

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**Z.C. NOTICE OF FINAL RULEMAKING**  
**AND**  
**Z.C. ORDER NO. 14-13F**  
**Z.C. Case No. 14-13F**  
**(Text Amendment – 11 DCMR)**  
**Technical Corrections to Z.C. Order No. 14-13E**  
**January 25, 2024**

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 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of the adoption of amendments to Z.C. Order No. 14-13E to amend Subtitle C (General Rules) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) to reflect technical corrections.

The corrections clarify that penthouses on the roof of a single household dwelling, flat, or RF zone apartment house conversion require special exception relief, consistent with the Commission’s direction as part of the original case. As part of Z.C. Case No. 14-13E, the Commission approved a text amendment to modify, clarify, and reorganize the penthouse and rooftop structures regulations of Subtitle C, Chapter 15.

The current reading of the regulations has led to ambiguity in the interpretation and difficulties in the administration of the regulations, with respect to whether penthouses containing stair or elevator access to the roof of a single household dwelling, flat, or RF zone apartment house conversion are permitted by-right or require a special exception. This is the result of Subtitle C § 1501.1(b) requiring special exception relief for “penthouse habitable space” but not “penthouse mechanical space” on the roof of a single household dwelling, flat, or RF zone apartment house conversion. Because of this, uncertainty has been created for applicants and has required repeated Office of the Zoning Administrator (OZA) interpretations of the regulatory intent.

The record of Z.C. Case No. 14-13E makes it clear that the Commission’s intent was to require special exception review for penthouses with stair or elevator access, whether or not combined with ancillary space, when the penthouses extend partially or entirely above the permitted height for the building. In response to comments made by the Commission, the Office of Planning (OP) stated in its supplemental report that it was proposing additional amendments to the text to “... no longer recommend permitting by right stairwell/storage penthouse on the roof of low density residential buildings above the permitted building height, but rather to retain the existing special exception requirement.” (Exhibit 3, p. 1).

OP has worked with OZA on the proposed technical corrections on removing the interpretive ambiguity present in the current language. To do this, the word “habitable” is being removed from the current language and by more explicitly permitting only by special exception penthouses containing stairs or elevator access to the roof, with or without ancillary space, that are partially or entirely above the permitted height of a single household dwelling, flat or RF zone apartment house conversion.

A Notice of Proposed Rulemaking was published in the *District of Columbia Register* on April 26, 2024, at Vol. 71 DCR 004697 proposing the amendments described above, and the Commission received no comments. Because the proposed amendments are technical in nature, no public hearing was held and no referral to the National Capital Planning Commission made. (See 11-Z DCMR § 703.1). The Commission took final action to adopt the amendments at a public meeting on May 30, 2024.

The amendments shall become effective upon publication of this notice in the *District of Columbia Register*.

Title 11 DCMR, ZONING REGULATIONS OF 2016, is amended as follows (text to be deleted is marked in ~~bold and strikethrough~~ text; new text is shown in **bold and underline** text):

**Chapter 15, PENTHOUSES, of Subtitle C, GENERAL RULES, is amended as follows:**

**Paragraphs (b) and (c) of § 1501.1, § 1501, USES, are amended to read as follows:**

- 1501.1 A penthouse or rooftop structure may house mechanical equipment, or any use permitted within the zone, except that penthouse space shall be restricted as follows:
- (a) ...
  - (b) **Notwithstanding the requirements of paragraph (a), Penthouse habitable penthouse** space shall only be permitted on the roof of a single household dwelling or flat in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2, if it:  
...
  - (c) Penthouse ~~habitable~~ space that satisfies the requirements of paragraph (b) of this subsection except that it would be partially or entirely above the matter-of-right permitted height for the building shall only be permitted if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9;

On January 25, 2024, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission **APPROVED IMMEDIATE PUBLICATION** of the proposed

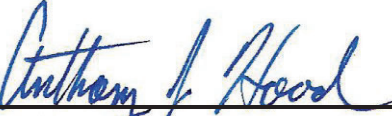
rulemaking at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Joseph Imamura, and Tammy Stidham to approve).

On May 30, 2024, upon the motion of Chairman Hood, as seconded by Commissioner Imamura, the Zoning Commission took **FINAL ACTION** to **APPROVE** the petition at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Joseph Imamura, and Tammy Stidham to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on October 11, 2024.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**