

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



**Order No. 17936-A of New York University, Motion for Modification of Approved Plans of Order No. 17936 of New York University**, pursuant to section 3129 of the Zoning Regulations. The original application was pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the off-street parking requirements under subsection 2101.1, and a variance from the loading requirements under subsection 2201, to allow the construction of a nine (9) - story dormitory and academic center building in the DD/C-2-C District at premises 1307-1311 L Street, N.W. (Square 247, Lot 103).<sup>1</sup>

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| <b>HEARING DATE (original application):</b>              | June 23, 2009                 |
| <b>DECISION DATE (original application):</b>             | June 23, 2009 (Summary Order) |
| <b>FINAL ORDER ISSUANCE DATE (original application):</b> | June 29, 2009                 |
| <b>MODIFICATION DECISION DATE:</b>                       | June 22, 2010                 |

**SUMMARY ORDER ON REQUEST FOR MODIFICATION**

Background.

On June 23, 2009, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the Applicant’s original request for variances from the lot occupancy requirements under § 772, from the off-street parking requirements under § 2101.1, and from the loading requirements under § 2201, to allow the construction of a nine-story dormitory and academic center building in the DD/C-2-C District at premises 1307-1311 L Street, N.W. (BZA Order No. 17936, issued June 29, 2009).

Motion for Minor Modification

On May 18, 2010, the Applicant filed a request for minor modification of approved plans, pursuant to § 3129 of the Zoning Regulations (Exhibit 33). Sufficient notice of this motion for minor modification of plans was provided to the Office of Planning (“OP”)

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<sup>1</sup> The Applicant also requested processing under “Expedited Review” pursuant to § 3118; however, § 3118 only applies to eligible applications for relief under §§ 223 and 209.1, pursuant to § 3118.1. Consequently, the Board did not entertain the motion for modification under § 3118.

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and Advisory Neighborhood Commission (“ANC”) 2F, as evidenced by the Certificate of Service that accompanied the motion. (Exhibit 33).

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. Neither OP nor the affected ANC 3F, 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, submitted a report or responded to the motion. The Applicant stated that it had presented the revised plans to its adjacent neighbors and they indicated no objection to the revision. (Exhibit 33).

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 motion was filed within the two-year period following the final order in the underlying case.

Further, § 3129.7, states that “[a] request to modify other aspects of a Board order may be made at anytime, but shall require a hearing.” 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 are minor and would not prejudice any party. The Applicant has proposed adding a green roof over the rear loading and parking area. The Applicant stated that with the roof, the building would occupy almost 100% of the lot area at ground level. The green roof has been designed to achieve the Applicant’s storm water management through roof collection and filtration. The revised gross floor calculations and revised plans illustrating the roof were included with the exhibits attached to the motion. (Exhibit 33, Exhibit A). According to the Applicant, the proposed minor modification represents an improvement over the original proposal which only had an impervious surface for the loading and parking area. 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

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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**.

**VOTE on Original Application (June 23, 2009):** 3-0-2

(Shane L. Dettman, William W. Keating, III, Marc D. Loud, to APPROVE. Two Mayoral appointees (vacant) not participating, not voting.)

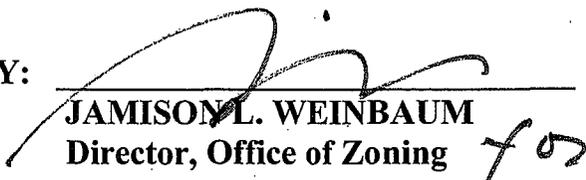
**VOTE on Minor Modification of Plans (June 22, 2010):** 3-0-2

(Shane L. Dettman, Meridith H. Moldenhauer, Nicole C. Sorg to APPROVE. Neither the Zoning Commission member or the third Mayoral appointee (vacant) participating, nor voting.)

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

A majority of Board members approved issuance of this order.

ATTESTED BY:

  
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**JAMISON L. WEINBAUM**

Director, Office of Zoning 70

**FINAL DATE OF ORDER:** JUL 06 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 § 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

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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.