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November 6, 2014

Anthony Hood, Chairperson  
Zoning Commission of the District of Columbia  
One Judiciary Square, Suite 220-South  
441 4<sup>th</sup> Street, NW  
Washington, DC 20001

Re. ZC Case 14-13 -- Definitions, Use of, Placement, and Size Limits for Rooftop Penthouses

Dear Mr Hood and Members of the Commission.

This case advances the process of activating rooftops -- both out in the open on decks or other surfaces or within enclosed areas -- something I have promoted for years. Existing regulations were effectively limited by restrictions in the Height Act, limitations that were recently relaxed. Thus, the value of the upper level can be much more fully utilized for the benefit of those occupying the building or visiting it, and the local government can realize gains as well from increased valuation and tax revenues.

Broadly speaking, I favor the proposals in the hearing Notice. My comments are intended to further unlock the potential of rooftops while remaining within the limits of the Height Act as now amended and to clarify terms that are key to implementation.

The Hearing Notice sets out a definition of the Height Act, previously undefined but usually understood. It creates a highly troublesome definition of "penthouse" that, to my mind, goes far beyond any ordinary meaning of that term. Present regulations have allowed a range of rooftop equipment and hardware to be on or come through the roof as long as it was less than four feet (4 ft) in height above the roof, often visible "out in the open." The proposed definition of "penthouse" includes the gamut of elements known as "roof structures" and folds them into a term that conveys a sense of enclosure from the second syllable "house" -- which is inherently something covered and not "open to the sky." I find the definition tortured and expect it will confuse practitioners and the public. Two other terms -- "story" and "story, top" would be modified, they seem appropriate, but may need to be adjusted depending on whether and how you determine to adjust the all-inclusive definition of "penthouse" as now proposed.

Jumping ahead, I would think it best to start section 411 with a statement of scope and what's excluded (such as "any roof structure, mechanical equipment, or vent stack and similar vertical appurtenance, no portion of which rises four feet (4 ft) or more above the surface of the portion of the roof where it rests or emerges") I believe this would be much clearer and quite similar to existing provisions, but not really changing the effect from what the Notice proposes cloaked in its overly broad definition of "penthouse."

In the Notice, multiple sections provide for "setbacks" (proposed and alternatives at 400.7(b), 530.5(b), 630.4(b), 770.6(b), 840.3(b), and 930.3(b)). With one exception, I support the alternatives. My exception is the final provision of each alternative, which would require determinations that apply to an adjacent property. This could be very confusing and require surveys beyond the limit of the property under consideration for permit or occupancy purposes. Instead, apply the "by right" height that applies to the adjacent property to the lot or setback line(s) on the property under review. At the same time, clarify that

ZONING COMMISSION  
District of Columbia  
CASE NO. 14-13  
EXHIBIT NO. 18  
ZONING COMMISSION  
District of Columbia  
CASE NO. 14-13  
EXHIBIT NO. 18

"by right" would include all height allowed if the adjacent property is in a receiving zone whether the adjacent property has acquired that or not.

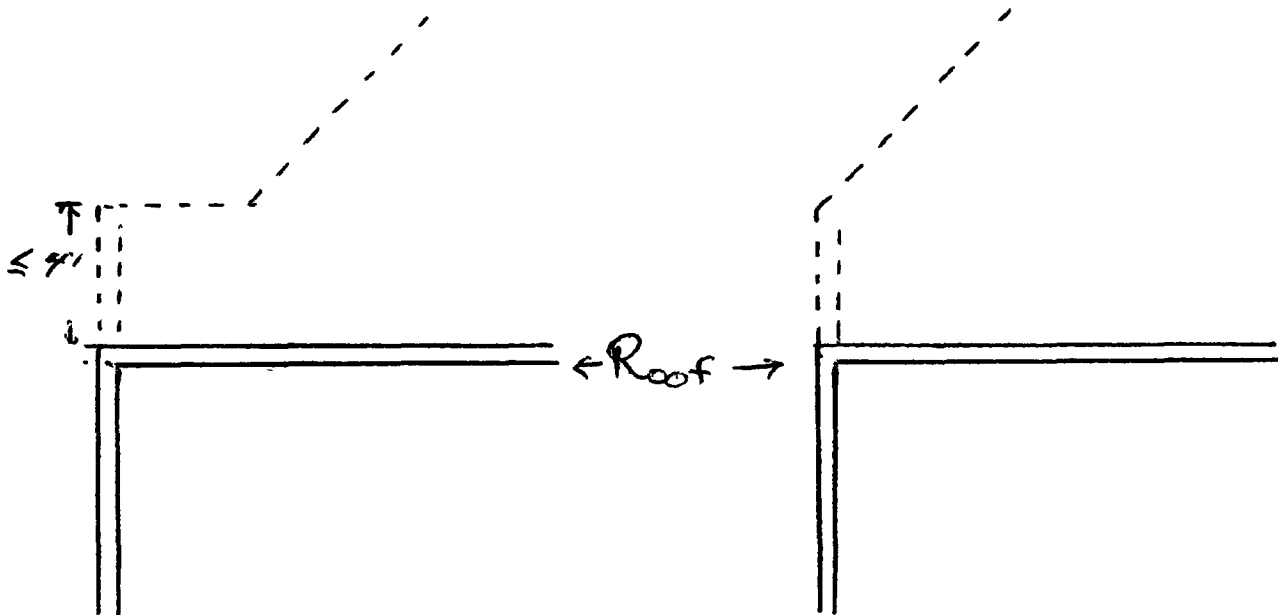
Having read the OP report (Exhibit 6), I am aware they are recommending an additional trigger for setback, namely if the adjacent property is "historic, or contains a historic building " This should be clarified and adjusted. The clarification would reference the inclusion of the adjacent property as being in an "historic district" or where the building and/or its grounds are landmarked. The adjustment would be to release the "setback" where the historic property is already developed to its lot line and its roof structure comes to that face where it meets a sidewall of the property under review or the sidewall of its penthouse -- a scenario that could occur in higher density zones with some frequency.

I would also like to suggest that you entertain the idea of allowing penthouses that contain stairs to being a slope of no more than 45 degrees from horizontal from the edge of the roof or any parapet that runs along the edge of that roof if it does not exceed four feet (4 ft ).

Instead of what the present and proposed rules would allow, an offset "start" to the angle of the underlying stairs, smooth that out

Allowed Now and As Proposed:

My Alternative:



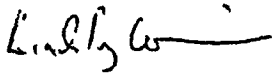
Finally, I understand the desire to leverage the value of rooftop occupancy to boost affordable housing. I agree with the goal, but find the extensive provisions that seem to be more akin to what I would expect to find in a tax code than zoning.

However, that similarity led me to an idea which I hope you will explore, going forward: provide that penthouses with human occupancy would have not only a distinct Certificate of Occupancy but also a distinct "tax lot." The latter could be assessed by CFO/Real Property in the same manner as other property but at a rate the Council would determine annually as part of the budget process. Assessments could be appealed if owners found them excessive, etc. The Council could also provide that all or some portion (if not all, I would hope "most") would flow to accounts to support affordable housing.

Among other things, this would reduce "up front" costs of development and put occupied rooftops into an ongoing funding stream. The only "zoning" part would be the issuance and updating of Certificates of Occupancy.

Your regulations would then be vastly shorter and focus on zoning.

Respectfully,

A handwritten signature in black ink, appearing to read "Lindsley Williams", with a long horizontal flourish extending to the right.

Lindsley Williams