

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19079 of 2002 11th Street LLC/Industrial Bank, as amended¹, pursuant to 11 DCMR § 3103.2, for variances from the public space at ground level requirements under § 633, the rear yard requirements under § 636.3, and the off-street parking requirements under § 2101.1, to allow the construction of a new mixed-use building with 33 residential units and ground floor retail in the CR/ARTS District at premises 2000-2002 11th Street N.W. (Square 304, Lots 27, 30, and 31).

HEARING DATES: October 6, 2015² and November 10, 2015
DECISION DATES: November 10, 2015 and December 15, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3, 34, and 44.) The application was amended at least twice by the Applicant. In its first request for amended relief, the Applicant requested special exception relief from §§ 639.1, 411, and 770.6. (Exhibits 34 and 44.) Subsequently, in its post-hearing statement, the Applicant withdrew its request for special exception relief from §§ 639, 411, and 770.6. (Exhibit 54.)

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 Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is

¹ This case was heard on November 10, 2015, at which time the Board voted to approve the three areas of requested variance relief and to defer its decision on the roof structure special exception relief until after the new penthouse regulations were published. In advance of the December 15, 2015 decision date, the Applicant submitted revised plans (Exhibit 54A) that eliminate the need for the special exception relief previously requested and amended the application by withdrawing its prior request for special exception relief from the roof structure setback requirements under §§ 411 and 770.6 and the penthouse requirements under § 639. (Exhibit 54.) The caption has been revised accordingly.

² The hearing was postponed from October 6, 2015 at the Applicant's request. (Exhibit 22.)

BZA APPLICATION NO. 19079
PAGE NO. 2

automatically a party to this application. The ANC submitted a report of support for the application. The ANC report is dated September 10, 2015 and indicates that at a duly noticed and regularly scheduled public meeting on September 3, 2015, at which a quorum was in attendance, the ANC voted 11-0-0 in support of the application for public space at ground level, rear yard requirements, off-street parking, and special exception from 1-to-1 roof structure setback. (Exhibits 37 and 46I.)

The Office of Planning (“OP”) submitted a timely report dated November 3, 2015, recommending approval of the application with two conditions³ (Exhibit 49) and testified in support of the application at the hearing. The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application and recommended four conditions.⁴ (Exhibit 50.)

A letter of support was submitted to the record from the adjacent condominium owners’ association. (Exhibit 47.)

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 pursuant to § 3103.2 for an area variance from the public space at ground level requirements under § 633, the rear yard requirements under § 636.3, and the off-street parking requirements under § 2101.1, to allow the construction of a new mixed-use building with 33 residential units and ground floor retail in the CR/ARTS District. The only parties to the case were the ANC and the Applicant. 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.

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 in seeking a variance from 11 DCMR §§ 633, 636.3, and 2101.1, the Applicant has met the burden of proof under 11 DCMR § 3103.2, 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 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, 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.

³ The Board noted that OP’s proposed conditions were encompassed by the plans and by DDOT’s proposed conditions; thus, they did not need to be adopted as part of the order.

⁴ The Board adopted DDOT’s conditions as part of the order.

BZA APPLICATION NO. 19079
PAGE NO. 3

This case was heard on November 10, 2015, at which time the Board voted to approve the three areas of requested variance relief and deferred its decision on the requests for special exception relief then requested. In advance of the December 15, 2015 decision date, the Applicant submitted revised plans (Exhibit 54A) that eliminated the need for the special exception relief previously requested and withdrew its request for special exception relief from the roof structure setback requirements under §§ 411 and 770.6 and the penthouse requirements under § 639. (Exhibit 54.) At its decision meeting on December 15, 2015, the Board rescinded its November 10, 2015 vote and approved the amended application with four conditions.

It is therefore **ORDERED** that the Board rescinds its vote to approve on November 10, 2015 and that the application, as amended, is hereby **GRANTED SUBJECT TO THE FINAL REVISED APPROVED PLANS AT EXHIBIT 54A, AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall install at least four short-term bicycle racks.
2. The Applicant shall provide an on-site bicycle maintenance/repair facility.
3. The Applicant shall provide a TransitScreen or similar device displaying real-time transportation schedules.
4. The Applicant shall offer annual Capital Bikeshare and carsharing memberships to each residential unit for five years.

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Peter G. May to APPROVE; Jeffrey L. Hinkle, not participating or voting; one Board seat vacant.)

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: December 22, 2015

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

BZA APPLICATION NO. 19079
PAGE NO. 4

PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.