

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA Application No. 19358-A**  
**Bearden Arts, LLC**  
**1341 H Street, NE (Square 1029, Lot 159)**

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| <b>HEARING DATES</b> (19358):       | September 25, November 30, and December 21, 2016 |
| <b>DECISION DATE</b> (19358):       | December 21, 2016                                |
| <b>ORDER ISSUANCE DATE</b> (19358): | March 21, 2017                                   |
| <b>DECISION DATE</b> (19358-A):     | September 28, 2022                               |

**SUMMARY ORDER ON REQUEST FOR  
MODIFICATION OF CONSEQUENCE**

Pursuant to notice, at its September 28, 2022, public meeting, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for modification of consequence to BZA Order No. 19358 to construct a mixed-use building in the NC-14 zone. The Board considered the request for modification of consequence under Subtitle Y § 703 of Title 11 of the DCMR (Zoning Regulations of 2016, the “**Zoning Regulations**” to which all references are made unless otherwise specified). For the reasons stated below, the Board **APPROVES** the request for modification.

**ORIGINAL APPLICATION.** In Application No. 19358, the Board approved the request by Bearden Arts, LLC (the “**Applicant**”) for a special exception under the enlargement and design requirements of Subtitle H § 910.1 and § 1202.1. The Board issued Order No. 19358 on March 17, 2017. (Exhibit 2A of the record for Case No. 19358-A.) The approval was subject to three conditions:

1. The Applicant shall include language in its public offering statement for the residential condominiums that any future residential purchaser or resident would be ineligible for RPP.
2. The Applicant shall include language in its public offering statement for the residential condominiums that there would not be any undue noise or amplified sound permitted on the Applicant’s roof terrace.

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 19358A  
EXHIBIT NO. 11

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3. The Applicant shall include language in its public offering statement for the residential condominiums that any future residential purchaser or resident, in perpetuity, must acknowledge that they are coming to an urban neighborhood that generates noise from area bars and restaurants, including neighboring and adjacent businesses and properties, and that the residents acknowledge and accept these circumstances.

**PROPOSED MODIFICATION.** On June 27, 2022, the Applicant submitted a request for modification of consequence to Order No. 19358. (Exhibits 1-6.) The Applicant proposed the following changes to the project: 1) change the ratio of residential and nonresidential uses in the building with a slight reduction in the Floor Area Ratio (FAR); 2) reduce the size of the interior first floor of the building; and 3) reduce the number of parking spaces from 14 to 7 spaces through the elimination of the previously proposed below-grade parking, while still meeting the minimum requirement of three spaces under the Zoning Regulations.

**NOTICE OF THE REQUEST FOR MODIFICATION.** Pursuant to Subtitle Y §§ 703.8-703.9, the Applicant provided proper and timely notice of the request for modification of consequence. (Exhibit 5.)

**PARTIES.** The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6A.

**ANC REPORT.** The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 8, 2022, at which a quorum was present, the ANC voted to support the modification. (Exhibit 10.) The ANC report raised no issues or concerns.

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted a report recommending approval of the modification. (Exhibit 8.)

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT submitted a report indicating that it had no objection to the modification. (Exhibit 9.)

### **CONCLUSIONS**

The Board determines that the Applicant's request complies with Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board." Based upon the record, the Board concludes that in seeking a modification of consequence, the Applicant has met its burden of proof under Subtitle Y § 703.4.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

**DECISION**

It is therefore **ORDERED** that this application for a modification of consequence of BZA Order No. 19358 is hereby **APPROVED** subject to the following **CONDITIONS**, which remain unchanged from BZA Order No. 19358:


1. The Applicant shall include language in its public offering statement for the residential condominiums that any future residential purchaser or resident would be ineligible for RPP.
2. The Applicant shall include language in its public offering statement for the residential condominiums that there would not be any undue noise or amplified sound permitted on the Applicant's roof terrace.
3. The Applicant shall include language in its public offering statement for the residential condominiums that any future residential purchaser or resident, in perpetuity, must acknowledge that they are coming to an urban neighborhood that generates noise from area bars and restaurants, including neighboring and adjacent businesses and properties, and that the residents acknowledge and accept these circumstances.

**VOTE: 4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Joseph S. Imamura to APPROVE; Carl H. Blake not present, not participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** October 4, 2022

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.