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April 5, 2019

VIA IZIS

District of Columbia Board of Zoning Adjustment
441 4th Street, NW,
Suite 210S
Washington, DC 20001

**Re: Request for Modification of Significance to Approved BZA Plans
1011 K Street, NW (Square 342, Lot 61)**

Dear Members of the Board:

This letter is submitted on behalf of Jemal's Bulldog L.L.C. (the "Applicant"), pursuant to Subtitle Y § 703 of the Zoning Regulations¹ in order to request a Modification of Significance to the plans approved by the Board of Zoning Adjustment ("BZA" or the "Board") in BZA Order No. 19020, for property located at 1101 K Street, N.W. (Square 342, Lot 61²) (the "Site"). The Applicant proposes to modify the approved plans by incorporating a nightclub, bar, cocktail lounge, or restaurant use in the penthouse of the building, which use requires special exception approval pursuant to Subtitle C § 1500.3(c) of the Zoning Regulations.

I. Background of Case

Pursuant to BZA Order No. 19020, dated January 28, 2016, and effective on February 8, 2016 (Exhibit A-1), the Board granted: (i) a variance from the court requirements of Section 776 of the 1958 Zoning Regulations ("ZR58"); (ii) a variance from the off-street parking requirements of Section 2101.1 of ZR58; (iii) a variance from the loading requirements of Section 2201.1 of ZR58; and (iv) a special exception from the rear yard requirements of Section 774 of ZR58, to construct a new 13-story hotel building on the Site. BZA Order No. 19020-A, dated January 29, 2016, and effective on February 9, 2016 (Exhibit A-2), replaced BZA Order No. 19020 and changed the Exhibit number of the approved plans from Exhibit 7 to the correct number – Exhibit 37C. In all other substantive respects, the Orders are the same.

Before the Board's public hearing on the application, the Applicant appeared before Advisory Neighborhood Commission ("ANC") 2C to present the project. At its regularly

¹ Except as expressly stated, all references to the Zoning Regulations are to the 2016 Zoning Regulations ("ZR16")

² The Site was previously known as Lots 4, 5, 53, and 809 in Square 342.

scheduled, duly noticed public meeting of June 4, 2015, ANC 2C voted unanimously (3-0-0) to support the application, with conditions. By report dated June 16, 2015, the Office of Planning also submitted a report in support of the application subject to the conditions agreed upon by the Applicant, which were incorporated into the order. By report dated June 16, 2015, the District Department of Transportation also indicated no objection to approval of the application. The Board granted a request for party status in opposition to the application from Unite Here Local 25, a union of hotel workers that owns office space approximately one block to the east of the Site.

The hotel has been constructed and was issued a certificate of occupancy for hotel use on December 7, 2018 (CO1900649).

II. Proposed Modification of Plans

As shown on the revised architectural drawing sheets attached as Exhibit B (the “Revised Plans”), and pursuant to Subtitle Y § 703.4 of the Zoning Regulations, the Applicant requests a Modification of Significance to include a nightclub, bar, cocktail lounge, or restaurant use in the penthouse of the building, as permitted by special exception, pursuant to Subtitle C § 1500.3(c).

The Applicant proposes to expand the penthouse’s footprint by approximately 124 square feet to accommodate kitchen support. This addition to the penthouse will include penthouse habitable space with a maximum height of 10 feet, 5 inches that will be setback 1:1 from the rear building wall in accordance with the Zoning Regulations.

There will be no reduction in the amount of green roof provided for the project. The small amount of green roof removed as part of the proposed addition will be relocated to the roof of this penthouse addition. As a result, there is no net reduction in green roof.

III. Community Support

The Applicant presented the modification application at ANC 2C’s December 10, 2018, public meeting, at which meeting the ANC voted unanimously (2-0) to recommend approval of the modification application.

IV. Overview of the Site and Surrounding Area

The Site consists of Lot 61 in Square 342 and is presently zoned D-5-R (DD/C-3-C under ZR58). Square 342 is located in the northwest quadrant of the District and is bounded by L Street and Massachusetts Avenue to the north, 10th Street to the east, K Street to the south, and 11th Street to the west. The Site is located in the southwest corner of Square 342 and has an L-shaped configuration with a total lot area of approximately 7,311 square feet.

The Site is improved with the 13-story Moxy Hotel, which opened for business at the end of 2018. Lot 810, abutting to the north and west of the Site, is improved with Hostelling International; Lot 3, to the east of the Site, is improved with a two-story office building. A residential condominium building is located on Lot 59, fronting Massachusetts Avenue, NW, across the public alley and to the north of the Site.

The Site is located in the Mount Vernon Triangle area of the District, and is in convenient

walking distance of the Convention Center, Gallery Place/Verizon Center, and the Penn Quarter. The neighborhood is well-served by multiple public transportation options, including Metrorail, Metrobus, the D.C. Circulator, permanent car-share locations, and Capital Bikeshare docking stations. The area is also well-served by a safe and extensive pedestrian network and protected on-street bicycle lanes. Two blocks to the east of the Site is Mount Vernon Square; two blocks to the west of the Property is Franklin Square. In addition, as part of the original BZA approval, the Applicant agreed to a robust transportation demand management program, terms of which are incorporated as conditions to BZA Order No. 19020-A.

The hotel includes guest rooms on floors 3 through 13, with restaurant/retail use on the first two floors, including a hotel lobby, bar, lounge/library on the ground and second levels, two small conference rooms on the second level and an exercise room on the fifth level. The hotel's cellar contains a kitchen, storage space, and administrative/back-of-house hotel uses, including offices, mechanical utility rooms, laundry room, and bathrooms. Overall, the hotel contains approximately 69,330 square feet of gross floor area (9.48 FAR) and approximately 200 hotel rooms.

IV. Special Exception Approval

The Applicant seeks special exception approval, pursuant to Subtitle C § 1500.3(c), to permit use of the penthouse for nightclub, bar, restaurant or lounge. As shown on the Revised Plans, the Applicant has designed the penthouse level to include approximately 2,794 square feet of penthouse habitable space to be utilized for a potential bar, restaurant, nightclub or lounge.

Pursuant to D.C. Official 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 Zoning 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.*

1. *11-X DCMR § 901.2(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 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 D-5-R Zone District, pursuant to 11-I DCMR § 302.1 and 11-U DCMR § 515.1(f). 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 above, the proposed use is permitted as a matter-of-right inside the 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.

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. Compliance with Subtitle Y § 704

The Applicant's request for a Modification of Significance of BZA Order No. 19020-A complies with the relevant subsections of Subtitle Y § 703 as follows:

- **Subtitle Y § 704.2** – *An application for a modification of significance shall be made in an appropriate manner provided by the Director. The applicant shall furnish two (2) copies of all information required by the form at the time of filing the application, including the following:*
 - (a) *A completed application form;*
 - (b) *The nature of, reason(s), and grounds for the modification of significance;*
 - (c) *The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and two (2) copies of self-stick labels printed with their names and addresses;*
 - (d) *A copy of the resume of any expert witness who will be testifying in the case;*
 - (e) *A written summary of the testimony of all witnesses;*

(f) A copy of any Board final order, map, plan, or other action or relief proposed to be modified or corrected; and

(g) Proof of service to all parties.

Consistent with Subtitle Y § 704.2, a copy of the application form has been completed on IZIS and is included with the case record. The nature of the Modification of Significance is described herein and shown on the Revised Plans attached hereto as Exhibit B. A copy of BZA Order Nos. 19020 and 19020-A are attached hereto as Exhibits A-1 and A-2. This request is being served on all parties to the original application, as evidenced by the attached Proof of Service. Included with this modification request is also a list providing the name and addresses of the owners of all property located within two hundred feet (200 ft.) of the Site (Exhibit C).

- **Subtitle Y § 704.3** – *No application for modifications of significance shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.*

A filing fee of \$1,216.80 is enclosed herewith. This fee represents 26% of the original filing fee of \$4,680.00 submitted with BZA Application No. 19020, in accordance with Subtitle Y § 1600.1(e).

- **Subtitle Y § 704.9** – *The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.*

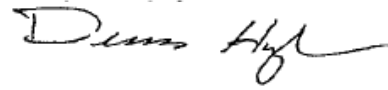
The final date of BZA Order No. 19020-A is January 29, 2016, and it became effective on February 9, 2016. Pursuant to Section 3130 of ZR58, the order was valid for a period of two years after it became effective unless, within such two-year period the Applicant filed plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit. The Applicant filed for a building permit within the two-year time frame and thus the order is vested.

VI. Conclusion

We appreciate your consideration of this matter and request a public hearing at the Board's earliest availability. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact us.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script, appearing to read "Dennis Hughes".

Dennis R. Hughes
Joseph O. Gaon

Enclosures

PROOF OF SERVICE

I hereby certify that on April 8, 2019, a copy of this request for a Modification of Significance to approved BZA plans was served on the following parties to the original case via U.S. Mail:

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Washington, DC 20024

Via Hand Delivery

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Commissioner Michael D. Shankle ANC 2C01
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