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October 7, 2015

Zoning Commission of the District of Columbia
One Judiciary Square – Suite 220 South
441 Fourth Street, NW
Washington, DC 20001

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Re. ZC Case 14-13 Proposed Penthouse Regulations

Honorable Members of the Commission:

This letter transmits my comparison of major portions of the present versus proposed penthouse regulations to govern penthouses and roof structures Submitted for myself alone, no one else – *amicus*

In this case, you have taken on issues that are complex and intertwined, far more so than might have been initially expected The reward, on adoption, will be to unlock the potential of occupancy of roofs in habitable penthouses and outdoor areas at roof level while, at the same time, harnessing these appropriately in terms of use, height, and overall expanse and external effect so that the benefits inure to the overall community and District while not being adverse to those nearby – or below and within.

As you will find out, I have found many places that warrant, in my opinion, attention. Overall:

- I found the overall proposed term “penthouse” overly inclusive and inappropriate in its definition as it went far beyond any normal meaning of the term, capped with “regulations previously in effect” I offer one solution, another may be to craft a term and an acronym such as “Regulated Roof Structure (RRS)” and apply that or some other term/acronym consistently instead, just as “GAR” and “GFA” appear from time to time
- I have suggested definitions that I think would work across the entire zoning regulations, including one for “parapet” – which also solves a long-standing problem with multiple exclusions of the cousin to that term set out explicitly in the Height Act, “balustrade.”
- I found the proposed text, diagram, and labels at 411.9 explaining multiple heights very confusing; I offer alternatives I also comment on the Developers Roundtable request for flexibility in one context (I have added alternative language to theirs, but same idea)
- I offer a way to focus protection on penthouses and roof structures that abut an historic property, just when there is no jurisdiction for the Historic Preservation Review Board, believing that they will otherwise protect their charges if proposed encroachment would be detrimental. In fact, I believe that HPRB will typically have jurisdiction of both subject and abutting properties most of the time.
- I clarify what “by right” height means, so that when height rule exceptions increase from IZ rules, PUDs and receiving zones, or otherwise, all relevant increments are included.
- I examine the proposed language of Chapters 4 (R zones) and 5 (Special Purpose), the latter being a semi-clone for the other zones (CR, C, M, W, HE, USN and even WR) In the R and SP comparisons, I revise the format and content, but not the rules proposed, as to allowed maximum

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height, mezzanines, stories, and uses, this as a proxy for the other zone districts rules for the corresponding provisions (I am leaving comments on the IZ section itself to others.)

While I have suggested changes to the format, but not the effective rules, set out in penthouse height and use tables proposed, I have the distinct impression that these tables would be far more readily understood if the first column, now headed with "Zone District" was instead consolidated within section 411 and within identified ranges of allowed (or planned/permit-proposed heights) These would accommodate actual rights when the "by right" the basic zone rule imposes is increased by a receiving zone, design review, PUD, campus plan, removal from lot lines, public facility provision, etc., summarized *illustratively* thusly:

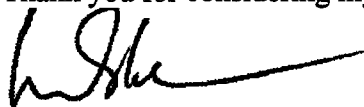
Height Allowed &/or Sought	Max Mechanical	Max Habitable	Mezzanine OK?	2 nd Story OK?
° 40 feet or less	10 ft. mechanical	no habitable	no mezzanine	no 2 nd story
° Over 40 thru 50 feet	15 ft mechanical	10 ft habitable	no mezzanine	no 2 nd story
° Over 50 thru 64 feet	18' 6" mechanical	10 ft habitable	no mezzanine	no 2 nd story
° Over 64 thru 84 feet	20 ft. mechanical	20 ft. habitable	no mezzanine	2 nd story OK
° 85 feet or over	20 ft. mechanical	20 ft. habitable	mezzanine OK	2 nd story OK

If also tied to height that is actually being sought in plans or permit drawings, this could also limit excessively tall penthouses/roof structures from sprouting on top of low-lying buildings where greater height is allowed but not utilized, or on portions thereof with multiple, some much lower, actual roofs.

I conclude with two other observations and, of course, recommendations.

- ZC Case 14-13 is similar to the GAR, R-4 and IZ cases that preceded: each must (somehow) be incorporated into the overall ZRR Administratively, it may be appropriate to sweep all or much of these case records into that officially before you when overall ZRR is taken up and (gasp!) decided
- The setback rules for taller apartment buildings and hotels ignore the reality that required light and air that must reach habitable rooms The most common design solution is to create an "L-shaped" tower with double loaded corridors. Overall, this is reasonably efficient But, the logical place for the central elevator core is at "inside corner" of the "L," where no wall has an exterior face. This has the immediate effect of having one corner of the elevator core at the back corner of the building, snug to the corner where the walls meet – and defying the setback the regulations impose. To me, such a case should not have to require a BZA case if the core is removed respectfully, perhaps at least 1 5-2 times its height above the top story from the nearer flanking property(ies).

Thank you for considering my report and its recommendations and comments, those above and attached.



Lindsley Williams

Attachment

cc: Jennifer Steingasser, Joel Lawson, and Elise Vitale (Kudos to each for their efforts to date!)

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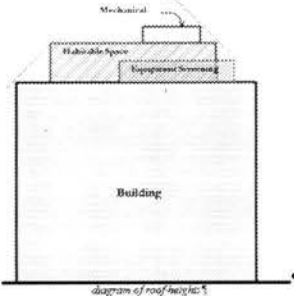
Framework for Considering Changes in District of Columbia Zoning Regulations Impacting Roof Structures and Their Placement on the Roof on Which Roof Structures Are Situated

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
Chapter 1 [Not defined in the present Zoning Regulations] [Not defined in the present Zoning Regulations] Story - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured. For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, stairway or elevator penthouses, or other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area. Story, top - the uppermost portion of any building or structure that is used for purposes other than housing for mechanical equipment or stairway or elevator penthouses. The term "top story" shall exclude architectural embellishment.	Chapter 1, THE ZONING REGULATIONS, § 199 DEFINITIONS, § 199.1 is amended as follows: By inserting the following new definitions for "The Height Act" and "Penthouse" in alphabetical order: Penthouse - A structure on or above the roof of any part of a building. The term includes all structures previously regulated as "roof structures" by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment. The Height Act - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended, D.C. Official Code §§ 6-601.01 to 6-601.09). By amending the definition of "Story" to delete the phrases "stairway or elevator" and "other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area"; and by amending the definition of "Story, top" to delete the phrase "housing for mechanical equipment or stairway or elevator" so that the definitions will read as follows: Story - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured. For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses. Story, top - the uppermost portion of any building or structure that is used for purposes other than penthouses. The term "top story" shall exclude architectural embellishments.	The proposed definition will lead to confusion as it defies the common meaning of the term "penthouse." Worse, the scope of "structures previously regulated" is opaque, with very few officials having a clue as to what is included and excluded. Suggestions follow on next page. Having a definition of the Height Act makes good sense in this context, however it appears at times without the article "The" so it may be better defined just as "Height Act". While proposed language likely follows intent of the amending language, the final "or" is relocated to appear prior to "penthouse." Recommend last phrase clarify the exclusion and read "... shall not include any located in cellars, penthouses, or other covered roof structures whose interior height is less than six feet, six inches (6 ft., 6 in.)." It may be better to describe the "top story" as the "uppermost occupied portion of any building or structure used for purposes other than an occupied penthouse or other structures allowed to be situated on the roof over the top story." It may be that the term should exclude "architectural embellishments" but, if so, why not also exclude antennas, features less than 4 feet high, and all the elements set out in present section 411.16. Alternatively, see, suggested exclusion at proposed definition of roof structure [next page] and delete second sentence now proposed in Story, top.

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
		At least some, maybe all, of the following definitions or variations should be considered to add to 199.1, in alphabetical order: ?? Habitable Area/Habitable Space – “habitable area” refers to any open areas used for a permitted purpose. “Habitable space” refers to any enclosed penthouse space used for any permitted purpose other than mechanical space as defined above. [Adapted from proposed 411.2.] ?? Mechanical Area/Mechanical Space – “Mechanical area” refers to any open area where equipment is permitted to be situated. “Mechanical space” refers to any enclosed penthouse space used for mechanical equipment, including an elevator landing or over-run, or a stairway. [Adapted from proposed 411.2.] Parapet – A vertical extension of a building wall that rises above the level of the adjacent roof, typically using material similar to that of the wall below; provided that the term also applies in this title to a partially open form of parapet, one such type being a balustrade, provided, an open or railing or transparent, translucent or wire mesh safety barrier of fence is not a parapet. A parapet may have a distinct cap or “coping” across its top; if so provided, that coping is considered a part of the parapet it covers. Penthouse – A covered roof structure on or above the roof or top story of any part of a building. The term includes all structures previously regulated as “roof structures” by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment. Penthouse, habitable – A penthouse in which human occupancy is typical and expected. Penthouse, mechanical – A penthouse for equipment, stairways, and elevators and elevator overrides, in which any human occupancy is transient (stairway, corridor, lavatory, elevator or stairway lobby) except for those actively servicing and maintaining equipment and components therein. Roof Structure – Any building element located on or above the roof or top story of any building, e.g., screen walls to surround cooling towers or equipment, but excluding architectural embellishments, antennas, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilation systems, or plumbing vent stacks. New: also exclude “vegetation on roofs or over roof structures contributing to GAR” (Chapter 34). <i>(?? Provide, elsewhere, that if a roof structure is covered, it may not have anything added to the surface of that cover and rising above that, other than an antenna, architectural embellishment or GAR plants??)</i>

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation																																																											
400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures in a Residence District shall not exceed that given in the following table: ***** 400.5 A building or other structure may be erected to a height not exceeding ninety feet (90 ft.); provided, that the building or structure shall be removed from all lot lines of its lot for a distance equal to the height of the building or structure above the natural grade. 400.6 A church may be erected to a height of sixty feet (60 ft.); provided, that it shall not exceed the number of stories permitted in the district in which it is located.	Chapter 4, RESIDENCE DISTRICT; HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows: Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), is amended as follows: By amending § 400.1 to add the phrase “, not including the penthouse,” so that the entire subsection reads as follows: 400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures, not including the penthouse, in a Residence District shall not exceed that given in the following table: ***** By adding new §§ 400.5 and 400.6 to read as follows: 400.5 The height of a rooftop penthouse, except as restricted in § 400.6, as measured from the surface of the roof upon which the penthouse is located, shall not exceed that given in the following table: <table><tr><th>ZONE-DISTRICT:</th><th>Maximum Penthouse Height:</th><th>Maximum Penthouse Stories:</th></tr><tr><td>R-1-A, R-1-B, R-2, R-3, R-4, R-5-A:</td><td>10 ft. 0"</td><td>1</td></tr><tr><td>R-5-B:</td><td>10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overruns</td><td>1, second story permitted for mechanical equipment</td></tr><tr><td>R-5-C:</td><td>16ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overruns</td><td>1, second story permitted for mechanical equipment</td></tr><tr><td>R-5-D:</td><td>20 ft. 0"</td><td>1 plus mezzanine, second story permitted for mechanical equipment</td></tr><tr><td>R-5-E:</td><td>20 ft. 0"</td><td>1 plus mezzanine, second story permitted for mechanical equipment</td></tr></table> 400.6 A non-residential building constructed pursuant to §§ 400.7 through 412 shall be permitted a penthouse of eighteen feet six inches (18 ft. 6 in.) in height maximum. Subsection 400.7 is repealed.	ZONE-DISTRICT:	Maximum Penthouse Height:	Maximum Penthouse Stories:	R-1-A, R-1-B, R-2, R-3, R-4, R-5-A:	10 ft. 0"	1	R-5-B:	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overruns	1, second story permitted for mechanical equipment	R-5-C:	16ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overruns	1, second story permitted for mechanical equipment	R-5-D:	20 ft. 0"	1 plus mezzanine, second story permitted for mechanical equipment	R-5-E:	20 ft. 0"	1 plus mezzanine, second story permitted for mechanical equipment	The term “penthouse” is a problem here as it means far more than what that term ordinarily means. Instead, consider “not including antennas, architectural embellishments, or structures or portions of a building that are permitted above the top story for any allowed purpose or occupancy.” What happens to former section 400.5? If retained but repositioned just after new 400.6 and 400.7, other provisions would have to be renumbered as well, as would the amended text where referencing same. What happens to former section 400.6? If retained but repositioned just after new 400.6 and 400.7, other provisions would have to be renumbered as well, as would the amended text where referencing same. As discussed earlier, the terms “penthouse” and here “, rooftop penthouse” are ill-suited to the universe of building elements intended as they include a much wider array, as the terms are normally understood, of structures and enclosed spaces that may be used for mechanical equipment, stairways, and at times human occupancy, and for other purposes as well, restate thusly: 400.5 The height and use of a roof structure (a penthouse or other roof structure four feet (4 ft.) or greater), except as allowed in § 400.6, as measured from the surface of the roof upon which the penthouse or other roof structure is located, shall not exceed that given in the following table: <table><tr><th rowspan="2">ZONE-DISTRICT</th><th colspan="2">Maximum Height</th><th colspan="3">Maximum Stories and Use Limitations</th></tr><tr><th>Mechanical Penthouse</th><th>Habitable Penthouse</th><th>Stories (Any Allowed Use)</th><th>Mezzanine (Any Allowed Use)</th><th>2nd Floor (Mechanical Use Only)</th></tr><tr><td>R-1-A, R-1-B, R-2, R-3, R-4, R-5-A</td><td>10 ft.</td><td>Not Applicable</td><td>1</td><td>Not allowed</td><td>Not allowed</td></tr><tr><td>R-5-B</td><td>15 ft.</td><td>10 ft.</td><td>1</td><td>Not allowed</td><td>Allowed</td></tr><tr><td>R-5-C</td><td>18 ft. 6 in.</td><td>10 ft.</td><td>1</td><td>Not allowed</td><td>Allowed</td></tr><tr><td>R-5-D</td><td>20 ft.</td><td>20 ft.</td><td>1</td><td>Allowed</td><td>Allowed</td></tr><tr><td>R-5-E</td><td>20 ft.</td><td>20 ft.</td><td>1</td><td>Allowed</td><td>Allowed</td></tr></table> Same comment as above. But, if 400.7 is repealed, the range remaining is 400.8 through 400.12. No comment warranted here vis-à-vis former 400.7 as these provisions are effectively relocated to § 411.18 and elsewhere, but see comments there.	ZONE-DISTRICT	Maximum Height		Maximum Stories and Use Limitations			Mechanical Penthouse	Habitable Penthouse	Stories (Any Allowed Use)	Mezzanine (Any Allowed Use)	2 nd Floor (Mechanical Use Only)	R-1-A, R-1-B, R-2, R-3, R-4, R-5-A	10 ft.	Not Applicable	1	Not allowed	Not allowed	R-5-B	15 ft.	10 ft.	1	Not allowed	Allowed	R-5-C	18 ft. 6 in.	10 ft.	1	Not allowed	Allowed	R-5-D	20 ft.	20 ft.	1	Allowed	Allowed	R-5-E	20 ft.	20 ft.	1	Allowed	Allowed
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Existing Provision (But, Showing Strike-Outs ZC-44-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
	Section 411, ROOF STRUCTURES (R), is retitled PENTHOUSES (R) and is amended to read as follows: 411.1 A penthouse permitted in this title shall comply with the conditions specified in this section. 411.2 For the purposes of this section, the term "mechanical space" refers to any enclosed penthouse space used for mechanical equipment, elevator over-run, or stairway; and the term "habitable space" refers to any enclosed penthouse space used for any purpose other than mechanical space as defined above. 411.3 [RESERVED] 411.4 A penthouse may house mechanical space or any use permitted within the zone, except as follows: (a) Habitable space within a penthouse on a detached dwelling, semi-detached dwelling, rowhouse or flat shall be limited pursuant to § 411.5 below; (b) Within residential zones and the Capitol Interest Overlay in which the building is limited to forty feet (40 ft.) maximum penthouse use shall be limited to mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space; (c) A nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104; and (d) Habitable space within the penthouse is not permitted on any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east. 411.5 Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail for a roof deck required by the Building Code, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under § 3104, provided the penthouse: (a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and (b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.	Instead, retitle to "Penthouses and Other Structures on Roofs over a Top Story (R)" "Penthouse," as it would be defined at 199.1, is vastly misleading. Replace with something more inclusive as in "penthouse [with revised definition] or other structures." I recommend taking these terms and defining them in definitions at 199.1, alphabetically. LW Change "A penthouse may house" to "A roof over a top story may house or support" Change from "within the penthouse" to "above the top story" and add a restriction on occupancy of the roof's open areas as well if security officials confirm a need for this. A roof deck is not itself ever required by the Building Code, just the railing when a roof deck does or will exist; instead of "a guard-rail for a roof deck required by the Building Code," perhaps "a guard rail required by the Building Code for a roof deck."

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
	411.6 All penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color, except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure. 411.7 Mechanical equipment shall be enclosed fully, except that louvers for the enclosing walls may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls. 411.8 When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level. 411.9 Enclosing walls of habitable space within the penthouse shall be of equal, uniform height as measured from roof level. Enclosing walls of mechanical space within the penthouse may be of the same height as the enclosing walls of habitable space, or may be of a single, different uniform height, and required screening walls around uncovered mechanical equipment may be of a single, different uniform height. The diagram that follows depicts a penthouse compliant with the requirements of this subsection.  411.10 Enclosing walls of a penthouse from roof level shall rise vertically to a roof, with a slope not exceeding twenty percent (20%) from vertical.	Equipment need not be "enclosed fully," which implies "covered;" "fully surrounded" is a more apt term. Use that instead. Moreover, there is often no need to cover a range of mechanical equipment, not just cooling towers, so. Replace second sentence to read, "Cooling towers and mechanical equipment need not be covered but they must be surrounded by walls that are as tall as the equipment they surround." Provide same flexibility when separated stairs are needed, e.g., per Building Code, thus: "when separate stairways or elevator cores are required, there may be one (1) enclosure for each such stairway or elevator core at each roof level." As proposed, the rules contemplate three heights (excluding elements that are under four feet (4 ft.), each to be uniform on given roof top: • Mechanical penthouse • Habitable penthouse • Equipment enclosures (implying "covered") or screening walls ("open to the sky") As written, proposed 411.9 diagrams the first but does not discuss it explicitly, even though it may include cooling towers of the allowed height with surrounding walls of the same height (louvers optional). The text should likely state that equipment located <i>beyond</i> the limits of the mechanical penthouse are limited to the height allowed habitable space or a single lesser height, thereby gaining greater rooftop area in which to locate that with its lesser required setbacks. <u>Developer Roundtable requested (Exhibit 127 in case record) flexibility on this single height; this could be provided in various ways, perhaps as "When there is more than one equipment enclosure or screened area and these do not abut or face each other, each may have its own consistent height."</u> In the diagram, change the terms • "Mechanical" to "Mechanical Penthouse" • "Equipment Screening" to "Roof Structure Enclosing or Screening Equipment." MAYBE? Add a parapet to this diagram or create and include a separate diagram depicting a piece of mechanical equipment that is less than four feet (4 ft.) high positioned within twelve inches (12") of a parapet, allowed there since the low-lying equipment would be fully screened by the parapet.

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
	411.11 The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10, even if such structures do not meet the normal setback requirements of § 411.18, upon a showing that: (a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot, or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable; (b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and (c) The light and air of adjacent buildings will not be affected adversely. 411.12 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas: (a) Zones where there is a limitation on the number of stories other than the C-3-B zone; and (b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and Second Street, S.W. 411.13 For the purposes of calculating floor area ratio for the building, the aggregate square footage of all space on all penthouse levels or stories or measuring six and one-half feet (6.5 ft.) or more in height shall be included in the total floor area ratio permitted for the building, with the following exceptions: (a) Mechanical space; (b) Habitable space devoted exclusively to communal rooftop recreation; (c) Habitable space within a penthouse with a floor area ratio of less than four-tenths (0.4); and (d) Mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system. 411.14 Areas within curtain walls or screening without a roof, used where needed to give the appearance of one (1) structure, shall not be counted in floor area ratio, but shall be computed as a penthouse to determine if they comply with § 411.12. 411.15 The gross floor area of habitable space within a penthouses shall be included in calculations to determine the amount of off-street vehicle parking, bicycle parking, and loading as required elsewhere in this title; except that communal recreation space or other ancillary space associated with a rooftop deck shall not be included.	

Existing Provision (But, Showing Strike-Outs ZC-44-43 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
	411.16 For residential buildings, the construction of penthouse GFA, including all forms of habitable space, is subject to the Inclusionary Zoning set-aside provisions of Chapter 26. 411.17 For non-residential buildings, the construction of habitable penthouse GFA, including all forms of habitable space, shall trigger the affordable housing requirement as set forth in § 414. 411.18 Penthouses for mechanical or habitable space, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, and any guard rail 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 (c) A distance equal to two (2) times its height from any building wall of the roof upon which it is located which fronts onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W., or fronting onto Pennsylvania Avenue, N.W. between 3rd Street, N.W. and 15th Street, N.W.	This is what is already in 411.14. To me, the "area" such nominal walls enclose should not be part of the rooftop percentage or fractional limits, not just FAR. Replace "Penthouses for mechanical or habitable space, screening around unenclosed mechanical equipment" with "Roof structures, including screening around mechanical equipment rising that have a height of four feet (4 ft.) or more." This provision SHOULD NOT APPLY if the property is itself subject to the jurisdiction of the Historic Preservation Review Board as it has ample authority to consider impact and placement of roof structures in such cases; <u>it should only apply when the subject property is not itself under the jurisdiction of the Historic Preservation Review Board, abuts a property that is under the Board's jurisdiction AND that a side of the subject property's roof structure confronts the property that is under that Board's jurisdiction.</u>

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
	411.19 Except as required in § 411.12 above, no setback is required from any side building wall that is adjoining another building wall with an equal or greater matter of right height. 411.20 For purposes of applying penthouse setbacks: (a) Walls of buildings that border any courtyard other than closed courtyards shall be deemed to be exterior walls; (b) Setbacks shall be applied to adjoining walls when the adjacent property has a lower matter-of-right height, and (c) Setbacks shall be applied when the adjacent property is improved with a designated landmark or contributing structure to a historic district. 411.21 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Chapter 27 of this title. 411.22 For purposes of this section, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, and plumbing vent stacks shall not be considered as penthouse structures. 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 shall not be subject to the requirements of this section. 411.24 A request to add penthouse space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of Chapters 16, 18, 28, or 29 prior to (EFFECTIVE DATE OF THIS AMENDMENT) may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to § 3030 provided: (a) The item shall not be placed on a consent calendar for a period of thirty (30) days minimum following the filing of the application; and (b) The Office of Planning shall submit a report with recommendation a minimum of seven (7) days in advance of the meeting.	Replace "penthouse setbacks" with "setbacks of penthouses and roof structures". CRITICAL: Provide that "lower height" does not apply if the adjacent site has rights to a greater height if it is located in a receiving zone, is approved for greater height in at least a First Stage order for a Planned Unit Development, or is a potential site where inclusionary bonuses provide additional height by right. PERHAPS EVEN? Provide that the Historic Preservation Review Board's review, if prior, may declare its satisfaction with any encroachment greater than that otherwise required, in which case required setback may be reduced or eliminated. Essentially, this is existing 411.15. Why not exclude all or much of this by definition? Essentially, this is existing 411.16. Why not exclude by definition? Essentially, this is existing 411.17. Perhaps, exclude by definition? If retained, replace "penthouse structures" with "penthouses and roof structures". Add Chapter 36 (Walter Reed)

Existing Provision (But, Showing Strike-Outs ZC-44-43 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
	411.25 In addition to meeting the requirements of § 3030, an application made pursuant to § 411.24 shall include: (a) A fully dimensioned copy of the approved and proposed roof-plan and elevations as necessary to show the changes; (b) A written comparison of the proposal to the Zoning Regulations; and (c) Verification that the affected ANC has been notified of the request. 411.25 Pursuant to § 5 of the Height Act, D.C. Official Code § 601.05(h), a penthouse may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback back and other restrictions stated in the Act.	Renumber as this provision is the second of two identified as 411.25; change to 411.26.

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation																		
530 HEIGHT 530.1 Except as specified in §§ 530 through 537 and in chapters 20 through 25 of this title, the height of buildings or structures in an SP District shall not exceed the height set forth in the following table: <table border="1"> <thead> <tr> <th>ZONE DISTRICT</th><th>MAXIMUM HEIGHT (Feet)</th><th>MAXIMUM HEIGHT (Stories)</th></tr> </thead> <tbody> <tr> <td>SP - 1</td><td>65</td><td>No Limit</td></tr> <tr> <td>SP - 2</td><td>90</td><td>No Limit</td></tr> </tbody> </table> ***** 530.4 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews. 530.5 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows: (a) It shall meet the requirements of § 411; (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and (c) It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen-foot six inch (18 ft., 6 in.), height of the housing. 530.6 Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.	ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)	SP - 1	65	No Limit	SP - 2	90	No Limit	Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended as follows: Section 530, HEIGHT (SP), is amended as follows: By amending § 530.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows: 530.1 Except as specified in §§ 530 through 537 and in Chapters 20 through 25 of this title, the height of buildings or structures, not including a penthouse, in an SP District shall not exceed the height set forth in the following table: <i>[no such table remains per instruction above.]</i> By amending § 530.4 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows: 530.4 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews. By amending § 530.5 to read as follows: 530.5 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table: <table border="1"> <thead> <tr> <th>ZONE DISTRICT</th><th>Maximum Penthouse Height</th><th>Maximum Penthouse Stories</th></tr> </thead> <tbody> <tr> <td>SP-1</td><td>10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides</td><td>1, second story permitted for mechanical equipment</td></tr> <tr> <td>SP-2</td><td>20 ft.</td><td>1 plus mezzanine; second story permitted for mechanical equipment</td></tr> </tbody> </table> Subsections 530.5 and 530.6 are repealed.	ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories	SP-1	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1, second story permitted for mechanical equipment	SP-2	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment	The word “penthouse” should be changed to a term that fully describes and defines the scope of the provision, as in “penthouse or roof structure.” The instruction should provide that the existing table is retained. Variation of this section appears multiple times in the regulations and could be consolidated in one place or added to the exclusions by definition. If the change instruction were accurate, section 530.5 would be amended as shown and 530.6 would be noted as “[Repealed]”; 530.7 would remain as is.
ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)																		
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Existing Provision (But, Showing Strike-Outs-ZC-14-13-Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
530.7 Where required by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), a height in excess of that permitted shall be authorized by the Mayor. 537.1 The provisions of § 411 shall also regulate roof structures in SP Districts. 537.2 The provisions of § 411 shall also regulate penthouses in SP Districts.	Section 537, ROOF STRUCTURES (SP) is renamed PENTHOUSES (SP), and is amended as follows: By amending § 537.1 to replace the phrase "roof structures" with "penthouses" so that the subsection reads as follows: 537.1 The provisions of § 411 shall also regulate penthouses in SP Districts. Subsection 537.2 is repealed.	This section appears multiple times in the regulations and could be consolidated in one place. Here, "penthouse" should be changed to a term or expression that fully conveys the scope of the provision, as in "penthouses and roof structures", both of which would be defined (above).

Existing Provision (But, Showing Strike-Outs ZC-14-13 Proposes)	Proposed Provision (per DCR of August 7, 2015)	LW's Analysis and Recommendation
This analysis does not delve into changes proposed for the Mixed Use Commercial-Residential (CR), Commercial (C), Industrial (M), Waterfront (W), Hill East, (HE) or Union Station North (USN) zone districts (Chapters 6, 7, 8, 9, 28, and 29 respectively) or changes proposed to any of the Overlay zones since the changes are largely designed to insert identical or nearly identical changes proposed for the Special Purpose (SP) zone district into them.		
Likely an oversight, the proposed rulemaking omits any treatment of the provisions in the Walter Reed (WR) zone district, an district classification with mapping that came into effect September, 2015 (Chapter 36) In WR, the penthouse rules reference section 411 and 770, but this looks incomplete to my eye given considerable variation in height and density (bulk) allowed across the wide-ranging WR district classifications.		
Likewise, this analysis does not delve into the changes proposed for the provisions on Inclusionary Zoning (Chapter 26) where very little content relates to the purposes of these amendments, and the issue is to ensure that the scope reaches whatever term is adopted to fully describe the scope as in “penthouses and roof structures.” The same holds for changes proposed for Special Exception provisions at section 3104.1 where the term “penthouse” would need to be conformed to whatever finally describes the full scope, as in the remark about Chapter 26.		