

March 7, 2018



Meridith H. Moldenhauer
Alyssa L. Bigley

Direct Phone 202-747-0767
Direct Fax 202-683-9389
mmoldenhauer@cozen.com
abigley@cozen.com

VIA IZIS

Frederick Hill, Chairperson
Board of Zoning Adjustment
441 4th Street NW Suite 210S
Washington, DC 20001

Re: BZA Application 19722 - 923-927 5th Street NW
Applicant's Prehearing Statement
Hearing Date: March 28, 2018

Dear Chairperson Hill and Members of the Board:

On behalf of Kline Operations, LLC (the "Applicant"), please find enclosed the Applicant's Prehearing Statement and Exhibits, including updated architectural plans.

The Applicant also requests that the Board waive the 40-day notice requirement for one area of relief the Applicant requested on February 27, 2018, the area variance from Subtitle I § 612.4 from the floor-to-ceiling clearance in the Mount Vernon Triangle Principal Intersection Area Sub-Area. The Board has the authority to waive the notice requirement pursuant to Subtitle Y § 101.9, if waiver will not prejudice the rights of any party, and to hold the public hearing as scheduled on March 28, 2018 pursuant to Y § 402.11.

No parties will be prejudiced by this waiver because the only party to this matter is ANC 6E. The Applicant presented to the ANC Development and Zoning Committee on March 1, and the full ANC on March 6, 2018. The ANC voted unanimously to recommend approval of the project on March 6, 2018, including all areas of requested relief.

In addition, the Applicant identified the request for relief from Subtitle I § 612.4 in an updated Form 135 filed via IZIS on February 27, 2018. Also, the public notice given by the posting on the property will include all areas of relief. Finally, the public had notice of all other areas of relief, including two other area variances that the Applicant requested prior to the 40-day minimum notice requirement. Consequently, the Applicant respectfully requests that the Board waive the 40-day notice requirement for this single area of relief (Subtitle I § 612.4, from the floor-to-ceiling clearance in the Mount Vernon Triangle Principal Intersection Area Sub-Area) and hold the hearing as scheduled on March 28, 2018.

Thank you for your attention to this matter. We look forward to presenting this application to the Board at the hearing scheduled for March 28, 2018.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a thin horizontal line.

Meridith H. Moldenhauer
Alyssa L. Bigley
1200 19th Street NW
Washington, DC 20036

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
KLINE OPERATIONS, LLC**

**BZA CASE NO. 19722
HEARING DATE: MARCH 28, 2018**

PREHEARING STATEMENT OF THE APPLICANT

I. EXECUTIVE SUMMARY AND RELIEF SOUGHT

This prehearing statement is submitted on behalf of Kline Operations, LLC (the “Applicant”), the contract purchaser of the property located at 923-927 5th Street NW, (Square 0516; Lots 0827, 0828, 0829 and 0833) (the “Property”). The Applicant requests special exception relief pursuant to 11 DCMR Subtitle X § 901.2, from I § 205.5 (rear yard, I § 205.1), C § 1504.1 (penthouse setback, C § 1502.1(c)(4)), and C § 1500.3 (penthouse use as a restaurant or cocktail lounge), as well as area variance relief pursuant to Subtitle X § 1000.1 from I § 207.1 (closed court dimensions), C § 909.1 (loading berths), and I § 612.4 (floor-to-ceiling clearance in the Mount Vernon Triangle Principal Intersection Area Sub-Area) to construct a new hotel in the D-4-R Zone District (the “Project”).

II. PROCEDURAL BACKGROUND

The Applicant filed the initial application on January 29, 2018 seeking area variance relief from the closed court and loading berth requirements, as well as special exception relief from the rear yard and penthouse setback requirements in the D-4-R Zone. See BZA Ex. No. 14. Since then, the Applicant discussed the project with the Office of Planning, the Historic Preservation Office, and the Zoning Administrator, as well as to the neighboring community at a community meeting open to the public, the Mount Vernon Triangle Community Improvement District Board, the ANC Single Member District Commissioner, the ANC 6E Development and Zoning Committee, and the full ANC 6E.

In response to the discussion of the Project at those meetings, the Applicant filed supplemental requests for a special exception from Subtitle C § 1500.3(c) on February 15, 2018 to permit penthouse use as a restaurant or cocktail lounge (“Penthouse Use”), and additionally, on February 27, 2018, for an area variance from Subtitle I § 612.4 on for the floor-to-ceiling clearance requirement (“Clearance

Requirement”) in the Mount Vernon Triangle Principal Intersection Area Sub-Area (“Intersection Sub-Area”).¹ See BZA Ex. Nos. 30, 34. Also, the Applicant has reduced the degree of requested rear yard relief. As outlined below and depicted on the updated plans, the design now includes a 1.5-foot rear yard. See **Exhibit A**.

The Applicant responded positively and expeditiously to input received from the groups mentioned above. Changes to the architectural plans thoughtfully incorporate adjustment of the façade design and materiality to meet historic guidelines, a slight narrowing of the court width to accommodate ducted fresh air requirements from the anticipated hotel operator (“Hotel Operator”), as well as designation of an enclosed trash room on the ground floor plan in response to ANC inquiry. The Applicant also retained a transportation consultant, Gorove/Slade Associates, to assess impact of the Project and provide guidance for loading management and parking options. See Comprehensive Transportation Report at **Exhibit B**. Further, the Applicant coordinated with the Hotel Operator to agree to limited operating hours for the Penthouse Use and for a valet parking agreement (“Parking Agreement”) in response to the ANC and community. See Plans at **Exhibit A** and Parking Agreement at **Exhibit C**, respectively.

The Applicant has worked diligently to accommodate these requests and has put forth a comprehensive design for the Project that will contribute positively to the neighborhood and activate a currently-unimproved assemblage of lots. Given the Property’s history of vacancy and failed previous attempts at development, the Applicant seeks the relief requested to develop the site in a manner consistent with the high density of the zone on this relatively small site. For the reasons stated in the Applicant’s prior filings, herein, and as well as the reasons to be discussed at the BZA hearing, the Applicant submits that the application meets the standard for all areas of relief requested.

¹ According to Figures I §§ 612(a)-(b), the Applicant was unsure of the Property’s location within the Intersection Sub-Area. As such, the Applicant did not include relief from this section in the initial application. After communication with the Office of Planning, however, this point has been clarified and the relief is now requested.

III. NATURE OF SPECIAL EXCEPTION RELIEF SOUGHT AND STANDARD OF REVIEW

As stated above, the Applicant requests special exception relief from I § 205.5 (rear yard, I § 205.1), C § 1504.1 (penthouse setback, C § 1502.1(c)(4)), and C § 1500.3 (Penthouse Use). Under D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board is authorized to grant a special exception where it finds the requested relief:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR Subtitle X § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

IV. APPLICANT MEETS BURDEN FOR SPECIAL EXCEPTION RELIEF

A. The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps

As outlined in the Applicant’s initial application at BZA Ex. No. 14, the requested relief will be in harmony with the purpose and intent of the Zoning Regulations and related maps.

1. Penthouse Setback

While the Project satisfies the front and rear setback requirements, it cannot meet the required 1:1 setback on the sides because of the necessary location of the staircases and the particular configuration of the lot. The intent of the penthouse setback requirement is to ensure the proposed design does not adversely affect the light and air to neighboring buildings. The requirement also ensures minimized visual impacts

from the street. In this case, the relief requested is consistent with the stated intent because the penthouse will meet the 1:1 setback from the front and rear, and will not tend to adversely affect the light and air to neighboring properties. The buildings adjacent to the Property on both sides where the penthouse does not meet the 1:1 setback are designated as contributing to the Mount Vernon Triangle Historic District (“Historic District”). See HistoryQuest Map at **Exhibit D**. Consequently, the structures will likely retain their current height (3-4 stories maximum), which is significantly lower than the Project’s proposed 11 stories. Also, the property to the rear will not be impacted because it is constructed to a taller height than the Project, and the proposed penthouse meets the 1:1 setback requirement from the rear. Thus, due to the configuration and historic nature of surrounding properties, the penthouse will not impact the light and air available to them.² Further, the Property’s narrow street frontage in relation the depth of the lot creates a reduced visual impact of the penthouse from 5th Street. Therefore, the penthouse setback relief is in harmony with the purpose and intent of the Zoning Regulations.

2. Penthouse Use

The requested relief for Penthouse Use is in harmony with the intent of the Zoning Regulations. In particular, one of the main objectives of the Mount Vernon Triangle District is to “allow for an appropriate mix of residential, office, lodging, retail, service, entertainment, cultural, and other uses.” Subtitle I § 300.1. The proposed Penthouse Use aligns with this intent, as the relief will allow the Applicant to operate a restaurant or cocktail lounge in the penthouse of the proposed hotel. Moreover, restaurant and cocktail lounge use is permitted as a matter of right in the D-4-R Zone. The Penthouse Use, therefore, furthers the Zone’s stated goals of activating the Property and contributing to the recommended uses for the Zone.

3. Rear Yard

The rear yard relief is harmonious with the general purpose of the Zoning Regulations because the D-4-R Zone is intended to promote the development of high-density neighborhoods in Mount Vernon

² Penthouse setback is typically not required from the sides of a building wall adjacent to a closed court. Subtitle C § 1502.1(c)(5). But for the designation of the north and south adjacent buildings as contributing historic structures, the Applicant would not be required to set the penthouse structure back from the closed court walls on the north and south sides.

Triangle. Subtitle I § 100.1. Moreover, as stated in the initial filing, a project of the size proposed here is an appropriate use in the D-4-R Zone.

Since filing the initial application, the Applicant has reduced the requested rear yard relief and now proposes a 1.5-foot rear yard. See **Exhibit A**. This rear yard is provided to promote light and air filtration to the neighboring property to the rear, as well as to comply with the fire-separation distance between the buildings. See further explanation at Section C.2.(a), below. The massing and layout of the ground and cellar floor, including the portion of the building constructed within the required rear yard, satisfies the development standards set out in Subtitle I § 600. It also permits effective use of space to allow one loading dock to be provided onsite, given the Property's limited access to the alley in the rear within the required rear yard area. Finally, if the Project were to provide a compliant rear yard, the resulting structure would be approximately 90 feet in depth and would further exacerbate the Applicant's ability to meet the penthouse setback and court dimension requirements.

For all these reasons, the requested relief is consistent with the purpose and intent of the Zoning Regulations and Maps.

B. The Proposed Relief will not Tend to Adversely Affect the Use of Neighboring Property

1. Penthouse Setback

As stated above, granting the requested penthouse setback relief will not tend to impact the use of neighboring buildings because: 1) The buildings to the north and south, from which the penthouse does not meet the setback requirement, are significantly lower in height than that Property; 2) the Penthouse is partially set-back from the sides of the structure by the distance of the closed court below, a total of 5 feet, and is fully compliant with the setback requirement from the front and rear; 3) The penthouse height will not exceed that which is permitted in the zone, and is comparable in massing and height to the existing penthouses on other large buildings on the square; and 4) The requested relief meets the special conditions for penthouse setback relief, as outlined below in Section C.1.

2. Penthouse Use

Penthouse Use relief will not adversely affect the use of neighboring property because the proposed

use will be small in scale, distanced from surrounding properties, and designed in such a way to promote noise mitigation.³ For example, the penthouse will be setback 1:1 from the rear as well as from the front of the Property, which faces busy 5th Street NW. The only outdoor access on the penthouse level will be in the front roof terrace, and no external access is available to the rear. In addition, the Applicant has agreed that the Penthouse Use will be restricted to shortened operating hours (2am on weekends and 1am on weekdays) in response to community and ANC requests. Finally, pursuant to Subtitle C § 1006.10, the use of the penthouse as habitable space permits the Applicant to contribute funds to a housing trust fund, which could help the District meet the inclusionary zoning regulations that such use requires, thus furthering the District's affordable housing goals.

3. Rear Yard

The relief for rear yard setback will not tend to adversely affect the use of neighboring property. The Property will be separated from the structures to the rear by approximately 10 feet, which provides light, air, and fire safety. Also, the rear yard relief will allow the loading dock to be located onsite and will permit deliveries and trash services to access the Property through the alley. Finally, the Project satisfies the rigorous special conditions for rear yard relief as outlined in Section C.2., below.

Consequently, the use of neighboring property will not tend to be adversely affect by the requested special exception relief for Penthouse Use, penthouse setback, or rear yard.

C. The Project Satisfies the Special Exception Requirements for Rear Yard and Penthouse Setback

As outlined in the initial application at BZA Ex. No. 14, the Project satisfies the special exception conditions and requirements for penthouse setback at C § 1504.1(a)-(f) as well as rear yard relief at I § 205.5(a)-(d).

³ It should be noted that the two properties on either corner of the same 5th Street block where the Property is located also propose penthouse restaurant or cocktail lounge use. See BZA Cases 19103-A and 19215. Thus, the proposed use will be in keeping with the similar proposed uses on the block.

1. *Penthouse Setback*

The Board may grant relief from the penthouse setback requirements via special exception pursuant to Subtitle C § 1504.1, and the Project meets the conditions of that section as follows:

- (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 strict application of the side setback requirements would be unduly restrictive on the construction of the penthouse. As depicted on the Plans at **Exhibit A**, the penthouse is already partially setback from the side property lines by 5', which is the width of the closed court below. If the penthouse were set back the required 20 feet on each side, the resulting penthouse would be unreasonably narrow, approximately 7 feet wide. This design would not permit two internal staircases for ingress and egress required by the building code, nor allow for standard circulation and function as discussed in section (d) below. The Applicant asserts that a 1:1 setback would create unreasonable impacts necessitating prohibitively costly and unworkable alignment of the access stair and elevator, as well as the room configurations below.

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

The penthouse will be partially set back 5' from the side lot lines, along the closed court below. This design will not appear to be an extension of the building wall, as confirmed by the Historic Preservation staff review and articulated in the Plans at **Exhibit A**.

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

Without the requested relief, the penthouse design would produce a roof structure that was uncharacteristically long and narrow, and would be more visually obstructive. To construct a narrow "bowling alley" style design on this structure would be less appealing and run afoul of the fabric of the block being developed by this and other properties under development. The proposed penthouse mimics others on the square, particularly those on the rooves of the large apartment buildings to the east which are of similar massing to the proposed Project. Thus, the proposed penthouse is visually less intrusive.

(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;

Given the narrowness of the lot, the lower floor layouts and the stairwells create a challenge to comply with setback on the penthouse level. Furthermore, a 7-foot wide compliant penthouse would not permit the design to meet D.C. Construction Code pertaining to roof access and stairwell separation. The elevator shaft and both stairwells are located in the required setback area. Therefore, if the penthouse were to comply with required setback, no elevator access could be provided. Without elevator access, the penthouse would no longer be ADA compliant and the elevator shaft would still remain within the required setback area. The stair shafts are 10 feet wide and therefore could not be relocated to fit within a 7-foot wide compliant penthouse, regardless of their orientation. Therefore, a penthouse that meets the setback requirements would violate the Construction Code and would result in an impractical design for lower floors.

(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 made every effort to create compliant mechanical and elevator housing. However, if the penthouse were required to meet the setback requirement, the mechanical equipment necessary for operation of the hotel would not fit in the resulting square footage. Therefore, setback relief would be required even if the proposed penthouse use was solely for screening mechanical equipment.

(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.

The penthouse regulations are intended, in part, to minimize the visibility from the street and to control impact to the light and air of adjacent buildings. The Applicant has made every attempt to comply with the intent and purpose of this chapter, as outlined above, and would do so but for the reasons stated herein.

2. Rear Yard

The Board “may waive the rear yard requirements as a special exception” pursuant to Subtitle I § 205.5. The Project meets the conditions of that section as follows:

(a) No window to a residence use shall be located within forty feet (40 ft.) of another facing building;

The Property will not contain any residential units. Further, the western-facing windows on the property located at 450 K Street NW are considered “at risk windows” because they are constructed on the 450 K Street property line, pursuant to a covenant for openings on property lines recorded in the land records (the “Opening Covenant”). See Opening Covenant at **Exhibit E**. Accordingly, this restriction does not apply.

(b) No window to an office use shall be located within thirty feet (30 ft.) of another facing office window, nor eighteen feet (18 ft.) in front of a facing blank wall;

The Property will not be used as an office, and the Applicant is unaware of any other office uses within 30 feet of the Property. However, it can be reasonably expected that windows from other facing buildings will be in close proximity in an area designated for high density.

(c) A greater distance may be required between windows in a facing building than the minimum prescribed in (a) or (b) if necessary to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines into such habitable rooms; and

The Applicant will provide adequate light to all guest rooms to the greatest degree possible. The Opening Covenant confirmed that the District requires a perpetual 10-foot fire separation between the 450 K Street building and “adjacent properties.” Although the Property is not immediately adjacent to 450 K Street, the Applicant has amended the plans to provide a 1.5-foot rear yard, thus satisfying the 10’ fire separation distance. The Applicant’s amended rear yard dimensions will also increase the flow of light and air to the area behind the Property, opposite the building at 450 K Street NW. Finally, the hotel guest rooms will be designed such that curtains or window dressings will provide additional privacy if needed.

(d) The building shall provide for adequate off-street service functions, including parking and loading areas and access points.

The Project will provide loading at the rear of the Property,⁴ and the D Zones do not require off-street vehicle parking (§ I-212.1). However, the Applicant is finalizing two pending agreements to provide 20 valet parking spots at two parking garages in the vicinity of the Property. See **Exhibit C**. Finally, the Applicant will request from DDOT a no-parking loading zone directly in front of the Property to accommodate drop-offs at the hotel.

Accordingly, as outlined above, the Applicant meets the special exception requirements for Penthouse Use, penthouse setback, and rear yard.

V. APPLICANT MEETS BURDEN FOR VARIANCE RELIEF

A. Additional Request for Area Variance Relief

The Applicant filed a request for additional area variance relief from the Clearance Requirement of Subtitle I § 612.4. See BZA Ex. No. 34. Pursuant to conversations with the Office of Planning, the Property's location is confirmed within a small portion of the Intersection Sub-Area. According to Subtitle I § 612.2 and Figures I §§ 612(a)-(b), the northwest corner of the Property measuring 18' (north-south) by 36' (east-west) falls within the Intersection Sub-Area Module "B." See Figures I § 612(a)-(b) at **Exhibit F**. As such, that portion of the Property is subject to the Clearance Requirement stating the minimum clear floor-to-ceiling height shall be 22' for at least 50% of its ground floor.⁵ As shown on the plans at **Exhibit A**, the proposed height of the area impacted by the Clearance Requirement is 20' in height. Therefore, the Applicant seeks relief by a degree of 2' from the Clearance Requirement.

⁴ The Applicant requests loading relief because one compliant loading berth will be provided, and two loading berths are required for a development of this use and size. Subtitle C § 909.1. See Section V.D.2. below.

⁵ Table I § 612.4 also requires that "[n]o more than 50% of the portions of a building within each of the B and C modules shall be more than 50 ft. above grade." According to conversations with the Office of Planning, this section was intended to apply to an assemblage of lots encompassing all modules A-D. Accordingly, the height limitation is met by the adjacent building to the north of the Property which falls within Module B and does not exceed 50' above grade.

B. Nature of Variance Relief and Standard of Review

Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § X-1000.1, the Board is authorized to grant an area variance where it finds that:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting, “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

C. The Property is Affected by an Exceptional Situation or Condition

As outlined in the Applicant’s initial application at BZA Ex. No. 14, the Property is characterized by an exceptional situation and condition arising from a confluence of factors: (1) the Property is an assemblage of four unique lots; (2) the shape of the lot is unique because the northern lot line jogs south and narrows the Property in the rear; (3) the Property has unique limited access to the alley; (4) the Property is particularly narrow compared to the non-rowhome properties on the square; and (5) the Property is partially located within the Intersection Sub-Area.

D. Strict Application of the Zoning Regulations Would Result in Practical Difficulty

1. Closed Court

Since the initial filing, the Applicant has updated the plans, attached at Exhibit A, to include court width of 5' wide each. This change is necessitated by the Hotel Operator's requirement to provide ducted fresh air. This requires more vertical duct risers in the building along the corridors, causing thickening of the walls by 1'-8." Thus, the Applicant reduced the court dimensions to 5' to accommodate this requirement. Without the added width on the north and south courts, the required expanded ducts would otherwise prohibitively decrease the width and height of the proposed corridors.

Strict application of the Regulations with respect to closed court dimensions would result in a practical difficulty to the Applicant. First, if the Applicant were required to eliminate the courts, the design could not include windows on the north and south façade, thus running afoul of the building requirement for windows in habitable units. Importantly, the courts are required to permit setback from the north and south property lines to allow this fenestration.

Second, if the Applicant were required to meet the closed court minimum width and area, the resulting building would be extremely narrow, approximately 25 feet wide. This impractical design would not meet requirements of the building code, Historic review, or the Hotel Operator. Therefore, the closed court requirements would impose a practical difficulty on the Applicant.

2. Loading Berth

The Project will provide one loading berth. If the Applicant were required to comply with the zoning requirements for two loading berths, the Applicant would face a practical difficulty. First, there is no curb cut from 5th Street NW, nor would one be approved by DDOT because it is contrary to the design regulations for the Primary Street Segment and design requirements of the Intersection Sub-Area. See Subtitle I § 612.5(d).

Second, the size constraint of the site would make it practically impossible to provide a second loading space. For example, a second, below-grade loading berth could not be provided because the limited frontage on the alley would prohibit the Applicant from meeting the ramping or clearance requirements for

such below-grade access. Additionally, the ramp to the cellar level would necessarily be located within the in space where the loading berth is provided currently.

Third, the only vehicle access to the Property is from the southeast corner of the Property at existing lot 0833 onto the alley. The linear width of this frontage is 11.5 feet, and the angled design of the loading dock entry is necessary for truck access. The Applicant considered numerous variations on the current loading design, but none could be configured such that two trucks were able to access the loading berth and maneuver from the alley.

Therefore, given that the only possible location for the loading berth is on the ground level, and the practical difficulty of the constraints from the alley access, only one loading berth can be provided on the Property.⁶

3. Floor-to-Ceiling Clearance

The project provides 20' floor-to-ceiling clearance in the required ground floor location, and the Applicant is only seeking 2' of relief. The Applicant would face practical difficulty in providing 22' floor-to-ceiling clearance on the ground floor. First, the Property is only partially located within the Intersection Sub-Area Module "B" where the Clearance Requirement is obligatory.⁷ Constructing a hotel lobby and ground floor space that complied with the Clearance Requirement only on the northwest corner of the Property would impose a practical difficulty on the Applicant.

Second, Historic Preservation staff has already opined on the proposed design and provided critical feedback as to the height of the glazing above the historic façade, which is reflected in the current design and 11-story height. Changes to the height of the floor-to-ceiling clearance would necessitate further reconfiguration and would likely not meet historic preservation demands due to the existing historic façade on the Property.

⁶ As discussed above, the Hotel Operator will institute a loading management system to coordinate access to the loading berth and platform. See **Exhibit B**.

⁷ The Applicant was made aware that when the section was drafted, the intent was for an assemblage of lots at the intersection of 5th and K Streets NW to be developed together. This, evidently, did not occur, but the Project meets the purpose of the regulation by providing two stories of glazing on the ground and second floors.

As such, the practical difficulties the Applicant faces in complying with the Zoning Regulations for closed court dimensions, number of loading berths, and the Clearance Requirement directly relate to the unique confluence of factors impacting the Property.

E. No Substantial Detriment to the Public Good or Impairment of the Zone Plan

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief for closed courts, loading berths, and Clearance Requirement. The relief requested does not impair the Zone Plan because it permits the Applicant to construct a thoughtfully designed project for lodging use in one of the busiest areas of the Historic District, in close proximity to the Washington Convention Center, Union Station, and many developments nearing completion in the area. It also furthers the goals of the Downtown Zones to promote infill of unimproved properties and activate the streetscape. The Applicant has made every effort to design a project in compliance with Subtitle I §§ 601-612, particularly the design requirements imposed on the Property due to its location on a “designated primary street segment” of the Downtown Zones. Finally, the public good will not be detrimentally impacted because the relief requested will not substantially impact traffic, noise, or congestion of neighboring properties.

VI. PROPOSED CONDITIONS

1. Interior partition locations, size, location, and number of hotel units and stairs are preliminary and shown for illustrative purposes only. Final layouts, design, interior plans, and number of hotel units may vary to the extent that such variations do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.

2. Flexibility to vary the final selection of exterior materials within the color ranges of the material types and based on the availability at the time of construction, without reducing the quality of materials or intent of the original design.

3. Flexibility to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings trim, and windows or that are otherwise necessary to obtain a final building permit to the extent that such changes do not require additional relief from the Zoning Regulations and such that the variations do not change the external configuration or appearance of the building.

4. The hours of operation for the Penthouse Use will be limited to 1am on Sunday-Thursdays and 2am on Friday and Saturday.

VII. COMMUNITY OUTREACH

The Applicant has conducted significant community outreach since filing the application. The Applicant presented the Project at a community meeting open to the public at 450 K Street NW, and separately to the Mount Vernon Triangle Community Improvement District Board, on February 22, 2018. The Applicant also met with the ANC Single Member District Commissioner for the Property. Finally, the Applicant presented the Project to the ANC 6E Development and Zoning Committee on March 1, 2018 and to the full ANC 6E on March 6, 2018. ANC 6E voted unanimously to recommend approval of the Project, conditioned upon the Applicant requesting from DDOT that one additional parking space be added to the loading zone in front of the Project on 5th Street NW. The Applicant agreed to make such a request and will continue to work with DDOT on that issue.

VIII. CONCLUSION

For the reasons stated above, the Project meets the applicable standards for special exception and area variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the relief requested.

Respectfully Submitted,

COZEN O'CONNOR



Meridith H. Moldenhauer
Alyssa L. Bigley
1200 19th Street NW
Washington, DC 20036

CERTIFICATE OF SERVICE

I certify that on March 7, 2018, a copy of this Prehearing Statement of the Applicant was served via email on the Office of Planning and Advisory Neighborhood Commission 6E, as follows:

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
Stephen.cochran@dc.gov

Advisory Neighborhood Commission 5E
Alex Marriot, SMD 6E05 and Chair
6E05@anc.dc.gov
Anthony Brown, Chair of Development and Zoning Committee
brownanc6e@gmail.com

COZEN O'CONNOR



Meridith H. Moldenhauer
Alyssa L. Bigley
1200 19th Street NW
Washington, DC 20036