

Exhibit C
Evaluation of Rooftop Uses against Special Exception Criteria

Special Exception for a Rooftop Eating/Drinking Establishment Use + Flexibility to Change Uses	
Standard of Review	<p>Under Subtitle C § 1500.3(c), any nightclub, bar, cocktail lounge, or restaurant use in a penthouse may be permitted only as a special exception.¹ Pursuant to Subtitle X, Section 901.2, the requested exception must (a) “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and (b) “not tend to affect adversely, the use of neighboring property.”</p> <p>The Project’s proposed penthouse satisfies such criteria.</p>
Harmony with ZR16	<p>Penthouse eating and drinking establishment uses in the Project are in harmony with the general purpose and intent of the Zoning Regulations, which permit a mix of uses, including commercial uses, in the MU-9 zone. The penthouse’s proposed eating and drinking establishment uses would advance the stated purposes of the MU zones, which are to provide “for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities.” 11-G DCMR § 100.1. The Project’s penthouse contributes to the mixed-use character of the Project and the goals of the MU-9 zone.²</p> <p>In addition, the proposed penthouse space requires no dimensional or design relief from the Zoning Regulations’ development standards. See Exhibit 12F at sheet 12.</p>
No Adverse Effects	<p>The penthouse eating and drinking establishment uses would not tend to affect adversely the use of any neighboring property. Other nearby properties, for instance, the single-story self-storage property at 301 New York Avenue, NE, and the undeveloped Lot 819, are highly unlikely to be adversely affected by the eating and drinking establishment uses in the Project’s penthouse given the existing or possible uses of those lots. The Project’s retention of 1346 4th Street, NE as, at most, a single story building, creates a buffer between the Project’s rooftop and future uses to the south.</p> <p>The Maurice Electric PUD on 4th Street, NE does include an approval for residential uses at heights approximating those of the Project. However, the Project’s rooftop is higher than the maximum height for the Maurice Electric PUD because of natural topographic conditions, and that greater height will avoid any impacts on the lower residential building. Further, the common ownership of the two projects (EDENS-affiliates and associated developer entities control the Maurice Electric PUD) allows the two buildings to be managed in a way to ensure no adverse effects from any penthouse eating and drinking establishments in the Project. Similarly, the residential building constructed at 1300 4th Street, NE is constructed below the height of the habitable penthouse proposed here. As a result, there will be no adverse effects from the proposed habitable penthouse on the residential building farther to the south. No other residential uses exist within any proximity to the proposed habitable penthouse.</p>
Flexibility	<p>The Applicant proposes non-residential space in the Project’s penthouse but has not yet identified a specific operator. In the event an appropriate commercial tenant is not available at the time of construction, the Applicant seeks the flexibility to develop the penthouse with a residential program of either amenity space or additional units, or a mix of the two.</p>

¹ The Commission may grant such special exception as part of a PUD proceeding. 11-X DCMR § 303.13.

² See also 11-G DCMR § 100.3 (describing the purposes of the MU-9 zone as to “(a) Provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses; (b) Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city; (c) Reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and nonresidential uses . . . ; (d) Encourage safe and efficient conditions for pedestrian and motor vehicle movement; (e) Ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; (f) Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) Ensure that buildings and developments around . . . transit hubs. . . support active use of public transportation and safety of public spaces.”)