

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19616-A of Thomas Jefferson Real Estate, LLC, pursuant to Subtitle Y § 704 for a modification of significance of BZA Order No. 19616, requesting special exception relief pursuant to Subtitle C § 909.2 from the loading requirements of Subtitle C § 909.1 and pursuant to Subtitle C § 807.4 from the long-term bicycle parking requirements for showers and clothing lockers of Subtitle C §§ 806.4 and 806.5, to change the principal use of an apartment house to lodging use in a new, four-story with garage, cellar and penthouse, attached, 49-unit residential building in the NC-6 Zone at premises 818 Potomac Avenue, S.E. (Square 930, Lot 23).

HEARING DATE (19616):	December 6, 2017
DECISION DATE (19616):	December 6, 2017
ORDER ISSUANCE DATE (19616):	January 9, 2018
HEARING DATE (19616-A):	June 30, 2021
DECISION DATE (19616-A):	June 30, 2021

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF SIGNIFICANCE

Original Application. In Application No. 19616, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Thomas Jefferson Real Estate, LLC (the “Applicant”) for special exceptions under Subtitle H § 1200 from the lot occupancy requirements of Subtitle H § 704.1, from the ground floor designated use requirements of Subtitle H § 1101.1, and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(c)(4), to construct a new, 49-unit apartment house in the NC-6 Zone. The Board issued Order No. 19616 on January 9, 2018. (Exhibit 6 of the record for Case No. 19616-A.) The approval was subject to two conditions:

1. The Applicant shall provide two additional short-term bicycle parking spaces (one inverted U-rack).
2. The Applicant shall provide one electric vehicle charging station in the parking garage.

Proposed Modification. On March 8, 2021, the Applicant submitted a request for modification of significance to Order No. 19616. (Exhibits 1-8.) The Applicant proposed to convert the residential use, which was approved in place of the designated uses required for at least 50% of the ground floor, to a non-residential lodging use. Based on the proposed change in use, the Applicant requests special exception relief from the loading requirements of Subtitle C § 909.1 and from the long-term bicycle parking requirements for showers and clothing lockers of Subtitle C §§ 806.4 and 806.5. The zoning relief requested in this case was self-certified. (Exhibit 27.)

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Board of Zoning Adjustment
District of Columbia
CASE NO. 19616A
EXHIBIT NO. 36

BZA APPLICATION NO. 19616-A
PAGE NO. 2

The Applicant also requested flexibility pursuant to Subtitle A § 304.10 to change the proposed lodging use to a residential use in the future without seeking further modification of the approval from the Board. In response to questions from the Board, the Applicant agreed to comply with the Inclusionary Zoning requirements that are in effect at the time of the conversion, if any such residential conversion were to occur.

Notice of the Request for Modification. Pursuant to Subtitle Y § 704.5, the Applicant served the request for modification of significance on the parties to the original application. (Exhibit 2.) 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.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 8, 2021, at which a quorum was present, the ANC voted to support the request with conditions. (Exhibit 34.) The ANC's proposed conditions included a prohibition on all accessory uses allowed under the lodging use that would generate a demand for loading, as well as a provision that would either allow the ANC an opportunity to file a resolution in opposition that would effectively limit the Board's approval to a term of five years, requiring the Applicant to seek a further modification, or that would limit the term of approval to five years outright. Accordingly, the Board adopted conditions prohibiting accessory uses to the proposed lodging use that would generate a demand for loading and limited its approval of the special exception relief granted to a five year term.

OP Report. The Office of Planning ("OP") submitted a report recommending approval of the proposed modification of significance. (Exhibit 31.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the proposed modification of significance, with conditions relating to transportation demand management and loading management. (Exhibit 32.) The Board adopted the conditions as part of its approval.

Request for Modification of Significance

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence¹ requires a public hearing and is a modification of significance. The Applicant's request complies with Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

As directed by Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for special

¹ See Subtitle Y §§ 703.3 and 703.4.

BZA APPLICATION NO. 19616-A
PAGE NO. 3

exceptions and a modification of significance. The only parties to the case were the ANC and the Applicant. 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.

“Great Weight” to the Recommendations of OP

The Board is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. The Board finds OP’s recommendation that the Board approve the application persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANC

The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2. The Board finds persuasive the ANC Report’s concern with the potential adverse impacts of the loading relief and concurs with the ANC Report that the approval should include conditions to mitigate these potential adverse impacts.

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.

It is therefore **ORDERED** that this application for a modification of significance of BZA Order No. 19616 is hereby **GRANTED** to:

- Substitute lodging uses in place of the residential uses authorized by BZA Order No. 19616 in place of the designated uses on required in 50% of the ground floor by Subtitle H § 1101.1;
- Grant special exception relief from the loading requirements of Subtitle C § 909.1; and
- Grant special exception relief from the long-term bicycle parking requirements for showers and clothing lockers of Subtitle C §§ 806.4 and 806.5;

subject to the approved plans at Exhibits 44A1-44A2 in the case record for Application No. 19616, and the following **CONDITIONS**, which shall replace and supersede the conditions of BZA Order No. 19616:

1. The Applicant shall provide two additional short-term bicycle parking spaces (one inverted U-rack).
2. The Applicant shall provide one electric vehicle charging station in the parking garage
3. The Applicant shall implement the Transportation Demand Management Plan detailed in Exhibit 32 of Case No. 19616-A for the life of the project, unless otherwise noted.

BZA APPLICATION NO. 19616-A
PAGE NO. 4

4. The Applicant shall implement the Loading Management Plan detailed in Exhibit 32 of Case No. 19616-A for the life of the project.
5. All accessory uses associated with the nonresidential lodging use that would generate loading demand, e.g., conference space, restaurant use, etc., shall be prohibited. The Zoning Administrator shall be authorized to determine whether any accessory use will generate loading demand.
6. The approval of the special exception relief from the loading and bicycle parking requirements granted in Order No. 19616-A shall be for a term of five (5) years from the effective date of this order.
7. The Board grants flexibility, pursuant to Subtitle A § 304.10, to the Applicant to convert the lodging use approved in Order No. 19616-A to a residential use without approval from the Board as a modification provided that the Applicant shall comply with the Inclusionary Zoning requirements in effect at the time of any conversion.

In all other respects, Order No. 19616 remains unchanged.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE)

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: July 14, 2021

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 A § 303, 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 AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

BZA APPLICATION NO. 19616-A
PAGE NO. 5

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.