

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-32A**

**Z.C. Case No. 15-32A**

**1126 9<sup>th</sup> ST NW, LLC**

**(Modification of Consequence of Consolidated PUD and Related Map Amendment**

**@ 1126 9<sup>th</sup> Street, NW (Square 369, Lot 880))**

**September 17, 2018**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 17, 2018. At that meeting, the Commission approved the application of 1126 9<sup>th</sup> ST NW, LLC (“Applicant”) for a modification of consequence of the consolidated PUD and related map amendment approved by Z.C. Order No. 15-32 (“Original Project”). The property (Lot 880 in Square 369) that is the subject of this application is bounded by 9<sup>th</sup> Street, N.W. to the east and M Street, N.W. to the north (“Property”). The modification request was made pursuant to Subtitle Z § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”).

**FINDINGS OF FACT**

**BACKGROUND INFORMATION**

1. The Commission approved the Original Project in 2016 under the procedural and substantive requirements of the 1958 Zoning Regulations. Prior to the instant modification, no other modifications or extensions had been requested or approved for the Original Project.
2. The Commission, at its July 30, 2018 public meeting, determined that the application qualified as a modification of consequence within the meaning of Subtitle Z § 703 of the Zoning Regulations, and that no public hearing was necessary pursuant to Subtitle Z § 703.1. The Commission, at its September 17, 2018 public meeting, deliberated on the modification of consequence application and determined that the application satisfied the standards of review and the modifications to the Original Project were favorable. This application proceeded under the procedural requirements of the 2016 Zoning Regulations.
3. The Original Project authorized a 33-unit, approximately 40,300-square foot, mixed-use, multiple dwelling residential building with ground floor commercial uses located at the

corner of 9<sup>th</sup> Street, N.W. and M Street, N.W. immediately across from the Washington Convention Center. An existing two-story building (“Existing Building”) that is historically contributing to the Shaw Historic District occupies a portion of the Property along 9<sup>th</sup> Street, N.W.

## MODIFICATION APPLICATION

4. The scope of this modification entails reducing the height and density of the Original Project and eliminating one area of zoning flexibility granted in the Original Project, all as shown in the architectural plans at Exhibit (“Ex.”) 1C1-1C2 in the record (“Revised Project”). The revisions to the Original Project contemplated as part of this modification application include: an overall reduction in height; an overall reduction in GFA; an enlargement of the light wells (i.e., closed courts; reconfiguration of rooftop mechanicals and rooftop green areas; the reconfiguration of internal demising walls of individual units; the partial reallocation of density from the Original Project’s 100-foot tower to the rear four-story portion of the building, by adding residential uses in that location and converting the rear four-story portion of the Original Project to five stories; conforming changes to the exterior architecture to account for the reduction in height and reallocation of density; and the removal of penthouse setback relief previously requested. (Ex. 1, p. 3.)
5. The proposed changes are largely in response to changing economic conditions, which necessitate removal of the Original Project’s tower element. The Revised Project is overall shorter and smaller due in large part to the recent and significant run up in construction costs. The Revised Project’s slight reallocation of density to the rear of the building improves interior efficiencies. Other changes, such as to the size of the light wells, rooftop green areas, and exterior architecture, are either in response to the reconfiguration of the building’s massing or are to improve the livability of the building. (*Id.*)
6. The changes proposed as a part of the Revised Project fall within the scope of a modification of consequence as set forth in Subtitle Z §§ 703.3 and 703.4 of the Zoning Regulations. That is, the Revised Project includes a change to conditions in the Original Project. Conditions A.1, A.2, and A.4 of the Original Project require the Applicant to build in accordance with certain approved plans. (Z.C. Order No. 15-32, p. 14.) The Applicant seeks to amend those plans in accordance with the foregoing revisions and thereby amend such Conditions. The Revised Project also includes a redesign or relocation of architectural elements from the final design of the Original Project. (Ex. 1, pp. 3-4.)
7. The modifications to the Original Project resulting in the Revised Project are within the Zoning Regulations’ definition of a modification of consequence and do not reach the standard of a modification of significance. The Zoning Regulations provide in relevant part that “[e]xamples of a modification of significance include, but are not limited to, a change in use, change to proffered public benefits and amenities, change in required covenants, or additional relief or flexibility from the zoning regulations not previously approved.” (11-Z § 703.6.) The Revised Project does not change the proffered public benefits and amenities (notably holding constant the number and level of affordability of the two affordable units even though the project itself grows smaller). The location of the two affordable units

remains unchanged. The Applicant does seek the flexibility, previously granted in Condition B.1.c of the Original Project, to vary the location of the affordable units in the building as long as the locations are proportional to the locations of the market-rate units. The Applicant no longer seeks the previously-granted flexibility to vary the bedroom count or unit size of the affordable units. (Ex. 1, pp. 3-4.)

8. The Revised Project does not propose a change of use or change in required covenants. The Revised Project still includes ground-floor commercial uses and multiple dwelling residential uses above, all of which are permitted as a matter of right in the underlying zones. Overall, the Revised Project seeks less flexibility from the Zoning Regulations by removing the previously approved penthouse setback relief. Moreover, other areas of zoning relief are reduced in magnitude. Accordingly, the overall scale of zoning relief has significantly decreased. (Ex. 1, pp. 3-4.)
9. With respect to the Revised Project's height along M Street, NW, the Revised Project does, by a de minimis amount, exceed the relief from § 1706.15 of the 1958 Zoning Regulations previously granted. The Original Project rises above the 60-foot height limit along M Street, N.W. by an amount of 1.33 feet, and the Revised Project rises above said 60-foot height limit by an amount of 1.58 feet (i.e., by an additional approximately three inches). However, this concept is not a new item of relief and the variation is truly minor in nature and not distinguishable by an observer from the public realm. (Ex. 1, p. 4.)
10. The Revised Project's overall effect is to reduce the impacts of the building constructed on the Property. The Revised Project is shorter and less dense than the Original Project, and the zoning flexibility is lesser in magnitude. One concern that the Commission raised with the Original Project—that its south facing façade was not sufficiently articulated—is no longer an issue because such façade has been significantly reduced in height. The Revised Project's rooftop, light well, and architectural changes that are all either consistent with or improvements to the design intent of the Original Project. Significantly, there is no proposed change in the number of affordable units provided. (Ex. 1, pp. 4-5.)
11. The Commission finds that the Revised Project is a significant reduction of the Original Project, fits into the context of the neighborhood, and proposes a design that is well done. The Commission also finds that it is important that the Revised Project retains the two affordable units as proposed in the Original Project and required in the Original Project.
12. In satisfaction of Subtitle Z § 703.13, the Applicant provided a Certificate of Service which noted that ANC 2F was served with the application. (Ex. 1, p. 6.)
13. OP submitted a report on July 20, 2018, recommending that the Commission approve the application as a modification of consequence. (Ex. 2.) OP concurred with the Applicant's submission that the proposed project modifications constitute a modification of consequence and recommended approval. (*Id.*, p. 1.) OP noted that the Revised Project would reduce the size of the project, require less relief and design flexibility than the Original Project, have less of an impact on the surrounding area and be more in conformance with the zoning regulations. In OP's view, the slight increase in height along

M Street, NW would be too minimal to have a significant impact on the surrounding area. (*Id.*, p. 3.)

14. On September 12, 2018, ANC 2F submitted a report into the record noting that, at a duly called and properly noticed meeting of such ANC on September 5, 2018, with a quorum present, ANC 2F voted 6-0 to support the application and expressed no issues or concerns. (Ex. 3.)

### **CONCLUSIONS OF LAW**

Pursuant to Subtitle Z § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence is “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” (11-Z DCMR § 703.3.) Examples of modifications of consequence “include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (*Id.* § 703.4.)

The Commission concludes that the modifications requested in the subject application and depicted in the plans submitted as Exhibits 1C1-1C2 are modifications of consequence and, therefore, can be granted without a public hearing.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.), to give “great weight” to the issues and concerns contained in the written report of an affected ANC. In this case, the ANC 2F report expressed no issues or concerns such that there is nothing to give great weight to. The Commission is also required to give great weight to OP’s recommendations under D.C. Official Code § 6-623.04 (2012 Repl.). The Commission concurs with OP’s recommendation to approve this modification of consequence application. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD and related Map Amendment approved in Z.C. Order No. 15-32. The conditions in the Original Project remain unchanged, except Condition Nos. A.1, A.2, A.4, and B.1 of Z.C. Order No. 15-32 are hereby amended and restated as follows with the changes made to the affordable housing requirements shown in **blue highlights**:

#### **A. PROJECT DEVELOPMENT**

1. The Revised Project shall be developed in accordance with the architectural plans and drawings submitted on June 26, 2018, and as modified by the guidelines, conditions, and standards herein (collectively, the “Revised Plans”). (Ex. 1C1-1C2.)

2. The Revised Project shall include a mixed-use building with upper-floor multiple dwelling residential units and ground-floor commercial uses, in the aggregate containing up to approximately 33,697 gross square feet (“GSF”), with an equivalent density of up to approximately 4.4 floor area ratio. Such GSF will be composed of up to approximately 3,773 GSF of commercial, retail and/or service uses and approximately 15 multiple dwelling residential units (subject to the flexibility contained in the Revised Plans). The Revised Project will have approximately two nonconforming surface parking spaces for commercial and/or residential parking and/or car-sharing services (one such space might be utilized for two car-sharing vehicles). The Revised Project may be constructed to a maximum height of approximately 76.33 feet. Along the 9<sup>th</sup> Street, N.W. façade, the Revised Project will step back from the street before rising to the full 76.33 feet, allowing the existing structure to be solely expressed within such setback area. Along the M Street, N.W. façade, the Revised Project will have a height rising to approximately 61.58 feet, as more particularly shown on the Revised Plans.
4. The Applicant shall have flexibility from the Zoning Regulations with respect to the Revised Project’s parking requirements, closed court requirements, and M Street, N.W. height setback (pursuant to 11 DCMR § 1706.15) requirements, all as more particularly shown on the Revised Plans.

## **B. PUBLIC BENEFITS**

1. **Prior to the issuance of the first Certificate of Occupancy for the residential component of the Revised Project, and for the life of the Revised Project, the Applicant shall demonstrate the following:**
  - a. The Revised Project shall provide a total of up to approximately 29,924 square feet of residential gross floor area (“GFA”). No more than approximately 29,924 square feet of GFA of this total will be market rate housing, and no less than approximately 1,348 square feet of GFA will be affordable housing;
  - b. The Applicant shall set aside a minimum of two of the residential units as affordable housing for the life of the project. Of the affordable units, one unit shall be reserved for households with incomes not exceeding 50% of the Area Median Income for the Washington, D.C. metropolitan statistical area (“AMI”) and one unit shall be reserved for households with incomes not exceeding 80% of the AMI; and

- c. The distribution of the affordable housing units shall be in substantial accordance with the plans marked as pages 19-26 of Exhibit 1C of the record,<sup>1</sup> and substantially in accordance with the following chart:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
<b>Total</b>	Up to 29,924 sf of GFA (100%)	15	N/A	N/A	N/A
<b>Market Rate</b>	No more than 28,576 sf of GFA (96%)	13	Market Rate	N/A	N/A
<b>50% AMI</b>	No less than 639 sf of GFA (no less than 2%)	1	50% AMI	For the life of the project	N/A
<b>80% AMI</b>	No less than 709 sf of GFA (no less than 2%) <sup>2</sup>	1	80% AMI	For the life of the project	N/A


On September 17, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve, Peter A. Shapiro, not present, not voting).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 23, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
 ANTHONY J. HOOD  
 CHAIRMAN  
 ZONING COMMISSION

  
 SARA A. BARDIN  
 DIRECTOR  
 OFFICE OF ZONING

<sup>1</sup> The Applicant has the flexibility to vary the locations and the unit mix of the affordable units, provided the locations of affordable units are proportional to the locations of market-rate units. The net square footages of the affordable housing shown on pages 19-26 of Exhibit 1C satisfy the gross square footages shown on the chart below due to the efficiency factor of the building.

<sup>2</sup> Pages 21 and 21a of Exhibit 1C erroneously listed the AMI level for this unit at 75% instead of the 80% level approved by the Original Project.