

## MEMORANDUM

**TO:** Sara Bardin, Director, Office of Zoning  
**FROM:** *JL* Joel Lawson, Associate Director, Development Review  
**DATE:** January 18, 2018  
**SUBJECT: Zoning Commission Case No. 14-13D, Penthouse Regulations.**  
**Request for Consent Calendar consideration of technical corrections to Zoning Commission Order 14-13 pertaining to the permitted area of penthouses**

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### 1. BACKGROUND AND ANALYSIS

As part of Zoning Commission Case 14-13, Penthouse regulations, the Zoning Commission established penthouse area limitations. For most zones, these limitations are the required 1:1 setback, and the 0.4 FAR exemption from FAR for most habitable space. No corrections to these provisions are proposed.

In certain zones, the Zoning Commission retained from ZR-58 a limit on the maximum penthouse area of 1/3 of the roof area upon which the penthouse sits – specifically low density zones with a limit on the number of stories of three. The former C-3-B zones, which were limited to 6 stories in height, were specifically exempted from this provision as being medium density zones. Under ZR-16, the C-3-B zones became the MU-8, MU-20, and NC-13 zones, and the story limit was removed. Other zones with a story limit of greater than three, however, were not specifically addressed.

The provision in the current regulations, in Subtitle C PENTHOUSES, reads as follows:

1503.2 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas:

- (a) Zones where there is a limitation on the number of stories other than the MU-8, MU-20, or NC-13 zones; and
- (b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W.

### 2. OP RECOMMENDATION

OP recommends the following technical corrections to the penthouse size restrictions, consistent with the intent of the Zoning Commission at adoption of the penthouse provisions in ZC Case 14-13 (additions show in **bold underline** and deletions shown in **~~bold strikethrough~~**):

#### **Subtitle C § 1503 PENTHOUSE AREA**

1503.1 (*no change*)

1503.2 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas:

- (a) Zones where there is a limitation on the number of stories other than the **MU-8, MU-20, or NC-13 HE** zones; **or within any WR Zone other than WR-1, any Land Bay which has a story limit of greater than three stories**; and

- (b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W. (*no change*)

These corrections would:

1. Remove the reference to the MU zones, which no longer have a limit on the number of stories so do not need to be called out for exemption;
2. Add to the exemption the HE (Hill East) zones, all of which have a story limit greater than three (ranging from four to ten stories); and
3. Add to the exemption the WR (Walter Reed) zones and Land Bays which have a story limit greater than three. These would include WR-2 (7 story limit); WR-3 (5 to 6 stories); WR-4 (3 to 4 stories); WR-7 Land Bays J.3 (4 stories) and J.5 (5 stories); and WR-8 (5 stories). The provision would remain applicable in the WR-5 zone (2 to 3 story limit) and WR-7 land bay J.4 (2 stories). WR-6 is a park zone with no development potential; WR-1 permits only rowhouse flats, so existing zoning provisions would not permit a penthouse by right.

The Office of Planning (OP) also requests limited flexibility to finalize new wording with the Office of the Attorney General prior to publication.

### **3. ANALYSIS**

As part of Zoning Commission Case 14-13, the Commission generally allowed the required 1:1 setback to limit the size of a penthouse, with the intent that this setback would address visibility, building bulk, and other potential impacts of the penthouse space. These limits will continue to apply in all zones. This is also consistent with the Height Act, which also requires a 1:1 setback, but provides no other limitation in penthouse area.

The Commission also retained a provision limiting the area of the penthouse to 1/3 of the area of the roof below, for low density zones which have a story limit of three (R-1 through R-5-A, C-1, CM-1, and Cap Overlay zones); this restriction was specifically removed for zones with a story limit of greater than three. As drafted, the text was applied to all zones with a limit on the number of stories, except C-3-B.

As such, the provision inadvertently also applies to development in other zones with a story limit, specifically:

- Hill East zones, which have a story limit of greater than three for all of its zones, ranging from four to ten stories; and
- The Walter Reed zones, which were under consideration by the Commission at the same time as the penthouse provisions, and which, consistent with the approved development plan for the District portion of the site, include the establishment of story limits, most of which are greater than three, for land bays in all zones.

As such, the proposed amendments to this provision are consistent with the intent of the provision – to provide additional penthouse size limitations for zones which are restricted to 3 stories or less. All other provisions regulating the potential area or size of the penthouse (mainly the height, 1:1 setback, and FAR exemption provisions) would remain in effect for these zones, as would all other penthouse provisions.