

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18306, of 1919 14th Street, LLC, on behalf of 14th Street Properties, pursuant to 11 DCMR §§3103.2 and 3104.1, for a variance from the court requirements of § 776.3; a variance from the off-street parking requirements of § 2101.1; a variance from the compact space requirements of § 2115.2; a variance from the off-street loading requirements of § 2201.1; a special exception from the roof structure requirements pursuant to § 411.11; and a special exception from the roof structure height limitation of § 1902.1(a) to allow the construction of a new residential building with ground floor retail and service uses in the ARTS/C-3-A District at 1905 - 1917 14th Street, N.W. (Square 237, Lots 179, 194, and 195).

HEARING DATE: January 24, 2012
DECISION DATE: February 7, 2012

DECISION AND ORDER

This self-certified application was submitted on September 21, 2011 by 1919 14th Street, LLC, on behalf of 14th Street Properties (collectively the “Applicant”). 14th Street Properties is the owner of the property at 1905 - 1917 14th Street, N.W. (Square 237, Lots 179, 194, and 195) (the “Property”). The application requests area variances from the court requirements of § 776.3; a variance from the off-street parking requirements of § 2101.1; a variance from the compact space requirements of § 2115.2; a variance from the off-street loading requirements of § 2201.1; a special exception from the roof structure requirements pursuant to § 411.11; and a special exception from the roof structure height limitation of § 1902.1(a) to allow the construction of a new residential building with ground floor retail and service uses in the ARTS/C-3-A District.

The Board of Zoning Adjustment (“BZA” or “Board”) held a hearing on the application on January 24, 2012 and deliberated on the application on February 7, 2012, at which time the Board voted 5-0-0 to grant the application. A full explanation of the factual and legal basis for the Board’s decision follows.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 22, 2012, the

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18306

EXHIBIT NO.

541

Board of Zoning Adjustment
District of Columbia
CASE NO.18306
EXHIBIT NO.54

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D.C. Office of Zoning ("OZ") provided notice of the filing of the application to the D.C. Office of Planning ("OP"); the D.C. Department of Transportation ("DDOT"); the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the subject property is located; and ANC Single Member District 1B02. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and on October 24, 2011, sent such notice to the Applicant, ANC 1B, and all owners of property within 200 feet of the subject property.

Party Status. The Applicant and ANC 1B were automatically parties to this proceeding. There were no requests for party status.

Applicant's Case. Kyrus L. Freeman and Norman M. Glasgow, Jr., of Holland & Knight LLP, represented the Applicant. The Applicant presented three witnesses in support of the application: David Franco, on behalf of the Applicant; Eric Colbert, of Eric Colbert and Associates; and Erwin Andres, of Gorove Slade Associates. The Board qualified as experts Mr. Colbert in architecture and Mr. Andres in transportation planning and analysis.

OP Report. By memorandum dated January 17, 2012, OP recommended approval of the zoning relief requested by the Applicant, based on OP's conclusions that the application was in conformance with the criteria for granting the requested area variances and special exception relief requested in this case. (Exhibit 32.)

DDOT Report. By memorandum dated January 13, 2012, DDOT recommended approval of the application, and indicated that "DDOT fully supports the reduction in parking for the transit-oriented development." (Exhibit 31.) DDOT stated that the requested parking relief "is appropriate considering the wealth of mass transit options for the residents and visitors." DDOT also indicated that the Applicant's proposed loading facilities will provide sufficient access for loading and deliveries at the Property.

ANC Report. By letter dated January 11, 2012, ANC 1B indicated that, at a properly noticed meeting on December 1, 2011, with a quorum present, the ANC voted to support the Applicant's requested variances and special exceptions, subject to the condition that residents of the proposed building be restricted from obtaining residential permit parking permits. (Exhibit 28.) The ANC Commissioner for the Single Member District in which the Property is located submitted a letter dated February 1, 2012 reiterating the ANC's support for the project and the importance of the provision that residents of the proposed building not be able to obtain residential parking permits for the life of the building. (Exhibit 47.)

Persons and Organization in Support. The Board received letters in support of the application from a number of individuals and organizations. (See Exhibits 27, 33, 34, 35, 36.) The letters commented favorably on the Applicant's proposal to replace the existing single-story retail use at the site with a new, mixed-use development that leverages the public infrastructure and transportation services in the area, and will add to the vibrancy, walkability, and diversity of the community.

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Persons and Organization in Opposition. The Board also received letters and petitions in opposition to the application. (See Exhibits 40, 41, 46, 49, 50.) A number of individuals raised concerns regarding transportation issues, including parking, loading, and the enforceability of the Applicant's proposal to restrict residents of the building from applying for residential parking permit stickers; the height of the proposed building; the size and square footage of the proposed units; and construction impacts.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at 1905 - 1917 14th Street, N.W. and includes Lots 179, 194, and 195 in Square 237. The Property is located on the east side of 14th Street.
2. Square 237 is located in the northwest quadrant of the District and is bounded on the north by U Street, on the east by 13th Street, on the south by T Street, and on the west by 14th Street. Wallach Place runs east-west and bisects the square.
3. The Property contains approximately 15,390 square feet of land area, and is currently improved with a one-story building that includes retail uses.
4. The Property is located within the ARTS/C-3-A District, and the 14th Street Historic District.
5. C-3-A Districts permit medium density development, including residential and mixed-use development. (11 DCMR § 740.4.) The C-3-A Districts are generally located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 740.5.) Pursuant to §§ 741, 721, 701, and 350.4 of the Zoning Regulations, multiple dwellings as well as numerous commercial, retail, and service uses are permitted as a matter of right in C-3-A Districts.
6. The Arts Overlay permits a maximum height of 75 feet for buildings in the underlying C-3-A District, provided that no part of the building projects above a plane drawn at a 45-degree angle from a line located 50 feet directly above any property line adjacent to a residential district or any alley separating the property from a residential district. (11 DCMR § 1902.1.)
7. The maximum permitted floor area ratio ("FAR") for a Property zoned ARTS/C-3-A that provides at least 3.0 FAR of residential use and meets the maximum Inclusionary Zoning ("IZ") requirements is 5.3 FAR, and the maximum lot occupancy is 75% for residential uses with 80% permitted under IZ. (11 DCMR §§ 1904.3 and 1909.1(c)(1).)
8. The Applicant is not seeking any relief from the applicable FAR or lot occupancy requirements. The project will also satisfy the matter-of-right zoning requirements with respect to rear yard and side yard. In addition, the proposed uses are consistent with the Property's ARTS/C-3-A zoning designation.

The Applicant's Project

9. The Applicant proposes to demolish the existing structure on the Property and to construct a new residential building with ground floor retail and service uses.
10. The development will include a total of approximately 78,253 square feet of gross floor area, which will be comprised of approximately 144 residential units and approximately 5,696 square feet of new retail and service space.
11. The project has been reviewed by the staff of the Historic Preservation Office ("HPO") and by the D.C. Historic Preservation Review Board ("HPRB").
12. HPRB found the concept of the proposed development not incompatible with the historic district and consistent with the purposes of the preservation act. (Exhibit 26.)

The Zoning Relief Requested

Special Exceptions

Unequal Height of Enclosing Roof Structure Walls

13. Subsection § 411.5 of the Zoning Regulations requires the enclosing walls of roof structures to be of equal height.
14. The project includes a roof structure that incorporates enclosing walls having heights of 8'6", 10'6", 13'6", and 17'8".
15. The 8'6" portion encloses a stairwell necessary to provide access to the roof.
16. The 10'6" foot portion of the structure encloses the mechanical equipment area, and there is a three-foot screen wall utilized to block views of equipment.
17. The 17'8" portion encloses the elevator penthouse. The elevator is required to go to the roof of the building and to provide access to the roof deck and ancillary amenity space to persons with disabilities.
18. The unequal heights reduce the height and massing for the majority of the proposed roof structure to the greatest extent possible.
19. The step-downs in height also help to reduce the visibility of the roof structure from the surrounding areas.

Excess of Maximum Height of Roof Structures Permitted in Overlay

20. The Arts Overlay limits any roof structure to a maximum height of 83' 6' where a building

achieves the maximum permitted height of 75 feet.

21. The Applicant proposes that a portion of the roof structure, which will accommodate the elevator override equipment, to rise to a height of 17'8" on a building that is 72'8" in height, resulting in an overall height of approximately 90'4".
22. As demonstrated in Findings of Fact Nos. 23 through 32, the Applicant has satisfied the applicable criteria of § 1906.1 for granting special exception relief from this Overlay requirement.
23. The proposed height of the roof structure will substantially advance the purposes of the Arts Overlay District by allowing the necessary mechanical equipment for the building and by providing access to a communal rooftop terrace.
24. The terrace is a major amenity to this residential development and a significant design feature that strengthens the Arts Overlay and 14th Street corridor. It provides a safe recreational gathering space for residents of the building and fosters increased activity in the overlay district.
25. The Applicant submitted shadow studies demonstrating that the portion of the proposed roof structure above 83'6" does not cast any shadow beyond the edge of the building roof. (Exhibit 30.)
26. The proposed penthouse is permitted to be 0.37 FAR or 5,694 square feet. However, the portion of the roof structure over 83'6" is only 331 square feet or 0.02 FAR. This 331 square feet is only seven percent of the total penthouse area.
27. The portion of the roof structure over 83'6" is set back 75 feet from the northern edge of the building, 32 feet from the eastern edge of the building, 44 feet from the southern edge of the building, and 38 feet from the western edge of the building and thus constitutes a very small amount of square footage and is set back such that it will not have any adverse visual impacts.
28. The penthouse will be clad in complementary materials to ensure its successful integration into the overall design of the building and its design and massing have been approved in concept by HBRB.
29. As further explained in Findings of Fact Nos. 41 through 45, the Property is affected by the combination of several exceptional circumstances, including subsurface groundwater and poor soils, and the Property's adjacency to a number of historic and important buildings.
30. Without the additional penthouse height, providing elevator access to the penthouse level would be very difficult and costly to achieve.

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31. The elevator penthouse has been located to protect the street views of the building, surrounding properties and the historic district.
32. The proposed extension in the roof structure height and at a limited and discreet location will only be as tall as necessary to allow elevator access to the roof. This portion of the roof structure will be significantly set back from adjacent property lines and public ways, so that there will only be limited visibility of it from public space.

Variances

33. Subsection 776.3 of the Zoning Regulations provides that where a court is provided for a residential building in the C-3-A District, the court must have a minimum width of at least four inches per foot of building height, but not less than 15 feet. Thus, in order to comply with the court regulations, any court provided for this project would need to be set back an additional 9' 2" at the 7th floor level.
34. The proposed open court will measure 5' 10" along the southern property line at the 7th floor of the proposed new construction.
35. Pursuant to § 2101.1 of the Zoning Regulations, the project is required to provide a total of 81 off-street parking spaces.
36. A total of 34 off-street parking spaces, with eight surface spaces and 26 spaces located in a below-grade parking garage is being provided instead.
37. Subsection § 2115.2 further provides that any "accessory parking area or accessory garage containing twenty-five (25) or more required parking spaces may designate up to forty percent (40%) of the parking spaces for compact cars." (11 DCMR § 2115.2.)
38. Fifteen of the spaces located in the garage are compact, which represents approximately 44% of the total number of off-street parking spaces provided in the project.
39. Pursuant to § 2201 the project is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep.
40. The project will provide one loading berth at 30 feet deep, one loading berth at 24 feet deep, one loading platform at 200 square feet, and no service/delivery space.

Exceptional and Extraordinary Conditions

41. The Applicant submitted a geotechnical prepared by Professional Service Industries ("PSI") indicating that PSI was retained to provide geotechnical engineering services for the Applicant's proposed mixed-use development project at the Property.

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42. PSI completed two test borings to depths ranging from approximately 30 feet to 60 feet below the existing ground surface, and analysis of the two test borings show a high water table at the Property, and that poor soil conditions would be encountered at the foundation bearing elevation of a multi-level underground garage.
43. The site is bounded to the north by Wallach Place, which has a relatively narrow roadway width of 30 feet. The site is bounded by a 15-foot public alley to the east.
44. Although the existing building on the Property is non-contributing to the 14th Street Historic District, the Property is adjacent to a number of historic and important buildings, and as noted on the HPO Staff Report and Recommendation in the record, these conditions have a direct impact on the design and layout of the proposed development on the Property.
45. The court setback was provided in response to specific recommendations from HPRB.

Practical Difficulties

46. The court as designed pulls the building's mass back slightly along the southern property line at the 7th floor, while at the same time providing a reasonable interior configuration for use of this level. Strict compliance with the court setback requirement would cause the elimination of a significant portion of the building along the southern property line at the 7th floor, and due to the configuration of the project, this space cannot be relocated elsewhere in the building.
47. Increasing the setback to meet the required court width would also result in a significant number of design changes to the interior configuration of the building, including the location and layout of units, the location of the stairways, the design of the garage, and a number of other impacts.
48. As a result of the location of the building's structural columns and the area occupied by required elevators, drive aisles, storage space, stairwells, and utility rooms, it would be practically difficult for the Applicant to accommodate the required number of full-size parking spaces on the Property without further reducing the number of parking spaces provided.
49. Reducing the percentage of parking spaces that are compact in size will necessarily reduce the total number of vehicles that can be accommodated in the building's garage, which would trigger the need for more parking relief.
50. The Applicant cannot provide additional levels of below-grade parking due to the groundwater and poor soil conditions of the Property.
51. Use of the ground level for parking is limited by requirement of § 1901.1 which provides that retail and service uses must occupy no less than 50% of the ground floor level of the building,

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combined with the need for a residential lobby and typical ground floor building services in the proposed building.

- 52. Due to the narrow widths of Wallach Place and the existing alley it is not feasible for a 55-foot truck to navigate the existing public alley system to access the proposed loading facilities.
- 53. Strict application of the loading requirements would require the Applicant to increase the depth of one of the loading berths by at least an additional 25 feet, which would have an adverse impact on the layout and configuration of essential building features, including the trash rooms and elevators.

No Substantial Detriment to the Public Good or Zone Plan

- 54. The deficiency in the court width involves only the 7th floor of the building. The Board finds that the court at this level is above the height of the abutting buildings to the immediate south, and thus there will be ample open space above the abutting building to satisfy the purpose of the court width requirements.
- 55. The project will result in a significant amount of transit and pedestrian access to the Property, resulting in a decrease in the number of vehicle trips that would otherwise be generated, and a decrease in the number of off-street parking spaces that would be needed if the property were not in such close proximity to public transportation.
- 56. The Board accepts the findings made in the Transportation Impact Analysis submitted by the Applicant (Exhibit 26) that the proposed parking will adequately serve the demands of the Property due to a number of factors, including: (1) the U Street/African American Civil War Memorial/Cardozo Metrorail station within walking distance of the Property; (2) the Property is serviced by 15 bus routes within close walking distance including Metrobus, Metro Express and DC Circulator routes; (3) there is an existing bike share location approximately 700 feet to the north of the Property at the intersection at 14th and V Streets, N.W. in addition to other facilities within short walking distance from the Property; (4) the project will include 65 bicycle parking spaces; and (5) the Property has a high "walkability score" as calculated by WalkScore.com.
- 57. The Applicant has committed to incorporate a number of transportation demand measures into operation of the building, as set forth in the Transportation Impact Analysis.
- 58. Although 15 of the 34 parking spaces provided in the parking garage are for compact cars, the garage has been designed in a manner that will maximize the efficiency of use of the parking garage space.
- 59. DDOT fully supported the reduction in parking for the transit-oriented development, and that the requested parking relief is appropriate considering the wealth of mass transit options for the residents and visitors.

60. In addition, the Applicant has agreed to include language in all documents related to the lease or sale of the residential units that residents of the building are prohibited from applying for residential permit parking stickers from the District of Columbia, regardless of the building's ownership, and for the life of the building.
61. As to the loading variance, it is unlikely that the building will be serviced by 55-foot tractor-trailer trucks; thus, there is no need for a 55-foot berth for this project.
62. Although a service/delivery space is not provided, the plans include an additional 24-foot loading berth that can accommodate service deliveries.
63. DDOT concluded that the proposed loading facilities would provide sufficient access for loading and deliveries at the Property.

CONCLUSIONS OF LAW

Variance Relief

Standard of Review

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3), to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (See 11 DCMR § 3103.2.)

The District of Columbia Court of Appeals has held that “an exceptional or extraordinary situation or condition” may encompass the buildings on a property, not merely the land itself, and may arise due to a “confluence of factors.” See *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Applicant is seeking a variance from the court requirements of § 776.3, a variance from the off-street parking requirements of § 2101.1, a variance from the compact space requirements of § 2115.2, and a variance from the off-street loading requirements of § 2201.1. As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested area variances in this case.

Exceptional and Extraordinary Conditions

The Board concludes that the Property is affected by a confluence of several exceptional and extraordinary conditions, and that the combination of these factors results in an extraordinary and exceptional condition that imposes a number of significant development constraints on the Property. For example, the Applicant submitted a geotechnical prepared by PSI indicating that PSI was retained to provide geotechnical engineering services for the Applicant's proposed mixed-use development project at the Property. PSI completed two test borings to depths ranging from approximately 30 feet to 60 feet below the existing ground surface, and analysis of the two test borings show a high water table at the Property, and that poor soil conditions would be encountered at the foundation bearing elevation of a multi-level underground garage. The property is bounded by two narrow rights of way; with Wallach Place having but a 30-foot wide roadway and the existing public alley being only 15-feet wide.

In addition, although the existing building on the Property is non-contributing to the 14th Street Historic District, the Mayor's Agent for Historic Preservation still must find that the new construction will be compatible with the character of its historic district. (D.C. Official Code §§ 6-1101 (b)(1)(C) and 6-1107.) The Property is adjacent to a number of historic and important buildings. As noted on the HPO Staff Report and Recommendation in the record, these conditions have a direct impact on the design and layout of the proposed development. Indeed, the court setback was provided in response to specific recommendations from HPRB.

Practical Difficulties

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the court, off-street parking, compact parking space, and the off-street loading requirements of the Zoning Regulations.

Although not required for zoning purposes, there is an open court measuring 5' 10" along the southern property line at the 7th floor of the proposed new construction. In order to comply with the court regulations, the court would need to be set back an additional 9' 2" at the 7th floor level. The court as designed has been provided to pull the building's mass back slightly along the southern property line at the 7th floor, while at the same time providing a reasonable interior configuration for use of this level. However, strict compliance with the court setback requirement would cause the elimination of a significant portion of the building along the southern property line at the 7th floor, and due to the configuration of the project, this space cannot be relocated elsewhere in the building. Increasing the setback to meet the required court width would also result in a significant number of design changes to the interior configuration of the building, including the location and layout of units, the location of the stairways, the design of the garage, and a number of other impacts.

As to the provision of on-site parking, the Board concludes that the Applicant has maximized the number of surface parking spaces. As indicated in the letter prepared by PSI included in the

record, it would be practically difficult for the Applicant to provide additional levels of below-grade parking due to the groundwater and poor soil conditions of the Property. Use of the ground level is limited by requirement of § 1901.1 which provides that retail and service uses must occupy no less than 50% of the ground floor level of the building, combined with the need for a residential lobby and typical ground floor building services in the proposed building.

With respect to the percentage of compact spaces, the location of the building's structural columns and the area occupied by required elevators, drive aisles, storage space, stairwells, and utility rooms make it practically difficult for the Applicant to accommodate the required number of full-size parking spaces on the Property without further reducing the number of parking spaces provided. Reducing the percentage of parking spaces that are compact in size would further reduce the total number of vehicles that can be accommodated in the building's garage, which would trigger the need for more parking relief.

As to the loading variance, the narrow widths of Wallach Place and the existing alley make it infeasible for a 55-foot truck to navigate the existing public alley system to access the proposed loading facilities. Moreover, in order to meet the strict application of the loading requirements, the Applicant would have to increase the depth of one of the loading berths by at least an additional 25 feet. Increasing the size of these facilities, however, would have an adverse impact on the layout and configuration of essential building features, including the trash rooms and elevators.

No Harm to Public Good or Zone Plan

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the project as proposed.

With respect to court width, the deficiency in the court width involves only the 7th floor of the building. The court at this level is above the height of the abutting buildings to the immediate south, and thus there will be ample open space above the abutting building to satisfy the purpose of the court width requirements.

The Applicant also submitted a Transportation Impact Analysis that demonstrates that the proposed parking will adequately serve the demands of the Property due to a number of factors as set forth in Finding of Fact No. 56. DDOT recommended approval of the application, and stated that it fully supports the reduction in parking for the transit-oriented development, and that the requested parking relief is appropriate considering the wealth of mass transit options for the residents and visitors.

Thus, the Board concludes that the existing transit access to the Property will result in a significant amount of transit and pedestrian access to the Property, resulting in a decrease in the number of vehicle trips that would otherwise be generated, and a decrease in the number of off-

street parking spaces that would be needed if the property were not in such close proximity to public transportation. Moreover, although 15 of the 34 parking spaces provided in the parking garage are for compact cars, the garage has been designed in a manner that will maximize the efficiency of use of the parking garage space.

In addition, the Applicant has agreed to include language in all documents related to the lease or sale of the residential units that residents of the building are prohibited from applying for residential permit parking stickers from the District of Columbia, regardless of the building's ownership, and for the life of the building. Originally the RPP condition as suggested by the ANC would have prohibited future residents from obtaining such stickers. The Board however recognizes that it generally cannot directly bind persons who are not before it. By requiring the Applicant to include the prohibition in all future lease or sales agreement, the Board accomplishes the ANC's objective. In addition, the Board is requiring a covenant running with the land so that all future owners of the property will be bound by this obligation.

The Board credits DDOT's findings that the Applicant's proposed loading facilities will provide sufficient access for loading and deliveries at the Property. Moreover, due to the anticipated needs of the residential use, it is unlikely that the building will be serviced by 55-foot tractor-trailer trucks; thus, there is no need for a 55-foot berth for this project. Although a service/delivery space is not provided, the plans include an additional 24-foot loading berth that can accommodate service deliveries. In addition, the Applicant has committed to incorporate a number of transportation demand measures into operation of the building.

Finally, the replacement of the existing one-story retail building constructed in the 1980s with a new mixed-used development will significantly contribute to the vibrancy of the neighborhood while supporting the District's goals for this area.

Special Exception

The Applicant is seeking a special exception from the roof structure requirements pursuant to § 411.11, and a special exception from the roof structure height limitation of § 1902.1(a).

Under § 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." (11 DCMR § 411.11.) The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely."

In this case, the Applicant requests relief from § 411.5 of the Zoning Regulations, which requires the enclosing walls of roof structures to be of equal height. However, in order to reduce the height and massing for the majority of the proposed roof structure to the greatest extent possible,

the proposed structure incorporates enclosing walls having heights of 8'6", 10' 6", 13'6" and 17'8". The 8'6" portion encloses a stairwell necessary to provide access to the roof. The 10'6" foot portion of the structure encloses the mechanical equipment area, and there is a 3-foot screen wall utilized to block views of equipment. The 17'8" portion encloses the elevator penthouse. The elevator is required to go to the roof of the building and to provide access to the roof deck and ancillary amenity space to persons with disabilities. The Board concludes that the proposed roof structure complies with the spirit and intent of the roof structure provisions and the Zoning Regulations, by helping to ensure adequate light and air to adjacent property and abutting streets. The Board further concludes that the step-downs in height help to reduce the visibility of the roof structure from the surrounding areas and that this special exception is requested in order to further minimize the bulk of the roof structure. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under § 411.

The Arts Overlay limits any roof structure to a maximum height of 83' 6' where a building achieves the maximum permitted height of 75 feet. Here, the Applicant proposes that a portion of the roof structure, which will accommodate the elevator override equipment, to rise to a height of 17'8" on a building that is 72'8" in height, resulting in an overall height of approximately 90'4".¹ Pursuant to § 1906.1 of the Zoning Regulations, the Board may grant relief from the requirements of the Arts Overlay as a special exception if the criteria stated in § 1901.6 (a) through (e) are met. However, the subsection also provides that the Board "shall apply criteria (c) and (d) only if relevant to the relief sought. Paragraph (d) concerns the design of vehicular access and egress and is clearly unrelated to the height roof structures. The Board therefore will not address that factor.

The Board concludes that the Applicant meets the other standards as follows:

Section 1906.1(a): The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area.

The Board concludes that in this case, the proposed height of the roof structure will substantially advance the purposes of the Arts Overlay District by allowing the necessary mechanical equipment for the building and by providing access to a communal rooftop terrace. The purposes of the Arts Overlay District include encouraging residential development, and strengthening the design character and identity of the area. (11 DCMR § 1900.2(e), (f) and (h).) Here, the rooftop terrace is a major amenity to this residential development and a significant design feature that strengthens the Arts Overlay and 14th Street corridor. It provides a safe

¹ A number of the individuals testified that they objected to the Applicant's requested height relief. The Board notes that the Applicant is not seeking any relief from the building height requirement, but is rather seeking a special exception from the Arts Overlay limitation regarding the height of roof structures.

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recreational gathering space for residents of the building and fosters increased activity in the overlay district. Without relief from the penthouse height restrictions, this important feature of the building and the design character of the Arts Overlay District would be significantly impacted.

Moreover, the Board further concludes that the height of the roof structure will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting the area. The Applicant submitted shadow studies demonstrating that the portion of the proposed roof structure above 83'6" does not cast any shadow beyond the edge of the building roof. (Exhibit 30.) The Applicant also presented evidence indicating that the proposed penthouse is permitted to be 0.37 FAR or 5,694 square feet. However, the portion of the roof structure over 83'6" is only 331 square feet or 0.02 FAR. This 331 square feet is only seven percent of the total penthouse area. In addition, the portion of the roof structure over 83'6" is set back 75 feet from the northern edge of the building, 32 feet from the eastern edge of the building, 44 feet from the southern edge of the building, and 38 feet from the western edge of the building. Thus, the Board concludes that this portion of the roof structure constitutes a very small amount of square footage and is set back such that it will not have any adverse visual impacts. The penthouse will be clad in complementary materials to ensure its successful integration into the overall design of the building and its design and massing have been approved in concept by HBRB.

Section 1906.1(b): Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan.

The Board concludes that in this case, the Property is affected by the combination of several exceptional circumstances, including subsurface groundwater and poor soils, and the Property's adjacency to a number of historic and important buildings, which as noted on the HPO Staff Report and Recommendation in the record, have a direct impact on the design and layout of the proposed development on the Property.

Section 1906.1(c): The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report.

The Board concludes that in this case, the proposed roof terrace -- and the elevator providing access to this amenity -- are exceptional urban design features for a building in the 14th Street corridor, which enhance the quality of life in the Arts Overlay. The elevator penthouse has been located to protect the street views of the building, surrounding properties and the historic district. The project has been reviewed by the staff of HPO and approved in concept by HPRB. (Exhibit 26.)

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Section 1906.1(e): The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the Arts Overlay District.

The Board concludes that in this case, the proposed extension in the roof structure height and at a limited and discreet location will only be as tall as necessary to allow elevator access to the roof. This portion of the roof structure will be significantly set back from adjacent property lines and public ways, so that there will only be limited visibility of it from public space. Thus, the Board determines that it does not need to impose any additional requirements or conditions.

Great Weight

Section 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 1B recommended approval of the requested relief subject to the condition that residents of the proposed building be restricted from obtaining residential permit parking permits. (Exhibit 28.) For the reasons stated above, the Board found the ANC's advice to be persuasive, although, as explained earlier, it has re-phrased the condition to put the onus on the Applicant and its successors and assigns to state the prohibition in sales or lease agreements. Having identified the ANC's issues and concerns and explained why it found the advice to be persuasive, the Board gave the ANC's written recommendations that great weight to which they were entitled.

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Board concurs with OP's recommendation that the zoning relief should be granted.

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 stated at D.C. Official Code § 6-651.07(g)(2) for a variance from the court requirements of § 776.3; a variance from the off-street parking requirements of § 2101.1; a variance from the compact space requirements of § 2115.2; and a variance from the off-street loading requirements of § 2201.1.

The Board also concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 411.11, and 1902.1(a). 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.

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT** to the approved plans, as shown on Exhibit 26, and **with the following CONDITIONS:**

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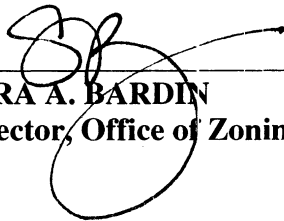
1. The Applicant shall include language in all documents related to the lease or sale of the residential units that residents of the building are prohibited from applying for residential permit parking stickers from the District of Columbia, regardless of the building's ownership, and for the life of the building. Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall record a covenant, satisfactory to the Office of the Attorney General, binding any future owners of the building and any of its residential units to include this restriction in any future leases or sales agreements.
2. The Applicant shall have the flexibility to modify the design and internal layout of the building to address any comments from the Historic Preservation Office and the Historic Preservation Review Board during final review of the project so long as the modifications do not require any additional areas of zoning relief.

VOTE: 5-0-0 (Nicole C. Sorg, Michael G. Turnbull, Meridith H. Moldenhauer,
Lloyd J. Jordan and Jeffrey L. Hinkle 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

MAY 16 2012

FINAL DATE OF ORDER: _____

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

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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.