

Chairman Hood and Members of the Commission  
District of Columbia Zoning Commission  
441 4<sup>th</sup> Street, NW  
Suite 210-S  
Washington, DC 20001

**Re: Case No. 14-13E: Comments on Proposed Amendments**

Dear Chairman Hood and Members of the Commission,

We have reviewed the Office of Planning's proposed amendments and appreciate the time and thought they have put into making these regulations more straight forward and effective. While we generally agree with their proposed changes, we would like to submit the comments below for the Commission's consideration.

1. Section 1504.1(c) (Side Building Wall Setbacks)

The Office of Planning (OP) proposes to increase the setback requirement to 1:1 for side walls that are not on the property line and face side yards and alleys. Other than in R and RF zones, the current regulations require no setback for side walls on the property line and a 0.5:1 setback for other side walls, including side walls facing side yards and alleys, unless they face a zone with a lower matter-of-right right or a historic resource. The limited setback currently required reflects the recognition that the visual impact of these penthouses is limited because the side building walls either abut or are in close proximity to each other. Accordingly, increasing the required set back creates spatial challenges with little aesthetic benefit. Goulston suggests, instead, that the Commission retain the existing side wall setback language for properties that are not in R and RF zones. The visual impact of the penthouse is minimal from an alley or a side yard so a greater set back is not warranted. Moreover, maintaining the existing language allows more opportunity for habitable space, which will result in a greater affordable housing set-aside or linkage contribution.

a. Goulston Recommended Change: Revise Subtitle C Section 1504.1(c) as follows:

*1504.1 Except as exempted by C §§ 1504.2 to 1504.4, penthouses and roof structures shall be set back from the edge of the roof upon which it is located, measured at a*

point where a line extending from the top of the roof intersects with the outside face of the building enclosing wall, as follows:

...

(c) A distance equal to its height from a side building wall of the roof upon which it is located if:

- (1) The side building wall is not located on a property line;
- (2) The side building wall faces a public or private street ~~or alley~~ right-of-way, or a public park;
- (3) The adjacent property along the shared lot line **(or the property opposite the side building wall across a public or private alley)** has a lower permitted matter-of-right building height; ~~or~~
- (4) The adjacent property along the shared lot line **(or the property opposite the side building wall across a public or private alley)** is improved with a building that is a designated landmark or contributing structure to a historic district with a height at least 10 feet (10 ft.) below the maximum height permitted in its zone;
- (5) The side building wall is on a single household dwelling or a flat in any zone; or
- (6) The side building wall faces a side yard or public or private alley other than as set forth above, except that in such case the setback shall be reduced to a distance equal to one half of its height;**

## 2. Section 1504.2(e) (Guardrails on Lower Terraces)

OP proposes to eliminate the setback requirement for guardrails on terraces and roof decks that are not on the highest roof of the building and are located along the rear, side, and open courts, except when they face a street or public park. This is a welcome change, as it will increase the usability of these outdoor spaces and encourage greater use and integration of such features into building design.

We suggest, however, that the setback requirement for guardrails along all lower terraces be eliminated, even when they are street-or-front facing. In addition to expanding potential outdoor spaces, this change will allow for greater planting or visual activity at the terrace edge and strengthen the connection between these outdoor spaces and the public realm. In short, the change will facilitate better urban design because it will further animate and activate the streetscape.

- a. Goulston Recommended Change: Modify Subtitle C, Section 1504.2(e) as follows and delete Section 1504.3(a).

1504.2 The setback requirements of 1504.1(a)-(d) (front, rear, side, open court, respectively) shall not apply to:

...

(e) ~~Guardrails required by the building code, for a balcony **that does not exceed a depth of ten feet (10 ft.) from the façade of the building,** or for a deck not located on the highest roof of a building **and which does not exceed a depth of ten feet (10 ft.) from the façade of the building.**~~

### 3. NEW A 301.16 (Vesting)

Under current regulations, text amendments take effect upon publication of the written order and matter-of-right projects are only vested upon receipt of a building permit. Many buildings that are in advanced stages of design or even in permit review would be “caught” by the proposed changes. We understand that the public has been put on notice of the pending amendments, however, some matter-of-right projects are subject to review under different disciplines, such as historic review. As such, penthouses may have been designed over a year ago to comply with the existing regulations so the project could undergo review by the Historic Preservation Review Board and any change to the approval would require modifications of such approval. Furthermore, while the penthouse changes were filed and set down at the beginning of 2020, there was no action or activity for many months (due, understandably, to greater priorities), which left designers in limbo over which rules they should follow. Those projects have filed or will soon file for permit review but could be forced to redesign fully-designed buildings unless their permits are issued prior to publication of the new regulations.

Accordingly, as with the previous penthouse changes in 2015, we propose language that will protect buildings in those stages of advanced design. Projects that are deemed compliant under the current regulations will be vested under the current regulations so long as a permit is filed by June 30, 2021. This provides owners and designers who proceeded in reliance under the old rules with the assurance and certainty to complete building design and proceed permits for already-designed buildings.

Finally, please note that the proposed vesting language below is limited to the design elements of the penthouse regulations (such as setbacks).

- a. Goulston Recommended Change: Add new vesting language as set forth below.

**NEW A 301.16 Notwithstanding Subtitle A Section 301.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving any penthouse or roof structure other than that 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 Subtitle C, Sections 1500 – 1505 in place as of [insert day before effective date of new regs], if the Application is legally filed with, and accepted as complete by the Department of Consumer and Regulatory Affairs, no later than June 30, 2021 (Vesting Date), or had received determination of zoning compliance from the Zoning Administrator prior to January 21, 2021.**

We greatly appreciate the opportunity to provide comments on these amendments and are happy to provide additional information if helpful.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_

Goulston & Storrs

cc: Joel Lawson, D.C. Office of Planning