

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 15613 of Nidal Sukhtian, as amended, pursuant to 11 DCMR § 3107.2 (new § 3103.2), for a variance from the minimum lot occupancy requirement (§532), a variance from the minimum area required as residential recreation space (§533.4), and a variance to allow residential recreation space on a roof deck with dimensions of less than twenty-five feet (§ 533.8) for construction of a four-unit apartment house in an SP-1 District at premises 1622 18th Street, N.W., Square 134, Lot 166 (formerly Lots 162, 163 and 164).

HEARING DATES: January 22 and June 17, 1992

DECISION DATES: March 4, April 8, July 1, July 29, September 2 & October 7, 1992

FINAL ORDER: May 14, 1998

MODIFICATION MEETING DATES: October 3, 2000; December 5, 2000

MODIFICATION DECISION DATE: December 5, 2000

MODIFICATION ORDER

PRELIMINARY MATTERS:

Dudley Cannada, the property owner's agent and architect, filed an application pursuant to 11 DCMR §§3103.2 and 3129.2 with the Board of Zoning Adjustment on September 11, 2000, for modification of the originally approved building plans for a variance from §533.8, to allow a roof area that is less than 25 feet to be used as residential recreation space in an SP-1 District. The applicant requested the modifications more than six months after the Board issued its final order on May 14, 1998 (hereafter the "order"), thus requiring a waiver of 11 DCMR §3129.3.

At its public meeting on October 3, 2000, the Board opened the record and requested additional information so that it could reach a decision regarding the modification.

In response, the applicant submitted written statements describing the requested modifications, a copy of the application for construction permits on private property dated May 11, 2000, a filing fee receipt from the Department of Consumer and Regulatory Affairs, and the building plans. The applicant stated that the proposed building was redesigned to utilize only the variance from 11 DCMR §533.8 granted in the Board's Order entered May 14, 1998 and otherwise complied with the Zoning Regulations. The applicant stated that the property owners

filed the original plans for a permit and paid a \$600.00 filing fee on May 14, 2000, thus meeting the terms of the Order to file for a building permit within a two-year period. The plans filed in September 2000 modified the original building plans filed in May.

Advisory Neighborhood Commission (ANC) 2B, by correspondence dated November 20, 2000, voted unanimously to support the application. The ANC believes that the requested modification will benefit the community and improve the project. Owners of two nearby condominiums objected to the motion on the grounds that the Board's Order expired before the applicant filed the request for modification and therefore, the Board lacked jurisdiction to consider the modification request.

At its meeting on December 5, 2000, the Board, voting 5-0-0, waived its rules pursuant to 11 DCMR §3101.6 and granted the Applicant's request to accept the late request for modification of plans.

The Board, at that same meeting, voting 5-0-0, waived its rules pursuant to 11 DCMR §3101.6 to permit Toye Bello, of the Department of Consumer and Regulatory Affairs, to testify during the Board meeting. Mr. Bello then testified about the Department's procedure for accepting construction permit applications for filing.

The Board, voting 5-0-0, determined that it retained jurisdiction to consider the request for modification because the applicant had complied with the requirement of 11 DCMR §3130 to file the plans for a building permit application within two years of the order.

The Board, voting 5-0-0, approved the request for modification of plans for the revised project.

FINDINGS OF FACT

1. On May 24, 1998, BZA Order No. 15613 became effective. The Order granted the applicant's request for a variance from the minimum lot occupancy requirement (§532), a variance from the minimum area required as residential recreation space (§533.4), and a variance to allow residential recreation space on a roof deck with dimensions of less than twenty-five feet (§ 533.8) for construction of a four-unit apartment house in an SP-1 District.
2. Pursuant to 11 DCMR §3130, no order of the Board shall be valid for a period longer than two (2) years unless, the plans for the erection or alteration are filed for the purposes of securing building permit.
3. The Order would have expired if the applicant did not file plans for a building permit by May 14, 2000.
4. The applicant filed a building permit application, submitted plans, and paid the required filing fee to the Department of Consumer and Regulatory Affairs on May 14, 2000.

5. The submission of plans for the structure authorized by the Order, filed within two years after issuance of the Order, was timely. The Order did not expire before the applicant requested modification of the approved building plans.
6. The applicant is seeking to modify the plans originally approved by the Board by increasing the amount of residential recreation space from 234 square feet to 262 feet under the variance from §533.8. The other plan modifications, which do not require zoning relief, are: a) reduce the proposed building height from 64.5 feet to 57 feet; b) reduce the proposed building from five stories and a roof structure to four stories and a roof deck; c) reduce the residential portion of the building from 81 percent of lot area to 80 percent; d) increase the rear yard at 10 feet above grade from 12 feet to 12.33 feet; and e) redesign the building's exterior.
7. The modification requires less zoning relief than the variances approved in the Order issued May 14, 1998. The applicant no longer requires variances from §§532 and 533.4 of the Zoning Regulations.
8. The applicant is requesting the modification to accommodate development on the site and because the proposed changes will reduce the zoning relief required by the project.
9. There are no other changes that affect the relief granted in the Order.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized to approve requests for minor modifications of approved plans that do not change the material facts the Board relied upon in approving the application under 11 DCMR §3129.7. The Board has jurisdiction to consider the Applicant's request for modification of the Order because the applicant filed plans for the erection or alteration for the purposes of securing a building permit before the Order's expiration date, May 14, 2000. The Board concludes that the requested change does not change the material facts the Board considered in approving the original application because the applicant now complies with §§532 and 533.4 and seeks less relief than previously granted from §533.8.

Advisory Neighborhood Commission 2B voted unanimously to support the application and, in approving this application, the Board granted the ANC the great weight to which it is entitled.

Accordingly, it is hereby **ORDERED** that the **REQUEST FOR MODIFICATION** of plans be **APPROVED**, in accordance with the construction plans identified at Exhibit No. 82 of the record.

DECISION DATE: December 5, 2000

MOTION: WAIVE THE BOARD'S RULES AND ACCEPT REQUEST FOR MODIFICATION OF PLANS FILED MORE THAN SIX MONTHS AFTER FINAL ORDER.

VOTE: 5-0-0 (Anne Mohnkern Renshaw, Carol J. Mitten, Sheila Cross Reid, Rodney L. Moulden and Robert N. Sockwell to approve.)

MOTION: WAIVE THE BOARD'S RULES AND ACCEPT REQUESTED GOVERNMENT TESTIMONY DURING A PUBLIC MEETING

VOTE: 5-0-0 (Robert N. Sockwell, Anne Mohnkern Renshaw, Sheila Cross Reid, Carol J. Mitten, and Rodney L. Moulden to approve.)

MOTION: CONSIDER THE APPLICANT'S REQUEST FOR MODIFICATION OF PLANS, BECAUSE THE APPLICANT HAD COMPLIED WITH THE REQUIREMENT OF § 3130 TO FILE PLANS FOR THE PURPOSES OF SECURING A BUILDING PERMIT WITHIN TWO YEARS OF THE BOARD'S ORDER.

VOTE: 5-0-0 (Carol J. Mitten, Robert N. Sockwell, Anne Mohnkern Renshaw, Sheila Cross Reid, and Rodney L. Moulden to approve.)

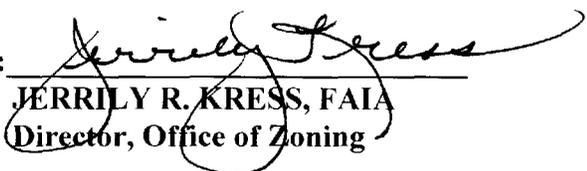
MOTION: REQUEST FOR APPROVAL OF MODIFICATION OF PLANS.

VOTE: 5-0-0 (Carol J. Mitten, Sheila Cross Reid, Robert N. Sockwell, Anne Mohnkern Renshaw, and Rodney L. Moulden to approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 29 2001

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR §3130, 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 PURPOSES OF SECURING A BUILDING PERMIT.

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE §1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

PY/BAB 3.23.01&2.2.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 15613

As Director of the Office of Zoning, I hereby certify and attest that on MAR 29 2001 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 who is listed below¹:

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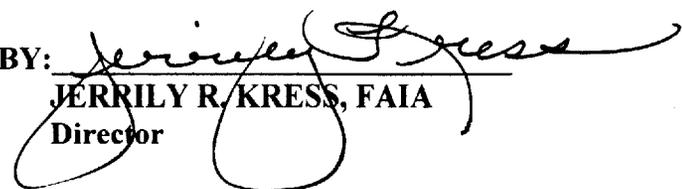
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ATTESTED BY: 
JERRILY R. KRESS, FAIA
Director

¹ The Office of Zoning record indicates that Mrs. L. L. Len is deceased.