

**MEMORANDUM**

TO: District of Columbia Zoning Commission
FROM: Noel Lawson, Associate Director, Development Review
Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: October 26, 2015
SUBJECT: ZC 14-13, Text Amendment to the Zoning Regulations: Rooftop Penthouses Supplemental Report

After multiple public meetings and hearings, the Zoning Commission took proposed action to approve zoning amendments related to penthouse regulations, and set October 9, 2015 as the date upon which the record would close for written comments from the public

In a report dated October 14, 2015, OP noted that many detailed comments were submitted since the Notice of Proposed Rulemaking was published, and requested additional time for completion of the requested comments summary. Attached to that report, OP submitted a preliminary list of potentially substantive issues raised by the public, and requested Commission clarification or confirmation of these issues

The Commission set October 26, 2015 as the date for a special public meeting to discuss the issues noted and to provide OP with the requested direction. It is anticipated that OP will then prepare a final version of the text, reflecting this direction, and provide it to the Commission at least a week in advance of the November 9, 2015 public meeting, to allow the Zoning Commission the opportunity to take final action on that date. Any changes from the version advertised will be highlighted for ease of reference.

Attached to this report is the OP summary of the comments submitted to the record by the public. Many of the submissions are very detailed, and clearly involved a great deal of thought and care for which the Office of Planning is very appreciative. OP attempted to provide summaries of public comments which accurately reflect the tone and the content of the original submission, but this should not be considered a definitive documentation of public comments. For that, the spreadsheet includes a direct reference to each exhibit number so that the Commission and members of the public can refer back to the original document. Also included in the chart is an "OP Response" column.

One issue mentioned in the previous OP report, but not included on the October 14 list of issues, was "definitions". Many comments were received which recommended clarification of proposed or existing definitions, or the addition of new definitions to provide clarity or conciseness in the regulations. OP continues to review these with Office of the Attorney General (OAG) and Department of Consumer and Regulatory Affairs (DCRA) staff, but any clarifications to definitions would not result in substantive changes to the regulations themselves.

ZONING COMMISSION
District of Columbia
CASE NO. 14-13
EXHIBIT NO. 141

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
126	NCPC	Setbacks - Pennsylvania Avenue NW (§ 411.18)	The proposed text amendment would allow 20' penthouses with a 2 to 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.	The PADC does not appear to restrict penthouses within the PADC area. However, guidelines have been established for specific squares in the PADC, which have been interpreted as having force of law. OP had access to and reviewed two sets of guidelines, one of which restricted penthouses and the other did not. However, OP is not opposed to referencing the PADC guidelines in the zoning text in Section 411.18.
126	NCPC	Setbacks - Independence Avenue SW (§ 411.18)	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.	NCPC staff support, adopted by the NCPC as a consent calendar item.
126	NCPC	US Secret Service Concerns (§ 411.4)	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.	NCPC support, noting the further discussions with USSS staff.
126	NCPC	Setbacks (§§ 411.18(b) and 411.23)	NCPC staff requested further clarification on the proposed setbacks 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.	No portion of the zoning regulation text could supersede provisions of the Height Act, including the requirement that the penthouse be set back from the exterior walls distances equal to their respective heights above the adjacent roof, as interpreted by the Zoning Administrator
127	The Developers Roundtable	Enclosure walls (§ 411.9)	Our recommendation concerns § 411.9 of the proposed regulations. Specifically we recommend revising the language to allow lower, where possible, wall heights for portions of mechanical equipment penthouses. The plain language of the proposed section requires that each use (habitable, mechanical, screening) have its own uniform height or that the entire penthouse be one height. A penthouse with both habitable space and mechanical equipment may have two heights - one for each use. But because the proposed section requires uniform height for each use, it necessarily does not permit multiple heights for a single-use penthouse, such as an entirely mechanical penthouse. Instead, a single-use penthouse must, as proposed, have a single uniform height. Therefore, we request that the proposed § 411.9 be clarified and changed to allow a penthouse to have walls of multiple heights, regardless of the uses within it. Accordingly, we propose that the following sentence be added to § 411.9 "For a penthouse devoted entirely to mechanical space, uniform wall height is required only if necessary to fully enclose all of the mechanical equipment."	Permitting a single, second height for mechanical penthouses could help to minimize the bulk and therefore visual impact of a purely mechanical penthouse. OP would therefore support language that would allow the elevator override to be of a different height from other mechanical space. However, additional clarification from the Commission has been requested.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
128	Friendship Neigh'd Association	Low density zones	Low-Density Commercial Zones: Large portions of Wisconsin and Georgia Avenues are designated for low density commercial/moderate density residential on the Future Land Use Map ("FLUM") of the Comprehensive Plan. They are zoned C-2-A. When the Comprehensive Plan was approved, the C-2-A zone had a matter-of-right height limit of 50 feet and a FAR of 2.5, with no more than 1.5 for non-residential uses. With inclusionary zoning, the FAR was increased to 3.0. With this text amendment, the height limit would be 60 feet for habitable space, with an extra story and an additional 5 feet for mechanical equipment, and the FAR limit would be increased to 3.4, with no more than 1.9 FAR for non-residential uses. This represents a 36% increase in the total FAR above what was anticipated in the Comprehensive Plan when the C-2-A zone was designated as a low-density commercial zone. It is a 27% increase in the non-residential FAR, and a 20% increase in height. This increase in the matter-of-right height and density is not consistent with the low-density commercial designation in the Comprehensive Plan, which is described as primarily one- to three-story-commercial buildings.	As described in the Office of Planning setdown report of July 24, 2014, the proposal is not inconsistent with the Comprehensive Plan, furthers many policies of the Comprehensive Plan, and is consistent with direction arising from the study of the Height Act in 2014. The proposals are also fully consistent with the Comp Plan Land Use Map and Policy Map designations. The proposal decreases the maximum permitted height of a penthouse in these zones, augments the setback requirements (consistent with Zoning Commission ZRR discussions), and establishes a maximum FAR exemption for habitable space within a penthouse.
128	Friendship Neighborhood Association	Moderate density zones	Moderate-Density Commercial Zones: The C-3-A zone is used in some areas that are designated for moderate-density commercial use in the Future Land Use Map ("FLUM") of the Comprehensive Plan. See, for example, the "Whole Foods Block" in Tenleytown, which is zoned C-3-A and designated as moderate-density commercial/medium-density residential in the FLUM (Zoning and Comprehensive Plan maps, attached). When the Comprehensive Plan was approved, the C-3-A zone had a matter-of-right height limit of 65 feet and a FAR of 4.0, with no more than 2.5 for non-residential uses. With inclusionary zoning, the FAR was increased to 4.8. With this text amendment, the height limit would be 75 feet for habitable space, with an extra story and an additional 8.5 feet for mechanical equipment. The FAR limit would be increased to 5.2, with no more than 2.9 FAR for non-residential uses. This represents a 30% increase in the total FAR beyond what was anticipated in the Comprehensive Plan when the C-3-A zone was designated as a moderate-density commercial zone. It is a 16% increase in the non-residential FAR, and a 15% increase in height.	As described in the Office of Planning setdown report of July 24, 2014, the proposal is not inconsistent with the Comprehensive Plan, furthers many policies of the Comprehensive Plan, and is consistent with direction arising from the study of the Height Act in 2014. The proposals are also fully consistent with the Comp Plan Land Use Map and Policy Map designations. The proposal does not increase the maximum permitted height of a penthouse in these zones, augments the setback requirements (consistent with Zoning Commission ZRR discussions), and establishes a maximum FAR exemption for habitable space.

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128	Friendship Neigh'd Association	Comprehensive Plan	In its June 1, 2015 Supplemental Report, the Office of Planning addressed these concerns by stating: "Historically the additional floor area permitted for roof structure uses has not been included within floor area ratio calculations per §§ 411.7 and 411.8 (11 DCMR) therefore are not inconsistent with the Comprehensive Plan." This response does not address whether, in reality, the expansion in the uses allowed in the penthouse, as well as the increase in the permissible size of the penthouse, changes the basic parameters for these zones such that the zoning envelopes in the C-2-A zones which are designated as low-density commercial or the C-3-A zones which are designated as moderate-density commercial have increased beyond what was envisioned in the Comprehensive Plan for the areas mapped as low or moderate-density commercial zones in the Future Land Use Map.	As described in the Office of Planning setdown report of July 24, 2014, the proposal is not inconsistent with the Comprehensive Plan, furthers many policies of the Comprehensive Plan, and is consistent with direction arising from the study of the Height Act in 2014.
128	Friendship Neigh'd Association	Penthouse FAR exemption §411.13 (c)	reject the provision [411.13(c)] where habitable space within a penthouse with a floor area ratio of less than four-tenth (0.4) is not included in the floor area ratio calculation for the building	The Commission discussed whether to include habitable penthouse space in building FAR. This would limit the effectiveness of the initiative and could essentially negate the affordable housing provisions, but could allow additional opportunities for sculpting of building massing. However, additional clarification from the Commission has been requested.
128	Friendship Neigh'd Association	Penthouse stories (§700.6)	revise 770.6 to limit the maximum number of penthouse stories in the C-1, C-2-A, C-2-B and C-3-A zones to one story	The current zoning does not limit the number of stories below the Height Act, and examples of placing mechanical space on top of other penthouse space exist now. In most zones, the total permitted height would be lower than the current permitted height, and allowing mechanical space to be placed on top of habitable space would allow more efficient penthouse space. Any penthouse above the Height Act limit would be limited to one story. However, additional clarification from the Commission has been requested.
128	Friendship Neigh'd Association	Penthouse height (§700.6)	limit the maximum penthouse height in the C-1, C-2-A, C-2-B and C-3-A zones to 10 feet, except a total height of 15 feet or 18.5 feet for mechanical equipment, stairway, and elevator overrides might be allowed if approved by the BZA.	As currently proposed, penthouse habitable space would be limited to 10 feet, and mechanical space to 15' or 18'-6", depending on the zone. OP would not support a change to limit all penthouse height to 10 feet in these zones, and to only allow additional height for an elevator override or stairway with BZA approval. This would limit the ability to provide elevators or utilize the rooftop, and would be an unwarranted reduction from current provisions.
129	Lindsley Williams	Definition - Mechanical Area	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.]	OP is supportive of the intent of this change. Other comments suggested the addition of definitions for "(penthouse) habitable space" and "(penthouse) mechanical space" which OP feels could be a clearer methodology, and OP has been in discussions regarding this clarification with OAG and DCRA

Note - this summary is for reference only; please refer to the ZC Exhibit for the complete submissions

DC Office of Planning, 10/26/2015

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129	Lindsley Williams	Definition - Parapet	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 or 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.	The standard definition of “parapet” would apply. To date, neither the Zoning Administrator nor OAG have raised concerns with this, but OP will consult further with the ZA and OAG and add a definition for “parapet” if they feel it would be helpful.
129	Lindsley Williams	Definition - penthouse	Penthouse – A covered roof structure on or above the roof or top story of any part of a building.	OP is comfortable with the proposed definition for “Penthouse”, as drafted with OAG input.
129	Lindsley Williams	Definition - Habitable Penthouse	Penthouse, habitable – A penthouse in which human occupancy is typical and expected.	OP is supportive of the intent of this change. Other comments suggested the addition of definitions for “(penthouse) habitable space” and “(penthouse) mechanical space” which OP feels could be a clearer methodology, and OP has been in discussions regarding this clarification with OAG and DCRA.
129	Lindsley Williams	Definition - Mechanical Penthouse	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.	OP is supportive of the intent of this change. Other comments suggested the addition of definitions for “(penthouse) habitable space” and “(penthouse) mechanical space” which OP feels could be a clearer methodology, and OP has been in discussions regarding this clarification with OAG and DCRA.
129	Lindsley Williams	Definition - Roof Structure	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.	This would essentially involve moving current Section 411.16 (411.23 in the advertised text) to the definition section, which OP is not opposed to. However, OP will review this change further with the Zoning Administrator and OAG.
129	Lindsley Williams	§411.4	Change “A penthouse may house” to “A roof over a top story may house or support”	OP does not support this word change
129	Lindsley Williams	§411.4(d)	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.	OP does not support this word change
129	Lindsley Williams	§411.5	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.”	This word change will be incorporated for clarity
129	Lindsley Williams	Enclosure walls - (§411.7)	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.”	The OP proposed language is unchanged from the current wording; no change is necessary.
129	Lindsley Williams	Setbacks - §411.18(a)(5)	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; 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.	The OP proposed language is consistent with the language discussed and given proposed action for approval by the Commission as part of ZRR. However, additional clarification from the Commission has been requested.

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129	Lindsley Williams	Setbacks - §411.20	Replace "penthouse setbacks" with "setbacks of penthouses and roof structures"	OP does not feel this word change is necessary.
129	Lindsley Williams	Setbacks - §411.20	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.	The OP proposed language is consistent with the language discussed and given proposed action for approval by the Commission as part of ZRR. However, OP concurs that if a particular height on an adjacent lot has been approved through a PUD, this should be the height considered. The height permitted in a receiving zone, or pursuant to IZ is the by-right height so no change is necessary to accommodate those.
130	ANC 4B	Penthouse restrictions on low density residential (§411.5)	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...	ANC support for the proposed language.
130	ANC 4B	Penthouse area (§ 411.5)	and clarifying that 30 square feet is the maximum floor area of roof structures covered by this provision; and	OP believes the provision as drafted is consistent with the Zoning Commission's intent. Including the stair access would leave little space for any rooftop storage. However, additional clarification from the Commission has been requested.
130	ANC 4B	Penthouse setbacks (411.18)	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;	The proposed language is reflective of the final draft language under ZRR. The proposed change would expand this provision to apply to the specified uses in other zones, although OP notes that a penthouse would be permitted only by special exception on a single family dwelling or flat in any zone. OP would not be opposed to this change; if directed by the Commission to do so, OP would craft the appropriate language and make the ZRR language consistent. However, additional clarification from the Commission has been requested.
131	Alma Gates	General Opposition	What brand of influence is promoting these regulations? The idea certainly didn't come from Congress. As a matter of fact, Congress didn't require the DC Office of Planning to take any action, or develop the regulations proposed in Case No. 14-13 - that action came from the Zoning Commission. And, Congress never intended for the entire city to be changed by the appearance of topknots perched on roofs or entertainment venues with the best monumental views to top-off prime downtown real estate.	The changes to the Height Act, supported by Congress and signed into law by the President were, according to records, intended to allow for the enclosure of unsightly mechanical space and to add to the District's tax base.
131	Alma Gates	General Opposition	You will recall the NCPC hearings where it was noted by Councilmember Mendelson that 39 out of 41 who testified before the DC Council were opposed to the proposed changes to the Height Act. The testimony at NCPC was also heavily weighted against changes to the Height Act and NCPC voted not to support OP ...	The author appears to be referring to the 2014 NCPC hearing and NCPC action regarding an earlier proposal to amend the Height Act to allow additional building height in parts or all of the District. Those much broader changes were not adopted, and are not proposed as part of this case. NCPC staff report (Exhibit 126) notes support for the current modified proposal; the report was adopted by the NCPC as a consent calendar item in September, 2015.

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131	Alma Gates	General Opposition	Is it really so hard to understand that those who have invested in neighborhoods aren't interested in having penthouses perched on adjacent houses or low rise apartment buildings? Is it really so hard to understand that these same folks abhor the idea of PUDs reaching even greater heights in their characteristically low rise communities?	OP has proposed, and the Zoning Commission has taken proposed action to approve, prohibiting a penthouse on a single family dwelling or flat, and lowering the permitted height a penthouse in low density zones (from 18'-6" by-right to 10'). Permitted penthouse height would also be lowered in the low to moderate density mixed use zones.
131	Alma Gates	General Opposition	Realistically, the Zoning Commission is aware that habitable rooftop space will not solve the city's housing needs because penthouses will not be implemented as affordable housing. Also, there just isn't that much off-set space or money going into the Housing Trust Fund to make a real difference. Rather, affordable housing is its own issue which deserves serious consideration by all responsible DC agencies and should not be viewed as an adjunct to penthouse zoning proposals.	It was never implied or stated that this proposal would solve the affordable housing issue in the city. However, as noted by the Commission, a multi-prong approach is needed and this would assist in addressing the issue. To date, only one developer has provided an estimate of the contribution that would be required for habitable space on a proposed downtown building, and the amount was \$1.165 million dollars.
132	ANC 1C	Support for proposed reductions in lower density zones	Therefore it is resolved that ANC 1C • Commends the Zoning Commission for the very significant progress reflected in the proposed final text as regards protecting rowhouse neighborhoods from rooftop penthouses of excessive height, width and bulk. • Commends the Zoning Commission for the enhanced attention to the aesthetic impact of penthouses reflected in the proposed final text, through requirements regarding penthouse design and compatibility of materials and color • Commends the Zoning Commission for substantially curtailing exemptions from the inclusion of penthouse floor area from allowable gross floor area in the proposed final text.	Thank you for your comments
132	ANC 1C	Penthouse area (§ 411.5)	• Urges the Zoning Commission to prohibit matter-of-right penthouses on any "detached dwelling, semidetached 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	OP believes the provision as drafted is consistent with the Zoning Commission's intent. Including the stair access would leave little space for any rooftop storage. However, additional clarification from the Commission has been requested.
132	ANC 1C	Setbacks (§ 411.18)	• Urges the Zoning Commission to 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 many zone" and §411.18(a)(4) amended so as to reflect this change.	The proposed language is reflective of the final draft language under ZRR. The proposed change would expand this provision to apply to the specified uses in other zones. However, additional clarification from the Commission has been requested.
133	Andrea Rosen	Support for proposed reductions in lower density zones	I thank the Zoning Commission and the Office of Planning for proposing to amend the text of the Zoning Regulations pertaining to penthouses to bring the regulations into closer alignment with the Comprehensive Plan's mandate for rowhouse neighborhoods: to protect their scale, character, architectural integrity, and function as family homes.	Thank you for your comment

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133	Andrea Rosen	Penthouse area (§411.5)	Please stand firm on §411.5 prohibiting 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. Please limit the use and height and other dimensions of rowhouse penthouses that are allowed by special exception for the sole purpose of providing a stair or elevator for roof access and storage ancillary to a rooftop deck. Please clarify that a penthouse may not exceed 30 square feet and 10 feet in height.	OP believes the provision as drafted is consistent with the Zoning Commission's intent. Including the stair access would leave little space for any rooftop storage. However, additional clarification from the Commission has been requested.
133	Andrea Rosen	Setbacks (§411.18)	Please extend the same side-wall setback formula to rowhouses in R-5 and Mixed-use zones that applies to rowhouses in zones R-1 through R-4. The discrepancy in the protections afforded to the rowhouses in different zones can be remedied by amending §411.18(a)(3) to pertain to any "detached dwelling, semi-detached dwelling, rowhouse or flat in any zone," which is the language used in §411.5.	The proposed language is reflective of the final draft language under ZRR. The proposed change would expand this provision to apply to the specified uses in other zones. However, additional clarification from the Commission has been requested.
133	Andrea Rosen	Gross Floor Area (§411.18)	Please stand firm on the substantial curtailment of exemptions of penthouses from allowable gross floor area, as outlined in §411.13.	Thank you for your comment
133	Andrea Rosen	Design / Compatibility of Materials	I applaud OP and ZC for going where angels fear to tread to set design standards for penthouses. Please preserve the final text that requires 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 "Enclosing walls of a penthouse from roof level shall rise vertically" (§411.10).	Thank you for your comment
134	Goulston & Storrs	Definition - penthouse	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.	The definition and Section 411.23 would work together to provide the clarity needed, but OP will consult further with OAG and DCRA on any <u>additional clarification needed</u> .
134	Goulston & Storrs	Definition - penthouse	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.	OP agrees that "roof deck" could be added to the list of items for which a setback is required. Otherwise, Section 411.23 provides the necessary clarification, but OP will consult further with OAG and DCRA on any <u>additional clarification needed</u> .
134	Goulston & Storrs	Definition - gross floor area	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 (only to the extent required by Section 411.13); 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, 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. "	OP is not opposed to these clarifications to the definition for "gross floor area", which would add clarity, but will review this further with the Zoning Administrator and OAG.

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134	Goulston & Storrs	Stair towers (§411.6)	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 and may be a single, different uniform height. "	Permitting a second height for mechanical penthouses could help to minimize the bulk of a mechanical penthouse and therefore the visual impact. OP would support language that would allow the elevator override to be of a different height from other mechanical space. However, additional clarification from the Commission has been requested.
134	Goulston & Storrs	Penthouse height, mechanical (§411.9)	As proposed, for a building with just mechanical space, the regulations will still require the entire 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. Modify § 411.9 as follows: "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, or both; provided, that if no habitable space is provided, the enclosing walls of the mechanical space may be of two different uniform heights. Required screening walls . . ."	OP agrees that permitting a single, second height for mechanical penthouses would help to minimize the visual impact. OP would support language that would allow the elevator override to be of a different height from other mechanical space. However, additional clarification from the Commission has been requested.
134	Goulston & Storrs	Exceptions from building floor area ratio calculations (§411.13)	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 feet, six inches (6 ft., 6 in.) , or more in height shall be counted as gross floor area and included in the total floor area ratio permitted for the building, with the following exceptions: [....]"	The OP proposed language is consistent with the current zoning text, but is not opposed to this proposed change.
134	Goulston & Storrs	Penthouse recreation space (§411.16)	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 the effect of reducing the number of residential units and therefore pressure the amount of IZ units provided by projects. Revise § 411.16 per comment: "For residential buildings, the construction of penthouse GFA, including all forms of habitable space, except that devoted exclusively to communal rooftop recreation or amenity space , is subject to the Inclusionary Zoning set-aside provisions of chapter 26."	Based on OP's understanding of Zoning Commission direction, rooftop recreation space would be counted towards the IZ requirement. As noted in OP reports, this may discourage rooftop amenity space, but excluding the recreation space could limit the effectiveness of the IZ provision. However, additional clarification from the Commission has been requested, and if the Commission wishes to make this change, OP would redraft this provision accordingly.
134	Goulston & Storrs	Setbacks (§411.18)	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.	OP believes that 411.18 adequately provides this direction.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
134	Goulston & Storrs	Penthouse setbacks (§411.18)	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).	The OP proposed language is consistent with the language discussed and given proposed action for approval by the Commission as part of ZRR. However, OP concurs that if a particular height on an adjacent lot has been approved through a PUD, this should be the height considered.
134	Goulston & Storrs	Affordable housing - non-residential - §414.3	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, properties owned by the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes, 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. "	OP is generally supportive of a provision to exempt institutional uses from the housing linkage requirement. OP would also generally support this for non-profits, provided the language clearly would exempt only space which is not revenue generating. Additional clarification from the Commission has been requested.
134	Goulston & Storrs	Affordable housing - non-residential §414.8	This section states that, in order for property to qualify as the destination of funds for the 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. Revise § 414.8 per comment: "414.8 For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that, 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. "	The OP proposed language is consistent with the existing housing linkage language in the zoning regulations and the Comprehensive Plan, and consistent with language discussed as part of ZRR. If the Commission wishes to incorporate this language, which would appear to broaden the applicable destination sites, then OP should be instructed to evaluate the implications of this change, consider it for both this provision and the corresponding one in PUDs, and <u>bring</u> forward a similar change as part of the upcoming Comp Plan review process.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
134	Goulston & Storrs	Affordable housing - non-residential §414.15	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 habitable gross -floor area to be constructed."	OP is supportive of this change as accurately reflecting the intent of the requirement.
134	Goulston & Storrs	Inclusionary Zoning §2602.1	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".	OP concurs that clarification is needed.
134	Goulston & Storrs	Inclusionary Zoning §2602.3	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 regulations should be revised to exempt rental penthouse units in the SEFC from IZ. Imposing an additional administrative burden for penthouse units to comply with the IZ administrative requirements is unnecessarily burdensome.	OP generally concurs, but notes that the existing SEFC requirement relates to "units", not to gross floor area, so rooftop habitable space on a residential rental building would not trigger an additional affordability requirement, potentially unlike the rest of the District. Additional clarification from the Commission has been requested; if the Commission agrees, OP will prepare appropriate alternative language.
134	Goulston & Storrs	Conversion of Non-conforming Penthouses §411.26	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 <i>[insert the effective date of ZC Order No. 14-13]</i> 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."	OP is uncertain that this language is needed, as this situation appears to be covered by Section 2001. Additional clarification from the Commission has been requested.
134	Goulston & Storrs	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).	The vesting of existing projects is a critical issue to projects that are in the design or approval process. Because the regulations are more restrictive in some zones and in some respects, and more permissive in other zones and in other respects, OP anticipates that some flexibility in their application will be desired. However, DCRA has also indicated that some certainty is needed for proper and consistent interpretation through the permitting process.

Note - this summary is for reference only; please refer to the ZC Exhibit for the complete submissions

DC Office of Planning, 10/26/2015

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
135	Committee of 100	Opposition	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.	Thank you for your comment.
135	Committee of 100	Opposition	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.	The author appears to be referring to earlier discussions regarding proposals to amend the Height Act to allow additional building height in parts or all of the District. Those much broader changes were not adopted, and are not proposed as part of the current case. This proposal includes no building height increases. The proposal includes reductions to or retention of permitted penthouse height for most of the city, and heights consistent with the Height Act revision for higher density zones only.
135	Committee of 100	Opposition	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. 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 current regulations permit a penthouse of 18'6" in all zones, including low density zones. The proposal would reduce this in low to medium density zones, and prohibit penthouses above single family dwellings and flats (permitting them to 10 feet only by special exception). Not permitting a penthouse of any kind on buildings devoted to other uses in single family zones - such as schools, recreation centers, or churches - would limit their ability to meet ADA requirements and to serve all residents of the city. As such, OP does not agree with this change.
135	Committee of 100	Setbacks (§411.18)	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.	As part of both ZRR and this initiative, additional, more expansive setbacks for penthouses have been proposed (along with the proposal to not allow a penthouse by-right on a single family dwelling or flat).
135	Committee of 100	FAR (§411.13)	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.	The Zoning Commission, as part of its deliberations, discussed whether to include all habitable penthouse space in building FAR, and moved forward with the 0.4 FAR exemption. As noted in previous OP reports, including all habitable penthouse space in building FAR would limit the effectiveness of the initiative and potentially negate the affordable housing provisions, but could allow additional opportunities for building sculpting. However, additional clarification from the Commission has been requested.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
135	Committee of 100	Affordability	...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.	There is no evidence that these changes to penthouse regulations would contribute to the replacement of existing residential class B residential buildings. It is just as possible that the ability to utilize permitted penthouse space more efficiently may encourage the retention and upgrading of existing buildings, or the addition of new residential units along underserved corridors.
135	Committee of 100	Stories (\$400.5 etc)	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.	The current zoning does not limit the number of stories below the Height Act, and examples of placing mechanical space on top of other penthouse space exist now. In most parts of the city, the total permitted height, including any mechanical space, would be lower than the current permitted height, and allowing mechanical space to be placed on top of habitable space would allow more efficient penthouse space. Any penthouse above the Height Act limit would be limited to one story. However, additional clarification from the Commission has been requested.
135	Committee of 100	Mezzanines (\$400.5 etc)	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.	The OP language is consistent with direction provided by the Zoning Commission as part of its deliberations, and OP has been in consultation with the office of the Zoning Administrator.
135	Committee of 100	PUD modifications (\$411.24)	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.	The proposed process would allow for modifications - conversions or additions of penthouse space - to be considered expeditiously by the Zoning Commission, and notification requirements have been included within the provision. For any case, should the Commission determine that it is not minor, it could be removed from the consent calendar and a public hearing held. However, additional clarification from the Commission has been requested.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
135	Committee of 100	Affordability (\$414.9)	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 afford ability 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.	To minimize administrative issues, the existing process and provisions in the PUD chapter and in the Comprehensive Plan (Chapter 25), including the 20 year term limit, was utilized. While OP would support a requirement that affordable units provided be provided in perpetuity (similar to IZ), the full implications of this to the penthouse and the PUD regulations would need to be studied, and this could require re-notification and a new public hearing. However, additional clarification from the Commission has been requested. The current PUD-related process, upon which the penthouse provision is based, allows either construction of units, or the contribution to the fund.
136	Holland & Knight	Penthouse definition	The proposed definition of "penthouse" should be modified to enumerate the structures that were previously regulated as "roof structures". Simply referring back to the previous set of roof structure regulations should be avoided for purposes of administrative efficiency and ease of use. Currently, Section 411.1 defines those elements that are regulated as roof structures. ... The proposed penthouse regulations should include a similar enumeration.	OP is not opposed to clarifications to the term "penthouse" although aspects of this would be addressed through the addition of new definitions for "penthouse habitable space" and "penthouse mechanical space". OP will continue to review with the Zoning Administrator and OAG to provide this clarification.
136	Holland & Knight	Penthouse definition	In addition, there are other rooftop elements that have become increasingly common that are not identified in the existing regulations as either being a roof structure or not a roof structure, such as trellises and guardrails. ... The proposed penthouse regulations should provide this additional clarity.	Some clarification either in the definition, or in the setback provisions, may be warranted. OP will review this with OAG and the Zoning Administrator.
136	Holland & Knight	Restriction of habitable space near the White House (\$411.4)	The prohibition on habitable space within a penthouse ... is excessive relative to the scope of comments submitted into the record by the U.S. Secret Service. Rather than an absolute prohibition, which affects all properties equally within the specific area around the White House, the proposed regulations should be modified to allow any use permitted in the zone, other than residential dwellings, within a penthouse as a matter-of-right, with dwellings permitted as a special exception with a referral to the USSS. In the alternative, the regulations could be amended to require a special exception for any use that is permitted in the zone.	As noted in the OP report and the NCPC comments submitted to the record, additional restrictions were subsequently requested by the USSS, so no additional changes are recommended by OP.
136	Holland & Knight	Penthouse height - mechanical space (\$5400.5, 700.6, etc)	...while alternatives to "over the top" elevator systems are available, these alternatives do not perform as well as an over the top system. The permitted penthouse height should remain at 18'6" for (the listed moderate density) zones. Alternatively, per the recommendation by DCBIA which was informed by consultations with the development community, should a reduced height still be desired, the height should be no less than 16'6".	The proposed text to date is consistent with Zoning Commission discussion. OP is not opposed to this change, which would provide additional elevator override flexibility while still providing a permitted height less than that currently permitted. However, additional clarification from the Commission has been requested.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
136	Holland & Knight	Penthouse height - mechanical space (\$411.6)	...allow mechanical space to have one height for elevator overrides and a second height for other mechanical equipment and stair towers that do not require the same height as the override. As currently proposed, property owners will be required to unnecessarily increase the height of a mechanical space penthouse be equal to an elevator override...	OP is supportive of this change, which would effectively permit a lower penthouse height for much of a mechanical penthouse area. It has been incorporated into the most recent proposed text. However, additional clarification from the Commission has been requested.
136	Holland & Knight	Penthouse height (\$400.5, 700.6, etc)	As proposed, zone districts with a maximum allowable building height of 65 feet or less would be permitted to have a maximum penthouse height of 10 feet. ... a minimum penthouse height of 12 feet, not inclusive of mechanical equipment, stairways, and elevator overrides, is necessary in order to provide the necessary roof drainage and mechanical systems and still be able to meet all egress requirements.	The issue relates to the provision of habitable space in these (and other) zones. While the proposed text is consistent with Zoning Commission discussion, OP notes that the language as drafted does not clearly state whether the 10 foot limit is to the top of the roof of the space, or is the clear internal height. OP is not opposed to this change, which would provide necessary design flexibility while still providing a permitted height significantly less than that currently permitted. However, additional clarification from the Commission has been requested.
136	Holland & Knight	Penthouse setback - historic properties (\$411.20)	This provision should be modified to only require a 1:1 setback for properties where the proposed construction is not subject to review by the Historic Preservation Review Board (HPRB). This limitation would provide protection to a historic resource in the absence of the evaluation of the impacts of an adjacent project that is part of the HPRB review process. Meanwhile, for projects where a setback would not be required if not for the presence of an adjacent historic building, property owners should be allowed to provide a setback that is less than 1:1, or for that matter no setback at all, if approved by the HPRB.	The proposal is consistent with Commission discussion as part of this case, and as part of the ZRR case.
136	Holland & Knight	Definition of Penthouse	In addition, there are other rooftop elements that have become increasingly common that are not identified in the existing regulations as either roof structures or not roof structures, and frequently cause confusion as to whether they are regulated as roof structures, such as trellises and guardrails. The proposed penthouse regulations should provide clarity regarding the elements that are subject to the new penthouse regulations and additional clarity on what elements are not. Articulate within the new definition of "penthouse" the elements that are to be regulated as penthouses to include, but not limited to: • Habitable space • Mechanical equipment • Elevator overrides • Stair tower • Communal or recreation space • Storage • Lavatories and showers. Expand upon the provision that identifies those elements that are not considered penthouses, proposed Section 411.22, to include other elements that are now common.	Some of these elements can be clarified in clarified definitions for habitable penthouse space and mechanical penthouse space. Others, such as a "trellis" may need to be added to either the definition or the setback requirements, as necessary. OP will review these changes with the Zoning Administrator and OAG prior to the completion of final proposed text.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
136	Holland & Knight	Definition of Penthouse	The proposed definition of "penthouse" needs to be modified to enumerate the structures that were previously regulated as "roof structures." Referring back to a previous set of regulations should be avoided for purposes of administrative efficiency and ease of use. The current Section 411.1 defines these elements as: • Mechanical equipment, • Stairway and elevator penthouses ... and when not in conflict with the Height Act on an apartment building roof: • Penthouses for (a) storage, showers, and lavatories incidental and accessory to roof swimming pools or communal recreation space located on the roof and (b) other enclosed areas, within the area permitted as a roof structure, used for recreational uses accessory to communal rooftop recreation space.	Some of these elements can be clarified in clarified definitions for habitable penthouse space and mechanical penthouse space. Others, such as a "trellis" may need to be added to either the definition or the setback requirements, as necessary. OP will review these changes with the Zoning Administrator and OAG prior to the completion of final proposed text.
136	Holland & Knight	Definition of Story	Modify definition to state "For purposes of determining the maximum number of permitted stories, the term "story" shall not include cellars or any stories permitted to be located within a penthouse."	While OP does not feel this change is necessary, OP is not opposed to it if directed to make this change by the Zoning Commission.
136	Holland & Knight	Definition of Top Story	Modify definition to state "The uppermost story of any building or structure that is not located in a penthouse. The term 'top story' shall exclude architectural embellishments."	While OP does not feel this change is necessary, OP is not opposed to it if directed to make this change by the Zoning Commission.
136	Holland & Knight	Term consistency	The proposed regulations include slight inconsistencies in how certain terms are used which is unnecessary and could cause confusion. For example, while "penthouse" is the proposed defined term, there are provisions that unnecessarily use the phrase "penthouse structure" when using "penthouse" would suffice.	OP will work with OAG to ensure that terminology is consistent and accurate.
136	Holland & Knight	Use of the term "Mechanical Space"	Mechanical space is inclusive of mechanical equipment, elevator over-runs, or stairways. Therefore, there is no need to itemize these elements in each of the tables throughout the different zone districts that define permitted penthouse heights. Rather, they could be replaced with the defined term "mechanical space." This would make it easier to update the Zoning Regulations when new elements are identified that can be included in mechanical space. Also, see comment below regarding having "mechanical space" and "habitable space" as defined terms	OP concurs that a consistent definition of both "penthouse mechanical space" and "penthouse habitable space", to be used consistently throughout the text as relevant, may result in both clearer and more concise language. OP will work with OAG and DCRA to examine these definitions and use the terms throughout the text.
136	Holland & Knight	Use of the term "Communal recreation space"	A number of sections use the term "communal rooftop recreation" and others sections use the term "communal recreation space" but neither is defined. Are these intended to be the same thing? The proposed regulations should include a definition of either both terms, if not intended to be the same, of just one term that is used consistently throughout the regulations.	The context of the limited number of places where these terms are used is slightly different; OP does not feel that this proposed change is necessary.
136	Holland & Knight	400.1	This amendment doesn't seem necessary since currently the height of the building doesn't include roof structures per Section 400.8.	The proposed use of "not including the penthouse" in the section outlining the permitted building height has provided for clarity and ease of use.
136	Holland & Knight	400.5	The use of the term "rooftop" isn't necessary and should be removed	OP agrees that this is not necessary and could be removed as a clarification

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
136	Holland & Knight	definitions - §411.2	The terms mechanical space and habitable space should be included as definitions in Section 199.1, so that it can be used universally throughout the regulations and easily updated is something else is considered to be included. For example, in Section 400.5, rather than listing the specific elements that are permitted a height of 15 feet (mechanical equipment, stairway, elevator overrides) the defined term "mechanical space" can be used.	OP concurs that a consistent definition of both "penthouse mechanical space" and "penthouse habitable space", to be used consistently throughout the text as relevant, may result in both clearer and more concise language. OP will work with OAG and DCRA to examine these definitions and use the terms throughout the text.
136	Holland & Knight	definitions - §411.8	Additionally, the term "elevator core" should be included within mechanical space to make it clearer in Section 411.8 that buildings can have separate penthouses on each level. Alternatively, Section 411.8 could be modified to replace "enclosure" with "penthouse."	This clarification would be consistent with proposed terminology so is recommended.
136	Holland & Knight	penthouse area - §§411.4(b) and 1402.4 (c)	The manner in which the 20% area limitation on ancillary space is described is inconsistent with established ZA interpretations. The method for calculating the 20% limit includes the unenclosed roof area devoted to deck, terrace, and recreation space AND the enclosed space that is devoted to uses that are considered accessory to the outdoor deck, terrace, and recreation space.	OP will review this proposal with the Zoning Administrator.
136	Holland & Knight	guard rails - §411.5	The reference to "guard-rail for a roof deck required by the Building Code" should be eliminated from this provision. A guard-rail should not be considered a penthouse.	This was provided at the direction of the Zoning Commission, although additional punctuation is proposed to clarify the section. While a guard-rail would not be considered a penthouse, it would be subject to the setback requirement.
136	Holland & Knight	Setbacks, Independence Ave - §411.12	Depending on lot size, the cumulative limitations on penthouses along Independence Avenue, one-third area restriction and setbacks in excess of the typical 1:1 (411.18(c)), could make it very difficult to accommodate required mechanical equipment on the roof of a building. The requirement for 2:1 penthouse setback along Independence Avenue should be eliminated.	The proposed language was discussed at length with NCPC, and is consistent with language as discussed by the Commission as part of ZRR.
136	Holland & Knight	gross floor area - §§411.16 & 411.17	These provisions use the term "GFA". However this term isn't defined until section 414.1. It should be introduced earlier in this chapter.	OP has proposed minor text clarifications to address this issue.
136	Holland & Knight	§411.19	The reference to Section 411.12 is incorrect.	Correction has been made.
136	Holland & Knight	Setbacks - Pennsylvania Ave. NW §411.18(c)	The 2:1 setback along Pennsylvania Avenue may make it difficult to accommodate required mechanical equipment on the roof of a building considering the additional building setbacks at the ground level and above a certain height that are required under the PADC Plan and Zoning Regulations. The requirement for 2:1 penthouse setback along Pennsylvania Avenue should be eliminated.	The proposed language was discussed at length with NCPC and OP does not support elimination of this provision.
136	Holland & Knight	Habitable space - non-residential (§414.2)	This provision should be modified to clarify whether the first 1,000 sq. ft. of habitable penthouse gross floor area is exempt, or whether the entire amount is used if 1,000 square feet is exceeded.	OP feels this provision is clear, that the requirement would apply to all of the habitable penthouse gross floor area including the 1,000 square feet that triggers the requirement, so no additional change is proposed.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
136	Holland & Knight	Habitable space - non-residential (§414.7)	The provision requires an average of 850 sq. ft. per affordable unit. However, if the total habitable space provided is, for example, 1,000 sq. ft., then under Section 414.6 the range of required affordable housing would be only 250 sq. ft. to 500 sq. ft. Thus, Section 414.7 should be clarified to indicate that the requirement to provide an average of 850 sq. ft. is not a minimum, and only applies to projects that are required to provide over 1700 sq. ft. of affordable housing.	As directed by the Zoning Commission, this wording is consistent with the similar provisions requiring affordable housing for office space gained through the PUD discretionary process. If the amount required by this provision is less than typical size of a unit, it could be addressed through a contribution to a housing trust fund.
136	Holland & Knight	Habitable space - non-residential (§414.8)	The definition of rehabilitation is vague and leaves open to interpretation who will determine the meaning of "substantial" and how that determination is made. This provision should be modified to include some sort of measureable standard by which a rehabilitation can be deemed to be "substantial"	This is the current definition from the corresponding PUD requirement; no change is recommended.
136	Holland & Knight	Habitable space - non-residential (§§414.9 & 414.10)	These provisions are unclear as to how these affordable units are administered. Are these affordable units treated the same as IZ units? Are they subject to the IZ covenant? Will they Administered by DHCD and subject to the DHCD IZ regulations?	This is the current definition from the corresponding PUD requirement; no change is recommended at this time, although a broader look at this provision from the PUD chapter and the Comprehensive Plan may be warranted, including its relationship to Inclusionary Zoning.
136	Holland & Knight	Habitable space - non-residential §414.11	This provision should be modified to address instances where an owner satisfies their affordable housing requirement by constructing one family dwellings since certificates of occupancy are not issued for one-family dwellings pursuant to Section 3203.1(a).	OP has raised this issue with the DCRA for comment. A technical correction may be necessary.
136	Holland & Knight	Habitable space - non-residential (§414.15)	This provision uses the term "fair market value" but the OTR website does not use such a term.	This is the current definition from the corresponding PUD requirement; no change is recommended.
136	Holland & Knight	penthouse height, CR zone (§630.4)	This provision should follow the same format as the others and include the permitted penthouse height and number of stories in table format.	This section has only one zone, so a table is not needed. OP notes that the format will change, if the penthouse proposals are approved, when incorporated into the new ZRR format.
136	Holland & Knight	penthouse stories, commercial zones (§770.6)	Consistent with other zone districts where a 20 foot penthouse is permitted, a mezzanine should be permitted within the C-2-B-1 and C-3-B districts	A mezzanine is only permitted in zones permitting a building height of 90 feet or more; the zones named allow a building height of less than this amount. As such, no change is proposed although OP would incorporate this change if directed to do so by the Zoning Commission.
137	Kalorama Citizens Association	Penthouse Area - (§411.5)	§ 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 roofdeck, 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.	As drafted, the provision would permit 30 square feet of storage space plus the area for the stair or elevator. OP believes that this was the Zoning Commission's intent. However, additional clarification from the Commission has been requested.

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
137	Kalorama Citizens Association	Setbacks - (§411.18)	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.	The proposed language is reflective of the final draft language under ZRR. The proposed change would expand this provision to apply to the specified uses in other zones. OP would not be opposed to this; if directed by the Commission to do so, OP would craft the appropriate language and make the ZRR language consistent. However, additional clarification from the Commission has been requested.
137	Kalorama Citizens Association	Support for proposed reductions in lower density zones	•Commends the Zoning Commission for the very significant progress reflected in the proposed final text as regards protecting rowhouse neighborhoods from rooftop penthouses of excessive height, width and bulk, •Commends the Zoning Commission for the enhanced attention to the aesthetic impact of penthouses reflected in the proposed final text, through requirements regarding penthouse design and compatibility of materials and color, •Commends the Zoning Commission for substantially curtailing exemptions from the inclusion of penthouse floor area from allowable gross floor area in the proposed final text	Thank you for your comments
138	Penn-Branch Citizens / Civic Association	Support for proposed reductions in lower density zones	We appreciate the prohibition of MOR penthouses in most R zones	Thank you for your comments
138	Penn-Branch Citizens / Civic Association	FAR (§411.13)	Amend Section 411.13 to delete subsections (b) and (c), which exclude from building FAR calculations. We find no reasonable basis for the exclusion. As stated by multiple witnesses in hearing testimony in this case, this kind of provision completely inverts the reason why penthouses traditionally have been excluded when a building's height is measured. A mechanical penthouse is an ancillary use that allows a building to function and serves no independent purpose. It therefore reasonably is exempted from FAR. If rooftop space is to be used for a substantive function, that space self-evidently ought to be part of the FAR.	The Commission discussed whether to include habitable penthouse space in building FAR. This would limit the effectiveness of the initiative and could essentially negate the affordable housing provisions, but could allow additional opportunities for sculpting of building massing. However, additional clarification from the Commission has been requested.
138	Penn-Branch Citizens / Civic Association	Setbacks (§411.19)	Reconsider Section 411.19, which states that generally, "[n]o setback is required from any side building wall that is adjoining another building wall with an equal or greater matter of right height." This appears to assume that the adjoining building actually has been built to the equal or greater height. If the adjoining building is lower-or even equal- the penthouse without a side setback will stick up like a sore thumb. The Commission is well aware of multiple existing inharmonious mechanical penthouses and, in a related vein, pop-ups. In our view, because of the inherent design issues, all habitable penthouse space proposed for adjoining buildings should require special exception relief.	Typically, a penthouse setback from a side lot line has not been required. The proposed language is intended to take a longer term approach to when a setback is required. The proposed language is also consistent with the language discussed by the Zoning Commission as part of ZRR. OP further notes that the height of a penthouse has been reduced in many zones, and the ability to do a penthouse on a single family dwelling or flat has been eliminated by-right, which would address the "pop-up".

Note - this summary is for reference only; please refer to the ZC Exhibit for the complete submissions

DC Office of Planning, 10/26/2015

ZC Exhibit #	Name	Issue	Comment/Testimony	OP Response
138	Penn-Branch Citizens / Civic Association	PUD modifications (§411.24)	Delete or amend Section 411.24 - A request to provide that the addition of penthouse space to a building already approved by the Zoning Commission as a planned unit development or through the design review process may not be filed as a minor modification. PUD heights are painstakingly negotiated. The new rules allow up to 20 feet of additional building height with only a month's notice. Changing the height of a PUD disrupts the settled expectations of PUD process participants. The work of several years can be undone in a moment.	The proposed process would allow for modifications - conversions or additions of penthouse space - to be considered expeditiously by the Zoning Commission, and notification requirements have been included within the provision. For any case, should the Commission determine that it is not minor, it could be removed from the consent calendar and a public hearing held.
138	Penn-Branch Citizens / Civic Association	Low to moderate density commercial zones	Zones C-1, C-2-A and C-2-B should be treated R-1 to R-4 zones. This proposal potentially allows neighborhood commercial zones to reach 70 to 90 feet, once PUDs and IZ requirements are applied along with habitable penthouses. This kills the nature and character of these zones.	In accordance with testimony provided in writing and at the public hearing, a penthouse is typically required for buildings of 50 feet or more, as permitted by right in the zones cited. As such, OP would not support this change.
139	Lyn Abrams	Support for proposed restrictions in lower density zones	I strongly support § 411.5 which 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.	Thank you for your comments
139	Lyn Abrams	Setbacks - (§411.18)	The proposed rule 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)). It is unclear why the proposal arbitrarily excludes rowhouses in Adams Morgan and other R-5 and mixed use zones from the protection offered by the first of these provisions. I urge the Commission to correct this unwarranted discrepancy by amending § 411.18(a)(3) to apply to any "detached dwelling, semi-detached dwelling, rowhouse or flat in any zone" rather than only to buildings in R-1 through R-4, using the same language as in § 411.5.	The proposed language is reflective of the final draft language under ZRR. The proposed change would expand this provision to apply to the specified uses in other zones. OP would not be opposed to this; if directed by the Commission to do so, OP would craft the appropriate language and make the ZRR language consistent. However, additional clarification from the Commission has been requested.
139	Lyn Abrams	Design/Materials - (§411.6)	I strongly support § 411.6 which requires all penthouses and mechanical equipment to be placed in one enclosure and to harmonize with the main structure in architectural character, material, and color. This requirement will assist in protecting the aesthetic character of District neighborhoods.	Thank you for your comments
139	Lyn Abrams	FAR - (§411.13)	Finally, I support the inclusion of habitable penthouse space in calculating floor area ratio. This requirement will remove the FAR freebie and should curtail the incentive to build additional penthouse apartments without regard to the effect on density.	Thank you for your comments