

SUPPLEMENTAL REPORT

TO: Sara Bardin, Director, Office of Zoning
FROM:  Joel Lawson, Associate Director, Development Review
DATE: March 24, 2016
SUBJECT: **Zoning Commission Case No. 14-13B, Penthouse Regulations.**
**Request for Consent Calendar consideration of a technical correction to
§ 3202 of DCMR 11 Zoning Regulations**

At its March 14, 2016 public meeting, the Zoning Commission considered a request from the Office of Planning (OP) for a technical correction to Zoning Commission Order No. 14-13, to establish vesting provisions for the newly adopted penthouse regulations. Although the issue had been raised by the public, it was not specifically called out by OP, and the Commission did not establish vesting provisions for the new penthouse regulations. As such, any proposal had to have a building permit approved prior to the effective date of the new regulations (January 8, 2016) to be vested under the former regulations.

The request for vesting language was mainly based on OP being contacted by an applicant explaining that their building permit for a downtown hotel has been in the review process since April of 2015. They had weekly coordination meetings with the Department of Consumer and Regulatory Affairs (DCRA) as the permit application was reviewed by various divisions, and had received a DCRA Letter of Zoning Compliance under the former regulations, including conformity of the proposed rooftop penthouse. However, the building permit had not been issued prior to the effective date of the new penthouse regulations, and the penthouse for the hotel had now been determined noncompliant to the new penthouse regulations.

At the public meeting, Commission members requested additional information from OP and DCRA regarding how many other projects might be in a similar situation. OP consulted with the Zoning Administrator and DCRA staff, who advised that they were not aware of a similar situation for higher density developments. OP also reached out to two of the major land use firms in the District to ask if they were aware of any project filed for a building permit prior to the effective date of the new penthouse regulations which would be adversely impacted by not being vested. Neither firm was able to identify such a project, other than the one which resulted in the initial request for vesting.

As such, OP continues to recommend, as the most expedient, fair and effective method to deal with this situation, vesting language generally as originally proposed. As requested by the Commission, language requiring a letter of compliance from the Zoning Administrator prior to the public hearing date for the penthouse regulations was also added.

Finally, the Commission members also requested tighter language which would not vest penthouse permissions for single family dwellings or flats (permitted by-right under the old regulations; permitted only by special exception and size limited under the new regulations). To address this, the revised text below would establish vesting, except for the new provision which restricts penthouses on single family dwelling / flat developments (§411.5).

Additional added language is shown underlined.

Chapter 32, ADMINISTRATION AND ENFORCEMENT, §3202, BUILDING PERMITS:

Modification to Section 3202 as follows:

3202.4 Except as provided in §§ 3202.8 **through 3202.12, ~~and 3202.9 and 3202.10~~**, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

New §3202.11 to read as follows:

3202.12 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving any penthouse other than as restricted in § 411.5 may be processed, and any work authorized by the building permit may be carried to completion, pursuant to the provisions of the roof structure regulations in place as of November 19, 2015, if the Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs, and had received a Letter of Zoning Compliance from the Zoning Administrator prior to that date.

As needed, this new language would also be translated into the newly adopted zoning text approved under Case 08-06A, ZR-16, as a technical correction.