

October 9, 2015

Chairman Anthony Hood and the Members of
the District of Columbia Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

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Re: Zoning Commission Case No. 14-13 – Goulston & Storrs Comments

Dear Chairman Hood and Members of the Commission.

We appreciate the opportunity to provide comments on the proposed amendments to the Zoning Regulations governing roof structures in D C We also greatly appreciate the efforts of this Commission, the Office of Planning, the Office of Zoning, the Office of the Attorney General, numerous community groups, property owners and developers, and individuals, as well as a wide range of additional stakeholders Our comments are as follows

I. Individual Section Comments and Recommendations

A. DEFINITIONS

<u>Section Number/Description</u>	<u>Comment</u>	<u>Recommendation</u>
Section 199 – Definition of “penthouse”	The new definition of “penthouse” includes all structures on or above the roof of any portion of the building It also references “roof decks and mechanical equipment” Section 411 23 excludes structures less than four (4) feet above the roof on which they stand	Ensure that the definition of roof structures works with Section 411 23, possibly by excluding structures of less than four (4) feet above the roof in the “penthouse” definition Eliminate the reference to roof decks in the “penthouse” definition If the setback of roof decks (below four (4) feet above the roof) is desired, include an express requirement for such setback in Section 411 9

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Section 199 1 – Definition of “gross floor area”	The new regulations no longer count all penthouse area as “gross floor area” Definition of GFA needs to be updated to reflect this	Revise as follows “Gross floor area The term “gross floor area” shall include basements, elevator shafts, and stairwells at each story, floor space used for mechanical equipment (with structural headroom of six feet, six inches (6 ft , 6 in), or more, penthouses <u>only to the extent required by Section 411.13</u>), attic space (whether or not a floor has actually been laid, providing structural headroom of six feet, six inches (6 ft , 6 in.), or more), interior balconies, and mezzanines The term “gross floor area” shall not include cellars, and outside balconies that do not exceed a projection of six feet (6 ft) beyond the exterior walls of a building, and penthouse space that is excluded pursuant to Section 411.13 ”
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B. PENTHOUSE DESIGN AND FORM

<u>Section Number/Description</u>	<u>Comment</u>	<u>Recommendation</u>
Section 411 6-411 9 – Heights of roof structure elements	Separate stair towers should be permitted to reach different heights	Add the following to § 411 6 “ except that a rooftop egress stairwell not containing any other form of habitable or mechanical space may be contained within a separate enclosure <u>and may be a single, different uniform height ”</u>
	As proposed, for a building with just mechanical space, the regulations will still require the entire roof	Modify § 411 9 as follows. “Enclosing walls of habitable space within the penthouse shall be of equal, uniform height as measured from roof

	structure to be driven by the height of the elevator override. Recommend modifying to permit different heights for the elevator override and other mechanical space	level Enclosing walls of mechanical space within the penthouse may <u>be</u> of the same height as the enclosing walls of habitable space, or may be of a single different uniform height, <u>or both;</u> <u>provided, that if no habitable space is provided, the enclosing walls of the mechanical space may be of two different uniform heights</u> And Required screening walls ”
Section 411 13 – Exceptions from building floor area ratio calculations	This provision should be revised to reflect the relationship to the term “Gross floor area ”	Revise § 411 13 as follows “411 13 For purposes of calculating floor area ratio for the building, the aggregate square footage of all space on all penthouse levels or stories measuring six and one-half feet (6.5 ft.) <u>six feet, six inches (6 ft., 6 in.)</u> , or more in height shall be <u>counted as gross floor area</u> and included in the total floor area ratio permitted for the building, with the following exceptions: []”
Section 411 16 – Exclusion of communal residential recreational space on roof	Residential recreation space on a roof should be excluded from calculations regarding additional inclusionary zoning or affordable housing contribution requirements This change would effectively require substantial additional payments for building amenities that are currently permitted and encouraged Further, the inclusion of such penthouse recreation space will have the effect of discouraging these roof amenities, which will be pushed into the building. This will have	Revise § 411 16 per comment “For residential buildings, the construction of penthouse GFA, including all forms of habitable space, <u>except that devoted exclusively to communal rooftop recreation or amenity space,</u> is subject to the Inclusionary Zoning set-aside provisions of chapter 26 ”

	the effect of reducing the number of residential units and therefore pressure the amount of IZ units provided by projects	
Section 411 18-411 20 – Setbacks	The current language in 411 18 unnecessarily repeats the phrase “of the roof upon which it is located” and the language in 411 20 appears to be duplicative of 411 18 Also, 411 20 relies on the established concept of “exterior walls” but it is undefined Recommend revising 411 18 to clarify what is, and is not, an exterior wall	Revise § 411 18 as follows, delete § 411 20 as unnecessary “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 <u>exterior walls</u> (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 <u>(5) Side building walls that are adjacent to Adjacent</u> 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, <u>For purposes of this section, front building walls, rear building walls, side building walls, and w Walls of buildings that border any courtyard other than closed courtyards shall be deemed to be exterior walls</u> (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 []”
Section 411.19 – Penthouse setback specifics when adjacent property approved for higher building height	If adjacent properties have been approved with building heights beyond the relevant matter-of-right building heights (through PUDs or Map Amendments), to reach the same or higher height as a subject property, no side wall setback should be required or, if required, it should be similar to Section 411 18(b)	Revise § 411.19 per comment. “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, whether such height is permitted as a matter of right or has been approved by the Board of Zoning Adjustment as a height variance or Zoning Commission pursuant to a design review or planned unit development application ”

C. AFFORDABLE HOUSING REQUIREMENTS

<u>Section Number/Description</u>	<u>Comment</u>	<u>Recommendation</u>
Section 414 - Non-residential habitable penthouse triggering affordable housing production requirement for non-profits and institutions	Housing linkage should not be required for use of rooftop space by non-profit uses such as libraries, museums, schools, and universities. By definition, such institutions are not engaged in a commercial enterprise and furthermore, since such institutions are often exempt from property taxes, they do not challenge their assessed value and would therefore likely pay more per square foot than a comparably-located commercial property owner. Note that review under Sections 206 and 210 would give the BZA and Commission additional control over school and university use of such space.	Revise § 414.3 as follows “414.3 The requirements of this section shall not apply to properties owned by the District government, or properties owned by the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes, <u>or properties owned or leased by non-profit organizations and institutions provided that such penthouse space is used by the non-profit organization or institution for uses consistent with its mission</u> ”
Section 414.5 – Section cite correction	This section includes an incorrect cite: “Section 414.7” should be “Section 414.6”	Revise § 414.5 per comment “414.5 If the owner constructs or rehabilitates the required housing, the provisions of §§ <u>414.6</u> through 414.11 shall apply.”
Section 414.8 – Qualification for rehabilitation of affordable housing	This section states that, in order for property to qualify as the destination of funds for the	Revise § 414.8 per comment “414.8 For purposes of this section, the word “rehabilitation” means the substantial renovation of housing for sale

	rehabilitation of affordable housing in compliance with this section, such property must be in “substantial violation of the Housing Regulations of the District of Columbia ” We recommend widening the circumstances allowing a building to receive funds for affordable housing One example to use is the current Downtown Development Chapter (Chapter 17 of the Zoning Regulations) This chapter includes language that affordable housing may be rehabilitated in compliance with Section 1706 23(e) if it was previously in nonresidential use, has been vacant for not less than 3 years or, if occupied, it is a tenant-sponsored purchase of the building	or rental that, <u>if previously in residential use, (i) is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR), (ii) has been vacant for not less than three (3) years prior to rehabilitation, (iii) or, if occupied, is a tenant-sponsored purchase of the building, or is located in a structure previously in nonresidential use.”</u>
Section 414 15 – Formula for non-residential affordable housing payment	The word “habitable” should be included in the last phrase of this section Also, per 411 13, this area is not “gross floor area ”	Revise §414 15 per comment “414 15 The contribution shall be determined by dividing the assessed value per square foot of land that composes the lot upon which the building is or will be located by the maximum permitted non-residential FAR and multiplying that amount times the penthouse non-residential <u>habitable gross floor area to be constructed</u> ”

Section 2602 1 – Applicability of Inclusionary Zoning provisions	This section should be slightly modified to ensure that either of the two outlined paths requiring Inclusionary Zoning, rather than a project possessing all of the outlined conditions in order to trigger Inclusionary Zoning	Revise § 2602 1(c)(3) to an “or” rather than an “and”
Section 2602 3 – Exclusions	The Southeast Federal Center Overlay is unique compared to other IZ exemptions The SEFC was exempted from the IZ requirements because it is already subject to a requirement that 20% of rental units be set aside for families earning 50% or less of the area median income, in accordance with current low income restrictions for tax-exempt housing bonds This requirement applies to all units, including those located in the penthouse. The regulations should be revised to exclude the SEFC Overlay because the units are already subject to a different affordable housing scheme Alternatively, at a minimum the regulation should be revised to exempt rental penthouse units in the SEFC from	Revise § 2602.3 as follows. “(e) Except for new habitable penthouse floor area as described in 2602.1(d), properties located in any of the following areas (1) The Downtown Development or <u>Southeast Federal Center</u> Overlay Districts, **** <u>(f) Properties located in the Southeast Federal Center Overlay District.”</u>

	IZ Imposing an additional administrative burden for penthouse units to comply with the IZ administrative requirements is unnecessarily burdensome	
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II Additional Concepts

Conversion of Non-conforming Penthouses

The amended Regulations should contemplate allowing for the conversion of legal non-conforming roof structures (i.e., those roof structures authorized by building permits and/or certificates of occupancy). Many properties have legal non-conforming roof structures and owners or other users would often wish to utilize the new roof structure concepts by employing the affordable housing contributions contemplated by the instant case. Such conversions would provide an additional source of funds for the Housing Production Trust Fund or otherwise assist with the provision of affordable housing.

We suggest adding the following provision:

“411.26 A non-conforming roof structure authorized by a building permit and/or certificate of occupancy existing or otherwise approved prior to *[insert the effective date of ZC Order No. 14-13]* may be converted into habitable space provided that (i) the provisions of Sections 411.15, 411.16, and 411.17 are observed, and (ii) the relevant non-conformity is not increased or extended.

Vesting Provision

Many projects have a long lead time from inception through design. In recent years, some fully designed matter of right projects have not proceeded to the full building permit stage because market conditions have not favored speculative buildings. Accordingly, we suggest the inclusion of vesting language. The proposed language regarding foundation to grade permits mirrors the vesting language that was recently adopted in connection with the new R-4 regulations (Z.C. Order No. 14-11). Therefore, we propose the following:

3202.10 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction shall be processed, and any work authorized by the permit may be carried to completion pursuant to the provisions of the roof structure regulations prior to *[insert the effective date of ZC Order No. 14-13]*, if:

(a) The Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to *[insert the effective date of ZC Order No. 14-13]*, or

(b) The project has

(1) An unexpired approval of a variance or special exception by the Board of Zoning Adjustment, or

(2) An unexpired approval of a design or concept design by the Historic Preservation Review Board (including a delegated approval made pursuant to 10 DCMR C §§ 319 through 321) or Commission of Fine Arts, and

(3) The vote to approve or the delegated action occurred

(A) Prior to *[insert the effective date of ZC Order No. 14-13]*, or

(B) On or after *[insert the effective date of ZC Order No. 14-13]*, and the application was filed prior thereto, or

(4) An unexpired approval of a first-stage, second-stage, or consolidated planned unit development, variance, special exception, campus plan, design review in the CG or SEFC zones, or concept design by the Historic Preservation Review Board or Commission of Fine Arts, provided, the vote to approve occurred prior to *[insert the effective date of ZC Order No. 14-13]*, or

(5) An unexpired approval of a variance, special exception, or design review in the CG or SEFC zones granted on or after the effective date of this title, for which a public hearing was held prior to *[insert the effective date of ZC Order No. 14-13]*, or

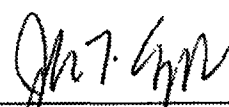
(6) An unexpired approval of a first-stage, second-stage, or consolidated planned unit development that was granted after the effective date of this title, but which was set down for a public hearing prior to *[insert the effective date of ZC Order No. 14-13]*, or

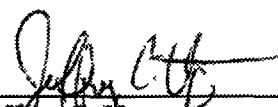
(7) Transferred TDRs or CLDs to the site prior to *[insert the effective date of ZC Order No. 14-13]*

We are available to provide any additional information on the above concepts. We greatly appreciate the opportunity to comment on this matter.

Respectfully submitted,


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