

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18486 of AG Georgetown Park Holding I LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow a bowling alley under § 908.1, in the W-1 and W-2 Districts at premises 3222 M Street, N.W. (Square 1200, Lot 868).

HEARING DATE: January 15, 2013
DECISION DATE: January 15, 2013

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment (“Board” or “BZA”) 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”) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E filed a timely letter report, dated January 4, 2013, which indicated that at a properly noticed, duly scheduled public meeting held on January 2, 2013, with a quorum present, the ANC voted unanimously to oppose the application, unless an agreement was reached between the Applicant and the Board of Directors of the Georgetown Park condominium association. (Exhibit 31.) At the hearing in light of the executed agreement between the Applicant and the condominium association that was reached and submitted for the record, ANC 2E, which was present, changed its position to one of support for the application.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application, subject to all of the consultant’s recommendations as outlined in their December 12, 2012 report being implemented. (Exhibit 34.) The District Department of Transportation (“DDOT”) submitted a letter of no objection dated January 4, 2013. (Exhibit 33.)

The Georgetown Park Unit Owners’ Association (“Association”) requested party status in opposition to the application. (Exhibit 35.) The Board granted the requested party status. The

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Applicant and party in opposition entered into an agreement which contained conditions to be placed on the application. In light of the executed agreement with the Association, the Association withdrew its request for party status. The Board accepted the executed agreement into the record (Exhibit 37) and the request for withdrawal of the Association's party status. Fourteen letters of opposition for the application from the Flour Mill of Georgetown Residential Condominium Association (Exhibit 30) and individual owners of residential units in the Georgetown Park condominium had been submitted for the record. (Exhibits 18, 19, 24, 25, 27, and 32.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 908.1. No parties appeared at the public hearing in opposition to this application.¹ 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 908.1 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 § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, 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 be **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 AND THE FOLLOWING CONDITIONS:**

1. No smoking shall be permitted in any portion of the restaurant, including any outdoor patio space.
2. The bowling lanes and other fixtures within the restaurant shall be located substantially as represented in the floor plans submitted to the BZA, although table and seating layout is provided for illustrative purposes only.
3. The restaurant shall not serve alcohol after 12:30 a.m. on Friday and Saturday and it shall not serve alcohol after 11:00 p.m. on Sunday through Thursday.
4. The restaurant shall not open before 8:00 a.m. on any day. The restaurant shall close no later

¹ As discussed herein, the party in opposition withdrew its opposition and entered into an agreement with the Applicant. (Exhibit 37.) In addition, the ANC, in response to the agreement entered into by the Applicant and Association, reversed its initial opposition and entered a position of supporting the application.

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than 1:00 a.m. on Friday and Saturday and it shall close no later than 11:30 p.m. on Sunday through Thursday.

5. All kitchen exhaust from the restaurant shall be vented through a code compliant vertical duct off of the roof, and any maintenance to this system or to the HVAC system requiring access to the roof of the building will be done between 9:00 a.m. and 6:00 p.m.
6. The upper patio ("Upper Patio") shall have a retractable enclosure which shall, when closed, contain an inaudible level of noise coming from the Upper Patio and from the interior of the Premises (the "Enclosure").
7. When the Upper Patio is not completely enclosed, it shall not be used and it shall not be occupied after 10:00 p.m. on Friday - Saturday or after 9:00 p.m. Sunday - Thursday. Further, when the Upper Patio is not enclosed, it shall not be used before 10:00 a.m. Sunday through Saturday.
8. The Upper Patio shall, at all times, whether enclosed or not, contain a patio roof that blocks views of the Upper Patio from the residents in units above the Upper Patio.
9. There shall be no direct doorway between any banquet room and the Upper Patio.
10. The maximum seating capacity for the Upper Patio shall be forty-two (42) and the maximum aggregate capacity for the Upper Patio, whether seated or standing, shall be fifty (50) persons.
11. The doors to the Upper Patio from the interior of the Premises shall remain closed at all times, to be opened only for ingress and egress.
12. No music is permitted on the Upper Patio unless it is fully and completely enclosed. The Upper Patio shall be enclosed at all times when the banquet rooms are used for a private party during which sound attenuation measures are required, such as weddings and bar mitzvahs.
13. The lower patio (the "Lower Patio") shall be closed and kept unoccupied after 10:00 p.m. on Friday - Saturday and no later than 9:00 p.m. on Sunday - Thursday. It shall not be used before 10:00 a.m.
14. The maximum seating capacity for the Lower Patio shall be thirty (30). The maximum aggregate capacity for the Lower Patio, whether seated or standing, shall be thirty-six (36) persons.
15. The fire pit intended for the Lower Patio shall be a gas-burning fixture only and shall not be lit at any time when the Lower Patio is closed.
16. No music is permitted on the Lower Patio at any time.

17. To the extent possible, the restaurant shall prohibit loitering in areas adjacent to the Premises. If such loitering occurs and disrupts the Association's Residents, the restaurant agrees to meet with the Association to discuss and implement possible solutions.
18. The Premises shall be constructed in such a manner that operation of the bowling lanes, including bowling, setting pins, rolling balls, interaction among patrons, or any other noise or vibration associated with the operation of the Premises, shall not be heard or felt in any of the Association Residences.
19. Soon after the restaurant commences its design efforts, the restaurant shall provide the Association with a copy of the specific sound attenuation design plans it intends to include in its detailed building permit plans, to be prepared and submitted in the future ("Plans"). The Association shall have the opportunity to have its acoustic consultants review the Plans and submit its comments on the Plans in writing to the restaurant within ten (10) business days. The restaurant shall give due consideration to the comments provided by the Association.
20. The restaurant shall provide to the Association both a phone number and an e-mail address of a restaurant representative, so that any Resident may contact the restaurant in the event of disturbances from noise or other aspects of the restaurant operation. The restaurant shall have a management representative attend a meeting with the Association on a monthly basis (or less often, at the Association's election) during build-out of the Premises and for the first six months after the restaurant opens for business, and thereafter at least twice a year, to work together to resolve any concerns.
21. The restaurant will neither undertake any concrete demolition or any outdoor work involving the Upper Patio prior to 9:00 a.m. Monday through Saturday. The restaurant will otherwise use good faith efforts to commence with any construction generating excessive noise after 9:00 a.m. Any other construction shall be performed in accordance with the permits.
22. All exterior signage shall be designed in a manner that is sensitive to the building's location in the Georgetown Historic District and shall be subject to approval by the Old Georgetown Board.

VOTE: **3-0-2** (Lloyd J. Jordan, Peter G. May, and Jeffrey L. Hinkle, to APPROVE; Nicole C. Sorg, not present or voting; and the third Mayoral appointee 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: January 24, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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 § 3205, 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

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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.