

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



**BZA Application No. 20507-B
Legacy Lofts II, LLC and Legacy Lofts III, LLC
89 and 93 Hawaii Avenue, N.E. (Square 3674, Lots 8 and 9)**

HEARING DATEs (20507):	October 6 and November 17, 2021
DECISION DATE (20507):	November 17, 2021
ORDER ISSUANCE DATE (20507):	May 24, 2023
MEETING DATE (20507-A):	December 13, 2023
DECISION DATE (20507-A):	December 13, 2023
ORDER ISSUANCE DATE (20507-A):	December 26, 2023
HEARING DATE (20507-B):	January 22, 2025 ¹
DECISION DATE (20507-B):	January 22, 2025

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION WITH HEARING**

Pursuant to notice, at its January 22, 2025, public hearing, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for a modification with hearing to BZA Order No. 20507-A to modify Order No. 20507-A to add a third story addition to each building on Lots 8 and 9, and increase the total number of new dwelling units in each building from 11 to 14, in two detached apartment houses in the RA-1 zone. The Board considered the request for a modification with hearing under Subtitle Y § 704 of Title 11 of the DCMR (Zoning Regulations of 2016, the “**Zoning Regulations**” to which all references are made unless otherwise specified). For the reasons stated below, the Board **APPROVES** the request for modification.

ORIGINAL APPLICATION. In Application No. 20507, the Board approved the request by 93 Hawaii Ventures, LLC, and 98 Webster Ventures, LLC, and Solid Brick Ventures, LLC (the “**Applicant**”) for special exceptions under Subtitle U § 421 to allow a new residential development and under

¹ The application was originally scheduled for the September 18, 2024 public meeting date as a modification without hearing, at which the Board removed the application from the consent agenda and scheduled for a public hearing as a modification with hearing.

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Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2 and the open court width requirements of Subtitle F § 202.1 to allow additions to and increases in the number of residential units in 11 existing detached apartment houses in the RA-1 Zone. The Board issued Order No. 20507 on May 24, 2023. (Exhibit 4 of the record for Case No. 20507-B.) The approval was subject to six conditions:

1. The Applicant shall unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile.
2. The Applicant shall identify transportation coordinators for the planning, construction, and operations phases of development, who will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
3. The Applicant shall provide the transportation coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year.
4. The Applicant shall direct the transportation coordinators to develop, distribute, and market various transportation alternatives and options to the project's residents, including promoting transportation events (e.g., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
5. The Applicant shall direct the transportation coordinators to subscribe to goDCgo's residential newsletter and to receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM plan.
6. The Applicant shall provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local transit lines (Streetcar, Circulator, and Metrobus), carpool and vanpool information, a Capital Bikeshare ("CaBi") coupon or rack card, a Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map.

1ST MODIFICATION. BZA Order No. 20507-A was issued on December 26, 2023, and reduced the number of approved dwelling units from 16 to 11 and removed a third story addition on two of the eleven lots.

PROPOSED MODIFICATION. On June 18, 2024, the Applicant submitted a request for a modification to Order No. 20507-A. (Exhibits 1-10.) The proposed modifications included adding a third story addition to each building on Lots 8 and 9, and increase the total number of new dwelling units in each building from 11 to 14, in two detached apartment houses. The Applicant submitted revised plans reflecting these modifications. (Exhibit 12.)

Based on the proposed modifications, the Applicant requests:

- Special exception under the new residential development requirements of Subtitle U § 421, pursuant to Subtitle X § 901.2.

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The zoning relief requested in this case was self-certified. (Exhibit 22 – 89 Hawaii Avenue, NE and Exhibit 23, 93 Hawaii Avenue, NE.)

NOTICE OF THE REQUEST FOR MODIFICATION. Pursuant to Subtitle Y § 704.5, the Applicant served the request for a modification with hearing on the parties to the original application. (Exhibit 14.) The Board referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5A.

ANC REPORT. The ANC did not submit a written report to the record.

OFFICE OF PLANNING ("OP") REPORT. OP submitted two reports to the record recommending approval of the modification.

- The original OP report, dated September 5, 2024, (Exhibit 17.)
- The supplemental OP report, dated December 27, 2024, (Exhibit 28.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a report to the record.

CONCLUSIONS

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a modification without hearing² requires a public hearing and shall be processed as a modification with hearing. The Applicant's request complies with Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications with hearing.

As directed by Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions, and modification with hearing.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for a modification with hearing to modify Order No. 20507-A to

² See, Subtitle Y § 703.7.

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add a third story addition to each building on Lots 8 and 9, and increase the total number of new dwelling units in each building from 11 to 14, in two detached apartment houses in the RA-1 zone and for the requested relief:

- Special exception under the new residential development requirements of Subtitle U § 421, pursuant to Subtitle X § 901.2.

Accordingly, it is **ORDERED** that the modification request is **GRANTED** consistent with the plans shown in Exhibit 12 of the record.


In all other respects, Order No. 20507-A remains unchanged.

VOTE: **4-0-1** (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Gwen M. Wright to APPROVE; Lorna L. John not present, not participating)

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: January 28, 2025

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE

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CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.