

**MEMORANDUM**

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

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

**DATE:** March 3, 2022

**SUBJECT:** BZA 20658 – 1650 Harvard St., N.W. Special Exceptions from Requirements for the Setback of a Penthouse, Elevator Override and Railings for the Renovation of an Existing Apartment Building in the RA-2 zone

**I. RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following Special Exception relief from the penthouse and rooftop structure requirements of Subtitle C §1504.1(c)(2) pursuant to Subtitle C §1506.1 to enable the construction of a habitable penthouse with associated decks and railings, and a new elevator override on an existing apartment building at 1650 Harvard Street, N.W.:

- **Penthouse Side Yard-Facing Setback Requirements of Subtitle C §1504.1(c)(2)** [Required, 1:1 (12 ft.) setback from side wall of building facing a public street (Quarry Road and Harvard Street; Existing, n/a; Proposed, ½ :1 (6 ft.) setback];
- **Rooftop Setback Requirements of Subtitle C §1504.1(c)(2) for Structures (railings) rising at least 4 feet above the roof on which they sit.** [Required, 1:1 (4 ft.) setback from side wall of building facing a public street (Quarry Road and Harvard Street; Existing, n/a; Proposed ½ :1 (2 ft.) setback];
- **Rooftop Setback Requirements of Subtitle C §1504.1(c)(2) for Structures (elevator override and staircase) rising at least 4 feet above the roof on which they sit.** [Required, 1:1 (15 ft.) setback of elevator overrun from side wall of building facing a public street (Harvard Street) and 1:1 setback of emergency staircase within penthouse facing a public street (Quarry Road); Existing, n/a; Proposed ~ 0.89: 1 (3 ft. 1 in.) setback of elevator overrun from Harvard Street and ½:1 (6 feet) setback of penthouse-embedded emergency stairway from Quarry Road].

**II. LOCATION AND SITE DESCRIPTION**

<b>Address</b>	1650 Harvard Street. N.W.	<b>Legal Description</b>	Square 2589, Lot 847
<b>Applicant</b>	1650 Harvard St NW Washington DC LLC; Jennifer Bisgaier and Jeff Utz, of Goulston & Stoors, agents		
<b>Zoning</b>	RA-2 (Predominantly moderate density residential development)		

<b>Ward, ANC</b>	1, 1C	<b>Historic District</b>	n/a
<b>Lot Character</b>	<p>The 38,415 square foot lot is generally bounded by Lanier Place on the east (which the designated building front faces), Quarry Road on the south (which a side yard faces), Harvard Street on the north (which a side yard faces) and, on the west, by a property line running from Harvard Street to Quarry Road. The southeastern boundary is irregular, wrapping around a lot at the corner of Quarry Road and Lanier Place. The lot slopes significant downward (~ 2 stories) from southeast to northwest.</p>		
<b>Existing Development</b>	<p>The existing 156-unit, 7-story apartment building has frontage on three streets, and a central courtyard. The principal pedestrian entrance is on Lanier Place. There is a U-shaped driveway and secondary entrance on Harvard Street. The 43 parking spaces and loading areas are entered from Quarry Road (Exhibit 4A1, Sheet 3).</p>		
<b>Adjacent Properties</b>	<p>The property immediately to the southeast, at the corner of Quarry Road and Lanier Place, is developed with a smaller 4-story apartment building which has rear and side walls facing the applicant’s property. To the immediate west is a relatively large 6-story apartment building with frontage on Harvard Street and Quarry Road.</p>		
<b>Neighborhood Character</b>	<p>The neighborhood character is varied, with mid-rise apartment buildings on the south side of Harvard Street and along parts of Lanier Place and Quarry Road. Two and three-story rowhouses predominate elsewhere, including on the north side of Harvard Street, across from the applicant’s property. There is a generally low-to-mid-rise commercial strip with smaller mid-rise apartment buildings on Mt. Pleasant Street to the northeast, and two-to-three story rowhouses farther west and south. The Mount Pleasant historic district begins on the north side of Harvard Street, across from the applicant’s property.</p>		
<b>Proposal</b>	<p>The applicant proposes to increase the number of apartments from 156 to 182 by reconfiguring layouts to add 17 units within the existing building, and a new habitable penthouse with 9 residential units and community amenity space. There would be a new elevator and overrun near the northwest corner of the building and emergency stairs would be embedded in the southwestern portion of the penthouse. Each penthouse unit facing north, east or west would have an adjacent private deck, as would the amenity space. Penthouses facing the courtyard would have balconies.</p> <p>The applicant has estimated that the penthouse units would generate a contribution to the (Affordable) Housing Production Trust Fund of approximately \$303,379. The exact amount would be calculated at the time of building permit application, consistent with the regulations.</p>		

### III. ZONING REQUIREMENTS

Zone – RA-2	Regulation	Existing	Proposed	Relief
Lot Area (sq.ft.)	none	38,415 sq.ft.	Same	None required
FAR F 302.2 & C 1002.3	1.8 FAR	4.41	Same	Existing nonconformity
Height F § 303.1	50 ft.	60.8 ft.	Same.	Existing nonconformity
Lot Occ. F 304.1	60%	84%	Same	Existing nonconformity
Affordable Units C §§ 1507.2, 1507.5 – 1507.7, and 1003.7,	IZ not required for existing building. Penthouse units require HPTF contribution	n/a	HPTF contribution estimate of about \$303,379.	None required
Rear Yard F 305.1 & F 305.2 (corner lot)	15 ft. or 4 in. per ft. of height, i.e., 20.3 ft. Measurable from abutting street centerline	11 ft., 13 ft., 17 ft.	Same	Existing Nonconformity
Side Yard F 306.2 (b)	Not Required, but at least 4 ft. if provided	4.7 ft.	Same	None required
Vehicle Parking C 701.5, 702.1(a), 701.4	1 space / 3 du. = 62 & with 50% transit reduction = 31	43	Same	None required
Bike Pkg. C 802.1	1 long term/3 du; 1 short-term/20du	n/a	80 long term; 13 short term	None required
Loading C §§ 901.1, 905.3, 903.1(a)	One 30 ft. berth with adjacent platform; (1) 20 ft. delivery space	55 ft. loading area on west side of building	Same	Existing non-conformity
GAR F 307.1	0.3	Not provided	0.3	None required
Penthouse Height F 303.2	20 ft.; 1 + mezz; 2 <sup>nd</sup> for mechanical space	N/A	12 ft. plus existing and new elevator overruns	Check
<b>Penthouse and Roof Structure Setbacks C 1500.9</b>	1:1 setbacks from front, rear and from side walls facing public or private streets or alleys = 12 ft. for penthouse & emergency stairway;	N/A	*1:1 setbacks from front; *1/2 : 1 (6 ft.) from both side walls facing streets for penthouse & emergency stair; * 1/2 : 1 (2 ft.) for deck railings; *0.89 :1 (3 ft. 1 in.) for elevator overrun	<b>Special Exceptions Required and Requested</b>

## IV. ZONING ANALYSIS

Consideration of all setback relief requests are consolidated in the following analysis.

### **Subtitle C § 1506.1 Criteria**

*Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the [Board of Zoning Adjustment](#) subject to:*

*(a) The special exception requirements of Subtitle X, Chapter 9;*

- *Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?*

The proposal would enable an update of the building to current market and construction code standards without increasing its already-nonconforming height and FAR, and in a way generally consistent with the intent of the penthouse regulations. The requested setback relief should not result in a penthouse that is visually dominant, or inconsistent with the intent that penthouses read as distinct from and secondary to the existing main building. The materials and colors of the penthouse and elevator override would be different than the existing building. The railings would be either metal with a low solid to void ratio, or glass and, at 7-stories up, should be relatively unobtrusive from the sidewalk level of Harvard Street, and barely visible from the south side of the narrower Quarry Road.

Development of residential space in the penthouse would result in a contribution to the (affordable) Housing Production Trust Fund, as mandated by the Zoning Regulations, consistent with the regulations.

- *Would the proposal appear to tend to affect adversely, the use of neighboring property in accordance with the zoning regulations and maps?*

The proposed partial relief from the side setbacks of the penthouse, deck railings and new elevator overrun from the north and south sides of the building should not adversely affect the use of neighboring properties. The nearest building is to the west. The applicant's building is set back between 11 and 17 feet from the western (rear) property line and the penthouse is set back between 1:1 and 1.4:1 from the rear wall, meeting zoning requirements. On the southeast side the penthouse is setback 1:1.

The applicant's property is north of the four-story and six-story apartment buildings on the south side of Quarry Road. These buildings do not appear to have roof decks or solar installations. The applicant's property already casts some shadows on these buildings for a few weeks in the summer. Any additional shadow from the penthouse, stairway or railings would fall on the roofs of these buildings and should not affect their use. The rowhouses to the north are across a wider than typical section of Harvard Street and are set-back from the street atop a steep wooded hill. The requested 6-foot reduction in the setback of the 12-foot-high penthouse, the 7-inch reduction in the roofdeck railing setback and the 3-foot 1-inch reduction in the elevator override setback should not have an adverse effect on the use of the properties to the north.

*(b) 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; and*

The applicant bases its demonstration on two points:

- The protracted time period of negotiations before and after purchase with existing building tenants delayed the development of plans and the filing for building permits which, although filed before the effective date of Order 14-13E, which in this case includes new, more restrictive setback regulations, had not been approved prior to their effective date.
- Structural and code-related constraints of the existing building, as well as the then-applicable roof structure regulations, affected the location of new building elements and influenced the type and location of building changes that were reflected in the tenant agreements signed prior to the approval and effective date of Zoning Commission Case 14-13E.

Although the building was purchased in November 2019, the applicant began negotiations with tenants in November 2018 with an agreement being reached in September 2019 and tenant input continuing throughout the construction drawing phase in 2020 and 2021. The plans, which reflected the penthouse and roof structure setback regulations then in place, were reviewed in a PDRM on April 27, 2021 and building permits were filed in October of 2021. (See timeframe provided in Exhibit 21).

The proposals for the changes to the setback regulations from which the applicant is seeking relief were filed on January 10, 2020. They included the revisions for setbacks from side buildings walls facing public streets from which the applicant is requesting relief. The applicant states that, because of the fluidity of the hearing process, the plans and agreements with tenants were developed to conform to the regulations that were in place when the building permit applications were filed in October of 2021. The effective date for Order 14-13E was December 24, 2021.

*(c) The applicant's demonstration of at least one (1) of the following:*

The applicant has demonstrated that it meets the first and the second criteria.

*(1) 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 project was subject to complicated negotiations with existing tenants and had a protracted period for the development of plans. Agreements with individual tenants on the future layout of their units were based on plans that reflected zoning requirements in place in 2020. The applicant states that to revise those plans within the constraints of the existing building structure in order to comply with the newly adopted regulations would likely require re-opening tenant agreements and

significant re-design, raising uncertainty that would add to project delays and changes that, together, may become prohibitively costly and unreasonable.

*(2) The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;*

The applicant states that designing for sustainability is an integral part of good building design. Granting the relief would ensure that there would be room to accommodate all the solar panels shown on Sheet 3 of Exhibit 4A1, while, the applicant states, redesigning the penthouse to comply with the now-applicable setback regulations may reduce the number of solar panels that could be accommodated.

The requested relief would not result in the roof structure's appearing to be an extension of the building wall (Exhibit 4A4, sheet 19). The penthouse, railings, elevator override and stairs would still be set back from the building wall.

## **V. OTHER DISTRICT AGENCY COMMENTS**

There were no comments from other District agencies at the time OP completed this report.

## **VI. ADVISORY NEIGHBORHOOD COMMISSION COMMENTS**

ANC 1C has filed in support of the application (Exhibit 19).

## **VII. COMMUNITY COMMENTS TO DATE**

There were no comments in the file at the time OP completed this report.

## **VIII. LOCATION AND ZONING MAP**

The map follows on next page.

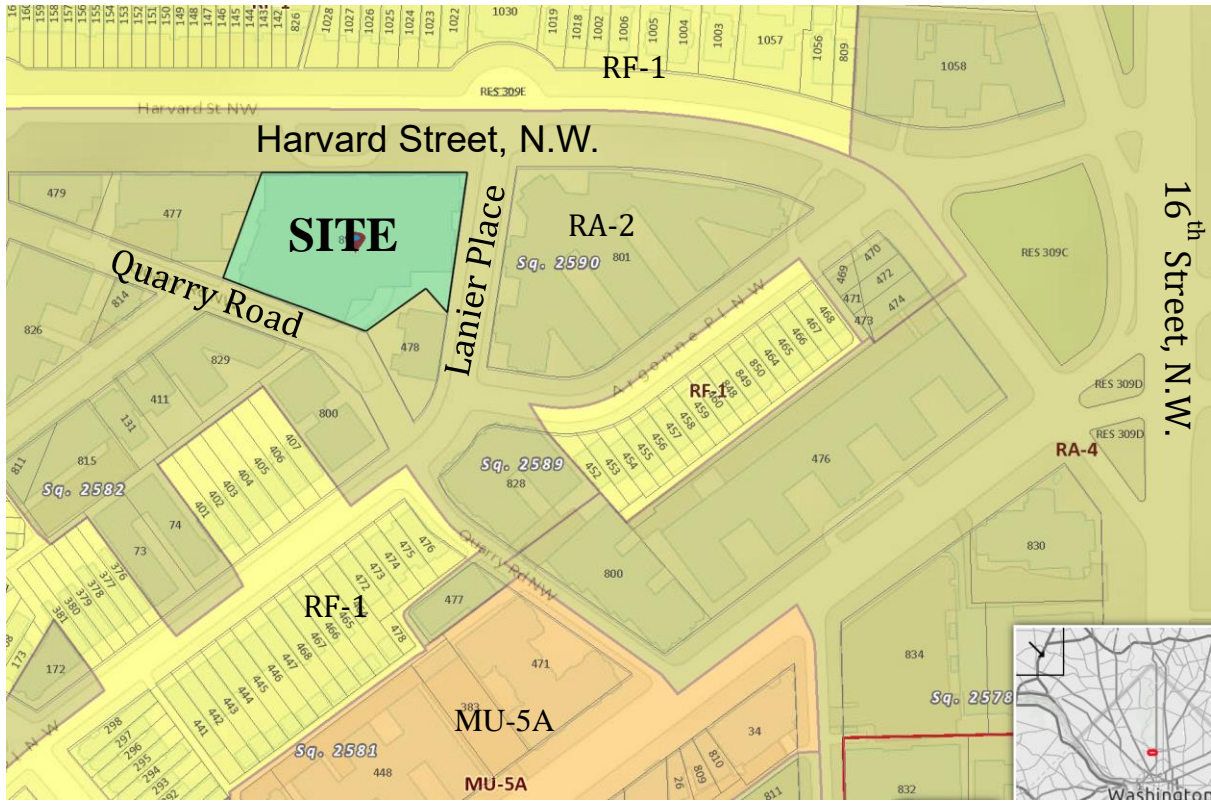


Figure 1. Site Location and Zoning