

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19052-A of Josh Green, Motion for Modification of Approval in Order No. 19052, pursuant to § 3129 of the Zoning Regulations, and amended application.

The original application (No. 19052) was pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, to construct a deck with staircase to an existing one-family dwelling in the R-3 District at premises 2905 28th Street N.W. (Square 2106, Lot 89).

NOTE: In this Order, the application is amended to include the relief already approved in the original application as well as a request for special exception relief under § 223, not meeting the rear yard requirements under § 404. The revised caption with the amended relief reads as follows:

Application No. 19052-A of Josh Green, as amended, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and not meeting the rear yard requirements under § 404, to construct a deck with staircase to an existing one-family dwelling in the R-3 District at premises 2905 28th Street N.W. (Square 2106, Lot 89).

HEARING DATE (Application No. 19052)	July 21, 2015
DECISION DATE (Application No. 19052):	July 21, 2015
FINAL ORDER ISSUANCE DATE (No. 19052):	July 22, 2015
HEARING DATE FOR MODIFICATION:	October 20, 2015
MODIFICATION DECISION DATE:	October 20, 2015

SUMMARY ORDER ON REQUEST FOR MODIFICATION AND AMENDED APPLICATION

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5 in the record of Application No. 19052.)

BZA APPLICATION NO. 19052-A
PAGE NO. 2

BACKGROUND

On July 21, 2015, 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 a deck with staircase to an existing one-family dwelling in the R-3 District. The original application (BZA No. 19052) was pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, to construct a deck with staircase to an existing one-family dwelling in the R-3 District at premises 2905 28th Street N.W. (Square 2106, Lot 89). BZA Order No. 19052 (the “Order”), approving the original request, was issued on July 22, 2015. (Exhibit 31 in the record of Application No. 19052.) Subsequently, the Department of Consumer and Regulatory Affairs (“DCRA”) informed the Applicant that relief is also needed for rear yard (20 ft. minimum required; 15.7 ft. proposed).

MOTION FOR MODIFICATION OF APPROVAL AND AMENDED APPLICATION

On August 26, 2015, the Applicant submitted a request for a modification to the approval granted in Application No. 19052 and to amend the relief requested in Application No. 19052 to add special exception relief from the rear yard requirements under § 404. (Exhibit 1 in Case No. 19052-A.) The plans have not changed from those approved in Application No. 19052. The caption in this case has been amended in this Order to reflect all the relief being granted, both in Application No. 19052 and in this application. This application is considered a continuation of No. 19052, and amends that case to include the relief approved in the original application together with the additional relief requested.

Pursuant to § 3129.7 of the Zoning Regulations (Title 11), requests to modify other aspects of a Board order than the approved plans may be made at any time, but require a hearing. Subsection 3129.8 limits the scope of the hearing conducted to review a request for modification to the impact of the modification on the subject of the original application. Also, § 3129.6 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. No material facts have changed from the original application. The Board held a public hearing on October 20, 2015 on this motion, pursuant to § 3129.7, and heard the request for a modification to the approval for special exception.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. The Board provided proper and timely notice of the public hearing on this application for modification and amended relief by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 3C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a report of no objection, which stated that at a regularly scheduled and properly noticed meeting on September 21, 2015, at which a quorum was present, the ANC voted not to object to the modification application. (Exhibit 18.)

BZA APPLICATION NO. 19052-A
PAGE NO. 3

The Office of Planning (“OP”) submitted a timely report recommending approval of the request for special exception relief pursuant to § 223 from the rear yard requirement at § 404 (Exhibit 21) and testified in support of the application at the hearing. OP stated that the Applicant applied for building permits after receiving the Board’s Order No. 19052 and on August 18, 2015, was informed by DCRA that the rear yard was calculated incorrectly and that rear yard relief was also required. The Applicant filed the motion for modification and amended application on August 26, 2015.

The District Department of Transportation (“DDOT”) submitted a report of no objection. (Exhibit 19.)

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. 19052, 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.

Also as directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception for a special exception under § 223, not meeting the rear yard requirements under § 404, to construct a deck with staircase to an existing one-family dwelling in the R-3 District. The only parties to the case were the ANC and the 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.

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 the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, and 404 that the requested relief 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 relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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. 19052 is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN EXHIBIT 3.**

In all other respects, Order No. 19052 remains unchanged.

BZA APPLICATION NO. 19052-A
PAGE NO. 4

VOTE ON ORIGINAL APPLICATION ON JULY 21, 2015: 4-0-1

(Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Robert E. Miller to Approve; Frederick L. Hill, not present or participating.)

VOTE ON MODIFICATION OF APPROVAL AND AMENDED APPLICATION: 4-0-1

(Marnique Y. Heath, Robert E. Miller, Frederick L. Hill, and Jeffrey L. Hinkle to Approve; 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: October 23, 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.