

## Applicant's Proposed Findings of Fact and Conclusions of Law

### GOVERNMENT OF THE DISTRICT OF COLUMBIA Zoning Commission

#### ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 20-06D

Z.C. Case No. 20-06D

**Felice Development Group**

**(PUD Modification Without Hearing @ Square 1048-S, Lot 2 / 1333 M Street, S.E.)**

**July 10, 2025**

Pursuant to notice, at its public meeting on July 10, 2025, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Felice Development Group (the “Applicant”) for a Modification Without Hearing to the Consolidated Planned Unit Development (“PUD”) approved pursuant to Z.C. Order No. 20-06,<sup>1</sup> as extended and modified by Z.C. Order Nos. 20-06A, 20-06B, and 20-06C, for the property known as Lot 2 in Square 1048-S (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

#### I. BACKGROUND

##### *The Property*

1. The PUD Site is a triangular parcel containing approximately 127,400 square feet of land area, located in the southeast quadrant of the District of Columbia, bounded by M Street, S.E., the Southeast/Southwest Boulevard, and freight rail tracks to the north; Water Street, S.E. to the southeast; and the unimproved right-of-way for Virginia Avenue, S.E. to the southwest.
2. The PUD Site is separated from the Capitol Hill residential neighborhoods to the north by freight rail tracks. Other uses in the surrounding area include the District Yacht Club (part of the Historic Boathouse Row) and the Maritime Plaza Development, which consists of two five-story office buildings.
3. The PUD Site is located within the boundaries of Ward 6 and Advisory Neighborhood Commission (“ANC”) 6B.

##### *Prior Zoning Commission Approvals*

4. Pursuant to Z.C. Order No. 20-06, effective April 23, 2021 (the “Original Order”), the Commission approved a Consolidated PUD, First Stage PUD, and related Zoning Map amendment from the PDR-4 zone to the MU-9 zone for the PUD Site. The Original Order authorized the construction of a mixed-use project consisting of approximately 786,160

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<sup>1</sup> In addition to the Consolidated PUD, Z.C. Order No. 20-06 also approved a First Stage PUD and a related Zoning Map amendment. The Application sought a Modification Without Hearing only for the Consolidated PUD.

square feet of gross floor area (“GFA”), yielding approximately 900 dwelling units; and approximately 44,092 square feet of GFA for non-residential use; and 174 vehicle parking spaces (the “Project”).

5. Pursuant to the Original Order, the Project is to be constructed in phases. The first phase, which is the Consolidated PUD, involves the construction of the East Tower (also known as Building 1-East Tower). The subsequent phase(s) include the construction of the West Tower (also known as Building 1-West Tower) and Building 2, which are the subjects of the First Stage PUD approval. The East Tower and West Tower will be connected via an elevated bridge and, together, comprise Building 1.
6. Pursuant to Z.C. Order No. 20-06A, effective October 7, 2022, the Commission approved a technical correction to the Original Order to correct the development table provided in Finding of Fact No. 31.
7. Pursuant to Z.C. Order No. 20-06B, effective April 7, 2023, the Commission approved a Modification of Consequence to the Original Order that permitted various modifications to the approved PUD including, but not limited to, shifting the eastern boundary of Theoretical Lot 1, adjusting boundaries for the Consolidated PUD and the First-Stage PUD, and increasing the vehicle parking for the Project. The Commission also approved corresponding changes to several conditions in the Original Order, including additional transportation mitigation measures in light of the approved increase in vehicle parking. Z.C. Order No. 20-06B established the most updated development program for the Consolidated PUD.
8. Pursuant to Z.C. Order No. 20-06C, dated January 26, 2023, and effective April 28, 2023, the Commission granted a two-year extension of the approved PUD. As a result, the deadline to file a building permit application for the Consolidated PUD is now April 23, 2025, and construction of the Consolidated PUD must commence by April 23, 2026.

#### ***Parties and Notice***

9. Other than the Applicant, the only party to Z.C. Case No. 20-6 was ANC 6B, the “affected” ANC pursuant to Subtitle Z § 101.8.
10. On May 27, 2025, the Applicant served the Application on ANC 6B, Commissioner Edward Ryder, the ANC’s chair and Single-Member District Representative for ANC 6B-08, and the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

## **II. THE APPLICATION**

11. On May 27, 2025, the Applicant filed a request for a Modification Without Hearing seeking approval of design modifications to the approved Consolidated PUD: (i) the private street proposed between the East Tower and the West Tower in Phase II of the Project; (ii) the walkway from M Street, S.E. along the east side of the East Tower; (iii) the penthouse

configuration and design; (iv) the materials for the enclosed projecting balconies; and (v) the finish for the site walls enclosing the planters and bioretention planters. (Ex. 1-2G.)

12. The Application included a set of modified plans (the “Modified Plans”) showing the requested design changes. (Ex. 2A.)
13. To formalize the requested exterior modifications, the Application submitted a proposed amendment to Decision No. A.1 of the Original Order, as subsequently modified by Z.C. Order No. 20-06B, for incorporation into the final order. (Ex. 2.)

***Justification for Requested Modification***

14. The Application explained that the requested exterior modifications are necessary to redesign certain architectural elements and the private street in response to construction or maintenance issues that have arisen as the permit plans for the Project have progressed. For example, the private street was redesigned as a Woonerf to address grading and infrastructure challenges, but will improve pedestrian circulation and site connectivity, reduce vehicular use and enhance safety. The roof slab was lowered to accommodate larger mechanical equipment. Also, some of the building materials were changed to address constructability challenges, comply with migratory wildlife regulations and to provide an improved, more cohesive design across the building. (*Id.*)
15. The Application summarized that the proposed modifications and asserted that these changes do not affect the Commission’s original findings at the time of approval, nor do they alter the PUD’s continued compliance with the evaluation standards set forth in Subtitle X §§ 304.3 and 304.4. The Application further asserted that the PUD remains not inconsistent with the Comprehensive Plan Maps, the Lower Anacostia Waterfront/Near Southwest Area Element, and the citywide elements, and that the modifications will not result in unacceptable impacts on the surrounding area or diminish the public benefits and amenities previously recognized by the Commission, citing Conclusions of Law Nos. 9–27 of the Original Order. (*Id.*)
16. Furthermore, the Application maintained that a Modification Without Hearing is justified, as the proposed changes are limited to architectural and design refinements, and the effects of the modification can be fully evaluated without the need for witness testimony. (*Id.*)

**III. RESPONSES TO THE APPLICATION**

***OP***

17. On June 26, 2025, OP submitted a report (the “OP Report”) stating that it “recommends the Commission approve the requested Modification Without a Hearing for exterior changes to Phase I (East Tower) under Subtitle Z § 703” because “[t]he proposed changes would not alter the PUD-approved development standards” and include exterior modifications that “are aesthetic and cosmetic and would not impact use or function.” (Ex. 4.)

18. The OP Report further noted that the proposed site plan change for the private street was made in response to input from the District Department of Transportation and would enhance circulation both to and through the site. (*Id.*)
19. The OP Report concluded that the exterior modifications proposed with the Application “would not significantly adversely impact any aspect of the specific public benefits, project amenities and approved development tabulations and measurements.” (*Id.* at p. 3.)

***ANC***

20. ANC 6B did not submit a written report or comments to the case record; however, the ANC received notice of the Application in accordance with Subtitle Z § 703.10, as noted in Finding of Fact No. 10 above.

**CONCLUSIONS OF LAW**

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make, without public hearing, modifications to approved contested case final orders and plans approved by such orders (modifications without hearing).
2. Subtitle Z § 703.6 describes a Modification Without Hearing as a “modification in which impact may be understood without witness testimony, including, but 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. Determination that a modification can be approved without witness testimony is within the Commission’s discretion. A request to add or change a zoning map designation to an approved planned unit development shall not be considered without a hearing.”
3. The Commission concludes that the Application qualifies as a Modification Without Hearing pursuant to Subtitle Z § 703.6 because it seeks to redesign or relocate architectural or exterior elements from the final design of the Consolidated PUD approved by the Commission. The Commission further finds the proposed modification can be fully evaluated without the need for witness testimony and therefore may be approved without a public hearing.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.10 to serve the Application on all parties to the original proceeding, in this case ANC 6B, at the same time that the request was filed with the Office of Zoning.
5. The Commission concludes that the requirement of Subtitle Z § 703.12 to provide a minimum of 30 days for parties to respond to the Application has been met.
6. The Commission concludes that, in accordance with Subtitle Z § 703.13, this request for a Modification Without Hearing was filed with the Office of Zoning at least thirty-five (35) days prior to the public meeting at which the request was considered by the Commission.

The Application was filed on May 27, 2025, and considered by the Commission at its July 10, 2025, public meeting.

7. The Commission finds the Application consistent with the intent of the original PUD approval of Z.C. Order No. 20-06, as amended and extended by Z.C. Order Nos. 20-06A, 20-06B, and 20-06C, for the reasons set forth in FF No.    above.

#### **“GREAT WEIGHT” TO RECOMMENDATIONS OF OP**

8. The Commission must give “great weight” to the recommendations of the 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 § 405.9 (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

#### **“GREAT WEIGHT” TO WRITTEN REPORT OF THE ANC**

10. 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).)
11. ANC 6B did not submit a report to the case record to which the Commission can give great weight (FF No.   ).

#### **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 Applicant’s request for a Modification Without Hearing to the Consolidated PUD approved pursuant to Z.C. Order No. 20-06, as amended and extended by Z.C. Order Nos. 20-06A, 20-06B, and 20-06C, to authorize the architectural and exterior modifications requested by the Application, and subject to the following condition (additions in **bold** and underlined text; deletions shown with ~~strikethrough~~ text):

##### **A. PROJECT DEVELOPMENT**

1. The approved project (the “Approved PUD”) shall be developed in accordance with the following plans and as modified by the guidelines, conditions, and standards herein:  
...
  - The Consolidated PUD plans dated November 19, 2020, and marked as Ex. 79A1-79C of the record for Z.C. Case No. 20-06 except as modified by the plans dated September 7, 2022, and marked as Ex. 3C1-3C5 of the record for Z.C. Case No. 20-06B, ~~and as further modified by~~ the Proposed Sheets marked as Ex. 15B-15C of the record for Z.C. Case No. 20-06B, and as further modified by the plans titled “East Tower” dated May 15, 2025, marked as Ex. 2A of the case record for Z.C Case No. 20-06D (collectively, the “Approved Plans”).

**Final Action**

**VOTE (July 10, 2025): 5-0-0**

(Joseph Immamura, Gwen Wright, Anthony J. Hood, Robert E. Miller, and Tammy Stidham to approve.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-06D shall become final and effective upon publication in the *District of Columbia Register*; that is, on \_\_\_\_\_, 2025.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

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**ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION**

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**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