

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



**Order No. 18902-A of Frost-LaBule LLC, Request for Minor Modification of Plans Approved in Order No. 18902**, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the floor area ratio requirements under § 402.4, and the off-street parking requirements under § 2101.1, and a special exception from the new residential developments requirements under § 353, to allow the construction of an apartment building for low income residents in the R-5-A District at premises 2620 Bowen Road S.E. (Square 5869, Lot 83).

<b>HEARING DATE</b> (Application No. 18902):	January 27, 2015
<b>DECISION DATE</b> (Application No. 18902):	January 27, 2015
<b>FINAL ORDER ISSUANCE DATE</b> (No. 18902):	February 2, 2015
<b>MINOR MODIFICATION DECISION DATE:</b>	July 19, 2016

**SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION**

**BACKGROUND**

On January 27, 2015, in Application No. 18514, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Frost-LaBule LLC (the “Applicant”) for variances from the floor area ratio requirements under § 402.4, and the off-street parking requirements under § 2101.1 in order to reduce the required number of parking spaces to 20, as well as a special exception from the new residential developments requirements under § 353, to allow the construction of an apartment building for low income residents in the R-5-A District. The Board issued Order No. 18902 on February 2, 2015. (Exhibit 34 of the record for Case No. 18902.)

**MOTION FOR MINOR MODIFICATION**

On June 13, 2016, the Applicant submitted a request for a minor modification to the plans approved by the Board in Order No. 18902. The Applicant noted that specific revisions to the plans include reducing the number of parking spaces from 20 to 19 and modifying the garage plan to allow for a van-accessible parking space. The Applicant explained that the proposed minor modification to the parking plan would allow the Applicant’s project to comply with Uniform Federal

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Accessibility Standards (“UFAS”), as required by the Federal Housing Administration’s partial funding of the project. The UFAS require that the proposed parking garage contain a van-accessible parking space proximate to the elevator. In order to comply with this requirement, the Applicant redesigned the parking garage, but was not able to preserve the 20 originally proposed parking spaces. Instead, the Applicant proposed to modify the plans to allow for 17 parking spaces within the garage, including the van-accessible space, and two surface parking spaces. The Applicant submitted a revised parking plan reflecting these revisions. (Exhibit 3.)

*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. (11 DCMR § 3129.6.) The Board found that no material facts upon which the Board had based its original approval of the application were changed by the modified parking plan.

*The Merits of the Minor Modification of Approved Plans*

The Applicant’s request for a minor modification of Order No. 18902 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 Applicant provided proper and timely notice of the request for minor modification to ANC 8A, the only other party to Application No. 18902. 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 6.) DDOT also submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 7.)

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.

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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 in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 18902, 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. 18902 is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED MODIFIED PLANS UNDER EXHIBIT 3.**

In all other respects, Order No. 18902 remains unchanged.

**VOTE ON ORIGINAL APPLICATION ON JANUARY 27, 2015: 4-0-1**

(Lloyd J. Jordan, Peter G. May, Marnique Y. Heath, and Jeffrey L. Hinkle to APPROVE; S. Kathryn Allen not present or voting.)

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

(Anita Butani D'Souza, Marcie I. Cohen, Frederick L. Hill, and, Jeffrey L. Hinkle 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:** July 28, 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.