

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18453 of 1728 14th Street LLC¹, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a special exception under subsection 411.11 from the roof structure requirement under subsection 411.5, to allow the construction of a mixed use retail/service/office building in the ARTS/C-3-A District at 1728 14th Street, N.W. (Square 207, Lot 120).²

HEARING DATE: December 4, 2012

DECISION DATE: December 4, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("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") 2F, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 2F, which is automatically a party to this application. ANC 2F submitted a resolution in support of the application. The ANC report stated that at a regularly scheduled, duly noticed meeting on November 7, 2012, at which a quorum was present, ANC 2F voted 4:0 in support of the application. (Exhibit 26.)

¹ The Applicant in this case was originally Clark Associates and Perseus Realty LLC. Since the time that this application was filed, Clark Associates relinquished its ownership interest in the property. Perseus Realty LLC, the contract purchaser at the time of the application, transferred the purchase contract to 1728 14th Street LLC and is the managing member of that entity.

² Subsequent to the date that the application was filed and public notice was issued, the Applicant determined to extend the elevator to serve a roof top deck above the fourth floor. Because the elevator penthouse will be attached to the stairway enclosure to the roof, and because these elements will be of different heights, special exception approval under subsection 411.11 is required. The Board waived the rules to allow the special exception to be considered at the public hearing.

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The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 27.) In addition, the District Department of Transportation ("DDOT") submitted a report with detailed analysis of the Applicant's project that was supportive of the application, with conditions. (Exhibit 28.)

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 variances under § 3103.2 from the strict application of the parking requirements under § 2101.1, and from the loading requirements under § 2201.1. 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 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 or undue hardship 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 and 411.11 for a special exception from the roof structure provisions under § 411.5. 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, 411.11, and 411.5, 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.

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 dated December 4, 2012 at Exhibits 25 and 30, and the FOLLOWING CONDITIONS:**

1) A member of the property management team will be designated as the Transportation Management Coordinator (TMC). The TMC will be responsible for ensuring that information is

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disseminated to tenants of the building. The position may be part of the other duties assigned to the individual.

2. The TMC will prepare a package of information identifying programs and incentives for encouraging retail and office tenants to use alternative modes of transportation. Packages will include information regarding the following:

- Capital Bikeshare,
- Zipcar,
- Commuter Connections Rideshare Program,
- Commuter Connections Guaranteed Ride Home, and
- Commuter Connections Pools Program.

3. Links to CommuterConnections.com and goDCgo.com will be provided on the property management websites.

4. In each tenant's staff room or pantry within the premises of each tenant's space, the Applicant proposes to provide informational boards, and the TMC will provide public transit information suitable for posting on those boards such as nearby Metrorail stations, Metrobus stops, Zipcar, and Capital BikeShare locations as well as information about WMATA and Zipcar smartphone applications.

5. Convenient and covered secure bike parking facilities will be provided.

6. The loading management plan (LMP) will designate a loading coordinator (duties may be part of other duties assigned to the individual). He or she will coordinate loading activities of the building (including non-FedEx/UPS deliveries, trash disposal, retail deliveries, and office deliveries). The loading coordinator will be responsible for informing tenants of the guidelines and procedures for loading and delivery operations.

7. The LMP will designate an on-site individual to schedule and coordinate with the loading coordinator and other tenants' on-site coordinators.

8. The loading coordinator will require all non-FedEx/UPS deliveries to use only the on-site loading berth for deliveries.

9. Using signage in the loading zone, trucks longer than 30 feet will be prohibited.

10. The retail and office tenant(s) will be required to notify the loading coordinator of all regularly scheduled deliveries and of any occasional deliveries so that the loading coordinator can seek to avoid conflicting loading activities. The retail and office tenant(s) shall provide the loading coordinator the following information: time and date that trucks are anticipated to arrive each day of the week, size of trucks being used, and the name of the delivery company.

11. No truck idling shall be permitted in the loading zone.

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12. Upon issuance of Certificates of Occupancy and initial tenant occupancy of the retail space and the office space in the building, the Applicant will make available at that time to each tenant employee who requests it a \$100 SmartTrip card, or a \$50 car-sharing membership, or a \$75 Capital Bikeshare membership, depending upon their method of commuting to and from work.

VOTE: **4-0-1** (Lloyd L. Jordan, Nicole C. Sorg, Robert E. Miller, and Jeffrey L. Hinkle, 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: December 6, 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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE

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AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.