City of Coral Gables
Planning and Zoning Staff Report

Applicant/appellant:	David William Condominium Ad Hoc Committee[1] (Sally Baumgartner, Deborah Brownell, Frances Frazier, George & Ingrid Lyall, Luis Martinez, Rafael David Poleo, Adriana Pereda, and Caridad Perez)
Application:	Appeal of City Staff Administrative Decision
Property:	700 Biltmore Way, Unit C2 – BA-18-07-2722 ("Unit C-2")
Legal Description:	DAVID WILLIAM HOTEL CONDO UNIT C2 UNDIV 4.6203% INT IN COMMON ELEMENTS
Present Owners:	D.W. Hotel Corp.
Present Use:	Presale - Gym Membership – Sales Demo Office (Showroom)("Gym Membership Showroom")
Zoning District:	Multi-Family Special Area ("MFSA")
Public Hearing:	Board of Adjustment
Date & Time:	**September 10, 2018; 8:00 a.m.**
Location:	City Commission Chambers, City Hall, 405 Biltmore Way, Coral Gables, Florida 33134

1. APPLICATION REQUEST

An appeal of the City staff's administrative decision to issue Certificate of Use No. CU-0000019335 ("Certificate of Use") for a Gym Membership Showroom, located at 700 Biltmore Way, pursuant to the provisions of Ordinance No. 2007-01, as amended, and known as the "Zoning Code." See application/appeal submittal package, attached as Exhibit B.

1. *Appeal, pursuant to Section 3-606 (A) of the Coral Gables "Zoning Code," of staff's decision to issue the Certificate of Use for a Gym Membership Showroom located on the ground floor, Unit C-2, within the David William Hotel Condominium at 700 Biltmore Way.*

[1]/ In spite of the applicant/appellant's chosen name, the ad hoc committee has no affiliation with the David William Hotel Condominium Association, Inc. ("Association") (See correspondence from the Association, attached as Exhibit A. In fact, as set forth below, the Association approved the use.)

2. ADVERTISING

This application was advertised in the Miami Daily Business Review on August 31, 2018. Notices were mailed to properties within one thousand feet of subject property and the property was posted on August 31, 2018. (See advertisement and notice, attached as Composite Exhibit C.)

3. BACKGROUND INFORMATION

The David William Hotel Condominium, located at 700 Biltmore Way[2] and legally-described as lots 6 to 22, inclusive, Block 10 of the Biltmore Section ("Property"), was constructed in 1963 as a twelve-story apartment-hotel building with special permission by the City Commission, as set forth more particularly below. (See property appraiser's webpage for the Property, attached as Exhibit D.) At the time of approval, the Property, was subject to the development standards of Ordinance No. 1005 ("Former Zoning Code")(See relevant provisions of the Former Zoning Code, attached as Exhibit E). The Property was zoned Apartment-Hotel or "A" Use District, which allows apartment and hotel uses. (See Use and Area Map Plate No. 6, attached as Exhibit F, and Section 3.02(c) of the Former Zoning Code, defining the "A" use, attached as page 3 of Exhibit E.)

However, Section 9.03(2) of the Former Zoning Code provided that no apartment building, hotel or other structure shall be constructed in Coral Gables of more than three (3) stories in height, without a public hearing before of the City Commission. (See Exhibit E.) As such, the City Commission on December 6, 1960, reviewed and approved the construction of a twelve-story apartment building on the subject site by Resolution No. 8622, attached as Exhibit G, which was later rescinded by Resolution No. 8671, attached as Exhibit H. The owner appealed the rescission, ultimately to the Supreme Court of Florida. The Court eventually entered an order enjoining the City from impeding the progress of the construction of the twelve-story apartment building on the subject site.

The Property changed from an apartment to an apartment/hotel and has housed various auxiliary commercial uses that were all permitted as of right at the Property based on its main permitted uses, as a hotel (the restaurant) or as a hotel having more than 100 rooms (the liquor store and any other commercial uses). (See Section 4.B of this report below). The changes and Commission approvals are as follows:

Resolution No. 8622 (Exhibit G)	December 6, 1960. Permitting construction of an apartment building twelve (12) stories in height.
Resolution No. 8671 (Exhibit H)	January 10, 1961. Rescinding Resolution No. 8622, 8626, and 8660 all relating to the approvals for the construction of the Property.

[2]/ The Property originally had the street address 720 Biltmore Way, but the street address later changed to 700 Biltmore Way.

Resolution No. 10436 (Exhibit I)	February 11, 1964. Permitting a restaurant (which was originally planned to be located on the twelfth floor) to be located on the first floor.
Resolution No. 10648 (Exhibit J)	May 26, 1964. Liquor license was granted, without regard to population, "to hotels having one hundred or more guest rooms."
Resolution No. 11261 (Exhibit K)	March 23, 1965. Authorizing the issuance of retail liquor store license, permitting the sale of alcoholic beverages or intoxicating liquors, regardless of alcoholic content, for consumption on the premises.

On January 3, 1990, the Property was converted to a hotel/condominium. The first floor of the Property housed the two commercial units, Units C-1 and C-2. Unit C-1 contained a restaurant and Unit C-2 contained the hotel's offices and meeting rooms. (See excerpts of the condominium documents, attached as Composite Exhibit L). Unit C-2 was also used as a banquet hall/center from 1992 to 1994. (See summary of relevant businesses and certificates of use, attached as Exhibit M).[3]

On June 27, 1997, the current owner, D.W. Hotel Corp. ("Owner"), acquired 114 of the 196 residential units in the Property, and the two commercial units. (See deed, attached as Exhibit N, and newspaper article attached as Exhibit O.) On June 2, 2003, Unit C-2 was subdivided to create a new Unit C-3, but no separate folio number has been established for Unit C-3. (See Exhibit L.)

The space that became Unit C-1 was operated as a restaurant, since 1964, first as "Chez Vendome" until 1997, and then from 2003 until August 2006 as "Carmen the Restaurant". Unit C-1 has since remained vacant. (See Exhibits M and O). That month, a fire occurred on the eighth floor and the entire building was vacated and closed for months. Although the ground floor was not damaged in the fire, the lengthy building closure caused the restaurant to close permanently.

Unit C-2 has been used as meeting rooms and offices for the hotel and as a fitness center/gym for hotel residents and guests. The largest partitioned room, the Rendezvous room, was rented out to residents for functions and used as a meeting room for the hotel guests, until the August 2006 fire. Since then, part of Unit C-2 has been used a management office for the condominium and as the fitness center for the condominium. The remaining areas have been vacant.

The Owner sold most of its residential units between 2003 and 2004 but continued to manage a pool of hotel units for third party investors. The Owner ceased leasing or managing any units for short term stays in 2009, because of low participation from the other unit owners.

[3]/ Although the City can find no record of the business, the 700 Club, a bar/club, operated on the twelfth floor, but it closed in 1989. Since then, the space was converted into residential space - a penthouse condominium and three cabanas.

Even though parts of the commercial units have been vacant since the fire, the Owner has repeatedly listed them for sale or lease as commercial units. (See listing agreements for 2015, 2016, and 2017 attached as Composite Exhibit P). Nevertheless, the Owner was unable to rent or sell the commercial units, until DJS Image Inc. (doing business as "Fusion Fitness") offered to lease both spaces.

On February 21, 2018, DJS Image Inc. applied for a certificate of use for Unit C-2. On or about March 21, 2018, the David William Hotel Condominium Association ("Association") submitted a letter stating that the commercial units are permitted to be utilized for commercial uses pursuant to Section 9(H)(1) of the Declaration of Condominium. (See Association's approval letter, attached as Exhibit Q). On March 30, 2018, the City issued the certificate of use for Unit C-2.

DJS Image Inc. is currently leasing and using Unit C-2 as a sales and demonstration office and showroom for pre-sale of gym membership for the personal training gym that it expects to open in Unit C-1. At present, Unit C-1 is vacant and no application for a certificate of use or any other development approval has been filed.

4. ZONING ANALYSIS

The Unit may be used as a Gym Membership Showroom ("Use") pursuant to the following two rationales:

1. The Use is an approved accessory use in the Multi-Family Special Area ("MFSA") District, pursuant to Section 4-104(B)(1) of the City Zoning Code.
2. Second, the Use is a lawful nonconforming use pursuant to Section 6-601 of the City Zoning Code.

A. Approved accessory use

Section 4-104(B)(1) of the City Zoning Code, entitled "Permitted principal uses and structures," provides that the following uses are permitted:

> Accessory uses, buildings or structures as provided in Article 4, Table No. 2. **Accessory uses, buildings or structures customarily associated with permitted uses within this Zoning District and not listed within the Table No. 2 may be permitted subject to Development Review Official review and approval.**(emphasis added)(See applicable current City Zoning Code sections, attached as Exhibit R.)

The Development Review Official, Ramon Trias, approved the Use as an accessory use, which is defined as follows, in Article 8 of the City Zoning Code:

> Accessory use, building or structure means a use which: 1) is subordinate to and serves a principal use; 2) is subordinate in area, extent, and purpose to the

> principal use served; 3) contributes to the comfort, convenience or necessities of the users or occupants of the principal use; and 4) is located on the same building site as the principal use. (See Exhibit R)

The Use meets all four of the foregoing criteria as follows:

1. The Use is subordinate to the principal condominium/hotel use, since the sales and demonstration office and showroom is used to market memberships for a gym that will be open to the residents.
2. The Use is subordinate in area to the principal use, since the space occupied by the Use is less than one-third (1,650 sq. ft.) the size of Unit C-2 prior to partition (5,320 sq. ft), and Unit C-2 was itself only a portion of the ground floor of the twelve-story Building. The Use is also subordinate in extent, since the Use may not be advertised by placing signs on the exterior of the building and the space occupied by the Use must be accessed from inside the building. Finally, the Use is subordinate in purpose, as set forth in paragraph 1 above.
3. The Use contributes to the comfort, convenience or necessities of the users or occupants of the principal use, since the Use is to sell memberships in a gym that will improve the health and welfare of the condominium/hotel residents and guests without their having to leave the building.
4. The Use meets the fourth criterion, since it is in the same building as the principal use.

While the applicant/appellant may argue that such an accessory use is normally limited to the residents or occupants of the property and their guests, it would not be appropriate to so limit the Use when the property has historically been used as a commercial property that was open to the public, as long as the businesses were not allowed to have storefronts or signs that were visible from the exterior of the structure and the business could only be accessed from inside the building.

The interpretation that the Use is allowed as an accessory use in the MFSA district was subsequently confirmed by the City Attorney's Office, in an email dated April 4, 2018. (See email, attached as Exhibit S.)

In addition, the condominium documents allow the Use. The Declaration of Condominium of the David William Hotel Condominium, recorded on November 29, 1989, in Official Records Book 14342, Page 794 of the public records of Miami-Dade County, provides in Article 34 that "[i]nitially, one Commercial Unit will be operated as a restaurant and the other Commercial Unit will be operated as a hotel" and stated the allowed uses for the commercial units in Article 34, Section B (as set forth immediately below). On May 22, 2003, the Sixth Amendment to the Declaration of Condominium of the David William Hotel Condominium, recorded in

Official Records Book 21396, Page 4393 of the public records of Miami-Dade County, revised Article 34, Section B to prohibit retail use as a primary use, as follows:

> Commercial Units. Subject to the provisions of Article 9 of the Declaration and Article 33, Paragraph H of the Declaration, each Owner of a Commercial Unit (more specifically the Owners of Unit C-1, Unit C-2 and Unit C-3) shall occupy and use each Commercial Unit only for the conduct of hotel, restaurant, office, ~~retail use~~ and/or commercial service purposes. No Commercial Unit shall be used for primarily retail purposes. However, a retail use that is ancillary to any of the permitted uses will be allowed. Notwithstanding the above provisions, the following uses shall be prohibited within any Commercial Unit: (1) adult bookstores; (2) topless bars and other topless commercial enterprises; and (3) the sale of sex paraphernalia. (emphasis in original)(See Composite Exhibit L.)

Moreover, as set forth in Section 3 above, the Association informed the City, in a letter dated March 21, 2018, that the Association agreed that the commercial units could be used for commercial purposes, as permitted by the Declaration of Condominium. (See Exhibit Q.)

B. Lawful nonconforming use

The Use is also permitted as a lawful non-conforming use. As set forth in Section 3 above, the Property was zoned "A" use and was historically used as an apartment-hotel, with auxiliary (accessory) commercial uses on the ground floor that were permitted as of right as follows:

> SECTION 3.18 AUXILIARY USES - HOTELS. A ***public*** **dining room or restaurant shall be permitted as an auxiliary use in any hotel**. **Hotels with one hundred (100) or more guest rooms may contain business establishments of CA or CB classification as auxiliary uses**, providing the exterior of the building shall not contain store fronts or have the appearance of commercial or mercantile activities or any display of articles or services for sale which are visible from the exterior of the building, or on the grounds facing a public highway or water frontage, and providing further that places of business established under the provisions of this section shall only be entered from within the building. **Hotels with one hundred (100) or more guests rooms may contain a retail liquor store, as an auxiliary use**, provided that such retail liquor store shall have no entrances or exits thereto except from within the hotel itself and not from the exterior of any such hotel or from any street; and no signs advertising such retail liquor store, or the sale of alcoholic beverages or intoxicating liquors therein, shall be permitted upon the exterior, or to be visible from the exterior, of any such hotel. (emphasis added)(See Former Zoning Code, attached as Exhibit E.)

Section 3.07 of the Former Zoning Code, entitled "CA-Use Districts," sets forth the permitted commercial uses, including, in subsection (29), "office for business and professional purposes" and, in subsection (45), "other similar enterprises or businesses which are not more obnoxious

or detrimental to the welfare of the particular community than the businesses or enterprises that are herein enumerated..." (See Former Zoning Code, attached as Exhibit E.)

Moreover, Section 3.08 of the Former Zoning Code, entitled "CB-Use Districts," sets forth the permitted commercial uses, including, in subsection (29), "restaurant, cafes, cafeterias, and delicatessen"; in subsection (33), "slenderizing salons;" and, in subsection (43), "other similar enterprises or businesses which are not more obnoxious or detrimental to the welfare of the particular community than the businesses or enterprises that are herein enumerated..." (See Former Zoning Code, attached as Exhibit E.)

Moreover, Section 3.17 of the Former Zoning Code, entitled "Auxiliary Uses – Apartments and Hotels, General," allowed for auxiliary (accessory) uses as follows:

> "Subject to any limitations in this code or in other ordinances of the city, **such facilities as are** required or useful for the operation of a hotel or apartment house, **or for the use or entertainment of guest or tenants of the hotel or apartment house, shall be permitted as auxiliary uses thereto**, when conducted and entered only from within the building." (See Former Zoning Code, attached as Exhibit E.)(emphasis added)

In 2007, the City completed a comprehensive rewrite of the Zoning Code. As part of the rewrite, the Multi-Family Special Area ("MFSA") zoning district was created for this area of the City. The Property is in the MFSA zoning district, which does not permit hotel use, restaurant, or office use.

Nevertheless, Section 1-108(B) of the current Zoning Code, entitled "Transitional Rules, Existing approved uses," provides that "[a]n existing use which is lawful on the date of adoption of these regulations, whether permitted as a "**permitted use**", a "special use", an "X use" or a "conditional use" in the zoning district in which it is located, shall not be deemed nonconforming solely because the procedure for approval has changed through the adoption of these regulations **and shall hereafter be deemed a permitted conditional use in the district in which it is located**…"(emphasis added)(See Exhibit R.)

Finally, the Use is a less intense lawful nonconforming commercial use than the historic restaurant use and is no more intense than the historic office use, as is established by the parking requirements for the Use. Section 5-1409 of the City Zoning Code provides that an office (or for that matter, an indoor recreation/entertainment facility, defined to include a gym) requires one parking space for every 300-hundred square feet of floor area, whereas a restaurant requires twelve parking spaces for every 1000 square feet (or one space for every 83 and 1/3 feet of floor area).

5. BOARD ACTION

This application/appeal requires a public hearing, including review and a decision by the Board of Adjustment. The Board provides relief from hardships and errors in the application of the regulations.

6. STAFF RECOMMENDATION

The Planning and Zoning Division staff recommends **DENIAL** of the appeal.

5. EXHIBITS

A. Letter from Association regarding applicant/appellant.
B. Applicant's submittal package.
C. Legal advertisement and courtesy notice to all property owners within 1,000 feet.
D. Property Appraiser's Summary Report.
E. Ordinance No. 1005, known as the Former Zoning Code
F. Use and Area Map Plate No. 6
G. Resolution No. 8622
H. Resolution No. 8671
I. Resolution No. 10436
J. Resolution No. 10648
K. Resolution No. 11261
L. Excerpts of condominium documents.
M. Summary of relevant business and certificates of use
N. Deed to Unit C-2 and other units
O. South Florida Business Journal article regarding David William Hotel
P. Listing Agreements for Commercial Property for Units C-1 and C-2
Q. Certificate of Use application and attachments for Unit C-2
R. Relevant sections of the current City Zoning Code
S. Email from City Attorney's office

Please visit the City website at www.coralgables.com to view all application materials. The complete application also is on file and available for examination during business hours at the Planning and Zoning Division, 427 Biltmore Way, Suite 201, Coral Gables, Florida, 33134.

Respectfully submitted,

Ramon Trias
Assistant Director of Development Services
for Planning and Zoning
City of Coral Gables, Florida