

SUPPLEMENTAL REPORT #2

TO: District of Columbia Zoning Commission
FROM: *JL* Joel Lawson, Associate Director, Development Review
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation
DATE: October 1, 2021
SUBJECT: ZC Case 14-13E – Supplemental Report for Proposed Zoning Text Amendments to Penthouse Regulations

I. BACKGROUND

At its meeting of February 25, 2021, the Zoning Commission took Proposed Action to approve proposed text amendments to the penthouse regulations and requested additional information from the Office of Planning (OP), which is provided in this supplemental report. In addition, a submission from the National Capitol Planning Commission (NCPC) was added to record (Exhibit 18), including a recommended change to one specific provision; and this report addresses that request.

While not specifically requested by the Commission, OP in this report attempts to briefly note ANC and public comments submitted to the record after proposed action.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMISSION AT PROPOSED ACTION

Setback of Solar Panels, and Screening of Solar Panel Structure

OP has proposed that solar panels less than two feet in height on the roof of a one-family dwelling or flat would not have to provide a 1:1 setback from the building wall below. The intent is to maximize the potential number of solar panels on the roof and further the important District policy to maximize the production and use of alternative forms of energy.

The Zoning Commission (the Commission) expressed some concern about the potential visibility of the panels and their structural supports from the street. As part of a broader concern in their comments, ANC 6B also raised a concern about not requiring a setback for solar panels from the front façade, particularly in the RF-1 zone. The Commission also requested that OP provide illustrations of what screening for solar panel structures might look like, as seen from the street (Attachment 1).

Rooftop solar panels that are highly visible from the street may not be a common occurrence, as many flat roofed dwellings provide a parapet at the front of the buildings, and solar panels now tend to be mounted close to the surface of the roof. However, OP discussed setbacks and screening of solar panels with DOEE staff and the DCRA Solar Coordinator. The need to maximize roof area available for solar panels was stressed, but there was not strong opposition to requiring a 1:1 setback for solar panels from a front façade, particularly since most solar panel installations are now mounted close to the roof surface. There was not strong support for requiring screening.

As a result, OP has identified three potential options for screening and setback for solar panels from the front façade:

1. Require no setback but require screening of any solar panels not providing a 1:1 setback. Although not recommended by OP, this option was included in the Notice of Proposed Rulemaking (NOPR):

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:

...

- (f) **Notwithstanding paragraphs (d) and (e) of this subsection, solar panels not set back one-to-one (1:1) from the front building wall shall provide visual screening, consisting of non-reflective solid or translucent panels fixed below the underside of the panels, of any structural members supporting the solar panels along the edge of the solar panel system facing the front façade of the building;**
2. Require no setback or screening from the front façade, i.e. not adopt clause (f) above. This would provide maximum flexibility for the placement of solar panels, and is recommended by OP.
3. Require a 1:1 setback from the front façade, but not screening, i.e. amend and/or relocate Section 1504.2 (d) to require the setback, but not adopt Section 1504.2 (f) which would require the structural support screening. This could result in some loss of solar panel potential on some roofs, but the impact would typically not be substantial, and could encourage panels to be set as close to the surface of the roof as practical. OP is not opposed to this option.

OP requests flexibility to work with OZ to amend the text in the final order according to the Commission decision, following final action.

III. NCPC FILING

NCPC, in Exhibit 18, has recommended a further modification to proposed Subtitle C § 1501.1(d) (existing Subtitle C § 1500.3(d)) following additional discussions they had with US Secret Service (USSS). The existing provision establishes an area proximate to the White House within which a habitable penthouse is permitted only by variance. The variance test was both difficult and inappropriate for this provision, although applications to date have been approved and none were opposed by the ANC.

In the OP proposal included in the NOPR, a more appropriate special exception process for relief would be established, subject to the general special exception criteria and review of the proposal by the USSS. The NCPC proposed amendment (noted below) would not impact the intent of the provision and is the preferred language of USSS, so OP recommends that it be incorporated into the final text.

In addition, at the request of the OAG, a non-substantive clarification to Section 1501.1 is proposed, to replace existing “except as follows” with “subject to the following”, as noted below.

Existing Zoning Regulations:

- 1500.3 A penthouse may house mechanical equipment, or any use permitted within the zone, except as follows:

...

- (d) Penthouse habitable space is not permitted 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.

Proposed Text at Proposed Action:

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:

...

- (d) ~~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 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.**

Revised Proposal, consistent with the NCPC recommendation and the OAG requested clarification:

1501.1 A penthouse **or rooftop structure** may house mechanical equipment or any use permitted within the zone, ~~except as follows~~ **subject to the following:**

...

- (d) ~~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 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 US Secret Service to determine whether security concerns exist.**

IV. ANC COMMENTS RECEIVED SUBSEQUENT TO PROPOSED ACTION

At Exhibit 22 are comments from Commissioner Eckenwiler, ANC 6C04. In summary:

1. Definitions:

Commissioner Eckenwiler has suggested the following additional modification to the definition for Rooftop Structure.

Structure, Rooftop: A 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 (notwithstanding the definition of “structure”), screening for mechanical equipment, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, roof mounted antennas, solar panels, skylights,

roof hatches, trellises with unenclosed sides (**regardless of beam spacing**), trash chutes, plumbing vent stacks, rooftop platforms for swimming pools, roof decks, temporary enclosures, and guardrails.

As background, the Zoning Administrator’s Office has a long-standing interpretation for a “trellis” – if the beams are spaced more than 24” on center, it is not considered a structure; if less than 24” on center, it is considered a structure, and would therefore be subject to any limitation established for a rooftop structure such as setbacks. The change proposed would make any rooftop trellis a rooftop structure, which would appear to make the placement of trellises as an architectural element more restricted. While OP does not feel this change is necessary, if the Commission agrees with the change proposed by the ANC Commissioner, OP requests flexibility to work with OZ to make this change as part of the final order following final action.

2. *Front Façade Setback Exemptions*

The Commissioner reiterated a concern that certain rooftop structures, which OP had proposed as not requiring a setback from the front façade, should require a setback in the RF zones, including roof decks, solar panels and guardrails, noting that allowing these without a setback would be in conflict with Subtitle E § 206.1 of the RF zones, which requires that “*a roof top architectural element original to a principal building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered*”.

As included in the NOPR, one of the elements mentioned by the Commissioner – a guardrail – is already proposed by OP to require a setback from the front façade for a roof deck on the highest roof of the building (see C § 1504.3); and this would normally mean that the roof deck itself would also set back accordingly. As noted above, OP is not opposed to requiring the setback from the front façade for solar panels. Enclosed space – habitable or mechanical – would continue to be required to provide the 1:1 setback from the front façade under the OP proposal.

OP feels that the remaining elements listed, such as deck guardrails on a roof that is not the highest roof of the building, could and should be allowed without the setback. However, if the Zoning Commission agrees with the Commissioner’s concern, the text could be amended, to require setbacks from the front façade. If that is the Commission’s decision, OP requests flexibility to work with OZ to amend the text accordingly, after final action, in the final order.

V. PUBLIC COMMENTS RECEIVED SUBSEQUENT TO PROPOSED ACTION

At Exhibit 21 are additional comments submitted jointly by the Committee of 100 (C100) and the Kalorama Citizens Association (KCA). Much of their discussion is similar to previous submissions, reiterating concerns to which OP responded in our last supplemental report (Exhibit 16).

In particular, the C100 and KCA raise concerns about penthouses on rowhouse conversions to apartment houses. Under existing regulations, conversions are permitted in RF-1 by special exception, while in RA-1, a conversion or a new apartment house is permitted by special exception. By definition, a building with three or more units is considered an apartment house, not a rowhouse, so is currently not subject to the penthouse restriction of Subtitle C § 1501.1 (a). However, as noted in the NOPR, OP is proposing an amendment to apply these restrictions to a conversion of a rowhouse to an apartment house in the RF zones.

The C100/KCA letter raises Subtitle C § 1500.3(b):

- (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;*

In the NOPR, this provision is proposed to be deleted. It is difficult to interpret, and, in most instances, is redundant of more restrictive provisions of C § 1501.1(a) for habitable penthouses on one-family dwellings, flats, and RF-1 rowhouse conversions (if approved by the Commission). As such, the provision mainly impacts existing or proposed multi-family buildings permitted by special exception in the RA-1 and RA-6 (aka RA-1/NO) zones.

The RA-1 apartment zone (formerly R-5-A) was established many decades ago, and many RA-1 zoned areas are developed predominantly with small apartment houses. However, some RA-1 zoned areas are built out primarily with rowhouses, which in some cases, have been modified or replaced with small apartment houses, as permitted by special exception. These new buildings tend to be taller and cover more of the lot to accommodate more units. This has led to concerns about the resulting bulk of the buildings and potential impact on adjacent rowhouse owners.

At the Proposed Action meeting, the Commission did not instruct OP to revisit this proposal. However, this is an issue raised in the C100/KCA letter, as well as in the earlier OP Supplemental Report (Exhibit 16), filed prior to the Commission taking proposed action. Separately, the Commission has instructed OP to review the RA-1 special exception provisions in total, a review process that is now underway.

As such, OP has identified the following options for the Commission:

1. **Delete C § 1500.3(b)** as recommended by OP and as proposed in the NOPR, so that penthouses on buildings in residential zones limited to 40 feet or less in height would not have this limitation. Other limitations on penthouse size and location on the roof would continue, particularly for penthouses on the roofs of single-family dwellings, flats, and (if approved by the Commission) RF-1 conversions; or
2. **Retain C § 1500.3(b) as is**, so that penthouses on buildings in residential zones limited to 40 feet or less in height would continue to be subject to this limitation – mainly new multi-family buildings in the RA-1 zone. If the Commission decides to not delete this provision as part of this case, OP could address it in the ongoing comprehensive review of RA-1 provisions for rowhouses, flats, and apartment houses.

Again, if the Commission takes action that is different from what was published in the NOPR, OP requests flexibility to work with OZ to determine appropriate final language following final action.

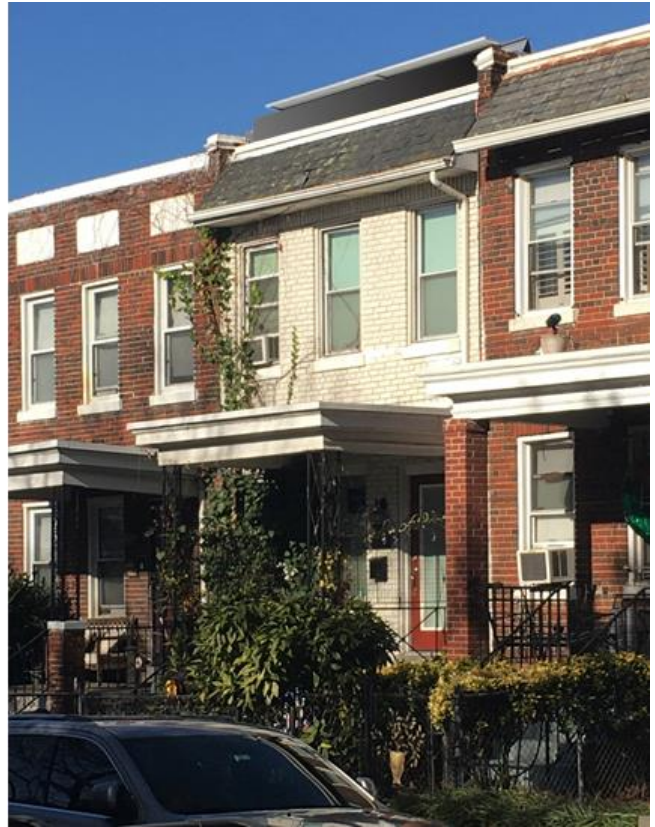
JS/jl

Attachments: Solar panel photos showing potential screening for support structure facing front facades.

At the request of the Commission, below are photo examples of solar panel systems visible from the street. In these examples, the solar panels may not conform to the proposed two foot height limit for solar panels in this situation.



Existing View



View with solar panel structure screened - metallic



Existing View



View with solar panel structure screened - wood