

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

**APPLICATION OF
MR GALLERY SQUARE LLC
627-631 H STREET, NW**

**BZA APPLICATION NO. 18772A
HEARING DATE: MARCH 8, 2016
ANC 2C**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of MR Gallery Square LLC (the “Applicant”) in support of its application to the Board of Zoning Adjustment (“BZA” or the “Board”) pursuant to 11 DCMR §§ 3104.1 and 411.4 for special exception approval to provide restaurant use in the penthouse of the approved mixed-use hotel/retail building in the DD/C-3-C District at 627-631 H Street, NE (Square 453, Lot 59) (the “Site”).

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception requested herein pursuant to 11 DCMR § 3104.1.

**III.
BACKGROUND**

A. Description of the Site

The Site consists of Lot 59 in Square 453. Square 453 is bounded by I Street to the north, 7th Street to the west, H Street to the south, and 6th Street to the east, all located in the northwest quadrant of the District of Columbia. The Site is an interior lot with frontage on H Street and a 30-foot public alley at the rear. To the east and west of the Site is private property (Lots 54 and

58, respectively), each of which is improved with a mixed use building rising to a height of approximately 40 feet.

As shown on the Zoning Map attached hereto as Exhibit A, the Site is zoned DD/C-3-C and is located in the Chinatown Subarea and Housing Priority Area B in the Comprehensive Plan. *See* 11 DCMR § 1706.8(b)). The C-3-C zoning permits a hotel as a matter-of-right, with a maximum height of 90 feet and a maximum density of 6.5 floor area ratio ("FAR"). Based on the Site's location within the Downtown Development ("DD") Overlay District, the Site may be developed with a building having a maximum height of 110 feet, based on its frontage on H Street, N.W., and a maximum density of 10.0 FAR.

B. Prior BZA Approval of the Site

Pursuant to BZA Order No. 18772, dated July 22, 2014, and effective on July 28, 2014 ("BZA Order No. 18772") (Exhibit B), the Board granted variances from the court requirements of 11 DCMR § 776, the parking requirements of 11 DCMR § 2101.1, and the loading requirements of 11 DCMR § 2201, and granted special exceptions from the roof structure setback requirements of 11 DCMR §§ 411 and 770.6 and the rear yard requirements of 11 DCMR § 774, to allow the construction of a new 11-story hotel with retail use at the Site. The approved hotel building has a maximum height of 110 feet and will contain approximately 245 hotel guest rooms. The hotel included approximately 4,600 square feet of gross floor area on the ground level for retail/restaurant use with additional space in the cellar area.

The penthouse relief approved in BZA Order No. 18772 was for special exception relief from the penthouse setback requirements from the east and west walls, abutting the open courts in these locations. The approved penthouse was 18'-6" tall and thus required a 18'-6" minimum setback from the north and south walls and from the east and west open court walls. Although

the penthouse was setback more than 18'-6" from the north and south walls, the penthouse was not setback from the east wall at all, and was only setback 5'-11" from the west wall.

In BZA Order No. 18772, the Board concluded that:

the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 411, 770.6... 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. *See* BZA Order No. 18872, p. 2.

Based on BZA Order No. 18772, the Applicant completed design of the building and submitted for building permit. Building Permit No. B1411730 was issued on July 17, 2015 (the "Building Permit"). It approved the penthouse and roof design in conformance with the approved BZA plans. The approved project is currently under construction.

C. New Penthouse Regulations and Modifications to Penthouse

On November 9, 2015, the Zoning Commission approved Z.C. Case No. 14-13, which amended the penthouse regulations (the "Approved Regulations") set forth in the Zoning Regulations. The Approved Regulations provide building owners the opportunity under certain conditions to include habitable space in penthouses. The Approved Regulations also modified certain design requirements to provide for more flexibility with respect to penthouse design, including the ability to provide two penthouse heights under (*see* 11 DCMR § 411.9) whereas only one height was previously permitted.

Under Section 411.4(c) of the Approved Regulations, a penthouse may house "[a] nightclub, bar, cocktail lounge, or a restaurant use" if approved by the Board as a special exception under 11 DCMR § 3104. Pursuant to 11 DCMR § 411.4(c), the Applicant proposes to relocate a portion of the approved ground floor restaurant use into the hotel's penthouse. The result will be approximately 3,922 square feet of restaurant use on the ground floor and

approximately 1,626 square feet of restaurant use in the penthouse. The area within the penthouse to be devoted to restaurant use is the same size and configuration as that approved by BZA Order No. 18772 and the Building Permit.

In addition, the Applicant proposes to take advantage of 11 DCMR § 411.9, which provides that “enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space.” The Applicant proposes to lower the height of a portion of the penthouse enclosing the emergency generator (located on the northwest portion of the roof) by providing a screen wall that is only 10’ tall, rather than 18’-6” as previously proposed. The screen wall is set back 6’ from the west court wall, which is a greater setback than that approved by BZA Order No. 18772 (i.e., a setback of 5’-11” for a screen wall of 18’6”). The screen wall is set back 10’ from the north wall which meets the requirement of the Approved Regulations. The result of this modification will be a reduction in the setback relief previously granted and a decrease in the penthouse’s visible impact. The Applicant does not propose any other changes to the height, setback, or size of the penthouse as approved by BZA Order No. 18772 and the Building Permit.

Set forth in Figure 1 below, the modified penthouse does not create any new areas of relief except for the restaurant use, which was not previously permitted and is requested herein.

Figure 1:

<u>Old Penthouse Regulations</u>	<u>New Penthouse Regulations</u>	<u>Proposed Project</u>
Multiple roof structures when separate elevator cores are required (§411.4).	Multiple roof structures for separate stair towers or when separate elevator cores are required (§§ 411.6 and 411.8)	One roof structure proposed, no relief needed.
Enclosing walls shall be of equal height (§411.5).	Multiple heights permitted for occupiable space (§ 411.9(a)); required screening walls around uncovered mechanical equipment may be of a single, different uniform height (§ 411.9(c)).	No relief needed. One height proposed in BZA Case No. 18772. Two heights now proposed, but result is to <u>reduce</u> the setback relief previously approved.

Maximum height of penthouse of 18 feet, 6 inches.	Maximum height of penthouse of 20 feet.	No relief needed. Maximum penthouse height maintained at 18'-6".
Setback of 1:1 required for all exterior walls (§ 770.6(b)).	Setback of 1:1 required for side building walls that border any court other than closed courts (§ 411.18(c)(5)).	Relief granted in BZA Order No. 18772 under old § 770.6(b). Relief granted does not change under new penthouse regulations (see § 411.18(c)(5)).
No setback required for interior lot lines (§ 770.6(b)).	No setbacks required from a side building wall located adjacent to a property that has an equal or greater matter-of-right height (§ 411.18(c)(3)). 1:1 setback required from a side building wall that abuts property improved with a contributing structure to a historic district and is built to a lower height (§ 411.18(c)(4)).	East building wall abuts a lot with a building currently built to the property line and which is permitted to have the same matter-of-right height as the project. No relief needed. West building wall abuts a lot improved with a contributing building to a historic district that is built to a lower height. Penthouse is setback 1:1 from this wall. No relief needed.
No habitable space permitted.	A penthouse may house mechanical equipment or any other use permitted within the zone, except... (c) a nightclub, bar, cocktail lounge, or restaurant shall only be permitted as a special exception. (§ 411.4(c)).	Special exception relief requested under new § 411.4(c).

IV. **THE APPLICANT MEETS THE TEST FOR SPECIAL EXCEPTION RELIEF**

The Applicant seeks special exception relief pursuant to 11 DCMR §§ 411.4(c) and 3104.1 as described herein.

A. Standard for Approving Special Exception Relief

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant special exception relief where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. 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 regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. 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.*

In this case, the Applicant seeks special exception approval pursuant to 11 DCMR §§ 3104.1 and 411.4 of the Approved Regulations to provide restaurant use in the approved penthouse of the hotel building. Section 411 does not impose any specific criteria for granting a special exception to permit restaurant use in a penthouse. As shown on the architectural plans and elevations (the “Plans”) attached hereto as Exhibit C, the Applicant will use approximately 1,626 square feet within the penthouse for habitable space devoted to retail/restaurant use. The proposed penthouse restaurant use is consistent with the goals of the Approved Regulations to provide habitable space in penthouses and to provide contributions to the Housing Production Trust Fund for the production of affordable housing. Moreover, given that the Site is located in the DD Overlay and within the C-3-C District, commercial uses are encouraged, and in fact required, at the Site, and restaurant use is a preferred use (*see* 11 DCMR § 1711). Providing restaurant use in the penthouse of the hotel building will provide a unique and enjoyable dining experience for hotel guests and visitors, and will provide additional preferred uses in Chinatown and the DD Overlay, furthering the principal policies and objectives for the Chinatown area of encouraging a mix of uses including hotel and retail (*see* 11 DCMR § 1705.1(c)). Thus, the requested restaurant use is in harmony with the general purpose and intent of the zone plan and

will not tend to adversely affect the use of neighboring property.

Section 411.15 of the Approved Regulations provides that the gross floor area of penthouse habitable space shall be included in the calculation of parking and loading requirements. The plans approved by BZA Order No. 18772 identified a total of 64 parking spaces required as follows:

- 61 spaces for the 245 sleeping rooms, and
- 3 spaces for the retail use: $(4,600 \text{ sf retail total}) - (3,000 \text{ sf}) / (750 \text{ sf}) = 2.13$ spaces rounded up to 3 spaces to provide for deviation of the retail square footage.

Parking for the revised layout continues to be required at 64 spaces as follows:

- 61 spaces for the 245 sleeping rooms, and
- 3 spaces for the retail use: $(3,922 \text{ sf retail on ground floor} + 1,626 \text{ sf retail in the penthouse} = 5,548) - (3,000 \text{ sf}) / (750 \text{ sf}) = 3.39$ spaces rounded down to 3 spaces)

Accordingly, no additional parking relief is required. In addition, loading is required for retail use in the C-3-C District with 8,000 square feet or more of retail use. Because the total retail square footage (including the penthouse) is less than 8,000 square feet, there is no change to the loading required or the relief granted.

VI. COMMUNITY SUPPORT

The Applicant has worked with the community and is pleased to have support for the project. On February 8, 2016, at its regularly scheduled, duly noticed Advisory Neighborhood Commission (“ANC”) 2C meeting, with a quorum of commissioners present, ANC 2C voted unanimously (3-0-0) to support the special exception relief. A copy of ANC 2C’s letter of support is in the record at Exhibit 28. At that meeting, the ANC requested that the Applicant not increase the dimensions of the window and door located on the south façade of the penthouse, as shown on

Sheet A02 of Exhibit 9C in the record. The Applicant agreed to this request. Sheet A02 of the Plans (Exhibit C) shows the exact dimensions of the window and door on the south penthouse façade. The Applicant sent the dimensioned Sheet A02 to ANC 2C with a cover letter confirming its commitment to not make any changes to the dimensions of the openings on the south penthouse façade. The Applicant's letter to the ANC is attached hereto as Exhibit D.

The Applicant also has support from the owner and contract purchasers of Lots 40, 50, 815, 816, 817, 818, 819, 821, and 835, which are located directly to the north of the Site and will be developed with a new residential building with ground floor retail. The owner and contract purchasers will be the closest residential neighbor to the Site and have expressed their support for the proposed restaurant use, which "will have a positive impact on the neighborhood and not produce any adverse impacts." *See* Letter of Support included in the record at Exhibit 27.

VII.

EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

<u>Exhibit A:</u>	A portion of the Zoning Map showing the Site
<u>Exhibit B:</u>	BZA Order No. 18772
<u>Exhibit C:</u>	Updated Architectural Plans and Elevations for the Project
<u>Exhibit D:</u>	Applicant's Letter to ANC 2C
<u>Exhibit E:</u>	Outlines of Testimony
<u>Exhibit F:</u>	Resumes of Expert Witness

VIII.

WITNESSES

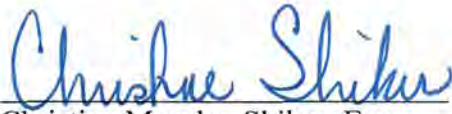
- A. Conrad Cafritz, Cafritz Interests on behalf of the Applicant
- B. Aaron Katz, Modus Hotels on behalf of the Applicant
- C. Anita Sircar, Davis, Carter, Scott, project architect

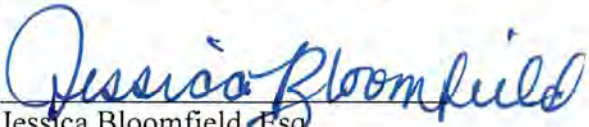
IX.
CONCLUSION

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

Respectfully submitted,

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