

Holland & Knight

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June 19, 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: Request for Modification of Consequence to Planned Unit Development
Z.C. Case No. 12-02 / 50 Florida Avenue, N.E. (Square 3516, Lots 134 and 138)**

Dear Members of the Commission:

On behalf of 50 Florida Avenue Development Associates, LLC (the “Applicant”), we submit this application for a Modification of Consequence to the above-referenced planned unit development (“PUD”), approved pursuant to Z.C. Order No. 12-02 (the “Order”), for property located at 50 Florida Avenue, N.E. (Square 3516, Lots 134 and 138) (the “PUD Site” or “Site”). This application is submitted pursuant to Subtitle Z § 703 of the Zoning Regulations (“11 DCMR”), which allows the Zoning Commission to approve Modifications of Consequence without a public hearing. The application is properly reviewed as a Modification of Consequence because it involves a proposed change to two conditions in the Order.¹

We respectfully request to be placed on the July 8, 2019, public meeting agenda for consideration of this request. As detailed below, Advisory Neighborhood Commission (“ANC”) 5E is in support of this modification request.

Enclosed is Application Form 105 (Exhibit A) and a check in the amount of \$520.00 for the required filing fee. Also enclosed is an authorization letter from the Applicant authorizing Holland & Knight LLP to file and process this application (Exhibit B).

A. The PUD Site

The PUD Site has a combined land area of approximately 42,223 square feet and is located on the north side of Florida Avenue, N.E. with approximately 204.11 linear feet of frontage on Florida Avenue, N.E. The PUD Site is bounded by a 16-foot-wide public alley to the north, private property to the east, Florida Avenue, N.E. to the south, and private property to the west. A 12-foot-wide public alley running north to south separates Lot 134 from Lot 138.

¹ Pursuant to 11-Z DCMR § 703.4, “[e]xamples of 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” (emphasis added).

B. Prior Zoning Commission Approval

Pursuant to the Order, dated October 21, 2013, final and effective November 29, 2013, the Zoning Commission approved a PUD with a related Zoning Map amendment to the C-3-B zone district, to facilitate the development of 196,029 square feet of residential use, 7,858 square feet of retail space, and associated parking in a below-grade garage for approximately 210 vehicles (the "Project"). A copy of the Order is attached as Exhibit C. The Applicant is not proposing any changes to the approved plans.

Pursuant to Decision No. B(4) of the Order, prior to the issuance of a certificate of occupancy for the building, the Applicant is required to submit to the Department of Consumer and Regulatory Affairs ("DCRA") evidence that:

- a. The Applicant provided \$220,000 to Cultural Tourism DC for the development and installation of eight signs for an Eckington Heritage Trail in the neighborhood.
- b. The Applicant paid a contractor or otherwise incurred costs of \$65,000 for the fabrication and installation of three-sided perimeter tree enclosures ("commonly referred to as "tree boxes") and mulch at the locations on the north and south sides of Q Street and R Street, N.E. between North Capitol Street and Eckington Street; and
- c. The eight heritage trail signs have been installed or are in the process of being developed and that the tree boxes and mulch have been installed.

C. Requested Modification of Consequence

The Applicant has made every effort to comply with the requirements of Decision No. B(4) and has met all of the other conditions set forth in the Order. Based on a cost of \$1,000 per tree box, the Applicant's previous \$65,000 commitment would fund approximately 65 tree boxes and mulch at the locations on the north and south sides of Q Street and R Street, N.E. between North Capitol Street and Eckington Street. However, in order to pull a permit for the tree box, each adjacent property owner must execute and record a covenant for maintenance of their adjacent tree box. This would mean that 65 separate property owners would have to execute and record a covenant for maintenance of the tree boxes, which will also serve as a restriction on their deed.

While the Applicant has worked with Advisory Neighborhood Commission ("ANC") 5E and the property owners on the north and south sides of Q Street and R Street, N.E. between North Capitol Street and Eckington Street regarding the execution of the required covenants, to date, only five property owners have executed the required covenant. In addition, some of the locations identified in 2012 as being able to accommodate tree boxes can no longer accommodate tree boxes.

Based on the foregoing, the Applicant proposes to modify the language of Decision No. B(4) as follows (additions are shown in *italics underlined* text and deletions are shown in ~~striketrough~~ text:

- a. The Applicant provided at least \$220,000 to Cultural Tourism DC for the development, fabrication, and installation of at least eight signs for an Eckington Heritage Trail in the neighborhood.
- b. The Applicant paid a contractor or otherwise incurred costs of up to \$65,000 for the fabrication and installation of three-sided perimeter tree enclosures ("commonly referred to as "tree boxes") and mulch at the locations on the north and south sides of Q Street, Quincy Street, and R Street, N.E. between North Capitol Street and Eckington Street; ~~and~~
- c. The ~~eight~~ heritage trail signs have been installed or are in the process of being developed, fabricated, and installed, and that the Applicant has secured permits for the installation of the tree boxes and mulch at the location adjacent to the properties of owners who have provided the requisite fully executed, notarized covenant for maintenance ~~have been installed; and~~
- d. In the event the Applicant is unable to incur costs of \$65,000 and secure permits for the installation of tree boxes and mulch at the locations on the north and south sides of Q Street, Quincy Street, and R Street, N.E. between North Capitol Street and Eckington Street, the Applicant shall provide any remaining funds to Cultural Tourism DC for the development and installation of additional signs for an Eckington Heritage Trail in the neighborhood. The Applicant's total contribution for the heritage trail signs, tree boxes, and mulch shall be \$285,000.

While the Applicant is requesting a modification to the conditions of the Order to redistribute its previously committed funds, the Applicant's overall contribution will not be decreased.

D. Service on Affected Advisory Neighborhood Commission


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, including ANC 5E, at the same time that the request is filed with the Office of Zoning. Other than ANC 5E, the only other party to the original proceeding was Ms. Kimberly Konkel. As noted in the Certificate of Service attached hereto, the subject application was served on ANC 5E and Ms. Konkel at the same time that it was filed with the Zoning Commission. At its June 18, 2019, public meeting, ANC 5E voted unanimously to support this modification request.

E. Conclusion

The Applicant respectfully requests approval of this Modification of Consequence to modify two conditions in Z.C. Order No. 12-02. 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

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", written over a horizontal line.

Kyrus L. Freeman
Joseph O. Gaon

Enclosures

cc: Jennifer Steingasser, D.C. Office of Planning (*See Certificate of Service*)
Joel Lawson, D.C. Office of Planning (w/enclosures, via Email & Hand Delivery)
Anna Chamberlin, DDOT (w/enclosures, via Email)
Advisory Neighborhood Commission 5E (*See Certificate of Service*)
Ms. Kimberly Konkel (*See Certificate of Service*)

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2019 a copy of the foregoing application for a Modification of Consequence for the approved PUD at 50 Florida Avenue, N.E. (Square 3516, Lots 134 and 138) was served on the following:

Jennifer Steingasser
D.C. Office of Planning
1100 4th Street, SW – Suite 650E
Washington, DC 20024

Via Email & Hand Delivery

Commissioner Silvia Pinkney
Advisory Neighborhood Commission 5E04
5E04@anc.dc.gov

Via Email

Advisory Neighborhood Commission 5E
c/o Chairperson Bradley Thomas
107 P Street NW
Washington, DC 20001

Via U.S. Mail

Ms. Kimberly Konkel
45 Q Street, NE
Washington, DC 20002

Via U.S. Mail



Joseph O. Gaon
Holland & Knight LLP