

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



**Order No. 18514-A of Andrew Daly and Patty Jordan, Request for Minor Modification of Plans Approved in Order No. 18514, pursuant to § 3129 of the Zoning Regulations.**

The original application was pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception under § 223, not meeting the lot occupancy requirements (§ 403), a variance from the parking space dimensions requirement under § 2115.1, and a variance from the garage setback requirement under § 2300.2(b), to allow a detached garage addition serving a one-family dwelling in the R-4 District at premises 1120 Park Street, N.E. (Square 987, Lot 8).

<b>HEARING DATE</b> (Application No. 18514):	March 12, May 21, July 23, September 24, and October 8, 2013
<b>DECISION DATE</b> (Application No. 18514):	October 8, 2013
<b>FINAL ORDER ISSUANCE DATE</b> (No. 18514):	October 15, 2013
<b>MINOR MODIFICATION DECISION DATE:</b>	February 2 and April 12, 2016

**SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION**

**BACKGROUND**

On October 8, 2013, in Application No. 18514, the Board of Zoning Adjustment (“Board” or “BZA”) approved Andrew Daly and Patty Jordan’s (the “Applicants”) request for a special exception under § 223, not meeting the lot occupancy requirements (§ 403), a variance from the parking space dimensions requirement under § 2115.1, and a variance from the garage setback requirement under § 2300.2(b), to allow a detached garage addition serving a one-family dwelling in the R-4 District. The Board’s decision was effectuated thorough the issuance Order No. 18514, which has a final date is October 15, 2013. (Exhibit 35 of the record for Case No. 18514.)

**MOTION FOR MINOR MODIFICATION**

On January 22, 2016, the Applicants submitted a request for a minor modification to the plans approved by the Board in Order No. 18514 and also, pursuant to 11 DCMR § 3100.5, requested waiver of the two-year time limitation for the filing of a minor modification under § 3129.3. (Exhibits 1 and 2.)

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Preliminary Matter: Waiver of Time Limitation

Subsection 3129.3 of the Zoning Regulations indicates that a request for minor modification of plans shall be filed with the Board not later than two years after the date of the final order approving the application. The Applicant requested a waiver of the time requirement, indicating that the untimely request for minor modification is a result of the Historic Preservation Office's ("HPO") review and advice of structural engineers. (Exhibit 1.)

The Applicants indicated that the modified plans, submitted to the record with the request for minor modification, attempt to address the issues underlying Ms. Schaub's opposition and, as the process of negotiating and litigating the issues was ongoing, the Applicants were unable to submit the request for minor modification within the two-year period after the issuance of Order No. 18514. The Board granted the Applicants' request based upon these considerations and waived the two-year filing requirement.

Motion for Minor Modification of Plans

The modifications to the approved plans in Order No. 18514 ("Modified Plans") were proposed as a result of a dispute between the Applicants and adjacent property owner, Patricia Schaub. In efforts to settle the dispute, the Applicants proposed to revise the plans in order to: change the garage's exterior to a brick facing; modify the roof deck materials to a post-railing design; increase the height of the garage to 13 feet, 10 <sup>5/8</sup> inches; increase the length of the garage to 15 feet, 5 1/2 inches; increase the width of the garage to 9 1/2 inch; replace the "captain's ladder" to the roof deck with a spiral staircase; and add a small sink to the garage's exterior. (Exhibit 2.) The Modified Plans were filed to the record as Exhibit 6. The Applicants indicate that the Modified Plans would not affect any aspect of variance relief granted by the Board, including the width of the parking space approved in Order No. 18514.

In the initial filing, the Applicants also noted that the Modified Plans had been concurrently submitted to the Historic Preservation Review Board ("HPRB"), but had not yet received approval from HPRB. Accordingly, the Applicants requested that the Board grant the minor modification, but allow flexibility for further minor modifications to be made based on comments from HPRB.

Patricia Schaub, adjacent property owner, filed a letter to the record in opposition to the minor modification and requested party status to the proceeding. The Board notes that in a minor modification proceeding, the only parties are those involved in the original proceeding. In this case, the only parties to the original proceeding were the Applicants and Advisory Neighborhood Commission ("ANC") 6A, the affected ANC. In a separate but related action, Ms. Schaub filed Appeal No. 19092 with the Board, challenging the Garage Permit No. G1500009 that was issued by the Zoning Administrator based on the relief granted in Order No. 18514.

The request for minor modification was scheduled to be considered at the public meeting of February 2, 2016, but because of the objections raised by Ms. Schaub to this request and

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through the related appeal, the parties requested additional time to continue discussions. When the Board revisited the matter at the end of the public hearing session of February 2, 2016, counsel for the Applicants requested to defer the Board's decision on the minor modification until after the Modified Plans have received approval from HPRB. The Applicant indicated that, if HPRB requests any further revisions, the Applicants would amend the request for minor modification and submit an updated version of the plans to reflect those changes ("Final Modified Plans") for the record. As part of the February 2, 2016 discussions, Ms. Schaub agreed to withdraw her opposition to the minor modification.<sup>1</sup> The Board agreed to postpone its decision on both the minor modification and the related appeal to April 12, 2016.

In advance of the April 12, 2016 hearing, the Applicant filed a motion to waive the timely filing requirements in order to submit Final Modified Plans. (Exhibits 12 and 13.) The revisions reflected in the Final Modified Plans were based on HPRB's March 24, 2016 approval of the plans, subject to minor suggested changes. (Exhibit 14.) Pursuant to HPRB's recommendations, the Applicants revised their plans to "step" the roof deck back, so that the north edge of the deck is 3 feet, 2 ½ inches from the north edge of the structure. The Applicants also noted in the supplemental filing that they are continuing to work with HPO staff to finalize colors and materials for the garage door and roof deck posts and railings. Those changes would not impact the size, shape, or massing of the structure, but the Applicants nonetheless requested that the Board allow for flexibility in the Final Modified Plans so that those cosmetic decisions could be incorporated.

Pursuant to § 3129.4, all requests for minor modifications shall be served on all other parties to the original application and those parties are allowed to file comments within 10 days of the filed request for minor modification. The Applicants provided proper and timely notice of the request for minor modification to ANC 6A, the only other party to the original application, and also notified the Single Member District ANC 6A03 as well as OP and DDOT.

An ANC report was submitted to the record, stating that at a regularly scheduled and properly noticed meeting on March 10, 2016, at which a quorum was present, ANC 6A voted 7-0 in support of the applicant's request.<sup>2</sup> (Exhibit 9.)

OP submitted a timely report recommending approval of the proposed minor modifications to the Applicant's plans. (Exhibit 10.) OP also testified in support of the minor modification at the

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<sup>1</sup> In addition, the Applicants agreed to surrender the building permit at issue in Appeal No. 19092, which would render the appeal moot. Pursuant to the parties' agreement, Ms. Schaub would request that the Board dismiss the appeal with prejudice at that time. In fact, such a request was made and granted by the Board during the same meeting in which this request was granted. An order granting the motion to dismiss is being separately issued.

<sup>2</sup> The ANC's report characterizes the application as "a special exception under § 223, not meeting the lot occupancy requirements (§ 403), a variance from the parking space dimensions requirement under § 2115.1, and a variance from the garage setback requirement under § 2300.2(b), to allow a detached garage addition serving a one-family dwelling" rather than a request for minor modification of the original request for relief.

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hearing on April 12, 2016. DDOT submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 11.)

As noted, the only parties to the case were the ANC and the Applicants. Since the ANC indicated no opposition to the grant of the motion., a decision by the Board to grant request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, 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 not otherwise prohibited by law.

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 minor modification of approved plans. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 18514, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

It is therefore **ORDERED** that this request for modification of the Board's approval in Application No. 18514 is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED FINAL MODIFIED PLANS UNDER EXHIBIT 13.**<sup>3</sup>

In all other respects, Order No. 18514 remains unchanged.

**VOTE ON ORIGINAL APPLICATION ON OCTOBER 8, 2013: 3-0-2**

(Lloyd J. Jordan, S. Kathryn Allen, and Anthony J. Hood, to Approve; Jeffrey L. Hinkle, not present or voting; and one Board seat vacant.)

**VOTE ON MINOR MODIFICATION ON APRIL 12, 2016: 5-0-0**

(Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE.)

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

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

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

  
SARA A. BARDIN  
Director, Office of Zoning

<sup>3</sup> The Board granted the Applicant flexibility to make minor changes to the approved plans, specifically with regard to color and materials.

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**FINAL DATE OF ORDER:** April 26, 2016

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.