

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Request for a Modification of Consequence to BZA Order No. 20507**  
**Applicant's Statement of Legacy Lofts II LLC and Legacy Lofts III LLC**  
**89 and 93 Hawaii Avenue, NE (Square 3674, Lots 8 and 9)**

**I. INTRODUCTION AND OVERVIEW.**

This Statement is submitted on behalf of Legacy Lofts II LLC and Legacy Lofts III LLC (collectively known as the “**Applicant**”), the respective owners of the properties located at 89 and 93 Hawaii Avenue, NE (Square 3674, Lots 8 and 9) (the “**Properties**”). The Properties are located in the RA-1 zone district and each lot is improved with an existing apartment building with 8 residential dwelling units.

**Original Case:** In BZA Case No. 20507, the Board of Zoning Adjustment granted special exception approval for 11 lots to enlarge the existing building and increase the number units. The Properties, as part of the approval, were granted special exception approval to convert the building on each lot from 8 units to 16 units.

**First Modification:** In BZA Case No. 20507A, the Board granted approval to modify the original plans for just the two above-referenced lots. The plan modifications contemplated maintaining the existing building footprint (not doing the proposed respective additions) and instead just adding 3 residential units to the cellar level of each building (the “**Project**”). Each building in the original approval contemplated 16 units. The original modification proposed to reduce this to 11 units each.

**Second (Current) Requested Modification:** As this is an RA-1 project, it must be approved by the Board. The Applicant is now requesting a second modification which would revert back to the originally approved 3 story building, with some design changes to the third story. This third story would have three units (instead of the original four units)—for a total of 14 units per building. The original approval contemplated 16 units per building and a third story, so the change from the original approval is a reduction of 2 units per building, and a change in the design of the third floor. Accordingly, this can be safely processed as a modification of consequence as it is a reduction in the number of units originally approved and is “redesign...of architectural elements

and open spaces from the final design approved by the Board.”<sup>1</sup> As part of the modification, the Applicant has included the special exception approval standards of U-421 for RA-1 projects.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the Modification of Consequence pursuant to Subtitle Y § 703. special exception approval requested pursuant to Subtitle X § 901 and U § 421.

**III. BACKGROUND.**

**A. Description of the Subject Property and Surrounding Area.**

The Properties are zoned RA-1 and are interior lots with 5,180 square feet of land area (Lot 8) and 5,598 square feet of land area (Lot 9). It is not located in any Historic District. To the north of the Property is Hawaii Avenue, NE. To the south of the Property is a public alley. To the west of the Property is a multi-family apartment building (85 Hawaii Avenue, NE). To the east of the Property is a multi-family apartment building (97 Hawaii Avenue, NE). The immediate surrounding area is characterized by a mix of residential uses with larger residential apartment buildings and some single-family homes. The larger area, made up of Fort Totten, Pleasant Hill, and University Heights, is characterized by institutional uses, such as the Armed Forces Retirement Home, and Catholic University. Fort Totten Park is located to the north of the Properties and is about a 2–3-minute walk.

**B. Description of the Proposed Project.**

As described above, the BZA approved each building to have three full stories and 16-units. The first modification eliminated the third story approved for each building and proposed a total of 11 units. This modification proposes to maintain the third story (with a slightly different design) and have 14 units. The following table demonstrates the changes to the development standards with respect to each approval and the proposed approval.

Standard	Existing	Min/Max	Original Case- 20507	Modification 20507A	Current Request
Height, Stories	25 ft., 2 stories	40 ft., 3 stories	35 ft. 6 in. (lot 8), 3 stories	25 ft., 2 stories	28 ft. 4 in., 3 stories

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<sup>1</sup> Y-703.4-For the purposes of this section, the term “modification of consequence” shall mean 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.

			37 ft. 6 in. (lot 9), 3 stories		(Lots 8 and 9)
Number of Units	8 units	NA	16 units	11 units	14 units (each building)
FAR	0.73 (Lot 8) 0.67 (Lot 9)	1.08	1.08 (lot 8) 1.04 (lot 9)	0.73 (Lot 8) 0.67 (Lot 9)	1.0 (Lot 8) 0.9 (Lot 9)
Lot Occupancy	36.4% (Lot 8) 33.7% (Lot 9)	40%	37% (lot 8) 35% (lot 9)	36.4% (Lot 8) 33.7% (Lot 9)	36.4% (Lot 8) 33.7% (Lot 9)
Side Yards	8 ft. (Lot 8) 8 ft. (Lot 9)	8 ft.	10 ft.	7 ft. (Lot 8) 7 ft. 7in. (Lot 9)	8 ft.-12 ft. (lots 8 and 9)
Rear Yard	28 ft. 2 in (Lot 8) 32 ft. (Lot 9)	20 ft.	24 ft. 3 in. (lot 8) 29 ft. 9 in (lot 9)	28 ft. 2 in (Lot 8) 32 ft. (Lot 9)	28 ft. 2 in. (Lot 8) 32 ft. (Lot 9)
Parking	0 spaces	1 space for every 3 units over 4 (3 spaces)	5 spaces	4 spaces	4 spaces (each lot)

**IV. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE X-901.2 AND U-421.**

As part of the modification, the Applicant is providing an analysis of why the proposal still meets the requirements for a development under U-421.

**A. Special Exception Criteria**

*i. General Special Exception Standards*

Pursuant to Subtitle X-901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

*ii. Standard for Review*

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning

requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). In this case, the Applicant is seeking relief from U-421 and asserts it meets the prerequisites for approval as it satisfies the relevant respective zoning requirements.

**B. The Application satisfies the General Special Exception Criteria of Subtitle X-901.2.**

The granting of the special exception will be in harmony with the general purpose and intent of the zoning regulations. The RA-1 Zone provides for areas predominately developed with low to moderate-density development, including multi-family residential buildings. The area is made up of a mix of multi-family residential developments and single-family dwellings uses and the proposal is for two, 14-unit residential buildings—fewer units than what the Board originally approved.

The granting of the special exception will not tend to adversely affect the use of neighboring properties. The Applicant is technically reducing the number of units from the original approval. The surrounding area is characterized by residential uses with larger apartment and condo buildings.

**C. The Application satisfies the Specific Requirements of U § 421.**

New residential developments in the RA-1 zone require special exception approval pursuant to U-421. The Zoning Administrator's interpretation of what constitutes a "new residential development" under U-421 includes the conversion of single-family homes to apartment buildings. Accordingly, the Project requires special exception approval pursuant to Section U-421 of the D.C. Zoning Regulation:

**Section 421.2: The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendation as to the adequacy of the following:**

**(a) Existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and**

It is expected that the Office of the State Superintendent of Education will not have an issue as this is an overall decrease to the number of units originally approved in each building.

**(b) Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.**

Hawaii Avenue intersects with North Capitol Street about 600 feet north of the Properties. North Capitol Street is a major transportation corridor in the District. Fort Totten Park is a 2 to 3-minute walk from the Properties and the Fort Totten Metro station is only a fifteen-minute walk. Accordingly, as determined in the previous case, residents should be adequately served by the surrounding public streets, recreation, and other services in the area (such as public transportation).

**Section 421.3: The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects.**

The Applicant has provided—or will provide as requested by the Office of Planning—sufficient information for the Office of Planning to comment and make recommendations on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects. The primary change includes a reduction in the number of units from what was originally approved, and a modification to the architectural features on the approved new third floor.

**Section 421.4: In addition to other filing requirements, the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plan (existing and final), landscaping plan, and plans for all new rights-of-way and easements.**

Referenced plans are included.

**V. CONCLUSION.**

For the reasons stated above, this Application meets the requirements for a modification of consequence and the request continues to comply with the original special exception approval by the Board.

Respectfully submitted,

*Alexandra Wilson*

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