

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18372 of 2321 4th Street LLC, on behalf of H Street Community Development Corporation, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a variance from the loading berth minimum vertical clearance height requirements under subsection 2201.6, to allow the construction of a new residential apartment building with ground floor retail and service uses in the C-3-A District at premises 2321 4th Street, N.E. (Square 3629, Lot 808).

HEARING DATE: June 26, 2012
DECISION DATE: June 26, 2012

SUMMARY ORDER

SELF-CERTIFIED

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

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") 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C submitted a letter, dated May 8, 2012, in support of the application. The ANC noted that at a duly noticed and regularly scheduled public meeting on May 8, 2012, with a quorum present, the ANC voted (10-1-1) to support the application. (Exhibit 24.) The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 28.) The District Department of Transportation ("DDOT") submitted a letter of "no objection" to the application. (Exhibit 27.)

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, for variances from the lot occupancy requirements under section 772, the off-street parking requirements under subsection 2101.1, the loading requirements under subsection 2201.1, and the loading berth minimum vertical clearance height requirements under subsection 2201.6. No parties

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CASE NO.

EXHIBIT NO.

18372
33

Board of Zoning Adjustment
District of Columbia
CASE NO.18372
EXHIBIT NO.37A

BZA APPLICATION NO. 18372
PAGE NO. 2

appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. No letters in support or opposition of the application were received.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from § 772, § 2101.1, § 2201.1, and § 2201.6, 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 an undue hardship and a practical difficulty 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.

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. The waiver will not prejudice the rights of any party, and is appropriate in this case. The waiver is therefore **ORDERED** that this application is hereby **GRANTED** pursuant to Exhibit 26 – Revised Plans dated June 12, 2012 and Exhibit 30 – Revised Plans dated June 26, 2012.

VOTE: **4-0-1** (Lloyd J. Jordan, Anthony J. Hood, Nicole C. Sorg, and Jeffrey L. Hinkle to GRANT; Rashida Y.V. MacMurray not present, not participating.)

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 *for*

FINAL DATE OF ORDER: **JUL 03 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

BZA APPLICATION NO. 18372
PAGE NO. 3

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.

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



Order No. 18567/18372-A of Application of 2321 4th Street LLC and H Street Community Development Corporation, Motion for Minor Modification of Approved Plans for Application Nos. 18567 / 18372, pursuant to § 3129 of the Zoning Regulations.¹

The original application (No. 18372) was pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a variance from the loading berth minimum vertical clearance height requirements under subsection 2201.6, to allow the construction of a new residential apartment building with ground floor retail and service uses in the C-3-A District at premises 2321 4th Street, N.E. (Square 3629, Lot 808).

HEARING DATE (Orig. Application – No. 18372):	June 26, 2012
DECISION DATE (Orig. Application – No. 18372):	June 26, 2012
FINAL ORDER ISSUANCE DATE (No. 18372):	July 3, 2012
MODIFICATION (No. 18567) HEARING / DECISION DATE:	June 11, 2013

**SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS IN
ORDER NO. 18372**

Background.

On June 26, 2012, the Board of Zoning Adjustment (the “Board” or “BZA”) approved Application No. 18372 of 2321 4th Street LLC, on behalf of H Street Community Development Corporation (the “Applicant”). The Applicant’s original request was for variances from the lot occupancy requirements under § 772, from the off-street parking requirements under § 2101.1, from the loading requirements under § 2201.1, and from the loading berth minimum vertical clearance height requirements under § 2201.6, to allow the construction of a new residential apartment building with ground floor retail and service uses in the C-3-A District at premises 2321 4th Street, N.E. Pursuant to 11 DCMR § 3103.2, the Board granted a variance from the lot occupancy requirements under § 772, a variance from the off-street parking requirements under §

¹ When the Applicant filed Application No. 18567, it submitted a motion for modification of the approved plans in Application No. 18372 as if it was a new application and consequently, it was given a new case number, Case No. 18567. However, it is also a continuation of Application No. 18372 insofar as it is a request to modify the plans approved in that case. The caption has been amended accordingly to reflect the revised application numbers

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BZA APPLICATION NO. 18567/18372-A
PAGE NO. 2

2101.1, a variance from the loading requirements under § 2201.1, and a variance from the loading berth minimum vertical clearance height requirements under § 2201.6, to allow the construction of a new residential apartment building with ground floor retail and service uses in the C-3-A District at premises 2321 4th Street, N.E. (Square 3629, Lot 808). Order No. 18372 approving the original request was issued July 3, 2012. (Exhibit 33, Application No. 18372.)

2013 Request for Modification of Approved Plans in Order No. 18372

On March 22, 2013, the Applicant in Case Nos. 18567/18372 submitted a request for approval of minor modifications to the plans approved by the Board pursuant to Order No. 18372, to allow the construction of a new residential building with ground floor retail and service uses at premises 2321 4th Street, N.E. (Square 3629, Lot 808) in the C-3-A District. (Exhibits 1 and 4, Application No. 18567.) In the modification request submitted as Application No. 18567, the Applicant asked that the entire record of Application No. 18372 be incorporated by reference. The record reflects that the request for modification was served on all of the parties to the case: the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 5E, the affected ANC, and the Single District Member, ANC 5E02. (Exhibit 1, Application No. 18567.)

In Application No. 18372, the Board approved a development of approximately 155,287 square feet of gross floor area, which will be comprised of 155-160 residential units and approximately 12,072 square feet of ground floor retail and service uses. The Board granted the Applicant flexibility to convert the proposed retail use into residential use in the future in the event that the retail spaces cannot be leased. The approved building included six stories constructed to a maximum building height of 64’-6”. The approved project also included 40 off-street parking spaces.

In Application No. 18567, the Applicant requested approval of modifications to the approved design in Application No. 18372 in order to have a greater likelihood of obtaining funding from D.C. Housing Finance Agency (“DCHFA”) and D.C. Department of Housing and Community Development (“DHCD”). The new design will reduce the building from six stories and 64’-6”, to five stories and 54’-10”, reduce the number of units from 155-160 units to 116-120 units, and maintain the residential parking ratio of one parking space for every four units, plus three spaces for retail, as previously approved by the Board, for a total of 32 parking spaces. The Applicant also proposes to increase the number of bicycle parking spaces, from 53 spaces to 60 spaces, although none are required. The breakdown of the units remains essentially the same, although the project would add four three-bedroom, two-bathroom units, where previously there were none. The modification is only required for the number of on-site parking spaces provided; no other relief is required. The Applicant indicated that the revised project does not create any new areas of zoning relief. (See, Exhibits 4, 29, and 31, Application No. 18567.)

Section 3129, specifically § 3129.3, indicates that a request for minor modification “of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application.” The motion was filed within the two-year period following the final order in the underlying case and thus is timely.

BZA APPLICATION NO. 18567/18372-A
PAGE NO. 3

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for a minor modification of plans. In the instant case, the Applicant chose to file an application and requested a hearing on the modification request at the outset, rather than seeking to be placed on the Board's meeting agenda as a minor modification of plans pursuant to § 3129.5. Thus, 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 Advisory Neighborhood Commission ("ANC") 5E, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 5E, which is automatically a party to this application.

ANC 5E submitted a resolution dated March 19, 2013, in support of the modification application. The ANC report indicated that at a duly noticed, regularly scheduled monthly meeting of the ANC at which a quorum was present, the ANC voted to support the request for modification unanimously. (Exhibit 26, Application No. 18567.)

The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 31, Application No. 18567.) The District Department of Transportation ("DDOT") also submitted a report of "no objection". (Exhibit 30, Application No. 18567.) Councilmember Kenyan R. McDuffie, who represents Ward 5 and in whose ward the project will be built, submitted a letter in support of the application. (Exhibit 32, Application No. 18567.)

Pursuant to § 3129.7, the Board convened a hearing on the requested modifications on June 11, 2013. Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129, that the requested modifications 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 modifications will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. No objections to the request for modification were submitted by any parties to the case. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant's proposed modifications are well supported, consistent with the requirements of § 3129.7 of the Zoning Regulations, and do not change the material facts the Board relied upon in approving the original application.

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. The waiver will not prejudice the rights of any party and is appropriate in this case.

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 for modifications of approved plans. Subsections 3129.6 and 3129.7 of the Zoning Regulations authorize the Board to grant, without a hearing, requests for modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.7.)

BZA APPLICATION NO. 18567/18372-A
PAGE NO. 4

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 in seeking a modification to the approved plans, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification is minor and no material facts have changed upon which the Board based its decision on the underlying application that would undermine its approval.

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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of approved plans is hereby **GRANTED, PURSUANT TO THE REVISED MODIFIED PLANS DATED MAY 28, 2013 AT EXHIBIT 29, TAB E (APPLICATION NO. 18567).**

In all other respects Order No. 18372 and the plans approved therein remain unchanged. The granting of the modifications approved pursuant to this Order does not extend or toll the validity of Order No. 18372.

VOTE on Modification of Approved Plans in Order No. 18372: **3-0-2**

(Lloyd J. Jordan, Anthony J. Hood, and Jeffrey L. Hinkle to APPROVE; S. Kathryn Allen, not present or voting; and 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 summary order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 24, 2013

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.