

CASE NO 14-13
Zoning Commission of the District of Columbia
Text Amendments to the Zoning Regulations
Rooftop Penthouse Regulations
Testimony of Marilyn J Simon, Friendship Neighborhood Association
Thursday, November 6, 2014

My name is Marilyn Simon, and I am speaking on behalf of Friendship Neighborhood Association. The proposed text amendments are not required by the recent amendments to the Height Act, but rather the proposed text would grant large increases in the matter of right height and density citywide.¹ It will, in many cases, result on matter of right heights and densities that are inconsistent with the Comprehensive Plan.

Amendments to the Height Act Do Not Necessitate the Proposed Text Amendment

The current zoning regulations on height, density, and rooftop structures serve a purpose in shaping our built environment. The loosening of federal regulations, which involves minor changes in limited locations, should not be used to justify major changes in the restrictions on rooftop structures across the District. Further, changes in the federal restrictions on rooftop structures in those limited locations don't trigger a requirement that the District change its regulations to match the new limits of the Height Act, and certainly don't trigger a massive upzoning outside those limited areas.

At most, the changes in the Height Act would trigger a process that might lead to the submission of new text that applies only to those areas that are currently constrained by the Height Act, and that text would only be submitted after a careful evaluation of the impact of the likely changes in uses and dimensions, including a full examination of the change in the incentive and ability to have larger structures with more intensive use.

**OP's Proposed Text Amendment Increases
the Effective Height and Density Limits in Most Zones**

Instead, the Zoning Commission has been presented with a proposal that increases the dimension and uses of rooftop structures, while exempting this additional volume, height and intensity of use from the zone limits on height and FAR. We concur with others who are speaking tonight, concerned about the impact of this text amendment on rooftop structures in areas that currently are constrained by the Height Act, the treatment of increases in rooftop structures in existing PUDs, and the very weak affordable housing requirements. Tonight, I will focus on how these text amendments, if adopted, will affect DC's mixed use corridors, especially those, like Wisconsin Avenue and Georgia Avenue, which are near lower density residential neighborhoods.

¹ The proposed language would provide the incentive and ability to increase height and density except in low density residential zones.

The Proposed Text Amendment is Inconsistent with the Comprehensive Plan

Large portions of Wisconsin and Georgia Avenues are designated for low density commercial/moderate density residential on the Future Land Use Map of the Comprehensive Plan. They are zoned C-2-A. The current limits for this zone are 50 feet in height and a FAR of 3.0 (with Inclusionary Zoning).² The proposed text amendment would allow a 20 foot tall, two-story penthouse, which will not count toward the height and FAR limits.³ This would be a substantial increase in the effective height, FAR and intensity of use.

The Office of Planning provided estimates of the average increase in allowable FAR.⁴ For buildings which are not constrained by the Height Act, these estimates do not capture the full increase in the rooftop structure, since

- (1) there is assumed to be only one-story in the 20-foot tall structure;⁵ and
- (2) the proposed regulations would allow the lower floor of the structure to have a smaller setback (larger footprint) than the upper floor.⁶

If we adjust OP's estimate to account for these factors, we find that this proposal will request even higher increases in matter-of-right FAR.

For residential buildings, the average allowable FAR would increase by 0.65, rather than the 0.26 in the OP Report. For a C-2-A zone, the average FAR limit increases from the 3.0 to 3.65.⁷ This is substantially higher than the 2.5 FAR limit that was in place when C-2-A was used.

² For a C-2-A zone, the non-residential matter of right FAR is limited to 1.5.

³ See §411.8 of Setdown Proposal. Alternative text was not advertised, although the ZC invited comment on whether habitable penthouse space should count toward the FAR limits.

⁴ See OP Public Hearing Report, ZC 14-13, October 27, 2014, page 13. These estimates were based on calculating using the configuration of 100 buildings. For each building, OP calculated the maximum footprint for a penthouse 20 feet in height and set back 20 feet from the edges listed in their proposed sections 400.7(b), 530.5(b), 630.4(b), 770.6(b), 840.3(b), and 930.3(b).

⁵ See §411.18 of the Setdown Proposal, limiting the penthouse to two stories, except in R-1 through R-4 zones, on one-family dwellings or a flat in any zone, or where any portion of the height or volume of the penthouse would be above the height limit established by the Height Act. Only in those cases would the penthouse be limited to a single story. See also §770.6 of the Setdown Proposal carrying this provision over to commercial zones.

⁶ See §411.6 of the Setdown Proposal, deleting the requirement that the penthouse walls be of equal height and rise vertically to a roof. As noted in the OP Public Hearing Report at page 11, this allows for more tiered space in the penthouse structure, utilizing more of the 11' setback. Alternative text was included in the PHN.

⁷ For the residential buildings in the survey, OP found an average lot area of 41,613 SF, an average roof-top area 21,270 SF, and calculated an average potential penthouse floor area of 10,890 SF. By dividing the calculated penthouse floor area by the average lot area, OP estimated the average potential increase in FAR, which would not count toward the limit in the zone, to be 0.26.

But matter-of-right buildings in C-2-A zones are not constrained by the Height Act. Therefore, the penthouse would not be limited to one story, but could have two stories. This would add 10,890 SF to the average potential penthouse floor area. In addition, the first floor of the penthouse might be set back from the edges by 10 feet, rather than 20 feet, so the average first floor of the penthouse might be 16,080 SF, rather than 10,890. This means that the average penthouse area is would be 26,970 SF, rather than the 10,890 SF estimated in the OP chart, and the average additional FAR would be 0.65, rather than OP's estimate of 0.26. The footprint of the penthouse in

in the Comprehensive Plan description of a low-density commercial area⁸ The amendment provides an incentive to build to 70 in height⁹ and to expand the footprint of the rooftop structure beyond the current maximum of one-third of the rooftop to the maximum allowed with the required setbacks Based on OP's sample, on average, the first floor of rooftop structure might cover over 75% of the roof area, more than twice the current limit

For commercial buildings, the increase in the average MOR FAR would be approximately 0.99, rather than the 0.43 in the OP Report¹⁰

It is difficult to see how buildings with these new dimensions are consistent with the Comprehensive Plan designations for these C-2-A zones

Other Issues:

In addition, we maintain that:

(1) The floor area of the rooftop structures should be counted toward the FAR limits on the same terms as the rest of the building

(2) For existing PUDs, changes in the dimensions or use of the rooftop structures should not be considered a minor modification for placement on the Zoning Commission's consent calendar

(3) To the extent that additional rooftop structures represent bonus density, the affordable housing component should be calculated using the formula based on bonus density, not calculated using the percentage of (new) gross floor area

Conclusion

The OP proposal is inconsistent with the Comprehensive Plan, and should be rejected Further, any change in the rules for rooftop structures related to the change in the federal regulations should be limited to those areas where the height is constrained by the Height Act,

residential buildings could be 76% of the roof area, rather than OP's estimate of 51% of the roof area That would be over twice the current limit

⁸ See Comprehensive Plan, Citywide Elements, Chapter 2, Section 225.8

⁹ The proposed regulations would expand the uses for the rooftop structure to include all uses allowed in that zone This means that it is likely to be in the developer's interest to maximize the volume of the rooftop structure, within the new constraints

¹⁰ For the commercial buildings in the survey, OP found an average lot area of 38,631 SF, an average roof-top area 26,240 SF, and calculated an average potential penthouse floor area of 16,630 SF By dividing the calculated penthouse floor area by the average lot area, OP estimated the average potential increase in FAR, which would not count toward the limit in the zone, as 0.43

Since matter-of-right buildings in C-2-A zones are not constrained by the Height Act, the penthouse would not be limited to one story, but could have two stories This would add 16,630 SF to the average potential penthouse floor area In addition, the first floor of the penthouse might be set back from the edges by 10 feet, rather than 20 feet, so the average first floor of the penthouse might be 21,435 SF, rather than 16,630 This means that the average penthouse area would be 38,065 SF, rather than the 16,630 SF in the OP chart, and the average additional FAR would be 0.99, rather than OP's estimate of 0.43 The footprint of the penthouse in commercial buildings would average 82% of the roof area

and the impact of those changes should be carefully studied prior to the adoption of any such proposal. If, after study, it is determined that it is in the public interest to liberalize the use and dimensions of rooftop structures in those areas currently constrained by the Height Act, OP can submit a proposal that focuses on those areas.

Upper Wisconsin Avenue: Zoning Map and the Future Land Use Map of the Comprehensive Plan

The areas zoned C-2-A are designated for low-density commercial and moderate density residential on the FLUM, while the surround areas, largely zoned R-2, are designated for low-density residential uses on the FLUM.

Zoning Map:



Comprehensive Plan, Future Land Use Map:



Comprehensive Plan: Future Land Use Map: Legend

LEGEND

Residential Land Use Categories

- Low Density Residential**
Defines the District's single family neighborhoods. Single family detached and semi-detached housing units with front, back, and side yards are the predominant uses.
- Moderate Density Residential**
Defines the District's row house neighborhoods as well as its low-rise garden apartment complexes. Also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some older inner city neighborhoods with this designation there may also be existing multi-story apartments.
- Medium Density Residential**
Defines neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. This designation also may apply to taller residential buildings surrounded by large areas of permanent open space.
- High Density Residential**
Defines neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas.
- Parks, Recreation, and Open Space**
Includes the federal and District park systems, including the National Parks, the circles and squares of the L'Ortolan city and District neighborhoods, the National Mall, settings for significant commemorative works, certain federal buildings such as the White House and the US Capitol grounds and museums, and District-operated parks and associated recreation centers. It also includes permanent open space uses such as corridors, open space associated with utilities such as the Dalecarlia and Metropolitan Reservoirs, and open space along highways such as Odoland Parkway. This category includes a mix of passive open space (for resource conservation and habitat protection) and active open space (for recreation).

Commercial Land Use Categories

- Low Density Commercial**
Defines shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas range from small business districts that draw primarily from the surrounding neighborhoods to larger business district uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings.
- Moderate Density Commercial**
Defines shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas range from small business districts that draw primarily from the surrounding neighborhoods to larger business district uses that draw from a broader market area. Buildings are generally larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.
- Medium Density Commercial**
Defines shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height.
- High Density Commercial**
Defines the central employment district of the city and other major office employment centers on the downtown perimeter. Characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are interspersed.

Metro Stations

Metro Lines