

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17850-A of JBG/14th & S LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the lot occupancy requirements under § 772, a special exception under § 411.11 for roof structures with unequal heights, special exception relief under § 1906.1 from provisions of the ARTS overlay district restricting eating and drinking establishments under § 1901.6 and height under § 1902.1, and a special exception under § 2120.6 from the parking requirement for an addition to a historic structure to allow construction of a mixed-use residential and retail development in the ARTS/C-3-A district at premises 1407 S Street, N.W. and 1802, 1804, 1810, 1816, and 1818 14th Street, N.W. (Square 206, Lots 1, 210, 230, 819, 820, and 821).

HEARING DATE: December 2, 2008
DECISION DATES: January 6, 2009 and February 3, 2009
ORDER DATE: April 1, 2009
RECONSIDERATION DATE: May 5, 2009

ORDER DENYING RECONSIDERATION

By order dated April 1, 2009, the Board approved an application submitted July 3, 2008, by JBG/14th & S, LLC (Applicant), the owner of the property that is the subject of the application for a variance from the maximum lot occupancy requirement under § 772.1, a special exception under § 411.11 for roof structures with unequal heights, special exceptions under § 1906 from provisions of the Uptown Arts-Mixed Use (ARTS) overlay district pertaining to restrictions on eating and drinking establishments (§ 1901.6) and height (§ 1902.1), and a special exception under § 2120.6 for relief from the parking requirement for an addition to a historic structure, so as to develop a mixed-use residential and retail development on a site zoned ARTS/C-3-A in Square 206, Lots 1, 210, 230, 819, 820, and 821. Parties in this proceeding were the Applicant, Advisory Neighborhood Commission 2B, and Tom Coumaris, James Bogden, and Charles Taylor, who all reside near the subject property and were opposed to the application.¹

On April 8, 2009, a party in opposition, Tom Coumaris, submitted a timely motion for reconsideration of the order. The motion “requests that the ... case be reconsidered” for reasons

¹ By letters dated December 22, 2008, two additional parties, Peter Knapp and Joseph Freeman, withdrew their opposition to the application.

BZA APPLICATION NO. 17850-A
PAGE NO. 2

including assertions that (i) advertisement of the case was “insufficient, both in public posting and in advertisement as special exceptions instead of variances”; (ii) the Board made an incorrect “assumption of the correctness of combining lots to achieve an address on S Street, NW ... so as to [void] the applicant’s need to provide a rear yard area abutting the alley,” since Swann Street ‘does not qualify as a rear yard’; (iii) the Applicant “did not meet the burden of proof for the standards of obtaining a variance or a special exception; (iv) “evidence was presented by Applicant’s attorney and not by Applicant”; and (v) “area calculations were arrived at incorrectly.”

By letter dated April 20, 2009, the Applicant submitted a timely response in opposition to the motion. The Applicant objected that the motion for reconsideration did not state specifically the grounds of the motion, as required by § 3126.4. According to the Applicant, two of the five claims of error in the motion (regarding adequacy of notice and burden of proof) reiterated issues that were raised at the hearing and addressed in the Board’s order that approved the application; one claim of error (regarding rear yard regulations) was groundless because no rear yard issue was in the application before the Board; and two allegations (concerning presentation of evidence by the Applicant’s attorney and area calculations) raised new claims of error that were not raised in the course of the public hearing and consisted of “terse allegations of procedural and substantive error [that] lack any substance that would permit the Board to evaluate the adequacy of its decision and order.” The Applicant argued that the Board should deny the motion for reconsideration in light of the motion’s “failure to provide grounds for any of the claims of error” and the “overwhelming evidence in the record that supports the Board’s findings and conclusions on the requested areas of relief.”

CONCLUSIONS OF LAW

Tom Coumaris, a party in opposition in this matter, submitted a timely request for reconsideration of the Board’s order in this proceeding. A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. 11 DCMR § 3126.4.

The Board was not persuaded that the motion by the party in opposition alleged any grounds to reconsider its decision to grant the relief requested by the Applicant. The motion did not state specifically any respect in which the Board’s decision was claimed to be erroneous, and the “reasons for reconsideration” listed in the motion did not present any new argument or testimony relevant to the Board’s deliberations in this case. Rather, the motion provided only a conclusory list of perceived errors, without any reference to evidence in the record or any argument to explain the allegation. The Board concurs with the Applicant that the motion failed to provide grounds for any of the claims of error, as required by § 3126.4.

Accordingly, it is therefore **ORDERED** that the motion for reconsideration is **DENIED**.

BZA APPLICATION NO. 17850-A

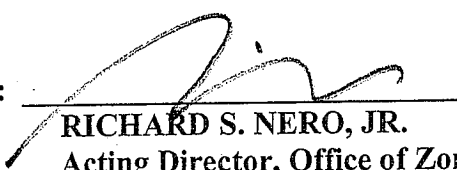
PAGE NO. 3

VOTE: **4-0-1** (Marc D. Loud, Shane L. Dettman, Gregory N. Jeffries and Mary Oates Walker (by absentee vote) voting to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: **JUN 18 2009**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17850-A

As Director of the Office of Zoning, I hereby certify and attest that on **JUNE 18, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Allison C. Prince, Esq.
David Avitabile, Esq.
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

Rob Stewart, Managing Member
JBG/14th & S, LLC
c/o The JBG Companies
4445 Willard Avenue, Suite 400
Chevy Chase, Maryland 20815

Tom Coumaris
1413 S Street, N.W.
Washington, D.C. 20009

James Bodgen
Charles Taylor
1419 S Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 2B
#9 Dupont Circle, N.W.
Washington, D.C. 20036

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17850-A
PAGE NO. 2

Single Member District Commissioner 2B09
Advisory Neighborhood Commission 2B
#9 Dupont Circle, N.W.
Washington, D.C. 20036

Jack Evans, Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

TWR