

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18772-A of MR Gallery Square LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the number of roof structure requirements pursuant to § 411.4, to permit a restaurant use in the penthouse of a hotel in the DD/C-3-C District (Housing Priority Area B) at premises 627-631 H Street, N.W. (Square 453, Lot 59).¹

HEARING DATE: March 8, 2016
DECISION DATE: March 8, 2016

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 ("Board" or "BZA") 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") 2C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. The ANC submitted a report, dated February 11, 2016, indicating that at a regularly scheduled, duly noticed meeting on February 8, 2016, at which a quorum was in attendance, the ANC voted 3-0-0 in support of the application. (Exhibit 28.) At the ANC 2C meeting, at the request of the ANC, the Applicant agreed not to increase the dimensions of the window and door on the south façade of the penthouse as shown on Sheet A02 of Exhibit 9C. This commitment is acknowledged in the Applicant's statement in the record (Exhibit 30D) and through the Applicant's testimony at the hearing. (See revised Sheet A02 at Exhibits 30D, p. 2 and 30C, p. 2 – (duplicate).)

¹ By way of background, the subject property received prior approval in BZA Order No. 18772, dated July 22, 2014, granting variances pursuant to 11 DCMR § 3103.2 from the court requirements of § 776, the parking requirements of § 2101.1, and the loading requirements of § 2201, and pursuant to 11 DCMR § 3104.1, granting special exceptions from the roof structure requirements of §§ 770.6 and 411, and the rear yard requirements of § 774, to allow the construction of a new 11-story hotel with retail use. (See BZA Order No. 18772 and Applicant's Statement, Exhibit 7, p. 1.) The penthouse regulations which are the subject of this application - §§ 411.4 and 770 - were not in effect at the time of that approval. They were part of Z.C. Case No. 14-13 approved by the Zoning Commission on November 9, 2015. (See Applicant's Statement, Exhibit 7, p. 2.)

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The Office of Planning (“OP”) submitted a timely report on March 1, 2016, recommending approval of the application (Exhibit 31) and expressed support for the application at the hearing.

The D.C. Department of Transportation (“DDOT”) submitted a report expressing no objection to the application. (Exhibit 32.)

A letter of support was submitted from the owner and contract purchasers of several residential properties in close proximity to the subject site. (Exhibit 27.)

One neighbor who resides adjacent to the property testified at the hearing regarding the application. He noted that the alley is tight, and he raised concerns about the impact of the proposed restaurant use on the area nearby. In response, the Applicant testified that DDOT had conducted an analysis of the project and found no adverse impact on parking in the area, that the customers of the restaurant are likely to be the hotel patrons, and the area is vibrant with many walkers. The Applicant pointed out that no additional parking requirement is triggered by the penthouse proposed.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 411.4. The only parties to the application were the Applicant and the ANC which expressed support for the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411.4, that the requested relief can be granted, 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 requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 30, Tab C – ARCHITECTURAL DRAWINGS.**

VOTE: 4-0-1 (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, 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: March 10, 2016

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 TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.