

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 20176 of M Street Five LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse use provisions of Subtitle C § 1500.3(c), to construct a roof deck for a bar and restaurant use above an existing attached building in the MU-4 Zone at premises 3219-3221 M Street, N.W. (Square 1207, Lot 114).

HEARING DATE: January 15, 2020
DECISION DATE: January 15, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 20 (Final Updated); Exhibit 17 (Revised); Exhibit 15 (Updated); Exhibit 7 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 7, 2020, at which a quorum was present, the ANC voted 8-0-0 to recommend that the proposal will have a relatively low impact and to request that the Board "learn more about any sound-related issues which may arise due to the use of the roof deck to ensure that the deck will not adversely affect the use of neighboring properties, including the residential properties across the street." (Exhibit 40.) At the public hearing, the Board asked that the Applicant provide testimony regarding how it will mitigate any potential sound-related issues. The Board was satisfied that the application will not cause any negative impacts due to noise on neighboring properties.

OP Report. The Office of Planning submitted a report, dated January 2, 2020, recommending approval of the application. (Exhibit 37.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the penthouse use provisions of Subtitle C § 1500.3(c), to construct a roof deck for a bar and restaurant use above an existing attached building in the MU-4 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS¹ AT EXHIBIT 13.**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Michael G. Turnbull to APPROVE; no other board members participating.)

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: January 22, 2020

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

¹Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

BZA APPLICATION NO. 20176
PAGE NO. 3

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.