

## ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

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

#### *Request of the Committee of 100 on the Federal City and Kalorama Citizens Association to Reopen the Record*

**October 23, 2021**

Chairman Hood and Members of the Commission:

Pursuant to 11DCMR §Z-602.6, The Committee of 100 on the Federal City (C100) and Kalorama Citizens Association (KCA) respectfully request the Commission to reopen the record in this case in order to accept the attached submission and address material issues in the case hitherto unaddressed. We do so for the following reasons:

#### **1. Fundamental procedural fairness requires it.**

On October 4, 2021, the record having been closed, C100 informally sought permission to submit the attached document and was denied. The record indicates that at least one additional person sought such permission, and was likewise denied. Notwithstanding these denials, the Office of Planning was allowed on October 5 to submit a “Second Supplemental Report”. It did so on its own motion and without any request from the Commission. We are aware of nothing in the Regulations justifying this sort of procedural discrimination, even had OP been acting in a scrupulously neutral role –which it was not, and is not ordinarily expected to. In fact OP was acting -- both by what the Report included and by what it omitted -- as an advocate for certain positions on the regulation of penthouses that remained sharply contested on the record. The Commission is required by law to give “great weight” to substantive positions espoused by OP. But it is not therefore authorized to accord OP procedural rights denied to other lawful participants in the case.

**2. Apparently as a result of reliance on OP’s unfairly truncated Report, the Commission proceeded to take final action without**

**addressing the two central issues posed by the proposed amendments regarding regulation of penthouses.**

OP's Report purported to be a summation of public comments that had been submitted after proposed action,<sup>1</sup> in the course of discussions between OP, CWA, and KCA as well as ANC 6C-04, pursuant to a mandate given by the Commission at the hearing. In fact, however, the Report did not articulate any position taken by C100 and KCA, but did reiterate one of OP's own positions – a position that we had argued is demonstrably inconsistent with the Zoning Regulations. The Commission -- as it should be able to do -- apparently relied on this Report as a factually accurate and complete statement of pending issues. As a result, it proceeded at the meeting to take a decision without having addressed at any point two critical issues that we had raised in the consultations between OP, C100 and KCA.<sup>i</sup>

**(a) Should rowhouses lose their current protection, as proposed by OP?** Rowhouses in any zone are currently protected under C-1500.4, which OP is proposing to strike (although the Report makes no mention of this fact). While OP proposes that dwellings with two dwelling units would be protected, the result would be that that a very large and rapidly growing class of buildings – rowhouses containing more than two units in any zone other than RF -- would no longer be protected. The absurd result would be that, of two outwardly identical adjacent buildings, one would be protected and the other not, based on the aesthetically irrelevant factor of the number of dwelling units each contained. OP counters with the claim, flatly inconsistent with the Zoning Regulations' definition of the term, that a rowhouse with more than two units is no longer a rowhouse but an apartment house. OP is only half right: under the Regulations such a building is indeed an apartment house, by reason of its *use*, but it is also a rowhouse, by reason of its architectural form.

At the October 6 meeting the Commission was concerned about OP's proposal to strike protections in C-1500.3(b), which applies in RA and in some RF zones. The Commission has rightly opted to retain that provision for the time being, even though OP had correctly pointed out that some of the buildings covered by it would continue to have similar protections under

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<sup>1</sup> Second Supplemental Report dated October 1, 2021.

the proposed C-1501.1. That being the case, the much larger issue, in terms of actual impact on the ground across multiple zones, is not the retention of C-1500.3(b) but the need to retain C-1500.4. – an issue that OP’s Report does not mention and the Commission did not address.

**(b) Should current requirements for setback of penthouses be weakened, as proposed by OP?** Setback requirements are critical to mitigating the adverse visual impact of any rooftop structure. OP’s Report dealt at length with the setback issue as applied to solar installations but made no mention of the issue of setback of penthouses. The Commission properly devoted substantial time during the October 6 meeting to the issue of setback of solar installations, but in apparent reliance on that Report, failed to address the equally critical issue of penthouse setbacks, which OP’s amendments would substantially weaken.

**Consequently, we strongly urge the Commission to reopen the record in order to accept the attached submission and consider these hitherto unaddressed issues.**

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<sup>i</sup> OP’s apparent inability to produce a comprehensive, all-views-included summary of comments imposes a greater burden on Commission members to closely parse the records for itself.