

Holland & Knight

800 17th Street, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Kyrus L. Freeman
202.862.5978
kyrus.freeman@hklaw.com

March 25, 2016

VIA IZIS AND HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

**Re: Request for Minor Modification
 Z.C. Case No. 15-01
 Consolidated PUD and Related Map Amendment @ Square 3587, Lot 4**

Dear Members of the Commission:

On behalf of Level 2 Development (the “Applicant”), owner of property located at 320 Florida Avenue, NE (Square 3587, Lot 4) (the “Property”), we hereby submit this application for minor modifications to the above-referenced planned unit development (“PUD”) and related Zoning Map amendment, approved pursuant to Z.C. Order No. 15-01, dated July 13, 2015 and effective on August 21, 2015. A copy of Z.C. Order No. 15-01 is attached hereto as Exhibit A.

This modification request is made pursuant to the Zoning Commission's authority established in Sections 2409.9 and 3030 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). Included with this filing is Z.C. Form 151-Application for a Minor Modification and a check in the amount of \$520.00 to cover the cost of the filing fee.

A. Previously Approved PUD

Pursuant to Z.C. Order No. 15-01, the Zoning Commission approved a PUD and a Zoning Map amendment to rezone the Property from the C-M-1 District to the C-3-C District. The approved PUD includes approximately 227,089 square feet of gross floor area (8.0 floor area ratio (“FAR”)), with approximately 217,243 square feet of gross floor area devoted to residential use and approximately 9,880 square feet of gross floor area devoted to ground-floor retail use. The PUD includes 313 residential units (plus or minus 10%) and 143 off-street parking spaces located in a below-grade parking garage. The maximum approved building height for the PUD is 120 feet at its highest point. The PUD allows for up to seven off-site inclusionary zoning (“IZ”) units and six non-IZ DC Habitat affordable dwelling units, with each unit containing a minimum of 1,000 square feet and 2.5 bedrooms.

B. Minor Modifications Requested

As shown on the PUD Minor Modification Plans hereto as Exhibit B (the “Minor Modification Plans”), the Applicant requests minor modifications to the approved architectural drawings in the following areas:

1. Revised Penthouse Design and Use

As shown on Sheets A16b, A17b, A18b, A19b, A24b, A25b, A26b, A35, A36, and A37 of the Minor Modification Plans, the Applicant proposes to revise the penthouse design and uses to be consistent with the recently-adopted penthouse regulations approved pursuant to Z.C. Order No. 14-13. Consistent with the new penthouse regulations, the Applicant proposes to provide habitable space in the penthouse and to increase the maximum penthouse height from 18 feet, 6 inches to 20 feet. The revised penthouse reduces the size of the previously-approved indoor rooftop amenity space, incorporates four new residential units, and relocates the building’s mechanical equipment to a new second-story on the penthouse. The revised penthouse will have two heights: one at 12 feet for residential use and one at 20 feet for both residential use and mechanical equipment.

As a result of the habitable space proposed for the penthouse, the overall net residential area in the building will increase by approximately 5,593 square feet. The result is an increase of approximately 448 net square feet required to be devoted to IZ units for households earning up to 50% of the Area Medium Income (“AMI”). While the Applicant is on target to exceed its off-site IZ unit area by over 1,000 square feet, the Applicant will still provide one additional IZ unit on-site, which will be devoted to households earning up to 50% of the AMI. *See* Sheet A36 of the Minor Modification Plans.

The Applicant also proposes to make minor refinements to the design of the penthouse, including adding new windows/louvers; installing a new railing on the roof that is setback 1:1 from the edge of the roof; providing a new rooftop trellis; and incorporating a modified landscape plan with reallocated green area ratio (“GAR”) components and a relocated green roof. As shown on Sheet A35 of the Revised Plans, the total GAR for the PUD will remain at 0.212 GAR and will incorporate intensive green roof areas.

Pursuant to 11 DCMR § 411.24 of the new penthouse regulations, a request to add penthouse habitable space to a building approved by the Zoning Commission as a PUD prior to January 8, 2016, may be filed as a minor modification for placement on the Zoning Commission’s consent calendar, pursuant to 11 DCMR § 3030, provided (a) the item shall not be placed on a consent calendar for a period of 30 days minimum following the filing of the application; and (b) the Office of Planning shall submit a report with a recommendation a minimum of seven days in advance of the meeting. *See* 11 DCMR § 411.24. In addition to meeting the requirements of § 3030, an application made pursuant to 11 DCMR § 411.24 shall include the following:

- a. A fully dimensioned copy of the approved and proposed roof plan and elevations as necessary to show the changes;
- b. A written comparison of the proposal to the Zoning Regulations; and
- c. Verification that the affected ANC has been notified of the request.

This application complies with the requirements of § 411.24(a)-(c). As shown on Sheets A24a, A24b, and A35-A37 of the Minor Modification Plans, the Applicant has provided fully dimensioned plans and elevations showing the approved and proposed penthouse. A written comparison of the proposal is provided herein, and as shown on the Certificate of Service attached at the end of this statement, the Applicant notified the affected ANC of the request.

Section 411.26 of the new penthouse regulations also notes that pursuant to § 5 of the Height Act, a penthouse may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback and other restrictions stated in the Height Act. The Applicant does not request any increase in height to the penthouse pursuant to 11 DCMR § 411.26.

2. Revised Park Design

A significant component of the PUD's approved public benefits was the creation of a public green space on District-owned land that abuts the Property to the west (the "Park"). The Park will be a landscaped public amenity on land that is currently overgrown with neglected trees and shrubbery and is littered with trash and debris. The Park will include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a widened sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north for a future connection to Morse Street. *See* Z.C. Order No. 15-01, Finding of Fact No. 24.

As shown on the Landscape Plans of the Minor Modification Plans, the Applicant proposes to significantly improve the design and usability of the Park. The revised design incorporates improved accessibility options with wider stairs and fewer switch-backs of the approved ADA-accessible ramp. The revised design still includes a plaza and park space, community herb garden, ornamental plantings, and a future pedestrian connection to Morse Street to the north, but also includes new lawn space and public seating areas on the Applicant's private property, now open to the public, which was not previously proposed.

3. Revised East and West Building Facades

As shown on Sheet A17b of the Minor Modification Plans, the Applicant proposes minor modifications to the building's west elevation, including (i) a refined window and façade treatment on the upper floors to create better unit functionality at those levels, and (ii) a revised masonry wall at the base of the building that is a result of the Applicant's desire to create a more integrated pedestrian sequence from the Park to Union Market, as well as to provide more public space. As shown on Sheet A19b of the Minor Modification Plans, the Applicant also proposes to modify the façade design on the building's east elevation by relocating certain windows to better accommodate construction of a new building on the adjacent property.

4. Revised On-site Parking Configuration

Pursuant to BZA Order No. 15-01, the approved PUD is required to provide 143 off-street parking spaces located in a two-level below-grade parking garage. The Zoning Commission granted flexibility from the compact parking space requirements of 11 DCMR § 2115.2 to permit 63% of the parking spaces to be compact in size. *See* Z.C. Order No. 15-01, Finding of Fact No. 29 and Decision No A.3.d. The Commission found that "[p]roviding the compact spaces is necessary to maximize

the efficiency of the garage, provide as many parking spaces as possible, maintain a drive aisle width of 20 feet, and accommodate a greater amount of compact, fuel-efficient vehicles that have a lower carbon footprint than full-size vehicles.” Z.C. Order No. 15-01, Finding of Fact No. 29. The Commission also found that “approval of this requested flexibility will not have any adverse effects, and will allow the Applicant to adequately accommodate parking for the building’s residential and retail users.” *Id.* Z.C. Order No. 15-01 also granted flexibility to “vary or reduce the number, location, and arrangement of parking spaces, provided that the total is not reduced below the number required under the Zoning Regulations.” Z.C. Order No. 15-01, Decision No. A.4.c.

As shown on Sheets A27 and A28 of the Minor Modification Plans, the Applicant proposes to shift the building’s foundation wall approximately 20 inches south into the Property, thus creating additional compact parking spaces against the building’s north wall in both parking garage levels. The result increases the building’s compact parking space ratio from 63% to 86%. The new compact parking spaces, however, will maintain the standard parking space width of 9 feet.

The retail and residential uses in the PUD require 90 on-site parking spaces. As set forth above, the Zoning Commission approved the PUD to be constructed with 143 parking spaces, with flexibility to reduce that number so long as it is not reduced below the total number of spaces required under the Zoning Regulations. As shown on the Minor Modification Plans, the revised parking configuration results in a reduction in the total number of on-site parking spaces from 143 spaces to 139 spaces, due to the decreased area in the garage that resulted from shifting the foundation wall to the south. However, the PUD is still providing significantly more parking spaces than the number required by the Zoning Regulations such that the proposed modification is consistent with the approved PUD Order.

C. Jurisdiction of the Zoning Commission and Compliance with Standards

Section 2409.9 of the Zoning Regulations authorizes the Zoning Commission to approve proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, Section 3030 of the Zoning Regulations provides for an expedited "Consent Calendar" procedure, allowing the Zoning Commission to make minor modifications and technical corrections to an approved PUD Order without a need for a public hearing. Pursuant to Section 3030.2, "minor modifications" are those modifications of little or no consequence. Section 3030 also permits the Zoning Commission to consider a request to add penthouse space pursuant to 11 DCMR § 411.24 as a minor modification. The modifications requested herein do not affect the essential elements of the approval given by the Zoning Commission for this project. The proposed modifications are proposed simply to make minor design refinements to the building’s façades, shift one of the foundation walls, provide habitable space in the penthouse as permitted in the new penthouse regulations, and increase the usability of the Park. Moreover, no additional zoning flexibility is needed. Accordingly, the request falls within the scope of this section.

As provided in Section 3030.13 of the Zoning Regulations, "all relief granted by the Commission under this section shall be consistent with the intent of the Commission in approving its original order, map, plan, rulemaking, or other action or relief proposed to be modified or corrected and shall not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map." As indicated by the information presented

herein, the project is consistent with the intent of the Commission's original approval and the minor changes will not substantially impair the intent, purpose, or integrity of the zone plan.

If the Zoning Commission determines that the proposed modifications described herein are not minor, then the Applicant respectfully requests that the Commission treat this filing as a Prehearing Submission and schedule a public hearing on the modification application at the earliest available hearing date.

D. Work with the Community

The Applicant worked closely with the community and Advisory Neighborhood Commission ("ANC") 5D throughout the previous approval process. By report dated June 3, 2015, ANC 5D recommended approval of the initial PUD application and related Zoning Map amendment. The Applicant has more recently met with Commissioner Lewis of ANC 5D01 to review the proposed minor modification application and has received her support. A letter indicating her support will be submitted to the record separately. The Applicant will continue to work with Commissioner Lewis and the full ANC 5D throughout the PUD modification process. Moreover, as required by 11 DCMR § 3030.6, the Applicant has served this request on ANC 5D and ANC 6C, the ANC located across the street from the Property. There were no other parties to the original proceeding.

E. Conclusion

The Applicant respectfully requests approval of this request for a minor modification to the plans approved in Z.C. Order No. 15-01. As required by 11 DCMR § 3030.13, this minor modification is consistent with the intent of the Commission in approving the original PUD and it will not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map. Accordingly, a minor modification is appropriate.

As stated above, if the Zoning Commission determines that the proposed modifications are not minor, then the Applicant respectfully requests that the Commission treat this filing as a prehearing submission and schedule a public hearing on the proposed modification application as expeditiously as possible.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Jessica R. Bloomfield

cc: Parties to Original Case
Joel Lawson, Office of Planning
Megan Rappolt, Office of Planning
Ryan Westrom, DDOT

See Attached Certificate of Service
(Via Hand; w/attachments)
(Via Hand; w/attachments)
(Via Hand; w/attachments)

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2016, a copy of this Request for Minor Modification to a PUD (Zoning Commission Order No. 15-01) was served on the following in accordance with 11 DCMR § 3030.6.

Advisory Neighborhood Commission 5D
c/o Adam Roberts, Chair
1832 L Street, NE
Washington, DC 20002

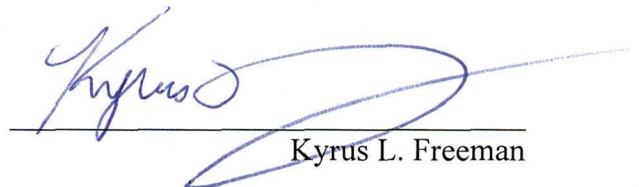
Via U.S. Mail

Peta-Gay Lewis
SMD 5D01
1861 Corcoran Street, NE
Washington, DC 20002

Via U.S. Mail

Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, DC 20013

Via U.S. Mail


Kyrus L. Freeman