

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



**Application No. 19610-A of Granite LLC**, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to the plans approved in BZA Order No. 19610, and pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the penthouse regulations of Subtitle C § 1500.3(c) to include a nightclub, bar, cocktail lounge, or restaurant use in the penthouse of an existing ten-story office building in the D-6 Zone at premises 730 15th Street N.W. (Square 221, Lots 800 and 809).

<b>HEARING DATE (19610):</b>	November 8, 2017
<b>DECISION DATE (19610):</b>	November 29, 2017
<b>ORDER ISSUANCE DATE (19610):</b>	December 4, 2017
<b>MODIFICATION HEARING DATE:</b>	February 27, 2019
<b>MODIFICATION DECISION DATE:</b>	February 27, 2019

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

**BACKGROUND**

On November 29, 2017, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Granite LLC (the “Applicant”) in Application No. 19610 for variance relief from the penthouse regulations of Subtitle C § 1500.3(d), to permit the second floor of the existing two-story penthouse to be used as habitable space in the D-6 Zone at premises 730 15<sup>th</sup> Street N.W. (Square 221, Lots 800 and 809). The Board issued Order No. 19610 on December 4, 2017.

**MODIFICATION OF SIGNIFICANCE**

On November 1, 2018, the Applicant submitted a request for a Modification of Consequence to the plans and relief approved in Order No. 19610. (Exhibits 1-2D.) On November 26, 2018, the Applicant modified its application and requested that the modification be processed instead as a Modification of Significance pursuant to Subtitle Y § 704. (Exhibit 4.)

In the current request, the Applicant proposes to modify the approved plans by incorporating a nightclub, bar, cocktail lounge, or restaurant use in the penthouse of the building. In Application No. 19610, the second-story penthouse habitable space was approved as a communal rooftop reception area accessory to the outdoor terrace. The Applicant filed proposed plans reflecting these modifications to the record. (Exhibit 22A (Updated); Exhibit 2B (Original).)

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EXHIBIT NO.28

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Based on the proposed modification, the Applicant also requests special exception relief from the penthouse regulations of Subtitle C § 1500.3(c) as is required to include a nightclub, bar, cocktail lounge, or restaurant use in the penthouse of the building. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 26.) In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. 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 application for which additional or different zoning relief is needed.

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence<sup>1</sup> requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of the hearing is limited to the impact of the modification on the subject of the original application, and does not permit the Board to revisit its original decision. Finally, pursuant to Subtitle Y § 704.9, the filing of any modification request under this section does not act to toll the expiration of the underlying order and the grant of any such modification does not extend the validity of any such order.

The 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 Commissions ("ANC") 2B and 2C, as well as to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B and is adjacent to the boundaries of ANC 2C, therefore both ANCs are automatically parties to this application. ANC 2C did not submit a written report to the record. ANC 2B submitted a report indicating that at a regularly scheduled, properly noticed public meeting on December 8, 2018, at which a quorum was present, the ANC voted 6-0-0 to support the modification. (Exhibit 7.)

Office of Planning ("OP") submitted a timely report recommending approval of the requested modification and recommending approval of the special exception relief. (Exhibit 24.) The District Department of Transportation submitted a report stating that it had no objection to the granting of the request. (Exhibit 6.)

In addition, the United States Secret Service stated that they have no objections to the proposed modification to the penthouse. (Exhibit 2D.) The United States Commission of Fine Arts gave concept approval for the design.

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<sup>1</sup> See, Subtitle Y §§ 703.3 and 703.4.

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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 special exception relief from the penthouse regulations of Subtitle C § 1500.3(c) to include a nightclub, bar, cocktail lounge, or restaurant use in the penthouse, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 901.2, 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 also concludes that in seeking a modification of significance to Order No. 19610, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 704.

As directed by 11 DCMR Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception and modification of significance. The only parties to the case were the ANCs and the Applicant. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR 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 significance is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 22A.**

In all other respects, Order No. 19610 remains unchanged.

**VOTE: 5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Robert E. Miller 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 J. BARDIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** March 5, 2019

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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.