

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

**APPLICATION OF
JEMAL'S EAST 451 L.L.C.
601 K STREET, N.W.**

**BZA APPLICATION NO. 19583
HEARING DATE: NOVEMBER 29, 2017
ANC 6E**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Jemal's East 451 L.L.C. (the "Applicant") in support of its application to the Board of Zoning Adjustment for special exception approval, pursuant to 11-C DCMR § 1500.3(c) and 11-Y DCMR § 900, to authorize bar, lounge, restaurant or nightclub use of the penthouse area of the thirteen-story hotel to be constructed in the D-4-R District at 601 K Street, NW. (Lots 23, 24, 25, 822 and 823 in Square 451) (the "Property").

As demonstrated in the revised architectural drawings attached as Exhibit A, the Applicant has redesigned the project such that all other areas of zoning relief originally requested as part of Application No. 19583 are no longer needed, namely: special exception, pursuant to 11-I DCMR §205.5, regarding the required rear yard; area variance relief, pursuant to 11-I DCMR §207, to provide a court not meeting the minimum dimensional requirements; special exception, pursuant to 11-I DCMR §203.3, relating to the front build-to requirement; and area variance, pursuant to 11-C DCMR §901.1, from the loading requirements. As a result, the Applicant requests the Board's approval to withdraw those requests for relief, and to approve the Applicant's lone remaining request for special exception approval regarding bar, lounge, restaurant or nightclub use of the penthouse area.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the special exception requested herein pursuant to 11-Y DCMR § 100.3.

III.
BACKGROUND

A. Description of the Site

The Property totals approximately 10,000 square feet of land area and is located in the southeastern corner of Square 451, which is a triangle-shaped square located immediately east of Mount Vernon Square. Square 451 is bounded by New York Avenue, NW, to the north, K Street, NW, to the south, 6th Street, NW, to the east, and 7th Street, NW, to the west, in Washington's downtown area.

There are two smaller-scale buildings currently located on the Property: a gasoline service station that was constructed on a portion of the Property; and a car wash building that was relocated to the Property from another site to be stored and is currently secured with dunnage. The Applicant’s original intent with redevelopment of the Property was to incorporate portions of these structures into the new hotel building. However, after further discussions with the Office of Planning and the District of Columbia Preservation League, with whom the Applicant has been coordinating rehabilitation at the site, it was determined that the more appropriate approach would involve relocating the gasoline service station immediately across the intersection from the Property, to a site in Square 484. This proposed relocation is shown in context at Sheet A025 of the revised architectural drawings (Exhibit A).

B. Description of Surrounding Area

An eleven-story headquarters building for the Association of American Medical Colleges is located to the immediate west of the Property, separated by a north-south public alley running through Square 451. The property to the immediate north of the Property is currently unimproved. A two-story commercial building and surface parking uses occupy the northeastern corner of the Square. Office and ground floor retail and service uses are located to the south, north and east of the Property. The nearest residential uses to the Property are located at the City Vista development along 5th Street, NW, and at 455 Massachusetts Avenue, NW, both more than 350 feet away from the Property, as identified on Sheet A005 of the revised architectural drawings (Exhibit A).

The Property is located in the heart of the Mount Vernon Triangle area of the District, one of downtown's most active neighborhoods for District residents and tourists alike. It is within walking distance to the Convention Center, Gallery Place/Capital One Arena, and the U.S. Capitol, and has benefitted from major streetscape investments that have created high-quality, well-landscaped, and tree-lined streets with inviting outdoor seating. Mount Vernon Triangle well-served by multiple public transportation options, including Metrorail, Metrobus, the D.C. Circulator, car-share locations, and Capitol Bikeshare docks.

C. Zoning Classification

The Property is zoned D-4-R, which permits hotel, retail, and eating and drinking establishments (with no limitations) as a matter-of-right, pursuant to 11-I DCMR § 302.1 and 11-U DCMR § 515. Nightclub, bar, cocktail lounge, or restaurant use within a building's penthouse is permitted by special exception approval by the Board, pursuant to 11-C DCMR § 1500.3(c).

D. Project Description

As shown on the revised architectural drawings (Exhibit A), the Applicant proposes to develop the Property with a new thirteen-story hotel, containing approximately 105,115 square feet of gross floor area, with a total floor area ratio of approximately 10.50 FAR, and 231 guest rooms.¹ The height of the building will reach a maximum height of 130 feet. Loading facilities in the form of three loading berths will be accessed from the public alley running along the Property's western border. No vehicle parking is required or provided. Bicycle parking will be provided in compliance with applicable regulations, with long-term spaces and shower and changing facilities provided in the cellar level of the building, and short-term spaces located along the perimeter of the building.

Restaurant/retail and front of house hotel uses will occupy the first floor, and guest rooms will occupy the second through thirteenth floors. Uses on the ground floor include retail space, hotel lobby, dining, bar and lounge facilities, and media salon. The building's cellar will contain a kitchen, storage space, and administrative/back-of-house hotel uses, including offices, meeting room, mechanical utility rooms, a housekeeping, employee breakroom, and bathrooms.

There will be two pedestrian access locations to the building, with the primary hotel entrance located along K Street, NW, and secondary entrance located on 6thth Street, NW. A vehicular lay-by is proposed along K Street, NW, in order to facilitate guest loading and unloading.

As shown on Sheet A014 of the revised architectural drawings (Exhibit A), the Applicant has designed the penthouse level to allow for approximately 2,815 square feet of penthouse

¹ Guest room numbers and overall gross floor area are approximate and subject to further refinement as the building design progresses.

habitable space (along with adjacent exterior terrace area) to be utilized for a potential bar, restaurant, nightclub or lounge. Kitchen and restrooms are provided in support of this prospective use. The Applicant has not yet identified a tenant or operator for this rooftop space, therefore, the layout shown is prototypical and subject to future refinement to accommodate the particular use.

IV.
THE APPLICANT MEETS THE TEST FOR
SPECIAL EXCEPTION APPROVAL

The Applicant seeks special exception approval, pursuant to 11-C DCMR § 1500.3(c) to permit use of a portion of the penthouse for nightclub, bar, restaurant or lounge, as described herein.

A. Standard for Approving Special Exception

Pursuant to D.C. Code §6-641.07(g)(2) and Subtitle X § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zone Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. Approval 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 approval are met. In reviewing an application for special exception approval, “[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.

B. Description of Penthouse Use Special Exception

Subtitle C, § 1500.3, provides that “a penthouse may house mechanical equipment or any use permitted with the zone, except as follows:

...

(c) A nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 ...”

1. 11-X DCMR § 902.2(a): Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

The requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The general purpose and intent of the Zoning Regulations is to promote public health, safety, morals, convenience, order, prosperity, and general welfare in order to provided adequate light and air; prevent undue concentration of population and the overcrowding of land; and provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

The proposed use of the penthouse habitable space for bar, restaurant, nightclub or lounge is certainly in keeping with the purpose and intent of the Zoning Regulations and Maps. The proposed use is permitted as a matter of right in the applicable D-4-R Zone District, pursuant to 11-I DCMR § 302.2 and 11-U DCMR § 515.1(f). The proposed uses satisfy the definition of “Eating and Drinking Establishments” set forth in 11-B DCMR § 200.2(j). The Applicant is not proposing that the space be utilized for any sexually-oriented business

establishment. The proposed penthouse use will tend to create conditions favorable to recreational and cultural opportunities and will tend to further the local economy, consistent with the Zone Plan for this central area of the District of Columbia.

2. *Subtitle X § 902.2(b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

The requested special exception to allow penthouse use also will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. As noted immediately above, the proposed use is a matter of right permitted use inside the hotel building and all surrounding buildings and, thus, is a use that would not ordinarily be considered to affect adversely the use of neighboring property consistent with the Zoning Regulations. Furthermore, as shown in Sheet A05, the closest residential uses to the Property are located more than 350 feet, or more than a city block, to the northeast and southeast, respectively, with a number of properties located in between. Other than these residential uses, the immediate neighborhood is comprised almost exclusively office uses and supporting retail and service uses.

Given the location of the proposed use on the roof of the building, the Applicant has committed to limit its operating hours and to restrict loud rooftop music in efforts to minimize any potential impact of the use, and is continuing to work through details of those restrictions in coordination with Advisory Neighborhood Commission 6E, as described immediately below. The Applicant has not yet engaged with a potential tenant or operator of the space given the early stage of development of the project, but has committed to include restrictions regarding noise and operating hours as part of any lease or operating agreement for the space.

For all these reasons, the proposed penthouse use is compatible with the existing character and use of the block and neighboring properties and will therefore not tend to affect adversely any neighboring property in accordance with the Zoning Regulations and Maps.

V.
COORDINATION WITH AFFECTED ADVISORY NEIGHBORHOOD COMMISSION

As required under 11-Y DCMR § 300.8(I), the Applicant apprised Advisory Neighborhood Commission (“ANC”) 6E of the application prior to filing and met with ANC 6E at its June 6, 2017, public meeting. The Applicant returned to the ANC with its revised project design and application at the ANC’s November, 7 2017, public meeting. There, ANC 6E voted unanimously to support the application, subject to the following conditions:

1. Closing hours for the rooftop restaurant/nightclub/lounge/bar shall be not later than 2:00 am on weekends and Midnight on weeknights;
2. No loud music shall be allowed on the rooftop; and
3. Work with the future operator and ANC 6E to establish more detailed operating guidelines.

The Applicant is in agreement with ANC 6E and has agreed to include these conditions into any lease or operating agreement for the rooftop space.

VI.
WITNESSES

- A. Paul Millstein, Jemal’s East 451 L.L.C./Douglas Development Corporation
- B. Peter Fillat, Fillat + Architecture

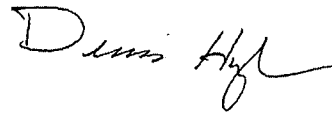
C. Shane Dettman, Director of Planning Services, Holland & Knight LLP

VII.
CONCLUSION

For the reasons stated above, the application meets the applicable standard for special exception approval under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP



By: _____
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