

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18906-B of Endeka Enterprises and 1320 Penelope LLC, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved in BZA Order Nos. 18906 and 18906-A, to expand the proposed mechanical penthouse area into a partial seventh floor for use as an accessory restaurant space in a mixed-use building in the DC/SP-1 and C-3-C Districts at premises 1337 Connecticut Avenue, N.W. (Square 137, Lot 55).

HEARING DATES (18906):	January 27, March 3, April 28, and June 30, 2015
DECISION DATE (18906):	June 30, 2015
FINAL ORDER ISSUANCE DATE (18906):	July 9, 2015
MINOR MODIFICATION ISSUANCE DATE (18906-A):	August 3, 2016
MODIFICATION OF CONSEQUENCE DECISION DATE (18906-B):	February 6, 2019

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On June 30, 2015, in Application No. 18906, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Endeka Enterprises and 1320 Penelope LLC (the “Applicant”) for variances from the width of court requirements under §§ 536 and 776, the off-street parking requirements under § 2101.1, the loading requirements under § 2201.1, and the zone district boundary line requirements under § 2514.2, and special exceptions from the hotels and inns requirements under § 512, and the roof structure setback requirements under §§ 400.7(b), 411.11, and 777.1 of the Zoning Regulations of 1958¹ to allow conversion of an existing office building into a mixed-use building in the DC/SP-1 and C-3-C Districts. The Board issued Order No. 18906 on July 9, 2015. (Exhibit 3.)

¹ The original application was filed under the Zoning Regulations which were then in effect (the “1958 Zoning Regulations”) but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the “2016 Regulations”). Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application.

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On June 7, 2016, the Applicant submitted a request for a minor modification to the plans approved by the Board in Order No. 18906. The Applicant proposed to amend the approved plans in order to replace the office use on the second floor with additional inn space, to replace the restaurant use on the sixth floor with additional inn space, and to reduce the amount of parking in the garage from seven to six parking spaces. The proposed additional inn space on the second and sixth floors would result in an increase in the number of inn rooms from the 50 originally proposed to 73 proposed in the modified plans. The Board granted this request for minor modification on July 16, 2016 and issued Order No. 18906-A on August 3, 2016.

MOTION FOR MODIFICATION OF CONSEQUENCE

On December 20, 2018, the Applicant submitted a request for modification of consequence to the plans approved by the Board in Orders No. 18906 and 18906-A. (Exhibits 1-5.) The Applicant proposes to expand the proposed mechanical penthouse area into a partial seventh floor to use as an accessory restaurant space. The Applicant submitted revised plans reflecting these modifications. (Exhibit 2.) The Applicant indicated that the proposed modification of consequence does not required additional relief from the Zoning Regulations.

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." Pursuant to Subtitle Y §§ 703.8-703.9, the request for 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.

Advisory Neighborhood Commission ("ANC") 2B, the only other party to the underlying case, submitted a report in support. The ANC indicated that at a regularly scheduled, properly noticed public meeting on January 9, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the request. (Exhibit 7.) Office of Planning ("OP") submitted a report recommending approval of the proposed modification of consequence to the Applicant's plans. (Exhibit 8.)

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 of approved plans. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a modification of consequence to the plans approved in Orders No. 18906 and 18906-A, the Applicant has met its burden of proof under as directed by 11 DCMR Subtitle Y § 703.4.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y §

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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.

It is therefore **ORDERED** that this application for modification of consequence of the Board's approval in Orders No. 18906 and 18906-A is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 2.**

In all other respects, Orders No. 18906 and 18906-A remain unchanged.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Anthony J. Hood 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 J. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 7, 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.