

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement 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 2001.3 and 3104 of the Zoning Regulations, for a special exception to change existing nonconforming uses to permit "yoga studio, apparel, accessories, home goods, and furnishings" uses, in an R-3 District at the Site.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Site and Application

The Site is located at the northwest corner of the intersection of 34th and Prospect Streets, and 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. Pursuant to Certificate of Occupancy No. B148972, dated March 20, 1987, the Site was last used for "upholstery furniture" purposes. The existing building includes approximately 3,687 square feet of retail square footage. The Applicant is seeking relief to convert the existing retail space for use as a yoga studio, apparel, accessories, home goods, and furnishings space to potential tenants. The Applicant is not proposing to increase the footprint or envelope of the existing building.

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CASE NO. 18555
EXHIBIT NO. 5

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II. Burden of Proof for Special Exceptions

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 relief requested 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.*

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 2003.2 - 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 retail space for use as a yoga studio, apparel, accessories, home goods, and furnishings space 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. 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.

2. **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, apparel, accessories, home goods, and furnishings 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 range in size from 519 square feet to 1,306 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. Similar to the current uses on the Site, trash will be stored within the retail areas, and wheeled out on trash-pick up days.

3. **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.

4. **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

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operation are all designed to attract neighborhood residents and employees and to fit with the character of the area.

5. 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 proposed uses are first permitted as a matter-of-right in the C-2 District. The existing uses are first permitted as a matter-of-right in the C-2 District. Thus, the application meets the requirements of Sections 2003.1 and 2003.6.

6. 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 Review Board and Commission of Fine Arts review.

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