

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19943-A of The Mills Building Associates, LLC**, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved by BZA Order No. 19943 to permit adjustments to the interior layout of the building, setbacks, and massing of the proposed penthouse in an existing mixed-use building in the D-5/D-6 Zones at premises 1700 Pennsylvania Avenue N.W. (Square 168, Lot 50).

<b>HEARING DATES</b> (19943):	March 13, 2019 and April 10, 2019
<b>DECISION DATE</b> (19943):	April 10, 2019
<b>ORDER ISSUANCE DATE</b> (19943):	April 17, 2019
<b>MODIFICATION OF CONSEQUENCE</b>	
<b>DECISION DATE</b> (19943-A):	December 18, 2019

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

Original Application. In Application No. 19943, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by The Mills Building Associates, LLC (the “Applicant”) for area variances from the loading requirements of Subtitle C § 901.1, and from the habitable penthouse regulations of Subtitle C § 1500.3(d) to renovate and construct additions to an existing office building. The Board issued Order No. 19943 on April 17, 2019. (Exhibit 3A.) The approval was subject to one condition.

Proposed Modification. On October 22, 2019, the Applicant submitted a request for minor modification to Order No. 19943. (Exhibits 1-3D.) The Applicant proposes to modify the interior layout of the ground floor and the layout, setbacks, and massing of the proposed penthouse. The proposed modifications incorporate the feedback received by the Applicant from Commission of Fine Arts staff. The Applicant submitted revised plans reflecting these modifications. (Exhibit 4A.)

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”) 2A.

**BZA APPLICATION NO. 19943-A**  
**PAGE NO. 2**

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 20, 2019, at which a quorum was present, the ANC voted 8-0-0 to support the request. (Exhibit 6.)

OP Report. The Office of Planning ("OP") submitted a report recommending approval of the proposed modification but found that the request should be considered as a modification of consequence because "the proposal is to redesign and relocate architectural elements and open spaces from the final design approved by the Board." (Exhibit 5.)

DDOT Report. The District Department of Transportation did not submit a report in response to this request for modification.

**Request for Modification of Consequence**

The Applicant sought a minor modification under Subtitle Y § 703.4 to modify the approved plans to adjust the interior layout of the building, setbacks, and massing of the proposed penthouse in an existing mixed-use building in the D-5/D-6 Zones at premises 1700 Pennsylvania Avenue N.W. (Square 168, Lot 50).

The Board concurs with OP and determines that the Applicant's request instead meets the definition of a modification of consequence in 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."

Nonetheless, based upon the record, the Board concludes that the Application has met the procedural requirements for a modification of consequence and that the Applicant has met its burden of proof for a modification of consequence as directed by Subtitle Y § 703.4.

"Great Weight" to the Recommendations of OP

The Board is required to give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8). The Board finds OP's recommendation that the Board approve the request as a modification of consequence persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANC

The Board must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2) The Board finds the ANC's recommendation that the Board approve the application persuasive and concurs in that judgment.

**BZA APPLICATION NO. 19943-A**  
**PAGE NO. 3**

Pursuant to Subtitle Y § 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 BZA Order No. 19943 is hereby **GRANTED**, subject to the approved plans at Exhibit 3B of Application No. 19943, as modified by Exhibit 4A of Application No. 19943-A, and the following condition, as carried forward from BZA Order No. 19943:

1. The Applicant shall implement the Loading Management Plan provided in Exhibit 24 of the record for Application No. 19943 with the addition of the following language:
  - a. A flagger shall be present whenever a vehicle is entering or exiting the loading dock. This flagger will alert pedestrians, bicyclists, and other vehicles to trucks that may be entering or exiting the facilities.

In all other respects, Order No. 19943 remains unchanged.

**VOTE: 3-0-2** (Frederick L. Hill, Carlton E. Hart, Lorna L. John to APPROVE; Anthony J. Hood, and Lesylleé M. White 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:** December 19, 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.