ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Case No. 14-13E - Office of Planning – Proposed Text Amendments to Penthouse Regulations

Statement of Larry Hargrove for Kalorama Citizens Association

January 21, 2021

Chairman Hood and members of the Commission:

Our comments concern only one element of this multifaceted set of proposals: the Office of Planning's proposed changes to rules dealing with penthouses on what it calls "low-density residential forms of development", The effect of these changes would be to eliminate the existing special protections adopted in 2015 against visually intrusive rooftop penthouses on "rowhouses and detached and semi-detached dwellings and flats", while applying those protections in substantially weakened form to a substantially smaller number of buildings identified as "single household dwellings, flats or accessory buildings".

OP would accomplish this by changes in rules governing the right to construct a penthouse, the height of the penthouse, and its required setback from the building's exterior walls – the principal factors determining the intrusiveness of the structure's visual impact on the building itself and on the surrounding neighborhood.

The federal Height of Buildings Act and the 2015 penthouse Regulations

In 2015, following an amendment to the federal Height Act that allowed rooftop penthouses that exceeded height limits under that Act to

be used for human occupancy, the District moved to amend the Zoning Regulations to allow such penthouses as a matter of right on buildings of any height. Generally, any use that was allowable in a particular zone would be permitted in a penthouse. The previous Zoning Regulations, like the Height Act itself, had recognized the necessity to curtail the potentially jarring visual impact of "roof structures" on the building and its surrounding neighborhood, and accordingly set limits on their allowable height and proximity to the building's exterior walls. The 2015 regulations set similar limits.

A ban on penthouses on some classes of buildings . . .

However, for rowhouses, detached or semi-detached dwellings and flats (two-unit dwellings) – probably the vast majority of buildings in the R, RF and RA districts -- the Commission made an exception to its broad authorization of penthouses for human occupancy. It was understood that these types of structures, because of their physical configuration and relatively small size, were especially vulnerable to the visual blight of a bulky oversized rooftop addition, and that the neighborhoods where they predominate needed special protection against potential encroaching ugliness. Characteristically, rowhouses are relatively short buildings with a narrow footprint. The shorter and narrower the building, the greater the proportionate visual contribution that a penthouse of a given height makes to the total mass of the structure and the shallower the viewing angle from the street -- and thus the greater the visual intrusiveness of the penthouse and the greater the need for setback from exterior walls and restriction on penthouse height. A 12-foot high penthouse on a thirty-five or forty-foot high rowhouse is very much more visually jarring than the same penthouse on a seventy or eighty foot tall building.

A comparable set of characteristics make the one- to three-story detached dwellings with gabled roofs that are typical in single family occupancy areas similarly vulnerable.

Consequently the Commission barred having a penthouse on these types of buildings as a matter of right.[1]

. ***. . except for providing access to a roofdeck***

At the same time, OP and the Commission recognized that many homeowners, and especially rowhouse owners, were interested in having a readily accessible roof deck. This was especially true of owners of rowhouses, which, with their typically flat roofs, are especially suited for this purpose. So to accommodate this legitimate interest, the Commission provided that owners of **rowhouses and detached or semi-detached dwellings and flats** could apply for a Special Exception to allow a modestly-sized penthouse ten feet high or less with up to 30 feet of storage space, just to provide a stair or elevator access to a roofdeck. To further limit its visual impact, the penthouse would have to be set back from the building's front and rear walls by a distance equal to its height, and similarly set back from side walls if an adjacent building had a lower or equal allowable height.[2]

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1 11 DCMR C§1500.4

2 11 DCMR C§1502.1. This provision requires that a penthouse be set back from the edge of the roof on which it is located by a distance equal to its height from the front and rear building walls. It requires the same setback from side building walls if

"(1) In any zone, it is on a building used as a detached dwelling, semi-detached dwelling, rowhouse or flat, that is:

Three facts about this special protective arrangement for rowhouses, detached and semi-detached buildings, and flats are of special importance:

• **First, with the exception of flats, which are two-unit dwellings by definition, they are based on the *physical characteristics* of the building, not on its *use* – which has no relevance to or effect upon the visual impact of a penthouse.** An ugly building is an ugly building regardless of what goes on inside of it. Including flats in the list, although that classification is based on use rather than physical characteristics, is appropriate because areas zoned for flats – RF-1, -2 and -3 -- are in fact predominately built as rowhouse areas.

• **Second, because the special protective arrangement is intended to target the most vulnerable types of buildings, it is precisely defined and unappealable, but reasonable:** A penthouse is

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> (A) Adjacent to a property that has a lower **or equal** permitted matter-of-right building height, or
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> (B) On a corner lot adjacent to a public or private street or alley right-of-way or a public park;
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> (2) In the R-1 through R-3 and RF zones, it is on any building not described in Subtitle C § 1502.1(c) (1) that is:
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> (A) Adjacent to a property that has a lower or equal permitted matter- of- right building height, or
>
> (B) On a corner lot adjacent to a public or private street or alley right-of-way or a public park."

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not allowed matter-of-right, but a specific arrangement for penthouse access to a roof deck with minimal visual intrusiveness is available by special exception – which, since becoming available, has been frequently sought and readily granted by the BZA.[3]

• **Third - requirements for setback from exterior walls are tailored to the special circumstances of rowhouse construction.** Setback from side walls is required in almost all cases where the adjoining building has an *equal* matter of right height, as well as where that height is lower. This is necessary because rowhouses are typically constructed in blocks in which all structures have the same matter-of-right height. The absence of side wall setback requirements in these cases could enable BZA-authorized penthouses extending across as much as the full width of the building and abutting similar penthouses on adjoining buildings.

How OP's Proposals Would Degrade These Protections for Rowhouses, Detached and Semi-detached Dwellings and Flats

First, the existing special protections for "rowhouses, detached or semi-detached dwellings" would be simply eliminated, by deleting C§1500.4. Unless it could be shown that a building in one of these classes qualifies as a "single household dwelling" or "flat" under the new criterion proposed by OP – which a very large and growing number could not -- it would be allowed to have a penthouse as a matter of right, the permitted height and use of which would be determined solely by the Zoning Regulations' general authorizations for penthouses for human occupancy. RA districts, for example, are replete with these converted rowhouses and semi-detached buildings with three or more units, and also have detached buildings similarly converted to multi-family use. These buildings would be

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3 Setdown Report, January 16 2020, pp. 3, 6

eligible for penthouses with heights ranging from 12 to 20 feet, to be occupied by any use permissible in the zone.[4]

Second, in place of the existing protection, with its prohibition of matter-of-right penthouses on rowhouses, detached or semi-detached dwellings and flats, penthouses would be authorized as a matter of right on classes of buildings identified solely on the basis of use: **single household dwellings, flats, or accessory buildings in any zone or on the roof of an apartment house in an RF zone converted pursuant to Subtitle U § 320.2.** These buildings would be allowed a penthouse as a matter of right that is within the zoning height limit and limited to one story and nine feet in height and contains only a stair or elevator for access to a roof deck and a maximum of 30 square feet of storage space ancillary to a roof deck. **But now, critically, all of these limitations could be evaded by special exception under Subtitle X. Chapter 9, and Subtitle C §1506, leaving the height, bulk and setback of the penthouse up to the vagaries of BZA deliberation.**

Bottom line

The practical effect of these proposed changes would be to continue some measure of special protection, although in very substantially weakened form, for a smaller number of dwellings principally in R and RF zones and accessory buildings in any zone, but to eliminate any such protections for the large number of rowhouses, detached or semi-detached buildings in the RA and other zones that do not happen to be used -- presumably at the

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[4] See 11 DCMR §E-303.2; §C-1501.1.

moment a penthouse permit is applied for -- as a single or two household dwelling.

Is there any policy reason for these changes? We can find none and OP offers none. It is perhaps an explanation, but not a justification, that these proposals are in line with the view that seems systematically evident in OP's current Comp Plan proposals: that "neighborhood protection" has somehow become a dirty word, and that any regulatory language that suggests otherwise should be at least watered down if not dropped altogether.

The arrangement devised in 2015 was and remains a reasonable compromise between homeowners' understandable affinity for having their own private roof deck, and the evident need to mitigate the obvious potential adverse aesthetic effects of allowing them to do so. The present arrangement should please everyone except those, whom OP acknowledges, are just opposed to roof decks on low density dwellings under any circumstances. And according to OP's own figures, it is working remarkably well: apparently something closely approaching 100% of those who have sought special exceptions for penthouses to access a roof deck under the 2015 regulations have been granted them, and the requests generated no ANC opposition.[5] This is a compelling reason for *retaining* the present arrangement – not, as OP appears to suggest[6]-- for scrapping it and replacing it with a substantially more permissive one.

Additionally, OP proposes, in C§1504.1, to largely do away with the requirement – especially relevant for rowhouse blocks -- that there must

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5 Setdown Report, January 16 2020, pp. 3, 6; Supplemental Ssetdown Report, February 14, 2020, p. 2..
6 Ibid, p. 6.

be a setback from sidewalls when the adjacent structure has an equal (and not only a lower) matter of right height. This is a bad move for two reasons: First, the visual impact of a penthouse built to extend all the way to the side wall is in no way mitigated or otherwise affected by the fact that the adjacent building has an equal permitted height. Second, as noted above, the absence of side wall setback requirements in these cases could enable BZA-authorized penthouses spanning up to the full width of the building and abutting similar penthouses on adjoining buildings. (The requirement in proposed C§1504.1(c))(1) for setback from a side wall that is not on a property line seems appropriate as a means to provide some protection in the case of some rowhouses, detached or semi-detached dwellings.)

What should the Zoning Commission do?

We urge the Commission to:

1. Delete proposed C§1501.1(a), regarding penthouses allowed as a matter of right on single household dwellings, flats or accessory buildings.

2. Retain C§1500.4, renumbered as necessary, amended as follows:

A. Add “single household dwellings, flats or accessory buildings in any zone or on the roof of an apartment house in an RF zone converted pursuant to Subtitle U § 320.2” to the list of classes of buildings covered, to ensure comprehensive coverage. It would not matter that the listed classes would overlap in some instances.

B. Change the penthouse height limit from 10 to 8 feet. OP has already acknowledged that the present height limitation on penthouses for roof deck access is too generous, proposing to reduce it to nine feet[7] and noting that these penthouses as built have ranged between eight and

[7] Supplemental Setdown Report, February 14, 2020, p.4.

nine. That limit could be reduced to eight feet while still leaving adequate headroom for navigating the stairway and exiting to the roof, further diminishing the visual impact of the penthouse.

The relevant portion of the amended section would then read as follows:

> “ . . . a penthouse . . . shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse, single household dwelling, flat or accessory building in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under Subtitle X, Chapter 9, provided the penthouse: (a) Is no more than eight feet (8 ft.) in height and contains no more than one (1) story; and (b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.

3. Restore the requirement that side wall setback be required when the permitted height of an adjacent building is the same as that of the building on which the penthouse is to be located, by amending proposed C§1504.1(c)(3) to read as follows:

> “(3) The adjacent property along the shared side lot line has a lower **or equal** permitted matter-of-right building height; or“.

The above comments were approved by the Executive Committee of the Kalorama Citizens Association on January 20, 2021. - Denis James, President