

**ATTACHMENT II**

**Draft Text for Setdown Report – for a version with proposed changes highlighted, please refer to Attachment I of this report**

**Subtitle C CHAPTER 15 PENTHOUSES AND ROOFTOP STRUCTURES**

**1500 INTRODUCTION**

1500.1 A penthouse or rooftop structure, when not in conflict with The Height Act or otherwise restricted, may be erected to a height in excess of the building height authorized by the zone district, in accordance with the conditions specified in this section.

1500.2 The requirements of this chapter shall apply to:

- (a) Penthouses, and
- (b) Rooftop structures that are four feet (4 ft.) or more in height above the roof upon which they sit.

1500.3 A rooftop structure that is less than four feet (4 ft.) in height above the roof upon which it sits shall not be subject to the requirements of this chapter, except it must comply with the setback requirements of Subtitle C § 1504;

1500.4 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, electronic equipment of a type not necessary to the operation of the building or structure, or solar canopies on top of a parking garage. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Subtitle C, Chapter 13.

**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.
- (b) An eating and drinking establishment within a penthouse, or on a rooftop or rooftop deck located on the highest roof of the building and devoted to an eating and drinking establishment, shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9; or
- (c) Penthouse habitable space or publicly accessible rooftop deck on the highest roof of the building 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 shall be permitted only by special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and with written approval by the US Secret Service.

### **1502 HEIGHT**

1502.1 Except as otherwise limited in this Chapter, permitted penthouse height and number of stories shall be as prescribed in the development standards for the applicable zone.

1502.2 Permitted penthouse height and number of stories for a building constructed pursuant to a planned unit development (PUD) shall be as prescribed for the PUD standards for the applicable zone, pursuant to Subtitle X, Chapter 3.

1502.3 Pursuant to § 5 of the Height Act, a penthouse or roof structure may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback and other restrictions stated in the Act.

### **1503 ENCLOSING WALLS OF A PENTHOUSE OR ROOF STRUCTURE**

1503.1 All penthouse and mechanical equipment space shall be in one (1) enclosure, except for the following:

(a) When located on the roof of a public school, public recreation center, or public library;  
or

(b) A rooftop egress stairwell or elevator enclosure not containing any other form of habitable or mechanical space may be within a separate enclosure, and shall harmonize with the main penthouse in architectural character, material, and color.

1503.2 When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.

1503.3 When consisting solely of mechanical equipment, the equipment shall be enclosed fully as prescribed in Subtitle C §§ 1503.1 and 1503.2 except that louvers may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.

1503.4 Enclosing walls of a penthouse or screening around uncovered mechanical equipment shall be of equal, uniform height as measured from roof upon which the penthouse sits, except that:

(a) Enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space;

(b) Enclosing walls of penthouse mechanical space shall be of a single uniform height except walls enclosing an elevator override may be of a separate uniform height;

(c) Required screening walls around uncovered mechanical equipment may be of a single, different uniform height; and

- (d) Enclosing walls of a stairwell providing access to a roof need not be of a single uniform height.

#### **1504 SETBACKS**

1504.1 Except as exempted by C §§ 1504.2 to 1504.4, penthouses and roof structures shall be set back from the edge of the roof upon which it is located, measured from a point where a line extending from the top of the roof intersects with the outside face of the building enclosing wall, as follows:

- (a) A distance equal to its height from the front building wall of the roof upon which it is located;
- (b) A distance equal to its height from the rear building wall of the roof upon which it is located;
- (c) A distance equal to its height from a side building wall of the roof upon which it is located if:
  - (1) The side building wall is not located on a property line;
  - (2) The side building wall faces a public or private street or alley right-of way, or a public park;
  - (3) The adjacent property along the common side lot line has a lower permitted matter-of-right building height; or
  - (4) The adjacent property along the common side lot line is improved with a building that is a designated landmark or contributing structure to a historic district, that is built to a lower defined height by 10 feet or greater.
- (d) A distance equal to its height from building walls that border all sides of an open court on the property; or
- (e) A distance equal to two (2) times its height from any building wall of the roof upon which it is located which fronts onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W., or fronting onto Pennsylvania Avenue, N.W. between 3rd Street, N.W and 15th Street, N.W., subject to any penthouse constraints contained within adopted PADDC Guideline documents.

1504.2 The setback requirements of 1504.1(a)-(d) (front, rear, side , open court, respectively) shall not apply to:

- (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.), measured from the surface of the roof upon which they sit;

- (d) 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;
- (e) 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;
- (f) Guardrails or privacy fences on the top of a one story accessory building, provided the total height of the building including the guardrail or privacy fence does not exceed the height permitted for an accessory building in the zone; or
- (g) Mechanical equipment or screening for mechanical equipment on the roof of a public school, recreation center, or library.

1504.3 The setback requirements of 1504.1(b)-(d) (rear, side, open court, respectively) shall further not apply to:

- (a) For a rooftop deck other than as addressed in C § 1504.2(e), 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;
- (c) Roof hatches that do not exceed a height of four feet (4 ft.), measured from the surface of the roof upon which they sit; or
- (d) Skylights that do not exceed a height of two feet (2 ft.), measured from the surface of the roof upon which they sit.

1504.4 The setback requirements of 1504.1(d) (open court) shall further not apply to:

- (a) A rooftop access stairwell or elevator.

### **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 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 § 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 by a fixed right-of-way public mass transit system.

1505.2 Penthouses including any combination of mechanical or habitable space, shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits for any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W.

1505.3 Areas within curtain walls without a roof used where needed to give the appearance of one (1) structure shall not be counted in floor area ratio, but shall be computed as a penthouse to determine if they comply with Subtitle C § 1505.2.

### **1506 RELIEF FROM PENTHOUSE OR ROOFTOP STRUCTURE REQUIREMENTS**

1506.1 Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment subject to:

- (a) The general special exception requirements of Subtitle X, Chapter 9;
- (b) The applicant's demonstration that every reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks, and
- (c) The applicant's demonstration of at least one (1) of the following:
  - (1) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;
  - (2) The relief requested would result in a better design of the penthouse or roof structure without appearing to be an extension of the building wall;
  - (3) The relief requested would result in a penthouse or roof structure that is visually less intrusive; and
  - (4) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C-115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.

1506.2 Relief shall not be granted to the setback requirements of Subtitle C § 1504 for a penthouse or roof structure located on a building constructed to the maximum height allowed by the Height Act.

1506.3 A request to add penthouse habitable space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of Subtitle X, Chapters 3 and 6 prior to January 8, 2016, may be filed as a minor modification

for placement on the Zoning Commission consent calendar, pursuant to Subtitle Z § 703, provided:

- (a) The penthouse does not require relief from any other penthouse regulation;
- (b) The item shall not be placed on a consent calendar for a period of thirty (30) days minimum following the filing of the application; and
- (c) The Office of Planning shall submit a report with a recommendation a minimum of seven (7) days in advance of the meeting.

1506.4 In addition to meeting the requirements of Subtitle X, Chapter 9, an application made pursuant to Subtitle C § 1506.3 shall include:

- (a) A fully dimensioned copy of the approved and proposed roof-plan and elevations as necessary to show the changes;
- (b) A written comparison of the proposal to the Zoning Regulations; and
- (c) Verification that the affected Advisory Neighborhood Commission has been notified of the request.

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

1507.1 The construction of penthouse habitable space on a building that is devoted to entirely non-residential or lodging use shall contribute funds to the HPTF in accordance with the procedures and requirements of C-1507.6 to 1507.10.

1507.2 The construction of penthouse habitable space on a building that is partially or entirely devoted to residential use is subject to the Inclusionary Zoning set-aside provisions of Subtitle C, Chapter 10 Inclusionary Zoning at 50% MFI in accordance with C § 1003.7 and C § 1507.5, except:

- (a) Penthouse space on a multi-family building devoted exclusively to communal rooftop recreation or communal amenity space for the primary use of residents of the building; or
- (b) Penthouse space on the roof of single household dwelling or flat.

1507.3 The requirements of this section shall not apply to properties owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.

1507.4 The penthouse habitable space set-aside shall be calculated as gross floor area, but shall mean “net residential floor area” for purposes of C § 1003.

1507.5 Inclusionary units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1507.2 shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to the Housing Production Trust Fund (HPTF), consistent with the provisions of Subtitle C §§

1507.6 through 1507.10, except that the calculation shall be based on the maximum permitted residential FAR, when:

- (a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
- (b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
- (c) The building is not otherwise required to provide Inclusionary Units for eligible households earning equal to or less than fifty percent (50%) of the MFI if the amount of penthouse habitable space would result in a net floor area set-aside less than the net floor area of the smallest dwelling unit within the building.

1507.6 When the construction of habitable penthouse space results in a contribution to the HPTF, the contribution amount and timing shall be in accordance with the provisions of C §§ 1507.7 through 1507.10.

1507.7 The required amount of the HPTF contribution shall be determined as follows:

- (a) First multiply the land area upon which the building is or will be located by the maximum by-right permitted FAR for the proposed use of the building to determine the maximum permitted gross square feet of development on the site; then
- (b) Divide the assessed value of land upon which the building is or will be located by the maximum permitted gross square feet of development to determine a value per square foot; then
- (c) Multiply the value per square foot by the total gross floor area of the penthouse habitable space to be constructed; and
- (d) The contribution shall be equal to one-half (0.5) of this amount.

1507.8 For the purposes of the calculation of C § 1507.7:

- (a) The land area upon which the building is or will be located shall include the entire record lot or combination of all tax and air lots comprising the entire record lot regardless of ownership;
- (b) The maximum permitted by-right FAR shall be based on the existing or, when applicable, the approved zoning designations, and shall not include any bonuses, credits, zoning relief or flexibility granted, planned unit development density increases, or grandfathered conditions, and shall be determined as follows:
  - (1) For an entirely non-residential or lodging building, the maximum permitted non-residential FAR shall be used, regardless of the use of the habitable space;
  - (2) For buildings that are partially or entirely devoted to residential use, the maximum permitted residential FAR shall be used, regardless of the use of the habitable space;

- (3) For the Downtown (D) zones, if not otherwise specified, the maximum permitted residential FAR permitted shall be 10 FAR; and
  - (4) In R and RF zones, projects with a maximum permitted lot occupancy of 40% or less shall use an equivalent of 1.2 FAR, and projects with a maximum permitted lot occupancy of 60% shall use an equivalent of 1.8 FAR.
- (c) The assessed value of land shall be the fair market value of the land as indicated in the property tax assessment records of the Office of Tax and Revenue (OTR), at the time the payment is due to be submitted pursuant to C §§ 1507.9 and 1507.10.
- (d) The total gross floor area of the penthouse habitable space shall be determined as follows:
- (1) For entirely non-residential or lodging buildings, all forms of habitable space shall be included in the total gross floor area of the penthouse habitable space;
  - (2) For buildings that are partially or entirely devoted to residential use, all forms of habitable space, except space devoted exclusively to communal rooftop recreation or amenity space for the primary use of residents of the building, shall be included in the total gross floor area of the penthouse habitable space; and
  - (3) For purposes of (i) and (ii), total gross floor area of the penthouse habitable space includes enclosed hallways, vestibules, washrooms, and other service space serving any habitable or non-habitable space.
- 1507.9 Except as described in C § 1507.10, not less than one-half (0.5) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's penthouse habitable space.
- 1507.10 Where the proposed penthouse or the building on which it is located is subject to a Planned Unit Development or Map Amendment, the HPTF payment required pursuant to C §§ 1507.6 through 1507.8 shall be as follows:
- (a) Prior to the issuance of a building permit for any penthouse space, not less than one-half (1/2) of the required total HPTF contribution shall be made in accordance with the calculation of C § 1507.7, based on the fair market value of the land as indicated in the property tax assessment records of the OTR at the time that the building permit application is accepted as complete by the Department of Consumer and Regulatory Affairs; and
  - (b) Prior to the issuance of a certificate of occupancy for any penthouse space, the calculations of C § 1507.7 shall be repeated based on the fair market value of the land as indicated in the property tax assessment records of the OTR at the time of certificate of occupancy issuance; and the balance of the required total contribution, minus the amount paid pursuant to the contribution of 1507.7 (a), shall be made.