

# Holland & Knight

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January 7, 2016

## **VIA IZIS AND HAND DELIVERY**

Board of Zoning Adjustment of the  
District of Columbia  
441 4th Street, N.W - Suite 210S  
Washington, D.C. 20001

Re: **Application for Special Exception and Variance Relief**  
**901 5<sup>th</sup> Street, NW (Square 0516 Lot 0059)**  
**BZA Case No. 19103**

Dear Members of the Board of Zoning Adjustment:

On behalf of the Applicant for the above-referenced application, we hereby submit the following post-hearing filing as requested by the Board at the December 15, 2015, public hearing on the application. At the conclusion of the hearing, the Board voted unanimously to approve the requested variances for minimum parking (§2101.1), parking access (§2117), rear yard (§774), and closed court (§776). In addition to the aforementioned variances, the Applicant also requested special exceptions pursuant to Sections 3104.1 and 411.11 of the newly adopted penthouse regulations for penthouse setback relief (§411.18), and to allow a portion of the proposed penthouse to be devoted to a nightclub, bar, cocktail lounge, and/or restaurant use (§411.4(c)). The Board delayed its decision on the requested special exceptions until January 12, 2016, as the newly adopted penthouse regulations were not yet in effect at the time of the public hearing. Since then, the new penthouse regulations have taken effect, having been published in the DC Register on January 8, 2016.

During the course of public hearing, the Board raised several questions related to the requested penthouse setback relief and the proposed standalone egress stair located on the roof along the east property line. The Board requested information that elaborated upon the potential visual impacts of the requested setback relief when observed from the public alley. In addition, the Board requested the Applicant to evaluate ways to reconfigure the proposed penthouse habitable and mechanical space, save for the proposed elevator core, to reduce the extent of setback relief that is required, noting that multiple penthouse heights were permitted under the new penthouse regulations and could potentially help reduce the extent of setback relief. The Board also requested the Applicant to modify the proposed egress stair, as necessary, to provide the required setback from the east exterior wall.

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As discussed below, the Applicant has made several modifications to the proposed roof plan, which, through a combination of increased setbacks and unequal penthouse heights, results in a substantial reduction in the extent of requested penthouse setback relief. However, as a result of these changes, the Applicant needs relief from the penthouse height requirements of Section 411.9 to allow enclosing walls to have unequal heights. While the newly adopted penthouse regulations permit enclosing walls for penthouse habitable space, penthouse mechanical space, and mechanical equipment screening to each have a separate height, each of these must individually be designed to a uniform height. This additional relief can be granted as part of the prior requested, and properly noticed, special exception under Section 411.11 of the Zoning Regulations.

Finally, the Board instructed the Applicant to follow-up with Advisory Neighborhood Commission 6E (the “ANC”) to specifically discuss the request to devote a portion of the proposed penthouse habitable space to a nightclub, bar, cocktail lounge, and/or restaurant use. While this request was part of the Applicant’s presentation to the ANC provided on September 1, 2015, the report filed by the ANC on November 9, 2015, did not specifically comment on this request. Thus, noting the explicit decision of the Zoning Commission to make these particular uses within a penthouse subject to a special exception so as to provide an opportunity for community input, the Board preferred additional comment from the ANC prior to making its decision.

### Revised Plans

For the Board’s convenience, and for administrative efficiency, the Applicant has prepared a full set of revised plans, attached hereto, which shall replace all previously filed sets plans. The revised plans reflect modifications made to the proposed roof plan to respond to comments and requests made by the Board at the public hearing. These modifications are described in detail below. In addition, the revised plans reflect refinements made to the building façade to address comments provided by the Historic Preservation Review Board (HPRB), which recently gave concept approval to the project at its December 17, 2015, hearing. These refinements did not, in any way, change the variances and special exceptions requested by the Applicant, nor did they create any new areas of zoning relief. Due to the possibility that further refinement to the building façade may be necessary to obtain final HPRB approval, the Applicant restates its request for flexibility to make design refinements to the exterior of the building so long as such refinements do not increase the extent of relief, or create new areas of zoning relief.

With respect to the roof plan modifications made in response to the Board’s comments, as stated above, the Applicant has substantially reduced the extent of requested setback relief through a combination of increased setbacks and multiple penthouse heights. In fact, the only area of the penthouse now requiring setback relief is a relatively small portion of the elevator core which, as demonstrated by the Applicant in its prehearing statement and at the public hearing, cannot be setback due to considerable operational constraints that would result if the core was shifted from its proposed location.

To the north of the elevator core, in the area devoted to residential communal recreation space, the Applicant has lowered the height of the eastern portion of the penthouse from 18'-6" to 10'-0". In addition, the width of the building has been increased by one (1) foot, or from 73'-0" to 74'-0". The slight increase in building width and partial decrease of penthouse height results in a compliant penthouse setback to the north, east, and to the west along 5<sup>th</sup> Street.

To the east of the elevator core, the width of the penthouse has been reduced by setting the north wall of the penthouse back a distance of 10'-0" from the exterior wall facing the public alley, which reduces the amount of penthouse space by approximately 150 square feet. In addition, similar to the approach taken on the north side of the core, the Applicant has reduced the height of the northern portion of the penthouse to 10'-0". The reduction in width and partial reduction in height results in a compliant penthouse setback on the north, and on the south along I Street.

Finally, per the Board's request, the Applicant has modified the standalone egress stair previously proposed to be directly in line with the east exterior wall without any setback. While initially proposed to have a height of 18'-6", the Applicant has reduced the height of the egress stair to 10'-0", and has also shifted the stair to the west by 10'-0". These changes result in a compliant setback condition along the entire east exterior wall, and allow the stair and main penthouse to be incorporated into a single enclosure.

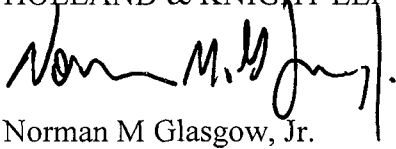
#### ANC Comment on Special Exception for Certain Penthouse Uses

Per the Board's request, the Applicant sought further comment on its special exception request to locate a bar, restaurant, cocktail lounge, or nightclub use within the proposed penthouse at the ANC's regularly scheduled, duly noticed, meeting held on January 5, 2016. Following a presentation by the Applicant, and with a quorum present, the ANC voted unanimously 7-0-0 in support of the special exception provided the use established is not a nightclub, which the Applicant is amenable to. No other comments or conditions were made by the ANC. A formal report from the ANC is expected to be filed with the Board prior to the January 12<sup>th</sup> scheduled decision.

#### Conclusion

The Applicant has carefully considered the comments provided by the Board, and as a result has substantially reduced the extent of requested penthouse setback relief. As shown in the revised plans, with the exception of a small portion of the elevator core, the rest of the proposed penthouse will provide the required setbacks through a combination of setbacks and multiple penthouse heights. However, as noted above, the Applicant's use of multiple mechanical penthouse heights and multiple habitable penthouse heights necessitates relief from the requirements of Section 411.9, which can be granted as part of the special exception already requested, and properly noticed, by the Applicant. Therefore, based on the revised plans,

information provided at the public hearing and included in the case record, and on the ANC's unanimous support for a restaurant, bar, and/or cocktail lounge use within the proposed penthouse, the Applicant submits that it has satisfied the burden of proof under Sections 3104.1 and 411.11 of the Zoning Regulations, and respectfully requests the Board to approve the remaining special exception relief.

Respectfully submitted,  
HOLLAND & KNIGHT LLP  
  
Norman M Glasgow, Jr.

Enclosures

cc: Jennifer Steingasser, Office of Planning (w/encl., via hand delivery)  
Joel Lawson, Office of Planning (w/encl., via hand delivery)  
Stephen Cochran, Office of Planning (w/encl., via hand delivery)  
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Advisory Neighborhood Commission 6E (w/encl., via hand delivery)  
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Pleadings file