

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

Christine Moseley Shiker
202 457 7167
chrstine.shiker@hklaw.com

August 12, 2015

VIA HAND DELIVERY

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

RECEIVED
DC OFFICE OF ZONING
2015 AUG 12 PM 2:32

Re **Zoning Commission Case No 12-18 – The Apollo (Square 858)**
Request for Consent Calendar Modification to PUD

Dear Members of the Commission

On behalf of H Street NE Owner LLC¹ (the "Applicant"), owner of the subject property, we submit this request for minor modifications to the above-referenced planned unit development and Zoning Map amendment approved in Zoning Commission Case No 12-18 (the "PUD") This modification request is made pursuant to the Zoning Commission's authority established in §§ 2409.9 and 3030 of the Zoning Regulations

The Applicant respectfully requests that the Zoning Commission consider this request for minor modifications at the Commission's September 21, 2015, public meeting

A. Introduction

By Zoning Commission Order No 12-18 (a copy of which is attached as Exhibit A) ("Order No 12-18"), the Zoning Commission approved a consolidated PUD for the property located at 600 H Street, N E , which is currently known as Lot 64 in Square 858² (the "Property") and a related application to amend the Zoning Map A Surveyor's Plat showing the property is attached as Exhibit B, and an excerpt from the on-line Zoning Map is attached as Exhibit C The Property is zoned HS-H/C-2-B and R-5-B by virtue of the zoning map amendment related to the PUD

¹ The original PUD applicant was submitted by USL WDC H Street, LLC and H Street Self Storage, LLC

² At the time the PUD was approved, the Property was known as Lots 860-862, 864 and parts of a public alley system to be closed By subdivision plat dated September 18, 2014, and recorded in the Office of the Surveyor for the District of Columbia in Book 209 at Page 2, those lots and the closed public alley were subdivided, creating Lot 64 in Square 858

ZONING COMMISSION
District of Columbia
District of Columbia
CASE NO. 12-18A
EXHIBIT NO. 1
EXHIBIT NO. 1

The PUD approved the development of a residential building with ground floor retail on the Property. Order No. 12-18 approved two development scenarios for the Property: the "Original Submission" and the "Grocery Alternate". The Original Submission is a mixed-use development with residential and retail uses. The Grocery Alternate is a mixed-use development including residential and retail uses as well as a grocery store on the ground floor. The Applicant is proceeding with the construction of the Grocery Alternate. Building Permit No. B1502785 was issued on June 11, 2015 (the "Building Permit"), for the construction of the Grocery Alternate (the "Project"), and construction is currently underway.

Under the Grocery Alternate, the Project is permitted to include a total of 490,134 square feet of gross floor area, with the following breakdown: approximately 388,069 square feet of gross floor area devoted to residential uses, approximately 42,108 square feet devoted to grocery use, approximately 54,440 square feet of gross floor area devoted to retail uses, and approximately 5,517 square feet within the loading area (Condition No. 2 of Order No. 12-18). The retail uses are identified as being located on the ground floor of the eastern portion of the building as well as on the second floor of the eastern portion of the building.

Condition No. 7(d) of Order No. 12-18 provides that the Applicant has flexibility with the design of the PUD to reduce the total amount of retail gross floor area provided on the second floor of the Project in the event that the Applicant is unable to lease such space and to convert the space into residential units. The second floor retail area includes 25,854 square feet of gross floor area and is hereinafter referred to as the "Second Floor Space".

Condition No. 7(e) of Order No. 12-18 also provides the Applicant flexibility within the design of the PUD for the Grocery Alternate to permit retail, service, professional office or residential use within the portion of the building fronting on 7th Street. The portion of the building fronting on 7th Street was originally anticipated to include approximately 14,000 square feet of gross floor area and is hereinafter referred to as the "7th Street Space". According to Condition No. 20(b), the 7th Street Space was approved to be constructed as second phase of the Project. Accordingly, it was not included in the Building Permit. As this area has been further designed, the Applicant has determined that the 7th Street Space will include approximately 12,216 square feet of gross floor area.

The Applicant has not been able to lease the Second Floor Space to a retail tenant. However, the Applicant is in negotiations with a unique office tenant that provides co-working space. Specifically, the potential tenant is a provider of shared workspace, community and services for entrepreneurs, freelancers, startups and small businesses. This potential tenant has indicated an interest in leasing up to approximately 31,908 square feet of gross floor area within the Project, which would include approximately 19,692 square feet of the Second Floor Space and 12,216 square feet of the 7th Street Space.

B Minor Modifications Requested

(1) Revision to Condition No 7(d)

The Applicant requests that Condition 7(d) be revised to read as follows (additions shown in underline)

“d To reduce the total amount of retail gross floor area provided on the second floor of the project in the event that the Applicant is unable to lease such space and to use the space for residential and/or office use or to convert the space into residential units in addition to the flexibility requested in Item 3,”

As shown on proposed Sheet 1 250a, a copy of which is attached as Exhibit D, the Second Floor Space would be converted in part to residential amenity space (approximately 6,162 square feet of gross floor area) and in part to retail or office use (approximately 19,692 square feet of gross floor area) The option to convert the Second Floor Space to office use continues to comply in all respects with the Zoning Regulations, and no additional zoning flexibility is needed Office use is permitted within the C-2-B District, and the use will be located only within the portion of the Property that is zoned C-2-B In addition, the Applicant does not request any change to the façade as approved by the Building Permit

The Project will continue to comply with the parking requirements as approved by Order No 12-18 Specifically, parking will be required and provided as follows

Use	Requirement	Required	Provided
Residential	1 space/2 units in R-5-B	$52 / 2 = 26$ spaces	232 spaces
	1 space/3 units in C-2-B	$379 / 3 = 126 \text{ } 3 = 126$ spaces	
Retail/Grocery	In excess of 3,000 sf, 1 space/750 sf of GFA	$60,086 - 1,950 \{3,000 \times 65\% \} = 58,136 / 750 = 77 \text{ } 5 = 78$ spaces	174 spaces
Office	In excess of 2,000 sf, 1 space/1,800 sf of GFA	$31,908 - 700 \{2,000 \times 35\% \} = 31,208 / 1,800 = 17 \text{ } 23 = 17$ spaces	18 spaces
TOTAL		247 spaces	424 spaces

Similarly, the Project will comply with the loading requirements as approved by Order No 12-18 Specifically, loading was required and approved as follows

Approved PUD - Required and Provided Loading

	Berth	Service/Delivery space
Residential (> 50 units)	1 @ 55'	1 @ 20'
Grocery (20,000 to 100,000 sf)	1 @ 55', 1 @ 30'	1 @ 20'
Retail (30,000 to 100,000 sf)	1 @ 55', 1 @ 30'	1 @ 20'
Total Required	3 @ 55', 2 @ 30'	3 @ 20'
Total Provided - based on flexibility from ZC to eliminate one Service/Delivery space	3 @ 55', 2 @ 30'	2 @ 20'

With the conversion of retail space to office space, loading will be required and provided as follows

Proposed Conversion - Required and Provided Loading

	Berth	Service/Delivery space
Residential (> 50 units)	1 @ 55'	1 @ 20'
Grocery (20,000 to 100,000 sf)	1 @ 55', 1 @ 30f	1 @ 20'
Retail (5,000 to 20,000 sf)	1 @ 30'	None
Office (20,000 to 50,000 sf)	1 @ 30'	1 @ 20'
Total Required	2 @ 55', 3 @ 30'	3 @ 20'
Total Provided - based on flexibility from ZC to eliminate one Service/Delivery space	2 @ 55', 3 @ 30'	2 @ 20'

Accordingly, the option to convert the Second Floor Space to office use complies in all respects with the Zoning Regulations and is consistent with the parameters of the approved PUD

(2 Revision to Condition No 2

As noted above, Condition No 2 reads in relevant part. "If the Grocery Alternate is selected, then the project shall include approximately 388,069 square feet of gross floor area devoted to residential uses, approximately 42,108 square feet of gross floor area devoted to grocery use, approximately 54,440 square feet of gross floor area devoted to retail uses, and approximately

5,517 square feet within the loading area ” The Final Grocery Alternate PUD Plans (as defined in Order No 12-18) identify the total gross floor area permitted as 490,134 square feet, which is the sum total of these four numbers. As the building has been finally designed, the Applicant has learned that the actual total gross floor area will be 491,761 square feet, or 1,627 square feet more than the total amount identified in the Final Grocery Alternate PUD Plans. This difference represents a 0.3% increase in gross floor area.

The height and bulk of the Project is as approved in the Final Grocery Alternate PUD Plans, and no changes are proposed. The very minor change in total gross floor area results from the mezzanine level of the grocery store which was incorrectly shown in the Final Grocery Alternate PUD Plans as being on the second level and comprising approximately 1,800 square feet. When the final plans were drawn, the mezzanine level was correctly shown between the first and second levels, and residential use occupies the second level, as shown on the plans attached as Exhibit D. Accordingly, the Applicant requests Condition No. 2 be revised in relevant part to read as follows:

If the Grocery Alternate is selected, then the project shall include approximately 394,250 square feet of gross floor area devoted to residential uses, approximately 60,086 square feet of gross floor area devoted to retail and grocery use, approximately 31,908 square feet devoted to office uses, and approximately 5,517 square feet within the loading area.

These numbers reflect the proposed revisions to the Second Floor Space discussed above. With this modification, the total permitted gross floor area for the Project will be 491,761 square feet.

C. Jurisdiction of the Zoning Commission 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 need for a public hearing. Pursuant to Section 3030.2, "minor modifications" are those modifications of little or no consequence. This request does not affect the essential elements of the approval given by the Zoning Commission for this Project. There will be no changes to the exterior configuration or appearance of the building as approved by the Building Permit. No zoning flexibility is needed in order to permit the modification to use within the Second Floor Space. Furthermore, the very minor change to the overall gross floor area is fully within the Zoning Administrator's authority to approve minor modifications in the final plans, including a change not to exceed 2% of the gross floor area. 11 DCMR § 2409.6(a). Accordingly, the request falls within the scope of this section.

As provided in Section 3030.13 of the Regulations, "all relief granted by the Commission under this section shall be consistent with the intent of the Commission in approving its original order, map, plan, rulemaking, or other action or relief proposed to be modified or corrected and shall not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map." As indicated by the information presented herein, the

Project is consistent with the intent of the Commission's original approval and the minor changes will not substantially impair the intent, purpose or integrity of the zone plan

D. Work with the Community

Throughout the approval process for this Project, there has been significant community involvement and participation. The Applicant presented this proposed modification to Advisory Neighborhood Commission ("ANC") 6C On June 10, 2015, at a duly notice, regularly scheduled monthly meeting, with a quorum present, ANC 6C voted unanimously to support the proposed modification to allow office use in the Second Floor Space. A copy of ANC 6C's letter in support is attached as Exhibit E

As required by Section 3030.6 of the Zoning Regulations, the Applicant has served this request on ANC 6C There were no other parties to the original proceeding

G. Exhibits

The following exhibits are attached in support of the modification application

Exhibit A Zoning Commission Order No 12-18

Exhibit B Certified Surveyor's Plat

Exhibit C Excerpt from the On-Line Zoning Map showing the Property

Exhibit D Approved and Proposed Sheet 1 05a from the Final Grocery Alternate PUD Plans

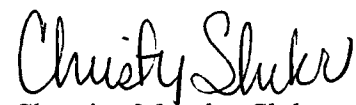
Exhibit E Letter of Support from ANC 6C

H. Conclusion

The Applicant respectfully requests approval of this request for a minor modification to Order No 12-18 As required by Section 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

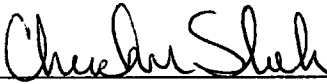

Christine Moseley Shiker

PROOF OF SERVICE

I hereby certify that on August 12, 2015, a copy of this Request for Consent Calendar Modification to PUD (Zoning Commission Order No 12-18) was served on the following in accordance with Section 3030 6 of the Zoning Regulations

Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, DC 20013-7787

Via U.S Mail



Christine Moseley Shiker

D C. Zoning Commission

August 12, 2015

Page 7

cc:	Parties to Original Case	<i>See Attached Certificate of Service</i>
	Jennifer Steingasser, Office of Planning	(Via Hand, w/attachments)
	Karen Thomas, Office of Planning	(Via Hand, w/attachments)
	Jamie Hensen, DDOT	(Via Hand, w/attachments)