

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 476

Case No. 84-10

(Penthouse - Text Amendment)

June 9, 1986

Pursuant to notice, a public hearing was held by the District of Columbia Zoning Commission on October 22 and 25, 1984. At those hearing sessions, the Zoning Commission considered proposed amendments to the penthouse and antenna provisions of the District of Columbia Zoning Regulations, pursuant to Section 9101. The public hearing was conducted in accordance with the provision of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

From time to time during recent years, members of the Zoning Commission had expressed concerns regarding the appearance of the roof structures of various projects that were before the Commission for zoning consideration.

Roof structures originally consisted primarily of spires, towers, domes and other architectural solutions to roof design as well as chimneys essential to the heating of buildings. Modern buildings, however, in response to an emphasis on functionalism and to the ever-growing number and sophistication of building systems (heating, ventilating, air conditioning, and electrical), have tended to be designed with flat roofs supporting an increasing quantity of equipment. With the exterior design focus on the facade of the building, the roof became an efficient collection area for equipment, sometimes hidden from the ground, separate from leasable or otherwise occupiable space and often above the general building height limit. As this use of the roof increased, the chaotic development where the building meets the sky became more obvious, leading to regulations designed to control, minimize or camouflage the clutter of rooftop equipment.

The District of Columbia Office of Planning, by memorandum dated August 11, 1983, reported that the solution to roof structure clutter that the regulations support is the penthouse. Penthouses, while they have improved the roofscape by collecting and hiding much of the clutter of rooftop buildings themselves, appear as additional blocks resting on top of the roofs. While the required 1:1 setback minimizes their visual impact from the adjacent streets,

they are often visible from a distance against the sky, from the windows of other buildings and from rooftop terraces and observation towers. Thus, the Zoning Commission requested the Office of Planning to review the situation and recommend changes to the existing regulations which would result in an improvement in the appearance of roof structures.

On July 9, 1984, at its regular monthly meeting, and subsequent to the consideration of status memoranda from the OP dated February 3, May 16, and July 2, 1984, the Zoning Commission authorized a public hearing to consider amendments to the Zoning Regulations that would regulate penthouses, satellite dishes, antennas, and heliports,

The Commission subsequently determined that it would not consider proposed amendments to regulate heliports. As a result of that action the proceeding in this case began to fall into two distinct issues; namely penthouses, and antennas, which included satellite dishes. The first hearing session generally focused on issues related to regulating penthouses and the second hearing session, on issues related to antennas.

The Office of Planning, by memorandum dated October 12, 1984, evaluated three basic, but not mutually exclusive, approaches to address the problem of roof structure design and to improve the appearance of the roof area. They are as follows:

1. Reducing the visibility of the penthouse;
2. Improving the appearance of the roof and penthouse: and
3. Integrating the penthouse into the overall design of the building and its roof.

The Office of Planning believes that reducing the area and height of the penthouse, or increasing penthouse setbacks would be extremely difficult and, on balance, probably not desirable because it would tend to reduce energy efficiency, increase operating costs, not accommodate certain rooftop equipment, and could facilitate the continued location of transformers vaults and grates in public space, adversely affecting landscaping and pedestrian circulation.

The Office of Planning indicated that the typical roof and penthouse could be improved in appearance by allowing greater flexibility in the choice of materials and/or by encouraging the introduction of landscaping and other decorative elements on the roof. Temporary restaurants, scenic overlooks, exercise facilities or employee lunch areas would bring users to the roof. The necessary railing,

which would be permitted an exception to the height limit, could be designed to act as an architectural embellishment in helping to provide a visual cap for the building.

Active use of the roof would increase the demands on the penthouse with the need to accommodate public restrooms and corridor access from the elevator to the roof. The major problem would be to provide the elevator access to the roof which would not only enhance use of the roof but would be required by the D.C. Architectural Barriers Act. Elevator access to the roof would require an additional elevator override height of approximately ten feet which would need to "pop up" above the normal penthouse. Under the current Zoning Regulations, the developer would have to seek an area variance for the added height and hope to justify it on the basis of the unusual circumstances and requirements of the project. If the Regulations treated an increase in penthouse height for the purpose of gaining access to active rooftop use as a special exception, the BZA would only require the developer to show that the impact of the added height would not bring with it any significant adverse impacts,

The Office of Planning indicated that the integration of a penthouse into the overall design of the building and its roof could be achieved the following ways:

1. A sloped setback at a forty-five degree angle from the building face could achieve essentially the same visual setback that exists in the current regulations, as seen from the street level:
2. A cornice or architectural embellished parapet wall extending no more than five feet above the roof would strengthen the visual cap of the building, reduce the sight lines to the penthouse and tend to divert the viewer's attention from the penthouse; and
3. Increasing the roof height would essentially be comparable to a twenty-foot high parapet wall. It would provide more flexibility in the design and integration of the roof and penthouse, and increase an opportunity to pursue the Comprehensive Plan policy for Downtown by utilizing architectural embellishments and other means to visually strengthen the roof.

The Office of Planning, by that same memorandum, identified the three types of telecommunications antennas; namely local communications, satellite earth stations, and microwave

terrestrial. The OP gave examples of how each type is typically used including physical features associated with them; namely, size, mounting height, mounting locations, etc.

The proposal required that all penthouses be setback to a 1:1 ratio from the perimeter of the structure (2:1 ratio in the C-3-C and C-4 Districts), that the height of penthouses not exceed 18 feet 6 inches, that no mechanical equipment exceed that height limit, that an elevator penthouse be permitted to exceed 18 feet 6 inches as a special exception to permit rooftop access, that more than one mechanical equipment enclosure be permitted in certain conditions, that the character, material and color of all penthouse enclosures be essentially the same as the structure, and that the height increase of parapet walls be permitted for architectural embellishments as a special exception.

The proposal also defined antenna, permitted dish antennas to be mounted no more than seven feet in height under certain conditions in the R-1. through R-5-A Districts (no more than nineteen feet in height in the R-5-B District), permitted telecommunications antenna as an accessory structure in any required yard to exceed a four foot height limit, required that roof-mounted telecommunications antennas meet certain conditions, and permitted telecommunications antennas to exceed permitted height limits.

At the public hearing, the Commission heard testimony from representatives of various architectural firms regarding penthouses, and received considerable testimony from various representatives of the communications industry.

Representatives from the architectural community opposed the setback proposal for roof structures because it would in their opinion, stifle the opportunity for creative design solutions; e.g., infill buildings and unusually shaped lots, intended illusion of height, or intended design relief in a continuous facade. They supported the retention of the current setback provisions of the Zoning Regulations.

Various architects, by testimony presented at the public hearing, supported permitting more than one penthouse as well as rooftop access by permitting elevator penthouses to exceed 18 feet 6 inches. They believed that the ability to construct buildings in stages would be improved and that more functional uses of rooftops could be made.

Architects also supported the concept of encouraging architectural embellishments at the roofline and would encourage some streamlining of the six-month process before the Board of Zoning Adjustment (BZA).

A registered mechanical engineer, by testimony presented at the public hearing, recommended that the height limit for mechanical equipment enclosures be increased to 19 feet - 6 inches to 20 feet because it would provide for the most efficient operation of cooling towers.

The Zoning Commission heard testimony from representatives of the C & P Telephone Company, the Columbia Broadcasting System, the MCI Telecommunications, Inc., the GTE Communications Corp., the Direct Satellite Television, Inc., and several individuals, all of whom expressed grave concerns about the incompleteness of, problems and technological constraints associated with, and loop-holes in the proposal.

Subsequent to the conclusion of the public hearing, the Zoning Commission determined that the issues raised by the communications industry and others were so vast and complex that the proposal regarding the definition and treatment of antennas required further consideration. Consequently, on June 10, 1985, at its regular monthly meeting, the Zoning Commission took proposed action to amend the penthouse provisions of the Zoning Regulations, only, and to consider the antenna provisions of the Zoning Regulations at a later time.

A notice of proposed rulemaking was published in the D.C. Register on August 2, 1985 (32 DCR 4506). No comments were received related to the substance of the proposal, as a result of the publication of that notice of proposed rulemaking.

There were no Advisory Neighborhood Commissions that expressed their concerns relative to this case.

On January 13, 1986, at its regular monthly meeting, the Zoning Commission authorized the scheduling of an additional public hearing on the antenna provisions of the Zoning Regulations.

As to the concerns regarding penthouse height limits, the Commission believes that the lack of any strong interest of the architectural and mechanical engineering communities to increase the height limit, indicates that the existing height limit apparently works well.

As to the concern regarding penthouse setback requirements, the Zoning Commission is not persuaded at this time that the current provisions of the Zoning Regulations requiring setbacks to be measured from the lot line, in lieu of the perimeter of the structure, should be changed,

As to the concern regarding the prohibition against more than one penthouse enclosure, the Zoning Commission believes that this prohibition is unreasonable because of changing

technology in roof-mounted equipment (e.g. satellite dish antennas and certain mechanical equipment), the building designs that include more than one mechanical core, and the need for greater flexibility in the phasing of construction,

As to the concern regarding increasing the height of parapet walls, the Zoning Commission believes that building and roofscape designs could be improved by permitting such increase. The Commission, however, is not prepared to permit such increase in the low or medium density zone districts.

As to the concern regarding increasing the height of elevator penthouses to allow rooftop access, the Zoning Commission believes that through creative design techniques, such objectives can be realized via the current regulations and this action of the Zoning Commission.

The proposed action of the Zoning Commission to amend the Zoning Regulations was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by report dated August 1, 1985, found that the proposed action of the Zoning Commission would neither adversely affect the Federal Establishment or other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital. The NCPC requested the Zoning Commission to consider adopting the proposed text of the advertised public notice for this case requiring penthouse setbacks to be measured from exterior walls in keeping with the Height of Buildings Act of 1910.

On May 8, 1986, at a special meeting and subsequent to review of the NCPC report, the Zoning Commission determined that it would request the NCPC to provide the Zoning Commission with information that expanded on the request of the NCPC. The NCPC, by response dated June 3, 1986, indicated that "the 1910 Height Act's requirement of penthouse setback from exterior walls is clearly intended to hide or screen penthouses from street views. Penthouse setbacks from lot lines do not provide this screening effect (unless the building line perimeter of roof, and lot line are in the same vertical plane) ."

On June 9, 1986, at its regular monthly meeting and at the request of the Chairperson, the Zoning Commission considered a memorandum from the Zoning Secretariat dated June 6, 1986, which noted a history of administrative construction of the penthouse setback requirements of the Height Act and Zoning Regulations. The Zoning Secretariat recommended the following proposed language to ensure that the various provisions of the Zoning Regulations, which govern setback requirements for roof structures, do not operate in conflict with the 1910 Height Act:

"No roof structure shall be erected in a manner which would violate the setback proviso contained in section 5 of the Act of June 1, 1910 (36 Stat. 454)."

The Commission concludes that this language is unacceptably ambiguous. To the Commission, the reference of the Height Act to "exterior walls" is clear, and leaves no room for amendment by administrative construction. The Commission intends that its use of the phrase "exterior walls" not be subject to exceptions under any circumstance,

As to the concern regarding that penthouse setback requirements not be in conflict with the 1910 Height Act, the Zoning Commission believes that its decision in this case lawfully and appropriately addresses the matter.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan of the District of Columbia.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations regarding the treatment of penthouses.

The text amendments set forth below reference the format and numbering system of the December, 1985 edition of the District of Columbia Municipal Regulations (DCMR) Title 11. The numbers contained in the brackets reference the numbering system of the Provisional Edition of DCMR Title 11, dated August, 1983. The specific amendments to DCMR Title 11 (the Zoning Regulations) are as follows:

1. In an R District, control housing for mechanical equipment, a stairway or elevator penthouse constructed at any height, and prevent equipment from extending above the penthouse height limit by deleting existing §400.8 and adding new §§400.8 and 400.9 as follows:
 - 400.8 [3201.26] If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:
 - (a) It shall meet the requirements of §411 [3308];
 - (b) It shall be set back from all exterior walls a distance at Least equal to its

height above the roof upon which it is located; and

- (c) It shall not exceed eighteen feet, six inches (18', 6") in height above the roof upon which it is located, Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18', 6") height of the housing,

400.9
[3201.27]

Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.

Renumber existing §§400.9 through 400.12 to 400.10 through 400.13 [3201.27 through 3201.23 to 3201.28 through 3201.210].

2.

In an SP District, control housing for mechanical equipment, a stairway or elevator penthouse constructed at any height, and -prevent equipment from extending above the penthouse height limit by deleting existing §530.5 and adding new §§530.5 and 530.6 as follows:

530.5
14201.221

If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

- (a) It shall meet the requirements of §411 [3308];
- (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
- (c) It shall not exceed eighteen feet, six inches (18', 6") in height above the roof upon which it is located . Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18', 6") height of the housing.

530.6
[4201.23]

Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located,

Renumber existing §530.6 to §530.7.

3. In a W District, control housing for mechanical equipment, a stairway or elevator penthouse constructed at any height, and prevent equipment from extending above the penthouse height limit and conform the height requirements to the same method of measurement as other districts by deleting existing §§930.2 and 930.4, by renumbering existing 9930.3 to 5930.2 and by adding new §§930.3 and 930.4, as follows:

930.3 (4403.31) If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

- (a) It shall meet the requirements of §411 [3308];
- (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located: and
- (c) It shall not exceed eighteen feet, six inches (18', 6") in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18', 6") height of the housing.

930.4 [4403.4] Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.

4. In a CR District, control housing for mechanical equipment, a stairway or elevator penthouse constructed at any height, and prevent equipment from extending above the penthouse height limit and conform the height requirements to the same method of measurements as other districts by deleting existing §§630.3, 630.5 and 630.6, by renumbering existing §630.4 to 630.3 and by adding new §§630.4 and 630.5 as follows:

630.4 [4503.4] If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

- (a) It shall meet the requirements of §411;

(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and

(c) It shall not exceed eighteen feet, six inches (18', 6") in height- above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18', 6") height of the housing,

630.5
[4503.5]

Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.

5.

In a C District, control housing for mechanical equipment, a stairway or elevator penthouse constructed at any height, and prevent equipment from extending anove the penthouse height limit by replacing existing §§770.7 and 770.8 with the following:

770.7
[5201.24]

If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

(a) It shall meet the requirements of §411;

(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;

(c) In the C-5(PAD) District, it shall be set back from that portion of the perimeter of the roof fronting on a street a minimum distance equal to twice the height of the roof structure above the roof upon which it is located; and

(d) It shall not exceed eighteen feet, six inches (18', 6") in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18', 6") height of the housing.

770.8
[5201.25)

Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.

6. In a C-M or M District, control housing for mechanical equipment, a stairway or elevator penthouse constructed at any height, and prevent equipment from extending above the penthouse height limit by deleting existing §840.2(b) and adding new §§840.3 and 840.4 as follows:

840.3
[6201.22] If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

- (a) It shall meet the requirements of §411;
- (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
- (c) It shall not exceed eighteen feet, six inches (18' 6") in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18' 6") height of the housing.

840.4
[6201.23] Housing for mechanical equipment, a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.

Renumber existing §840.3 to 5840.5.

7. Allow more than one enclosure for penthouses and mechanical equipment under certain conditions by adding a new §411.4 as follows:

411.4
[3308.12] 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 and at each roof level.

Renumber existing §§411.4 through 411.16 to 411.5 through 411.17, Renumber section references accordingly.

8. Permit increased height to allow parapet walls designed to improve the roofscape in districts where the permitted height is ninety feet or greater by adding to the definition of "Building, height of" in §199 the following:

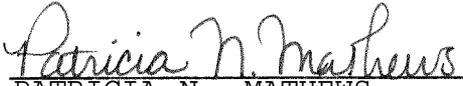
8. Permit increased height to allow parapet walls designed to improve the roofscape in districts where the permitted height is ninety feet or greater by adding to the definition of "Building, height of" in §199 the following:

In those districts in which the height of building is permitted to be ninety feet (90') or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet (3) in height.

Vote of the Zoning Commission taken at the public meeting on June 10, 1985: 4-0 (George M. White, Patricia N. Mathews, John G. Parsons, and Lindsley Williams, to approve - Maybelle T. Bennett, not present not voting) .

This order was adopted by the Zoning Commission at its regular public meeting on June 9, 1986 by a vote of 4-0 (John G. Parsons, George M. White and Patricia N. Mathews to adopt as amended and Lindsley Williams, by absentee vote to adopt, - Maybelle T. Bennett, not present, not voting).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order is final upon publication in the D.C. Register, and will take effect sixty days after publication in the D.C. Register, specifically on 04 JUL 1986.



PATRICIA N. MATHEWS
Chairperson
Zoning Commission



EDWARD L. CURRY
Acting Executive Director
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