

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Request for Modification of Approved Plans Application No. 17474-B of ASR Group, Inc., by Metro Properties, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, and a variance from the residential recreation space requirements under section 773, to allow the construction of a new unit apartment building in the C-2-A District at premises 1300 Rhode Island Avenue, N.E. (Square 3956, Lot 801).¹

HEARING DATE (original application):	May 23, 2006
DECISION DATE (original application):	May 23, 2006 (Bench Decision)
FINAL ORDER ISSUANCE DATE (original application):	June 6, 2006
MODIFICATION DECISION DATE:	April 1, 2008 (Bench Decision)
MODIFICATION ORDER ISSUANCE DATE:	April 2, 2008 (BZA No. 17474-A)
2nd MODIFICATION DECISION DATE:	November 3, 2009

SUMMARY ORDER ON 2nd REQUEST FOR MODIFICATION

Background.

On May 23, 2006, the Board approved the Applicant's original request for variances from lot occupancy requirements under section 772, residential recreation space requirements under section 773, and from section 2115.2 that any accessory parking area or parking garage with 25 or more required parking spaces may designate up to 40 percent of the required parking spaces for compact cars, as well as special exception pursuant to 11 DCMR §§ 3104.1 and 411.3 requiring the rooftop elements to be placed in one enclosure,

¹ Due to the Board's approval of the modification of plans, the need for relief changed, resulting in elimination of one variance and one special exception, both of which are no longer necessary relief. Specifically, a variance from Section 2115.2, to authorize compact car parking spaces to exceed the limitation of forty percent (40%) of total parking spaces, and a special exception from Section 411.3 to allow rooftop elements to be placed in more than one enclosure, are no longer needed. The Applicant's plan revision also removed an entire story, thereby decreasing the number of units by 60. Accordingly, the caption for the case has been altered to reflect those changes.

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to allow the construction of a new 326-unit apartment building in the C-2-A District at premises 1300 Rhode Island Avenue, N.E. (BZA Order No. 17474).

On March 4, 2008, the Board received a request from the Applicant for a minor modification of approved plans pursuant to Section 3129. The Board approved that request on April 1, 2008. (BZA Order No. 17474-A).

On September 29, 2009, the Board received a second request for a minor modification of approved plans. The Applicant's request for a modification of plans included a request for a waiver of a now-amended six-month time requirement for filing a modification, pursuant to Section 3129 of the Zoning Regulations.² (Exhibit 37). Copies of this motion for minor modification of plans were also submitted to the Office of Planning (OP) and Advisory Neighborhood Commission (ANC) 5B as well as the Single Member District (SMD) ANC Commissioner 5B04. Pursuant to subsection 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. No parties submitted written comments concerning the requested modification. The 10 day period ended on October 13, 2009.

Modification of Plans. The project approved by the Board in 2006 in Application 17474 authorized construction of a 326-unit apartment building with 260 parking spaces that was designed and planned as a condominium project. On May 23, 2006, the Board approved the Applicant's original request for variance relief from requirements from lot occupancy, residential recreation space, and from section 2115.2 that any accessory parking area or parking garage with 25 or more required parking spaces may designate up to 40 percent of the required parking spaces for compact cars, as well as special exception pursuant to 11 DCMR §§ 3104.1 and 411.3 requiring the rooftop elements to be placed in one enclosure, to allow the construction of a new 326-unit apartment building.

Then, due to a stalling in the condominium market in the District of Columbia, as elsewhere in the United States, the Applicant redesigned the project to reduce construction costs and repositioned the planned apartments from condominiums to rental units in 2008. In BZA Order No. 17474-A, the Board approved minor plan changes on April 2, 2008, by which the number of units increased by 10; lobby and other public areas were added, and private rooftop terraces were eliminated.

² The waiver of the six-month period is no longer required, pursuant to ZC Order No. 09-01, in which the Zoning Commission amended Section 3129 by extending the period of time for filing a modification request from six months to two years. The Applicant filed the request for modification within the two-year period.

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In the current application for plan modification, the Applicant is requesting approval of additional plan changes, but not changes or additions to relief previously approved by the Board. These plan modifications would retain the already-approved site plan, but eliminate one floor of apartments, or 60 units, and one level of below-grade parking, or 132 spaces. In addition, the plan revisions eliminate penthouse structures that served units on the top floor, including spiral stairs, a roof room and roof decks that served those units. The resulting building would have 263 units and 136 parking spaces. (Exhibit 37, Attachment C at A-2).

The Board's approval of the requested revisions will not result in any change to the basic design of the exterior of the building, including all building facades. Nor will the plan revisions cause any changes to the building that will be visible to passersby, nearby neighbors, or the general public. Rather, by eliminating the penthouse structures, the roof will be simplified and the roofline thereby streamlined and unobstructed by improvements. The Board's approval of the plan revisions will result in elimination of one variance and one special exception, neither of which continue to be necessary.

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 states that the revisions to the plan were necessitated to further reduce construction costs and improve the economics and ability to obtain financing for the project, given the difficult economy and housing market in which the District as well as the rest of the country has been in for several years.

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 plans 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.

Order No. 17474-A was issued April 2, 2008 and became effective on April 12, 2008. The order stated that it would remain valid for two years from the effective date, or April

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12, 2010. This approval of a minor modification, pursuant to Section 3129, does not alter the term limit on Board action previously approved in this case. Therefore, this order shall remain valid for the same term previously adopted, that is, until April 12, 2010.

Accordingly, it is therefore **ORDERED** that (pursuant to Exhibit 37, Attachment C – Revised Plans) the application is **GRANTED**.

VOTE on Original Application (May 23, 2006): 5-0-0

(Geoffrey H. Griffis, Ruthanne G. Miller, Anthony J. Hood, John A. Mann II and Curtis L. Etherly, Jr. to approve.)

VOTE on Minor Modification of Plans (April 1, 2008): 3-0-2

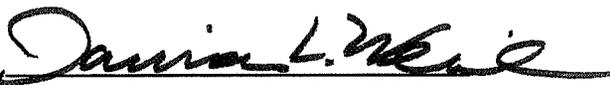
(Ruthanne G. Miller, Curtis L. Etherly, Jr. and Shane L. Dettman (having read the record) to approve; the third Mayoral Appointee and the Zoning Commission Member not voting, not having participated in the original application.)

VOTE on Second Minor Modification of Plans (November 3, 2009): 3-0-2

(Shane L. Dettman, Meridith H. Moldenhauer (having read the record), Marc D. Loud to grant; 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: NOV 13 2009

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."

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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
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As Director of the Office of Zoning, I hereby certify and attest that on NOV 13, 2009, 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:

Jacques B. DePuy, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036-5605

Chairperson
Advisory Neighborhood Commission 5B
2100 New York Avenue, N.E.
Washington, D.C. 20002

Single Member District Commission 5B04
Advisory Neighborhood Commission 5B
1024 Girard Street, N.E.
Washington, D.C. 20017

Harry Thomas, Jr., Councilmember
Ward 5
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, D.C. 20004

Bennett Rushkoff, Esq.
General Counsel
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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