

# Holland & Knight

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April 25, 2019

## **VIA IZIS AND HAND DELIVERY**

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

**Re: Application for a Modification of Consequence to an approved PUD  
Z.C. Case No. 14-14  
501 H Street, NE (Square 833, Lot 47)**

Dear Members of the Commission:

On behalf of Jemal's CDC, LLC (the "Applicant"), the owner of property located at 501 H Street, NE (Square 833, Lot 47) (the "Property"), we hereby submit an application for a Modification of Consequence to the above-referenced planned unit development ("PUD") approved pursuant to Z.C. Order No. 14-14. As described below, the Modification of Consequence is requested to (i) permit office use on the second floor of the mixed-use building approved by Z.C. Order No. 14-14; and (ii) install a total of four glass windows on the south and east facades of the building.

This application is submitted pursuant to Subtitle Z § 703 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"), which allows the Zoning Commission to approve Modifications of Consequence without a public hearing. As further described below, the application is properly reviewed as a Modification of Consequence because it involves a "change to a condition in the final order" and "a redesign or relocation of architectural elements... from the final design approved by the Commission," which are "examples" of Modifications of Consequence identified in 11-Z DCMR §§ 703.4. Moreover, there are no factual issues in this case that would require a public hearing to resolve.

Attached hereto is Zoning Commission Form 105 (Exhibit A) and a letter from the Applicant authorizing Holland & Knight LLP to file and process the application (Exhibit B). Also included is a check in the amount of \$520.00 for the filing fee.

## **I. The Property and Approved PUD**

### **A. The Property**

The Property is located in the northeast quadrant of the District and is bounded by H Street, NE to the north, private property to the east, a public alley that runs east-west between 5<sup>th</sup> and 6<sup>th</sup> Streets, NE to the south, and 5<sup>th</sup> Street, NE to the west. The Property has a land area of approximately 9,813 square feet and is rectangular in shape.

### **B. Previous Zoning Commission Approval**

Pursuant to Z.C. Order No. 14-14 (Exhibit C), dated June 29, 2015, and effective on July 31, 2015, the Zoning Commission approved a consolidated PUD and a related Zoning Map amendment from the HS-H/C-2-A district to the HS-H/C-2-B district for the Property under the 1958 Zoning Regulations. The approved PUD was for a six-story, mixed-use multiple-dwelling building with approximately 47,971 square feet of total gross floor area (“GFA”), comprised of (i) approximately 15,411 square feet of GFA and approximately 8,538 square feet of cellar floor area devoted to retail use on the on the cellar, first, and second levels; and (ii) approximately 32,560 square feet of GFA and approximately 1,199 square feet of cellar floor area devoted to residential use in the cellar, third, fourth, fifth, and sixth levels (28 units plus or minus three units) (the “Building”). The Building was approved to have a maximum height of 77’-5” to the top of the roof slab, and 83’-5” to the top of the six foot parapet.

The Building includes five on-site parking spaces and one loading berth, all located at the rear of the Property and accessed from the adjacent east-west public alley. As shown on the Building’s approved south elevation attached hereto as page 1 of Exhibit D, the parking and loading facilities are screened from the alley by overhead roll-up doors that are approximately 12’-3” tall. Above that, to a height of approximately 36 feet, is a stone façade with false windows imprinted within the stone material. Punched glass windows were not proposed in this location because the adjacent space inside the building was projected to be used as back-of-house retail.

The Building was constructed in accordance with the approved PUD plans over the course of approximately 18 months in 2016 and 2017. The first Certificate of Occupancy was issued for the base building in November, 2017, and 100% of the residential units are currently leased. The retail space, which was projected at the time of PUD approval as being occupied by one large, multi-story tenant, has been much more difficult to lease than originally anticipated and remains largely vacant. As of the date of this filing, the Applicant has been able to secure two retail leases that will occupy approximately 50% of the total approved retail space.

## **II. Requested Modification of Consequence**

### **A. Proposed Office Use**

As noted above, pursuant to Z.C. Order No. 14-14, the Property was approved to be developed as a mixed use building with retail use occupying the cellar, first, and second levels. The Applicant proposes to modify the approved use of the Building by permitting office use on the second floor in addition to the approved retail use. Office use is permitted as a matter of right at the Property under both the 1958 and 2016 Zoning Regulations (*see* 11 DCMR §§ 701.6(f) and 721.1

(ZR58) and 11-H DCMR § 1103.1(j) (ZR16)) and is therefore not inconsistent with the surrounding zoning or uses in the neighborhood. Indeed several new office uses have recently moved into the neighborhood, including a WeWork at the corner of 7<sup>th</sup> and H Streets, NE (two blocks from the Site), several real estate agency companies along the H Street corridor.

The Applicant has been actively marketing the Building's retail space for approximately three years, with pre-leasing starting during construction. The Applicant engaged JLL to help market to retail tenants, and has thus far negotiated leases with two retailers occupying portions of the cellar and first floor levels. Given the lack of demand for second-floor retail space and the negative impacts to the neighborhood in maintaining vacancies, the Applicant proposes to modify Decision No. A.2 of Z.C. Order No. 14-14 by permitting office use on the second floor space as follows:

Decision No. A.2: In accordance with the Plans, the PUD shall be a six-story, mixed-use, multiple dwelling building with approximately 47,971 square feet of gross floor area and 4.89 FAR. Approximately 15,411 square feet of gross floor area (1.57 FAR) and approximately 8,538 square feet of cellar floor area shall be devoted to retail use on the cellar, first, and second levels, of which approximately 9,427 square feet of gross floor area may be devoted to office use on the second level. Approximately 32,560 square feet of gross floor area (3.32 FAR) and approximately 1,199 square feet of cellar floor area shall be devoted to residential use in the cellar, third,<sup>1</sup> fourth, fifth, and sixth levels, comprised of 28 residential units (plus or minus three units). The building shall be constructed to a maximum height of 77'-5" to the top of the roof slab, and 83'- 5" to the top of the six-foot parapet.

As noted above, office use is permitted as a matter of right at the Property under the 1958 and 2016 Zoning Regulations. In addition, the parking requirement for office use is less than the parking requirement for retail use under both the 1958 and 2016 Zoning Regulations. *See* 11 DCMR § 2101.1 (ZR58) and 11-C DCMR § 701.5 (ZR16). Loading facilities are not required for less than 20,000 square feet of office use under the 1958 or 2016 Zoning Regulations. *See* 11 DCMR § 2201.1 (ZR58) and 11-C DCMR § 901.1 (ZR16). Therefore, no additional impacts related to parking or loading are anticipated as a result of adding office use to the Building.

#### B. Proposed Windows

As shown on the approved elevations (Exhibit D, p.1), the material approved for the first two stories of the Building's south and east elevations was "12 x 24 synthetic stone." Three rectangular imprints were provided on the south façade to add variation to the blank wall in this location. Real glass windows were not proposed since the adjacent space inside the building was projected to be used as back-of-house retail.

As shown on the proposed elevations (Exhibit D, p.2), the Applicant proposes to fill in the three rectangular imprints on the south façade with glass windows, and to add one glass window on the east façade that will match those on the south facade. The windows are needed in order to provide

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<sup>1</sup> Z.C. Order 14-14 did not reference the residential use on the third floor, which is clearly shown throughout the approved architectural drawings. Thus, the Applicant requests that the Commission approve this technical correction as part of this application.

light for the second floor office use proposed herein. As requested by the owner of the residential building located across the public alley to the south of the Property, the Applicant will provide permanent frosting on all of the proposed new windows, up to a minimum height of six feet as measured from the bottom of the glass. Doing so will maintain privacy for this one adjacent residential use.

### **III. Application Properly Filed as a Modification of Consequence**

Pursuant to 11-Z DCMR §§ 703.3 and 703.4, the term “modification of consequence” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance. Examples of a modification 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. The proposed modification includes (i) a change to a condition in the final order regarding the approved uses in the Building; and (ii) a redesign of architectural elements on the Building’s south and east façades to replace the approved stone material with glass windows in four locations, and is therefore properly filed as a modification of consequence.

Moreover, there are no factual issues that require a public hearing to resolve. The Commission has previously found a change of use to be a modification of consequence when it determined that there were no factual issues that would require a public hearing to resolve. *See* Z.C. Case No. 06-46D, where the Commission concluded that although the request would appear to be a modification of significance, for which a hearing is required, it “considers these standards to be flexible, with the principal distinction between modifications of significance and consequence being whether the Commission believes it would be helpful to have a hearing” (quoting Z.C. Case No. 04-13A where the Commission found that a request to change an approved public benefit from a church room to a residential use was not a modification of significance because the relief was “straightforward”).

In this case, the proposed modification is similarly straightforward and presents no factual issues that require a public hearing to resolve. The Applicant proposes to permit office use on the second floor of the Building, which is a use permitted as a matter-of-right in the underlying zone and is found in other mixed-use developments within the immediate neighborhood. The Applicant’s proposal to add windows to the south and east facades also creates no factual issues, since the windows are simply needed to provide light for the proposed office use. As noted above, the Applicant has discussed this proposal with the adjacent residential neighbor, and in response to their stated concern has agreed to install permanent privacy frosting on each proposed new window, up to a minimum height of six feet measured from the bottom of the window, in order to ensure adequate privacy. Therefore, neither of the proposed modifications raise any factual issues or create any adverse impacts that would require a public hearing to resolve.

Thus, given that (i) there are no factual issues that would require a public hearing to resolve; (ii) the proposed change in use is “straightforward” (*see* Z.C. Order No. 04-13); and (iii) the modification will have no negative impacts, the Commission may approve the request as a modification of consequence.

**IV. Status of Community Engagement**

The Applicant reached out to the affected Advisory Neighborhood Commission (“ANC”) 6C prior to filing this application and has also spoken with the closest residential neighbor. The Applicant will work with the ANC to formally present the application at an upcoming public meeting and will provide an update for the record prior to the Zoning Commission’s decision on this matter.

**V. Service on Affected ANCs**

Pursuant to 11-Z DCMR § 703.13, the Applicant is required to formally serve a copy of the subject application on all parties to the original proceeding at the same time that the request is filed with the Office of Zoning. Other than ANC 6C, there were no other parties to the original proceeding. As noted in the Certificate of Service attached hereto, the subject application was served on ANC 6C in compliance with 11-Z DCMR § 703.13.

**VI. Conclusion**

The Applicant respectfully requests approval of this Modification of Consequence application to permit (i) office use on the second level of the approved project, and (ii) windows at the second level of the south facade. The request is consistent with the intent of the Zoning Commission in approving the original application; accordingly, approval of the Modification of Consequence is appropriate.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

Jessica R. Bloomfield

Enclosures

cc: Certificate of Service  
Joel Lawson, D.C. Office of Planning (w/enclosures, via Email)  
Karen Thomas, D.C. Office of Planning (w/enclosures, via Email)  
Anna Chamberlin, DDOT (w/enclosures, via Email)

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2019, copies of the foregoing application for a Modification of Consequence were served on the following, with hard copies sent on the following business day.

Jennifer Steingasser  
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VIA EMAIL & HAND DELIVERY

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