

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19026-A of 1300 H Street, NE LLC, Motion for Minor Modification, pursuant to § 3129 of the Zoning Regulations.

The original application (No. 19026), as amended, was pursuant to 11 DCMR §§ 3103.2 and 3104.1 for a variance from the off-street parking requirements under § 2101.1 and special exceptions from the H Street Neighborhood Commercial Overlay requirements under 11 DCMR §§ 1320.4(f), 1324.1 and 1325.1, to construct a new four-story mixed-use building with ground floor retail containing 36 residential dwelling units in the HS-A/C-2-A District at premises 1300 H Street, N.E. (Square 1026, Lots 97 - 103).

HEARING DATE (Application No. 19026):	July 7, 2015
DECISION DATE (Application No. 19026):	July 7, 2015
FINAL ORDER ISSUANCE DATE (Application No. 19026):	July 15, 2015
MINOR MODIFICATION DECISION DATE:	March 1, 2016

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 14 in the record of Application No. 19026.)

BACKGROUND

On July 7, 2015, the Board approved Application No. 19026 of 1300 H Street, NE LLC (“the Applicant”), pursuant to §§ 3103.2 and 3104.1, for a variance from the off-street parking requirements under § 2101.1 and special exceptions from the H Street Neighborhood Commercial Overlay requirements under 11 DCMR §§ 1320.4(f), 1324.1 and 1325.1, to construct a new four-story mixed-use building with ground floor retail containing 36 residential dwelling units in the HS-A/C-2-A District. The original application also had asked for special exception relief from roof structures requirements under §§ 411.5 and 770.6, but the Applicant withdrew that request and amended the application in advance of the public hearing on the case.

MOTION FOR MINOR MODIFICATION OF APPROVED PLANS

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EXHIBIT NO.12

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On February 19, 2016, the Applicant submitted a request for minor modification of the plans approved by the Board of Zoning Adjustment ("Board") in order to modify the building's penthouse by adding a second stair tower and incorporating multiple penthouse heights. (Exhibit 1.) The Applicant enclosed proposed plans with its request. (Exhibit 7.)

The Applicant indicated that the proposed modifications comply with the Zoning Regulations regarding penthouse structures, as amended by Zoning Commission Order No. 14-13. In addition, the Applicant provided testimony to confirm that the habitable penthouse space would comply with the Inclusionary Zoning requirements. No amendment to the relief sought in Application No. 19026 is requested.

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 modified penthouse design.

The Merits of the Minor Modification of Approved Plans

The Applicant's request for a minor modification of Order No. 19026 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.

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 site of this application is located within the jurisdiction of Advisory Neighborhood Commission ("ANC") 6A, which is automatically a party to this application. The ANC submitted a report dated February 16, 2016, which stated that at a regularly scheduled and properly noticed meeting on February 11, 2016, at which a quorum was present, the ANC voted 8-0 in support of the modification request. (Exhibit 8.) The Office of Planning ("OP") submitted a timely report recommending approval of the request. (Exhibit 10.)

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 modification of approval. 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 original approval in Case No. 19026, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval. The only parties to the case were the ANC and the

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Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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 of the Board's approval in Application No. 19026 is hereby **GRANTED, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 7.**

In all other respects, Order No. 19026 remains unchanged.

VOTE: 3-0-2 (Marnique Y. Heath, Frederick L. Hill, and Michael G. Turnbull to Approve; Jeffrey L. Hinkle not participating and 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 order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 4, 2016

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.