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2014 NOV -5 PM 3: 02

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November 5, 2014

Anthony Hood, Chairperson
D C Zoning Commission
Office of Zoning
441 4th Street NW, Suite 210
Washington, DC 20001

Re: **Z.C. Case No. 14-13**
Goulston & Storrs Comments regarding Rooftop Penthouse Text
Amendments

Goulston & Storrs offers the following recommendations regarding the proposed Rooftop Penthouse Regulations under consideration in Z.C. Case No. 14-13

Broadly, Goulston supports the proposed text amendments, which will allow greater use of rooftop structures for recreational and common space uses as well as for additional residential and commercial office space. Goulston generally supports OP's proposed text regarding the height, form, and density of penthouses. Goulston also supports OP's recommendations regarding affordable housing and housing linkage requirements.

Institutional Uses

Goulston recommends that the proposed regulations permit broader uses within institutional buildings, such as churches, museums, libraries, public and private schools, colleges and universities, and government and other civic uses. The additional space gained through the expanded permitted uses will allow these institutions to accommodate program and space needs without outward physical expansion. To this end, Section 411.2 should be amended as follows:

Section 411.2 A penthouse may be used to house mechanical equipment, stairway and elevator overrides, or any use permitted within the zone in which the penthouse is located, except that a penthouse located within the R-1 through R-4 zones, or any one-family dwelling or flat in any other zone may only be used to house mechanical equipment, stairway and elevator overrides, or ancillary space directly associated with a rooftop deck. Notwithstanding the foregoing, penthouses on institutional buildings may be permitted to be used for any institutional use either permitted as a matter of right or approved for the building pursuant to applicable special exception standards, even if such buildings are located in the R-1 through R-4 Zone Districts.

ZONING COMMISSION
District of Columbia

Clarification Regarding What Uses Trigger a Linkage Requirement

The proposed regulations should more clearly state (a) what uses are permitted above the roof level and (b) which uses trigger an affordable housing requirement and which do not. Although we understand the Commission's desire to produce additional affordable housing within the District as an offset for additional residential units or office space that is gained through the amendments, we also strongly believe that such affordable housing requirements should not apply to recreational space and other common areas, whether such recreational/common space is in a residential or commercial building. Similarly, such affordable housing requirements should not apply to penthouse space devoted to institutional uses, such as churches, museums, libraries, public and private schools, universities, and other government and civic uses.

To this end, Goulston recommends the following change to the definition of "penthouse non-residential gross floor area," which will ensure that recreational space and other common areas as well as penthouse space devoted to institutional uses do not trigger a linkage requirement.

Section 414.2 For the purposes of this section, the term "penthouse non-residential gross floor area" shall mean all of the gross floor area of a penthouse devoted to hotel, retail, service, office, or other commercial uses, except that the term shall exclude common recreational space, whether or not such space is accessory to rooftop deck space, —not otherwise occupied by dwelling units, space accessory to rooftop deck space such as storage, rest rooms, or change rooms, mechanical equipment, stairway, or elevator overrides.

Solar Panels

Goulston supports OP's proposed amendments regarding solar panels, which provide a balance between standardized roof structure regulations and incentives for greater sustainability. OP's proposed language regarding existing buildings is particularly important, because existing buildings often lack the ability to otherwise accommodate solar panels on the building roof. Particularly for narrow urban sites, the penthouse roof may be the only viable option for solar panels.

Setbacks from Historic Resources

Finally, Goulston recommends that the Commission not include a requirement for a penthouse to be set back from a common lot line with a historic resource.

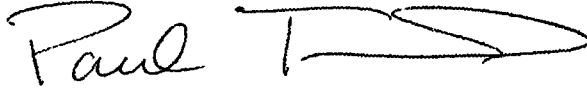
- First, the proposed regulation would, for the first time, impose preservation-based limits on properties that are not historic but happen to be adjacent to historic resources. Moreover, the proposed regulation would define the applicable zoning for a particular parcel based on the status of adjacent property.
- Second, the proposed regulation is overbroad. The historic preservation regulations do not set an existing historic resource in amber, rather, it is always possible for an adjacent historic resource to be improved up to the zoning-permitted height either through a

compatible addition or through a project of special merit. Therefore, requiring a penthouse setback because of adjacency to a historic resource would unfairly disadvantage that property when compared to a site that is not adjacent to a historic resource. In both cases, the adjacent property could be developed to the matter of right height, yet the property adjacent to the historic resource would be subject to a greater penthouse setback requirement.

Conclusion

We appreciate the opportunity to comment on the proposed amendments and we look forward to the Commission's consideration of these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Tummonds". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul Tummonds

A handwritten signature in black ink, appearing to read "David Avitabile". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Avitabile