

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18289 of EQR-EYE Street LLC, pursuant to 11 DCMR §§ 3104.1, and 3103.2, for a special exception relating to penthouse uniform height requirements under §§ 771.1 and 411.11, a variance from the lot occupancy requirements under § 772.1, a variance from the closed court requirements under § 776.4, and a variance from the floor area ratio limitations for historic lots under § 1707.4, to restore historic buildings and construct an addition to create a residential and retail building with below-grade parking in the DD/C-2-C District at premises 443-459 I Street, N.W. (Square 516, Lots 812-815, and 876).¹

HEARING DATE: December 13, 2011
DECISION DATE: January 10, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

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, and to all owners of property within 200 feet of the property that is the subject of this application. The Advisory Neighborhood Commission (“ANC”) 6C, received proper and timely notice as well. The subject property is located within the jurisdiction of ANC 6C, which is automatically a party to this application.² ANC 6C submitted a written report, dated November 25, 2011, in support of the application. The ANC noted that at a duly noticed and regularly scheduled public meeting on November 21, 2011, with a quorum present, the ANC voted

¹ The Applicant amended the application to withdraw the portion of the special exception request relating to the penthouse setback requirements under § 770 6(b)

² At the December 13, 2011 hearing, the Applicant responded to questions from Board members about future changes in ANC jurisdiction. The Applicant stated that ANC 2C will assume jurisdiction over the property in January 2012, due to redistricting. The Applicant also testified that ANC 2C had unofficially reviewed the project and had voiced no disapproval or concerns.

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unanimously (6:0) to support the application. (Exhibit 26.) The Board accepted the ANC's written report into the record.

The Office of Planning ("OP") submitted timely reports into the record dated December 6, 2011 (Exhibit 29) and January 5, 2012 (Exhibit 37), and described its support for the application at the December 13, 2011 hearing.³ On December 6, 2011, the District Department of Transportation ("DDOT") submitted a report of no objection to the application, provided that the Applicant's streetscape design will comply with the standards listed in DDOT's Downtown Streetscape Regulations and Mount Vernon Triangle Public Realm Design Project. (Exhibit 30.) Letters of support from two tenants of the property were also received. (Exhibit 38, Tab B.) Two musicians who use the property for practice and performance space submitted letters of support on January 5, 2012.⁴ (Exhibit 39.) Accordingly, a decision by the Board to grant the application would not be adverse to any party.

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 for a special exception pursuant to §§ 411.11, 771.1, and 3104.1 from the uniform height requirements for roof structures under § 411.5, and variances pursuant to § 3103.2 from the requirements of §§ 772.1, 776.4, and 1707.4.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional and 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 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 further concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 771.1, and 411.11, for a special exception to permit the construction of a penthouse of uneven heights, 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.

³ Initially, OP had expressed concerns about the closed court relief, but upon its review of the supplemental information and testimony provided by the Applicant, OP clarified and voiced its full support of the application at the hearing.

⁴ Both musicians testified at the hearing, expressing their concern at losing their performance and practice space. Thereafter, the Board postponed the decision in the case until January 10, 2012, which gave the Applicant time to work with tenants and others who would be displaced by the project, including the studio and the musicians who used it as well as another tenant. The Board gave leave for those who had testified at the hearing to submit letters after the hearing. The two musicians who testified also submitted letters of support for the project after the hearing. (Exhibit 39.)

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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. It is therefore **ORDERED** that the application, (**pursuant to Exhibit 38, Tab A, Revised Plans, and Exhibit 32, Exhibit A (sheets 4A, 4B, and 4C, dated 12/10/11)**), is hereby **GRANTED**, with the following **CONDITION**:

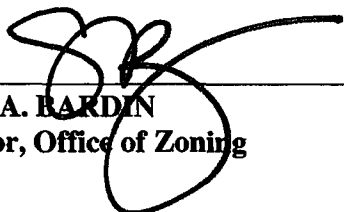
1. The Applicant shall be able to modify the project plans in the further development of its construction drawings as the result of further review by the Historic Preservation Review Board or the staff of the Historic Preservation Office.

VOTE: **5-0-0** (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle (by absentee vote), and Anthony J. Hood 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: **JAN 20** 2012

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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JAN 20 2012

As Acting Director of the Office of Zoning, I hereby certify and attest that on _____, 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 ANCs 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:

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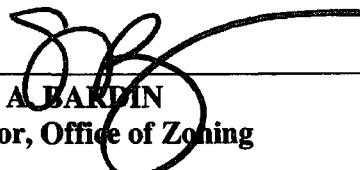
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