



Commission Members

Presidential Appointees

Elizabeth A. White, Vice-Chair

Mayoral Appointees

Arrington Dixon
Linda Argo

Ex Officio Members

Secretary of Defense
The Honorable Lloyd J. Austin III

Acting Secretary of the Interior
The Honorable Scott de la Vega

Acting Administrator of General Services
The Honorable Katy Kale

Chairman
Committee on Homeland Security
And Government Affairs
United States Senate
The Honorable Gary C. Peters

Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
The Honorable Carolyn B. Maloney

Mayor
District of Columbia
The Honorable Muriel Bowser

Chairman
Council of the District of Columbia
The Honorable Phil Mendelson

Executive Director
Marcel Acosta

IN REPLY REFER TO:
NCPC File No. ZC 14-13E

April 1, 2021

Zoning Commission of the District of Columbia
2nd Floor, Suite 210
441 4th Street, NW
Washington, DC 20001

Members of the Zoning Commission:

The National Capital Planning Commission, at its April 1, 2021 meeting, approved the enclosed action on the Text Amendment to Subtitles A-K, U, and X Modifications and Clarifications to Penthouse and Rooftop Structure Regulations located in Washington, DC. A copy of the Executive Director's Recommendation for the project is available online at www.ncpc.gov/review/archive/2021/4/ as part of the April 2021 meeting materials.

Sincerely,

Marcel Acosta
Executive Director

Enclosures

cc: Mr. Andrew Trueblood, Director, DC Office of Planning
Mr. Frederick Lindstrom, Assistant Secretary, U.S. Commission of Fine Arts



Executive Director's Recommendation

Commission Meeting: April 1, 2021

PROJECT Text Amendment to Subtitles A-K, U, and X Modifications and Clarifications to Penthouse and Rooftop Structure Regulations District-wide Washington, DC	NCPC FILE NUMBER ZC 14-13E
SUBMITTED BY Zoning Commission of the District of Columbia	NCPC MAP FILE NUMBER 00:00(06.00)45283
REVIEW AUTHORITY Approval of Comments on Zoning Map & Regulations Amendments per 40 U.S.C. § 8724(a) and DC Code § 2-1006(a)	APPLICANT'S REQUEST Approval of report to the Zoning Commission of the District of Columbia
	PROPOSED ACTION Approve comments as requested
	ACTION ITEM TYPE Consent Calendar

PROJECT SUMMARY

The Zoning Commission of the District of Columbia has taken a proposed action on text amendments to Subtitles A-K, U, and X, which includes modifications and clarifications to the penthouse and rooftop structure regulations (ZC 14-13E). The District Office of Planning (DCOP) proposes text amendments in the zoning regulations to clarify, simplify, and amend various definitions and general regulations regarding both mechanical and habitable penthouse space provisions. In September 2015, the Commission supported the text amendments to rooftop penthouse regulations to allow human occupancy of penthouses, as permitted in the Height Act. This proposed action would amend those regulations. The Zoning Commission will consider taking final action on this case at the public meeting tentatively scheduled for April 8, 2021.

In February and March 2021, NCPC staff coordinated with the DCOP asking for clarification on specific changes that may affect federal interests, including proposed changes to the type of land use approval needed to construct habitable penthouses near the White House. Because of this change, NCPC staff reached out to the United States Secret Service (USSS) to discuss security impacts. NCPC staff incorporated USSS feedback and recommends text changes to the proposed text amendments to protect the federal interests near the White House.

KEY INFORMATION

- Proposed text amendments to Subtitles A-K, U, and X would clarify, simplify, and amend regulations regarding mechanical and habitable penthouses.
- The majority of the changes do not have an impact to the federal interests and penthouses would remain in compliance with the provisions of the Height Act.
- After consultation with USSS, the proposed amendment would continue to protect the federal interest by requiring submission of projects from DCOP staff to the agency for

consultation to ensure security concerns are mitigated for a habitable penthouse proximate to the White House prior to special exception approval.

RECOMMENDATION

Recommends that the Zoning Commission make modifications to proposed regulations of Section 1501.1(d) to require habitable penthouses or publicly accessible rooftop decks to undergo consultation with the United States Secret Service to determine whether security concerns exist prior to approval by the Board of Zoning Adjustment, which would codify the existing informal communication structure.

Notes that the District of Columbia Office of Planning have addressed the comments previously raised by NCPC staff and the United States Secret Service. These collaborative discussions have resulted in regulations that protect federal interests.

Notes the proposed text amendments that would clarify, simplify, and amend regulations regarding mechanical and habitable penthouses.

Finds the proposed amendments would not be inconsistent with federal elements of the Comprehensive Plan for the National Capital nor adversely affect any identified federal interests.

PROJECT REVIEW TIMELINE

Previous actions	September 3, 2015 - (ZC 14-13) – Text Amendments to Rooftop Penthouse Regulations
Remaining actions (anticipated)	None

PROJECT ANALYSIS

The Zoning Commission of the District of Columbia adopted text amendments on November 9, 2015 to various chapters of the Zoning Regulations. In their adoption, DCOP staff indicated they would monitor the regulations for their effectiveness and impact, and that amendments would be brought forward if needed. Over time many of these regulations were identified by the Zoning Commission, members of the Board of Adjustment (BZA), staff of the Zoning Administrator (ZA), and the Department of Consumer and Regulatory Affairs (DCRA) and other agencies and DCOP staff as having issues in their effectiveness and ease of interpretation and implementation. The intent of the revisions is to:

- Reorganize and simplify the structure of penthouse regulations to make them easier to understand and administer.

- Reintroduce the previous differentiation between enclosed penthouses and unenclosed rooftop structures (such as mechanical equipment and parapets).
- Add additional definitions for clarity.
- Clarify and simplify the required setback provisions, particularly from side building walls.
- Address the reasonable ability to use rooftop space in lower density zones.
- Codify USSS consultation and review for habitable penthouses near the White House prior to Special Exception approval.

NCPC is interested in the form and character of the nation's capital, particularly along streets and avenues that abut national resources in the monumental core. Basic elements of building form, including height, penthouse and setback contribute to the character of city streets, vistas, and the setting in and around major historic and cultural sites. In the September 3, 2015 review of the text amendments to the penthouse regulations, staff highlighted four areas of federal interest that were protected in the regulations as a result of collaborative discussions between NCPC and DCOP staff:

- Pennsylvania Avenue, NW;
- Independence Avenue, SW;
- Security concerns around the White House; and
- Clarifying provisions related to parapet walls and railings, setbacks, and special exceptions, consistent with the requirements under the Height Act.

The proposed text amendments would continue to protect the federal interests related to Pennsylvania Avenue, NW; Independence Avenue, SW; and the clarifying provisions.

The proposed text amendment would provide for a special exception process for the operation of habitable penthouses proximate to the White House within the area outlined in red in Figure 1. The boundary for this area is defined as any building within an area bound by I Street, NW to the north; Constitution Avenue, NW to the south; 19th Street, NW to the west, and 13th Street, NW to the east. Under current regulations, a habitable penthouse is not permitted within this defined area, so variance relief is required. The proposed amendment would not allow this use by-right, however, would allow these uses via a special exception process whereas any proposed use must adhere to specific standards to mitigate impacts.

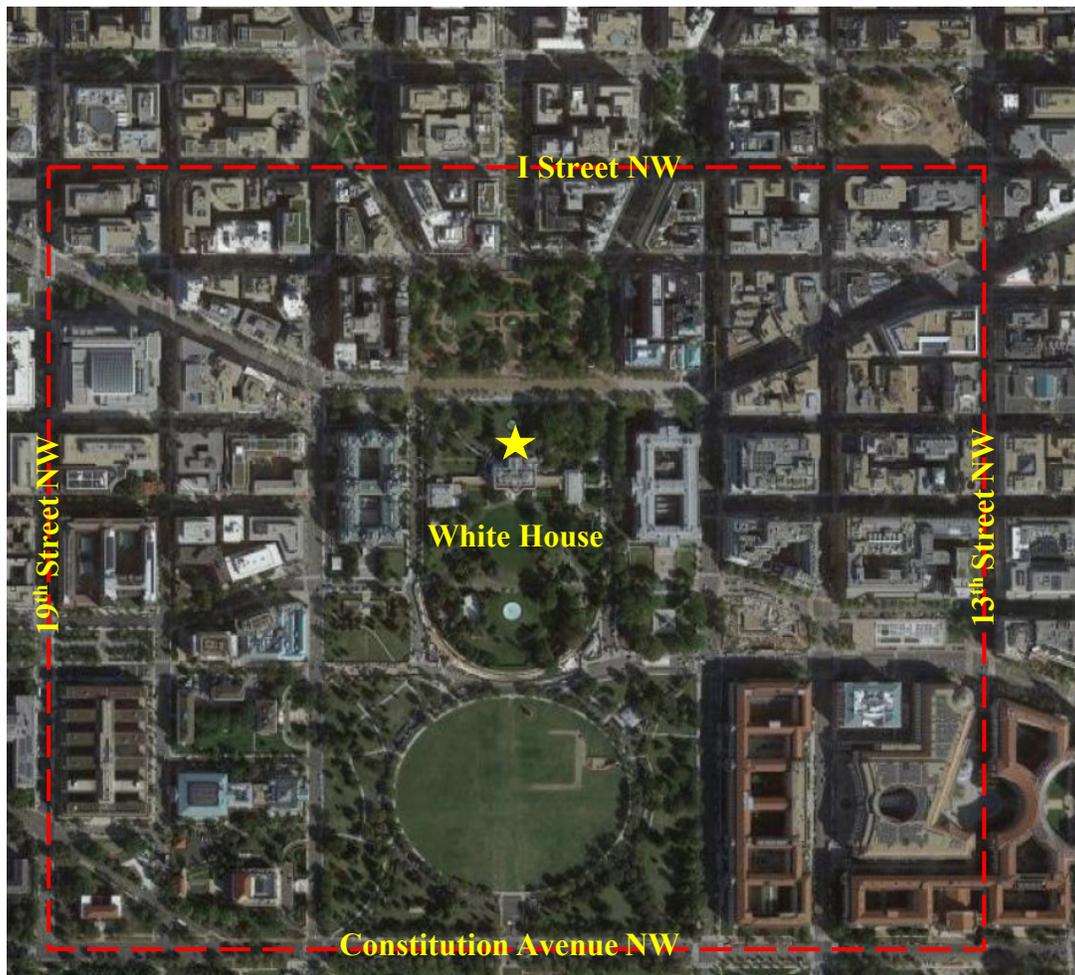


Figure 1: Area requiring Special Exception with USSS written approval for habitable penthouses.

After consultation between NCPC staff and USSS, USSS agreed with the changes to allow penthouses and rooftop decks by special exception. However, to tighten the regulatory review process and formalize an existing informal communication process between USSS and DCOP that currently exists regarding these types of land use requests, USSS modified the proposed text language. The proposed text states that any special exceptions for rooftop decks and habitable penthouses may be approved by the Board of Zoning Adjustment after consultation with USSS to determine whether security concerns exist.

In order to further mitigate adverse security impacts, USSS may provide a letter to the Board of Zoning Adjustment (BZA) following its consultation. Conditions can be included by USSS in a letter of support to the BZA to mitigate any adverse impacts on the White House from the proposed penthouse. In addition, the review process would be extended to proposals for publicly accessible rooftop decks. After consultation with the USSS and coordination with DCOP staff,

NCPC staff recommends the text changes. Below is the recommended text change to Section 1501.1(d) of the Zoning Regulations governing penthouse uses:

(d) *On any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east, penthouse habitable space or publicly accessible rooftop deck(s) on the highest roof of the building, shall be permitted only if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, ~~and with written approval by the US Secret Service~~ **after consultation with the U.S. Secret Service to determine whether security concerns exist.***

CONFORMANCE TO EXISTING PLANS, POLICIES AND RELATED GUIDANCE

Comprehensive Plan for the National Capital

The federal interests discussed above are defined and guided by policies in the Federal Elements of the *Comprehensive Plan for the National Capital* and Commission endorsed plans such as *the Legacy Plan*, *the Monumental Core Framework Plan*, and *the SW Ecodistrict Plan*. For example, the Comprehensive Plan includes policies that: aim to protect the vistas and views that are integral to the national capital's image; prevent new development from diminishing the integrity of the National Mall and surrounding monumental core; and accommodate federal and national capital activities. The Comprehensive Plan, along with NCPC's planning documents, guide staff's analysis of how the text amendments to the rooftop penthouse regulations may impact these interests. Staff's comments and analysis are consistent with policies in the Comprehensive Plan to preserve the form and character of the nation's capital through enforcement of the 1910 Height of Building Act.

CONSULTATION

NCPC staff consulted with the USSS to discuss potential security concerns with allowing habitable penthouses on buildings around the White House with a Special Exception. After coordination with USSS, the agency provided changes that were accepted by DCOP that require applicants for penthouses proximate to the White House to consult with USSS to determine whether security concerns exist. With these adjustments to the text that require consultation with USSS, it was concluded that the proposed changes in the approval process for habitable penthouses would continue to protect the federal interests.

National Historic Preservation Act

NCPC has an advisory role when providing comment to the Zoning Commission of the District of Columbia, and therefore has no independent responsibility to comply with the National Historic Preservation Act.

National Environmental Policy Act

NCPC has an advisory role when providing comment to the Zoning Commission of the District of Columbia, and therefore has no independent responsibility to comply with the National Environmental Policy Act.

CONSULTATION

Staff had several discussions with USSS staff regarding the recommended text changes to ensure that these changes would not affect federal security interests near the White House.

ONLINE REFERENCE

The following supporting documents for this project are available online at www.ncpc.gov:

- Link to Zoning Commission materials

ATTACHMENTS

- PowerPoint
- U.S. Secret Service Letter

Text Amendment to Subtitles A-K, U, and X Modifications and Clarifications to Penthouse and Rooftop Structure Regulations

Approval of Report to the Zoning Commission of the District of Columbia

Zoning Commission of the District of Columbia

Project Summary

Commission Meeting Date: April 1, 2021

NCPC Review Authority: 40 U.S.C. § 8724(a) and DC Code § 2-1006(a)

Applicant Request: Approval of Report to the Zoning Commission of the District of Columbia

Session: Consent

NCPC Review Officer: Chrishaun Smith

NCPC File Number: ZC 14-13E

Project Summary:

The Zoning Commission of the District of Columbia has referred zoning case ZC 14-13E for review and comment by the NCPC.

In ZC 14-13E, The District Office of Planning (OP) proposes to the zoning regulations to clarify, simplify, and amend various definitions and general regulations regarding both mechanical and habitable penthouse space provisions.

After consultation with USSS, the proposed amendment would continue to protect the federal interest by requiring submission of projects from DCOP staff to the agency for consultation to ensure security concerns are mitigated for a habitable penthouse proximate to the White House prior to special exception approval.

Project Summary

- text amendment would allow penthouses in close proximity to the White House by requesting zoning special exception relief.
 - It also requires review by the United States Secret Service (USSS).
 - Currently, an applicant can only get variance for these projects.
 - OP proposes the following text change to the penthouse approval process:
 - *On any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east, penthouse habitable space or publicly accessible rooftop deck(s) on the highest roof of the building, shall be permitted only if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and with written approval by the US Secret Service.*





U.S. Department of Homeland Security
UNITED STATES SECRET SERVICE

Washington, D.C. 20223

March 15, 2021

National Capital Planning Commission
Policy and Research Division
ATTN: Chrishaun Smith, Urban Planner
401 9th Street, NW, Suite 500N
Washington, DC 20004

Dear Mr. Smith,

Following our meeting on March 11, 2021 concerning The District of Office of Planning's proposed language and procedural change to Title 11, Subtitle X, Chapter 9, the Secret Service in collaboration with Chief Council recommend a slight modification to the proposed updated language.

Specifically in cases relating to penthouse habitable space(s) or public access rooftops within a two block radius of the White House, the Secret Service requests the National Capital Planning Commission (NCPC) to remove/replace the following portion of the new, proposed language "the applicants apply for a Special Exception, not a variance, and provides written approval from the U.S. Secret Service"; and consider the following modified language instead:

Penthouse habitable space is not permitted on On any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east, **penthouse habitable space or publicly accessible rooftop deck(s) on the highest roof of the building, shall be permitted only if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, after consultation with the U.S. Secret Service to determine whether security concerns exist.**

Please respond to Secret Service, Office of Protective Operations' Special Agent In Charge, Michael Smith at (202)355-3065, Michael.Smith@uss.s.dhs.gov with any reservations or opposition that the NCPC may have with this modification, prior to the District of Columbia Zoning Commission's anticipated April 8, 2021 vote on this subject.

Respectfully,

For:

Kimberly A. Cheadle
Assistant Director
Office of Protective Operations
United States Secret Service