



Government of the District of Columbia
**Advisory Neighborhood
Commission 6C**

January 18, 2021

Anthony J. Hood
Chair
Zoning Commission
of the District of Columbia
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: ZC 14-13E (Text Amendment, Penthouses and Rooftop Structures)

Dear Chairman Hood:

We write to offer ANC 6C's comments¹ on the proposed amendments addressing penthouses and rooftop structures.

Definitions

1) "Penthouse": As amended, this definition at section B-100.2 (page 2)² would apply only to a structure that "has a roof and is partly to fully enclosed on all sides." This is too narrow and would not encompass roofed structures with no enclosing walls, *e.g.*, a trellis with beams spaced 24" or less or a solid roof structure atop vertical supports.

Excluding the latter types of structures is inconsistent with the purpose of the regulation. The visual impacts of a roofed structure with no enclosing walls can be just as significant as for a partially enclosed roofed structure. Moreover, it makes no sense to regulate trellises with beams spaced more than 24" apart—see the proposed new definition of "rooftop structure"—while omitting those with narrower beam spacing.

- **Recommendation:** strike "and is partly to fully enclosed on all sides".

¹ On January 13, 2021, at a duly noticed and regularly scheduled monthly meeting, with a quorum of six out of six commissioners and the public present via videoconference, this matter came before ANC 6C. The commissioners voted 6-0 to adopt the position set out in this letter and to authorize Vice-Chair Mark Eckenwiler (6C04) to present testimony.

² Except where otherwise indicated, all page numbers refer to Case Exhibit 7A3, OP's Hearing Report Attachment III - Proposed Text.

2) “Rooftop structure”: As amended, this definition at section B-100.2 (page 3) would apply only to an “unenclosed or partly enclosed structure with no roof.” Here, too, the definition is too narrow, and should encompass all unroofed structures, including those that are fully enclosed. (Mechanical screening, which is expressly listed, is typically enclosed on all sides.)

- **Recommendation:** strike “An unenclosed or partly enclosed structure” and insert “A structure”.

ANC 6C appreciates OP’s attempt to respond to preliminary comments, but the further amendment suggested in the hearing report (Exhibit 7 at pp. 8-9) creates the circularity problem it attempts to avoid. If unenclosed mechanical equipment were, as proposed, to include screening, then that screening would (as “mechanical equipment”) itself require screening, and so on *ad infinitum*.

The issue we raised preliminarily arises elsewhere, under proposed section B-1503.4 (discussed below in the section on “Enclosing walls”).

- **Recommendation:** do not adopt the supplemental edits, as suggested by OP’s hearing report, shown in red on page 3.

3) “Temporary” rooftop structures: ANC 6C asks the Commission to consider whether ostensibly temporary structures, such as rooftop tents, need to be expressly included within the scope of “penthouse” or “rooftop structure.” We note that extremely large tents appear each spring on the roofs of large commercial buildings in our area. These structures remain in place for most of the year and are highly visible from numerous vantage points; as a result, the visual impacts are indistinguishable from those of more permanent structures.



If these nominally temporary rooftop structures are barred under the Construction Codes from remaining in place for months at a time—and it is unclear to us whether that is so—then we will look to DCRA for more energetic enforcement. If, on the other hand, there are no independent restrictions on these persistent rooftop features, then we urge the Commission to bring them within the scope of subtitle C of the zoning regulations.

Measuring point for roofs

The zoning regulation do not provide a definition for the term “roof,” leading to uncertainty over where the top of a “roof” sits. (The top of the decking? The top of the exterior membrane? Some other point?) OP’s proposed amendments seek to plug this gap in limited circumstances involving green roofs—see new section C-306.7 at page 4—but do not provide a uniform overall standard. Thus, in new section C-306.8 (page 4), penthouse height is to be measured from the “roof” on which the penthouse sits, but it is unclear where that initial measuring point is found.

Complicating this is the fact that comparatively new types of roof assemblies differ in important respects from traditional ones. The most obvious example is that the insulation layer now often sits above the decking, not below it.

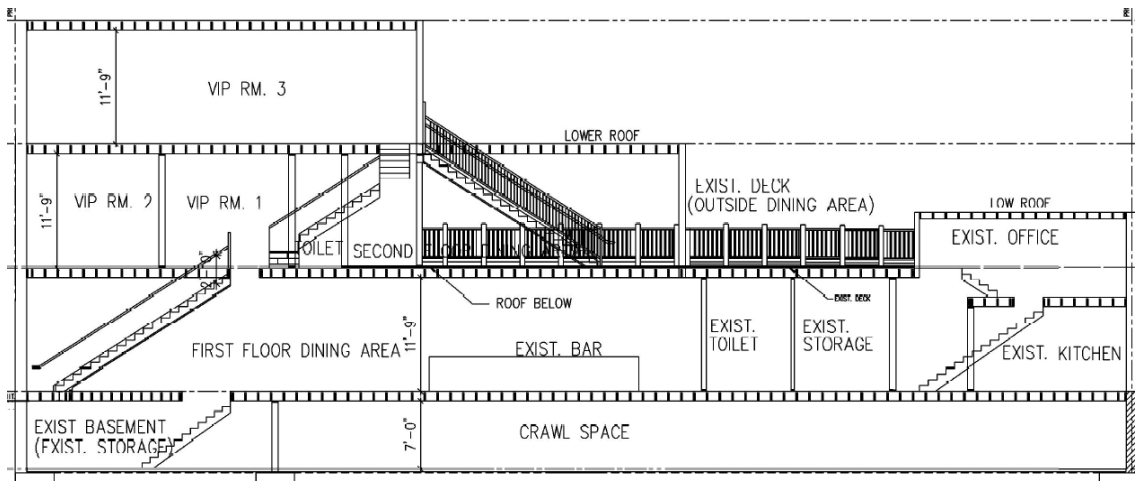
- **Recommendation:** add a new definition for “roof” or “top of roof” to clarify the proper measuring point.

Uses

Current section C-1500.3(c) allows a nightclub, bar, cocktail lounge, or restaurant use in a “penthouse” only pursuant to a special exception. Because the current definition of “penthouse” includes guardrails,³ this existing provision is properly applicable to roof decks as well as enclosed penthouse space.

OP proposes to amend this provision—in the process renumbering it to C-1501.1(c); *see* page 9—to restrict its application to decks “on the highest roof of the building.”

ANC 6C strongly opposes this limitation. Consider the scenario in which a building’s upper story (or stories) is only a partial floor:



³ See existing section 1500.4 (referring to “a penthouse, other than screening for rooftop mechanical equipment **or a guard-rail**”) (emphasis added).

The purpose of the regulation, quite clearly, is to address potential noise impacts on nearby properties from boisterous patrons. OP’s proposal would require a special exception only when the outdoor terrace is above the topmost roof level. Paradoxically, however, OP’s language would require a special exception for a smaller building with one full story and a roof deck.

In its hearing report, OP attempts to justify its position by citing Zoning Administrator Interpretation ZA-009.⁴ The Commission should reject this rationale for two independent reasons.

First, as noted above, ZA-009 ignores the purpose (and arguably the literal language) of the current regulation, which is designed to protect nearby property owners. ZA-009 requires a special exception where a two-story property has a small penthouse and adjacent roof deck but allows a deck as a matter of right on a nearly identical building with two full stories and a partial third story.

Second, the Commission should not defer to ZA-009 merely because it is the status quo. Not only is the status quo illogical, but it is also of extremely recent vintage. Less than two years ago, the Zoning Administrator took the opposite position, agreeing in writing that a building with a partial upper story—**indeed, the specific building shown in section on the previous page**—would require a special exception to use a lower-story roof deck for dining activity. *See* annotated Attachment A to this letter. Because this interpretation is so recent, it does not merit the deference that a more longstanding interpretation might deserve.

- **Recommendation:** in new proposed section C-1501.1(c), strike “the highest” and insert “any”.

Enclosing walls

1) Proposed section C-1503.1 (page 11), carried forward from existing C-1500.6, would continue to require screening walls for all rooftop mechanical equipment over 4’ tall. Many self-contained HVAC units, however, are already housed in symmetrical outer enclosures. In such cases, requiring screening walls adds more bulk to a rooftop with no appreciable esthetic benefit.

- **Recommendation:** create a narrow exception from the screening-wall requirement for an individual piece of mechanical equipment with a symmetrical outer enclosure (whether in rectilinear, cylindrical, or other form). Such an exception might include language requiring any attached cables, conduit, or ductwork not to rise a certain height above the base of the mechanical unit.

2) Proposed section C-1503.4 (page 11) refers redundantly to screening walls, which are “rooftop structures” under the new definition for that term.

- **Recommendation:** in the section’s introductory text (but not in the subsections that follow), strike all references to screening walls.

⁴ *See* <https://dcra.dc.gov/publication/interpretation-za-009-rooftop-dining-areas-adjacent-partial-floors>. ANC 6C is well aware of this problematic interpretation, having brought it to OP’s attention earlier this month.

Setback exceptions

1) New proposed section C-1504.2(f), found at page 14, contains two separate exceptions. The first pertains to balconies, a term not defined in the regulations.

It is unclear to us what purpose the balcony exception serves. ANC 6C can imagine two types of balconies: overhanging balconies projecting out past the building façade, and recessed balconies within the façade line. Because neither of these sits on a “roof,” there appears to be no need to exempt them from the penthouse/rooftop structure requirements.

- **Recommendation:** delete as superfluous the language discussing balconies.

2) More generally, subsections C-1504.2(c) through (f) create a direct conflict with the purposes of section E-206, which protects the integrity and appearance of rooftop architectural elements. Section E-206 does so by prohibiting, absent special-exception relief, any rooftop addition that enlarges or extends a feature like a cornice or mansard roof.

The Zoning Commission recently issued its final order in ZC 19-21, completing a lengthy rulemaking process to refine section E-206 and companion sections while retaining their essential protections. Adoption of proposed section C-1504.2, however, would undermine that effort by allowing roof decks, solar panels, and guardrails to rise *directly* above original rooftop architectural elements, in some cases as high as 4'. Given that “[o]n flat roofed rowhouses, solar panels are typically quite close to the roof, often mounted on small beams spanning the side parapet walls”—noted on page 5 of OP’s hearing report (Exhibit 7)—achieving a 1:1 setback should not be unduly burdensome.

- **Recommendation:** the exceptions in proposed subsections C-1504.2(c) through (f) should not apply in RF zones.

Enclosed area (floor area ratio)

ANC 6C found it puzzling that the proposed text for section C-1505.1 in the notice of public hearing counted “rooftop structures”—that is, structures with no roof—against the applicable FAR cap when certain *roofed* structures, such as penthouse mechanical space, are excluded.

- **Recommendation:** flag this inconsistency for the Commission’s consideration.
 - We note that OP’s hearing report addresses this concern (at page 14) by striking “or rooftop structure” and appreciate OP’s responsiveness to the concern expressed earlier.

ANC 6C also notes that because mechanical equipment would now fall under the definition of “rooftop structure” and not “penthouse,” section C-1505.1(d) contains incorrect language.

- **Recommendation:** in C-1505.1(d), strike “penthouse or”.

- OP's hearing report makes the opposite change, striking "or rooftop structure". We believe this is incorrect, as mechanical equipment *per se* (as opposed to "penthouse mechanical space") is a rooftop structure as discussed above.

Maximum rooftop coverage

Under the existing regulation, section C-1503.2(a), penthouses (defined broadly) may not occupy more than one-third of the applicable roof's area in any zone where height is capped at three stories or fewer. RF zones, which make up a substantial portion of ANC 6C, are included.

OP's proposed amendments would eliminate this restriction altogether. Although new proposed section C-1501.1(a) would severely limit penthouse *habitable* space on certain structures (including single-family dwellings and flats), the result would be the near-total elimination of any cap on penthouse *mechanical* space. It is unclear what practical problem OP is trying to address through this change.

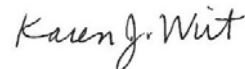
We are extremely concerned that unscrupulous actors, of which the District has no shortage, will exploit this distinction to a) construct large penthouses that are "mechanical" in name only and then b) use them as (or convert them to) habitable space.

- **Recommendation:** restore the cap on all penthouses/roof structures to one-third of the roof area. If retaining this limit creates a specific and articulable problem, then relax the cap accordingly instead of eliminating it entirely.

* * *

Thank you for giving great weight to the views of ANC 6C.

Sincerely,



Karen Wirt
Chair, ANC 6C

Attachment

Attachment A

RE: 707 H St, NE

LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

Wed 3/6/2019 10:01 AM

To: Eckenwiler, Mark (SMD 6C04) <6C04@anc.dc.gov>**Cc:** Bolden, Tarek (DCRA) <tarek.bolden@dc.gov>; Kelty, Joel (SMD 6C05) <6C05@anc.dc.gov>; Beeton, Kathleen A. (DCRA) <kathleen.beeton@dc.gov>; Reid, Rohan (DCRA) <rohan.reid@dc.gov>; Chrappah, Ernest (DCRA) <Ernest.Chrappah@dc.gov>; Stum, Blaine (Council) <bstum@DCCOUNCIL.US>

Commissioner Mark Eckenwiler:

Actions To Be Taken:

- A new Hold has been placed in the permit tracking system to flag any future applications.
- My office is working with the Office of General Counsel to issue a Notice to Revoke the recent COO (CO1901156).
- A property inspection will be scheduled to determine the current status of construction and business activity, as well as the current state of the roof and confirm if a roof deck is existing.
- NOIs will be requested for work performed while the SWO is in effect.
- My office will review any future applications for rooftop use, and , if a new rooftop deck is proposed for dining activity, we will require [as you have noted] the applicant to seek BZA Special Exception under C-1500.3(c).

Matthew Le Grant

Zoning Administrator- Dept of Consumer and Regulatory Affairs

1100 4th St SW- 3rd Floor

Washington, DC 20024

[Matthew.legrant@dc.gov](mailto:matthew.legrant@dc.gov)

202 442-4576

From: Eckenwiler, Mark (SMD 6C04)**Sent:** Tuesday, March 05, 2019 11:52 AM**To:** LeGrant, Matt (DCRA)**Cc:** Bolden, Tarek (DCRA); Kelty, Joel (SMD 6C05); Beeton, Kathleen A. (DCRA); Reid, Rohan (DCRA); Chrappah, Ernest (DCRA); Stum, Blaine (Council)**Subject:** Re: 707 H St, NE**Importance:** High

Matt,

One additional issue: the plans for the now-revoked construction permits depicted an uncovered rooftop deck. (That deck was fraudulently described in those permit applications as an existing condition. I went up on that roof last fall; there is not & has never been a deck there.) I have not yet received the CO1901156 application documents I requested from you in my Feb. 26 email (attached), so I can only assume that the deck is shown or described there as well. Moreover, the tenant's pending ABC license application includes a request for a "summer garden,"