

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19475 of DC Boathouse, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the penthouse restaurant use requirements of Subtitle C § 1500.3(c) and the retail use requirements of Subtitle U § 504.1(j), to construct an addition to an existing dormitory to create an apartment building with a ground-floor retail use and a penthouse café in the MU-2 Zone¹ at premises 2601 Virginia Avenue N.W. (Square 6, Lot 42).

HEARING DATE: April 19, 2017
DECISION DATES: May 31, 2017² and June 7, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") 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.

The Board 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") 2A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 15, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 35.)

¹ The Zoning Commission voted to approve a map amendment to rezone this property from the RA-5 zone to the MU-2 zone on March 30, 2017 in Z.C. Case No. 16-25. Final action by the Zoning Commission was scheduled for May 8, 2017. Z.C. Order No. 16-25 was issued on July 28, 2017 (64 DCR 7253.)

² At the May 31st meeting, the Board granted the Applicant's request to reopen the record and postponed its decision to June 7 in order to allow a seven-day period for any party responses.

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The Office of Planning (“OP”) submitted a timely report dated April 7, 2017, in support of the application. (Exhibit 39.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application with conditions. DDOT’s recommended conditions included requests that a minimum of 83 secure long-term bicycle parking spaces be provided, one 20-foot delivery space be provided, and that trash dumpsters should be stored on private property. (Exhibit 38.) The Board adopted all of DDOT’s conditions in this order.

The West End Citizens Association (“WECA”) requested party status in support of the application. (Exhibit 34.) At the April 19, 2017, the Board granted WECA party status in support of the application. WECA testified and participated in the hearing. (Exhibit 42.) The Applicant’s proposal includes a residents-only café use in the penthouse. The Applicant and WECA entered into a Memorandum of Agreement related to the proposal that includes provisions for residents and their guests only, no liquor license, limited hours, and no outdoor entertainment. (Exhibit 13.) The Board adopted terms of the agreement as conditions to this order.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the penthouse restaurant use requirements of Subtitle C § 1500.3(c) and the retail use requirements of Subtitle U § 504.1(j), to construct an addition to an existing dormitory to create an apartment building with a ground-floor retail use and a penthouse café in the MU-2 Zone. 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 adverse 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 Subtitle X § 901.2, and Subtitle C § 1500.3, and Subtitle U § 504.1(j), 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.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 36A AND WITH THE FOLLOWING CONDITIONS:**

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1. The Applicant shall provide a minimum of 83 secure long-term bicycle parking spaces.
2. The Applicant shall provide one 20-foot delivery space.
3. Trash dumpsters shall be stored on private property.
4. The Applicant shall not seek an application for a liquor license for the limited penthouse use.
5. The Applicant shall not seek an application for any outdoor entertainment use, including any outdoor speakers or any amplified music, both in the ground-floor retail and in the penthouse.
6. The Applicant shall limit the hours of operation of the penthouse to end by 11 p.m. on Sunday through Thursday evenings and midnight on Friday through Saturday evenings.

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Robert E. Miller, 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: August 9, 2017

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.

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

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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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.