



Executive Director's Recommendation

Commission Meeting September 3, 2015

PROJECT Text Amendments to Rooftop Penthouse Regulations Washington, DC	NCPC FILE NUMBER ZC 14-13 NCPC MAP FILE NUMBER 00 00(06 00)44194
SUBMITTED BY Zoning Commission of the District of Columbia	APPLICANT'S REQUEST Approval of report to the Zoning Commission of the District of Columbia
REVIEW AUTHORITY Approval of Comments to the Zoning Commission of the District of Columbia	PROPOSED ACTION Approve comments as requested ACTION ITEM TYPE Consent Calendar

2015 SEP 14 AM 8:57

RECEIVED
ZC OFFICE OF ZC...

PROJECT SUMMARY

The Zoning Commission of the District of Columbia has taken a proposed action on the text amendments to the rooftop penthouse regulations (ZC 14-13). In 2014, President Obama signed Public Law 113-103, which amended restrictions related to human occupancy of penthouses as set forth in the 1910 Height of Buildings Act (Height Act). This amendment followed the completion of the Height Master Plan, a year-long study to explore strategic changes to the Height Act conducted by NCPC and the District of Columbia Office of Planning (DCOP) at the direction of Congress. Currently, the existing zoning regulations do not allow for human occupancy in penthouses in the District of Columbia. The proposed text amendments to rooftop penthouse regulations would allow human occupancy of penthouses, as permitted in the Height Act. The Zoning Commission will consider taking final action on this case at the public meeting tentatively scheduled for October 19, 2015.

On April 23, 2015, NCPC staff provided comments to the Zoning Commission on specific areas of federal interests, including Pennsylvania Avenue, NW; Independence Avenue, SW, security concerns around the White House, and clarifying provisions to the proposed rooftop penthouse regulations, that could affect the form and character of the nation's capital (see Attachment A). Both NCPC and DCOP staff have worked together to resolve many of staff's comments through the penthouse regulations and/or Zoning Regulations Rewrite (ZRR) in ZC 08-06A.

ZONING COMMISSION
District of Columbia

CASE NO.

14-13

EXHIBIT NO.

126

ZONING COMMISSION
District of Columbia
CASE NO.14-13
EXHIBIT NO.126

KEY INFORMATION

- The amended Height Act allows human occupancy of penthouses
 - Proposed text amendments to rooftop penthouse regulations would allow human occupancy of penthouses, as permitted in the Height Act
-

RECOMMENDATION

The Commission:

Notes that the Zoning Commission and the District of Columbia Office of Planning have addressed the comments previously raised by NCPC staff. These collaborative discussions have resulted in regulations that protect federal interests.

Commends the District of Columbia for coordinating with NCPC and the U.S. Secret Service staff to address matters related to security around the White House.

Supports the proposed text amendments to restrict penthouses to one-third of the total roof area with a setback distance equal to two times its height along Independence Avenue, SW.

PROJECT REVIEW TIMELINE

Previous actions	None.
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Remaining actions (anticipated)	None
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PROJECT ANALYSIS

NCPC is interested in the form and character of the nation's capital, particularly along streets and avenues that abut national resources in the monumental core. Basic elements of building form, including height, penthouse and setback contribute to the character of city streets, vistas, and the setting in and around major historic and cultural sites.

The following includes staff's findings and comments on the proposed regulations, as highlighted in staff's letter to the Zoning Commission:

- Pennsylvania Avenue, NW,
- Independence Avenue, SW,
- Security concerns around the White House, and
- Clarifying provisions

The Zoning Commission and the DCOP have addressed the comments previously raised by NCPC staff. As confirmed by DCOP staff, the proposed text amendments are subject to the requirements under the Height Act. These collaborative discussions have resulted in regulations that protect federal interests.

Pennsylvania Avenue, NW

In 1975, the Pennsylvania Avenue Development Corporation (PADC) adopted the PADC Plan, which includes areas along Pennsylvania Avenue, NW between 3rd and 15th Streets, NW. The PADC Plan provides a framework for how development will occur along the Avenue. It includes height and setback regulations that frame the view of the U.S. Capitol.

Staff evaluated the following proposed text amendments to penthouses along Pennsylvania Avenue, NW:

- Penthouses fronting Pennsylvania Avenue, NW (between 3rd Street, NW and 15th Street, NW) should be setback a distance equal to two times its height (2.1) from any building wall of the roof upon which it is located.

The proposed text amendment would allow 20' penthouses with a 2:1 penthouse (both mechanical and habitable) setback on 160' buildings along Pennsylvania Avenue, NW.

NCPC staff maintains that the PADC Plan and square guidelines govern development for each building along Pennsylvania Avenue. Building massing and penthouse regulations are determined through an amendment to the PADC Plan and the development of square guidelines.

Independence Avenue, SW

The National Mall is a public space within a park-like setting framed by trees and civic institutions. In April 2015, NCPC staff recommended all rooftop equipment and penthouse structures on Independence Avenue (between 6th and 12th Streets, SW) be incorporated into the 130' building height proposed in the ZRR. Any future development on Independence Avenue, SW over 130' in height (including penthouses) would have a negative impact on views from the National Mall and of the Smithsonian Castle.

Since staff submitted these comments, DCOP has modified the proposed text amendment to add the following controls for penthouses along Independence Avenue:

- Penthouses fronting Independence Avenue, SW (between 12th Street, SW and 2nd Street, SW) should be setback a distance equal to two times its height (2.1) from any building wall of the roof upon which it is located. Penthouses shall not exceed one-third of the total roof area.

It is important that rooftop structures, architectural embellishments, and penthouses be carefully located and designed and not compete with the architectural features of the Smithsonian Institution's original building when viewed from its center point on the National Mall and from 10th Street. The proposed ZRR includes design criteria for the Zoning Commission's design review for development along Independence Avenue (see EDR ZC 08-06A). NCPC staff finds the new design review criteria coupled with the proposed text amendments for rooftop penthouses, ensures penthouses will not compete with or diminish the architecture of any of the Smithsonian buildings.

NCPC staff supports the proposed text amendments to restrict penthouses to one-third of the total roof area with a setback distance equal to two times its height along Independence Avenue, SW.

Security Concerns Around the White House

In a memorandum to the Zoning Commission, dated April 30, 2015, the United States Secret Service (USSS) raised security concerns regarding the proposed height and use of rooftop penthouses in areas near the White House. In particular, the USSS opposed rooftop penthouses used as residential living space, and if allowed, these types of rooftop penthouses could adversely affect White House security. In May 2015, NCPC and the USSS staff met with DCOP staff to discuss the security risks with the proposed penthouse regulations around the White House. After the meeting, it was determined that habitable space within penthouses would not be permitted within a two-block radius of the White House.

Since USSS submitted these comments, DCOP has modified the proposed text amendments for penthouses near the White House

- Habitable space within the penthouse is not permitted on any building within an area bound by I Street, NW to the north, Constitution Avenue, NW to the south, 19th Street, NW to the west, and 13th Street, NW to the east

The proposed text amendments adequately addresses USSS security concerns related to the height and use of penthouses around the White House **NCPC staff commends the District of Columbia for coordinating with NCPC and the U.S. Secret Service staff to address matters related to security around the White House.**

Clarifying Provisions

In April 2015, NCPC staff recommended clarifying provisions related to parapet walls and railings, setbacks, and special exceptions, consistent with the requirements under the Height Act (see Attachment A)

DCOP modified the proposed text amendments in § 411 18 (general setback provisions) and § 411 23 (penthouse structures less than four feet) to include the following setback requirements

- § 411 18 "Penthouses for mechanical or habitable space, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, and any guard rails on a roof shall be setback from the edge of the roof upon which it is located as follows
 - (a) A distance equal to its height from the following
 - (1) Front building wall of the roof upon which it is located,
 - (2) Rear building wall of the roof upon which it is located,
 - (3) Side building walls of the roof upon which it is located in the R-1 through R-4 zones that are adjacent to a property that has a lower or equal permitted matter of right building height,
 - (4) Side building walls of the roof upon which it is located in other than the R-1 through R-4 zones that are adjacent to a property that has a lower permitted matter-of-right building height; and
 - (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,
 - (b) A distance equal to one-half (0 5) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of (a)(3) through (5), and
- § 411 23 Except as otherwise noted in this section, penthouse structures less than four feet (4 ft) in height above a roof or parapet wall should not be subject to the requirements of this section

Any portion of a penthouse located above the limit of height of the Height Act, requires a 11 setback NCPC staff requested further clarification on the proposed setbacks in §411 18(b) and § 411.23 concerning their consistency with the Height Act DCOP staff confirmed that setback requirements in § 411 18(b) and § 411 23 must comply with the Height Act, therefore, would not be applicable for portions of the penthouse above the limit of height In addition, DCOP staff noted that all of the proposed text amendments are subject to the requirements under the Height Act

CONFORMANCE TO EXISTING PLANS, POLICIES AND RELATED GUIDANCE

The federal interests discussed above are defined and guided by policies in the Federal Elements of the *Comprehensive Plan for the National Capital* and Commission endorsed plans such as *the Legacy Plan*, *the Monumental Core Framework Plan*, and the *SW Ecodistrict Plan* For example, the Comprehensive Plan includes policies that aim to protect the vistas and views that are integral to the national capital's image, respect and preserve the monumental character of the National Mall and surrounding areas, and prevent new development from diminishing the integrity of the National Mall and surrounding monumental core The Comprehensive Plan, along with NCPC's planning documents, guide staff's analysis of how the text amendments to the rooftop penthouse regulations may impact these interests Staff's comments and analysis are consistent with policies in the Comprehensive Plan to preserve the form and character of the nation's capital through enforcement of the 1910 Height of Building Act

CONSULTATION

NCPC staff has been consulting with the USSS, who have expressed security concerns with allowing habitable penthouses on buildings around the White House NCPC staff and the USSS have worked with DCOP to resolve these concerns.

ONLINE REFERENCE

The following supporting documents for this project are available online

- Zoning Case Information Summary

Prepared by A Dupont
August 28, 2015

IN REPLY REFER TO:
NCPC FILE No. Z C. 14-13

APR 29 2015

Chairman Anthony Hood
Zoning Commission for the District of Columbia
441 4th Street NW, Suite 200S
Washington, DC 20001

RE: NCPC Staff Comments on ZC 14-13, Text Amendments to Rooftop Penthouse Regulations

Dear Chairman Hood:

Thank you for providing the National Capital Planning Commission (NCPC) staff the opportunity to comment on the proposed rooftop penthouse text amendments to the District of Columbia Municipal Regulation Title 11, Zoning Regulations. In 2014, President Obama signed Public Law 113-103, which amended restrictions related to human occupancy of penthouses as set forth in the 1910 Height of Buildings Act (Height Act). This amendment followed the completion of the Height Master Plan, a year-long study to explore strategic changes to the Height Act conducted by NCPC and the District of Columbia Office of Planning (DCOP) at the direction of Congress. The DCOP's proposed zoning text amendment would allow human occupancy of penthouses, as permitted in the Height Act.

NCPC is interested in the form and character of the nation's capital, particularly along streets and avenues that abut national resources in the monumental core. Basic elements of building form, including height, penthouse and setback contribute to the character of city streets, vistas, and the setting in and around major historic and cultural sites. NCPC staff has previously commented through the Zoning Regulations Review (Case No. 08-06A or ZRR) regarding the importance of building mass along such avenues as North Capitol Street, South Capitol Street, Pennsylvania Avenue, and Independence Avenue.¹ Although separate zoning regulatory cases, both the proposed rooftop penthouse regulations and the ZRR have interrelated implications for the basic elements of building form along these major streets and avenues.

Two avenues where it is particularly important to weigh the proposed penthouse regulations comprehensively with the ZRR include Independence Avenue, which abuts the National Mall; and Pennsylvania Avenue, which connects the White House and the United States Capitol. The draft ZRR (as proposed in December 2014) contemplates new matter-of-right height for development on these significant avenues in the monumental core and in the case of Independence Avenue proposes limitations on penthouses. It is unclear how the new penthouse regulations would be applied to these areas and how they might impact important views surrounding the avenues and

¹ NCPC staff commented on ZC 08-06A sent to the Zoning Commission on 6/24/14 and 9/15/14

Mr. Anthony Hood

Page 2

symmetry of development without knowing the final zoning to be adopted in the ZRR. See Appendix A for more detailed comments and illustrations. We respectfully request that the Zoning Commission review the application to amend the penthouse regulations for these two sections of the avenues concurrently with or after – rather than in advance of – the ZRR.

NCPC staff is also coordinating with the United States Secret Service (USSS) on the proposed penthouse regulations in relation to security concerns around the White House. The USSS have indicated to us that they are submitting comments to the Zoning Commission under separate cover.

Finally, NCPC recommends clarifying provisions related to parapet walls and railings, setbacks, and special exceptions. See Appendix B for more information.

These comments are provided by NCPC staff for your consideration and do not represent an official Commission action. NCPC staff enjoyed a cooperative relationship with DCOP during the Height Master Plan and ZRR and looks forward to the opportunity for additional engagement on these recommendations. If you have any questions, please contact Angela Dupont at (202) 482-7232 or Angela.dupont@ncpc.gov

Sincerely,



Marcel C. Acosta
Executive Director

cc: L. Preston Bryant, Jr., Chairman, National Capital Planning Commission
Sharon Schellin, Secretary to the Zoning Commission

Pennsylvania Avenue, NW

In 1975, the Pennsylvania Avenue Development Corporation (PADC) adopted the PADC Plan which includes areas along Pennsylvania Avenue, NW between 3rd and 15th Streets, NW. The PADC Plan provides a framework for how development will occur along the Avenue. It includes height and setback regulations that frame the view of the U S Capitol. Development within this area is required to be consistent with the PADC Plan.

The historic Federal Triangle sits just to the south, and has lower building heights (approximately 81 - 137 feet) that heavily influence the overall character of the Avenue. The PADC Plan advocates for lower initial building heights on the north side of Pennsylvania Avenue before stepping back to achieve a maximum height of 160 feet, shifting this additional height out of the primary viewshed. This design solution accommodates the extra height, protects this nationally significant viewshed, and reinforces the symmetry of the Avenue.¹

Of the 15 blocks, there are only 4 instances on the Avenue where the square guidelines have ever allowed additional height to accommodate a penthouse. 3 of these were allowed to accommodate mechanical equipment or stairwell access up to 168 feet (Squares 291 - 1275 *Pennsylvania Avenue*, Square 322 - *Presidential Building* and Square 348 - 1001 *Pennsylvania Avenue*). The Willard Hotel (Square 225) has an 18.5' penthouse in addition to the 160' building.

The majority of 160' buildings for the 15 blocks on the north side of Pennsylvania Avenue do not include penthouses. Most recently, square guidelines were developed through the PADC Plan process (which is a federal requirement) for the Newseum site (Square 491). While the building is allowed 160' in height, the guidelines required penthouse related uses (mechanical equipment) to be incorporated into the 160' building height.

Based on this most recent application of square guidelines and the majority of buildings along the Avenue today, NCPC staff believes that penthouse related uses should be incorporated into the 160' building height, consistent with the overall guidance in the PADC plan.

Recommendation

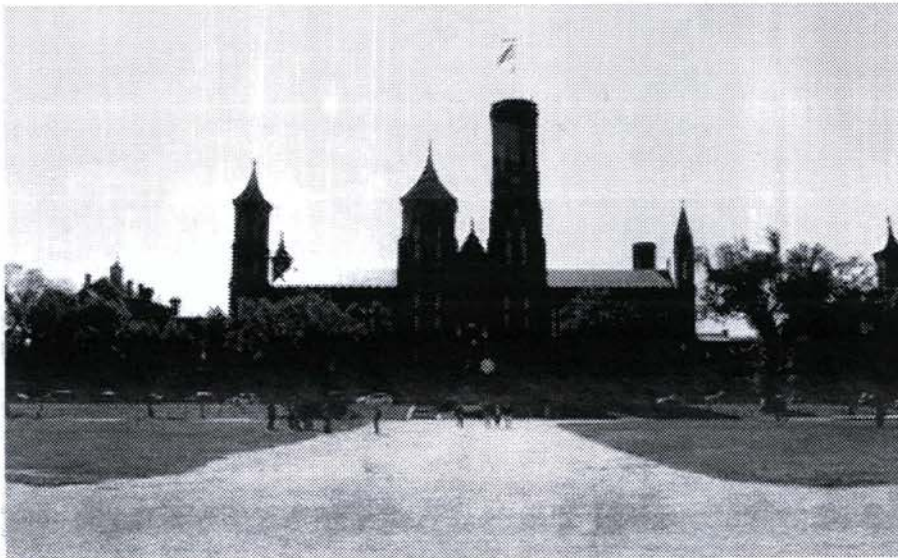
NCPC staff proposes that no penthouses (both mechanical and habitable) be allowed on 160' buildings within the PADC boundary (squares fronting Pennsylvania Avenue between 3rd and 15th Streets, NW) unless otherwise allowed through individual square guidelines in the Pennsylvania Avenue Development Plan.

¹ [1] "New construction adjacent to historic structures will be required to take into account the qualities of the adjacent structures (with regard to height, scale, proportion, rhythm, texture, materials, architectural detail, and amount of variety among the structures with respect to these qualities as well as style and date of erection) to ensure that these structures maintain their historic or architectural integrity, but will not necessarily be required to conform to them." (PADC General Guidelines Section 910 14)

"All new development is conceived as an integral part of its surroundings, which include the remainder of the development Area, the Mall, the Federal Triangle, and the District's downtown and should support Pennsylvania Avenue's function as a bridge between the monumental Federal core to the south and the District's Downtown to the north." "The design of any development shall be coordinated with the massing, architectural design, servicing, pedestrian amenities, and uses of nearby development as prescribed under the Plan." (PADC General Guidelines Section 910 11)

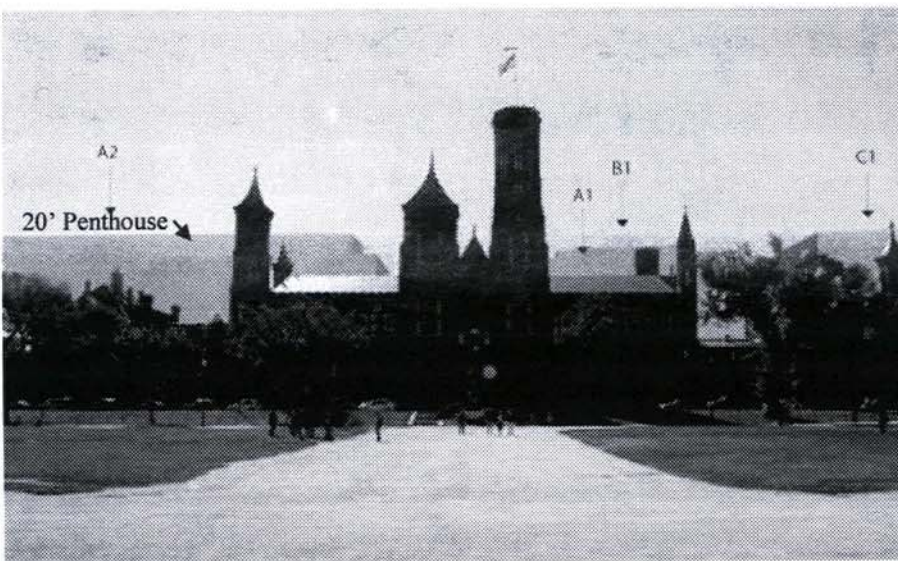
Independence Avenue, SW

NCPC staff identified concerns with the proposed penthouse regulations for both the current and proposed zoning on Independence Avenue between 6th and 12th Streets, SW. Current zoning allows buildings on Independence Avenue a matter-of-right height of 90' and 130' through the Planned Unit Development (PUD) process. The DCOP's proposed zoning in the Zoning Regulations Review (ZRR) allows buildings on Independence Avenue a matter-of-right height of 130' with an upper story step-back at 110' (in addition to a building line setback of 88' from Independence Avenue). Today, the National Mall is a public space within a park-like setting framed by trees and civic institutions as opposed to private development. The two images below show the impact of a 20' penthouse on top of 130' buildings on Independence Avenue as seen from the National Mall.



Left Image:

View of the Smithsonian Castle today from the center of the National Mall.



Left Image:

View of the Smithsonian Castle with new buildings at 130' in height with a 20' penthouse (total height of 150').

Note: This model assumes the proposed SW Ecodistrict parcelization. If Virginia Avenue and 11th Street are not rebuilt, the impact of development could be more significant because parcel size would substantially increase.

APPENDIX A

As previously indicated in staff's oral and written testimony to the ZC, any development over this 130' height (whether mechanical or habitable penthouses) would negatively impact the public open space views from the National Mall.

Recommendation

If buildings on Independence Avenue (between 6th and 12th Streets, SW) are allowed to achieve 130' in height (either through the PUD process with the current zoning or as a matter-of-right in the proposed Zoning Regulations Review):

NCPC staff proposes that no penthouses (both mechanical and habitable) be allowed.² All rooftop equipment and mechanical structures should be incorporated into the 130' building. Any penthouse development over 130' negatively impacts views of the Smithsonian campus and views from the National Mall.

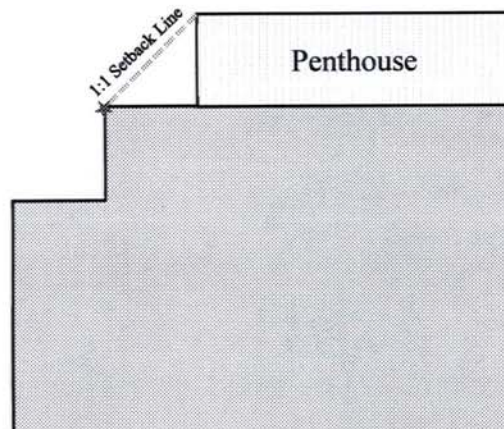
² NCPC staff comments on the ZRR sent to the Zoning Commission on 6/24/14 and 9/15/14 recommend that buildings on Independence Avenue in the proposed D8 zone be allowed a maximum building height of 110' and that they be setback 88' from the right-of-way centerline. If this recommendation were to be approved by the Zoning Commission in the ZRR, NCPC staff finds the proposed penthouse language acceptable with one caveat: an applicant should not be able to seek a special exception for setback relief for the side of the penthouse facing Independence Avenue.

Parapet Walls, Safety Railings, and Guard Rails

The proposed zoning regulations in §411.16 state that safety railings or guard rails required by the construction code shall not be considered as penthouses, therefore, would not have the proposed 1:1 setback for penthouses. The Height Act and zoning should continue to reinforce the street level views and minimize the visibility of rooftop elements. NCPC staff recommends revising the proposed regulations in §411.16 to clarify that any safety railings and guard rails above the limit of height in the Height Act should meet a 1:1 setback from the edge of the roof. NCPC staff notes that the Height Act allows parapet walls below the limit of height and all safety railings/guard rails that do not extend above the limit of height, would not require a setback.

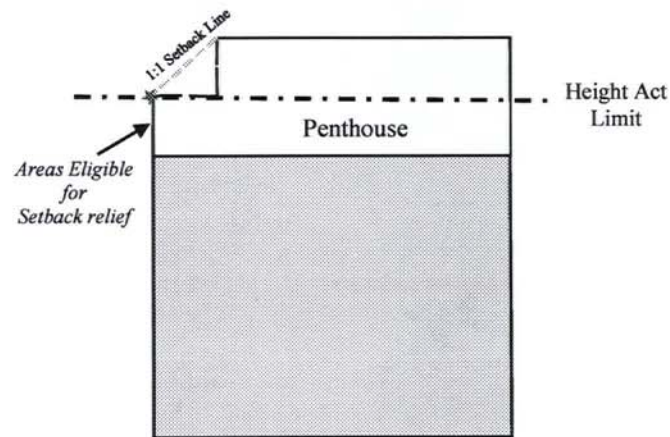
Penthouse Setback

The proposed 1:1 penthouse setback is consistent with the Height Act, which requires penthouses, ventilation shafts, and tanks to be setback from the exterior walls with a distance equal to their respective heights above the adjacent roof. For clarification purposes, NCPC staff recommends adding a diagram (see example below) and/or revising the proposed language in §400.7(b), §530.5(b), §630.4(b), §770.6(b), §840.3(b), and §930.3(b) to explain where to measure the 1:1 penthouse setback when buildings have an upper story step-back.



Special Exceptions

The proposed regulations in §411.11 would allow the BZA to grant relief from penthouse setback requirements under certain conditions. NCPC staff recommends clarifying in the proposed zoning regulations that only the portion of the penthouse under the limit of height of the Height Act would be eligible for setback relief and the height above the limit would require the 1:1 setback (as shown in the image below).





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The Honorable Ron Johnson

Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
The Honorable Jason Chaffetz

Mayor
District of Columbia
The Honorable Muriel Bowser

Chairman
Council of the District of Columbia
The Honorable Phil Mendelson

Executive Director

Marcel C. Acosta

**IN REPLY REFER TO:
NCPC FILE No. ZC 14-13**

SEP 10 2015

**Zoning Commission of the
District of Columbia
441 4th Street NW
2nd Floor, Suite 210
Washington, DC 20001**

Members of the Commission.

The National Capital Planning Commission, at its meeting on September 3, 2015, approved the enclosed action on the Text Amendments to Rooftop Penthouse Regulations. A copy of the Executive Director's Recommendation for the project is also enclosed

Sincerely,

**Marcel C. Acosta
Executive Director**

Enclosures

**cc: Eric Shaw, Director, DC Office of Planning
Anthony Hood, Chairman, Zoning Commission**



Commission Action

September 3, 2015

PROJECT
Text Amendments to Rooftop Penthouse
Regulations
Washington, DC

NCPC FILE NUMBER
ZC 14-13

NCPC MAP FILE NUMBER
00 00(06 00)44194

SUBMITTED BY
Zoning Commission of the District of Columbia

APPLICANT'S REQUEST
Approval of report to the Zoning
Commission of the District of Columbia

ACTION TAKEN
Approve comments as requested

REVIEW AUTHORITY
Advisory
per 40 U.S.C. § 8724(a) and DC Code § 2-
1006(a)

2015 SEP 14 AM 8:54

16 OFFICE OF ZONING

The Commission.

Notes that the Zoning Commission and the District of Columbia Office of Planning have addressed the comments previously raised by NCPC staff. These collaborative discussions have resulted in regulations that protect federal interests.

Commends the District of Columbia for coordinating with NCPC and the U.S. Secret Service staff to address matters related to security around the White House.

Supports the proposed text amendments to restrict penthouses to one-third of the total roof area with a setback distance equal to two times its height along Independence Avenue, SW.

Deborah B. Young

Secretary to the National Capital Planning Commission

9/10/15
[Date]