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June 9, 2016

**VIA IZIS AND HAND DELIVERY**

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

**Re: Request for Minor Modification of Plans Approved in  
BZA Order No. 18890  
646-654 H Street, N.E. (Square 858, Lot 65)**

Dear Members of the Board:

This letter is submitted on behalf of Rock Creek-650 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. 18890, for property located at 646-654 H Street, N.E. (Square 858, Lot 65—formerly Lots 802, 801, 800, and 2) (the "Property"). The Applicant proposes to modify the approved building's penthouse by adding 1,908 net square feet of habitable residential space on a first floor in the penthouse. The modified penthouse is triggered by and complies with all requirements set forth in the new penthouse regulations, approved by the Zoning Commission in Z.C. Order 14-13 (the "New Penthouse Regulations").

Other minor modifications include a reduction in the unit count from 26 to 23 units and minor design changes to the retail entry features on the ground floor. These modifications are especially insignificant and likely do not require BZA review but are mentioned briefly here for the record.

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 is an authorization letter from the Applicant authorizing the law firm of Saul Ewing LLP to file and process the application. Also included herewith is a complete set of the architectural plans initially submitted in BZA No. 18890 with all of the proposed modifications shown in yellow highlighting and red type.

Board of Zoning Adjustment  
District of Columbia  
CASE NO.18890  
EXHIBIT NO.39

**I. Background of Case**

September 29, 2014, the Applicant submitted an application (Application No. 18890) to the Board for the following special exception and variance relief from the requirements of the Zoning Regulations:(1) for a variance from the parking requirements of Section 2101.1, the parking space size requirements of 2115.2 and the loading requirements of Section 2201.1; and (2) pursuant to 11 DCMR §§ 3104.1 and 1325.1 for a special exception to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot that has 6,000 square feet or more of land area, in the C-2-B District and the H Street Northeast Neighborhood Commercial Overlay District ("H Street Overlay District" or "HS Overlay"). The Property is zoned HS-H/C-2-B.

The approved project is a 75 foot high mixed use apartment building with 26 units and ground floor retail uses ("Project"). Affordable units will be provided as required by the inclusionary zoning ("IZ") requirements. The Project will total approximately 32,646 square feet of gross floor area on the 6,970 square foot lot, resulting in a building density of approximately 4.7 FAR which is the maximum permitted FAR (with the 20% IZ bonus) in the HS-H/C-2-B District. The Project meets all of the IIS Overlay design requirements as well as the HS-H/C-2-B height and density standards. Due to the small size of the Property, the requested zoning relief in BZA Case No. 18890 was necessary for parking and loading relief as needed to develop the Project. In addition, a special exception was required because the Project was enlarging the gross floor area of the existing buildings on the 6,970 square foot Property by more than 50%.

The Project was approved as proposed with positive recommendations from the Office of Planning and Advisory Neighborhood Commission ("ANC") 6C. The Board held its public hearing on the application on February 10, 2015, and voted unanimously (4-0-1, with one Board seat vacant) to approve. A copy of the Summary Order approving the original application is attached as Exhibit D.

**II. Proposed Minor Modification Description and Compliance with Matter of Right Standards**

Applicant is requesting a minor modification to revise the building's penthouse to add habitable residential space. The proposed modification does not change any of the areas of relief previously approved by the Board. It arises as a result of the recent adoption of new penthouse regulations which permit the inclusion of habitable space in a penthouse.

Habitable space is proposed to be included in a first story of the proposed penthouse. Mechanical equipment and associated screening will be provided above the habitable space. The height of the modified penthouse fully complies with matter of

right standards. The first story habitable space has a height of 12 feet and the mechanical space and associated screening above has a height of 6.5 feet for a total of 18.6 feet which is the maximum permitted (Section 770.6).

The penthouse includes a total of 1,908 net square feet of additional residential space. The additional space will serve as additional living space for the five units located on the top, 6th floor, of the Project.

The penthouse also complies with matter of right setback requirements.. It is setback an equivalent distance to its height from the front (H Street), rear ( alley), and west (7th Street N.E.) building walls. No setback is provided or required from the eastern building wall which is adjacent to a building which is neither a landmark or a contributing building and , as a result no setback is required pursuant to 11 DCMR §411.18(c).

Pursuant to Section 411.16, the penthouse habitable space will comply with the Inclusionary Zoning ("IZ") set-aside requirements. Pursuant to Section 2603.1 an inclusionary development in the C-2-B District "shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use including penthouse habitable space as described in § 2602.1(d), or fifty percent (50%) of the bonus density being utilized for inclusionary units." In this case 8% of the of the gross floor area devoted to residential use is the greater amount. The 1,908 square feet of additional residential space provided in the penthouse triggers an additional set aside requirement of 153 square feet at 50% AMI pursuant to 11DCMR 2603.10 (100% of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible low-income households).

The set aside requirement generated by the proposed penthouse will be satisfied with a contribution to the housing trust fund pursuant to 11DCMR 2607.9 which provides that the set aside requirement can be met with such a contribution if the building is not otherwise required to provide IZ units at 50% AMI and the amount of the penthouse habitable space would result in a set aside which is less than the smallest unit in the building. These requirements are met here. The C-2-B set-aside requirements are for moderate income units only and the smallest unit in the Project is 505 square feet (as compared to the 153 sf set aside required for the penthouse habitable area).

### **III. The Proposed Modification Complies with the Requirements for Minor Modifications set forth in Section 3129 of the Zoning Regulations**

The requested modification complies with the applicable requirements of Section 3129:

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- Section 3129.2. This request is in writing, states the modifications requested and the reasons therefore, and includes copies of the relevant BZA approved plans as well as plans showing the requested modifications.
- 3129.3. This modification request is submitted with two years of the approved BZA order effective date (February 20,2015).
- 3129.4. The modification application is being served on the only party to the original application- ANC 6C,
- 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 or any of the areas of relief previously granted by the Board. The areas of relief previously approved include parking, loading and an addition in IIS-H zone whereas the modification deals with adding a modest amount of habitable space to the penthouse without increasing the unit count.

A filing fee of \$1,196 and a completed Fee Calculator Form 126 are enclosed herewith. Pursuant to Section 3180.1(f), the required fee is 26% of the \$4,600 original filing fee submitted with BZA Application No. 18890.

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,

  
Cynthia A. Giordano

#### Attachments

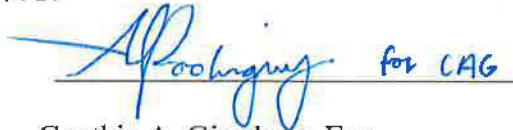
cc: Joel Lawson, DC Office of Planning (Via Hand and Electronic Delivery)  
Maxine Brown-Roberts, DC Office of Planning (Via Hand and Electronic Delivery)  
Advisory Neighborhood Commission 6C (See Proof of Service)

Board of Zoning Adjustment  
June 9, 2016

**PROOF OF SERVICE**

I hereby certify that on June 9, 2016, a copy of this Request for Minor Modification of BZA Approved Plans was served on the following parties to the original case via U.S. Mail:

Advisory Neighborhood Commission 6C  
P.O. Box 77876  
Washington DC 20013-7787



Cynthia A. Giordano, Esq.  
Saul Ewing LLP

1081948 | 06/09/2016

Rock Creek - 650 H LLC

100247

DC Treasurer

CHECK DATE: 6/2/2016

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
6/2/2016	Bill		1,216.80	1,216.80		1,216.80
				Check Amount		1,216.80

Eagle Operating 650 BZA Minor Mod App 1,216.80

THIS CHECK IS VOID WITHOUT A BLUE & RED BACKGROUND AND A WATERMARK - HOLD UP TO THE LIGHT TO VERIFY

Rock Creek - 650 H LLC  
1155 Connecticut Ave, NW  
Suite 700  
Washington, DC 20036

Eagle Bank  
Bethesda, MD 20814  
65-329/550

100247

Printed: WinUser-amons-06/02/16 03:51:48 pm

DATE	6/2/2016
AMOUNT	1,216.80

PAY ONLY 1,216.80 CENTS

MEMO: BZA Minor Mod App

PAY One Thousand Two Hundred Sixteen and 80/100 Dollars

TO THE DC Treasurer  
ORDER  
OF

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES A MICROPRINT BORDER & FLUORESCENT FIBERS

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