

Jeffrey C. Utz
jutz@goulstonstorrs.com
(202) 721-1132

Lawrence Ferris
lferris@goulstonstorrs.com
(202) 721-1135

April 29, 2025

D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200S
Washington, D.C. 20001

Re: **BZA Application No. 21279 – 400 Morse Street NE (Square 3589, Lot 29)
(the “Property”) – Supplemental Request for Waiver**

Dear Members of the Board:

On behalf of ARP Morse LLC (“**Applicant**”), we hereby submit this supplemental statement regarding the Applicant’s request for waiver included in the April 25, 2025 Supplemental Submission and, specifically, to clarify that the Applicant requests waiver pursuant to Subtitle Y § 101.9 to allow these submissions and modification of the application after the 30-day deadline under Subtitle Y §§ 300.15 and 300.16, and to allow a shortened public notice period from the 40-day period under Subtitle Y § 402.1.

A. Background and Circumstances Necessitating Waivers.

As discussed in the Supplemental Submission, the additional area variance relief being requested, and the shortened notice period for such relief, are necessitated by the Zoning Administrator’s guidance recently received by the Applicant regarding the successive processing of this Application and the application filed by the owners of the nearby property at 405-407 Morse Street NE (the “**405 Morse Property**”) in BZA Case No. 21292. The 405 Morse Property application was filed over three weeks after the Application and requests approval for an entertainment, assembly, and performing arts use within 1,000 feet of the Property contrary to Subtitle U §§ 802.1(c)(3) and (e)(3). The Applicant became aware of the application for the 405 Morse Property during the Applicant’s outreach with the community and Advisory Neighborhood Commission (“**ANC**”) 5D.¹ The Applicant then reached out to meet with the Zoning Administrator to discuss the issue of the two applications being processed in short succession and, following that meeting, received the Zoning Administrator’s recommendation to request the area variance (in both BZA cases). Such recommendation prompted the Supplemental Submission on April 25,

¹ As noted in prior submissions, the Applicant presented to the ANC’s Zoning Committee and to the full ANC at its regularly scheduled public meeting, and the ANC voted unanimously to support the Application.

2024 and associated additional hearing notice mailed by the Applicant to ensure that all property owners within 200 feet of the Property were notified of the additional relief as soon as possible.

B. There is Good Cause to Grant the Requested Waivers.

Subtitle Y § 101.9 authorizes the Board to, upon a showing of good cause, waive the 30-day deadline under Subtitle Y §§ 300.15 and 300.16 and the public notice period under Subtitle Y § 402.1. Good cause exists for the grant of the requested waivers in this case. The Applicant did not become aware of the proposal by the owners of the 405 Morse Property or the filing of Case 21292 until the Applicant's presentation to the ANC's Zoning Committee on March 20, 2025. After learning of the proposed nearby use and application, the Applicant worked quickly to meet with the Zoning Administrator to discuss the issue of the two nearby applications, but, due to the timing of the discussion with the Zoning Administrator, the Applicant was not able to receive the Zoning Administrator's recommendation to seek a variance until after the 30-day submission deadline under Subtitle Y §§ 300.15 and 300.16 had passed and the 40-day notice period Subtitle Y § 402.1 had already begun. Moreover, the Applicant could not foresee that the Zoning Administrator would recommend that the Applicant, as the first of the two applications with an earlier hearing, nonetheless seek preemptive variance relief and, therefore, could not request such relief in this case until after the passing of the 30-day submission deadline and commencement of the 40-day notice period. Accordingly, the Board has ample cause to grant the requested waiver for late filing.

It bears emphasizing that the circumstances of this case discussed above — where three weeks after the Applicant submitted the Application, another application for an entertainment use was filed within 1,000 feet — represents a highly unique scenario. These extenuating circumstances were compounded in this case by the fact that the Applicant did not become aware of the 405 Morse Property owners' proposed use and of the filing of Case No. 21292 until the Applicant's presentation to ANC 5D's Zoning Committee on March 20, 2025.

Importantly, waiver of the 30-day submission deadline and to shorten the 40-day notice period will not prejudice any party, stakeholder, or neighbor. The Applicant has kept the ANC apprised of the additional variance relief being requested, in addition to serving the ANC with the April 25, 2025 Supplemental Submission as required, and the Applicant mailed an updated hearing notice to all property owners within 200 feet concurrent with the filing of the Supplemental Submission — 19 days before the May 14 public hearing date — to ensure all stakeholders have notice of the additional relief and ample time to provide additional input to the record. Further, notably, the nature and details of the proposed eating and drinking establishment with a live performance venue, for which the Applicant requests approval, have not changed since the initial filing, and all stakeholders received notice of the public hearing for such use as of the Office of Zoning's notice mailing on March 5 — i.e. 70 days before the hearing date. Moreover, as discussed in the Supplemental Submission, because there is currently no entertainment/live performance use within 1,000 feet of the Property and the Application is the first request for approval of such use, the Applicant's requested area variance is strictly preemptive and theoretical and is requested out of an abundance of caution based on the Zoning Administrator's recommendation.

For all of these reasons, ample good cause exists for the Board to grant the requested waiver, as permitted under Subtitle Y § 101.9, for the 30-day submission deadline under Subtitle Y §§ 300.15 and 300.16 and to shorten the 40-day public notice period under Subtitle Y § 402.1.

C. Conclusion

As discussed above, the Applicant meets the standards for the requested waivers under the Board's rules. As outlined in detail in the Applicant's prior submissions, the Application meets the standards for the special exception and variance relief requested. Accordingly, the Applicant respectfully requests that the Board proceed with the public hearing scheduled for May 14, 2025, and approve the Application. Please feel free to contact the undersigned at (202) 721-1135 if you have any questions. Thank you for your consideration of this matter.

Sincerely,

/s/ Jeffrey C. Utz

/s/ Lawrence Ferris

Certificate of Service

The undersigned hereby certifies that copies of the foregoing document and attachments were delivered via email to the following addresses on April 29, 2025.

Crystal Myers
Office of Planning
crystal.myers@dc.gov

Erkin Ozberk
District Department of Transportation
erkin.ozberk1@dc.gov

ANC 5D
5D@anc.dc.gov

Hector Arbuckle – ANC 5D01
5D01@anc.dc.gov

/s/ Lawrence Ferris

Lawrence Ferris