

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: *JL* Joel Lawson, Associate Director, Development Review
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation
DATE: February 14, 2020
SUBJECT: ZC Case 14-13E – Supplemental Setdown for a Proposed Zoning Text Amendment to Penthouse Regulations

I. BACKGROUND

At the Zoning Commission meeting of January 30, 2020, the Commission received a report from the Office of Planning (OP) recommending amendments to the zoning regulation text related to penthouses and rooftop structures. For a full review of those OP recommendations along with additional background, research, and Comprehensive Plan analysis, please refer to the report dated January 16, 2020 (Exhibits 2, 2A, and 2B).

The Commission asked OP to return to the February 24, 2020 public meeting with additional information, including additional analysis of BZA and Zoning Commission cases with penthouse relief; alternatives for the provision of a stairwell penthouse to a rooftop deck on a low-density residential building; and diagrams.

II. RECOMMENDATION

The Office of Planning (OP) continues to recommend that the Zoning Commission set down for a public hearing amendments to the zoning regulations to clarify, simplify, and amend various definitions and general regulations regarding both mechanical and habitable penthouse space provisions.

With regards to the proposed change to the provision related to the ability to provide a stairwell access to a roof deck on a one family dwelling or flat, OP has investigated alternatives as requested, and recommends that the Commission set down a revised proposal as detailed in Section IV of this report that would:

- permit by-right a roof access stairwell with a 30 sq.ft. maximum storage area within the permitted building height limit, and
- permit by special exception (as existing) a penthouse partially or entirely above the height limit.

OP has discussed this option with the Zoning Administrator (ZA) who supports this change, and with the Office of Attorney General (OAG). As requested in the original report, OP requests flexibility to continue to work with OAG, to incorporate any additional requested changes by the Zoning Commission at the setdown meeting and to refine but not otherwise alter or expand the scope of the proposed text as necessary for the public hearing notice.

III. ADDITIONAL ANALYSIS REQUESTED

BZA cases:

The Zoning Commission requested two pieces of specific additional analysis:

1. Additional and more detailed analysis of BZA cases for relief from penthouse regulations specifically on one family dwellings and flats

OP identified 70 BZA cases with some form of penthouse relief under the ZR-16 regulations to the end of 2019. Of these, 27 cases (39% of the) were for the relief of penthouse provisions on the roof of a one family dwelling or flat, mostly in the R and RF zones.

Of these 27 cases:

- Eleven (40%) required no zoning relief other than from penthouse provisions.
- Twenty (74%) were in the rowhouse zones (R-3 and RF).
- Nineteen (70%) were for penthouse structures (enclosures or guardrails) located partially or entirely above the permitted building height for the zone. Many of the remainder were for guardrails for decks.
- Seventeen (63%) included relief from C § 1500.4, for the addition of a stairwell enclosure to a roof deck. OP found only one of these applications which did not also include some form of penthouse setback relief.
- Twelve (44%) included relief from setback provisions for a roof deck guardrail. Three of these were for guardrail setback relief on the roof of an accessory building.
- Nineteen (70%) involved some form of setback relief, typically from the side building wall.
- Seven (26%) included the addition of a new third story to an existing building, with a penthouse on top of that. Four cases (15%) were for a penthouse on a new building.
- OP identified only two cases (7%, one in an RF zone and one in an RA zone) with penthouse relief which also included the conversion of a rowhouse to apartments – likely because a penthouse is currently permitted by-right on multi-family buildings.

2. Provision of actual numbers for types of cases, rather than just percentages

About 65 of the 70 identified BZA cases with some form of penthouse relief had received a decision as of the end of 2019. According to the Orders and transcripts for these cases, 64 of the cases were approved by the BZA; the denial was for penthouse access to a roof deck on a new flat in the RF-1 zone. All the cases were recommended for approval by OP, although this was sometimes after the applicant had revised the proposal to better address specific aspects of relief needed.

For Zoning Commission cases, the numbers and kinds of relief were a bit different. Of the 83 Zoning Commission cases identified, 29 (35%) included some form of penthouse relief.

Also as noted in the earlier report, the most common forms of relief requested were for setback from a side building wall; setback from a rear building wall; addition of a penthouse on a single-family dwelling or flat; and, in the mixed-use zones, the addition of a bar/restaurant on a rooftop.

The table below outlines BZA and ZC relief identified¹, as well as the section number in the existing regulations, and a very brief note of the OP recommendation for any changes of significance (please refer to the draft text attached to the earlier OP report at Exhibit 2 for additional discussion of the provision and the OP recommendation):

Section	Description	BZA Cases	ZC Cases	Recommendation
C § 1500.3(b)	penthouse area limit in zones allowing 35-40 feet in height	0 (0%)	0 (0%)	Delete (applied only to non-SFD / flat buildings)
C § 1500.3(c)	eating / drinking establishment on a rooftop by sp. ex.	14 (20%)	7 (24.1%)	Retain, expand to include decks devoted to this use
C § 1500.3(d)	restrict penthouse proximate to the White House	4 (5.7%)	0 (0%)	Retain, establish a sp.ex. process
C § 1500.4	penthouse on a single-family dwelling or flat by sp.ex.	15 (21%)	1 (3.4%)	Revised to allow by-right only if within building height limit
C § 1500.6	number of enclosures	7 (10%)	3 (10.3%)	Generally retain
C § 1500.9	enclosures of non-uniform height	7 (10%)	12 (41.4%)	Retain
C § 1500.10	non-vertical wall enclosures	3 (4.3%)	0 (0%)	Delete
C § 1501	penthouse height allowances	1 (1.4%)	4 (13.8%)	Retain
C § 1502.1(a)	setback from a front building wall	4 (5.7%)	0 (0%)	Retain for penthouses, exempt green roof, solar panels less than four feet in height
C § 1502.1(b)	setback from a rear building wall	21 (30 %)	2 (6.9%)	Retain for penthouses, exempt green roof, solar panels less than four feet in height, required guardrails, skylights, roof hatches
C § 1502.1(c)	setback from a side building wall	35 (50%)	6 (20.7%)	Require for penthouse facing a street, alley or park or if side wall is set back; exempt other penthouses, green roof, solar panels less than four feet in height, required guardrails, skylights, roof hatches
C § 1502.1(c)(5)	setback from an open court wall	0 (0 %)	6 (20.7%)	Same as for rear wall, also exempt rooftop access stair or elevator shaft
C § 1503.2	penthouse area in zones with stories limit	0 (0 %)	0 (0 %)	Delete
C § 1505	affordable housing	0 (0 %)	1 (3.4%) ²	Retain, but clarify and expand

¹ Data is generally based on relief as requested by the applicant in the original filing. OP attempted to update this in cases where the relief changed through the review and approval process, but may not have identified all such cases.

² To locate affordable units off-site.

IV. ROOFTOP ACCESS AND STORAGE ON ONE-FAMILY DWELLINGS AND FLATS

The main changes proposed in this report from the original setdown report include the following:

- Reduce permitted height of a stairwell to a roof deck on a one-family dwelling or flat from 10 feet to 9 feet, consistent with the large majority of stairwells approved;
- Allow the stairwell by-right if entirely within the permitted building height for the zone, less than 9 feet / one story in height, and with deck storage area of 30 sq.ft. or less; and
- Apply this standard to enclosed stairwells to a roof deck on an accessory building.

OP had discussed and examined various alternatives before bringing forward the recommendation in the earlier report, and had proposed to allow by right a stairway that meets the size limiting conditions, while one that does not meet these conditions would be permitted by special exception. Over 50% of the single-family dwelling or flat cases with penthouse relief in the R and RF zones include relief from this provision. Existing and proposed Building Code and Zoning Regulation provisions would limit both visual impact and potential impacts on neighboring properties. OP continues to be comfortable with this proposal as being a reasonable response to the provision of roof decks which are a feature desired by many rowhouse owners where private outdoor space is limited on these smaller lots.

However, OP also acknowledges that roof decks on houses are not supported by all, nor are enclosed stairways to provide access to those decks. The review process can result in changes to the proposed penthouse which minimize or improve its visual appearance, resulting in a better solution from a streetscape standpoint. At the January 30, 2020 public meeting, Commission members noted this positive impact of the review process, particularly for cases where the penthouse would be located on a third-floor addition to the house where it would be more likely to be visible and contribute to a sense of building bulk as seen from the street. The Commission asked OP to revisit this recommendation, and potentially propose a more refined or detailed proposal.

The comments from the Commission were instructive, as was the more detailed review of BZA cases for penthouses on one family dwellings and flats. OP also had additional discussions with the Zoning Administrator (ZA), and with OAG staff which were also helpful. In particular, the ZA noted a current interpretation of the regulations, under which relief to provide an enclosed stairwell to a roof deck would be required even when the penthouse is within the permitted building height limit – such as for a stairwell to a deck on the second floor of a building.

OP continues to recommend that the provision be amended to also apply to conversions of rowhouses to multi-family buildings, and that stairwells not meeting the by-right conditions be reviewed as special exceptions. Although enclosed stairwells to the roof deck on a one-story accessory building are not common, OP also recommends that the provision apply to accessory buildings as well.

For clarity, a summary of existing, previously proposed, and revised proposed language pertaining to this issue is provided below.

EXISTING REGULATIONS

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

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

...

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:

- (a) Is no more than ten feet (10 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.

Effect: An enclosed stairwell to a rooftop deck and associated small storage area on any level of a one-family dwelling or flat and whether it is above or below the permitted height for the building, is not permitted by-right, but rather is permitted by special exception subject to the general special exception review criteria of Subtitle X. An apartment building, including a conversion of rowhouse in the RF zones to an apartment building, would not be subject to this limitation, so a stairwell with storage area or other habitable space would be permitted by-right, provided other penthouse restrictions such as setback are met.

AS ORIGINALLY PROPOSED IN THE OP REPORT DATED 1/16/20:

1500.3 Deleted and replaced with a new 1501.1(a)

1500.4 Deleted

...

1501 USES

1501.1 A penthouse may house mechanical equipment or any use permitted within the zone with the following limitations:

- (a) A habitable penthouse on the roof of a single household dwelling or flat in any zone, or a conversion pursuant to Subtitle U § 320.2 shall be permitted, provided the penthouse is a maximum of ten feet (10 ft.) in height and one (1) story; and 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; however, the Board of Zoning Adjustment may approve by special exception a penthouse not meeting these limitations, pursuant to Subtitle C § 1506.

...

Effect: An enclosed stairwell to a rooftop deck and associated small storage area would be permitted by-right on any level of the building. One not meeting these criteria would be permitted by special exception. In addition, it was proposed to expand these by-right penthouse size restrictions to also apply to a conversion of rowhouse in the RF zones to an apartment building – an enclosure meeting these conditions would be permitted by-right; one not meeting these conditions would require special exception review. Finally, it was proposed to apply the more specific special exception criteria for penthouses, as outlined in C § 1506.

AS NOW PROPOSED:

Revised recommended text for the regulation of penthouse structures on the roof of a one family dwelling or flat is below, with proposed changes shown (proposed additions shown in **bold underline** text, and proposed deletions shown in ~~**bold strike-through**~~ text, and proposed substantive changes from the original setdown version shown **highlighted**).

1500.3 Deleted and replaced with a new and revised 1501.1(a)

1500.4 Deleted

1501 USES

1501.1 A penthouse may house mechanical equipment or any use permitted within the zone, ~~except as follows~~ **with the following limitations:**

- (a) A penthouse on the roof of a single household dwelling, flat, **or accessory building** in any zone, or a conversion pursuant to Subtitle U § 320.2, shall be permitted provided the penthouse:
 - (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; however**
 - (4) **The Board of Zoning Adjustment may approve by special exception a penthouse not meeting these conditions, pursuant to Subtitle C § 1506.**

...

Effect: An enclosed stairwell to a rooftop deck and associated small storage area would be permitted by-right provided it is located below the permitted height allowed for the building (i.e. typically 35 feet for the RF zones). Essentially, this would allow by right a rooftop access to a rooftop deck on the first or second floor of a building (where a larger habitable story addition would be permitted by right), not currently permitted. A penthouse with additional habitable space would be permitted by special exception, or more likely, the owner of the house would simply call this a by-right additional floor within the three floor limit. The stairwell would continue to have to meet penthouse setback requirements.

An enclosed roof deck access stairwell partially or entirely above the permitted height for the building would remain permitted only by special exception.

OP review of past BZA cases involving stairwell access to roof decks also indicated that penthouse height tended to be in the 8 to 9-foot range. As such, OP is proposing that the ten-foot maximum height limit be slightly lowered to nine feet.

In addition, OP is proposing to apply this regulation also to penthouses to a roof deck on an accessory building, and continues to recommend that these provisions also apply to a conversion of rowhouse in the RF zones to an apartment building.

OP also continues to recommend that the special exception process apply the more specific criteria for penthouses outlined in C § 1506.

Staff also identified one additional clarification required in relation to this provision. New C § 1506 Special Exceptions should include a reference to C § 1501.1(a), to ensure that it is clear that the special exception relief from C § 1501.1(a) is required to address the criteria of C § 1506:

1506 RELIEF FROM PENTHOUSE OR ROOFTOP STRUCTURE REQUIREMENTS

~~1504.1~~ **1506.1** Relief ~~to~~ **from** the requirements of Subtitle C §§ ~~1500.6—1500.10 and 1502~~ **1501.1(a), 1503, and 1504** may be granted as a special exception by the Board of Zoning Adjustment subject to:

...

V. DIAGRAMS:

The preparation of diagrams illustrating the proposed changes was discussed internally, and time constraints limited the ability to resolve the final issues associated with the text and also produce a significant number or quality of illustrations prior to the date this report had to be filed. However, a limited number of drawings are being added to the record as Attachment 1, mainly addressing the changes discussed regarding requirements pertaining to the provision of a rooftop deck access stair on the roof of a one family dwelling or flat. OP will provide additional illustrations to the record as they can be produced, prior to a public hearing.