



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Stephen Cochran, AICP, Case Manager
JL Joel Lawson, Associate Director Development Review

DATE: June 12, 2018

SUBJECT: Office of Planning Third Supplemental Report on BZA Case No.19722– 923-925 5th Street, NW -- Square 713, Lot 53

I. BACKGROUND

The third supplemental report addresses the modified penthouse setback relief the applicant is requesting to accommodate changes made since the April 4, 2018 and May 16, 2018 public hearings to the design of the penthouse for the proposed hotel building, with limited retail, at 923-927 5th Street, NW. The analysis incorporates the information in the PowerPoint filed by the applicant on May 18, 2018 (Exhibit 76).

II. RECOMMENDATIONS

The Office of Planning (OP) **recommends the Zoning Commission deny the request for the Special Exception relief from the penthouse setback requirements of Subtitle C § 1502.1(c)(4)**, as illustrated in the right-hand diagram “Proposed Penthouse” on page 16 of Case Exhibit 76, pursuant to Subtitle X § 901.2 and Subtitle C § 1504.1.

OP continues to recommend **approval** of the four variance requests and other two special exception requests for which OP had recommended approval in its March 16, 2018 report (Exhibit 52). These are

1) **VARIANCES** pursuant to Subtitle X § 1000.1 from:

- **The closed court width and area requirements of Subtitle I § 207.1** for two closed courts
 - (North Court: 18.5’ wide, 684.5 SF area required; 6’2” wide, 322.9 SF proposed);
 - (South Court: 16.66’, 555.6 SF area required; 6’2” wide, 204.7 SF proposed).
- **The Mount Vernon Triangle Principal Intersection Area (MVT/PIA) interior height requirement of Subtitle I § 612.4** -- (22-foot height, to depth of 36 feet, required; 19-foot height, to depth of 24 feet, proposed).
- **The loading access requirements of Subtitle C § 904.2** – (driveway or access aisle ≥ 12 feet required; 11.5 feet provided).
- **The loading requirements of Subtitle C § 901.1** -- (2 berths and 2 loading platforms required; 1 berth and one loading platform proposed):



The District Department of Transportation’s findings on this application assume the applicant will implement the loading management plan proposed in Exhibit 39-B, pages 17,18 and as summarized on pages 2 and 3 of the District Department of Transportation ‘s (DDOT’s) recommendations for this case (Exhibit 45), supplemented by the DDOT report filed May 11, 2018 (Exhibit 74).

2) SPECIAL EXCEPTIONS pursuant to Subtitle X § 901.2:

- **To permit a rooftop penthouse lounge, pursuant to Subtitle C § 1500.3 (c)** (*see Exhibit 39A6, page 6*):

The applicant states that it has agreed with ANC 6E to limit the hours of operation for the rooftop lounge shall be limited to 1 a.m. on weekdays and 2 a.m. on weekends.

- **For relief from the rear yard requirements of Subtitle I § 205.1, pursuant to Subtitle I § 205.5--**(20.83 feet required beginning 25 feet about the height measuring point required: 1.5 feet proposed):

The applicant has informed OP that on the proposed east -facing windows that are directly opposite residential windows on the west side of the rear wing of 450 K Street, NW, the applicant plans to install translucent vertical window treatments to enhance privacy for the residential units.

**III. OFFICE OF PLANNING ANALYSIS OF REQUESTED SPECIAL EXCEPTION
SETBACK REQUIREMENTS OF SUBTITLE C § 1502.1 (C) (4)**

Since the application’s original filing, the configuration of the proposed penthouse has changed. It was originally shown as a single twenty-foot high two-story structure that appeared to extend directly upward from the main façade of the building’s northern and southern courts. The design was revised prior to the May 16, 2018 public hearing. The applicant has since filed the current, fully dimensioned design shown in Exhibit 76, which OP analyzes below.

Subtitle C § 1502.1 contains the following penthouse front and rear setback requirements:

C-1502.1: Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:

- A distance equal to its height from the front building wall of the roof upon which it is located;*
- A distance equal to its height from the rear building wall of the roof upon which it is located;*

The proposed penthouse design meets these requirements for the front and rear setback.

In Downtown and other mixed-use zones, Subtitle C § 1502’s requirements for the side setback of a penthouse vary. For an interior lot, the penthouse is required to be set back 1:1 from any portion of the

side wall of the building on which it sits, if that building is adjacent to a designated landmark or contributing structure to a historic district, pursuant to Subtitle C § 1502.1 (C) (4):

(c) [a penthouse must be set back] A distance equal to its height from the side building wall of the roof upon which it is located if:

(4) For any zone, it is on a building adjacent to a property improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter-of-right building height;

With the north and south adjacent buildings being contributing structures to the Mount Vernon Triangle historic district, the applicant is requesting special exception relief to construct a penthouse that would have less than the required 1:1 setback from the side wall of the courts on the north and south sides of the proposed building. The following criteria apply.

C-1504.1 Relief to the requirements of Subtitle C §§ 1506 – 1500.10 and 1502 may be granted as a special exception by the Board of Zoning Adjustment subject to Subtitle X, Chapter 9 and subject to the following considerations:

(a) 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;

Although the applicant may have demonstrated that the strict application of the setback requirements from the southern court would be unduly restrictive on the construction of a single-story all-mechanical penthouse (Exhibit 76, page 30), this is not what has been requested in this application. Rather, the applicant takes the demonstration that a one-story mechanical penthouse could require setback relief from the south courtyard wall, and extrapolates it into a request for setback relief from both the south and the north courtyard walls to accommodate a two-story penthouse with both mechanical and habitable space. The first level would have a bar/lounge and some mechanical equipment and the second level would contain the remaining mechanical equipment.

The intention of the Zoning Regulation’s provisions for occupied penthouses is to enable habitable spaces *if* the penthouse meets the special exception criteria. The applicant has not yet demonstrated satisfaction of the first of these criteria.

(b) The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall;

Since the first BZA hearing, the design has been modified to ensure the roof structure does not appear to be an extension of the building wall. The penthouse has been narrowed from north to south and lengthened from east to west. Setbacks, although non-compliant, have been introduced and the degree of setback relief has been reduced. Additionally, the penthouse’s cladding has changed to a dark brick color that clearly distinguishes the penthouse from the building façade. As such, the application meets this criterion.

(c) The relief requested would result in a roof structure that is less intrusive;

The revised design would be less intrusive than the design presented at the first hearing, but still more intrusive than a penthouse that conformed to setback requirements because the buildings to the north and

south are historic and considerably shorter than the proposed hotel. The most recent architectural design was, however, given concept approval by the Historic Preservation Review Board on May 24, 2018

(d) 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;

The applicant has demonstrated that given the relatively small size and width of the lot, the strict application of the setback requirements would impact the ability of a one-story mechanical penthouse to meet the building code's requirements. It has not demonstrated this for either a two story, all-mechanical penthouse or for the proposed two-story penthouse that would accommodate both mechanical equipment and a penthouse lounge.

(e) Every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and

Since the hearing, the applicant has shown this for a one-story mechanical penthouse and for a two-story penthouse accommodating both mechanical equipment and a lounge. It has not demonstrated satisfaction of this criterion for a two-story all-mechanical penthouse.

(f) 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.

One of the intentions of the setback regulations is to ensure that the appearance of the penthouse from adjacent public ways is minimized. When the penthouse regulations were modified in 2016, the Zoning Commission made clear that habitable uses in penthouses could be permitted, provided the penthouse would comply with the Zoning Regulations or would meet the special exception criteria. Habitable penthouse space was not intended to be an entitlement, but rather an option when other uses for the roof are satisfied consistent with the regulations. While the light and air of adjacent buildings should not be significantly adversely affected, and OP supports to the creative use of rooftops consistent with the zoning regulations, granting this requested relief would impair the intent and purpose of the penthouse setback regulations.

IV. ADDITIONAL DISTRICT AGENCY COMMENTS

On May 24, 2018, the Historic Preservation Board (HPRB) gave concept approval to the most recent design of the proposed building.

The District Department of Transportation (DDOT) filed two reports (Exhibits 45 and 74) stating the department had no objection to the approval of the requested special and exceptions and variances, provided the applicant implements the loading management plan noted on pages 2 and 3 of the first DDOT report.

V. COMMUNITY COMMENTS

ANC 6E passed a resolution conditionally recommending approval of the application, as the design existed on April 3, 2018 (Exhibit 61).

The case file contains five requests for party status in opposition (Exhibits 42-44, 67 and 79) as well as written testimony and filings in opposition (Exhibits 62, 78 – 78 E, and 80).