

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19583 of Jemal's East 451 LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1500.3(c) from the penthouse regulations of Subtitle C § 1500, to construct a 13-story hotel in the D-4-R zone at premises 601 K Street, N.W. (Square 451, Lot 23, 24, 25, 823, 822).

HEARING DATES: October 11, 2017 and November 29, 2017²
DECISION DATE: November 29, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3 – original, Exhibit 38 – revised.) 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") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 7, 2017, at which a quorum

¹ The Applicant amended the application by removing from the original application the following requests for relief: a variance for loading under Subtitle C § 901.1, a variance for court under Subtitle I § 207.1, a special exception for front build-to line under Subtitle I § 203.1, and a special exception for rear yard under Subtitle I § 205 based on the Applicant's revised self-certification form. (Exhibit 38.)

² The hearing in this application was postponed from October 11, 2017 to November 29, 2017 at the Applicant's request. (Exhibits 30, 31.)

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was present, the ANC voted 5-0-0 to support the application, contingent upon “receipt of a letter from Douglas Development [the Applicant] agreeing to restrictions on hours for the rooftop bar, and to communicate that support in writing to the Board of Zoning Adjustment.” (Exhibit 40.) In its prehearing statement (Exhibit 34) and at the public hearing, the Applicant expressed its commitment to meeting the conditions noted in the ANC report to limit operating hours and restrict loud rooftop music in an effort to minimize impacts of the use.

The Office of Planning (“OP”) submitted a timely report dated November 17, 2017 recommending approval of the amended application. In its report, OP indicated that the Applicant would have to address the 4.5 floor area ratio (“FAR”) minimum residential requirement for the D-4-R zone and the affordable housing requirement for the habitable penthouse space under Subtitle C § 1505. (Exhibit 36.) At the hearing the Applicant testified that it will satisfy the affordable housing component with a contribution to the Affordable Housing Trust Fund and meet the 4.5 FAR residential requirement with credits / off-site development.

The District Department of Transportation (“DDOT”) submitted a timely report dated November 17, 2017 indicating that it had no objection to the grant of the application. (Exhibit 37.)

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 a special exception under Subtitle C § 1500.3(c) from the penthouse regulations of Subtitle C § 1500, to construct a 13-story hotel in the D-4-R zone. The only parties to the case were the ANC and the Applicant. 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, Subtitle C §§ 1500 and 1500.3(c), 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 EXHIBITS 39A1-39A3 – REVISED ARCHITECTURAL DRAWINGS (Parts 1, 2, and 3) - AND WITH THE FOLLOWING CONDITIONS:**

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1. The Applicant shall restrict the hours of operation of the restaurant, bar, or lounge so that the hours end no later than midnight on weekdays (Sunday through Thursday for Alcoholic Beverage Regulation Administration (“ABRA”) licensing purposes) and 2:00 AM on weekends (Friday and Saturday for ABRA licensing purposes).
2. The Applicant shall not allow excessive noise, per the ABRA regulations, on the rooftop at any time.

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro 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: December 5, 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 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

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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.