GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17197 of 1600 Fourteenth Street Limited Partnership, pursuant to 11 DCMR § 3103.2 for a variance from the requirement to provide residential recreation space under § 773, and pursuant to 11 DCMR § 3104, a special exception to reduce the requirement to dedicate at least 50% of the ground floor to arts, retail, and service uses under §1901.1[1] at the premises to be known as 1401 Q Street, N.W. (Square 208, record lot 139).

HEARING DATE: July 20, 2004
DECISION DATE: September 14, 2004

DECISION AND ORDER

The application was submitted on or about May 13, 2004 by 1600 Fourteenth Street Partnership (the applicant). The applicant was represented by Douglas J. Patton of the law firm of Holland & Knight, LLP. Following a hearing on July 20, 2004, the Board of Zoning Adjustment (the Board) voted to approve the variance and special exception.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case was self-certified, pursuant to § 3113.2 (Exhibit 2).

The application The applicant seeks a variance to reduce the requirement under § 773 that a minimum of 15% of the gross floor area at the project be dedicated to residential recreation space. The applicant also seeks a special exception under §1901.1 to reduce the requirement that a minimum of 50% of the ground floor be dedicated to arts, retail and service uses.

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all entities owning property within 200 feet of the applicant's site, the Advisory Neighborhood Commission (ANC) 2F, and the Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 22).

ANC 2F The subject site is located within the area served by Advisory Neighborhood Commission 2F, which is automatically a party to this application. The ANC filed a report indicating that at a public meeting on July 7, 2004, with a quorum present, the ANC unanimously voted to approve the applicant's amended application for variance and special exception relief. The ANC stated that it supported the reduction of residential recreation space

[1] The original application and filings requested additional zoning relief that was either withdrawn or amended. The captioned relief is what remains before the Board.

441 4th Street, N.W., Suite 210-S, Washington, DC 20001 (202) 727-6311
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(from 15% to about 6%), in part, to "avoid an undesirable increase in height of the roof structure, which [would] be visible from the street and detract from the historic district". The ANC also stated that the slight reduction in ground floor retail and service uses – from 50% to 46.9% -- was a "negligible deviation" that should be allowed.

Request for Party Status The Board received a request for party status from 20 neighboring property owners, most of whom reside on Q Street, who requested to participate as one joint party. Party status was granted based upon the individuals' proximity to the site, and the participating party was designated the "Q Street Group". The Q Street Group was represented by Andrea Ferster, Esq., Andrea Doughty, and Bonn Macy. The Q Street Group opposed the residential recreation space variance, but did not oppose the special exception request.

Other Persons in Support/Opposition The Reverend Vernon Shannon, pastor of the church located across from the site testified in support of the project. No other persons appeared at the hearing in support or in opposition to the application. However, the Board received letters in support of the residential recreation variance from two neighboring property owners (Exhibits 27 and 28).

OP Report OP's report indicated that the application meets the test for both the variance and the special exception. In addition, Travis Parker, the OP representative who prepared the report, testified at the public hearing in support of the application.

The Applicant's Case The applicant introduced three witnesses: Fred Bahrami, Principal for Fourteenth Street; Bill Bonstra, of Bonstra and Associates, Architects; and Lindsley Williams, a land use, planning and zoning consultant affiliated for this case with the law firm of Holland & Knight LLP. The Board qualified Mr. Bonstra and Mr. Williams as experts in their respective fields. It also qualified Ms. Emily Eig, a potential rebuttal witness for the Applicant, as an expert in the field of historic preservation and architectural history.

FINDINGS OF FACT

The Property

1. The subject property is located at 1401 Q Street, N.W, at the northwestern corner of Fourteenth and Q Streets (Square 208, Lot 139). The site is zoned Uptown Arts – Mixed Use Overlay/C-3-A and is also within the Greater Fourteenth Street Historic District.

2. The lot is currently unimproved and is used as a parking lot that is operated by the applicant. The portion of the lot fronting Q Street is approximately 120 feet wide. The portion of the lot fronting Fourteenth Street is approximately 79 feet wide, and is relatively narrow.

The Proposed Project

3. The applicant proposes to construct a seven story apartment building containing up to 30 apartment units. There would be approximately 39,950 gross square feet of residential use in the proposed apartment building.

4. The applicant proposes to set aside 46.9 % of the building's gross floor area on its ground level to retail and service uses. The retail uses will be located entirely on the Fourteenth Street frontage of the building, and will not change the residential character at the Q Street frontage.

5. The applicant proposes to provide nearly six percent (5.99 %) of the building's gross floor area in residential use for active and passive recreation by the residents of the building and their guests, corresponding to a total of approximately 2,373 square feet. This space would be comprised of an interior party room and an outdoor courtyard, and a green area with benches and landscaping near the parking areas. Slightly more than half of the provided recreational space will be outdoors. The applicant also proposes to provide private balconies for approximately two-thirds of the apartment units, and contends that the balconies will mitigate any effects stemming from the recreational space reduction.

6. The Historic Preservation Review Board (HBRB) approved conceptual design of the project at its meeting in May, 2004, and directed the applicant to ensure that the uppermost occupied floor (the seventh) would be set back from the Fourteenth and Q Street frontages as well as from the western and northern sides of the building's mass.

The Residential Recreation Requirements

7. At the ground floor level, the applicant is constrained from meeting the residential recreation requirements because at least half of that area, specifically the area fronting along Fourteenth Street, must be set aside for those uses "preferred" by the Arts overlay, namely a range of retail, service, and arts-related uses.

8. Another constraint is the narrowness of the lot, which drives the location of the core building functions and parking. The narrow lot requires that parking be placed in a spiral around the outside of the building, resulting in a central location for core building functions such as the lobby entrance to the building, the mail receiving area, the fire control room, the central core of elevators and stairs, and other utilitarian functions. Accordingly, there is limited remaining interior space for residential recreation within the building's first floor.

9. The applicant is also constrained from providing roof deck recreational space due to height limitations imposed in the Arts Overlay and HBRB's design directives.

10. The applicant is particularly constrained from providing outdoor recreational space. Apart from two small areaways that serve and abut planned apartments, the balance of the building's land area is dedicated to the access driveway or the footprint building itself. Thus, there is no additional land at ground level that could be used for "outdoor" recreation space.

11. There are existing public recreational spaces in the immediate vicinity: elementary and junior high school playgrounds and fields, a skateboard park, and a basketball court.

The Ground Floor Retail/Service Requirements

12. The proposed retail uses will further the purpose of the retail/service requirement in the Arts Overlay District, namely: to keep a solid retail frontage along the Fourteenth and U Street corridors.

13. The 3% reduction (from 50% to 47%) in required retail/service uses is negligible.

CONCLUSIONS OF LAW

The Residential Recreation Space Variance

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3) (2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief to reduce the 15% required amount of residential recreation space to approximately 6%.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove "practical difficulties," an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1170.

Applying this test to the requested relief, the Board agrees with OP that a combination of factors necessitates the reduction in residential recreation space; *i.e.*, the relatively narrow lot and limited options for providing parking and building core functions, the minimal amount of available ground floor space due to the retail requirements in the Arts Overlay, and the building height and design limitations in both the Overlay and Historic District. The Board also finds that the proposed residential space is consistent with the intent and purposes of the Arts/C-3-A District and will not result in substantial detriment to the zone plan. Nor will the amount of proposed recreational space result in substantial detriment to the public good.

The Q Street Group asserts that the applicant has not met the variance test. It argues, first, that the property is not unique. It claims that since the land is vacant and rectangular, it is inherently commonplace, neither unique nor exceptional. While the property is rectangular, vacant and flat, the Board does not agree that these facts immediately disqualify the property from meeting the "uniqueness" test. As stated in the *Gilmartin* case, "a confluence of factors can establish uniqueness..." for purposes of approving a variance. As explained above, the uniqueness of this site derives not just from its overall narrowness but from the confluence of accompanying requirements for retail uses and building core functions, setbacks required by zoning for roof structures and intermediate setbacks required by HPRB at the top (7th floor) of the building. These factors converge to create a "unique" set of circumstances arising from the land and the rules and standards applied to it.

The Q Street Group also maintains that a reduction in the residential recreation space will result in a detriment to the public good, claiming that existing public recreational resources are inadequate. Q Street argued that the nearby recreation areas were conducive only to children, not adults, that they were poorly maintained, and were too far from the site. The Board does not necessarily agree that the nearby public recreation is inadequate. But even if it were to agree, this factor is not legally relevant. The Zoning Regulations do not require specific types of recreation or that the recreation be attractive to targeted populations. The Board concludes that the nearby recreational opportunities will mitigate any potential detriment to the public good, as will the private balconies that are proposed throughout two-thirds of the building.

The Retail/Service Use Special Exception

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations, in particular the standards contained in § 3104. This applicant seeks a special exception to reduce the required ground floor retail space from 50% to 47%. This application meets the standards in § 3104. The Board agrees with OP that the special exception use will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties.

In addition to meeting the general standards for special exception approval under § 3104, the applicant has demonstrated that is meets the criteria under § 1906.1 for relief from the standards in Chapter 19 of the Zoning Regulations:

Section 1906.1(a) requires that the uses will 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 in the area. As stated by OP and in the Findings of Fact, a 3% reduction in retail will not undermine the purpose of the Overlay, and the proposed retail uses will only benefit the area and advance the purpose of the Overlay.

Section 1906.1(b) requires a showing of exceptional circumstances that make strict compliance difficult or impossible, or that the development provides alternative public benefits. The project will provide an alternative public benefit in that it will serve as a residential buffer for the Q Street properties in addition to supporting a public presence on the Fourteenth Street side of building.

Section 1906.1(c) requires a showing that the architectural design concept of the project will enhance the urban design features of the immediate vicinity, and that it be reviewed by HPRB if in an historic district. Here, the proposed design was reviewed and conceptually approved by HPRB. HPRB found the design, as revised, to be compatible with the Historic District and the surrounding area.

Section 1906.1(d) requires a showing that vehicular access and egress is located and designed to be efficient and safe. Here, the vehicular access for the project is from the public alley to the west. OP finds, and the Board agrees, that this access point is the least intrusive to the neighborhood and will not create any dangerous traffic or pedestrian conditions.

The Board is required under D.C. Official Code § 1-309(d)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In reviewing a variance and special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees with the advice received from the ANC and the OP.

Therefore, for the reasons stated, the Board concludes that both a variance to reduce the requirement to provide residential recreation space from 15% to 6% under § 773, and a special exception to reduce the percentage of the ground floor used for arts, retail, and service uses from 50% to 47% under § 901.1 are hereby **GRANTED.**

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann, II, and Anthony J. Hood (by absentee ballot); Curtis L. Etherly, Jr., not voting, not having participated in the case)

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT.

Each concurring Board member has approved the issuance of this Order:

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 21 2004

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.

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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR

ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 17197

As Director of the Office of Zoning, I hereby certify and attest that on DEC 21 2004, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Douglas J. Patton, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Andrea Doughty
On behalf of the Q Street Group
1417 Q Street, N.W.
Washington, D.C. 20009

Bonn Macy
On behalf of the Q Street Group
1445 Q Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 2F
P.O. Box 9348
Washington, D.C. 20005

Commissioner 2F01
Advisory Neighborhood Commission 2F
P.O. Box 9348
Washington, D.C. 20005

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106

Washington, D.C. 20004

Toye Bello, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning