

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18275-A of Maral LLC Motion for Modification and Amended Application, pursuant to § 3129 of the Zoning Regulations for the modification of the first floor use. The amended application is pursuant to 11 DCMR § 3103.2, for a variance from the use requirements under § 350.1, to allow the use of the basement as an office in an existing two-story building in the R-5-B District at premises 1200 Potomac Avenue S.E. (Square 1021, Lot 34).¹

HEARING DATES (Original application): November 15, 2011, December 20, 2011,
February 14, 2012, March 20, 2012

DECISION DATE (Original application): March 20, 2012

FINAL ORDER ISSUANCE DATE
(Original application): January 17, 2013

HEARING DATE
(Modification/amended application): September 29, 2015

DECISION DATE
(Modification/amended application): September 29, 2015

**SUMMARY ORDER ON REQUEST FOR MODIFICATION AND AMENDED
APPLICATION**

SELF CERTIFIED

The original application was referred to the Board of Zoning Adjustment (“Board” or “BZA”) by the Zoning Administrator (“ZA”). A self-certification form was filed with the request for modification. (Exhibit 4.)

¹ The Applicant originally requested modification “of an approved variance from the use requirements under § 350.1, to allow the use of the basement and first floors as an office in an existing two-story building in the R-5-B District.” (Exhibit 1.) During the public hearing, the Board noted that only the first floor was the subject of the original application for use variance relief. Therefore, the Board determined that the modification request would apply to the first floor only and that the change in use for the basement would require use variance relief. The Applicant amended its request at the hearing, and the caption has been revised accordingly.

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Background

On November 15, 2011, the Board approved Application No. 18275 of Potomac Avenue, LLC for a variance from the use provisions of § 350.1 to allow a coffee shop on the first floor of an existing two-story building in the R-5-B District at premises 1200 Potomac Avenue, S.E. (Square 1021, Lot 34).² (Exhibit 6.) The contract purchaser of the property, Maral LLC (“the Applicant”), proposes instead to use the first floor and basement of the property as an office and showroom for Dila Development and Construction Company. (Exhibit 3.) Accordingly, the Applicant filed this request for modification with the Board. The application requested modification “of an approved variance from the use requirements under § 350.1, to allow the use of the basement and first floors as an office in an existing two-story building in the R-5-B District.” (Exhibit 1.)

During the public hearing on September 29, 2015, the Board noted that the originally approved use variance relief applies only to the first floor of the building, and thus, the Applicant can only request a modification under § 3129 with regard to the first floor. The Board determined that a use variance is required to establish the proposed office use in the basement of the building. Accordingly, the Applicant revised its request during the hearing to seek a modification for the change in use on the first floor and to seek a variance from the use requirements of § 350.1 with regard to the basement use.

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this modification by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (“ANC”) 6B, and to all owners of property within 200 feet of the property that is the subject of this application.³ The subject property is located within the jurisdiction of ANC 6B, which is automatically a party to this application.

ANC 6B submitted a report, dated September 10, 2015, in support of the proposed modification. The ANC noted that at a duly noticed and regularly scheduled public meeting on September 8, 2015, with a quorum present, the ANC voted 8-0-1 to support the Applicant’s request. The ANC specifically noted that there was “positive neighborhood support and no opposition to” the Applicant’s proposed change of use. (Exhibit 26.)

The Office of Planning (“OP”) submitted a report dated September 22, 2015, in support of the modification, as requested by the Applicant. (Exhibit 29.) OP also testified at the public hearing in support of the Applicant’s amended request for use variance relief to establish an office use in the basement of the property. The District Department of Transportation (“DDOT”) submitted a

² The original application from Potomac Avenue LLC also requested use variance relief to establish a pet supply store on the second floor of the existing building, but that request was denied by the Board. (Exhibit 6.)

³ This case was originally processed as Application No. 19073, but was administratively renumbered to 18275-A to reflect the request for modification. All referrals and notices sent by the Office of Zoning properly list the case number as 18275-A.

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memorandum dated August 31, 2015, indicating that it has “no objection” to the approval of the requested relief.

Modification Request

As directed by 11 DCMR § 3129.7, the Board considered the request for modification at a public hearing on September 29, 2015. Pursuant to § 3129.8, the scope of the hearing, with regard to the change in use on the first floor, was “limited to impact of the modification on the subject of the original application.”

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board granted the Applicant’s request for modification to allow an office and showroom on the first floor of the Subject Property.

Use Variance

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 use requirements under § 350.1, to allow the use of the basement as an office. After amending its request to include use variance relief, the Applicant and Applicant’s agent provided testimony addressing how the proposal meets the requirements of the variance test. Specifically, the Applicant indicated that the approval of a non-residential use on the first floor and the lack of outside entry to the basement would create an undue hardship if the Applicant were required to establish a residential use in the basement. The Board closed the record at the conclusion of the hearing. 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 § 3103.2 from the use requirements under § 350.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.5, 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 APPROVED PLANS AT EXHIBIT 27.**

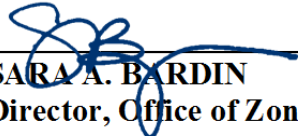
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VOTE: **5-0-0** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill,
and Michael G. Turnbull to APPROVE.)

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: October 8, 2015

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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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.

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

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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.