



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 13, 2015
SUBJECT: ZC 14-13, Text Amendment to the Zoning Regulations: Rooftop Penthouses Supplemental Report

I. BACKGROUND

At its July 28, 2014 public meeting, the Zoning Commission received a report from the Office of Planning (OP) describing proposed amendments to the Zoning Regulations pertaining to rooftop penthouses. The proposed amendments are intended to complement recent amendments by the federal government to The Act to Regulate the Height of Buildings in the District of Columbia of 1910 (the Height Act), and to provide additional clarity and certainty to penthouse regulations. Because the current Zoning Regulations for penthouses are in most instances more restrictive than the Height Act, the changes to the Height Act cannot be given full effect until corresponding changes to the Zoning Regulations are also adopted.

At the September 4, 2014 special public meeting, the Commission set down the draft text along with alternative text as requested. The Public Hearing was held on November 6, 2014, and the Zoning Commission then discussed the proposal at a public meeting on December 8, 2014. At that meeting, the Commission requested that OP provide a “matrix” of options, for further discussion by the Commission prior to holding an additional public hearing on a refined proposal for revised penthouse regulations.

The purpose of this report is to outline options for Zoning Commission consideration, and includes a brief summary of the current zoning regulations, the Height Act, and the relationship between various proposed amendments. The report also notes which option was the original OP proposal (October 2014 proposal), as noticed and then discussed at the public hearing. Detailed analysis of the issues, initial recommendations, and alternative proposals are described the OP reports of July 24, 2014 (set down report), August 28, 2014 (supplemental set down report), October 27, 2014 (pre-hearing report), and November 24, 2014 (supplemental post-hearing report).

All references to zoning regulation section numbers are to the current zoning regulation text; “proposed” text refers to the original OP proposal in the October 27, 2014 report, received by the Zoning Commission at its public hearing on November 6, 2014.

II. MATRIX OF OPTIONS

1. Penthouse Height (§§ 400.7 (c) & (d) and various other zone specific provisions):

Options:

- a. Allow a 20 foot tall penthouse in all zones.
- b. Allow a 20 foot penthouse in most zones, but limit height to 10 feet for low density residential zones and uses (October 2014 proposal); and
 Retain existing more restrictive penthouse heights in overlay zones where they currently exist (Capitol Interest § 1203.2; Ft. Totten § 1563.4; and Uptown Arts § 1902.1) (October 2014 proposal).
- c. Limit height to 10 feet in additional moderate to medium density residential and/or mixed use zones, possibly allowing additional height, up to 20 feet, by special exception.
- d. Limit the height of habitable space to 10 feet (or some other height) but allow 20 feet for non-habitable/mechanical space) in some or all zones.
- e. Retain existing height of 18.5 feet in all zones, or for all zones other than low density residential zones where height would be limited to 10 feet.

Zones:	Roof Structure Height (feet)			ZC
	EXISTING ZONING	HEIGHT ACT	Oct. 2014 PROPOSED	
Residential:				
Low (R-1 – R-4)	18.5'	n/a	10'	
Moderate (R-5-A – R-5-B)	18.5'	20'	20' ¹	
Medium to High (R-5-D – R-5-E)	18.5'	20'	20'	
Any Zone SFD/FLAT	18.5'	20'	10'	
Mixed Use:				
Low – Moderate (C-1, C-2-A, C-2-B)	18.5'	20'	20' ¹	
Moderate – Medium (C-2-B, C-3-A, C-3-B)	18.5'	20'	20'	
Medium – High (C-2-C, C-3-C, C-4, C-5, CR)	18.5'	20'	20'	
Industrial: (CM, M)	18.5'	20'	20'	
Capitol Interest Overlay	10'	20'	10'	
Fort Totten Overlay	Within max building height	20'	Within max building height	
Uptown Arts Overlay	83.5' above measuring pt.	20'	83.5' above measuring pt.	

Current Zoning Regulations: A penthouse height of 18'-6" maximum is generally permitted, although certain overlay zones noted above have additional restrictions. As part of the ZRR process, OP has proposed, and the Commission has taken proposed action to approve, limiting the height of a penthouse in the R-1 through R-4 zones to 10 feet max.

Height Act: Permits a penthouse height of twenty feet for habitable space within a penthouse located above the Height Act limit, and permits various things (over-runs, towers, minarets, etc.) to exceed this limit. Otherwise, the Height Act does not establish a maximum height, and does not regulate the height of a penthouse below the Height Act limit.

Relationship to other proposed amendments: Allowing 20' as opposed to the current 18.5' would likely have limited impact on other proposed amendments. Allowing different heights for habitable and non-habitable space would require changes to regulations requiring all penthouse structure to be of one uniform height.

¹ OP would not be opposed to advertising limiting penthouse height to 10 feet in moderate density zones.

2. Penthouse Number of Stories (not within current regulations, proposed new § 411.18):

Options:

- a. Do not establish a limit on the number of stories (current zoning regulations).
- b. Limit penthouses to 2 stories in all zones.
- c. Limit penthouses to 1 story but permit 2 stories in higher density/height zones (October 2014 proposal)
- d. Limit penthouses to 1 story, by permit 2 stories in mixed use zones.
- e. Limit penthouses to 1 story in some or all zones, but allow a second story with BZA / ZC approval in some or all zones.
- f. Limit habitable penthouse space to one story, but allow a second story for non-habitable (mechanical) space in some or all zones.
- g. Limit penthouses to 1 story for all uses in all zones.

Zones:	Number of Stories Within Roof Structure						
	EXISTING	HEIGHT ACT		Oct. 2014 PROPOSED		ZC	
			Above Ht Act ²	Below Ht Act	Above Ht Act	Below Ht Act	Above Ht Act
Residential:							
Low (R-1 – R-4)	unlimited	1	unlimited	1	1		
Moderate (R-5-A – R-5-B)	unlimited	1	unlimited	1	2		
Medium to High (R-5-D – R-5-E)	unlimited	1	unlimited	1	2		
Any Zone SFD/FLAT	unlimited	1	unlimited	1	1		
Mixed Use:							
Low – Moderate (C-1, C-2-A)	unlimited	1	unlimited	1	2		
Moderate – Medium (C-2-B, C-3-A, C-3-B)	unlimited	1	unlimited	1	2		
Medium – High (CR, C-2-C, C-3-C, C-4, C-5)	unlimited	1	unlimited	1	2		
Industrial: (CM, M)	unlimited	1	unlimited	1	2		

Current Zoning Regulations: Number of stories within a penthouse is not regulated or limited. Rather, §411.13 anticipates possible multiple levels within a penthouse.

Height Act: Limits the number of stories to one for habitable space within a penthouse located above the Height Act. There is otherwise no limit on the number of stories (i.e. no limit for non-habitable space above, or for any penthouse below the Height Act limit).

Relationship to other proposed amendments: Limiting penthouses to 1 story in low density zones is consistent with previous ZRR discussions. Allowing an additional story (for habitable or non-habitable space) in other zones would support opportunities to provide habitable space in a penthouse and maximize any affordable housing linkages, but, as noted by the Commission, could also provide incentive the maximize penthouse volume in a way that does not currently exist in the regulations. This would particularly be the case if the Commission decided to eliminate or ease penthouse area (FAR) restrictions or the requirement that all walls of a penthouse be of one uniform height.

² The Height Act limit applies only to habitable space; it does not limit (additional) mechanical penthouse levels.

3. Uses Permitted Within a Penthouse (§§ 411.1 & 411.2):

Options:

- a. Allow habitable space within a penthouse:
 - i. In all zones;
 - ii. In all zones but limit habitable space in low density residential zones (Oct. 2014 proposal);
 - iii. Only in higher density/height zones.
- b. Limit specified uses which may have a greater potential external impact in some or all zones, by not permitting them, or by allowing them only by special exception (as noted in the Oct 2014 report).
- c. Allow only recreation related uses as habitable space within a penthouse, in some or all zones, similar to current zoning regulations for residential buildings.
- d. Do not allow habitable space within a penthouse in any zone.

Zones:	Human Occupancy (living, office, retail, recreation space)				
	EXISTING	HEIGHT ACT		Oct. 2104 PROPOSED	ZC
		Above Ht Act	Below Ht Act		
Residential:					
Low (R-1 – R-4)	Limited ³	Yes	n/a	Limited	
Moderate (R-5-A – R-5-B)	Limited	Yes	n/a	Yes	
Medium to High (R-5-D – R-5-E)	Limited	Yes	n/a	Yes	
Any Zone SFD/FLAT	Limited	Yes	n/a	Limited	
Mixed Use:					
Low – Moderate (C-1, C-2-A)	Limited	Yes	n/a	Yes	
Moderate – Medium (C-2-B, C-3-A, C-3-B)	Limited	Yes	n/a	Yes	
Medium – High (C-2-C, C-3-C, C-4, C-5, CR)	Limited	Yes	n/a	Yes	
Industrial: (CM, M)	No	Yes	n/a	Yes	

Current Zoning Regulations: Uses within a penthouse are limited to mechanical equipment, elevator and stair overrides, and amenity space directly associated with outdoor rooftop recreation spaces in residential buildings (not permitted for non-residential buildings). Habitable area such as living, office, commercial, or conference space is not permitted.

Height Act: Permits any form of habitable space within a penthouse above the Height Act limit, if it provides the 1:1 setback and is limited to one story; does not specifically address habitable space in a penthouse located below the Height Act limit.

Relationship to other proposed amendments: Without expanding the permitted range of uses, there may be limited desire to utilize any expanded permissions. Likewise, without amending other regulations, there may be limited opportunity or incentive to utilize this use provision. Affordable housing linkage would be limited, and may be inappropriate since no “leasable” space would be permitted.

³ Limited to incidental service or recreation space associated with roof decks for apartment buildings only.

4. Penthouse Setbacks (§400.7 and various other zone specific provisions):

Options:

- a. Clarify and augment penthouse setback requirements (October 2014 proposal), from:
 - i. Any wall facing a public street, public alley; or court open to a public street;
 - ii. Any wall that provides a setback from a lot line that it faces; or
 - iii. Any wall that abuts a common lot line, and is taller than the matter-of-right permitted height of the building on the adjacent property.
- b. In addition, require a new setback from historic properties:
 - i. Require a 1:1 setback from any lot line shared with a property which is historic, or contains a historic building (October 2014 proposal); or
 - ii. Require a 1:1 setback from any lot line shared with a property which is historic, or contains a historic building, except in low density residential areas where such a setback:
 - 1. Would not be required due to the much narrower lot width typical to these areas which would make a penthouse practically difficult; or
 - 2. Would be .5:1 instead of 1:1, to acknowledge the prevalent narrower lot width.
- c. Retain current, more general language for penthouse setback requirement.

Zones:	Penthouse Setback				
	EXISTING	HEIGHT ACT		Oct. 2104 PROPOSED	ZC
		Above Ht Act	Below Ht Act		
Residential:					
Low (R-1 – R-4)	1:1	1:1	n/a	1:1	
Moderate (R-5-A – R-5-B)	1:1	1:1	n/a	1:1	
Medium to High (R-5-D – R-5-E)	1:1	1:1	n/a	1:1	
Any Zone SFD/FLAT	1:1	1:1	n/a	1:1	
Mixed Use:	1:1	1:1		1:1	
Low – Moderate (C-1, C-2-A)	1:1	1:1	n/a	1:1	
Moderate – Medium (C-2-B, C-3-A, C-3-B)	1:1	1:1	n/a	1:1	
Medium – High (C-2-C, C-3-C, C-4, C-5, CR)	1:1	1:1	n/a	1:1	
Industrial: (CM, M)	1:1	1:1	n/a	1:1	

Current Zoning Regulations: A setback of 1:1 is required from all exterior walls, although interpretation of how to apply this provision has varied somewhat over time, and the text is not clear from which walls the setback is reasonably required.

Height Act: Establishes a requirement that “*penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof*” – equal to a 1:1 setback. The recent Height Act amendment did not alter this.

Relationship to other proposed amendments: Clarifying and expanding the setback requirement, as proposed, would have minimal impact on other proposed amendments, but could support removal of other penthouse area limitations and/or requiring penthouse walls to be of one uniform height as proposed below.

5. Penthouse Area - Limitation of 1/3 of roof area in zones with a limit on number of stories (§§ 411.8) – R-1, R-2, R-3, R-4, R-5-A, C-1, CM-1, CAP Overlay):

Options:

- a. Remove the 1/3 of roof area limitation of the penthouse area for all uses in all zones where it currently applies.
- b. Retain the 1/3 of roof area limitation of the penthouse area for the R-1 through R-4 zones, and for a single family dwelling or flat in any zone (October 2014 proposal), and for the Cap Overlay⁴ (i.e remove the limitation in the C-1, R-5-A, and CM-1 zones).
- c. Retain the 1/3 of roof area limitation of the penthouse area in all zones where it currently applies.

Zones:	Penthouse Area Limited to 1/3 of Roof Below				
	EXISTING	HEIGHT ACT		Oct. 2104 PROPOSED	ZC
		Above Ht Act	Below Ht Act		
Residential:					
Low (R-1 – R-4)	1/3 max.	n/a	n/a	1/3 max.	
Moderate (R-5-A)	1/3 max.	n/a	n/a	Not required	
(R-5-B)	n/a	n/a	n/a	n/a	
Medium to High (R-5-D, R-5-E)	n/a	n/a	n/a	n/a	
Any Zone SFD/FLAT	n/a	n/a	n/a	1/3 max.	
Mixed Use:					
Low – Moderate (C-1)	1/3 max.	n/a	n/a	Not required	
(C-2-A)	n/a	n/a	n/a	n/a	
Moderate – Medium (C-2-B, C-3-A, C-3-B)	n/a	n/a	n/a	n/a	
Medium – High (C-2-C, C-3-C, C-4, C-5, CR)	n/a	n/a	n/a	n/a	
Industrial:					
(CM-1)	1/3 max.	n/a	n/a	Not required	
(CM-2, CM-3, M)	n/a	n/a	n/a	n/a	
CAP Overlay: (all zones)	1/3 max.	n/a	n/a	1/3 max.⁴	

Current Zoning Regulations: Existing regulations limit the size of the penthouse to 1/3 of the roof area below in specified low density zones and the CAP Overlay.

Height Act: Does not limit penthouse size, above or below the Height Act, other than the 1:1 required setback.

Relationship to other proposed amendments: Removal of this area limitation would support more effective utilization of penthouse area for habitable space as proposed, so would support the affordable housing linkage proposals. Expanded penthouse setback provisions could limit penthouse size and visual and other impacts.

⁴ The October 27, 2014 OP report did not address the CAP Overlay directly. OP recommends retaining the 1/3 limit in the CAP Overlay, which includes CAP/R-4, CAP/R-5-B, CAP/C-2-A, CAP/SP-2, and CAP/CM-1 zones.

6. Penthouse Area - Exemption from FAR for penthouse enclosed space (§§ 411.7):

Options:

- a. Exempt all enclosed penthouse space, habitable and non-habitable, from building FAR (October 2014 proposal), allowing the 1:1 setback and the 1/3 of roof area limitation (where retained) to dictate penthouse size.
- b. Exempt enclosed mechanical space in a penthouse from building FAR, but provide a maximum exemption for habitable space (such as the 0.4 FAR exemption considered in ZRR, or another amount such as 0.5 FAR exemption as noted in the October 2014 report).
- c. Establish a maximum exemption from FAR that would apply to any use within an enclosed penthouse.
- d. Include all enclosed penthouse space, regardless of use, in building FAR.

Zones:	Penthouse FAR Exemption				
	EXISTING	HEIGHT ACT		Oct. 2104 PROPOSED	ZC
		Above Ht Act	Below Ht Act		
Residential:					
Low (R-1 – R-4)	n/a	n/a	n/a	n/a	
Moderate (R-5-A – R-5-B)	.37 max.	n/a	n/a	Do not limit	
Medium to High (R-5-D – R-5-E)	.37 max.	n/a	n/a	Do not limit	
Any Zone SFD/FLAT	.37 max.	n/a	n/a	Do not limit	
Mixed Use:	.37 max.			Do not limit	
Low – Moderate (C-1, C-2-A)	.37 max.	n/a	n/a	Do not limit	
Moderate – Medium (C-2-B, C-3-A, C-3-B)	.37 max.	n/a	n/a	Do not limit	
Medium – High (C-2-C, C-3-C, C-4, C-5, CR)	.37 max.	n/a	n/a	Do not limit	
Industrial: (CM, M)	.37 max.	n/a	n/a	Do not limit	

Current Zoning Regulations: In those zones that have an FAR limit (all zones other than low density residential) an increase of allowable FAR of not more than 0.37 is permitted for generally mechanical space within a penthouse⁵ Any penthouse area, regardless of use, greater than 0.37 FAR would count towards permitted building FAR, although OP found no examples of this. As part of the Zoning Regulations Review process (ZRR), the Commission considered a proposal to slightly increase this to 0.40 FAR.

Height Act: Does not limit penthouse area, above or below the Height Act, other than indirectly through the 1:1 required setback.

Relationship to other proposed amendments: Removal of this area limitation would support more effective utilization of penthouse area for habitable space as proposed, so would support the affordable housing linkage proposals. Retention of the 1:1 required setback and the 1/3 of roof area limitation in lower density residential zones would limit penthouse size and visual and other impacts, as would establishing a maximum number of penthouse stories as proposed.

⁵ Section 411.7: “Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted.”

7. Enclosing Penthouse Walls of Equal Height and Vertical (§§ 411.6):

Options:

- a. Delete the requirement that all penthouse walls be of equal height (October 2014 proposal).
- b. Retain requirement that the walls of an enclosed penthouse shall be of equal height above roof level but permit screening walls for mechanical equipment not contained within a penthouse to be of a second, uniform height (alternative October 2014 text, as proposed by the Historic Preservation division of OP).
- c. Permit one uniform height for mechanical equipment or screening walls for mechanical equipment not contained within a penthouse, and a second uniform height for habitable space.
- d. Retain requirement that the walls of an enclosed penthouse shall be of equal height above roof level, but exempt Historic buildings (which undergo HP design related review) from this requirement.
- e. Delete the requirement that all penthouse walls rise vertically to a roof (October 2014 proposal).
- f. Retain requirement that all penthouse walls “be of equal height, and shall rise vertically to a roof” (October 2014 alternate text).

Current Zoning Regulations. All walls of the penthouse are required to be of one height, to encourage a more unified penthouse massing.

Penthouse walls are also required to rise vertically to a roof, generally at a 90° angle to the roof below, although the Zoning Administrator has advised OP that some lee-way on what is considered “vertical” has been granted.

The zoning regulations currently also require that all penthouse structure be located within one structure. This can also lead to penthouses that are made artificially large, but can also encourage a simpler, more unified rooftop design. OP did not propose changes to this provision.

Height Act. Does not address this issue, above or below the Height Act limit.

Relationship to other proposed amendments: Removing or allowing more flexibility in penthouse walls of equal height could make providing habitable space in a penthouse more feasible, so would support proposals to allow habitable space in a penthouse, and to provide an affordable housing linkage to that space. This may also make it easier to meet proposed penthouse setback requirements.

Providing more flexibility in allowing non-vertical enclosure walls would have limited impact on the other proposed amendments, but would allow additional design flexibility.

8. Affordable Housing Linkage:

8A Affordable Housing Linkage for the Provision of Habitable Penthouse Space on Non-Residential Buildings (not within current regulations, proposed new § 414):

Options:

- a. Establish a requirement that new habitable penthouse greater than 1,000 sq.ft. for a non-residential building provide affordable housing, using criteria consistent with the current housing linkage formula:
 - i. Provide affordable housing (on or off-site) at a rate of $\frac{1}{2}$ to $\frac{1}{4}$ of the area of the applicable penthouse space, depending on the distance of the affordable housing from the subject site; or
 - ii. Provide a contribution to a housing production trust fund equal to $\frac{1}{2}$ of the assessed value per square foot of the applicable penthouse area. (October 2014 proposal)
- b. Broaden the applicability by also applying the requirement to new penthouse space, for example to include the downtown and transfer of development rights (TDR) areas. (October 2014 alternate proposal)
- c. Require a larger contribution of one square foot of density for low-income households for every one square foot of new penthouse non-residential gross floor area; or a contribution to a housing production trust fund equal to the full assessed value of the proposed penthouse non-residential gross floor area for non-residential use. (October 2014 alternate proposal)
- d. Do not establish a requirement that new habitable penthouse space on a non-residential building require provision of affordable housing.

Current Zoning Regulations. Because the ability to provide habitable penthouse space on a non-residential building is very limited, the zoning regulations do not include a housing linkage requirement. However, the regulations do include a requirement for a housing linkage for discretionary gains of density through the PUD process or through a street or alley closing. The original October 2014 proposal is based on this existing requirement.

Height Act. The Height Act does not address this issue.

Relationship to other proposed amendments: Restrictions on the ability to add or construct penthouse space, or counting penthouse space in building floor area ratio, would reduce the incentive to construct penthouse space, so the affordable housing benefit would be correspondingly limited. Limitations on the uses permitted within a penthouse may also limit the effectiveness of any affordable housing linkage.

Requiring a housing linkage would significantly support broader District objectives to address housing and housing affordability in the District, but may make the addition of penthouse habitable space less economically viable, depending on the extent of the linkage requirement.

8B Inclusionary zoning for the Provision of Habitable Penthouse Space on Residential Buildings- (Chapter 26, IZ):

Options:

- a. Apply current IZ provisions to new habitable residential space within a penthouse (i.e. penthouse space not currently permitted), in a manner consistent with the current IZ regulations (October 2014 proposal).
- b. Apply current IZ requirements to new habitable residential space within a penthouse, and also broaden the requirement to apply to new habitable penthouse space in zones and areas of the city where IZ currently does not apply (October 2014 alternate proposal).
- c. Broadly apply IZ to new penthouse habitable space, but require a 1:1 affordable housing requirement at a deeper level of affordability (50% AMI) (October 2014 alternate proposal).
- d. Do not establish a requirement that new habitable penthouse on a residential building require provision of affordable housing.

Current Zoning Regulations. Habitable penthouse space on a residential building is limited to space associated with outdoor rooftop recreation space. As such, the zoning regulations do not address penthouse space specifically, although Chapter 26 IZ would currently apply to habitable space within a penthouse, at a rate of 8 or 10% of gross floor area at a rate of 50% to 80% of AMI, as required by zoning in those areas where IZ currently applies.

Height Act. The Height Act does not address this issue.

Relationship to other proposed amendments: Restrictions on the ability to add or construct penthouse space, or counting penthouse space in building floor area ratio, would reduce the incentive to construct penthouse space, so the affordable housing benefit would be correspondingly limited. Limitations on the uses permitted within a penthouse may also limit the effectiveness of any affordable housing linkage.

Requiring a housing linkage would significantly support broader District objectives to address housing and housing affordability in the District, but may make the addition of penthouse habitable space less economically viable, depending on the extent of the linkage requirement.

If the Commission decides to permit livable habitable space in a penthouse of low density residential development, OP would recommend that the housing linkage provision not be required.

9. Special Exception Review Criteria for Penthouse Regulation Relief and Clarification of the term “Operating Difficulties” (§ 411.11):

Options:

- a. Retain the current review criteria for special exception relief from specified penthouse regulations.
- b. Retain the criteria, but provide additional clarification of the term “operating difficulties” (October 2014 proposal).

Current Zoning Regulations: Special exception review of specified aspects of the penthouse regulations is permitted. One of the criteria for approval of a special exception is a demonstration by the applicant that a conforming penthouse is “*impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable...*”. The phrase “operating difficulty” was identified by the Commission as needing clarification.

Height Act: The Height Act does not address this issue. The Board cannot approve penthouse structure relief that would be inconsistent with the Height Act.

Relationship to other proposed amendments: This proposal should have limited impact on the other proposed amendments.

10. Process for Amending an Approved PUD or Design Review Project (not within current regulations, proposed §411.20):

Options:

- a. Permit a request to add penthouse space to a building approved by the Zoning Commission as a Planned Unit Development (PUD) or through design review to be filed as a minor modification for placement on the Zoning Commission consent calendar, provided the additions conform to the regulations and not result in any additional relief from requirements.
- b. Permit the minor modification process noted above, but establish additional filing criteria (October, 2014 proposal):
 - i. A dimensioned copy of the approved and the proposed roof-plan; elevations as necessary to show the changes;
 - ii. A written comparison of the proposal to the zoning regulations;
 - iii. Verification that the affected ANC has been notified of the request; and
 - iv. The item not be placed on a consent calendar for a period of 30 days minimum following the filing of the application.
- c. Do not permit a minor modification consideration of an addition to penthouse space for a building approved by the Commission through a PUD or design review – such a change, even if conforming to any new regulations, would require a modification of the PUD including a public hearing.

Current Zoning Regulations: A minor modification process for a PUD exists (§3030). The process does not address situations such as this, where the zoning regulations and by-right permissions may change following approval of a PUD or design review application.

Height Act: Does not address this issue.

Relationship to other proposed amendments: This proposal should have limited if any relevance to the other proposed amendments, other than that it would facilitate these generally larger developments to incorporate habitable space into the penthouse area.

11. Definitions (§199):

Options:

- a. Provide definitions for “Height Act”⁶ and for “Penthouse” (October 2014 proposal).
- b. Amend the definitions of “Story” and “Story, top” (October 2014 proposal).
- c. Do not provide these new / amended definitions.

Current Zoning Regulations: Does not provide a consistent definition for the Height Act; and uses various terms for rooftop enclosures. The definition for “story” includes the area limitation of 1/3 of the story below.

Height Act: Uses the term “penthouse” to refer to rooftop space, whether for mechanical equipment or habitable space.

Relationship to other proposed amendments: The added definitions and amendment to the definition for “story, top” would not directly impact other proposed amendments. Amendments to the definitions for “story” would be needed if the Commission elected to delete the limitation of penthouse area in those zones which have a number of story limitation.

12. Parking for Penthouse Habitable Space (§§ 537.2, 777.2, 639.2, 845.2, 936.2):

Options:

- a. Retain the current provision for mixed-use (SP, C, CR, and W) and Industrial (CM, M) zones that penthouse space not count towards parking requirements. (October 2014 proposal)
- b. Continue to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but subject other enclosed penthouse area, such as additional residential units, office, or retail space, to the parking requirement of the zone for that use (October 2014 alternate proposal).
- c. Apply parking requirements to all new penthouse space.

Current Zoning Regulations: Penthouse space is exempted from parking requirements, although such penthouse space is currently limited to mechanical or support recreation space which would not generate additional parking demand.

Height Act: The Height Act does not address parking requirements.

⁶ A definition “Height Act” has also been included as part of the ongoing ZRR amendments to the regulations.

Relationship to other proposed amendments: Expanding the ability to provide habitable space in a penthouse, as proposed, could generate additional parking demand within the building. Typically, because the potential area of habitable penthouse is small compared to the rest of the building, the impact on required parking should be minimal. It is unlikely that requiring parking for habitable space would impact the ability to provide habitable space in most buildings. However, it could make the addition of such habitable penthouse space difficult on existing buildings which provide parking at or below the current parking requirement, potentially requiring BZA relief from parking requirements.