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May 21, 2013

VIA HAND DELIVERY

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

RECEIVED
D.C. OFFICE OF ZONING
2013 MAY 21 PM 1:57

Re. Application No. 18555 - PreHearing Statement

Honorable Members of the Board

On behalf of Jemal's Prospect's LLC, the owner of property located at 3343 Prospect Street, N W , Square 1220, Lot 30 (the "Site"), enclosed please find one original and twenty copies of the Applicant's prehearing submission in support of its application to the Board of Zoning Adjustment (the "Board") filed pursuant to 11 DCMR Sections 2003.1 and 3104 of the Zoning Regulations, for a special exception to change existing nonconforming uses to permit "yoga studio, yoga apparel, and yoga accessories" uses, in an R-3 District at the Site

Thank you for your attention to this application

Sincerely,



Kyrus L Freeman

Enclosure

cc Stephen J Mordfin, D C Office of Planning (Via Hand, with enclosure)
Advisory Neighborhood Commission 2E (Via U S Mail, with enclosure)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO 18555
EXHIBIT NO 26

Board of Zoning Adjustment
District of Columbia
CASE NO.18555
EXHIBIT NO.26

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

**APPLICATION OF
JEMAL'S PROSPECT'S LLC**

**BZA APPLICATION NO. 18555
HEARING DATE: JUNE 4, 2013
ANC 2E**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted by Jemal's Prospect's LLC, the owner of property located at 3343 Prospect Street, N.W., Square 1220, Lot 30 (the "Site"), in support of its application pursuant to 11 DCMR Sections 2003.1 and 3104.1 of the Zoning Regulations, for a special exception to change existing nonconforming uses to permit "yoga studio, yoga apparel, and yoga accessories" uses¹, in an R-3 District at the Site.

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the special exception relief requested herein pursuant to Sections 2003.1 and 3104.1 of the Zoning Regulations.

**III.
EXHIBITS IN SUPPORT OF THE APPLICATION**

<u>Exhibit A:</u>	Building Plat showing the Site.
<u>Exhibit B:</u>	Zoning Map showing the Site
<u>Exhibit C:</u>	Site Plan and Photographs of Site.
<u>Exhibit D:</u>	Outline of Testimony of Representative of Jemal's Prospect's LLC.

¹ The Applicant initially requested approval for "yoga studio, apparel, accessories, home goods, and furnishings". However, in consultation with the ANC 2E, the Applicant has agreed to amend the proposed uses to "yoga studio, yoga apparel, and yoga accessories "

IV. BACKGROUND

A. Description of the Site and the Proposal

The Site is located at the northwest corner of the intersection of 34th and Prospect Streets. See Exhibit A. As indicated on the portion of the Zoning Map attached hereto as Exhibit B, the Site is zoned R-3. The Site is rectangular in shape with 99 feet of frontage on 34th Street and 35 feet of frontage on Prospect Street. The Site is improved with a one-story brick building which has been used for commercial uses since 1955 pursuant to a number of BZA orders. The existing building includes approximately 3,687 square feet of retail square footage, which as shown on the Site Plan attached hereto as Exhibit C, is divided into the following uses:

- A furniture upholster store (594 square feet),
- A dry cleaner (712 square feet);
- A hair salon (616 square feet);
- A vacant 1,246 square foot space last used for "office and display of interior decorating" pursuant to Certificate of Occupancy No B93857; and
- A vacant 519 square foot space last used for "office space" pursuant to Certificate of Occupancy No. CO30195.

The Applicant is seeking relief to convert the existing vacant spaces and the hair salon space, which collectively total 2,381 square feet, for yoga studio, yoga apparel, and yoga accessories uses. The Applicant is not proposing to increase the footprint or envelope of the existing building.

V.
**THE APPLICANT MEETS THE BURDEN
OF PROOF FOR SPECIAL EXCEPTION RELIEF**

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested 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 regulations." *First Baptist Church of Washington v District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v District of Columbia Board 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.* As described below, the Applicant meets all of the applicable special exception standards.

Pursuant to Section 2003.1 of the Zoning Regulations, the Board of Zoning Adjustment is authorized to approve as a special exception under Section 3104.1 a change in a nonconforming use to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, subject to the conditions set forth in Section 2003. The Applicant complies with the special exception standards as follows:

1. **Section 2003.1 - If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.**

The existing hair salon use is first permitted as a matter-of-right in the C-1 District pursuant to Section 701.1 (c) of the Zoning Regulations; office use is first permitted as a matter-of-right in the C-1 District pursuant to Section 701.6(f) of the Zoning Regulations; and interior decorating use is first permitted as a matter-of-right in the C-2 District pursuant to Section

721.2(l) of the Zoning Regulations The proposed uses are first permitted as a matter-of-right in the C-2 District pursuant to Sections 701.1 (j) and 701.5 of the Zoning Regulations Thus, the application meets the requirement of Section 2003.1.

2. **Section 2003.2 - The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.**

The Applicant's requested relief to convert the existing vacant spaces and the hair salon space for use as a yoga studio, yoga apparel, and yoga accessories will not adversely affect the present character or future development of the surrounding area. The surrounding area is characterized by a mix of uses and structures, including several nonconforming uses. Although the Site is zoned R-3, the existing building on the Site has a history of nonconforming commercial uses dating back to 1955 The application will permit continued use of this building with small, low intensity commercial uses.

The Site is located in the Georgetown area, which includes a mix of residential, commercial, educational, and institutional uses. For example, a number of retail and service uses are located to the south of the Site along M Street, and Georgetown University and Georgetown Visitation School are located to the west of the Site Moreover, the C-2-A District is located within 300 feet to the east and south of the Site.

In addition, the surrounding area is located in the Georgetown Historic District and there are very few vacant properties for new development in the immediate area of the Site. Thus, approval of the requested relief will have no adverse impacts on the present character or future development of the neighborhood.

3. **Section 2003.3 - The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.**

The proposed yoga studio, yoga apparel, and yoga accessories uses will not create any harmful external effects. As shown on the site plan included with the application, the retail berths are relatively small and the proposed uses will have a collective size of 2,381 square feet. Thus, the spaces will generate nominal amounts of noise and waste. In addition, the proposed uses will be neighborhood-serving and thus will generate nominal amounts of vehicle trips since most patrons will likely live or work in the vicinity of the Site. Similar to the current uses on the Site, trash will be stored within the retail areas, and wheeled out on trash-pick up days.

4. **Section 2003.4 - When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.**

The existing nonconforming use has never been changed to a conforming or more restrictive use, and thus this section is not applicable to the current application

5. **Section 2003.5 - In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.**

The proposed uses are a "neighborhood facility" that have been designed to be small, low intensity uses primarily patronized by people who live or work in the immediate neighborhood. The nature of the services provided, the small size of the establishment, and its hours of operation are all designed to attract neighborhood residents and employees and to fit with the character of the area.

6. **Section 2003.6 - For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:**

- (a) **W-0, R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;**
- (b) **SP-1 and SP-2;**

- (c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);
- (d) W-1, W-2, and W-3;
- (e) CR; and
- (f) C-M-1, C-M-2, C-M-3, and M.

The existing hair salon use is first permitted as a matter-of-right in the C-1 District pursuant to Section 701.1 (c) of the Zoning Regulations; office use is first permitted as a matter-of-right in the C-1 District pursuant to Section 701 6(f) of the Zoning Regulations; and interior decorating use is first permitted as a matter-of-right in the C-2 District pursuant to Section 721.2(l) of the Zoning Regulations. The proposed uses are first permitted as a matter-of-right in the C-2 District pursuant to Sections 701.1 (j) and 701.5 of the Zoning Regulations. Thus, the application meets the requirements of Sections 2003.1 and 2003 6.

7. **Section 2003.7 - The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.**

As described above, the application meets the applicable standards of this section. Therefore, the Applicant does not believe that the Board needs to require any changes or modifications to the application. Moreover, any exterior changes to the building will be subject to Old Georgetown Board and Commission of Fine Arts review.

VI. COMMUNITY SUPPORT

The Applicant has the support of the community for the requested zoning relief. Advisory Neighborhood Commission ("ANC") 2E, the ANC in which the site is located, voted unanimously to support the requested zoning relief at its meeting on April 29, 2013, subject to

the uses having hours limited to between 7:00 am and 9:30 pm on weekdays and between 9:00 am and 9.30 pm on Saturdays and Sundays

VII.

WITNESSES

A. Representative of Jemal's Prospect's LLC

VIII.

CONCLUSION

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

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By


Kyrus L. Freeman, Esq.
800 17th Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 955-3000

EXHIBIT A

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., January 18, 2013

Plat for Building Permit of SQUARE 1220 LOT 30

Scale: 1 inch = 20 feet Recorded in Book G.T. Page 50

Receipt No. 13-01898

Furnished to: HOLLAND & KNIGHT / FREDA HOBAR

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)


Surveyor, D.C.

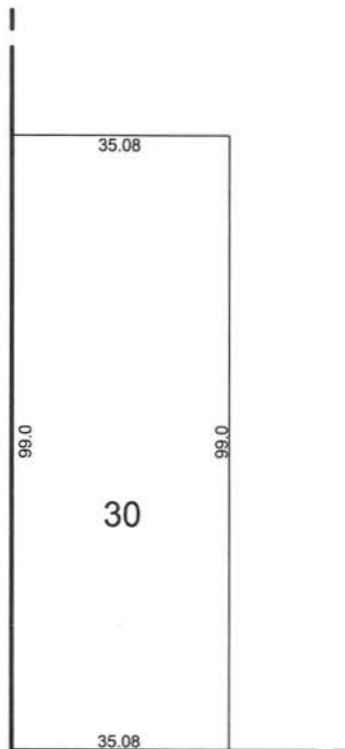
Date: _____

By: A.S. 

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

34th STREET, N.W.

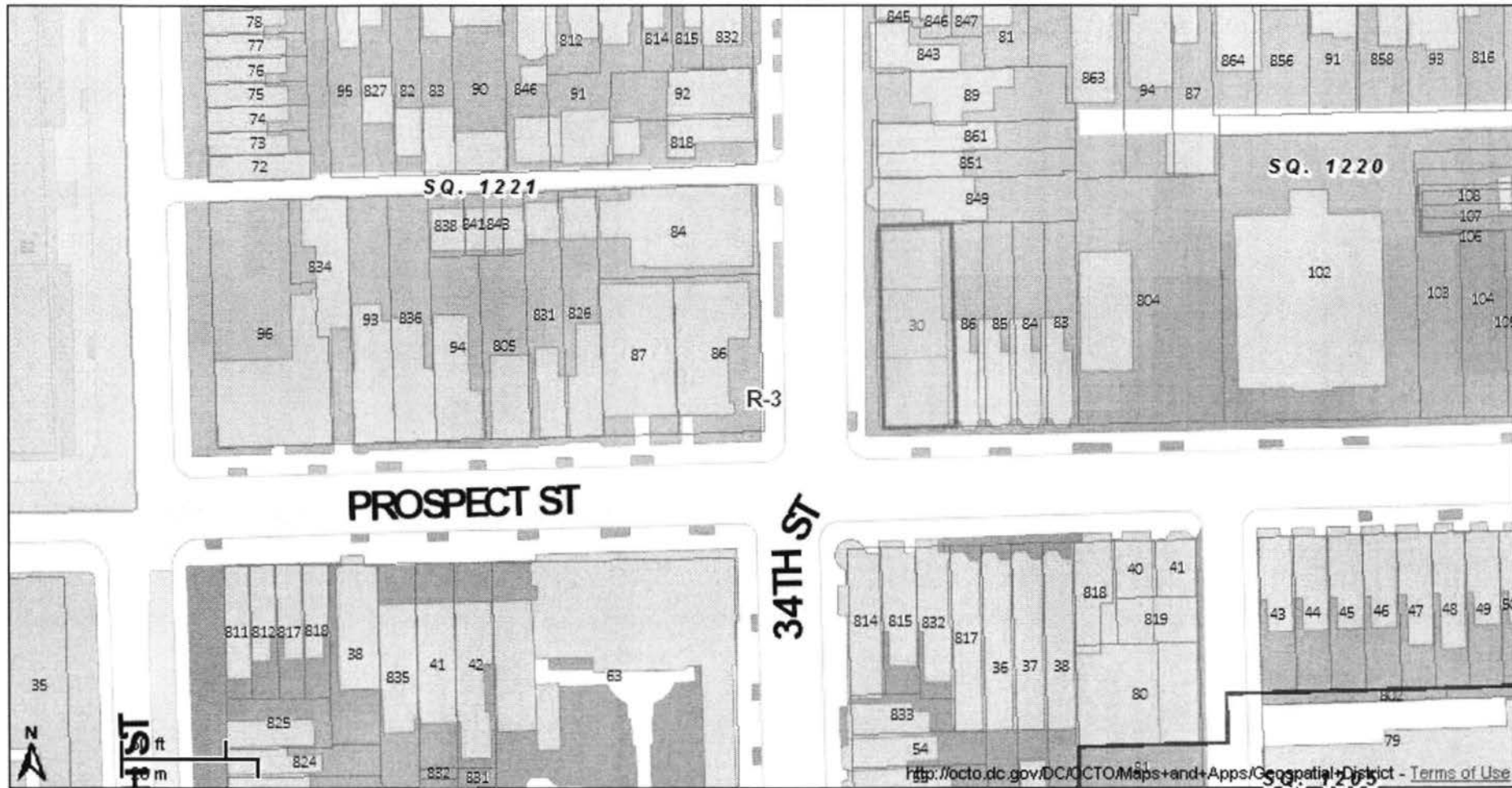


PROSPECT
STREET, N.W.

EXHIBIT B



District of Columbia Office of Zoning
EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP
 May 21, 2013



<http://octo.dc.gov/DCOCTOMaps+and+Apps/Geospatial+District> - Terms of Use

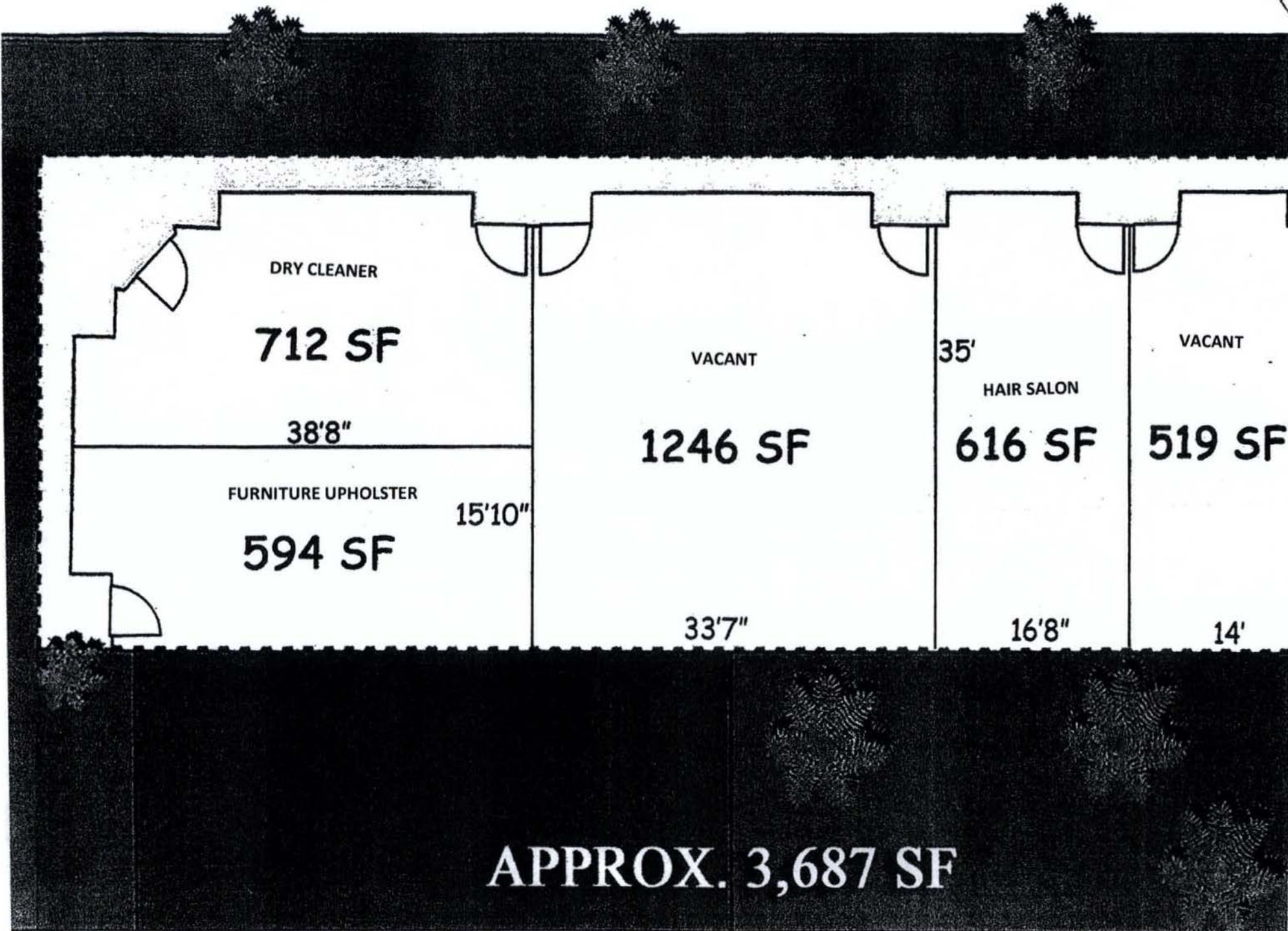
Zoning Layers

Zone Districts	Overlays Districts	TDRs	Air Rights Zone
Pending Zones	Pending Overlay Districts	Pending PUDs	Baist Index
Historic Districts	Campus Plans	Active PUDs	CEA

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

EXHIBIT C

34th Street





GOVINDA GALLERY





EXHIBIT D

OUTLINE OF TESTIMONY
REPRESENTATIVE OF JEMAL'S PROSPECT'S LLC

- I. INTRODUCTION
- II. PROPOSED DEVELOPMENT
- III. WORK WITH THE COMMUNITY
- IV. CONCLUSION