

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18246 of PNH 14th & R, LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for area variances to allow an expansion of a nonconforming structure under § 2001.3, an increase in the floor area ratio limitations of § 771.2, a lot occupancy of 100% for a residential building under § 772.1, and special exceptions from the roof structure enclosure height requirements under § 770.6 and, by incorporation, the roof structure provisions of § 411.5, and the roof structure height provisions of the Arts Overlay under § 1902.1 to allow the conversion of an existing commercial building to an apartment building with ground floor retail in the Arts/C-3-A District at 1401 R Street, N.W.¹ (Square 207, Lot 110).

HEARING DATE: September 20, 2011
DECISION DATE: September 20, 2011 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

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 the Applicant, Advisory Neighborhood Commission (“ANC”) 2F, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 2F, which is automatically a party to this application. ANC 2F submitted a letter, dated May 26, 2011, in support of the application. The ANC noted that at a duly noticed public meeting on May 4, 2011, with a quorum present, the ANC voted unanimously (4:0) to support the application. (Exhibit 24.)

The Office of Planning (“OP”) and the District’s Department of Transportation (“DDOT”) also submitted reports in support of the application. (Exhibits 27 and 28.) DDOT recommended several conditions pertaining to parking and loading at the site. Because the Applicant does not

¹ The caption for this case, as advertised, contained both addresses for this property, namely, the former address of 1700 14th Street, N.W., as well as the current address of 1401 R Street, N.W.

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seek any relief from the parking or loading requirements of the Zoning Regulations, those recommendations are not germane to this application.

The Board received one request for party status. (Exhibit 23.) The individual requesting party status did not appear at the hearing and, accordingly, the Board denied the request.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the nonconforming structure provisions of § 2001.3, the floor area ratio limitations of § 771.2, and the lot occupancy limitations of § 772.1; and for a special exception under § 3104.1 from the strict application of the roof structure enclosure height requirements of § 770.6, and the roof structure height requirements of the Arts Overlay under § 1902.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. 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 the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for area variances under §§ 2001.3, 771.2, and 772.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board also concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 770.6, 411.5, and 1902.1, and 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.

It is therefore **ORDERED** that the application is hereby **GRANTED (pursuant to Exhibit 26, Tab H – Project Location Plan (September 2, 2011), with the following condition:**

1. The Applicant shall have the flexibility to modify the design of the building to address any comments from the D.C. Historic Preservation Review Board during final review of the project so long as the modifications do not require any additional areas of zoning relief.

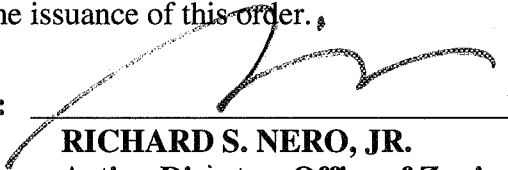
Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

VOTE: **4-0-1** (Nicole C. Sorg, Konrad W. Schlater, Lloyd L. Jordan, and Jeffrey L. Hinkle to approve; Meridith Moldenhauer not present, not voting)

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

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

ATTESTED BY:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: SEP 22 2011

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 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.

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As Director of the Office of Zoning, I hereby certify and attest that on **SEP 22 2011**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANC's and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Mary Carolyn Brown, Esq.
Holland & Knight
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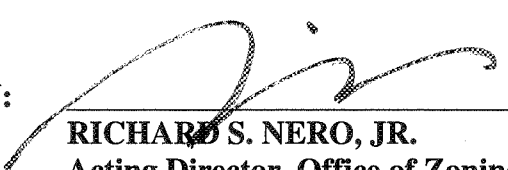
Chairperson
Advisory Neighborhood Commission 2F
5 Thomas Circle, N.W.
Washington, D.C. 20005

Single Member District Commissioner 2F01
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ATTESTED BY:


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