

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



**Order No. 18273-A of 1328 – 1330 Wisconsin Ave., LLC, et al, Motion for Modification of Approved Plans and Amended Application of 1328 – 1330 Wisconsin Ave., LLC, et al,** pursuant to § 3129 of the Zoning Regulations. The amended application is pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 771 and a variance from the rear yard requirements under § 774, to allow rear additions to existing buildings in the C-2-A District at premises 1328, 1330, 1332, and 1336 Wisconsin Avenue, N.W. (Square 1231, Lots 824 and 843).<sup>1</sup>

**HEARING DATE (original application):** November 15, 2011  
**DECISION DATE (original application):** November 15, 2011  
**FINAL ORDER ISSUANCE DATE (original application):** November 28, 2011  
**HEARING DATES ON MODIFICATION/AMENDED APPLICATION:** May 1, 2012 and  
May 8, 2012  
**MODIFICATION/AMENDED APPLICATION DECISION DATE:** May 15, 2012

**SUMMARY ORDER ON REQUEST FOR MODIFICATION AND AMENDED APPLICATION**

**SELF CERTIFIED**

The zoning relief requested in the original application was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 7.) Another self-certification form was filed with the request for modification. (Exhibit 40.)

Background.

On November 15, 2011, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the

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<sup>1</sup> The Applicant requested a modification of its approved plans as well as amended the original application. Order No. 18273 provided variance relief from the rear yard requirements under §774.1. The original application was advertised for variance relief from floor area requirements under § 771 and from lot occupancy requirements under § 772 as well as from the rear yard requirements under § 774. In the amended application and request for modification of approved plans, the Applicant was asking for relief that was identical to the relief originally requested and noticed in Application No. 18273. (Exhibit 40.) The caption has been changed to reflect the additional relief required and approved.

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application of 1328 – 1330 Wisconsin Ave., LLC, et al<sup>2</sup> (“Applicant”) for a variance from the rear yard requirements under § 774.1, to allow rear additions to existing buildings in the C-2-A District at premises 1328, 1330, 1332, and 1336 Wisconsin Avenue, N.W. (Exhibit 38.) As stated in Order No. 18273, the Applicant had revised its plans from what it originally submitted and therefore the relief that was granted had been amended from what was originally requested and advertised by eliminating requests for variances from the floor area ratio (“FAR”) requirements under § 771 and from the lot occupancy requirements under § 772. (Exhibit 38.) This request for modification and amendment of the application would reinstate those other areas of relief while keeping the variance relief from the rear yard requirements previously granted under § 774.<sup>3</sup>

Modification Request/Amended Application No. 18273-A.

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this modification and amended application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (“ANC”) 2E, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 2E, which is automatically a party to this application.

ANC 2E submitted a letter report, dated April 30, 2012, in support of the amended application and modification of approved plans. The ANC noted that at a duly noticed and regularly scheduled public meeting on April 30, 2012, with a quorum present, the ANC voted unanimously (7:0) to support the Applicant’s request for variances for rear setback and floor area ratio, to allow rear additions, as originally proposed. The ANC noted that the proposal then before it was the same as that which it had previously supported in 2011. The ANC stated that the proposal would benefit the character and use of the existing space and that the ANC had received letters of support from adjacent neighbors located at 1326 and 1338 Wisconsin Avenue, N.W. (Exhibit 54.)

The Office of Planning (“OP”) submitted a report dated April 24, 2012, wherein it stated that while OP was not opposed, in principle, to the granting of the requested FAR or rear yard relief, at that point it was unable to make a recommendation due to a lack of information for evaluation and demonstration of undue hardship or practical difficulty if the additional relief were not granted<sup>4</sup>. (Exhibit 52.) The Applicant provided additional evidence of undue hardship in the form

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<sup>2</sup> The Applicant indicated that the modification was requested by one of the two Applicants in the underlying case, 1328 – 1330 Wisconsin Avenue LLC, but that the Applicant did so with the consent of its co-applicant in the original application, Soleiman Brothers V LLC. (Exhibit 40.)

<sup>3</sup> The Applicant did not require variance relief from lot occupancy requirements under § 772.

<sup>4</sup> In its April 24, 2012 report, OP also stated that the District Department of Transportation (“DDOT”) had filed a report in 2011 in which DDOT had indicated that there were no concerns about either the requested relief or the project. OP noted in that report that the south-adjacent property owner had filed a letter of support for the July 2011 application and the north-adjacent property owner had filed a letter stating no objection.<sup>4</sup> (Exhibit 52.) At the May 1,

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of letters from its real estate agent and advisor and its new architect to satisfy OP and the Board's concerns. (Exhibit 56.) At the Board's May 8, 2012 hearing, OP testified that it was in support of the amended application, based on its review of the Applicant's supplemental information.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a use variance under § 3103.2 from the strict application of the FAR requirements under § 771 and the rear yard requirements under § 774. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for a variance under §§ 771 and 774, that there exists an exceptional or extraordinary situation or condition related to the property that creates a undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

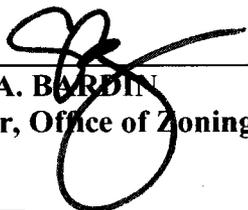
It is therefore **ORDERED** that the application is hereby **GRANTED (pursuant to Exhibits 55 – First Floor Proposed Plan and 17 - Plans, July 28, 2011).**

**VOTE:** 3-0-2 (Lloyd L. Jordan, Jeffrey L. Hinkle, and Rashida Y. V. MacMurray, to Approve. Nicole C. Sorg and the Zoning Commission member, not participating and not voting.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: \_\_\_\_\_

  
SARA A. BARDIN  
Director, Office of Zoning

FINAL DATE OF ORDER:           MAY 18 2012          

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2012 hearing, the Board incorporated the record and exhibits thereto of the original application into the record of the amended application herein.

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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.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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



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As Director of the Office of Zoning, I hereby certify and attest that on **MAY 18 2012**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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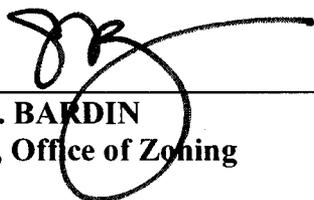
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**ATTESTED BY:**

  
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**SARA A. BARDIN**  
Director, Office of Zoning

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