

# Holland & Knight

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September 27, 2024

## VIA IZIS

Zoning Commission for the District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

**Re: Request for Modification With A Hearing and Special Exception for an  
Approved Consolidated PUD  
Z.C. Case No. 07-26  
Square 398, Lot 7006, part of Lot 32**

Dear Members of the Commission:

On behalf of 899 Lodging Group, LLC (the “Applicant”), the owner of property located at 899 O Street, NW (Square 398, Lot 7006, and part of Lot 32) (the “Property”), we hereby submit this Application for a Modification with Hearing and special exception relief to make changes to the existing hotel located at the Property and initially approved pursuant to Z.C. Order No. 07-26. Specifically, the Applicant is seeking: (i) special exception relief pursuant to 11-C DCMR § 1501.1(d) and 11-X DCMR § 901.2 to establish an eating and drinking establishment in the existing penthouse and (ii) special exception from penthouse setbacks pursuant to 11-C DCMR § 1506.1 and 11-X DCMR § 901.2 to allow for a 2 foot, 2 inch increase in height increase of an existing elevator overrun and a new elevator lobby.

This Application is submitted pursuant to 11-Z DCMR § 704, which allows the Zoning Commission to approve the requested modification with a hearing, 11-C DCMR § 1501.1(d) and 11-X DCMR § 901.2 for the penthouse use, and 11-X DCMR § 303.13, which permits the Zoning Commission to approve any relief for which special exception approval is required, including the requested penthouse setback relief from 11-C DCMR § 1506.1 and 11-X DCMR § 901.2. As further described below, the Application is properly reviewed as a Modification with Hearing because the request does not meet the requirements of a Modification without Hearing provided

in 11-Z DCMR § 703.6 and the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect neighboring property.

Attached hereto is Form 100 – Application Signature Page (Exhibit A) and a letter from the Applicant authorizing Holland & Knight LLP to file and process the Application (Exhibit B). Also included is the required filing fee and Certificate of Notice (Exhibit C).

## **I. The PUD Site, the Property, and Prior Zoning Commission Approval**

Pursuant to Z.C. Order No. 07-26, dated May 12, 2008 (Exhibit D), the Zoning Commission approved a consolidated PUD and a related Zoning Map amendment from the C-2-A zone to the CR or C-3-C zone<sup>1</sup> for Lot 7006, and part of 32 in Square 398 (the “PUD Site”). The PUD Site has a land area of approximately 149,600 square feet and is bounded by P Street on the north, 7<sup>th</sup> Street on the east, O Street on the South, and 9<sup>th</sup> Street on the west.

At the time that Z.C. Order No. 07-26 was approved, the PUD Site was improved with a grocery store, the landmark O Street Market, and a large surface parking lot. As of the filing of this Application, all the buildings approved by the PUD have been constructed.

Pursuant to Z.C. Order 07-26, the Zoning Commission approved development of the PUD Site to include housing, retail and service uses, hotel use, and the historic O Street Market has been rehabilitated and incorporated into the grocery store.

## **II. Proposed Penthouse Modification to Hotel**

The existing hotel has recently been sold to a new owner and is undergoing a rebranding and renovation effort. As shown on the architectural plans and elevations (the “Plans”) (Exhibit D), the Applicant will be making minor modifications to the penthouse that include the following: renovating the interior of the structure to provide additional conference space; filling in the swimming pool in the penthouse and adding a kitchen and seating areas to provide an eating and drinking establishment for hotel guests; the addition of a higher capacity elevator with a 2 foot, 2 inch increased height that will increase accessibility to the penthouse and the rest of the hotel in general; and the addition of an elevator lobby located at the elevator entrance on the penthouse. As shown on the Plans, the proposed work will not affect the massing of the building, as it will comply with all other development standards for the zone.

The rebranded hotel will repurpose the existing penthouse area from an amenity space that includes an underutilized swimming pool to an eating and drinking establishment that will serve as a meeting and function space for the hotel and also provide the opportunity for eating and drinking as an extension of its existing second floor restaurant. The penthouse, having approximately 1,458 square feet, will consist of a very small warming kitchen and a bar with flex

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<sup>1</sup> Z.C. Order No. 07-26 was approved under the 1958 Zoning Regulations. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations on September 6, 2016, the CR District was re-designated to the MU-10 District and the C-3-C District was re-designated to the MU-9 District.

space to house meetings and allow guests to obtain light food and drinks. The Applicant envisions the penthouse as meeting and conference space that offers various food and drink items during the day and evening and serving predominantly hotel guests.

As shown in the architectural plans (Exhibit E), only 2 feet, 2 inches of height are being added to the existing penthouse to accommodate the elevator overrun. The additional height will match the height of the existing overrun. There is an existing elevator shaft; however, the current elevator stops at the second floor. To improve access to floors and decrease elevator wait times for guests, the Applicant proposes to extend the elevator to the roof, which necessitates adding 2 feet, 2 inches to the overrun. The proposed elevator lobby will be 13 feet in height and provide a setback of 15 feet, 1-3/4 inches, and therefore will not require setback relief.

The rebranded hotel will comply with the applicable vehicle parking, bicycle parking, and loading requirements as approved by the PUD.

### **III. Special Exception for Proposed Penthouse Use**

The special exception standard for allowing an “eating and drinking establishment” in a penthouse does not include any additional conditions with which an applicant must comply. Thus, pursuant to 11-X DCMR § 901.2, the only applicable standard is whether the use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. As set forth below, the proposed eating and drinking establishment use in the penthouse level of the hotel building meets the general special exception burden of 11-X DCMR § 901.2 and should therefore be granted.

Pursuant to 11-C DCMR § 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.

#### *i. Proposed Use is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.*

The proposed eating and drinking establishment, which is all interior space of approximately 1,458 square feet, will be in harmony with the general purpose and the intent of the MU-4 zone, which is among other things, to permit moderate-density mixed-use development for shopping and business needs, housing, and mixed uses. *See* 11-G DCMR § 101.9. Eating and drinking establishments, including restaurants, bars, cafes, and coffee shops are permitted as a matter-of-right in the MU-4 zone. *See* 11-U DCMR § 512.1(e). Therefore, the proposed eating and drinking establishment is in harmony with the general purpose and intent of the Zoning Regulations.

Moreover, the proposed eating and drinking establishment will advance the general intent of the Zoning Regulations because the proposed establishment will enable the hotel to offer a mix of uses that is consistent with the mixed-use character of the MU-4 zone. The proposed establishment will also provide an amenity for hotel guests at a desirable location, contributing positively to the activation of the area and economically benefitting the District as a whole.

The Zoning Map indicates that the surrounding area of the hotel is within the MU-4 zone along the 9th Street Corridor between P Street and M Street. This corridor features a variety of uses complementary to the hotel and its amenities, such as restaurants (Family Ethiopian Restaurant, Maxwell Park, CherCher, Lift Lounge, SundeVich, and San Lorenzo), services (banks, pilates studio, dog groomer), retail, a gasoline service station, and residential properties. Therefore, 9th Street is already a vibrant mixed-use corridor that supports diverse activities and complements the proposed penthouse use.

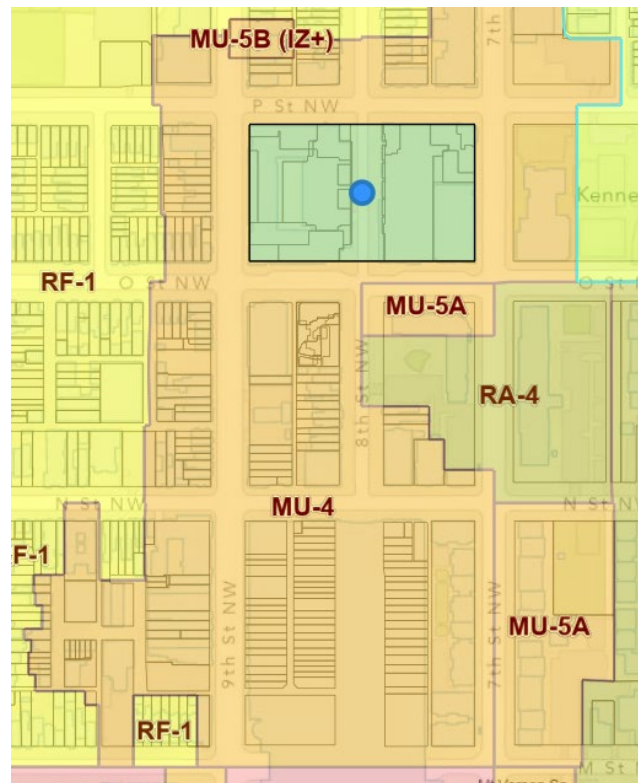


Figure 1: Zoning Map of Property and 9th Street corridor.

ii. *Proposed Use will not affect adversely the use of neighboring property.*

The proposed eating and drinking establishment will also not adversely affect the neighboring properties. The intensity of the proposed use is nominal and will be appropriate in the mixed-use development in which it is located. The establishment will accommodate an occupancy of approximately 157 individuals for the proposed establishment and the space will be fully enclosed within the penthouse. The limited size and location within an existing penthouse will mitigate its potential impact on the neighborhood and will ensure its compatibility with adjacent uses. Therefore, there will be no adverse impact to the hotel guests in the building or to residents in nearby buildings. Furthermore, the proposed use will not trigger increases in traffic to and from the Property, as the use will predominantly serve guests of the hotel.

Accordingly, the Applicant's proposal to incorporate an eating and drinking establishment in the existing penthouse of the hotel is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property and therefore meets the test for special exception relief under 11-X DCMR § 901.2.

**IV. The Application Meets the Special Exception Criteria Under 11-C DCMR §§ 1506.1 and 1506.2 and 11-X DCMR § 901.2 for Relief from Penthouse Setback Requirements**

Pursuant to 11-C DCMR § 1506.1, the Applicant may request special exception relief from the penthouse setback requirements of Subtitle C, § 1504 subject to certain conditions, which include compliance with 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. *See* 11-C DCMR § 1506.1. Relief may be granted subject to the following criteria.

- i. The special exception requirements of Subtitle X, Chapter 9;*
  - a. Proposed Use is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.*

Penthouse setback relief is requested for the elevator overrun, of which the height will be increased by 2 feet, 2 inches, providing an overall height of 20 feet, 8 inches, with a setback of 9 feet, 8 inches. While the penthouse setback is required to be equal to the height of the penthouse, relief is being sought due to site constraints and design considerations.

The purpose and intent of the penthouse setback regulation is to minimize the visibility of rooftop structures from the street while still allowing for necessary mechanical equipment and habitable and amenity space on the penthouse level. In this case, the hotel's penthouse is pre-existing and was approved through a PUD process. Importantly, no exterior changes are being proposed to the existing penthouse itself; therefore, the massing and height will remain unchanged, maintaining its original form and complying with the approved design parameters.

The proposed setback relief for the 2 foot, 2 inch elevator overrun will not undermine the intent of the setback regulation, as the increased height of the overrun is necessary to provide safe and efficient vertical circulation to the penthouse level. Additionally, the location of the overrun on the southwest corner of the rooftop minimizes its visibility from the street ensuring that it will not detract from the character of the surrounding area. In fact, the Plans include a perspective of the roof as viewed from the street where only a small portion of the elevator overrun is potentially visible.

Furthermore, granting the relief will allow for improved access to the penthouse without altering the building's overall appearance or disrupting the harmonious relationship between the hotel and its neighboring structures. The proposed use and modifications are in keeping with the goals of the MU-4 zone, which encourages mixed-use development that accommodates business, retail, and residential needs while promoting efficient use of space and minimal visual impact from mechanical structures.

In conclusion, the penthouse setback relief for the elevator overrun is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as it balances functional requirements with aesthetic considerations, while maintaining compliance with the existing PUD approval.

*b. Proposed Use will not affect adversely the use of neighboring property.*

The proposed modification to increase the height of the elevator overrun by 2 feet, 2 inches will not be visible from the street and is designed to have minimal impact on the overall view of the southern building façade.

Importantly, the reduced setback is unlikely to adversely affect neighboring properties. The building is separated from the residential properties on the southern side of O Street by the width of the street itself, which provides a significant buffer between the proposed modifications and nearby residences. Given this separation, the impact of the reduced setbacks on the southern residential properties will be minimal, if noticeable at all, from the ground level. In addition, the overall massing of the building and its rooftop structures remain largely unchanged, ensuring that the modifications do not alter the visual character of the area in a way that would negatively affect adjacent properties.

Furthermore, the use of an enclosed elevator is not expected to generate significant noise or activity that could disturb neighboring properties. The elevator will operate within its shaft, will be designed with materials similar to those used on the building to reduce its visual impact and blend seamlessly with the building's overall design. Since the rooftop space is already part of the hotel's operational area, the modifications will not introduce any new or abnormal levels of activity beyond what is already permitted for the site.

Additionally, the proposed use aligns with the existing character of the neighborhood, which includes a mix of residential, commercial, and hotel uses. The modifications will enhance the hotel's functionality without introducing any adverse effects that would disrupt the surrounding uses. The penthouse and rooftop space are already approved as part of the building's use, and the proposed elevator improvements are necessary for providing safe, functional access to this space and to the lower floors of the hotel, which will benefit hotel guests without imposing any negative externalities on neighboring properties.

In conclusion, the proposed modifications are modest in scale and designed to minimize visual impact while enhancing the building's functionality. The separation provided by O Street, combined with the careful placement and design of the rooftop elements, ensures that the proposed use will not adversely affect the use or enjoyment of neighboring properties.

*c. The applicant's demonstration that:*

- i. 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 would result in unduly restrictive and unreasonable construction due to the existing structure of the building and site constraints. Specifically, the elevator shaft must be extended to service the penthouse, requiring an increased height for the overrun to align with the approved height of the penthouse. This 2 foot, 2 inch height increase is essential for the proper functioning of the elevator and to provide safe, accessible service to the penthouse level and other floors of the hotel, but achieving full compliance with the setback requirement is not feasible given the current placement of the elevator bank. The proposed height matches the existing overrun as shown on sheets A010, A011, A015, and A017 of the Plans.

The existing elevator shaft and its location within the building were established during original construction and were part of the approved PUD. To relocate or significantly modify the elevator bank in order to meet the strict setback requirements would require extensive structural alterations, which would not only be prohibitively costly but also structurally impractical given the configuration of the building. The setbacks are calculated based on the height of the penthouse structures, and while compliance is typically required to minimize visibility, the unique constraints of the existing structure make full compliance unreasonable in this case.

Moreover, strict adherence to the setback requirements would undermine the functionality of the building. The elevator overrun must extend to accommodate mechanical systems required for safe and reliable vertical circulation, and moving the elevator location would create inefficiencies. Compliance with the setback regulations would necessitate a complete redesign of the building's existing vertical circulation system, leading to higher costs and a longer construction timeline, all of which are unreasonable given the minor nature of the proposed modifications.

Furthermore, strict application of the setback requirements would be inconsistent with building codes and modern accessibility standards. The increased height of the elevator overrun and the design of the elevator lobby are necessary to meet current safety and accessibility codes, which prioritize functionality and user safety. Restricting the elevator's height in order to fully meet the setback requirements would create practical challenges and potentially result in non-compliance with critical building codes.

In summary, the strict application of the setback requirements would be unduly restrictive and unreasonable given the structural constraints of the existing building. It would impose significant construction challenges, increase costs, and compromise the functionality and safety of the building, making setback relief necessary to achieve a reasonable, code-compliant design that also mitigates visual impact through thoughtful design choices.

## **V. Community Outreach**

The Applicant introduced the proposed penthouse modifications to ANC 2G at its regularly scheduled meeting on July 2, 2024. During the meeting, the ANC expressed no concerns regarding the proposal and indicated that it would support the modification. The Applicant will be meeting with the ANC throughout the process, including the Zoning, Planning, and Historic Preservation Committee and the full ANC.

Since the first meeting, the ANC has received the following concerns from neighbors that reside at a condominium building located directly across O Street at 1335 9<sup>th</sup> Street, NW. Responses to those concerns from the Applicant have also been provided.

- 1. The proposed penthouse modifications would degrade the value of the units in the condominium building. This is a residential community and the hotel should not be permitted to convert the penthouse into a destination for "nightlife day drinking."*

The proposed penthouse modifications are minor in scale and carefully designed to have minimal visual or functional impact on surrounding properties. The 2-foot, 2-inch height addition to the elevator overrun will be located on the rooftop of an existing building, designed to minimize visibility from street level and nearby properties. Given the separation provided by O Street, the rooftop changes will not affect the aesthetics or views from nearby residential properties. Additionally, the penthouse where the eating and drinking establishment will be located is on the north side of the building, opposite the residential building on the south side of O Street, and will remain fully enclosed. This, along with the 100-foot separation and O Street, will limit potential noise impacts on nearby residents.

The improvements align with the existing character of the area, which is zoned MU-4, allowing for a mix of residential, commercial, and hotel uses. The penthouse's use as an eating and drinking establishment is consistent with the zoning regulations, which permit such activities. Importantly, this is not intended to be a destination for "nightlife day drinking" but rather an amenity for hotel guests. The conversion will replace an underutilized swimming pool with a meeting space, conference room, and dining option, designed to complement the hotel's offerings without disrupting the surrounding community.

Furthermore, the penthouse use will be subject to oversight by the Alcoholic Beverage Regulation Administration (ABRA), which will ensure compliance with noise mitigation and occupancy regulations. These controls, along with the hotel's commitment to responsible management, will ensure that the space remains an amenity for guests rather than a disruptive venue.

In summary, the proposed improvements are modest, in line with zoning regulations, and unlikely to negatively impact property values or the residential character of the area. Instead, they will enhance the functionality of the hotel while maintaining harmony with the neighborhood.



2. *The current operator does not manage their outdoor space within the guidelines of DC Code and should not be permitted to add a bar and obtain additional liquor licensing. The rooftop has a large outdoor space directly across from the condominium, and noise and disruption will be increased due to loud noise, music, and significantly more people.*

The use of the existing outdoor space on the rooftop is not part of this Application. The proposed penthouse modifications are being undertaken by a new operator committed to complying with all applicable DC regulations, including the management of outdoor space and liquor licensing. The Applicant already holds a liquor license for the outdoor terrace and will bring a fresh approach to ensure full compliance with DC Alcoholic Beverage Regulation Administration (ABRA) requirements regarding hours of operation and noise control.

The Applicant has a proven track record of responsible management and plans to implement policies aligned with the DC Code to address prior concerns about noise and disruption. The enclosed penthouse space that is the subject of this Application is separated by approximately 100 feet across O Street from the condominium, further reducing potential noise impacts.

It's important to clarify that the outdoor rooftop space was part of the original PUD approval and is not part of this Application. The current proposal focuses solely on improving the interior penthouse space. Additionally, the new operator will manage the space in accordance with local noise ordinances and will implement noise reduction strategies, such as landscaping buffers, to minimize disruptions. The space will be used primarily by hotel guests, not for large public events, so foot traffic and noise levels are not expected to increase significantly.

In conclusion, the new operator is dedicated to managing the rooftop space responsibly, respecting both the local regulations and the concerns of neighboring residents. The proposed modifications should not be viewed as a continuation of past management practices, but rather as an opportunity to improve the use of the space in a way that enhances the community while minimizing noise and disruption.

3. *The rooftop looks directly into condominium homes.*

While the Applicant understands the concern about proximity, it is important to clarify that the penthouse is located on the north side of the building, and it is separated from the nearby condominium building by approximately 100 feet, including O Street. This distance creates a meaningful separation between the penthouse and the residential units across the street ensuring that there is no direct, close-range line of sight into condominium homes.

Additionally, the penthouse modifications are primarily internal and focused on enhancing access and functionality. There are no proposed changes to the existing penthouse exterior that would create new sightlines or significantly increase visibility into nearby homes. The existing rooftop structure will remain fully enclosed, helping to further limit any potential privacy concerns for residents of the nearby condominiums.

Furthermore, the separation provided by O Street, in combination with the building's height and the setback of the rooftop elements, reduces the likelihood that the rooftop space will be intrusive for neighboring residents.

In conclusion, while the penthouse may be visible from some surrounding properties, the significant separation of approximately 100 feet, along with the enclosed nature of the structure, ensures that the privacy of nearby condominium homes will be preserved. The hotel will take all necessary steps to minimize any potential impact on the residential community, ensuring that the modifications align with the mixed-use character of the neighborhood without encroaching on the comfort of its residents.

4. *The addition of a large rooftop bar or lounge will increase traffic, crime and significantly increase costs to homeowners.*

The hotel provides sufficient parking in compliance with the PUD approval, and the proposed penthouse improvements will not increase parking requirements. The Applicant acknowledges the concerns about potential neighborhood impacts, but the modifications are not intended to create a large, publicly accessible rooftop bar or lounge. Instead, the purpose of these improvements is to offer a controlled, well-managed amenity for hotel guests within the existing penthouse space, not to attract large crowds or promote nightlife activities that could increase crime or cause disruption.

The Applicant is committed to maintaining a safe and secure environment, both within the hotel and penthouse. Security measures will include trained staff, security personnel, monitoring hotel activity, and enforcing strict occupancy and behavior policies. By keeping the space primarily for hotel guests and managing it responsibly, the Applicant aims to prevent conditions that could lead to increased crime or safety issues.

Studies on mixed-use areas like the MU-4 zone, where residential and commercial uses coexist, typically show that well-managed properties do not contribute to crime.<sup>2</sup> In fact, they often enhance safety by bringing more “eyes on the street” through regulated, legitimate activity. The hotel will collaborate with local law enforcement, community groups, and nearby property owners to address any safety concerns promptly.

Regarding concerns about increased homeowner costs, such as insurance rates or security expenses, there is no indication that the proposed penthouse modifications would lead to such outcomes. On the contrary, the introduction of a well-maintained use within the existing penthouse space could contribute positively to the neighborhood's vibrancy and desirability. The Applicant is committed to ensuring the penthouse is an asset to the hotel and community, rather than a source of financial or security concerns.

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<sup>2</sup> “How Mixed-Use Neighborhoods Can Reduce Crime Rates,” Kaley Overstreet; and “Danger Zone: The Causal Effects of High-Density and Mixed-Use Development on Neighborhood Crime,” Tate Twinam.

In conclusion, the penthouse use will be managed with a focus on safety, security, and minimizing any negative impact on the neighborhood. The hotel's responsible policies, combined with coordination with local authorities, will ensure that the space does not contribute to crime or increased costs for homeowners.

## **VI. Conclusion**

The Applicant respectfully requests approval of this Modification with Hearing to permit an eating and drinking establishment in the hotel penthouse and for special exception relief from the setback requirements. The request is consistent with the intent of the Zoning Commission in approving the original Application and will not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map, or affect neighboring properties. Accordingly, approval of the Modification with Hearing is appropriate.

Respectfully submitted,

HOLLAND & KNIGHT LLP

s/Kyrus L. Freeman

Kyrus L. Freeman

### Attachments

cc: Certificate of Service  
Jennifer Steingasser, Office of Planning (via Email with attachments)  
Joel Lawson, Office of Planning (via Email with attachments)  
Advisory Neighborhood Commission 2G (via Email with attachments)

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2024, electronic copies of the foregoing Application were served on the following.

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Via Email

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c/o Commissioner Alexander M. Padro (Chair)  
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Via Email