

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 21224
Ai Pop Up, LLC and Songbyrd, LLC^{1, 2}
530 and 540 Penn Street, NE (Square 3594, Lot 6)

HEARING DATE: December 18, 2024
DECISION DATE: December 18, 2024

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to permit an entertainment use, in an existing, attached, office building in the PDR-1 zone:

- Special Exception under the entertainment, assembly, and performing arts uses requirements of Subtitle U § 802.1(e), pursuant to Subtitle X § 901.2
- Area Variance from the entertainment, assembly, and performing arts uses requirements of Subtitle U § 802.1(e)(2), pursuant to Subtitle X § 1002

The zoning relief requested in this case was self-certified. (Exhibit 36, Final Revised.)³

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5D, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "Board") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

¹ The application was filed by UM 500 PENN STREET NE, LLC on October 10, 2024, on behalf of Ai Pop Up, LLC and Songbyrd, LLC. See Exhibits 1A and 23.

² The application was amended in Exhibit 23 to add Songbyrd, LLC to the application.

³ The application was publicly noticed in Exhibit 21 requesting relief for a special exception under the entertainment, assembly, and performing arts uses requirements of Subtitle U § 802.1(e) and an area variance from the entertainment, assembly, and performing arts uses requirements of Subtitle U § 802.1(e)(2). Subsequently, the Applicant amended their application in Exhibit 29A2 to request additional relief; a special exception under the eating and drinking establishments with live performance, night club or dance venue requirements of Subtitle U § 801.1(c), as well as area variances from the eating and drinking establishments with live performance, night club or dance venue requirements of Subtitle U § 802.1(c)(2) and Subtitle U § 802.1(c)(3) and the requirements of Subtitle U § 802.1(e)(3). The Applicant then submitted another self-certification in Exhibits 33A and 36 withdrawing the relief requested in Exhibit 29A2.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 11, 2024, at which a quorum was present, the ANC voted to support the application. (Exhibit 35.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING (“OP”) REPORT. OP submitted two reports to the record:

- The Original OP Report, dated December 2, 2024, recommend approval of the application. (Exhibit 27.)
- The Supplemental OP Report, dated December 13, 2024, recommended approval of the revised application. (Exhibit 30.)

DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT did not submit a written report to the record.

PERSONS IN SUPPORT. The Board heard testimony from Eduardo Nunes in support of the application at the public hearing on December 18, 2024.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception and variance relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property;
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief;
- There exists an exceptional or extraordinary situation or condition related to the property;
- The exceptional condition creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations;
- The relief can be granted without substantial detriment to the public good; and
- The relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception under the entertainment, assembly, and performing arts uses requirements of Subtitle U § 802.1(e), pursuant to Subtitle X § 901.2

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- Area Variance from the entertainment, assembly, and performing arts uses requirements of Subtitle U § 802.1(e)(2), pursuant to Subtitle X § 1002

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 24B of the record, as required under Subtitle Y §§ 604.9 and 604.10.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Tammy M. Stidham to APPROVE; Chrishaun S. Smith not present, not participating)

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

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

ATTESTED BY:  On behalf of
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 23, 2024

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

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.