



MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Karen Thomas, Project Manager
JL for Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: November 4, 2024
SUBJECT: **ZC 07-26G: OP Report** - Request for a Modification with Hearing for Special Exception to approved PUD 07-26 at 899 O Street NW

I. RECOMMENDATION

OP recommends **that the Zoning Commission set down** for a Public Hearing the request of 899 Lodging Group, LLC (“the Applicant”) for a **modification with a hearing** pursuant to Subtitle Z § 704 for:

- Special Exception relief pursuant to X § 901.2 to allow:
 - Addition of an eating and drinking establishment, within an existing penthouse pursuant to C § 1501.1(d) and
 - A height increase of 2 feet 2 inches of an existing elevator overrun, pursuant to C § 1506.1, a setback equal to penthouse height is required; existing non-conforming setback of 9 ft. 8 in. for an 18 ft. 6 in. override; proposed 9 ft. 8 in. setback for a 20 ft. 8 in. penthouse is proposed.

It appears that the proposed modification as filed would also require variance relief from penthouse height, as the zone allows a maximum penthouse height of 20 feet, and a mechanical penthouse height of 20 ft. 8 in. is proposed. This relief has not been requested. OP discussed this with the applicant who advised that the over-run would be modified to reduce the height by at least 8 inches, so that height relief would not be required. Based on this, OP has not provided penthouse height variance relief analysis in this report. Reducing the over-run height would also lessen the penthouse setback relief required accordingly.

OP can update the Zoning Commission at the Public Meeting for setdown regarding the status of the application and the OP recommendation.

II. BACKGROUND

Subtitle Z § 704 provides for Zoning Commission consideration of a modification with a hearing to an approved Planned Unit Development (PUD) if there is additional relief or flexibility from the zoning regulations not previously approved, as provided under Z § 703.6, as is the case in this request.

III. MODIFICATION REQUEST

The Applicant envisions the penthouse as providing meeting and conference space, offering food and drink items during the day and evening use for predominantly hotel guests. Therefore, the Applicant proposes modifications of the approved PUD 1,458 square feet penthouse to allow:

- Interior renovations to remove the rooftop swimming pool and add an eating and drinking establishment for hotel guests, including a kitchen and bar with seating area for hotel guests; and
- Additional height to the elevator overrun for improved access to all floors and the roof, for a total height of no more than 20 ft.

The existing and proposed setback is 9 ft. 8 in., so the addition to the mechanical penthouse height would increase the existing non-conformity, so penthouse setback relief is required. No other changes or additional relief are requested.

IV. OP ANALYSIS

a. Eating and Drinking Establishment

Pursuant to C § 1501.1(d), an eating and drinking establishment may be located within penthouse habitable space, or on a rooftop deck on the highest roof of the building, if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9.

Special Exception Relief from Subtitle X § 901.2

901.2 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The proposed eating and drinking establishment is a permitted use in the MU-4 base zone where the hotel is located, and in the MU-9 (formerly C-3-C) PUD zone for this site. At its proposed location within the penthouse, granting the relief would not be contrary to the intent of the Regulations, as the proposed establishment would be within an existing enclosed penthouse as shown on Exhibit 2E [Sheet A006 of the proposed plan](#).

- (b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

The use of neighboring property in accordance with the Regulations should not be unduly adversely affected as the establishment would be within an enclosed area to the north side of the building with access to limited outdoor patio space, which is also set back from the roof edges along the O Street frontage. The capacity for the establishment, according to the Applicant, would be a maximum of 157 persons within the enclosed penthouse. Since the use would be intended primarily for hotel guests, significant additional vehicle or pedestrian traffic is not anticipated beyond what currently exists for the hotel use.

The applicant filings note that neighbors expressed concerns regarding the potential for noise and disruption as a nighttime venue ([Exhibit 2, pages 8-11](#)). The Applicant noted that the indoor establishment would be subject to the DC Alcoholic Beverage Regulation Administration (ABRA) requirements regarding hours of operation and noise control and will be managed subject to those requirements and controls.

Changes to the penthouse exterior are not proposed. With respect to privacy of neighbors, the existing rooftop structure will remain fully enclosed, which should mitigate potential privacy concerns for nearby residents.

- (c) *Subject in specific cases to the special conditions specified in this title.*

There are no specific criteria for this relief.

b. Relief from Penthouse Setback Requirements

To allow an increase in the height of the elevator overrun, pursuant to Subtitle C §§ 1506.1, 1506.2 and X § 901.2. The new elevator is intended to provide more efficient elevator service for hotel guests and a newly refurbished penthouse level with its proposed eating establishment. The elevator overrun requires additional room to accommodate mechanical systems required for safe and reliable vertical circulation.

Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board, subject to the special exception requirements of Subtitle X, Chapter 9 and the applicant's demonstration that reasonable 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's demonstration of at least one (1) of the following of C §1506.1 (c) (1)...(4)

The Applicant states that the strict application of setback requirements would result in unduly restrictive and unreasonable construction due to the existing structure of the building and site constraints. (C § 1506.1(c) (1)). The existing elevator shaft location was established during original construction and is part of the approved PUD. Given the existing structure's internal configuration, it would be unduly prohibitive to shift the elevator shaft to satisfy the one-to-one setback for the newer elevator installation within the penthouse. Moving the elevator location would also create unnecessary reconstruction of the building's interior.

Special Exception Relief from Subtitle X § 901.2

901.2 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The intent of the Regulations is to minimize penthouse space visibility from public space. The proposed vertical extension of the overrun should not result in a significant increase in its visibility from the sidewalk on either O Street or from 9th Street NW.

The original PUD Order for [07-26 Page 6, Item 30 \(b\)](#) granted flexibility from roof structure requirements and it was determined by the Commission that *"The requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize their visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired, and the light and air of adjacent buildings will not be adversely affected."* The proposed vertical extension of the elevator overrun would not materially change this determination.

- (b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

The use of neighboring property in accordance with this requirement would not be adversely impacted due to noise or visibility from a neighbor's residence. The Applicant has stated that the elevator equipment would not generate noise to disturb the hotel guests, nor should it disturb neighbors since it would be enclosed within the penthouse building. The enclosed

lobby connecting the elevator to the proposed habitable penthouse space would provide the required penthouse setback.

(c) *Subject in specific cases to the special conditions specified in this title.*

OP reviewed the Applicant’s submission in response to Subtitle C §1506.1 (c) (4) and supports that the strict application of the Regulations would be unduly restrictive as previously discussed.

V. EQUITY ANALYSIS

Subtitle Z-704.3 states that a modification with a hearing “*shall meet the requirements for, and be processed as, a second-stage PUD application.*” Further, the application requirements in Z§300.12(k), requires “*an updated racial equity analysis since the first-stage PUD was approved*”.

According to the Racial Equity Tool, the Commission will use the following criteria, themes and questions in its evaluation of a zoning action’s consistency with the Comprehensive Plan, as viewed through a racial equity lens.

- *What Comprehensive Plan policies related to racial equity will potentially be advanced by approval of the zoning action?*

Approval of the proposed zoning action would not significantly advance or impede the stated policies of the Comprehensive Plan related to equity since the requested special exception relief is related to an interior renovation of the existing facility that would not adversely impact the light and air to neighboring properties, nor result in loss of affordable housing, nor lead to other inequities for the neighborhood or planning area as a whole. The addition of the eating and drinking establishment would create some additional employment opportunities for area residents.

What Comprehensive Plan policies related to racial equity will potentially not be advanced by approval of the zoning action?

An analysis of the Comprehensive Plan does not indicate any policies related to racial equity that would be significantly impaired by the proposed modification to the PUD.

- *When considering the following themes/questions based on Comprehensive Plan policies related to racial equity, what are the anticipated positive and negative impacts and/or outcomes of the zoning action? Note: Additional themes may also apply.*

Factor	Question	OP Response
Direct Displacement	Will the zoning action result in displacement of tenants or residents?	The hotel has no residential uses, so the proposed special exception relief would not result in any direct displacement of hotel or neighborhood residents.
Indirect Displacement	What examples of indirect displacement might result from the zoning action?	Indirect displacement as a result of this zoning relief is not anticipated. The provision of a new elevator and addition of an eating and drinking establishment should not affect pressure on housing costs in the vicinity, nor affect new housing options and opportunities for existing neighborhood residents.
Housing	Will the action result in changes to: <ul style="list-style-type: none"> ▪ Market Rate Housing ▪ Affordable Housing ▪ Replacement Housing 	The proposed interior renovations requiring the stated relief would not have any effect on the potential to increase the amount of new housing development in the future including all-affordable housing within the Planning Area.
Physical	Will the action result in changes to the physical environment such as:	The property is currently required to comply with the most current standards for these areas, as well as with

Factor	Question	OP Response
	<ul style="list-style-type: none"> ▪ Public Space Improvements ▪ Infrastructure Improvements ▪ Arts and Culture ▪ Environmental Changes ▪ Streetscape Improvements 	the requirements of the PUD. The proposed changes should not impact the physical environment components as stated.
Employment Opportunity	Is there a change in access to opportunity? ▪ Job Training/Creation	The proposed action of including an eating and drinking establishment could provide new employment opportunities, compared to the existing under-utilized swimming pool area.
Access to Services	<ul style="list-style-type: none"> ▪ Healthcare ▪ Addition of Retail/Access to New Services 	The modification would not result in new services or impacts on existing services. The site is close to amenities which is a benefit to visitors in the Shaw area. The site is also close to transit, providing access for guests and employees.
Community	How did community outreach and engagement inform/change the zoning action?	The Applicant's statement at Exhibit 2 Page 8-11 references the comments of the residential community across O Street and the Applicant's responses to those concerns. Concerns included: noise and disruption to the nearby neighbors; current management of outdoor space; visibility of the rooftop spaces into residents' homes; potential increase in costs to residents; crime; and traffic to the neighborhood due to the rooftop bar. OP anticipates that the Applicant would further address these concerns, and discuss any agreed upon mitigation at the public hearing.

VI. ANC COMMENTS

The ANC 2G's comments were not included in the record to date.

VII. SUMMARY

OP recommends the application be setdown for a hearing. The hotel is purpose built and operational pursuant to the original [Order 07-26 \(2008\)](#). The proposed modifications are permitted by special exception, so are anticipated to be consistent with the intent of zoning provided the relevant conditions and criteria have been addressed.