

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17583-B of 1634 Associates LLC, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirements under section 773, a variance from the retail use provisions under subsection 1901.1, and a variance from the off-street parking requirements under subsection 2101.1, to construct a thirty-two (32) unit residential building with ground floor retail in the ARTS/C-3-A District at premises southwest corner of the intersection of 14th and R Streets, N.W. (Square 208, Lots 806, 807, and 808).

HEARING DATE:	April 3, 2007
DECISION DATE:	April 3, 2007
FINAL DATE OF ORDER:	April 4, 2007
MODIFICATION DECISION DATE:	May 5, 2009

SUMMARY ORDER ON MODIFICATION

Background. On April 3, 2007, the Board approved the Applicant's request for a variance from the residential recreation space requirements under section 773, a variance from the retail use provisions under subsection 1901.1, and a variance from the off-street parking requirements under subsection 2101.1. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on April 4, 2007 (BZA Order 17583).¹

On April 3, 2009, the Board received a request from the Applicant for a minor modification of approved plans and a waiver requirement pursuant to subsection 3100.5 of the provisions of subsection 3129.3 of the Zoning Regulations to modify the approved plans. (Exhibit 34). Copies of the motion for minor modification of plans were also

¹ Under the Summary Order, and pursuant to subsection 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until April 4, 2009. On April 3, 2009, the Board granted the Applicant's Motion to Extend Validity of BZA Order No. 17583 by two years. The validity of the original Order was extended from April 4, 2007 to April 4, 2011. (*See, BZA Order No. 17583-A*).

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submitted to the Office of Planning (OP) and Advisory Neighborhood Commission (ANC) 2F. Pursuant to subsection 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. No parties submitted written comments concerning the requested modification. The 10-day period ended on April 16, 2009.

Waiver of Six-Month Requirement. Pursuant to subsection 3129.3, requests for modification of plans must be received no later than six months from the issuance of the final order. BZA Order No. 17583 was approved by the Board on April 3, 2007 and the Final Order was issued on April 4, 2007. The six-month period ended on October 4, 2007. Thus, the Applicant asked for a waiver of the six-month requirement.

The Board accepted the Applicant's stated reasons for the delay. According to the Applicant, the project has not proceeded to construction because of the economic downturn which has negatively affected the ability to obtain financing to construct the project and has made financing for prospective purchasers much harder to obtain as well, thereby adversely affecting the marketability of the project. The Applicant stated that it intends to go forward with the project as soon as possible given the constraints and that the factors leading to the inability to proceed to construction constitute good cause for waiving the rules to permit consideration of the requested modification.² By consensus, the Board waived the six-month requirement for the Applicant to file a modification request.

Modification of Plans. The original Application 17853 was for the construction of a new mixed-use retail and residential building. The Applicant sought variances from the residential recreation space requirements of subsection 773, from the minimum 50% retail uses on the ground floor under subsection 1901.1, and from the parking requirements of subsection 2101.1 for a reduction of on-site parking spaces required.³ The building will have 32 residential units and 2,216 square feet of retail. One floor of underground parking with 18 spaces will be provided.

The plans approved under BZA Order No. 17583 showed balconies on both the west and south facing facades. The Applicant's modification involves removal of the balconies on

² At the time of this decision, the Zoning Commission had taken proposed action to amend the Zoning Regulations to extend the period of time for filing a modification request from six months to two years so that the requested waiver of the rules would be consistent with the pending amendments.

³ One area of relief that was granted in the original application, that is, a variance from the residential recreation space requirements, is no longer necessary, since the Zoning Commission repealed that requirement after the original application was granted.

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the west facing façade on the 2nd through 7th floors and those on the south facing façade on the 2nd through 5th floors (*See Exhibit 34, Attachment B - Sheets 5, 6, 7, 8, 13 and 14 of the plans*). The Applicant plans to enclose the balconies (which were 24 square foot indentations in the façade) as part of the building to increase by that amount the area of the apartments units of which the balconies were a part. Sliding glass doors with a railing will face out of the building in place of the balconies. According to the Applicant, enclosing the balconies will neither increase the gross floor area nor the floor area ratio (FAR) of the building. The proposed modifications to the plan do not alter any of the other computations for the building except that the interior floor area of the units would be slightly increased.

Accordingly, the modifications are minor and do not change the material facts on which the zoning relief was approved, and therefore no new relief is required. The Applicant states that the construction of the building has not started because of the prevailing economic downturn. This has made financing for prospective buyers much harder to obtain.

Based upon the record before the Board, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129.1, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. No parties opposed this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant's proposed modification of plans is consistent with the requirements of § 3129.7 of the Zoning Regulations in that the revisions represent a minor modification that does not change the material facts the Board relied upon in approving the original application.

Accordingly, it is therefore **ORDERED** that (pursuant to Exhibit 34, Attachment B – Revised Plans) the application is **GRANTED**.

VOTE on Original Application (April 3, 2007): 3-0-2

(Curtis L. Etherly, Jr., John A. Mann II, and Ruthanne G. Miller to grant; the Zoning Commission member and the third mayoral appointee not voting not having heard the case.)

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VOTE on Minor Modification of Plans (May 5, 2009): 3-0-2

(Marc D. Loud, Gregory N. Jeffries, Shane L. Dettman to grant; two mayoral appointees (vacant) not participating and not voting.)

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

A majority of Board members approved issuance of this order.

ATTESTED BY:



RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: MAY 19 2009

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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.

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

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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.

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As Acting Director of the Office of Zoning, I hereby certify and attest that on May 19, 2009, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:



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