

## MEMORANDUM

**TO:** District of Columbia Zoning Commission

**FROM:** Elisa Vitale, Development Review Specialist  
Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** March 20, 2020

**SUBJECT:** **OP Report** –ZC Case No. 16-06D: Request for a **Modification of Consequence** to an approved Design Review at 1900 Half Street, SW and Waiver of sections §§ Z-703.5 and Z-703.6

### I. RECOMMENDATION

After a review of the request, including a comparison of the modified plans against the approved plans and the Order (ZC 16-06); OP **concurs** with the Applicant’s submission that the proposed use change constitutes a **modification of significance** pursuant to Z § 703.6. However, OP **does not object** to the Applicant’s request that the Commission waive Z §§ 703.5 and 703.6 **to permit a change in use to be processed as a modification of consequence.**

The Applicant is proposing an education use in place of the previously approved ground floor retail along with an associated 0.47% increase in Floor Area Ratio (FAR).

Should the Commission determine that the Application be considered a modification of significance, OP recommends that the proposed modifications be approved for a public hearing.

### II. BACKGROUND

Subtitle Z § 703 provides for Zoning Commission consideration of a modification of consequence to approved final orders and plans 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.
- 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.

### III. MODIFICATION REQUEST

In summary, the Applicant is proposing to modify the approved Design Review by modifying the ground floor use from retail to education to accommodate the Eagle Academy Public Charter School. The proposed use change also would result in a small increase in the building Floor Area Ratio (FAR) as the Applicant is proposing to fill in a portion of the mezzanine.

#### *Development Parameters:*

| Item          | Approved Design Review      | Proposed Design Review Modification | Plans Sheet # |
|---------------|-----------------------------|-------------------------------------|---------------|
| FAR           | 502,395 sq. ft.<br>4.53 FAR | 504,795 sq. ft.<br>4.55 FAR         | Exhibit 2     |
| Change in Use | 16,542 sq. ft. retail       | 18,942 sq. ft. educational use      | Exhibit 2F    |

#### *Changes in Previously Approved Relief and Flexibility Requests*

The proposed project is an adaptive reuse of an existing building, which was nonconforming with respect to FAR. Although the requested modification results in a small increase in FAR from the original approval (4.22 FAR approved) and subsequent modification in case 16-06B (4.53 FAR approved), the total FAR proposed (4.55 FAR proposed) is still less than what existed when the building was constructed (6.0 FAR). No additional relief is necessary because of the proposed modifications.

### IV. OP ANALYSIS

The original Design Review approval was for a mixed-use building with approximately 453 dwelling units and 16,452 square feet of retail (ZC Case 16-06). At the time of approval, the Applicant did not request flexibility with respect to proposed ground floor uses. Subsequent modifications (ZC Cases 16-06A, 16-06B, and 16-06C) requested flexibility to adjust the amount of space devoted to retail (ZC Case 16-06A) but did not contemplate a change in use.

Eagle Academy Public Charter School, which currently has a campus at 1017 New Jersey Avenue, SE, has lost its lease and must vacate its space by June 15, 2020. Eagle Academy desires to relocate to the subject property and needs to open its door in the new location by August 2020 to ensure continuity for students beginning the 2020 academic year. The Applicant’s request to process the application as a modification of consequence stems from the accelerated timeline that is needed to meet the August opening.

Education is a permitted use in the CG-5 zone pursuant to K § 507.2. The southeast corner of the building was within the 100-year floodplain<sup>1</sup>, which would result in the prohibition of an educational

<sup>1</sup> See ZC Case 16-06, Exhibit 29A3, dated June 20, 2016, sheet 46.

use; however, the Applicant is re-grading the land to remove the building from the 100-year floodplain entirely.

The Eagle Academy campus at the subject property would serve approximately 240-260 students with 35 teachers, faculty, and staff. The school hours would be 7:30 AM to 6:00 PM with drop-off occurring between 8:15 and 9:00 AM and pick-up occurring between 3:45 and 4:15 PM. The parking requirement for the proposed educational use is below the retail requirement. Therefore, adequate parking should be provided at the property.

|           | <b>Existing ZC Case 16-06 et seq.</b>                | <b>Proposed Modification</b> |
|-----------|--|------------------------------|
| C § 701.5 | 1.33 spaces/1,000 sq. ft. in excess of 3,000 sq. ft. | 0.25 spaces/1,000 sq. ft.    |
| Project   | 16,542 sq. ft. retail                                | 18,942 sq. ft. educational   |
| Required  | 18 spaces  | 5 spaces                     |
| Approved  | 277 parking spaces<br>42 retail<br>235 residential   | 277 parking spaces           |

## **V. ANC / COMMUNITY COMMENTS**

ANC 6D voted 5-0-0 at its November 18, 2019 regularly scheduled and properly noticed meeting, to support Eagle Academy Public Charter School’s request to relocate its campus to 1900 Half Street SW (Exhibit 2G). ANC 6D is the only party to Case 16-06 and subsequent modifications (16-06A, 16-06B, and 16-06C).

## **VI. AGENCY REFERRALS**

The District Department of Transportation (DDOT) will provide comments under separate cover.