

A Motion for Minor Modification is a procedural device requested by a party to the case to bring "modifications that do not change the material facts upon which the Board based its original approval of the application" before the Board of Zoning Adjustment (BZA), pursuant to 11 DCMR §3129.6. Typically, minor modifications relate to technical corrections or inadvertent mistakes to approved final orders. Motions for Minor Modifications are placed on the Consent Calendar pursuant to § 3129.

INSTRUCTIONS

Any Motion for Minor Modification 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. At the time of filing this application before the BZA, the Maker of the Motion shall complete and submit a Form 126 - Board of Zoning Adjustment Fee Calculator and pay a filing fee in accordance with the BZA Schedule of Fees (11 DCMR § 3180), if applicable. (Check or money order is payable to the "D.C. Treasurer"; cash and credit/debit card payments will not be accepted.)
2. Forms must be completely filled out and must be typewritten or printed. All information shall be furnished by the Maker of the Motion for Minor Modification. 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").
3. On a separate sheet of 8 ½" x 11" paper, state each reason why the Board of Zoning Adjustment (BZA) should grant your Motion for Minor Modification.
4. Submit one (1) original and fifteen (15) copies of all required forms and accompanying documents in person to the Office of Zoning at 441 4th Street, NW Suite 200-S, Washington, DC 20001.
5. At the time of filing, the Maker of the Motion is required to serve all Applicants, Appellants, Parties, Intervenors, and the Office of Planning on the above-referenced BZA case.



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.2



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA



FORM 152 – MOTION FOR MINOR MODIFICATION

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 for Minor Modification to:

☒ Final Order

☐ Approved Plan

☐ Amount of Relief

☐ Other _____

Points and Authorities:

Below and/or on a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map.

See Attachment A.

CERTIFICATE OF SERVICE

I hereby certify that on this

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day of

January

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I served a copy of the forgoing motion or request to each Applicant, Petitioner, Appellant, Party, Intervenor, and the Office of Planning on

the above referenced BZA case via:

☐ Mailed letter

☐ Hand delivery

☒ E-Mail

☐ Other _____

Signature:

S. Hayes Edwards, Jr. IMCM

Print Name:

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

Firm/Organization:

McMillan Metro, P.C.

Address:

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301-251-1180

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hedwards@mcmillanmetro.com

To be notified of hearing and decision: (Maker of Motion or Authorized Agent)

In the event an authorized agent files a motion on behalf of the Maker of the Motion, a letter signed by the Maker of the Motion authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name:

Address:

Phone No.:

E-Mail:

ATTACHMENT A
TO APPLICANT'S MOTION FOR MINOR MODIFICATION PURSUANT TO § 3129
Case No. 18514

Applicants Andrew Daly and Patricia Jordan (the "Applicants") submit this Motion to Modify Plans pursuant to § 3129. Included herewith are the final modified plans (the "Modified Plans") which contain minor modifications to the plans (the "Original Plans") approved by the Board in a Summary Order on October 16, 2013. A motion to waive the time limitations of § 3129.3 is also being submitted concurrent with this Motion.

I. Background

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.

No construction has occurred at the garage site since July 2016, other than the stairs adjacent to the garage, which are not relevant to either the litigation of Ms. Schaub's BZA Appeal. Before stopping work, the Applicants' contractor built the south and east wall of the garage and installed footers, but given subsequent review by the Applicants' engineering professionals, none of those elements will be used in the final planned construction. The Motion to Modify is submitted to ensure the Summary Order is square with the Applicants' final Modified Plans before the construction is recommenced.

After the Board's Summary Order, the Applicants submitted their plans, including the above minor modifications, for approval by the Historic Preservation Office in the summer of 2014. In July 2014, HPO indicated that the garage would be approved in full at the staff level. (See email chain attached as Exhibit 1 between Applicants' architect Eric Peterson and Sarah VanLandingham of HPO). However, after the Applicants had submitted their plans to DCRA for permitting, HPO changed its opinion and granted staff level review only for the garage itself, with the condition that certain wood facing materials be changed to brick, and instructed

Applicants to seek the Historic Preservation Review Board's approval for the roof deck portion of the plans. (See email chain attached as Exhibit 2 between Applicants' architect Eric Peterson and Sarah VanLandingham of HPO). Although the Applicants have not yet received that approval (discussed in part below), it has been their intention, and it remains their intention, to build no roof deck until receiving HPRB approval.

II. The Modifications Are Minor and Comply with the Summary Order

The minor modifications shown in the Modified Plans include mainly revised construction details addressing potential issues with walls of the garage without affecting any of the aspects for which variances were granted by the Board. These construction changes came about as a result of Applicants' desire to settle litigation brought in July 2015 by Patricia Schaub of 1118 Park Street, N.E. and based on the advice of structural engineers retained for the purposes of that lawsuit. Central to Ms. Schaub's lawsuit, and to the Applicant's efforts to revise their plans, is the fact that Ms. Schaub's garage lacks the proper frost footing—an issue that Ms. Schaub alleges the Applicants must account for in their construction. While that issue has largely been rendered moot, the discussion of how it can be resolved has driven much of the modifications to the plans.

On October 12, 2015, a "test pit" that was dug at the garage site, which showed that Ms. Schaub's garage indeed had no footer at all, and provided information necessary for eventually developing the Modified Plans. Subsequent to the test pit 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 Modified Plans. At a December 2015 site meeting, 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 have to be condemned if it was not properly underpinned and supported. At that time, DCRA proposed, and the parties began to consider 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 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. Yet despite her omission, the Applicants have instructed their professionals to develop the Modified Plans to reflect the wall being constructed adjacent to Ms. Schaub's present garage wall.

Between the Board's Summary Order of October 2013 and the present, other minor modifications have been made to the plans, as reflected in the Modified Plans. Although at no time have the Applicants' sought or intended to build anything other than what the relevant authorities have specifically approved. First, the Applicants changed the garage's exterior from CMU block to a brick facing, a change which in no way implicates any of the variances granted by the Board. Likewise, the roof deck materials were changed to a post/railing design. The Applicants also decided to increase the height of the garage (including the roof deck material) by one foot, to 13 feet 10^{5/8} inches—noting that § 400 sets the maximum height at 15 feet, meaning no variance was needed for the Original Plans (whose height was 12 feet 11 inches) nor for the Modified Plans. The Modified Plans also increased the length of the garage from 15 feet 4½ inches to 15 feet 5½ inches (a change of one inch) and the width from 9 feet to 9 feet ½ inch (a change of one inch). The Modified Plans also replace the "captain's ladder" to the roof deck with a spiral staircase and add a small sink to the garage interior. As for the parking space, although the Modified Plans include a thicker interior wall on the west side of the garage than the Original Plans, the opening for the parking space will remain at the same width, meaning that the usable width of the parking space (approved in the Summary Order) will not change.

III. The Modified Plans Are Being Submitted for HPRB Approval.

The Applicants are concurrently submitting the Modified Plans for approval by the Historic Preservation Review Board, as the garage portion was referred to the Review Board when the plans were submitted to HPO. In fact, the Applicants have previously sought HPRB approval for their new roof deck design, but such application was deferred based on ANC 6A's request that the BZA Appeal filed by Patricia Schaub (No. 19092) be resolved before ANC/HPRB review of the roof deck design. This Motion to Modify is being submitted in connection with that Appeal, as the Applicants wish to address any minor, immaterial discrepancies brought up in that appeal by securing the requested approval of their Modified Plans. The Applicants would have preferred to secure HPRB approval before submitting this Motion, but since that was not possible, the Applicants must request that the Board grant approval for the Modified Plans with the minor caveat that the Modified Plans might change further if HPRB conditions its approval on further modifications to the materials and appearance of the roof deck.

WHEREFORE, the Applicants request an Order from the Board stating that the minor modifications included in the Modified Plans are approved pursuant to § 3129. The Applicants request that the Order state that this approval allows for further minor modifications only as required to gain the approval of the Historic Preservation Review Board, including the materials and appearance of the roof deck included in the Modified Plans.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Applicants' Motion to Modify the Approved Plans 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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S. Hayes Edwards, Jr. /mcm
S. Hayes Edwards, Jr., Esq.



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA



FORM 126 – BOARD OF ZONING ADJUSTMENT FEE CALCULATOR

Per §3180 of the Zoning Regulations, at the time of the filing of an application or an appeal with the Board of Zoning Adjustment, the applicant or appellant shall pay a filing fee in accordance the fee calculator below. In the case of an application combining two (2) or more actions, or for an application requesting consideration of more than one alternative, the fee shall be the total of the amounts for each action or alternative computed separately. However, for applications involving owner-occupied, one-family dwellings or flats, regardless of the number of variances, special exceptions, or alternatives requested, the fee is three hundred and twenty-five dollars (\$325.00). A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee where the property is owned by the agency and the property is to be occupied for a government building or use.

APPLICATION OR APPEAL TYPE:	FEE	UNIT	TOTAL
VARIANCE:			
Owner-Occupied Dwelling	\$325		
All Other Variances Per Section Requested	\$1,040		
TOTAL FOR VARIANCES:			
SPECIAL EXCEPTION:			
Parking Lot/Garage/Accessory Parking (per space)	\$104		
Child Development Center (per student)	\$33		
Private School (per student)	\$33		
Residential Under §353	\$520		
CBRF (per person)	\$104		
Office Use in SP (per 100 square feet)	\$52		
Roof Structures	\$2,600		
Hotel or Inn in SP (per room or suite)	\$104		
Gasoline Service Station	\$5,200		
Repair Garage	\$1,560		
Home Occupation	\$1,560		
Accessory Apartment Under §202	\$325		
Theoretical Lot Under §2516	\$1,560		
Additional Theoretical Lot Under §2516	\$520		
Recycling Facility Under §802	\$5,200		
Antenna Under §211	\$2,600		
Any Other Special Exception	\$1,560		
Chancery (per 100 square feet)	\$65		
Owner-Occupied Special Exception	\$325		
Time Extension/Modification – Owner Occupied	\$130	1	
Time Extension/Modification – All other (percentage of filing fee)	26%		
TOTAL FOR SPECIAL EXCEPTIONS:			\$130
APPEAL:			
NCPC/ANCs/Citizens Association/Civic Association/Not-for-Profits	\$0		
All other organizations, groups or persons	\$1,040		
TOTAL FOR APPEALS:			
GRAND TOTAL:			\$130
I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22 2405)			
Name:	S. Hayes Edwards Jr.	Signature:	
Exhibit No.	Last Revised (10/18/10)		Case No. 18514