

INFORMATION

A motion is a procedural device requested by a party to the case to bring a limited, contested issue before the Zoning Commission (ZC) or the Board of Zoning Adjustment (BZA) for decision. A party may submit a motion at any point; however it is recommended that motions be submitted ahead of time for consideration by the ZC or BZA.

Use this form if you are a party to a case and you would like to request that the Zoning Commission or Board of Zoning Adjustment entertain your motion. For example:

- a). Motion to continue or dismiss; or
- b). Motion to reopen a closed record to accept a document.

A motion will be entertained by the Commission or Board at a meeting or as a preliminary matter at a hearing. At that time a decision will be rendered. Please note, in the case of a request to reopen the record, pursuant to 11 DCMR §§3024.1 and 3121.9, the request will be presented to the Chair for consideration. The request must demonstrate good cause and the lack of prejudice to any party. If granted, the materials shall be entered into the record.

INSTRUCTIONS

Any Motion as provided by the District of Columbia Zoning Regulations (11 DCMR) that is not completed in accordance with the following instructions shall not be accepted:

1. Forms must be completely filled out and must be typewritten or printed. All information shall be furnished by the Maker of the Motion or Request. If additional space is necessary, use separate sheets of 8 ½" x 11" paper to complete the form (drawings and plans may be no larger than 11" x 17").
2. On this sheet and/or on a separate sheet of 8 ½" x 11" paper, state:
 - Case Number;
 - Name of Movant;
 - The relief you are requesting;
 - Each and every reason you believe you are entitled to relief and why the ZC or BZA should grant your motion, including relevant references to the Zoning Regulations or Map;
 - Certificate of Service;
 - Signature and Date; and
 - Contact Information.
3. Submit the required forms and accompanying documents to the Office of Zoning using:
 - The Interactive Zoning Information System at www.dcoz.dc.gov for electronically filed cases;
 - In person or by US mail at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; or
 - By email to zcsubmissions@dc.gov for the ZC or bzsubmissions@dc.gov for the BZA.
4. At the time of filing, Makers of Motions or Requests are required to serve all Applicants, Petitioners, Appellants, Parties, and/or Intervenor, and the Office of Planning in the above-referenced ZC or BZA case via either mailed letter, hand-delivery, or electronic mail.



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.

District of Columbia Office of Zoning
441 4th Street, N.W., Ste. 200 S, Washington, D.C. 20001
(202) 727 6311 * (202) 727 6072 fax * www.dcoz.dc.gov * dcoz@dc.gov

Board of Zoning Adjustment
District of Columbia
CASE NO. 18514A
EXHIBIT NO. 4



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 18514

Motion of: ☒ Applicant ☐ Petitioner ☐ Appellant ☐ Party ☐ Intervenor ☐ Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Waive the section 3129.3 time limitation for filing a Motion for Minor Modification

Points and Authorities:

Please state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form.

Attachment A

CERTIFICATE OF SERVICE

I hereby certify that on this 2 2 day of January, 2016

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

☐ Mailed letter ☐ Hand delivery ☒ E-Mail ☐ Other _____

Signature: S. Hayes Edwards Jr. / MCM

Print Name: S. Hayes Edwards Jr. on behalf of Andrew Daly & Patricia Jordan

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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 grounds for this Motion are that events of the past six months have necessitated the Motion to Modify and prevented the Applicants from fully modifying their plans. The Applicants and their professionals have been developing the modified set of plans (the "Modified Plans") during that time, and most intensively over the past 30 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. In that Appeal, she alleges, *inter alia*, that the Garage Permit was improperly issued because the plans submitted and approved by DCRA were not identical to those approved in the Summary Order in this case. The Motion to Modify is submitted to ensure the Summary Order is square with the Applicants' final Modified 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, 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 Modified Plans are the result of this work, and reflect construction methods that address Ms. Schaub's alleged concerns, other issues identified by the Applicants' professionals, and revisions intended to secure approval from 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. In the weeks that followed, Ms. Schaub informed the Applicants that she would be unilaterally seeking to underpin her garage wall in its present location, rejecting the other three options discussed at the December site meeting. In fact, Ms. Schaub has yet to present the Applicants with her plans for that work, as she stated she would, which the Applicants need in order to decide where and how the wall should be constructed. Yet despite her omission, the Applicants have instructed their professionals to develop final plans to build the wall in the originally planned location.

The Modified 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.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing 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 22nd of January, 2016, upon the following:

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