity, stability, predictability and character of low and moderate density zones, be they residential or commercial. These zones are meant to complement each other; however, if commercial zones are permitted to increase in height and density whether they abut, adjoin, confront or border residential zones, their height would increase considerably and become a barrier between zones that should exist harmoniously without perceptible changes in zone boundaries.

There is no need to rush to conclusion and pass regulations on penthouses that were not anticipated in the previous Comprehensive Plan cycle and appear to be inconsistent with current Comprehensive Plan policies and guidance. To avoid conflicts with the Comprehensive Plan, consideration should be limited at this time only to those areas of the city where maximum allowable heights are below Height Act limits.

Respectfully submitted,

A handwritten signature in black ink that reads "Alma H. Gates". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Alma H. Gates, Chair
Committee of 100 Zoning Subcommittee