

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17794-A of NH Street Partners Holdings LLC, pursuant to 11 DCMR § 3129, for a modification to approved plans and, pursuant to 11 DCMR § 3129.3, a waiver of the two-year time period for filing a motion for modification of approved plans. The original application was approved on July 29, 2008, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 633, to permit the renovation and expansion of an existing office building with ground floor retail in the CR District at premises 1200 New Hampshire Avenue, N.W. (Square 70, Lot 195).

HEARING DATES (Orig. Application): July 29, 2008

DECISION DATE (Orig. Application): July 29, 2008 (Bench Decision)

ORDER 17794 ISSUANCE DATE: August 1, 2008

**DECISION DATE ON MOTIONS TO APPROVE
MODIFICATION OF APPROVED PLANS
AND WAIVER OF TIME FOR FILING:** April 12, 2011

SUMMARY ORDER

Background

On July 29, 2008, the Board of Zoning Adjustment ("Board" or "BZA") voted to approve Application No. 17794, filed pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 633, to permit the renovation and expansion of an existing office building with ground floor retail in the CR District at premises 1200 New Hampshire Avenue, N.W. (Square 70, Lot 195). BZA Order No. 17794 approving the application was issued on August 1, 2008. (Exhibit 25.)

The Applicant submitted its building permit application on July 26, 2010, prior to the expiration of Order No. 17794 on August 1, 2010. The Applicant indicated that the building permit application has been reviewed and approved by the Zoning Division for the Department of Consumer and Regulatory Affairs ("DCRA") but is still pending with DCRA for final approval and issuance. (Exhibit 29.)

Motions for Minor Modification of Plans and Waiver of Deadline for Filing Motion

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On March 22, 2011, the Applicant filed a motion for minor modification of the approved plans in BZA Order No. 17794, pursuant to 11 DCMR § 3129. The record indicates that the request for modification was served on the parties to the case. Sufficient notice of this motion for minor modification of plans was provided to the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 2A, the affected ANC. (Exhibit 29.)

The Applicant has requested minor modifications to the project plans to finalize the design and complete the interior renovations. The Applicant's proposed modifications include: (1) a slight increase in gross floor area (340.5 square feet), resulting from the infill of internal open space between the fourth and fifth floors, which was not included in the original proposal, and (2) an increase in public space at the ground floor (1,040 square feet in total), slightly reducing the need for previously granted relief from the requirements of § 633 of the Zoning Regulations.

The Applicant also requested a waiver of the two-year filing deadline for minor modification to plans. Subsection 3129.3 of the Zoning Regulations requires a request for minor modification of plans to be filed with the Board no later than two years after the date of the final order approving the application. Here, the Applicant asked for a waiver of this requirement, because when the application was originally approved in the summer of 2008, shortly thereafter there was a significant downturn in the real estate market and economic conditions resulting in the project not being able to proceed at that time. Then, in early 2010, as economic conditions slightly improved, the project started to move forward and construction plans were prepared and submitted in accordance with the requirements of Order No. 17794. The Applicant indicated that only after the building permit application was submitted and the expiration of the two-year period occurred did the Applicant become aware of the impact of the interior renovations planned for the fourth and fifth floor to the overall project. (Exhibit 29.)

The record indicates that the Applicant presented this request for a minor modification to ANC 2A at its regularly scheduled public meeting on March 16, 2011. According to the Applicant, ANC 2A had no objection to the request, but took no formal action as a quorum was not present. Consequently, the affected ANC 2A, which was a party to the underlying case, and thus was required to be served with any modification request to which it was a party, did not submit a report or respond to the motion. (*See*, Exhibit 29.)

The Office of Planning (“OP”) submitted a timely report indicating that it supports the proposed modifications and also does not object to the requested waiver from the requirements of § 3129.3 of the Zoning Regulations. (Exhibit 30.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modifications of approved plans. Section 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.)

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Based upon the record before the Board and having given great weight to the OP report¹ filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR § 3104, specifically that approval of the proposed modifications will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

No requests for party status were received. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board finds no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application. Finally, the Board concludes that the Applicant's inability to start the project due to economic and market conditions beyond the Applicant's reasonable control, and its only recently learning of the impact of the interior renovations planned for the fourth and fifth floor to the overall project constitute "good cause" sufficient for it to waive the time period requirement for filing a motion for modification of approved plans pursuant to § 3129.3. Based upon the record, the Board finds that the Applicant has met the criteria set forth in § 3130.6.

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 for modification of approved plans, as shown in Exhibit 29, Tab 3 – Modified Plans, and for a waiver of the two-year deadline in which to make the motion for modification, is **GRANTED**. In all other respects Order No. 17794 and the plans approved therein remain unchanged.

VOTE: 3-0-2 (Nicole C. Sorg, Jeffrey L. Hinkle, and Meridith H. Moldenhauer to Approve. No other Board members participating.)

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

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: APR 21 2011

¹ As to the affected ANC, since it took no position, there was nothing to which to give great weight.

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PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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As Director of the Office of Zoning, I hereby certify and attest that on APR 21 2011, 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:

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ATTESTED BY:


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