



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

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

**DATE:** July 6, 2018

**SUBJECT:** Office of Planning Fourth Supplemental Report on BZA Case No.19722– 923-925 5<sup>th</sup> Street, NW -- Square 713, Lot 53

### I. BACKGROUND

This fourth supplemental report addresses the modified penthouse setback relief the applicant is requesting to accommodate changes to the penthouse design made since the April 4, 2018, May 16, 2018 and June 20, 2018 public hearings to the design of the penthouse for the proposed hotel building, with limited retail, at 923-927 5<sup>th</sup> Street, NW. The analysis incorporates the information in the PowerPoint filed by the applicant on May 18, 2018 (Exhibit 76) and the updated architectural plans and elevations filed on June 27, 2018 (Exhibit 90). Since the June 20, 2018 hearing, the applicant:

- Has reduced the size of the penthouse to a one-story mechanical penthouse;
- Has modified its setback relief request and is now requesting only the setback relief illustrated in Exhibit 90, Sheet A017a “Mechanical Roof Plan Areas of Setback;
- Is no longer proposing a bar/restaurant use in the penthouse and has withdrawn the special exception request for such a use.

### II. RECOMMENDATIONS

The Office of Planning (OP) **recommends the Zoning Commission approve the request for the Special Exception relief from the penthouse setback requirements of Subtitle C § 1502.1(c)(4)**, as illustrated in Exhibit 90, Sheet A017a “Mechanical Roof Plan Areas of Setback, pursuant to Subtitle X § 901.2 and Subtitle C § 1504.1.

- From South Closed Court: 1:1 setback required; 1:0.56 proposed;
- From North Closed Court: 1:1 setback required; 1:0.64 proposed
- From North Property Line in northeast area of roof: 1:1 setback required; 1:0.8 proposed.

OP **continues to recommend approval** of the four variance requests and the one remaining special exception request for which OP had recommended approval in its March 16, 2018 and June 12, 2018 reports (Exhibits 52 and). 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  $\geq$  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:

- **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 plans in Exhibits 85A and 90 for the proposed building’s east facade have altered the location of some proposed east -facing windows. They would no longer be directly opposite residential windows on the west side of the rear wing of 450 K Street, NW. Accordingly, the applicant no longer 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 significantly. It would now be a one-story, mechanical-only penthouse, 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) *A distance equal to its height from the front building wall of the roof upon which it is located;*
- (b) *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.

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, and from the side wall at the property line on a portion of the northeast area of the roof. 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;*

The applicant has demonstrated that the strict application of the setback requirements would be unduly restrictive for the construction of a single-story all-mechanical penthouse (Exhibit 90, Sheet A-017a). The site is relatively narrow and setbacks would be further constrained by the need to introduce closed courts on the north and south side for window placement, thus leading to less roof width in which to achieve the required 1:1 setback.

*(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 not completely compliant, have been introduced and the degree of setback relief being requested 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 and second hearings. The one-story mechanical penthouse, with setback relief, would likely be less intrusive than a taller, narrower design that would meet all setback requirements.

*(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.

*(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*

The applicant has shown this for a one-story 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. The proposed 10-foot tall penthouse would be lower and less intrusive than a taller, fully-compliant mechanical penthouse, thus meeting the intent of the chapter and title. The light and air of adjacent buildings should not be significantly adversely affected by the requested setback relief.

#### **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 ANC chair reiterated this position on June 24, 2018 (Exhibit 89).

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).