

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** <sup>JLS</sup> Jennifer Steingasser, Deputy Director  
**DATE:** February 15, 2019  
**SUBJECT:** **ZC Case No. 08-34I** Modification of Consequence to the approved Capitol Crossing PUD Center Block Square 566, Lot 862 (ZC Case No. 08-34)

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**I. OFFICE OF PLANNING RECOMMENDATION**

After a review of the request, including a comparison of the proposed changes and the original Order (ZC 08-34); OP **concurs** with the Applicant’s submission that the proposal is a **modification of consequence** and the proposed changes meet the criteria of Subtitle Z 703.4 (Attachment 1).

As such, OP has no objections to the Applicant’s request and recommends that the proposed modifications be **approved**.

**II. BACKGROUND**

**2010** – The District of Columbia Council approved an Act authorizing the Land Disposition Agreement (LDA) for the subject property. The LDA required that a future PUD for the property would have 50 affordable housing units at 80% AMI.

*The Purchaser shall construct and develop, at its sole cost and expense, no less than 50 affordable residential units on the Property that shall be sold or rented to households earning 80% of the area median income as defined in the section 2(1) of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1) (“AMI”)) or less, with the unit mix and specific AMI levels set forth in the PUD;*

**2011** – Zoning Commission Order No. 08-34 (published July 1, 2011) approved the PUD for Center Place Holdings (now Capitol Crossing) with 150 residential units and a requirement of 50 affordable housing units on-site (see Section II. B. for details).

**2018** – The Council approved an amendment to the LDA to allow hotel use and off-site affordable housing provided the Zoning Commission approves the modification to the PUD. The Council also required that if there is future residential use on the property, the Applicant must provide 50 affordable housing units on-site.

*To amend section 47-4640 of the District of Columbia Official Code to require the owner of the real property known as Center Leg Freeway (Interstate 395) PILOT Area to provide no fewer than 50 affordable housing units on that real property if it is ever*

*developed for residential use; and to amend the Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010 to mandate that the developer construct 100 affordable residential units on the real property located at 1530 First Street, S.W., or other comparable property as approved by the Mayor, contingent on the Zoning Commission approving an amendment to the existing planned unit development for the Center Leg Freeway (Interstate 395) PILOT Area to allow for non-residential use, within 5 years of such approval by the Zoning Commission.*

*If the PUD approved by the Zoning Commission pursuant to this section is amended to allow the Purchaser to use the Property for a non-residential use, the Purchaser shall, in lieu of the requirement set forth in subparagraph (A) of this paragraph, construct and develop, at its sole cost and expense, approximately 100 affordable residential units on real property located at 1530 First Street, S.W., or on other comparable real property approved by the Mayor, that shall be sold or rented to households earning 50% or less of the AMI; provided, that some units are at 30% or less of the AMI; provided further, that if the Property is at any time converted from a non-residential use to a residential use, the owner shall build 50 affordable residential units as described in subparagraph (A) of this paragraph.*

**2019** – The Applicant is currently proposing a modification of consequence (ZC 08-341) to allow a change to hotel use and to provide off-site affordable housing (See Section III). If the Capitol Crossing PUD should have residential use in the future, 50 on-site affordable housing units would be provided on-site per the LDA.

### **III. MODIFICATION REQUEST**

Subtitle Z § 703 provides for Zoning Commission consideration of a modification of consequence to an approved Planned Unit Development (PUD), and the Applicant is requesting two modifications of consequence.

#### **A. Change of Use from Residential to Hotel**

The applicant is proposing to modify the PUD Order 08-34 for a Stage One approval of a mixed-use building with residential and commercial uses on the Center Block, the subject site. The Applicant is proposing a change to a mixed use building with hotel and commercial uses with no change to the building's approved overall height, bulk and density. Hotel use is a permitted use in the C-4 zone and the Applicant would provide detailed plans for the new building as part of a future Second Stage PUD application.

#### **ZC Order 08-34:**

*32. These three new city blocks are referred to as the North Block, the Center Block, and the South Block. Each of the blocks will be developed as a single building on a single lot. The North Block will contain office and retail uses and will have a maximum height of 130 feet. The Center Block will include residential and office uses as well as facilities for the Holy Rosary Church and will have a maximum height of 130 feet. The South Block will include office use, the relocated JHS Synagogue, and facilities for the Jewish Historical Society and will have a maximum height of 130 feet.*

*47. The Center Block will include an apartment house with ground floor retail, an office component with ground floor retail and facilities for the Holy Rosary Church. All of these components will be connected internally at or above the level of the main floor to form a single building with frontage on 3rd Street, generally as shown on Sheets 2.3a and 2.3b of the Final First-Stage PUD Plans. Based on the Center Block's frontage on 3<sup>rd</sup> Street, which has a right-of-way width of 110 feet, the Center Block building is entitled to a maximum height of 130 feet under the 1910 Height Act and the C-4 Zone District.*

### **B. Off-Site Affordable Housing**

The Applicant also proposes to modify the affordable housing requirement for the original residential building. The Order required 50 units at 80% AMI for the original residential use but the Applicant now proposes to provide the required affordable housing off-site if the change in use to a hotel is approved. The Order did not specify the affordable housing square footage, or the exact unit mix but the 50 units were to be distributed across the housing unit mix. The C-4 PUD is not subject to the Inclusionary Zoning regulations.

Through this modification, the Applicant proposes to provide 100 units of affordable housing at a new residential building at 1530 First Street, S.W. The Applicant proposes 20% of the units at 30% MFI and 80% of the units at 50% MFI. The affordable units would vary in unit size and the First Street building will have 46 one-BR, 37 two-BR, 10 three-BR, and 8 four-BR units. The Applicant would provide the original 50 affordable housing units on-site should residential use be approved at the Capitol Crossing development in the future, which is required by the District's LDA.

#### **ZC Order 08-34:**

*22. For a period of 40 years from the date that the first certificate of occupancy is issued for the residential building, the Applicant shall provide a minimum of 50 residential units set aside for affordable housing for individuals earning no more than 80% of the Metropolitan Statistical Area median and paying no more than 30% of the family's household income for rent or housing ownership costs. The affordable housing units shall be distributed across the housing mix (e.g., if the market-rate units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the affordable units shall have a similar mix). Except as provided as provided in the land disposition agreement, the affordable housing units shall not be concentrated on any one floor or within a floor of the residential building. Nothing in this condition shall be constructed as requiring the affordable housing to be located on the top three levels of the residential building, have prime views or include bay windows or balconies.*

#### **79. c. Housing and Affordable Housing (11 DCMR § 2403.9(f).)**

*The Overall Project will include approximately 180,000 square feet of gross floor devoted to residential use to be constructed in the Center Block. The Applicant will set aside a minimum of 50 units for affordable housing. The affordable housing will be affordable to individuals earning no more than 80% of the Metropolitan Statistical Area median and paying no more than 30% of the family's household income for rent or housing ownership costs. Affordable restrictions will remain for a period of 40 years from the date that the first unit in the residential building is occupied. The affordable housing units will be distributed across the housing mix (e.g., if the market-rate units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the affordable units shall have a similar mix). In addition, the affordable housing units may not be concentrated on any one floor or within a*

*floor of the residential building, without the approval of the Deputy Mayor for Planning and Economic Development, provided that the affordable housing units do not need to be located on the top three levels of the residential building, have prime views or include bay windows or balconies.*

#### **IV. OP ANALYSIS**

The Applicant's proposed change from residential to hotel use in the Center Block is in keeping with a goal of the Capitol Crossing PUD to provide daytime and nighttime activation of the neighborhood. The proposed hotel use also is in response to recent changes in this neighborhood which now has more residential buildings than when the development was originally proposed. The Applicant does not propose any changes to the height and massing of the building and the ground floor retail use would remain unchanged. Overall, OP finds that a hotel with ground floor retail in this location and as a part of the overall Capitol Crossing development would not be a detrimental change and supports this modification to the PUD.

As a matter of course, the Office of Planning does not support off-site location of required affordable units. However, OP finds this case to be unique and the result of the modification to be superior to the original condition. The Applicant would directly fund the 100 affordable units at 1530 First Street SW and, as such, that all-affordable building would not need to draw on the Affordable Housing Production Trust Fund, which would be very beneficial to the District's affordable housing program. The modification would result in double the number of affordable housing units that were to be provided through the original condition and at a deeper level of affordability with 20% of the units at 30% MFI and 80% of the units at 50% MFI (versus all units at 80% AMI). The Applicant also would provide an additional 50 affordable housing units on the subject site should the hotel convert back to a residential building. The First Street SW building is currently in the design review process before the Zoning Commission, and the affordable units would be offered earlier to residents at this alternate site than they would be at Capitol Crossing. All of these proposed changes would be consistent with, and help achieve the affordable housing goals of the PUD and the District.

OP supports the Applicant's proposed modifications to the approved conditions of the Order on Page 5 of their application (Exhibit 1). The Applicant has proposed a new condition which outlines the Applicant's commitment to directly fund the off-site affordable housing units:

Prior to the issuance of the first certificate of occupancy for the hotel building located on Lot 862 in Square 566, the Applicant shall provide evidence to the Zoning Administrator that (i) it has funded the construction of a minimum of 100 new affordable housing units in a new residential project located at 1530 First Street, SW; and (ii) a certificate of occupancy has been issued for the affordable housing units at 1530 First Street, SW.

#### **V. COMMUNITY COMMENTS**

There are no comments from the community in the record.

**Attachment 1-**

**703 CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS**

- 703.1 This procedure shall allow the Commission, in the interest of efficiency, to make, without public hearing, minor modifications, modifications of consequence, and technical corrections to previously approved final orders and plans.
- 703.2 For purposes of this section, “minor modifications” shall mean modifications that do not change the material facts upon which the Commission based its original approval of the application or petition.
- 703.3 *For the purposes of this section, 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*
- 703.4 *Examples 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.*
- 703.5 *For the purposes of this section, a “**modification of significance**” is a modification to a contested case order or the approved plans of greater significance than a modification of consequence. Modifications of significance cannot be approved without the filing of an application and a hearing pursuant to Subtitle Z § 704.*
- 703.6 *Examples of **modifications 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.*

A “modification of consequence” requires the establishment of a timeframe for the parties in the original proceeding to file comments on the request and the scheduling of a date for Commission deliberations, while a more substantive “modification of significance” requires the holding of a public hearing, in accordance with Subtitle Z § 704.