

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18144 of National Indian Gaming Association, pursuant to 11 DCMR § 3129.7 for the approval of modifications to plans approved by the BZA pursuant to Order No. 17985, and pursuant to 11 DCMR § 3103.2, for a variance from the parking space accessibility requirements under subsection 2117.4, to allow the installation of a car lift to provide access to the required parking spaces for a building devoted to a non-profit organization use in the CAP/R-4 District at premises 224 2nd Street, S.E. (Square 762, Lot 7).

DECISION TO HOLD HEARING

ON MODIFICATION:

September 21, 2010

HEARING DATE:

November 30, 2010

DECISION DATE:

November 30, 2010

SUMMARY ORDER

SELF CERTIFIED

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

Background

On November 3, 2009, the Board of Zoning Adjustment (“Board” or “BZA”) granted BZA Application No. 17985, subject to five conditions, with regard to a related application by the same Applicant in this application and pertaining to the same property. That Order was issued on November 10, 2010 and remains in force, and is incorporated by reference, to this Order.

On July 16, 2010, the Applicant filed a Request for Modification of Approved Plans pursuant to § 3129 of the Zoning Regulations, seeking a minor modification of plans that were originally approved in Order No. 17985. (Exhibit 37, BZA Case No. 17985.) The Applicant submitted a supplemental filing on September 10, 2010. (Exhibit 40, BZA Case No. 17985.)

In response to the request for minor modifications, the Office of Planning (“OP”) submitted two reports, dated July 26, 2010 and September 14, 2010, both of which were in support of the modifications. (Exhibits 39 and 41, BZA Case No. 17985.) Also, the affected Advisory

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Neighborhood Commission (“ANC”), ANC 6B, submitted a report dated July 19, 2010, in support of the request for minor modifications. (Exhibit 38, BZA Case No. 17985.)

The Board considered the request for minor modifications at its Public Meeting on September 21, 2010. At that meeting, the Board determined that the request to modify approved plans did not meet the standards for a minor modification pursuant to § 3129 of the Zoning Regulations, as new relief that was not previously discussed was being requested, thereby changing the material facts on which the Board had made its decision. Section 3129 authorizes the Board to grant minor modifications provided there are no changes in the material facts upon which the Board based its original approval of the application. In this case, the Board determined that the modifications requested required additional relief and thus changed the material facts upon which it relied in granting the initial application. Pursuant to §§ 3129.7 and 3129.8, the Board ordered a hearing limited to the impact of the modification on the subject of the original application.

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On September 24, 2010, the Applicant filed a new application, BZA Application 18144, in which the Applicant asked both for modification of the previously-approved plans in BZA No. 17985 as well as new variance relief from the parking space accessibility requirements pursuant to § 2117.4, to allow the installation of a car lift instead of a ramp, as previously approved, to provide access to the required parking spaces for a building devoted to a non-profit organization use.

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 ANC 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a timely report, dated November 7, 2010, indicating that at a duly-noticed public meeting on July 13, 2010, at which a quorum was present, the ANC voted unanimously, 9:0, to support the application. (Exhibit 25.) OP submitted a timely report indicating that it supported the application. (Exhibit 28.) According to OP’s report, the District Department of Transportation was contacted but did not file a report, having expressed no opposition to the Applicant’s request.¹

¹ The subject property is in both the Capitol Hill Historic District and the CAP Overlay. The property also is a historically designated landmark. Having previously reviewed the project in 2009, the Historic Preservation Review Board staff again reviewed the project with the requested modifications and filed a report, dated July 22, 2010, reiterating its recommendation that the Historic Preservation Review Board approve the plans. (Exhibit 27, Exhibit F.) The U.S. Commission on Fine Arts reviewed the Applicant’s original plans and did not object to the proposed design. Also, the Architect of the Capitol (“AOC”) reviewed the application and indicated that the project is not inconsistent with the CAP/R-4 District and that it would not adversely affect the operations of the Legislative Branch of government. (See, Exhibit 29, BZA Case No. 17985.) At the September 21, 2010, meeting, the Zoning Commissioner who sat on the BZA on this case, Michael Turnbull, is also the AOC representative on the Zoning Commission. He reminded the Applicant that, as this is a special exception in the CAP Overlay, they would be required to submit the modified plans to the AOC for review. (Transcript of Public Meeting, September 21, 2010, pages 15-16.)

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As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3103.2 and 3129.7, for a modification of approved plans and a variance from the parking space accessibility requirements under § 2117.4, to allow the installation of a car lift to provide access to the required parking spaces for a building devoted to a non-profit organization use. 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 proving under 11 DCMR §§ 3103.2, 3129.7, and 2117.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates practical difficulties or an undue hardship for the owner in complying with the Zoning Regulations, and that the 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.² 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 31 – Updated Plans and BZA Order No. 17985) be **GRANTED**.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE. The third Mayoral appointee (vacant) not present, nor voting.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 09 2010

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

² The Board found that the first and second prongs of the modification application had been satisfied by the underlying application, BZA Case No. 17985, and incorporated that case and its Order by reference.

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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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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DEC 09 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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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