

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19583-A of Jemal’s East 451 LLC, pursuant to 11 DCMR Subtitle Y § 703, for a minor modification to the plans approved by BZA Order No. 19583 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).

The original application (No. 19583) was pursuant to 11 DCMR Subtitle X, Chapter 9, for 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 (Case No. 19583):	October 11, 2017 and November 29, 2017
DECISION DATE (Case No. 19583):	November 29, 2017
ORDER ISSUANCE DATE (Case No. 19583):	December 5, 2017
MODIFICATION DECISION DATE:	October 24, 2018

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

BACKGROUND

On November 29, 2017, in Application No. 19583, the Board of Zoning Adjustment (“Board” or “BZA”), based on a self-certification, approved the request by Jemal’s East 451 LLC (the “Applicant”) for 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).

In the original application, Application No. 19583, the Board approved special exception relief under Subtitle C § 1500.3(c) from the penthouse regulations of Subtitle C § 1500, to authorize use of the penthouse of a new hotel to be constructed on the subject property for restaurant, lounge, nightclub, or bar uses. Both the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) recommended approval of Application No. 19583. Also, the affected Advisory Neighborhood Commission (“ANC”) for the subject property, ANC 6E, the only other party to the Application, recommended approval of the application. On November 29, 2017, the Board approved the requested special exception relief.

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The Board issued Order No. 19583 (the “Order”) on December 5, 2017, subject to the approved plans at Exhibits 39A1-39A3 in the record of Case No. 19583 and two conditions:

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.

(Exhibit 4.)

MOTION FOR MINOR MODIFICATION

On September 19, 2018, the Applicant submitted a request for a minor modification to modify the plans approved by the Board in Order No. 19583. (Exhibits 1-7.) Pursuant to 11 DCMR Subtitle Y § 703, the Applicant, as a result of further design development, is requesting a minor modification to make several design refinements including redesign of the entry along K Street, redesign of the penthouse, and redesign of bay window projections. (see Exhibit 3, p. 2 items A.-E. for complete list and see revised set of drawings showing proposed refinements at Exhibits 5A and 5B.)

The Applicant served the request on ANC 6E on September 20, 2018. (Exhibit 3.)

On October 16, 2018, the Applicant filed a supplement to its original request adding a new design request to remove guest rooms from a portion of the second floor; correcting an error in the approved plans calculation of gross floor area (“GFA”) which will result in a decrease instead of an increase on overall GFA; and clarifying that the Office of Planning (“OP”) was provided with the additional information requested, i.e. a zoning compliance table and estimated affordable housing contribution (see Exhibit 10, pgs. 2-3. Also see revised drawings reflecting the changes at Exhibits 9A1 and 9A2.)

The Applicant served ANC 6E and OP with the further modification request on October 16, 2018. (Exhibit 8.) The Applicant asked for the matter to be decided as a minor modification.

The Office of Planning (“OP”) submitted a report, dated October 17, 2018, recommending approval of the request for a minor modification to the previously approved plans. (Exhibit 12.) Specifically, OP has recommended the requested changes to the size, height and layout of the penthouse, as illustrated in the exhibits in Case No. 19583-A dated October 16, 2018 (Exhibits 9A1 and 9A2), and for which a special exception under Subtitle C § 1500.3 was approved in the Order. In its report, OP also indicated it has no objection to the other design and numerical refinements contained in the October 16, 2018 Exhibits to the building drawings and development

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numbers that accompanied the Order and were approved by the Board. OP noted that since the issuance of the Order the Applicant has refined the design of other parts of the building and that these refinements have resulted in changes to portions of the K Street façade, the entry vestibule, the cellar and, to comply with public space regulations, bay window projections on 6th Street. OP indicated that other than the penthouse, none of these refinements affect previously granted relief, not do they require new relief, but for the sake of clarity when filing for a building permit, the Applicant has asked the Board to also approve the non-penthouse changes to the drawings that previously accompanied the Order. (Exhibit 12.)

ANC 6E submitted a report on October 22, 2018 that indicated that it recommended approval of the modification request. The ANC's report stated that at a duly noticed public meeting on October 2, 2018, at which a quorum was present, the ANC voted 7-0-0 to support the Applicant's request with the following two conditions:

1. The trash room be located indoors; and
2. Douglas will continue to work with the Commission to obtain DDOT approval for a lay-by on 6th St. and/or K St.

(Exhibit 13.)

The Applicant submitted a response to the ANC's report on October 23, 2018, stating that while the requested items are not directly relevant to the items raised in the Applicant's modification request, the Applicant has no objection to these requested conditions. (Exhibit 14.)

DDOT did not submit a report in this matter.

The Merits of the Request for Minor Modification

The Applicant's request complies with 11 DCMR Subtitle Y § 703.3, which defines a minor modification as "modifications that do not change the material facts upon which the Board based its original approval of the application."

In the application herein, the Applicant is requesting a minor modification to the plans approved in Order No. 19583 to make minor changes to the size, height, and layout of the penthouse approved by the Board as part of Application No. 19583, which application involved approval of the use of the penthouse of a hotel for bar/restaurant/ lounge/nightclub use. As noted by OP in its report, the penthouse for which the special exception use was permitted by Order No. 19583 was to be one-story and 18 feet tall, and setback-compliant. The Applicant proposes to alter that plan and now provide a one-story-plus-mezzanine penthouse that would be 20 feet tall, setback-compliant and 760 square feet larger than the previous penthouse. The uses would be the same as those permitted by Order No. 19583.

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The Applicant's supplemental submission also included a request to: (1) clarify the minor design changes proposed for the approved project; (2) identify and correct minor calculation errors in the approved drawings; and (3) address certain issues raised in discussion with OP regarding the minor modification request. A full, corrected set of comparative drawings of the approved and proposed design of the project is included at Exhibit 9A1 and 9A2 together with a comparative estimate of penthouse habitable contribution to the Housing Production Trust Fund at Exhibit 10. The Applicant also requested that should the Board approve the minor modification request, that reference in its approval be made to this set of revised drawings.

In its analysis, OP notes that the proposed penthouse changes would result in a zoning-compliant change to the penthouse dimensions and a minor increase in the amount of space devoted to the special exception use. The Applicant calculates this would result in an increase in the required affordable housing contribution from approximately \$84,767 to approximately \$102,852. No new relief is required for the penthouse. There has been no significant change in the surrounding neighborhood since Order No. 19583 became final. Therefore, the material facts upon which the Board based its original approval have not changed.

Pursuant to Subtitle Y §§ 703.6-703.9, the request for a minor modification shall be served on all other parties to the original application and those parties are allowed to submit comments within 10 days after the request has been filed with the Office of Zoning and served on all parties.

The Applicant provided proper and timely notice of the request for minor modification to ANC 6E, the other party to Application No. 19583. (Exhibits 3 and 8.) ANC 6E was the only other party to the original application and notice of the initial proposed refinements was provided on September 19, 2018 and notice of the supplemental proposed refinements was provided on October 16, 2018.¹ On October 22, 2018, ANC 6E submitted a report to the record of this application recommending conditional approval² of the modification request. (Exhibit 13.)

The Applicant also served its request on the Office of Planning. OP submitted a report dated October 17, 2018 recommending approval of the requested modification as a minor modification. (Exhibit 12.)

As directed by 11 DCMR Subtitle Y § 703.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a minor modification. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 19583, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703,

¹ The ANC was advised by the Office of Zoning of its right to respond to the supplemental proposed refinements by October 23rd, which allowed the ANC seven days' response time instead of the 10 days required by Y-703.9, by the Board Chair's authorization.

² The Board found that the conditions requested by the ANC were not related to the relief being requested and thus declined to adopt them.

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that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application for a minor modification of the Board's approval in Application No. 19583 is hereby **GRANTED, SUBJECT TO THE MODIFIED PLANS AT EXHIBITS 9A1 AND 9A2.**

In all other respects, Order No. 19583 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON NOVEMBER 29, 2017: 4-0-1

(Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

VOTE ON MINOR MODIFICATION ON OCTOBER 24, 2018: 3-0-2

(Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; Frederick L. Hill, Lesylleé M. White, not present or voting.)

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: November 2, 2018

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.