



Advisory Neighborhood Commission 4B

6856 Eastern Avenue, NW - Suite 314

Washington, DC 20012

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Ron Austin, ANC 4B06, Chairperson; Douglass Sloan, ANC 4B09, Vice Chairperson;

Judi Jones, ANC 4B07, Secretary Frederick Grant, ANC 4B03, Treasurer,

Andre Carley, ANC 4B01, Frank Jones III, ANC 4B02; Brenda Parks, ANC 4B04; Brenda Speaks, ANC 4B05;

October 7, 2015

Mr. Anthony Hood
Chairperson
D.C. Zoning Commission
Office of Zoning
One Judiciary Square
441 4th Street N.W., Suite 200 South
Washington, D.C. 20001

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Dear Chairperson Hood:

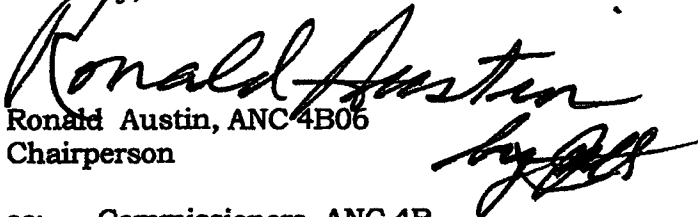
RE: ZC 14-13, Definitions, Use Permissions and Size Restrictions for Rooftop Penthouses

Dear Chairman Hood and members of the Commission:

At its regularly scheduled meeting on October 6, 2015 (notice of which was properly given, and at which a quorum of seven of eight members was present) ANC 4B voted (7 yes, 0 no) to adopt the attached resolution making recommendations regarding ZC 14-13, 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.

The Commission submits this resolution under the provisions of DC Code 1-309.10(a) through 1-309.10(h)(1), which require, among other things, that Advisory Neighborhood Commission recommendations be given "great weight" by DC government agencies, that DC government agencies "articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In doing so, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission."

Sincerely,


Ronald Austin, ANC 4B06
Chairperson

cc: Commissioners, ANC 4B
Hon. Brandon Todd, Councilmember, Ward 4
Mr. Gottlieb Simon, Executive Director, Office of Advisory Neighborhood Commissions
Ms. Lyn Abrams, Stop-the-Pop

ZONING COMMISSION
District of Columbia

CASE NO. 14-13
EXHIBIT NO. 30
ZONING COMMISSION
District of Columbia
CASE NO. 14-13
EXHIBIT NO. 130



Advisory Neighborhood Commission 4B
Government of the District of Columbia
6856 Eastern Avenue, NW - Suite 314
Washington, DC 20012

RESOLUTION #15-0906

**Recommendations to the Zoning Commission Regarding
ZC 14-13 (Notice of Proposed Rulemaking -- Text Amendments to
Chapters 1, 4, 5, 6, 7, 12, 15, 19, 26, 27, 29, and 33: Definitions, Use
Permissions, and Size Restrictions for Rooftop Penthouses)
Adopted October 6, 2015**

Advisory Neighborhood Commission 4B (the Commission) takes note of the following:

- The Zoning Commission has issued a Notice of Proposed Rulemaking in ZC 14-13, setting out its proposed final text of revised Zoning Regulations concerning Rooftop Penthouses,
- The Comprehensive Plan mandates the protection of the scale, character and architectural integrity of rowhouse neighborhoods and their role in providing housing for larger households, thus helping to keep young families in the District, through a collection of precise actions and policies, including some specifically relating to curtailing penthouses and added stories, that collectively constitute an *action program* by which this protection is to be achieved;
- Among these Comprehensive Plan provisions is one requiring setback from adjoining side walls of row houses and semi-detached houses,¹ which is needed because rowhouses are relatively short buildings, and the shorter the building, the greater the proportionate contribution that a penthouse of a given height makes to the total mass of the structure; the shallower the viewing angle from the street; and thus the greater the visual intrusiveness of the penthouse and the greater the need for side-wall setback;
- For various historical reasons rowhouse neighborhoods were generally over-zoned in the 1958 Zoning Regulations, with substantially higher height limits and greater densities than were reflected in the neighborhoods as actually built, making them especially attractive targets for redevelopment, either by mass demolition or by

¹ Action LU-2.1.B: Amendment of Exterior Wall Definition

Amend the city's procedures for roof structure review so that the division-on-line wall or party wall of a row house or semi-detached house is treated as an exterior wall for the purposes of applying zoning regulations and height requirements.

addition of marketable space to individual buildings by expansion upward and outward;

- Expansive redevelopment of individual buildings is peculiarly destructive in row house neighborhoods, in that a thoughtless change to the mass or height of one row house can automatically both directly diminish the livability of its immediate neighbors and rupture the integrity of the whole row;
- The market has increasingly incentivized popup developers to exploit the gaps between zoning standards and rowhouse neighborhoods as built;
- The immediately preceding draft text in this case set out options regarding FAR, height, setback, and allowable human occupancy of penthouses that could have produced regulations for R-5-B and higher rowhouse neighborhoods that would be disastrously at odds with what the Plan calls for; specifically, they would have offered popup developers the following irresistible incentive, as a matter if right, for any interior R-5B or higher rowhouse: a penthouse ten feet high and as wide as the house itself, providing up to several hundred square feet of prime marketable apartment space, without any sacrifice of allowable FAR – an FAR freebie; experience with existing popup projects indicates that the result would often be a project that first adds at least one story and possibly as many as three, to get up to the 50-foot height limit, builds out horizontally if necessary to fill out the full zoning envelope, and then adds another 10-foot “story” of height with the penthouse;
- The proposed final text incorporates major changes that, as written or with further refinement, could forestall such damaging effects of excessive height and width of penthouses on rowhouses; specifically:

(1) **Height and width:** §411.5 of the text prohibits rooftop penthouses as a matter of right on any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone”, other than for mechanical equipment or a guardrail. They are allowed by Special Exception, for the sole purpose of providing a stair or elevator for roof access and up to 30 square feet of storage space ancillary to a roof deck, and cannot exceed ten feet in height. Assuming that 30 square feet is the total floor area of the roof structure – as we believe is intended, and this should be made clear – the dimensions of the structure’s exterior footprint would be proportionately curtailed, preventing it from spreading across the width of the building.

(2) **Setback:** The text requires setback from adjoining walls where the two buildings have the *same* legal height limit for R-1 through R-4 zones (§411.18(a)(3)), but for R-5 and other zones limits the requirement to walls adjacent to a property with a *lower* permitted height (§411.18(a)(4)). There is no perceptible reason for this arbitrary exclusion of rowhouses in Adams Morgan and other R-5 and Mixed Use zones from the protection offered by the first of these provisions. This unwarranted discrepancy can be readily corrected by amending §411.18(a)(3) to apply to any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone” rather than just to buildings in R-1 through R-4, using the same language as in §411.5 dealing with height, just discussed.

- In practical effect, enacting these measures would largely achieve the objectives of the Comprehensive Plan provision cited above that is specifically intended to deal with setback problems by requiring that common walls of rowhouses be regarded as exterior walls for setback purposes;
- It is especially important to base zoning rules for such visually important building features as penthouse height, width and setback on the physical characteristics of the building – as in the phrase “detached dwelling, semi-detached dwelling, rowhouse or flat” employed in the Penthouse text’s provision discussed above -- rather than its zoning, which often is seriously divergent from the built environment;
- The immediately preceding draft did not adequately address the question of compatibility of materials or design of a penthouse with the building, and presented options that would allow multiple structures, structures of differing heights, and structures with one or more non-vertical walls, conjuring visions of unsightly rooftop clutter randomly strewn about;
- The proposed final text requires generally that “penthouses and mechanical equipment shall be placed in one (1) enclosure and shall harmonize with the main structure in architectural character, material and color” (§411.6) and that “[e]nclosing walls of a penthouse from roof level shall rise vertically” (§411.10);
- The immediately preceding draft had envisaged the possibility of substantially exempting penthouse floor area used for human habitation from inclusion within allowable gross floor area;
- The proposed final text substantially curtails exemptions from gross floor area (§411.13),

RESOLVED:

- That the Commission **strongly recommends** that the Zoning Commission prohibit matter-of-right penthouses on any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone”, and limit the use and height and other dimensions of rowhouse penthouses that are allowed thereon by special exception, by enacting §411.5 of the pending draft, and clarifying that 30 square feet is the maximum floor area of roof structures covered by this provision; and
- That the Commission **strongly recommends** that the Zoning Commission enact the side-wall setback formula provided in §411.18(a) of the pending text, with §411.18(a)(3) amended so as to apply to any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone” and §411.18(a)(4) amended so as to reflect this change;

FURTHER RESOLVED:

That Commissioner Douglass Sloan, ANC 4B09, is hereby authorized to serve as the Commission's representative in all matters relating to this resolution.

FURTHER RESOLVED:

That, in the event the designated representative Commissioner cannot carry out his representative duties for any reason, the Commission authorizes the Chairperson to designate another Commissioner to represent the Commission in all matter relating to this resolution.

FURTHER RESOLVED:

Consistent with DC Code §1-309, only actions of the full Commission voting in a properly noticed public meeting have standing and carry great weight. The actions, positions and opinions of individual commissioners, insofar as they may be contradictory to or otherwise inconsistent with the expressed position of the full Commission in a properly adopted resolution or letter, have no standing and cannot be considered as in any way associated with the Commission.

ADOPTED by voice vote at a regular public meeting (notice of which was properly given, and at which a quorum of seven of eight members was present) on October 6, 2015, by a vote of 7 yes, 0 no.