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800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 1300
Holland & Knight LLP | www.hklaw.com

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

November 5, 2013

VIA HAND DELIVERY

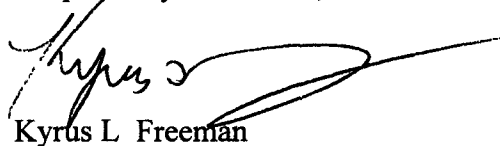
Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N W , 2nd Floor
Washington, D C 20001

Re BZA Application No 18555-A
3343 Prospect Street, N W (Square 1220, Lot 30)

Dear Members of the Board

On behalf of Jemal's Prospect's LLC, we are submitting herewith an original and ten copies of the Applicant's Prehearing Statement in support of the above-referenced application. We look forward to the Board's hearing on this matter on November 19, 2013.

Respectfully Submitted,



Kyrus L. Freeman

Enclosures

cc Advisory Neighborhood Commission 2E (w/encl by mail)
Steve Mordfin, Office of Planning (w/encl by hand delivery)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18555-A
EXHIBIT NO. 37

Board of Zoning Adjustment
District of Columbia
CASE NO. 18555
EXHIBIT NO. 37

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

**APPLICATION OF
JEMAL'S PROSPECT'S LLC
3343 PROSPECT STREET, N.W.**

**BZA APPLICATION NO. 18555-A
HEARING DATE: NOV. 19, 2013
ANC 2E**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Prehearing Statement of the Applicant is submitted on behalf of Jemal's Prospect's LLC (the "Applicant"), 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 Section 3129.2 for approval of a 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 the Site.¹

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the relief requested herein pursuant to Sections 2003, 3104, and 3129 of the Zoning Regulations.

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

<u>Exhibit A</u>	Portion of the Baist and Sanborn Atlas plats showing the Site
<u>Exhibit B</u>	Portion of the Zoning Map showing the Site
<u>Exhibit C</u>	Approved Site Plan

¹ 3343 Prospect Street, N W is the official address of record for Square 1220, Lot 30. However, as shown on the proposed modified site plan included as Exhibit E of this statement, the requested modification applies to an existing 594 square feet space used for "upholstering furniture" pursuant to Certificate of Occupancy No. B148972.

Exhibit D

BZA Order No 18555

Exhibit E

Proposed Modified Site Plan

IV. BACKGROUND

A. Description of the Site and BZA Approval

The Site is located at the northwest corner of the intersection of 34th and Prospect Streets, N W 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 that has been used for commercial uses since 1955 pursuant to several BZA orders (see BZA Orders 14041, 14139, 18555) The existing building includes approximately 3,687 square feet of retail square footage, and as shown on the Approved Site Plan attached hereto as Exhibit C, is divided into the following spaces

- 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

On June 4, 2013, the Board granted a special exception to convert the two vacant spaces and the hair salon into yoga studio, yoga apparel, and yoga accessories uses See BZA Order No 18555 attached hereto as Exhibit D These spaces collectively total 2,381 square feet 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 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 modification of the approved plans to extend the approved yoga studio, yoga apparel, and yoga accessories uses into the 594 square foot space used for "upholstering furniture" pursuant to Certificate of Occupancy No B148972 A Proposed Modified Site Plan identifying the proposed extended space is attached hereto as Exhibit E

On October 8, 2013, the Board scheduled the application for a public hearing The Applicant meets the applicable standards set forth in Sections 2003, 3104, and 3129 of the Zoning Regulations for approval to change the existing nonconforming use of furniture upholstery to yoga studio, yoga apparel, and yoga accessory uses

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

Section 3129.7 of the Zoning Regulations authorizes the BZA to modify any aspect of a BZA order -- including plans approved pursuant to such order -- at any time, subject to a hearing. In addition, Section 3129.8 provides that "[t]he scope of a hearing conducted pursuant to § 3129.7 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision " 11 DCMR §3129.8 As described in more detail below, the Applicant's proposed modifications to the approved plans do not have any adverse impacts on the original application

Moreover, pursuant to Section 2003.1 of the Zoning Regulations, the Board 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 furniture upholster store is first permitted as a matter-of-right in the C-2 District pursuant to Section 721.3(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 furniture upholstery 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 the 594 square foot space 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. A number of retail and service uses are located to the south of the Site along M Street, while 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, which is designed to provide facilities for shopping and business needs, housing, and mixed uses (*see* 11 DCMR § 720.2). In addition, the surrounding area is located in the Georgetown Historic District where there are few vacant properties for new development, making the Site particularly appropriate for the proposed new uses. Furthermore, in June of 2013, the Board found that the proposed uses would not adversely affect the present character or future development of the neighborhood. Thus, approving the addition of 594 more square feet for the same yoga studio, yoga apparel, and yoga accessories uses will not have any substantial adverse impacts on the surrounding area.

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 Proposed Modified Site Plan, if approved, the space for the overall yoga studio, yoga apparel, and yoga accessories uses is relatively small at a collective size of 2,975 square feet, including the proposed addition of the 594 square foot space. This additional space will generate minimal amounts of noise and waste. 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. Finally, expansion of the approved uses by 594 square feet does not change the material facts upon which the Board based its original approval of the application.

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 furniture upholster store is first permitted as a matter-of-right in the C-2 District pursuant to Section 721 3(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.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards under Sections 2003, 3129, and 3104 of the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By

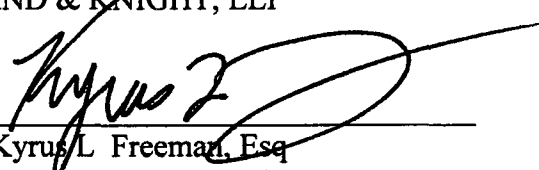
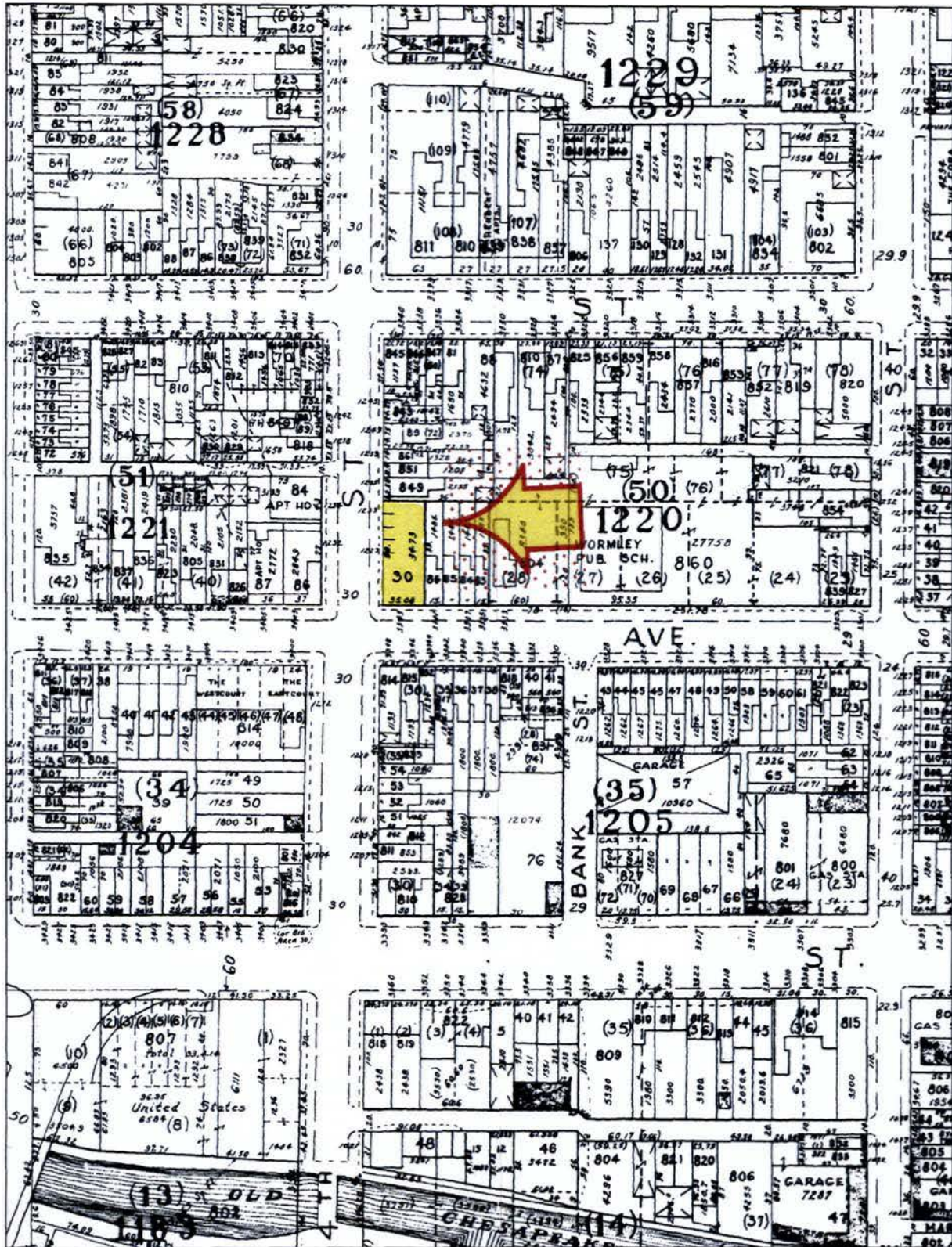

Kyrus L. Freeman, Esq.
Jessica R. Bloomfield
800 17th Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 955-3000

EXHIBIT A

Portions of Baist Map
3343 Prospect Street, N.W.



Portions of Sanborn Map
3343 Prospect Street, N.W.

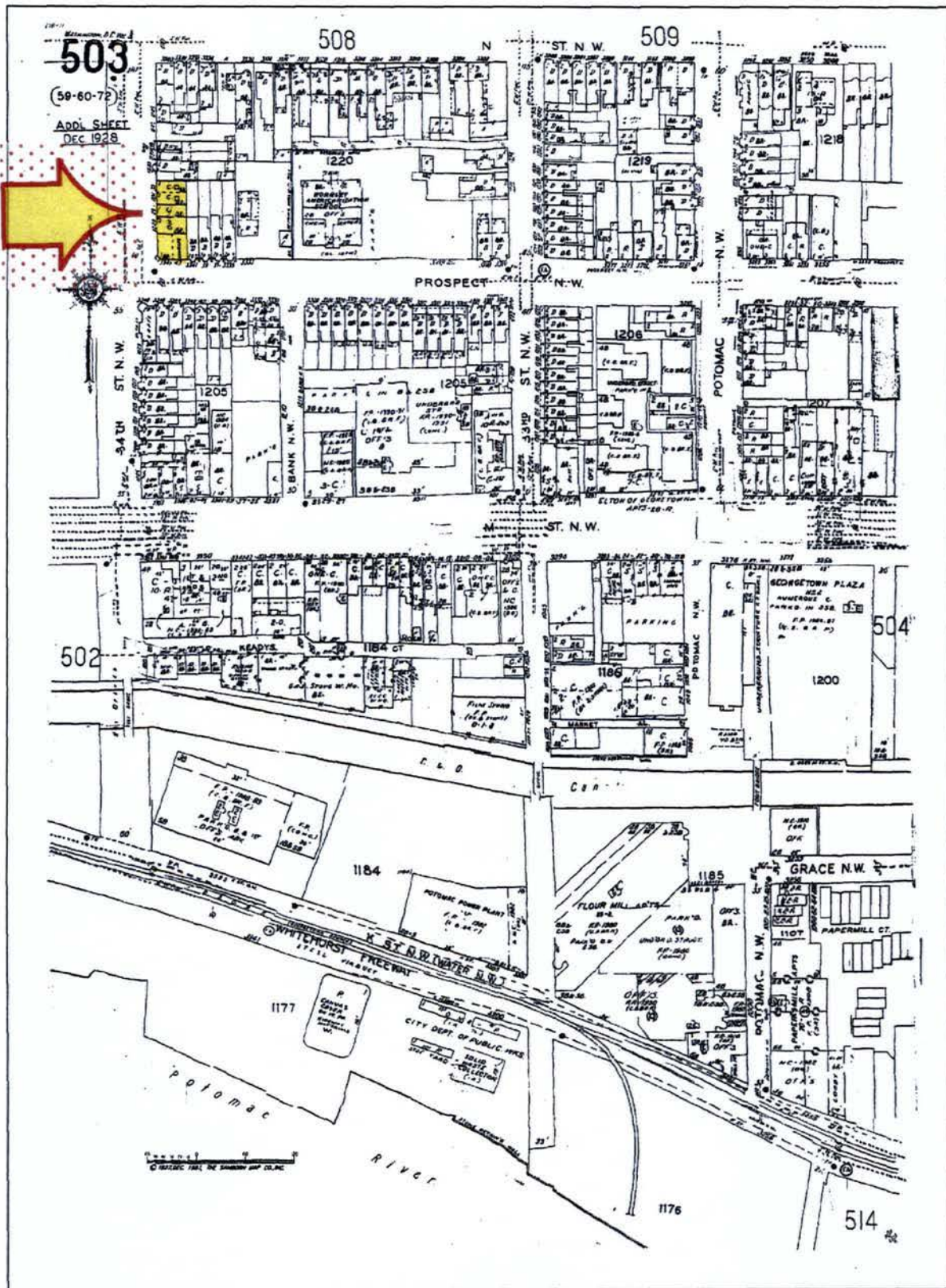
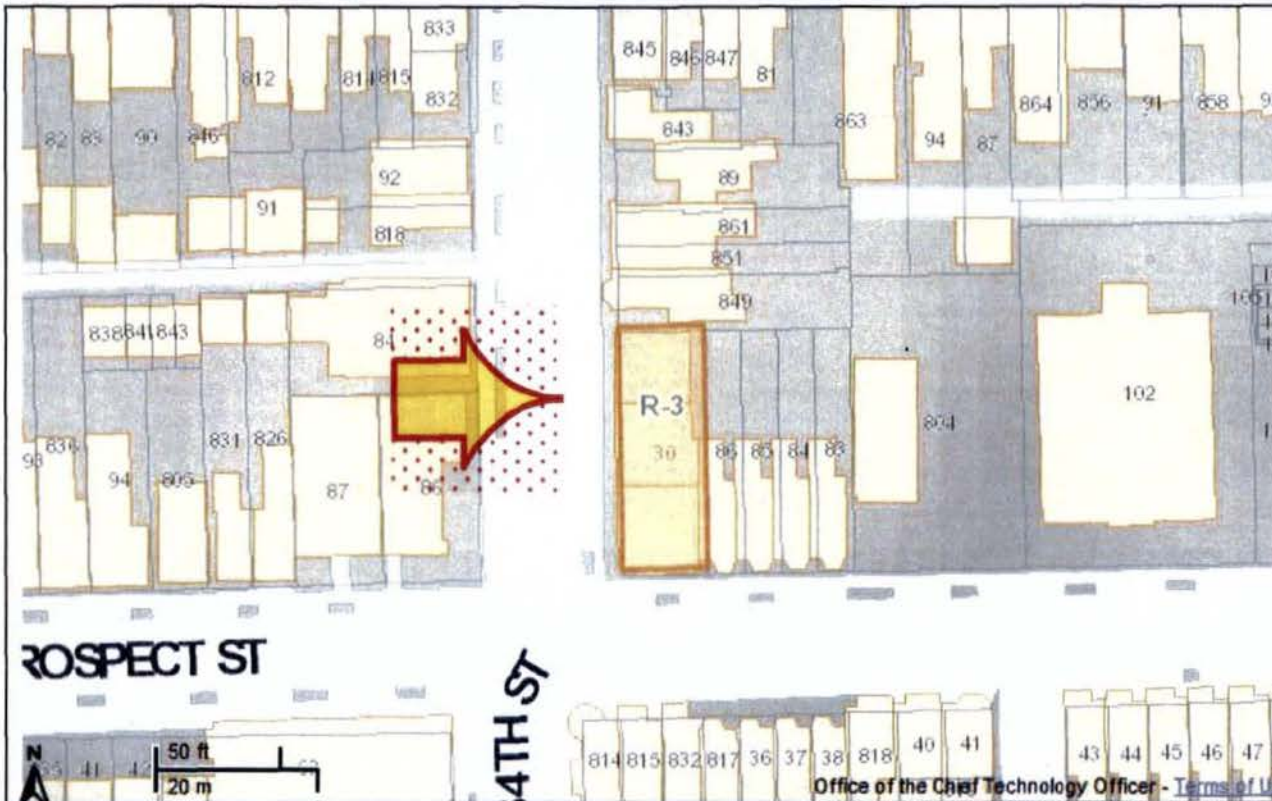


EXHIBIT B



Zoning Report for Square: 1220 Lot: 0030

October 14, 2013



Zoning Layers

 Zone Districts	 Pending Overlays	 Active PUDs	Latitude: 38.906198	
 Pending Zones	 Baist Index	 Pending		 Campus Plans
 Overlays	 Historic Districts	 TDRs		 CEA

While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy, or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right to change any content on its zoning map without prior notice.

Zoning Data Summary*

Square/Suffix/Lot	1220 / n/a / 0030
Premises Address	3343 PROSPECT ST NW
Zoning District (s)	R-3
Overlay District (s)	
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	2
Council Member	Jack Evans
ANC	2E
ANC Chairperson	Ron Lewis
SMD	2E03
Commissioner	Jeffrey Jones

* For a detailed explanation of zoning related terms, please refer to the DC Zoning Map Glossary available at http://maps.dcoz.dc.gov/css/Map_App_User_Guide/Glossary.pdf.

** To the extent an active PUD exists on a particular site, the PUD zoning depicts the zoning in effect for that site.

EXHIBIT C

34th Street

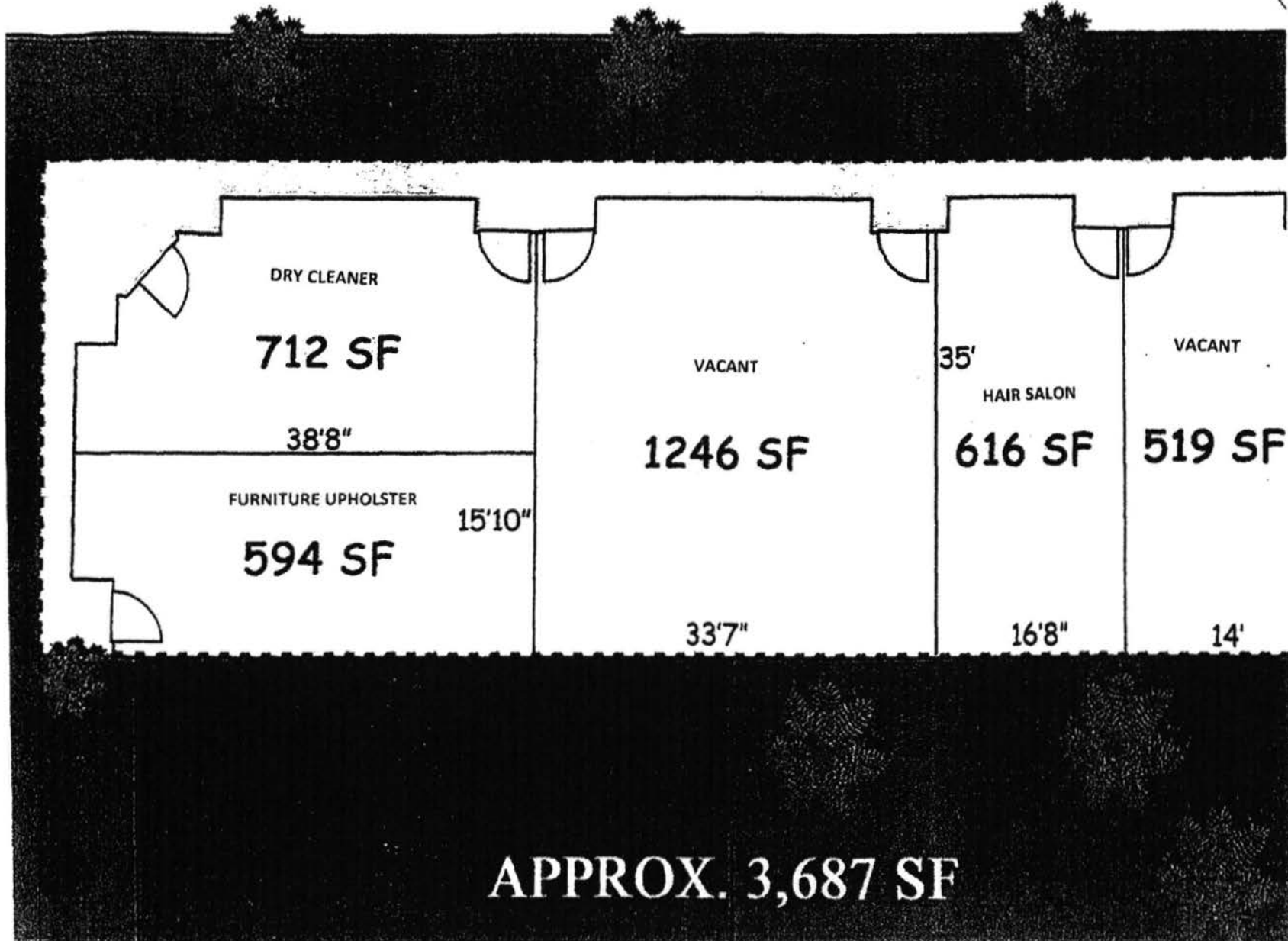


EXHIBIT D

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 dcoz@dc.gov

Web Site. www.dcoz.dc.gov

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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.

BZA APPLICATION NO. 18555
PAGE NO. 3

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 THEREOF, 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 E

34th Street

