

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18906-A of Endeka Enterprises and 1320 Penelope LLC, Request for Minor Modification of Plans Approved in Order No. 18906, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2, for variances from the width of court requirements under §§ 536 and 776, the off-street parking requirements under § 2101.1, the loading requirements under § 2201.1, and the zone district boundary line requirements under § 2514.2, and pursuant to § 3104.1 for special exceptions from the hotels and inns requirements under § 512, and the roof structure setback requirements under §§ 400.7(b), 411.11, and 777.1, to allow conversion of an existing office building into a mixed-use building in the DC/SP-1 and C-3-C Districts at premises 1337 Connecticut Avenue, N.W. (Square 137, Lot 55).

HEARING DATES (Application No. 18906):	January 27, March 3, April 28, and June 30, 2015
DECISION DATE (Application No. 18906):	June 30, 2015
FINAL ORDER ISSUANCE DATE (No. 18906):	July 9, 2015
MINOR MODIFICATION DECISION DATE:	July 19, 2016

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

BACKGROUND

On June 30, 2015, in Application No. 18906, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Endeka Enterprises and 1320 Penelope LLC (the “Applicant”) for variances from the width of court requirements under §§ 536 and 776, the off-street parking requirements under § 2101.1, the loading requirements under § 2201.1, and the zone district boundary line requirements under § 2514.2, and special exceptions from the hotels and inns requirements under § 512, and the roof structure setback requirements under §§ 400.7(b), 411.11, and 777.1, to allow conversion of an existing office building into a mixed-use building in the DC/SP-1 and C-3-C Districts. The Board issued Order No. 18906 on July 9, 2015. (Exhibit 32 of the record for Case No. 18906.)

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MOTION FOR MINOR MODIFICATION

On June 7, 2016, the Applicant submitted a request for a minor modification to the plans approved by the Board in Order No. 18906. The originally approved project included a sixth floor addition onto an existing five-story building, with retail use on the ground floor, office use on the second floor, inn use on the third, fourth, and fifth floors, and inn and restaurant uses on the sixth floor. The Applicant proposed to amend the approved plans in order to replace the office use on the second floor with additional inn space, to replace the restaurant use on the sixth floor with additional inn space, and to reduce the amount of parking in the garage from seven to six parking spaces. The proposed additional inn space on the second and sixth floors would result in an increase in the number of inn rooms from the 50 originally proposed to 73 proposed in the modified plans. The Applicant submitted revised plans reflecting these modifications. (Exhibit 5.)

The Applicant indicated that the proposed minor modification does not required additional relief from the Zoning Regulations. Further, the Applicant does not seek to modify the conditions of approval included in BZA Order No. 18906.

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 plans and addition of inn space.

The Merits of the Minor Modification of Approved Plans

The Applicant's request for a minor modification of Order No. 18906 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 2B, the only other party to Application No. 18906, as well the ANC Commissioner for Single Member District 2B07. 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 8.) The District Department of Transportation ("DDOT") also submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 9.)

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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 in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 18906, 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 5.**

In all other respects, Order No. 18906 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON JUNE 30, 2015: 3-0-2

(Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood to APPROVE; Jeffrey L. Hinkle not present, not voting; 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.