

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



**BZA Application No. 20146-A
Ninety Keys, LLC
1510 31st Street, N.W. (Square 1270, Lot 57)**

HEARING DATE (20146):	November 20, 2019
DECISION DATE (20146):	November 20, 2019
ORDER ISSUANCE DATE (20146):	November 26, 2019
HEARING DATE (20146-A):	February 7, 2024
DECISION DATE (20146-A):	February 7, 2024

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION OF SIGNIFICANCE**

Pursuant to notice, at its February 7, 2024, public hearing, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for modification of significance to BZA Order No. 20146-A to allow flexibility to convert from an existing office use to general service, art, design, creation, or limited medical care uses, as well as office uses in the R-3/GT zone. The Board considered the request for modification of significance under Subtitle Y § 704 of Title 11 of the DCMR (Zoning Regulations of 2016, the “**Zoning Regulations**” to which all references are made unless otherwise specified). For the reasons stated below, the Board **APPROVES** the request for modification.

ORIGINAL APPLICATION. In Application No. 20146, the Board approved the request by Caesar Junker (the “**Applicant**”) for a variance from the use restrictions of Subtitle U § 201.1, to convert an existing beauty shop use to an office use in an existing building in the R-20 zone. The Board issued Order No. 20146 on November 26, 2019. (Exhibit 41 of the record for Case No. 20146.) The approval was subject to the approved plans.

PROPOSED MODIFICATION. On October 4, 2023, the Applicant submitted a request for modification of significance to Order No. 20146. (Exhibit 1.) The Applicant submitted plans reflecting these modifications. (Exhibit 7.) The Applicant proposes to modify the approval by adding Conditions to read as follows:

1. The use of the Subject Premises may be devoted to:

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- a. General Service Use, as permitted pursuant to Section U-512.1(l), as such use is defined and described in Section B-200.2(cc); or
 - b. Office Use, as permitted pursuant to Section U-510.1(r), as such use is defined and described in Section B200.2(w); or
 - c. Arts, Design, and Creation Use, as permitted pursuant to Section U-510.1(c), as such use is defined and described in Section B-200.2(e).
 - d. Medical Care, including dentist, doctor, optician, or medical office, and excluding hospitals, clinics, and any type of overnight care, and also excluding any facility that meets the definition for and is licensed under the D.C. Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983.
2. Retail Use is prohibited; it being understood that Retail Use means the uses listed in Section U-512.1(k), and as such use is defined and described in Section B-200.2(bb).
 3. Notwithstanding any permissions granted herein, no establishment which has massage as its principal use shall be permitted.
 4. Operating times shall not exceed 8 am to 8 pm Monday- Saturday; and 10:00 a.m. to 6:00 p.m. Sunday.
 5. Business deliveries of bulk items that require a recipient signature shall only be allowed between 8:30 a.m. to 6:00 p.m., Monday through Friday, and 9:30 a.m. to 2:00 p.m., Saturdays.
 6. Should any biomedical waste be generated by the use of the property, the operator shall implement a plan for the secure storage and removal of such waste in accordance with D.C. Law, and a copy of such plan will be provided to ANC 2E within one month of the beginning of such use.
 7. There shall be no use from the Eating and Drinking Establishment category (Section B-200.2(i)), which includes, but is not limited to restaurant, prepared food shop, fast food restaurant, take-out, food delivery, bar, café, coffee shop, and deli.
 8. There shall be no use related to any material distribution of cannabis-related products, whether such products are offered for sale or by gift or any other means of distribution, or as part of any medicinal cannabis or marijuana use including onsite.

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9. Any use in the space which emits excessive noise shall be appropriately sound-proofed and shall comply at all times with all District noise disturbance laws and regulations.

10. The Applicant shall engage a rodent control company to implement and execute a rodent control and maintenance strategy and practice.

11. Basic care of the property shall be maintained such as trash removal, snow removal, and lawn care, in accordance with D.C. Law.

The zoning relief requested in this case was self-certified. (Exhibit 2.)¹

NOTICE OF THE REQUEST FOR MODIFICATION. Pursuant to Subtitle Y § 704.5, the Applicant served the request for modification of significance on the parties to the original application. (Exhibit 8.) 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.

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2E.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 29, 2024, at which a quorum was present, the ANC voted to support the modification, subject to conditions, agreed upon by the Applicant. (Exhibit 22.) The ANC report raised no issues or concerns with approval of the modification.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the modification. (Exhibit 18.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a report to the record for this modification application.

CONCLUSIONS

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence² requires a public hearing and is a modification of significance. The Applicant's request complies with Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

¹ The modification application was amended to withdraw a request for retail use. (Exhibit 17.)

² See, Subtitle Y §§ 703.3 and 703.4.

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As directed by Subtitle X § 1002, and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for use variance, and modification of significance.

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.

DECISION

It is therefore **ORDERED** that this application for a modification of significance of BZA Order No. 20146 is hereby **APPROVED** consistent with the plans shown in Exhibit 7 of the record, as required under Subtitle Y §§ 604.9 and 604.10, to include, except as specifically modified herein, uses that fall within these Use Categories: (1) General Service; (2) Office; (3) Arts, Design, and Creation; and (4) Medical Care, subject to the following **CONDITIONS**, which shall replace and supersede the conditions of BZA Order No. 20146:

1. The use of the Subject Premises may be devoted to:
 - a. General Service Use, as permitted pursuant to Section U-512.1(l), as such use is defined and described in Section B200.2(cc); or
 - b. Office Use, as permitted pursuant to Section U-510.1(r), as such use is defined and described in Section B200.2(w); or
 - c. Arts, Design, and Creation Use, as permitted pursuant to Section U-510.1(c), as such use is defined and described in Section B-200.2(e).
 - d. Medical Care, including dentist, doctor, optician, or medical office, and excluding hospitals, clinics, and any type of overnight care, and also excluding any facility that meets the definition for and is licensed under the D.C. Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983.
2. Retail Use is prohibited; it being understood that Retail Use means the uses listed in Section U-512.1(k), and as such use is defined and described in Section B-200.2(bb).
3. Notwithstanding any permissions granted herein, no establishment which has massage as its principal use shall be permitted.
4. Operating times shall not exceed 8:00 a.m. to 8:00 p.m. Monday- Saturday; and 10:00 a.m. to 6:00 p.m. Sunday.

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5. Business deliveries of bulk items that require a recipient signature shall only be allowed between 8:30 a.m. to 6:00 p.m., Monday through Friday, and 9:30 a.m. to 2:00 p.m., Saturdays.
6. Should any biomedical waste be generated by the use of the property, the operator shall implement a plan for the secure storage and removal of such waste in accordance with D.C. Law, and a copy of such plan will be provided to ANC 2E within one month of the beginning of such use.
7. There shall be no use from the Eating and Drinking Establishment category (Section B-200.2(i)), which includes, but is not limited to restaurant, prepared food shop, fast food restaurant, take-out, food delivery, bar, café, coffee shop, and deli.
8. There shall be no use related to any material distribution of cannabis-related products, whether such products are offered for sale or by gift or any other means of distribution, or as part of any medicinal cannabis or marijuana use including onsite.
9. Any use in the space which emits excessive noise shall be appropriately sound-proofed and shall comply at all times with all District noise disturbance laws and regulations.
10. The Applicant shall engage a rodent control company to implement and execute a rodent control and maintenance strategy and practice.
11. Basic care of the property shall be maintained such as trash removal, snow removal, and lawn care, in accordance with D.C. Law.

In all other respects, Order No. 20146 remains unchanged.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller 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: February 21, 2024

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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.