

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17850 of JBG/14<sup>th</sup> & S LLC**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the lot occupancy requirements under § 772, a special exception under § 411.11 for roof structures with unequal heights, special exception relief under § 1906.1 from provisions of the ARTS overlay district restricting eating and drinking establishments under § 1901.6 and height under § 1902.1, and a special exception under § 2120.6 from the parking requirement for an addition to a contributing structure to allow construction of a mixed-use residential and retail development in the ARTS/C-3-A district at premises 1407 S Street, N.W. and 1802, 1804, 1810, 1816, and 1818 14<sup>th</sup> Street, N.W. (Square 206, Lots 1, 210, 230, 819, 820, and 821).

**HEARING DATE:** December 2, 2008  
**DECISION DATES:** January 6, 2009 and February 3, 2009

**DECISION AND ORDER**

This application was submitted July 3, 2008 by JBG/14<sup>th</sup> & S, LLC, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted 5-0-0 on February 3, 2009 to grant the application subject to conditions.

**Preliminary Matters**

Application. The application was filed pursuant to 11 DCMR § 3103 for a variance from the maximum lot occupancy requirement under § 772.1 and pursuant to 11 DCMR § 3104 for a special exception under § 411.11 for roof structures with unequal heights as well as special exceptions under § 1906 from provisions of the Uptown Arts-Mixed Use (ARTS) overlay district pertaining to restrictions on eating and drinking establishments (§ 1901.6) and height (§ 1902.1), and under § 2120.6 for relief from the parking requirement for an addition to a historic structure, so as to develop a mixed-use residential and retail development on a site zoned ARTS/C-3-A in Square 206, Lots 1, 210, 230, 819, 820, and 821. The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated July 7, 2008, the Office of Zoning sent notice of the application to the Office of Planning; the State Historic Preservation Officer; the District Department of Transportation (“DDOT”); the Councilmember

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for Ward 2; Advisory Neighborhood Commission (“ANC”) 2B, the ANC for the area within which the subject property is located; and the single-member district ANC 2B09.

A public hearing was scheduled for December 2, 2008. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on September 18, 2008 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 2B. Notice was published in the D.C. Register on September 26, 2008 (55 DCR 9986).

Requests for Party Status. In addition to the Applicant, ANC 2B was automatically a party in this proceeding. The Board granted requests for party status in opposition to the application from Tom Coumaris, Peter Knapp, Joseph Freeman, and James Bogden and Charles Taylor, who all reside near the subject property. By letters dated December 22, 2008, Peter Knapp and Joseph Freeman withdrew their opposition to the application, citing discussions with the Applicant that addressed concerns regarding construction and other impacts of the project as well as the location of the parking garage and loading dock in the alley

Applicant’s Case. The Applicant provided testimony and evidence from Andrew McIntyre and Brooks Blake of JBG Companies; Shalom Baranes, an expert in architecture; and Martin Wells, an expert in traffic issues. The Applicant and its witnesses described its project, explained the need for the various forms of zoning relief requested, and addressed issues of potential adverse impact.

Government Reports. By report dated November 25, 2008 and through testimony at the public hearing, the Office of Planning (“OP”) recommended approval of the application subject to certain conditions. The conditions initially proposed by OP would require the Applicant to limit eating and drinking establishments to no more than 50 percent of the project’s 14<sup>th</sup> Street frontage, and to implement recommendations by DDOT with respect to the allocation of parking spaces between the residential and commercial uses consistent with the objectives of the ARTS overlay district.

In a supplemental report dated February 2, 2009, OP reiterated its recommendation that the Board should grant the Applicant’s request for special exception relief from the restriction that eating and drinking establishments occupy no more than 25% of the linear frontage within the Arts Overlay, but changed its condition to limit eating and drinking establishments to no more than 40 percent of the project’s linear footage along 14<sup>th</sup> Street in light of the fact that applicant agreed to the greater restriction. OP noted estimates that, not including the Applicant’s proposal, eating and drinking establishments now occupied between 23.8 and 25.2 percent of the linear footage along 14<sup>th</sup> and U Streets within the ARTS overlay. OP also noted the lack of an established procedure to measure eating and drinking establishments, and the resulting difficulty of determining when a violation of the restriction has occurred.

By memorandum dated November 21, 2008, the District Department of Transportation indicated its support for the Applicant’s proposal to provide approximately 90 parking spaces at the subject property. Noting that “the proposed project does not appear to have a projected demand that may place a significant burden on the local network of neighborhood streets,” DDOT

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recommended that the Board require the Applicant to implement a transportation demand management strategy to ensure that the project would “not effectuate undue congestion.” DDOT made several suggestions, including that the Applicant should provide Metro SmarTrip cards to residents and business owners at the new development; install ample bicycle parking – at least four racks on 14<sup>th</sup> Street – for residents and retail customers, and furnish lockers and showers to encourage bicycle commuting by the retail staff; evaluate the provision of a parking space for a car-sharing service in the garage; and pay the residents’ application fee and annual fee for one year for the car-sharing service to encourage its use as well as paying their membership fee for the SmartBikes bicycle-sharing service for one year. DDOT testified that the transportation demand management strategies were suggested to decrease the number of trips generated at the subject property and to reduce any unmet demand for parking.

ANC Report. At a regularly noticed and scheduled public meeting held November 12, 2008 with a quorum present, ANC 2B voted 9-0 to approve a motion stating that the ANC did not support the application. The motion did not indicate the ANC’s issues or concerns.

By letter dated December 22, 2008, ANC 2B indicated its support for the use of alternative transportation modes by residents of the project, but objected to the lack of a parking plan to support the retail and service businesses planned for the site, including a proposed restaurant occupying up to 40 percent of the frontage along 14<sup>th</sup> Street.

By letter dated January 23, 2009, ANC 2B indicated that, at a duly noticed regular meeting on January 14, 2009 with a quorum present, the ANC approved two motions by a vote of 8 to 0. The motions (i) rejected the Applicant’s revised plan for the placement of the garage and asked “the developer to work with neighbors to relocate the garage so that it is responsive to neighborhood concerns for safety and access”; and (ii) asked the Board “to withhold its rulings on the requests for a variance and special exceptions until the [Historic Preservation Review Board] approves the concept plans for the proposed development.” ANC 2B contended that “no flexibility condition should be granted to the developer until specific drawings have been approved by the HPRB.”

Persons in support. The Board heard testimony and received letters from persons in support of the application who commented favorably on the Applicant’s project, including the proposed reduction in the number of parking spaces at the project as a means to discourage vehicular traffic. By letter dated November 25, 2008, the Cardozo Shaw Neighborhood Association (“CSNA”) indicated that, at its regularly scheduled monthly membership meeting held November 13, 2008, CSNA voted 13-2-2 in general support of the application. The letter stated CSNA’s support for the zoning relief requested by the Applicant but also expressed concern about whether the proposed 90 parking spaces would adequately serve the needs of the property and would not contribute to any further demands on limited on-street parking.<sup>1</sup>

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<sup>1</sup> At the public hearing, the CSNA representative stated that the letter in support did not encompass the Applicant’s request for special exception relief from the restriction on eating and drinking establishments, because, at the time of the CSNA meeting, the Applicant had not yet decided whether to seek that relief.

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Parties in opposition. The parties in opposition stated objections to the Applicant's proposal especially with respect to the construction of a large building in close proximity to nearby residences, the location of the entrance to the garage and loading dock on the alley, and concerns pertaining to noise, trash, parking, and traffic. A party in opposition also contended that the application was erroneously advertised as a request for special exception when variances were needed from height and setback requirements applicable in the ARTS overlay district, and that placards giving notice of the hearing were not properly maintained at the subject property.<sup>2</sup>

Persons in opposition. By letter dated December 2, 2008, the MidCity Beautification & Education Association indicated its opposition to the Applicant's request for relief from the restriction on eating and drinking establishments. According to MidCity, the requested special exception would allow a large eating or drinking establishment – 100 feet of frontage along 14<sup>th</sup> Street – and would have “extremely heavy impacts on the surrounding area in terms of parking congestion, traffic congestion (from patrons, daily food delivery trucks, and trash trucks), and in terms of potential noise disturbance.” MidCity also contended that a “significant increase in eating and drinking establishments also has indirect adverse effects on the neighborhood by driving up rent levels for street frontage, which leads to other uses being priced out of this market and over time to a loss of business diversity in the Arts District.”

**FINDINGS OF FACT**

**The Subject Property and Surrounding Area**

1. The subject property is a rectangular parcel located on the west side of 14<sup>th</sup> Street, N.W., bounded by S Street on the south and Swann Street on the north (Square 206, Lots 1, 210, 230, 819, 820, and 821). The site has 110 feet of frontage on S and Swann Streets and 200 feet of frontage on 14<sup>th</sup> Street, and is bounded on the west side by a public alley, 20 feet wide, that extends from Swann Street to S Street. Another public alley, 10 feet wide, runs east-west through the middle of the square and intersects with the larger alley at approximately the midpoint of the western boundary of the subject property.
2. The subject property currently comprises six lots at 1407 St Street, N.W. and 1802, 1804, 1810, 1816, and 1818 14<sup>th</sup> Street, N.W. The area of the subject property is approximately 24,000 square feet.
3. The site is located within the Greater U Street Historic District. Only the building at 1407 S Street – a four-story building originally constructed as the Hudson apartment

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<sup>2</sup> The Board was not persuaded by the party in opposition that the application was erroneously advertised. Pursuant to 11 DCMR § 1906.1, the Board may permit exceptions from any requirement of the ARTS overlay district – including the height and setback requirements imposed in the overlay zone – if granted under § 3104, the section of the Zoning Regulations that sets forth the Board's authority to grant special exceptions pursuant to § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g) (2) (2001 ed.) Nor was the Board persuaded that notice of the hearing was deficient even if the placards were not properly maintained at the subject property. (The Applicant submitted affidavits asserting that the posting had been maintained as required.) Notice of the hearing was mailed directly to owners of property within 200 feet of the subject property, and was published in the *D.C. Register*.

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building and more recently occupied by the Whitman-Walker Clinic – has been determined to be a contributing building. The other lots are improved with non-contributing buildings or surface parking lots.

4. Fourteenth Street has a right of way of 110 feet and accommodates two-way traffic. S Street is also two-way, with a 90-foot right of way. Swann Street is one-way eastbound and has a right of way of 50 feet.
5. The subject property is zoned ARTS/C-3-A, which is generally mapped along 14<sup>th</sup> Street in the vicinity of the site. Properties to the west of the 20-foot public alley are located in the R-5-B zone district; another area of R-5-B is located to the southeast of the subject property. Areas to the east are located in the R-4 zone.
6. The subject property is located in the vicinity of several Metrobus routes as well as the U Street/African-American Civil War Memorial/Cardozo Metrorail station.
7. The subject property is designated for moderate-density residential and commercial uses on the Future Land Use Map of the Comprehensive Plan. The Plan's Generalized Policy Map designates 14<sup>th</sup> Street as a "Main Street/Mixed Use Corridor," and calls for enhancement of corridors to foster economic and housing opportunities serving neighborhood needs.

### **The Applicant's Project**

8. The Applicant proposed to construct a mixed-use development on the subject property that will incorporate the contributing building on the southern portion and new construction on the remainder of the parcel; the existing noncontributing buildings will be demolished. The project will contain approximately 17,837 square feet of ground-floor retail space; residential space on the second through seventh floors containing approximately 130 dwelling units; and two levels of below-grade parking that will provide at least 90 parking spaces. The Applicant indicated that the precise number of dwelling units and parking spaces had not yet been determined but will depend on the final layouts of the building and the garage.
9. The building will contain approximately 119,825 square feet of gross floor area, and will be 75 feet tall. Its floor area ratio ("FAR") will be 4.99, including approximately 0.74 FAR of retail space. While the C-3-A zone generally permits a maximum building height of 65 feet, with no limit on the number of stories, within the ARTS overlay district a building may be constructed to a maximum height of 75 feet. *See* 11 DCMR §§ 770.1, 1902.1.
10. Access to the residential portion of the project will be provided on S Street, while the retail areas will be accessible from S, 14<sup>th</sup>, and Swann Streets.

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11. Vehicular access to the garage and loading area will be provided through the alley off S Street. No curb cuts are planned on any of the streets bordering the subject property, and one existing curb cut on 14<sup>th</sup> Street will be eliminated.
12. The Applicant will provide bicycle parking in the project for both the retail and residential components, and will work with DDOT to install bicycle racks in public spaces along the project's 14<sup>th</sup> Street and S Street frontages.
13. The Applicant will work with appropriate District agencies to locate a parking space for a car-sharing service on a street abutting the subject property. Absent a car-sharing space on an abutting street, the Applicant will reserve at least one space in the retail portion of the parking garage for use by a car-sharing service.
14. The Applicant will offer one-year memberships in a car- or bicycle-sharing service to initial residents of the project who do not have a parking space.
15. In response to concerns expressed by the Historic Preservation Review Board concerning visual impacts of the garage doors, the Applicant proposed a modification to the parking and loading garage doors that will move the doors approximately three or four feet to the north of the originally proposed location and recess the doors approximately five to seven feet from the property line at the alley. Ornamental gates will be installed for both garage doors, along with sound attenuation technology, to reduce the visual and noise impacts of the garage doors.

### **Zoning Relief**

16. The C-3-A zone district permits a maximum lot occupancy of 75 percent for residential use (§ 772.1) and 100 percent for nonresidential uses. The Applicant's project will have varied percentages of lot occupancy, depending on the floor: 99 percent on the ground floor; 79 percent on the second and third floors; 67 to 70 percent on the fourth floor; and 64 or 65 percent on the fifth through seventh floors. The project requires zoning relief so as to permit lot occupancy greater than 75 percent on the second and third floors due to the incorporation of the contributing building on the site into the new project.
17. Pursuant to § 1901.1, the Applicant's proposed building, which will front on 14<sup>th</sup> Street, is required to devote not less than 50 percent of the ground level of the building to retail, service, arts, and arts-related uses listed in §§ 1907 and 1908. Pursuant to § 1901.6, eating and drinking establishments may not occupy more than 25 percent of the linear footage within the ARTS overlay district, as measured along the lots fronting on 14<sup>th</sup> Street and U Street, N.W.
18. The Applicant's project will devote at least 50 percent of the ground floor to retail and service uses, consistent with § 1901.1. The Applicant requested special exception relief from the restriction on eating and drinking establishments because the Applicant cannot

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determine whether the limitation will apply to the project until seeking a certificate of occupancy for the space.

19. The Zoning Administrator has no current measurement of the percent of the linear foot frontage occupied by eating and drinking establishments along 14<sup>th</sup> or U Streets within the ARTS overlay district, nor are there any regulations identify which uses would be counted towards that threshold. An “eating and drinking establishment analysis” submitted by the Applicant demonstrated that eating and drinking establishments presently occupy approximately 24 percent of the linear foot frontage along 14<sup>th</sup> and U Streets within the ARTS overlay district. Eating and drinking establishments now occupy more than 30 percent of the frontage along U Street, and almost 20 percent of the frontage along 14<sup>th</sup> Street. A survey undertaken by the MidCity Association estimated that 25.2 percent of the total frontage of 14<sup>th</sup> and U Streets within the ARTS overlay district is now occupied by eating and drinking establishments.
20. Pursuant to § 1902.1, a building located in the ARTS/C-3-A zone may be constructed to a maximum height of 75 feet so long as no roof structure exceeds a height of 83.5 feet and, if the lot abuts a Residence district or an alley that serves as the zone district boundary line of an adjacent Residence district (as is the case with the subject property), no part of the building may project above a plane drawn at a 45-degree angle from a line located 50 feet directly above the property line that abuts the Residence district or the alley.
21. While the height of the Applicant’s proposed building will be 75 feet, the Applicant requested special exception relief to allow a roof structure in excess of the 83.5-foot limit to accommodate elevator access to the roof, and from the 45-degree setback requirement, because the shape of the lot dictated the placement of structural columns in certain locations and the column placement resulted in a building design that will encroach into the 45-degree setback on the top story. The area encroaching into the 45-degree setback is a square approximately five feet on each side. Elimination of that area, so as not to require special exception relief from the setback requirement, would, for structural reasons, cause the elimination of the top floor of the planned building.
22. The shadow studies submitted by the Applicant demonstrate that the planned massing of the building will not create adverse light or air impacts on abutting properties. The new construction will be set back approximately 18 feet from the property line; with the 20-foot alley, the Applicant’s building will be located 38 feet from the closest residential building.
23. The Applicant requested special exception relief, pursuant to § 411.11, from the requirement set forth in § 411.5 stating that the enclosing walls of a roof structure must be of equal height. The Applicant planned two roof structures on the proposed building: the primary roof structure will not exceed the 83.5-foot limit required by the ARTS overlay district, but the other roof structure will have a height of 18 feet, six inches, to accommodate an elevator core needed in part to provide access to recreational space on

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the roof. The footprint of the elevator core will be less than 500 square feet, and the taller roof structure will not create adverse light impacts on nearby properties. The separate roof structures will allow use of a larger portion of the roof as recreational space.

24. Pursuant to § 2101.1, the minimum parking requirement for the Applicant's project is 108 spaces, including 43 parking spaces to serve the planned retail uses and 65 to serve the residential units. The Applicant proposed to provide at least 90 parking spaces in the below-grade garage, and to allocate at least 65 spaces to the residential use and at least 15 spaces to the commercial uses; the remaining 10 parking spaces could be allocated to serve the residential or retail use, depending on demand.
25. The Board agrees with the conclusion reached by the Applicant's traffic expert that the proposed 90 parking spaces will likely suffice for the project's 130 dwelling units and retail space in part because (a) the required and proposed ratio of parking spaces per dwelling unit – 0.5 spaces per dwelling – is close to the average automobile availability in the neighborhood according to the U.S. Census; that is, 0.57 vehicles per dwelling; and (b) one-quarter of residents living in owner-occupied households and nearly two-thirds of residents living in renter-occupied households in the neighborhood do not own vehicles, according to the U.S. Census.
26. After a party in opposition expressed concern about trash collection in the alley, the Applicant obtained a letter from the Department of Public Works ("DPW"), dated February 2, 2009. The letter stated that representatives of DPW and the Applicant conducted a field test in the alley abutting the subject property to determine how far the Applicant's building should be set back so that trash-collection trucks could safely maneuver in the alley. According to DPW, the field analysis demonstrated that "a five-foot setback from the edge of the alley and a length of nine feet to allow for turning and backing" would be required so that the trucks could turn into the alley safely to collect trash and recycling from the residents of S and Swann Streets. The Board agrees with this conclusion.

### **Harmony with Zoning**

27. The C-3 district is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) district, providing substantial amounts of employment, housing, and mixed uses. The C-3-A zone permits medium-density development, with a density incentive for residential development within a general pattern of mixed-use development, located on arterial streets, in uptown centers, and at rapid transit stops. *See* 11 DCMR § 740.
28. The purposes of the Uptown Arts-Mixed Use (ARTS) overlay district include to require uses that encourage pedestrian activity, especially retail, entertainment, and residential uses; to expand the area's housing supply in a variety of rent and price ranges, as well as business and job opportunities; and to encourage the development of residential and

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commercial buildings, including the adaptive reuse of older buildings in the area and an attractive combination of new and old buildings. 11 DCMR § 1900.2.

29. The Applicant's project will conform to the applicable zoning requirements with respect to building height, bulk, and use (after special exception relief from the ARTS overlay provision that could otherwise preclude use of the ground floor by eating and drinking establishments).
30. The project will comply with street frontage design requirements set forth in § 1903, including the provision calling for construction of the majority of the streetwall to the property line (§ 1903.3) and the prohibition against driveways that provide access from a pedestrian street to parking spaces or loading berths (§ 1903.2). Vehicular access and egress to the project will be located in the alley, thereby minimizing pedestrian impacts.

### **CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the 75-percent maximum lot occupancy permitted under § 722.1 for residential use in the C-3-A zone to allow construction of residential space occupying 79 percent of the underlying lot on the second and third floors of the planned mixed-use project.

The Board is authorized under § 8 of the Zoning Act 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 Board finds that the subject property is affected by an exceptional situation or condition due to a confluence of factors, including the need to preserve and integrate the contributing building on the site, the inability to build new floor area above the existing historic structure, and requirements of the ARTS overlay district that affect building design.

The retention of the contributing portions of the building is required by Historic Landmark and Historic Protection Act of 1978 ("the Preservation Act"), which disallows the issuance of a permit to demolish a building that contributes to a historic district "unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner". D.C. Official Code § 6-1104 (e). Since the retention of the contributing portion of the building places significant development

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constraints on the Applicant, the Board assumes that the Applicant's decision to retain the structure resulted from its conclusion that the Mayor would not be able to make one of the findings required by the Preservation Act.

In addition, the Mayor may not approve a permit to alter the exterior of contributing portions of the building unless the same standards for issuing a demolition permit are met. D.C. Official Code § 6-1105 (f). In order to obtain a favorable recommendation of the Historic Preservation Review Board, which advises the Mayor on such matters, the Applicant has agreed to not construct new building area above the four-story contributing building.

Additional limits on development result from the street design requirement of § 1903.3, which applies to this and other new buildings that front certain streets in the overlay. This provision requires that such buildings "be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than fifteen feet (15 ft.) shall be constructed to the property line between the subject lot and the abutting street right-of-way," thus further squeezing the development potential of this project.

Although this street design requirement is not unique as to this development, the confluence of its impact together with the loss of development resulting from the preservation of the contributing portions of the existing structure and the limitations on development above that structure combine to make absolute compliance with lot occupancy limits a practical difficulty. Compliance with the 75-percent lot occupancy maximum on the second and third floors would require a decrease of approximately 500 square feet of floor area per floor on the second through seventh floors of the building (or 3,000 square feet), resulting in a decrease of approximately four dwelling units and jeopardizing the financial feasibility of the project. Strict compliance with the Zoning Regulations would require the Applicant to construct a smaller addition that would jeopardize the Applicant's ability to pursue the redevelopment project.

The requested variance can be granted without causing substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. The purposes of the ARTS overlay district include to "encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings." 11 DCMR § 1900.2(g). The requested variance is relatively small, allowing a maximum lot occupancy of 79 percent instead of 75 percent on two of the seven floors of the project.

The Applicant also requests a special exception under § 411.11 for roof structures with unequal heights, special exception relief under § 1906.1 from provisions of the ARTS overlay district restricting eating and drinking establishments under § 1901.6 and height under § 1902.1, and a special exception under § 2120.6 from the parking requirement for an addition to a historic structure. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the

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use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1.

Pursuant to § 411.11, the Board may approve, as a special exception, the design, number, and other aspects of roof structures where full compliance would be unduly restrictive, prohibitively costly, or unreasonable due to operating difficulties, size of building lot, or other conditions relating to the building or surrounding area, provided that the intent and purpose of the Zoning Regulations will not be materially impaired by the structure, and the light and air of adjacent buildings will not be affected adversely. In this case, the Applicant proposes to construct a principal roof structure whose height will comply with the limit applicable in the ARTS overlay zone and a smaller roof structure, with a height of 18.5 feet, needed to accommodate the elevator core of the building. The Board concludes that special exception relief from roof structure requirements is appropriate to allow the two planned roof structures of unequal heights. Full compliance would require either elimination of elevator access to the roof, part of which will be available for use as recreation space, or building both roof structures to a height of 18.5 feet. As designed by the Applicant, the roof structures will not adversely affect the light and air of adjacent properties.

Pursuant to § 1906.1, the Board may grant exceptions from the requirements of the ARTS overlay district based on the following criteria: (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; (b) exceptional circumstances affecting the property make compliance with the ARTS overlay requirements difficult or impossible, or the development will provide alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of the ARTS overlay and of the Comprehensive Plan; (c) the architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; and (d) vehicular access and egress will be located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions. The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other requirements as necessary to protect neighboring property and to achieve the purposes of the ARTS overlay district.

The Board concludes that the Applicant's requests for special exception relief from two provisions of the ARTS overlay district – so as to allow use of up to 40 percent of the ground floor of the project by eating and drinking establishments and to allow a portion of the top floor of the building to encroach into the 45-degree setback area – are consistent with the requirements for relief under § 1901.6. The ARTS overlay district encourages eating and drinking establishments – restaurants and “drinking places, including bar, nightclub, or cocktail lounge” are among the “preferred arts uses and arts-related uses” listed in § 1908.1 – even as the overlay also imposes a restriction on the amount of space that can be devoted to eating and drinking establishments on lots fronting on 14<sup>th</sup> Street or U Street.

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Exceptional circumstances affecting the subject property make compliance with the ARTS overlay requirements difficult or impossible. The Zoning Administrator has not yet measured the percentage of the linear street frontage of 14<sup>th</sup> Street that is occupied by eating and drinking establishments nor has the Zoning Commission adopted regulations specifying which uses should be counted towards that threshold.<sup>3</sup> According to the study submitted by the Applicant, the lots fronting on 14<sup>th</sup> Street have not yet exceeded this threshold, while the lots fronting U Street have. Although the restaurant uses envisioned by the Applicant are still permitted as a matter of right, this may change by the time the Applicant seeks certificates of occupancy for these uses. The developer cannot be expected to make the expenditures required to build out restaurant space for a development of this size without the certainty that certificates of occupancy will issue once occupants are found. The Applicant is not attempting to circumvent the special exception process that may or may not be required in the future, but is subjecting itself to adverse impact scrutiny at this time.

In this regard, the requested special exception concerning eating and drinking establishments will not create dangerous or otherwise objectionable traffic conditions, and the condition adopted in this order, limiting space devoted to eating and drinking establishments to no more than 40 percent of the project's linear foot frontage along 14<sup>th</sup> Street, will protect neighboring property and achieve the purposes of the ARTS overlay district.

With regard to the special exception requested to allow encroachment into the 45-degree setback area, the Board concludes that the relatively small encroachment is necessary to achieve a mixed-use building at the size, intensity, and location that 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. Exceptional circumstances affecting the subject property, especially the retention of the contributing building on the site and compliance with other requirements of the ARTS overlay affecting building design, make compliance with the setback requirement difficult, if not impossible. The architectural design concept of the project, which will come before HPRB for its review and recommendation to the Mayor, will enhance the urban design features of the immediate vicinity, and no dangerous or otherwise objectionable traffic conditions will be created.

Pursuant to § 2120.6, the Board may grant relief from parking requirements if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The retention of the contributing

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<sup>3</sup> The Zoning Commission has proposed the following text for a similar restriction in the Neighborhood Commercial Overlay in a Notice of Proposed Rulemaking published in the D.C Register at 53 DCR 1202:

An establishment that is required to obtain either a Basic Business License with a Public Health Food Establishment Restaurant Endorsement or a CR or DR Restaurant, CT or DT Tavern, or CN or DN Nightclub Alcohol Beverage License shall be subject to the following limitations (and shall hereinafter be referred to as an "eating or drinking establishment")....

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building on the subject property will limit the ability to construct parking under that portion of the site, and that additional parking spaces are not needed to accommodate the proposed mix of uses based on the location of the site, in an area likely to attract pedestrians and well served by public transportation. The Applicant will devote at least 65 of the 90 parking spaces in the garage to the residential use in the building, the minimum number required by the Zoning Regulations for the planned residential use. At least 15 parking spaces will be reserved for the retail uses, while the remaining 10 parking spaces may be allocated either to the residential or the retail uses, depending on demand. In addition, the Applicant will implement measures designed to encourage use of alternative forms of transportation, including bicycles and a car-sharing service.

Lastly, the Board agrees with the Department of Public Works that a five-foot setback from the edge of the alley and a length of nine feet to allow for turning and backing should be required so that the trucks could turn into the alley safely to collect trash and recycling from the residents of S and Swann Streets. This requirement is stated in condition number two below.

Based on the findings of fact and for the reasons discussed above, the Board concludes that the requested special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

The Board has accorded the issues and concerns raised by ANC 2B the “great weight” to which they are entitled. In doing so, the Board fully credited the unique vantage point that ANC 2B holds with respect to the impact of the requested zoning relief on the ANC’s constituents. However, the Board concludes that the ANC did not offer persuasive advice that would cause the Board to find that the requested zoning relief should not be approved. ANC 2B initially expressed its opposition to the project without stating any specific issues or concerns. The ANC later objected to the lack of parking plan to support commercial uses planned for the site, the Applicant’s revised plan for the location of the entrance to the garage, and the Applicant’s request for approval of zoning relief before the project was approved by the HPRB. Based on the findings of fact and for the reasons discussed above, the Board concludes that the parking plan for the project, with the transportation demand management measures that the Applicant will implement to decrease the number of trips generated at the subject property, will support the commercial and residential uses located at the proposed development and will not create adverse impacts on neighboring property. With respect to the ANC’s objection to the location of the garage entrance, the Board notes that the Applicant’s garage proposal is consistent with the requirements of the ARTS overlay. Further, the Applicant has proposed moving the doors and recessing them in response to HPRB concerns about their visual impact. (See Finding of Fact No. 15.) The Board declines the ANC’s recommendation that it withhold its rulings pending HPRB review. HPRB review does not impact the zoning relief at issue in this case. If any new zoning relief is triggered in response to HPRB recommendations, then the Applicant may seek modification of its plans in this forum at that time. (See Condition No.1.)

Based on the findings of fact, and having given great weight to the recommendations of the

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Office of Planning and to the issues and concerns of ANC 2B, the Board concludes that the requested zoning relief, as conditioned by the Board, can be approved so that the Applicant's project is not likely to become objectionable to adjoining and nearby property. For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for a variance from the lot occupancy requirements under § 772, a special exception under § 411.11 for roof structures with unequal heights, special exception relief under § 1906.1 from provisions of the ARTS overlay district restricting eating and drinking establishments under § 1901.6 and height under § 1902.1, and a special exception under § 2120.6 from the parking requirement for an addition to a historic resource to allow construction of a mixed-use residential and retail development in the ARTS/C-3-A district at 1407 S Street, N.W. and 1802, 1804, 1810, 1816, and 1818 14<sup>th</sup> Street, N.W. (Square 206, Lots 1, 210, 230, 819, 820, and 821). Accordingly, it is hereby **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The Applicant shall have flexibility to modify design features to comply with the recommendations of the Historic Preservation Review Board or its staff so long as the modification does not result in any new areas of zoning relief.
2. In conjunction with this approval, the Applicant shall modify the alley elevation to include the ground-level setback detailed in the letter from the Department of Public Works dated February 2, 2009 (Exhibit 55).
3. The Applicant shall have flexibility to modify the amount and allocation of vehicle parking provided in the project, so long as the project includes an overall minimum of 90 parking spaces, with a minimum of 15 spaces set aside for the retail component of the project and a minimum of 65 spaces set aside for the residential component of the project.
4. The Applicant shall provide bicycle parking in the parking garage for both the residential and retail components as shown on the approved plans, and shall offer to pay for the installation of up to four bicycle racks in public space abutting the subject property on both 14<sup>th</sup> Street and S Street.
5. The Applicant shall work with the appropriate District authorities to reserve a parking space for a car-sharing service on a street abutting the subject property. If no car-sharing space is located on a public street abutting the project by the date upon which the first certificate of occupancy is issued for the project, the Applicant shall set aside at least one space in the retail portion of the parking garage for use by a car-sharing service no later than one year thereafter.
6. The Applicant shall provide, on request, a one-year membership in a car-sharing or bicycle-sharing service per unit to initial residents of the project who have not leased or purchased an automobile space.
7. Eating and drinking establishments shall occupy no more than 40 percent of the project's linear foot frontage along 14<sup>th</sup> Street.

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**VOTE: 5-0-0** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Shane L. Dettman, and Gregory N. Jeffries voting to approve with conditions)

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

Each concurring member has approved the issuance of this Order.

**ATTESTED BY:**

  
**RICHARD N. NERO, JR.**

**Acting Director, Office of Zoning**

**FINAL DATE OF ORDER:** APR 01 2009

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 § 3205, 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 1, 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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**RICHARD S. NERO, JR.**  
Acting Director, Office of Zoning

TWR