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Anthony Hood, Chairman
D.C. Zoning Commission
441 4th Street NW
Washington, DC

ZONING COMMISSION
District of Columbia
CASE NO. 14-13
EXHIBIT NO. 81

Re: ZC 14-13 (Penthouse Development)

Dear Mr. Hood and Members of the Commission,

I am appearing in opposition to the proposed changes to penthouse regulations, especially as they impact low to medium density neighborhoods. Habitable penthouses should not be allowed in zones where the matter of right height is less than 50 feet. Setbacks that effectively minimize the visual impact of penthouses are difficult to achieve at 50 feet and are impossible at lower heights. One argument in favor of penthouse expansion is that better designed, more attractive rooftops inevitably will result. There is no basis for such optimism. In the analogous pop-ups case, the Commission received voluminous testimony to the contrary. Ill-designed penthouses will be built, which the Commission will be powerless to address. Even well-designed penthouse structures may be out of balance with neighboring properties and the character of an overall neighborhood. After finally beginning to address the pop-ups problem – which affected one zone, R-4, most aggressively – the Commission is now opening the door to mini-popups citywide.

Zone C-2-A is an endangered species. In 2008 the Commission approved a PUD, 2300 Pennsylvania Avenue SE, in a C-2-A zone near Pennsylvania and Minnesota avenues, at a height of 59 and one-half feet, which was substantially over the 50-foot MOR limit. The Commission did so after rejecting the applicant's earlier request for 70 feet as too high for the neighborhood. Most properties in the vicinity are one or two-stories. This small C-2-A zone, on the north and south sides of Pennsylvania Avenue, abuts single-family housing with no opportunity for buffering. If future development in this C-2-A zone is achieved through the PUD process, as a likely to be the case, additional height above the MOR maximum may be layered on through PUD rules, IZ requirements and now potentially through the penthouse proposal. That is a significant upzoning of an area where this Commission already has determined doesn't warrant excessive heights.

Similar scenarios are playing out across the District. I urge you not to keep piling on and piling on, one height dispensation after another. The cumulative provisions for achieving more height make a charade of MOR height limits. They're no longer a ceiling, they're a threshold. Prohibiting habitable penthouses at 50 feet or below is a reasonable place to start exercising restraint.

Penthouse expansions are not "minor" PUD modifications? PUD modifications to provide for habitable penthouses certainly should not be treated as minor. Most PUD heights are painstakingly negotiated. This Commission in 2010 approved the 19-acre Skyland PUD, which is to be built – eventually – at heights and FAR well below MOR maximums. Again, the surrounding neighborhood contains mostly one- and two-story properties. Among the several factors leading to the height determination was the desire to minimize the visual impact of the back end of the

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District of Columbia
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commercial development on a residential neighborhood behind and below the development. Minor modifications are approved on a fairly routine basis and may go forward unnoticed by stakeholders who participated in an initial PUD approval. Changing the height of a PUD, however, disrupts the settled expectations of PUD process participants. Such changes are by no means minor and should not be treated as such.

Why is this happening? As a general matter, I raise the question. why is the Commission doing this wholesale rulemaking at this time? I had the privilege of presenting Height Act testimony before a House of Representatives subcommittee in 2012 on behalf of the Committee of 100 on the Federal City and can assure you this proposal was not the focus of the hearing. The Height Act debate before Congress began with the issue of whether habitable penthouses should be allowed where buildings were already at Height Act maximums. The Office of Planning subsequently upped the ante to ask that Height Act restrictions be eliminated altogether outside boundaries of the original federal city That was rejected and relatively modest relief was afforded.

That modest relief – reasonably understood as aimed at buildings at Height Act maximums – is being applied to raise heights citywide. The proposal completely inverts the reason why penthouses are excluded when a building's height is measured. A mechanical penthouse self-evidently is adjunct to a building to allow it to function, it serves no independent purpose. The one-to-one setback requirements acknowledge that penthouses, while necessary, should be minimized as much as possible.

Building heights, on the other hand – as determined under zoning regulations – are based on type and intensity of use, neighborhood context and other factors. When a building is constructed to its maximum permissible height, it is as high as it ought to be under those standards. When another story or two is added simply because the penthouse is there, the adjunct feature becomes the arbitrary factor driving heights, rather than neighborhood context or zone purposes.

Recently, the Commission created new zone C-2-B-1, identical to C-2-B except that it allows heights up to 75 feet (ZC 14-16 Mar. 31, 2014). Whether or not the new zone lives up to its intended purposes, it was created with fair notice of the height increase. The penthouse proposal is a back door way to increase heights. Further, it is unclear how the penthouse amendments will affect, and be affected by, the ZRR. There is no need to address penthouse habitation rules at this time except at Height Act maximums. That limited focus would address the central focus of the amendments and the expectations of District residents.

Sincerely,

Laura M. Richards