

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

Application of
9 New York Ave LLC

BZA Application No:
ANC 6C06

STATEMENT OF THE APPLICANT

This application is made by 9 New York Ave LLC (the “**Applicant**”) to the Board of Zoning Adjustment (“**Board**”) for (i) special exception approval pursuant to Subtitle C § 909.2(a) for relief from the loading requirement under Subtitle C § 901.1 to provide one loading berth and one service delivery space, and (ii) special exception approval pursuant to Subtitle C § 1504.1 for relief from the requirement under Subtitle C § 1500.9 that enclosing walls of a penthouse be of equal, uniform height on a residential building to be redeveloped at 7 New York Avenue NE (Square 671, Lot 14) (the “**Property**”). The proposed project will conform to the Zoning Regulations in all other respects.

I. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X §§ 901.1 of the Zoning Regulations.

II. DESCRIPTION OF THE PROPERTY, SURROUNDING AREA, AND PROJECT

The Property is located in the NoMa neighborhood in Ward 6. The Property is triangular in shape and is located just east of the intersection of New York Avenue, North Capitol Street, and N Street, NE.¹ The Property has frontage on New York Avenue, N Street, and Reservation 183,

¹ Although the Property is triangular in nature, the Applicant notes that the Property does not meet the definition of a “triangular lot” in Subtitle B of the Zoning Regulations: “A lot fronting on two (2) streets at their junction, the streets, forming with each other an angle of less than forty-five degrees (45°).” The lot does not front on the New York Avenue and N Street at their junction, which junction is actually located at the three-way intersection of New York Avenue, N Street, and North Capitol Street. Rather, the Property is more accurately categorized as a “through lot”, which is defined in Subtitle B as “An interior lot having frontage on two (2) or more streets where the streets differ in direction by forty-five degrees (45°) or less.” Note, that the definition of “through lot” appears to have recently changed to remove the “or less” as part of broader text amendments made pursuant to Zoning Commission Case No. 19-13. However, this deletion appears to have been unintentional and not within the requested amendments that were the subject of that case. To the extent that the removal of “or less” was intentional and the definition of a through lot is “An interior lot having frontage on two (2) or more streets where the streets differ in direction by forty-five degrees (45°),” the Applicant also requests relief from the rear yard requirements of the D-5 zone district.

has a lot area of approximately 5,009 square feet and is located in the D-5 zone district. The Property is located immediately to the west of 33 New York Avenue, which is currently improved with an approximately 130-foot tall hotel, and across N Street from the Belgard, an approximately 350-unit apartment building. The surrounding area is developed primarily with retail and residential buildings and consists of properties zoned D-5, RA-4, MU-5A and MU-4.

The Property is currently improved with an approximately 3-story building formerly owned by the Covenant House. The Applicant proposes to redevelop the Property with a 116-unit residential apartment building, including ground floor and penthouse amenity spaces (the “**Project**”). The Project will be approximately 130 feet in height, with a 20-foot penthouse, and will contain approximately 68,805 square feet of gross floor area, as shown on the plans attached as Exhibit A (the “**Plans**”). Given the Project’s proximity to several mass transit options, it will not provide parking; vehicle parking is not required in the D-5 zone east of 20th Street NW.

**III. THE APPLICATION SATISFIES THE CRITERIA FOR THE REQUESTED
RELIEF**

**A. Special Exception Pursuant to Subtitle C § 909.2 to Permit No Loading Space
on the Property**

The Applicant requests special exception approval pursuant to Subtitle C § 909.2(a) for relief from the requirement to provide one loading berth, platform and one service/delivery space for the Project under Subtitle C § 901.1. Under Subtitle C § 901.1, a residential use of more than 50 dwelling units, such as the Project, is required to provide one loading berth, a loading platform and one service/delivery space. The Project proposes to provide a loading area in public space along N Street, rather than providing a loading berth and service/delivery space on the Property. Under Subtitle X § 901.2, in order to obtain special exception relief, an applicant must show that the requested relief will be in harmony with the intent and purpose of the Zoning Regulations and

Zoning Maps and will not adversely affect neighboring properties. Additionally, for special exception relief from the loading requirements pursuant to Subtitle C § 909.2(a), the applicant must demonstrate that the only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in Chapter 9 of Subtitle C, or in Chapters 6 or 11 of Title 24 DCMR. As discussed below, the Project meets both the general requirements for special exception relief under Subtitle X § 901.2 and the specific conditions for approval under Subtitle C §909.2(a).

1. *The only means by which a motor vehicle could access the lot is from a public street, and provision of a curb cut or driveway on the street would violate any regulation in Chapter 9 of Subtitle C, or in Chapters 6 or 11 of Title 24 DCMR. (C § 909.2(a))*

As shown on the Plans, the Property is accessible to motor vehicles only from the public streets surrounding the Property, which would require a curb cut or driveway on the street. As described below, such a curb cut or driveway at the Property would not comply with Title 24 DCMR § 605.8, which requires that “all curb cuts and driveways shall meet the specifications of and be permitted by the District Department of Transportation.” Specifically, a curb cut or driveway on the Property would violate several specifications set forth in the District Department of Transportation’s Design and Engineering Manual (the “**DDOT Design and Engineering Manual**”). As an initial matter, using the Property’s existing curb cuts on New York Avenue for loading access would be the disfavored approach according to the DDOT Design and Engineering Manual, which states that a curb cut should be located “on the street with the lower volume of vehicular traffic when a property fronts on two or more streets and when consistent with area planning and historic preservation objectives.” (See DDOT Design and Engineering Manual, Section 31.5(g)). Therefore, any curb cuts at the Property for loading access would likely need to be located on the less busy N Street in order to comply with DDOT standards.

Additionally, the shape of the Property would result in loading movements that violate the DDOT Design and Engineering Manual's prohibition on back-in movements through public space. Section 31.5(h) of the DDOT Design and Engineering Manual requires that "turning movements must be accommodated on private property to ensure head-in/head-out vehicle movements through public space." The Property is narrow and triangular and even at its widest point is only 66 feet, 9 inches wide and therefore would be unable to feasibly accommodate turning movements on private property if it provided the required loading area within the property line. As shown on Sheet A04 of the Plans, accommodating the turning movements on private property would significantly expand the footprint necessary for the loading area on the ground level of the Project, effectively limiting any reasonable ground floor use of the site other than loading. It would also force the elevator core to be located in the western part of the building, where the elevator override would violate setback requirements at the penthouse level. This setback violation would also be the case if the existing curb cuts on New York Avenue were used for loading access, as shown on Sheets A03 of the Plans.

Furthermore, a curb cut on N Street would violate DDOT's minimum distance requirements from the existing curb cut at the adjacent hotel property to the east. Section 31.5.5(a-b) of the DDOT Design and Engineering Manual requires that a curb cut be located a minimum of 24 feet from an adjacent curb cut. The eastern part of the Property is the widest, making it the most advantageous for providing loading; however, the existing curb cut of the adjacent 33 New York Avenue building on N Street, is located only 1 foot, 6 inches away from the Property's eastern property line. If the Project adhered to the minimum distance constraint, loading would be located in the narrowest portion of the Property, which would require back-in maneuvers in violation of DDOT policy and would be extremely inefficient, causing a significant portion of the

ground floor to be dedicated to loading and therefore would not be functional. Therefore, locating a new curb cut and loading access in a usable and practical location on the Property (which would still require backing movements in public space and would also cause the elevator to violate penthouse setback requirements) would also violate the distance requirements set forth in the DDOT Design and Engineering Manual. For these reasons, the provision of a curb cut or driveway at the Property to be used for loading access would not comply with the specifications of the DDOT Design and Engineering Manual. Such noncompliance would in turn violate Title 24 DCMR § 605.8, which requires that “all curb cuts and driveways shall meet the specifications of and be permitted by the District Department of Transportation.”

2. The Relief Requested Is in Harmony with the Intent and Purpose of the Zoning Regulations and Zoning Maps and Will Not Tend to Adversely Affect Neighboring Properties.

The requested relief from the loading requirement for a multifamily residential building is fully in harmony with the Zoning Regulations and Maps and will not result in any adverse effects to neighboring properties. As discussed above, due to the narrow triangular shape of the Property, providing a loading area within the property lines would force undesirable loading maneuvers and a noncompliant penthouse setback condition. Therefore, the requested relief to provide no loading or service/delivery space at the Property will avoid vehicular and pedestrian conflicts as well as the creation of an additional noncompliance with a zoning development standard. The Property’s other use and development standards, with the exception of penthouse uniform height, comply with the requirements for the D-5 zone district and the requested relief will facilitate the development of a residential building on a currently underutilized parcel, increasing the housing stock in the District.

Additionally, the proposed loading area located in public space will not tend to adversely affect neighboring properties as the Applicant plans to work closely with DDOT to ensure that the activities in public space comply with DDOT regulations and minimize effects on neighboring properties. The area in public space that the Applicant is proposing to use for loading is currently one oversized curb cut that is used for access to the parking spaces at the Property and the use of such space for loading activities will therefore not be removing existing on-street parking spaces. The Project will be eliminating two curb cuts on New York Avenue and an oversized curb cut on N Street, reducing the opportunity for vehicular and pedestrian conflicts. Furthermore, the Project will involve enhancements to the public space along the N Street side of the Project as part of the design of the proposed loading area, including street trees and an extension of the sidewalk from the 33 New York Avenue property.

For all these reasons, the Project meets the standards under Subtitle C § 909.2(a) and Subtitle X § 901.2 for the requested relief from the loading requirements.

B. Special Exception Pursuant to Subtitle C § 1504.1 to Permit Non-Uniform Penthouse Height

The Applicant also requests special exception approval pursuant to Subtitle C §1504.1 of the Zoning Regulations for relief from the requirement under Subtitle C §1500.9 to allow a penthouse with variable height.² Subtitle C §1500.9 requires that “enclosing walls of the penthouse shall be of equal, uniform height as measured from roof level.” As shown on Sheet A07 of the Plans, the Project includes a penthouse enclosure containing amenity space and mechanical space, which has varying heights. The majority of the first level penthouse enclosure

² The Applicant notes that text amendments to the penthouse regulations of the Zoning Regulations are currently under consideration by the Zoning Commission in Zoning Commission Case No. 14-13E, including an amendment to the special exception standards for relief from the penthouse uniform height requirement. However, the proposed new special exception standards are less strict than the current special exception standards, and consist of a subset of the current special exception standards. Therefore, to the extent Applicant meets the current special exception requirements to allow non-uniform height of penthouse mechanical space, it will also meet the special exception requirements in the proposed text amendments.

is 12 feet tall, but a small triangular area housing the stairs along the northern side of the enclosure has a height ranging from eight feet, five inches to five feet at its northernmost point. The Applicant is therefore seeking special exception relief to allow this non-uniform height.

Under Subtitle X, § 901.2, in order to obtain special exception relief, the applicant must show that the requested relief will be in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not tend to adversely affect neighboring properties. Additionally, for special exception relief from the penthouse requirements pursuant to Subtitle C, §1504.1, the applicant must demonstrate compliance with certain conditions for relief. As discussed below, the Project meets the specific conditions of Subtitle C §1504.1 and the general requirements for special exception relief under Subtitle X§901.2.

- 1. The strict application of the requirements of Chapter 15 of Subtitle C would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes. (Subtitle C§1504.1(a))*

As described herein, the shape of the Property limits the possible locations of the elevator stack and stairwells and the proposed configuration of the elevators and stairs are designed to minimize potential noncompliance with penthouse setback and height requirements. As shown on Sheet A07 of the Plans, the area of the penthouse that is not of uniform height is minimal and houses only the stairwell, which cannot reasonably be moved without causing significant design implications for the entire Project. Therefore, the strict application of the penthouse uniform height requirements would result in construction that is unduly restrictive and unreasonable.

- 2. The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall. (Subtitle C§1504.1(b))*

The requested relief results in a better design of the Project, creating a penthouse that is well-designed, efficient, and Building Code-compliant. As shown on the Plans, the area for which

the non-uniform height is required is a minimal portion of the penthouse, but will appear as a distinct feature without creating the appearance that the building wall has simply been extended.

3. *The relief requested would result in a roof structure that is visually less intrusive. (Subtitle C§1504.1(c))*

The area of relief requested is the result of the Applicant's attempts to comply with 1:1 setback requirement and to minimize any impact on adjacent buildings. As shown on Sheet A07 of the Plans, the height of the northermost point of the bump-out is only 5 feet in height, while it is set back over 6 feet. The Applicant has designed the height of the stairwell bump-out to be as short as possible while still complying with building and safety code requirements, in order minimize visibility from the street level.

4. *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. (Subtitle C§1504.1(d))*

As described above, the narrow triangular shape of the Property imposes several constraints on the design and location of the Project's elevator stack and stairwells. The area in which the elevator stack can be located and still comply with the required penthouse setback is extremely limited and dictates the location of the stairwell as well as the design of the penthouse mechanical and amenity space. The stairwell locations are also significantly limited by the narrowing of the Property as it comes to a point at its western end and therefore relocating the stair and/or elevator to enable compliance with the uniform height requirements would be unduly costly and restrictive to the Project's design.

5. *Every effort has been made for the housing of mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks. (Subtitle C 1504.1(e))*

This provision is inapplicable as the Applicant is not requesting relief from penthouse setback requirements.

6. *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. (Subtitle C§1504.1(f))*

The requested relief is in line with the intent and purpose of the roof structure regulations and will not impair the light and air of adjacent buildings. Indeed, to the contrary, granting relief to permit a height lower than the main penthouse structure will make the design more modest and appropriately dimensioned, which is in line with the underlying preference broadly expressed by the penthouse regulations to ensure that penthouses are not visually disruptive. Furthermore, the Property abuts only one other building, on its eastern side, and the buildings to the south and north are located across public streets. Therefore, the proposed penthouse design will not impair the light and air of neighboring properties.

7. *The Relief Requested Is in Harmony with the Intent and Purpose of the Zoning Regulations and Zoning Maps and Will Not Tend to Adversely Affect Neighboring Properties.*

For the same reasons discussed above, the requested relief from the uniform height requirement for penthouse space is fully in harmony with the Zoning Regulations and Maps and will not result in any adverse effects to neighboring properties. The proposed penthouse relief will result in a portion of the penthouse having a lower height than the rest of the penthouse enclosure. The Applicant has minimized the height of the bump-out to the greatest extent possible, even in areas of the bump-out where the setback distance would allow a greater height than what is proposed, in order to have a less visually intrusive design. This design is consistent with the intent of the penthouse regulations to ensure that penthouses are designed to as to minimize visual disruption.

For all these reasons, the Project meets the standards under Subtitle C§1504.1 and Subtitle X§901.2 for the requested relief from the uniform penthouse height requirements.

