



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Stephen Cochran, AICP, Case Manager
 JLS
 Joel Lawson, Associate Director Development Review

DATE: March 23, 2018

SUBJECT: BZA Case No.19722– 923-925 5th Street, NW -- Square 713, Lot 53

I. BACKGROUND

The applicant has made the following changes to its submissions and requests since its original filing:

- a. An additional special exception request pursuant to Subtitle C § 1500.3 (c) for a restaurant/lounge in the proposed penthouse (Exhibit 30);
- b. An additional area variance request from the interior height requirements of Subtitle I § 612.4 (Exhibit 34)
- c. A statement that the interior height relating to “b”, above, would be reduced an additional foot (Exhibit 50, with corresponding plan changes not yet filed);
- d. An additional area variance from the loading access requirements of Subtitle C § 909.3 (Exhibit 46);
- e. The interior height of the first floor that is within the Mount Vernon Triangle’s Principal Intersection Area has been reduced from 20 feet to 19 feet, changing the amount of the requested variance from the requirements of Subtitle I § 612.4;
- f. The provision of a 1.5-foot rear yard resulting in a reduction in the amount of the requested special exception relief from the requirements of Subtitle I § 205.4;
- g. A statement that the proposed building height would be reduced from 100 feet to 99 feet (Exhibit 50, with corresponding plan changes not yet filed).

This OP report analyzes the application as it had been updated in writing by 2 pm on Friday, March 23, 2018, but with some architectural plan revisions not yet filed.

The application is self-certified.

A. The Office of Planning (OP) RECOMMENDS THE BOARD APPROVE the following requested relief for a proposed hotel building, with limited retail, at 923-927 5th Street, NW:

1) APPROVAL OF VARIANCES pursuant to Subtitle X § 1000.1 from:

- **The closed court width and area requirements of Subtitle I § 207.1** for two closed courts
 - (North Court: 18.5’ wide, 684.5 SF area required; 6’2” wide, 322.9 SF proposed);
 - (South Court: 16.66’, 555.6 SF area required; 6’2” wide, 204.7 SF proposed).



- **The Mount Vernon Triangle Principal Intersection Area (MVT/PIA) interior height requirement of Subtitle I § 612.4** -- (22-foot height, to depth of 36 feet, required; 19-foot height, to depth of 24 feet, proposed).
- **The loading access requirements of Subtitle C § 904.2** – (driveway or access aisle \geq 12 feet required; 11.5 feet provided).
- **The loading requirements of Subtitle C § 901.1** -- (2 berths and 2 loading platforms required; 1 berth and one loading platform proposed):
 - OP notes that the District Department of Transportation’s findings on this application assume the applicant will implement the loading management plan proposed in Exhibit 39-B, pages 17,18 and as summarized on pages 2 and 3 of the District Department of Transportation ‘s (DDO’s) recommendations for this case (Exhibit 45).

2) APPROVAL OF SPECIAL EXCEPTIONS pursuant to Subtitle X § 901.2:

- **To permit a rooftop penthouse lounge, pursuant to Subtitle C § 1500.3 (c)** (*see Exhibit 39A6, page 6*):
 - OP notes that the applicant states it has agreed with ANC 6E to limit the hours of operation for the rooftop lounge shall be limited to 1 a.m. on weekdays and 2 a.m. on weekends.
- **For relief from the rear yard requirements of Subtitle I § 205.1, pursuant to Subtitle I § 205.5**--(20.83 feet required beginning 25 feet about the height measuring point required: 1.5 feet proposed):
 - OP notes that the applicant has informed OP that on the proposed east -facing windows that are directly opposite residential windows on the west side of the rear wing of 450 K Street, NW, the applicant plans to install translucent vertical window treatments to enhance privacy for the residential units.

B. OP RECOMMENDS THE BOARD DENY the following request:

- **A Special Exception from the penthouse setback requirements of Subtitle C § 1502.1(c)(4)**, pursuant to Subtitle X § 901.2 and Subtitle C § 1504.1 to permit:

North side of building: (1:1, 20-foot setback required; 0.25:1, 5-foot setback proposed). (*See Exhibit 39A6, page 7*);

South side of building: (1:1, 20-foot setback required; 0 setback proposed). (*See Exhibit 39A6, page 7*).

II. AREA, SITE DESCRIPTION, AND PROPOSAL

Applicant: Klein Ops, LLC		Legal Description: Square 516, Lots 827-829, 833	
Address: 923-927 5 th Street, NW		Ward: 6	ANC: 6E (05)
Zoning: D-4-R		Historic Preservation: contributing historic façade in non-contiguous Mount Vernon Triangle Historic District	
Lot Features	The 60-foot wide 6,639 square-foot, flat, generally rectangular lot is on lot south of the southeast corner of 5 th and K Streets, NW in the Mount Vernon Triangle area of Downtown. It is currently vacant, but for the historic one-story façade of a building previously on the site. The Square has an active alley system of varying widths, entered from K Street, NW. The site has access to this system via an 11.5-foot section of the site’s southern boundary.		
Adjacent Properties	North-adjacent: two and three story historic buildings. South-adjacent: two story historic building. East-adjacent: rear yards totaling 8.5 feet in width for two properties, east of which is an 11-story apartment building with at-risk side windows.		
Neighborhood Character	The Mount Vernon Triangle is completing its transition from a PDR area to a neighborhood of high-rise apartments, office buildings, hotels and retail uses, including several one to four-story historic properties occupied by non-residential uses.		
Zoning	<p>The property is in the D-4-R zone, which requires fulfillment of a 4.5 FAR residential requirement either on-site, through the purchase of Credits from within the same Credit Trade Area or through a combination of affordable housing development and Credit purchases. The zone permits 3.5 FAR of non-residential density provided the minimum residential requirements are met and provides for additional density for residential uses exceeding the minimum requirement, or for non-residential uses through the purchase of Credits generated by historic preservation or other residential development within the Credit Trade Area. The applicant has stated it will achieve additional non-residential density through the purchase of Credits</p> <p>The site is fully within the Mount Vernon Triangle (MVT) sub-area of downtown, and the northern 18 feet of the site is also within the MVT Principal Intersection Area (MVT-PIA), which has very particular dimensional, design and use requirements. In this zone, the site’s frontage on the 80-foot wide 5th Street, permits a maximum building height of 100 feet. With the purchase of credits the density is essentially limited by the building’s height.</p>		
Proposal	The applicant is proposing the consolidation of four lots and the construction of a 9.94 FAR, 11-story, 65,957 square foot (sf), 153-key hotel with ground floor retail within the hotel’s lobby. The building would be 99 feet tall, with a twenty-foot high, two-story penthouse containing restaurant/lounge on its first floor and mechanicals above. A terrace facing 5 th Street would serve the lounge. The building would contain one loading dock and berth, and no parking spaces.		



III. ZONING REQUIREMENTS and REQUESTED RELIEF

Table 1: Zoning Analysis for 6,639 SF site in the D-4-R zone.

Item	Regulation	Required / Permitted	Proposed	Relief
Lot Area	n/a	n/a	Same	Conforming
FAR	I § 547.1	As limited by bulk & height restrictions, if residential or Credits purchased	9.94	Conforming, if Credits purchased
Lot Occ.	I-§202	Up to 100%	<i>To be updated by applicant. (100% - 1.5 ft. rear yard)</i>	Conforming
Bldg. Height	I-§532.1	Limited to 100 feet by street right-of way width	99 ft.	Conforming
Penthouse (height, setbacks, etc.)	I-§ 540.5 C-§1502.1	20 ft. height inclusive of 1 st story habitable space and second story mechanical space. 1:1 setback from front, rear, side.	Penthouse uniformly 20 feet, w/ 2 nd story mechanicals. To be determined if Height Act permits side setback relief - <u>Front</u> , 20’ (1:1) - <u>Rear</u> 22’ (>1:1) - <u>North Side, from closed court & from property line: 0 ft.</u>	- Conforming - Conforming Special Exception Requested

Item	Regulation	Required / Permitted	Proposed	Relief
			- <u>South Side, from closed court and from property line: 0'</u>	<i>Special Exception Requested</i>
Penthouse (number)	C-§§ 1500.6, 1500.7	One permitted, but with accommodation of separate elevator cores and roof levels	One	Conforming.
Penthouse (uses)	<i>C-§1500.3 X – Chapter 9</i>	<i>Nightclub, bar, etc. permitted only by Special Exception</i>	<i>Hotel lounge</i>	<i>Special Exception Requested</i>
Front Build-To	I-§§526.1, 203	≥75% of 1 st 15 ft. of ht. to ≤ 4 ft. of property line on Primary Street	100%	Conforming
Front Setback	I § 527.1	None required	None	Conforming
Rear Yard	<i>I-§ 205.4</i>	<i>20.83 ft.</i>	<i>1.5 ft.</i>	<i>Special Exception requested</i>
Side Yard	I-§ 206	Not required. If provided, ≥ 4 ft.	No side yards.	Conforming
Closed Ct. Width	<i>I - § 207</i>	Comm.& Lodging: >2.5"/ft. ht. or 12' <ul style="list-style-type: none"> • <i>North: 18.5'</i> • <i>South: 16.7'</i> 	<i>6'2". 6'2".</i>	<i>Variances Requested</i>
Closed Ct. Area	I - § 207	Res.: ≥ 2 x (required width) ² or 250 SF <ul style="list-style-type: none"> • <i>North: 684.5'</i> • <i>South: 555.6SF</i> 	<i>322.9 SF 204.7 SF</i>	<i>Variances Requested</i>
Vehicle Entrances	I-§ 602.2	No vehicular entrance/exit from Primary St. (5 st St.)	None on 5th Street	Conforming
Vehicle Parking	C-§702.3(b)	None required	0	Conforming
Bicycle Parking	C-§802	Lodging, long-term: 1/10K sf= 6 Lodging, short: 1/40K sf=2 Retail, long: 1/10K sf=1 Retail, short: 1/3.5K sf= 1	7 spaces provided in cellar; <i>Location of short-term spaces to be clarified</i>	<i>Conforming, subject to clarification of short-term space location</i>

Item	Regulation	Required / Permitted	Proposed	Relief
		Total Long Term: 7 Total Short Term: 3		
Loading (facilities)	C § 901.1 C § 901.8	Minimum for hotel (2) 12' x 30' berths with platform	(1) 12' x 30' berth with platform	Variance requested
Loading (access)	C-§904.2	Access aisle ≥ 12 ft. wide	Property has 11.5 ft. of access from alley to loading area	Variance Requested
Green Area Ratio	I-§208.1	0.2	Not provided	To Be Determined
MVT/PIA (int. ht.)	I-§612.4	22-ft. height to depth of 36 ft.	20 ft. height to depth of 24 ft.	Variance requested
MVT/PIA (use)	I -612.7	Devote 50% of ground floor within PIA to required uses	50% of modules B and D will be devoted to coffee shop in lobby and/or food and drink	Conforming

IV. OFFICE OF PLANNING ANALYSIS OF REQUESTED RELIEF

A. Variances

1. Variances from the closed court width and area requirements of Subtitle I § 207.1 for two closed courts
 - o North Court: (18.5’ wide, 684.5 SF area required for 89’height; 6’2” wide, 322.9 SF proposed) (See Exhibit 39A6, page 4;)
 - o South Court: (16.66’, 555.6 SF area required for 80’ height; 6’2” wide, 204.7 SF proposed) (See Exhibit 39A6, page 4);

Exceptional Condition Resulting in Practical Difficulty if Zoning Regulations Strictly Applied

Between the banks of front or rear facing hotel rooms the center portion of each side façade would be recessed 6’2” from the property line to enable the double loading of a corridor with side-facing rooms that would not have at-risk windows. The applicant has demonstrated that the 60-foot width of the site is narrower than most other lots in the Square and that providing compliant closed courts would result in a 24.8-foot wide building in the center portion of floors 3 – 11, resulting in a practical difficulty for achieving a double-loaded plan;

Relief Would Result in No Substantial Detriment to the Public Good or Zone Plan

Granting the requested reduction would not likely pose a substantial detriment to either the north-adjacent three-story historic property, which has recently been substantially rehabilitated, nor to the historic property to the south. The proposed courts would fulfill the zone’s objectives of ensuring the provision of provide for adequate separation, light and air for the applicant’s building, and for

possible future additions to adjacent buildings, which could be redeveloped with closed courts on their side property lines.

OP recommends approval.

2. Variance from the Mount Vernon Triangle Principal Intersection Area (MVT/PIA) interior height requirement of Subtitle I § 612.4 -- (22-foot height, to depth of 36 feet, required; 20-foot height, to depth of 24 feet proposed). (See Exhibit 39A6, page 3).

Exceptional Condition Resulting in Practical Difficulty if Zoning Regulations Strictly Applied

The applicant's property is within an 18-foot wide by 72-foot deep section of the MVT/PIA. This is an unusually small and narrow portion of the PIA, which has requirements intended to encourage the provision of spaces and uses that would promote active uses within and outside of the buildings on the four corners of the intersection. With the historic buildings to the north already having undergone renovation, the strict application of the regulations would result in the applicant's losing a significant portion of the third story of the proposed building to achieve only 2 additional feet of height and 12 additional feet of depth beyond the proposed 20-foot height to a depth of 36 feet;

Relief Would Result in No Substantial Detriment to the Public Good or Zone Plan

The PIA's requirements are intended to encourage the provision of spaces and uses that would promote active uses within and outside of the buildings on the four corners of the intersection. For the southeast corner of the intersection these objectives have been substantially met through the uses in the recently renovated historic buildings on the corner. With the applicant providing a twenty-foot high lobby space to a depth of 24 feet, and with the intention to include a coffee shop open to the public in the lobby, the granting of the requested relief would pose no substantial detriment to the public good or the zone plan.

OP recommends approval.

3. Variance from the loading access requirements of Subtitle C § 904.2 – (driveway or access aisle \geq 12 feet required; 11.5 feet provided) (See Exhibit 39A6, page 3, and Exhibit 39-B, pages 21, 22 [CTR pages 13, 14]).

Exceptional Condition Resulting in Practical Difficulty if Zoning Regulations Strictly Applied

The property has only 11.5 feet of frontage on the alley at the rear of the site. The applicant proposes the provision of one loading berth and platform, internal to the proposed building. With a curb cut from 5th Street for loading access not being possible, denial of the requested relief would preclude any loading from being included in the building;

Relief Would Result in No Substantial Detriment to the Public Good or Zone Plan

The Square has an extensive alley system with access from I Street and K Street and with adequate room for backing and turning movements. Granting the requested relief would enable major loading

functions to be accessed from the alley, rather than from curbside on 5th Street, thus promoting the Mount Vernon Triangle sub-area’s objectives for furthering an active pedestrian environment, particularly in the Principal Intersection Area.

OP recommends approval.

4. Variance from the loading requirements of Subtitle C §§ 901.1 and 901.4 -- (2 berths and 2 loading platforms required; 1 berth and one loading platform proposed). (See Exhibit 39A6, page 3).

Exceptional Condition Resulting in Practical Difficulty if Zoning Regulations Strictly Applied

The property has only 11.5 feet of frontage on the alley at the rear of the site. With the proposed plans’ achieving one 12-foot wide loading space and berth only by placing these facilities on the diagonal, the internal turning movements to accommodate a second loading space and berth would likely result in the practical difficulty of losing almost all uses other than loading in the rear and middle of the building.

Relief Would Result in No Substantial Detriment to the Public Good or Zone Plan

The applicant’s Comprehensive Transportation Review (CTR) (Exhibit 39-B) indicates that hotel loading could be adequately accommodated with only one loading berth and dock. The District Department of Transportation (DDOT) has indicated it does not object to the requested relief. Granting the relief would not likely result in a substantial detriment to the public good or the zone plan, provided the applicant fully implements the proposed loading management plan (Exhibit 39-B, pages 17,18 of Exhibit [pages 9.10 of Exhibit B, CTR]), as may be modified by recommendations the District Department of Transportation (DDOT) may propose to mitigate or lessen any possible impacts.

OP recommends approval.

B. Special Exceptions

1. Special Exception to permit a rooftop penthouse lounge pursuant to Subtitle C § 1500.3(c) and Subtitle X, Chapter 9. (See Exhibit 7, page 4 Exhibit 39A6, page 3, and Exhibit 39B, pages 29-36).

Harmony with general purpose and intent of Zoning Regulations and Maps

The property is in a high-density Downtown zone. Entertainment, lounge and restaurant uses are encouraged uses in the Mount Vernon Triangle and its Principal Intersection Area. Penthouse regulations permit the requested lounge use by special exception.

Not tend to adversely affect use of neighboring property

The applicant has set the proposed rooftop lounge back from the front and rear of the building. The lounge-adjacent rooftop terrace would be located only at the front of the building. There would be no public access to the rear of the roof, where such use would have the potential to disturb residents

of the nearby apartments at 450 K Street, NW. The applicant has shown the locations of nearby residential buildings (Exhibit 39A, Page 2) and the separation appears adequate.

Meets other specified conditions

There are no other conditions specified for the use. However, OP encourages the applicant to limit the hours of operation for the rooftop lounge to 1 a.m. on weekdays and 2 a.m. on weekends. This is an ANC recommendation to which the applicant has agreed.

OP recommends approval.

2. Exception from the rear yard requirements of Subtitle I § 205.1, pursuant to Subtitle I § 205.5-- (20.83 feet required beginning 25 feet about the height measuring point required: 1.5 feet proposed). (See Exhibit 7, page 4; Exhibit 39A6, page 3; and Exhibit 39B, pages 29-36).

I § 205.1 The Board of Zoning Adjustment may waive the rear yard requirements as a special exception pursuant to Subtitle X and subject to the following conditions:

- (a) *No window to a residence use shall be located within forty feet (40 ft.) of another facing building;*

In a meeting with the applicant and OP, the Zoning Administrator stated that because this criterion applies only if the building for which the relief is sought is a residential building, the applicant may request relief from the rear yard requirement as a special exception under Subtitle I § 205.5, rather than as a variance.

- (b) *No window to an office use shall be located within thirty feet (30 ft.) of another facing office window, nor eighteen feet (18 ft.) in front of a facing blank wall;*

This section is not applicable to a hotel use.

- (c) *A greater distance may be required between windows in a facing building than the minimum prescribed in (a) or (b) if necessary to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines into such habitable rooms; and*

Since the original application the applicant has modified its rear yard request from providing no rear yard, to providing a 1.5-foot rear yard. This was done to ensure satisfaction of the fire-code-related requirement of 10 feet between the rear-facing windows of the proposed hotel and the existing “at-risk” windows on the side of a property three lots to the east, at 450 K Street, NW. Because the width of the two lots between the applicant’s and 450 K Street totals no more than 8.5 feet, it is unlikely that there will be future construction on rear of either of these lots, which would require the blocking-up of the at-risk windows at 450 K Street.

However, to help preserve privacy for the residential windows at 450 K Street, the applicant has agreed to install vertical window treatments for windows on the east side of the

applicant's property that are directly opposite windows on the west side of the rear wing of 450 K Street, NW.

(d) *The building shall provide for adequate off-street service functions, including parking and loading areas and access points*

The zone does not require parking. The applicant is proposing providing one loading berth and loading platform inside of the building. DDOT has determined (Exhibit 45) that the proposed single loading space and platform will be adequate for the building's off-street loading functions, and that, with the conditions noted in the applicant's Comprehensive Transportation Report and the DDOT report, the loading management and access plans will be sufficient.

OP recommends approval.

3. Special Exception from the penthouse setback requirements of Subtitle C § 1502.1(c)(4).

1:1 setback relief is required by Subtitle C § 1502.1 (c) (4):

C-1502.1: Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:

(c) A distance equal to its height from the side building wall of the roof upon which it is located if:

(4) For any zone, it is on a building adjacent to a property improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter-of-right building height; and

The buildings adjacent to both sides of the applicant's property are contributing structure built to a lower height than the proposed building.

The applicant's initial filing for penthouse side setback relief would likely have required a variance from the following zoning regulation, because the proposed 100-foot building height would not have been less than the 100-foot maximum height permitted by the Height Act on a street with an 80-foot right of way.

Subtitle C §1504.2 Relief shall not be granted to the setback requirements of Subtitle C § 1502 for a roof structure located on a building constructed to the maximum height allowed by the Height Act.

With the height reduction to 99-feet, OP has analyzed the request's compliance with the special exception criteria of Subtitle C § 1504.1:

C-1504.1 Relief to the requirements of Subtitle C §§ 1506 – 1500.10 and 1502 may be granted as a special exception by the Board of Zoning Adjustment subject to Subtitle X, Chapter 9 and subject to the following considerations:

(a) 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;

Strict application of the setback requirements could impact the ability of the proposed penthouse to meet the building code's egress requirements for the proposed penthouse lounge. However, the intention of the Zoning Regulation's provisions for occupied penthouses is to enable habitable spaces if the penthouse meets the special exception criteria. The applicant has not demonstrated that it has considered conforming setbacks and that the strict application of these requirements would be unduly restrictive, costly, unreasonable, or inconsistent with building codes.

(b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;

The design directly extends portion of the building wall upwards another 20 feet. The central portions of the side walls are fully-designed and appear to be a single 120-foot tall façade. The roof structure would appear to be more of a direct extension of the building, not as a roof structure.

(c) The relief requested would result in a roof structure that is less intrusive;

The proposed design would result in a penthouse that would be visually attractive if considered as part of the façade of a 120-foot tall building, but would be extremely intrusive as a penthouse in the context of a 100-foot tall building. Because the buildings to the north and south are historic, and considerably shorter than the proposed hotel, it is likely that the sides of the proposed hotel and its penthouse would be highly visible for the foreseeable future.

(d) 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 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;

Given the relatively small size and width of the lot, it is possible, but not yet demonstrated, that strict application of the setback requirements could impact the ability of the proposed penthouse to meet the building code's requirements for the proposed penthouse lounge and could result in a less-efficient building layout to accommodate the fire-code separation for emergency stairs.

(e) Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and

The applicant has not presented alternative layouts or other information to demonstrate that every effort has been made to meet these requirements.

(f) The intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

While the light and air of adjacent buildings should not be adversely affected by the proposed reduction in side setbacks, granting the requested relief would materially impair the intent and purpose of the penthouse setback regulations. One of the intentions of the setback regulations is to make clear distinctions between a building and a penthouse and to ensure that the appearance of the penthouse from adjacent public ways is minimized. When the penthouse regulations were modified in 2016, the Zoning Commission made clear that habitable uses in penthouses could be permitted, provided the penthouse would comply with the Zoning Regulations or would meet the special exception criteria. Habitable penthouse space was not intended to be an entitlement. While the light and air of adjacent buildings should not be adversely affected, granting the requested relief would materially impair the intent and purpose of the penthouse setback regulations.

V. ADDITIONAL DISTRICT AGENCY COMMENTS

The Historic Preservation Board (HPRB) has given preliminary concept approval to the massing and general design of the proposed building, and has asked the applicant to work on design details with staff and return to the HPRB for final concept approval.

The District Department of Transportation (DDOT) filed a report (Exhibit 45) stating the department had no objection to the approval of the requested special and exceptions and variances, provided the applicant implements the loading management plan noted on pages 2 and 3 of the DDOT report.

VI. COMMUNITY COMMENTS

The applicant informed OP that ANC 6C had voted during the week of March 5, 2018 to support the application as it was structured at that time. The ANC had not filed a report in the case record at the time OP completed its report.

The case file contains three requests for party status in opposition (Exhibits 42-44).