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D. Application for Variance and Special Exception Relief

Cavalier Apartments LP (the "Applicant"), the fee owner of 3500 14th Street, N.W. (Lot 0043, Square 2688)(the "subject property") hereby makes application to the District of Columbia Board of Zoning Adjustment (the "Board") for a special exception pursuant to §§ 2003.1 and 3104.1 of the District of Columbia Zoning Regulations, 11 DCMR (February 2003) (the "Zoning Regulations") to change an existing nonconforming use to the operation of a retail variety and grocery store in the ground floor commercial space in the Hubbard Place Apartments and a special exception pursuant to § 2120.6 to eliminate the parking requirements for a change of use within a historic resource in the R-5-E Zoning District.

1. Statement of Existing and Proposed Use

The Applicant owns and operates the Hubbard Place Apartments, consisting of two hundred-thirty (230) HUD Section 8 units for low income families and ground floor commercial spaces on three sides of the subject property, which fronts on Oak Street, N.W., 14th Street, N.W. and Otis Street, N.W. One of these commercial spaces, comprising 3,570 square feet and fronting on both Oak Street, N.W. and 14th Street, N.W. in the southwest corner of the subject property, was most recently occupied by The Latin American Youth Center for office use. Exhibit 5 - Certificate of Occupancy No. CO0902285 issued May 29, 2009. The office use was abandoned on June 30, 2012, by The Latin American Youth Center as its funding sources dwindled during the economic downturn of recent years. Black Lion Market, Inc. the current tenant in another commercial space on the north side of the subject property, has leased the

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18672
EXHIBIT NO. 4

vacant space and has completed the renovation of the ground floor commercial space for use as a retail variety and grocery with the authorized sale of pre-packaged items and prepared food. On April 25, 2013, the D.C. Department of Consumer and Regulatory Affairs issued a temporary Certificate of Occupancy (No. CO1300798) to the tenant, pending application to, and approval by, this Board for the change of nonconforming use of the subject property and such other necessary zoning relief.

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2. Site Description

The subject property is an eight-story building, 90-feet in height, extending along 14th Street, N.W. the entire block between Oak Street, N.W. and Otis Street, N.W. The subject property is thus virtually an island bounded by streets on three sides and by a four-story apartment building, The Tivoli Gardens, at the rear property line. The subject property, an example of Renaissance Revival architecture was opened in 1927. It was designated as a D.C. Historic Landmark in 2007 (“The Cavalier”) and is also listed in the National Register. The subject property was historically located in a commercial zone district, but in 1994 in Case No. 93-10Z, the Zoning Commission rezoned the subject property from C-2-A to R-5-E as part of Zoning Consistency Project II. The effect of the rezoning was to make the existing commercial uses on the ground floor nonconforming uses.

3. Surrounding Area Description

The subject property is located in the northern portion of Columbia Heights along the major commercial corridor, 14th Street. The site now exists as an R-5-E island in the miles-long strip of commercial zoned land which characterizes 14th Street from U Street north to Spring Road, N.W. The predominant land uses along 14th Street in the immediate vicinity of the subject property are two and three story row houses with ground floor commercial uses. Away from the

14th Street corridor, Otis Street to the west of the subject property has several multifamily buildings, but the dominant land use is single family row houses on Ogden Street, Oak Street and Parkwood Place.

4. Basis for Special Exception Relief Under Section 2003.1

The Board has frequently confronted and approved requests for a change of nonconforming uses within a building.¹ The common characteristic in each of these applications was a building plainly adapted for non-residential use, yet sited in a residential zone. In the instant application, the subject property was developed and maintained with commercial use on the ground floor for almost seventy (70) years before the underlying zoning was changed from C-2-A to R-5-E. The ground floor of the building in both the historic and the current photographs retains unmistakable commercial architectural elements, especially at the corners of the buildings: large display windows, doorways opening directly to the sidewalk and distinctive metal canopies proclaiming the non-residential activity. Exhibits 3 and 7.

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Section 2003 places several conditions that must be satisfied before one nonconforming use can be changed for another:

- (1) the proposed nonconforming use is one that is permitted in the most restrictive district in which the existing nonconforming use is permitted (§ 2003.1);
- (2) the “proposed use shall not adversely affect the present character or future development of the surrounding area” (§ 2003.2);
- (3) there are no deleterious external effects (§ 2003.3);

¹ Application No. 18555 of Jemal’s Prospect LLC, June 4, 2013 (change from office use to yoga studio, yoga apparel and accessories in the R-3 zone); Application No. 18275 of Potomac Avenue LLC, March 20, 2012 (change from vacant to coffee shop on ground floor by use variance in the R-5-B zone); Application No. 18274 of Little Deli Delicatessen, Trading as Chick’s Deli, November 29, 2011 (change from optometrist office to deli in the DD/R-5-E zone); Application No. 18099 of Beau Thai LLC, September 21, 2010 (change from fast food restaurant to restaurant in the R-4 zone).

(4) the change of use is not from a more restrictive to a less restrictive use (§ 2003.4); and

(5) in a residence district, “the proposed use shall be either a dwelling, a flat, apartment house, or a neighborhood facility (§ 2003.5).

In addressing each of these standards in order, the Applicant proffers as follows:

Both office use and retail use are first permitted as a matter of right in the C-1 zone district, so the two nonconforming uses are similarly restrictive.

The subject property is embedded in the C-2-A zone which characterizes the 14th Street corridor in Columbia Heights and residential-over-commercial is the typical land use.

The retail use is contained entirely within the building and has no deleterious adverse effects.

While the term “neighborhood facility” is not defined in the Zoning Regulations, the Board has in several cases decided that local-oriented businesses satisfy the plain intent of the term.² Some of the defining characteristics for a “neighborhood facility” have been held by the Board in the cited cases to be: small size, lack of parking, accessible by walking, patronized primarily by persons living or working close by, non-exclusive clientele and utilized by all members of the community. By all of these measures, the proposed retail use on the subject property is properly a “neighborhood facility.”

5. Basis for Special Exception Relief Under § 2120.6

The Applicant is requesting a special exception under Section 2120.6 to relieve it from having to provide parking for the nonconforming retail uses on the ground floor. As previously mentioned,

² Application No. 17100-A of Jesus Is the Way Church, June 22, 2004 (coffee/sandwich shop deemed to be a neighborhood facility in the R-4 zone); Application No. 16412 of Florida Avenue Partnership, May 5, 1999 (change from office use to restaurant is neighborhood facility in D/DCOD/R-5-B zone). See Zoning Commission Order No. 403 in Case No. 81-17, July 18, 1983.

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the Hubbard Place Apartments were built in 1927, predating the adoption of the Zoning Regulations on May 12, 1958. At the time of completion, the building contained residential units and ground floor commercial spaces at either end of the building along 14th Street. On a historic basis, the subject property is grand-fathered from compliance with the Zoning Regulations requiring off-street parking spaces on site. There is limited space at the rear of the building, serviced by a driveway off Otis Place, which is used for parking and loading. There are approximately six (6) stripped parking spaces in this area which are used by building employees and by delivery and contractor vehicles.

The building was designated as a “historic landmark” in 2007. Currently, the subject property contains three (3) retail spaces on the ground floor. The Black Lion Market is at the north end of the building (1,600 sq. ft.), the George Shoe Repair adjacent to the building entrance mid-block (400 sq. ft.) and the retail space facing Oak Street on the south end of the building, which is the subject of this application (3,750 sq. ft). To the best of Applicant’s knowledge, the three retail spaces have never had access to any required parking spaces on the subject property. Under § 2101.1, a retail space in the C-1 zone district (which is the most restrictive zone district which allows the proposed retail use) must provide one parking space for each 600 sq. ft. of gross floor area in excess of 2,000 sq. ft. In this instance, the parking requirement is three (3) parking spaces. If all of the retail spaces at the Hubbard Place Apartments were aggregated under the parking standard, the Applicant would be required to provide a total of seven (7) parking spaces for these uses.

Section 2100.4 requires parking spaces be provided for any additional requirement due to a change of use in a historic resource. Section 2120.3 relieves the owner of a historic resource from complying with the requirement of § 2100.4 to provide additional parking, provided that (i)

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the building's gross floor area has not been increased by more than 49% and (ii) the additional parking required is not more than three (3) parking spaces. An inquiry to the Zoning Administrator regarding the need to seek relief from the parking requirements applicable to a retail use did not result in a definitive approach to the zoning issue.³

In the Applicant's opinion, § 2120.6 affords the broadest remedy available to the Applicant under the circumstances of the subject property, as the Board has the authority to eliminate the parking requirement arising under § 2120.

6. Special Exception Standards of § 3104.1.

In addition to the specific requirements of §§ 2003.1-2003.4 and §§ 2120.6(a), any special exception application must also satisfy the general standard for this type of zoning relief: (i) that such relief will be in harmony with the general purpose and intent of the Zoning Regulations and (ii) that such relief will not adversely affect the use of neighboring property.

The zoning scheme for the northern part of the 14th Street corridor in the Columbia Heights neighborhood shows a pattern of development that results in ground floor commercial space with residential units above. This pattern holds for both row houses and multifamily buildings. It is unsurprising that the subject property fits well within this context. Indeed, the subject property predates the zoning scheme and was possibly the inspiration for it. As can be observed in Exhibit 7, the early incarnations of the building included ground floor commercial spaces in almost identical locations to those presently occupied.

Continuing ground floor commercial use is entirely consistent with the Comprehensive Plan and the local planning initiatives published by the D.C. Office of Planning. The stated objective for this part of 14th Street was mixed use development with multi-story housing above

³ Attached as Exhibit __ is a copy of the exchange of correspondence of the undersigned counsel for the Applicant with the Zoning Administrator.

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retail shops and services.⁴ Such development reinforces Mid-City's character as a pedestrian-oriented neighborhood with lively walk-in uses. A use, such as the one proposed, furthers planning goals for the area and continues the historic tradition of the subject property.

The proposed retail use at the subject property will have no effect of neighborhood property, as the building is itself isolated from other structures, particularly on the southern side which actually faces a small city-owned triangular park formed by the intersection of Oak street, Ogden Street and 14th Street.

E. Community Contacts

The Applicant will request to meet with Advisory Neighborhood Commissions 1A at its regular monthly meeting in October or November 2013.

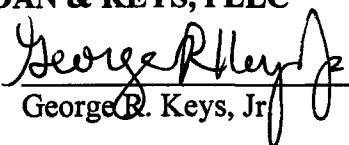
F. Conclusion

Based upon the foregoing discussion, the Applicant requests that the Board grant: (i) a special exception allowing the Applicant to change the nonconforming use of the ground floor space as offices to retail variety and grocery store and (ii) a special exception under § 2120.6 eliminating any parking requirement arising from the proposed retail commercial use of the subject property.

Respectfully submitted,

JORDAN & KEYS, PLLC

By:


George R. Keys, Jr.

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⁴ Comprehensive Plan Area Elements for Ward 2 – Mid-City, p. 11 and Policy MC-1.1.1 “Neighborhood Conservation”, Policy MC-1.1.4 “Local Services & Small Business” and Policy MC-2.2.6, at p. 24. See Columbia Heights Public Realm Framework Plan (October 2004).