

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA Application No. 20523(1)
AMSQ LP

300 New Jersey Avenue, N.W. and 51 Louisiana Avenue, N.W. (Square 631, Lots 808, 809)

HEARING DATE: October 13, 2021

DECISION DATE: October 13, 2021

CORRECTED¹ SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a penthouse addition to an existing, detached, commercial building in the D-3 Zone:

- Special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7 (Pursuant to Subtitle X § 901.2)

The zoning relief requested in this case was self-certified. (Exhibit 3.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (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.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2021, at which a quorum was present, the ANC voted to support the application. (Exhibit 35.) The ANC's recommendation was conditioned on the Board's order imposing a prohibition against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open. The Board adopted this provision as a condition of this order. Commissioner Mark Eckenwiler testified at the Public Hearing on behalf of the ANC.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 31.)

¹ The order was corrected to remove reference to Subtitle I § 302 in the Relief Requested section. The Applicant's self-certification form listed the requested relief as pursuant to Subtitle I §§ 605.6 and 605.7 to allow the expansion of the penthouse structure.

DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District’s transportation network. (Exhibit 32.)

ARCHITECT OF THE CAPITOL (“AOC”) AND CAPITOL POLICE. The Applicant testified at the Public Hearing they will continue outreach with AOC and Capitol Police regarding the project and have proposed devoting a portion of the penthouse space to be a guard station for Capitol Police and Secret Service.

CONCLUSIONS

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.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

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 the requested relief and therefore **APPROVES** relief from:

- Special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7 (Pursuant to Subtitle X § 901.2)

Subject to the following **CONDITIONS**:

1. The project shall be constructed in accordance with the plans submitted as Exhibit 29A in the record², as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall be prohibited against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open.


² Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from what is granted by this Order.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE; Lorna L. John 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: October 22, 2021

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 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 SUBTITLE Y § 705 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 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.

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



**BZA Application No. 20523-A
AMSQ, LP**

300 New Jersey Avenue, NW and 51 Louisiana Avenue, NW (Square 631, Lots 808, 809)

HEARING DATE (20523):	October 13, 2021
DECISION DATE (20523):	October 13, 2021
ORDER ISSUANCE DATE (20523(1)):	October 22, 2021
DECISION DATE (20523-A):	June 28, 2023

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION OF CONSEQUENCE**

Pursuant to notice, at its June 28, 2023, public meeting, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for modification of consequence to BZA Order No. 20523(1) construct a penthouse addition to an existing, detached, commercial building in the D-3 Zone. The Board considered the request for modification of consequence under Subtitle Y § 703 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. 20523, the Board approved the request by AMSQ, LP (the “**Applicant**”) for a special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7, pursuant to Subtitle X § 901.2. The Board issued Order No. 20523(1) on October 22, 2021. (Exhibit 3A of the record for Case No. 20523-A.) The approval was subject to two conditions:

1. The project shall be constructed in accordance with the plans submitted as Exhibit 29A in the record, as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall be prohibited against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open.

PROPOSED MODIFICATION. On May 2, 2023, the Applicant submitted a request for modification of consequence to Order No. 20523. (Exhibits 1-3C.) The Applicant proposed several design changes and updates to the approved plans, including 1) reduction of the penthouse addition, 2)

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reduced roof deck footprint, 3) additional penthouse equipment, 4) revised setback dimensions for existing mechanical penthouse, and 5) removal of horizontal mullions from penthouse addition. The Applicant submitted revised plans reflecting these modifications. (Exhibit 3C.)

NOTICE OF THE REQUEST FOR MODIFICATION. Pursuant to Subtitle Y §§ 703.8-703.9, the Applicant provided proper and timely notice of the request for modification of consequence. (Exhibit 3.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6E.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 6, 2023, at which a quorum was present, the ANC voted to support the modification. (Exhibit 5.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the modification. (Exhibit 6).

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

CONCLUSIONS

The Board determines that the Applicant's request complies with 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." Based upon the record, the Board concludes that in seeking a modification of consequence, the Applicant has met its burden of proof under Subtitle Y § 703.4.

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

It is therefore **ORDERED** that this application for a modification of consequence of BZA Order No. 20523(1) is hereby **APPROVED** subject to the following **CONDITIONS**, which shall replace and supersede the conditions of BZA Order No. 20523(1):

1. The project shall be constructed in accordance with the plans submitted as Exhibit 3C in the record for case 20523-A, as required by Subtitle Y §§ 604.9 and 604.10.

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2. The Applicant shall be prohibited against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open.


In all other respects, Order No. 20523(1) remains unchanged.

VOTE: 3-0-2 (Lorna L. John, Chrishaun S. Smith, and Joseph S. Imamura to APPROVE;
Frederick L. Hill not present, not participating; one Board seat vacant)

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: July 11, 2023

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.

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



**BZA Application No. 20523-B
AMSQ, LP
300 New Jersey Avenue, N.W. and 51 Louisiana Avenue, N.W.
(Square 631, Lots 808 and 809)**

HEARING DATE (20523):	October 13, 2021
DECISION DATE (20523):	October 13, 2021
ORDER FINAL DATE (20523(1) ¹):	October 22, 2021
DECISION DATE (20523-A ²):	June 28, 2023
DECISION DATE (20523-B):	December 13, 2023

**SUMMARY ORDER ON REQUEST FOR
TWO-YEAR TIME EXTENSION**

ORIGINAL APPLICATION. In Application No. 20523, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) approved the request by AMSQ, LP (the “**Applicant**”) for a special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7 to construct a penthouse addition to a commercial office building in the D-3 Zone. The Board issued Order No. 20523 on October 22, 2021, and issued Corrected Order No. 20523(1), with the same final date - October 22, 2021 (the “**Order**,” Exhibit 3). Pursuant to Subtitle Y § 604.11, the Order became effective ten days after issuance. Pursuant to Subtitle Y § 702.1, the Order was valid for two years from the time it became final. The Board subsequently issued Order No. 20523-A for a Modification of Consequence; this approval did not extend the validity of Order No. 20523(1).

REQUEST FOR TWO-YEAR TIME EXTENSION. On October 25, 2023, the Applicant submitted a request that the Board grant a two-year extension of Order No. 20523(1). (Exhibits 1-5.)

NOTICE OF THE REQUEST. Pursuant to Subtitle Y §§ 705.2(a), the Applicant provided proper and timely notice of the request for time extension to the parties to the underlying case. (Exhibit 4.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commissions (“ANC”) 6E and 6C.

¹ Corrected Summary Order

² Modification of Consequence

ANC REPORT. ANC 6E's report indicated that at a regularly scheduled, properly noticed public meeting on November 7, 2023, at which a quorum was present, ANC 6E voted to support the Applicant's time extension request. (Exhibit 6.) ANC 6C did not submit a report to the record for this request.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the time extension. (Exhibit 7.)

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

CONCLUSIONS

This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.2(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.2(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.2(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

Based upon the record before the Board and having given great weight to the appropriate recommendations and reports filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.2 to extend the validity of the underlying order.

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

It is therefore **ORDERED** that the request for a two-year time extension to the validity of the Board's approval in Order No. 20523(1) is hereby **APPROVED**, and the Order shall be valid until **October 22, 2025.**

VOTE 4-0-1 (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Robert E. Miller to APPROVE; Chrishaun S. Smith not participating)

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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: December 27, 2023

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.