GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Order No. 14619-B[1] of Lenore Partnership, Motion for Modification of Conditions "A" and "D"[2] of Order No. 14619 of Lenore Partnership and Waiver of the Two (2)-Year Filing Time Requirement, pursuant to Section 3129 of the Zoning Regulations. The original application was pursuant to Sub-section 8207.2 (3108.1, 11 DCMR) of the Zoning Regulations, for a special exception under Paragraph 3101.45 (209.1, 11 DCMR) to permit construction of a community center building, including a tennis court and a swimming pool in an R-1-A District at premises 4201 Lenore Lane, N.W. (Square 2246, Lot 27).

HEARING DATE (original application):	June 24, 1987
DECISION DATE (original application):	June 24, 1987
FINAL ORDER ISSUANCE DATE (original application):	September 15, 1987
FIRST MODIFICATION DECISION DATE:	April 6, 1988
FIRST MODIFICATION ORDER ISSUANCE DATE:	May 5, 1988
2nd MODIFICATION DECISION DATE:	June 8, 2010

SUMMARY ORDER ON 2nd REQUEST FOR MODIFICATION

Background.
On June 24, 1987, the Board approved the Applicant's original request for special exception pursuant to Sub-section 8207.2 (3108.1, 11 DCMR) of the Zoning Regulations, for a special exception under Paragraph 3101.45 (209.1, 11 DCMR) to permit construction of a community center building, including a tennis court and a swimming

[1] This minor modification order is numbered 14619-B, so as to distinguish this order from a prior modification order issued May 5, 1988 (Order 14619). Essentially, that order reflected that there were approved plans (Site Plan 23C) that revised the site plan by relocating the footprint of the swimming pool and the tennis courts. Order No. 14619 (issued May 5, 1988) is a companion order to Order 14619 which was issued on September 15, 1987. The May 5, 1988 Order states, "…the proposed modification of plans is approved subject to the condition that the layout of the site shall be in accordance with the plans marked as Exhibit No. 23C of the record. In all other respects, the Order of the Board dated September 15, 1987, shall remain in full force and effect."
[2] The Applicant amended its request at the Office of Planning's recommendation, and agreed to a modification to Condition "D" as well. For ease of administration, that modification would reference the site plan in this application instead of the identical layout stored with the original case record in the Office of Zoning's archive.

pool in an R-1-A District at premises 4201 Lenore Lane, N.W. (BZA Order No. 14619, issued September 15, 1987), subject to six conditions.

On May 5, 1988, the Board issued a companion order to reflect approval of a request from the Applicant for a minor modification of the approved plans. The Board approved that first modification request on April 6, 1988. (BZA Order No. 14619, issued May 5, 1988). Subsequently, the construction was completed and the site now contains the Lenore Pool and Tennis Club (the "Club"), which is the successor to the Lenore Partnership (both are referred to as the "Applicant"), a facility that has been in existence for over 22 years subject to the conditions in that order.

Second Request for Modification.
On April 26, 2010, by a letter from the Applicant dated April 22, 2010, the Board received a new request for a modification to condition "A" of Order No. 14619 of Lenore Partnership. That condition relates to the number of member families that may use the facilities of the Club and the number of member families who may reside further than 1,000 feet from the site. Condition "A" of the existing special exception order limits to15 the number of families that could be members of the community center. The condition also states that no more than two member families may reside in excess of 1,000 feet from the site. The Applicant requested that Condition "A" be amended to allow an increase in the maximum membership from 15 to 20 families; and an increase in the number of families that may reside beyond a 1,000-foot perimeter from two to three. No physical or operational changes were proposed in the request for modification.

The Applicant requested a waiver of the two-year time requirement for filing a modification request, pursuant to § 3129 of the Zoning Regulations.[3] (Exhibit 24). Sufficient notice of this motion for minor modification of plans was provided to the Office of Planning (OP) and Advisory Neighborhood Commission (ANC) 3F, as evidenced by their consideration, votes, and reports. (Exhibits 25 and 26). Also, the Applicant notified and consulted with the neighbors living within 200 feet of the facilities, since the modification request included a petition, dated April 15, 2010, from neighbors living within 200 feet of the Applicant's facilities in support of the request. (Exhibit 24).

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[3] Zoning Commission Order No. 09-01, published in the *D.C. Register* on June 5, 2009, amended § 3129 (Modification of Approved Plans), as well as § 3130 (Time Limits on Board Action). In Z.C. Order No. 09-01, the Zoning Commission amended § 3129 by extending the period of time for filing a modification request from six months to two years. Specifically, § 3129.3, as amended, states that the "request for minor modification of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." The Applicant's request for modification was not filed within either the original six-month or the amended two-year period. Nonetheless, the Board granted the waiver by consensus, having heard no objection from any party or other affected person.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. OP submitted a report recommending approval of the request on June 1, 2010. In addition, for administrative ease, OP recommended modifying Condition "D" in reference to the site plan in the application instead of the identical layout stored with the original case record in the Office of Zoning archive. The Applicant agreed to this change. (Exhibit 25). The Board considered the amended request for modification to include a revised Condition "D."

Pursuant to § 3129.4, the affected ANC 3F, which was a party to the underlying case, is required to be served with any modification request to which it was a party. Although the Applicant's letter is silent as to whether it was served on ANC 3F, the record is clear that ANC 3F did learn of the application and was not prejudiced, as evidenced by the fact that ANC 3F considered and voted upon the Applicant's request on May 17, 2010. (Exhibit 25).

On June 7, 2010[4], ANC 3F submitted a report, dated June 4, 2010, indicating that at a duly-noticed public meeting on May 17, 2010, the ANC voted unanimously by a vote of 4:0:0 (with a quorum being 4) to support the request for a minor modification to BZA Order 14619 to expand the membership that may use the Club from 15 member families to 20 member families and to raise the limit on the number of families who may reside further than 1,000 feet from the site from two to three. The ANC also voted to support the request for the Board to waive its rules pursuant to § 3100.5 to permit the modification since more time[5] had elapsed from the approval and original Order than the Zoning Regulations would otherwise allow. The ANC also voted 4:0:0 to maintain the provisions of the original order as listed in the April 22, 2010, letter to the Board from the Applicant, as well as the governing regulations implementing the 1987 Order regarding hours of operation, lighting, noise, trash, security, and private parties cited in the Applicant's letter of April 22, 2010.

Section 3129, specifically § 3129.3, indicates that a request for minor modification "of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." The Board, by consensus, waived the two-year time limit, noting that the facility in question had been operating for several decades.

Further, § 3129.7, states that "[a] request to modify other aspects of a Board order may be

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[4] The Board, by consensus, waived the time requirement to allow the late-filed ANC letter (Exhibit 26) into the record, pursuant to § 3129.4.
[5] The ANC's letter referenced the now-amended six-month limitation period that was amended by Zoning Commission Order No. 09-01 to a two-year period.

made at anytime, but shall require a hearing." All of the parties in the case filed written reports and all of those reports were in support of the request. The Board waived its rules, by consensus, and decided the request based on the written materials that had been filed.

The modifications are minor and do not change the material facts on which the zoning relief was approved, and therefore no new relief is required. The Applicant stated that the modifications being sought were necessitated by the fact that over the last 22 years the number of families with children who reside within 1,000 feet of the site and are interested in using the Club's facilities has exceeded expectations. The Club would like to expand its membership to accommodate these requests. The modification would raise the limit from 15 to 20 member families and the number of member families who may reside further than 1,000 feet from the site from two to three. A petition was submitted from nearby neighbors in support of the modification request. (Exhibit 24). No one objected to the request.

Based upon the record before the Board, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129.1, that the requested relief can be granted being in harmony with the general purpose and intent of the Zoning Regulations and Map. No parties opposed this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant's proposed modification of these conditions is consistent with the requirements of § 3129.7 of the Zoning Regulations in that the revisions represent a minor modification that does not change the material facts the Board relied upon in approving the original application.

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. It is therefore **ORDERED** that this application be **GRANTED WITH THE FOLLOWING CONDITIONS, AS MODIFIED:**

<u>Condition A</u>: The membership of the Lenore Pool and Tennis Club, or any successor entity that will use the recreational facilities, shall be limited to no more than 20 families. No more than three of the member families may reside in excess of 1,000 feet from the subject site.

<u>Condition D</u>: The layout of the recreational facilities shall be as shown on the site plan identified as Exhibit No. 23C.

VOTE on Original Application (June 24, 1987): 4-0-1

(Lindsley Williams, Paula L. Jewell, William F. McIntosh, and Charles R. Norris, to grant; Carrie L. Thornhill not present, not voting.)

VOTE on Minor Modification of Plans (April 6, 1988): 4-0-1

(William F. McIntosh, Paula L. Jewell, and Charles R. Norris to approve; Lindsley Williams to approve by proxy; Carrie L. Thornhill not voting, not having heard the case.)

VOTE on Second Minor Modification of Conditions (June 8, 2010): 3-0-2

(Shane L. Dettman, Meridith H. Moldenhauer, Nicole C. Sorg to approve; the Third Mayoral Appointee (vacant) and the Zoning Commission Member not voting, not having participated.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved issuance of this order.

ATTESTED BY: _____
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 15 2010

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3205, 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.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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. 14619-B

As Director of the Office of Zoning, I hereby certify and attest that on June 15, 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Robert Axelrod, Treasurer
Lenore Pool and Tennis Club
2610 Tilden Place, N.W.
Washington, D.C. 20008

Chairperson
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Advisory Neighborhood Commission 3F
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ATTESTED BY: Jamison L. Weinbaum

JAMISON L. WEINBAUM
Director, Office of Zoning