

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

RECEIVED
OFFICE OF ZONING
2013 SEP 12 PM 2:38

Kyrus Lamont Freeman
(202) 862-5978
kyrus.freeman@hklaw.com

September 12, 2013

Via Hand Delivery

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N W , Suite 210S
Washington, DC 20001

Re **BZA Order No. 18555 - 3343 Prospect Street, N.W. (Square 1220, Lot 30)**
Request for Minor Modification of Plans Pursuant to Section 3129 of the Zoning Regulations

Dear Board Members

On behalf of Jemal's Prospect's LLC, as owner of the above-referenced property, we submit this request pursuant to 11 DCMR Section 3129.2 for approval of a minor modification to the plans approved by the Board of Zoning Adjustment (the "Board") pursuant to Order No. 18555, which granted special exception relief to change nonconforming uses to yoga studio, yoga apparel, and yoga accessories uses under Section 2003.1 of the Zoning Regulations, in the R-3 District at 3343 Prospect Street, N W (Square 1220, Lot 30) (the "Site"). The filing fee of \$405.60 (26% of the original filing fee in the case) and Forms 126 and 152 are enclosed.

In Application No. 18555, which was approved on June 4, 2013, the Board granted a special exception pursuant to 11 DCMR Sections 2003.1 and 3104.1 to convert the following spaces into yoga studio, yoga apparel, and yoga accessories uses: (1) a vacant 1,246 square foot space last used for "office and display of interior decorating" pursuant to Certificate of Occupancy No. B93857, (2) a vacant 519 square foot space last used for "office space" pursuant to Certificate of Occupancy No. CO30195, and (3) an existing 616 square foot hair salon space.

A copy of Order No. 18555 is attached hereto as Exhibit A, and a copy of the approved site plan which was included as Exhibit C of the Applicant's Prehearing Statement marked as Exhibit 26 of the record in Application No. 18555 is attached hereto as Exhibit B. In approving the special exception relief, the Board determined that (1) the Applicant satisfied the burden of proving the elements necessary to establish the case for a special exception under Section 2003.1, (2) the special exception relief is in harmony with the general purpose and intent of the

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18555
EXHIBIT NO. 35

Board of Zoning Adjustment
District of Columbia
CASE NO. 18555
EXHIBIT NO. 35

Zoning Regulations and Map, and (3) granting the special exception relief would not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map

Subsequent to the Board's approval, the Applicant was contacted by a potential yoga operator, and this operator has asked for additional space within the building. The Applicant is therefore seeking a minor modification of the approved plans to extend the approved yoga studio, yoga apparel, and yoga accessories uses into an existing 594 square foot space used for "upholstering furniture" pursuant to Certificate of Occupancy No B148972. A site plan identifying the proposed extended space is attached hereto as Exhibit C.

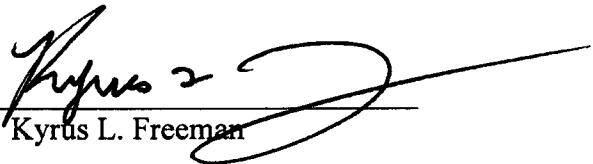
Section 3129.2 of the Zoning Regulations authorizes the Board to approve minor modifications to plans approved by the Board, and Section 3129.6 of the Zoning Regulations provides that "approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board based its original approval of the application."

Here, the Applicant is not proposing to increase the footprint or envelope of the existing building. The requested expansion does not create any new areas of zoning relief, and the Board has previously found that the Applicant's proposal to convert nonconforming uses to yoga studio, yoga apparel, and yoga accessories uses meets the applicable special exception standards of the Zoning Regulations. Expanding the approved yoga studio, yoga apparel, and yoga accessories uses will not generate any undue impacts since, as shown on the proposed site plan attached hereto as Exhibit C, the yoga spaces will be relatively small at a collective size of 2,975 square feet. In addition, expansion of the approved uses by 594 square feet would not cause any undue traffic impacts since the uses will be neighborhood-serving and most patrons will likely live or work in the vicinity of the site. Thus, the Applicant's request to extend the approved yoga studio, yoga apparel, and yoga accessories uses by 594 square feet does not change the material facts upon which the Board based its original approval of the application. Accordingly, this application is within the scope of Section 3129.6 of the Zoning Regulations and can be approved by the Board as a minor modification.

Very truly yours,

HOLLAND & KNIGHT LLP

By


Kyrus L. Freeman

Attachments

cc Steven Mordfin, OP
Advisory Neighborhood Commission 2E
Jeffrey Jones, Advisory Neighborhood Commission 2E

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18555 of Jemal's Prospect's LLC, pursuant to 11 DCMR § 3104.1, for a special exception to change nonconforming uses to yoga studio, yoga apparel, and yoga accessories uses under § 2003.1 of the Zoning Regulations, in the R-3 District at premises 3343 Prospect Street, N.W. (Square 1220, Lot 30).

HEARING DATE: June 4, 2013

DECISION DATE: June 4, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E submitted a letter, dated May 3, 2013, indicating that at a duly noticed public meeting at which a quorum was present, the ANC voted unanimously (5:0) in support of the application, subject to conditions. (Exhibit 24.) The Office of Planning ("OP") submitted a report in support of the application, subject to one condition. (Exhibit 27.) The District Department of Transportation ("DDOT") also submitted a report recommending approval of the application. (Exhibit 22.)

The Applicant initially requested approval for "yoga studio, apparel, accessories, home goods and furnishings use." However, at the request of ANC 2E, the Applicant amended the proposed uses to "yoga studio, yoga apparel, and yoga accessories" uses, which are first permitted as a matter-of-right in the C-2 District pursuant to §§ 701.1 (j) ("Group Instruction Center or Studio") and 701.5 (other "service or retail" uses) of the Zoning Regulations.

3343 Prospect Street, N.W. is the official address of record for Square 1220, Lot 30. However, as shown on the site plan included as Exhibit C of the Applicant's Prehearing Statement marked as Exhibit 26 of the record, the requested relief applies to: (i) a vacant 1,246 square foot space last used for "office and display of interior decorating" pursuant to Certificate of Occupancy No. B93857; (ii)

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcz@dc.gov

Web Site: www.dcoz.dc.gov

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18555

EXHIBIT NO. 32

Board of Zoning Adjustment
District of Columbia
CASE NO 18555
EXHIBIT NO 32

BZA APPLICATION NO. 18555
PAGE NO. 2

a vacant 519 square foot space last used for "office space" pursuant to Certificate of Occupancy No. CO30195; and (iii) an existing 616 square foot hair salon space.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1 for a special exception under § 2003.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITION:**

1. The approved hours for the uses are between 7:00 a.m. and 9:30 p.m. on Monday through Friday, and between 9:00 a.m. and 9:30 p.m. on Saturday and Sunday.

VOTE: 4-0-0 (Lloyd L. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 12, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

EXHIBIT B

34th Street

DRY CLEANER

712 SF

38'8"

FURNITURE UPHOLSTER

594 SF

15'10"

VACANT

1246 SF

33'7"

35'

HAIR SALON

616 SF

16'8"

VACANT

519 SF

14'

APPROX. 3,687 SF

EXHIBIT C

34th Street

DRY CLEANER

712 SF

38'8"

Proposed Additional "Yoga Studio,
Yoga Apparel, and Yoga Accessories" Space

594 SF

15'10"

Approved
"Yoga Studio,
Yoga Apparel, and
Yoga Accessories" Space

1246 SF

33'7"

35'

Approved "Yoga
Studio, Yoga
Apparel, and
Yoga Accessories"
Space

616 SF

16'8"

Approved
"Yoga Studio,
Yoga Apparel, and
Yoga Accessories" Space

519 SF

14'

APPROX. 3,687 SF



BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 126 – BOARD OF ZONING ADJUSTMENT FEE CALCULATOR

Per §3180 of the Zoning Regulations, at the time of the filing of an application or an appeal with the Board of Zoning Adjustment, the applicant or appellant shall pay a filing fee in accordance the fee calculator below. In the case of an application combining two (2) or more actions, or for an application requesting consideration of more than one alternative, the fee shall be the total of the amounts for each action or alternative computed separately. However, for applications involving owner-occupied, one-family dwellings or flats, regardless of the number of variances, special exceptions, or alternatives requested, the fee is three hundred and twenty-five dollars (\$325.00). A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee where the property is owned by the agency and the property is to be occupied for a government building or use.

APPLICATION OR APPEAL TYPE:	FEE	UNIT	TOTAL
-----------------------------	-----	------	-------

VARIANCE:

Owner-Occupied Dwelling	\$325		
All Other Variances Per Section Requested	\$1,040		

TOTAL FOR VARIANCES: N/A

SPECIAL EXCEPTION:

Parking Lot/Garage/Accessory Parking (per space)	\$104		
Child Development Center (per student)	\$33		
Private School (per student)	\$33		
Residential Under §353	\$520		
CBRF (per person)	\$104		
Office Use in SP (per 100 square feet)	\$52		
Roof Structures	\$2,600		
Hotel or Inn in SP (per room or suite)	\$104		
Gasoline Service Station	\$5,200		
Repair Garage	\$1,560		
Home Occupation	\$1,560		
Accessory Apartment Under §202	\$325		
Theoretical Lot Under §2516	\$1,560		
Additional Theoretical Lot Under §2516	\$520		
Recycling Facility Under §802	\$5,200		
Antenna Under §211	\$2,600		
Any Other Special Exception	\$1,560		
Chancery (per 100 square feet)	\$65		
Owner-Occupied Special Exception	\$325		
Time Extension/Modification – Owner Occupied	\$130		
Time Extension/Modification – All other (percentage of filing fee)	26%	\$1,560.00	\$405.60

TOTAL FOR SPECIAL EXCEPTIONS: \$405.60

APPEAL:

NCPC/ANCs/Citizens Association/Civic Association/Not-for-Profits	\$0		
All other organizations, groups or persons	\$1,040		

TOTAL FOR APPEALS: N/A

GRAND TOTAL: \$405.60

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22 2405)

Name: Kyrus L. Freeman, Esq. Signature: 

Exhibit No. _____ Last Revised (10/18/10) Case No. _____



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA



FORM 152 – MOTION FOR MINOR MODIFICATION

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 18555

Motion for Minor Modification to:

☒ Final Order

☒ Approved Plan

☐ Amount of Relief

☐ Other _____

Points and Authorities:

Below and/or on a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map.

See letter included with this request.

CERTIFICATE OF SERVICE

I hereby certify that on this

12

day of

September

,

2

0

1

3

I served a copy of the forgoing motion or request to each Applicant, Petitioner, Appellant, Party, Intervenor, and the Office of Planning on

the above referenced BZA case via:

☒ Mailed letter

☒ Hand delivery

☐ E-Mail

☐ Other _____

Signature:

Print Name:

Kyrus L. Freeman, Esq.

Firm/Organization:

Holland & Knight LLP

Address:

800 17th Street, NW, Suite 1100

Phone No.:

202-862-5978

E-Mail:

kyrus.freeman@hklaw.com

To be notified of hearing and decision: (Maker of Motion or Authorized Agent)

In the event an authorized agent files a motion on behalf of the Maker of the Motion, a letter signed by the Maker of the Motion authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name:

Kyrus L. Freeman, Esq.

Address:

800 17th Street, NW, Suite 1100 Washington, DC 20006

Phone No.:

202-862-5978

E-Mail:

kyrus.freeman@hklaw.com

THIS CHECK IS VOID WITHOUT A BLUE BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

Douglas Development Corporation
DDC Operating Account
702 H Street, NW
Suite 400
Washington, DC 20001

Eagle Bank
7815 Woodmont Avenue
Bethesda, Maryland 20814

65-329
550

Date	Check No.	Check Amount
9/9/2013	237395	\$405.60

Four Hundred Five AND 60/100 Dollars

Pay to the order of:

DC Treasurer

VOID IF NOT CASHED WITHIN 180 DAYS WITHIN DATE OF ISSUE



SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING