

## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Karen Thomas, Case Manager  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** December 7, 2018  
**SUBJECT:** BZA Case 19200B (1401 Okie Street N.E.)  
**SUBTITLE Y § 704- MODIFICATION OF SIGNIFICANCE**

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### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends that the Board **approve** the modification requested by the applicant, as follows:

- **Special Exception Relief** pursuant to Subtitle X Chapter 9 to permit:
  - U § 802.1 (d) - Entertainment, Assembly and Performing Arts Uses - None Existing; Proposed for any tenant space in the building;
  - C § 1500.3 (c) - Penthouse as a nightclub, bar, cocktail lounge, and/or restaurant use - None Existing; Proposed;
  - C § 703 - Parking: 85 Spaces Required; None Proposed;
  - J § 205.2- Rear Yard -: 12 feet Minimum Required; 5 feet 9 inches feet Proposed; and
- **Variance Relief** pursuant to Subtitle X § 1000.1 to permit:
  - Entertainment, Assembly and Performing Arts Uses – 1,000 feet minimum location radius required from a live performance venue; within 300 feet proposed.

### **II. BACKGROUND**

BZA Order 19200, effective March 3, 2016 granted approval of variance relief from the off-street parking requirements of Section 2101 (ZR 58) to allow no on-site parking for the former warehouse building at the corner of Okie and Fenwick Streets N.E. Parking would be provided in the applicant-owned seven-story parking structure across the street from the site. The former warehouse was proposed for re-use as a 73,244 (GFA) square-feet, mixed-use building with retail, and a manufacturing use. Subsequently, the plans were modified to include a partial third-story for proposed office use and approved under Order 19200A (2017).

### **III. PROPOSAL**

The current project would increase the building's area by an additional 19,936 square feet of GFA (0.93 FAR) for a total of 93,180 square feet in GFA (1.18 FAR) to include entertainment, eating and drinking establishment uses in addition to the previously approved retail, office and manufacturing uses. The revised building design would include:

- A partial second story northeast of the building;
- Expansion of the second and third stories on the southwest corner; and

- Extension of the ground floor space, on the southeast corner of the building, by 6 feet 3 inches into the required rear yard, including a 36-foot high structure to accommodate the brewery equipment.

The requested relief would allow:

- The entire building to be tenanted by entertainment uses (primarily active leisure uses), not meeting the location requirement of 1,000 feet minimum from an existing live performance venue (also owned by the applicant). This would allow the applicant flexibility to increase or decrease the tenant space to uses in this category, without returning to the Board;
- The addition of roof decks to be used by a bar, coffee shop and brewery; and
- Placement of the proposed brewery’s heavy equipment within the rear yard.

As previously approved, parking would be assigned within the 1,000-space garage structure owned by the applicant, located across the street from the site. The loading requirements would be satisfied under this proposal, as previously approved.

#### IV. OFFICE OF PLANNING ANALYSIS

Subtitle Y § 704, defines a modification of significance, as a modification which requires a public hearing, *where the scope of the hearing shall be limited to impact of the modification on the original application and shall not permit the Board to revisit its original decision* (Y § 704.7). The review herein is based on “*the relevant evidentiary issues requested for modification and any condition impacted by the requested modification.*” per Y § 704.6.

The applicant satisfied the filing requirements of Y § 704.2 through Y § 704.5. The following is reviewed as follows:

##### A. Special Exception Relief:

- U § 802.1 (d) Entertainment, Assembly and Performing Arts Uses — None Existing; Proposed for any tenant space in the building;

Entertainment, assembly, and performing arts uses, are subject to the following conditions:

- (1) *The use shall be located and designed so that it is not likely to become objectionable to neighboring property because of noise, traffic, parking, loading, number of attendees, waste collection, or other objectionable conditions;*

The applicant is requesting that the entire building be considered for entertainment uses for any tenanted space in the building. Proposed decks accessory to some of the uses would provide passive areas for patrons where the anticipated noise level would be typical of that generated by sidewalk cafes or lounges. The proposed uses would be in a former industrial area with only the applicant’s multi-family apartment building within proximity of the site. Therefore, noise is not anticipated to become objectionable to neighboring properties, as the majority are commercial, and parking uses.

The building is located off the New York Avenue corridor, which has limited public transportation options. However, major access improvements are forthcoming to relieve reliance on single-occupancy vehicle transportation, including designated areas for drop off and pick-up by ride-sharing services located near the 1,000-space garage opposite the subject building, also owned by the applicant. Traffic and parking would be managed through signage to the garage. Bike access would be soon improved through the planned

*New York Avenue Streetscape and Trail Plan*, which includes improved lighting, new sidewalks and a raised two-way cycle track on the north side of New York Avenue. Truck traffic due to deliveries to and from the site would be via New York Avenue and Fenwick Street (Exhibit 28, page 14). A trash compactor would be located inside the loading area and dumpsters would not be stored in public space (Exhibit 28, Page 14). The applicant submitted a Comprehensive Transportation Report to DDOT for review (Exhibit 28).

(2) *The property shall not abut a residential use or residential zone;*

The property does not abut a residential zone, and the only residential use is the applicant's apartment building to the north. The apartment building is converted from the historic Hecht's Warehouse and has limited units facing the property. The applicant states there will be no live performance events with amplified sounds therefore the proximity of the uses should not be a concern. The rear yard abuts a DCPS bus depot.

(3) *There is no property containing a live performance, night club or dance venue either in the same square or within a radius of one thousand (1,000 ft.) from any portion of the subject property;*

The applicant owns a live performance venue (City Winery) less than 1,000 feet from the subject site. Variance relief from this requirement is requested with this application and discussed hereafter.

(4) *External performances or external amplification shall not be permitted; and*

External performances or amplification are not proposed. The covered, and uncovered roof decks associated with the proposed uses are intended for passive use associated with coffee shops, bars, the brewery and bowling lane. There would be no live performance events with amplified sounds nor would there be external performances in those areas. In addition, the location of the lounges and open-air areas are towards the rear of the building, as shown on Page 4 of the plans (Exhibit 31A).

(5) *The Board of Zoning Adjustment may impose additional requirements as it deems necessary to protect adjacent or nearby residential properties, including but not limited to:*

(A) *Soundproofing;*

(B) *Limitations on the hours of operation; and*

(C) *Expiration on the duration of the special exception approval.*

OP would encourage the applicant to consider sound proofing of entertainment areas to limit noise from the building. OP has no comment on limitations to the hours of operation since different tenants and related uses may change over time. Similarly, OP does not recommend an expiration on the duration of the special exception approval, since the proposed uses are deemed permitted uses in the zone subject to review based on adverse impacts to residential properties, which are not in the immediate vicinity, unless owned by the applicant, as discussed.

- **C § 1500.3 (c) Penthouse** as a nightclub, bar, cocktail lounge, and/or restaurant use — None Existing; Proposed;

**i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?**

Either of the proposed uses are permitted within the PDR-1 zone, but such uses are permitted through special exception approval if proposed within the penthouse/roof decks. The penthouse satisfies the provisions of the Regulations and the related roof deck structures would comply with the required development standards. The proposal would be in harmony with the intent of the regulations.

ii. **Would the proposal appear to tend to affect adversely, the use of neighboring property?**

The use of the roof decks would not create adverse impacts on the surrounding neighborhood, which are primarily commercial, and restaurant uses. The residential building in the former Hecht warehouse is also owned by the applicant, who is anticipated to implement controls to not adversely affect the tenants of the apartment building under their management/ownership.

• **Parking – C § 703:** 85- On-site Spaces Required; None Proposed;

The Board may grant relief if there are other means of off-street parking available in the immediate vicinity. In this case, the applicant owns a 1,000 space above-grade parking garage across the street from the subject property. In a previous Board determination, relief was granted from the requirements to provide a minimum of 223 spaces for the property's uses. Since the entire building would be devoted to entertainment uses a minimum of 85 spaces would be required.

i. **Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?**

The proposal would satisfy the intent of the Regulations, since parking would be provided at the applicant's other facility, approved prior under the Order 19200. A Comprehensive Transportation Assessment (CTA) was submitted to DDOT as part of the applicant's original submission under the prior Order. A new report was also issued and submitted to DDOT (Exhibit 28).

ii. **Would the proposal appear to tend to affect adversely, the use of neighboring property?**

This should not tend to adversely affect the use of neighboring property as the on-street parking supply should not be adversely impacted and the new uses could revitalize a former industrial district with contemporary retail, service and entertainment uses beneficial to the Ivy City/Trinidad neighborhood. The applicant indicated that appropriate signage would direct customers and employees to available off-street parking in the area.

• **Rear Yard – J § 205.2:** 12 feet Minimum Required; 5 feet 9 inches Proposed;

The new additions to the building would include a two-story, 36 feet high, rear addition to accommodate the brewery's manufacturing equipment. This would extend the building in part by 6 feet 3 inches, reducing the rear yard to 5 feet 9 inches, as indicated in the November 28, 2018 drawings, Proposed First Floor Plan, Page 11 (Exhibit 31A).

The proposal is in harmony with the intent of the Regulations as the entire rear yard would not be reduced. Moreover, the reduction would not interfere with light and air to any neighboring building, as there are no abutting buildings. Thus, the proposal would not adversely affect the use of neighboring property.

**B. Variance Relief**

- **U § 801.1(d) (3)** – To permit Entertainment, Assembly and Performing Arts uses within 1,000 feet of a live performance venue.

**i. Exceptional Situation Resulting in a Practical Difficulty**

The applicant has cited difficulty in attracting small retail uses and offices to the location, as the subject property has a large footprint as a former warehouse use. The applicant has maintained the existing building’s structure and has actively marketed the building for the past four years. Adjoining blocks have been also leased to large retailers, including the recently leased space to the City Winery, which is the entertainment venue within 1,000 feet of the subject property. This unusual situation due to the building’s size and its marketability creates an exceptional situation resulting in a practical difficulty for the applicant in satisfying the area requirement of the use provision.

**ii. No Substantial Detriment to the Public Good**

The proposed entertainment uses should not be a substantial detriment to the public good as the uses would not be live performance or entertainment uses, which would typically generate noises due to loud music and performance events. The uses would permit the patrons to engage in activities described as active leisure activities<sup>1</sup>, and would not be designed for performance, auditory, sporting or visual events. The areas designated for outdoor use on the decks would not involve noises that may originate from interior activities, such as the main bar or bowling lanes, as noted on the drawings.

Traffic should not adversely impact the neighborhood, as there would be a designated parking garage that is easily accessed from New York Avenue. In the future, drop off and pick up through on-demand rides would take place in the vicinity of the garage and should not affect traffic flow due to circling and frequent stops.

**iii. No Substantial Harm to the Zoning Regulations**

Substantial harm to the Regulations should not result from these uses since they would primarily include eating and drinking establishments, which are permitted within the zone. In addition, the proposed entertainment use would be active leisure entertainment uses that would not attract large number of persons for an advertised event. Therefore, there should be no harm to the Regulations, which is to mitigate the adverse impacts of large performance venues within proximity.

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<sup>1</sup> B § 200.1 (n): (n) Entertainment, Assembly, and Performing Arts:

(1) A use involving facilities designed primarily for public assembly that enables patrons to experience visual, auditory, performance, or literary arts; attend sporting events or conferences; **or to participate in active leisure activities;**

## **V. COMMENTS OF OTHER DISTRICT AGENCIES**

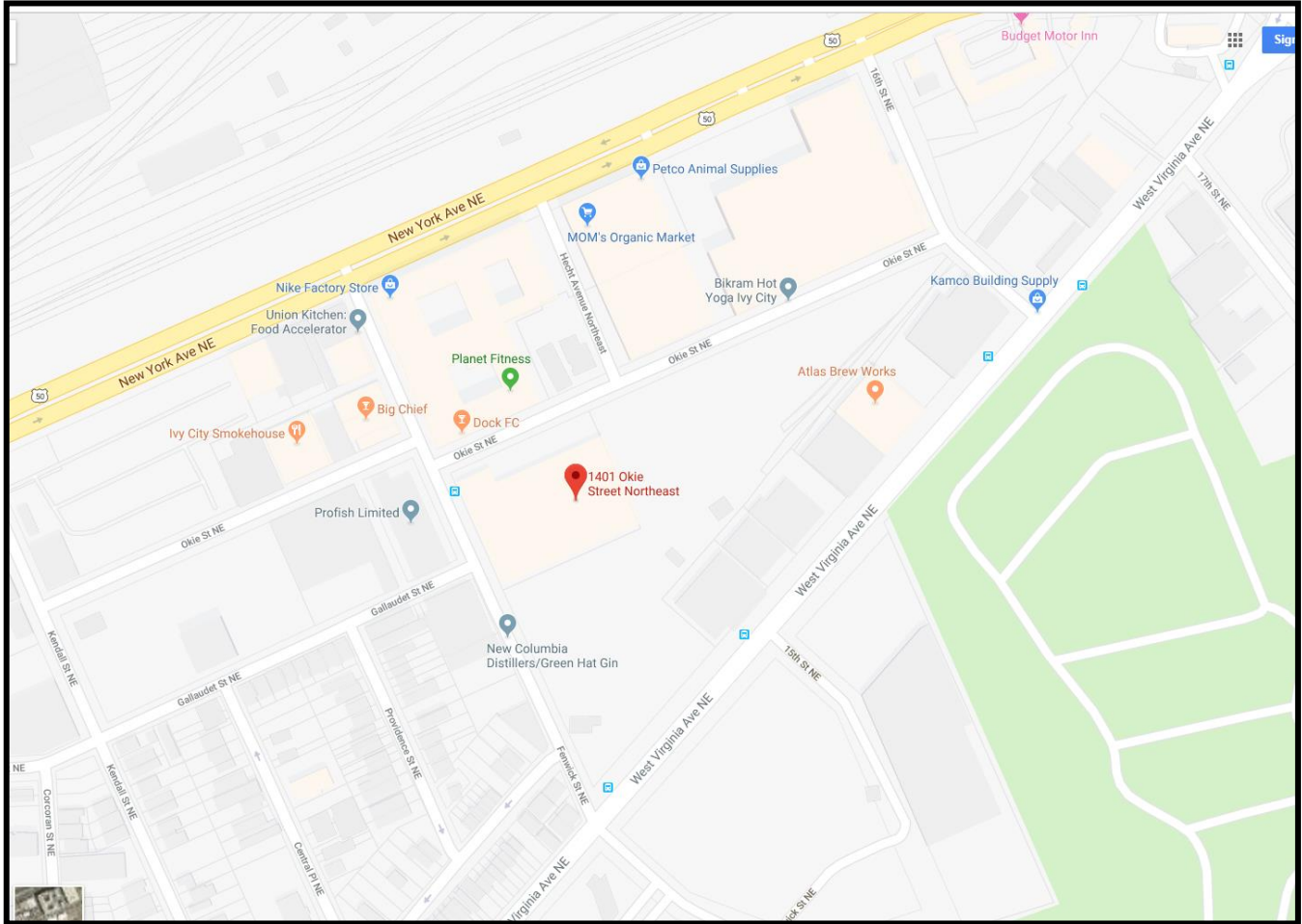
The District Department of Transportation (DDOT) would provide comments separately to the record.

## **VI. COMMUNITY COMMENTS**

The ANC5D voted to support the application at their regularly held meeting on November 13, 2018

To date, no other community comments have been filed to the record.

Attachment: Location Map



### Location and Zoning Maps

