



MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Karen Thomas, Project Manager
JL for Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: January 22, 2025
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 **approval of the modification** request pursuant to Subtitle Z § 704 by 899 Lodging Group, LLC (“the Applicant”) to modify the building at 899 O Street for special exception relief pursuant to:

- C § 1501.1(d) and X § 901.2 to allow an eating and drinking establishment, in penthouse habitable space;
- C § 1506.1 and X § 901.2 – Penthouse Setback: **Existing** non-conforming setback of 9 ft. 8 in. for an 18 ft. 6 in override; **Proposed:** None for a new 20 ft. max. height penthouse structure (elevator shaft); **and**
- Related approval to expand the existing penthouse structure by 40 square feet for a new enclosed elevator lobby.

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.

The original filing noted the elevator over-ride would have a height of 20 ft. 8 in, which exceeds the height allowed under the zoning regulations. The applicant has amended the request to reduce this height to no more than 20 feet.

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, which is permitted by special exception;
- An additional elevator overrun for improved access to all floors and the roof, no more than 20 ft. in height which does not meet the setback requirements from the roof’s edges. The existing

setback is 9 ft. 8 in., and the proposed new penthouse enclosure would increase the existing non-conformity; and

- To allow a 40 square-foot lobby for the new elevator shown in submitted plans

IV. OP ANALYSIS

a. Eating and Drinking Establishment (C § 1501.1(d))

Pursuant to C § 1501.1(d), an eating and drinking establishment may be located within the 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, other than in a penthouse, an allowed use in both 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, granting the relief would not be contrary to the intent of the Regulations, as the proposed establishment would be within an existing enclosed penthouse.

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

Neighboring properties should not be unduly adversely affected, as the establishment would be within an enclosed area to the north side of the building and limited outdoor patio space, which is also set back from the roof edges along the O Street frontage. According to the Applicant, the capacity for the establishment would be 157 persons maximum within the enclosed penthouse. The use would be intended primarily for hotel guests, so significant additional vehicle or pedestrian traffic is not anticipated.

Changes to the penthouse exterior are not proposed. With respect to privacy of neighbors, the existing rooftop structure would remain fully enclosed, and the patio is not proposed to be expanded beyond the area that currently exists, which should mitigate potential privacy concerns for nearby residents.

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.

- (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 (C §§ 1506.1 and X § 901.2)

The new elevator is proposed to provide more efficient access for hotel guests to the proposed eating establishment at the penthouse level. The expanded elevator structure would require additional room to accommodate mechanical systems for safe and reliable vertical circulation.

The Applicant also proposes to expand the enclosed penthouse structure by approximately 40 square feet to accommodate an elevator lobby. The lobby will be 13 feet in height and would provide a conforming setback of 15 feet, 1-3/4 inches.

Pursuant to C § 1506.1 relief from the requirements of Subtitle C § 1504 (setbacks) may be granted as a special exception by the Board, subject to

- (a) the special exception requirements of Subtitle X, Chapter 9
- (b) 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
- (c) 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 be unduly restrictive and result in unreasonable construction due to the existing structure of the building and site constraints. 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 prohibitive to shift the elevator shaft to satisfy the one-to-one setback required for the penthouse. Moving the elevator location would also create unnecessary reconstruction of the building's interior. The wall closest to the edges would not appear to be an extension of the building wall.

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 overrun should not result in a significant increase in visibility from the sidewalk on either O Street or 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 existing elevator overrun from the second floor to the penthouse level 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 should not be adversely impacted due to noise or visibility from a neighbor's residence. The Applicant stated that the elevator equipment would not generate noise to disturb 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 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*”.

The OP setdown report of [Exhibit 6](#) provides a review of the proposal against the Comprehensive Plan, through the lens of the Zoning Commission Racial Equity Tool. In summary, the analysis did not identify Comp Plan policies related to racial equity that would be significantly impaired by the proposed modification. The requested modification and associated relief would be related to a largely interior renovation of the existing facility that should not significantly impact neighboring properties, result in loss of affordable housing, or lead to other inequities for the neighborhood or planning area as a whole.

VI. ANC COMMENTS

An ANC 2G memo in support is at [Exhibit 13](#).

VII. SUMMARY

OP recommends approval of the proposed modifications to PUD 07-26, including the requested relief to expand the elevator lobby as proposed in Exhibit 9C ([Updated Architectural Drawings](#)). The hotel is purpose built and operational pursuant to the original [Order 07-26 \(2008\)](#). Proposed modifications are permitted by special exception, so are anticipated to be consistent with the intent of zoning provided as the relevant conditions and criteria have been addressed.