

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18906 of Endeka Enterprises and 1320 Penelope LLC, as amended,¹ pursuant to 11 DCMR §§ 3103.2, 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 pursuant to § 3104.1 for 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, to allow conversion of an existing office building into 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: January 27, 2015, March 3, 2015, April 28, 2015, and June 30, 2015

DECISION DATE: June 30, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 22.)

The Board of Zoning Adjustment (“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”) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a resolution dated June 15, 2015, indicating that at a duly noticed public meeting on June 10, 2015, at which a quorum was in attendance, the ANC voted 8-0-0 in support of the application. (Exhibit 26.)

¹ This application is for modifications to plans approved in Case No. 18569. The Applicant stated that the modifications triggered the need for additional relief from the parking requirements and the roof structure requirements in addition to the relief granted in Case No. 18569. (Exhibit 1.) Subsequently, the Applicant further modified the project and amended the application (Case No. 18906) to include the following additional relief: variances from §§ 536 and 776 (court), § 2201.1 (loading), and § 2514 (zone district boundary line), and a special exception under § 512 (hotels and inns requirements). (See Exhibit 22.)

BZA APPLICATION NO. 18906

PAGE NO. 2

The Office of Planning (“OP”) also submitted a report in support of the application. (Exhibit 29.) The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 28.) There were three letters from neighbors filed in support of the application. (Exhibit 27.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from §§ 536, 776, 2101.1, 2201.1, and 2514.2. The only parties to this case were the Applicant and ANC 2B which supported the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from §§ 536, 776, 2101.1, 2201.1, and 2514.2, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under §§ 512, 400.7(b), 411.11, and 777.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and the OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 512, 400.7(b), 411.11, and 777.1, that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the

BZA APPLICATION NO. 18906

PAGE NO. 3

APPROVED PLANS, AS SHOWN ON EXHIBIT 25E, and the FOLLOWING CONDITIONS:

Loading Management Plan Components:

1. Vendors and on-site tenants shall be required to coordinate and schedule deliveries.
2. Trucks accessing the site shall be limited to a maximum of 30 feet in length.
3. All tenants shall be required to schedule any loading operation using a truck 20 feet to 30 feet in length.
4. Deliveries shall be scheduled to ensure curbside capacity is not exceeded. Unscheduled delivery vehicles shall be directed to return at a later time when loading space is available.
5. Inbound and outbound truck loading movements will be monitored to ensure trucks do not block the alley. Tenants shall ensure that trucks will not be allowed to park on 18th Street for deliveries.
6. Trucks using the loading docks will not be allowed to idle and must abide by the DDOT Freight Management and Commercial Vehicle Operations regulations and use the primary access routes listed in the DDOT Truck and Bus Route System map.

Transportation Demand Management (TDM) Program:

7. A member of the property management group shall serve as the Transportation Management Coordinator (TMC) responsible for coordinating and implementing the TDM provisions, preparing informational promotional brochures to residents and visitors and coordinating trash and loading activities. The contact information will be provided to DDOT and Zoning Enforcement with annual contact updates.
8. Real time transit information shall be presented on a display in the hotel to provide guests real time transportation information. In addition, the TMC will make printed materials for guest and employees upon request.
9. The Applicant shall register as a member of the Capital Bikeshare Bulk Membership program for hotels and provide initial free daily Capital Bikeshare passes for hotel guests in perpetuity, not to exceed \$5,000 per year.

VOTE: 3-0-2

(Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood to Approve; Jeffrey L. Hinkle not present, not voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this summary order.

BZA APPLICATION NO. 18906

PAGE NO. 4

ATTESTED BY: 

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 9, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE 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 § 3205, 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,

BZA APPLICATION NO. 18906

PAGE NO. 5

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18906-A of Endeka Enterprises and 1320 Penelope LLC, Request for Minor Modification of Plans Approved in Order No. 18906, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2, 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 pursuant to § 3104.1 for 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, to allow conversion of an existing office building into 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 (Application No. 18906):	January 27, March 3, April 28, and June 30, 2015
DECISION DATE (Application No. 18906):	June 30, 2015
FINAL ORDER ISSUANCE DATE (No. 18906):	July 9, 2015
MINOR MODIFICATION DECISION DATE:	July 19, 2016

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

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, 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 32 of the record for Case No. 18906.)

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BZA APPLICATION NO. 18906-A**PAGE NO. 2****MOTION FOR MINOR MODIFICATION**

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 originally approved project included a sixth floor addition onto an existing five-story building, with retail use on the ground floor, office use on the second floor, inn use on the third, fourth, and fifth floors, and inn and restaurant uses on the sixth floor. 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 Applicant submitted revised plans reflecting these modifications. (Exhibit 5.)

The Applicant indicated that the proposed minor modification does not require additional relief from the Zoning Regulations. Further, the Applicant does not seek to modify the conditions of approval included in BZA Order No. 18906.

Determination That the Modification Was Minor

Subsection 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.) The Board found that no material facts upon which the Board had based its original approval of the application were changed by the modified plans and addition of inn space.

The Merits of the Minor Modification of Approved Plans

The Applicant's request for a minor modification of Order No. 18906 complies with 11 DCMR § 3129. Subsection 3129.2 states that “[t]he Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.” The Applicant's request for minor modification meets these requirements.

Pursuant to § 3129.4, all requests for minor modifications shall be served on all other parties to the original application and those parties are allowed to submit comments within 10 days of the filed request for minor modification. The Applicant provided proper and timely notice of the request for minor modification to ANC 2B, the only other party to Application No. 18906, as well the ANC Commissioner for Single Member District 2B07. The ANC did not submit a written report to the record.

The Applicant also served its request on the Office of Planning (“OP”). OP submitted a timely report recommending approval of the proposed minor modifications to the Applicant's plans. (Exhibit 8.) The District Department of Transportation (“DDOT”) also submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 9.)

BZA APPLICATION NO. 18906-A
PAGE NO. 3

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 and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for minor modification of approved plans. Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 18906, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

It is therefore **ORDERED** that this request for modification of the Board's approval in Application No. 18890 is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED MODIFIED PLANS UNDER EXHIBIT 5.**

In all other respects, Order No. 18906 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON JUNE 30, 2015: 3-0-2

(Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood to APPROVE; Jeffrey L. Hinkle not present, not voting; one Board seat vacant.)

VOTE ON MINOR MODIFICATION ON JULY 19, 2016: 4-0-1

(Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE; Marnique Y. Heath not present or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 3, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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.

BZA APPLICATION NO. 18906-B
PAGE NO. 2

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 require 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 §

BZA APPLICATION NO. 18906-B
PAGE NO. 3

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 A. 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.