

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



**BZA Application No. 20666  
1644 North Capitol, LLC  
1634 North Capitol Street, NW (Square 3101, Lot 118)**

**HEARING DATE:** April 20, 2022  
**DECISION DATE:** May 25, 2022

**SUMMARY ORDER**

**RELIEF REQUESTED.** The application requests the following relief in order to permit a restaurant use within the penthouse of a proposed, attached, four-story with penthouse and cellar, hotel in the MU-4 zone:

- Special exception from the penthouse use requirements of Subtitle C § 1501.1(d), pursuant to Subtitle X § 901.2

The zoning relief requested in this case was self-certified. (Exhibit 19A (Final Revised); Exhibit 4 (Original).)<sup>1</sup>

**PARTIES.** The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5E, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING.** The Board of Zoning Adjustment (the "Board") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC submitted two reports to the record:

- The first ANC report indicated that at a regularly scheduled, properly noticed public meeting on March 15, 2022, at which a quorum was present, the ANC voted to approve the application. (Exhibit 22.) The ANC's approval was conditioned on the Applicant's agreement to work with the community on a community benefits package.
- The second ANC report indicated that at a regularly scheduled, properly noticed public meeting on May 17, 2022, at which a quorum was present, the ANC voted to support the application and specific conditions agreed to by the Applicant to address concerns regarding noise. (Exhibit 30.) The Board adopted the conditions as part of the Order.

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<sup>1</sup> The self-certification form was updated to revise the section of requested relief to reflect the changes in text amendment Z.C. 14-13E which was approved after the original application was filed.

ANC 5E06 Commissioner Karla Lewis testified on behalf of the ANC at the April 20, 2022 Public Hearing.

**OFFICE OF PLANNING (“OP”) REPORT.** OP submitted a report recommending approval of the application. (Exhibit 20.) OP recommended that the Board adopt a condition relating to exterior lighting to mitigate the impact on adjacent residential properties. The Board adopted this provision as a condition of the Order.

**DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT.** DDOT submitted a report indicating that it objected to the application unless certain conditions were included in the final Order. These conditions included a transportation demand management plan, as well as completing a public space permit application and pick up/drop off plan, subject to DDOT approval. The Board did not adopt these conditions as they were not relevant to the relief requested, however, the Applicant stated they agreed to DDOT’s conditions. (Exhibit 21.)

### **CONCLUSIONS**

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

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 special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special

### **DECISION**

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief and therefore **APPROVES** the following relief:

- Special exception from the penthouse use requirements of Subtitle C § 1501.1(d), pursuant to Subtitle X § 901.2

Subject to the following **CONDITIONS**:

1. The project shall be constructed in accordance with the plans submitted as Exhibits 6 and 19B in the record,<sup>2</sup> as required by Subtitle Y §§ 604.9 and 604.10.

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<sup>2</sup> Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project

2. All exterior lighting on the penthouse shall be shielded and pointed downward, which would mitigate the impact of the proposal by ensuring that light is not directed towards neighboring residential properties. Decorative outdoor lighting, such as string lights, shall be excluded from this condition.
3. There shall be no amplified music before 12 pm or after 10 pm
4. All music shall have no heavy bass.
5. The Applicant shall implement sound proofing around the penthouse restaurant.
6. Only ambient music shall be played on the rooftop terrace.

**VOTE: 5-0-0** (Lorna L. John, Carl H. Blake, Chrishaun S. Smith, Frederick L. Hill, and Anthony J. Hood to APPROVE)

**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:** June 1, 2022

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 IS

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described in the Application and depicted on the approved plans. 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 such application that would require additional or different zoning relief from what is granted by this Order.

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.