

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18890-A of Rock Creek-650 LLC, Request for Minor Modification of Plans Approved in Order No. 18890, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the parking requirements under § 2101.1, the parking space size requirements under § 2115.2, and the loading requirements under § 2201.1, and a special exception from the HS Overlay special exception requirements under § 1325.1 to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot that has 6,000 square feet or more of land area in the HS-H/C-2-B District at premises 646-654 H Street, N.E. (Square 858, Lots 1, 2, 800, 801, and 802).

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| HEARING DATE (Application No. 18890): | February 10, 2015 |
| DECISION DATE (Application No. 18890): | February 10, 2015 |
| FINAL ORDER ISSUANCE DATE (No. 18890): | February 20, 2015 |
| MINOR MODIFICATION DECISION DATE: | July 19, 2016 |

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

BACKGROUND

On February 10, 2015, in Application No. 18890, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Rock Creek-650 LLC (the “Applicant”) for variances from the parking requirements under § 2101.1, the parking space size requirements under § 2115.2, and the loading requirements under § 2201.1, and a special exception from the HS Overlay special exception requirements under § 1325.1 to allow an addition that increases the gross floor area of an existing building by more than 50% on a lot that has 6,000 square feet or more of land area in the HS-H/C-2-B District. The Board issued Order No. 18890 on February 20, 2015. (Exhibit 37 of the record for Case No. 18890.)

MOTION FOR MINOR MODIFICATION

On June 9, 2016, the Applicant submitted a request for a minor modification to the plans approved by the Board in Order No. 18890. The Applicant noted that specific revisions to the plans include modifying the approved penthouse in order to add 1,908 square feet of habitable residential space.

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The Applicant also indicated that the revised penthouse plan is “triggered by and complies with all requirements set forth in the new penthouse regulations, approved by the Zoning Commission in Z.C. Order 14-13.” The proposed revised plans also reduce the unit count from 26 to 23 units and make minor design changes to the ground floor retail entry features. (Exhibit 1.) The Applicant submitted for the record revised plans reflecting these revisions. (Exhibit 2.)

Determination That the Modification Was Minor

Subsection 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. The Board found that no material facts upon which the Board had based its original approval of the application were changed by the modified penthouse plan and other proposed design changes.

The Merits of the Minor Modification of Approved Plans

The Applicant’s request for a minor modification of Order No. 18890 complies with 11 DCMR § 3129. Subsection 3129.2 states that “[t]he Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.” The Applicant’s request for minor modification meets these requirements.

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 submit 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 6C, the only other party to Application No. 18890. The ANC did not submit a written report to the record.

The Applicant also served its request on the Office of Planning (“OP”). OP submitted a timely report recommending approval of the proposed minor modifications to the Applicant’s plans. (Exhibit 4.) The District Department of Transportation (“DDOT”) also submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 5.)

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, 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 report filed

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in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 18890, 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. 18890 is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED MODIFIED PLANS UNDER EXHIBIT 2.**

In all other respects, Order No. 18890 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON FEBRUARY 10, 2015: 4-0-1

(Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; one Board seat vacant.)

VOTE ON MINOR MODIFICATION ON JULY 19, 2016: 4-0-1

(Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE; Marnique Y. Heath not present or voting.)

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: August 3, 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.