



ZC Case No. 14-13, Penthouse Regulations, Final Notice

Comment by Nancy J. MacWood, Chair
The Committee of 100 on the Federal City

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When political scientists and public policy students write about the 2007-2015 rezoning process in the District of Columbia, they will surely isolate the penthouse regulations as the major change in development standards, and emphasize the under-the-radar process. If the potential negative affect of these regulations weren't so alarming, the Committee of 100 would be showing some appreciation for the brazen pathway that the Office of Planning has taken to achieve their 10 year campaign to raise heights in the District. That the Zoning Commission is rewarding the Office of Planning with the one zoning change it clearly wants is astonishing. The Committee of 100 strongly urges the Zoning Commission to think about the uncontrollable change you have endorsed and to not vote final approval of the penthouse regulations.

The penthouse regulations are underpinned with a fabrication. Congressional action to authorize human habitation in one-story penthouses above the Height of Buildings Act maximum height limits is a narrow allowance. It has no effect on any D.C. zoning regulations outside downtown, and in downtown it only affects the zones that permit the maximum federal height. To implement the congressional action, the Zoning Commission had to amend the use of penthouses in those downtown zones, but it didn't need to take any action in other parts of the city where zoning height maximums have not reached the Height of Building Act maximums.

The Office of Planning has campaigned tirelessly for height increases across the city even though its leadership stated repeatedly at the beginning of ZRR that height changes were off the table. That disingenuous pronouncement was followed by unprecedented collaboration with the House of Representatives to advocate for the dissolution of the Height of Buildings Act throughout D.C. and to retain a liberalized version for downtown.

The response from District residents – during a summer season – was firm and unambiguous. District residents prize the city development pattern and reject across-the-board height changes. If there was any doubt that building height is a significant protected element in the District, past and future, it was dispelled by the nearly unanimous Sense of the Council resolution opposing any amendments to the Height of Buildings Act.

With that background, the Zoning Commission decided to consider two changes to the development standards outside the long and exhaustive ZRR process. First, the Zoning Commission considered controls on the widely criticized building of pop-ups. The existing regulations permitted maximum heights in many neighborhoods that exceeded actual building heights. The unrealized height allowance encouraged developers and owners to build additional floors and create often ugly and architecturally disjointed structures that marred the character of blocks and neighborhoods. The Zoning Commission acted swiftly to restrict this practice.

More recently, the Zoning Commission has considered a different type of pop-up with a very different result. Acknowledging that roof structures dedicated to equipment and structures that support a building's functioning are permitted in every zone, the Zoning Commission decided to encourage more of these structures by permitting them to be larger, to avoid limits on building bulk, and to permit them to be used for human habitation. The more permissive regulations would permit 10 foot structures on roofs in single family neighborhoods and 20 foot structures in other zones. Juxtaposing this permission with the controls put on similar height increases in row house neighborhoods suggests that the Zoning Commission doesn't like the word pop-up but has no problem with the term penthouse.

There is no evidence that the allowance for mechanical equipment roof top structures has been fully used. Indeed, it is hard to find many examples of a roof top structure beyond an HVAC unit in single family neighborhoods and on multi-family buildings these functional elements are typically no larger than necessary. The action taken by the Zoning Commission will encourage awkward pop-ups on roofs throughout District neighborhoods and more massive structures on multi-family buildings with no insurance that designs will be compatible, let alone attractive and contribute to the architectural character of neighborhoods or the skyline aesthetic of the city. **At a minimum, penthouses should not be permitted in single family zones for the obvious reasons associated with pop-ups.**

The Committee of 100 also urges the Zoning Commission to revise the development standards for penthouses where they may provide economic sense without jeopardizing the city's development pattern. Setbacks are a critical component to mitigating the loss of light and air from more massive roof structures, and ensuring that these added or planned structures do not present awkward boxes. Limits on the amount of roof coverage would encourage other uses on the roof, like gardens, that would support the District's environmental agenda. Similarly, penthouses with a Certificate of Occupancy should be included in the FAR controls. There is no precedent in zoning policy that we are aware of that exempts space for some active uses from the controls applied to the building envelope.

It is undeniable that zoning policies are contributing to the District's affordable housing crisis. We ask the Zoning Commission to reconsider the zones where the penthouse regulations would apply. In the previous paragraph we mentioned that penthouses may make economic sense and not pose aesthetic and other issues in some zones. But they will clearly contribute to

affordability issues in other zones. Class B housing is disappearing and is being replaced with Class A housing that by definition includes clubs, gyms, concierge and other attributes that most residents don't need and would easily relinquish for lower rents. Penthouse-enclosed recreational activities and social amenities will contribute to higher rents, and provide an incentive to create the high rent amenities on roofs of buildings that are not currently providing those amenities. We urge the Zoning Commission to not permit penthouses in zones that include much of the city's existing affordable housing, and to consider limiting them to the more dense zones where most of the luxury housing (that is unaffordable to most residents) exists.

The Committee of 100 urges the Zoning Commission to limit penthouses to one story. This was a significant condition approved by Congress to prevent the addition of mechanical equipment on top of roof structures for habitation. An important influence in the congressional consideration was the perception that mechanical equipment shelters are ugly and that structures for habitation would be better designed and more attractive capstones to buildings. The Zoning Commission's decision to allow second stories for equipment invites continued ugly treatment – only now it would be taller. We urge the Zoning Commission to maintain the existing controls on rooftop mechanical equipment and to only allow habitable penthouses where the roof will not share building support systems. As you know, many new buildings house these systems internally, so it seems unnecessary to provide an additional rooftop story to accommodate them.

We also find that there are inconsistencies within the regulations that will lead to new requests for clarification from the Zoning Administrator. For example, mezzanines are not defined as a story, but in some zones mezzanines are counted as a story and in other zones they are not. We recommend that mezzanines be treated consistently as a story.

We strongly oppose the provision that would allow the Zoning Commission to treat an addition of a penthouse to an approved Planned Unit Development (PUD) as a minor modification of the PUD. Minor modifications per ZRR will be handled on consent calendar, and thus, will not provide any public participation. A potential 20 foot increase in height is not minor, and, in fact, height and bulk are typically contested matters in PUD cases. To not allow the parties, including the ANC, to present testimony and cross examine the applicant is to deny them full participation in the PUD process.

Finally, the Committee of 100 strongly urges the Zoning Commission to extend the time limit on affordability of new units created when the penthouse is 1,000 sf or more. There will not be very many affordable units created per this provision but the few that are created should remain affordable in perpetuity. The approved twenty (20) year minimum for rental and sale units is not supportable. The District is severely lacking in affordable housing at all levels of income, except the highest brackets, and there is no reason to expect that in 20 years the housing crisis will be over. If in 20 years there is no longer a need to control market rate prices for a subset of units, the Zoning Commission can release the affordability controls at that time.

We also urge the Zoning Commission to require the beneficiaries of large penthouses to build the required affordable units. We should stop the practice of allowing developers to simply pay into the Housing Production Trust Fund. The District will see new affordable units much quicker if they are built by the developers who are required to produce them before getting a Certificate of Occupancy.