

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19621-A of Richard Hilton, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved by BZA Order No. 19621 to construct a fourth story rear addition to an existing principal dwelling unit in the R-1-B Zone at premises 2318 California Street N.W. (Square 2519, Lot 284).

The original application (No. 19621) was pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201.3 from the non-conforming structure requirements of Subtitle C § 202.2, to construct a fourth story rear addition to an existing one-family dwelling in the R-1-B Zone at premises 2318 California Street N.W. (Square 2519, Lot 284).

HEARING DATE (Case No. 19621):	December 6, 2017
DECISION DATE (Case No. 19621):	December 6, 2017
ORDER ISSUANCE DATE (19621):	December 11, 2017
MODIFICATON DECISION DATE:	June 6, 2018

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On December 6, 2017, in Application No. 19621, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Richard Hilton (the “Applicant”) for a special exception under Subtitle D § 5201.3 from the non-conforming structure requirements of Subtitle C § 202.2, to construct a fourth story rear addition to an existing one-family dwelling in the R-1-B Zone at premises 2318 California Street N.W. (Square 2519, Lot 284). In the original case, the Advisory Neighborhood Commission (“ANC”), ANC 2D, did not submit a report specific to the BZA application, but recommended support of a related Historic Preservation Review Board (“HPRB”) application.

The Board issued Order No. 19621 on December 11, 2017. (Exhibit 6 of the record for Case No. 19621-A.)

MOTION FOR MODIFICATION OF CONSEQUENCE

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Preliminary Matters. On April 20, 2018, the Applicant submitted a request to modify the approval of Application No. 19621, to extend the fourth floor rear addition eight feet to the rear and to make other changes to the design not directly related to the relief granted and, according to the Office of Planning (“OP”), not requiring new or additional relief. (Exhibit 13.) The Applicant submitted the request as a Minor Modification to the approved plans. (Exhibits 1-4A3.)

A “minor modification” means a modification that does not change the material facts upon which the Board based its original approval of the application. (11-Y DCMR § 703.3.) A “modification of consequence” means a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board. (11-Y DCMR § 703.4.) Neither of these processes require the holding of a public hearing. A decision on a request for a minor modification or a modification of consequence shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application. (11-Y DCMR § 703.12.)

Based on the foregoing and with advice from the Office of the Attorney General (“OAG”), the Board determined that the Applicant’s request in this case would be more appropriately classified as a Modification of Consequence. In its report recommending approval of the modification, the Office of Planning (“OP”) stated that no additional zoning relief would be needed, but after consulting with OAG, reviewed the request as a modification of consequence. In its deliberations, the Board determined that the request should be classified as a modification of consequence, as it exceeded the scope of a minor modification.

Merits of the Modification of Consequence. In the original order dated December 11, 2017, the Board granted a special exception under Subtitle D § 5201.3 from the non-conforming structure requirements of Subtitle C § 202.2 to allow a fourth-story rear addition to an attached principal dwelling. The property is nonconforming with respect to lot occupancy, side yards, lot area, and lot width.

In the modification request, the Applicant stated that the modification was needed to:

- (1) Clarify a discrepancy on the approved roofline design for the penthouse of the building, citing a difference between the final and the HPRB-approved roofline for the penthouse,
- (2) Enclose a previously approved exterior deck on the third floor,
- (3) Extend a previously approved living space on the fourth floor and shift back a previously approved roof deck, adding two balconies, and
- (4) Incorporate a new interior elevator that services all levels.

(Exhibit 3.)

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The Applicant's request complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

In the application herein, the Applicant is requesting a modification of consequence to the Order because with this modification, the Applicant is requesting to construct a fourth story rear addition to an existing principal dwelling unit in the R-1-B Zone, based on the revised plans at Exhibit 4A3 with revisions shown in Exhibits 10-11. The Applicant indicated that the proposed revisions involve a discrepancy in the final and HPRB-approved roofline for the penthouse level of the building. According to the Applicant, the drawings for the proposed roof profile were originally submitted to the IZIS portal on September 4, 2017. Subsequently, HPRB suggested revising the roof profile not to extend past the existing roof ridge line. The Applicant made those adjustments to the design, but the revised design drawings and the Final Permit Submission drawings that incorporated those changes did not make it onto the IZIS portal. Thus, the BZA approved an older version of the design drawings and not the revised, HPRB-approved drawings with the final roof profile. The Applicant stated that the modified plans would also incorporate the following proposed changes to the rear of the existing building:

- (1) 1st and 2nd Floors: Extend the existing building step back to align in one continuous plans. The overall existing building footprint would not be extended, only aligned.
- (2) 3rd Floor: The previously proposed rear deck would now be enclosed and become part of the interior of the residence. Two small balconies would also be proposed from the rear building face.
- (3) 4th Floor/Penthouse: The previously proposed roof deck would be shifted back over the newly enclosed third floor area of the building. The proposed sliding doors would also be shifted to incorporate the added interior area.
- (4) Incorporation of a new interior residential elevator that would service all floor levels. The Applicant noted that it will submit revised permit drawings for alterations to the interior layout of the residence in order to incorporate the elevator.

(Exhibit 3.)

Pursuant to Subtitle Y §§ 703.8-703.9, the request for a modification of consequence shall be served on all other parties to the original application and those parties are allowed to submit comments within ten days after the request has been filed with the Office of Zoning and served on all parties. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 2D, the only other party to Application No. 19621. ANC 2D did not submit a report addressed to the BZA, instead indicating its support for the requested modification in a report addressed to the Historic Preservation Review Board ("HPRB"). (Exhibit 12.)

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The Applicant also served its request on OP. OP submitted a report dated May 25, 2018, recommending the Board approve the modification requested by the Applicant. (Exhibit 13.) DDOT did not submit a report.

On June 6, 2018, the Board deliberated on and approved the modification request.

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence. Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a modification of consequence to the plans approved in Case No. 19621, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant the request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 consequence of the Board's approval in Application No. 19621 is hereby **GRANTED TO SUBJECT TO THE MODIFIED PLANS AT EXHIBIT 4A3 WITH REVISIONS AS SHOWN IN EXHIBITS 10-11.**

In all other respects, Order No. 19621 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON DECEMBER 6, 2017: 4-0-1

(Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller, to APPROVE; one Board seat vacant.)

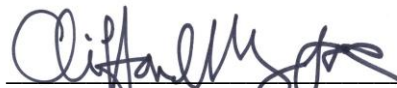
VOTE ON MODIFICATION OF CONSEQUENCE ON OCTOBER 4, 2017: 4-0-1

(Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Robert E. Miller to APPROVE; Lorna L. John, not participating or voting.)

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

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FINAL DATE OF ORDER: June 12, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.