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April 30, 2015

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--DCBIA Comments regarding Rooftop Penthouse Text Amendments**

Dear Mr. Hood:

The D.C. Building Industry Association ("**DCBIA**") offers the following comments to the revised proposed Rooftop Penthouse Regulations under consideration in Z.C. Case No. 14-13, that were published in Notice of Further Public Hearing in the DC Register on March 20, 2015. Generally, DCBIA supports the revised proposal, but we have specific comments on several of the proposed regulations. DCBIA's specific comments and recommendations follow the format of the Office of Planning's report to the Zoning Commission dated April 20, 2015 (the "**OP Report**"), and are as follows:

1. Penthouse Height (Section 400.7 (c) and (d) and various other provisions--530.5(c) and (d), 630.4(c) and (d), 770.6(d) and (e), 840.3(c) and (d), and 2906.1)

DCBIA generally supports Alternative 1 for Section 400.7 as outlined on pages 2 and 3 of the OP Report and Alternative 1 for the other corresponding sections referenced above. DCBIA also agrees with OP that rooftop amenity space (typically found on newer residential and mixed-use residential/retail buildings in the 50 ft. height R-5-B and C-2-A zones) must have elevator access to the roof in order to be fully accessible. Full rooftop access is an attractive option for outdoor space for residential tenants.

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Rooftop amenity space in a multi-family building must be handicapped-accessible. A 10 ft. elevator penthouse height is not sufficient for elevator access to the roof. According to industry experts, a height of 18 ft., 6 in. is necessary to allow an elevator to provide rooftop access. The standard type of elevator currently being installed in multi-story buildings in the District is known as a machine room less(MRL) traction elevator. For a typical MRL traction elevator, the machine and governor are mounted at the top of the hoistway. By mounting at the top of the hoistway, a separate machine room above the elevator is not required. All of the major elevator manufacturers (Otis, Kone, Thyssen, Schindler) use a similar MRL traction elevator design for a typical 350 fpm, 3500-4000 lb capacity, 9 ft.-10 ft. cab, and all can fit within an elevator penthouse of 18 ft., 6 in. for rooftop access. All elevators require penthouse interior clearance for the elevator cab, plus an access area at the top of the hoistway for elevator maintenance and inspection, plus a 5 ft. rail, plus a hoist beam. Other factors which dictate elevator penthouse height include cab size (typically 9-10 ft.), size of motors and gears mounted above the cab, and the amount of counterweights necessary. All of these required elements taken together dictate the current standard of 18 ft., 6 in. for an elevator providing rooftop access. Underslung elevators are roughly twice the price of MRL traction elevators (roughly a \$200,000-250,000 premium per car), and are an outdated product that is no longer the industry standard and cannot be bought wholesale. One elevator consultant has told DCBIA that the only underslung elevator being installed in the District today is at the African American History Museum, and was custom-designed and custom-fabricated for that purpose, and is very expensive. Hydraulic elevators are slow and inefficient, and are not generally used in new residential developments. Even these types of elevators require clearance above the cab, and a penthouse height that can be at most a few feet below the 18 ft. 6 in. height required for MRL traction elevators.

DCBIA recommends that proposed Section 400.7(c)(2) in Alternative 1 of the advertised text be amended to read "on a building in any zone (other than the C-3-B zone) where there is a limit on the number of stories". This amended language will allow multi-family buildings in the R-5-B and C-2-A zones the ability to have outdoor spaces on the roof accessed by efficient and economical elevator systems, and will still include the 10 foot maximum penthouse height in those zones where penthouse height is most likely to have an impact on adjacent and nearby properties.

2. Penthouse Number of Stories (Section 411.18)

DCBIA supports the advertised Alternative 1 in the March 20, 2015 Notice of Further Public Hearing.

3. Uses Within a Penthouse (Sections 411.1 and 411.2)

DCBIA supports OP's recommendation that Alternative 1 is preferable, as it would allow rooftop use on buildings in moderate-density residential and mixed use zones, as described above in paragraph 1 of this letter.

3B. Special Exception Restrictions for Specified Uses (Sections 411.1 and 411.2)

DCBIA supports OP's recommendation to require special exception review for nightclubs, bars, lounges and restaurants in roof structures in those zones where the building height is limited to 50 ft. DCBIA does not support the need for special exception relief for other permitted uses, including uses that are currently permitted in roof structures.

4. Penthouse Setbacks (Sections 400.7(b) and various other provisions—530.5(b), 630.4(b), 770.6(b), 840.3(b), and 930.3(b))

DCBIA supports OP's recommendation, including the setback from historic properties, with the understanding that an abutting property owner would be permitted to seek special exception relief from this historic preservation setback requirement, in the same manner as for any other requirement in the penthouse regulations.

5. Penthouse Area Limitation of 1/3 the roof area in zones with a limit on the number of stories (Section 411.9)--R-1, R-2, R-3, R-4, R-5-A, C-1, C-M-1, CAP Overlay

DCBIA supports OP's recommendation.

6. Penthouse Area—Exemption from FAR for penthouse enclosed space (Section 411.8)

DCBIA supports the advertised Alternative 1 in the March 20, 2015 Notice of Further Public Hearing.

7A. Enclosing Penthouse Walls of Equal Height and Vertical (Section 411.6)

DCBIA supports OP's recommendation in the last paragraph of their discussion on this issue.

7B. Walls Required to be Vertical (Section 411.6)

DCBIA recommends adoption of a regulation allowing a maximum slope of 45 degrees for a penthouse, rather than a 20% slope. This has been used successfully in a number of instances, including instances where a stairway within a building, at the edge of a floorplate, can rise up to the roof, without the need to shift to an inward location on the top floor of the building in order to continue up into the penthouse.

7C. Number of Permitted Penthouse Structures (Section 411.4)

DCBIA supports OP's recommendation to adopt Alternative 2.

8A. Affordable Housing Linkage for the Provision of Habitable Penthouse Space on Non-Residential Buildings (Section 414)

DCBIA generally supports Section 414 as advertised in the March 20, 2015 Notice of Further Public Hearing. However, DCBIA does not support Section 414.2 as advertised. Although the OP report references that this section applies to "non-residential buildings", the advertised text of Section 414.2 does not make that distinction and would apply to all buildings. DCBIA supports the Alternative Text for § 414.2 as advertised in the original Notice of Further Public Hearing published in the DC Register on September 19, 2014. In addition to the language in the March 20, 2015 Notice of Further Public Hearing, the September 19, 2014 advertisement defined "penthouse non-residential gross floor area" to include the phrase "...;recreation space accessible to all occupants of the building; space accessory to rooftop deck space such as storage, restrooms or change rooms...". DCBIA does not agree that general communal space within a penthouse, whether the building is residential or non-residential, should generate a housing linkage requirement. Although we understand the Commission's desire to produce additional affordable housing within the District as an offset for additional commercial space that is gained through the amendments, we also strongly believe that such set aside requirements should not apply to recreational space and other common areas available to all occupants of the building.

8B. Inclusionary Zoning for the Provision of Habitable Penthouse Space on Residential Buildings (Chapter 26, IZ)

DCBIA prefers Alternative 1 of Section 2603.5 in the advertised text, for ease of administration of the IZ program for residential developments in those zones where 100% of the units would otherwise be set aside for eligible moderate-income

households. DCBIA would agree to the adoption of Alternate 2 for those zones where the required set-aside is for a mix of low and moderate-income households.

9. Special Exception Review Criteria for Penthouse Regulation Relief and Clarification of the term “Operating Difficulties” (Section 411.11)

DCBIA does not support the “clarifying” language proposed in Section 411.11(a) of the advertised text. This special exception has been interpreted over the years by the BZA to apply to many different kinds of situations. DCBIA’s concern is that the language as proposed may be interpreted to limit “operating difficulties” to only those enumerated instances in the text or others related to those instances. As an alternative, if the Commission wishes to adopt clarifying language, DCBIA recommends using “including but not limited to”, instead of “such as” in Section 411.11(a).

10. Process for Amending an Approved PUD or Design Review Project (Section 411.20)

DCBIA supports OP’s recommendation.

11 Definitions (Section 199)

DCBIA supports OP’s recommendation.

12. Additional Comments

a. Penthouse Gross Floor Area shall not be counted in parking calculations

DCBIA supports Alternative 1 of the advertised text in the March 20, 2015 Notice of Further Public Hearing in Sections 537.2, 639.2, 777.2, 845.2, 936.2, 1203.4, 1613.2, 1811.2 and 2809.2.

b. Section 411.16

DCBIA would like to reiterate the comments provided in our November 6, 2014 submission to the Zoning Commission regarding the proposed language for Section 411.16. For the convenience of the Commission, that discussion is included below.

DCBIA supports the OP Recommendation to add safety railings to the list of items not considered to be penthouses. Furthermore, § 411.16

currently only identifies “gooseneck exhaust ducts serving kitchen and toilet ventilating systems” as structures not considered to be penthouses. The current interpretation of this provision applies to only exempt “skinny” air intake louvers and exhaust systems. Modern equipment typically does not qualify as “skinny.” (Although the equipment is typically less than 4 feet height, it is often as wide as it is tall.) Modernizing the definition to capture louvers and other equipment required for air intake and exhaust systems will provide greater flexibility locate such systems away from active rooftop recreation space and, if necessary, on penthouse roofs. Code requirements and best practices generally require placement of these structures at the highest point and above any level occupied and used by people, yet the Zoning Regulations require the placement of the exhaust systems at the roof level and therefore at the level of human occupancy and activity.

Therefore, DCBIA recommends the following revisions to Section 411.16:

For the purposes of this section, green roof systems, skylights, ~~gooseneck~~ intake and exhaust louvers and ducts serving air handling, kitchen and toilet ventilating systems, safety railings required by the construction code, and plumbing vent stacks shall not be considered as penthouses, and shall be permitted to be located above the height of the penthouse, provided that such equipment is less than four feet in height and is set back a distance at least equal to its height from all penthouse walls.

Conclusion

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

Sincerely,



Christopher H. Collins
DCBIA Counsel

CHC/rcf
cc: Jennifer Steingasser, Office of Planning