

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18555-A of Jemal’s Prospect’s LLC, Motion for Modification of Approved Plans in Order No. 18555, pursuant to § 3129 of the Zoning Regulations.

The original application, was pursuant to 11 DCMR § 3104.1, for a special exception to change nonconforming uses to yoga studio, yoga apparel, and yoga accessories uses¹ under § 2003.1 of the Zoning Regulations, in the R-3 District at premises 3343 Prospect Street, N.W. (Square 1220, Lot 30).

HEARING DATE (Original Application):	June 4, 2013
DECISION DATE (Original Application):	June 4, 2013
FINAL ORDER ISSUANCE DATE (No. 18555):	June 12, 2013
HEARING DATE FOR MODIFICATION:	November 19, 2013
MODIFICATION DECISION DATES:	October 8, 2013 and November 19, 2013

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS

BACKGROUND

On June 4, 2013, the Board of Zoning Adjustment (the “Board” or “BZA”) approved Jemal’s Prospect’s LLC’s (the “Applicant”) original request for a special exception to change nonconforming uses to yoga studio, yoga apparel, and yoga accessories uses under § 2003.1 of the Zoning Regulations, in the R-3 District at premises 3343 Prospect Street, N.W. (Square 1220, Lot 30). (Exhibit 35.) BZA Order No. 18555, approving the original request, subject to one condition, was issued on June 12, 2013. (Exhibit 32.) That order approved the requested special exception relief to allow yoga studio, yoga apparel, and yoga accessory uses in (i) a 1,246 square foot space last used for "office and display of interior decorating" pursuant to Certificate of Occupancy No. B93857 and having an address of 1227 34th Street, N.W.; (ii) a 519 square foot space last used for "office space" pursuant to Certificate of Occupancy No. CO30195 and having an address of 1233 34th Street, N.W.; and (iii) a 616 square foot space having an address of 1231 34th Street, N.W.

¹ The caption should have read “group instruction center” instead of “yoga studio, yoga apparel, and yoga accessories uses” and by this Order is so amended.

MOTION FOR MODIFICATION

The Applicant first submitted a request for minor modification on September 12, 2013. (Exhibit 35.) At a public meeting on October 8, 2013, the Board determined that the request was not a minor modification and required a public hearing. Accordingly, the matter was scheduled for a November 19, 2013 hearing. The matter was heard and decided on November 19th, 2013, and the Board granted the requested modification.

Per 11 DCMR §§ 3129.7 and 3129.8, on November 5, 2013, the Applicant submitted its request for a modification to the plans approved in BZA Order No. 18555. (Exhibit 37.) In its submission materials, the Applicant indicated that, pursuant to § 3129 of the Zoning Regulations, it was requesting modifications to the plans to reconfigure and thereby increase the square footage of the yoga studio, yoga apparel, and yoga accessory uses by 594 square feet, to include the square footage of space used for "upholstering furniture" pursuant to Certificate of Occupancy No. B148972, having the address of 3343 Prospect Street, N.W. The reason given for the modification is that subsequent to the Board's original approval, the Applicant was contacted by a potential yoga operator, and this operator asked for additional space within the building. The record indicates that the request for modification was served on all of the parties to the case: the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 2E, the affected ANC, and the Single District Member.

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 (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 and thus is timely.

Pursuant to § 3129.4 of the Zoning Regulations, all parties are allowed to file comments within 10 days of the filed request for modification. OP submitted a timely supplemental report, dated November 5, 2013, recommending approval of the Applicant's request to modify the approved plans. (Exhibit 39.) OP also testified at the public hearing recommending approval of the modification request. ANC 2E submitted a timely report, dated November 10, 2013, recommending approval of the motion to modify the plans. The ANC report indicated that at its regularly scheduled, duly noticed public meeting of November 4, 2013, at which a quorum was present, ANC 2E voted unanimously by a vote of 7-0 that it did not object to the proposal due to the minor change of interior spaces use and no noticeable change or impact to the surrounding community. (Exhibit 38.) Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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.

Subsection 3129.8 of the Zoning Regulations limits the scope of the hearing conducted to review a request for modification to the impact of the modification on the subject of the original application. Also, § 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 ANC and OP reports filed in this case, the Board concludes that in seeking a modification to the approved plans, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of approved plans is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN EXHIBIT 37 TAB E**. In all other respects, Order No. 18555 and the conditions therein remain unchanged.

VOTE ON ORIGINAL APPLICATION ON JUNE 4, 2013: 4-0-1

(Lloyd L. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May to APPROVE; one Board seat vacant.)

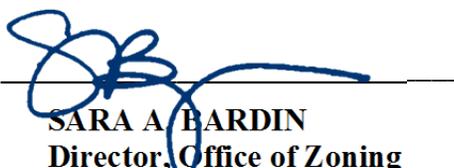
VOTE ON MODIFICATION OF APPROVED PLANS ON NOVEMBER 19, 2013: 3-0-2

(Lloyd J. Jordan, S. Kathryn Allen, and Robert E. Miller to APPROVE; Jeffrey L. Hinkle, not present or voting; one Board seat vacant.)

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

FINAL DATE OF ORDER: November 26, 2013

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.