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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
Comments to Proposed Rooftop Penthouse Text Amendments

Dear Chairman Hood and Members of the Zoning Commission:

Holland & Knight submits the following comments to the revised proposed Rooftop Penthouse Regulations under consideration in Zoning Commission Case No. 14-13. These proposed regulations were published in a Notice of Further Public Hearing in the DC Register on March 20, 2015 (“Advertised Text”), and the Office of Planning provided comment and recommendations in its report to the Zoning Commission dated April 20, 2015 (the “OP Report”). Generally, Holland & Knight supports the revised proposal; however, we have specific concerns and comments relating to some of the proposed regulations. Our position regarding each section is set forth below, following the format of the OP Report.

1. Penthouse Height (§§ 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)

Holland & Knight generally supports Alternative 1 for § 400.7. However, Holland & Knight does not support the proposed § 400.7(c)(2) which limits the height of a penthouse to 10 feet in any zone in which the building height is limited to 50 feet. Holland & Knight agrees with OP (as set forth in the OP Report on page 2) that this section should not impair the ability to provide rooftop amenity space, especially for residential and mixed-use residential/retail buildings in the R-5-B and C-2-A zones. In order to provide full access to this space, the building must provide elevator access to the roof. According to information provided to us, approximately 15 feet is needed to provide elevator access to the roof. Rooftop access is an important outdoor amenity for both residential tenants and commercial tenants. As such, Holland & Knight would support a proposal that provides for a height of 15 feet for a penthouse in the R-5-B and C-2-A zones, which would limit the overall height but permit full access. Holland & Knight also supports DCBIA’s recommendation that the proposed § 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”.

2. Penthouse Number of Stories (§ 411.18)

Holland & Knight supports Alternative 1 in the Advertised Text.

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

Holland & Knight generally supports Alternative 1 in the Advertised Text, with the following modification to § 411.2(b): “In any residential zone in which the building height is limited to forty feet (40 ft.) or less by right.” Holland & Knight supports allowing rooftop use on buildings in moderate-density residential and mixed use zones.

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

Holland & Knight believes that a special exception is not needed for a use permitted in the underlying zone (as proposed in § 411.2(c) of Alternative 2). If the Commission decides to move forward with such a requirement, Holland & Knight generally supports OP’s recommendation to require special exception review for nightclubs, bars, lounges and restaurants in roof structures in those zones in which the building height is limited to 50 feet. Holland & Knight, however, would further recommend that it be limited to those commercial zones in which the building height is limited to 50 feet and which abuts a residential zone.

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

Holland & Knight supports the proposed amendments to clarify penthouse setbacks. Holland & Knight requests that if the Commission adopts a setback from a historic property (§ 400.7(b)(6)), the regulations confirm that a property owner 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 (§ 411.9)--R-1, R-2, R-3, R-4, R-5-A, C-1, C-M-1, CAP Overlay

Holland & Knight has no objection to OP’s recommendation.

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

Holland & Knight supports Alternative 1 in the Advertised Text.

7A. Enclosing Penthouse Walls of Equal Height and Vertical (§ 411.6)/7B. Walls Required to be Vertical (§ 411.6)

Holland & Knight supports Alternative 1 in the Advertised Text with the following modification to § 411.6(b): “Rise vertically with a slope of not greater than 45% from vertical to a roof.” A slope of 45% provides a 1:1 setback, further limiting (if not fully eliminating) the view of the penthouse from the street and provides more flexibility in the design of the penthouse.

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

Holland & Knight supports Alternative 2 in the Advertised Text.

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

Holland & Knight generally supports §414 in the Advertised Text, with three clarifications. First, Holland & Knight requests that the title be clarified to confirm that § 414 applies only to non-residential buildings which is consistent with page 17 of the OP Report. Specifically, residential use and accessory communal rooftop space for residential buildings is addressed in the proposed §2602.1(d). Second, Holland & Knight requests that the Commission exempt communal rooftop space for non-residential buildings from the definition of “penthouse non-residential gross floor area.” Specifically, the definition in § 414.2 could 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...”. We believe that the Housing Linkage requirements should not apply to recreational space and other common areas available to all occupants of the building whether the building is residential or non-residential. Third, we seek clarification as to whether the first 1,000 square feet of occupiable space for a penthouse is exempt from the requirements. Specifically, we recommend that § 414.2 be revised to state as follows: “. . . shall mean all of the gross floor area of a penthouse in excess of 1,000 square feet not occupied by . . .”

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

Holland & Knight generally supports Alternative 1 in the Advertised Text. We request that § 2602.1(d)(1) be revised include general communal space for residential buildings with the following replacement language: “(1) penthouse space which is devoted to recreation or communal space accessible to all occupants of the building or penthouse space accessory to rooftop deck space such as storage, restrooms or change rooms.”

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

Holland & Knight does not object to the “clarifying” language proposed for § 411.11(a) in the Advertised Text, with the clarification that the language be revised to state “including but not limited to”, instead of “such as” in § 411.11(a).

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

Holland & Knight supports the proposed amendments in the Advertised Text.

11. Definitions (§ 199)

Holland & Knight supports the proposed amendments in the Advertised Text.

12. Additional Comments

a. Penthouse Gross Floor Area shall not be counted in parking calculations (§§ 537.2, 639.2, 777.2, 845.2, 936.2, 1203.4, 1613.2, 1811.2 and 2809.2).

Holland & Knight supports Alternative 1 in the Advertised Text.

b. § 411.16

Holland & Knight supports the proposed amendments in the Advertised Text.

Conclusion

We appreciate the opportunity to comment on the proposed amendments. Norman M. Glasgow, Jr. will testify on our behalf at the public hearing on April 30, 2015. We look forward to the Commission's consideration of these recommendations and his testimony.

Sincerely,

A handwritten signature in dark ink that reads "Holland & Knight". The signature is written in a cursive, flowing style.

HOLLAND & KNIGHT LLP

cc: Jennifer Steingasser, Office of Planning (Via E-Mail)
Joel Lawson, Office of Planning (Via E-Mail)