

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 12799-A of The VIP Room, as amended, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to Condition No. 1 in BZA Order No. 12799 in order to permit the sale and storage of alcohol at the commercial establishment in the MU-3 Zone at premises 6201 3rd Street N.W. (Square 3342, Lot 813).

HEARING DATE (12799):	November 15, 1978
DECISION DATE (12799):	December 6, 1978
ORDER ISSUANCE DATE (12799):	January 29, 1979
MODIFICATION MEETING DATES:	November 28, 2018 and January 30, 2019
MODIFICATION HEARING DATE:	April 3, 2019
MODIFICATION DECISION DATE:	April 3, 2019

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF SIGNIFICANCE

BACKGROUND

On December 6, 1978, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Earline Sampson, owner of The VIP Room (the “Applicant”) in Application No. 12799 for a variance from the use provisions of Section 5101 to use part of the first floor of the premises as a public hall, seating 150 persons in a C-1 District at the premises 6201 3rd Street, N.W. (the “Subject Property”). The Board granted the application and issued Order No. 12799 on January 29, 1979. The Board’s approval was subject to the following conditions:

1. There shall be no alcoholic beverages sold on the premises.
2. There shall be no operation of the premises after 2:00 A.M.
3. The GRANT is LIMITED to this particular applicant and operator and is NOT TRANSFERRABLE.
4. The applicant and operator shall be responsible for seeing that noise emanating from the establishment does not interfere with reasonable use of surrounding properties.

MOTION FOR MODIFICATION OF SIGNIFICANCE

On September 20, 2018, the Applicant submitted a request for a modification of consequence to eliminate Condition No. 1 of the previously approved Order that prohibits the sale of alcoholic beverages. (Exhibits 1-8.) After considering the request at the public meetings of November 28, 2018 and January 30, 2019, the Board concluded in deliberations that it had erred in its previous determination that the case qualified as a modification of consequence and determined instead that it should be considered as a modification of significance.

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence requires a public hearing and is a modification of significance. Accordingly, the Applicant properly re-filed its request under Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance. (Exhibits 29-36.)

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of the hearing is limited to the impact of the modification on the subject of the original application, and does not permit the Board to revisit its original decision.

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") 4B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a report indicating that at a regularly scheduled, properly noticed public meeting on January 28, 2019, at which a quorum was present, the ANC voted 8-0 to support the modification request. (Exhibit 28.) ANC Commissioner Brenda Parks also appeared at the public hearing to testify in support.

The Office of Planning ("OP") submitted two reports recommending approval of the requested modification. (Exhibits 10 and 28.) OP recommended that additional conditions be imposed requiring the Applicant to obtain approval from the Alcoholic Beverage Regulation Administration ("ABRA") and satisfy all requirements ABRA may impose; however, the Board did not adopt the proposed condition, because the Applicant would be required to obtain ABRA approval regardless of the Board's conditions.

The Board received 35 letters in support of the modification. (Exhibits 24, 25 (also filed as Exhibits 30 and 31) and 27.) Six neighbors testified in support at the public hearing on April 3, 2019. Fourteen letters in opposition were submitted to the record (Exhibits 11-23 and 51) and one neighbor testified in opposition at the public hearing.

As directed by 11-Y DCMR 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modification of significance. The only parties to the case were the ANC and the Applicant. An untimely party status request in

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opposition was filed by James Stehle on March 31, 2019. (Exhibit 52.) At the public hearing of April 3, 2019, Mr. Stehle testified that he did not intend to request party status and therefore withdrew his request. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

The Board concludes that in seeking a modification of significance to Order No. 12799. The Applicant has met its burden of proof under 11 DCMR Subtitle Y § 704.

It is therefore **ORDERED** that this request for modification of significance is hereby **GRANTED** to eliminate Condition No. 1 from Order No. 12799.

In all other respects, Order No. 12799 remains unchanged.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE.)

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: April 5, 2019

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.