District of Columbia Office of Planning

SUPPLEMENTAL REPORT

TO: District of Columbia Zoning Commission

FROM: Joel Lawson, Associate Director, Development Review

JL for Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

DATE: February 18, 2021

SUBJECT: ZC Case 14-13E – Supplemental Report for Proposed Zoning Text Amendments to Penthouse Regulations

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I. RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission take proposed action to approve the proposed amendments to the zoning regulations generally as advertised in the Public Hearing Notice. These amendments are intended to clarify, simplify, and strengthen various definitions and regulations regarding penthouses and roof structures.

OP requests that the Commission provide OP and OAG flexibility to incorporate any additional changes that may be requested by the Commission into the Notice of Proposed Rulemaking, for publication prior to final action.

For additional information on the proposal, please refer to the OP Public Hearing Report at Exhibit 7 to the record.

II. BACKGROUND

At the close of the Zoning Commission public hearing for this case, held on January 21, 2021, the Commission requested that OP provide additional information in a supplemental report, mainly to address concerns raised by members of the public in submissions added to the record on the day of the hearing, and by the Commission at the public hearing.

Following the public hearing, OP reviewed the comments and had additional conversations with Commissioner Eckenwiler of ANC 6A; Larry Hargrove, on behalf of the Kalorama Citizens Association (KCA); and Laura Richards on behalf the Committee of 100 (C100). The comments and additional discussions were helpful – while we may not agree on all issues, the discussions were informative and have led directly, and indirectly, to changes proposed by OP. In addition, Mr. Hargrove and Ms. Richards submitted to OP additional written comments, which largely elaborate on comments in their original filings, and which OP has attached to this report (Attachment II).

OP also had additional conversations with staff of the Department of Energy and Environment (DOEE), and the Solar Coordinator within the Department of Consumer and Regulatory Affairs (DCRA) regarding solar panels, and with the Zoning Administrator (ZA) on various issues

In addition, OP reviewed recently approved Zoning Commission text amendments to better reconcile this set of text amendments. These included 19-13 (alley lots), 19-21 (solar and front façade) and 20-19 (accessory buildings). This review also led to minor additional amendments to the penthouse proposal.

Please see Attachment I to this report for the text of the limited additional amendments recommended, or provided as an alternative, by OP for Commission consideration.

III. SUMMARY OF PUBLIC COMMENTS FROM THE JANUARY 21, 2021 PUBLIC HEARING, WITH OP ANALYSIS

Zoning Commission	Section	RESPONSE	Proposed Action
Balcony / roof deck guardrails not the highest roof	C § 1504.2 (f)	This issue was also generally raised by David Avitable G&S and Mark Eckenwiler, ANC 6C. OP had proposed this provision to be consistent with DCRA interpretation of existing regulations. Based on the input from the public and additional conversations on this issue with the ZA, OP agrees that this provision is not necessary and is now proposing it be deleted.	OP now proposes to delete this provision See Attachment I.
Solar Panels – question allowing panel systems that are 2 feet above the roof, if not mounted on the parapet	C § 1504.2 (d) and (e)	OP held additional conversations with DOEE and the DCRA Solar Coordinator, and continues to feel that the proposal balances visual concerns with the needed flexibility for these important installations, in furtherance of District policies and objectives outlined in the OP report at Exhibit 7. OP further notes that solar panel height is measured to the top-most point of the panel, so even a slight angle to the panels can increase defined height.	No change to existing proposal.
Solar Panels – questioned whether solar panel systems should be required to provide either screening or a 1:1 setback from the front façade.	C § 1504.2 (d) and (e)	DCRA and DOEE reiterated the importance of not restricting solar on low density residential buildings, to further District policies outlined in the last OP report. However, to address this concern, an option could be to require that the mechanical supports for the solar panels be screened from the front façade. According to DCRA, some solar panel systems come with such screening. In other cases, an existing building parapet would act as a screen along the front. . OP has provided an example of such language, although additional refinement may be needed.	No change to existing proposal. Alternatively, amend C § 1504.2 to require the screening of the structural support system for solar panel systems from the front building wall, if the solar system is not set back from the front façade. See Attachment I
Special exception provision and proposal to remove duplicative criteria	C § 1506	Only one criteria is proposed to be deleted - current C § 1504.1(f), which essentially duplicates criteria for the required review under Subtitle X Chapter 9. Current C § 1504.1(f): *The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light*	No additional change proposed.

Zoning Commission	Section	RESPONSE	Proposed Action
		and air of adjacent buildings shall not be affected adversely. Subtitle X Chapter 9 special exception criteria: *"(a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;* *(b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps"* Other criteria were moved within the provision, but not deleted.	
Zoning Commission – respond to David Avitable, G&S comments re setbacks from Side Building Walls and impact on affordable housing	Existing C § 1502.1(d)	OP discussed the proposal for setbacks, including from side building walls in our public hearing report. Mr. Avitable noted that in some cases, a required side yard could increase from ½:1, to 1:1. This could in some instances limit the size of the penthouse, and therefore the affordable housing requirement. OP proposed this change to make the regulations more consistent, and easier to understand and interpret by reducing the "options" for setback size. OP's original research on penthouses indicated that penthouses typically do not utilize the entire area available under the regulations, given the limitations of zoning such as the .4 FAR allowance, and GAR / Green Building requirements. While this change could have a minor impact on some cases, other proposed changes would overall tend to allow a more efficient utilization of habitable penthouse space consistent with the intent of the regulations. There is additional discussion of setback from side walls in response to comments from C100 and KCA, below.	No additional change proposed
Vesting	n/a	OP discussed the addition of a vesting rule with OAG and the ZA prior to the hearing. Because this amendment process has been underway for over a year, OP is continuing to not propose a vesting provision Instead, the Commission could establish, in the Order, an appropriate "date certain" on which the new regulations would become effective and applicable. This, for example, is what the Commission did for the ZR-16 amendments.	No additional change to zoning proposed.

Prior to addressing specific recommendations submitted on behalf of the KCA and C100, OP notes that a major concern they raised relates to their reading of a specific aspect of the current regulations, related to limits on the ability to provide a habitable penthouse on low density residential forms of development. This was discussed at the public hearing, and further during the meeting OP staff had with Mr. Hargrove and Ms. Richards. The regulation in question is existing C § 1500.4 / proposed C § 1501.1(a).

Existing Provision Wording:	**Proposed Provision Wording**
C § 1500.4 Notwithstanding Subtitle C § 1500.3, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail required by Title 12 of the DCMR, D.C. Construction Code for a roof deck, shall not be permitted on the roof of a **detached dwelling, semi-detached dwelling, rowhouse or flat 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: …	C § 1501.1(a) Penthouse habitable space may be permitted on the roof of a **single household dwelling, flat, or accessory building in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2**, if it: …

The KCA and C100 described the change highlighted as one that would diminish or reduce the applicability of this provision, by making it applicable to fewer kinds of buildings. For example, in the attached memo from KCA and C100, they note that "*a rowhouse outside an RF zone that contains more than two dwelling units is clearly included under the current list, which explicitly mentions "rowhouse", but it is not covered by the proposed new list since such a building is neither a single household dwelling, flat, accessory building or converted flat in an RF district*.". However, any building with more than two units is a "multi-family building" by definition, so is not currently covered by this existing regulations. This is why OP is proposing to expand the provision to include rowhouse conversions to multi-family buildings in the RF zone.

OP understands the KCA and C100 position that the regulations could be read as they describe it. However, a review of the original approval in 14-13, existing BZA case records, and discussions with the Zoning Administrator confirmed to OP that the existing and proposed provisions cover the same spectrum of buildings, with the exception of the proposed expansion of the provision in the new regulations. The Zoning Administrator advised that "rowhouse" is considered a subset of the broader "row building" term, and he has applied "rowhouse" to a single family attached dwelling or an attached flat. This is consistent with the intent for the provision, and discussion at the hearing. The OP report for that case describes this as a provision related to "low density residential forms of development" (Exhibit 2, p. 6; p. 4; p. 6) while the supplemental setdown report (Exhibit 4 pp. 3; 4; 6) describes this a provision related to a "single family dwelling or flat". At neither of those meetings did the Commission raise concerns about where this restriction would apply, or indicate that it should be applied more broadly, or ask OP to expand the scope of the provision to apply it more broadly - to multi-family buildings or non-residential buildings.

In general, OP does not support applying this penthouse prohibition more broadly, as that would be inconsistent with the Federal and Council approved changes to the Height Act provisions which were intended to be more, not less, permissive in the ability to provide habitable penthouse space. Such a change would also negatively impact the affordable housing requirements related to the provision of habitable space, and would be inconsistent with objectives to create more, not less, housing in the District.

Having said that, C100 and KCA are correct that the current language mixes "use" and "building form" and need additional clarity and consistency with terminology used in other parts of the zoning regulations (although this is not the only place that the term "rowhouse" is used specifically in reference to attached dwellings). This is why OP is proposing to correct the term to be consistent with ones used predominantly in the regulations, and consistent with what OP's intent, and OP's understanding of the Commission's intent, for the provision. As such, there is no intent to lessen the scope of the provision by clarifying the terminology.

OP acknowledges, however, the KCA and C100 position is that this penthouse restriction SHOULD apply more broadly. As noted above, OP has already proposed this by applying it to conversions in the RF zone pursuant to U § 320.2. Even more specifically, based on our conversations, are concerns for existing rowhouse development in RA-1 and RA-2, which are low to moderate density multi-family residential zones. They are correct that there are parts of the city where rowhouses are zoned RA-1 or RA-2; these zones tend to have been in place for many decades, and not the result of more recent "up-zonings". Rowhouses are permitted in these zones, by special exception in the RA-1 zone and by-right in RA-2, as are multiple-dwelling buildings. These areas are typically designated on the Comprehensive Plan Future Land Use Map (FLUM) for moderate, or higher, density residential development, so the zones are appropriate, and moderate forms of multi-family development are consistent with the designation.

In both zones, under both the current and the proposed text, a penthouse would be restricted on the roof of a one family dwelling or flat, whether it is a detached, semi-detached or attached (rowhouse) building, as the restrictions of C § 1501.1(a) apply in all zones.

In the RA-2 zone, under both the existing and the proposed text, a habitable penthouse consistent with the regulations, including height, area, and setback requirements, would be permitted by right on a multi-family building (one with 3 or more units).

However, separate from the text amendments highlighted by the C100 and KCA discussed above, OP notes a different provision that would impact the ability to do a habitable penthouse on a multi-family building in the RA-1 zone, and which OP had proposed to delete. The current regulations include C § 1500.3(b) which states that:

> *(b) Within residential zones in which the building is limited to thirty-five feet (35 ft.) or forty feet (40 ft.) maximum, the penthouse use shall be limited to penthouse mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;*

That provision would limit a penthouse but would prohibit habitable space other than ancillary space associated with a roof deck. The applicable residential zones, ones which limit building height to 35 – 40 feet, would be the R, RF-1 through RF-4, and the RA-1, RA-6 and RA-7 zones. As such, the proposal to delete existing C § 1500.3(b) could make the regulations for penthouses less restrictive, with the main impact for multi-family buildings in the RA-1 zone.

OP continues to feel that this provision is not consistent with current policy and should be deleted, as the restrictions of C § 1501.1(a), particularly as proposed to be expanded by OP, provide more restrictive limits for one family dwellings and flats in these and all zones - the kinds of buildings originally intended to be restricted. In the RA-1 zones, any new multi-family building is subject to special exception review pursuant to U § 421, so the potential impacts of any penthouse would be evaluated as part of that review.

While OP is not recommending further amendments of these specific provisions, if the Commission wishes to expand the scope of the limitation, you could instruct OP to examine this in more detail as part of a more comprehensive review of RA-1 zone, as recently requested by the Commission and BZA members. If the Commission wished to retain this provision as it exists currently, OP would request flexibility to work with OAG and the ZA, who indicated to OP that this provision is difficult to administer, to evaluate and refine the language to make it easier to administer and understand. This would limit penthouse use, but not necessarily size, in the R, RF-1 to 4, and RA-1, RA-6 and RA-7 zones for multi-family and non-residential buildings.

The following table continues the summary of OP responses to comments received, including ones from KCA and C100, which tend to be similar so are addressed together; and those of ANC 6C.

KCA and C100	Section	RESPONSE	Proposed Action
Larry Hargrove and Laura Richards		In addition to the Exhibits, also refer to the memo Attachment II.	
Delete proposed C§1501.1(a), and retain existing C§1500.4 (Exhibit 12, p. 8; Exhibit 12. p.1)	existing C§1500.4 proposed C§1501.1(a)	See discussion above. Deletion of this section would eliminate the proposed ability to provide this limited form of roof access if the penthouse is entirely below the permitted height limit for the building. Reinstating it would continue to penalize homeowners wishing to add enclosed access to a roof deck on their two story house, potentially encouraging larger additions.	Not recommended by OP. See options above for potential amendments.
Relief from provisions of C§1500.4 (proposed C§1501.1(a) should not be by special exception, "*leaving the height, bulk and setback of the penthouse up to the vagaries of BZA deliberation*". (Exhibit 12, p.6)	C§1501.1(b)	OP continues to believe that the special exception process, as it exists now, is appropriate for a penthouse located partly or entirely above the permitted height for the building. However, OP has proposed clarifying language to reinforce that the special exception would continue to be for the use only, not the limitations on the size or height of the use. Relief from any other aspect of penthouse zoning would be either by special exception pursuant to C§1506, or by variance (for example, from height).	Clarification to C§1501.1(b) proposed. See Attachment I.
Relief from setback rules should not be available through special exception. (Exhibit 13, p.1)	C§1501.1(b) C§1506	This comment seemed to particularly relate to setbacks for penthouses on the roof of a low density residential building. OP continues to believe that the special exception relief process, as it exists now, is appropriate.	No additional changes proposed.
Change penthouse height limit from 10 to 8 feet. (Exhibit 12, p.8)	C§1501.1(a)	OP proposed to change the permitted height for a penthouse from ten feet to nine feet. As noted in earlier reports, our research indicated most rooftop stairwells were in the eight to nine foot height range, while few exceeded that height. Limiting the height to eight feet could be problematic given the more specific and restrictive method for measuring	No additional changes proposed.

KCA and C100	Section	RESPONSE	Proposed Action
		penthouse height proposed in the new regulations B§306.8. The proposed reduction in height combined with the proposal to allow to stairwell roof to slope would reduce the visibility of any stairwell permitted.	
Restore the requirement for setback from side walls of building with equal height. (Exhibit 13, p.1; Exhibit 12 p.9)	C§1504.1(c)	The current regulations require a setback from a side wall if, among other things, the adjacent zoning allows a building of equal or lower height. OP is proposing to change this to not require the side setback if the adjacent building is allowed an equal height. This would make the provision less restrictive on some properties. For all buildings, the setback from a side building wall would continue to be required if the side wall of the building is itself set back from the lot line, or if it faces a street, alley, public park, or if the adjacent lot has a lower permitted height, or is in a historic district, or is improved with a lower landmarked building. A setback would also be required for any penthouse above the Height Act limit for the site. On low density residential buildings, any penthouse is only permitted by special exception so would be subject to BZA review, including an assessment of visual impact and impacts on neighboring properties. Allowing an option for a stairwell penthouse on a side wall as part of this review process also would provide a more logical solution for homeowners, since existing building stairwells in rowhouses tend to be constructed along a side building wall for efficiency of internal layout, and a rooftop access stair can typically be most efficiently placed over the lower floor stairwells. For other forms of buildings, this restriction can be an unnecessary limitation on the provision of new housing and affordable housing, or amenity space for residents of DC.	No additional changes proposed by OP, but if the Commission wishes, this setback requirement could be re-instated.

KCA and C100	Section	RESPONSE	Proposed Action
Comprehensive Plan (Attachment II)		The KCA and C100 memo references a provision in the Comprehensive Plan Land Use Element, related to rezoning of lands – LU-2.1.A: Residential Rezoning. OP is not proposing a rezoning in this text amendment, so this provision is not relevant to this case. Nor does this provision "carry out" a separate Action item LU-2.1.B Amendment of Exterior Wall Definition, and OP is not proposing any such definitional change. The Comprehensive Plan is to be read a whole and the OP setdown report at Exhibit 2 provides a review of the proposals against the Comprehensive Plan.	None.

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Mark Eckenwiler, ANC 6C	Section	RESPONSE	Proposed Action
Definitions – penthouse and rooftop structure (Ex. 9, p.1) Trellis issue also raised by the Commission	B § 100.2	New and amended definitions were proposed for both "Penthouse" and "Rooftop Structure". These definitions were the result of extensive discussions with staff at DCRA and OAG, and were intended both to define and clarify the definitions, and make them consistent with long standing interpretations. A primary difference between the two is that a penthouse would have a roof and be at least partially enclosed, whereas a rooftop structure would not have a roof and be not fully enclosed. Commissioner Eckenwiler noted in the filings and in conversation that he felt that the definitions for "Penthouse" and "Rooftop Structure" appear too narrow, and made specific recommendations for amendments. He specifically notes a "trellis", a common feature on rooftops, but which does not readily fit in with either definition. Part of the OP proposal incorporates the current interpretation of when a trellis is considered to have "roof" for zoning purposes – when the trellis beams are less than 24" apart. However, Commissioner Eckenwiler pointed out that a trellis would commonly be unenclosed on all sides, and that it may not make sense to differentiate trellises based on beam spacing. Following additional discussions with the ZA, OP does not propose additional changes to the "Penthouse" definition; but changes to the "Structure, Rooftop" proposed definition would include the following:	Amendments to the definition of "Structure, Rooftop" proposed. See Attachment I

Mark Eckenwiler, ANC 6C	Section	RESPONSE	Proposed Action
		Structure, Rooftop: A~~n unenclosed or partly enclosed~~ structure with no roof that is located on or above the roof of any part of a building, including but not limited to … trellises with ~~beams with spacing of greater than 24 inches on center and~~ unenclosed sides, ...	
Definitions – rooftop structure (Ex. 9, p.2)	B § 100.2	Commissioner Eckenwiler noted an issue within the examples of rooftop structures which OP had attempted to correct, but had not. OP agrees that the previous recommendation should not be adopted. The language as originally proposed in the setdown report should be sufficiently clear.	Recommend reverting back to original wording. See Attachment I.
Temporary rooftop structures Ex. 9, p.2)		This issue was addressed at the public hearing. OP had discussed this with the Zoning Administrator, who noted that temporary structures were regulated, and that he did not feel additional regulations for ones specific to rooftops were needed.	No additional changes proposed
Roof measuring point (Ex. 9, p.3)	C § 306.8	At the public hearing for this case, OP noted discussing this with DCRA staff, including the Zoning Administrator, who noted that using the existing defined building height was the appropriate measuring point for penthouses and rooftop structures. The ZA did not feel that additional height measurement rules for penthouses, beyond those proposed in this amendment, were needed.	No additional changes proposed
Eating or drinking establishment deck on lower roof (Ex. 9, p.3)	C § 1501.1 (c)	In additional discussion, Commissioner Eckenwiler reiterated the ANC position that it is not logical to allow an open deck associated with an eating or drinking establishment by-right on a terrace at any level below the penthouse, but by special on the penthouse level. OP understands that position, but as noted at the public hearing, the use itself is only permitted by special exception on the penthouse level, whereas it would be permitted by-right on other levels. As such, OP is proposing to make consistent the intent of the Commission in the regulation.	No additional changes are proposed. OP would not support expanding the special exception requirement to eating and drinking establishments on other floors.
Screening walls around single self-enclosed mechanical unit (Exhibit 9, p.4 and Exhibit 15)	C § 1503.1	Commissioner Eckenwiler provided additional information requested by the Commission at Exhibit 15. OP forwarded this to the Zoning Administrator who noted that the first examples (pp. 2 & 3) were typically mounted on the ground, not on the roof, but if mounted on the roof, screening would be appropriate.	No additional changes proposed. C § 1500.6 in the proposal is moved to C § 1503.1, and the wording has been clarified to be

Mark Eckenwiler, ANC 6C	**Section**	**RESPONSE**	**Proposed Action**
		The ZA further noted existing provision C § 1500.6 which reads "*All penthouses and mechanical equipment shall be placed in one (1) enclosure, except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure, and shall harmonize with the main structure in architectural character, material, and color*." Although OP has proposed to amend this section, it has been interpreted to require all mechanical equipment enclosures to harmonize with main structure (OP believes the intent was more narrowly to ensure that the rooftop egress stairwell must do so). This interpretation has, at times, led to screening generally matching the building being required for mechanical equipment boxes as shown in in the second example (p. 4) submitted by the ANC.	consistent with the intent.
Delete setback requirements for lower balconies (Exhibit 9, p. 5)	C § 1504.2 (f)	As noted above in response to comments from the Commission and other members of the public, OP is proposing to delete this provision, meaning that a setback for a guardrail for a lower terrace or balcony would not be required.	Proposed to be deleted See Attachment I.
Do not apply setback exemptions in the RF zones (Exhibit 9, p. 5)	C § 1504.2 (c) – (f)	Commissioner Eckenwiler noted that a concern was that this provision exempting specified roof top elements from specified setback requirements could undermine the recently adopted provisions of text amendment case 19-21, which clarified and amended regulations pertaining to solar panels and rooftop elements, and suggested that they not be applied in the RF zones. Eliminating these exemptions entirely, however, would be unduly restrictive in this zone, and would be more restrictive than the existing regulations. For example, they could make the more common forms of solar panels – parapet mounted ones - not permitted by right, and would lessen the ability to provide rooftop mounted panels. OP continues to believe that that the setback exemptions, many of which are carried forward from current regulations, are appropriate. Any significant alteration to a rooftop element, such as the addition of a guardrail, would typically be considered a significant alteration to a rooftop element, so would not be allowed by right.	No additional changes proposed.

Mark Eckenwiler, ANC 6C	**Section**	**RESPONSE**	**Proposed Action**
Enclosed area (FAR) (Exhibit 9 p. 5)	C § 1505.1	This section lists penthouse exemptions from FAR. Concerns regarding specific language were noted, only some of which had been addressed prior to the public hearing. In particular, (d) in the current regulations exempts "*Mechanical equipment owned and operated as a penthouse by a fixed right-of-way public mass transit system*." OP had proposed to add the phrase "or rooftop structure" after "penthouse", but the ANC noted that this is not relevant to this provision, since rooftop structures do not count towards FAR. OP agrees with the proposal of the ANC to delete "as a penthouse" from this provision.	Additional amendment to this provision, which applies only to penthouse and rooftop structure FAR exemptions. See Attachment I.
Maximum rooftop coverage (Exhibit 9, p.6)	C § 1503.2(a) (current regs); C § 1505 (proposed regs)	This provision, carried forward from the 1958 regulations but amended as part of 14-13D, limits the size of mechanical and habitable penthouse space on buildings with a height limit of 3 stories or less to a maximum of 1/3 of the roof area upon which it sits. This encompasses a broad range of zones, include the residential R, RF, RA-1, RA-6 and RA-7 zones; the mixed-use W-1, C-1, MU-24, MU-25, MU-26, MU-27, and RC-2 zones; and the PDR-5 and PDR-6 zones. OP proposed to delete this section as an unnecessary and unwarranted restriction on the ability to utilize the penthouse provisions as envisioned in the Height Act. With its elimination, the anticipated caps provided by setback and height limits would remain to limit total penthouse size. As such, OP does not recommend its reintroduction, but if the Commission wishes to, OP would suggest amending it to only further restrict penthouse space on the roofs of buildings in residential zones, but not mixed use or industrial zones.	No additional change recommended. For alternative language, see Attachment I

Office of Planning	**Section**	**RESPONSE**	**Proposed Action**
		Minor clarifications identified by OP subsequent to the public hearing.	
Architectural Embellishments	B §306.5	This issue was also raised by G&S, and by Commissioner Eckenwiler, ANC 6C. This existing provision (proposed to be moved from C § 1501.3 to B §306.5) includes	Do not add "parapets," to B §306.5 See Attachment I.

Office of Planning	Section	RESPONSE	Proposed Action
		a list of what are considered "architectural embellishments". The only change proposed was to add "parapet" to this list. On second thought, this would be inconsistent with the proposed definition for parapet.	
Habitable penthouse on an accessory building	C § 1501.1 (a) and (b)	OP had proposed limiting penthouses on an accessory building to a nine foot tall stairwell and small storage area, by right if below the permitted building height, and by special exception if above. However, as part of Case 20-19, Accessory Buildings, the Commission provided new provisions regarding accessory building height which would not permit a penthouse above the permitted height of twenty feet maximum, even by special exception. As such, the reference to allowing a stairwell above the permitted building height for an accessory building by special exception is proposed to be deleted.	Amend C § 1501.1 (b) to delete reference to "accessory building". See Attachment I.
Habitable penthouse on an alley dwellings	C § 1501.1 (a) and (b)	As part of Case 19-13, Alley Dwellings, the Commission provided new limits on alley dwelling height which would not permit a stairwell above the permitted height of twenty feet maximum, even by special exception. Although alley lots were not explicitly referenced in the proposed penthouse regulations, this provision would have been in conflict with that provision. Accordingly, OP has proposed to add a reference to the special exception provision to note that it would not apply to a dwelling on an alley lot.	Amend C § 1501.1 (b) to add reference to "not located on an alley lot". See Attachment I

IV. PROPOSED TEXT AMENDMENTS

The complete revised text as published in the Public Hearing Notice is provided as Attachment I to the OP Report at Exhibit 7A3, with proposed additions shown in **bold underline** text, and proposed deletions shown in **~~bold strike-through~~** text. A "clean" set of pre-hearing proposed amendments is available at Exhibit 7A4.

Specific changes proposed subsequent to the public hearing, as described in this report, are attached, with these additional shown in purple text, **and bold and underlined** or **~~strike-through~~** as appropriate.

JS/jl

Attachments:

I – Additional text amendments proposed subsequent to the public hearing.

II – Additional comments provided by Larry Hargrove, KCA and Laura Richards, C100.

Attachment I - Additional text amendments proposed subsequent to the public hearing.

For the complete set of proposed amendments as proposed prior to the public hearing, please refer to Exhibit 7A3 (marked up) and 7A4 (clean). This document shown additional amendments proposed subsequent to the public hearing. These additional are shown in **purple text.**

I. Proposed Amendments to Subtitle A, AUTHORITY AND APPLICABILITY

No additional amendments proposed

II. Proposed Amendments to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES

…

100 DEFINITIONS

…

100.2 When used in this title, the following terms and phrases shall have the meanings ascribed:

…

Parapet: A vertical extension of a wall of a building above the roof.

Penthouse: A structure **that has a roof and is partly to fully enclosed on all sides and is located** on or above the roof of any part of a building. ~~**The term includes all structures previously regulated as "roof structures" prior to January 8, 2016 by § 411 of the 1958 Regulations. Skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, and plumbing vent stacks shall not be considered as penthouses.**~~

…

Structure, Rooftop: A~~n unenclosed or partly enclosed~~ structure with no roof that is located on or above the roof of any part of a building, including but not limited to, unenclosed mechanical equipment, screening for mechanical equipment, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, solar panels, skylights, roof hatches, trellises with ~~beams with spacing of greater than 24 inches on center and~~ unenclosed sides, trash chutes, plumbing vent stacks, rooftop platforms for swimming pools, roof decks, temporary enclosures, and guard rails.

…

306 HEIGHT

…

306.5 Architectural embellishments including, but not limited to, spires, towers, domes, minarets, ~~parapets,~~ and pinnacles may be erected to a greater height than any limit prescribed by these regulations or the Height Act, provided the architectural

embellishment does not result in the appearance of a raised building height for more than thirty percent (30%) of each the wall on which the architectural embellishment is located.

…

III. Proposed Amendments to Subtitle C, GENERAL RULES

Chapter 15 PENTHOUSES AND ROOFTOP STRUCTURES

1500 INTRODUCTION

No additional amendments proposed.

1501 USES

1501.1 A penthouse or rooftop structure may house mechanical equipment or any use permitted within the zone, except that penthouse habitable space shall be restricted as follows:

~~1500.3 (a) Penthouse habitable space on a detached dwelling, semi-detached dwelling, rowhouse, or flat shall be limited pursuant to Subtitle C § 1500.4~~

~~1500.3 (b) Within residential zones in which the building is limited to thirty-five feet (35 ft.) or forty feet (40 ft.) maximum, the penthouse use shall be limited to penthouse mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;~~

(a) Penthouse habitable space may be permitted on the roof of a single household dwelling, flat, or accessory building in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2, if it:

(1) Is located entirely within the matter of right permitted height for the building;

(2) Is a maximum of nine feet (9 ft.) in height and one (1) story; and

(3) Contains only stair or elevator access to the roof plus a maximum of thirty square feet (30 sq. ft.) of space ancillary to a rooftop deck or terrace.

(b) Penthouse habitable space on the roof of a single household dwelling~~,~~ or flat not located on an alley lot~~, or accessory building~~ in any zone, or on the roof of an apartment house converted pursuant to Subtitle U § 320.2, and that 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, subject to meeting the provisions of C § 1501.1(b)(2) and (3), and the provisions of C § 1506;

…

1502 PENTHOUSE HEIGHT

No additional amendments proposed.

1503 ENCLOSING WALLS

No additional amendments proposed.

1504 SETBACKS

…

1504.2 The front, rear, side, and open court setback requirements of Subtitle C §§ 1504.1(a)-(d) shall not apply to features meeting the following conditions:

(a) Parapets;

(b) Roof membranes, and green roof mediums that do not exceed a height of two feet, measured from the surface of the roof upon which they sit;

(c) Roof decks, platforms, or other rooftop features that do not exceed a height of twelve inches (12 in.) maximum above the roof, measured from the surface of the roof upon which they sit;

(d) On the roof of a one family dwelling or flat, or an accessory building to those uses, solar panels not attached to or hanging down from the side of a penthouse, rooftop structure, or parapet, that do not exceed a height of either:

(1) For rooftop mounted panels, two feet (2 ft.) maximum above the roof, measured from the surface of the roof upon which they sit; or

(2) For parapet mounted panels, one foot (1 ft.) maximum above the top of the side wall parapet;

(e) On the roof of any other building or structure, solar panels not attached to or hanging down from the side of a penthouse, rooftop structure, or parapet, that do not exceed a height of four feet (4 ft.) maximum above the roof, measured from the surface of the roof upon which they sit;

(f) Notwithstanding Subtitle C §§ 1504.2 (d) and (e) above, solar panels not set back 1:1 from the front building wall shall provide visual screening of any structural members supporting the solar panels along the edge of the solar panel system facing the front façade of the building;[1]

~~**(f) 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;**~~

[1] While OP is not recommending this provision, it is provided for Commission consideration if it felt to be appropriate.

…

1504.3 The rear, side, and open court setback requirements of Subtitle C §§ 1504.1(b)-(d) shall further not apply to features meeting the following conditions:

(a) For a rooftop deck ~~other than as addressed in Subtitle C § 1504.2(f)~~ , guardrails required by the building code which do not exceed a height of three feet, six inches maximum (3'-6" max.), when the façade is not facing a public or private street or public park;

(b) Gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, trash chutes, plumbing vent stacks, HVAC compressors, or other similar mechanical equipment;

…

1505 ENCLOSED AREA

1505.1 For the purposes of calculating floor area ratio for the building, the aggregate square footage of all ~~**penthouse**~~ levels or stories **of a penthouse** measuring six and one-half feet (6.5 ft.) or more in height shall be included in the gross floor area contributing to the total floor area ratio permitted for the building, with the following exceptions:

(a) Penthouse mechanical space;

(b) Communal recreation or amenity space for residents or **non-residential** tenants of the building;

(c) Penthouse habitable space, other than as exempted in Subtitle C § ~~**1503.1(b)**~~ **1505.1(b),** with a floor area ratio of less than four-tenths (0.4); and

(d) Mechanical equipment owned and operated ~~**as a penthouse or rooftop structure**~~ by a fixed right-of-way public mass transit system.

~~**1503.2**~~ **1505.2** Penthouses **or rooftop structure,** including any combination of mechanical or habitable space, shall not exceed one-third (1/3) of the total roof area upon which the penthouse **or rooftop structure** sits ~~**in the following areas:**~~

~~**(a) Zones or portions of zones where there is a limitation on the number of stories of three (3) or less; and**~~

~~**(b) Any**~~ **for any** property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W.

Alternative:

~~**1503.2**~~ **1505.2** Penthouses **or rooftop structure,** including any combination of mechanical or habitable space, shall not exceed one-third (1/3) of the total roof area upon which the penthouse **or rooftop structure** sits in the following areas:

(a) – **Residential** Zones or portions of **residential** zones where there is a limitation on the number of stories of three (3) or less; and

(b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W.

…

1506 RELIEF FROM PENTHOUSE OR ROOFTOP STRUCTURE REQUIREMENTS

No additional amendments proposed.

1507 AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE HABITABLE SPACE

No additional amendments proposed.

Attachment II – Additional comments provided by Larry Hargrove, KCA and Laura Richards, C100

MEMO TO: ***Joel Lawson, Office of Planning***

FROM: ***Laura Richards, Committee of 100 on the Federal City***
Larry Hargrove, Kalorama Citizens Association

SUBJECT: ***ZC 14-13E -- Proposed Amendments regarding penthouses on certain protected classes of buildings***

DATE: ***February 12, 2021***

We are writing to provide you a follow-up on our very productive conversation of February 5, 2021, which you suggested could be appended to your report due in this case later this month. That conversation emanated from the fact that, at the January 21 hearing on this case, the Chairman had expressed concern about claims we had made that that the proposed amendments would weaken or remove existing special protections against visually intrusive penthouses on certain classes of buildings that were deemed especially vulnerable Those protections consist of a ban on matter-of-right penthouses, coupled with an available special exception for a modestly sized penthouse for access to a roofdeck.

In the course of the conversation we identified the following three ways in which these protections would be weakened, and discussed how the pending draft amendments could be changed so as to avoid these adverse effects.

First, the amendments change the types of buildings covered by the special protections, dropping some types currently covered that are most in need of protection. Existing regulations provide special protection for "rowhouses and detached and semidetached dwellings and flats [i.e., two-family dwellings]."[2] The proposed amendments would change this list to "single household dwellings, flats or accessory buildings" as well flats converted to apartments in the RF districts.[3] **We have objected to this change because it would eliminate protections for a large number of buildings that are in special need of protection, namely, rowhouses and semi-detached buildings that do not qualify as flats**.

[2] C§1500.4

[3] Proposed C-§1501.1(a) and (b)

OP takes the position that the proposed new list does not make this or any other change in the types of protected buildings: that any building included under the existing regulations would be covered under the new one. But the plain language of the text indicates that that is not the case: a rowhouse outside an RF zone that contains more than two dwelling units is clearly included under the current list, which explicitly mentions "rowhouse", but it is not covered by the proposed new list since such a building is neither a single household dwelling, flat, accessory building or converted flat in an RF district.

We understand OP's position to be that the special protections were not intended to cover multifamily buildings (other than flats, presumably). There are at least two problems with this position. **First**, there is no trace of any such legislative intent in the adopted text, which in fact indicates a clearly opposite intent since all of the building types currently listed, other than flats, may lawfully contain three or more dwelling units. **Second**, to exclude buildings on the basis of the number of residential units they contain would misconstrue the whole purpose of these protective measures, namely: to prevent an unduly jarring visual effect on the building as a piece of architecture -- an effect that remains the same regardless of the number of units in the building. In short, the relative need of any building for this sort of protection depends on its exterior physical configuration, not its use. So it would make makes no sense to protect one building because it has only two units and to refuse to protect the apparently identical building next door that has four.

This issue has important practical implications. There are large and increasing numbers of rowhouses especially in the RA districts that contain more than two dwelling units – a function of the size of the building and the lack of any limit on the number of units allowed. Because of their physical configuration, rowhouses – narrow, flat-roofed structures - are doubly in need of protection: they are both the most likely to be redeveloped with a roof deck, and among the most vulnerable to the intrusive visual effects of a penthouse. Yet the proposed amendments would leave many of them unprotected.

Remedy: Retain the current list of types of buildings covered, with its explicit reference to rowhouses and semi-detached buildings, combining it with the proposed new list, which overlaps it to some degree but explicitly includes flats converted to apartments in RF districts.

Second, current regulations ban a matter-of-right penthouse on the protected classes of buildings, but make available by special exception a penthouse of precisely defined limited scale just for the purpose of providing access to a roof deck.4 That special exception has been very liberally granted and looks likely to serve as a de facto matter-of-right penthouse authorization. Nevertheless, **OP's proposed amendments would remove this ban, allowing a limited roofdeck-access penthouse as a matter of right where the penthouse will not exceed the permitted building height, and a penthouse free of such limitations by special exception.**[5] This would leave the scale of the penthouse to be determined on the basis of rules generally applicable in the particular zone district (which for RA districts, for example, allow heights up to 20 feet). Moreover, a proposed amendment would render C§1506.1 -- the provision on relief from penthouse requirements, which would govern this special exception -- substantially more permissive than is currently the case.

Remedy: We urge that the ban-plus-limited-special-exception arrangement in C-§1500\.4 negotiated in 2015 be retained. It is a reasonable compromise between two competing interests: protecting especially vulnerable buildings against visual blight from rooftop structures, and allowing homeowners the most convenient mode of access to a roof deck. However, if our understanding is correct, OP is now proposing to do just this that, except for allowing the limited roofdeck-access penthouse as a matter of right where the penthouse will not exceed the matter-of-right building height; you have noted that otherwise a property owner might be incentivized to add a full story in lieu of seeking a penthouse special exception. This exception seems reasonable *provided that the property owner in such*

[4] C-§1500\.4

[5] Proposed C-§1501.1(a) and (b)

a case is not allowed to evade those limitations by a special exception, such is currently proposed in new C§1501.1(b).

Third, for the protected classes of buildings, **the current regulations require a setback equal to penthouse height from side walls if the building is adjacent to a property that has a lower *or equal* permitted matter-of-right building height.[5] The proposed amendments would strike "or equal"**. This would mean that for many rowhouse blocks, where all buildings have the same matter-of-right height, penthouses spanning the full width of the building would be legally permissible. Equally if not more important, in the case of rowhouse blocks with a uniform permitted height that exceeds the built height (a common condition, dating to the 1958 regulations), a pop-up development that rises above its neighbor to the full legal height and on top of that adds a penthouse flush to the side wall can have an egregiously jarring visual impact. You suggested that striking "or equal" might be justified on the ground that other properties in the row would be entitled to do a pop-up project of the same overly intrusive dimensions in the future. But equally it is possible that in the future the height limit might be lowered to comport with the neighborhood as built, as mandated by the Comprehensive Plan:

> "***Action LU-2.1-A: Residential Rezoning***
>
> Provide a better match between zoning and existing land uses in the city's residential areas, with a particular focus on:

[5] This carries out Comprehensive Plan Action LU-2-1-B, which employs the term "exterior walls" as it is used in the Height of Buildings Act, to refer to building walls from which a setback equal to the height of the roof structure or penthouse is required:

> **"Action LU-2.1-B. Amendment of Exterior Wall Definition**
> Amend the city's procedures for roof structure review so that the division–on-line wall or party wall of a row house or semi-detached house is treated as an exterior wall for the purposes of applying zoning regulations and height requirements."

This Action makes no distinction based on the permitted height of an adjacent building.

Blocks of well-established single family and semi-detached homes that are zoned ~~R-5-A~~ *RA-1* or higher

(a) Blocks that consist primarily of row houses that are zoned ~~R-5-B~~ *RA-2* or higher

(b) Historic districts where the zoning does not match the predominant contributing properties on the block face.

In all these instances, pursue rezoning to appropriate densities to protect the predominant architectural character and scale of the neighborhood."

In any event the suggestion that one offensively intrusive project should be allowed because more might be allowed later is likely to strike neighboring homeowners permanently saddled with an eyesore in their midst as a pretty paltry solution.

Remedy: Restore "or equal".

Additionally, as you know we have proposed lowering the permitted height of the roofdeck access penthouse to eight feet -- one foot lower than what OP has proposed. Absent any building code conflicts, we see no reason why this additional protection could not be implemented.

Specific changes implementing the foregoing recommendations follow.

We urge the Commission to:

1. Delete proposed C§1501.1(a), regarding penthouses allowed 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[6] and noting that these penthouses as built have ranged between eight and 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 amended section C§1500.4would then read as follows:

> " . . . a penthouse . . . shall not be permitted on the roof of a detached dwelling, semidetached dwelling, rowhouse, single household dwelling, flat or accessory building in any zone or on the roof of an apartment house in an RF zone converted pursuant to Subtitle U § 320.2; 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.

Additionally, as indicated above, we would support allowing a limited matter-of-right penthouse for roofdeck access where the penthouse does not exceed the matter-of-right building height limit, provided that those limitations cannot be evaded by a special exception.

2. 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 penthouses 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".

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