

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND

ZONING COMMISSION ORDER NO. 14-13B
Z.C. Case No. 14-13B

(Text Amendment – 11 DCMR)

Minor Modification to Z.C. Order No. 14-13B (Penthouse Regulations)
May 23, 2016

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of the adoption of amendments to the current and newly adopted versions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR)) to make minor modifications to Z.C. Order No. 14-13 (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted amendments to the currently effective version of the Zoning Regulations (Current Regulations) governing rooftop penthouses as well as conforming amendments to other provisions, including the provisions of Chapter 32, ADMINISTRATION AND ENFORCEMENT. The substance of the amendments was later included by the Commission in the version of Title 11 DCMR that will become effective on September 6, 2016 (2016 Regulations), which was adopted by the Commission through a Notice of Final Rulemaking published in Part II of the March 4, 2016 edition of the *District of Columbia Register*.

The modification concerns the permitting process set forth in § 3202 of the Current Regulations and Subtitle A, Chapter 3 of the 2016 Regulations, which provides that construction rights do not vest until a building permit is issued. (11 DCMR § 3202.4.) The amendment adds a new § 3202.12 to the Current Regulations and a new § 301.13 to Subtitle A of the 2016 Regulations to provide a limited exception to that rule if: (1) a building permit application for penthouse construction not involving a detached dwelling, semi-detached dwelling, rowhouse, or flat was filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs on or before November 19, 2015; and (2) the applicant had received a Letter of Zoning Compliance from the Zoning Administrator prior to that date. When those circumstances exist, the building permit 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. The modification also makes conforming amendments to § 3202.4 of the Current Regulations and Subtitle A § 301.4 of the 2016 Regulations.

The amendments address a circumstance brought to the attention of the Commission by the Office of Planning involving a building permit applicant that is unlikely to involve any other

pending building permit application. As such, the Commission considered the amendments as being modifications of little or no importance or consequence and therefore properly proposed pursuant to 11 DCMR § 3030, which permits such modifications to be adopted without a hearing or referral to the National Capital Planning Commission.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 22, 2016, at 63 DCR 6261. No comments were received in response.

The Commission took final action to adopt the amendments at a public meeting on May 23, 2016, making no changes to the proposed text. As to the Current Regulations, the final rulemaking is effective upon publication of this notice in the *D.C. Register*. As to the 2016 Regulations, the Final Rulemaking shall become effective on September 6, 2016.

Current Regulations:

Chapter 32, ADMINISTRATION AND ENFORCEMENT, of Title 11 DCMR, ZONING, is amended as follows:

Section 3202, BUILDING PERMITS, § 3202.4, is amended by striking the phrase “§§ 3202.8, 3202.9, and 3202.10” in the introductory text and replacing it with the phrase “3202.8 through 3202.12” so that the entire provision reads as follows:

- 3202.4 Except as provided in §§ 3202.8 through 3202.12, 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.

A new § 3202.12 is added 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.

2016 Regulations:

Chapter 3, ADMINISTRATION AND ENFORCEMENT, of Subtitle A of Title 11 DCMR, ZONING REGULATIONS OF 2016, is amended as follows:

Section 301, BUILDING PERMITS, § 301.4, is amended by striking the reference to § 301.11 in the introductory text and replacing it with a reference to new § 301.13 so that the entire provision reads as follows:

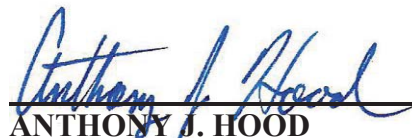
- 301.4 Except as provided in Subtitle A §§ 301.9 through 301.13, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:
- (a) The permit holder shall begin construction 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 § 301.13 is added to read as follows:

- 301.13 Notwithstanding Subtitle A § 301.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving any penthouse other than as restricted in Subtitle C § 1500.4 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.

On May 23, 2016 upon a motion by Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the rulemaking and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May; and Michael G. Turnbull by absentee ballot to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 15, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.