

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18415 of PT2SO LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the lot occupancy requirements under subsection 772.1, a variance from the rear yard requirements under subsection 774.1, and a special exception from the roof structure provisions under subsection 411.3, to allow the construction of a new mixed use nine-unit residential apartment house with commercial and retail service establishments in the Arts/C-2-B District at premises 1932 9th Street, N.W. (Square 361, Lot 134).¹

HEARING DATE: October 16, 2012

DECISION DATE: October 16, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") 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 within 200 feet of the site. The site is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted two letters to the record in support of the application. The first letter was addressed to the Office of Planning/Historic Preservation Office regarding the Historic Preservation Review Board's review.² (Exhibit 8.) Thereafter, the ANC submitted a report

¹ The Applicant amended the application at the public hearing from a request for a variance from the rear yard requirements under § 774.7(b) to the rear yard requirements under § 774.1. The caption has been amended to reflect that change in relief.

² The subject property is within the Greater U Street Historic District. The ANC letter dated August 12, 2009 was addressed to the Office of Planning/Historic Preservation Office and indicated that at a duly noticed, regularly scheduled monthly meeting on August 6, 2009, ANC 1B, with a quorum of seven of 11 commissioners present, voted unanimously (7:0) to support the owner's design and scope of work for the project. (Exhibit 8.) OP's report indicated that the Historic Preservation Review Board approved the proposed development at its meeting on December 15, 2011. (Exhibit 28.)

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addressed to the Board and dated September 17, 2012, which indicated that at a regularly scheduled, duly noticed meeting on September 6, 2012, at which a quorum was present, ANC 1B voted unanimously in support of the application. (Exhibit 25.)

The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 28.) In addition, the District Department of Transportation ("DDOT") submitted a report of no objection to the application. (Exhibit 27.)

A letter from the Shaw Main Street was submitted that raised concerns, assuming that the application is approved, about how trash removal of neighboring businesses would be impacted. (Exhibit 29.) Also, William C. Lewis, president, 9-N-U Business League, who is an adjacent property/business owner, testified in opposition to the application.³

Variance Relief:

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 for a variance under § 3103.2 from the strict application of the lot occupancy requirements under § 772.1 and the rear yard requirements under § 774.1.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving 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 requested 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.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board also required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1 for a special exception from the roof structure provisions under § 411.3. 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 the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

³ Mr. Lewis neither requested nor received party status and simply testified as an individual in opposition.

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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, 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.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO the plans at Exhibit 11.**

VOTE: **4-0-1** (Nicole C. Sorg, Lloyd L. Jordan, Jeffrey L. Hinkle, and Peter G. May to Approve; the third Mayoral appointee 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: October 19, 2012

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL 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.

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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.