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February 19, 2016

VIA IZIS AND HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Request for Minor Modification of Plans Approved in BZA Order No. 19026
1300 H Street, NE (Square 1026, Lots 97-103)**

Dear Members of the Board:

This letter is submitted on behalf of 1300 H Street NE LLC (the "Applicant"), pursuant to 11 DCMR § 3129, in order to request a minor modification of the plans approved by the Board of Zoning Adjustment ("BZA" or the "Board") in BZA Order No. 19026, for property located at 1300 H Street, NE (Square 1026, Lots 97-103) (the "Site"). The Applicant proposes to modify the approved building's penthouse by adding a second stair tower and incorporating multiple penthouse heights. The modified penthouse complies with all requirements set forth in the new penthouse regulations, approved by the Zoning Commission in Z.C. Order 14-13 (the "Approved Penthouse Regulations").

Attached as Exhibit A is BZA Form 152 – Motion for a Minor Modification, and attached as Exhibit B is BZA Form 126 – Fee Calculator. Attached as Exhibit C are authorization letters from the Site's owner and Applicant authorizing the law firm of Holland & Knight LLP to file and process this application.

I. Background of Case

On April 15, 2015, the Applicant submitted an application (Application No. 19026) to the Board for the following special exception and variance relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3104.1 and 3103.2: (i) special exception relief under 11 DCMR § 1320.4(f) for new construction on a lot having more than 6,000 square feet; (ii) special exception relief under 11 DCMR § 1324.10 to provide no primary residential entrances on H Street, NE; (iii) special exception relief under 11 DCMR § 770.6 and 411.5 to provide a roof structure with enclosing walls of unequal heights; and (iv) an area variance from 11 DCMR § 2101.1 to provide eight on-site parking spaces where 30 on-site parking spaces were required. The relief was requested to permit the construction of a new residential building with ground floor

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EXHIBIT NO. 3

retail at the Site. The Site is zoned HS-A/C-2-A and is presently improved with a vacant building that was most recently used as the R.L. Christian Public Library.

As part of the Applicant's Prehearing Submission, dated June 23, 2015, the Applicant withdrew its request for a special exception under 11 DCMR § 770.6 and 411.5, since it was able to redesign the penthouse to comply with the then-applicable penthouse regulations. The Applicant also noted in its Prehearing Submission that it intended to incorporate habitable space in the penthouse if and when the Zoning Commission took final action on the Approved Penthouse Regulations. *See* Applicant's Prehearing Submission in BZA Case No. 19026, Exhibit 29, pp. 1-2. The Applicant's modified penthouse plan submitted with this application takes advantage of the Approved Penthouse Regulations by providing two penthouse heights and incorporating habitable space, as permitted by Sections 411.9(a), 770.6, and 411.4 of the Approved Penthouse Regulations.

The requested zoning relief in BZA Case No. 19026 was necessary to allow the Applicant to develop the Site with a four-story, mixed use building with ground floor retail and approximately 36 residential units above. The ground floor was approved to contain approximately 6,614 square feet of gross floor retail, plus a residential lobby, bicycle storage room, trash facilities, and utility rooms. Floors two through four were approved to contain approximately 23,385 square feet devoted to residential use. The building was approved with a maximum height of 55 feet and a maximum density of 3.0 floor area ratio ("FAR").

Before the Board's public hearing on the application, the Applicant appeared before Advisory Neighborhood Commission ("ANC") 6A to present the project. At its regularly scheduled, duly noticed public meeting of June 11, 2015, ANC 6A voted unanimously (6-0) to support the application. The Capitol Hill Restoration Society also voted to support the application at its June 11, 2015, Zoning Committee meeting. The Board held its public hearing on the application on July 7, 2015, and voted unanimously (4-0-1, with one Board seat vacant) to approve the requested relief through a bench decision. A copy of the Summary Order approving the original application is attached as Exhibit D.

II. Proposed Modification of Plans

As shown on the revised and comparative architectural drawing sheets attached as Exhibit E (the "Revised Plans"), the Applicant requests a minor modification to revise the building's penthouse by adding a second stair tower and incorporating multiple penthouse heights. The penthouse will also include habitable space, as permitted by the Approved Penthouse Regulations. The total number of units and square footage within the building is the same as previously approved by the Board, and there is no change in the areas of relief previously granted.

Specifically, as shown on Sheet A204 of the Revised Plans, the Applicant added a second stair tower on the southeast side of the building in order to comply with the Building Code. When habitable space was added to the roof, it became necessary to provide two means of egress. In addition, as shown on Sheet A401 of the Revised Plans, the roof structure will be 12 feet in height over the habitable space and the new stair tower, and will rise to a second height of 15 feet to provide screening for the mechanical equipment above. The two heights are permitted pursuant to Sections 411.9(a) and 771.1 of the Approved Penthouse Regulations.

The Applicant proposes to provide approximately 2,747 square feet of habitable space in the penthouse, which will include two residential units, and approximately 618 square feet of penthouse mechanical space in the penthouse. The residential units are permitted in the penthouse as a matter-of-right pursuant to Section 411.4 of the Approved Penthouse Regulations.

The penthouse complies with all of the setback requirements set forth in the Approved Penthouse Regulations. The penthouse is setback at least 1:1 from the north, west, and east building walls (facades facing 13th Street, H Street, and the alley, respectively) and from the open court to the south. These setbacks account for both the 12-foot tall habitable space and the 15-foot tall mechanical space above. The penthouse is not set back from the closed court, but is not required to have any setback in this location pursuant to 11 DCMR § 411.18(c).

Pursuant to Section 411.16 of the Approved Penthouse Regulations, the penthouse habitable space will be subject to, and will comply with, the Inclusionary Zoning (“IZ”) set-aside requirements of Chapter 26 of the Zoning Regulations. Section 2603.1 of the Approved Penthouse Regulations states that an inclusionary development in the C-2-A District “shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use including penthouse habitable space as described in § 2602.1(d), or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.” In the present case, and as shown in Figure 1 below, 75% of the bonus density is the greater amount, and the Applicant will therefore provide a minimum of 4,050 square feet of gross floor area to IZ units:

Figure 1:

75% of Bonus Density	10% of Residential GFA (Including Penthouse GFA)
(10,800 sf land area) x (0.5 FAR bonus density) = 5,400 sf	(26,528 sf residential GFA) + (2,747 sf penthouse habitable space) = 29,275 sf
(5,400) x (0.75) = <u>4,050 sf of IZ</u>	(29,275) x (.10) = <u>2,927.5 sf of IZ</u>

The revised penthouse complies with all other requirements of the Approved Penthouse Regulations.

III. Community Support

The Applicant notified ANC 6A of its request for a modification of plans on January 13, 2016. On January 20, 2016, the Applicant presented the Revised Plans to Single Member District Commissioner Stephanie Zimny, who expressed support for the revised penthouse plan. On January 20, 2016, the Applicant presented the Revised Plans to ANC 6A’s Economic Development and Zoning (“EZO”) Committee, which voted unanimously to support the Applicant’s request for a modification of plans. Following the EZD’s vote, on February 11, 2016, ANC 6A voted unanimously (8-0) to support the requested modification. The ANC’s letter of support is attached hereto as Exhibit F.

IV. Compliance with Section 3129 of the Zoning Regulations

The Applicant's request for a modification of Order No. 19026 complies with the relevant subsections of 11 DCMR § 3129 as follows:

- 11 DCMR § 3129.2. This request is in writing, states specifically the modifications requested and the reasons therefore, and includes copies of the plans for which approval is requested. Copies of the approved and modified plans are attached as Exhibit E.
- 11 DCMR § 3129.3. The final date of BZA Order No. 19026 is July 7, 2015, and it became effective on July 15, 2015. This modification is filed within the two year period.
- 11 DCMR § 3129.4. This request was served on all parties to the original application, as evidenced by the attached Proof of Service. The only party to the original application was ANC 6A, and ANC 6A has voted unanimously to support the modification.
- 11 DCMR § 3129.6. The modification is a minor modification that does not change the material facts upon which the Board relied in approving the original application.

A filing fee of \$1,757.60 and a completed Fee Calculator Form 126 are enclosed herewith. This fee represents 26% of the original filing fee of \$6,760.00 submitted with BZA Application No. 19026, in accordance with 11 DCMR § 3180.1(f). Also included is Form 152 – Motion for Minor Modification.

We would appreciate your consideration of this matter at the next available public meeting. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact me.

Very truly yours,

HOLLAND & KNIGHT LLP


Christine M. Shiker
Jessica R. Bloomfield

Attachments

cc: Joel Lawson, DC Office of Planning (Via Hand Delivery; w/attachments)
Anne Fothergill, DC Office of Planning (Via Hand Delivery; w/attachments)
Advisory Neighborhood Commission 6A (See Proof of Service)

PROOF OF SERVICE

I hereby certify that on February 19, 2016, a copy of this Request for Minor Modification of Plans was served on the following parties to the original case via U.S. Mail:

Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington DC 20013

Christine Moseley Shiker JB
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Holland & Knight LLP