

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** *JL for* Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** March 8, 2018

**SUBJECT:** ZC Case 11-08C - **OP Report – Modification of Consequence** to approved Order 11-08 (2700 16<sup>th</sup> Street NW; Square 2578, Lots 832 and 833)

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### **I. RECOMMENDATION**

The applicant filed a Modification of Consequence request pursuant to Subtitle Z § 703 to facilitate the community's request to changes to the above-mentioned benefits. OP does not oppose the changes to the conditions as a modification of consequence, as explained in OP's analysis [below](#).

### **II. BACKGROUND**

[ZC Order 11-08](#), effective March 9, 2012, approved a PUD and PUD-related map amendment for the construction of a residential building on the site of the former Italian Embassy at 2600 16<sup>th</sup> Street N.W. Pursuant to ZC Order 11-08A, the Commission approved a time extension of the Order through March 9, 2015. Subsequently Order 11-08B was a further extension through March 9, 2017 to begin construction of the project, which is currently underway, with completion and occupancy anticipated by Fall 2019.

In this request, the applicant proposes modifications to the following two conditions of the order:

- B.3. Prior to the issuance of a certificate of occupancy for the project, the Applicant shall renovate the commercial kitchen at the Festival Center located at 1640 Columbia Road, N.W. The renovation of the kitchen shall include the demolition and moving of the men's restroom, demolition and building of the new kitchen space and installation of the new kitchen equipment.
- B.4. Prior to the issuance of a certificate of occupancy for the project, the Applicant shall establish a tree fence buy-in program with the Reed-Cooke Neighborhood Association and the Applicant shall contribute \$50,000 to the program. Once the program is established, the Applicant shall be responsible for selling and installing up to 625 tree fences. The tree fences shall be sold at-cost.

Subtitle Z § 703 provides for Zoning Commission consideration of a modification to an approved Planned Unit Development (PUD):

### **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.

### III. MODIFICATION REQUEST

The applicant proposes to modify the stated conditions of the approved PUD as shown in the table below (revised language in **bold**).

Item	Approved Consolidated PUD	Proposed Modification
1	<p><u>Prior to the issuance of a certificate of occupancy</u> for the project, the Applicant shall renovate the commercial kitchen at the Festival Center located at 1640 Columbia Road, N W The renovation of the kitchen shall include the demolition and moving of the men's restroom, demolition and building of the new kitchen space and installation of the new kitchen equipment.</p>	<p><u>Prior to issuance of a certificate of occupancy</u> for the project, the Applicant shall <b>provide \$250,000 to the Festival Center to be put toward major constructional maintenance, including, but not limited to, repairs to the HVAC, roof and elevators, performing accessibility and energy efficiency improvements, or implementing electrical, security system, and kitchen upgrades. Prior to issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator in the form of a letter, signed by the Festival Center, confirming that the funds have been provided to the Festival Center and that the Festival Center is using them for the intended use.</b></p>

Item	Approved Consolidated PUD	Proposed Modification
2	<p><u>Prior to the issuance of a certificate of occupancy</u> for the project, the Applicant shall establish a tree fence buy-in program with the Reed-Cooke Neighborhood Association and the Applicant shall contribute \$50,000 to the program. Once the program is established, the Applicant shall be responsible for selling and installing up to 625 tree fences. The tree fences shall be sold at-cost.</p>	<p><u>Prior to the issuance of a certificate of occupancy</u> for the project, the Applicant shall <b>contribute \$120,000 to the Reed-Cooke Neighborhood Association to be used in its Block Beautification program. The funds will be used for maintenance of existing tree boxes, landscaping, and other neighborhood projects that beautify the public spaces in the Reed-Cooke neighborhood. Prior to issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator in the form of a letter, signed by the Reed-Cooke neighborhood Association, confirming that the funds have been allocated for the Reed-Cooke Neighborhood Association as set forth in the Amendment and Restatement of Agreement and that the Reed-Cooke Neighborhood Association is using the funds for the intended use.</b></p>

#### IV. OP ANALYSIS

The application proffers a contribution of \$250,000 towards the Festival Center’s needed upgrades, whereas the initial offer specified only the provision of a commercial kitchen for the Center. The Center’s current Board of Directors determined that the funds could be put to better use to “*perform major building maintenance*” including:

- *Improvements to the HVAC system,*
- *Enhancing the front entrance to be accessible for persons with disabilities,*
- *Improving the security system by installing cameras in and around the property,*
- *Improving energy efficiency by performing a thorough audit of the facility, ... and*
- *Improving the current kitchen ...by replacing essential equipment (e.g. stove and oven, refrigerator, dishwasher, etc.)*

Therefore, the money would be utilized to address specific physical needs for the facility.

In addition, the Reed-Cooke Neighborhood Association (RCNA) proposed in 2012, the creation of a tree-fence program in conjunction with the original developer, Il Palazzo. The RCNA and the current developer, Mill Creek both desire to revise the program. While the benefit will remain a beautification program for the neighborhood, it will not be limited to tree fences as outlined in their memo to the record, [Exhibit 2E](#). The memo also details the management and allocation of the proposed funding of \$120,000.

Subtitle X § 305.3 (d) states that “*Monetary contributions shall only be permitted if ... the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.*”

Language is included in the proposed modifications to ensure that funds to each entity would be applied to specific improvements that can be assessed by the Zoning Administrator. The applicant would be

required to submit evidence in the form of a letter confirming to the Zoning Administrator the provision of the respective funds, prior to the issuance of a certificate of occupancy, consistent with X § 305.3 (d).

The proposed revisions were initiated at the requests of the Festival Center and the RCNA and represent a reallocation of targeted funds due to current needs. While this request could be considered a modification of significance, in this case, OP does not believe that the modifications as proposed should require a hearing as parties to the record, including the ANC 1C and the RCNA, initiated and supported the proposed revisions to the order. The requests are straightforward, and present no factual issues that should require a public hearing to resolve, nor would it change the material facts upon which the case was decided. Therefore, OP is not opposed to this being processed as a modification of consequence.

#### **V. ANC AND COMMUNITY COMMENTS**

ANC 1C, at its regularly scheduled meeting of February 7, 2018, voted to support the application ([Exhibit 2D](#)).

No other community comments were received.

#### **VI. AGENCY REFERRALS**

No comments were received from other District agencies.