

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 15340-A of A&S Associates, LLC,¹ pursuant to 11 DCMR § 3129, for a minor modification of approved plans under Board of Zoning Adjustment Order No. 15340 (as already modified).

HEARING DATE: July 3, 2007

DECISION DATE: July 3, 2007

DECISION AND ORDER

On April 3, 2007, A&S Associates, LLC (“Applicant”) filed this request with the Board of Zoning Adjustment (“BZA” or “Board”) for what it termed a “minor” modification of Board Order No. 15340, dated August 17, 1990 (the “1990 Order”), as originally modified on April 19, 1991 (the “1991 Order”). The Applicant also requested a waiver of the six-month time limitation on the filing of modification requests. See, 11 DCMR § 3129.3.

The Board, after reviewing the record in the case, deliberated on the modification request at its public meeting on July 3, 2007. At the public meeting, the Board voted 3-0-2 to deny the Applicant’s request to waive the six-month requirement of 11 DCMR § 3129.6, and to deny the modification request itself.

FINDINGS OF FACT

1. On August 17, 1990, the Board issued the 1990 Order, granting the Applicant’s predecessor-in-interest (N.V. Homes Ltd. Partnership) a special exception and several variances to construct 34 single-family detached dwellings on a theoretical lot subdivision in an R-1-A zone district in the 2500 Block of 49th Street, N.W.
2. The 1990 Order was modified in 1991 to permit the construction to be phased-in over a 10-year period, ending on the 10th anniversary of the 1991 modification

¹The original applicant, modification of whose plans is herein being requested, was N.V. Homes Ltd. Partnership. A&S Associates, LLC is the original applicant’s successor-in-interest.

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order, *to wit*, on April 19, 2001. During this 10-year period, the 1990 order remained in full force and effect.

3. Sometime before August 11, 2006, 33 of the originally planned and permitted 34 dwellings were constructed.
4. On August 11, 2006, the Department of Consumer and Regulatory Affairs (“DCRA”) issued Building Permit No. B73714 to the Applicant authorizing the construction of the last of the 34 originally-planned dwellings.
5. On December 22, 2006, DCRA revoked Building Permit No. B73714, having determined that it had been issued in error because the 1990 Order, as modified by the 1991 Order, had expired in 2001.
6. After DCRA revoked the building permit, the Applicant filed this modification request with the Board, seeking “an extension of the expiration date of the Board’s approval to construct the final house in the project.” Exhibit No. 47, at 2.
7. The Applicant also requested that the Board approve a “Revised Site Plan” which included several changes from the original site plan, (*See*, Exhibit No. 49 at 2, and Attachment B), and that the Board include several conditions in any order granting the modification request. (*See, Id.* at 3-4).

CONCLUSIONS OF LAW

Section 3129 of the Zoning Regulations permits applicants to request, without a hearing, a minor modification of plans approved by the Board within six months of the date of the final order approving the application.² This provision assumes an underlying effective order that authorizes the plans for which a modification is sought, and contemplates a modification of that underlying order to effectuate modification of the plans.

In this case, the Applicant requests the Board to extend the expiration date of the 1991 Order in order to complete construction authorized by that order. That order clearly conditions the 1990 Order with the statement that “construction of the project may be phased over a period of TEN YEARS.” 1991 Order at 2. Further, the 1991 Order also states that “[t]he requested modification would result in the permitted flexibility of the applicant to phase the development of the project over a period of *up to* ten years.” *Id.*, at 1. (Emphasis added.) There is nothing in the record to suggest that the Applicant, or

²In order to proceed with this case, the Board waived the applicability of § 3129.6, pursuant to its authority under § 3100.5.

its predecessor in interest, was granted more time than the 10-year phase-in period. Therefore, the Board concludes that, at the end of that 10-year period, on April 19, 2001, the 1990 Order, as modified by the 1991 Order, expired, and the Applicant's special exception permission to construct its 34-dwelling project came to an end. Because the 1990 Order, as modified by the 1991 Order, expired in 2001, there is no existing order in effect for the Board to modify. Because the order has expired, the Board cannot reach the underlying plans for purposes of modification, as their validity has also expired

The Board is required to give "great weight" to issues and concerns raised by the affected Advisory Neighborhood Commission ("ANC") and to any recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning did not make a recommendation with respect to this application, but ANC 3D, the ANC within which the subject property is located, did. ANC 3D, at a properly-noticed and regularly-scheduled meeting, voted unanimously in favor of a motion to deny the application for modification, and set forth its reasons at some length in its report to the Board dated June 12, 2007. Exhibit No. 48. The ANC argued that the request for modification was too late, that the modifications were not minor and that the neighbors should be heard on the modified plans. Because the Board agrees with the ANC that the request for modification is too late and denies the request on that basis, it need not address the other concerns.

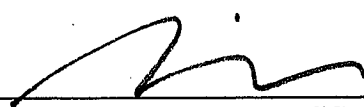
Accordingly, the Board concludes that there is no existing order in effect in this case for the Board to modify pursuant to 11 DCMR § 3129; therefore it is hereby **ORDERED** that this application is **DENIED**.

VOTE: **3-0-2** (Ruthanne G. Miller, John A. Mann II and Curtis L. Etherly, Jr., to deny. No fourth member and no Zoning Commission member participating or voting.)

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

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FINAL DATE OF ORDER: NOVEMBER 27, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT 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 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 Director of the Office of Zoning, I hereby certify and attest that on November 27, 2007, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:



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TWR