

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Stephen Cochran, Zoning and Special Projects Planner  
*JL for* Jennifer Steingasser, Deputy Director, Development Review/Historic Preservation

**DATE:** April 20, 2023

**SUBJECT:** **ZC Case 14-19B** - Office of Planning Report on a Request for a Modification of Consequence to Conditions in Order 14-19 for a PUD at 300 M Street, N.E.

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### **I. RECOMMENDATION**

The Office of Planning (OP) does not object to the application being considered as a Modification of Consequence and recommends the Zoning Commission **approve** the applicant's request for the deletion of two sub-sections of Condition 8 in Order 14-19, and the substitution of a new sub-section for the deleted subsection. The proposed deletions to the approved language are struck through and the proposed new language is **bolded and underlined**:

#### B. Public Benefits

8. Prior to the issuance of a Certificate of Occupancy for the building, the applicant shall submit to DCRA evidence that the Applicant has made the follow contributions or expenditures. The Applicant shall provide proof to the Zoning Administrator that the items or services funded have been or are being provided in order to obtain a Certificate of Occupancy.

d. Contribute \$25,000 to Playable Art DC for a play and place making initiative in partnership with OP and DPR to bring an innovative artbased play space to a neighborhood with underserved park space in the District through a design competition. The space will be located at one of the following locations: 1200 block of 4th Street, N.E.; the corner of N Street and Florida Avenue, N.E.; or along the Metropolitan Branch Trail between M Street and L Street;

e. Contribute \$50,000 to WMATA for the installation of two additional fare gates/turnstile at the M Street exit of the NoMA Metrorail station to increase capacity during rush hour.

**d. Contribute \$75,000 to the NoMa Business Improvement District (“BID”) to support placemaking improvements in and around the 200 and 300 blocks of M Street, NE and the 100-300 blocks of L Street, NE, including the public space at grade and the elevated railroad tracks and Metropolitan Branch Trail, with such improvements including: ground-plane artistic elements; wall art celebrating the NoMa neighborhood; bicycle play infrastructure; and/or similar improvements as developed in coordination between the NoMa BID and ANC 6C.**

## II. PROJECT AND BACKGROUND OF PROPOSED CHANGES

<b>Location and Legal Address</b>	300 M Street, NE (Square 772, Record Lot 24/Tax Lot 813) in the southern half Square 772, which is bounded by M, N, 3 <sup>rd</sup> & 4 <sup>th</sup> Streets, NE.
<b>Ward, ANC</b>	Ward 6, ANC 6C
<b>Applicant</b>	300 M Street Development Group, LLC
<b>Approved Project</b>	418,798 SF, 6.21 FAR building with 416 - 426 residential units (~34 IZ at 80% MFI) and 12,900 SF of retail. Height varies from 50 to 110-feet high.
<b>Effective Date</b>	November 20, 2015. One Extension granted in ZC 14-19A
<b>Status</b>	Construction Completed
<b>Base Zone</b>	PDR-1, Industrial / Commercial (C-M-1 when PUD approved)
<b>PUD Zone</b>	MU-9, High-Density Mixed Use (C-3-C when PUD approved)

## III. MODIFICATION OF CONSEQUENCE CRITERIA

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

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

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.

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.

If the Commission determines that the request is a modification of consequence, the deletions and additions in Section I of this report would incorporate the applicant’s request.

## IV. ANALYSIS

The applicant states that in the 6 ½ years between project approval and the applicant’s efforts to complete delivery of the proffers and public benefits required by the Order’s Conditions, changed circumstances beyond the applicant’s control made it no longer possible or desirable to make the contributions, a total of \$75,000, required by Conditions 8.d and 8.e:

- The Playable Art DC program is no longer in operation; and

- WMATA is no longer planning to increase the number of fare gates at the southern entrance of the NoMA/Gallaudet Metro station.

To redirect the proffered \$75,000 to existing organizations and still-planned neighborhood improvements, the applicant now requests permission to contribute an equal amount of \$75,000 to the NoMA Business Improvement District (BID). The proposed substitute Condition 8.d appears to be capable of helping to effectuate improvements to the public realm in the project's neighborhood, and are comparable to what would have been delivered under the original Conditions. The proposed modifications would not constitute a substantive change to the PUD Order or the PUD's development. As such, OP has no objection to the requested changes being considered and approved as a Modification of Consequence.

## V. ANC COMMENTS

ANC 6C was the only party to the original application. The applicant's Statement (Exhibit 2) describes its positive consultations with the ANC, its Single Member District representative and the review of the proposed modifications by the ANC's Planning and Zoning Committee and the full ANC. To date, the ANC has not submitted comments to the record.

## VI. OTHER DISTRICT AGENCY REPORTS, AND COMMUNITY COMMENTS

The applicant has circulated the application to OP and the District Department of Transportation, and has consulted with the District agency that used to fund the Playable Art program. The applicant has also spoken directly with WMATA and learned WMATA would no longer accept funds for new fare gates if no longer plans to install.

There were no comments from other agencies, community groups, or individuals in the case file at the time OP completed this report.

### Location and Zoning Map - 300 M Street, N.E. is in Blue above, and is labelled 14-19A

