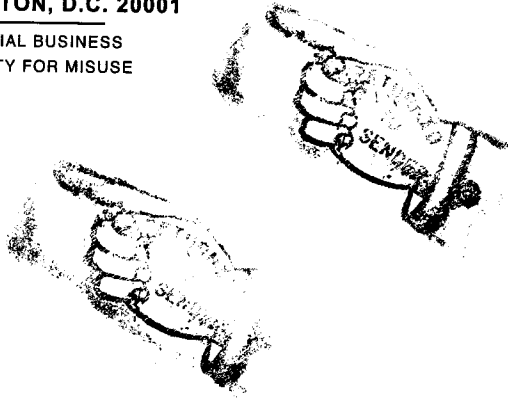


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ZONING
441 4th STREET, N.W. SUITE 200-S/210-S
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ZONING COMMISSION
District of Columbia
CASE NO.14-13
EXHIBIT NO.144

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 14-13

Z.C. Case No. 14-13

(Text Amendment to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29,
30, 31, 33, and 35 - Penthouse Regulations)

November 9, 2015

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of adoption of the following text amendments to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29, 30, 31, 33, and 35 of Title 11 (Zoning) of the District of Columbia Municipal Regulations (DCMR). A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 7, 2015, at 62 DCR 10718. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of the Amendments

The amendments re-define most roof structures as “penthouses” and provide regulation for penthouse height, design, and uses. The proposed rules, in part, provide complimentary regulations needed to effectuate an amendment¹ to the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09) (Height Act), which permits occupancy of rooftop penthouses of one (1) story and twenty feet (20 ft.) or less. Because the current Zoning Regulations pertaining to penthouses are in some instances more stringent than what the amendment would permit, the changes to the Height Act cannot be given effect until corresponding changes to the Zoning Regulations are also adopted. The amendments provide, among other things, the uses allowed in penthouses, the height and other area limitations that apply to them, and the affordable housing requirements that are generated by either residential or non-residential uses.

Procedures Leading to Adoption of the Amendments

On July 24, 2014, the Office of Planning (OP) submitted a memorandum that served as a petition and setdown report requesting amendments to the Zoning Regulations to effectuate the recent

¹ An Act to amend the Act entitled “An Act to regulate the height of buildings in the District of Columbia” to clarify the rules of the District of Columbia regarding human occupancy of penthouses above the top story of the building upon which the penthouse is placed, approved May 16, 2014 (128 Stat. 1155; D.C. Official Code § 6-601.05).

amendment to the Height Act and to address other identified penthouse related provisions. (Exhibit [Ex.] 1.)

At its regularly scheduled public meeting on July 28, 2014, the Commission considered the proposal and requested that OP work with the Office of the Attorney General to draft text amendment language for the proposal. On September 2, 2014, OP submitted a supplemental report, which included draft language for the amendments, as requested. (Ex. 2.)

In its supplemental report, OP recommended that the Commission amend the regulations as follows:

- Allow twenty feet (20 ft.) of height for all rooftop penthouses and uses within a penthouse, except within low-density residential zones or above one (1)-family dwellings and flats;
- Permit two (2) stories within a rooftop penthouse if located entirely below the Height Act limit, except in overlay zones where penthouse height is currently limited, within low-density residential zones, or above one (1)-family dwellings and flats;
- Eliminate limits on penthouses pertaining to the percentage of roof area and floor-to-area-ratio ("FAR"), allowing a one-to-one (1:1) setback requirement to dictate the maximum area of a penthouse, except to retain the one-third (1/3) of roof area limit in low-density residential zones;
- Allow all forms of habitable space within a penthouse, as permitted by the zone district, except within low-density residential zones; and
- Provide a linkage between new penthouse habitable space and affordable housing.

At the Commission's request, OP also included alternative text to be advertised for the following:

- Retain the current permitted height of eighteen feet, six inches (18 ft. 6 in.) for penthouses; and
- Require that: (1) an equal amount of affordable housing be provided for each square foot of penthouse habitable space; (2) this new affordable housing be targeted at low-income households; and (3) the affordable housing standards be applicable to new habitable penthouse space in all parts of the District, including zones where Inclusionary Zoning (Chapter 26 of Title 11 DCMR) is not otherwise applicable.

At a special public meeting on September 4, 2014, the Commission voted to set down the proposed regulations for a public hearing, including several alternative concepts offered by the

Commission. A Notice of Public Hearing was published in the *D.C. Register* on September 19, 2014, at 61 DCR 9547. (Ex. 3.)

On October 27, 2014, OP submitted a hearing report regarding the proposed amendments. On November 6, 2014, the Commission held a properly noticed public hearing at which it heard testimony regarding the amendments.

On November 24, 2014, OP submitted a supplemental report in response to the Commission's request for additional analysis and information regarding the following issues: the definitions of "Story" and "Story, Top"; current solar panel interpretations; uses permitted within a rooftop penthouse for mixed-use zones; the affordable housing linkage for penthouse habitable space in a non-residential building; and the applicability of Inclusionary Zoning to habitable penthouse space in a residential building. (Ex. 40.)

On December 8, 2014, the Commission held a properly noticed public meeting at which the Commissioners deliberated on the proposed amendments, OP's supplemental report, and comments submitted by various members of the public and representatives of community organizations. Specifically, a large number of comments suggested that more discussion and community input was needed before the Commission took further action on the proposed amendments. The Commission requested that OP provide an outline of the various options before the Commission for the proposed regulations and that another public meeting and public hearing be scheduled before the Commission took further action.

On February 13, 2015, OP submitted a supplemental report including the outline of issues and alternatives requested by the Commission. (Ex. 56.) On February 23, 2015, the Commission held a properly noticed public meeting at which the Commissioners deliberated on the proposed amendments.

On April 20, 2015, OP submitted a second hearing report for the proposed regulations. (Ex. 62.) In its report, OP detailed the notice given to the public regarding the proposed amendments, as well as a full discussion of the amendments and the alternatives advertised.

On April 29, 2015, National Capital Planning Commission (NCPC) staff submitted comments regarding the amendments. (Ex. 65.) NCPC noted concern about how the proposed amendments would affect two areas — Independence Avenue, which abuts the National Mall, and Pennsylvania Avenue, N.W., which connects the White House and the United States Capitol. NCPC requested that the Commission review amendments to the penthouse regulations for these two areas as part of the comprehensive Zoning Regulations Review (ZRR), rather than addressing the issue separately before the ZRR.

On April 30, 2015, the United States Secret Service submitted comments expressing concerns about how the proposed amendments would affect White House security. (Ex. 74.)

On April 30, 2015, the Commission held a properly noticed public hearing at which it heard testimony regarding the amendments from various District residents, representatives of community organizations and Advisory Neighborhood Commission (ANC) Single Member Districts, and members of the development community. Additionally, leading up to and following the public hearing, the Commission received a number of written comments regarding the proposed regulations.

On May 29, 2015, OP submitted a supplemental report. (Ex. 119.) The report addressed a number of issues raised by the Commission at the April 30, 2015 hearing. On June 4, 2015, OP submitted a proposed worksheet for the Commission to use during its deliberations on the proposed amendments. (Ex. 121.) The worksheet included a summary of each of the major issues, the alternatives before the Commission for each issue, and OP's recommendation as to each issue.

On June 8, 2015, the Commission held a properly noticed public meeting at which the Commissioners again deliberated on the proposed amendments. At the conclusion of the public meeting, the Commission voted to take proposed action on the amendments as recommended by OP, subject to specific revisions, as follows:

- Detached and Row Dwellings and Flats in All Zones. The Commission proposed not to allow a penthouse by right, but to allow a penthouse of ten feet (10 ft.) and one (1) story by special exception, if approved by the Board of Zoning Adjustment. As proposed, any approved penthouse space would be limited to stair or elevator access to the roof and habitable use only as space ancillary to a rooftop deck not to exceed thirty square feet (30 sq. ft.);
- Other Uses in Residential Zones Permitting a Maximum Building Height of Forty Feet (40 ft.). The Commission proposed to permit a maximum height of ten feet (10 ft.) for habitable space or fifteen feet (15 ft.) for mechanical equipment, stairways, and elevator overrides, measured from the building roof upon which the penthouse sits. As proposed, any penthouse would be limited to one (1) story and to habitable use only as space ancillary to a rooftop deck;
- Other Uses in Zones Permitting a Maximum Height of More than Forty Feet (40 ft.) and up to Fifty Feet (50 ft.). The Commission proposed to permit a maximum height of ten feet (10 ft.) for habitable space or fifteen feet (15 ft.) for mechanical equipment, stairways, and elevator overrides, measured from the building roof upon which the penthouse sits. As proposed, any penthouse would be limited to one (1) story of habitable space, with a second story permitted for mechanical equipment. Additionally, certain uses, such as a bar, restaurant, or nightclub, would be permitted only by special exception, if those uses are also permitted within the zone;

- Other Uses in Zones Permitting a Maximum Height of More than Fifty Feet (50 ft.) and up to Sixty-Five Feet (65 ft.). The Commission proposed to retain the current maximum height of eighteen feet, six inches (18 ft. 6 in.) and limit habitable space to a height of ten feet (10 ft.). As proposed, penthouse habitable space would be limited to one (1) story, with a second story permitted for mechanical equipment. Additionally, certain uses, such as a bar, restaurant, or nightclub, would be permitted only by special exception, if those uses are also permitted within the zone;
- Other Uses in Zones Permitting a Maximum Height of Seventy Feet (70 ft.) or More but Less Than Ninety Feet (90 ft.). The Commission proposed to permit a maximum height of twenty feet (20 ft.). As proposed, penthouses would be limited to one (1) habitable story, with a second story permitted for mechanical equipment. Additionally, certain uses, such as a bar, restaurant, or nightclub, would be permitted only by special exception;
- Other Uses in Zones Permitting a Maximum Height of Ninety Feet (90 ft.) or More. The Commission proposed to permit a maximum height of twenty feet (20 ft.), including for habitable space within the Pennsylvania Avenue Development Corporation (PADC) Plan or on property fronting Independence Avenue. As recommended by OP, in response to concerns raised by NCPC regarding these two areas, the Commission proposed to impose an expanded setback requirement in these areas, with a setback-to-height ratio of two-to-one (2:1). As proposed, penthouses would be limited to one (1) habitable story plus a habitable mezzanine level, with a second story permitted for mechanical equipment. Additionally, certain uses, such as a bar, restaurant, or nightclub, would be permitted only by special exception if those uses are also permitted within the zone, and the amendments would incorporate restrictions proposed by the U.S. Secret Service regarding areas surrounding the White House;
- Penthouse Setback. The Commission proposed to incorporate the text regarding setbacks proposed as part of the ZRR, except to clarify that the setback is to be measured from the edge of the roof upon which the penthouse sits and to retain the two-to-one (2:1) setback in the PADC Plan and also impose it on a portion of Independence Avenue;
- Penthouse Area. The Commission proposed to retain the current restriction which limits penthouses to one-third (1/3) of the area of the roof upon which it sits, other than in the C-3-B Zone District, as well as to include the area restrictions for properties fronting on a portion of Independence Avenue. The Commission further proposed to exempt enclosed mechanical space and enclosed communal rooftop recreation space from calculations of FAR, but to count other forms of habitable space towards permitted FAR, except to provide an exemption of zero point four (0.4) FAR for such space;
- Penthouse Design. The Commission proposed to permit up to three (3) different heights for penthouse structures on any given roof — one (1) for covered mechanical equipment,

one (1) for habitable space, and one (1) for screening for uncovered mechanical equipment. As proposed, the walls of a penthouse would be required to be vertical, as they currently are, but with a clarification that a wall that is up to twenty percent (20%) from vertical would be considered vertical. Further, all penthouses and mechanical equipment would be required to be placed in a single enclosure, while permitting emergency egress stairwells required by the building code to be in a separate enclosure;

- Affordable Housing. For non-residential buildings in all zones, the Commission proposed to require the owner to produce or financially assist in the production of residential uses that are affordable to low-income households if new habitable space exceeds one thousand square feet (1,000 sq. ft.). For residential buildings, as proposed, new habitable penthouse space in any zone would be included in Inclusionary Zoning calculations, with one hundred percent (100%) of the resulting inclusionary units being set aside for “low-income households” as defined in § 2602. Further, a contribution to a housing trust fund would be permitted in lieu of providing set-aside units on-site under the circumstances described in a new § 2607.9;
- Parking. The Commission proposed to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but to apply the parking requirements of the relevant zone and use to other habitable space;
- Amendment Process for a Previously Approved Planned Unit Development (PUD) or Design Review Project. The Commission proposed to allow adding habitable penthouse space within such a project, with additional criteria, including that notice be given to any affected ANC as a minor modification pursuant to the Consent Calendar procedures of § 3030;
- Special Exception Review. The Commission proposed to retain the current review criteria for special exception relief from specified penthouse regulations, but to clarify the term “operating difficulties”; and
- Definitions. The Commission proposed to provide definitions for the terms “Height Act” and “Penthouse,” and also amend the definitions of “Story” and “Story, top.”

Pursuant to the Commission’s vote, the proposed amendments were referred to NCPC on June 8, 2015, and again on July 28, 2015, for the thirty (30)-day period of review required under § 492 of the District Charter. A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 7, 2015, at 62 DCR 10718.

At a properly noticed public meeting on July 27, 2015, the Commission considered a request by ANC 4B to extend the deadline for submitting comments beyond the proposed deadline of September 11, 2015. The Commission granted the request, extending the deadline to October 9, 2015.

In a letter dated September 10, 2015, the NCPC Executive Director advised the Zoning Commission that NCPC, at a meeting held September 3, 2015, approved an action in which it noted that the proposed amendments addressed NCPC's prior comments, commended the District of Columbia for working with NCPC and the Secret Service for addressing concerns related to security around the White House, and supported the proposed text amendments to restrict penthouses to one-third (1/3) of the total roof area, with a setback distance equal to two (2) times its height along Independence Avenue, S.W. (Ex. 26.)

In response to the Notice of Proposed Rulemaking, the Commission received a number of comments. Specifically, the Developer Roundtable recommended that the amendments be revised to increase flexibility by permitting a penthouse to have walls of multiple heights, regardless of the use to which the penthouse is to be put. (Ex. 27.) A representative of the Friendship Neighborhood Association submitted comments stating that the amendments would result in matter-of-right heights and densities that are inconsistent with the Comprehensive Plan. (Ex. 128.) Additionally, Mr. Lindsley Williams submitted comments recommending a number of revisions to the amendments, some substantive and others technical. (Ex. 129.) ANCs 4B and 1C both submitted reports in support of the amendments, while recommending a few revisions, as discussed in detail below. (Ex. 130, 132.) Alma Gates submitted comments stating general opposition to the amendments. (Ex. 131.) Andrea Rosen submitted comments in support of the amendments, as revised. (Ex. 133.) The law firms of Goulston & Storrs PC and Holland & Knight LLP filed comments (Ex. 134 and 136, respectively) recommending a number of revisions to the amendments, both technical and substantive, including that certain types of projects be vested under the existing rules. The Committee of 100 on the Federal City submitted comments in opposition to the proposed amendments. (Ex. 135.) The Kalorama Citizens Association and Lyn Abrams both submitted comments echoing those of ANCs 4B and 1C. (Ex. 137, 139.) Lastly, the Penn-Branch Citizens/Civic Association recommending several revisions to the amendments. (Ex. 138.)

In response to these comments, OP filed a supplemental report dated October 14, 2015. (Ex. 140.) OP stated that it was continuing to prepare corrections and clarifications to the text of the amendments. OP requested additional time prior to final action to complete these revisions, and also requested guidance from the Commission at its upcoming public meeting of October 19, 2015, regarding several issues raised by the comments submitted since the Commission took proposed action. OP also filed a summary of the issues raised in public comments, which was noted to be not a definitive documentation of public comments. (Ex. 141.)

At a properly noticed public meeting on October 19, 2015, the Commission voted to deliberate on the issues raised in OP's supplemental report at its public meeting on October 26, 2015. On October 26, 2015, the Commission deliberated on the issues raised by OP and provided guidance as to the following issues:

- Height and Stories. For zones where the proposed amendments limit penthouse height for mechanical space to fifteen feet (15 ft.), the Commission decided to maintain this

limit as proposed, rather than raising this height to sixteen feet, six inches (16 ft., 6 in.). For zones where the proposed amendments limit penthouse height to ten feet (10 ft.), the Commission decided to raise this limit to twelve feet (12 ft.) in order to provide for roof drainage and mechanical systems. With respect to the number of stories permitted, the Commission decided to maintain the proposed amendments rather than limiting the number of permitted stories to only one (1). With respect to the number of different heights permitted for penthouse enclosing walls, the Commission decided to permit multiple heights for penthouses with only mechanical space, one (1) for elevator overrides and another for other mechanical space;

- Penthouse Area. The Commission indicated that the proposed limitation of thirty square feet (30 sq. ft.) applicable to penthouses on one-family dwellings does not include space used for stair and elevator access. The Commission decided to maintain the proposed exemption of zero point four (0.4) FAR of habitable penthouse space for calculations of building FAR;
- Penthouse Setback. In response to comments from ANCs 4B and 1C, the Commission decided to extend the setback limitations applicable to the R-1 through R-4 Zone Districts to all detached dwellings, semi-detached dwellings, rowhouses, and flats, regardless of the zone district;
- Minor Modifications of Approved PUDs. The Commission decided to maintain the proposed amendments with respect to the minor modification process provided for approved PUDs that incorporate habitable penthouse space;
- Conversions of Existing Nonconforming Penthouses. The Commission indicated that no additional language was needed in order to permit conversions of nonconforming penthouses to habitable use;
- Affordable Housing Requirements. The Commission decided to maintain the existing twenty (20)-year term limit for affordable housing units provided as a requirement for non-residential penthouse space. The Commission also requested that OP study the potential impacts of eliminating this term and instead requiring that affordable units be provided in perpetuity. The Commission declined to exempt institutional and non-profit uses from the proposed affordable housing requirements. With respect to recreation space within a penthouse, the Commission decided to impose the affordable housing requirements on such space in non-residential buildings, but not to subject such space in residential buildings to Inclusionary Zoning requirements. Lastly, the Commission decided to exempt rental units in the South East Federal Center Overlay District from Inclusionary Zoning requirements because those units are subject to separate affordable housing requirements. However, the Commission decided not to exempt condominium units in the overlay because those units are not subject to any separate affordability requirements.

OP submitted a supplemental report dated November 2, 2015, in which it discussed a number of revisions made to the amendments in response to public comments in coordination with the Office of the Attorney General and the Department of Consumer and Regulatory Affairs. (Ex. 142.) These revisions were made pursuant to the guidance and clarification provided by the Commission at its public meeting on October 26, 2015, as discussed above, as well as technical corrections and clarifications of the text of the amendments.

On November 9, 2015, the Commission considered whether to take final action to approve the proposed amendments. The Commission voted to adopt the rule as proposed, subject to the changes it agreed to during its October 26th deliberations, the changes proposed by OP in its November 2nd Report, and two technical changes proposed by OP during its current deliberations. Those two changes involved making a reference to “rowhouses” in § 411.18(c) when discussing penthouse setbacks applicable to buildings used as a detached dwelling, semi-detached dwelling, rowhouses, and flats and providing penthouse setbacks when those building in any zone or other building in the R-1 through R-4 Zone Districts are on a corner lot. The Commission believes that all of these changes rationally flow from the proposed rules, and therefore no additional notice of proposed rulemaking is required. Both OP and the Office of the Attorney General were granted flexibility to make any conforming or clarifying changes needed, and several such changes were made; such as adding a specific reference to the setback requirement of § 411.18 as one of the exceptions to § 411.3, which exempts penthouses less than four feet (4 ft.) in height above a roof or parapet wall from the requirements of that section. The Commission was not persuaded by comments suggesting the need for vesting provisions and therefore no such provisions were included.

In response to notice given pursuant to § 13 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10), the Commission received written reports from a number of ANC.

ANC 7B submitted a report on November 24, 2014. (Ex. 54.) At its public meeting held November 20, 2014, the ANC voted, with a quorum present 4-3 to adopt a resolution stating several concerns. The ANC’s primary concern was the complexity and timing of the hearing, which, the ANC stated, did not allow for full public debate and consideration of the proposed amendments. The ANC further objected “to the entire language and thrust of Section 400.7(b)(5),” which was included in the Public Hearing Notice as an alternative to the proposed text. ANC 7B also recommended that § 400.7(c) include a requirement that all R-1 through R-4 Zone Districts permit structures of over four feet (4 ft.) by special exception only. The ANC requested that the Commission hold the record open for an additional ninety (90) days to allow for full public comment, to hold roundtables requiring OP to provide visual representations explaining the intent of the proposed amendments, to make this representation available on the Office of Zoning website, and to coordinate the proposal with the Commission’s action to amend the R-4 regulations in Z.C. Case No. 14-11.

ANC 1C submitted three (3) reports regarding the proposed amendments. The first report was dated January 9, 2015. (Ex. 55.) At a duly noticed public meeting held on January 7, 2015, ANC 1C voted, with a quorum present, 6-0 to adopt a resolution regarding the proposed amendments. The ANC recommended that the amendments include the following: allow only a single story of human occupancy within a penthouse; to retain the one-to-one (1:1) setback ratio and one-third (1/3) roof occupancy limitations, particularly for rowhouses, including those in the R-5-B Zone District; impose a ten foot (10 ft.) height limit on penthouses on any rowhouses; and require that any occupied space within a penthouse be included in FAR calculations.

ANC 1C's second report was dated April 30, 2015. (Ex. 73.) It includes an outline of the ANC's position on several issues.² The ANC stated that, with respect to the R-5-B Zone District, the proposed amendments are out of character with the Comprehensive Plan in terms of setback and the integrity of residential rowhouse neighborhoods. The ANC stated that, for R-4 and R-5-B Zone Districts, it recommended limiting penthouse heights to ten feet (10 ft.), which would be sufficient for staircase access to a roof. The ANC also supported permitting penthouses on one (1)-family dwellings only by special exception. ANC 1C opposed permitting habitable space in penthouses in the R-5-B Zone District because it would encourage over-development and conversion of one-family structures into multi-unit buildings. Further, the ANC stated that permitting habitable enclosed recreation space in a penthouse in this district would encourage additional noise and density in residential neighborhoods, contrary to the Comprehensive Plan. ANC 1C recommended that setback requirements be applied to all exterior walls, including common walls, in order to avoid structural pressure on such walls and impinging on the development rights of abutting property owners, as well as the potential for snow load problems, interference with chimneys on abutting properties, and fire safety problems. Lastly, ANC 1C reiterated that it was opposed to exempting penthouse enclosed space from FAR calculations.

ANC 1C's third report was dated October 8, 2015. (Ex. 132.) At a properly noticed public meeting on October 7, 2015, ANC 1C voted, with a quorum present, 8-0, to adopt a resolution regarding the proposed amendments. In its report, the ANC noted that the Comprehensive Plan includes an instruction to amend procedures for roof structure review so that a party wall of a rowhouse or a semi-detached house is treated as an exterior wall for purposes of applying zoning regulations and height requirements. The ANC also stated that expansive redevelopment is destructive in rowhouse neighborhoods, and that the market has increasingly incentivized such development. The ANC stated that the proposed amendments incorporate changes from previously proposed alternatives that could forestall the damaging effects of this development, especially with respect to restrictions on height and width. ANC 1C stated that there is no perceptible reason for requiring setback from adjoining walls in R-1 through R-4 Zone Districts where the buildings have the same legal height limit, but, for R-5 and other zones, imposing this

² The Commission notes that the report does not indicate that these comments were adopted by any vote by the ANC at a duly noticed public meeting. Accordingly, the comments are not entitled to the same "great weight" as the ANC's other reports. However, the Commission has taken these comments into consideration in its decisions regarding the amendments.

requirement only to walls adjacent to a property with a lower permitted height. Accordingly, the ANC recommended extending the setback requirement currently proposed for the R-1 through R-4 Zone Districts to all detached dwellings, semi-detached dwellings, rowhouses, and flats. ANC 1C stated that the proposed amendments would substantially curtail exemptions of habitable penthouse space from gross floor area. The ANC recommended that the amendments prohibit matter-of-right penthouses on any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone,” and limit the use and dimensions of any penthouses by special exception review by enacting proposed § 411.5 and clarifying that thirty square feet (30 sq. ft.) is the maximum floor area of a penthouse. The ANC further recommended that the amendments impose the side-wall setback formula provided in proposed § 411.18(a), with subsection (a)(3) amended so as to apply to any “detached dwelling, semi-detached dwelling, rowhouse or flat in any zone.”

ANC 6C submitted a report dated April 13, 2015. (Ex. 60.) At a duly noticed, regularly scheduled meeting, ANC 6C voted, with a quorum present, 6-0-0 to recommend that the amendments limit rowhouse penthouse height to ten feet (10 ft.) and permit such penthouses only by special exception. The ANC stated that it was concerned that penthouses would otherwise be used as a means of circumventing R-4 Zone District height restrictions.

ANC 3D submitted a report on April 14, 2015. (Ex. 61.) At a duly noticed special public meeting on April 9, 2015, ANC 3D voted, with a quorum present, 8-0-0 to adopt a resolution regarding the proposed amendments. The ANC noted the policy embodied in the Land Use Element of the Comprehensive Plan to conserve one-family neighborhoods, which is reiterated in the Rock Creek West Area Element. The ANC stated that most one-family dwellings and low-density apartment and commercial buildings do not have the need for a mechanical penthouse. The ANC further stated that the proposal to permit a penthouse of one (1) story and ten feet (10 ft.) would encourage “tear downs” and new construction and would lead to a loss of the neighborhood character of the Rock Creek West area. The ANC stated that the proposal to allow penthouses in the C-1 and C-2-A Zone Districts would also aesthetically intrude upon the scale, function, and character of the surrounding low-density residential neighborhoods. Accordingly, ANC 3D recommended that the Commission reject the proposal to permit penthouses in areas where the existing height of buildings is limited to fifty feet (50 ft.) or less.

ANC 6B submitted a report dated April 20, 2015. (Ex. 63.) At a regularly scheduled, properly noticed meeting on April 20, 2015, ANC 6B voted, with a quorum present, 10-0-0 in support of the proposed amendments on the condition that rooftop penthouses be permitted in residential areas only by special exception.

ANC 4B submitted a report dated October 7, 2015. (Ex. 130.) At a regularly scheduled public meeting on October 6, 2015, ANC 4B voted, with a quorum present, 7-0 to adopt a resolution regarding the proposed amendments. In its report, the ANC gave comments and recommendations substantially similar to those included in ANC 1C’s report submitted October

7, 2015. The ANC further stated that the proposed amendments, with the recommended refinements, would achieve the objectives of the Comprehensive Plan.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANCs. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. For this docket the Commission received written reports from ANCs 1C, 3D, 4B, 6B, 6C, and 7B, all of which were described above. In response to these reports, the Commission finds first that, after additional public hearings and meetings, initial concerns regarding the timing and notice for the amendments have been addressed and resolved. Despite, ANC 7B’s request to do so, the Commission did not formally coordinate these amendments with those adopted for the R-4 regulations in Z.C. Case No. 14-11, finding that the amendments at issue here merited a full separate discussion. The Commission finds persuasive the requests of multiple ANCs to limit penthouses in residential zones and on detached dwellings, semi-detached dwellings, rowhouses, and flats in all zones. Accordingly, the Commission has incorporated these limitations into the amendments, including a new restriction that a penthouse would be permitted only by special exception, and a limit of thirty square feet (30 sq. ft.) for penthouses on these structures. With respect to FAR calculations, the Commission finds that counting habitable penthouse space towards FAR limitations, but also exempting up to zero-point-four (0.4) FAR, strikes the right balance in order to enable habitable penthouse space to be realized while still imposing moderate restrictions. Likewise, the Commission finds that a proper balance is struck by permitting habitable penthouse space in zones with a maximum height above forty feet (40 ft.) for structures that are not detached dwellings, semi-detached dwellings, rowhouses, or flats.

With respect to the amendments’ consistency with the Comprehensive Plan, the Commission finds persuasive OP’s finding, detailed in several reports, that the regulations are not inconsistent with the Comprehensive Plan. (Ex. 1, 6, 119.) With respect to the issue of setback from adjoining walls for buildings used as detached dwellings, semi-detached dwellings, rowhouses, and flats, the Commission finds persuasive the recommendation of ANCs 1C and 4B that the setback requirements for R-1 through R-4 Zone Districts be extended to such building in other zones. Accordingly, the Commission has extended these requirements to all detached dwellings, semi-detached dwellings, rowhouses, and flats, regardless of the zone district.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) to give great weight to OP recommendations. The Commission believes that its final determination in this case substantially reflects the recommendation of OP.

For the reasons stated above, the Commission concludes that the adoption of the following text amendments is consistent with the best interests of the public and not inconsistent with the Comprehensive Plan.

Title 11 of the District of Columbia Municipal Regulations, ZONING, is amended as follows:

Chapter 1, THE ZONING REGULATIONS, § 199 DEFINITIONS, § 199.1 is amended as follows:

By inserting the following new definitions for “The Height Act,” “Penthouse,” “Penthouse habitable space,” and “Penthouse mechanical space,” in alphabetical order:

Height Act, The - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).

Penthouse - A structure on or above the roof of any part of a building. The term includes all structures previously regulated as “roof structures” by § 411 prior to January 8, 2016. Skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, and plumbing vent stacks shall not be considered as penthouses.

Penthouse habitable space - enclosed space within a penthouse devoted to any use permitted in the zone, unless otherwise restricted, other than penthouse mechanical space. The term penthouse habitable space shall include communal recreation space and associated facilities such as storage, kitchen space, change rooms, or lavatories.

Penthouse mechanical space - enclosed space within a penthouse devoted to mechanical equipment for the building, elevator over-rides, or stair towers.

By amending the definition of “Story” to delete the phrases “stairway or elevator” and “other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area”; and by amending the definition of “Story, top” to delete the phrase “housing for mechanical equipment or stairway or elevator” so that the definitions will read as follows:

Story - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses.

Story, top - the uppermost portion of any building or structure that is used for purposes other than penthouses. The term "top story" shall exclude architectural embellishments.

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows:

Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), is amended as follows:

By amending § 400.1 to add the phrase “, not including the penthouse,” so that the entire subsection reads as follows:

400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures, not including the penthouse, in a Residence District shall not exceed that given in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)
R-1-A, R-1-B, R-2, R-3, R-5-A	40	3
R-5-B	50	no limit
R-5-C	60	no limit
R-5-D	90	no limit
R-5-E	90	no limit
R-4 ZONE DISTRICT		
New construction of 3 or more immediately adjoining one- or two-family row dwellings built concurrently on separate record lots	40	3
All other structures	35	3

By amending §§ 400.5 through 400.8 by repealing §§ 400.7 and 400.8, re-designating the existing text of §§ 400.5 and 400.6 as §§ 400.7 and 400.8 and adding new text to §§ 400.5 and 400.6, so that the subsections will read as follows:

400.5 A penthouse may be erected to a height in excess of that authorized in the district in which it is located. The height of a penthouse, except as restricted in § 400.6 and as prohibited on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in any zone in § 411.5, as measured from the surface of the roof upon which the penthouse is located, shall not exceed that given in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
R-1-A, R-1-B, R-2, R-3, R-4, R-5-A	12 ft.	1
R-5-B	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
R-5-C	12 ft., except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
R-5-D	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space
R-5-E	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

- 400.6 A non-residential building constructed pursuant to §§ 400.7 through 400.12 shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.).
- 400.7 A building or other structure may be erected to a height not exceeding ninety feet (90 ft.); provided, that the building or structure shall be removed from all lot lines of its lot for a distance equal to the height of the building or structure above the natural grade.
- 400.8 A church may be erected to a height of sixty feet (60 ft.); provided, that it shall not exceed the number of stories permitted in the district in which it is located.

Section 411, ROOF STRUCTURES (R), is retitled PENTHOUSES (R) and is amended to read as follows:

- 411.1 A penthouse permitted in this title shall comply with the conditions specified in this section.
- 411.2 [RESERVED]
- 411.3 Except for compliance with the setbacks required by § 411.18 and as otherwise noted in this section, a penthouse that is less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.
- 411.4 A penthouse may house mechanical equipment or any use permitted within the zone, except as follows:
- (a) Penthouse habitable space on a detached dwelling, semi-detached dwelling, rowhouse, or flat shall be limited pursuant to § 411.5 below;
 - (b) Within residential zones and the Capitol Interest Overlay in which the building is limited to forty feet (40 ft.) maximum penthouse use shall be

limited to penthouse mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;

- (c) A nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104; and
- (d) Penthouse habitable space is not permitted on any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east.

411.5 Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail required by Title 12 of the DCMR (*CONSTRUCTION CODE SUPPLEMENT OF 2013*) for a roof deck, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under § 3104, provided the penthouse:

- (a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and
- (b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.

411.6 All penthouses shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color; except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure.

411.7 Mechanical equipment shall be enclosed fully, except that louvers for the enclosing walls may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.

411.8 When roof levels vary by one (1) floor or more or when separate elevator penthouses are required, there may be one (1) enclosure for each elevator penthouse at each roof level.

411.9 Enclosing walls of the penthouse shall be of equal, uniform height as measured from roof level, except that:

- (a) Enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space;

- (b) For a penthouse containing no habitable space, enclosing walls of penthouse mechanical space shall be of a single uniform height except walls enclosing an elevator override may be of a separate uniform height; and
 - (c) Required screening walls around uncovered mechanical equipment may be of a single, different uniform height.
- 411.10 Enclosing walls of a penthouse from roof level shall rise vertically to a roof, with a slope not exceeding twenty percent (20%) from vertical.
- 411.11 The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and 400.18 upon a showing that:
 - (a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable;
 - (b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and
 - (c) The light and air of adjacent buildings will not be affected adversely.
- 411.12 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas:
 - (a) Zones where there is a limitation on the number of stories other than the C-3-B Zone District; and
 - (b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and Second Street, S.W.
- 411.13 For the purposes of calculating floor area ratio for the building, the aggregate square footage of all space on all penthouse levels or stories measuring six and one-half feet (6.5 ft.) or more in height shall be included in the total floor area ratio permitted for the building, with the following exceptions:
 - (a) Penthouse mechanical space;
 - (b) Communal recreation space;
 - (c) Penthouse habitable space, other than as exempted in § 411.13(b), with a floor area ratio of less than four-tenths (0.4); and

- (d) Mechanical equipment owned and operated as a penthouse by a fixed right-of-way public mass transit system.
- 411.14 Areas within curtain walls or screening without a roof, used where needed to give the appearance of one (1) structure, shall not be counted in floor area ratio, but shall be computed as a penthouse to determine if they comply with § 411.12.
- 411.15 The gross floor area of penthouse habitable space shall be included in calculations to determine the amount of off-street vehicle parking, bicycle parking, and loading as required elsewhere in this title; except that recreation space for residents or tenants of the building or other ancillary space associated with a rooftop deck shall not be included.
- 411.16 For residential buildings, the construction of penthouse habitable space, except penthouse habitable space devoted exclusively to communal rooftop recreation or amenity space for the primary use of residents of the residential building, is subject to the Inclusionary Zoning set-aside provisions of Chapter 26.
- 411.17 For non-residential buildings, the construction of penthouse habitable space, including all forms of habitable space, shall trigger the affordable housing requirement as set forth in § 414.
- 411.18 Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be set back from the edge of the roof upon which it is located as follows:
 - (a) A distance equal to its height from the front building wall of the roof upon which it is located;
 - (b) A distance equal to its height from the rear building wall of the roof upon which it is located;
 - (c) A distance equal to its height from the side building wall of the roof upon which it is located if:
 - (1) In any zone, it is on a building used as a detached dwelling, semi-detached dwelling, rowhouse, or flat, that is:
 - (A) Adjacent to a property that has a lower or equal permitted matter-of-right building height, or
 - (B) On a corner lot adjacent to a public or private street or alley right-of-way or a public park;

- (2) In the R-1 through R-4 Zone Districts, it is on any building not described in (c)(1) that is:
 - (A) Adjacent to a property that has a lower or equal permitted matter-of-right building height, or
 - (B) On a corner lot adjacent to a public or private street or alley right-of-way or a public park;
 - (3) For zones not listed in paragraph (c)(2), it is on a building not described in paragraph (c)(1) that is located adjacent to a property that has a lower permitted matter-of-right building height;
 - (4) For any zone, it is on a building adjacent to a property improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter-of-right building height; and
 - (5) For any zone, it is on a building with walls that border any court other than closed courts;
 - (d) A distance equal to one-half (1/2) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of paragraphs (c)(1) through (5); or
 - (e) A distance equal to two (2) times its height from any building wall of the roof upon which it is located which fronts onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W., or fronting onto Pennsylvania Avenue, N.W. between 3rd Street, N.W. and 15th Street, N.W., subject to any penthouse constraints contained within adopted PADC Guideline documents.
- 411.19 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Chapter 27 of this title.
- 411.20 RESERVED
- 411.21 RESERVED
- 411.22 RESERVED

411.23 RESERVED

411.24 A request to add penthouse habitable space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of Chapters 16, 18, 28, or 29 prior to January 8, 2016, may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to § 3030 provided:

- (a) The item shall not be placed on a Consent Calendar for a period of thirty (30) days minimum following the filing of the application; and
- (b) The Office of Planning shall submit a report with a recommendation a minimum of seven (7) days in advance of the meeting.

411.25 In addition to meeting the requirements of § 3030, an application made pursuant to § 411.24 shall include:

- (a) A fully dimensioned copy of the approved and proposed roof plan and elevations as necessary to show the changes;
- (b) A written comparison of the proposal to the Zoning Regulations; and
- (c) Verification that the affected ANC has been notified of the request.

411.26 Pursuant to § 5 of the Height Act, D.C. Official Code § 601.05(h), a penthouse may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback and other restrictions stated in the Act.

By adding a new § 414, AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL BUILDING OF PENTHOUSE HABITABLE SPACE, to read as follows:

**414 AFFORDABLE HOUSING PRODUCTION REQUIREMENT
GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL
BUILDING OF PENTHOUSE HABITABLE SPACE**

414.1 The owner of a non-residential building proposing to construct penthouse habitable space shall produce or financially assist in the production of residential uses that are affordable to low-income households, as those households are defined by § 2601.1, in accordance with this section.

- 414.2 The requirements of this provision shall be triggered by the filing of a building permit application that, if granted, would result in the amount of penthouse habitable space exceeding one thousand square feet (1,000 sq. ft.).
- 414.3 The requirements of this section shall not apply to properties owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.
- 414.4 Qualifying residential uses include one (1)-family dwellings, flats, multiple-family dwellings, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in § 199.1.
- 414.5 If the owner constructs or rehabilitates the required housing, the provisions of §§ 414.6 through 414.11 shall apply.
- 414.6 The gross square footage of new or rehabilitated housing shall equal:
- (a) Not less than one-fourth ($1/4$) of the proposed penthouse habitable space if the required housing is situated on an adjacent property;
 - (b) Not less than one-third ($1/3$) of the proposed penthouse habitable space if the location of the required housing does not comply with paragraph (a) of this subsection, but is nonetheless within the same Advisory Neighborhood Commission area as the property, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and
 - (c) Not less than one-half ($1/2$) of the proposed penthouse habitable space if the location of the required housing is other than as approved in paragraphs (a) and (b) above.
- 414.7 If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq. ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing.
- 414.8 For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR).
- 414.9 In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the

issuance date of the first certificate of occupancy for the residential development, or if for a one (1)-family dwelling, the effective date of the first lease agreement.

- 414.10 If the required housing is provided for home ownership, it shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling, the effective date of the first sales agreement.
- 414.11 No certificate of occupancy shall be issued for the owner's building to permit the occupancy of penthouse habitable space until a certificate of occupancy has been issued for the housing required pursuant to this section, or in the case of a residential unit for which a certificate of occupancy is not required, prior to the final building inspection.
- 414.12 If the owner instead chooses to contribute funds to a housing trust fund, as defined in § 2499.2, the provisions of §§ 414.13 through 414.16 shall apply.
- 414.13 The contribution shall be equal to one-half (1/2) of the assessed value of the proposed penthouse habitable space.
- 414.14 The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than thirty (30) days prior to the date of the building permit application to construct the penthouse habitable space.
- 414.15 The contribution shall be determined by dividing the assessed value per square foot of land that comprises 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 habitable space to be constructed.
- 414.16 Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's penthouse habitable space.

Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended as follows:

Section 530, HEIGHT (SP), is amended as follows:

By amending § 530.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

530.1 Except as specified in §§ 530 through 537 and in Chapters 20 through 25 of this title, the height of buildings or structures, not including a penthouse, in an SP Zone District shall not exceed the height set forth in the following table:

By amending § 530.4 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows:

530.4 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

By amending § 530.5 to read as follows:

530.5 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
SP-1	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
SP-2	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

Subsection 530.6 is repealed.

Section 537, ROOF STRUCTURES (SP) is renamed PENTHOUSES (SP), and is amended as follows:

By amending § 537.1 to replace the phrase “roof structures” with “penthouses” so that the subsection reads as follows:

537.1 The provisions of § 411 shall also regulate penthouses in SP Zone Districts.

Subsection 537.2 is repealed.

Chapter 6, MIXED USE, COMMERCIAL RESIDENTIAL) DISTRICTS, is amended as follows:

Section 630, HEIGHT (CR), is amended as follows:

By amending § 630.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

630.1 Except as provided in this section, the height of buildings and structures, not including a penthouse, shall not exceed ninety feet (90 ft.).

Subsection § 630.4 is amended to read as follows:

630.4 A penthouse may be erected to a height in excess of that which this section otherwise authorizes, but shall not exceed a height of twenty feet (20 ft.) or one (1) story, as measured from the surface of the roof upon which the penthouse sits. A mezzanine for habitable or mechanical space is permitted; and a second story is permitted for penthouse mechanical space only.

Subsection 630.5 is repealed.

Section 639, ROOF STRUCTURES (CR) is renamed PENTHOUSES (CR), and is amended as follows:

By amending § 639.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

639.1 The provisions of § 411 shall also regulate penthouses in CR Zone Districts.

Subsection 639.2 is repealed.

Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

Section 770, HEIGHT OF BUILDINGS AND STRUCTURES (C), is amended as follows:

By amending § 770.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

770.1 Except as provided in this section and in Chapters 17 and 20 through 25 of this title, the height of a building or structure, not including a penthouse, in a Commercial District shall not exceed that set forth in the following table:

Subsection § 770.3 is amended by deleting the phrase “over elevator shafts” so that the entire subsection reads as follows:

770.3 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that

which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

Subsection 770.6 is amended to read as follows:

770.6 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
C-1, C-2-A	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
C-2-B, C-3-A	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
C-2-B-1, C-3-B	20 ft.	1; second story permitted for penthouse mechanical space
C-2-C; C-3-C; C-4; C-5	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

Subsections 770.7 and 770.8 are repealed.

Section 777, ROOF STRUCTURES (C) is renamed PENTHOUSES (C), and is amended as follows:

By amending § 777.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

777.1 The provisions of § 411 shall also regulate penthouses in the Commercial Districts.

Subsection 777.2 is repealed.

Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows:

Section 840, HEIGHT OF BUILDINGS AND STRUCTURES (C-M, M), is amended as follows:

By amending § 840.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

840.1 Except as provided in § 840.2 and in Chapters 20 through 25 of this title, the height of buildings or structures, not including a penthouse, in an Industrial District shall not exceed that given in the following table:

By amending § 840.2 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows:

840.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

Subsection 840.3 is amended to read as follows:

840.3 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
CM-1	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
CM-2	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
CM-3, M	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

Subsections 840.4 and 840.5 are repealed.

Section 845, ROOF STRUCTURES (C-M, M) is renamed PENTHOUSES (C-M, M), and is amended as follows:

By amending § 845.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

845.1 Section 411 shall be applicable to penthouses in the Industrial Districts.

Subsection 845.2 is repealed.

Chapter 9, WATERFRONT DISTRICTS, is amended as follows:

Section 930, HEIGHT OF BUILDINGS AND STRUCTURES (W), is amended as follows:

By amending § 930.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

930.1 Except as provided in this section, the height of buildings and structures, not including a penthouse, shall not exceed the maximum height in the following table:

By amending § 930.2 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows:

930.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews or mayoral approvals.

Subsection 930.3 is amended to read as follows:

930.3 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
W-0; W-1	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
W-2	12 ft., except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
W-3	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

Subsection 930.4 is repealed.

Section 936, ROOF STRUCTURES (W) is renamed PENTHOUSES (W), and is amended as follows:

By amending § 936.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

936.1 The provisions of § 411 shall apply to penthouses in the Waterfront Zone Districts.

Subsection 936.2 is repealed.

Chapter 12, CAPITOL INTEREST OVERLAY DISTRICT, is amended as follows:

Section 1203, HEIGHT, AREA, AND BULK REGULATIONS, is amended as follows:

By amending § 1203.2(a) to delete the phrase “over elevator shaft”, and to replace § 1203.2(b) in its entirety so that the entire subsection reads as follows:

- 1203.2 The height of buildings or structures as specified in § 1203.1 may be exceeded in the following instances:
- (a) A spire, tower, dome, minaret, pinnacle, or penthouse may be erected to a height in excess of that authorized in § 1203.1; and
 - (b) If erected or enlarged, a penthouse may be erected to a height in excess of that authorized in the zone district in which located; provided that:
 - (1) It meets the requirements of § 411; and
 - (2) It does not exceed ten feet (10 ft.) or one (1) story in height above the roof upon which it is located.

Subsection 1203.4 is repealed.

Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

Section 1305, PLANNED UNIT DEVELOPMENT GUIDELINES, is amended as follows:

By amending § 1305.1 to add the word “penthouse” to reads as follows:

- 1305.1 In the NC Overlay District, the matter-of-right height, penthouse, and floor area ratio limits shall serve as the guidelines for planned unit developments.

Section 1307, WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

The existing §§ 1307.7 and 1307.8 are renumbered 1307.8 and 1307.9, respectively. A new § 1307.7 is added to read as follows:

- 1307.7 A penthouse within the WP/C-2-A or WP/C-2-B Overlay Districts may be erected to a height in excess of that authorized in the zone district in which located; provided that:

- (a) The maximum permitted height shall be twelve feet (12 ft.) above the roof upon which it is located, except that the maximum permitted height for penthouse mechanical space shall be fifteen feet (15 ft.); and
- (b) The maximum permitted number of stories within the penthouse shall be one (1) except that a second story for mechanical equipment only shall be permitted.

Section 1309, EIGHTH STREET SOUTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended by adding a new § 1309.8 to read as follows:

1309.8 A penthouse within the ES Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be twelve feet (12 ft.) above the roof upon which it is located, except that the maximum permitted height for penthouse mechanical space shall be fifteen feet (15 ft.); and
- (b) The maximum permitted number of stories within the penthouse shall be one (1).

Chapter 14, REED-COOKE OVERLAY DISTRICT, is amended as follows:

Section 1402, HEIGHT AND BULK PROVISIONS, is amended as follows:

Subsection 1402.2 is amended to read as follows:

1402.2 For the purpose of this chapter, no planned unit development shall exceed the matter-of-right building height, bulk, and area requirements or penthouse provisions of the underlying zone district.

By adding new §§ 1402.4 and 1402.5 to read as follows:

1402.4 If erected or enlarged as provided in § 411, a penthouse within the RC/C-2-A or RC/R-5-B Overlay Districts may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be twelve feet (12 ft.) above the roof upon which it is located, except that the maximum permitted height for penthouse mechanical space shall be fifteen feet (15 ft.);
- (b) The maximum permitted number of stories within the penthouse shall be one (1); and

- (c) It shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.

1402.5 A penthouse within the RC/C-2-B Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be twelve feet (12 ft.) above the roof upon which it is located, except that the maximum permitted height for penthouse mechanical space shall be fifteen feet (15 ft.); and
- (b) The maximum permitted number of stories within the penthouse shall be one (1), except that a second story for mechanical equipment only shall be permitted.

Chapter 15, MISCELLANEOUS OVERLAY DISTRICTS, is amended as follows:

Section 1503, PLANNED UNIT DEVELOPMENT (DC), § 1503.1 is amended read as follows:

1503.1 In the DC Overlay District, the matter-of-right building height, penthouse height, and floor area ratio limits shall serve as the maximum permitted building height, penthouse height, and floor area ratio for a planned unit development.

Section 1524, PLANNED UNIT DEVELOPMENT (FB), § 1524.1 is amended to read as follows:

1524.1 In the FB Overlay District, the matter-of-right building height, penthouse height, and floor area ratio limits shall serve as the maximum permitted building height, penthouse height, and floor area ratio for planned unit developments.

Section 1534, HEIGHT, AREA, AND BULK REGULATIONS (NO), § 1524.4 is amended to read as follows:

1534.4 Except as limited in § 411.5, a penthouse within the NO Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be twelve feet (12 ft.) above the roof upon which it is located, except that the maximum permitted height for penthouse mechanical space shall be fifteen feet (15 ft.);

- (b) The maximum permitted number of stories within the penthouse shall be one (1); and
- (c) It shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.

Section 1563, HEIGHT, BULK, AND USE PROVISIONS (FT), § 1563.4 is amended to read as follows:

1563.4 The maximum bulk and height of a new building for a newly established use in the underlying CR Zone District shall be 5.0 FAR and eighty feet (80 ft.) in height, inclusive of a penthouse, which shall be limited to one (1) story maximum.

Section 1572, HEIGHT AND FLOOR AREA RATIO RESTRICTIONS (CHC), is amended by adding a new § 1572.5 to read as follows:

1572.5 A penthouse within the CHC Overlay District shall conform to the height and use provisions in the underlying Commercial District.

Chapter 16, CAPITOL GATEWAY OVERLAY DISTRICT, is amended as follows:

Section 1601, BONUS DENSITY AND HEIGHT (CG), is amended by adding a new § 1601.7 to read as follows:

1601.7 The provisions of § 411 shall apply to penthouses in the CG Overlay.

Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, is amended as follows:

Section 1806, PLANNED UNIT DEVELOPMENT, is amended as follows:

By amending § 1806.1 to add the words “penthouse height” to read as follows:

1806.1 The matter-of-right height, penthouse height, and floor area ratio limits shall serve as the maximums of permitted building height, penthouse height, and floor area ratio for a planned unit development (PUD) in the SEFC Overlay District.

By adding a new § 1811, PENTHOUSES, to read as follows:

1811 PENTHOUSES

1811.1 The provisions of § 411 shall apply to penthouses in the SEFC Overlay, except that the provisions of § 411.16, governing the application of Chapter 26 of this title, shall not apply to residential rental buildings.

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, § 1902, HEIGHT AND BULK, § 1902.1(a) is amended to add the phrase “or exceed one (1) story” to reads as follows:

1902.1 ...

- (a) No penthouse permitted by this title shall exceed a height of eighty-three and one-half feet (83.5 ft.) above the measuring point used for the building, or exceed one (1) story; and

Chapter 24, PLANNED UNIT DEVELOPMENT PROCEDURES, is amended as follows:

Section 2405, PUD STANDARDS, is amended as follows:

Subsection 2405.1 is amended to read as follows:

2405.1 Except as limited by an overlay, no building or structure shall exceed the maximum height permitted in the least restrictive zone district within the project area as indicated in the following table; and no penthouse shall exceed the maximum height permitted; provided, that the Zoning Commission may authorize minor deviations for good cause pursuant to § 2405.3:

ZONE DISTRICT	MAXIMUM HEIGHT	MAXIMUM PENTHOUSE HEIGHT
R-1-A, R-1-B, R-2, R-3, C-1, W-0	40 ft.	12 ft. /1 story
R-4, R-5-A, R-5-B,	60 ft.	15 ft./1 story; second story permitted for penthouse mechanical space
W-1, W-2, C-M-1	60 ft.	18 ft. 6 in./1 story; second story permitted for penthouse mechanical space
C-2-A	65 ft.	18 ft. 6 in./1 story; second story permitted for penthouse mechanical space
R-5-C, SP-1	75 ft.	20 ft./1 story; second story permitted for penthouse mechanical space
R-5-D, R-5-E, SP-2, C-2-B, C-2-B-1, C-2-C, C-3-A, C-3-B, W-3, C-M-2, C-M-3, M	90 ft.	20 ft. /1 story plus mezzanine; second story permitted for penthouse mechanical space
CR	110 ft.	20 ft./1 story plus mezzanine; second story

ZONE DISTRICT	MAXIMUM HEIGHT	MAXIMUM PENTHOUSE HEIGHT
		permitted for penthouse mechanical space
C-3-C, C4, C-5 (PAD)	130 ft.	20 ft. /1 story plus mezzanine; second story permitted for penthouse mechanical space
C-5 (PAD) (Where permitted by the Building Height Act of 1910, D.C. Official Code § 6-601.05(b) (formerly codified at D.C. Code §5-405(b) (1994 Repl.)), along the north side of Pennsylvania Avenue)	160 ft.	20 ft./1 story plus mezzanine; second story permitted for penthouse mechanical space

By amending § 2405.3 (a) to add the word “building” and the phrase “but not the maximum penthouse height” so that the entire subsection reads as follows:

2405.3 The Zoning Commission may authorize the following increases; provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter, or with respect to FAR, is for the purpose of a convention headquarters hotel on Square 370:

- (a) Not more than five percent (5%) in the maximum building height but not the maximum penthouse height; or
- (b) Not more than five percent (5%) in the maximum FAR.

Chapter 26, INCLUSIONARY ZONING, is amended as follows:

Section 2602, APPLICABILITY, is amended as follows:

By amending § 2602.1 to add a new subsection (d) so that the entire subsection reads as follows:

2602.1 Except as provided in § 2602.3, the requirements and incentives of this chapter shall apply to developments that:

- (a) Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, and W-1 through W-3 Zone Districts, unless exempted pursuant to § 2602.3;
- (b) Have ten (10) or more dwelling units (including off-site inclusionary units);
- (c) Are either:
 - (1) New multiple-dwellings;

- (2) New one (1)-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction;
- (3) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more; or
- (d) Consist of a residential building, other than a one (1)-family dwelling or flat, that has penthouse habitable space pursuant to § 411.16.

By amending § 2602.3(a) and (e) to add the phrase “except for new penthouse habitable space described in § 2602.1(d)” so that the entire subsection reads as follows:

2602.3 This chapter shall not apply to:

- (a) Hotels, motels, or inns, except for new penthouse habitable space as described in § 2602.1(d);
- (b) Dormitories or housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;
- (c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff;
- (d) Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments; or
- (e) Except for new penthouse habitable space as described in § 2602.1(d), properties located in any of the following areas:
 - (1) The Downtown Development or Southeast Federal Center Overlay Districts;
 - (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;
 - (3) The W-2 zoned portions of the Georgetown Historic District;
 - (4) The R-3 zoned portions of the Anacostia Historic District;

- (5) The C-2-A zoned portion of the Naval Observatory Precinct District; and
- (6) The Eighth Street Overlay.

Section 2603, SET-ASIDE REQUIREMENTS, is amended as follows:

By amending § 2603.1 to add the phrase “including penthouse habitable space as described in § 2602.1(d),” so that the entire subsection reads as follows:

- 2603.1 Except as provided in § 2603.8, an inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B Zone District or in a C-1, C-2-A, W-0, or W-1 Zone District shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use including penthouse habitable space as described in § 2602.1(d), or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.

By amending § 2603.2 to add the phrase “including floor area devoted to penthouse habitable space as described in § 2602.1(d),” so that the entire subsection reads as follows:

- 2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-B-1, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2, or W-3 Zone District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use including floor area devoted to penthouse habitable space as described in § 2602.1(d), or fifty percent (50%) of the bonus density being utilized for inclusionary units.

By amending §§ 2603.3 and 2603.4 to add references to new § 2603.10 so that both subsections will read as follows:

- 2603.3 Except as provided in §§ 2603.9 and 2603.11, inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0, and W-1 Zone Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (50%) of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.
- 2603.4 Except as provided in § 2603.10, developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Zone Districts shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.

By adding a new § 2603.10 to read as follows:

2603.10 Notwithstanding §§ 2603.3 and 2603.4, one hundred percent (100%) of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible low-income households.

Section 2607, OFF-SITE COMPLIANCE, is amended by adding a new § 2607.9 to read as follows:

2607.9 Inclusionary Units resulting from the set-aside required for penthouse habitable space as described in § 2602.1(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of §§ 414.13 through 414.16 when:

- (a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
- (b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
- (c) The building is not otherwise required to provide inclusionary units for low-income households and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

Section 2608, APPLICABILITY DATE, is amended as follows:

By amending § 2608.2 to add the phrase “With the exception of penthouse habitable space approved by the Zoning Commission pursuant to § 411.24”, so that the entire subsection reads as follows:

2608.2 With the exception of penthouse habitable space approved by the Zoning Commission pursuant to § 411.24, the provisions of this chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.

Chapter 27, REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, Section 2707, EXEMPTED ANTENNAS, § 2707.1(b) is amended to remove all references to roof structures so that the entire subsection reads as follows:

- 2707.1 The requirements of §§ 2703 through 2706 shall not apply to any antenna that is:
- (a) Entirely enclosed within a building but is not the primary use within the building;
 - (b) Entirely enclosed on all sides by a penthouse, or an extension of penthouse walls; this subsection shall not be interpreted to permit a penthouse in excess of the permitted height above the roof upon which it is located;
 - (c) Located entirely behind and no taller than the parapet walls; or
 - (d) No taller than eighteen inches (18 in.) in height and necessary for the implementation of expanded 911 or emergency communications.

Chapter 28, HILL EAST (HE) ZONE DISTRICT, is amended as follows:

Section 2809 is renamed “PENTHOUSES (HE)” and is amended as follows:

By amending § 2809.1 to delete the phrase “and 400.7” so that the subsection reads as follows:

2809.1 The provisions of § 411 shall apply to penthouses in the HE Zone District.

The existing text of § 2809.2 is repealed and replaced with the following new text:

2809.2 The height of a rooftop penthouse as measured from the surface of the roof upon which the penthouse is located shall not exceed that given in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
HE-1	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
HE-2	20 ft.	1; second story permitted for penthouse mechanical space
HE-3, HE-4	20 ft.	1 plus mezzanine; second story permitted penthouse mechanical space

Chapter 29, UNION STATION NORTH (USN) ZONE DISTRICT, is amended as follows:

Section 2906 is renamed “PENTHOUSES” and is amended as follows:

Subsections 2906.1 and 2906.2 are amended to read as follows:

2906.1 The provisions of § 411 shall apply to penthouses in the USN Zone District.

2906.2 A penthouse may be erected to a height in excess of that permitted in § 2905 but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
USN	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

Subsections 2906.3 and 2906.4 are repealed.

Chapter 30, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended as follows

Section 3030, CONSENT CALENDAR, § 3030.1, is amended by adding a third sentence, so that the subsection reads as follows:

3030.1 The purpose of this section is to create an expedited procedure to be known as the "Consent Calendar." The procedure shall allow the Zoning Commission, in the interest of efficiency, to make, without public hearing, minor modifications and technical corrections to previously approved final orders, rulemaking, or other actions of the Zoning Commission, including corrections of inadvertent mistakes. The procedure also permits the Zoning Commission to consider a request to add penthouse space pursuant to § 411.24.

Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Section 3104 SPECIAL EXCEPTIONS, is amended as follows:

By amending the table in § 3104.1 to add special exception provisions for "Nightclub, bar, cocktail lounge, or restaurant within a penthouse" and "Penthouses above a detached dwelling, semi-detached dwelling, rowhouse, or flat" and by amending the special exception provisions for "Roof structures - location, design, number, and all other regulated aspects" by replacing the phrase "Roof structures" with "Penthouses" so that the new and amended to read as follows:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Nightclub, bar, cocktail lounge or restaurant within a penthouse	Any District where use permitted within a building.	411.4
...		
Penthouses - above a detached dwelling, semi-detached dwelling, rowhouse, or flat	Any District	411.5
Penthouses - location, design, number, and all other regulated aspects	Any District	411.11

Chapter 33, SAINT ELIZABETHS EAST CAMPUS (StE) DISTRICT, is amended as follows:

Section 3306 FLOOR-AREA-RATIO (FAR), HEIGHT, LOT OCCUPANCY, REAR YARD SETBACK, MINIMUM LOT AREA, AND SETBACKS, § 3306.2 is amended to add the phrase “, not including a penthouse” so that the subsection reads as follows:

3306.2 Except as provided in this section, the FAR, height of a building or structure, not including a penthouse, lot occupancy, and rear yard in a StE Zone District shall not exceed or be less than that set forth in the following table:

Section 3312, ROOF STRUCTURES is renamed “PENTHOUSES” and is amended as follows:

By replacing § 3312.1 to read as follows:

3312.1 The provisions of § 411 shall apply to penthouses in the StE Zone Districts.

By adding a new § 3312.2 to read as follows:

3312.2 A penthouse may be erected to a height in excess of that permitted in § 3301 but shall not exceed the height, as measured from the surface of the roof upon which the penthouse sits, in the following table:

ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
StE-1, StE-4, StE-8, StE-10, StE-11, StE-14, StE-7 pursuant to § 3301.4(b)	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
StE-2, StE-5, StE-9	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
StE-3, StE-12, StE-15, StE-17 StE-7 pursuant to § 3301.4(a)	20 ft.	1; second story permitted for penthouse mechanical space
StE-6, StE-13, StE-18	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

Chapter 35, WALTER REED ZONE DISTRICT, is amended as follows:

Section 3510, HEIGHT AND ROOFTOP STRUCTURES (WR) is renamed “HEIGHT AND PENTHOUSES (WR)” and a new § 3510.3 is added to read as follows:

3510.3 A penthouse constructed in accordance with the provisions of § 411 may be erected to a height in excess of that permitted, but shall not exceed the height, as measured from the surface of the roof upon which the penthouse sits, in the following table:

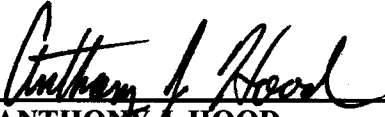
ZONE DISTRICT	MAXIMUM PENTHOUSE HEIGHT	MAXIMUM PENTHOUSE STORIES
WR-1, WR-6	Pursuant to §411.5	Pursuant to §411.5
WR-4, WR-5, WR-7	12 ft. except 15 ft. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
WR-8	12 ft., except 18 ft. 6 in. for penthouse mechanical space	1; second story permitted for penthouse mechanical space
WR-3	20 ft.	1; second story permitted for penthouse mechanical space
WR-2	20 ft.	1 plus mezzanine; second story permitted for penthouse mechanical space

On June 8, 2015, upon a motion by Commissioner May, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** the Petition at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Michael G. Turnbull, and Peter G. May to approve).

On November 9, 2015, upon a motion by Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Petition and **ADOPTED** this Order at its

public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie E. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 8, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 14-13

Z.C. Case No. 14-13

**(Text Amendment to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29,
30, 31, 33, and 35 - Penthouse Regulations)**

November 9, 2015

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.