

AMENDED ATTACHMENT A
TO APPLICANTS' FORM 150 MOTION TO WAIVE TIME LIMITATION
Case No. 18514

Applicants Andrew Daly and Patricia Jordan (the "Applicants") submit this Motion to waive the time limitation of § 3129.3 for filing a Motion to Modify the plans approved by the Board (the "Motion to Modify"). The events of the past eight months have necessitated the Motion to Modify and prevented the Applicants from fully modifying their plans until now. The Applicants and their professionals have been developing the modified set of plans (the "Final Plans") during that time, and most intensively over the past 90 days. The Motion to Modify could not reasonably have been made any sooner.

I. Background

The Applicants seek to build a garage behind their row-home located at 1120 Park Street, N.E., Washington, D.C., but such construction has been halted since the July 2015. The Summary Order granting the Board's approval for the Applicants' plans was issued in this case on October 15, 2013. Thereafter, the Applicants proceeded to obtain a Garage Permit (No. G1500009) from DCRA, which was issued on May 20, 2015. Upon commencement of the construction, conditions in the field created a dispute between the Applicants and their next-door neighbor, Patricia Schaub ("Ms. Schaub") of 1118 Park Street N.E. Ms. Schaub soon filed a lawsuit in the Superior Court of the District of Columbia claiming, *inter alia*, that the Applicants' construction had damaged her property. In particular, Ms. Schaub's home includes a garage that encroaches on the Applicants' property, which she alleges would be endangered by the Applicants' construction of the garage. Ms. Schaub also appealed the Garage Permit. See BZA Case No. 19092. That Appeal has since been dismissed, as a result of a settlement agreement entered into between the Applications and Ms. Schaub (the "Settlement Agreement")—as part of which the Applicants surrendered their previously issued Garage Permit. The Motion to Modify is submitted to ensure the Summary Order is square with the Applicants' Final Plans.

II. The Motion for Minor Modification Could Not Have Been Submitted in the Time Limit Set Out in §3192.3

Since the Summary Order, many events have caused minor modifications to the construction plans—although the Applicants have never intended to build anything other than that which the authorities have granted express approval. These minor modifications came about as a result of Historic Preservation Office's review, litigation brought by Ms. Schaub (which has been dismissed without prejudice, pursuant the Settlement Agreement), and advice of structural engineers hired in connection with the litigation. The minor modifications include an additional inch in both the length and width of the garage, a different design for the roof deck and stairs

leading to it, the addition of a sink, new construction details for the walls, and the garage's exterior materials.

The Applicants have been quite busy since construction began in June 2015 and was soon halted. Litigation commenced in July 2015. In connection therewith, the Applicants have retained counsel and three structural engineers, who have analyzed the garage plans and the claims of property damage made by Schaub. During this time, the Applicants and their undersigned counsel have worked diligently to resolve the litigation and the BZA Appeal filed by Ms. Schaub, which has entailed many, meetings, hearings, filings, review of engineering analysis, and other time-consuming work. The Final Plans are the result of this work, and reflect construction methods that address several issues raised by Ms. Schaub, the Applicants' professionals, and the Historic Preservation Office.

Several occurrences have prevented the filing of the Motion to Modify until this time. First, a "test pit" that was dug at the garage site on October 12, 2015, which provided information necessary for developing the modified plans. Subsequent to that investigation, the Applicants were forced to terminate their prior structural engineer and hire a new engineer, Structura, Inc., who has prepared the engineering details for the new plans, submitted with the Motion to Modify. In December, DCRA informed Ms. Schaub that her garage lacked the necessary frost footer for (at least) the wall adjacent to the Daly's proposed garage wall, meaning that wall would be condemned if it was not properly underpinned and supported. At that time, DCRA proposed and the parties began to discuss four potential options: building a new party wall on the correct property line; build a new party wall where the Schaub wall is present; or build two separate walls on the correct property line; or build a new party wall on the correct property line.

Given such uncertainty and need for discussion with Schaub, there was no way the Applicants could have developed and submitted final modified plans at that time. The Applicants and Ms. Schaub settled their dispute on the date of the originally-scheduled hearings on the Applicant's original Motion to Modify and on Ms. Schaub's Appeal—with the Board's very kind indulgence. The resulting Settlement Agreement provided that Ms. Schaub would dismiss her lawsuit with prejudice, withdraw her Appeal with prejudice, and consent to the Applicant's Final plans, provided they were the height of the garage shown in the plans attached to the Summary Order in this case. Ms. Schaub also agreed not to oppose this Motion to Modify. In return, the Applicants agreed to forfeit their previously-issued Garage Permit and granted Ms. Schaub an Easement for the land on which her garage encroached, so she could properly underpin the garage. The parties also entered into a Mutual Release agreement. The result of that resolution, for the purposes of this Motion, is that the Final plans reflect a garage with roof deck that is one foot shorter than the plans submitted with the original Motion to Modify (referred to therein as the "Modified Plan").

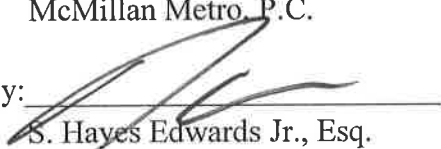
After entering into the Settlement Agreement, the Applicants returned to their efforts to secure final approval for their garage. First, they received the approval of their ANC (6A) for both the zoning and historic preservation aspects of their plans. The ANC met on March 10, 2016 and issued its letters of support the following day. Next, the Applicants went before HPRB on March 24, 2016, where their plans were approved pursuant to minor suggested changes. The one change recommended by HPRB which affects massing (stepping back the roof-deck from the alley), is now embodied in the Final Plans.

The lengthy, and necessary, procedures described above have prevented the Motion to Modify from being filed until now. The Final Plans address all possible issues that have arisen since construction began and are based on information obtained and events occurring since then. Accordingly, the Motion to Modify could not possibly have been submitted with the limitations of §3129.3.

WHEREFORE, the Applicants request that the Board waive the § 3129.3 time limitation for filing their Motion to Modify and grant them leave to bring the Motion to Modify at this time.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amended Exhibit A to Applicants' Motion to Waive the Limitations of § 3129.3 was filed electronically with the Office of Zoning and was served by electronic mail as indicated, this 11th day of April, 2016, upon the following:

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