

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18453-A of Application of 1728 14th St. LLC, Motion for Modification of Approved Plans for Application No. 18453, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a special exception under subsection 411.11 from the roof structure requirement under subsection 411.5, to allow the construction of a mixed use retail/service/office building in the ARTS/C-3-A District at premises 1728 14th Street, N.W. (Square 207, Lot 120).

HEARING DATE (original application):	December 4, 2012
DECISION DATE (original application):	December 4, 2012
FINAL ORDER ISSUANCE DATE (Order No. 18453):	December 6, 2012
MODIFICATION HEARING/MEETING DATES:	June 11, June 25, and June 28, 2013

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS

Background

On December 4, 2012, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the application of 1728 14th St. LLC (the “Applicant”). The Applicant’s original request was for variances from the parking requirements under § 2101.1 and from the loading requirements under § 2201.1, and a special exception under § 411.11 from the roof structure requirement under § 411.5, to allow the construction of a mixed use retail/service/office building at 1728 14th Street, N.W. (Square 207, Lot 120) in the ARTS/C-3-A District. BZA Order No. 18453, approving the original request, was issued December 6, 2012. That order approved the requested variances and special exception relief to allow the construction of a mixed use retail/service/office building, per the approved plans at Exhibits 25 and 30, with conditions. (Exhibit 37.)

Request for Modification of the Approved Plans

The Applicant first submitted a request for minor modification on May 13, 2013. (Exhibit 41.) The Board determined at its public meeting of June 11, 2013 that this modification request was not minor and required a public hearing. Accordingly, the matter was scheduled for a June 25, 2013 hearing. All of the hearings to be held on June 25th were subsequently postponed and

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18453-A

EXHIBIT NO.

50

Board of Zoning Adjustment
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CASE NO.18453
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rescheduled to June 28, 2013 to allow for a quorum. The matter was heard and decided on June 28, 2013, and the Board granted the requested modification.

Per 11 DCMR § 3129.7 and 3129.8, on June 12, 2013, the Applicant submitted a Memorandum of Points and Authorities in Support of its request for a modification to the plans approved in BZA Order No. 18453. That Order granted variances from the parking requirements under § 2101.1 and from the loading requirements under § 2201.1, and a special exception under § 411.11 from the roof structure requirement under § 411.5, to allow the construction of a mixed use retail/service/office building at premises 1728 14th Street, N.W. in the ARTS/C-3-A District. In its motion the Applicant indicated that, pursuant to § 3129 of the Zoning Regulations, it was requesting modifications to the plans to reconfigure and thereby increase the square footage of the cellar by 108 square feet, to include the square footage of the cellar in the total square footage of the building, and to amend the parking calculations provided in the original application. The reason given for the modification is that after the BZA Order was issued in 2012, the structural engineer advised the Applicant that the location of the north wall of the cellar in the original plans was too close to the south wall of the adjacent building to ensure the integrity of that building, which is a fragile historic structure. In addition, the stairway configuration to the cellar has been reversed, so as to minimize the amount of excavation along the property line adjacent to the historic structure to the south. Further, there had been a misunderstanding in the parking calculations whereby the cellar floor area had not been included in the original plans, as required. The Applicant noted that the uses of that area will not generate any actual demand for parking. The Applicant's transportation expert witness prepared a supplemental report which concluded that the modifications do not change the expert's findings and conclusions in this case. (Exhibit 46.) The record indicates 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") 2F, the affected ANC, and the Single District Member. (Exhibits 41 and 46.)

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.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. OP submitted a timely supplemental report, dated May 28, 2013, recommending approval of the Applicant's request to modify the approved plans as these changes are "primarily to correct an error in calculation that would not have impacted OP's original analysis of the application." (Exhibit 42.) OP also testified that it would recommend approval of the modification request. The District Department of Transportation ("DDOT") submitted a timely supplemental report, dated June 11, 2013, recommending no objection to the requested modifications. The affected ANC, ANC 2F, submitted a timely report, dated June 19, 2013, recommending approval of the motion to modify the plans. The ANC report indicated that at a regularly scheduled, duly noticed public meeting, at which a quorum was present, ANC 2F

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voted unanimously by a vote of 8:0 to support the modifications to the approved plans in Case No. 18453. (Exhibit 47.)

No objections to the request for minor 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.

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. Subsection 3129.8 of the Zoning Regulations limits the scope of the hearing conducted to review a request for modification to the impact of the modification on the subject of the original application. Also, § 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.)

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 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, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 25, 30, AND 46**. In all other respects Order No. 18453 and the conditions therein remain unchanged.

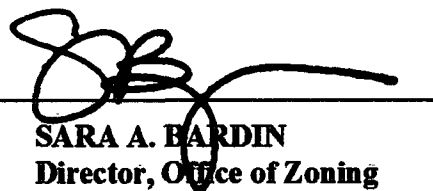
VOTE on Modification of Order No. 18453: **3-0-2**

(S. Kathryn Allen, Michael G. Turnbull, and Jeffrey L. Hinkle, to APPROVE; Lloyd J. Jordan, not present or voting; 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: July 3, 2013

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**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.**