

CASE NO 14-13
Zoning Commission of the District of Columbia
Text Amendments to the Zoning Regulations
Rooftop Penthouse Regulations
Testimony of Carol F. Aten, Committee of 100 on the Federal City
Thursday, April 30, 2015

My name is Carol Aten and I am speaking on behalf of the Committee of 100 on the Federal City

There is nothing in the recent amendment to the Height of Buildings Act that requires the city or the Zoning Commission to take any action. It is an authorization, not a requirement. In addition, there is nothing in the history of the amendment that suggests the amendment was contemplated to apply except where buildings are already at Height Act maximums—downtown. All the discussions were about unsightly mechanicals on the roofs of buildings. Considered unsightly, we would note, despite the required setbacks.

We have two major objections. (1) changes are being proposed without the proper planning, and (2) changes are being proposed for areas not currently at Height Act limits

No Proper Planning

Our first objection is that these changes are being proposed in opposition to and without appropriate changes to the Comprehensive Plan. In fact, changes are being proposed without ANY discernable planning that considers the potential impacts of penthouses on infrastructure, transportation, street life, density, aesthetics, or neighborhood character. Why enact zoning changes before such planning is done and when a Comprehensive Plan revision process is to begin soon? What is the big rush? These proposed penthouse provisions are an open invitation to the perverse effects of the law of unintended consequences. Let's require that the proper planning be done first.

Height Act Limits

Our second objection, is that these changes are being proposed for areas of the city that are not at height maximums--areas where regular zoning is the appropriate method for changing allowable heights, areas that have been limited in height for reasons of scale and density, not because of any Height Act restrictions. Even though penthouses are currently allowed in these areas, the newly allowed uses will create incentives for larger structures where currently they are only as big as required to fit mechanicals.

The Zoning Commission should not be upzoning the city by using the artificial construct of "habitable penthouses" and the myth that setbacks make them invisible. This hardly

makes for a transparent zoning process Height is a “hot button” issue and a majority of residents in a *Washington Post* poll said they didn’t want heights raised Pop-ups are a recent illustration of that sensitivity

No convincing case has been made for the need, value, or benefits of these changes except for developers by developers. The touted contribution to affordable housing is a cynical ploy to make us feel like something good will come out of this but it’s likely to be minimal at best

No changes in height or use should be allowed in areas that are not at Height Act maximums

Issues

In addition to these two major objections, there are a number of issues that should be addressed by policy and planning For example:

1. What are the public policy objectives for the use of rooftops that the penthouse regulations address and how do penthouses relate to other public policy objectives? We currently have incentives for communal recreation space, an amenity that is particularly important in some areas of the proposed expanded downtown like NOMA where the absence of such spaces is notable Also, we have policies encouraging sustainability with green roofs, solar panels, and storm water management Adopting this proposal changes the incentive structure giving developers the opportunity to do something profitable versus something that serves the public interest. Should the economic incentives to build habitable penthouses trump these other beneficial uses as is likely if the decision is left to the developer as a matter of right?
2. What are some of the impacts related to scale? Twenty feet on top of a 50 foot building is much different than 20 feet on top of a 90 foot building A PUD in a 50 foot zone could add 15 feet for the PUD and another 20 feet for a penthouse totaling 85 feet. These increases are significant since they would usually occur in areas that abut lower residential areas and the ability to monetize the space means that the penthouses will be larger and more prominent What kind of adverse effects might these increases in height and mass have on nearby residential areas including reduction of light and air, visual intrusion, increased noise, parking demands, change in neighborhood character, and loss of privacy, to name a few? Will the additional two stories and increased FAR incentivize teardowns of low-rise apartment buildings that are more likely to be affordable now than would be any new construction that would replace them?
- 3 Is it fair to neighborhoods to allow penthouses as a minor modification to already approved PUDs? After all the agreements have been made, why should developers be able to add 2 stories and new space without any consultation? Unless the penthouse space is within the approved FAR, this represents a major change and should require appropriate reviews

4. If mechanicals are moved from the new, now valuable, roof top “real estate” to make room for penthouses, where will they go? What will be the impact of moving them to the top basement level as has been suggested? E.g., loss of parking; or venting of noxious odors? If still on the roof, should we be concerned about whether uses on adjacent roof tops are compatible (as we are about such uses on the ground)? E.g., one building’s mechanicals next to another building’s residential; or a restaurant and bar next to residential?

5. What will be allowed in the setback space? Umbrellas and heaters for rooftop dining? Nothing above 4 feet? What about barriers to keep people from falling off the roof?

6 Will putting bars and restaurants in penthouses diminish the vitality of the pedestrian experience and the vibrant street life we are seeking?

These are undoubtedly but a few of the issues that are raised by these proposals but they illustrate that some good planning should precede their adoption We should be able to make informed choices about uses and scale based on real information. Even the then director of the Office of Planning told the Congress during the Height Act hearings that.

The limits currently established in the federal Height Act should remain in place unless and until the District completes an update to the District Elements of the Comprehensive Plan where targeted area(s) that meet specific planning goals and also do not impact federal interests are identified Under this recommendation, building heights in targeted areas may be proposed to exceed the maximums under the federal law; and these may be authorized through the existing Comprehensive Plan process, pending Congressional approval. Should such targeted exceptions be authorized through the Comprehensive Plan, the Height Act would remain in place for all other areas both inside and outside of the L’Enfant City

The Office of Planning laid out the appropriate and legally required process Why is it being ignored? Why are ill-considered proposals being rushed into execution?

Recommendation

The bottom line is: there is no urgency, there are too many unanswered issues that should be informed by planning, and residents and the City Council should be able to address the desirability of habitable penthouses through the Comprehensive Plan amendment or revision process.

Consequently, the Zoning Commission should defer action on penthouses until proper planning has been done and the Comprehensive Plan revisions have been completed.

Thank you for the opportunity to present our views.