

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18558/17809-C of Application of Jemal's Uline LLC, Motion for Minor Modification of Approved Plans for Application Nos. 18558 / 17809, pursuant to § 3129 of the Zoning Regulations, for approval of interior and exterior modifications to the plans approved by the Board of Zoning Adjustment pursuant to Order No. 17809, to permit the expansion and renovation of the existing Uline arena and ice house in the C-M-1 and C-M-3 Districts at premises 1130-1150 3rd Street, N.E. (Square 748, Lots 8-11, 30-34, 42, 43, 802, 808-812).¹

The original application (No. 17809) was pursuant to 11 DCMR § 3104.1 for special exception relief from parking requirements for historic structures under § 2120 and a special exception from the roof structure number and setback requirements under § 411, to permit the expansion and renovation of the existing Uline arena and ice house in the C-M-1 and C-M-3 Districts at premises 1130-1150 3rd Street, N.E. (Square 748, Lots 8-11, 42, 43, 802, 808-812).

HEARING DATE (Orig. Application):	September 16, 2008
DECISION DATE (Orig. Application):	September 16, 2008
FINAL ORDER ISSUANCE DATE (No. 17809):	October 2, 2008
DECISION ON 1ST MOTION TO EXTEND ORDER:	September 28, 2010
ISSUANCE DATE OF 1ST EXTENSION (No. 17809-A):	October 1, 2010
DECISION ON 2ND MOTION TO EXTEND ORDER:	October 23, 2012
ISSUANCE DATE OF 2ND EXTENSION (No. 17809-B):	October 24, 2012
MODIFICATION (No. 18558) HEARING / DECISION DATE:	June 4, 2013

**SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS IN
ORDER NO. 17809**

Background.

¹ When the Applicant filed Application No. 18558, it submitted a motion for modification of the approved plans in Application No. 17809 as if it was a new application and consequently, it was given a new case number, Case No. 18558. However, it is also a continuation of Application No. 17809 insofar as it is a request to modify the plans approved in that case. Given there are two prior cases for time extensions in Case No. 17809, this case is now designated Application No. 18558/17809-C. Also, in Application No. 18558/17809-C, the Applicant has amended the original application by adding Lots 30-34 to the subject property. The caption has been amended accordingly to reflect both the revised application numbers and the addition of Lots 30-34. Finally, it is duly noted that Order No. 17809 was approved subject to five conditions which remain in effect, and the Board has conditioned this application, Application No. 18558/17809-C, on six additional conditions

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18558/17809-C
EXHIBIT NO. 35

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On September 16, 2008, the Board of Zoning Adjustment (the "Board" or "BZA") approved Application No. 17809 of Jemal's Uline LLC (the "Applicant"). The Applicant's original request was for special exception relief from off-street parking requirements for historic structures under § 2120 and from the roof structure number and setback requirements under § 411, to permit the expansion and renovation of the existing Uline arena and ice house in the C-M-1 and C-M-3 Districts at premises 1130-1150 3rd Street, N.E. Pursuant to 11 DCMR § 3104.1, the Board granted a special exception from parking requirements for historic structures under 11 DCMR § 2120 and a special exception from the roof structure number and setback requirements under 11 DCMR § 411, in order to expand and renovate the existing Uline arena and ice house in the C-M-1 and C-M-3 Districts at premises 1130-1150 3rd Street, N.E. (Square 748, Lots 8-11, 42, 43, 802, 808-812).² Order No. 17809 approving the original request subject to five conditions was issued October 2, 2008. (Exhibit 32, BZA Order No. 17809, Application No. 17809.)

On April 6, 2010, the Board received a request from the Applicant in Case No. 17809 for a two-year extension, pursuant to 11 DCMR § 3130, in the authority granted in Order No. 17809, which was then due to expire on October 2, 2010. At its decision meeting on September 28, 2010, the Board found that the requirements of § 3130 were met and granted the Applicant a two-year extension of BZA Order No. 17809, until October 2, 2012. (Exhibit 36, BZA Order No. 17809-A, Application No. 17809.)

On August 31, 2012, the Board received a request from the Applicant in Case No. 17809 for a second two-year extension of the authority granted in the original BZA Order, upon a showing of good cause, pursuant to 11 DCMR § 3130. That Order was due to expire on October 2, 2012. At its decision meeting on October 23, 2012, the Board found that the requirements of § 3130 were met and granted the Applicant a second two-year extension of BZA Order No. 17809, until October 2, 2014. (Exhibit 42, BZA Order No. 17809-B, Application No. 17809.)

2013 Request for Modification of Approved Plans in Order No. 17809

On March 8, 2013, the Applicant in Case Nos. 18558/17809 submitted a request for approval of interior and exterior modifications to the plans approved by the Board pursuant to Order No. 17809, to permit the expansion and renovation of the existing Uline arena and ice house at premises 1130-1150 3rd Street, N.E. (Square 748, Lots 8-11, 30-34, 42, 43, 802, and 808-812) in the C-M-1 and C-M-3 Districts. (Exhibit 1, Application No. 18558.) In the modification request submitted as Application No. 18558, the Applicant asked that the entire record of Application No. 17809 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") 6C, the affected ANC, and the Single District Member. (Exhibit 1, Application No. 18558.)

In Application No. 17809, the Board approved a development of a total of 280,765 square feet for office uses, 182 off-street parking spaces, and loading facilities. The initial approved relief permitted the conversion of the

² As mentioned in footnote 1, the original application did not include Lots 30-34, but these lots have now been made part of the application, as amended and modified.

former arena and ice house to four floors of office space inside the arena, with a new structure at the southeast corner of the property. Additionally, two new floors would be built upon the remaining portion of the ice house located next to the arena. The ice house was originally redesigned to be a four-story building, but would be reduced to three stories in the modified plans. The revisions to the approved design also include the introduction of retail space at the ground level of the arena and ice house, previously assigned to office space and thereby reduce the area of office space. The revised plans also relocate the parking from a two-level below grade structure to a four-level, above grade, screened parking structure for 176 spaces (where 162-182 spaces were approved per Order No. 17809).

Since that initial approval of the project, the owner has removed the below grade parking so as to reduce excavation beneath the Arena and to reduce modifications to the existing foundation structure. According to the record, the parking garage relocation resulted in a reduction of the rentable square footage by removing the previously approved new ice house addition on the southeast corner of the site. The Applicant also requested approval to modify the building's design to introduce retail uses to the base of the office portion and thereby create a mixed use development, to reduce and shift office space, and to relocate parking to a screened parking structure. (Exhibit 27, Application No. 18558.)

The Applicant indicated that the revised project does not create any new areas of zoning relief. In Application No. 17809, the Board granted special exception relief to reduce the off-street parking requirements where 243 spaces had been required and 162-182 would be provided as well as granted relief from the roof structure number and setback requirements under § 411. In the modified design, the project would continue to require roof structure number and setback relief, although the specific configuration would change. The project also would continue to require relief to reduce the off-street parking requirements, but in the modified design 202 spaces were required and 176 would be provided. Thus, the degree of parking relief needed is reduced in the current design. Also the façade along Third and M Streets has been changed to encompass more retail. (See, Exhibit 27, Application No. 18558.)

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 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") 6C, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 6C, which is automatically a party to this application.

ANC 6C submitted a letter dated May 13, 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

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by a vote of 6:0:0. (Exhibit 26, Application No. 18558.)

The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 28, Application No. 18558.) The District Department of Transportation ("DDOT") also submitted a report recommending approval of the application, subject to the inclusion of conditions. (Exhibit 32.) The Capitol Hill Restoration Society submitted a letter in support of the application. (Exhibit 30.)

Pursuant to § 3129.7, the Board conducted a hearing on the requested modifications on June 4, 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.)

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 PLANS DATED JUNE 4, 2013 AT**

EXHIBIT 31 (APPLICATION NO. 18558), AND SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Applicant shall have the flexibility to provide 162 to 176 off-street parking spaces.
2. The Applicant shall have the flexibility to modify the design and internal layout of the building to address any comments from the Historic Preservation Office and the Historic Preservation Review Board during final review of the project so long as the modifications do not require any additional areas of zoning relief.
3. The Applicant shall coordinate with DDOT to provide adequate access and egress on Congress Street from the Applicant's parking structure.
4. The Applicant shall work with DDOT to develop a loading management plan that identifies truck routing options, limits delivery times, and limits the size of trucks accessing the site to 40 feet. The Applicant shall assign a loading management coordinator to assist with truck loading activities.
5. The Applicant shall provide in the office portion of the building a transportation information screen that provides information regarding train, bus, and BikeShare schedules and availability.
6. The Applicant shall provide showers and lockers for bike users in the area shown on the approved plans.

In all other respects Order No. 17809 and the conditions therein remain unchanged. The granting of the modifications approved pursuant to this Order does not extend or toll the validity of Order No. 17809.

VOTE on Modification of Order No. 17809: 4-0-1

(Lloyd J. Jordan, Peter G. May, S. Kathryn Allen, and Jeffrey L. Hinkle³, to APPROVE; 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.

³ Each of the sitting and voting Board members indicated on the record that they had not participated in the original case, No. 17809, but each had reviewed the entire record of that case prior to deliberations on the modification request.

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ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 13, 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.**