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June 1, 2016

VIA IZIS AND HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N.W., Suite 210-S
Washington, DC 20001

Re: Application for a Minor Modification to Z.C. Order No. 06-04C

Dear Members of the Zoning Commission:

On behalf Florida & Q Street, LLC (the "Applicant"), the owner of Lot 48 in Square 3100 (the "Property"), we hereby submit this application for minor modifications to the above-referenced planned unit development ("PUD") approved pursuant to Z.C. Order No. 06-04C.

This minor modification request is made pursuant to the Zoning Commission's authority established under Sections 411.24 and 3030.1 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). Attached hereto as Exhibit A is Zoning Commission Form 151-Application for a Minor Modification. Also included is a check in the amount of \$520.00 for the filing fee.

I. BACKGROUND

The Property has a land area of approximately 18,984 square feet and is located in the northwest quadrant of the District at the intersection Q Street, Florida Avenue, and North Capitol Street. The Property extends approximately 150 feet north along North Capitol Street and is currently unimproved. Pursuant to Z.C. Order No. 06-04, dated January 8, 2007, effective June 15, 2007 (Exhibit B), the Zoning Commission approved a consolidated PUD and a related Zoning Map amendment for the Property to enable the development of a new mixed-use building. Subsequent to its initial approval, the Zoning Commission approved modifications to the PUD pursuant to Z.C. Order No. 06-04C (Exhibit C). The approved PUD, as modified, involves construction of a mixed-use development having a total gross floor area of approximately 85,428 square feet. Approximately 84,306 square feet will be devoted to residential use, providing between 85 and 95 dwelling units, and approximately 4,998 square feet of floor area will be devoted to retail use in the cellar. The PUD will have a maximum density of 4.5 floor area ratio ("FAR") and a maximum building height of 72'-4 1/2" (not including penthouses). The PUD will include 41 parking spaces located on one level of underground parking accessed from Florida Avenue.

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District of Columbia
CASE NO.06-04E
EXHIBIT NO.1

Finally, pursuant to Z.C. Order Nos. 06-04A, 06-04B, and 06-04D (Exhibits D, E and F, respectively), the Zoning Commission approved extensions to the PUD, such that construction is required to begin no later than June 15, 2016. Concurrent with its present request for a minor modification, the Applicant has also submitted a separate request for a two-year time extension to allow the Applicant to update the construction drawings in order to move forward with the project, as modified, if/once approved by the Commission. As is more thoroughly discussed in the time extension request application, the Applicant has filed for a building permit, however, due to the lengthy process associated with procuring building permits, the Applicant is unable to begin construction of the PUD by June 15, 2016.

II. REQUEST FOR A MINOR MODIFICATION OF PLANS

A. Minor Modification Requested

As shown on the plans attached hereto as Exhibit G (the “Minor Modification Plans”), the Applicant requests approval to modify the approved use and design of the previously approved penthouse, including the addition of penthouse habitable space, and to increase the height of the parapet by eight (8) inches to accommodate the green roof areas and roof terrace paving while still meeting the 3’-6” parapet height required by building code. The Applicant’s request is made pursuant to 11 DCMR, §§411.24 and 3030.1, which allows placement of the request on the Commission’s consent calendar for consideration as a minor modification.

Pursuant to 11 DCMR §411.24 of the recently adopted 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. In addition to meeting the requirements of §3030, an application made pursuant to 11 DCMR §411.24 must 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 Advisory Neighborhood Association (ANC) has been notified of the request.

This application complies with the requirements of 11 DCMR § 411.24(a)-(c). As shown on the Minor Modification Plans, the Applicant has provided fully dimensioned plans, elevations, and sections showing the approved and proposed penthouse. A written comparison of the proposal is provided in this submission, and as shown on the Certificate of Service attached at the end of this statement, the Applicant notified the affected ANC of the request.

1. Previously Approved Penthouse Use and Design

As shown on Sheets A-3.7 and A-3.8 of the Minor Modification Plans, the previously approved penthouse included three separate penthouse structures, screened mechanical equipment, and outdoor recreation space. The three penthouse structures consisted of a centrally located main elevator core containing an elevator, elevator override, and a small lobby area; a separate egress stair and elevator override located on the western portion of the building roof; and a second egress stair located on the northern portion of the roof. The previously approved penthouse structures had a maximum height of 18'-6" above the roof. The remaining portions of the approved penthouse roof plan consisted of unenclosed screened mechanical equipment located along the west side of the north egress stair, unscreened individual condenser units (less than four feet in height) located on the west portion of the roof, several green roof areas, and outdoor recreation/amenity spaces for use by residents of the building. The roof of the main penthouse structure also contained a partial green roof. As shown on table included on Sheet A-3.7A of the Minor Modification Plans, the green roof areas on the previously approved plans covered approximately 3,536 square feet of roof area.

2. Revised Penthouse Use and Design

As shown on Sheets A-3.7A – A-3.8A, the Applicant proposes to modify the previously approved penthouse plan to add penthouse habitable space and additional unenclosed screened mechanical equipment. The amount of penthouse habitable space proposed within the revised penthouse is approximately 3,904 square feet of square floor area ("GFA") (Exhibit G, Sheet A-3.7A). Although the Applicant has not yet determined the final layout of the proposed penthouse habitable space, the space will be allocated either as individual dwelling units or made part of dwelling units located on the floor below such that the resulting number of units in the building remains within the 85 – 95 unit range approved under Order No. 06-04C.

With respect to penthouse height, as permitted under Section 411.9, the modified penthouse plan includes a single enclosure with three separate heights. As shown on Exhibit G, Sheet A-3.8A, the proposed penthouse habitable and mechanical space (egress stairs) will have a maximum height of 14'-4", the areas containing unenclosed screened mechanical equipment will have a maximum height of 8'-0", and the elevator overruns will have a maximum height of 17'-0", lower than the previously approved overruns.

As shown on the Minor Modification Plans, the revised penthouse will meet the 1:1 setback requirements along those areas of the roof for which a setback is required, including the building walls along North Capitol Street and Florida Avenue, along the rear building wall, and along the west and north side building walls where the adjacent properties have a lower matter-of-right height. As permitted under Section 411.18(c)(5), the portion of the revised penthouse, including the screened mechanical equipment, is not setback 1:1 along the closed court located along the back of the northern wing of the building.

To accommodate the proposed penthouse modifications, the Applicant has made adjustments to the outdoor rooftop amenity space, green roof areas, and location of the individual condenser units. As shown on Exhibit G, Sheet A-3.7A, the roof terrace has been extended along North Capitol Street and Florida Avenue, and along the rear of proposed penthouse. The individual condenser units that were previously located on the western portion of the roof are now consolidated on the roof of the proposed penthouse, fully screened by the penthouse parapet. Finally, additional/expanded green roof areas have been located on portions of the lower 5th Floor roof and on the penthouse roof. As a result these changes, the overall green roof area will be increased slightly to approximately 3,595 square feet, or by approximately 59 square feet.

3. Modifications to Penthouse Facades

The materials proposed for the revised penthouse design are consistent with the materials that were previously approved by the Commission. As shown on the elevations included on Exhibit G, Sheets A-4.1A – A-4.4A, the proposed penthouse materials will be applied in a manner that corresponds to the horizontality of the main building. In addition, the mullion pattern of the penthouse windows will be similar to the windows of the main building, thereby further integrating the penthouse into the design of the main building.

4. Modification to Main Building Roof Parapet

As shown in the elevations and sections included in the Minor Modification Plans, the Applicant is proposing to slightly increase the main parapet by eight (8) inches (Exhibit G, Sheets A-4.1A – A-5.3A). As currently proposed, the parapet height increases to 4'-2", for a total height of 73'-1/2". This minor increase in height is necessary to accommodate the green roof areas and roof terrace paving while still meeting the 3'-6" parapet height required by building code. Compared to the previously approved plans, this slight increase in height is negligible, and the building will continue to be well below the 90 foot maximum permitted in the C-2-B zone district under a PUD. Finally, the increased height has no influence on how the penthouse height and setback are measured, which are taken from the edge of the roof upon which the penthouse is located and not from the parapet.

5. Compliance with Penthouse Regulations

Under the new penthouse regulations, penthouses within the C-2-B zone district, and under a PUD, are permitted a maximum height of 20 feet, for both habitable and mechanical space, can contain one story plus a mezzanine for habitable space, and a second story for mechanical space; and can contain up to three separate heights, with elevator overrides allowed to have a fourth separate height. As described above, the revised penthouse design contains multiple heights for penthouse habitable space, penthouse mechanical space, and screened mechanical equipment. The majority of the proposed penthouse has a uniform height of 14'-4", with limited areas of screened mechanical equipment and penthouse mechanical space having separate heights of 8'-0" and 17'-0", respectively. Notwithstanding the multiple heights proposed, all spaces and screened equipment will be place in

one enclosure that, as shown on the Minor Modification Plans and described above, harmonize with the main building in architectural character, material, and color.

As clearly demonstrated on sections included on Exhibit G, Sheets A-5.1A – A-5.3A, the revised penthouse will meet all required 1:1 setback requirements, with the exception of the portion of the penthouse bordering the closed court, which is expressly permitted under the new penthouse regulations.

Pursuant to Section 411.13, the aggregate square footage of all space on all penthouse levels or stories having a ceiling height of 6'-6" or greater must be included in the total FAR permitted for the building, with certain exceptions. These exceptions include, in relevant part, all penthouse mechanical space, all communal recreation space, and non-communal penthouse habitable space up to 0.4 FAR. Based on the Property's land area of approximately 18,984 square feet, approximately 7,593 GFA of non-communal penthouse habitable space is permitted in the revised penthouse without the space counting toward the FAR of the main building. The proposed penthouse includes approximately 3,904 GFA of non-communal penthouse habitable space, which equates to a 0.20 FAR, well below the 0.4 FAR exemption permitted under the new penthouse regulations.

With respect to parking and loading, per the new penthouse regulations the GFA of penthouse habitable space, not including recreation space, counts toward off-street vehicular parking, bicycle parking, and loading. Pursuant to Order No. 06-04C, the building is permitted to have a range of 85 – 95 dwelling units, and required to provide a minimum of 41 parking spaces. For an apartment house located within the C-2-B zone district, the minimum parking requirement is one space for each three dwelling units, which equates to a minimum parking requirement of 28 – 32 spaces for the building. As stated above, the Applicant does not intend to devote the proposed penthouse habitable space to additional new dwelling units, thus, there is no change to the minimum parking requirements for the building as a result of the proposed modification. Per the conditions of the previous approval, the Applicant will also continue to provide 60 bicycle parking spaces in the parking garage which is well in excess of the minimum required for a building of this size.

Regarding loading, as part of its original approval under Z.C. Order No. 06-04, the Commission granted relief from the minimum loading requirements for the residential component of the building to allow the Applicant to provide a 30-foot deep loading berth in lieu of the required 55-foot loading berth. The building will also contain the required 20-foot delivery space. The Applicant will continue to provide the loading facilities described above. The additional penthouse habitable space proposed by the Applicant does not trigger the need for additional loading berths or delivery spaces; and therefore, does not increase the degree of the original relief granted, or give rise to any new areas of loading relief.

6. Compliance with Affordable Housing Requirement for Residential Buildings

Pursuant to Section 411.16 of the penthouse regulations, the construction of penthouse habitable space in a residential building, except for space devoted exclusively to communal recreation or amenity space for the primary use of residents of the building, is subject to the

Inclusionary Zoning (IZ) set aside provisions of Chapter 26. Furthermore, Section 2607.9 requires inclusionary units that result from the set aside required for penthouse habitable space to be provided within the building, except under the following circumstances where the IZ set aside requirement attributable to the penthouse habitable space can be met through a contribution to a housing trust fund:

- a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded IZ requirement within the building;
- b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to IZ requirements; or
- c) The building is not otherwise required to provide IZ units for low-income households and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

When initially approved by the Commission, IZ was not in effect and thus was not applicable to the building. However, IZ was in effect at the time of the PUD modification that was approved (*See* Order No. 06-04C, Finding of Fact 39(l) at p. 9). Thus, given the C-2-B zoning of the Property the Applicant is required to set aside 8% of the residential gross floor area of the building to eligible moderate-income households, which equates to approximately 6,744 gross square feet.

Assuming that all 3,904 GFA of the penthouse habitable space is devoted to residential use, that space would be subject to the IZ set aside requirement of Section 2603.10, which requires 100% of inclusionary units resulting from penthouse habitable space to be set aside for eligible low-income households, unless the building meets one of the exemptions enumerated above. Pursuant to 2607.9(c), the IZ requirement resulting from penthouse habitable space can be satisfied through a contribution to a housing trust fund when a building is not otherwise required to provide IZ units for low-income households, and the resulting set aside requirement would be less than the gross floor area of the smallest dwelling unit within the building. In this project, the Applicant is not required to provide affordable units to low-income households, and the set aside requirement resulting from the proposed penthouse habitable space would be a maximum of 312 GFA (8% of 3,904 GFA). As currently designed, the smallest dwelling unit in the building is approximately 460 GFA.

Thus, the Applicant intends to satisfy the IZ set aside requirement that results from the proposed penthouse habitable space through a contribution to the District's Housing Production Trust Fund (HPTF). The total amount of the HPTF contribution, which must be calculated in accordance with Sections 414.13 – 414.16, will be based upon the final amount of penthouse habitable space that is devoted to non-communal residential use and a 6.0 FAR, the maximum FAR permitted on the Property under a PUD. As required under Section 414.14, the assessed value used in the HPTF calculation shall be the fair market value as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than 30 days prior to the date of the building permit application to construct the penthouse habitable space.

B. Jurisdiction of the Zoning Commission for a Minor Modification and Compliance with Standards

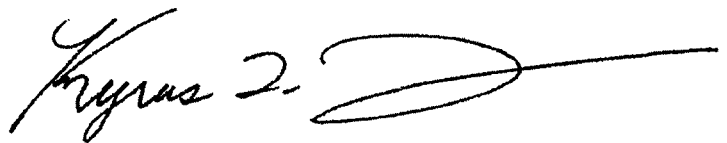
Section 2409.9 of the Zoning Regulations authorizes the Zoning Commission to approve proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, Section 3030 of the Zoning Regulations provides for an expedited "Consent Calendar" 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 provide habitable space in the penthouse as permitted under the new penthouse regulations. Moreover, no additional zoning flexibility is needed. Accordingly, the request falls within the scope of Section 3030.

III. CONCLUSION

The Applicant respectfully requests approval of this request for a minor modification to the plans approved in Z.C. Order No. 06-04C, and requests that it be placed on the Commission's first public meeting agenda scheduled after July 1, 2016, which is a minimum of 30 days from filing the application. 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.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Shane L. Dettman, AICP

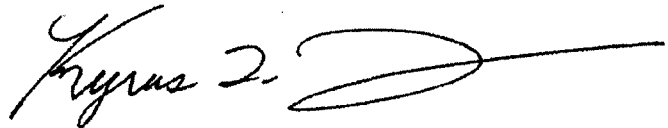
Attachments

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2016, a copy of the foregoing Applicant's Request for a Minor Modification served by electronic mail on the following at the address stated below:

Teri Janine Quinn
Chairperson, Advisory Neighborhood Commission 5E
Single Member District 5E06
5E06@anc.dc.gov

Karen Thomas
D.C. Office of Planning
karen.thomas@dc.gov

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", with a long horizontal stroke extending to the right.

Kyrus L. Freeman