

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18502-A of Jemal's Gram LLC, Motion for Minor Modification of Approved Plans in Order No. 18502, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow multiple roof structures not meeting the normal setback requirements under §§ 411.11 and 770.6, and to extend the zoning controls under § 2514.2, to construct an eleven story mixed-use office, retail and service building in the DD/C-2-C and DD/C-3-A Districts at premises 655 New York Avenue, N.W. (Square 450, Lots 4, 6, 21, 33, 34, 40, and 803-818).¹

The application, as amended, is pursuant to 11 DCMR § 3104.1, for a special exception to extend the zoning controls under § 2514.2, to construct an 11-story mixed-use office, retail and service building in the DD/C-2-C and DD/C-3-A Districts at premises 655 New York Avenue, N.W. (Square 450, Lots 4, 6, 21, 25, 33, 34, 39, 40, 800, 803-818, 825, and 830-832).

HEARING DATE (Application No. 18502)	February 5, 2013
DECISION DATE (Application No. 18502):	February 5, 2013
FINAL ORDER ISSUANCE DATE (No. 18502):	February 6, 2013
MINOR MODIFICATION DECISION DATE:	November 3, 2015

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

SELF-CERTIFIED

¹ According to the application for minor modification and the revised plans submitted with that application, the development no longer requires a special exception for the penthouse setback that was previously granted by the Board. Also, the request for modification of the approved plans would incorporate the additional land owned the Applicant in Square 450. This additional land is comprised of Lots 25, 39, 800, 825, 830-832 and occupies the remainder of Square 450 to the east of the original site. (Exhibit 3.) The Applicant submitted an amended self-certification with the modification application which removed the request for special exception from § 411.11. (Exhibit 3D.) The caption has been amended to reflect these changes.

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The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6 in the record of Application No. 18502.) An amended self-certification form was submitted to the record in Case No. 18502-A. (Exhibit 3D.)

BACKGROUND

On February 5, 2013, the Board of Zoning Adjustment (“Board” or “BZA”), by a vote of 4-0-1, approved the Applicant’s original request for special exception approval to construct an 11-story mixed-use office, retail and service building in the DD/C-2-C and DD/C-3-A Districts. In BZA Order No. 18502 (the “Order”), the Board approved the Applicant’s original request, pursuant to 11 DCMR § 3104.1, for a special exception to allow multiple roof structures not meeting the normal setback requirements under §§ 411.11 and 770.6, and to extend the zoning controls under § 2514.2, to construct an 11-story mixed-use office, retail and service building in the DD/C-2-C and DD/C-3-A Districts at premises 655 New York Avenue, N.W. (Square 450, Lots 4, 6, 21, 33, 34, 40, and 803-818). The Order approving the original request was issued on February 6, 2013. (Exhibit 3A.) That approval was conditioned on the Applicant carrying out the construction in accordance with the architectural drawings included in the application at Exhibit 10 in the record of Case No. 18502.

Order No. 18502 became effective on February 16, 2013, and included a requirement that the Applicant submit a building permit application within two years of the effective date. The Applicant timely submitted its building permit application to the Department of Consumer and Regulatory Affairs (“DCRA”) on January 8, 2015. (Exhibit 3B.) That building permit application is at DCRA pending approval.

MOTION FOR MINOR MODIFICATION OF APPROVED PLANS

On October 16, 2015, the Applicant submitted a request for a minor modification to the Board’s previous approval, in particular of the approved plans, in Application No. 18502 and, pursuant to 11 DCMR § 3100.5, also asked for a waiver of the two-year deadline for filing such a request. (See, Exhibits 1 and 3-3E in Case No. 18502-A.)

In Application No. 18502-A, the Applicant requested modification of the approved plans to incorporate the additional land owned the Applicant in Square 450. This additional land, comprised of Lots 25, 39, 800, 825, 830-832, occupies the remainder of Square 450 to the east of the original site. As a result of the proposed expansion, the land area for the project will increase to approximately 96,992 square feet. On this enlarged building site, the Applicant would expand the office building design that was approved by the Board in Order No. 18502² to accommodate a potential anchor tenant for the expanded building. The building design originally approved in Order No. 18502 has been minimally modified, along its east elevation, in order to allow for this

² The design was also reviewed and approved by the Historic Preservation Review Board.

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expansion. The Applicant submitted a booklet of drawings with both the approved drawings and proposed revised drawings with Application No. 18502-A. (Exhibit 3C1-3C3.)

In the application for minor modification, the Applicant indicated that no additional zoning relief is needed to accomplish the expanded design. Further, the Applicant noted that under the revised design, the development no longer would require the special exception relief related to penthouse setback that was previously granted by the Board.

Based on the revised self-certification in Exhibit 3D accompanying the modification application, the caption in this case has been amended in this Order to reflect the relief being granted and all of the Lots in Square 450 that are part of the subject property, including the additional lots added by the expansion of the project. This application (No. 18502-A) is considered a continuation of Case No. 18502.

Waiver of Two-Year Filing Deadline.

Subsection 3129.3 of the Zoning Regulations 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 for minor modification was filed beyond the two-year period cited in § 3129.3; consequently, the Applicant requested a waiver of that deadline, pursuant to 11 DCMR § 3100.5. The Applicant stated that the timing of the request related to the recent acquisition by the Applicant of the property in the eastern portion of Square 450 to allow for the proposed expansion and to accommodate an important anchor tenant that was not foreseen at the time of the original approval. Finding that the recent acquisition of new land on the eastern side of the project site justified the waiver of the time requirement, the Board granted the waiver. The waiver would not prejudice the rights of any party and is not prohibited by law.

Determination That the Modification Was Minor.

Subsection 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.) The Board found that no material facts upon which the Board had based its original approval of the application were changed by the expanded design. Rather, the redesign eliminated the need for one of the special exceptions already approved for penthouse setbacks.

The Merits of the Minor Modification of Approved Plans.

The Applicant's request for a minor modification of Order No. 18502 complies with 11 DCMR § 3129. Subsection 3129.2 states that "[t]he Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested." The Applicant's request for minor modification met all of these requirements.

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Pursuant to § 3129.4, all requests for minor modifications of plans shall be served on all other parties to the original application and those parties are allowed to file comments within 10 days of the filed request for minor modification. The Applicant provided proper and timely notice of the request for minor modification by First Class mail to Advisory Neighborhood Commission ("ANC") 6E, by Hand Delivery to Single Member District ANC 6E-04, and to the Office of Planning. The site of this application is located within the jurisdiction of ANC 6E³, which is automatically a party to this application. An ANC report dated October 9, 2015, was submitted to the record, recommending approval of the request for minor modification to Order No. 18502. The ANC's report stated that at a regularly scheduled and properly noticed meeting on October 6, 2015, at which a quorum was present, the ANC voted (6 in favor, 0 opposed, and 0 abstentions) in support of the modification application. (Exhibit 3E.)

There was no OP report in the record.

The only parties to the case were the ANC and the Applicant. No parties appeared at the public meeting in opposition to the application. 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 minor modification of approval, including approved plans, in Case No. 18502. Based upon the record before the Board and having given great weight to the ANC report filed in this case, the Board concludes that in seeking a minor modification to the original approval and plans in Case No. 18502, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts 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 § 3125.5, 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 this application for modification and amendment of the Board's approval in Application No. 18502 is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS IN EXHIBITS 3C1-3C3**.

In all other respects, Order No. 18502 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON FEBRUARY 5, 2013: 4-0-1

(Lloyd J. Jordan, Nicole C. Sorg, Anthony J. Hood, and Jeffrey L. Hinkle to Approve. The third mayoral member vacant.)

³ The development was previously in the jurisdiction of ANC 2E, prior to redistricting.

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VOTE ON MODIFICATION OF APPROVAL AND AMENDED APPLICATION: 3-0-2⁴
(Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to Approve; Frederick L. Hill, not present or participating; one Board seat 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: November 5, 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.

⁴ Board Members Heath and Miller read the record in order to participate in this application.