

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-19B
Z.C. Case No. 14-19B
300 M Street Development Group, LLC
(Modification of Consequence of Approved PUD
@ Square 772, Lot 24, 813 [300 M Street, N.E.]
May 11, 2023

Pursuant to notice, at its May 11, 2023 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of 300 M Street Development Group, LLC (“Applicant”) for a Modification of Consequence to approve changes to the planned unit development (“PUD”) approved by Z.C. Order No. 14-19, as amended by Z.C. Order No. 14-19A, for property located at 300 M Street, N.E. which is more particularly known as Square 772, Record Lot 24 (also designated as Lot 813)¹ (the “Property”).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”], to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Prior Approvals

1. Pursuant to Z.C. Order No. 14-19, effective November 20, 2015 (the “Original Order”), the Commission approved a Consolidated PUD and related Zoning Map amendment from the C-M-1 zone to the C-3-C zone for the Property. The Original Order authorized the construction of a mixed-use building consisting of approximately 408,496 square feet of gross floor area devoted to residential use (approximately 416 residential units) and approximately 10,302 square feet of gross floor area devoted to retail use (the “Project”).
2. Condition B.8.d of the Original Order, as originally approved, required the Applicant to make a proffered \$25,000 contribution to Playable Art DC, a District-run program, to implement a play and place-making initiative to bring an innovative art-based play space to a neighborhood with underserved park space. Condition B.8.e required the Applicant to

¹ At the time of the original PUD approval, the Property was known as Lots 1, 2, 6, 7, 19, 801, and 802 in Square 772. The Property has since been re-subdivided and is now designated as Record Lot 24 and known for Assessment and Taxation purposes as Lot 813 in Square 772.

make a proffered \$50,000 contribution to the Washington Metropolitan Area Transit Authority (“WMATA”) for the installation of two additional fare gates/turnstiles at the M Street exit of the NoMa Metrorail station to increase capacity during rush hour.

3. Pursuant to Z.C. Order No. 14-19A, effective December 28, 2018, the Commission granted a two-year time extension for the Original Order.

Parties and Notice

4. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission 6C (“ANC 6C”), in which the Property is located.
5. On March 29, 2023, the Applicant served the Application on ANC 6C as well as on the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

The Application

6. On March 29, 2023, the Applicant filed the Application requesting a Modification of Consequence to modify Conditions B.8.d and B.8.e of the Original Order to replace the proffered \$25,000 contribution to Playable Art DC and proffered \$50,000 contribution to WMATA with a single contribution of \$75,000 to the NoMa Business Improvement District (“NoMa BID”) to support public improvements near the Property. (Ex. 2.)
7. The Application states that the modification is needed because the two monetary contributions required by Conditions B.8.d and B.8.e of the Original Order are no longer able to be completed because Playable Art DC is no longer in operation; and WMATA is unable to accept the funds because the proposed enhancements to the NoMa Metrorail station are no longer being planned. (Ex. 2.)
8. The Application states that the Applicant has worked closely with ANC 6C, the NoMa BID, and WMATA to develop alternative proposals for the \$75,000 in funds consistent with the original intent of the Original Order. Based on the ANC’s feedback and preference for placemaking improvements in the immediate area surrounding the Property, the Applicant decided to redirect the \$75,000 in funds to the NoMa BID to support the following placemaking improvements near the Property: ground-plane artistic elements; wall art that celebrates the NoMA neighborhood; and/or bicycle play infrastructure, as shown in the precedent images submitted by the Applicant at Ex. 2C. The Application states that the NoMa BID and ANC 6C will work together to determine the final location for the improvements in and around the 200 and 300 blocks of M Street N.E. and/or the 100-300 blocks of L Street NE, subject to any necessary approval from DDOT. (Ex. 2, 2C.)
9. The Application states that the proposed modification is consistent with the Commission’s previous approval of the Project and fits within the Zoning Regulations’ definition of a

Modification of Consequence as a proposed change to conditions in the Original Order. (Ex. 2.)

Responses to the Application

10. On April 20, 2023, OP submitted a report (“OP Report”) recommending approval of the Application. The OP Report states that the proposed redirect of the proffered \$75,000 to the NoMa BID “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 OP Report also states that the proposed modification would not constitute a substantive change to the Original Order or the Project’s development, and OP therefore has no objection to the Application being considered and approved as a Modification of Consequence. (Ex. 4.)
11. On May 11, 2023, ANC 6C submitted a report (“ANC Report”) stating that at a duly noticed and regularly scheduled monthly meeting on May 10, 2023, with a quorum present, ANC 6C voted 7-0 to support the Application. The ANC Report asks the Commission to approve the modification as proposed and does not raise any issues or concerns. (Ex. 5.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
3. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding at the same time that the request is filed with the Office of Zoning, in this case ANC 6C. The Commission notes that ANC 6C was provided with an opportunity to respond to the Application and did respond by filing the ANC Report in support.
4. At its public meeting on May 11, 2023, the Commission determined that the Application could be properly considered a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify conditions of the Original Order, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.1.
5. The Commission finds that the Application is consistent with the PUD approved by the Original Order because the proposed change to Conditions B.8.d and B.8.e of the Original Order will redirect proffered funds to support public improvements which are consistent

with the intent and goals of the original approval and would not result in any substantive changes to the PUD.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

6. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
7. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

8. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
9. The Commission finds ANC 6C’s recommendation to approve the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Modification of Consequence to modify Conditions B.8.d and B.8.e of Z.C. Order No. 14-19, as amended, as follows:

Conditions B.8.d and B.8.e of Z.C. Order No. 14-19 are revised to replace existing Condition B.8.d and delete existing Condition B.8.e as follows (additions are shown **bold/underlined** and deletions in ~~**bold/strikethrough**~~). All subsequent parts of Condition B.8. are renumbered because of the deletion of existing Condition B.8.e.

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 following 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. The Applicant shall:

- a. Commission an artist for the installation of public art (in an amount up to \$50,000) on M Street at the terminus of Abbey Place;
- b. Contribute \$20,000 to Two Rivers Public Charter School for the relocation of concrete benches and sidewalk repair;
- c. Contribute \$10,000 to Planned Parenthood of Metropolitan Washington for the purpose of purchasing furniture and equipment for the organization's community room;
- ~~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 art-based 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/turnstiles 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, N.E. and the 100-300 blocks of L Street, N.E., 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.**
- f. e.** Install the following improvements adjacent to the PUD Site's property line on the north side of M Street, the east side of 3rd Street, and the west side of 4th Street:
 - i. Replace the sidewalk with a new granite curb and gutter. Paving shall include upgraded accent bands and granite cobble pavers, subject to DDOT approval;
 - ii. Plant approximately 20 new canopy trees and 20 new ornamental trees;
 - iii. Install planters and trash receptacles for public use;
 - iv. Install Washington Globe streetlights and other street-level lighting; and
 - v. Install bioretention planters along the north side of M Street; and

g. f. Request that DDOT remove the existing “Police Parking Only” spaces located on the east side of 3rd Street, adjacent to the PUD Site. . .

All other conditions of Z.C. Order No. 14-19 remain unchanged and in effect, except as modified by other orders of the Commission.

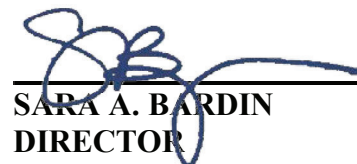
VOTE (May 11, 2023): **4-0-1**

(Peter G. May, Robert E. Miller, Anthony J. Hood and Joseph S. Imamura to **APPROVE**; 3rd Mayoral appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 14-19B shall become final and effective upon publication in the *District of Columbia Register*; that is, on September 15, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.