

February 15, 2018



**Meridith H. Moldenhauer**  
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VIA IZIS

Frederick Hill, Chairperson  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street NW Suite 210S  
Washington, DC 20001

**Re: BZA Application 19722 - 923-927 5<sup>th</sup> Street NW**  
**Applicant's Additional Request for Special Exception Relief**

Dear Chairperson Hill and Members of the Board:

On behalf of Kline Operations, LLC (the "Applicant"), please find enclosed the Applicant's Additional Request for Special Exception Relief. The Applicant requests this relief pursuant to 11 DCMR § X-901.2 and Subtitle C § 1500.3(c) to permit restaurant or cocktail lounge use in the project's proposed penthouse.

This filing includes the following materials:

1. Statement of the Applicant including the burden of proof for this additional relief
2. Amended Form 135 Self-Certification
3. Certificate of Service

Thank you for your attention to this matter. If you have any questions please do not hesitate to contact me on behalf of the Applicant.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "Meridith H. Moldenhauer", written over a horizontal line.

Meridith H. Moldenhauer  
Alyssa L. Bigley  
1200 19<sup>th</sup> Street NW  
Washington, DC 20036

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF  
KLINE OPERATIONS, LLC**

**923-927 5<sup>TH</sup> STREET NW  
ANC 6E05**

**ADDITIONAL REQUEST FOR SPECIAL EXCEPTION RELIEF**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Kline Operations, LLC (the “Applicant”), the contract purchaser of the property located at 923-927 5<sup>th</sup> Street NW, (Square 0516; Lots 0827, 0828, 0829 and 0833) (the “Property”) in support of their Additional Request for Special Exception Relief pursuant to 11 DCMR Subtitle X § 901.2 from Subtitle C § 1500.3 to permit penthouse use as a restaurant or cocktail lounge (“Penthouse Use”).

**II. BACKGROUND AND INITIAL APPLICATION**

The Applicant filed their initial application on January 29, 2018 seeking area variance relief from the closed court and loading berth requirements, as well as special exception relief from the rear yard and penthouse setback requirements in the D-4-R Zone. The plans included with the initial application show a penthouse structure. See BZA Ex. No. 9A1 p. 15. At the time of filing, the Applicant was in the process of finalizing the proposed hotel operator’s intended use for the penthouse and other amenities areas on the Property. Now that the proposed use for the penthouse has been determined, the Applicant requests this additional area of relief from Subtitle C § 1500.3(c).

**III. NATURE OF SPECIAL EXCEPTION RELIEF SOUGHT AND STANDARD OF REVIEW**

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR Subtitle X § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

#### **IV. APPLICANT MEETS BURDEN FOR SPECIAL EXCEPTION RELIEF**

##### **A. The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps**

The purposes of the D zones and the D-4-R zone specifically are to promote the development of high-density residential and mixed-use neighborhoods in the Mount Vernon Triangle neighborhood located between New York, New Jersey, and Massachusetts Avenues, N.W.; to provide for the orderly development and use of land and structures; and to provide incentives and flexible mechanisms for achieving the retail, residential, historic, and open spaces goals through the generation and use of density credits that can be traded within defined areas. Subtitle I §§ 100.1, 102.1(k), and 530.1. In addition, “the purpose of regulating use categories in D zones is to allow for an appropriate mix of residential, office, lodging, retail, service, entertainment, cultural, and other uses.” Subtitle I § 300.1.

The requested relief will be in harmony with the purpose and intent of the Zoning Regulations and related maps because the Zoning Regulations specifically permit restaurant and cocktail lounge use in a penthouse as a special exception. Subtitles C § 1500.3(c). The proposed use aligns with this intent, as the relief will allow the Applicant to operate a restaurant or cocktail lounge in the penthouse of the proposed hotel. The requested relief will permit an efficient design because, due to the constraints on the Property as to width, as well as the requirements in the Mount Vernon Triangle Sub-Area, the Applicant can most efficiently provide such a use in the penthouse space.

**B. The Proposed Relief will not Adversely Affect the Use of Neighboring Property**

Penthouse use relief will not adversely affect the use of neighboring property because the proposed use will be small in scale, distanced from surrounding properties, and designed in such a way to promote noise mitigation. The restaurant and lounge area in the penthouse will be relatively small compared with the building footprint. It will also be screened from the residential properties to the rear, and the open-air roof terrace will be located to the front of the Property facing on 5<sup>th</sup> Street NW, which is primarily non-residential in nature. Further, the penthouse setback from the rear property line, in conjunction with the alley width, will create approximately 28 feet of distance between the penthouse and the residential properties to the rear. In addition, the proposed courts at the penthouse level provide setback and articulated relief from neighboring properties to the north and south, particularly from the adjacent properties that are lower in height than the Project. Moreover, the Applicant will design the penthouse to promote noise-reduction and mitigation from the surrounding properties. Finally, eating and drinking establishments are a permitted use, and even encouraged, in the D-4-R Zone. Consequently, the use of neighboring property will not tend to be adversely affect by the requested special exception relief for penthouse use.

**V. CONCLUSION**

For the reasons stated above, the Project meets the applicable standards for special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the special exception for penthouse use.

Respectfully Submitted,

COZEN O'CONNOR



Meridith H. Moldenhauer  
Alyssa L. Bigley  
1200 19<sup>th</sup> Street NW  
Washington, DC 20036



**BEFORE THE BOARD OF ZONING ADJUSTMENT  
DISTRICT OF COLUMBIA**



**FORM 135 – ZONING SELF-CERTIFICATION**

<i>Project Address(es)</i>	<i>Square</i>	<i>Lot(s)</i>	<i>Zone District(s)</i>
923-927 5th Street NW	0516	827, 828, 829, 833	D-4-R
Single-Member Advisory Neighborhood Commission District(s):		6E05	

**CERTIFICATION**

The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to:

<b>Relief Sought</b>	<input type="checkbox"/> X § 1000.1 - Use Variance	<input checked="" type="checkbox"/> X § 1000.1 - Area Variance	<input checked="" type="checkbox"/> X § 901.2-Special Exception
<b>Pursuant to Subsections</b>		I-207.1, C-909.2	I-205.5, C-1504.1, C-1500.3(c)

Pursuant to 11 DCMR Y § 300.6(b), the undersigned agent certifies that:

- (1) the agent is duly licensed to practice law or architecture in the District of Columbia;
- (2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
- (3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

**I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.  
(D.C. Official Code § 22-2405)**

<i>Owner's Signature</i> 		<i>Owner's Name (Please Print)</i> BRAD KLINE	
<i>Agent's Signature</i> 		<i>Agent's Name (Please Print)</i> MERIDITH H. MOLDENHAUER	
Date	2.15.18	D.C. Bar No.	494695
		or	Architect Registration No.

**CERTIFICATE OF SERVICE**

I certify that on February 15, 2018, a copy of this Additional Request was served via email on the Office of Planning and Advisory Neighborhood Commission 6E, as follows:

District of Columbia Office of Planning  
1100 4<sup>th</sup> Street SW, Suite E650  
Washington, DC 20024  
planning@dc.gov

Advisory Neighborhood Commission 5E  
Alex Marriot, SMD 6E05 and Chair  
6E05@anc.dc.gov  
Anthony Brown, Chair of Zoning Subcommittee  
brownanc6e@gmail.com

COZEN O'CONNOR



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